

with process and the insurer is expected to answer on its behalf.¹⁷¹ An insurer, even with knowledge of the suit, does not have a duty to inject itself gratuitously into a lawsuit by defending an additional insured who has not requested coverage and has not forwarded complied with the policies forwarding conditions.¹⁷² An insurer that has not been notified that a defense is expected bears no extra-contractual duty to provide notice that defense is available to an additional insured who has not requested one.¹⁷³

10 **PRESCRIBED CONDUCT UNDER THE TEXAS INSURANCE CODE.** This section discusses conduct relating to claims handling that is specifically required of insurers by Texas Statute.

A. **Records of Complaints.** An insurer is required to maintain a complete record of all complaints received by the insurer during the preceding three years or since the date of the insurer's last examination by the department, whichever period is shorter. The record must indicate: 1) the total number of complaints; 2) the classification of complaints by line of insurance; 3) the nature of each complaint; 4) the disposition of the complaints; and 5) the time spent processing each complaint.¹⁷⁴ A "complaint" means any written communication primarily expressing a grievance.¹⁷⁵

B. **Providing Claim Information on Request.**

1) **Providing Liability Claim Information on Request.** On the written request, within six months of date of disposition of claim, by a named insured under a liability insurance policy, the insurer that wrote the policy shall provide to the insured information relating to the disposition of a claim filed under the policy. The information must include: 1) the name of each claimant; 2) details relating to the amount paid on the claim; settlement of the claim; or judgment on the claim; 3) details as to how the claim, settlement, or judgment is to be paid; and 4) any other information required by rule of the commissioner that the commissioner considers necessary to adequately inform an insured with regard to any claim under a liability insurance policy.¹⁷⁶ "Liability insurance" means general liability insurance, professional liability insurance including medical professional liability insurance, commercial automobile liability insurance, and the liability portion of commercial multi-peril insurance.¹⁷⁷

¹⁷¹ *Id.*

¹⁷² *Weaver v. Hartford Accident & Indem. Co.*, 570 S.W.2d 367, 370 (Tex 1978).

¹⁷³ *Nat'l Union*, 246 S.W.3d at 608.

¹⁷⁴ TEX. INS. CODE ANN. § 542.005 (formerly TEX. INS. CODE ANN. Art. 21.21-2 § 2(b)).

¹⁷⁵ *Id.*

¹⁷⁶ TEX. INS. CODE ANN. § 542.101 (formerly TEX. INS. CODE ANN. Art. 21.59).

¹⁷⁷ *Id.*

- 2) **Request by Policyholder Under Property and Casualty Insurance Policy.** On written request of a policyholder, an insurer that writes property and casualty insurance in Texas shall provide the policyholder with a list of claims charged against the policy and payments made on each claim.¹⁷⁸ This does not apply to a workers' compensation insurance policy.
 - 3) **Deadline to Respond 30 days.** An insurer is required to provide this requested information in writing not later than the 30th day after the date the insurer receives the request for the information. Information is considered to be provided on the date the information is deposited with the United States Postal Service or is personally delivered.¹⁷⁹
- C. **Provide Written Notice of Offer or Settlement on Casualty Policy Claim.** Not later than the 10th day after the date an initial offer to settle a claim against a named insured under a casualty insurance policy issued to the insured is made, the insurer shall notify the insured in writing of the offer. Not later than the 30th day after the date a claim against a named insured under a casualty insurance policy issued to the insured is settled, the insurer shall notify the insured in writing of the settlement.¹⁸⁰ This applies to any casualty insurance policy that is delivered, issued for delivery, or renewed in Texas, but does not apply to a casualty insurance policy that requires the insured's consent to settle a claim against the insured, fidelity, surety, or guaranty bonds, or marine insurance as defined by Article 5.53 of the Insurance Code.¹⁸¹
- D. **Action to Recover Deductible under certain Auto Insurance.** If an insurer is liable to an insured for a claim that is subject to a deductible payable by the insured and a third party may be liable to the insurer or the insured for the amount of the deductible, the insurer shall: 1) take action to recover the deductible against the third party not later than the first anniversary of the date the insured's claim is paid; or 2) pay the amount of the deductible to the insured.¹⁸² **But an insurer is not required to take action or pay the amount of the deductible, if not later than the earlier of the first anniversary of the date the insured's claim is paid or the 90th day before the date the statute of limitations for a negligence action expires, the insurer: 1) notifies the insured in writing that the insurer does not intend to take further collection actions against the third party; and 2) authorizes the insured to take further collection actions.**¹⁸³
 This requirement applies to every insurer that issues a private passenger

¹⁷⁸ TEX. INS. CODE ANN. § 542.102 (formerly TEX. INS. CODE ANN. Art. 21.59).

¹⁷⁹ TEX. INS. CODE ANN. § 542.103 (formerly TEX. INS. CODE ANN. Art. 21.59).

¹⁸⁰ TEX. INS. CODE ANN. § 542.153 (formerly TEX. INS. CODE ANN. Art. 21.56).

¹⁸¹ TEX. INS. CODE ANN. § 542.151-152 (formerly TEX. INS. CODE ANN. Art. 21.56).

¹⁸² TEX. INS. CODE ANN. § 542.204 (formerly TEX. INS. CODE ANN. Art. 21.79G).

