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# TEXAS PROMPT PAYMENT OF CLAIMS ACT - Talk Softly And Carry A Big Stick

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**THE TEXAS PROMPT PAYMENT OF CLAIMS ACT IS THE BIGGEST STICK YOU HAVE TO COMPEL THE CARRIER TO PAY YOUR CLAIM FAST.**

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.

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.

**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.

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 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.

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 45<sup>th</sup> 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

**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

*“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.”*

*“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.”*

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.

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## ABOUT THE AUTHOR

### *J. BRANTLEY DURRETT, III*

J. Brantley Durrett, III is an attorney that has been representing policyholders in insurance disputes against insurance companies and other wrongdoers since 1989.

His experience is concentrated in complex civil litigation matters with a particular emphasis in representing policyholders in insurance litigation. He has represented homeowners, apartment owners and business owners against their insurance carriers when their contractual and other rights have been abused by unscrupulous insurance adjusters and other scoundrels. He also has significant appellate experience including appeals before the Texas Courts of Appeal and the United States Court of Appeal for the Fifth Circuit. In an appellate capacity, Mr. Durrett has handled insurance cases of first impression in Texas and won reversals of lower court mistakes.

Mr. Durrett has been licensed in Texas since 1989. He has obtained millions of dollars in settlements for his clients. He is a member of numerous professional organizations, including the State Bar of Texas (Sections: Litigation, Insurance, and Commercial and Consumer Law) and the American Association for Justice (Sections: Motor Vehicle Liability, Insurance, Medical Malpractice, Commercial Litigation and Expert Witnesses).

Recently, Mr. Durrett restructured his practice to accept only a limited number of serious cases each year. As a result, he can provide a greater level of personal service for his clients without the distraction of maintaining a heavy case load.

If you think you have wronged by your insurance carrier or its adjusters, contact Mr. Durrett for a FREE, no obligation consultation.

#### **Durrett Law Firm**

The **Durrett Law Firm** is dedicated to protecting your interests and handling your case with personal attention, aggressive advocacy, professionalism, and compassion.

We have been successfully representing policyholders against their insurance carriers in Texas for almost 20 years. We understand that sustaining a insured loss can be financially and emotionally devastating. We strive to balance this concern with the unique and rigorous demands of the legal system. We understand that the selection of an attorney is an important decision, and which may have far reaching consequences.



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