

What You Should Know About Insurance Bad Faith



An E-Book by Christopher C. Van Cleave

Introduction

We buy insurance to protect us when disaster strikes. We pay premiums every month or quarter or year with the reasonable expectation that when we need them, our insurance company will do its best to help us get full coverage for our claim. Our insurance company is supposed to be on our side - treat us like good clients, and serve our interests. Unfortunately, that is not always the case.

Sometimes our own insurance company doesn't provide us all the information we need to make a claim, doesn't tell us about all the available coverage, or even gives us misleading information. This eBook is designed to help level the playing field, and provide insureds with the information we need to make certain we get the coverage and benefits we paid for. This guide provides information that will hopefully help us understand our rights under the insurance policies we buy, including those rights that might be hidden in the small print or otherwise not spelled out in our policies.

Hopefully, the information in this eBook will help insureds make their own decisions and get their claims fairly paid without having to hire an attorney. But if you are unsure about what your rights are, or just want to make sure that you are getting the full benefits you paid insurance premiums for, don't hesitate to call Van Cleave Law, or email us to set up an appointment. Consultations are always free.

-Christopher C. Van Cleave

Chapter One: Insurance Bad Faith

In order to avoid serious financial losses after disasters such as (but not limited to) wrecks, hurricanes, tornados, hail storms, fires, illnesses that require expensive hospitalizations or medications, and deaths; we purchase insurance. Insurance is supposed to provide peace of mind because we know that we will be taken care of.

An insurance policy is a contract – we pay premiums and, in return, the insurance company is supposed to provide compensation and coverage for specified “risks”. Unfortunately, insurance companies are big businesses that sometimes care more about the bottom line than fulfilling contractual promises to individual policyholders. In order to improve that bottom line, insurance companies often look for ways to delay, or even outright deny, payment of legitimate claims.

Insurance companies know that many of us don’t understand or maybe even read the fine print in the lengthy, single spaced policies they send us, so we may not even know we are being taken advantage of when our claim is delayed or denied. We may just assume the insurance company must be right and that our particular claim is not covered for the reasons stated by the insurance company.

When an insurance company delays or denies a claim without a legitimate reason, or breaches the duty of good faith and fair dealing that is implied in every insurance contract in Mississippi, the insurance company is acting in *bad faith*.

Bad faith claims can arise from any kind of insurance policy, including:

1. **Life Insurance:** The insurance company refuses to pay full policy limits after a loved one passes away. This is especially common on claims under “burial policies” (designed to pay enough benefits to cover a loved one’s funeral) and claims where the insured dies within two years of getting the policy (known as the “contestability period” under Mississippi law). The insurance company may try to assert the claim is not covered because, the insurance company alleges, the decedent did not tell the truth on their insurance application. But sometimes insurance companies ignore the information they are told on the insurance application, or fail to conduct a required investigation based on what the insured told them at the time of the application. Just because an insurance company says there is no coverage after a loved one dies does not mean it’s true.
 - Mississippi law also requires insurance companies to pay interest on life insurance policies in Mississippi from the date of death through the date the claim is paid. Insurance companies often fail to comply with this requirement, which is another example of bad faith.

2. **Fire Insurance:** The insurance company refuses to pay for damages caused by a fire. Often the insurance company will allege the fire was caused by “arson”, however this defense is very difficult for insurance companies to prove. Instead, the insurance company may delay the claim over a period of many months and keep asking the insured to provide more and more personal and financial information, with the hope the insured eventually gives up and refuses to provide any more information. Then, the insurance company denies the claim for the insured’s alleged “failure to cooperate”. Although an insured has a duty to cooperate with “reasonable” requests for information, sometimes these acts by insurance companies constitute bad faith.
 - Mississippi law also requires insurance companies to pay the full insured value if a home is totally destroyed by fire. Sometimes insurance companies ignore this obligation and try to pay less than the amount of insurance listed on the policy, which is also bad faith.
3. **Homeowner’s Insurance:** Most homeowner’s policies in Mississippi are “all risk” policies. That means they provide coverage for any “direct physical loss” to the home, and the insurance company has the burden of proving that any loss not covered was caused by a risk specifically excluded by the policy. Many times, especially in claims involving hurricane or tornado damage, or for claims involving water damage, insurance companies deny claims without actually proving the damage is caused by an excluded risk.
 - Most homeowner’s policies also provide “inflation coverage” so that if a home is completely destroyed, the amount of coverage provided by the policy automatically increases to reflect inflation that occurred between the time the policy was purchased and the time the claim is paid. Sometimes insurance companies don’t tell insureds about this additional coverage (which may be hidden in the small print); other times insurance companies may manipulate the numbers to pay less than is actually owed. These are also examples of bad faith.
4. **Health Insurance:** The insurance company refuses to pay for medical bills or refuses to pre-approve certain medical services that should be covered by the policy.
5. **Automobile / Uninsured Motorist Coverage:** The insurance company refuses to pay for damages to your vehicle or injuries you suffered due to another driver’s negligence, where the other driver was uninsured or did not have enough insurance to cover your injuries, when those damages should have been paid for under your own policy.
6. **Disability Benefits:** The insurance company refuses to pay or continue paying under a disability policy even though you are disabled and unable to return to work.
7. **Failure to Defend:** Many insurance policies, such as general liability policies and automobile policies, require an insurer to defend the insured against lawsuits filed against the insured, but insurance companies sometimes wrongfully refuse to provide a defense or even advise the insured that a defense is available.

