

The Florida Department of Financial Services ("DFS") has changed its procedures regarding the Civil Remedy Notice ("CRN"), which is required by Florida Law for prosecution of a statutory bad faith claim against an insurer.

Florida Statute §624.155 mandates that any person may bring a civil action against an insurer when such person is damaged by the insurer's violation of various statutory provisions. The most prevalent claim under §624.155 is an allegation that the insurer did not attempt in good faith to settle a claim when, under all the circumstances, it could and should have done so, had it acted fairly and honestly towards its insured and with due regard for his or her interests.

In Florida, first party bad faith claims against insurers must be brought pursuant to the statute. Third party bad faith claims may be pursued under the statute or the common law, but the plaintiff is not entitled to a judgment under both remedies.

As a condition precedent to bringing an action under §624.155, the claimant must give DFS and the insurer sixty (60) days written notice of the alleged violations. The CRN must be on a form provided by the Department and it must contain certain information, including, a reference to the statutory provision which is alleged to have been violated; the facts and circumstances giving rise to the violation; and a statement that the notice is given in order to perfect the right to pursue the civil remedy authorized by §624.155.

No action under the statute may be pursued if, within sixty (60) days after filing the notice, the insurer cures the alleged violation. All insurers are required to report the disposition of the alleged violation to DFS.

DFS now requires that the CRN and the insurer's response must be filed electronically on the DFS CRN website. Communications under the statute may no longer be submitted by paper.

It is important for insurers to establish a mechanism for timely responding to a statutory CRN. If an insurer fails to respond to a CRN within sixty (60) days, the courts apply a rebuttable presumption that the insurer has acted in bad faith.

Carlton Fields regularly monitors CRN filings as a courtesy to our clients. Carlton Fields is engaged by many insurers to provide coverage opinions, and to prepare the insurer's communications to DFS and the claimant. Carlton Fields welcomes these engagements. Alternatively, an insurer may follow the procedure described below.

When the insurer electronically files its 60-day response, it becomes a public record. In order to limit disclosure of confidential information, the insurer's 60-day response regarding claim denial can be limited to:

"This is ABC Insurance Company's response to Civil Remedy Notice _____ (the "CRN") filed by _____. After reviewing the CRN, ABC conducted a thorough review of its decision to deny the claim subject of the CRN. ABC's denial of the claim was correct. ABC denies that it has violated the statute(s) as alleged in the Notice. At all times ABC acted in good faith, fairly and honestly toward its insured, with due regard for the insured's interests. Moreover, the CRN fails to adequately describe the alleged violations and fails to provide sufficient information to allow ABC to correct the alleged violations. A detailed analysis of ABC's decision has been delivered to the insured (or its legal counsel) and a copy will be sent to the Department if requested."

CRNs involving subjects other than claim denials can be worded appropriately. When the disputes alleged in the CRN are resolved, the insurer should obtain a written withdrawal of the CRN and post the withdrawal on the DFS website so that the disposition of the allegations is publicly noted.

To file a communication to DFS regarding a CRN:

1. Log onto the DFS website at <https://apps.fdfs.com/CivilRemedy/>.
2. Double click "Subscription."
3. Click "Create User Account."
4. Enter your e-mail address and other requested information and click on "Create User."
5. The Department will send a password to your e-mail address. (Once you have a password, the above steps need not be repeated.)
6. Log on to the website with your e-mail address and password.
7. Click on the link to existing filings.
8. Enter into the relevant CRN by entering the CRN file number at the top of the blank CRN and then click "Search" at the bottom of the blank CRN. Your CRN should appear.
9. Click on "Add Information" at the top of the CRN, type or paste your communication into the box, and click "Submit." You must use "word" or "rich text format." Your communication will now appear as part of the CRN.

For more information about Carlton Fields' Insurance Litigation and Regulation Practice Group, please visit our website at www.carltonfields.com/insurance.

This publication is not intended as, and does not represent, legal advice and should not be relied upon to take the place of such advice. Since factual situations will vary, please feel free to contact a member of the firm for specific interpretation and advice if you have a question regarding the impact of the information contained herein. The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.