



THIRD-PARTY BAD FAITH REFORM

FJRI supports legislation to address the lack of predictability, fairness, and justice in adjudicating third-party bad faith claims, encourage quick, fair settlements, and preserve the reputation of Florida's legal system.

Issue Background

In Florida, an individual can sue an insurer when he or she believes the insurer acted in "bad faith" in defending or settling a claim. In a third-party bad faith claim, someone who is not the policyholder gains the right to bring the lawsuit. This typically happens when an insured is exposed to a judgment for damages in excess of the policy limits, allegedly at the hands of the insurer.

While historically an insurer's mere negligence did not alone amount to bad faith, in *State Farm Mutual Automobile Insurance Co. v. Laforet*, the Florida Supreme Court ruled that the wholly subjective "totality of the circumstances" standard should apply, instead of the "fairly debatable" standard where a plaintiff must show the absence of a reasonable basis for the insurer to deny the claim.

The Problem

Despite the Florida Supreme Court's past assurances that an insurer's negligence does not amount to bad faith, ordinary negligence is now often deemed "bad faith" under the totality of the circumstances standard.

Meanwhile, there is no duty on the part of a third party to cooperate with an insurance company to settle the claim. Accordingly, attorneys engage in various abusive strategies in order to set up a bad faith claim for their client. These can include stalling tactics, unreasonably short or arbitrary time frames, multi-conditional or unrealistic demands, and intentional misinformation. The result is lucrative multi-million-dollar payouts that greatly exceed the amount of insurance the policyholder purchased.

The Solution

Florida is considered one of the worst states in the country for exposure to third-party bad faith litigation, and it's costing Florida small businesses, families, consumers, and job creators. The remedy to these problems is straightforward:

- As a condition precedent to common law (third party) actions, require the plaintiff to file the same, specific written demand that first-party policyholders are already required to file under current law. This will allow an insurer to cure

the alleged violation by paying either the amount demanded or the full policy limits, whichever is less, within the current 60-day timeframe.

- Affirm that mere negligence does not amount to bad faith.
- Require plaintiffs and their representatives to cooperate in good faith.
- If multiple third parties make competing claims that exceed the policy's limits, allow the insurer to have a judge or arbitrator determine how the policy limits should be distributed among the parties.