

FAIR CLAIMS HANDLING STATUTES A 50 STATE SURVEY



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JUNE 2016

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June 2016

Dear Clients:

Eagle International Associates is proud to present *Fair Claims Handling Statutes - A 50 State Survey*, a compendium of the rules and statutes for the 50 states and District of Columbia concerning fair claims practices. Eagle members for all states contributed to this publication. It is an example of the collective efforts of Eagle providing both service and benefits to clients. We hope that you will find this booklet informative and useful in your respective practices and businesses. We invite you to contact any Eagle member with questions or comments.

With best wishes,

The Members of Eagle International Associates, Inc.

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ALABAMA

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First Party Claims:

Alabama Administrative Code

General statute governing Fair Claims Practices, if any:

Chapter 482-1-125 of the Alabama Administrative Code sets forth the minimum standards for the investigation and disposition of property and casualty claims arising under insurance contracts or certificates issued to residents of Alabama. Violation of that chapter is not admissible as evidence in any civil or criminal court proceeding (Ala. Admin. Code r. 482-1-125-.02).

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: Insurer must acknowledge receipt of notification of claim within 15 days unless payment is made within that period of time (Ala. Admin. Code r. 482-1-125-.06(1)). Providing necessary claim forms, instructions, or reasonable assistance so that the claimant can comply with policy conditions and insurer's reasonable requirements will constitute acknowledgment of the claim (Ala. Admin. Code r. 482-1-125-.06(4)). For purposes of this requirement, notice of claim to a producer of an insurer is considered notification to the insurer.

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: Within 30 days, or the number of days specified in the policy, of receipt of the proof of loss, claimant shall be advised of the status of acceptance or denial of the claim (Ala. Admin. Code r. 482-1-125-.07(1)). A reasonable basis, supported by specific information, for suspecting claimant of fraud relieves insurer of this requirement.

Must carrier demonstrate prejudice to disclaim on late notice: NO

Alabama allows a primary insurer to deny coverage because of untimely notice without proof of prejudice. Excess carriers must show prejudice to deny coverage on a failure to comply with notice provisions of the policy (Jenelle Mims Marsh & Charles W. Gamble, Alabama Law of Damages § 27:1).

Timeframe for issuing reservation of rights, if any:

Time Limit: Within 30 days, or the number of days specified in the policy, of receipt of the proof of loss, claimant shall be advised of the status of acceptance or denial of the claim (Ala. Admin. Code r. 482-1-125-.07(1)). If the insurer needs more time to determine whether to accept or deny a claim, it shall notify the insured that it needs more time within 30 days, or the time specified in the policy, after receipt of proof of loss and give the reasons why such additional time is needed (Ala. Admin. Code r. 482-1-125-.07(2)).

Additional Fair Claims Practices regulation of significance, if any:

Ala. Admin. Code r. 482-1-125-.05(2) - The insurer is prohibited from denying a first party claim based upon failure to give proper written notice within a specified time, unless such failure breaches a specific policy provision concerning notice.

Ala. Admin. Code r. 482-1-125-.05(3) - The insurer is prohibited from indicating on a check or accompanying letter that said payment is "final" or "a release" of a claim unless the policy limit has been paid or there has been an agreed to compromise settlement.

Ala. Admin. Code r. 482-1-125-.05(4) - Prohibits issuing checks or drafts in partial settlement that contains language purporting to release the insurer or its insured from total liability.

Ala. Admin. Code r. 482-1-125-.06(3) - A reply to all written requests by the insured must be made within 15 days of receipt of written communications.

Ala. Admin. Code r. 482-1-125-.06(4) - The insurer must provide necessary claim forms, instructions or reasonable assistance to the insured within 15 days of receipt of a claim.

Ala. Admin. Code r. 482-1-125.07(2) - If the insurer needs more time to determine whether to accept or deny a claim, it shall notify the insured within 30 days, or the time specified in the policy, after receipt of proof of loss that it needs more time and giving the reasons. A reasonable basis, supported by specific information, for suspecting claimant of fraud relieves insurer of this requirement. There is no need to notify if the claim is in litigation.

Ala. Admin. Code r. 482-1-125.07(2) - If the investigation remains incomplete, the insurer shall notify the insured 45 days from the initial notification, and every 45 days thereafter, of the reasons that additional time is needed. A reasonable basis, supported by specific information, for suspecting claimant of fraud relieves insurer of this requirement. There is no need to notify if the claim is in litigation.

Ala. Admin. Code r. 482-1-125-.07(4) - The insurer is prohibited from knowingly ceasing or prolonging settlement negotiations with the intention to allow the statute of limitations to run.

Ala. Admin. Code r. 482-1-125.07(6) - The insurer is required to tender payment within 30 days, or the time specified in the policy, after (a) accepting liability, (b) reaching an agreement on the amount of the claim, and (c) receiving documents necessary to consummate the settlement.

Ala. Admin. Code r. 482-1-125-.08(3) - The insurer cannot require an automobile claimant to travel an unreasonable distance to (a) inspect a replacement vehicle, (b) obtain a repair estimate, or (c) have the vehicle repaired at a specific repair shop.

Ala. Admin Code r. 482-1-125-.08(4) - The insurer must supply the insured a copy of an estimate prepared by or for the insurer and relied upon to settle a partial loss automobile claim. Estimate must be reasonable and in an amount to allow for repairs to be made in a workmanlike manner.

Ala. Admin. Code r. 482-1-125-.08(6) - When an insurer elects to repair and designates a specific repair shop for automobile repairs, damaged vehicle is to be restored as nearly as possible to its condition prior to loss. Insurer must make reasonable efforts to assure that repairs are completed within a reasonable period of time. This provision does not create a duty to pay for alleged diminution in value.

Ala. Admin. Code r. 482-1-125-.08(7) - The insurer must provide reasonable notice prior to termination of payment for automobile storage charges to allow insured to remove the vehicle from storage prior to termination of payment.

Ala. Admin. Code r. 482-1-125-.08(9) - The proposed use of replacement parts requires visible identification of the non-original equipment and the use of non-original equipment must be clearly disclosed.

Ala. Admin. Code r. 482-1-125-.09(1) - Any consequential physical damage necessarily or reasonably incurred in making repair or replacement is to be included in the loss based on replacement costs under a fire policy.

Ala. Admin. Code r. 482-1-125-.09(2) - For residential fire and extended coverage policies that provide for adjustment on actual cash value basis, actual cash value is determined (a) by replacement cost less depreciation, (b) by market value, or (c) as otherwise provided in policy. However, where the property has nominal or no economic value, or a value disproportionate to replacement cost less depreciation, such a determination is not required.

[Alabama Administrative Code](#)

Third Party Claims:

Alabama Administrative Code

General statute governing Fair Claims Practices, if any:

The purpose of Chapter 482-1-125 of the Alabama Administrative Code is to set forth the minimum standard for the investigation and disposition of property and casualty claims arising under contracts or certificates issued to residents of Alabama. Evidence of violation of that chapter is not admissible as evidence in any civil or criminal court proceeding (Ala. Admin. Code r. 482-1-125-.02).

Duty to Defend vs. Duty to Indemnify:

The duty to defend and/or indemnity is not addressed in Chapter 482-1-125 of the Alabama Administrative Code.

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: There is no time limit in Chapter 482-1-125 of the Alabama Administrative Code relevant to third party claimants.

Timeframe for issuing denial of liability, if any:

Time Limit: This is not addressed in Chapter 482-1-125 of the Alabama Administrative Code relevant to third party claimants.

Must carrier demonstrate prejudice to disclaim on late notice: NO

Alabama allows the primary insurer to deny coverage for untimely notice without proof of prejudice. Excess carriers must show prejudice in order to base denial of coverage on a failure to comply with notice provisions of the policy (Jenelle Mims Marsh & Charles W. Gamble, Alabama Law of Damages § 27:1).

Timeframe for issuing reservation of rights, if any:

Time Limit: There is no time limit for reservation of rights in Chapter 482-1-125 of the Alabama Administrative Code relevant to third party claimants.

Additional Fair Claims Practices regulation of significance, if any:

Ala. Admin. Code r. 482-1-125-.05(4) - An insurer is prohibited from issuing checks or drafts in partial settlement that contains language purporting to release the insurer or its insured from total liability.

Ala. Admin. Code r. 482-1-125-.07(4) - An insurer is prohibited from knowingly ceasing or prolonging settlement negotiations with the intention to allow the statute of limitations to run.

Ala. Admin. Code r. 482-1-125-.07(5) - The insurer is prohibited from knowingly making false statements indicating that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time.

Ala. Admin. Code r. 482-1-125.07(6) - The insurer must tender payment within 30 days, or the time specified in the policy, after (a) accepting liability, (b) reaching an agreement on the amount of the claim, and (c) receiving documents necessary to consummate the settlement.

Ala. Admin. Code r. 482-1-125-.08(2) - An insurer cannot recommend to third party automobile claimant that the claimant make a claim under their own policy solely to avoid paying claims under the insurer's policy.

Ala. Admin. Code r. 482-1-125-.08(3) - The insurer is prohibited from requiring an automobile claimant to travel an unreasonable distance to (a) inspect a replacement vehicle, (b) obtain a repair estimate, or (c) have the vehicle repaired at a specific repair shop.

Ala. Admin Code r. 482-1-125-.08(4) - The insurer must supply the insured a copy of an estimate prepared by or for the insurer and relied upon to settle a partial loss automobile claim. The estimate must be reasonable and in an amount to allow for repairs to be made in a workmanlike manner.

Ala. Admin. Code r. 482-1-125-.08(6) - When an insurer elects to repair and designates a specific repair shop for automobile repairs, damaged vehicle is to be restored as nearly as possible to its condition prior to loss. Insurer must make reasonable efforts to assure that repairs are completed within a reasonable period of time. This provision does not create a duty to pay for alleged diminution in value.

Ala. Admin. Code r. 482-1-125-.08(9) - The proposed use of replacement parts requires visible identification of the non-original equipment and the use of non-original equipment must be clearly disclosed.

[Alabama Administrative Code](#)

Matching

In Alabama there is no specific law on matching, but if the right arguments are made, the insured may be able to collect insurance benefits to put his/her property back in its pre-loss condition of having a uniform and consistent appearance.

Stated Value Policy

Stated value coverage pays to repair or replace the insured item, whichever is less, at the time that a claim is filed. A stated value policy (sometimes called stated amount or maximum limit of liability) does not promise upfront to pay this stated amount. In the event of a covered total loss, it may pay less than the stated amount, as the insurer has the right to pay the lesser of, for example, someone's collector car's depreciated actual cash value (ACV) or its replacement cost. Also, many insurers that offer stated value policies require periodic appraisals to substantiate the insured amount, adding cost and inconvenience to the client. *Hawk v. Rogers*, 989 So. 584 (Ala. Civ. App. 2008).

Appraisal Process

If there is a dispute between the insured, and the insurer, the insured should try to resolve the dispute and include the insured's contractor in the discussions on site. If the disagreement remains, the insured should utilize the Appraisal provision of his/her policy and employ an Appraiser with experience to help. This person usually will not be the same person as the insured's contractor. In Alabama, insurance appraisal is a binding and legal process, and as such, the decision should be carefully and strategically considered with the help of a trusted and experienced public adjuster. An award fixing fire loss was not invalidated because one of the appraisers was an attorney and not a contractor or architect, and the testimony showed that the appraiser had a basis for forming a proper judgment. Furthermore, the policy did not limit the selection of appraisers to contractors or architects. *Glen Falls Ins. Co. V. Garner*, 229 Ala. 39, 155 So. 533 (Ala. 1934). Additionally, in Alabama, issues of causation cannot be determined during the appraisal. See *Rogers v. State Farm Fire & Cas. Co.*, 984 So.2d 382 (Ala. 2007); *Caribbean I Owners' Ass'n., Inc. v. Great American Ins. Co. of NY*, 619 F.Supp.2d 1178 (S.D. Ala. 2008).

ALASKA

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702-221-1399

First Party Claims:

General statute governing Fair Claims Practices, if any:

[Alaska Stat. § 21.36.125](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 10 days ([Alaska Admin. Code tit. 3, § 26.040](#)). Within 10 days after receipt of notification of a claim, the insurer must give written acknowledgement to the insured, identifying the person handling the claim, including that person's name, address, telephone number, the firm name and the file number.

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 15 days after receipt of statement of claim, proof of loss, or other acceptable evidence of loss ([Alaska Admin. Code tit. 3, § 26.070](#)).

Must carrier demonstrate prejudice to disclaim on late notice: YES

Weaver Bros. Inc. v. Chappel, 684 P2d 123 (Alaska 1984).

Timeframe for issuing reservation of rights, if any:

Time Limit: 15 days after receipt of statement of claim, proof of loss, or other acceptable evidence of loss ([Alaska Admin. Code tit. 3, § 26.070](#)).

Additional Fair Claims Practices regulation of significance, if any:

[Alaska Admin. Code tit. 3, § 26.040](#) - The insurer must also "promptly" provide necessary claim forms, instructions and assistance to either the insured or a third-party claimant.

[Alaska Admin. Code tit. 3, § 26.040](#) - The insurer must respond to all other communications from an insured or a third-party claimant within 15 days of receipt.

[Alaska Stat. § 21.36.125\(15\)](#) - Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to facts or applicable law for denial of a claim or for the "compromise of a settlement" constitutes an unfair claim settlement practice.

[Alaska Admin. Code tit. 3 § 26.070](#) - While the initial investigation remains incomplete, additional written notification shall be provided within 45 days of the initial notification, and no more than every 45 days thereafter giving the reasons that additional time is necessary to complete the investigation.

[Alaska Admin. Code tit. 3 § 26.070\(2\)](#) - The insurer must pay the portions of the claim not in dispute within 30 working days of a properly executed statement of claim, proof of loss, or other acceptable evidence of loss.

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[Alaska Stat. § 21.36.125](#).

Duty to Defend vs. Duty to Indemnify:

An insurer's duty to defend and its obligation to indemnify are separate and distinct contractual elements. The duty to defend is broader than the duty to provide coverage. A duty to defend arises whenever a complaint sufficiently alleges an issue of liability covered by the policy on its face, even if the allegations of the complaint are false or groundless. Tush v. Pharr, 68 P3d 1239 Alaska (2003).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: 10 days ([Alaska Admin. Code tit. 3, § 26.040](#)). Within 10 days after receipt of notification of a claim, the insurer must give written acknowledgement to the insured, identifying the person handling the claim, including that person's name, address, telephone number, the firm name and the file number.

Timeframe for issuing denial of liability, if any:

Time Limit: 15 days from proof of loss ([Alaska Admin. Code tit. 3, § 26.040](#)).

Must carrier demonstrate prejudice to disclaim on late notice: YES

Weaver Bros. Inc. v. Chappel, 684 P2d 123, 126 (Alaska 1984).

Timeframe for issuing reservation of rights, if any:

Time Limit: 15 days from proof of loss ([Alaska Admin. Code tit. 3, § 26.040](#)).

Additional Fair Claims Practices regulation of significance, if any:

[Alaska Admin. Code tit. 3, § 26.040](#) - The insurer must also “promptly” provide necessary claim forms, instructions and assistance to either the insured or a third-party claimant.

[Alaska Admin. Code tit. 3, § 26.040](#) - The insurer must respond to all other communications from an insured or a third-party claimant within 15 days of receipt.

[Alaska Stat. § 21.36.125\(15\)](#) - Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to facts or applicable law for denial of a claim or for the “compromise of a settlement” constitutes an unfair claim settlement practice.

Matching

Resolution of the concept of replacement costs and matching products requires an analysis of the specific language of the particular insurance policy at issue. See *Bering Strait Sch. Dist. v. RLI Ins. Co.*, 873 P2d 1292 (Alaska 1994). Some policies require that the new property be identical or similar to the damaged property. See 15 Couch on Insurance § 176:65 (3 ed 2005 and Supp. 2015).

Stated Value Policy

Stated value policies are not referenced by statute in Alaska.

Appraisal Process

A motor vehicle, property coverage policy, or any other policy providing first property, casualty, or inland marine coverage must include an appraisal clause. Each party selects an appraiser and then an umpire is appointed. [Alaska Stat. § 21.96.035](#).

ARIZONA

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First Party Claims:

General statute governing Fair Claims Practices, if any:

[Ariz. Rev. Stat. § 20-461](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 10 working days ([Ariz. Admin. Code § R20-6-801](#)).

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 15 working days from proof of loss ([Ariz. Admin. Code R20-6-801\(G\)\(1\)\(a\)](#)).

Must carrier demonstrate prejudice to disclaim on late notice: YES

[Ariz. Admin. Code R20-6-801\(D\)\(4\)](#)

Timeframe for issuing reservation of rights, if any:

Time Limit: 15 working days from proof of loss ([Ariz. Admin. Code R20-6-801\(G\)\(1\)\(a\)](#)).

Additional Fair Claims Practices regulation of significance, if any:

[Ariz. Admin. Code § R20-6-801\(E\)\(3\)](#) - Responses to all other communications from an insured must take place within 10 days of receipt.

[Ariz. Admin. Code R20-6-801\(G\)\(1\)\(b\)](#) - If additional time is needed to determine coverage, the insurer must notify the insured within 15 working days after receipt of the proofs of loss, giving the reasons more time is needed. If additional time for investigation is needed, then the insurer shall send a letter setting forth the reasons additional time is needed investigation 45 days from the initial notification and every 45 days thereafter.

[Ariz. Rev. Stat. § 20-461\(5\)](#) - Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to facts or applicable law for denial of a claim or for the compromise of a settlement constitutes an unfair claim settlement practice

Third Party Claims:

NOTE: Arizona has no direct third party bad faith claim.

General statute governing Fair Claims Practices, if any:

[Ariz. Rev. Stat. § 20-461](#)

Duty to Defend vs. Duty to Indemnify:

Arizona recognizes that insurers have both the duty to defend and also a duty to indemnify, which are separate and distinct.

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Not applicable, Arizona does not recognize a direct third party bad faith claim.

Timeframe for issuing denial of liability, if any:

Not applicable, Arizona does not recognize a direct third party bad faith claim.

Must carrier demonstrate prejudice to disclaim on late notice:

Not applicable, Arizona does not recognize a direct third party bad faith claim.

Timeframe for issuing reservation of rights, if any:

Not applicable, Arizona does not recognize a direct third party bad faith claim.

Additional Fair Claims Practices regulation of significance, if any:

[Leal v. Allstate Ins. Co](#), 199 Ariz. 250, 17 P.3d 95 (App. 2000)- Court recognizes no statutorily implied duty of good faith and fair dealings on part of automobile insurer, in favor of third party claimant, as to claim settlement practices.

Matching

There is no Arizona statute or published case law regarding matching obligations.

Stated Value Policy

There is no Arizona statute or published case law regarding stated value policies.

Appraisal Process

There is no Arizona statute or published case law that could be found regarding when property damage

appraisals are required. However, if an insurance policy contains an appraisal clause, waiver of such a clause is not favored. *Meineke v. Twin City Fire Ins. Co.*, 181 Ariz. 576, 581, 892 P.2d 1365, 1370 (App. 1994). Once a party invokes the appraisal procedure, the party seeking to prove waiver of the appraisal clause has the burden of proof. *Id.* If an insurance policy contains an appraisal clause, but does not provide a time for requesting an appraisal, a request for an appraisal must be made within a reasonable time. *Id.* at 582, 892 P.2d at 1371. The timeliness of a demand for appraisal depends on the circumstances existing at the time the demand was made including the timing between the breakdown of good faith negotiations concerning the amount of loss suffered by the insured and the appraisal demand. *Id.*

ARKANSAS

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First Party Claims:

General Statute governing Fair Claims Practice:

[Ark. Code Ann. § 23-66-201, et seq. \(2015\)](#) and Arkansas Insurance Commission Regulations codified at [054-00-043 Ark. Code R. § 1, et seq. \(Weil 2001\)](#).

Time frame for contacting Insured upon initial receipt of claim:

Time Limit: 15 days ([054-00-043 Ark. Code R. § 7\(a\) \(Weil 2001\)](#)).

Time frame for issuing disclaimer of coverage:

Time Limit: 15 days from proof of loss ([054-00-043 Ark. Code R. § 9\(a\)\(1\) \(Weil 2001\)](#)).

Must carrier demonstrate prejudice to disclaim on late notice: YES

[054-00-043 Ark. Code R. § 9\(j\) \(Weil 2001\)](#)

Time frame for issuing reservation of rights:

Time Limit: 15 days from proof of loss ([054-00-043 Ark. Code R. § 9\(a\) \(Weil 2001\)](#)).

Additional Fair Claims Practices regulation of significance:

[054-00-043 Ark. Code R. § 7\(c\) \(Weil 2001\)](#) - An insurer must respond to all communication from an insured within 15 working days.

[054-00-043 Ark. Code R. § 9\(a\)\(2\)\(Weil 2001\)](#) - If more time is needed to investigate a claim, the insurer must notify the insured of that fact within 15 days of the insurer's receipt of a proof of loss. If additional time is needed, the insurer must notify the insured within 45 days from the initial notification and every 45 days thereafter, setting forth the reasons that additional time for investigation is required. Ark. Code Ann. § 23-79-126 (2001 Repl.);

[054-00-043 Ark. Code R. § 7\(\)\(a\) \(Weil 2001\)](#) - Insurers shall furnish forms for proof of loss within 20 calendar days after a loss has been reported or the insurer waives proof of loss requirements.

Third Party Claims:

General Statute governing Fair Claims Practices:

[Ark. Code Ann. § 23-66-201, et seq. \(2015\)](#) and Arkansas Insurance Commission Regulations codified at [054-00-043 Ark. Code R. § 1, et seq. \(Weil 2001\)](#).

Duty to Defend vs. Duty to Indemnify:

The Fair Claims Practices statutes and regulations do not address the duty to defend and the duty to indemnify. Generally, in examining an insurer's duty to defend, the allegations in the pleadings are evaluated against the insured's policy to determine the insurer's duty to defend. However, the duty to defend arises when there is a possibility that the injury or damage may fall within the policy coverage. Conversely, where there is no possibility that the damage alleged in the complaint may fall within the policy there would be no duty to defend. Thus, the duty to defend is broader than the duty to indemnify. See *e.g.*, [Murphy Oil USA, Inc. v. Unigard Security Insurance Co.](#), 347 Ark. 167, 176, 61 S.W.3d 807, 813 (2001).

Matching

There is no statute or case law that could be found.

Stated Value Policy

There are references to stated value policy in statutes in [Ark. Code Ann. 23-88-101](#). However, the costs of labor may not be depreciated when determining the actual case value of a covered loss under an indemnity insurance policy that does not define the term actual cash value. *Adams v. Cameron Mutual Ins. Co.*, 2013 Ark. 475 (2013).

Appraisal Process

Appraisals are required if there is not an agreement on value.

<http://www.insurance.arkansas.gov/Legal/Rules/Rule43.pdf>

CALIFORNIA

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First Party Claims:

General statute governing Fair Claims Practices, if any:

[Cal. Ins. Code § 790.03\(h\)\(2\) and \(3\) \(2015\)](#). (Note: § 790.03 is preempted where it conflicts with ERISA. See *Quaresma v. BC Life & Health Ins. Co.* (E.D. Cal. 2007) 623 F.Supp.2d 1110, 1137-44.)

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 15 days ([Cal. Code Regs., tit. 10, § 2695.5\(e\)](#)).

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 40 days after proof of claim. ([Cal. Code Regs. tit. 10, § 2695.7\(b\)](#)).

This timeframe does not apply to claims arising from policies of disability insurance subject to [Cal. Insurance Code § 10123.13](#), disability income insurance subject to [Cal. Insurance Code § 10111.2](#) or mortgage guaranty insurance subject to [Cal. Insurance Code § 12640.09\(a\)](#), nor does it apply to automobile repair bills arising from policies of automobile collision and comprehensive insurance subject to [Cal. Insurance Code § 560](#). [Cal. Code Regs., tit. 10, § 2695.7\(b\)\(4\)](#). This timeframe is increased to 80 days (or suspended until otherwise ordered by the Commissioner) where there is a reasonable basis, supported by specific information, to suspect the submitted claim is false or fraudulent. [Cal. Code Regs., tit. 10, § 2695.7\(k\)](#).

Must carrier demonstrate prejudice to disclaim on late notice: YES.

Safeco Ins. Co. of America v. Parks (2009) 170 Cal.App.4th 992, 1003-04 (citing Shell Oil Co. v. Winterthur Swiss Ins. Co. (1993) 12 Cal.App.4th 715, 761).

Timeframe for issuing reservation of rights, if any:

Time Limit: 40 days after proof of claim ([Cal. Code Regs. tit. 10, § 2695.7\(b\)](#)).

Additional Fair Claims Practices regulation of significance, if any:

[Cal. Code Regs. tit. 10, § 2695.5\(b\)](#) - An insurer must respond to any other communication by an insured within 15 days.

[Cal. Code Regs. tit. 10, § 2695.7\(c\)\(1\)](#) - If more time is needed to investigate a claim, the insurer must notify the insured of that fact within 40 days of its receipt of a proof of loss, setting forth the reasons that additional time for investigation is required and every 30 days thereafter until the determination is made or legal action is served.

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[Cal. Ins. Code § 790.03\(h\)\(2\) and \(3\) \(2015\)](#). (Note: § 790.03 is preempted where it conflicts with ERISA. See Quaresma v. BC Life & Health Ins. Co. (E.D. Cal. 2007) 623 F.Supp.2d 1110, 1137-44.)

Duty to Defend vs. Duty to Indemnify:

Montrose Chem. Corp. v. Superior Court, 6 Cal. 4th 287, 861 P.2d 1153 (1993): The insurer's duty to defend is broader than its obligation to indemnify and may exist where coverage is in doubt and ultimately does not develop. An insurer must defend claims which potentially seek damages that are within the policy's coverage. Whether an insurer owes a duty to defend is usually determined by comparing the complaint's allegations to the policy's terms. Evidence extrinsic to the underlying complaint may be used to defeat or generate a duty to defend.

Montrose Chem. Corp. v. Admiral Ins. Co., 10 Cal. 4th 645, 913 P.2d 878, fn.9 (1995): The duty to defend arises when there is a potential for indemnity. The duty to indemnify arises when an insured's liability is established. Even if an insurer has a duty to defend, it may ultimately not have a duty to indemnify either because damages were not awarded or because the judgment was for damages that are not covered under the policy.

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: 15 days ([Cal. Code Regs., tit. 10, § 2695.5\(e\)](#)).

Timeframe for issuing denial of liability, if any:

Time Limit: 40 days after proof of claim ([Cal. Code Regs., tit. 10, § 2695.7\(b\)](#)).

This timeframe does not apply to claims arising from policies of disability insurance subject to [Cal. Insurance Code § 10123.13](#), disability income insurance subject to [Cal. Insurance Code § 10111.2](#) or mortgage guaranty

insurance subject to [Cal. Insurance Code § 12640.09\(a\)](#), nor does it apply to automobile repair bills arising from policies of automobile collision and comprehensive insurance subject to [Cal. Insurance Code § 560](#). [Cal. Code Regs., tit. 10, § 2695.7\(b\)\(4\)](#). This timeframe is increased to 80 days (or suspended until otherwise ordered by the Commissioner) where there is a reasonable basis, supported by specific information, to suspect the submitted claim is false or fraudulent. [Cal. Code Regs., tit. 10, § 2695.7\(k\)](#).

Must carrier demonstrate prejudice to disclaim on late notice: YES.

Safeco Ins. Co. of America v. Parks (2009) 170 Cal.App.4th 992, 1003-04 (citing *Shell Oil Co. v. Winterthur Swiss Ins. Co.* (1993) 12 Cal.App.4th 715, 761).

Timeframe for issuing reservation of rights, if any:

Time Limit: 40 days after proof of claim ([Cal. Code Regs. tit. 10, § 2695.7\(b\)](#)).

Additional Fair Claims Practices regulation of significance, if any:

[Cal. Code Regs., tit. 10, § 2695.5\(b\)](#) - An insurer must respond to any other communication by an insured within 15 days.

[Cal. Code Regs., tit. 10, § 2695.7\(c\)\(1\)](#) - If more time is needed to investigate a claim, the insurer must notify the insured of that fact within 40 days of its receipt of a proof of loss, setting forth the reasons that additional time for investigation is required and every 30 days thereafter until the determination is made or legal action is served.

Matching

In 1990, the National Association of Insurance Commissioners adopted a new section of the “Unfair Property/Casualty Claims Settlement Practices Model Regulation.” Section 9 of the model regulation provides:

A. When the policy provides for the adjustment and settlement of first-party losses based on replacement cost, the following shall apply:

(2) When a loss requires replacement of items and the replaced items do not match in quality, color or size, the insurer shall replace all such items in the area so as to conform to a reasonably uniform appearance. This applies to interior and exterior losses. The insured shall not bear any cost over the applicable deductible, if any.

10 CCR § 2695.9

California adopted a regulation that clarifies the model regulation’s reference to “the area.” California’s regulation requires replacement of “all items in the *damaged* area so as to conform to a reasonably uniform appearance.” Cal. Code Regs. tit. 10, § 2695.9 (emphasis added).

California courts have found that matching regulations can provide at least support for a breach of contract claim. In *Rattan v. United Services Automobile Association*, 84 Cal. App. 4th 715, 724, 101 Cal. Rptr. 2d 6, 12 (Cal. Ct. App. 2000), the court found that the trial court was justified in rejecting a jury instruction suggesting that any violation of the “reasonably uniform appearance” regulation was per se a breach of contract or an act of bad faith, rather than merely evidence of a breach or bad faith. Notably, California’s regulation does not contain the language indicating that the regulation does not create a private right of action.

Stated Value Policy

The stated value issue seems to involve when a carrier is required to pay the policy limits of a property policy particularly if there is a total loss.

Whether to accept a policy limits demand depends on whether the settlement demand is reasonable under the circumstances. "The duty of good faith and fair dealing does not impose a categorical obligation to accept a settlement demand regardless of cost." *Continental Casualty Co. v. United States Fidelity & Guaranty Co.*,

516 F.Supp. 384, 389 (N.D. Cal. 1981). The duty of good faith requires an insurer "to settle in an appropriate case." *Walbrook Ins. Co., Ltd. v. Liberty Mutual Ins. Co.*, 5 Cal.App.4th 1445, 1456 (1992) (quoting *Comunale v. Traders & General Ins. Co.*, *supra*, 50 Cal.2d at 659)

Under California law, "there is an implied covenant of good faith and fair dealing in every contract that neither party will do anything which will injure the right of the other to receive the benefits of the agreement." *Comunale v. Traders & General Insurance Co.*, 50 Cal.2d 654, 658 (1958). This principle is applicable to policies of insurance. This implied covenant imposes on the insurer a duty to settle a claim whenever there is a substantial likelihood of a recovery in excess of its policy limits. *Id.* at 659;

Liability insurers must accept a policy limit settlement offer when the amount of the judgment is "likely" to exceed the policy limit. *Miller v. Elite Ins. Co.*, 100 Cal.App.3d 739, 759 (1980).

Case law suggests a settlement demand is "reasonable" if it is equal to or less than the sum of the products of each possible outcome of a case and the probability of that outcome occurring. For instance, in *Miller*, *supra*, a \$5,000 settlement was reasonable as a matter of law when the insurer assessed damages at \$11,000 and the insured's liability was a 50 percent certainty.

Appraisal Process

Currently every fire insurance policy issued in California requires that certain disputes be submitted to a process known as appraisal if demanded by either party to the policy. Cal.Ins.Code Section 2070; 2071. However, appraisal may be waived. Cal.Ins.Code Section 2075. Many other types of policies, including earthquake policies, require the use of the appraisal process in certain circumstances.

10 CCR § 2695.9 reads in pertinent part:

(e) Once the appraisal provision under an insurance policy is invoked, the appraisal process shall not include any legal proceeding or procedure not specified under California Insurance Code Section 2071. Nothing herein is intended to preclude separate legal proceedings on issues unrelated to the appraisal process.

Question of binding v. non-binding:

California Code of Civil Procedure Section 1280(a) reads:

"Agreement" includes but is not limited to agreements providing for valuations, appraisals and similar proceedings and agreements between employers and employees or between their respective representatives.

It is well settled that an agreement in an insurance policy to submit a claim to the appraisal process is an "agreement" within the meaning of California Code of Civil Procedure section 1280, subdivision (a), and is therefore considered to be an arbitration agreement subject to the statutory contractual arbitration law. (*Lambert v. Carneghi*, 158 Cal.App.4th 1120, 1129-1130 (2008); *Kacha v. Allstate Insurance Company*, 140 Cal. App.4th 1023, 1031 (2006) (*Kacha*) ["Appraisal hearings are a form of arbitration and are generally subject to rules governing arbitration"].)

§ 1286.2. Grounds for vacation of award

According to California Code of Civil Procedure Section 1286.2, an appraisal award can be vacated only if one of the following six grounds is present:

- 1) The award was obtained through corruption, fraud, or undue means.
- 2) There was corruption on the part of any of the appraisers.
- 3) The rights of a party were substantially prejudiced by the misconduct of a neutral appraiser.
- 4) The award exceeded the powers of the appraisers.

5) The rights of a party were substantially prejudiced by the refusal of the appraisers to postpone the hearing upon sufficient cause being shown or by the refusal of the appraisers to hear evidence material to the controversy or by other conduct of the appraisers contrary to the provisions of law.

6) A neutral appraiser who was subject to disqualification failed, upon receipt of a timely demand, to disqualify himself or herself.

After the panel of competent and disinterested appraisers has been selected, has listened to or reviewed the evidence, and has made its own independent investigation, the panel will render an award, which can be confirmed, vacated, or corrected. The parties have 100 days in which to seek to correct or vacate the award and four years to confirm it-a clear indication of the courts' bias toward confirmation.

In California, an appraisal award may be confirmed by filing a petition with the superior court. Once confirmed, the award becomes a judgment and can be enforced in the same way as any civil judgment.

An appraisal award can be corrected only if there is an obvious mathematical error. It cannot be corrected to fix an error of fact or law, even if the error is obvious on the face of the document. *Moshonov v. Walsh*, 22 Cal. 4th 771,775 (2000) (Even if a contract provides for an award of attorney's fees to the prevailing party, and a party prevails on the contract but the award fails to include attorney's fees, the award cannot be corrected to add the fees.).

Thus, the most successful attacks on an appraisal award focus on whether the award was obtained through undue means. To attack an award via a petition to vacate is difficult. The courts are loath to set aside any award without the clearest of evidence of fraud, corruption, or undue means.

COLORADO

For more information, please contact an Eagle Member:

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303-320-0509

First Party Claims:

General statute governing Fair Claims Practices, if any:

[C.R.S. § 10-3-1101 through § 10-3-1116.](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: Reasonably promptly ([C.R.S. § 10-3-1104\(1\)\(h\)\(III\)-\(VIII\)](#)).

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 60 days after a valid and complete claim ([3 C.C.R. § 702-5-1-14](#)).

Must carrier demonstrate prejudice to disclaim on late notice: YES

Friedland v. Travelers Indem. Co., 105 P.3d 639, 648 (Colo. 2005);

Clementi v. Nationwide Mut. Fire Ins. Co., 16 P.3d 223, 232 (Colo. 2001).

Timeframe for issuing reservation of rights, if any:

Time Limit: 60 days after a valid and complete claim ([3 C.C.R. § 702-5-1-14](#)).

