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Florida's Trial Bar Hurricane

Legal abuse threatens insurers that absorb extreme weather risk.

Governor Rick Scott has done heroic work to shore up the finances of Florida's catastrophic insurer before the next big hurricane makes landfall. But storm or no storm, taxpayers will still get whacked with Category 5 bills if Tallahassee doesn't shut down the state's latest plaintiffs attorney get-rich-quick scheme.

Sunshine State lawyers, in cahoots with local contractors, are crisscrossing the state encouraging homeowners to sign away their insurance rights, a practice known as "assignment of benefits," or AOB. In exchange, the lawyers promise to handle property repairs and fight with the insurance company for settlement paydays.

What the lawyers aren't telling homeowners is what happens next. A 1950s-era Florida statute dictates that insurers are liable for all attorneys fees if they lose in court or settle for an amount more than the insurer's initial offer. So the trial bar is filing inflated claims to coerce pre-emptive settlements from insurers that want to avoid even more expensive, protracted legal battles.

State courts have turned a blind eye to this abuse, and insurance costs are predictably soaring. Citizens Property Insurance Corp., Florida's state-owned insurer of last resort, has seen litigated claims jump to 45% of all claims in 2016, up from 12% in 2011. The average paid loss on all non-wind water claims clocked in at \$19,966 last year, up from \$10,301 in 2011—and that number is expected to climb this year as more AOB lawsuits are filed.

Private insurers are seeing similar trends and are passing the costs along to policyholders. Florida's Office of Insurance Regulation says insurers may need to raise rates 10% or more annually "just to break even." In Miami-Dade County, an owner of a \$150,000 home pays, on average, a \$2,678 annual premium for Citizens' multi-peril insurance, more than twice the national average, and that's rising to \$2,926 soon. Citizens isn't allowed to raise rates more than 10% a year, but private insurers can.

How long can homeowners bear double-digit premium hikes? Florida's insurance commission is worried that consumers will eventually drop private insurance, or private insurers will close up shop—or both, especially in Southeast Florida, where AOB abuse is concentrated. Citizens would then be forced by law to step in and offer a below-market rate policy. Taxpayers would absorb the losses.

This man-made fiscal hurricane is swirling even as Citizens has offloaded more than a million policies to private insurers and shrunk its market share over the past few years. In 2011 the insurer estimated it would have to levy a \$11.6 billion tax on Florida policy holders to cover claims from a catastrophic hurricane. Today, Citizens is running a surplus and could absorb the cost itself thanks to recent weather luck and Gov. Scott's reforms.

That sunny scenario won't last if AOB abuse continues. Florida's legislative session started last week, and a bill introduced by Republican Senator Dorothy Hukill proposes common-sense reforms. But legislative fixes have been thwarted in recent years by the state's powerful plaintiffs-lawyer lobby, and competing bills would bless the trial bar's practices. Florida homeowners already face risks from hurricanes, hail storms and other natural phenomena. Do they need to face the unnatural disaster known as plaintiffs attorneys too?

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