

# The Ohio Unfair Claims Settlement Practices Act

## Guidance for the Claims and Litigation Processes

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 Ohio's Unfair Claims Settlement Practices Act ("the Act") guides the handling and settlement of insurance claims both before and, in certain circumstances, during litigation. As such, its provisions are relevant to insurers pre-suit, insurance defense counsel, and plaintiff's counsel. The Act is located in Ohio Administrative Code ("Ohio Adm.Code") Sections 3901-1-07 (Unfair Trade Practices) and 3901-1-54 (Unfair Property & Casualty Claims Settlement Practices).

Importantly, the Act creates no private right of action. *Strack v. Westfield Companies.*, 33 Ohio App.3d 336 (9th Dist.1986); *Furr v. State Farm Mutual Auto Insurance Co.*, 128 Ohio App.3d 607 (6th Dist.1998); Ohio Adm.Code 3901-1-54(A) (stating that "[n]othing in this rule shall be construed to create or imply a private cause of action for violation of this rule."). A violation of the Act may, however, be admissible in evidence to demonstrate that an insurer was violating its obligation of good faith by refusing to pay a claim without reasonable justification. *Furr v. State Farm Mut. Auto. Ins. Co.*, 128 Ohio App. 3d 607, 616-617 (6th Dist.1998). Further, after a written application is submitted to the superintendent, the Ohio Department of Insurance investigates alleged violations and may impose penalties for infractions. R.C. 3901.22.

Generally, the Act speaks to the handling and settlement of both first-party (insureds) and third-party (claimants) insurance claims in several important ways. It specifies time frames in which an insurer should respond and investigate all claims. For instance, an insurer should generally acknowledge a claim, provide any applicable claim forms, and respond to communications within 15 days of notice of a claim, except as otherwise specified when a matter is in litigation. Ohio Adm.Code 3901-

1-07(C); Ohio Adm.Code 3901-1-54(F). The insurer should then open a claim file and commence an investigation of the claim within 21 days of notice. Ohio Adm.Code 3901-1-07(C) (4). The insurer should also respond to a proof of loss within 21 days and provide updates every 45 days thereafter until final determination. Ohio Adm.Code 3901-1-07(C)(12); Ohio Adm.Code 3901-1-54(G)(1).

The Act specifies certain information the insurer should provide to any claimant — especially if the claimant is unrepresented. The Act specifies that an insurer should notify any unrepresented insured or unrepresented third-party claimant 60 days before any limitations period expires (either statutory or contractual). Ohio Adm.Code 3901-1-54(G)(5). An insured is also entitled to notice of the right to renegotiate the cash settlement of a total loss auto claim if a comparable replacement vehicle is not available within 35 days of payment. Ohio Adm.Code 3901-1-54(H)(7)(f).

The Act also places certain duties of providing information on the first- or third-party claimants. One such requirement is to provide the insurer with documentation of the purchase of a replacement vehicle within 33 days after receipt of the cash settlement for a total loss auto claim. Ohio Adm.Code 3901-1-54(H)(7)(f) & (H)(7)(g). That requirement applies as a predicate to an insurer's obligation to reimburse sales tax. Additionally, the Act has numerous claim specific provisions dealing with the handling and resolution of, for instance, auto and fire loss claims, which discussion is beyond the scope of this article.

The Act instructs that insurers have an independent duty to investigate claims. Thus, insurers should generally independently investigate the claim and analyze the coverage provided. The insurer should advise of the

availability of coverage if the facts discovered during the investigation so indicate. Ohio Adm.Code 3901-1-54(E)(1) ("An insurer shall fully disclose to first party claimants all pertinent benefits, coverages or other provisions of an insurance contract under which a claim is presented."). The insurer should not misrepresent the pertinent facts or policy provisions relating to coverage. Ohio Adm.Code 3901-1-07(C)(1). Even if the insured demands that the insurer not pay a third-party claim against that insured based on some asserted defense to liability, the insurer has the right to independently investigate and pay the third-party claim based on the insurer's own independent investigation. Ohio Adm.Code 3901-1-07(C)(14).

