

# THE 5 BIG ADVANTAGES YOU HAVE OVER YOUR INSURANCE COMPANY



## YOUR ADVANTAGES

### 1. ARIZONA LAW IS ON YOUR SIDE

Interpretation of what is and what is not covered favors you over the insurance company.

### 2. YOU CAN RECOVER EMOTIONAL DAMAGES FOR BEING MISTREATED

To prevent insurance companies from wrongfully denying valid claims, Arizona provides for recovery of additional damages beyond what is covered under the policy.

### 3. YOU ARE A PERSON, NOT A CORPORATION

Your jury will be made of people, not corporations.

### 4. YOUR ATTORNEYS' FEES ARE CONTINGENT UPON RECOVERY

Your attorneys' fees are contingent upon the outcome of your case, while the insurance company must pay its attorneys by the hour regardless of the outcome.

### 5. FREE CONSULTATION

You have access to a free consultation before you decide to sue.

Wayne & Mark Arnett want you to know that

## You Have More Power Than You Think

When your insurance company has treated you unfairly it is easy to feel that the company is holding all the cards. The insurance company is huge, while you are small. The company is rich, while you just had a devastating loss. The company is aggressive and organized for a fight, while you are not set up for a major confrontation.

You may feel frustrated because the insurance company that took your hard-earned premium dollars, promising protection and security if the unthinkable happened, now treats you like dirt.

While your insurance company does hold some advantages over you, you have many advantages over your insurance company.

Below are five advantages you may have against your insurance company. This report should not be taken as legal advice, but hopefully this list may help you in your quest to find the answers you are looking for.

### Advantage No.1

#### Arizona Law is on Your Side

Arizona law attempts to level the playing field between you and your insurance company. For example, Arizona courts will typically interpret insurance policies in the light most favorable to finding coverage.

Unless there is some overriding public policy reason, Arizona courts will accept your reasonable interpretation of the policy over a reasonable interpretation put forth by your insurance company. Further, even if the provision in the policy is clear to the court, it must

be clear to the average insured before it can be used to deny coverage.

Why would the courts favor your interpretation over the company's? Simply stated, the courts want to encourage the company to make its policy clear and easy to read. If vague wording helped the insurance company deny claims, then all insurance companies would have an incentive to use vague language. By giving the advantage to you, the incentive is for the company to write clear policies.

But the law favoring you does not stop with policy interpretation. The courts have recognized that often the policy is written clearly, but the sales agent misrepresented the coverage when it was sold. To overcome this problem, Arizona courts have held that such promises become part of the policy.

And that's not all. Unusual exclusions in the policy must be brought to the purchaser's attention before they can be used to deny coverage. This prevents an insurance company from putting unusual exclusions that you wouldn't expect in your policy, knowing that few people ever read, let alone study, the policy.

A list of the four different ways Arizona courts look for coverage in interpreting insurance policies is found in *State Farm Mutual Auto Insurance Co. v. Dimmer*, 160 Ariz. 453, 773 P.2d 1012 (App. 1988).

The number of consumer protections for the insured are numerous and we have only scratched the surface here. Here are some more examples:



- Insurance companies are prohibited from withholding funds they know they owe, in an effort to force an insured to settle for less money than they think they deserve. *Borland v. Safeco Insurance Co. of America*, 147 Ariz. 195, 200, 709 P.2d 552, 557 (Ariz. App. 1985).

- Insurance companies are required to make a neutral and detached investigation. *Linthicum v. Nationwide Life Ins. Co.*, 150 Ariz. 326, 327, 723 P.2d 675, 676 (1986).

Of course, the law in Arizona has its warts too (we would list them here, but we are not in the habit of educating defense attorneys about the problems we see). You should also note that your case might not be governed by Arizona law. Insurance obtained through your employer might be governed by Federal law which preempts state law. You'll need to navigate through the exceptions.

Further, there are still many areas of the law where there isn't a prior insurance case precisely on point. That's when one needs to look to the principles found in the law, apply them in a different light, and ask the court to clarify the law.

In order for us to evaluate your particular case, you'll need to call for a free consultation. But we hope this section helps you understand that you are not powerless against your insurance company and that the law is often in your favor.

#### Advantage No. 2

### **You can recover emotional distress damages from your insurance company**

If your insurance company has wrongfully denied your claim, you can of

course sue them for the money it owes you. But that's not all. Arizona courts recognize that, when a claim is wrongfully denied without a reasonable basis, an insured often suffers more than just the money withheld. When you purchase insurance, part of what you are buying is peace of mind. When a claim is wrongfully denied, you lose the very security of mind you bargained for.

