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## IN THIS ISSUE

# How the Defense Bar Made the Case for Tort Reform

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2023 will be remembered as a watershed year for tort reform in Florida with the enactment of HB 837.[1] But the successes of 2023 were the culmination of year-after-year, hard-fought efforts by numerous stakeholders, including the Florida Defense Lawyers Association, the Florida Chamber of Commerce, Associated Industries of Florida, the Florida Retail Federation, the Florida Trucking Association, and my own organization, the Florida Justice Reform Institute (the "Institute"), among others, to pass longstanding priorities of the tort reform community. Some of the unsung heroes of those efforts include the defense attorneys who offered compelling testimony to the Florida Legislature regarding why these reforms were needed.

This article traces some of the significant changes that have occurred to Florida's tort landscape over the past few years, including the elimination of one-way attorney fees in insurance litigation, the limitation on the award of contingency fee multipliers, and statutory reforms designed to improve transparency in medical damages. The article also identifies some of the players in the defense community who helped make the case for these changes. Finally, the article previews some of the successes achieved as a result of these efforts.

## Assignments of Benefits and One-Way Attorney Fees

One of the main drivers of increased insurance litigation over the past decade has been the assignment of benefits ("AOBs"). In the typical AOB, a service provider, like a roofer, agrees to make a repair potentially covered by an insurance policy in exchange for the insurance policyholder's right to sue his insurer via an assignment of insurance policy benefits. What made AOBs particularly lucrative was that, by virtue of the assignment, the assignee was also getting an assignment of the insured's or beneficiary's statutory right to recover attorney fees under so-called one-way attorney fee statutes. These one-way attorney fee provisions — sections 627.428[2] and 626.9373, Florida Statutes[3] — made insurance litigation relatively risk-free for plaintiffs, even for low-value claims, because if a plaintiff prevailed they were awarded their attorney fees, but they faced no reciprocal risk of paying the insurer's fees if the plaintiff lost.

Since 2015, the Institute has theorized that assignees, spurred by the promise of attorney fees under the one-way attorney fee statutes, were a major driver of insurance litigation.[4] Examples abounded where insurance disputes involving relatively low dollar amounts proceeded to litigation and resulted in large attorney fee awards to assignees as authorized by the one-way attorney fee statutes.[5] The Institute's own study demonstrated that, based upon data found on the Department of Financial Services' service of process database — which catalogues all lawsuits filed against insurers — there was a *16,000 percent increase* in lawsuits brought by assignees since 2000, even though the total number of service of process notices increased by only 183 percent over the same timeframe.[6] The Office of Insurance Regulation also reported concerning trends arising from 2010 to 2015, including a 28 percent increase in the average severity of domestic property insurance water loss claims,[7] a 46 percent increase in the frequency per 1,000 policies of water loss claims associated with personal residential insurance policies,[8] and an increase from 5.7 percent to 15.9 percent in the use of AOBs.[9] Florida's Insurance Commissioner warned that, based on these trends, his office foresaw "higher insurance premiums for consumers and a lack of availability of insurance policies as insurers exit the market."[10]

Proposed solutions necessitated addressing both AOBs and the one-way attorney fees provisions. But changes proved to be incremental. In 2019, the Legislature enacted section 627.7152, Florida Statutes, along with other AOB reforms.[11] Section 627.7152 included numerous protections for insureds with regard to the creation of AOBs, and recovery of attorney fees was authorized for assignees only under 57.105, Florida Statutes, or the newly created section 627.7152(10), which tied recovery of fees to the degree of success achieved in the suit.[12]

In 2021, the Legislature amended the one-way attorney fee statute to state that, in a suit arising under a residential or commercial property insurance policy not brought by an assignee, the amount of reasonable attorney fees would be awarded only as provided in section 57.105 or newly-created section 627.70152, Florida Statutes, as applicable.[13] Section 627.70152 was created to add a specific mechanism for recovery of attorney fees by a policyholder or beneficiary in litigation, similar to that in section 627.7152(10), which makes recovery dependent upon the degree of success achieved in the suit.[14]

