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Florida insurance market needs strong medicine

If the Florida homeowners' insurance market were in a medical exam, the diagnosis would find the patient in dangerously poor condition. The patient's vital signs—its financial results—are troubling. What is more, there are multiple co-morbidities. The welter of symptoms collectively reveal the patient to be one step away from the emergency room. Consider seven signs of sickness below:

1. Red Ink. Insurers operating in Florida overwhelmingly report unprofitable results. Insurance companies collectively lost $1.5 billion of their Florida business in 2021, a year in which no hurricanes struck the peninsula.

In 2016-2019, the Florida homeowners insurance market reported a combined ratio of 117.5 percent. This means that for every hundred dollars of premium received, insurers paid $117.50 in losses and expenses. This compares to the overall insurance industry reporting a combined ratio of 100.7 percent. The industry's investment income ratio—investment income divided by net premium—of 7.9 percent renders the results of the overall industry profitable, with a seven-point profit margin. The investment income is not, however, sufficient to pull Florida homeowners business into the black, as figuring in investment income resulted in an operating margin of 109.6 percent, which means Florida homeowners insurers on average lose $9.60 for every hundred dollars of premium revenue.

2. Administration of Last Rites. Several Florida insurers have become insolvent in recent months and years. The common denominator in these companies' corporate obituaries is claims costs far outpacing premium growth. The most recent casualties include Gulfstream, Avatar and Johns.

Insolvent FL Insurers	Comment
St. Johns	business taken over by Slide Insurance, March 2022
Avatar	insolvent March 2022
Gulfstream	went into liquidation, July 2021
American Capital	in receivership April 2021
Florida Specialty	liquidated October 2019
Sawgrass	insolvent in 2017, policies taken over by Heritage

3. Be a quitter. Several property insurers are realizing that continuing in the Florida market is throwing good money after bad, and are strategically withdrawing from the state. The most recent such announcement, in March, was from Lexington Insurance Company, part of the American International Group family. What makes Lexington's departure troubling is that Lexington is an excess and surplus (E&S) lines insurer. E&S companies concentrate on high-risk business no standard insurer will touch. Whereas standard insurers run out of burning buildings (figuratively), E&S carriers run into burning buildings. Because they are willing to insure business others won't, regulators allow E&S insurers the freedom to charge premiums and issue insurance contracts as they see fit, without having to abide by the guardrails established by state-based insurance regulators overseeing standard lines insurer rates and forms.

4. Limit your losses. Insurers continuing to operate in the Sunshine State are taking defensive tactical measures, cancelling policies, restricting coverage and raising rates (see table below).

Insurers Pausing or Reducing FL Exposure	Comment
Lexington	pulling out of Florida, announced March 2022
Lighthouse	stopped writing new Fla. homeowners business, Feb 2022
Florida Farm Bureau	stopped writing new Fla. homeowners business, Feb 2022
Universal	dropped 13,000 of its 57,000 Fla. policies
Progressive	dropping 56,000 Fla. homeowners policies

TypTap new insurer stopped new Fla. writing

5. Those who fight and run away live to fight another day. The growth and profitability strategy for insurers with a Florida footprint is to increase their business outside of the state while shrinking their Florida portfolio. For example, Heritage insurance, 86 percent of whose 2021 business was in Florida, reported in its Q4 2021 earnings call that it had a 10.9 percent decrease in Florida personal lines policies and a 10.7 percent increase in personal lines outside of Florida.

6. The Swelling of Citizens. Citizens Property Insurance Company (Citizens), the state-run "insurer of last resort" is becoming the "insurer of first resort" as private market insurers refrain from offering coverage to customers who cannot find insurance elsewhere. In late March, Citizens President and CEO Barry Gilway projected his company could have more than one million policies by the end of 2022. Citizens is adding approximately 5,500 new policies per week. At the end of March 2022, Citizens had 801,341 policies, up from 570,000 one year ago.

7. Litigation Gone Wild. In a recent Citizens report, Gilway also noted a "disturbing trend" in year-to-date litigation through June of 2021—the number of lawsuits against insurers, excluding Citizens, increased 51 percent year-over-year to 50,951 versus 33,800 in the first six months of 2020. The longer-term picture is disturbing—the same report reveals that the rise in Florida homeowners'-related lawsuits more than tripled from 27,416 in 2013 to 85,007 in 2020.

