

Will Florida Be Able to Reform Its Homeowners' Insurers' Market as Natural Disasters Increase?

Alexander Borghese

The Haverford School, USA

ABSTRACT

This opinion piece explores the challenges facing Florida's homeowners insurance market amidst increasing natural disasters. Florida's geographic vulnerability to hurricanes, floods, and other climate-related events has led to soaring insurance premiums and the exit of multiple insurers from the state. The average homeowner's insurance cost in Florida has risen significantly, with premiums in 2023 more than triple the national average. Hurricane Andrew in 1992 marked a pivotal moment in the state's insurance history, exposing the industry to massive losses and triggering a wave of insurer insolvencies. Since then, the market has struggled to recover, with recent years marked by high litigation costs and abuse of the legal system through Assignment of Benefits (AOB) and one-way attorney fees. These practices have fueled a surge in lawsuits, driving up insurance costs while benefiting lawyers more than policyholders. To address these issues, Florida passed legislation in 2022 aimed at curbing AOB abuses and reducing litigation. Senate Bill 2-A eliminated AOB agreements for property insurance and curtailed attorney fee provisions. While these reforms offer a promising start, the market still faces legal pressures that threaten its stability. The document concludes that further reforms are needed to address these systemic challenges and restore confidence in Florida's insurance market.

Case Study of Florida and Its Natural Disasters

This opinion piece examines the state of Florida and its homeowners insurance market as a case study. The State of Florida extends for 65,758 square miles with 8,436 miles of coastline and is home to 22 million residents - making it the third most populous state in the United States. Surrounded by the waters of the equatorial Atlantic and the Gulf of Mexico, Florida is experiencing more frequent and increasingly severe natural disasters, including floods, hurricanes, and other climate-related events (ProgramBusiness, 2023). Danielle Lombardo, Chair of the Global Real Estate Practice at Lockton, said that Florida is "the most risky piece of land in the world for insurers from a catastrophe standpoint" (Rozsa & Werner, 2022).

Insurance Companies are Leaving the Florida Market

With each new hurricane, Florida's homeowner's market weakens as insurance companies leave and the prices rise. The average cost of primary homeowners' insurance in Florida increased 45% from 2017 to 2022, and 16% from 2021 to 2022 (Koch & Blake, 2023). The average homeowners' insurance premium in Florida rose to \$6,000 in 2023, more than triple the national average (Welsch, 2023).

Fliegman identifies Hurricane Andrew in 1992 as the event that permanently change the Florida insurance industry's appreciation of the potential large size of hurricane-related losses (Fliegelman, 2023). Andrew's \$27 billion in damage (\$59 billion in 2024 dollars), resulted in 11 insurance company insolvencies (NOAA, 2018).

Following Andrew, many insurance companies remaining in Florida limited their market exposure, others withdrew from the market entirely, and many went insolvent. Since 2021, 15 insurance companies have stopped

writing new policies and 9 additional insurers have become insolvent including 3 of the 10 largest property insurers in Florida (McDaniel, 2023; MyFloridaCFO, 2023).

Growing Abuse of the Home Owner's Insurance System

The abuse of the legal system has resulted in low levels of insurance payments to homeowners. The Florida Office of Insurance Regulation, reported that in the five years between 2017 and 2021, Florida insurers paid \$51 billion. Nearly three-quarters (71%) of the payouts were for attorneys' fees and public adjusters; just 8% covered claimants' compensation (Furtwangler, 2023).

The assignment of benefits, one-way attorney fees, and multiplier effects, were originally adopted as consumer protections. In theory, the assignment of benefits agreements enables contractors, who have greater expertise in damage remediation and in working with insurance companies, to negotiate fairer settlements, while one-way attorney fees and contingency fee multipliers were intended to level the playing field between policyholders and deep-pocketed insurers (Koch & Blake, 2023). However, these factors have resulted in a surge of claims, an unwarranted increase in the amount of litigation, and the skyrocketing of insurance costs

Under assignment of benefits (AOB), a policyholder assigns insurance policy benefits to a third party, typically a construction contractor, without the insurer's consent. An AOB would commonly be used when a homeowner has an insurance claim and contacts a third-party contractor for assistance such as a roofer, plumber, or water remediation company.

