

Being A Effective Advocate For Your Client When Litigating High Volume Claims



Hon. John Bowman
Circuit Court Judge



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WHAT ARE THE CASES ABOUT?

PERSPECTIVE & PROFESSIONALISM



- Contract Dispute
- Who writes the contract? (Why don't the insurance companies just spell out what they mean?)
- Plain meaning of terms and conditions



Florida's homeowner's insurance rates are highest in the nation and still rising – and according to many in the industry, the culprit isn't hurricanes.

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FLORIDA POLITICS

Leaky pipe problems pose risk to Florida homeowners insurance

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BUSINESS

Citizens to ask Florida for insurance-rate hikes, blaming water claims

By JIM TURNER NEWS SERVICE OF FLORIDA
JUN 20, 2017 | 2:05 PM



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Miami Herald

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Insurance-fraud ring put in dozens of phony claims on homes across Miami-Dade, police say

BY DAVID O'NEILL

APRIL 30, 2019 OR 10 AM, UPDATED APRIL 30, 2019 06:50 PM



HEADLINES

INDUSTRY PERSPECTIVE

In October, Citizens released charts showing that non-weather-related water damage claims represented 56 percent of all claims in 2014. Statewide, 24 percent of such claims were represented by attorneys when Citizens first learned of them. Seventy-two percent came from Miami-Dade, Broward and Palm Beach counties. In the tri-county area, 93 percent of all claims were represented by attorneys. Of 562 suits filed against Citizens in December 2014, 98 percent originated from the tri-county area, and 91 percent involved non-weather-related water damage.

Tools for Plaintiff to Move their Case Forward - Motion to Compel Deposition

PLAINTIFFS' MOTION TO COMPEL DESIGNATION OF CORPORATE REPRESENTATIVE(S), DEPOSITION DATES FOR CORPORATE REPRESENTATIVE(S), AND FOR ATTORNEYS' FEES

Why Take the Corporate Representative's Deposition?

- Allows Early and Accurate Evaluation of Case for Client
- Allows you to Determine What Remaining Discovery is Necessary
- Forces the Insurance Company to Evaluate Its Case

3 Documented Attempts!

Filing # 77281565 E-Filed 08/30/2018 05:15:54 PM

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

██████████ and,
Plaintiffs,
v.
██████████
Defendant.

PLAINTIFFS' MOTION TO COMPEL DESIGNATION OF CORPORATE REPRESENTATIVE(S), DEPOSITION DATES FOR CORPORATE REPRESENTATIVE(S), AND FOR ATTORNEYS' FEES

Plaintiffs, ██████████ (hereinafter the "Plaintiffs"), hereby file this Motion to Compel Designation of Corporate Representative(s), Deposition Dates for Corporate Representative(s), and for Attorneys' Fees against Defendant, Security First Insurance Company d/b/a Security First Florida (the "Insurance Company"), and state:

I. INTRODUCTION

Plaintiffs entered into an insurance contract with the Insurance Company. The insurance contract provided property insurance for Plaintiffs' home. Plaintiffs have filed a claim for Breach of Contract for the Insurance Company's failure to pay benefits under its insurance contract arising from substantial damage as a result of Hurricane Irma to Plaintiffs' home. Despite having requested the Insurance Company to designate its Corporate Representative(s) in response to proffered areas of inquiry and to provide deposition dates for same, the Insurance Company has refused to comply with Plaintiffs' request. Pursuant to Florida Rules of Civil Procedure 1.310 and 1.380(a)(2), Plaintiffs move this Court for entry of an Order compelling the Insurance Company

Tools for Plaintiff to Move their Case Forward - Motion to Strike Affirmative Defenses



Filing # 86608186 E-Filed 03/19/2019 11:43:51 AM

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: CA92-19-002518 (21)

Plaintiffs

v.

Defendant

PLAINTIFFS' MOTION TO STRIKE AFFIRMATIVE DEFENSES

Plaintiffs, [REDACTED] (hereinafter the "Plaintiffs"), hereby file this Motion to Strike Defendant's [REDACTED] (the "Insurance Company"), Affirmative Defenses Numbered One through Ten, and state:

I. INTRODUCTION

By way of background, Plaintiffs entered into an insurance contract with the Insurance Company. The subject insurance contract provided property insurance for Plaintiffs' home. Plaintiffs filed a claim for Breach of Contract as a result of the Insurance Company's failure to pay benefits under its insurance contract arising from substantial damage to Plaintiffs' home caused by Hurricane Irma. The Insurance Company subsequently filed its Answer and Affirmative Defenses. Pursuant to Florida Rule of Civil Procedure 1.140, this Court should strike the Insurance Company's Affirmative Defenses as legally insufficient.¹

II. LEGAL STANDARD

a. The Insurance Company Must Plead Ultimate Facts in Support of its Affirmative Defenses

¹ In the alternative, Plaintiffs move for a more definite statement.

