



January 2013

## **PROMPT DISPOSITION OF CLAIMS**

### **Claims Handling Regulations**

In New Jersey, insurers are bound by a variety of statutes, regulations and case law respecting the prompt resolution of claims. The volume of claims arising out of Hurricane Sandy creates a significant tension between a carrier's responsibility to fully investigate a claim and the insured's right to prompt payment for a valid claim. Particularly where the habitability of a dwelling is at issue, insureds will expect speedy action on the part of the carrier. The Insurance Trade Practices Act, N.J.S.A. 17:29B-1 to -14 (the "Act"), sets forth fifteen (15) categories of conduct deemed to represent "Unfair Claim Practices". The prohibited practices most relevant to Sandy claims are as follows:

1. Misrepresentations of facts or policy provisions;
2. Failure to acknowledge and act reasonably in response to a claim;
3. Failure to adopt and implement reasonable standards for the prompt investigation of claims;
4. Refusal to pay claims without conducting a reasonable investigation based upon available information;
5. Failure to affirm or deny coverage within a reasonable time period;
6. Failure to promptly and fairly settle claims once liability becomes clear; and
7. Paying substantially less to an insured for a claim, compelling the insured to initiate a declaratory action to recover the amount due.

Pursuant to authority granted under the Act, the Commissioner of the Department of Banking and Insurance has adopted regulations regarding proper claims handling in order to eliminate the prohibited actions and to ensure fair and equitable treatment of claimants. N.J.A.C. 11:2-17.1 *et. seq.* (the "Code"). The Code prescribes the conduct insurers must follow in the adjustment and handling of a claim.<sup>1</sup>

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<sup>1</sup> The Code applies to all policies except for ocean, marine, fidelity and surety, boiler and machinery and workers' compensation. Moreover, it is inapplicable to commercial property and liability policies for which the annual premium exceeds \$10,000 and where the claim is made by a commercial insured.

The following provisions must be adhered to in handling a first party property damage claim:

1. The insurer must acknowledge receipt of a notice of claim within 10 days and the acknowledgement must include the address and telephone number of the claims office or authorized claims representative handling the case;
2. All necessary claim forms and instructions must be provided to the claimant;
3. The insurer must respond to all claimant communications requiring a reply within 10 days of the communication;
4. The insurer must commence an investigation within 10 days of receipt of the notice of claim;
5. All first party property damage claims must be paid within 30 calendar days from receipt of a properly executed Proof of Loss, except that if an insurer is unable to settle a claim within 30 days, written notification must be sent to the claimant by the end of the 30 day period setting forth the reasons why additional time is needed;
6. If a first party claimant is not represented by counsel and submits insufficient information to support the claim, the insurer must provide the claimant with a general description of the information/documentation needed to establish the claim;
7. Payment of agreed upon settlements must be made within 10 days of receipt of executed agreement or compliance with conditions set forth in the agreement;
8. An insurer cannot refuse to settle a first party claim on the basis that payment is the responsibility of others;
9. If in active settlement negotiations with a claimant, the insurer must advise the claimant of any applicable statute of limitations. Notice must be given 60 days prior to the expiration of the statute of limitations. This regulation does not apply if a claimant is represented by counsel;

10. The insurer must pay those portions of the claim for which there is no dispute so long as payment can be made without prejudice to either party;
11. First party payments must be accompanied by a statement setting forth the coverage under which the payment is made and an explanation of how the amount was calculated (this provision does not apply to negotiated settlements);
12. Upon payment of a first party property damage claim of \$5,000 or more, notice of payment must be sent to the claimant if payment is made to the claimant's public adjuster or other representative; and
13. Unless specifically negotiated, the insurer remains liable for hidden damage directly related to the covered loss, subject to the terms, conditions and limits of the policy.

#### **The Consequences Of Failure To Adhere To The Act Or Code Requirements In The Adjustment And/Or Payment Of A Claim**

While neither a violation of the Act nor the Code creates a private or individual cause of action against the carrier, our Courts have recognized that a deviation from the statutory and regulatory standards may support a claim of bad faith. Pickett v. Lloyd's, 131 N.J. 457 (1993). Pickett is the seminal case in which the New Jersey Supreme Court recognized a claim for bad faith in the handling of a first party property damage claim. Under Pickett, an insurer may be liable for bad faith, and consequential damages, where the insurer fails to conscientiously and timely pay a meritorious property damage claim. Relying upon long established precedent that every insurance contract contains a covenant of good faith and fair dealing, the Supreme Court in Pickett held that the breach of that covenant may result in the insurer being responsible for economic damages that are the natural and probable consequences caused by the insurer's actions.

Bad faith can be demonstrated in either the context of a denial of a first party claim or delay in payment of a first party claim. In the context of a processing/payment delay, bad faith is established "by showing that no valid reasons existed to delay processing the claim and that the insurance company knew or recklessly disregarded the fact that no valid reasons supported the delay." A claim for bad faith denial of a first party property damage claim requires a showing that the insurer lacked a reasonable basis for denying the claim and the insurer's knowledge or reckless disregard of that fact.

Situations most likely to implicate the foregoing considerations are where adjusters do not promptly respond to claim notifications or make coverage determinations against the insured's interests without conducting a "reasonable" investigation. In the case of Sandy, it may be difficult for insurers to implement procedures to meet the volume of claims so that they may be handled promptly and fairly, but it is imperative that they try to do so.

Schenck, Price, Smith & King's Hurricane Sandy Insurance Advisory Group has prepared a presentation on a wide range of topics which are likely to arise from Sandy-related insurance claims. Please feel free to contact any member of the Group with any questions which you may have at 973-539-1000.

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