

Steve Pociak on Sinkholes



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Steve Pociak: Consumers, taxpayers lose in Citizens sinkhole debacle

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My View

The debacle involving Citizens Property Insurance Corp. and the sinkhole rates that it charges consumers points out one clear thing — that Citizens is not a true insurance company.

It is a socialized mechanism that undercuts the private market and maintains artificially low rates because it has the power to tax all policyholders when it suffers losses. The losses are here. Over the past four years, sinkhole claims have exploded — especially in the Sinkhole Alley area of north Hillsborough, Pasco and Hernando counties. In 2010, Citizens, the major insurer in the area, took in about \$30 million in sinkhole premiums and paid out \$245 million in sinkhole losses — a clearly unsustainable situation.

When the Legislature directed Citizens to move its rates to more actuarially sound levels, Citizens' board recommended sharp increases in sinkhole rates, as high as \$4,000 to \$5,000 in some areas of Sinkhole Alley. The public uproar was understandable, considering the tough economy. However, this sinkhole insurance is not for catastrophic ground collapse — that is already covered by mandatory homeowners' insurance policies. Instead, these higher premiums are for optional sinkhole insurance that covers cracks in walls and driveways — something that every home has.

The root cause of the high price of optional insurance is that, without definitive signs of problems such as visible ground openings and structural shifts, it is hard to know if cracks were caused by sinkholes or merely normal settling, or whether damage may eventually make a house uninhabitable. This uncertainty creates an opportunity for lawyers, public adjusters and sinkhole remediation specialists to worry and entice homeowners into filing claims, pressuring insurance companies to make payments to avoid expensive litigation. This drives up the cost of insurance for everyone else.

So while the focus of attention has been mostly on the high sinkhole rates that Citizens sought to charge in the Sinkhole Alley area north of Tampa, precious little attention was paid to one of the main factors that is causing Citizens to have such huge sinkhole losses — the virtual "cottage industry" that encourages disputable claims and lawsuits and costs taxpayers tens of millions of dollars. Ironically, those lawyers, public adjusters and sinkhole remediation specialists were among those most vocal in getting residents upset about the proposed rate hikes, when in fact these special interests had a direct hand in driving the huge losses that caused the need for a rate hike in the first place.

How big is the sinkhole business? In February 2011, the Office of Insurance Regulation testified before the House Insurance & Banking Subcommittee that, between 2006 and 2009, trial attorneys and public adjusters made \$21.4 million in fees in closed sinkhole cases — attorneys made \$13.2 million and public adjusters made \$8.2 million. In 2010, OIR reported that the average payment to an attorney in a closed sinkhole case was \$32,237, and the average payment to a public adjuster was \$22,384 per sinkhole case.

Additionally, little attention has been paid to the fact that members of the sinkhole cottage industry are positioning themselves as advocates for consumers in fighting sinkhole rate increases, when, in fact, they are part of what's driving Citizens' sinkhole losses. The former state insurance consumer advocate is now working for a law firm in the business of suing insurance companies. One group that has been rallying against sinkhole reforms, Policyholders of Florida, has its website registered by a law firm in the business of suing insurance companies.

There is a significant case before the Florida Supreme Court deciding the question of whether Citizens can be sued for bad faith — in other words, for failing to act in good faith in settling claims with its policyholders. Trial attorneys oppose this, since they want the state insurer to be a bottomless pit — with Citizens pushing its losses to other homeowners and auto insurance policyholders in the form of assessments on their insurance policies.

If the recent sinkhole rate filing debacle is any guidance, Citizens is not a true insurance company.

The bottom line is that the current system puts consumers in the worst of situations — it encourages a parasitic cottage industry to seek questionable and sometimes fraudulent claims, which depletes Citizens' financial reserves. Because Citizens is not a true insurance company, its losses are pushed to taxpayers in the form of higher assessments. In the end, consumers and taxpayers pay more, and the cottage industry financially benefits by posing as a consumer advocate.

Additional Facts

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