CARLTON FIELDS

# Florida Bad Faith Legislation

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The Florida Senate is considering legislation designed to reduce insurance companies' exposure to bad faith claims. Florida Senate Bill 1334, introduced by Sen. Jeff Brandes (R), requires policyholders to present their demands to insurers with much greater specificity than mandated by current law. In turn, this will give insurers a definitive statement of the claimant's position and an opportunity to timely cure any alleged deficiency in the claims handling process. The proposed legislation should limit bad faith lawsuits that are triggered by the vague provisions of the current law. The ultimate goal is to reduce policyholder premiums caused by the minimal threshold for a policyholder to assert a bad faith claim.

Florida is the epicenter of insurance bad faith claims spawned, in part, by the definition of bad faith mandated by Florida Statutes section 624.155, i.e., "Bad faith on the part of an insurance company is failing to settle a claim when, *under all the circumstances*, it could and should have done so, had it acted fairly and honestly toward its policyholder and with *due regard for [the policyholder's] interests*" (emphasis added).

The references to "all the circumstances" and the "policyholder's interests" minimize the potential for summary judgment and leave bad faith decisions to the whimsy of juries.

Florida courts have long recognized common law third-party bad faith actions but not first-party claims. Section 624.155 was enacted to provide a statutory bad faith remedy for first-party policyholders. However, the courts have applied the statutory definition to common law third-party actions. As a result, bad faith litigation has grown exponentially. First-party policyholders are limited to statutory actions. However, third-party claimants may simultaneously pursue both common law and statutory remedies, albeit with the identical standard.

Section 624.155 currently requires a claimant to file and serve a civil remedy notice as a condition precedent to pursuing a statutory bad faith action. The notice is intended to inform the insurer of the claimant's contentions regarding the insurer's failure to properly evaluate and settle a claim. Section 624.155 provides the insurer with a 60-day "safe harbor" period to address and settle the claim in order to prevent a bad faith action. However, the current statute does not require that the notice

describe the amount of the claim or the nature of the insurer's alleged bad faith conduct with specificity. As a result, the insurer's ability to reach a settlement within the safe harbor period is handicapped because a vague notice does not clearly advise the insurer of the claimant's allegations of bad faith or set forth a specific settlement demand.

The Senate bill attempts to remedy this problem. It requires that the civil remedy notice state *with specificity* the amount of damages demanded to settle the claim and prohibits demands for "vague remedial action" regarding the insurer's claims handling practices.

The proposed amendment is designed to provide the insurer with the claimant's *specific contentions* so that the insurer can evaluate and settle the claim and pay the appropriate amount or otherwise address the specific conduct that is the basis of the claimant's grievance. In short, by requiring that the notice be specific, insurers will be able to cure the claimant's contentions within the 60-day safe harbor period and prevent bad faith litigation.

As might be expected, the proposed amendment is under attack by groups adverse to the insurance industry, and its passage is uncertain.

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