

Question 8 – July 2013 – Selected Answer 1

1. Violation under applicable Texas consumer protection laws by Insureco and Albert

Peter may obtain recovery against Insureco for several violations of the Texas Insurance Code under the DTPA.

According to Texas law, the Insurance Code seeks to protect consumer against unfair and deceptive competition practices. A consumer has a claim under the DTPA if an insurance company engages in the acts prohibited by the Insurance Code. A consumer is one who seeks to acquire by lease or purchase goods or services. The Insurance Code prohibits insurance companies from engaging in misrepresentation of the insurance policy and coverage, failure to communicate with a reasonable period of time that the notice of the claim, failure to provide within a reasonable period of time the status of the claim, failure to provide within a reasonable period of time investigation of a claim, failure to act in good faith to approve and payout a claim where liability has become clear.

a. Violation for misrepresentation of insurance policy

According to the facts, Peter purchased an insurance policy from Insureco that provided that in the event Peter was disabled and unable to work, he would receive a monthly benefit equal to his regular salary for the length of his disability. Because Peter purchased an insurance policy, Peter qualified as a consumer under the DTPA. Insureco would have likely have a violation under the DTPA because it misrepresented the insurance policy that Peter signed up for. Peter was involved an automobile accident that led him to be totally medical condition that totally disabled him and not return to work for at least 12 month. According to the Insureco policy, Peter should have been able to successful file a clam under the Insureco policy.

Therefore Insureco would likely be liable under the Insurance Code of the DTPA for misrepresentation of an insurance policy.

b. failure to acknowledge receipt of an insurance claim.

Peter would be able to recover against Insureco for failure to acknowledge receipt of an insurance claim.

According to Texas law, an insurance company must acknowledge a properly filed insurance claim within the requirement under the Insurance Code. After Peter filed his claim a month passed without hearing anything from Insureco. Peter called to check on the status of his claim and was informed that he was in the process of reviewing the claim. Because Insureco admitted to being aware of the claim and failed to provide notice to Peter of his claim, they would be in violation of the Insurance Code under the DTPA.

Therefore, Peter would likely be able to recover against Insureco for the violation of failure to acknowledge receipt of an insurance claim.

c. failure to provide status of a claim within a reasonable time

Peter would likely be able to recover against Insureco for failure to acknowledge the status of the claim within a reasonable period of time.

Texas Insurance provides a timeline that insurance companies are provided to respond and communicate the status of the insurance claim.

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Texas Insurance provides a timeline that insurance companies are provided to respond and communicate the status of the insurance claim.

According to the facts Insureco took six months to complete its review of the claim. This response time violates the Insurance Code, thus Insureco would be liable under the Insurance Code.

Therefore, Insureco committed a violation of the Insurance Code when it failed to promptly notify Peter within the statutory time limits of his claim status.

d. failure to provide within a reasonable period of time investigation of a claim

Insureco violated the Texas Insurance Code because it failed to provide within a reasonable period of time the investigation of a claim.

According to the Insurance Code, an insurance company must conduct a reasonable and timely investigation of a claim under the insurance Code.

The facts state according to Albert, Insureco never conducted an investigation of the claim. This stipulated fact is sufficient for violation of the DTPA.

Thus, Insureco has violated the DTPA by not investigating Peter's insurance claim.

e. failure to provide settlement of a claim in good faith when liability has become clear

Insureco has violated a provision of the DTPA which requires that an insurance company settle a claim within a reasonable amount of time when liability has become clear. According to Texas Insurance Code an insurance company must settle a claim in good faith when liability has become reasonable clear. According to the facts, Peter has is disabled and unable to work per the provisions of the insurance policy. Because Peter has met the terms under the provision, Insureco should not deny Peter's claim under these facts.

Therefore, Insureco is in breach of the Insurance Code which is a violation under the DTPA.

2. Peter's claim for damages under the Insurance Code and the DTPA

Peter may recover punitive, additional, and exemplary damages for Insureco's violation under the Insurance Code.

According to Texas Law, a consumer may recover punitive damages under the Insurance Code if he can prove that the insurance company willfully and knowingly violated the provisions of the insurance code.

