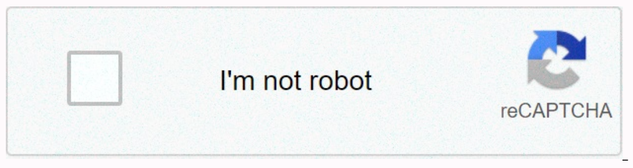

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Civil remedy notice

Current up to Reg. 46, no. 237; 8 December 2020Seection 69J-123.002 - Civil remedy notice(1) The civil repair notice required by Section 624.155, F.S., must be presented electronically on form DFS-10-363, Civil Repair Notice of insurer infringement (Effective 10-14-08), which is adopted and incorporated reference. The form must be submitted to the Department of Financial Services, Consumer Assistance Office, through the website at the address . No charge is required. (2) Reports from insurers authorized to the Department as required by Section 624.155(3)(c), F.S., regarding the provision of the alleged breach should be added electronically to the existing Form DFS-10-363 specific to the notice addressed. (3) Any written communication between the parties to the civil appeal notice, intended for inclusion in the Department's electronic file, is electronically added to the existing Form DFS-10-363 specific to the notice addressed. Fla. Administrative Code Ann. R. 69J-123.002 Regulatory Authority 624.308(1) FS. Law implemented 624,307, 624,155 (3)(b) FS. New 10-14-08, modified 12-27-09. ANSWER: Prudence, not perfection, is required. In recent years, there seems to have been an increase, especially in first-party pre-lawsuit assignments, which resulted in the filing of a Civil Remedies Notice (CRN). NRNs often involve the demand for UM/UIM benefits from an affected party (of the insured person) following a car accident. Earlier this year, after such assignment and request to obtain an affidavit from the UM applicant, a file manager observed all these CLANs look the same... and they read the same... Continued:... all notices say that the insurer failed to settle the claim promptly... failed to properly assess the complaint... failed to implement the appropriate investigation standards.... Then he said: Sometimes I'm tempted not to even answer... I advised him against a total inability to respond. At the same time, I began to think about the various types of accurate, appropriate and - if ever necessary - defensible answers. I. First Party Bad Faith Claims A. General - A Primer and a Refresher A first-party bad faith claim comes to Florida when an insured person sues their insurance company for a refusal or improper rejection of benefits. Wojciechowski v. Allstate Property and Casualty Ins., 2016 WL 10732584, *8 (M.D. Fla. December 27, 2016). V. QBE Ins. Corp., 504 F. Supp. 2d 1307, 1310 (S.D. Fla. 2007)([A]n action for first-party bad faith consists in the unlawful refusal of an insurer of complaint that is directly the responsibility of your policyholder). While the actions of third-party bad faith of common law were recognized in Florida as early as 1938, first-party bad faith actions are not recognized by common law. State Mutual Auto. Laforet, 658 So. 2d 55, 58-59 (Fla. 1995). In 1982, the Florida Legislature enacted Florida Statute §624,155, creating a lawsuit of action in bad faith for the first part. The Florida Statute § 624.155 provides a private lawsuit against an insurer for failing to attempt in good faith to resolve claims when, in all circumstances, it could and should have done so, if it had acted fairly and honestly against its policyholder and with due respect for you or your interests. The Florida Supreme Court has ruled that a request for bad faith under Article 624.155(1)(b)(1) is based on the insurer's obligation to pay when all conditions under the policy would require an insurer exercising good faith and fairness to its policyholders to pay. Cadle v. GEICO General Ins. Co., 838 F.3d 1113, 1124 (11th Cir. (Fla.) 2016)(citing Vest v. Travelers Ins. Co., 753 So. 2d 1270, 1275 (Fla. 2000)). In order to determine whether an insurer has acted in good faith, the courts must consider all the circumstances which, among other things, involve: whether the insurer has investigated the facts relating to the event; took due account of reasonable settlement offers in the circumstances; and settled wherever possible if a reasonably prudent person would settle. Daniels v GEICO General Ins. 665,668 (11th Cir. (Fla.) 2018); Wojciechowski v. Allstate Property and Casualty Ins., 2016 WL 10732584, *8 (M.D. Fla. December 27, 2016). B. Recoverable damages in first-party bad faith lawsuit With regard to damages recoverable in a bad faith action, Florida Statute §624.155 provides: Recoverable damages under this section include damages that are a reasonably foreseeable result of a specific violation of this section by the authorized insurer and may include a premium or judgment in an amount that exceeds policy limits. 