LATEST STRATEGIES FOR DEALING WITH INSURANCE BAD FAITH IN 2025

PRESENTED BY

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RDCY
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HB 837 – 90-Day Safe Harbor

RDCY

627.422:

(4)(a) An action for bad faith involving a liability insurance claim, including any such action brought under the common law, shall not lie 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.

HB 837

627.422:

(b) If an insurer does not tender the lesser of the policy limits or the amount demanded by the claimant within the 90-day period provided in paragraph (a), the existence of the 90-day period and that no bad faith action could lie had the insurer tendered the lesser of policy limits or the amount demanded by the claimant pursuant to paragraph (a) is inadmissible in any action seeking to establish bad faith on the part of the insurer.

HB 837

What about conditional demands?

HB 837 – Comparative Bad Faith?

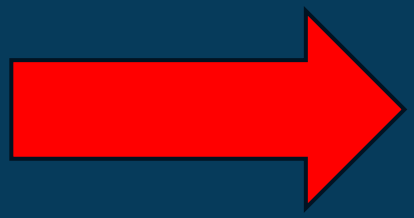
627.422:

(b)1. 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. This duty does not create a separate cause of action, but may only be considered pursuant to subparagraph 2.

2. In any action for bad faith against an insurer, the trier of fact may consider whether the insured, claimant, or representative of the insured or claimant did not act in good faith pursuant to this paragraph, in which case the trier of fact may reasonably reduce the amount of damages awarded against the insurer.

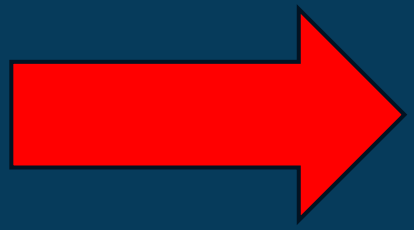
DUTY TO PROTECT

INSURANCE COMPANY



POLICY HOLDER

ATTORNEY



CLIENT

HB 837 – Multiple Claimants

627.422:

(6) If two or more third-party claimants have competing claims arising out of a single occurrence, which in total may exceed the available policy limits of one or more of the insured parties who may be liable to the third-party claimants, an insurer is not liable beyond the available policy limits for failure to pay all or any portion of the available policy limits to one or more of the third-party claimants if, within 90 days after receiving notice of the competing claims in excess of the available policy limits, the insurer complies with either paragraph (a) or paragraph (b).

HB 837 – Multiple Claimants

627.422:

(a) The insurer files an interpleader action under the Florida Rules of Civil Procedure. If the claims of the competing third-party claimants are found to be in excess of the policy limits, the third-party claimants are entitled to a prorated share of the policy limits as determined by the trier of fact. An insurer's interpleader action does not alter or amend the insurer's obligation to defend its insured.

HB 837 – Multiple Claimants

627.422:

(b) Pursuant to binding arbitration that has been agreed to by the insurer and the third-party claimants, 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 such third-party claimants at the expense of the insurer. The third-party claimants are entitled to a prorated share of the policy limits as determined by the arbitrator, who must consider the comparative fault, if any, of each third-party claimant, and the total likely outcome at trial based upon the total of the economic and noneconomic damages submitted to the arbitrator for consideration. A third-party claimant whose claim is resolved by the arbitrator must execute and deliver a general release to the insured party whose claim is resolved by the proceeding.

HB 837 – Is it Retroactive?

Section 29. This act shall not be construed to impair any right under an insurance contract in effect on or before the effective date of this act. To the extent that this act affects a right under an insurance contract, this act applies to an insurance contract issued or renewed after the effective date of this act.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JACOB MICHAEL DIAL
and JESUS PENA,

Plaintiffs,

v. Case No. 8:23-cv-1650-VMC-TGW

GEICO GENERAL INSURANCE COMPANY,

III. Analysis

A. Defendant's Motion

Dial and Pena argue that Geico acted in bad faith by failing to settle their bodily injury claims against its insured. (Doc. # 59 at 11-12). According to them, Geico committed bad faith because "it failed to minimize the biggest exposures to its insured by not tendering the available per-person limits to Dial more expeditiously and not tendering at all the remaining per-person limits to Pena." (Id.). For its part, Geico insists that it acted in good faith in handling multiple potential claims against its insured that were all likely to exceed the insurance policy's limits. (Doc. # 54 at 1-2, 19-23).

No reasonable jury could conclude that Geico acted in bad faith in its handling of this multiple-claimant accident. An insurer's "good faith duty to the insured requires it to fully investigate all claims arising from a multiple claim accident, keep the insured informed of the claim resolution process, and minimize the magnitude of possible excess judgments against the insured by reasoned claim settlement." Farinas v. Fla. Farm Bureau Gen. Ins. Co., 850 So. 2d 555, 561 (Fla. 4th DCA 2003). An insurer has a duty to abstain from "indiscriminately settl[ing] with one or more of the parties for the full policy limits" in a multiple claimant situation. Shuster v. S. Broward Hosp. Dist. Physicians' Pro. Liab. Ins. Trust, 591 So. 2d 174, 177 (Fla. 1992).

