



When The Damage Is Done Are You Prepared To Litigate Against Your Insurance Company?

October 11, 2016 | [Insurance, Insurance Broker Claims, Policyholder Protection](#)

In the wake of Hurricane Matthew, there will certainly be a wave of claims and possible denials of coverage by insurance companies. Before the storm hit, we heard a great deal about “preparedness” for the storm. But, how prepared is your company if it has to litigate a claim against its insurance company? Litigation against any party is often a costly and lengthy process. Insurance coverage disputes are no different and often involve more aggressive tactics by the insurance company early in the case. Here are some best practices for companies facing insurance coverage denials:

Re-review the denial letter and consider whether litigation is the best strategy

- You may want to consider other tactics against the insurance company, like using renewal time or your broker's relationship as leverage for resolving the claim outside of litigation
- Consider whether it would help to have coverage counsel analyze the denial and coverage issues

Review whether the insurance company raised so-called policy conditions as part of the denial

- Did the insurance company raise a question of notice?
- Does the policy require a sworn proof of loss or examination under oath before filing suit?
- Is there a time limitation in the policy to bring a lawsuit?

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Analyze the appropriate forum

- Insurance coverage disputes often hinge on what state's law will apply and insurance companies have been filing suit first more frequently in jurisdictions that they believe will apply more favorable law; it is a best practice to be ready
- Consider whether there are statutory notice requirements for bad faith claims

Organize your claim information sooner rather than later

- Collect the policies and other policy related documents
- Identify and talk with key witnesses in your company
- Evaluate whether a litigation and preservation hold might be necessary
- Gather the claim information and consider using a database

Understand that the playbook for insurance companies usually involves early motion practice

- Insurance companies often file early motions like Removal, Transfer, Motions to Dismiss or Compel Arbitration
- Consider building this phase into your litigation budget

Understand that insurance companies frequently try to make discovery a one-way street

- Check out my prior November 13, 2014 blog about [issues relating to compelling production of documents from insurance companies](#)

Be mindful of arguments regarding privilege

- Consider what arguments an insurance company might raise to obtain your privileged information

Be patient

- It often takes a considerable amount of time and money to get to the place in the litigation where the insurance company will consider settlement