UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

Gale Force Roofing and Restoration, LLC, Plaintiff, v. Julie I. Brown, in her official capacity as Secretary of the Florida Department of Business and Professional Regulation, Defendant.	No.: 21-cv-00246-MW-MAF

DEFENDANT'S MEMORANDUM IN OPPOSITION TO GALE FORCE'S MOTION FOR A PRELIMINARY INJUNCTION

Contractors are not insurance adjusters. The State has a substantial—and even a compelling—interest in ensuring that contractors do not hold themselves out as insurance adjusters. Given the different roles they play, and the different ways in which they must be regulated, Florida defines them differently and regulates them differently through entirely separate provisions of the Florida code.[1]

The harm that arises when unscrupulous contractors act like insurance adjusters is self-evident and empirically demonstrable; well-meaning, yet unsuspecting, Floridians are conned into making insurance claims for roof repairs

[1] *Compare* Fla. Stat. § 626.854 ("'Public adjuster' defined") *with id.* § 489.105(3) (definition of "[c]ontractor").

that often never get completed and were not necessary in the first place. And as the contractors complete their bilk of the insurance companies, the insurance companies are forced to raise premiums for some Florida homeowners and to deny coverage outright for others.

In furtherance of this compelling interest, Florida's elected leaders took a modest step. They prohibited contractors from advertising in a narrowly drawn way—i.e., via electronic or written medium, and only for the purpose of encouraging a consumer to make a claim against an insurance company for roof repairs. The prohibition does not extend to all advertising. Nor does it prevent a well-meaning contractor from advising a homeowner that a roof might need repairs. Simply put, it does no more than keep contractors in their designated lane and out of the insurance-adjuster business.[2]

[2] The insurance-adjuster business is heavily regulated. For example, Florida law imposes licensing, continuing education, and ethics requirements on adjusters, and even regulates the form and content of all contracts for public adjuster services. *See* Fla. Stat. §§ 626.864(1), 626.865, 626.869, 626.878, 626.8796. Florida law also prohibits public adjusters from making certain statements in their advertisements—"[a] statement or representation that invites an insured policyholder to submit a claim when the policyholder does not have covered damage to insured property[;] . . . by offering monetary or other valuable inducement[;] . . . [or] by stating that there is 'no risk' to the policyholder by submitting such claim." *Id.* § 626.854(7)(a). Finally, it is a third-degree felony in Florida to hold oneself out to be a public adjuster without being licensed by the Department of Financial Services. *Id.* § 626.8738.

For this reason and those that follow, the Act challenged by Gale Force is quintessential commercial-speech regulation that easily complies with the First Amendment. Gale Force's motion, while long on rhetoric, falls far short of demonstrating otherwise. Because (1) the State has not only a substantial, but even a compelling, interest in preventing insurance fraud and the costs it inflicts, (2) the Act advances this interest, and (3) the Act is narrowly drawn, it does not violate the First Amendment. Gale Force's motion for a preliminary injunction should, accordingly, be denied.

BACKGROUND

A. In the State of Florida, insurance fraud is a lucrative business. It occurs in approximately 10 percent of property-casualty claims, and it costs the insurance industry more than $40 billion. ECF No. 13-1.[3] These costs are passed on to the

[3] The information provided at ECF No. 13-1 is also available on the Florida House of Representative's webpage at https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3100&Session=2021&DocumentType=Meeting%20Packets&FileName=ibs%202-3-21.pdf.

District courts may take judicial notice of information published on government websites and publicly available documents. *See, e.g.*, *Williams v. Lew*, 819 F.3d 466, 473 (D.C. Cir. 2016) (taking judicial notice of GAO Report, discussing market effects of "debt limit impasses," available on GAO website); *Cannon v. District of Columbia*, 717 F.3d 200, 205 n.2 (D.C. Cir. 2013) (taking judicial notice of contents of document, available on D.C. Retirement Board's website, summarizing operation of pension fund for its beneficiaries); *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1278 (11th Cir. 1999) (taking judicial notice of relevant public documents required to be filed with SEC, for purpose of determining what statements the documents contain, and not to prove truth of documents'

insured consumer. *Id*. As a practical matter, this means that the average family pays between $400 and $700 more per year in premiums than it otherwise would. *Id*.

Families in Florida are well aware of this phenomenon, and they are just as well aware of the most aggressive culprits. Thirty-six percent of Floridian homeowners say that, when hiring contractors, fraud is one of their biggest concerns. *Id*. And this concern is well founded. Florida's Insurance Consumer Advocate[4] reports that the highest number of complaints it receives are related to home improvement and construction. *Id*.

For this reason, Florida's Insurance Consumer Advocate launched an educational initiative in the Spring of this past year. ECF No. 13-2. Dubbed "Demolish Contractor Fraud: Steps to Avoid Falling Victim," the initiative warned

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contents, when considering motion to dismiss in securities fraud case, was permitted to take); *see also* 1 Weinstein's Federal Evidence § 201.12 (2018) (collecting similar cases from the Second, Fourth, Ninth, and Tenth Circuits).

[4] Florida's Office of the Insurance Consumer Advocate was established by the Florida Legislature in 1992. Appointed by Florida's Chief Financial Officer "but not otherwise under the authority of the department or of any employee of the department," Fla. Stat. § 627.0613, the Insurance Consumer Advocate, among other things, "works with a wide range of public and private partners, stakeholder and consumer groups to propose solutions to insurance issues that focus on the best interests of Florida consumers," *see* Office of the Insurance Consumer Advocate, MyFloridaCFO, https://www.myfloridacfo.com/division/ica/icaofficeoverview (last visited Jun. 27, 2021). Relevant to the instant case is the presentation given on February 3, 2021, by current Insurance Consumer Advocate Tasha Brown to the Florida House Insurance and Banking Subcommission titled "Consumer Impact and Trends in Property and Automobile Insurance." The PowerPoint slides from that presentation are attached at ECF No. 13-1.

that "[m]any . . . contractors often engage in practices that inflate and exaggerate claims while also acting as unlicensed public adjusters." *Id*. According to the initiative, "[h]ere's the scenario":

- You are approached at home (solicited) by a contractor who offers you payment or a gift card to conduct a free inspection of your roof. Upon completing the inspection, the contractor advises you of damage to your roof.

- You have never noticed the damage but you trust the contractor as a professional. The contractor states that your roof is badly damaged and that you need a new roof.

- He states that your insurance company will cover the cost and there is no expense to you. He promises to communicate directly with your insurance company and handle the claim on your behalf.

- The contractor asks you to electronically sign a document on a tablet authorizing the work on your roof. The contractor scrolls to the signature area of the document and you sign.

- Unbeknownst to you, you do not need a roof replacement; however, you have signed an Assignment of Benefits, a legal contract that transfers your insurance rights to the contractor. This authority allows the contractor to file an insurance claim on your behalf, receive direct payment of your insurance payouts, file a lawsuit against the insurance company and more. Because you signed the form electronically, you do not have a copy and do not know exactly what you've signed.

- The contractor may charge the insurance company an unnecessary or inflated amount for the roof.

- The contractor may never complete the work but is still able to be paid by the insurance company due to the requirement included on the contract you signed.

- The contract may also limit you from communicating directly with your insurance company, which means, if you have questions about the insurance claim, you will not be able to ask the company.

- Oftentimes, these fraudulent, possibly unlicensed, contractors target neighborhoods and take advantage of multiple homeowners. The contractor may complete the roof of one home to use as an example or proof to other homeowners.

Id.[5]

While educating consumers regarding contractor-based insurance-fraud red flags, Florida's Insurance Consumer Advocate also began to urge State lawmakers to enact property-insurance reforms geared towards slowing down a scheme that, as described by the Insurance Consumer Advocate during her presentation to the House Insurance and Banking Subcommission, skyrockets insurance rates for some consumers while leaving others entirely unable to find coverage for their homes. *See* ECF No. 13-1.

B. Florida's elected leaders listened, and on June 11, 2021, Governor DeSantis signed into law Chapter 2021-77, Laws of Florida (the "Act"). The Act created a new Florida Code provision titled "Prohibited property insurance

[5] "[A] district court may rely on affidavits and hearsay materials which would not be admissible evidence for a permanent injunction," "if the evidence is 'appropriate given the character and objectives of the injunctive proceeding.'" *Levi Strauss & Co. v. Sunrise Int'l Trading, Inc.*, 51 F.3d 982, 985 (11th Cir. 1995) (quoting *Asseo v. Pan Am. Grain Co.*, 805 F.2d 23, 26 (1st Cir.1986)).

practices." Fla. Stat. § 489.147. Relevant here, the Act forbids any "contractor" from "directly or indirectly" (1) "[s]oliciting" (defined as "contacting") "a residential property owner by means of a prohibited advertisement." *Id*. § 489.147(2)(a). The Act defines "[p]rohibited advertisement," in turn, as:

- "any written or electronic communication"
- "by a contractor"
- "that encourages, instructs, or induces a consumer to contact a contractor or public adjuster"
- "for the purpose of making an insurance claim for roof damage."

Id. § 489.147(1)(a). The term "prohibited advertisement" "includes, but is not limited to, door hangers, business cards, magnets, flyers, pamphlets, and e mails." *Id.* The Act subjects "contractor[s] who violate[]" the Act to disciplinary proceedings and potential fines "up to $10,000 . . . for each violation." *Id.* § 489.147(3).

C. Eleven days after the Governor signed the Act, and roughly a week before its effective date, Gale Force filed a one-count complaint alleging that "[t]he Act (specifically, Section 1) is a First Amendment violation." ECF No. 1 ¶ 36. Alongside of its complaint, Gale Force filed an Emergency Motion for Preliminary Injunction. ECF No. 4. This Court has set argument on Gale Force's motion for Tuesday, June 29, 2021. *See* ECF Nos. 11-12.

ARGUMENT

Gale Force's motion correctly recites the standard for justifying a preliminary injunction. To do so, Gale Force must demonstrate: (1) that "it has a substantial likelihood of success on the merits," (2) that it will suffer "irreparable injury . . . unless the injunction issues," (3) that "the threatened injury to" it "outweighs whatever damage the proposed injunction may cause the" State, and (4) "if issued, the injunction would not be adverse to the public interest." *Siegel v. LePore*, 234 F.3d 1163, 1175 (11th Cir. 2000). Gale Force also correctly acknowledges that it bears the burden of establishing each element.

That is the sum-total of what Gale Force's motion gets right. "In this Circuit, '[a] preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly established the burden of persuasion' as to each of the four prerequisites." *Id.* at 1176 (quoting *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998)) (internal citations omitted)). Gale Force can do no such thing.

As an initial matter, it is unlikely to succeed in this case because it has not demonstrated a legally cognizable injury-in-fact for purposes of Article III standing. The Act prohibits certain "*advertisements*," which include "*written*" and "*electronic* communication" that "encourages, instructs, or induces a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage," Fla. Stat. § 489.147(1)(a) (emphases added). Gale Force's complaint,

motion for a preliminary injunction, and declaration fail entirely to establish that it communicates through these mediums or that its "advertisements" include any reference whatsoever to insurance claims.

On the merits, it is unlikely to succeed because the Act's regulation of purely commercial speech is examined via the lens of intermediate, not strict, scrutiny, and viewed through the correct tier, the Act plainly survives. Gale Force, moreover, has not established that it is in danger of suffering any injury whatsoever, let alone an irreparable one, based on the same reasons why it has no Article III standing. Finally, both the State's and the public's interest would be threatened should the Court preliminarily enjoin a consumer-protection law intended to address widespread insurance fraud that is costing the average Florida household hundreds of dollars per year in increased premiums. *See* ECF No. 13-1.

I. GALE FORCE IS NOT LIKELY TO SUCCEED ON THE MERITS OF ITS FIRST AMENDMENT CLAIM.

A. Gale Force has not carried its burden of demonstrating that it has Article III standing to bring this claim.

The "irreducible constitutional minimum" of Article III standing "contains three elements." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559 (1992). They are (1) a concrete and particularized injury-in-fact, (2) a causal connection to the defendant, and (3) the ability of the Court to redress the injury. *Id*. As the party

invoking this Court's jurisdiction, Gale Force "bears the burden" of demonstrating that it has met each element. *Id*.

Gale Force has not done so. As noted above, the Act prohibits licensed contractors from making certain "advertisements," which the Act defines as "*written*" and "*electronic* communication[s]" that "encourage[], instruct[], or induce[] a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage," Fla. Stat. § 489.147(1)(a) (emphases added). At no point in any of Gale Force's filings, however, has Gale Force alleged that it has, or plans to, disseminate the sort of advertisements prohibited by the Act.

According to Mr. Alexander Dewey, whose affidavit is attached to Gale Force's motion for a preliminary injunction, "Gale Force regularly conducts inspections of homes in the state of Florida and informs homeowners whether their roof system has suffered damage and is in need of replacement." ECF No. 4-1 ¶ 5. Plainly, nothing in the Act prohibits this conduct or communication. Mr. Dewey goes on to explain in his affidavit that "Gale Force advertises to homeowners in the state of Florida that it conducts these inspections and is willing to inspect residential roof systems." *Id.* It is equally clear that the Act imposes no restrictions on such an advertisement. Finally, Mr. Dewey asserts that after the homeowner engages Gale Force and after Gale Force conducts the roof inspection, "*if damage is found*, Gale Force encourages homeowners to contact their insurance carrier to determine if the

damage is covered under their residential insurance policy." *Id.* ¶ 6 (emphasis added).

