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# Florida’s New Tort Reform Package: The Modernizing of Florida’s Bad Faith Laws

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Effective immediately, on March 24, 2023, Florida HB 837 was signed into law by Governor DeSantis, who championed this bill through the Republican-dominated Florida Legislature. This new law will dramatically impact the legal landscape of the state.

The sweeping new tort reform law will significantly alter Florida’s third-party bad faith law as it pertains to the duties an insurance company owes to its policyholders, in hopes of curbing what many see as long-standing abuses of bad faith law that have negatively impacted the insurance marketplace within the state.

Signaling significant changes in Florida third-party bad faith law, HB 837:

- Codifies that mere negligence in and of itself is insufficient to support a bad faith claim. Rather, the insurer must not act solely on the basis of their own interests in settlement.
- The bad faith or unfair actions of the claimant and claimant’s counsel can be considered when analyzing the insurance company’s actions.
- Insurance companies are immune to bad faith actions where the insurance company tenders *either* the amount demanded by the claimant *or* the policy limits, whichever is lesser, within ninety (90) days of receiving actual notice of a claim that is also supported by sufficient evidence to justify the amount in dispute.
- When faced with multiple claimants and limited policy limits, the insurance company can now file an interpleader action or enter binding arbitration to resolve how the limited policy limits are divvied up among the claimants to avoid bad faith claims.

Further discussion of these key reforms to Florida’s bad faith law follows.

## Negligence Alone Does Not Equal Bad Faith

While Florida common law has long recognized that mere negligence or a mistake by an insurance

company does not automatically equate to a finding of “bad faith” on the part of an insurance company, HB 837 now clearly and explicitly mandates that mere negligence in and of itself is insufficient to support a cause of action for bad faith, whether in the context of a statute-based or common law–based claim.

This aspect of the new law codifies what was previously expressed under Florida common law, which has held that “[to] fulfill the duty of good faith, an insurer does not have to act perfectly, prudently, or even reasonably. Rather, insurers must refrain from acting solely on the basis of their own interests in settlement.” *Novoa v. Geico Indem. Co*., 542 F. App’x 794, 796 (11th Cir. 2013) (internal quotations and citations omitted).

This aspect of HB 837 is likely to be a welcome change for insurance companies, even when having made only a minor or insignificant error in the claim adjustment process. Previously, they had to defend against expensive and time-consuming allegations of bad faith that were premised on actions that clearly did not rise to the level of actual bad faith.

## A New Focus on the Actions of Claimants and their Counsel

Florida bad faith law is designed to ensure that insurance companies operating within the state act appropriately and place the interests of an insured above those of the company. Accordingly, the focus of any bad faith action is typically, and understandably, on the actions of the insurance company, its adjusters and decision makers.

Unfortunately, as with any other area of the law, the potential for abuse exists and Florida has become infamous for what is colloquially referred to as the “bad faith set-up” in which counsel for claimants attempt to force insurance companies into situations in which they must respond to unrealistic and artificially timed demands, often without the necessary evidence to support such a demand, or by creating other artificial claims-handling or settlement pitfalls. These actions have little to do with the actual purpose of bad faith laws, i.e., protecting the insured, and everything to do with placing an unwary company into a situation in which bad faith allegations can be made against it, often in an effort to unreasonably force that company to pay extra-contractual damages.

Now, the focus is no longer solely on what the insurance company did or did not do, as HB 837 also places a corresponding duty on claimants and claimants’ counsel to act in good faith when providing necessary information regarding a claim, in issuing demands to companies, in setting deadlines and in any effort to settle a claim. Thus, the new law seeks to curb abuses of Florida bad faith law by attorneys who attempt to unfairly “create” the very circumstance that then leads to claims for insurer bad faith. Under HB 837, if a claimant or insured *does* act unreasonably or unfairly in its own actions with respect to a given claim, those actions can be considered in conjunction with the actions of the company, and that insured’s ability to successfully prosecute a bad faith claim and to recover damages in that action may be compromised.

## Immunity to Bad Faith under Certain Circumstances

HB 837 also provides an immunity to bad faith actions where the insurance company tenders either the amount demanded by the claimant or the policy limits, whichever is lesser, within ninety (90) days of receiving actual notice of a claim that is also supported by sufficient evidence to justify the amount in dispute. This provides a company with the time to fully evaluate the underlying facts and circumstances of a given claim and to consider what evidence exists in support of the claimed damages, before being forced to artificially tender its policy benefits merely because a failure to do so

could give rise to a claim for insurer bad faith.

## An Answer to the *Farinas* Problem of Multiple Claimants with Insufficient Policy Limits

A long-standing issue in Florida surrounds the scenario in which an insurance company is faced with a claim involving more than one claimant, with clearly insufficient policy limits to resolve all such pending claims on behalf of its insured. While Florida common law has spoken on the issue in the seminal case *Farinas v. Fla. Farm Bureau Gen. Ins*. Co., 850 So. 2d 555 (Fla. 4th DCA 2003) – which provides standards for a liability company that is faced with multiple competing claims against its insured, with clearly insufficient policy limits to resolve all such claims – Florida law previously did not provide any specific method by which a company could address this circumstance such that it could feel secure that its actions would not result in a subsequent bad faith claim.

HB 837 now creates clear mechanisms by which a liability company can distribute limited policy benefits when there are multiple claimants presenting competing claims stemming from a single occurrence or accident and the amounts being sought by those multiple claimants are in excess of the available policy limits. In such a circumstance, under HB 837 the company now can file an interpleader action or enter binding arbitration to resolve these issues and to avoid being faced with bad faith claims seeking extra-contractual damages above the company's actual policy limits.



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