

Cancellation and Non-Renewal Issues in Texas

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I. Introduction

The focus of this paper is both to identify applicable laws pertaining to the cancellation and non-renewal of various types of insurance in the State of Texas and to address certain concerns and issues arising from such cancellation and non-renewal. The bulk of the provisions regarding cancellation and non-renewal are found in Chapter 551 of the Texas Insurance Code, V.T.C.A. Texas Insurance Code (2006 Ed.) (the "Code"). However, with regards to certain specialized forms of insurance, such as 1) worker's compensation insurance, 2) life, health and accident insurance and 3) policies issued by Lloyd's Plan insurers and county mutual insurers, care should be taken to ensure that the applicable portions of the Title 28 of the Texas Administrative Code (the "TAC") are also consulted. It should be noted that these statutes are strictly followed. *Jones v. Ray Insurance Agency*, 59 S.W.3d 739 (rehearing denied 92 S.W.3d 530 (Tex. 2002); *Texas Specialty Underwriters v. Tanner*, 997 S.W. 2nd 645 (Tex. Civ. App. Dallas 1999, pet. denied).

II. CHAPTER 551 - Subchapter B

The Texas Legislature has divided Chapter 551 of the Code into two basic sections - Subchapters B and C respectively. Subsection B is specifically mandated to apply to "certain" specified liability policies, including those issued by Lloyd's plan insurers, county mutual and reciprocal or interinsurance exchanges but specifically excludes policies written by a) county mutual fire insurance companies that write "exclusively industrial fire insurance as described in Section 912.310 [of the Code] or b) a farm mutual company." (emphasis added).

Section 551.051 (2) specifically extends its scope to "liability insurance" that is defined as a) general liability insurance, b) professional liability insurance other than medical professional liability insurance, c) commercial automobile liability insurance, d) commercial multiperil insurance and any other type or line of liability insurance designated by the department. Of significant note is the fact that commercial auto insurance is treated differently than personal lines automobile insurance (which is addressed in Subchapter C of Chapter 551).

Section 551.052 prohibits the cancellation of a liability insurance policy that falls within its terms after the 60th day following which the policy was issued. This provision puts the burden on the insurer (and/or its agent) to determine any underwriting discrepancies that would make the risk being insured unacceptable prior to the expiration of this 60 day period. This burden is then underscored by the fact that Section 551.052(b) in turn prohibits the cancellation of a liability insurance policy that is a renewal or a continuation policy or a prior policy. The only exceptions to these prohibitions on cancellation are set forth in Sections 551,052 (c) and (d) of the Code and are limited to instances of a) fraud in the procurement of the policy, b) failure to pay premiums when due (*but see*, Section IV.E of this paper, *infra*, for other considerations to this exception), c) an increase in hazard within the control of the insured that would produce a rate increase, d) the loss of the insurer's reinsurance covering all or a part of the risk insured or e) the insolvency or receivership of the insurer where the cancellation is directed by the supervisor, conservator or receiver. Although there are no cases citing to this point, it could be argued from the language of the statute that any increase in hazard warranting cancellation must have its inception after the expiration of the 60th day following the inception of the first policy period to be meritorious - both because of the use of the word "increase" and the implication that the original premium was insufficient given the nature of the loss.

Any notice of cancellation given pursuant to Subchapter B of Section 551 of the Code must be given in writing not later than the tenth day on which the cancellation of a liability policy subject to its terms is intended to take effect. Section 551.053 specifically states that the insurer must "deliver or mail" such notice to the first named insured at the address shown on the policy. However, to avoid any dispute as to the sufficiency of the mailing — especially involving insureds who may be in the process of going out of business and/or where the risk of hazard has increased - this author suggests that a separate notice be sent to each and every named insured or identifiable insured and/or the agent and that the underwriting file be reviewed to make sure that the notice is sent to all known addresses for each such insured.

Subsection B of Section 551 of the Code also addresses the conditions for nonrenewal of liability policies subject to its terms and provides that an insurer may nonrenew a policy of liability insurance if