POLICY BRIEF

Progress in Motion:
Florida's Insurance Reforms Gaining Momentum

Christian Cámara
Senior Fellow, The James Madison Institute

Introduction

Two years after the Florida Legislature took bold steps in attacking the root causes of the state's property insurance crisis, there are signs that the market is stabilizing despite a pair of active hurricane seasons. New insurers have entered the market, capital investment is on the rise, litigation is on the decline, and insurance rates have stabilized and even decreased in some cases. Despite these positive developments, consumers are still feeling the sting of rates far above those in comparable states and insecurity as it relates to the availability of coverage following a series of costly hurricane strikes.

As a newly elected Legislature convenes for the 2025 regular legislative session, it will undoubtedly face pressure to do more to address the justified concerns of Florida consumers. Indeed, lawmakers should take their constituents' concerns to heart, but also be clear about where things stand today as

opposed to a couple of years ago when insurance rates were dramatically increasing, competition was decreasing, and losses due to uncontrolled litigation were fleecing the industry and triggering downgrades and insolvencies.

The following pages will revisit the issues that plagued the Florida insurance market that were allowed to spiral into a full-blown crisis just a few years ago, how the bold reforms enacted in recent years successfully stabilized the market, and why the Legislature should resist any political pressure to dilute or otherwise weaken these reforms.

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.

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,[1] 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.[2]

With the homeowner out of the picture and no longer in a position to negotiate and thus mitigate repair costs, unscrupulous 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 originally designed to protect ordinary consumers, which became easily exploitable.

The constant threat of litigation and massive judgments far beyond policy coverage limits borne out of lawyers manipulating 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, especially in the absence of hurricanes.

HB 7065 – May 2019

After deliberating over several proposed reforms for seven consecutive sessions, the Legislature finally 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.[3]

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 the state. Indeed, even reinsurers expressed concerns as early as 2016 that the issue was trickling into Florida's reinsurance pricing[4] 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 proven 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 inside the four corners of a policy and the laws in force at the time of the loss, not laws passed subsequently; hence, lawyers successfully argued that the pre-reform exploitable rules applied.

This litigation "tail" is why the insurance market 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 enact-

ment of HB 7065.

Had the Legislature enacted those reforms just three years earlier before hurricanes began to strike the state once again, Floridians would have likely enjoyed a far healthier property insurance market these past few years—an expensive lesson in why tough but needed reforms should not be deferred.

SB 76 – May 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 other forms 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.[5]

Though it took effect in July of 2021, the benefits of SB 76 would take years to have a demonstrable effect on the property insurance market as its provisions were not applied retroactively, requiring the market to cycle through the tens of thousands of lawsuits filed before the reforms were enacted.

The result? Insurance rates continued to soar and, to make matters worse, the double-digit rate increases coupled with private insurers' decisions to reduce their exposure forced policies back into state-run property insurer Citizens en masse. Because Citizens premium increases are capped by law,[6] 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 in many parts of the state. Due to that price difference, consumers increasingly and understandably turned to government-run Citizens for their coverage instead of admitted carriers, 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;[7] the following month, that figure hit 10 percent; and fast-forwarding to September 2023, Citizens' policy count spiked to over 1.4 million policies.[8]

SB 2D – May 2022

After continued underwriting losses and multiple insurance company downgrades and insolvencies,[9] Governor Ron DeSantis issued a call for the Legislature to convene a special session on property insurance[10] in May of 2022 to stop the bleeding ahead of the 2022 hurricane season and mid-year reinsurance renewal period. The result was SB 2D, which contained several provisions related to property insurance regulation and tort reform. They included:

- 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.
- 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 on to policyholders and buying time to stabilize the market.
- 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.
- Requiring a claimant to establish that a property insurer breached the contract in order to prevail in a bad faith claim.

- Codifying the lodestar method[11] 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.[12]

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,[13] 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 enormously higher rates. Ultimately, Demotech downgraded only three major Florida insurers,[14] and one went insolvent, becoming the fifth Florida property insurer to be dissolved in 2022.[15]

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."[16]

SB 2A – December 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.

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.

