CANCELLING POLICIES IN TEXAS

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CANCELLING POLICIES IN TEXAS

I. INTRODUCTION

A quick review of Texas law on bad faith will quickly reveal that a disproportionate number of the cases on the subject involve cancelled policies. In automobile insurance, in particular, it seems like most insureds wait until they have missed a payment to have a wreck. When this happens, the existence of coverage will hinge on whether or not the policy was properly cancelled. If it was, there is no coverage and no bad faith denial. If it was not, bad faith claims and insurance code violations are sure to follow.

Given the importance of cancellation, it is somewhat surprising that many insurers continue to employ policies for cancellation that are either absolutely incorrect, or, at best, provide insufficient evidence to prove the insurer's good-faith cancellation in litigation. This paper is meant to provide a basic framework for proper cancellation, point out the legal pitfalls, and provide some guidance for the implementation of safer cancellation practices.

II. STATUTES AND REGULATIONS

As everyone reading this paper is painfully aware, insurance is a heavily regulated industry in Texas. It should not be surprising that there are several statutes and regulations governing cancellation. What might surprise you is that several of these statutes and regulations do not apply to some of the more common types of coverage.

The following are the main statutes and regulations dealing with cancellation.

A. ARTICLE 21.49-2A

Article 21.49-2A applies to liability insurance, including general liability, professional liability, commercial automobile liability, and commercial multiperil coverage. This section provides that an insurer may not cancel a renewal or continuation policy or a policy that is in its initial period after the 60th day of issuance, unless it is cancelling for: 1) fraud in obtaining coverage; 2) failure to pay premiums when due; 3) an increase in hazard within the control of the insured which would produce an increase in rates; 4) a loss of the insurer's reinsurance coverage for all or part of the risk covered by the policy; or 5) for insurer's placed in supervision, conservatorship, or receivership, when the cancellation is approved or directed by the supervisor, conservator, or receiver.

When an insurer cancels one of these policies, it must do so in a particular way. This statute provides that the insurer must deliver or mail to the first-named insured under a liability insurance policy at the address shown on the policy, written notice of cancellation of the policy not less than the 10th day before the date on which the cancellation takes effect. Such notice must state the reason for the cancellation.

B. ARTICLE 21.49-2B.

In 1991, the Texas legislature passed House Bill 2. This piece of legislation was supposed to address the whole of insurance regulation in the State of Texas.

A small part of this legislation focused on cancellation. According to the legislative history of the act, these cancellation provisions were intended to: 1) clarify and make absolutely clear that a policy can be cancelled at any time where there is non-payment of any portion of the premium;

2) allow cancellation at any time when continuation would result in violation of the insurance code; 3) provide for cancellation at any time for fraud; 4) for auto policies, provide for cancellation at any time if the insured's license is revoked or suspended; and 5) provide for cancellation for any reason within the first 60 days of an auto policy (90 days for other policies) with cancellation only for "good cause" after this time.

The result of this legislation was Article 21.49-2B. This statute applies to personal automobile insurance policies not written through the Texas Automobile Insurance Plan, homeowners or farm or ranch owner's policies, standard fire policies insuring one-family dwellings, and policies providing property and casualty coverage to governmental units, other than a fidelity, surety, or guaranty bond.

This statute actually defines cancellation. For this statute, cancellation occurs when an insurer terminates coverage, refuses to provide additional coverage to which the insured is entitled under the policy, or reduces or restricts existing coverage under a policy by endorsement or other means.

The cancellation scheme under Article 21.49-2B is more complicated than under 2A. Section 4(a) provides that an insurer may cancel "only as provided by this section." Sections 4(b)-(f) then state particular reasons for cancellation.

Under those sections, an insurer may cancel for nonpayment of premiums, if coverage would violate the law, if the insured submits a fraudulent claim, if the policyholder of an auto policy or another member of their household has their license suspended or revoked (unless the insured consents to termination as to the revoked person only), and in non-auto policies for an increase in risk.

