

Insider Secrets:

Legal Assignment of Insurance Benefits

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After graduating from Stetson, Harvey was employed by the State Attorney's Office. Mr. Cohen is licensed to practice in Federal and State court. Mr. Cohen began as a solo practitioner and is now the managing partner of over a dozen attorneys and five co-council staff. Cohen Battisti, Attorney's at Law are great supporters of the Leukemia Lymphoma Society.



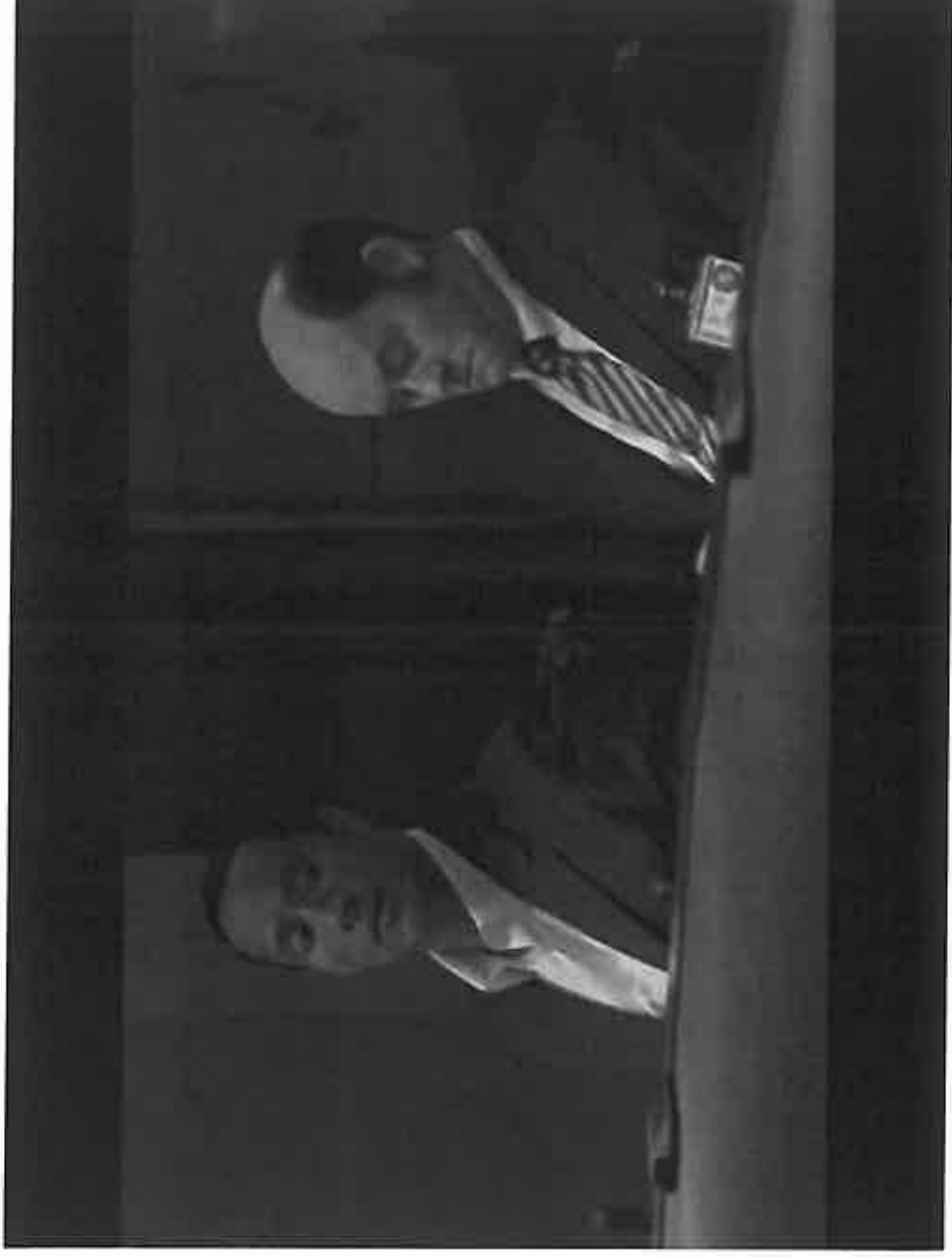
Mr. Cohen frequently gives informative seminars to the restoration professionals throughout various locations in Florida and throughout the nation. These seminars include: Contractor's legal rights, Assignment of Insurance Benefits, the Attorney Fee Shifting Statute, Contract Drafting and more.