- Under Mississippi law, if an insurance company provides a defense under a “reservation of rights” (meaning they are paying for a defense right now but reserve the right to later say there is no coverage and maybe even require you to pay them back for incurred expenses), the insurance company usually has a duty to allow you (the insured) to hire another lawyer, of your own choosing, to advise you about your rights. The insurance company also has an obligation, in most cases, to pay the other attorney’s fees and expenses. However, insurance companies sometimes refuse to offer to pay for the insured to have his own attorney, or even refuse to tell the insured about that option. This can also be bad faith.
8. **Ambiguous Language:** Some policies include language that is not clear about whether a particular risk is covered, or not covered. Under Mississippi law, the insurer is required to resolve that question in favor of providing coverage to the insured. Sometimes, the insurer resolves the question in favor of the insurance company, to protect and promote the insurance company’s bottom line. That is bad faith.

What is Bad Faith Litigation?

Mississippi law permits insureds to bring legal actions against insurance companies who commit bad faith. Damages potentially recoverable in these cases include:

1. The contractual benefits (money) the insurance company should have paid;
2. Compensation for the insured’s inconvenience and emotional distress caused by the wrongful denial of coverage;
3. Reasonable attorneys’ fees and expenses incurred by the insured in enforcing the insured’s contractual rights; and
4. Punitive damages in an amount, determined by a Jury, sufficient to punish the insurance company for its bad faith and set an example to prevent that insurance company, and others, from committing similar misconduct and bad faith in the future.

Chapter Two: The Truth About Inflation Coverage

Purchasing a home is a big financial step in anyone's life. We all want to make sure we get enough insurance to protect our investment. Usually, our insurance agent or another representative of the insurance company will inspect our home to determine the amount of coverage needed to protect our investment – which is usually based on an estimate of how much it would cost to replace our home in the event of a total loss. It is in our best interest to let the insurance company know anytime we add on or do anything to increase the value (and replacement cost) of our home so that the increase can be covered.

But what about increases in replacement cost that happen because of inflation instead of any additions we make on the home? If, for example, we get \$100,000 of coverage because that is what it would cost to rebuild our home in today's market; what happens if our house burns down a year from now and because of inflation in the cost of labor and materials it would now cost us \$120,000 to rebuild the same home? What happens if the insurance company takes six months to pay our claim, and due to inflation the cost to rebuild is now \$130,000?

What is “inflation coverage” or “inflation protection”?

Most homeowner's insurance policies include something called “inflation coverage” or “inflation protection” that is supposed to cover these inflation related replacement cost increases. We may not realize it, but part of what we pay in premiums is paying for that additional coverage. (We should all check with our agents to make sure our policies include inflation coverage).

The trick, and what Homeowner's Insurance Companies don't want us to know, is in how the inflation coverage is calculated. Most policies provide a mathematical formula for determining how much inflation will increase the amount of coverage. But most policies *don't* tell us exactly where the numbers to be used in those formulas come from. For instance, many policies say that the amount of inflation coverage will be determined by dividing the “inflation factor” listed in the policy into the “inflation factor” on a “given date”. However, in most cases, the insurance company / policy does *not* tell us what the source of the new “inflation factor” is; or even what is meant by a “given date”.

This lack of information allows insurance companies to pick and choose the numbers to *limit* the amount of inflation coverage provided. For example, if inflation is lower on the date of loss than the date when they finally get around to paying the claim, the insurance company might say “given date” means the date of loss – and vice versa. If no source for the inflation factor is identified in the policy, the insurance company can pick and choose from a multitude of private and governmental sources for inflation rates to find the lowest possible inflation rate to increase our coverage by. In some cases, the insurance company may not give us the benefit of our inflation coverage, since they know many insureds are not aware of it. The result – our insurance company may pay us less than it actually owes.

