

First Party Litigation Legislation Position Survey

Several of the property and casualty insurance trade associations active in Texas continue to create a legislative strategy to address the first party litigation issues insurers face. To that end, we seek your company's input on what the legislative fix should look like.

The following trade associations:

- AFACT
- AIA
- ICT
- NAMIC
- PCI
- TCAIS

are working together to identify the key issues, and for those trade associations that lobby, craft the legislative package. These trade associations are sending this survey to all of its members doing business in Texas. Our hope is that by using a uniform survey, we can quickly determine the collective will of the insurance industry.

For those of you who attended the NAMIC All-Industry meeting on September 8, you know we discussed a number of possible legislative ideas. To help make this survey meaningful, we are providing a list of some of the more promising ideas, seeking your thoughts on the best ideas and strategy moving forward.

Before we describe those options, we would like to make a few overall comments about the process moving forward:

- *We believe the legislative strategy should be limited to first party property damage claims. By keeping life/health out of the mix, it will simplify the strategy.*
- *We want to make sure our legislative efforts are not perceived as overreaching. As we discussed at length at the September 8 meeting, many believe that legislation that places a cap on attorney's fees will dramatically increase the opposition to our legislative efforts. We do believe there are ways to effectively reduce the attorney's fees paid out in such claims without placing a statutory cap on them.*
- *One bill or a suite of bills? Depending on the final strategy selected, we must decide whether to pursue the needed changes via one omnibus bill or through a series of bills. Please provide your input on that when you respond.*
- *Once we have an idea of what the legislative package will look like, we can formally approach other non-insurance allies about carrying the torch for the effort. Tort reform groups like Texans for Lawsuit Reform and the Texas Civil Justice League, along with the Texas Association for*



Business, have expressed support for leading the effort for the changes we have discussed. In order to formally ask them for their help, we will need to formally present to these groups the details of what we're seeking. This survey will help us do that.

Below are some of the more popular recommendations. **Please score each of these on a scale of 1 to 3, with 1 being the highest priority and 3 being the lowest priority for your company.**

- Amend Chapter 542, subchapter B of the Texas Insurance Code. These amendments could take a number of forms, including but not limited to:
 - Pegging the penalty interest rate to something that floats with the prevailing interest rate.
 - Penalty interest should only accrue after a claim is due under the terms of the policy.
 - Penalty interest should only accrue on the amount of a claim the insurer agrees to pay or that is not reasonably in dispute.
 - Require that the attorney's fees be reasonable and necessary with the amount in controversy.
 - Eliminate awards of attorney' fees based on a jury finding of an immaterial amount of a breach of contract claim. Such windfalls encourage frivolous lawsuit.
 - Require a finding of unreasonable claim handling by the insurer before a plaintiff is entitled to recover attorney fees. A good faith payment by the insurer should not create liability for the plaintiff's attorney fees regardless of whether a judge or jury later decides that a different amount was owed.
 - Require supplement claims to be presented in writing before suit, allowing an insurer the opportunity to accept or deny the supplemental claim before litigation.
 - Establish safe harbors to avoid penalty interest and attorney fees for timely payment of appraisal awards.
 - Prohibit the recovery of penalties and interest if a claimant rejects a qualifying settlement offer under Chapter 42, Civ. Prac. & Remedies Code.

- Amend Chapter 541 of the Texas Insurance Code to require an intentional act before the policyholder can recover treble damages.

- Regulate public adjusters more thoroughly. Specifically, prohibit PA recovery unless the PA actually negotiates with the insurer. Further, require that a PA may not recover until the policyholder is actually paid. Also restrict public adjusters from soliciting or referring clients in the same way that attorneys are restricted under their Rules of Professional Conduct. Provide a system for review of and disciplinary sanctions against PAs who submit estimates to policyholders or insurers that are unreasonable in price or scope or ignore clearly applicable

terms of the policy.

- Place restrictions on the ability of roofers to solicit claims after a weather event. Further, place restrictions on roofers referring claims to public adjusters or attorneys.
- Add prohibited roofing practices to the Deceptive Trades Practices Act.
- Amend barratry statute to specifically ban the use of public adjusters as case runners.
- Regulate the ability of attorneys to share fees with their clients.
- Limit the ability of the policyholder to sue the adjuster (if the company agrees the adjuster was acting in the course and scope of employment, then the adjuster would be released from the lawsuit).
- Give insurers more flexibility in their ability to cancel or non-renew policyholders using means that are not unfairly discriminatory.
- Make abatement of all activities in a lawsuit mandatory once appraisal under the policy is invoked. Judges should have no discretion to force parties to engage in any type of discovery, mediation, or other litigation activities before compelling appraisal to proceed as required by the policy.
- Payment of an appraisal award within a certain time after the appraisal award is rendered means no breach of contract as a matter of law.
- Appraisal umpires can be appointed in some manner other than by the district judge in the county where the property is located.
- Interest penalty only attaches to disputed amount of claim and only begins to run after a judicial determination that something additional was owed by the carrier.
- Provide immunity from insurers' liability to mortgagees in situations where the insured cashes a check payable to both the insured and the mortgagee without the endorsement of the mortgagee (negating the recent decision of the Dallas Court of Appeals in *Viewpoint Bank v. Allied Property and Casualty Insurance Company*.)

Please provide your preferences of priority no later than close of business on Friday, September 26.
Thanks in advance for your time and effort.