

624.155's Requirement for a Civil Remedy Notice Needs to be Clarified

Bad Faith:

In all states, if an insured is upset with the handling of their claim, they can file a complaint with their state's insurance commissioner or sue their insurer under a breach of contract claim. Some states, such as Florida, have gone farther and permitted insureds or 3rd party beneficiaries of the insurance contract to bring bad faith claims against the insurance company ("insurer"). Bad faith claims permit recovery of greater damages than a simple breach of contract claim and bringing a claim of bad faith can be governed by common law OR statute.

A bad faith claim can be brought against an insurer either by the insured (1st party claim) or by a person that is not a party to the insurance contract, but is a beneficiary of that contract (a 3rd party claim).

- **1st party bad faith example:** Insured has a house fire, makes an insurance claim, and is unhappy with the way their insurance company handles the claim. Insured could bring a 1st party bad faith claim against the insurance company.
- **3rd party bad faith example:** Insured causes car wreck that injures a motorist. On behalf of the insured, the insurance company settles the claim with the motorist. If the motorist is unhappy with the way the insurance company settled the claim, then the motorist can bring a 3rd party bad faith claim.

Florida Bad Faith Law:

- 3rd party bad faith was established decades ago via common law.
- In 1982, the Legislature codified 3rd party bad faith AND added a new remedy of 1st party bad faith by enacting 624.155. Prior to introduction of 624.155, Florida did not recognize 1st party bad faith claims.

624.155

Florida Statute 624.155 permits 1st and 3rd party bad faith claims to be brought against insurance companies accused of violating specific statutes SO LONG as, prior to filing suit, the claimant files a Civil Remedy Notice (CRN) with the Department of Financial Services (DFS) that specifies the alleged violation. The purpose of the CRN requirement is to give the insurer notice of the alleged violation and time to cure the violation prior to a lawsuit being commenced.

Damages recoverable under 624.155 are greater than damages available under a breach of contract claim (which would be limited to actual damages incurred). Under 624.155, the following damages are available to a prevailing claimant:

- Consequential damages in excess of the policy limits
- Attorney's fees
- Interest
- Possible emotional stress damages
- Punitive damages IF claimant can prove a history of insurer's claim practices that show willful, wanton, and malicious disregard for insured's rights.

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The Problem:

The problem is that plaintiff's attorneys will file CRN's that allege a violation per the statutory requirement- but *omit* any specific damage amount or remedy. Often the CRN will just tell the insurer: "pay us what you owe us". This means that the insurance company - even if willing to write a check to cure the alleged violation - cannot know how much money it would take to cure the alleged violation. This has led to general confusion as to what a CRN requires and resulted in conflicting court cases on whether or not a CRN should list a specific cure amount.

Proposed Solutions:

A) DFS Administrative Change - DFS has the authority to require that CRNs contain a complete and clear description of the issue, including the amount of damages. If the CRN is unclear or there is no amount of damages provided, the DFS could reject the CRN as non-compliant to statute and require that a new one be submitted.

B) Legislative Change - Amend 624.155(3) to require the CRNs to specify a cure amount that could be paid to the insured in satisfaction of their complaint.

The statute should be amended as follows (amended language underlined and *italicized*):

(3)(a) As a condition precedent to bringing an action under this section, the department and the authorized insurer must have been given 60 days' written notice of the violation. If the department returns a notice for lack of specificity, the 60-day time period shall not begin until a proper notice is filed.

(b) The notice shall be on a form provided by the department and shall state with specificity the following information, and such other information as the department may require:

1. The statutory provision, including the specific language of the statute, which the authorized insurer allegedly violated.
2. The facts and circumstances giving rise to the violation.
3. The name of any individual involved in the violation.
4. Reference to specific policy language that is relevant to the violation, if any. If the person bringing the civil action is a third party claimant, she or he shall not be required to reference the specific policy language if the authorized insurer has not provided a copy of the policy to the third party claimant pursuant to written request.
5. A statement that the notice is given in order to perfect the right to pursue the civil remedy authorized by this section.
6. *A specific cure amount to correct the violation.*