

NEXT CASE UP CITIZENS PROPERTY  
VERSUS PERDIDO CONDOMINIUM.

>> SORRY, MR. CANTERO.

>> THANK YOU, YOUR HONOR.

MAY IT PLEASE THE COURT,  
RAOUL CANTERO ALONG WITH MY  
PARTNER DAVID DRAIGH FOR  
CITIZENS INSURANCE COMPANY.  
I WILL RESERVE FIVE MINUTES FOR  
REBUTTAL IF I CAN.

THE COMPLAINT IN THIS CASE  
ALLEGES ONLY ONE COUNT WHICH IS  
FOR VIOLATION OF SECTION 624.155  
FLORIDA STATUTES.

THE ISSUE IN THIS CASE, THE ONLY  
ISSUE WHETHER CITIZENS CAN BE  
SUED FOR STATUTORY BAD FAITH.

I WOULD LIKE TO STATE TWO  
GENERAL PROPOSITIONS THINK WE  
CAN ALL AGREE ON.

NUMBER ONE, THAT STATUTORY  
WAIVERS MUST BE STRICTLY  
CONSTRUED.

AND NUMBER TWO, THEY MUST BE  
CLEAR AND UNEQUIVOCAL.

SO WHEN WE OVERLAY THAT STANDARD  
OVER THE STATUTE HERE, I BELIEVE  
IT IS CLEAR THAT IT DOES NOT  
WAIVE SOVEREIGN IMMUNITY FOR  
STATUTORY BAD FAITH.

>> AND THEN, LET'S OVERLAY THAT  
WITH WHICH WE CAN NOT DISAGREE  
IS THAT ALL PROVISIONS OF A  
STATUTE SHOULD BE GIVEN EFFECT,  
CORRECT?

>> CERTAINLY.

>> ALL RIGHT.

>> DO YOU HAVE A QUESTION ON  
THAT?

I DON'T KNOW IF YOU'RE REFERRING  
TO SUBSECTION 2?

>> I AM REFERRING TO WHAT A  
WILLFUL TORT.

>> A WILLFUL TORT IN THIS  
CONTEXT, I THINK THERE ARE  
SEVERAL, LET'S FIRST REMEMBER  
THAT THE SOVEREIGN IMMUNITY IS  
NOT JUST IN FAVOR OF CITIZENS AS  
THE CORPORATION.

IT IS ALSO IN FAVOR OF AGENTS

AND EMPLOYEES OF CITIZENS.  
SO IT IS WILLFUL TORTS THAT CAN  
BE AGAINST CITIZENS AS A COMPANY  
AND ALSO AGAINST ITS EMPLOYEES  
AND AGENTS ACTING ON BEHALF OF  
CITIZENS.

BUT AS A COMPANY THE, THE  
WILLFUL TORTS THAT CAN BE  
ASSERTED ARE FRAUD, DEFAMATION,  
AND INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS.

>> WHERE DOES IT SAY THAT IN THE  
STATUTE?

>> IT IS A WILLFUL TORT,  
INTENTIONAL AFFLICTION, THESE  
ARE ALL WILLFUL TORTS.

I THINK THAT WILLFUL TORTS  
SHOULD BE INTERPRETED SAME AS AN  
INTENTIONAL TORT.

THEY'RE SYNONYMOUS.

INTENTIONAL TORTS ARE THE TYPE  
OF TORTS THAT DO NOT ENJOY  
IMMUNITY.

AND FINALLY INTENTIONAL  
INTERFERENCE WITH CONTRACT AWL  
RELATIONSHIP.

SOMETHING THAT WAN BE EXERTED  
AGAINST THE CORPORATION.

THERE ARE SEVERAL.

THERE IS NOT A LOT OF THEM  
BECAUSE IT IS DESIGNED TO BE  
ELIMINATED IN THE IMMUNITY THAT  
IT WAIVES.

>> CERTAINLY WE KNOW BAD FAITH  
IS NOT CONTRACTUAL BECAUSE IT IS  
GOING TO APPLY IN ABSENCE OF  
PRIVITY OF CONTRACT.

>> BAD FAITH, THERE IS NO COMMON  
LAW CAUTION CAUTION BAD FAITH.

>> WHERE DOES THAT FALL?

IT IS NOT A CONTRACTUAL REMEDY?

>> I SAY IT IS STATUTORY REMEDY.  
STATUTORY REMEDY.

>> NO, IT EXISTED BEFORE WE HAD  
THE STATUTORY REMEDY IN THE  
THIRD PARTY CONTEXT.

>> RIGHT.

THERE IS NO COMMON LAW REMEDY  
FOR--

>> THIRD PARTY BAD FAITH.

WHAT IS THE NATURE OF BAD FAITH  
THOUGH?

>> BAD FAITH IN ITSELF IS NOT  
ITSELF A WILLFUL TORT.

>> WHAT IS IT?

IS IT A TORT?

>> THE COMMON LAW BAD FAITH  
IS A TORT.

IT ARISES OUT OF A CONTRACT.

>> WELL--

[INAUDIBLE]

>> AS ARISING OUT OF THE  
CONTRACT.

>> BUT ITS NOT CONTRACTUAL  
REMEDY THOUGH, IS IT?

>> IT IS NOT.

>> THE QUESTION BECOMES IS IT A  
WILLFUL TORT IF WE ACCEPT THAT  
DEFINITION.

>> YES.

I WOULD SAY IS NOT BY DEFINITION  
A WILLFUL TORT BECAUSE BAD FAITH  
OCCURS THROUGH NEGLIGENCE.

IT IS NOT SETTLING WHEN UNDER  
ALL THE CIRCUMSTANCE YOU COULD  
HAVE, YOU SHOULD HAVE SETTLED.  
AND SO--

>> CAN I ASK WE WERE TALKING  
ABOUT THE IN PARIMATERIA.  
THEY HAVE A DUTY IN THE STATUTE  
TO DEAL IN GOOD FAITH.

>> YES.

>> HOW IF A STATUTORY CAUSE OF  
ACTION FOR BAD FAITH IS NOT  
CONTEMPLATED, WHAT IS THE  
MEANING OF THAT SECTION OF THE  
STATUTE THAT SAYS THEY HAVE A  
DUTY TO DEAL IN GOOD FAITH?

>> WELL CERTAINLY IT ESTABLISHES  
THAT CITIZENS SHOULD ACT IN GOOD  
FAITH--

>> BUT THAT IS LIKE, IT IS LIKE  
SAYING THEY SHOULD BE NICE GUYS  
AND THEY SHOULDN'T RAISE RATES  
AND SHOULD--

>> I THINK THAT REALLY IT PROVES  
MY POINT, BECAUSE, HAVING THAT  
IN SUBSECTION, SUBSECTION  
TWO, NOW IN SUBSECTION 1 THEY  
SAY THERE SHALL BE NO LIABILITY

OR NO CAUSE OF ACTION ACCEPT IN THESE CIRCUMSTANCES.

IT WOULD BE OBVIOUS FOR THE LEGISLATURE TO HAVE CAUSE OF ACTION FAILING TO ACT IN GOOD FAITH, SUBSECTION TWO, THEY WOULD PUT IT AS A FAVOR IN SUBSECTION ONE BUT THEY DIDN'T DO THAT.

