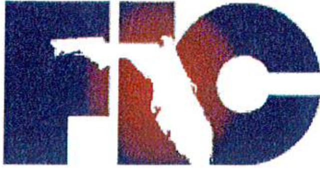

P.O. Box 749 * Tallahassee, FL 32302 * TEL: 850.386.6668 * Fax: 850.386.7371

February 19, 2020

Governor Ron DeSantis
Office of Governor Ron DeSantis
State of Florida
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399-0001

Dear Governor DeSantis:

I am writing today to express the support of the Florida Insurance Council for SB 914 and HB 7071, relating to contingency fee multipliers. It's an issue that virtually all insurance companies agree upon.

The Florida Insurance Council is the premier trade association representing personal lines and commercial lines property and casualty, life, and health insurers issuing policies to businesses and consumers throughout Florida. Our insurance company members represent millions of people who either choose, or are required, to have homeowner's insurance. These homeowners are looking for an insurance policy offered at an affordable price that pays claims when a home is damaged or destroyed.

For many years, the law in Florida required the application of a multiplier of a plaintiffs' lawyers fees only in rare and exceptional circumstances. In 2017, the Florida Supreme Court removed this "rare and exceptional" standard in the Joyce v. Federated national Insurance Co. decision. This decision makes Florida, once again, an outlier Nationally, as evidenced by the fact that the U.S. Supreme Court in Burlington v. Dague in 1992 ruled that contingency fee multipliers incentivize non-meritorious claims; in Perdue v. Kenny A. ex rel. Winn, the U.S. Supreme Court further limited the use of contingency fee multipliers to rare and exceptional circumstances.

Here in Florida, we find that the combination of Florida's law requiring insurers to pay attorneys fees on every case brought against an insurer in the event that a policyholder receives even a few dollars more than what was offered by the insurer, together with the contingency fee multiplier, is causing a dramatic increase in litigation brought primarily for the purpose of enriching plaintiffs lawyers.

Florida consumers are having no trouble finding lawyers to take cases. In fact several brief and recent examples of the use of multipliers make this clear:

1. A domestic insurer issued a partial denial for roof replacement based on the cost of the repair estimate. The matter settled prior to trial for $25,000. The court in a fee hearing issued $195,586 including a fee multiplier of 2.0.

2. Citizens made a partial denial on a supplemental claim request of $29,000 by the policyholder. Two days into trial the case settled for $35,000. In a fee hearing the court found this settlement "extraordinarily favorable" to the insured, and entered a fee multiplier of 2.1 over and above the lodestar amount for a total of $702,927 in attorneys fees.
3. A domestic insurer disputed a case involving a sinkhole, contesting the customers contention they did not need to enter into a contract with a subsurface repair contractor to repair the ground under the house. Once the contract was entered, the insurer paid the cosmetic repair and subsurface repair costs of $256,480. The court granted summary judgment to the insureds on a confession of judgement based upon the tender after the contract. In a fee hearing an award of $386,239 was entered, including a multiplier of 1.5.
4. Citizens denied a water loss claim where the vendor (bringing suit under an AOB) made the repair of a leaking drain pipe, and did not retain the leaking pipe evidence. The claim was denied as the policy did not cover constant and repeated seepage. The claim ultimately settled for $2754. The court applied a $1.75 multiplier awarding $42,971.

While many examples could be listed, these illustrate the problem. Roofing contractors go door to door promising new roofs and partnered with plaintiffs lawyers bring suit even when roofs are decades old and exhibit nothing but wear and tear. These lawyers advertise from billboards, television, and buses throughout central Florida, battling for every customer. Plaintiffs lawyers team up with water remediating vendors and file thousands of cases for a single vendor. There is no shortage of lawyers willing to take these cases, yet courts continue to grant multipliers.

In the end, all homeowners end up paying higher rates for insurance, based upon this exorbitant cost driver. Rate hearings the Florida Office of Insurance Regulation for increases of 28%, and several above 40% have recently occurred based in part on the increased litigation being fueled by the promise of sky-high attorneys fees based on the multiplier. Recently Florida Specialty Insurance Company entered liquidation. While there are other factors at work in the Florida market that are contributing to rate increases and this insolvency, the contingency fee multiplier is a major factor.

We find it interesting to note that prior to the Joyce case, the legislature was not presented with any legislation to eliminate the "rare and exceptional" standard. One can only imagine what the outcome of the Joyce case would be under the current makeup of the Florida Supreme Court. Finally, a nationwide review of all 50 states indicates that other than Florida, other states follow the law of the land as set forth by the U.S. Supreme Court limiting multipliers to rare and exceptional cases, not run of the mill water loss, roof replacement, or sinkhole claims.

Please support SB 914 and HB 7071 which conforms Florida to the rest of the Nation, follows U.S. Supreme Court precedent, and restores the law to what was used for many years prior to the 2017 Joyce decision.

Sincerely,

Cecil Pearce, President
Florida Insurance Council, Inc.