Additionally, if the most an insurance company had to pay for wrongfully denying a claim was the amount of the claim, insurance companies would have the incentive to deny all claims and only pay those claims where the insureds hired lawyers and brought suit. To make it more profitable for the honest companies, the law allows the recovery of much more than the amount of the claim. These additional damages include interest, emotional distress, money to help pay attorneys' fees, and even punitive or exemplary damages. By making it more expensive to wrongfully deny claims without a reasonable basis, Arizona keeps insurance companies in check. We firmly believe that the law we have helped shape in Arizona has benefited many more people than just the hundreds of clients we have helped over the last 20 years. It has helped hundreds of thousands of others, by providing the economic incentive to treat people in good faith.

So when you feel like the insurance companies hold all the power, just remember that they have a reason to fear anyone they mistreat, because those people have the power to recover far more money from them than they have wrongfully withheld.

You need to understand that there are risks to filing a lawsuit. For example,

if you lose your case you could possibly owe additional money to the insurance company for its attorneys' fees and costs. That is why you'll want to examine your case closely before proceeding. Of course, you can call us for a free consultation to help you better understand your case and the risks involved.

#### Advantage No. 3

### **You are a person, not a corporation**

If your case is not resolved before trial, your case will be tried in front of a jury. That jury will be made up of people—not corporations. This advantage is not really a legal advantage, but practical one. Many people have either been mistreated by an insurance company, or have had a friend or relative mistreated. People have a learned distrust for insurance companies because of the many abuses by some companies in the past. Because of this, insurance companies have a harder time establishing credibility.

When you walk into the court room, the jury will be anxious to hear your

## **INSURANCE PROBLEM?**

*Call today for a free consultation*

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**Arnett & Arnett PC**  
Arizona Insurance Bad Faith Attorneys

story. They will be eager to weigh your story against the insurance company's story and the documentary evidence presented to them. If you do not lie to the jury and if you tell the truth, the whole truth, and nothing but the truth, the jury will give you a fair trial.

Don't get us wrong, the insurance company will get a fair trial too. Jurors typically take their responsibility very seriously and will not award money undeservedly. However, the jury will have an easier time identifying with you than with a large corporation. Especially when the jury learns of your mistreatment by the company.

**Advantage No. 4**  
**Your attorneys' fees are contingent upon recovery**

Another often overlooked advantage you have over your insurance company is that if we take your case on a contingency fee, our attorneys' fees are a percentage of the recovery from the insurance company. So if you don't recover, you don't owe us for attorneys' fees (only court costs).

Not so for the insurance company. When an insurance company is sued, it

typically has to hire an attorney and pay him or her hundreds of dollars an hour to defend the company. What that means to you is that your company has a real incentive to resolve the case while spending as little in attorneys' fees as it reasonably can. That is a tricky thing to do. On the one hand, the company wants to avoid paying attorneys to defend its actions. On the other hand, the insurance company does not want to gain a reputation in the legal community that they fold like a house of cards whenever they are sued.

While different insurance companies have differing philosophies as to that balance, you should understand that your insurance company does have pressure on it that you will not have.

**Advantage No. 5**  
**You have access to a free consultation before you sue**

There is a lot to consider before filing suit against an insurance company. But this is another advantage you have, because you have access to a free consultation before you

decide what to do. Your insurance company has to pay for all its legal advice.

At Arnett & Arnett we have provided hundreds of free consultations over the last 20 years. Sometimes we have determined that what is really needed is better communication with the insurance company. We have helped people write letters to the insurance company giving the company the clear opportunity to act in good faith. On occasion we have been successful in getting the insurance company to do the right thing without having to hire us to file suit. And we do it for free.

Why would we help you write a letter to the insurance company for free? Because we want to make sure that the company is really committing bad faith, rather than simply being misinformed about the facts. By giving the insurance company the clear opportunity to do the right thing, we can make sure that the company's actions were deliberate, and not just a misunderstanding or clerical error. If the company pays the claim, great. If not, we may be able to help you.

## INSURANCE BAD FAITH LAWYERS

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Brothers Wayne & Mark Arnett have been practicing insurance bad faith law in Arizona since 1990. Wayne started doing insurance bad faith cases in 1976 (while Mark was still in junior high school).

*Practice Limited to Insurance Bad Faith Cases*

