

## What's UP with Insurance Class Action Lawsuits?

If you've been harmed by an unfair business practice that also harmed others, participating in a class action lawsuit can be a relatively easy and economical way to get compensated. The lawyers do the work and advance the costs. The specifics of the harm and the amount of money at stake will determine whether it makes more sense for you to file suit as an individual or as part of a class. Weigh the pros and cons after consulting with lawyers who have experience handling both insurance matters and class action suits. Not every unfair practice can be remedied through a class action suit, and these types of lawsuits can take longer to resolve than individual ones. But a class action can be the most practical road to a recovery.

Insurance companies have a history of earning higher profits through unfair sales and claims practices that harm large numbers of consumers (policyholders) but in relatively small dollar amounts. Although individual policyholders are harmed by these practices, they can't pursue a remedy on their own. They can't afford to pay a lawyer by the hour and no lawyer will take their case on a "contingency" fee (a percentage of whatever they recover) because the dollar amount of their "out-of-pocket" loss is too small to make it economically practical. In these situations, a class action suit is the way to go. If an insurance company has cheated or mistreated you and you suspect they may have done the same to others, you may be able to remedy the situation by participating in a class action lawsuit.

Insurance class actions are appropriate when one policyholder has the same grievance as other policyholders. All the impacted policyholders can hire one law firm to represent them as a group. This group is called "the Class." Individuals in the class are called "Class members." Courts apply special requirements and procedures to class action lawsuits. Class members must have suffered similar harm in order to be "certified" as a class and allowed to proceed with the lawsuit.

Class action attorneys generally work on a contingent fee basis, which means they don't charge by the hour. Their fee is based on what they recover for the class when/if the case gets resolved. Under a contingent attorney fee contract, no fee will be owed if there is no recovery. In most cases, the law firm representing the class advances all the costs of the suit. The class members are generally not asked to

pay out of pocket costs. If the lawyers are successful in obtaining a recovery for the class members, the fees and costs are either deducted from the recovery or paid separately by the insurance company. Class action attorneys' fees must be approved by a court.

### **Small rip offs multiplied = Big profits**

As proven in high profile lawsuits such as "Campbell v. State Farm" and as described in the books "Delay, Deny, Defend" by Professor Jay Feinman and "From Good Hands to Boxing Gloves" by David Berardinelli, some insurance companies have earned billions by underpaying millions of claimants by small amounts. Too small for the underpaid claimant to challenge in court.

Class actions empower consumers because they allow individuals who have been harmed to get together with others in the same situation and hire experienced counsel to represent them. Class action suits can level the playing field between consumers and large, powerful insurance companies. While the majority of policyholders' issues with insurance companies arise from individual disputes, it is possible that your complaint is shared by many others. Class actions can be brought related to any type of insurance, including homeowners, auto, long-term care, title and life insurance.

### **Examples of Insurance Class Action Suits**

#### **Title Insurance**

When you borrow money to buy a house, you're required to buy title insurance. If you refinance that loan, you have to buy it again. New York State has a law that requires titles insurers to give you a discount on the policy if you're buying it in connection with a refinance on a property you've owned for at least ten years. When a number of consumers figured out they weren't getting the required discount, they hired lawyers and filed a class actions against the various title insurers that were violating the discount law. The classes got certified and the individual policyholders received refunds for themselves and for all the other policyholders who had paid more than they should have for refinance title insurance.

#### **Health Insurance**

In another example, a health insurance policy covered anesthesia costs. A policyholder had surgery (and anesthesia) but the insurer unfairly refused to pay for the anesthesiologist's fee - claiming they were

only required to pay for the substance/dosage – not the professional who administered it. The policyholder hired a lawyer and sued – not just for themselves but on behalf of a class of people. The class consisted of people who’d been similarly harmed because they’d had to pay for anesthesiologist’s fees out of their own pocket due to the insurer’s unfair reading of its policy. The litigation was successful and everyone who had that policy and had paid for their own anesthesiologists’ fees received a refund.

## **Homeowners Insurance**

A bad storm damages policyholder Smith’s home and when repairs get underway, he has to move out until they’re completed. He’d paid extra premiums for a “rider” to his homeowners’ insurance policy that promised enhanced “ALE” coverage for temporary/additional living expenses in this type of situation. He discovers that he would have had longer lasting ALE coverage with the cheaper basic policy – he was outraged. He hires a lawyer under a contingency fee contract and files a lawsuit. He’s what’s known as the “lead plaintiff”. As lead plaintiff, he can get reimbursed for his own losses related to paying for mislabeled “enhanced” coverage. Class members who were similarly ripped off by the same insurer can get reimbursed as well.

Class action suits are often used by disaster victims to recover for losses and fill gaps in insurance coverage: Utility companies that failed to maintain their equipment and caused wildfires and explosions, manufacturers of defective windows and other home repair products...

## **Politics and practicality**

Insurers and other large corporations have spent millions of dollars lobbying to change the laws in the United States to make it harder for people to use the legal system and the class action process to remedy large scale small dollar injustices. It is harder today to pursue a class action suit than in the past, but it can still be done. Like every system – the class action system sometimes has been abused and the costs and attorney fees have been disproportionate to the amounts recovered by the class. But judges, after input from members of the Class, must approve class action settlements, so there are checks and balances to protect the class members.

—

This article was written by class action attorney [Emily Madoff](#) of [Wolf Popper LLP](#), and edited by UP Staff.



For more general information on this topic, please visit the [Resolving Claim Disputes](#) section in the United Policyholders Claim Help Library and start with [What To Expect When You're Suing an Insurance Company](#).