How do we know if we get the full benefit of the inflation coverage we paid for?

When an insurance company pays a total loss under a homeowner's policy, they usually don't include a detailed explanation of whether and/or how any inflation coverage increase was calculated. So, even if an insurance company pays for a "total loss" and pays the full amount of coverage listed on the policy when you bought it, they may not be paying the *full* amount they actually owe on the claim.

Chapter Three: There is a Narrow Definition of Flood Damage

As a homeowner, it's important to understand what exactly homeowner's insurance covers. While it does cover a wide range of possible damages to our homes and the things we keep inside, most homeowner's policies do *not* account for destruction caused by flooding. Usually, we must purchase a separate policy to protect our home against flooding. This does not, however, mean that we won't be covered in the case of water damage. In fact, after a property is damaged from a water-related incident, the burden of proof of flood damage is on the insurance company. Although they may try to claim that the damage was caused by a flood to avoid payment, they must prove that the "flood" (as defined by policy) was the reason for damage.

According to the Federal Emergency Management Agency (FEMA), a flood is defined as "a general and temporary condition of partial or complete inundation of two or more acres and two or more properties of normally dry land." To qualify as flood damage, it can *only* be caused by one of the following:

- Inland or tidal water overflows
- Abnormal water accumulation or runoff
- Mudflow
- Landslides leading to waves or currents in nearby bodies of water

As long as your home's damage was not caused by any of the above, you will typically be entitled to coverage for a water damage claim (in the absence of some other applicable exclusion).

Chapter Four: The Insurance Company is Responsible for Paying for Living Expenses

When a home is damaged to the point of being uninhabitable, the insurance company is usually responsible for paying the homeowner's expenses to live somewhere else. Under most policies, the insurance company must pay for the homeowner to live in a similar (type and quality) home to the insured property that was damaged or destroyed. Usually these expenses should be paid while the damage claim is being adjusted and repairs are being made.

In addition to covering temporary housing, many insurance policies cover additional living expenses, or loss of use. These costs can include rent, housing, food, and storage. If our home is covered by homeowner's insurance and is severely damaged by some accident or disaster, we should not need to worry about sleeping on someone's couch while we wait for our home to be repaired. Many times, the insurance adjuster will simply ask if we have a place to stay while our home is uninhabitable. If we tell them we are staying with a relative or a friend, the adjuster, in an effort to save the insurance company money, may not mention available coverage for additional living expenses. However, it's important to ensure that we receive the full coverage we paid for after our home is damaged, whether we stay with a relative or not.

The following are a few tips to remember when considering what additional living expenses should be covered by your insurance company:

- Know the policy limits, as there is typically a cap for additional living expenses. There will also usually be a limited time period for how long additional living expenses will be covered.
- Look for comparable accommodations. Staying in a hotel might be nice, but can get old quickly. It is usually better to find a rental property that's comparable to our damaged home.
- Document all extra expenses; this includes meals/groceries, storage, laundry, mileage and even pet boarding. Remember the key word is "additional", so paying for our mortgage or for our children's swim lessons will not be included as additional costs.
- Keep all receipts. These may be necessary to collect money from the insurance company for additional costs.

Although many insurance companies may try to avoid paying for additional living expenses, understanding our insurance policy rights can make a significant impact throughout the aftermath of an accident or disaster. Sometimes, it is necessary to have a professional intervene on the insured's behalf.

Chapter Five: Many Policies Also Pay for Special Circumstances and Additional Damages

Most homeowner's policies include several types of "special" or "additional" coverages, which provide over-and-above coverage for our home and personal property. These special circumstances and additional coverages will provide compensation for items such as debris removal, landscaping, animal and insect damage, antique coverage and updates for city code compliance.

Debris removal typically qualifies as additional coverage when tree limbs and damaged building materials need to be removed, or when pollution cleanup and/or decontamination is necessary. For example, if a tree falls on our house and leads to scattered pieces of wood and roofing, we want to ensure that our roof is repaired *and* that our home is cleared of any remaining debris. Our homeowner's policy probably provides additional coverage for those costs.

If our yard, shrubbery or garden is damaged, we are usually entitled to additional coverage for landscaping under our homeowner's policy. The amount of coverage available for landscaping will depend on the particular policy. Certainly, if a hurricane hits and damages or destroys our home and yard, restoring destroyed shrubs is likely to be the last of our priorities. Even so, we have a right receive all of the coverage we paid for.

