



Passion. Preparation. Persistence.

Volume 8, Issue 19

THE BASSETT BULLETIN™

Have You Checked The Time? The Notice Requirement of the Texas Insurance Code

If you are going to file a lawsuit against an insurance company, or if you work for an insurance company and have been sued for violations of the Texas Insurance Code, the party that is bringing the lawsuit must provide written notice of the claim and provide a 60 day notice period before the lawsuit is filed. *In re Cypress Tex. Lloyds*, No. 13–11–00070–CV, 2011 WL 3630515 (Tex. App.—Corpus Christi Aug. 15, 2011, orig. proceeding).

In this recent Court of Appeals matter, Cypress Texas Lloyds, an insurance company, has filed a mandamus with the Court of Appeals to compel the trial court to withdraw its Order denying Cypress's motion to abate, or stop, the trial court case and require Patricia Martinez, Cypress' insured and the person who filed the lawsuit against Cypress, to provide, among other things, the proper pre-suit notice of her lawsuit in compliance with the Texas Insurance Code. The Court of Appeals is to decide whether Martinez provided sufficient notice.

Background Facts

In 2008, Hurricane Dolly struck the Rio Grande Valley damaging Patricia Martinez' roof. At the time of the storm, Martinez had homeowner's insurance through a policy issued by Cypress. Martinez filed an insurance claim regarding the property damage and Cypress paid Martinez for her property damage. However, Martinez was dissatisfied with the payment because it was insufficient to make the repairs to her home.

Martinez filed her lawsuit against Cypress and sent Cypress an additional written notice of her claims *that same day*. Cypress filed its Answer to the lawsuit and, one month later, filed a Motion to Abate the suit on the grounds that Martinez had failed to send notice of the lawsuit.

As this will be relevant to the Court's reasoning, Martinez' lawsuit was filed on July 13, 2010. Cypress filed its Answer on August 16, 2010, and filed its Motion to Abate on September 15, 2010. The trial court held a hearing on the motion and issued its ruling in November 2010. The trial court denied Cypress' motion for abatement and Cypress filed this mandamus.

The Proper Notice

Under the Texas Insurance Code, a person that seeks damages from a company for violations of this Code must provide written notice to the other person or company not later than the 61st day before the date the action is filed. In other words, a party needs to send or receive the notice of the complaints and then wait 60 days before the lawsuit is filed. On the 61st day, the lawsuit can be filed. The notice, or letter, that is sent must (1) specifically state the complaint and (2) list the amount of damages including actual damages, expenses, and attorney's fees.

The purpose of the sixty day notice requirement, per the Texas Supreme Court, is to "discourage litigation and encourage settlements of consumer complaints." Further, pre-suit notice provides the opportunity for insurance companies to limit their damage exposure through an offer of settlement. This is one of the significant reasons as to why insurance companies want this notice period. It gives the company an opportunity to evaluate the claim and determine its options.

In the *Cypress* matter, Cypress argued that mandamus relief was warranted because the Texas Insurance Code requires pre-suit notice and Martinez' failure to give pre-suit notice deprived Cypress of its right to limit its damage exposure through an offer of settlement. Finally, Cypress argued that the notice provided by Martinez was insufficient to put them on notice of her specific complaints. The Texas Insurance Code requires that pre-suit notice include basic information, including the "specific complaint" and the amount of actual damages and expenses sought.

Texas courts have held that notice letters containing specific factual allegations supporting the causes of action, or at least enough information to imply those facts, satisfies the notice requirement. One of the reasons behind this notice period is to provide consumers the opportunity to resolve their issues and damages with an insurance company before the matter is litigated. In terms of how the notice letter is written or whether specific violations of the Texas Insurance Code are listed, the Court has held that if there is sufficient notice of the damages alleged and the amount of damages, then courts will typically allow that to serve as proper notice.

The *Cypress* Writ of Mandamus

The Court of Appeals denied Cypress' writ because Martinez provided sufficient notice and provided the proper amount of time under the Code. Specifically, Martinez filed her lawsuit and sent a letter to Cypress with additional complaints on July 13, 2010. By the

time Cypress filed its motion to stop the trial court case on September 15, 2010, more than 60 days had passed. The Texas Supreme Court held that the trial court was not required to give Cypress *another* 60 days to try and settle this claim. The filing of the lawsuit and additional notice letter started the clock ticking on the 60 day notice period.

Further, the Court held that Martinez had provided sufficient notice of her claims and damages because she specified the amount of her damages and provided enough factual allegations to support her causes of action.

Thoughts and Tips

1. In this case, Cypress followed the rules and timely filed its Motion to Abate. The Texas Insurance Code reads that a Defendant may file a Plea in Abatement not later than the 30th day after the date the person files an original Answer. In this situation, the timing of Cypress' motions arguably backfired on them because the Court held that Martinez' filing of her lawsuit was Cypress' first notice of claim and the 60 day notice period had expired by the time Cypress filed the Motion to Abate. Perhaps if Cypress had filed the Motion to Abate sooner, or with its original Answer, then there may have been a more favorable outcome for Cypress? It may be a better practice to get the Motion to Abate on file as soon as possible - - if not with your Answer.
2. What if the statute of limitations is about to expire? Under the Texas Insurance Code, notice is "not required" if giving notice is "impracticable" because the action "must be filed to prevent the statute of limitations from expiring," or "is asserted as a counter-claim." In order to qualify for this exception, a Plaintiff must plead and offer some proof that the giving of notice was "rendered impracticable" by the impending expiration of the limitations period. The courts typically rule in favor of the Defendant on this issue and it is a pretty tough threshold to show that the notice period is not required.
3. Finally, what constitutes sufficient notice of a claim and damages? Be as specific as possible and use as many factual details as possible. The letter cannot just parrot the Texas Insurance Code and list the damages. The letter must identify the facts or, at least, provide the basis for the court to imply the facts.

In contrast, if you receive such a notice of a violation against you, can you determine the specific complaints and allegations? As you read the notice, your focus should be more on the facts to support the alleged violations and less on whether the various code violations are listed. While the courts will typically review these letters in favor of the consumer, some courts have held that the notice was improper because it failed to describe the allegations with any sort of factual support or basis.



The Bassett Firm

**Two Turtle Creek Village
3838 Oak Lawn Avenue
Suite 1300
Dallas, Texas 75219
(214) 219-9900 Telephone
(214) 219-9456 Facsimile
Toll Free: 1-800-310-9769
www.thebassettfirm.com**

ATTORNEYS

- **MIKE H. BASSETT**
- **JENNIFER R. ASHMORE**
- **ROBERT L. MCGEE, JR.**
- **WILLIAM A. NEWMAN**
- **MICHAEL J. NOORDSY**
- **J. DANIEL OLIPHANT**
- **JAMES S. FREDERICK**
- **J. ANDREW ROBERTSON**
- **MATHEW SAMUEL**

Information regarding *The Bassett Bulletin*™ is available from Annie C. (acopeland@thebassettfirm.com) at (214) 219-9900. ©2004 The Bassett Firm. All rights reserved.

The Bassett Bulletin™ is published twenty-six times a year, and is a complimentary publication of The Bassett Firm.
