

# PROMPT PAYMENT OF CLAIMS IN A 1<sup>ST</sup> PARTY WORLD



31<sup>th</sup> Annual Insurance Symposium

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## WHAT IS PROMPT PAYMENT? INSURANCE CODE CHAPTER 542

- Sets deadlines for certain insurers to take certain actions upon receipt of claims and throughout the claims handling process.
- Some deadlines are extended for eligible surplus lines insurers.
- Know which deadlines are days vs business days.
- In the event of a weather-related catastrophe or major natural disaster, as defined by the insurance commissioner, the deadlines are extended for an additional 15 days. TEX. INS. CODE § 542.059(b).

## ACKNOWLEDGMENT - § 542.055

- Within 15 days (30 business days for eligible surplus) after the insurer receives notice of the claim it **MUST**:
  - (1) Acknowledge receipt of the claim;
  - (2) Commence any investigation of the claim; and
  - (3) Request from the claimant all items, statements, and forms it reasonably believes, at that time, will be required.
- Additional requests may be made during investigation of claim
- If acknowledgment is not in writing, the insurer must make a record of the date, manner, and content. §542.055(c)

## **ACCEPT OR REJECT - § 542.056**

- After insurer receives all items, statements, and forms required by the insurer to secure final proof of loss the insurer must notify claimant in writing no later than 15 business days of acceptance or rejection of the claim.
- If the claim is rejected the notice must state the reasons.
- If an insurer needs additional time, it can get an extension of 45 days from the date of notice. But it must send the notice to the claimant within initial acceptance or denial period stating the reasons that the insurer needs additional time.

## **PAYMENT - § 542.057 AND §542.058**

- Insurer must pay claim within 5 business days of notifying claimant it will pay the claim. §542.057(a).
- If payment is conditional upon the claimant performing an act, then the insurer must pay the claim within 5 business days of the act being performed. §542.057(b).
- If insurer is an eligible surplus insurer and payment is conditional upon the claimant performing an act, then the insurer must pay the claim within 20 business days. §542.057(c).
- An insurer must pay the claim within sixty days after receiving the items requested from the policyholder under §542.055. §542.058(a).

## LIABILITY - § 542.060

- Amount of the claim, attorney' fees, interest (on balance of claim).
- Interest for claims where 542A does NOT apply: 18%
- Interest for claims where 542A DOES apply: 5% + Prime\*  
(\*Postjudgment Interest Rate)
  - March 2024 Postjudgment Interest Rate: 8.50%
  - <https://occc.texas.gov/publications/interest-rates>
- Interest runs on entire claim liability, minus partial payments and deductible.

# EXAMPLE OF INTEREST CALCULATION

Weather Claim (under 542A)

Actual Damages =	\$100,000.00 (Award, less deductible)
<u>Prompt Payment Penalties =</u>	<u>\$ 22,191.78 (13.5% per year)*</u>
Total =	\$122,191.78

\* 600 days passed between the date prompt payment was triggered and the date the award of actual damages was issued

- NOTE: This calculation will apply regardless of any other bad faith finding

# POLL QUESTION

- What is the current interest rate that applies to winter storm Uri?
- A) 8.5%
- B) 18%
- C) 5%
- D) 13.5%



## **APPRAISAL AND PROMPT PAY**

- Appraisal does not toll the deadlines.
- Interest will run on the amount of the claim that is owed under the policy (covered damage).
- If no coverage, then no violation and no interest accrues (damages).
- When appraisal award is made, pay covered damage and interest within 5 days (or per policy terms if shorter).

# **THIRD-PARTY INVESTIGATORS/VENDORS**

- There is no single formula as the facts of each claim are unique.
- Communicate and update the claimant on who is inspecting and why.
- Follow up to ensure timely inspections and reports.
- If third-party investigators/vendors are taking an unreasonable amount of time, the carrier may be liable for the delay.

# THIRD-PARTY INVESTIGATORS/VENDORS

- Be clear in the assignment scope and product expectations;
- If first selected vendor consistently delays communications and/or inspections, find another;
- If the inspection/report does not include entire scope, promptly obtain supplement;
- If claimant is causing vendor delays (not making property available to inspect, postponing inspection), document activity, steps taken, and communications.

## **AVOIDING A CHAPTER 542 CLAIM**

- Comply with all deadlines and document the investigation (correspondence in writing, claim log, etc.);
- Ask the insured for documents, evidence to determine what, if any, coverage is provided under the policy;
- If the insured is not responsive, follow up and document;
- If claim is partially covered, unconditionally tender uncontested portion.

## OTHER FIRST-PARTY CONSIDERATIONS

- Both § 541 and the common law apply the same standard
- Violate/breach when the insurance carrier knew or should have known that it was reasonably clear that the claim was covered.
- Not necessarily when all the information is collected.
- Treble damages – DTPA and §541

# QUESTIONS?

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