CHAPTER TWELVE

Security Nets

Insurance

IF LIFE WEREN'T FULL OF RISKS, it wouldn't be life. That doesn't mean, however, that you can't reduce your exposure to risk. Insurance is one way to reduce that exposure. Fundamentally, a consumer insurance contract provides that, in return for regular payment by the insured of **premiums**, the insurer is prepared to **indemnify** the insured for a covered loss -- that is, pay money equal to the damage sustained, minus some predetermined amount called a **deductible**. (Most commercial insurance policies operate on a similar basis, but often with more complex formulas.) Deductibles make insurance more affordable because they reduce the insurer's costs, since it avoids both the indemnification and administration of small claims.

Deductibles also help reinforce the idea that insurance is meant to protect against significant loss, not routine loss. Keeping this in mind will, as discussed more below, help you adequately plan your insurance needs while keeping the cost of insurance economical. It also helps the insured maintain the state of caution necessary to avoid losses in the first place, saving insurance for unavoidable or catastrophic loss.

INSURANCE SALES

One goal of this chapter is to give you the sense of perspective that is necessary when dealing with insurance brokers who are, to give them the benefit of the doubt, very excited about the insurance Aproducts@ their companies have to offer. There are two terms used to describe insurance salespeople: **brokers** and **agents**. Generally, an insurance broker represents many different companies, though most only have relationships with a small handful. An agent typically represents only one.

Insurance salespeople, even at their most aggressive, are not bad. They are working for living, just as everyone else is. And many mutually satisfactory insured-broker relationships have been built on aggressive Acold-calls@ by agents. On the other hand, you might prefer to buy from a friend, relative or acquaintance who sells insurance. Trust is the cornerstone of any business relationship, especially where there are technicalities the consumer is unequipped to master. So it's a good idea to buy from someone you know, or -- if you are among the many who prefer not to do business with friends -- someone who is recommended to you.

No matter who ends up getting your insurance business, remember that they make their money by commissions: The more you pay in premiums, the more they make. Competition, of course, counteracts the incentive to oversell, so there is no reason not to talk to several brokers or agents, especially since most have a relationship with only one or two insurers. You might be quite surprised how big a difference there can be between two comparable companies= virtually identical policies. Keep in mind, though, that a company=s claim-handling history and long-term financial stability can have an impact on the overall value of a policy. The least expensive policy gets very expensive if the insurer denies valid claims or goes out of business, leaving you without coverage.

Some states allow insurance companies to offer insurance directly to consumers, without brokers. In many cases you can achieve substantial savings by this route, but not always. Unless a company completely dispenses with its commissioned salespeople, it will usually be reluctant to undersell them. This is not an unreasonable policy, since insurers rely on their cadres of agents and brokers to sell their line of policies. In that case, their price level may just reflect a slight discount. Then instead of the commission going to a neighbor who sells insurance, it goes to the insurer itself. Also, any independent judgment a broker, or even an agent, can offer you is lost when you deal directly with the company.

Having said that, you must strive not to be manipulated by an insurance salesperson into buying more insurance coverage than you need. There *is* such a thing as Aoverinsurance.@ Of course, there is usually no reason to pay for redundant coverage. Also, seemingly small premium additions for unneeded coverage can add up to hundreds and thousands of dollars over the years. Breaking your budget for insurance almost never makes sense. You must sit down and figure out the point where premiums stack up high enough to undermine the value of the policy, given the risks involved.

This calculation is especially valuable when considering how high a deductible to take. For example, you can easily spend thousands over a few years for the privilege of a $100 deductible on automobile collision insurance instead of a more economical $250 or $500. You would have to make quite a few claims to get back those premiums, more than most people ever make and more than most insurers will pay before asking you to take your business elsewhere.