PLAINTIFFS' MOTION TO STRIKE AFFIRMATIVE DEFENSES

6.

By further affirming its Affirmative Defenses, Insurance Company alleges that there is no

coverage for loss of [REDACTED] and tear, marring, scratching, or deterioration without pleading

any supporting facts which leaves Plaintiffs guessing as to why the Insurance

Company believes these policy exclusions/limitations or limit coverage. There are

no facts alleging what building component, or alleged wear and tear, etc., how the

unidentified building component, as a result of the alleged wear and tear, etc., how

it was determined that the building component failure resulted from alleged wear and

tear, etc., or when the unidentified building component failure occurred as a result of alleged wear

and tear, etc. The Insurance Company should be required to plead what building component failed

- Why Move to Strike Improper Affirmative Defenses?
- Forces Counsel to Think About the Merits of their Defenses
- Limits the Scope of Discovery / Streamlines Case
- Avoids Claims of Unfair Surprise on Eve of Trial / Continuances
- Often Opposing Counsel Will Withdraw Unsupported Defenses before Hearing

Moving the Case Forward

Rule 1.350(a) Production of Documents and Things and Entry Upon Land for Inspection:

Any party may request any other party (1) to produce and permit the party making the request, or someone acting in the requesting party's behalf, to inspect and copy any designated documents, including electronically stored information, writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the party to whom the request is directed through detection devices into reasonably usable form, that constitute or contain matters within the scope of rule 1.280(b) and that are in the possession, custody, or control of the party to whom the request is directed; (2) to inspect and copy, test, or sample any tangible things that constitute or contain matters within the scope of rule 1.280(b) and that are in the possession, custody, or control of the party to whom the request is directed; or (3) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on it within the scope of rule 1.280(b).

Best Method to Move Cases Forward - Notice It For Trial!



Filing # 74209009 E-Filed 06/27/2018 05:21:44 PM

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. [REDACTED] DIVISION 14 Judge [REDACTED]

[REDACTED]
Plaintiff(s) / Petitioner(s)

v.

[REDACTED]
Defendant(s) / Respondent(s)
_____ /

UNIFORM TRIAL ORDER
17TH JUDICIAL CIRCUIT
ORDER FOR PRETRIAL
CONFERENCE
AND
CALENDAR CALL

TRIAL PERIOD Commencing 03-11-2019. This is a (3)
week calendar.

CALL OF THE CALENDAR AND PRETRIAL CONFERENCE: 03-04-2019 at 10:30 AM

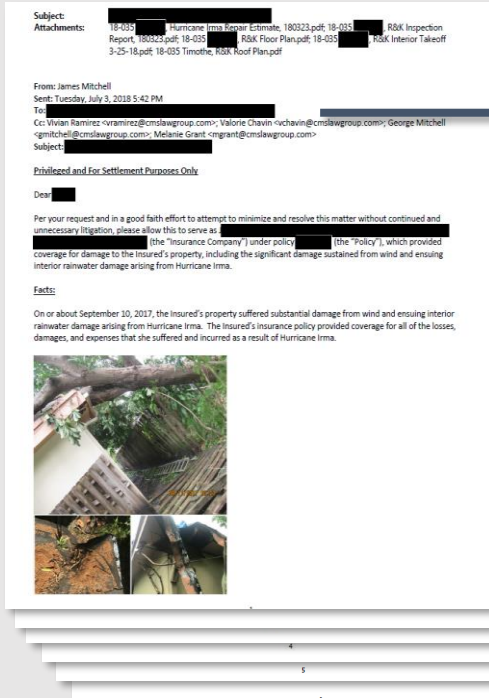
5 DAYS/~~WEEKS~~ X JURY NON-JURY

THE ORDER OF TRIALS set during this period will be determined at the CALENDAR CALL. You are subject to being called to commence trial during any part of the above noted trial period. Failure of any party to attend the pretrial conference and calendar call may result in either the case being dismissed or a default being entered.

