

FAIR CLAIMS HANDLING STATUTES

A 50 STATE SURVEY



Eagle
International Associates

APRIL 2012

PREPARED BY:
EAGLE INTERNATIONAL
ASSOCIATES, INC.

BOARD OF DIRECTORS

CHAIRMAN

Timothy W. Waldeck, Esq.
Waldeck Law Firm, P.A.
(612) 375-1550
twaldeck@waldeckpa.com

VICE CHAIRMAN

Jeffrey V. Hill, Esq.
Hill-Lamb LLP
(971) 373-8800
jhill@hill-lamb.com

EXECUTIVE DIRECTOR

Frank L. Napolitani
Eagle International Associates, Inc.
(888) 313-2661
(702) 221-1399
frank.napolitani@eagle-law.com

WWW.EAGLE-LAW.COM

DIRECTORS

David A. Abrams, New Jersey
Leland E. Backus, Nevada
Mario C. Ciano, Ohio
Alex J. Hagan, North Carolina
Jeffrey V. Hill, Oregon
David D. Hudgins, Virginia
Pierre Humblet, Belgium
Dale Jones, Louisiana
David M. Macdonald, Texas
Frank L. Napolitani, Nevada
M. B. "Burt" Satcher, III, Georgia
John W. VanDenburgh, New York
Timothy W. Waldeck, Minnesota

Past Chair: John E. Cuttino



April 2012

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.

IMPORTANT NOTICE: This publication is intended to provide general information and guidance regarding the included subject matter. The content of this publication does not constitute legal advice or opinion and should not be construed or treated as such. Although efforts have been made to provide accurate information, Eagle International Associates, Inc. and its member firms do not assume, and expressly disclaim, responsibility for any person's reliance on the information contained herein. You should independently verify the information set forth herein before using it for yourself or on behalf of a client. For specific legal questions that you may have concerning matters in a particular jurisdiction, you are advised to consult the Eagle member firm or other attorneys admitted in that jurisdiction or contact Eagle International Associates, Inc. at 888-313-2661 for a referral.

TABLE OF CONTENTS

	PAGE
Alabama.....	1-3
Alaska.....	4-5
Arizona.....	5-6
Arkansas.....	6-7
California.....	7-9
Colorado.....	9-10
Connecticut.....	10-11
Delaware.....	11-12
District of Columbia.....	12-13
Florida.....	13-14
Georgia.....	15-16
Hawaii.....	16-18
Idaho.....	18-20
Illinois.....	20-22
Indiana.....	22-23
Iowa.....	23-24
Kansas.....	25
Kentucky.....	25-26
Louisiana.....	27
Maine.....	28-29
Maryland.....	29-30
Massachusetts.....	30-31
Michigan.....	31-32
Minnesota.....	32-34
Mississippi.....	34-35
Missouri.....	35-36
Montana.....	37-40
Nebraska	40-41
Nevada.....	42-43
New Hampshire.....	44-45
New Jersey.....	45-47
New Mexico.....	47-49
New York.....	49-51
North Carolina.....	51-52
North Dakota.....	52-53
Ohio.....	53-55
Oklahoma.....	55-57
Oregon.....	57-58
Pennsylvania.....	58-59
Rhode Island.....	59-61
South Carolina.....	61-62
South Dakota.....	63-64
Tennessee.....	64-65
Texas.....	65-67
Utah.....	67-70
Vermont.....	70-71
Virginia.....	72-73
Washington.....	73-74
West Virginia.....	74-75
Wisconsin.....	75-76
Wyoming.....	77-78

ALABAMA

First Party Claims:

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.

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

Time Limit: 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 denial of coverage because of untimely notice without requiring the primary insurer prove that the insurer was prejudiced by lack of notice. 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: 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). 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). 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). 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-.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. 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. No need to notify if the claim is in litigation.

Ala. Admin. Code r. 482-1-125.07(4). 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). Required to tender payment within 30 days, or the time specified in the policy, after (a) accepting liability, (b) reaching a 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). 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). 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 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). 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 nonoriginal equipment and the use of nonoriginal 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.

Third Party Claims:

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:

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: Not addressed 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: 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 denial of coverage because of untimely notice without requiring the primary insurer prove that the insurer was prejudiced by lack of notice. 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: Not addressed 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). 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). 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). 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). Required to tender payment within 30 days, or the time specified in the policy, after (a) accepting liability, (b) reaching a 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). Insurer is prohibited from recommending to third party automobile claimants 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). 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). 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 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 nonoriginal equipment and the use of nonoriginal equipment must be clearly disclosed.

Contributed by William Scott (AL) 205-967-9675 (wscott@sssandf.com)

ALASKA

First Party Claims:

General statute governing Fair Claims Practices, if any:

Alaska Stat. § 21.36.125(2) and (3) (2006).

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 from the insured, its agent or a third-party claimant, 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 of proof of loss Alaska Admin. Code § 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 of proof of loss Al. Admin. Code § 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) (2006). 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 § 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.

Alaska Admin. Code § 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(2) and (3) (2006).

Duty to Defend vs. Duty to Indemnify:

Alaska Pacific Assur. Co. v. Collins, 794 P2d 936 (Alaska 1990).

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 from the insured, its agent or a third-party claimant, 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 Al. Admin. Code § 26.070

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 Al. Admin. Code § 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) (2006). 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 § 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.

Alaska Admin. Code § 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.

