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Florida's Insurance Crisis—Brought by Lawyers

By Jerry Theodorou and Tony Carvajal

Florida homeowners deserve a reasonable property insurance market and should not be used for a litigation shakedown that picks their pockets.

Introduction

Florida's homeowners insurance market is in the emergency room on life support. Homeowners and insurance agents across the state struggle to obtain reasonably priced homeowners insurance. In 2022, the average annual premium for a homeowners insurance policy was $4,231, close to three times the U.S. average of $1,544, and nearly twice Florida's $2,505 average just two years ago.[1] In 2023, premiums are on track to climb even higher. The Florida state legislature held two special sessions in 2022 focused on making insurance more available and affordable. Although the meetings helped raise lawmakers' awareness of the cause of the crisis and introduced measures to arrest further market deterioration, reasonably priced insurance is expected to remain hard to find in 2023.

Crisis conditions in the Florida insurance market are not new. In 1992, Hurricane Andrew devastated southeast Florida. In addition to insured losses of $27 billion ($57 billion in today's dollars), the category 5 storm caused seven Florida-domiciled insurers to fail, led national insurers to leave the state and catalyzed the formation of state-backed insurance entities.[2] Figure 1 outlines the progression of hurricane insurance policy response since 1992.

Hurricane Andrew's destruction was a wake-up call for state regulators to strengthen building codes and a signal for Florida insurers to put adequate reinsurance in place to protect their balance sheets against hurricanes. The Florida legislature also created the state-run Citizens Property Insurance Corp to be the insurer of last resort for Floridians. Citizens filled the hole left by departing insurers, making coverage available to those who could not secure insurance in the private market. What is more, sophisticated risk models were developed to help insurers better understand the risk they were assuming. All these developments enabled insurers to quantify and withstand Florida's natural catastrophe risk. However, another factor has turned Floridian insurance from a risky but manageable market into a sea of red ink: litigation. This paper sheds light on the causes of Florida's insurance woes and proposes what must be done to stabilize the market.

Figure 1: Hurricane Timeline (1992-Present)

- **1992** Hurricane Andrew
- **1993** Florida Hurricane Catastrophe Fund formed
- **2002** Florida Building Code put into effect
- **2002** Citizens Insurance Corp. founded in merger of two insurers of last resort
- **2004** Hurricanes Charley, Frances, Ivan, Jeanne
- **2005** Hurricanes Dennis, Rita, Katrina, Wilma
- **2005–2016** No landfalling hurricanes
- **2016** Hurricanes Hermine, Matthew
- **2017** Hurricane Irma
- **2018** Hurricane Michael
- **2019** Hurricane Dorian
- **2019** AOB reform
- **2022** Hurricane Ian

Crisis Symptoms

The depth and breadth of Florida's insurance crisis is demonstrated by the large number of Florida insurers that failed in the past two years, withdrew entirely from the Florida market or restricted writing new business. The ranks of the fallen even include two publicly traded insurers, UPC and FedNat. Other Florida insurers that failed in the past two years include St. John's, Avatar, Southern Fidelity, Gulfstream and Weston. Insurers that ceased writing new Florida business include Lexington (an AIG company), Heritage, HCI, Southern Oak, Florida Farm Bureau, Universal, Centauri, Bankers, Florida Family and People's Trust. This long list of insurers that have fallen or who are sitting on the sidelines is an alarming sign that the Florida property insurance market is severely broken.

Florida Insurance Claim Payments: The Reality

71%

go to attorneys and public adjusters

<30%

go to policyholders

Frequent Filers

Florida is home to 7 percent of the nation's homeowners policies. Florida is, however, shockingly home to 76 percent of the country's homeowners insurer litigation cases.[3] This profound asymmetry clearly demonstrates that the source of the state's insurance woes is a litigation crisis. In the six-month period from October 2020 to March 2021, there were five Florida attorneys each filing more than 1,000 Florida homeowners insurance lawsuits.[4] A Fort Lauderdale attorney led the pack, filing 2,081 lawsuits against insurance firms in that period.[5]

A shockingly high percentage of insurance claim payments—71 percent—go to attorneys and public adjusters.[6] Policyholders receive less than 30 percent of insurer claim payments. Figure 2 outlines the five main practices pursued by Florida plaintiff attorneys that enrich law firms and drive up the cost of insurance for homeowners.

