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By C.J. Gomes

Non-Florida Insurers and Florida Accidents

People love traveling to Florida. Perhaps it is Mickey Mouse or the never-ending beaches that draw people to the Sunshine State. Regardless of the reason, people frequently travel to Florida in their personal automobiles, which are insured by policies issued outside of Florida. With Florida being a major tourist destination within the United States, it also follows that there is a large amount of commercial travel in a wide variety of industries, which may also be insured outside the state of Florida. With so many out-of-state travelers and businesses coming into Florida, many automobile insurers face common problems if an insured travels to and is involved in an accident in Florida. Two of the biggest issues out-of-state automobile insurers face, which will be addressed in this article, include 1) when, why, and how an insurer that does not issue policies in Flor-

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ida should or must comply with Florida's mandatory insurance disclosure requirements; and 2) which state's standards of good faith and proper claims handling apply in such a situation.

Florida Statute Section 627.4137: The Disclosure Requirement.

Florida's Insurance Code includes a mandatory insurance disclosure requirement, providing as follows:

> (1) Each insurer which does or may provide liability insurance coverage to pay all or a portion of any claim which might be made shall provide, within 30 days of the written request of the claimant, a statement, under oath, of a corporate officer or the insurer's claims manager or superintendent setting forth the following information with regard to each known policy of insurance, including excess or umbrella insurance:
>
> (a) The name of the insurer.
>
> (b) The name of each insured.
>
> (c) The limits of the liability coverage.
>
> (d) A statement of any policy or coverage defense which such insurer reasonably believes is available to such insurer at the time of filing such statement.
>
> (e) A copy of the policy.
>
> In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, shall disclose the name and coverage of each known insurer to the claimant and shall forward such request for information as required by this subsection to all affected insurers. The insurer shall then supply the information required in this subsection to the claimant within 30 days of receipt of such request.
>
> (2) The statement required by subsection (1) shall be amended immediately upon discovery of facts calling for an amendment to such statement.
>
> (3) Any request made to a self-insured corporation pursuant to this section shall be sent by certified mail to the registered agent of the disclosing entity.

Fla. Stat. §627.4137.

In Florida, plaintiffs' attorneys routinely will make a request pursuant to Fla. Stat. §627.4137 whenever an accident occurs. However, disclosure under this statute may not be required, depending on the claim at issue. The following will highlight some important aspects of this statute that the courts have addressed.

> The relevant inquiry that courts address in determining whether the safe harbor provision applies "is whether the parties intended the policy to be delivered in Florida and not whether they intended the policy to cover a risk in Florida."

Applicability of Florida's Disclosure Requirement

Florida's disclosure requirement is only applicable to insurers affording, or potentially affording, liability coverage. Florida courts have confirmed that, based on the plain meaning of the statute, the disclosure requirement only applies to liability coverage. *See* Fla. Stat. §627.4137 ("Each insurer which does or may provide *liability* insurance coverage… shall…"); *Progressive Am. Ins. Co. v. Rural/Metro Corp.*, 994 So. 2d 1202, 1206 (Fla. 5th DCA 2008) (finding that the disclosure statute "is limited to information regarding liability insurance coverage"). Accordingly, courts hold that the statute does not mandate disclosure of insurance information in response to requests relating to other types of auto coverages such as medical payments or personal injury protection (PIP). *Id.* As such, an initial step in determining whether your client must respond to a 627.4137 disclosure request is simply to determine whether the policy affords, or potentially affords, liability coverage for the claim presented.

