



**Article Number III**  
**Unfair Claims Settlement Practices:**  
**Protecting the Claims Adjuster When Fraud is Suspected**

**By Tim Lynch & Anne Bandle**

The NAIC model regulations and act were designed to ensure that the claims process was transparent, moved promptly and reached an equitable result. The requirements imposed upon carriers by all of the adopting states to report to first- and, in some instances, third-party claimants as to the progress of the insurer's investigation and the date by which a resolution of the claim may be expected fulfill these goals.

A significant problem is faced by adjusters when they have a claim where there exists a suspicion that the insured either contributed to the loss or has intentionally exaggerated the estimate of damages. How does he or she handle the claim consistent with the policies embodied in the regulations and statutes?

Nineteen states provide some form of guidance and protection for the claims adjuster. Those states are:

Alaska	Kentucky	Oklahoma
Alabama	Maryland	Pennsylvania
Arizona	Minnesota	Rhode Island
Arkansas	Nebraska	Texas
California	New Hampshire	West Virginia
Iowa	New Jersey	
Kansas	New York	

The protections fall generally within two classifications. They are:

1. Extensions or waivers of the time limit by which the investigation must be completed and the claim either accepted or denied; and
2. What the insured must be told regarding the evidence of potential wrongdoing.

One requirement that generally exists is that the evidence supporting such suspicions must be documented in the claims file. In other words, it cannot just be a "gut hunch." Additionally, some states, e.g. Alabama, New York, New Jersey, Minnesota, Maryland, Pennsylvania and West Virginia, specifically require

that the evidence be available for inspection by state authorities. In all other states, the states' ability to review the file is implicit.

Examples of the protections are as follows:

Alaska and Maryland require that while the investigation is in process the insurer must advise as to the status every 45 days and state the reasons why more time is needed. [3 AAC 26.070; MD ADC 31.15.07.04(B) and MD ADC 31.15.07.04(E)] However, "if there is a reasonable basis supported by specific information for suspecting that a first-party claimant has fraudulently caused or wrongfully contributed to the loss, and the basis is documented in the claim file, this reason need not be included in the written request for additional time to complete the investigation or the written denial."

In three states, a reasonable basis supported by specific information that the insured has fraudulently caused or contributed to the loss converts the time for completion of the investigation from a specific deadline to a "reasonable" time frame. No mention is made of what the insured must be told as the basis for the extension of time. These states are:

1. Alabama in 482-1-125-.07(1);
2. Kentucky in 806 KAR 12:095 § 6; and
3. Nebraska in 210 NAC § 60-008. 03.

Oklahoma also extends the time limit for acceptance or rejection of a first-party claim. [36 Okl.St. Ann. § 1250.7(C); OK ADC 365:15-3-7(c)] Absent such evidence of fraud, the maximum is 120 days from notice of claim.

Four states relieve the carrier of the time limits and the requirement to advise the first party claimant of the reasons for the extension where there is specific information that the insured has fraudulently caused or contributed to the loss by arson. These are:

1. Arizona in AZ ADC R20-6-801(G)(1)(c);
2. Arkansas in AR ADC INS 43 § 9(b);
3. Kansas in KS ADC 40-1-34 ; N.A.I.C. 902-1 (January 1981 ed.); KS ST § 40-2404(9)(e); and
4. Texas in V.T.C.A., Insurance Code § 542.056(b)

The limitation as to arson appears to leave open the question of what an adjuster should do where there is no specific evidence of incendiary origin but the lost property descriptions or valuations are very questionable.

Four states extend both the time limit for acceptance or rejection of the first party claim and the requirement to inform the insured of the reasons for the extension if there is a "reasonable basis" to assert fraud or causation by the insured. These states are:

1. West Virginia in W. Va. C.S.R. 114-14-6.7;
2. Iowa in IA ADC 191-15.41(3);
3. New Jersey's in N.J.A.C. 11:2-17.7(g); and
4. Pennsylvania in 31 PA ADC § 146.7.

In all four states, the carrier must advise the insured as to acceptance or rejection in a reasonable amount of time.

New York is similar to West Virginia, Iowa, New Jersey and Pennsylvania with the added requirement in 11 NYCRR 216.5(b) that the insurer must submit a specific report to the Insurance Fraud Bureau when fraud or causation by the insured is suspected.

California extends the waivers to both first- and third-party claims. 10 CA ADC 2695.7(b)(1) extends the 40-day time frame for accepting or rejecting the claim to 80 days or, given undefined circumstances, indefinitely if the carrier has a "reasonable basis supported by specific information for belief that claim is false or fraudulent." Under 10 CA ADC 2695.7(b)(2) the insurer is "not required to disclose information that could be reasonably expected to alert the claimant that the subject claim is being investigated as a suspected fraudulent claim."

Additionally, Rhode Island extends the waiver of the time to complete the investigation to both first and third-party claims. [RI ADC 02 030 073]

Minnesota also extends the protection to both first and third-party claimants and appears to allow for a more liberal interpretation of the quality of the evidence by stating "where evidence of suspected fraud is present, the reasons for failure to complete the investigation within the time period need not be specific." The drafters did not require that the evidence be "specific." [M.S.A. § 72A.201 Subd. 4(3)(i) – (4)]

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New Hampshire simply requires that when the reason for delay in completion of the investigation is suspected fraud a "delay letter shall be deemed sufficient if it indicates that the reason for the delay is that further investigation is needed to determine the validity of the claim." [NH ADC Ins 1002.05]

In the next article we will examine further the handling of suspicious claims both in these jurisdictions and in the states which do not provide for waivers of regulatory requirements.

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