

April 27, 2015

Via Facsimile

The Honorable Senators
Texas Senate
P.O. Box 12068
Austin, Texas 78711-2068

Re: Senate Bill 1628

Dear Honorable Senators:

Allow me to introduce myself. I am a Partner at the law firm of Haynes and Boone, LLP and have been at the firm for almost 28 years. I am the Partner-in-Charge of the Dallas office of Haynes and Boone and serve as the Chair of the firm's Insurance Practice Group. I am also the founder of the State Bar's Insurance Law Section, which has the distinction of having as one of its original council members the then Texas Supreme Court Justice, Greg Abbott. I have also taught Insurance Law at SMU Law School for over ten years. I am also heavily involved with the Insurance Coverage group of the Litigation Section of the ABA and am slated to be the Vice-Chair of that organization later this Fall.

My practice for almost 25 years has been representing business policyholders in Texas and elsewhere in disputes with insurance companies. Those businesses include companies from every industry including energy, real estate, telecommunications, food and beverage, hotel, health care, manufacturing, and banking.

I write to express my deep concern and opposition to Senate Bill 1628. While I appreciate the sponsor's intent in introducing this bill, namely, to address perceived abuses in pursuing hailstorm claims, the bill goes way beyond this intent and instead has many unintended consequences which will significantly harm Texas business interests.

My business clients have no interest in pursuing frivolous claims nor do they ever wish to engage in lawsuit abuse. However, they do expect the legislature to protect their interests against insurance companies which unfairly deny or delay legitimate claims. Up to now, that protection has been found in the Unfair Settlement Practices statute (Chapter 541 of the Texas Insurance Code) as well as the Prompt Pay statute (Chapter 542 of the Texas Insurance Code), and business policyholders for years have kept insurers in line with the protections offered by these statutes. Unfortunately, the current Senate bill now jeopardizes these coveted safeguards.

I can only conclude that the bill's sponsor and proponents do not fully appreciate the unintended consequences of the bill. Allow me to explain. Business policyholders in Texas spend millions of dollars on insurance premiums to protect their property, business, and various business interests. They count on these purchased policies to provide the necessary protection in the event their business suffers a fortuitous event. Many of my clients have suffered significant losses by natural disasters, unforeseen mishaps, as well as unwanted litigation. However, their property and casualty policies have always been a means of mitigating those losses. As a result, those businesses are able to continue to grow, provide much needed jobs, and generate revenue for the state. Many businesses would be financially crippled or significantly deterred without the insurance protection they purchased.

Without the necessary statutory safeguards, which would be eliminated by the proposed bill, Texas businesses will suffer. Here are some of the unintended consequences of this bill:

1. Under the current law as it has existed for over forty years, a business insured can recover its "actual damages" and consequential damages under the Unfair Settlement Practices statute, which importantly includes the benefits under the policy. Incredibly, the bill deletes from the business insured's recovery every kind of damages caused by the claim denial, including the policy benefits. Business policyholders rarely have any damages other than the policy benefits. This means that if the bill passes business policyholders will have no protections against an insurance company's unfair claim denials. This amendment does a great disservice to countless Texas businesses while only protecting the interests of insurance companies.

2. Under the current law, since 1991, an insurer has clear deadlines to acknowledge a claim, investigate the claim, request information about the claim, accept or reject the claim, and pay the claim. Failure to comply with respect to a valid claim subjects the insurer to liability of 18% of the amount of the claim. This protection offered by the Prompt Pay statute has been instrumental to Texas businesses in requiring carriers to promptly pay legitimate claims whether they are property or liability claims.

For example, business policyholders are frequently named as defendants in lawsuits and must pay hundreds of thousands of dollars defending these suits. All businesses, however, purchase liability policies, which generally provide the important benefit of paying the cost of defending these suits. Because the Prompt Pay Statute applies to a claim for defense costs, the statute has been a significant help to businesses for years in ensuring that carriers are diligent and timely in responding to claims for payment of defense costs.

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The Prompt Pay statute has been equally beneficial to business insureds when faced with claims under policies providing coverage for real property losses, personal property losses, business interruption losses, data breach losses, auto and trucking losses, and other business losses. Those businesses rely on insurance recoveries to continue daily operations and future growth. The inability to obtain fair and timely payment from insurers is a great hindrance to those objectives.

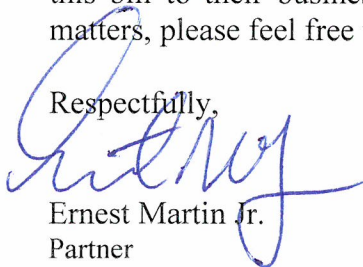
3. The proposed bill introduces a two-year bar on claims by requiring notice of a claim within two years of when the damage or loss occurs. This requirement simply ignores business reality as many businesses often suffer damage or loss from latent defects and often do not become aware of the damages until it is too late. The unintended consequence will be to bar legitimate business claims.

In light of the above, I strongly urge you to oppose Senate Bill 1628. I have many clients which are gravely concerned about the unintended consequences of a bill that does much more harm to business interests than it does to curb perceived abuses in a single category of hailstorm claims. Among those clients who have expressed concern about the proposed bill are:

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| • Sovereign Bank, | • Centex Homes, |
| • Trammell Crow Residential, | • NCH Corporation, |
| • Ericsson Inc., | • Ferrovia Agroman U.S. Corp, and |
| • La Quinta Inns & Suites, | • Webber LLC. |

I am confident that if countless other businesses fully understood the harmful ramifications of this bill to their businesses, they too would be opposed. If you wish to discuss any of these matters, please feel free to call me.

Respectfully,



Ernest Martin Jr.
Partner

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