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The Eleventh Circuit Holds Florida's Bad Faith Safe Harbor Statute Bars Bad Faith Claim

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On March 24, 2023, Florida's comprehensive tort reform went into effect. Part of this sweeping legislation modified Florida bad faith law by creating a safe harbor from bad faith liability if an insurer tenders the lesser of its policy limits or the amount demanded by a claimant within 90 days after receiving notice of a claim accompanied by sufficient evidence to support the amount of the claim. § 624.155(4)(a), Fla. Stat.

In *Chambers v. Progressive Select Ins. Co.*, No. 25-12392, 2026 U.S. App. LEXIS 30317 (11th Cir. Oct. 5, 2026), the Eleventh Circuit considered whether the safe harbor applied to the following factual scenario: (i) a bad faith lawsuit arising out of a pre-tort reform auto claim, (ii) where the bad faith claim did not accrue until after the statutory amendments went into effect. The Eleventh Circuit concluded that the safe harbor applied prospectively to the bad faith claim—not retroactively—because the bad faith cause of action did not accrue until after the statutory amendment's effective date.

In that case, Progressive's insured, Angela Borrero ("Borrero"), hit and severely injured a motorcyclist. The accident occurred on October 1, 2018, and was reported to Progressive that same day. At the time of the accident, Borrero was insured by Progressive under an auto policy that provided bodily injury limits in the amount of $10,000 per person and $20,000 per occurrence, and a property damage limit of $10,000. Progressive offered the $10,000 bodily injury limit to settle the claimant's bodily injury claim on October 22, 2018 (*i.e.*, within twenty-one days of the accident being reported to Progressive). Progressive also offered to settle the claimant's property damage claim for the amount demanded plus statutory interest, $9,674.36, seventy-two days after the claimant's original property damage demand.

The claimant did not accept the bodily injury and property damage settlement offers and, instead, filed suit against Borrero. The case eventually proceeded to trial, and, in January 2023, the jury returned a $7.4 million verdict in favor of the claimant. On April 27, 2023, the trial court entered final judgment against Borrero in that amount. Borrero filed for bankruptcy and Chambers, as the bankruptcy estate's trustee, filed a bad faith lawsuit against Progressive.

In the bad faith lawsuit, Chambers alleged Progressive acted in bad faith by failing to settle the claims against Borrero. Progressive moved for judgment on the pleadings, arguing the safe harbor statute applied because, within ninety days of receiving the claimant's demands, Progressive had tendered the bodily injury policy limit and the amount demanded for the claimant's property damage claim. Chambers argued the new safe harbor statute did not apply retroactively to the bad faith lawsuit, which was based on Progressive's conduct in 2018. The district court granted Progressive's motion based on the safe harbor statute and Chambers appealed.

The central issue before the Eleventh Circuit was whether Florida's safe harbor statute applied to a post-tort reform bad faith lawsuit, which was based on a pre-tort reform claim and the insurer's conduct in 2018. The Eleventh Circuit held that it does and affirmed the judgment in favor of Progressive.

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In reaching this conclusion, the Court found that the general rule—*i.e.* a claim is governed by the law in effect when the claim accrues—applied to Chambers' bad faith claim since the legislature specially "provided that the amendment[s] should apply to 'causes of action filed after [the] effective date' in March 2023." Under Florida law, a bad faith claim is not ripe and does not accrue unless and until a third-party obtains a judgment against an insured for an amount that exceeds the insured's policy limits. Relying on this established Florida law, the Eleventh Circuit confirmed that Chambers' bad faith claim accrued in April 2023, when the trial court entered the excess judgment. Because the bad faith claim accrued in April 2023 (and the bad faith lawsuit was filed in December 2023), the Eleventh Circuit held that the statutory safe harbor applied to Chambers' bad faith claim. The Eleventh Circuit likewise found that the safe harbor barred Chambers' bad faith claim because Progressive offered the bodily injury limit and the amount demanded for the claimant's property damage claim well within the 90-day safe harbor window.

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