His firm has handled thousands of insurance claims. Cohen Battisti has represented the restoration industry and has recovered hundreds of thousands of dollars for their clients and the insurance industry has paid for their attorneys fees. Cohen Battisti Attorneys at Law has also been the General Counsel for the Orlando Predators arena football team.

Disclaimer:

Please note that this is not legal advice. This is only the general explanation of legal theory. Every case is different and you should not rely on this information. Always have your contracts reviewed by an attorney before using. Also the views expressed are not necessarily the views of Cohen Battisti, Attorneys at Law.

But Before We Start...

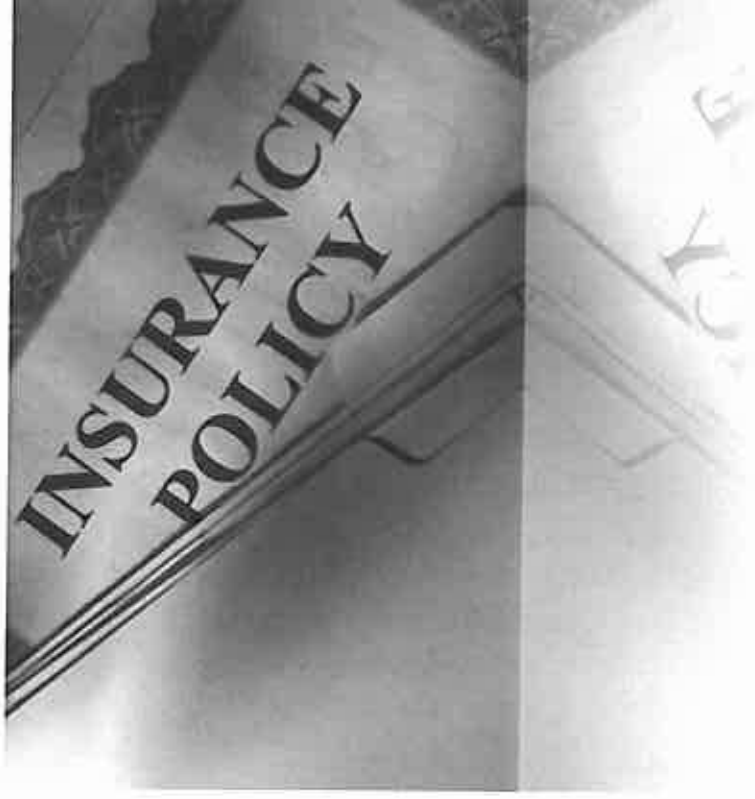


Introduction into Insurance

1st Party v. 3rd Party

Property Damage

Slip and Fall



Policy Holder Obligations

- Examination Under Oath (EUO)
- Sworn Statement
- Proof of Loss
- Notify Insurance Company
- Reduce impact of damage



Forced Place Policy

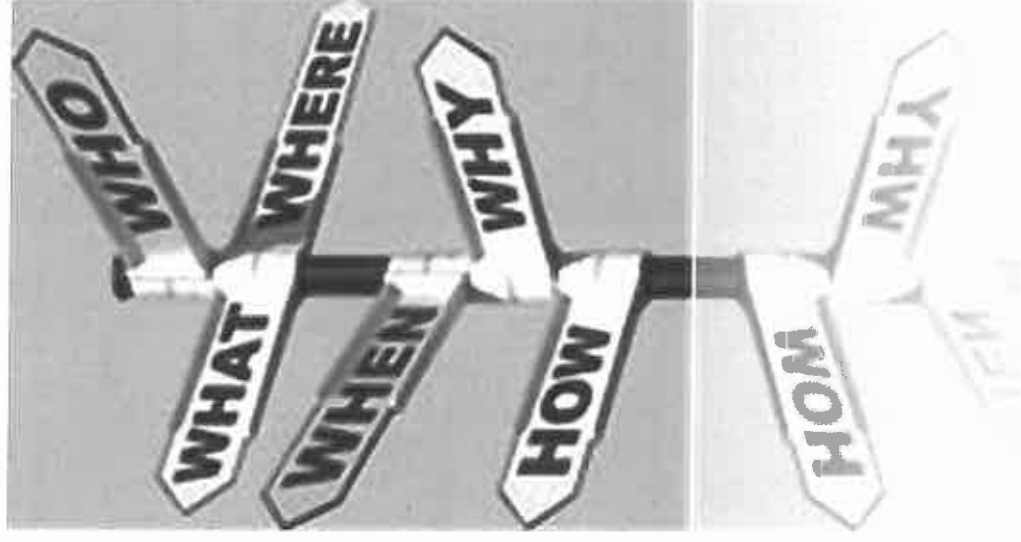
- Bank purchased insurance forced on a property.
- Usually obtained about twice as much as privately obtained insurance
- Some banks get “kick backs” of commissions when these are “forced” on a home-owner