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 the seven companies that became insolvent in 2022 and 2023. That is the bad news. But there is also good news. In the two years since reforms were signed into law by Governor Ron DeSantis, there is evidence that the market has stabilized despite two active hurricane seasons: 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,[17] existing Florida insurers have expanded their book of business, several new property and casualty insurers have been approved to enter the market to start writing new policies,[18] and millions of policyholders will experience no increase in premiums and, in many cases, will actually enjoy a *decrease* in premiums, per the latest insurance rate filings.[19]

The three main reforms in SB 2A were proposals contained in the James Madison Institute (JMI) 2022 publication, "Road to Recovery: Clearing the Path to Meaningful Reforms in Florida's Insurance Arena."[20] 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 pro-

tections against insurers who genuinely 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.[21] 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 intentionally and maliciously 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.[22]

2023 Reforms

When lawmakers reconvened during the 2023 Regular Legislative Session, they enacted additional reforms to build upon those passed during the Special Session three months prior 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;[23]
- Expanding eligibility for the My Safe Florida Home program to harden homes;[24]
- Establishing additional rules on public adjusters and limitations on what they can charge consumers;[25]
- 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;[26] and
- Authorizing OIR to further examine the health and compliance of insurance companies, enhancing pen-

alties 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.[27]

2024 Reforms

By the time the 2024 Regular Legislative Session rolled around, there was already objective evidence of a recovering property insurance market thanks to the bold reforms enacted during 2022. Nevertheless, a number of property insurance-related bills were introduced, and a handful of modest reforms were passed and approved by Governor Ron DeSantis, including:

- Waiving the 1.75 percent premium tax on property insurance and flood insurance policies for one year with the intention of passing those savings on to consumers.[28]
- Appropriating another $200 million for the My Safe Florida Home Program and amending eligibility requirements to prioritize senior citizens.[29]
- Creating a pilot program essentially expanding the My Safe Florida Home Program to include condominium associations and unit owners so that their buildings and units can likewise be inspected and fortified to better withstand storms.[30]
- Allowing Surplus Lines carriers to enter into takeout agreements with Citizens Property Insurance Corporation, but only on non-homesteaded second homes.[31] This change is based on a recommendation in last year's JMI policy brief[32] to open the HO3* market to surplus lines** insurance carriers. As enacted, this particular reform allows the private surplus lines insurance market to assume the hurricane risk of thousands of policies, especially those belonging to out-of-state residents, who currently enjoy Citizens' cheaper, subsidized insurance rates for their vacation homes courtesy of Florida taxpayers.

Market Stabilization

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 had been requesting for years. However, due to the cyclical nature of the insurance industry, it was estimated that it would take anywhere between 18 months and three years to fully derive the benefits of several of those major reforms due to two main factors:

1. Claims filing deadlines: Prior to the sweeping changes 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 windstorm events that struck in the three years preceding the law's change 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.

Improving Litigation Trends

Given the two factors outlined above, many plaintiffs' attorneys availed themselves to the one-way attorney fee provision even after its repeal if: 1) they argued that an insured loss was incurred while covered under a policy that was executed before the repeal took effect, and 2) the claim was filed within a year of the loss event.

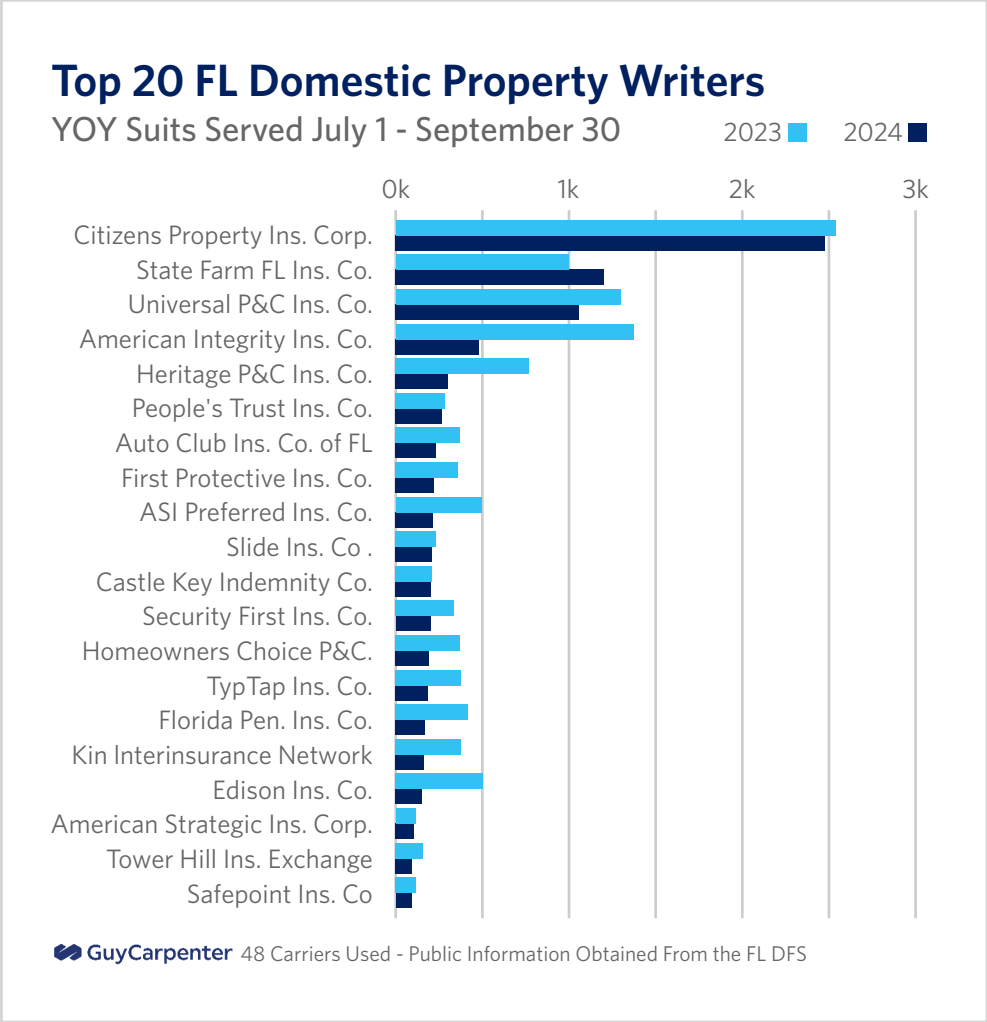
Aware of those timetables, they took advantage of the narrowing window of opportunity to file lawsuits under conditions favorable