Notwithstanding these changes, property insurance litigation continued to increase. This prompted two special legislative sessions in 2022 related to property insurance.[15] In the first special session, held in May 2022, the Legislature finally revised the one-way attorney fee statutes to state that the right to attorney fees in a residential or commercial property insurance policy suit may not be transferred to, assigned to, or acquired in any manner by anyone other than the named or omnibus insured or a named beneficiary.[16] Further, the Legislature amended these statutes to provide that an insurer may recover attorney fees when a claimant's suit is dismissed, and in

awarding attorney fees to either the claimant or insurer, a strong presumption would be created that a lodestar fee is sufficient and reasonable.[17] In the second special session, held in December 2022, the Legislature again amended the one-way attorney fee statutes to make clear that there is no right to fees in actions brought under a residential or commercial property insurance policy.[18]

Of course, these changes were largely confined to the property insurance market, meaning that assignees could still use the one-way attorney fee statutes in other insurance coverages, like auto glass.[19]

Finally, in 2023, the Legislature passed, and Governor DeSantis signed, HB 837. HB 837 officially repealed the one-way attorney fee statutes for all actions brought under an insurance policy, removing the opportunity for risk-free insurance litigation in any coverage.[20] At the same time, the legislation created new section 86.121, Florida Statutes, applicable to actions for declaratory relief to determine insurance coverage after an insurer has totally denied coverage for a claim.[21] In those circumstances, a named insured, omnibus insured, or named beneficiary could recover reasonable attorney fees upon obtaining a declaratory judgment in their favor. This provision would not apply, however, to any action arising under a residential or commercial property insurance policy.[22]

These incremental efforts were supported by testimony in the Legislature from defense attorneys with direct experience with the problems plaguing the insurance market. For example, Aram Megerian of Cole, Scott & Kissane, P.A. spoke on behalf of the Institute before both the House and Senate in support of several proposals to remove one-way attorney fees or limit their use.[23] Megerian heads one of the largest first-party property insurance defense practices in the state at Cole, Scott & Kissane, P.A. Megerian was able to provide compelling testimony about the current litigation market. In his experience, assignees would demand an excessive amount to repair damage to a home, and had little incentive to demand less because even if the assignee did not recover the full amount claimed, any amount over what the insurer had paid would represent a win, entitling the assignee to their attorney fees.

Another proponent of legislation to fix the one-way attorney fee statutes was Ryan Jones of Traub Lieberman.[24] Like Megerian, Lieberman is a first-party property insurance defense litigator. Lieberman spoke in support of 2022 special session legislation not on behalf of any association, trade group, or client, but only on behalf of himself as a litigator. He was able to cite examples from his own practice, including *Delgado v. Citizens Property Insurance Corp.*, in which a claim fully paid by Citizens still led to an attorney and expert fee award to the insured of more than $100,000.[25]

Another frequent offeror of testimony regarding the problems with insurance litigation created by AOBs and the one-way attorney fee statutes was Cristina Cambo of Cambo Ferry PLLC; Cambo spoke on behalf of the Florida Defense Lawyers Association.[26] Cambo explained how the 2019 AOB reforms were a step in the right direction, but more recent data confirmed more needed to be done as AOB insurance litigation had not significantly decreased, prompting the necessary fixes that occurred in the 2021, 2022, and 2023 sessions.

Such compelling testimony — based on real, boots-on-the-ground experience from the attorneys who litigate these issues — helped make the case for why AOB and one-way attorney fee reforms needed to happen.

## Contingency Fee Multipliers Become the Exception after Being the Norm

Another key, related reform accomplished in 2023 was making contingency fee multipliers the exception and not the norm in litigation.

