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Florida House candidate says he's standing up for homeowners, but critics say he's raising insurance rates

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TALLAHASSEE — Florida House candidate Andrew Vargas is campaigning to stop “abuse and frivolous lawsuits that lead to rate increases” from insurers, but state records show his South Florida law firm is a leader in a cottage industry of trial lawyers blamed by experts for higher homeowner premiums.

Vargas’ law firm has been the top litigator against Citizens Property Insurance Corp. for a relatively new and controversial type of lawsuit linked to “Assignment of Benefits” contract cases, filing 644 of them from 2014 until 2018, according to data from Citizens, the state-run insurer of last resort and second-largest homeowner insurer in Florida. In that time period, Citizens has defended 10,091 of the AOB cases.

Vargas personally signed the complaints in at least 298 of his firm’s AOB suits against Citizens, in which customers hand over the rights to their insurance benefits to a contractor who does repairs on a damaged property.

The AOB cases can lead to higher rates because they give contractors an added incentive to make costlier-than-needed repairs that can be too challenging for insurers to fight in court, thereby inflating costs, according to insurance companies and the state’s insurance commissioner. Critics say it’s riddled with fraud and abuse.

But Vargas said the insurance companies aren’t telling the truth about rates, which kept going higher and higher for many, regardless of the AOB issue.

“Even before this AOB type of litigation, which started up in 2013 or 2014, those rates were continuously going up. Rates were going up every single year,” Vargas told POLITICO in an interview.

But Vargas’ assessment conflicts with a 2015 rate [report](#) from Citizens that states it was able to lower rates that year “for nearly 70 percent of its policyholders.” AOB lawsuits peaked a year later, when Citizens began consistently raising rates in South Florida.

Citizens says the lawsuits themselves — which are more prevalent in South Florida than in other regions of the state — have, in large part, led to the higher rates. The firm says that one of its typical homeowner multi-peril insurance policies in Miami-Dade County increased by 26 percent from 2015 to 2018. The same policy in Orlando went down by 22 percent over the same period.

More than half of Citizens' 440,000 customers are in South Florida, with most policies concentrated in Miami-Dade, where Vargas, a Republican, is [running](#) against Democratic lobbyist Javier Fernandez and independent Liz de las Cuevas, a former Republican. The election is Tuesday.

In the wake of Hurricane Irma, when many struggled in the district and South Florida with home damage and the hassle of dealing with insurance companies, property insurance has become a major pocketbook issue.

Efforts to reform the AOB controversy have failed for at least five years in a row in the GOP-led Legislature. Florida House Speaker Richard Corcoran said that reforms his chamber proposed would “put a stop to the rampant graft and corruption taking place in Assignment of Benefits ... save residents hundreds of millions of dollars in the long run and put a stop to a cesspool of fraud.”

If elected, Vargas said, he has a simple proposition for insurance companies: “If the insurance companies can make a commitment to our state Legislature and say, ‘Let’s come to the table and reform Assignment of Benefits,’ and the insurance companies agree to lower rates, I will be part of that solution. ... I’m not going to sit here, win this election and stonewall any efforts to lower insurance rates for Florida residents.”

Vargas shares his views with his former law partner — former Florida House budget chairman Carlos Trujillo, who is now U.S. ambassador to the Organization of American States — and with many South Florida state senators who have been at an impasse on AOB reform with the insurance industry for years. Lobbyists for insurance companies frequently fire back that the industry can’t guarantee rate reductions but add that the litigation creates an unexpected cost that should bring rates down were it to go away.

In addition to disagreeing with the industry, Vargas also disputed Citizens’ numbers showing that his Coral Gables-based firm, [Vargas Gonzalez Hevia Baldwin](#), led the state in AOB lawsuits against it. “It just can’t be. Their number is wrong,” he said, unable to say what rank his firm is. “They’ve been wrong before about these numbers.”

Vargas didn’t dispute the total number of AOB lawsuits filed by his firm against Citizens, 644, or of the statewide total it filed against all insurers in the cases — at least 1,586 — since 2013. Vargas personally signed the complaints in at least 855 of them, according to a POLITICO analysis of Department of Financial Services data. Statewide, the firm is not an industry leader in these types of lawsuits, which can also include auto as well as homeowner’s insurance.

The data show the suits account for about a third of the firm’s insurance cases; Vargas said they account for less than 15 percent of its total revenue.

Though he signed the suits in question, Vargas said, he isn't trying the AOB cases himself any longer. Instead, he said, he represents homeowners; AOB suits are on behalf of the contractors.

In a campaign mailer sent last week to voters in Florida House District 114, Vargas focused solely on property insurance and homeowner's, and said that "the cost of homeowner's insurance increased every year and insurance companies added to their bottom line."

