

300 WORDS (more or less) about BAD FAITH REFORM

PROBLEM—Insurers are forced to pay when they shouldn't because current law allows "any person," not just those who are a party to an insurance contract, to bring a "civil remedy" suit **alleging "bad faith"** when an insurer fails to settle a claim within policy limits. Fear of being hit with awards far in excess of policy limits forces many insurers to settle **or pay** claims that probably should not be settled, **increasing the premiums for everybody**.

BACKGROUND—Under the current provisions of §624.155, F.S., any person, not just the insured, can bring a civil action against an insurer for failure of that insurer to, in good faith, settle the claim within the policy limits. Plaintiffs' attorneys often routinely demand policy limits in every case, even those where the liability of the insurer is doubtful, and the insurer usually has only 60 days in which to investigate the claim and make a decision on whether or not to pay and, in the case of multiple plaintiffs, which one gets what portion of the insurance limits. This is often insufficient time, especially in complex cases with multiple plaintiffs. This threat of almost unlimited damages far in excess of policy limits often forces insurers to pay policy limits even in cases where liability is truly in doubt, especially since insurers contend that the trend in case law is such that merely losing a court case in many instances is equated with bad faith. Those forced settlements lead to increases in overall costs of insurance.

DISCUSSION—SB 1650 by Sen. Oelrich and HB 1463 by Rep. Murzin provides that the civil remedy claim can only be brought by the insured under the policy, but in fairness, continues to allow the insured to formally assign the bad faith cause of action to someone else. Additionally, the bill:

- ◆ Preempts all other remedies and causes of action for extra-contractual damages for failure to settle under an insurance contract. Under current

law, a plaintiff can choose to pursue a claim under the bad faith statute or choose a common law remedy.

- ◆ Raises the standard of proof for a plaintiff to prevail in bad faith cases to "clear and convincing," a more stringent standard than currently used.
- ◆ Requires any person seeking bad faith damages to cooperate fully with the insurer in facilitating a settlement and gives the insurer 90 days instead of the current 60 days to investigate a specifically made claim before bad faith can be pursued. This gives the insurer additional time in which to investigate a complex claim, gives them the specific information needed to do so, and allows time in which to cure any violation that may have led the insured to pursue the bad faith action.
- ◆ Finally, the bill provides that, if there are multiple plaintiffs, and the aggregate compensation sought by those multiple plaintiffs exceeds the policies' limits, the insurer can avoid bad faith extra-contractual exposure by making a timely written offer of its policy limits to all known claimants in exchange for a release of all claims against the insured, or if the insurer tenders such limits to the court for apportionment to the claimants.

Taken together, these reasonable changes will take the bad faith laws back to where they were first intended: to punish egregious behavior; not to force unfair settlements.

SOLUTION—Support passage of SB 1650 by Sen. Oelrich and HB 1463 by Rep. Murzin.

FOR MORE INFORMATION, CONTACT:

Laura B. Pearce, Esq., FAIA Director of Governmental Affairs & General Counsel, or
Kyle Ulrich, FAIA Director of Political Affairs
E-mail: lpearce@faia.com, kulrich@faia.com



Florida Association of Insurance Agents
PO Box 12129
Tallahassee, FL 32317-2129



Telephone: 850-893-4155
Fax: 850-668-2852
www.faia.com