Figure 2: The Many Faces of Florida Lawsuit Abuse

Main Practices	Description	Action Needed
Assignment of Benefits (AOB)	Homeowners give to third parties, such as roofing contractors, the right to seek payment directly from their insurer	Strict enforcement of new law prohibiting awards of attorneys' fees to an assignee in AOB litigation
One-Way Attorney Fees	Requires insurers to pay the legal costs of plaintiffs who successfully sue over claims	Strict enforcement of new law prohibiting one-way attorney fees
Fee Multipliers	Allows attorneys to earn a multiple of their fee if competent counsel cannot be obtained	Severely restrict use of contingency fee multipliers in awards
Roof Replacement Schemes	Contractors go door-to-door promising homeowners they will get free roof replacement from their insurance company	Insurance policies to provide actual cash value, rather than replacement cost for damaged roof repair
Bad Faith	Insurers are sued when they allegedly fail to act in accordance with terms and conditions of insurance policy	Strict enforcement of SB-2, requiring claimant to establish that insurer breached insurance contract

Source: R Street Analysis

Florida's legal landscape is among the most ethically challenged in the nation when assessing attorney suspensions and disbarments. Florida has 14.5 percent of the nation's attorney disbarments and 9.2 percent of the country's suspensions, both of which are disproportionately high considering that Florida boasts only 6.5 percent of the nation's population.[7]

Previous R Street publications and testimony (at both special legislative sessions in 2022) have argued that the root cause of Florida's insurance crisis is not natural catastrophes; rather, the crisis emanates from out-of-control litigation.[8] There is sufficient capital held by insurance and reinsurance companies to assume Florida's natural catastrophe risk. While insurers can estimate how much capital and premium is needed to cover Florida's hurricane risk, the impact of frivolous litigation places an excessively heavy burden on homeowners, making insurance premiums unreasonably expensive and reinsurance overly costly for insurers.

Financial Sinkhole

A decade ago, Florida insurers were hit with a raft of claims alleging that dissolving subsurface limestone had caused sinkholes and subsequent cracking in home foundations.[9] Today, it is insurance company income statements that are the sinkholes. In 2021, prior to the impact of Hurricane Ian, insurers operating in Florida were losing money. Weather and climate could not be blamed for the red ink, because 2021 was the third full year with no Florida-landfalling hurricanes since Michael in 2018. Figure 3 reveals how unprofitable Florida homeowners insurance was in 2021. It shows the combined ratio, an insurance industry profitability measure calculated by dividing premiums by the sum of losses and expenses. A break-even combined ratio is 100 percent. A combined ratio above 100 percent indicates an underwriting loss; a combined ratio below 100 percent means there was underwriting profit. Insurers also generate investment income, but the investment income contribution to Florida insurers' financials improves the operating ratio by less than five percentage points, which is not enough to bring the bottom line result into the black.

Figure 3: Unprofitability of Florida's Homeowners Insurance, 2021

Insurance Company	Florida Homeowners Combined Ratio 2021
Universal	114%
Tower Hill	266%
HCI	103%
Florida Peninsula	109%
Security First	155%
Southern Fidelity	212%
Florida Family	106%
Southern Oak	109%
Southern Heritage	119%
UPC	126%

Source: Standard & Poor's Capital IQ Pro

Reinsurance

There are three types of Florida homeowners insurers: large national insurers, Florida domestics and Citizens. Larger national companies are jumbo-sized insurers, such as State Farm, Allstate, Nationwide and Progressive, which operate across the country. Their Florida business is often written by a "pup," a company that writes only in Florida. An example of a Florida pup is Castle Key Insurance, an Allstate company.

By contrast, Florida Domestics came into operation after Hurricane Andrew drove many national insurers out of the state. Several Florida-only companies were established to take up the slack. These are known as "take-out" or "depopulation" companies because they were also intended to depopulate or "take out" business from Citizens, the state-run insurer of last resort. There are approximately 30 such insurers. Some are reducing their Florida footprint by expanding into other states to diversify their risk. Five such companies are publicly traded; the remainder are privately held. Florida domestics are heavily dependent on reinsurance, and several are thinly capitalized and highly leveraged, which has led to frequent failures.

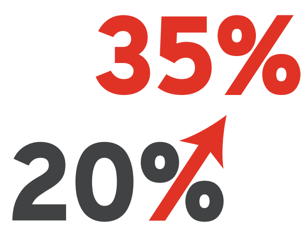
Lastly, Citizens Property Insurance Corp. was established by the state to provide capacity and insurance in a market being abandoned by traditional capital providers. The heavy reliance of Florida domestic insurers on reinsurance is demonstrated in the table below, showing the high percentage of their premium used to buy reinsurance. It shows they reinsure an average 65 percent of their business.

