UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-CV-81222-BER

OCEAN REEF CHARTERS, LLC,

Plaintiff,

v.

TRAVELERS PROPERTY CASUALTY CO.,

Defendant.
_____/

ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT [ECF No. 121]

Plaintiff Ocean Reef Charters, LLC ("Ocean Reef") moves for leave to file a Third Amended Complaint ("TAC") to add a claim for punitive damages. For the following reasons, that request is denied.

Ocean Reef was an insured under a maritime policy issued by Defendant Travelers Property Casualty Company of America ("Travelers"). Hurricane Irma caused damage to the insured vessel. Travelers denied coverage on the grounds that the insured violated the captain and crew warranties of the policy. In 2018 the parties began litigating whether that denial was proper. Travelers took the position that (1) the Florida Anti-Technical Statute did not apply, so it did not have to show a nexus between the violation of the policy and the loss and/or (2) if the Anti-Technical Statute applied, there was a nexus between the violation and the loss. Ocean Reef said that

the Florida Anti-Technical Statute required Travelers to show a nexus and that no nexus existed.[1]

The trial court agreed with Travelers that the Anti-Technical Statute did not apply. *Travelers Prop. Cas. Co. of Am. v. Ocean Reef Charters, LLC*, 396 F. Supp. 3d 1170 (S.D. Fla. 2019). In May 2021, the Eleventh Circuit reversed and remanded, after resolving an open question of whether Florida law or federal common law applied. 996 F.3d 1161 (11th Cir. 2021).

On remand, the trial court granted summary judgment in favor of Ocean Reef because there was insufficient evidence that any violation of the captain and crew warranties affected the loss. The trial court first concluded that, in fact, Ocean Reef had violated the captain and crew warranties. 568 F. Supp. 3d 1357, 1361 (S.D. Fla. 2021). The trial court next found that Travelers had not met its burden of showing that the policy breach increased the hazard. *Id.* at 1362. Therefore, the trial court entered a judgment in Ocean Reef's favor. That judgment was affirmed on appeal. 71 F.4th 894 (11th Cir. 2023). After Travelers paid the entire judgment plus interest in full, Ocean Reef brought this lawsuit alleging Travelers' bad faith.

[1] Florida's Anti-Technical Statute, Fla. Stat. § 627.409(2) says that an insurer cannot deny coverage unless the insured's breach of the policy "increased the hazard by any means within the control of the insured." In other words, an insurer cannot deny coverage if the policy breach did not affect the loss.

I. LEGAL PRINCIPLES

A. *Bad Faith/Punitive Damages*

Florida law allows an insured to bring a civil action against an insurer for damages if the insurer in bad faith violates specified provisions of the Florida Insurance Code. Here, the proposed TAC alleges that Travelers did not adequately consider and apply the Anti-Technical Statute before denying Ocean Reef's claim and did not adequately inform Ocean Reef about that statute. ECF No. 121-1 ¶29(a)-(h). It further alleges that this improper conduct toward Ocean Reef was a general business practice of Travelers. *Id.*

Florida's bad faith insurance law allows for punitive damages, but only in limited situations:

> (8) Punitive damages may not 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.

Fla. Stat. § 624.155(8). At trial, an insured must prove entitlement to punitive damages by clear and convincing evidence. *Cook v. Fla. Peninsula Ins. Co.,* 371 So. 3d 958, 961-62 (Fla. Dist. Ct. App. 2023) (citing Fla. Stat. § 768.72(2)).

The statute does not define "willful, wanton, and malicious." Neither party has cited, nor has the Court's research revealed, a case defining these terms as they are used in Section 624.155. But, these terms are defined elsewhere under Florida's

criminal laws. "Malicious" has been defined as acting with "ill will, hatred, spite, [or] for an evil intent. Or perhaps stated more simply, 'the subjective intent to do wrong.'" *Peterson v. Pollack*, 290 So. 3d 102, 109 (Fla. Dist. Ct. App. 2020) (brackets in original) (citations omitted). In criminal law, "'[w]anton' means 'with a conscious and intentional indifference to consequences and with the knowledge that damage is likely to persons or property.' 'Willful' means 'intentionally, knowingly and purposely.'" *Id.* at 110. Because punitive damages are meant to punish not compensate, it seems logical that these same definitions should apply to the bad faith insurance statute. *Engle v. Liggett Grp., Inc.,* 945 So. 2d 1246, 1262 (Fla. 2006) (punitive damages are "quasi-criminal," intended to "punish the defendant and to deter future wrongdoing") *quoting Cooper Indus., Inc. v. Leatherman Tool Group, Inc.,* 532 U.S. 424, 432 (2001) (citations omitted).