>> WOULD YOU, MY CONCERN, AND SOMETHING I WOULD ADDRESS TO OTHER SIDE IS THAT, IN THE FIRST CITIZENS CASE, WE TALKED ABOUT THAT THERE COULD BE INTENTIONAL TORTS WHERE THERE WERE ADDITIONAL ACTS OTHER THAN STATUTORY BAD FAITH CAUSE OF ACTION.

AM I TO UNDERSTAND THERE IS NOTHING TO ALLEGE IN THIS CASE THERE WERE ADDITIONAL INTENTION ACTS THAT WOULD TAKE THIS OUT OF GARDEN-VARIETY 624.155 CAUSE OF ACTION?

>> THAT IS OUR POSITION, YOUR HONOR AND CERTAINLY IT IS UNDISPUTABLE, THAT THE ONLY CAUSE OF ACTION ALLEGED IN THE COMPLAINT IS UNDER SECTION 624.155 AND WHAT THIS COURT SAID IN THE SAN PERDIDO CASE IN TO THE NEAT 7 IT COULD RISE TO WILLFUL TOWARD AND CITED AGUILERA.

AGUILERA DOESN'T APPLY TOTAL BY BECAUSE IT WAS A WORKERS' COMPENSATION CASE BUT IN AGUILERA, IT SAID THE TRIAL COURT DISMISSED SEVERAL CAUSES OF ACTION.

THIS COURT AGREED THERE WAS NO CAUSE OF ACTION FOR COMMON LAW BAD FAITH.

NO CAUSE OF ACTION FOR STATUTORY BAD FAITH BECAUSE IT WAS WORKERS COMP BUT IT SAID THERE WAS CAUSE OF ACTION.

FOR INTENTIONAL AFFLICTION OF EMOTIONAL DISTRESS IF THEY COULD PROVE THE ELEMENTS OF THAT TORT.

WE AGREED WITH.

THAT WE AGREE IF SOMEBODY WANTS TO SUE, HAVE A CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS THAT IS WILLFUL TORT THAT EXEMPTED FROM THE IMMUNITY.

NOW THEY HAVE TO PLEA AND PROVE THE, I THINK THE ONEROUS REQUIREMENTS FOR PROVING THAT, OTHERWISE, YOU KNOW, WE JUST GET INTO BAD FAITH BY ANOTHER NAME. SO IT REALLY HAS TO RISE TO THE LEVEL OF INTENTIONAL AFFLICTION OF EMOTIONAL DISTRESS.

IN AGUILERA THE COURT EXPLICATED THE FACTS THAT SHOWED THAT IT ROSE TO THAT LEVEL.

WHETHER IT CAN NEVER RISE TO A LEVEL IN HOMEOWNERS INSURANCE CASE WHERE THERE IS NO BODILY AND HEALTH ISSUES I THINK IS QUESTION TO BE LEFT FOR ANOTHER DAY.

>> WELL, IT COULD.

SOMEBODY IS WITHOUT A ROOF AND FOR TWO YEARS THEY DON'T HAVE A ROOF BECAUSE OF ACTIONS OF THE INSURANCE COMPANY, IT COULD BE.

>> RIGHT.

>> BUT HERE, I WANT TO GO BACK TO THE ISSUE OF WHAT BAD FAITH IS.

IN THIRD PARTY CONTEXT IT'S A TORT.

>> IT'S A TORT ARISING OUT OF CONTRACT.

I WOULD THINK IT'S A HYBRID BECAUSE THE COURTS HAVE SAID IT ARISES OUT OF CONTRACT BUT IT IS NOT A CONTRACTUAL CLAIM.

>> SO IT'S A TORT.

I MEAN IT'S A TORT.

>> I WOULD SAY YES.

>> THE FACT THOUGH THAT THIS IS A STATUTORY CAUSE OF ACTION, THAT THEREFORE BASICALLY EXEMPTS IT FROM IN THIS SITUATION OF A FIRST PARTY?

WE'RE NOT TALKING ABOUT THIRD

PARTY.

I'M NOT SURE HOW CITIZENS, THEY  
COULD BE INVOLVED IN A THIRD  
PARTY?

>> I'M NOT SURE.

THEY MAY HAVE SOME LIABILITY  
INSURANCE ATTACHED TO THE  
HOMEOWNERS POLICY.

>> SO THERE COULD BE.

SO, COULD THAT BE DIFFERENT I  
MEAN COULD IT BE DIFFERENT?

>> IT IS DIFFERENT SO NOW I ACE  
TORT.

SO NOW WE'RE TALKING ABOUT A  
TORT.

STILL HAS TO BE WILLFUL TORT.  
OUR POSITION IS EVEN COMMON LAW  
BAD FAITH IS NOT BY DEFINITION A  
WILLFUL TORT BECAUSE IT COULD BE  
COMMITTED NEGLIGENTLY AND  
CONSTRUING THE STATUTE STRICTLY,  
THE WAIVER STRICTLY, WILLFUL  
TORT MEANS THOSE TORTS THAT ARE  
BY DEFINITION WILLFUL,  
INTENTIONAL TORTS AND COMMON LAW  
BAD FAITH WOULD NOT BE ONE OF  
THOSE.

BUT OF COURSE YOU DON'T NEED TO  
GO THERE NECESSARILY IN THIS  
CASE BECAUSE--

>> LET ME ASK YOU ABOUT THE  
STATUTORY PROVISION ON GOOD  
FAITH IN 627.351-S-12.

>> YES, YOUR HONOR.

I'M THERE.

>> IS THERE A REFERENCE TO GOOD  
FAITH BEING BALANCED AGAINST  
CORPORATE RESPONSIBILITY?  
OR IS THAT IN LATER VERSION OF  
THE STATUTE?

>> THE SECOND PHRASE AFTER GOOD  
FAITH SAYS BALANCED AGAINST THE  
CORPORATION'S DUTY TO THE STATE  
TO MANAGE ITS ASSETS  
RESPONSIBLY, TO MINIMIZE ITS  
ASSESSMENT POTENTIAL WHICH IS  
NOT FOUND IN 624.15--

>> THAT IS QUESTION I WANT TO  
ASK YOU.

WE HAVE THE SPECIFIC REFERENCE

TO GOOD FAITH IN THIS PARTICULAR  
CONTEXT AND IT IS QUALIFIED IN A  
WAY THAT GOOD FAITH IS NOT  
QUALIFIED IN, IN THE, IN  
CHAPTER 624.

>> YES.

YES.

SO IT IS NOT THE SAME KIND OF  
GOOD FAITH AS REQUIRED IN 624  
BECAUSE IT HAS TO BE BALANCED  
AGAINST ITS DUTY TO MANAGE ITS  
ASSETS RESPONSIBLY AND MINIMIZE  
ASSESSMENT POTENTIAL.

PROVIDE AFFORDABLE HOMEOWNERS  
PROPERTY INSURANCE TO PEOPLE IN  
THE STATE AT THE TIME WAS NOT  
BEING AFFORDED.

THIS WAS IN 2002 WHEN CITIZENS  
WAS CREATED.

ONE ONE OF WAYS IT CAN PROVIDE  
AFFORDABLE INSURANCES, IT KNOWS  
IT WILL NOT BE SUBJECT TO BAD  
FAITH CLAIMS.

