



A PROFESSIONAL LAW CORPORATION

BAD FAITH IN LOUISIANA & TEXAS

September 22, 2017

It has been a stressful month here on the United States Gulf Coast. While Gulf Coast residents have been busy for the last few weeks preparing for, and now cleaning up from Hurricanes Harvey and Irma, your work is just beginning.

As you may know, we regularly prepare and litigate property claims related to storm damage in Louisiana and Texas. The laws in Texas and Louisiana regarding property insurance claims, specifically related to bad faith penalties for untimely payment of claims, have recently changed (after Katrina in Louisiana and just this month in Texas).

We have become aware that some outside adjusters, especially those from other areas who are brought in for temporary post-storm work, do not know the strict time limits for processing property claims in Louisiana and Texas. We have compiled below a short synopsis of an insurer's duties in Louisiana and Texas to help guide you and your adjusters as you work through Hurricane Harvey damages.

I. LOUISIANA:

The Insurer's Duties to the Insured.

Insurers have a duty of good faith and fair dealing to their insured. If the insurer fails to pay the undisputed portion of the claim within the applicable statutory period either without probable cause or in an arbitrary and capricious manner after satisfactory proof of loss has been submitted, bad faith penalties will apply. Unfortunately for insurers, your own adjuster's first inspection can be considered by Louisiana courts to constitute a "satisfactory proof of loss". This means that to be safe, you should be making a payment or an offer of payment within 30 days of your first adjuster's inspection.

The insurer has an affirmative duty to adjust claims fairly and promptly and to make a reasonable effort to settle claims with the insured or the claimant, or both.

Insurer's Breach of its Duties

If an insurer knowingly commits any of the following acts, it shall constitute a breach of the insurer's duties to the insured:

Failing to adequately communicate with the insured; and

Failing to pay the amount of any claim due any person insured by the contract within sixty days after receipt of satisfactory proof of loss from the claimant when such failure is arbitrary, capricious, or without probable cause

Under the two statutes, insurers have thirty (30) days to pay the undisputed portions of the claim before they are subject to penalties for such failure. Bad faith penalties allow for additional penalties of between fifty percent (50%) and two-hundred percent (200%) of the applicable damages along with attorneys' fees and costs.

Penalties for Bad Faith Adjustment of Claims.

La. R.S. 22:1892 allows for a fifty percent (50%) penalty of damages along with attorney fees and costs. All insurers must pay the amount of any claim due within thirty (30) days of receipt of satisfactory proof of loss from the insured or any other party.

When the insurer fails to make such payment within thirty days after receipt of such satisfactory written proof of loss when such failure is found to be arbitrary, capricious, or without probable cause, the insurer shall be subject to a penalty, in addition to the amount of the loss, of fifty percent damages on the amount found to be due from the insurer to the insured, or one thousand dollars, whichever is greater.

The insured is also entitled to attorneys' fees and costs.

Under La. R.A. 22:1973, in addition to any general or special damages to which a claimant is entitled for breach of the imposed duty, the claimant may be awarded penalties assessed against the insurer in an amount not to exceed two times the damages sustained or five thousand dollars, whichever is greater.

Because the insurer has a duty to tender any and all undisputed amounts to the insured within these statutory time periods, we suggest that you tender any and all undisputed claims as soon as possible, but at least within 30 days of your adjuster's first inspection of the property, in order to protect your insurer from bad faith penalties.

II. TEXAS:

Prompt Payment of Claims Under Chapter 542

Chapter 542 provides the following deadlines for processing claims:

- **Deadline to Acknowledge Claim** – The insurer has 15 days after receiving notice of a claim by which to: (1) acknowledge receipt of the claim, (2) begin to investigate the claim, and (3) request additional information from the insured, if necessary.¹
- **Deadline to Accept or Reject Claim** – After acknowledging and investigating the claim, the insurer must then notify the insured in writing no later than the 15th business day after it has received the items it requested as to whether it has accepted or rejected the claim. If the insurer is unable to accept or reject the claim within 15 days, the insurer, within that same period, must notify the claimant of the reasons that the insurer needs additional time. In this situation, the insurer must accept or reject the claim no later than the 45th day after the date the insurer notified the claimant that it needed additional time to complete its investigation.²

¹ Tex. Ins. Code §542.055.

² Tex. Ins. Code §542.056.

- **Deadline to Pay Accepted Claims** – If the insurer notifies the insured that it has accepted the claim, it must pay the claim no later than 5 business days after providing the insured that notice. If the payment is conditioned upon some action by an insured, then the insurer must pay 5 business days after the performance of that action.³
- **Deadline to Pay All Claims** – The insurer must pay the claim within 60 days of receiving all items, statements, and forms reasonably requested by the insurer.⁴
- **Extension of Deadlines** – On September 1, 2017, the Texas Department of Insurance issued Order No. 2017-5209, which states that claims resulting from Hurricane Harvey in certain counties will be subject to a 15-day extension for claims processing.⁵
- **Statutory Penalty Interest** – The new law decreases the penalty interest rate that insurers must pay if they fail to pay “timely and fully” under Chapter 542 from 18% per annum to a rate of 5% above Texas’ pre-judgment interest rate, which is currently 5%. For claims to which Chapter 542A does not apply, however, the statutory penalty interest is still 18%.

Bad Faith Claims Under Chapter 541

To prevail in a bad faith action under Chapter 541, the insured must prove three things: (1) the insured’s claim for coverage was denied; (2) there was no reasonable basis for the insurer deny the claim; and (3) the insurer knew or should have known that it had no justification for denying the claim. If the insured prevails in his bad faith claim, the insurer will be liable for actual damages, plus court costs and reasonable and necessary attorney’s fees. The trier of fact may also award treble⁶ damages upon a showing that the insurer acted knowingly.⁷

If the insured’s attorney fails to comply with the new pre-suit notice requirements, the insured may be prohibited from recovering attorneys’ fees. Additionally, if a claim is tried, the amount of recoverable attorneys’ fees will be adjusted. For an insured to recover all attorneys’ fees, the award must equal at least 80% of the pre-suit damages demand, while a pre-suit demand equaling 20-79% of the damages award allows only for a scaled percentage recovery of attorneys’ fees. Should the award be 20% or less of the insured’s original demand, the claimant recovers no attorneys’ fees.

As always, please feel free to be in touch with any questions and if we can be of service to your or your clients.

³ Tex. Ins. Code §542.057.

⁴ Tex. Ins. Code §542.058.

⁵ The “catastrophe” counties include: Aransas, Atascosa, Austin, Bastrop, Bee, Bexar, Brazoria, Brazos, Burleson, Caldwell, Calhoun, Cameron, Chambers, Colorado, Comal, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Hidalgo, Jackson, Jasper, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Lee, Liberty, Live Oak, Matagorda, Montgomery, Newton, Nueces, Orange, Polk, Refugio, San Jacinto, San Patricio, Travis, Tyler, Victoria, Walker, Waller, Washington, Wharton, Williamson, and Wilson

⁶ Treble damages, in United States law, is a term that indicates that a statute permits a court to triple the amount of the actual/compensatory damages to be awarded to a prevailing plaintiff. Treble damages are a multiple of, and not an addition to, actual damages

⁷ Tex. Ins. Code §541.152.