Additional Fair Claims Practices regulation of significance, if any: N/A

Third Party Claims:

Fair Claims Practices Statutes:

[C.R.S. § 10-3-1101 through § 10-3-1116.](#)

Duty to Defend v. Duty to Indemnify:

“The insurer is obligated to provide a defense whenever the allegations in the pleading state facts that, if true, are within the promised coverage under the policy.” John W. Grund, Annotation, *Insurer’s duties when coverage invoked – Duty to defend*, 7A Colo. Prac., Personal Injury Torts & Ins. § 46.27 (2d ed. 2011).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: Reasonably promptly ([C.R.S. § 10-3-1104\(1\)\(h\)\(II\)-\(III\)](#)).

Timeframe for issuing denial of liability, if any:

Time Limit: 60 days after a valid and complete claim ([3 C.C.R. § 702-5-1-14](#)) & ([C.C.R. § 702-5-1-14](#)).

Must carrier demonstrate prejudice to disclaim on late notice: NO

Friedland v. Travelers Indem. Co., 105 P.3d 639, 648 (Colo. 2005);

Clementi v. Nationwide Mut. Fire Ins. Co., 16 P.3d 223, 232 (Colo. 2001).

Timeframe for issuing reservation of rights, if any:

Time Limit: Reasonably promptly.

Additional Fair Claims Practices regulation of significance, if any: N/A

Matching

There is no statute. The rule is generally governed by the contract with the insurer.

Stated Value Policy

There is no statute.

Appraisal Process

There is no statute.

CONNECTICUT

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860-525-3101

First Party Claims:

General statute governing Fair Claims Practices, if any:

These claims are governed by [Connecticut General Statutes Chapter 704, C.G.S. §§ 38a-815 to 38a-832](#).

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: “within reasonable time after proof of loss statements have been completed.” ([Conn. Gen. Stat. Ann. § 38a-816\(6\)\(b\) & \(e\) \(2014\)](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: “within reasonable time after proof of loss statements have been completed.” ([Conn. Gen. Stat. Ann. § 38a-816\(6\)\(b\) & \(e\) \(2014\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: NO

But, the insured is relieved of any late notice if the insured can show that the carrier was not prejudiced by the late notice.

Timeframe for issuing reservation of rights, if any:

Time Limit: “within reasonable time after proof of loss statements have been completed.” ([Conn. Gen. Stat. Ann. § 38a-816\(6\)\(b\) & \(e\) \(2014\)](#))

Additional Fair Claims Practices regulation of significance, if any: N/A

Third Party Claims:

General statute governing Fair Claims Practices, if any:

These claims are also governed by [Connecticut General Statutes Chapter 704, C.G.S. §§ 38a-815 to 38a-832](#).

Duty to Defend vs. Duty to Indemnify:

There is no specific statute addressing this issue. The issue, however, is governed by case law which holds that the “duty to defend has a broader aspect than the duty to indemnify and does not depend on whether the injured party will prevail against the insured.” [Missionaries of Co. of Mary, Inc. v. Aetna Casualty & Surety Co.](#), 155 Conn. 104, 110, 230 A.2d 21 (1967). The “duty to defend is triggered whenever a complaint alleges facts that potentially could fall within the scope of coverage, whereas the duty to indemnify arises only if the evidence adduced at trial establishes that the conduct actually was covered by the policy. [DaCruz v. State Farm Fire and Casualty Co.](#), 268 Conn. 675, 687–88, 846 A.2d 849 (2004).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: “within reasonable time after proof of loss statements have been completed.” ([Conn. Gen. Stat. Ann. § 38a-816\(6\)\(b\) & \(e\) \(2014\)](#))

Timeframe for issuing denial of liability, if any:

Time Limit: “within reasonable time after proof of loss statements have been completed.” ([Conn. Gen. Stat. Ann. § 38a-816\(6\)\(b\) & \(e\) \(2014\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: NO

But, the insured is relieved of any late notice if the insured can show that the carrier was not prejudiced by the late notice.

Timeframe for issuing reservation of rights, if any:

Time Limit: “within reasonable time after proof of loss statements have been completed.” ([Conn. Gen. Stat. Ann. § 38a-816\(6\)\(b\) & \(e\) \(2014\)](#))

Additional Fair Claims Practices regulation of significance, if any: N/A

Matching

There are no statutes or case law addressing the issue of matching in the context of first or third party claims.

Stated Value Policies

There are no statutes or case law addressing the issue of stated value policies in the context of first or third party claims.

Appraisal Process

The appraisal process in Connecticut is governed by statute which provides that if the parties fail to agree as to the actual cash value or the amount of loss, either party may demand in writing that each appoint an appraiser within twenty days of the demand. The appraisers then select an umpire, but if they fail to agree on an umpire, such umpire shall be selected by a judge of a court of record. The appraisers then appraise the loss, stating separately the actual cash value and loss to each item; and, failing to agree as to any item, shall submit their differences, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual cash value and loss. [Conn. Gen. Stat. § 38a-307](#).

The legislature has also created an arbitration process for first party claims involving disputes on automobile property damage claims in which the owner and insurance company could not agree on a value ([Conn. Gen. Stat. Ann. § 38a-9](#)) and a mediation program for first party property damage claims from catastrophic events ([Conn. Gen. Stat. Ann. § 38a-10](#))

DELAWARE

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[Eagle International Associates, Inc.](#)
702-221-1399

First Party Claims:

General statute governing Fair Claims Practices, if any:

[Del. Code Ann. tit.18, § 2304\(16\)\(a\)-\(n\) \(2015\)](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 15 days ([18-900-902 Del. Code Regs § 1.2.1.2](#)).

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 30 days following proof of loss ([18-900-902 Del. Code Regs § 1.2.1.5](#)).

Must carrier demonstrate prejudice to disclaim on late notice: YES

Note: This issue was handled on the federal level in [British Ins. Co. of Cayman v. Safety Nat'l Cas.](#), 335 F.3d 205, 207 (3d Cir. 2003) (interpreting New Jersey law) but applies to Delaware.

Timeframe for issuing reservation of rights, if any:

Time Limit: 30 days following proof of loss ([18-900-902 Del. Code Regs § 1.2.1.5](#)).

Additional Fair Claims Practices regulation of significance, if any:

[18-900-902 Del. Code Regs § 1.2.1.3](#) - The investigation of claims must commence within 10 working days of receipt of notice of loss.

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[Del. Code Ann. tit.18, § 2304\(16\)\(a\)-\(n\) \(2015\)](#).

Duty to Defend vs. Duty to Indemnify:

It is well-settled in Delaware that an insurer's duty to defend a suit against its insured is broader than its duty to indemnify. See [Charles E. Brohawn & Bros. Inc. v. Employers Commercial Union Ins. Co.](#), Del. Supr., 409 A.2d

1055, 1058 (1979). Delaware courts typically follow the “four-corners” test when determining whether an insurer has a duty to defend. That duty is determined by comparing the allegations contained in the underlying complaint with the terms of the insurance policy issued by the insurer to the insured. Continental Cas. Co. v. Alexis I. duPont School Dist., Del. Sup. Ct., 317 A.2d 101, 103 (1974).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: 15 days ([18-900-902 Del. Code Regs § 1.2.1.2](#)).

Timeframe for issuing denial of liability, if any:

Time Limit: 30 days following proof of loss ([18-900-902 Del. Code Regs § 1.2.1.5](#)).

Must carrier demonstrate prejudice to disclaim on late notice: YES

Timeframe for issuing reservation of rights, if any:

Time Limit: 30 days following proof of loss ([18-900-902 Del. Code Regs § 1.2.1.5](#)).

Additional Fair Claims Practices regulation of significance, if any:

[18-900-902 Del. Code Regs § 1.2.1.3](#) - The investigation of claims must commence within 10 working days of receipt of notice of loss.

Matching

Not required.

Stated Value Policy

The valuation of damages for partial and total losses also includes the concept of causation and is summarized as follows from *CIGNA Insurance Co. v. Didimoi Prop. Holdings, N.V.*, 110 F. Supp. 2d 259 (D. Del. 2000).

The phrase “amount of loss” was not ambiguous and concluded that in the insurance context, an appraiser’s assessment of the “amount of loss” necessarily included a determination of the cause of the loss, as well as the amount it would cost to repair the damage.

The court cited the Black’s Law Dictionary definition of the term “amount of loss” as “the diminution, destruction, or defeat of the value of, or of the charge upon, the insured subject to the assured, by the direct consequence of the operation of the risk insured against, according to its value in the policy, or in contribution for loss, so far as its value is covered by the insurance.”

Thus, the definition of “amount of loss” expressly includes a causation element. The court held that causation is a factual issue for the appraisal panel to decide as part of the amount of loss determination.

Appraisal Process

Not specifically required but is expressly contemplated by the *Didimoi* Court as an element of the measure of damages. Insurers are recommended to have an appraisal clause in their policy.

DISTRICT OF COLUMBIA

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[Hudgins Law Firm](#)

703-739-3300

First Party Claims:

General statute governing Fair Claims Practices, if any:

[D.C. ST § 31-2231.17](#) (“Unfair claim settlement practices”)

Timeframe for contacting Insured upon initial receipt of claim, if any:

A person must “acknowledge and act reasonably promptly upon communication with respect to claims arising under insurance policies.” ([D.C. ST § 31-2231.17\(b\)\(2\)](#)). A person must also “adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.” ([D.C. ST § 31-2231.17\(b\)\(3\)](#)). There is no statutory definition for “prompt” or “reasonably promptly.”

Timeframe for issuing disclaimer of coverage, if any:

A person must deny coverage of claims “within a reasonable time after proof of loss statements have been completed or after having completed its investigation related to the claims.” ([D.C. ST § 31-2231.17\(b\)\(5\)](#)). There is no statutory definition for “reasonable time.”

Must carrier demonstrate prejudice to disclaim on late notice: NO

Timeframe for issuing reservation of rights, if any: None

Additional Fair Claims Practices regulation of significance, if any: None

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[D.C. ST § 31-2231.17](#) (“Unfair claim settlement practices”)

Duty to Defend vs. Duty to Indemnify:

No statutory provision.

Timeframe for contacting Claimant upon initial receipt of claim, if any:

A person must “acknowledge and act reasonably promptly upon communication with respect to claims arising under insurance policies.” [D.C. ST § 31-2231.17\(b\)\(2\)](#). A person must also “adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.” [D.C. ST § 31-2231.17\(b\)\(3\)](#). There is no statutory definition for “prompt” or “reasonably promptly.”

Timeframe for issuing denial of liability, if any:

A person must deny coverage of claims “within a reasonable time after proof of loss statements have been completed or after having completed its investigation related to the claims.” [D.C. ST § 31-2231.17\(b\)\(5\)](#). There is no statutory definition for “reasonable time.”

Must carrier demonstrate prejudice to disclaim on late notice: NO

Timeframe for issuing reservation of rights, if any: None

Additional Fair Claims Practices regulation of significance, if any: None

Matching

Nat’l Presbyterian Church, Inc. v. Guide One Mut. Ins. Co., 82 F. Supp. 3d 55, 57 (D.D.C. 2015):

- In National Presbyterian, an earthquake in Washington D.C. damaged some of the limestone panels on the façade of the insured church. The church was concerned that the new “unweathered” limestone panels would have a noticeably different coloration and would, therefore, diminish the aesthetic qualities of the façade. The critical issue was whether the insurer was required to pay for both structural repairs and to create a matching façade.

- The policy issued to the church gave the insurer the option to either pay the value of lost or damaged property, pay the cost of repairing or replacing the lost or damaged property, take all or part of the property at an agreed or appraised value, or repair, rebuild or replace the property with other property of like kind and quality subject to the condition that the insurance company will pay to replace damaged property with other property of “comparable material and quality” and used “for the same purpose.”
- The court looked to two policy provisions to find an ambiguity. First, the court noted a distinction between the repair options relating to “the property” and those relating to “lost or damaged property,” specifically noting that “the property” was broadly defined by the policy to include the “building,” inclusive of fixtures, floor coverings, and appliances. The court also found that a reasonable person could conclude that the phrases “comparable material” and “other property of like quality and kind” can be read to mean property that looks the same. The court ultimately concluded that matching was required.

Stated Value Policy

Am. Serv. Ctr. Assocs. v. Helton, 867 A.2d 235, 2005 D.C. App. LEXIS 20 (D.C. 2005)

- The basic rule for measure of damages for partial destruction of or injury to a chattel is the difference in value of the chattel immediately before and after the injury. An alternative measure is the reasonable cost of repairs necessary to restore it to its former condition.
- We therefore hold that when a plaintiff can prove that the value of an injured chattel after repair is less than the chattel's worth before the injury, recovery may be had for both the reasonable cost of repair and the residual diminution in value after repair, provided that the award does not exceed the gross diminution in value. Our conclusion is overwhelmingly supported by decisions in other jurisdictions that have considered the issue - including neighboring Maryland and Virginia - which allow recovery for the cost of repair made plus the residual diminution in value

Total loss in D.C.?

- Fair market value is determined at the time of the loss. See Sawyer v. Monarch Cab Co., 164 A.2d 340 (D.C. App. 1960). When an automobile is practically destroyed or so extensively damaged as to be beyond repair, the measure of liability is the difference between the fair market value immediately before the loss less its salvage value immediately afterwards. See *id.*

Vaughan v. Nationwide Mut. Ins. Co., 702 A.2d 198, 1997 D.C. App. LEXIS 245 (D.C. 1997):

- “The distinction between the policies was recognized by Judge von Kann in *Millender v. Nationwide Ins. Co.*, 119 Daily Wash. L. Rptr. at 1957 (D.C. Super. Ct. Sept. 12, 1991):

‘the Tutt Court did not state that an insurance carrier could never write a contract which reduces the amount of benefits payable under its uninsured motorist coverage by the amount of payment made to the insured for worker's compensation or disability benefits. Instead, the Court simply held that the particular policy before it could not be read to contain such a provision, noting that, it is the duty of the insurer to spell out in plainest terms -- terms understandable to the man on the street -- any exclusionary or delimiting policy provisions. . . . The delimiting language in Tutt's policy with Aetna is different from the language in *Millender's* Nationwide policy. . . . The Tutt Court concluded that the delimiting language only operated to reduce the total liability of the uninsured motorist to the insured, and, since the total liability of the uninsured [205] motorist well exceeded the sum of the policy limit combined with the worker's compensation benefits paid, the insurance carrier was liable for the full extent of the policy limit. Here, in an apparent effort to cure the very ambiguity which brought about Aetna's loss in Tutt, Nationwide specifically stated that “the limits of [its] coverage” were reduced by the sums received by the insured for worker's compensation. There is nothing unclear or ambiguous about this language. Plaintiff could not have reasonably believed that he was buying anything other than a contract which would provide coverage for his damages to the extent of the policy limit and subject to a reduction for any sums received to compensate him for the injuries suffered.’

(Citations and quotations omitted.) Accordingly, we conclude that the policy limitations were appropriately applied and the deduction of workers' compensation benefits were correctly taken from the \$ 100,000 policy limitation and not the \$ 200,000 jury verdict.”

Appraisal Process

Scope:

- Appraisal is a method for ascertaining the amount of loss of damage. Appraisal does not determine other issues such as liability and coverage. Roumel v. Niagara Fire Ins. Co., 225 A.2d 658 (D.C.App. 1967).

A party may not sue to enforce the covenant of appraisal. Nor can they sue to enforce any award which might have been rendered by the appraisers. This is true because appraisal is merely a method of ascertaining the amount of loss or damage and does not determine other issues such as liability and coverage. Thus, even after an award is rendered, the insured's right of action is on the policy, the award being merely conclusive proof of the damages involved. Where no award is rendered, the amount of the loss must be proved by competent evidence.

Timing:

- Demand for appraisal together with the “no action” clause makes the completion of the process a condition precedent to filing a lawsuit. Roumel v. Niagara Fire Ins. Co., 225 A.2d 658 (D.C.App. 1967).

FLORIDA

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305-671-2980

First Party Claims:

General statute governing Fair Claims Practices, if any:

[F.S. 624.155](#) and [626.9541](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 14 calendar days [Fl. Admin. Code Ann. r. 69O-166.024](#)

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: [F.S. 627.426\(2\)\(b\)\(1\)](#)

Notice of refusal to defend the insured must be given by registered or certified mail either within 60 days of compliance with §627.426(2)(a) or receipt of the summons and complaint, whichever is later, but no later than 30 days before trial. *Nat'l Union Fire Ins. Co. v. Goldman*, 548 So. 2d 790, 791 (Fla. 2nd DCA 1989).

Must carrier demonstrate prejudice to disclaim on late notice: NO (qualified)

The carrier is not required to show that it was prejudiced by the failure of the insured to give timely notice, in order to avoid liability under its policy; this does not mean that upon a showing of *delay alone* the insurer can avoid liability-it only means that the insurer will not have the burden of proving such prejudice. The outcome of late notice cases will ultimately depend upon the facts and circumstances of each case. *American Fire and Casualty Company v. Collura*, 163 So. 2d 784, 792-93 (Fla. 2nd DCA 1964).

Timeframe for issuing reservation of rights, if any:

Time Limit: [F.S. 627.426\(2\)\(a\)](#)

Within 30 days from the date when the insurer knows or should have known of a coverage defense, it must send the insured, by certified or registered mail, written notice of its reservation of rights to assert a coverage defense. *Nat'l Union Fire Ins. Co. v. Goldman*, 548 So. 2d 790, 791 (Fla. 2nd DCA 1989).

Additional Fair Claims Practices regulation of significance, if any:

[Fl. Admin. Code Ann. r. 690-166.024\(3\)](#) The insurer must begin its investigation within 10 working days of receipt of proof of loss statement as is reasonably necessary.

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[F.S. 624.155](#) and [626.9541](#)

Duty to Defend vs. Duty to Indemnify:

An insurer's duty to defend is determined from the allegations of the complaint. *National Union Fire Ins. Co. v. Lenox Liquors, Inc.*, 358 So. 2d 533 (Fla. 1977). If the complaint alleges facts partly in and partly out of coverage of the policy, the insurer is obligated to defend the entire suit. *Tropical Park, Inc. v. United States Fidelity and Guaranty Co.*, 357 So. 2d 253, 256 (Fla. 3rd DCA 1978). Where the terms of an insurance contract are susceptible of two reasonable constructions, that interpretation which will sustain coverage for the insured will be adopted. *Poole v. Travelers Insurance Co.*, 130 Fla. 806, 179 So. 138 (1937).

The duty to defend is broader than the duty to indemnify in the sense that the insurer must defend even if the facts alleged are untrue or the legal theories unsound. *West Am. Ins. Co. v. Silverman*, 378 So.2d 28, 30 (Fla. 4th DCA 1979). In contrast, the duty to indemnify is determined by the underlying facts of the case. *State Farm Fire & Cas. Co. v. CTC Dev. Corp.*, 720 So.2d 1072, 1077 n. 7 (Fla. 1988). In construing insurance policies, courts should read the policy as a whole, endeavoring to give every provision its full meaning and operative effect. *U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So. 2d 871, 877 (Fla. 2007). Exclusionary clauses are strictly construed in a manner that affords the insured the broadest possible coverage. *Indian Harbor Ins. Co. v. Williams*, 998 So. 2d 677, 678 (Fla. 4th DCA 2009).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: 14 calendar days [Fl. Admin. Code Ann. r. 690-166.024\(1\)](#)

Timeframe for issuing denial of liability, if any:

Time Limit: [F.S. 627.426\(2\)\(b\)\(1\)](#)

Notice of refusal to defend the insured must be given by registered or certified mail either within 60 days of compliance with 627.426(2)(a) or receipt of the summons and complaint, whichever is later, but no later than 30 days before trial. *Nat'l Union Fire Ins. Co. v. Goldman*, 548 So. 2d 790, 791 (Fla. 2nd DCA 1989).

Must carrier demonstrate prejudice to disclaim on late notice:

The carrier is not required to show that it was prejudiced by the failure of the insured to give timely notice, in order to avoid liability under its policy; this does not mean that upon a showing of *delay alone* the insurer can avoid liability-it only means that the insurer will not have the burden of proving such prejudice. The outcome of late notice cases will ultimately depend upon the facts and circumstances of each case. *American Fire and Casualty Company v. Collura*, 163 So. 2d 784, 792-93 (Fla. 2nd DCA 1964).

Timeframe for issuing reservation of rights, if any:

Time Limit: [F.S. 627.426\(2\)\(a\)](#)

Within 30 days from the date when the insurer knows or should have known of a coverage defense, it must send the insured, by certified or registered mail, written notice of its reservation of rights to assert a coverage defense. *Nat'l Union Fire Ins. Co. v. Goldman*, 548 So. 2d 790, 791 (Fla. 2nd DCA 1989).

Additional Fair Claims regulation of significance, if any:

Fl. Admin. Code Ann. r. 69O-166.024(3) The insurer must begin its investigation within 10 working days of receipt of proof of loss statement as is reasonably necessary.

Matching

[626.9744\(2\)](#): “When a loss requires replacement of items and the replaced items do not match in quality, color, or size, the insurer shall make reasonable repairs or replacement of items in adjoining areas. In determining the extent of the repairs or replacement of items in adjoining areas, the insurer may consider the cost of repairing or replacing the undamaged portions of the property, the degree of uniformity that can be achieved without such cost, the remaining useful life of the undamaged portion, and other relevant factors.”

Stated Value Policy

[627.702\(1\)\(a\)](#): “In the event of the total loss of any building, structure, mobile home as defined in s. 320.01(2), or manufactured building as defined in s. 553.36(13), located in this state and insured by any insurer as to a covered peril, in the absence of any change increasing the risk without the insurer’s consent and in the absence of fraudulent or criminal fault on the part of the insured or one acting in her or his behalf, the insurer’s liability under the policy for such total loss, if caused by a covered peril, shall be in the amount of money for which such property was so insured as specified in the policy and for which a premium has been charged and paid.”

Appraisal Process

[627.7015\(7\)](#): If the insurer fails to notify a policyholder of its right to participate in the statutory mediation program or if the insurer requests the mediation, and the mediation results are rejected by either party, “the policyholder is not required to submit to or participate in any contractual loss appraisal process of the property loss damage as a precondition to legal action for breach of contract against the insurer for its failure to pay the policyholder’s claims covered by the policy.”

627.70151 provides guidelines for when an appraiser who is used as an umpire in a contractual appraisal process can be objected to by the insurer or policy-holder.

GEORGIA

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[M.B. "Burt" Satcher III, Esq.](#)
[Owen Gleaton Egan Jones & Sweeney, LLP](#)
404-688-2600

First Party Claims:

General Statute governing Fair Claims Practices:

[Ga. Code. Ann. § 33-6-34.](#)

Timeframe for contacting insured upon initial receipt of claim, if any:

First Party Property Damage Claims Arising Under Personal Private Passenger Motor Vehicle Policies: Insurer must provide the insured with proof of loss claims, if applicable, within fifteen days. ([R. of Comp. Gen. Office of Comm. of Ins. 120-2-52-.03\(2\)](#))

Timeframe for issuing disclaimer of coverage:

First Party Property Damage Claims Arising Under Personal Private Passenger Motor Vehicle Policies: 15 days following proof of loss. 30 days after receiving notice of claim if proof of loss form is not required. ([R. of Comp. Gen. Office of Comm. of Ins. 120-2-52-.03\(3\)](#))

If the insurer needs more time to determine whether a first party claim should be accepted or denied, the insurer must notify the claimant within five business days after the applicable time limitation above has expired. In total, the insurer has up to sixty days from receipt of notice of the claim to accept or deny liability, unless the insurer has documented the claim file where the insurer has requested information necessary to determine liability and such information has not been submitted. ([R. of Comp. Gen. Office of Comm. of Ins. 120-2-52-.03\(5\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: NO

Where timely notice is a valid condition precedent to coverage, the insurer is not required to show that it was prejudiced by the insured's failure to give notice. [Caldwell v. State Farm Fire & Cas. Ins. Co](#), 385 S.E.2d 97 (Ga. App. 1989)(citing [Richmond v. Georgia Farm Bureau Mut. Ins. Co](#), 231 S.E.2d 245 (Ga. App. 1976)).

Time frame for issuing Reservation of RIGHTS, if any:

There is no fixed time frame, but the insurer must give its insured timely notice of its Reservation of Rights. [State Farm Fire and Cas. Co. v. Walnut Avenue Partners, LLC](#), 675 S.E.2d 534 (Ga. App. 2009).

Additional Fair Claims Practices Regulation of significance, if any:

[Ga. Code Ann. § 33-6-37](#) - There is no private cause of action for violation of the Fair Claims Settlement Act.

Third Party Claims:

General Statute governing Fair Claims Practices

Fair Claims Practices Generally: [Ga. Code Ann. § 33-6-34](#).

For Third Party Property Claims Arising Under Motor Vehicle Liability Policies:

[Ga. Code Ann. § 33-4-7](#).

Duty to Defend v. Duty to Indemnify:

A liability insurer's duty to defend and duty to indemnify are two separate and independent obligations. [Yeomans & Assoc. Agency, Inc. v. Bowen Tree Surgeons](#), 618 S.E. 2d 673 (Ga. Ct. App. 2005). The insurer has a duty to defend its insured against all claims covered under a policy, even if the claims are groundless, false or fraudulent. [Owners Ins. Co. v. Smith Mechanical Contractors, Inc.](#), 683 S.E.2d 599 (Ga. 2009). An insurer's duty to defend is broader than its duty to indemnify. [Shafe v. American States Ins. Co.](#), 653 S.E.2d 870 (Ga. Ct. App. 2007).

Timeframe for contacting claimant upon initial receipt of claim, if any:

Within sixty days of receiving a written request from a claimant, every insurer providing liability or casualty coverage that is or may be liable to pay all or part of any claim must provide a statement under oath of a corporate officer or the insurer's claims manager stating, with regard to each known policy of insurance issued by it: 1) the name of the insurer; 2) the name of each insured; and 3) the limits of coverage. The insurer may provide a copy of the declarations page of each policy in lieu of providing such information. [Ga. Code Ann. § 33-3-28](#)

Timeframe for issuing denial of liability, if any:

There is no fixed time frame for an insurer to issue its denial of liability.

Must carrier demonstrate prejudice to disclaim on late notice: Generally, NO

Where timely notice is a valid condition precedent to coverage, the insurer is not required to show that it was prejudiced by the failure to give notice. [Caldwell v. State Farm Fire & Cas. Ins. Co](#), 385 S.E.2d 97 (Ga. App. 1989)(quoting [Richmond v. Georgia Farm Bureau Mut. Ins. Co](#), 231 S.E.2d 245 (Ga. App. 1976)).

With respect to motor vehicle liability insurance policies, an insurer is required to show that its insured's failure to forward a copy of the summons or other process and to cooperate with the insurer in connection with the defense of any action under the policy is prejudicial in order to relieve the insurer of its duty to defend

and indemnify its insured. [Ga. Code Ann. § 33-7-15\(a\)-\(b\)](#). However, if a third-party provides the summons or other process to the insurer within ten days of filing with the court, subsections (a) and (b) will not operate to deny coverage based on the insured's failure to provide the documents to the insurer. *Id.* at (c). If the name of the insurer or insurer's agent is unknown, the third party shall have a period of 30 days from the date the insurer or agent becomes known in which to send these required documents. (*Id.*)

Timeframe for Issuing Reservation of RIGHTS, if any:

There is no fixed time frame, but the insurer must give its insured timely notice of its Reservation of Rights. [State Farm Fire and Cas. Co. v. Walnut Avenue Partners, LLC](#), 675 S.E.2d 534 (Ga. App. 2009).

Additional Fair Claims Practices Regulations of Significance, if any:

There is no private cause of action for violation of the Fair Claims Settlement Act. [Ga. Code Ann. § 33-6-37](#)

Matching

Georgia has not enacted "matching" regulations requiring the replacement of undamaged items when the damaged items cannot be replaced in a way that achieves a reasonably uniform appearance.

Stated Value Policy

Georgia does not have a law regulating stated value policies and the terms of the policy of insurance control whether applied to stated value policies or actual value policies. In cases where property is wholly destroyed by fire, Georgia has enacted a valued policy statute that protects property owners from the burden of proving the value of their property such that the amount of insurance set forth in the policy relative to the building or structure shall be taken conclusively to be the value of the property with certain exceptions. [Ga. Code Ann. § 33-32-5](#).

Appraisal Process

The appraisal process is governed by the policy of insurance. The appraisal process used to determine the amount of an insured's loss is not merely a prerequisite to filing suit, but the method by which the parties have contractually agreed to settle their differences with regard to the amount of loss; thus, in appraisal cases, a trial cannot proceed until the appraisal process is complete. [Thornton v. Georgia Farm Bureau Mut. Ins. Co.](#), 287 Ga. 379, 695 S.E.2d 642 (2010).

HAWAII

For more information, please contact:

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702-221-1399

First Party Claims:

General statute governing Fair Claims Practices, if any:

[Haw. Rev. Stat. § 431:13-103\(11\)\(C\) and \(D\) \(2011\)](#).

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 15 days [Haw. Rev. Stat. § 431:13-103\(11\)\(B\)](#)

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: "reasonable time" after investigation completed [Haw. Rev. Stat. § 431:13-103\(11\)\(E\) \(2011\)](#)

Must carrier demonstrate prejudice to disclaim on late notice: YES

Timeframe for issuing reservation of rights, if any:

Time Limit: "reasonable time" after investigation completed [Haw. Rev. Stat. § 431:13-103\(11\)\(E\) \(2011\)](#)

Additional Fair Claims Practices regulation of significance, if any:

[Haw. Rev. Stat. § 431:13-103\(11\)\(G\)](#). The insurer must provide written notification for any delay on any claim remaining unresolved within 30 days from the date it was reported.

[Haw. Rev. Stat. § 431:13-103\(11\)\(C\), \(D\), \(O\), and \(P\) \(2011\)](#):

(C) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(D) Refusing to pay claims without conducting a reasonable investigation based upon all available information;

(O) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage to influence settlements under other portions of the insurance policy coverage;

(P) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[Haw. Rev. Stat. § 431:13-103\(11\)\(C\) and \(D\) \(2011\)](#).

Duty to Defend vs. Duty to Indemnify:

The duties to defend and indemnify arise under the terms of the insurance policy, and it is through an interpretation of the terms of the policy that such duties are deemed to be owed. *Del Monte Fresh Produce (Hawaii), Inc. v. Fireman's Fund Ins. Co.*, 117 Haw. 357, 183 P.3d 734 (2007).

Under Hawaii's law, all doubts as to whether a duty to defend exists are resolved against the insurer and in favor of the insured. *Emergency Medical Services, Inc. v. St. Paul Mercury Ins. Co.*, 495 F.3d 999 (8th Cir. 2007).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: 15 days [Haw. Rev. Stat. § 431:13-103\(11\)\(B\)](#).

Timeframe for issuing denial of liability, if any:

Time Limit: "reasonable time" after investigation completed. [Haw. Rev. Stat. § 431:13-103\(11\)\(E\) \(2011\)](#)

Must carrier demonstrate prejudice to disclaim on late notice: YES

Timeframe for issuing reservation of rights, if any:

Time Limit: "reasonable time" after investigation completed. [Haw. Rev. Stat. § 431:13-103\(11\)\(E\) \(2011\)](#)

Additional Fair Claims Practices regulation of significance, if any:

[Haw. Rev. Stat. § 431:13-103\(11\)\(G\)](#). The insurer must provide written notification for any delay on any claim remaining unresolved within 30 days from the date it was reported.

[Haw. Rev. Stat. § 431:13-103\(11\)\(C\), \(D\), \(O\), and \(P\) \(2011\)](#):

(C) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(D) Refusing to pay claims without conducting a reasonable investigation based upon all available information;

(O) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage to influence settlements under other portions of the insurance policy coverage;

(P) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;

Matching

Whether “matching” is required will depend upon the definition of loss in the policy. Although there appears to be no Hawaiian case directly on point, case law in Hawaii does provide that the appraisal procedure to be followed is to be based upon the language in the policy. *Wailua Associates v. The Aetna Casualty & Surety Company*, 904 F.Supp. 1142 (D.Hawaii 1995). If the policy defines replacement cost as the cost to replace “the lost or damaged property with other property . . . of comparable material and quality,” as was the case in *Cedar Bluff Townhome Condominium Ass’n, Inc. v. Am. Family Mut. Ins. Co.*, 857 N.W.2d 290 (Minn. 2014), then the appraiser could make the argument that the policy did provide for matching as the Minnesota Supreme Court found this language to mean in *Cedar Bluff Townhome Condominium Ass’n*.

Stated Value Policy

A stated value policy will be enforceable in Hawaii and the arbitrator/umpire will have significant discretion in reaching their conclusion as to stated value.

Appraisal Process

Appraisals in Hawaii are required if there is no agreement as to value and the policy provides for an appraisal. Under Hawaiian law, the appraisal procedure set forth in the policy is considered an “agreement to arbitrate” within scope of the Federal Arbitration Act. The appraisal panel determines the arbitration procedure to be followed if there is any dispute as to procedure. The appraisal panel has discretion to consider the Flood Plain Management Act and other Federal regulations under the insurance policy that provides coverage for increased cost of repairs or replacement caused by enforcement of buildings codes and laws. *Wailua Assocs. v. Aetna Cas. & Sur. Co.*, 904 F.Supp. 1142 (D.Haw.1995).

IDAHO

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208-344-5800

First Party Claims:

General statute governing Fair Claims Practices, if any:

The Idaho Unfair Claims Settlement Practices Act, [Idaho Code § 41-1329](#), makes certain acts by an insurer an “unfair method of competition or an unfair or deceptive act or practice in the business of insurance,” including:

- (1) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
- (2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
- (3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
- (4) Refusing to pay claims without conducting a reasonable investigation based upon all available information;

- (5) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
- (6) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;
- (7) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;
- (8) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;
- (9) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;
- (10) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made;
- (11) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;
- (12) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;
- (13) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or
- (14) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

Violation of the Act may subject an insurer to administrative fines or penalties, but does not create a private cause of action. *Simper v. Farm Bureau Mut. Ins. Co. of Idaho*, 132 Idaho 471, 974 P.2d 1100 (1999). Nonetheless, the Act has been held as legislatively mandated industry standards, and violations of the Act are admissible in an insurance bad faith case. *Weinstein v. Prudential Property and Cas. Ins. Co.*, 149 Idaho 299, 233 P.3d 1221 (2010).

Timeframe for contacting Insured upon initial receipt of claim, if any:

There is no set time, but an insurer is required to act “promptly.” It should be noted that payments for repairs to a covered auto must be paid within 20-days of receipt of an itemized bill or invoice covering repairs authorized by the insurer, [Idaho Code § 41-1328](#); and failure to pay the amount justly due under a policy within 30-days of submission of a proof of loss (60-days in the case of uninsured or underinsured motorist claims) may result in the award of attorney’s fees under [Idaho Code § 41-1839](#).

Timeframe for issuing disclaimer of coverage, if any:

There is no set time, but best practice would be as soon as possible.

Must carrier demonstrate prejudice to disclaim on late notice: YES/NO

The Idaho Supreme Court has held that, except where notice is a condition precedent to coverage, the insurer must demonstrate prejudice due to the late notice. *Viani v. Aetna Insurance Co.*, 95 Idaho 22, 501 P.2d 706 (1972), partially overruled on other grounds, *Sloviaczek v. Estate of Puckett*, 98 Idaho 371, 565 P.2d 564 (1977).

Timeframe for issuing reservation of rights, if any:

There is no set time, but best practice would be as soon as possible.

Additional Fair Claims Practices regulation of significance, if any: None.