Policies Issued and Delivered Outside Florida

The disclosure requirement is likely not applicable to policies issued and delivered outside of Florida. Florida's Insurance Code includes a "safe harbor" provision, which states that, "[n]o provision of this part of this chapter applies to: … (2) Policies or contracts not issued for delivery in this state nor delivered in this state, except as otherwise provided in this code." Florida Statute §627.401(2). The "this part of this chapter" language refers to Part II of Chapter 627 in Florida Statutes, including Sections 627.401 through 627.443—which encompasses the disclosure requirement statute, section 627.4137 *See Prime Ins. Syndicate, Inc. v. B.J. Handley Trucking, Inc.*, 363 F.3d 1089, 1091-92 (11th Cir. 2004); *Zurich Am. Ins. Co. v. Frankel Enters.*, 509 F. Supp. 2d 1303, 1314 (S.D. Fla. 2007). The relevant inquiry that courts address in determining whether the safe harbor provision applies "is whether the parties intended the policy to be *delivered* in Florida and not whether they intended the policy to *cover a risk* in Florida." *Travelers Indem. Co. v. Royal Oak Enters.*, 359 F. Supp. 2d 1321, 1323 (M.D. Fla. 2005) (emphasis added). In both the personal and commercial automobile lines context, Florida courts have almost always applied the safe harbor provision to shield out-of-state policies from the mandates of various sections of Part II of Chapter 627 of the Florida Statutes. *See, e.g., Aetna Life Ins. Co. v. Smith*, 345 So. 2d 784, 786 (Fla. 4th DCA 1977) (holding that the policy at issue clearly fell within the safe harbor provision "because the policy was not issued for delivery in Florida nor delivered in [Florida;] and [the insured] is a resident of North Carolina, where the policy was issued and delivered."); *Nat'l Tr. Ins. Co. v. Graham Bros. Constr.*, 916 F. Supp. 2d 1244, 1260 (M.D. Fla. 2013) (finding that the policy at issue was "executed in Florida because the last act necessary to complete the contract occurred in Florida, such that Florida law applies to the *interpretation* of the Pol-

icy. However, the evidence shows that the Policy was not issued for delivery in Florida, nor was it actually delivered in Florida, but rather was issued for delivery and personally delivered… in Georgia. Accordingly, Section 627.401(2) removes the Policy from the requirements of" Florida's Insurance Code); *Mathason v. Am. Nat'l Life Ins. Co.*, 855 So. 2d 261, 262 (Fla. 4th DCA 2003) (holding that the delivery in Florida of a certificate of insurance and amendatory endorsement "was not the equivalent of delivery of the full policy in Florida. Therefore, because only the certificate was delivered in [Florida], the master policy was an out-of-state policy and not subject to" Florida's Insurance Code.); *Albury v. Equitable Life Assurance Society of the United States*, 409 So. 2d 235, 236 (Fla. 1st DCA 1982) (holding that an insured was not entitled to an award of attorneys' fees under Florida's Insurance Code where a certificate and policy booklet explaining coverage were delivered to the insured in Florida, but the master policy was delivered in Missouri).

While Florida courts have relied on the safe harbor provision to refuse enforcement of multiple sections within Part II of Chapter 627, no Florida court had specifically addressed whether the safe harbor provision applied to the disclosure statute, section 627.4137. It would seem, though, that because the disclosure statue clearly falls within Part II of Chapter 627, the safe harbor provision would equally apply, and thus the disclosure requirement should not apply to policies issued and delivered outside of Florida.

However, in 2010, a federal court in Florida reached the opposite conclusion. In *Abercrombie & Fitch Stores, Inc. v. Tex. Fixture Installers*, a federal court, applying Florida law, considered a motion to compel the production of policy information from an out-of-state insurer. No. 3:09-cv-860-J-TEM, 2010 U.S. Dist. LEXIS 148032 (M.D. Fla. May 27, 2010). The court noted that the insurer complied with some of the requirements in Florida Statute Section 627.4137 but failed to comply fully. *Id.* The insurer argued that because it was not a "Florida insurer" and the policy was issued and delivered in Texas, the mandatory disclosure requirement should not apply. *Id.* The insurer further argued that the rule of *lex loci contractus* applied, meaning that Texas law should apply to the policy, and thus, the insurer should not be bound by Florida's disclosure statute. *Id.* The court disagreed, finding that the rule of *lex loci contractus* was not applicable. *Id.*

Of particular note, it does not appear the insurer in *Abercrombie* raised the argument that the disclosure statute is not applicable to policies issued and delivered outside of Florida, pursuant to the safe harbor provision of Florida Statute Section 627.401(2). Based on the foregoing, and regardless of the opinion in *Abercrombie*, this author's opinion remains that the disclosure requirement is not applicable to policies issued and delivered outside of Florida.