Section 4(g) provides that cancellation under any of these sections does not take effect until the 10th day after the date the insurer mails notice of the cancellation to the insured.

There are then two timing provisions. First, a personal auto policy may be cancelled on the 12-month anniversary of the policy only if the insurer mails notice no later than the 30th day before cancelling. Second, the statute provides that an insurer "may cancel a personal automobile policy if it has been in effect less than 60 days. An insurer may cancel any other policy if it has been in effect less than 90 days."

Section 9 of the statute requires insurers to given a written reason for cancellation at the request of the insured. And finally, in Section 11, the statute provides that cancellation in violation of its rules "has no effect."

C. ARTICLE 24.17.

Article 24.17 relates to the cancellation of premium financing agreements. Under this section, the insurer may cancel for nonpayment of premiums, so long as the insurer sends written notice of cancellation by a date no earlier than the 10th day after the mailing of the notice, and the insured is given notice that they may cure the default in payment within that time. After this deadline expires, the insurer is required to send out a second notice, this time of true cancellation due to the failure to cure the nonpayment.

D. 28 TAC §5.7001.

The Texas Department of Insurance has its own regulations dealing with cancellation. Section 5.7001 et seq. of Title 28 of the Texas Administrative Code contains several sections dealing with the cancellation of insurance.

The trick in reading this regulation involves figuring out which section applies to which form of insurance. It is particularly important to note that Sections 5.7004, 5.7008, 5.7009. 5.7010, 5.7011, 5.7013, and 5.7014 do not apply to personal automobile policies.

Section 5.7002(a) provides that after a personal automobile policy has been in effect for 60 days, an insurer may cancel only for 1) failure to pay premium, 2) suspension or revocation of the driver's license of the named insured or any other operator who either resides in the same household or customarily operates an insured auto (unless the insured consents to elimination of coverage for the revoked driver), or 3) where continuation of the policy would violate the insurance code.

Section 5.7002(b) provides that for all other types of insurance, those policies may be cancelled after they have been in effect for 90 days only for 1) nonpayment of premiums, 2) increase in hazard within the insured's control, or 3) where continuation of the policy would violate the insurance code.

Section 5.7003 is a timing calculation statute. Under that statute, the 60 or 90 day deadline referenced in section 5.7002 is calculated from the date of mailing.

Section 5.7004 provides that when an insurer refuses to give an insured additional coverage to which the insured is entitled, or restricts coverage by endorsement, there is a violation of the code, unless the insured has consented to the action.

Section 5.7005 applies only to personal auto policies. Under that section, the insurer may cancel at the one-year anniversary of a policy, so long as the insurer gives at least 30 days prior written notice.

This section also requires insurers that write for less than one year to renew, at the option of the insured, for additional periods adding up to at least one year.

Section 5.7008 requires insurers to keep records concerning cancellation and non-renewal. These documents must be kept in accordance with the insurer's normal retention practices for the "daily reports" of expired policies.

Section 5.7011 provides that any cancellation that does not follow the regulations is null and void. Section 5.7012 provides that insurers must provide a reason for cancellation if the insured so requests.

Section 5.7013 applies to general liability insurance policies and commercial auto policies. Cancellation of these policies must be mailed at least 45 days prior to the effective date of cancellation, unless section 5.7014 applies. The company may ask its agent to notify the policyholder, but the burden of notice rests on the insurer.

Section 5.7014 also applies to general liability insurance and commercial auto policies. This section provides shorter notice periods for certain cancellation reasons. Thus, if cancellation is for nonpayment of premiums, increase in exposure, violation of the insurance code, receivership of the insurance company, or if the policy is still within its first 60 days of coverage, the insurer may cancel my mailing written notice of cancellation at least 10 days prior to the effective date of cancellation.

III. CASE LAW.

Never content to let the legislature monopolize the confusion of the law, our courts have added to the general confusion with some interesting spins on cancellation. As the following

shows, these cases have thrown up some interesting new hurdles for the insurer who wishes to cancel.

