
FLORIDA LEGISLATIVE UPDATES

Bad Faith

SB 924 by Sen. Jeff Brandes (R-St. Petersburg) – Senate Banking and Insurance ran out of time on Tuesday and deferred action on this bill. It will be heard next Tuesday. The bill amends the civil remedies portion of the Insurance Code for third-party bad faith causes of action. Specifically, the bill:

- Provides the insureds or claimants must prove that insurers acted in bad faith through reckless disregard for their rights and that the reckless disregard caused damage to them;
- Codifies the legal precedent that the conduct of insureds or claimants is relevant to the trier of fact;
- Creates an affirmative defense where the conduct of insureds or claimants caused an excess judgment;
- Requires the insurer to advise the insured of settlement opportunities, the probable outcome of litigation, and the possibility of an excess judgment with steps to avoid such judgment;
- Precludes a third-party bad faith determination against insurers if they were ready and willing to settle for policy limits within 45 days of receiving the notice of loss; and
- Precludes liability beyond policy limits in an interpleader case of two or more third-party claimants to a single claim if the insurer brings the interpleader action within 90 days of receiving notice of the competing claims.

Damages for Personal Injury

SB 1668 by Sen. David Simmons (R-Longwood) – Senate Judiciary approved an amended version on a vote of 4 to 2 on Tuesday. The bill provides, in any claim for damages, if a personal injury to a claimant, evidence of past, present, or future medical expenses must be based on the usual and customary charges in the community where medical expenses are incurred. It also provides that:

- The evidence of usual and customary charges may not include evidence of increased or additional charges based on the outcome of litigation;
- The evidence of the availability of insurance may be used to prove future damages; and
- The amounts paid or payable to claimants under insurance coverage are presumed to be the usual and customary medical charges unless a claimant shows that the amounts are inadequate under the circumstances.

The House companion – HB 9 by Rep. Tom Leek (R-Daytona Beach) – was approved this week by the Civil Justice Subcommittee on a vote of 10 to 4. An amendment was adopted to bring the measure closer to the Senate version. A few differences remain between the two bills regarding health insurance payments, including:

- The Senate bill, for past and present medical expenses only, presumes the private or governmental health insurance payments are the usual and customary medical charges, but allows the plaintiff to rebut that presumption with evidence the insurance payments are inadequate. The House bill does not contain a rebuttable presumption for the treatment of health insurance payments as usual and customary.
- The Senate bill allows health insurance payments and “other relevant evidence” to be used to prove future medical expenses. However, the House bill does not allow other relevant evidence.

The Senate bill now heads to Health Policy while the House measure moves to Commerce.