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2. Our firm understands insurance coverage issues. We can make sure all available insurance coverages are located.
3. We are passionate about obtaining the maximum recovery for our clients, and will try the case to a jury if necessary to obtain the best results.
4. Recoveries in excess of available insurance coverage generate greater recoveries for our clients and larger referral fees to referring attorneys.

The hiring of an attorney is an important decision that should not be based solely on advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.

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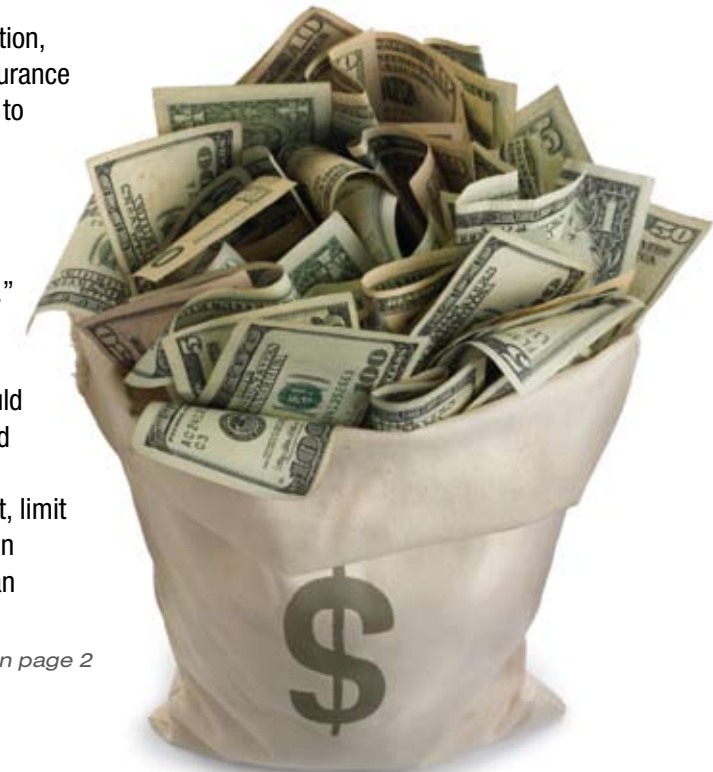
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## Gov. Scott's proposed legislation

Boosting profits of a well-protected industry at the expense of injured Floridians.

As foreshadowed in the gubernatorial election, legislative allies of Gov. Rick Scott and insurance industry lobbyists have proposed changes to Florida law that would provide insurance companies myriad new legal defenses to dismiss claims, delay settlements and eliminate the 73-year-old legal standard that requires insurers to act in "good faith."

On March, 3, 2011 Senator John Thrasher introduced Senate Bill 1592. "This bill would gut the legal protections of severely injured Floridians with legitimate claims and give insurance companies more ways to deflect, limit or completely disallow claims," says Steven Wittmer, senior partner at Wittmer | Linehan in Sarasota.



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### CASE REVIEW

## \$7 million motorcycle accident judgment is largest in Manatee / Sarasota County.

During the summer of 2008, a motorcycle accident forever changed the lives of Kim Miller, a 45-year-old single mother, and her son Justin, 17.

On that August 25, Kim was riding as a passenger on a motorcycle driven by her boyfriend, Willie Swails. As they headed south on US 41 in Bradenton, a van driven by Paul Torrey unexpectedly made a left turn directly into their path. Without a chance to take any evasive action, Mr. Swails ran directly into the front of the van. Mr. Swails

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## Gov. Scott's proposed legislation

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"The Legislature is being asked to be the influential lobbyist and to protect big business and the insurance industry. It is a regulated industry. Regulation equals profit. But, they want more."

### Controlling the Process

Under the proposed changes, only "an insured" person could bring a civil action in court against "the insurer," and the insured person could not assign his or her rights to an injured party or anyone else, except in medical malpractice cases.

Furthermore, the statute changes allow insurance companies to dictate how claims would proceed through the courts. For example, the statute change says an insured person could not

*"This bill would gut the legal protections of severely injured Floridians with legitimate claims and give insurance companies more ways to deflect, limit or completely disallow claims." – Steven T. Wittmer*

bring a bad faith civil action against an irresponsible insurer until the underlying claim has been "finally resolved." What the insurer-friendly language means: First, accept as final settlement the limits for your policy as a final resolution, then you can bring suit against us saying we acted irresponsibly when we negotiated the final resolution.

