POLICY BRIEF

Hold the Line:
Florida's Insurance Reforms and the Path Ahead

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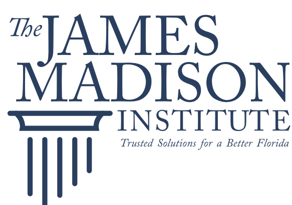
Introduction

After years of modest reforms that merely managed the decline of the state's property insurance market, the Florida Legislature finally took bold action a year ago that attacks the root causes of what is currently the most significant crisis to impact Florida residents. Senate Bill 2A, enacted during a special legislative session in December of 2022, included several provisions ranging from insurance regulatory reform and tighter eligibility standards for Citizens Property Insurance Corporation, to significant changes in Florida's tort laws with the goal of both stemming the tide of litigation and massive insurance losses, and attracting much-needed capital investment. When lawmakers reconvened during the 2023 Regular Legislative Session three months later, they enacted additional reforms to build upon those passed in December.



Just prior to the passage of SB 2A, there were very real concerns that several insurers in Florida were on the precipice of being downgraded, having to massively scale back their coverage through non-renewals or entirely withdraw from the market due mainly to a depletion of their surpluses and a consequent inability to afford the necessary reinsurance coverage to remain operating (reinsurance is essentially insurance for insurance companies whose coverage kicks in after a largescale catastrophic event).

Indeed, reforms may have come too late for seven companies that became insolvent over the past year. That is the bad news. But there is also good news. In the year since the reforms were signed into law by Governor Ron DeSantis, there is evidence that the market has stabilized: private insurance coverage has largely remained available—although expensive—across much of the state, primary insurers were able to secure reinsurance coverage at the critical mid-year renewal period in 2023 more easily than in 2022,[1] existing Florida insurers have expanded their book of business, and several new property and casualty insurers have been approved to enter the market to start writing new policies.[2]

As positive as these developments are, however, they have not addressed the most pressing issue for most consumers: rate relief.

But rising premiums are not unique to Florida. Insurance rates have increased across the nation due to domestic inflationary pressures that have, for example, increased the cost of construction by over 40 percent[3] in the last few years, and catastrophic losses around the globe borne by the reinsurance companies, which translate into higher rates for the primary property insurers that rely on them. What is unique to Florida, however, is how staggering the rate increases are when compared to the rest of the country.

Florida's average homeowner insurance premiums have tripled since 2019 to about $6,000 per year versus the national average of about $1,700.[4] Florida property insurers have experienced rate increases of approximately 30 to 50 percent for their reinsurance coverage and other risk transfer products, while insurers outside of Florida have experienced more modest rate increases of about 10 to 20 percent.[5] Any increases in the cost of such risk transfer products are borne directly by consumers through higher insurance rates, and when combined with the insurance losses Florida has experienced due to its own natural catastrophes, domestic inflation, and pre-reform social inflation from litigation, this results in the disproportionately high rates Floridians are grappling with.

In 2019, Florida accounted for 76 percent of all insurance litigation nationwide, even though the state only accounted for eight percent of all insurance claims filed during the same period. As of August 2022, those figures only worsened to Florida accounting for almost 80 percent of nationwide litigation and nine percent of claims filed

Indeed, there is little Florida can do to address its geographic position as a low-lying peninsula jutting 500 miles out into storm-prone tropical waters, which organically and understandably results in more expensive property insurance compared with the rest of the country, as well as a more complex insurance system tailored to such circumstances. Florida's growth and economic success also contribute to higher rates as roadway congestion increases, housing costs rise, and more people and wealth concentrate predominantly in the state's more desired coastal metro areas that are naturally prone to more storms and flooding, and are therefore more expensive to build and repair on.

These are indeed legitimate cost drivers that would justify some gradual rate escalation, especially when combined with rising inflation and the increasing price of reinsurance, catastrophe bonds, and other risk transfer products.[6]

But none of the factors mentioned above can account for the ongoing dramatic double-digit insurance rate increases Floridians are feeling or the multiple years of insurer net profit losses[7] leading to insolvencies, even in hurricane-free years. As such, it is evident that these have been propelled by other cost drivers disconnected from the state's natural risks, global reinsurance prices, national economy, and other uncontrollable factors.

In 2019, Florida accounted for 76 percent of all insurance litigation nationwide, even though the state only accounted for eight percent of all insurance claims filed during the same period.[8] As of August 2022, those figures only worsened to Florida accounting for almost 80 percent of nationwide litigation and nine percent of claims filed.[9] When these figures are broken down further, the data show that just about every other state averages under 1,000 such lawsuits annually, while Florida has been hovering around 100,000 lawsuits. Therein lies the principal driver of massive profit losses for insurance companies despite the double-digit rate increases imposed on consumers to offset those losses.

Florida lawmakers have taken steps to address this problem over the past decade. However, many of the reforms either came too late or were too modest. They finally took a bold step in the right direction when they passed SB 2A in December 2022 and built upon it in 2023. Nevertheless, those reforms also came late and, much like waiting until a cancer metastasizes and its symptoms grow unbearable, it will take longer for the right, aggressive treatment to start having a meaningful impact on the patient than if it had been applied sooner.

