

Cooperation Clauses in Liability Insurance Contracts

A “cooperation clause” is a provision found in most liability insurance policies that compels the insured person (“insured”) or entity to assist the insurance company in defending claims under the policy. This type of clause does two things. First, the insured is generally in a better position to know about the claim than the insurance company and has information that is invaluable to the defense of the claim. Second, it discourages insureds from colluding with the individual making the claim.

So what does this mean for you as an insured? Most cooperation clauses include that insureds attending hearings and trials when requested, assist in settling cases, and help secure and provide evidence to the insurance company. In return the insurance company will pay for the defense of the claim—usually providing an attorney of their choice and bearing the costs of litigating any lawsuit resulting from the claim. If an insured does not provide his or her cooperation and as a result the insurance company can show that it has been “substantially prejudiced” from the lack of cooperation, the insurance company may attempt to cease its defense of the claim and not allow recovery under the policy, thus leaving the burden of defending the claim (and potentially paying any judgment resulting there from) on the insured.

If an insured is involved in an accident or incident and has some concern that he/she might ultimately be sued, there are some things the insured can do at the time of the incident or accident that will help the insurance company with its defense later on. First, make notes for yourself about the incident, including your recollection of the event and the names and addresses of any witnesses. Second, do not tell anyone that the incident was your fault and do not claim that any other individuals are at fault—whether something was someone’s “fault” can be decided after all of the facts are known. Finally, do not discuss the incident with persons other than law enforcement and your insurer.

Ideally, insureds will work with their insurance company to provide information and defend the claim. In return insurance adjusters should work with and assist the insured to get as many benefits which are owed to the insured following any loss.

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