



SARASOTA
LITIGATOR
Journal

Published by the Law Office of Steven T. Wittmer, P.A.

Steven T. Wittmer, P.A.
2014 Fourth Street, Sarasota, FL 34237
T: 941.365.2296 • F: 941.365.0829
www.sarasotalitigator.com



Steven T. Wittmer, Esq.
Board Certified Civil Trial lawyer
st Wittmer@sarasotalitigator.com



Gregory P. Linehan, Esq.
gplinehan@sarasotalitigator.com

**Ten things about your insurance
that your insurance company may not want you to know**

The average American spends thousands of dollars per year on insurance for homeowners, automobile, medical, life, business, disability, umbrella and other coverages. Because most of us never suffer the large losses that everyone worries about, people have very little experience in dealing with insurance companies on large claims. Those that do are often in for a bit of a shock. Delay, the use of complex policy language to deny claims, and substantial underestimating of losses by carriers are common. Many people don't realize that insurance companies, like banks, earn their profits from investments, stocks, bonds, venture capital and real estate. The profitability of a company depends on how much money they have available to invest. If a company owes X million to all claimants at a given point in time, it can save 8% or more of that per year in investment profits by merely engaging in delay. It can save another 30 to 40% by engaging in low-balling. Another 20 to 30% can be saved by wrongful claim denials on confusing policy language.

Whether an uninsured will recover for a legitimate claim at all, and if so, the amount he or she will be paid, depend largely on the policyholder's own knowledge of his or her rights and responsibilities. Policyholders are often at the mercy of their insurance company. The company wrote the policy, the company interprets the policy, the company evaluates the claim and the company holds the money.

So the policyholder is really at a substantial disadvantage to the insurer. However, there are ways to begin to level the proverbial playing field. To do so, you must familiarize yourself with important principles of insurance law, which judges and legislators have fashioned over the years for your protection.

Here are ten such principles:

1. An insurance company must act in utmost good faith in the interpretation of their policies, and in the investigation and payment of claims.

Continued on page 2



**Wittmer recovers \$490,000
in motor vehicle collision case**

- Limits of insurance coverage were only \$200,000

On July 30, 2003, James Mason was heading home after a day at work. On this particular day, James, a CAD design operator for a national safety engineering firm, was driving down Fruitville Road with the rest of the evening rush hour traffic. James and his wife, Kathi, were in the right lane heading East on Fruitville Road. They were stopped at the red light at the intersection of Fruitville Road and Lockwood Ridge Road. Doris MacBain had just left Sarasota Memorial Hospital

after visiting her husband. Mentally distracted and not paying attention, the elderly Doris MacBain plowed her car into the rear of the Masons' vehicle.

In the blink of an eye the collision turned the Mason vehicle from a midsize car to the likeness of a compact. James immediately felt pain in his neck and shoulder, and was taken to the hospital for his injuries. Throughout the next several months James endured neck surgery for a herniated disc and shoulder

Continued on page 2

IN THIS ISSUE

1

Ten things about your insurance ...

Case study: Wittmer firm recovers \$490,000 settlement

2

Ten things your auto insurer won't tell you

3

Premises liability & negligent security

4

Your referral
Contact us on-line

CONTACT US
ON-LINE

For complete text of newsletter articles and more information about STW, our services and qualifications, please visit

www.sarasotalitigator.com

10 Things your auto insurer won't tell you

Published by *Smart Money* magazine

1. **"You're paying too much."**
2. **"Forget your driving record. We want your credit rating."**
3. **"We're pocketing your deductible."**
4. **"We can dump you on a whim."**
5. **"We'll stiff you if your car is totaled..."**
6. **"...and even if it isn't."**
7. **"You need a lawyer."**
8. **"Our body shops work for us, not you."**
9. **"We make money by sitting on your claims."**
10. **"We own your state insurance commission."**



For complete text of this story and more valuable consumer information, go to www.sarasotalitigator.com

Wittmer recovers \$490,000

Continued from page 1

surgery for a torn rotator cuff. Since the motor vehicle collision, James found it increasingly more difficult to concentrate, became agitated, had difficulty collecting his thoughts and was unable to concentrate enough to work a full day. James and Kathi were concerned they would lose everything under the crushing burden of their extensive medical bills.