Contributed by Jeff Hill (OR) 503-417-1104 (hill@bodyfeltmount.com)

ARIZONA

First Party Claims:

General statute governing Fair Claims Practices, if any:

Ariz. Rev. Stat. § 20-461(2) and (3).

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

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. 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:

Arizona has no direct third party bad faith claim.

General statute governing Fair Claims Practices, if any:

Ariz. Rev. Stat. § 20-461(2) and (3).

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, (App. Div. 1. 2000), 199 Ariz. 250, 17 P.3d 95., 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.

Contributed by Jack Storer (AZ) 602-776-5690 (jstorer@swensonlaw.com)

ARKANSAS

First Party Claims:

General Statute governing Fair Claims Practice:

Ark. Code Ann. § 23-66-201, *et seq.* (2011 Supp) 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:

15 days. 054-00-043 Ark. Code R. § 7(a) (Weil 2001).

Time frame for issuing disclaimer of coverage:

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:

15 days from proof of loss. 054-00-043 Ark. Code R. § 9(a) (Weil 2001).

Additional Fair Claims Practices regulation of significance:

(a) An insurer must respond to all communications by an insured within 15 working days. 054-00-043 Ark. Code R. § 7(c) (Weil 2001).

(b) If more time is needed to investigate a claim, the insurer must notify the insured of that fact within 15 days of its 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. 054-00-043 Ark. Code R. § 9(a)(2)(Weil 2001).

(c) 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. Ark. Code Ann. § 23-79-126 (2001 Repl.); 054-00-043 Ark. Code R. § 7()(a) (Weil 2001).

Third Party Claims:**General Statute governing Fair Claims Practices:**

Ark. Code Ann. § 23-66-201, *et seq.* (2011 Supp) 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 appear to address issues pertaining to the duty to defend and the duty to indemnify. Generally, in examining an insurer's duty to defend, the allegations in the pleadings against the insured 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 coverage, 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).

Contributed by Jason Campbell (AR) 501-372-1887 (campbell@amhfirm.net)

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

Cal. Ins. Code § 790.03(h)(2) and (3) (2006). (Note: § 790.03 is preempted where it conflicts with ERISA.)

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

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) (2006). (Note: § 790.03 is preempted where it conflicts with ERISA.)

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). 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).

Timeframe for issuing denial of liability, if any:

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

Must carrier demonstrate prejudice to disclaim on late notice: YES

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.

Contributed by Alison Crane (CA) 415-981-5411 (acrane@bledsoelaw.com)

COLORADO

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:

Reasonably promptly. C.R.S. § 10-3-1104(1)(h)(II)-(III).

Timeframe for issuing disclaimer of coverage, if any:

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:

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:

1. There does not appear to be a statute addressing this. Below is the relevant information from secondary sources and case law.

2. “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:

Reasonably promptly. C.R.S. § 10-3-1104(1)(h)(II)-(III).

Timeframe for issuing denial of liability, if any:

60 days after a valid and complete claim. 3 C.C.R. § 702-5-1-14 and 3 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:

Reasonably promptly.

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

Contributed by Art Kutzer (CO) 303-320-0509 (akutzer@srgllc.com)

CONNECTICUT

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) (2012).

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) (2012).

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) (2012).

Additional Fair Claims Practices regulation of significance, if any:

None.

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). U., 155 Conn. 104, 110, 230 A.2d 21 (1967).

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) (2012).

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) (2012).

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) (2012).

Additional Fair Claims Practices regulation of significance, if any:

None.

Contributed by Chris Harrington (CT) 860-525-3101 (cmh@hksflaw.com)

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

Del. Code Ann. tit.18, § 2304(16)(a), (b) (2006).

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), (b) (2006).

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. du Pont 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.

Contributed by David Pennington (PA) 215-563-4470 (dpennington@harvpenn.com)

DISTRICT OF COLUMBIA

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

Contributed by David Hudgins (VA) 703-739-3300 (dhudgins@hudginslawfirm.com)

FLORIDA

First Party Claims:

General statute governing Fair Claims Practices, if any:

F.S. 624.155 & 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(1)

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. 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.

Third Party Claims:

General statute governing Fair Claims Practices, if any:

F.S. 624.155 & 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. 69O-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.

Contributed by Peter Miller (FL) 305-671-2980 (pmiller@pmillerlaw.com)

GEORGIA

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(1).

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(6).

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)(quoting *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:

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

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 party 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 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. O.C.G.A. § 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).

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.

Contributed by Burt Satcher (bsatcher@og-law.com) and Annarita Busbee (abusbee@og-law.com) (GA) 404-688-2600

HAWAII**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), (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), (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.

Contributed by Paul deLorimier (CA) 213-386-6900 (pdelorimier@mbglaw.com)

IDAHO

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, violations of the Act have some evidentiary value in the context of bad faith claims. *Walston v. Monumental Life Ins. Co.*, 129 Idaho 211, 923 P.2d 456 (1996).

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

Time Limit: 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, 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 may result in the award of attorney’s fees under Idaho Code § 41-1839.

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 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:

Time Limit: 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:

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).

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:

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

Additional Fair Claims Practices regulation of significance, if any:

None.

Contributed by Rob Anderson (ID) 208-344-5800 (randerson@ajhlaw.com)

ILLINOIS

First Party Claims:

General statute governing Fair Claims Practices, 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.”