The following report revisits many of the reforms the Florida

Legislature has enacted in recent years to shore up the state's property insurance market, why the timing of those reforms mattered, and how lawmakers might build upon them to further stabilize the insurance market, reduce the state's exposure, and restore affordability for consumers.

Recent Legislative Reforms

For almost two decades, the Florida property insurance market was plagued by excessive litigation and fraud stemming from insurance claims enabled by the exploitation of legal loopholes and court decisions governing attorney fees, bad faith rules, and an insurance practice known as "Assignment of Benefits" (AOB).

An AOB allows a third party – such as a roofing contractor, water-extraction company or other vendor – to stand in the place of the insured and assume the policyholder's benefits by collecting payments directly from the insurance company for a covered loss. In doing so, the policyholder also transfers to the third party the right to negotiate and adjust the claim in question.

> But the abuse did not simply vanish in 2019 when HB 7065 was passed. Florida law allowed policyholders to file a windstorm claim or supplemental claim up to three years after a storm's landfall.

Most health insurance and personal injury protection (PIP) auto policies function under this arrangement, which allows medical providers to collect payments directly from the insurer for covered healthcare services rather than a policyholder paying the medical provider and then getting reimbursed by the insurance company.

AOBs increasingly became more common in property insurance claims where a policyholder would exercise the right to assign his or her policy benefits for a specific loss,[10] including the benefit (previously) in Florida law allowing a policyholder to sue an insurance company and then have their attorney fees covered by the insurer should the policyholder prevail, also known as the "one-way attorney fee" provision.[11]

With the homeowner out of the picture and no longer in a position to negotiate and thus mitigate repair costs, crooked contractors would oftentimes inflate their bills and/or charge for repairs that were unnecessary or unrelated to the loss in question. It became more and more common for contractors to partner with trial lawyers to avail themselves of the aforementioned one-way attorney fee benefit in state law, as well as bad-faith rules that were designed to protect ordinary consumers.

The constant threat of litigation and massive judgments far beyond policy coverage limits borne out of lawyers exploiting one-way attorney fee and bad faith laws served as a perverse incentive for insurers to settle for amounts greater than they otherwise would have, which resulted in higher rates to recoup the losses.

These abuses amplified the number and severity of claims and caused insurance rates to skyrocket despite an unprecedented "hurricane drought" in which no storm struck Florida in the decade preceding 2016. This raised legitimate concerns from consumers when they asked why their premiums were rising so sharply.

HB 7065 – 2019

After seven years of deliberation and several proposed reforms, the Legislature passed HB 7065 in 2019 to address unrestrained litigation incentivized by the one-way attorney fee law as it related to the unrestricted use of AOBs. The bill established commonsense rules related to executing AOBs and created an attorney fee formula based on the difference between the demand, offer, and judgement to determine which party, if any, receives attorney fees in AOB-related lawsuits.[12]

Unfortunately, HB 7065 came 3 years too late. No major storm struck the state between 2005 and 2016, but there were justified fears that the AOB cottage industry could easily pivot from exploiting non-catastrophe losses such as water damage from broken pipes to more lucrative hurricane-related claims should a major storm finally strike. Indeed, even reinsurers expressed concerns as early as 2016 that the issue was trickling into Florida's reinsurance pricing[13] due to fears that reinsurers would be on the hook for artificially inflated hurricane claims stemming from AOB abuse, excess litigation, and other such "social inflation" factors.

And they were right.

Hurricane Hermine made landfall in 2016, and major Hurricanes Irma and Michael in the years that followed. The catastrophic losses from these hurricanes allowed contractors and plaintiff's attorneys to continue exploiting the laws that existed before HB 7065 was enacted in 2019, but this time for much larger hurricane

claims, as reinsurers and other stakeholders feared.

But the abuse did not simply vanish in 2019 when HB 7065 was passed. Florida law allowed policyholders to file a windstorm claim or supplemental claim up to three years after a storm's landfall. Although subsequent legislation eventually reduced the window to file claims, the rules for filing any insurance claims are governed by the contractual provisions written in the policy and the laws in force at the time of the loss, not laws passed subsequently; hence, the pre-reform exploitable rules have been argued to apply.

This litigation "tail" is why the insurance market has bled for years after hurricane strikes. Citizens alone was still reporting over 900 AOB-related lawsuits per month in 2021—the majority of those from losses related to Hurricane Irma in 2017 prior to the enactment of HB 7065. Even today, insurers are still paying and experiencing losses from those claims as lawsuits oftentimes take years to resolve.

Had the Legislature enacted those reforms just three years earlier before hurricanes began to strike the state once again, Floridians would likely be looking at a far healthier property insurance market. Hence, the timing of reforms matters almost as much as the reforms themselves.

SB 76 – 2021

Given the dire state of the insurance market, the industry's accruing losses, and consequent double-digit rate increases plaguing consumers, the legislature approved another insurance and tort reform package in 2021, which included provisions that built upon HB 7065.

