THE

LIFE INSURANCE CLAIMS KIT:

What to Do If Your Life Insurance Benefits Are Denied

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TABLE OF CONTENTS

INTRODUCTION

If you feel that you have been wrongfully denied a life insurance settlement, our experienced attorneys would be happy to discuss your options further at

(800) 562-9830.

When someone close to you dies, it's devastating. Filled with emotions that may take years to process, you also face immediate concerns like paying hospital bills, making funeral arrangements and trying to get your finances in order.

As if that weren't bad enough, some people also face the prospect of having their life insurance claims denied. The money your loved one faithfully set aside each month to provide security for you and the children may suddenly be in jeopardy.

As the shock of this news sets in, you might realize:

- There might be not be any money to put the kids through college
- You can't afford to make your monthly mortgage payments.
- You are going to have to cash out your IRA to provide basic living expenses.
- You can't even give your loved one the burial he or she deserves.

There is no more frustrating feeling than confronting the fact that a large company, that doesn't even know you, may be able to dramatically influence the rest of your life without your say.

Here's the good news: you don't have to accept an insurance company's actions without a fight. You can even challenge an insurance company's denial of benefit coverage in civil court. This book is designed to educate you about basic concepts and ideas you need to know to resolve your case.

At Marc Whitehead & Associates, LLP, we believe that once you learn the facts about life insurance companies and the extent and limits of their authority, you can enjoy more power and peace of mind. While this e-book does not constitute legal advice, it does provide practical, concrete, immediately actionable information about how to handle various life insurance related crises.

CHAPTER ONE: 4 TYPES OF LIFE INSURANCE COVERAGE

Term life payments start out affordable and increase in cost, as the policyholder becomes a greater actuary risk.

This common, readily available type of policy pays a lump sum to beneficiaries, when the policy holder dies, assuming that the premiums have been paid. The following conditions apply:

- Term life insurance provides coverage at a fixed rate for a certain period of time.
- Policyholders pay a set monthly premium throughout that term.
- Once the term has expired, the policyholder must renew under a different rate or with different conditions.
- There is no investment component to the policy.

2. Group Life Insurance

Group life insurance works the exact same way as term life insurance: You pay monthly premiums at a rate based on your age and the designated amount you want your beneficiary to receive, and your beneficiary collects a lump sum when you pass away. The main difference is that your employer or the organization to which you belong purchases the insurance "wholesale," allowing them to offer benefits to employees or members at a discount. Many employers and organizations include a small group life insurance benefit at no charge to their employees or members.

Whole life insurance differs from term life insurance in two important ways:

Individuals pay a set annual premium rate throughout the life of the policy, which never increases over time.

There is an added investment component, which means that the policyholder is building a cash reserve over time.

3. Whole Life Insurance

Whole life insurance is one form of permanent life insurance. The name "permanent" describes a type of policy designed to provide coverage for an individual's entire life rather than for a set period of time.

When you purchase a whole life insurance plan, your premiums accumulate cash value that you can borrow against without incurring a tax penalty. Cash value generally increases by a guaranteed amount each year; there may be additional growth on top of this amount that varies with prevailing market trends. Your beneficiary also receives a lump sum payment when you pass away.

Whole life premiums start out more expensive than term life insurance, but if you hold on to a group life insurance plan for your entire adult life span, the payments over time may average out to a lower monthly amount. However, term life insurance holders tend to drop coverage when they get older, and the premiums become too expensive. They then rely on separate investments to support their dependents in the event of death.

4. Universal Life Insurance

Universal, or variable, life insurance is another form of permanent life insurance that gives the policy holder more flexibility than whole life. Not only can you adjust the investment and death benefit portions of the policy over time; but you can also use interest earned on the account to pay for premiums. This is not allowed in a traditional whole life policy. People sometimes describe universal coverage as combining the affordability of term life and with the investment opportunities of whole life policies.

CHAPTER TWO: WHY ARE LIFE INSURANCE CLAIMS DENIED?

> ! *Remember: life insurance companies exist to earn profits, not necessarily to further humanitarian goals.*

Now that you have a clearer handle on your loved one's policy, you probably want to understand why the insurance company has denied or delayed the claim. Sometimes, a claim denial or delay may be warranted. Other times, companies use dubious logic and bureaucratic justifications to avoid making good on claims, even when policy holders made regular payments, sometimes for decades.