As background, to calculate an attorney fee award, Florida courts begin with the traditional lodestar method: i.e., the simple calculation of multiplying the number of attorney hours reasonably expended on the matter by the reasonable hourly rate.[27] In some cases, a court may decide that the lodestar figure does not represent a reasonable fee. In contingency fee cases, for example, the attorney taking on the representation agrees to receive no compensation if his client does not prevail. Under *Florida Patient's Compensation Fund v. Rowe*, the Florida Supreme Court instructed trial courts that they may adjust the lodestar amount in light of that contingency risk and apply a multiplier in the range from 1.5 to 3, based on the "likelihood of success" at the outset of the case.[28] Notably, the lodestar amount often awards *more* than a contingency fee would, as the lodestar produces an award that roughly approximates the fee that the prevailing attorney would have received if he or she had been representing a paying client who was billed by the hour in a comparable case. With a multiplier, that attorney fee award may more than double.

The Florida Supreme Court reexamined *Rowe* in *Standard Guaranty Insurance Co. v. Quanstrom*[29] and modified the analysis for contingency risk multipliers. As set forth in *Quanstrom*, a court must consider whether to apply a contingency risk multiplier but is not required to apply one.[30] When determining whether a multiplier is necessary, the court should consider three factors: (1) whether the relevant market requires a multiplier to obtain competent counsel; (2) whether the attorney was able to mitigate the risk of nonpayment in any way; and (3) whether any of the factors set forth in *Rowe*[31] are applicable, especially the amount involved, the results obtained, and the type of fee arrangement between the attorney and his or her client.[32]

In contrast, the U.S. Supreme Court strongly disfavors contingency enhancements and finds that they should apply only in "rare" and "exceptional" cases. As Justice Scalia explained in the majority opinion in *City of Burlington v. Dague*,[33] an attorney's contingency risk "is the product of two factors: (1) the legal and factual merits of the claim, and (2) the difficulty of establishing those merits. The second factor, however, is ordinarily reflected in the lodestar — either as the higher number of hours expended

to overcome the difficulty, or in the higher hourly rate of the attorney skilled and experienced enough to do so."[34] Thus, "[t]aking account of it again through lodestar enhancement amounts to double counting."[35]

Notwithstanding the compelling reasons for repudiating contingency risk multipliers outlined in *Dague*, the Florida Supreme Court expanded their use. In 2017, the Florida Supreme Court confirmed the continued viability of contingency risk multipliers in *Joyce v. Federated National Insurance Co.*[36] and went further, holding that a multiplier may be applied in almost any case, regardless of whether the lodestar amount represents a reasonable fee. Thus, the Florida Supreme Court ruled that the Fifth District Court of Appeal erred by "imposing a 'rare' and 'exceptional' circumstances requirement before a trial court may apply a contingency fee multiplier."[37]

In his dissent, Justice Canady argued that the multiplier was applied in *Joyce* "without sufficient justification under the requirements of our case law," as the record failed to support the notion that the case was difficult or that a multiplier was necessary to obtain counsel.[38] Justice Canady went through the evidence before the trial court and concluded that a multiplier was not justified in this "simple, straightforward case," particularly where there were thousands of attorneys in a neighboring county that might have taken the case and it took only one phone call to obtain counsel.[39] In light of the availability of the one-way fee in section 627.428, Justice Canady rejected the notion that a multiplier was necessary to motivate insurance attorneys to take such cases.[40]

As a consequence of *Joyce*, multipliers became the rule and not the exception, particularly in rudimentary insurance disputes, incentivizing insurance litigation and making contingency fee multipliers a target for tort reform.

In 2021, there was an effort made as part of implementing AOB reform to make the lodestar fee the presumptive fee when awarding attorney fees in insurance litigation.[41] To assist in this effort, the Institute assembled 14 examples of run-of-the-mill insurance cases resulting in attorney fee awards including multipliers that dwarfed the amount in dispute.[42] For example, in *Bush v. Homeowners Choice Property & Casualty Insurance Co.*,[43] a first-party property insurance case involving an amount in controversy of $18,911.72 for repair of the plaintiffs' roof, the trial court concluded a multiplier of 2.5 was appropriate given the difficulty of the case. Thus, the court awarded *$756,887.50* in attorney fees (not including prejudgment interest), after applying a 2.5 multiplier and hourly rates of $550, $600, and $700.[44]

Ultimately, the legislation as passed did not include any change to contingency fee multipliers.