SB 76, which passed on the last day of the 2021 Legislative Session, tightened Citizens' eligibility requirements and eased—but did not eliminate—its statutory cap on rate increases; required plaintiffs to notify an insurer before a lawsuit is filed in the form of a pre-suit demand at least 10 days before filing suit; allowed an insurer to use mediation or another form of alternative dispute resolution after receiving a pre-suit notice; replaced the one-way attorney fee statute with a formula modeled after the AOB attorney fee reforms in HB 7065 to make the recovery of attorney fees and costs contingent on obtaining a judgment for indemnity that exceeds the pre-suit offer made by the insurance company; and reduced the deadline to file insurance claims from three to two years from the date of loss, except for supplemental claims, which were given an additional year.[14]

Though it took effect in July of 2021, the benefits of SB 76 will take years to have a demonstrable effect on the property insurance market as its provisions were not applied retroactively – the market will have to cycle through the tens of thousands of cases filed leading up to the enactment of the reform

The result? Insurance rates have continued to soar and, to make matters worse, the double-digit rate increases consumers are experiencing, as well as private insurers' decisions to reduce their exposure in recent years, have forced policies back into state-run property insurer Citizens en masse. Because Citizens premium increases are capped by law,[15] it has been unable to keep up with the necessary rate increases to remain actuarially sound, which has created a widening gap between the rates charged by Citizens and those charged by private insurers. Due to that price difference, consumers increasingly and understandably turned to government-run Citizens for their coverage instead of admitted carriers in recent years, thus shifting more of the state's enormous risk away from the private market and onto taxpayers.

In September 2021, Citizens had almost 709,000 policies in force accounting for about nine percent of the Florida market;[16] the following month, that figure hit 10 percent, and fast-forwarding to this report's publication, Citizens has over 1.3 million policies[17] and about 16 percent of the market based on total insured value.[18] As a reference, Citizens had less than 420,000[19] policies and only 4.5 percent of the market just four years ago.[20]

SB 2D – May 2022

After continued underwriting losses and multiple insurance company downgrades and insolvencies,[21] Governor Ron DeSantis issued a call for the Legislature to convene a special session on property insurance[22] in May of 2022 to stop the bleeding ahead of the 2022 hurricane season and mid-year reinsurance renew-

al period. The result was SB 2D, which contained several provisions related to property insurance regulation and tort reform. They included:

1. The elimination of the one-way attorney fee benefit in state law, but only as it related to AOBs; thus, the one-way attorney fee benefit could not be assigned to a third party and applied *only* to the named insured or beneficiary in the policy in lawsuits arising under residential or commercial property insurance policies.
2. The creation of a temporary Reinsurance to Assist Policyholders (RAP) program to soften insurance rate increases by providing up to $2 billion in reinsurance coverage from the state's general revenue funds via the Florida Hurricane Catastrophe Fund with the intention of passing those savings onto policyholders and buying time to stabilize the market.
3. Prohibiting roofers from paying or absorbing insurance deductibles and requiring certain disclosures on roofing advertisements; allowing insurers to include a roof deductible if certain requirements are met.
4. Requiring a claimant to establish that a property insurer breached the contract in order to prevail in a bad faith claim.
5. Codifying the lodestar method[23] of calculating attorney fees arising out of property insurance claims and drastically restricting the application of contingency fee multipliers to only rare and exceptional circumstances to significantly reduce the amounts insurers pay in attorney fees.[24]

As solid as those reforms were, they too appeared to have come too late. Barely two months after they were passed, Florida's primary insurance rating agency Demotech warned that approximately 17 Florida insurers were facing downgrades,[25] which would be catastrophic not only for the market and companies in question, but also for the hundreds of thousands of policyholders whose federally-backed mortgage lenders would not recognize coverage from downgraded insurers and would be force-placed with collateral protection insurance carriers at devastatingly higher rates. Ultimately, Demotech downgraded only three major Florida insurers,[26] and one went insolvent, becoming the fifth Florida property insurer to be dissolved in 2022.[27]

Also that summer, Florida's reinsurance rates increased by 50 percent on average, which is considered near "distress" levels for many primary insurance companies purchasing said coverage. One reinsurer noted that "the challenging and opaque regulatory situation in the admitted homeowners' market was the single largest factor [for the reinsurance rate increase] as opposed to actual weather events themselves."[28]

SB 2A – Dec. 2022

New legislative leadership far more receptive to enacting the reforms truly necessary to address the root causes of the state's decades-long property insurance crisis wasted no time and joined with Governor Ron DeSantis to call a special session almost immediately after the 2022 general election. The result was the most meaningful set of reforms to Florida's tort laws and property insurance system in state history.