The official-seeming tone of a claim denial can intimidate beneficiaries and contribute to a sense of hopelessness.

Like any business, an insurance company can be held accountable by the law. In fact, in civil court disputes over life insurance claims, they generally bear the burden of proof.

Material Misrepresentation on the Policy Statement

Material misrepresentation is when the policyholder either intentionally lies or makes an error filling out the initial form. That error was significant – i.e., material – in that, had the insurance company known the truth, it would have refused to issued the policy.

When you fill out an insurance policy, the standard that applies is **utmost good faith.** That means the insurer assumes you will be strictly honest. It's not cost-effective for companies to check all answers, when people fill out their paperwork. Insurance companies only investigate the truthfulness of the policyholder's statements when the beneficiary files for a death benefit. If the company finds a material misrepresentation on the policy, it may void it and deny the claim.

That being said, not all misrepresentations are equal:

- **Intentional misrepresentation**, such as a lie about whether one smokes, is more likely to be grounds for voiding a policy than a simple omission, such as neglecting to include your middle initial when you wrote your name.

- **Concealment**, a type of material misrepresentation in which the policy holder withholds information, should only void a policy if the company can show that the withheld information was material and that the policyholder knew that the facts withheld were material when he or she concealed them.

Exclusions are items or risks not covered by the insurance policy. Make sure you review your policy's exclusions to find gaps in your coverage.

Insurance companies may choose an alternative to denying a claim outright. If the misrepresentation is unrelated to the cause of death – for instance, if someone lied about being a smoker but then died in a car crash – the insurer might adjust the premiums retroactively to reflect what they would have been, had the information on the policy been accurate. If the beneficiary receives a partial payment, the company may argue that material misrepresentation is the reason.

Death Occurred During the Period of Contestability

Denials for material misrepresentation can only be made if the policyholder dies during the period of contestability. This clause in life insurance policies gives the insurer the right to investigate any death that occurs during a set period of time – typically one or two years – after signing the policy.

Insurance policies have contained contestability periods since the nineteenth century, as a way to protect themselves against someone who knows they are dying when they sign up for the policy.

When death occurs during the contestability period, that doesn't mean the insurer won't pay the death benefit. It only means that the case will be investigated, often leading to delays in payment.

Once the policy becomes incontestable, the insurer may still choose to investigate a case in which fraud is suspected. Simply making it through the first two years of a policy is no guarantee that an insurance company can't deny the claim.

Your Loved One Committed Suicide

Losing a loved one in any context can unleash complex and deep emotions that take time to process. If your loved one took his or her own life, the sudden absence can be shocking to an extreme degree. Unfortunately, nearly all insurance policies write exclusions for suicide into their policies.

Exclusions related to death by suicide can prevent you and other beneficiaries from recovering a benefit, although you may be entitled a return of premium payments. This process may seem deeply unfair – and may compound the trauma of losing a loved one unexpectedly – but beneficiaries often can work around the exclusion and obtain some benefits. For instance, so-called "suicide clauses" often only last for the first two years of a policy. After that time, beneficiaries may collect death benefits even in cases of suicide.

People have also gone to court and understandably challenged the denial of claims in these types of cases. For instance, in January 2008, actor Heath Ledger passed away just seven months after taking out a life insurance policy worth $10 million. Despite the fact that the New York Medical Examiner's office ruled his drug overdose an accident; the insurance company launched an investigation to determine whether the cause of death was suicide.

Lawyers representing Ledger's daughter filed suit against the company, and the result was a settlement. Although his daughter did not obtain the full $10 million, she and her legal team managed to hold the insurance company responsible to make partial good on the policy.

The Policyholder Failed to Pay Premiums

Another common reason insurers will deny a beneficiary's claim is for a lapse of payments. Here are some important things to know:

- A lapse of payments occurs when the policyholder fails to make premium payments and the **cash surrender value** is exhausted. With term life insurance policies, which don't have an investment component, there is no cash surrender value. Thus, it is easier to let a term life policy lapse.

- Insurance companies must allow a grace period – typically 30 days, but sometimes longer – in which the policyholder can **reinstate** the policy.

