Q&A for Legal System Abuse

Q: What do mean by "abuse?"
A: Abuse is when someone tries to use a legitimate system to reap undeserved rewards. Typically, legal system abuse is characterized by fraudulent claims; false or inflated costs associated with a legitimate claim; unreasonable demands for compensation in a claim; excessive or unnecessary legal paperwork; and/or “jurisdiction shopping,” where a sympathetic judge, court venue, or jury pool is sought.

Q: Does this "abuse" even matter to me? Isn't it just impacting the pockets of big insurance companies?
A: Yes, 100% of this abuse matters to regular policyholders and all Americans. While the payouts come from insurance carriers, those companies don’t “eat” the loss; they eventually pass it on in the form of higher premiums across all insurance buyers. If they didn’t, they would go out of business. Moreover, businesses that have to pay more for insurance end up passing that cost on to consumers in the form of higher prices for their products or fees for their services. Legal system abuse also makes it harder to get insurance in some business sectors and jurisdictions since insurers don’t want to offer coverage where there’s a higher-than-normal chance they will face unreasonable lawsuits, verdicts and expenses. Businesses may have to turn to higher-priced specialty insurers or turn to government-run insurers of last resort, which can cost more and offer less protection.

Q: Is the legal system broken?
A: Not completely. The main problem right now is that lawyers take advantage of the good rules of the system, such as the right of parties to “discover” the truth or investigate the facts of an event, in order to run up bills and convince juries to approve awards that are not in line with the law or the lawsuit’s claims. Some courts are known to allow this sort of abuse, and lawyers target those courts for their lawsuits. In some states, laws are being changed to reduce incentives for lawyers and their financial backers to bring frivolous lawsuits or make unreasonable demands.

Q: Shouldn't people be able to sue others, including insurance companies?
A: People should be able to turn to the courts when they have been harmed so they get appropriate recompense for an injury, property damage or financial loss. If an insurer doesn’t honor the terms of an insurance policy, a policyholder should be able to ask the court to enforce the contract. What shouldn’t happen is an immediate activation of the legal system before an insurer has the opportunity to investigate a claim and fulfill its obligations. The courts should not be the first recourse, because most claims can be resolved through the normal insurance process.

Q: Besides retaining a lawyer to start a legal action, what avenues are available to me if I feel I am not being treated fairly?

A: In many cases, your insurance agent or broker is the best person to start with to see precisely what your insurance policy covers. You can also discuss your claim with your insurance company using its claims appeal process. If you determine that your insurer isn't fulfilling its obligations under that contract, you can contact your state insurance bureau or department. It's totally free, and the specialists there should be able to inform you of your rights and put pressure, if needed, on an insurance company to follow the rules. That is also a good start if an at-fault party's insurance carrier is not honoring its obligation to compensate you for a loss caused by that insurer's policyholder.

If you still feel you are being treated unfairly and the amount you are seeking is fairly low—that amount varies by state but is generally between $3,000 and $20,000—you can turn to small claims court. A small claim often doesn't involve lawyers on either side. You can bring the evidence to the court, and a judge will decide if a payout is justified and, if so, how much should be awarded.

Q: Don't I need to hire a lawyer if the insurance company won't pay what's fair? How do I know what is fair?

A: It is difficult to say precisely what is "fair," but in general, compensation in an insurance claim is subject to some stipulations in an insurance policy. If you are filing a claim with your own insurer, you can expect an adjuster to research the evidence of your injury or property loss, determine if treatment or repairs can fix the problem, and figure out what the cost of those actions should be. That serves as the basis for compensation, which will be adjusted to reflect your deductible (how much you agreed to pay before insurance kicks in), your co-payment (what percentage of treatment or repairs you agreed to pay), and your limits (the maximum payout from the insurance company that is listed in your policy).

If you have an injury claim against another party, such as an employer or another business or individual—whether it involves your body or your property—you should start by simply filing a claim with that party's insurance company.

