

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT, IN AND FOR
PASCO COUNTY, FLORIDA

ELISE BINGHAM,

Plaintiff,

vs.

CASE NO.: 51-2012-CA-0812-ES

TOWER HILL PREFERRED INSURANCE
COMPANY,

Defendant.

**ORDER GRANTING MOTION TO FILE THIRD AMENDED
COMPLAINT FOR COMPENSATORY AND PUNITIVE DAMAGES**

THIS MATTER having come before the Court on September 1, 2020, upon Plaintiff's Verified Amended Motion for Leave to File Her Third Amended Complaint for Compensatory and Punitive Damages and Demand for Jury Trial, and having heard arguments of counsel and upon the Court's consideration and review of all relevant filings, case law, and being otherwise fully advised in the premises thereof, it is hereby ORDERED and ADJUDGED as follows:

1. Florida Rule of Civil Procedure 1.190(f) requires a motion for leave to amend to assert a claim for punitive damages by making a reasonable showing, either by evidence in the record or evidence to be proffered by the claimant, which provides a "reasonable basis" for recovery of such damages. Timing is also essential; Florida Rule of Civil Procedure 1.190(f) permits the motion to amend can be filed separately and before the supporting evidence or proffer, but each shall be served on all parties at least 20 days before the hearing. Florida Rule of Civil Procedure 1.190(f) mirrors the requirements of Section 768.72, Florida Statutes:

In any civil action, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant, which would provide a reasonable basis for recovery of such damages. The claimant may move to amend his or her complaint to assert a claim for punitive damages as allowed by the rules of civil procedure.

Section 768.72(1), Florida Statutes (2019). In the context of an extra-contractual, "bad faith" claim against an insurer, Section 624.155 provides for recovery of punitive damages when the appropriate proffer and proof has been made:

No punitive damages shall be awarded under this section unless the acts giving rise to the violation occur with such frequency as to indicate a general business practice and these acts are:

- (a) Willful, wanton, and malicious;
- (b) In reckless disregard for the rights of any insured; or
- (c) In reckless disregard for the rights of a beneficiary under a life insurance contract.

Section 624.155, Florida Statutes (2020).

“Florida law is clear on this point,” requiring a plaintiff to provide the court with evidence in the record or evidence to be proffered by the claimant that provides a “reasonable basis” for recovery before the court may allow a claim for punitive damages to be included in a plaintiff’s complaint. See *Cypress Aviation, Inc. v. Bollea*, 826 So. 2d 1091, 1092 (Fla. 2d DCA 2002), citing *Simeon, Inc. v. Cox*, 671 So. 2d 158, 160 (Fla. 1996). “An evaluation of the evidentiary showing required by section 768.72 does not contemplate the trial court simply accepting the allegations in a complaint or motion to amend as true.” *Bistline v. Rogers*, 215 So. 3d 607, 610 (Fla. 4th DCA 2017). Certiorari jurisdiction is appropriate to review whether a trial judge has conformed with the procedural requirements of Section 768.72, but not so broad as to encompass a review of the sufficiency of evidence when the trial judge has followed the procedural requirements of Section 768.72. See *Simeon* at 160.

2. On August 10, 2020, Plaintiff, ELLISE BINGHAM (“Mrs. Bingham”) filed with the Court and served on Defendant, TOWER HILL PREFERRED INSURANCE COMPANY (“Tower Hill”), her Verified Motion for Leave and also various depositions of Tower Hill

employees and representatives, transcripts of hearings in the Underlying Contract Action, the Tower Hill Preferred Insurance Policy insuring Mrs. Bingham's property, Redacted Claims Notes, the Tower Hill Adjuster's Handbook, the Report of Rab Beverly, and Notices of Filing regarding "Concealment Motions" filed by Tower Hill's various companies in numerous other cases. See Plaintiff's Verified Amended Motion for Leave, August 10, 2020, pages 3-4, Filing # 111565489. Additionally, Mrs. Bingham attached to her Verified Motion for Leave a proposed copy of the proposed Third Amended Complaint for Compensatory and Punitive Damages and Demand for Jury Trial. Having concluded that Mrs. Bingham served the evidence in the record or evidence to be proffered at least 20 days prior to the hearing, set for September 1, 2020, this Court finds that Mrs. Bingham has satisfied the procedural requirements for seeking punitive damages, as set forth in Section 768.72, Florida Statutes, and Section 624.155, Florida Statutes.

3. Mrs. Bingham's Proposed Third Amended Complaint alleges Improper Claims Handling of Mrs. Bingham's Claim: Three Categories of Individual and Institutional Bad Faith including:

- a. Category One: "Failure to adjust Mrs. Bingham's loss pursuant to the applicable standard of care at the time of the claim investigation. The basis for pursuing this category of bad faith is more fully described in the Third Amended Complaint, beginning at ¶ 27, and more fully detailed in ¶ 36(a)-(i), which incorporates facts and circumstances contained in the record.
- b. Category Two: "General Business Practice of Negotiating Benefits Due to Insureds in Sinkhole Cases." The basis for pursuing this category of bad faith including a "general business practice" by Tower Hill is more fully described in the Third Amended Complaint, beginning at ¶ 37, and more fully detailed in ¶ 39(a)-(r), which incorporates facts and circumstances contained in the record.

c. Category Three: “Tower Hill’s Strategy of False Accusations of Concealment and Fraud Against Mrs. Bingham and Other Similarly Situated Insureds” including a “general business practice” by Tower Hill is more fully described in the Third Amended Complaint, beginning at ¶ 40, and more fully detailed in ¶ 43(a)-(f), which incorporates facts and circumstances contained in the record.

4. Mrs. Bingham then alleges violations and counts under Florida “Bad Faith” Statutes, § 624.155, Florida Statutes, under Florida’s Unfair Methods of Competition and Unfair or Deceptive Acts, § 626.9541, Florida Statutes, and under Florida Administrative Code, § 690-220.

5. Upon a review of the filings, and upon argument of counsel, the Court finds that Mrs. Bingham’s Verified Motion for Leave to Amend, as well as the contents of the Third Amended Complaint, which incorporates record evidence in support described herein, demonstrate a “reasonable basis” to permit Mrs. Bingham to seek punitive damages.

IT IS THEREFORE the finding of this Court that the Plaintiff Ellise Bingham’s Verified Motion for Leave to File Her Third Amended Complaint should be and is GRANTED, and the Third Amended Complaint for Compensatory and Punitive Damages and Demand for Jury Trial, filed into the record on August 10, 2020 is deemed filed and served upon Defendant, TOWER HILL PREFERRED INSURANCE COMPANY, on the date of the entry of this Order.

DONE and ORDERED in Chambers, Pasco County, Dade City, Florida, this _____
Day of _____, 2020.

Electronically Conformed 9/21/2020

Honorable Susan G. Barthle
Circuit Court Judge

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