US Law Week

New Time-Limited Settlement Demand Laws Need Testing in Court

By Michael Bean and Jordan Derringer

Jan. 19, 2023, 1:00 AM

California recently followed two other states by enacting a law that standardizes requirements a time-limited demand must meet to justify a bad faith refusal to settle an insurance claim. Sheppard Mullin's Jordan Derringer and Michael Bean say the courts will resolve how effective these statutes are in regulating policy limit demands.

Time-limited settlement demands are, in theory, effective tools to promote the quick and efficient resolution of disputed claims. But in practice, savvy plaintiffs' lawyers across the country have been exploiting these demands for decades to position insurance companies for extra-contractual damages.

Plaintiffs' lawyers argue that their tactics are necessary to help compensate claimants who were seriously injured by at-fault parties, and otherwise provide a check against insurers' delays in processing claims. These arguments, however, have begun to ring hollow in recent years in the face of ever-increasing abuses of time-limited demands.

The problem has gotten so bad in recent years that three state legislatures—in traditionally pro-policyholder states—have enacted laws to address this problem.

California, Georgia, Missouri Set Standards

Most recently, California enacted SB1155 to standardize the requirements a "time-limited demand" must meet to justify a "bad faith refusal to settle" a claim. As of Jan. 1, 2023, a "time-limited demand" that does not substantially comply with the new law's requirements will not be considered "reasonable" in a future lawsuit against the insurer seeking extra-contractual damages.

California's new law is similar to the laws passed in Georgia and Missouri, the only other two states that have codified rules for time-limited demands. The laws are not identical, but each requires that the "time-limited demand" be in writing, and provide the insurer adequate time to accept the demand, background information regarding the claim, an unconditional release to the insureds, and enough information for the insurer to make an informed decision regarding the value of the claim.

The laws also impose requirements on insurers responding to time-limited demands. In California, for example, the insurer must respond to the demand in writing before it expires, and if the insurer intends to accept the demand, it must provide written acceptance of the material terms "in their entirety." Also, if the insurer does not accept the demand for any reason, it is required to provide a written explanation for its decision.

Perhaps the most important feature of these laws is that the failure to comply—or in the case of California's new law, substantially comply—precludes the use of a time-limited demand in a future lawsuit seeking extra-contractual damages against the at-fault party's liability insurer.

Despite the overwhelming use of time-limited settlement demands and the importance of these statutes, there has been little case law interpreting these laws, at least in their current incarnation. For example, although Georgia's statute was originally enacted in 2013, it was amended in 2021 to provide requirements that are substantially similar to Missouri's and California's statutes.

The amendments were made in response to criticism from the Georgia courts regarding loopholes in the statute. Specifically, the statute was modified to address some important issues, including when the demand could be made, the scope of the release, the nature and extent of the information that a claimant must provide with the demand, and the scope of an insurer's right to seek clarification of the demand's terms.

The amended statute is still too new for any meaningful judicial interpretation of these revisions, and only time will tell if the new language fixes the loopholes that the revisions were meant to cure.

Court Resolution Needed

Missouri's Supreme Court weighed in on whether an insurer's counteroffer before the statutory acceptance period expired was a rejection of the demand.

The court held that because the statute did not expressly or impliedly indicate a legislative intent to change the common law formation rules for settlement agreements, the counteroffer was a rejection, and the offer could no longer be accepted. Other than this decision, there has been no substantive judicial interpretation of Missouri's time-limited demand statute.

Given that California's statute became effective on Jan. 1, 2023, there haven't been any cases addressing it. Yet, there are several obvious issues with the statute that will need to be resolved through the courts—most notably, what it means for a demand to substantially comply with the new law.

It will be interesting to see how creative plaintiffs' attorneys will test the boundaries of these statutes, and whether other states will follow suit and enact similar statutes, or wait on the sidelines while these statutes are subjected to further judicial scrutiny.

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Author Information

Michael L. Bean is special counsel at Sheppard, Mullin, Richter and Hampton focuses his practice on insurance coverage and bad faith litigation.

Jordan S. Derringer is special counsel at Sheppard, Mullin, Richter and Hampton and focuses his practice on insurance coverage and bad faith litigation.