**Do you have a valid
Assignment of Benefit
in your contract?**



Assignment of Benefit



What?

What is an Assignment?

- Assignment of Benefits: Legal document entitling the restoration company to “stand in the shoes” of the insured.
- Assigning the benefits of the insurance policy for a specific claim

What is an Assignment?

- Insurance Company has to deal with YOU as opposed to the property owner.

why is taking control from

the person who purchased

the ins. policy and lives in

the home a good thing?

What is an Assignment?

- The effect of a valid assignment is to allow you to receive all benefits and rights under the insurance contract.



Stacks of
Cash ????
What does
this mean??

even if
you don't
deserve them?

What about the
policyholder?

Who?

Who Can Sign?

- The policy holder or named insured
- Authorized representative
- Property Manager
- Power of Attorney
- Tenant with authorization from the insured
(Be careful with this one)

Where?

Separate

- Assignment of Benefits should be a separate document and/or separate clause in contract
- State the insurance company
- Signed by the named insured or an authorized representative

Example of an Assignment of Benefits

Your Company Name
Your Address
Your Phone Number
Your Web Address

ASSIGNMENT OF INSURANCE BENEFITS

Client/Insured _____
Policy Number _____
Claim Number _____
Insurer _____
Date of Loss _____

I. ASSIGNMENT OF INSURANCE BENEFITS

I, hereby, assign any and all insurance rights, benefits, proceeds and any causes of action under any applicable insurance policies to (insert Your Company Name) (hereinafter referred to as "Company"), for services rendered or to be rendered by Company. In this regard, I waive my privacy rights. I make this assignment in consideration of Company's agreement to perform services and supply materials and otherwise perform its obligations under this contract, including not requiring full payment at the time of service. I also hereby direct my insurance carrier(s) to release any and all information requested by Company, its representative, and/or its Attorney for the direct purpose of obtaining actual benefits to be paid by my insurance carrier(s) for services rendered or to be rendered. I believe the appropriate insurance carrier to be _____

II. DIRECT PAYMENT AUTHORIZATION

I, hereby, authorize Company be given irrevocable power-of-attorney and my express permission to endorse my name on any and all checks received from an insurance company on my behalf for services provided by Company. I agree that any portion of work, deductibles, betterment, depreciation or additional work requested by the undersigned, not covered by insurance, must be paid by the undersigned on or before its completion. I also hereby authorize and unequivocally instruct direct payment of any benefits or proceeds to Company.

DATED THIS _____ DAY OF _____, 2010, in _____, Florida

(Print Name) Owner/Agent _____ Address _____

(Signature) Owner/Agent _____ Phone _____

Sample Contract

Your Company Name
Your Address
Your Phone Number
Your Web Address

CONTRACT FOR SERVICES, ASSIGNMENT OF BENEFITS, DIRECT PAYMENT AUTHORIZATION, AND HOLD HARMLESS AGREEMENT

I, the Owner/Agent for the job site listed below, authorized, (insert: Your Company Name) (hereinafter referred to as "Company") to enter my property, furnish materials, supply all equipment and perform all labor necessary to preserve and protect my property from further damage.

