MAMIC
Maryland Association of Mutual Insurance Companies

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February 15, 2024

The Honorable William C. Smith, Jr.
Chair, Senate Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, Maryland 21401

RE: Senate Bill 538 - Civil Actions - Noneconomic Damages - Personal Injury and Wrongful Death - UNFAVORABLE

Dear Chairman Smith and Members of the Committee,

On behalf of the Maryland Association of Maryland Insurance Companies (MAMIC), we respectfully oppose Senate Bill 538.

As you may recall, MAMIC is comprised of 12 mutual insurance companies that are headquartered in Maryland and neighboring states. Approximately one-half of our members are domiciled in Maryland, and are key contributors and employers in our local communities. Together, MAMIC members offer a wide variety of insurance products and services and provide coverage for thousands of Maryland citizens.

Senate Bill 538 completely upends the system of determining noneconomic damages under Maryland's tort liability law that has been in place for many years. MAMIC is aware of no evidence that would support such a radical change. While MAMIC has opposed such legislation in the past, our focus this year is different. The Committee is well aware that inflation has been a major driver in the increasing cost of property and liability insurance in Maryland and across the country. As smaller insurers in the highly competitive Maryland market, MAMIC members strive to keep costs as low as possible for our policyholders.

Like all insurers, MAMIC members must purchase reinsurance – essentially, insurance for insurance companies. The cost of reinsurance has been rising rapidly as well and that places extra pressure on our members who are offering their Maryland policyholders various products and services.

We should point out that MAMIC includes the second oldest mutual insurer in the United States, located in District 46 in Baltimore City. We have other domestic insurer-members headquartered in Bel Air, Hagerstown and Frederick. Other members may be headquartered in adjoining states, but Maryland is a very important market or them. For example, one MAMIC member is a major writer of residential property (homeowners) insurance on the Lower Eastern Shore. Experienced legislators know that coastal insurance exposures are among the most difficult to insure. In short, MAMIC members offer insurance products that is vitally important to many Marylanders.

Understanding that reinsurance is a subject with which Committee members are likely unfamiliar, we believe the attached article about current insurance problems in Florida may be helpful. The last several paragraphs of the article deal with the role of reinsurance and recent cost increases for that product. We offer the article to illustrate the essential role of reinsurance in the entire insurance system.

All MAMIC members depend heavily on solid, stable, reinsurance programs. Reinsurers in Maryland, by extension, depend on a solid, stable, tort liability environment in order to offer their products at affordable rates. The passage of Senate Bill 538 would completely disrupt our statutorily constructed model for assessing noneconomic damages in our State. This model has developed over decades, and it serves Maryland citizens well. To be effective, the model requires a healthy, competitive liability insurance market that can pay claims, including claims for noneconomic damages, when necessary. For these reasons MAMIC and its members do not believe that any material change to the system of ascertaining noneconomic damages is warranted. In fact, we believe the dangers far outweigh any speculative benefit offered by the proponents of this bill. We respectfully request an unfavorable report on Senate Bill 538.

Thank you for your consideration of our views on this legislation.

Sincerely,

Jeane A. Peters, President

cc: Bryson Popham

Insurer’s Retreat in Florida Signals Crisis With No Easy Fix

Farmers is ending some policies in the Sunshine State as insurers struggle with the rising costs of covering climate change-related damage. No one can agree on whom to blame.

Farmers, one of the nation’s largest home insurers, is cutting back on business in Florida.Credit...Kristoffer Tripplaar/Sipa, via Associated Press

By Emily Flitter

Emily Flitter covers finance.
July 14, 2023

Insurers are trapped in a riddle: In a world where the risk of costly disasters is rising but high premiums are squeezing policyholders and angering state regulators, how can they continue to make money?

That question was at the center of the decision by Farmers Insurance this week to stop renewing almost a third of the policies it has written in Florida, becoming the latest insurer to pull business from a state as the industry grapples with the rising costs of covering damage tied to floods, hurricanes, wildfires and other climate-related disasters.

Farmers, one of America’s biggest home insurers, didn’t say what specifically led to its decision. Was the cost of payouts too high in recent years, which saw record-setting numbers of billion-dollar disasters, just as rates charged by reinsurers, which sell insurance to insurers, were rising? Was it too many lawsuits from policyholders? Or is Farmers playing a game of chicken with state regulators, hoping that walking away now will give it leverage to charge customers more in the future?

