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1. Connie can seek remedies under the DTPA for Laundry List Violations, Unconscionability, Insurance Code Violations, and under the Texas Common Law Good Faith in Fair Settlement of Insurance Claims.

The issue is, when does an insurance company violate the DTPA giving rise to liability, what timeline does an insurance company have to manage claims of their clients, and what damages are available to a consumer for violations of the DTPA and the Insurance Code?

The DTPA

The Deceptive Trade Practices Act (DTPA) provides Texas consumers with protection from unlawful, unfair, or deceptive trade practices. A consumer under the DTPA is anyone who has sought or acquired, by purchase or lease, goods or services. A consumer can seek protection under the DTPA for (1) Laundry List Violations; (2) Unconscionability; (3) Breach of Warranty; (4) Insurance Code Violations.

Laundry List

The DTPA Laundry List is a list of 27 bad acts or practices that give rise to a claim for relief, the most commonly used are subsections 5&7, misrepresentation of the quality and character of goods; subsection 12 for the misrepresentation of the legal rights and remedies; and subsection 24 for failure to disclose information that went to the basis of the bargain. A consumer who establishes a violation under the DTPA may seek a remedy when they rely to their detriment on the false, misleading or deceptive information, and can show they would not have entered the bargain but-for the misleading or fraudulent representations. A consumer must also provide 60-day "pre-suit" notice before filing an action, describing with particularity their complaint, list their damages, including attorney's fees, and give 60-days for a response/settlement offer.

Unconscionability

A claim for unconscionability is available when the consumer was taken advantage of due to their lack of knowledge, ability, experience or capacity to a "grossly unfair degree" and the result is likely to shock the conscious of an ordinary person.

Remedies

Remedies under the DTPA are economic damages, plus up to 3x economic damages and mental anguish if they can prove the violation was "knowingly" and up to 3x economic and 3x mental anguish if they can prove the violation "intentional." Knowingly requires actual awareness of falsity/deceptive

facts; and intentional requires knowledge plus the specific intent to induce the consumer. Additionally, consumers may get reasonable attorneys fees, not based on a contingency, along with other costs and fees.

Sections 541 and 542 of the Insurance Code

Section 541 of the Insurance Code provides consumers from protection from insurance companies from deceptive, false, or misleading practices in what their policy contains, how to settle a claim, prompt payment of a claim, and is actionable ("ties in") to the DTPA. An insurance company is strictly required to adhere to proper procedure in order to avoid liability under the DTPA. Section 541 requires insurance companies not mislead, lie to, deceive or intice clients into buying insurance, and cannot misrepresent to the clients the level of coverage nor give incomplete information about properly filing a claim to avoid paying the claim. A violation of Section 541 entitles the consumer to actual damages (which includes economic damages, along with any other damages naturally flowing from the violation). In addition, a form of punitive damages is also available, and if a consumer can show the insurance company acted "knowingly" they can be awarded up to three times their actual damages. Knowingly requires actual awareness of the falsity or deceptive nature of the statements. Finally, the consumer is entitled to attorney's fees and costs.

Section 542 of the Insurance Code specifically governs the prompt payment of insurance claims. The rules are particular, and require that within **15-days** of receipt of a claim, an insurance company must acknowledge receipt of the claim and request any additional supporting documentation that may be required. The company must then, within **15 days** of receipt of all the necessary supplemental documentation from the consumer, with honest good faith and due dilligence, investigate the claim. Once they have done that investigation and has reasonably determined they are liable under the claim, the insurance company must make propmt payment of the claim with **5-days**. Section 542 does not tie in to the DTPA, but instead damages available for a violation of this section are actual damages, plus 18% interest of the actual claim, along with attorneys fees and costs of court.

