

## "Significant Changes to Florida's Bad Faith Laws," by Jesse Drawas, Esq., partner at Kaufman Dolowich, 8-2-2023

With the passage of House Bill 837/Senate Bill 236 has come sweeping changes to Florida's tort and bad faith laws.

Among key changes the Bill, also known as "Civil Remedies," makes significant changes to Florida's bad faith law in an attempt to curtail abuses that have negatively impacted insurers within the state. Proponents say it could help to reduce the number of frivolous bad faith insurance lawsuits.

In part, "bad faith" law allows an insured person or someone who has been injured by an insured person to recover damages from an insurer for failing to settle a claim in good faith when the insurer could and should have done so. The following below addresses some key changes to bad faith law. A previous blog post discussed the legislation's impact on tort law.

### Duty To Act in Good Faith

The law affirms the common law principle that "mere negligence alone is insufficient to constitute bad faith." While common law has long recognized this, this legislation makes it explicitly clear. It also places a good faith standard on the insured, claimant and their representatives specifically stating that, "the insured, claimant, and representative of the insured or claimant have a duty to act in good faith in furnishing information regarding the claim, in making demands of the insurer, in setting deadlines, and in attempting to settle the claim." Under the provisions of the law, a court may look into the claimant and counsel's actions to determine if they still have a valid bad faith claim. This provision creates a shared duty on all parties similar to Florida's comparative fault law for tort actions.

### Safe Harbor From A Bad Faith Claim

In addition, among other changes, it provides a safe harbor for an insurer from a bad faith claim if the insurer tenders the lesser of the policy limits or the amount demanded by the claimant within 90 days after receiving actual notice of a claim, which is accompanied by sufficient evidence to support the amount of the claim. Florida has long been a jurisdiction plagued by "gotcha" tactics, such as brief deadlines for policy limit demands. This new provision allows the insurer enough time to investigate a claim and is not triggered until "sufficient evidence" has been provided. If the insurer does not tender this amount within the 90-day period, any applicable statute of limitations is extended for an additional 90 days. Further an insurer's failure to tender this amount within 90-days is inadmissible in a subsequent bad faith action seeking to establish the insurer's bad faith.

### Multiple Claimants

The legislation also provides protections for cases involving multiple competing claims arising out of a single occurrence, where claims may exceed policy limits of one or more of the insured parties. Such claims have long been an avenue for claimants to create pitfalls for insurers stuck in a "no-win" situation. Now, an insurer is not liable beyond the available policy limits if the insurer within 90 days after receiving notice of the competing claims files an interpleader action or the insurer makes the entire amount of the policy limits available for payment to the competing third-party claimants before a qualified arbitrator agreed to by the insurer and third-party claimants at the expense of the insurer.

### Kaufman Dolowich Can Help

The new law is complex and has dramatically changed Florida's bad faith landscape. If you need assistance understanding the law's provisions or defending a claim, Kaufman Dolowich's attorneys are here to help.

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