Liability Coverage Disclosure

Florida's statute requires the disclosure of liability coverage "known" to the insurer at the time of disclosure. The last paragraph in subsection (1) of Florida's disclosure statute, provides:

> the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney, shall disclose the name and coverage of each known insurer to the claimant and shall forward such request for information as required by this subsection to all affected insurers. The insurer shall then supply the information required in this subsection to the claimant within 30 days of receipt of such request.

Fla. Stat. §627.4137 (1). Courts have interpreted this statutory language as imposing "obligations on both insurers and insureds, upon request, to furnish claimants with all known information pertaining to insurance coverage." *Underwriters at Lloyd's London v. Osting-Schwinn*, 545 F. Supp. 2d 1261, 1264 (M.D. Fla. 2008). "Essentially, a claimant may obtain the information through either the insured or the insurer at the claimant's own behest." *Id. See also Gira v. Wolfe*, 115 So. 3d 414, 417 (Fla. 2d DCA 2013) ("The statute permits the request for disclosure to be made to the insured, or her or his insurance agent."). However, "[n]o Florida court has squarely addressed whether Fla. Stat. §627.4137(1) imposes a duty on the insurer to provide information pertaining to other potential insurers when the request is sent directly to the insurer and not the insured." *Underwriters at Lloyd's*, 545 F. Supp. 2d at 1264, n.2.

A federal court in Florida held that compliance with subsection (1) of the statute does not mean insurers must "engage in massive discovery efforts to assist claimants in obtaining [information regarding other policies; i]t merely requires disclosure of all *known* insurance coverage to assist a claimant in [making] an informed decision regarding settlement." *Id.* at 1264. Thus, generally, an insurer is compliant with the statute if it produces the information that it "already has, or soon will have, in its possession." *Id.*

Moreover, federal courts, applying Florida law, held that the statute does not require the insurer to obtain or provide any disclosure affidavits from other potentially liable insurers. *See Davidson v. Gov't Emples. Ins. Co.*, No. 8:09-cv-727-T-33MAP, 2010 U.S. Dist. LEXIS 113824, at *31–32 (M.D. Fla. Oct. 26, 2010) (holding that the insurer complied with the disclosure statute by merely disclosing the name of another potential liability insurer because the disclosure statute does not require the insurer "to provide a sworn statement of coverage from another insurance company;" rather, the insurer is "only responsible for providing information about… its own policy").

Regardless of the foregoing caselaw, if the claimant's attorney asks for "complete," "full," or "strict" compliance with Section 627.4137, the claimant's attorney may be requesting a separate disclosure directly from the insured or his or her agent. In such a case, the insurer may seek clarification from the claimant's attorney regarding the scope of the request; however, a prudent insurer should assume the broadest scope of the request and timely inquire with the insured and/or the insurance agent regarding the availability of any other potentially applicable liability coverages. *See, e.g., Gira v. Wolfe*, 115 So. 3d 414 (Fla. 2d DCA 2013) (holding that a request for "a complete insurance disclosure" required the insurer to inquire with the insured or the insured's insurance agent about additional coverage and disclose the insured/agent's knowledge to the claimant).

Consequences of Noncompliance

Consequences of noncompliance with the disclosure statute may be severe. The disclosure statute does not itself address the consequences of non-compliance. Florida courts have recognized that there is no private cause of action against the insurer for failing to comply. *See Lucente v. State Farm Mut. Auto. Ins. Co.*, 591 So. 2d 1126, 1127-28 (Fla. 4th DCA 1992) (finding that the disclosure statute does not contain an implicit cause of action for a third party against an insurance company); *Brannan v. Geico Indem. Co.*, 569 F. App'x 724, 728 (11th Cir. 2014) (finding there is no legal support for the claimant's position that the disclosure statute creates a first-party private cause of action against an insurer). However, Florida courts have held that compliance with the disclosure statute is not a "mere technicality" and does have consequences for the insurer. *Cheverie v. Geisser*, 783 So. 2d 1115, 1119 (Fla. 4th DCA 2001).