The three main reforms in SB 2A were proposals contained in the JMI 2022 publication, "Road to Recovery: Clearing the Path to Meaningful Reforms in Florida's Insurance Arena."[29] These included:

1. ONE-WAY ATTORNEY FEE REPEAL

For decades, the single greatest driver of frivolous and excessive litigation was the one-way attorney fee benefit in state law, which incentivized attorneys to sue first, ask questions later, and engage in dilatory tactics oftentimes to their clients' detriment to inflate their legal bills and eventual insurance payouts. SB 2A repealed this provision in law as it relates to primary insurance litigation, which requires litigants to follow the common-law American rule: that parties bear their own litigation costs, the rule applicable in most states and for most types of litigation. The absence of the one-way attorney fee benefit does not in any way preclude aggrieved consumers from suing insurance companies they believe have low-balled or mistreated them, and they still enjoy legal protections against insurers who legitimately act in bad faith. This is how most other states operate.

2. "BAD FAITH" CLARIFICATION

A second and equally important way SB 2A reduces frivolous and costly litigation is by clarifying what constitutes an insurer acting in bad faith, while preserving consumers' ability to appropriately penalize bad actors in the insurance industry and seek restitution. Florida's bad faith statute outlines an insurer's responsibilities to act in good faith to settle a claim and establishes a process for claimants who believe insurers may have acted in bad faith.[30] Unfortunately, unscrupulous attorneys oftentimes instructed their clients to not communicate with the insurance company and engaged in other schemes intended to "set up" an insurer into a condition of bad faith to trigger the payment of exorbitant fees. This was neither fair nor the intention of the state's bad faith law, which exists to punish insurers that legitimately and willfully engage in bad behavior. SB 2A fixed this by clarifying that a court must first find that a property insurer has indeed breached the contract before a claimant can sue for bad faith.

Prior to this reform, an insurer merely agreeing to pay any amount after the 60-day "safe harbor" period following a claimant's filing of a civil remedy notice and subsequent suit would usually be considered a "confession of judgment," which opened the insurer to a costly bad faith claim, even if the insurer took every step to settle the dispute in good faith. The requirement of a court ruling finding that an insurer breached a contract before a bad faith lawsuit can be filed will now filter out frivolous lawsuits while preserving the spirit of the bad faith law that protects consumers and holds bad actors accountable. Mere disagreements on prices when both sides have consistently acted in good faith will now be resolved through appraisal processes and other conflict resolution methods.

3. TIGHTENING CITIZENS ELIGIBILITY

In order to stabilize the market and ensure its long-term viability, lawmakers recognized the need to attract investment and outside capital to promote competition and spread Florida's enormous risk beyond its borders. Ending the perverse incentives for litigation was the first way; the other was by creating a level of predictability and measurability as it relates to transferring Citizens policies to the private market. 2021's SB 76 tightened Citizens' eligibility by steering potential, but not existing, Citizens policyholders to private carriers if a comparable policy was available within 20 percent of the premium Citizens was charging. However, incumbent Citizens policyholders were under no obligation to switch. SB 2A now requires it. This important change allows private insurers looking to expand into Florida to quantify how many policies they could realistically assume from Citizens and thus are far more likely to attract investors to do so and enter into depopulation agreements with Citizens to write policies at rates unburdened by the litigation "tail" from past losses. This change has already yielded increased investment and other positive results, which will be discussed in the next section.

SB 2A went beyond JMI recommendations and included a number of other meaningful provisions, such as:

- Reducing the deadline for policyholders to file a claim from 2 years to 1 year after the date of loss for a new or reopened claim, and from 3 years to 18 months for a supplemental claim;
- Eliminating AOBs, and thus the ability to assign insurance policy benefits to a third party vendor or attorney;
- Allowing (but not requiring) insurers to include a mandatory arbitration provision in policies to reduce expensive litigation;
- Providing an additional reinsurance coverage option to insurance companies through the temporary Florida Optional Reinsurance Assistance Program (FORA);
- Requiring certain Citizens policyholders to obtain flood insurance coverage;
- Expanding the Office of Insurance Regulation's ability to penalize insurance companies for various violations; and
- Amending certain timeframes to require insurance companies to be more responsive to their customers by reducing the amount of time they have to inspect, pay, deny, or respond to their customers' claims.[31]

2023 Reforms

To build upon the landmark reforms contained in SB 2A, the Legislature enacted additional changes to state law in the immediate months that followed during the 2023 Regular Legislative session, to both further shore up the market and enhance consumer protections. These included:

- Lifting the Citizens rate cap on all non-primary residences and other specified properties;[32]
- Establishing limits on bad faith claims and repealing the one-way attorney fee benefit for surplus lines carriers;[33]
- Expanding eligibility for the My Safe Florida Home program to harden homes;[34]
- Establishing additional rules on public adjusters and limitations on what they can charge consumers;[35]
- Defining the circumstances when a hurricane deductible would apply and reducing the time an insurance company has to cancel a policy from 90 to 60 days;[36] and
- Authorizing OIR to further examine the health and compliance of insurance companies, enhancing penalties and fines against insurers committing certain violations, increasing reporting requirements, and prohibiting executives of impaired or insolvent insurance companies from receiving bonuses or other golden parachutes.[37]

