



James W. Mills III

Board Certified: Personal Injury Trial Law • Civil Trial Law
Texas Board of Legal Specialization

Texas Law Alert

Fall 2014

Insurance Company Bad Faith

Most of us carry insurance—on our home, our car, our lives. The insurance company who sold you the policy probably tried to tell you that it was selling you peace of mind. You make your payments every month and then when you finally do have a claim—surprise—it is denied. Sometimes the denial is proper because the claim truly is not covered. Many times, however, the denial is improper, and the claim you have made really should be covered by the insurer to whom you have paid all those premiums. What then?

The answer is you may have an insurance bad-faith claim against your insurer. “Bad faith” by an insurance company can occur any time the insurer refuses to honor a legitimate claim by someone it insures. Examples of bad faith by an insurance company can include things like denying a legitimate claim, unnecessarily delaying the payment of a claim, neglecting to investigate the facts to determine if a claim is covered or not, or refusing to settle one claim unless you agree to settle another unrelated claim.

Texas law prohibits bad faith by an insurer, but, like all laws, it is not always followed. In fact, insurance companies test the limit of laws against bad faith, counting on the fact that the person with insurance is unlikely to go talk to a lawyer and find out his rights. The reason for this is simple: Every time that the insurer does not pay a claim it should have covered, the insurer profits.

Talk to a Lawyer!

So what can you do to protect yourself? First of all, *an insurance adjuster is not your friend*. Once you make a claim that could subject the insurer to liability, the adjuster is usually focused on nothing but keeping the size of the payout as small as possible. Be aware that most insurance adjustors are not lawyers, and even the ones who are are not always right when they say a claim is not covered. And do not hand over any documents to an adjustor until you talk to a lawyer. The insurance company may use them against you.

No matter what the adjustor tells you, talking to a lawyer is a

good idea. Sometimes adjustors will tell you that the expense of consulting a lawyer and the time it takes to pursue a case through the courts means that you should take what is being offered right now. Remember: The adjustor is not looking out for you, and the “advice” not to talk to a lawyer is intended to discourage you from finding out if the offer is fair.

If you suspect that your insurer is not dealing fairly with you, call us. We want to help you get what you deserve under the law.

We Love Referrals!

Despite this modern age of marketing and advertising, the best source of our new business is word of mouth. We are grateful that many of our clients and friends feel confident in recommending our firm.

Unfortunately, when people need a good lawyer, they often do not know where to turn. If you or someone you know has been injured and needs legal help, call us.

Your Rights as a Tenant

Unfortunately, disputes between landlords and their tenants are not uncommon, and because they involve tenants' homes they can often become emotional. Getting into a lawsuit with your landlord is never fun, and so, in order to prevent unnecessary disputes, it is helpful to know your rights as a tenant.

The relationship between a landlord and a tenant is governed by the terms of the lease.

The relationship between a landlord and a tenant is governed by the terms of the lease. Most landlords will insist that you sign a written lease. Before signing, read the lease carefully. Generally, all of the lease terms, including the amount of rent, the place where payment is due, the procedure for requesting repairs, etc., can be enforced as written.

A landlord has the obligation to provide tenants with certain things. For example, a landlord must insure your "quiet enjoyment" of the property you lease. "Quiet enjoyment" means that you not only have a right to peace and quiet but it also means that your landlord cannot evict you or otherwise disturb your right to live in peace as long as you pay your rent and follow the rules. Also, a landlord must repair conditions that materially endanger a tenant's health and safety, or that make the property unfit to inhabit. A landlord must do certain things to protect tenants, such as providing residential tenants with smoke detectors, dead-

bolts on exterior doors, and a peephole.

The question of repairs is often contentious. It is important to understand that, even if a landlord refuses to make a necessary repair, you *cannot* simply not pay your rent. Instead, you must mail the landlord written notice of the problem by certified mail and give him a chance to fix it. If your landlord still refuses to make the repair, you may be able to end the lease, repair the problem yourself and deduct the amount due in rent, or have a court order that the repairs be made. Because the procedure for doing this is complex, it is

best to consult a lawyer before trying this remedy.

A landlord must refund to you any security deposit you have paid, unless he has a valid reason for keeping some or all of it. A valid reason for keeping a deposit includes paying to repair damage to the property, although the landlord cannot charge you for normal wear and tear. Your landlord must refund your deposit within 30 days after you move out, as well as provide you with a list of deductions and the reasons for them. You are required to give him your forwarding address in writing.

Uninsured Motorist Insurance Is a Good Idea



Even though all Texas motorists are required to have automobile insurance, it is hardly a secret that not all drivers obey the law. To protect yourself if you are hit by another driver who does not have any insurance, or who does not carry enough insurance to pay for all of the damages his negligence causes, it is a good idea to carry uninsured and underinsured motorist insurance coverage, known as "UM/UIM."

UM/UIM insurance covers you for personal injuries and some other kinds of damages caused when you are hit by a person with no insurance or not enough insurance. If the driver who hits you does not have

insurance of his own, UM/UIM coverage is the best way to protect yourself and those riding with you from the damages these uninsured motorists cause. The only alternative is to sue the uninsured motorist, and a driver who does not have enough money to afford insurance usually does not have enough money to pay the judgment you get if you win the lawsuit.

