

# Florida Federal Court Limits First Party Bad Faith Claims

June 15, 2015

First party bad faith actions in Florida must be pursued under §624.155 Florida Statutes because Florida does not recognize common law first party claims. The statute provides that an insured may bring a civil action against an insurer for "not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so had it acted fairly and honestly toward its insured." As a condition precedent to filing suit, the insured must first file a Civil Remedy Notice (CRN) with Florida's Insurance Department and provide a copy to the insurer. The statute must be strictly construed and the CRN is crucial to the integrity of an action under the statute. The CRN must "state with specificity" the statutory provision allegedly violated and the facts and circumstances giving rise to the violation. The purpose of the CRN requirement is to set forth the basis of the insured's bad faith allegations to allow the insurer an opportunity to remedy the problem. The insurer has 60 days from receipt of the CRN to "cure" the alleged bad faith and avoid litigation. Essentially, the statute provides for specific notice of bad faith conduct and a 60-day safe harbor within which the insurer may resolve the dispute and preclude the insured from asserting a bad faith claim. In *Fox Haven of Foxfire Condo IV Ass'n Inc. v. Nationwide Mut. Fire Ins. Co.*, the insured condominium association alleged that the insurer failed to properly investigate and settle a claim for damages caused by Hurricane Wilma. After the storm, the association and the insurer disagreed on the damage amount. The insurer paid the amount of its estimate and the association invoked the policy's appraisal provision to resolve the dispute concerning the amount owed. During the appraisal process, the association filed a CRN alleging that the insurer was not attempting to settle the claim in good faith. The insurer did not take advantage of the opportunity to cure. The appraisal panel rendered a damage award that was more than 10 times the insurer's payment, but the insurer failed to promptly pay the award. Ultimately the award was paid. Following payment, the condo association filed a statutory bad faith action to recover damages allegedly caused by the insurer's bad faith, plus punitive damages. The association alleged that the insurer's delay in failing to promptly pay the appraisal award constituted bad faith. The U.S. district court disagreed because "an insured cannot establish bad faith via insurer conduct that occurred after the CRN's 60-day cure period." The court held that the purpose of the CRN is to provide the insurer with the opportunity to correct the

circumstances that gave rise to the bad faith action. **Thus, any action or inaction that occurred after the end of the cure period cannot support a bad faith claim because it is impossible for an insurer to remedy bad faith that has not yet occurred.** Accordingly, the court entered summary judgment for the insurer regarding all claims of bad faith conduct that occurred after the CRN was filed. The court also entered summary judgment on the association's punitive damage claim because the proof offered by the association to establish the insurer's general business practices was based partly on evidence that hundreds of CRNs were filed alleging that the insurer made inadequate settlement offers. The court ruled that the many similar CRN filings were merely evidence that other insureds were dissatisfied with the insurer's initial assessment of their claims. The CRNs, however, were not evidence that the insurer evaluated the other claims in bad faith.

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