‘Pin-Pon’ Case Highlights Attacking a Civil Remedy Notice in Bad Faith Litigation

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A recent case has shown the significance for insurers to identify and raise every deficiency in responding to a “civil remedy notice,” or CRNs, in defending against an insurance bad faith claim. When the requirements outlined in Florida Stat. Section 623.155 are not expressly followed, insurers must diligently raise every technical defect with the CRN and not substantively respond, or otherwise they risk waiving such argument at the motion to dismiss stage.

In *Pin-Pon v. Landmark American Insurance,* No. 2-cv-14013 (S.D. Fla. Jun. 5, 2020), Pin-Pon Corp. filed three CRNs over the course of eight years, and each were deficient in some fashion.

The dispute centered around substantial losses suffered by Pin-Pon stemming from Hurricane Frances, which Pin-Pon alleged were covered by the insurance policy issued by the defendant, Landmark American Insurance Co. Landmark refused to pay for the losses, and Pin-Pon brought a claim in state court, which ultimately resulted in a $2,935,642.37 judgment for Pin-Pon.

Pin-Pon then initiated an action against Landmark for statutory bad faith in violation of Fla. Stat. Section 624.155(1)(b)(1). Landmark argued dismissal was warranted because Pin-Pon failed to comply with the requirements of Fla. Stat. Section 624.155(3), which is a condition precedent to bringing an action under Fla. Stat. Section 624.155(1)(b)(1).

Particularly, Form DFS-10-363 lays out 15 requirements for every CRN. A CRN must include inter alia: complainant’s name, complainant’s address, complainant’s e-mail address, and insurer’s address.

There were several errors in Pin-Pon’s CRNs. The first CRN listed Pin-Pon’s parent company rather than Pin-Pon as the insured. In response to the first CRN, Landmark summarized the contents of the CRN, denied the allegations, and substantially responded to the claims. The second CRN contained an identical email for both Pin-Pon and their attorney. Landmark responded to the second CRN through the department’s website. In its response, Landmark asserted that the CRN was defective due to its failure to adequately specify Landmark’s alleged wrongdoing.

Nevertheless, despite this supposed defect, Landmark summarized the contents of the CRN, denied the allegations, and responded on the merits. Lastly, the third CRN contained the wrong address for the insurer, to which Landmark responded, rendering the CRN defective. After raising these defects, Landmark proceeded to summarize the factual background of the subject claim and responded.

U.S Southern District Court Judge Donald M. Middlebrooks initially dismissed Pin-Pon's claim. Middlebrooks found that Section 624.155 must be strictly construed. To that end, the court stated the only acceptable name to be listed on the CRN is that of the plaintiff, and the relationship between the party and the plaintiff is immaterial. The court further opined that since the statute is to be strictly construed, equitable concerns or other extraneous facts will not be contemplated.

Pin-Pon moved for reconsideration and the court surprisingly reversed course. Pin-Pon argued that: Fla. Stat. Section 624.155 is remedial in nature and therefore entitled to liberal, rather than strict, construction; Pin-Pon substantially complied with the statute and satisfied its purpose; Landmark waived any technical defects in the CRNs by substantially responding to the notices; and the defective information is optional and thus not required by statute.

Although the court maintained its prior conclusion that Section 624.155 is to be strictly construed, the court actually agreed that Pin-Pon had satisfied the statute's purpose by substantially complying with its requirement. Furthermore, the court found Landmark waived any technical defects by substantially responding to the CRNs.

In the court's view, Pin-Pon had substantially complied with the technical notice requirements of the statute when it filed three CRNs with nearly complete and accurate identifying information. In other words, when pieced together, the three CRNs were sufficient.

While Pin-Pon's motion for reconsideration was pending before the court, the Fourth District Court of Appeal decided *Bay v. United Services Automobile Association*, No. 4D19-3332, 2020 WL 6154256 (Fla. 4th DCA Oct. 21, 2020). In that case, the CRN misidentified the insured as "USAA Casualty Insurance Company," instead of by its correct name "United States Automobile Association," or "USAA." Nevertheless, USAA proceeded to dispute the insured's claim on its merits but never argued the CRN was deficient for failure to properly identify the insured.

When USAA raised the argument for the first time before the state trial court, the Fourth District Court of Appeal held USAA waived the argument by not raising it in its response to the CRN.

Middlebrooks referenced the *Bay* ruling and opined Landmark waived the majority of the technical defects with the CRNs by failing to raise them in response to the CRNs. According to the court, the CRNs, although deficient, provided Landmark actual notice of Pin-Pon's intent to sue.

The key takeaway for insurers and defense attorneys is to argue and raise every defect, regardless of how minute they may appear,

that renders the CRN legally insufficient. Failure to do so will most likely preclude the insurer from raising those same defects as grounds for dismissal later. Additionally, when the claimant files a deficient CRN, the insurer will be wise to only address the deficiencies in its response rather than substantively respond to the CRN on its merit.

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