Litigation, Litigation, Litigation

Unlike several Louisiana insurers that succumbed to losses from Hurricane Ida in 2021, Florida insurance failures and pullouts were not driven by natural catastrophe losses. The cause of the Florida woes is excessive litigation.

Although excessive litigation is the proximate cause of Florida's property insurance issues, it's not appropriate to blame the lawyers. Lawyers litigate—that's their job. The problem has arisen from the unintended consequences of a cluster of laws and state Supreme Court decisions that created loopholes enabling contractors, lawyers and homeowners to inflate the number and the value of claims payments. A comprehensive report by Guy Fraker on the dire condition of the Florida insurance concurs with this assessment, finding that "everybody's just leveraging the rules of the game."

The Florida Office of Insurance Regulation 2020 annual report presents the striking statistic that "in 2019 Florida accounted for 76.45% of all homeowners' suits opened against insurance companies in the U.S. despite only accounting for 8.16% of all homeowners' claims opened by insurance companies in the U.S."

The Cure

Reform of the broken Florida homeowners insurance market requires resolve in the state legislature to pass a sweeping set of reforms. In the legislative session ending March 2022, the only significant bill to be presented was SB 1728, which was temporarily postponed, and ultimately failed due to never being reconsidered in the final days of the 60-day regular session. This bill takes aim at unscrupulous roof contractors, but it is medicine too thin for a patient seriously ill that may go on life support if this year's hurricane season is rough.

Just as operating on a patient suffering from multiple diseases is complex, solving the Florida insurance issues is no easy undertaking. We suggest the following legislative initiatives be introduced:

- **Slay the roof replacement monster**. Roofs should be valued on an actual cash, rather than replacement cost basis. A homeowners' insurance policy is not a maintenance agreement. The natural wearing out of a roof is not a covered cause of loss.

SB 76, approved in the 2021 legislative session, took aim at unscrupulous roofing contractor solicitation practices, including contractors making promises for "free roofs" when any damage is the result of roof age rather than wind damage. A federal court blocked that portion of the bill, alleging that roof contractor solicitations are a form of protected free commercial speech.

SB 1728, as introduced in the 2022 legislative session, would allow contractor solicitation and advertising provided the contractor present a statement to the homeowner clarifying that the homeowner is responsible for paying the deductible. The statement also stipulates that it is a felony for the contractor to waive the deductible or file a claim with false information. It would also introduce a roof-only deductible for new policies.

- **Direct high-hazard properties to E&S market.** Properties exposed to high hazards because of location or because their construction is not stormproof should not be artificially subsidized by the broader market. In California, which has its own homeowners insurance issues from wildfires, the volume of E&S homeowner premium has tripled since 2018.
- **Eliminate one-way-attorney fees**. Assignee plaintiffs in the form of service providers repairing insured damage account for approximately one third of lawsuits filed against insurers. There is a high degree of concentration in just a few plaintiff attorney firms.
- **Introduce lodestar fee**. A lodestar fee is an attorney's fee calculated by multiplying a reasonable number of hours spent on a case by a reasonable rate. A bill (SB 1910) was introduced to achieve this reform in 2022, but it died in the Banking and Insurance committee.
- **Reform Citizens**. Citizens should have rates reflective of the inherent risk of a property. Citizens' rate increases are artificially capped at a maximum of 11 percent increases. In the private market there is no such cap on rate filings, which present the actuarial justification for requested rate change to the state regulator.

Without a special session focusing on addressing the pressing Florida property insurance problems, it appears likely that the situation will only get worse. June 1 is the date for renewal of reinsurance treaties protecting Florida insurers. Expectations are for reinsurance rate increases, which will be passed on to homeowners, pushing Florida homeowners insurance premium levels to yet higher nosebleed levels. June 1 is also the official start of the Atlantic hurricane season. If there is a silver lining to this cloud, it is that additional pain may spur legislators to take action and support needed reforms, and to do so with dispatch.

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