Here, Connie will be entitled to claims status as a consumer because she sought and acquired the services of the insurance company. It does not appear that they made an false or deceptive claims with respect to the sale of the policy. However, the policy clearly stated it was coverage for any damage or loss to the warehouse and its contents, except for damage caused by arson. Once the fire erupted, Connie was issued a report from the fire department with a determination that the fire was accidental. Connie was distraught and sought the advice of Insureco on filing a claim to collect on her policy, and she was misled by a representative that "all" she had to do was file a one-page claim form, which she

under their duty to investigate the claim, they should have asked for any documents from the fire

department or other investigative agencies. Under Section 542, upon receipt of the one-page form, Insureco had 15-days to acknowledge receipt and request necessary documentation to complete their required investigation into the claim. However, Insureco had not responded until they sent a rejection letter on October 15, 2016. This was a direct violation of Section 542 because they did not conduct any independent investigation, they did not request additional documentation, they did not acknowledge receipt of the claim within 15-days (or at all, for that matter), they did not use good faith or due diligence. Their reasons for denying the claim were conclusory, based on no actual investigation or documentation. They claim their denial was because Connie failed to provide "all the required forms" but she never requested any, and further the representative only told her she needed to complete the one-page form.

Due to the clear violations of the insurance code, Sections 541 & 542, Connie has a claim as a consumer under the DTPA to seek damages. If she first sends her pre-suit notice and waits the statutory 60-days and gets no offer of settlement, Connie can file under the DTPA for her damages due to violations of the laundry list (misrepresentation of the way to file a claim), unconscionability for the grossly unfair way in which Insureco took payment for services they did not render, causing her to become distraught and outright denying her claim, as well as for claims under the insurance code Sections 541 & 542.

Connie will likely recover her actual damages, can likely treble her damages if she can argue Insureco acted "knowingly" (which certainly they did), and may also be entitled to mental anguish damages under the DTPA if she can prove their violations caused a disruption to her daily routine. Additionally, Connie can seek reasonable attorney's fees, 18% interest on her claim under Sec. 542, as well as costs and fees.

The Common Law Duty of Good Faith in Settlement of Insurance Claims

Texas is one of the few states that has a common law duty to act in good faith in the fair and equitable settlement of insurance claims. This common law protection is available to protect against malicious, fraudulent, wanton and willful failure to settle an insurance claim in good faith. A violation will entitle the claimant to actual damages as well as attorneys fees and costs. Here, Connie will likely have a common law claim, although she will not likely need it due to the extensive protection of the DTPA and Insurance Code.

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Connie has several options for proceeding in a case against Insureco. She will only be entitled to one recovery, however.

Chapter 541

To begin, she can file a claim under Chapter 541 of the Texas Insurance Code. The purpose of Chapter 541 is to discourage improper dealings amongst Texas insurers and to protect those who purchase and rely on insurance policies in Texas. Connie has three options for pursuing her Chapter 541 claim. First, Chapter 541 prohibits insurance companies from, among other acts, making misrepresentations with respects to the contents of a policy. Here, an Insureco representative told Connie that "all" she needed to do file her claim was submit a one-page form, while in reality the company and her policy required many more forms to submit a valid claim. The representative's statement was a misrepresentation as to what was required, and Connie can show that she relied on it.

Second, Chapter 541 requires insurance companies to act in good faith when it comes to settling claims. If an insurance company does not make a good faith effort to settle a claim once it has become reasonably clear that liability has been established, then the insurance company has breached its statutory duty to act in good faith. Here, Insureco did not make a good faith effort to settle Connie's claim. The company misled her as to what was required, waited "many months" to respond to her claim, ignored the evidence Connie presented in support of her claim, and then denied her claim because the company "assumed" that Connie's conclusive evidence did not apply or was incorrect. This is a breach of Insureco's Chapter 541 duty to use good faith when it comes to settling a claim, and will give rise to a cause of action for Connie.

Finally, Chapter 541 creates a cause of action when an insurance company violates the so called "laundry list" of the Texas Deceptive Trade Practices Act. Insureco's likely did not violate the DTPA laundry list (discussed below), but if it had then the company would have an additional basis of liability under Chapter 541.

Under a Chapter 541 claim, Connie can request an injunction to stop Insureco's unfair settlement practices (thereby requiring the company to settle) and can receive any actual damages caused by company's conduct. Actual damages are defined as all economic

damages, meaning any pecuniary loss suffered by Connie as a result of the company's action, but also any damages created by emotional distress or pain and suffering. If Connie is successful in her Chapter 541 claim, she is also entitled to recover attorney's fees.