Mr. Dewey has not averred that when "Gale Force encourages homeowners to contact their insurance carrier," *id*., it does so via "written" or "electronic communication," Fla. Stat. § 489.147(1)(a). Moreover, he has not averred that Gale Force encourages owners to do so in any advertisement. To the contrary, the subsequent advice that Gale Force gives to homeowners *after* they have hired Gale Force and *after* Gale Force has inspected their roofs does not fit the ordinary, commonsensical understanding of the word "advertisement."[6] Indeed, the discussions that Gale Force wants to continue are entirely unlike the "door hangers, business cards, magnets, flyers, pamphlets, and e-mails" that the Act provides as examples of prohibited advertisements.[7] *See* Fla. Stat. § 489.147(1)(a).

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[6] *See* Advertisement, New Oxford English Dictionary, 24 (3d Ed. 2010) (defining "advertisement" as "a notice or announcement in a public medium promoting a product, service, or event or publicizing a job vacancy"); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* §6 (2012).

[7] *See Yates v. United States*, 574 U.S. 528, 544 (2015) (applying, among other tools of statutory construction, the "*noscitur a sociis*" to find that a fish is not a "tangible object" for purposes of the Sarbanes-Oxley Act); *see also* Scalia & Garner, *Reading Law* §31 (describing *noscitur a sociis* canon to mean "[w]hen several nouns or verbs or adjectives or adverbs—any words—are associated in a context suggesting that the words have something in common, they should be assigned a permissible meaning that makes them similar," and noting that "[t]he canon especially holds that 'words grouped in a list should be given related meanings'").

Simply put, Mr. Dewey's assertions do not support his conclusion that Gale Force will "have to cease conducting business as it currently operates in order to comply with this new statute," ECF No. 4-1 ¶ 7. Accordingly, Gale Force has not carried its burden of establishing the requisite injury-in-fact. And for that reason, it is not likely to succeed on the merits of its claims.

B. The Act does not violate the First Amendment.

Before proceeding, it is of paramount importance to correct several misunderstandings throughout Gale Force's filings. The Act does not, as Gale Force apparently believes, prevent contractors from offering "***any*** communication (in any written medium or spoken word) that in any manner directs a homeowner to contact the contractor that results in making a ***valid*** insurance claim for roof damage." ECF No. 4, at 2 (double emphases in original). Instead, it limits "prohibited advertisement[s]" to "*written* or *electronic* communication," and it includes a non-exhaustive list of the sort of forms that such advertisements might take. Fla. Stat. § 489.147(1)(a) (emphases added). Nor does it "create[] a catch-all provision that penalizes ***anyone*** . . . ." ECF No. 4, at 3 (double emphasis in original).[8] It is not

[8] Gale Force is flatly wrong that the Act would prohibit a neighbor from encouraging a homeowner to repair or replace a roof and to submit an insurance claim. ECF No. 4, at 14. The allegation that the Act would "criminalize an attorney that answers a call from a client that was recently impacted by a hurricane if that attorney advised the homeowner to contact a public adjuster or a contractor to make an insurance claim and get the damage repaired" is equally spurious. ECF No. 1 ¶ 11. The proscribed conduct at issue in this litigation is the use of a "prohibited

apparent at all how Gale Force has found in the Act such a sweeping, universal prohibition. The State submits that the Act includes no such provision. At bottom, the provision of the Act at issue in this case is an advertising regulation, and nothing more.

As the Court determines the constitutionality of the Act, it must judge it by its terms. And the plain terms prohibit one category of individual (contractors) from using two communication mediums (written or electronic) in a way the Legislature has found particularly likely to result in property-insurance fraud. This modest restriction survives First Amendment scrutiny.

i. Because the Act regulates commercial speech, it is not subject to strict scrutiny.

According to Gale Force, "[t]he Act will necessarily . . . outlaw [its] *advertising* that it can assist homeowners recover from the life-interrupting damage Mother Nature brings to Florida each year." ECF No. 4, at 4 (emphasis added). Later in its motion, Gale Force appears to concede that its challenge falls squarely in the "commercial speech context." *Id*. at 8. Because the Act plainly applies only to commercial speech, Gale Force is mistaken when it asks this Court to determine the constitutionality of the Act via strict scrutiny.

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advertisement," which is defined as a communication "*by a contractor*." Fla. Stat. § 489.147(1)(a) (emphasis added).

The Supreme Court has "always been careful to distinguish commercial speech from speech at the First Amendment's core." *Fla. Bar v. Went for It*, 515 U.S. 618, 623 (1995). For this reason, "[c]ommercial speech" is provided with only "a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values." *Id*. In other words, it "is subject to modes of regulation that might be impermissible in the realm of noncommercial expression." *Id.*

The gravamen of Gale Force's argument is the U.S. Supreme Court's content-based line of cases, which culminated in *Reed v. Town of Gilbert*, 576 U.S. 155 (2015). *Reed*, however, left intact the commercial-speech test first articulated in *Central Hudson Gas and Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980), and later applied in *Florida Bar*, 515 U.S. 618, both of which establish that a regulation of purely commercial speech (i.e., "prohibit[ing] certain "advertisement[s]," Fla. Stat. § 489.147(2)(a)) does not trigger strict scrutiny. Indeed, courts throughout the country have "rejected" the precise "notion" advanced by Gale Force in this case—i.e., "that *Reed* altered *Central Hudson*'s longstanding intermediate scrutiny framework." *Contest Promotions, LLC v. City & Cty. of S.F.*, 874 F.3d 597, 601 (9th Cir. 2017).[9]

[9] *Accord Reagan Nat'l Advertising of Austin, Inc. v. City of Austin*, 972 F.3d 696, 709 (5th Cir. 2020); *Adams Outdoor Advert. Ltd. P'ship v. City of Madison*, 2020 U.S. Dist. LEXIS 60861, at *36 (W.D. Wis. 2020); *Reagan Nat'l Advertising*

That *Florida Bar* and *Central Hudson* still govern renders meritless Gale Force's reliance on *Wollschlaeger v. Governor*, 848 F.3d 1293, 1308 (11th Cir. 2017) (en banc), and *Otto v. City of Boca Raton*, 981 F.3d 854, 861 (11th Cir. 2020). Both cases addressed restrictions on the speech of licensed medical professionals, not regulation of advertisements. Nowhere in *Wollschlaeger* did the *en banc* Eleventh Circuit even mention *Central Hudson*, and it cited *Florida Bar* only while discussing "[t]he quantum of empirical evidence needed to satisfy heightened judicial scrutiny."[10] *See Wollschlaeger*, 848 F.3d at 1312. *Otto*, in turn, cited *Central Hudson* once to reiterate that "[l]esser-protected categories" of speech "include commercial speech," and then to state that the commercial-speech "categor[y]" was *not* "a good fit for the ordinances" at issue in that case because the ordinances did not regulate commercial speech, and because nobody had argued that commercial speech was at issue. 981 F.3d at 865.

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of Austin, Inc. v. City of Cedar Park, 343 F. Supp. 3d 674, 679 (W.D. Tex. 2018); *GEFT Outdoor LLC v. Consol. City of Indianapolis & Cty of Marion, Ind.*, 187 F. Supp. 3d 1002, 1016-17 (S.D. Ind. 2016); *Peterson v. Vill. Of Downers Grove*, 150 F. Supp. 3d 910, 928-29 (N.D. Ill. 2015), *aff'd on other grounds sub nom. Leibundguth Storage & Van Serv., Inc. v. Vill. Of Downers Grove*, 939 F.3d 859 (7th Cir. 2019); *Cal. Outdoor Equity Partners v. City of Corona*, 2015 U.S. Dist. LEXIS 89454, at *24-*25 (C.D. Cal. July 9, 2015).

[10] Contrary to Gale Force's mistaken view, "heightened scrutiny" is not the same as "strict scrutiny." *See Wollschlaeger*, 848 F.3d at 1301 ("[B]ecause these three provisions do not survive heightened scrutiny . . . , we need not address whether strict scrutiny should apply to them.").

This is a commercial-speech case. For that reason, neither *Reed*, nor *Wollschlaeger*, nor *Otto*, are apposite. This case is governed by *Central Hudson* and *Florida Bar*, which means that the Act at issue is subject only to intermediate scrutiny.

ii. The Act survives intermediate scrutiny.

Intermediate scrutiny for commercial speech involves three inquiries. "First, the government must assert a substantial interest in support of its regulation." *Fla. Bar*, 515 U.S. at 623. "Second, the government must demonstrate that the restriction on commercial speech directly and materially advances that interest." *Id*. "And third, the regulation must be narrowly drawn." *Id*. (internal citation marks omitted). Under these elements, the Act is plainly constitutional.

A. The State's interest in regulating licensed contractors and preventing consumer exploitation is paramount, and the U.S. Supreme Court has recognized as much. Indeed, it has lent its imprimatur to the principle that "States have a *compelling* interest in the practice of professions within their boundaries." *Goldfarb v. Va. State Bar*, 421 U.S. 773, 792 (1975) (emphasis added). Moreover, "as part of their power to protect the public health, safety, and other valid interests," States have broad power to establish standards for licensing practitioners and regulating the practice of professions." *Id*. This includes licensed contractors like Gale Force.

The State also has a compelling interest in ensuring that Florida homeowners are protected from skyrocketing insurance premiums or, worse, the inability to secure homeowner's insurance at all. These concerns are neither abstract nor hypothetical. As discussed above, contractor-driven insurance fraud costs insurance companies more than $40 billion. ECF No. 13-1. This translates into hundreds of dollars in increased premiums for some homeowners, and denial of coverage for others. *Id*. In Florida, this sort of fraud is particularly rampant given the concern over hurricane-driven roofing damage and the propensity for unscrupulous contractors to take advantage of homeowners who cannot readily assess whether their roofs need service. *Id*. Plainly, the State's interest in regulating this sort of commercial speech is substantial.

B. Just as plainly, the Act directly and materially advances the State's interest in preventing this sort of fraud. Specifically, it prevents licensed contractors from advertising, in either written or electronic format, to homeowners for the purpose of encouraging the homeowner to make an insurance claim for roof damage. Preventing this sort of activity advances a solution to the documented problems that arise when licensed contractors are allowed free reign to deviously persuade homeowners into submitting flimsy insurance claims.

In other words, "the harms . . . are real and" the Act "will in fact alleviate them to a material degree." *Fla. Bar*, 515 U.S. at 626. The veracity of the harms was

established in the Legislative record, much of which is affixed to this filing. *See, e.g.*, ECF Nos. 13-1, 13-3. Specifically, on February 3, 2021, Florida's Insurance Consumer Advocate gave a presentation to the House Insurance and Banking Subcommittee. Titled "Consumer Impact and Trends in Property and Automobile Insurance," the presentation detailed how the "[t]otal cost of insurance fraud (non-medical)" equals "$40 billion+"; "[c]osts the [average] family between $400 and $700/year of increased premiums"; and "[o]ccurs in approx.10% of property-casualty claims." ECF No. 13-1. It documented the consumer impact, including increased insurance rates, lack of insurance availability, and even increased mortgage payments across Florida. *Id*. Finally, it provided a number of anecdotes, including how a "direction-to-pay" agreement left a homeowner with a "gutted home," work that was never completed, and a $100,000 lien. *Id*.

The record before the legislature neatly tracks the "summary contain[ing] data—both statistical and anecdotal"—that the U.S. Supreme Court "found" to "satisf[y] the second prong of the *Central Hud*son test" when it decided *Florida Bar*. *See* 515 U.S. at 626, 628. Simply put, preventing licensed contractors from taking part in the sort of advertisement that invites insurance fraud does, as a matter of the empirical record and common sense, materially advance the State's interest.

C. With respect to the third prong, the Supreme Court has emphasized that "the differences between commercial speech and noncommercial speech are

manifest." *Id.* at 632. As a result, the "least restrictive means test has no role in the commercial speech context." *Id*. What the Supreme Court requires, instead, "is a 'fit' between the legislature's ends and the means chosen to accomplish those ends." *Id*. This "fit" need not be "necessarily perfect, but reasonable"; it need not necessarily represent "the single best disposition but one whose scope is in proportion to the interest served, that employs not necessarily the least restrictive means but . . . a means narrowly tailored to achieve the desired objective." *Fla. Bar*, 515 U.S. at 632.

Under this standard, the Act is plainly narrowly drawn. Disrupting the "scenario" described above, *see supra* at 5-6, is the "ends" of the Legislature in passing the Act. Forbidding licensed contractors from *advertising* in a manner that encourages homeowners to make insurance claims is the "means chosen to accomplish those ends." *Fla. Bar*, 515 U.S. at 632. One could argue that the Act is indeed the "best disposition" for accomplishing the Legislature's goals. *Id.* Plainly, however, the Act is a "reasonable" way of doing so. *Id.*

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The State has a substantial interest in stemming the tide of property insurance fraud. The Act materially advances that goal. And the Act is narrowly tailored. For a commercial-speech regulation, the First Amendment demands nothing more. Accordingly, Gale Force cannot show that it is substantially likely to succeed on the

merits of its First Amendment claim, and it has failed to carry its burden under this prong.