"It's delay, delay, delay. What does 'finally' mean? Wittmer asks. "The insurers want to be able to exhaust all appeals until the injured brings a suit." New, highly technical criteria and legal procedures required to evaluate claims appear designed to slow or derail valid claims. It would lay down a minefield of potential traps. "One mistake could cost the insured a large judgment that would pay for long-term care," Wittmer said.

### Sitting on the Money

If the proposed changes are approved, the insurance company would not owe a duty to the insured to even investigate, much less settle, any third-party claim until the insurance company receives what it calls a "bona-fide" offer.

Statute changes would give the insurer wide latitude in defining what it considers a bona-fide offer. "It's another delaying tactic to favor the insurer," Wittmer says.

Another change to the statutes says a bona-fide offer could not be made sooner than 30 days after the accident, and the offer remains open until the later of 60 days after delivery or 180 days after accident, whichever is longer. "That is laughable," Wittmer said. "The insurer would have up to 180 days to determine if they have to investigate and/or settle a claim. They want



to sit on the money for 180 days. Under the current statutes, the insurer does owe a duty to its insured to investigate and settle a case as quickly as possible."

The insurers argue that that is too great a duty to perform for the premiums that they receive.

### Good Faith vs Arbitrary Refusal

The standard of "good faith," in place in Florida law since 1938, would be changed to an "arbitrary refusal" standard if the insurer-friendly language were approved.

In essence, it means that insurers would no longer be required to act fairly and honestly toward the insured or with due regard for the insured's interests. The insurer also would not be required to settle when it could and should have done so, had it acted fairly and honestly.

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Another proposed change would release the insurance companies of additional duties to advise injured parties of settlement opportunities. The proposed changes say the insured and his or her representatives owe a duty to cooperate and to provide "any information relevant to the claim" to the insurance company. "It turns the duty (to provide information) on its head," Wittmer says. "Under current statute, the claimant is not obligated to get the information for the insurance company."

Furthermore, if the claimant fails to comply with this duty, the insurance company can raise an affirmative defense to a bad-

faith claim, according to the changes proposed by the insurance industry. The questions are: why do profitable, powerful insurance companies need these new "protections," and why now?

"Yes, insurance companies get snookered," Wittmer says, "but that happens in a small minority of cases. But, these changes are a greedy overreach by insurers and pro-business legislators leveraging a friendly political climate to boost profits of a well-protected and already profitable industry at the expense of injured Floridians."



## CASE REVIEW Judgment

Continued from page 1

was killed in the collision and Kim was ejected from the motorcycle. Kim traveled over 40 feet in the air, hit a concrete light pole and then fell to the ground. Kim was not wearing a helmet but fortunately for her, her head did not strike the pole or the ground.

Kim's numerous injuries included a closed head injury; multiple fractures of the ribs; sternum; pelvis; left leg, kneecap and ankle; and both hands, as well as multiple internal lacerations, "road rash" and burns. She was airlifted from the accident scene to Bayfront Medical Center.

Following multiple surgeries and skin grafts, Kim spent months recovering from her injuries. Despite her significant efforts to recover from the numerous orthopedic injuries, Kim's diffuse axonal brain injury (shearing of brain tissue) has left her with significantly impaired memory and cognitive functions and speech capabilities. She functions at a very diminished level, has severe difficulty walking, and will require 24-hour-a-day care for the remainder of her life for simple daily activities such as taking medicine, cooking, dressing and using the bathroom.

Mr. Torrey, the driver of the van, was arrested and found to have been driving under the influence of alcohol at the time of the accident. He had received a prior "DUI" and was driving on a "work only" license.

Nationwide Insurance Company insured Mr. Torrey. Despite a clear offer to resolve Kim's claims, Nationwide attempted to include unacceptable settlement terms as a condition to receiving payment of the policy benefits. These unfavorable settlement terms were rejected and our Firm proceeded to file a lawsuit. Despite the fact that Kim never hit her head in the accident, Nationwide retained experts to render opinions that the head injuries Kim sustained were all resulting from her failure to wear a helmet.

Experts were retained and deposed, and shortly before trial Nationwide and Mr. Torrey finally agreed to stipulate to a \$7 million judgment in order to avoid a trial before a jury.