A. MAILING PRESUMPTIONS.

The Standard Texas Personal Automobile Policy provides that the insurer may cancel by "mailing at least 10 days' notice to the named insured," and further provides that proof of mailing is sufficient proof of notice. Under such policies, earlier Texas courts had ruled that receipt of the notice was irrelevant. Newer cases, however, have cast a new spin on this issue.

In *Willis v. Allstate Ins. Co.*, 392 S.W.2d 799 (Tex. Civ. App.–Dallas 1965, writ ref'd n.r.e.), the insurer timely mailed a cancellation notice for nonpayment of premium. Unbeknownst to the insurer, the insured had died, and thus never "received" this cancellation. The court, however, ruled that the cancellation was still valid, because it was the mailing that was relevant, not the receipt.

In *Sudduth v. Commonwealth County Mut. Ins. Co.*, 454 S.W.2d 196 (Tex. 1970), however, the Supreme Court of Texas muddied the waters. In that case, the question was whether or not a certificate of mailing was sufficient proof to "prove" mailing, and thus receipt, in a cancellation case. The court began its analysis by agreeing that when a policy provides for notice upon mailing, and that the mailing itself constitutes proof of notice, the only relevant issue is the fact of mailing. *Id.* at 197. Breaking from prior case law, however, the court held that a sworn averment of nonreceipt is some evidence of no mailing when the only evidence of mailing is a post-lawsuit affidavit from an interested party, unsupported by "independent proof." *Id.*

However, the Court noted that the postal receipt in that case did not constitute "independent proof" because it failed to indicate its contents, and indicated that if it had, its analysis would have been different. *Id*. at 197-98.

At the root of this case is a discussion of the presumptions surrounding mailing. There is a presumption that mail duly posted in the U.S. mail has been delivered. The court used this presumption to "prove" that evidence of non-receipt is evidence of non-mailing. The reasoning goes like this: we presume mail put in the postal service is received. There is evidence that no mail was received. This is therefore evidence that the mail was not put into the postal service.

The insurer in *Sudduth* then tried a different argument. It pointed out that it had a mailing receipt and the affidavit of the person who mailed the notice. Surely, reasoned the insurer, this was "independent proof" of mailing, and there was no need to discuss presumptions or inferences.

The court disagreed. Instead, the court noted that the postal receipt did not indicate what had been mailed to the insured, was not signed, and it did not indicate how the contents were verified. The court therefore ruled that the affidavit was from an interested witness, and therefore not independent proof, and that given the insufficiency of the postal receipt, it was not independent proof, either. Summary judgment therefore should have been denied the insurer, and the matter submitted for trial. The end result appears to be an inability to win on summary judgment in cancellation cases, at least where the insured is prepared to testify as to non-receipt. Instead, the matter must be submitted to a jury, and the jury must determine the truth in the ensuing swearing match. As noted later, however, there are steps that may be taken by insurers to help establish "independent proof" of mailing.

B. WAIVING OF CANCELLATION AND ESTOPPEL.

Even when cancellation is properly mailed, subsequent acts by the insurer may make that cancellation ineffective. This can happen at least two ways: by waiver of the cancellation, or by actions leading to estoppel.

An insurer may waive its right to cancel a policy, even if it has followed the cancellation requirements to the letter, by doing something that is inconsistent with the cancellation or that recognizes the continuance of the policy. As the Dallas Court of Appeals stated in *Schachar v. Northern Assur. Co.,* 786 S.W.2d 766 (Tex. App.–Dallas 1990, writ denied):

When, under a policy of insurance, a forfeiture has been worked and the insurer has knowledge of the existence of facts which constitute a forfeiture of the policy, any unequivocal act done after the forfeiture has become absolute which recognizes the continued existence of a policy or which is wholly inconsistent with a forfeiture, will constitute a waiver thereof.

Id. at 767 (quoting *Bankers Life & Loan Ass'n of Dallas v. Ashford*, 139 S.W.2d 858, 860 (Tex. Civ. App.–Galveston 1940, no writ)).

