

unless the party seeking to compel mediation agrees to pay the costs of the mediation.<sup>540</sup>

- D. **Recommendations.** Because the DTPA and Insurance Code require notice by the plaintiff before suit is filed, Defendants usually have advance knowledge that a lawsuit is forthcoming. The codes encourage and reward Defendants who attempt to resolve the matter through a settlement offer. Thorough consideration of the merits of the claim and determination of defense strategy at this early phase, can often take the incentive out of the case for the opposing attorney. Many of these claims are taken on contingency, and if a thoughtful settlement offer is made during this phase, it can effectively prevent plaintiff and plaintiff's counsel from collecting additional damages and the attorney's fees that may be incurred by plaintiff to develop the case for trial. Defendants waste powerful defenses by not taking advantage of the procedural aspects of these codes.

- 17 **CONCLUSION.** Most, if not all, claims handling issues that result in the problems can be eliminated by an adjuster's familiarity and education in three basic areas of Texas law: 1) The Prompt Payment of Claims statute; 2) the list of prohibited unfair claim settlement practices, and 3) *Stowers*. The importance of adjuster education cannot be underestimated. This Guide provides information regarding the laws and regulations that adjusters should be aware of in handling Texas claims. Forms have been provided to assist adjusters with specific time deadlines. Please keep this Guide available for future reference when questions arise regarding the handling of a Texas claim.

**APPENDICES FOLLOW**

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<sup>540</sup> See TEX. BUS. & COM. CODE ANN. § 17.5051(f); TEX INS. CODE §541.161(f).