THE OTHER IS IT ASSESSES EVERY  
OTHER ASSESSABLE INSURER IN THE  
STATE WHICH IS EVERY INSURER  
THAT INSURANCE HOMEOWNERS  
POLICIES, PROPERTY INSURANCE,  
THEY GET ASSESSED AND BASED ON  
THOSE ASSESSMENTS THEY CAN OFFER  
LOWER PREMIUMS, PREMIUMS THAT  
COULD NOT OTHERWISE BE OFFERED.  
AND THAT'S WHY THE STATE MEANT  
TO EXEMPT OR TO IMMUNIZE THEM  
FROM BAD FAITH CLAIMS.

THAT WAY THEY COULD OFFER LOWER  
PREMIUMS AND PROVIDE AFFORDABLE  
PROPERTY INSURANCE.

>> BUT THEY ALSO HAVE THE  
ABILITY TO ASSESS POLICYHOLDERS.

>> YES.

>> PROSPECTIVELY.

SO WHY, IF WE KNOW THAT WE HAVE  
JUST CONTRACTUAL RELATIONS AND  
WE KNOW WE'VE DONE ALL THOSE  
THINGS TO DOT CALCULATIONS  
CORRECTLY THEN WHY DID GIVE THEM  
THE POWER FOR FUTURE ASSESSMENTS  
AGAINST POLICYHOLDERS UP TO A  
CERTAIN PERCENTAGE OF THE

POLICY?

>> BECAUSE IT ALL DEPEND ON THE CIRCUMSTANCES, HOW MUCH THEY HAVE TO PAY OUT IN A GIVEN--

>> THAT'S WHAT I MEAN. DOESN'T IT CONTEMPLATE?

>> BUT THE BUDGET CONTEMPLATES PAYING OUT ON PROPERTY CLAIMS. NOT ON PROPERTY CLAIMS AND THEN BAD FAITH CLAIMS ON TOP OF THOSE.

THERE ARE PLENTY OF PROPERTY CLAIMS ALREADY.

THEY HAVE TO ACCOUNT FOR THAT. AND THOSE MAY VARY YEAR TO YEAR.

>> THAT IS NOT ACCOMMODATED IN THE RATE STRUCTURE IS WHAT YOU'RE SAYING?

>> RIGHT.

UNLESS THE COURT HAS ANY QUESTIONS I WILL RESERVE THE REST OF MY TIME FOR REBUTTAL. THANK YOU.

>> MAY IT PLEASE THE COURT. MY NAME IS TOM CONDON WITH THE LIVE LSD LAW FIRM IN SARASOTA AND I REPRESENT PERDIDO SUN. I DON'T THINK THERE IS ANY QUESTION WE LOOK AT TWO STATUTES WE'RE DEALING WITH THAT THE LEGISLATURE INTENDED TO CREATE INSURANCE COMPANY CALLED CITIZENS.

THIS INSURANCE COMPANY WOULD HELP THE CITIZENS OF STATE OF FLORIDA AND THEREFORE HELP THE ECONOMY OF STATE OF FLORIDA. IT WASN'T CREATED TO MAKE SURE THAT CITIZENS COULD CONTINUE TO PAY CLAIMS AND CONTINUE ON AND ON, IT WAS CREATED TO HELP THE CITIZENS OF FLORIDA.

TWO OF THE MOST IMPORTANT PROVISIONS THAT ARE IN THE STATUTES IS THAT CITIZENS IS CHARGED TO HANDLE CLAIMS CAREFULLY, TIMELY, DILIGENTLY AND IN GOOD FAITH.

YOUR HONOR, I DON'T KNOW HOW THAT GOOD FAITH IS ANY DIFFERENT

THAN GOOD FAITH THAT IS DEALT  
WITH IN THE BAD FAITH STATUTE.  
TO SAY THAT--

>> IN THE BAD FAITH STATUTE,  
DOES IT, IS THE GOOD FAITH  
OBLIGATION QUALIFIED BY THAT  
BALANCE AGAINST?

I'LL ADMIT, I'M NOT SURE EXACTLY  
WHAT THAT MEANS.

>> I DON'T EITHER KNOW WHAT IT  
MEANS.

>> BUT IT IS DIFFERENT THAN WHAT  
IS IN CHAPTER 624, ISN'T IT?

>> IT IS.

IT IS DIFFERENT THAN THE, SOME  
ADDITIONAL LANGUAGE.

>> IF THE, IF THE INTENT OF THE  
LEGISLATURE WAS SIMPLY TO MAKE  
CITIZENS SUBJECT TO THE ORDINARY  
REQUIREMENT THAT AN INSURER  
WOULD FACE WITH RESPECT TO GOOD  
FAITH HANDLING OF CLAIMS, WHY  
WOULD THEY PUT THIS PARTICULAR  
PROVISION IN HERE?

THAT WOULD BE, THAT, IF THEY  
DIDN'T HAVE S-2, THAT WOULD BE  
THE RESULT, WOULDN'T IT?

THEY WOULD BE JUST SUBJECT TO  
WHAT'S IN THE, AT LEAST  
ARGUABLY, THEY WOULD BE SUBJECT  
TO WHAT IS OVER IN CHAPTER 624.  
BUT THAT IS NOT WHAT THEY DID.  
THEY SPECIFICALLY ADDRESSED GOOD  
FAITH, IN THE CONTEXT OF THIS  
PARTICULAR PROVISION.

AND, JUST, SEEMS STRANGE TO ME,  
THAT THEY WOULD BE REFERRING TO,  
THIS STATUTORY GOOD FAITH  
OBLIGATION OR A BAD FAITH CLAIM  
OF, FROM CHAPTER 624, BY THIS  
REFERENCE TO WILLFUL TORTS, UP  
IN ONE AND THEN GO DOWN AND TALK  
ABOUT GOOD FAITH IN TWO.

I JUST DON'T UNDERSTAND THE  
WORKINGS OF THE LEGISLATIVE MIND  
THAT WOULD CAUSE THEM TO DO  
THAT.

>> ARE YOU ASKING ME TO EXPLAIN  
THAT?

>> I DON'T KNOW.

>> BUT, YES, I AM.  
I AM ASKING YOU BECAUSE, BECAUSE  
OUR TASK HERE IS TO FIGURE OUT  
WHAT THE LEGISLATURE MEANT.  
WOULD YOU CONCEDE THAT?

>> YES, SIR.

>> WELL WHY WOULD THEY REFER TO  
GOOD FAITH, IN THIS PARTICULAR  
UNIQUE WAY, IF THEY HAD INTENDED  
TO INCORPORATE THE CAUSE OF  
ACTION IN CHAPTER 624?  
FOR BAD FAITH CLAIMS?

>> I CAN'T SPECULATE EXACTLY WHY  
THEY DID.

THEY USED THE TERM WILLFUL TORT  
AND I WILL EXPLAIN WHY BAD FAITH  
IS WILLFUL TORT.

THEY DID ADD THIS ADDITIONAL  
LANGUAGE, I DON'T, I DON'T KNOW  
EXACTLY WHAT IT MEANS.

I DON'T KNOW HOW WE CAN APPLY IT  
TO SAY THAT IMMUNES THEM FROM A  
BAD FAITH CLAIM.

