

BAD FAITH BLOG

# New Missouri Law Levels The Playing Field For Insurers

AUTHOR: SANDBERG PHOENIX

On April 26, 2017, the Missouri General Assembly passed a bill modifying certain statutory provisions relating to settlement of tort claims. The bill, known as HB 339 and HB 714, grants certain rights to insurers when a claimant and tortfeasor enter into a contract to limit recovery pursuant to R.S.Mo. § 537.065 and imposes new requirements on time-limited demands in R.S.Mo. § 537.058. Governor Greitens signed the bill on July 5, 2017 and it will be effective August 28, 2017. This legislation is designed to limit currently legal, but abusive, practices against insurers in an effort to reform insurance “bad faith” litigation in Missouri.

For example, the legislation aims to prevent unreasonable time-limited demands (often for policy limits) frequently used as the device to “set-up” a bad faith claim. Under the new law, time-limited demands must be left open for a minimum of 90 days, accompanied by medical and wage authorizations, and must also conform to a number of statutory requirements. Subsection 7 of R.S.Mo. § 537.058 expressly provides that a time-limited demand failing to comply with the statute’s requirements “shall not be considered as a reasonable opportunity to settle” by the insurer and “shall not be admissible in any lawsuit alleging extra-contractual damages,” such as a bad faith lawsuit seeking recovery for a judgment in excess of policy limits. These restrictions apply to lawsuits filed by an insured tortfeasor, and the tortfeasor’s assignee (typically the injured claimant) against the insurer.

Additionally, the new legislation requires the insurer be informed of any “rollover agreement” executed pursuant to R.S.Mo. § 537.065 and authorizes an insurer to “intervene” before entry of judgment against the tortfeasor. These opportunities are significant rights that were not previously available to an insurer if, as allowed by Missouri law, an insured rejected a defense provided under a reservation of rights and assumed control of the defense itself. The statute appears intended to prevent a common scenario that occurs in Missouri now where an insurer has no knowledge a § 537.065 “rollover” agreement has been entered into by and between the tortfeasor and the injured claimant, which results in a large judgment, usually in excess of the policy limits, against the insured, until after a garnishment and/or bad faith lawsuit is filed against the insurer.

Time-Limited Demands

Section 537.058 sets forth new requirements for a time-limited demand to settle a claim for personal injury, bodily injury, or wrongful death. The new statute requires the demand to be sent to the tort-feasor's insurer by certified mail, return receipt requested, remain open for at least 90 days from the date the demand is received by the insurer, and must also include the following information:

- Amount of monetary payment requested or request for applicable policy limits;
- Date and location of the loss;
- Claim number, if known;
- Description of known injuries;
- Parties to be released if demand is accepted;
- Description of claims to be released if demand is accepted;
- An offer of unconditional release for the insurer's insureds from all present and future liability for that occurrence under R.S.Mo. § 537.060;
- List of names and addresses of health care providers from date of injury to date of demand, along with HIPAA-compliant authorizations;
- Names and addresses of claimant's employers from date of injury until date of demand, along with employer authorizations, if the claimant asserts a claim for lost wages or like claim.

Upon receipt of a time-limited demand, the insurer may ask for clarification of the terms without it being considered a counteroffer or rejection of the demand. After acceptance of the time-limited demand, the insurer may provide payment to the claimant in the form of cash, money order, wire transfer, cashier's check, draft or bank check, or electronic funds transfer. A claimant may require payment within a specified period of time, but not less than 10 days after written acceptance of the demand.

Notably, in any lawsuit filed by a claimant as an assignee of the tort-feasor (or by the tort-feasor for the benefit of the claimant), a time-limited demand that does not comply with the terms of 537.058 "shall not be considered as a reasonable opportunity to settle for the insurer and shall not be admissible in any lawsuit alleging extra-contractual damages against the tort-feasor's liability insurer."

The new time-limited demand requirements do not apply to demands issued within 90 days of a jury trial.

#### Amendment to R.S.Mo. § 537.065

Subsection 1 of R.S.Mo. § 537.065 is amended by expressly requiring a tort-feasor's insurer or indemnitor be granted the opportunity to defend the tort-feasor without a reservation of rights, and the insurer's refusal of such defense, before a claimant and tortfeasor may enter into an enforceable contract to limit recovery to certain, specified assets, such as the tortfeasor's insurance policy.

The bill also added two new provisions to the statute, subsections 2 and 3. Subsection 2 requires an insurer to be provided written notice of the execution of a § 537.065 contract, and grants the insurer 30 days after receipt of such notice to “intervene” as a matter of right in any pending lawsuit involving the claim for damages. Subsection 3 states the provisions of R.S.Mo. § 537.065 apply to “any covenant not to execute, any contract to limit recovery to specified assets, or other similar contract, regardless of whether it is referred to as a contract under this section.”