From Critical To Stable Condition

The legislative changes to the state's property insurance and tort laws, especially those contained in SB 2A, were significant reforms that experts, stakeholders, and the insurance industry have been requesting for years. However, due to the cyclical nature of the insurance industry, it will take anywhere between 18 months and three years to fully derive the benefits of several of these major reforms due to two main factors:

1. Claims filing deadlines: Prior to any of the reforms outlined above, Florida law allowed policyholders to file a claim up to three years after a windstorm loss. SB 76 in 2021 reduced it to two years, and SB 2A in 2022 further reduced this window to one year. Consequently, even after these new deadlines were enacted, claims and lawsuits continued pouring in from any windstorm event in the past three years that a claimant could argue caused damage because insurance claims are governed by the policy *at the time of the loss* whose provisions are based on the laws in force when the policy was written, not necessarily when the claim or lawsuit for said loss is filed.
2. Policy renewals: As previously discussed, insurance policy provisions are based on the laws in force at the time the policy is executed, even if the law changed after a policy's execution date. This essentially extends pre-reform rules and legal "benefits" contained in an insurance policy by up to another year for those policyholders who executed or renewed their policies right before a new law took effect. It therefore takes about a year after a new law is passed for its changes to be reflected in all policies across the state.

Litigation Decreasing?

Given the two factors outlined above, many policyholders and their attorneys can still avail themselves to the now-repealed one-way attorney fee provision if: 1) they can argue that an insured loss was incurred while covered under a policy that was executed before the repeal took effect, and 2) the claim is filed within a year of the loss event.

Aware of these and other timetables, plaintiff attorneys have taken advantage of the narrowing window of opportunity to file lawsuits under conditions favorable to them. Earlier this year, for example, courts were overrun by a flood of new litigation filed by lawyers seeking to have their cases heard under rules existing prior to this year's tort reform package that more narrowly defines what constitutes a bad faith claim, among other provisions. In the days leading up to Governor Ron DeSantis signing HB 837 into law, over 280,000 civil cases were filed in Florida courts in March alone,[38] more than 23 times the monthly average of 12,000 lawsuits,[39] which is itself a staggering figure.

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Since that explosion of litigation, however, there are growing signs that the number of new lawsuits is dropping, and in some cases, precipitously. As of the date of this publication, the Office of Insurance Regulation has not published its insurance litigation data call across all insurers; but data from Citizens Property Insurance Corporation, which is a good snapshot of the market as a whole, appears to establish a trend of decreasing new litigation. For example, there is at least a 17 percent reduction in new claims filed against Citizens during the first ten months of 2023 compared with the same period in 2022.[40] This reduction is noteworthy, given Hurricane Ian's impact in September 2022, which would normally trigger a spike in new litigation over the next year. Yet despite Ian's catastrophic landfall, new cases filed against Citizens dropped during the first ten months of this year.

Indeed, this is merely a snapshot of one company, albeit the state's largest, and it is still too early to fully ascertain what impact Hurricanes Ian and the more recent Idalia may have on litigation data.

Market Improvements

It has been said that investors and their capital go where they are treated well. For far too long, they have been mistreated in Florida due to uncontrolled litigation, fraud, and other social inflation. The overdue steps lawmakers have taken to address this has apparently been noticed by insurance market actors, and there are now several signs that finally point to a gradual recovery. The first and most obvious sign that the insurance market and investors have looked upon Florida's reforms favorably has been the entrance of at least 17 new property and casualty insurers into the state this year.[41]

In addition to these new companies, a number of insurers have been approved to participate in the Citizens Depopulation Program to assume over 650,000 policies from Citizens so far in 2023, which accounts for a more than 800 percent increase over 2022.[42] One of these takeout companies announced that it will be extending rate *reductions* to about 70 percent of its 53,000 new policyholders compared to the rates they were paying with Citizens.[43]

For the first time in years, Citizens depopulation is outpacing the influx of new policies into Citizens. In the first 11 months of 2023 alone, Citizens has transferred over 223,000 policies to the private market, which is far more than it transferred in the past seven years combined (169,000 policies).[44] Just in November, almost 93,000 policies were transferred *from* Citizens to private carriers,[45] while only 6,000 new policies were written by Citizens.[46] This newfound trend is having a noticeable impact on the amount of policies in force, and it appears that the total number of Citizens policies may have peaked back in September now that there have been two consecutive months of significant outbound policy transfers.[47] The November total policy count for Citizens is estimated to be around 1.2 million[48] from 1.4

million[49] just two months ago, with over $90 billion in exposure transferred from taxpayers to the private market.[50]

Another major sign of the market's recovery came in June during the critical mid-year reinsurance renewal period when primary insurers were able to secure their reinsurance and other risk-transfer coverage more easily than they did in 2022.[51] Initial concerns that there would not be enough reinsurance capacity for the state's insurance carriers and forecasts of 50 percent rate increases did not come to fruition; instead, every company was able to secure enough risk transfer to cover its exposure at an average rate increase of about 27 percent instead of the previously estimated 50 percent increase.[52]

Overall, the market is still experiencing profit losses, but these are significantly lower than prior years, and the trend is one of improvement.[53]

Further Reforms?