¹⁸³ *Id.*

automobile insurance policy¹⁸⁴ and regardless of whether the third party who may be liable for the amount of the deductible is insured or uninsured.¹⁸⁵ "Action" as used in this section means taking various actions such as reasonable and diligent collection efforts, mediation, arbitration, and litigation against a responsible third party or the third party's insurer.¹⁸⁶ Obviously, the intent of this legislation is to encourage insurers to take appropriate and necessary steps to collect a deductible from third-parties or their insurers.¹⁸⁷

E. Special Notice Requirements for claimants regarding Motor Vehicle Repairs.

An insurer may not, directly or indirectly, limit its coverage under a policy covering damage to a motor vehicle by specifying the brand, type, kind, age, vendor, supplier, or condition of parts or products that may be used to repair the vehicle or by limiting the beneficiary of the policy from selecting a repair person or facility to repair damage to the motor vehicle covered under the policy.¹⁸⁸ This prohibition also applies to third-party claimants.¹⁸⁹

- 1) The insurer may not: 1) solicit or accept a referral fee or gratuity in exchange for referring a beneficiary or third-party claimant to a repair person or facility to repair the damage; 2) state or suggest, either orally or in writing, to a beneficiary that a specific repair person or facility or a repair person or facility identified on a preferred list compiled by an insurer must be used by a beneficiary in order for the damage repair or parts replacement to be covered by the policy; or 3) restrict a beneficiary's or third-party claimant's right to choose a repair person or facility by requiring the beneficiary or third-party claimant to travel an unreasonable distance to repair the damage.¹⁹⁰ Please refer to Appendix J for sample notice form.
- 2) **At the time the vehicle is presented to an insurer or an insurance adjuster in connection with a claim for damage repair, the insurer or insurance adjuster must provide to the claimant notice of the provisions the person's rights regarding the repair of a motor vehicle.**¹⁹¹
- 3) **Under rules set by the Commissioner of Insurance, an insurer is required to give a specific written notice to any insured or third-party claimant who makes a claim regarding damage to a vehicle.**¹⁹²

¹⁸⁴ TEX. INS. CODE ANN. § 542.203 (formerly TEX. INS. CODE ANN. Art. 21.79G).

¹⁸⁵ TEX. INS. CODE ANN. § 542.204 c (formerly TEX. INS. CODE ANN. Art. 21.79G).

¹⁸⁶ TEX. INS. CODE ANN. § 542.202 (formerly TEX. INS. CODE ANN. Art. 21.79G).

¹⁸⁷ TEX. INS. CODE ANN. § 542.201 (formerly TEX. INS. CODE ANN. Art. 21.79G).

¹⁸⁸ TEX. INS. CODE ANN. § 1952.301(a).

¹⁸⁹ TEX. INS. CODE ANN. § 1952.301(b).

¹⁹⁰ TEX. INS. CODE ANN. § 1952.302.

¹⁹¹ TEX. INS. CODE ANN. § 1952.305.

¹⁹² 28 TAC § 5.501(b).

a. If a claimant presents the vehicle to the insurer in connection with a claim for damage repair, or otherwise makes the claim in person, the written notice must be given to the claimant at that time.¹⁹³ If the claim is made in writing, including e-mail or fax, the insurer must mail the written notice to the claimant within three business days of receiving notice of the claim, unless the insurer otherwise delivers the claimant the written notice within those three business days.¹⁹⁴ If the claim is made by telephone, an insurer must: 1) mail the written notice to the claimant within three business days; or 2) give a specified "verbal notice" to the claimant at the time of the claimant's telephone call and mail the written notice to the claimant within 15 business days of receiving notice of the claim.¹⁹⁵

b. The verbal notice at a minimum must consist of the following:

BY LAW, YOU HAVE THE RIGHT TO SELECT WHERE YOUR MOTOR VEHICLE IS REPAIRED AND THE PARTS USED FOR REPAIRS. HOWEVER, AN INSURANCE COMPANY IS NOT REQUIRED TO PAY MORE THAN A REASONABLE AMOUNT FOR SUCH REPAIRS AND PARTS. YOUR RIGHTS CONCERNING MOTOR VEHICLE REPAIRS ARE EXPLAINED IN THE INSURANCE CODE §§ 1952.301-307, A COPY OF WHICH WILL BE MAILED TO YOU WITHIN 15 BUSINESS DAYS. IF YOU HAVE ANY QUESTIONS ABOUT YOUR MOTOR VEHICLE REPAIR RIGHTS, CONTACT THE TEXAS DEPARTMENT OF INSURANCE AT 1-800-252-3439.¹⁹⁶

c. The written notice must be printed in at least ten point type, with the insurer's name, mailing address, phone number, and fax number printed in bold face type. The insurer may provide an e-mail address or web address printed in bold face type. The notice must be attached to, or have printed on the reverse side, a copy of Insurance code §§ 1952.301-1952.307.¹⁹⁷ A sample notice is attached as Appendix J.

11 **PROMPT PAYMENT OF FIRST PARTY CLAIMS.** The last area of prescribed conduct by Texas Statute relating to claims handling is by far the most important and concerns the prompt payment of first party claims. While the Prompt Payment of Claims Act does not prevent an insurance company from disputing or denying a first party claim, it does require first party claims be handled in a prompt, time

¹⁹³ *Id.*

¹⁹⁴ *Id.* § 5.501©

¹⁹⁵ *Id.* § 5.501(d).

¹⁹⁶ 28 TAC § 5.501.

¹⁹⁷ 28 TAC § 5.501(h).