

Colorado Statutes

Title 10. INSURANCE

REGULATION OF INSURANCE COMPANIES

Article 3. Regulation of Insurance Companies

Part 11. UNFAIR COMPETITION - DECEPTIVE PRACTICES

Current through Chapter 385 of the 2016 Legislative Session

§ 10-3-1115. [Effective 1/1/2017] Improper denial of claims - prohibited - definitions - severability

(1)

(a)

A person engaged in the business of insurance shall not unreasonably delay or deny payment of a claim for benefits owed to or on behalf of any first-party claimant.

(b)

For the purposes of this section and section 10-3-1116 :

(I)

"First-party claimant" means an individual, corporation, association, partnership, or other legal entity asserting an entitlement to benefits owed directly to or on behalf of an insured under an insurance policy. "First-party claimant" includes a public entity that has paid a claim for benefits due to an insurer's unreasonable delay or denial of the claim.

(II)

"First-party claimant" does not include:

(A)

A nonparticipating provider performing services; or

(B)

A person asserting a claim against an insured under a liability policy.

(2)

Notwithstanding section 10-3-1113(3), for the purposes of an action brought pursuant to this section and section 10-3-1116, an insurer's delay or denial was unreasonable if

the insurer delayed or denied authorizing payment of a covered benefit without a reasonable basis for that action.

(3)

If any provision of this section or its application to any person or circumstance is held illegal, invalid, or unenforceable, no other provisions or applications of this section shall be affected that can be given effect without the illegal, invalid, or unenforceable provision or application, and to this end the provisions of this section are severable.

(4)

The general assembly declares that this section is a law regulating insurance.

(5)

This section and section 10-3-1116 shall not apply to insurance issued in compliance with the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S.

(6)

This section and section 10-3-1116 shall not apply to title insurance issued pursuant to article 11 of this title or to life insurance issued pursuant to article 7 of this title.

(7)

The provisions of this section and section 10-3-1116 do not apply to any claim payment that is delayed or denied because of the insurer's participation in the child support enforcement mechanism established in section 26-13-122.7, C.R.S.

Cite as C.R.S. § 10-3-1115

History. Amended by 2016 Ch. 157, §1, eff. 1/1/2017.

L. 2008: Entire section added, p. 2172, § 5, effective August 5.

Note: 2016 Ch. 157, was passed without a safety clause. See Colo. Const. art. V, § 1(3).

Note: *This section is set out twice. See also C.R.S. § 10-3-1115, effective until 1/1/2017.*

Case Notes:

ANNOTATION

Law reviews. For article, "CRS §§ 10-3-1115 and -1116:

Providing Remedies to First-Party Claimants", see 39 Colo. Law. 69 (July 2010).

This section and § 10-3-1116 impose on insurers a statutory standard of liability in addition to and different from that required to prove a claim for breach of the common law duty of good faith and fair dealing as expressed in § 10-3-1113. *Kisselman v. Am. Family Mut. Ins. Co.*, 292 P.3d 964 (Colo. App. 2011).

The exclusion of title insurers from this section and § 10-3-1116 is not construed to approve the ruling in *Hedgecock v. Stewart Title Guar. Co.*, 676 P.2d 1208 (Colo. App. 1983), that an insured was entitled to attorney fees as part of the damages for breach of a title insurance contract, but rather that the title insurance industry does not have a history of delaying or denying claims. *First Citizens Bank v. Stewart Title Guar.*, 2014 COA 1, 320 P.3d 406.

Where an adversarial proceeding is filed and a genuine disagreement as to the amount of compensatory damages exists, the duty to negotiate is suspended, and there is no duty to advance payment of claims. *Baker v. Allied Prop. & Cas. Ins. Co.*, 939 F. Supp. 2d 1091 (D. Colo. 2013).

This section does not apply to a third-party administrator or a plan advisor. "A person engaged in the business of insurance" includes only those individuals or entities against whom a common law claim of bad faith breach of insurance would lie. *Riccatone v. Colo. Choice Health Plans*, 2013 COA 133, 315 P.3d 203.

The court will not read into a statutory definition new requirements that are not contained in the statute. Nothing in this section requires a contractual relationship with the insurer or a right of subrogation as a prerequisite to the ability to assert a claim "on behalf of" an insured. *Kyle W. Larson Enters. v. Allstate Ins.*, 2012 COA 160M, 305 P.3d 409.

This section is unambiguous, and, under the plain language of the statute, "first-party claimant" includes repair vendors asserting an entitlement to benefits owed on behalf of an insured under an insurance policy. Because the repair vendor was "asserting an entitlement to benefits owed... on behalf of" the insureds, the repair vendor is a first-party claimant for purposes of this section and § 10-3-1116. *Kyle W. Larson Enters. v. Allstate Ins.*, 2012 COA 160M, 305 P.3d 409.

Under § 10-3-1116, the measure of recovery for unreasonable delay or denial of benefits is the "covered benefit" the payment of which was unreasonably delayed or denied. There is no requirement under this section that a claimant suffer and prove "damages"

attributable to any unreasonable delay or denial. An award to a prevailing claimant is not the damages caused by the delay but rather, according to § 10-3-1116, two times the covered benefit the payment of which was unreasonably denied or delayed. *Hansen v. Am. Family Mut. Ins. Co.*, 2013 COA 173, ___ P.3d ___.