

**RPPTL SECTION WHITE PAPER:
PROPOSED CHANGE TO SECTION 627.4137, FLORIDA STATUTES**

I. SUMMARY

Currently section 627.4137, Florida Statutes, requires a liability insurance carrier, whose policy may pay for all or a portion of a claim, to provide a statement under oath, within 30 days of demand by the claimant, with:

- (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.

The proposed changes would include additional insureds as being allowed to make such demands, provides consequences for an insurer's failure to comply with the statute and defines liability insurance. A copy of the existing statute is attached as Exhibit "A" and the proposed revisions as Exhibit "B".

II. CURRENT SITUATION

A party which believes it has a claim against another is allowed to make a demand for insurance information under section 627.4137, Florida Statutes. Typically the demand is made by the attorney for the claimant on the insured, the insurance agent for the insured (if known) or the carrier directly (if known). Once the demand is made there is an obligation on the part of the insured or his insurance agent to provide that demand to the carrier. The carrier has 30 days from receipt to provide the information required by the statute.

Under existing case law, the failure to comply with section 627.4137 on the part of an insurer gives the claimant a cause of action against the carrier after a judgment was obtained against the insured, *see Lucente v. State Farm Mut. Auto. Ins. Co.*, 591 So. 2d 1126 (Fla. 4th DCA 1992), and also allows the claimant to set aside a settlement which was entered pre-suit with the carrier, *see Schlosser v. Perez*, 832 So. 2d 179 (Fla. 2d DCA 2002).

Often the insured does not pass along the demand for insurance information to the carrier or the carrier does not respond timely. In either case the terms of the statute are not complied with.

Non-disclosure of insurance coverage impacts additional insureds as well as claimants. It is a frequent occurrence in commercial contracts involving construction projects, leases, and manufacturer-supplier agreements, among many other contracts, that parties to the contract provide additional insured coverage for a co-party. Contracts typically do not identify the insurance company providing the additional insured coverage. Certificates of insurance are frequently provided, but sometimes are not provided, and sometimes contain inaccurate information. An additional insured currently has no statutory mechanism to obtain information regarding its additional insured insurance rights. The additional insured therefore may be unable to provide timely notice of claim, or may provide such notice to the incorrect insurance company.

III. ANALYSIS OF PROPOSED CHANGES

The proposed changes do the following:

1. Defines the liability policies covered under this provision.
2. Codifies the claimant's right to pursue a post-judgment action.
3. Codifies the claimant's right to set aside a settlement agreement where there was non-compliance by the insurer.
4. Includes additional insureds among the categories of claimants who may make demand for information under this provision.
5. Prohibits a carrier from making a coverage denial based on the terms of an undisclosed policy as to additional insureds.
6. Notes that the courts have inherent authority to impose sanctions for non-compliance.
7. Notes that this provision does not create a cause of action or penalty against the insured.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

None

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

None

VI. CONSTITUTIONAL ISSUES

None.

VII. OTHER INTERESTED PARTIES

1. Insurance Carriers

Select Year: 2012 Go

The 2012 Florida Statutes

Title XXXVII
INSURANCE

Chapter 627
INSURANCE RATES AND CONTRACTS

[View Entire Chapter](#)

627.4137 Disclosure of certain information required.—

(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.

History.—ss. 543, 809(2nd), ch. 82-243; s. 79, ch. 82-386; s. 22, ch. 83-288; ss. 38, 114, ch. 92-318; s. 327, ch. 97-102; s. 10, ch. 2011-174.

Note.—Former s. 627.7264.

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(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 or additional insured, 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, addition insured, or the claimant's or additional insured's attorney, shall disclose the name and coverage of each known insurer to the claimant or additional insured 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 or additional insured 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.

(4) For purposes of this section, "liability" insurance shall include all policies by which an insurer insures the liability of its insured to parties other than the insured, including, without limitation, automobile liability policies, general liability policies, and professional liability policies.

(5) Any insurer who fails to comply with the terms of this section shall be subject to a common law bad faith claim, provided that a judgment is first obtained against an insured under the terms of such policy for a cause of action which is covered by such policy. An insurer that fails under this section to provide disclosures to an additional insured under its policy shall not be permitted to deny coverage based on a particular coverage defense contained in the non-disclosed policy. Furthermore, any settlement of an insured claim which includes as part of the settlement terms a request for disclosures required under this section shall be unenforceable, at the option of the claimant, unless the information requested pursuant to this section has been provided to the requesting party before settlement has been agreed upon. Nothing in this subsection shall limit in any way a trial court's inherent authority to impose discovery or other sanctions upon a non-disclosing party, nor shall this subsection

EXHIBIT

B

create a cause of action or penalty against an insured.

History.—ss. 543, 809(2nd), ch. 82-243; s. 79, ch. 82-386; s. 22, ch. 83-288; ss. 38, 114, ch. 92-318; s. 327, ch. 97-102; s. 10, ch. 2011-174.

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