624,155(8), Fla. Florida's Unified Messaging Statute goes further and establishes recoverable damages from a UM carrier, by virtue of an action in bad faith inundated under florida's Statute §624.155, will include the following: Recoverable damages from an unspoitched carrier in an action inundated under s. 624.155 will include the total amount of damages of the applicant , including the amount above the policy limits, any interest on unpaid benefits, reasonable legal fees and costs, and any damages caused by a violation of a law of this state. The total amount of the applicant's damage can be recovered by both an insurer and a third party. 627,727(10), Fla. See also State Farm Mutual Auto. Ins. Laforet, 658 So. 2d 55 (Fla. C. Requirements to prosecute the claim for first-party bad faith - Where CRN enters as a previous condition to file a first part in bad faith pursuant to §624.155, the policyholder must give the Florida Department of Financial Services and the authorized insurer sixty (60) days of written notice of the breach. §624.155(3)(a), Fla. This warning is commonly referred to as a civil remedy alert, or CRN. The NRN must contain the following specific information: The legal provision, including the specific language of the statutes, which the authorised insurer would have breached; The facts and circumstances giving rise to the infringement; The name of any individual involved in the breach; Reference to specific political language relevant to the breach, where appropriate. . A statement that the notice is given in order to improve the right to pursue the civil remedy authorized by this section. See §624.155(3)(b), Fla. See also The Heritage Corporation of South Florida v. National Union Fire Ins. Co. of Pittsburgh, Pa., 580 F. Supp. 2d 1294, 1299-1300 (S.D. Fla. 2008)(CRN was not specific enough to allow the insurer to treat alleged breaches resulting in legal claims for bad faith, in which CRN did not invoke specific obligations or loyalty policies, did not explain the amounts of the damages in question caused by the insurer's alleged legal breaches, and did not specify what kind of action it wanted the insurer to take in response , such as paying certain policies, investigating certain claims, or taking some other type of action) (emphasis added). Note- Another approach and vision of a CRN is that it gives a carrier the opportunity to oversee siimi analysis or a lack of payment. According to the Statute, no action must reside if, within 60 days of the filing notice, the damages are paid or the circumstances that gave rise to the breach are correct. §624.155(3)(d), Fla. Stat. See in general, Paz versus Fidelity Nat'l Ins. Co., 712 So. 2d 807 (Fla.3d DCA 1998) (the insurance company's agreement to pay for damages due within sixty days of the civil appeal notice does not prohibit a bad faith lawsuit – the statute prohibits bad faith cases if the damages are paid or the circumstances giving rise to the breach are corrected within sixty days – negotiating an agreement to be paid as a correction of circumstances would render the first part of the statute meaningless). The sixty (60) day window gives insurers the last chance to meet their sinimi management obligations when a good faith decision by the insurer ... indicate that the contractual services are due. Fridman vs. Safeco Ins. Co. of Illinois, 185 So.3d 1214, 1220 (Fla. 2016); Talat Enterprises, Inc. against Aetna Cas. & Surety Co., 753 So. 2d 1278, 1284 (Fla. 2000) (emphasis Florida Statute §624.155(1)(b) is correctly read to authorize a civil remedy for non-contractual damages if a first-party insurer does not pay the contractual amount due to the policyholder to the insured person all policy conditions were met within sixty days of the date on which a valid notice was submitted pursuant to §624.155(2)(a). Talat Enterprises, Inc., 753 So. 2d to 1283. The statutes cannot reasonably be interpreted to require the payment of non-contractual damages to avoid disputes in bad faith until the conditions for payment under the policy are met and the insurer has been able to take care within the legal period of sixty days for treatment. Non-contractual damages that can only be recovered due to this status of civil remedy cannot be recovered when the remedy itself does not mature (why)... the insurer pays what is due to the insurance policy during the care period. Id. to 1284. Q. Effect of non-response - Presumption and burden move to the insurer to prove why it did not respond If the insurer does not respond to a civil remedy notice within the sixty (60) day window, then there is a presumption of bad faith sufficient to transfer the burden to the insurer to show why it did not respond. Fridman, 185 So.3d to 1220 (quoting Imhof v. 643 So. 2d 617, 619 (Fla. 1994), withdrew from other reasons, State Farm