

Tab 3	SB 122 by Broxson; (Compare to H 00301) Attorney Fee Awards Under Insurance Policies and Contracts
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

BANKING AND INSURANCE
Senator Broxson, Chair
Senator Rouson, Vice Chair

MEETING DATE: Tuesday, January 22, 2019

TIME: 12:30—2:00 p.m.

PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Broxson, Chair; Senator Rouson, Vice Chair; Senators Brandes, Gruters, Lee, Perry, Taddeo, and Thurston

TAB		BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Workshop - Discussion and testimony only on the following (no vote to be taken): SB 122 - Attorney Fee Awards Under Insurance Policies and Contracts				
1	SB 122 Broxson (Compare H 301)	Attorney Fee Awards Under Insurance Policies and Contracts; Revising certain attorney fee provisions in the Florida Insurance Code to specify that an insured or beneficiary entitled, under certain circumstances, to attorney fees under an insurance policy or contract must be a named insured or named beneficiary; providing that such right to attorney fees may not be assigned or extended by agreement, except to certain persons, etc.		Workshop-Discussed
		BI JU RC	01/22/2019 Workshop-Discussed	
Other Related Meeting Documents				



Florida Office of Insurance Regulation

Florida's Assignment of Benefits (AOB) Crisis

Presented to:

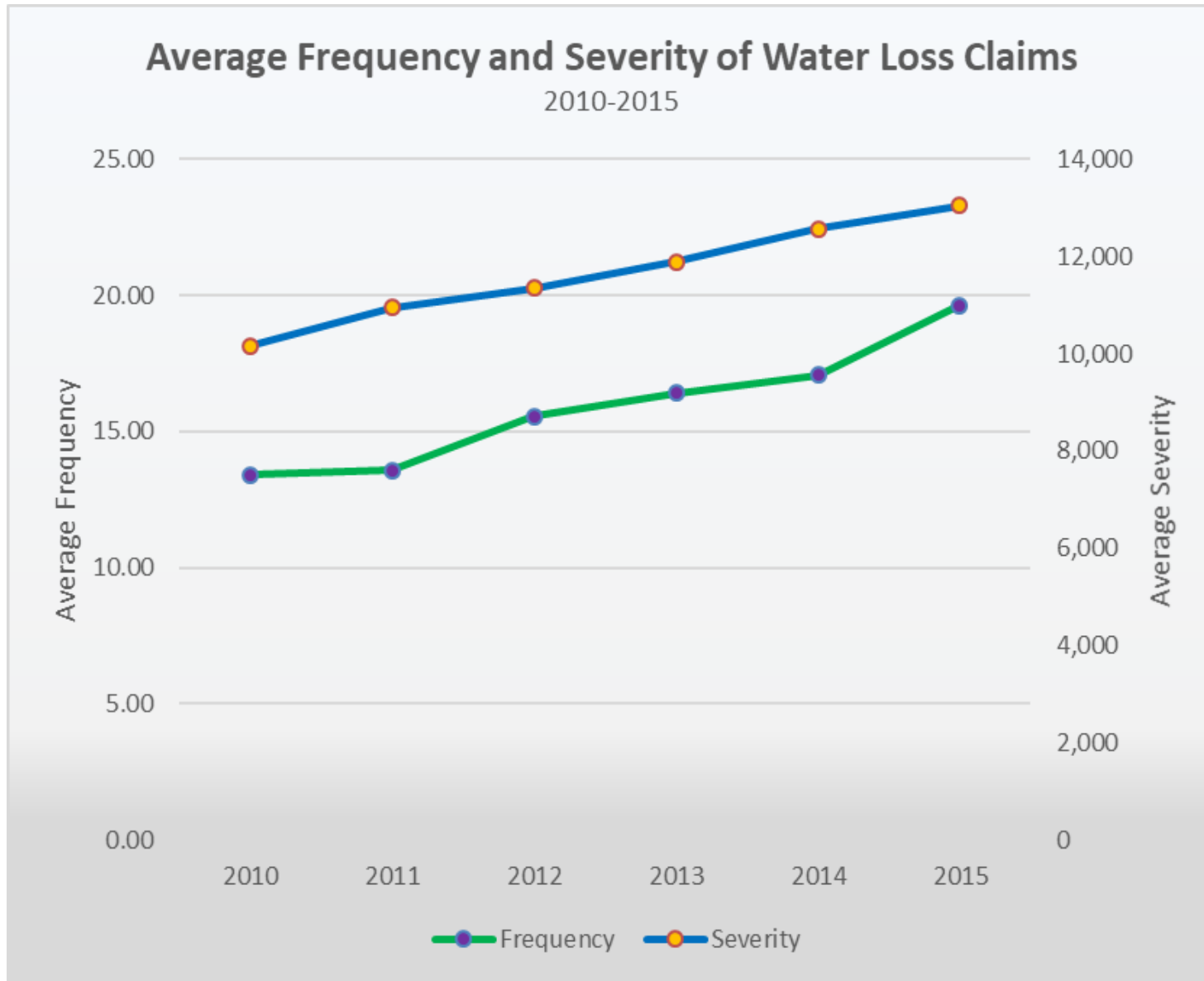
Senate Banking and Insurance Committee

January 22, 2019



Florida Office of Insurance Regulation

2015 AOB Study



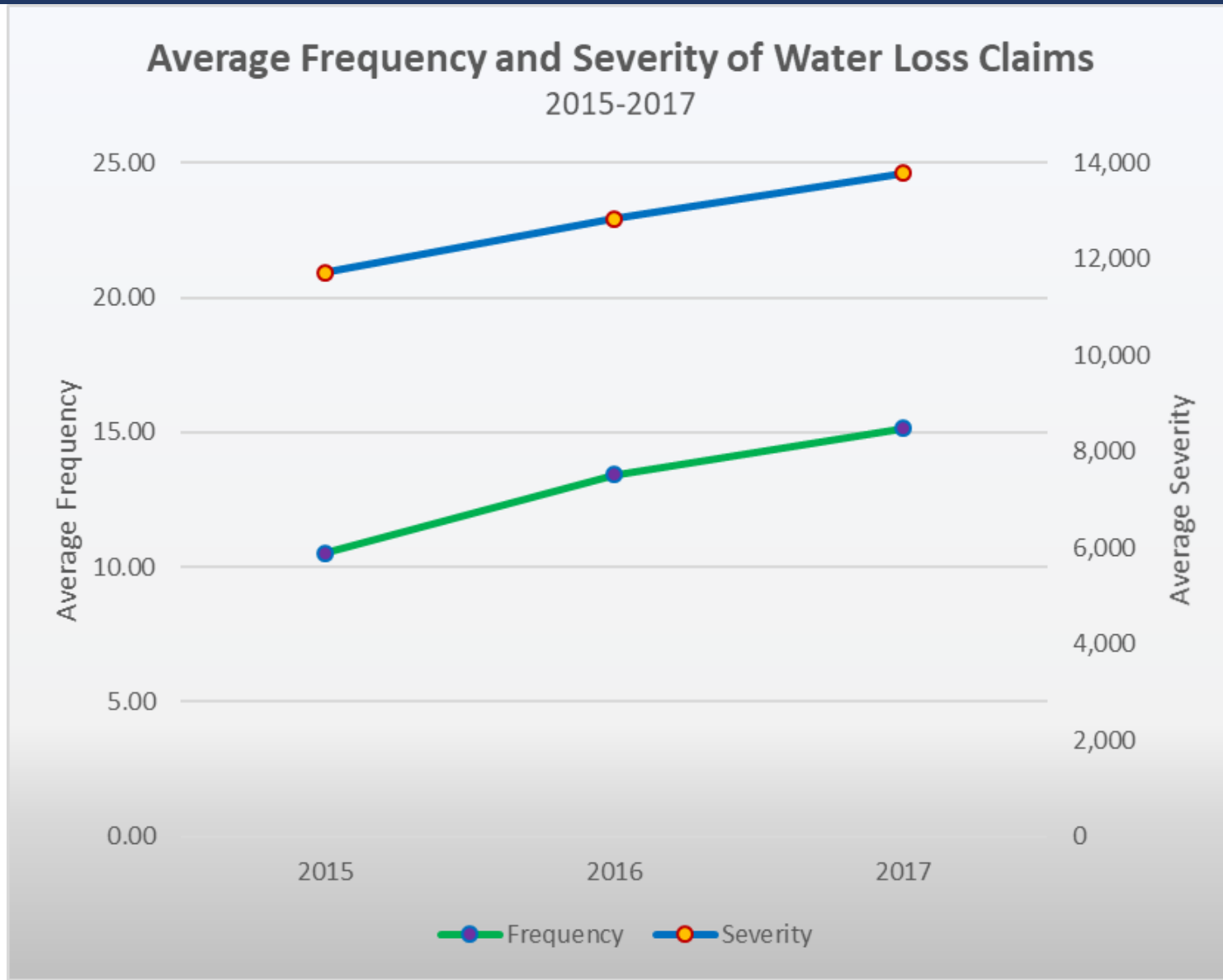
Source: Office Assignment of Benefits Data Call. Data based on claims for voluntary carriers with dates closed between 1/1/2010 and 9/30/2015. Insurer must have been able to provide information to determine the frequency and severity of HO-3/DF claims for water losses.

*Data is only shown for insurers that were able to consistently indicate for a given year that a claim had or did not have an (AOB).



Florida Office of Insurance Regulation

2017 AOB Study



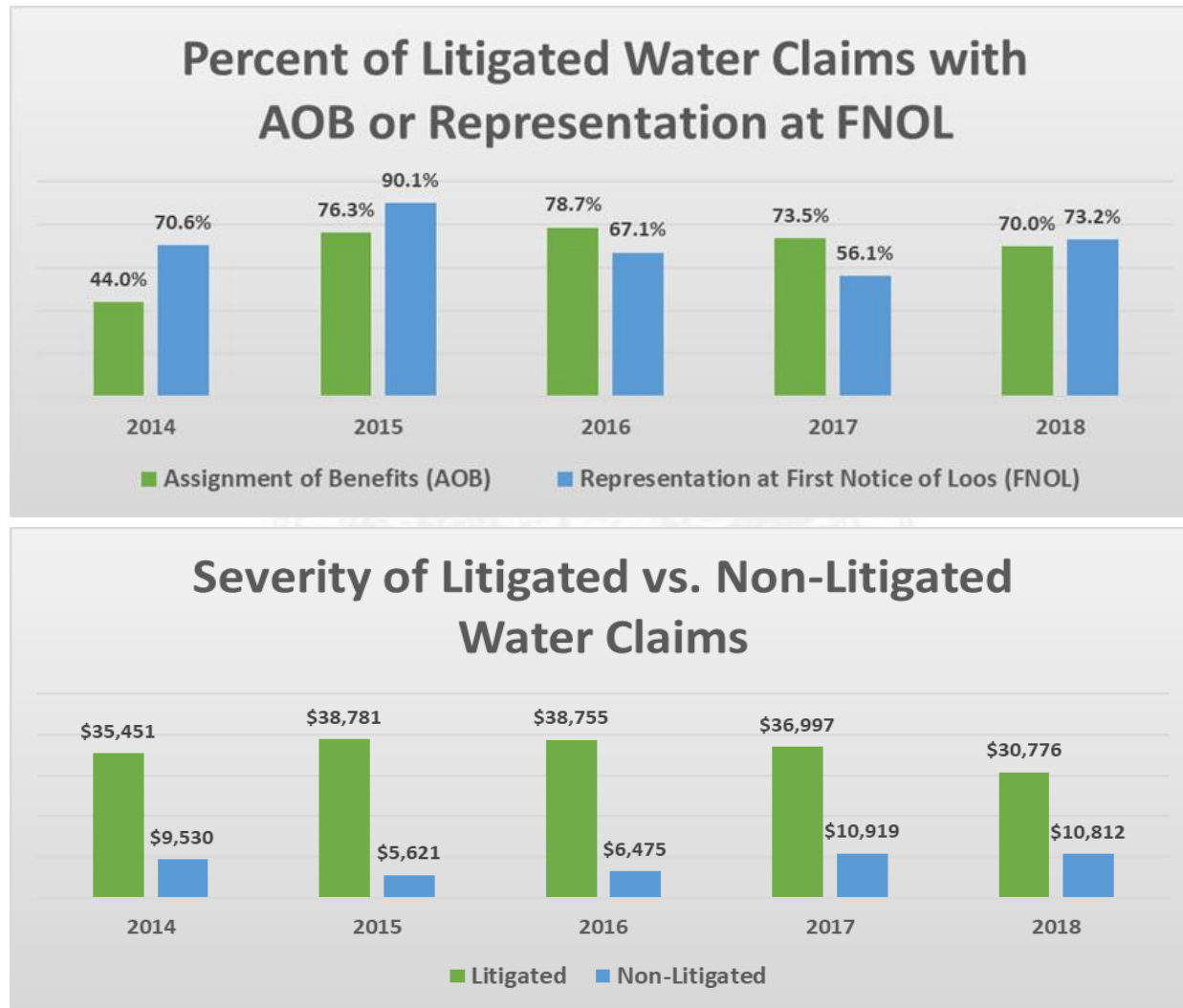
Source: Office Assignment of Benefits Data Call. Data based on claims for voluntary carriers with dates closed between 1/1/2015 and 6/30/2017. Insurer must have been able to provide information to determine the frequency and severity of HO-3/DF claims for water losses.

*Data is only shown for insurers that were able to consistently indicate for a given year that a claim had or did not have an (AOB).



Florida Office of Insurance Regulation

Experience: Citizens Property Insurance Corporation 2014-2018



Notes:

1) Claims data is based on non-weather related water claims by report year for Homeowners policies.

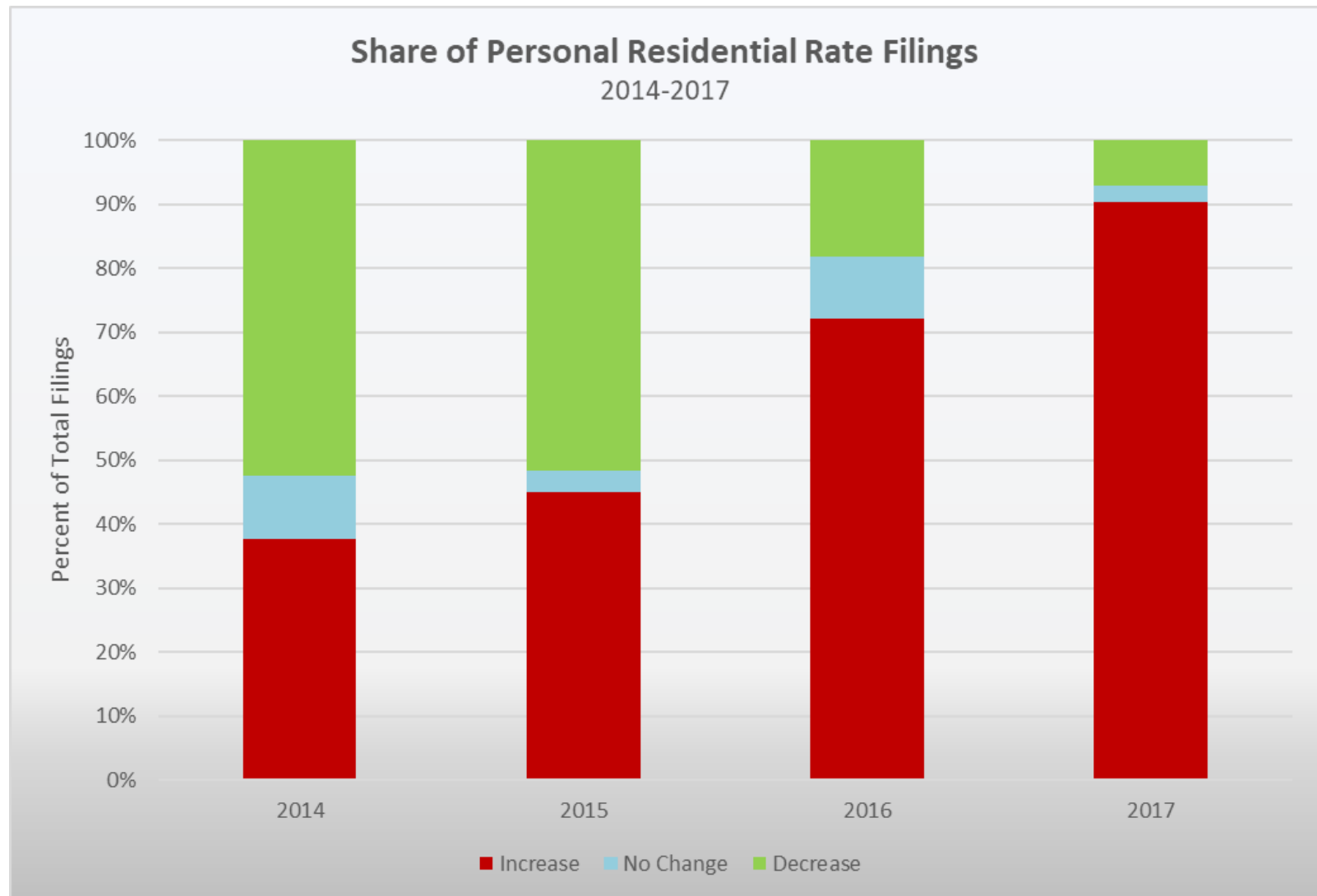
2) Severity of litigated and non-litigated claims are based on undeveloped report year incurred loss and allocated loss adjustment expense (ALAE)

Source: Citizens Property Insurance Corporation (2018)



Florida Office of Insurance Regulation

Property Insurance Affordability



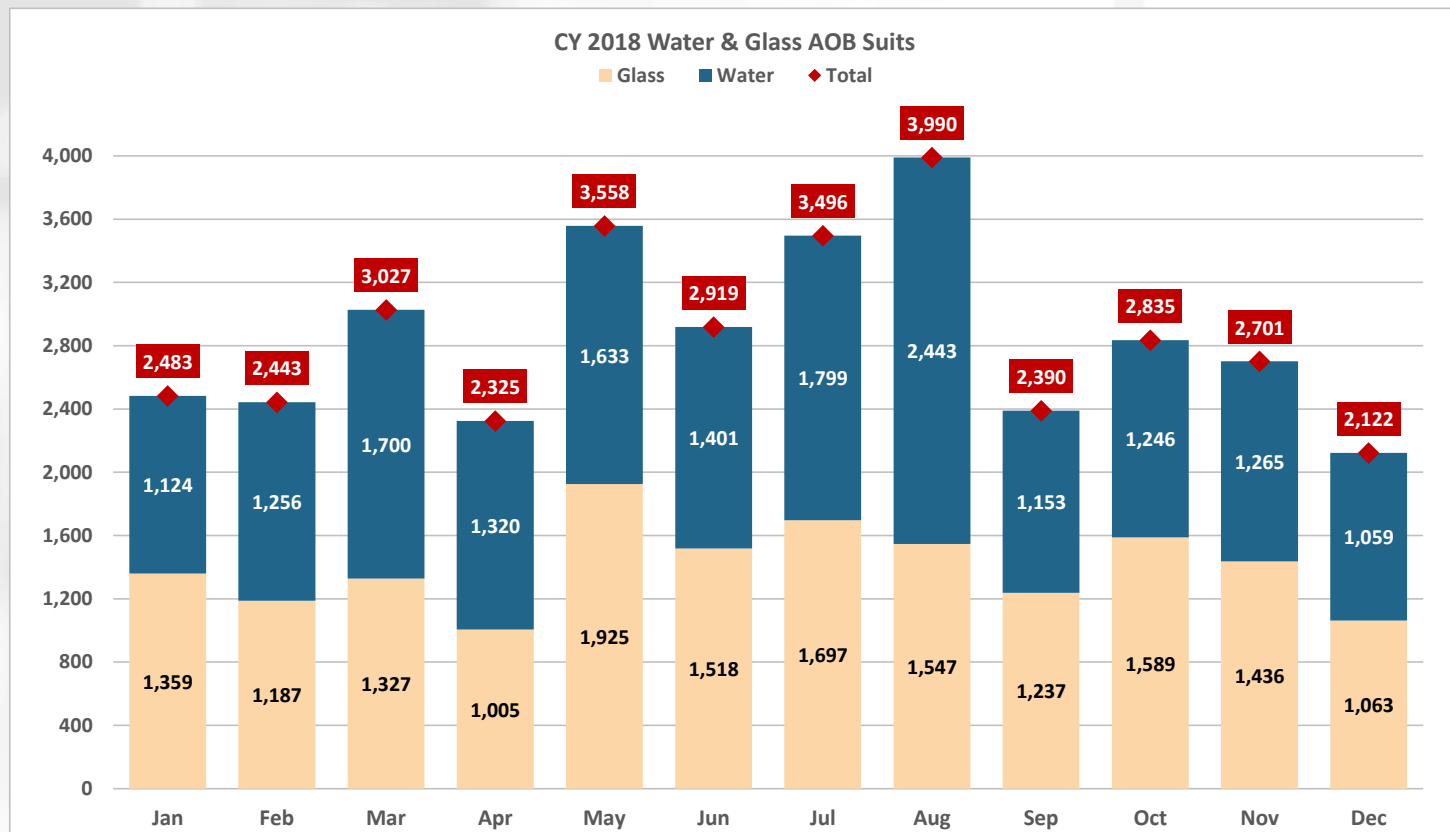
Assignment of Benefits: By the Numbers

Senate Banking and Insurance Committee

January 22, 2019

DEPARTMENT OF FINANCIAL SERVICES

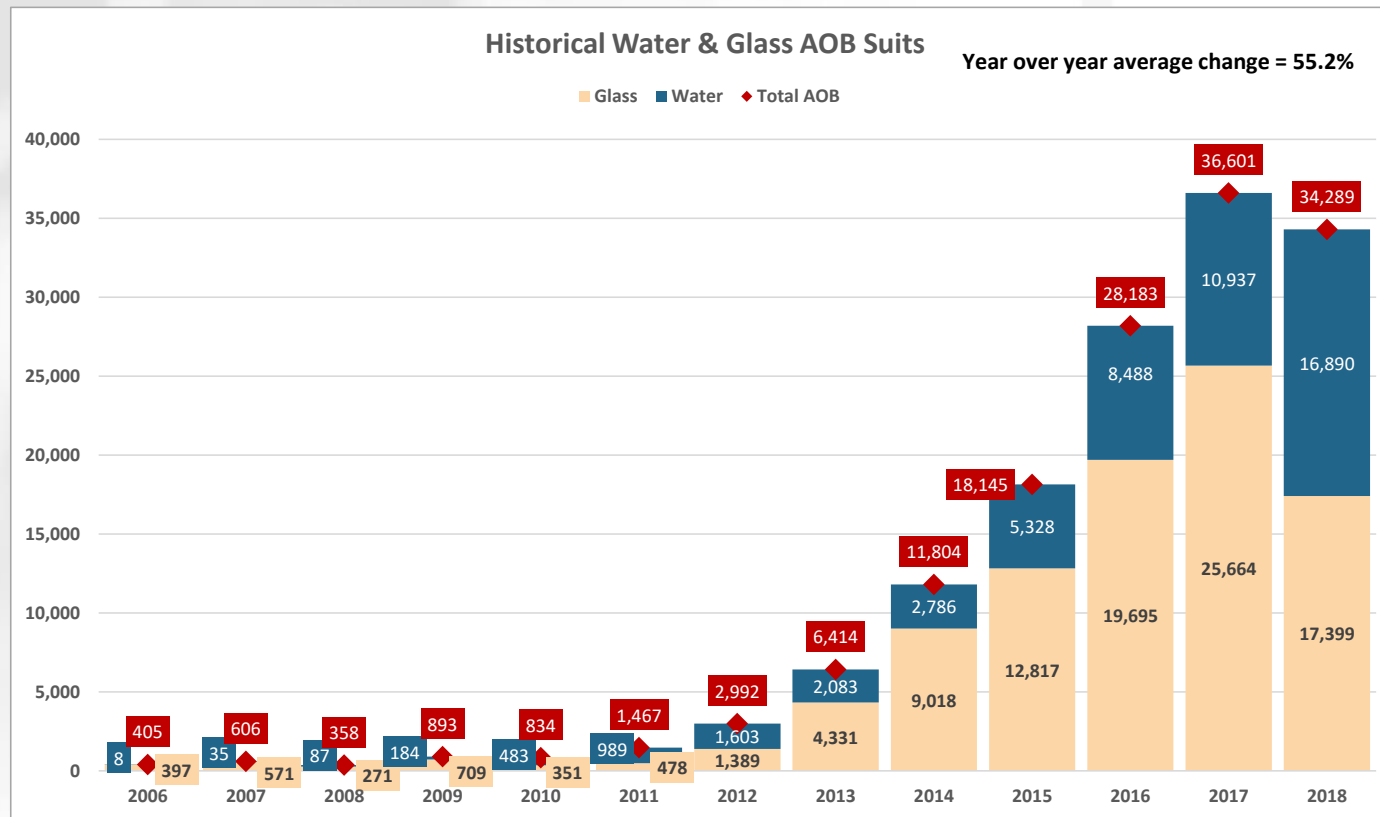
Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Glass	1,359	1,187	1,327	1,005	1,925	1,518	1,697	1,547	1,237	1,589	1,436	1,063
Water	1,124	1,256	1,700	1,320	1,633	1,401	1,799	2,443	1,153	1,246	1,265	1,059
Total	2,483	2,443	3,027	2,325	3,558	2,919	3,496	3,990	2,390	2,835	2,701	2,122



CFO JIMMY PATRONIS

DEPARTMENT OF FINANCIAL SERVICES

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Glass	397	571	271	709	351	478	1,389	4,331	9,018	12,817	19,695	25,664	17,399
Water	8	35	87	184	483	989	1,603	2,083	2,786	5,328	8,488	10,937	16,890
Total AOB	405	606	358	893	834	1,467	2,992	6,414	11,804	18,145	28,183	36,601	34,289



CFO JIMMY PATRONIS

DEPARTMENT OF FINANCIAL SERVICES



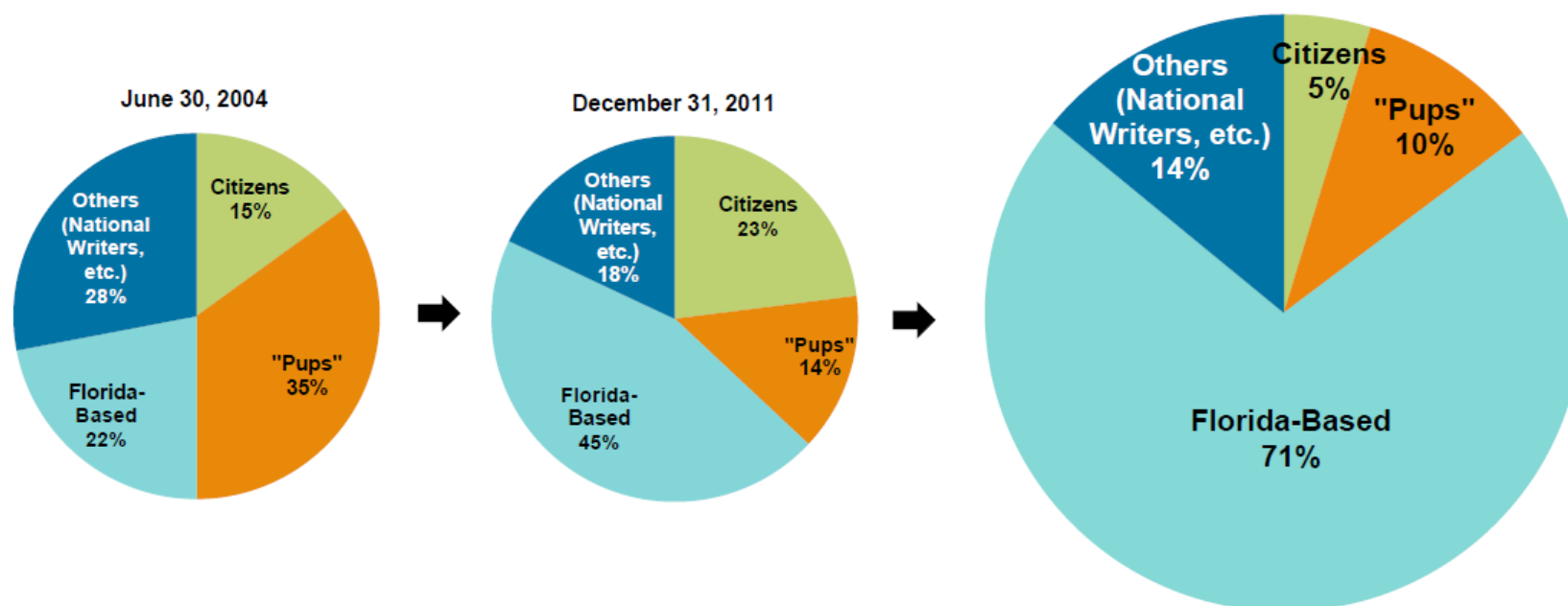
CFO JIMMY PATRONIS

Citizens Property Insurance Corporation Overview

Barry Gilway
President



**For Policies that Include Wind Coverage
Florida Residential Property Insurance Market
Includes State Farm Florida
QUASR data as of June 30, 2018**

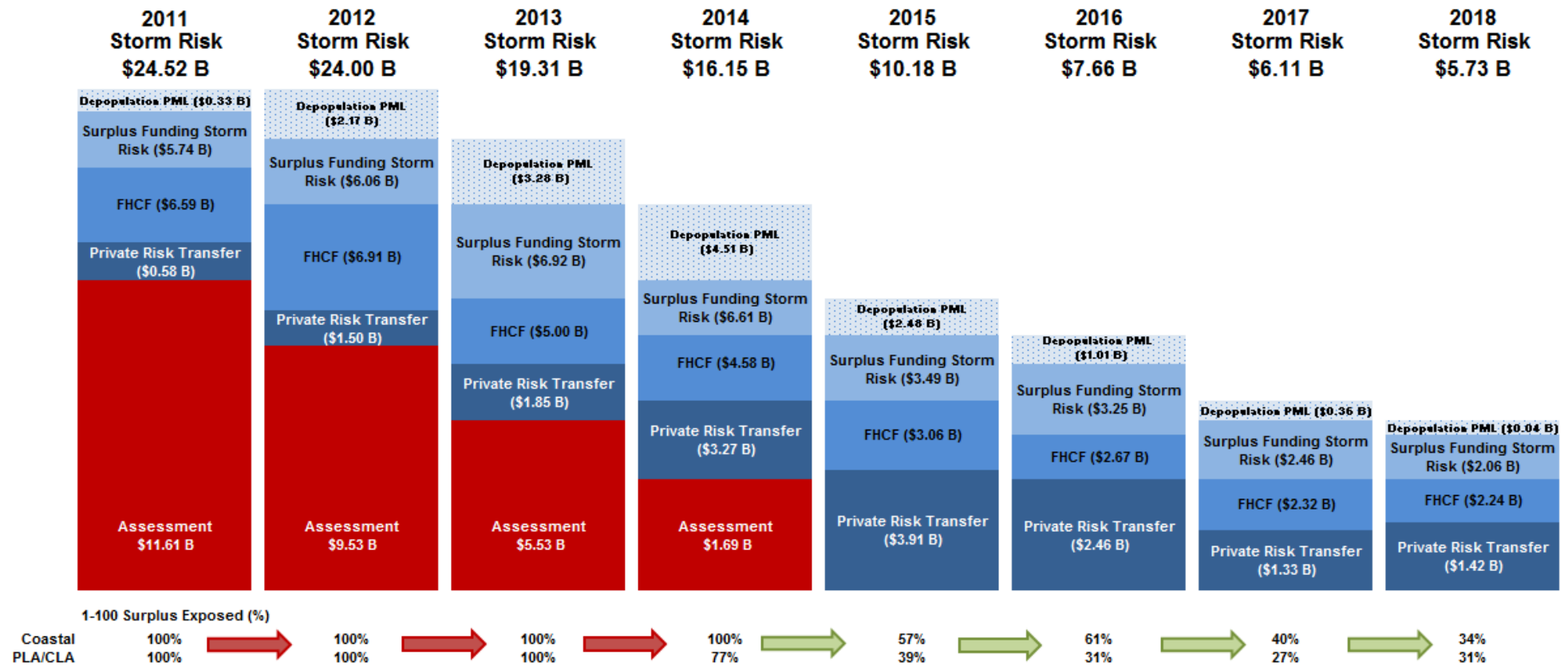


Insurer Category	Total Insured Value
Citizens	\$106,284,553,696
"Pups"	\$233,041,758,285
Florida-Based	\$1,612,889,890,922
Others	\$319,869,629,249
Total	\$2,272,085,832,151

The Florida Residential Property Insurance Admitted Market is divided into 4 major parts: (i) Citizens; (ii) Florida only subsidiaries "pups" of major national writers; (iii) Florida-based domestic companies; and (iv) non-domestic nationwide property writers, such as USAA, etc.

Storm Risk: 1 in 100 year PML

Public Summary of Citizens Assessment Reduction Efforts Over Time



Notes:

- Storm Risk is as measured by 1-in-100 year probable maximum loss (PML) plus estimated loss adjustment expenses using the Florida Hurricane Catastrophe Fund (FHCF) account allocation where PLA and CLA are combined. PLA/CLA combined PMLs are added to the Coastal PMLs to be consistent for surplus distribution. In general, the PMLs presented are as projected at the beginning of storm season; with the exception of 2017 which is as of August 31, 2017.
- Surplus and Assessments are as projected at beginning of storm season. Not all PLA/CLA surplus is needed to fund storm risk in 2014. In 2015 - 2018, not all surplus in PLA/CLA and the Coastal Account is needed to fund storm risk. Remaining surplus is available to fund a second event.
- Florida Hurricane Catastrophe Fund (FHCF) is as projected at beginning of storm season; with the exception of 2017 and 2018 which are Citizens' initial data submission to the FHCF.
- Depopulation PMLs are not included in storm risk totals and are presented as year end totals; with the exception of 2018, which is as of May 31, 2018. PMLs from 2011-2014 use a weighted average of 1/3 Standard Sea Surface Temperature (SSST) and 2/3 Warm Sea Surface Temperature (WSST). 2015 - 2018 PMLs reflect only SSST event catalog.

Carrier Litigation Expense

Litigation has been increasing steadily for all carriers.

	2013	2014	2015	2016	2017	2018
Citizens Property Insurance Company						
All	9,146	9,525	7,653	10,061	7,624	13,363
AOB	860	1,062	1,250	3,242	2,718	3,631
AOB %	9%	11%	16%	32%	36%	27%
All Other Carriers						
All	18,270	22,122	30,167	31,790	41,524	69,300
AOB	4,613	4,820	6,645	5,968	9,772	17,421
AOB %	25%	22%	22%	19%	24%	25%
Total All	27,416	31,647	37,820	41,851	49,148	82,663
Total AOB	5,473	5,882	7,895	9,210	12,490	21,052
Total AOB %	20%	19%	21%	22%	25%	25%

Data source – DFS LSOP 2013-2018 Q4

Note: 2018 Q3 data includes Hurricane Irma which represents around 60% of all new Litigation for Citizens Property Insurance in 2018.

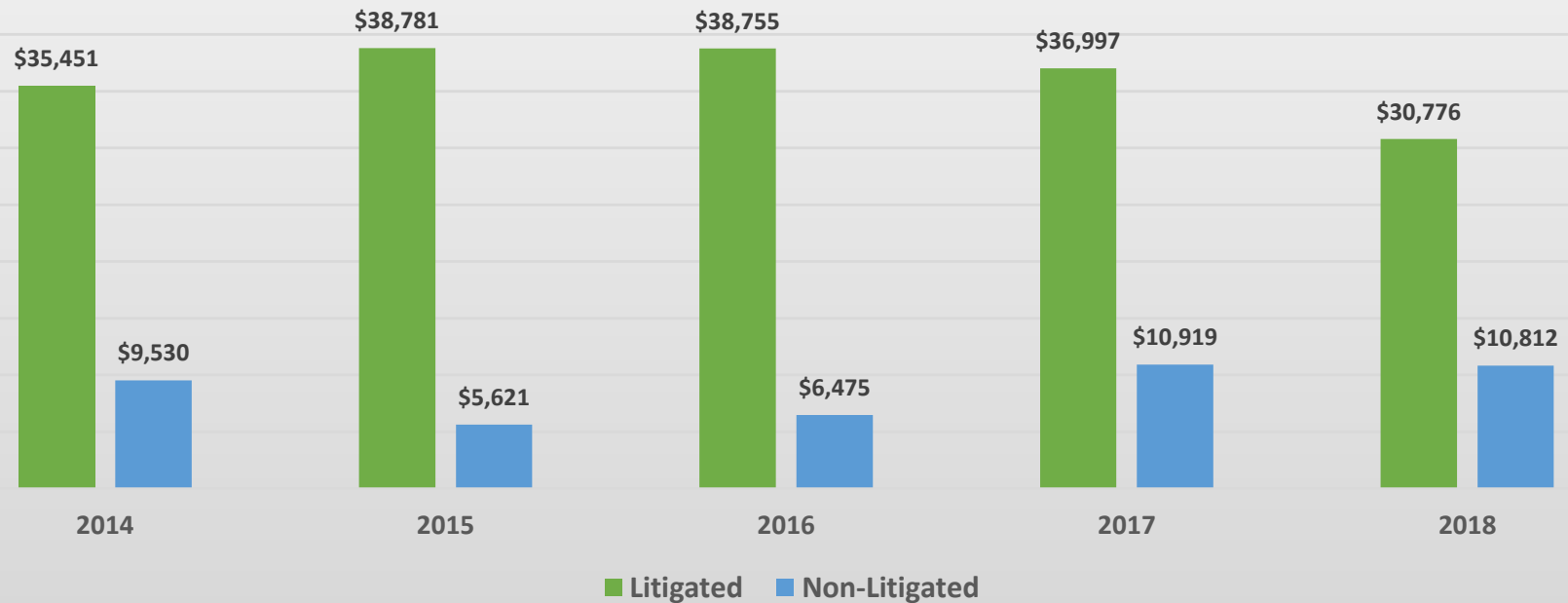
Legal Service of Process 2013-2018 All State of Florida Carriers

	Miami-Dade	Broward	Palm Beach	Orange	Hillsborough	Duval	Polk
2013	10,759	4,383	2,116	1,578	2,064	725	326
2014	12,287	5,932	2,337	1,815	2,025	780	401
2015	13,133	8,309	3,184	2,101	2,019	960	363
2016	14,718	9,605	3,493	1,994	2,424	1,047	449
2017	13,993	11,137	4,403	2,980	2,913	1,487	623
2018	25,736	17,281	6,139	6,232	3,594	2,027	1,284

Legal Service of Process – AOB Litigation

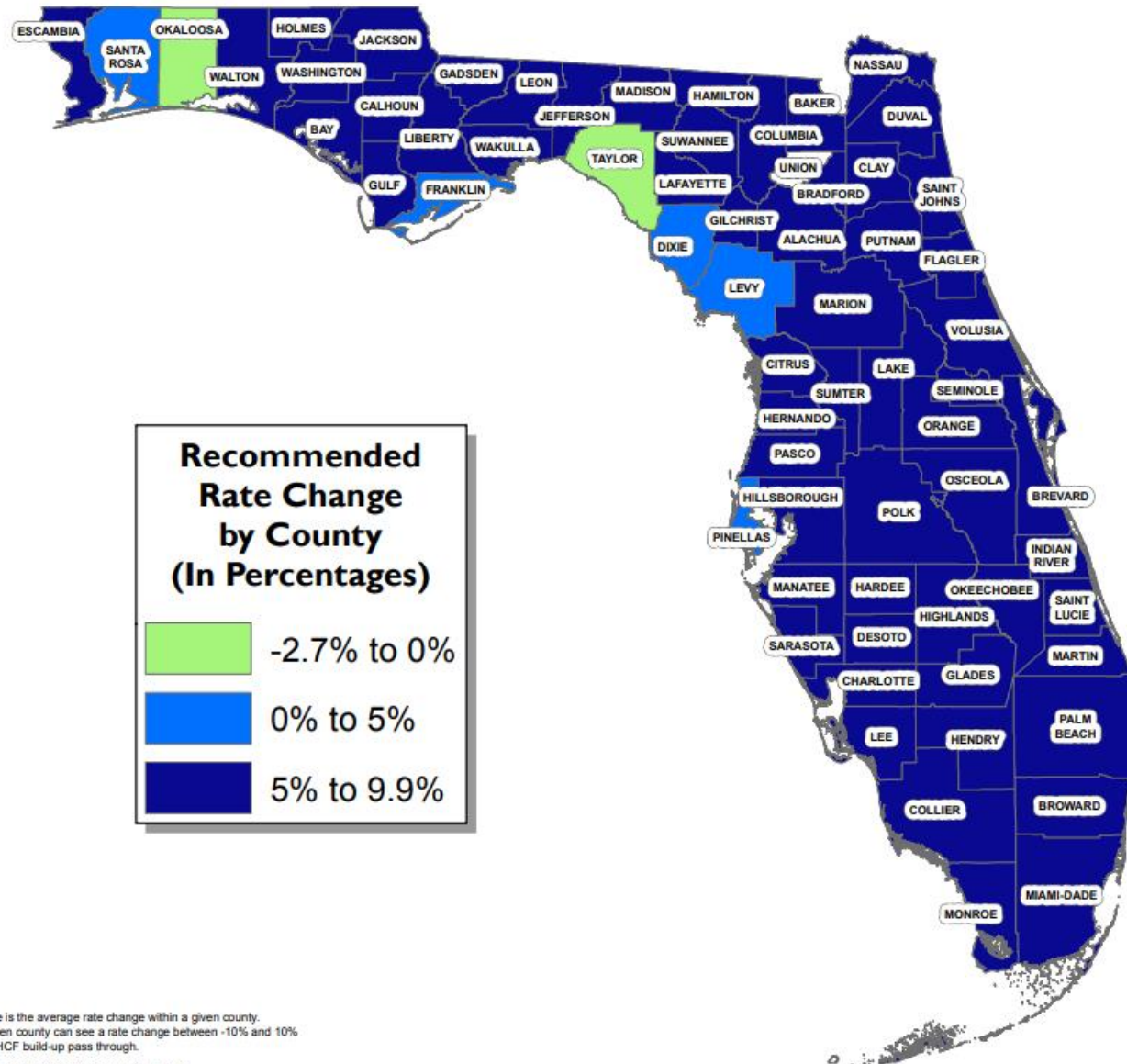
	Miami-Dade		Broward		Palm Beach		Orange		Hillsborough		Duval		Polk	
	AOB	%	AOB	%	AOB	%	AOB	%	AOB	%	AOB	%	AOB	%
2013	2,782	26%	775	18%	355	17%	723	46%	133	6%	65	9%	47	14%
2014	2,872	23%	1,155	19%	286	12%	766	42%	34	2%	94	12%	44	11%
2015	3,240	25%	2,170	26%	580	18%	536	25%	26	1%	95	10%	65	18%
2016	3,772	25%	2,886	30%	719	21%	413	21%	95	4%	58	6%	63	14%
2017	4,464	32%	3,821	34%	1,052	24%	658	22%	209	7%	193	13%	76	12%
2018	6,940	27%	5,227	30%	1,346	22%	2,276	37%	636	18%	440	22%	263	20%

Severity of Litigated vs. Non-Litigated Water Claims



Homeowners Multiperil Rates

Exhibit 2 - Percent of 2019 Recommended Rate Change by County
Multi-Peril HO-3 Policies



Notes:

1. Percentage of rate change is the average rate change within a given county.
2. Policy holders within a given county can see a rate change between -10% and 10% excluding effects of the FHCF build-up pass through.
3. In-force as of 06/30/2018.
4. Counties with no color have no HO-3 policies as of 06/30/2018.