Deceptive Trade Practices Act

As mentioned above, Chapter 541 creates a cause of action for independent violations of the "laundry list" of the Texas Deceptive Trade Practices Act (DTPA). The DTPA creates a similar cause of action for independent violations of Chapter 541. Under the DTPA a consumer has a cause of action against anyone who has violated the "laundry list," acted unconscionably, breached a warranty, or violated Chapter 541 in connection with a transaction that forms the basis of the complaint. A "consumer" is defined as any entity who acquires or seeks to acquire, by purchase or lease, a good for consumer use. Connie purchased her insurance policy, so she qualifies as a consumer, and the actions at issue by Insureco were in connection with her purchase that form the basis of Connie's complaint. Therefore Connie may validly turn to the DTPA to pursue a cause of action against Insureco.

As mentioned, Connie will have a cause of action under the DTPA for Insureco's violations of Chapter 541, discussed above.

Next, Connie could argue that Insureco violated the DTPA laundry list (which, as mentioned above, also qualified her for an additional and independent cause of action through Chapter 541). The DTPA laundry list encompasses a wide range of prohibited activities, the most commonly litigated of which is a seller making a misrepresentation that a consumer relied on in making a transaction. However, there does not appear to have been any misrepresentation made to Connie when she *purchased* her insurance - the misrepresentation was made when she made her claim on the policy. The laundry list will thus not create a cause of action for Connie.

Connie could argue that Insureco acted unconscionably in selling her the policy, but there is no evidence that the company took "gross advantage" of her in selling her the policy. As mentioned above, Connie's claim is rooted in the misrepresentations that were made when she made a claim on the policy, not when she purchased the policy itself.

Connie may have a claim for breach of warranty under the DTPA, however. The DTPA

does not create any warranties, it only creates a venue for plaintiffs to enforce warranties that are created independently of the Act. Since the Insureco policy expressly covers all damage to the warehouse (except that caused by arson) and the fire was not caused by arson, any lack of coverage could arguably be a breach of the express warranty to provide coverage. It is not clear that this argument would succeed, however, and Connie certainly has stronger arguments in her case against Insureco.

Regardless of whether any other DTPA claims will succeed, Connie can file a DTPA claim against Insureco for the company's violations of Chapter 541. Under a DTPA claim, Connie would be entitled to economic damages, meaning any pecuniary losses she can show were caused by the company's actions. If Connie can show that the Insureco representative acted knowingly in her misrepresentative directions on how to file a claim, then Connie will be able to recover for emotional distress damages (if she can meet the high burden of proof such damages require). In addition, the DTPA provides that additional damages may be imposed. If Connie can show that the Insureco representative acted knowingly, Connie will be entitled to recover a total of up to three times her economic damages. If Connie can show that the representative acted intentionally, Connie can recover up to three times the sum of both her economic damages and any emotional distress damages. If her DTPA claim is successful she is entitled to recover her attorney's fees. Connie would also be entitled to any other equitable remedies that may be appropriate.

Prompt Payment of Claims Act

Connie can also file a claim under the Prompt Payment of Claims Act. This Texas statute requires that an insurance company settle insurance claims promptly. Under the statute, an insurance company must approve or deny a claim within 15 days of receiving it, or provide an explanation for why the company cannot approve or deny the claim. In some cases the insurance company will be able to extend the deadline to 45 days after receiving the claim, but the company must provide good cause and notice. Here, Insureco waited "many months" to deny Connie's claim, in clear violation of the Act. Since Connie can show that (1) she is entitled to recover under her insurance claim, (2) she provided the details requested by the company, and (3) the company violated the Prompt Payment of Claims Act, Connie is entitled to recover an 18% penalty and attorney's fees.

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CONCLUSION:

Connie may recover damages under Ch. 451 and Ch. 452 of the Texas Insurance Code and under the Deceptive Trade Practices Act (DTPA).

Insurance Code Claims

First, Connie may recover under the Insurance Code. The Insurance Code includes two chapters relevant to this question: Chapter 451 which provides consumer protection and unfair competition protections, and Chapter 452 which sets out requirements for the prompt payment of claims. Connie has claims under both.