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[Idaho Code § 41-1329](#)

Duty to Defend vs. Duty to Indemnify:

“Under Idaho law and consistent with other states, an insurer’s duties to defend and indemnify are separate duties.” *Hoyle v. Utica Mut. Ins. Co.*, 137 Idaho 367, 375, 48 P.2d 1256 (2002). “The duty to defend is broader than the duty to indemnify.” *Id.* Nonetheless, the duty to defend only arises “upon the filing of a complaint, whose allegations, in whole or in part, read broadly, reveal a potential for liability that would be covered by the insured’s policy.” *Amco Ins. Co. v. Tri-Spur Inv. Co.*, 140 Idaho 733, 737, 101 P.3d 226, 230 (2004).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: There is no set time. Idaho does not require an insurer to investigate a third party’s claim or initiate settlement negotiations before suit is filed. *Morell Const., Inc. v. Home Ins. Co.*, 920 F.2d 576 (9th Cir. 1990).

Timeframe for issuing denial of liability, if any:

There is no set time, but best practice would be as soon as possible.

Timeframe for contacting Insured upon initial receipt of claim, if any:

There is no set time. Idaho does not require an insurer to investigate a third party’s claim or initiate settlement negotiations before suit is filed. *Morell Const., Inc. v. Home Ins. Co.*, 920 F.2d 576 (9th Cir. 1990).

Timeframe for issuing disclaimer of coverage, if any:

There is no set time, but best practice would be as soon as possible.

Must carrier demonstrate prejudice to disclaim on late notice: Yes and No.

The Idaho Supreme Court has held that, except where notice is a condition precedent to coverage, the insurer must demonstrate prejudice due to the late notice. *Viani v. Aetna Insurance Co.*, 95 Idaho 22, 501 P.2d 706 (1972), partially overruled on other grounds, *Sloviaczek v. Estate of Puckett*, 98 Idaho 371, 565 P.2d 564 (1977). Even where notice is a condition precedent, the insured is still given the opportunity to offer an excuse for non-compliance and/or show that the notice was timely. *See County of Kootenai v. Western Casualty & Sur. Co.*, 113 Idaho 908, 913, 750 P.2d 87, 92 (1988).

Timeframe for issuing reservation of rights, if any:

There is no set time, but an insurer is required to act “promptly.”

Additional Fair Claims Practices regulation of significance, if any: None.

Matching

No case law in Idaho. Only ten states (Iowa, Nebraska, Kentucky, California, Florida, Utah, Ohio, Rhode Island, Connecticut, and South Dakota) have adopted “matching” regulations requiring the replacement of undamaged items when the damaged items cannot be replaced in a way that achieves a reasonably uniform appearance.

Stated Value Policy

Idaho has not adopted a valued policy law in its statutory scheme, and there is no Idaho case law adopting analogous principles.

Appraisal Process

Whether appraisals are required and/or when they are binding will depend upon whether the policy has an appraisal provision, and whether the appraisal provision can be equated with an arbitration provision that can be compelled under Idaho’s arbitration statutes, [Idaho Code §7-901](#) and [§7-902](#). Whether the appraisal

provision can be equated with an arbitration provision will depend upon the wording of the policy provision. If the appraisal provision states that the decision of the umpire is binding, the determination of the umpire will be binding if it is not contested in a timely manner in a court proceeding. *Villa Highlands, LLC v. W. Community Ins. Co.*, 148 Idaho 598, 607, 226 P.3d 540, 549 (2010).

ILLINOIS

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312-201-6413

First Party Claims:

General statute governing Fair Claims Practices, if any:

[215 Ill. Comp. Stat. Ann. 5/154.6\(c\) and \(i\) \(2012\)](#).

Among the acts constituting unfair claims practices are: "Failing to adopt and implement reasonable standards for the prompt investigations and settlements of claims," and "Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed."

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: "reasonable promptness"

"Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies." ([215 Ill. Comp. Stat. Ann. 5/154.6\(b\) \(2012\)](#)).

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: "reasonable time" to determine coverage and notify insured within 30 days of determination. [Ill. Admin. Code tit. 50, § 919.50\(a\) \(2012\)](#).

Must carrier demonstrate prejudice to disclaim on late notice: NO

But, prejudice is a factor in a late notice defense. *See, e.g., Country Mutual Insurance Co. v. Livorsi Marine, Inc.*, 222 Ill.2d 303, 856 N.E.2d 338, 344, (2006).

Timeframe for issuing reservation of rights, if any:

Time Limit: "reasonable time" to determine coverage and notify insured within 30 days of determination. [Ill. Admin. Code tit. 50, § 919.50\(a\) \(2012\)](#)

Additional Fair Claims Practices regulation of significance, if any:

215 Ill. Comp. Stat. Ann. 5/154.6(o) (2012) - The insurer must provide the insured with forms necessary to make claims, plus explanations of how to use the forms, within 15 working days of the insured's request.

[215 Ill. Comp. Stat. Ann. 5/155 \(2012\)](#) - An insured or an assignee may recover damages for the insurer's unreasonable and vexatious delay in the handling and settling a claim.

[215 Ill. Comp. Stat. Ann. 5/155\(1\) \(2012\)](#) - Illinois permits an insured to seek extracontractual damages and attorneys' fees for an insurer's vexatious and unreasonable delays in claims handling. In addition to costs and attorneys fees, a prevailing insured may also recover an amount not to exceed any one of the following:

(a) 25% of the amount which the trier of fact finds the party is entitled to recover under the policy, exclusive of costs;

(b) \$60,000; and

(c) the excess of the amount which the trier of fact finds the insured is entitled to recover, exclusive of costs, over the amount, if any, which the insurer offered to pay in settlement of the claim before the action.

These three remedies have been held to be exclusive and therefore, the maximum amount of bad faith damages available is \$60,000. *Cramer v. Insurance Exchange Agency*, 174 Ill.2d 513, 675 N.E.2d 897 (1996).

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[215 Ill. Comp. Stat. Ann. 5/154.6\(c\) and \(i\) \(2012\)](#)

Duty to Defend vs. Duty to Indemnify:

In *Conway v. Country Casualty Insurance Co.*, 92 Ill.2d 388, 442 N.E.2d 245, (1982), the Illinois Supreme Court found that (1) the duty to defend and the duty to indemnify are separate, (2) the duty to defend is broader than the duty to indemnify, and (3) the duty to defend does not depend on a duty to indemnify.

An insurer must defend a suit against its insured unless it is clear that there is *no* potential for coverage. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill.2d 90, 607 N.E.2d 1204, 1212 (1992). Moreover, an insurer may be obligated to defend on account of true but unpled facts which are known by the insurer. In *Associated Indemnity Co. v. Insurance Company of North America*, 68 Ill.App.3d 807, 386 N.E.2d 529, 536 (1st Dist. 1979), the court held that the insurer would have a duty to defend “if the insurer has knowledge of true but unpleaded facts, which, when taken together with the complaint’s allegations, indicate that the claim is within or potentially within the policy’s coverage.”

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: “reasonable promptness” [215 Ill. Comp. Stat. Ann. 5/154.6\(b\) \(2012\)](#)

Timeframe for issuing denial of liability, if any:

Time Limit: “reasonable time”

“The company shall affirm or deny liability on claims within a reasonable time and shall offer payment within 30 days after affirmation of liability, if the amount of the claim is determined and not in dispute. For those portions of the claim which are not in dispute and for which the payee is known, the company shall tender payment within said 30 days.” [Ill. Admin. Code tit. 50, § 919.50\(a\) \(2012\)](#)

Must carrier demonstrate prejudice to disclaim on late notice:

No, but prejudice is a factor in a late notice defense. *See, e.g., Country Mutual Insurance Co. v. Livorsi Marine, Inc.*, 222 Ill.2d 303, 856 N.E.2d 338, 344, (2006).

Timeframe for issuing reservation of rights, if any:

Time Limit: “reasonable time”

“The company shall affirm or deny liability on claims within a reasonable time and shall offer payment within 30 days after affirmation of liability, if the amount of the claim is determined and not in dispute. For those portions of the claim which are not in dispute and for which the payee is known, the company shall tender payment within said 30 days.” [Ill. Admin. Code tit. 50, § 919.50\(a\) \(2012\)](#)

Additional Fair Claims Practices regulation of significance, if any:

[215 Ill. Comp. Stat. Ann. 5/154.6\(c\) and \(i\) \(2012\)](#) - Failing to “adopt and implement reasonable standards for the prompt investigations and settlements of claims” and failing to “affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed” constitute improper claims practices.

[215 Ill. Comp. Stat. Ann. 5/155 \(2012\)](#) - An insured or an assignee may recover damages for the insurer’s unreasonable and vexatious delay in the handling and settling a claim.

[215 Ill. Comp. Stat. Ann. 5/155\(1\) \(2012\)](#) - Illinois permits an insured to seek extra-contractual damages and

attorneys' fees for an insurer's vexatious and unreasonable delays in claims handling. In addition to costs and attorneys fees, a prevailing insured may also recover an amount not to exceed any one of the following:

(a) 25% of the amount which the trier of fact finds the party is entitled to recover under the policy, exclusive of costs;

(b) \$60,000; and

(c) the excess of the amount which the trier of fact finds the insured is entitled to recover, exclusive of costs, over the amount, if any, which the insurer offered to pay in settlement of the claim before the action.

These three remedies have been held to be exclusive and therefore, the maximum amount of bad faith damages available is \$60,000. *Cramer v. Insurance Exchange Agency*, 174 Ill.2d 513, 675 N.E.2d 897 (1996).

Matching

Regulation: None

Statute: None

Case Law: *Mohr v. American Auto Ins. Co.*, 2004 WL 533475 (N.D. Ill., March 5, 2004) (factual issue)

Stated Value

A stated value policy differs from an actual cash value policy because the parties predetermine the insurance company's liability, whereas the company's liability under an actual cash value policy is determined after the loss based on the vehicle's actual cash value immediately before the loss. *Allied American Insurance Co. v. Washburn*, 159 Ill.App.3d 1035, 1039, 111 Ill.Dec. 804, 513 N.E.2d 50, 53 (1987).

Appraisal Process

Appraisers' findings can be binding on both parties. *Hetherington v. Continental Ins. Co.*, 311 Ill. App. 577, 37 N.E.2d 366 (4th Dist. 1941) (stating "[i]n the absence of fraud, collusion, mistake, or malfeasance, the findings of the appraisers will be binding on both parties.")

Resolving disputes through informal procedures, as opposed to litigation, comports with public policy in Illinois. *Reed v. Docor's Associates, Inc.*, 331 Ill. App. 3d 618, 772 N.E.2d 372 (5th Dist. 2002).

By statute, 215 ILCS 5/397.05, Illinois recognizes that, when an insured requests an appraisal under a fire and extended coverage insurance policy and the insured's amount of appraised loss is fully upheld by agreement of the appraisers or the umpire, then the insured's appraisal fee and the umpire's appraisal fee shall be paid by the insurer.

Appraisals, like arbitrations, may be either binding or non-binding in nature. To be deemed binding, there must be evidence of an agreement, or the plain language of the policy must be unequivocal, that a party is waiving its right to sue. *Stratford West Homeowners Ass'n. v. Country Mutual Insurance Co.*, 338 Ill. App. 3d 288, 788 N.E.2d 342 (3d Dist. 2003).

INDIANA

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317-663-8570

First Party Claims:

General statute governing Fair Claims Practices, if any:

[Ind. Code § 27-4-1-4.5 \(2015\)](#).

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: “reasonable promptness” ([Ind. Code § 27-4-1-4.5 \(2\) \(2015\)](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: “promptly”

“Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to facts or applicable law for denial of a claim or for the offer of a compromise settlement.” ([Ind. Code § 27-4-1-4.5\(14\) \(2015\)](#))

Must carrier demonstrate prejudice to disclaim on late notice:

Prejudice to the insurer is presumed by the insured’s late notice, but the insured may rebut the presumption with evidence showing that late notice created no prejudice. Tri-etch, Inc. v. Cincinnati Ins. Co., 909 N.E.2d 997, 1005 (Ind. 2009).

Timeframe for issuing reservation of rights, if any:

Time Limit: “promptly”

“Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to facts or applicable law for denial of a claim or for the offer of a compromise settlement.” ([Ind. Code § 27-4-1-4.5\(14\) \(2015\)](#))

Additional Fair Claims Practices regulation of significance, if any:

Indiana recognizes a “cause of action for the tortious breach of an insurer’s duty to deal with its insured in good faith.” Erie Ins. Co. v. Hickman by Smith, 622 N.E.2d 515, 519 (Ind. 1993). “The obligation of good faith and fair dealing with respect to the discharge of the insurer’s contractual obligation includes the obligation to refrain from (1) making an unfounded refusal to pay policy proceeds; (2) causing an unfounded delay in making payment; (3) deceiving the insured; and (4) exercising any unfair advantage to pressure an insured into a settlement of his claim.” *Id.*

In Lumberman’s Mut. Cas. Co. v. Combs, 873 N.E.2d 692, 714 (Ind. Ct. App. 2007), the court held that “[p]oor judgment or negligence do not amount to bad faith; the additional element of conscious wrongdoing must also be present. A finding of bad faith requires evidence of a state of mind reflecting dishonest purpose, moral obliquity, furtive design, or ill will. A bad faith determination inherently includes an element of culpability.”

Additionally, in Monroe Guaranty Ins. Co. v. Magwerks Corp., 829 N.E.2d 968, 975-77 (Ind. 2005), the Indiana Supreme Court found that a punitive damages claim for bad faith can occur even if there is a good faith dispute over coverage. Thus, this suggests that an insurance company can be liable for bad faith if it fails to treat its policyholders fairly during its investigation of the claim. *See also Klepper v. ACE American Ins. Co.*, 999 N.E.2d 86 (Ind. Ct. App. 2013) (Bad faith claims against insurer were allowed to proceed in absence of coverage).

Third Party Claims:

General statute governing Fair Claims Practices, if any:

“Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies” and “Failing to adopt and implement reasonable standards for the prompt investigation of claims.” [Ind. Code Ann. § 27-4-1-4.5 \(2\) and \(3\) \(2011\)](#).

Duty to Defend vs. Duty to Indemnify:

The insurer's duty to defend is broader than its duty to indemnify. Walton v. First American Title Ins. Co., 844 N.E.2d 143, 146 (Ind.Ct.App. 2006). However, insurance company may go beyond the face of the complaint and if its independent investigation of the facts underlying the complaint reveals that the claim is patently outside of policy's coverage, the insurer may refuse to defend. Walton, 844 N.E.2d at 146.

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: "reasonable promptness" ([Ind. Code Ann. § 27-4-1-4.5\(2\) and \(3\) \(2011\)](#))

Timeframe for issuing denial of liability, if any:

Time Limit: "promptly"

"Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to facts or applicable law for denial of a claim or for the compromise of a settlement." ([Ind. Code Ann. § 27-4-1-4.5\(14\) \(2011\)](#))

Must carrier demonstrate prejudice to disclaim on late notice:

Prejudice is presumed upon the showing of an unreasonable delay in giving notice to the insurer. Shelter Mut. Ins. Co. v. Barron, 615 N.E.2d 503, 507 (Ind. Ct. App. 1993). However, that presumption of prejudice is rebuttable by establishing that prejudice to the insurer did not actually occur. Id.

Timeframe for issuing reservation of rights, if any:

Time Limit: "promptly"

"Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to facts or applicable law for denial of a claim or for the compromise of a settlement." ([Ind. Code Ann. § 27-4-1-4.5\(14\) \(2011\)](#))

Additional Fair Claims Practices regulation of significance, if any:

Indiana recognizes a "cause of action for the tortious breach of an insurer's duty to deal with its insured in good faith." Erie Ins. Co. v. Hickman by Smith, 622 N.E.2d 515, 519 (Ind. 1993). "The obligation of good faith and fair dealing with respect to the discharge of the insurer's contractual obligation includes the obligation to refrain from (1) making an unfounded refusal to pay policy proceeds; (2) causing an unfounded delay in making payment; (3) deceiving the insured; and (4) exercising any unfair advantage to pressure an insured into a settlement of his claim." Id.

In Lumberman's Mut. Cas. Co. v. Combs, 873 N.E.2d 692, 714 (Ind. Ct. App. 2007), the court held that "[p]oor judgment or negligence do not amount to bad faith; the additional element of conscious wrongdoing must also be present. A finding of bad faith requires evidence of a state of mind reflecting dishonest purpose, moral obliquity, furtive design, or ill will. A bad faith determination inherently includes an element of culpability."

Matching

There are no statutes.

Stated Value Policy

There are no statutes.

Appraisal Process

There are no statutes.

IOWA

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563-324-3246

First Party Claims:

General statute governing Fair Claims Practices, if any:

[Iowa Code § 507B.4](#); [Iowa Admin. Code 191—Chapter 15](#). Note, however, Iowa does not recognize a private cause of action under these statutes. [Bates v. Allied Mut. Ins. Co.](#), 467 N.W.2d 255, 259-60 (Iowa 1991).

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 15 days. ([Iowa Admin. Code R. 191—15.42](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 30 days following proof of loss. ([Iowa Admin. Code R. 191—15.41](#))

Must carrier demonstrate prejudice to disclaim on late notice:

Not under a claims-made policy – strict compliance with notice provision is required. [Farm Bureau Life Ins. Co. v. Chubb Custom Ins. Co.](#), 780 N.W.2d 735, 741 (Iowa 2010). For an occurrence policy, the question of whether notice was reasonably given is generally one for the trier of fact. [Fireman’s Fund Ins. Co. v. ACC Chem. Co.](#), 538 N.W.2d 259, 262 (Iowa 1995). When the insured’s lack of compliance with notice requirements is measured in terms of months and years, however, lack of compliance with notice requirements can be determined as a matter of law. [Dico, Inc. v. Employers Ins. of Wausau](#), 581 N.W.2d 607, 614 (Iowa 1998). Once the insurer establishes lack of notice requirements, the burden shifts to the insured to show either: 1) compliance was excused or waived; or 2) the insurer was not prejudiced by the late notice. [Fireman’s Fund Ins. Co. v. ACC Chemical Co.](#) 538 N.W.2d 259, 264 (Iowa 1995).

Timeframe for issuing reservation of rights, if any:

Time Limit: 30 days following proof of loss. ([Iowa Admin. Code R. 191—15.41](#))

Additional Fair Claims Practices regulation of significance, if any: See generally,

[Iowa Code § 507B.4](#)

[Iowa Admin. Code R. 191, Chapter 15](#)

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[Iowa Code § 507B.4](#). Note, however, Iowa does not recognize a private cause of action under this Chapter. [Bates v. Allied Mut. Ins. Co.](#), 467 N.W.2d 255, 259-60 (Iowa 1991).

Duty to Defend vs. Duty to Indemnify:

An insurer’s duty to defend is separate from its duty to indemnify; the duty to defend is broader than the duty to indemnify. The duty to defend arises “whenever there is potential or possible liability to indemnify the insured based on the facts appearing at the outset of the case.” In other words, the duty to defend rests solely

on whether the petition contains any allegations that arguably or potentially bring the action within the policy coverage. If any claim alleged against the insured can rationally be said to fall within such coverage, the insurer must defend the entire action. In case of doubt as to whether the petition alleges a claim that is covered by the policy, the doubt is resolved in favor of the insured. A.Y. McDonald Indus., Inc. v. Insurance Co. of N. Am., 475 N.W.2d 607, 627 (Iowa 1991) (en banc)

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Insurer must acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies. ([Iowa Code § 507B.4\(3\)\(j\)\(2\)](#))

Timeframe for issuing denial of liability, if any:

Time Limit: “Reasonable time.” ([Iowa Code § 507B.4\(3\)\(j\)\(5\)](#))

Must carrier demonstrate prejudice to disclaim on late notice:

Not under a claims-made policy – strict compliance with notice provision is required. Farm Bureau Life Ins. Co. v. Chubb Custom Ins. Co., 780 N.W.2d 735, 741 (Iowa 2010). For an occurrence policy, the question of whether notice was reasonably given is generally one for the trier of fact. Fireman’s Fund Ins. Co. v. ACC Chem. Co., 538 N.W.2d 259, 262 (Iowa 1995). When the insured’s lack of compliance with notice requirements is measured in terms of months and years, however, lack of compliance with notice requirements can be determined as a matter of law. Dico, Inc. v. Employers Ins. of Wausau, 581 N.W.2d 607, 614 (Iowa 1998). Once the insurer establishes lack of notice requirements, the burden shifts to the insured to show either: 1) compliance was excused or waived; or 2) the insurer was not prejudiced by the late notice. Fireman’s Fund Ins. Co. v. ACC Chemical Co. 538 N.W.2d 259, 264 (Iowa 1995).

Timeframe for issuing reservation of rights, if any:

Time Limit: “Reasonable time.” ([Iowa Code § 507B.4\(3\)\(j\)\(5\)](#), (14))

Additional Fair Claims Practices regulation of significance, if any:

See generally, [Iowa Code § 507B.4](#)

Matching

Iowa law provides that when a loss requires replacement of items and the replaced items do not match in quality, color or size, the insurer shall replace as much of the item as is necessary to result in a reasonably uniform appearance within the same line of sight. This applies to interior and exterior losses. Exceptions can be made on a case-by-case basis. [Iowa Admin. Code 191 - 15.44\(1\)\(b\)](#).

Stated Value Policy

No specific statute or case law found. Iowa does have an administrative rule setting forth the standards for determining replacement cost and actual cash value. [Iowa Admin. Code 191 - 15.44](#).

Appraisal Process

Appraisal provision required in “standard” fire policy. Policies covering perils other than fire and lightning may contain provisions inconsistent with standard policy. [Iowa Code § 515.109](#).

KANSAS

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913-234-6100

First Party Claims:

General statute governing Fair Claims Practices, if any:

Citation: [Kan. Stat. Ann. § 40-2404\(9\)](#).

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: “reasonably promptly” 30-days. ([Kan. Stat. Ann. § 40-2404\(9\)\(b\)](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: “promptly provide” ([Kan. Stat. Ann. § 40-2404\(9\)\(n\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: UNCLEAR

([Kan. Stat. Ann. § 40-2404\(9\)](#))

Timeframe for issuing reservation of rights, if any:

Time Limit: “promptly provide” ([Kan. Stat. Ann. § 40-2404\(9\)\(n\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[Kan. Stat. Ann. § 40-256](#) - Extra-contractual damages for first party claims.

Third Party Claims:

General statute governing Fair Claims Practices, if any: [Kan. Stat. Ann. § 40-2404\(9\)](#)

Duty to Defend vs. Duty to Indemnify:

Duty to defend is more broad than the duty to indemnify. *Gilmore v. Beach House, Inc.*, 38 Kan. App. 2d 949, 954, 174 P.3d 439, 443 (2008). Must defend if there is a “possibility” of coverage. *MGM, Inc. v. Liberty Mut. Ins. Co.*, 253 Kan. 198, 202, 855 P.2d 77 (1993).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: “reasonably promptly” ([Kan. Stat. Ann. § 40-2404\(9\)\(b\) and \(c\)](#))

Timeframe for issuing denial of liability, if any:

Time Limit: “promptly provide” ([Kan. Stat. Ann. § 40-2404\(9\)\(n\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

Timeframe for issuing reservation of rights, if any:

Time Limit: “promptly provide” ([Kan. Stat. Ann. § 40-2404\(9\)\(n\)](#))

Additional Fair Claims Practices regulation of significance, if any: N/A

Matching

There is no statute or any case law that could be found.

Stated Value Policy

There appears to be no valued policy law in Kansas.

Appraisal Process

Kansas regards appraisal as a form of arbitration, which, statutorily, does not apply to contract of insurance. See ([Kan. Stat. Ann. § 5-401](#)); *Friday v. Trinity Universal of Kan.*, 939 P.2d 869, 871 (Kan. 1997). No other information could be found in statute or case law.

KENTUCKY

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First Party Claims:

General statute governing Fair Claims Practices, if any:

[K.R.S. 304.12-230](#) Unfair claims settlement practices.

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 15 days. ([806 Ky. Admin. Regs. 12:095, § 5\(1\)](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: "reasonable time" ([806 Ky. Admin. Regs. 12:095, § 6\(1\)\(a\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

[Jones v. Bituminous Cass. Corp.](#), 821 S.W.2d 798 (Ky. 1991)

Timeframe for issuing reservation of rights, if any:

Time Limit: "reasonable time" ([806 Ky. Admin. Regs. 12:095, § 6\(1\)\(b\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[806 Ky. Admin. Regs. 12:095, § 6\(5\)](#) - If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within thirty (30) calendar days after receipt of the proofs of loss, giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, forty-five (45) calendar days from the date of the initial notification and every forty-five (45) calendar days thereafter, send to the first party claimant a letter stating the reasons additional time is needed for investigation.

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[K.R.S. 304.12-230](#) Unfair claims settlement practices.

Duty to Defend vs. Duty to Indemnify:

The duty to defend is broader than duty to indemnify. [James Graham Brown Found, Inc. v. St. Paul Fire & Marine Ins. Co.](#), 814 S.W.2d 273 (Ky. 1991). Insurer has duty to defend if there is any allegation which potentially, possibly or might come within coverage of policy. [Id.](#) The duty to defend continues to the point of establishing that liability upon which plaintiff was relying was in fact not covered by the policy and not merely that it might not be. [Id.](#) at 279 (citing 7C Appelman, *Insurance Law and Practice* § 4683.01 at 69 (Berdal Ed.1979)).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: 15 days. ([806 Ky. Admin. Regs. 12:095, § 5\(1\)](#))

Timeframe for issuing denial of liability, if any:

Time Limit: "reasonable time" ([806 Ky. Admin. Regs. 12:095, § 6\(1\)\(a\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

Jones v. Bituminous Cass. Corp., 821 S.W.2d 798 (Ky. 1991)

Timeframe for issuing reservation of rights, if any:

Time Limit: "reasonable time" ([806 Ky. Admin. Regs. 12:095, § 6\(1\)\(b\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[806 Ky. Admin. Regs. 12:095, § 6\(5\)](#) - Insurers shall not make statements which indicate that the rights of a third-party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third-party claimant of the provision of a statute of limitations.

Matching

There are no statutes or case law.

Stated Value Policy

There are no statutes or case law.

Appraisal Process

There are no statutes or case law.

LOUISIANA

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[Craig R. Webb, Esq.](#)

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504-599-5990

First Party Claims:

General statute governing Fair Claims Practices, if any:

[Louisiana Revised Statute 22:1892](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

Except for catastrophic losses, which is 30 days, the insurer shall initiate loss adjustment of a property claim or a claim for reasonable medical expenses within 14 days after notification.

Timeframe for issuing disclaimer of coverage, if any:

A disclaimer must be issued within 30 days of receipt of a satisfactory proof of claim, and a law suit can be considered a proof of claim

Must carrier demonstrate prejudice to disclaim on late notice: YES

Timeframe for issuing reservation of rights, if any:

Any reservation of right letter should be issued within 30 days of receipt of a satisfactory proof of claim.

Additional Fair Claims Practices regulation of significance, if any:

Failure to make a payment on a claim within 30 days after receipt of a written satisfactory proof of loss and demand therefore, or to offer to settle any property damage claim, including a third party claim, may subject

the insurer to penalties in an amount in addition to the actual loss of 50% of the amount of the loss, or \$1000.00, whichever is greater, if such failure is found to be arbitrary, capricious, or without probable cause as well as attorney's fees.

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[Louisiana Revised Statute 22:1892](#)

Duty to Defend vs. Duty to Indemnify:

Insurer has the duty to defend and indemnify. Martco Limited Partnership v Wellons, Inc., WL 38557 (5th CIR (LA) 2009). The duty exists when the underlying complaint is sufficient to trigger the duty to defend and where the insurer cannot establish a policy exclusion to excuse it from the duty to defend the claim

Timeframe for contacting Claimant upon initial receipt of claim, if any:

There is no set time, but it is suggested that it be done within 30 days after notification of a claim.

Timeframe for issuing denial of liability, if any:

All insurers must make a written offer to settle any property damage claim, including a third party claim, within 30 days of receipt of a written satisfactory proof of loss of the claim, and failure to do so may subject the insurer to penalties and attorney's fees.

Must carrier demonstrate prejudice to disclaim on late notice: YES

Timeframe for issuing reservation of rights, if any:

In light of the current state of litigation in Louisiana, it is recommended that any reservations of rights letter be issued within 30 days, and consideration given to a denial of coverage, but providing a defense.

Additional Fair Claims Practices regulation of significance, if any:

After a written settlement agreement exists, payment must be completed within 30 days.

Matching

It does not appear that the issue of matching has been addressed by Louisiana Courts or the Legislature.

Stated Value Policy

The Louisiana Legislature has enacted a Valued Policy Law. [La. R.S. 22:1318](#).

"The language of the statute clearly provides that if an insurer places a value on covered property and uses that valuation to determine the premium charged the insured, in the case of total loss the insurer shall compute and compensate any covered loss of the property at that valuation without deduction or offset unless a different method of loss computation is set forth in the policy and policy application in type of equal size. The legislative history shows an attempt by the insurance industry to lessen the impact of the statute by providing a means for the insurer to set forth a different method of loss computation, an attempt which was ultimately successful as the legislature included the provision in the statute. This compromise allows insurers to set forth an alternative method of loss computation, but protects insureds by requiring the insurers to provide notice in the application that an alternative method of loss computation has been stated in the policy.

A plain reading of La. R.S. 22:695 [[redesignated La. R.S. 22:1318](#)] reveals that few conditions are placed upon parties wishing to set forth a different method of loss computation. While the statute requires that the chosen method be specified in both the policy and the application in "type of equal size," it does not place any limitation upon the actual method of loss computation set forth by the insurer.¹⁵ The language of the statute simply allows the parties to set forth something different than the face value without deduction or offset as the method for computing and compensating any covered loss." *Landry v. Louisiana Citizens Property Insurance Company*, 983 So.2d 66 (La. 05/28/08).

Appraisal Process

Louisiana law does not require a specified appraisal process. However, appraisal clauses are enforceable under Louisiana law and shall be interpreted in accordance with general contract interpretation principles in order to determine the common intent of the parties. *Dufrene v. Certain Interested Underwriters at Lloyd's of London*, 91 So.2d 397 (La.App. 5 Cir. 3/27/2012).

MAINE

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702-221-1399

First Party Claims:

General statute governing Fair Claims Practices, if any:

[Me. Rev. Stat. 24-A, §2164-D.](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: "Reasonably promptly" ([Me. Rev. Stat. 24-A, § 2164-D\(3\)\(B\), \(C\) and \(K\)](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: "Reasonable time after investigation complete" ([Me. Rev. Stat. 24-A, § 2164-D\(3\)\(B\), \(C\), and \(K\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

[Ouellette v. Maine Bonding & Casualty Co.](#), 495 A.2d 1232 (Me. 1985).

Timeframe for issuing reservation of rights, if any:

Time Limit: "Reasonable time after investigation complete" ([Me. Rev. Stat. 24-A, § 2164-D\(3\)\(F\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[Me. Rev. Stat. 24-A, § 2164-D\(3\)\(B\), \(C\), and \(K\)](#) - "Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies" and "failing to adopt and implement reasonable standards for the prompt investigation of claims" constitute unfair claim settlement practices. Claim forms must be provided to an insured within 15 days of request.

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[Me. Rev. Stat. 24-A, § 2164-D.](#)

Duty to Defend vs. Duty to Indemnify:

Former is broader than latter; [York Insurance Group of Maine v. Lambert](#), 740 A.2d 984 (Me. 1999).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: "Reasonably promptly" ([Me. Rev. Stat. 24-A, § 2164-D\(3\)\(B\), \(C\), and \(K\)](#))

Timeframe for issuing denial of liability, if any:

Time Limit: "Promptly" ([Me. Rev. Stat. 24-A, § 2164-D\(3\)\(J\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

Ouellette v. Maine Bonding & Casualty Co., 495 A.2d 1232 (Me. 1985).

Timeframe for issuing reservation of rights, if any:

Time Limit: “Reasonable time after investigation complete” ([Me. Rev. Stat. 24-A, § 2164-D\(3\)\(F\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[Me. Rev. Stat. 24-A, § 2164-D\(3\)\(B\), \(C\), and \(K\)](#) - “Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies” and “failing to adopt and implement reasonable standards for the prompt investigation of claims” constitute unfair claim settlement practices. Claim forms must be provided to an insured within 15 days of request.

Matching

A property insurer in Maine has the option of repairing, rebuilding, or replacing the “property destroyed or damaged with other of like kind and quality” within a reasonable time. [Me. Rev. Stat. 24-A, §3002](#).

Stated Value Policy

An insurer in Maine is obligated to pay, to the extent of the actual cash value of the property at the time of the loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality, nor in any event for more than the interest of the insured. [Me. Rev. Stat. 24-A, §3002](#).

Appraisal Process

In the absence of agreement between insurer and insured as to the actual cash value or the amount of loss, then, on written demand of either, each shall select a competent appraiser, who shall then select a competent umpire. In the event of a disagreement between the two appraisers, the difference shall be submitted to the umpire. [Me. Rev. Stat. 24-A, §3002](#).

MARYLAND

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First Party Claims:

General statute governing Fair Claims Practices, if any:

[§ 27-303](#): Unfair claim settlement practices & [§ 27-1001](#): Lack of Good Faith

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 15 days ([Md. Code Regs.31.15.07.03\(B\)\(10\)](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 15 days after claim forms completed. ([Md. Code Regs. 31.15.07.03 \(B\)\(12\)](#))

Must carrier demonstrate prejudice to disclaim on late notice:

Not in first party context.

Timeframe for issuing reservation of rights, if any:

Time Limit: 15 days after claim forms completed. ([Md. Code Regs. 31.15.07.03 \(B\)\(12\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[Md. Code Regs. 31.15.07.04\(B\)](#) - If an insurer has not completed its investigation within 45 days of notification, it must (1) write to the insured and provide the “actual reason” that additional time is necessary to investigate the claim, and (2) write the insured every 45 days thereafter until the insurer either affirms or denies coverage.

[Md. Code Ann., Ins. § 27-303\(6\)](#) - Failing “to provide promptly on request a reasonable explanation of the basis for a denial of a claim” constitutes an unfair claim settlement practice.

[Md. Code Ann., Ins. §27-1001](#) - Failing to act in good faith defined as “an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insurer made a decision on a claim.”

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[§ 27-303](#): Unfair claim settlement practices

Duty to Defend vs. Duty to Indemnify:

No statutory citation.

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: 15 days ([Md. Code Regs.31.15.07.03\(B\)\(10\)](#))

Timeframe for issuing denial of liability, if any:

[Md. Code Regs. 31.15.07.03 \(B\)\(12\)](#)

Must carrier demonstrate prejudice to disclaim on late notice: YES, actual prejudice.

Timeframe for issuing reservation of rights, if any:

[Md. Code Regs. 31.15.07.03 \(B\)\(12\) \(2011\)](#)

Additional Fair Claims Practices regulation of significance, if any: N/A

Matching

No statute, but existing [MIA Bulletin](#).

Stated Value Policy

No statutory provisions on this topic

Appraisal Process

No statutory provision on this topic.

Appraisal process has generally been regarded by courts as a fair method of resolving disputes over the amount of a loss. Meyer v. State Farm Fire & Cas. Co., 85 Md. App. 90 (1990). Appraisals deal solely with determining the amount of the loss. The parties agree to submit matter to appraisal and be bound by the umpire’s decision. A party cannot now then claim that the umpire’s decision is tainted merely because the outcome is less than favorable. Brethren Mutual Ins. Co. Filsinger, 54 Md. App. 357 (1983); Aetna Cas. & Surety Co. v. Ins. Comm’r, 293 Md. 409 (1982); Schreiber v. Pacific Coast Fire Ins. Co., 195 Md. 639 (1950). When the appraisers cannot agree on the value, they jointly agree upon an umpire. Firemen’s Fund Ins. Co. v. Flint Hosiery Mills, Inc., 74 F.2d 533 (4th Cir. 1935).