- Citizens current average actuarial rate indication for multiperil homeowners is 25.2% with a capped indication of 8.5%
- Actuarial rate need for homeowners multiperil policies ranges among Senate districts from 0.1% to 51.6%
- 97% of homeowners multiperil policyholders will see rate increases in 2019
- 70% of homeowners customers received rate decreases in 2015
- If AOB reform is successful the actuarial rate indication for homeowners multiperil would be reduced from 25.2% to 10.1%
- If overall litigation rates can be reduced to pre-2015 levels the actuarial rate indication for homeowners multiperil would be reduced from 25.2 to 1.5%

Available for Non-Weather Water Losses for Citizens' HO-3 and DP-3 Policies

- Voluntary program offered at time of loss for water losses caused by accidental discharge or overflow of water or steam from a plumbing, heating, air conditioning, automatic fire protective sprinkler system or household appliance
- **Emergency Water Removal Services**
 - No deductible
 - No cost to policyholder even if loss is not covered by Citizens
 - If the policyholder agrees to participate, Citizens provides a Citizens-approved contractor(s) to provide water removal and drying services to protect insured structures from further damage
- **Managed Repair Contractor Network Program**
 - Provides permanent repair services for covered damage
 - Policyholder works with licensed and insured contractors within the network
 - All contractors' claim related work is guaranteed for three years

2018 Policy Changes

- Effective for HO-3 and dwelling DP-3 new business and renewals August 1, 2018
- \$10,000 Sublimit for Coverages A and B if Managed Repair Contractor Network not used
- Requires all claimants other than insured, their agent, representative or a public adjuster representing claimant to:
 - Provide documentation supporting the right to make a claim
 - Provide documentation detailing the scope and amount of loss
 - Participate in appraisal or alternative dispute resolution

ASSIGNMENT OF BENEFITS

Abuse of Florida's One-Way Attorney's Fee
Law for Anti-Consumer Purposes



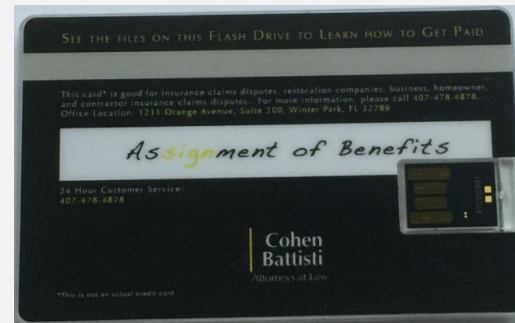
Q: HOW DID WE GET HERE?

A: ABUSE OF FLORIDA LAW FOR PROFIT
Profit-seekers are innovative & Florida's one-way attorney's fee law is abused to drive attorney profits

- AOB's are the latest abusive claims practice and cost driver created by attorneys to generate fees, not to protect the consumer.
- Attorneys created a new AOB litigation market when the Legislature acted to stop other methods of manufacturing fees that were harming the public and the number of legitimate claims to sue also declined
(e.g. sinkhole claim reforms, PIP reforms, and a decade without hurricanes)
- AOB's are a "first-party" coverage issue, so are seen only in first-party coverages like property insurance, comprehensive & collision insurance, and PIP.

WHEN DID THE AOB APPROACH TO FEES BEGIN?

- AOBs began years ago with PIP claims. In about 2010, attorneys promoted expansion of AOBs to other coverages, like property and comprehensive & collision.
- The first significant spread seems tied to an inventive claims attorney who dubbed himself:
the Johnny Appleseed of Assignment of Benefits
- This attorney began widely promulgating the new AOB approach in 2010 by conducting seminars and sending mailers to repair vendors. The mailer included this imitation credit card with a zip drive of template AOBs for vendors to have consumers sign.



WHAT IS AN AOB?

Per Florida CFO, Division of Consumer Services:



- An AOB is an agreement that, once signed, transfers the insurance claims rights or benefits of your insurance policy to a third party.
- An AOB gives the third party authority to file a claim, make repair decisions and collect insurance payments without your involvement.

Per the “Johnny Appleseed of Assignment of Benefits”:

What is an Assignment?

- Assignment of Benefits: Legal document entitling the restoration company to “stand in the shoes” of the insured.
- Assigning the benefits of the insurance policy for a specific claim
- Insurance Company has to deal with YOU as opposed to the property owner.
- The effect of a valid assignment is to allow you to receive all benefits and rights under the insurance contract.



Q1: ARE THESE AOBs NECESSARY?

Q2: DO DIRECTIONS TO PAY WORK?

A1: NO

These AOBs are NOT necessary for customers to get repairs and payment under their insurance policy

- Not common in property and comprehensive & collision until 2010; not even permitted in some states
- Florida has claims handling laws that ensure consumers and vendors are protected

Why attorneys don't want Direction to Pay

A2: YES

A Direction to Pay lets insurers talk to vendors and pay them directly *BUT* DOES NOT allow a vendor's attorney access to the one-way attorney's fees.

Difference between Assignment of Benefits and Direction to Pay

Direction to Pay

- Simply instructs the insurance company how to pay
- Conveys no legal standing
- Can not bring suit under a direction to pay
- Bad faith, not an option

Assignment of Benefits

- Conveys legal standing
- Conveys to bring suit/claim against insurance company in dispute
- Allows the assignor to stand in the shoes of insured
- Bad faith becomes an option

Q: WHY THEY WANT AOBs INSTEAD OF DTPs?

A: AOBs ALLOW VENDORS & LAWYERS TO HAVE THEIR CAKE AND EAT IT TOO...

- AOB Attorneys can collect attorney's fees (unlike with DTPs)
- AOB Attorneys can bring bad faith cases (unlike with DTPs)
- AOB vendors demand payment while refusing to provide any documentation, itemization, or justification to the insurance company
 - Claiming they don't have to comply with policy requirements to cooperate in adjustment of claim
- AOB vendors can both “stand in the shoes of the insured” against the insurance company and still file a lien against the insured's home to collect

Fee Shifting

- Allows law firm to obtain their fees and costs separately from any client funds
- We do not take a penny of your money
- No costs to you
- See Florida Statute 627.428
- See your attorney for state specific statutes and/or case law

CURRENT ONE-WAY ATTORNEY'S FEE LAW

WAS INTENDED TO PROTECT INSURED(S) (NOT VENDORS) BUT COURTS EXPANDED TO AOBs

627.428 Attorney's fee.—

(1) Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of **any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer**, the trial court or, in the event of an appeal in which the insured or beneficiary prevails, the appellate court shall adjudge or decree against the insurer and in favor of the **insured or beneficiary** a reasonable sum as fees or compensation for the **insured's or beneficiary's attorney** prosecuting the suit in which the recovery is had.*

**There is an identical one-way attorney fee statute applicable to the nonadmitted market, 626.9373, F.S.*

Wilder v. Wright, 278 So.2d 1 (Fla. 1973)

627.428 was “intended to govern the relationship between the contracting parties to the insurance policy. While the injured party may become a third party beneficiary under the policy, as stated in *Shingleton*, that third party may not automatically invoke all the provisions of the contract or statutes governing the rights and responsibilities flowing between insurer and insured.

Continental Casualty Co. v. Ryan Inc. Eastern, 974 So.2d 368 (Fla. 2008):

“Despite the express limitations in Section 627.428 as to the class of designated entities entitled to recover attorney's fees, this Court has previously approved an award of attorney's fees in situations where policy coverage was obtained through an assignment from the insured.”

INTENT OF THE ONE-WAY ATTORNEY FEE STATUTE

“[T]he statute is a **one-way street** offering the potential for attorneys’ fees **only to the insured or beneficiary**...The...public policy underlying this...statute is to discourage insurers from contesting **valid claims** and to **reimburse successful policyholders** forced to sue to enforce their policies.” *Danis Industries Corp. v. Ground Improvement Techniques, Inc.*, 645 So.2d 420 (Fla. 1994) *citing* *Fewox v. McMerit Constr. Co.*, 556 So. 2d 419, 423 (Fla. 2d DCA 1989).

PRACTICAL EFFECT OF CURRENT ONE-WAY ATTORNEY'S FEE LAW

OPENS THE DOOR FOR CLAIMS ABUSE – A PUBLIC HARM

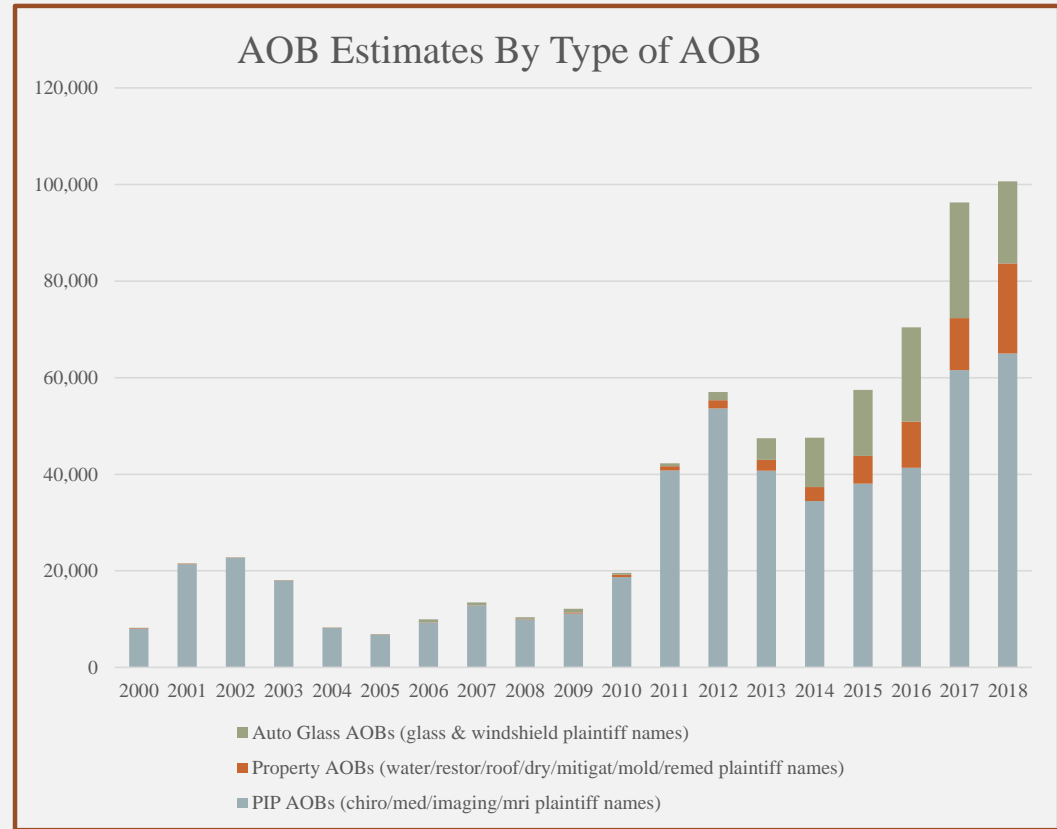
- 1) Insurers pay the AOB party's attorney fees when they lose.
- 2) Insurers pay their own attorney fees, even when they win.
- 3) Insurers may even pay the AOB party's fees when they win!
 - For example, an AOB vendor may agree to less than the disputed amount, but in order to settle, the vendor's attorney will ask for attorney's fees. This is a very common occurrence.
- 4) AOB litigation has skyrocketed.
- 5) Consumers ultimately pay in increased insurance premiums.

ONE-WAY FEE STATUTE, WHEN OUT OF THE HANDS OF INSURED, CREATES IMBALANCE

- Because the one-way attorney fee statute was designed for named insureds, omnibus insureds,** and named beneficiaries, it is a first-party right.
- AOBs were first used to expand beyond covered insureds in the marketplace for personal injury protection (PIP).
- Around 2010, AOBs exported to other first party coverages, namely, property and comprehensive & collision (chiefly, auto glass) coverages.

**Florida courts have upheld anti-assignment restrictions in life and health policies, hence AOBs are primarily seen in the property & casualty marketplace.*

***Omnibus insureds are defined in case law as parties mentioned in an insurance policy, but not by their legal name. For example, “pedestrians” and “passengers.”*



**Lawsuit data courtesy of the Florida Justice Reform Institute, pulled from the Florida Department of Financial Services' Service of Process website.*

THE CURRENT AOB SYSTEM HARMS ALL CONSUMERS

IMBALANCE CREATED BY TRANSFER OF ONE-WAY ATTORNEY FEE TO AOB VENDORS ENCOURAGES ABUSE

Inflated claims costs

- Studies prove this. As Johnny Appleseed's presentation tells vendors, an AOB allows them to charge more than the customary prices established by the widely-accepted Xactimate pricing tool.

Public harm

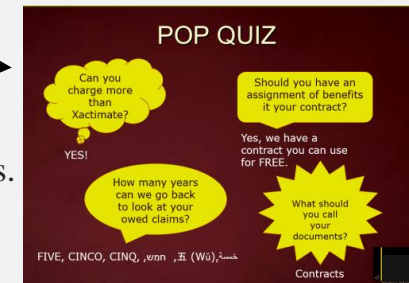
- Rising insurance rates
 - Without reform, Commissioner says premiums could rise an average of 29.5% over the next 5 years.
- Skyrocketing litigation

Harm specific to insured consumers who sign an AOB

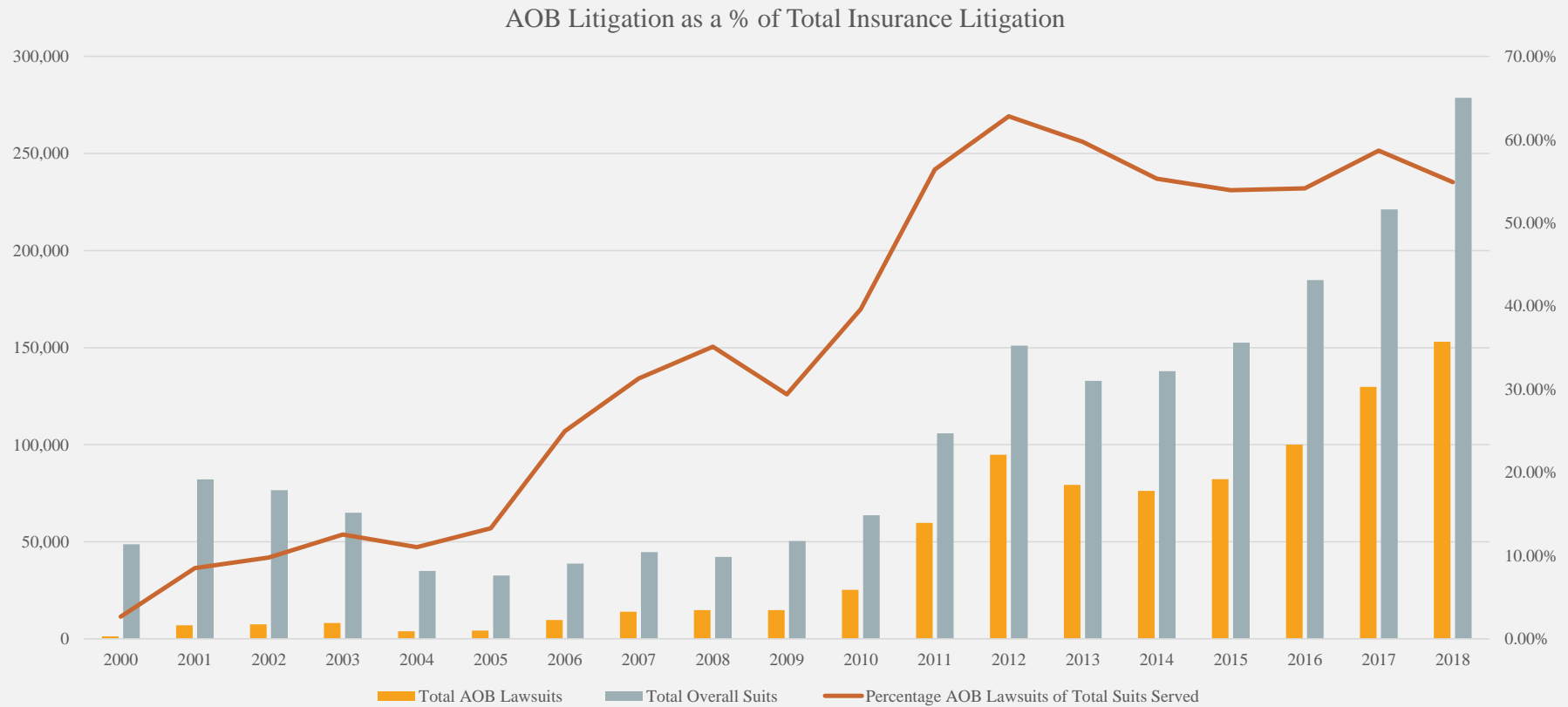
- Total loss of control over their claim
- Potential lawsuits filed in their name without their knowledge
- Inability to change vendors if displeased with work or delays
- Potential to be sued by the vendor
- Potential for vendor to put lien on home
- Potential risk of the broad, irrevocable power-of-attorney contained in AOBs
- Contractual duty to indemnify vendors

Instances of fraud

- E.g., the recent arrest of the owner of Kinnecorps, LLC, an AOB vendor who brought 157 lawsuits in 2018 and was represented by "the Johnny Appleseed of AOB"

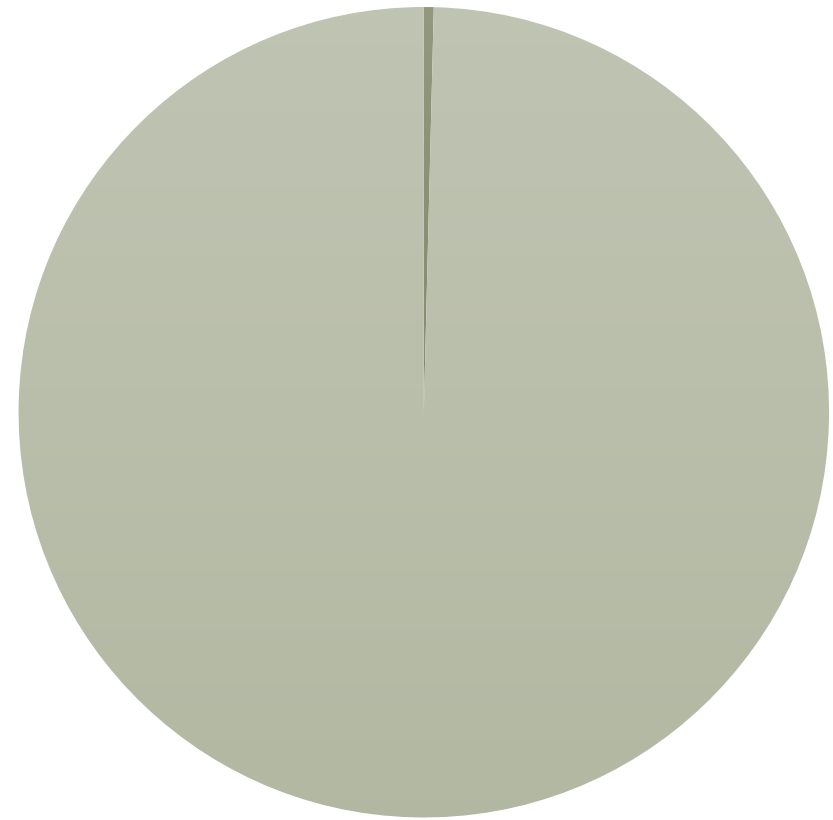


AOBS NOW MAKE UP A MAJORITY OF ALL INSURANCE LITIGATION REPORTED TO DFS



**Data courtesy of FJRI, from the DFS Service of Process database.*

**HOWEVER,
AOB
LITIGATION IS
BROUGHT BY A
SMALL
NUMBER OF
ATTORNEYS**

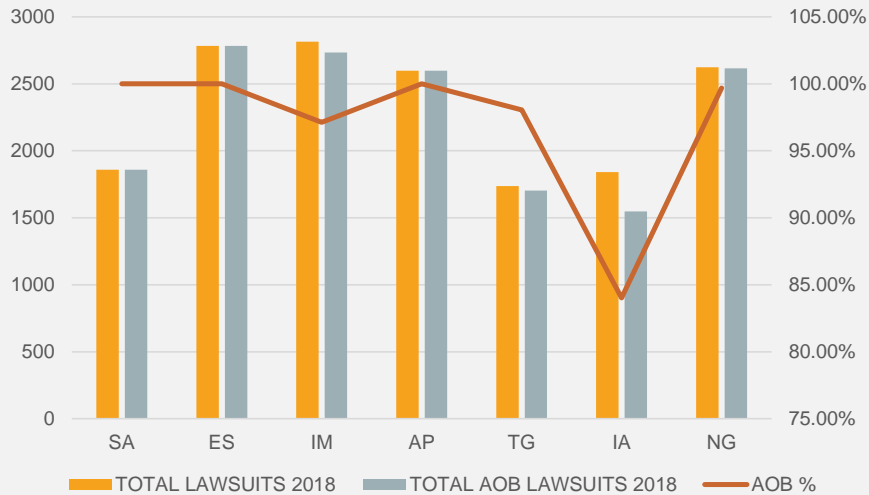


■ AOB ATTORNEYS

■ FLORIDA BAR ATTORNEYS

ATTORNEY EXAMPLES

Sampling of AOB Attorneys: 2018 Volume

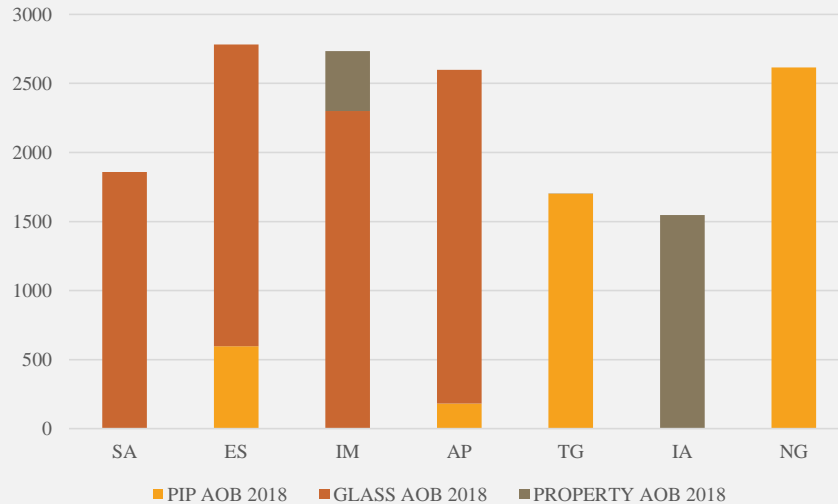


**note that there are a couple attorneys who have over 6,000 lawsuits. There is also an attorney that filed over 30,000 AOB lawsuits in 2018. They're not included on this chart because it skewed the axis.*

- AOB attorneys often limit their practice to AOB cases—examples to the left.
- These attorneys churn a tremendous—often, unimaginable—number of AOB cases.
- They partner with a vendor, and then request the vendor use an AOB for every job, and then submit the AOB and the bill to the attorney.

ATTORNEY EXAMPLES

Breakdown of Attorney AOB "Specialty"



**note that there are a couple attorneys who have over 6,000 lawsuits. There is also an attorney that filed over 30,000 AOB lawsuits in 2018. They're not included on this chart because it skewed the axis.*

- The attorney then files a lawsuit—typically—over every bill.
- These attorneys have relatively few clients in relation to the volume of lawsuits they file, because they file lawsuits for practically every bill a few vendors issue.
- One cannot produce this volume of AOB lawsuits “organically.” This is a “business plan” or scheme to form litigation mills for personal profit, not to address a public need or harm.
- Some AOB attorneys are even going into the vendor business, where now, they are sometimes both the attorney and the client.

COURTS: IT'S UP TO THE LEGISLATURE

- *Security First v. OIR*, 1D14-1864, June 22, 2015
- Facts: Insurer sought to restrict post-loss assignments in policy contract by requiring the insurer's written consent. OIR disapproved the form, citing Florida law authorizing such assignments. OIR's decision was upheld in administrative processes, leading to the appellate challenge.
- Issue: Was OIR's refusal to approve the policy, which required insurer's written consent for post-loss assignments, in error?
- Decision: Affirmed. Florida law allows policyholders to freely assign claims without insurer consent.

“...[W]e are not unmindful of the concerns that [insurer] expressed in support of its policy change, providing evidence that inflated or fraudulent post-loss claims filed by remediation companies exceeded by thirty percent comparable services; that policyholders may sign away their rights without understanding the implications; and that a ‘cottage industry’ of ‘vendors, contractors, and attorneys’ exists that use the ‘assignments of benefits and the threat of litigation’ to ‘extract higher payments from insurers.’ These concerns, however, are matters of policy that we are ill-suited to address.”

QUESTIONS?



Caution

As of: January 16, 2018 3:07 PM Z

State Farm Mut. Auto. Ins. Co. v. Nichols

Supreme Court of Florida

June 1, 2006, Decided

No. SC03-1483, No. SC03-1653

Reporter

932 So. 2d 1067 *; 2006 Fla. LEXIS 982 **; 31 Fla. L. Weekly S 358

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Petitioner, vs. SHANNON NICHOLS, Respondent. SHANNON NICHOLS, Petitioner, vs. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Respondent.

Prior History: **[**1]** Two Cases Consolidated: Application for Review of the Decision of the District Court of Appeal - Certified Great Public Importance.

Fifth District - Case No. 5D01-3851. (Orange County).

Nichols v. State Farm Mut., 851 So. 2d 742, 2003 Fla. App. LEXIS 8794 (Fla. Dist. Ct. App. 5th Dist., 2003)

Core Terms

insured, benefits, attorney's fees, damages, No-Fault, cases, suits, district court, ambiguity, Statutes, provisions, provides, courts, costs, award of attorney's fees, settlement proposal, general release, injured insured, settlement, assurance, attorney's fees provision, personal injury, insurance company, requires, applies, particularity, conditions, prevailing, fault, motor vehicle

Case Summary

Procedural Posture

Petitioner insured brought suit in a trial court against respondent insurer. A jury found for the insurer, which received attorney's fees under the offer of judgment statute, [Fla. Stat. § 768.79](#) (1999). A question was certified as to whether [§ 768.79](#) applied to PIP suits. The Fifth District Court of Appeal, Florida, ruled yes but reversed, as the settlement offer was ambiguous and did not satisfy [Fla. R. Civ. P. 1.442](#). The parties sought review.

Overview

The insurer sought attorney's fees, as the insured rejected a PIP settlement offer. The release was general, and the insured, who also had a claim for uninsured motorist (UM) benefits, refused to sign the release for fear of also releasing her higher UM claim. On review, the court ruled that the offer of judgment statute applied to suits under the PIP statute, [Fla. Stat. § 627.736\(7\)\(b\)](#) (1999), as they were suits for damages. Further, the attorney's fees provision in the PIP statute did not exclude other such provisions, including the one in the offer of judgment statute. Applying the offer of judgment statute to PIP suits also did not make the PIP system unconstitutional. Until an insurer offered to pay an insured's damages, attorney's fees, and related sums, the "one-way street" under [Fla. Stat. § 627.428](#) (1999) entitled an insured to attorney's fees. But once an offer was made and rejected, the insured who turned down the full sum owed had no right to protection under [§ 627.428](#), and the insurer could then seek attorney's fees under the offer of judgment statute. [Fla. R. Civ. P. 1.442](#) precluded attorney's fees for the insurer as its release had not been limited to the PIP claim.

Outcome

The court approved in full the district court's decision reversing the award of attorney's fees to the insurer.

LexisNexis® Headnotes

Civil Procedure > Settlements > Offers of Judgment > General Overview

Insurance Law > ... > No Fault Coverage > Personal Injury Protection > General Overview

[HN1](#) Settlements, Offers of Judgment

A suit for PIP benefits is a "civil action for damages" to which the offer of judgment statute, [Fla. Stat. § 768.79](#) (1999), applies.

[HN5](#) **Settlements, Offers of Judgment**

See [Fla. Stat. § 768.79\(1\)](#) (1999).

Civil Procedure > ... > Discovery > Methods of
Discovery > Mental & Physical Examinations

Civil Procedure > Settlements > Offers of
Judgment > General Overview

Insurance Law > ... > No Fault Coverage > Personal
Injury Protection > General Overview

Insurance Law > ... > No Fault Coverage > Personal
Injury Protection > General Overview

[HN2](#) **Methods of Discovery, Mental & Physical Examinations**

Under the PIP statute, [Fla. Stat. § 627.736\(7\)\(b\)](#) (1999), if a person unreasonably refuses to submit to an examination, the personal injury protection carrier is no longer liable for subsequent personal injury protection benefits. [Fla. Stat. § 627.736\(7\)\(b\)](#) (1999).

Civil Procedure > Settlements > Offers of
Judgment > General Overview

Insurance Law > ... > No Fault Coverage > Personal
Injury Protection > General Overview

[HN6](#) **Settlements, Offers of Judgment**

The district courts, emphasizing the plain meaning of the offer of judgment statute, [Fla. Stat. § 768.79\(1\)](#) (1999), have consistently held that a PIP suit is a "civil action for damages."

Civil Procedure > Settlements > Offers of
Judgment > General Overview

Contracts Law > Remedies > General Overview

Insurance Law > Claim, Contract & Practice
Issues > General Overview

Insurance Law > ... > No Fault Coverage > Personal
Injury Protection > General Overview

[HN3](#) **Settlements, Offers of Judgment**

Under the plain language of the offer of judgment statute, [Fla. Stat. § 768.79\(1\)](#) (1999), which encompasses any civil action for damages filed in the courts of Florida, the legislature clearly and unambiguously intended for the statute to cover PIP suits.

Civil Procedure > Settlements > Settlement
Agreements > General Overview

[HN4](#) **Settlements, Settlement Agreements**

[Fla. R. Civ. P. 1.442](#) demands that settlement proposals state with particularity any relevant conditions and state with particularity all non-monetary terms. [Fla. R. Civ. P. 1.442\(c\)\(2\)\(C\)-\(D\)](#).

Civil Procedure > Settlements > Offers of
Judgment > General Overview

[HN7](#) **Settlements, Offers of Judgment**

The purpose of a PIP suit is to recover damages for breach of an insurance contract. While a contractual breach may consist of a failure to pay insurance "benefits" or "security," a plaintiff, if successful, nevertheless will receive court-ordered compensation for her loss, which is the very definition of damages. As one court has said, the right to damages may arise under tort law; it may arise under contract law; it may arise under property law. If the party seeks damages from another party, then the claim is covered by the broad phrase in the offer of judgment statute, [Fla. Stat. § 768.79\(1\)](#) (1999), "civil action for damages."

Governments > Legislation > Interpretation

[HN8](#) **Legislation, Interpretation**

Where a statute is free from ambiguity, a court must follow its plain meaning. When the language of the

statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.

Civil Procedure > Settlements > Offers of Judgment > General Overview

Insurance Law > ... > No Fault Coverage > Personal Injury Protection > General Overview

[HN9](#) **Settlements, Offers of Judgment**

The phrase "any civil action for damages" in the offer of judgment statute, [Fla. Stat. § 768.79\(1\)](#) (1999), unambiguously includes suits to recover damages for breach of a PIP insurance contract.

Governments > Legislation > Interpretation

[HN10](#) **Legislation, Interpretation**

Where two statutory provisions are in conflict, the specific statute controls over the general statute.

Governments > Legislation > Interpretation

[HN11](#) **Legislation, Interpretation**

See [Fla. Stat. § 768.71\(3\)](#) (1999).

Civil Procedure > Settlements > Offers of Judgment > General Overview

Insurance Law > ... > No Fault Coverage > Personal Injury Protection > General Overview

Insurance Law > Remedies > Costs & Attorney Fees > General Overview

[HN12](#) **Settlements, Offers of Judgment**

The offer of judgment statute, [Fla. Stat. § 768.79](#) (1999), does not conflict with the attorney's fees provision in the PIP statute; [Fla. Stat. § 627.736\(7\)\(b\)](#) (1999), the latter controls.

Insurance Law > ... > No Fault Coverage > Personal Injury Protection > General Overview

Insurance Law > Remedies > Costs & Attorney Fees > General Overview

[HN13](#) **No Fault Coverage, Personal Injury Protection**

The attorney's fees provision in Florida's PIP statute, [Fla. Stat. § 627.736\(7\)\(b\)](#) (1999), entitled "Applicability of provision regulating attorney's fees," states that with respect to any dispute under the provisions of the PIP statute between the insured and the insurer, the provisions of [Fla. Stat. § 627.428](#) shall apply. [Fla. Stat. § 627.736\(8\)](#) (1999).

Insurance Law > Remedies > Costs & Attorney Fees > General Overview

[HN14](#) **Remedies, Costs & Attorney Fees**

See [Fla. Stat. § 627.428\(1\)](#) (1999).

Insurance Law > Remedies > Costs & Attorney Fees > General Overview

[HN15](#) **Remedies, Costs & Attorney Fees**

Under [Fla. Stat. § 627.428\(1\)](#) (1999), a prevailing insured, but not a prevailing insurer, is entitled to attorney's fees.

Civil Procedure > Settlements > Offers of Judgment > General Overview

Insurance Law > Claim, Contract & Practice Issues > General Overview

[HN16](#) **Settlements, Offers of Judgment**

The "one-way street" under [Fla. Stat. § 627.428](#) (1999) cannot be used as a detour around settlement negotiations. An insured prevails only when the insured obtains a judgment greater than any offer of settlement previously tendered by the insurer. The "judgment" includes the insured's damages plus any attorney's fees, taxable costs, and prejudgment interest incurred before the insurer's offer.

without creating conflict.

Civil Procedure > Settlements > Settlement
Agreements > General Overview

Insurance Law > Remedies > Costs & Attorney
Fees > General Overview

[HN17](#) **Settlements, Settlement Agreements**

A clear line exists between pre-offer and post-offer periods. Unless and until an insurer offers to pay an insured's damages plus attorney's fees, costs, and interest, the "one-way street" under [Fla. Stat. § 627.428](#) (1999) entitles the insured to attorney's fees. But once such an offer is made and rejected, the "one-way street" ends. An insured, having turned down the full amount she is owed, cannot claim the protection of [§ 627.428](#).

Civil Procedure > Settlements > Offers of
Judgment > General Overview

Civil Procedure > ... > Costs & Attorney
Fees > Attorney Fees & Expenses > General
Overview

[HN18](#) **Settlements, Offers of Judgment**

The term "judgment" under the offer of judgment statute, [Fla. Stat. § 768.79](#) (1999), must be defined--as it is under [Fla. Stat. § 627.428](#) (1999)--to include not only the a plaintiff's damages award, but also any attorney's fees, taxable costs, and prejudgment interest to which a plaintiff is entitled when an offer is made. It is this judgment to which the offer must be compared in determining whether to award fees and costs under both the offer of judgment statute and [§ 627.428](#).

Civil Procedure > Settlements > Offers of
Judgment > General Overview

Insurance Law > ... > No Fault Coverage > Personal
Injury Protection > General Overview

[HN19](#) **Settlements, Offers of Judgment**

Because the term "judgment" under both [Fla. Stat. § 627.428](#) (1999) and the offer of judgment statute, [Fla. Stat. § 768.79](#) (1999), have been uniformly defined, the two statutes can be applied simultaneously to PIP cases

Civil Procedure > Settlements > Offers of
Judgment > General Overview

Governments > Legislation > Interpretation

Insurance Law > ... > No Fault Coverage > Personal
Injury Protection > General Overview

[HN20](#) **Settlements, Offers of Judgment**

As one court noted in holding that the offer of judgment statute applied in PIP cases, the rule that the inclusion of one thing means the exclusion of another does not mean that the application of one precludes the additional application of another.

Civil Procedure > Settlements > Offers of
Judgment > General Overview

Insurance Law > Remedies > Costs & Attorney
Fees > General Overview

Civil Procedure > ... > Costs & Attorney
Fees > Attorney Fees & Expenses > General
Overview

[HN21](#) **Settlements, Offers of Judgment**

In cases involving some types of insurance, [Fla. Stat. § 627.428](#) (1999) has not been defined as precluding the application of other attorney's fees provisions. To the contrary, the application of the offer of judgment statute, [Fla. Stat. § 768.79](#) (1999), has been authorized in an underinsured motorist case, even though it also fell within the scope of [Fla. Stat. § 627.428](#) (1999). The district courts, too, have applied the offer of judgment statute to insurance cases, including those involving property insurance, liability insurance, and uninsured motorist benefits. One court has specifically rejected the argument that in an uninsured motorist case [§ 627.428](#) precludes an award of attorney's fees to the insurer under the offer of judgment statute.

Civil Procedure > Settlements > Offers of
Judgment > General Overview

Governments > Legislation > Interpretation

Insurance Law > Remedies > Costs & Attorney
Fees > General Overview

[HN22](#) Settlements, Offers of Judgment

If the legislature had enacted [Fla. Stat. 627.736\(8\)](#) (1999) for the sole purpose of excluding all other attorney's fees provisions in PIP suits, then presumably it would have used exclusionary language, rather than the inclusive language it used. The words in the statute are the best guide to legislative intent. [Section 627.736\(8\)](#) gives no clue that the legislature intended to prohibit application of the offer of judgment statute.

Constitutional Law > Bill of Rights > Fundamental
Freedoms > Freedom to Petition

[HN23](#) Fundamental Freedoms, Freedom to Petition

See [Fla. Const. art. I, § 21](#).

Constitutional Law > Bill of Rights > Fundamental
Freedoms > Freedom to Petition

Insurance Law > ... > No Fault Coverage > Personal
Injury Protection > General Overview

[HN24](#) Fundamental Freedoms, Freedom to Petition

With regard to the constitutionality of Florida's PIP statute, [Fla. Stat. § 627.736\(7\)\(b\)](#) (1999), the access-to-courts provision has been interpreted to mean that the legislature cannot abolish a traditional common-law right of recovery without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.

Constitutional Law > Bill of Rights > Fundamental
Freedoms > Freedom to Petition

Insurance Law > ... > No Fault Coverage > Personal
Injury Protection > General Overview

[HN25](#) Fundamental Freedoms, Freedom to

Petition

The personal injury portion of the PIP statute, [Fla. Stat. § 627.736\(7\)\(b\)](#) (1999), which does make insurance compulsory, provides a reasonable alternative to the traditional action in tort and therefore complies with the access-to-courts provision.

Civil Procedure > ... > Attorney Fees &
Expenses > Basis of Recovery > American Rule

Torts > Malpractice & Professional
Liability > Healthcare Providers

Civil Procedure > ... > Costs & Attorney
Fees > Attorney Fees & Expenses > General
Overview

[HN26](#) Basis of Recovery, American Rule

Fla. Stat. § 768.56 (1981), which provides for attorney's fees for the prevailing party in medical malpractice cases, does not violate the Florida Constitution. An award of attorneys fees to the prevailing party is a matter of substantive law properly within the aegis of the legislature, in accordance with the long-standing American Rule adopted by the Supreme Court of Florida. As difficult as the resulting application of this statute may be in certain cases, § 768.56 is constitutional.

Civil Procedure > ... > Costs & Attorney
Fees > Attorney Fees & Expenses > General
Overview

[HN27](#) Costs & Attorney Fees, Attorney Fees & Expenses

Fee-shifting statutes generally do not deny access to courts.

Insurance Law > ... > No Fault Coverage > Personal
Injury Protection > General Overview

[HN28](#) No Fault Coverage, Personal Injury Protection

Florida's PIP statute, [Fla. Stat. § 627.736\(7\)\(b\)](#) (1999), is unique. It expressly abolished a traditional common-

law right by limiting the recovery available to car accident victims. In exchange, the statute made PIP insurance compulsory and allowed recovery regardless of fault. The purpose of the no-fault statutory scheme is to provide swift and virtually automatic payment so that the injured insured may get on with his life without undue financial interruption. This benefit balances the restrictions on recovery, making the PIP statute a reasonable alternative to the traditional tort action. Applying the offer of judgment statute to PIP suits does not upset this balance.

Civil Procedure > Settlements > Offers of Judgment > General Overview

Insurance Law > ... > No Fault Coverage > Personal Injury Protection > General Overview

Civil Procedure > ... > Costs & Attorney Fees > Attorney Fees & Expenses > General Overview

[HN29](#) **Settlements, Offers of Judgment**

Insurers are entitled to attorney's fees only in two limited circumstances: (1) where the insured recovers nothing at trial; and (2) where the insured rejects an offer that turns out to be at least one-third greater than the damages awarded at trial, when added to any attorney's fees, taxable costs, and prejudgment interest that the insured accumulated before the offer. In other words, for the offer of judgment statute to apply, a plaintiff either must have a very weak case or must reject a very generous offer. Encouraging plaintiffs to settle in those circumstances, rather than pursue needless litigation, is entirely consistent with the intent of the no-fault legislation of relieving the overburdened court system. Application of the offer of judgment statute, [Fla. Stat. § 768.79](#) (1999), to PIP suits in Florida does not render the PIP statute, [Fla. Stat. § 627.736\(7\)\(b\)](#) (1999), constitutionally infirm.