Chapter 451

Chapter 451 of the Insurance Code protects persons who purchase insurance in Texas. Any person or entity that purchases insurance may be a proper plaintiff. Here, because Connie is a person who purchased insurance, she is a proper plaintiff.

Chapter 451 prohibits misleading and deceptive practices to do with the sale of insurance. Specifically, it prohibits insurers and their agents from making misleading or deceptive statements or misrepresenting information about a policy's existence or terms. It requires insurers to make reasonable investigations before denying claims. If the insurer rejects the claim, the insurer must explain the reasons for its denial. If liability becomes reasonably clear, insurers must act reasonably and fairly to effectuate a fair and equitable settlement with the insured. Further, the Insurance Code allows a person to bring claims for violations of the DTPA "laundry list" under it.

Here, Insureco repeatedly violated these provisions. First, Insuredco made a misleading claim either when a representative told Connie that "all" she needed to do was to submit a one-page claim form or when it told Connie that she failed to submit "all the required forms." Because Connie submitted the one-page claim form as she was told, at least one of these statements must have been false.

Second, Insuredco does not appear to have made a reasonable investigation of Connie's

claim before denying it. Insuredco said that it "assumed" the cause of the fire was arson, but an assumption is not a reasonable investigation. Insuredco could have made an investigation and come to a conclusion that the fire was not accidental despite the Fire Department's report, but it did not do so here. Instead, it rejected the claim without a reasonable investigation, thereby violating its statutory duty to investigate before denying.

Third, Insuredco was required to adequately explain the reasons for its denial. As discussed above, assuming that the fire was arson was not a reasonable conclusion without an adequate investigation; a statement about this assumption in the letter of denial is probably not adequate explanation to meet the duty to explain the denial. Moreover, Insuredco did not explain what required forms Connie was missing; therefore, its explanation of denial for lack of required forms was also inadequate.

Fourth, Insuredco failed to act diligently to effectuate a reasonable and equitable settlement with Connie, the insured, upon liability becoming reasonably clear. Connie's submission of the Fire Department's report determining the fire was accidental is sufficient to find that liability is "reasonably clear." Insuredco might have timely independently investigated the report, but its failure to do so means that it cannot rebut the report; therefore, because the report is the only evidence as to the cause of the fire and states that it was accidental, liability is reasonably clear. Insuredco violated the Insurance Code by failing to act reasonably to effectuate a fair settlement.

Fifth, Insuredco likely violated the DTPA laundry list. See below for detailed discussion.

Chapter 452: The Prompt Claims Payment Act

Chapter 452 of the Insurance Code sets requirements for timeliness in responding to and paying claims.

First, an insurance company is required to respond to the initial claim notice within 15 days. If possible, the insurance company must accept or deny the claim within those 15 days. If it requires an extension, such as to investigate, it must notify the insured of its intent to extend, and it must resolve the claim within 45 days. Here, Insuredco did not respond to Connie for "many months" after she submitted the claim form. Insuredco failed to respond to Connie within 15 days, failed to notify her that it required an extension to investigate, and failed to meet the extended deadline. Therefore, Insuredco violated the

Prompt Claims Payment Act.

DTPA Claims

In addition, Connie may recover under the DTPA. The DTPA is a consumer protection law that is broadly construed to protect Texas consumers from unfair and deceptive trade practices. Here, Connie is a proper plaintiff because she is a consumer: she sought to acquire a service (insurance) by purchase. She may bring claims under the DTPA against Insuredco so long as the claim is in connection to the transaction; this claim is based on failure to pay the insurance proceeds and act reasonably during the claim process, so it is a proper claim and Insuredco is a proper defendant.

The DTPA allows four types of claims: 1) violations of the laundry list, 2) breach of warranty arising independently of the DTPA, 3) unconscionable transactions, and 4) breaches of the Insurance Code ch. 451. Here, there are no warranties at issue. These claims are cumulative, but a consumer may only make a single recovery.

