

Thinking of hiring a lawyer to fight your insurance company? Know what you're getting into.

In the aftermath of Hurricane Sandy, attorneys have descended upon Long Beach offering to represent homeowners in recovering compensation from their insurance companies. Attorneys from all over the country are hosting seminars, aggressively marketing themselves and signing up clients at an impressive rate. This is understandable given the intense frustration that often comes with trying to collect on insurance policies. If you are thinking of hiring an attorney, it is imperative that you understand the terms of the law firm's contract (sometimes referred to as retainer agreements or engagement letters).

I have spoken with a number of experts and experienced attorneys who have reviewed several retainer agreements from law firms claiming they can get results for Sandy victims. They recounted that provisions of certain agreements were at times confusing or even downright unfair. Based on these conversations, here are some key areas that they recommend you consider in reviewing such a contract.

What is the scope of the engagement?

Does the agreement specify precisely what services will be provided? Do not assume that you know what duties are encompassed by terms such as "pre-litigation services" or "claims processing services." If you are uncertain, ask the attorney to explain the scope of each unclear term, and, to the extent possible, request that a more expansive definition be included in the agreement.

You should also know whether written consent is required before a lawsuit is filed on your behalf. You do not want a lawsuit filed without your knowledge, especially if the attorney has not explained his strategy and the likelihood of a positive outcome.

"One-Stop Shop"

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Some law firms are promising to help homeowners with all of their needs, including public adjustment work and even construction. While a “one-stop shop” may sound appealing, here are some things that experts recommend you keep in mind.

You should consider what benefits are derived from hiring a law firm to do public adjustment work. Public adjusters must be licensed in New York State and must disclose that you have 72 hours to void an agreement with them. Attorneys do not face those restrictions. Perhaps most importantly, an adjuster cannot charge more than 12.5 percent of the recovery amount and they usually charge less. If you will be required to pay more than 12.5 percent, you should ask what justifies such a rate.

Additionally, law firms that also provide construction (or other non-legal) services may risk conflicts of interest. The best legal representation will likely come from an attorney whose sole job is to focus on providing legal services. You do not want an attorney distracted with other aspects of your case or wondering how to profit from you in ways other than through providing traditional legal services. It also seems intuitive that the best construction will be from one whose sole job is to focus on that. When an attorney’s allegiance appears to be to a contractor — or anyone else other than you — you risk complicating an already confusing area.

That said, there might be circumstances where a one-stop shop is appropriate. Be sure you know exactly who will be doing each stage of the work and the qualifications those people possess. You are also entitled to know whether the attorney receives referral fees for the other services provided under the agreement.

Who will perform your work?

Some agreements allow a law firm to outsource your case — or parts of it — to an unnamed attorney. That is unacceptable. You are entitled to know exactly who will be working on your case and his/her credentials. Because there is a high likelihood that a local attorney will appear in court on your behalf, you should certainly know the identity and qualifications of that individual.

Attorneys’ Fees

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It is common for attorneys to receive a contingency fee of around 33 percent of your recovery; a higher percentage may be suspect. Also, pay attention to how the contingency fee is calculated. Specifically, is it calculated based on your entire recovery, including money you received before you retained the attorney? Experts say this provision, which appears in a proposed agreement floating around town, is unjustifiable.

In addition to legal fees, homeowners often have to pay for an attorney's "costs and expenses." Costs and expenses are often taken off the top of the recovery amount, so you do not actually end up getting 66 percent of the insurance money. Thus, you need to know precisely what expenses will be incurred by the firm and taken out of your cut. This area, perhaps more than any other, requires you to scrutinize the contract language. Vague phrases such as "administrative expenses" should prompt you to ask detailed questions.

Additionally, make sure you understand how the costs and expenses will be billed. First, will you be required to pay costs and expenses even if you do not recover from the insurance company? (The answer is likely yes). Will you be expected to pay costs and expenses periodically, meaning before you recover any money from the insurance company? Or will you only be billed for costs and expenses after you recover? If you are not required to pay costs and expenses prior to recovery, reserve the right to demand periodic expense statements.

The bottom line is that every term in a retainer agreement should be clear and unambiguous. If you are presented with terms you find puzzling, it is advisable to consult with an attorney before signing. There are plenty of attorneys who will review the proposed agreement for free. My email is below and I would be happy to show your agreement to an expert. Turning to an attorney at this difficult time may be the right decision for you. Just make sure you know what you are getting into.

Todd Kaminsky is a federal prosecutor working in the Criminal Division of the United States Attorney's Office for the Eastern District of New York and can be reached at toddkaminsky@yahoo.com. This column is written in his personal capacity.

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