MASSACHUSETTS

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First Party Claims:

General statute governing Fair Claims Practices, if any:

[Mass. Gen. Laws, ch. 176D](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: "Reasonably promptly" ([Mass. Gen. Laws, ch. 176D, § 3\(9\)\(b\)](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: "Reasonable time" after proofs of loss completed; "promptly" ([Mass. Gen. Laws, ch. 176D, § 3\(9\)\(e\), \(n\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

([Mass. Gen. Laws, ch. 175, § 112](#)); *Employers Liab. Assur. Corp. v. Hoechst Celanese Corp.*, 684 N.E. 2d 600 (Mass. App. 1997).

Timeframe for issuing reservation of rights, if any:

Time Limit: "Reasonably promptly" ([Mass. Gen. Laws, ch. 176D, § 3\(9\)\(c\),\(e\)\(n\)](#))

Additional Fair Claims Practices regulation of significance, if any:

Mass. Gen. Laws, ch. 93A - Private right of action for unfair acts and practices in trade or commerce, which may include unfair insurance practices as defined by ch. 176D

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[Mass. Gen. Laws, ch. 176D.](#)

Duty to Defend vs. Duty to Indemnify:

Former is broader than latter; *Bagley v. Monticello Ins. Co.*, 430 Mass. 454, 720 N.E. 2d 813 (1999).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: "Reasonably promptly" ([Mass. Gen. Laws, ch. 176D, § 3\(9\)\(b\)](#))

Timeframe for issuing denial of liability, if any:

Time Limit: "Reasonable time"; "promptly" ([Mass. Gen. Laws, ch. 176D, § 3\(9\)\(e\), \(n\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

Timeframe for issuing reservation of rights, if any:

Time Limit: "Reasonably promptly"; "reasonable time"; "promptly"; "Reasonable time" after completed investigation ([Mass. Gen. Laws, ch. 176D, § 3\(9\)\(c\), \(e\), \(n\)](#))

Additional Fair Claims Practices regulation of significance, if any:

Mass. Gen. Laws, ch. 93A - Private right of action for unfair acts and practices in trade or commerce, which may include unfair insurance practices as defined by ch. 176D

Matching

A property insurer in Massachusetts has three options upon the occurrence of a loss: (1) pay the amount of the loss, (2) notify the insured of its intention to rebuild or repair the premises, or (3) “replace the property with other of the same kind and goodness.” [Mass. Gen. Laws, ch. 175, §99, Twelfth, ¶18.](#)

Stated Value Policy

Value of insured property, as stated in the policy, limits maximum extent of insurer’s liability for the actual value of the property lost, destroyed, or damaged. *LES Realty Trust “A” v. Landmark American Ins. Co.*, 82 Mass. App. Ct. 694, 977 N.E.2d 566 (2012); *Simon v. National Union Fire Ins. Co.*, 57 Mass. App. Ct. 350, 782 N.E.2d 1125 (2003).

Appraisal Process

If no agreement between insurer and insured as to “amount of loss”, insurer, upon demand by insured, shall initiate reference process, involving three referees, two of whom picked by the parties, and the third picked by the other two referees. [Mass. Gen. Laws, ch. 175, §100.](#) (See generally, *Augenstein v. Insurance Co. of North America*, 372 Mass. 30, 360 N.E.2d 320 (1977))

MICHIGAN

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313-965-6100

First Party Claims:

General statute governing Fair Claims Practices, if any:

Michigan’s Uniform Trade Practices Act, [MCL 500.2001](#), et seq.

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: An insurer has 30 days to specify in writing the materials that constitute a satisfactory proof of loss after receipt of a claim. ([MCL 500.2006\(3\)](#))

Timeframe for issuing disclaimer of coverage, if any:

No statutory timeframe in which to disclaim coverage; however, as a general rule, if an insurer undertakes a defense of an insured while having knowledge of facts which might preclude coverage, the insurer will be deemed to have waived or be estopped from asserting its right to deny coverage, unless notice of the possible lack of coverage is provided to the insured within a reasonable time. See *Kirschner v Process Design Associates, Inc.*, 459 Mich 587; 592 NW2d 707 (1999).

Must carrier demonstrate prejudice to disclaim on late notice: YES

Wendel v Swanberg, 384 Mich 468; 185 NW2d 348 (1971); but see, *Schubiner v New England Insurance Co.*, 207 Mich App 353 (1994) in which the Michigan Court of Appeals drew a distinction between “occurrence” and “claims made” policies and declined to apply the general insurance principle that the insurer must show prejudice to deny coverage under a “claims made” policy for lack of timely notice.

Timeframe for issuing reservation of rights, if any:

No statutory timeframe in which an insurer must provide a reservation of rights letter; however, Michigan

courts have held that an insurer who has knowledge of facts which may preclude coverage must give notice of potential defenses within a “reasonable time;” otherwise, the insurer may be estopped from later denying coverage. See Kirschner v Process Design Associates, Inc., 459 Mich 587; 592 NW2d 707 (1999). Michigan Courts have held that two years without issuing a reservation of rights letter was unreasonable, Meirthew v Last, 376 Mich 33; 135 NW2d 353 (1965), whereas, when a reservation of rights was provided four months after undertaking the defense of an insured, the insurer’s actions were reasonable and timely. Fire Insurance Exchange v Fox, 167 Mich App 710; 423 NW2d 325 (1988).

Additional Fair Claims Practices regulation of significance, if any: N/A

Third Party Claims:

General statute governing Fair Claims Practices, if any:

Michigan’s Uniform Trade Practices Act, [MCL 500.2001](#), et seq.

Duty to Defend vs. Duty to Indemnify:

In Michigan, as an insurer has a duty to defend when coverage is arguable, it is often said that the duty to defend is broader than the duty to indemnify. See Auto-Owners Ins. Co. v City of Clare, 446 Mich 1; 521 NW2d 480 (1994). The duty to defend is not limited to meritorious suits and may even extend to actions which are groundless, false or fraudulent, so long as the allegations against the insured even arguably come within the policy coverage. An insurer has a duty to defend, despite theories of liability asserted against any insured which are not covered under the policy, if there are any theories of recovery that fall within the policy. See Dochod v Central Mutual Ins. Co., 81 Mich App 63; 264 NW2d 122 (1978). The duty to defend cannot be limited by the precise language of the pleadings. As such, the insurer has the duty to independently investigate the third party’s allegations to determine whether coverage is possible. See Shepard Marine Construction Co. v Maryland Casualty Co., 73 Mich App 62; 250 NW2d 541 (1976).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: An insurer has 30 days to specify in writing the materials that constitute a satisfactory proof of loss after receipt of a claim. ([MCL 500.2006\(3\)](#))

Timeframe for issuing denial of liability, if any:

No statutory timeframe in which to disclaim coverage; however, as a general rule, if an insurer undertakes a defense of an insured while having knowledge of facts which might preclude coverage, the insurer will be deemed to have waived or be estopped from asserting its right to deny coverage, unless notice of the possible lack of coverage is provided to the insured within a reasonable time. See Kirschner v Process Design Associates, Inc., 459 Mich 587; 592 NW2d 707 (1999).

Must carrier demonstrate prejudice to disclaim on late notice: YES

See Wendel v Swanberg, 384 Mich 468; 185 NW2d 348 (1971); but see, Schubiner v New England Insurance Co., 207 Mich App 353 (1994) in which the Michigan Court of Appeals drew a distinction between “occurrence” and “claims made” policies and declined to apply the general insurance principle that the insurer must show prejudice to deny coverage under a “claims made” policy for lack of timely notice.

Timeframe for issuing reservation of rights, if any:

No statutory timeframe in which an insurer must provide a reservation of rights letter; however, Michigan courts have held that an insurer who has knowledge of facts which may preclude coverage must give notice of potential defenses within a “reasonable time;” otherwise, the insurer may be estopped from later denying coverage. See Kirschner v Process Design Associates, Inc., 459 Mich 587; 592 NW2d 707 (1999). Note, however, an insurer is only required to issue a reservation of rights to the policyholder (and personal counsel if applicable), and not the claimant. Id.

Additional Fair Claims Practices regulation of significance, if any: N/A

Matching

Nothing specifically addressing “matching” under Michigan statute or case law; but see discussion below concerning MCL 500.2827.

Stated Value Policy

MCL 500.2826 pertains to replacement cost policies and permits the insured to repair or replace the damaged or destroyed structure without any deduction for depreciation. The insured is reimbursed for the difference between the actual cash value of the property at the time of the loss and the amount required to replace, rebuild or repair the damaged property to its original condition, with materials of the same kind and quality.

If the policy is a “guaranteed replacement cost” policy, the insurer will pay the full cost to repair or replaced the damaged building, regardless of the policy limit, if certain conditions concerning notice of improvements to the property have been met. This differs from a standard replacement cost policy in that it guarantees that the insured will recover the full replacement cost of the loss, even if the policyholder was underinsured. (In reality, most guaranteed replacement cost policies do not actually provide for full replacement cost, irrespective of policy limits, but provide for enhancement of structure policy limits on a percentage basis).

MCL 500.2827 is Michigan’s “repair cost” statute. An insurer may issue a policy in which the insurer agrees to reimburse and indemnify the insured for the difference between the actual cash value of the lost or damaged property at the time of the loss and the amount actually necessary to repair, rebuild or replace the property. The repair, replacement or rebuilding is to be “to a condition similar in appearance to what existed at the time of the loss, using conventional materials and construction methods that are currently available without extraordinary expense.” For example, an insurer could elect to replace plaster with drywall. Under this statute, the insurer’s liability “shall not exceed the amount of liability covered by the contract or insurance.” Actual repair or replacement of the damaged property is not required to receive the repair cost benefit, if the repair or replacement damages exceed the stated policy limits. *Cortez v Fire Ins Exch*, 196 Mich App 666, 493 NW2d 505 (1992).

Appraisal Process

If the insured and the insurer fail to agree on the actual cash value or amount of loss, either party may make a written demand for appraisal to resolve the dispute. See, [MCL 500.2833](http://legislature.mi.gov/doc.aspx?mcl-500-2833) Fire Insurance Policy; Mandatory Provisions; Coverage. <http://legislature.mi.gov/doc.aspx?mcl-500-2833> Each party would select an appraiser and notify the other of the appraiser’s identity within 20 days after receipt of the written demand. The two appraisers then select an umpire. If the appraisers are unable to agree on an umpire, either party may ask the circuit court in the county in which the loss occurred to select the umpire. If the two appraisers are unable to agree as to the value of the loss within a reasonable time, they must submit their differences to the umpire and a written agreement signed by any two of these three establishes the amount of the loss.

MINNESOTA

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First Party Claims:

General statute governing Fair Claims Practices, if any:

[Minn. Stat. § 72A.201 \(2014\)](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 10 business days. ([Minn. Stat. § 72A.201, subd. 4\(1\)](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 30 day if investigation is completed ([Minn. Stat. § 72A.201, subd. 4\(3\)\(i\)](#)) or, in any event, not more than 60 days following proof of loss ([Minn. Stat. § 72A.201, subd. 4\(11\)](#)).

Must carrier demonstrate prejudice to disclaim on late notice: YES

([Minn. Stat. § 72A.201, subd. 4\(6\)](#)). Either a showing of prejudice or a showing that notice is a condition precedent to coverage will disclaim coverage on late notice. *Sterling State Bank v. Virginia Sur. Co.*, 173 N.W.2d 342 (Minn. 1969)

Timeframe for issuing reservation of rights, if any:

Time Limit: 30 days if investigation is completed ([Minn. Stat. § 72A.201, subd. 4\(3\)\(i\)](#)) or, in any event, not more than 60 days following proof of loss. ([Minn. Stat. § 72A.201, subd. 4\(11\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[Minn. Stat. § 72A.20, subd. 12\(2\) and \(3\)](#) - “Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies,” and “failing to adopt and implement reasonable standards for the prompt investigation of claims” constitute unfair claim settlement practices.

[Minn. Stat. § 72A.20, subd. 12\(14\)](#) - “Failing to promptly provide reasonable explanation of the basis in the insurance policy in relation to facts or applicable law for denial of a claim or for the compromise of a settlement” constitutes an unfair claim settlement practice.

There is no private right of action for a violation of Minnesota’s Unfair Claims Practices Act. The Act is enforced by the Commissioner of Commerce and the Attorney General. *Elder v. Allstate Ins. Co.*, 341 F.Supp.2d 1095 (D. Minn. 2004).

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[Minn. Stat. § 72A.201 \(2014\)](#).

Duty to Defend v. Duty to Indemnify:

The duty to defend is broader than the duty to indemnify. *Meadowbrook, Inc. v. Tower Ins. Co., Inc.*, 559 N.W.2d 411, 41 (Minn. 1997). When any part of the claim is “arguably” within the scope of the policy coverage the insurer has a duty to defend. *Jostens Inc. v. Mission Insurance Co.*, 387 N.W.2d 161, 165 (Minn. 1986). An insurer seeking to establish that it does not have a duty to defend must show that each claim asserted in the law suit “clearly falls outside” the policy. *Id.* at 165–66. The duty to indemnify is narrower. Before an insurer has a duty to indemnify, all claims alleged in the complaint must fall within the policy coverage.

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: 10 business days. ([Minn. Stat. § 72A.201, subd. 4\(1\)](#))

Timeframe for issuing denial of liability, if any:

Time Limit: 30 days if investigation is completed ([Minn. Stat. § 72A.201, subd. 4\(3\)\(i\)](#)) or, in any event, not more than 60 days following proof of loss. ([Minn. Stat. § 72A.201, subd. 4\(11\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

([Minn. Stat. § 72A.201, subd. 4\(6\)](#)). Either a showing of prejudice or a showing that notice is a condition precedent to coverage will disclaim coverage on late notice *Sterling State Bank v. Virginia Sur. Co.*, 173 N.W.2d 342 (Minn. 1969).

Timeframe for issuing reservation of rights, if any:

Time Limit: 30 days if investigation is completed ([Minn. Stat. § 72A.201, subd. 4\(3\)\(i\)](#)) or, in any event, not more than 60 days following proof of loss. ([Minn. Stat. § 72A.201, subd. 4\(11\)](#))

Additional Fair Claims Practices regulation of significance, if any

[Minn. Stat. § 72A.20, subd. 12\(2\) and \(3\)](#) - “Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies” and “failing to adopt and implement reasonable standards for the prompt investigation of claims” constitute unfair claim settlement practices.

[Minn. Stat. §72A.20, subd. 12\(14\)](#) - “Failing to promptly provide reasonable explanation of the basis in the insurance policy in relation to facts or applicable law for denial of a claim or for the compromise of a settlement” constitutes an unfair claim settlement practice.

There is no private right of action for a violation of Minnesota’s Unfair Claims Practices Act. The Act is enforced by the Commissioner of Commerce and the Attorney General. [Elder v. Allstate Ins. Co.](#), 341 F.Supp.2d 1095 (D. Minn. 2004).

Matching

When matching products are not available to repair or replace the damaged portions, and the resulting repair using “close” materials leaves a property owner with aesthetically unacceptable results, there has not been a matching. Hence, the requirement primarily for roofs and siding is that they match. This has been determined by case law in Minnesota.

Stated Value Policy

There are references to stated value policy in statutes in Minnesota, [M.S.A. § 65A.08 \(2\)](#). However, if the policy is issued as a surplus line policy, it is not required to follow the stated value policy law.

Appraisal Process

Appraisals are required if there is not an agreement on value. Each party getting one appraiser and the appraisers then determine a third neutral. Minnesota, [M.S.A. § 66A.29](#).

MISSISSIPPI

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601-607-4800

First Party Claims:**General statute governing Fair Claims Practices, if any:**

There is no Fair Claims Practices Act in Mississippi nor are there any statutes relating to fair claims practices.

Timeframe for contacting Insured upon initial receipt of claim, if any:

There is no set time but best practice is as soon as possible but certainly no more than 10 days from notice of claim.

Timeframe for issuing disclaimer of coverage, if any:

There is no set time as the company has the right to conduct its investigation. Therefore, it is best to be

diligent in the investigation, maintain communication with the insured, and issue the denial as soon as a decision is made. While taking an inordinate amount of time may lead to a constructive denial, the primary issue is the effort put into the investigation.

Must carrier demonstrate prejudice to disclaim on late notice:

The Mississippi Supreme Court has held that in UM cases, a provision requiring “notice as soon as practicable” is void as conflicting with the statutory coverage requirements. The Court found that the “notice as soon as practicable” provision conflicted with the UM Act’s requirement that the insured recover all sums he is legally entitled to recover from the uninsured tortfeasor. Because the tortfeasor remained subject to suit by the UM insured, the UM carrier was likewise subject to a claim for UM benefits under the policy notwithstanding the lengthy delay in receiving notice of the accident. Lawler v. Government Employees Ins. Co., 569 So. 2d 1151, 1153 (Miss. 1990).

Timeframe for issuing reservation of rights, if any:

There is no set time but best practice is within 30 days of acknowledgement of claim.

Additional Fair Claims Practices regulation of significance, if any: N/A

Third Party Claims:

General statute governing Fair Claims Practices, if any:

No statute

Duty to Defend vs. Duty to Indemnify:

“Insurer’s duty to defend is broader than its duty to indemnify, as insurer has duty to defend when there is any basis for potential liability under the insurance policy.” Great Northern Nekoosa Corp. v. Aetna Cas. and Sur. Co. 921 F.Supp. 401 (N.D.Miss. 1996).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

There is no set time but best practice is no later than 14 days from notice of claim.

Timeframe for issuing denial of liability, if any:

There is no set time but best practice is within 30 days of acknowledgement of claim.

Must carrier demonstrate prejudice to disclaim on late notice:

It depends on the language in the policy. Under Mississippi law, insurer is not required to prove that it suffered actual prejudice from unreasonably delayed notice of claim. Bolivar County Bd. of Sup’rs v. Forum Ins. Co. 779 F.2d 1081 (C.A.5 (Miss.) 1986)

The law of Mississippi is well-settled that an insured’s breach of a condition precedent or to a provision that renders the policy void relieves the insurer of any obligation to show prejudice. A substantial line of cases supports the rule that an insurer need not show prejudice when the insured breaches a condition precedent or a condition that voids the policy. U.S. Fidelity & Guar. Co. v. Wigginton, 964 F.2d 487, 490 (C.A.5 (Miss.) 1992)

Notice requirement must clearly state that it is a condition precedent to coverage. If the notice provision is ambiguous, then there is no condition precedent and the insurer must show actual prejudice. Commercial Union Ins. Co. v. Dairyland Ins. Co., 584 So.2d 405, 408 (Miss. 1991)

Timeframe for issuing reservation of rights, if any:

There is no set time but best practice is within 30 days of acknowledgement of claim.

Additional Fair Claims Practices regulation of significance, if any: N/A

Matching

There are no statutory requirements for matching in Mississippi, though the best practice is to replace or repair property with “like kind or quality.”

Stated Value Policy

There are no statutory requirements for stated value, though the use of stated values are permitted. *Scott v. Transport Indemnity Company*, 513 So.2d 889, 893 (Miss. 1987).

Appraisal Process

There are no statutory requirements for appraisals. The Supreme Court, however, has held that “an appraisal is presumptively correct, but it is also the law that the court may set aside the appraisal where the award is so grossly inadequate or excessive as to amount to a fraud in effect, although fraud is not charged, or where appraisers were without authority, or where there is a mistake of fact or to prevent injustice.” *Munn v. National Fire Insurance Company of Hartford*, 115 So.2d 54, 58 (Miss. 1959) citing 29 *Am. Jur., Ins.*, Sec. 1251, page 934. Thus, best practice is to ensure that appraisers exercise authority only to the extent granted in the policy.

MISSOURI

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913-234-6100

First Party Claims:

General statute governing Fair Claims Practices, if any:

([Missouri Revised Statute §375.1000](#))

“Nothing in sections 375.1000 to 375.1018 shall be construed to create or imply a private cause of action for violation of sections 375.1000 to 375.1018.”

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 10 days ([Mo. Code Regs. Ann. tit. 20, § 100-1.030 \(2006\)](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 15 days following all necessary forms. ([Mo. Code Regs. Ann. tit. 20, § 100-1.050 \(2006\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

“Missouri courts have consistently placed the burden on insurers to demonstrate that they are prejudiced by receiving late notice of a claim before allowing the companies to avoid coverage under a policy because of the late notice.” *Tresner v. State Farm Ins. Co.*, 913 S.W.2d 7, 11 (Mo. banc 1995).

Timeframe for issuing reservation of rights, if any:

Time Limit: 15 days following all necessary forms. ([Mo. Code Regs. Ann. tit. 20, § 100-1.050 \(2006\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[\(Mo. Ann. Stat. § 375.1007\(2\) and \(3\) \(2014\)\)](#)

“Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies” and “failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies” constitute improper claims practices.

[\(Mo. Ann. Stat. § 375.1007\(13\) \(2006\)\)](#)

The insurer must provide appropriate claim forms with instructions on how to use them within 15 calendar days of a request.

[\(Mo. Code Regs. Ann. tit. 20, § 100-1.050 \(2006\)\)](#)

If more time is required to investigate the claim, the insurer must write to the insured within 15 working days after the submission of the claim and explain why more time is needed. If the investigation remains incomplete, the insurer must write to the insured within 45 days from the date of the original notification and every 45 days thereafter, setting forth the reasons that additional time is needed

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[\(Missouri Revised Statute 375.1007 \(2000\)\)](#)

Duty to Defend vs. Duty to Indemnify:

The duty to defend is based upon the allegations of the complaint, the duty to indemnify is triggered by the actual facts establishing liability on the part of the insured. McCormick Baron Management Services, Inc. vs. American Guarantee and Liability Ins.Co., 989 S.W.2d 168 (Mo. 1999).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: 10 days [\(Mo. Code Regs. Ann. tit. 20, § 100-1.030 \(2006\)\)](#)

Timeframe for issuing denial of liability, if any:

Time Limit: 15 days following all necessary forms. [\(Mo. Code Regs. Ann. tit. 20, § 100-1.050 \(2006\)\)](#)

Must carrier demonstrate prejudice to disclaim on late notice: YES

“Missouri courts have consistently placed the burden on insurers to demonstrate that they are prejudiced by receiving late notice of a claim before allowing the companies to avoid coverage under a policy because of the late notice.” Tresner v. State Farm Ins. Co., 913 S.W.2d 7, 11 (Mo. banc 1995).

Timeframe for issuing reservation of rights, if any:

Time Limit: 15 days following all necessary forms. [\(Mo. Code Regs. Ann. tit. 20, § 100-1.050 \(2006\)\)](#)

Additional Fair Claims Practices regulation of significance, if any:

[\(Mo. Ann. Stat. § 375.1007\(2\) and \(3\) \(2014\)\)](#)

“Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies” and “failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies” constitute improper claims practices.

[\(Mo. Ann. Stat. § 375.1007\(13\) \(2006\)\)](#)

The insurer must provide appropriate claim forms with instructions on how to use them within 15 calendar days of a request.

[\(Mo. Code Regs. Ann. tit. 20, § 100-1.050 \(2006\)\)](#)

If more time is required to investigate the claim, the insurer must write to the insured within 15 working days after the submission of the claim and explain why more time is needed. If the investigation remains incomplete, the insurer must write to the insured within 45 days from the date of the original notification and every 45 days thereafter, setting forth the reasons that additional time is needed.

Matching

Matching is required if the material used will be a mismatch to the material already present. However, matching is not required if the new material used is virtually identical to the old material. There are genuine issues of material fact as to whether replacement siding for part of house damaged by hail was virtually identical or if house with mismatched siding was equal in value to house with matching siding and precluded summary judgment for homeowners insurer on insured's claims for breach of contract and vexatious refusal to pay. *Alessi v. Mid-Century Ins. Co., Inc.*, 464 S.W.3d 529 (Mo. Ct. App. 2015)

Stated Value Policy

[Missouri Revised Statute §379.140](#)

The Missouri statute applies to loss or damage by fire. It applies to both real and personal property. In the event of a total loss, the insurer must pay the total amount of the policy less the depreciation of the property between the time of the issuance of the policy and the loss. In a partial loss, the insurer must pay the comparable percentage of the total value as the damaged part bears to the whole property.

Appraisal Process

In Missouri, there are no statutory/regulatory requirements for the appraisal process. If the parties' disagreement is over the amount of loss, however, appraisal is appropriate. See, e.g., *Lance v. Royal Ins. Co.*, 259 S.W. 535, 535 (Mo.App.1924). The process is typically outlined in the insurance policy.

MONTANA

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702-221-1399

First Party Claims:

General statute governing Fair Claims Practices, if any:

Montana's Unfair Trade Practices Act was created "to regulate trade practices in the business of insurance." [Mont. Code Ann. § 33-18-101](#). It precludes any person from engaging "in this state in any trade practice which is defined in this chapter as or determined pursuant to this chapter to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance." [MCA § 33-18-102\(1\)](#). Specifically, the Act prohibits an insurer from, inter alia, engaging in the following conduct:

- (1) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;
- (2) fail to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
- (3) fail to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
- (4) refuse to pay claims without conducting a reasonable investigation based upon all available information;

- (5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
- (6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;
- (7) compel insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds;
- (8) attempt to settle a claim for less than the amount to which a reasonable person would have believed the person was was [sic] entitled by reference to written or printed advertising material accompanying or made part of an application;
- (9) attempt to settle claims on the basis of an application that was altered without notice to or knowledge or consent of the insured;
- (10) make claims payments to insureds or beneficiaries not accompanied by statements setting forth the coverage under which the payments are being made;
- (11) make known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;
- (12) delay the investigation or payment of claims by requiring an insured, claimant, or physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;
- (13) fail to promptly settle claims, if liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or
- (14) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

[MCA § 33-18-201.](#)

A private cause of action only exists on the part of the insured if the insured suffered actual damages as a result of the insurer's violation of subsection (1), (4), (5), (6), (9), or (13) of 33-18-201. [MCA § 33-18-242\(1\).](#)

The Act limits the causes of action which can be brought by an insured against an insurer. Specifically, the Act provides:

An insured who has suffered damages as a result of the handling of an insurance claim may bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section [that is, for violation of the aforementioned MCA 33-18-201 subsections], but not under any other theory or cause of action. An insured may not bring an action for bad faith in connection with the handling of an insurance claim.

[MCA § 33-18-242\(3\).](#) The Act then states: "An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue." [MCA § 33-18-242\(5\).](#) The insured must file his claim "within 2 years from the date of the violation of 33-18-201." [MCA § 33-18-242\(7\)\(a\).](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

There is no set time; however, the Act requires the insurer "to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies." [MCA § 33-18-201\(2\).](#) Additionally, under Montana law, an insurer must conduct a reasonable investigation into claims based on all available information, and that such investigation must be "prompt." *Farmers Union Mut. Ins. Co. v. Rumph*, 339 Mont. 251, 170 P.3d 934 (2007).

Timeframe for issuing disclaimer of coverage, if any:

An insurer must pay or deny a claim “within 30 days after receipt of a proof of loss unless the insurer makes a reasonable request for additional information or documents in order to evaluate the claim.” [MCA § 33-18-232\(1\)](#). If the insurer makes such a reasonable request, the insurer must “pay or deny the claim within 60 days of receiving the proof of loss.” *Id.* Exemptions exist where “the insurer has notified the insured, the insured’s assignee, or the claimant of the reasons for failure to pay the claim in full”; or “the insurer has a reasonable belief that insurance fraud has been committed and the insurer has reported the possible insurance fraud to the commissioner.” *Id.* Importantly, the deadlines set forth in [MCA § 33-18-232\(1\)](#) do “not eliminate an insurer’s right to conduct a thorough investigation of all the facts necessary to determine payment of a claim.” An insurer’s failure to comply with these time limits will result in a 10% annual interest rate being applied to all sums due and owing, so long as the interest due on the claim exceeds \$5. *Id.*

An insurer’s non-compliance with the aforementioned time limits does not give rise to a private cause of action by an insured or a third-party and evidence of compliance or noncompliance is not admissible in a private action. [MCA § 33-18-232\(2\)](#).

Must carrier demonstrate prejudice to disclaim on late notice: YES/NO

Yes. Montana follows the notice-prejudice rule; that is, “[a]n insured’s technical or illusory failure to comply with obligations of a policy will not automatically terminate coverage, and an insurer who does not receive timely notice required by the terms of an insurance policy must demonstrate prejudice from that lack of notice in order to avoid the obligation to provide defense and indemnification of the insured.” *Atlantic Cas. Ins. Co. v. Greytak*, 379 Mont. 332, 350 P.3d 63, 67 (2015).

Timeframe for issuing reservation of rights, if any:

There is no set time, but best practice would be as soon as possible.

Additional Fair Claims Practices regulation of significance, if any: None.**Third Party Claims:****General statute governing Fair Claims Practices, if any:**

Montana’s Unfair Trade Practices Act, MCA § 33-18-101 *et. seq.*, governs the insurer’s trade practices. Montana Code Section 33-18-201, *supra*, sets forth the relevant acts which are prohibited by the Act. Like an insured, a third-party claimant has a private or independent cause of action against the insurer “for actual damages caused by the insurer’s violation of subsection (1), (4), (5), (6), (9), or (13) of 33-18-201”, *supra*. [MCA § 33-18-242\(1\)](#). The third-party claimant cannot file an action under the Act “until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim”. [MCA § 33-18-242\(6\)\(b\)](#). The third-party claimant must file suit “within 1 year from the date of the settlement of or the entry of judgment on the underlying claim.” [MCA § 33-18-242\(7\)\(b\)](#).

Duty to Defend vs. Duty to Indemnify:

In Montana, an insurer’s duty to defend and duty to indemnify are two separate and distinct legal duties. The duty to defend is independent from and broader than the duty to indemnify created by the same insurance contract.” *See e.g. Farmers Union Mut. Ins. Co. v. Staples*, 321 Mont. 99, 105, 90 P.3d 381, 385 (2004). In describing an insurer’s duty to defend, the Montana Supreme Court has held that “an insurer’s duty to defend its insured arises when a complaint alleges facts which represent a risk covered by the terms of an insurance policy.” *Farmers Union Mut. Ins. Co. v. Rumph*, 339 Mont. 251, 255, 170 P.3d 934, 937 (2007). A duty to indemnify only arises when the losses or damages are found to be covered by the policy.

Timeframe for contacting Claimant upon initial receipt of claim, if any:

No time is set. However, the Act provides a third-party claimant with a private cause of action if the insurer “fail[s] to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.” [MCA § 33-18-201\(5\)](#). However, please note, “the UTPA does not confer upon insurers a duty to disclose information in response to third-party claimants’ requests for an explanation of coverage, policy limits, and amounts already expended on defense.” *See Bateman v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.*, 423 F. App’x 763, 765 (9th Cir. 2011).

Timeframe for issuing denial of liability, if any:

No time is set. However, the Act provides a third-party claimant with a private cause of action if the insurer “fail[s] to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.” [MCA § 33-18-201\(5\)](#). However, please note, “the UTPA does not confer upon insurers a duty to disclose information in response to third-party claimants’ requests for an explanation of coverage, policy limits, and amounts already expended on defense.” See *Bateman v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.*, 423 F. App’x 763, 765 (9th Cir. 2011).

Must carrier demonstrate prejudice to disclaim on late notice:

See Section “First Party Claims: Must carrier demonstrate prejudice to disclaim on late notice” above. Additionally, under Montana law, where the insurance policy requires notice by the insured and requires full compliance with its terms before suit can be filed against the insurer and where the insured did not notify the insurer of the claim and/or of the existing lawsuit, the insurer is not liable for the damages suffered by the third party claimant. See *Steadele v. Colony Ins. Co.*, 361 Mont. 459, 466-67, 260 P.3d 145, 151 (2011).

Timeframe for issuing reservation of rights, if any:

No time is set, but best practice would be as soon as possible.

Additional Fair Claims Practices regulation of significance, if any:

Under the Act, “an insurer has a duty to provide coverage for an injured third party when liability for the underlying accident is ‘reasonably clear.’” See *Peterson v. St. Paul Fire & Marine Ins. Co.*, 357 Mont. 293, 302, 239 P.3d 904, 911 (2010) (citing *Ridley v. Guaranty Nat. Ins. Co.*, 286 Mont. 325, 334, 951 P.2d 987, 992 (1997)). “[L]iability is ‘reasonably clear’ when a reasonable person, with knowledge of the relevant facts and law, would conclude, for good reason, that the defendant is liable to the plaintiff.” See *id.* at 305.

Matching

No statute requiring.

Stated Value Policy

Whenever any policy of insurance is written to insure any improvements upon real property in this state against loss or damage and the property insured is considered to be a total loss, without criminal fault on the part of the insured or the insured's assigns, the amount of insurance written in the policy must be taken conclusively to be the true value of the property insured and the true amount of loss and measure of damages. The payment of money as a premium for insurance must be prima facie evidence that the party paying the insurance premium is the owner of the property insured. However, any insurance company may assert fraud in obtaining the policy as a defense to a suit on the policy. [Mont. Code Anno., §33-24-102](#)

In the absence of criminal fault or fraud that when insured improvements on real property are considered to be a total loss, the amount of applicable insurance coverage written in the policy contract is taken conclusively to be the true amount of the loss and measure of damages. *Britton v. Farmers Ins. Grp. (Truck Ins. Exch.)*, 221 Mont. 67, 72, 721 P.2d 303, 306-07 (Sup Ct 1986)

A total loss occurs when an improvement to real property is so significantly damaged that it no longer retains its “identity and specific character as a building.” *Meccage v. Spartan Ins. Co.*, 156 Mont. 140, 477 P.2d 117 (Sup Ct 1970)

Appraisal Process

On whether an appraisers calculations regarding amount of loss are binding:

An award made by appraisers or arbitrators should not be vacated unless it was made without authority, or as a result of fraud or mistake, or misfeasance or malfeasance of the appraisers. [Lee v. Providence Washington Ins. Co.](#), 82 Mont. 264, 266 P. 640, 642 (1928); [Hass v. Hass Land Co.](#), 217 Mont. 246, 251, 704 P.2d 63, 66 (1985); [Bennett v. Mahoney](#), 161 Mont. 510, 515, 507 P.2d 1057, 1060 (Sup Ct 1973)

Although the award may be fair on its face, it is proper for the court to consider the method by which the appraisers reached their decision. But courts should be cautious in interfering in this class of cases and should never do so except to prevent a manifest injustice. McIntosh v. Hartford Fire Ins. Co., 106 Mont. 434, 78 P.2d 82, 83 (Sup Ct 1938), citing *Lee*

NEBRASKA

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702-221-1399

First Party Claims:

General statute governing Fair Claims Practices, if any:

[Neb. Rev. Stat. Ann. § 44-1540](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 15 days [Neb. Admin. Code Title 210, Chapter 60 § 60-006 to -008](#).

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 15 days following proof of loss [Neb. Admin. Code Title 210, Chapter 60 § 60-006 to -008](#).

Must carrier demonstrate prejudice to disclaim on late notice: YES/NO

[Neb. Admin. Code § 60-005](#). No insurer shall deny a claim based upon the failure of a first party claimant to give written notice of loss within a specific time limit unless the written notice requirement is a written policy condition, or the first party claimant's failure to give written notice after being requested to do so is so unreasonable as to constitute a breach of the claimant's contractual duty to cooperate with the insurer.

Timeframe for issuing reservation of rights, if any:

Time Limit: 15 days following proof of loss [Neb. Admin. Code Title 210, Chapter 60 § 60-006 to -008](#).

Additional Fair Claims Practices regulation of significance, if any:

[Neb. Rev. Stat. Ann. § 44-1540](#). Failing to acknowledge with reasonable promptness pertinent communications with respect to claims" and "failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims" constitute unfair claim settlement practices.