There was a renewed effort to reform contingency fee multipliers as part of the special session held in May 2022. Aram Megerian again testified based on his practice, pointing to an example in a run-of-the-mill insurance dispute where approximately 657 hours of plaintiff attorney time — roughly three months of work — netted around $372,000 in attorney fees, including a multiplier.[45] Through these and other efforts, section 627.70152, Florida Statutes, was amended to provide that in awarding attorney fees in insurance litigation, a strong presumption would be created that a lodestar is sufficient and reasonable.[46]

The efforts to make contingency fee multipliers the exception and not the rule finally came to fruition in 2023 through HB 837. In HB 837, section 57.104, Florida Statutes, was amended to provide expressly that, in any action in which attorney fees are determined or awarded by the court, there is a strong presumption that a lodestar fee is sufficient and reasonable — and such presumption may be overcome only in a rare and exceptional circumstance with evidence that competent counsel could not otherwise be retained.[47]

## Transparency in Damages

2023 also finally saw the advent of transparency in medical damages, aided again by the compelling testimony of defense attorneys with firsthand experience of the problems often plaguing the medical expense evidence presented to juries.

The lack of transparency in medical expenses had been a longstanding problem in personal injury and wrongful death litigation. An injured party may recover their past medical expenses (such as hospital bills, diagnostic tests, and doctor visits) as damages in a personal injury or wrongful death lawsuit. What juries most often heard at trial to establish those damages were the "billed" amounts or "sticker prices" of a claimant's medical treatment, which typically reflected much higher dollar amounts than what an insurer would have otherwise paid for the treatment or what the claimant would have even paid out of pocket for the treatment.

What further complicated this transparency issue were letters of protection ("LOPs") — agreements in which a claimant's medical provider agrees to suspend efforts to collect past medical bills in exchange for a right to payment from any recovery made by the claimant in litigation. LOPs typically bear a sticker price that greatly exceeds the true cost or value of medical treatment. Sometimes these LOPs were sold to factoring companies — interested parties as they are plaintiffs' law firms or medical providers — which purchased LOPs at a discount for a right to collect each LOP's full sticker price. Regardless of what the claimant's medical provider would ultimately accept as full satisfaction of the outstanding bill, and regardless of what steeply discounted amount a factoring company might have paid for the LOP, an LOP bearing an often artificially inflated amount would be admitted at trial as the claimant's evidence for the value of his medical treatment.

Consideration of such inflated amounts misled juries into awarding excessive amounts for unpaid bills, future damages for anticipated medical expenses, and pain and suffering. 2023 HB 837 was designed to address these issues and ensure juries hear more evidence about the true value of medical treatment.

Again, defense attorneys with firsthand knowledge of this lack of transparency were able to provide credible

testimony to the Legislature in support of this portion of HB 837. An example is Joseph Tessitore of Moran Kidd, a litigator whose practice includes representation of clients in bodily injury, wrongful death, and casualty suits. Tessitore testified on behalf of the Florida Chamber of Commerce in support of HB 837's provisions requiring transparency in damages.[48] He explained how juries were often misled by plaintiffs' attorneys working with medical providers presenting LOPs with inflated amounts, providing as an example one LOP for a procedure with a face value of $200,000, even though the procedure would have otherwise cost $20,000 based on regular market rates.

Laurette Balinsky of Luks Santaniello Petrillo Cohen & Peterfriend testified before the House and Senate on HB 837 and its Senate counterpart, SB 236, on behalf of the Florida Retail Federation.[49] Ninety percent of Balinsky's practice involves investigating the abuse of LOPs; given her vast experience, Balinsky was able to provide numerous examples where the charges represented by an LOP dwarfed the amounts ultimately accepted by the provider for the procedure reflected in the LOP.

