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High court ruling doesn't eliminate bad-faith claims

Commentary by Meghan C. Moore

The Florida Supreme Court's decision in *QBE Insurance v. Chalfonte Condominium Apartment Association* is not — contrary to insurance industry speculation — the death knell for insurance bad-faith claims in Florida.

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Rather, it simply reiterates that Florida law imposes on insurers doing business in this state certain statutory obligations of good faith and fair dealing and provides a private right of action to consumers harmed by an insurer's violation of those obligations. The court acknowledged "that the statutory remedy in section 624.155 'essentially extended the duty of an insurer to act in good faith and deal fairly in those instances where an insured seeks first-party coverage or benefits under a policy of insurance.' " Florida consumers who understand how to perfect bad-faith claims under Florida's Civil Remedies Statute, section 624.155 (the bad-faith statute), and incorporated provisions of Florida's Unfair Insurance Trade Practices Act, should not be concerned about the court's refusal to create a first-party common law cause of action for breach of the implied covenant of good faith and fair dealing in insurance contracts. The common law cause of action, recognized in other contexts, relates to the performance of an express term of a contract and protects the parties' reasonable expectations.

Florida's bad-faith statute, in contrast, offers significantly greater protections.

The bad-faith statute, for instance, requires insurers to settle claims when they can and should in good faith, acting fairly, honestly and with due regard for their insureds' interests. It also requires insurers to, among other things, adopt and implement standards for the proper investigation of claims, acknowledge and act promptly upon claim communications, promptly notify the insured of any additional information necessary to process his or her claim, clearly explain the nature of the requested information and the reasons why such information is necessary, and provide a reasonable explanation in writing to insureds of the basis in the insurance policy, in relation to facts or law, for denial of a claim or the offer of a compromise settlement.

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The bad-faith statute also prohibits insurers from misrepresenting pertinent facts or insurance policy provisions. And, with respect to first-party residential property policies, the statute requires insurers to pay undisputed amounts within 90 days after receiving notice of an insurance claim, absent extenuating circumstances.

When an insured is harmed by an insurance carrier's violation of one or more of these provisions, he or she may recover damages that are the reasonably foreseeable result of the insurer's violation. Damages may exceed and are in no way capped by, the policy limits.

Florida consumers need be mindful, however, that in order to perfect a claim under the statute, they must file a Civil Remedy Notice pursuant to Florida statute 624.155(3) and allow an insurer 60 days to cure any alleged statutory violations. This notice requirement is a condition precedent to a private right of action and requires the insured to set forth, at minimum, the statutory provisions violated, facts and circumstances giving rise to the violation, known individuals involved in the violation, and relevant policy language.

In short, the bad-faith statute enacted by the Florida Legislature three decades ago requires insurers to act fairly, honestly and in good faith in investigating, evaluating and adjusting insurance claims. Since Florida policyholders already have a powerful and carefully balanced remedy, creation of a common law private right of action in the first-party context is unnecessary, and has long been recognized as such by Florida courts.

Thus, while *Chalfonte* confirmed that Florida law does not recognize a claim for breach of the implied warranty of good faith and fair dealing by an insured against its insurer, it did so by expressly concluding "that such first-party claims are actually statutory bad-faith claims that must be brought under section 624.155 of the Florida statutes."

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