Civil Procedure > Settlements > Settlement Agreements > General Overview

[HN30](#) **Settlements, Settlement Agreements**

[Fla. R. Civ. P. 1.442](#) requires that settlement proposals state with particularity any relevant conditions and also state with particularity all non-monetary terms. [Fla. R.](#)

[Civ. P. 1.442\(c\)\(2\)\(C\)-\(D\)](#). This requirement of particularity is fundamental to the purpose underlying the statute and rule.

Civil Procedure > Settlements > Releases From Liability > General Overview

Civil Procedure > Settlements > Settlement Agreements > General Overview

[HN31](#) **Settlements, Releases From Liability**

Under the plain meaning of [Fla. R. Civ. P. 1.442](#), the Supreme Court of Florida agrees with those courts that have treated releases as conditions or non-monetary terms that must be described with particularity. A "condition" is traditionally defined as "a stipulation or prerequisite in a contract, will, or other instrument, constituting the essence of the instrument. A "term" is defined more broadly as "a contractual stipulation." It is clear that when an offeror insists that an offeree sign a general release, the release becomes a stipulation or prerequisite of the contract. Even if the release does not constitute the essence of the settlement proposal--and thus a condition under subdivision [Fla. R. Civ. P. 1.442\(c\)\(2\)\(C\)](#)--at the very least it qualifies as a non-monetary term under [Fla. R. Civ. P. 1.442\(c\)\(2\)\(D\)](#).

Civil Procedure > Settlements > Releases From Liability > General Overview

Civil Procedure > Settlements > Settlement Agreements > General Overview

[HN32](#) **Settlements, Releases From Liability**

A summary of a proposed release can be sufficient to satisfy [Fla. R. Civ. P. 1.442](#), as long as it eliminates any reasonable ambiguity about its scope. The Rule intends for a proposal for judgment to be as specific as possible, leaving no ambiguities so that the recipient can fully evaluate its terms and conditions. Furthermore, if accepted, a proposal should be capable of execution without the need for judicial interpretation. Proposals for settlement are intended to end judicial labor, not create more.

Civil Procedure > Settlements > Settlement Agreements > General Overview

Civil Procedure > Settlements > Releases From
Liability > General Releases

Opinion by: CANTERO

Opinion

[HN33](#) Settlements, Settlement Agreements

Given the nature of language, it may be impossible to eliminate all ambiguity. [Fla. R. Civ. P. 1.442](#) does not demand the impossible. It merely requires that a settlement proposal be sufficiently clear and definite to allow the offeree to make an informed decision without needing clarification. If ambiguity within the proposal could reasonably affect an offeree's decision, the proposal does not satisfy the particularity requirement. [Rule 1.442](#) is not intended to revolutionize the language used in general releases, however. Traditionally, general releases have included expansive language designed to protect the offeror from unforeseen developments or creative maneuvering by the other party. Such language can be sufficiently particular to satisfy [Rule 1.442](#). For example, one court has concluded that the language in a general release, even though expansive, is typical of other general releases and is clear and unambiguous. The Rule aims to prevent ambiguity, not breadth.

Civil Procedure > Settlements > Releases From
Liability > General Overview

Civil Procedure > Settlements > Settlement
Agreements > General Overview

[HN34](#) Settlements, Releases From Liability

Settlement proposals must clarify which of an offeree's outstanding claims against the offeror will be extinguished by any proposed release.


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Philip D. Parrish, P.A., Miami, Florida on behalf of the Academy of Florida Trial Lawyers, as Amicus Curiae.

Judges: CANTERO, J. PARIENTE, C.J., and WELLS, LEWIS, and BELL, JJ., concur. ANSTEAD, J., concurs in result only with an opinion, in which QUINCE, J., concurs.

[*1070] CANTERO, J.

In this case, we decide whether, in a suit for benefits under a personal injury protection policy, an insurer may ever recover attorney's fees pursuant to the offer of judgment statute. We review *Nichols v. State Farm Mutual*, 851 So. 2d 742 (Fla. 5th DCA 2003), which held that an insurer could recover such fees but certified to us a question of great public importance. **[**2]** We have jurisdiction. See [art. V, § 3\(b\)\(4\), Fla. Const.](#); *State Farm Mut. Auto. Ins. Co. v. Nichols*, 913 So. 2d 598 (Fla. 2005) (granting review). As we explain below, we agree with the district court in this case, as well as the other district courts that have considered this issue, and hold that [HN1](#)  a suit for PIP benefits is a "civil action for damages" to which the offer of judgment statute applies. We also agree with the district court, however, that in this case the insurer's offer did not satisfy the requirements of [Florida Rule of Civil Procedure 1.442](#). We therefore approve the district court's decision in full.

I. FACTS

After suffering injuries in a car accident in 1996, Shannon Nichols requested personal injury protection benefits from her insurer, State Farm. While agreeing to pay her early medical bills, State Farm requested that Nichols undergo an independent medical examination to determine the need for further treatment. Despite repeated rescheduling, she ultimately failed to attend the exam. [HN2](#)  Under the PIP statute, "[i]f a person unreasonably refuses to submit to an examination, the personal injury protection carrier **[**3]** is no longer liable for subsequent personal injury protection benefits." [§ 627.736\(7\)\(b\), Fla. Stat.](#) (1999). Relying on the statute, State Farm refused to pay any additional benefits.

Nichols filed a complaint against State Farm in county court, alleging breach of their insurance contract. While the PIP suit was pending, State Farm served Nichols with a proposal for settlement in the amount of \$ 250. As a condition of the **[*1071]** settlement, however, Nichols would have been required to "execute a General Release in favor of State Farm, which will be expressly limited to all claims, causes of action, etc., that have accrued through the date of Nichols's acceptance of this

Proposal." At the time, she also had an outstanding uninsured motorist ("UM") claim arising from the same accident, which later settled for \$ 13,000. Fearing that the release would extinguish both the PIP claim and the UM claim, Nichols rejected the offer. State Farm later claimed that it did not intend for the release to extinguish the UM claim.

At trial, the jury found that Nichols unreasonably refused to submit to a medical examination, which meant she was not entitled to any recovery. State **[**4]** Farm therefore requested attorney's fees and costs under the offer of judgment statute. See [§ 768.79, Fla. Stat.](#) (1999). The county court initially denied the request, concluding that the offer of judgment statute does not apply to PIP suits. Only days later, however, the Third District held that the offer of judgment statute *does* apply to such suits. See *U.S. Sec. Ins. Co. v. Cahuasqui*, 760 So. 2d 1101 (Fla. 3d DCA 2000), review dismissed, [796 So. 2d 532 \(Fla. 2001\)](#). Upon reconsideration, the county court awarded \$ 23,199 to State Farm. It also certified to the Fifth District a question of great public importance, asking whether the offer of judgment statute applies to PIP suits.

The Fifth District answered yes. *Nichols*, 851 So. 2d at 744. [HN3\[↑\]](#) Applying the statute's plain language, which encompasses "any civil action for damages filed in the courts of this state," [§ 768.79\(1\), Fla. Stat.](#) (1999), the district court concluded that the Legislature "clearly and unambiguously" intended for the statute to cover PIP suits. *Nichols*, 851 So. 2d at 745. While acknowledging **[**5]** "thoughtful policy arguments" for the opposite result, the district court advised that they would be "more appropriately addressed to the Legislature." *Id.*

Judge Sawaya dissented in part. He argued that "the Legislature never intended a suit to recover PIP benefits to be an action for damages under [section 768.79](#)." *Id.* at 747 (Sawaya, J., concurring in part and dissenting in part). The purpose of the PIP system, he wrote, was to guarantee swift payment to insureds without regard to fault. In his view, "application of [section 768.79](#) to PIP cases, with its inherent uncertainties and risks, has completely abrogated the security and the assurance that injured insureds were promised by the Legislature through the No-Fault Act." *Id.* at 750. He joined the majority, however, in certifying to us a question of great public importance: "May an insurer recover attorney's fees under [rule 1.442, Florida Rules of Civil Procedure](#), and [section 768.79, Florida Statutes](#), in an action by its insured to recover under a personal injury protection

policy?" *Id.* at 747.

On appeal, Nichols raised another **[**6]** issue: whether State Farm's settlement proposal satisfied [HN4\[↑\]](#) [Florida Rule of Civil Procedure 1.442](#), which demands that such proposals "state with particularity any relevant conditions" and "state with particularity all nonmonetary terms." [Fla. R. Civ. P. 1.442\(c\)\(2\)\(C\)-\(D\)](#). She argued that State Farm's offer was too ambiguous because it arguably required her to release not only her PIP claim, but also her outstanding UM claim. *Nichols*, 851 So. 2d at 745. At the attorney's fees hearing, she even accused State Farm of attempting in bad faith to kill two claims with one release. *Id.* But State Farm, professing to have been "unaware of the existence of the UM claim at the time," testified "that had the proposal for settlement been accepted, [it] would not have required that the release include the UM claim." *Id.* at 745-46. **[*1072]** The trial court accepted State Farm's explanation and deemed the settlement proposal valid under [rule 1.442](#). *Id.* at 746.

The Fifth District concluded, however, that because the scope of the release "could not be determined without resort to clarification or **[**7]** judicial interpretation," *id.*, the settlement proposal was too ambiguous to satisfy [rule 1.442](#). According to the district court, "[t]he terms and conditions of the proposal should be devoid of ambiguity, patent or latent." *Id.* It therefore reversed the award of attorney's fees to State Farm.

Both parties petitioned us for review. Nichols relied on the certified question, whereas State Farm alleged express and direct conflict with other district court decisions regarding [rule 1.442](#)'s particularity requirement. We granted review based on the certified question and consolidated the cases. *State Farm*, 913 So. 2d at 598. We now approve the Fifth District's reasoning on both issues, which we analyze separately.

II. THE CERTIFIED QUESTION

The certified question asks whether the offer of judgment statute applies to PIP suits. The Fifth District answered yes, *Nichols*, 851 So. 2d at 745, as have the other two district courts to consider the issue. See [Tran v. State Farm Fire & Cas. Co.](#), 860 So. 2d 1000 (Fla. 1st DCA 2003); *Cahuasqui*, 760 So. 2d at 1101. Two of those cases, however, produced dissents. See **[**8]** *Nichols*, 851 So. 2d at 747 (Sawaya, J., concurring in part and dissenting in part); *Cahuasqui*, 760 So. 2d at 1107 (Fletcher, J., dissenting). We agree with the three district courts and hold that the offer of judgment statute

applies to PIP suits. To explain our decision, we discuss (A) whether the offer of judgment statute *includes* PIP suits, (B) whether the separate attorney's fees provision in the PIP statute *precludes* application of the offer of judgment statute, and finally (C) whether applying the offer of judgment statute to PIP suits would render unconstitutional the entire PIP system.

A. The Offer of Judgment Statute

The first issue is whether the offer of judgment statute applies to PIP suits. The statute provides:

[HN5](#) [↑] In any civil action for damages filed in the courts of this state, if a defendant files an offer of judgment which is not accepted by the plaintiff within 30 days, the defendant shall be entitled to recover reasonable costs and attorney's fees incurred by her or him . . . from the date of filing of the offer if the judgment is one of no liability or the judgment obtained by the plaintiff is at least 25 **[**9]** percent less than such offer, and the court shall set off such costs and attorney's fees against the award.

[§ 768.79\(1\), Fla. Stat.](#) (1999) (emphasis added). [HN6](#) [↑] The district courts, emphasizing the plain meaning of the statute, have consistently held that a PIP suit is a "civil action for damages." See *Nichols*, 851 So. 2d at 745; *Cahuasqui*, 760 So. 2d at 1104. But *Nichols* maintains that her suit is better characterized as an action for "benefits" or "security."

We find this characterization to be a distinction without a difference. [HN7](#) [↑] The purpose of a PIP suit is to recover damages for breach of an insurance contract. In fact, in *Nichols*'s initial complaint, and again in her amended complaints, she expressly referred to her suit as "an action for damages." While the contractual breach may consist of a failure to pay insurance "benefits" or "security," the plaintiff, if successful, nevertheless will receive court-ordered compensation for her loss, which is the very definition of damages. **[*1073]** See, e.g., *Black's Law Dictionary* 416 (8th ed. 2004) (defining damages as "[m]oney claimed by, or ordered to be paid to, a person **[**10]** as compensation for loss or injury"). As one court has said, "[t]he right to damages may arise under tort law; it may arise under contract law; it may arise under property law. If the party seeks damages from another party, then the claim is covered by [section 768.79](#)'s broad phrase, 'civil action

for damages.'" *Beyel Bros. Crane & Rigging Co. of S. Fla. v. Ace Transp., Inc.*, 664 So. 2d 62, 64 (Fla. 4th DCA 1995). Nothing in the offer of judgment statute exempts claims for contractual damages.

We have long recognized that, [HN8](#) [↑] where a statute is free from ambiguity, we must follow its plain meaning. As we have explained, "[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." *Clines v. State*, 912 So. 2d 550, 555-56 (Fla. 2005) (quoting *A.R. Douglass, Inc. v. McRaney*, 102 Fla. 1141, 137 So. 157, 159 (Fla. 1931)). This is one of those times. [HN9](#) [↑] The phrase "any civil action for damages" unambiguously includes suits to recover damages for breach **[**11]** of a PIP insurance contract. We therefore conclude that the offer of judgment statute encompasses such cases.

B. The PIP Statute

Having determined that a PIP suit is a "civil action for damages" covered by the offer of judgment statute, we now consider whether the separate attorney's fees provision in the PIP statute precludes application of other attorney's fees provisions. In considering this issue, we note the "long-recognized principle of statutory construction that [HN10](#) [↑] where two statutory provisions are in conflict, the specific statute controls over the general statute." *State v. J.M.*, 824 So. 2d 105, 112 (Fla. 2002) (citing *State ex rel. Johnson v. Vizzini*, 227 So. 2d 205, 207 (Fla. 1969)). Moreover, the chapter containing the offer of judgment statute expressly states that [HN11](#) [↑] "[i]f a provision of this part is in conflict with any other provision of the Florida Statutes, such other provision shall apply." [§ 768.71\(3\), Fla. Stat.](#) (1999). Thus, if [HN12](#) [↑] the offer of judgment statute conflicts with the attorney's fees provision in the PIP statute, the latter controls. We conclude, however, that they do not conflict.

[HN13](#) [↑] The **[**12]** attorney's fees provision in the PIP statute, entitled "Applicability of provision regulating attorney's fees," states that "[w]ith respect to any dispute under the provisions of [the PIP statute] between the insured and the insurer, the provisions of s. 627.428 shall apply." [§ 627.736\(8\), Fla. Stat.](#) (1999). The cross-referenced statute, [section 627.428](#), provides:

[HN14](#)[↑] Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer, the trial court or, in the event of an appeal in which the insured or beneficiary prevails, the appellate court shall adjudge or decree against the insurer and in favor of the insured or beneficiary a reasonable sum as fees or compensation for the insured's or beneficiary's attorney prosecuting the suit in which the recovery is had.

[§ 627.428\(1\), Fla. Stat.](#) (1999). In other words, [HN15](#)[↑]] a prevailing insured, but *not* a prevailing insurer, is entitled to attorney's fees.

[*1074] Nichols argues that because [section 627.428](#) only authorizes attorney's [*13] fees for insureds, and because it is the only attorney's fees provision incorporated into the PIP statute, it implicitly precludes courts from awarding attorney's fees to PIP insurers under any other provision, including the offer of judgment statute. She emphasizes our decision in [Danis Industries Corp. v. Ground Improvement Techniques, Inc.](#), 645 So. 2d 420 (Fla. 1994), which explained that [section 627.428](#) "is a one-way street offering the potential for attorneys' fees only to the insured or beneficiary" in order "to discourage insurers from contesting valid claims and to reimburse successful policy holders forced to sue to enforce their policies." *Id.* at 421.

Even *Danis* recognized, however, that [HN16](#)[↑] the "one-way street" under [section 627.428](#) cannot be used as a detour around settlement negotiations. The specific issue in that case was what it meant for an insured to "prevail" under [section 627.428](#). We held that an insured prevails only when the insured "obtain[s] a judgment greater than any offer of settlement previously tendered by the insurer." *Id.* In a later case, [Scottsdale Insurance Co. v. DeSalvo](#), 748 So. 2d 941 (Fla. 1999), [*14] we clarified that the "judgment" includes the insured's damages *plus* any attorney's fees, taxable costs, and prejudgment interest incurred before the insurer's offer.

Together, *Danis* and *DeSalvo* drew [HN17](#)[↑] a clear line between the pre-offer and post-offer periods. Unless and until the insurer offers to pay the insured's damages plus attorney's fees, costs, and interest, the "one-way street" under [section 627.428](#) entitles the insured to attorney's fees. But once such an offer is made and rejected, the "one-way street" ends. The insured, having

turned down the full amount she is owed, cannot claim the protection of [section 627.428](#).

The question here is whether the insurer, having made an offer that eliminates the insured's entitlement to further attorney's fees under [section 627.428](#), can recover its *own* fees if it meets the conditions of the offer of judgment statute. Neither *Danis* nor *DeSalvo* resolved that question. Recently, however, we did clear the way for application of the offer of judgment statute to insurance cases by extending a crucial part of the *Danis/DeSalvo* reasoning to the offer of judgment statute. In [White v. Steak & Ale of Florida, Inc.](#), 816 So. 2d 546 (Fla. 2002), [*15] we held that [HN18](#)[↑] the term "judgment" under the offer of judgment statute must be defined--as it is under [section 627.428](#)--to include not only the plaintiff's damages award, but also any attorney's fees, taxable costs, and prejudgment interest to which the plaintiff would have been entitled when the offer was made. *Id.* at 551. "It is this judgment to which the offer must be compared in determining whether to award fees and costs" under both the offer of judgment statute and [section 627.428](#). *Id.* (citing *DeSalvo*, 748 So. 2d at 944 n.3). We explained that "[a]lthough *Danis* and [*DeSalvo*] involved an award of attorneys' fees under [section 627.428](#), we see no reason why this rationale should not apply equally to offers or demands made under [section 768.79\(6\)](#)." *Id.* at 551 n.5.

[HN19](#)[↑] Because we have uniformly defined the term "judgment" under both [section 627.428](#) and the offer of judgment statute, the two statutes can be applied simultaneously to PIP cases without creating conflict. The following chart illustrates how they interact: [*1075]

 [Go to table 1](#)

[*16]

The most complex situation is where the insured recovers some damages, but the judgment is only 75 percent or less of the defendant's offer. (This is not such a case, because Nichols recovered nothing.) In that situation, both parties have a statutory entitlement to attorney's fees. Even then, however, the two statutes will not conflict: under [section 627.428](#) the insured will be awarded attorney's fees incurred *before* the offer, and under the offer of judgment statute the insurer will be awarded fees incurred *after* the offer.

Given the lack of conflict between the statutes, the

question becomes whether the expression of one thing (i.e., attorney's fees for insureds under [sections 627.428](#) and [627.736](#)) implies the exclusion of another (i.e., attorney's fees under the offer of judgment statute). [HN20](#)^[↑] As one court noted in holding that the offer of judgment statute applied in PIP cases, "[t]his rule that the inclusion of one thing means the exclusion of another, however, does not mean that the application of one precludes the additional application of another." *Cahuasqui*, 760 So. 2d at 1105.

[HN21](#)^[↑] In cases involving other types of insurance, we have not interpreted [\[**17\]](#) [section 627.428](#) as precluding the application of other attorney's fees provisions. To the contrary, we have authorized the application of the offer of judgment statute in an underinsured motorist case, even though it also fell within the scope of [section 627.428](#). See *Sarkis v. Allstate Ins. Co.*, 863 So. 2d 210, 223 (Fla. 2003). The district courts, too, have applied the offer of judgment statute to insurance cases, including those involving property insurance, see *Pa. Lumbermens Mut. Ins. Co. v. Sunrise Club, Inc.*, 711 So. 2d 593, 594 (Fla. 3d DCA 1998), liability insurance, *Rabatie v. U.S. Sec. Ins. Co.*, 581 So. 2d 1327 (Fla. 3d DCA 1989), and uninsured motorist benefits. See *Weesner v. United Servs. Auto. Ass'n*, 711 So. 2d 1192, 1194 (Fla. 5th DCA 1998); *Allstate Ins. Co. v. Manasse*, 715 So. 2d 1079, 1082 (Fla. 4th DCA 1998); *Allstate Ins. Co. v. Silow*, 714 So. 2d 647, 651 (Fla. 4th DCA 1998); *State Farm Mut. Auto. Ins. Co. v. Marko*, 695 So. 2d 874, 876 (Fla. 2d DCA 1997). One court has specifically rejected the argument that in an uninsured motorist case [section \[**18\]](#) [627.428](#) precludes an award of attorney's fees to the insurer under the offer of judgment statute. *Weesner*, 711 So. 2d at 1194.

Nichols attempts to distinguish PIP suits from these other insurance cases on the ground that [section 627.428](#) applies to PIP suits *through* a separate provision in the PIP statute, which incorporates it by reference. See [§ 627.736\(8\)](#), *Fla. Stat.* (1999). According to Nichols, the Legislature's reason for including this separate provision must have been to foreclose the application of any other attorney's fees provisions to PIP suits. Otherwise, she argues, the provision would be redundant with [section 627.428](#).

We find this argument unpersuasive. [HN22](#)^[↑] If the Legislature had enacted [\[**1076\]](#) [section 627.736\(8\)](#) for the sole purpose of excluding all other attorney's fees provisions in PIP suits, then presumably it would have used exclusionary language, rather than the inclusive

language it used. The words in the statute are the best guide to legislative intent. Here, [section 627.736\(8\)](#) gives no clue that the Legislature intended to prohibit application of the offer of judgment statute.

C. Access to Courts

Nichols argues [\[**19\]](#) that applying the offer of judgment statute to PIP suits will deny insureds access to courts and thus render the entire PIP system unconstitutional. [Article I, section 21 of the Florida Constitution](#) provides that [HN23](#)^[↑] "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." We hold that even with the addition of the offer of judgment statute, the PIP statute withstands constitutional scrutiny.

We first considered [HN24](#)^[↑] the PIP statute's constitutionality in *Kluger v. White*, 281 So. 2d 1 (Fla. 1973). We interpreted the access-to-courts provision to mean that the Legislature cannot abolish a traditional common-law right of recovery "without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown." *Id.* at 4. Applying this standard, we held unconstitutional the portion of the PIP statute that provided an exemption from tort liability for certain property damage. [\[**20\]](#) *Id.* at 5. We cautioned, however, that if insurance had been made compulsory for property damage, the provision might have been upheld. *Id.*

One year after *Kluger*, we decided that [HN25](#)^[↑] the personal injury portion of the PIP statute, which does make insurance compulsory, "provides a reasonable alternative to the traditional action in tort" and therefore complies with the access-to-courts provision. See *Lasky v. State Farm Ins. Co.*, 296 So. 2d 9, 14 (Fla. 1974). We reasoned that, under the PIP system, "[i]n exchange for his previous right to damages for pain and suffering . . . with recovery limited to those situations where he can prove that the other party was at fault, the injured party is assured of recovery of his major and salient economic losses from his own insurer." *Id.* We emphasized that the insured can recover something "even where he *himself* is at fault," and that normally there will be "speedy payment" rather than prolonged litigation. *Id.*

As the PIP statute has been amended over the years,

we have considered new challenges to its constitutionality. The most prominent example is *Chapman v. Dillon*, 415 So. 2d 12 (Fla. 1982). **[**21]** In the eight years between *Lasky* and *Chapman*, the Legislature substantially reduced the percentage of medical expenses and lost wages the insured may recover. *Id.* at 16. Deciding that the amendments were "reasonable attempts by the legislature to correct some of the practical problems which the no-fault law had posed," we again upheld the statute. *Id.* Although the changes meant that insureds would not necessarily recover all their economic losses, we explained that full recovery was not essential to the outcome in *Lasky*; "[i]nstead the crux in *Lasky* was that all owners of motor vehicles were required to purchase insurance which would assure injured parties recovery of their major and salient economic losses." *Id.* at 17. We determined that the statutory amendments "have not fundamentally changed this essential characteristic of the no-fault law." *Id.*

[*1077] The question here is whether allowing PIP insurers to recover attorney's fees under the offer of judgment statute (enacted after *Lasky* and *Chapman*, see ch. 86-160, § 58, Laws of Fla.) would fundamentally change the essential characteristics of the PIP system and thereby **[**22]** deny access to courts. The only case in which we have analyzed an attorney's fees provision under the access-to-courts provision is *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985). There, we considered whether *HN26* [↑] section 768.56, Florida Statutes (1981), which provided attorney's fees for the prevailing party in medical malpractice cases, violated the Florida Constitution. We held it did not, explaining:

The assessment of attorney fees against an unsuccessful litigant imposes no more of a penalty than other costs of proceedings which are more commonly assessed. . . . The statute may encourage an initiating party to consider carefully the likelihood of success before bringing an action, and similarly encourage a defendant to evaluate the same factor in determining how to proceed once an action is filed. We reject the argument that section 768.56 so deters the pursuit of medical malpractice claims that it effectively denies access to the courts to either party in malpractice actions. We find that an award of attorneys fees to the prevailing party is "a matter of substantive law properly within the aegis of the legislature," in accordance **[**23]** with

the long-standing American Rule adopted by this Court. See *Whitten v. Progressive Cas. Ins. Co.*, 410 So. 2d 501, 504 (Fla. 1982). As difficult as the resulting application of this statute may be in certain cases, we conclude that section 768.56 is constitutional.

Id. at 1149 (citations omitted). As this passage makes clear, *HN27* [↑] fee-shifting statutes generally do not deny access to courts. *Id.*

We recognize that *HN28* [↑] the PIP statute is unique. It expressly abolished a traditional common-law right by limiting the recovery available to car accident victims. In exchange, the statute made PIP insurance compulsory and allowed recovery regardless of fault. As we have noted, "the purpose of the no-fault statutory scheme is to 'provide swift and virtually automatic payment so that the injured insured may get on with his life without undue financial interruption.'" *Ivey v. Allstate Ins. Co.*, 774 So. 2d 679, 683-84 (Fla. 2000) (quoting *Gov't Employees Ins. Co. v. Gonzalez*, 512 So. 2d 269, 271 (Fla. 3d DCA 1987)). This benefit balances the restrictions on recovery, making the PIP statute a reasonable alternative to the traditional **[**24]** tort action.

Applying the offer of judgment statute to PIP suits will not upset this balance. *HN29* [↑] Insurers are entitled to attorney's fees only in two limited circumstances: (1) where the insured recovers nothing at trial, as happened in this case; and (2) where the insured rejects an offer that turns out to be at least one-third greater than the damages awarded at trial, when added to any attorney's fees, taxable costs, and prejudgment interest that the insured accumulated before the offer. In other words, for the offer of judgment statute to apply, the plaintiff either must have a very weak case, or must reject a very generous offer. Encouraging plaintiffs to settle in those circumstances, rather than pursue needless litigation, "is entirely consistent with the intent of the no-fault legislation of relieving our overburdened court system." *Cahuasqui*, 760 So. 2d at 1105. We therefore hold that application of the offer of judgment statute to PIP suits does not render the *PIP statute* constitutionally infirm.

[*1078] III. THE PARTICULARITY REQUIREMENT

The remaining issue is whether State Farm's settlement proposal satisfied the particularity requirement of *HN30* [↑] *Florida Rule of Civil Procedure 1.442* **[**25]** . The rule requires that settlement proposals "state with


particularity any relevant conditions" and also "state with particularity all nonmonetary terms." [Fla. R. Civ. P. 1.442\(c\)\(2\)\(C\)-\(D\)](#). As the district court noted below, "[t]his requirement of particularity is fundamental to the purpose underlying the statute and rule. A proposal for settlement is intended to end judicial labor, not create more." *Nichols*, 851 So. 2d at 746.

The Fifth District decided that the language requiring Nichols to sign a general release was too ambiguous to satisfy [rule 1.442](#). *Nichols*, 851 So. 2d at 746. Accordingly, it reversed the trial court's award of attorney's fees under the offer of judgment statute. State Farm now challenges the Fifth District's ruling, claiming it conflicts with other district court decisions. We exercise our discretion to review the issue. See *Savoie v. State*, 422 So. 2d 308, 312 (Fla. 1982) (holding that "once this Court has jurisdiction of a cause, it has jurisdiction to consider all issues appropriately raised in the appellate process"). As explained below, we conclude that State Farm's settlement **[**26]** proposal failed to eliminate ambiguity regarding Nichols's outstanding UM claim and thus cannot support an award of attorney's fees.


As a threshold matter, we must determine whether a general release qualifies as one of the "relevant conditions" or "nonmonetary terms" of a settlement proposal, which must be described with particularity under [rule 1.442](#). In this case, the Fifth District determined that a release is a condition and a nonmonetary term. See *Nichols*, 851 So. 2d at 746. Most district courts agree. See, e.g., [1 Nation Tech. Corp. v. A1 Teletronics, Inc.](#), 924 So. 2d 3, 6 (Fla. 2d DCA 2005); *Dryden v. Pedemonti*, 910 So. 2d 854, 856 (Fla. 5th DCA 2005); *Palm Beach Polo Holdings, Inc. v. Vill. of Wellington*, 904 So. 2d 652, 653 (Fla. 4th DCA 2005); *Sink v. Emerald Hill Owners Ass'n*, 903 So. 2d 1047, 1048 (Fla. 1st DCA 2005); *Boyd v. Nationwide Mut. Fire Ins. Co.*, 890 So. 2d 1240, 1242 (Fla. 4th DCA 2005); *Swartsel v. Publix Super Mkts., Inc.*, 882 So. 2d 449, 453 (Fla. 4th DCA 2004); *Hales v. Advanced Sys. Design, Inc.*, 855 So. 2d 1232, 1233 (Fla. 1st DCA 2003). **[**27]**

In an earlier case, however, the Third District held that the releases and dismissal required by a settlement proposal "were not 'conditions' of the settlement, but rather mechanical and legally inconsequential means of effecting it. They thus should be regarded as mere surplusage, the existence of which should not affect substantial rights." *Earnest & Stewart, Inc. v. Codina*, 732 So. 2d 364, 366 (Fla. 3d DCA 1999). A few


decisions, mostly from the Third District, have expressed this view. See *Delpa, Inc. v. Martinez*, 878 So. 2d 455, 455 (Fla. 3d DCA 2004); [Gulf Coast Transp., Inc. v. Padron](#), 782 So. 2d 464, 465 (Fla. 2d DCA 2001); *Kaplan v. Goldfarb*, 777 So. 2d 1208, 1208 (Fla. 3d DCA 2001).

HN31  Applying the plain meaning of [rule 1.442](#), we agree with those courts that have treated releases as conditions or nonmonetary terms that must be described with particularity. A "condition" is traditionally defined as "a stipulation or prerequisite in a contract, will, or other instrument, constituting the essence of the instrument." *Black's Law Dictionary* 312 (8th ed. 2004). A "term" is defined more broadly as "a contractual **[**28]** stipulation." *Id.* at 1209. We think it clear that when an offeror insists that an offeree sign a general release, the release becomes a stipulation **[*1079]** or prerequisite of the contract. Even if the release does not constitute the essence of the settlement proposal--and thus a condition under subdivision (c)(2)(C) of the rule--at the very least it qualifies as a nonmonetary term under subdivision (c)(2)(D).

Next we consider what degree of particularity the rule requires. Some courts have demanded "that an offeror state *all the terms* of . . . any 'general release' or, instead, attach a copy of the actual documents themselves to the offer." [Swartsel](#), 882 So. 2d at 453 (emphasis added). In this case, however, the Fifth District interpreted the rule as giving offerors the option of including "either the proposed language of the release or a summary of the substance of the release." *Nichols*, 851 So. 2d at 746; see also [Palm Beach Polo](#), 904 So. 2d at 653 (following *Nichols*); *Boyd*, 890 So. 2d at 1242 (requiring only a summary "sufficient to apprise [the offeree] of its terms").

We agree that **HN32**  a summary of the proposed **[**29]** release can be sufficient to satisfy [rule 1.442](#), as long as it eliminates any reasonable ambiguity about its scope. As the Second District recently explained:

The rule intends for a proposal for judgment to be as specific as possible, leaving no ambiguities so that the recipient can fully evaluate its terms and conditions. Furthermore, if accepted, the proposal should be capable of execution without the need for judicial interpretation. Proposals for settlement are intended to end judicial labor, not create more.

[Lucas v. Calhoun](#), 813 So. 2d 971, 973 (Fla. 2d DCA 2002) (citation omitted). We recognize that, **HN33** 

given the nature of language, it may be impossible to eliminate all ambiguity. The rule does not demand the impossible. It merely requires that the settlement proposal be sufficiently clear and definite to allow the offeree to make an informed decision without needing clarification. If ambiguity within the proposal could reasonably affect the offeree's decision, the proposal will not satisfy the particularity requirement.

We caution that [rule 1.442](#) is not intended to revolutionize the language used in general releases. Traditionally, general releases **[**30]** have included expansive language designed to protect the offeror from unforeseen developments or creative maneuvering by the other party. Such language can be sufficiently particular to satisfy [rule 1.442](#). For example, in [Board of Trustees of Florida Atlantic University v. Bowman](#), 853 So. 2d 507 (Fla. 4th DCA 2003), the Fourth District concluded that the language in a general release, "even though expansive, is typical of other general releases and is clear and unambiguous." *Id.* at 509. The rule aims to prevent ambiguity, not breadth.

State Farm's settlement proposal was too ambiguous to satisfy [rule 1.442](#). The proposal stated, at the outset, that it would be "a full and final satisfaction and settlement of any and all of Nichols's claims and causes of action in, or arising out of, the above-styled case." Then it provided that Nichols would be required to "execute a General Release in favor of State Farm, which will be expressly limited to all claims, causes of action, etc., that have accrued through the date of Nichols's acceptance of this Proposal." At the time of the offer, Nichols not only had a pending PIP claim against State Farm, but also a **[**31]** UM claim arising from the same accident and of greater value. Although that claim was not technically "*in . . . the above-styled case*," it could have been viewed as a claim "*arising out of . . . the above-styled case*," because it arose from the same set of facts. State Farm's use of the **[*1080]** broad phrase "all claims, causes of action, etc." exacerbated this ambiguity.

The district courts have consistently held, and we agree, that [HN34](#)[↑] settlement proposals must clarify which of an offeree's outstanding claims against the offeror will be extinguished by any proposed release. See, e.g., [Dryden](#), 910 So. 2d at 856-57 (holding that the description of a general release was "not as clear and as certain as it should be," because it "could have been found . . . to have extinguished" additional claims); [Palm Beach Polo](#), 904 So. 2d at 653 (holding that "the offer was legally deficient because plaintiff's acceptance

could have extinguished other pending unrelated claims"); [Morgan v. Beekie](#), 879 So. 2d 110, 111 (Fla. 5th DCA 2004) (holding that an offer "cannot be a basis for an award of attorney's fees because it was both ambiguous and failed **[**32]** to make it clear that it was solely for personal injuries when the settlement of the property damage claim had not yet been fully consummated"). Because State Farm's offer failed to do so, it is invalid under [rule 1.442](#) and cannot support an award of attorney's fees under the offer of judgment statute.

IV. CONCLUSION

We hold that the offer of judgment statute applies to PIP suits. In this case, however, State Farm's offer of judgment was too ambiguous to satisfy [Florida Rule of Civil Procedure 1.442](#). We therefore approve in full the district court's decision reversing the award of attorney's fees.

It is so ordered.

PARIENTE, C.J., and WELLS, LEWIS, and BELL, JJ., concur.

ANSTEAD, J., concurs in result only with an opinion, in which QUINCE, J., concurs.

Concur by: ANSTEAD

Concur

ANSTEAD, J., concurring in result only.

While I agree with the majority as to the ultimate outcome, I cannot agree with the majority's analysis or conclusion as to the use of the offer of judgment statute to circumvent the Legislature's clear intention to limit the entitlement to attorney's fees in PIP actions to the insured-claimant. By applying a broader and more **[**33]** general statute on fees the majority opinion has essentially eviscerated the specific legislative intent on fees, as well as fundamentally undermining the legislative scheme to assist Florida citizens in the collection of PIP benefits. One can only hope that the Legislature will recognize that its work has been undone, and act promptly to restore the balance of rights of citizen-insureds in their dealings with insurance companies who have now been armed with a powerful new economic weapon to discourage insureds from

litigating legitimate claims.

Because I agree with the dissenting opinion of Judge Sawaya on this issue, I quote that opinion here and endorse its analysis:

I concur with the majority that the order awarding attorney's fees must be reversed. However, I respectfully disagree that the offer of judgment statute found in [section 768.79, Florida Statutes](#), applies to PIP cases. In my view, application of [section 768.79](#) to PIP cases would completely thwart and circumvent the purposes of the Florida Motor Vehicle No-Fault Law [n.1] (the No-Fault Act) and PIP benefits. Moreover, I believe that the Legislature never intended a suit to recover **[**34]** PIP benefits to be an action for damages under [section 768.79](#). Although I concur that this issue should be certified to the Florida Supreme Court, I believe that the question certified should be rephrased as follows to reflect the true nature of a suit to recover **[*1081]** PIP benefits and answered in the negative:

May an insurer recover attorney's fees under [rule 1.442, Florida Rules of Civil Procedure](#), and [section 768.79, Florida Statutes](#), in an action brought by its insured to recover personal injury protection benefits under the insurance policy issued to the insured?

[n.1] [§§ 627.730-7405, Fla. Stat.](#) (2001).

Application of the Offer of Judgment Statute Would Circumvent the Purposes of the No-Fault Law and Pip Benefits

In order to properly determine whether the offer of judgment statute found in [section 768.79, Florida Statutes](#) (2001), applies to PIP cases, it is necessary to start with the firmly established rule that "[l]egislative intent, as always, is the polestar that guides a court's inquiry under the Florida No-Fault Law" **[**35]** [United Auto Ins. Co. v. Rodriguez](#), 808 So. 2d 82, 85 (Fla. 2001). In my view, application of [section 768.79](#) to PIP cases would completely circumvent and thwart the purposes of the No-Fault Act and the specific provisions relating to PIP benefits found in [section 627.736](#). Therefore, it is clear to me that the Legislature certainly did not intend for [section](#)

[768.79](#) to apply to PIP cases.

The Florida Legislature enacted the No-Fault Act to "provide for medical, surgical, funeral, and disability insurance benefits without regard to fault" and to limit "the right to claim damages for pain, suffering, mental anguish, and inconvenience." [§ 627.731, Fla. Stat.](#) (2001). In order to accomplish this objective, [section 627.736\(1\)](#) requires that every owner of a motor vehicle obtain motor vehicle liability insurance that provides "personal injury protection . . . for loss sustained . . . as a result of bodily injury, sickness, disease, or death arising out of the ownership, maintenance, or use of a motor vehicle" (Emphasis added). In exchange for abrogation of the right of the injured party to sue the tortfeasor for damages for pain, suffering, **[**36]** mental anguish, and inconvenience, the injured party is entitled to receive protection in the form of PIP benefits, which are limited to the following: eighty percent of all reasonable medical expenses so the insured will have access to necessary medical care and his or her medical providers will be assured of prompt payment; sixty percent of disability benefits so the insured and his or her family will have access to necessary funds for family support to replace the income lost as a result of any debilitating injury suffered by the insured; and certain death benefits to ensure prompt payment of necessary funeral expenses. [§ 627.736\(1\), Fla. Stat.](#) (2001).

Because the injured insured is statutorily prohibited from recovering these costs from the tortfeasor whose wrongful conduct caused the injury or death, he or she is relegated to payment of these necessary costs from his or her insurance carrier unless the statutorily-imposed threshold of permanency is established. [§ 627.737, Fla. Stat.](#) (2001). Thus, the injured insured becomes totally dependent on his or her insurance carrier for payment of these necessary costs. Shortly after **[**37]** the Legislature enacted the No-Fault Act in 1973, the Florida Supreme Court in *Lasky v. State Farm Insurance Co.*, 296 So. 2d 9 (Fla. 1974), articulated the specific purposes of the No-Fault Act, stating that central to the legislative intent was the desire to enhance the public welfare through "an assurance that persons injured in vehicular accidents would receive **[*1082]** some economic aid in meeting medical expenses and the like, in order not to drive them into dire financial circumstances with the possibility of swelling the

public relief rolls." *Id.* at 16 (emphasis added). In [*Ivey v. Allstate Insurance Co.*, 774 So. 2d 679 \(Fla. 2000\)](#), the court held that "[w]ithout a doubt, the purpose of the no-fault statutory scheme is to 'provide swift and virtually automatic payment so that the injured insured may get on with his life without undue financial interruption.'" *Id.* at 683-84 (emphasis added) (quoting [*Government Employees Ins. Co. v. Gonzalez*, 512 So. 2d 269, 271 \(Fla. 3d DCA 1987\)](#)). The assurance of swift and virtually automatic provision of PIP benefits is accomplished through the requirements **[**38]** of [*section 627.736\(4\)\(b\)*](#), which provides that PIP insurance benefits shall be overdue if not provided within thirty days after the insurer is furnished written notice of a covered loss and of the amount of same. If the insurer allows a claim to become overdue, the insurer is subject to specific penalties, which include an award of attorney's fees to the insured. [n.2] I emphasize that imposition of an award of fees against the insurance carrier is a penalty for failing to provide PIP benefits in accordance with the time limitations of the No-Fault Act. The court in *Ivey* explained the significance of the statutory provisions that allow for awards of attorney's fees to the injured insured in achieving the purpose of the No-Fault Act:

Florida law is clear that in "*any dispute*" which leads to judgment against the insurer and in favor of the insured, attorney's fees shall be awarded to the insured. See [*§§ 627.736\(8\), 627.428\(1\)*](#); see also [*Dunmore v. Interstate Fire Ins. Co.*, 301 So. 2d 502, 503 \(Fla. 1st DCA 1974\)](#). That is, under PIP law, the focus is outcome-oriented. If a dispute arises between an insurer and an insured, and judgment is entered **[**39]** in favor of the insured, he or she is entitled to attorney's fees. *It is the incorrect denial of benefits*, not the presence of some sinister concept of "wrongfulness," that generates the basic entitlement to the fees if such denial is incorrect. It is clear to us that *the purpose of this provision is to level the playing field so that the economic power of insurance companies is not so overwhelming that injustice may be encouraged because people will not have the necessary means to seek redress in the courts.*

[*Ivey*, 774 So. 2d at 684](#) (emphasis added).

