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Liability Insurers Are Seeking License To Skirt Their Responsibilities When There Are Multiple Claimants

I. Current law just requires insurance companies to act "reasonably" to protect their insureds from the biggest exposure.

Multiple claimant cases are those rare, often terrible calamities where one act of negligence has injured, perhaps badly, more people than there are policy limits. For split limit policies (i.e., 100/300) if there are more claimants than there are split limits (3 in that example), then you have claimants competing for the same money. With a combined single limit policy (common in commercial settings), then any claim with more than one claimant is a multi-claimant case.

The types and combinations of injuries are infinite. Sometimes none of the claimants are catastrophically injured, but sometimes there can be several who are. Perhaps most typically, in serious cases at least, one or two claimants will have losses that stand out above the others, with injuries such as paralysis, brain injury, amputation or death.

In such situations, under current law, the obligations of the liability insurer are straightforward and have not changed since at least 1969. The carrier should use reasonable efforts to investigate all the claims, evaluate them, and then use the policy limits to attempt to blot out the most liability possible for the benefit of the insured. *See Liberty Mut. Ins. Co. v. Davis*, 412 F.2d 475 (5th Cir. 1969); *Farinas v. Florida Farm Bureau*, 850 So. 2d 555 (Fla. 4th DCA 2003).

Insurers are given wide discretion on making these decisions and cannot be sued for bad faith even if, through the exercise of reasoned judgment, some claimants end up with none of the insurance benefits.

If, for example, an insured with a $1 million-dollar combined single limit policy has caused a wreck that results in a spinal cord injury (valued at $15 million), a broken arm (valued at $60,000) and two whiplashes (valued at $20,000 each), and the spinal cord injury claimant offers to settle only if he receives the full $1 million dollar limit within 30 days, that offer should obviously be accepted. The insured will be fortunate to have only the manageable claims to settle from their own funds.

II. HB 837/SB 236 would completely eviscerate the liability insurer's obligation to investigate and evaluate the most dangerous claim.

Under HB 837/SB 236, the liability insurer can wait for 90 days and do nothing at all. At that point, all the insurance company has to do is write a check to the clerk of the court, file suit against the injured people, and then transfer its work to a judge (who is paid by taxpayers), or an arbitrator, who will then create what they perceive to be a "pro-rata distribution" of the policy limits.

III. Why this interpleader (or the arbitration equivalent) is a bad idea.

The fundamental flaw in this plan is that the claimants have the option to either participate in these processes or not, and are absolutely not required to accept the proposed "pro-rata" distribution of the policy limits. They have a Seventh Amendment right to a jury trial against the insured, and nothing in this bill can take that right away.

In fact, **nobody is assured of protection by these 'interpleader' proceedings other than the insurance company.**

Of course, if the insured is insolvent, the injured claimants may be likely to accept whatever they are offered. In those cases, the claims of some or perhaps all of the claimants will be resolved and the insured will obtain a release.

However, for the individuals and small businesses with net worths between $2 million to about $30 million (which are the main constituency the law of bad faith is designed to protect), the claimants have other options.

In the example listed above, the insurer can simply ignore the policy limits offer from the quadriplegic, who can then file suit for unlimited damages against the insured. Nothing in the 'interpleader' processes impairs that lawsuit or protects the insured from the consequences of a huge excess judgment against them.

Long before the 90-day period expires (during which the insurance company is literally required to do nothing), the opportunity to settle may be extended and lost forever because of inaction by the insurer. During those critical 90 days, the lawsuit against the insured can be filed and served, and well underway.

And yet, under HB 837/SB 236, the insurer would obtain absolute immunity for its failures simply by initiating the interpleader process.

IV. HB 837/SB 236 allows liability insurers to abandon settlement efforts at the policyholders' greatest time of need.

Multiple claimant cases are the nightmare scenarios for small businesses. A single act of negligence has injured many people, the value of the claims exceed the limits of the business' insurance (even $10 million umbrellas are inadequate for some cases), and one or more of the claims may be catastrophic.

In such situations, the chances are high the insured will be required to pay *some* amount of money from its own pocket, even if the insurer does everything right. In these multi-claimant cases, more than in any other case, the insureds desperately need their insurance company to live up to their promises to investigate, evaluate and help settle the most liability possible, to *hopefully* keep the insureds excess exposure to a manageable level.

The insurance company's natural instinct, of course, is to do as little work as possible. Although it collected premiums in exchange for the promise of claim-handling expertise, insurers would rather pass their own work off to others whenever possible – particularly once it has decided it will tender its policy limits. After all, once the insurer has decided to pay *its own* money, it no longer really cares about protecting the insured from paying *their* money. The insurers just want out of the claim as quickly as possible, without incurring any additional expense. Maybe insurers will force the claimants to fight among themselves, or worst case they throw the work over to the courts to figure it out (since they are all paid by taxpayers).

That selfish instinct is controlled only by the threat of a bad faith claim against the insurer who shirks their responsibility to stand with their insureds, to help them evaluate and craft a means to settle as much of the liability as possible. This bill would gut that accountability, and leave Florida's small businesses and high net worth individuals to fend for themselves in the settlement process.

Our Legislature should not deprive those businesses and individuals of the protection and expertise they paid for through their premium dollars.