The statistics above provide clear and convincing evidence that the landmark reforms enacted in recent years have had a positive impact on the insurance market. But given the nature of the insurance business and factors outside Florida's control, these positive impacts are coming gradually. There is still room for additional reforms that would accelerate market recovery by attracting additional capital, mitigating some of Florida's natural risks, and tightening some legal loopholes.

A. Further Clarify Bad Faith

Section 624.155 lists the statutory provisions that if violated, may expose an insurer to civil action for bad faith. Currently, there is no explicit requirement for a claimant to list what laws were specifically violated to proceed with such a lawsuit. The Legislature should clarify this by requiring that all allegations be stated with specificity and accompanied by documentation explaining which provision(s) an insurer violated and how. Lawmakers should additionally clarify that there should be no such civil action when an insurer complies with payment demands, proposals for settlement, notices of intent to initiate litigation, or loss appraisal. These tweaks would clarify the Legislature's intent to filter out frivolous lawsuits while preserving the right of consumers to hold insurers accountable when they genuinely engage in misconduct.

B. Expand the My Safe Florida Home Program

Florida's unique vulnerability to windstorms will always impact insurance rates and how the state regulates its property insurance system. As such, the most effective long-term and tangible investment to reduce rates is by physically hardening Florida's built environment. Studies have shown that every dollar invested on disaster mitigation yields at least $3 in future insurance loss savings,[54] which would eventually translate into lower rates. Florida already requires insurance premium discounts based on certain mitigation measures.[55]

Created in 2006, the My Safe Florida Home Program provided free home inspections for Floridians and helped residents reinforce their homes against hurricanes with grants from the state.[56] The program only lasted two years but was renewed and its eligibility expanded in 2022. Responsible stewardship by Florida's lawmakers has allowed the state to amass significant budget surpluses in recent years, and some of those funds have been used to soften insurance rate increases by directly subsidizing rates. If state funds are going to be invested toward that end, they should be meaningful and long-lasting, and mitigation is one such way.

As such, lawmakers should examine ways this program can be expanded to include more homes by either increasing its funding and/or creating a recurring revenue source such as a small home closing surcharge to sustain it.

C. Further restrict where Citizens can write new policies

Another way to harden Florida's built environment is by creating a market incentive to do so. Currently, developers build on some of the highest risk coastal areas knowing that Citizens will always be there to offer coverage even if no private carrier is willing to do so. Prohibiting Citizens from writing policies in the state's most vulnerable, high-risk areas would force developers to either rethink building in those areas or decide to build structures so strong and resilient that private carriers would agree to cover them.

This concept has already been tried in Florida, although in a very limited way. In 2013 the Florida Legislature restricted[57] Citizens from writing policies covering structures built (or substantially expanded) after 2015 if they lie seaward of the Coastal Construction Control Line (CCCL) or in any federally-designated wetland (existing structures were grandfathered for coverage eligibility).[58]

The CCCL is a line of jurisdiction in Florida law defining the landward limit of the state's authority to regulate coastal construction. It has been established along most of Florida's sandy beachfront properties, but does not extend into the Florida Keys or the mostly vegetated coastline of the state's "Big Bend" area.[59] This coverage prohibition has served a dual purpose:

1. Prospectively reducing the growth of Citizens' risk exposure by prohibiting it from covering the newest, most expensive structures in the state's most storm and flood prone areas; and
2. Keeping this enormous risk in the appropriately-priced private market thereby encouraging any new development in these high-risk areas to be built stronger and more resiliently in order to obtain the most affordable coverage possible.

Lawmakers should consider expanding this prohibition to include more of the state's most storm and flood-prone areas by including newly built or substantially expanded structures within a *certain distance* of the CCCL (instead of merely seaward of the line). This would limit the growth of Citizens in the areas at highest risk of natural disasters and serve as a disincentive to over-develop and concentrate more wealth and people on barrier islands and other high-risk coastal zones. It would have positive environmental impacts as well as incentivize capital investments into Florida insurers that specialize in coastal properties.

These solutions would inject much-needed predictability into the state's insurance market, which would make investors look upon it more favorably; additionally, any efforts to inhibit the migration of policies into government-run Citizens will protect the state's taxpayers and allow for more competition between private carriers.

Conclusion

Florida's insurance market is largely at the mercy of forces out of state government's control: domestic inflation, reinsurance prices impacted by the global economy and foreign catastrophes, and the state's enormous natural risks. However, "social inflation" factors such as fraud and the entrenched culture of litigiousness unique to Florida were allowed to metastasize into the current insurance crisis for far too long.

A year ago, lawmakers finally decided to enact a number of landmark reforms that included tackling the holy grail of litigation incentives by repealing the one-way attorney fee statute and erecting commonsense guardrails around bad faith rules that preserve consumers' ability to hold bad actors accountable. In less than a year, these reforms have already had a meaningful impact on the market itself, including attracting new companies and outside capital, reducing the size of Citizens, and even extending modest rate relief on some policyholders.