[n.2] [*United Auto. Ins. Co. v. Rodriguez*, 808 So. 2d](#)

[*82, 87 \(Fla. 2001\)*](#) ("Under the language of the Florida No-Fault Law, an insurer is subject to specific penalties once a payment becomes 'overdue'; the penalties include ten percent interest and attorneys' fees."); [*January v. State Farm Mut. Ins. Co.*, 838 So. 2d 604 \(Fla. 5th DCA 2003\)](#).

In [*Nationwide Mutual Fire Insurance Co. v. Pinnacle Medical, Inc.*, 753 So. 2d 55 \(Fla. 2000\)](#), the court, in holding unconstitutional the requirement of mandatory arbitration and awards of attorney's fees **[**40]** to the prevailing party under [*section 627.736\(5\)*](#), again emphasized the importance of the provision for fees to the insured under [*section 627.428*](#) by explaining:

An objective of Florida's Motor Vehicle No-Fault Law was to provide persons injured in an accident with prompt payment of benefits. [*Lasky v. State Farm Ins. Co.*, 296 So. 2d 9, 16 (Fla. 1974).] Similarly, the legislative objective of [*section 627.428\(1\), Florida Statutes*](#), which provides for an award **[*1083]** of attorney fees against insurers who wrongfully deny benefits, was to discourage insurance companies from contesting valid claims and to reimburse successful insureds for their attorney fees when they are compelled to sue to enforce their insurance contracts. See [*State Farm Fire & Cas. Co. v. Palma*, 629 So. 2d 830, 833 \(Fla. 1993\)](#).

Id. at 59.

There is no provision for an award of attorney's fees to the insurer in any of the provisions of the No-Fault Act and, I believe, for good reason. Such a provision would thwart the purpose of the PIP provisions of the statutory no-fault scheme by unleveling the playing field by giving the insurance companies **[**41]** far too much leverage over the insureds, who are dependent on the fair and speedy payment of their necessary medical bills from their insurance carrier so they will continue to have access to necessary medical care. Hence, an award of fees to the insurer under [*section 768.79*](#) would circumvent the purposes of assuring swift and virtually automatic payment of benefits and, instead of discouraging insurers from contesting valid claims, it would have the effect of encouraging the contest of valid claims. Furthermore, an award of fees to the insurer under [*section 768.79*](#) would completely vitiate the purpose of imposing a penalty

on the insurer under [section 627.428](#). Moreover, because [section 768.79](#) is punitive in nature, [n.3] an award of fees to the insurer would actually impose a penalty on the insured. I do not believe that the Legislature intended this result in enacting the No-Fault Act or [section 768.79](#).

[n.3] See *Hilyer Sod, Inc. v. Willis Shaw Express, Inc.*, 817 So. 2d 1050, 1054 (Fla. 1st DCA 2002) ("Moreover, the offer of judgment statute and rule should be strictly construed because the procedure is in derogation of the common law and is penal in nature. [****42**] "), approved, 849 So. 2d 276 (Fla. 2003); *Schussel v. Ladd Hairdressers, Inc.*, 736 So. 2d 776, 778 (Fla. 4th DCA 1999) (noting that "[section 768.79](#) and *Florida Rule of Civil Procedure 1.442* are punitive in nature") (citing *TGI Friday's, Inc. v. Dvorak*, 663 So. 2d 606, 614 (Fla. 1995); *Loy v. Leone*, 546 So. 2d 1187, 1189 (Fla. 5th DCA 1989)).

I also believe that imposition of attorney's fees on the insureds pursuant to [section 768.79](#) could totally offset the insureds' benefit awards for these essential medical costs and leave the insureds with unpaid medical bills that could potentially cause a cessation of their medical care. In addition, imposition of fees against the insureds could leave the insureds actually owing money to their insurance company. In essence, the insureds could lose the benefits of the coverage for which they paid a premium and be saddled with a debt owed to their insurance company. Surely, the Legislature did not intend for such calamities to occur to insureds who were, according to the court in *Lasky*, given "an assurance that [they] would receive some [****43**] economic aid in meeting medical expenses and the like" Imposition of fees pursuant to [section 768.79](#) would, in my view, constitute a breach of that assurance and could potentially place many injured insureds in "dire financial circumstances with the possibility of swelling the public relief rolls"--a circumstance the court in *Lasky* indicated should not occur.

Moreover, the stated purpose of the No-Fault Act is to "provide medical, surgical, funeral, and disability insurance benefits without regard to fault, and to require motor vehicle insurance [***1084**] securing such benefits" [§ 627.731, Fla. Stat.](#) (2001). This purpose is accomplished through the provisions of [section 627.733](#), which require that every owner of a motor vehicle "maintain security

as required by subsection (3)" [§ 627.733\(1\), Fla. Stat.](#) (2001). Subsection (3) provides that "[s]uch security shall be provided: (a) [b]y an insurance policy . . . which provides the benefits and exemptions contained in ss. 627.730-627.7405." [§ 627.733\(3\)\(a\), Fla. Stat.](#) (2001). [Section 627.736](#) contains the provisions that specify [****44**] what the security requirements are: medical, disability and death benefits. As the court explained in *Reid v. State Farm Fire & Casualty Co.*, 352 So. 2d 1172 (Fla. 1977):

The provision of [Section 627.733](#), that every owner or registrant of a motor vehicle required to be registered and licensed in the state shall maintain security, must be read in context with the rest of the Florida Automobile Reparations Reform Act. In this context, the purpose of the required security is clearly to provide financial responsibility to pay any "no-fault" personal injury protection benefits due under [Section 627.736](#).

Id. at 1173 (emphasis added).

The point I am making is that injured insureds are provided security for the payment of their benefits. The dictionary gives the plain and ordinary meaning of the term "security": "1. Freedom from risk or danger; safety. 2. Freedom from doubt, anxiety, or fear; confidence. 3. Something that gives or assures safety." *The American Heritage Dictionary* 109 (2d ed. 1985). Injured insureds who, according to *Lasky*, were given "an assurance . . . of economic aid" should not be subjected to [****45**] the uncertainties of the offer of judgment statute, which requires the injured party to make a calculated guess at the amount of benefits a jury might award and to make another calculated guess whether the award will exceed the statutory percentage provided in the statute. Payment of the injured insureds' necessarily-incurred medical bills and continuation of their medical care is far too important to be subjected to the uncertainties of the offer of judgment statute. In my view, application of [section 768.79](#) to PIP cases, with its inherent uncertainties and risks, has completely abrogated the security and the assurance that injured insureds were promised by the Legislature through the No-Fault Act. This is not what the Legislature intended.

I further believe that those insureds who file suit to recover their benefits in small claims court without

the assistance of counsel to make this burdensome calculated guess will leave insurance companies, which are represented by attorneys, with an unfair advantage. I also believe that this will discourage many insureds from attempting to obtain the benefits for which they paid a premium, leaving the insurance companies that collected their **[**46]** premiums with a windfall.

The Florida Supreme Court recognized that [section 627.428\(1\)](#) is a "one-way street offering the potential for attorneys' fees only to the insured or beneficiary." [Danis Indus. Corp. v. Ground Improvement Techniques, Inc.](#), 645 So. 2d 420, 421 (Fla. 1994). Because of the imposition of fees pursuant to [section 768.79](#), instead of traveling down an unobstructed one-way street to recovery as intended by the Legislature, many injured insureds may find themselves stuck in front of a toll booth erected and maintained by their insurance companies without sufficient funds for passage through. This certainly is not the intention of the Legislature.

[*1085] [Section 768.79](#) is part of Chapter 768, Florida Statutes, wherein the Legislature included [section 768.71\(3\)](#), which provides that "[i]f a provision of this part is in conflict with any other provision of the Florida Statutes, such other provision shall apply." The PIP statute found in [section 627.736](#) specifically provides that in PIP cases, "the provisions of s. 627.428 shall apply. . . ." [§ 627.736\(8\), Fla. Stat.](#) (2001) (emphasis added). This provision is significant because **[**47]** [section 627.428](#) would apply to PIP cases regardless of the provisions of [section 627.736\(8\)](#). In my view, the Legislature intended that the specific provisions of [section 627.428](#) should apply over the general provisions of [section 768.79](#). In other words, specifically including [section 627.428](#) in the provisions of [section 627.736\(8\)](#), to the exclusion of any other statutory provision for fees, clearly indicates the Legislature's intention that [section 627.428](#) be the exclusive authority for an award of fees in PIP cases. See, e.g., [Frazier v. Metropolitan Dade County](#), 701 So. 2d 418 (Fla. 3d DCA 1997) (holding that [section 768.71\(3\)](#) applied to a conflict between the wrongful death statute (the more specific statute) under which a non-negligent survivor's recovery cannot be reduced due to another survivor's negligence, and the comparative negligence statute (the more general statute), which dictates that each party's liability is limited to

that party's percentage of fault, so that the comparative fault statute had to yield to the wrongful death statute).

I note that the Legislature recently amended [section 627.736](#) by adding subsection (11), which requires that the **[**48]** insured provide the insurer with written notice of an intent to file a claim for benefits. Ch. 2001-271, § 6, at 1759, Laws of Fla.; [§ 627.736\(11\)\(a\), Fla. Stat.](#) (2001). [Section 627.736\(11\)\(d\)](#) provides that "[t]he insurer shall not be obligated to pay any attorney's fees if the insurer pays the claim within the time prescribed by this subsection." In my view, this provision reaffirms the Legislature's intention that an award of fees to the insured be a one-way street, especially in light of the fact that the Legislature again failed to make provision for fees to the insurer.

Nichols v. State Farm Mutual, 851 So. 2d 742, 747-51 (Fla. 5th DCA 2003) (Sawaya, J., concurring in part, dissenting in part).

QUINCE,

J.,

conkurs.

Table1 ([Return to related document text](#))

If the judgment is:	The insured receives:	The insurer receives:
No liability	No fees	Post-offer fees under the offer of judgment statute
75 percent or less of insurer's offer	Pre-offer fees under section 627.428	Post-offer fees under the offer of judgment statute
More than 75 percent of insurer's offer, but not more than 100 percent	Pre-offer fees under section 627.428	No fees
More than insurer's offer	All fees under section 627.428	No fees

Table1 ([Return to related document text](#))

End of Document

2017

Report of the 2017 Assignment of Benefits Data Call

January 8, 2018



FLORIDA OFFICE OF
INSURANCE REGULATION

David Altmaier, Insurance Commissioner

Table of Contents

I.	Executive Summary.....	1
II.	Purpose and Scope.....	2
III.	Data and Findings.....	3
	Summary of the Findings for Water Claims.....	3
	Frequency Analysis.....	3
	Severity Analysis.....	5
	Combined Impact of Frequency and Severity Changes	7
	Assignment of Benefits.....	8
	Conclusion.....	10
IV.	Supplements.....	
	Appendix A – Assignment of Benefits Data Call.....	11
	Appendix B – Insurers Included In This Report.....	42
	Appendix C – Mapping of Counties to Regions.....	44
	Appendix D – Graphs and Charts for HO-3 and DF Policies Separately	47

I. Executive Summary

Pursuant to Section 624.316 Florida Statutes, the Florida Office of Insurance Regulation (Office) collected data from insurers that write certain types of personal residential property policies in Florida. A copy of this data call may be found in Appendix A. This data call is a follow-up to a data call released in February 2016. The same 25 insurers, based on policies in force as of June 30, 2015, writing Homeowners/HO-3¹ (Owners policy type or HO) and Dwelling Fire² (DF) policies were required to submit data to the Office. A list of all insurers that submitted data may be found in Appendix B of this report. The responding insurers represent approximately 85.5% of the HO-3 and DF policies in force as of September 30, 2017.

The analysis presented in this report shows that the trends in water losses identified in the 2016 report are continuing to escalate at an alarming rate:

	Prior Report	This Report
	From Jan. 1, 2010 to Sept. 30, 2015	From Jan. 1, 2015 to June 30, 2017
Frequency	46.3%	44.1%
Severity	28.5%	17.6%
Combined	88.0%	69.5%
	Average Annualized Change	Average Annualized Change
Frequency	8.3%	27.6%
Severity	5.4%	11.4%
Combined	14.2%	42.1%

The frequency of water claims in the most recent two-and-a-half-year period has increased 44.1%, which is just slightly less than the total increase in frequency for the almost six-year period (46.3%) studied in the prior report. The severity of water losses has also increased significantly in recent years. In total, water losses were increasing at a rate of 14.2% per year in the prior report. Since 2015, the rate has increased to 42.1% per year. These increases are occurring in all regions of the state; however Southeast Florida and Central West Florida show the highest rates of increase in water losses. These trends are evident in rate filings submitted to the Office and are resulting in significant premium increases to homeowners across the state.

¹ HO-3/Owners policies are the most commonly purchased policy that covers direct damage to the dwelling and other structures on the property unless it is specifically excluded.

² Dwelling Fire policies are policies that offer coverage for the dwelling but with more limited coverage than that required and available under a standard HO-3 policy. Typically, this type of policy would be written on a dwelling in which the owner does not reside.

II. Purpose and Scope

The information requested in this data call was substantially similar to that requested in the prior data call with the exception that the information in Section B was required to be broken out by HO and DF policies. To facilitate a quicker submission, the Office requested that companies only submit the data that was currently collected or stored in the insurer's claims database and not conduct a manual claim review to complete all of the requested data points. Each analysis will only include information for insurers that could supply the necessary data required for that analysis.

Insurers were required to respond by September 8, 2017. Due to the impact of Hurricane Irma, some insurers were unable to meet this deadline and additional time to respond was provided. The last of the original submissions was received by the Office on October 3, 2017.

The data call encompassed two sets of data:

- Section A - Detailed claim information for each claim for water or roof damage which was closed between January 1, 2015 and June 30, 2017
- Section B - Summary information by county for closed claims during that same period for all other perils (AOP), excluding hurricane and sinkhole, as well as open claims as of July 1, 2017, for both AOP and Water/Roof claims. Data was separated by HO and DF policies. The graphs and charts by policy type may be found in Appendix D.

This report relies upon the data provided by the insurers as being accurate and complete. It is based on the information as received and no audit of the data has been performed. To simplify this report and to be consistent with the prior report, the report will focus on water claims rather than claims from roof damage. Detailed information for 144,983 water claims (damage that resulted from water pipes bursting, leaks from appliances, etc.) was submitted as part of Section A of the data call.

Citizens Property Insurance Corporation (Citizens) has issued multiple analyses based on its own data. Citizens has concluded that "water loss claims, exacerbated by assignment of benefits, are driving higher rates in South Florida and increasingly across the state." More information may be found on the Citizens website (www.citizensfla.com). As Citizens' data has already been examined and reported on, this report will instead focus on the data provided by licensed personal lines insurers.

III. Data and Findings

Summary of the Findings for Water Claims

Based on the water claims reported by the insurers:

- The HO-3/DF frequency of water claims per 1,000 policies has increased by **44%** since 2015. This represents an average annualized increase in frequency of water claims of **27.6%** each year.
- The average severity of HO-3/DF water claims increased by **18%** since 2015. This represents an average annualized increase in the severity of water claims of **11.4%** each year.
- The combined impact of changes in frequency and severity result in an average **42.1%** increase in water losses each year.
- Southeast Florida has the highest frequency and severity of HO-3/DF water losses, however the highest combined change in frequency and severity occurred in Central West Florida. All regions are seeing significant increases in water losses.
- Claims with an assignment of benefit (AOB) have a higher severity than claims without an AOB (generally at least 85% more).
- There has been a significant increase in the use of AOBs since 2015, from 12.8% of water claims to 17.0% of water claims. This increase in the use of AOBs is being seen across the central and southern regions of the state, while the northern regions have experienced declines in the use of AOBs for water claims.

While the data was required to be submitted by the same insurers, it should be noted that there is a different mix of insurers included in this report since there were several insurers that voluntarily provided information for the prior report that were not included in this report. There were also some insurers with data that was excluded in the prior report that could be used in this report. Notwithstanding these changes in the mix of insurers reporting data, it is appropriate to compare the trends or changes in the data reflected in the prior report for the period of January 1, 2010 to September 30, 2015, and that which occurred between January 1, 2015 and June 30, 2017.

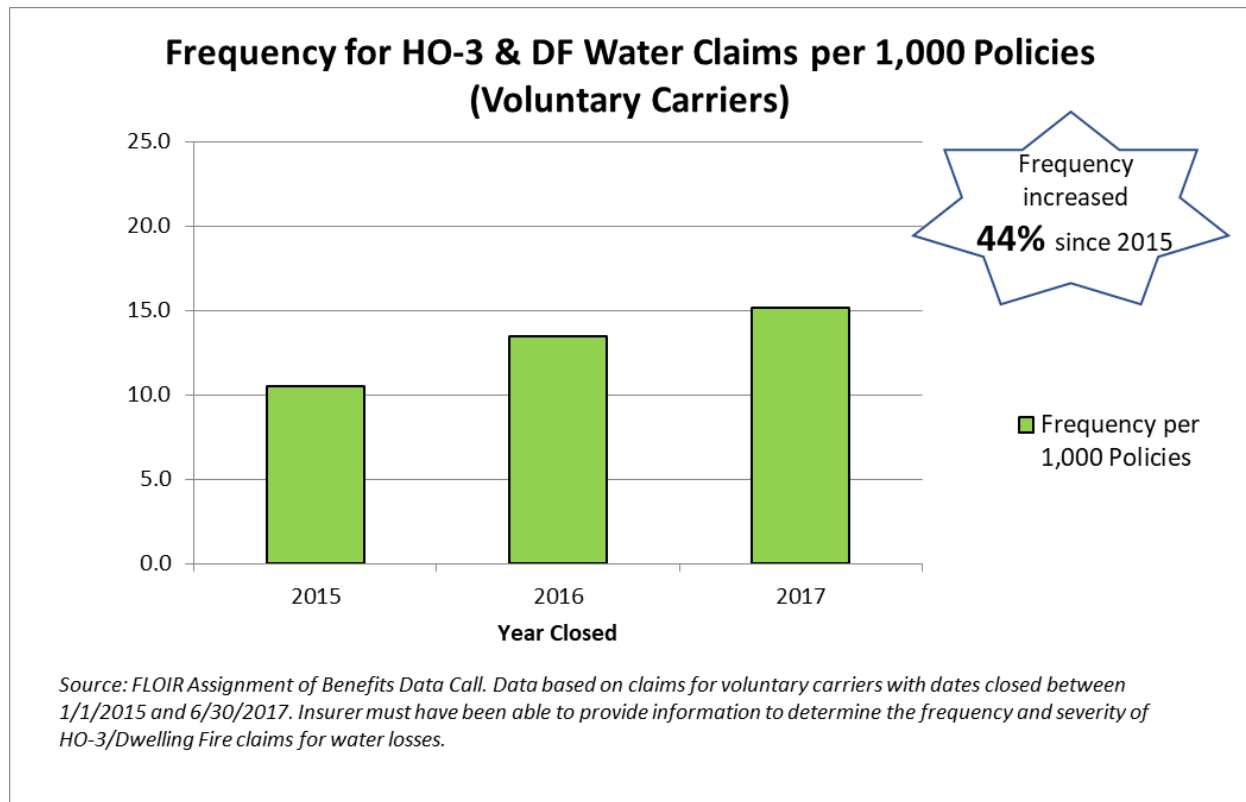
Frequency Analysis

The first analysis involved examining the changes in frequency³ of water claims. Frequency was calculated based on the number of claims divided by “earned house years”⁴ in thousands. The number of earned house years by county was provided in Section B of the data call.

³ Frequency is the likelihood that a loss will occur. It is calculated as the number of claims that occur divided by exposure base. In this report, the frequency is expressed as the number of claims that occur per every 1,000 policies.

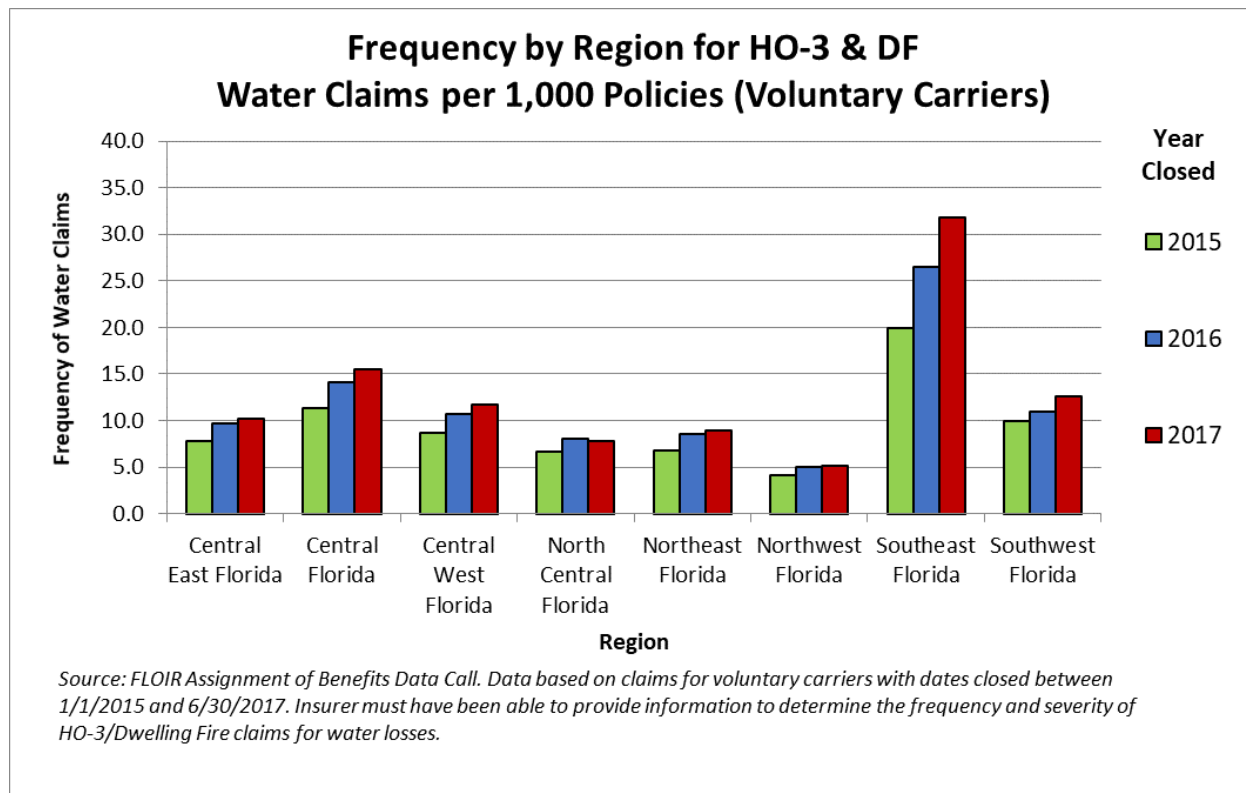
⁴ “Earned house years” is an exposure base used in personal residential ratemaking. It represents one house insured for one year.

The chart below shows that the HO-3 & DF frequency of water claims per 1,000 policies has increased by **44%** since 2015. This 44% increase in frequency in just a two-and-a-half-year period compares to the 46% increase in frequency shown in the prior report for the approximately six-year period between January 1, 2010 to September 30, 2015.



This represents an average annualized increase in frequency of water claims of **27.6%** each year. This can be compared to the 8.3% average annualized increase shown in the prior report.

The chart on the next page examines the changes in frequency of water losses by region for voluntary carriers. A breakdown of the counties that comprise each region may be found in Appendix C.

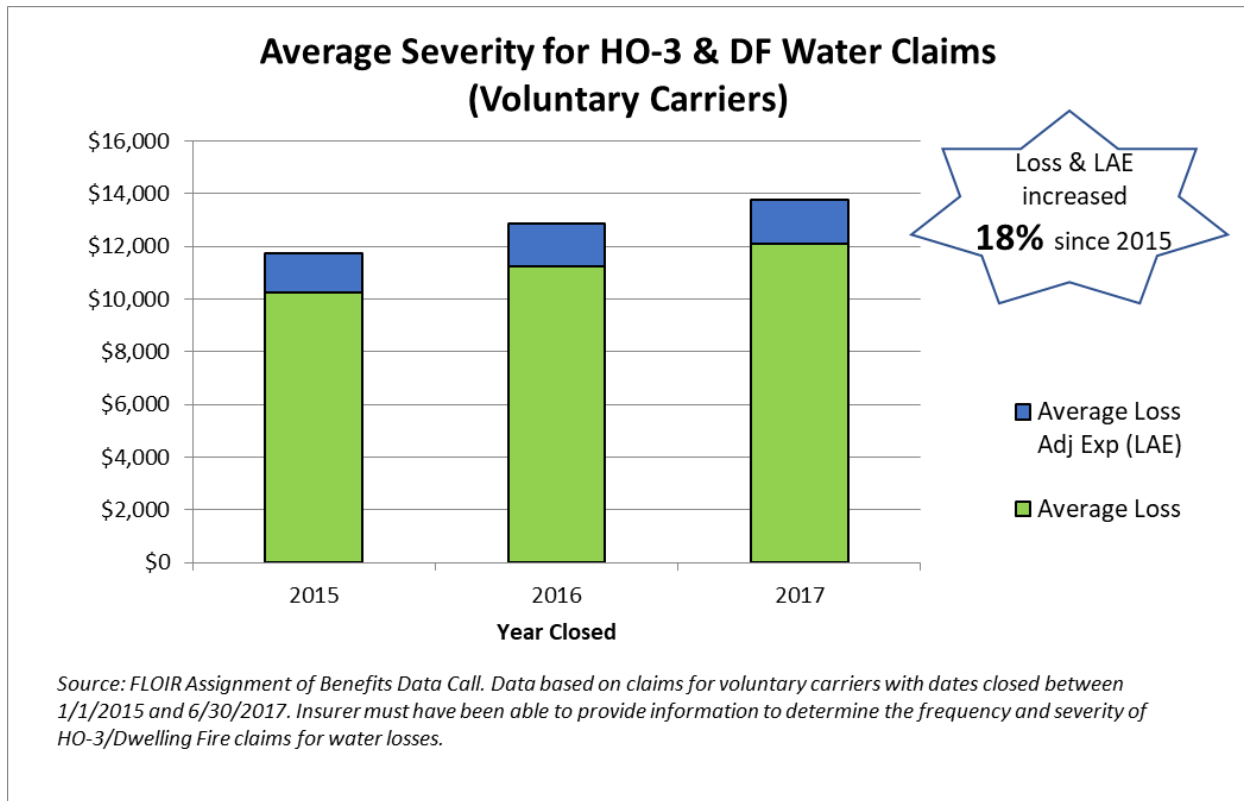


Southeast Florida has, by far, the largest frequency of water claims than any other region of the state. Between claims closed in 2015 and claims closed in the first two quarters of 2017, Southeast Florida experienced an increase in water claim frequency of 60%. While this is a significant increase in claim frequency, all regions of the state experienced double-digit increases between 2015 and 2017.

Severity Analysis

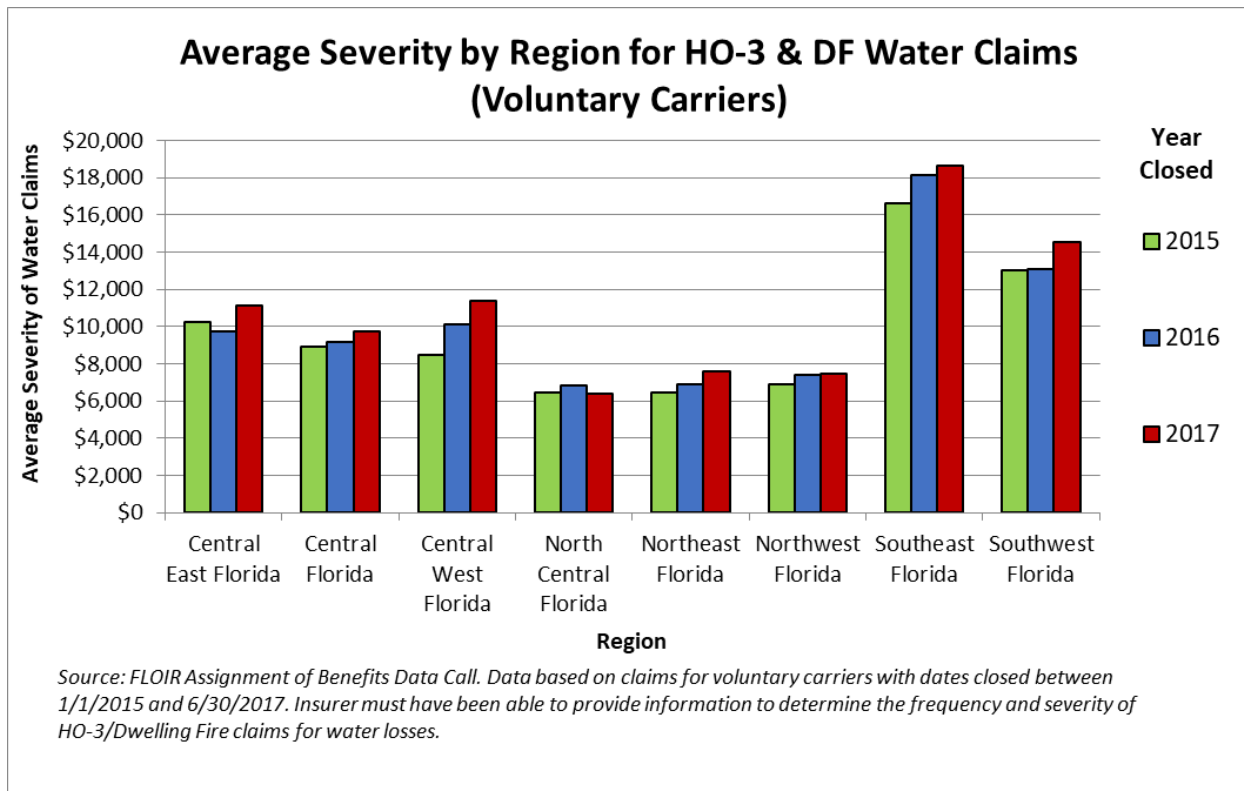
The second analysis involved examining the changes in severity⁵ of water claims. Using the same subset of policies, the average severity of HO-3/DF water claims during this period increased by **18%** since 2015. This 18% increase in severity in just a two-and-a-half-year period compares to the 28% increase in severity shown in the prior report for the approximately six-year period between January 1, 2010 to September 30, 2015:

⁵ Severity is the amount of losses paid for a claim.



This represents an average annualized increase in the severity of water claims of **11.4%** each year. This can be compared to the 5.4% average annualized increase shown in the prior report.

The chart on the next page examines the changes in severity of water losses by region for voluntary carriers. Again, the breakdown of the counties that comprise each region may be found in Appendix C.



Southeast Florida also has the highest average severity of water claims, but the highest increase in claim severity by region (35%) occurred in Central West Florida. All regions, except for North Central Florida, experienced an increase in claim severity of at least 8%. North Central Florida experienced a decrease in claim severity of 0.9%.

Combined Impact of Frequency and Severity Changes

The combined impact of changes in frequency and severity result in an average **42.1%** increase in water losses each year compared to the average 14.2% increase in water losses each year from the prior report.

Region	Change from 2015 - 2017			Average Annualized Trend		
	Frequency	Severity	Combined	Frequency	Severity	Combined
Central East Florida	32.2%	9.3%	44.4%	20.4%	6.1%	27.8%
Central Florida	36.8%	8.7%	48.8%	23.3%	5.7%	30.3%
Central West Florida	35.8%	34.6%	82.7%	22.6%	21.9%	49.5%
North Central Florida	16.3%	-0.9%	15.2%	10.6%	-0.6%	9.9%
Northeast Florida	32.5%	16.9%	54.9%	20.6%	11.0%	33.9%
Northwest Florida	25.9%	8.3%	36.4%	16.6%	5.5%	23.0%
Southeast Florida	59.9%	11.9%	79.0%	36.8%	7.8%	47.4%
Southwest Florida	27.0%	11.8%	42.0%	17.3%	7.7%	26.4%
Statewide	44.1%	17.6%	69.5%	27.6%	11.4%	42.1%

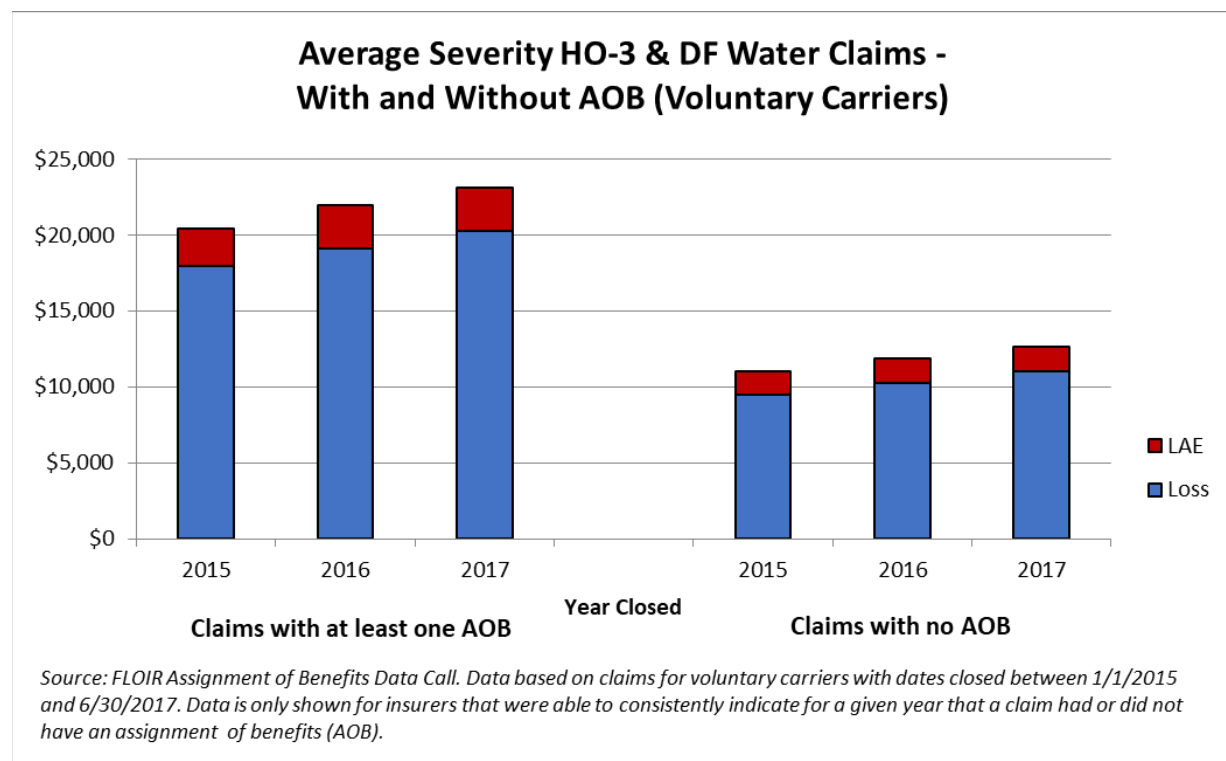
Assignment of Benefits

Many insurers have attributed the rising costs of water claims to an increase in the use of assignment of benefits (AOBs) in which the insured assigns its rights and benefits under its insurance policy to a third-party contractor, water mitigation company, etc. In the prior data call, very few of the insurers were able to consistently track the use of AOBs over the period of the data call. This year, most of the insurers could provide this information.

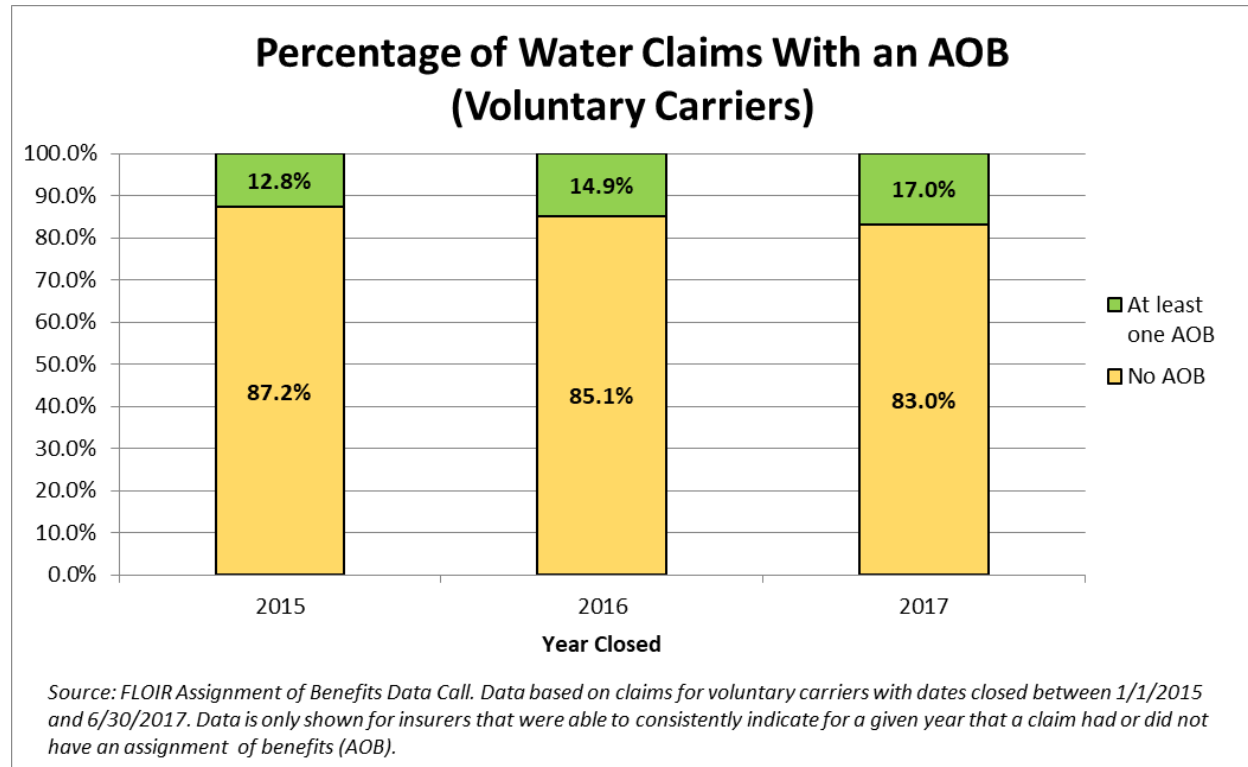
The data in the AOB portion of the analysis involved 110,255 claims. While this is a large number of claims for such analysis, there are areas of the state where the data associated with AOB claims is less likely to be fully credible due to the small number of claims utilizing AOBs.

The chart on the next page compares the average severity for water claims where there is at least one AOB associated with the claim or when there are no AOBs associated with the claim. The data shows that claims with an AOB have a much higher severity than claims without an AOB (generally at least 85% more). The reason for the higher severity of losses for a claim with an AOB cannot be determined from the information collected in this data call. One partial explanation may be that the AOBs could be generally used on the more serious claims. Others might argue that the costs are inflated for claims with an AOB.

The average severity for claims with an AOB and the average severity for claims without an AOB have both increased at approximately the same rate between 2015 and 2017. However, in the prior report these average severities remained relatively stable between 2010 and 2015.

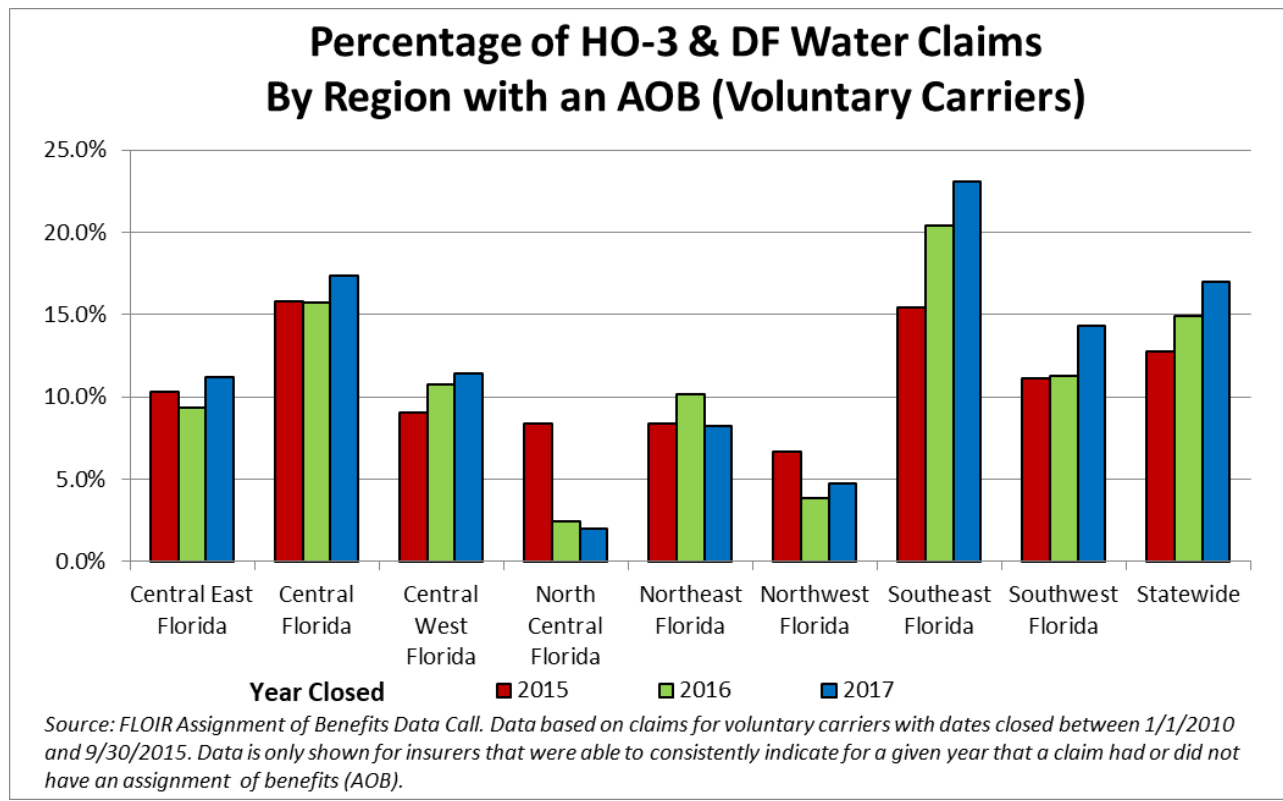


The percentage of claims that utilize an AOB has grown significantly since 2015:



In 2015, almost 13% of the water claims utilized an AOB. In 2017, that percentage was approximately 17%. Since there are more water claims with an AOB, and the severity of claims with an AOB are significantly higher, the overall water losses have increased rapidly.

