

Claims Scuttlebutt

Insurance happenings in Florida, Louisiana, Texas and North Carolina

Scuttlebutt: Naval term for drinking fountain where the latest news is shared.

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Reflections on 2024

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NC Supreme Court - Coverage for COVID-19

NC Supreme court joins one other state granting Business Interruption coverage for COVID-19



Image: NOAA

Reflections on the end of 2024

As 2024 comes to an end and we reflect upon the year that was forecast to be one of the most active seasons on record due to near record warm ocean temperatures and reduced wind shear in the Atlantic due to La Nina conditions, we remember a year that started with the earliest category 5 Atlantic hurricane, Beryl and was punctuated by four more major hurricanes that inflicted at least \$232 billion in damages and over 400 deaths. Insurance companies rallied and in Florida claims were paid more quickly than ever before thanks to stronger regulations and tighter requirements from the insurer accountability act, though despite the good done by carriers in the stricken areas I am concerned with the overall sentiment towards insurance in the United States. The brazen murder of United Health Care CEO, Brian Thompson, on December 4 apparently due to issues the suspect had with the insurance industry resonated with many Americans who have lent support to the suspect through social media and GoFundMe GiveSendGo campaigns. Some have referred to the suspect as a hero - even one of his former teachers stated that she had "never been prouder to be a professor" after the assassination. A woman in Florida was arrested 8 days later after she referenced the words on the shell casings found at the murder - she was upset with a health insurance claim and told Blue Cross Blue Shield on a recorded call "Delay, deny, depose, you people are next."

The murder and the vocal support for the suspect is a bell weather for us in other parts of the insurance industry. They clearly indicate the negative attitude that many in America have towards health insurance and given the challenges of a destructive hurricane season coupled with steep increases in homeowner insurance premiums over the past few years, the property insurance environment in the southeast is at a precarious point. Enter 60 minutes reporting of a Hurricane Ian claim that offered one side of the story in early

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October, and then the Weiss Ratings report that misrepresented claims denials in Florida from 2023. They furthered the false public narrative popularized by Al Bundy on Married with Children who said, "Insurance is like marriage. You pay, pay, pay and you never get anything back." These reports eroded trust of the property insurance industry that was valiantly and honestly addressing tens of thousands of claims from back-to-back Hurricanes Helene and Milton. Taken in light of the intense property insurance environment in the southeast, Dr. Weiss's report potentially endangers property insurance company executives, agents and others in the industry. His failure to accurately characterize and separate claims denials, from claims below deductible, withdrawn and duplicate claims was reckless. For example, Citizens of Florida was singled out in Weiss' report for "denying" over 50.4% of their 2023 claims - this was such a mischaracterization of the claims as even Weiss acknowledged that the claims he reported as "denied" included duplicate claim, withdrawn claims and claims that fell below the policy deductible. Florida OIR issued a subpoena to Weiss over the misleading reports, and those knowledgeable of the facts have attempted to correct the public record. Citizens CEO Tim Cerio in his public report to the Board of Governors on December 4 provided the real statistics from 2023 and from the hurricanes of 2024. He shared that from Hurricanes Debby, Helene and Milton that included both wind and flood damages there were only 13.2% fully denied claims. He made it clear that Citizens is not a for profit entity, and that they have zero financial incentive to not pay claims. Citizens Chief Claims Officer Jay Adams presented the same information on December 5 to the Florida Chamber of Commerce at their annual insurance summit. Most recently, former Deputy Insurance Commissioner of Florida, Lisa Miller, had a conversation with Locke Burt, CEO of Security First Insurance on her podcast that does a good job explaining the fallacies of Dr. Weiss's reporting - the full podcast can be found [here](#).

I understand how the comical Al Bundy arrived at his cynical statement, but after several years in the property insurance industry I can attest that every carrier I worked for or with wanted to pay claims fully within the limitations of the policy. They never directed "low balling" estimates or finding reasons to deny claims, rather the attitude was always find coverage if it can be found to pay the claim. My personal best day in the industry was a day at an insurance village following a hurricane where I was face to face with an anguished, elderly policy holder who was uncertain how to proceed because of a misunderstanding earlier in her claim. At the end of our hour together, I was pleased to tell her that her insurance company was going to pay for all her repairs and for her hotel while the property was unlivable. She did not expect to be reimbursed for her additional living expenses, and after her brief tears of joy her hug and smile were the highlights of my deployment. I was thankful that I was in a position to help her, and I wish I could have helped her earlier. Anyone reading this who has worked as an adjuster has stories just like this, and I guarantee that their "best day" was not a day that they told a policy holder "no," rather it was a day that they told the policy holder "yes." I sincerely hope that as we move into 2025 there is more reporting about the good that insurance carriers do. I hope that the frustration with the health insurance industry finds resolution, but that it does not bleed into the property space where every carrier I know is doing their best to get policy holders back to where they were before the loss happened.

Florida OIR: no major legislation in 2025

At the Florida Chamber of Commerce Insurance Summit in Orlando, Deputy Commissioner Virginia Christy said that the Office of Insurance Regulation is not seeking new insurance legislation this year, and that the reforms initiated over the previous years are working. The Florida insurance market is improving: litigation is down, new insurance companies are entering the Florida market and Citizens Insurance is below one million policies for the first time since July 2022.

This comes after the incoming Florida Senate President issued strong remarks about property insurance companies, though no specific agenda items have been proposed for the coming sessions.

With the high premiums and reporting of "denied" claims discussed in the first part of this newsletter, property insurance remains a hot topic in Tallahassee. Clearly the reforms are working, but there will still be some pressure to do something this year. The best guess is that OIR and the legislature will team up to clarify and formalize the temporary requirements put in place with Emergency Rule 69ber24-4.

