



Republic of the Philippines
 Department of Finance
INSURANCE COMMISSION
 1071 United Nations Avenue
 Manila



Legal Opinion (LO) No.:	2021-02
Date:	21 January 2021

MR. BRILLY V. BERNARDEZ
President
Dragon Construction, Inc.
 315 Roosevelt Avenue, SFDM,
 Quezon City 1105, Metro Manila

SUBJECT: Request for Clarification in Relation to IC Legal Opinion No. 2020-07

Dear **Mr. Bernardez:**

This refers to your letter dated 25 August 2020 requesting for the issuance of a clarificatory opinion with respect to IC Legal Opinion No. 2020-07 dated 07 August 2020 on the subject “Request for Legal Opinion on Accrual of Penalties”. In the said 25 August 2020 letter, you requested for clarification with respect to Section 243 of Presidential Decree No. 612 or the Insurance Code, “particularly on when the date or period of counting of penalties validly starts.”

This request for clarification with respect to IC Legal Opinion No. 2020-07 stems from the Decision dated 12 August 2011 rendered by the Insurance Commission in favor of Dragon Construction, Inc. (DCI) in IC Adm. Case No. RD 386, finding the Respondent BF General Insurance Corporation “liable for violating Sections 241, 243 and 415 of the Insurance Code and Insurance Memorandum Circular 4-93 for its unjustified and willful refusal to pay the claim of Complainants”.

Section 243 of the Insurance Code (now Section 249 of the Insurance Code, as amended by Republic Act No. 10607) expressly allows the imposition of interest on the payment of insurance proceeds subject to the condition that there must be a finding of unreasonable delay or refusal in the payment of the claims, in accordance with the Supreme Court’s ruling in *Tio Khe Chio vs. Court of Appeals* (279 Phil. 127 [1999]). This ruling is reiterated in *Prudential Guarantee and Assurance, Inc. vs. Trans-Asia Shipping Lines, Inc.* (491 SCRA 411 [2006]) where the Supreme Court ruled that “Section 243 and 244 of the Insurance Code apply when the court finds an unreasonable delay or refusal in the payment of the insurance claims.”

Section 243 of the Insurance Code provides as follows:

“Sec. 243. The amount of any loss or damage for which an insurer may be liable, under any policy other than life insurance policy, **shall be paid within thirty days after proof loss is received by the insurer and ascertainment of the loss or damage is made** either by agreement between the insured and the insurer or by arbitration; but **if such ascertainment is not had or made within sixty days after such receipt by the insurer of the proof of loss, then the loss or damage shall be paid within ninety days after such receipt.** Refusal or failure to pay the loss or damage within the time prescribed herein will entitle the assured to collect interest on the proceeds of the policy for the duration of the delay at the rate of twice the ceiling prescribed by the Monetary Board, unless such failure or refusal to pay is based on the ground that the claim is fraudulent.”

The factual circumstances in *Prudential Guarantee* provides guidance as to when the double interest on the proceeds of the policy for the duration of delay, as provided in Section 243 of the Insurance Code, must be computed, to wit:

“x x x On 26 October 1993, a day after the occurrence of the fire in “M/V Asia Korea”, TRANS-ASIA filed its notice of claim. On 13 August 1996, the adjuster, Richards Hogg International (Phils.), Inc. completed its survey report recommending the amount of P11,395,076.26 as the total indemnity due to TRANS-ASIA. x x x

The Court of Appeals, in imposing double interest for the duration of the delay of the payment of the unpaid balance due TRANS-ASIA, computed the same from 13 August 1996 until such time when the amount is fully paid. Although not raised by the parties, we find the computation of the duration of the delay made by the appellate court to be patently erroneous.

To be sure, Section 243 imposes interest on the proceeds of the policy for the duration of the delay at the rate of twice the ceiling prescribed by the Monetary Board. Significantly, Section 243 mandates the payment of any loss or damage for which an insurer may be liable, under any policy other than life insurance policy, within thirty days after proof of loss is received by the insurer and ascertainment of the loss or damage is made either by agreement between the insured and the insurer or by arbitration. **It is clear that under Section 243, the insurer has until the 30th day after proof of loss and ascertainment of the loss or damage to pay its liability under the insurance, and only after such time can the insurer be held to be in delay, thereby necessitating the imposition of double interest.**

In the case at bar, it was not disputed that the survey report on the ascertainment of the loss was completed by the adjuster, Richard Hoggs International (Phils.), Inc. on 13 August 1996. PRUDENTIAL had thirty days from 13 August 1996 within which to pay its liability to TRANS-ASIA under the insurance policy, or until 13 September 1996. Therefore, the double interest can begin to run from 13 September 1996 only.”

Thus, pursuant to the Supreme Court’s ruling in *Prudential Guarantee*, the insurer has thirty (30) days from the receipt of proof of loss and ascertainment of the loss or damage, counted from the date the ascertainment is made, within which to pay its liability under the insurance policy. The insurer incurs delay, thereby meriting the imposition of the double penalty provided in Section 243 of the Insurance Code, if it refuses or fails to pay the loss or damage within the aforementioned thirty-day period. As such, the double penalty runs from the lapse of the thirty-day period, or on the 31st day, from the date of ascertainment of the loss or damage.

It must be emphasized, however, that the foregoing pronouncement in *Prudential Guarantee* pertains only to the scenario wherein there is ascertainment of the loss or damage. In the event that no such ascertainment is had or made within sixty (60) days after the insurer’s receipt of the proof of loss, then the insurer has until the 90th day from receipt of the proof of loss to pay its liability under the insurance policy. Only after the lapse of ninety (90) days from the insurer’s receipt of proof of loss does the insurer incur delay, thereby necessitating the imposition of double interest.

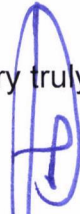
Hence, for purposes of imposing the double interest on the proceeds of the policy under Section 243 of the Insurance Code, the double interest is imposed on the proceeds of the policy for the duration of the delay, counted from the lapse of thirty (30) days, or on the 31st day, from the date of receipt of proof of loss and ascertainment of the loss or damage, if ascertainment is had or made. In the event where no ascertainment of the loss or damage is had or made within sixty (60) days from the insurer’s receipt of the proof of loss, then the insurer has until the 90th day from the receipt of the proof of loss to pay the loss or damage. If no payment is made by the insurer within the said period, then the double interest is imposed on the proceeds of the policy for the duration of the delay, counted from the lapse of ninety (90) days, or on the 91st day, from the date of the insurer’s receipt of proof of loss.

The foregoing notwithstanding, it must be noted that the period to be observed for the payment of the loss or damage, as required under Section 243 of the Insurance Code, is subject to the condition that the claim is compensable. Hence, if the insurer’s “failure or refusal to pay is based on the ground that the claim is fraudulent”, then the double interest provided in Section 243 of the Insurance Code will not apply.

Please note that the opinion rendered by this Commission is based solely on the particular facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used, in any manner, in the nature of a standing rule binding upon the Commission in other cases whether for similar or dissimilar circumstances.

For your information and guidance.

Very truly yours,



DENNIS B. FUNA
Insurance Commissioner