The failure to comply with the disclosure statute may have serious ramifications, such as: a court finding that disclosure was a material condition of a potential settlement agreement on a policy limits claim, that the insurer's failure to timely and/or fully disclose may be evidence of bad faith, or that the insurer's failure to comply may waive certain coverage defenses. *See id.* (finding there was no binding settlement agreement between the insurer and the claimant for the policy limits where the claimant made repeated demands for an insurance disclosure and the insurer failed to provide any disclosure); *Powell v. Prudential Prop. & Cas. Ins. Co.*, 584 So. 2d 12, 14 (Fla. 3d DCA 1991) (finding that the claimant made repeated demands for an insurance disclosure and the insurer's failure ever to provide such disclosure may hinder settlement and serve as evidence supporting bad faith); *Diocese of St. Petersburg, Inc. v. Nat'l Union Fire Ins. Co.*, No. 8:17-CV-886-T-30AEP, 2017 U.S. Dist. LEXIS 71041, at *6-7 (M.D. Fla. May 10, 2017) (holding that the failure to comply with Section 627.4137 may waive certain coverage defenses).

For instance, in *Gira*, the court held that a settlement agreement was not reached where the claimant demanded an insurance disclosure and the insurer provided a disclosure affidavit only disclosing the insurer's own policy information, with no disclosure from the insured or the insured's insurance agent about whether they have additional coverage and no disclosure from the insurer purporting to relay the insured's knowledge. 115 So. 3d 414 (Fla. 2d DCA 2013). In that case, the disclosure affidavit only stated: "[o]ther insurance which may be available to the above named insured which is known to [the insurer] at this time is as follows" and the following space was left blank. *Id.* at 415. The claimant's counsel sent a second disclosure request, to which the insurer provided the same disclosure affidavit with the "other insurance" section again left blank. *Id.* at 416. The claimant's counsel rejected the policy limits offer and filed suit against the insured. *Id.* The insured filed a motion to enforce the settlement agreement, which the trial court granted. *Id.* On appeal, the court held that the trial court erred because there is no binding settlement when there is a failure to comply with a material term of the settlement offer. *Id.* A complete insurance disclosure was an expressed condition of the settlement offer and the insurer's "statement that it knew of no other coverage did not satisfy the requirement that the [insureds] disclose coverage." *Id.* Specifically, the court found that the disclosure "did not contain a representation from the [insureds] or their insurance agent" and the section as to other insurance was left completely blank. *Id.* at 417.

The failure to comply with the disclosure statute may have serious ramifications, such as: a court finding that disclosure was a material condition of a potential settlement agreement on a policy limits claim, that the insurer's failure to timely and/or fully disclose may be evidence of bad faith, or that the insurer's failure to comply may waive certain coverage defenses.

In *Kwiatkowski v. Allstate Ins. Co.*, the court considered the issue of whether a liability insurer complied with Florida's disclosure statute and whether noncompliance may constitute bad faith. 2017 U.S. App. LEXIS 24190 (11th Cir. 2017). The claimant's attorney made a disclosure request pursuant to Florida statutes, to which the insurer timely responded with a proper disclosure affidavit that stated that no other insurance was "known at this time." *See Kwiatkowski v. Allstate Ins. Co.*, No. 2:14-cv-575-FtM-PAM-CM, 2017 U.S. Dist. LEXIS 186520, at *3 (M.D. Fla. Jan. 11, 2017). The claimant's attorney rejected the insurer's offer to settle for the policy limits based on the position that he had not received a statement from the "insured or insured's insurance agent, describing the available coverage." *Id.* at *4. After obtaining a judgment against the insured, the claimant's attorney then pursued an action for bad faith against the insurer, in which the trial court concluded that "[n]o reasonable jury could find that [the insurer] acted in bad faith." *Id.* at *7. The court noted that prior to the insurer sending the disclosure response, the insurer sent the insured a letter requesting that she provide any other insurance she may have, to which the insured responded she had none, and the insurer also contacted the insurance agent and confirmed there was no other known coverage. *Id.* at *2. The court granted summary judgment in favor of the insurer. *Id.* at *11. On appeal, the court affirmed summary judgment for the insurer, but held that the disclosure response "was deficient in that it did not include a statement by [the insured] or her insurance agent about additional insurance—information [the insurer] had in its possession at the time." *Kwiatkowski v. Allstate Ins. Co.*, 717 F. App'x 910, 912 (11th