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. *Simmon in 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. *Simmon in 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 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)

Contributed by Mitch Orpett (IL) 312-201-6413 (maorpett@tribler.com)

INDIANA

First 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).

Timeframe for contacting Insured 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 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 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."

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."

Contributed by Mitch Orpett (IL) 312-201-6413 (maorpett@tribler.com)

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

Iowa Code Ann. § 507B.4 et seq (2006).

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

Time Limit: "reasonably promptly: Iowa Code Ann. § 507B.4(9)(b) and (c) (2006).

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 30 days following proof of loss Iowa Admin. Code r. 191-15.41(507B) (2006).

Must carrier demonstrate prejudice to disclaim on late notice: The burden of proof to show a lack of prejudice by late notice is on the insured. *Fireman's Fund Ins. Co. v. ACC Chemical Co.* 538 N.W.2d 259 (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(507B) (2006).

Additional Fair Claims Practices regulation of significance, if any:

Iowa Admin. Code r. 191-15.41(507B) (2006). If more time is needed to investigate a claim, the insurer must notify the insured of that fact within 30 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.

Third Party Claims:

General statute governing Fair Claims Practices, if any:

A third-party tort claimant has no right to assert bad faith claims against the tortfeasor's liability insurer. *Mong v. McAllister*, 319 N.W.2d 256 (Iowa 1982).

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:

Time Limit: "reasonably promptly: Iowa Code Ann. § 507B.4(9)(b) and (c) (2006).

Timeframe for issuing denial of liability, if any:

Time Limit: 30 days following proof of loss Iowa Admin. Code r. 191-15.41(507B) (2006).

Must carrier demonstrate prejudice to disclaim on late notice: NO

The burden of proof to show a lack of prejudice by late notice is on the insured. *Fireman's Fund Ins. Co. v. ACC Chemical Co.*, 538 N.W.2d 259 (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(507B) (2006).

Additional Fair Claims Practices regulation of significance, if any:

Iowa Admin. Code r. 191-15.41(507B) (2006). If more time is needed to investigate a claim, the insurer must notify the insured of that fact within 30 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.

Contributed by Steve Fields (MO) 314-863-6311 (sfields@brinkerdoyen.com)

KANSAS

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” Kan. Stat. Ann. § 40-2404(9)(b).
30-days

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: “promptly provide” Kan. Stat. Ann. § 40-2404(9)(n) (2006).

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

Unclear under Kan. Stat. Ann. 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. Ann. § 40-2404(9)

Duty to Defend vs. Duty to Indemnify:

Duty to defend is broad than the duty to indemnify. Must defend if there is a “possibility” of coverage.

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) (2006).

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

Contributed by Brad Russell (KS) 913-234-6100 (b.russell@swrllp.com)

KENTUCKY

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 (LexisNexis 2011).

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: "reasonable time" 806 Ky. Admin. Regs. 12:095 (LexisNexis 2011).

Must carrier demonstrate prejudice to disclaim on late notice: YES

Timeframe for issuing reservation of rights, if any:

Time Limit: "reasonable time" 806 Ky. Admin. Regs. 12:095 (LexisNexis 2011).

Additional Fair Claims Practices regulation of significance, if any:

806 Ky. Admin. Regs. 12:095 (LexisNexis 2011). 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 (LexisNexis 2011).

Timeframe for issuing denial of liability, if any:

Time Limit: "reasonable time" 806 Ky. Admin. Regs. 12:095 (LexisNexis 2011).

Must carrier demonstrate prejudice to disclaim on late notice: YES

Timeframe for issuing reservation of rights, if any:

Time Limit: "reasonable time" 806 Ky. Admin. Regs. 12:095 (LexisNexis 2011).

Additional Fair Claims Practices regulation of significance, if any:

806 Ky. Admin. Regs. 12:095 (LexisNexis 2011). 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.

Contributed by Shea Conley (KY) 859-233-1311 (sconley@reminger.com)

LOUISIANA

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.

Contributed by James Ryan (LA) 504-799-6330 (jryan@ryan-law.us)

MAINE

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)(B), (C), and (K).

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: “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)(B), (C), and (K).

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.

Contributed by John Egan (MA) 617-330-7181 (jegan@rubinrudman.com)

MARYLAND

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) (2011).

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) (2011)

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) (2011)

Additional Fair Claims Practices regulation of significance, if any:

Md. Code Regs. 31.15.07.04(B) (2011). 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) (2011). 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 (2011). 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) (2011).

Timeframe for issuing denial of liability, if any:

Time Limit: Md. Code Regs. 31.15.07.03 (B)(12) (2011)

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

Timeframe for issuing reservation of rights, if any:

Time Limit: Md. Code Regs. 31.15.07.03 (B)(12) (2011)

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

Contributed by Paul Finamore (MD) 410-783-6349 (pmfinamore@nilesbarton.com)

MASSACHUSETTS

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).

Contributed by John Egan (MA) 617-330-7181 (jegan@rubinrudman.com)

MICHIGAN

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:

Time Limit: 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).

Timeframe for issuing reservation of rights, if any:

Time Limit: 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:

Nothing significant.

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:

Time Limit: 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).

Timeframe for issuing reservation of rights, if any:

Time Limit: 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:

Nothing significant.