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[Neb. Rev. Stat. Ann. § 44-1540](#)

Duty to Defend vs. Duty to Indemnify:

An insurer has a duty to defend its insured whenever it ascertains facts which give rise to the potential of liability under the policy. *Union Ins. Co. v. Land & Sky, Inc.*, 247 Neb. 696, 700, 529 N.W.2d 773, 776 (1995).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: 15 days [Neb. Admin. Code Title 210, Chapter 60 § 60-006 to -008](#).

Timeframe for issuing denial of liability, if any:

Time Limit: [Neb. Admin. Code Title 210, Chapter 60 § 60-006 to -008](#).

Must carrier demonstrate prejudice to disclaim on late notice: YES/NO

Unclear for Third Party Claimants.

Timeframe for issuing reservation of rights, if any:

Time Limit: 15 days [Neb. Admin. Code Title 210, Chapter 60 § 60-006 to -008](#).

Additional Fair Claims Practices regulation of significance, if any:

[Neb. Rev. Stat. Ann. § 44-1540](#). Failing to acknowledge with reasonable promptness pertinent communications with respect to claims” and “failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims” constitute unfair claim settlement practices.

Matching

When a loss requires replacement of items and the replacement items do not reasonably match in quality, color or size, the insurer shall replace all items in the area so as to conform to a reasonably uniform appearance. This applies to both interior and exterior losses.

[Neb. Admin Code Title 210, Chapter 60 § 60-010.01\(b\)](#)

Stated Value Policy

Fire insurance; valued policies. Whenever any policy of insurance is written to insure any real property the amount of the insurance written in such policy shall be taken conclusively to be the true value of the property insured and the true amount of loss and measure of damages. [Neb. Rev Stat. Ann. § 44-501.02](#)

A definition for Actual Cash Value can be found in Olson v. Le Mars Mut. Ins. Co. of Iowa, 269 Neb. 800, 696 N.W.2d 453 (Supreme Court 2005).

Appraisal Process

Appraisal provision was an unenforceable arbitration clause, based on the common-law doctrine that arbitration agreements entered into before a dispute arises, which purport to deny the parties the right to resort to the courts, and are against public policy and therefore void and unenforceable. Rawlings v. Amco Ins. Co., 438 N.W.2d769, 771 (Neb. 1989)

NEVADA

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702-872-5555

First Party Claims:

General statute governing Fair Claims Practices, if any:

[N.R.S. 686A.310](#) and [NAC 686A.600 – 690](#)

1. Engaging in any of the following activities is considered to be an unfair practice:

(a) Misrepresenting to insureds or claimants pertinent facts or insurance policy provisions relating to any coverage at issue.

(b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

(c) Failing to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.

(d) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss requirements have been completed and submitted by the insured.

(e) Failing to effectuate prompt, fair and equitable settlements of claims in which liability of the insurer has become reasonably clear.

(f) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds, when the insureds have made claims for amounts reasonably similar to the amounts ultimately recovered.

(g) Attempting to settle a claim by an insured for less than the amount to which a reasonable person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made part of an application.

(h) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured, or the representative, agent or broker of the insured.

(i) Failing, upon payment of a claim, to inform insureds or beneficiaries of the coverage under which payment is made.

(j) Making known to insureds or claimants a practice of the insurer of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

(k) Delaying the investigation or payment of claims by requiring an insured or a claimant, or the physician of either, to submit a preliminary claim report, and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

(l) Failing to settle claims promptly, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

(m) Failing to comply with the provisions of [NRS 687B.310 to 687B.390](#), inclusive, or [687B.410](#).

(n) Failing to provide promptly to an insured a reasonable explanation of the basis in the insurance policy, with respect to the facts of the insured's claim and the applicable law, for the denial of the claim or for an offer to settle or compromise the claim.

(o) Advising an insured or claimant not to seek legal counsel.

(p) Misleading an insured or claimant concerning any applicable statute of limitations.

2. In addition to any rights or remedies available to the Commissioner, an insurer is liable to its insured for any damages sustained by the insured as a result of the commission of any act set forth in subsection 1 as an unfair practice.

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 20 working days ([NAC 686A.665](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 30 working days following proof of loss. ([NAC 686A.675](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

Las Vegas Metropolitan Police Dept. v. Coregis Ins. Co., 256 P.3d 958 (Nev. 2011) (Insurer under [NAC 686A.660\(4\)](#) must show notice was late and that it has been prejudiced by late notice. Prejudice exists if delay "materially impairs" insurer's ability to contest insured's liability to third-party.)

Timeframe for issuing reservation of rights, if any:

Time Limit: 30 working days following proof of loss. ([NAC 686A.675](#))

Additional Fair Claims Practices regulation of significance, if any:

[NAC 686A.680](#) - sets forth methods that must be followed for adjusting and settling first-party automobile total loss claims.

[NAC 686A.660](#) - requires insurer to disclose to first-party claimant all pertinent benefits, coverage or other insurance provisions for claims.

Unfair claims practice law pre-empted by ERISA. Medford v. Metropolitan Life Ins., 244 F.Supp.2d 1120, 1121 (D.Nev. 2003)

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[NRS 686A.310](#). However, NRS 686A.310 does not create a third-party right of action. Tweet v. Webster, 614 F.Supp. 1190 (D. Nev., 1985).

Duty to Defend vs. Duty to Indemnify:

Benchmark Ins. Co. v. Sparks, 254 P.3d 617 (Nev. 2011). Duty to defend is broader than duty to indemnify. The duty to defend, unless unambiguously limited by insurance policy language, is triggered by potential for indemnification and continues until potential for indemnification ceases or until the end of the litigation. See United National Ins. Co. v. Frontier Ins. Co., 120 Nev. 678, 687, 99 P.2d 1153, 1157 (2004)

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: 20 working days. ([NAC 686A.665](#))

Timeframe for issuing denial of liability, if any:

Time Limit: 30 working days following proof of loss. ([NAC 686A.675](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

Las Vegas Metropolitan Police Dept. v. Coregis Ins. Co., 256 P.3d 958 (Nev. 2011) (Insurer under NAC 686A.660(4) must show notice was late and that it has been prejudiced by late notice. Prejudice exists if delay “materially impairs” insurer’s ability to contest insured’s liability to third-party.)

Timeframe for issuing reservation of rights, if any:

Time Limit: 30 working days following proof of loss. ([NAC 686A.675](#))

Additional Fair Claims Practices regulation of significance, if any: N/A

Matching

There is no statute.

Stated Value Policy

[NAC 686A.680](#) Standards applicable to insurers under automobile policies. ([NRS 679B.130](#), [686A.015](#))

1. When an insurance policy provides for the adjustment and settlement of first-party automobile total losses on the basis of actual cash value or replacement with another of like kind and quality, one of the following methods must be applied:

(a) The insurer may elect to offer a replacement automobile which is a specific comparison automobile available to the insured, with all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the automobile paid, at no cost other than any deductible provided in the policy. The insurer

may prorate license fees and limit payment to the unused period of the fees. The offer and any rejection of the offer must be documented in the claim file.

(b) The insurer may elect to make a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable automobile including all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of a comparable automobile. The cost must be determined by an evaluation of:

- (1) The cost of two or more comparable automobiles in the local market area which are currently available or were available within the most previous 90 days to consumers in the local market area;
- (2) If the cost cannot be determined pursuant to subparagraph (1), the cost of two or more comparable automobiles that are currently available or were available in the most previous 90 days to consumers in areas, both within and without this State, which are geographically proximate to the local market area; or
- (3) If the cost cannot be determined pursuant to subparagraph (1) or (2), two or more quotations obtained by the insurer from two or more licensed dealers located within the local market area.

(c) When a first-party automobile total loss is settled on a basis which deviates from the methods described in paragraphs (a) and (b) of this subsection, the deviation must be supported by documents giving particulars of the condition of the automobile. Any deductions from the cost, including a deduction for salvage, must be measurable, discernible, itemized and specified as to the amount and must be appropriate in amount. The basis for the settlement must be fully explained to the first-party claimant.

2. Where liability and damages are reasonably clear, an insurer may not recommend that a third-party claimant make a claim under his or her own policies solely to avoid paying claims under the insurer's insurance contract or policy.

3. An insurer may not require a claimant to travel unreasonably to inspect a replacement automobile, to obtain a repair estimate or to have the automobile repaired at a specific repair shop.

4. An insurer shall, upon the claimant's request, include the first-party claimant's deductible, if any, in subrogation demands. A subrogation recovery must be shared on a proportionate basis with the first-party claimant, unless the deductible amount has been otherwise recovered. No deduction for expenses may be made from the deductible recovery unless an outside attorney is retained to collect the recovery. The deduction may then be for no more than a pro rata share of the allocated loss adjustment expense.

5. If an insurer prepares an estimate of the cost of automobile repairs, the estimate must be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant and may furnish to the claimant the names of one or more conveniently located repair shops. Any such repair shop must be operated by a person having a license issued by the Department of Motor Vehicles, if such a license is required by [NRS 487.610](#).

6. When the amount claimed is reduced because of betterment or depreciation, all information supporting the reduction must be contained in the claim file. The deductions must be itemized and specified as to amount, and must be appropriate in amount.

7. When the insurer elects to repair and designates a specific repair shop for automobile repairs:

(a) The repair shop must be operated by a person having a license issued by the Department of Motor Vehicles, if such a license is required by [NRS 487.610](#); and

(b) The insurer shall cause the damaged automobile to be restored to its condition before the loss at no additional cost to the claimant, other than as stated in the policy, within a reasonable time.

8. The insurer may not use, as a basis for cash settlement with a first-party claimant, an amount which is less than the amount which the insurer would pay if repairs were made, other than in total loss situations, unless the amount is agreed to by the insured.

[Comm'r of Insurance, M-9 § 9, eff. 2-21-80]—(NAC A 12-15-88; 3-28-96)

Appraisal Process

Appraisals are subject to Uniform Arbitration Act; thus action for declaratory relief seeking interpretation of business interruption clause of policy was barred by failure of insured to seek to vacate appraisal award within 90 days as provided by the Uniform Arbitration Act. N.R.S. 38.025, subd. 1, 38.145, subd. 2.

Silverman v. Fireman's Fund Am. Ins. Companies, 96 Nev. 30, 604 P.2d 805 (1980)

NEW HAMPSHIRE

For more information, please contact:

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702-221-1399

First Party Claims:

General statute governing Fair Claims Practices, if any:

[N.H. Rev. Stat. Ann. 417:4 XV \(2012\)](#).

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 10 days pursuant to [N.H. Admin. Rules, Ins. § 1001.01](#) which holds that:

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 30 days following receipt of health insurance claim. For all other claims, 10 working days after receipt of the notice of loss. ([N.H. Admin. Rules, Ins. § 1001.02](#))

Must carrier demonstrate prejudice to disclaim on late notice:

A showing of actual prejudice may be required when an insurer seeks to disclaim coverage based on its insured's violation of a policy provision, though the showing has been held unnecessary where the insurer had no opportunity to protect its interests.

Timeframe for issuing reservation of rights, if any:

Time Limit: 10 working days after receipt of the notice of loss. ([N.H. Admin. Rules, Ins. § 1001.02](#))

Additional Fair Claims Practices regulation of significance, if any:

[N.H. Admin. Rules § 1001.01 to .02](#) - If more time is needed the insurer must notify the insured of that and continue to do so every 30 days thereafter until a determination of coverage is made.

[N.H. Rev. Stat. Ann. § 417:4 XV \(2012\)](#) - "Failing to acknowledge and act promptly upon communications with respect to claims arising under insurance policies" and "failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims" constitute unfair claim settlement practices.

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[N.H. Rev. Stat. Ann. 417:4 XV \(2012\)](#).

Duty to Defend vs. Duty to Indemnify:

An insurer's obligation to defend its insured is determined by whether the cause of action against the insured alleges sufficient facts in the pleadings to bring it within the express terms of the policy" and is broader than the duty to indemnify. [Martin v. Me. Mut. Fire Ins. Co.](#), 145 N.H. 498, 500, 764 A.2d 911 (2000).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: 10 working days ([N.H. Admin. Rules, Ins. § 1001.01](#))

Timeframe for issuing denial of liability, if any:

Time Limit: 10 working days after receipt of the notice of loss. ([N.H. Admin. Rules, Ins. § 1001.02](#))

Must carrier demonstrate prejudice to disclaim on late notice:

A showing of actual prejudice may be required when an insurer seeks to disclaim coverage based on its insured's violation of a policy provision, though the showing has been held unnecessary where the insurer had no opportunity to protect its interests.

Timeframe for issuing reservation of rights, if any:

Time Limit: 10 working days after receipt of the notice of loss. ([N.H. Admin. Rules, Ins. § 1001.02](#))

Additional Fair Claims Practices regulation of significance, if any:

[N.H. Admin. Rules § 1001.01 to .02](#) - If more time is needed the insurer must notify the insured of that and continue to do so every 30 days thereafter until a determination of coverage is made.

[N.H. Rev. Stat. Ann. § 417:4 XV \(2012\)](#) - "Failing to acknowledge and act promptly upon communications with respect to claims arising under insurance policies" and "failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims" constitute unfair claim settlement practices.

Matching

There are no statutes or case law addressing the issue of matching in the context of first or third party claims.

Stated Value Policies

There are no statutes or case law addressing the issue of stated value policies in the context of first or third party claims.

Appraisal Process

The appraisal process for property damage claims covered by a fire insurance policy is governed by [N.H. Rev. Stat. Ann. § 407:22 \(2016\)](#) which provides that if the parties fail to agree as to the actual cash value or the amount of loss, either party may demand in writing that each appoint an appraiser within twenty days of the demand. The appraisers then select an umpire, but if they fail to agree on an umpire, such umpire shall be selected by a judge of a court of record. The appraisers then appraise the loss, stating separately the actual cash value and loss to each item; and, failing to agree as to any item, shall submit their differences to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual cash value and loss.

The resolution of disputes regarding the valuation of motor vehicle property damage claims and jewelry loss claims is addressed by [N.H. Admin. Rules § 1002.01 to .21](#).

NEW JERSEY

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First Party Claims:

General statute governing Fair Claims Practices, if any:

[NJSA 17:29B-4](#); [NJSA 17B:30-13.1](#); [NJ Admin Code 11:2-17](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 10 days [N.J. Admin. Code § 11:2-17.6 to :2-17.8](#).

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: Within a reasonable period of time after proof of loss statements have been completed.

[NJSA 17:29B-4\(9\)\(e\)](#). Note, also that “unless a clear justification exists, or unless otherwise provided by law, the maximum payment periods for property/liability claims shall be as follows: for all first party claims other than personal injury protection (PIP) and auto physical damage, 30 days after receipt of proof of loss. [N.J. Admin. Code § 11:2-17.7\(c\) 1](#).

Must carrier demonstrate prejudice to disclaim on late notice: YES

Timeframe for issuing reservation of rights, if any:

Time Limit: Within a reasonable period of time after proof of loss statements have been completed.

[NJSA 17:29B-4\(9\)\(e\)](#). Note, also that “unless a clear justification exists, or unless otherwise provided by law, the maximum payment periods for property/liability claims shall be as follows: for all first party claims other than personal injury protection (PIP) and auto physical damage, 30 days after receipt of proof of loss. [N.J. Admin. Code § 11:2-17.7\(c\) 1](#).

Additional Fair Claims Practices regulation of significance, if any:

[N.J. Stat. Ann. § 17:29B-4 \(2006\)](#).

(9) Unfair claim settlement practices. Committing or performing with such frequency as to indicate a general business practice any of the following:

- (a) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
- (b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
- (c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
- (d) Refusing to pay claims without conducting a reasonable investigation based upon all available information;
- (e) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
- (f) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;
- (g) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;
- (h) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;
- (i) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;

(j) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made;

(k) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(l) Delaying the investigation or payment of claims by requiring an insured, claimant or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(m) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;

(n) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;

(o) Requiring insureds or claimants to institute or prosecute complaints regarding motor vehicle violations in the municipal court as a condition of paying private passenger automobile insurance claims.

(10) Failure to maintain complaint handling procedures. Failure of any person to maintain a complete record of all the complaints which it has received since the date of its last examination. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this subsection, "complaint" shall mean any written communication primarily expressing a grievance.

More detailed regulations implementing the above are set forth in [NJSA §17B:30-13.1](#) and [NJ Admin Code 11:2-17](#).

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[NJSA 17:29B-4](#); [NJSA §17B:30-13.1](#); [NJ Admin Code 11:2-17](#)

Duty to Defend vs. Duty to Indemnify:

An insurer is obligated to provide the insured with a defense against all actions covered under the insurance policy. *Hartford Accident & Indemn. Co. v. Aetna Life & Cas. Ins. Co.*, 98 NJ 18 (1984). When a complaint raises allegation that fall within a risk covered by the insurance contract, the insurer has a duty to defend. The potential merit of the claim is immaterial—the duty to defend remains even if the claims are “poorly developed and almost sure to fail.” *Voorhees v Preferred Mut. Ins. Co.*, 128 NJ 165 at 174 (1992). Although courts generally look to the complaint to ascertain the duty to defend, the analysis is not necessarily limited to the facts asserted in the complaint. *Abouzaid v. Greater New York Mut. Ins. Co.*, 207 NJ 67 (2011). Moreover, if a complaint contains multiple or alternative causes of action, an insurer will have a duty to defend its insured as long as one of the claims in the complaint are covered by the policy. (*id.*) Where there are multiple theories of liability, an insurer has the option to either defend the insured with a reservation of its right to later dispute coverage, or refuse to defend the insured with the possibility of later reimbursing the insured if the claim is determined to be covered by the policy. *Burd v Sussex Mut. Ins. Co.*, 56 NJ 383 (1970). Where coverage cannot be determined from the face of the complaint, the insurer must defend the insured “until all potentially covered claims are resolved. *Flomerfelt v. Cardiello*, 202 NJ 432 (2010).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: 10 days [N.J. Admin. Code § 11:2-17.6 to :2-17.8](#).

Timeframe for issuing denial of liability, if any:

Time Limit: Within a reasonable period of time after proof of loss statements have been completed.

[NJSA 17:29B-4\(9\)\(e\)](#). Note, also that “unless a clear justification exists, or unless otherwise provided by law, the maximum payment periods for property/liability claims shall be as follows: 45 days for third-party property damage claims; and 90 days after receipt of proof of loss for third-party bodily injury claims. [N.J. Admin. Code § 11:2-17.7 \(c\) 2 and \(c\) 3](#).

Must carrier demonstrate prejudice to disclaim on late notice: YES

Timeframe for issuing reservation of rights, if any:

Time Limit: Within a reasonable period of time after proof of loss statements have been completed.

[NJSA 17:29B-4\(9\)\(e\)](#). Note, also that “unless a clear justification exists, or unless otherwise provided by law, the maximum payment periods for property/liability claims shall be as follows: 45 days for third-party property damage claims; and 90 days after receipt of proof of loss for third-party bodily injury claims. [N.J. Admin. Code § 11:2-17.7 \(c\) 2 and \(c\) 3](#).

IMPORTANT NOTE AS TO NJ LAW REGARDING RESERVATION OF RIGHTS: An insurer waives its right to contest or deny coverage when it defends the case without a reservation of rights letter. *Merchants Indemnity Corp. v. Eggleston*, 37 NJ 114 (1962). Even pre suit conduct by an insurer that leads an insured to believe a matter is covered can result in estoppel from contesting coverage. *Griggs v. Bertram*, 88 NJ 347 (1982). MOST IMPORTANTLY, an insurer that wishes to defend an insured under a reservation of rights can only do so if it is with the insured’s consent. *Merchants Indemnity Corp.*, supra. To be valid and adequate, a reservation of rights letter MUST advise the insured of their option to accept or reject the offer of defense under the reservation of rights. *Nazario v. Lobster House*, 2009 N.J. Super Unpub. LEXIS 1069 (App.Div. 2009)

Additional Fair Claims Practices regulation of significance, if any:

Citations: Same as with respect to first party claims above.

Matching

New Jersey does not have “matching” statutes or regulations, and thus there is no legal requirement that insurance policies cover replacement of undamaged items to provide a reasonably uniform appearance with damaged items that have been replaced or repaired. The policy terms and definitions of replacement costs will be determinative. This issue has not been addressed by the New Jersey courts.

Stated Value Policy

With respect to automobile physical damage claims, an insurer is not prohibited from issuing a stated value policy insuring against physical damage where the amount of damages to be paid in the event of a total loss is a specified dollar amount. [NJ Admin Code §11:3-10.4 \(i\)](#)

Appraisal Process

New Jersey law, [NJSA §17:36-5.20, \(TEXT FROM PAMPHLET LAWS\)](#) requires that every fire insurance policy contain a mandatory appraisal clause stating:

Appraisal. In case the insured and this Company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then, on request of the insured or this Company, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item, and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and the umpire shall be paid by the parties equally.

New Jersey employs the “broad evidence rule” under which the appraiser must consider “every fact and circumstance which would logically tend to the formation of a correct estimate of the loss,” so as to evaluate complete indemnity. *Elberon Bathing Co., Inc. v. Ambassador Ins. Co.*, 77 NJ 1, 389 A2d 439 (1978).

An insurance company cannot reject an appraisal demand by asserting that liability is in dispute. *Hala Cleaners, Inc. v. Sussex Mutual Insurance Company*, 115 NJ Super 11 (Chan. Div. 1971).

NEW MEXICO

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First Party Claims:

General Statute Governing Fair Claims Practices, if any:

[N.M. STAT. ANN. § 59A-16-20 \(2015\)](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

The insurer must acknowledge and act “reasonably promptly” upon communications with respect to claims from insureds arising under policies. ([N.M. STAT. ANN. § 59A-16-20 B \(2015\)](#))

Timeframe for issuing disclaimer of coverage

The insurer must “affirm or deny coverage of claims of insureds within a reasonable time after proof of loss requirements under the policy have been completed and submitted by the insured.” ([N.M. STAT. ANN. § 59A-16-20 D \(2015\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

The New Mexico Supreme Court has held that the carrier must show “substantial prejudice” as a result of a material breach of the insurance policy by the insured, including breach of the notice provisions, before it will be relieved of its obligations under the policy. *Whelan v. State Farm Mut. Auto. Ins. Co.*, 329 P.3d 646, 651 (N.M. 2014); *State Farm Mut. Auto Ins. Co. v. Fennema*, 110 P.3d 491, 494 (N.M. 2005); *Foundation Reserve Ins. Co. v. Esquibel*, 607 P.2d 1150, 1152 (N.M. 1980).

Timeframe for issuing reservation of rights, if any:

The insurer must “affirm or deny coverage of claims of insureds within a reasonable time after proof of loss requirements under the policy have been completed and submitted by the insured.” ([N.M. STAT. ANN. § 59A-16-20 D \(2015\)](#))

Additional Fair Claims Practices regulations of significance:

[N.M. STAT. ANN. § 59A-16-20 C \(2015\)](#) - “[F]ailing to adopt and implement reasonable standards for the prompt investigation and processing of insureds’ claims arising under policies” may constitute an “unfair and deceptive practice.”

[N.M. STAT. ANN. § 59A-16-20 E \(2015\)](#) - “[N]ot attempting in good faith to effectuate prompt, fair and equitable settlements of an insured’s claims in which liability has become reasonably clear” may constitute an “unfair and deceptive practice.”

[N.M. STAT. ANN. § 59A-16-20 F \(2015\)](#) - “[F]ailing to settle all catastrophic claims within a ninety-day period after the assignment of a catastrophic claim number when a catastrophic loss has been declared” may constitute an “unfair and deceptive practice.”

Third-Party Claims:

General Statute Governing Fair Claims Practices, if any:

[N.M. STAT. ANN. § 59A-16-20 \(2015\)](#). The New Mexico Supreme Court has held that a private cause of action against an insurer for unfair and deceptive practices is available to third-party claimants in some circumstances, but not in others. *Hovet v. Allstate Ins. Co.*, 89 P.3d 69, 73 (N.M. 2004) (recognizing third-party bad faith cause of action against compulsory automobile liability insurance carrier for failure to settle an underlying suit); but see *Jolley v. Associated Elec. & Gas Ins. Servs.*, 237 P.3d 738, 739 (N.M. 2010) (declining to extend third-party bad faith cause of action against carriers providing non-mandatory excess liability insurance coverage).

Duty to Defend vs. Duty to Indemnify:

The duty of an insurer to defend arises from the allegations on the face of the complaint or from the known, but un-pleaded, factual basis of the claim that brings it arguably within the scope of coverage. *American Gen. Fire and Cas. Co. v. Progressive Cas. Co.*, 799 P.2d 1113, 1116 (N.M. 1990); see also *Hinkle v. State Farm Fire & Cas. Co.*, 308 P.3d 1009 (N.M. App. 2013).

Actual notice presumptively triggers a duty to defend unless the insured knowingly declines a defense. *Garcia v. Underwriters at Lloyd's, London*, 182 P.3d 113, 118-19 (N.M. 2008) (holding that a formal demand is not required and that notice does not even necessarily have to come directly from the insured).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

The insurer must acknowledge and act “reasonably promptly” upon communications with respect to claims. [N.M. STAT. ANN. § 59A-16-20 B \(2015\)](#); *Hovet*, 89 P.3d at 73 (extending private right of action to third-party claimants).

Timeframe for issuing denial of liability, if any:

The insurer must “affirm or deny coverage of claims ... within a reasonable time after proof of loss requirements under the policy have been completed and submitted.” [N.M. STAT. ANN. § 59A-16-20 D \(2015\)](#); *Hovet*, 89 P.3d at 73 (extending private right of action to third-party claimants).

Must carrier demonstrate prejudice to disclaim on late notice: YES

The New Mexico Supreme Court has held that the carrier must show “substantial prejudice” as a result of a material breach of the insurance policy, including breach of the notice provisions, before it will be relieved of its obligations under the policy. *Whelan v. State Farm Mut. Auto. Ins. Co.*, 329 P.3d 646, 651 (N.M. 2014); *State Farm Mut. Auto. Ins. Co. v. Fennema*, 110 P.3d 491, 494 (N.M. 2005); *Foundation Reserve Ins. Co. v. Esquibel*, 607 P.2d 1150, 1152 (N.M. 1980).

Timeframe for issuing reservation of rights, if any:

The insurer must “affirm or deny coverage of claims ... within a reasonable time after proof of loss requirements under the policy have been completed and submitted.” [N.M. STAT. ANN. § 59A-16-20 D \(2015\)](#); *Hovet*, 89 P.3d at 73 (extending private right of action to third-party claimants).

Additional Fair Claims Practices regulation of significance:

[N.M. STAT. ANN. § 59A-16-20 C \(2015\)](#) - “[F]ailing to adopt and implement reasonable standards for the prompt investigation and processing of insureds’ claims arising under policies” may constitute an “unfair and deceptive practice.”

[N.M. STAT. ANN. § 59A-16-20 E \(2015\)](#) - “[N]ot attempting in good faith to effectuate prompt, fair and equitable settlements of an insured’s claims in which liability has become reasonably clear” may constitute an “unfair and deceptive practice.”

[N.M. STAT. ANN. § 59A-16-20 F \(2015\)](#) - “[F]ailing to settle all catastrophic claims within a ninety-day period after the assignment of a catastrophic claim number when a catastrophic loss has been declared” may constitute an “unfair and deceptive practice.”

Where third-party claims are available, the third-party claimant cannot file suit against the insurer for unfair claim practices until after the conclusion of the underlying litigation between the claimant and the insured. *Hovet*, 89 P.3d at 76-77.

Matching

No case law or statutes discussing matching were located.

Stated Value Policy

References to stated value policy are found in [13.13.2.8 NMAC](#) with respect to Property Insurance and in [13.12.3.17\(F\) NMAC](#) with respect to Uninsured and Unknown Motorists Coverage.

Appraisal Process

New Mexico Insurance Code does not provide an appraisal process for property damage claims, but the Uniform Arbitration Act might apply to disputes involving appraisals. See N.M. Stat. Ann. § 44-7A-1 et seq. Arbitration is also permitted pursuant to [13.12.3.17\(H\) NMAC](#) with respect to Uninsured and Unknown Motorists Coverage claims for property damage.

NEW YORK

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New York Statute

First Party Claims:

General statute governing Fair Claims Practices, if any:

[11 New Code of Rules & Regulations §216](#)

[Insurance Law §3420](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 15 days ([11 N.Y. Admin. Code § 216.4 to .6](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 15 days following proof of loss ([11 N.Y. Admin. Code § 216.4 to .6](#))

Disclaimer of Coverage:

([11 N.Y. Admin. Code § 216.6](#)) The company shall inform the claimant in writing as soon as it is determined that there was no policy in force or that it is disclaiming liability because of a breach of policy provisions by the policyholder.

([Insurance Law §3420 \(d\)\(2\)](#)) requires that an insurer intending to disclaim liability under a liability policy “shall give written notice as soon as is reasonably possible of such disclaimer of liability or denial of coverage to the insured and the injured person or any other claimant.”

“[T]imeliness of disclaimer is measured from the time when the insurer first learns of the grounds for disclaimer of liability or denial of coverage” (see *First Fin. Ins. Co. v. Jetco Contr. Corp.*, 1 N.Y.3d 64, 68–69, 769 N.Y.S.2d 459, 801 N.E.2d 835 [2003]). Thus, where an insurer “becomes sufficiently aware of facts which would support a disclaimer,” the time to disclaim begins to run, and the insurer bears the burden of explaining any delay in disclaiming coverage (see *Hunter Roberts Constr. Group, LLC v. Arch Ins. Co.*, 75 A.D.3d 404, 409, 904 N.Y.S.2d 52 [2010]).

Must carrier demonstrate prejudice to disclaim on late notice: YES

If notice is given within 2 years of the time required under the policy. ([Insurance Law §3420 \(c\) \(2\)](#))

Timeframe for issuing reservation of rights, if any:

Time Limit: 15 days following proof of loss ([11 N.Y. Admin. Code § 216.4 to .6](#))

Additional Fair Claims Practices regulation of significance, if any:

[N.Y. Ins. Law § 2601 \(2006\)](#) - “Failing to acknowledge with reasonable promptness pertinent communications with respect to claims” and “failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims” constitute unfair claim settlement practices.

[11 N.Y. Admin. Code § 216.4 to .6](#) - If more time is needed the insurer must notify the insured of that and continue to do so every 90 days thereafter until a determination of coverage is made.

[11 N.Y. Admin. Code § 216.5](#) - Every insurer shall establish procedures to commence an investigation of any claim filed by a claimant, or by a claimant’s authorized representative, within 15 business days of receipt of notice of claim. An insurer shall furnish to every claimant, or claimant’s authorized representative, a notification of all items, statements and forms, if any, which the insurer reasonably believes will be required of the claimant, within 15 business days of receiving notice of the claim. A claim filed with an agent of an insurer shall be deemed to have been filed with the insurer unless, consistent with law or contract, such agent notifies the person filing the claim that the agent is not authorized to receive notices of claim.

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[11 New Code of Rules & Regulations §216](#)

[Insurance Law §3420](#)

Duty to Defend vs. Duty to Indemnify:

An insurer’s duty to defend, which is “exceedingly broad” (*Regal Constr. Corp. v. National Union Fire Ins. Co. of Pittsburgh, PA*, 15 N.Y.3d 34, 37, 904 N.Y.S.2d 338, 930 N.E.2d 259 (2010) [internal quotation marks omitted]), is more extensive than its duty to indemnify (see *Exeter Bldg. Corp. v. Scottsdale Ins. Co.*, 79 A.D.3d 927, 928, 913 N.Y.S.2d 733 (2010); *Franklin Dev. Co., Inc. v. Atlantic Mut. Ins. Co.*, 60 A.D.3d 897, 900, 876 N.Y.S.2d 103 (2009)). An insurer’s duty to defend will be triggered by allegations in the complaint suggesting a reasonable possibility of coverage irrespective of the apparent merits of the allegations (see *BP A.C.Corp. v. One Beacon Ins. Group*, 8 N.Y.3d 708, 714, 840 N.Y.S.2d 302, 871 N.E.2d 1128 (2007); *Automobile Ins. Co. of Hartford v. Cook*, 7 N.Y.3d 131, 137, 818 N.Y.S. 176, 850 N.E.2d 1152 (2006)). This standard applies equally to additional insureds and named insureds.

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: 15 days ([11 N.Y. Admin. Code § 216.4 to .6](#))

Timeframe for issuing denial of liability, if any:

Time Limit: 15 days following proof of loss ([11 N.Y. Admin. Code § 216.4 to .6](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

If notice is given within 2 years of the time required under the policy. ([Insurance Law §3420 \(c\)\(2\)](#))

Timeframe for issuing reservation of rights, if any:

Time Limit: 15 days following proof of loss ([11 N.Y. Admin. Code § 216.4 to .6](#))

Additional Fair Claims Practices regulation of significance, if any:

[N.Y. Ins. Law § 2601 \(2006\)](#) - “Failing to acknowledge with reasonable promptness pertinent communications with respect to claims” and “failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims” constitute unfair claim settlement practices.

[11 N.Y. Admin. Code § 216.4 to .6](#) - If more time is needed the insurer must notify the insured of that and continue to do so every 90 days thereafter until a determination of coverage is made.

[11 N.Y. Admin. Code § 216.5](#) - Every insurer shall establish procedures to commence an investigation of any claim filed by a claimant, or by a claimant’s authorized representative, within 15 business days of receipt of notice of claim. An insurer shall furnish to every claimant, or claimant’s authorized representative, a notification of all items, statements and forms, if any, which the insurer reasonably believes will be required of the claimant, within 15 business days of receiving notice of the claim. A claim filed with an agent of an insurer shall be deemed to have been filed with the insurer unless, consistent with law or contract, such agent notifies the person filing the claim that the agent is not authorized to receive notices of claim.

Matching

No statute requiring.

Stated Value Policy

NY has designated fire insurance contracts, which require the lesser of: Actual cash value of property at time of loss; cost to repair or replace the property with like material in a reasonable time; or to an amount not exceeding X (an amount decided by the parties at the time of the contract). [N.Y. Ins. Law §3404\(e\)](#)

Appraisal Process

Amended statute provides that “[a]n appraisal shall determine the actual cash value, the replacement cost, the extent of the loss or damage and the amount of the loss or damage which shall be determined as specified in the policy and shall proceed pursuant to the terms of the applicable appraisal clause or the insurance policy and not as an arbitration.” [N.Y. Ins. Law §3408\(c\)](#). Determining the “extent of loss or damage” is now appropriate in appraisals under amended Section 3408(c). Its intent was encouraging use of the appraisal process. *Zarour v. Pac. Indem. Co.*, 113 F. Supp. 3d 711, 715 (S.D.N.Y. 2015). When parties dispute the extent and dollar value of the loss, and not the scope of coverage provided by the policy, the policy's appraisal provisions are applicable. *Quick Response Commercial Div. v. Cincinnati Ins. Co.*, 2015 WL 5306093, (N.D.N.Y. 2015).

If the insured and Company fail to agree to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall then select a competent and disinterested umpire. [N.Y. Ins. Law §3404\(e\)](#)

NORTH CAROLINA

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First Party Claims:

General statute governing Fair Claims Practices, if any:

[N.C. Gen. Stat. Ann. §§ 58-63](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

“Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies” is an unfair claim settlement practice if committed “with such frequency as to indicate a general business practice.” ([N.C. Gen. Stat. Ann. § 58-63-15 \(11\)\(b\)](#))

Timeframe for issuing disclaimer of coverage, if any:

“Failing to affirm or deny coverage of claims within a reasonable time after proof-of-loss statements have been completed” is an unfair claim settlement practice if committed “with such frequency as to indicate a general business practice.” ([N.C. Gen. Stat. Ann. § 58-63-15 \(11\)\(e\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: NO

“A claim filed after the contractual time limitation has expired is barred, regardless of its merit, unless the insurer, by its conduct, waives or is estopped from relying upon the limitation provision of the policy.” [Marshburn v. Associated Indemnity Corp.](#), 353 S.E.2d 123, 126 (N.C. Ct. App. 1987).

