

## GUEST COLUMN

## New law establishes rules of the road for “time-limited demands” in insurance claims

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For decades “time-limited demands” have been used to settle third-party liability claims, but they can be fraught with peril for insurers. Originally used to effectuate policy limit settlements, the focus has shifted to demands calculated *not to be accepted* so the claimant can argue the insurer is liable for any judgment that exceeds the policy limit.

Today, insurers often receive demands where the time to respond is too short, the terms are unclear, or there is insufficient information to make an informed settlement decision. But when the insurer asks for more information or additional time to investigate, the plaintiff asserts that the demand has been rejected, and years of litigation aimed at recovering more than the policy limit ensues.

On Sept. 28, 2022, the California Legislature passed SB 1155 (Code of Civ. P. § 999, et seq.), which sets forth various requirements that a “time-limited demand” must meet to justify a “bad faith refusal to settle” claim. After Jan. 1, 2023, a “time-limited demand” that does not substantially comply with the new law’s requirements will not be considered “reasonable” in a future lawsuit against the insurer seeking extra-contractual damages.

This law is a positive step toward creating a framework for settling

third-party liability claims. But it is important to keep in mind that the statute is limited in scope and has several important carve outs.

Below are some key provisions and issues that insurers should keep in mind.

### Which demands must comply with the new law?

The law only applies to demands that fall within its definition of a “time-limited demand.” This definition extends to policy limit demands made “prior to filing the complaint or demand for arbitration.” (Cal. Code of Civ. Proc. § 999(b)(2).) Demands made after a suit is filed against the insured do not have to comply with the new law to be considered “reasonable” in a future bad faith suit.

The statute is also limited to demands that require acceptance “within a specified period of time.” Thus, insurers should be on the lookout for demands omitting a specific time period for acceptance.

### What are the new requirements for time-limited demands?

A “time-limited demand” must (1) be in writing; (2) be labeled as a time-limited demand (or reference the new statute); and (3) contain the following material terms:

- Amount – The demand must be for an amount “within the insurer’s limit of liability insurance.”
- Timing – The demand must provide at least 30 days from the date of transmission by email, fax,

or certified mail for the insurer to accept it; 33 days for demands sent by regular mail.

- Scope – The demand must clearly and unequivocally offer to settle all claims within the policy limit, including satisfaction of all liens.
- Release – The demand must offer a complete release from all present and future liability.

• Details – The demand must include the date and location of the loss, the claim number (if known) and a description of all known injuries sustained by the claimant.

- Proof – The demand must include “reasonable proof,” which may include medical records or bills, sufficient to support the claim.

### Where Must Time-Limited Demands Be Sent?

The demand must be sent to either (1) an email address or physical address designated by the insurer for the receipt of time-limited demands with the Department of Insurance or (2) to the insurance representative assigned to handle the claim.

### What are the consequences if a demand does not comply with the new law?

The new law requires a time-limited demand to “substantially comply” with its requirements. If it does not, the demand will not be considered a “reasonable” demand in a future lawsuit alleging extra-contractual damages against the insurer. (Cal. Code of Civ. Proc. § 999.4(a).)

The new law does not define what constitutes “substantial com-

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pliance,” so there will be uncertainty as to whether some demands that do not strictly comply with the new law are sufficient.

Do unrepresented claimants have to comply with the new law?

No, unrepresented claimants are excluded. (Cal. Code of Civ. Proc. § 999.4(b).) Consequently, insurers should expect that plaintiffs in future bad faith lawsuits will argue that non-compliant time-limited demands from unrepresented claimants are “reasonable” demands. Insurers, however, will still be able to argue that the demand was unreasonable for reasons other than the fact it failed to comply with the statute.

### **What should an insurer do if it receives a time-limited demand?**

An insurer that receives a time-limited demand has the same options it has always had. It can: (1) accept the demand, (2) seek clarification/request an extension, or (3) choose not to accept the demand. (Cal. Code of Civ. P. §999.3.)

But the new law imposes several requirements on liability insurers when responding to the demand. First, the insurer must respond to the demand in writing before it expires. (Cal. Code of Civ. Proc. § 999.3.) Second, if the insurer intends to accept the demand, it must provide written ac-

ceptance of the material terms “in their entirety.” (*Id.* at § 999.3(a).) Third, if the insurer does not accept the demand for any reason, it is required to provide a written explanation for its decision. (*Id.* § 999.3(c).)

The new law states that a liability insurer’s written explanation for why it did not accept a demand “shall be relevant” in any future lawsuit seeking extra-contractual damages. (Code of Civ. Proc. § 999.3(c).) Thus, an insurer’s “why” letters will be even more closely scrutinized in future litigation.

### **What about conditions?**

While the new law sets out the

“material terms” that must be included in a “time-limited demand,” these are not the *only* terms that can be included in the demand. Liability insurers should expect that claimants will still include various other conditions that will be judged by the common law “reasonableness” standard.

### **Future issues to think about**

While the new law appears to provide a straightforward template for time limited demands, future litigation will likely be needed to address the uncertainties noted above. Therefore, while this new law is an important first step, it is not the last.