The Insurance Contract

Once you have done the basic comparison-shopping and are working out the details of your coverage with an insurance salesperson, you will reach a point where you need to fill out an application for insurance. Besides basic identification information, the insurer will want to know all about the property you want to insure or the risk you want to insure against. It will want to know a lot about you as well, since by this application it will attempt to determine how much risk it is being asked to take on by issuing the policy. It may get a credit report on you. On an automobile policy, the company will want to know all about your driving record.

The answers you write in those little blanks determine whether the company will **bind**, or write, a policy for you at all, and if so at what cost. They become part of the contract, under the policy terms. People with an innocent little fender-bender that really wasn=t their fault would not have to be very bad to be *tempted* to fudge these answers. But answering untruthfully is wrong, and it is a fraudulent act. A false answer on an insurance application, if it is material, will usually *invalidate the policy* if it is discovered. In this case, a Amaterial@ misrepresentation is one which caused the insurer to issue a policy it would not have issued, or whose terms would have been substantially different, if you told the truth.

Misrepresentations on insurance applications *are* discovered, and frequently, because insurers faced with paying a large claim have a big economic incentive to make thorough investigations. The obligation promptly to uncover a misrepresentation is on the one who knows it best -- the one who made it -- not the insurer. (That means that a material change in circumstances relevant to the policy, such as a new job that results in an increase in the distance you drive to work, must be reported to the insurer even after the application process.) For want of a few hundred dollars a year in wrongfully "saved" premiums, people have lost the right to make claims in the tens and hundreds of thousands of dollars when insurers discovered the insured did not really live where they claimed to live or similarly lied on their applications. Many states require insurers, in such a situation, to return the premiums paid -- cold comfort indeed when a large, otherwise legitimate claim goes out the window.

Truth and Consequences

Fraudulent misrepresentations on an insurance application may save you in premiums but, besides being wrong, they put you at risk of having your entire claim denied. Fudging the answers on the application isn=t just bad, it=s bad sense, and could lead to financial disaster.

Insurance contracts are the very definition of contracts of adhesion, Atake it or leave it@ form contracts where there is no room for negotiation. Although you can change terms such as the type and amount of coverage and deductibles, the insurer will not negotiate the price with you -- based on the kind of coverage you want, it follows a rigid formula. Other terms of the policy, such as definitions and requirements under the policy, are non-negotiable in consumer insurance. They have been carefully drafted by insurance-company lawyers based on court decisions and regulatory requirements. Sometimes, these terms are so technical that even most lawyers who are not insurance-law specialists would be hard pressed to read a policy and come away with an accurate understanding of coverage and claim requirements. Since many states now mandate (or companies are using) plain English policy forms, your contract may be easier to read. It pays to read the policy carefully, try to understand its terms, and ask questions. Whether your contact is jargon filled or plain English, in the event of a conflict with the insurer, any ambiguity in the policy terms will be held to favor you -- but this is not a reason to avoid trying our best to figure them out beforehand.

TYPES OF INSURANCE

It is beyond the scope of this book to give in-depth advice on selecting insurance. But there are some insurance basics that you should know. They'll make your shopping more knowledgeable and give you a starting point for intelligent questioning of your broker or agent.

Group Versus Individual Insurance

Many people are eligible to purchase life, disability, and supplemental health, accident and disability insurance through groups. Examples are employees of a company, and members of unions, professional associations, and automobile clubs. Group rates are usually lower than individually-rated policies. They come, like off-the-rack clothes, in a certain variety of sizes and styles but no more. A minimum of advice is available, at least compared to what your own broker should be doing for you, though a phone number is usually available to connect you with the group's broker or an officer of the group in charge of choosing insurance.

In contrast, individual policies are easier to customize. You can probably get more flexibility as to the **term**, or length of the insurance contract, and other aspects of the policy. You can also choose which company you want to insure you. But like a custom-made suit, it will cost you. If, based on your other calculations, you can get a good fit off the rack, there's no reason not to take advantage of it.