ASSIGNMENT OF INSURANCE BENEFITS

I, hereby, assign any and all insurance rights, benefits, proceeds and any causes of action under any applicable insurance policies to Company, for services rendered or to be rendered by Company. In this regard, I waive my privacy rights. I make this assignment in consideration of Company's agreement to perform services and supply materials and otherwise perform its obligations under this contract, including not requiring full payment at the time of service. I also hereby direct my insurance carrier(s) to release any and all information requested by Company, its representative, and/or its Attorney for the direct purpose of obtaining actual benefits to be paid by my insurance carrier(s) for services rendered or to be rendered. I believe the appropriate insurance carrier to be [REDACTED] [REDACTED]

lawsuit
Setup
begins
early

DIRECT PAYMENT AUTHORIZATION

I also hereby authorize and unequivocally instruct direct payment of any benefits or proceeds to Company. I also authorize Company to be given irrevocable power-of-attorney and my express permission to endorse my name on any and all checks received from an insurance company on my behalf for services provided by Company. I agree that any portion of work, deductibles, betterment, depreciation or additional work requested by the undersigned, not covered by insurance, must be paid by the undersigned on or before its completion.

PAYMENT TERMS

Payment terms to Company are net-30 days. Late charges of 1.5% monthly are charged to any and all unpaid balances. Company shall be entitled to reimbursement for costs of collection (including reasonable attorney's fees and costs) of unpaid amounts by Owner/Agent and for reasonable attorney's fees and costs for the breach, or enforcement, of any terms of this entire service agreement.

AUTHORIZED ANTIMICROBIAL AGENTS

I understand that in the best judgment of Company, materials may be treated with a Commercial antimicrobial agent to inhibit the growth of micro-organisms during the drying process. I have received advanced notice of the use of antimicrobial and/or antimicrobial products as part of the restoration process. I understand it is beyond the expertise of Company to determine if someone is sensitive to its application and will hold Company harmless for its use.

STOP WORK-HOLD HARMLESS

In the event Company is not allowed to perform its recommended procedures and/or drying equipment is removed prematurely, I agree to release and hold Company harmless, and indemnify Company against all claims or actions that may result from such procedures.

I have read and understand the information above and have received a copy for my records.

Print Name Owner/Agent: _____ Date: _____
Signature Owner/Agent: _____ Phone: _____
Address: _____ Claim #: _____

**Other supporting documents
to help you with the claims
collection process**

Certification of Completion

COMPANY NAME

Address: Phone _____
License Number(s) _____

CERTIFICATE OF COMPLETION & SATISFACTION

Job Site Address: _____

Customer Name: _____

Job # : _____ Completion Date: _____

I have had an opportunity to walk the job site located at the above address and inspect the work area. A representative from (COMPANY NAME) has explained the work performed. I see no problems associated with services performed by (COMPANY NAME).

All of my questions have been answered to my satisfaction and (COMPANY NAME) scope of work has been completed to my entire satisfaction. However, I will promptly report any problem to (COMPANY NAME), and give (COMPANY NAME) a full and fair opportunity to address them.

**I HAVE READ THIS CERTIFICATE AND AGREE THAT THE
FOREGOING STATEMENTS ARE TRUE.**

Owner/Owner's Agent
(Must be at least 18 years old)

(Company Name)

Signature of Owner/Agent(Circle One)

Signature of Company Representative

Print Name and Title

Print Name and Title

Example of a 10 Day Demand Letter

(COMPANY LETTERHEAD)

(date)

To all interested and relevant parties:

This is the last good faith effort to receive payment on claim number *(claim number)*.

On *(date of loss)*, *(homeowner)*, the homeowners and/or legally binding representatives, of and for *(loss address)*, Policy *(policy number)*, Claim *(claim number)*, contracted our services for a *(type of loss)* at the aforementioned address. We completed all contracted work successfully.

The following documents were submitted to your company for review and payment on *(date documents were submitted)*:

1. Service Contract;
2. Assignment of Insurance Benefits;
3. Direction of Payment to *(Company Name)*;
4. Certificate of Completion and Satisfaction.

Please issue payment directly to *(Company Name)* for the balance due on the invoice within 10 days from the date of this letter so as to avoid any potential legal action in this matter.

I sincerely urge you to make every effort to satisfy this outstanding file amicably.

Collection Department.

Consent to Discuss Claim with the Mortgage Company

CONSENT TO DISCUSS CLAIM

DATE: _____

Mortgage Co.: _____

Mortgagor: _____

Address: _____

Telephone No.: _____

Loan No.: _____

Re: LETTER OF AUTHORIZATION TO ACCESS MY ACCOUNT

TO WHOM IT MAY CONCERN:

I HEREBY AUTHORIZE [COMPANY NAME] TO ACCESS AND DISCUSS MY/OUR ACCOUNT FOR THE DURATION OF OUR INSURANCE CLAIM. WE UNDERSTAND THEY WILL BE HELPING US PREPARE AND COORDINATE THE NECESSARY DOCUMENTS AND INSPECTIONS FOR EXPEDITING OUR INSURANCE DRAFT.