I AGREE WITH YOU, IT WOULD BE  
BETTER IF IT WASN'T THERE AND  
APPEARS TO BE A LITTLE  
INCONSISTENT WITH SAYING THEY  
COULD BE SUED FOR BAD FAITH BUT  
CERTAINLY--

>> IF IT'S A LITTLE BIT  
INCONSISTENT AND WE HAVE THIS  
RULE OF STRICT CONSTRUCTION, IT  
SEEMS LIKE TO ME THAT CUTS  
AGAINST YOUR ARGUMENT, YOUR  
CONCESSION IT'S A LITTLE BIT  
INCONSISTENT, UNDERMINES YOUR  
BASIC POSITION.

>> IT DOES NOT BECAUSE IT IS  
VERY CLEAR THAT THEY FIT WITHIN  
THE EXCEPTION OF THE WILLFUL  
TORT, BAD FAITH DOES, AND THAT  
CLEARS IT UP SUCCINCTLY AS I SEE  
IT.

>> SEE, THAT, MY PROBLEM THOUGH  
IS, I DON'T THINK IT MAKES IT SO  
CLEAR BECAUSE, FOLLOWING WHAT  
JUSTICE CANADY IS SAYING WHEN  
YOU DO FIRST PARTY BAD FAITH,  
NOT A COMMON LAW TORT, IS WHY  
THE STATUTE WAS CREATED.

IT'S A STATUTORY CAUSE OF ACTION.

THAT IS WHAT, AND IN THIS CASE YOU DON'T ALLEGE ADDITIONAL ACTS THAT WOULD PUT EITHER ONE OF, IT IS EMPLOYEES, SOMETHING OUTRAGEOUS, LIKE THEY KNEW FROM THE BEGINNING THEY SHOULD HAVE PAID THIS CLAIM.

THEY'RE TALKING AMONG THEMSELVES ABOUT, THEY'RE GOING TO JUST, HOLD OUR POLICYHOLDERS MONEY UNTIL THE END, SOMETHING THAT IS JUST NOT SETTLING THE CLAIM.

SO THE QUESTION I HAVE IS, HOW DO YOU CONVERT AND SAY IT'S CLEAR THAT A, STATUTORY CAUSE OF ACTION UNDER 624.15 IS CONVERTED INTO A WILLFUL TORT WHICH IS NOT JUST A TORT, IT IS AN INTENTIONAL TORT?

I'M NOT, I THINK THAT THAT'S A LEAP I WOULD LIKE TO, YOU KNOW, I THINK IT MAKES GOOD POLICY SENSE FROM MY, A POLICYHOLDER THAT WE WANT CITIZENS TO ACT RESPONSIBLY BUT I DON'T KNOW HOW WE CAN SAY IT IS CLEAR THAT IS WHAT THE LEGISLATURE DID WHEN THEY CREATED INTENTIONAL TORT, WILLFUL TORT EXCEPTION.

IF YOU COULD JUST HELP.

HOW DOES THE STATUTORY CAUSE OF ACTION, FIRST PARTY BAD FAITH, WITH NO ADDITIONAL ACTS OF INTENT, ALLEGED, CONVERT INTO ITS A WILFUL TORT?

>> WELL, FIRST OF ALL, THE LANGUAGE IN THE BAT FAITH STATUTE STATES FIRST, THAT I THINK THE FIRST PART OF THE LANGUAGE DEALS WITH AN INDIVIDUAL ADJUSTER OR INDIVIDUAL CLAIM SAYING THEY MUST ACT HONESTLY AND HANDLE THE CLAIMS APPROPRIATELY AND IF SOMEONE HANDLES CLAIMS THAT ARE DISHONEST THEN OF COURSE THAT IS WILLFUL.

I DON'T THINK THERE IS ANYTHING

IN THE STATUTE THAT REQUIRES WE HAVE TO SPELL OUT SPECIFICALLY EXACTLY WHAT THE ACTIVITIES ARE THAT THEY HAVE DONE.

>> YOU'RE JUST SAYING THERE IS, WITHOUT ANY ADDITIONAL ALLEGATIONS, THAT EVERY, EVERY STATUTORY BAD FAITH ACTION IS ACTUALLY A WILLFUL TORT? WHICH WOULD ALSO MEAN THAT THERE WOULD BE LIABLE FOR PUNITIVE DAMAGES IF--

>> IF YOU CAN SHOW A PATTERN IN OTHER THINGS.

>> SO, THAT'S, I MEAN, BUT, I DON'T KNOW ANY CASE LAW THAT JUST TAKES STATUTORY CAUSES OF ACTION AND MAKES THEM WILLFUL TORTS.

THAT IS MY CONCERN.

I DON'T KNOW HOW WE GET THERE.

>> WELL, IN ANSWER TO THE QUESTION ABOUT HOW DO WE TAKE A STATUTORY CAUSE OF ACTION AND MAKE IT A WILLFUL TORT, FIRST YOU HAVE TO SEE IF IT MAKES IT A TORT WHICH I THINK WE'VE ALL AGREED THAT BAD FAITH--

[INAUDIBLE]

IT IS NOT AS THE FIFTH DCA SAID, A STATUTORY ACTION.

THAT'S ASSUMING THAT STATUTORY CAUSES OF ACTION AND TORTIOUS CAUSES OF ACTION ARE-- THEY ARE NOT.

THE STATUTE IS GIVES RISES TO THE TORT.

I DISAGREE WITH COUNSEL THAT YOU CAN NEGLIGENTLY PROVE BAD FAITH.

I THINK IF ALL YOU PROVE IS NEGLIGENCE, IN A LAWSUIT AGAINST BAD FAITH INVOLVING BAD FAITH THEN YOU'RE PROBABLY GOING TO LOSE AND I'M NOT--

>> I THINK IT IS PART OF THE JURY, THERE IS SOMETHING IN THE JURY INSTRUCTIONS I BELIEVE ON BAD FAITH.

IT SAYS THAT SOMETHING--

>> JURY INSTRUCTIONS, YOUR

HONOR, EXCUSE ME, THE JURY INSTRUCTIONS ARE VERY CLEAR THAT IT IF YOU LOOK AT THE JURY INSTRUCTION FOR BAD FAITH, THEY'RE EVEN STRONGER THAN THE LANGUAGE IN THE STATUTE IN TERMS OF DEALING WITH WHAT, THE PLAINTIFF MUST PROVE.

BUT, IT, I DON'T KNOW OF ANY CASE, YOUR HONOR, WHERE A LAWSUIT HAS BEEN FILED FOR BAD FAITH, LET'S FORGET ABOUT STATUTORY, WILLFUL AND ALL OF THAT FOR JUST A SECOND.

THAT SAYS, WELL, YOU DIDN'T ALLEGE SPECIFICALLY WHAT IT WAS REVERSED BECAUSE THERE WAS NO SPECIFIC ALLEGATIONS IN THE COMPLAINT AS TO EXACTLY WHAT THE PERSON DID.

IT IS SIMILAR TO ALLEGING THAT SOMEONE WAS NEGLIGENT WHEN THEY RAN A STOP SIGN.

THEN YOU GO INTO THE DETAILS.

>> ARE YOU SAYING THAT YOU COULD AMEND THIS COMPLAINT TO PUT IN SOME ADDITIONAL ALLEGATIONS THAT WOULD MAKE IT DIFFERENT THAN JUST ANY BAD FAITH?

I MEAN THAT'S, THE RECORD DOESN'T HAVE THAT.