- In most cases, if the policyholder reinstates within 30 days, he or she does not have to renew with new changes to the contract, otherwise known as **underwriting**.

The insurer must prove that it notified the policyholder when the policy was about to lapse, if challenged in a civil suit .

The Beneficiary Did Not File the Claim within an Appropriate Timeline

Life insurance companies don't automatically know when a policyholder dies. It's up to the beneficiary to file a claim within the period of time stated on the policy in order to receive the death benefit.

For beneficiaries, this can sometimes be challenging. Their loved ones may have multiple policies, including free group coverage from organizations, group coverage through an employee, and private insurance. These policies may be neatly stored in a safe deposit box, or they may only exist in a virtual setting, making it easy to overlook policies and allow them to lapse.

Depending on the circumstances and the laws of your state, you can still recover death benefits, even if you fail to submit a claim by the contract deadline.

The Claims are Not Covered By the Policy

Life insurance policies used to include a wide variety of exclusions – for death during an act of war, skydiving, aviation, mountain climbing or scuba diving, even diseases such as HIV. Some policies still have exclusions, and it is extremely important to read the fine print in your policy and also to go over it with your insurance broker, who is legally obligated to clarify provisions and exclusions.

In general, the industry has shifted away from using exclusions in standard life insurance policies, because they are unpopular with consumers. **Accidental death and dismemberment (AD&D)** policies are an exception to this rule. Unlike standard life insurance, AD&D only pays a death benefit if the policyholder dies in an accident.

CHAPTER THREE: STRATEGIES AND TACTICS INSURANCE COMPANIES USE TO DENY BENEFITS

Insurance companies spend millions of dollars a year on marketing to brand themselves as sober, fair-minded advocates for policyholders. However, it's a big mistake to assume that an insurer is looking out for your best interests, just because it projects a caring image.

Others strategies and tactics commonly used include:

- **Alleging that there is a forged signature on the policy forms.** If true, this would constitute a material misrepresentation.
- **Acting as though simple errors on the policy forms, such as the misspelling of names or checking the wrong box for gender, constitute material misrepresentation.** It's true. Insurers have voided policies and denied death benefits for things as simple as a misspelled name on the form. The strategy here is most likely intimidation. They figure that some people, especially those dealing with a death in the family, will be too distraught to fight the denial.
- **Claiming that a death ruled "accidental" by the treating physician or coroner was, in fact, a suicide.** This is a common strategy, as we already explained in the case of Heath Ledger. In 2011, Metlife used the same strategy to deny benefits to Jane Pierce, whose husband, a cancer survivor and devout Catholic, died in a car crash. Since Todd was still undergoing reconstructive treatment as part of his recovery, Metlife tried to argue that the accident was suicide.
- **Claiming that a death ruled "accidental" was in fact from an exclusion on the policy.** This is what happened to Jodi Scanlon, whose husband, Michael, struck his head and later passed away from complications due to the traumatic head injury he suffered, as ruled by the coroner. CIGNA denied his coverage, claiming that Scanlon died from a heart attack, which was not covered on the accidental death and dismemberment policy.

Real Tactic Example

If you bought your The State of California recently investigated a case in which Metlife had continued to take premium payments out of a policyholder's cash reserves, even though the company knew the policyholder was deceased. When the cash reserve was gone, the company simply closed the policy.

Such outright theft constitutes just one of many egregious tactics insurance companies have used to avoid paying death benefits.

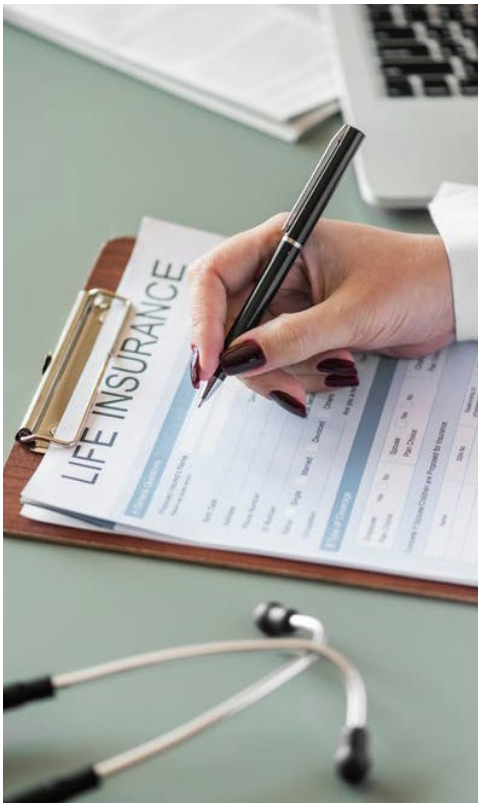
- **Having an independent medical examiner contradict previous evidence gathered by the coroner or treating physician.** In some cases, insurance companies have hired medical examiners who find a high blood alcohol level in the body of the deceased where none was reported before; insurers can use this as a pretext to deny death benefits in cases where addiction is an exclusion.