Here Insureco stated that as a matter of company practice it took six months to review claim. Peter also informed Albert that he was at risk for foreclosure and repossession if the claim were not paid out. Insureco continued to ignore calls from the consumer and refused to pay out the claim without conducting an investigation. This behavior amount to willfully breaching the Insurance Code which will allow for punitive damages.

Insureco may be liable for punitive damages if Peter can prove that they willfully breached the Insurance Code.

Peter may recover additional damages in the form of mental anguish and reasonable attorney fees. According to the Texas Insurance Code an insurance company who knowingly commits a violation of the insurance code may be liable for mental anguish and reasonable attorney fees.

Here Insureco was aware of the debilitating injury of Peter. Insureco continued through its agent to deny the claim and fail to conduct an investigation. Peter had to go under the care of a psychiatrist because of the stress of the home foreclosure. This amounts to mental anguish and liability for mental anguish under the Code.

Therefore Insureco knowingly committed a violation of the Insurance Code and would be liable for additional damages.

Because of the foregoing reasons Insureco may also be liable under the DTPA for treble damages up to three times of the amount of economic damages due to its willful breach of the Insurance Code.

Therefore, Insureco would be liable under the Insurance Code for punitive, additional, and exemplary damages.

Question 8 – July 2013 – Selected Answer 2

1. Peter has claims against Albert and Insureco for violations for the Deceptive Trade Practices Act (DTPA) and the Insurance Code.

The DTPA is designed to protect consumers from deceptive business practices and misrepresentations. A person is a consumer if he sought or acquired goods or services for lease or purchase. A service includes insurance coverage. A consumer has a cause of action under the DPTA for (1) violation of the DTPA laundry list, a list of prohibited misrepresentations and practices, (2) breach of warranty, (3) unconscionable acts or course of conduct, (4) violations of the Insurance Code, and (5) violations of other tie-in statutes.

Laundry list

A defendant may not represent that an agreement confers rights or remedies when the agreement does not. The misrepresentation need not be intentional or knowing. However, the plaintiff must show that he relied to his detriment on the misrepresentation. In this case, the policy stated that Peter would receive a monthly benefit equal to his regular salary for the length of his disability. Ultimately, Insureco

did not provide those remedies. Peter can show that he relied on the agreement because he did not seek out any other insurance policy because he believed the Insureco would cover him.

Unconscionability

A defendant is liable for unconscionable conduct when the defendant takes advantage of the consumer's lack of knowledge or expertise to an unfairly gross degree. The behavior must be flagrant, glaring, and unmitigated. Generally, a claim for unconscionability arises out of a consumer's technical lack of knowledge with regard to a machine or device. However, Peter may have a claim that his lack of knowledge about the insurance policy or that Insureco took advantage of its ridiculous settlement policies and investigation practices. Certainly, the conduct was so atrocious and Albert's callousness for Peter's disability and need for disability payments to avoid foreclosure of his home and repossession of his vehicle, an argument could be made that Insureco's course of conduct was unconscionable.

Insurance Code violations

Under the Insurance Code, any person seeking or obtaining insurance coverage or policy may recover against any other person involved in selling insurance. Generally, if a plaintiff is a consumer under the DTPA, the plaintiff is also a person under the Insurance Code. Under the Insurance Code, an insurance is prohibiting from misrepresenting the terms of a policy as well as the extent of its coverage or benefits. It may not circulate false information as well. In this case, Insureco misrepresented the quality (and extent) of their coverage when it stated that Peter would receive a disability benefit equal to his regular salary for the length of his disability. Additionally, the fact that Insureco would not pay the claim if Peter had other coverage was not mentioned in the policy.

