Florida's Insurance Settlement Law – An incentive to sue

FLORIDA'S INSURANCE SETTLEMENT 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 b 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 insurance settlement 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 INSURANCE SETTLEMENT 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 *Boston Old Colony Ins. Co. v. Gutierrez, 386 So.2d 783 (Fla. 1980)* exemplifies the unlevel playing field created by Florida's current insurance settlement laws.

The case involved a plaintiff and defendant who were involved in a head-on collision. Both men claimed the accident was the other's fault and filed claims against each others insurer. The defendant in the original lawsuit, Mr. Brown was insured by Boston Old Company. Based on some corroborating evidence and the findings of an accident expert, it was determined that the plaintiff, Mr. Gutierrez was on the wrong side of the road at the time of the accident. Despite the evidence, Boston Old Company discussed settling the dispute with their insured, Mr. Brown, who maintained he was not liable and refused to settle the claim.

Prior to trial the plaintiff also offered to settle for Mr. Brown's policy limits of $10,000, however, the insurer denied liability based on Mr. Browns instructions. Meanwhile, Mr. Brown settled his counterclaim against the plaintiff and his insurer. Boston Old Company again offered to settle with Mr. Gutierrez for Mr. Brown's policy limits, $10,000. At trial the judgment against Mr. Brown was $1.4 million. The plaintiff immediately filed a

claim against Boston Old Company for $1.4 million alleging “bad faith” for refusing to settle the claim for policy limits when it had the chance -- despite instructions by the insured.

The Florida Supreme Court found that the third party failed to prove bad faith on part of the insurer and prompted Justice Alderman to express his concerns about Florida’s bad faith doctrine stating, “In the Alice-in-Wonderland’ world created by the (common law) rule, it is to the injured party’s benefit if the insurer breaches its duty to its insured and to his detriment if there is no breach.”

Justice Alderman’s conclusion points to the incongruity of Florida’s insurance settlement law and which induce plaintiffs not to settle with insurers and receive no more than the policy limits and instead file a bad faith lawsuit seeking both the policy limits and an excess judgment.

ESTABLISHING REASONABLE STANDARDS FOR INSURANCE SETTLEMENT BENEFITS CONSUMERS

Florida’s insurance settlement 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 insurance settlement 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 insurance settlement law is 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.