Contributed by David Thomas (MI) 313-961-9344 (dthomas@rmrtt.com)

MINNESOTA

First Party Claims:

General statute governing Fair Claims Practices, if any:

Citation Minn. Stat. Ann. § 72A.201

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

Time Limit: 10 business days. Minn. Stat. Ann. § 72A.201, Subd. 4(1) (2006).

Timeframe for issuing disclaimer of coverage, 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. Ann. § 72A.201, Subd. 4(11) (2006).

Must carrier demonstrate prejudice to disclaim on late notice: YES

Minn. Stat. Ann. § 72A.201, Subd. 4(6) See *Leamington Co. v. Nonprofits' Ins. Ass'n*, 615 N.W.2d 349 (Minn. 2000); *Sterling State Bank v. Virginia Surety 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. Ann. § 72A.201, Subd. 4(11) (2006).

Additional Fair Claims Practices regulation of significance, if any:

Minn. Stat. Ann. § 72A.20, Subd. 12(2) and (3) (2006). “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. Ann. § 72A.20, Subd. 12(14) (2006). “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.

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. Ann. § 72A.201

Duty to Defend vs. Duty to Indemnify:

The duty to defend is broader than the duty to indemnify. *Westfield Ins. Co. v. Kroiss*, 694 N.W.2d 102, 106 (Minn. Ct. App. 2005). 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).

The duty to indemnify is more narrow. Before an insurer has a duty to indemnify, all claims alleged in the complaint must fall within the policy coverage. *Reinsurance Assoc. of Minn. v. Timmer*, 641 N.W.2d 302, 308 (Minn. Ct. App. 2002).

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

Time Limit: 10 business days. Minn. Stat. Ann. § 72A.201, Subd. 4(1) (2006).

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. Ann. § 72A.201, Subd. 4(11) (2006).

Must carrier demonstrate prejudice to disclaim on late notice: YES

Minn. Stat. Ann. § 72A.201, Subd. 4(6) See *Leamington Co. v. Nonprofits’ Ins. Ass’n*, 615 N.W.2d 349 (Minn. 2000); *Sterling State Bank v. Virginia Surety 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. Ann. § 72A.201, Subd. 4(11) (2006).

Additional Fair Claims Practices regulation of significance, if any:

Minn. Stat. Ann. § 72A.20, Subd. 12(2) and (3) (2006). “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. Ann. § 72A.20, Subd. 12(14) (2006). “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.

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).

Contributed by Timothy Waldeck (MN) 612-375-1550 (twaldeck@waldecklind.com)

MISSISSIPPI

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:

Time Limit: 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:

Time Limit: 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:

Time Limit: 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:

None.

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:

Time Limit: 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:

Time Limit: 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: Yes and No.

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:

Time Limit: 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:

None.

Contributed by Wade Manor (MS) 601-607-4800 (wmanor@sssf-ms.com)

MISSOURI

First Party Claims:

General statute governing Fair Claims Practices, if any:

375.1000 R.S.Mo (2000) et seq.

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) (2006). “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 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:**

375.1007 R.S.Mo. (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) (2006). “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 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.

Contributed by Steve Fields (MO) 314-863-6311 (sfields@brinkerdoyen.com)

MONTANA

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 (emphasis added).

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). For ease of reference, the subsections which create a private cause of action were highlighted above.

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, “[i]nsurers have the duty to investigate “claims and coverage promptly”. *Daly Ditches Irr. Dist. v. Nat’l Sur. Corp.*, 234 Mont. 537, 541, 764 P.2d 1276, 1279 (1988) (quoting *Tynes v. Bankers Life Co.*, 730 P.2d 1115, 1124 (Mont. 1986)).

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

It is unclear whether Montana courts would require the insurer to demonstrate prejudice to disclaim on the basis of late notice by the insured.

Montana courts have held “a notice requirement in an insurance policy ‘is a condition precedent, and failure to comply therewith will bar a recovery under the policy, unless the condition is waived by the company.’” *Steadale v. Colony Ins. Co.*, 2011 MT 208, 361 Mont. 459, 465, 260 P.3d 145, 150 (2011) (quoting *LaBonte v. Mutual Fire & Lightning Ins. Co.*, 75 Mont. 1, 12, 241 P. 631, 635 (1925)) (but note that the *Steadale* case discussed prejudice to the insurer). While this recent case suggests that a showing of prejudice may not be required; we were unable to locate any Montana statute or case addressing this issue and federal courts interpreting Montana law and addressing this issue have ruled inconsistently.

First, in *State Farm Mut. Auto. Ins. Co. v. Murnion*, 439 F.2d 945, 947 (9th Cir. 1971), the federal Court of Appeals was asked to review, inter alia, the district court’s ruling that the insurer “must show that it was somehow prejudiced by the delay in notification and that prejudice would not be presumed from the delay.” In its decision, the Court of Appeals first found, pursuant to Montana law, satisfaction of policy provisions requiring the insured to give notice “immediately” or “as soon as practicable” was a condition precedent to liability. The Court of Appeals then documented that Montana law was silent on the issue of whether an insurer must show prejudice to disclaim due to the insured’s failure to comply with such a policy provision; that is, due to the insured’s failure to provide notice “immediately” or “as soon as practicable”. In recognizing it could only overrule the district court’s ruling if the ruling was “clearly wrong”, the Court determined the district court’s decision requiring a showing of prejudice was not “clearly wrong”. Therefore, the Court of Appeals affirmed the district court.