For the protection it provides, UM/UIM coverage is a wise insurance buy. If you do not already have UM/UIM insurance, contact your insurance company about adding it to your policy. If you already carry UM/UIM insurance, it would be wise to make sure that you have enough to protect you from an unexpected loss.

Bicycle Safety

As a form of exercise or transportation, bicycles are becoming ever more popular. However, with the increase in the number of bicycles using the roads, there is also an increased danger of an accident or injury.

When a car or truck has a collision with a bicycle, the bicycle rider usually loses, no matter who legally had the right of way. Bicycle riders should take extra care to obey the following safety tips:

Remember: Bikes Are Vehicles, Too

Legally, bicycles traveling on a road are required to be treated the same way as any other vehicle traveling on the road. This means that bicyclists need to obey the same laws as other drivers. Don't run red lights, change lanes without signaling, or commit other infractions. If you would not do it in a car, don't do it on a bike.

Wear a Helmet

The easiest way to protect yourself is to always wear a helmet when you ride. Some jurisdictions require all riders to wear helmets but, even where it is not required, wearing an approved helmet can significantly reduce the chance of serious head injuries in the event of an accident.

Be Visible

Because bicycles are much smaller than cars and trucks, it is important to make sure that others using the road can see you. Make sure that your bicycle has reflectors on the front and back and even on the wheels. When riding at night, wear light-colored clothing and consider using a light.

Be Aware

The best safety advice is to be aware of the conditions around you and be careful when riding. Always look both ways when entering a street and stay on the correct side of the street when riding. Keep a lookout for drivers who may not be looking out for you. Like other drivers, bike riders should ride defensively.

Tire Explosion

Brad was a mechanic called to a gravel mine to repair the brakes on a dirt hauler. He was heating the rim of the wheel hub with a torch to get it unstuck and the heat caused the tire to explode, horribly injuring—and eventually killing—him. Brad's close-knit family was devastated and sued the mining company for failing to provide proper training.

Although Brad was an experienced mechanic, the evidence showed that he had no warning of the danger because the tire did not smoke, get hot, or do anything that would indicate a problem. The mining company was well aware of the potential danger of removing a tire using heat, but the company did not warn Brad to be careful. In fact, the mining company had not even trained its own workers about the dangers of using heat to remove a wheel.

The case went to court, and the Texas jury awarded the family of the mechanic over \$160 million.

Who's Responsible?

A recent case involving the death of a child illustrates how complex even a seemingly straightforward lawsuit can be.

The case arose out of the tragic death of an 11-year-old girl who was waiting for her school bus. She was struck and killed by a truck driver making a turn. Evidence from the scene showed that truck's tire left the road and struck the girl.

She suffered severe head trauma and was declared dead on the scene. It was alleged that the truck driver left the road because he was going too fast in order to get to work on time.

The driver was charged with manslaughter and is awaiting trial. However, a suit was brought against the trucking company that employed him. Trucking is a regulated industry, and the family argued that the employer had not provided the driver with the training required by federal law. The employer responded by claiming that the driver had a valid license allowing him to drive a truck and, therefore, his training was adequate, even if it was incomplete.

The jury rejected this argument. Although it awarded the estate of the girl only a small amount of money for her suffering, it awarded a substantial amount to her parents for the loss of their daughter. The final verdict was over \$6,500,000.

Even a case that looks simple can have twists and turns. Many people would not assume that the trucker's employer could be liable for the trucker's bad driving. Don't try to navigate these issues by yourself. Get the help of a qualified lawyer.

What Is My Case Worth?

When deciding whether to sue for an injury caused by another's carelessness, the first question people usually ask is "What is my case worth?" The answer depends on what kind of damages were caused by the other party's negligence.

Some damages that are recoverable are easy to see. If a negligent driver runs into your car and injures you, you can recover the cost of repairing or replacing your car and the cost of your medical bills related to the accident. You can also recover any lost wages because of time you missed from work due to your injuries.

Other kinds of damages are harder to see. If you have been hurt, you can usually recover something for the "pain and suffering" caused by the injury. You can also recover for things that are likely to happen in the future because of the injury

you have suffered. An example would be any permanent disfigurement or any ongoing impairment caused by the injury that is serious enough to permanently affect your ability to lead your life or earn a living.

Your spouse and family may be entitled to recover monetary damages because of the injury you suffered.

If the lingering effects of your injury mean that you cannot perform the same work or play the same recreational sports you did before being injured, this ongoing loss should be compensable, even though the amount of the loss is often hard to accurately estimate.

Your spouse and family may also be entitled to recover monetary damages because of the injury you suffered. If your injury prevents you from performing the "household services" you would have otherwise done, such as cleaning the house or mowing the lawn, these losses are worth something. So are the emotional damages to your relationship with your family caused by your injury. These damages are called a "loss of consortium."

In short, the damages that may be recovered in a negligence lawsuit are limited only by the damages caused by the negligence. If you have any questions about whether you can recover for an injury you have suffered, please contact us. Every case is fact-specific, and we would be happy to discuss your situation with you.

Actual resolution of legal issues depends upon many factors, including variations of facts and Texas law. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.