Timeframe for issuing reservation of rights, if any:

“Failing to affirm or deny coverage of claims within a reasonable time after proof-of-loss statements have been completed” is an unfair claim settlement practice if committed “with such frequency as to indicate a general business practice.” ([N.C. Gen. Stat. Ann. § 58-63-15 \(11\)\(e\)](#))

Additional Fair Claims Practices regulation of significance, if any:

“If claims filed with a TPA or insurer are not paid within 30 days after receipt of the initial claim by the TPA or the insurer, the TPA or the insurer shall at that time mail a claim status report to the claimant.” ([11 N.C. Admin. Code 21.0106](#))

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[N.C. Gen. Stat. Ann. §§ 58-63](#)

Duty to Defend vs. Duty to Indemnify:

“An insurer’s duty to defend is ordinarily measured by the facts as alleged in the pleadings; its duty to pay is measured by the facts ultimately determined at trial. Thus, the duty to defend is broader than the duty to indemnify in the sense that an unsubstantiated allegation requires an insurer to defend against it so long as the allegation is of a covered injury; however, even a meritorious allegation cannot obligate an insurer to defend if the alleged injury is not within, or is excluded from, the coverage provided by the insurance policy.” [Harleysville Mutual Ins. Co. v. Buzz Off Insect Shield, L.L.C.](#), 692 S.E.2d 605, 610-11 (N.C. 2010) (internal citations and quotations omitted).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

“Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies” is an unfair claim settlement practice if committed “with such frequency as to indicate a general business practice.” ([N.C. Gen. Stat. Ann. § 58-63-15 \(11\)\(b\)](#))

Timeframe for issuing denial of liability, if any:

“Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies” is an unfair claim settlement practice if committed “with such frequency as to indicate a general business practice.” ([N.C. Gen. Stat. Ann. § 58-63-15 \(11\)\(b\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: NO

“A claim filed after the contractual time limitation has expired is barred, regardless of its merit, unless the insurer, by its conduct, waives or is estopped from relying upon the limitation provision of the policy.” Marshburn v. Associated Indemnity Corp., 353 S.E.2d 123, 126 (N.C. Ct. App. 1987)

Timeframe for issuing reservation of rights, if any:

“Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies” is an unfair claim settlement practice if committed “with such frequency as to indicate a general business practice.” ([N.C. Gen. Stat. Ann. § 58-63-15 \(11\)\(b\)](#))

Additional Fair Claims Practices regulation of significance, if any:

“If claims filed with a TPA or insurer are not paid within 30 days after receipt of the initial claim by the TPA or the insurer, the TPA or the insurer shall at that time mail a claim status report to the claimant.” ([11 N.C. Admin. Code 21.0106](#))

Matching

The state insurance regulations prohibit an insurer from requiring the use of an after-market part in the repair of an automobile, unless the part is “at least equal to the original part in terms of fit, quality, performance and warranty.” [11 N.C. Admin. Code 4.0426](#).

The standard fire insurance policy states that a policyholder’s coverage should not exceed “the amount which it would cost to repair or replace the property with material of like kind and quality.” [N.C. Gen. Stat. Ann. § 58-44-16\(f\)\(1\)](#).

Stated Value Policy

No specific provisions.

Appraisal Process

Generally, the appraisal process is governed by the insurance contract, and “[i]f the contractual appraisal provisions are followed, an appraisal award is presumed valid and is binding absent evidence of fraud, duress, or other impeaching circumstances.” N.C. Farm Bureau Mut. Ins. Co. v. Harrell, 557 S.E.2d 580, 581 (N.C. Ct. App. 2001).

Fire insurance policies, on the other hand, are required to contain a specific provision for the appraisal process. That provision is found at [N.C. Gen. Stat. Ann. § 58-44-16\(f\)\(14\)](#). The appraisal process for auto liability policies is similarly defined by statute. See [N.C. Gen. Stat. Ann. § 20-279.21\(d1\)](#).

Where a policy states that the insurer is not required to make a loss payment until the parties have either agreed on the amount of the loss or the appraisal process has been completed, the completion of the appraisal process is a condition precedent to filing suit over the loss amount. Patel v. Scottsdale Ins. Co., 728 S.E.2d 394, 399 (N.C. Ct. App. 2012)

The appraisal process is generally limited to a determination of the amount of loss and is not intended to interpret the amount of coverage or resolve a coverage dispute. North Carolina Farm Bureau Mut. Ins. Co. v. Sadler, 711 S.E. 2d 114, 117 (N.C. 2011).

NORTH DAKOTA

For more information, please contact:

[Eagle Member](#)

[Eagle International Associates, Inc.](#)

702-221-1399

First Party Claims:

General statute governing Fair Claims Practices, if any:

North Dakota has adopted a version of the Unfair Claims Settlement Practices Act [ND Cent. Code. § 26.1-04-03\(09\)](#). There are no specific time limitations for compliance in the statute or regulations.

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: “reasonable promptness” ([N.D. Cent. Code § 26.1-04-03\(09\) \(2016\)](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: “reasonable time” ([N.D. Cent. Code § 26.1-04-03\(09\) \(2016\)](#))

“without unnecessary delay” ([N.D. Cent. Code § 26.1-32-07\(09\) \(2016\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES/NO

Timeframe for issuing reservation of rights, if any:

Time Limit: “reasonable time” ([N.D. Cent. Code § 26.1-04-03\(09\) 2016\)](#))

Additional Fair Claims Practices regulation of significance, if any: N/A

Third Party Claims:

General statute governing Fair Claims Practices, if any:

North Dakota has adopted a version of the Unfair Claims Settlement Practices Act [ND Cent. Code. § 26.1-04-03\(09\)](#). There are no specific time limitations for compliance in the statute or regulations.

Duty to Defend vs. Duty to Indemnify:

The duty to defend and the duty to indemnify are separate and distinct. [Smith v American Family Mut. Ins. Co.](#), 294 N.W.2d 751 (N.D. 1980). The duty to defend is broader than the duty to indemnify. “Ordinarily, an insurer has a duty to defend an underlying action against its insured if the allegations in the complaint give rise to potential liability or a possibility of coverage under the insurance policy.” [Nodak Mut. Ins. Co. v. Heim](#), 559 N.W.2d 846 (N.D. 1997).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: “reasonable promptness” ([N.D. Cent. Code § 26.1-04-03\(09\) \(2016\)](#))

Timeframe for issuing denial of liability, if any:

Time Limit: “reasonable time” ([N.D. Cent. Code § 26.1-04-03\(09\) \(2016\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

Timeframe for issuing reservation of rights, if any:

Time Limit: “reasonable time” ([N.D. Cent. Code § 26.1-04-03 \(09\) 2016\)](#))

Additional Fair Claims Practices regulation of significance, if any: N/A

Matching

There is no statute or any case law that could be found.

Stated Value Policy

There are references to stated value policy in statutes. [N.D. Cent. Code, § 26.1-39-05 \(2016\)](#).

Appraisal Process

Appraisals are required by the required standard policy if there is not an agreement on value. Each party getting one appraiser and the appraisers then determine a third neutral.

[N.D. Cent. Code § 26.1-39-06 \(2016\)](#).

OHIO

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Columbus

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First Party Claims:

General statute governing Fair Claims Practices, if any:

[Ohio Administrative Code § 3901-1-54](#) (See Tab 1), as promulgated by the Superintendent of Insurance under [Ohio Revised Code §§ 3901.19 to 3901.26, et seq](#) (The purpose of the statute is to provide uniform standards for the investigation and disposition of property and casualty claims. The provisions of the statute are intended to define procedures and practices which constitute unfair claims practices. The statute, however, does not create or imply a private cause of action for violations of the statute)

Timeframe for contacting Insured upon initial receipt of claim, if any:

An insurer has 15 days to acknowledge a claim, or 10 days to pay. An insurer may also satisfy this requirement by providing necessary claim forms and complete instructions to the claimant. An insurer is not obligated to respond within this timeframe when the claimant has filed a complaint in any court. ([Ohio Admin. Code § 3901-1-54\(F\)\(1\)-\(4\)](#))

Timeframe for issuing disclaimer of coverage, if any:

An insurer has 21 days following proof of loss to accept or deny a claim. If more time is needed to investigate, an insurer may extend the time by giving notice and an explanation to the claimant within 21 days. If an extension is taken, an insurer must provide the claimant with a written status relative to the investigation every 45 days. If the form and execution of a proof of loss is material to an insurer, the insurer shall immediately provide the claimant with the documents and specific instructions. An insurer cannot otherwise deny a claim on the basis that the proof of loss was not on the insurer's usual form. ([Ohio Admin. Code § 3901-1-54\(G\)\(1\)](#))

Must carrier demonstrate prejudice to disclaim on late notice? YES

See [Ferrando v. Auto-Owners Mut. Ins. Co.](#), 98 Ohio St. 3d 186 (2002).

Timeframe for issuing reservation of rights, if any:

An insurer has 21 days following proof of loss to accept or deny a claim. If more time is needed to investigate, an insurer may extend the time by giving notice and an explanation to the claimant within 21 days. If an extension is taken, an insurer must provide the claimant with a written status relative to the investigation every 45 days. ([Ohio Admin. Code § 3901-1-54\(G\)\(1\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[Ohio Admin. Code § 3901-1-54](#) at Tab 1.

Third Party Claims:

[Ohio Administrative Code § 3901-1-54](#) (See Tab 1), as promulgated by the Superintendent of Insurance under [Ohio Revised Code §§ 3901.19 to 3901.26, et seq.](#)

Duty to Defend vs. Duty to Indemnify:

An insurer has no duty to defend and indemnify third parties.

Timeframe for contacting Claimant upon initial receipt of claim, if any:

An insurer has 15 days to acknowledge a claim, or 10 days to pay. An insurer may also satisfy this requirement by providing necessary claim forms and complete instructions to the claimant. An insurer is not obligated to respond within this timeframe when the claimant has filed a complaint in any court. ([Ohio Admin. Code § 3901-1-54\(F\)\(1\)-\(4\)](#))

Timeframe for issuing denial of liability, if any:

An insurer has 21 days following proof of loss to accept or deny a claim. If more time is needed to investigate, an insurer may extend the time by giving notice and an explanation to the claimant within 21 days. If an extension is taken, an insurer must provide the claimant with a written status relative to the investigation every 45 days. ([Ohio Admin. Code § 3901-1-54\(G\)\(1\)](#))

Must carrier demonstrate prejudice to disclaim on late notice? YES

See [Ferrando v. Auto-Owners Mut. Ins. Co.](#), 98 Ohio St. 3d 186 (2002).

Timeframe for issuing reservation of rights, if any:

An insurer has 21 days following proof of loss to accept or deny a claim. If more time is needed to investigate, an insurer may extend the time by giving notice and an explanation to the claimant within 21 days. If an extension is taken, an insurer must provide the claimant with a written status relative to the investigation every 45 days. ([Ohio Admin. Code § 3901-1-54\(G\)\(1\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[Ohio Admin. Code § 3901-1-54](#) at Tab 1.

Matching

“When an interior or exterior loss requires replacement of an item and the replaced item does not match the quality, color or size of the item suffering the loss, the insurer shall replace as much of the item as to result in a reasonably comparable appearance.” [O.A.C. 3901-1-54\(I\)\(1\)\(b\)](#)

Stated Value Policy

“A person, company, or association insuring any building or structure against loss or damage by fire or lightning shall have such building or structure examined by his or its agent, and a full description thereof made, and its insurable value fixed, by such agent. In the absence of any change increasing the risk without the consent of the insurers, and in the absence of intentional fraud on the part of the insured, in the case of total loss the whole amount mentioned in the policy or renewal, upon which the insurer received a premium, shall be paid. However, if the policy of insurance requires actual repair or replacement of the building or structure to be completed in order for the policyholder to be paid the cost of such repair or replacement, without deduction for depreciation or obsolescence, up to the limits of the policy, then the amount to be paid shall be as prescribed by the policy.” [R.C. 3929.25](#).

Appraisal Process

No statutes.

OKLAHOMA

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[Michael Woodson, Esq.](#)

[Edmonds Cole Law Firm, P.C.](#)

405-272-0322

First Party Claims:

General statute governing Fair Claims Practices, if any:

Unfair Claims Settlement Practices Act, 36 O.S. §§ [1250.1](#), [1250.2](#), [1250.3](#), [1250.4](#), [1250.5](#), [1250.6](#), [1250.7](#), [1250.8](#), [1250.9](#), [1250.10](#), [1250.11](#), [1250.13](#), [1250.14](#), [1250.15](#), [1250.16](#), [1250.17](#)

Time frame for contacting Insured upon initial receipt of claim, if any:

Time Limit: 30 Days ([36 O.S. 1250.6\(a\)](#); [Okla. Admin. Code 365:15-3-5\(a\)](#))

Time frame for issuing disclaimer of coverage, if any:

Time Limit: 45 Days after received Proof of Loss. ([36 O.S. § 1250.7\(A\)](#); [Okla. Admin. Code 365:15-3-7\(a\)\(1\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

See ([36 O.S. § 1250.5\(7\)](#)); First Bank of Turley v. Fidelity and Deposit Insur. Co. of Maryland, 1996 OK 105, 928 P.2d 298.

Time frame for issuing reservation of rights, if any:.

Time Limit: 45 Days after received Proof of Loss. ([36 O.S. § 1250.7\(A\)](#); [Okla. Admin. Code 365:15-3-7\(a\)\(1\)](#)) (Within 45 days after receipt of properly executed proofs of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer, or if further investigation is necessary) Statute does not specifically mention Reservation of Rights.

Additional Fair Claims Practices regulation of significance, if any:

[36 O.S. § 1250.7\(C\)](#) - "Every property and casualty insurer shall complete investigation of a claim within sixty (60) days after notification of proof of loss, unless such investigation cannot reasonably be completed within such time."; but

[Okla. Admin. Code 365:15-3-6](#) - "Every property and casualty insurer shall complete investigation of a claim within 45 business days after receipt of proof of loss, unless such investigation cannot reasonably be completed within such time."

[36 O.S. § 1250.7\(A\)](#) & [Okla. Admin. Code 365:15-3-7](#) - If insurer needs more time to accept/deny a claim the insurer must notify the insured of that and continue to do so every 45 days thereafter until a determination of coverage is made.

[36 O.S. § 1250.5\(3\)](#) - "Failing to adopt and implement reasonable standards for the prompt investigation of claims" constitutes an unfair claim settlement practice in Oklahoma.

[Okla. Admin. Code 365:15-3-7\(e\)](#) - Negotiations shall not be delayed unreasonably. Insurers shall not continue to delay negotiations for settlement with a claimant who is neither an attorney nor represented by an attorney, for a length of time which causes the claimant's rights to be affected by a statute of limitations or a policy or contract time limit, without giving the claimant written notice that the time limit may be expiring and may affect the claimant's rights. Such notice shall be given to first party claimants thirty days before the date on which such time limit may expire. Such notice shall be given to third party claimants sixty days before the date on which such time limit may expire.

Note – This requirement for notice has never been applied to court cases involving the Governmental Tort Claims Act (*codified at* 51 O.S. §§ [151](#), [152](#), [152.1](#), [152.2](#), [152.3](#), [153](#), [153.1](#), [154](#), [155](#), [155.1](#), [155.2](#), [156](#), [157](#), [158](#), [159](#), [160](#), [161.1](#), [162](#), [163](#), [164](#), [165](#), [166](#), [167](#), [169](#), [170](#), [171](#), [172](#)). See Williams v. Bixy Independent School Dist., 2013 OK CIV APP 86, 310 P.3d 1100.

Third Party Claims:

General statute governing Fair Claims Practices, if any:

Unfair Claims Settlement Practices Act, 36 O.S. §§ [1250.1](#), [1250.2](#), [1250.3](#), [1250.4](#), [1250.5](#), [1250.6](#), [1250.7](#), [1250.8](#), [1250.9](#), [1250.10](#), [1250.11](#), [1250.13](#), [1250.14](#), [1250.15](#), [1250.16](#), [1250.17](#)

Duty to Defend vs. Duty to Indemnify:

First Bank of Turley v. Fidelity and Deposit Ins. Co. of Maryland, 928 P.2d 298, 303 (Ok. 1996) (“insurer’s duty to defend its insured is broader than its duty to indemnify, this duty” is not unlimited. “The defense duty is measured by the nature and kinds of risks covered by the policy as well as by the *reasonable expectations of the insured*.” “The insurer’s defense duty is determined on the *basis of information gleaned from the petition (and other pleadings), from the insured and from other sources available to the insurer* at the time the defense is demanded (or tendered) rather than by the outcome of the third-party action.” (emphasis in original)).

Time frame for contacting Claimant upon initial receipt of claim, if any:

Time Limit: 30 Days ([36 O.S. 1250.6\(a\)](#); [Okla. Admin. Code 365:15-3-5\(a\)](#))

Time frame for issuing denial of liability, if any:

Time Limit: 45 Days after received Proof of Loss. ([Okla. Admin. Code 365:15-3-7\(a\)\(1\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

First Bank of Turley v. Fidelity and Deposit Ins. Co. of Maryland, see supra, does not distinguish between first and third party, thus fair inference that same duties to timely disclaim reasonably extend to third-parties.

Time frame for issuing reservation of rights, if any:

Time Limit: No specific time frame mentioned. Presumably 45 Days after received Proof of Loss. ([36 O.S. § 1250.7\(A\)](#)) & ([Okla. Admin. Code 365:15-3-7\(a\)\(1\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[36 O.S. § 1250.7\(C\)](#) - “Every property and casualty insurer shall complete investigation of a claim within sixty (60) days after notification of proof of loss, unless such investigation cannot reasonably be completed within such time.” But, [Okla. Admin. Code 365:15-3-6](#) - “Every property and casualty insurer shall complete investigation of a claim within 45 business days after receipt of proof of loss, unless such investigation cannot reasonably be completed within such time.”

[36 O.S. § 1250.7\(A\)](#);

[Okla. Admin. Code 365:15-3-7\(a\)\(1\)](#) - If insurer needs more time to accept/deny a claim the insurer must notify the insured of that and continue to do so every 45 days thereafter until a determination of coverage is made.

[Okla. Admin. Code 365:15-3-7\(e\)](#) - Negotiations shall not be delayed unreasonably. Insurers shall not continue to delay negotiations for settlement with a claimant who is neither an attorney nor represented by an attorney, for a length of time which causes the claimant’s rights to be affected by a statute of limitations or a policy or contract time limit, without giving the claimant written notice that the time limit may be expiring and may affect the claimant’s rights. Such notice shall be given to third party claimants 60 days before the date on which such time limit may expire.

[Okla. Admin. Code 365:15-3-7\(f\)](#) - Rights of third party claimant. No insurer shall make statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third party claimant of a provision of a statute of limitations.

Matching

There is not statute or regulation that requires matching.

Stated Value Policy

Oklahoma standard fire insurance statutes: [36 O.S. § 4803](#), [36 O.S. § 4804](#), and [36 O.S. § 4808](#). Insurer required to pay actual cash value. If the property is insured for any amount in excess of fair value of property, then at the time of a total loss, the premiums, plus 6% interest shall be reimbursed to insured. Also, the statutes state that nothing in this section shall be construed to relieve the insurer from paying the full value of any claim against the policy up to the maximum amount for which the home is insured. Also, see Eagle Fire Co. of New York v. Snyder, 392 F.2d 570, 571 (10th Cir. 1968) (“In Oklahoma, a contract of fire insurance is one of indemnity whereby the insurer agrees to protect the insured against certain stated types of loss to the extent of the coverage stipulated in the policy. When the insured property is totally destroyed, the liability under the policy is the actual cash value thereof at the time of loss. This value is to be determined by relevant factors, including the original cost, replacement cost, the age of the insured property, the condition in which it has been maintained, and the location, use and profit likely to accrue therefrom.”)

Appraisal Process

[36 O.S. § 4803](#): Appraisal process outlined in property insurance, standard policy provisions for fire policies. No mandate for appraisal. Appraisal awards are considered binding on the party who demands the appraisal under the policy. See Massey v. Farmers Ins. Group, 1992 OK 80. 837 P.2d 880.

Note: Additional Oklahoma State Statutes can be located at: [Oklahoma State Courts Network-Oklahoma Statutes Citationized](#) title 36 for Insurance; and additional Oklahoma Administrative Code sections can be located at: [Oklahoma Secretary of State-Oklahoma Administrative Code](#), title 365 for Insurance Department.

OREGON

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513-417-1104

First Party Claims:

General statute governing Fair Claims Practices, if any:

[Or. Rev. Stat. § 746.230](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 30 days. ([Or. Admin. R. § 836-080-0225 to 235](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 30 days following proof of loss. ([Or. Admin. R. § 836-080-225 to 235](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

Carl v. Oregon Auto Ins. Co./North Pac. Ins. Co., 141 Or App 515 (1996).

Timeframe for issuing reservation of rights, if any:

Time Limit: 30 days following proof of loss. ([Or. Admin. R. § 836-080-225 to 235](#))

Additional Fair Claims Practices regulation of significance, if any:

[Or. Rev. Stat. § 746.230](#) - Failing to “acknowledge and act promptly upon communications with respect to claims” and “failing to adopt and implement reasonable standards for the prompt investigation of claims” constitute unfair claim settlement practices.

[Or. Admin. R. § 836-080-225 to 235](#) - If more time is needed to accept or deny a claim the insurer must notify the insured of that and continue to do so every 45 days thereafter until a determination of coverage is made.

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[Or. Rev. Stat. § 746.230](#)

Duty to Defend vs. Duty to Indemnify:

The insurer’s duty to defend an action against its insured is independent of the insurer’s duty to indemnify. An insurer has a duty to defend if the claim that is stated against its insured in the complaint could, without amendment, impose liability for conduct covered by the policy. Even where the insurer does not have a duty to defend based on the allegations of the initial complaint, facts proved at trial on which liability is established may give rise to a duty to indemnify, if the insured’s conduct is covered. *Bresee Homes Inc. v. Farmers Ins. Exchange*, 353 Or 112, 293 P3d 1036 (2012).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: 30 days ([Or. Admin. R. § 836-080-0225 to 235](#))

Timeframe for issuing denial of liability, if any:

Time Limit: 30 days following proof of loss. ([Or. Admin. R. § 836-080-225 to 235](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

Carl v. Oregon Auto Ins. Co./North Pac. Ins. Co., 141 Or App 515 (1996).

Timeframe for issuing reservation of rights, if any:

Time Limit: 30 days following proof of loss. ([Or. Admin. R. § 836-080-225 to 235](#))

Additional Fair Claims Practices regulation of significance, if any:

[Or. Rev. Stat. § 746.230](#) - Failing to “acknowledge and act promptly upon communications with respect to claims” and “failing to adopt and implement reasonable standards for the prompt investigation of claims” constitute unfair claim settlement practices.

[Or. Admin. R. § 836-080-225 to -235](#) - If more time is needed to accept or deny a claim the insurer must notify the insured of that and continue to do so every 45 days thereafter until a determination of coverage is made.

Matching

Resolution of the concept of replacement costs and matching products requires an analysis of the specific language of the particular insurance policy at issue. For example, recovery may be limited to the actual cash value of the loss on the property, up to the policy limits, or the cost of repair or replacement “with material of like kind and quality,” whichever is less. *Schnitzer v. South Carolina Ins. Co.* 62 Or App 300, 661 P2d 550 (1983). Some policies require that the new property be identical or similar to the damaged property. See 15 Couch on Insurance § 176:65 (3 ed 2005 and Supp. 2015).

Stated Value Policy

Case law acknowledges that under a value policy, an insured’s recovery is circumscribed by the value of the item or category of property that is stated in the policy, subject to an applicable deductible. *Oregon Orchards v. Insurance Company of N.A.*, 239 Or 192, 397 P2d 75 (1964). The standard fire insurance policy limits insurance to an amount not to exceed a specified amount of dollars. ORS 742.206.

Appraisal Process

Fire insurance policies must include an appraisal clause. Each party selects an appraiser and then an umpire is appointed. [ORS 742.232](#).

PENNSYLVANIA

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215-563-4470

First Party Claims:

General statute governing Fair Claims Practices, if any:

[31 Pa. Code §§ 146.1-146.9](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 10 days ([31 Pa. Code § 146.5 to 146.7](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 15 days after proof of loss. ([31 Pa. Code § 146.5 to 146.7](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

See *Vanderhoff v. Harleysville Ins. Co.*, 2010 W.L. 2653247, *citing* *Brakemen v. Potomac, Ins. Co.*, 371 A.2d 193 (Pa. 1977)

Timeframe for issuing reservation of rights, if any:

Time Limit: 15 days after proof of loss. ([31 Pa. Code § 146.5 to 146.7](#))

Additional Fair Claims Practices regulation of significance, if any:

[40 Pa. Stat. Ann. § 1171.5](#) - "Failing to acknowledge and act reasonably promptly upon communications with respect to claims" and "failing to adopt and implement reasonable standards for the prompt investigation of claims" constitute unfair claim settlement practices.

[40 Pa. Stat. Ann. § 1171.5](#) - "Failing to affirm or deny coverage within a reasonable time after proof of loss" constitutes an unfair claim settlement practice"

[31 Pa. Code § 146.5 to .7](#) - The insurer must notify the insured of that and continue to do so every 45 days thereafter until a determination of coverage is made.

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[31 Pa. Code §§ 146.1-146.9](#)

Duty to Defend vs. Duty to Indemnify:

See *American and Foreign Insurance Company v. Jerry's Sport Center, Inc.*, 2010 WL 3222404

The *Jerry's Sport Center* court explained that the duty to defend arises if, on its face, the factual allegations of the complaint encompass an injury that is actually or potentially within the scope of the policy. Whether or not the complaint might fall within the policy's coverage, the duty to defend exists. It is the insurer's duty to determine whether it believes there is a potential indemnity obligation. If it is uncertain as to whether there is such an obligation, it should defend and seek resolution of the issue through a declaratory judgment action. If it believes there is no such obligation, it can deny coverage and allow the insured to defend, subject to its potential liability if the coverage decision is incorrect. Because of this settled law, the Pennsylvania Supreme Court concluded that to find a right of reimbursement of defense costs would "amount to a reactive erosion of the broad duty to defend" and "would . . . narrow Pennsylvania's long-standing view that the duty to defend is broader than the duty to indemnify."

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: 10 days ([31 Pa. Code § 146.5 to 146.7](#))

Timeframe for issuing denial of liability, if any:

Time Limit: 15 days after proof of loss. ([31 Pa. Code § 146.5 to 146.7](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

Timeframe for issuing reservation of rights, if any:

Time Limit: 15 days after proof of loss. ([31 Pa. Code § 146.5 to .7](#))

Additional Fair Claims Practices regulation of significance, if any:

[40 Pa. Stat. Ann. § 1171.5](#) - "Failing to acknowledge and act reasonably promptly upon communications with respect to claims" and "failing to adopt and implement reasonable standards for the prompt investigation of claims" constitute unfair claim settlement practices.

[40 Pa. Stat. Ann. § 1171.5](#) - "Failing to affirm or deny coverage within a reasonable time after proof of loss" constitutes an unfair claim settlement practice.

[31 Pa. Code § 146.5 to .7](#) - The insurer must notify the insured of an ongoing claim investigation within 30 days of the investigation and continue to do so every 45 days thereafter until a determination of coverage is made.

Matching

Not required. *Green v. United States Automobile Insurance*, 2007 Pa.Super. 344, 936 A.2d 1178 (2007), appeal denied, 598 Pa. 750, 954 A.2d 577 (2008) – insurer not compelled to pay for entire roof replacement, only damaged shingles

Stated Value Policy

Pennsylvania uses a fairly straight forward valuation of damages for partial and total losses, which can be summarized by the following:

"the measure of damages for injury to property is the cost of repairs where the injury is repairable; however, where the injury is characterized as permanent, the measure of damages becomes the decrease in the fair market value of the property". *Wade v. S.J.Groves & Sons Co.*, 283 Pa. Super. 464, 483, 424 A.2d 902, 911 (1981)

Appraisal Process

Not required. However, per above, the proper measure of damages is the cost of repair. Insurers would be advised to include an appraisal provision in their policy.

RHODE ISLAND

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702-221-1399

First Party Claims:

General statute governing Fair Claims Practices, if any:

[R.I. Gen. Laws §§ 27-9.1-1 et seq.](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

30 days (generally). ([R.I. Gen. Laws § 27-9.1-4\(16\)](#))

15 days (accident, health and life claims). ([02-030-013 R.I. Code R. § 4\(A, H\)](#))

10 days (property/casualty claims). ([02-030-073 R.I. Code R. § 5\(D\)](#))

Timeframe for issuing disclaimer of coverage, if any:

“Reasonable time” after completing investigation (generally). ([R.I. Gen. Laws § 27-9.1-4\(7\)](#))

21 days after receipt of properly executed proof of loss, with an additional 45 days if requested by insurer (generally). ([Insurance Regulation 78, Section 7.B](#))

“Reasonable time” (accident, health and life claims). ([02-030-013 R.I. Code R. § 4\(D\)](#))

15 days from proof of loss (property/casualty claims). ([02-030-073 R.I. Code R. § 6\(A\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

Timeframe for issuing reservation of rights, if any:

“Reasonable time” (accident, health and life claims) ([02-030-013 R.I. Code R. § 4\(D\)](#))

15 days from proof of loss (property/casualty claims) ([02-030-073 R.I. Code R. § 6\(A\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[Insurance Regulation 73](#) - Unfair Property/Casualty Claims Settlement

[Insurance Regulation 78](#) - Procedures in Payment of Automobile Damage Claims

[Insurance Regulation 10](#) - Uninsured and Underinsured Motorist Coverage

[R.I. Gen. Laws § 9-1-50](#) - Payment within 30 days of receipt of release, or financial penalty applies.

[02-030-013 R.I. Code R. § 4\(G,I\)](#) - (accident, health, life claims)- claim not resolved in 30 days from proof of loss, insurer must explain delay. Written notice of claim denial within 15 days of determination.

[02-030-073 R.I. Code R. § 6\(B,E\)](#) - (property/casualty claims)- claim not resolved within 15 days from proof of loss, insurer must explain delay. Insurer may not begin negotiations with unrepresented claimant until written notice of statute of limitations.

[R.I. Gen. Laws § 31-47-12](#); [§ 27-9.1-4\(17\)](#) - insurer may not interfere with consumer’s choice of repairer.

[Insurance Regulation 73, Section 7.H](#) - insurer shall provide notice that insured may have denial of claim reviewed by Department of Business Regulation,

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[R.I. Gen. Laws § 27-9.1-4](#)

Duty to Defend vs. Duty to Indemnify:

An insurer's duty to defend is broader than the insurer's duty to indemnify in accordance with the terms, conditions and exclusions in the policy. The duty to defend is a function of the allegations in the complaint filed against the insured. If the allegations bring the case within the scope of the risks covered by the policy, the insurer must defend regardless of whether the allegations are groundless, false or fraudulent. Sanzi v. Shetty, 864 A.2d 614 (R.I. 2005); Peerless Insurance Co. v. Viegas, 667 A.2d 785 (R.I. 1995)

Timeframe for contacting Claimant upon initial receipt of claim, if any:

30 days (generally) ([R.I. Gen. Laws § 27-9.1-4\(16\)](#))

15 days (accident, health and life claims) ([02-030-013 R.I. Code R. § 4\(A,H\)](#))

10 days (property/casualty claims) ([02-030-073 R.I. Code R. § 5\(D\)](#))

Timeframe for issuing denial of liability, if any:

"Reasonable time" after completing investigation (generally). ([R.I. Gen. Laws § 27-9.1-4\(7\)](#)) "Reasonable time" (accident, health and life claims). ([02-030-013 R.I. Code R. § 4\(D\)](#))

15 days from proof of loss (property/casualty claims). ([02-030-073 R.I. Code R. § 6\(A\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

An insured is not be barred from recovering the benefits for which he or she has paid because of a breach of the policy's notice provision when there is no showing by the insurer that it was prejudiced by the breach. The burden of showing prejudice is on the insurer. In evaluating this type of case, the court should look to the length of the delay, the reasons for the delay, and the probable prejudicial effect of the delay on the insurer. Pennsylvania General Insurance Co. v. Becton, 475 A.2d 1032 (R.I. 1984).

Timeframe for issuing reservation of rights, if any:

"Reasonable time" (accident, health and life claims). ([02-030-013 R.I. Code R. § 4\(D\)](#))

15 days from proof of loss (property/casualty claims). ([02-030-073 R.I. Code R. § 6\(A\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[R.I. Gen. Laws § 27-9.1-4](#) - Failing to (1) acknowledge and act with reasonable promptness upon pertinent communications with respect to claims arising under its policies, (2) adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies, and (3) provide forms necessary to present claims within 10 calendar days of a request with reasonable explanations regarding their use, constitute unfair claims practices by an insurer.

[R.I. Gen. Laws § 27-9.1-4 \(7\)](#) - Failing to affirm or deny coverage of claims within a reasonable time after having completed its investigation related to the claim or claims constitutes an unfair claims practice by an insurer.

[02-030-073 R.I. Code R. §6\(B\)\(1\)](#) - If the insurer needs more time to determine whether to accept or deny the claim, it shall notify the claimant within 15 days after receipt of the proofs of loss and give the reasons it requires additional time. If the investigation remains incomplete, the insurer shall notify the claimant within 45 days from the initial notification and every 45 days thereafter until the claim is accepted or denied, always setting forth the reasons for requiring additional time for investigation.

[R.I. Gen. Laws §§ 27-9.1-1 et seq.](#) - Provides that nothing in the statute should be construed to create a cause of action under the statute, but violations of the chapter are admissible in a bad faith action under [R.I. Gen. Laws § 9-1-33](#). Skaling v. Aetna Ins. Co., 799 A.2d 997 (R.I. 2002).

Matching

When a loss requires replacement of items and the replaced items do not match in quality, color or size, the insurer shall replace all such items so as to conform to a reasonably uniform appearance. This applies to interior and exterior losses. [02-030-073 R.I. Code R. §9\(A\)](#)

Stated Value Policy

Standard statutory form requirement: “ to an amount not exceeding “X” dollars, does insure [BLANK] and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after a loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair...” [R.I. Gen. Laws § 27-5-3](#) Actual Cash Value case law definition: [02-030-073 R.I. Code R. §9\(B\)](#)

Appraisal Process

If insured and company fail to agree to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty (20) days of that demand. The appraisers shall first select a competent and disinterested umpire. [R.I. Gen. Laws § 27-5-3](#)

“[U]nless the insurer denies coverage for the claimed loss, and if the dispute is limited to the amount or extent of the loss, the parties are required to submit to the appraisal process.” [Hahn v. Allstate Ins. Co., 2009-164-APPEAL, 2011 WL 1196896 \(Supreme Court R.I. 2011\)](#)

SOUTH CAROLINA

For more information, please contact an Eagle Member:

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803-724-1714

First Party Claims:

General statute governing Fair Claims Practices, if any:

[S.C. Code Ann. § 38-59-20.](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: “reasonable promptness” ([S.C. Code Ann. § 38-59-20\(2\)](#))

Timeframe for issuing disclaimer of coverage, if any:

No specific timeframe for issuing disclaimer of coverage, but must “adopt and implement reasonable standards for the prompt investigation and settlement of claims, including third-party liability claims, arising under its policies.” ([S.C. Code Ann. § 38-59-20\(3\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

[Vt. Mut. Ins. Co. v. Singleton by & ex rel. Singleton, 316 S.C. 5, 12, 446 S.E.2d 417, 421 \(S.C. 1994\).](#)

Timeframe for issuing reservation of rights, if any:

No specific timeframe for issuing reservation of rights, but must “adopt and implement reasonable standards for the prompt investigation and settlement of claims, including third-party liability claims, arising under its policies.” ([S.C. Code Ann. § 38-59-20\(3\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[S.C. Code Ann § 38-59-10](#) - Proof of loss forms: When an insurer under an insurance policy requires a written proof of loss after the notice of the loss has been given by the insured or beneficiary, the insurer or its representative shall furnish a blank to be used for that purpose. If the forms are not furnished within twenty days after the receipt of the notice, the claimant is considered to have complied with the requirements of the policy as to proof of loss upon submitting within the time fixed in the policy for filing proofs of loss written proof covering the occurrence, character, and extent of the loss for which claim is made. The twenty-day period after notice of loss to furnish forms applies to all types of insurance unless a lesser time period is specifically provided by law.

