



## **Vote No on PCS for HB 881 and Undoing the Third-Party Bad Faith Liability Safe Harbor**

In Florida, an individual can sue an insurer when he or she believes the insurer acted in “bad faith” in defending or settling a claim. A third-party bad faith claim typically arises when an insurer fails to settle an injured party’s claim against the insured within policy limits, thereby exposing the insured to a judgment for damages in excess of policy limits. Unfortunately, the potential to recover windfall damages in excess of policy limits was a powerful incentive and led to rampant litigation abuse. Attorneys engaged in various abusive strategies in order to set up a bad faith claim for their client. These included stalling tactics, intentional misinformation, and unreasonable settlement-related demands.

The Legislature finally addressed many of the abuses of third-party bad faith litigation in 2023 HB 837. In relevant part, HB 837 amended section 624.155, Florida Statutes, to create a sensible safe harbor from third-party bad faith liability: An action for bad faith involving a liability insurance claim shall not lie if the insurer tenders the lesser of the policy limits or the amount demanded by the claimant within 90 days after receiving actual notice of a claim which is accompanied by sufficient evidence to support the amount of the claim. § 624.155(4)(a), Fla. Stat.

PCS for HB 881 would gut this safe harbor. More specifically, Section 1 of PCS for HB 881 would amend section 624.155(4)(a) to state that: (a) a party’s submission of “sufficient evidence” for purposes of triggering the 90-day clock of the safe harbor could include any number of things, including simply providing a single photograph of an accident scene; and (b) if an insurer does not believe the submitted evidence is sufficient, the insurer must provide a written notice of objection within 10 business days of receipt of the submitted evidence—otherwise any objection is waived.

The changes proposed by PCS for HB 881 are unwarranted and unreasonable. PCS for HB 881 would put an extremely short fuse on an insurer’s ability to investigate the submitted evidence of a claim in order to preserve an objection and application of the safe harbor. Practically speaking, it will also be difficult to even serve a written notice of objection. At the time a claimant provides a notice of claim to an insurer, the claimant likely does not even have an attorney, and at most likely has an adjuster assisting them; yet the legislation would require the insurer to determine quickly who should receive any written notice of objection. The legislation would also likely lead to excessive back-and-forth between the insurer and the claimant regarding the sufficiency of the evidence presented, introducing uncertainty about when the 90-day clock is triggered. None of this is necessary.

In 2023, the Legislature instituted a reasonable safe harbor for bad faith liability, giving the insurer 90 days to examine the evidence submitted by the claimant and to decide whether to tender the policy limits or the claimant’s demand. There is no reason to undercut these reforms before they have a chance at success. For all these reasons, the Florida Justice Reform Institute opposes PCS for HB 881.