* HO-3 insurance policies are the most common form of single-family home insurance that protect policyholders against property damage, legal liabilities and other expenses associated with unexpected disasters.

** Surplus Lines carriers, also known non-admitted or unlicensed insurers, are authorized to write certain property and casualty insurance policies, but are not regulated by the state and thus not backed by the state (FIGA) in cases of insolvency. They are usually specialized insurers covering certain risks that traditional regulated carriers are unable or unwilling to cover.

to them. Last year, courts were overrun by a flood of new litigation filed by lawyers seeking to have their cases heard under rules existing prior to tort reform legislation passed by the Legislature that more narrowly defined what constitutes a bad faith claim, among other provisions.[33] In the days leading up to Governor Ron DeSantis signing these reforms into law, over 280,000 civil cases were filed in Florida courts in March of 2023 alone,[34] more than 23 times the monthly average of 12,000 lawsuits,[35] which itself is a staggering figure. Since lawsuits sometimes take years to resolve, there are still many of those in the pipeline even today, which will no doubt continue to incur massive losses.

Since that explosion of litigation, however, there are growing signs that the number of new lawsuits is dropping precipitously, even in the face of recent hurricane activity. At the time of this publication, there is data available only through the third quarter of 2024. A direct comparison of Q3 2023 and Q3 2024 shows that all but one of Florida's top 20 property insurers, including Citizens, have experienced fewer lawsuits this year compared with the same period last year (see graph above). More specifically, Florida property insurers were sampled for their litigation data, which showed that lawsuit activity through Q3 peaked in 2021 (before the 2022 reforms) at 62,788 lawsuits; this figure dropped for the same period in 2022 to 48,125 lawsuits, again in 2023 to 36,639 lawsuits, and finally in 2024 to 27,923 lawsuits.[36] Viewed more simply, lawsuits decreased by almost 59 percent since the reforms were passed. This reduction trend is especially noteworthy, given the costly impacts of Hurricanes Ian in 2022, Idalia in 2023, and Hermine and Milton in 2024, which would normally trigger additional litigation.



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 18 new property and casualty insurers into the state in 2023[37] and at least nine so far in 2024.[38]

Another positive sign of market growth and stabilization is the number of insurers who have shown interest in participating in the Citizens Depopulation Program. So far, 18 companies have been approved to participate in the take-out program to assume over 1 million Citizens policies through November 2024. These include eight companies who will be taking on the risk of over 235,000 homeowners policies.[39] The result is, Citizens' policy count as of this report's publication stands at just over 1.03 million policies,[40] accounting for a reduction of almost 400,000 policies since last year. The trends are positive, but there is still a long way to go in reducing Citizens exposure: as a reference, Citizens had less than 420,000[41] policies and only 4.5 percent of the market just five years ago.[42]

Another major sign of the market's recovery has been the availability and rate softening of reinsurance since the 2022 reforms. During the critical mid-year reinsurance renewal period in 2023, primary insurers were able to secure their reinsurance and other

risk-transfer coverage more easily than they did in 2022.[43] 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.[44] This year, there was likewise enough reinsurance capacity to meet Florida's demands during the mid-year renewal period, and rates were either flat or down by up to 10 percent.[45]

Rate Relief

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

Before diving into Florida's insurance rate crisis and how reforms have started to make a meaningful impact on them, it is important to put the issue of rates into perspective.