In both cases, a claims manager should be able to provide a time frame by which a decision on your claim will be made. If you feel it is too long or, when the decision is made, you feel the compensation is too low, you may wish to contact a lawyer to see if it is worth the money to sue for a higher amount.

Q: What costs are involved if I hire a lawyer? If they advise taking legal action on a contingency basis, how does that work?

A: Most lawyers charge an upfront fee for a consultation since legal advice is their stock in trade. A lawyer will be able to inform you of the cost of litigation and give a general idea of your likelihood of success based on certain parameters, such as the financial loss you suffered and the circumstances of the event. Personal injury lawyers vary greatly in their professionalism. The best will not take a case they think they can't win. Less reputable lawyers may encourage you to shoot for the moon, no matter the evidence, even suggesting that there are ways to work the system to get high payouts.

A lawyer may offer to take your case on a contingency basis, which means you might not pay an initial fee for consultation. If you go forward with litigation, you will be entering a contract to have the legal fees and other costs come out of any monetary award. Typically, this percentage runs about 30% of an award, but it's important to fully understand the terms of the attorney-client contract, because hidden fees—even interest payments to a third-party litigation financing company—could be involved and dramatically erode what ends up in your pocket. If the lawyer loses and you receive no compensation, a contingency contract usually says you pay nothing, but again, check the details of the contract carefully.

Q: Insurance policy language confuses me. How can I learn more about what coverage I have or don't have?
A: Insurance policies are legal contracts, so they often contain language that is difficult to understand. The easiest part of your policy to understand is in the front section, where you can find important information such as who is covered by the policy, what risks the policy includes and excludes, how much you must pay for the coverage and how often, and the monetary amount you are insured for.

Deeper in the policy, you will find very specific information about the insurer's obligations to you if an adverse event happens and your obligations in such an event. Your duties are an important part of the contract, because if you violate them you could be denied full (or any) coverage.

For terms that are confusing, such as "total insured value," "attachment point," "co-insurance," "arbitration" or any other thing you don't understand, your insurance agent or broker is the best first resource. You should ask your insurance professional about how your insurance would respond in scenarios you might encounter, and you should involve both your insurance agent/broker and your legal advisor in contracts you are entering that commit you to liability for your own actions or those of others. You might be surprised at how many times hosting a party, providing a ride, loaning a vehicle, or doing a favor has gotten people and businesses into expensive lawsuits without adequate insurance coverage!

Q: What can we realistically do about legal system abuse?
A: As individuals, we have few options, but those we have are fairly easy to act upon. We can understand the terms, limits and restrictions of our own insurance coverage so we are not caught with a property loss or liability claim against us that is uninsured or underinsured. We can also practice excellent risk management so we are less likely to be at fault in an incident. Another great thing we can do is keep quality records so we can produce evidence in our favor in a claim or lawsuit.

We can also refuse to file inflated or false claims. While plaintiff attorneys may make the payout sound enticing, such claims are often time-consuming, stressful and fraught with moral downsides. Moreover, they may yield very little money for the plaintiff while lining the pockets of the professionals involved.

If you become the victim of legal system abuse, your best bet is to cooperate fully with your insurer, sharing all pertinent facts. Your insurer will provide guidance to you and, if you have a lawyer, your legal counsel on how to best protect your business or personal assets and reputation. Your insurer may also provide legal counsel, depending on the benefits of your policy.

You may also wish to talk to your state and national legislators about legislative solutions. Some states have clamped down on contractors, medical professionals and attorneys involved in legal system abuse. This has resulted in lowering or stabilizing the cost of insurance in those jurisdictions. Contacting your state and federal elected officials can be helpful, as they do listen to individuals and business owners about their challenges and insurance is one issue that impacts everyone. If you belong to an organization, such as your local Chamber of Commerce or a professional association, you can have a lot of influence through that group. Your Trusted Choice agent may be able to help you find resources that can assist your group in lobbying officials to end, or at least minimize, legal system abuse.