- **Using unrelated preexisting conditions as a pretext to deny coverage.** Sometimes, this practice boils down to ambiguous questions on the initial policy form. In one case, for instance, a policyholder was asked if he had suffered any major health problems, such as heart disease or diabetes. He had seen a chiropractor for a hurt shoulder, and he did not think that rose to the level of the listed conditions on the form. Nevertheless, his coverage was denied on those grounds.

- **Arguing that the cause of death is "suspect."** While on vacation in a foreign country, an otherwise healthy man incurred a fatal blow to the head from a fall. No autopsy was performed on his body, which was instead embalmed in preparation for shipping overseas. His company denied the accidental death and dismemberment policy because "there was no way to tell the true cause of death."

- **Explaining ambiguities in the policy in a way favorable to the insurer.** This is a common tactic, but it can usually be overturned if the beneficiary files suit, due to the fact that any unclear or ambiguous language in the policy must be construed in a manner favorable to the policyholder.

CHAPTER FOUR: SPECIAL SCENARIOS



Accidental Death and Dismemberment (AD&D)

This type of life insurance can be purchased as a stand-alone policy or a rider on your existing policy. As the name suggests, it pays out a death benefit only when the policyholder's death is accidental or when, in the course of an accident, the policyholder loses a limb, speech, hearing or vision.

Since dying in an accident is a rare event, statistically speaking, insurance companies can afford to make AD&D policies very affordable, and they are widely available. Moreover, in some cases, the death benefit can be sizable.

Given the inexpensive premiums and the potentially big pay out, you can be sure the insurer will do everything possible to find a reason to deny the claim. The most common tactics are:

- To argue that the death was not really an accident;
- To claim the policyholder was engaged in reckless conduct at the time of the accident;
- To deny the claim when it takes weeks or months for the accident victim to pass away from an accident-related injury.

AD&D policies typically contain multiple exclusions, including

- Being intoxicated or abusing drugs at the time of the accident.
- Pregnancy at the time of the accident.
- Sustaining an injury during active combat.
- Having a heart attack or stroke in the course of an accident.

Insurers often find a way to manipulate these exclusions in order to deny claims. For instance, they might deny the claim of a passenger in a fatal car crash for having alcohol in his system, even if the driver had been sober and did not cause the accident.

Employee Retirement Income Security Act (ERISA) Claims

When you have a group sponsored life insurance policy through your employers, a comprehensive federal statute known as the Employee Retirement Income Security Act, or ERISA, probably oversees it. Lawmakers introduced this statute to respond to two problems in regulating group employer sponsored policies:

1. Each state had its own insurance laws and regulations, making the system unduly complicated.

2. There were many opportunities for corruption and self-dealing in large pension plans.

The law had good intentions, but unfortunately, ERISA often causes far more problems for beneficiaries than it solves. It gives insurance companies a number of avenues to deny claims and delay paying them out. There is also no accountability; insurers can deny claims without penalties. In addition, beneficiaries must follow a precise and time-sensitive appeals process before they can even file suit against the insurance company.

Individual vs. Group Claims

When you purchase health insurance, you buy it either as a private individual or as part of a larger group. While the federal government oversees group plans through the provinces of ERISA, individual – or private – plans are regulated under state insurance laws designed to protect the consumer from an insurer's bad faith.

- **Individual, or Private, Insurance Policies**

When a private insurer uses deception or malicious intent, the company may be in violation of state regulations. Sometimes, all it takes to make an insurer offer a settlement is the threat of a lawsuit. Other times, it's necessary to use aggressive litigation. Your attorney may sue not only for recovery of the death benefit but also for emotional distress, attorney's fees, and punitive damages associated with the violation of state regulations.