B. *Leave to Amend*

Under Federal Rule of Civil Procedure 15(a), a plaintiff may amend a complaint once as a matter of course within certain time constraints. Fed. R. Civ. P. 15(a)(1). After this time has passed (as it has, here), a plaintiff may amend the complaint only with the opposing party's consent or leave of court. Fed. R. Civ. P. 15(a)(2). Rule 15 directs that "court[s] should freely give leave [to amend] when justice so requires." *Id.* Leave to amend may be denied in cases evincing undue delay, bad faith, futility of amendment, or undue prejudice to the opposing party. *See Maynard v. Bd. of Regents,* 342 F.3d 1281, 1287 (11th Cir. 2003). In considering whether a proposed amendment is futile, the standard "is akin to that for a motion to dismiss; thus, if the amended complaint could not survive Rule 12(b)(6) scrutiny, then the

amendment is futile and leave to amend is properly denied." *Krome Mining Partners v. United States*, No. 09-20951-CIV, 2009 WL 10700153, at *3 (S.D. Fla. Sept. 2, 2009) (citation omitted). *See also Burger King Corp. v. Weaver*, 169 F.3d 1310, 1320 (11th Cir. 1999) ("denial of leave to amend is justified by futility when the 'complaint as amended is still subject to dismissal'") (citation omitted).

A party seeking leave to amend after the scheduling order's deadline for amended pleadings must first show good cause before the Court can consider whether amendment is proper under Rule 15(a).[2] *Sosa v. Airprint Systems, Inc.*, 133 F.3d 1417, 1419 (11th Cir. 1998). The party seeking to amend a complaint after the scheduling order's deadline for amendments has expired must show that the "evidence supporting the proposed amendment would not have been discovered in the exercise of reasonable diligence until after the amendment deadline had passed." *Rusty 115 Corp. v. Bank of Am., N.A.*, No. 22-CV-22541-BER, 2024 WL 1619697, at *2 (S.D. Fla. Apr. 15, 2024); *Romero v. Drummond Co.,* 552 F.3d 1303, 1319 (11th Cir. 2008). And, the party must show that it moved to amend the scheduling order promptly after discovering the relevant information. *Hix v. Acrisure Holdings, Inc.*, No. 1:21-CV-4541-MLB, 2022 WL 17538687, at *1 (N.D. Ga. Dec. 8, 2022).

II. DISCUSSION

At different stages of this litigation, including in its Motion for Leave to Amend ("the Motion") Ocean Reef has taken the incorrect position that it was, and is, entitled

[2] A scheduling order "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4).

to take discovery to develop its punitive damages claim even though it has not yet stated a claim upon which punitive damages relief can be granted. As I now show, the Federal Rules of Civil Procedure require a plaintiff to be able to state a claim based on facts known *before* discovery.

"It is no small thing to file a lawsuit that brings someone involuntarily into federal court." *In re Zantac (Ranitidine) Prod. Liab. Litig.,* 706 F. Supp. 3d 1363, 1365–66 (S.D. Fla. 2020). Prior to filing such a lawsuit, a plaintiff is required to conduct a reasonable factual and legal inquiry. *See Mike Ousley Prods., Inc. v. WJBF-TV,* 952 F.2d 380, 382 (11th Cir. 1992). By signing the complaint, plaintiff's counsel certifies that "to the best of [counsel's] knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . . the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery." Fed. R. Civ. P. 11(b)(3).[3] It is assumed that a lawyer signing a complaint has enough evidentiary support to state a claim.

