



Insurance Matters!

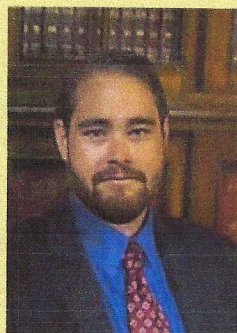
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A Newsletter of the **Insurance and Surety Committee**
of the Real Property Probate and Trust Law Section of The Florida Bar



Scott P. Pence, Tampa
Co-Chair



Michael G. Meyer
Co-Chair

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Effects of Amendment to Florida's Statute of Repose on the Products Completed Operations Hazard

By: Richard Brown, Esq. and Grace Hebbel, Esq., Saxe Doernberger & Vita P.C., Trumbull, CT

Recent amendments to Florida's Statute of Repose¹ have resulted in concerns as to the scope of risk Florida homebuilders face as a result, and the availability of insurance coverage for such exposures. Previously, the statute provided for a strict, yet straightforward 10-year limitation for latent construction defect claims. Under that language, issues arose when suits were filed near expiration of the statute, because parties seeking to defend claims were given little time to effectively assert related claims.



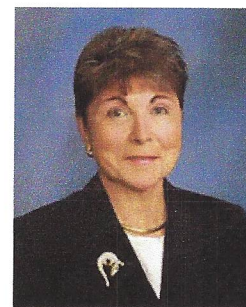
The amendment to the statute serves to lengthen the statute of repose to 11 years for certain cross-claims, compulsory counter-claims, and third-party claims, and in limited circumstances, potentially even longer. Most policies in the Florida marketplace serve to limit coverage under the products-completed operations hazard ("PCO") to 10 years, and thus, in very limited circumstances, an insured contractor may be exposed to third-party claims under the revised statute. It is important to note, however, that coverage under most CGL policies is occurrence-based,

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Catastrophe Claims: Insurance Coverage for Natural and Man-Made Disasters

By: Claramargaret H. Groover, Esq., Becker & Poliakoff, Orlando, FL

The one *must-have* insurance treatise for your law library this year is - Catastrophe Claims: Insurance Coverage for Natural and Man-Made Disasters.¹ This essential volume is co-authored by Dennis J. Wall, a respected member of The Florida Bar, who is well known for his expertise in insurance matters. Mr. Wall with his co-authors, John K. DiMugno and Steven Plitt, brings us an up-to-date analysis of well researched insurance law and practice arising from contemporary events. The three main authors and the other chapter authors generously share their scholarship and experience to bring us depth and breadth of coverage for catastrophic events.



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What is new?

Cases are taken straight from our recent national headlines include those arising from Hurricane Katrina, the cyberhacking of the Target Corporation, terrorism at the World Trade Center, floods and fires, the Northridge Earthquake, and subprime mortgage litigation to name only a few. The authors also address trends in conditions which could lead to more catastrophic events. For example, the authors discuss trending conditions that impact insured claims such as climate change, irrespective of the cause of such changes that cause catastrophic losses, and changes in the regulatory scheme in the wake of current administration Executive Orders. Risks are not likely to abate but whether the claims arise under federal or state law will be important to know.

The most significant 2018 additions are the two new chapters devoted to our 83-year-old Social Security Old-Age Insurance and Disability Insurance Programs with the reminder that Social Security is insurance. One chapter lays out the basis and status of the Act and one addresses Social Security Disability Insurance. In the author's words, "These are the twin premises behind both chapters: First, Social Security Old-Age Insurance and Social Security Disability Insurance are *insurance*. Second, these are insurance contracts between the federal government and the people of the United States, governed by principles written in the *Constitution* of the United States."

Senior lawyers and lawyers who counsel the aged or disabled client recognize that even a modest return can ameliorate the catastrophic cost of living once an individual can no longer work. Here, the author reminds us of the constitutional underpinnings of this insurance legislation that once helped an economically defeated nation recover from the Great Depression after 1929. The initial chapter on the status of the Act is subtitled: "An outline, not an argument."

