

BUSINESS SURVIVAL GUIDE

Laws Impacting Business

Understand prompt payment act to maximize insurance coverage

A business owner has paid insurance premiums for years. Now, he has a claim. He contacts his insurance agent who reports the loss to his carrier. The carrier investigates the loss, asks for information, reinvestigates, asks for more information and generally stalls.

This frustrating scenario is being played out more frequently across the state. As carriers suffer record losses because of bad investments, a bad economy and large claims, carriers are taking an even harder line with claims.

Adjusters report that claims that would have been paid in years past are now being disputed. Often, it seems that carriers delay or deny payment knowing that few companies or individuals have the time or the financial resources to take on the carrier.

However, at least with regard to first party insurance claims (such as commercial property, crime and auto insurance), as a business policy owner, he has a weapon on his side: the Prompt Payment of Claims Act.

KNOWING RIGHTS

Many business policy owners, risk managers and even agents are not familiar with this important statute found in the



INSURANCE CLAIMS

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Insurance Code. Rest assured that the carriers and their adjusters are very familiar with this Act. They conduct in-house training on it, know its requirements and deadlines and know how to use the provisions to frustrate its purpose and avoid its penalties, while at the same time delaying payment.

Business policy holders need to be familiar with it, too.

The Prompt Payment of Claims Act sets out a series of deadlines which the carrier must meet or suffer 18 percent penalty and attorneys fees. It is a strict liability statute. A violation of any part of the statute subjects the carrier to the penalty.

In order to have a claim adjusted and paid promptly, a business owner must know these deadlines and how to use them to force the carrier to respond. Think of it as the owner's own personal cattle-prod.

The first step in activating the act is reporting the claim. Make sure to give notice of the claim in writing. Any written notice setting out the basic facts of the loss or a loss notice form will suffice.

This step seems terribly obvious, but it is surprising that, when claims go to litigation, it is often uncertain when the first notice was actually given. Since penalties flow from the first notice, it is important that this step be completed properly and promptly.

THE NEXT STEP

The written notice triggers the first deadline for the carrier. Within 15 days, the carrier must do three things: acknowledge the claim, begin its investigation of the claim and request additional information that is reasonably necessary for the carrier to adjust the claim.

The request for additional information is a key provision that the carriers use to frustrate the act. They request information, then when they receive the information they request more information and so forth.

These serial requests for additional information allow the carrier to delay payment outside the time frame contemplated by the act. In order to counter this strategy, the business policy owner must do three things.

- If there is a request for information, make the carrier put it in writing. That way there is no misunderstanding about what is being requested and when it was requested.

- Gather the information and materials as quickly as possible and provide them to the carrier with a written letter documenting the compliance with the request.

- If the carrier then asks for more information or documents, make the carrier state the reasons for the additional information in writing.

At a later date, the policy owner may need

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proof that the carrier engaged in unreasonable requests for information. Remember, the carrier's requests for information cannot be open-ended. They must be reasonable and they must relate to the adjustment of the particular loss.

BALL IN THE OTHER COURT

Once a policy owner has provided the carrier with the information and documents requested by the carrier, the second deadline is triggered. The carrier must accept or reject the claim no later than the 15th business day after the carrier receives the information and documents.

In the event that the carrier rejects the claim, the carrier must notify the business policy holder in writing of the reasons for rejecting the claim. If for some reason the carrier cannot accept or reject the claim within the 15 business day period, it must notify the insured and state the reasons that it needs additional time.

This provision buys the carrier some additional time, but it is limited. The carrier must accept or reject the claim not later than the 45th business day after notifying the insured that it needed more time.

The carrier has five business days to pay after it has notified the insured that it will pay all or part of a claim. If payment is conditioned on the performance of some act by the insured, such as providing a proof of loss, or an inspection, then the carrier must pay the claim not later than the fifth business day after the act has been performed.

ASSESSING VIOLATIONS

The act provides two powerful remedies in the event of a violation: an 18 percent interest penalty and attorneys fees. If the carrier does not comply with any portion of this statute, then the carrier is liable for the amount of the claim, plus 18 percent per annum penalty and reasonable attorneys fees.

The penalties and fees do not just apply if the ultimate payment of the claim is delayed. Rather, the penalties apply to any violation of the act. This means that if the carrier does not notify the insured of the acceptance or rejection of the claim within 15 business days after receipt of materials and information, then the carrier is penalized.

Likewise, if the carrier does not acknowledge the claim and begin investigation

within 15 days of receiving the notice, the carrier must pay the penalty.

Knowing how to use this act can provide a powerful weapon to a business policy holder in dealings with a carrier. Being knowledgeable about the deadlines and how to trigger them can help "prod" a carrier to investigate and pay a claim in a prompt and efficient manner.

Just as important, it can also ensure that if the policy owner has to litigate against the carrier, he has triggered the provisions of the act and carefully preserved the penalties, including attorneys fees, which the act provides.

(It should be noted that the act has special provisions covering surplus lines carriers and claims that appear to be arson related, and it does not apply to certain types of coverage, such as marine, workers compensation, mortgage guaranty insurance and title insurance, among others.)

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