DO YOU, AND YOUR COMPLAINT IS ONLY, ALL WE HAVE, SO WE DON'T KNOW OF ANY ADDITIONAL FACTS THAT YOU ARE PREPARED TO-- YOU MAY BE RIGHT THAT MAYBE THEN IT WAS A PREMATURE BUT ARE YOU PREPARED, THAT IF THE COMPLAINT WAS AMENDED TO BE ABLE TO TAKE IT WITHIN AGUILAR KIND OF SITUATION?

>> YES, YOUR HONOR, IN TERMS OF ADDITIONAL SITUATIONS BEYOND THE ONE WE'VE ALLEGED IN THIS CASE. ADDITIONAL INSURED INVOLVEMENT WITH, WITH THE CITIZENS. YES.

FITTING IN WITH THE PATTERN, ET CETERA.

>> WHY DIDN'T YOU ASK, THE TRIAL

COURT DISMISSED THE COMPLAINT,  
RIGHT?

>> YES.

>> WHY DIDN'T YOU ASK TO AMEND  
TO SAY THAT YOU COULD ALLEGE  
ADDITIONAL ACTS THAT WOULD  
CONSTITUTE AN INDEPENDENT,  
WILLFUL TORT?

>> BECAUSE THE RULING BY THE  
TRIAL COURT WAS THERE WAS  
ABSOLUTELY NO WAY TO ASSERT A  
CAUSE OF ACTION OF BAD FAITH  
UNDER CIRCUMSTANCES AGAINST  
CITIZENS.

IT WOULDN'T HAVE DONE US ANY  
GOOD TO HAVE ASKED TO DO THAT  
BECAUSE HE HAD ALREADY RULED AND  
WE WOULD JUST BASICALLY BE  
BEATING OUR HEAD AGAINST  
THE WALL.

THAT IS WHY, THE,  
YOU KNOW THE STATUTE  
ITSELF, THE BAD FAITH STATUTE  
ITSELF, SPEAKS OF ACTING FAIRLY  
AND ALSO SPEAKS OF WILLFUL IN  
SUBSECTION 5, THAT IF THERE'S  
WELLFUL, WANTON OR MALICIOUS  
ACTIONS BIT INSURANCE COMPANY,  
OR ITS, ADJUSTERS OR ITS  
EMPLOYEES, THAT THAT ENTITLES  
ONE TO BAD FAITH THAT'S WILLFUL.  
THAT'S DEFINITELY WILLFUL.

WE ALSO, THE PHRASE, THE PHRASE,  
WILLFUL TORTS IS NOT DEFINED  
WITHIN THE CITIZENS STATUTE AT  
ALL, 627.

BUT, IN 627.041 WILLFUL TORT IS  
DEFINED.

SAME CHAPTER, 627.

IN, IT IS DEFINED AS TOES.

IN RELATION TO AN ACT OR  
OMISSION WHICH CONSTITUTES A  
VIOLATION OF THIS PART WILLFUL  
MEANS WITH ACTUAL KNOWLEDGE OR  
BELIEF THAT SUCH AN ACT OR  
OMISSION CONSTITUTES SUCH  
VIOLATION AND WITH SPECIFIC  
INTENT, NEVERTHELESS TO COMMIT  
SUCH ACT OR OMISSION.

NOW OMISSIONS CAN AMOUNT TO BAD

FAITH.

NOT DOING WHAT YOU'RE SUPPOSED TO DO AS AN ADJUSTER CAN AMOUNT TO BAD FAITH AND THAT IS CLEAR IN THE WILLFUL TORT.

USUALLY WHAT WE'RE TALKING ABOUT.

NOT SO MUCH WHAT THEY GO OUT AND DO AS OPPOSED TO WHAT AN ADJUSTER DOESN'T DO.

BAD, IT IS CLEAR TO ME, FROM A FULL READING OF THE CITIZENS STATUTE THAT THE LEGISLATURE WAS OUT TO HELP THE INDIVIDUALS.

AND THEY MAKE IT CLEAR THAT THEY DON'T WANT THOSE INDIVIDUAL INSUREDS OF CITIZENS TO BE IN ANY WORSE SITUATION, THAN, A PRIVATE INSURED.

I MEAN WHY WOULD THEY SAY THAT UNLESS THEY WANTED TO GIVE THE SAME SWORD--

>> WHERE DO THEY SAY THAT?

>> ONE SECOND, YOUR HONOR.

I'M SORRY, I DIDN'T WRITE THE CITE.

BUT IT IS IN OUR BRIEF.

>> WHAT EXACTLY ARE YOU SAYING-- THE LEGISLATURE SAID THEY WANTED THE CITIZENS POLICYHOLDERS TO BE TREATED EXACTLY THE SAME WAY THAT POLICYHOLDERS OF ANOTHER, OF A PRIVATE INSURER WOULD BE TREATED?

>> YES.

YES, YOUR HONOR.

>> WELL, WHY-- IF THAT'S THE CASE, WHY WOULD THEY, WHY DO THEY HAVE THIS PROVISION HERE ABOUT IMMUNITY WHICH WOULDN'T APPLY TO A PRIVATE INSURER AND SUBJECT TO THESE LIMITED EXCEPTION ANDS THEN THIS SPECIAL RULE ABOUT GOOD FAITH?

I JUST DON'T UNDERSTAND HOW THAT COULD BE.

IT SEEMS LIKE THEY'RE MAKING SOME SPECIAL RULES HERE.

NOW, THEY'RE OBVIOUSLY, FOR

INSTANCE, THERE ARE RULES THAT SERVE AS AN INCENTIVE FOR CITIZENS NOT TO IMPROPERLY DENY CLAIMS, BECAUSE IF THEY IMPROPERLY DENY CLAIMS, THEY GET HIT WITH ATTORNEYS' FEES, OKAY? ATTORNEY FEES ARE PROVIDED FOR IN HERE.

>> YOU'RE CORRECT, YOUR HONOR. BUT THAT'S AFTER A LONG LAWSUIT FOR A PERSON OR ENTITY OR WHATEVER THAT DOESN'T HAVE A ROOF OR A BUILDING OR ANYTHING ELSE.

I'M NOT SURE THAT REALLY HITS THEM THAT HARD.

>> WELL, I UNDERSTAND YOUR POSITION, BUT I'LL BE INTERESTED TO LOOK BACK IN YOUR BRIEF AND FIND THE SPECIFIC TEXTUAL PROVISION THAT SAYS THAT THERE IS AN IDENTICAL TREATMENT OF CITIZENS POLICYHOLDERS WITH PRIVATE COMPANY POLICYHOLDERS. THEN I'D BE INTERESTED TO SEE HOW THAT SQUARES WITH WHAT WE'VE BEEN LOOKING AT HERE.

>> FIRST DCA'S OPINION--  
[INAUDIBLE]

A4 BASICALLY SAYS THAT, LET ME SEE IF I CAN GET TO THE RIGHT PLACE HERE.

WHILE NOT A PRIVATE INSURANCE COMPANY, IT'S NONETHELESS CHARGED BY THE LEGISLATURE TO PROVIDE AFFORDABLE PROPERTY INSURANCE TO POLICYHOLDERS AND TO SERVE POLICYHOLDERS ON THE, QUOTE, HIGHEST POSSIBLE LEVEL OR NEVER LESS THAN THAT GENERALLY PROVIDED IN A VOLUNTARY MARKET. THAT'S WHAT YOU'RE REFERRING TO?

