§ 7505. Loss.

(a) Peril Not Insured Against: Rescue Efforts. An insurer is liable:

(1) Where the thing insured is rescued from a peril insured against and which would otherwise have caused a loss if in the course of the rescue, the thing is exposed to a peril not insured against, and which permanently deprives the insured of its possession, in whole or in part;

(2) If a loss is caused by efforts to rescue the thing insured from a peril insured against.

(b) *Willful Act of Insured: Negligence*. An insurer is not liable for a loss caused by the willful act of the insured; but the insurer is not exonerated by the negligence of the insured or of the insured's agents or others.

(c) *Notice of Loss*. Failure to give notice of loss covered by marine or fire insurance within any period provided for by the policy or otherwise does not exonerate the insurer if the notice is given within a reasonable time after the insured has or should have first-hand knowledge of the loss. In all other classes of insurance, the insured shall have at least 20 days after the event within which to give notice of loss. No requirement of notice within a lesser period is valid.

(d) *Preliminary Proof of Loss*. When preliminary proof of loss is required by a policy, the insured is not bound to give proof as would be necessary in a court of law, but it is sufficient for the insured to give the best evidence in his or her power at the time.

(e) *Waiver of Defects in Notice or Preliminary Proof*. All defects in a notice of loss, or in a preliminary proof thereof, which the insured might remedy, and which the insurer omits to specify to the insured, without unnecessary delay, as grounds of objection, are waived.

(f) *Waiver of Delay*. Delay in the presentation to an insurer of notice, or preliminary proof of loss, is waived if caused by an act of the insurer, or if the insurer omits to make objection promptly and specifically upon that ground.

(g) *Policy Requiring Proof by Third Person: Sufficiency of Compliance*. If a policy requires, by way of preliminary proof of loss, the certificate or testimony of a person other than the insured beneficiary, there is sufficient compliance with the requirement if the insured or the beneficiary:

(1) Uses reasonable diligences to procure the certificate of testimony; and

(2) In case of refusal to give it to him, furnishes reasonable evidence to the insurer that the refusal was not induced by just grounds of disbelief in the facts necessary to be certified or testified.

(h) *Failure to Pay Loss: Recovery of Amount Due and Damages*. In all cases where loss occurs and the insurer liable therefor fails to pay the same within the time specified in the policy, after demand made therefor, the insurer shall be liable to pay the holder of the policy, in addition to the amount of the loss, 12 percent damages upon the amount of the loss, together with all reasonable attorney's fees for prosecution and collection of the loss; the attorney's fees to be taxed by the court where the same is heard on original action, by appeal or otherwise, and to be taxed as a part of the costs therein, and collected as other costs are or may be by law collected; and writs of attachment or garnishment filed or issued after proof of loss or death has been received by the insurer shall not defeat the provisions of this section; provided, the insurer desiring to pay the

amount of the claim as shown in the proof of loss or death may pay the amount into the registry of the court after issuance of writs of attachment and garnishment, in which event there shall be no further liability on the part of the insurer.

(1) This section pertains to rights and remedies between insurers and their insureds and does not pertain to persons or entities who are not an insured under the policy of insurance that provides coverage for the loss. This section does not, and shall not, grant any right, claim or remedy to any person or entity that is not an insured under the policy that provides coverage for the loss. A person or entity who has asserted a claim against an insured but is not an insured under the policy of insurance that provides coverage for the loss does not, and shall not, have any right, claim or remedy based upon this section and does not have standing to assert any right, claim or remedy under this section. No right, claim or remedy pursuant to this section shall be assignable to any person or entity that is not an insured under the policy of insurance that provides coverage for the loss.

(i) *Total Loss by Fire or Miscellaneous Insurance: Recovery of Full Amount*. A fire or miscellaneous insurance policy, in case of a total loss of any risk insured under the classes specified in this division, as valued or miscellaneous insurance shall be held and considered to be a liquidated demand against the insurer taking the risk for the full amount stated in the policy, or the amount upon which the insurer charges, collects or receives a premium; provided, that the provisions of this section shall not apply to personal property. In the event of a total loss or destruction of any personal property on which the amount of the appraisal or agreed loss is less than the total amount insured thereon, the insurer shall return to the insured the unearned premium for the excess of insurance over the appraised or agreed loss, to be paid at the same time and in the same manner as the loss shall be paid; and the unearned premium shall be a just and legal claim against the insurer.

Source: PL 3-107, § 28; (h)(1) added by PL 14-70, § 4.

Commission Comment: PL 14-70 was enacted on June 10, 2005 and contained the following findings, in addition to severability and savings provisions and other enactments:

Section 1. Findings. The Legislature generally retains broad control and regulatory power over the insurance industry in the CNMI and has within its control and power the ability to determine the extent to which causes of action may be asserted against insurers by third party claimants, as long as its action is rationally related to a legitimate Commonwealth interest. It is recognized that there is presently in the CNMI no case or statute setting forth whether a third party claimant may assert a cause of action for "bad faith" against an insurer, or whether a third party claimant has any right to assert a claim pursuant to 4 CMC § 7505(h) or 4 CMC § 5112. This has resulted in uncertainty within the area of civil liability, a lack of predictability amongst insurers, a lack of protection against unfounded claims against insurers, allegations, threats and claims of bad faith by third party claimants, unwarranted claims under the Insurance Act and the Consumer Protection Act, and costly litigation.

It is in the best interest of the CNMI economy to encourage private investment in the CNMI. This amendment is in part designed to dissuade

insurers from discontinuing the provision of liability insurance in the Commonwealth, to reduce the significant rise in premiums, and to increase the types and amounts of coverage available for CNMI risks. The absence of a legal provision precluding third party claimants from asserting causes of action against insurers for bad faith has a chilling impact on the operation of private insurance companies in the CNMI. There has been a decrease in the types of coverage being made available in relation to certain CNMI risks and premiums for some types of coverage have risen so high that there are some types of coverage that are no longer available or affordable by individuals and businesses in the CNMI. Several insurers have commenced the process of completely ceasing to provide liability insurance and others have expressed an intention to do the same. The legislature finds that, without passage of this amendment, Commonwealth commerce would be in jeopardy of significant decline and there would be a significant risk of substantial negative impact on the people and infrastructure of the CNMI. The Legislature, therefore, finds that it is in the best interest of the people of the CNMI to preclude such claims.

The Legislature further finds that it is in the best interest of the CNMI to maintain the availability of liability insurance, to foster competition in the insurance market, to prevent drastic increases in premiums and reduce premiums for liability coverage, to encourage the widespread acquisition of liability insurance by individuals and businesses, to increase sources of compensation for victims of personal injuries, to preserve commercial and economic stability in the Commonwealth, and to preserve a legal environment of fairness to plaintiffs, defendants, and insurers.

It is, therefore, the intent of this bill to make appropriate amendments to the Commonwealth Insurance Act and Commonwealth Consumer Protection Act to implement the findings of this bill.

See comment to 4 CMC § 7502 for more information regarding PL 14-70, which was enacted on June 10, 2005.