



## Policyholders Claim Bad Faith in COVID-19 Litigation

By Bethany L. Barrese and Stacy M. Manobianca

When submitting an insurance claim for losses due to COVID-19, the policyholder's rightful expectation is that their insurer will handle their claim fairly and in good faith. However, a growing collection of lawsuits<sup>1</sup> allege that certain insurers are not living up to this expectation and are denying coronavirus-related claims in bad faith.

One such lawsuit, Barbara Lane Snowden dba Hair Goals Club v. Twin City Fire Insurance Company,<sup>2</sup> was filed in Harris County, Texas. The suit alleges that Ms. Snowden's business sustained losses due to the COVID-19 outbreak and the County's business shutdown order. Ms. Snowden allegedly submitted a claim for covered losses to her property insurer, Twin City. According to the complaint, not only was the claim wrongfully denied, Twin City mishandled the claim and made material misrepresentations regarding the policy provisions and the applicable law.

In addition to a breach of contract claim, the Snowden suit seeks damages against Twin City for bad faith. Like many states, Texas law provides relief for many types of bad faith conduct via both common law and statute. The complaint in Snowden alleges that Twin City breached its common law duty of good faith and fair dealing by wrongfully denying the claim despite there being no reasonable basis to do so. The complaint also alleges two violations of Texas statute – misrepresentation of the policy, the facts, and/or the law in violation of Texas Insurance Code Chapter 541 and failure to timely pay

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<sup>1</sup>SDV is [tracking](#) insurance coverage litigation arising out of COVID-19 claims nationwide.

<sup>2</sup>Case No. 2020-19538, pending in Harris County, Texas.

the claim in violation of Texas Insurance Code Chapter 542. All of the wrongful conduct was allegedly done “knowingly” by Twin City. As a result, Ms. Snowden seeks significant damages from Twin City including three times the actual damages, consequential damages, compensatory damages, court costs, attorney’s fees, and interest.

Another case, Big Onion Tavern Group, LLC et al. v. Society Insurance, Inc.,<sup>3</sup> was brought by owners of restaurants and movie theaters in the Chicago area against their insurer, Society. The plaintiffs sought coverage for business interruption caused by a government-ordered shutdown under property policies that did not contain any exclusions for loss caused by virus. The complaint alleges that Society issued blanket denials “often within hours of receiving Plaintiffs’ claims – without first conducting any meaningful coverage investigation.”

The Big Onion plaintiffs filed suit against Society seeking a declaration that their business interruption losses are covered, along with damages for breach of contract and statutory bad faith. The bad faith claim alleges that Society violated 215 ILCS 5/154.6 by failing to conduct a meaningful investigation and by failing to provide reasonable and accurate explanations for its denials. The complaint further alleges that Society directed its agents “to make sham claim notifications” to avoid paying losses. As a consequence of Society’s allegedly vexatious and unreasonable conduct, the plaintiffs seek damages above and beyond the amounts owed under the policy, plus attorney’s fees, costs, and interest.

In addition to these pending lawsuits, lawmakers in several states have proposed bills that would require insurers to provide coverage for coronavirus-related business interruption losses.<sup>4</sup> In Massachusetts, the pending legislation specifically states that it is subject to Chapter 176D of the General Laws, which concerns Unfair Methods of Competition and Unfair and Deceptive Acts and Practices – i.e., statutory bad faith.<sup>5</sup> The statute sets forth twelve categories of conduct that are prohibited in the insurance business, including misrepresentations, unfair claim settlement practices, failure to settle claims promptly where liability is reasonably clear, and failure to provide a reasonable explanation for a denial of coverage. By including this language in the bill, Massachusetts legislators are sending a clear message that if the bill becomes law, insurers must comply with its provisions in good faith.

Policyholders should be also aware of efforts by insurers to retroactively modify policies to exclude coronavirus related losses. Specifically, we are aware of one insurer attempting to exclude virus and bacteria losses on numerous lines of first party property policies – from commercial property to builder’s risk and inland marine – in the middle of the policy term.<sup>6</sup> This type of action by an insurer would almost certainly constitute bad faith, especially where there is no support in the policy for unilateral modification to the policy terms.

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<sup>3</sup>Case No. 1:20-cv-02005, pending in the United States District Court for the Northern District of Illinois, Eastern Division. Anna M. Perry of SDV described the facts of this case in detail on SDV’s [website](#).

<sup>4</sup>For more information on pending legislation, see [SDV’s COVID-19 resource page](#).

<sup>5</sup>While Chapter 176D does not provide a private right of action, plaintiffs may bring statutory bad faith claims under Chapter 93A. See Silva v. Steadfast Ins. Co., 87 Mass. App. Ct. 800, 803, 35 N.E.3d 401, 405 (2015).

<sup>6</sup>For more information on this issue, please see this [article](#) written by our colleague Theresa A. Guertin.

In light of the above, there are certain steps that policyholders should take to protect themselves when asserting a claim for COVID-19 related losses:

- **Know Your Policy:** It is critical that you have an opportunity to review a complete copy of your policy in advance of filing a claim. Oftentimes, policyholders are only provided with a copy of their policy's declaration page, which does not provide a clear picture of what losses are covered. The policy will provide the roadmap for coverage, and it is essential that you are aware of the types of coverage that are – and are not – provided. In particular, look for endorsements excluding coverage for virus or sick buildings, which may preclude recovery absent legislative action.
- **Consult with Counsel:** Reviewing your specific insurance policies and your first and third-party losses with insurance counsel can provide you with valuable insight as to the coverage available, along with a roadmap to recovery for covered losses. This will streamline the process and maintain the credibility of your claim.
- **Communicate with Your Insurer Early and Often:** Insurance policies require that insureds fulfill certain conditions in order to obtain coverage. For example, some policies have notice requirements and timelines for presentation of proof of loss statements. To err on the side of caution, you should put your insurer on notice of a loss, in writing, at the very first opportunity. In addition, it is important to consider the shelter in place/social distancing requirements and how it could impact policyholders in satisfying policy conditions. For example, policies often require that insureds protect their property, provide an inventory of loss, or provide a sworn statement about the claim. Policyholders should seek to provide the requested information to their insurer and be open to utilizing technology to assist them in preparing their claim.
- **Require Written Communications:** Correspond with your adjuster in writing whenever possible. If you are communicating with your adjuster verbally, ask that they confirm communications in writing. This is particularly important when an insurer is denying coverage because it will start the clock on your time to file any potential lawsuit against the insurer. If an insurer fails to respond in writing, consider sending an e-mail or a letter to your adjuster confirming the verbal discussion.
- **Keep a Claim Calendar:** Track all claim correspondence with the insurer in a separate calendar. This will provide a timeline for the insurer's investigation of your claim, which can be particularly significant in states that have legislation requiring prompt communications or prompt payment of claims. Courts have determined that statutory guidelines are not relaxed as a result of an emergency, and insurers will be held to these statutory requirements.

Ideally, policyholders should adopt these steps as best practices for all claims, including those involving losses due to COVID-19. For more information, contact Bethany L. Barrese at [blb@sdvlaw.com](mailto:blb@sdvlaw.com) or Stacy M. Manobianca at [smm@sdvlaw.com](mailto:smm@sdvlaw.com).