Rule 8(a) sets the pleading threshold for a complaint — the pleading must include facts entitled to the assumption of truth that, viewed in the light most favorable to the plaintiff, state a plausible claim for relief. *Ashcroft v. Iqbal,* 556 U. S. 662, 678-79 (2009); *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555 (2007). That is, viewed in that manner, the factual allegations must be enough to raise a right to

[3] Notably, here, none of Plaintiff's three proposed complaints has said that discovery was needed to have evidentiary support for the punitive damages claim.

relief above the speculative level. *Twombly*, 550 U. S. at 555 (citations omitted). The complaint must provide "more than labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Id.* A claim cannot rest on "'naked assertion[s]' devoid of 'further factual enhancement.'" *Iqbal*, 556 U. S. at 678 (quoting *Twombly*, 550 U. S. at 557 (alteration in original)). A claim is not plausible if there are "obvious alternative explanations, which suggest lawful conduct rather than the unlawful conduct that plaintiff would ask the court to infer." *Am. Dental Assoc. v. Cigna Corp.,* 605 F. 3d 1283, 1290 (11th Cir. 2010) (citing *Iqbal*, 556 U. S. at 682). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Iqbal*, 556 U. S. at 678 (quoting *Twombly*, 550 U. S. at 557).

So, Rule 8(a) requires that a complaint contain sufficient factual allegations to plausibly state a cause of action *before the plaintiff gets any discovery.* And Rule 11 assumes that the plaintiff has gathered those facts before filing the complaint.

The well-pled allegations in the complaint then frame the issues to be litigated. A plaintiff is not entitled to discovery solely for the purpose of developing unpled claims. *See* Fed. Rule Civ. P. 26(b)(1), Advisory Committee Note (2000) (parties "have no entitlement to discovery to develop new claims or defenses that are not already identified in the pleadings."). Discovery is intended to factually develop the well-pled claims and defenses. So, information requested in discovery must have some connection to proving or disproving an *existing* claim or defense. *Turco v. Ironshore Ins. Co.*, No. 2:18-CV-634-FTM-99-MRM, 2019 WL 2255654, at *5 (M.D. Fla. Mar. 4,

2019) ("Relevance is determined on the basis of the existing claims and defenses in the litigation, not on unasserted claims and defenses."); *see also Caliber Home Loans, Inc. v. Bales*, No. 3:16-CV-1167-J-32JRK, 2017 WL 8341699, at *1 (M.D. Fla. Aug. 17, 2017) (denying discovery because it had "no apparent relation to any existing claim or defense"). Post-filing discovery is not intended to allow a plaintiff "to marshal facts that he 'should have had — but did not — before coming through the courthouse doors.'" *Thompson v. Carnival Corp.,* 174 F. Supp. 3d 1327, 1339 (S.D. Fla. 2016) *quoting Lowery v. Alabama Power Co.,* 483 F.3d 1184, 1216 (11th Cir. 2007). Of course, if discovery designed to develop existing claims also yields evidence of new claims, the plaintiff may seek to amend its complaint to add the new claims.

To summarize:

> The Rules of Civil Procedure do not contemplate that a plaintiff may file a complaint rife with conclusory and speculative allegations, hoping to find data and evidence to support the allegations through subsequent discovery. *See Iqbal*, 556 U.S. at 678–79 ("Rule 8 ... does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions."); *see also Lazarre v. JPMorgan Chase Bank, N.A.,* 780 F. Supp. 2d 1320, 1329 n.16 (S.D. Fla. 2011) (Discovery "is not intended to allow a plaintiff to go on a fishing expedition to see if the speculative complaint that he has filed has any basis in fact." (citation and internal quotation marks omitted).); *Belik v. Carlson Travel Grp., Inc.,* 864 F. Supp. 2d 1302, 1314 (S.D. Fla. 2011) ("Plaintiff's attempt to reverse the logical sequence in litigation—claim first, discovery later—is unavailing.").

Moss v. Liberty Mut. Fire Ins. Co., No. 3:16-CV-677-J-39JBT, 2017 WL 4676629, at *7 (M.D. Fla. Aug. 18, 2017).

A. *Good Cause*

Ocean Reef says that the Rule 16 good cause requirement may not apply "due to the parties' recent election to proceed before Judge Reinhart, the subsequent

termination of the scheduled trial date necessitating modification of the scheduling order, and parties' pending joint motion to establish new pre-trial deadlines." ECF No. 121 at 3. When Ocean Reef filed its motion for leave to amend on August 26, 2024, the operative scheduling order was Judge Ruiz's Order from October 2023. ECF No. 27. It set a January 29, 2024, deadline to amend pleadings. *Id*. That deadline has never been extended. ECF Nos. 118, 119, 124. The good cause requirement applies.

Ocean Reef says there is good cause for allowing its belated amendment because: (1) it has "diligently litigated this case and pursued discovery despite Travelers' repeated delays;" and (2) Travelers will not be prejudiced by allowing Ocean Reef to add a claim for punitive damages. ECF No. 121 at 6.