Next, in *XL Specialty Ins. Co. v. Patrol Helicopters, Inc.*, CV-08-73-BU-RFC-JCL, 2009 WL 4929261 (D. Mont. Dec. 21, 2009) *aff'd sub nom. XL Specialty Ins. Co. v. Progressive Cas. Ins. Co.*, 411 F. App'x 78 (9th Cir. 2011), the federal district court addressed the insurer's objections to the magistrate judge's findings and recommendations on summary judgment. The insurer's objections included an argument that the magistrate judge erred in concluding coverage was not precluded by the insured's failure to comply with the notice provision in the insurance policy (this provision required the insured to give notice "immediately" or "as soon as practicable") because the insurer could not establish prejudice as a result of the delay. The district court ruled that the issue was not properly before it because the insurer did not argue this issue below. However, the district also noted, the magistrate court "thoroughly reviewed Montana law in the area and correctly concluded the Montana Supreme Court, consistent with the majority of jurisdictions, would impose a prejudice requirement for notice provisions in liability policies."

Contrary to the above-referenced decisions, in *Fed. Sav. & Loan Ins. Corp. v. Aetna Cas. & Sur. Co.*, 785 F. Supp. 867, 871 (D. Mont. 1990), the federal district court found proof of prejudice was unnecessary. In that case, the court addressed whether the insurer must establish prejudice when denying a claim as a result of the insured's failure to comply with the notice/proof of loss provision (requiring notice "at the earliest practicable moment, not to exceed 30 days after discovery of the loss" and requiring the filing of a proof of loss within six months of discovery) for a fidelity bond, which provided insurance coverage to the insured for loss resulting from an employee's dishonest or fraudulent acts. In ruling that prejudice was not required, the court held:

Montana has long recognized that timely notice of discovery is a condition precedent to recovery on a surety bond when the policy contains a notice clause. *Outlook Farmers' Elevator Co. v. American Surety Co.*, 70 Mont. 8, 24, 223 P. 905, 911 (1924). Montana courts have never required the insurer to demonstrate substantial prejudice; the insured has the duty to demonstrate that all conditions set by the policy have been met. *Glacier General Assur. Co. v. State Farm*, 150 Mont. 452, 461, 436 P.2d 533, 538 (1968). Aetna is not required to demonstrate that Montana Savings' failure to provide timely notice caused Aetna substantial prejudice. Montana Savings' failure to satisfy the conditions of the surety bond are dispositive in this case. Given the lack of Montana law on point and the divergence among Montana federal courts, it is unclear whether a Montana court would require the insurer to prove prejudice.

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 held:

The duty to defend arises when a complaint against an insured alleges facts, which if proven, would result in coverage. *St. Paul Fire & Marine Ins. Co.*, 150 Mont. at 188, 433 P.2d at 799; *Grindheim*, 908 F.Supp. at 800. “Where a complaint alleges facts which represent a risk outside the coverage of the policy but also avers facts which, if proved, represent a risk covered, the insurer is under a duty to defend.” *Atcheson v. Safeco Insurance Co.* (1974), 165 Mont. 239, 245–46, 527 P.2d 549, 552 (citations omitted).

Id. 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.

Contributed by Rob Anderson (ID) 208-344-5800 (randerson@ajhlaw.com)

NEBRASKA

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 § 60-006 to -008.

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 15 days following proof of loss Neb. Admin. Code § 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 § 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 § 60-006 to -008.

Timeframe for issuing denial of liability, if any:

Time Limit: 15 days Neb. Admin. Code § 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 § 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.

Contributed by Brad Russell (KS) 913-234-6100 (b.russell@swrllp.com)

NEVADA

First Party Claims:

General statute governing Fair Claims Practices, if any:

N.R.S. 686A.310 and NAC 686A.600 – 690

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.

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., ___ Nev. ___, 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. *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, ___ Nev. ___, 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., ___ Nev. ___, 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:

None

Contributed by Gene Backus (NV) 702-872-5555 (gbackus@backuslaw.com)

NEW HAMPSHIRE

First Party Claims:

General statute governing Fair Claims Practices, if any:

NH 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.

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:

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. Admin. Rules § 1001.01 to .02

"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. N.H. Rev. Stat. Ann. § 417:4 XV (2012).

Third Party Claims:

General statute governing Fair Claims Practices, if any:

NH 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 pursuant to 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:

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. Admin. Rules § 1001.01 to .02

“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. N.H. Rev. Stat. Ann. § 417:4 XV (2012).

Contributed by Chris Harrington (CT) 860-525-3101 (cmh@hksflaw.com)

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

NJSA 17:29B-4; 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 (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 (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 NJ Admin Code 11:2-17

Third Party Claims:

General statute governing Fair Claims Practices, if any:

NJSA 17:29B-4; 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. N.J.S.A. 17:29B (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. N.J.S.A. 17:29B (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.

Contributed by David Abrams (NJ) 973-758-9301 (dabrams@sralawfirm.com)

NEW MEXICO

First Party Claims:

General Statute Governing Fair Claims Practices

N.M. STAT. ANN. § 59A-16-20 (2011)

Timeframe for contacting Insured upon initial receipt of claim

Time Limit: The insurer must acknowledge and act “reasonably promptly” upon communications with respect to claims. N.M. STAT. ANN. § 59A-16-20 B (2011)

Timeframe for issuing disclaimer of coverage

Time Limit: 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 by the insured.” N.M. STAT. ANN. § 59A-16-20 D (2011)

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. *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

Time Limit: 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 by the insured.” N.M. STAT. ANN. § 59A-16-20 D (2011)

Additional Fair Claims Practices regulations of significance

“[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 C (2011)

“[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 E (2011)

“[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.” N.M. STAT. ANN. § 59A-16-20 F (2011)

Third-Party Claims:

General Statute Governing Fair Claims Practices

N.M. STAT. ANN. § 59A-16-20 (2011). 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 at least some circumstances. *Hovel v. Allstate Ins. Co.*, 89 P.3d 69, 73 (N.M. 2004).

