

# The Check is In The Mail?

## Revisiting the Texas Prompt Payment of Claims Statute

Wes Johnson

21st Annual Insurance Symposium

March 24, 2014



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# What is the Prompt Payment of Claims Statute?

- Codified in Section 542 of the Texas Insurance Code (formerly known as Art. 21.55)
- Imposes an affirmative duty on insurance carriers to promptly pay claims as soon as it becomes reasonably clear that they have the liability to do so



# Scope of Section 542

- Applies to claims handling procedures on all insurance policies in Texas, except:
- Worker's compensation claims
- Mortgage guaranty insurance
- Fidelity, surety, or guaranty bonds
- Title insurance
- Certain types of marine insurance



# Scope of Section 542

- Violations of Prompt Payment Act only apply to first-party claims
- Third party claimants lack standing to assert cause of action for negligent handling of a claim

*Lasewicz v. Joyce Van Lines, Inc.* Southern District of Texas 2011



# Scope of Section 542

- The statute only applies to “a first party claim made by an insured or policyholder under an insurance policy or contract or by a beneficiary named in the policy or contract [that] must be paid by the insurer directly to the insured or beneficiary.”
  - TEX. INS. CODE ANN. § 542.051(2).



So a Claim is Raised By Your  
Insured...



# Duties Imposed on Claimants

- Process begins with the “notice of claim” by the insured
- To trigger the statutory deadlines, the notice of claim must be in writing
- The notice of claim must “reasonably apprise the insurer of facts relating to the claim.”

- TEX. INS. CODE ANN. § 542.051(4).



# Claims Handling Obligations

- The insurer must acknowledge receipt of the claim
- The acknowledgment must be in writing
- Separate acknowledgments are required for separate claims – even if arising from the same incident

- TEX. INS. CODE ANN. § 542.055(a)(1).

- *Dunn v. Southern Farm Bur. Cas. Ins. Co.*, 991 S.W.2d 467 (Tex. App. – Tyler 1999, pet. denied)





# Claims Handling Obligations

- An insurer must commence any investigation of the claim within 15 days of receipt of the notice of claim from the insured
- 30 days for surplus line insurers



- TEX. INS. CODE ANN. § 542.055(a).

# Claims Handling Obligations

- The insurer must request from the claimant all items, statements and forms that the insurer reasonably believes will be required to investigate the claim
  - TEX. INS. CODE ANN. § 542.055(a).



# Claims Handling Obligations

- The statute requires the insurer to provide written notice if it accepting or rejecting the claim.
- The insurer must state the reasons for the rejection.
  - TEX. INS. CODE ANN. § 542.056



# Insurer Deadline to Accept or Reject Claim

- 15 business days from receipt of notice of claim
- If additional time is requested, the insurer must inform the insured in writing
- If more time is requested, the insurer is granted an additional 45 days

• TEX. INS. CODE ANN. § 542.056



# Deadline to Pay Claims

- After receipt of all items needed to investigate to render determination of claim – insurer has 60 days to pay claim or face statutory penalties.

- TEX. INS. CODE ANN. § 542.058



# Case Law Update

- Mag-Dolphus, Inc. v. Ohio Cas. Ins. Co., Southern District of Texas – 2012
- Insurer not held to violation of Chapter 542 for failing to make first payment until 17 months after Hurricane Ike
- Basis: It satisfied an appraisal award by an independent umpire



# Defense to 60 Day Rule

- Partain v. Mid-Continent Spec. Ins. Ser., Inc. – Southern District of Texas 2012
- Insured NOT entitled to Ch. 542 relief where insured's counsel denied request for information regarding damages and defenses relative to coverage.



# Deadline to Pay Claims

- Insurer has 5 business days to pay a claim after it has informed it insured that it has accepted the claim – or face statutory penalties.

- TEX. INS. CODE ANN. § 542.057





# Statutory Penalties

18%  
INTEREST

A pixelated illustration of a red lightning bolt striking the word 'INTEREST'. The lightning bolt is positioned at the bottom left of the word, striking the letter 'I'. The background is a dark blue gradient with a silhouette of a mountain range at the bottom.

# Statutory Penalties

- Failure to meet statutory requirements results in liability for 18% per annum in damages
- The amount of the claim
- Claimant's attorneys fees

• TEX. INS. CODE ANN. § 542.060



# Burden of Proof

- To recover statutory penalties under Prompt Payment Act, must establish:
- A claim under the Policy;
- Liability by the carrier for the claim;
- Failure to meet one of the provisions of the Act

*Terry v. Safeco Ins. Co.*, Southern District of Texas 2012



# Application of Section 542 to UM/UIM Claims

- Section 542 does apply to UM/UIM claims
- However, benefits are conditioned upon the insured's legal entitlement to receive damages from a third party – generally upon a settlement or judgment taken against insured
- *Mid-Century v. Daniel* , 223 S.W.3d 586 (Tex. App. – Amarillo 2007, no pet.).



# Application of Section 542 in Interpleader Claims

- The statute does apply in interpleader claims
- The filing of interpleader funds with the registry of the court does suffice the payment requirements of the statute.
- If interpleader was filed prior to the end of the statutory deadlines an insurer could avoid statutory penalties

- *State Farm Ins. Co. v. Martinez*, 216 S.W.3d 799 (Tex. 2007)

# Application to Workers Compensation Claims

- Texas Supreme Court ruled that the remedies contained in the Texas Labor Code are the sole remedies available to injured workers if their employer subscribed to the workers compensation system
- No workers' comp bad faith

*Ruttiger v. Texas Mutual Ins. Co.*, TX. Sup. Ct. 2012



# Applying Statute to Duty to Defend

- Since 1996, debate raged as to whether 21.55/Section 542 applied to claims for a duty to defend against a third-party claim
- One line of cases held that since the claim for defense is derivative of a third party claim, it was a third party claim itself, and not subject to the statute
- Another line of cases held that since the claim for defense is unique to the insured, it is a first-party claim and subject to the statute

# Dispute Resolved by Lamar Homes

- This dispute was resolved by the Texas Supreme Court in *Lamar Homes, Inc. v. Mid-Continent Cas. Co.*, 242 S.W.3d 1 (Tex. 2007).
- *Lamar Homes* involved a homebuilder seeking a defense in a lawsuit brought by a homeowner for a construction defect





# Lamar Homes Holding

- Supreme Court concluded that since “an insured seeks recovery for the insured's own loss” then such a claim for defense is an inherent first-party claim and Art. 21.55/Section 542 IS applicable.



# Applicable From Date Insured Submits Bill for Attorney's Fees

- "when the insurer wrongfully rejects its defense obligation, the insured has suffered an actual loss that is quantified after the insured retains counsel and begins receiving statements from legal services."
- Thus, the holding states that the insured must actually submit the bills to carrier to start clock and statutory deadlines

# Insured's Duties

- Insurer is not liable for penalties under Chapter 542 until insured actually incurs attorney's fees, tenders them to the carrier and provides evidence of the dates and amounts of the defense costs.

*Trammell Crow Residential Co. v. Virginia Sur. Co., Inc.*, Northern District of Texas 2008



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# For More Information...

Contact me:

Wes Johnson

Cooper & Scully, PC

900 Jackson, Suite 100

Dallas, Texas 75202

(214) 712-9562

[wes.johnson@cooperscully.com](mailto:wes.johnson@cooperscully.com)

