Cambo Ferry, PLLC

March 19, 2025

Cambo Ferry, PLLC Opposes HB 1551

To whom it may concern:

We write to oppose HB 1551.

1. **The 2021 and 2022 Statutory Reforms Must be Given Time to Take Full Effect.**

The elimination of one-way attorneys' fees in 2022 was a major contributing factor towards the stabilization of the property insurance market in Florida. Before these reforms were enacted, the Plaintiffs' bar had perfected the practice of turning low severity damage claims into total losses, multiple suits, and high attorney fee awards and settlement. This resulted in carriers and court systems being inundated with low-severity damage claims driven by an all-but-guaranteed recovery of statutory attorney fees, costing insurers and Florida taxpayers billions of dollars per year and resulting in nearly a dozen insurer insolvencies.

However, since the reforms were implemented, Florida has seen a significant decrease in the number of property claims reported and the number of property claims litigated. These reforms were never meant or designed to be temporary efforts or a band-aid.

When SB 76 was enacted in 2021 and SB 2A and SB 2B were enacted in 2022, we understood that it would take between two to five years to reverse the damage and stabilize Florida's crippled property insurance market. It has only been two years since the 2022 Property Insurance reforms were implemented and the results and data are compelling. Before the 2022 reforms, Florida accounted for nearly 80% of the nation's homeowner insurance lawsuits while representing only 9% of total claims. Today, the data provided by our clients confirms that they have seen between 50-60% decrease in litigation. Since the 2022 reforms were implemented, the data provided by our clients confirms that over 60% of the claims for which a Notice of Intent to Initiate Litigation was filed are resolved through the Notice of Intent process.

The Plaintiffs' bar and supporters of HB 1551 claim that the decrease in claims and litigation is due to perceived lack of access to the courts and reforms that tilted too far in favor of carriers. However, this is not accurate. The statutory Notice of Intent Process forces both parties to the table to try and resolve their differences before a lawsuit can be filed. The elimination of statutory attorneys' fees has also had that very intended effect – the deterrence of exaggerated and fabricated claims and lawsuits.

All this progress is directly threatened by HB 1551. If passed, this bill would establish a system in which "prevailing parties" may be awarded their fees in insurance litigation. However, to call this legislation a "prevailing party" bill is a misnomer at best, and a lie at worst.

2. This Bill is Not a "Loser Pays" Statute, rather it is Back Door One-Way Fees.

We are attorneys and understand that, on the surface, this bill appears reasonable. However, as drafted, HB 1551 is based on a subjective, ambiguous, and undefined reasonableness standard. Allowing this will once again open the door to exorbitant fee awards rendered by trial court judges and would lead to a litigation environment that lacks clarity, uniformity, and security. Under House Bill 1551, the proposed attorney fees' statute is not a true prevailing party statute as it will be manipulated by the trial bar. The only way it will not be manipulated is if the trial results in a full defense zero verdict.

The stated goal of HB 1551 is to create a prevailing party standard for the recovery of attorneys' fees, known as "loser pays." However, if this bill were to pass as phrased, it would not accomplish its stated goal. On the contrary, it would operate in practice to eliminate the true prevailing party statute and replace it with a one-way Plaintiff attorney fees-based statute. By removing the current ability to settle suits in litigation for both insureds and insurers, HB 1551 would allow Plaintiff attorneys to control which party is the prevailing party. Further, whether Plaintiff would be entitled to attorneys' fees pre-suit is ambiguous, and it will result in multiple lawsuits to define the scope and process, will result in larger payments to account for attorney fees and costs, and will result in more expensive litigation and insurance premiums.