Group Think

Many members of groups are offered types of group insurance that are rarely sold to individuals by agents and brokers. These include policies that may cost you very little and pay a certain amount per day if you end up in the hospital, or provide cash payments to you in the event of accidents, or if you contract a particular disease, such as cancer. Remember, the primary purpose of insurance is to protect against serious risk. As inexpensive as these are, what are your chances of spending time in a hospital, or becoming ill in a specific way? Always remember that ready-made policies like these are testimony to the insurer's own estimation of your likelihood of recovering more than you put in: very little.

Premiums

Paying insurance premiums is not a lot of fun, no matter what, but make sure you have control over the situation. Many kinds of insurance are billed quarterly or twice a year, making budgeting tricky. Some insurers will permit you to make monthly payments, although they often require automatic withdrawal from a bank account. Most also charge a small service fee for extended payment.

Most states don't allow insurers to drop your coverage simply because you've missed a premium payment. They are usually required to send you a notice of cancellation, giving you an absolute deadline by which time you must make the payment. Often your agent or a representative of the company can help you with a tricky situation, such as where the check really is in the mail. All things being equal, neither one of them wants to lose you as a customer.

It's usually wise to avoid premium financing, where an insurer will let you extend payments by means of a high-interest loan. If the insurer won't let you extend payments without interest (but with a modest service fee), or if the premiums are too high for you to buy insurance on your current budget, you probably should take a fresh look at your insurance situation and see if you can reduce your premiums by changing carriers, raising deductibles or reducing coverage.

HEALTH INSURANCE

One of the biggest areas of insurance concern is health insurance. Most Americans are covered by health insurance at their places of employment, though what was once a Afringe@ benefit is now a major concern. The plight of those who are not covered, and the increasing cost to everyone in the system, is an ongoing political football. There are some basic points about the health insurance system in existence today, however, that are worth learning.

There are two types of traditional, **indemnity**-type health insurance, in which you basically go to the doctor of your choice, pay the bill, and submit it for reimbursement or indemnification:

Basic coverage is what it sounds like. It pays for basic medical expenses, such as doctors, hospitals, and related expenses, including the cost of a hospital stay. Typically these plans pay 80% of these expenses once a deductible is met. You may have to pay the doctor or other provider first, then submit a **claim form** with a statement of services in order to be reimbursed, or the doctor may be paid directly by the insurer. The deductible can be from $200 to $2500, depending on the plan; there are often separate deductibles for individual members of a family if you have family coverage. The 20% not covered by the plan is called the **coinsurance** or **copayment** amount.

Payment under basic coverage is only made up to an amount determined by the insurance company to be Areasonable@ for a certain procedure. Thus if your doctor charges $250 to prescribe two aspirins and a call in the morning, you may be on the hook for any amount above the reasonable fee for such a consultation. (You can check this point with your insurer and avoid paying the doctor for the excess amount if the insurance contract doesn't permit him or her to collect it.) Remember that contracts with doctors are no different from contracts with anyone else. Negotiate, and don=t be shy about complaining after the fact. When you=re sick or in pain, you=re in no condition for give-and-take.

Major medical picks up where basic coverage leaves off. It covers expenses above the relatively low ceiling of basic coverage, and kicks in when a Amajor medical@ condition has to be treated. Its coverage is broader, and often includes a cap on **coinsurance** so that, after a certain point -- often $2-3,000 -- all expenses are paid by the insurer. This insurance is frequently **direct billed** by the providers, since no one expects people to front thousands or tens of thousands while waiting for a claim to be turned around.

Few people can afford to buy indemnity-type coverage for themselves these days. Individuals and families who have to provide their own health insurance, and more and more employers, are turning to **health-maintenance organizations**, or HMO=s. Patients in HMO=s choose from a network of physicians, hospitals and often pharmacies and laboratories, and pay only a small fee, perhaps five or ten dollars, for each office visit. HMO=s are by far the most economical form of medical insurance. But you get what you pay for. Patients have a minimum amount of choice of physicians and hospitals, and providers have an incentive to Aturn over@ as many patients as possible in a day, since they receive a flat fee per patient. And under many of these plans, you are not allowed to see a specialist unless a Aprimary care physician@ certifies that specialist care is appropriate.

