



FUNDERBURK & FUNDERBURK, LLP

ATTORNEYS AT LAW

**THE
INSURANCE
ADJUSTER'S
ESSENTIAL GUIDE
FOR HANDLING
TEXAS CLAIMS**

2010

© MARK J. COURTOIS

**2777 ALLEN PARKWAY, SUITE 1000
HOUSTON, TEXAS 77019
VOICE: 713-526-1801
FACSIMILE: 713-526-2708**

About the Author

MARK J. COURTOIS

PARTNER

Education: Preparatory education, University of Notre Dame (B.A. cum laude, 1984); legal education, Southern Methodist University School of Law (J.D., 1990); Dean's Advisory Council 1988-1989; Quarter finalist, 1988 Mock Trial Competition; Associate Justice, 1989 SMU Moot Court Program

Admissions: Texas Bar in 1990; U. S. District Court, Southern District of Texas, Northern District of Texas, Eastern District of Texas, Western District of Texas, and the U.S. Court of Appeals, Fifth Circuit.

Memberships: State Bar of Texas; Houston Bar Association; Houston Young Lawyers Association; Texas Association of Defense Counsel; Member of the Construction Law Section and Litigation Section of the State Bar of Texas; Martindale-Hubbell rated AV.

Reported decisions: *Bodine v. Employers Cas. Co.*, 352 F.3d 245(5th Cir. 2003); *Doddy v. Oxy USA, Inc.*, 101 F.3d 448 (5th Cir. 1996); *Barfield v. City of Houston*, 846 S.W.2d 399 (Tex. App.– Houston [14th Dist.] 1992, writ denied); *K & W Enterprises, Inc. v. Appolito*, 804 F.Supp. 906 (S.D. Tex. 1992).

Publications:

TEXAS CIVIL CAUSES OF ACTION & THEORIES OF LIABILITY REFERENCE GUIDE, 1998
TEXAS DAMAGES, 1998
TEXAS CONSTRUCTION CLAIMS, co-author, 1999
THE INSURANCE ADJUSTER'S ESSENTIAL GUIDE FOR HANDLING TEXAS CLAIMS, 2005-2009
TEXAS LEGAL LIABILITY ADVISOR, editor and author of legal periodical

Prior positions: Juvenile probation officer and runaway shelter counselor, Dallas County Juvenile Department, 1984-1988; President, Notre Dame Club of Houston, 1996-1999; Board member of Houston homeless shelter, 1991- 1993.

Personal: Married to Maria Jorik Courtois, also an attorney, and they have four children.

Contact: FUNDERBURK & FUNDERBURK, LLP
2777 Allen Parkway
Suite 1000
Houston, Texas 77019

Direct phone: 713-620-7226
Firm phone: 713-526-1801
Facsimile: 713-526-2708
Email: mjcourtois@ffllp.com



THE INSURANCE ADJUSTER'S ESSENTIAL GUIDE FOR HANDLING TEXAS CLAIMS

2010

© Mark Courtois

TABLE OF CONTENTS

Chapter		
1.	Introduction	1
2.	Who are Texas Insurance Adjusters?	1
3.	Sources of Ethical Standards	2
	A Insurance Adjusters	
	B Public Adjusters	
4.	The Insurance Policy	3
	A The Consumer Bill of Rights	
	B Duties set out in the Insurance Contract	
5.	Common Law Conflict of Interest	7
	A Uninsured Motorist Claims and the <i>Hunt</i> Presumption	
	B Subrogation	10
6.	Privacy Issues	26
	A Non-Public Personal Financial Information	
	B Non-Public Personal Health Information	
7.	Prohibited Conduct under the Texas Insurance Code	27
	A Prohibited Misrepresentations Regarding Policy or Insurer	
	B Prohibited Misrepresentations Regarding an Insurance Policy	
	C Prohibited Settlement Practices	28
8.	Breach of the Duty of Good Faith and Fair Dealing	34
	A Failure to Investigate	
	B Use of Experts as Basis for Denial	
	C Good Faith Duty to Insured for Third-Party Liability Claims	
9.	Extra-Contractual Claims Against the Insurer	37
	A Where there is no Coverage	
	B Where there is Coverage	
	C No Claim for Negligent Claims Handling	
	D No Duty to Notify Additional Insured of Coverage or Defend without a Request for Coverage	
10.	Prescribed Conduct under the Texas Insurance Code	38
	A Records of Complaints	
	B Providing Claim Information on Request	
	C Provide Written Notice of Offer or Settlement on Casualty Policy Claims	
	D Action to Recover Deductible under certain Auto Insurance	
	E Special Notice Requirements for claimants regarding Motor Vehicle Repairs	
11.	Prompt Payment of First Party Claims	41
	A Importance of Compliance	
	B What Claims are Covered	
	C Initial Response to Receipt of Claim	
	D Deadline for Acceptance or Rejection of Claim	

