

Truth About Mold - Litigation Tips

Bad faith insurance companies will do ANYTHING to win a lawsuit. They have a big bag of tricks and will even commit crimes against you, your family and your attorneys.

Because the insurance companies and other defendants typically refuse to accept responsibility or honor their contractual obligations, these cases often become lawsuits. As a result, we frequently receive questions about the legal process. This paper provides information about the games played by these defendants and tips on how to protect yourself and your family.

The law says that insurance companies are required to act in "good faith," but this law is frequently ignored by "bad faith" insurance companies.

The insurance companies and defendants use many tricks and illegal activities during litigation. It's known throughout the legal arena that insurance companies and other big corporations will do ANYTHING to win. They are trying to intimidate you to get you to drop the lawsuit.

It's important to be aware of these intimidation tactics and illegal activities in order to protect you and your family. After all, the insurance companies share their activities and methods with each other, so the plaintiffs should be also share their experiences with each other.

The following list discusses some of the tricks they have used during litigation and tips on how to protect yourself and your family. We have also provided examples of these activities that occurred during actual lawsuits.

1. Hire a good "plaintiffs" attorney with a proven track record of handling cases like yours. This is critical. You must hire an attorney who only works for plaintiffs and who knows how to litigate a case with facts like yours. (For example, you would not hire a divorce attorney to handle a lawsuit about a car accident or house fire, etc.)

"Defense" attorneys typically work for insurance companies and other businesses, so do your homework, and do not hire a defense attorney.

In some mold cases, insurance companies have tried to influence or intimidate the plaintiffs' attorneys to get them to drop the case or screw it up on purpose. Be aware of any changes in your attorneys' conduct, their handling of your case or their attitude toward you and your family.

2. The insurance companies have hundreds of in-house attorneys, and they have ongoing relationships with many additional outside attorneys. Their first response to most claims is to say "No." As the insurance companies say, it's well-known that most people will just accept the answer and let it go. Then, there are a handful of people who will ask again, and an even smaller number who will take it to court. This is a numbers game for the insurance companies. If the potential damages in your case are large, they will be assign their "mad dog" or "attack dog" attorneys to the case. These attorneys will do ANYTHING to win.

A comment on slabbed.org sums it up :

"Sometimes an insurer has a case that comes along that needs to go away no matter the means or methods. Since not all of the insurance defense bar are unethical scudda beans, sometimes ethical local firms need to be moved out of the way so the right kind of lawyer can come do the dirty work."

Sometimes the local attorneys are also caught doing some of the dirty work. In one case, the local attorney was caught committing an ethics violation and had to withdraw from the case.

3. They will put you, your spouse, your children, your relatives and your attorneys under surveillance. These surveillance people usually work in teams and have more than one person or more than one car following you. Take pictures of the surveillance people and their vehicles. Write down their vehicle description and license plate numbers. They like to think they are sneaky, and they really hate it when you catch them in the act. Ask your attorney about hiring your own surveillance people or install a security and surveillance system on your house.

Example: In one case, the insurance company hired a family member of the plaintiffs to conduct surveillance and to get inside information. Some people will do anything for money.

Example: In one case, the insurance company hired a woman that lived next door to the plaintiff's attorney. They paid her to do surveillance. Remember, they will do ANYTHING to win---even committing crimes.

4. Their surveillance people will watch you when you are home and in public. They will follow you in malls, grocery stores, movie theaters, restaurants, etc. They can take pictures of you from long distances with their expensive cameras. They will pretend to know you or your friends and family members. Pay attention to strangers who suddenly appear and seem to be too friendly or have too many personal questions.

5. Their surveillance people might violate traffic laws when they follow you or commit other crimes against you. Report them to the police.

Example : In one case, the surveillance people would speed or run through red lights in order to keep up with the family. They also harassed a teenage driver in the family.

Example : In another case, the plaintiff came home and found one of the surveillance men walking out of her house carrying some of her property. This is illegal. Call the police.

6. They will watch your activity on social media to try to find information that will hurt your case or embarrass you in front of the jury. They will "friend you" or connect with you on social media in order to get information, or they will use a fake name and harass you.

7. They might use invalid license plates on their surveillance vehicles (such as license plates from other vehicles) in order to try to hide their identity. This is a crime. Report it to the police.

Example : In one case, they put license plates from an old car on an RV in order to avoid being identified.

8. They might hire your friends, family members or coworkers to spy on you. Unfortunately, some people will do anything for a few dollars.

9. They might tap your phone or listen to your conversations using electronic listening devices. If they commit those crimes, report them to the police.

Example : One of State Farm's outside attorneys (David V. Jones) was caught when he disclosed the contents of a "non-consensually intercepted and recorded telephone conversation." (wiretapping). He pled no contest to the charge, but he has failed to disclose it on his pro hac vice affidavit (in more than one case).

10. They might take your mail from your mailbox (especially the mail from your attorneys). Get a

P.O. Box at your local post office.