The court has determined this case is ready for trial pursuant to Fla. R. Civ. P. 1.440. The case is set for trial before the undersigned Judge in Courtroom 14175, Broward County Courthouse, 201 S.E. 6th Street, Fort Lauderdale, Florida as stated above.

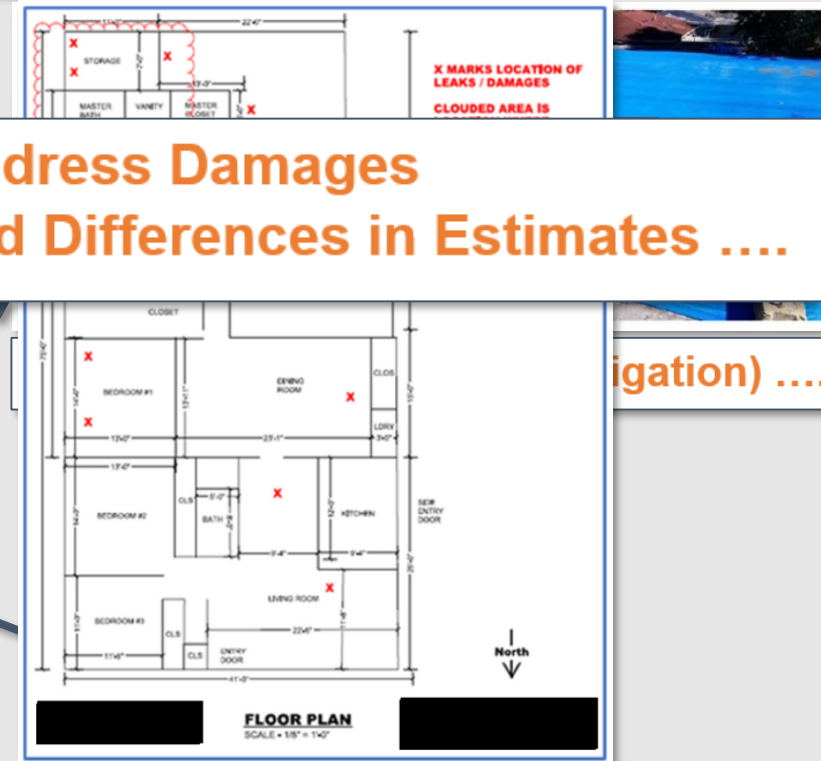
You are advised your case may be placed into the 17th Circuit's "Civil Trial Pool" and is subject to being called for trial before any circuit civil judge. If placed in the Civil Trial Pool, you MUST be prepared to proceed to trial if called. ONLY the division judge or administrative judge of the civil division may grant a continuance of any case placed in the Civil Trial Pool.

