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Recent Statutory Changes in Florida Insurance Law: Bad Faith - Part Four

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This is the final in a series of four articles analyzing recent changes to Florida law governing bad-faith claims in insurance coverage litigation made in Senate Bill 2A and House Bill 837, which became law in December 2022 and March 2023, respectively (the Amendments).

While previous articles dealt with new subsections in Section 624.155, this article will focus on the amendment of Section 624.1551.

1. The amendment to Fla. Stat. 624.1551

The preamble to 624.1551 states the amendments "revis[e] conditions that must be met for a claim for extra-contractual damages in a civil remedy action against a property insurer" and "providing construction." Amended Section 624.1551 states:

> **624.1551 Civil remedy actions against property insurers.**—Notwithstanding any provision of s. 624.155 to the contrary, in any claim for extra-contractual damages under s. 624.155(1)(b), no action shall lie until a named or omnibus insured or a named beneficiary has established through an adverse adjudication by a court of law that the property insurer breached the insurance contract and a final judgment or decree has been rendered against the insurer. Acceptance of an offer of judgment under s. 768.79 or the payment of an appraisal award does not constitute an adverse adjudication under this section. The difference between an insurer's appraiser's final estimate and the appraisal award may be evidence of bad faith under s. 624.155(1)(b), but is not deemed an adverse adjudication under this section and does not, on its own, give rise to a cause of action.

The Amendment applies only to claims against property insurers that are based on 624.155(1)(b). It therefore has no applicability to any claims against non-property insurers or to claims against property insurers based on 624.155(1)(a).[1]

Under prior law, "a statutory bad-faith claim under section 624.155 is ripe for litigation when there has been (1) a determination of the insurer's liability for coverage; (2) a determination of the extent of the insured's damages; and (3) the required notice [CRN] is filed pursuant to section 624.155(3)(a)." *Zaleski v. State Farm Fla. Ins. Co.*, 315 So. 3d 7 (Fla. 4th DCA 2021).

The prerequisites set forth in the Amendment override a long line of case law holding that an insured is not obligated to obtain a judgment from a court that the insurer breached the insurance agreement before bringing suit on a bad-faith claim. All of these cases held, in one form or another, that the insured need only prove the "functional equivalent" of a judgment establishing that the loss was covered by the policy and the amount of the loss.[2] The Supreme Court had held an insured "is not obligated to obtain the determination of liability and the full extent of his or her damages through a trial" but rather "may utilize other means of doing so, such as an agreed settlement ... or stipulation before initiating a bad-faith cause of action."[3] Several cases specifically held that an appraisal award could serve as the "functional equivalent" of a judgment,[4] while others held that acceptance of an offer of judgment under s. 768.79 would meet the test.[5]

Interestingly, the Legislature did not override this case law for claims that are not subject to 624.1551. This includes all non-property claims and property claims based on 624.155(1)(a). Courts will need to decide whether this different treatment constitutes legislative approval of the "functional equivalent" doctrine in non-property claims and property claims based on 624.155(1)(a).

For the claims affected by the Amendment, the statute requires the insured to establish, as a condition precedent to bringing a bad-faith claim against a property insurer, that (i) there has been "an adverse adjudication by court of law" demonstrating that the insurer breached the policy and (ii) a final judgment has been rendered against the insurer. It also makes clear that the difference between an insurer's appraiser's final estimate and the appraisal award is not an "adverse adjudication" for purposes of the statute and is not alone sufficient to "give rise to a cause of action" under 624.155(1)(b).

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1 624.155(1)(a) provides a civil remedy for extra-contractual damages against insurers who commit any of the "Unfair Claim Settlement Practices" listed in Fla. Stat. 626.9541(1)(i).

2 See, e.g., *Vest v. Travelers Ins. Co.*, 753 So. 2d 1270, 1273-74 (Fla. 2000) (the insured could use other means to establish "a resolution of some kind in favor of the insured" and "to show that the insured had a valid claim." This could be satisfied by proof of the "functional equivalent" of a judgment establishing that the loss was covered by the policy and the amount of the loss. This proof could include payment of policy limits by the insurer, payment of an agreed settlement with the claimant, an arbitration or appraisal award in favor of the insured, or stipulation of loss exceeding the amount offered by the insurer.)

3 *Fridman v. Safeco Insurance Co.*,185 So.3d 1214, 1224 (Fla. 2016).

4 See, e.g., *Patti Fortune and Jeremy Domin v. First Protective Insurance Company d/b/a Frontline Insurance*, 302 So.3d 485 (Fla. 2nd DCA Sept. 4, 2020)(appraisal award satisfies requirements of a determination of the insurer's liability for coverage and extent of the insured's damages); *Cammarata v. State Farm Fla. Ins. Co.*, 152 So.3d 606, 612 (Fla. 4th DCA 2014) (finding that appraisal award was a "'favorable resolution' of an action for insurance benefits, so that [the insured] ... satisfied the necessary prerequisite to filing a bad-faith claim.")

5 *Wollard v. Lloyd's and Cos. of Lloyd's*, 439 So. 2d 217, 218 (Fla. 1983) ("When the insurance company has agreed to settle a disputed case, it has, in effect, declined to defend its position in the pending suit. Thus, the payment of the claim is, indeed, the functional equivalent of a confession of judgment or a verdict in favor of the insured.")