

BULLETIN 21-04

To: All P&C Insurers Writing Business in the State of Iowa
From: Doug Ommen, Iowa Insurance Commissioner
RE: Derecho Damage Deadlines
Date: July 26, 2021

The purpose of Bulletin 21-04 is to provide ongoing guidance to individuals and entities regulated by the Iowa Insurance Commissioner when severe weather and natural disasters impact Iowa consumers and circumstances may prevent them from completing claims handling within one year of the date of damage.

The derecho that swept through Iowa on August 10, 2020 was one of the most devastating disasters the state of Iowa has ever experienced. On top of the significant damage, material shortages, the lack of available contractors, and subsequent weather events have been hurdles to the completion of repairs over the past year. The Iowa Insurance Division has also heard from carriers about shortages of claims adjusters available to inspect and reinspect property damage, which has led to additional delays.

As we approach the one-year anniversary, the Iowa Insurance Division has noted an increase in communication related to three provisions commonly seen in insurance policies covering real property:

1. Deadlines for repair completion.
2. Deadlines for litigation.
3. Updated material prices when evaluating replacement cost.

Many insurance contracts include provisions requiring replacement or repairs to be completed within a specified time period in order to receive the replacement cost settlement proceeds, also known as “recoverable depreciation.” The intent of this provision is understood in ordinary circumstances. The Iowa Insurance Division commends the significant efforts by carriers and consumers working together to rebuild our communities. However, there is much work left to be done. Many policyholders, through no fault of their own, but due to the scale of the damage from the derecho, are still waiting for work on their homes or other property to be completed. Given the varied circumstances leading to delays around the derecho recovery, invoking contractual provisions prohibiting payment of recoverable depreciation after a certain deadline may be viewed as a failure to act in good faith to effectuate fair and equitable settlement of a claim pursuant to Iowa Code sections 507B.3 and 507B.4. This remaining liability is readily apparent and has been documented thoroughly within many still pending claims.

The Iowa Insurance Division views situations where consumers with open derecho claims, who are holding up their end of the insurance contract by diligently working towards the completion of repairs as proper justification for granting an extension request. We have learned of numerous insurance companies already actively engaged in granting extensions requested of their insureds. However, the Iowa Insurance Division believes this practice is important to implement more broadly given the unique circumstances of the derecho in those circumstances when policyholders have demonstrated a good faith effort to conclude the claim.

Concerns have also been raised that these delays may limit a policyholder's ability to later file an action against the carrier for disputed claims. Carriers must use great care in applying these provisions in the current circumstances as policyholders request extensions in claims handling. Insurance carriers have a duty to pay what is owed under the contract in a timely manner and cannot compel insureds to institute litigation by offering substantially less than what is ultimately recoverable under a claim.

The Iowa Insurance Division has received information suggesting that there is some variability in how carriers are choosing to address the substantial material cost increases our market is experiencing and if those cost increases are to be paid to the consumer as part of the replacement cost settlement. Although policy specific, the Iowa Insurance Division generally views the material prices at the time the repairs are completed to be covered under replacement cost provisions such as "like kind and quality".

Insurance carriers have a duty to their policyholders to be there for them when the worst happens by providing the coverage promised in a timely manner. The derecho has presented unprecedented challenges for carriers and policyholders alike. If policyholders are making reasonable progress toward completing the repairs, a company's responsibility to act in good faith should guide them to accommodate a request for extensions or appropriate determinations for reimbursement related to cost increases outside the control of the policyholder. The existence of or the interpretation of insurance contract provisions cannot be employed to frustrate an insurer's duties of fair dealing. Great work has been done here in Iowa as the Iowa Insurance Division has seen companies in this derecho disaster rise to that challenge by working to pay a large volume of claims quickly - over \$3 billion to Iowa policyholders to date.

Hardworking Iowans have paid their premiums diligently and carriers have worked to expedite the payment of claims after this disaster. The Iowa Insurance Division expects carriers, who have a duty to be fair in the claims process, to make certain they continue to support their Iowa policyholders throughout this rebuilding process in its entirety.

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