Cir. 2017). Regardless, the court held that summary judgment was proper because "no reasonable jury could conclude that this omission was anything other than simple negligence that does not rise to the level of bad faith." *Id*. Rather, the court found that the "evidence shows that, on the whole, [the insurer's] efforts to settle were prompt, consistent, and reasonably diligent." *Id*. at 912. *See also Coulter v. State Farm Mut. Auto. Ins. Co.*, 24 Fla. L. Weekly Fed. D311 (U.S. N.D. Fla. January 16, 2014) (rejecting the argument that the insurer's failure to comply strictly with the disclosure statute by failing to provide a complete copy of the policy "necessarily constitutes an act of bad faith," where the record includes evidence of the insurer's "diligent and timely efforts to pursue a settlement on behalf of [the insured]").

In sum, while failure to comply with the disclosure requirement is not in and of itself "bad faith," it is considered as potential evidence of bad faith, as part of Florida's "totality of the circumstances" bad faith standard. Moreover, a failure to comply with the disclosure statute may result in an insurer's inability to enforce a settlement agreement, which could have serious ramifications in a policy limits situation. In light of the potentially severe consequences for failing to comply with the disclosure statute, the author often advises insurers to have a proper procedure in place to respond to such requests, or if, as in the case of insurers who do not issue policies in Florida, the insurer is not typically faced with such requests, the insurer should retain Florida counsel to assist and advise.

Notwithstanding that disclosure is not required, the author often recommends that out-of-state insurers comply with Florida's disclosure requirement because either the state where the policy was issued requires some form of disclosure, it serves as evidence of the insurer's good faith effort to resolve the claim against the insured, disclosure may aid in quick resolution of the claim, and/or generally, there really is no beneficial reason to withhold disclosure. This is a case-by-case analysis that might warrant discussion with the client and Florida counsel.

Disclosure of *All* Policies

Florida Statute Section 627.4137 requires the disclosure of *all* policies, including excess or umbrella. Florida's disclosure statute requires that each insurer "which does or may provide liability insurance coverage to pay all or a portion of any claim which might be made *shall* provide" the required disclosure, including "a copy of the policy" with regard to "each known policy of insurance, including excess or umbrella insurance." Fla. Stat. §627.4137.

Courts have noted that the disclosure requirement was enacted because the Florida legislature considered it vital to settlement negotiations that the claimant be provided with *all* information relevant to insurance coverage. *Underwriters at Lloyd's London v. Osting-Schwinn*, No. 8:05-cv1460-T-17TGW, 2008 U.S. Dist. LEXIS 54619, at *11 (M.D. Fla. Apr. 23, 2008); *see also Cheverie v. Geisser*, 783 So. 2d 1115, 1119 (Fla. 4th DCA 2001) (noting that the Florida legislature enacted the disclosure statute due to "the importance of a claimant's access to this type of information in making settlement decisions."). Accordingly, Florida courts have also recognized that the disclosure requirement applies not only to primary liability insurers, but any potentially applicable excess or umbrella policies, as well. *See State Farm Mut. Auto. Ins. Co. v. St. Godard*, 936 So. 2d 5 (Fla. 4th DCA 2006). Insurers may produce such policies in electronic format in response to any required disclosure under the statute.

