

LAW WEEK

COLORADO

How To Get Your Client's Insurance Claims Paid

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At some point in virtually every attorney's career, they are confronted with the dilemma of a client asking for assistance in getting an insurance claim paid. Whether that claim is for damage to their home, property damage to a vehicle, loss of business income resulting from a water loss, unpaid medical bills, unapproved requests for health care, being injured by an uninsured or underinsured motorist, being sued and needing a defense or any other of a myriad of scenarios, you, the lawyer, are expected to know what to do. It's not as hard as you think!

The very first thing you should do, without fail, is to obtain a full and complete copy of the applicable policy. This should include all policy forms, endorsements and declarations pages. Be careful; often the copy provided by the agent (known in Colorado as the "producer") or available on the insurer's website neglects to include all of the policy forms and endorsements. The declarations pages typically include a list of all of the forms that should comprise the complete policy.

The second thing you must do is review all of the communications regarding the claim that have already been exchanged between your client and the insurer and all agents or representatives of the insurer. You should also ask your client about what verbal communications they have had with the insurer and its agents and representative. These communications should educate you about the reasons, from the insurer's perspective, the claim has not been paid or honored, i.e. why the client is asking you for help.

The third step is to review the policy to confirm whether the insurer is accurately quoting it in their communications, or whether there are portions that seem applicable but the insurer has omitted from their communications. You should also look for whether there are exclusions that may apply; whether there are conditions or limitations that may apply; what are the client's duties with respect to timely reporting, cooperating, producing documents and forwarding suit papers; requesting pre-approval for medical procedures; appealing

or asking for review of denied claims; any timing requirements for action applicable to your client's claim; the period of time the policy covers; any applicable limits and sub-limits; and anything else your educated eye may spot that is or could be an issue.

Now that you have reviewed the most critical documents (retrieved through steps 1 and 2) and completed your issue-spotting (step 3), that brings you to the critical fourth step: developing the path to a solution, i.e. getting the claim paid. Although the insurance company may be a corporate behemoth whose employees often appear heartless and fixated on pointless detail, the reality is your client needs the adjuster to help them in order for your client to achieve their objective. Seldom does ranting and raving to the person in control of your client's claim advance your client's interest. Instead, figure out what the information and documentation is that the adjuster needs so the claim can be satisfactorily resolved.

If the adjuster is asking for volumes of information, some of which is clearly relevant and some of which is not, make sure the clearly relevant material is timely provided, but then politely ask the adjuster to explain why the other information is relevant. If there is information your client believes the insurer is not considering but should, be certain that information is provided — whether or not the insurer has asked for it. If the client believes the insurer is low-balling the value of their claim, then obtain documentation that supports the client's valuation and forward it to the insurer. If the insurer wants to take a statement from your client (typically, these are tape-recorded), suggest that the statement be taken at your office. If the insurer is wrongly citing certain exclusions or limitations, then clearly explain why the facts do not support the application of those exclusions and limitations.

In short, your client needs to provide the insurer with the information it needs to justify paying the claim and/or accepting the defense of your client in a lawsuit. When this information is provided, you or your client should plainly articulate why the information supports payment of the claim and/or accepting the defense; ask the insurer to advise within a specific period of time whether they need any other information to com-



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plete their evaluation; and ask for a reply within a specified period of time. I always invite the insurer to call me or come to my office to discuss, ideally with the client, to answer any remaining questions.

By following these simple steps, you will be surprised at how often your client will find the once seemingly recalcitrant insurer is willing to change their mind and pay the claim. Sure, it takes some work, and reading an insurance policy may seem like the cure for insomnia, but giving the insurance company the opportunity to "do the right thing" and pay the claim, once they've been provided with all of the available information, will often allow your client to achieve the result they wanted when they first walked into your office, and in a much more expeditious fashion than would likely happen through litigation.

A strong word of caution: If the insurance company's "special investigations unit" (SIU) is involved, the insurer is likely investigating the claim for fraud and/or misrepresentation.

To assist your client in responding

to such an investigation, which often includes the insurer requesting the insured sit for an Examination Under Oath (E.U.O) and to produce a large volume of financial records (looking for financial motive), you should give serious consideration to consulting with an attorney experienced in handling these types of investigations.

Whether your client first called you or showed up in your office in tears, red-faced anger or utterly perplexed (or oftentimes all three) — using these tips and tools should help you help your clients get their insurance claims paid. Of course, in spite of your best efforts, sometimes this doesn't work and the expertise of counsel who deals with these types of issues day in and day out is needed. At that point, your client would be well served to look for an attorney who focuses a significant portion of her practice wrestling with insurance companies. •

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