

Considering Suing Insurance Company?

Here are some questions to ask yourself before taking a bite at the litigation apple.



Is my claim covered by the policy according to the expert or experts I hired?

Oftentimes, insurers retain so called “experts” who classify a claim or cause of loss as something not covered so the insurer is off the hook. It is critical that YOU hire a qualified, independent expert should you suspect that your claim is covered.

Did I let the statute of limitations pass?

Each state has a time limit on when suits can be filed. This is called the “statute of limitations” and is a minimum of one year.

There is debate about when the statute of limitations begins, though. Some state courts have ruled that the clock starts ticking on the date of loss; some have ruled the statute starts running on the date of the claim; some have ruled the statute starts ticking when a reasonable person would believe their insurer was breaching the policy (lowballing payments for repair and/or replacement, and other acts of bad faith).

If the statute has passed, the policyholder has no legal recourse. In

other words, you give up your right to sue.

We recommend that if you are bumping up against a statute of limitations, you hire an attorney to file and properly serve a lawsuit only so you protect your rights. If not, the insurer has zero motivation to resolve your claim because you have no recourse.

Should the claim be resolved to your satisfaction, you can always drop the suit. And, there are alternatives to litigation that are often less costly and less time consuming. See <http://policyholdersofamerica.org/appraise.html> for more details on the Appraisal Process.

Have I done all I was supposed to do under the policy?

An insurance policy is nothing short of a contract between you and the insurance company. Like with any contract, if one of the parties to the contract breach the contract, and damages occur as a result of that breach, the party responsible for the damage may suffer serious financial penalties. You do not want to be that party.

Under that contract, YOU have duties just as the insurance company has duties. Your duties are clearly spelled out in the policy (or contract) and include but are not limited to such things as:

A. Protecting your property from further damage (in the policy, it’s called “temporary repairs) which may include but are not limited to tarping a roof after a storm caused a roof leak, repairing a broken pipe or completely shutting off the main water valve so no further water

can run through the pipes, etc... Temporary repairs do not include ripping out all wet building materials. If you are hell bent on making more permanent repairs such as these before the claim is adjusted to your satisfaction, the insurance company may deny coverage. Why? They will claim that you destroyed the evidence they need to properly investigate the claim. More on this later...

B. Cooperating with your insurance company which means allowing the insurer and/or their designated agents (adjusters, contractors, etc...) access to your property given reasonable notice and at reasonable times. In most cases, the term reasonable means no less than 3 hours notice and not before 7:30 am or after 8:00 pm.

C. Submitting to an "Examination Under Oath" or "EUO" should one be requested by the insurance company. If the insurer requires an EUO, this spells trouble in the claims process and the insurer is most likely trying to dodge responsibility or suspects insurance fraud. While you are required to submit to an EUO, you are allowed to have your attorney present.

Has every effort been made to resolve my claim fairly and did I document those efforts in writing?

Document the claim, its progress, requests for payment, and status by using our claims form available at http://policyholdersofamerica.org/claims_form.pdf

Have you received qualified bids from vendors and/or contractors ready and willing to perform services or supply products at the price they bid?

Insurance companies oftentimes have what they call "preferred vendors" who lowball repair and/or replacement estimates. Insurers then use these woefully low estimates as their basis for payment. Usually, these estimates contain language in them that allows for the "unknown" or unforeseen damage (usually called "supplemental damage"). This contingent allows the preferred vendor to seek additional money for the project he or she lowballed. It is common for insurance company "preferred vendors" to cost more than local contractors when it's all said and done and they usually cut corners to save the insurance company money. Why do you think they are called "preferred vendors"?

Is an undisputed amount owed to you for repairs and/or replacement been withheld?

Usually, an insurance company will issue payment for the lowball, unrealistic estimate they received from their preferred vendor and argue that your claim is resolved. The amount owed by the insurance company's vendor is the amount that is considered "undisputed" because there is no dispute about that amount being the minimal amount owed. If the insurance company has withheld that undisputed amount, and not issued it in a timely basis, that is considered bad faith. It should be noted that under replacement cost policies, insurance companies CAN withhold depreciation but must issue the amount withheld for depreciation to the homeowner once all repairs are made.

Did the insurance company send out an adjuster and begin receiving estimates within the allotted time frame as spelled out in the policy?

Policies are usually quite specific about the length of time an insurer had to begin adjusting a claim and the length of time the insurer has to issue payment once the minimum amount owed becomes reasonably clear.

Did the insurance company allow and authorize your requests for repairs that would mitigate damage?

Many types of damage, like water damage, are growing problems. Sure, you should tarp your roof or fix a broken pipe and the policy allows you to do just that. But, more destructive repair work like removing all wet sheetrock, plywood, subflooring material, etc... must be authorized by the insurance company if the insurance company is still **investigating** the claim. Always request, in writing, the insurer to authorize “mitigation repairs” so that the damage ceases to grow. If the insurer does not authorize mitigation repairs after your documented requests and the damage grows, the insurer will, most likely, be responsible for the additional repairs necessary.

Can my family sustain the cost and time requirement of litigation?

Let’s face reality. Most lawyers just won’t fund cases against insurance companies because they are expensive. While many lawyers are willing to take on “contingency” fee cases (their fees are only paid if and when money is paid by the insurance company and may be anywhere from 30 – 45% of the payments made to you), an increasing number of lawyers are refusing to finance the out of pocket expenditures required in litigation. This expense is usually very high by insurance company-design. Insurers can afford to throw tons of dough at litigation...

hiring countless defense experts and demanding countless depositions. For every expert they hire, you are forced to hire your own expert to challenge their expert’s opinion.

Ask any attorney you are contemplating using to estimate the costs involved, even if you are lucky enough to find an attorney willing to front these out of pocket costs. Then decide if you can financially afford to pursue litigation. There is NO REASON to bite off on something you cannot afford.

Also ask any attorney you are contemplating using to set forth reasonable recovery goals and to estimate the time it will take to achieve those goals given the appeals process. Insurers who get hit big time at the lower (District) court level, often triumph at the one of two appeals court levels where more insurance-friendly justices reside.

The political landscape of your state often is the determining factor insofar as insurance company recovery is concerned. If you are living in a Red State, the courts tend to be insurance company or big business friendly, especially at the appeals level. If your state is more consumer-friendly, your chances of recovery are far better.

Can I deal with private investigators?

During litigation, it is more common than not, that an insurance company will hire a private investigator to “tail” or “investigate” you as well as other members of your family. While many of the things learned by a private investigator are not admissible in court,

such “gems” are used to harass or embarrass people into dropping a case.

Take the cheating husband, the gay guy (whose family did not know about his preferences) or the 50-year old man who smoked pot when he was a teen. We’ve seen people cave under the pressure of knowing such information may see the light of day.



Look. Every adult on the planet has something they would like to remain unknown. Only in rare instances would we suggest dropping a case because of something that happened in the past. Regardless, speak with an attorney about how, if at all, such an embarrassing lapse of judgment would impact your case BEFORE making a decision to pursue litigation.