Unfortunately, most consumers are still reeling from massive rate increases that are threatening Florida's economic growth, not to mention crippling family budgets. Therefore, it is incumbent on lawmakers to resist any pressure to dilute any of the reforms that are already having a positive impact less than a year after they were enacted. If anything, they can and should build upon them by investing to reduce Florida's actual risk exposure and easing any existing barriers to capital investment.

Indeed, these bold reforms should have come sooner, but if there is ever an opportunity to say, "better late than never," it is in this case.

Endnotes

1 AON: "Reinsurance Market Dynamics," June and July 2023 (https://www.aon.com/getmedia/5bd28313-9c37-461c-b665-69a910bf0a6a/20230628-midyear-rmd.pdf).

2 Florida Office of Insurance Regulation, "New Entities into the Florida Insurance Market, January 1 to October 31, 2023" (https://floir.com/docs-sf/default-source/floir-documents/new-entities/new-entities-as-of-october-31-2023.pdf).

3 Allen, Gregg, NPR: "Feeling the pinch of high home insurance rates? It's not getting better anytime soon," October 26, 2023 (https://www.npr.org/2023/10/26/1208590263/florida-homeowners-insurance-soaring-expensive).

4 Eaglesham, Jean, The Wall Street Journal: "Rising Insurance Costs Start to Hit Home Sales," August 25, 2023 (https://www.wsj.com/real-estate/rising-insurance-costs-start-to-hit-home-sales-d8787f0f).

5 News Service of Florida: "Reinsurance: A key piece of Florida's insurance market is improving—but at a price," July 11, 2023 (https://www.wuft.org/news/2023/07/11/reinsurance-a-key-piece-of-floridas-insurance-market-is-improving-but-at-a-price/).

6 Wall Street Journal: "Insurers are Facing a Steep Rise in Reinsurance Rates," November 8, 2022 (https://www.wsj.com/articles/insurers-are-facing-a-steep-rise-in-reinsurance-rates-11667858056).

7 Citizens Property Insurance CEO Barry Gilway, Senate Banking & Insurance Committee presentation, October 19, 2021 (https://flsenate.gov/Committees/Show/BI/MeetingPacket/5302/9490_MeetingPacket_5302_2.pdf).

8 Letter from Florida Insurance Commissioner David Altmaier to House Commerce Committee Chair Blaise Ingoglia, April 2, 2021 (https://www.insurancejournal.com/app/uploads/2021/04/Florida-OIR-Report.pdf).

9 Insurance Information Institute: "Trends and Insights: Florida's homeowners' insurance crisis," August 2022 (https://www.iii.org/sites/default/files/docs/pdf/triple-i_trends_and_insights_florida_issues_brief_08082022.pdf).

10 See e.g., 5 Highlands Insurance Company v. Kravecas, 719 So.2d 320, (Fla. 3rd DCA 1998); One Call Property Services, Inc. v. Security First Insurance Company, 40 FLW D1196 (Fla. 4th DCA May 20 2015).

11 § 627.428, F.S. (2018); see also § 6626.9373, F.S. (applicable to surplus lines insurers).

12 Chapter 2019-57, Laws of Florida (HB 7065).

13 Insurance Journal: "Special Report: Execs Warn of Impending Florida Market Crisis Over Water Loss Claims," May 3, 2016 (http://www.insurancejournal.com/news/southeast/2016/05/03/407257.htm).

14 Chapter 2021-77, Laws of Florida (SB 76).

15 § 627.351(6), F.S.

16 Florida Insurance Commissioner David Altmaier, Senate Banking & Insurance Committee testimony, September 22, 2021 (https://www.flsenate.gov/media/videoplayer?EventID=1_nty0d3lq-202109221330&Redirect=true).

17 Citizens Property Insurance Corporation: "Policies In Force," as of October 31, 2023 (https://www.citizensfla.com/policies-in-force).

18 Citizens Property Insurance Corporation: "Florida Residential Property Market Share," June 20, 2023 Report (https://www.citizensfla.com/documents/20702/93160/20230630+Market+Share+Report.pdf)

19 Citizens Property Insurance Corporation: "Policies In Force," as of October 31, 2019 (https://www.citizensfla.com/policies-in-force).

20 Citizens Property Insurance CEO Barry Gilway, House Insurance & Banking Subcommittee presentation, October 13, 2021 (https://myfloridahouse.gov/VideoPlayer.aspx?eventID=7415).

21 Reyes, Max, Bloomberg: "Fraud and Litigation Push Florida's Home Insurers Into Insolvency," March 22, 2022 (https://www.bloomberg.com/news/articles/2022-03-22/fraud-litigation-push-florida-s-home-insurers-into-insolvency).

22 Special Session Proclamation, Executive Office of the Governor, April 26, 2022 (https://www.flgov.com/wp-content/uploads/2022/04/SKM_C750i22042614070.pdf).