"Place of Performance"

The "place of performance" governs which state's standards of claims handling apply—but, where is the place of performance? When determining choice of law in a third-party bad faith case in Florida, courts apply the law of the "place of performance." *Gov't Emps. Ins. Co. v. Grounds*, 332 So. 2d 13, 14-15 (Fla. 1976). Determining the "place of performance" for bad faith purposes can be difficult in circumstances where an accident and personal injury lawsuit occur in Florida, but involve a policy issued in a different state. Florida courts, however, generally find that the "place of performance" in such actions is Florida, notwithstanding where a policy of insurance is issued. For instance, in *Grounds*, the Florida Supreme Court considered which state's law should apply in an action alleging insurer bad faith, where the auto policy was issued and delivered to the insured in Mississippi—a state that did not permit excess judgment recoveries, but the underlying accident occurred in Florida—a state that has a comprehensive excess judgment standard. *Id.* In applying the "place of performance" evaluation, the court determined that "the place of performance was Florida, where the cause of action against [the insured] was maintained and defended by [the insurer]." *Id.* at 15.

Since *Grounds*, courts in Florida have expanded on the "place of performance" rule continually to apply Florida law. *See, e.g., Morgan v. Gov't Employees Ins. Co.*, No. 3:12-cv-32-J-99MMH-TEM, 2012 U.S. Dist. LEXIS 136965, at *20 (M.D. Fla. Aug. 22, 2012) (concluding that Florida law governs third-party bad faith claims even though the policy in this case was issued to the insured in Georgia because "Florida is where the underlying lawsuit against [the insured] was brought, maintained, defended, mediated, and where negotiation for settlement occurred"); *Gallina v. Commerce & Indus. Ins.*, No. 8:06-cv-1529-T-27EAJ, 2008 U.S. Dist. LEXIS 75675, at *18 (M.D. Fla. Sept. 30, 2008) (concluding that "performance," for purposes of the third-party bad faith claim, occurred in Florida because the claimant's injury, the underlying action against the insured, and the underlying settlement negotiations all occurred in Florida).

Florida courts' predilection for applying Florida law in such bad faith cases can significantly affect the outcome of a bad faith action, particularly where the bad faith laws of the two states differ substantially. An illustrative example may be found in *Teachers Insurance Co. v. Berry*, where a Pennsylvania insured was involved in an automobile accident in Florida that resulted in the death of a third party. 901 F. Supp. 322 (N.D. Fla. 1995). After failed settlement discussions and an untimely demand response, the claimant's estate filed a wrongful death action against the insured in Florida. After entering into a consent final judgment with the claimant, the insured filed a bad faith action in Florida against the Pennsylvania insurer. The insurer argued that Pennsylvania law should govern the bad faith action, while

the insured argued that Florida law applied. The court explained that the cause of action in a third-party bad faith case concerns the manner in which the insurer "went about providing coverage or representing [the insured's] interests under the policy, i.e., the effort made by [the insurer] to consummate settlement of the underlying Florida wrongful death claim within policy limits after an offer on the same had been made by the attorney" for the estate. *Id.* In other words, the court recognized that the issue concerned the insurer's performance under the policy, and thus, the place of performance governed. The court held that, regardless of the fact that the policy was issued in Pennsylvania, Florida law governed the insurer's claim handling because Florida is where "the wrongful death action against the insured was brought, maintained and defended, and where negotiation for settlement between the adjuster for [the insurer] and counsel for the [the claimant] commenced." *Id.*

This is not to say that a Florida court will always determine that Florida law should apply under the "place of performance" evaluation, and some courts have recognized certain significant factors that would not support application of Florida law. One such factor is whether the insurer has offices and/or employees located in Florida, and whether any of those individuals worked on the subject claim. *See Filipovich ex rel. Preston v. N.Y. Cent. Mut. Fire Ins. Co.*, No. 04-12787, 2005 U.S. App. LEXIS 29614 (11th Cir. Mar. 23, 2005). In *Filipovich*, a New York insured was operating a vehicle in Florida when he was involved in an accident resulting in multiple fatalities. After a significant jury verdict was entered against the insured in Florida, a third-party bad faith action in Florida ensued. The insurer moved to dismiss, arguing that New York law controlled the bad faith claim, and that, under New York law, an injured claimant did not have standing to pursue a third-party bad faith claim. The district court determined that New York law controlled and dismissed the bad faith action. The district court held that regardless of the fact that settlement decisions were made by the parties' attorneys in Florida, the attorneys were not the insurer's agents.

