



# The Legal Update

POLICYHOLDER REPRESENTATION

NOVEMBER 2009

## IN THIS ISSUE

Ask the Attorney  
Page 2

Announcing New  
Website  
Page 3

Travelers Underpays  
Claim By A Total of  
\$1.1 MM  
Page 3

A Veterans Day Honor  
To Remember  
Page 4

Get Connected to  
Attorney Brant Durrett  
Page 4

## Durrett Law Firm

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

2401 Fountainview Dr.  
Suite 450  
Houston, Texas 77057  
(713) 623-6881  
www.durrettlaw.com

**We Appreciate Your Business and Your Referrals**

## The Power of Maybe

**W**hat is bad faith? Clients often ask me whether an insurer's conduct in their claim constitutes bad faith. Responding in the most equivocal manner possible, I usually simply say, "Maybe." I am not intentionally trying to be vague and insensitive to their question, but answering their question is difficult.

The label "bad faith" does not help matters. "Bad faith" is simply an abbreviated reference to the failure of the insurance company to treat its insured in the investigation, adjustment and payment of an insurance claim consistent with the common law duty of good faith and fair dealing. The courts have imposed the duty of good faith and fair dealing upon insurance carriers because of the inherently unequal bargaining power between an insurer and its insured in the claims process.

### Legal Definition

To be precise, the Texas Supreme Court has defined the legal duty of good faith and fair dealing in the insurance context as: "failing to attempt in good faith to effectuate a prompt, fair and equitable settlement of a claim when the insurer's liability has become reasonably clear." From the legal definition, it should be obvious that just about any conduct or practice causing the wrongful delay or denial of an insurance claim can fit within this definition.

### Examples of Bad Faith

Accordingly, I find greater clarity is obtained if I define "bad faith" by example rather than giving a text book definition. Common examples of insurance company practices supporting a bad faith claim include: (1) failing

to conduct a reasonable investigation of the claim (thoroughly, timely and properly); (2) wrongfully denying a claim; (3) unreasonably delaying payment of a claim; (4) wrongfully cancelling an insurance policy; and (5) misrepresenting facts or policy provisions to an insured that cause the insured to lose policy benefits or settle a claim for less than full value. Obviously, many other insurance company practices that cause loss to the insured can be considered bad faith insurance practices as well. But the foregoing examples generally describe the conduct the law seeks to prohibit.



**Is your claims adjuster Dr. Evil?**

### Reasonableness Defense

Despite the generality of the basis for a bad faith practices lawsuit, the law provides insurers with a powerful defense to such claims. The defense is *reasonableness*. Texas law holds that insurers can deny claims without violating the duty of good faith and fair dealing if the basis for their denial is *reasonable*.

The most common example of this occurs when an insurance carrier hires an expert to investigate the cause of a loss. If the expert returns a fair and unbiased report to the insurance company supporting claim denial based an exclusion in the policy, the carrier is free to deny the claim without liability for

*Continued on Page 2*

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

**WWW.DURRETTLAW.COM**

## Ask the Attorney ...



**Brant Durrett**  
Attorney at Law

**Q:** *I really enjoy the tips and articles in your newsletter, but is there anywhere I can go to get this information without having to save your newsletters?*

**A:** Funny, you should ask. I just launched a new website that contains all of the articles and newsletters Durrett Law Firm has ever published. It is located at [www.durrettlaw.com](http://www.durrettlaw.com). In addition, to my newsletters and articles, the website has other reports, studies, news and commentary in the three areas of out practice: insurance law, business litigation and car accidents. I will continue to add content to the website to act as a reference point in the areas.

Three additional websites that I have found that contain helpful information are:

1. [www.unitedpolicyholders.org](http://www.unitedpolicyholders.org);
2. [www.policyholdersofamerica.org](http://www.policyholdersofamerica.org); and
3. [www.texaswatch.org](http://www.texaswatch.org).

Finally, if you can not find the answer to your question, you may always contact me.

If you have a question you would like Mr. Durrett to answer, please email it to [brant@durrettlaw.com](mailto:brant@durrettlaw.com)

## The Power of Maybe cont.

bad faith, even if it is later determined that the claim is covered under the policy.

Another example of the *reasonableness* defense can occur when an insurer erroneously denies a claim, but at the time of denial, a *reasonable* basis for the denial exists. In this scenario, an insurer reaches the correct result – denial – but for the wrong reason.

