

# dbrr

## DAILY BUSINESS REVIEW

An ALM Publication DAILY BUSINESS REVIEW MONDAY, DECEMBER 2, 2013 [dailybusinessreview.com](http://dailybusinessreview.com) A5

## OPINION & COMMENTARY

FROM DAILY BUSINESS REVIEW EDITORS &amp; GUESTS

# Why people keep suing property insurance firms

Commentary by Jason Wolf

The question of why people continually sue property insurance companies is a perplexing one. The simple answer to this question that keeps claims and litigation managers at Florida property insurance companies awake at night is that it's actually their own fault! Yes, it's often the fault of the insurance company.

It seems counter-intuitive. Insurance companies should want to limit lawsuits. However, they will often settle most first-party lawsuits rather than litigate aggressively. Thus, there is an increase in claims.

From the plaintiff attorney's side, there is an incentive to filing claims. Because Florida has a statute providing attorney fees for first-party property lawsuits, plaintiff attorneys file as many lawsuits as they can, knowing that insurance companies will almost always pay to settle the lawsuits rather than risk taking cases to trial. For members of boards of directors, litigation is expensive. We don't want to pay our defense lawyers, they say, and we certainly don't want to risk a negative result at a jury trial, which would be worsened by having to pay a large fee amount to the plaintiff's attorney. So settlement is the answer.

Insurance companies: Listen up! There is another way. Take a different tactic and stop giving away money to plaintiff's attorneys, unless

they really deserve it, and can prove their case.

Full disclosure: I am a defense attorney, so aggressive defense litigation is good for my business, but I have also never stopped wondering why so many insurance companies tell me they hate lawsuits. Their litigation budget is too high and yet they continually settle every claim that comes in front of them.

To be sure, when a lawsuit comes in, and the claim should have been paid on the front end or looks clearly underpaid, aggressive litigation is not the answer. Settle it immediately before the defense lawyer incurs any fees at all. Similarly, if certain claims decisions were made that could be misconstrued during discovery, again settle. The point is that there must be a system to carefully and methodically evaluate each case from the beginning, rather than make assumptions that the cases should always

be settled. The idea of blindly allowing insurance defense lawyers to litigate freely, and then maybe settle on the figurative courthouse steps is not a sound business model.

When insurance companies settle virtually every lawsuit that is filed, particularly those without merit, it spurs more lawsuits. Insurance company claims managers, consultants, and auditors oftentimes don't believe this — but it is a fact.

Anecdotally, I have often heard a plaintiff's attorney say "[this carrier] settles every case for \$7,500 plus fees" or "I sue [this insurer] all the time, because they like me and always settle after initial discovery." It's

rare that I hear a plaintiff's attorney say "I never sue [this company] because they don't pay me and they compel me take every case to trial."

But what if an insurer earned a reputation for taking cases to trial, instead of automatically paying? The playing field would change enormously.

Claims and liability managers need to combat frivolous lawsuits.

Plaintiff's attorneys have a finite set of resources in terms of manpower and hours that can be devoted to their cases. Many often — and should — consider the reputation of the defendant. Attorneys talk

amongst themselves all the time; if an institutional defendant, whether it is an insurer or a retailer, has a reputation of defending its claims, attorneys may be reluctant to bring suit unless there's truly been an egregious oversight.

Plaintiff attorneys — like all attorneys — are eager to make money. It is profitable to continually file lawsuits, regardless of the facts and merit, knowing with near certainty that the insurance company will pay to settle them.

It's time for that to change.

**Jason Wolf is a shareholder at the firm of Koch Parafinczuk & Wolf in Fort Lauderdale. His practice focuses on first-party property insurance defense, and he is the firm's partner who oversees all lawsuits against property insurers.**



Wolf

