

Personal Advantage  
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## **When to Sue Your Insurance Company**

**Policyholders pay insurance premiums for good faith protection against financial loss...and insurance companies are obligated to show good faith in their dealings with policyholders by delivering what has been paid for.**

A policyholder who acts in bad faith by filing a false insurance claim is guilty of fraud and can go to prison.

Unfortunately, an insurer who tries to defraud a policyholder by refusing to pay a legitimate claim is not criminally prosecuted. The policyholder's only recourse is a civil suit to prove the company has acted in bad faith.

What is bad faith?

"Bad faith," in the context of insurance, can be simply defined as "the unreasonable refusal on the part of an insurer to promptly pay a valid claim."

Bad faith practices on the part of an insurance company include:

- Failure to investigate the claim adequately.
- Unreasonable delay in processing the claim.
- Inadequate payment for the claim filed.
- Conscious disregard for the rights of a policyholder.

Your right to sue:

If your insurance company has acted in bad faith, you are entitled to sue for the full amount of benefits due, plus damages for emotional distress and any economic loss you suffer due to the company's refusal to pay your claim. If the insurer's conduct has been particularly unscrupulous, you may also be awarded punitive damages, the purpose of which is to punish the company and encourage it to behave more responsibly in the future.

Case histories:

Here are a few of the bad faith lawsuits I have tried or been involved with over the years.

Mike Egan, a roofer, fell off a ladder and severely injured his back. Surgery was unsuccessful, and Mr. Egan's doctors declared him totally disabled. His disability insurance policy promised to pay \$200 a month for life if he was disabled by an accident. The insurance company paid the benefits for a few months, then suddenly stopped. Reason: It claimed the disability was caused by "sickness" rather than an accident, knowing full well that the sickness benefits lasted only three months. The company never consulted Mr. Egan's doctors. Result: The jury awarded Mr. Egan the benefits due under his policy plus \$78,000 for mental suffering, plus a record-setting punitive damage judgement that was later reduced when the company agreed to a settlement.

The co-owners of a small auto parts store in Bishop, California were wiped out one winter night when an explosion and ensuing fire destroyed their business. Their insurance company refused to pay any benefits,

accusing the two partners of arson - even though the men were never suspected or questioned by police or fire officials and no charges were filed. The insurance company publicized the accusations, and the businessmen and their families were forced to leave their small town.

One of the partners later suffered a stroke his doctors attributed to the stress of the fire and the trial. In court, the accidental cause of the explosion was proved to be a faulty butane heater. Result: The jury found that the insurance company had acted in bad faith by ignoring its responsibility to make an adequate investigation. The case was eventually settled for over \$750,000.

Note: The attorney who tried this case called it a "typical fire case." Accusations of arson are a common delaying tactic that insurance companies use against fire victims.

Mary Frazier lost her 23-year-old husband in a tragic drowning accident. His employee benefits included a \$12,000 double indemnity life insurance policy, under which she was due to receive a double benefit in case of accidental death. The company paid the first \$12,000 but refused to pay the second \$12,000. Reason: The company determined that her husband had committed suicide. Furthermore, it was revealed in court that the company had instructed its supposedly impartial investigators to find a motive for suicide, though none existed. The Fraziers were happily married, enjoying their first child and were very religious. And there were witnesses to the accident. Result: The widow was awarded the benefit due, plus \$150,000 for emotional distress, plus \$8 million in punitive damages. The latter was reduced to \$2 million on appeal, and eventually disallowed because California's two-year statute of limitations for punitive damages had expired before the suit was filed.

Examples: There are some states that don't allow policyholders to recover attorneys' fees. Washington does not allow for punitive damages, while other states have capped them. Solution: It's sometimes possible to sue in the insurer's home state.

If you have health insurance through your employer. If your health insurance policy is governed by the provisions of ERISA (Employee Retirement Income Security Act), you can only sue to recover benefits due - not for damages.

Problem: Few, if any, attorneys are willing to take on such a case. Solution: Look for an individual or group health plan not provided by your employer. Encourage lawmakers to close the loophole in ERISA that preempts state consumer laws regulating insurance.

Don't sleep on your rights:

The "bad faith" lawsuit is the consumer's most powerful weapon in a battle with an insurance company, and the one most feared by the insurance industry.

Proof: The industry spends millions trying to convince the public and lawmakers that an explosion of litigation and high damage awards are to blame for sky-rocketing insurance premiums&that the public's ability to collect damages should be capped, their rights to sue limited and attorneys' contingency fees banned.

Facts: The number of lawsuits in the US, per capita, has not risen in 33 years&the mean jury award of \$8,000 has stayed nearly constant since 1959&a contingency arrangement is often the only way a less-than-wealthy person can gain access to our nation's courtrooms.

Bottom line: Don't take your rights for granted.