In the prior report, Central Florida and Southwest Florida actually had a higher percentage of claims with an AOB. While these regions still have a large percentage of claims with an AOB, Southeast Florida has had the largest increase in the use of AOBs and now has the highest use of AOBs across all regions.



Conclusion

The significant increase in both the frequency and severity of water losses, the rising use of AOBs, and the acceleration of those trends over the last several years is resulting in tangible consumer harm. AOBs have been a part of Florida's marketplace for more than a 100 years. Loopholes in the way it is being used in the marketplace are driving up costs for homeowners across the state due to unnecessary litigation associated with certain AOB claims. The escalating trends identified in this analysis are showing up in rate filings that are being submitted to the Office and are resulting in significant premium increases for almost all homeowners across the state. These trends, in addition to increasing premiums, are reducing consumer choice as insurers cease writing or begin nonrenewing policies in areas with high water losses. Absent any intervening changes in the way AOBs are being used today, it is expected that these trends will continue to deteriorate. This may cause availability issues as insurers struggle to control the rising costs and will result in higher homeowners premiums for all Florida homeowners.

Appendix A

Assignment of Benefits Data Call

Assignment of Benefits Data Call

pursuant to Section 624.316, Florida Statutes

If you need any assistance during the filing process,
please contact the Office at

Sandra.Starnes@florir.com



FLORIDA OFFICE OF
INSURANCE REGULATION

Due by September 8, 2017

Assignment of Benefits Data Call

pursuant to Section 624.316, Florida Statutes

Scope Period: Claims Closed Between 1st Quarter 2015 to 2nd Quarter 2017

The data call relates specifically to Florida Owners Type of Homeowners policies (HO-3 and equivalent) and Dwelling Fire policies.

The Florida Office of Insurance Regulation (Office) is conducting an examination of Owners type of Homeowners policies (HO-3 and equivalent) and Dwelling Fire policies of certain insurers pursuant to Section 624.316, Florida Statutes.

This communication is being sent via email to the insurer's president (if email address is available) and the financial statement contact.

Currently the only companies requested to complete this data submission are the same companies that completed the prior data call (the top 25 Homeowners/Owners type and Dwelling Fire writers as of 2015). However, this examination is open to response for from all personal residential property writers.

The insurer's submission may be submitted made on an individual company basis or a group basis.

It is understood that an insurer's claim system may not collect all of the information requested in this data call. **The Office is not requiring that an insurer conduct a manual claim review in order to retrieve this information.** If the claim system does not collect the information for certain variables, please disclose this on the 'Contact Info' sheet.

The items indicated below are to be submitted to the Office no later than 5 PM ET, September 8, 2017.

It is requested that you perform a quality review of the data being provided. Some issues from the prior data call included companies providing:

- Data on policies other than HO-3 (or its equivalent) and Dwelling Fire.
- Data for claims on property located outside of Florida.
- The city of the mailing address rather than the city of the location of the property. (Some of the cities provided were located in foreign countries.)
- Claims with a closed date before or after the scope period of the data call.
- Dates of loss that were clearly incorrect, such as dates in the future.

Additionally, it is requested that your company's submission include a Notarized Affidavit, signed by the person submitting the data call or a company officer, stating that the information provided is accurate, to the best of their knowledge.

Please note: Additional underlying documentation shall be available upon request of the Office.

Your prompt cooperation in this effort will be greatly appreciated.

If there are any issues gathering the information requested in this data call, please contact Sandra Starnes at 850-413-5344 as soon as possible to discuss possible alternatives.

Specific instructions:

This data call encompasses Owners type of Homeowners policies (HO-3 and equivalent) and Dwelling Fire policies only.

Wind-only policies should be excluded from this data call.

Fill out all cells to the best of your ability. If data is not available, please insert "N/A".

PLEASE DO NOT LEAVE ANY CELLS BLANK.

No deductions for salvage, subrogation or reinsurance received or expected should be made.

The sheets are being left unlocked. **Do not move or revise the columns in this data call.** You may add additional columns at the end if needed.

Section A - Specific Instructions

Claims closed between January 1, 2015 and June 30, 2017 should be reported in this section. The only perils that should be reported are claims for water damage or roof damage.

If you use different perils than the ones listed in the heading in Col. P, please provide a mapping from your perils to: Water - Plumbing, Water - Appliance, Water - Other, and Roof.

Currently, there are columns set up for one water mitigation firm, two contractors, two attorneys and one public adjuster. If you have claims that exceed these set categories, copy the required fields for that type and paste after the end of the requested columns (currently Col. BJ) and rename the heading to reflect the new field type (e.g. there are three contractors for a claim, copy columns AA:AG and paste at Col BK:BQ. Then rename cell BK3 to Contractor 3).

Section B - Specific Instructions

For Section B - Claims for All Other Perils (excl. Sinkhole) would include the water and roof losses claims reported in Section A.

Name of person submitting data call:

Phone Number:

E-Mail Address:

Is this data call being submitted as trade secret?:

--

(If yes, submit the affidavit required by s. 624.4213, Florida Statutes, and mark your email as "Trade Secret".)

Please list all companies included in this data call:

Comments regarding information in data call:

DETAILED CLAIM INFORMATION FOR EACH WATER/ROOF CLAIM CLOSED BETWEEN JANUARY 1, 2015 AND JUNE 30, 2017

Page 18

DETAILED CLAIM INFORMATION FOR EACH WATER/ROOF CLAIM CLOSED BETWEEN JANUARY 1, 2015 AND JUNE 30, 2017

[illegible]

[illegible]

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Section B

SUMMARY BY COUNTY OF ALL OTHER PERILS (AOP) CLAIM INFORMATION

HO-3 POLICIES (OR ITS EQUIVALENT)

County	Earned House Years for 2015	Earned Premium Volume for 2015	AOP Claims (excl. Sinkhole) Closed in 2015			Earned House Years for 2016	Earned Premium Volume for 2016	AOP Claims (excl. Sinkhole) Closed in 2016		
			Number of Claims	Indemnity Amount Paid	Loss Adjustment Expenses Paid			Number of Claims	Indemnity Amount Paid	Loss Adjustment Expenses Paid
ALACHUA										
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HERNANDO										
HIGHLANDS										

HO-3 POLICIES (OR ITS EQUIVALENT)										
County	Earned House Years for 2015	Earned Premium Volume for 2015	AOP Claims (excl. Sinkhole) Closed in 2015			Earned House Years for 2016	Earned Premium Volume for 2016	AOP Claims (excl. Sinkhole) Closed in 2016		
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ST JOHNS										

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County	Earned House Years for 2015	Earned Premium Volume for 2015	AOP Claims (excl. Sinkhole) Closed in 2015			Earned House Years for 2016	Earned Premium Volume for 2016	AOP Claims (excl. Sinkhole) Closed in 2016		
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ST LUCIE										
SUMTER										
SUWANNEE										
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WAKULLA										
WALTON										
WASHINGTON										

Section B

SUMMARY BY COUNTY OF ALL OTHER PERILS (AOP) CLAIM INFORMATION

HO-3 POLICIES (OR ITS EQUIVALENT)

County	Earned House Years for Jan. 1, 2017 - June 30, 2017	Earned Premium Volume for Jan. 1, 2017 - June 30, 2017	AOP Claims (excl. Sinkhole) Closed Between Jan. 1, 2017 - June 30, 2017			AOP Claims Pending (excl. Sinkhole) as of 7/1/2017					
			Number of Claims	Indemnity Amount Paid	Loss Adjustment Expenses Paid	Number of Pending AOP Claims	Est. Amount of Indemnity Losses for AOP Claims	Est. Amount of LAE for AOP Claims	Number of Pending Water/Roof Claims	Est. Amount of Indemnity Losses for Water/Roof Claims	Est. Amount of LAE for Water/Roof Claims
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HENDRY											
HERNANDO											
HIGHLANDS											

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PUTNAM											
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SARASOTA											
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ST JOHNS											

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ST LUCIE											
SUMTER											
SUWANNEE											
TAYLOR											
UNION											
VOLUSIA											
WAKULLA											
WALTON											
WASHINGTON											

Section B										
SUMMARY BY COUNTY OF ALL OTHER PERILS (AOP) CLAIM INFORMATION										
DWELLING FIRE POLICIES										
County	Earned House Years for 2015	Earned Premium Volume for 2015	AOP Claims (excl. Sinkhole) Closed in 2015			Earned House Years for 2016	Earned Premium Volume for 2016	AOP Claims (excl. Sinkhole) Closed in 2016		
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DWELLING FIRE POLICIES										
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POLK										
PUTNAM										
SANTA ROSA										
SARASOTA										
SEMINOLE										
ST JOHNS										

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ALACHUA												
BAKER												
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CALHOUN												
CHARLOTTE												
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GULF												
HAMILTON												
HARDEE												
HENDRY												
HERNANDO												
HIGHLANDS												

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ST LUCIE											
SUMTER											
SUWANNEE											
TAYLOR											
UNION											
VOLUSIA											
WAKULLA											
WALTON											
WASHINGTON											

Appendix B

Insurers that Submitted Data

Appendix B – Insurers that Submitted Data

Below are the insurers that submitted data for the Assignment of Benefits Data Call:

American Integrity Insurance Company of Florida

American Strategic Insurance Corporation

ASI Assurance Corporation

ASI Preferred Insurance Corporation

Castle Key Insurance Company

Citizens Property Insurance Corporation

Federated National Insurance Company

First Protective Insurance Company

Florida Family Insurance Company

Florida Peninsula Insurance Company

Garrison Property and Casualty Insurance Company

Heritage Property & Casualty Insurance Company

Homeowners Choice Property & Casualty Insurance Company, Inc.

Lakeview Insurance Company

Monarch National Insurance Company

Olympus Insurance Company

Omega Insurance Company

People's Trust Insurance Company

Progressive Property Insurance Company

Security First Insurance Company

Southern Fidelity Insurance Company

St. Johns Insurance Company, Inc.

State Farm Florida Insurance Company

Tower Hill Preferred Insurance Company

Tower Hill Prime Insurance Company

Tower Hill Select Insurance Company

Tower Hill Signature Insurance Company

United Property & Casualty Insurance Company

United Services Automobile Association

Universal Property & Casualty Insurance Company

USAA Casualty Company

USAA General Indemnity Company

Appendix C

Mapping of Counties to Regions

Appendix C – Mapping of Counties to Regions

Below is the mapping of Florida counties to the regions shown in this report:

County	Region
Alachua	North Central Florida
Baker	Northeast Florida
Bay	Northwest Florida
Bradford	North Central Florida
Brevard	Central East Florida
Broward	Southeast Florida
Calhoun	Northwest Florida
Charlotte	Southwest Florida
Citrus	Central West Florida
Clay	Northeast Florida
Collier	Southwest Florida
Columbia	North Central Florida
Miami-Dade	Southeast Florida
De Soto	Central West Florida
Dixie	North Central Florida
Duval	Northeast Florida
Escambia	Northwest Florida
Flagler	Northwest Florida
Franklin	Northwest Florida
Gadsden	North Central Florida
Gilchrist	North Central Florida
Glades	Southwest Florida
Gulf	Northwest Florida
Hamilton	North Central Florida
Hardee	Central Florida
Hendry	Southwest Florida
Hernando	Central West Florida
Highlands	Central Florida
Hillsborough	Central West Florida
Holmes	Northwest Florida
Indian River	Central East Florida
Jackson	Northwest Florida
Jefferson	North Central Florida
Lafayette	North Central Florida
Lake	Central Florida
Lee	Southwest Florida
Leon	North Central Florida
Levy	North Central Florida
Liberty	Northwest Florida
Madison	North Central Florida
Manatee	Central West Florida
Marion	Central Florida
Martin	Southeast Florida
Monroe	Southeast Florida
Nassau	Northeast Florida

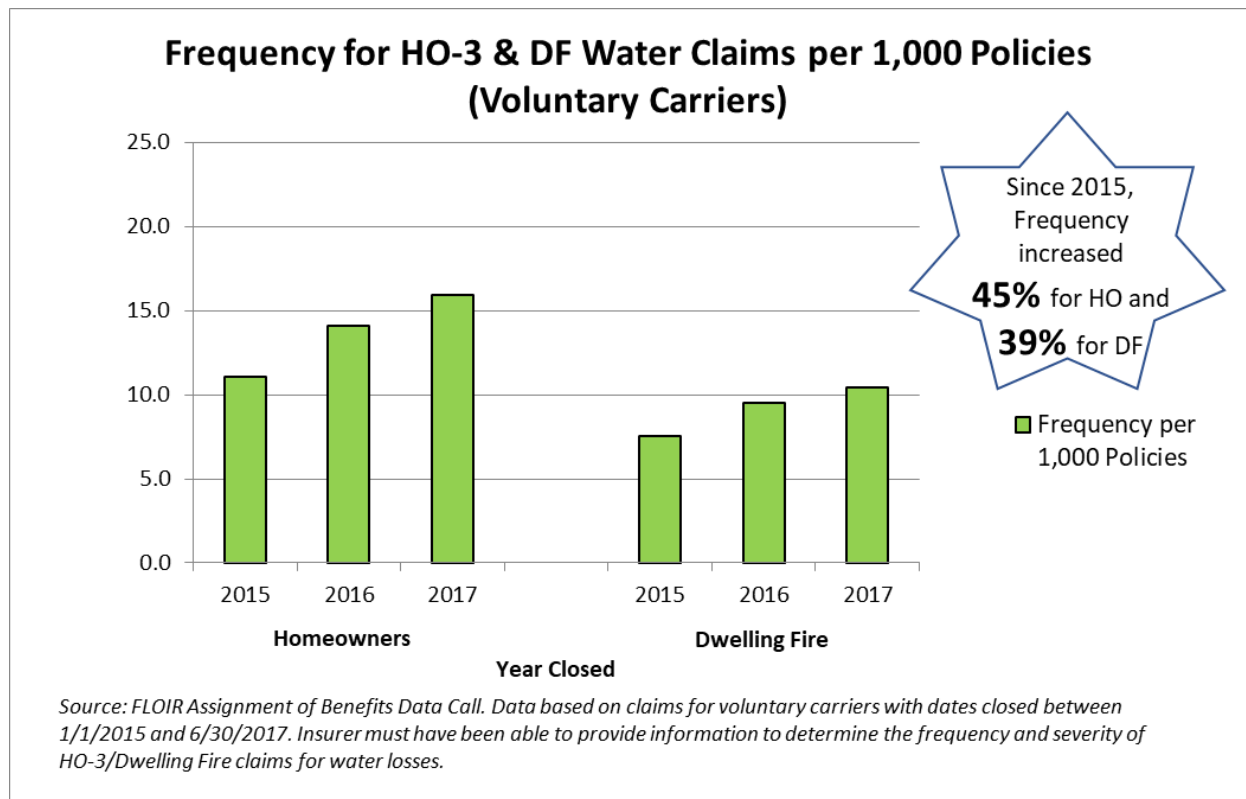
Appendix C – Mapping of Counties to Regions

County	Region
Okaloosa	Northwest Florida
Okeechobee	Central East Florida
Orange	Central Florida
Osceola	Central Florida
Palm Beach	Southeast Florida
Pasco	Central West Florida
Pinellas	Central West Florida
Polk	Central Florida
Putnam	Northeast Florida
St Johns	Northeast Florida
St Lucie	Central East Florida
Santa Rosa	Northwest Florida
Sarasota	Central West Florida
Seminole	Central Florida
Sumter	Central Florida
Suwannee	North Central Florida
Taylor	North Central Florida
Union	North Central Florida
Volusia	Central East Florida
Wakulla	North Central Florida
Walton	Northwest Florida
Washington	Northwest Florida

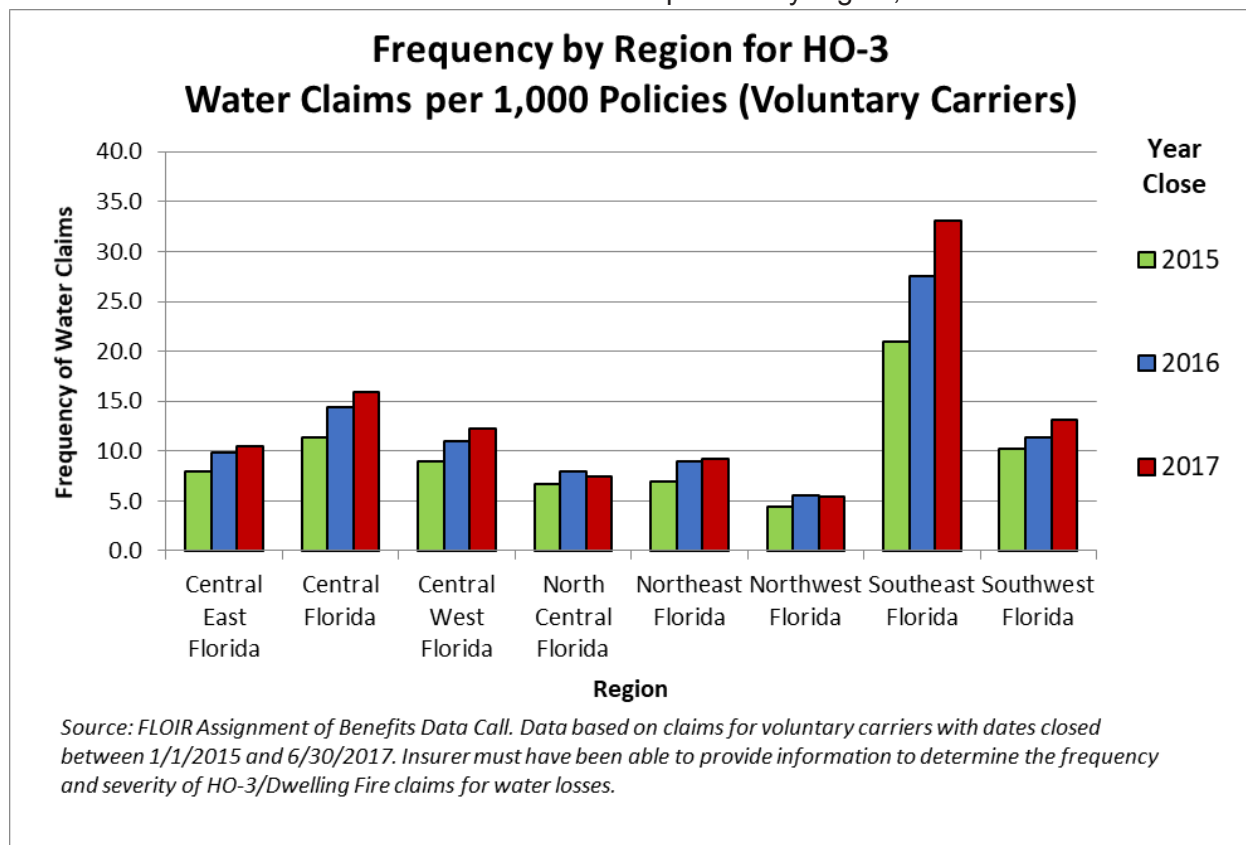
Appendix D

Graphs and Charts for HO-3 and DF Policies Separately

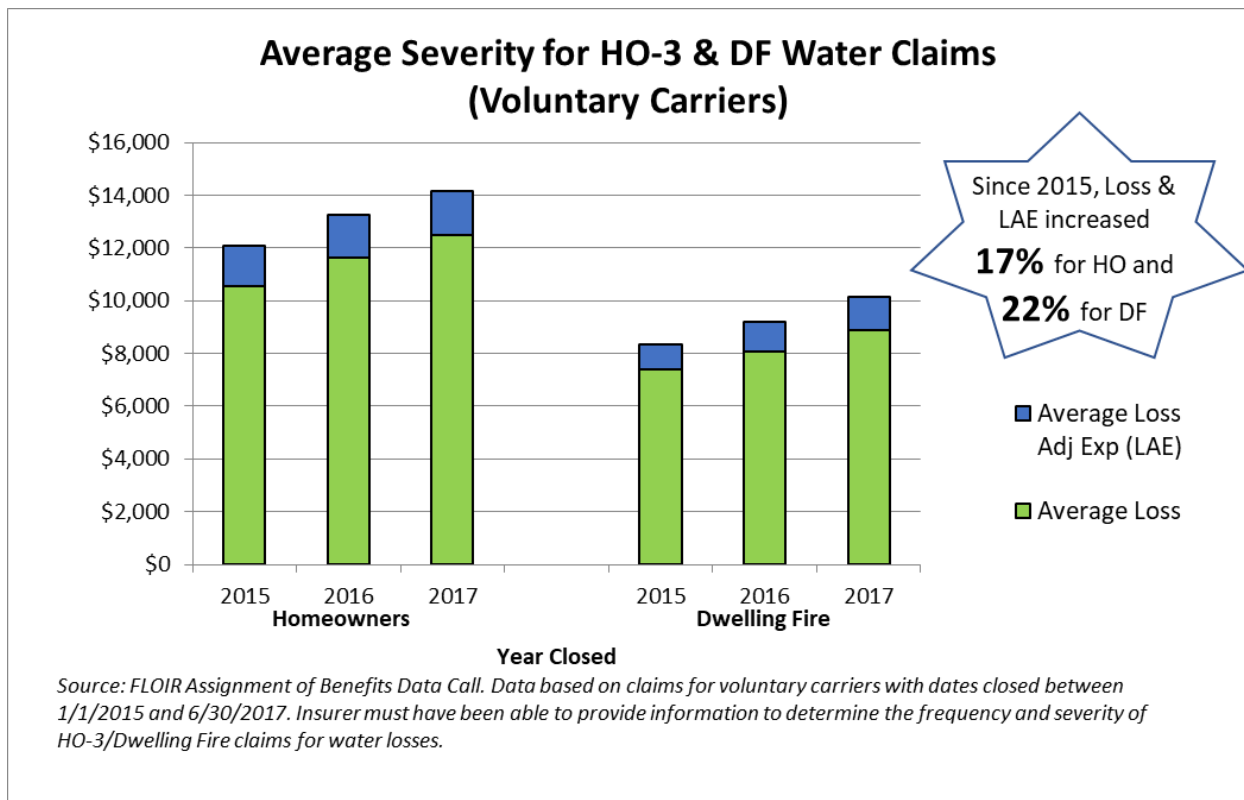
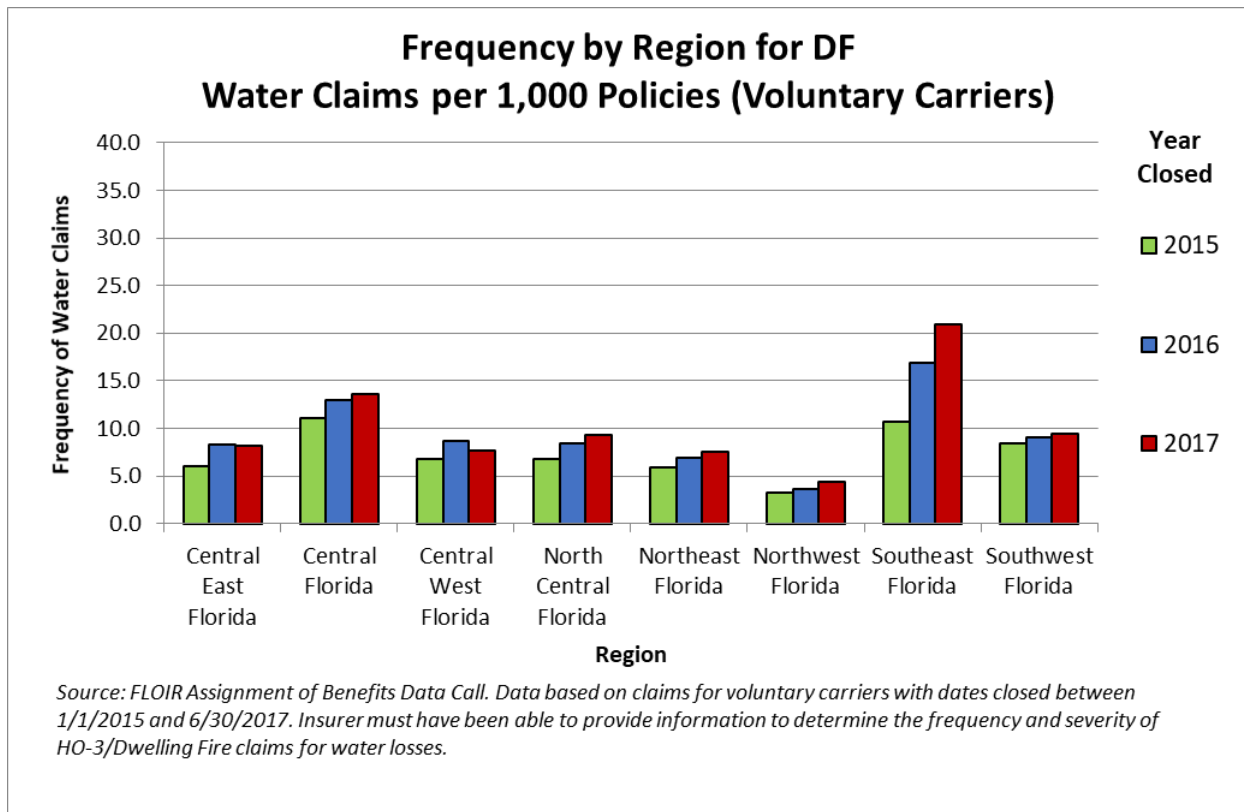
Appendix D – Graphs and Charts for HO-3 and DF Policies Separately



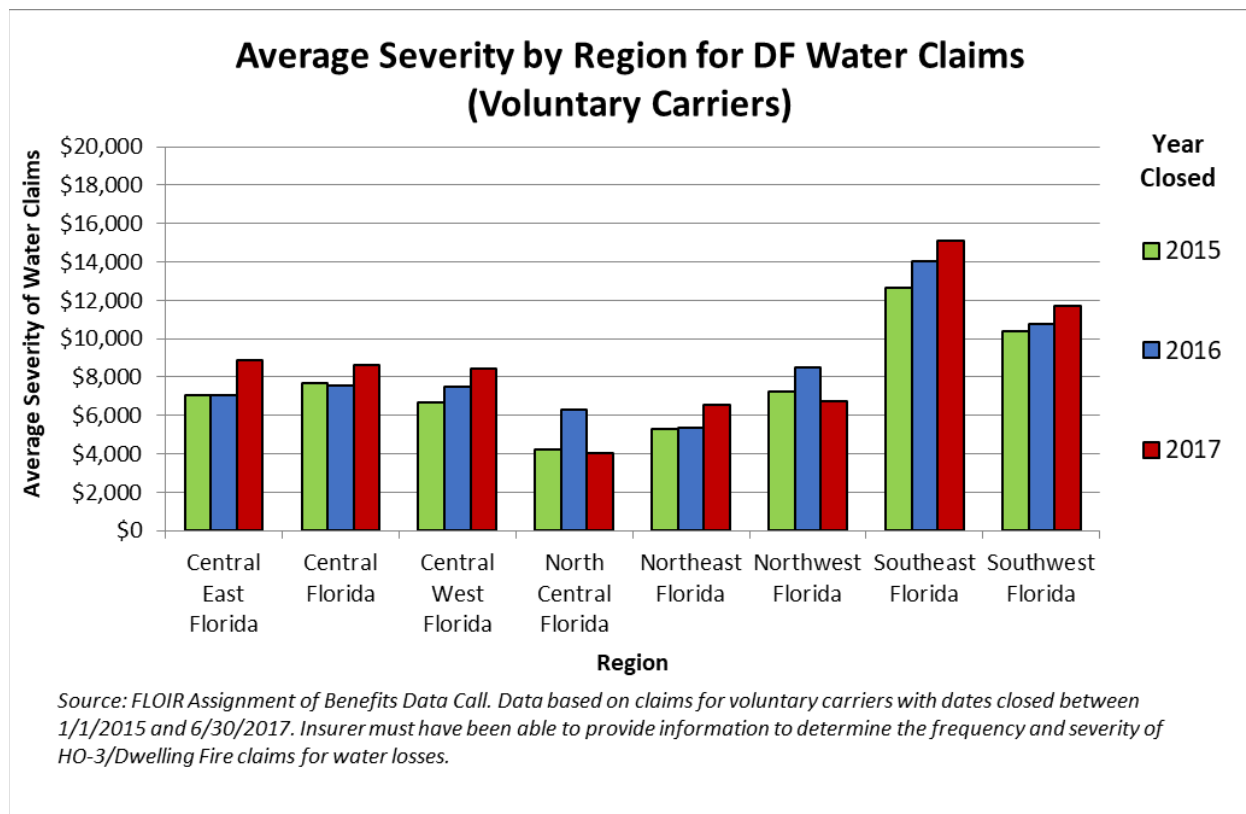
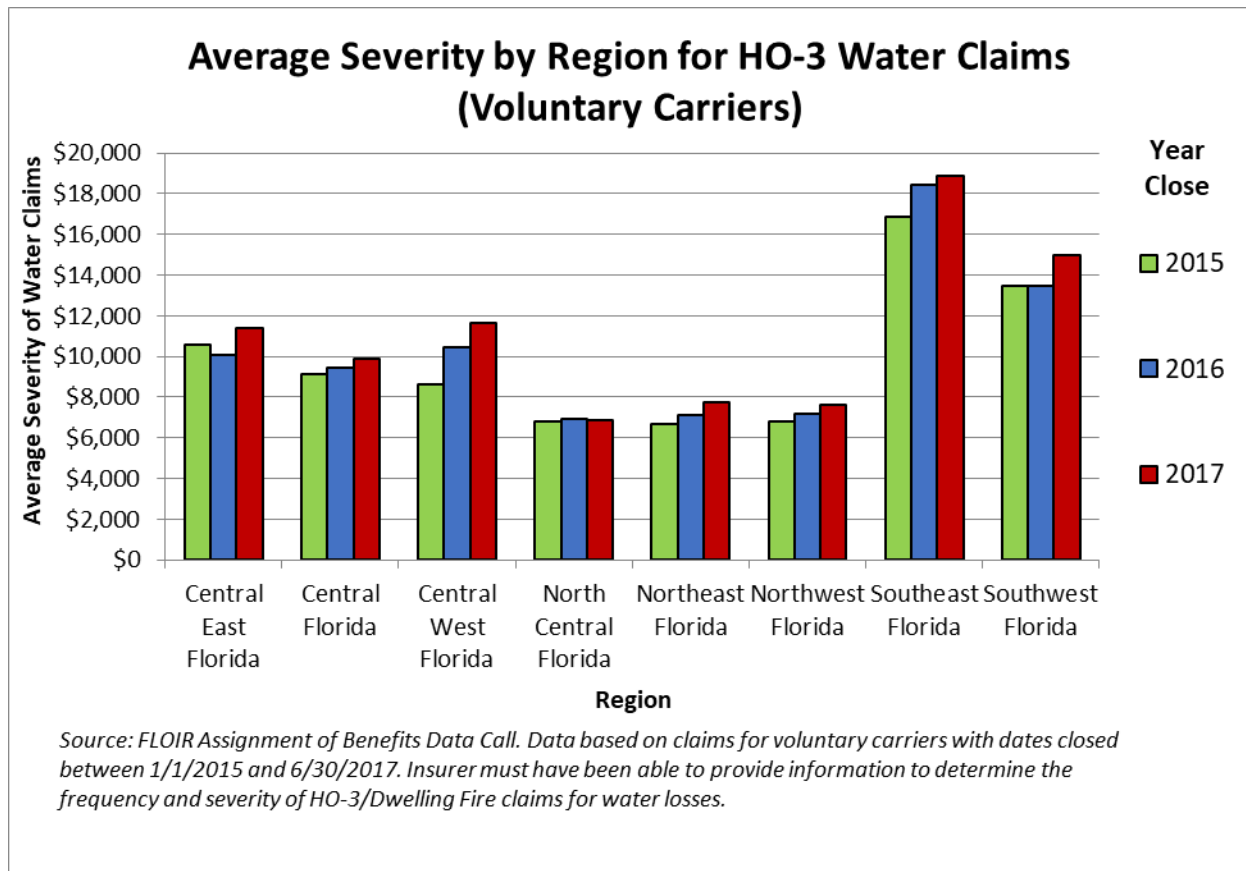
Similar trends are observed for both HO-3 and DF policies by region, as well.



Appendix D – Graphs and Charts for HO-3 and DF Policies Separately



Appendix D – Graphs and Charts for HO-3 and DF Policies Separately

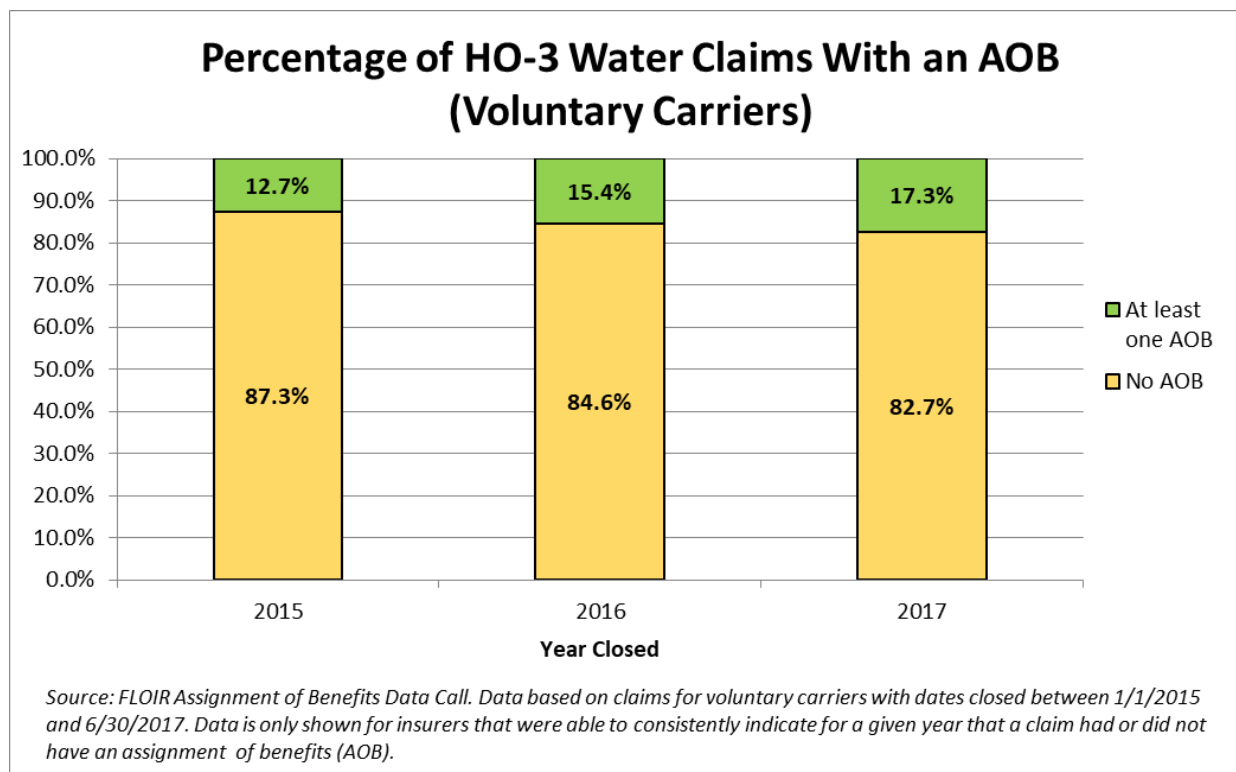
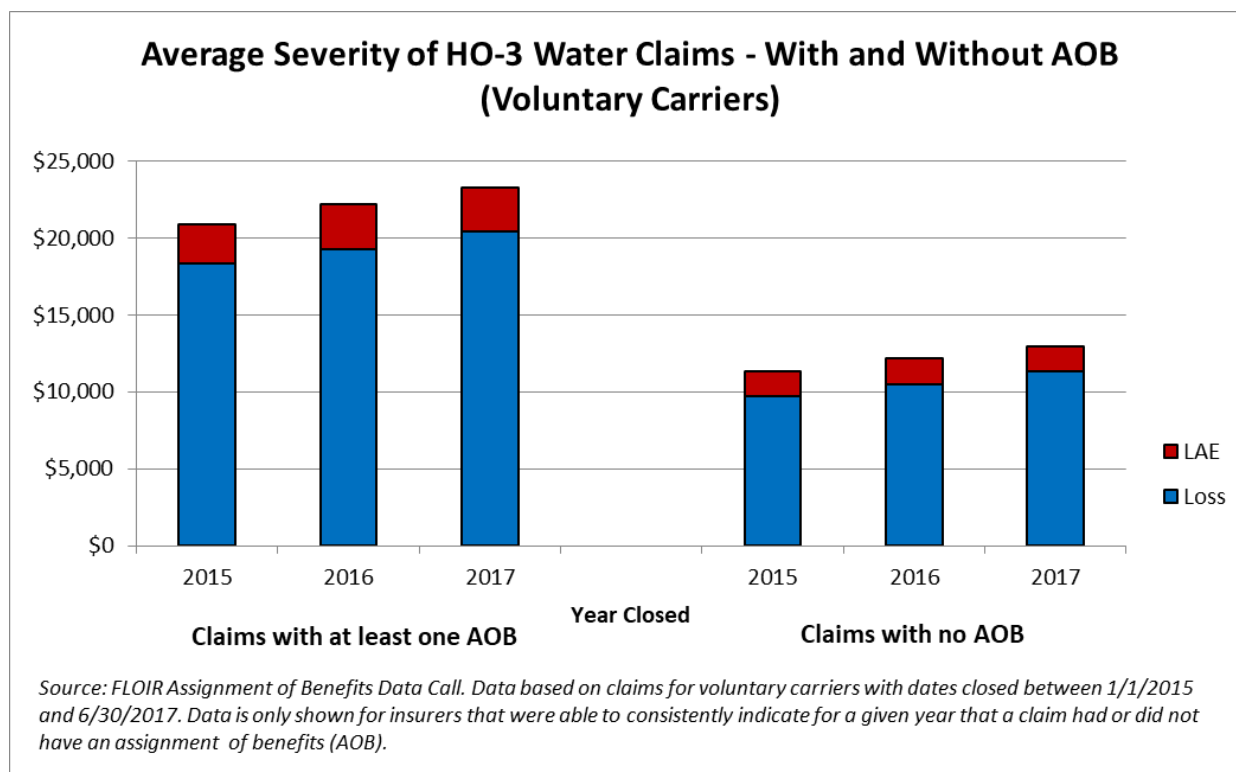


Appendix D – Graphs and Charts for HO-3 and DF Policies Separately

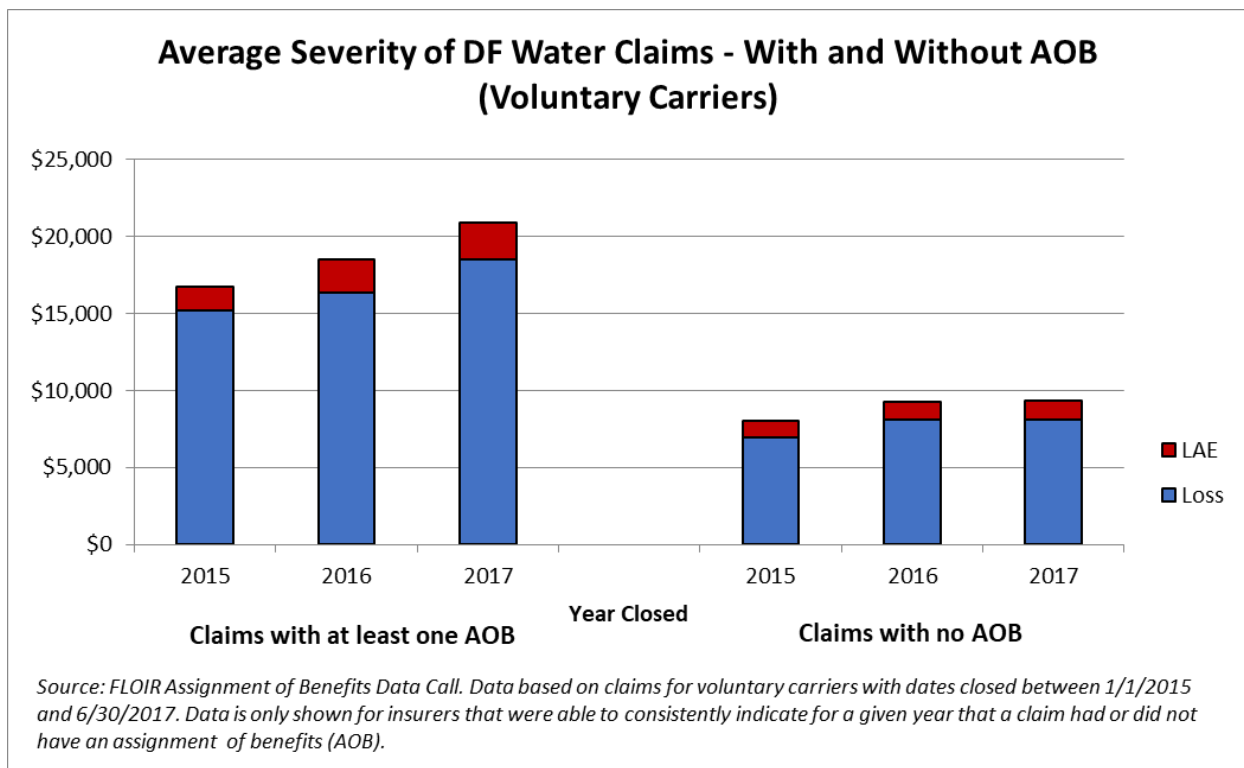
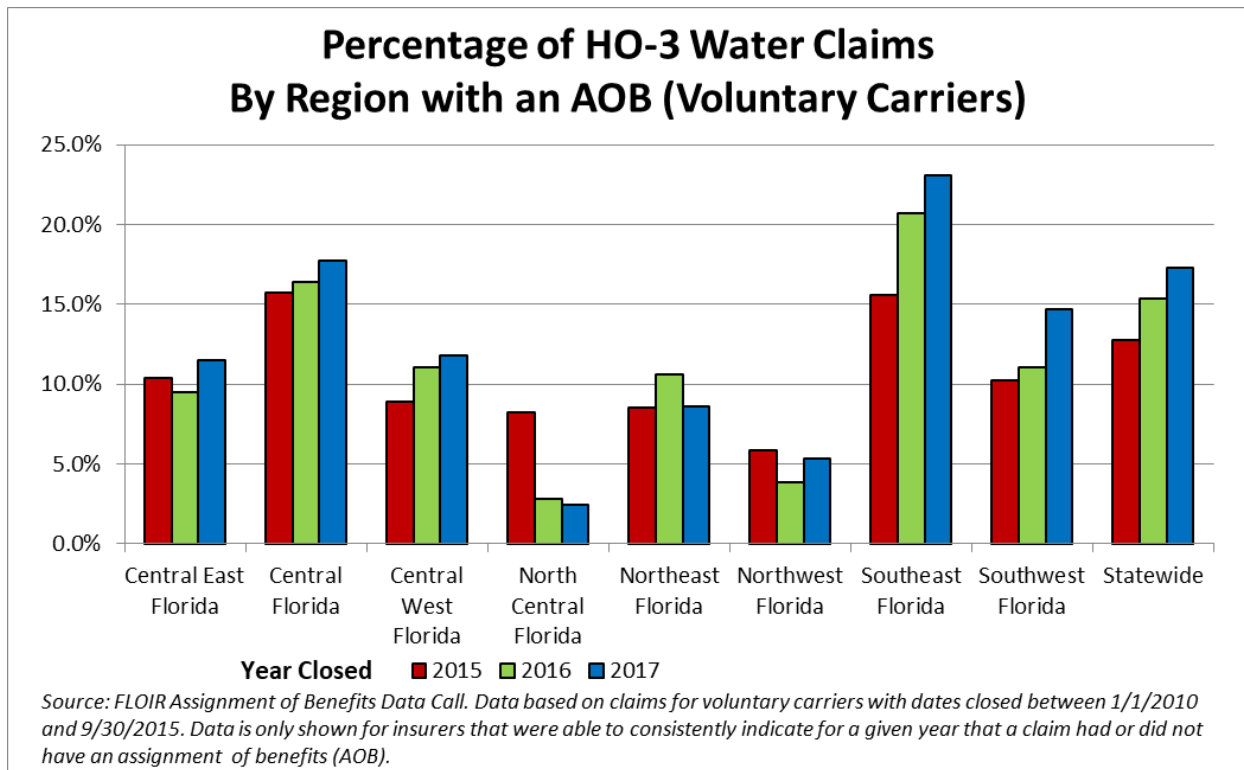
Homeowners	Change from 2015 - 2017			Average Annualized Trend		
Region	Frequency	Severity	Combined	Frequency	Severity	Combined
Central East Florida	31.7%	8.1%	42.4%	20.2%	5.3%	26.6%
Central Florida	39.5%	8.0%	50.7%	24.9%	5.2%	31.4%
Central West Florida	38.0%	34.7%	85.9%	24.0%	21.9%	51.2%
North Central Florida	12.3%	0.8%	13.2%	8.0%	0.6%	8.6%
Northeast Florida	33.0%	15.9%	54.2%	21.0%	10.3%	33.5%
Northwest Florida	23.4%	12.0%	38.3%	15.1%	7.8%	24.1%
Southeast Florida	57.6%	11.8%	76.2%	35.4%	7.7%	45.9%
Southwest Florida	29.4%	11.2%	43.9%	18.8%	7.3%	27.5%
Statewide	44.7%	17.1%	69.5%	27.9%	11.1%	42.2%

