Hiring An Attorney For An Insurance Claim: When, Why and How

You've suffered a major loss from fire, theft, or some other calamity and you've filed an insurance claim. You're not sure what your rights are, and you're worried about trusting your insurance company. You should be. The only way to ensure a fair settlement of a large claim (in excess of $10,000) is to educate yourself and get professional help when you need it. If you're reading this publication, you're on the right track.

Do you need professional help? Do you need a lawyer? Do you need a public adjuster? What is a public adjuster? Can you handle it on your own? The first thing you need before making these decisions is a complete copy of your policy, including the "Declarations Page" and all "Endorsements" and "Riders".

Your Declarations Page is generally the first or second page of the policy. It states the dollar limits applying to each category of coverage, and lists the endorsements and riders (extras) that you have in addition to the basic policy. Each such addition will be listed by a code number or letter, or combination thereof. Review your basic coverage categories; Dwelling, Contents (Personal Property), and Loss of Use (sometimes called "Additional Living Expenses").

QUESTIONS AND ANSWERS:

Q: "I've filed a claim under my homeowners policy. I've met with adjusters from my company. A dispute has arisen. I'm getting frustrated. Do I need a lawyer?"

A: If you can communicate effectively in writing and in person with your insurer with confidence, polite aggression, and insistence on your rights, you may not need an attorney. If you are losing patience, feeling frustrated, angry or anxious, or are unsure about your rights, a qualified insurance attorney can help.

Q: "Once I hire an attorney, should I let them do all the talking to my insurer"?
A: Not necessarily. You can try having an attorney give you advice on your rights and continue to communicate with your insurer. If an aggressive attorney contacts your insurer early in the claims process, it may aggravate and prolong a dispute that you might have resolved yourself. However, if you’ve given it your best shot and the insurance company won’t treat you fairly, let a professional take over on your behalf. Once the insurance company has dug in its heels and you’ve hired an attorney, let the attorney have all communications with the insurance company. Most attorneys will insist on this and its for your own protection.

Q: "Can I hire my family lawyer to represent me...the one who did my will last year?"

A: You can, but you shouldn’t. Your lawyer should be experienced in insurance coverage or bad faith litigation. Insurance companies generally hire very experienced insurance defense counsel to represent them and yours should be a worthy adversary. Insurance companies will assess the risk of not settling with you by considering the strength of your representative.

Q: "How can I find the right lawyer?

A: Be an astute consumer, get referrals from friends, family members, or reputable attorneys who have personal contacts with an insurance specialist. Call your County Bar Association and ask for referrals for "Plaintiffs Insurance Coverage" or "Bad Faith Attorneys." Interview potential candidates and ask for the name of a former client. Contact the former client and ask them to share their experience with you.

A: A lawsuit is a major undertaking but may be the most effective way to fairly resolve a major claim. The attorney you select should have your utmost confidence...and deserve it!

Q: "Do I have to sue my insurance company to get what I am entitled to under my policy?"

A: Absolutely not. On most small dollar claims, your insurer will pay your claim with little fuss and bother. Basic negotiating will resolve most insurance disputes. There are laws and regulations in most states that make it illegal for insurance companies to force consumers to file suit to recover their policy benefits.

Q: "What are the alternatives to litigation?"

A: Mediation, Arbitration, Appraisal are three of the most popular alternatives to litigation.

In MEDIATION, the parties work with a third party to negotiate a resolution of their dispute in an informal, voluntary process.
An ARBITRATION may be binding or non-binding, and is more formal than a mediation. The arbitrator may dictate the result, or simply work with the parties to reach a result.

APPRaisal is a procedure mentioned in most policies as a way to resolve a dispute over the value of a loss. It is done by a third party, but may not be legally binding.

Q: "How do I find a mediator or arbitrator?"

A: Look in your phone book under "Mediation Services" or "Attorneys – Mediators". Word of mouth.

Q "If I do hire a lawyer, what will it cost?"

A: You can pay by the hour, or enter into a "Contingent Fee Agreement."

Q: "What do lawyers charge by the hour?"

A: Hourly fees for lawyers vary according to firm size, experience of the attorney, and geographic location. Consumers retaining a partner in a law firm can expect to pay $200-$350 per hour. Rates for law firm Associates range from $75-$175 per hour. Consumers retaining a rural attorney in private practice can expect to pay lower hourly fees. Beware of trading costs for experience. The median range of hourly fees for attorneys is approximately $120-250.

Q: "What is a "Contingent Fee Agreement"?"

A: Many policyholders in dispute with their insurer cannot afford to pay a lawyer by the hour. Most lawyers who represent policyholders in disputes with insurers will work under contingent fee agreements. Under such agreements, the attorney is only paid if the client recovers money in a lawsuit or settlement. Then, the lawyer takes a percentage of the recovery.

If a case settles before a case goes to trial, most attorneys set their contingency fee at 33% of the recovery. If a case goes to trial, the range increases to 33-40%.

Q: "Do I have to pay litigation costs on top of attorney fees?"

A: Some attorneys will advance litigation costs, but the client is generally ultimately responsible for them. Whether you pay hourly or on a contingency, you may have to pay costs, even if you lose your case. You can set a cost reserve in advance with your attorney, and request that he or she try to stay within that amount.

Q: "What do litigation costs run for an average case?"
**A:** That question cannot be answered with certainty. It depends on the facts of the case, the location of witnesses, and the complexity of the dispute.

**Q:** "What recourse do I have if I am not satisfied with my attorney?"

**A:** A client has an absolute right to discharge their attorney at any time, and for any reason. You may be liable to pay your attorney for the reasonable value of their time, and, if you fire them soon before the case settles or is tried, you may have to pay them extra. You can hire a second attorney, but make sure you iron out the question of payments you may owe to the first attorney.

The State Bar of California has a Hotline to answer questions about attorneys. They will also process a complaint against an attorney, and if appropriate, may bring disciplinary proceedings. The Hotline number is 1-800-843-9053. If you're outside California, check with the agency that licenses and regulates lawyers, every state has one.