An accident or disaster, such as a fire or hurricane, can also damage the inside of our home and may destroy or break antiques or pieces of art. Under most homeowner's policies, there is additional coverage for these personal losses (over and above additional coverage that may be provided through adding a special rider).

Like a hurricane or fire, animals and insects can cause major damage to our home or property. Many homeowner's insurance policies provide additional coverage for these special circumstances. For example, if part or all of our home has become unlivable due to damage caused by termites, our insurance company may cover our claim (in the absence of a separate exclusion). Rodent infestations are handled in a similar manner. A rat chewing through electrical wiring, for example, is not necessarily a type of damage you can monitor and in many cases will be covered. When it comes to larger animals, insurance companies are more likely to cover damages from a one-time occurrence.

Whether the exterior of our home is destroyed from termites or a falling tree from a hurricane, if the damage is covered our insurance company will usually also provide additional coverage for the cost of re-building that part of the property so it is up-to-code. This type of coverage protects us when it more expensive to repair damage than originally estimated because changes in city or county Codes require different or more expensive

materials or building specs, such as improved wiring, sprinkler systems or increased elevation.

Although coverage for these special damages is very beneficial for a homeowner, many do not know about or take advantage of these additional coverages. Sometimes insurance companies hide these coverages in small print, or fail to discuss these opportunities with us after a loss.

Chapter Six: Insurance Companies Sometimes Abuse Our Duty to Cooperate

What is a Cooperation Clause?

The purpose of a cooperation clause is to allow the insurance company to obtain more information about the circumstances behind a claim. Since the insured party usually will have more detailed information about what happened and what their losses are, homeowners typically must work with the insurance company's investigators throughout a claim. All homeowner's policies place a duty on the insured to cooperate with the insurance company in its investigation. In many cases, the insured will be required to submit to an "examination under oath", or "EUO", that will usually be taken by a lawyer hired by the insurance company.

Failure to Cooperate

Sometimes, especially in fire claims, insurance companies will try to use the cooperation clause against the insured to avoid paying for legitimate claims. Insurance companies do this by requiring the insured to do many things that simply are not necessary or to gather information that does not exist. The insurance company may have its lawyer take an examination under oath, and use that process to require the insured to divulge personal information they are uncomfortable with in an adversary setting. In fire claims, the insurance company will usually ask the insured to provide months of financial records and credit card bills to try to show financial dire straits as a motive for arson. It is almost impossible for the insurance company to prove arson as a basis to deny coverage in most cases though, so the insurance company uses a never ending stream of unreasonable requests for information to wear the homeowner down. Eventually the homeowner / insured gives up and refuses to provide any further information. The insurance company then denies the claim based on the insured's alleged "failure to cooperate".

What many insureds don't know is that there are limits on the circumstances that allow an insurance company to deny a claim for failure to cooperate. Most importantly, the insurance company's requests for information must be "reasonable". Many times, what is reasonable is difficult for an insured to identify without the help of a lawyer who understands the law on this issue. In most cases, an insurance company will also have to prove that the alleged failure to cooperate also caused the insurance company to suffer prejudice to use failure to cooperate as a basis to deny a claim. Insurance companies don't want us to know what "reasonable" requests for cooperation are, or what the limits are on an insurance company's ability to lawfully deny a claim for alleged failure to cooperate.

Chapter Seven: Buy And Understand UM Automobile Coverage

Many Drivers Who Cause Wrecks Through Negligent Driving Have Little or No Insurance

Even though Mississippi drivers have been required to have automobile liability insurance since 2000, estimates show that as many as 25% of drivers in Mississippi are **uninsured** - one of the highest percentages in the country. An even higher percentage of drivers that do have insurance – over half – only have the minimum amount of liability insurance coverage required by law (\$25,000 per person, \$50,000 per accident).

Unfortunately, distracted driving is on the rise – and many wrecks cause innocent drivers or passengers to suffer injuries and damages and incur medical bills far in excess of \$25,000. A driver whose negligence causes a wreck that results in someone suffering injuries and damages greater than the amount of insurance the negligent driver carries is referred to as an “**underinsured**” driver.

With such a high percentage of uninsured and underinsured Mississippi drivers on the road, it is important to make sure we have complete coverage to protect ourselves and our loved ones in the case of an accident caused by someone else’s negligence.

What is Uninsured/Underinsured Motorist Coverage and How Does it Work?

Uninsured / Underinsured motorist coverage means our insurance policy will provide compensation to us after a wreck even if the at-fault driver does not have enough liability coverage to cover the cost of our damages.