Many employers offer a combination of HMO=s and indemnity plans, sometimes called a "Preferred Provider Plan" or "PPO." Under these plans you can either go to an Aout of network@ doctor, pay at the Apoint of service@ (the doctor=s office), and receive 70% or even as little as 50% indemnification, or go within the network and get the full economic advantages of the HMO.

If you are looking for an HMO to join, you'll want to scan the respective plans' physician and hospital lists, see if patients must go to a central location or to doctors' offices in their areas, and keep an especially close eye on maternity benefits. When joining any health care plan as an individual, be sure to learn as much about the plan as you can from the materials the company provides. Even more importantly, don't even consider a plan until you've spoken to someone who's in it and found out what they think of the available doctors, claim handling and other details. And of course avoid plans if you learn that they forbid doctors from recommending anything less than 100% of the specialist care or other attention patients need.

A Premium on Premiums

More and more workers are asked to pick up part of the cost of health-care premiums. If this is the case for you, see if your employer can arrange to have premiums taken out of your pre-tax income under an IRS-approved plan that your employer's benefits specialist or accountant should know about. The advantage of this is that your taxable income is reduced, and you save on income taxes.

If you and your spouse are employed, and both of your employers offer health insurance, it might pay to drop the extra coverage -- or it might not. Double coverage has some advantages: you may be able to submit the amounts you pay as coinsurance and in meeting deductibles on the first plan to the second plan. In the case of coinsurance, for example, if the first plan pays 80%, you can get back 80% of the remaining 20% -- another 16% -- from the second plan. Thus your total coverage would be 96% instead of 80%. Whether or not this pays depends on your respective plans' deductibles, coinsurance caps and, of course, the amount of your contribution toward premiums. If premiums are not an issue, of course, there is no reason to leave the plan, except to save your employer money -- perhaps a wise thing to do. Where employers cover the worker but charge extra for spouses or families, it might pay to just drop the part you pay for.

Remember, though, that once you've dropped coverage for someone on an employer-sponsored plan, that person may have trouble getting back on the plan if circumstances change. Except for when you are first hired, insurers are generally allowed to check for **insurability**, and reject or limit coverage for applicants who have a preexisting or ongoing condition.

COBRA

Employers don't have to provide medical insurance, but if they do, many are required by federal law -- the Consolidated Omnibus Budget Reconciliation Act, known as COBRA -- to offer the right to purchase eighteen months of coverage, at their group-rate cost plus up to 2%, to employees who are terminated or quit, as well as to divorced spouses and non-custodial children. This coverage may not be cheap, but it may be less expensive than an equivalent individual or "conversion" plan.

Life Insurance

Life insurance policies come in many different forms. Companies are constantly trying to find an insurance Aproduct@ that sells best in a given niche of the market. Many policies are hybrids of the traditional basic types, or add new features meant to make them more attractive. There are alternatives to life insurance policies, such as annuities, which a sophisticated investor can use in place of insurance. And a whole new wave in estate planning has developed around the use of life insurance, purchased late in life at high premiums, to provide assets to beneficiaries. The reason for this is that the proceeds of life insurance are tax-free to the recipient under federal law and are only charged against the decedent's estate under federal law if the estate is higher than the current floor of $600,000.