In its Response, Travelers argues that all of the new facts pled in the proposed TAC were known to Ocean Reef before the deadline to amend pleadings. ECF No. 122 at 6-7. All but one of them were known to Ocean Reef before it filed its initial Complaint. *Id*. at 9. The sole exception is Travelers' corporate representative deposition on January 31, 2024, which Travelers says is cumulative to information that Ocean Reef knew in 2019. *Id*. at 9-10. Ocean Reef does not address any of these arguments in its Reply. By not responding to these arguments, Ocean Reef concedes that they are correct. *Ryder Truck Rental, Inc. v. Logistics Res. Sols., Inc.,* No. 21-21573-CIV, 2022 WL 2348642, at *12 (S.D. Fla. May 26, 2022) (collecting cases). And, even if these arguments were not conceded, Ocean Reef's Motion and Reply do not cite any cases where a party's inability to get discovery was found to be good cause to file an amended pleading after the deadline in the scheduling order.

Ocean Reef says it waited to file its motion for leave to amend "until it had the full measure of discovery available to support its amendment." ECF No. 119 at 3; ECF No. 121 at 2 (Ocean Reef waited "so that it could identify all supporting evidence before seeking leave to amend."). But, as Travelers correctly argues and Ocean Reef seems to concede, the disputed discovery dealt with Travelers' file for Ocean Reef's insurance claim, not with Travelers' general business practices. *See* ECF Nos. 128 at 2 ("Travelers withheld discovery *of its claim file* for months.") (emphasis added); 122 at 11 ("But none of the information that came out of those [discovery] disputes relates to the new allegations in the TAC."). The newly-pled facts in the TAC also deal with conduct that mostly predated the Eleventh Circuit's clarification of the law. So, it was unlikely to provide evidence about whether Travelers acts willfully, wantonly, maliciously, or with reckless disregard for the rights of other insureds. Given this low probability that the discovery would provide evidence material to punitive damages, it was not diligent or reasonable for Ocean Reef to wait to file its proposed TAC.

Ocean Reef's lack-of-prejudice argument fairs no better. "[P]rejudice is irrelevant under Rule 16. All that matters is diligence. So this argument is dead on arrival." *Hix,* 2022 WL 17538687, at *4 (collecting cases).

Finally, as noted above, Ocean Reef was not entitled to discovery solely for the purpose of developing facts to support a punitive damages claim.[4] So, waiting to get

[4] Apparently, Travelers did not object to this discovery, but Travelers' acquiescence does not control this Court's case management decisions.

that discovery does not establish good cause for missing the scheduling order deadline to amend pleadings.

For all these reasons, Ocean Reef has not shown that it acted diligently enough to establish good cause for a belated motion to amend.

B. *Futility*

Even if there was good cause to excuse the belated request to amend, allowing the proposed TAC would be futile because it would not survive a motion to dismiss for failure to state a claim for punitive damages.

Ocean Reef incorrectly says the Court has already decided that further amendment would not be futile: "Ocean Reef's proposed amendment to reassert its punitive damages claim was invited by this Court, ECF No. 65 at 7, and thus cannot be considered futile." ECF No. 121 at 4.[5] The Court did not "invite" the pending motion. In responding to the Motion to Dismiss the Second Amended Complaint, Ocean Reef improperly embedded an alternative request for leave to amend. The Court pointed out that the correct procedural mechanism was to file a separate motion for leave to amend. And, under binding precedent the Court is obligated to consider futility before granting leave to amend. Ocean Reef has not cited any case

[5] In its Reply Brief, Ocean Reef says, "[T]his Court instructed Ocean Reef to file a motion for leave to amend after the deadline for amendments had expired." ECF No. 128 at 3. The Court did not instruct Ocean Reef to do anything. The Court merely advised Ocean Reef of the proper procedure if Ocean Reef wanted to ask for another amendment. Specifically, the Court said, "If Ocean Reef wants leave to file a Third Amended Complaint, it must file a separate motion that attaches the proposed amended pleading." ECF No. 65 at 7 (citing S.D. Fla. Local Rule 15.1).

saying that this obligation can be waived or that merely telling a party how to properly raise its argument somehow eliminates that obligation.