Here, Geico only learned of the accident at issue on November 24, 2020. (Def. Ex. C at GLC 00001-00002). Within twenty-seven days – during which time Geico attempted to communicate with the insureds and the three potential claimants about the accident, as well as obtained the police report and contacted the hospital – Geico tendered the per-accident limits on a global basis to the three claimants on December 21, 2020. (Id. at GLC 00006-00007; Def. Ex. JJ; Def. (11th Cir. 2010). Two weeks later, on January 4, 2021, Geico tendered the per-person limit to Dial, which Dial subsequently rejected on January 14. (Def. Ex. SS). In the same January 14 letter rejecting the tender to Dial, Dial and Pena's counsel stated that Pena also would not be accepting a tender from Geico and would not participate in the global settlement conference Geico had scheduled. (Def. Ex. UU).

[1] Alternatively, even if there were genuine disputes as to issues under Florida common law, the Court would grant Geico's Motion for a different reason. Florida Statute § 624.155(4)(a) provides: "An action for bad faith involving a liability insurance claim, including any such action brought under the common law, shall not lie 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." Fla. Stat. § 624.155(4)(a) (emphasis added). This statute went into effect on March 24, 2023 – before Plaintiffs obtained final judgments against Grant on May 17, 2023, and before Plaintiffs initiated this action on July 21, 2024. See (Doc. # 41-1 at 39) ("Except as otherwise expressly provided in this act, this act shall apply to causes of action filed after the effective date of this act."); see also (Doc. # 53 at 4; Doc. # 55 at 3) (Plaintiffs and Geico agreeing this statute went into effect on March 24, 2023).

DONE and **ORDERED** in Chambers in Tampa, Florida, this 19th day of July, 2024.

Virginia M. Hernandez Covington

VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CRISANTO C. OXONIAN, et al.,

Plaintiffs,

v. **Case No: 8:24-CV-1351-MSS-AAS**

GEICO GENERAL INSURANCE COMPANY,

Defendant.

ORDER

THIS CAUSE comes before the Court for consideration of Defendant GEICO GENERAL INSURANCE COMPANY'S ("GEICO") Motion for Judgment on the Pleadings, the response in opposition thereto, and the reply. (Dkts. 19, 27, 31) Upon consideration of all relevant filings, case law, and being otherwise fully advised, the Court **GRANTS** GEICO's Motion for Judgment on the Pleadings.

Oxonian v. GEICO

- December 12, 2006 - DOL (Fatality)
- January 4, 2007 - GEICO tenders $10K limits
- March 28, 2023 - FJ against GEICO insured
- April 26, 2023 - Amended FJ
- May 8, 2024 - BF suit filed
- June 3, 2024 - Removal to Middle District
- August 9, 2024 - GEICO moves for SJ

CRISANTO C. OXONIAN, et al.,

Plaintiffs,

v.

GEICO GENERAL INSURANCE COMPANY,

Defendant.

Therein, GEICO claims it is entitled to judgment on the pleadings because the undisputed facts show that GEICO tendered its $10,000 bodily injury policy limits to Ms. Oxonian within 90 days of the accident, as required under Florida law. (Id. at 7) In response, Plaintiffs contend that GEICO impermissibly relies upon 2023 legislative changes made to Florida's bad faith law, which they claim were not in effect at the time the policy was made and were not made retroactive to insurance policies issued on or before the effective date of the act. (See generally Dkt. 27) On October 17, 2024, GEICO filed a reply. (Dkt. 31) The motion is now ripe for review.

CRISANTO C. OXONIAN, et al.,

Plaintiffs,

v.

GEICO GENERAL INSURANCE COMPANY,

Defendant.

III. DISCUSSION

GEICO is entitled to judgment on the pleadings. On March 24, 2023, Fla. Stat. § 624.155 was amended to include, for the first time, a safe harbor to protect insurers from a finding of bath faith liability. Specifically, House Bill ("HB") 837, as it is commonly known, provides that "[a]n action for bad faith involving a liability insurance claim, including any such action brought under the common law, ***shall not lie*** 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." § 624.155(4)(a), Fla. Stat. (2023) (emphasis added). The Legislature expressly states the amendment applies to "causes of action filed after March 24, 2023." See § 624.155 n. 1(B), Fla. Stat. (2023) ("Section 30, ch. 2023-15, provides that "[e]xcept as otherwise expressly provided in this act, ***this act shall apply to causes of action filed after March 24, 2023***.") (emphasis added). Here, it is undisputed that Plaintiffs filed their cause of action for bad faith on May 8, 2024. (See Dkt. 1-1)

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Defendant.