II. GALE FORCE IS IN NO DANGER OF IRREPARABLE INJURY.

The Eleventh Circuit has made plain that "[a] showing of irreparable injury is 'the sine qua non of injunctive relief.'" *Siegel*, 234 F.3d at 1176 (quoting *Northeastern Fla. Chapter of the Ass'n of Gen. Contractors v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990)).[11] Here though, Gale Force has failed to establish that it is about to suffer *any* injury (let alone an irreparable one). As noted above, the Act prohibits certain "*written*" and "*electronic*" "*advertisement[s]*" that "encourage[], instruct[], or induce[] a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage," Fla. Stat. § 489.147(1)(a) (emphases added). Gale Force's complaint, motion for a preliminary injunction, and declaration fail to establish that it communicates whatsoever through these mediums or that it references insurance claims whatsoever when it advertises. For this reason, it cannot satisfy this prong of the preliminary-injunction inquiry.

III. ISSUING GALE FORCE'S REQUESTED PRELIMINARY INJUNCTION WOULD LACERATE BOTH THE STATE'S AND THE PUBLIC'S INTEREST IN STEMMING THE FLOOD OF CONTRACTOR-DRIVEN INSURANCE FRAUD.

Finally, in this case, the interest of the State and the interest of the public coincide. For the State, regulating licensed contractors, *see Goldfarb*, 421 U.S. at

[11] Gale Force is mistaken to argue otherwise. *See* ECF No. 4, at 6-7.

792, and preventing the harms associated with insurance fraud are substantial—and indeed compelling—interests. Animating these two interests serves the public good, as doing so ensures that Florida homeowners are neither denied homeowners insurance nor subject to exorbitant premiums due to insurance fraud. Enjoining the Act would render a blow to the State's attempts to advance these interests.

As noted above, Florida's Insurance Consumer Advocate has been working every possible angle, from consumer advocacy to urging legislation, in an effort to end crisis-level insurance fraud in the State of Florida. Given the documented toll that these sorts of schemes levy on the coffers of the State and its citizens, it strains credulity to suggest (as Gale Force has) that requiring licensed contractors to advertise in a way less susceptible to predatory behavior somehow disserves the public's interest. For these reasons, these two prongs weigh heavily in favor of denying Gale Force's motion.

CONCLUSION

For the foregoing reasons, the Court should deny Gale Force's emergency motion for a preliminary injunction.

Respectfully submitted by:

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Dated: June 27, 2021

LOCAL RULE 7.1(F) CERTIFICATION

Pursuant to Local Rule 7.1(F), the attached Opposition to Gale Force's Motion for Preliminary Injunction contains words 5,062 words, excluding the case style, signature block, and any certificate of service.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served to all counsel of record through the Court's CM/ECF system on the 27th of June, 2021.

/s/ Mohammad O. Jazil
Mohammad O. Jazil

EXHIBIT 13-1

FLORIDA'S INSURANCE CONSUMER

ADVOCATE

FLORIDA DEPARTMENT OF FINANCIAL SERVICES

Tasha Carter

CONSUMER IMPACT AND TRENDS IN PROPERTY AND AUTOMOBILE INSURANCE

HOUSE INSURANCE AND BANKING SUBCOMMITTEE

FEBRUARY 3, 2021

TASHA CARTER

Florida's Insurance Consumer Advocate

CFO JIMMY PATRONIS

INSURANCE CONSUMER ADVOCATE

FLORIDA'S INSURANCE CONSUMER ADVOCATE
DEPARTMENT OF FINANCIAL SERVICES
Tasha Carter

CREATED BY FLORIDA LEGISLATURE IN 1992

- Section 627.0613, Florida Statutes

OVERSEEN BY THE CHIEF FINANCIAL OFFICER

- Appointed by Chief Financial Officer Jimmy Patronis
- Reports Directly to the Chief Financial Officer
- Works Independently from the Department of Financial Services

ROLE OF THE INSURANCE CONSUMER ADVOCATE

- Official Representative of FL's Insurance Consumers
- Examine Rate and Form Filings Submitted to OIR
- Recommend Actions to the Legislature, Department and OIR

KEY FOCUS AREAS

FLORIDA'S INSURANCE CONSUMER ADVOCATE
DEPARTMENT OF FINANCIAL SERVICES
Tasha Carter

BALANCING FLORIDA'S INSURANCE MARKET

- Viable, Competitive Market and Accessible, Affordable Insurance

IDENTIFYING TRENDS AND IMPROVING MARKET PRACTICES

- Market Reports
- Consumer Complaints
- Industry Stakeholders

INCREASING CONSUMER AWARENESS AND EDUCATION

- An Informed Consumer Can Be Their Own Best Advocate

KEY FOCUS AREAS

FLORIDA'S INSURANCE CONSUMER ADVOCATE
DEPARTMENT OF FINANCIAL SERVICES
Tasha Carter

ASSISTING CONSUMERS WITH INSURANCE-RELATED MATTERS

- One-on-One Assistance

ENGAGING LEGISLATIVELY TO REPRESENT FLORIDA'S INSURANCE CONSUMERS

- Florida Legislature
- Chief Financial Officer
- Department of Financial Services
- Office of Insurance Regulation
- Division of Administrative Hearings
- Appointed Boards

Serving Floridians by actively engaging with consumers and working with stakeholders to find consumer-focused solutions on all insurance matters.

FACTORS IMPACTING INSURANCE MARKET

FLORIDA'S INSURANCE CONSUMER ADVOCATE
DEPARTMENT OF FINANCIAL SERVICES
Tasha Carter

INSURANCE FRAUD

- Total cost of insurance fraud (non-medical) = $40 billion+
- Costs the avg. family between $400 and $700/year of increased premiums
- Occurs in approx.10% of property-casualty claims

CONTRACTOR SOLICITATION FRAUD

- 36% of homeowners say fraud is one of their biggest concerns when hiring contractors
- The highest number of complaints related to residential property insurance is home improvement/construction

FACTORS IMPACTING INSURANCE MARKET

FLORIDA'S INSURANCE CONSUMER ADVOCATE
DEPARTMENT OF FINANCIAL SERVICES
Tasha Carter

LOSSES FROM MULTIPLE HURRICANES

- Hurricane Irma - $17b+ estimated insured losses; 1m+ claims
- Hurricane Michael - $9b+ estimated insured losses; nearly 160,000 claims

INCREASED REINSURANCE COST

- 15% increase in purchases
- 57% increase in cost
- Causes: catastrophe claims, water claims, loss creep

INCREASED LITIGATION

- 27,416 lawsuits in 2013; 85,007 in 2020 (all companies)
- 45% of lawsuits were filed in the tri-county area (2020)

CONSUMER IMPACT

FLORIDA'S INSURANCE CONSUMER ADVOCATE
DEPARTMENT OF FINANCIAL SERVICES
Tasha Carter

INCREASED INSURANCE RATES

- 3rd highest property insurance premiums in country - $3,643 avg. premium
- Represent nearly 8% of premium of all premiums written in the U.S.

LACK OF AVAILABILITY

- Stricter Underwriting Guidelines
- Reduced Capacity
- Retreating from High-risk Areas

INCREASED MORTGAGE PAYMENTS

- Insurance included in mortgage payment resulting in an overall increase

CONSUMER STORIES

FLORIDA'S INSURANCE CONSUMER ADVOCATE
DEPARTMENT OF FINANCIAL SERVICES
Tasha Carter

- **ORGANIZED CONTRACTOR SCHEME IN SW FLORIDA COMMUNITY**
  - 32 Claims; 43 AOB's; Invoices totaling $816,000
- **ROOFING CONTRACTOR SOLICITATION IN THE VILLAGES**
  - Door-to-Door Solicitations; 420% increase in roofing permits
- **DIRECTION TO PAY AGREEMENT**
  - Gutted home; Failed to complete the work; Filed $100,000 lien against the insured property
- **HOMEOWNER UNABLE TO FIND COVERAGE**
  - Living on fixed income; 2 options that are unaffordable

FLORIDA'S INSURANCE CONSUMER

ADVOCATE

FLORIDA DEPARTMENT OF FINANCIAL SERVICES

Tasha Carter

OFFICE OF THE INSURANCE CONSUMER ADVOCATE

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TASHA CARTER

FLORIDA'S INSURANCE CONSUMER ADVOCATE

@YourFLVoice

EXHIBIT 13-2

What is contractor solicitation and how does it work?

Here's the scenario:

You are approached at home (solicited) by a contractor who offers you payment or a gift card to conduct a free inspection of your roof. Upon completing the inspection, the contractor advises you of damage to your roof.

You have never noticed the damage but you trust the contractor as a professional. The contractor states that your roof is badly damaged and that you need a new roof.

He states that your insurance company will cover the cost and there is no expense to you. He promises to communicate directly with your insurance company and handle the claim on your behalf.

The contractor asks you to electronically sign a document on a tablet authorizing the work on your roof. The contractor scrolls to the signature area of the document and you sign.

Unbeknownst to you, you do not need a roof replacement; however, you have signed an Assignment of Benefits, a legal contract that transfers your insurance rights to the contractor. This authority allows the contractor to file an insurance claim on your behalf, receive direct payment of your insurance payouts, file a lawsuit against the insurance company and more. Because you signed the form electronically, you do not have a copy and do not know exactly what you've signed.

The contractor may charge the insurance company an unnecessary or inflated amount for the roof.

The contractor may never complete the work but is still able to be paid by the insurance company due to the requirement included on the contract you signed.

The contract may also limit you from communicating directly with your insurance company, which means, if you have questions about the insurance claim, you will not be able to ask the company.

Oftentimes, these fraudulent, possibly unlicensed, contractors target neighborhoods and take advantage of multiple homeowners. The

contractor may complete the roof of one home to use as an example or proof to other homeowners.

This deliberate deception is insurance fraud perpetrated by a contractor = contractor solicitation fraud.

To learn more about contractor solicitation fraud and how you can protect yourself and your neighbors, review the components of **Demolish Contractor Fraud: Steps to Avoid Falling Victim.**

- What's Right and What's Wrong
- Insurance Fraud
- Intentional vs. Unintentional Fraud
- Telling the Story - Consumer Experiences

- Just The Facts - Insurance Fraud Statistics
- Red Flags
- Consumer Tips
- Resources

What's Right and What's Wrong?

How to tell if a contractor is breaking the law:

WHAT'S RIGHT	WHAT'S WRONG
Require consumer to pay insurance deductible	Waive an insurance deductible or offer services at no charge for filing an insurance claim
Advertise construction services to potential clients	Mislead consumers using untrue or deceptive advertisements
Discuss, explain and offer a quote for construction or repair of property	Negotiate or influence the settlement of an insurance claim on behalf of a consumer
Obtain a building permit from local officials, as required	Construct or repair property without the appropriate permit or disregard local ordinances

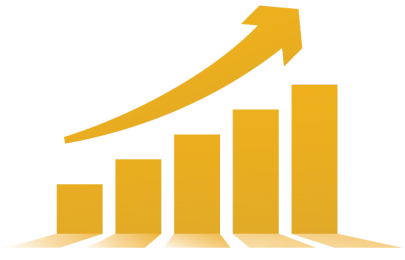
View the complete list of permissible and prohibited actions by a contractor and the violations involved: Contractor Prohibitions

What constitutes fraud?

Fraud of any kind impacts both the victims and the industry its perpetrated against. Per the Insurance Information Institute, “insurance fraud is a deliberate deception perpetrated against or by an insurance company or agent for the purpose of financial gain. Fraud may be committed at different points in the transaction by applicants, policyholders, third-party claimants, or professionals who provide services to claimants.”

How does fraud impact consumers and the insurance industry?

Insurance fraud costs more than $40 billion annually, which costs the average family between $400 and $700 a year in increased premiums. Insurance fraud tactics and schemes result in insurance companies paying higher negotiated settlements or paying additional costs to litigate these claims. Those expenses are typically passed on to consumers in the form of:

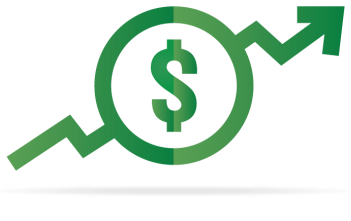


Increased Insurance Rates

- Florida has the 3rd highest property insurance premiums in the country - $3,643 average premium
- Represent nearly 8% of all premiums written in the U.S.

LACK OF AVAILABILITY

- Companies unwilling to insure homes:
  - Older than 15 years
  - Roof older than 10 years
  - Located in specific areas
- Excluding coverage for specific damage



INCREASED MORTGAGE PAYMENTS

- Increased insurance rates included in escrow account resulting in an increase in mortgage payments

When an insurance company pays a contractor for work, the homeowner expects the contractor to complete the work in a manner that is of high quality. If a contractor receives an insurance payment and abandons the job, intentionally does poor quality work or uses subpar materials, the contractor is committing insurance fraud. These acts of insurance fraud can impact you, as a consumer, significantly. If your home is left unfinished, you may have to pay out-of-pocket to complete or re-construct the repairs. Additionally, more damage can occur as a result of poor work or subpar materials used. An insurance company will not pay for the same damage twice - if you, or a third-party on your behalf, file an insurance claim for damage for a specific timeframe, the insurance company will not pay to repair that damage again.