Frank Pierce of Luks Santaniello Petrillo Cohen & Peterfriend is another litigator who testified on behalf of the Florida Defense Lawyers Association in support of HB 837 and SB 236. Pierce was also able to provide real-life examples illustrating the problem of LOPs and the inability to present an accurate picture of damages to a jury. Pierce recounted one example wherein a plaintiff with health insurance submitted only half of her medical bills to insurance, per her lawyer's instructions.[50] The half of her medical bills not submitted to the plaintiff's insurance had a purported face value of $145,000; had the plaintiff submitted the same charges through her insurance, her insurer would have paid less than half that amount in full satisfaction of the charges. But the plaintiff was permitted to offer at trial the full $145,000 of purported medical expenses as her damages, even though health insurance would have paid much less.

As a result of these and other efforts, HB 837 was enacted and created section 768.0427, Florida Statutes, which expressly defines what evidence may be admitted to prove medical expense damages in personal injury and wrongful death actions.[51] Among other things, section 768.0427 provides that if a plaintiff is insured but obtains treatment under an LOP or does not submit his medical charges to his insurance, evidence admissible to prove damages for that medical treatment would include any amounts the plaintiff's health care coverage would have been obligated to pay for that treatment.[52] Juries may also hear evidence regarding the Medicare or Medicaid rates for services and treatments to enable the jury to account for such measures in their calculation of medical damages.[53] Further, when a plaintiff is pursuing damages for treatment or services they received under an LOP, the plaintiff must disclose, among other things, a copy of the LOP, all billings for the plaintiff's medical expenses, and whether the plaintiff had health care coverage at the time the medical treatment was rendered.[54] All of these reforms ensure the jury has an accurate and complete picture of the reasonable and necessary cost or value of medical care for which the plaintiff seeks damages, which is necessary to accurately calculate damages.

## The Reforms Appear to Be Working

Although it is still early, these reforms appear to be having a real impact on litigation, particularly insurance litigation. 2023 legislation HB 837 — which barred recovery of one-way attorney fees in insurance litigation — and SB 1002 — which prohibited auto glass assignments for insurance policies renewed or issued after July 1, 2023 — appear to have already caused a marked decrease in litigation. Data collected by the Institute from publicly available sources, such as the Department of Financial Services' service of process database, shows there were less than 5,000 auto glass lawsuits filed in Florida in the first half of 2024, a significant drop. By contrast, calendar year 2022 had over 37,000 auto glass lawsuits, and calendar year 2023 had over 60,000.[55]

As for property insurance, overall litigation for the top 45 property insurers in Florida diminished in 2023, and Florida is seeing a continued decrease in lawsuits in 2024. For example, in the second quarter of 2023, more than 18,000 lawsuits were filed against the 45 largest property insurers in Florida; this number dropped to roughly 12,000 in the second quarter of 2024.[56] The Sun-Sentinel reported a similar decrease, showing that the number of lawsuits against the 25 top insurers in the state decreased from 44,550 in 2022 to 38,678 in 2023 — a drop of 13.2%.[57] There is also good news from Citizens, Florida's state-backed insurer of last resort. Citizens' policy count has begun dropping for the first time in several years, and it reported a 20% decrease in lawsuits from 2022 (11,734) to 2023 (9,716).[58]

These numbers must still be considered against the backdrop of an influx of litigation filed in 2023 to avoid the new requirements of HB 837. As reported by several outlets, the number of new civil cases filed in March 2023 across the state as HB 837 was signed was 280,122 — *126.9%* higher than the previous record set in May 2021.[59] It will take time for this extra litigation to make its way through the courts. But the avalanche is subsiding, and removing the incentive to sue is working, particularly in insurance litigation.

As the past few years have shown, to effect change in our civil justice system through legislation, it is critical to illustrate the existence of a problem with real-world examples, not just hypotheticals or unsupported hyperbole. Defense attorneys can play a vital role in that effort, by identifying the root causes of recurring problems in litigation and educating both clients and legislators about these issues and proposed solutions. It is through efforts like these that the tort reform community accomplished so much in 2023.

**ABOUT THE AUTHOR:**

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1 CS/CS/HB 837 (2023); *see* Ch. 2023-15, Laws of Fla.