PRE-MEDIATION – DEMAND AND SUMMARY



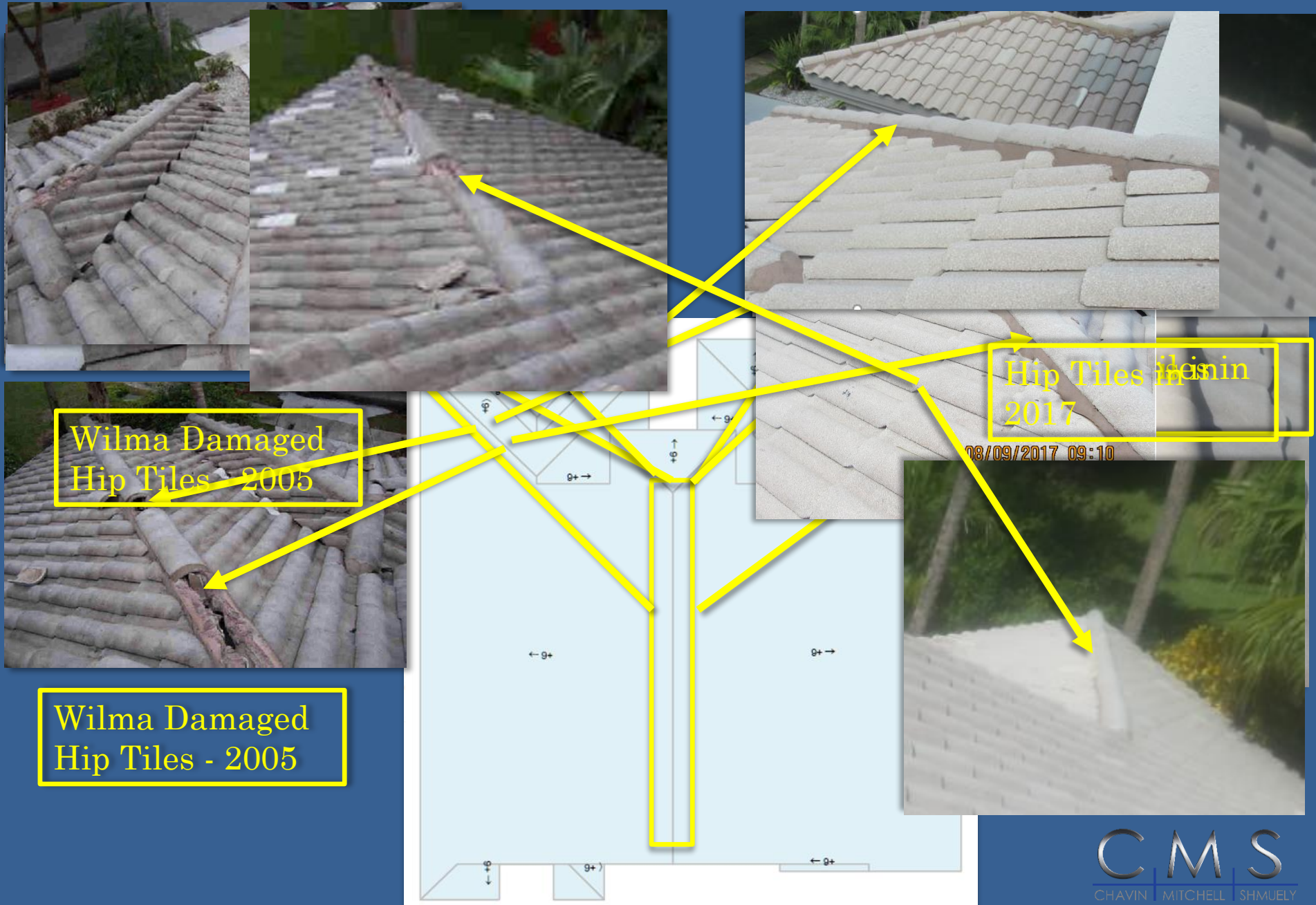
From: Valorie Chavin <vchavin@cmlawgroup.com>
Sent: Wednesday, January 31, 2019 2:10 PM
To: Opposingcounsel@defensefirm.com
Cc: Erickleinman@bestmediatorever.com
Subject: Mediation Summary and Opening Settlement Demand

Address Damages
and Differences in Estimates



Address Location and
Extent of Interior Damages

Roof Repairs After Wilma (Addressing Pre-Existing Damages)



PRIOR CLAIMS/PRE-EXISTING DAMAGES

Policy Number:		GENERAL UNDERWRITING	
L O S S E S	Indicate number of losses reported by any prospective insured within the last five years? (See definition of insured below) <input checked="" type="checkbox"/> None		
	Date of Loss	Description	Amount Paid
Prior Carrier(s) (Last 12 Months):		Policy No.(s):	Exp Date(s):
<input checked="" type="checkbox"/> I have not had property insurance on this property in the last 12 months.			

5. Any existing damage? ☐ Yes ☒ No
If yes to 5., Existing Damage Exclusion (UPCIC-10) applies.

APPLICANT'S STATEMENT

Each applicant and co-applicant (each an "Applicant" for purposes of this paragraph) must sign this application. Each Applicant acknowledges and agrees that he or she has read the above application and any attachments. Each Applicant understands that a misrepresentation, omission, concealment of fact, or incorrect statement may prevent recovery under the policy. Each Applicant understands that any such misrepresentation, omission, concealment of fact, or incorrect statement by any Applicant may negate coverage under the policy as to all Insureds. This information is being offered to the company as an inducement to issue the policy for which the undersigned Applicant(s) are applying. Each applicant agrees that if the initial payment for the policy premium, or downpayment for the policy premium as applicable, is returned by the bank for any reason, coverage will be null and void from inception (e.g., insufficient funds, closed account, stopped payment, etc.).