Thus, an insurer that cancels a policy, then continues to send out bills, may have waived that cancellation.

While waiver is determined solely upon the insurer's conduct, estoppel requires some act of reliance by the insured. One of the essential elements of estoppel is that the insured must have been misled or caused to change his position to his detriment. *Powell v. American Cas . & Life Co.,* 250 S.W.2d, 744, 746 (Tex. Civ. App.–Dallas 1952, writ dism'd). For example, in *Schachar*, supra., the court concluded that the insurer's mailing of a renewal notice, followed the next day by a cancellation notice for nonpayment of premium (before the renewal premium was

even due), when coupled with the insurer's failure to return the insured's NSF premium check, could have misled and confused the insured, thereby raising a fact issue as to estoppel. *Schachar*, 786 S.W.2d at 768.

C. DUPLICATE NOTICES OF CANCELLATION.

Accidents seem to happen more often in mail rooms than on highways. One problem that occasionally arises comes from duplicate mailings. What happens when an insurer sends out a valid notice of cancellation, then sends out a duplicate notice with a different cancellation date? The law is not clear, but there is some indication that this second cancellation may operate to amend the first.

Such an amendment of the first notice would mean that the insured would have been given a new effective date of cancellation. He might reasonably believe that he had coverage until the end of the second cancellation period, and only plan to secure replacement insurance by such date.

If a wreck occurred between the first and second cancellation, this insured would have a good argument for coverage.

At least one court has indicated that this "amendment view" might be adopted by a court, should the issue ever arise. In *International Service Ins. Co. v. Maryland Cas. Co.*, 421 S.W.2d 721, 723 (Tex. Civ. App.–San Antonio 1967, no writ), the San Antonio court of appeals refused to give any validity or effect to a second notice of cancellation (with a later date), but only because the second notice was never received and therefore, had no possibility to mislead the insured.

The implication of this language is that, if the second notice of cancellation was received and did mislead the insured, then it may amend the effect of the original notice of cancellation.

There is also support for the "amendment view" in the general law regarding "offers" to enter into contracts. Specifically, an "offer" to enter into a contract can be modified at any time before the offer expires (under its terms.) For example, if you offer to sell your car for $2000 (with ten days to accept the offer), you could amend that offer at any time within ten days (as long as the offer has not already been accepted.) See American Jurisprudence Contracts § 32 - 35. In the case of duplicate cancellations, you can view the first notice of cancellation as an offer to continue the policy if the defect is remedied.

Prior to the expiration of the ten days stated in such offer, you then send a second notice that changes the effective date of cancellation to the end of the month. You would have unilaterally amended your own "offer."

Finally, there is the general view that all policies of insurance (and related instruments, including notices of cancellation) are construed in favor of coverage. *Cruz v. Liberty Mutual Ins. Co.*, 853 S.W.2d 714, 717 (Tex. App.–Texarkana 1993), reversed on other grounds, 883 S.W.2d 164 (Tex. 1993); *Gonzalez v. Mission American Ins. Co.*, 795 S.W.2d 734, 737 (Tex. 1990). This is especially true if one construction would render a motorist totally uninsured, contravening the general public policy in favor of having all motorists insured, pursuant to the Texas Motor Vehicle Safety Responsibility Act.

National County Mut. Fire Ins. Co. v. Johnson, 9 S.W.2d 1 (Tex. 1993). Using these general rules, any ambiguity or conflict in the cancellations would be construed in favor of coverage.

D. CANCELLATION AND BAD FAITH.

In *Union Bankers Ins. Co. v. Shelton*, 889 S.W.2d 278 (Tex.1994), the Supreme Court of Texas recognized that a cause of action for breach of the duty of good faith and fair dealing exists when the insurer wrongfully cancels an insurance policy without a reasonable basis.

Thomas Shelton applied to Union Bankers for a health insurance policy.

In response to certain medical history questions, he indicated that he had never been treated for or had any indications of skeletal or muscular disorder.