FURTHERMORE I HEREBY INSTRUCT MY MORTGAGE COMPANY TO IMMEDIATELY RELEASE ANY AND ALL FUNDS FOR WORK PROVIDED BY [COMPANY NAME] UPON DEMAND. AS SUCH MY MORTGAGE COMPANY IS HEREBY ON NOTICE THAT THE UNTIMELY RELEASE OF INSURANCE PROCEEDS FOR WORK PROVIDED BY EMERGENCY SERVICES AND RECONSTRUCTION MAY RESULT IN FURTHER LEGAL PROCEEDINGS AGAINST THE MORTGAGE COMPANY FOR LOST INTEREST AND UNJUST ENRICHMENT.

SINCERELY,

MORTGAGOR: _____

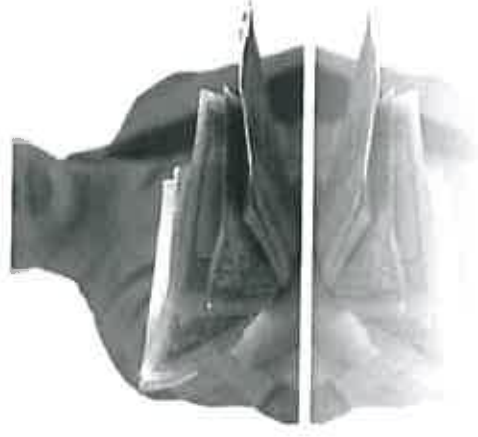
When?

When can the assignment be executed?

- Anytime within the Statute of Limitations
- Check your state for the Statute of Limitation
- Each state is different
- For Example:
 - Florida has a 5 yrs Statute of Limitations

Why?

- Allows you to be paid directly from Insurance Company as if you were the property owner/policy holder *but you're not!*
- Check issued with your company name on it



Fee Shifting

- Allows law firm to obtain their fees and costs separately from any client funds
- We do not take a penny of your money
- No costs to you
- See Florida Statute 627.428 — *one way attorney fee statute*
- See your attorney for state specific statutes and/or case law

lawsuit setup

unfair and

*abused — intended
— for policy —
— holders but*

*AOB businesses take
advantage — driving up costs!*

How?

Requirements for an Assignment to be Effective

- For an assignment to be effective, it must be signed by the named insured or with authorization from the named insured to sign

Requirements for an Assignment to be Effective

- State that it is assigning **all rights** and benefits under the policy



why not just
for services
Rendered?

Requirements for an Assignment to be Effective

- **No specific language is required** to make such an assignment, but the assignor must make some clear statement of intent to assign clearly identified contractual rights to the assignee

**EACH POLICY HAS
DIFFERENT LIMITATIONS**

Difference between Assignment of Benefits and Direction to Pay

OK

Direction to Pay

- Simply instructs the insurance company how to pay
- Conveys no legal standing
- Can not bring suit under a direction to pay
- Bad faith, not an option



this should be used - this is appropriate way to get paid

NOT OK

Assignment of Benefits

- Conveys legal standing
- Conveys to bring suit/claim against insurance company in dispute
- Allows the assignor to stand in the shoes of insured
- Bad faith becomes an option