11. They will cause repeated delays during your lawsuit. It's called "starving the plaintiff." They have billions of dollars; you don't. Make sure your attorneys stay on top of deadlines and strongly oppose any requests for delay.

12. During the litigation process, they might use impostors in place of the real claims people or insurance company employees. Some of the claims people may not be able to do well during a deposition or trial, so they might use an impostor in their place. Be sure to ask for proof of identification for all insurance company employees and witnesses.

Example: In one case, the State Farm Insurance Company Claims Manager was a large, overweight, bald man around 40 years old. When it came time for his deposition, the insurance company brought in a different man (small, slender build, with white hair and a full beard who was about 65 years old)—most likely one of their own in-house attorneys.

Example: During one trial, a woman was in the courtroom with the insurance company attorneys. They would not disclose her identity, but she was likely an in-house attorney for the insurance company. The judge should have asked her to leave since she refused to identify herself.

13. Their attorneys may violate litigation rules and procedures. Make sure your attorney brings these violations to the attention of the court.

Example: In a lawsuit in Oklahoma, State Farm and their attorneys were found to be in contempt of court and were disciplined and sanctioned for their bad behavior. The court ruling said, "This Court finds the conduct displayed by State Farm and its counsel to be obstructive, contemptuous, and in bad faith." The court found one of these attorneys to be guilty of constructive fraud in another case and discovery abuses in yet another case (and the list of misdeeds goes on).

14. They might send subpoenas to your banks, schools, credit card companies, etc. without getting approval from the court. If they do get approval for some of the subpoenas, they will violate the court order and ask for records beyond the time limit approved by the court (such as a 2-year or 3-year limit).

When defense attorneys make unnecessary or overbroad requests for information, or they violate the rules of discovery, or they use discovery to harass or obstruct the plaintiffs, it is referred to as discovery abuse. The plaintiff's attorney needs to bring these matters to the judge, and the judge should stop all discovery abuses.

Example: In one case, they asked for all school records for the family from "birth to the present day" (e.g., from birth through college). This is another intimidation tactic. They also asked the banks for records from several years, even though the court only allowed them to ask for two years of bank records.

15. They might pay someone to date you or become your friend in order to get inside your house to get information about your lawsuit and to get access to your computer and documents.

Example: In one case, the insurance company hired a man to date a woman (the plaintiff). While he was "dating" her, the man was in her house every day and was able to get copies of legal papers and evidence. He also harmed the woman.

16. They might pay someone to live near you in a house, apartment or even a camper or RV. Be cautious of new people who suddenly appear in your life and seem to be too interested in your life or your lawsuit.

Example: In one case, the insurance company used surveillance people against the family for several months. The company paid for the surveillance people to use an RV/camper as their base of operations. They parked the RV on the street where the family lived. They would take pictures from there and would send out their teams in multiple vehicles to follow the family whenever they left their home.

When the plaintiffs moved to a different house, the surveillance people moved their RV to the new location. This strategy was used to intimidate and harass the plaintiffs and their children. This insurance company was desperate to find a way to scare the family into dropping the lawsuit. The family did not drop the lawsuit.

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17. They might send you to see one of their hand-picked doctors to be evaluated. This is known as an Independent Medical Exam (IME), but there is nothing independent about it. The insurance companies use a select list of doctors to allegedly "evaluate" plaintiffs and write reports. Their reports are often just a "copy and paste" from previous reports they have done, so watch for errors and information that has nothing to do with you.

There is a lot of information about IMEs on the Internet. Know your rights. Ask your attorney if you can take a witness with you and/or videotape the appointment, and do not allow your children to be alone with these doctors.

These IME doctors will use this time like a deposition to ask you more questions about you and your lawsuit. This is not a deposition. You only have to answer questions relating to your health issues. These doctors will pretend to be your friend in order to get you to talk too much. They are NOT your friend. Remember, the IME doctor is working for the insurance company.

In addition, IME doctors are not allowed to cause you physical harm or harass or insult you. Protect yourself during the exam by having a witness and, if allowed, audiotape or videotape the session.

18. They might destroy or alter evidence. Make sure your attorney has copies of everything and watch for unusual changes and photos or other types of evidence that have been altered (e.g., photos that have been digitally altered or documents where some of the information has been removed or pages are missing).

19. They might act like "attack dogs" (also known as "mad dogs") during your depositions. This is another one of their intimidation tactics. Know your rights, and if necessary, ask for the depositions to be conducted at the courthouse in the presence of a mediator or other court official. Another good step is to videotape your depositions. The "attack dog" defense attorneys do not want their bad behavior to be videotaped.

If your children are involved in the lawsuit, you should absolutely have their depositions videotaped. This will help to keep the "attack dog" attorneys under control.