Additionally, an insurance company violates the Insurance Code if it (1) does not approve or deny a claim within a reasonable amount of time, (2) denies a claim without conducting a reasonable investigation, (3) does not respond to an insured's inquiries in a reasonable amount of time, (4) if it fails to provide a reasonable explanation of a denial of a claim the Insurance Code, or (5) if it fails to pay out a claim after liability has become reasonably clear. In this case, Insureco did not even acknowledge receipt of Peter's claim for more than a month and it took Insureco more than six months to make a decision on Peter's claim, which it ultimately denied. Insureco failed to conduct a reasonable investigation - it did not obtain or request any other documentation and stating that it denied Peter's claim merely because Peter's doctor was involved in another suspicious claim - and it did not conduct the investigation in a reasonable amount of time - Albert told Peter that Insureco takes six months to review total disability claims even if they don't really need that long and sure enough, Peter did not hear from Insureco for more than six months. Insureco failed to provide any explanation when it initially denied Peter's claim. Finally, Albert failed to timely respond to Peter's calls and inquiries, merely stating that he would get to it when he would. Liability appears to be clear under the policy Peter had with Insureco - they would pay in the event he became disabled. Their failure to pay after liability has become clear is also a violation.

2. Peter may recover damages for mental anguish as well as treble damages through the DTPA and Insurance Code.

Under the DTPA, a consumer may recover economic damages for violations that are the producing cause of his harm. Economic damages includes lost wages, medical expenses, and any other form of pecuniary loss. Additionally, upon a showing that the defendant's conduct was intentional or knowing, a plaintiff may recover damages for mental anguish as well as additional discretionary damages. A plaintiff may recover damages for mental anguish i.e. pain and suffering, if he can show that the violation caused

him stress and anxiety to the extent that it substantially interfered with his daily routine. Additionally, the Insurance Code provides for broader remedies. For violations of the Insurance Code, a plaintiff may recover actual damage (i.e. economic damages plus mental anguish and other provable damages), regardless of a showing of intentional or knowing misconduct.

Peter is likely to recover damages for his lost wages, his repossessed car, and his foreclosed home. There is also sufficient evidence to find that Insureco and Albert acted knowingly and intentionally when they dragged their feet on the claim and ultimately denied it without cause - specifically Albert's statements that Insureco "always" waits six months on total disability claims regardless of the information to support the claim as well as his statement that he'd back to Peter "when he got around to it." As a result of the knowing and intentional misconduct, Peter will recover mental anguish damages because he has become so upset and stressed that he has had to seek professional psychiatric help as well as treble damages for their conduct. Additionally, because the conduct is knowing or intentional, Peter can recover additional discretionary damages - for a knowing violation, he can recover up to three times economic damages and for an intentional violation, he can recover up to three times actual damages.

Additionally, under Chapter 542 of the Insurance Code a person may recover an 18% penalty if an insurance company does not timely acknowledge (5 days), begin an investigation of the claim (15 days), approve or deny a claim (15 days may be extended to 45 days, depending on investigation), or pay out a claim when liability has become reasonably clear (5 days). Peter will be entitled to the penalty as well because Insureco violated a substantial amount of the Code.

Finally, a prevailing consumer is entitled to all reasonably necessary attorney's fees. If Peter succeeds, he is entitled to mandatory attorney's fees.

Question 8 – July 2013 – Selected Answer 3

I. Violations of Texas consumer protection laws by Insureco and Albert the DTPA is to be liberally construed to promote its primary purpose, which is to protect consumers who acquire goods or services by purchase or lease against unfair or deceptive practices. The DTPA has numerous tie-in statutes that allow a consumer to recover damages under the DTPA as well as claims under the DTPA and the tie-in statute. The DTPA protects consumers by providing a cause of action for misleading and deceptive practices under the laundry list of 27 violations, breach of warranty claims (merchantability and fitness for particular purpose) and from unconscionable practices (where the seller takes advantage of the consumer's lack of education or knowledge to a grossly unfair degree).

Under the insurance code, a principal is liable for the actions of the agent when the agent acts with apparent, actual, or implied authority on behalf of the principal. An insurance agent's actions make the insurance company liable for the agent's actions and the agent's knowledge is imputed to the insurance company. Under the insurance code's Unfair Settlement Practices Act, the insurance company must promptly investigate and settle claims within 15 business days of receipt of the claim and all documentation to process the claim. The insurance company must pay out a claim to its insured as soon as liability becomes reasonably clear. In the event the insurance company needs additional time to investigate a claim, it must provide notice to the insured and can obtain an additional 45 days. An insurance agent may not misrepresent part of the policy to the insured. The insurance company may not automatically deny a claim and must provide the insured with an explanation for the denial when denying a claim.