>> YES, SIR.

YES, YOUR HONOR.

BASICALLY, YOU KNOW, I LOOKED AT ALL THESE EXCEPTIONS TO THE IMMUNITY FOR CITIZENS AND, FRANKLY, THEY DON'T HAVE VERY MUCH IMMUNITY LEFT, IF YOU WANT TO KNOW THE TRUTH.

YOU LOOK AT ALL OF THOSE, THEY CAN OBVIOUSLY BE SUED--

>> IT DEPENDS HOW YOU INTERPRET THEM, RIGHT?

>> WELL, YES, SIR. SOME OF THEM, THAT'S TRUE. BUT, YOU KNOW, THE TERM "WILLFUL TORT" MAY HAVE COME, I DON'T KNOW, MAY HAVE COME FROM THE LANGUAGE, THE FOOTNOTE IN THE AGUILAR CASE THAT WAS REFERRED TO BY COUNSEL.

YES, IT'S A WORKER'S COMPENSATION CASE, BUT I DON'T KNOW OF ANY CASE THAT SAYS BAD FAITH CANNOT RISE TO THE LEVEL OF A WILLFUL TORT.

>> IT SEEMS TO ME WHAT WE'RE DOING, AND THIS IS MY PROBLEM. WE'RE HERE WITH-- YOU WOULD AGREE THAT WHEN THERE'S A WAIVER OF IMMUNITY, IT'S GOT TO BE STRICTLY CONSTRUED. IS THAT A RULE OF CONSTRUCTION?

>> YES, MA'AM.

>> OKAY.

I'M WITH YOU ON WANTING THIS TO BE SOMETHING THAT'S IMPOSED ON CITIZENS, BUT WE CAN'T DO IT IN THE ABSENCE OF THE LEGISLATURE NOT DOING IT.

AND I JUST DON'T SEE HOW BY SIMPLY THE EXCEPTION "WILLFUL TORT" THAT WE KNOW THAT HAS TO ENCOMPASS STATUTORY BAD FAITH CLAIM WITHOUT MORE.

AND THAT'S MY PROBLEM, I MEAN, THAT'S MY PROBLEM.

I THINK IT'S NOT CLEAR, AND I THINK IT'S MORE OF A STRETCH TO GET THERE THAN THERE IS TO SAY WE DO NOT, IT'S AMBIGUOUS AND, THEREFORE, IF IT'S AMBIGUOUS, WE DON'T-- YOU DON'T GET THE BENEFIT OF THE WAIVER OF THE IMMUNITY, THE IMMUNITY GOES TO THE STATE ENTITY.

WHY ISN'T THAT NOT THE MORE APPROPRIATE WAY TO ADDRESS THIS?

>> WELL, THEN WHY IS CITIZENS

CONCEDING RIGHT HERE BEFORE YOU  
THAT FRAUD AND OTHER WILLFUL,  
INTENTIONAL TORTS ARE  
ENCOMPASSED BY THIS TERM  
"WILLFUL TORT"?

THEY AGREE TO THAT.

>> WELL, BECAUSE FRAUD IS, BY  
ITS DEFINITION, IT HAS TO HAVE  
AN INTENT ELEMENT.

AS I THINK IT WOULD-- BAD FAITH  
HAS TO HAVE, SHOULD HAVE, SHOULD  
HAVE LANGUAGE.

IT'S NOT NECESSARILY AN  
INTENTIONAL TORT AS WE USE WITH  
FRAUD.

WHAT WAS THE OTHER ONE THAT WAS  
MENTIONED, FRAUD--

>> INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS AND OTHERS.

>> RIGHT.

THAT WE TRADITIONALLY THINK OF  
AS THE INTENTIONAL TORTS.

I HAVEN'T LOOKED AT MY TORT BOOK  
IN A WHILE, BUT IT'S NEGLIGENT,  
YOU WOULD AGREE, IS NOT AN  
INTENTIONAL TORT.

>> TRUE.

>> OKAY.

>> AND I DON'T BELIEVE  
NEGLIGENCE PROVES BAD FAITH.

>> I MEAN, ALL THEY HAD TO SAY  
WAS TORT ACTIONS, THAT THEY'RE  
EXEMPT FROM TORT ACTION, RIGHT?  
I MEAN, THAT THEY'RE NOT--

>> NOT EXEMPT FROM TORT ACTIONS.

>> IT DIDN'T HAVE TO ADD  
"WILLFUL."

>> NO, THEY DIDN'T.

AND, BUT THAT'S WHAT WE HAVE TO  
DEAL WITH.

AND DOESN'T IT ALL BOIL DOWN TO  
THE WORD "WILLFUL" AS IT RELATES  
TO THE STATUTE, THE BAD FAITH  
STATUTE?

I THINK EVERYONE AGREES IT'S A  
TORT.

I HAVEN'T HEARD ANYONE SAY IT'S  
NOT HERE TODAY.

>> WELL, I SORT OF SAID-- I  
THOUGHT I, THAT IT'S A STATUTE.

THIS ONE THAT YOU'RE PLEADING,  
FIRST PARTY, BAD FAITH, IS A  
STATUTORY CAUSE OF ACTION.  
ABSENT THE STATUTE, YOU WOULD  
NOT HAVE HAD A CASE AGAINST, AS  
A FIRST PARTY CLAIMANT, IS THAT  
CORRECT?

>> YES, MA'AM.

>> SO I DON'T THINK THAT THAT  
MAKES IT NECESSARILY, I DON'T  
THINK IT NECESSARILY MAKES IT A  
TORT.

IT MAKES IT, IT'S A STATUTORY  
CAUSE OF ACTION.

>> WELL, THEY SAY IN THE FIRST  
DCA'S DECISION THAT THEY DEFINE  
A TORT AS A CIVIL DUTY THAT'S  
BEEN BREACHED.

IT'S NOT A CONTRACT, IT RESULTS  
IN DAMAGES.

WELL, THE DUTY CAN BE CREATED BY  
THE STATUTE.

THAT'S HAPPENED IN A WRONGFUL--

>> BUT HERE THIS IS NOT JUST THE  
DUTY BEING CREATED BY THE  
STATUTE ON WHICH A COMMON LAW  
TORT IS THE BASE.

THIS IS THE ACTUAL CREATION BY  
THE LEGISLATURE OF A SPECIFIC  
STATUTORY REMEDY, A SPECIFIC  
CAUSE OF ACTION THAT'S SET FORTH  
IN THE STATUTE.

I MEAN, THAT'S WHAT IT SAYS,  
CIVIL REMEDY.

A PERSON MAY BRING A CIVIL  
ACTION AGAINST AN INSURER.

SO I THINK THAT'S WHAT JUSTICE  
PARIENTE, THE DISTINCTION THAT  
SHE'S TALKING ABOUT.

NOW, IT IS, IT IS CERTAINLY TRUE  
THAT IN SOME BROAD SENSE OF THE  
UNDERSTANDING OF TORTS BEING A  
CIVIL WRONG, THEN ALL STATUTORY  
CAUSES OF ACTION THAT CREATE A  
CIVIL REMEDY COULD BE UNDERSTOOD  
AS A TORT.

