

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Simmons offered the following:

Amendment

Remove line(s) 1764-1854, and insert:

(2)(a) In all matters under this section relating to professional liability insurance coverage for medical negligence and in determining whether the insurer acted fairly and honestly towards its insured with due regard for her or his interest, an insurer shall not be held in bad faith for failure to pay its policy limits if it tenders policy limits by the 90th day after the conclusion of all of the following:

1. One deposition of each of the defendants named in the action has been completed.

2. The claimant has offered in writing to the defendant insured the opportunity to take the deposition of all claimants named in the action.

Amendment No. (for drafter's use only)

27 3. The claimant has offered in writing the name of each of
28 the expert witnesses that the claimant intends to call at trial.

29 4. The claimant has offered in writing the name of each of
30 the treating physicians that the claimant intends to call at
31 trial.

32 5. The claimant has offered in writing the name of each of
33 the fact witnesses that the claimant intends to call at trial.

34 6. The claimant has offered in writing to respond as
35 required by Rule 1.340, Florida Rules of Civil Procedure, to the
36 defendant insured's request for production of documents.

37 7. The parties have engaged in at least one voluntary or
38 compulsory mediation, which has reached an impasse or adjourned.

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40 If the claimant adds to or amends the list of expert witnesses,
41 the time under this paragraph for tendering policy limits shall
42 be extended by an additional 60 days. Either party may move the
43 court to extend or terminate the time period set forth in this
44 paragraph because the other party has unnecessarily or
45 inappropriately delayed any of the events specified in
46 subparagraphs 1.-7. The fact that the insurer did not tender
47 policy limits during the time periods specified in this
48 paragraph does not create a presumption or conclusively
49 establish that the insurer acted in bad faith.

50 (b) The following factors shall be considered by a court
51 in determining whether an insurer has attempted in good faith to
52 settle claims when, under all the circumstances, it could and
53 should have done so had it acted fairly and honestly toward its
54 insured and with due regard for her or his interests:

Amendment No. (for drafter's use only)

55 1. The insurer's willingness to negotiate with the
56 claimant in anticipation of settlement.

57 2. The insurer's consideration of the advice of the
58 insured's defense counsel.

59 3. The propriety of the insurer's methods of investigating
60 and evaluating the claim.

61 4. Whether the insurer informed the insured of the offer
62 to settle within the limits of coverage, the right to retain
63 personal counsel, and the risk of litigation.

64 5. Whether the insured denied liability or requested that
65 the case be defended after the insurer fully advised the insured
66 as to the facts and risks.

67 6. Whether the claimant imposed any condition, other than
68 the tender of the policy limits, on the settlement of the claim.

69 7. Whether the claimant provided relevant information to
70 the insurer on a timely basis.

71 8. Whether and when other defendants in the case settled
72 or were dismissed from the case.

73 9. Whether there were multiple claimants seeking, in the
74 aggregate, compensation in excess of policy limits from the
75 defendant or the defendant's insurer.

76 10. Whether the insured misrepresented material facts to
77 the insurer or made material omissions of fact to the insurer.

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79 Upon motion of either party for good cause shown, the court may
80 allow consideration of such additional factors as it determines
81 to be relevant.

82 (c) In an action under this section brought by any person,
83 other than the insured or a person to whom the insured has

Amendment No. (for drafter's use only)

84 assigned his or her cause of action under paragraph (d), damages
85 may not exceed the lesser of:

- 86 1. An amount equal to the insured's policy limits; or
87 2. An amount equal to the excess judgment in the action
88 for medical negligence.

89 (d) Nothing in this subsection shall be construed to
90 prohibit an insured from assigning a cause of action to an
91 injured third-party claimant for the insurer's failure to act
92 fairly and honestly towards its insured with due regard for the
93 insured's interest.