Seven months after Union Bankers issued Shelton's policy, he underwent total hip replacement surgery to correct necrosis in his left hip joint. Shelton filed a claim for benefits, and Union Bankers denied that claim on the basis that the necrosis was an undisclosed pre-existing condition. Union Bankers notified Shelton that it was denying the claim and requested that Shelton execute a rider specifically excluding hip disorders.

When Shelton refused, Union Bankers refunded all premiums and canceled the policy on the ground that Shelton's failure to disclose the hip condition was a material misrepresentation in the insurance application.

Shelton filed suit against Union Bankers for breach of contract, bad faith, Deceptive Trade Practices Act and Insurance Code violations. The jury answered all questions against Shelton, except that it failed to find that he had intended to deceive Union Bankers when he made the misrepresentations.

The Court held that an intent to deceive must be proved to cancel a health insurance policy within two years of its issuance when the cancellation is based on the insured's misrepresentation on the insurance application. Because the jury failed to find that Shelton

intended to deceive Union Bankers, the Court held that when Union Bankers canceled the policy based on the misrepresentation, it breached the insurance contract as a matter of law. The Supreme Court remanded the case for a new trial on the bad faith issue, remarking that the policy behind requiring a duty of good faith and fair dealing in insurance contracts is even more compelling when the insurer unilaterally cancels the insured's policy without a reasonable basis, stating that:

> The insured is not merely at the mercy of the insurer to treat him fairly in the processing of a single claim, but must rely on the insurer's good faith for the continued existence of any coverage. The insurer's ability to unilaterally cancel an insurance policy and the insured's inability to prevent cancellation demonstrates a great disparity in bargaining power. Furthermore, a failure to extend the duty of good faith and fair dealing to the cancellation of an insurance policy would allow insurers to avoid bad faith liability by canceling the entire policy rather than denying a single claim.

Id. at 283.

A cause of action is therefore stated by alleging that the insurer had no reasonable basis for the cancellation of the policy and that the insurer knew or should have known of that fact. Cancellation for improper reasons or outside of the appropriate time limit would almost certainly give rise to such a lawsuit, highlighting the need for thorough knowledge of the cancellation rules and regulations discussed earlier.

E. NOTIFICATION OF MORTGAGEES.

Certain policies may contain mortgagee clauses. Under these clauses, the insurer is

obligated to notify the mortgagee of the cancellation before cancelling coverage on the mortgaged property. However, even when these mortgagee clauses fail to list a mortgagee, the company may still be under a duty to notify known mortgagees before cancelling.

In *Travelers Indem. Co. v. Storecraft, Inc.*, 491 S.W.2d 745 (Tex. Civ. App.–Corpus Christi 1973, no writ), the mortgagee was listed in a loss payee clause, but was not listed as a mortgagee. When the insurer cancelled the policy, it notified the insured but not the loss payee/mortgagee. When the property was thereafter destroyed, the mortgagee made a claim under the policy.

The insurer argued that a loss payee is not entitled to the notice given a mortgagee. The court, however, disagreed, noting that the loss payee clause and other circumstances known to the agent put the insurer on notice that there was a mortgagee. Since the loss payee clause further incorporated the rest of the policy (including the mortgagee clause) the loss payee was to be treated as a mortgagee, and the failure to notify this mortgagee of the cancellation meant that coverage was still in effect.

When there is a mortgagee clause, the mortgagee and insured are treated separately. It is thus entirely possible to cancel for the insured, but still maintain coverage for the mortgagee. This was the result ultimately reached in the *Storecraft* case. The mortgagee was therefore paid on the claim, even though the policy had been properly cancelled as to the insured.

F. THE LATEST (AND GREATEST) INTRODUCTION OF CONFUSION:

JONES V. RAY INSURANCE AGENCY.

The latest opinion to thoroughly muddle the area of cancellation is *Jones v. Ray Ins.*

Agency, 59 S.W.3d 739 (Tex. App.–Corpus Christi 2001, pet. pending). In this case, the Corpus Christi court of appeals may have finally messed up the area so completely that the Supreme Court of Texas will have to speak as to its interpretation.