We can purchase “uninsured” and/or “underinsured” coverage from our own insurance company to fill the gap between insurance available to a negligent driver (if any) and the cost of injuries we suffer as a result of that negligence. This coverage, often referred to as “UM” or “UIM” coverage, allows us to collect compensation from our own insurance company after a wreck if the at-fault driver is uninsured or does not have enough liability insurance to cover our damages and losses.

UM/UIM coverage is relatively inexpensive when compared with the cost of liability insurance. Most companies will sell UM or UIM coverage with limits up to the amount of liability insurance we carry. What’s more, in Mississippi we are allowed to “stack” our UM/UIM coverage if we have more than one vehicle in our household insured. For example, if we have three vehicles insured with UM/UIM limits of \$50,000 per person / \$100,000 per accident, those three policies “stack” so that if we are in a wreck with an uninsured and/or underinsured driver we will have up to \$150,000 per person and \$300,000 per accident of available UM/UIM coverage.

What We Need to Know About UIM/UM Coverage and When We are Usually Covered in Mississippi

- Insurance companies **MUST** provide us with UM/UIM coverage unless we reject it in writing
- UM / UIM coverage does not cover us if our negligence causes the wreck
- We may not be covered if using our vehicle for business purposes at the time of the wreck
- If the wreck was the result of a hit-in-run, most policies require us to file a police report in order to be covered
- If we give another permission to drive our car, that driver and all passengers are typically covered
- Our Policy should provide UM/UIM coverage for all of our family members who live in our home
- Our minor children are covered no matter where they live
- Even if our children attend college out of town, they are typically covered
- We must file our claim for damages within a certain amount of time after the wreck

What does UM/UIM Coverage pay for?

- Current and future medical expenses for treating injuries sustained in the wreck
- Rehabilitation costs
- Lost wages and/or loss of wage earning capacity due to injuries sustained in the wreck
- Travel costs for medical care
- Pain and suffering
- Emotional Distress and Mental Anxiety
- Other damages caused by the wreck

It's important to have complete insurance coverage to protect ourselves and our families against uninsured and underinsured drivers.

Chapter Eight: Document EVERYTHING

Perhaps the most important thing we as insureds can do when dealing with our insurance company is to document *everything*. This can be really hard to do, as many times when we have to make an insurance claim we are dealing with tremendous personal loss, strain and emotion. The insurance companies know that – and some may try to use those circumstances against the insured, to promote the insurance company's bottom line.

When an insured has to make an insurance claim, whether on a life insurance policy, automobile wreck, fire loss, natural disaster, or health or disability claim, it is a good idea to do each of the following:

1. Keep a journal. Write down the date, time and content of every communication you have with the insurance company or its representative.
2. Get and write down the name, number and address of each and every representative of the insurance company you have contact with.
3. Take lots and lots of pictures that show the loss(es). It is also a good idea to take pictures of your insured property, including your home and contents, before a loss occurs. This will be especially helpful in documenting claims for loss of personal contents.
4. Record conversations with Insurance Company Representatives. If you have a recording device, it is a good idea to record conversations you have with insurance company representatives related to your claim. That way, there won't be any question about who said what. If you are unable to record conversations, it is a good idea to write a letter or email to the insurance company representative(s) you talk to as soon as the conversation is over and confirm, in writing, exactly what was said and agreed to.
5. Ask questions – and get answers in writing. If not clear on what is required to make a claim, or what rights and benefits you have under the insurance policy – write the insurance company (adjuster, agent or other officer) and ask them *specific* questions about those issues. Ask that the answers be provided, *in writing*, within a specified time.
6. If you still aren't sure that you are being dealt with fairly and/or that you are getting all the rights and benefits you paid premiums for, call an insurance bad faith lawyer for a free consultation. At Van Cleave Law, consultations are always free.

Conclusion

Insurance companies have the advantage when dealing with individuals. Insurance Companies have enormous financial resources and many have developed tactics to help promote their bottom line – to the financial detriment of insureds who pay their premiums. Many times, our clients feel like the insurance company that they paid is working against

them when it comes to managing a claim. It is an unfortunate truth in the insurance industry and one that we combat every day. We know the bad insurance company tactics and use that knowledge to level the playing field when it comes to handling and managing claims for our clients.

If you feel like you or a loved one may have been treated unfairly by an insurance company, or feel that an insurance claim may have been delayed or denied in bad faith, call Christopher C. Van Cleave, an experienced Mississippi insurance bad faith attorney at Van Cleave Law. Our experienced legal team has the necessary experience to take on insurance companies and make them provide full coverage under the policies they sell. Consultations are always free.