The purpose of life insurance is not to provide a windfall to someone in the event of your death, but to provide security for people who otherwise had been counting on your income for support. These people are the ones you will designate as the **beneficiaries** of your life insurance policy. Some places of employment provide some life insurance to their employees, sometimes as part of a collective bargaining requirement. Different financial planners give different rules of thumb about how much insurance you need, but most speak in terms of three to five years worth of income. Thus if you make $45,000 a year, you should be considering $150,000 - $250,000 worth of insurance. This **death benefit**, or amount of insurance payable on your death, would provide a several-year-long cushion for your family to readjust to the loss of your income. They could either pay off major debts (such as a mortgage) and put the remainder in an interest-bearing instrument for continuing expenses, or just put the whole amount in a safe investment and continue as they had when your income was coming in.

The cost of life insurance is fundamentally based on the statistical likelihood of death within a certain period for people fitting certain criteria. The major criteria are gender (since life expectancies are different for men and women), age, weight for a given height, and whether or not you smoke. Obviously the younger you are and the better shape you're in, the more likely you are to live longer and the lower your premiums will be. For smokers, the best way to save a bundle on premiums is to become ex-smokers and re-apply after a year. For more policies with a higher "face value," or death benefit, more health details, including blood tests, electrocardiograms and blood pressure screening, may be required before a policy will be issued.

There are two basic kinds of life insurance policies. One is **term** life, and one is **whole** life. The difference between them may be compared to renting insurance and buying it. Term insurance is a contract, by its own terms automatically renewable for a set number of years. With term life, you pay premiums for the term of the policy. When the term is over, that is the end of your relationship with your insurer. You may apply for a new policy -- one rated for your new age and new health situation -- but it will undoubtedly be costlier. And depending on your new circumstances, you may no longer be Ainsurable@; i.e., because of your health or age, the risk of your death could be too high for an insurer to bear.

Whole life, on the other hand, is a kind of investment. For most people, and especially younger people, whole life is more expensive than term, in terms of premiums. But as long as you keep current with your payments -- which remain steady with whole life -- you build up something called **cash value**. This cash value is, after a certain number of years, the amount that you could, if you wish, ask the insurance company to surrender to you if you want to terminate the policy. Eventually the cash value approaches the total amount of insurance you have bought, and indeed in some policies, such as **universal life** (a high-powered version of whole life), if you live to a certain age you actually Awin@ by getting an amount close to the death benefit, and the policy is automatically canceled. (You can win with a whole life policy too, but ordinarily you have to live to 100 to collect.)

The problem with whole life, besides its expense, is that the cash value is often substantially less than you would have if you had taken the amount of money you pay in premiums and invested in a certificate of deposit. The cash value in a universal policy depends on how well the insurance company manages its own investment portfolio or some other factor over which you have no control. In some cases, both putting the money in the CD *and* paying term-life premiums could put you ahead of a whole life policy -- especially with the group rates available for term policies.

On the other hand, many people do not have the discipline to do these things. Few people are tempted to cash in their insurance policies on a whim, but money in a CD or savings account is less sacrosanct. An insurance policy of this kind also takes care of both things for you. And more sophisticated policies, such as universal life, allow you to borrow against your cash value at a favorable rate, making the investment possibly more valuable than its straightforward return would indicate. Also, because term policies tend to get much more expensive as years go on, the savings of youth may be less appreciated when paying high premiums at retirement age. And once that term contract is up, you have nothing to show for maybe decades of premiums.

Main variations on term and whole life include:

- **universal life**, mentioned above, which also features flexibility in premium payment plans;
- **excess interest life**, which is like universal and also allows use of income on the cash value to be applied to premiums;
- **variable life**, which permits the policyholder to participate in the investment of the cash value but does not guarantee the size of the death benefit; and
- **adjustable life**, more akin to term life, but which allows flexibility as to shortening the term, the size of the death benefit, and premium payment plans after the policy is issued.

DISABILITY INSURANCE

Disability insurance is insurance that picks up where sick pay leaves off. It pays you a percentage of your salary for a certain period when you are unable to work as a result of a disability -- a serious illness or injury. Many experts maintain that disability insurance is more important than life insurance. Like life insurance, disability insurance policies offer many different types of benefits. It would be difficult to address all the important issues concerning disability insurance here, but there are certain points of which you should be aware.