Dwelling Fire	Change from 2015 - 2017			Average Annualized Trend		
Region	Frequency	Severity	Combined	Frequency	Severity	Combined
Central East Florida	36.2%	26.3%	72.0%	22.8%	16.8%	43.5%
Central Florida	22.8%	12.6%	38.3%	14.7%	8.2%	24.1%
Central West Florida	13.2%	25.4%	42.0%	8.6%	16.3%	26.3%
North Central Florida	37.7%	-3.7%	32.6%	23.8%	-2.5%	20.7%
Northeast Florida	28.4%	23.4%	58.5%	18.1%	15.1%	35.9%
Northwest Florida	38.1%	-6.9%	28.6%	24.0%	-4.6%	18.3%
Southeast Florida	95.7%	19.0%	133.0%	56.5%	12.3%	75.7%
Southwest Florida	12.0%	12.9%	26.4%	7.9%	8.4%	16.9%
Statewide	38.5%	21.6%	68.4%	24.3%	13.9%	41.6%

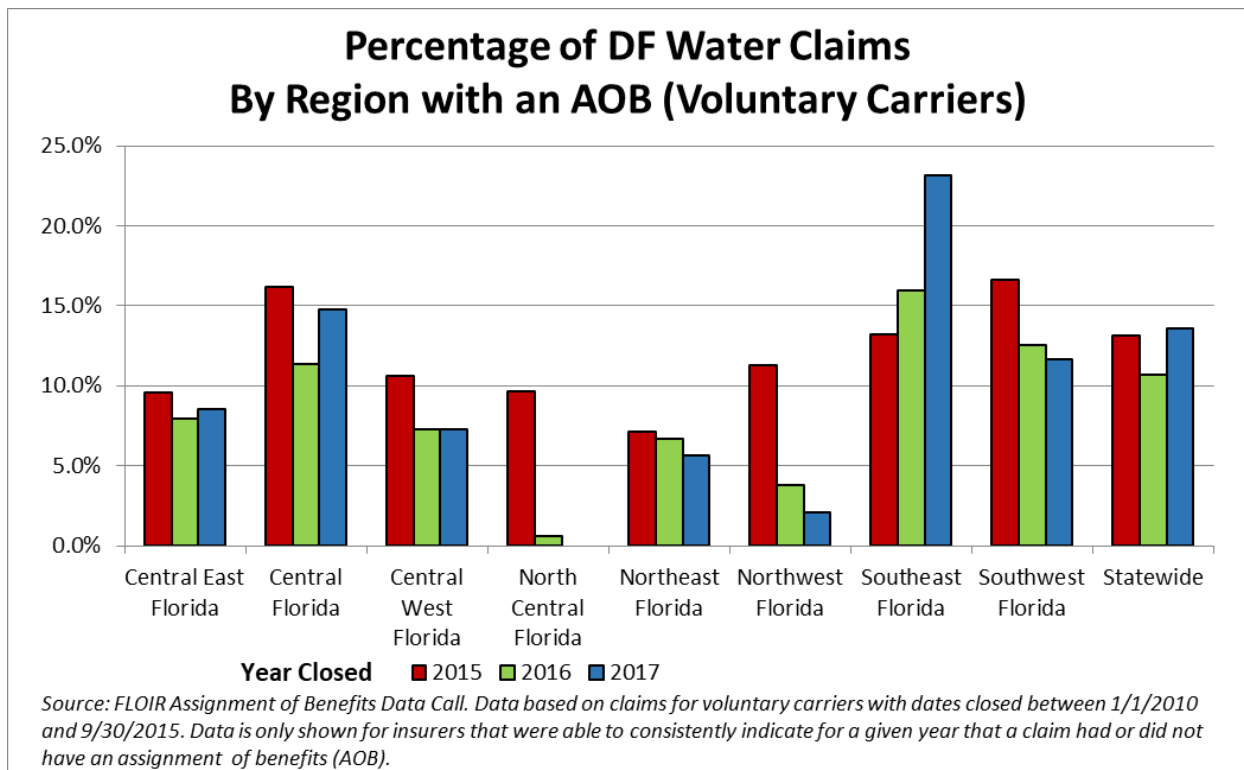
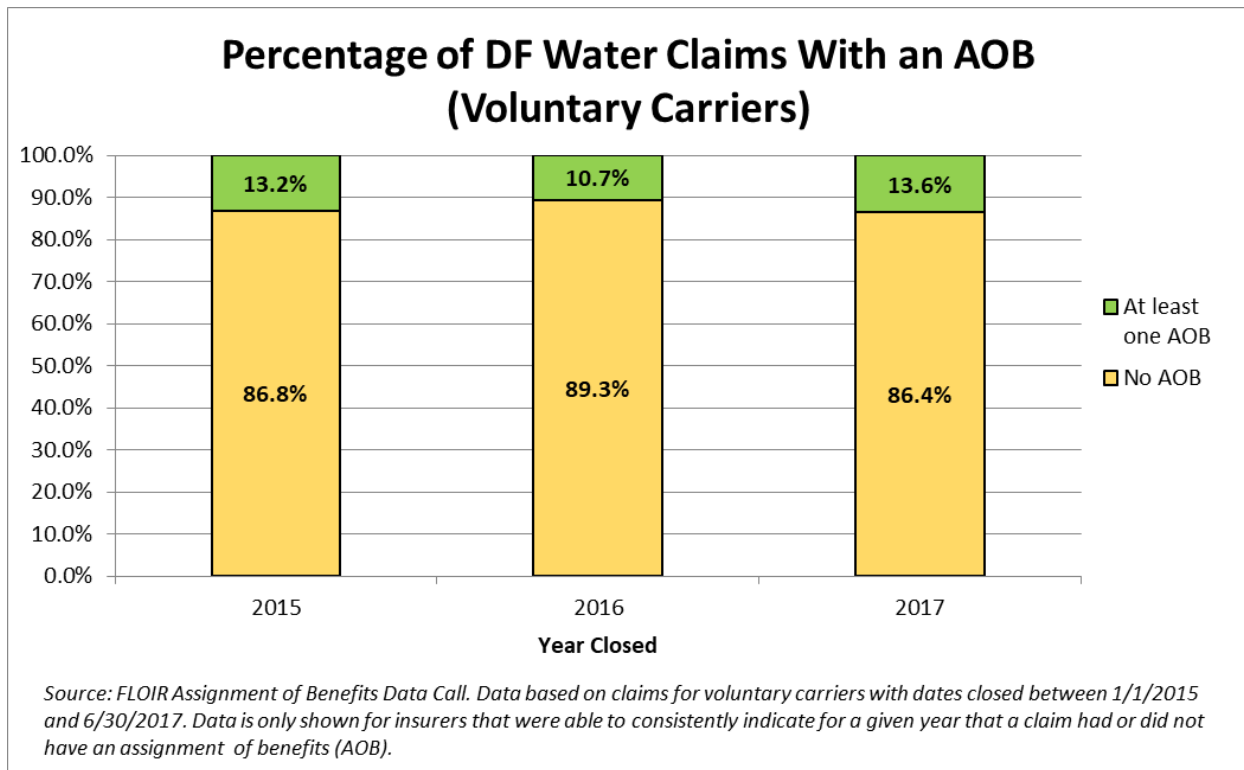
Appendix D – Graphs and Charts for HO-3 and DF Policies Separately



Appendix D – Graphs and Charts for HO-3 and DF Policies Separately



Appendix D – Graphs and Charts for HO-3 and DF Policies Separately





FLORIDA OFFICE OF INSURANCE REGULATION

David Altmaier, Insurance Commissioner
200 E. Gaines Street – Tallahassee, Florida 32399

Phone: (850) 413-3140

www.floir.com



Citizens 2019 Rates

Frequently Asked Questions

1. [Why will most Citizens policyholders see additional rate increases when Florida has weathered only three storms in the past decade?](#)
2. [Are Floridians more at risk of assessments as a result of Citizens increased rate need?](#)
3. [What is Assignment of Benefits \(AOB\) and how is it affecting 2019 rates?](#)
4. [Are water losses and AOB abuses limited to South Florida? Is it spreading to other parts of the state?](#)
5. [What is Citizens doing to address water losses and AOB abuse?](#)
6. [What would happen to rates if the AOB and water litigation problems were resolved?](#)
7. [How can policyholders' actions after a loss affect rates?](#)

1. **Why will most Citizens policyholders see additional rate increases when Florida has weathered only three storms in the past decade?**

Skyrocketing nonweather water losses in Miami-Dade, Broward and Palm Beach Counties have eroded financial progress made following more than a decade without a hurricane. Given the latest data, rates in those counties would have to nearly triple to pay for nonweather related water losses and the litigation expenses that often accompany these claims. Water losses also threaten to increase rates in other regions of the state.

While rates for many policy types and areas have been approaching actuarial soundness over the past few years, this recent surge in claims related to nonweather water losses in South Florida has increased Citizens' net claims payments and litigation expense costs. These losses are significant enough to offset previous progress made toward rate adequacy and the decreased cost of reinsurance and other risk transfer products, resulting in the need for a corresponding rate increase.

Citizens is required by law to recommend actuarially sound rates within the limits of the Legislatively created glide path, which limits rate increases to no more than 10 percent per year. The Office of Insurance Regulation uses these recommendations to set Citizens rates.

[Top ↑](#)

2. Are Floridians more at risk of assessments as a result of Citizens increased rate need?

More affordable reinsurance and the success of Citizens' depopulation efforts over the past several years have allowed Citizens to boost its claims paying ability significantly. For the first time since its creation, Citizens can now handle a 1-in-100 year storm followed by a 1-in-41 year event without having to levy assessments on Florida policyholders.

While Citizens' surplus remains significant, Citizens has a duty to its policyholders and all Floridians to protect them from the increased risk of assessments that will arise from continued unchecked nonweather water losses. This includes enacting policy changes aimed at stemming these losses and raising rates in accordance with the statutorily mandated glide path to cover the increased risk of these losses.

Even with actuarially sound rates and a responsible reinsurance strategy, however, a major storm or series of storms that exhausts Citizens' reinsurance and surplus could make assessments necessary.

[Top ↑](#)

3. What is Assignment of Benefits and how is it affecting 2019 rates?

Assignment of benefits (AOB) is a contract between an insurance policyholder and a third party, such as a roofer or a water remediation vendor. An AOB transfers control of the claim benefits and other policy rights and provisions to a third party. This includes all responsibility for dealing with the insurance company to evaluate damages, file a policyholder's claim, settle the claim and receive payment.

Nonweather water loss claims submitted with an AOB cost on average of three times more than claims without an AOB and are more frequently litigated. AOB claims also are ripe for abuse as Citizens often is not given the opportunity to inspect the damages or approve permanent repairs before they are completed.

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' increased rate need. Homeowners frequently are told during an emergency service call that the only way repairs can begin is by signing an AOB. In these situations, the contractor may begin permanent repairs before notifying Citizens of the loss and may even inflate the severity of the loss, with or without the policyholder's consent.

[Top ↑](#)

4. Are water losses and AOB abuses limited to South Florida? Is it spreading to other parts of the state?

As of June 2017, 83 percent of claims submitted to Citizens that resulted in litigation had legal or AOB representation before the claim was even reported to Citizens. Nearly 94 percent of those cases originate in Miami-Dade, Broward and Palm Beach counties. Although water losses and AOB abuses remain concentrated in South Florida, the trend

is spreading to other parts of the state, where AOB representation at first notice of loss has nearly tripled.

Claims reported with AOB representation cost more than double than nonrepresented claims to resolve. This cost increases to nearly five times if the case requires litigation.

[Top ↑](#)

5. What is Citizens doing to address water losses and AOB abuse?

Last year, the Florida Office of Insurance Regulation approved a set of focused [policy changes](#) for Citizens regarding loss reporting, including the establishment of a threshold for nonapproved emergency services and the opportunity to inspect the property prior to permanent repairs being completed. Citizens must respond with 48 hours if contacted by a policyholder requesting approval for additional emergency services above the threshold.

Policyholders are required to allow Citizens to inspect the damage within 72 hours of a loss being reported and as often as Citizens reasonably requires. Failure to do so may result in loss of coverage for permanent repairs. If Citizens does not reasonably attempt to conduct an inspection or provide approval within 72 hours the loss being reported, the policyholder can authorize or begin permanent repairs covered under the policy.

Another option for eligible policyholders is the Citizens [Managed Repair Program](#) which includes two voluntary services to help customers recover when their home is damaged from water damage not caused by weather. The Emergency Water Removal Services Program offers **free** water removal and drying services following eligible water losses not caused by weather. Citizens also offers a Managed Repair Contractor Network to connect customers connected with a network of approved contractors who can make permanent repairs for covered damages.

Effective August 1, 2018, if a customer opts to use a contractor outside the Managed Repair Contractor Network, there is a \$10,000 limit on covered damage resulting from water losses not caused by weather. This limit includes up to \$3,000 for emergency water removal services. Customers who do use Citizens' Managed Repair Program would not be subject to the sublimit.

[Top ↑](#)

6. What would happen to rates if the AOB and water litigation problems were resolved?

Resolving the AOB and water litigation problems may contribute to a decrease of litigation rates, which would in turn reduce the statewide rate indication. Citizens expects a litigation rate of nearly 50 percent of all water claims versus previous levels of 12 to 15 percent. If litigation rates returned to the lower, historic levels, many South Florida policyholders would see rate decreases in 2019 and the overall average rate increase would be 1.5 percent.

Citizens' [Managed Repair Program](#) offers valuable services to qualified HO-3 and DP-3 customers whose homes have been damaged. Emergency Water Removal Services

provides water removal services to protect a policyholder's home from further damage caused by a nonweather water loss. The Managed Repair Contractor Network Program provides permanent repair services to return the customer's home to its pre-loss condition following a qualified loss. Permanent repairs include flooring, insulation, drywall, paint, and cabinetry.

Citizens continues to educate its customers about AOB abuse and common scenarios where AOB-related fraud can occur such as offers for repairs for damage you were unaware of, a proposal of "*something for nothing*," such as a free roof or large insurance payouts, or pressure to sign a contract they don't fully understand.

7. How can policyholders' actions after a loss affect rates?

The most important action policyholders can take to remain in the driver's seat on their claim is to [Call Citizens First](#), either by contacting their agent, submitting a claim online through myPolicy or by calling Citizens' 24/7 toll-free claims hotline at **866.411.2742**.

Immediately calling Citizens as soon as they suspect damage to their property will allow Citizens to help policyholders resolve their claim and repair any covered damage in the most efficient and cost effective manner possible.

Citizens also advises our customers to be wary of unsolicited vendors canvassing their neighborhood offering something for nothing, such as a free roof or large insurance payouts. Finally, never sign a contract you don't fully understand.

[Top ↑](#)

ACTION ITEM

A&U Committee Meeting, December 11, 2018
Board of Governors Meeting, December 12, 2018

CONTRACT ID:	Annual Recommended Rate Filings – Effective September 1, 2019
BUDGETED ITEM	N/A
CONTRACT AMOUNT	N/A
PURPOSE / SCOPE	<p>Purpose:</p> <p>As required by statute, Citizens has completed the annual analysis of recommended rates for 9/1/2019 – 8/31/2020. The purpose of this item is to receive approval from the Board to file these recommended rates with the Florida Office of Insurance Regulation.</p> <p>Scope:</p> <p>The presented recommended rate changes include all policy types for manually rated personal and commercial lines of business. These recommended rate changes:</p> <ul style="list-style-type: none"> • Comply with the requirement in Florida law that Citizens recommend actuarially sound rates • Are not excessive, inadequate or unfairly discriminatory, and meet the requirements of U.S. Actuarial Standards of Practice except where Florida law supersedes such standards • Comply with the statutory “glide path” • Considers the Florida Public Hurricane Model, as required by law • Include an appropriate charge to pass through the Florida Hurricane Catastrophe Fund Rapid Cash build-up <p>For personal lines, the overall statewide indicated rate change is 25.9%. After the application of the glide-path capping, the recommended rate impact is 8.2%.</p> <p>For commercial lines, the overall statewide indicated rate change is 54.2%. After the application of the glide-path capping, the recommended rate impact is 9.0%.</p>
CONTRACT TERM(S)	N/A
PROCUREMENT METHOD	N/A
RECOMMENDATION	<p>Citizens’ Actuarial and Underwriting Committee recommends that Citizens’ Board of Governors:</p> <ol style="list-style-type: none"> a) Approve and recommend the 2019 Annual Recommended Rate Filings. b) Upon approval, the presented rate changes will be filed with the Office of Insurance Regulation.
CONTACTS	Brian Donovan, FCAS, MAAA - Sr Director, Chief Actuary

Executive Summary

Actuarial & Underwriting Committee Meeting, December 11, 2018

Board of Governors Meeting, December 12, 2018

Annual Recommended 2019 Rate Filings

As required by statute, Citizens has completed the annual analysis of recommended rates for 2019. The Office of Insurance Regulation uses this information as it establishes Citizens rates to be implemented for policy effective dates beginning September 2019. The analysis developed rate indications that:

- Comply with the requirement in Florida law that Citizens recommend actuarially sound rates. The indications developed are designed to generate the premium needed to cover Citizens' projected losses and expenses during the effective period of the rates.
- Are not excessive, inadequate or unfairly discriminatory, and meet the requirements of U.S. Actuarial Standards of Practice except where Florida law supersedes such standards.
- Comply with the statutory "glide path" that limits Citizens annual rate increases to no more than 10% for any single policy issued. This is an exception to the requirement for actuarially sound rates. It applies to non-sinkhole perils, and excludes coverage changes and surcharges.
- Considers the Florida Public Hurricane Model (FPM) results in wind rate recommendations, as required by law. Law changes in 2016 removed the requirement that the FPM results be the "minimum benchmark" for those rates.
- Include an appropriate charge to pass through the Florida Hurricane Catastrophe Fund (FHCF) Rapid Cash Build-Up Factor, as required by law.

Major cost factors in the rate analysis include:

- i) Non-catastrophic losses and loss adjustment expenses (LAE)
- ii) Modeled catastrophic hurricane losses and estimated LAE
- iii) Administrative expenses
- iv) Risk transfer costs
- v) Pre-event liquidity costs

The average statewide indicated rate change over all personal lines of business is +25.9%. The premium impact after the application of the glide path cap is 8.2%. Note that each Citizens policyholder pays a premium for an individual policy line that is based on their risk classification; nobody pays exactly the average. The indications vary greatly by account and by product line. See Exhibit 1 for more detail.

Executive Summary

Actuarial & Underwriting Committee Meeting, December 11, 2018

Board of Governors Meeting, December 12, 2018

The average statewide indicated rate change over all commercial lines of business is +54.2%. The premium impact after the application of the glide path cap is +9.0%. These results also vary widely by product line. See Exhibit 1 for more detail.

When underlying costs are rising rapidly, the difference between indicated revenue need and actual premium impact may be significant. Due to the glide path, cost trends may outstrip the ability of Citizens to obtain sound premiums, even if base rates are sound.

Determination of Overall Rate Indications by Line of Business

Water Peril

The peril of water continues to be the primary driver of Citizens' increased rate need. In particular, litigated water claims in South East Florida (Miami-Dade, Broward, and Palm Beach counties) are driving the water indication (see below example for illustration of impact of litigation on current rates). Before consideration of the Managed Repair Program and the \$10K sublimit on water claims, the expectation is that 50% of all water claims in 2019 will end up in litigation. Litigated claims cost almost five times as expensive to settle as non-litigated claims (\$9K versus \$41K for loss and loss expenses). In 2017, South East Florida, while accounting for 57% of HO-3 exposure, accounted for 94% of all litigated claims.

On 8/1/2018, changes to Citizens' policy language became effective that address the costs of this excessive litigation, and the rate increases that they create for policyholders. At the time of a water loss, a policyholder will have the option to enter Citizens' Managed Repair Program. Policyholders who do not use the program will have their water losses subjected to a \$10,000 sublimit. Policyholders who do use Citizens' Managed Repair Program will not be subject to any sublimit. The rate indication explicitly contemplates the effect of this new program. It is expected to reduce litigation, which lowers the water rate need by 30%. Without the new program, the statewide HO3 water indication would be 43.6%. Instead, the proposed rates include an adjusted water indication of 30.5%. This leads to an overall HO3 indication reduction of 19%.

Impact of Litigation on Average HO-3 Premium

As stated above and noted in the past several rate filings, the Multi-Peril HO-3 rate need is primarily driven by the increased litigation rate. In **Table 1** below we compare the HO-3 indication, based on the current litigation rates (50%) versus what the indication would have been had litigation rates remained at the earlier levels (15%). The results in Table 1 are based on statewide results. It is important to note that the change in the areas of the state where litigation is most prevalent have an even more dramatic difference. As shown, statewide, the overall indication decreases from 25.2% to 1.5%. In Miami-Dade, the indication decreases from 26.5% to -2.9%. That is, we would have recommended a decrease instead of an

Executive Summary

Actuarial & Underwriting Committee Meeting, December 11, 2018

Board of Governors Meeting, December 12, 2018

increase. **Table 2** illustrates how that would impact the average premiums in Miami-Dade. For Miami-Dade, the current average premium is \$3,687. Under current market conditions (i.e. current litigation rates), the actuarially sound premium is \$4,664. If litigation rates were at earlier levels, the actuarially sound premium would be \$3,581.

Table 1	Current Indication ¹		Adjusted Indication ²	
	Uncapped Indication	Proposed Change	Uncapped Indication	Proposed Change
<u>Product Line - Personal</u>				
Total Multi-Peril Homeowners	25.2%	8.5%	1.5%	0.2%
1 Current Indication - This is the current indication from Exhibit 1 based on current litigation rates				
2 Adjusted Indication - This is what the current indication would be had litigation rates remained steady				

Table 2	Actuarially Sound Premium		
	<u>Current Premium</u>	<u>Current Indication¹</u>	<u>Adjusted Indication²</u>
Miami-Dade	\$3,687	\$4,664	\$3,581
1 Current Indication - This is the fully indicated uncapped HO-3 average premium based on unadjusted indication. It should be noted that the proposed charge premium is \$4,033 after application of glide-path			
2 Adjusted Indication - This is the fully indicated HO-3 average premium had litigation rates remained at historical levels.			

Hurricane Peril

Hurricane peril rates drive the overall Citizens premium for many policyholders, particularly in coastal territories. As Florida law requires, projected hurricane losses from accepted scientific simulation models were considered. Citizens used four models accepted by the Florida Commission on Hurricane Loss Projection Methodology: AIR (v16.0.0, Touchstone 5.0.0), RMS (Risklink v17.0), CoreLogic RQE (Florida Hurricane Model v2017a), and the FPM (v6.2). No model results were modified or adjusted. The four distinct models underpinned a range of rate indications for each line of business. These ranges varied by line of business, as models may disagree widely in some territories and products.

When determining the statewide and individual territory wind rate indications, we selected the median of the four models. This is in alignment with the approach that was introduced with last year's rate filing. We view this approach as appropriate because it provides a statistically sound method for recognizing the range of model results in every territory while also

Executive Summary

Actuarial & Underwriting Committee Meeting, December 11, 2018

Board of Governors Meeting, December 12, 2018

minimizing the effect of outliers.

Exhibit 1- Summary of Statewide Rate Indications displays results for each product line. The **Uncapped Indication** is the selected statewide indication adjusted for the FHCF pass-through. The **Proposed Change** columns represent the actual premium impact to consumers after the application of the glide path cap to each single policy. At the policy level, all premium changes are limited to +/- 10% (except for HO-4 which is limited to +10%/-15%, in accordance with previous OIR guidance). After the application of the cap, the impact of the FHCF pass-through is added.

Impact of Private Reinsurance Costs

Due to significant depopulation and continued low “rates-on-line” (unit costs) for private reinsurance, Citizens was, once again, able to transfer the majority of its hurricane risk away from Florida policyholders (including non-Citizens policyholders, who would pay emergency assessments if storms caused significant deficits). For the fourth year in a row, Citizens can sustain a so-called “1-in-100 year” storm, in the Coastal Account without triggering assessments. Because Citizens is only exposing 34% (down from 50% from 2017) of its Coastal surplus to such a storm, it can also sustain a 1-in-41 year storm following a 1-in-100 year event.

Last year, Citizens transferred \$1.33 billion of Coastal Account risk to private reinsurers at a net cost of \$56 million. This year, Citizens transferred \$1.42 billion of Coastal Account risk to the private sector at an estimated net cost of \$55 million. “Net cost” refers to the gross expenditure on risk transfer less the expected hurricane losses that would be subject to the agreements. Last year’s Homeowners indication included a provision of 5.5% for the cost of private reinsurance. This year the provision is 5.7%, meaning that 5.7 cents of the premium dollar is devoted to private reinsurance.

Private reinsurance covers policies in the Coastal account only, but it does lower the probability that policyholders in the Personal Lines Account (PLA) and Commercial Lines Account (CLA) will face a surcharge due to deficits in the Coastal Account. Consequently, a small portion of private reinsurance costs are allocated to the policies in the PLA and CLA. The rate indications allocate 90% of the private reinsurance costs to the Coastal Account and 10% to the PLA/CLA.

Note that public reinsurance from the mandatory participation in the FHCF is divided into a PLA+CLA contract and a separate Coastal contract, the net costs of which are allocated to policies in the respective accounts.

Impact of Pre-Event Liquidity

Pre-event liquidity (debt financing) provides a funding bridge to the point in time and loss

Executive Summary

Actuarial & Underwriting Committee Meeting, December 11, 2018

Board of Governors Meeting, December 12, 2018

levels at which the FHCF begins to pay hurricane reimbursements. It also ensures quick claims-paying capacity for subsequent storms in a season and augments other Citizens claims-paying resources that are not readily available in cash after a storm. This allows for timely payment of claims as well as flexibility in the timing and cost of issuance of post-event debt.

Pre-event debt does impact the cost structure of Citizens, and therefore the rate indications. The impact in Homeowners to the statewide uncapped rate indication is +1.9%.

Impact of Policy Level Capping

Due to the interaction of all actuarial considerations, rate indications vary greatly from policy to policy within Citizens. Large increases as well as large decreases are indicated for various consumers. The glide path established in 2010 requires Citizens to ensure no single policyholder shall be subject to a (non-sinkhole) rate increase greater than 10%. In order to balance the statutory requirements of actuarial soundness and the glide path, it is recommended that all rate increases be capped at +10%, and all rate decreases at -10%, except for HO-4 forms as noted above.

Impact of FHCF Buildup Premium

The FHCF is required by law to include a “rapid cash buildup factor” of 25% in its premium. Citizens, in turn, is required by law to pass this cost to the policyholder, outside the 10% glide path cap. This results in higher rate indications and affects the statewide premium impacts as well, raising some lines slightly above 10%.

Sinkhole Indications

The number of reported sinkhole claims to Citizens has been steadily declining since the end of 2011. In 2011, over 4,500 claims were reported. By 2013 the number was reduced to around 1,200 and has declined further since then, attributable largely to the impact of Senate Bill 408, the major sinkhole claims reform enacted in 2011. While all signs at this point are that SB408 has successfully addressed sinkhole trends, there does remain uncertainty about the final outcome of many pending claims, some litigated. Staff recommends that for a fifth straight year, sinkhole rates remain unchanged. As the ultimate effect of law changes emerges in the claims experience, there is no guarantee that future sinkhole rate increases will not be necessary.

Monroe County

In the rate order issued regarding the personal lines 2018 rates (Order # 211627-17), the OIR held Monroe rates’ at the 2017 levels and directed Citizens to complete the following analyses:

Executive Summary

Actuarial & Underwriting Committee Meeting, December 11, 2018

Board of Governors Meeting, December 12, 2018

1. **An evaluation and study of appropriate rating territories for Monroe County for wind-only and multi-peril policies**

Results

We have investigated the effects of segmenting Monroe into three separate geographical territories: the upper, middle and lower keys. The three of the four models suggest that rates on policies written in the lower keys are not as inadequate as in the middle and upper keys. Due to the 10% glide path, this would have very little effect this year. But eventually, policyholders in the upper and middle keys could pay more premium, which would allow policyholders in the lower keys to pay less.

While staff will continue to monitor this option, we recommend continuing to use only one Monroe rating territory in 2019, for these reasons:

A. Increased uncertainty with more granularity

As required by statute, we calculate the indicated wind premium using modeled hurricane losses from approved models. There is uncertainty in any model results, which is why we consider the results of four models. Segmenting the Monroe territory means asking the models for more granular precision when there is a lack of actual historical hurricane data for this area. This will only increase the uncertainty of the model results.

B. Little Impact to recommended rate changes in 2019

Splitting Monroe into more granular rating territories would have little impact on the recommended rate changes for Monroe policyholders in 2019. This is because every split territory still has an indication that is much greater than 10%. It would be two to three years before Citizens' recommended rate changes would be different for the split territories as compared to the single territory.

C. Not Actuarially Justified

Whether to segment the Monroe into more granular territories is a decision that requires careful deliberation. It would lead to higher uncapped indications for some policyholders, and also creates internal costs to implement the new territories. Additionally, the four models are not in total agreement on which segments of the Keys should be higher or lower. Keeping a single territory for now has little impact on 2019 premiums paid by policyholders, and allows for a more careful decision. In particular, it may allow the models to incorporate the results from Hurricane Irma. Since Irma did impact the Keys, this may be an important data point for calibrating models.

Executive Summary

Actuarial & Underwriting Committee Meeting, December 11, 2018

Board of Governors Meeting, December 12, 2018

2. **Review the study of Applied Research Associates, Inc. which evaluated the effectiveness of Plywood (Class C) shutters, for consideration by Citizens to provide a credit for this wind mitigation feature**

Results

We have conducted a detailed review of the 2003 Applied Research Associate, Inc., (ARA) study referenced by the order. We do not recommend that Citizens provide credit for this wind mitigation feature, for reasons explained below.

- A. Plywood shutters cannot be verified

Because plywood shutters must be manually installed by policyholders as a storm approaches, their use cannot be verified when a policy is written. This makes them unsuitable for a premium credit under actuarial standards of practice.

- B. Practical concerns

Even if an insured purchases plywood shutters, ARA points out that their effectiveness depends upon several factors. For example, they must be new and not warped. As they age, stored plywood shutters can warp, especially if they are deployed at some point, get wet, and are stored again. Also, the nail holes used to install the shutters must be “virgin”. That is, each time shutters are deployed, new nail holes must be used. Finally, ARA found that even under ideal conditions, the plywood shutters were expected to fail at wind speeds over 130. Monroe is rated as a 180 wind zone.

- C. Would need to be offered statewide

To be actuarially fair, the new credit could not be offered only in Monroe County. It would need to be offered statewide. Implementing the new credits would create new costs. Finally, there might be unintended consequences. In particular, making the credit consistent with other mitigation credits offered by Citizens, and with current hurricane models (the ARA study was published in 2003), might require updating all the mitigation credits offered by Citizens.

3. **Collaborate with Monroe County on the completion of its detailed study to evaluate the effect of building code standards in Monroe County and the impact of those standards on wind mitigation credits**

Results

Executive Summary

Actuarial & Underwriting Committee Meeting, December 11, 2018

Board of Governors Meeting, December 12, 2018

Citizens did this. Staff collaborated with FIRM on their study by providing policy data, and by analyzing FIRM's survey results using the AIR hurricane model. That study is now complete

4. **An evaluation and study of the models accepted by the Florida Commission on Hurricane Loss Projection Methodology using the 2017 standards, which includes the requirement that county building codes be reflected in the model results**

Results

Citizens cannot yet complete this task. This is because the standards set in 2017 apply to models that are not approved and available for use until 2019. We cannot use current models instead because, prior to 2017, the standards did not require that county building codes be reflected in the model results.

Rate Analysis Exhibits

Several Exhibits are included with this item. Note that scale differs on some maps, so review the legends carefully when comparing maps. Also, all premium totals are based on policies in-force as of 6/30/2018.

Exhibit 1: Summary of Statewide Indications

- Columns (1) through (3) display the statewide uncapped indication and the proposed capped rate impact for multi-peril lines of business in the Personal Lines Account.
- Columns (4) through (6) display the statewide uncapped indication and the proposed capped rate impact for multi-peril lines of business in the Coastal Account.
- Columns (7) through (9) display the statewide uncapped indication and the proposed capped rate impact for wind-only lines of business (written only in the Coastal Account).
- Columns (10) through (12) display the statewide uncapped indication and the proposed capped rate impact for combined multi-peril and wind-only lines of business.

Exhibit 2 – Multi-Peril HO-3 (Homeowners) County Average Premium Impacts Map

- Displays the average proposed premium impact after capping for each county
- Note that the numbers in this exhibit show the average premium impact for the county

Executive Summary

Actuarial & Underwriting Committee Meeting, December 11, 2018

Board of Governors Meeting, December 12, 2018

- The actual premium impact can vary between -10% and +10% for individual policyholders within each county

Exhibit 3 – Wind-Only HW-2 (Homeowners) County Average Premium Impacts Map

- Displays the average proposed premium impact after capping for each county
- Note that the numbers in this exhibit show the average premium impact for the county
- The actual premium impact can vary between -10% and +10% for individual policyholders within each county

Exhibit 4 – Multi-Peril HO-6 (Condo Unit-Owners) County Average Premium Impacts Map

- Displays the average proposed premium impact after capping for each county
- Note that the numbers in this exhibit show the average premium impact for the county
- The actual premium impact can vary between -10% and +10% for individual policyholders within each county

Exhibit 5 – Wind-Only HW-6 (Condo Unit-Owners) County Average Premium Impacts Map

- Displays the average proposed premium impact after capping for each county
- Note that the numbers in this exhibit show the average premium impact for the county
- The actual premium impact can vary between -10% and +10% for individual policyholders within each county

Exhibit 6 – Multi-Peril DP-1 and DP-3 (Dwelling Fire) County Average Premium Impacts Map

- Displays the average proposed premium impact after capping for each county
- Note that the numbers in this exhibit show the average premium impact for the county
- The actual premium impact can vary between -10% and +10% for individual policyholders within each county

Exhibit 7 – Wind-Only DW-2 (Dwelling Fire) County Average Premium Impacts Map

- Displays the average proposed premium impact after capping for each county
- Note that the numbers in this exhibit show the average premium impact for the county
- The actual premium impact can vary between -10% and +10% for individual policyholders within each county

Executive Summary

Actuarial & Underwriting Committee Meeting, December 11, 2018

Board of Governors Meeting, December 12, 2018

Exhibit 8 – Multi-Peril MHO-3 and MDP-1 (Mobile Homeowners and Dwelling Fire) County Average Premium Impacts Map

- Displays the average proposed premium impact after capping for each county
- Note that the numbers in this exhibit show the average premium impact for the county
- The actual premium impact can vary between -10% and +10% for individual policyholders within each county

Exhibit 9 – Wind-Only MW-2 and MD-1 (Mobile Homeowners and Dwelling Fire) County Average Premium Impacts Map

- Displays the average proposed premium impact after capping for each county
- Note that the numbers in this exhibit show the average premium impact for the county
- The actual premium impact can vary between -10% and +10% for individual policyholders within each county

Exhibit 10 - Multi-Peril Commercial Residential County Average Premium Impacts Map

- Displays the average proposed premium impact after capping for each of the “Group 2” perils territories (some of which cross several counties)
- Note that the numbers in this exhibit show the average premium impact for the territory.
- The actual premium impact can vary between -10% and +10% for individual policyholders within each county

Exhibit 11 - Wind-Only Commercial Residential County Average Premium Impacts Map

- Displays the average proposed premium impact after capping for each county

Exhibit 12 - Multi-Peril Commercial Non-Residential County Average Premium Impacts Map

- Displays the proposed premium impact after capping for each Group 2 territory
- The numbers display the expected premium impact for each policyholder within a territory.

Exhibit 13 - Wind-Only Commercial Non-Residential County Average Premium Impacts Map

- Displays the average proposed premium impact after capping for each county

Executive Summary

Actuarial & Underwriting Committee Meeting, December 11, 2018

Board of Governors Meeting, December 12, 2018

Exhibit 14 - Distribution of Recommended Rate Impacts by Policy in PLA

- Tabulates the proposed capped premium impacts for personal lines into a histogram showing number and proportion of policyholders in each impact range
- Includes all personal lines combined
- Range exceeds +/- 10% slightly, due to the impact of the FHCF pass through

Exhibit 15 - Distribution of Recommended Rate Impacts by Policy in Coastal Account

- Tabulates the proposed capped premium impact for personal lines into a histogram showing number and proportion of policyholders in each impact range
- Includes all personal lines combined
- Range exceeds +/- 10% slightly, due to the impact of the FHCF pass through

Exhibit 16 – Average Premium by County – HO-3

- Current and proposed average premium by county for multi-peril Homeowners policies
- Based on in-force policies as of 6-30-2018

Exhibit 17 – Average Premium by County – HW-2

- Current and proposed average premium by county for wind-only Homeowners policies
- Based on in-force policies as of 6-30-2018

Exhibit 18 – Average Premium by County – HO-6

- Current and proposed average premium by county for multi-peril Condo Unit policies
- Based on in-force policies as of 6-30-2018

Exhibit 19 – Average Premium by County – HW-6

- Current and proposed average premium by county for multi-peril Condo Unit policies
- Based on in-force policies as of 6-30-2018

Exhibit 1 - Summary of Statewide Indications

using the OIR Promulgated Contingency Provisions

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
	Personal Lines Multi-Peril			Coastal Multi-peril			Wind-Only			Total		
<u>Product Line - Personal</u>	<u>In-Force</u> <u>Premium</u>	<u>Uncapped</u> <u>Indication</u>	<u>Proposed</u> <u>Change</u>	<u>In-Force</u> <u>Premium</u>	<u>Uncapped</u> <u>Indication</u>	<u>Proposed</u> <u>Change</u>	<u>In-Force</u> <u>Premium</u>	<u>Uncapped</u> <u>Indication</u>	<u>Proposed</u> <u>Change</u>	<u>In-Force</u> <u>Premium</u>	<u>Uncapped</u> <u>Indication</u>	<u>Proposed</u> <u>Change</u>
Homeowners	346,043,344	23.1%	8.3%	76,032,128	34.8%	9.5%	93,665,105	23.8%	8.4%	515,740,577	24.9%	8.5%
Renters	769,910	-18.8%	-12.3%	745,856	-4.1%	-3.5%	154,398	5.8%	5.6%	1,670,164	-9.9%	-6.7%
Condo Units	15,541,107	25.3%	8.5%	14,411,170	29.7%	8.2%	11,100,353	38.3%	8.0%	41,052,630	30.4%	8.2%
Dwelling - DP3	91,879,455	32.9%	8.8%	33,026,253	45.2%	9.2%	23,917,109	28.0%	7.7%	148,822,817	34.8%	8.7%
Dwelling - DP1	17,928,440	9.8%	5.5%	7,115,830	27.5%	8.4%	n/a	n/a	n/a	25,044,270	14.9%	6.3%
Mobile Homeowners	23,109,490	1.2%	0.9%	2,867,584	20.2%	5.7%	3,217,390	29.9%	9.7%	29,194,464	6.3%	2.4%
<u>Dwelling Mobile Home</u>	<u>12,485,120</u>	<u>13.2%</u>	<u>7.8%</u>	<u>1,320,433</u>	<u>41.8%</u>	<u>9.2%</u>	<u>326,189</u>	<u>43.6%</u>	<u>9.5%</u>	<u>14,131,742</u>	<u>16.6%</u>	<u>8.0%</u>
Total Personal Lines	507,756,866	23.1%	7.9%	135,519,254	36.0%	9.1%	132,380,544	25.9%	8.3%	775,656,664	25.9%	8.2%

	(1)	(2)	(3)		(7)	(8)	(9)	(10)	(11)	(12)
		Multi-Peril				Wind-Only			Total	
<u>Product Line - Commercial</u>	<u>In-Force</u> <u>Premium</u>	<u>Uncapped</u> <u>Indication</u>	<u>Proposed</u> <u>Change</u>		<u>In-Force</u> <u>Premium</u>	<u>Uncapped</u> <u>Indication</u>	<u>Proposed</u> <u>Change</u>	<u>In-Force</u> <u>Premium</u>	<u>Uncapped</u> <u>Indication</u>	<u>Proposed</u> <u>Change</u>
Commercial Residential	19,350,085	37.4%	5.2%		29,482,000	101.6%	10.5%	48,832,085	76.1%	8.4%
<u>Commercial Non-Residential</u>	<u>1,874,282</u>	<u>5.0%</u>	<u>5.0%</u>		<u>33,617,032</u>	<u>25.0%</u>	<u>10.0%</u>	<u>35,491,315</u>	<u>24.0%</u>	<u>9.7%</u>
Total Commercial Lines	21,224,367	34.5%	5.2%		63,099,032	60.8%	10.2%	84,323,399	54.2%	9.0%

	(1)	(2)	(3)		(7)	(8)	(9)	(10)	(11)	(12)
		Multi-Peril				Wind-Only			Total	
<u>Product Line</u>	<u>In-Force</u> <u>Premium</u>	<u>Uncapped</u> <u>Indication</u>	<u>Proposed</u> <u>Change</u>		<u>In-Force</u> <u>Premium</u>	<u>Uncapped</u> <u>Indication</u>	<u>Proposed</u> <u>Change</u>	<u>In-Force</u> <u>Premium</u>	<u>Uncapped</u> <u>Indication</u>	<u>Proposed</u> <u>Change</u>
Personal	643,276,120	25.9%	8.2%		132,380,544	25.9%	8.3%	775,656,664	25.9%	8.2%
<u>Commercial</u>	<u>21,224,367</u>	<u>34.5%</u>	<u>5.2%</u>		<u>63,099,032</u>	<u>60.8%</u>	<u>10.2%</u>	<u>84,323,399</u>	<u>54.2%</u>	<u>9.0%</u>
Total	664,500,487	26.1%	8.1%		195,479,576	37.2%	8.9%	859,980,063	28.6%	8.3%

Notes:

(1), (4), (7) In-Force Premium at Current Rate Level

(2), (5), (8) Uncapped Rate Indications (includes FHCF Build Up Premium).