In extreme cases where the "attack dog" attorneys are clearly out of control, you will have to ask for the depositions to be held at the courthouse or under supervision by the court. You can also ask the court to put a limit on your depositions (e.g., limited to a certain number of hours each day or certain number of days). These "attack dog" attorneys do not follow normal procedures, and they believe they are allowed to do whatever they want.

Example: In one case, the defense attorneys were so aggressive and threatening during the

depositions of the adult plaintiffs, that the family hired a professional videographer to be present during the depositions of their children. When the defense attorneys arrived for the deposition of the children and saw the video camera, they became outraged. The plaintiff's attorney pointed out that their behavior was being recorded, and the defense attorneys eventually settled down. Because of this protective measure, the attorneys behaved appropriately and the children's depositions were very short.

Example: In one case, the insurance company attorney was using intimidation tactics during a deposition. The plaintiff spoke up and told the attorney that he knew about these "mad dog" tactics. The attorney became very upset and demanded to know how the plaintiff knew about this. Because the attorney became so rattled by the plaintiff's comments, it changed the tone and direction of the deposition. Again, it's better to be informed and knowledgeable about their tricks.

For more information about these "mad dog" tactics, check out the 3-part investigative news report conducted by Channel 7 & KGO news in November 2006. The description of their news report says:

"Investigation Into How State Farm Does Business (Parts 1 & 2). State Farm cheats policyholders by forging signatures to deny coverage and orders employees to lie under oath in bad faith litigation."

"Investigation into How State Farm Does Business (Part 3). Employees instructed to destroy documents that could be used against them and the use of 'mad dog' litigation tactics in bad faith lawsuits."

20. They will conduct robo-searches of the Internet looking for information about you or anyone whose name is the same as yours. They might take legal action against people with the same name as you. Remember, these bad faith insurance companies think they are above the law.

Example: In one case in the Midwest, the insurance company found another woman (in California) with the same name as the plaintiff in the case. They sent a subpoena to her employer and demanded information. Even though the employer explained this was not the same woman involved in the lawsuit, the insurance company refused to back down. The employer had to hire an attorney to resolve the matter.

21. Their employees or other hired help (such as private investigators or criminals) might steal from you or cause damage to your home or business and then blame you for it.

Example: In one case, about a year after the initial mold claim, something happened to the water heater and it flooded the basement. The insurance company tried to blame the plaintiffs, but the house was vacant and the insurance company's contractors were the only people with keys to the house.

Example: In another case, the insurance company's conduct was so egregious that the jury awarded the plaintiff \$14.5 million. Not only did the insurance company file false criminal charges against the plaintiff (claiming that he had caused damage to the roof), but the court concluded that it was the insurance company's own employees who had caused the damage. For more information about this example, read about [the case of Joseph Radcliffe](#).

22. They might use expert witnesses who are not qualified or who have records of professional misconduct. Make sure your attorney thoroughly investigates each witness and make sure all of their professional licenses and credentials are current and valid.

Example: In one case, the insurance company used a "doctor" to examine the plaintiffs, review their medical records and write reports on each family member. It was discovered that the "doctor" was not a medical doctor (M.D.). He only had a Ph.D., so he was not qualified to serve as an expert

witness in that role. He was removed from the case and was not allowed to testify.

23. They might pay off your attorney or promise to give them litigation business in the future in order to get them to withdraw from the lawsuit.

24. They might have their employees or witnesses wear "brown" clothing, because attorneys believe that brown clothing makes a person seem more honest.

25. They might have their employees or witnesses pretend to be sad or even start crying on the witness stand. This is just another ploy to try to gain sympathy from the jury.

26. The attorneys for the bad faith insurance companies might act unprofessionally in the courtroom in order to distract or confuse the jury. Make sure your attorney brings that bad behavior to the attention of the judge.

Example: In one case, the attorney for the insurance company did not follow proper courtroom etiquette or rules. He frequently ran up to the judge's bench and the witnesses on the witness stand without asking for permission to approach. He also turned his chair to face the wall (putting his back to the jury) numerous times during the trial...anything to disrupt the process and distract the jurors.

Example: In another case, the attorney for the insurance company had his wife wear sleeveless, low-cut shirts to distract the jury (even though it was freezing cold and there was a blizzard outside).

27. They might bribe the judge or members of the jury, and they might try to put some of their people in your jury pool. Make sure the court follows the proper procedures for selection of the jury and watch out for any suspicious activity that might indicate bribes or other types of illegal interference. You might want to hire a trial consultant to handle this aspect of the case.

28. Do not expect them to tell the truth. It is very likely they will lie and alter evidence. One way to protect yourself is to attend every deposition and the trial, so you can tell your attorney when the defendants are lying or altering evidence.

Remember, they will do ANYTHING to win.

Keep in mind, this is just a game for these insurance companies. They will use any trick to distract, deflect, deny, lie, cheat and hide the truth.

Be informed, pay attention and report any unethical or illegal activities.

These cases can be won, but you need a strong, experienced, "plaintiffs" attorney, and you need to be aware of the tricks used by the defendants.