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THE TRILEMMA OF INSURANCE CLAIM DISPUTES

What do you do when you can't agree?

By: Sean M. Scott

When a dispute arises over a property damage claim, policyholders need to carefully weigh their options when it comes to getting their claim resolved. Some policyholders opt to hire a public insurance adjuster (P.A.) to represent them, however this decision comes with a cost. A P.A.'s services usually requires a 10% fee of any insurance claim proceeds they are able to recover from the claim onset. However, if the P.A. is brought into the claim later in the process and takes the claim on what is known as an overage basis, the percentage for their services can double or triple. An overage basis is when the insurance company has paid out what they consider to be the undisputed damage amount and the P.A. has to fight for any additional costs associated with overlooked or unforeseen damages or amounts that were not included in any previous payments.

Although P.A.'s can be helpful in negotiating higher settlements in insurance claims, one drawback is that most P.A.'s cannot engage in the practice of law, so they tend to be very limited if the dispute escalates into the legal arena or a court battle. So, what happens when the insurance company refuses to pay for damages or costs that a policyholder and their P.A. is claiming or what if the carrier becomes adversarial and demands an examination under oath? Here, the policyholder may be forced to hire an

attorney and pay an additional fee for legal representation. Some attorneys may charge by the hour, which can range anywhere from \$250-\$650 per hour or they may charge a contingency fee anywhere from 25% to 35% of any claim proceeds they are able to recover. Either way, this can be an expensive endeavor, especially when their fees are combined with a P.A.'s fee. More critically, if the replacement cost of the damages or items in dispute meets or exceeds the policy limits, the costs of representation can dramatically reduce the amount of money the policyholder will get to rebuild their home.

The third financial risk in the trilemma of a claim dispute is when the policyholder and their representatives hit an impasse with the insurance carrier and one of the parties demands appraisal. Most homeowners' insurance policies contain a provision for dispute resolution called the "Appraisal Clause". The California Insurance Code § 2071 states: *In case the insured and this company shall fail to agree as to the actual cash value or the amount of loss, then, on the written request of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of the request. Where the request is accepted, the appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon the umpire, then, on request of the insured or this company, the umpire shall be selected by a judge of a court of record in the state in which the property covered is located. Appraisal proceedings are informal unless the insured and this company mutually agree otherwise. For purposes of this section, "informal" means that no formal discovery shall be conducted, including depositions, interrogatories, requests for admission, or other forms of formal civil discovery, no formal rules of evidence shall be applied, and no court reporter shall be used for the proceedings. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him or her and the expenses of appraisal and umpire shall be paid by the parties equally.*

Here the policyholder is faced with another expense - the cost of the appraisal process. Now the policyholder will be faced with their appraiser's hourly fees, which may run anywhere from \$200-\$400 per hour, half of the umpire's hourly rate, which may run between \$350-\$600 per hour plus travel expenses, expert fees, hearing costs, etc. The outcome of an appraisal award is never guaranteed to be in the policyholder's favor, so the appraisal process can be a slippery slope, especially if the amount in dispute is less than \$50,000. All in all, the P.A.'s fee, the attorney's fees, and the costs of appraisal can decimate the net claim recovery.

To better illustrate this, let's say you are disputing \$100,000 needed for repairs to your fire damaged home. You retained a public adjuster who was unsuccessful in getting the insurance carrier to pay more than what they initially paid, so you decide to hire an attorney, who demanded the dispute be resolved in appraisal. If the appraisal panel determines that \$75,000 is the award for additional damages, then the P.A. takes 10% off the top (\$7,500), the attorney takes 25% (\$18,750), and let's say the cost of the appraiser and umpire fees (which are never known in advance) comes to \$15,000. The net proceeds you would end up getting would be \$41,250.00, which is far less than the \$100,000 that was needed at the outset.

This situation will likely force you to either secure a construction loan, do the repairs yourself, cut corners, or pay out of pocket to get the work done.

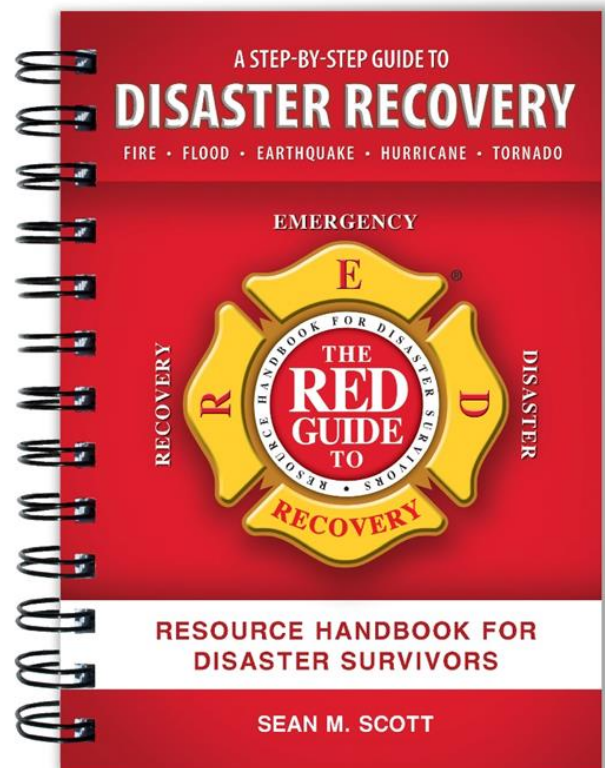
Then, to add insult to injury, if the appraiser you hire is inexperienced in appraisals, fire and smoke restoration, or in the use of Xactimate, the end result of the appraisal could be far less than the amount you hope to recover.

The only silver lining to this is that a good attorney that specializes in insurance bad faith may be able to recover additional monies in a lawsuit, if the case for bad faith is strong and he or she prevails.



Mr. Scott is the author of *The Red Guide to Recovery – Resource Handbook for Disaster Survivors*, *Secrets of The Insurance Game*, and Co-Author of *The Native Family Disaster Preparedness Handbook*. Sean has written numerous papers and articles on disaster recovery and restoration topics and has spent over 40 years in the restoration and construction industry. He actively serves as an umpire and appraiser in insurance claim disputes and provides consulting and cost estimating services to those who have suffered damages from fire, smoke, flooding, and other types of property damage claims.

For more information on disaster recovery, *The Red Guide to Recovery – Resource Handbook for Disaster Survivors* and *Secrets of The Insurance Game* both provide a wealth of insight and useful information on the recovery process. Visit www.TheRedGuidetoRecovery.com for details on the content of these books and other disaster preparedness and recovery resources.





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