Since this bill repeals the Proposal for Settlement statute and replaces it with a more limiting and virtually impossible process for insurers to be able to be found to be the prevailing party, it operates to provide the Plaintiffs' bar with the methodology to ensure that they are the prevailing party. Although this is not the intent of the bill, the effect will be that Plaintiffs' counsel is handed the reins and full control over the claim process, which will delay the prompt resolution of insureds' suits, and will result in the retreat of reinsurer participation while increasing the rates for those reinsurers who remain in the state. The bill contains no defined standard to determine if the offer that they make will be deemed to be a "good faith settlement offer." Much like the litany of litigation that has occurred and been decided over the last few decades regarding the Proposal for Settlement statute - the enactment of House Bill 1551 will result in the same multitude of decades of litigation, if not more. But that litigation will take place in an environment where reinsurers and insurers will be leaving the state of Florida due to the uncertainty and increased litigation that will result after the reforms of 2022.

By way of background, under the current Proposal for Settlement statute, both insureds and insurers can file a proposal for settlement. There are two types of proposals that can be filed: (1) a proposal that is inclusive of attorneys' fees; or (2) a proposal that is exclusive of attorneys' fees – in other words, a proposal for indemnity only. What this means is that when calculating and determining "indemnity," in order to make an offer, we look only to the cost of repairs (i.e., how much will it cost to replace the roof) without regard to attorney's fees and costs.

If the proposal is exclusive - that means that the amount of the proposal relies solely on the amount of damages or indemnity, and the court then determines the amount of attorney fees for the prevailing party. If the proposal is inclusive - that means that the attorney fees and costs are both considered in the amount of the proposal. Furthermore, the operating Proposal for Settlement

statute includes a 25% differential that determines which side is able to get fees. That 25% is a "cushion" that allows insurers to try to guess the amount of attorney fees and costs if they decide to file an inclusive PFS, without having to guess down to the exact penny.

Indeed, the two statutes (other than the Proposal for Settlement statute, Fla. Stat. §768.79) that provided for statutory entitlement attorney fees never considered the amount of Plaintiff's attorney fees. The first, Fla. Stat. §627.428, only required "rendition of a judgment or decree by any of the courts of this state against an insurer" without consideration of the amount of attorney fees or costs. Next, Senate Bill 76 in 2021, the statute specifically excluded attorney fees and costs to determine the amount in dispute. House Bill 1551 is contrary to all the prior law in Florida to determine entitlement to attorney fees, as it requires the insurer to guess the exact amount of Plaintiffs' attorney fees and costs to make a "good faith settlement offer." However, the amount of attorney fees and costs is in the complete control of the Plaintiffs' attorney and completely unknown by the insurer. Furthermore, the statute does not define a "good faith settlement offer" and who or what determines what constitutes a "good faith settlement offer." Without a definition or clear parameters as to what constitutes a "good faith settlement offer" under this statute, it will effectively be impossible for the court or jury determine that the offer was made in good faith. This will lead to increased litigation over the amount of fees and whether an offer was made in good faith.

In practice, what this would mean is that under House Bill 1551, to determine which party is the "prevailing party" the insurer is required to first guess the exact amount of what the jury will find as covered damages. Then the insurer is again required to guess the exact amount of Plaintiffs' attorney fees and costs. Then from these guesses, compute a "good faith settlement offer" for what it believes is the exact amount of both. After that, then insurer must litigate the case all the way through trial, receive a verdict, and, unless that verdict is zero, wait for a hearing on attorney fees and costs before some currently unknown process decides if the offer made by the insurer was made in "good faith." **This also means that consumers would have to go through this full process to determine whether the consumer or the carrier is entitled to attorney's fees and costs.**

In short, there would be no disincentive to litigation, and Florida would revert to the previous environment which fostered the perpetuation of low severity damage claims and lawsuits and high recovery of fees and damages.

3. The Bill, as Drafted, Leaves More Questions than Answers.

HB 1551 is completely ambiguous, which will lead to multiple lawsuits up to the Florida Supreme Court to determine the legislative intent and scope of the proposed statute. Some of the issues that will be litigated because of the ambiguity are the following:

- What exactly is a good faith settlement offer?
    - What information was considered and how did the Insurer determine it made a good faith settlement offer?
    - How did the insurer determine the amount of attorney fees and costs?
    - Can the good faith settlement offer have a release as part of the offer?