BUT THAT'S-- BUT THE LAW  
FREQUENTLY DIVIDES THESE  
STATUTORY CAUSES OF ACTION INTO  
A SEPARATE CATEGORY.

AND SOMETIMES THEY'RE TREATED DIFFERENTLY FOR PARTICULAR PURPOSES BECAUSE THEY ARE STATUTORY CAUSES OF ACTION. AND IT SEEMS TO ME THAT THAT'S A DISTINCTION IN THE LAW THAT JUST CAN'T BE BRUSHED AWAY HERE WHEN WE'RE CONFRONTED WITH ALL THIS SOMEWHAT COMPLEX SITUATION THAT WE'RE CONFRONTED WITH.

TELL ME WHY I'M WRONG.

>> WELL, ONE REASON I THINK YOU'RE WRONG IS BECAUSE WE HAVEN'T SEEN ANYTHING CITED BY THE OPPOSITION THAT HOLDS EXACTLY WHAT YOU SAID, YOUR HONOR, THAT IT WOULD CREATE SOME KIND OF A DIFFERENT TYPE OF A CAUSE OF ACTION WITH A CONTRACT THAN IF-- EXCUSE ME, IF IT CREATES A DUTY AND, THEREFORE, CREATES A TORT.

I HAVEN'T SEEN ANYTHING THAT DEFINES THAT OR SAYS HERE'S THE STATUTE THAT'S LIKE THAT.

I MEAN, YOU CAN TAKE THE WORKER'S COMPENSATION STATUTE WHICH CRYPTS A RETALIATORY-- CREATES A RETALIATORY, SAYS THERE SHOULD BE NO RETALIATION AGAINST SOMEONE JUST BECAUSE THEY HAVE A WORKER'S COMP CLAIM. WELL, DOES THAT CREATE A CAUSE OF ACTION?

YES, IT DOES.

AND EVEN PUNITIVE DAMAGES.

IT COULD BE A WILLFUL TORT.

THAT'S ANOTHER PERFECT EXAMPLE. HOW DO WE DRAW THIS LINE BETWEEN THE CAUSES OF ACTION THAT ARE CREATED BY STATUTE THAT AREN'T TORTS VERSUS THE ONES THAT ARE TORTS?

I'M JUST NOT AWARE OF WHERE THAT LINE IS, AND IF I WAS, HONESTLY, I WOULD USE THAT TO ANSWER YOUR SPECIFIC QUESTION.

AND WE'RE TALKING ABOUT HERE NOT JUST STATUTES THAT SAYS GO DO SOMETHING AND YOU GET YOUR WRIST

SLAPPED, WE'RE TALKING ABOUT A STATUTE THAT SAYS HERE'S WHAT WE'RE GOING TO HOLD OVER THE HEAD OF CITIZENS TO TREAT THESE PEOPLE RIGHT.

>> THANK YOU, SIR.

TIME IS UP.

>> SORRY.

MY APOLOGIES.

THANK YOU.

>> REVERTING BACK TO THE SUBSECTION TWO OF THE STATUTE, I WANT TO POINT OUT A COUPLE OF THINGS.

NUMBER ONE IS THAT THE STATUTE IN SUBSECTION ONE THAT GRANTS THE IMMUNITY SAYS THERE SHALL BE NO LIABILITY ON THE PART OF AND NO CAUSE OF ACTION AGAINST ANY NATURE SHALL ARISE AGAINST, AND THEN IT TALKS ABOUT SEVERAL ENTITIES FOR ANY ACTION TAKEN BY THEM IN THE PERFORMANCE OF THEIR DUTIES OR RESPONSIBILITIES UNDER THIS SUBSECTION.

NOW, THIS SUBSECTION HAS TO MEAN SOMETHING, AND IT CAN'T MEAN JUST THE SUBSECTION THAT GRANTS THE IMMUNITY BECAUSE THEY'RE NOT PERFORMING ANY ACTS UNDER THAT SUBSECTION.

IT HAS TO AT LEAST INCLUDE THE FOLLOWING SUBSECTION, SUBSECTION TWO, WHICH IS THE ONE THAT SAYS YOU HAVE TO ACT IN GOOD FAITH. SO ONE AND TWO, THE GRANTING OF IMMUNITY AND TWO ARE BOTH UNDER S.

THOSE ARE THE ONLY SUBSECTIONS UNDER SUBSECTION 3516S IS ONE AND TWO.

SO UNDER THIS SUBSECTION, IT HAS TO INCLUDE THAT GOOD FAITH PROVISION.

>> MR. CANTERA, IT SEEMS TO ME, I'M TRYING TO FIGURE OUT HOW THESE ALL FIT TOGETHER.

FROM THE ARGUMENTS I'M HEARING TODAY, THIS PRINCIPLE OF LAW WE'RE TALKING ABOUT WOULD APPLY

TO NOT ON THE 6724155,  
COMMONLY KNOWN AS THE  
STATUTORY BAD FAITH WHICH  
COULD BE EITHER PARTY OR FIRST  
PARTY, BUT WOULD ALSO APPLY TO  
THIRD PARTY CASES FOR THE  
LIABILITY INSURANCE THAT  
CITIZENS PROVIDES AS WELL.

>> THAT'S OUR POSITION--

>> YEAH.

I MEAN, THAT'S WHERE THIS WOULD,  
THAT'S WHERE IT WOULD TAKE US.

>> YES.

>> AND THAT'S EVEN THOUGH IN THE  
STATUTORY BAD FAITH CASES WE  
KNOW FROM CASES, DECISIONS FROM  
THIS COURT THAT UNDER 64155--  
624155 THE LIABILITY IS STILL  
THE POLICY LIMIT UNLIKE THIRD  
PARTY WHICH IS EXCESS JUDGMENTS.  
WE KNOW THAT, CORRECT?

>> I'M SORRY, UNDER FIRST PARTY  
BAD FAITH I DON'T THINK THE  
LIABILITY IS THE POLICY LIMIT,  
NO.

>> IT IS.

YES, IT IS.

WELL--

>> IT'S BAD FAITH.

YOU'RE GOING OVER AND ABOVE THE  
POLICY LIMIT.

>> NO, YOU'RE NOT.

NO, THAT'S NOT THE STANDARD.

I DON'T HAVE-- I DID A CASE  
LIKE THAT, AND SO, I MEAN, THIS  
COURT HAS HELD THAT IT'S UP TO  
THE POLICY LIMIT.

UNLESS YOU CAN MOVE SEPARATE  
DAMAGES.

THAT--

[INAUDIBLE CONVERSATIONS]

>> SOMETHING ELSE.

>> CORRECT.

>> STILL LIMITED.

JUSTICE WELLS WROTE IT.

>> OR PUNITIVE DAMAGES.

IF IT'S UP TO A CERTAIN LEVEL.  
624155 PROVIDES IN CERTAIN  
CIRCUMSTANCES FOR PUNITIVE  
DAMAGES.

