

“Public Policy Considerations Concerning Insurance Bad Faith and Residual Market Mechanisms”

Thesis:

Courts should not impose first-party bad faith liability on state-run property insurers who participate in the residual property insurance market.

Arguments:

For Liability:

- Overall trend is that courts throughout the country are imposing bad faith liability in more contexts (claims adjuster personal liability, liability of downstream insurance intermediaries, etc.) and that the cause of action keeps a level playing field between insurers and policyholders
- In Florida, statutory language with creation of Citizen Property Insurance Corporation’s enabling statute refers to “good faith,” implying that Florida Legislature’s intention is to allow bad faith claims against state sponsored property insurer

Against Liability:

- States traditionally confer sovereign immunity upon state agencies. A comparison can be made to insurance guaranty associations, and courts by a majority rule have conferred immunity to insurance guaranty associations against tort claims.
- State-sponsored property insurers are public entities; the main policy rationale for

insurance bad faith is to deter private insurers from reckless and/or intentional mishandling of claims through financial penalties.

- In Florida, a cause of action for first-party bad faith arises from a statutory cause of action, not a tort. Thus, insurance bad faith is not a “willful tort” (the Florida Legislature did make an exception for claims to proceed against Citizens based upon “willful torts”).
- The Florida Supreme Court has not yet definitively ruled on the sovereign immunity issue as of this date.

Related Insurance Bad Faith Research:

- “Crop Insurance Bad Faith: Protection for America’s Farmers,” *Creighton Law Review* (forthcoming, 2013)
- “Can (and Should) an Insurance Defense Attorney/Law Firm Be Held Liable for Insurance Bad Faith?,” *Virginia Law & Business Review* (2012)

* Future Research: Personal Liability of Insurance Claims Adjusters/Professionals for Insurance Bad Faith