(3), (6), (9) Premium Impact after Capping (includes FHCF Build Up Premium).

$$(10) = (1) + (4) + (7)$$

$$(11) = [(1) * (2) + (4) * (5) + (7) * (8)] / (10)$$

$$(12) = [(1) * (3) + (4) * (6) + (7) * (9)] / (10)$$

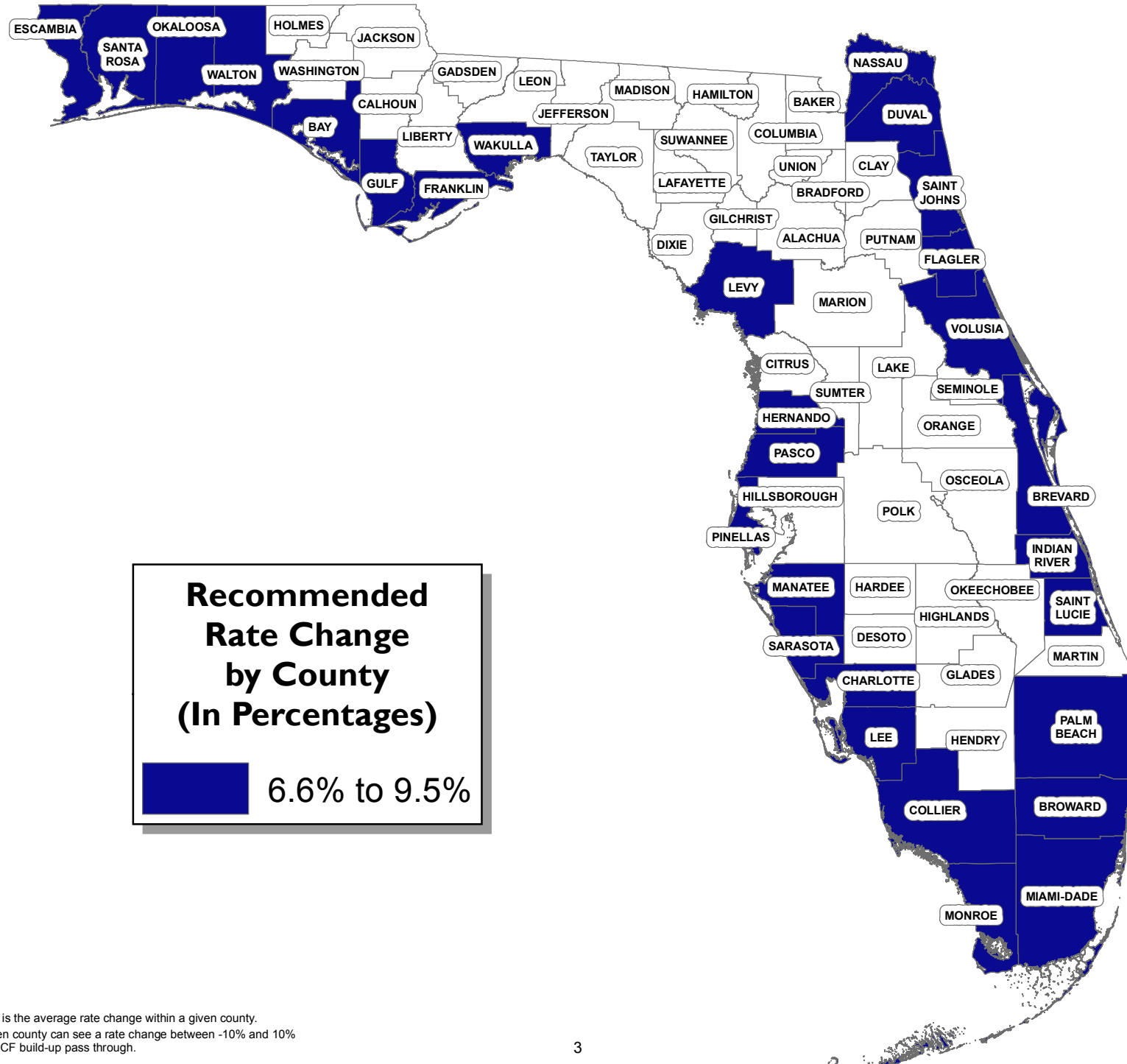
Multi-Peril HO-3 Policies



1. Percentage of rate change is the average rate change within a given county.
2. Policy holders within a given county can see a rate change between -10% and 10% excluding effects of the FHCF build-up pass through.
3. In-force as of 06/30/2018.
4. Counties with no color have no HO-3 policies as of 06/30/2018.

Exhibit 3 - Percent of 2019 Recommended Rate Change by County

Wind-Only HW-2 Policies



Notes:

1. Percentage of rate change is the average rate change within a given county.
2. Policy holders within a given county can see a rate change between -10% and 10% excluding effects of the FHCF build-up pass through.
3. In-force as of 06/30/2018.
4. Counties with no color have no HW-2 policies as of 06/30/2018.

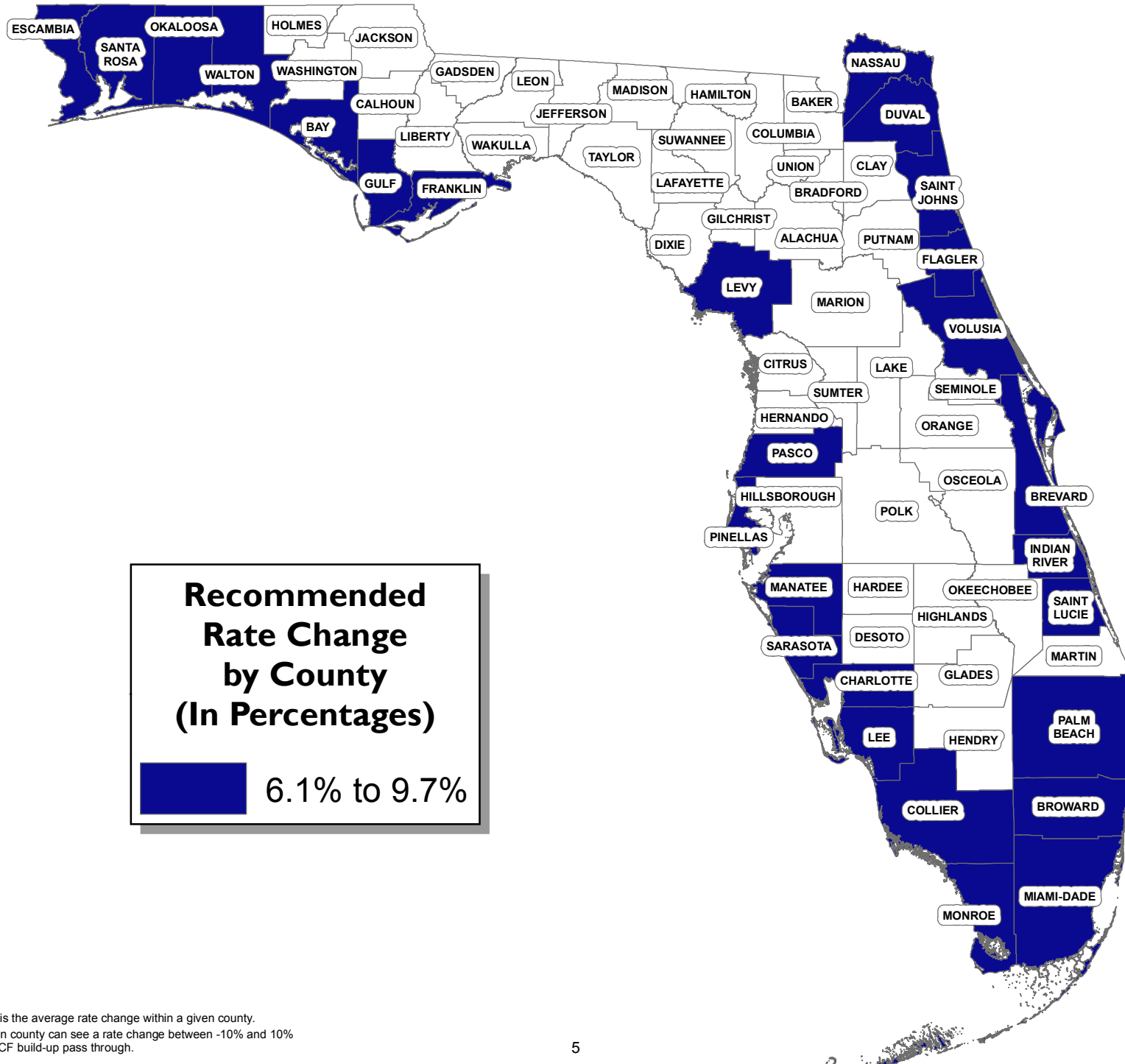
Multi-Peril HO-6 Policies



1. Percentage of rate change is the average rate change within a given county.
2. Policy holders within a given county can see a rate change between -10% and 10% excluding effects of the FHCF build-up pass through.
3. In-force as of 06/30/2018.
4. Counties with no color have no HO-6 policies as of 06/30/2018.

Exhibit 5 - Percent of 2019 Recommended Rate Change by County

Wind-Only HW-6 Policies

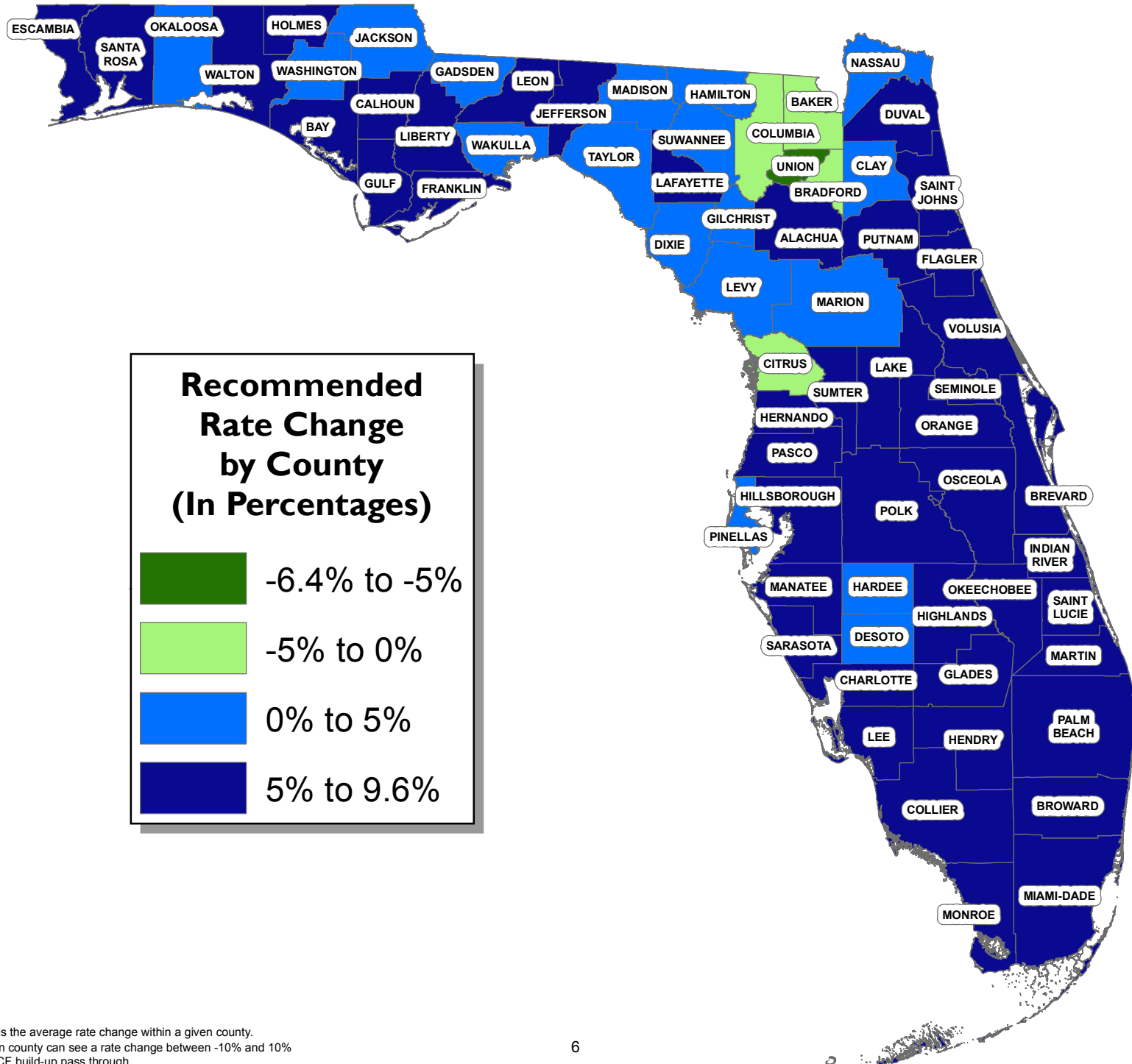


Notes:

1. Percentage of rate change is the average rate change within a given county.
2. Policy holders within a given county can see a rate change between -10% and 10% excluding effects of the FHCf build-up pass through.
3. In-force as of 06/30/2018.
4. Counties with no color have no HW-6 policies as of 06/30/2018.

Exhibit 6 - Percent of 2019 Recommended Rate Change by County

Multi-Peril DP-1 and DP-3 Policies

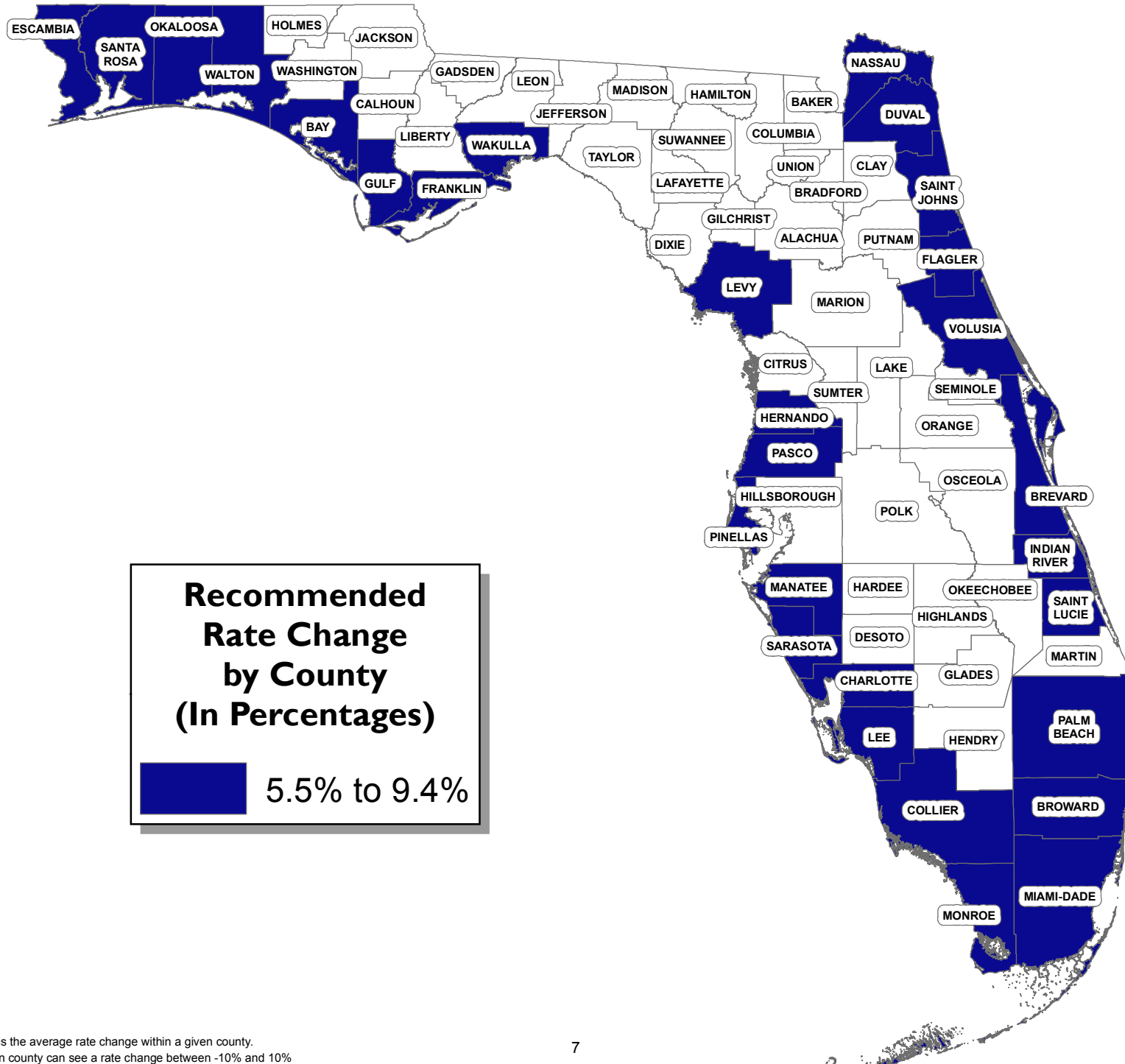


Notes:

1. Percentage of rate change is the average rate change within a given county.
2. Policy holders within a given county can see a rate change between -10% and 10% excluding effects of the FHCF build-up pass through.
3. In-force as of 06/30/2018.

Exhibit 7 - Percent of 2019 Recommended Rate Change by County

Wind-Only DW-2 Policies

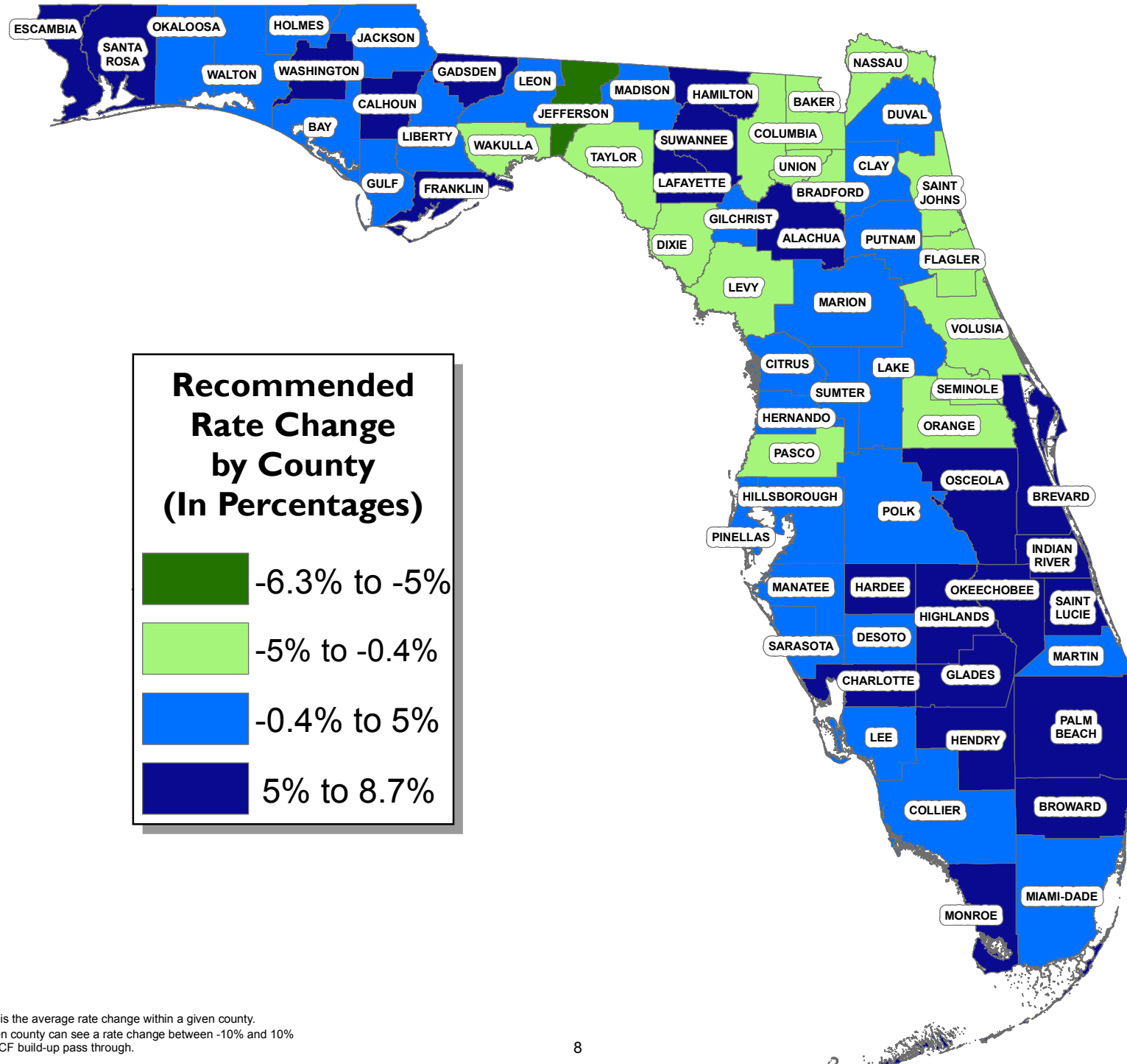


Notes:

1. Percentage of rate change is the average rate change within a given county.
2. Policy holders within a given county can see a rate change between -10% and 10% excluding effects of the FHCF build-up pass through.
3. In-force as of 06/30/2018.

Exhibit 8 - Percent of 2019 Recommended Rate Change by County

Multi-Peril MHO-3 and MDP-I Policies

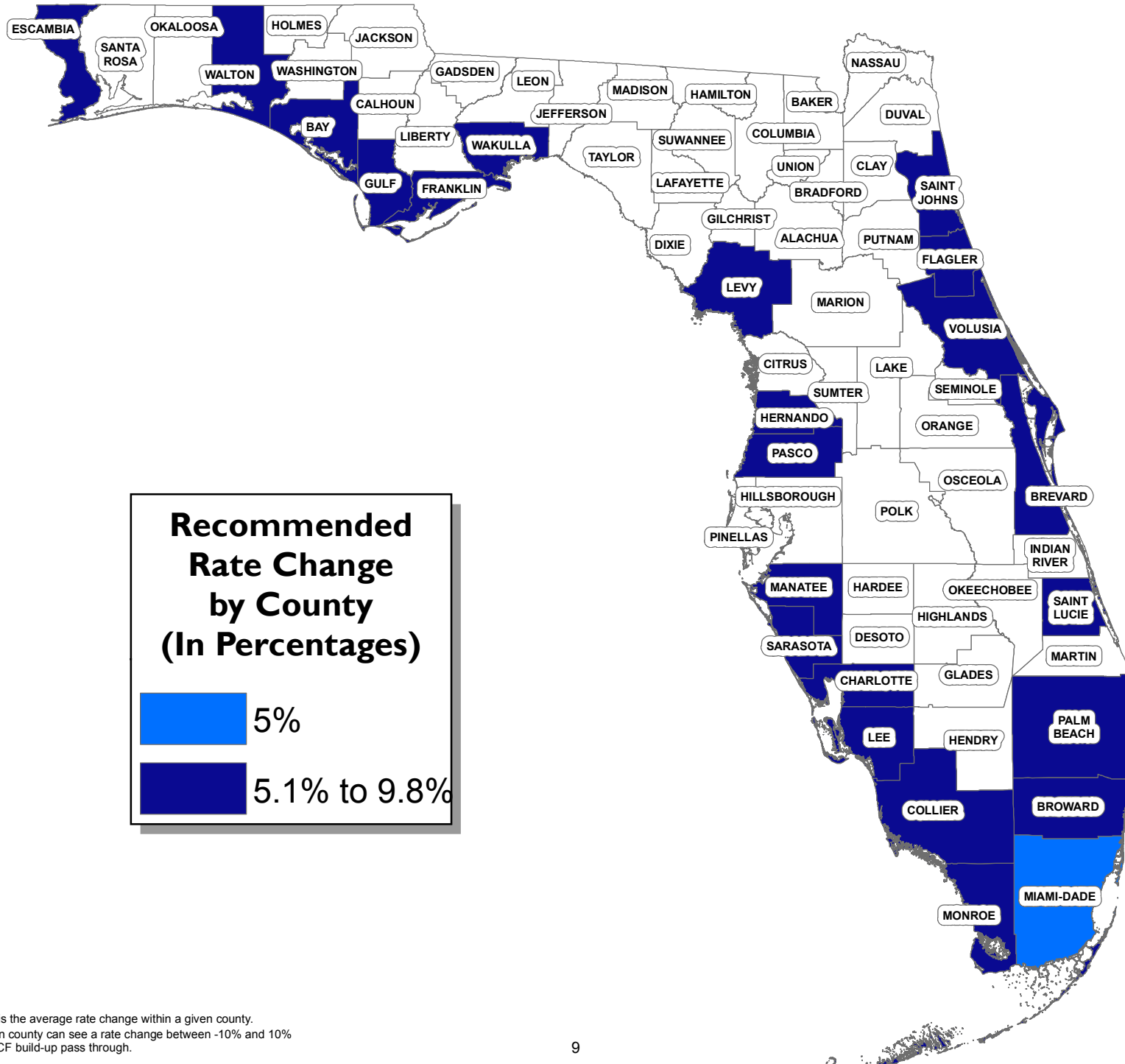


Notes:

1. Percentage of rate change is the average rate change within a given county.
2. Policy holders within a given county can see a rate change between -10% and 10% excluding effects of the FHCF build-up pass through.
3. In-force as of 06/30/2018.

Exhibit 9 - Percent of 2019 Recommended Rate Change by County

Wind-Only MW-2 and MD-1 Policies



Notes:

1. Percentage of rate change is the average rate change within a given county.
2. Policy holders within a given county can see a rate change between -10% and 10% excluding effects of the FHCF build-up pass through.
3. In-force as of 06/30/2018.
4. Counties with no color have no MW-2 or MD-1 policies as of 06/30/2018.

Exhibit 10 - Percent of 2019 Recommended Rate Change by Territory

Multi-Peril Commercial Residential Policies

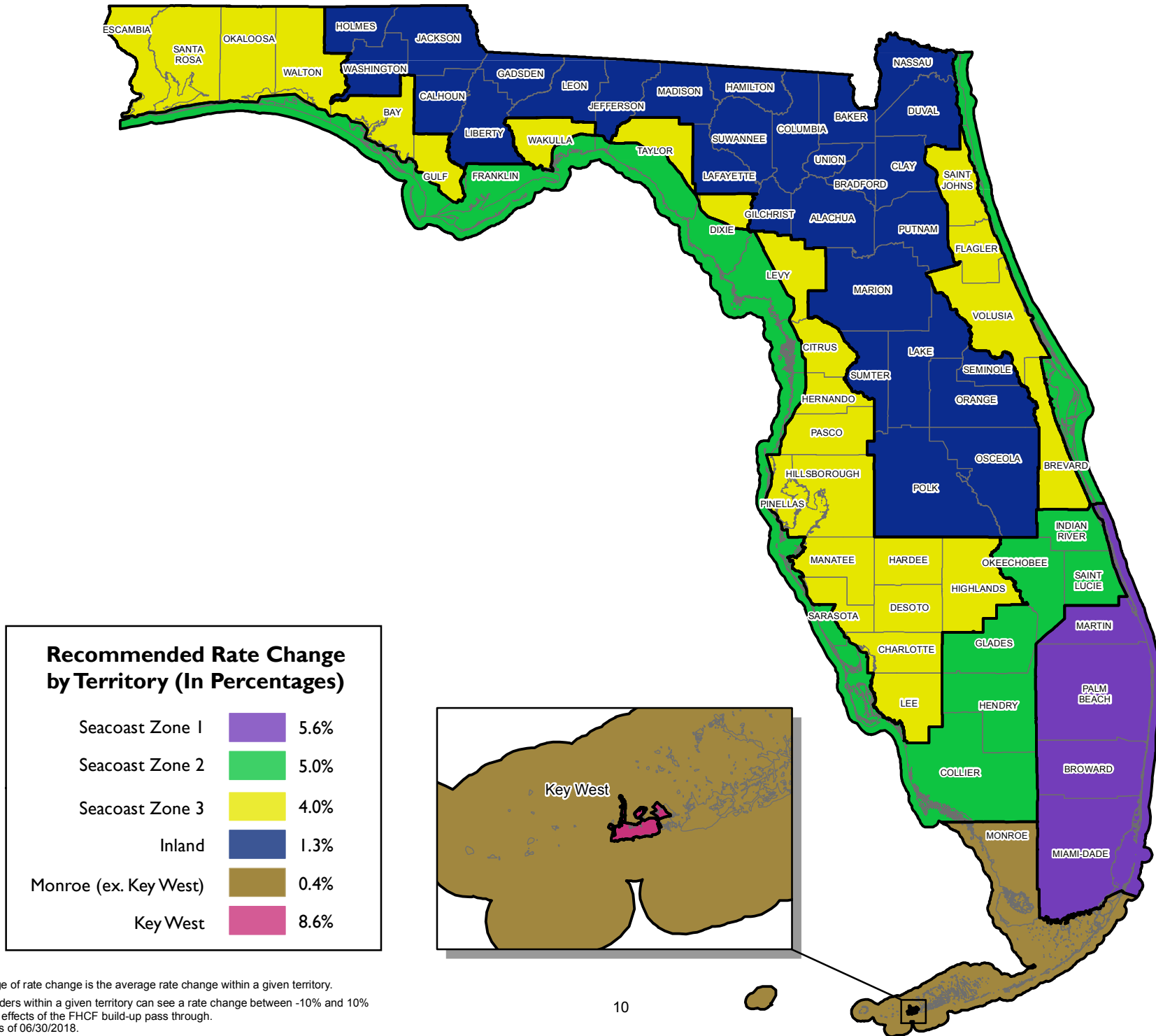
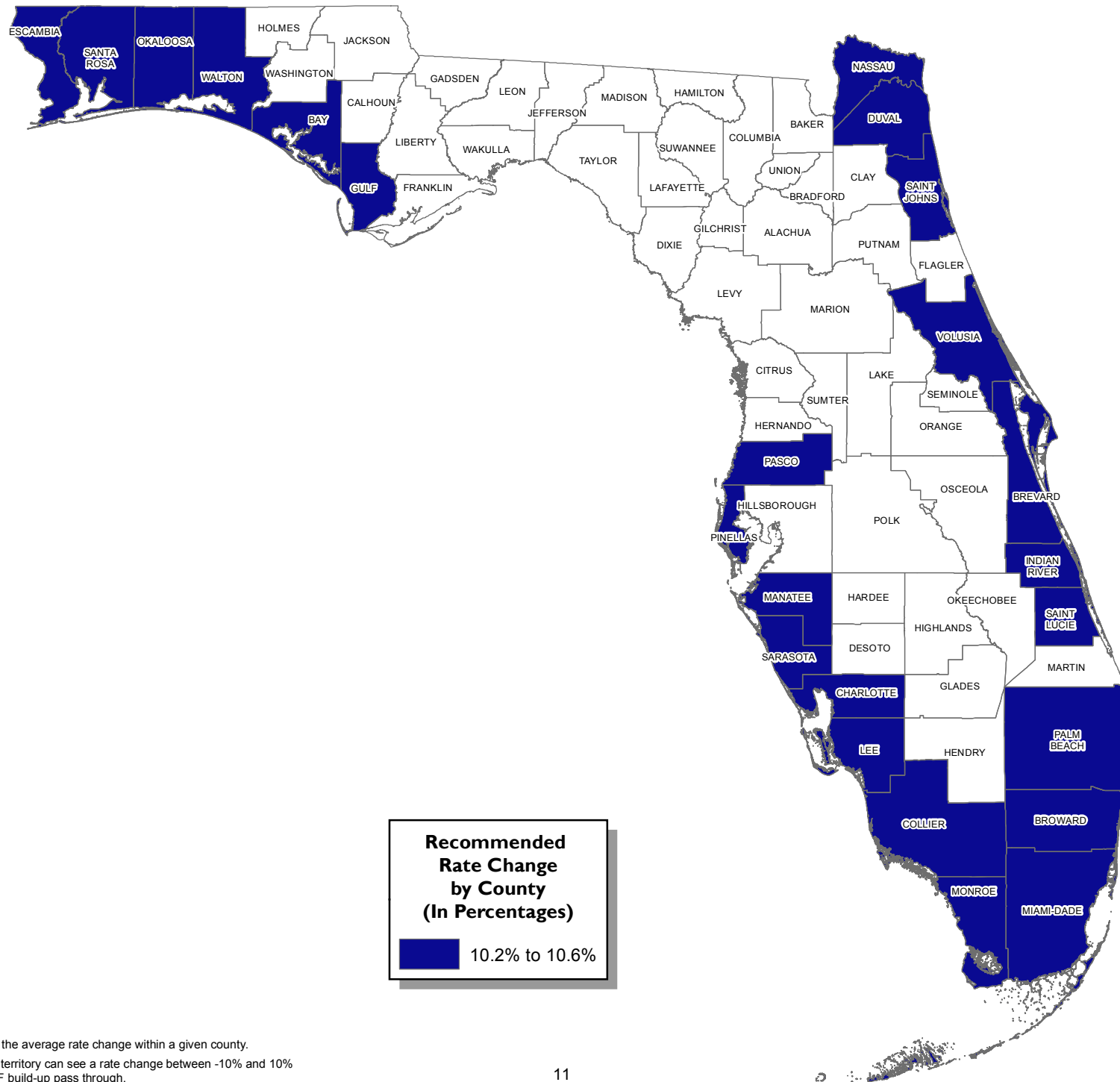


Exhibit II - Percent of 2019 Recommended Rate Change by County

Wind-Only Commercial Residential Policies



Notes:

1. Percentage of rate change is the average rate change within a given county.
2. Policy holders within a given territory can see a rate change between -10% and 10% excluding effects of the FHCF build-up pass through.
3. In-force as of 06/30/2018.
4. Counties with no color have no CR-W policies as of 06/30/2018.

Exhibit 12 - Percent of 2019 Recommended Rate Change by Territory

Commercial Non-Residential Multi-Peril Policies

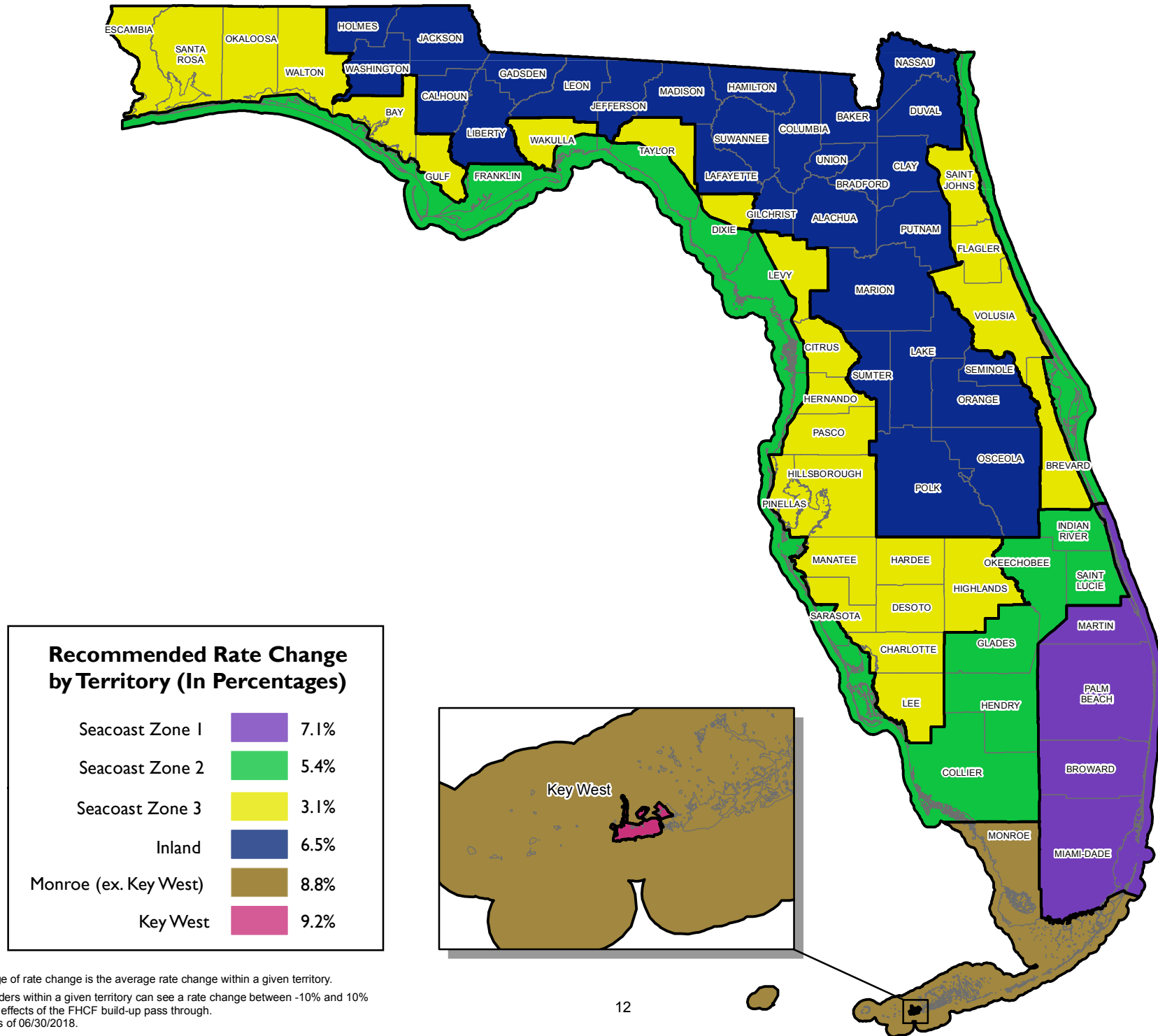
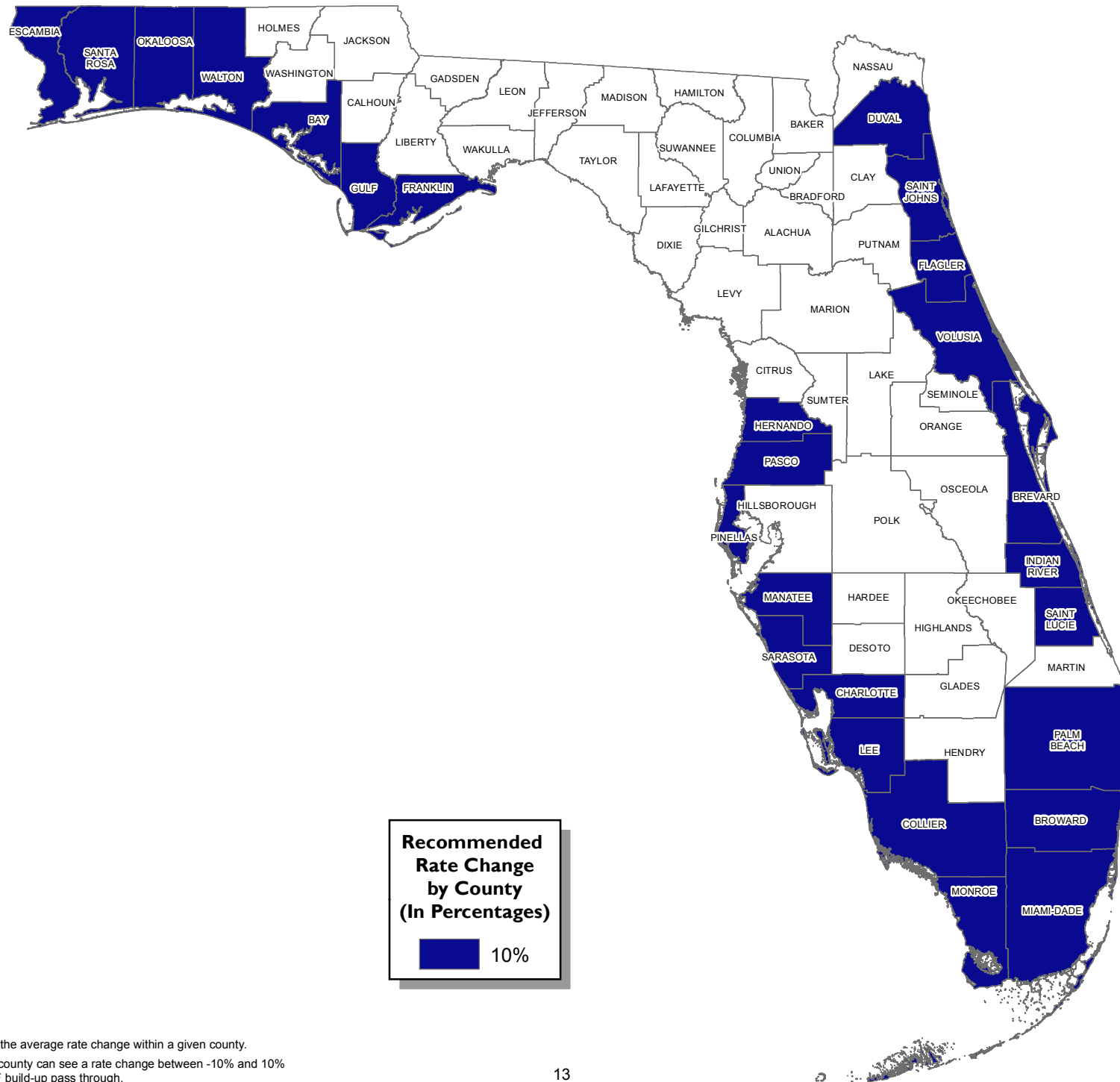


Exhibit 13 - Percent of 2019 Recommended Rate Change by County

Wind-Only Commercial Non-Residential Policies



Notes:

1. Percentage of rate change is the average rate change within a given county.
2. Policy holders within a given county can see a rate change between -10% and 10% excluding effects of the FHCF build-up pass through.
3. In-force as of 06/30/2018.
4. Counties with no color have no CNR-W policies as of 06/30/2018.