2 Section 627.428(1), Florida Statutes, specifically provided that, "[u]pon 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. (2019).

3 Section 626.9373 was similar to section 627.428, but applied to surplus lines insurers: "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 insured or beneficiary prevails on appeal, the appellate court, shall adjudge or decree against the insurer in favor of the insured or beneficiary a reasonable sum as fees or compensation for the insured's or beneficiary's attorney prosecuting the lawsuit for which recovery is awarded." § 626.9373(1), Fla. Stat. (2019).

4 *See* Fla. Justice Reform Inst., *Restoring Balance in Insurance Litigation: Curbing Abuses of Assignments of Benefits and Reaffirming Insureds' Unique Right to Unilateral Attorney's Fees* (2015) [hereinafter *Restoring Balance*], https://www.ljustice.org/files/123004680.pdf.

5 *See, e.g., United Auto. Ins. Co. v. Xunda A. Gibson, M.D., P.A.*, 355 So. 3d 955 (Fla. 4th DCA 2023) (A PIP insurer filed a confession of judgment in the amount of $21.31 in benefits and $7.00 in interest and conceded the assignee medical provider's entitlement to attorney fees under section 627.428. The trial court granted the provider's motion for fees in the amount of $10,328.80, with interest. Although the appellate court reversed and remanded because part of the attorney fee award was founded upon pre-litigation conduct, the appellate court did not disturb the finding that the provider was entitled to its attorney fees no matter the low value of the claim.).

6 *Restoring Balance*, *supra*, at 13.

7 Commissioner David Altmaier, *The Florida Property Insurance Market and Assignment of Benefits*, Presentation to the Financial Services Commission at 4 (Feb. 7, 2017), https://www.floir.com/siteDocuments/FSCAOBPresentation02072017.pdf.

8 *Id.*

9 *Id.*

10 *See* Fla. H.R. Subcomm. on Civ. Just., CS/CS/HB 7065 (2019), Final Bill Analysis 6 (May 28, 2019).

11 *See* Ch. 2019-57, § 1, Laws of Fla. (codified at § 627.7152, Fla. Stat. (2020)) (CS/CS/HB 7065 (2019)).

12 *See id.*

13 Ch. 2021-77, §§ 6, 9, Laws of Fla. (amending § 626.9373, Fla. Stat. (2019), § 627.428, Fla. Stat. (2019)) (CS/CS/CS SB 76, §§ 6, 9 (2021)).

14 Ch. 2021-77, § 12, Laws of Fla. (codified at § 627.70152, Fla. Stat. (2021)) (CS CS/CS SB 76 § 12 (2021)).

15 Fla. Legis., *Joint Proclamation to the Members of the Florida Senate and the Florida House of Representatives* (Dec. 6, 2022), https://www.myfloridahouse gov/FileStores/Web/HouseContent/Approved/Web%20Site/uploads/documents proclamations/Joint%20Proclamation%202022%20SSA%20December%2012 14.pdf; Communications Director Taryn Fenske, *Memorandum Re: Calling on the Legislature to Hold a Special Session Regarding Property Insurance* (Apr. 26, 2022), https://www.flgov.com/2022/04/26/calling-on-the-legislature-to-hold-a-special-session-regarding-property-insurance/ (last visited August 27, 2024).

16 Ch. 2022-268, §§ 11-12, Laws of Florida (amending §§ 626.9373, 627.428, Fla Stat. (2021)) (CS/SB 2D, §§ 11-12 (2022)).

17 Ch. 2022-268, § 16, Laws of Fla. (amending § 627.70152 (2021)) (CS/SB 2D, § [16] (2022)).

18 Ch. 2022-271, §§ 6, 13, 17, Laws of Fla. (amending § 626. 9373, Fla. Stat. (2022). § 627.428, Fla. Stat. (2022), § 627.70152, Fla. Stat. (2022)) (SB 2A, §§ 6, 13, 17 (2022)).

19 *See, e.g.*, Restoring Balance, *supra*, at 19-23 (discussing use of AOBs in context of auto glass repairs); Fla. Justice Reform Inst., *2017 AOB Update* 4 https://www.fljustice.org/files/126949990.pdf.