Lois Jones purchased a personal auto insurance policy from Ray on November 6, 1997. This policy provided that it could be cancelled for any reason within the first sixty days, with ten days' notice, and that proof of mailing is proof of notice.

After the policy went to underwriting, certain deficiencies in the application were noted, and a request for information along with a contingent notice of cancellation was sent out. This notice indicated that the policy would be cancelled on December 4, 1997, unless Jones provided certain information (a driver's license for Jones and driver information for her sister) before that time.

Jones did not provide that information, or any explanation why such information might not be necessary, and the policy was terminated because of her non-response.

The postal receipt acknowledging the mailing of this notice of cancellation lists the contents mailed as "cancellations." The receipt was accompanied by a mailing list, showing that Petitioner sent a cancellation notice to Respondent at her proper address.

On December 28th, twenty-seven days after notice of cancellation by mailing, Jones had a car wreck and called Ray to make a claim on her policy. She was told by both her agent and her insurer that her policy had been cancelled prior to the loss. Despite this notice, Jones allowed her car to sit in storage, resulting in fees that ultimately caused repossession of her vehicle.

Jones brought suit in state court in Houston. The agent and insurer moved for summary judgment on Jones' claims. Jones filed a response that included an affidavit from Jones denying the receipt of the notice of cancellation, but not contesting the mailing of the notice. The trial court granted summary judgment. Jones appealed.

The appeal was transferred from the Houston Court of Appeals to Corpus Christi. The resulting opinion makes a variety of errors in its analysis of the law. Perhaps most distressing is its analysis of policy cancellation.

According to the Corpus Christi court:

An insurer may cancel a personal automobile insurance policy only for the grounds listed in §4 of article 21.49-2B of the Texas Insurance Code, and if the policy has been in effect less than sixty days. TEX. INS. CODE art. 21.49-2B, § 4(i). Subsection (i) does not allow an insurer to cancel for any reason other than listed in the other subsections of § 4, and by implication would prohibit cancellation after sixty days, but since the policy in this case was in effect less than two months, the sixty-day provision doesn't apply.

Id. at 747.

In other words, an insurer may only cancel for nonpayment, violation of law, fraudulent claims, or license suspension in the first 60 days of a policy. The insurer may never cancel for any other reason, and may not cancel for any reason after 60 days.

The court continued on, discussing the issue of mailing. After citing inapplicable authority, the court concluded that any time an insured contests receipt, a fact issue is raised as to mailing. This despite the fact that Jones, in her affidavit, did not even allege that she had not moved or continued to receive mail at the address given to the insurer.

Finally (as to cancellation) the court misinterpreted the ten-days' notice requirement. According to the court, this notice period makes cancellations ineffective until ten days after they are mailed. However, since the notice was mailed on December 1, this still afforded the insured more than ten days' notice of cancellation before her December 28th accident.

To avoid this conclusion, the court added a new "reasonable amount of time" requirement, stating that the time given "would not have afforded appellant a reasonable amount of time to obtain other insurance before termination." *Id*. at 748. For this reason, the court concluded that the notice was not timely.

After this decision was handed down, the Appellate Section and Fletcher & Springer was brought in to handle the appeal to the Supreme Court of Texas and to challenge this interpretation of the cancellation statute. The Supreme Court denied the petition, but did so by issuing a per curiam opinion. In that opinion, the court stated that it "disapprove[d] [of] the court of appeals' statement interpreting the statute." *Ray Ins. Agency v. Jones*, 92 S.W.3d 530, 531 (Tex. 2002).

The end result was that the Supreme Court refused to revisit *Sudduth*, and thus could not reverse on the basis of the proof of mailing, since the insured had submitted an affidavit of non-receipt. However, a majority of the Court did disapprove of the statutory interpretation. Because the case was "petition denied," however, we can expect sloppy (or sneaky) plaintiff's attorneys to try to push its statutory interpretation on trial courts without notifying the court of the per curiam opinion.