Thus, based on the pleadings, GEICO is entitled to judgment as a matter of law because it tendered its $10,000 bodily injury policy limit to Ms. Oxonian 23 days after the accident, which is well before the statutorily required 90-day deadline provided under HB 837. See § 624.155(4)(a); (Dkt. 12 at ¶ 10; Dkt. 13-1) "Because it is undisputed that Geico tendered the policy limits within ninety days, no bad faith claim can survive under Section 624.155(4)(a)." Dial v. GEICO Gen. Ins. Co., No. 8:23-cv-1650-VMC-TGW, 2024 U.S. Dist. LEXIS 127473 at * 28 n.1 (granting GEICO's motion for summary judgment, in the alternative, because plaintiffs both obtained final judgments against the insured and initiated the cause of action *after* March 24, 2023, and it was undisputed that "GEICO tendered the policy limits on a global basis within ninety days and also offered the per-person policy limit of $10,000 to Dial within ninety days.") GEICO's motion for judgment on the pleadings is due to be **GRANTED**. In response to the motion, Plaintiffs raise two principal arguments, both of which fail.

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Defendant.

Plaintiffs next argue that HB 837 cannot be applied retroactively because it would impair their rights under the insurance contract. For support, they note that when the legislature enacted HB 837, it expressly stated as follows:

> section 29. This act shall not be construed to impair any right under an insurance contract in effect on or before the effective date of this act. To the extent that this act affects a right under an insurance contract, this act applies to an insurance contract issued or renewed after the effective date of this act [March 24, 2023].

Fla. HB 837, § 29 (2023).

The Parties dispute whether Plaintiffs have a "right" under the insurance contract in the first instance. GEICO contends that because Plaintiffs are neither insureds nor assignees, they have no rights under the insurance contract. (See Dkt. 31 at 4-5) Plaintiffs, who acknowledge they are not parties to the insurance contract, assert that they nevertheless have standing as third-party beneficiaries to sue for damages suffered by the insured because of the insurer's bad faith failure to settle.

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Defendant.

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

(Dkt. 27 at 8) For one, as explained above, the undisputed facts show that GEICO made an attempt to settle for the full $10,000 bodily injury policy limit. See supra. But "[e]ven if Plaintiffs, as third parties, have rights under the insurance contract" because of GEICO's alleged failure to settle, "the amendments to Section 624.155 did not affect any rights under the policy." See Dial, 2024 U.S. Dist. LEXIS 127473 at *28 n.1.

"Under Florida law, when addressing whether a statutory amendment applies to a statutory remedy, courts look to the statute in effect on the date the cause of action accrued." Isaacson v. QBE Specialty Ins. Co., No. 2:24-cv-715-SPC-NPM, 2024 U.S. Dist. LEXIS 191418 at *3 (M.D. Fla. Oct. 22, 2024) (citing Agency for Health Care Admin. v. Payas, 372 So. 3d 787, 789 (Fla. Dist. Ct. App. 2023) ("[T]he determinative point in time separating prospective from retroactive application of an enactment is the date the 'cause of action' accrues, which is the date that a party has the right to sue") (citation omitted)). "Because a bad-faith claim is a statutory action, a bad-faith cause of action accrues 'when the last element constituting the cause of action occurs.'" Id. (first quoting Fla. Stat. § 95.031(1); and then citing Lopez v. Geico Cas. Co., 968 F. Supp. 2d 1202, 1206 (S.D. Fla. 2013)).

Here, Plaintiffs' "right" to file a bad faith action against GEICO did not arise until the final judgment was entered against the insureds, which occurred on March 28, 2023, and April 26, 2023, after the effective date of HB 837 on March 24, 2023.

HB 837 – Impact on 624.155?

HB 837 – Impact of abolition of 627.428?

CRN in 3rd Party Cases?

FLORIDA JUSTICE ASSOCIATION®

FJA® Legislative Update

YOUR NEWSLETTER FOR REVIEWING LEGISLATIVE ISSUES IMPACTING CIVIL JUSTICE IN FLORIDA

To provide a coordinated response to these attacks, your FJA leadership has created an HB 837 Appellate Committee. This committee, made up of leading appellate attorneys and practitioners, is already underway on its mission to evaluate ways to eliminate or minimize the negative impacts of the new law through constitutional and interpretive arguments. The committee will serve as a clearinghouse for litigation arising from the new law. The committee will not

For the committee to effectively fulfill its mission, it is critical that it learn of pending issues being litigated under this new law as soon as possible. **If you receive a defense filing raising a particular issue under the new law or need to take a position interpreting the new law or challenging any aspect of it, please email the committee at legal@myfja.org**.

THANK YOU

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