- When can or must the good faith settlement offer be made by the insurer?
    - During the claim process?
    - Upon receipt of the Notice of Intent to Litigate under Fla. Stat. §627.70152?
    - At any time during litigation?
- Will the pre-suit fees and costs of the attorney be included as part of the "judgment"?
    - If so, will those costs include subcontractors used by the attorneys such as estimators, appraisers, public adjusters?
- Does the judge or the jury decide what is a good faith offer?
    - If it is the judge, is it a subject or objective standard?
    - If it is the jury, what are the standard jury instructions going to say?
- How does the bill and fee award affect the fee-shifting in the non-binding arbitration statute?
- Will this eliminate the fee shifting already provided by Fla. Stat. §44.103 which already awards prevailing fees upon the rendition of a judgment exceeding the arbitration award.

Based on this, the bill, as drafted, is unworkable. There must be another solution.

Another issue with House Bill 1551 is that, also contrary to pre-reform Fla. Stats. §§627.428, 627.70152, and the Proposal for Settlement statute, it allows Plaintiff attorneys to get attorney fees for work performed *prior* to filing suit. This is even more expansive than the prior system and Fla. Stat. §627.428 that brought Florida's property insurance market to the brink of collapse.

Please ask yourself this: "How can adding in yet another a statutory fee provision be the solution to expediting a fair and reasonable claim settlement for policyholders?" The answer is: it cannot.

4. Should the Bill Pass, Florida's Insurance Market Will Crumble.

The consequences of passing this bill would not be theoretical or academic – they would be catastrophic and immediate. If lawmakers dismantle the 2022 reforms and protections, the private market and reinsurers, who are just now regaining confidence in the Florida market, will take their business elsewhere. Property insurance carriers will also either leave or again go insolvent.

As it stands, following the 2022 legislative changes, nearly 400,000 policies were depopulated from Citizens Property Insurance Corporation and moved to the private market. If the private insurance market collapses again, Florida will have one option left: state-run insurance. State-run insurance is intended to be the insurance of last resort, yet it will become primary again. To get an idea of what that would look like, all one has to do is look at the federally controlled flood program, the National Flood Insurance Program, which is underfunded, inefficient, and largely ineffective.

This bill will be a boon for the trial bar, resulting in more litigation and fewer pre-suit settlements due to the perverse incentive created by HB 1551 which would allow for the refusal of pre-suit offers in order to drum up attorneys' fees in litigation with impunity. The only party that stands to gain from these proposed reforms is the Plaintiffs' bar, whereas the consumer will see delayed claim settlements, higher reinsurance rates, and higher insurance rates.

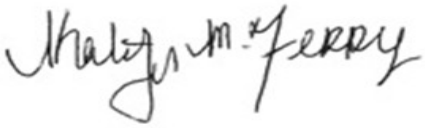
Passing HB 1551 would send a clear message to reinsurers: Florida has chosen to welcome back an unstable, uncertain, litigation-driven system with open arms. Reinsurers will respond immediately by either refusing to do business with Florida property insurance carriers, or by increasing their rates. Those costs will be passed directly to insurers, who will be forced to pass them on to homeowners. All of this would undermine and undo the competitive insurance market that allows our constituents and consumers to access affordable and reliable property insurance coverage.

The current system in place allows for the Plaintiffs' bar and the consumer to hold carriers accountable when necessary. This proposed bill would operate to reintroduce the same type of litigation loopholes that destabilized the property insurance market which necessitated the 2022 property insurance reforms in the first place.

The legislature must reject HB 1551, as it would effectively erase the progress and stability that has been reintroduced to Florida's property insurance market.

Sincerely,

Cristina P. Cambo, Esq.



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