In practice, AOBs make it easy, inexpensive, and profitable for contractors and attorneys to sue insurers. In the aftermath of Hurricane Irma in year 2017, insurers were hit with more late-reported and re-opened insurance claims than for any prior natural disaster on record, as word spread that even minor roof damage could profitably be argued after the fact to justify full roof replacements from insurers and significant attorney fees for plaintiff attorneys (Koch & Blake, 2023). In 2018, Florida had more than 153,000 AOB lawsuits, a 94% increase over a five-year period (Seaman et al., 2020).

One-way attorney fee provisions was seen as necessary leverage for policyholders to engage in fair disputes against highly-sophisticated and well-funded insurance companies. The prevailing rule in the United States is that each party in litigation must pay his or her own attorney's fees and costs, regardless of the case's outcome. Limited exceptions include when a statute authorizes an award of legal fees to the prevailing party in a lawsuit (Johnson v Omega Ins. Co, 2013). Such fee-shifting statutes are designed to encourage injured parties to enforce their rights when the cost of litigation, absent a fee-shifting statute, would discourage them from doing so (Florida Justice Institute, n.d.). Florida Statute §627.428 granted insured policyholders the right to collect in addition reasonable attorneys' fees when they secured through a lawsuit any amount against their insurers (Murrin, 2023a). However, the unintended consequence of these statutes was an increase in litigation.

The third factor is contingency fee multipliers. In some cases, especially those governed by fee-shifting provisions, a court may decide that the fees to be awarded to a plaintiffs' attorney do not represent a reasonable fee given the time, effort, and risk in bringing the lawsuit. In contingent fee cases, the attorney taking on the representation typically agrees to waive any compensation if his or her client does not prevail. The Florida Supreme Court has instructed trial courts that they may adjust the amount a prevailing plaintiff's attorney may be awarded in light of that contingency risk, and apply a multiplier of 1.5 times to 3.0 times of such fees based on the likelihood of success at the outset of the case (Florida Justice Reform Institute, n.d.).

Florida Efforts to Stabilize the Market

By 2022, the State of Florida has intervened to stabilize the homeowners' insurance market because the general tort environment related to property insurance had led to thousands of frivolous lawsuits that have driven up insurance

costs resulting in rising premiums. Florida leads the nation in homeowners insurance-related litigation. Despite having fewer than 7% of total homeowners' claims, Florida had 76% of the countrywide homeowners' lawsuits in 2021 (Fenske, 2022).

In December 2022, the Florida legislature passed Senate Bill 2-A which was intended to significantly reduce litigation of first-party property claims. The Insurance Act eliminated Assignment of Benefits agreements executed under a property insurance policy, effective January 1, 2023.

The Insurance Act also amended Florida's statutory fee-shifting provision, expressly stating that "there is no right to attorney fees" in a lawsuit arising under a residential or commercial property insurance policy (Insurance Act, §627.428 2022; Insurance Act §626.9373, 2022). Furthermore, the Act removed all references to attorneys' fees from the pre-suit notice provision in Florida Statute §627.70152, effectively eliminating its use as a fee-shifting mechanism (Murrin, 2023b).

The Insurance Act also increased the threshold for bad faith lawsuits, reduced the claim reporting deadline for policyholders from two years to one for new or reopened claims and from three years to one and a half years for any supplemental claims.

Conclusion

This is a promising start at legal reform, however, there are other areas such as aggressive plaintiff bar, specialized marketing companies, lead litigators, specialized litigation consulting, TPL funding that continue to increase legal penalties against insurers that make Florida a less desirable insurance market.

Acknowledgments

I would like to thank my advisor for the valuable insight provided to me on this topic.

