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Insurance Law and Policy Holder Representation

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TOP TEN THINGS YOUR INSURANCE COMPANY MAY NOT WANT YOU TO KNOW

1. An insurance company must act in good faith in the interpretation of their policies, and in the investigation and payment of claims. It is unlawful for an insurer to engage in unreasonable delay; to put their financial interests ahead of the financial interests of the policyholder; or to lowball (underpay) claims. They cannot use deception or trickery in sales or claims handling. They cannot compel an insured to hire an attorney in order to be paid what they are owed.

They must be fair to their policyholders. The violation of any of these standards is a violation of the duty of good faith which the law imposes on all insurance companies. It exposes the carrier to potentially significant damages.

2. If an insurance company unreasonably denies a claim or breaches its duty of "Good Faith and Fair Dealing," and you must sue them in order to recover your policy benefits, the insurance company may be responsible for paying your losses and costs.

3. If an insurance agent misrepresents the coverage being provided at the time the agent sells you your policy, the insurance company may have to honor the coverage representations made by their agent.

Insurance agents are nice. Otherwise, they wouldn't be able to sell policies. The same is true for claims adjusters. Otherwise, they wouldn't be able to settle claims. It is important to distinguish these nice individuals from the company itself. The purpose of an insurance company is not to be nice, but to make money for its stockholders. If it makes more money than expected, the stock goes up.

If it makes less money than expected, the stock goes down. When the stock goes up, executives are given bonuses. When the stock goes down, they are given headaches. The name of the game in the home office begins with the word "profits." Don't ever forget this. When the home office trains agents or claims adjusters they don't tell them to be sinister. There are no conventions at which agents are taught to misrepresent coverage and adjusters are taught low-balling techniques. What does happen, however, is that agents are told very little about the policies they are selling. They may know something about what is covered, but they know very little about what is not.

If you were to spend the rest of your life talking to insurance agents about policies they are selling, you would probably not find a single agent who would be able to simply pull out a policy and explain it.

The truth is that agents don't understand policies. They just sell them. Most agents won't even show you a copy of the policy they are urging you to buy. If you ever see a policy at all, it will probably be sent to you in the mail directly by the insurance company days, or weeks, after you have purchased the insurance. So at the time of sale, you don't know what you are buying other than what the company or agent promotional or sales pitch conveys to you.

4. If the amount of your insurance coverage is not sufficient to cover your actual losses because the insurance agent recommended that you insure for less than the amount you actually need, the insurance company may be responsible for paying your entire loss, not just the amount of the policy benefits.

This is another good reason to take notes when you buy your policy in the first place, and to keep these notes in your insurance file. If the limit which you purchased were recommended by the insurance agent and they are insufficient, you are entitled to be paid for all losses on the basis of what your limits should have been.

5. Any ambiguity in your policy must be interpreted in your favor and against the insurer.

Every insurance company has a Mad Hatter Department. This Department is in fierce competition with its counterparts at other insurance companies to see who can write the most incomprehensible and loophole-filled gobbledygook in the industry.

The reason policies are so incomprehensible is not because insurance companies cannot find people who can write in plain English. It is because the companies know that the less clear the policy is, the less clear their obligation to pay will be. So they write policies that they have to obtain “coverage opinions” on by law firms to whom they pay hefty fees to explain what they have written. Believe it or not, even these lawyers are often wrong.

You can turn this confusion from a disadvantage into an advantage by simply showing that an applicable provision is ambiguous. If it is, coverage must be provided, and the claim must be paid.

6. The insurance company, not the policyholder, has the obligation of providing the applicability of a “limitation” or “exclusion” in the policy.

Insurance policies typically contain a very brief “insuring clause” describing what’s covered. Dozens of paragraphs and thousands of words are then spent listing exclusions, exceptions and limitations.

When a large claim occurs, insurance companies want to be able to write a letter to their policyholder denying coverage by quoting from one or more of the “exclusions.” The bottom line will be that they sure would like to pay your claim, but darn, they just can’t.

Many insureds will either accept what they are being told or will seek advice from someone in the insurance industry or from a lawyer who doesn’t specialize in this field. As a result, many legitimate claims go either unpaid or severely underpaid.

What you should know is that the insurance company, not you, has the burden of proving that an exclusion or limitation in the policy is:

- clear,
- conspicuous and
- applicable.

The shifting of this “burden” concerning exclusions – to the insurers – is contrary to the usual rule of the law that the party making the claim is the one who bears this burden. Because most policyholders are unaware of this rule, insurance companies often avoid paying legitimate claims based on exclusions that, if challenged, the exclusions, to the company.

7. An insurance company may try to rescind (eliminate) your policy coverage based on an alleged misrepresentation in the insurance application. It is not uncommon for an insurer to try to escape paying a large claim by accusing a policyholder of attempting to obtain insurance under false pretenses. They point out that doing so is illegal. Some people become so frightened that they give up their claim. If you are innocent of any wrongdoing, don’t give in to such tactics.

There are three important principles to remember on this subject:

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- Read all policy applications yourself and read them carefully;
- Don't fall for a bluff when an insurance company tries to rescind. If you have been honest, stand up for yourself. You will probably prevail.
- There are "incontestability periods" in most policies and under the law. That means that beyond a particular date (e.g. two years), the company can no longer rescind the policy for an alleged misstatement on the application. When they try to rescind, don't rollover, examine the situation carefully.

8. Even as to those who do fight, insurers know that most people will wind up with a lawyer that is not a specialist in this field. This fact can be helpful for you to know when trying to negotiate a fair claim settlement on your own behalf.

9. You can get a free legal consultation with a lawyer from raybourhis.com before you talk to a company representatives, rather than after it's too late.

10. Read the definitions contained in your policy. These definitions often change the common meaning of the words used.

Also be aware that policy language does NOT trump state laws and protections.