20 CS/CS/HB 837, §§ 2, 5, 10, 11, 12, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26 (2023) (repealing §§ 626.9373, 627.428, Florida Statutes, and making other revisions to account for that repeal).

21 Ch. 2023-15, § 2, Laws of Fla. (codified at § 86.121, Fla. Stat.).

22 *Id.*

23 *See, e.g.*, Fla. S. Comm. on Appropriations, recording of proceeding, at 3:19:30 (May 23, 2022), https://thefloridachannel.org/videos/5-23-22-senate-commitee-on-appropriations/ (last visited August 27, 2024) (discussing 2022 SB 2D).

24 Fla. S. Comm. on Appropriations, recording of proceeding, at 3:03:00 (May 23, 2022) https://thefloridachannel.org/videos/5-23-22-senate-committee-on-appropriations/ (last visited August 27, 2024) (discussing 2022 SB 2D).

25 *Delgado v. Citizens Prop. Ins. Co.*, No. 2019-000185-CA-01 (Fla. 11th Cir. Ct. Jan. 4, 2021) (Final Judgment for Attorney Fees).

26 *See, e.g.*, Fla. S. Comm. on Appropriations, recording of proceeding, at 2:25:20 (May 24, 2022) https://thefloridachannel.org/videos/5-24-22-house-appropriations-committee-130-pm/ (last visited August 27, 2024).

27 472 So. 2d 1145, 1150-52 (Fla. 1985), *holding modified by Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828 (Fla. 1990).

28 *Id.* at 1151.

29 555 So. 2d 828 (Fla. 1990).

30 *Id.* at 831.

31 These factors are:
(1) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly.
(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
(3) The fee customarily charged in the locality for similar legal services.
(4) The amount involved and the results obtained.
(5) The time limitations imposed by the client or by the circumstances.
(6) The nature and length of the professional relationship with the client.
(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
(8) Whether the fee is fixed or contingent. *Rowe*, 472 So. 2d at 1150.

32 *Quanstrom*, 555 So. 2d at 834; *see also State Farm Fire & Cas. Co. v. Palma*, 555 So. 2d 836, 838 (Fla. 1990).

33 505 U.S. 557 (1992).

34 *Id.* at 562.

35 *Id.* at 563.

36 228 So. 3d 1122 (Fla. 2017).

37 *Id.* at 1127.

38 *Joyce*, 228 So. 3d at 1135-39 (Canady, J., dissenting).

39 *Id.* at 1140-41.

40 *Id.* at 1140.

41 *See* CS/CS/CS SB 76 §§ 1, 6, 9 (2021).

42 *See Maso LLC v. Citizens Prop. Ins. Corp.*, Case No. 2018-021168-CA-01 (Fla. 11th Cir. Ct. Jun. 6, 2019) (Order Awarding Attorney Fees); *Bush v. Homeowners Choice Prop. & Cas. Ins. Co.*, Case No. 12-CA-19360-O (Fla. 9th Cir. Ct. Mar. 28, 2018) (Final Judgment); *Martinez v. Universal Prop. & Cas. Corp.*, Case No. 2011-012845-CA-01 (Fla. 11th Cir. Ct. July 19, 2018) (Order); *Cabrera v. Tower Hill Preferred Ins. Co.*, Case No. CACE14007966 (21) (Fla. 17th Cir. Ct. 2018) (Order Awarding Attorneys Fees); *Defreitas v. Citizens Prop. Ins. Corp.*, Case No. 2015-026365-CA-01 (Fla. 11th Cir. Ct. Feb. 14, 2018) (Final Judgment Awarding Attorney Fees and Costs); *Kile v. Sec'y First Ins. Co..*, Case No. 05-2015-CA-040091-XXXX-XX (D) (Fla. 18th Cir. Ct., Feb. 14, 2017) (Final Order on Award of Plaintiff's Attorney Fees and Costs); *Anderson v. Citizens Prop. Ins. Corp.*, Case No. 51 2011 CA 0821 ES (Fla. 6th Cir. Ct. Jan. 7, 2016) (Final Judgment Awarding Attorney Fees and Costs); *Carter v. Castle Key Ins. Co.*, Case No. 2015-CA-003033 (Fla. 2d Cir. Ct. Oct. 6, 2016) (Final Judgment); *Sunshine State Ins. Co. v. Davide*, 117 So. 3d 1142 (Fla. 3d DCA 2013); *Taylor v. People's Trust Ins. Co.*, Case No. 50-2011-CA-001265-XXXX-MB (Fla. 15th Cir. Ct. Oct. 5, 2011) (Final Judgment).