Mut. Car. According to the Florida Supreme Court in Fridman, sixty days after [the policyholder] filed his civil remedy notice without action from Safeco, a presumption of bad faith arose. Fridman, 185 So.3d to 1228. See also Cadle v. GEICO General Insurance Co., 838 F.3d 1113, 1124 (11tn Cir. (Fla.) 2016)(if an insurer does not respond to a civil remedy notice within the sixty-day window, there is a presumption of bad faith sufficient to pass the burden on to the insurer to show why it did not respond). In Vaughn v. Producers Agriculture Ins. Co., 111 F. Supp.3d 1251, 1254-1255 (N.D. Fla. 2015), the judge considered a first-party bad faith claim by an insurer against its crop insurer. The court referred the insurer's reply to the insured person's civil appeal notice and whether that response was sufficient to preclude a presumption of bad faith: a civil reparation notice is an earlier condition for making a claim in bad faith under Article 624.155. An applicant must file a notice with the Florida Department of Financial Services on a form provided by the Department at least sixty days before filing a lawsuit in bad faith. §624.155(3)(a)-(b), Fla. The insurer may avoid an action for bad faith if, within sixty days of the applicant's notice of filing, the damages are paid or the circumstances giving rise to the breach are corrected. The legal regime, in other requires putative applicants to submit a notice to give the insurer the last chance to resolve an insured person's claim and avoid unnecessary bad faith disputes. . The genesis of timely response is Imhof v. Nationwide Mutual Insurance Company, where the Florida Supreme Court, addressing a different review issue, has stated for the first time that failure by an insurer to respond to a CRN valid within sixty days creates a presumption of bad faith. 643 So. 2d 617, 619 (Fla. 1994). This presumption transfers to the insurer the burden of proving why he did not reply. In Imhof, the defendant - as the court pointed out - had not responded in any way to the applicant's notice. 643 So. 2d to 619 (emphasis added). The judge, troubled by the possibility that a defendant could isolate himself from liability simply by refusing to respond to a notice of violation, developed the presumption of bad faith. Id. It is clear that the desire to reset the policy underlying §624.155, which the imhof court has defined as promot[ing] rapid resolution of insurance claims, is the basis of the court's decision. The court explained, for example, that when an insurer does not respond within sixty days, the insurer makes a mockery of the very purposes of §624.155. Id. The presumption of bad faith, therefore, has been forged to incentivize timely responses that in turn further the rapid resolution of insurance claims. The same concern that led to the presumption should serve as a touchstone for deciding what constitutes a response to a civil remedy notice under §624.155. The asymmetry of information, above all, hinders pre-process settlement. Unveiling the location of each side illuminates potential tradeoffs. The sooner this happens, the more time it takes to reach a compromise. This can be achieved as long as the parties engage in genuine exchanges. It's important to emphasize that these candid exchanges aren't exclusive to a specific medium, like the Florida Department of Financial Services portal. The period of sixty days in this case has spr up in the course of a genuine arbitration procedure. Within this period, the parties exchanged numerous documents and presented wide-ranging evidence to support their respective positions. The plaintiffs are undoubtedly aware of [the insurer's] position in relation to the underlying insurance claim. Therefore, [the insurer's] responses to the plaintiff's allegations during the arbitration process had the same information revealing the – probably even greater – effect of a formal response to the portal. This does not mean that all preschool proceedings constitute a reply within the meaning of Article 624.155. This court, however, does not have to outline the precise limits of an adequate response, because in this case the exchanges [of the insurer] with the plaintiffs Sufficient. As a result, the plaintiffs are not entitled to a summary judgment on the presumption of bad faith because [the insurer] responded promptly to the plaintiff's NRN. At 1254-1255 (emphasis provided). And. The fee for denying payment by the insurer does not mean that the insurer is guilty of bad faith It is important refusal of payment does not mean that the insurer is guilty of bad faith. According to the Florida Supreme Court: We rush to point out that refusing payment does not mean that an insurer is guilty of bad faith on a point of law. The insurer has the