Do your due diligence before hiring a contractor. Review Consumer Tips and Red Flags to decrease the likelihood of working with a contractor looking to commit insurance fraud.

You'll also want to avoid unintentionally being involved in insurance fraud. Insurance fraud can be an intentional act, or you may unknowingly commit or be involved in fraud.

INTENTIONAL

- Filing an insurance claim for...
  - Stolen property that was not taken
  - Hurricane damage that was not caused by a storm

- Setting your home or property on fire
- Inflating the cost of a damaged item
- Allowing someone to use your insurance benefits for services
- Falsely claiming to be injured in a vehicle accident

UNINTENTIONAL/UNKNOWINGLY

- Your contractor files an insurance claim for damage that doesn't exist or for more damage than exists
- Your vehicle repair company charges your insurance for new parts when used parts were installed
- Your agent provides false information on your insurance application to obtain a better rate
- A repair person replaces your windshield and charges your insurance company when there is little or no damage

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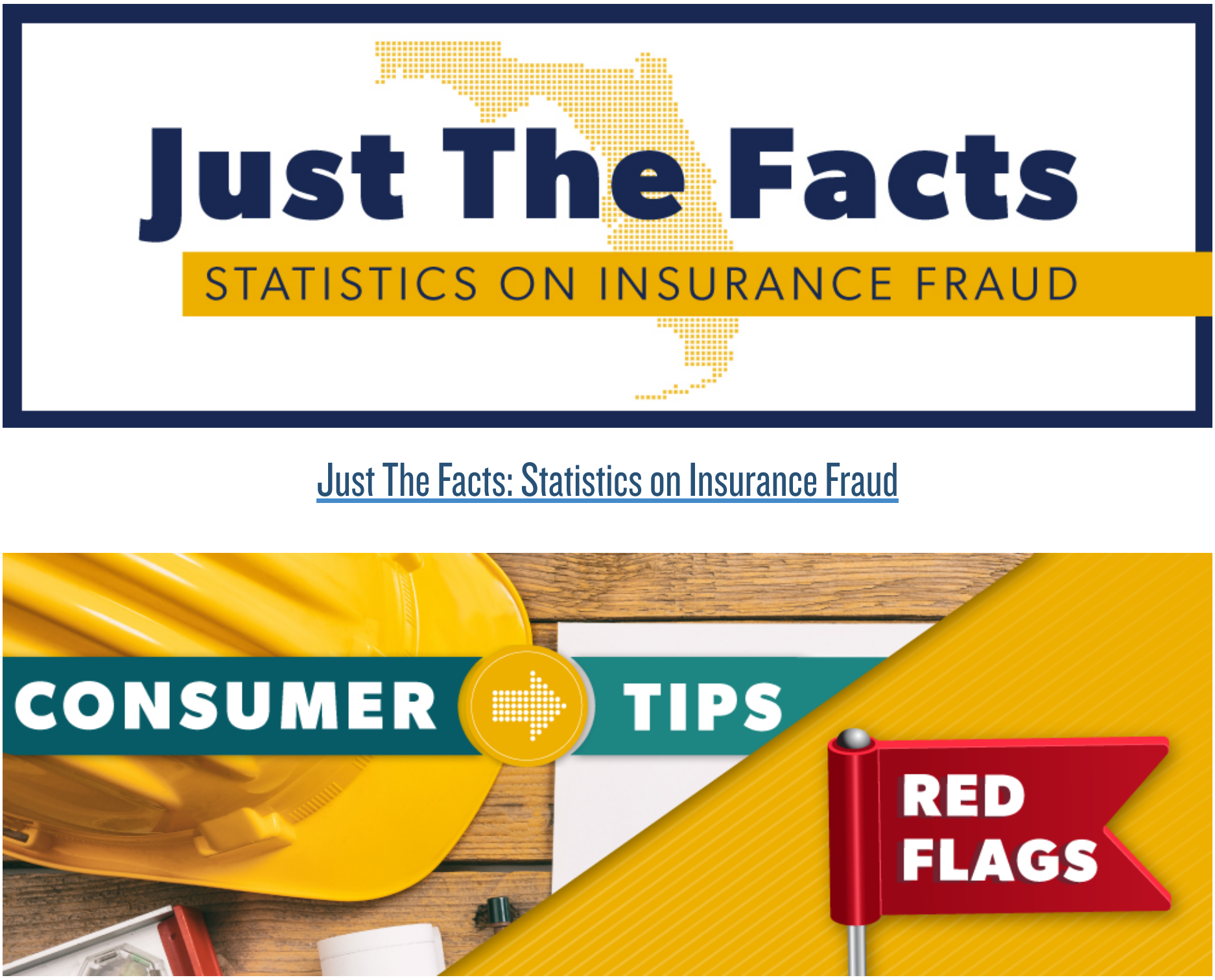


[Just The Facts: Statistics on Insurance Fraud]

[Consumer Tips & Red Flags]

Telling The Story: Consumer Experiences

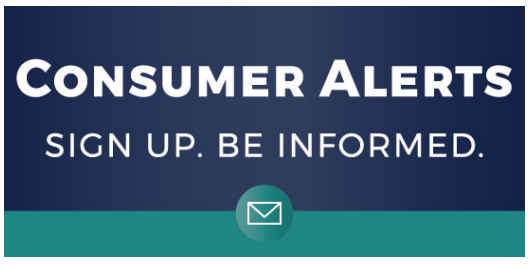
Contractor Fraud Resources

Contact the Office of the Insurance Consumer Advocate

Office of the Insurance Consumer Advocate
200 East Gaines Street, Tallahassee, FL 32399
Phone: (850) 413-5923
Email: Your**FL**Voice@MyFloridaCFO.com

@YourFLVoice

Twitter | Facebook



FLORIDA DEPARTMENT OF FINANCIAL SERVICES

Our department manages the financial responsiblities for the State of Florida.

200 East Gaines Street, Tallahassee, FL 32399

Monday – Friday 8 am - 5 pm (EST)

1-877-MY-FL-CFO (1-877-693-5236)

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EXHIBIT 13-3

OFFICE OF INSURANCE REGULATION

DAVID ALTMAIER
COMMISSIONER

February 24, 2021

Dear Chair Ingoglia,

Thank you for the recent opportunity to testify at the House Commerce Committee and your subsequent letter regarding cost drivers affecting Florida's insurance rates. The Florida Office of Insurance Regulation (OIR) looks forward to continuing discussions with you and Committee members about this critical topic that affects all Floridians.

OIR's goal is to provide the Committee with relevant data as you evaluate Florida's insurance rates. I hope the information contained in this report a helpful resource.

As you'll see, the primary cost drivers for property insurance rates in Florida are associated with the following factors:

1. Catastrophe claims: Florida domestic property insurers have experienced significant underwriting losses due to recent catastrophe losses and loss creep;
2. Adverse loss reserve development: This creates a high degree of uncertainty in the property insurance market;
3. Higher reinsurance costs: Reinsurance costs have a particularly capacious influence on Florida's domestic property insurance industry due to its reliance on reinsurance to finance catastrophe losses; and
4. An increase in claims with costly litigation, even with the passage of HB 7065 to curtail litigation abuse.

Additionally, auto insurance premiums continue to increase in Florida across all coverages due to cost increases associated with distracted driving, increased repair and medical costs, and other factors. The report contains additional information regarding the potential impact that changes to the PIP law could have on premiums.

As we continue to work together to foster an insurance market in which products are reliable, affordable, and available, I am grateful for your leadership and the Committee's partnership.

Please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

David Altmaier

David Altmaier
Insurance Commissioner

Florida Property Insurance Market Overview

Currently, there are approximately 7.4 million residential insurance policies in force in the Florida property market. Almost 90% of those policies are in the admitted market, as opposed to Surplus Lines or Citizens Property Insurance Corporation (Citizens) policies. The majority of the policies, approximately 82.4% (5,412,440 policies), of those issued by the admitted market are written by Florida's domestic property insurance market.[1]

Insurers in the admitted property insurance market undergo a rigorous licensing process by the Florida Office of Insurance Regulation (OIR), receive ongoing and thorough financial reviews, and file rates and policy forms with the OIR for review and approval.

The property market in Florida is stressed. As a result of significant adverse losses, property insurers in Florida are reducing their footprint in certain geographic areas of the state or ceasing to write new business in Florida altogether. As a result, the number of applications for coverage with Citizens is increasing. Property insurance premiums for policyholders are increasing and coverage is being reduced. Insurers are facing significant financial hardship due to negative underwriting results, adverse loss reserve development, and "social inflation" factors such as excessive litigation and door-to-door solicitation. A series of recent landfalling major tropical events including Hurricanes Michael[2] and Irma[3] have also negatively impacted the financial condition of domestic property insurers.

All of these factors combined are jeopardizing the availability and affordability of property insurance for consumers. Consumers are facing reduced availability, with fewer choices of coverage and increased premiums for coverage that is available. Insurers are facing reinsurance availability and affordability issues as well, as the uncertainty and volatility of the property market in Florida impacts the global reinsurance market and the cost of reinsurance, which is ultimately paid by consumers in the form of higher premiums. Throughout this report, OIR will outline market results, cost drivers in the market, identify impacts to consumers, and provide possible solutions to promote market stability.

OIR has compiled this data from sources including the NAIC Direct defense and Cost Containment (DCC) information, the U.S. Department of Transportation Federal Highway Administration, the Fast Track Monitoring System (ISS, ISO, and NISS), the Florida Department of Highway Safety and Motor Vehicles, and data compiled by the OIR, including the Hurricane Irma data call, Hurricane Michael data call, 2020 Assignment of Benefits (AOB) data call, and a recent property claims survey.

Underwriting Results

The past several years, including the first three quarters of 2020, have been driven by significant underwriting losses for Florida domestic property insurers. In the first three quarters of 2020, Florida's domestic industry reported a little over $1 billion in underwriting losses, almost double that of 2019.

[1] For the duration of this report, references to Florida's domestic property insurance market does not include Citizens, unless specifically noted.
[2] As of November 2, 2020, Hurricane Michael generated 158,991 claims with an estimated cost of $9.1 billion. (floir.com)
[3] As of November 9, 2020, Hurricane Irma generated 1,125,588 claims with an estimated cost of $20.7 billion. (floir.com)

(See Exhibit A)

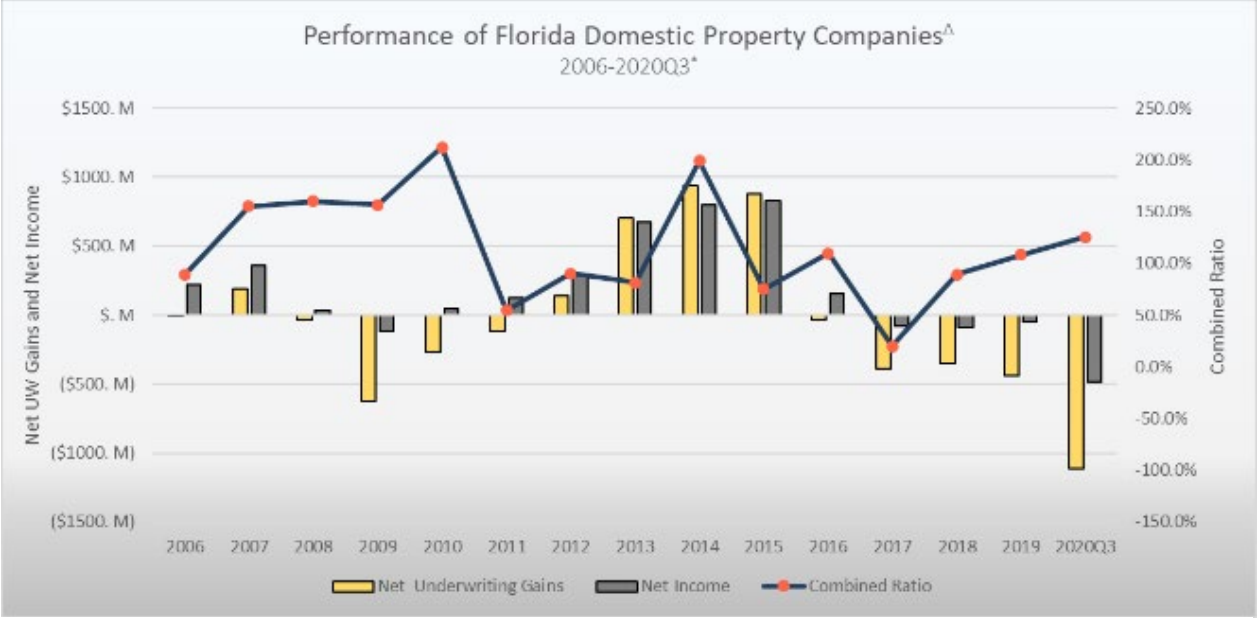

Exhibit A: Performance of Florida Domestic Property Companies
The yellow bar depicts the domestic industry's underwriting gain or loss. Underwriting gains or losses represent how much an insurance company has either made or lost from their operations and is a good indication of whether their net income or loss. The grey bar indicates the domestic industry's net income.