>> WELL, BUT YOU ONLY GET PUNITIVE DAMAGES WITH WILLFUL TORTS.  
>> THIS IS NOT A TORT.  
>> OKAY.  
>> STRICTLY CONSTRUING THE STATUTE--  
>> OKAY.  
>>-- OUR POSITION THIS IS NOT A TORT, THIS IS A STATUTORY CAUSE OF ACTION.  
SO THE TERM "WILLFUL TORT" STRICTLY CONSTRAINING THE STATUTE HAS TO BE INTERPRETED AS COMMON LAW TORTS THAT ARE INTENTIONAL TORTS.  
>> WELL, I WOULD--  
>> BY DEFINITION.  
>> I THOUGHT YOU, YOU'RE NOW SAYING THAT THE SAME REASONING WOULD APPLY TO A COMMON LAW THIRD PARTY BAD FAITH CLAIM--  
>> BECAUSE THAT IS NOT BY DEFINITION AN INTENTIONAL TORT.  
>> BUT YOU DON'T REALLY-- DO YOU REALLY-- I THOUGHT ON THE FIRST PART OF YOUR ARGUMENT YOU SAID WE DON'T HAVE TO GO THERE.  
>> RIGHT.  
YOU DON'T HAVE TO GO THERE, CORRECT.  
>> SURE WE HAVE TO GO THERE, BECAUSE THERE'S NO DIFFERENCE BETWEEN THE TWO.  
>> THERE IS A DIFFERENCE IN THAT ONE IS A STATUTORY--  
>> NOT UNDER THE STANDARDS, THERE'S NOT.  
THE STANDARDS ARE THE SAME FOR STATUTORY BAD FAITH--  
>> YES.  
THE DIFFERENCE IS ONE IS A STATUTORY CAUSE OF ACTION AND THE OTHER IS NOT.  
THE OTHER RESPONSE AS FAR AS SUBSECTION TWO IS THAT THE STATUTE, THE LEGISLATURE CREATES MANY DUTIES THAT DO NOT CREATE A PRIVATE RIGHT OF ACTION, AND THIS COURT HAS SAID AS RECENTLY

AS THE CASE WHICH CREATED A FONT SIZE REQUIREMENT IN HURRICANE DEDUCTIBLE PROVISIONS AND POLICIES THAT SAY, WELL, THAT DOESN'T CREATE A PRIVATE RIGHT OF ACTION.

AND YOU GO THROUGH THE FACTORS, DID THE LEGISLATURE INTEND TO CREATE A PRIVATE RIGHT OF ACTION FOR BREACH OF THAT DUTY?

AND HERE BY NOT PUTTING VIOLATION OF SUBSECTION TWO IN ONE OF THE EXCEPTIONS TO IMMUNITY, THE LEGISLATURE DID NOT INTEND TO CREATE A PRIVATE RIGHT OF ACTION FOR THAT VIOLATION OF THAT.

REGARDING JUSTICE PARIENTE'S QUESTION ABOUT WHETHER THE COMPLAINT ALREADY ALLEGES FACTS, WELL, THE COMPLAINT IS-- HAS A LOT OF DETAILS REGARDING THE FACTS AND THE FAILURE TO, THE FAILURE TO PAY THE CLAIM, FAILURE TO GO TO APPRAISAL. AND SO THE FACTS ARE ALREADY THERE.

I DON'T KNOW THAT THEY CAN ALLEGE ANYTHING ELSE THAT WOULD NOW HAVE A CAUSE OF ACTION FOR INTENTIONAL--

>> WELL, YOU, BUT YOUR ARGUMENT IS, I MEAN, AGAIN, THIS IS WHERE I'M NOT SO SURE WHERE I MAY PART COMPANY, THAT THEY COULDN'T ALLEGE ANYTHING ADDITIONAL THAT WOULD TAKE IT JUST PURELY AS THEY DIDN'T NEGOTIATE IN BAD FAITH OR THEY DIDN'T-- I MEAN, IN GOOD FAITH AND TAKE IT UP TO THE LEVEL LIKE AN AGUILAR OF AN INTENTIONAL COURT.

>> WELL, AGUILERA WAS FILED IN 2006 WAY BEFORE THIS COMPLAINT WAS-- THEY HAD THE OPPORTUNITY TO DO IT THEN.

>> SO LET ME UNDERSTAND. THE BLANKET RULE ISN'T THAT COMMON LAW BAD FAITH IS NEVER AN INTENTIONAL TORT.

HERE WE ONLY, THE ONLY HOLDING THAT WE HAVE TO MAKE THE CONFLICT HOLDING IS WHETHER 624.155 CAUSES OF ACTION ARE, BY DEFINITION, INTENTIONAL TORTS OR WILLFUL TORTS.

>> YES.

THAT'S THE ONLY THING YOU HAVE TO ALLEGE.

BUT JUST TO CLARIFY WHAT MY POSITION IS, I'M NOT SAYING THAT THIRD PARTY COMMON LAW BAD FAITH IS NEVER AN INTENTIONAL TORT.

>> OKAY.

THAT'S WHAT--

>> IT CAN BE INTENTIONAL, CERTAINLY.

BUT IT'S NOT INTENTIONAL BY DEFINITION, AND THE TERM "WILLFUL TORT" HAS TO REFER TO TORTS THAT ARE INTENTIONAL BY THE DEFINITION OF THE TORT LIKE FRAUD, INTENTIONAL AFFLICTION OF EMOTIONAL DISTRESS, DEFAMATION, THOSE KINDS OF ACTIONS.

>> BUT IT WOULD BAR THE STANDARD BAD FAITH CASE.

YOU DON'T REALLY SEE BAD FAITH CASES, AUTOMOBILE CASES AND INJURIES WHERE THEY GO TO THE EXTENT OF AGUILAR WHERE THEY GO OUT AND CANCEL DOCTORS' APPOINTMENTS AND CHANGE MEDICAL RECORDS AND DO THAT STUFF.

>> NO.

>> IT'S THE TYPICAL--

>> YES.

>>-- BAD FAITH.

>> RIGHT.

>> THEY NEGOTIATE BACK AND FORTH.

>> ARE I WAS INVOLVED IN ONE IN THE THIRD DCA IN LEVINE WHERE IT WAS YOU PAID-- YOU OFFERED THE POLICY LIMITS FOR BODILY INJURY BUT NOT ON PROPERTY DAMAGE. AND THEY ALLEGED THAT WAS BAD FAITH.

>> SO, I MEAN, THAT'S THE KIND OF THING, SO THAT WOULD BE

BLOCKED AND IMMUNE UNDER THE  
STATUTE THEN.

>> WELL, YOU DON'T HAVE  
TO ADDRESS THAT.

>> WELL, WE MAY NOT, BUT THAT'S  
GOING TO AS A MATTER OF FACT  
DECIDE THAT ISSUE BECAUSE THERE  
REALLY IS NO DIFFERENCE IN THE  
ELEMENTS FOR THE CAUSE OF ACTION  
A STATUTORY OR COMMON LAW IF  
IT'S A STANDARD, RUN-OF-THE-MILL  
CASE.

>> WELL, AND AS MY EXAMPLE  
SHOWS, IT'S NOT ALWAYS A WILLFUL  
TORT.

>> RIGHT.

>> IT EXEMPTS WILLFUL TORT FROM  
THE IMMUNITY.

>> YEAH.

>> UNLESS THE COURT HAS ANY  
OTHER QUESTIONS, I ASK YOU TO  
AFFIRM THE TRIAL COURT AND QUASH  
THE FIRST DCA'S DECISION IN  
THIS CASE.

THANK YOU VERY MUCH.

>> THANK YOU.

WE'LL BE IN RECESS FOR  
TEN MINUTES.

>> ALL RISE.