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 unpleaded 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).

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

Time Limit: The insurer must acknowledge and act “reasonably promptly” upon communications with respect to claims. N.M. STAT. ANN. § 59A-16-20 B (2011); *Hovel*, 89 P.3d at 73 (extending private right of action to third-party claimants)

Timeframe for issuing denial of liability

Time Limit: 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 (2011); *Hovel*, 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. *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

Time Limit: 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 (2011); *Hovel*, 89 P.3d at 73 (extending private right of action to third-party claimants)

Additional Fair Claims Practices regulation of significance

“[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 C (2011)

“[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 E (2011)

“[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.” N.M. STAT. ANN. § 59A-16-20 F (2011)

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. *Hovel*, 89 P.3d at 76-77.

Contributed by David Macdonald (TX) 214-651-3300 (dmacdonald@macdonalddevin.com)

NEW YORK

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 to accept or reject claim

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

Insurance Law §3420 (c) (2) if notice is given within 2 years of the time required under the policy

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.2d 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

Insurance Law §3420 2 (b)(A) if notice is given within 2 years of the time required under the policy

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.

Contributed by Kevin Salter (NY) 212-201-6825 (ksalter@bjsslaw.com)

NORTH CAROLINA

First Party Claims:

General statute governing Fair Claims Practices, if any:

N.C. Gen. Stat. Ann. § 58-63 *et seq.*

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 *et seq.*

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.

Contributed by Alex Hagan (NC) 919-865-7000 (alex_hagan@elliswinters.com)

NORTH DAKOTA

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) (2011).

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: "reasonable time" N.D. Cent. Code § 26.1-04-03(09) (2011).
 "without unnecessary delay" N.D. Cent. Code § 26.1-32-07(09) (2011).

Must carrier demonstrate prejudice to disclaim on late notice: YES

The insurer must prove prejudice to succeed on a late notice disclaimer. *Finstad v. Steiger Tractor, Inc.*, 301 N.W.2d 392, 398 (N.D. 1981).

Timeframe for issuing reservation of rights, if any:

Time Limit: "reasonable time" N.D. Cent. Code § 26.1-04-03(09) (2011).

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) (2011)

Timeframe for issuing denial of liability, if any:

Time Limit: "reasonable time" N.D. Cent. Code § 26.1-04-03(09) (2011).

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) (2011)).

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

Contributed by Michael Coutu (NY) 716-853-2050 (mcoutu@sliva-lane.com)

OHIO**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 §§ 119.03, 3901.041 and 3901.19, *et seq.*

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 is not obligated to respond within this timeframe when the claimant has filed a complaint in any court.

See 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.

See 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.

See Ohio Admin. Code § 3901-1-54(G)(1).

Additional Fair Claims Practices regulation of significance, if any:

See Ohio Admin. Code § 3901-1-54 at Tab 1.

Third 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 §§ 119.03, 3901.041 and 3901.19, *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 is not obligated to respond within this timeframe when the claimant has filed a complaint in any court.

See 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.

See 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.

See Ohio Admin. Code § 3901-1-54(G)(1).

Additional Fair Claims Practices regulation of significance, if any:

See Ohio Admin. Code § 3901-1-54 at Tab 1.

Contributed by Mario Ciano (OH) 216-687-1311 (mciano@reminger.com)

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

36 O.S. §§ 1250.1 et. seq.

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) (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.)

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:

1. Statute States - "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." 36 O.S. § 1250.7(C); but
2. Code States - "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." Okla. Admin. Code 365:15-3-6.
3. 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. § 1250.7(A); Okla. Admin. Code 365:15-3-7(a)(1)

4. "Failing to adopt and implement reasonable standards for the prompt investigation of claims" constitutes an unfair claim settlement practice in Oklahoma. 36 O.S. § 1250.5(3).

5. 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 30 days before the date on which such time limit may expire. Okla. Admin. Code 365:15-3-7(E).

Third Party Claims:

General statute governing Fair Claims Practices, if any: Citation

36 O.S. §§ 1250.1 et. seq.

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:

1. Statute States - "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." 36 O.S. § 1250.7(C); but

2. Code States - "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." Okla. Admin. Code 365:15-3-6.

3. 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. § 1250.7(A); Okla. Admin. Code 365:15-3-7(a)(1)

4. 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(E).

5. 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. Okla. Admin. Code 365:15-3-7(F).

*Contribution by Clint Whitworth (cwhitworth@edmondscole.com)
and Michael Woodson (mwoodson@edmondscole.com) 405-272-0322*

OREGON

First Party Claims:

General statute governing Fair Claims Practices, if any:

ORS 746.230

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

Time Limit: 30 days Or. Admin. R. § 836-080-0225-235.

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 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.

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:

North Pac. Ins. Co. v. Wilson’s Distrib. Serv., 138 Or App 166, 908 P2d 827 (1995).