These underwriting results have a direct impact on the surplus position of individual insurers and the industry as a whole. Surplus acts as a buffer against catastrophe and other unexpected losses. From 2019 through the third quarter of 2020, the surplus of Florida's domestic property insurers decreased by almost $585 million.

As capital and surplus deteriorates, companies lose the capacity to write additional business, which directly impacts the availability of coverage for consumers. Continued losses of this magnitude are unsustainable.

COST DRIVERS IN THE PROPERTY MARKET

Loss Reserve Development

One of the primary factors driving these negative results is adverse loss reserve development over the past several years.

Insurers are required to set reserves to determine their future claim liabilities. Pursuant to section 624.424(1)(b), Florida Statutes, insurers are required to annually submit a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or by a qualified loss reserve specialist. Actuaries use probability theory and other methods of statistical analysis to determine the adequacy of insurance companies' statutory loss reserves.

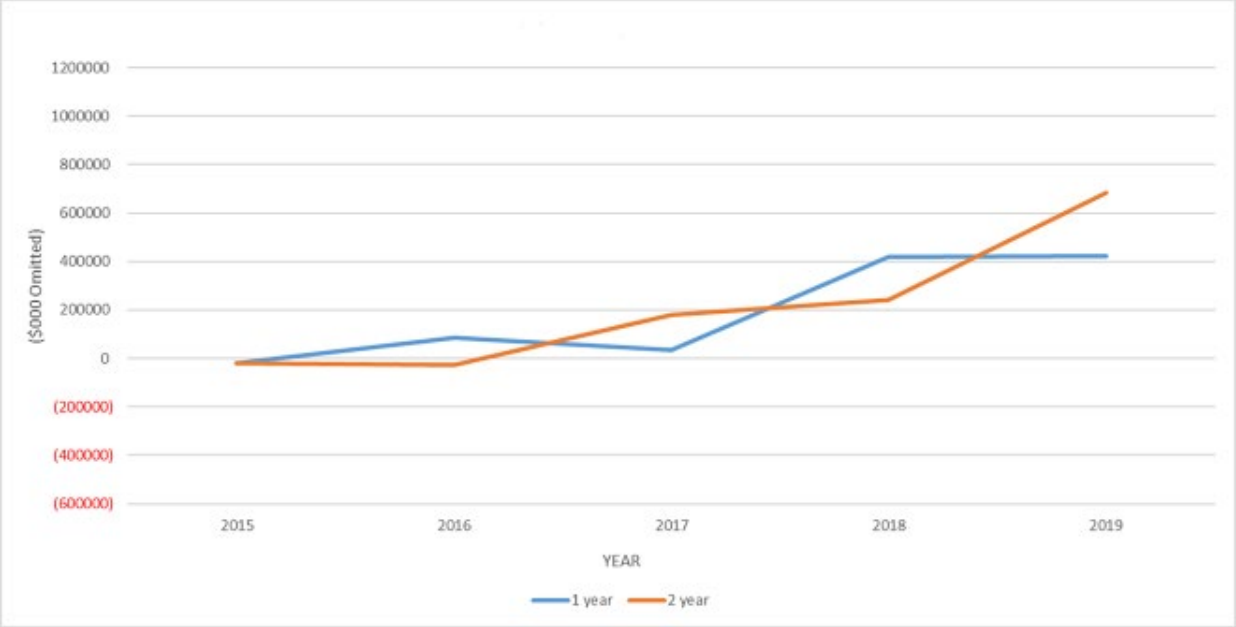

Exhibit B: Loss Reserve Development

Exhibit B depicts loss reserve development for Florida domestic insurers from 2015-2109. The blue line shows the one-year loss reserve development, and the orange line shows the two-year loss reserve development.

Upon the filing of a claim, or an anticipated claim, insurers establish a loss reserve, or the amount the insurer believes that claim will cost. At periodic points in time, an insurer goes back and evaluates how much those claims actually cost and uses that information to inform reserves going forward. If claims cost less than projected, reserve redundancies exist. If claims cost more than projected, reserves are said to have developed adversely.

If an insurers' claims being paid out are more than what the company has reserved, then the amount originally determined to be set aside is deficient. If market trends including but not limited to unexpected catastrophe losses, litigation, or social inflation, result in increased claims payments of more than what was originally reserved, the actuary may recommend increasing the companies' reserves for future claims payments.

The one- and two-year loss reserve development has increased dramatically, especially in 2018 and 2019.

To quantify, when carriers looked back one year later on their claims in 2018, the claims were about $418M more expensive than what the insurer originally estimated, and the two-year look back was approximately $241M more than the original estimate In 2019, claims were approximately $422M more than estimated, and increased to $682M at the two-year mark. The two-year reserve development shown in 2019 provides an indication of what may happen in 2020. These numbers reflect the high degree of uncertainty which exists in the property insurance market, which in turn impacts reinsurance capacity and reinsurance rates for insurers. In the simplest of terms, the greater the uncertainty that exists on future claims, the more reinsurers will tend to hedge their willingness to offer capacity and the capacity that is available will cost more as a result.

The insurance industry is inherently uncertain; for this reason, it is not expected that the established loss reserve will always exactly equal the ultimate cost of claims. However, it is also not expected that the ultimate cost of claims will be double or triple the estimated loss reserve. This uncertainty impacts an insurer's ability to set adequate rates, secure reinsurance, and attract investors.

Claims Cost Associated with Litigation

One of the primary reasons for the above adverse loss reserve development is the increase in the frequency and severity of litigated claims. In 2019, Florida passed legislation curbing excessive litigation associated with the use of Assignment of Benefits (AOBs), thanks to the leadership of Governor DeSantis, CFO Patronis, and the Florida Legislature. While lawsuits containing an AOB have dropped sharply from 2019 to 2020, lawsuits without an AOB have risen at a greater rate than in prior years, causing the overall total number of lawsuits to increase from 2019 to 2020.

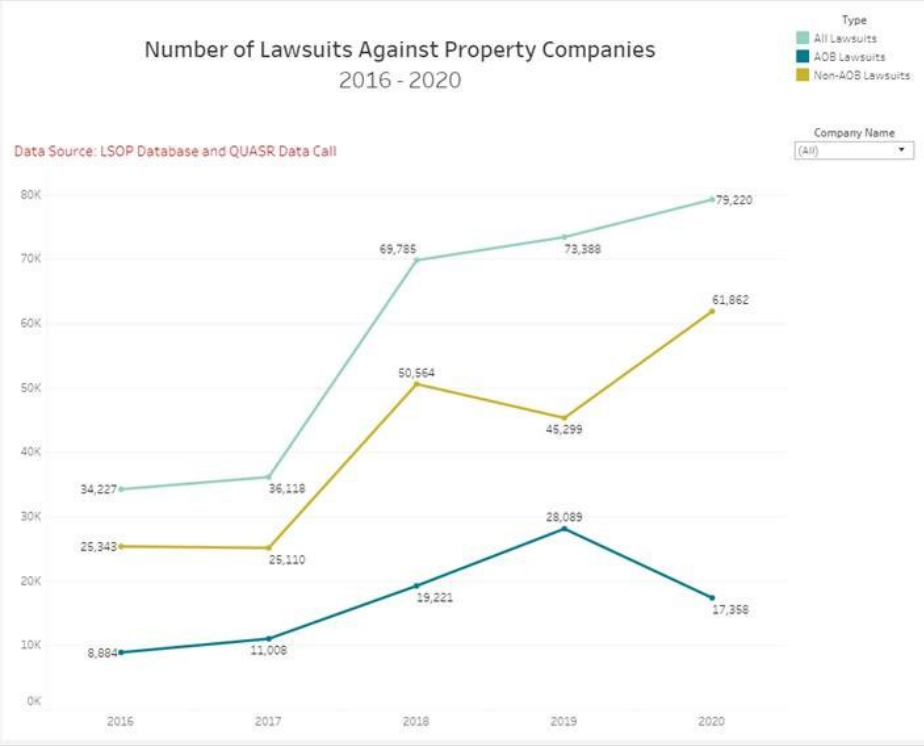

Exhibit C: Lawsuits Filed Against Property Companies
Using data from the Department of Financial Services Legal Service of Process, OIR matched lawsuits against known property writers. AOB frequency was determined mainly through the presence variations of "AAO" terminology.

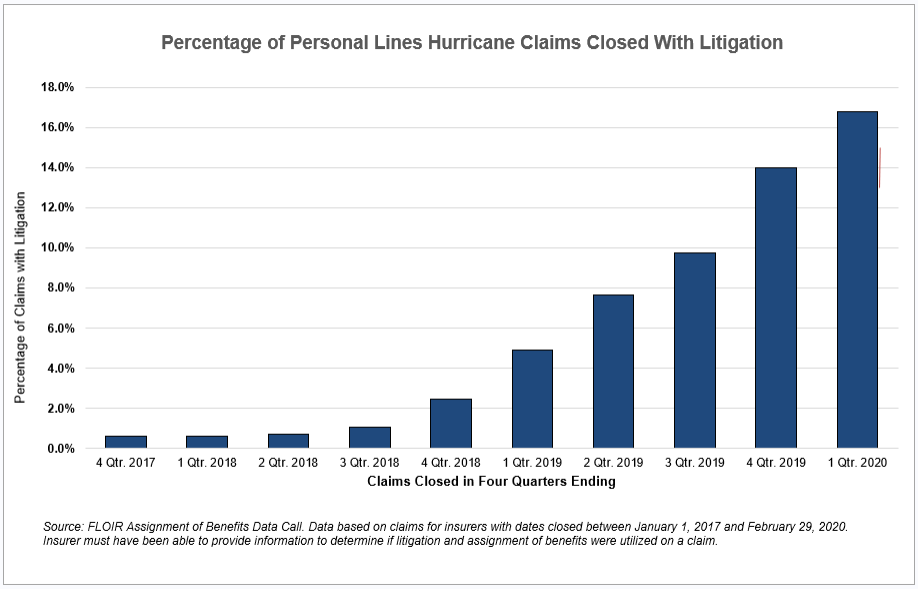

Exhibit D: Hurricane Claims in Litigation
Data obtained by OIR from various sources shows that the industry has experienced a high frequency of claims litigation between 2016 and 2020. Reasons for this include catastrophic windstorm events such as hurricanes Michael and Irma, increasing litigation, and social inflation.

In 2020, OIR issued an AOB data call to begin tracking the impact of the legislation. While it is too early to determine the full impact of the legislation, initial analyses indicate the reform has had a positive impact on reducing litigation associated with AOBs.

A litigated claim costs approximately three times the cost of a non-litigated claim.

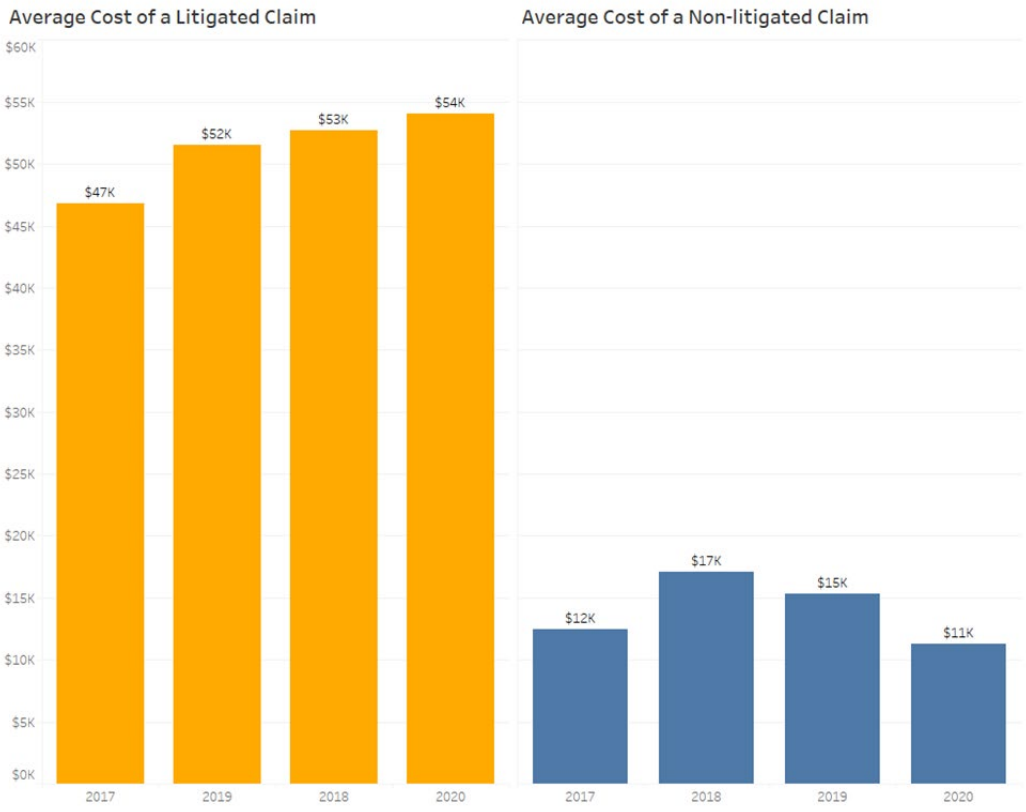

Exhibit E: Average Cost of a Litigated and Non-litigated Claim
Data in this chart was provided by insurers as part of the OIR 2021 property claim survey. OIR received data from insurers that provide coverage for 58% of the market.