What analysis should you expect?

The authors generously share their scholarship on a broad range of topics: fundamentals of insurance policies and risk management; fundamentals of claims handling, appraisals, and underwriting as well as litigation; agent and broker liability; causation in coverage determination; changes in homeowner property insurance; valuation and proof of business interruption losses post-catastrophe; insurance for disaster losses due to human activity; flood and earthquake insurance as well as disasters that are both natural and man-made; financial disasters, such as the subprime crisis, and director and officer liability insurance; social security and disability insurance; and insurance for cyberattacks.

What is unexpected?

Who knew that an insurance law treatise could be readable for both the business major, the seasoned insurance professional, and the liberal arts graduate? Where, but here, will you find a citation to Dodd-Frank, legislation intended to protect us from financial institutions that are "too big to fail", in the same paragraph with a quotation from William Faulkner?² In other words, this tome is intellectually intriguing and entertaining on many levels as well as authoritative on the law.

Who should be interested in this treatise?

Every legal practitioner will benefit. This comprehensive contemporary view is not just a work for transactional and insurance coverage lawyers. Litigators will want to know more about first party litigation or when expert testimony is required, or not, to establish the professional standard of care in a broker malpractice case. A coverage litigator will find discussions on federal and state court

See Catastrophe Claims, continued on Page 3




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actions for declaratory judgment, removal from and to federal court, recovering the judgment against the insurer, and class actions such as the homeowner class action arising from Hurricane Katrina. If you are a construction lawyer working to recover under applicable insurance on the construction project or if you are a corporate lawyer seeking to understand insurance for cyber-hacking attacks, this book brings you current cases and analysis to approach your search with confidence. Every lawyer whose practice touches any insurable risk will find a wealth of information and analysis to guide the representation.

Get up to date with this important work open on your desk. You can learn more at: <https://legalsolutions.thomsonreuters.com/law-products/Treatises/Catastrophe-Claims-Insurance-Coverage-for-Natural-and-Man-Made-Disasters-May-2018-ed/p/105453948>

1. Thompson-Reuters, May 2018.

2. "The past is never dead. It's not even past." William Faulkner, *Requiem for a Nun* (New York, Vintage, 2011), p.73 

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meaning that the policy is triggered by property damage that occurs during the policy period, and therefore, any subsequent claims permitted under the amended statute will necessarily relate to the original property damage that occurred during the 10-year period. As such, the property damage would be covered under the standard 10-year PCO extension. This article will analyze the anticipated effect of the amendments upon coverage under a 10-year PCO extension.

Understanding the Relationship Between the Statute of Repose and Insurance Coverage

A. Amendment to Florida Statute § 95.11(3)(c)

On March 23, 2018, the Governor approved House Bill 875 which became effective on July 1, 2018. This bill amended Florida Statute § 95.11, which governs statutes of repose for construction defect claims and previously provided for a strict 10-year statute of repose. Pertinently, the amendment includes the following addition: "However, counterclaims, cross-claims, and third-party claims that arise out of the conduct, transaction, or occurrence set out or attempted to be set out in a pleading may be commenced up to 1 year after the pleading to which such claims relate is served, even if such claims would otherwise be time-barred." This language seeks to extend the time to file claims for latent construction defects for up to an additional year, or 11 years from the date of completion of the project. The new limitations period applies to any actions that commence on or after July 1, 2018.

B. Effect of Amendment on Products-Completed Operations Coverage

Currently, in the Florida market, most policies provide products-completed operations coverage for 10 years, or the statute of repose, whichever is less. This begs the question of whether the amendment to the statute has created any uninsured exposure outside of the scope of the PCO hazard.

To evaluate the potential for uninsured exposure, we start with the fact that the set of circumstances in which this extended limitation period may come into play at all is limited. First, in order for the repose period to be expanded under the revised statute, a defect claim would need to be asserted in the 10th year after project completion, on the eve of the expiration of the limitations period.

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