

# CLAIMS

## THE INSURER'S OBLIGATIONS, THE AGENT'S ROLE

Insurance policies are contracts. Both parties to the contract [the insured and the insurer] **have rights and duties** [obligations] pursuant to the contract.

We discussed some of the insured's most important claim-related obligations in the preceding document After The Storm—Maximizing Your Claim Recovery. **What about the insurer; what are its claim-related obligations?**

First, **the insurer is obligated to pay for loss or damage as more fully described and limited in the insurance policy.** For example, the ISO Commercial Property Building and Personal Property Coverage Form states:

"We [the insurer] will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss."

**Second, the insurer must comply with relevant principles of contract law and applicable Florida State Statute. Most important here is Florida Statute 626.9541:**

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.

(i) Unfair claim settlement practices

3. Committing or performing with such frequency as to indicate a general business practice any of the following:

- a. Failing to adopt and implement standards for the proper investigation of claims;
- b. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
- c. Failing to acknowledge and act promptly upon communications with respect to claims;
- d. Denying claims without conducting reasonable investigations based upon available information;
- e. Failing to affirm or deny full or partial coverage of claims, and, as to partial coverage, the dollar amount or extent of coverage, or failing to provide a written statement that the claim is being investigated, upon the written request of the insured within 30 days after proof-of-loss statements have been completed;
- f. Failing to promptly provide a reasonable explanation in writing to the insured 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;
- g. Failing to promptly notify the insured of any additional information necessary for the processing of a claim; or
- h. Failing to clearly explain the nature of the requested information and the reasons why such information is necessary."

Third, **the insurer has to be wary of Florida Statute 624.155.** Essentially, 624.155 gives the insured a "hammer" as follows:

(1) Any person may bring a civil action against an insurer when such person is damaged: (a) By a violation of any of the following provisions by the insurer:

1. Section 626.9541(1) (i)

(b) By the commission of any of the following acts by the insurer:

1. Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests;

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2. Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made; or
3. Except as to liability coverages, failing to promptly settle claims, when the obligation to settle a claim 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. Notwithstanding the provisions of the above to the contrary, a person pursuing a remedy under this section need not prove that such act was committed or performed with such frequency as to indicate a general business practice."

In summary, given all of the above, **the insurer must investigate, adjust and settle with its insured as required by the insurance contract and the law.**

### MARSH & MCLENNAN AGENCY'S ROLE

Generally, independent insurance agents lack contractual or legal authority to:

- Conclusively construe insuring agreements and other policy terms and condition
- Investigate and pay claims
- Commit the insurer to any course of action

Specifically, our contracts with various insurers are in line with the foregoing and, while holding us to certain basic standards of performance, e.g. provide accurate information to the insurer, are expressly drafted by the insurers to **recognize Marsh & McLennan Agency as the insured's representative.**

Given these limitations, **we function as our client's troubleshooter and advocate, doing whatever we reasonably can to compel insurers to live up to their contractual and statutory obligation to adjust and settle claims.**

How do we accomplish that?

- Maintain a staff of experienced Claim Consultants who understand the claims process from beginning to end;
- Focus on problem cases, becoming involved as soon as a client makes us aware that the insurer is not performing as required;
- Develop an in-depth understanding of the critical issues by communicating with adjusters, claim managers, executive management and attorneys;
- Devise and work to implement alternative claim management strategies as dictated by the facts;
- Realizing that coverage is the major factor in many claim-based disputes, remain current with Florida law as it relates to insurance coverage and approach coverage from a law of contracts perspective, using rules of policy analysis and interpretation to the client's benefit where possible;
- Explain claim and legal issues to client personnel as needed to help them navigate through the claim process as easily as possible

### CONCLUSION

We've reviewed the claims landscape from Maximizing Your Claim Recovery; Pre-Loss Strategies to After The Storm –Maximizing Your Claim Recovery, all in light of The Insurer's Obligations, The Agent's Role.

We hope some or all of this information will be of benefit to you, ultimately helping to put more money in your pocket if a loss occurs. If you have any questions, concerns, comments or suggestions, please contact Marsh & McLennan Agency.

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to be there for you in the

**MOMENTS  
THAT  
MATTER.**

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