While the 2020 AOB data call shows that the use of AOBs is decreasing, it also shows that claims with litigation are increasing, albeit at a slower rate than before the AOB reform. If this trend continues, insurers are likely going to continue seeing adverse loss reserve development, and that will exacerbate other negative market conditions, such as rising consumer rates and rising reinsurance rates.

For example, in August 2020, Capitol Preferred Insurance Company requested a statewide average rate increase of 26.2% for its business in the Homeowners Multi-Peril account. Capitol Preferred indicated that, while it had experienced a minimal reduction in AOB claims due to the passage of HB 7065, it experienced an overall increase in litigation. Capitol Preferred indicated that this increase in litigation was a contributing factor in its requested rate increase. Additionally, the company stated that it continues to see increases in non-catastrophe water losses, which leads to more litigation on those claims.

Exhibits C, D, E, and F also provide a representation of litigation trends based on data compiled by OIR.

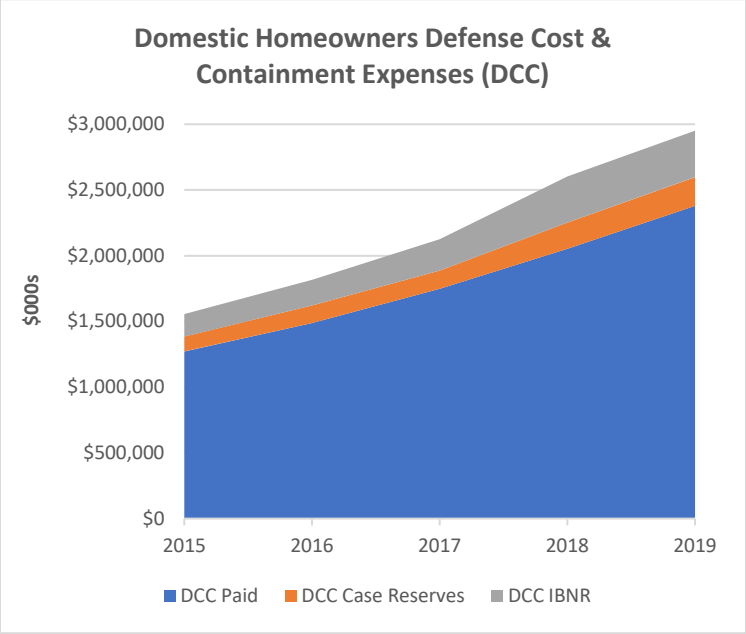

Exhibit F: Defense Cost & Containment Expenses
To further illustrate a rise in litigation costs, in 2019, insurers paid approximately $2,379,073,000 in Direct defense and cost containment (DCC). The DCC includes defense, litigation, and medical cost containment expenses, whether internal or external. It includes attorney fees owning to a duty to defend.

While there are several reasons why litigation is increasing, much of the increase followed the Supreme Court's ruling in *Joyce*.[4] Specifically, the decision reaffirmed "adherence to the use of contingency fee multipliers" and stated that "there is not a 'rare' and 'exceptional' circumstance requirement before a contingency fee multiplier can be applied." The holding in *Joyce* appears to have increased the potential for litigants to access fee multiplier awards and could further incentive plaintiffs' attorneys to proceed with costly litigation as opposed to exploring other avenues of claim resolution. While direct data may not exist related to this assertation, the date of the Joyce decision would appear to coincide with the increase in non-AOB litigation in the Service of Process data base.

[4] *Joyce v. Federated Nat'l Ins. Co.*, 228 So. 3d 1122 (Fla. 2017)

Roof Claims

Insurers are increasingly reporting an uptick in roof-related claims. One of the trends that has emerged following the passage of AOB reform in 2019 is roof solicitation, with the promise of a new roof at no cost to the policyholder. These kinds of solicitations provide insight into why litigation and claim costs may still be increasing, which will lead to increased premium costs for consumers.

To add clarity to this reported trend, OIR issued a 2021 property claims survey that, among other things, requested data on roof claims. Overall, OIR received data from insurers that provide coverage for 58% of the market. The data shows that from 2017 through 2019 there was a substantial increase in the number of roof claims that were litigated. While there was a dip in 2020 in the percentage of litigated roof claims in 2020, it's possible that when responding to the survey, insurers may have reported only closed claims as of the end of that calendar year. In that case, many claims opened in 2020 may not have closed in the same calendar year due generally to the speed of closure and the time litigation takes and specifically to the pandemic, litigation timelines and the effects of the pandemic on court proceedings.

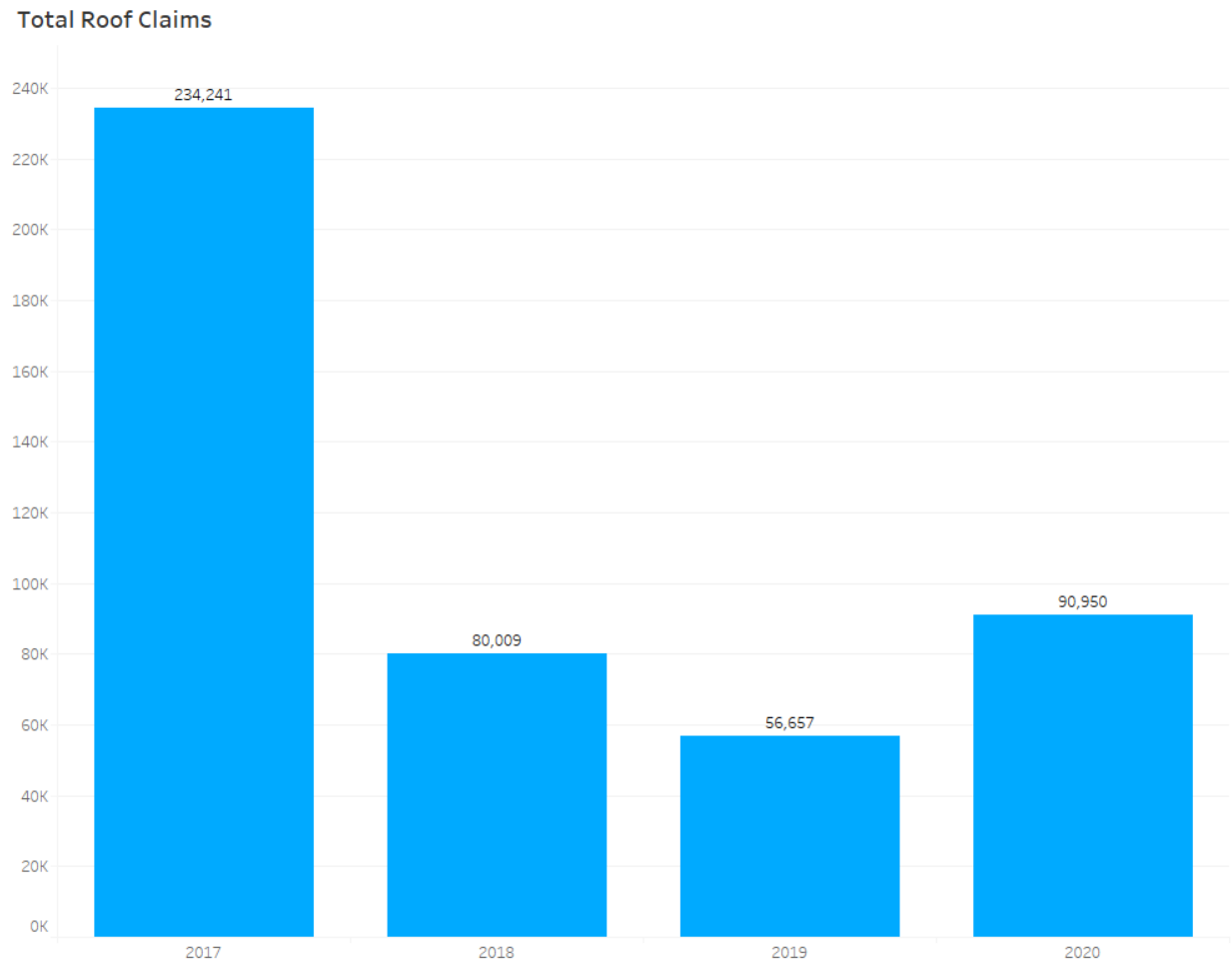

Exhibit G: Total Roof Claims Reported by Year, OIR 2021 Property Claims Survey

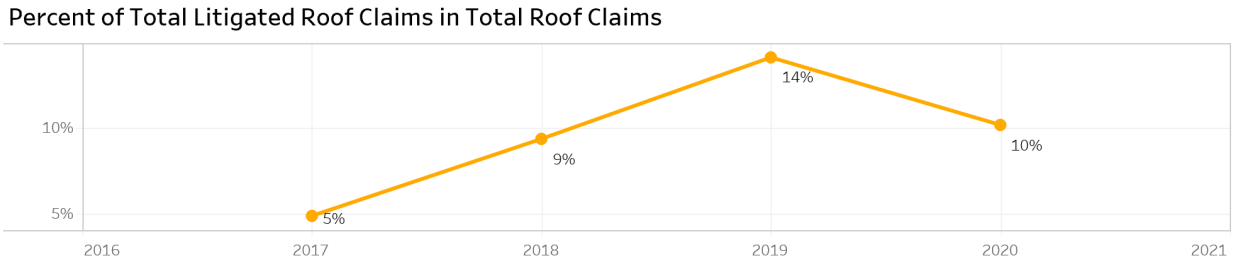

Exhibit H: Percent of Total Litigated Roof Claims in Total Roof Claims, OIR 2021 Property Claims Survey

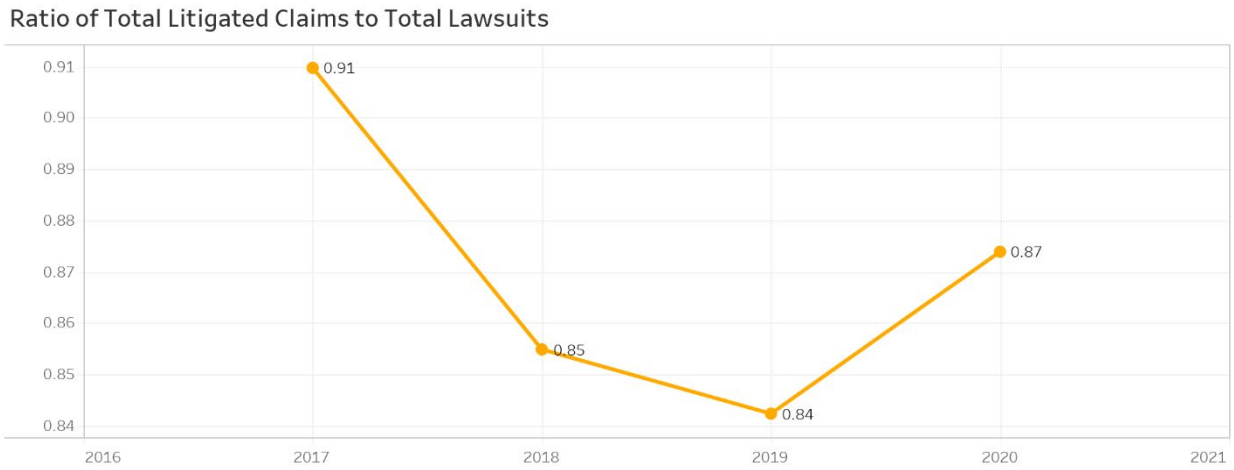

Exhibit I: Ratio of Total Litigated Claims to Total Lawsuits, OIR 2021 Property Claims Survey

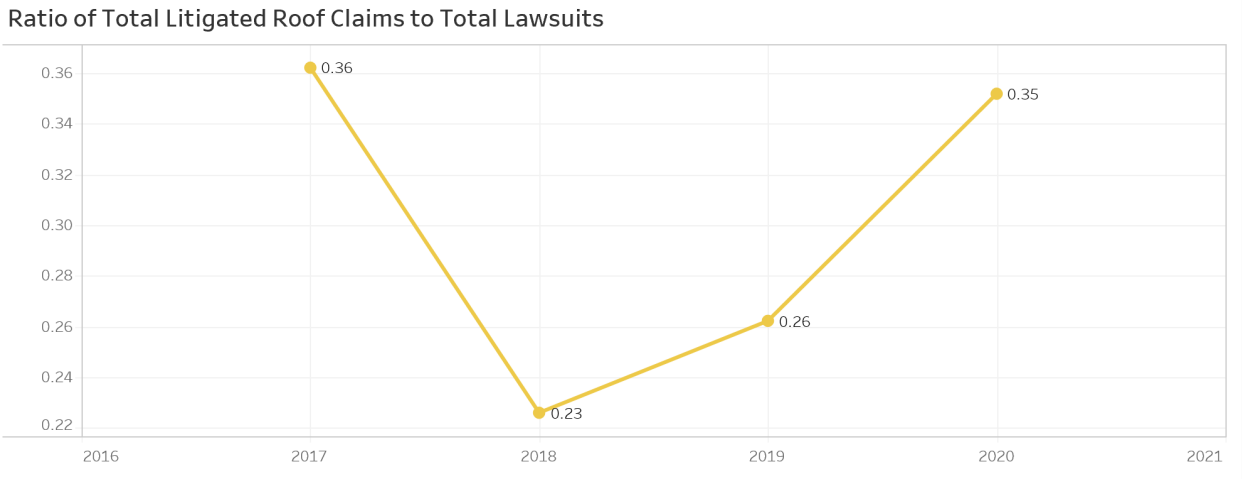

Exhibit J: Ratio of Total Roof Claims to Total Lawsuits, OIR 2021 Property Claims Survey

The data gathered generally reflects an increasing number of roof claims and related litigation between 2016 and 2020.