23 Lodestar is the dominant calculation method for determining attorney fee awards generally by calculating the number of hours an attorney has reasonably spent on a case, a reasonable market-based hourly rate, and multiplying these figures.

24 Chapter 2022-268, Laws of Florida (SB 2-D).

Endnotes (Cont.)

25 Artemis: “Demotech warns 17 Florida carriers of downgrades, state leadership responds,” July 22, 2022 (https://www.artemis.bm/news/demotech-warns-17-florida-carriers-of-downgrades-state-leadership-responds/).

26 Raab, William, Claims Journal: “Demotech Downgrades 3 Carriers in Florida; Regulators Outraged,” August 4, 2022 (https://www.claimsjournal.com/news/southeast/2022/08/04/311975.htm).

27 Raab, William, Insurance Journal: “Weston Insurance becomes fifth Florida insurer to go insolvent this year,” August 4, 2022 (https://www.insurancejournal.com/news/southeast/2022/08/04/678662.htm).

28 “Gallagher Re 1st View Changing Environment” Report, July 1, 2022 (https://www.ajg.com/gallagherre/news-and-insights/2022/july/gallagher-re-1st-view-1-july-2022/), p. 2.

29 Camara, Christian, James Madison Institute: “Road to Recovery: Clearing the Path to Meaningful Reforms in Florida’s Insurance Arena,” November 2022 (https://jamesmadison.org/road-to-recovery-clearing-the-path-to-meaningful-reforms-in-floridas-insurance-arena/).

30 § 624.155, F.S.

31 Chapter 2022-271, Laws of Florida (SB 2-A).

32 Chapter 2023-175, Laws of Florida (HB 799).

33 Chapter 2023-15, Laws of Florida (HB 837).

34 Chapter 2023-176, Laws of Florida (HB 881).

35 Chapter 2023-130, Laws of Florida (HB 1185).

36 Ibid.

37 Chapter 2023-172, Laws of Florida (HB 7052).

38 Carroll, Michael, Florida Record: “New Florida court filings soard to 280,122 in March in runup to signing of tort reforms,” April 12, 2023 (https://flarecord.com/stories/641493382-new-florida-court-filings-soared-to-280-122-in-march-in-runup-to-signing-of-tort-reforms).

39 Kennedy, John, Tallahassee Democrat: “Fear of new limits prompts flood of lawsuits before DeSantis signed restrictions into law,” March 24, 2023 (https://www.tallahassee.com/story/news/politics/2023/03/24/thousands-lawsuits-filed-florida-before-limits-kick-in-desantis/70045705007/).

40 Conversation with Christine Ashburn, Legislative Affairs Director, Citizens Property Insurance Corporation, November 28, 2023.

41 Florida Office of Insurance Regulation, “New Entities into the Florida Insurance Market, January 1 to October 31, 2023” (https://floir.com/docs-sf/default-source/floir-documents/new-entities/new-entities-as-of-october-31-2023.pdf?sfvrsn=ba0522d3_2).

42 Press Release, Office of Insurance Regulation: “OIR Approves New Application to Form a Domestic Property Reciprocal Insurer,” November 21, 2023 (https://floir.com/newsroom/archives/item-details/2023/11/28/oir-approves-new-application-to-form-a-domestic-property-reciprocal-insurer).

43 Press Release: HCI Group Inc., “HCI Group Insurance Subsidiary Assumes Over 53,000 Policies From Citizens,” November 20, 2023 (https://feeds.issuerdirect.com/news-release.html?newsid=4958442651325779).

44 Citizens Property Insurance Corporation: “Historical Results – Personal Lines,” as of November 27, 2023.

45 Citizens Property Insurance Corporation: “Depopulation Update,” as of November 27, 2023.

46 Conversation with Christine Ashburn, Legislative Affairs Director, Citizens Property Insurance Corporation, November 28, 2023.

47 Citizens Property Insurance Corporation: “Policies In Force,” as of October 31, 2019 (https://www.citizensfla.com/policies-in-force).

48 Ibid.

49 Ibid.

50 Citizens Property Insurance Corporation: “Depopulation Update,” as of November 27, 2023.

51 AON: “Reinsurance Market Dynamics,” June and July 2023 (https://www.aon.com/getmedia/5bd28313-9c37-461c-b665-69a910bf0a6a/20230628-midyear-rmd.pdf).

Endnotes (Cont.)

52 Florida Insurance Commissioner Michael Yaworksky, Senate Banking & Insurance Committee testimony, October 10, 2023 (https://flsenate.gov/media/videoplayer?EventID=1_ky7xx6qg-202310101100).

53 Ibid.

54 Congressional Budget Office. "Potential Cost Savings from Pre-Disaster Mitigation Programs," September 2007 (https://www.cbo.gov/sites/default/files/110th-congress-2007-2008/reports/09-28-disaster.pdf).

55 § 627.711, F.S.

56 §215.5586, F. S.

57 Chapter 2013-60, Laws of Florida (SB 1770).

58 § 627.351(6)(a)5.b., F.S.

59 § 161.053, F.S.

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