



The Legal Update

POLICYHOLDER REPRESENTATION

APRIL/MAY 2009

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Durrett Law Firm

Holding Insurance Companies Accountable For Their Promises to Policyholders Since 1989.

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The Texas Prompt Payment of Claims Act

One of the strongest weapons in the policyholder's arsenal for compelling a carrier to act promptly to resolve an insurance claim is the Prompt Payment of Claims Act. The Act is a strict liability statute where a carrier's good faith intent is not defense. If the carrier fails to comply with any portion of the Act, the policyholder is

entitled to recover penalty interest on the claim at the rate of 18% per annum along with reasonable attorney's fees.

The Three Main Timetables

The Act provides three main detailed timetables by which the carrier must request items, respond to the claim, accept or reject the claim, and (if accepted) pay the claim. Generally, the timetables are as follows:

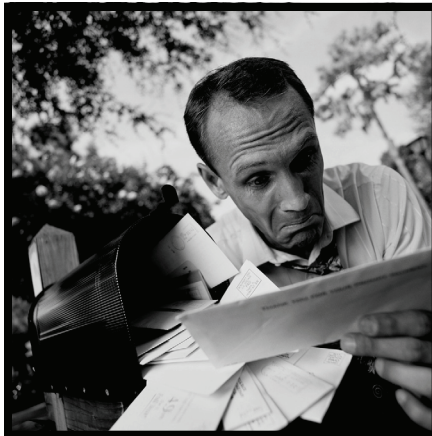
Within 15 days from written notice by the policyholder the carrier must: (1) acknowledge receipt of the claim; (2) commence an investigation of the claim; and (3) request all items, statements and forms reasonably believed, at that time, will be required.

Within 15 business days (or 30 calendar days for suspected arson) from receipt of information required to secure the final proof of loss, the carrier must accept or reject the claim in writing. If rejected, the carrier must state the reasons for the rejection. If unable to accept or reject the claim within this period, the carrier must provide notice, within the same period, of the reasons the carrier needs additional time. The carrier must thereafter accept or reject the claim not later than the 45th day after such notice.

Within 5 business days (20 business days for a surplus lines carrier) from notice of acceptance, the carrier must pay whatever part of the claim it accepted.

Timely and Reasonable Requests

As part of the first main timetable, the carrier is required, among other things, "to request from the claimant all items, statements and forms that the insurer reasonably believes, at that time, will be required from the claimant." After making the request, it is the policyholder's obligation to provide the information requested. At this point, the obligation of the carrier to take further action is suspended until the policyholder complies with the request. For example, if the carrier requests the insured business owner to produce income tax returns to justify a business interruption claim and the business owner fails to produce the tax returns, then the carrier's obligation to pay the claim is suspended until that policyholder complies with the request.



Still Waiting?

However, there are important limitations on the policyholder's obligation to comply with the carrier's request. First, the carrier must make its requests with the timetable (i.e. within 15 days from written notice from the policyholder). Second, the requests must be reasonable. A request that is untimely or unreasonable will not toll the application of the timetables for the carrier and could result in the time clock running on the carrier's obligation to accept or reject the claim. Accordingly, a policyholder should be sensitive to receipt of unreasonable requests and thoroughly document when it has complied with all reasonable requests. For example, if a policyholder sustains damage to its building as a result of a hurricane and the carrier requests

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For more articles, reports, studies, news, and commentary on these and other legal matters...

Contact Brant Durrett - bdurrett@sbcglobal.net

Ask the Attorney ...



Brant Durrett
Attorney at Law

Q: *In handling an insurance claim, what are the top five things I should do to protect myself?*

A: If I were to name five things that I would do to protect myself in the claims process, they would consist of the following:

1. Give prompt, written notice of the claim to any insurance carrier that might have coverage. It is not up to you to determine if coverage exists, but is up to you to give notice of the claim to the carrier.
2. Keep a record of all contact with the carrier. Record the name, date, time, and substance of all communications (telephone conversations, e-mails, and correspondence) with the carrier and claims adjuster. Either record or follow up all telephone conversations with emails stating the substance of the conversation and the promises made by the adjuster.
3. Photograph and preserve digital pictures of all damage.
4. Hire your own experts before the damage is repaired to determine causation and proper scope and cost of repairs.
5. If the carrier has not settled your claim within 60 days, hire an attorney to review it.

If you have a question you would like Mr. Durrett to answer, please email it to bdurrett@sbcglobal.net

Prompt Payment of Claims Act cont.

documentation regarding the policyholder's employment history, the request could be considered unreasonable and the policyholder's failure to provide the same would not toll the application of the timetables.

Policyholder Vigilance Required

There are other situations in which the policyholder should be vigilant. For example, if the carrier makes a reasonable request for documentation that no longer exists, the policyholder should immediately provide the carrier with written notice that the documentation no longer exists. Notification allows the carrier to make additional requests for documentation that may provide the same information and operates to eliminate the policyholder's failure to provide missing documentation as a basis to toll the application of the timetables to the carrier.

Finally, while carriers often request a broad scope of documents from claimants, they are required to accept or reject a claim within 15 business days from receipt of information required to secure the final proof of loss. As a result, if the carrier has

sufficient information to secure the final proof of loss, despite the claimant's noncompliance with timely and reasonable requests, it must do so. Moreover, the carrier has the right to make additional requests of the policyholder, beyond the initial time period, but only if the requests are necessary and unknown at the time of the initial timetable. In other words, if reasonable requests for documentation are known at the time of the policyholder's notification of the claim, a carrier can not delay the application of the timetables by making multiple, reasonable requests timed in such a manner as to continue the tolling of the statute.