	E	Payment of Claim	
	F	Penalties for Violations of the Act	
	G	Recommendations about complying with the Act	
12.		Insurance Policy Construction and Defenses	47
	A	Texas Rules of Policy Interpretation	
	B	Policy Defenses and Exclusions	
13.		Handling Third-Party Claims	54
	A	The Insurer's Duties for Third-Party Claims - Defend & Indemnify	
	B	Responding to the Insured's Tender of Defense	
	C	Reservation of Rights	
	D	The Carrier's Right to Control the Defense	
	E	Should a Declaratory Judgment Action be Commenced on Coverage	
	F	Assignments Against Insurers - Important New Development	
	G	Equitable "virtual-Representation" Doctrine	
	H	Settlement Issues	
	I	Attorney Billing Guidelines and Attorney Ethical Issues	
14.		Demands for Policy Limits - Stowers Liability	70
	A	The <i>Stowers</i> Duty	
	B	When is the <i>Stowers</i> Duty Triggered?	
	C	Determining Policy Limits	
	D	Reasonable Settlement	
	E	Excess Insurance and Self-Insured Retention	
	F	Recommendations	
15.		The Texas Deceptive Trade Practices Act	77
	A	Introduction	
	B	Intent to Deceive is Irrelevant to DTPA Liability	
	C	Who is a consumer	
	D	Who is a Proper DTPA Defendant	
	E	Prohibited Trade practices Actionable Under the DTPA	
	F	The Laundry List of Prohibited Conduct	
	G	Contrast to Breach of Contract Claims	
	H	Damages	
	I	Claims Excluded from DTPA	
16.		Procedural Issues for DTPA and Insurance Code Claims	86
	A	Notice Requirements	
	B	Offers of Settlement	
	C	Mediation	
	D	Recommendations	
17.		Conclusion	88

APPENDICES

- A. Consumer Bill of Rights For Homeowners, Dwelling and Renters Insurance
- B. Provisions from homeowner and auto policies relating to insurer Duties After Loss
- C. Map of Texas counties
- D. Map of Texas Metropolitan Statistical Areas, 2003
- E. Map of Texas counties with county seat
- F. Texas Prompt Payment of First Party Claim Worksheet
- G. The Texas "Stowers" Liability Worksheet
- H. Notice & Response Worksheet for Demands Pursuant to DTPA and Insurance Code
- I. Texas Unfair Claim Settlement practices
- J. Statutory Notice required for Motor Vehicle Repairs

THE INSURANCE ADJUSTER'S ESSENTIAL GUIDE FOR HANDLING TEXAS CLAIMS

2010

© Mark Courtois

1 **INTRODUCTION.** Adjusting insurance claims is an inherently stressful profession. The job requires daily encounters with claimants who themselves are usually stressed due to some loss or injury, encounters with plaintiff's attorneys seeking a payday, encounters with the customary negative attitudes and bias against insurance companies, and the daily encounters with supervisors and insurance company management about how a claim is being handled or what was paid to settle a claim. While adjusters are seen as bankers and welfare workers by claimants, they are seen as bank vault guards by insurance company management who many times encourage a frugal approach to claims resolution. And all the while there is the added pressure that actions taken by an adjuster during the claims process may subject the adjuster and company to a subsequent lawsuit or even personal liability. Texas law recognizes that an insurance adjuster can be held personally liable for violations of the Texas Insurance Code, the Texas Deceptive Trade Practices Act, and common law fraud.¹ So not only is there pressure to get good claim results for the company, but making a serious mistake can possibly subject the adjuster to personal liability. Navigating these waters can be tricky, with little ultimate reward aside from knowing that a good job was done. The purpose of this publication is to provide insurance adjusters with an easy to understand guide on the basic requirements and prohibitions involved in handling claims in the State of Texas. Obtaining a working knowledge of these rules is perhaps the single best thing an adjuster can do to avoid, or at least minimize, claims against the adjuster, complaints filed with the Texas Department of Insurance and civil lawsuits alleging extra-contractual claims. This Guide explores the ethical and statutory duties for adjusters under Texas law.

2 **WHO ARE TEXAS INSURANCE ADJUSTERS?**

- A. Insurance adjusters are persons licensed by the Texas Department of Insurance to act as an insurance adjuster. A person may not act as, or represent that the person is, an adjuster in the state of Texas unless the person holds a license with the Texas Department of Insurance.²
- B. But a nonresident adjuster is not required to hold a license to: (1) adjust a single loss in this state; (2) adjust losses arising out of a catastrophe common to all those losses; or (3) act as a temporary substitute for a

¹ See, e.g., *Liberty Mutual Inc. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 484 (Tex.1998); *Gasch v. Hartford Accident & Indemnity Co.*, 491 F.3d 278, 282 (5th Cir.2007); *Blanchard v. State Farm Lloyds*, 206 F.Supp.2d 840, 845 (S.D.Tex.2001) (citing *Griggs v. State Farm Lloyds*, 181 F.3d 694, 700 (5th Cir.1999)).

² TEX. INS. CODE ANN. § 4101.051(formerly TEX. INS. CODE ANN. Art 21.07-4 § 2(a).