In New York, New Jersey, Puerto Rico and Rhode Island, workers are covered by disability insurance through their employers, who are required by law to provide temporary coverage. Employers in many other states voluntarily provide disability; to some extent, it takes pressure off them to continue extended sick pay. The period of disability covered by your employer's policy, however, may be as short as a month or two. Social Security also provides long-term disability coverage. But some employers, and many other groups, offer participation in supplemental disability plans, which can also be purchased on an individual basis. The three main types of supplemental disability insurance are:

- **Noncancellable**, which continues to protect you as long as you continue to pay premiums; benefits may increase with income;
- **Guaranteed renewable**, which only guarantees the availability of coverage but not the premium amount; and
- **Optionally renewable**, which is analogous to term insurance in the sense that each year you and the insurer consider a new contract with new terms.

As important as disability insurance is, keep in mind that almost all plans are premised on your having a certain amount of savings socked away for a rainy day.

HOMEOWNERS AND RENTERS INSURANCE

One of the most important types of insurance you need is homeowners or renters insurance. There are two types of such insurance. One is **liability** insurance, which indemnifies you for claims made by others against you for damage they sustain while on your property (or in your apartment) due to your negligence. This insurance can be extended to cover you for all personal liability, regardless of where it takes place, for your unintentional acts. The other type of insurance is **property** insurance, which covers your own loss of the contents of your home, and in the case of a homeowner loss of the home itself, due to fire, theft or other accident.

There are many kinds of homeowners policies, and the right kind for you depends on the kind of property you need to insure and, of course, your budget. Most mortgage lenders insist that you take out at least a basic **comprehensive** policy including liability and insurance for the structure on which the mortgage is held.

When choosing a policy, you will want to consider the following issues:

- Is loss to property indemnified at replacement value or actual market value, with depreciation?
- Does the coverage on the main dwelling reflect a realistic valuation of the value of the house?
- Do you want extended coverage over things like burst pipes and structural failure?

Most policies give discounts for homes with fire alarms (which are mandatory in many places anyway) and other safety features, including proximity to a fire station and fire hydrants.

You should be aware that most homeowners' policies exclude coverage for losses resulting from a commercial use of the home or for professional or business activities, and for personal liability arising out of extra-hazardous activities such as flying or boating. Intentional activities are never covered. And keep in mind that most policies exclude coverage for damage caused by electrical wiring or plumbing that is installed by a non-licensed person other than the homeowner.

In-Home Workers

If you have a nanny or employ other workers in your home, such as a housekeeper, be sure to ask your broker to include riders for worker's compensation. You need it even for workers who don't live-in. The rider covers your liability for injuries that employees sustain. Without it, you won't be covered. This coverage usually only costs a nominal sum above your regular premium. You are, of course, also legally responsible for these employees' unemployment and, in some states, disability insurance, plus Social Security and all other withholding.

Record-Keeping

In order to make a claim for property loss under your homeowners insurance, good record-keeping is essential. You should have an inventory of basically all the personal property in your home, ideally with the amount you paid for it and the date and place of purchase. Photographs and videotapes are an excellent way to accomplish much of this, especially in terms of furnishings, interior decoration and structural changes that would not be reflected in blueprints or surveys. There are also home inventory computer programs as well as on-line resources on the Internet. The latter have the advantages of both automation and off-site storage. This means that while the records can be more readily accessed and updated than written ones kept in a safe deposit box, a catastrophic fire doesn't destroy them either.

In addition to providing you with evidence of the value of your property, this exercise also gives you an idea of how much property insurance you need. And remember, just as the value of your home may change and should be reflected in your policy, so should the amount of coverage for personal effects as the years pass and you acquire more stuff. If some of that property is an art, coin, or antique collection, or some other kind of valuable, nonstandard property – including luxury goods such as engagement rings and other fine jewelry, or furs – you'll need to get a special rider.