If elected, the mailer said, Vargas would work toward "eliminating fraud, abuse, and frivolous lawsuits that lead to rate increases." He also questioned how insurers poor-mouth to justify raising rates while lavishing big paydays on executives.

In all, since 2013, Vargas' firm has filed at least 4,806 insurance-related lawsuits and Vargas personally signed half of those suits — at least 2,478 — POLITICO's analysis found.

Vargas told POLITICO that he's not filing frivolous suits on behalf of homeowners.

"It's not that if you file a lawsuit, you're going to automatically get all these attorney's fees. No. That's not how it works," he said. "You actually have to have a viable lawsuit."

But fighting an AOB case in Florida can be tricky for insurers in part because of what are called "one-way" attorney fees. If a contractor and an insurance company go to court over a claim dispute, and the insurance company's estimate is off by even \$1, then the insurance company is responsible for paying the attorney fees on both sides.

In concert with one-way fees for lawyers, AOB cases become tricky because the contractor becomes the plaintiff, and, experts say, that creates an added financial incentive to perform more expensive work and to fight harder for the estimated damage — which can be highly subjective and vary from contractor to contractor.

Water-related claims — such as leaky or broken pipes that aren't caused by named storms — are often litigated using the AOB law and can be particularly ripe for fraud and abuse because they are hard to estimate. The average cost for litigated water claims is more than double that of non-litigated water claims, according to a [2016 special report](#) on the matter. And the average cost for non-litigated water claims with AOB is more than double that for non-litigated water claims without AOB.

Vargas' firm accounts for the third-highest number of water-related suits against Citizens, 1,202, behind the Stremms Law Firm and Morgan Law Group, in the past four years. In all during that period, 26,871 water-related claims have been filed against Citizens, the insurer says.

"Many of the rate increases in South Florida are driven by the AOB/water litigation issue," said [Christine Ashburn](#), who is Citizens' chief of communications, legislative and external affairs, in an interview. "The reality is, we have shown and consistently said that if AOB were to be fixed and water trends were to go back prior to this crisis, many of our customers who are seeing rate increases would be seeing stable rates and, in many cases, rate decreases."

Ashburn added that while all the AOB lawsuits are filed on behalf of contractors, some of the water claims are filed by residents themselves. Citizens has backed legislation to make clear that one-way attorney fees would apply strictly to homeowners — not contractors. The legislation has never passed.

In 2015, Citizens [decreased](#) its rates for nearly 70 percent of policyholders. But as the litigation ticked up, peaking in 2016, it said it was forced to start raising rates in areas with rampant suits, particularly South Florida.

“I think that the root of the problem there is that the assignment of benefits mechanism is being taken advantage of by a small number of market participants,” Florida Insurance Commissioner David Altmaier said about increasing water claims during a [Cabinet meeting in 2016](#).

That year, Citizens and the Office of Insurance Regulation began [backing legislation](#) to remove the “one-way” attorney fee benefit for contractors, [blaming the increased litigation](#), in part, for rate increases.

In 2016, Florida didn’t have any serious hurricanes, but Citizens had to [tap into its hurricane surplus funds](#) to pay “nonweather water claims losses.”

At a Florida Cabinet meeting a year later, Altmaier said the one-way attorney fees give contractors and lawyers an incentive to inflate claims and sue for settlement. He blamed the increased litigation for driving increasing premiums, which by law are capped at 10 percent per year.

“Water losses are going up, both in terms of frequency and severity,” said Altmaier at a [2017 Cabinet meeting](#). “Were these trends to continue unchecked, policyholders would see about 10 percent increases every year going forward just to keep up with water trends that are covering their policy.”

By 2017, rates increased statewide on average by [6.7 percent](#). In Broward, Miami-Dade and Palm Beach counties, they increased on average by 8.3 percent.

In 2018, rates [again increased by 6.7 percent](#) statewide on average. But in South Florida, they continued to climb with an average increase of more than 10 percent across the tri-county area.

“Miami-Dade homeowners’ policyholders could see average premiums climb from \$3,400 to \$4,500 in just four years,” states a company 2018 [report](#). “Instances of AOB abuse are on the rise, particularly in South Florida, and are one of the major factors driving increased nonweather water losses and Citizens’ increase rate need.”

That same report stated that policyholders in other parts of the state “who were expected to see rate decreases in 2018, also may be subjected to higher rates based on higher water claims and increased AOB-related litigation.” Citizens said that’s because the AOB-litigation trend is beginning to spread to other parts of the state.

Vargas said some insurance companies also have questionable relationships with contractors that low-ball residents and pointed out that “one of the only coverages left for residents left in the state of Florida is water damage.” And many insurance companies fight to reimburse people.

“My focus and my energy is on the homeowner side,” Vargas said. “Win or lose — and God willing I win — I’m going to go back to representing homeowners with insurance disputes.”

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