Reinsurance Costs

In addition to the direct impact to insurers described above, these results also have detrimental indirect impacts as well, notably the impact these results have on the cost of reinsurance. Florida is the most catastrophe-prone region in the United States with 8,436 miles of shoreline. To spread that catastrophic risk outside of Florida's borders, insurers turn to the global reinsurance market. Florida's domestic property insurance industry is especially reliant on reinsurance to finance the payment of catastrophe losses and is sensitive to hardening reinsurance market conditions. When the supply of reinsurance is readily available and affordable, the capacity of domestic property insurers to write and retain business is enhanced, and the premium impact to consumers is modest.

When the supply of reinsurance is limited and/or expensive, the capacity of domestic property insurers is particularly constrained, which results in reductions in writings and increases in premiums to consumers. The hardening reinsurance market has resulted in increased reinsurance costs for domestic property insurers.

Limited Reinsurance Rate Filings

The impact of the hardening reinsurance market can be seen in the number of limited reinsurance rate filings submitted to OIR. A limited reinsurance filing is an expedited filing permitted by law which allows an insurer to recoup the cost of reinsurance purchased if the filing does not result in an increase to any policyholder of more than 15%. During the four-year period from 2014 to 2018, OIR received a total of 10 limited reinsurance filings. During the 18-month period from June 2019 to the end of 2020, OIR received 107 limited reinsurance filings.

On average, insurers making limited reinsurance rate filings in 2020 reflected a need for a rate increase of approximately 10% to cover just the increased cost of reinsurance. The average rate need reflected in limited reinsurance filings in 2019 was just over 6%. Insurers with higher reinsurance costs not recoverable under limited reinsurance filings are including the higher reinsurance cost in comprehensive rate filings.

Annual Reinsurance Data Call

OIR conducts an Annual Reinsurance Data Call (ARDC) to obtain information on reinsurance agreements of Florida's property insurers for the upcoming hurricane season. The data call specifically relates to all property insurance policies providing wind coverage.

Based on findings from the ARDC for the 2020-2021 year, the amount of 2020 reinsurance coverage purchased by insurers has increased an average of 15% from 2019. However, the cost of that reinsurance has increased dramatically by 54% from 2019 figures.

IMPACT ON FLORIDA CONSUMERS

Insurers can respond to the multiple challenges in the market in a number of ways. Insurers may decide to withdraw, either partially or completely, from the market, or to non-renew existing policies. Either of these options creates an availability issue for consumers. Insurers may also need to increase premiums to cover expected losses and expenses, which creates an affordability issue for consumers. The chart below is a graphic depiction of the impact of market forces on premiums.

In 2020, OIR saw a dramatic increase in the number of rate filings approved with a rate increase of more than 10%. Specifically, of the 105 homeowners' multi-peril rate filings the OIR approved, 55 were ultimately approved for an increase greater than 10%. In 2016, out of 64 approved filings, only six were for an increase greater than 10%. (See Exhibit K)

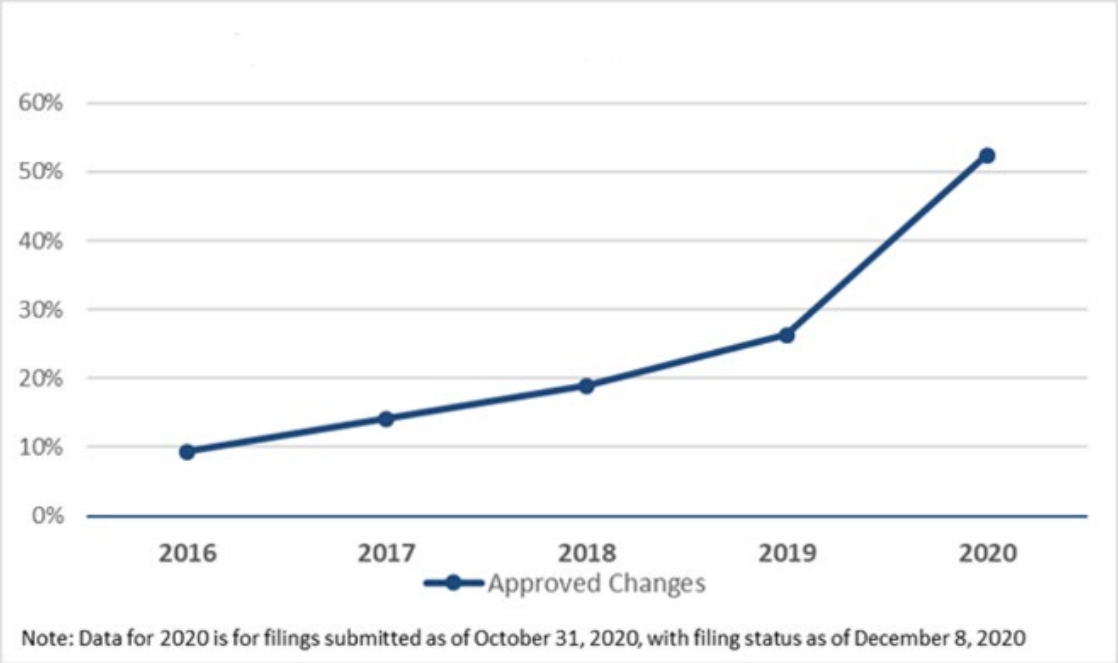

Exhibit K: Personal Residential Rate Filings Approved Greater than 10%

If a rate filing request is greater than 15% and uses data, in whole or in part, from a computer model, a public hearing is required. Since December 2019, OIR has held seven public rate hearings for companies requesting rate increases greater than 15%.

The substantial increase in the number of rate filings being made with OIR and in the amount of rate increases being requested further demonstrates the pressure adverse loss reserve development, reinsurance costs, social inflation, excessive litigation, and other factors are placing on the market. **These higher rates create affordability issues for millions of Floridians.**

SOLUTIONS

Addressing the cost drivers outlined in this report will help to stabilize rates and ensure that the market supports insurance products that reliable, available and affordable for Florida consumers. As the Florida Legislature begins to address some of these issues, OIR provides the following recommendations for consideration.

Tort Reform

There is evidence to support the need for tort reform that will foster stability in the insurance marketplace during periods of distress from natural catastrophes and social inflation. It is critical that consumers have access to legal relief when, by fact or belief, they receive unfair treatment from their insurance company, but excessive litigation is harmful to consumers because it raises rates, reduces options, and creates instability in the market.

Specifically, solutions could include:

- The Implementation of a Pre-suit Notice Requirement: Establish a requirement that claimants provide a 60-day pre-suit notice to the insurer prior to the commencement of litigation. Affording an insurance company a meaningful opportunity to address a consumer's concerns regarding a claim prior to a lawsuit provides another avenue for resolution, potentially eliminating costly litigation.

- Establishing Stricter Criteria on Attorney's Fees: Establish a limitation on attorney's fees in first-party claims. If the policyholder does not win at least 80% of their pre-suit demand in trial, their attorneys' fees are reduced or eliminated. The recently enacted AOB legislation provides a potential framework for this.

- Consider reviewing the concurrent causation framework established by the *Sebo* decision: While not specifically tort reform, this decision seems to have incentivized a preponderance of roof claims solicitations. Under the framework of the *Sebo* decision, there could be an incentive to claim that a small portion of shingles that are damaged by a potentially covered peril could lead to the entirety of the roof being replaced. This could cause insurance contracts to function more like maintenance contracts, which is not the intent or purpose of insurance. Establishing a statutory framework for when concurrent causation is appropriate and when it isn't could be a more consumer friendly approach to addressing this issue than allowing actual cash value on roofs.

Clear Authority to Review Financial Transactions of MGAs

The OIR reviews managing general agents (MGAs) and service agreements between insurers and affiliates within a holding company system as a tool to understand the interrelationship between the parties, the functions that each performs, and the compensation paid for such services.

The Legislature could amend Florida Statutes to clarify that the OIR has clear[5] authority to examine or review the financial condition of a managing general agent (MGA) to better ensure that transactions between the insurer and these entities are fair and reasonable in relation to the services provided to the insurer. This would provide OIR with a better overall picture of the financial condition of domestic insurers by ensuring regulatory access to the financials of affiliated entities which provide services to the insurer. This may have the added benefit of increasing public trust in domestic insurers and encourage capital investment in the insurance entities within holding company systems.

Data Collection

Amend Florida Statutes to require insurers to collect and report litigation trends to OIR on an annual basis. Concerns surrounding litigation trends are not new. There is a widespread agreement that litigation related social inflation is harming the affordability and availability of insurance products within Florida's private homeowners' market. Gathering specific data to support this has proven difficult because of the way individual insurers collect and retain data. In response to OIR's most recent survey, several insurers indicated that they could not provide a response to some or all of the questions related to litigation trends because they did not collect the data.

Gathering and evaluating comprehensive data surrounding litigation trends is an important component in formulating appropriate solutions to this problem. This comprehensive data would allow OIR to more effectively identify current and emerging litigation trends to provide recommendations to policymakers.

Claims Window

Amend section 627.70132, Florida Statutes, to change the requirement relating to the notice of a windstorm or hurricane claim.

Insurers have an absolute obligation to honor in full faith all valid claims that are timely reported. Currently, Florida has a three-year window for filing claims following a windstorm event such as a hurricane. Shortening the window to file a windstorm or hurricane claim could help prevent fraudulent claims arising years after the storm has passed as well as help address adverse loss reserve development.

A shorter period would allow adequate time for a homeowner to evaluate damage from a storm and file a claim. Insurers would be better able to adjust losses and more accurately estimate the cost of a claim.

[5] Sections 626.7452, 624.316, 624.318, 624.424, and 626.7451, F.S.

Florida's Domestic Property Insurers*

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA
AMERICAN CAPITAL ASSURANCE CORP
AMERICAN COASTAL INSURANCE COMPANY
AMERICAN INTEGRITY INSURANCE COMPANY OF FL
AMERICAN MODERN INSURANCE COMPANY OF FLORIDA, INC.
AMERICAN PLATINUM PROPERTY AND CASUALTY INSURANCE COMPANY
AMERICAN SOUTHERN HOME INSURANCE COMPANY
AMERICAN STRATEGIC INSURANCE CORP.
AMERICAN TRADITIONS INSURANCE COMPANY
ASI ASSURANCE CORP.
ASI HOME INSURANCE CORP.
ASI PREFERRED INSURANCE CORP.
AUTO CLUB INSURANCE COMPANY OF FLORIDA
AVATAR PROPERTY & CASUALTY INSURANCE COMPANY
CENTAURI SPECIALTY INSURANCE COMPANY
CITIZENS PROPERTY INSURANCE CORPORATION
CYPRESS PROPERTY & CASUALTY INSURANCE COMPANY
EDISON INSURANCE COMPANY
FCCI INSURANCE COMPANY
FEDNAT INSURANCE COMPANY
FIRST COMMUNITY INSURANCE COMPANY
FIRST FLORIDIAN AUTO AND HOME INSURANCE COMPANY
FIRST PROTECTIVE INSURANCE COMPANY
FLORIDA FAMILY HOME INSURANCE COMPANY
FLORIDA FAMILY INSURANCE COMPANY
FLORIDA FARM BUREAU CASUALTY INSURANCE COMPANY
FLORIDA FARM BUREAU GENERAL INSURANCE COMPANY
FLORIDA PENINSULA INSURANCE COMPANY
GRANADA INSURANCE COMPANY
GULFSTREAM PROPERTY AND CASUALTY INSURANCE COMPANY
HERITAGE P&C INSURANCE COMPANY
HOMEOWNERS CHOICE PROPERTY & CASUALTY INSURANCE COMPANY, INC.
JOURNEY INSURANCE COMPANY
KIN INTERINSURANCE NETWORK
MAIN STREET AMERICA PROTECTION INSURANCE COMPANY
MONARCH NATIONAL INSURANCE COMPANY
OLD DOMINION INSURANCE COMPANY
OLYMPUS INSURANCE COMPANY
PEOPLE'S TRUST INSURANCE COMPANY

PRIVILEGE UNDERWRITERS RECIPROCAL EXCHANGE
PROGRESSIVE PROPERTY INSURANCE COMPANY
SAFE HARBOR INSURANCE COMPANY
SAFEPOINT INSURANCE COMPANY
SAFEPORT INSURANCE COMPANY
SECURITY FIRST INSURANCE COMPANY
SOUTHERN FIDELITY INSURANCE COMPANY
SOUTHERN OAK INSURANCE COMPANY
ST. JOHNS INSURANCE COMPANY
STATE FARM FLORIDA INSURANCE COMPANY
TOWER HILL PREFERRED INSURANCE COMPANY
TOWER HILL PRIME INSURANCE COMPANY
TOWER HILL SIGNATURE INSURANCE COMPANY
TYPTAP INSURANCE COMPANY
UNITED PROPERTY & CASUALTY INSURANCE COMPANY
UNIVERSAL INSURANCE COMPANY OF NORTH AMERICA
UNIVERSAL PROPERTY & CASUALTY INSURANCE COMPANY
US COASTAL PROPERTY & CASUALTY INSURANCE COMPANY
VAULT RECIPROCAL EXCHANGE
WESTON INSURANCE COMPANY

*This list provides all domestic property insurers writing business in Florida. Not all companies were participants in our survey.