AUTOMOBILE INSURANCE

When all is said and done, the most compelling reason to buy automobile liability insurance is that in many states it's illegal to drive without it. The reason for this is that while you might not care whether you're covered in the event of an accident, the person in the other car does.

Car insurance is in many ways analogous to homeowner's insurance. You can get both liability and property coverage -- the latter known as **collision** coverage -- with comprehensive policies providing both (as well as optional theft and vandalism coverage). Like homeowners insurance, if there is a lienholder on your car, it will require that you take out a property policy for protection of its security interests. In both cases you must take a good look at the policy to see what is covered and what is excluded. And both types base your premium on an analysis of your riskiness as a covered person and the value of the property involved.

On the other hand there are important differences from a homeowners policy. For example, there is also a distinct **medical** coverage that you must get to cover injuries to you and your passengers incurred in an accident, up to a set limit per person. The liability coverage includes coverage for property damage (mainly the other car) and personal injury, also up to a certain amount with a total cap as well.

While many state require you to carry liability insurance, the amount they require you to cover is often quite small. If you have any assets at all you will want to protect them from a judgment by getting the appropriate amount of insurance. Remember, however, that there is such a thing as too much insurance -- most of us don't need $5 million in liability insurance, as we're unlikely to ever incur liability on that scale, or to have assets of that magnitude to protect.

No-Fault Insurance

Many states require drivers to participate in a no-fault insurance system. Under this system, some damage and some costs are automatically covered by the driver=s own insurance, regardless of who is at fault. But keep in mind that this only concerns the relationship between you and the other driver. The insurance companies care very much who is at fault, and if an investigation reveals that it was you, expect a healthy increase in your premium -- you=re now a riskier driver to insure.

Another difference from homeowners insurance is that premiums for auto insurance are based on much more complicated formulas. Insurers check your driving record going back several years, and want to know how often you drive, how far, from where and to where. They are especially interested in your Ademographics@: unmarried males under 30 are notoriously bad risks, and their premiums tend to be sky-high.

When shopping for an auto policy, consider the following:

- Is there coverage for towing? (If you are a member of an auto club, or own a newer car that comes with free roadside assistance, this may be redundant.)
- Does the policy pay for replacement transportation if a damaged car is in the shop for an extended period? How much does it pay?

- Have you gotten discounts you are entitled to? Discounts are usually available for good students, cars with alarms, coverage of multiple vehicles on one policy, and many other things -- check with your agent.

MAKING CLAIMS

Crunch time for insurance is when you have claims to submit. A family with children and a medical indemnity plan may find the submission of claims to be an almost weekly occurrence. And indeed medical claims are the easiest to make. You simply use the claim form provided by your insurance company, or a reasonable copy (many medical establishments have a standard form on their computers) and give them all the information requested. If you find yourself making many claims, you can photocopy the form with the standard information (which remains the same each time) already written in.

On the other hand, years can go by between claims on your automobile and homeowners policies. Unlike medical policies, these claims are usually initiated by a call to your broker or insurance company (the latter usually provides a 24-hour phone number to call in urgent claims). This call should be made as promptly as possible, or your rights to recover may be prejudiced. This enables the insurer to, in its judgment, promptly dispatch a **claims adjuster**, an investigator who reports to the insurer on the validity and extent of the claim. In the case of home damage, you may proceed with emergency repairs, but it's a good idea to get in touch with your insurer as soon as possible before doing anything other than protecting safety and undamaged property.

The insurer will open a claim file, ask you various questions and ask you to forward documentation to its office. In the case of an automobile claim involving an accident, the insurer will need the following:

- the time, date and place of the accident;
- a general narrative description of what happened;
- the police or accident report;
- the name, driver's license number, and automobile registration number of other drivers involved;
- the insurance information for the other drivers involved;
- preliminary injury and damage information.