Negligent or bad faith claims handling: We hold today that if an insured can demonstrate bad faith or unreasonable action by the insurer in processing a claim under their mutually binding insurance contract, he can recover consequential damages in a tort action. Actual damages are not limited by the contract. Further, if he can demonstrate the insurer's actions were willful or in reckless disregard of the insured's rights, he can recover punitive damages. Nichols v. State Farm Mut. Auto. Ins. Co., 279 S.C. 336, 340, 306 S.E.2d 616, 619 (S.C. 1983).

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[S.C. Code Ann. § 38-59-20.](#)

Duty to Defend vs. Duty to Indemnify:

See City of Hartsville v. S.C. Mun. Ins. & Risk Fin. Fund, 382 S.C. 535, 544, 677 S.E.2d 574 (S.C. 2009)

“duty to defend” and “duty to indemnify” are “separate and distinct obligations”

“duty to defend” is determined based on allegations in the complaint and facts outside of the complaint that are known by the insurer

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: “reasonable promptness” ([S.C. Code Ann. § 38-59-20\(2\)](#))

Timeframe for issuing denial of liability, if any:

No specific timeframe for issuing denial of liability, but must “adopt and implement reasonable standards for the prompt investigation and settlement of claims, including third-party liability claims, arising under its policies.” ([S.C. Code Ann. § 38-59-20\(3\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

Factory Mut. Ins. Co. v. Kennedy, 256 S.C. 376, 182 S.E.2d 727 (S.C. 1971); Vt. Mut. Ins. Co. v. Singleton by & ex rel. Singleton, 316 S.C. 5, 12, 446 S.E.2d 417, 421 (S.C. 1994).

Timeframe for issuing reservation of rights, if any:

There is no specific timeframe for issuing reservation of rights, but insurer must “adopt and implement reasonable standards for the prompt investigation and settlement of claims, including third-party liability claims, arising under its policies.” ([S.C. Code Ann. § 38-59-20\(3\)](#))

Additional Fair Claims Practices regulation of significance, if any:

Negligent or bad faith claims handling: South Carolina law does not recognize a cause of action by a third party for the tort of bad faith refusal to pay benefits. Kleckley v. Nw. Nat. Cas. Co. 338 S.C. 131, 526 S.E.2d 218 (S.C. 2000)

Unreasonable refusal to settle: [U]nreasonable refusal on the insurer's part to accept an offer of compromise settlement will render it liable in tort to the insured for the amount of the judgment against the insured in excess of policy limits. Nichols v. State Farm Mut. Auto. Ins. Co., 279 S.C. 336, 339, 306 S.E.2d 616, 619 (S.C. 1983).

Matching

There is no specific requirement under South Carolina that requires an insurer to replace the damaged material in order to match. The language of the policy provides the terms for the insurer's duty with regard to the property damage. See, e.g., *Dash v. Selective Ins. Co.*, Civil Action No. 5:12-cv-02732-JMC, 2015 U.S. Dist. LEXIS 65026, *8 (D.S.C. May 19, 2015) (determining there was no bad faith where the adjuster explained to the insured that, among other things, the policy paid "for damaged property only, not to match" in response to the insured's request that the entire roof be replaced in order for it to match).

Stated Value Policy

There are references to stated value policy in [S.C. Code Ann. § 38-75-20](#) (property other than chattels or personal property) and [S.C. Code Ann. § 38-75-220](#) (hazard insurance on mobile homes). <http://www.scstatehouse.gov/code/t38c075.php>. Excess policies are not governed by these two statutory sections.

Appraisal Process

South Carolina does not have a statutory provision governing the process for seeking appraisals in claims involving valuation disputes. If the policy includes provisions governing this issue, the language of the policy will apply. See, e.g., *Coker v. Fireman's Fund Ins. Co.*, C.A. No. 3:11-cv-0446-CMC, 2012 U.S. Dist. 9793, *2 (D.S.C. Jan. 27, 2012) ("FFIC argues, and the court agrees, that the insurance policy established a mechanism for resolving disputes at to valuation: the appraisal process.").

SOUTH DAKOTA

For more information, please contact:

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[Eagle International Associates, Inc.](#)

702-221-1399

First Party Claims:

General statute governing Fair Claims Practices, if any:

[S.D.C.L. § 58-33 et seq.](#)

In 2014, [House Bill 1054](#) was enacted into law. The bill clarifies the following:

"Any of the following acts by an insurer, if committed in violation of section 3 of this Act, is an unfair claims practice:

- (1) Knowingly misrepresents to a claimant or an insured a relevant fact or policy provision relating to coverages at issue;
- (2) Fails to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;
- (3) Fails to adopt and implement reasonable standards to promptly complete claim investigations and settlement of claims arising under its policies;
- (4) Fails to make a good faith attempt to effectuate prompt, fair, and equitable settlement of claims submitted in which liability coverage, and causation of claims have become reasonably clear;
- (5) Compels an insured or beneficiary to institute a suit to recover an amount due under its policies by offering substantially less than the amount ultimately recovered in a suit brought by the insured or beneficiary;
- (6) Refuses to pay claims without conducting a reasonable claim investigation;

- (7) Fails to affirm or deny coverage of claims within a reasonable time after having completed a claim investigation related to the claim;
- (8) Attempts to settle a claim for less than the amount that a reasonable person would believe the insured or beneficiary is entitled by reference to written or printed advertising material accompanying or made part of an application;
- (9) Attempts to settle a claim on the basis of an application that was materially altered without notice to, or knowledge or consent of, the insured;
- (10) Makes a claim payment to an insured or beneficiary without indicating the coverage under which each payment is being made;
- (11) Unreasonably delays a claim investigation or payment of a claim by requiring both a formal proof of loss form and subsequent verification that would result in duplication of information and verification appearing in the formal proof of loss form;
- (12) Fails, in the case of a claim denial or offer of compromise settlement, to promptly provide a reasonable and accurate explanation of the basis for such action; or
- (13) Fails to provide forms necessary to present a claim within fifteen days of a request with reasonable explanations regarding their use.”

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: At least 30 days ([S.D.C.L. § 58-33-67\(1\)](#))

Note: The statute states the following:

“In dealing with the insured or representative of the insured, unfair or deceptive acts or practices in the business of insurance include, but are not limited to, the following:

- (1) Failing to acknowledge and act within thirty days upon communications with respect to claims arising under insurance policies and to adopt and adhere to reasonable standards for the prompt investigation of such claims;

This language does not differentiate between acknowledging the claim versus a coverage evaluation. Acknowledging the claim must be done as soon as possible.

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 30 days. Although no timeframe is specified, one could interpret the language of [S.D.C.L. § 58-33-67\(1\)](#) to mean that a disclaimer should be provided within 30 days.

Must carrier demonstrate prejudice to disclaim on late notice: YES

“South Dakota law requires that an insurer show actual prejudice caused by an untimely notice of loss and not just mere allegations of prejudice in order to prevail.” Union Pacific R.R. v. Certain Underwriters at Lloyd’s London, 771 N.W.2d 611 ,618 (S.D., 2009).

Timeframe for issuing reservation of rights, if any:

Time Limit: 30 days. Although no timeframe is specified, one could interpret the language of [S.D.C.L. § 58-33-67\(1\)](#) to mean that a reservation of rights should be provided within 30 days.

Additional Fair Claims Practices regulation of significance, if any:

58-33-67 - Unfair or deceptive practices in dealing with insured

In dealing with the insured or representative of the insured, unfair or deceptive acts or practices in the business of insurance include, but are not limited to, the following:

- (1) Failing to acknowledge and act within thirty days upon communications with respect to claims arising under insurance policies and to adopt and adhere to reasonable standards for the prompt investigation of such claims;
- (2) Making claims payments to any claimant, insured, or beneficiary not accompanied by a statement setting forth the coverage under which the payments are being made;
- (3) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;
- (4) Failing to promptly settle claims, where liability has become reasonably clear under one portion of the insurance policy coverage to influence settlements under other portions of the insurance policy coverage;
- (5) Requiring as a condition of payment of a claim that repairs to any damaged vehicle shall be made by a particular contractor or repair shop;
- (6) Failing to make a good faith assignment of the degree of contributory negligence in ascertaining the issue of liability;
- (7) Unless permitted by law and the insurance policy, refusing to settle a claim of an insured or claimant on the basis that the responsibility should be assumed by others.

Third Party Claims:

General statute governing Fair Claims Practices, if any: None

Duty to Defend vs. Duty to Indemnify:

The duty to defend is much broader than the duty to indemnify, and are independent of each other. *Haw-keye-Security Ins. Co. v. Clifford by Clifford*, 366 N.W.2d 489, 490 (S.D.1985). The courts place the burden on the insurer to show there is no duty to defend. *Id.* at 492. The insurer has the burden to show the claim clearly falls outside of the policy coverage. *Id.*

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: None specified, although 30 days based on [S.D.C.L. § 58-33-67\(1\)](#) would be appropriate.

Timeframe for issuing denial of liability, if any:

Time Limit: None specified, although 30 days based on [S.D.C.L. § 58-33-67\(1\)](#) would be appropriate.

Must carrier demonstrate prejudice to disclaim on late notice: YES

“South Dakota law requires that an insurer show actual prejudice caused by an untimely notice of loss and not just mere allegations of prejudice in order to prevail.” *Union Pacific R.R. v. Certain Underwriters at Lloyd’s London*, 771 N.W.2d 611 ,618 (S.D., 2009)

Timeframe for issuing reservation of rights, if any:

Time Limit: None specified, although 30 days based on [S.D.C.L. § 58-33-67\(1\)](#) would be appropriate.

Additional Fair Claims Practices regulation of significance, if any:

[House Bill 1054](#) signed into law in 2014 states the following:

“Any of the following acts by an insurer, if committed in violation of section 3 of this Act, is an unfair claims practice:

- (1) Knowingly misrepresents to a claimant or an insured a relevant fact or policy provision relating to coverages at issue;
- (2) Fails to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;

- (3) Fails to adopt and implement reasonable standards to promptly complete claim investigations and settlement of claims arising under its policies;
- (4) Fails to make a good faith attempt to effectuate prompt, fair, and equitable settlement of claims submitted in which liability coverage, and causation of claims have become reasonably clear;
- (5) Compels an insured or beneficiary to institute a suit to recover an amount due under its policies by offering substantially less than the amount ultimately recovered in a suit brought by the insured or beneficiary;
- (6) Refuses to pay claims without conducting a reasonable claim investigation;
- (7) Fails to affirm or deny coverage of claims within a reasonable time after having completed a claim investigation related to the claim;
- (8) Attempts to settle a claim for less than the amount that a reasonable person would believe the insured or beneficiary is entitled by reference to written or printed advertising material accompanying or made part of an application;
- (9) Attempts to settle a claim on the basis of an application that was materially altered without notice to, or knowledge or consent of, the insured;
- (10) Makes a claim payment to an insured or beneficiary without indicating the coverage under which each payment is being made;
- (11) Unreasonably delays a claim investigation or payment of a claim by requiring both a formal proof of loss form and subsequent verification that would result in duplication of information and verification appearing in the formal proof of loss form;
- (12) Fails, in the case of a claim denial or offer of compromise settlement, to promptly provide a reasonable and accurate explanation of the basis for such action; or
- (13) Fails to provide forms necessary to present a claim within fifteen days of a request with reasonable explanations regarding their use.”

Matching

If a loss requires replacement of items and the replaced items do not match in quality, color, or size, the insurer shall replace all items in the area so as to conform to a reasonably uniform appearance. ([S.D. House Bill 1054](#))

Stated Value Policy

([S.D.C.L. § 58-10-10](#))

South Dakota law covers policies that insure against loss by fire, tornado, or lightning. In the event of a total loss, the stated value in the policy will be the true value of the property. If a total fire loss happens within 90 days of an increase of 25% of the policy limits, then the value of the property is determined by the policy. A loss of appurtenant property shall be settled for actual replacement cost or actual cash value, unless a specific amount was assigned. Any claim for a building insured under a commercial blanket with one amount for two or more buildings shall be settled for actual replacement cost or actual cash value.

Appraisal Process

Binding appraisal and arbitration provisions are prohibited in South Dakota insurance contracts pursuant to Bulletin 98-5 and [S.D.C.L. § 21-25A-3](#).

However, the Division has approved language that can be utilized in filings which complied with South Dakota law. The criteria to be met are: 1) Both parties must agree to the appraisal or arbitration; 2) The decision determined could not be binding on either the insured/claimant or the insurer.

TENNESSEE

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First Party Claims:

General statute governing Fair Claims Practices, if any:

[Tenn. Code Ann. §56-8-105](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: “Reasonably promptly” ([Tenn. Code Ann. § 56-8-105\(2\)](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: “reasonable time” after proof of loss. ([Tenn. Code Ann. § 56-8-105\(7\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

“[B]reach of a notice provision establishes a presumption that the Insurer was prejudiced by the delay. The insured may rebut the presumption with competent evidence that the insurer was not prejudiced by the delay in notice.” *American Justice Ins. Reciprocal v. Hutchinson*, 15 S.W.3d 811, 818 (Tenn. 2000).

Timeframe for issuing reservation of rights, if any:

Time limit: “reasonable time” after proof of loss. ([Tenn. Code Ann. § 56-8-105\(7\)](#))

Additional Fair Claims Practices regulation of significance, if any:

General link to the Department of Commerce and Insurance’s regulations that may be applicable to insurers: (Tenn. Code Ann. § 56-8-101et seq)

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[Tenn. Code Ann. § 56-8-105](#)

Duty to Defend vs. Duty to Indemnify:

“[T]he Insurer has a duty to defend when the underlying complaint alleges damages that are within the risk covered by the Insurance contract and for which there is a potential basis for recovery. The duty to defend arises if even one of the allegations is covered by the policy. The duty to defend is broader than the duty to indemnify because the duty to defend is based on the facts alleged, while the duty to indemnify is based upon the facts found by the trier of fact. Any doubt as to whether the claimant has stated a cause of action within the coverage of the policy is resolved in favor of the insured.”

Travelers Indem. Co. of America v. Moore & Associates, Inc., 216 S.W.3d 302, 305 (Tenn. 2007)(citations omitted).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: “Reasonably promptly” ([Tenn. Code Ann. § 56-8-105\(2\)](#))

Timeframe for issuing denial of liability, if any:

Time Limit: “reasonable time” after proof of loss. ([Tenn. Code Ann. § 56-8-105\(7\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

“[B]reach of a notice provision establishes a presumption that the insurer was prejudiced by the delay. The insured may rebut the presumption with competent evidence that the insurer was not prejudiced by the delay in notice.” American Justice Ins. Reciprocal v. Hutchinson, 15 S.W.3d 811, 818 (Tenn. 2000).

Timeframe for issuing reservation of rights, if any:

Time Limit: “reasonable time” after proof of loss. ([Tenn. Code Ann. § 56-8-105\(7\)](#))

Additional Fair Claims Practices regulation of significance, if any:

General link to the Department of Commerce and Insurance’s regulations that may be applicable to insurers: (Tenn. Code Ann. § 56-8-101 et. Seq)

Matching

While there is no published case on point, there is unpublished case law that would indicate matching is required. See Hutcherson v. Tennessee Farmers Mut. Inc. of Columbia, 1986 WL 9608, at *2 (Tenn. Ct. App., Sept. 3, 1986) (where damaged spot alone was not capable of being repaired satisfactorily because of aesthetic reasons, it was necessary to replace the entire front portion of the roof)

Stated Value Policy

An insurance company shall not be liable beyond the actual value of the insured property at the time of loss regardless of the value that the insured has paid premiums on, so long as the inspection required by TCA 56-7-801 has been performed, making the policy a valued policy. If the amount on which the premium has been paid exceeds the actual value, the insured shall be reimbursed the excess premium paid. T.C.A. §§56-7-801, 56-7-802.

Appraisal Process

Appraisals are not required by law, but are a matter of contract between an insurer and an insured.

TEXAS

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First Party Claims:

General Statute governing Fair Claims Practices:

[TEX. INS. CODE CHAPTER 541](#). Unfair Methods of Competition and Unfair or Deceptive Acts or Practices

[TEX. INS. CODE CHAPTER 542](#). Processing and Settlement of Claims

Timeframe for contacting insured upon initial receipt of claim if any:

Time Limit: 15 days (or 30 business days if insurer is an eligible surplus-lines insurer). ([TEX. INS. CODE § 542.055](#))

Timeframe for issuing disclaimer of coverage if any:

Time Limit: 15 days after insurer receives all items, statements, and forms required by the insurer to secure final proof of loss. ([TEX. INS. CODE § 542.056](#))

Must carrier demonstrate prejudice to disclaim due to late notice: YES

“An insured’s failure to timely notify its insurer of a claim or suit does not defeat coverage if the insurer was not prejudiced by the delay.” See *PAJ, Inc. v. Hanover Ins. Co.*, 243 S.W.3d 630, 636-37 (Tex. 2008); *Hudson v. City of Houston*, 392 S.W.3d 714, 727 (Tex. App.—Houston [1st Dist.] 2011, pet. denied). **However**, an insurer’s actual knowledge of a claim or suit does not preclude a showing of prejudice as a matter of law. *Hudson*, 392 S.W.3d at 727. See also, *National Union Fire Ins. Co. v. Crocker*, 246 S.W.3d 603, 609-10 (Tex. 2008); *Jenkins v. State & County Mut. Fire Ins. Co.*, 287 S.W.3d 891, 897 (Tex. App.—Fort Worth 2009, pet. denied); *Maryland Cas. Co. v. American Home Assurance Co.*, 277 S.W.3d 107, 117 (Tex. App. – Houston [1st Dist.] 2009, pet. withdrawn).

Timeframe for issuing reservation of rights if any:

Time Limit: “Reasonable time” ([TEX. INS. CODE § 541.060\(a\)\(4\)\(B\)](#)) (“An insurer must, ‘within a reasonable time,’ either ‘affirm or deny coverage of a claim’ or ‘submit a reservation of rights’ to the policyholder.” *Comsys Info. Tech. Servs. v. Twin City Fire Ins. Co.*, 130 S.W.3d 181, 190 (Tex. App. – Houston [14th Dist.] 2003, pet. denied)).

Additional Fair Claims Practices regulation of significance if any:

If the insurer is unable to accept or reject the claim within the period specified by Subsection [TEX. INS. CODE § 542.056\(a\)](#) (15 business days after insurer receives all items, statements, and forms required by the insurer to secure final proof of loss) or [TEX. INS. CODE § 542.056\(b\)](#) (30 days after the insurer receives all items statements, and forms required by the insurer, if the insurer has a reasonable basis to believe that a loss resulted from arson), the insurer, within that same period, shall notify the claimant of the reasons that the insurer needs additional time. The insurer shall accept or reject the claim not later than the 45th day after the date the insurer notifies a claimant under this subsection. [TEX. INS. CODE § 542.056\(d\)](#)

If an insurer notifies a claimant under [TEX. INS. CODE § 542.056](#) that the insurer will pay a claim or part of a claim, the insurer shall pay the claim not later than the fifth business day after the date notice is made. [TEX. INS. CODE § 542.057](#)

Except as otherwise provided, if an insurer, after receiving all items, statements, and forms reasonably requested and required under [TEX. INS. CODE § 542.055](#), delays payment of the claim for a period exceeding the period specified by other applicable statutes or, if other statutes do not specify a period, for more than 60 days, the insurer shall pay damages and other items as provided by [TEX. INS. CODE § 542.060](#) (interest on the amount of the claim at the rate of 18% per year and reasonable attorney’s fees). [TEX. INS. CODE § 542.058](#)

If an insurer that is liable for a claim under an insurance policy is not in compliance with this sub-chapter, the insurer is liable to pay the holder of the policy or the beneficiary making the claim under the policy, in addition to the amount of the claim, interest on the amount of the claim at the rate of 18 percent a year as damages, together with reasonable attorney’s fees.” [TEX. INS. CODE § 542.060](#)

Third Party Claims:

NOTE: Texas does not recognize a direct cause of action against an insurer by a third-party for the mis-handling of a third-party claim. (See, *Allstate Ins. Co. v. Watson*, 876 S.W.2d 145 (Tex. 1994)). All duties by an insurer with regard to the handling of a third-party claim in Texas extend *solely* to the insured to whom the insurer has issued a policy. There is no privity – and therefore, no duty – between an insurer and a third-party claimant making a claim against an insured.

General statute governing Fair Claim Practices, if any:

[TEX. INS. CODE CHAPTER 541](#). Unfair Methods of Competition and Unfair or Deceptive Acts or Practices

Timeframe for contacting Insured upon initial receipt of claim if any:

Time Limit: “Reasonably promptly”. “[F]ailing to acknowledge with reasonable promptness pertinent communications relating to a claim under the insurer’s policy” is an “unfair claim settlement practice.” ([TEX. INS. CODE § 542.003\(b\)\(2\)](#)). (This relates generally to a demand for a defense by an insured, which some courts in Texas have recognized as separate claim by the insured in its own right. The Texas Supreme Court has ruled that an insurer must promptly notify an insured of its decision with regard to a duty to defend similarly to the

manner in which an insurer would be required to acknowledge receipt of a first-party claim. *See, Lamar Homes Inc. v. Mid-Continent Cas. Co.*, 242 S.W.3d 1, 18-20 (Tex. 2007)).

Timeframe for issuing denial of liability, if any:

Time Limit: “Reasonable time” [TEX. INS. CODE § 541.060\(a\)\(4\)\(A\)](#). (“An insurer must, ‘within a reasonable time,’ either ‘affirm or deny coverage of a claim’ or ‘submit a reservation of rights’ to the policyholder.” *Comsys Info. Tech. Servs. v. Twin City Fire Ins. Co.*, 130 S.W.3d 181, 190 (Tex. App. – Houston [14th Dist.] 2003, pet. denied)).

Timeframe for issuing reservation of rights, if any:

Time Limit: “Reasonable time” ([TEX. INS. CODE § 541.060\(a\)\(4\)\(B\)](#)) (“An insurer must, ‘within a reasonable time,’ either ‘affirm or deny coverage of a claim’ or ‘submit a reservation of rights’ to the policyholder.” *Comsys Info. Tech. Servs. v. Twin City Fire Ins. Co.*, 130 S.W.3d 181, 190 (Tex. App. – Houston [14th Dist.] 2003, pet. denied)).

Duty to Defend vs. Duty to Indemnify:

The duty to defend and the duty to indemnify by an insurer are distinct and separate duties. *See, Utica Nat’l Ins. Co. v. American Indem. Co.*, 141 S.W.3d 198, 203 (Tex. 2004) (quoting *King v. Dallas Fire Ins. Co.*, 85 S.W.3d 185, 187 (Tex. 2002)); *Trinity Universal Ins. Co. v. Cowan*, 945 S.W.2d 819, 821-22 (Tex. 1997); *American Alliance Ins. Co. v. Frito-Lay, Inc.*, 788 S.W.2d 152, 153 (Tex. App.—Dallas 1990, writ dismissed).

Under the “complaint-allegation rule,” (also known as the “eight-corners doctrine”) factual allegations in the pleadings and the policy language determine an insurer’s duty to defend. *American Physicians Ins. Exch. v. Garcia*, 876 S.W.2d 842, 847-48 (Tex. 1994).

If a petition does not allege facts within the scope of coverage, an insurer is not legally required to defend a suit against its insured. *Id.* at 848. Thus, if the facts alleged in a petition against an insured would not give rise to coverage, even if proven as alleged, an insurer will possess no duty to defend. *See D.R. Horton-Texas, Ltd. v. Markel Int’l Ins. Co.*, 300 S.W.3d 740, 745 (Tex. 2009).

An insurer’s duty to defend is determined by the third-party plaintiff’s pleadings, considered in light of the policy provisions, without regard to the truth or falsity of those allegations. *GuideOne Elite Ins. Co. v. Fielder Rd. Baptist Church*, 197 S.W.3d 305, 308 (Tex. 2006). Thus, “[e]ven if the allegations are groundless, false, or fraudulent the insurer is obligated to defend.” *Zurich Am. Ins. Co. v. Nokia, Inc.*, 268 S.W.3d 487, 491 (quoting 14 COUCH ON INSURANCE § 200:19).

All doubts regarding the duty to defend are resolved in favor of the duty. *King v. Dallas Fire Ins. Co.*, 85 S.W.3d 185, 187 (Tex. 2002). Pleadings against the insured are interpreted liberally in favor of imposing the duty to defend. *National Union Fire Ins. Co. v. Merchs. Fast Motor Lines, Inc.*, 939 S.W.2d 139, 141 (Tex. 1997)

“Where the complaint does not state facts sufficient to clearly bring the case within or without the coverage, the general rule is that the insurer is obligated to defend if there is, potentially, a case under the complaint within the coverage of the policy.” *Zurich*, 268 S.W.3d at 492 (quoting *Heyden Newport Chem. Corp. v. S. Gen. Ins. Co.*, 387 S.W.2d 22, 26 (Tex. 1965)).

The duty to defend is not affected by facts ascertained before suit, developed in the course of litigation, or by the ultimate outcome of the suit. *Trinity Universal Ins. Co. v. Cowan*, 945 S.W.2d 819, 829 (Tex. 1997) (noting that duty to defend is unaffected by “what the parties know or believe the alleged facts to be, the outcome of the underlying case, or the merits of the claim”).

If a complaint potentially includes a covered claim, the insurer must defend the entire suit. Typically, even if only one claim in a complaint containing multiple claims could be covered, the insurer must defend the entire action and the insurer must demonstrate that all the claims of the suit fall outside the policy’s coverage to avoid defending the insured. *Zurich*, 268 S.W.3d at 492 (citing 14 COUCH ON INSURANCE § 200:1).

While analysis of the duty to defend has been strictly circumscribed by the eight-corners doctrine, it is well settled that the “facts actually established in the underlying suit control the duty to indemnify.” *D.R. Horton-Texas*, 300 S.W.3d at 744 (quoting *Pine Oak Builders, Inc. v. Great Am. Lloyds Ins. Co.*, 279 S.W.3d 650, 656 (Tex. 2009)); *Heyden*, 387 S.W.2d 22, 25 (Tex. 1965) (“The duty to indemnify is triggered by the actual facts establishing liability in the underlying suit.”).

Thus, an insurer can ultimately possess a duty to indemnify an insured depending on the factual determinations of fault in a suit against the insured, even if the insurer possesses no duty to defend the insured due to the factual allegations of the pleadings in that suit. *See, generally, D.R. Horton-Texas*, 300 S.W.3d 740 (Tex. 2009).

Even if a liability insurer breaches its duty to defend, the party seeking indemnity still bears the burden to prove coverage if the insurer contests it. The doctrine of estoppel cannot be used to create coverage where none exists by the terms of the policy. *Utica*, 141 S.W.3d at 203; *Employers Cas. Co. v. Block*, 744 S.W.2d 940, 943-44 (Tex. 1998); *Texas Farmers Ins. Co. v. McGuire*, 744 S.W.2d 601, 602-03 (Tex. 1988).

Additional Fair Claims Practices regulation of significance, if any:

The holding in *Lamar Homes Inc. v. Mid-Continent Cas. Co.*, 242 S.W.3d 1, 18-20 (Tex. 2007) appears to convey “first-party” claims status on a demand for defense from an insured in a third-party claim situation. This raises the issue of whether, in cases in which an insured incorrectly, negligently or wrongfully fails to provide a defense, or denies a demand for a defense, an insured may pursue the costs of its defense in a separate, first-party action against the insurer and, if so, whether the extra-contractual damages provided by [TEX. INS. CODE §§ 541.151 & 541.152](#). To date, this issue has not been reached by Texas appellate courts, but insurers should be mindful of this holding in conducting duty to defend analyses.

Matching

There is no case law or statutory treatment specifically relating to the extent to which an insurer must allocate payment based on how closely a repair of a damaged portion of a building or other insured property “matches” the pre-existing or remaining, undamaged and unrepaired portion. The primary focus is on whether the policy language provides for a specific level of repair or simply relies on the standard language that repairs will be of a “like kind and quality” to the pre-loss condition. In such cases, the extent to which any repair returns a property to a “like kind and quality” typically results in competing experts for the opposing sides offering opinions over what the “industry standard” is, or otherwise opining about whether the proposed repair meets the “like kind and quality” standard. *See, i.e. Southland Lloyds Ins. Co. v. Cantu*, 399 S.W.3d 558, 565 (Tex. App. – San Antonio 2011, no pet.) (experts for insured and insurer disagreed over significantly differing repair estimates; plaintiff’s expert opined that siding on all four sides of insured residence had to be replaced because “it’s an industry standard that if 50 percent or more is damaged, you replace all the siding” to ensure the siding matched on all four sides, and insurance expert concurred.)

Stated Value Policy

Texas Courts generally define a “total loss” as follows:

There can be no total loss of a building so long as the remnant of the structure standing is reasonably adapted for use as a basis upon which to restore the building to the condition in which it was before the injury; that whether it is so adapted depends upon the question whether a reasonably prudent owner, uninsured, desiring such a structure as the one in question was before injury, would, in proceeding to restore the building to its original condition, utilize such remnant as such basis.

Royal Ins. Co. v. McIntyre, 37 S.W. 1068, 1074 (Tex. 1896)

This definition conflicts, potentially, with the generally accepted use of the term “total loss” as used in an insurance context, which is to mean that a property is so damaged that it exceeds its market value and/or policy limits. This distinction is important, because while a structure may be a “total loss” as that term is understood in the insurance industry, or as is generally understood by a layperson, it may not meet the standard of “total loss” as articulated in Texas law. *See, State Farm Fire & Cas. Co. v. Mower*, 917 S.W.2d 2, 3-4 (Tex. 1995) (“adjuster’s initial conclusion [that the cost of reconstructing the insured’s home would exceed policy limits], even if it had turned out to be right, does not meet the legal test for total loss.”)

In *Mower*, the insurer (State Farm) offered approximately \$90,000 (against policy limits of \$175,000) to reconstruct the insured’s home after it was severely damaged by fire (the opinion states that “only the foundation and about 85% of the garage remained”). The independent adjuster hired by State Farm to investigate the loss initially concluded that the cost of reconstructing the home would exceed the amount of coverage, until the homeowner obtained two bids for under \$90,000. At that point, the adjuster revised his

assessment and determined that the home was not a total loss. The insureds sued, claiming that State Farm acted in bad faith by not tendering policy limits even though the home was a “total loss.”

All of the foregoing assumes that there exists no language in a disputed policy seeking to set a “liquidated damages” figure in the event of a total loss. Barring such a provision, the relevant issues would be: (1) the sufficiency of the investigation and adjustment of the claim to determine the true value of the loss ([TEX. INS. CODE § 541.060\(7\)](#)); and (2) whether the value of the loss is within policy limits. However, there is no statutory or common-law basis upon which an insurer must automatically tender policy limits in the event that a structure or other insured property is deemed a “total loss.”

(Note: This analysis does not address the similar but distinct issue of whether an insurer possesses a duty to determine the value of a claim based on a cost to repair damaged property versus a cost to replace such property, when both figures would fall within policy limits on a policy).

Appraisal Process

Appraisals are a function of and arise solely out of existing policy language, and are not mandated by statute or common law in Texas. Further, appraisal’s procedure and its binding effect are governed by the language of the policy. Courts typically hold that an appraisal is required if either side invokes it (pursuant to the policy language), and that the award is binding absent fraud or collusion.

In essence, appraisal is required when it is invoked, and it is binding when it is conducted honestly. However, there have recently been disputes (particularly in the wake of the vast body of first-party litigation generated by Hurricane Rita and Ike claims) over how long after a claim is made appraisal can be invoked, with plaintiffs (usually) objecting to appraisal when it is invoked long after the reasonable adjustment period has concluded or after litigation has been instituted.

The seminal case on the timeline for invoking appraisal in Texas is *In re Universal Underwriters of Texas Ins. Co.*, 345 S.W.3d 404 (Tex. 2011), which clarified that appraisal need not be invoked prior to a disputed claim reaching litigation; rather, it can be invoked if it is invoked “reasonably soon after it is clear that the parties have reached an impasse regarding the valuation of the claim.”

The *Universal Underwriters* Court considered whether an insurer’s invocation of the appraisal provision of a commercial casualty policy after the insured had filed suit constituted a “waiver” of the provision, as the insured claimed. Specifically, in that case, the insurer tendered a nominal payment against a hail claim (roof) by an insured auto dealership, resulting in the insured filing suit. The insurer responded by invoking the appraisal clause, which the insured countered by claiming that such clause was waived because it was not invoked timely.

The Court determined that, for an appraisal clause to be waived, the insurer would have had to intend, or act in a manner so inconsistent with its right to appraisal as it could reasonably be construed to have intended, to waive it.

Rather than imposing a rigid numerical deadline or timeline for determining when appraisal must be invoked, the *Underwriters* Court held that “while an unreasonable delay is a factor in finding waiver, the reasonableness of the delay must be measured from the point of impasse.” In other words, if the insured and insurer did not clearly establish that an impasse with regard to the claim had been reached, a court could find that, in most cases, a reasonable insurer might not realize that the parties has reached an impasse, or even that a dispute over valuation remained, until the insured brings suit.