Florida Auto Insurance Market Overview

Florida boasts a competitive automobile insurance market with 613 licensed insurers to write this type of coverage, generating more than $24B in written premium as of third quarter 2020. The Florida Office of Insurance Regulation is charged with licensing companies to write automobile insurance in the state, reviewing their forms and rates for compliance with all applicable laws, and monitoring the conduct of such insurers in the marketplace.

As is discussed later in this report, overall loss trends for automobile insurance losses in Florida are continuing to increase for the most significant coverages such as Bodily Injury (BI) liability, Personal Injury Protection (PIP) and Comprehensive coverage. These increases, which result from the cost drivers discussed below, are likely to continue into the future, regardless of what mandatory insurance coverage framework is in place in Florida.

Florida's current No-Fault Motor Vehicle Law requires owners and registrants of motor vehicles to carry PIP coverage and Property Damage (PD) liability coverage. During the past several legislative sessions, efforts have been made to repeal PIP and replace it with some variation of mandatory BI liability coverage in an effort to reduce automobile insurance premiums. The primary difference between PIP and mandatory BI is that under PIP, which is a no-fault coverage, persons injured in an auto accident seek coverage first under their own PIP policy, whereas under mandatory BI, persons injured in an auto accident would seek recovery from a responsible third-party's BI coverage. A discussion of the potential impact of the repeal of PIP follows an analysis of the cost drivers affecting auto insurance premiums in Florida.

While COVID-19 relief filings and decreases in vehicle miles traveled during the pandemic has temporarily ameliorated the cost drivers, overall loss trends in auto insurance in Florida continue to be high compared to the nationwide average.

Cost Drivers in the Auto Market

Frequency and Severity of Crashes

With the noted exception of 2020, nationwide, consumers are driving more miles. An increase in vehicle miles traveled also increases exposure to crashes. As fewer miles were driven in 2020, the frequency of crashes in 2020 has also decreased.

In Florida, the frequency of crashes has decreased since 2016. COVID-19 has significantly impacted the frequency of crashes in 2020 due to the decrease in drivers on the road; however latest crash data from fourth quarter 2020, as of February 10, 2021, suggests that frequency may be returning to close to the 2019 levels.

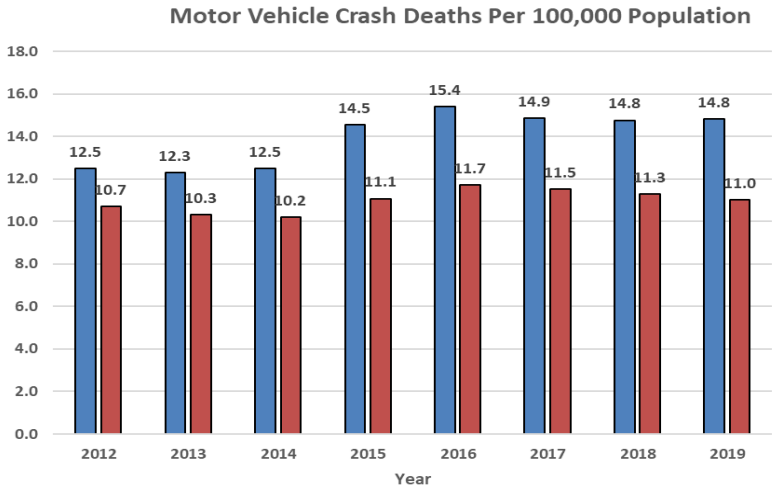

Exhibit 1: Motor Vehicle Crash Fatalities

The Florida average is represented in blue and the nationwide average is represented in red. Based on information from the National Highway and Traffic Safety Administration (NHTSA), from 2012–2019. https://cdan.nhtsa.gov/stsi.htm#

From 2017-2019, there has been a reduction in the frequency of fatal crashes nationwide. Florida, however, has not benefitted from this nationwide trend, as its crash fatality rates have remained steady. In addition, Florida continues to report a much higher rate of fatal crashes than the rest of the nation. The data suggests that crash frequency trends may be increasing while crash severity remains high relative to the rest of the nation.

Frequency and Severity of Claims

Based on data from the fast track monitoring system, which is data compiled by multiple statistical agencies to report the frequency and severity of auto insurance claims is detailed below.

Coverage	Florida			Countrywide		
	Frequency	Severity	Pure Premium	Frequency	Severity	Pure Premium
Bodily Injury	-1.80%	26.70%	24.50%	-8.50%	24.10%	13.60%
Property Damage	-8.30%	20.40%	10.40%	-8.40%	21.40%	11.10%
Personal Injury Protection	10.40%	2.10%	12.60%	-10.40%	13.30%	1.50%
Comprehensive	16.70%	13.00%	31.80%	2.30%	22.30%	25.10%
Collision	-2.50%	13.10%	10.30%	-2.30%	15.90%	13.20%

Exhibit 2: Percent Change by Coverage from 2015-2019

Based on data from the Fast Track monitoring system (ISO, ISS and NISS). Frequency represents the number of claims, severity represents the cost of the claim, and the overall loss trend represents losses divided by exposure. The coverages do not take into account policy limits, which may differ significantly by state.

From 2015-2019, on average, the overall loss trends for bodily injury and personal injury protection in Florida are significantly higher than the nationwide average and comprehensive coverage trends in Florida outpace the national average.

Consumer Pricing

Coverage	Florida			Countrywide		
	Frequency	Severity	Pure Premium	Frequency	Severity	Pure Premium
Bodily Injury	-1.80%	26.70%	24.50%	-8.50%	24.10%	13.60%
Property Damage	-8.30%	20.40%	10.40%	-8.40%	21.40%	11.10%
Personal Injury Protection	10.40%	2.10%	12.60%	-10.40%	13.30%	1.50%
Comprehensive	16.70%	13.00%	31.80%	2.30%	22.30%	25.10%
Collision	-2.50%	13.10%	10.30%	-2.30%	15.90%	13.20%

Exhibit 3: Chances in Consumer Price Index

The data represents changes in the consumer price index on average across the U.S. for all urban consumers, according to the U.S. Bureau of Labor. Statistics are not seasonally indexed. https://data.bls.gov/PDQWeb/cu

The costs of the services associated with auto insurance claims, including medical care, hospital care and services, and motor vehicle body work has risen consistently over the years by approximately 2-4% each year.

IMPACT OF COST DRIVERS ON FLORIDA CONSUMERS

There have been some major rate changes in the market over the last several years. In 2016 and 2017, more than two-thirds of the personal auto insurance rate filings that were approved were for rate increases greater than 5%. As the frequency of crashes began to decrease in Florida in 2017, it was reflected in the experience period utilized in the rate filings. Starting in 2018, that percentage reduced to one-third of personal auto rate filings. After a slight spike in the number of rate increases approved for greater than 5% in 2019, the 2020 year saw such rate increases decrease because of the pandemic.

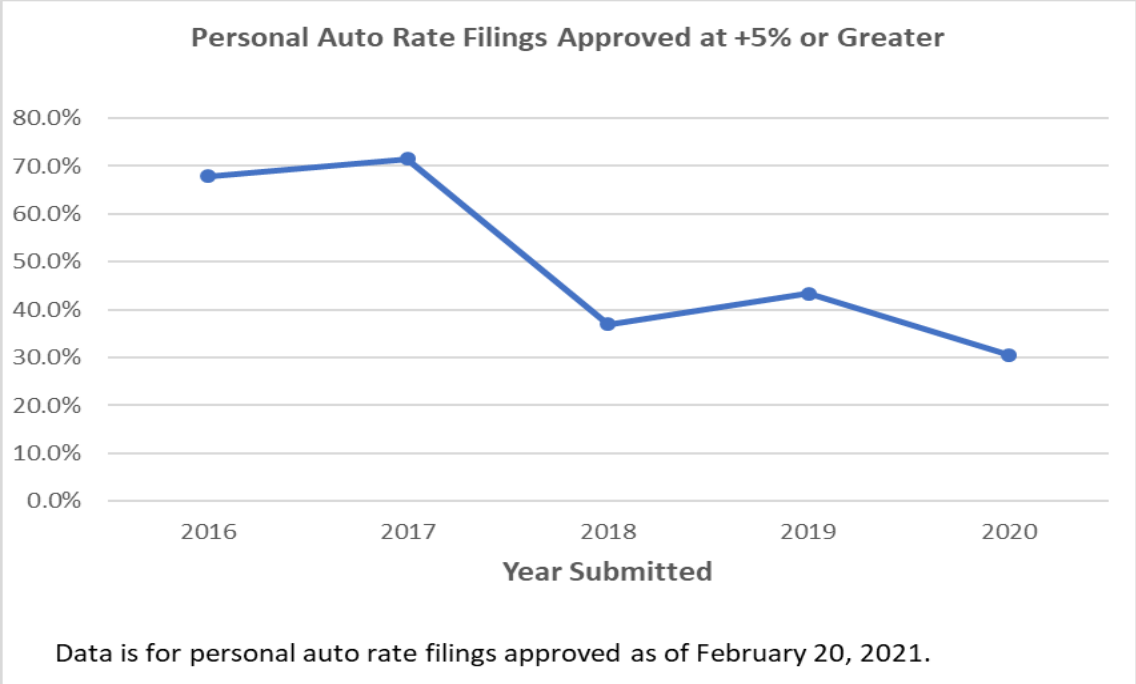

Exhibit 4: Personal Auto Insurance Rate Filings +5% or Greater

In response to COVID-19 and following the OIR issuance of Informational Memorandum OIR-20-04M, OIR has worked with numerous insurers to implement 117 COVID-19 relief filings as of February 23, 2021 that provide for premium relief, moratoriums on cancellations, premium collection, and other relief. Of these 117 filings, approximately 25% were related to personal auto and 35% were related to commercial auto. OIR is working with insurers to implement premium credits to provide immediate benefit to Floridians and continues to monitor these commitments.

PERSONAL INJURY PROTECTION (PIP)

The debate over the repeal of PIP has been focused on finding a suitable replacement that will have a minimal impact on rates for consumers. The prevailing theory from policymakers has been to replace PIP with mandatory BI and either optional or mandatory Medical Payment ("MedPay") coverage. There have been several bills filed with the legislature on this issue over the past five years.

The initial impact on consumers will vary significantly based on many different factors, such as:

- The limits chosen for BI coverage;
- Whether MedPay is mandatory or optional and the limits associated with that coverage;
- What types of coverage are currently purchased by the consumer;
- Where the consumer lives; and
- The driving history of the consumer.

Changes to the PIP law and any premium impact therefore should be viewed in the broader context of overall premiums for auto insurance coverage. Auto insurance premiums are continuing to increase across all coverages because of increases in costs due to increase in the severity of crashes, increased repair and medical costs, and other factors. These trends in auto insurance rates will likely continue, regardless of

whether PIP remains or is replaced by BI. If PIP is repealed and replaced with mandatory BI and MedPay, without addressing bad faith and litigation trends, increased litigation and claims costs associated with the new mandatory coverages could increase premiums dramatically.

To assist policymakers in evaluating the impact of repealing PIP and replacing it with mandatory BI, OIR has commissioned Pinnacle Actuarial Resources, Inc. to conduct a study to analyze the impact of repealing the requirement to purchase PIP and replacing it with the traditional tort liability system. This study is a follow up from a 2016 report. Based on its analysis of data at that time, Pinnacle estimated that the overall impact on automobile insurance premiums resulting from the repeal of PIP and its replacement varied, sometimes significantly, depending on what coverages were required and at what amounts.

Pinnacle's 2016 Estimated Impact on Overall Average Statewide Auto Premiums

	BI $10/$20	BI $15/$30	BI $25/$50
MedPay Optional	-6.7%	-6.2%	-5.6%
$2,500 Mandatory Med Pay	-3.4%	-2.9%	-2.4%
$5,000 Mandatory Med Pay	-0.7%	-0.2%	+0.3%

It may be that the time has come to repeal PIP on the theory that it is no longer effective as a no-fault option to provide personal injury protection. But PIP repeal should not be pursued if the goal is simply to reduce auto insurance premiums. Such a goal could well be an elusive one since other market forces and costs are continuing to exert pressure on auto losses and premiums in Florida, which may well result in continued premium increases.