

'Loss payment'

DAVID J. PETTINATO

No matter what type of case an attorney is handling, most insurance policies share a common trait: They contain numerous terms and conditions the policyholder must comply with to obtain benefits. The "loss payment" provision is one of the few such terms favoring the policyholder.

It requires the insurer to perform and expressly sets out the time period within which it must tender undisputed insurance benefits to the policyholder.

A typical provision reads as follows:

Loss Payment. We will adjust all losses with you. . . . Loss will be payable:

- a. 20 days after we receive your proof of loss and reach agreement with you; or
- b. 60 days after we receive your proof of loss and
 - (1) there is an entry of a final judgment; or
 - (2) there is a filing of an appraisal award with us.

The loss payment provision must be interpreted to mean that once an insured has submitted a properly executed sworn proof of loss (POL) statement, the insurer has a certain number of days to tender the undisputed amount of benefits. Insurers argue that the provision implies an obligation to pay benefits only after there is an "agreement" between it and the policyholder.

Taking this argument to its extreme, the insurer would never be obligated to pay benefits as long as it disagreed with the POL's claimed amount, in part or whole. Under such a contract, the insurer could collect premiums from the policyholder but never have a contractual obligation to perform any duties, unless it expressly agreed to them.

A more reasonable interpretation of the loss payment provision is that on submission of the POL, if the claimed amount exceeds the insurer's damage estimate, the insurer is obligated to tender undisputed benefits in agreement with the policyholder, leaving the balance as disputed.

Sometimes insurers claim that the POL is a "hostile" filing and reject it. This is not only a breach of the policy but also clear evidence of the insurer's bad-faith claims handling. How can the POL be considered "hostile" when it is the only way an insured can demand payment within a certain time period? If the POL form has not been properly completed, the insurer may argue that it is improper in form only and needs to be resubmitted.

Once the POL is filed, the clock starts ticking for payment. That is why insurers concoct a coverage defense by rejecting the POL, arguing that their obligation to tender benefits is not ripe. However, when a POL is properly completed, whether or not the insurer disagrees with the claimed amount, it is inherently bad faith for the insurer to reject the POL on that basis alone.

DAVID J. PETTINATO *practices with the Merlin Law Group in Tampa. His e-mail address is DPettinato@merlinlawgroup.com.*