- **Group Policies**

If you have a group policy, you may appeal a claim denial through the administrative appeal process. Executing the appeal properly is critical, and it is time-sensitive. You are far more likely to have a favorable outcome if the case goes to trial when there is a strong appeal.

CHAPTER FIVE: FREQUENTLY ASKED QUESTIONS

Q. What's the first thing I should do when my claim is denied?

A. First of all, don't panic. Insurance companies deny claims all the time. For you, the denial may feel like an emotional assault. To them, it is just business as usual.

Fortunately, this preemptive strike obscures two significant disadvantages they face if you challenge the denial. First, they bear the burden of proof. Second, they must abide by the policyholder's interpretation in the case of ambiguity.

You should read through the policy carefully to understand the reason they denied your claim and to know what the policy covers. Our life insurance attorneys can help you to understand the terminology and your rights going forward.

Q. What is underwriting?

A. Underwriting is the process by which insurance agents assess the risk and exposures of their clients.

Certain factors, such as age, gender, occupation, health and medical records, hobbies, and lifestyle choices are used to calculate an individual's predicted life expectancy by comparing them with a class of people who have a similar profile. This assessment is used to set premiums or deny coverage.

Q. The insurance company denied my claim based on language in the policy that I can't understand. What do I do?

A. Potentially, you can turn this to your advantage, if you obtain qualified legal representation and bring an action against the insurance company. If there is ambiguity in the policy, insurers are required by law to honor an interpretation that favors the policyholder.

Q. What if my spouse passes away while we were on holiday in Europe, and the insurance company denies the claim. Can the insurance company do that?

A. It depends on what exclusions are stated in your spouse's policy.

Exclusions are items or risks that the insurer will not cover. If your spouse, the policyholder, passed away in a foreign country, exclusions may apply that could allow the insurer to refuse to pay a death benefit. Fortunately, depending on your circumstances, the language in your spouse's policy, and the insurance company's willingness to negotiate or be flexible, you may be able to obtain fair benefits.

Q. I'm confused. What's the difference between denying my claim and rescinding the policy?

A. They are essentially the same thing. When the insurance company denies your claim, it rescinds, or cancels, the policy. The company will return premiums paid to you but will not pay out the death benefit.

If you receive a letter notifying you that the insurer has rescinded your policy, the first thing you should do is read it over carefully to find out why. While it is possible that the denial was warranted, all too often insurance companies use underhanded tactics to void policies and get out of paying appropriate benefits.

Q. What does it cost to hire an attorney?

A. The short answer is it will cost you nothing up front. We represent clients involved in life insurance claim denials on a contingency basis, meaning that you don't pay us anything unless we obtain financial compensation for you. That way, you can be assured of qualified representation, even if you can't afford to hire an attorney. We offer each prospective client a free, no obligation case review with one of our life insurance lawyers, during the course of which we explain our attorney fees and costs in greater detail.

Since no two life insurance policies are alike, it's important for you to get a proper legal review as soon as possible so that you don't miss out on an opportunity to recover benefits that are rightfully yours.

CHAPTER SIX: WHERE TO GO FROM HERE

Did you know?

Once the insurance agency denies your claim, the insurance company is essentially done with your claim. Unless you threaten legal action, the insurer has no reason whatsoever to revisit your case.

It may seem like a big step, but threatening legal action against an insurance company that refuses to pay out a death benefit may be the only way you can give the insurer a reason to reopen your case. Sometimes the threat alone is enough to force the company to reverse its decision, particularly in cases in which:

- The original policy's language was unclearly written.
- You received conflicting or poor advice from an agent.
- What the insurer claims is material misrepresentation doesn't hold up to scrutiny.

You may also be able to negotiate in cases where a misrepresentation was material but didn't affect the cause of death. For instance, let's say a policyholder lied about being an occasional smoker to qualify for lower premiums and later died from a traumatic head injury. The company might simply apply a higher premium rate retroactively and reduce the death benefit accordingly.