Doris MacBain had automobile liability insurance with Progressive. The limits of coverage on her vehicle were \$100,000.00. When James retained our firm his medical bills already approached \$100,000. James and Kathi were in a serious predicament. Offers were extended to Progressive to resolve the Masons' claims provided Progressive made a timely delivery of \$100,000 AND disclosed information on all other available insurance. Initially, Progressive failed to disclose that Mrs. MacBain's husband had a second insurance policy of \$100,000, which provided coverage for this motor vehicle collision.

Progressive failed to comply with the terms of the Masons' initial offer and suit was filed. After a little more than one year of litigation, Defendant's denials of wrongdoing, defense medical opinions indicating that there was nothing wrong with James, and surveillance to try to capture James in the act of doing something he should not, the insurance company was finally convinced they needed to settle the Masons' claim. The problem now facing the insurance company was that the Masons' damages clearly exceeded all available insurance. Progressive quickly made a written tender of the \$200,000 in coverage and turned to Mrs. MacBain to pay the remainder of the claim.

Continued on page 4

Ten Things About Your Insurance

Continued from page 1

2. If an insurance company unreasonably denies a claim or breaches its duty of "Good Faith and Fair Dealing," and you must sue them in order to recover your policy benefits, the insurance company must pay for your legal costs and attorney's fees.
3. If an insurance agent misrepresents the coverage being provided at the time the agent sells you your policy, the insurance company will have to honor the coverage representations made by their agent.
4. If the amount of your insurance coverage is not sufficient to cover your actual loss because the insurance agent recommended that you insure for less than the amount you actually needed, the insurance company may be responsible for paying your entire loss, not just the amount of the policy benefits.
5. Any ambiguity in your policy must be interpreted in your favor and against the insurance company.
6. The insurance company, not the policyholder, has the obligation of providing the applicability of a "limitation" or "exclusion" in the policy.
7. In cases involving your insurance company's duty to defend, its duty to defend is broader than its duty to indemnify.
8. An insurance company that tries to rescind (eliminate) your policy coverage once you have made a claim, on the grounds that you made a misrepresentation on your insurance application, may be violating the law.
9. Punitive damages are awardable against insurance companies accused of engaging in oppressive, fraudulent or malicious conduct. Use this fact in negotiations where applicable.
10. You can usually get free legal advice from an insurance law expert so that you know your rights before you talk to your company, rather than after it is too late.



For complete text of this story and more valuable consumer information, go to www.sarasotalitigator.com. **STW**

Premises liability & negligent security

A position paper from the Academy of Florida Trial Lawyers

Issue:

Current law requires businesses open to the public to ensure that persons on their premises are reasonably safe from foreseeable risks of harm. Should the Florida Legislature absolve businesses of all responsibility when they fail to take proper security measures and someone is robbed, beaten, raped or murdered because of it?

Academy Position:

No. Current premises liability laws encourage commercial property owners to take necessary precautions to make their property safe. Changing the law would put the lives of every Floridian and every tourist in the state in danger. Additionally, changing the law would encourage businesses to avoid taking some precautions.

Summary:

Limiting premises liability would allow commercial property owners to escape responsibility for injuries to patrons caused by criminals on their property, no matter how dangerous the property is or how likely the risk of harm.

The Florida Supreme Court in *Merrill v. McDonald* stated that a business could not shirk its duty to protect its patrons by transferring liability to criminals who commit foreseeable acts; the business must use reasonable efforts to protect its customers. Why on earth would the state of Florida allow businesses to abandon this duty?