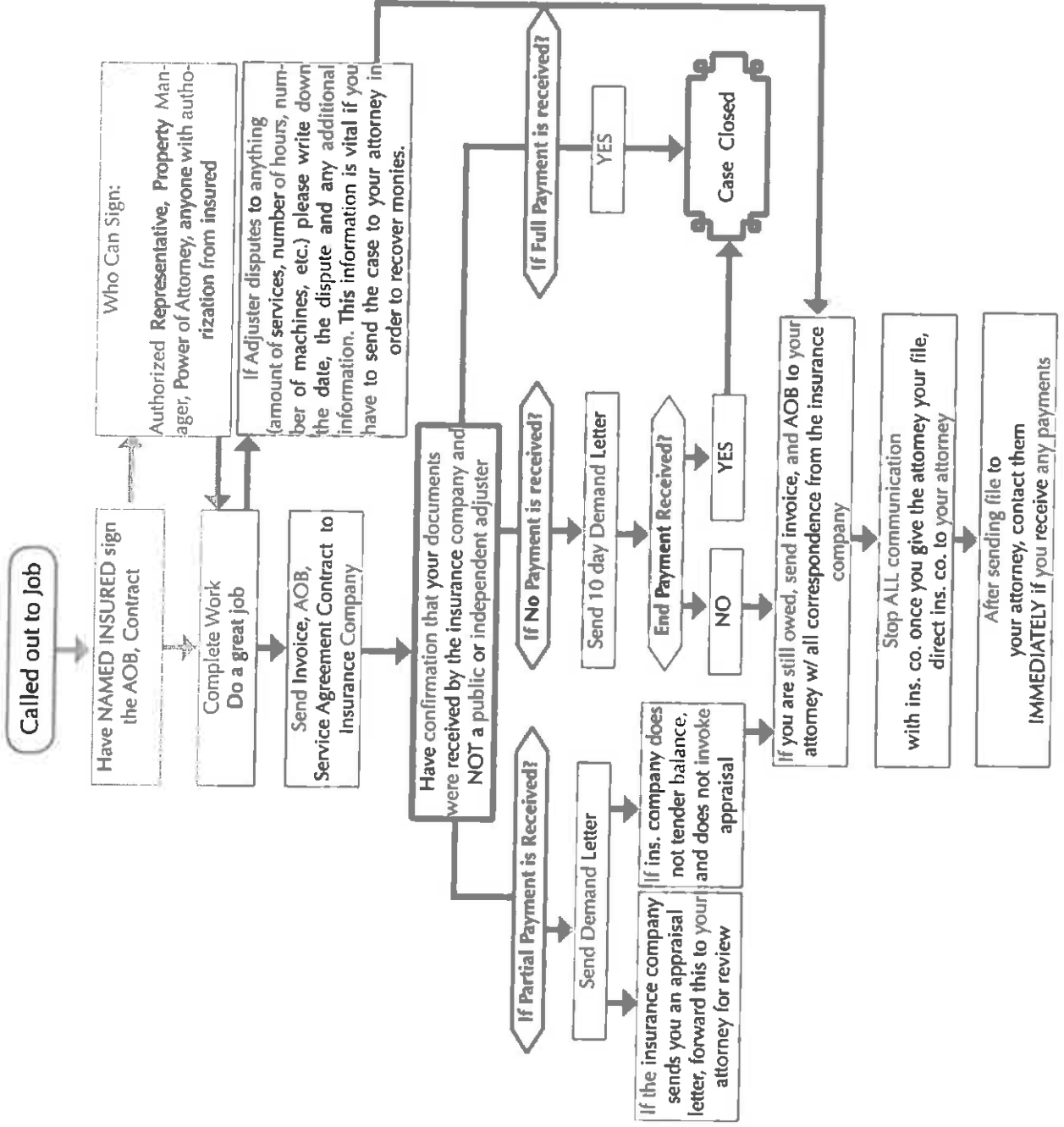
this is how lawyers abuse the system! needs to be outlawed!