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[46] 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 more than tripled since 2019 to almost $11,000 per year versus the national average of about $2,377.[47] 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.[48] 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.

So while 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, these factors alone do not account for the ongoing dramatic double-digit insurance rate increases Floridians are feeling or the multiple years of insurer net profit losses[49] 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, which the reforms of 2022 largely addressed and are finally being reflected in the rates consumers are paying two and three years later.

Last year, there were already signs that rates were beginning to plateau and even come down for some. One company that entered into a depopulation agreement with Citizens, for example, announced that it would be extending rate *reductions* to about 70 percent of its 53,000 new policyholders compared to the (already artificially low) rates they were paying with Citizens.[50] This year, 15 companies have made 22 filings for rate decreases impacting 1.5 million residential policies, and 29 companies have made 42 filings to keep rates the same for 1.9 million residential policies.[51]

Further Reforms

The positive trends described 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 natural and macroeconomic factors outside Florida's control, these positive impacts have come gradually. There is still room for additional actions that would accelerate market recovery by attracting additional capital, as well as mitigating some of Florida's natural risks.

A. 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,[52] which would eventually translate into lower rates. Florida already requires insurance premium discounts based on certain mitigation measures.[53]

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.[54] 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.

This year, the Legislature appropriated additional funds to the program and expanded it to include condominiums. These are definitely steps in the right direction, and lawmakers should continue finding ways to help more Floridians fortify their homes by

increasing its funding and/or creating a recurring revenue source such as a small home closing surcharge to sustain it. In the meantime, Floridians should avail themselves to this program because even if they do not qualify for grants to fortify their homes, they may very well qualify for a free home inspection, which in many cases may confer insurance discounts on mitigation measures they did not know they had before the inspection.

B. 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 at viable rates.

This concept has already been tried in Florida, although in a very limited way. In 2013 the Florida Legislature restricted[55] 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).[56]

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.[57] 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 resilient 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), and perhaps including structures that repeatedly suffer a total loss within a certain timeframe. 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.

C. Close remaining bad faith and attorney fee loopholes

For decades, the main driver of insurance litigation and the consequent losses to the industry that resulted in rate increases and insolvencies was due to plaintiffs' attorneys exploiting laws and court decisions governing bad faith and one-way attorney fees, which were originally intended to protect average consumers from bad actors in the insurance industry. As a result of the various reforms discussed above, those issues were addressed within the statutes that governed them. However, there are loopholes that need to be plugged to fully address these problems and harmonize all of Florida law with the original intent of the landmark reforms that were enacted in the last five years.

Currently, some attorneys are dodging the guardrails the Legislature established by first filing a civil remedy notice before serving an insurer with an intent to litigate, which undermines a company's ability to accept coverage or issue additional payments. Because civil remedy notices trigger a 60-day "cure" period for the insurance company to address any violation and make payments during that time, attorneys oftentimes will make unreasonable demands inside that window, and if the insurer subsequently reverses any previous denial, wants to make payment, invoke appraisal, or make a settlement offer to pay the insured to prevent a lawsuit in response to the notice of intent to litigate that is filed after the 60-day period, any such goodwill action could result in the attorney filing a lawsuit for bad faith. This is because an insurer making additional payments after the 60-day "cure" period is essentially an admission of having acted in "bad faith," which opens it to the massive payouts and other penalties the plaintiff's attorney desires.

Hence, the Legislature should clarify that an insurer making a payment to the insured in response to a civil remedy notice demand, notice of intent to litigate, or appraisal at the insured's request will not constitute a cause of action for bad faith. Additionally, it should add that an insurer that pays an offer of judgment or proposal for settlement is likewise not subject to civil remedy action.

It is important for the Legislature to be aware of trending litiga-

tion schemes meant to subvert the intent of its reforms before they proliferate into another crisis.

Conclusion

Florida's insurance market is largely at the mercy of forces outside 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 proliferate into a massive crisis for far too long.

In 2022, 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, those reforms had already begun to have noticeable impacts on the market; over two years later, those impacts are not just being observed by industry insiders but, most importantly, they are being felt by actual consumers.

Many Floridians are finally seeing an end to rate increases, and many will even enjoy modest decreases. Therefore, it is incumbent on lawmakers to resist any pressure to dilute any of the reforms that are already having such positive impacts. If anything, they can and should build upon them by investing to reduce Florida's actual risk exposure and closing any legal loopholes that may undermine the progress the insurance market has made.

Endnotes

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