As the Florida Supreme Court unanimously stated in the *Merrill* case, it would be irrational to allow a party who negligently fails to provide reasonable security measures to reduce its liability because there is an intervening intentional tort, where the intervening intentional tort is exactly what the security measures are supposed to protect against. It makes no sense to ask a jury to “compare” the fault of a business that shirks its duty to protect customers with the fault of the criminal the business had a duty to protect the public from.

A few examples of how this bill would impact negligent security cases:

- 1) A hotel fails to repair a lock and a hotel guest is raped. Everyone would agree that the rapist is a wrongdoer. However, the hotel is 100% at fault for creating the opportunity for the rapist to commit the criminal act. This proposal would require the jury to split the fault between the hotel and the rapist, despite the fact that the case is about the breach of the hotel's duty to its guests. Under this proposal, a jury could apportion 90% of the fault to the rapist and 10% to the hotel. Do we really want to tell the millions of visitors who come to Florida every year that their hotel only owes them a 10% duty to make sure they are safe in their rooms?
- 2) A toddler is in the play yard of a day care center. The owner of the center has decided to cut staffing and an unwatched child is abducted by a stranger. The child and her kidnapper are never seen again. The day care center had a duty to protect the child from the danger that occurred. The day care center was negligent and breached its duty to the parent and the child. That is the basis for the lawsuit and the day care center's negligence—the failure to use reasonable care. The day care center is 100% responsible for its failure to protect children under its care from being kidnapped. By allowing the kidnapper to go on the jury verdict form for an apportionment of fault, this proposal would allow the day care center to escape responsibility for the tragedy that occurred because of the negligence of the day care center.

If the same unattended child had drowned in the center's swimming pool, no one would suggest that fault be apportioned between the center and the swimming pool. It also makes no sense to apportion fault to a foreseeable criminal act.



If a hotel, a day care center, or any other business fails to take reasonable security measures or to warn its patrons of the risk of criminal acts on its property and a patron is injured or killed as a result of this failure, the business may be liable. To allow the negligent business to point the finger at someone else for what their own negligence caused would be irresponsible at a time when we are requiring extra vigilance and security.

Changing this law would encourage businesses to cut costs by cutting security and safety measures. The people who would be put most at risk by this new lack of security would be society's most vulnerable—seniors, women and children. They are the “easy targets” for muggers, kidnappers and rapists.

The Legislature should find this position unacceptable. If accountability is eliminated, the duty a business owes to their patrons and visitors will be abandoned and the safety of all of us – students, children, seniors, women and tourists – will be in jeopardy. **STW**

Wittmer recovers \$490,000

Continued from page 2

Ultimately, our Firm was able to convince Progressive that they had failed to properly evaluate this claim and that their conduct (in trying to pay less than the available policy limits) had exposed their insured to excess damages. Convinced their attempts to reduce the Masons' damages had failed, they reluctantly agreed to pay James and Kathi Mason \$490,000. **STW**

Contact us on-line

For complete text of newsletter articles, other valuable information, or to contact one of our attorneys, please visit www.sarasotalitigator.com.

Your referral can help a friend or family member

Please feel free to refer us to your family, friends or neighbors for their legal needs. We welcome the opportunity to help individuals in matters of personal injury, wrongful death, insurance disputes, workers compensation, and trust and estate litigation.

Call our office at (941) 365-2296 if we can be of assistance.

Acknowledgements:

Ten things about your insurance Ray Bourhis, Bourhis & Wolfson.

Premises liability & negligent security Academy of Florida Trial Lawyers.

Ten things your auto insurer won't tell you *Smart Money* magazine, February 1999.

The hiring of an attorney is an important decision that should not be based solely on advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.

SARASOTA
LITIGATOR
Journal



Steven T. Wittmer, P.A.

2014 Fourth Street

Sarasota, FL 34237

PRSR STD
US POSTAGE
PAID
PERMIT 118
MANASOTA FL