

SARASOTA LITIGATOR Journal

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Property Insurance Reform Forecast: *Storms Ahead*



Have insurers doing business in Florida established policies designed to underpay all homeowner property insurance claims by their policyholders? Have insurers colluded to boost premium rates?

“Recent news stories have revealed that some insurers doing business in Florida allegedly have proce-

dures in place to pay policyholders, regardless of the circumstances of the claim, regardless of the extent of possible damages, the least amount possible,” says Steven Wittmer, a board-certified Sarasota attorney.

Meanwhile, as insurers summarily drop thousands of Florida homeowners, property insurance premiums continue to climb at seemingly exponential rates.

“It appears that now, more than ever, in this chaotic regulatory environment, Florida residents need a qualified, experienced attorney at their side when insurers don’t honor

legitimate claims on their policies.”

The Battle Is Joined

Florida legislators and insurance regulators, feeling betrayed by insurers following the latest in a series of legislative and regulatory fixes designed to mitigate

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CASE REVIEW

Settlement Reached for Injuries Sustained in Falling Merchandise Case.

Jane Doe (client’s name withheld for confidentiality) was shopping at a local closeout store when she suddenly and unexpectedly suffered life-changing injuries. As Mrs. Doe bent down to read the back of a can of Freon, two 22” tool boxes fell off an 8’ shelf and crashed into the top of her head. She fell to one knee as she was momentarily knocked unconscious. Immediately, medical assistance was rendered and emergency care needed.

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Property Insurance

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the crisis, are in a pitched battle with insurance companies. The government's core question is: How do insurers set their rates?

Legislators said the 2007 reform package – making the state-backed Citizens Property Insurance Corporation a stronger market competitor and adding billions to a state fund for a reinsurance pool for the private market – should have lowered homeowner insurance premiums by an average of 24 percent. The promised relief for property owners never materialized, however. The insurers said the legislators, using their political calculators, had promised too much.

In recent months, Allstate, Florida's second-largest private homeowners and auto insurer, has come under intense scrutiny by the Office of Insurance Regulation (OIR) and Florida Insurance Commissioner Kevin McCarty. This simmering battle reignited amidst Florida's homeowner property insurance crisis.

Allstate's rates first fell by 14.2 percent, however, the company asked for a 42 percent increase in the next round of ratemaking. That thoroughly miffed the OIR, which launched an investigation into how Allstate sets its rates. The OIR wants Allstate documents that reinforce its conjecture that insurers may have colluded to avoid rate cuts after the 2007 insurance fix. Allstate refused to submit communications with trade groups. Allstate says it has given the OIR its so-called McKinsey Report, which supposedly outlines how the company saves money by paying less on claims.

Regulators wouldn't back down and, on Jan. 17, suspended Allstate from writing new policies in Florida, citing its failure to comply with investigative subpoenas. Courts intervened and Allstate was back in

*“Like a big ship,
the Legislature
turns slowly and
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– STEVEN T. WITTMER

business a day later.

Blame Game Continues

From Gov. Charlie Crist and the Florida Legislature to state regulators, Florida government has ramped up the rhetoric and the pressure on insurers.

“Florida consumers deserve to know what is in the documents that Allstate is so aggressively guarding, and my office is determined to get them,” McCarty said in early January when he canceled a two-day hearing on Allstate's reinsurance program and its relationships with risk-modeling companies, rating organizations and trade associations.

Industry defenders ask if Florida politicians are simply trying to shift the blame for Florida's dysfunctional regulatory structure to insurers. The

legislators, the industry defenders say, can't seem to find the courage to tell their constituents about the true costs of insuring property in hurricane country.

In early February, the Florida Senate Select Committee on Property Insurance Accountability pressed the investigation into rising property insurance rates. Information developed in its hearings may be used as the basis for legislation this spring.

At this newsletter's presstime, the Senate committee was considering several possible actions:

- Providing clearer guidelines on what mathematical storm models insurance companies can use to set rates or buy insurance;
 - Determining a fair “profit factor” for insurers to use. Regulators have recommended 3.7 percent, but some insurers have asked for profit factors in excess of 20 percent;
 - Deciding whether to extend a two-year moratorium on allowing insurance companies to go to an arbitration panel if they disagree with regulators about rates;
 - Assessing whether the state can lower its commitment to provide up to \$28 billion in backup coverage to insurers in the event of a major hurricane season.
- Meanwhile, on Feb. 19, the OIR filed an administrative complaint seeking to suspend the certificates of authority of the Allstate Companies to write new insurance policies in Florida. The complaint is based in part on Allstate's: Failure to provide witnesses and documents as subpoenaed by the OIR; Falsely labeling subpoenaed documents as trade secret; Falsely certifying its rate filings.



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Property Insurance

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Filing the complaint is required under Florida law as part of the process that began when Commissioner McCarty issued on Jan. 17 the Immediate Final Order (IFO), suspending Allstate from writing any new business in Florida. Allstate is expected to request an administrative hearing on that complaint. If requested, a hearing would be held at the Division of Administrative Hearings. An administrative law judge will hear the evidence and then make findings of fact. Commissioner McCarty could then issue a Final Order, which may include a suspension of Allstate's certificates of authority. Allstate could then appeal to the First District Court of Appeal.

"Seeking to suspend a company's license is not something we take lightly," said OIR General Counsel Steve Parton. "However, in light of their defiance of the Florida Insurance Code, we think it is necessary to make the point that actions such as we have seen by Allstate will not be tolerated."

"Like a big ship, the Legislature turns slowly and relief will not be immediate," Wittmer says. "That relief most likely will impact property insurance premium rates. On the other side of the policy, when filing a claim, it would be prudent to let us stand with you, to ensure that you receive all the benefits to which you are entitled under the policy."



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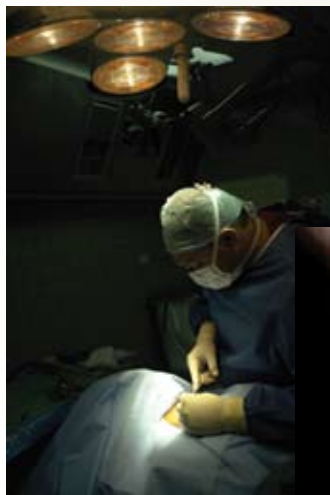
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Settlement Reached

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After undergoing conservative care for approximately four months, Mrs. Doe underwent neck surgery in an attempt to alleviate her unrelenting pain. Her surgery was helpful in reducing her pain, but it did not relieve all of her symptoms. Almost a year of therapy followed her surgery. During this time Mrs. Doe remained on a daily regimen of pain medication to make her daily activities manageable.

Wittmer & Linehan were retained to represent Mrs. Doe in her case against the closeout store. Mrs. Doe attempted to settle her case without the need to file a lawsuit but our



efforts were unsuccessful. In fact, the closeout store denied that the accident ever occurred. After months of litigation, Wittmer & Linehan proved that the incident did take place by the store's own documents and witnesses. On the eve of trial, the case successfully settled for a confidential amount. Mrs. Doe felt vindicated and happy to close this chapter in her life.



Now Accepting Case Referrals

The law firm of Wittmer & Linehan is accepting referrals of cases in the areas of personal injury, wrongful death, insurance disputes, workers compensation, and trust and estate litigation. We promise to work hard to earn and preserve your trust in referring cases to our firm, providing prompt, diligent and aggressive representation.

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