Policyholder Delays

Aside from the foregoing, the policyholder must ensure that his retained professionals are aware of and strictly comply with the statute. For example, overworked contractors or public insurance adjusters occasionally delay the process of getting a claim paid by neglect or intent. Frequently, in these situations, the contractor or public insurance adjuster will continue to insist upon "working" with the carrier, rather than advising the insured to consult with an attorney for legal

representation. Accordingly, the policyholder should be cognizant of the statutory timetables and if violated, should immediately contact an attorney for representation in order to preserve evidence and fully document all aspects of the claim.

Conclusion

The Prompt Payment of Claims Act is a powerful weapon to compel an insurance carrier to keep its promises to the policyholder. Nevertheless, the Act has many nuances and is difficult, if not impossible, for a layman to fully implement without reviewing its provisions and keeping detailed records of the history of a claim. At a minimum, the policyholder should recognize that he does not have to wait forever to receive payment for his claim. As a general rule, if your claim has not been settled or paid within 60 days from the time you report the loss, you should seek the assistance of an attorney for a review of the status of the claim and to determine whether the Act has been violated or is being tolled for noncompliance.



If it's March - It Must be Time for a Vacation or Three



Group Therapy at Seaside, FL



Joe & Carolyn Durrett - 50 years

During the month of March, many clients thought the Durrett Law Firm was closed because for three consecutive weeks, Brant Durrett was out of town.

Spring Break was celebrated at a beach house named "Group Therapy" in Seaside, Florida. The Durrett Family (Brant, Shari and Hailie) joined the Pruet, Burgher, and Bahorich families to spend the week on the beach. In all, 17 people shared the spacious beach house for fun, fellowship and great home-cooked meals

The following week, Shari and Brant flew to Los Angeles, California to join Brant's brother and sister, their spouses, as well as Brant's parents, Joe and Carolyn Durrett, as they celebrated their 50th Wedding Anniversary. Everything was perfect; the company, the weather and the food!

For the last trip, Brant joined his brother, Charles, for a turkey hunt on a ranch just north of Del Rio, Texas. Earlier in the year, Charles was selected as the winner of turkey hunting contest sponsored by *The Texas Sporting Journal*. Other sponsors included Rancho Bellas Rocas, Brush Country Camouflage and Rusty Baker Outdoors. The turkey hunt was captured on video by the television crew for Rusty Baker Outdoors and is to be aired in the future on the Sportsman Channel. To remember the occasion, Brant had the beard, tail feathers and spurs of his first turkey mounted and to be proudly displayed in his office.



Brant Durrett with first turkey

Travelers Makes Additional Payment of \$744,581.92



Durrett Law Firm announces that it recently obtained an additional payment on a property damage claim for a client from The Travelers Insurance Company. Mr. Durrett's client is a owner of a small business park in Spring, Texas. Many of the business park's buildings had metal roofs that were damaged by strong winds from Hurricane Ike. After hiring an out-of-state engineer to make a cursory inspection of the metal roofs, Traveler's claims adjuster paid approximately \$60,000 actual cash value on the claim and denied the balance of the loss.

Mr. Durrett was able to convince Travelers that its engineer's inspection was deficient. Travelers asked to reinspect the loss. After reinspection, Travelers decided that additional damages were caused by Hurricane Ike and made a further payment of \$744,581.92.

Mr. Durrett has successfully handled many claims against The Travelers Insurance Company over the last 20 years. Despite receipt of this additional payment, Mr. Durrett continues to pursue Travelers on behalf of his client for additional damages, penalty interest (18% per annum on the amount of the claim) and attorney's fees under the Prompt Payment of Claims Act. [See lead article from page one.]



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Unlike other firms that send clients, associates, and friends an impersonal newsletter that has been created by a service, our newsletter is **100% home-grown**. It is written and designed in-house—by us!



Hailie Durrett Selects Texas A&M University



In what can only be described as the “upset of the year”, Hailie Durrett, the publisher’s one and only daughter, has decided to attend Texas A&M University over the University of Mississippi.

As first reported in the November issue of *The Legal Update*, Hailie managed to elude the effectiveness of advanced early childhood brainwashing techniques regarding Ole Miss and determined that Texas A&M was the best fit. While Hailie’s decision has caused some paternal dismay, she steadfastly maintains that her favorite college football team remains Ole Miss. She is ready to graduate and head off to College Station where she plans to major in English. The publisher can only say how exceedingly proud he is of her.



Readers Respond To Poll Regarding Judicial Elections In Texas

In the February-March newsletter, we asked DFL News readers: Do you believe campaign contributions to judicial elections affect courtroom events? Our readers unanimously responded in the affirmative. The purpose of the courts is to administer justice in a fair and impartial manner. To DFL Readers, the perception of bias caused by campaign contributions is a sufficient basis to reconsider the way we elect judges in Texas.

Get Connected To Attorney Brant Durrett

In the virtual world of the internet, social media is the way people get connected and stay connected. To learn more about Brant Durrett or the Durrett Law Firm make a connection on LinkedIn, Facebook and Twitter.



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