Here, Peter had paid for the insurance policy and was covered by the policy. Albert represented Insureco as its agent and therefore Insureco is also liable for the actions of Albert under agency theory. Peter will be able to sue for the following actions of Albert and Insureco:

A. Failure to investigate within 15 days

Albert and Insureco never "finished reviewing Peter's claim or conducted any investigation." They have a duty to promptly do so under the Texas insurance code and have violated that provision. Peter still had not been paid nor had his claim been investigated within 6 months of submitting it. Their policy of investigating for 6 months violates the insurance code. Albert and Insureco should have taken action within 15 business days of receipt and failed to do so. Furthermore, Albert should have returned Peter's phone calls and failure to do so also violates the insurance code and the DTPA.

B. Failure to promptly pay when liability has become reasonably clear

Albert and Insureco did not pay out on the policy even though they had the information that Peter was thoroughly examined by his doctor and the doctor determined that he would require on-going treatment and that he was totally disabled and would be unable to return to work for at least 12 months. Liability was reasonably clear in this case and considering that Insureco failed to investigate, they are liable to Peter under his insurance policy and have violated section 541 of the Insurance code.

C. Misrepresenting Policy

Albert and Insureco misrepresented the policy to Peter and stated that Insureco would not pay on that claim if Peter had other insurance that applied. This violates the insurance code as well as the DTPA because the seller/insurer may not make false or misleading claims.

D. Failure to provide a reason for denial and the automatic denial Albert and Insureco automatically denied Peter's claim based on his doctor but did not provide any explanation for the denial until Peter called and Albert said it was "suspicious circumstances." Such practices violate the unfair settlement practices act under the insurance code. Albert and Insureco violated the insurance code by failing to provide a reason for the denial as well as for the automatic denial.

Therefore, Albert and Insureco have violated the unfair settlement practices act under the insurance code as well as the DTPA for their conduct.

II. Peter may be able to recover punitive, additional, or exemplary damages Under the DTPA; the remedies available are economic damages, costs, and attorney's fees. Upon a showing of a knowing violation, the consumer can get mental anguish as well as treble damages. Upon a showing of an intentional violation, the consumer can get treble mental anguish and economic damages. Knowing requires that the seller make statements knowing that they are false, deceptive, or misleading. Intentional requires that the seller make statements knowing they are false, deceptive, or misleading and intend that the consumer rely on them. Under the insurance code, when an insurance company fails to promptly settle a claim when liability is reasonably clear or where an insurance company fails to investigate a claim, the insurance company is subject to punitive damages as well as criminal liability and fines in the amount of at least \$100 per violation. Furthermore, where an agent has knowledge of potential damages to the insured, that knowledge is imputed to the principal and the insurance company is liable for those damages.

Here, Albert and Insureco failed to investigate the claim, failed to settle it when liability was reasonably clear, and failed to deny or approve the claim within 15 business days. Therefore, they are liable under

the insurance code for punitive damages as well as criminally for fines. Peter had informed Albert of the potential foreclosure and repossession of his car and home. Therefore, Insureco and Albert had knowledge that they may be on the hook for damages related to that as well. Under the insurance code, they are liable for the loss in his credit rating as well as for punitive damages for their gross violation. 541 of the insurance code is a DTPA tie-in statute. Under the DTPA, Peter will be able to recover his economic damages relating to their violations as well as his mental anguish if he can demonstrate they acted knowingly or intentionally. It appears that they certainly acted knowingly and therefore he will be able to get mental anguish, treble economic damages, costs, and attorneys' fees. If Peter can prove they acted intentionally (which seems very likely), he will be able to get treble economic and mental anguish, costs, and attorneys' fees. Since Peter has been seeing a psychiatrist because of this ordeal, mental anguish will be relatively easy to prove.

Therefore, Peter will likely be able to recover (upon a showing of intentional conduct) treble mental anguish and economic damages, costs, attorneys' fees, and punitive damages. He will be able to recover punitive damages under the insurance code.