



MODRALL SPERLING

L A W Y E R S

August 23, 2022

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VIA EMAIL AND HAND DELIVERY

Stephen Thies
NMOSI Office of Legal Counsel
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Email: Stephen.Thies2@state.nm.us

Re: *Gouin, Dennis – Case 177733 Claim ISW9758*
**NOTICE OF APPEAL OF LETTER DECISION AND
REQUEST FOR FORMAL HEARING**

Dear Mr. Thies:

This firm represents Travelers Personal Insurance Company with respect to the above referenced claim. I have received a copy of your letter of July 25, 2022 following your meeting with Travelers Director Nahren Nissan. Travelers insured, Dennis Gouin, submitted a claim for Additional Living Expenses (ALE) related to the recent the Hermits Peak Fire. Mr. Gouin was evacuated but fortunately did not sustain any damage to his home. Hence, this claim is solely for Additional Living Expenses.¹

Mr. Gouin's policy provides a limited coverage for ALE in these situations. However, Mr. Gouin's expenses did not reach his \$5,000 deductible. Given that there were no future claims to be made for fire damage, and given that Mr. Gouin's entire claim was therefore presented within the 120-day time period, Travelers applied the deductible as directed in OSI's "Notice Regarding Implementation of Wildfire Emergency Order of May 11, 2022 and no payment was made.

Travelers believes that its interpretation of the Office of Superintendent's ("OSI") Emergency Order is in accordance with the OSI's "Notice Regarding Implementation of Wildfire Emergency Order of May 11, 2022" responses to Questions 3 and 4. Specifically, in response to Question 3 asking "How should the 120-day waiver be applied by property and casualty insurers?" the OSI states:

¹ Your letter incorrectly characterizes Mr. Gouin's claim as being for "payment of repair or replacement of damaged property". This claim is for ALE and a small amount of food spoilage.

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Answer:

The Order directs “insurers who write property or homeowners policies” and “insurers who write automobile policies” to waive deductibles for a period of 120 days. The intent is to ensure that a policyholder’s temporary inability to pay a deductible not delay the processing of a claim or impede the insured’s ability to make repairs, including removal of debris. In such instances, the insured would still be responsible for the deductible amount after the 120-day emergency forbearance period expires or once their individual circumstances have improved, whichever occurs first.

The 120-day period under Sections C-2 and D-2 of the Order shall begin on the date of loss for claim payments issued on or after the May 11, 2022, effective date of the Order. Upon expiration of the 120-day grace period, application of the deductible may resume, which may include applying the deductible to other sums owed to the policyholder for covered losses under the policy. If an insurer is issuing a claim payment for repair or replacement of damaged property within the 120-day period, and further payments under the claim after the 120-day period are not likely to exceed the

deductible, the insurer may apply the deductible to that payment. The terms and conditions of the policy contract, including the deductible and policy limits available, shall remain in full effect.

For example, if a policyholder has a policy coverage subject to a deductible, the Order requires the insurer to pay these claims without application of the deductible if there is an expressed hardship need on the part of the insured such that the insured cannot yet afford to pay the deductible owed. The insurer can then apply the deductible to other sums (e.g., payments for repair to the dwelling) owed the policyholder for covered losses under the policy. If the claim is likely to be resolved within the 120-day emergency forbearance period or if payments outside of that period are not likely to exceed the deductible, and the insurer is making a payment for repairs to the dwelling within the 120-day period, the insurer may apply the deductible to that payment.

The guidance provided in response to Question 4 addressing “How should insurer’s treat Section C-4 of the Order related to additional living expenses within the confines of the policy terms, conditions, and limits” is also consistent with how Travelers handled Mr. Gouin’s claim. The guidance provides:

Answer:

The Order is intended to provide policyholders the option to temporarily waive application of any deductible that may apply for payments issued under Additional Living Expense (ALE) coverage portion of their policy and to provide policyholders a period of up to 12 months, if needed, to make a claim for ALE benefits that may be available under their policy. ALE payments as permitted under this section of the Order shall be subject to the terms, conditions, and limits of the policy contract. [Please also refer to the Waiver of Deductibles section above for further guidance.]

Consistent with this Notice Regarding Implementation of Wildfire Emergency Order of May 11, 2022, Travelers applied the policy deductible to Mr. Gouin’s ALE claim that fell below his policy deductible (and for which no additional payments were to be made beyond the 120-day waiver period). This resulted in no net payment. The OSI has nevertheless concluded that Travelers must pay Mr. Gouin’s claim without applying any deductible. In reaching this conclusion, it is unclear whether the OSI contends that Travelers incorrectly applied the guidance or whether OSI is modifying the guidance given to the industry.²

² The July 25 letter also raises questions about how other claims, which do involve property damage, and which are expected to be open for more than 120 days, should be handled. In your letter you indicate that “property or homeowner insurers must view the policy as having no

Stephen Thies
NMOSI Office of Legal Counsel
August 23, 2022
Page 3

The July 25 letter states that if Travelers disagrees then it must request a hearing on the matter within thirty days pursuant to NMSA 1978, Section 59A-4-15. While it does not appear that section applies to the present circumstances, because Travelers does not agree with the letter decision, and does not want to waive its rights to an appeal, Travelers requests a hearing to preserve all rights. Travelers is also willing to continue to discuss the interpretation provided to the industry informally but does not waive its right to a formal hearing (if applicable to this matter). I trust that this letter addresses the issues raised, but if you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,



Jennifer A. Noya

cc: The Honorable Russell Toal (via email and hand delivery)
New Mexico Superintendent of Insurance
1120 Paseo De Peralta, Santa Fe, NM 87501
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deducible” and that “the amount of any policy deductible cannot be offset against any future payments.” This is consistent with the Emergency Order’s temporary waiver of deductibles for claims related to the Hermits Peak Fire as well as the guidance OSI gave to the industry in its Notice.