If coverage is denied based on an insurance policy term, condition, or exclusion, the insurer should reference the specific language on which the coverage denial is based. See, e.g., Ohio Adm.Code 3901-1-07(C)(1)(b). Ohio Adm.Code 3901-1-54(G)(2) further states this requirement and mandates that the insurer document the basis for the denial in its file: "No insurer shall deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to such provision, condition, or exclusion is included in the denial. The claim file of the insurer shall contain documentation of the denial . . ."

As to insureds, claims should be left open without final settlement or release unless the policy limits are exhausted or there is a compromise settlement of a dispute between the insurer and insured as to "coverage and the amount payable under the insurance contract." Ohio Adm.Code 3901-1-54(E) (5). Thus, insureds are generally not required to sign a release of the insurer unless there is a documented dispute regarding the amount

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or availability of coverage. The same general provision applies to third parties to the extent partial payment is made for a claim. Ohio Adm. Code 3901-1-54(E)(6). Thus, insurers should not issue partial payment checks to third-party claimants with release language. Rather, a separate release is advisable if settlement or full and final payment has occurred.

The Act also provides guidance where a claim presents issues of liability by a third party for the loss or when multiple insurers are covering the same loss. First-party claims should generally be resolved without regard to “whether the responsibility for payment should be assumed by others.” Ohio Adm. Code 3901-1-54(G)(3). Thus, first-party claims should generally be resolved with the insured and should not be delayed while a claim for liability is pursued against a third party. An example would be a home fire loss where the fire was caused by the defective product of a third party. The insurer would generally first pay the insured’s loss within the terms of coverage and then pursue its subrogated right of reimbursement against any third party liable for the loss. If the insured has incurred a deductible, the insurer should generally seek that amount as part of its subrogation action and then share any subrogation recovery with its insured on a proportional basis. Ohio Adm. Code 3901-1-54(H)(10). In doing so, the insurer and its counsel should always remain cognizant of the potential collateral effects on any other claims for non-covered losses or personal injury the insured may have.

Further, the Act also instructs that if a property loss sustained by a non-negligent party is covered by multiple insurers who

cannot agree on priority of coverage, then the insurers should cover the loss in equal shares within a reasonable time and then litigate (or arbitrate pursuant to inter-company arbitration) apportionment and priority of coverage. Ohio Adm. Code 3901-1-54(G)(7). Using the same example, a homeowner covered under multiple primary, excess, and umbrella policies for a house fire by insurers, who cannot agree on priority of coverage, would be paid the claim in equal shares. Then the insurers would resolve the issue of priority and primacy of coverage amongst themselves. Further, payment for a loss under one coverage which is not disputed should not be withheld based on an ongoing dispute as to the availability of other coverage. Ohio Adm. Code 3901-1-54(G)(8). For instance, payment of medical payments coverage under an auto policy should not be withheld solely because of an ongoing dispute as to the availability or amount due under the uninsured/underinsured motorist coverage provisions.

Finally, the Act provides guidelines for the timing of payment of first- and third-party claims. As to third-party claimants, payment should generally be made within 5 days after the settlement and release is fully executed. Ohio Adm. Code 2301-1-07(C)(16). As to first-party claimants, an insurer should generally tender payment within 10 days after acceptance of a claim if the amount of the claim is determined and is not in dispute, unless otherwise agreed or required by law. Ohio Adm. Code 3901-1-54(G)(6).

Overall, although the full Act should be regularly reviewed on a case-by-case, fact-specific basis, its overall guidance can be summarized by a series of common-sense practices by both claimant and insurer:

- Treat all those involved with the claim process as you would want to be treated;
- Keep all those involved informed and respond promptly, even if it is only to advise of the need for additional time;
- Share information and advise of the options, deadlines, coverages, and exclusions; and
- It will benefit neither claimant, nor insurer, to withhold information, ignore communications, or attempt to lure or lull the other to violate the Act.



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