For example, assume an insurance carrier denies a fire claim due to arson caused by the insured. Further assume that the insured proves that he did not commit arson. Despite this wrongful denial, if at the time of the denial the insurer has any valid basis to deny the claim it overlooked (i.e. the insured failed to pay all of the premiums due) the insurer has not violated the duty of good faith and fair dealing. What is dispositive is whether at the time of the loss a *reasonable insurer* would have denied the claim based upon the facts that existed at that time and

not simply whether this insurer denied the claim properly.

Synthesizing the basis for a bad faith insurance practices claim with the insurer's defense of *reasonableness* yields two general points with regard to all bad faith insurance practices claims. First, an insurance claim must be covered under the policy before a carrier can be liable for bad faith insurance practices. (There are a few narrow - mainly theoretical - exceptions to this point.) Second, the focus of a bad faith insurance claim is not whether the carrier's denial of the claim is valid; but rather *on the reasonableness of the insurer's conduct in rejecting the claim.*

### Conclusion

The complexity of analyzing these claims brings me back to the first point of this article – when questioned on whether a bad faith claim exists in a given case, the most prudent answer is usually "Maybe."



## ANNOUNCING NEW WEBSITE -



Roll your clicker on over to:  
**[www.durrettlaw.com](http://www.durrettlaw.com)**

As I mentioned in the September, 2009 newsletter, I have been working on a surprise. Well, this is the big announcement! I am pleased to announce the launch of our new website at **[www.durrettlaw.com](http://www.durrettlaw.com)**.

I literally tried for two years to find a web designer who understands how to create a website to be something more than a billboard on the Internet. Last May, I found Foster Web Marketing, a web design firm for lawyers out of Fairfax, VA that designs websites so that someone without html programming knowledge can add to and modify the site without having to contact the design team.

In addition, I had the privilege to involve my wife, Shari, in the project too! She took most of the flash photos in the header on a Saturday afternoon last July. I think she did a great job on the look and finish of all the photos. (There is a particularly beautiful photo of the new Harris County Courthouse entrance way!)

I hope you will visit the site to check it out. The site has great content for clients too. There are articles on the three areas of my practice: insurance law, business litigation and car accidents. In addition, there is a frequently asked questions section, a blog section and a news section. Finally, all newsletters are posted there as well. Please check out the website and let me know your comments!

## *Travelers Underpays Claim By A Total of \$1.1 MM*



**U**pdating a story from April, 2009, the Durrett Law Firm is pleased to announce that it recently obtained an additional payment of \$387,500 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.

After filing suit, 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 in April, 2009 made a further payment of \$744,581.92. Despite receipt of this additional payment, Mr. Durrett continued 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. In September, 2009, the parties attended mediation and with the help of the mediator, Trey Bergman, Travelers agreed to pay Mr. Durrett's client an additional \$387,500 bringing the total

amount recovered since the filing of the lawsuit to \$1,132,081.90.

**DISCLAIMER:** This newsletter is intended to offer insurance related information and critical commentary pertinent to the clients, friends and fellow professionals of the Durrett Law Firm. It is not intended to be legal advice and does not constitute an attorney-client relationship. The information contained in this newsletter is intended to be general in nature; readers should obtain professional legal advice before undertaking any action on the basis of this material.



# DURRETT LAW FIRM

2401 Fountainview Dr.  
Suite 450  
Houston, Texas 77057  
(713) 623-6881

Return Service Requested

**Our Mission is to  
Level the Playing Field  
Against  
Insurance Companies!**

**We care enough to send you the REAL DEAL!**

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!



## *A Veterans Day Honor To Remember*

Veterans Day is an annual American holiday honoring military veterans. U.S. President Woodrow Wilson first proclaimed the holiday for November 11, 1919 to celebrate the end of World War I. At the time, it was known simply as Armistice Day. In 1953, an Emporia, Kansas shoe store owner named Al King had the idea to expand Armistice Day to celebrate all veterans, not just those who served in World War I. On November 8, 1954, Congress amended its act replacing “Armistice” with Veterans, and it has been known as Veterans Day thereafter.

My father-in-law, Don Nelsen served as a Seabee in the Pacific Theater during World War II. He passed away in 2007. On Veterans Day this year, Shari and I had the opportunity to observe the unveiling of his name on the Wall of Honor at Veterans Park in the Brazos Valley Veterans Memorial in College Station, Texas.

We miss Papa dearly, but are extremely proud of his service to the USA and the recognition bestowed upon him this Veterans Day.



*In the picture, Shari Durrett points to the name of her father, Donald E. Nelsen, placed on the Wall of Honor at Veterans Park.*

## *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.



<http://www.linkedin.com/in/jbrantleydurrettiii>



<http://www.facebook.com/brantdurrett>



<http://www.twitter.com/brantdurrett>