1. General Business Practice

The proposed TAC alleges that Travelers has general business practices of:

- Not informing insureds about potential application of anti-technical statutes or proof of causation requirements. ¶29(b)(ii) (citing ¶19)
- Failing to adopt and implement standards for the proper investigation of claims involving a breach of warranty in Florida and other states with similar anti-technical statutes. ¶29(c) (citing ¶18)
- Misrepresenting facts relating to coverage "for claims involving a breach of warranty in Florida and other states with similar anti-technical statutes . . . by failing to inform Ocean Reef and other insureds of these statutory requirements." ¶29(d), (e) (citing ¶¶ 11, 19, 23-24); *see also* ¶29(g) (Travelers has general business practice of not informing insureds of applicable anti-technical statutes or other proof of causation requirements) (citing ¶¶ 11, 19, 23-24); ¶29(h) (Travelers has general business practice of not promptly notifying insured of additional information necessary for claim processing "by not communicating with its insureds about applicable anti-technical statutes or other proof of causation requirements and requesting information necessary to inform this coverage decision.") (citing ¶¶ 11, 19, 23-24).

- Denying claims based on breach of warranty without conducting reasonable investigations based upon available information. ¶29(f) (citing ¶¶ 12, 18, 22).

First, the proposed TAC lacks any facts to support the allegation that Travelers acted improperly in "other states with similar anti-technical statutes." The facts in the pleading refer only to Florida claims.

Second, the proposed TAC alleges, "When denying claims for breach of warranty, Travelers does not inform its insureds about anti-technical statutes or proof of causation requirements that apply to such denials." ¶19. It cites three specific instances between 2016-2018 when Travelers did not cite or discuss the Anti-Technical Statute in letters denying coverage. ¶¶ 11, 23, 24. It also cites the deposition testimony of Travelers' corporate representative. ¶19.

Third, the proposed TAC alleges, "Travelers has not adopted or implemented . . . standards for its adjusters to [consult with a qualified marine expert] to determine whether proof of causation is required and obtaining such proof before denying coverage." ¶18. It cites to the corporate representative deposition. It also cites two specific instances in 2017 when Travelers denied a maritime claim based on the captains' warranty without consulting a marine expert. ¶¶ 12, 22.[6]

[6] The proposed TAC also alleges, "Since 2021, at least two other Travelers' policyholders — Zayne Acquisitions, LLC and Party Brook Hill Park, LLC — have alleged that Travelers engaged in similar bad faith conduct, including the failure to properly investigate claims before denial or underpayment." ¶25. These allegations are not entitled to the assumption of truth. The reference to "similar bad faith conduct" is a vague, purely legal conclusion without adequate factual support. Likewise, Travelers' alleged "failure to properly investigate claims before denial or

Viewed in the light most favorable to Ocean Reef, the proposed TAC plausibly alleges two general business practices — (1) not advising insureds about the Florida Anti-Technical Statute in denial letters and (2) not consulting with marine experts before denying claims when the Anti-Technical Statute applies.

2. Willful, Wanton, Malicious Behavior or Reckless Disregard

Ocean Reef has not plausibly alleged that Travelers' general business practices involved willful, wanton, and malicious behavior, or recklessly disregarded the rights of any insured. Until the Eleventh Circuit's decision in May 2021, it was not clear that the Anti-Technical Statute applied to maritime claims. Therefore, even viewed in the light most favorable to Ocean Reef, Travelers' pre-2021 behavior is consistent with the obvious, alternative, lawful explanation that Travelers had a good faith belief about an unsettled question of law. So, that conduct does not provide factual support for a plausible punitive damages claim.[7] And, Ocean Reef has not cited any

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underpayment" does not imply a general business practice of engaging in the "acts giving rise to the violation" alleged in this case — that is, not properly considering the Anti-Technical Statute before denying maritime ocean claims or informing policyholders about that statute.