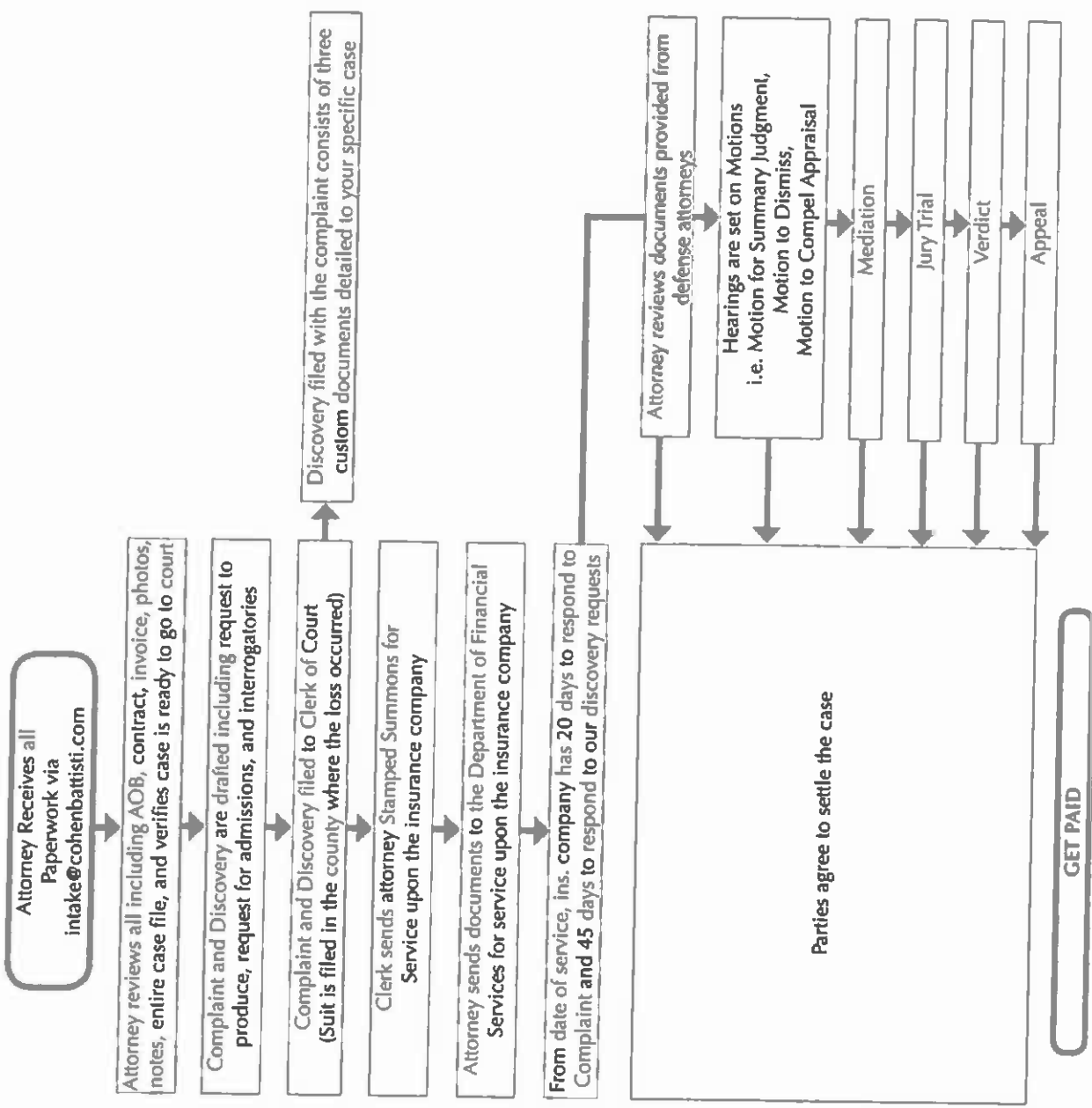
Important Things to Know

- Call your documents contracts not work authorization
- Provide proof of loss (photos + drying logs)
- Document the file



— litigation
 Setup
 and
 playbook





Frequently asked questions

- **How long does the insurance company have to pay my claim?**

Answer:

Most insurance policies have a provision which states a time frame for payment of claims. However, if you review these provisions they will typically read as follows:

"We will pay your claim within 20 days of the date you and we reach an agreement in writing or 30 (or 60) days after entry of an appraisal award or entry of a final judgment". The foregoing language may not be the precise language of your policy, but it does contain the essence of the policies often seen in Florida.

Frequently asked questions

- **What if the mortgage company is holding my check?**

Answer:

If you are a **remediation** company send your claim to us right away they should not be holding your check. We may be able to sue the mortgage company for unjust enrichment.

Frequently asked questions

- **What do I do if an insurance adjuster kicks us off the job?**

Answer:

We can file a tortious interference with business practice.

Frequently asked questions

- **Why does 3rd party peer review always have a lower invoice?**

Answer:

Insurance companies and third vendors have a pre set agreement. However there is no policy provision that requires you to match their preferred vendor prices.

advertising that inflates costs!
they unfairly

POP QUIZ

Can you charge more than Xactimate?

YES!

Should you have an assignment of benefits it your contract?

Yes, we have a contract you can use for FREE.

How many years can we go back to look at your owed claims?

What should you call your documents?

FIVE, CINCO, CINQ, ,五 (Wü), خمسة

Contracts

Thank you!

If you have any questions, please feel free to reach me at the contact information below:

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