IV. RECOMMENDATIONS

Given the impact of the above law, the prudent insurer will re-evaluate its cancellation policies and procedures on a fairly regular basis. At the very least, a "checkup" review of cancellation policies and procedures should be undertaken for each line of business. This should include a review of the following:

A. CANCELLATION PREDICATES.

As the above statutes illustrate, different lines have different cancellation predicates and deadlines. For instance, with personal auto policies, an insurer may cancel for any reason within the first 60 days, but for only certain enumerated reasons after that time. For each different line of insurance written by an insurer, that insurer should compile a list of such deadlines and predicates, so that everyone knows why policies written under that line may be cancelled.

This applies for predicates as to the entire line. Each individual policy should then be examined to see who may be cancelled. If there is a valid mortgagee clause, the predicates for cancellation of the insured apply, but the mortgagee must receive its own notice under the proper deadlines.

B. CANCELLATION DEADLINES.

Different lines also have different cancellation deadlines. As part of the listing of cancellation predicates, there should also be deadlines. These deadlines then need to be strictly enforced. Specifically, notices need to be mailed out on the date indicated.

If a notice states one date, but the postal receipt indicates another, this could lead a court to conclude that the notice was facially invalid, because it contained an effective notice date

earlier than ten days after actual mailing. While there are arguments against this reasoning, it is best to avoid having to make such arguments.

It is also important to remember that when calculating deadlines, one generally counts the end date, but not the beginning date. Mail sent on the 1st therefore does not give 10 days' notice before the 10th. To avoid mistakes, padding by one day may be wise.

C. MAILING GUIDELINES.

Perhaps the most important area of review is the mailing guidelines of the insurer. Many insurers prepare their own postal receipts, and have no way of listing what was actually mailed. This is, at best, poor proof of mailing, and as noted above, proof of mailing is generally the only reliable proof of notice.

Sudduth provides some guidance for what courts might consider to be proper "independent proof" of mailing. Under *Sudduth*, the receipt was criticized because it was not clearly signed and executed by the postal service. The absence of any proof of the contents of what was mailed was also criticized. At the very least, proper mailing procedure needs to address these concerns.

Proper procedure should, therefore, go something like this: the insurer's mail room uses certified mail, and prepares a list showing exactly what documents were put into which pieces of certified mail. This list is attested to by an employee. This certified mail is then taken to a post office, and a postal employee prepares the certificate of mailing, indicating the date. This procedure establishes contemporaneously with the mailing both what was mailed, and when it was mailed.

D. DOCUMENT RETENTION.

Of course, proof of mailing and notice does not help if that proof has been thrown away. There should already be document retention programs in effect. These programs need to be evaluated to make sure they are meeting statutory requirements, and providing for sufficient retention to defend any claims that might be made.

V. CONCLUSION

The cancellation of insurance policies in Texas can be fraught with peril. An understanding of the underlying statutes and regulations is crucial, as is an understanding of how cancellation has been treated by Texas courts. Only by understanding this law can an insurer hope to appropriately cancel a policy, and thus preclude coverage for any future occurrence. The recommendations given here should help in evaluating cancellation practices for errors. However, since this is an evolving area of the law, the prudent insurer will return to this issue as the law develops, and change its practices accordingly.

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Fletcher, Farley, Shipman & Salinas, LLP – Fletcher, Farley, Shipman & Salinas, LLP originated in 1992 as a dedicated business defense firm, devoted to providing high-quality representation, sound legal guidance and efficient, cost-effective service to defendants. With depth of experience in all matters of tort, commercial, insurance and other litigation, Fletcher Farley is dedicated to resolving conflicts and solving problems for our clients. We leverage our extensive experience and skills as trial and appellate attorneys to achieve resolution both inside and outside of the courthouse. Whether in mediation, arbitration, negotiation or courtroom proceedings, Fletcher Farley strives for quick and efficient resolution that allow our clients to do what they do best — conduct business.