43 Case No. 12-CA-19360-O (Fla. 9th Cir. Ct. 2018).

44 *Id.* (Aug. 28, 2015 Final Verdict; Mar. 28, 2018 Final Judgment on Fees and Costs).

45 *See, e.g.*, Fla. S. Comm. on Appropriations, recording of proceedings, at 3:19:30 (May 23, 2022) https://thefloridachannel.org/videos/5-23-22-senate-committee-on-appropriations/ (last visited August 27, 2024) (discussing 2022 SB 2D).

46 Ch. 2022-268, § 16, Laws of Fla. (amending § 627.70152, Fla. Stat. (2021)) (CS SB 2D, § 16 (2022)).

47 Ch. 2023-15, § 1, Laws of Fla. (creating § 57.104(2), Fla. Stat.) (CS/CS/HB 837, § 1 (2023)).

48 *See, e.g.*, Fla. H.R. Comm. on Judiciary, recording of proceedings, at 1:29:05 (Mar. 8, 2023) https://thefloridachannel.org/videos/3-8-23-house-judiciary-comittee/ (last visited August 27, 2024) (discussing proposed amendment to HB 837 (2023)).

49 Fla. S. Comm. on Fiscal Policy, recording of proceedings, at 1:38:40 (Mar. 14,2023), https://thefloridachannel.org/videos/3-14-23-senate-committee-on-judiciary/ (last visited August 27, 2024) (discussing 2023 SB 236).

50 *Id.* at 1:22:00.

51 § 768.0427, Fla. Stat. (2023).

52 *Id.* § 768.0427(2)(b).

53 *Id.* § 768.0427(2)(b), (c).

54 *Id.* § 768.0427(3).

55 Data is on file with the Florida Justice Reform Institute.

56 Data is on file with the Florida Justice Reform Institute.

57 Ron Hurtibise, Sun-Sentinel, *Lawsuits against Florida's top property insurers decline. Is it a sign reforms are beginning to work?* (Jan. 4, 2024).

58 *Id.*

59 Patrick R. Fargason, The Florida Bar News, *Comprehensive Tort Reform Spurs Record Filings* (Apr. 6, 2023), https://www.floridabar.org/the-florida-bar-news/comprehensive-tort-reform-spurs-record-filings/ (last visited August 27, 2024); *see also* Greg Fox, WESH, *Florida courts flooded with civil cases as tort reform bill becomes law* (Mar. 28, 2023), https://www.wesh.com/article/tort-reform-florida/43444303 (last visited August 27, 2024); John Kennedy, USA Today Network – Florida, *Fear of new limits prompts flood of lawsuits before DeSantis signed restrictions into law* (Mar. 24, 2023), https://www.tallahassee.com/story news/politics/2023/03/24/thousands-lawsuits-filed-florida-before-limits-kick-in-desantis/70045705007/ (last visited August 27, 2024); Press Release by Osceola Clerk of the Circuit Court and County Comptroller, *Statement from the Honorable Kelvin Soto, Esq., Osceola Clerk of the Circuit Court & County Comptroller, on the Passage of HB 837* (Mar. 28, 2023), https://osceolaclerk.com/statement-from the-honorable-kelvin-soto-esq-osceola-county-clerk-of-the-circuit-court-county comptroller-on-the-passage-of-hb-837/ (last visited August 27, 2024).