Laundry List

The DTPA laundry list is a set of practices and acts that are prima facie misleading, deceptive, or fraudulent in the DTPA. There are more than 30 possible claims in the list. They include a misrepresentation about the character or quality of a good or service, intentional failure to disclose a material fact with intent to induce the consumer, and misrepresentation about a legal right. Here, Connie might be able to show that Insuredco made misrepresentations about the procedure to file an insurance claim or that Insuredco intentionally failed to disclose the proper procedure in an attempt to induce Connie into failing to follow the required procedure. These would constitute violations of the laundry list. Also note that these violations may be brought through the Insurance code as violations of the laundry list (see above).

Unconscionability

Connie might be able to show that Insuredco acted unconscionably. Under the DTPA, an unconscionable transaction is one that takes advantage of the consumer's lack of knowledge, education, or experience to a grossly unfair degree. Grossly unfair is a very high standard; it is defined as flagrant, noticeably unfair. Here, Connie might argue that Insuredco took advantage of her lack of experience and knowledge about the insurance industry, the requirements for submitting a claim, and her rights under the consumer

protection laws. If she convinces a court that Insuredco did take advantage of her and that it was "grossly" unfair, she will succeed on this claim.

Insurance Code Violation

As discussed above, a consumer may bring violations of the insurance code under the DTPA. Here, Insuredco violated the insurance code, so Connie may bring claims under the DTPA.

Remedies

Connie may recover damages under the insurance code and DTPA, but she may only make a single recovery. This section will discuss the remedies provided by each law and conclude with her maximum recovery.

Insurance Code Damages

Chapter 451: Under Chapter 451 of the Insurance Code, Connie may recover up to treble actual damages. Actual damages are defined as any damages remedy available at common law including pecuniary loss, mental anguish, pain and suffering, etc. Here, there is no evidence regarding what Connie's actual damages might include, but they would certainly include the claim she is owed, any losses resulting from the late payment, and any costs associated with recovering it. Additionally, if she suffered mental anguish, she can recover for it under the insurance code. Additionally, Connie can probably recover treble actual damages because she can probably show that Insuredco acted knowingly when it violated the Insurance Code. There is no evidence that these violations were merely mistakes; Insuredco ignore many phone calls by Connie and affirmatively sent her a denial letter that did not meet the requirements for explanation.

Chapter 452: Under Chapter 452, Connie may recover 18% interest on her insurance claim for Insuredco's failure to comply with the time requirements of the Prompt Claims Payment Act.

DTPA Damages

The DTPA allows a consumer to recover economic damages for violations. Economic damages are considerably narrower than actual damages and include only pecuniary

losses proved by the consumer. Here, on a claim through the DTPA, Connie can recover economic damages as a result of violations of the laundry list, insurance code, and possibly unconscionability.

Additionally, Connie can probably recover treble economic damages if she can show that Insuredco acted knowingly when it violated the DTPA. As discussed above, Connie can probably show that Insuredco's violations were knowing because there were not mere errors; Insuredco ignored her phone calls repeatedly and sent her a denial notice that did not adequately explain the reasons for her denial (an insurance code violation). If Connie succeeds in showing that Insuredco's violations were knowing, she would also be entitled to recover mental anguish damages if she could prove them. Mental anguish damages compensate for severe anguish, such as that which would disrupt the consumer's daily routine. There is no evidence here that Connie suffered such mental anguish for which she could recover.

Finally, if Connie could show that Insuredco intentionally (knowing + intent) violated the DTPA, she could recover treble economic damages and treble mental anguish damages. Since Connie probably does not have any mental anguish damages, this point is moot.

Other Damages

Both the Insurance Code and the DTPA entitle a prevailing plaintiff to recover attorney fees. The fees must be awarded on a \$/hour basis for work completed, not as a percentage of the damage award.

Damages Conclusion

Because Connie may make only a single recovery for her damages, her better recovery will be through the Insurance Code. The insurance code will allow her to recover treble actual damages, a broader recovery than her treble economic damages under the DTPA.

Common Law

Texas common law also allows insured claimants to recover in tort when an insurer acts in severely bad faith. The bar to recovery is very high, and it is doubtful that Connie can meet it here. However, if she does succeed in such a showing, she would be entitled to enhance her award with punitive damages.
