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Willy E Rice, *Saint Mary's University of San Antonio*



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*Judicial Bias, the Insurance Industry and Consumer Protection: An Empirical Analysis of State Supreme Courts' Bad-Faith, Breach-of-Contract, Breach-of-Covenant-of-Good-Faith and Excess-Judgment Decisions, 1900–1991*

Willy E. Rice

41 CATH. U. L. REV. 325 (1992).

Consumers are becoming increasingly dissatisfied with the services and products that the American insurance industry provides. Correspondingly, they are filing an ever-increasing number of lawsuits against insurers in state courts. While courts have ruled equally in favor of insurers and policyholders, advocates for both consumers and the insurance industry strongly believe “judicial bias” or “judicial hostility” permeates state supreme courts.

Some United States Supreme Court Justices have argued that state supreme courts are hostile towards insurance carriers. Commentators have also viciously criticized state supreme courts for being biased against insurance carriers. The contrary view that state supreme courts are anti-consumer is also widespread. Are either of these accusations true? Are state supreme courts biased against the insurance industry? Or are certain regional state supreme courts more likely to issue anti-consumer opinions?

A certain kind of judicial bias, termed disparate-impact discrimination, occurs when extralegal factors—those having little to do with the merits of the case—regularly and systematically influence a state supreme court’s decisions in favor of either the insurer or the policyholder. An empirical analysis of state supreme court cases decided between 1900-91 reveals that state supreme courts are unwittingly discriminating against litigants. Specifically, these supreme tribunals allow extralegal factors to influence the disposition of insurance-related cases. Based on the findings of this empirical analysis, policyholders and insurance companies are encouraged to settle their disputes in a state administrative forum, and to avoid trial by judge or jury.

Keywords: American insurance industry, insurance providers, policyholders, judicial bias, consumer protection, state supreme courts, bad faith, breach of contract, breach of covenant of good faith, excess judgment, disparate-impact discrimination, empirical analysis, judicial hostility.