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.

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

Time Limit: 30 days Or. Admin. R. § 836-080-0225-235

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. Stat. Ann. § 746.230 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.

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.

Contributed by Jeff Hill (OR) 503-417-1104 (hill@bodyfeltmount.com)

PENNSYLVANIA

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.

Contributed by David Pennington (PA) 215-563-4470 (dpennington@harvpenn.com)

RHODE ISLAND

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:

Time Limit: 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:

Time Limit: "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:

Time Limit: "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 § 9-1-50 - payment within 30 days of receipt of release, or financial penalty applies (accident, health, life claims) 02-030-013 R.I. Code R. § 4(G,I) - claim not resolved in 30 days from proof of loss, insurer must explain delay

- written notice of claim denial w/in 15 days of determination (property/casualty claims) 02-030-073 R.I. Code R. § 6(B,E) - claim not resolved w/in 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

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:

Sanzi v. Shetty, 864 A.2d 614 (R.I. 2005); *Peerless Insurance Co. v. Viegas*, 667 A.2d 785 (R.I. 1995)

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.

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

Time Limit: 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:

Time Limit: "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:

Time Limit: "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).

Contributed by Gordon Cleary (RI) 401-421-3060 (gcleary@vetterandwhite.com)

SOUTH CAROLINA**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:

Time Limit: 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:**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. S.C. Code Ann § 38-59-10

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 (1971).

Timeframe for issuing reservation of rights, if any:

Time Limit: 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:

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).

Contributed by John Cuttino (SC) 803-227-4271 (jcuttino@turnerpadget.com)

SOUTH DAKOTA

First Party Claims:

General statute governing Fair Claims Practices, if any:

S.D.C.L. § 58-33-67

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. *Hawkeye-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: N/A

Contributed by Steve Fields (MO) 314-863-6311 (sfields@brinkerdoyen.com)

TENNESSEE

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:
<http://www.state.tn.us/sos/rules/0780/0780-01/0780-01.htm>

Tenn. Code Ann. § 56-8-101 et 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:
<http://www.state.tn.us/sos/rules/0780/0780-01/0780-01.htm>

Tenn. Code Ann. § 56-8-101 et. seq.

Contributed by Daniel Ripper (TN) 423-756-5034 (dan@lutheranderson.com)

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

Tex. Ins. Code Ann. A § 541.001 (West) et. seq. - Unfair Methods of Competition and Unfair or Deceptive Acts or Practices

Tex. Ins. Code Ann. A § 542.001 (West) et. seq. Processing and Settlement of Claims

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

Time Limit: 15 days. Tex. Ins. Code Ann. A § 542.055 (West).

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 Ann. A § 542.056 (West).

Must carrier demonstrate prejudice to disclaim on late notice: YES

“[a]n 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. *PAJ, Inc. v. Hanover Ins. Co.*, 243 S.W.3d 630, 636-37 (Tex.2008); *Hudson v. City of Houston*, 2011 WL 1376168 (Tex. App.—Houston [1st Dist.] Jan. 13, 2011, pet. filed)

Timeframe for issuing reservation of rights if any:

Time Limit: “reasonable time” Tex. Ins. Code Ann. A § 541.060 (West).

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 (a) or (b), 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 Ann. A § 542.056 (West).

“If an insurer notifies a claimant under Section 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 Ann. A § 542.057 (West).

“Except as otherwise provided, if an insurer, after receiving all items, statements, and forms reasonably requested and required under Section 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 Section 542.060.” Tex. Ins. Code Ann. A § 542.058 (West).

“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 Ann. A § 542.060 (West)

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

Tex. Ins. Code Ann. A § 541.001 (West) et. seq. - Unfair Methods of Competition and Unfair or Deceptive Acts or Practices

Tex. Ins. Code Ann. A § 542.001 (West) et. seq. Processing and Settlement of Claims

Duty to Defend vs. Duty to Indemnify:

“[U]nder the “complaint allegation rule,” 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. The duty to indemnify is triggered by the actual facts establishing liability in the underlying suit. *Heyden Newport Chem. Corp. v. Southern Gen. Ins. Co.*, 387 S.W.2d 22, 25 (Tex.1965). Thus, the duty to defend and the duty to indemnify by an insurer are distinct and separate duties. See *American Alliance Ins. Co. v. Frito-Lay, Inc.*, 788 S.W.2d 152, 153 (Tex.App.—Dallas 1990, writ dismissed).” *Trinity Universal Ins. Co. v. Cowan*, 945 S.W.2d 819, 821-22 (Tex. 1997)

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

Time Limit: 15 days. Tex. Ins. Code Ann. A § 542.055 (West).

Timeframe for issuing denial of liability, 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 Ann. A § 542.056 (West).

Timeframe for issuing reservation of rights, if any:

Time Limit: "reasonable time" Tex. Ins. Code Ann. A § 541.060 (West).

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 (a) or (b), 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 Ann. A § 542.056 (West).

"If an insurer notifies a claimant under Section 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 Ann. A § 542.057 (West).

"Except as otherwise provided, if an insurer, after receiving all items, statements, and forms reasonably requested and required under Section 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 Section 542.060." Tex. Ins. Code Ann. A § 542.058 (West).

"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 Ann. A § 542.060 (West).

Contributed by Marc Sheiness (TX) 713-374-7005 (msheiness@hou-law.com)

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

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 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

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), but further defined regulation at 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."