[7] Ocean Reef argues that my prior Report and Recommendation's reference to inferences being "equally plausible" implicitly found that Ocean Reef had alleged a plausible claim for punitive damages. ECF No. 121 at 5-6. That choice of words was imprecise. As noted in the parenthetical immediately following it, the phrase was intended to reflect the concept of an "obvious alternative explanation[], which suggest[ed] lawful conduct rather than the unlawful conduct that plaintiff would ask the court to infer." *Ocean Reef Charters, LLC v. Travelers* Prop. Cas. Co. of Am., No. 23-CV-81222-RAR, 2024 WL 776026, at *3 (S.D. Fla. Feb. 26, 2024) (quoting *Am. Dental Ass'n v. Cigna Corp.,* 605 F.3d 1283, 1290 (11th Cir. 2010), *report and recommendation adopted,* No. 23-CV-81222-RAR, 2024 WL 941972 (S.D. Fla. Mar. 5, 2024). This phrase was not a finding that Ocean Reef had pled a plausible claim for punitive damages.

post-2021 cases where Travelers' general business practices have violated the rights of a policyholder, let alone done so willfully, wantonly, maliciously, or in reckless disregard for the insured's rights. *See Progressive Select Ins. Co. v. Ober*, 353 So. 3d 1190, 1193 (Fla. Dist. Ct. App. 2023) (insurer's good faith mistake of law was not willful, wanton, and malicious, or in reckless disregard for the rights of any insured.).

For all these reasons, it would be futile to allow Ocean Reef to file the proposed TAC.

Ocean Reef argues, again without citing any legal authority, that its "motion for leave does not determine the merits of Ocean Reef's amendment, and Travelers can still file another motion to dismiss challenging the sufficiency of Ocean Reef's general business practice allegations [and] the sufficiency of Ocean Reef's claims should only be evaluated on a fully briefed motion to dismiss." *Id*. All incorrect. When a party seeks leave to amend, it must file a separate motion, which must then be evaluated for futility. The futility analysis incorporates the legal standards for a motion to dismiss. A motion to dismiss is evaluated solely on the allegations in the complaint. So, if granting leave to amend would not be futile because the proposed amended pleading states a claim upon which relief can be granted, the defendant is ordered to answer the amended complaint. The defendant cannot file another motion to dismiss. Here, the parties were given a full opportunity to brief whether it would be futile to grant leave to amend, which should have been the same arguments they would made on a 12(b)(6) motion.

III. PUBLIC POLICY

In a footnote to its Motion, Ocean Reef makes an inappropriate appeal to public policy:

> It is critically important to distinguish the [Rule 8(a)] pleading threshold from the burden of proof at trial in this context, since the average policyholder will be incapable of identifying numerous specific instances of wrongful conduct without formal discovery. If the judiciary imposes an impossible pleading standard for punitive damages, then this statutory remedy will be effectively unavailable to Florida consumers.

ECF No. 121 at 5 n.2. This argument suggests that this Court should ignore the Federal Rules of Civil Procedure and binding appellate precedent (including from the United States Supreme Court) because enforcing these legal standards will make punitive damages in bad faith insurance claims "effectively unavailable to Florida consumers."

Ocean Reef's footnote misstates and misunderstands this Court's role in a government of divided powers. This Court is not imposing a heightened pleading standard for punitive damages in bad faith cases. The Rule 8 pleading standard is the same in all cases — the plaintiff must allege sufficient facts entitled to the assumption of truth to state a plausible claim for relief.

In a bad faith insurance case, the elements necessary to state a claim for relief come from the substantive law enacted by the Florida Legislature, not from this Court. That law says punitive damages are not available without proof of a general business practice plus heightened *mens rea*. So, a plaintiff seeking punitive damages in a bad faith case in federal court needs to plead sufficient facts to plausibly allege these elements. Admittedly, it may be difficult to obtain those facts prior to filing a

lawsuit. If a plaintiff cannot marshal these facts, and therefore cannot bring a punitive damages claim, the remedy is to get the Florida Legislature to modify the bad faith insurance statute.

Ocean Reef also ignores the countervailing public policy that "punitive damages are meant to be reserved for the most egregious of cases." *Manheimer v. Fla. Power & Light Co.,* No. 3D22-1534, 2023 WL 4919540, at *3 (Fla. Dist. Ct. App. Aug. 2, 2023). That policy may explain why the Florida Legislature set the punitive damages bar so high. At the end of the day, it is for the Florida Legislature, not this Article III Court, to make policy judgments. This Court must, and will, apply the rules without making value judgments about the outcome that results.

IV. CONCLUSION

Ocean Reef's Motion for Leave to File a Third Amended Complaint is DENIED. No further amendments will be permitted.

DONE and ORDERED in Chambers at West Palm Beach, Palm Beach County, in the Southern District of Florida, this 9th day of October 2024.

BRUCE E. REINHART
UNITED STATES MAGISTRATE JUDGE