UTAH

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First Party Claims:

General statute governing Fair Claims Practices, if any:

[Utah Administrative Code \(UCA\) R590-190-9](#) and [10](#)

[R590-190-9](#). Unfair methods, deceptive acts and practices defined

The commissioner, pursuant to [Section 31A-26-303\(4\)](#), hereby finds the following acts, or the failure to perform required acts, to be misleading, deceptive, unfairly discriminatory or overreaching in the settlement of claims:

- (1) denying or threatening the denial of the payment of claims or rescinding, canceling or threatening the rescission or cancellation of coverage under a policy for any reason which is not clearly described in the policy as a reason for such denial, cancellation or rescission;
- (2) failing to provide the insured or beneficiary with a written explanation of the evidence of any investigation or file materials giving rise to the denial of a claim based on misrepresentation or fraud on an insurance application, when such misrepresentation is the basis for the denial;
- (3) compensation by an insurer of its employees, agents or contractors of any amounts which are based on savings to the insurer as a result of denying the payment of claims;
- (4) failing to deliver a copy of the insurer's guidelines, which could include the department's statutes, rules and bulletins, for prompt investigation of claims to the Insurance Department when requested to do so;
- (5) refusing to pay claims without conducting a reasonable investigation;
- (6) offering first party claimants substantially less than the reasonable value of the claim. Such value may be established by one or more independent sources;
- (7) making claim payments to insureds or beneficiaries not accompanied by a statement or explanation of benefits setting forth the coverage under which the payments are being made and how the payment amount was calculated;
- (8) failing to pay claims within 30-days of properly executed proof of loss when liability is reasonably clear under one coverage in order to influence settlements under other portions of the insurance policy coverage or under other policies of insurance;
- (9) refusing payment of a claim solely on the basis of an insured's request to do so unless:
 - (a) the insured claims sovereign, eleemosynary, diplomatic, military service, or other immunity from suit or liability with respect to such claim; or
 - (b) the insured is granted the right under the policy of insurance to consent to settlement of claims.
- (10) advising a claimant not to obtain the services of an attorney or suggesting the claimant will receive less money if an attorney is used to pursue or advise on the merits of a claim;
- (11) misleading a claimant as to the applicable statute of limitations;
- (12) requiring an insured to sign a release that extends beyond the occurrence or cause of action that gave rise to the claims payment;
- (13) deducting from a loss or claim payment made under one policy those premiums owed by the insured on another policy, unless the insured consents;
- (14) failing to settle a first party claim on the basis that responsibility for payment of the claim should be assumed by others, except as may otherwise be provided by policy provisions;
- (15) issuing checks or drafts in partial settlement of a loss or a claim under a specified coverage when such check or draft contains language which purports to release the insurer or its insured from total liability;

(16) refusing to provide a written basis for the denial of a claim upon demand of the insured;

(17) denying a claim for medical treatment after preauthorization has been given, except in cases where the insurer obtains and provides to the claimant documentation of the pre-existence of the condition for which the preauthorization has been given or if the claimant is not eligible for coverage;

(18) refusing to pay reasonably incurred expenses to an insured when such expenses resulted from a delay, as prohibited by these rules, in claims settlement or claims payment;

(19) when an automobile insurer represents both a tortfeasor and a claimant:

(a) failing to advise a claimant under any coverage that the same insurance company represents both the tortfeasor and the claimant as soon as such information becomes known to the insurer; and

(b) allocating medical payments to the tortfeasor's liability coverage before exhausting a claimant's personal injury protection coverage.

(20) failing to pay interest at the legal rate, as provided in Title 15, Utah Code, upon amounts that are overdue under these rules. This does not apply to insurers who fail to pay Personal Injury Protection expenses when due. These expenses shall bear interest as provided in 31A-22-309(5)(c).

History Note: Notice of continuation effective 4/26/04; notice of continuation effective 4/15/09.

[R590-190-10](#). Minimum standards for prompt, fair and equitable settlements

(1) The insurer shall provide to the claimant a statement of the time and manner in which any claim must be made and the type of proof of loss required by the insurer.

(2) Within 30-days after receipt by the insurer of a properly executed proof of loss, the insurer shall complete its investigation of the claim and the first party claimant shall be advised of the acceptance or denial of the claim by the insurer unless the investigation cannot be reasonably completed within that time. If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within 30-days after receipt of the proofs of loss, giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, within 45-days after sending the initial notification and within every 45-days thereafter, send to the first party claimant a letter setting forth the reasons additional time is needed for the investigation, unless the first party claimant is represented by legal counsel or public adjuster. Any basis for the denial of a claim shall be noted in the insurers claim file and must be communicated promptly and in writing to the first party claimant. Insurers are prohibited from denying a claim on the grounds of a specific provision, condition, or exclusion unless reference to such provision, condition or exclusion is included in the denial.

(3) Unless otherwise provided by law, an insurer shall promptly pay every valid insurance claim. A claim shall be overdue if not paid within 30-days after the insurer is furnished written proof of the fact of a covered loss and of the amount of the loss. Payment shall mean actual delivery or mailing of the amount owed. If such written proof is not furnished to the insurer as to the entire claim, any partial amount supported by written proof or investigation is overdue if not paid within 30-days. Payments are not deemed overdue when the insurer has reasonable evidence to establish that the insurer is not responsible for the payment, notwithstanding that written proof has been furnished to the insurer.

(4) If negotiations are continuing for settlement of a claim with a claimant, who is not represented by legal counsel or public adjuster, notice of expiration of the statute of limitation or contract time limit shall be given to the claimant at least 60 days before the date on which such time limit may expire.

(5) Insurers are prohibited from making statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third party claimant of the provision of a statute of limitations.

(6) Upon receipt of an inquiry from the insurance department regarding a claim, every licensee shall furnish a substantive response to the insurance department within the time period specified in the inquiry.

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: “promptly acknowledge” ([UCA 31A-26-303\(3\)\(a\)](#))

“within 15 calendar days” ([UAC r 590-190-6](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: “promptly” ([UCA 31A-26-303](#))

30 calendar days ([UAC r. 590-190-9](#) and [10](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

[UCA 31A-21-312\(2\)](#)

Timeframe for issuing reservation of rights, if any:

Time Limit: “promptly” ([UCA 31A-26-303](#))

30 calendar days ([UAC r. 590-190-9](#) and [10](#))

Additional Fair Claims Practices regulation of significance, if any:

[UAC R590-190-11](#) - applies to total loss claim adjustments and settlements for automobile claims

[UAC R590-190-12](#) - regulates unfair claims for automobile settlement claims

[UAC R590-190-13](#) - standards for prompt, fair and equitable settlements applicable to fire and extended coverage type policies with replacement cost coverage

[UAC R590-190](#) - applies to unfair property, liability and title claims settlement practices

[UAC R590-191](#) - applies to unfair life insurance claims settlement practices

[UAC R 590-192](#) - applies to unfair accident and health claims settlement practices

UAC R590-89-3- defines the scope of the Unfair Claims Settlement Practices Rules and clearly indicates that “[t]his rule is regulatory in nature and is not intended to create a private cause of action.” See [Cannon v. Travelers Indem. Co.](#), 387 Utah Adv. Rep. 48, 2000 UT App 10, 994 P.2d 824 (Ct. of Appeals, Utah, 2000)

Third Party Claims:

General statute governing Fair Claims Practices, if any: None

Duty to Defend vs. Duty to Indemnify:

[Equine Assisted Growth v. Carolina Ins. Co.](#), 266 P.3d 733 (Utah, 2011). Duty to defend is broader than duty to indemnify. Duty to defend is triggered when facts give rise to potential liability or indemnity. Only limited to 8 corners of complaint and insurance policy, if explicitly so limited by policy language which is not ambiguous.

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: “promptly acknowledge” ([UCA 31A-26-303\(3\)\(a\)](#))

Further defined as being within 15 calendar days ([UAC 590-190-6](#))

Timeframe for issuing denial of liability, if any:

Time Limit: “promptly” ([UCA 31A-26-303](#))

30 calendar days ([UAC r. 590-190-9](#) and [10](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES [UCA 31A-21-312\(2\)](#)

Timeframe for issuing reservation of rights, if any:

Time Limit: “promptly” ([UCA 31A-26-303](#))

30 calendar days ([UAC r. 590-190-9](#) and [10](#))

Additional Fair Claims Practices regulation of significance, if any:

[Utah Code Ann. § 31A-26-303\(3\)\(b\)](#) - The insurer must also “adopt and implement reasonable standards for the prompt investigation and processing of claims under insurance policies.”

Matching

There is no statute.

Stated Value Policy

There is no statute.

Appraisal Process

In Miller v. USAA Casualty Insurance Company, 44 P. 3d 663 (Utah 2002)(attached), Court stated:

None of the extra-contractual claims pertain to the amount of loss under the insurance contract. Because the clause is limited to appraisal of the amount of loss, *677 only the contractual claim was covered by the clause.

Miller v. USAA Cas. Ins. Co., 2002 UT 6, ¶ 53, 44 P.3d 663, 676-77

(v) if the insurer is notified within 30-days of the receipt of the claim draft that the first party claimant cannot purchase a comparable vehicle for such market value, the company shall reopen its claim file and the following procedure(s) shall apply:

(A) the company may locate a comparable vehicle by the same manufacturer, same year, similar body style and similar options and price range for the insured for the market value determined by the company at the time of settlement. Any such vehicle must be available through licensed dealers or private sellers;

(B) the company shall either pay the difference between market value before applicable deductions and the cost of the comparable vehicle of like kind and quality which the insured has located, or negotiate and effect the purchase of this vehicle for the insured;

(C) the company may elect to offer a replacement in accordance with the provisions set forth in Subsection R590-190-11.(1)(a); or

(D) the company may conclude the loss settlement as provided for under the appraisal section of the insurance contract in force at the time of the loss. The company is not required to take action under this subsection if its documentation to the first party claimant, at the time of settlement, included written notification of the availability and location of a specified and comparable vehicle of the same manufacturer, same year, similar body style and similar options in as good or better condition as the total loss vehicle which could be purchased for the market value determined by the company before applicable deductions.

[Utah Admin. Code r. R590-190](#)

VERMONT

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[Claims Handling for Vermont](#)

First Party Claims:

General statute governing Fair Claims Practices, if any:

[8 V.S.A. § 4724.](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 10 days [21-020-008 Vt. Code R. § 5\(A\)](#)

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 15 days after proof of loss. [21-020-008 Vt. Code R. § 6\(A\)](#)

Must carrier demonstrate prejudice to disclaim on late notice: YES

Cooperative Fire Ins. Ass'n of Vermont v. White Caps, Inc., 166 Vt. 355, 694 A.2d 34 (1997).

Timeframe for issuing reservation of rights, if any:

Time Limit: 15 days after proof of loss. [21-020-008 Vt. Code R. § 6\(A\)](#)

Additional Fair Claims Practices regulation of significance, if any:

If the insurer needs more time to determine whether a first-party claim will be accepted or denied, it must notify the first-party claimant with the reasons why more time is needed within 15 working days after receipt of the proofs of loss. [21-020-008 Vt. Code R. § 6\(C\)](#)

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[8 V.S.A. § 4724.](#)

Duty to Defend vs. Duty to Indemnify:

An insurer's duty to defend is broader than its duty to indemnify. Generally, the insurer's duty to defend is determined by comparing the allegations in the complaint of the underlying suit to the terms of coverage in the policy. If any claims are potentially covered by the policy, the insurer has a duty to defend. City of Burlington v. Nat'l Union Fire Ins. Co., 163 Vt. 124, 127, 655 A.2d 719, 721 (1994). The duty to defend is not triggered, however, when the circumstances indicate that, as a matter of law, there would be no duty to indemnify. Garneau v. Curtis & Bedell, Inc., 158 Vt. 363, 366, 610 A.2d 132, 134 (1992).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: 10 days [21-020-008 Vt. Code R. § 5\(A\)](#)

Timeframe for issuing denial of liability, if any:

Time Limit: 30 days [21-020-008 Vt. Code R. § 6\(C\)](#)

Must carrier demonstrate prejudice to disclaim on late notice: YES

Cooperative Fire Ins. Ass'n of Vermont v. White Caps, Inc., 166 Vt. 355, 694 A.2d 34 (1997).

Timeframe for issuing reservation of rights, if any:

Time Limit: 30 days [21-020-008 Vt. Code R. § 6\(C\)](#)

Additional Fair Claims Practices regulation of significance, if any

If the insurer needs more time to determine whether a third-party claim will be accepted or denied, the insurer must notify the third-party claimant with the reasons why it needs additional time within 30 working days after receipt of notice of the claim. Id. If the investigation remains incomplete, the insurer shall, 30 working

days from the date of the initial notification and every 30 working days thereafter, send to the claimant a letter setting forth the status of the investigation and reasons why additional time is required. [21-020-008 Vt. Code R. § 6\(A\)](#).

Matching

There are no statutes or case law addressing the issue of matching in the context of first or third party claims.

Stated Value Policies

There are no statutes or case law addressing the issue of stated value policies in the context of first or third party claims.

Appraisal Process

There does not appear to be any statutes or case law governing the appraisal process in Vermont. As a result, the appraisal process is governed by the language of the insurance contract.

VIRGINIA

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First Party Claims:

General statute governing Fair Claims Practices, if any:

[Va. Code Ann. § 38.2-510](#) & [14 Va. Admin. Code § 5-400-50, -60, -70](#).

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 10 working days ([14 Va. Admin. Code § 5-400-50\(A\)](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 15 working days following proof of loss. ([14 Va. Admin. Code § 5-400-60\(A\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: NO

Timeframe for issuing reservation of rights, if any:

Time Limit: 15 working days following proof of claim. ([14 Va. Admin. Code § 5-400-60\(A\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[14 Va. Admin. Code § 5-400-60\(B\)](#) - If the insurer requires additional time to determine coverage of a first-party claim, it shall notify the first-party claimant within 15 working days after receipt of the proofs of loss, giving the reasons why more time is needed. *Id.* If the investigation of the first-party claim has not been completed, the “insurer shall, within 45 days from the date of notification of a first-party claim and every 45 days thereafter, send to the first-party claimant a letter setting forth the reasons additional time is needed for investigation.”

[Va. Code Ann. § 38.2-510](#) - Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies and failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies constitute unfair claims practices.

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[Va. Code Ann. § 38.2-510](#) & [14 Va. Admin. Code § 5-400-50, -60, -70](#).

Duty to Defend vs. Duty to Indemnify:

Duty to defend is broader than the duty to indemnify, and arises whenever the complaint alleges facts and circumstances, some of which would, if proved, fall within the risk covered by the policy. Virginia Elec. & Power Co. v. Northbrook Prop. & Cas. Ins. Co., 252 Va. 265, 267, 475 S.E.2d 264, 265 (1996).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: 10 working days ([14 Va. Admin. Code § 5-400-50\(A\), \(D\)](#))

Timeframe for issuing denial of liability, if any: None

Must carrier demonstrate prejudice to disclaim on late notice: NO

Timeframe for issuing reservation of rights, if any: None

Additional Fair Claims Practices regulation of significance, if any:

[14 Va. Admin. Code § 5-400-50\(D\)](#) - Upon receiving notification of a third party claim, every insurer "shall promptly provide the third party claimant with all necessary claim forms.

[Va. Code Ann. § 38.2-510](#) - Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies and failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies constitute unfair claims practices.

Matching

There is no statute that could be found.

Weinstein v. Commerce Ins. Co, 196 Va. 106, 82 S.E.2d 477 (1954).

The court affirmed the decision in favor of the fire insurers in the insured's action to recover the total value of her partially burned building, rather than the cost of repairing the damage with material of like kind and quality.

"While the Weinstein case is one of first impression in Virginia, we experience no difficulty in concluding that the contracts of insurance are plain and free from difficult interpretation. The policies insured Miss Weinstein's property "to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality." (Italics supplied)"

Stated Value Policy

There are references to stated value policy in statutes 14 Va. Admin. Code § 5-340-120

14VAC5-340-120. Market value policy.

"No policy which is filed based on this section shall be more restrictive than the form designated as SCC-BI-MV, attached hereto as Exhibit 9."

Exhibit 9

In the valuation of personal property, which has been damaged but not destroyed, the measure of damages is the difference between the market value of the property immediately before and immediately after the property was damaged, plus necessary and reasonable expenses incurred by the owner in connection with the injury. An exception to this rule is that where tangible personal property can be restored by repairs and

the repairs would be less than the diminution in value because of the injury, the amount recoverable is the reasonable cost of restoring the property to its former condition.

Averett v. Shircliff, 237 S.E.2d 92, 218 Va. 202, 1977 Va. LEXIS 179 (Va. 1977):

“Most jurisdictions confronted with situations such as exist in the present case have held that where an automobile has been damaged but not totally destroyed and it is reasonably susceptible of repairs, the measure of damages is the cost of repairs and any diminution of the automobile's market value which results from the car having been injured after the repairs; that is, the cost of repairs plus any amount of depreciation in value of the vehicle as repaired”

What constitutes “total loss” in Virginia?

Phoenix Ins. Co. v. Shulman Co., Inc., 125 Va. 281 (1919).

[Total loss] “Does not mean the complete extinction or annihilation of the property, but do mean that the property must have been so injured that a reasonably prudent owner would not use the same in restoring it to its former condition, but would abandon it and construct the property new.”

Appraisal Process

Appraisal required?

Va. Code Ann. § 8.2-2105 requires that all insurance policies include an appraisal clause which requires that either party, upon written demand, submit a dispute concerning amount of loss to the appraisal process

Code of Virginia; Chapter 21. Fire Insurance Policies

§ 38.2-2105. Standard provisions, conditions, stipulations and agreements for such policies.

A. Except as provided in § 38.2-2107, each policy shall contain the following provisions, conditions, stipulations, and agreements:

Appraisal. In case the insured and this Company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then, on request of the insured or this Company, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally; provided, however, if the written demand is made by this Company, then the insured shall be reimbursed by this Company for the reasonable cost of the insured's appraiser and the insured's portion of the cost of the umpire

Appraisal binding?

The Virginia Bureau of Insurance (“Bureau”) advised via memorandum on August 29, 2014 that all licensed property and casualty insurers and rate service organizations must amend coverage forms to remove language requiring appraisal awards in property claims to be non-binding. Revised policy forms must be submitted to the Bureau within 90 days. The link to a PDF version of the memorandum follows. With respect to appraisal provisions found in motor vehicle insurance policies, the Bureau will take action to amend the standard auto forms.

Based on its recent legal and regulatory review of the issue, **the Bureau concluded that the appraisal process should be construed as binding in nature**. Its previous position, stated in Administrative Letter 1998-12, was that the appraisal process was to be construed as non-binding.

[Appraisal Provisions](#)

WASHINGTON

For more information, please contact an Eagle Member:

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[Hill & Lamb LLP](#)
513-417-1104

First Party Claims:

General statute governing Fair Claims Practices, if any:

[Wash. Rev. Code § 48.30.010 et seq.](#)

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 10 days (generally) ([Wash. Admin. Code § 284-30-360\(1\)](#))
15 days (group insurance) ([Wash. Admin. Code § 284-30-360\(1\)](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 15 days after proof of loss ([Wash. Admin. Code § 284-30-380\(1\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

[Churchill v. Factory Mut. Ins. Co.](#), 234 F.Supp.2d 1182 (W.D. Wash. 2002).

Timeframe for issuing reservation of rights, if any:

Time Limit: 15 days after proof of loss. ([Wash. Admin. Code § 284-30-380\(1\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[Wash. Admin. Code § 284-30-330](#) - Failing to “acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies” and failing to “adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies” constitute unfair claims practices.

[Wash. Admin. Code § 284-30-360](#) - The insurer must respond to all pertinent communications from a claimant reasonably suggesting that a response is expected within 10 working days.

[Wash. Admin. Code § 284-30-370](#) - The insurer shall complete its investigation of a claim within 30 days after notification of the claim, unless such investigation cannot reasonably be completed within such time.

[Wash. Admin. Code § 284-30-380\(3\)](#) - If the insurer needs more time to determine whether a first-party claim should be accepted or denied, it must notify the first-party claimant within 15 working days after receipt of the proofs of loss, giving the reasons why more time is needed.

[Wash. Admin. Code § 284-30-380\(3\)](#) - If the investigation remains incomplete, the insurer shall, within 45 days from the date of initial notification and no later than every 30 days thereafter, send to the claimant a letter setting forth the reasons additional time is needed for investigation.

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[Wash. Rev. Code § 48.30.010 et seq.](#)

Duty to Defend vs. Duty to Indemnify:

The duties of an insurer to defend and indemnify are distinct in that the duty to defend arises when a complaint contains any allegations that could make an insurer liable to an insured under the policy, while the duty to

indemnify arises when an insured is actually liable to a claimant and that claimant's injury is covered by the language of the policy. Mutual of Enumclaw Ins. Co. v. USF Ins. Co., 164 Wash. 2d 411, 191 P3d 866 (2008).

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: 10 days (generally) ([Wash. Admin. Code § 284-30-360\(1\)](#))

Timeframe for issuing denial of liability, if any:

Time Limit: 15 days after proof of loss ([Wash. Admin. Code § 284-30-380\(1\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

Churchill v. Factory Mut. Ins. Co., 234 F.Supp.2d 1182 (W.D. Wash. 2002).

Timeframe for issuing reservation of rights, if any:

Time Limit: 15 days after proof of loss ([Wash. Admin. Code § 284-30-380\(1\)](#))

Additional Fair Claims Practices regulation of significance, if any:

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[Wash. Admin. Code § 284-30-360](#) - The insurer must respond to all pertinent communications from a claimant reasonably suggesting that a response is expected within 10 working days.

[Wash. Admin. Code § 284-30-370](#) - The insurer shall complete its investigation of a claim within 30 days after notification of the claim, unless such investigation cannot reasonably be completed within such time.

[Wash. Admin. Code § 284-30-380\(3\)](#) - If the insurer needs more time to determine whether a first-party claim should be accepted or denied, it must notify the first-party claimant within 15 working days after receipt of the proofs of loss, giving the reasons why more time is needed.

[Wash. Admin. Code § 284-30-380\(3\)](#) - If the investigation remains incomplete, the insurer shall, within 45 days from the date of initial notification and no later than every 30 days thereafter, send to the claimant a letter setting forth the reasons additional time is needed for investigation.

Matching

Resolution of the concept of replacement costs and matching products requires an analysis of the specific language of the particular insurance policy at issue. See Allemand v. State Farm Ins. Cos., 160 Wn. App. 365, 248 P.3d 111 (Div 3 2010); Roberts v. Allied Group Ins. Co. 79 Wn. App. 323, 901 P.2d 317 (Div 1 1995). Some policies require that the new property be identical or similar to the damaged property. See 15 Couch on Insurance § 176:65 (3 ed 2005 and Supp. 2015).

Stated Value Policy

As a result of an amendment to Wash. Rev. Code § 48.12.190 in 1967, Washington is no longer a statutory valued property state. Washington case law continues to acknowledge value policies. See Nat'l Fire Ins. Co. v. Solomon, 96 Wn.2d 763, 638 P2d 1259 (1982).

Appraisal Process

Fire insurance policies must include an appraisal clause. Each party selects an appraiser and then an umpire is appointed. [Wash. Admin. Code § 284-20-010\(3\)](#) (mandating that fire insurance policies be issued on the 1943 New York Standard Fire Insurance Policy form).

WEST VIRGINIA

For more information, please contact:

[Eagle Member](#)

[Eagle International Associates, Inc.](#)

702-221-1399

First Party Claims:

General statute governing Fair Claims Practices, if any:

[W. Va. Code § 33-11-1](#), et seq. Unfair Trade Practices Act (UTPA).

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: 15 days ([W. Va. Code R. § 114-14-5. 1](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 10 days after completion of investigation. ([W. Va. Code R. § 114-14-6-6.3](#)) (investigation commences within 15 days of claim and reasonable time to complete investigation) ([W. Va. Code R. § 114-14-6-6.2\(a\)](#) & [W. Va. Code § 33-11-4 \(9\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

[State Auto. Mut. Ins. Co. v. Youler](#), 183 W.Va. 556, 563, 396 S.E.2d 737, 744 (1990).

Timeframe for issuing reservation of rights, if any:

Time Limit: 10 days after completion of investigation. ([W. Va. Code R. § 114-14-6-6.3](#)) (investigation commences within 15 days of claim and reasonable time to complete investigation) ([W. Va. Code R. § 114-14-6-6.2\(a\)](#) & [W. Va. Code § 33-11-4 \(9\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[W. Va. Code § 33-11-4 \(9\)\(e\)](#) - An insurer must “affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.”

[W. Va. Code § 33-11-4 \(9\)\(c\)](#) - Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies and failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies constitute unfair claims practices.

Third Party Claims:

General statute governing Fair Claims Practices, if any:

[W. Va. Code § 33-11-4a\(a\)](#) Unfair Trade Practices Act (UTPA) – no direct third party claims permitted.

Duty to Defend vs. Duty to Indemnify:

A liability insurer’s duty to defend is broader than its duty to indemnify. [Camden-Clark Mem’l Hosp. Ass’n v. St. Paul Fire & Marine Ins. Co.](#), 224 W. Va. 228, 682 S.E.2d 566 (2009). Where a policy of insurance contains a duty to defend, West Virginia law ordinarily imposes a duty upon an insurer to defend its insured even where some claims may not be covered by the terms of the policy. [Id.](#)

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: 15 days ([W. Va. Code R. § 114-14-5](#))

Timeframe for issuing denial of liability, if any:

Time Limit: 10 days after completion of investigation ([W. Va. Code R. § 114-14-6-6.3](#)) (investigation commences

within 15 days of claim and reasonable time to complete investigation) ([W. Va. Code R. § 114-14-6-6.2\(a\)](#) & [W. Va. Code § 33-11-4 \(9\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

State Auto. Mut. Ins. Co. v. Youler, 183 W.Va. 556, 563, 396 S.E.2d 737, 744 (1990).

Timeframe for issuing reservation of rights, if any:

Time Limit: 10 days after completion of investigation ([W. Va. Code R. § 114-14-6-6.3](#)) (investigation commences within 15 days of claim and reasonable time to complete investigation) ([W. Va. Code R. § 114-14-6-6.2\(a\)](#) & [W. Va. Code § 33-11-4 \(9\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[W. Va. Code Ann. § 33-11-4a\(a\)](#) - A third-party claimant may not include allegations of unfair claims settlement practices in any underlying litigation against an insured.

[W. Va. Code Ann. § 33-11-4a\(b\)](#) - A third-party claimant's sole remedy against a person for an unfair claims settlement practice or the bad faith settlement of a claim is the filing of an administrative complaint with the Commissioner, which must be filed "as soon as practicable" but no later than one (1) year following the actual or implied discovery of the alleged unfair claims settlement practice.

A third-party bad faith action may be assigned. Strahin v. Sullivan, 220 W.Va. 329, 647 S.E.2d 765, 774 (2007).

[W. Va. Code Ann. § 33-11-4\(9\)](#) - A third party beneficiary has standing to bring a bad faith claim. Goff v. Penn Mut. Life Ins. Co., 729 S.E.2d 890 (2012).

[W. Va. Code Ann. § 5-11-9\(7\)\(A\)](#) - A third party may assert that an insurer violated the West Virginia Human Rights Act in its handling of the third party's claim. Michael v. Appalachian Heating, LLC, 226 W.Va. 394, 701 S.E.2d 116 (2010).

Matching

There are no statutes or case law.

Stated Value Policy

For a total loss due to a fire, the insurance company must pay for the whole amount stated in the policy. W. Va. Code §33-17-9, Davis v. Safe Ins. Co., 199 S.E. 364 (W.Va. 1938). W. Va. Code 33-17-9

Appraisal Process

There are no statutes or case law.

WISCONSIN

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[Theodore J. Waldeck, Esq.](#)

[Waldeck Law Firm, P.A.](#)

612-375-1550

First-Party Claims:

General statute governing Fair Claims Practices, if any:

[Wis. Admin. Code Ins. § 6.11.](#)

Timeframe for contacting insured upon initial receipt of claim, if any:

Time Limit: 10 consecutive days ([Wis. Admin. Code Ins. § 6.11\(4\)](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: “reasonable time” after proof of loss. ([Wis. Admin. Code Ins. § 6.11\(3\)\(a\)\(7\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

[Wis. Stat. § 631.81, subd. \(1\) \(2014\)](#). If an insured fails to give notice within one year after the time required by the policy, there is a rebuttal presumption of prejudice and the burden of proof shifts to the claimant to show the insurer was not prejudiced. *Neff v. Pierzina*, 629 NW.2d 177, 185 (Wis. 2001).

Timeframe for issuing reservation of rights, if any:

Time limit: “reasonable time” after proof of loss. ([Wis. Admin Code. Ins. § 6.11\(3\)\(a\)\(7\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[Wis. Admin. Code Ins. § 6.11\(3\)\(a\)\(5\)](#) - failure to “promptly provide a reasonable explanation of the basis in the policy contract or applicable law for denial of a claim or for the offer of a compromise settlement” constitutes unfair practices.

[Wis. Admin Code Ins. § 6.11\(3\)\(a\)\(2\)](#) - failure to initiate and conclude a claims investigation with all reasonable dispatch constitutes unfair practices.

[Wis. Stat. § 632.24](#) - Wisconsin is a direct action state, allowing claimant to name insurer as a defendant in any action brought for negligence against the insured.

Third Party Claims:

General statute governing Fair claims Practices, if any:

[Wis. Admin. Code Ins. § 6.11](#).

Duty to Defend v. Duty to Indemnify:

Insurer has duty to both defend and indemnify. *Gross v. Lloyds of London Ins. Co.*, 358 N.W.2d 266 (Wis. 1984). An insurer’s duty to defend is broader than the duty to indemnify. *Elliot v. Donahue*, 485 N.W.2d 403 (Wis. 1992). The duty to defend arises when there are allegations in the complaint which, if proven, would give rise to liability under the terms of the insurance policy. *Id.* Any question as to whether a duty to defend exists must be resolved in favor of the insured. *Baumann v. Elliott*, 704 N.W.2d 361 (Wis. Ct. App. 2005). The duty to indemnify is narrower. An insurer must indemnify an insured only against losses that are covered under the terms of the insurance policy. *Olson v. Farrar*, 809 N.W.2d 1 (Wis. 2012).

Timeframe for contacting claimant upon initial receipt of claim, if any:

Time limit: 10 consecutive days ([Wis. Admin. Code Ins. § 6.11\(4\)](#))

Timeframe for issuing denial of liability, if any:

Time limit: “reasonable time” after proof of loss. ([Wis. Admin. Code Ins. § 6.11\(3\)\(a\)\(7\)](#))

Must carrier demonstrate prejudice to disclaim on late notice: YES

[Wis. Stat. § 631.81, subd. \(1\) \(2014\)](#). If an insured fails to give notice within one year after the time required by the policy, there is a rebuttal presumption of prejudice and the burden of proof shifts to the claimant to show the insurer was not prejudiced. *Neff v. Pierzina*, 629 NW.2d 177, 185 (Wis. 2001).

Timeframe for issuing reservation of rights, if any:

Time limit: “reasonable time” after proof of loss. ([Wis. Admin Code. Ins. § 6.11\(3\)\(a\)\(7\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[Wis. Admin. Code Ins. § 6.11\(3\)\(a\)\(5\)](#) - provides that an insurer must “promptly provide a reasonable explanation of the basis in the policy contract or applicable law for denial of a claim or for the offer of a compromise settlement.”

[Wis. Admin Code Ins. § 6.11\(3\)\(a\)\(2\)](#) - failure to initiate and conclude a claims investigation with all reasonable dispatch constitutes unfair practices.

Wisconsin’s Fair Claims Practices Act does not create a private right of action. [Kranzush v. Badger State Mut. Cas. Co.](#), 307 N.W.2d 256 (Wis. 1981).

Matching

There is no statute or any case law that could be found.

Stated Value Policy

There are references to stated value policy in statutes [W.S.A. § 632.05\(2\)](#).

Appraisal Process

Appraisals are required if there is not an agreement on value. Each party getting one appraiser and the appraisers then determine a third neutral.

[W.S.A. 631.85](#).

WYOMING

For more information, please contact an Eagle Member:

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[Brian J. Hunter, Esq.](#)

[William M. McKellar, Esq.](#)

[McKellar, Tiedeken & Scoggin, LLC](#)

307-637-5575

First Party Claims:

General statute governing Fair Claims Practices, if any:

Wyo. Stat. [26-13-124](#). Also see [26-15-124](#) on time limit for accepting or rejecting certain claims.

Timeframe for contacting Insured upon initial receipt of claim, if any:

Time Limit: “reasonably promptly” ([Wyo. Stat. Ann. § 26-13-124\(a\)\(ii\)](#))

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: “reasonable time” after proof of loss. ([Wyo. Stat. Ann. § 26-13-124\(a\)\(v\)](#)) However, under [Wyo. Stat. Section 26-15-124 \(a\)](#), claims for benefits under a life, accident or health insurance policy shall be rejected or accepted and paid by the insurer within forty –five (45) days after receipt of the proofs of loss and supporting evidence. The Wyoming Supreme Court has held that this statute is applicable to first party uninsured motorist claims. Under [Wyo. Stat. Section 26-15-124 \(b\)](#), claims for benefits under a property or casualty insurance policy shall be rejected or accepted and paid by the insurer or its agent designated to receive those claims within forty-five (45) days after receipt of the claim and supporting bills.

Must carrier demonstrate prejudice to disclaim on late notice:

No statutory authority and no Wyoming Supreme Court case directly on point.

Timeframe for issuing reservation of rights, if any:

Time Limit: “reasonable time” after proof of loss. ([Wyo. Stat. Ann. § 26-13-124\(a\)\(v\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[Wyo. Stat. Ann. § 26-13-124\(a\)\(iii\)](#) - The insurer must “adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.”

[Wyo. Stat. 26-15-124 \(c\)](#) - Provides that if an action or proceeding is commenced against an insurance company on any insurance policy or in any case where the insurer is obligated by a liability policy to defend or pay a judgment on behalf of the named insured, if it is determined that the company refuses to pay the full amount of the loss and the refusal is unreasonable or without cause, the court may award a reasonable attorney’s fee and interest at 10% per year.

Third Party Claims:**General statute governing Fair Claims Practices, if any:**

[Wyo. Stat. Ann. § 26-13-124](#)

Duty to Defend vs. Duty to Indemnify:

No statutory provisions. The Wyoming Supreme Court has held that the duty to defend is broader than the duty to indemnify. It is invoked by any claim alleged in the complaint which is potentially covered under the policy. Matlack v Mountain West Farm Bureau Mut. Ins. Co., 44 P.3d 73 (Wyo. 2002)

Timeframe for contacting Claimant upon initial receipt of claim, if any:

Time Limit: “reasonably promptly” ([Wyo. Stat. Ann. § 26-13-124\(a\)\(ii\)](#))

Timeframe for issuing denial of liability, if any:

Time Limit: “reasonable time” after proof of loss. ([Wyo. Stat. Ann. § 26-13-124\(a\)\(v\)](#))

Must carrier demonstrate prejudice to disclaim on late notice:

No statutory authority and no Wyoming Supreme Court case directly on point.

Timeframe for issuing reservation of rights, if any:

Time Limit: “reasonable time” after proof of loss. ([Wyo. Stat. Ann. § 26-13-124\(a\)\(v\)](#))

Additional Fair Claims Practices regulation of significance, if any:

[Wyo. Stat. Ann. § 26-13-124\(a\)\(iii\)](#) - The insurer must “adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.”

[Wyo. Stat. 26-15-124 \(c\)](#) - Provides that if an action or proceeding is commenced against an insurance company on any insurance policy or in any case where the insurer is obligated by a liability policy to defend or pay a judgment on behalf of the named insured, if it is determined that the company refuses to pay the full amount of the loss and the refusal is unreasonable or without cause, the court may award a reasonable attorney’s fee and interest at 10% per year.

Matching

“If the shingles are obsolete and there is partial damage, i.e., a full slope of the roof, it shall be construed that the full roof has been damaged and adjustment shall be made on that basis.” [Insurance Dept. Current Rules and Regulations. Regulation Governing Adjustment of Damages to Dwelling Roofs Under Homeowners Policies, Chapter 26, Section 4. \(Dec. 31, 1996\)](#). One should operate under the premise that the insured should be put back in the same or similar condition as if the incident which damaged the property did not occur.

No additional statutes, rules or case law appear to govern matching. Courts will look to the policy provisions regarding adjustment and valuation of claims.

Stated Value Policy

No statutes, rules or case law appear to govern stated value policies. Courts will look to the policy provisions to determine the scope of coverage and regarding adjustment and valuation of claims.

Appraisal Process

On whether an appraiser's calculations regarding amount of loss are binding:

No statutes, rules or case law appear to govern use of appraisals in settlement of claims. Courts will look to the policy provisions to determine the scope of coverage and regarding adjustment and valuation of claims.

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SINCE 1989

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