

California Law Creates Statutory Safe Harbor for Certain Insurers Receiving Time-Limited Pre-Litigation Settlement Demands

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A new California statute effective January 1, 2023 contains requirements for claimants and insurers alike when claimants issue pre-litigation time-sensitive settlement demands under automobile, motor vehicle, homeowner, or commercial premises liability insurance policies for claims alleging personal or bodily injury, property damage, or wrongful death. Insurers who issue policies covering such risks in California should be aware of this new framework and prepared to respond accordingly when they receive such demands.

On September 28, 2022, California Governor Gavin Newsom signed into law SB 1155, which adds Chapter 3.2: “Time-Limited Demands,” to the California Code of Civil Procedure (Sections 999-999.5). The statute, effective January 1, 2023, is the California Legislature’s response to the insurance industry’s growing concerns that such demands “have become increasingly unreasonable” and are used as a “litigation tactic to pressure an insurance company to settle without allowing sufficient time to fully investigate a claim ... and to set up the insurer for a bad faith lawsuit.”

The new law addresses these concerns by setting out specific requirements for the contents of a time-limited settlement demand, including a minimum 30-day time period to respond to the demand and reasonable proof of the claimant’s alleged injuries and damages. The new law also affords some new protections to insurers against unreasonable settlement demands by providing that a time-limited demand that does not substantially comply with these requirements cannot serve as the basis for a bad faith claim for failure to settle within the policy limits. There are, however, some significant limitations on the types of claims and insurance policies encompassed by this new law, as described below.

While there is an existing body of case law in California addressing an insurer’s obligations when responding to a time-limited settlement demand, the exact parameters of what is considered reasonable continue to be the subject of ongoing bad faith failure-to-settle litigation. In *Pinto v. Farmers Ins. Exch.*, 61 Cal. App. 5th 676, 688 (2021), the Second District Court of Appeal explained that a showing of bad faith requires a finding not only that the claimant’s offer was reasonable, but also that the insurer’s response to the offer was unreasonable. As the court in *Pinto* explained, the reasonableness analysis is undertaken on a case-by-case basis, and the determination is dependent on “the insurer’s conduct under the facts of the particular case.” *Id.*, 61 Cal. App. 5th at 687. California’s model jury instructions governing bad faith failure to settle were amended following *Pinto* to make this point clearer. See CACI 2334 (May 18, 2022). A link to Troutman Pepper’s analysis of the *Pinto* decision can be found [here](#). The statute does not alter existing caselaw governing time-limited demands issued once the claimant has initiated litigation or an arbitration against an insured.

Insurance Policies and Claims Impacted by the New Rules

This law applies only to causes of action and claims covered under automobile, motor vehicle, homeowner, or commercial premises liability policies for property damage, personal or bodily injury, and wrongful death claims. (Section 999.5). Therefore, many types of common insurance, including commercial general liability insurance, worker's compensation insurance, and professional liability, will largely fall outside of the new law's scope. To the extent such policies are issued as package policies and include some form of motor vehicle or premises liability coverage, however, the statute may still apply to claims falling under that type of coverage.

The new law applies to "time-limited demands," which are defined in Section 999(b)(2) as:

1. An offer made ***prior to the filing of the complaint or demand for arbitration***;
2. To settle any cause of action or claim for personal injury, property damage, bodily injury, or wrongful death by or on behalf of a claimant;
3. To a tortfeasor with a liability insurance policy; and
4. For purposes of settling the claim against the tortfeasor within the insurer's limit of liability insurance, which by its terms must be accepted within a specified period of time.

This law also does not apply to a claimant who is not represented by counsel. (Section 999.4(b)). It is also important to note that this law only impacts demands made in advance of a claimant initiating a lawsuit or arbitration against the insured.

The law applies only to time-limited demands transmitted on or after January 1, 2023. (Section 999.5(c)).

Requirements for a Time-Limited Demand

Section 999.1 sets out the following requirements for a time-limited demand:

1. The demand to settle must be in writing;
2. The demand must be labeled as a time-limited demand or reference Section 999; and
3. The demand must contain the following material terms:
 - a. The time period within which the demand must be accepted must be not fewer than 30 days from the date of transmission if transmitted by email, facsimile, certified mail, or not fewer than 33 days if transmitted by mail.
 - b. The demand must contain a "clear and unequivocal offer to settle all claims within policy limits, including the satisfaction of all liens".
 - c. The demand must include an offer for a complete release from the claimant for the liability insurer's insureds from all present and future liability for the occurrence.
 - d. The demand must identify the date and location of the loss.
 - e. The demand must identify the claim number, if known.
 - f. The demand must include a description of all known injuries sustained by the claimant.
 - g. The demand must include reasonable proof of the injuries, which may include medical records or bills sufficient to support the claim.

Website for Insurer Addresses

The new law requires that the time-limited demand be sent to either: (1) the email or physical address of the

liability insurer for the receipt of time-limited demands if the address has been provided by the liability insurer to the Department of Insurance, and the department has made the address publicly available; or (2) the insurance representative assigned to handle the claim, if known. (Section 999.2).

Section 999.2 also requires the Department of Insurance to post on its internet website the email or physical address designated by a liability insurer for receipt of time-limited demands. The liability insurer may submit its designated email address or physical address for receipt of time-limited demands to the following email: TLD.address@Insurance.ca.gov.

Insurer's Response to a Time-Limited Demand

In responding to a time-limited demand, the insurer may do one of the following:

1. **Accept the demand** by providing written acceptance of the material terms of the demand as outlined in Section 999.1 in their entirety. (Section 999.3(a)).
2. **Seek clarification or additional information or request an extension of time** due to the need for further information or investigation (Section 999.3(b)). Such requests will not be deemed to be a counteroffer or rejection of the demand.
3. **Reject the demand**, which must be made in writing and must explain the basis for the rejection. The rejection will be relevant to any lawsuit alleging extracontractual damages against the liability insurer. (Section 999.3(c)).

Effect of Noncompliant Time-Limited Demand

Section 999.4 provides that a time-limited demand that does not substantially comply with the requirements set out above "shall not be considered to be a reasonable offer to settle the claims against the tortfeasor for an amount within the insurance policy limits for the purposes of any lawsuit alleging extracontractual damages against the tortfeasor's liability insurer."

Accordingly, a noncompliant time-limited demand cannot serve as a basis for a bad faith claim based upon the failure to settle within policy limits and likely will be inadmissible in a subsequent bad faith lawsuit. The new law, however, further provides that it does not otherwise alter existing law, including law relating to claims, damages, and defenses in litigation seeking extracontractual damages. (Section 999.5(b)). Therefore, an insurer could nonetheless face liability for extracontractual liability on other grounds, depending on the facts of the claim.

Conclusion

By establishing baseline criteria for a reasonable time-limited demand, the new law provides helpful guidance for claimants seeking early settlement of a claim, and it also provides some protection to insurers against liability for rejecting unreasonable settlement demands. It remains to be seen whether these baseline criteria will impact the courts' evaluation of the reasonableness of a policy limits settlement offer in the context of other types of insurance policies and other types of claims. Existing caselaw will likely still govern in certain respects what constitutes an unreasonable response by an insurer in responding to pre-litigation demands.

The statute's full text can be read [here](#).

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