Figure 4: **Domestic Insurer Reinsurance Reliance**

Insurance Company	Reinsurance purchased 2021 (in $ millions)	Direct premium written (DPW) 2021 (in $ millions)	Reinsurance as percent of DPW
UVE	589	1671	35%
UPC	819	1408	58%
Tower Hill	701	854	82%
First Protective	467	702	67%
Heritage	324	652	50%
HCI	114	550	21%
Florida Peninsula	305	467	65%
American Integrity	256	453	57%
Security First	339	392	86%
Peoples Trust	182	276	66%
Olympus	291	230	127%
Average			**65%**

Source: S&P Capital IQ. https://www.spglobal.com/marketintelligence/en/solutions/sp-capital-iq-pro.

There is nothing inherently wrong with buying lots of reinsurance. Reinsurance is a form of capital that helps insurers cap their losses in a claim-heavy year. The problem with Florida insurers being so reinsurance-dependent this year is that the cost of reinsurance for 2023 has gone up sharply. A reinsurance market report issued on Jan. 1, 2023, indicates that reinsurance cost to insurers who did not have property losses impacting the reinsurance layer rose by 15 percent to 35 percent at the Jan. 1, 2023, renewal negotiations.[10] This increase was mainly for reinsurance contract renewals with the large European reinsurers, such as Munich Re, Swiss Re and Hannover Re. On June 1, there will be another reinsurance renewal period for Florida risk, mainly involving Bermuda and Lloyd's reinsurers. Supply and demand factors are behind reinsurance costs rising. Reinsurance supply is curtailed in 2023 because many reinsurance providers reduced their appetite for Florida risk, or are pulling out of the market altogether. The reinsurers cutting back on Florida reinsurance include Axis Re, Vantage, Tokio Marine Kiln, AXA XL, Sirius Point and Fidelis. It is too early to tell whether reinsurance costs will rise by a similar amount in June, but the steep January 1 increase means insurers are paying more for their reinsurance, and this cost will necessarily be passed on to individual policyholders.



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Retro Reinsurance

Just as reinsurance is insurance for insurance companies, there is reinsurance for reinsurance companies, called retrocessional reinsurance, commonly called "retro." Retro enables reinsurers to reduce their volatility in the event of severe loss events. In 2023, many of the traditional providers of retro are pulling out of the market or severely reducing the amount of retro capacity they offer. Among retro providers cutting back are Berkshire Hathaway, Canopius, Ascot, QBE Re and RenRe's Upsilon vehicle. With the law of supply and demand working in favor of sellers, the cost of retro at the Jan. 1, 2023 renewals rose by an estimated 50 percent.[11]

Florida Reforms

The bills introduced and passed in the May and December 2022 special legislative sessions included valuable measures aimed at arresting the continued deterioration of the state's homeowners insurance market.[12] The most significant and impactful measures are curbs on one-way attorney fees and on the assignment of benefits. The introduction of new reinsurance structures partially fills the hole in reinsurance supply. Today's paucity of reasonably priced reinsurance is not a cause of the state's crisis. It is a symptom, the cause of which is the state's endemic lawsuit crisis.

Excessive, frivolous litigation has placed an unfair financial burden on the back of every Floridian home or condominium owner. The key to restoring Florida's insurance market to health, with choice and competition, is root and branch eradication of lawsuit abuse. The way to bring insurance premiums down to manageable levels is to bring down loss costs, and the only way to bring down loss costs significantly is to once and for all put a stop to abusive, exploitative and unethical litigation.

The growing Republican majority in the Florida Senate and House could mean a more supportive environment for execution of the new measures. In 2022, the Republican majority grew in both houses, from 24R/16D in 2020 to 28R/12D in 2022, and in the Senate and from 71R/46D in 2020 to 78R/42D in the House in 2022. Roofing and remediation contractor associations are already filing a suit to undo the gains made in the 2022 special sessions.[13]

Solutions Identified: Legislature Must See Reforms Through

The effects of the property insurance market crisis are painfully felt—with insurers failing or leaving the state, and premiums for Floridians spiraling upward.

Conclusion

The principal cause of Florida's failing property insurance market has been identified. It is catastrophically burdensome, unmerited litigation. The effects of the crisis are painfully felt—with insurers failing or leaving the state and premiums for Floridians spiraling upward. The solutions have been identified as well in two special legislative sessions in 2022. Now it is up to the legislature to stand firm and maintain resolve to see the reforms through. Florida homeowners deserve a reasonable market and should not be used for a litigation shakedown that picks their pockets.

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