Contributed by Gene Backus (NV) 702-872-5555 (gbackus@backuslaw.com)

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).

Contributed by Chris Harrington (CT) 860-525-3101 (cmh@hksflaw.com)

VIRGINIA

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:

No statutory provision

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.

Contributed by David Hudgins (VA) 703-739-3300 (dhudgins@hudginslawfirm.com)

WASHINGTON

First Party Claims:

General statute governing Fair Claims Practices, if any:

Rev. Code Wash. 48.30.010

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 § 284-30-370 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:

RCW 48.30.010

Duty to Defend vs. Duty to Indemnify:

Griffin v. Allstate Ins. Co., 29 P3d 777 (Wash. App. 2001).

Timeframe for contacting Claimant 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 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:

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 § 284-30-370 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.

Contributed by Jeff Hill (OR) 503-417-1104 (hill@bodyfeltmount.com)

WEST VIRGINIA

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.

Timeframe for issuing disclaimer of coverage, if any:

Time Limit: 10 days after completion of investigation
(investigation commences within 15 days of claim and
reasonable time to complete investigation)

W. Va. Code R. § 114-14-6-6.3.
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

Timeframe for issuing reservation of rights, if any:

Time Limit: 10 days after completion of investigation
(investigation commences within 15 days of claim and
reasonable time to complete investigation)

W. Va. Code R. § 114-14-6-6.3.
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. 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).

W. Va. Code § 33-11-4 (9). 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 § 33-11-1, et seq. Unfair Trade Practices Act (UTPA) – no 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	W. Va. Code R. § 114-14-6-6.2(a).
reasonable time to complete investigation)	W. Va. Code § 33-11-4 (9).

Must carrier demonstrate prejudice to disclaim on late notice: YES

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	W. Va. Code R. § 114-14-6-6.2(a).
reasonable time to complete investigation)	W. Va. Code § 33-11-4 (9).

Additional Fair Claims Practices regulation of significance, if any:

A third-party claimant may not bring a private cause of action or any other action against any person for an unfair claims settlement practice. W. Va. Code Ann. § 33-11-4a(a) (West). A third-party claimant may not include allegations of unfair claims settlement practices in any underlying litigation against an insured. 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. W. Va. Code Ann. § 33-11-4a(b) (West).

Contributed by Shea Conley (KY) 859-233-1311 (sconley@reminger.com)

WISCONSIN

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 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)(7).

Must carrier demonstrate prejudice to disclaim on late notice: YES

Wis. Stat. § 631.81, Subd. (1). If insured fails to give notice within 1 year after the time required by the policy, there is a rebuttable presumption of prejudice and the burden of proof shifts to the claimant to show there was not prejudice. *Neff v. Pierzina*, 629 N.W.2d 177 (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)(7).

Additional Fair Claims Practices regulation of significance, if any:

Wis. Admin. Code Ins. § 6.11(3)(5) 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.”

Wisconsin is a direct action state, allowing claimant to name insurer as a defendant in any action brought for negligence against the insured. Wis. Stat. § 632.24.

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

Wis. Admin. Code Ins. § 6.11

Duty to Defend vs. Duty to Indemnify:

Insurer has duty both to defend and indemnify. *Gross v. Lloyds of London Ins. Co.*, 358 N.W.2d 266 (Wis. 1984). 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.” *Carney v. Village of Darien*, 60 F.3d 1273, 1277 (7th Cir. 1995).

The duty to indemnify is more narrow. An insurer must indemnify an insured only against losses that are covered under the terms of the insurance policy. *Olson v. Farrar*, 2012 LEXIS 1 at *28 (Wis. Jan. 31, 2012).

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

Time Limit: 10 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)(7).

Must carrier demonstrate prejudice to disclaim on late notice: YES

Wis. Stat. § 631.81, Subd. (1). If insured fails to give notice within 1 year after the time required by the policy, there is a rebuttable presumption of prejudice and the burden of proof shifts to the claimant to show there was not prejudice. *Neff v. Pierzina*, 629 N.W.2d 177 (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)(7).

Additional Fair Claims Practices regulation of significance, if any:

Wis. Admin. Code Ins. § 6.11(3)(5) 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.”

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).

Contributed by Timothy Waldeck (MN) 612-375-1550 (twaldeck@waldecklind.com)

WYOMING

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: YES/NO

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: YES/NO

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.

Contributed by Julie Nye Tiedeken (WY) 307-637-5575 (jtiedeken@mtslegal.net)

IMPORTANT NOTICE: This publication is intended to provide general information and guidance regarding the included subject matter. The content of this publication does not constitute legal advice or opinion and should not be construed or treated as such. Although efforts have been made to provide accurate information, Eagle International Associates, Inc. and its member firms do not assume, and expressly disclaim, responsibility for any person’s reliance on the information contained herein. You should independently verify the information set forth herein before using it for yourself or on behalf of a client. For specific legal questions that you may have concerning matters in a particular jurisdiction, you are advised to consult the Eagle member firm or other attorneys admitted in that jurisdiction or contact Eagle International Associates, Inc. at 888-313-2661 for a referral

DISTRIBUTED BY:

EAGLE INTERNATIONAL ASSOCIATES, INC.
PO Box 371510
LAS VEGAS, NV 89137-1510
888-313-2661
702-221-1399
WWW.EAGLE-LAW.COM

