



501986

LEGISLATIVE ACTION

Senate

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House

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Floor: WD/2R

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03/22/2023 05:53 PM

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Senator Martin moved the following:

Senate Amendment (with title amendment)

Delete lines 335 - 402

and insert:

(4) (a) In an action for bad faith failure to settle a liability insurance claim, including any such action brought under the common law, if the insurer initiates settlement negotiations by tendering the lesser of the policy limits or the amount demanded by the claimant in exchange for a general release of the insured within 90 days after receiving actual notice of the loss, the failure to tender the policy limits



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12 sooner does not constitute bad faith.

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

21 (c) If the insurer fails to tender pursuant to paragraph
22 (a) within the 90-day period, any applicable statute of
23 limitations is extended for an additional 90 days.

24 (5) In any bad faith action, whether such action is brought
25 under this section or is based on the common-law remedy for bad
26 faith:

27 (a) Mere negligence alone is insufficient to constitute bad
28 faith.

29 (b) The focus of the bad faith claim is on the conduct of
30 an insurer, but in determining whether the insurer actually
31 could have settled the claim, the jury may consider the totality
32 of the circumstances, including:

33 1. Whether any conditions placed on the settlement by the
34 claimant were unreasonable or impossible to perform within the
35 time permitted; and

36 2. Whether the insured failed to cooperate with the
37 insurer's efforts to meet the conditions after being fully
38 advised by the insurer about the purpose and importance of doing
39 so.

40 (6) (a) If two or more third-party claimants have competing



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41 claims arising out of a single occurrence, which in total may
42 exceed the available policy limits of an insured who may be
43 liable to the third-party claimants, and the insurer initiates
44 settlement negotiations by globally tendering the applicable
45 policy limits in exchange for a general release of the insured
46 within 90 days after receiving actual notice of the loss, the
47 failure to tender policy limits sooner does not constitute bad
48 faith.

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

56 (c) If two or more third-party claimants have competing
57 claims arising out of a single occurrence, which in total may
58 exceed the available policy limits of an insured who may be
59 liable to the third-party claimants, and the claimants are
60 unwilling to globally settle within the policy limits,
61 thereafter, the insurer must attempt to minimize the magnitude
62 of possible excess judgments against the insured. The insurer is
63 entitled to great discretion to decide how much to offer each
64 respective claimant in its attempt to protect the insured. The
65 insurer may, in its effort to minimize the excess liability of
66 the insured, use its discretion to offer the full available
67 policy limits to one or more claimants to the exclusion of other
68 claimants and may leave the insured exposed to some liability
69 after all the policy limits are paid. An insurer does not act in



70 bad faith simply because it is unable to settle all claims in a
71 competing claimant case.

72 (d) An insurer is not liable beyond the available policy
73 limits for failure to pay all or any portion of the available
74 policy limits to one or more of the third-party claimants if,
75 pursuant to a binding arbitration that has been agreed to by the
76 insurer and all the third-party claimants, the insurer makes the
77 entire amount of the policy limits available for payment to the
78 competing third-party claimants before a qualified arbitrator
79 agreed to by the insurer and such third-party claimants at the
80 expense of the insurer. The third-party claimants are entitled
81 to a prorated share of the policy limits as determined by the
82 arbitrator, who must consider the comparative fault, if any, of
83 each third-party claimant and the total likely outcome at trial
84 based upon the total of the economic and noneconomic damages
85 submitted to the arbitrator for consideration. A third-party
86 claimant whose claim is resolved by the arbitrator must execute
87 and deliver a general release to the insured party whose claim
88 is resolved by the proceeding.

89 (7)~~(4)~~ In any insurance bad faith action, whether brought
90 under this section or the common law, upon adverse adjudication
91 at trial or upon appeal, the ~~authorized~~ insurer shall be liable
92 for damages, together

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94 ===== T I T L E A M E N D M E N T =====

95 And the title is amended as follows:

96 Between lines 17 and 18

97 insert:

98 revising applicability and conditions for the award of



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damages, court costs, and attorney fees in certain
civil actions;