



Florida's Bad Faith Law – An incentive to sue

FLORIDA'S BAD FAITH LAW

In Florida, individuals can sue their insurer if they believe the insurer acted fraudulently or in “bad faith” when defending or settling a claim. The law allows individuals to sue their insurer if they believe their insurance company's actions resulted in additional damages and legal costs.

The fundamental principles of the bad faith cause of action are intended to promote the following:

- Economically protect the defendant insured from an excess judgment when the insurer has control of a the defense and settlement of a claim;
- Make available to injured persons specified dollar limits that are available as compensation;
- Encourage insurers to behave responsibly by making them liable for the financial damage that is caused by their breach of good faith duties.

However, in Florida bad faith claims are not limited to insured parties. Currently, injured third party plaintiffs can also sue an insurer if they believe the company acted in “bad faith.”

In *Thompson v. Commercial Union Ins. Co. of New York*, 250 So.2d 259, 260 (Fla. 1971) the Florida Supreme Court extended the right to bring a bad faith cause of action to third parties. The court declared that third party plaintiffs could directly sue an insurer “for recovery of the judgment in excess of the policy limits, based upon the alleged fraud or bad faith of the insurer in the conduct or handling of the suit.

This is based on the determination by Florida courts that our current bad faith laws allow “any person aggrieved” to sue an insurer for alleged improper conduct. These standards act as an incentive to sue, making insurance companies the target for excessive lawsuits seeking multi-million damage awards that far exceed the policy limits of the policyholder.

FLORIDA'S BAD FAITH LAW CREATES UNLEVEL PLAYING FIELD

Insurance companies have a responsibility to their policyholders to deal fairly and in good faith when it decides how to handle lawsuits on their behalf. But the right to make a bad faith claim should be limited to policyholders and not extended to third party claimants.

The case of *Berges v. Infinity Insurance Company*, 896 So.2d 665 (Fla. 2004) exemplifies the unlevel playing field created by Florida's current bad faith laws.

The lawsuit against Infinity Insurance Company was a bad faith lawsuit filed against the insurer as a result of a car accident in which a car driven by a friend of the plaintiff, Berges, collided with another car on March 29, 1990, killing the driver and severely injuring her minor daughter. On May 2, 1990 Infinity Insurance Company received a hand-written letter from the deceased victim's husband, Mr. Taylor, demanding a settlement within 25 days for Mr. Berges' policy limits. The letter demanded a total settlement of \$20,000 -- \$10,000 for a wrongful death claim and \$10,000 for the bodily injury claim.

Infinity planned to settle for the policy limits as set forth by Mr. and one of the company's adjusters communicated as much to Mr. Taylor in a May 11, 1990 phone call and again in a May 24, 1990 letter sent to Mr. Taylor. However, because of an incorrect zip code, Mr. Taylor did not receive the settlement letter from Infinity's attorney until June 20. Since Mr. Taylor did not receive the letter or settlement payment prior to the 25-day deadline established in Mr. Taylor's original letter to the insurer, his attorney notified Infinity the offer to settle was revoked.

The case went to trial and the jury awarded the victim, \$911,400 for the wrongful death suit and \$500,000 for the bodily injury claim for the injuries sustained by the minor passenger. As a result of the verdict far exceeding the policy limits, the insured, Mr. Berges immediately filed a bad faith claim against Infinity.

The final judgment in *Berges* resulted in the insurer being ordered to pay a more than \$2 million -- \$1.8 million for the claims as well as \$616,200 in attorney fees -- for a \$20,000 insurance policy.

While the Florida Supreme Court upheld the Berges ruling in 2004, several justices called into question Florida's bad faith statutes in a dissent highlighting the inequities and negative economic impacts the current standards of bad faith have on Florida consumers. In his dissent, Justice Wells stated, "Just as it is an obvious truth that 'there is no free lunch,' likewise, there is no free liability insurance. It is an undeniable fact which follows logic and common sense that bad faith judgments against insurers drive up the premium costs for all insureds, particularly for insureds who purchase low-limits liability insurance policies."

Justice Wells also highlighted the incentives that exist for attorneys to "create" bad faith claims.

"I must also recognize that there are strategies which have developed in the pursuit of insurance claims which are employed to create bad faith claims against insurers when, after an objective, advised view of the insurer's claims handling, bad faith did not occur. This is a strategy which consists of setting artificial deadlines for claims payments and the withdrawal of settlement offers when the artificial deadline is not met. The goal of this strategy is to convert a policy purchased by the insured which has low limits of insurance into unlimited insurance coverage....In this case, if settlement had been the goal, settlement would have been completed by July 1, 1990. Since it is not, fourteen years later, there is still no settlement."

ESTABLISHING REASONABLE STANDARDS FOR BAD FAITH BENEFITS CONSUMERS

Florida's bad faith laws lack logical standards that constitute or at least evidence bad faith on the part of the insurer. Additionally, the law is vague and provides plaintiff's attorneys many ways to use the law to target insurers for bad faith claims.

The law is equally vague in its definition of how much time an insurer has to investigate and offer a settlement to an injured third-party before it is considered to have acted in bad faith.

Florida's bad faith laws need to be reformed. The reforms should include:

- Limiting the ability for parties to bring a bad faith cause of action to a right of policyholders and not one that extends to third parties.
- Logical and well-defined timeframes within which an insurer must be responsive to a party before it is found to have acted in bad faith.
- Establishing timeframes to give insurance companies a reasonable opportunity to investigate a claim before making a settlement decision.
- Defining reasonable standards as to what constitutes bad faith on the part of an insurer.

By establishing these common sense standards, Florida's bad faith law will be good news for Florida consumers. Such reforms will continue to protect them by providing some well-defined guidelines for insurers that will help eliminate some of the factors responsible for higher insurance costs.