Life insurance companies know that in cases of ambiguity, they face a higher standard of proof. They will most likely weigh the odds of settlement over taking a case to court. If they decide that their odds favor litigation, here are some steps you should consider taking to obtain a fair outcome.

Educate Yourself about Your Policy and Claim Denial

It's unfortunate that you may have to work for a benefit that should rightfully be yours. But if the alternative is not having the money to support yourself and your family, you need to do what it takes. Reading this e-book and developing an informed understanding of your policy and the reason the insurer denied your claim are good first steps.

Contact a Qualified Life Insurance Attorney

At the firm of Marc Whitehead & Associates, LLP, our attorneys are familiar with all types of life insurance as well as with the underhanded tactics insurers use to deny benefits. We can help you navigate the complexities of group insurance claims denials, and we understand pertinent state and federal regulations. When you work with us, it's our job to represent you at every stage of the process, from the time you get the claims denial letter to your moment in court.
Keep a Paper Trail

Document every piece of correspondence the insurance company sends you, and forward it all to your life insurance attorney. Should the insurance company request a recorded statement from you for its records, notify your attorney, and have him or her contact the insurance claims representative.
Your case will likely be determined solely on the material evidence each side presents, so you need to be prepared to appeal the reason given in the denial letter with substantiated facts, not emotion or opinion. Your attorney's job is to keep you focused on the facts at a time when emotions run high.

Time is of the Essence – Don't Procrastinate

As we have seen, the process can be quite time-sensitive, particularly in the case of group policies. You may feel overwhelmed at the prospect of taking legal action so soon after the death of a loved one, but the sooner you take action, the better. Acting quickly has important psychological benefits as well. The more you ruminate over the insurance company's actions, the more powerless and less willing to take action you might become. You have done nothing wrong, and your anger and frustration are likely quite justified.

ABOUT MARC WHITEHEAD

Marc Stanley Whitehead is the founding partner of Marc Whitehead & Associates, Attorneys at Law, LLP, which was established in 1992 in Houston, Texas.

Born in Memphis, Tennessee, Marc was raised in Normangee, Texas. He graduated in 1985 from Normangee High School as class valedictorian. Marc attended Texas A&M University where he graduated in 1989 with a Bachelor of Business Administration in Finance.

Marc attended the University of Houston Law Center and received his law degree (J.D.) in 1992, graduating in the top quarter of his class. He was admitted to the State Bar of Texas in 1992. He is also admitted to practice before all U.S. Federal District Courts in Texas, the U.S. Court of Appeals-Fifth Circuit and the U.S. Court of Appeals for Veterans Claims.

Attorney Marc Whitehead and our experienced legal team are proud of our track record and numerous distinctions in the arena of Texas law. Marc Whitehead & Associates, LLP has been rated A+ by the Better Business Bureau – a reflection of our team's devotion to customer service. Among other practice areas, we specialize in insurance litigation and have deep, developed and practically rooted insight into how to help claimants overcome obstacles to obtaining fair compensation from insurance companies, even in complex cases.

Marc Whitehead has served as law professor at University of Houston Law Center, where he taught Civil Trial Advocacy, as well as an Instructor of Civil Trial Advocacy at the National Institute of Trial Advocacy.

He is Board Certified by the Texas Board of Legal Specialization in Personal Injury Trial Law, putting him in a rare group of lawyers who must pass very stringent requirements to obtain and maintain this certification. He's also active in many professional associations, serving as an American Association for Justice-Leader Forum Member, an AAJ Risperdal Litigation Group Member, an AAJ Xarelto Litigation Group Member, an AAJ Transvaginal Mass Litigation Group Member and an AAJ Toxic, Environmental and Pharmaceutical Section Member. In addition, he has been honored as an Association of Civil Trial and Appellate Specialist, rated "AV" by Martindale Hubble, rated 10.0 by AVVO, rated by SuperLawyers, and rated by the National Trial Lawyers Association as one of the Top 100 Trial Lawyers in Texas.

If you entrust your life insurance claim to our experienced team, we will work tirelessly and compassionately to recover your benefits. We understand the diverse and profound challenges you face and appreciate that you're likely dealing with complex emotions about the situation.

Our years of experience fighting and winning against insurance companies and our deep bench of resources gives our team a distinct advantage in helping you secure the benefits you deserve. Please call our office now at **(800) 562-9830.**

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