

'Board Certified' Could Soon Be an Advertising Thing for Florida Insurance Lawyers

Insurance Journal

By this time next year, plaintiffs lawyers, who have frequently been held up as thorns in the side of the Florida property insurance industry for their sometimes-aggressive pursuit of policyholder claims litigation, could have a stamp of credibility to brandish in advertisements: “board certified in insurance coverage law.”

The Florida Bar’s Board of Legal Specialization and Education is scheduled to vote Friday, Nov. 8, on creating the new certification. Other Bar committees and the Bar’s Board of Governors would then review. The state Supreme Court will have the final say, perhaps in late 2025, Bar members said. The idea has been in the works for more than six years and has been endorsed by United Policyholders, a consumer advocacy group, and by the Florida Justice Association and the Florida Defense Lawyers Association. Attorneys on both sides say the new moniker will benefit insurance defense lawyers as well as plaintiffs’ attorneys who specialize in insurance matters.

“There’s no reason not to offer that, really,” said Matt Lavisky, immediate past president of the 1,200-member defense lawyers association. “It’s a good way to distinguish between someone who is not specialized in insurance law.”

The certification, if approved, would be one of 28 that the Florida Bar offers, including certificates in trial law, appellate law, construction law, adoption law, maritime law, workers’ compensation and more. Only Ohio and Texas offer similar certificates in insurance law, the Florida Bar’s news site reported.

Lavisky said he does have some concerns, because insurance law is such a wide-ranging field with many subspecialties. Should a lawyer who has handled only personal injury protection and auto insurance cases, for example, be able to call herself “board certified in

insurance law” and then take on third-party litigation and homeowner property claims?

“It won’t mean much if everyone is board-certified,” he noted.

Others involved in the certification push said Bar members have considered that question. Applicants for the designation also would have to take continuing education courses and pass exams that test their knowledge in broad areas of insurance law, said Chip Merlin, a prominent plaintiffs’ lawyer in Tampa who blogs about insurance claims disputes.

“There’s no way someone could get past the test if they didn’t know the law,” Merlin said. “I see no downside to it.”

The certification would help tamp down assertions by lawyers who claim to be “insurance specialists” but who may have spent little time in the field, Merlin said. “It takes years – decades, really – to get really good at something.”

To earn the designation, the Bar proposal notes, attorneys would have to have at least seven years of practice with five of those in insurance matters. At least 40% of their practice would have to be in insurance coverage matters, explained Debbie Crockett, a Tampa attorney who represents policyholders and has spearheaded the push for the new label.

The cert concept began in 2018, just as Florida’s insurance litigation wars and the property insurance crisis in the state was heating up. The COVID-19 pandemic put the plan on hold for a couple of years, but this year, Crockett and others have pulled together wide support and drafted a formal proposal. She noted that while board certifications have existed for many specialties, nothing was available for her own area of insurance coverage law. The certificate will be useful, not only to claims litigants, but also for corporate risk management attorneys, mediators, law professors, and those who specialize in helping policyholders navigate the insurance claims process, Crockett said.

“The fact that there were back-to-back hurricanes makes this even more urgent now, in my opinion,” she said.

Florida insurance carriers might say that some policyholder attorneys are looking for any type of

advantage after the state Legislature in 2022 and 2023 disincentivized what many said had become a costly flood of unnecessary claims litigation. The reforms ended one-way attorney fees and fee multipliers – the court-approved practices that had caused insurers to pay plaintiffs’ hefty legal fees even when an award was only slightly higher than a settlement offer. Lawmakers also ended assignments-of-benefit agreements and raised the bar on bad-faith claims.

“The Legislature did everything it needed to do, and it worked: Litigation is down,” said Scott Johnson, an insurance consultant and educator who has studied the Florida market for years.

A certification may or may not help deter abuses of the legal system like those exemplified by Coral Gables trial lawyer Scot Stremms. He was disbarred in 2022 for multiple ethical violations, including filing thousands of claims lawsuits, many of them on the same claim.

“I don’t know if this would have prevented that,” Crockett said. “What I do think is that when the consumer is looking for an attorney to help them, they will have options to look for lawyers that are board certified in insurance coverage law.”

She said she has received numerous letters in support of the idea from insurance defense firms, including from one of the largest in Florida. It was signed by 14 lawyers.

An insurance law certification would help consumers as well as insurance companies, south Florida plaintiffs’ attorney Michael Cassel told the Bar news site. “It’s not the good attorneys that the insurance companies hate, it’s the bad ones who they still have to pay because of one thing or another,” he said, according to Bar report. “That’s why I think board certification is hugely important, it allows people to know who really takes a passion and interest in this area of law instead of just dabbling.”

The Bar places no restrictions on attorneys advertising that they are board-certified, Crockett said.