Exhibit 14
Distribution of Recommended Rate Changes by Policy
for the Personal Lines Account

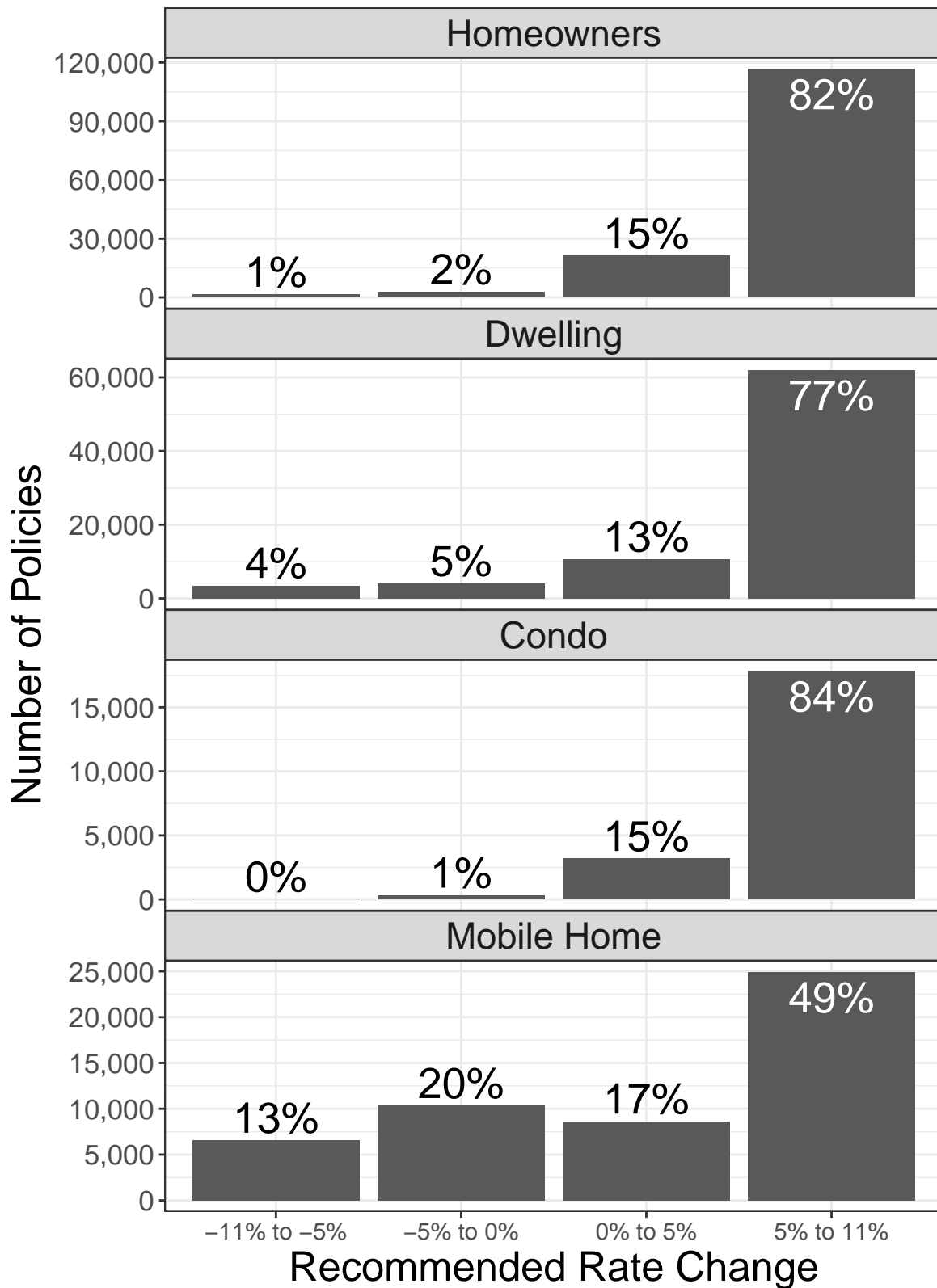


Exhibit 15
 Distribution of Recommended Rate Changes by Policy
 for the Coastal Account

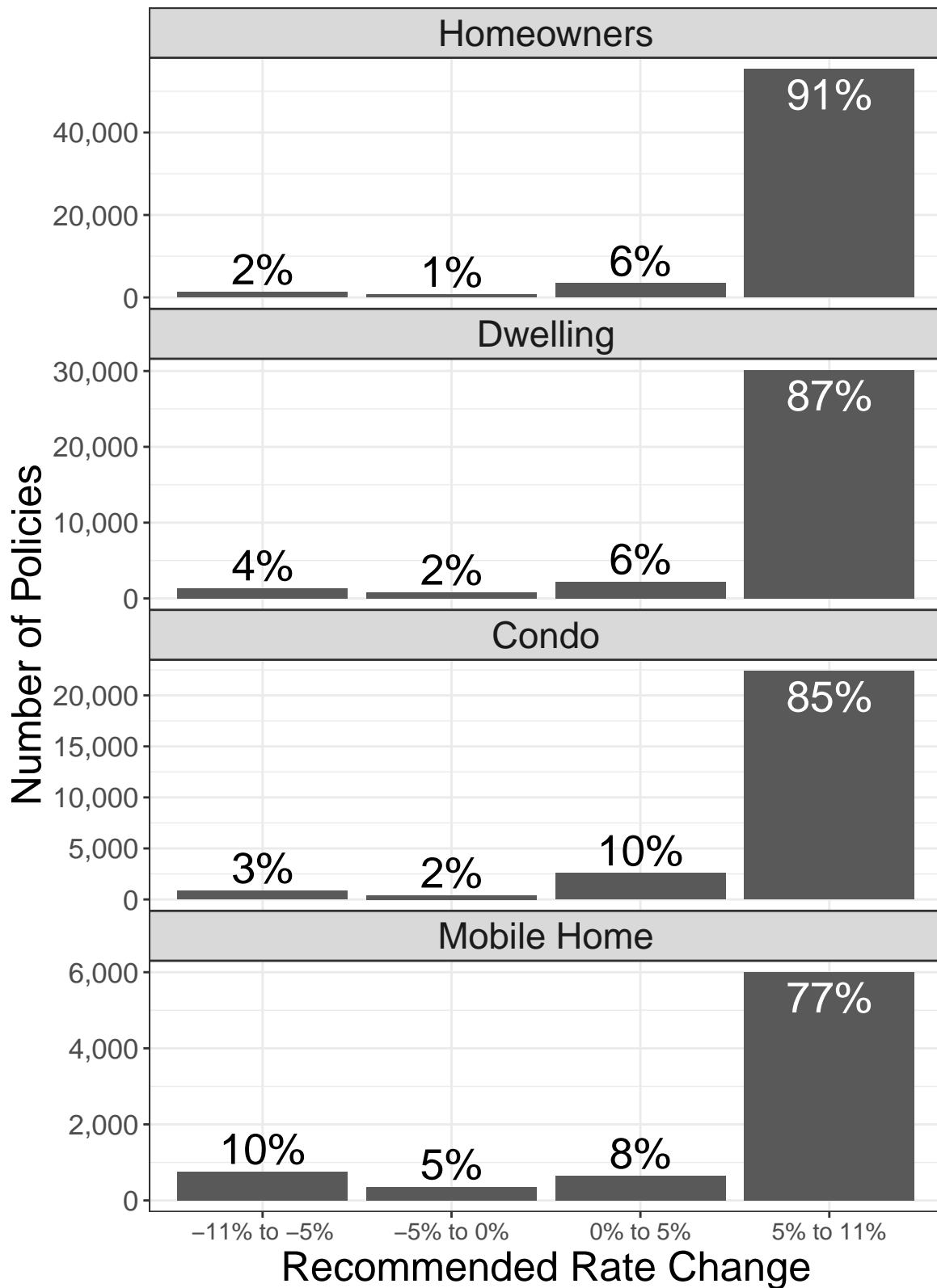


EXHIBIT 16 - MULTIPERIL HO3
Recommended Change by County

County	Number of Policies		Current	Recommended	
	Total	Rate Decreases	Average Premium	Rate Change	Average Premium
Alachua	108	2	1,170	8.9%	1,274
Baker	4	0	1,548	9.4%	1,693
Bay	207	4	1,579	7.5%	1,697
Bradford	6	0	1,412	9.4%	1,544
Brevard	1,986	45	1,844	6.7%	1,968
Broward	29,215	0	3,057	9.9%	3,360
Calhoun	3	0	1,076	9.3%	1,176
Charlotte	932	21	1,484	8.1%	1,605
Citrus	274	3	1,224	6.0%	1,298
Clay	68	0	1,070	9.2%	1,168
Collier	355	0	1,864	9.2%	2,036
Columbia	13	0	1,156	9.6%	1,266
Dade	55,279	1,449	3,687	9.4%	4,033
De Soto	19	0	1,658	7.4%	1,780
Dixie	20	0	1,417	2.5%	1,453
Duval	372	0	1,202	9.3%	1,314
Escambia	328	2	1,891	9.0%	2,060
Flagler	48	0	1,566	9.2%	1,711
Franklin	31	5	1,758	2.0%	1,792
Gadsden	85	4	1,009	7.9%	1,088
Gilchrist	16	0	1,186	9.4%	1,297
Glades	8	0	1,302	6.7%	1,390
Gulf	9	1	3,151	7.1%	3,374
Hamilton	3	0	1,357	9.5%	1,486
Hardee	3	0	946	9.4%	1,034
Hendry	41	0	1,729	9.2%	1,889
Hernando	8,830	5	1,297	6.9%	1,387
Highlands	44	0	1,319	9.4%	1,442
Hillsborough	10,958	0	1,491	8.2%	1,613
Holmes	11	0	1,007	9.2%	1,100
Indian River	221	0	1,896	9.0%	2,067
Jackson	43	1	1,037	8.6%	1,126
Jefferson	9	1	856	8.0%	925
Lafayette	1	0	2,280	9.6%	2,499
Total	164,621	4,494	2,627	8.5%	2,851

County	Number of Policies		Current	Recommended	
	Total	Rate Decreases	Average Premium	Rate Change	Average Premium
Lake	123	0	1,028	9.2%	1,123
Lee	927	23	1,758	8.9%	1,914
Leon	98	1	898	9.0%	979
Levy	51	35	1,478	1.3%	1,497
Liberty	2	0	1,753	9.2%	1,914
Madison	6	0	1,175	9.3%	1,284
Manatee	1,218	16	1,619	8.2%	1,752
Marion	173	0	1,034	9.4%	1,131
Martin	220	0	2,835	7.7%	3,054
Monroe	406	6	3,691	9.7%	4,049
Nassau	71	0	1,511	9.2%	1,650
Okaloosa	127	92	1,859	-2.7%	1,808
Okeechobee	33	1	1,440	9.0%	1,569
Orange	397	0	1,409	9.3%	1,540
Osceola	154	0	1,288	9.4%	1,409
Palm Beach	10,907	181	2,901	7.0%	3,105
Pasco	8,215	3	1,378	7.1%	1,476
Pinellas	27,670	2,444	1,655	4.3%	1,727
Polk	173	2	1,400	9.0%	1,526
Putnam	27	1	1,209	8.7%	1,314
Saint Johns	233	0	1,485	8.5%	1,611
Saint Lucie	598	1	1,817	8.8%	1,978
Santa Rosa	92	53	2,394	1.1%	2,421
Sarasota	1,933	74	1,651	8.6%	1,793
Seminole	166	0	1,295	9.3%	1,415
Sumter	19	0	1,074	9.3%	1,173
Suwannee	6	0	2,559	9.6%	2,804
Taylor	44	14	1,725	-0.2%	1,721
Union	0	0	0	N/A	N/A
Volusia	904	2	1,312	9.2%	1,433
Wakulla	22	0	1,422	6.7%	1,517
Walton	47	2	2,431	5.3%	2,560
Washington	9	0	1,470	9.5%	1,610

EXHIBIT 17 - WIND-ONLY HW2
Recommended Change by County

County	Number of Policies		Current Average Premium	Recommended	
	Total	Rate Decreases		Rate Change	Average Premium
Alachua	0	0	0	N/A	N/A
Baker	0	0	0	N/A	N/A
Bay	221	0	1,723	9.5%	1,886
Bradford	0	0	0	N/A	N/A
Brevard	233	5	2,442	9.3%	2,668
Broward	6,552	199	2,746	9.2%	2,998
Calhoun	0	0	0	N/A	N/A
Charlotte	118	0	2,247	9.5%	2,459
Citrus	0	0	0	N/A	N/A
Clay	0	0	0	N/A	N/A
Collier	612	6	2,789	9.4%	3,050
Columbia	0	0	0	N/A	N/A
Dade	7,803	1,119	3,026	7.5%	3,253
De Soto	0	0	0	N/A	N/A
Dixie	0	0	0	N/A	N/A
Duval	149	6	1,216	9.2%	1,328
Escambia	1,299	2	2,131	9.4%	2,332
Flagler	232	0	1,122	9.4%	1,227
Franklin	116	9	2,386	8.0%	2,577
Gadsden	0	0	0	N/A	N/A
Gilchrist	0	0	0	N/A	N/A
Glades	0	0	0	N/A	N/A
Gulf	74	0	2,332	9.5%	2,552
Hamilton	0	0	0	N/A	N/A
Hardee	0	0	0	N/A	N/A
Hendry	0	0	0	N/A	N/A
Hernando	50	5	1,286	8.1%	1,391
Highlands	0	0	0	N/A	N/A
Hillsborough	0	0	0	N/A	N/A
Holmes	0	0	0	N/A	N/A
Indian River	127	1	3,506	9.3%	3,833
Jackson	0	0	0	N/A	N/A
Jefferson	0	0	0	N/A	N/A
Lafayette	0	0	0	N/A	N/A
Total	38,321	1,799	2,638	8.4%	2,861

County	Number of Policies		Current Average Premium	Recommended	
	Total	Rate Decreases		Rate Change	Average Premium
Lake	0	0	0	N/A	N/A
Lee	1,408	26	2,346	9.3%	2,564
Leon	0	0	0	N/A	N/A
Levy	71	1	1,183	9.2%	1,292
Liberty	0	0	0	N/A	N/A
Madison	0	0	0	N/A	N/A
Manatee	124	4	2,515	9.3%	2,749
Marion	0	0	0	N/A	N/A
Martin	0	0	0	N/A	N/A
Monroe	6,439	0	3,462	7.6%	3,726
Nassau	77	0	941	9.5%	1,030
Okaloosa	46	0	3,703	9.5%	4,054
Okeechobee	0	0	0	N/A	N/A
Orange	0	0	0	N/A	N/A
Osceola	0	0	0	N/A	N/A
Palm Beach	4,801	32	2,851	9.3%	3,117
Pasco	155	26	1,337	7.6%	1,439
Pinellas	1,424	0	2,473	9.4%	2,706
Polk	0	0	0	N/A	N/A
Putnam	0	0	0	N/A	N/A
Saint Johns	148	3	1,183	9.3%	1,293
Saint Lucie	50	0	1,733	9.5%	1,897
Santa Rosa	252	0	2,606	9.5%	2,852
Sarasota	4,479	311	1,347	8.8%	1,464
Seminole	0	0	0	N/A	N/A
Sumter	0	0	0	N/A	N/A
Suwannee	0	0	0	N/A	N/A
Taylor	0	0	0	N/A	N/A
Union	0	0	0	N/A	N/A
Volusia	899	42	1,198	9.2%	1,309
Wakulla	44	1	1,252	9.1%	1,366
Walton	318	1	2,121	6.6%	2,261
Washington	0	0	0	N/A	N/A

EXHIBIT 18 - MULTIPERIL HO6
Recommended Change by County

County	Number of Policies		Current Average Premium	Recommended	
	Total	Rate Decreases		Rate Change	Average Premium
Alachua	73	0	364	10.0%	400
Baker	0	0	0	N/A	N/A
Bay	53	0	832	9.8%	913
Bradford	0	0	0	N/A	N/A
Brevard	581	14	868	6.8%	927
Broward	11,541	0	839	9.1%	916
Calhoun	0	0	0	N/A	N/A
Charlotte	188	0	739	9.1%	807
Citrus	1	0	1,684	9.9%	1,852
Clay	7	0	309	10.0%	339
Collier	361	0	1,223	9.0%	1,333
Columbia	0	0	0	N/A	N/A
Dade	8,192	399	961	9.1%	1,048
De Soto	6	0	358	9.7%	393
Dixie	1	0	467	10.0%	514
Duval	47	0	554	10.0%	610
Escambia	97	0	1,217	9.1%	1,328
Flagler	9	0	910	10.0%	1,001
Franklin	4	0	1,185	10.0%	1,304
Gadsden	0	0	0	N/A	N/A
Gilchrist	0	0	0	N/A	N/A
Glades	0	0	0	N/A	N/A
Gulf	1	0	2,076	10.0%	2,283
Hamilton	0	0	0	N/A	N/A
Hardee	0	0	0	N/A	N/A
Hendry	0	0	0	N/A	N/A
Hernando	39	0	865	9.9%	951
Highlands	1	0	456	9.8%	501
Hillsborough	464	0	667	7.5%	717
Holmes	0	0	0	N/A	N/A
Indian River	87	0	1,235	5.6%	1,304
Jackson	0	0	0	N/A	N/A
Jefferson	0	0	0	N/A	N/A
Lafayette	0	0	0	N/A	N/A
Total	34,902	533	870	8.3%	943

County	Number of Policies		Current Average Premium	Recommended	
	Total	Rate Decreases		Rate Change	Average Premium
Lake	0	0	0	N/A	N/A
Lee	539	2	746	7.4%	801
Leon	61	0	297	10.0%	327
Levy	2	0	495	10.0%	545
Liberty	0	0	0	N/A	N/A
Madison	0	0	0	N/A	N/A
Manatee	332	0	927	8.0%	1,002
Marion	12	0	658	10.0%	724
Martin	159	0	1,047	9.6%	1,147
Monroe	128	9	1,557	7.7%	1,677
Nassau	7	0	1,500	10.1%	1,651
Okaloosa	62	0	772	9.7%	847
Okeechobee	1	0	1,845	9.8%	2,025
Orange	173	0	471	9.5%	516
Osceola	29	0	437	10.0%	481
Palm Beach	6,065	59	976	7.2%	1,046
Pasco	518	0	517	8.6%	562
Pinellas	4,092	49	655	6.1%	695
Polk	15	0	733	9.6%	803
Putnam	1	0	664	10.0%	731
Saint Johns	43	0	806	9.9%	886
Saint Lucie	153	0	1,080	9.4%	1,181
Santa Rosa	14	0	1,009	9.9%	1,109
Sarasota	347	1	1,225	7.1%	1,312
Seminole	38	0	443	10.0%	487
Sumter	1	0	843	10.0%	927
Suwannee	0	0	0	N/A	N/A
Taylor	1	0	1,578	9.9%	1,735
Union	0	0	0	N/A	N/A
Volusia	331	0	628	7.2%	673
Wakulla	1	0	1,724	10.0%	1,896
Walton	24	0	1,264	9.9%	1,389
Washington	0	0	0	N/A	N/A

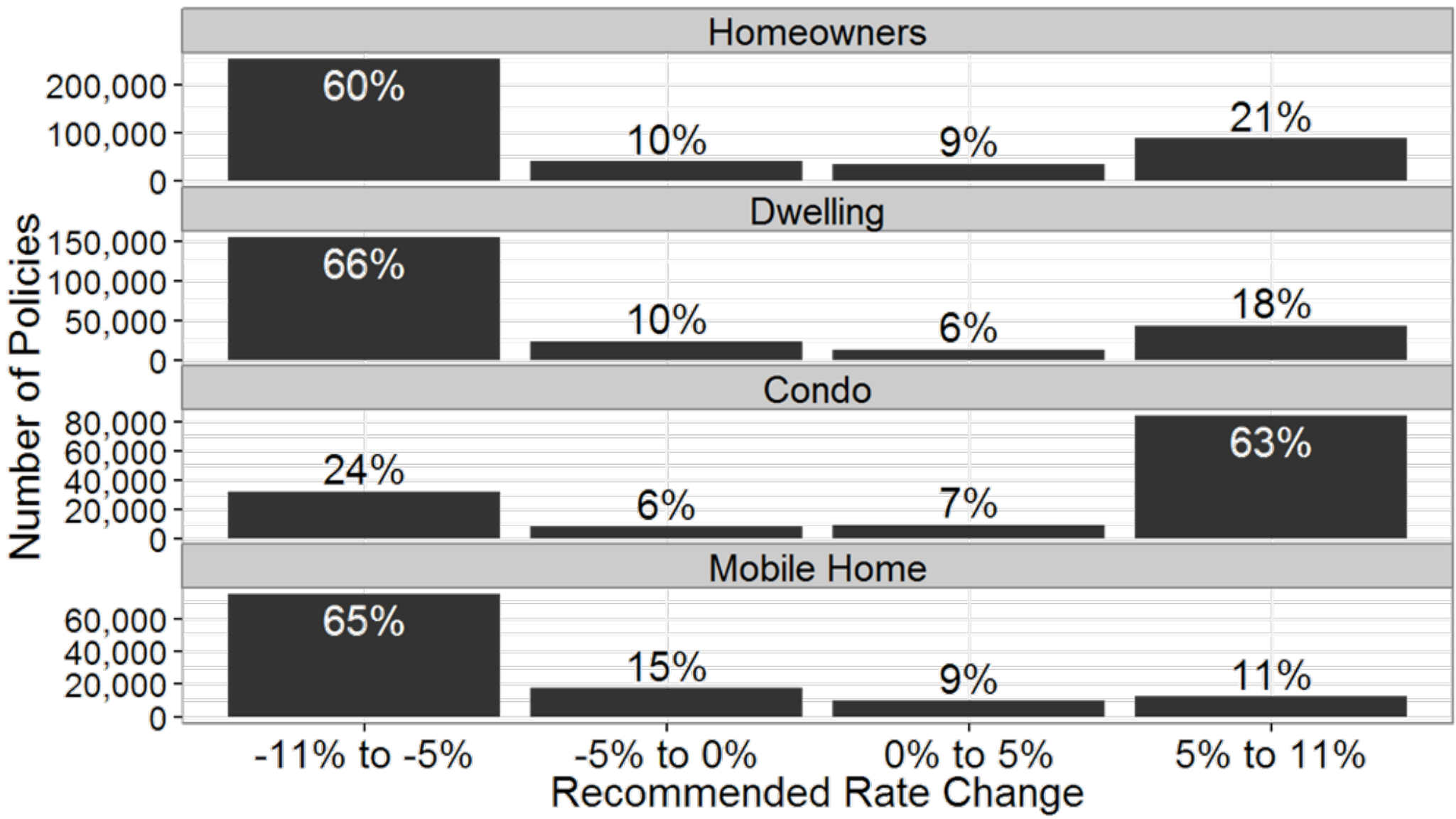
EXHIBIT 19 - WIND-ONLY HW6
Recommended Change by County

County	Number of Policies		Current Average Premium	Recommended	
	Total	Rate Decreases		Rate Change	Average Premium
Alachua	0	0	0	N/A	N/A
Baker	0	0	0	N/A	N/A
Bay	167	14	570	8.7%	620
Bradford	0	0	0	N/A	N/A
Brevard	215	31	773	7.7%	832
Broward	2,109	195	697	7.6%	750
Calhoun	0	0	0	N/A	N/A
Charlotte	117	0	925	9.7%	1,014
Citrus	0	0	0	N/A	N/A
Clay	0	0	0	N/A	N/A
Collier	666	43	946	8.2%	1,024
Columbia	0	0	0	N/A	N/A
Dade	1,930	258	1,280	6.6%	1,365
De Soto	0	0	0	N/A	N/A
Dixie	0	0	0	N/A	N/A
Duval	24	1	497	9.4%	544
Escambia	263	3	786	9.5%	860
Flagler	22	1	478	9.0%	521
Franklin	6	0	364	9.7%	399
Gadsden	0	0	0	N/A	N/A
Gilchrist	0	0	0	N/A	N/A
Glades	0	0	0	N/A	N/A
Gulf	2	0	1,730	9.7%	1,898
Hamilton	0	0	0	N/A	N/A
Hardee	0	0	0	N/A	N/A
Hendry	0	0	0	N/A	N/A
Hernando	0	0	0	N/A	N/A
Highlands	0	0	0	N/A	N/A
Hillsborough	0	0	0	N/A	N/A
Holmes	0	0	0	N/A	N/A
Indian River	156	22	1,446	7.4%	1,553
Jackson	0	0	0	N/A	N/A
Jefferson	0	0	0	N/A	N/A
Lafayette	0	0	0	N/A	N/A
Total	12,639	1,061	920	8.0%	994

County	Number of Policies		Current Average Premium	Recommended	
	Total	Rate Decreases		Rate Change	Average Premium
Lake	0	0	0	N/A	N/A
Lee	779	5	927	9.6%	1,017
Leon	0	0	0	N/A	N/A
Levy	5	0	209	9.7%	230
Liberty	0	0	0	N/A	N/A
Madison	0	0	0	N/A	N/A
Manatee	197	0	945	9.7%	1,037
Marion	0	0	0	N/A	N/A
Martin	0	0	0	N/A	N/A
Monroe	1,258	0	1,046	9.7%	1,147
Nassau	30	7	876	7.7%	943
Okaloosa	163	26	644	7.6%	693
Okeechobee	0	0	0	N/A	N/A
Orange	0	0	0	N/A	N/A
Osceola	0	0	0	N/A	N/A
Palm Beach	2,110	171	920	7.6%	990
Pasco	24	1	375	9.4%	411
Pinellas	574	37	828	8.9%	902
Polk	0	0	0	N/A	N/A
Putnam	0	0	0	N/A	N/A
Saint Johns	46	8	694	8.4%	752
Saint Lucie	112	0	728	8.3%	788
Santa Rosa	51	4	712	9.3%	778
Sarasota	1,088	137	872	8.5%	946
Seminole	0	0	0	N/A	N/A
Sumter	0	0	0	N/A	N/A
Suwannee	0	0	0	N/A	N/A
Taylor	0	0	0	N/A	N/A
Union	0	0	0	N/A	N/A
Volusia	311	65	532	6.1%	565
Wakulla	0	0	0	N/A	N/A
Walton	214	32	847	8.1%	916
Washington	0	0	0	N/A	N/A

EXHIBIT 20 - Range of Policyholder Impacts

2015 Recommended Rate Change



Notification of Contract Changes



Changes to Policy Language that Impact Claim Payments and Coverage

The Florida Office of Insurance Regulation (OIR) has approved new policy language in the following policy types for new business and renewal policies effective on or after July 1, 2016:

- *Citizens Homeowners 3 – Special Form (CIT HO-3)*
- *Citizens Homeowners 6 – Unit-Owners Form (CIT HO-6)*
- *Dwelling Property 3 – Special Form (CIT DP-3)*

The summaries of changes provided below are for informational purposes only and subject to relevant Citizens policy contract language.

Duties After Loss

Reasonable Emergency Measures

In case of a loss to covered property, the revised policy contract requires policyholders to take emergency measures for the sole purpose of protecting the property from further damage.

- Reasonable emergency measures are limited to the greater of \$3,000 or 1 percent of the Coverage A limit, unless the policyholder receives Citizens' approval in advance to exceed this amount.
- Reasonable emergency measures may include permanent repairs if necessary to prevent further damage or prevent unwanted entry to the property.
- To the degree it is reasonably possible, the damaged property must be retained for Citizens to inspect.

Loss Reporting

Policyholders must give prompt notice to Citizens. Except for the policy provisions regarding reasonable emergency measures, there may be no coverage for permanent repairs that begin before one of the following occurs:

- 72 hours after the loss is reported to Citizens
- Loss is inspected by Citizens
- Verbal or written approval is provided by Citizens

Additional Coverage Changes

Coverage changes have been made to the following:

- **Coverage C – Personal Property:** Water or steam, when considered personal property (utility costs, bottled water, etc.) is not covered. If water or steam needs to be replaced as part of a covered loss, it will be covered (for example, replacement of water in a swimming pool when there is a covered loss to the swimming pool).
- **Additional Coverages:** *Reasonable Emergency Measures* is introduced.
- **Collapse** coverage has been revised to state that abrupt collapse of plumbing and other similar systems from age, deterioration or maintenance is not covered.
- **Perils Insured Against** include the following:
 - Additional details have been added to the peril of *Accidental Discharge of Water or Steam*, which states that coverage is provided for access to replace only the part or portion of the system that caused the covered loss, regardless of the condition of the entire system.
 - Revisions to support other contract changes

Amended policy documents are available through OIR's [I-File system](#) by entering the following log numbers in the search box on the *Quick Search* tab:

- **FCP 16-02737** (PR-M HO policy forms)
- **FCP 16-02738** (PR-M DP policy forms)



Estimated Result of AOB Reform on Citizens Property Insurance Corporation Homeowners Rates
(Sorted by Current Average Premium)

Senator	D#	Policy Count	Current Average Premium	Actuarially Sound Rate Need	Rate Requested	New Average Premium w/o AOB Reform	Actuarially Sound Rate Need w/ AOB Reform	Rate Request w/ AOB Reform	New Average Premium w/ AOB Reform
Pizzo	38	4,036	\$4,411	19.3%	8.4%	\$4,783	5.9%	2.6%	\$4,524
Rodriguez	37	8,989	\$4,348	25.3%	7.2%	\$4,663	9.6%	1.5%	\$4,415
Taddeo	40	17,481	\$3,566	28.0%	10.2%	\$3,930	9.0%	4.9%	\$3,740
Diaz	36	8,191	\$3,534	26.1%	9.5%	\$3,871	7.4%	3.0%	\$3,640
Rader	29	3,023	\$3,431	25.1%	8.0%	\$3,707	10.6%	3.0%	\$3,533
Farmer	34	7,546	\$3,395	42.5%	10.0%	\$3,733	24.9%	9.1%	\$3,703
Flores	39	10,985	\$3,307	35.0%	10.1%	\$3,641	16.2%	5.4%	\$3,485
Book	32	7,872	\$3,171	51.6%	9.9%	\$3,484	28.5%	9.9%	\$3,487
Braynon	35	11,589	\$3,121	32.2%	10.1%	\$3,435	13.6%	5.8%	\$3,303
Powell	30	3,661	\$2,871	12.4%	7.3%	\$3,082	3.4%	1.2%	\$2,906
Thurston	33	7,202	\$2,769	42.1%	9.9%	\$3,042	22.3%	9.5%	\$3,033
Berman	31	5,024	\$2,712	10.1%	6.8%	\$2,897	1.0%	-0.2%	\$2,706
Harrell	25	1,026	\$2,232	16.5%	7.8%	\$2,406	6.7%	4.2%	\$2,327
Broxson	1	435	\$1,999	9.3%	6.6%	\$2,131	3.6%	3.2%	\$2,063
Mayfield	17	1,807	\$1,860	9.4%	7.1%	\$1,992	2.4%	2.5%	\$1,906
Benacquisto	27	696	\$1,855	26.1%	8.8%	\$2,019	13.3%	8.5%	\$2,013
Passidomo	28	606	\$1,710	24.5%	9.2%	\$1,867	11.9%	9.0%	\$1,864
Gainer	2	429	\$1,672	9.4%	7.1%	\$1,992	2.4%	2.5%	\$1,906
Brandes	24	13,551	\$1,626	3.8%	4.2%	\$1,694	-1.4%	-0.3%	\$1,620
Galvano	21	1,778	\$1,614	16.6%	8.2%	\$1,747	6.8%	5.5%	\$1,703
Gruters	23	2,676	\$1,602	15.8%	8.4%	\$1,736	6.6%	5.5%	\$1,689
Rouson	19	6,828	\$1,593	6.9%	3.9%	\$1,655	0.5%	0.7%	\$1,603
Hooper	16	13,826	\$1,569	4.3%	6.0%	\$1,662	-2.0%	0.2%	\$1,571
Lee	20	1,208	\$1,539	17.2%	7.6%	\$1,656	5.4%	5.1%	\$1,618
Cruz	18	7,497	\$1,505	21.7%	8.2%	\$1,628	9.0%	6.3%	\$1,601
Albritton	26	366	\$1,499	15.7%	9.0%	\$1,634	4.5%	4.6%	\$1,568
Wright	14	921	\$1,499	10.3%	7.8%	\$1,616	3.6%	3.8%	\$1,556
Hutson	7	638	\$1,435	19.5%	9.0%	\$1,565	11.8%	7.1%	\$1,537
Stewart	13	168	\$1,427	23.7%	9.3%	\$1,559	8.3%	8.3%	\$1,545
Bean	4	281	\$1,374	19.0%	9.3%	\$1,501	7.1%	6.8%	\$1,467
Torres	15	225	\$1,355	32.8%	9.4%	\$1,482	16.1%	9.4%	\$1,483

Estimated Result of AOB Reform on Citizens Property Insurance Corporation Homeowners Rates
(Sorted by Current Average Premium)

Senator	D#	Policy Count	Current Average Premium	Actuarially Sound Rate Need	Rate Requested	New Average Premium w/o AOB Reform	Actuarially Sound Rate Need w/ AOB Reform	Rate Request w/ AOB Reform	New Average Premium w/ AOB Reform
Bracy	11	158	\$1,349	25.0%	9.3%	\$1,475	8.9%	8.8%	\$1,467
Simpson	10	12,492	\$1,332	0.1%	6.9%	\$1,423	-6.8%	2.1%	\$1,361
Bradley	5	200	\$1,285	10.6%	6.2%	\$1,365	0.8%	0.8%	\$1,296
Simmons	9	193	\$1,272	26.3%	9.2%	\$1,390	13.0%	8.9%	\$1,385
Stargel	22	152	\$1,271	13.3%	9.1%	\$1,387	3.3%	3.4%	\$1,314
Montford	3	312	\$1,245	8.6%	5.7%	\$1,316	-0.5%	0.0%	\$1,246
Perry	8	198	\$1,165	14.6%	9.0%	\$1,270	5.4%	5.7%	\$1,231
Gibson	6	162	\$1,039	22.0%	9.4%	\$1,137	6.4%	6.6%	\$1,108
Baxley	12	193	\$1,012	16.9%	9.4%	\$1,107	8.8%	8.3%	\$1,096
TOTAL	-	164,621	\$2,627	25.2%	8.5%	\$2,851	10.1%	4.3%	\$2,739

THE FLORIDA SENATE

APPEARANCE RECORD

1-22-19

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Bill Number (if applicable)

Topic Assignment of Benefits Abuse

Amendment Barcode (if applicable)

Name Jimmy Patronis

Job Title Chief Financial Officer

Address Plaza 11, The Capitol

Phone (850) 413-2850

Street

Tallahassee, FL

32399

Email cfo.patronis@myfloridacfo.com

City

State

Zip

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing CFO Jimmy Patronis

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/19
Meeting Date

Bill Number (if applicable)

Topic AOB WORKSHOP

Amendment Barcode (if applicable)

Name KENNETH B. BELL

Job Title Attorney

Address 215 S. McWade St. Suite 601

Phone 850-521-1980

Street

Tallahassee FL 32301

City

State

Zip

Email kbell@gunbroker.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing PERSONAL INSURANCE FEDERATION OF FLORIDA

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/22/19

Meeting Date

Bill Number (if applicable)

Topic AOB

Amendment Barcode (if applicable)

Name David Altmaier

Job Title Commissioner

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Office of Insurance Regulation

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/20/19
Meeting Date

Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name Barry Gilway

Job Title President / CEO + Executive Director

Address 2101 Maryland Circle
Street

Phone 850-513-3746

Tallahassee FL 32303
City State Zip

Email barry.gilway@citizensfta.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Citizens Property Insurance Corporation

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

CourtSmart Tag Report

Room: KN 412

Caption: Senate Banking and Insurance

Case No.:

Judge:

Type:

Started: 1/22/2019 12:35:41 PM

Ends: 1/22/2019 2:01:38 PM

Length: 01:25:58

12:37:43 PM Chairman Called meeting to order
12:38:23 PM Sheri call roll
12:40:25 PM Chairman Broxson introduces today's meeting
12:41:39 PM Speaker Kenneth Bell, Attorney with the Personal Insurance Federation of FL
12:53:33 PM Mr. Barry Gilway, President and CEO & Ex. Director for Citizen's Property Ins. Corp.
1:07:03 PM Chairman
1:07:50 PM Jimmy Patronis, Chief Financial Officer, State of FL
1:19:53 PM Chair asked for questions to committee
1:20:01 PM Sen. Rouson, question
1:21:03 PM Response CFO
1:23:53 PM Follow up question
1:23:59 PM Response of CFO
1:25:48 PM Mr. Gilway to also respond.
1:30:59 PM Sen. Brandes, question
1:31:06 PM Mr. Bell response
1:31:58 PM Follow up question of Sen. Brandes
1:32:06 PM Response, Mr. Bell.
1:34:23 PM Chairman comments
1:35:07 PM Sen. Thurston, question
1:35:37 PM Response of CFO
1:38:00 PM Chairman comments
1:38:49 PM Sen. Thurston further comments
1:39:41 PM CFO Patronis
1:41:49 PM Justice Bell presentation
1:51:56 PM Chairman comments and moving on to the next speaker
1:52:16 PM Mr. Lee Jacobson
1:58:23 PM Chair Broxson asks committee to express their desire for AOB future meetings.
1:59:08 PM Sen. Thurston comments on future AOB issue.
1:59:44 PM Sen. Perry expresses his AOB desires also.
2:00:42 PM Sen. Perry moved adjournment

By Senator Broxson

1-00417-19

2019122__

A bill to be entitled

An act relating to attorney fee awards under insurance policies and contracts; amending ss. 626.9373 and 627.428, F.S.; revising certain attorney fee provisions in the Florida Insurance Code to specify that an insured or beneficiary entitled, under certain circumstances, to attorney fees under an insurance policy or contract must be a named insured or named beneficiary; providing that such right to attorney fees may not be assigned or extended by agreement, except to certain persons; making technical changes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 626.9373, Florida Statutes, is amended to read:

626.9373 Attorney ~~Attorney's~~ fees.—

(1) Upon the rendition of a judgment or decree by any court of this state against a surplus lines insurer in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer ~~on or after the effective date of this act~~, the trial court or, if the named insured or named beneficiary prevails on appeal, the appellate court, shall adjudge or decree against the insurer in favor of the named insured or named beneficiary a reasonable sum as fees or compensation for the named insured's or named beneficiary's attorney prosecuting the lawsuit for which recovery is awarded. The right to attorney fees under this section may not be

1-00417-19

2019122__

assigned or extended by contract or other agreement to any person other than another named insured, named beneficiary, or omnibus insured.

(2) If awarded, ~~attorney~~ attorney's fees or compensation ~~must shall~~ be included in the judgment or decree rendered in the case.

Section 2. Section 627.428, Florida Statutes, is amended to read:

627.428 Attorney fees ~~Attorney's fee~~.—

(1) Upon the rendition of a judgment or decree by any court ~~of the courts~~ of this state against an insurer and in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer, the trial court or, in the event of an appeal in which the named insured or named beneficiary prevails, the appellate court shall adjudge or decree against the insurer and in favor of the named insured or named beneficiary a reasonable sum as fees or compensation for the named insured's or named beneficiary's attorney prosecuting the suit in which the recovery is awarded ~~had~~. The right to attorney fees under this section may not be assigned or extended by contract or other agreement to any person other than another named insured, named beneficiary, or omnibus insured.

(2) As to suits based on claims arising under life insurance policies or annuity contracts, ~~no~~ such attorney fees ~~may not attorney's fee shall~~ be allowed if such suit was commenced prior to expiration of 60 days after proof of the claim was duly filed with the insurer.

(3) When so awarded, compensation or fees of the attorney ~~must shall~~ be included in the judgment or decree rendered in the

1-00417-19

2019122__

59 case.

60 Section 3. This act shall take effect July 1, 2019.