References

Fenske, T. (2022). *Calling on the legislature to hold a special session regarding property insurance*, Office of Florida Governor Ron De Santis [Press release], <https://www.flgov.com/2022/04/26/calling-on-the-legislature-to-hold-a-special-session-regarding-property-insurance/>

Florida Justice Institute. (n.d.). *Contingency fee multipliers*, Retrieved May 23, 2024 from, <https://www.citizensfla.com/documents/20702/11345463/White+Paper+on+Contingency+Fee+Multipliers+-+Jan.+2019+.pdf/0733f251-48ce-445a-9d18-fd22ab08543d>

Fliegelman, A. (2023). Wind, fire, water, hail: What is going on in the property insurance market and why does it matter? *The OFCR Blog*, <https://www.financialresearch.gov/the-ofr-blog/2023/12/14/property-insurance-market/>

Insurance Act, Fla. Stat §626.9373 (2022). <https://www.flsenate.gov/laws/statutes/2022/626.9373>

Insurance Act, Fla. Stat §627.428 (2022). <https://www.flsenate.gov/laws/statutes/2022/627.428>

Furtwangler, R. (2023). Understanding the rising costs of homeowners insurance in Florida, *HBKW Wealth Advisors*, <https://hbkswealth.com/2023/10/understanding-the-rising-costs-of-homeowners-insurance-in-florida/>

Johnson v Omega Ins. Co., FLA 200 So. 3d 1207 (2006), 1214 <https://casetext.com/case/johnson-v-omega-ins-co-2>.

Koch, A. C. & Blake, D. (2023). The Florida property insurance market, <https://www.milliman.com/en/insight/florida-property-insurance-market-ran-aground>

McDaniel, J. (2023, July 12). Citing Climate change risks, Farmers is latest insurer to exit Florida, *Washington Post*, <https://www.washingtonpost.com/climate-environment/2023/07/12/farmers-insurance-leaves-florida/#>

Murrin, M. G. (2023a). Part I: The shift in Florida insurance litigation with the end of one-way attorneys' fees, *Insurance Industry Legal Blog*, Retrieved August 17, 2023, from <https://www.jimersonfirm.com/blog/2023/09/part-i-the-shift-in-florida-insurance-litigation-with-the-end-of-one-way-attorneys-fees/>

Melissa G. Murrin, (2023b). Part II: The shift in florida insurance litigation with the end of one-way attorneys' fees, *Insurance Industry Legal Blog*, Retrieved August 17, 2023, from <https://www.jimersonfirm.com/blog/2023/09/part-i-the-shift-in-florida-insurance-litigation-with-the-end-of-one-way-attorneys-fees/>

MyFloridaCFO (2023). Rehab and liquidation, Retrieved August 17, 2023 from, <https://www.myfloridacfo.com/division/receiver/companies>

National Oceanic and Atmospheric Association [NOAA]. (2018). Costliest U.S. tropical cyclones tables updated, Retrieved August 17, 2023 from, <https://www.nhc.noaa.gov/news/UpdatedCostliest.pdf>

ProgramBusiness (2023) Status of the property insurance market in Florida, <https://programbusiness.com/news/status-of-the-property-insurance-market-in-florida/>

Rozsa, L. & Werner, E. (2022) Florida's insurance woes could make Ian's economic wrath even worse, *Washington Post*, <https://www.washingtonpost.com/climate-environment/2022/09/30/ian-florida-economy-insurance>

Seaman, S., Burke, K., Selby, J., & Hernandez, P. (2020). Legal trends behind 'social inflation' in insurance, *Law 360*, <https://www.hinshawlaw.com/assets/htmldocuments/Articles/The%20Legal%20Trends%20Behind%20Social%20Inflation%20In%20Insurance.pdf>

Welsch, A. (2023). Costs aren't coming down yet, *Barron's*, Retrieved August 17, 2023 from, <https://www.barrons.com/advisor/articles/florida-homeowners-insurance-cost-f92ec195>