Texas Courts Uphold Appraisal Causation

In *Rios v Homesite Insurance Company*, the insured filed a motion to set aside an appraisal award because the insured believed the appraisal panel exceeded its authority when it considered causation. The court rejected the insured's motion

As background, the insured filed a wind-hail claim and the carrier provided coverage for wind damage to the fence, but it did not find any wind or hail damage to the roof. The insured disputed the findings and filed suit against the carrier. Both parties agreed to submit to appraisal to set the amount of loss where the umpire and carrier appraiser signed an award that did not include the roof. This was disputed by the insured's appraiser who argued that the panel should not have considered causation as the umpire and carrier appraiser determined that the roof damages were the result of improper installation.

The carrier paid the award plus pre-judgment interest and then filed a motion for summary judgment based upon the award payment estopping the breach of contract suit. The insured filed the motion to set aside the appraisal award in response.

In Texas the courts have recognized that an appraisal panel must consider causation since setting the amount of loss requires the appraisal panel to separate damages caused by the claimed cause of loss from damages from anything else, so the courts denied the motion to set aside the award. Furthermore, the courts granted the carrier's motion for summary judgment because also in Texas the insured cannot maintain a breach of contract claim after the timely payment of an appraisal award.

US Senate Climate-Driven Insurance Crisis

The Senate Budget Committee released their report of Climate-Driven Insurance troubles this December following two years of an investigation that began looking into risks that climate change posed to the financial industries and the US economy. The investigations were in response to the reporting of troubled insurance markets in Florida, Louisiana, California and Texas, but they expanded the investigations to include insurance markets throughout the United States.

They looked at non-renewal rates as there is a direct correlation in markets with higher non-renewals to higher premiums and can be an early warning sign for the insurance market in the area. They found that the counties with the highest non-renewal rates were in the areas most exposed to wildfires and hurricanes, and they also found that Florida, Louisiana, California and Texas are not the only states to experience spiking premiums and non-renewal rates. In fact, Texas was not even in the top ten of these states.

The Budget Committee report can be found [here](#).

As a result of the higher premiums, there is an opening for E&S carriers to expand their market share. The E&S market was flat year over year until 2018, and every year since the E&S market has grown consistently. This trend not going to slow down as long as non-renewals and premiums continue to rise.

NC Supreme Court Grants COVID-19 Coverage

In December, the North Carolina Supreme Court found in favor of a group of North Carolina restaurants overturning a court of appeals opinion and granting coverage for a business interruption claim associated with the government shutdown during the COVID-19 pandemic. North Carolina is in the minority and joins Vermont as the only state supreme courts that have found coverage for policy holders in the matter of COVID-19 business interruption claims.

At the center of the COVID-19 debate is the interpretation of phrase "physical loss" that is necessary to reach coverage. Most states have applied the interpretation of "physical loss" to require material change to the physical property, and that the potential presence of the virus did not alter or damage the property. However, the North

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Carolina supreme court rejected that argument noting that the term “physical loss” is ambiguous and should be interpreted in a broader sense in favor of the policyholder. It is important to note that the policy in question with Cincinnati Insurance was an all-risk policy and does not contain a virus exclusion as many commercial policies adopted after the SARS outbreak.

The court held the position that an all-risk policy provides coverage for situations where property was rendered unfit or unsafe for its intended use, regardless of whether there was a physical alteration to the property. The court referenced a New Hampshire decision (Mellin v. Northern Security Insurance (2015)) that determined “physical loss may include not only tangible changes to the insured property, but also to changes that are perceived by the sense of smell and that exist in the absence of structural damage.” In that case a condominium owner received coverage for loss of use of their condo due to a strong cat urine odor from the unit below. Interestingly, the New Hampshire courts later differentiated coverage for the smell of cat urine from the claims made for COVID-19, but the North Carolina supreme court ignored the New Hampshire distinction ultimately giving coverage for COVID-19 business interruption in the state of North Carolina where the policy does not have a virus exclusion. Attorney Chip Merlin wrote a blog about how New Hampshire justified the differences between cat urine and COVID-19, which can be found [here](#).

The North Carolina decision reinforces the concept of insurance as a contract of adhesion and ambiguity is determined in favor of the policy holder who had no part in drafting the contract, and it is likely that the few carriers without virus exclusions in North Carolina will be amending their policy forms in the near future. However, North Carolina has a three-year statute of limitations to bring a law suit, and since the COVID-19 government shut downs were outside of the statute of limitations it is unlikely that new law suits will be accepted by the courts in the state.

Lozano Update

We are thankful for everyone who worked with Lozano in 2024, and we are excited about where we will go in 2025. Lozano submitted an application to Texas Windstorm Insurance Association (TWIA) / Texas Fair Plan Association (TFPA) in response to their Request for Qualifications seeking new vendors for the 2025 CAT season. We hope to hear back good news in February so that we can get started building the systems and certifications to work their claims in Texas next year! Lozano also began a trial period with American Traditions Insurance in Florida, where we will work some of their wind and hail claims this winter. We are hopeful this will develop into a strong relationship once American Traditions sees the high quality, professional work of Lozano’s adjusters, ultimately leading to a CAT contract for 2025. Finally, we will be attending the Verisk Elevate conference in Salt Lake City February 3-5 - we hope to see some of you there. Wishing everyone a happy new year and that we can all thrive together in 2025!



Lozano Insurance Adjusters is a customer-centric adjusting firm that has worked over 300,000 claims in the southeastern United States. Our executive team combines years of military leadership and management experience running an independent adjusting firm. We understand the challenges and concerns of insurance carriers as well as their customers, and we tailor our work to their specific needs. We strive to deliver personalized service and empathy to develop the best outcome for the claims entrusted to us. Your claim is our commitment. If you are interested in joining our team register on our [website](#).