

An analysis and report by Barry Zalma regarding: "Florida's P&C Insurance Market: Spiraling Towards Collapse"

Excerpt from his Guest Column regarding RICO actions by Florida Insurers.



The RICO suits may have been filed because a recent report indicates that Florida's property insurance market is "spiraling towards collapse" and requires immediate attention if there is any chance of protecting the market, consumers, and ultimately, the state's economy, according to an analysis about to be presented to the Florida Legislature.

According to the Insurance Journal, Guy Fraker of Cre8tfutures Innovation System & Consultancy issued, at the request of the insurance industry in Florida, a report called: "Florida's P&C Insurance Market: Spiraling Towards Collapse." Fraker, IJ reported, has worked with the insurance industry for 30 years, including on auto insurance and autonomous vehicles, and with primary carriers, reinsurers and related sectors.

The report reportedly points a finger at the state's "litigation economy" as the main contributor to insurance market woes- seeing it as more of a direct cause than the many weather events Florida has suffered. The Fraker report claimed roughly 6% of homeowners insurance claims being litigated are excessive.

Florida Insurance Commissioner David Altmaier told the Senate Banking and Insurance Committee on January 12 that carriers were on pace to nearly double their losses in 2020 compared with 2019, as their surpluses fell from \$6.7 billion to \$6.1 billion in just the first three quarters of the year.

Florida's insurer of last resort, Citizens Property Insurance Corp., has received a flood of new policyholders over the last year as consumers struggle to find coverage in the private market, and it appears to ZIFL that is one of the reasons for its RICO action.

Insurers have been sued more than 200,000 times since 2013, many of them stemming from non-catastrophe water damage and roofing claims brought by assignors of the claims.

Analyzing more than 3,000 insurance cases, Fraker found that litigation costs are 17% higher for Florida insurers than in other catastrophe-prone states. The fees paid to attorneys by Florida carriers for this litigation are on average more than 750% of the damages paid to the plaintiffs/insureds. In one case Fraker examined, the plaintiff attorney was awarded 21,041% of the damages in fees.

The first page of the report contains the following from a policyholder's lawyer that points out the reason for the expanding costs in Florida:

"See the attached recent order awarding \$725.00 per hour with a 1.8 multiplier on a Hurricane Irma denial. I have twice the experience and three times the trial experience as Ben Alvarez. Please advise your carrier that these are the fees they will pay us, if not more, if they want to keep litigating Hurricane Irma cases."-Attorney Joseph W. Ligman in email sent to insurance defense firms.

Fraker, stated that his first objective is: "As an unintended consequence of Florida multiple legislative acts and Fl Supreme Court Decisions, litigation practices have placed Florida's P&C market in a state of crisis re viability, accelerating towards collapse, at the expense of Floridian's financial security."

In addition, Fraker noted that focusing on claim payments with greater granularity, payments include loss damage payments, and the expenses associated with paying those damages known as Loss Adjustment Expenses (LAE) and Direct Defense Costs (DDC). Insurance litigation related expenses are split between LAE and DCC. As Chart 1 shows, LAE and DDC expenses are typically 4% of revenues in every hurricane prone state, except Florida where these expenses have grown to 19%. In general, a combined ratio below 110% reflects a stable insurer. However, a combined ratio above 110% is generally indicative of an insurer facing some challenges. Insurers with back-to-back combined ratios in excess of 130% are either fending off, or actually in, crisis mode.

A total reversal of the statute that currently applies to all claim disputes placing responsibility on insurers to pay 100% of litigation costs when a plaintiff prevails by \$1. Fraker says the language of the statute should be replaced with former U.S. Supreme Court Justice Antonin Scalia's opinion that fee multipliers only be used on a "rare and exceptional" basis and never used for punitive measures.

Fraker also quoted a leading analyst group as follows:

"The combination of growing litigation expense, litigation uncertainty, with storm uncertainty makes Florida's P&C market distinct from any other U.S. market. We hear you are asking us for some definition of adequate capitalization for a Florida insurance carrier. As far as we know that number hasn't been part of any realistic analysis because it cannot be calculated given layers of uncertainty all trending away from viability."

Fraker explains how the law of unintended consequences has affected the problems in the Florida P&C insurance business.

Given all that has been written, reviewed, and examined, regarding the use of an Assignment of Benefits (AOB), fueled by Section 627.428, FS (1 Way Attorney Fees), little needs to be rehashed in this market analysis, particularly in light of reform statutes enacted in 2019.

However, three quick observations remain highly relevant to this market study.

1. First, when an insured is allowed to assign the benefits and rights of the named insured to another party who lacks an insurable interest in the property, the net effect is to double the coverages provided by protecting a party that was never underwritten, nor charged a premium. Most states do allow a named insured to assign policy benefits to a, as in a single, 3rd party, with significant restrictions upon whom they may choose, as well as which benefits are assignable. Florida allows more simultaneous, or parallel 3rd party assignments to the most liberal list of qualified parties.
2. Secondly, given the evolution of AOB applications occurred on a case-by-case basis from 2008 to 2016, the only public policy statutes available as reference points are 2019 reform measures Sections 627.7152 & 7153, FS.
3. In a classic case study of decisions leading to significant unintended consequences, the intersection of Section 627.428, FS with the growth in use of the AOB, the litigation storm made the jump to landfall as a Cat5.

The report concludes: "The best options to realign Florida Property and Casualty insurance institutions become much clearer once market-wide reform recommendations complete the consideration process, leaving only the enacted reforms. The likelihood of undesired & unintentional consequences grow significantly with institutional reforms based on current market conditions already rendering the P&C industry unsustainable. However, some realigning is needed regardless of other measures."

##end##

NOTE: Mr. Zalma has more than 53 years as a claims person and insurance coverage attorney who has advised insurers on claims handling and coverage interpretations. He provides expert testimony on insurance policy language, insurance bad faith, insurance claims handling and is a nationally recognized expert on insurance fraud matters.

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