right to deny claims that, in good faith, it is not due to a policy. Even when a court or arbitration later ruled that the insurer's refusal was wrong, there is no reason to act if the refusal was in good faith. Vest v. Travelers Ins. Co., 753 So. 2d 1270, 1275 (Fla. 2000) (emphasis provided). In a fairly recent case, the Florida Supreme Court also said it wanted to make it clear that: The insurer has a full opportunity to defend its actions related to handling the policyholder's UM insurance claim when he challenges the action in bad faith. In other words, just because the amount of the unified verdict is a binding element of damages under Article 627,727(10), in the event of bad faith, the insurer is not precluded from explaining its actions not in not paying the policy limits when requested and from filing its case on the grounds that it did not act in bad faith in the handling of the UNIFIED MESSAGING complaint. Fridman, 185 So.3d to 1230. The courts have denied claims of bad faith based on the insurer's failure to recover and the payment of a non-economic damages claim if the policyholder does not present medical evidence of permanence. For example, in Cadle v. GEICO General Ins. Co., the Eleventh Circuit Court of Appeals has ruled that a Unified Messaging carrier does not act in bad faith by refusing to settle the insured person's unified application if the unspoient motorist is not liable to the policyholder for damages resulting from the accident. According to the Cadle court, an insured person seeking non-economic benefits from his UNIFIED MESSAGING carrier must first meet the requirement of permanent injury under the non-fault statute. Since the Unified Messaging carrier is not required to provide coverage for pain, suffering, mental distress and inconvenience unless the permanent injury requirement threshold for non-economic damage has been met, the inability of the insured person during the sixty (60) day of treatment to provide the Unified Messaging carrier with medical evidence of the permanence of his injuries resulting from the accident prevented him from recovering in his action in bad faith against the carrier for not having settled his complaint. If an un insured motorist is not liable to the insured person for damage resulting from an accident, the insurer acted in bad faith by refusing to settle the claim. Id. to 1127 (quoting Blanchard v. State Farm Mut. Car. Ins. Co., 575 So. 2d 1289, 1291 (Fla. 1991)). See also Duncan v. GEICO General Ins. Co., 729 Fed. 900 (11° Cir. (Fla.) 2018)(the insurer did not act in bad faith in the treatment of the insured person's unified application where none of the medical records included in the letter of application indicating the insured person suffered a permanent injury, x-rays and resonance before the accident returned the only medical evidence suggesting permanence suggested a follow-up appointment in five months along with stretching exercises and where during the 60-day care period the insurer's examiners concluded that the injuries were of a soft tissue nature); Wojciechowski v. Allstate Property and Casualty Ins., 2016 WL 10732584, *8 (M.D. Fla. December 27, 2016) (as the policyholder did not prove within the CRN care period that he had suffered a permanent injury within a reasonable degree of medical probability, Allstate's refusal to file UIM policy limits of $100,000 during the treatment period, which was based on the medical records in his possession, and the fact that the policyholder did not incur out-of-pocket expenses , was not done in bad faith). II. Take Homes for CRNs and Responses To sum up: if an insurer does not respond to an RRN within the sixty (60) day window, there is a presumption of bad faith sufficient to transfer the burden to the insurer to prove why it did not respond. This presumption was created to (a) incentivize timely responses, (b) encourage parties to share relevant information, and (c) promote the rapid resolution of insurance claims. A sufficient response from the insurer does not require payment or that the answer is perfect. The answer could be equivalent to documents provided or other evidence. Or it could mean the establishment of a process such as arbitration or voluntary mediation, which advises the policyholder of the insurer's position. But when an insurer receives a CRN, we strongly advise them to respond in some written way, to avoid the negative presumption. So... Did you get a CRN? Be threatened with one? Or as an applicant are you thinking of presenting one? If so, you can contact us to discuss the matter. We are available to evaluate your options and can help you formulate and draft a prudent and appropriate response. -Joe Amos & Stephanie Preston Topics: insurance, bad faith claims