Rather, the district court noted that the insurer's place of business was New York, and, significantly, *it had no offices in Florida*. Thus, the district court reasoned that the bases for the bad faith claims—the failure to settle, the failure to investigate, and the failure to inform—all occurred (or failed to occur) in New York. On appeal, the circuit court agreed, finding that the place of performance was New York because the insurer's offices were located in New York, and its employees' relevant acts all took place in New York.

Other jurisdictions have similarly considered where the insurer's offices and employees were located when determining which state's law should apply to a third-party bad faith claim. *See, e.g., Yost v. Travelers Ins. Co.*, No. 98-1790, 1999 U.S. App. LEXIS 13665 (4th Cir. June 21, 1999) (holding that Pennsylvania law applied to a third-party bad faith claim, even though the accident and underlying suit occurred in West Virginia, because the policy was issued to a resident of Pennsylvania; was and drafted to conform to the laws of Pennsylvania; on a vehicle titled and garaged in Pennsylvania; and the insurer adjusted the claim from its Pennsylvania office and directed actions of defense from Pennsylvania); *Bristol W. Ins. Co. v. Whitt,* 406 F. Supp. 2d 771, 788 (W.D. Mich. 2005) (applying Michigan law to a third-party bad faith claim—even though the accident occurred in Indiana, and the claimants sued the insured in Indiana because the policy was issued in Michigan to a Michigan resident for a vehicle registered and located in Michigan, and the insurer's conduct in failing to settle case occurred in Michigan rather than in Indiana); *Van Winkle v. Allstate Ins. Co.*, 290 F. Supp. 2d 1158, 1168 (C.D. Cal. 2003) (applying New York law to a third-party bad faith case, even though the accident occurred in California, noting that "the wrongs alleged to have occurred within the underlying insurer-insured relationship occurred in New York" and "'applying California law would abrogate the interest of a jurisdiction such as [New York] in the application of its law' to a situation arising out of an insurance policy issued to a New York resident by an agent of the insurer located in New York").

Although there is some potential to argue that Florida's "place of performance" rule does not require application of Florida law, insurers should be aware that Florida courts do tend to favor the application of Florida law. This is particularly significant as it may subject insurers, who do not routinely issue policies in Florida, to Florida's claims handling rules, regulations, and standards. Out-of-state insurers should be wary in such instances, particularly where a savvy plaintiffs' attorney may target such insurers for "setting up" a bad faith claim.

Conclusion

There are numerous issues that can arise for automobile insurers that do not issue automobile insurance policies in Florida when their insured travels to and has an accident in Florida. It is critical that a claim professional or defense attorney recognize these issues and address them at the outset of the claims handling, so as not to fall inadvertently into a potential bad faith trap.

It is routine practice for claimants' attorneys in Florida to send Florida Statute Section 627.4137 requests for disclosure with the initial letter of representation. Thus, the issues discussed in this article should be addressed at the beginning of the claim process. While the author firmly believes that the safe harbor provision of Florida's Insurance Code protects insurers from the disclosure of policies or contracts that are neither issued for delivery in Florida nor delivered in Florida, there are times when disclosure nevertheless may be recommended.

Florida's "place of performance" rule is significant because it may subject insurers, who do not routinely issue policies in Florida, to Florida's claims handling standards. While similarities exist in the standard of good faith claims handling, there are differences between jurisdictions that may be critical. One should not assume that the claim must be handled under the standards of the state where the policy was issued. The analysis is more complex and nuanced. Again, this is an analysis that should be considered at the outset; this is especially true in delicate situations where mishaps can happen easily and quickly, such as in accidents involving multiple claimants or potentially inadequate limits.