

# It's Time to Shutter Sham Litigation!

By [BG Murphy](#)

Breaking news—Florida has a massive litigation issue, costing Florida's consumers hundreds of millions of dollars annually. Well, this isn't breaking news, but it is one of the most significant factors impacting the health of Florida's property insurance market and economy. To quote Disney's *Beauty and the Beast*, "it's a tale as old as time."

Earlier this year, Florida Insurance Commissioner David Altmaier responded to a data request from Florida House Commerce Committee Chair Blaise Ingoglia. The data, a product of the National Association of Insurance Commissioners' Market Conduct Annual Summary, contained in the report showed the severity of Florida's litigation problem. In 2019, Florida only represented 8.16 percent of property insurance claims filed nationally; however, Florida represented over 76.45 percent of litigated property insurance claims nationally. And, 2019 was no outlier. The previous four years showed very similar data. Between 2013 and 2020, Florida's property insurers paid out \$15 billion in claims cost. Eight percent of the \$15 billion was paid to consumers, while 71 percent was paid to attorneys.

In 2021, Florida's Legislature took a massive first step towards containing the out-of-control litigation with the passage of significant attorney fee reform. Senate Bill 76, which FAIA's own Sen. Jim Boyd championed, contained several meaningful provisions, including overturning one hundred years of precedence with a change to Florida's "one-way" attorney fee statute. Although there are signs that the new law is having positive impacts on the market, the industry financials continue to paint a bleak picture. Florida's property insurers reported over 1.22 billion in underwriting losses in the first three quarters of 2021 alone. Much of this is attributed to the frequency and severity of litigated claims.

As FAIA continues to work with Florida's Legislature to build on reforms from the last session, one of the association's longtime members, Sen. Doug Broxson, has appealed to Florida's highest court to investigate the litigation crisis in Florida. In a letter to the Florida Supreme Court, Sen. Broxson questioned the behavior of some attorneys as "antithetical to my understanding of the professionalism required by lawyers." Additionally, Broxson noted that the volume of lawsuits filed by certain law firms likely put them at odds with attorneys' governing rules. The Department of Financial Services' service of process database shows how bad the situation has gotten with single attorneys filing as many as 2,000 cases per year.

Broxson's request did not fall on deaf ears. (I'd be lying if I said I didn't have to ask FAIA's legal eagle, Laura Pearce, what vexatious meant.) The workgroup, which consists of eight judges, was tasked with investigating rules and statutory provisions relating to vexatious and sham litigation in non-criminal cases; surveying the judges, court staff, and clerks on the utilization of these provisions; and, to provide recommended changes to Florida law and rules based on their findings. The vexatious and sham litigation statutes and rules aimed to protect defendants and limited court resources against burdensome and costly legal proceedings that are unwarranted, without cause, or filed solely to harass the opposing party.

Although most of the public's interest has focused on the impacts on the property insurance market, the reality is that the litigation crisis has negatively impacted the entire insurance marketplace. Along with champions such as Sen. Broxson and Sen. Boyd, FAIA continues to advocate for reforms that protect consumers and support a healthy and competitive insurance market.

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