Accumulated Damages Over Time



TER
NG,



EFFECTIVE USE OF PICTURES AT MEDIATION AND TRIAL


Water Pours into the Home During the Storm

Video of Interior
of the Home the
Day of the
Hurricane –
September 10,
2017



Civil Remedy Notice of Insurer Violation (“CRN”)



 **FLORIDA**
DEPARTMENT OF
FINANCIAL SERVICES

Civil Remedy Notice of Insurer Violations

Filing Number: [REDACTED]
Filing Accepted: 9/17/2019

Warning! Information submitted as part of this civil remedy notice is a public record. Data entered into this form will be displayed on the DFS website for public review. Please DO NOT enter Social Security Numbers, personal medical information, personal financial information or any other information you do not want available for public review.

☒ The submitter hereby states that this notice is given in order to perfect the rights of the person(s) damaged to pursue civil remedies authorized by Section 624.155, Florida Statutes.

Complainant

Name: [REDACTED]
Street Address: [REDACTED]
City, State Zip: [REDACTED]
Email Address: [REDACTED]
Complainant Type: Insured

Insured

Name: [REDACTED]
Policy #: [REDACTED]
Claim #: [REDACTED]

Attorney

Name: JAMES E. MITCHELL
Street Address: 12955 BISCAYNE BLVD, SUITE 201
City, State Zip: NORTH MIAMI, FLORIDA 33181
Email Address: JMITCHELL@CMSLAWGROUP.COM

Notice Against

Insurer Type: Authorized Insurer
Name: [REDACTED]
Street Address: [REDACTED]
City, State Zip: [REDACTED]

Please identify the person or persons representing the insurer who are most responsible for/knowledgeable of the facts giving rise to the allegations in this notice.
[REDACTED]

Type of Insurance: Residential Property & Casualty

DFS-10-363
Rev. 11/2007

CRNs Under the New Assignment of Benefits Statute



624.155 Civil remedy.—

(f) A notice required under this subsection may not be filed within 60 days after appraisal is invoked by any party in a residential property insurance claim.

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The 2019 Florida Statutes

Title XXXVII Chapter 624
INSURANCE INSURANCE CODE: ADMINISTRATION AND GENERAL PROVISIONS View Entire Chapter

624.155 Civil remedy.—

(1) Any person may bring a civil action against an insurer when such person is damaged:

(a) By a violation of any of the following provisions by the insurer:

1. Section 626.554(1)(i), (o), or (x);
2. Section 626.5551;
3. Section 626.5725;
4. Section 626.5726;
5. Section 626.5727; or
6. Section 627.7783.

(b) By the commission of any of the following acts by the insurer:

1. Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests;
2. Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made; or
3. Except as to liability coverages, failing to promptly settle claims, when the obligation to settle a claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

Notwithstanding the provisions of the above to the contrary, a person pursuing a remedy under this section need not prove that such act was committed or performed with such frequency as to indicate a general business practice.

(2) Any party may bring a civil action against an unauthorized insurer if such party is damaged by a violation of s. 624.401 by the unauthorized insurer.

(3)(a) As a condition precedent to bringing an action under this section, the department and the authorized insurer must have been given 60 days' written notice of the violation.

(b) The notice shall be on a form provided by the department and shall state with specificity the following information, and such other information as the department may require:

1. The statutory provision, including the specific language of the statute, which the authorized insurer allegedly violated.
2. The facts and circumstances giving rise to the violation.
3. The name of any individual involved in the violation.
4. Reference to specific policy language that is relevant to the violation, if any. If the person bringing the civil action is a third party claimant, she or he shall not be required to reference the

http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0000-0000-0054-Sections/0624.155.html [10/10/2019 12:27:18 PM]

http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0000-0000-0054-Sections/0624.155.html [10/10/2019 12:27:18 PM]

BAD FAITH & BAD FAITH DISCOVERY

- **Florida Standard Jury Instruction**

- 404.4 INSURER'S BAD FAITH (FAILURE TO SETTLE)

- Bad faith on the part of an insurance company is failing to settle a claim when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward [its policyholder] [its insured] [an excess carrier] and with due regard for [his] [her] [its] [their] interests.

- **Fla. Stat. § 624.155(1)(b)(1)**

- A civil action may be brought against an insurer for “not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests.”

- *Homeowner's Choice Prop. & Cas. Ins. Co. v. Mahady*, 2019 WL 3938885 Fla. 4th DCA August 21, 2019:

- “However, these discovery requests are facially improper in their entirety. ‘[U]ntil the obligation to provide coverage and damages has been determined, a party is not entitled to discovery related to the claims file or to the insurer’s business policies or practices regarding handling of claims.’”

THANK YOU!

QUESTIONS

