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SB-1155 Liability claims: time-limited demands. (2021-2022)

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Senate Bill No. 1155

CHAPTER 719

An act to add Chapter 3.2 (commencing with Section 999) to Title 14 of Part 2 of the Code of Civil Procedure, relating to claims settlement.

[Approved by Governor September 28, 2022. Filed with Secretary of State September 28, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1155, Caballero. Liability claims: time-limited demands.

Existing law provides for liability insurance to protect against loss resulting from liability for an injury suffered by a person or for damage to property. Existing case law establishes obligations liability insurers have to the insured, including the duty to indemnify and the duty to defend. Existing law limits damages for a breach of contract to damages proximately caused by or likely to result from the breach and requires these damages to be ascertainable in both their nature and origin. Existing law provides that stipulations that are necessary to make a contract reasonable or conformable to usage but are not contrary to the contract's manifest intention are implied. Existing case law allows for extracontractual damages for a breach of the implied covenant of good faith and fair dealing where an insurer unreasonably refused to accept a settlement offer within the policy limits against the insured. Existing law allows any party to serve an offer to allow judgment to be taken or an award to be entered in accordance with specified terms and conditions. If an offer made by the plaintiff is not accepted by the defendant and the defendant fails to obtain a more favorable judgment or award, the court or arbitration may require the defendant to pay a reasonable sum to cover plaintiff's postoffer expert witnesses' services, as specified, in addition to plaintiff's costs.

This bill would provide a framework for parties to settle a liability claim using a "time-limited" demand, as specified. The bill would define "time-limited" demand as an offer to a tortfeasor to settle a cause of action or claim for personal or bodily injury, property damage, or wrongful death within the tortfeasor's liability insurance policy limits prior to the filing of a complaint or demand for arbitration. The bill would require a time-limited demand to be accepted not fewer than 30 or 33 days from the date of transmission, as specified, and to contain specified information, including a clear and unequivocal offer to settle all claims within policy limits, a description of all known injuries sustained by the claimant, and reasonable proof to support the claim. The bill would require a claimant to send their time-limited demand to the email address or physical address designated by the liability insurer for receipt of time-limited demands, if available, or the insurance representative assigned to handle the claim, if known, and would require the Department of Insurance to post a liability insurer's designated email address or physical address on the department's internet website. The bill would allow a recipient of a demand to accept the demand in writing or to seek clarification or additional information or a request for extension. If an insurer does not accept a time-limited demand, the bill would require the insurer to notify the claimant of its decision and the basis of its decision prior to the expiration of the time-limited demand. The bill would specify that this notification is relevant in any lawsuit alleging extracontractual damages against the tortfeasor's liability insurer.

Under this bill, a "time-limited" demand would not be considered a reasonable offer for purposes of a lawsuit alleging extracontractual damages against the liability insurer if the demand did not substantially comply with these provisions. The bill would make these provisions inapplicable to an unrepresented claimant. The bill would state that, in the event a court determines that these provisions conflict with the Civil Discovery Act, that act will prevail. The bill would make these provisions applicable to time-limited demands transmitted on or after January 1, 2023.

This bill would become operative only if SB 1107 of the 2021–22 Regular Session is enacted and takes effect on or before January 1, 2023.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 3.2 (commencing with Section 999) is added to Title 14 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 3.2. Time-Limited Demands

999. (a) It is declared to be the public policy of the State of California that prompt settlements of civil actions and claims are encouraged as beneficial to claimants, policyholders, and insurers.

(b) For purposes of this section, the following definitions apply:

(1) "Extracontractual damages" means any amount of damage that exceeds the total available limit of liability insurance for all of a liability insurer's liability insurance policies applicable to a claim for property damage, personal injury, bodily injury, or wrongful death.

(2) "Time-limited demand" means an offer prior to the filing of the complaint or demand for arbitration to settle any cause of action or a claim for personal injury, property damage, bodily injury, or wrongful death made by or on behalf of a claimant to a tortfeasor with a liability insurance policy 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.

999.1. A time-limited demand to settle any claim shall be in writing, be labeled as a time-limited demand or reference this section, and contain material terms, which include the following:

(a) The time period within which the demand must be accepted shall be not fewer than 30 days from date of transmission of the demand, if transmission is by email, facsimile, or certified mail, or not fewer than 33 days, if transmission is by mail.

(b) A clear and unequivocal offer to settle all claims within policy limits, including the satisfaction of all liens.

(c) 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 date and location of the loss.

(e) The claim number, if known.

(f) A description of all known injuries sustained by the claimant.

(g) Reasonable proof, which may include, if applicable, medical records or bills, sufficient to support the claim.

999.2. (a) A claimant shall send their time-limited demand to either of the following:

(1) The email address or physical address designated by the liability insurer for receipt of time-limited demands for purposes of this chapter, if an address has been provided by the liability insurer to the Department of Insurance and the Department of Insurance has made the address publicly available.

(2) The insurance representative assigned to handle the claim, if known.

(b) To implement this section, the Department of Insurance shall post on its internet website the email address or physical address designated by a liability insurer for receipt of time-limited demands for purposes of this chapter.

(c) An act by the Department of Insurance pursuant to this section is a discretionary act for purposes of Section 820.2 of the Government Code.

999.3. (a) The recipients of a time-limited demand may accept the demand by providing written acceptance of the material terms outlined in Section 999.1 in their entirety.

(b) Upon receipt of a time-limited demand, an attempt to seek clarification or additional information or a request for an extension due to the need for further information or investigation, made during the time within which to accept a time-limited demand, shall not, in and of itself, be deemed a counteroffer or rejection of the demand.

(c) If, for any reason, an insurer does not accept a time-limited demand, the insurer shall notify the claimant, in writing, of its decision and the basis for its decision. This notification shall be sent prior to the expiration of the time-limited demand, including any extension agreed to by the parties, and shall be relevant in any lawsuit alleging extracontractual damages against the tortfeasor's liability insurer.

999.4. (a) In any lawsuit filed by a claimant, or by a claimant as an assignee of the tortfeasor or by the tortfeasor for the benefit of the claimant, a time-limited demand that does not substantially comply with the terms of this chapter 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 purposes of any lawsuit alleging extracontractual damages against the tortfeasor's liability insurer.

(b) This section shall not apply to a claimant that is not represented by counsel.

(c) In the event a court determines that this chapter conflicts with the Civil Discovery Act, (Title 4 (commencing with Section 2016.010) of Part 4), the Civil Discovery Act shall prevail.

999.5. (a) This chapter shall only apply to causes of action and claims covered under automobile, motor vehicle, homeowner, or commercial premises liability insurance policies for property damage, personal or bodily injury, and wrongful death claims.

(b) Except as provided in this chapter, nothing shall alter existing law, including law relating to claims, damages, and defenses, that may be asserted in litigation seeking extracontractual damages.

(c) This chapter shall apply to time-limited demands transmitted on or after January 1, 2023.

SEC. 2. This act shall become operative only if Senate Bill 1107 of the 2021–22 Regular Session is enacted and takes effect on or before January 1, 2023.