The insurance company and its claim adjuster (often an outside contractor) will continue to ask for information as it develops. Do not fail to provide requested information. Your cooperation is required under the insurance policy; failure to assist in developing the claim can result in losing it.

If a liability claim is made against you because of an auto accident or an occurrence in your home, the insurer is obligated to follow up its claim investigation by providing legal counsel for your legal defense. This does not mean, however, that you cannot speak to your own lawyer for general advice or to work with the insurer's lawyer. This is obviously an expensive course to take, but in the case of a larger claim it could be a healthy approach. You certainly don't need a lawyer to duplicate the work of the insurer's lawyer, but you might want to have someone reviewing the work.

Claims Problems

Most insurers are professional and ethical, interested in handling your claim with a minimum of friction and providing you with the coverage for which you have paid. But you should be aware that, once a claim is made, you and the insurer have different interests. You want to receive the largest indemnity check possible. It wants to write the smallest check possible. Of course, it will investigate the situation to see that you have held up your contractual obligations. It is entitled to do that. Save yourself and your insurer a lot of trouble and keep good records of your communications with the insurer. Put as much in writing as you can.

Problems arise when some carriers decide that the economic cost of a claim is so high that they will take almost any route to avoid paying it. An insurer wrongfully denying a legitimate claim may be guilty of a tort, recognized in many states, of **bad-faith failure to indemnify**. In these states, you can recover extra damages if you prove bad faith on the insurer's part. The purpose of this rule is to change the calculus that makes it worthwhile for the insurer to stonewall you and dare you to sue. Other states allow consumers to use the consumer fraud statutes for unfair claims practices. Certainly if you are involved in a dispute involving unfair claims practices, communicate with your state's insurance commissioner and other consumer agencies.

Another area to watch is the behavior of the insurer's lawyer. Remember that liability insurance is litigation insurance -- you are entitled to a full defense of claims against you. The insurer is not allowed to deny you a defense because, for example, it says that the claim against you would probably not be covered under its policy -- for example, if intentional conduct by you is part of the claim. In most states, as long as the claim against you *could* be covered under a reasonable reading of the policy, you are entitled to a defense. Thus if the complaint against you includes both intentional *and* negligent conduct, they must defend you as long as the negligence claim remains in the case. But take note: If the claim is successful, *and* the insurer was right in saying that you were not covered (i.e., in the case of intentional behavior), you have to reimburse the insurer for its legal expenses.

Since the insurer is paying for the lawyer, it has the prerogative of directing the actions of the lawyer. But the insurer's lawyer has a legal obligation of loyalty both to you and to the insurer. Any time you have reason to believe that the lawyer is not looking out for you, or that the lawyer is favoring the insurer's interests over yours, you should have independent counsel look into it.

For example, if a claim is made against you, but you have a legitimate defense, the lawyer should not be eager to settle for some amount above its policy limit that leaves you holding the bag for the remainder. A legitimate settlement is one thing, but if you suspect the insurance company wants to cut its losses and avoid legal fees, sound the alarm. In the event that such behavior can be demonstrated to the court, the judge may order the insurer to pay for your separate counsel -- someone of your own choice -- as well. In such a case the company has forfeited its right to choose your lawyer by not acting in accordance with its fiduciary duty to you.

Fraudulent Claims

Just as lying on your insurance application is a prescription for trouble, so is the filing of false, inflated or otherwise fraudulent claims. The fact that insurers are big companies does not make it right or legal to steal from them. Such activity raises everyone's premiums. It also stands to land you in jail. More and more attorneys general, insurance commissioners and insurance companies are coming down hard on insurance fraud. The upshot can be more than a denial of your claim. It can be a conviction for the felony of criminal fraud or similar charges, leading to stiff fines or perhaps jail time -- for you and for everyone involved in the fraud, including your spouse or other family members if they Ahelped out.@ It=s not worth it.

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