“A lot of insurers have been losing a lot of money in Florida and they’ve been threatening to leave for years,” said Daniel Schwarcz, a professor at the University of Minnesota Law School who specializes in insurance.

In most states, insurers have to behave like electrical utilities: If they want to increase the rates they’re charging their customers, they have to apply for regulatory approval from the state government to do so.

Insurers’ trouble in raising rates may be among the reasons they are retreating in places like Florida and California, where climate change is causing the costs of paying claims — which insurers refer to as “losses” — to soar. When it’s hard to raise rates as companies have done in certain places, the best business decision is to leave.

In May, State Farm, the country’s largest insurance company, said it would stop selling homeowners’ coverage in California. Last month, Allstate said it had stopped selling new home and commercial policies in the state, citing the worsening climate and rising building costs. Farmers itself said this month that it would limit new homeowners insurance policies in California, citing rising inflation and risks from worsening climate disasters as among the reasons.

More on California

- **San Francisco Mayorship:** Mark Farrell, a venture capitalist who led the city for six months in 2018, wants his old job back. His chances hinge on how far San Francisco residents have moved from the left to centrist politics.
- **Age Is Just a Number:** Edith Ceccarelli is the oldest known person in the United States and the second oldest on Earth. When she had her 116 birthday, a California community made sure to celebrate.
- **A California Radio Station:** KGAY — the only terrestrial radio station in America geared toward L.G.B.T.Q. listeners and their allies — in Palm Springs counts as listeners Gen X and older gay men who enjoy Rihanna but still worship Donna Summer.
- **Pandemic Losses:** California agreed to use at least $2 billion meant for pandemic recovery to help those students who are still trying to catch up after the 2020 school shutdowns as part of a settlement with families in the Oakland and Los Angeles school districts.

Florida law lets regulators deny rate increases or even force insurers to return money to customers if the rates they’re charging or hoping to charge are “excessive,” meaning they could generate a profit regulators consider “unreasonably high in relation to the risk involved.” Floridians already pay more than the national average for homeowners insurance. Insurance on a $250,000 home in Florida cost an average of $1,981 this year, while the national average was $1,428.

Some experts, like Mr. Schwarcz, say state regulators have too much control over how insurers set rates, keeping them artificially low even as the cost of paying out claims after devastating and more frequent storms continues to rise.

Other experts say it’s not less regulation that is needed, but more of it — specifically, better management of so-called reinsurance companies that operate out of the sight of consumers and sell insurance to home and auto insurers to help them manage their risk. These companies have raised their rates sharply in recent years. State regulators have less authority over reinsurers, allowing those companies more freedom to charge insurers rates as they see fit.

Industry groups say that it’s neither of those things and that insurers are folding parts of their business to reduce the number of claims-related lawsuits from policyholders.

“This business decision was necessary to effectively manage risk exposure,” Trevor Chapman, a spokesman for Farmers, said in an email.

Mr. Chapman added that Farmers was not totally pulling out of the state, just ending its home, auto and umbrella policies sold under the Farmers brand. Any damage that occurs to policyholders’ properties before their yearlong policies end will still be covered. The company sells policies under several other brands, which it plans to keep running.

A spokeswoman from the Office of Insurance Regulation said the written notice the company sent to the regulatory agency on Wednesday was marked as a “trade secret.”

Geography, construction and climate change have made Florida especially vulnerable to damage from natural disasters.Credit...Josh Ritchie for The New York Times

Mr. Schwarcz said Florida’s politicians and regulators should have seen this coming.

The Florida insurance industry has also seen smaller insurers vanish. Over the past two years, eight small insurers have gone bankrupt in the state. The string of retreats and bankruptcies has left many homeowners with few options other than a nonprofit, state-backed carrier.

According to the Insurance Information Institute, an industry trade group, property and casualty insurers have not, as a whole, earned profits on underwriting — or as a result of their overall business activities — in Florida since 2016. The industry’s cumulative underwriting losses have topped $1 billion for the last three years. Last year, the institute said, insurers’ cumulative net income losses in the state totaled $900 million.

“While some states have very bad years financially, like Louisiana in 2020 and 2021 due to the record level of hurricanes, no other state has reported sustained losses for property insurers like Florida has since its last profitable year in 2016,” said Mark Friedlander, a spokesman for the institute, which represents consumer insurance companies.

“The problem is that there’s denial among folks that live in Florida and folks that live in California — and, frankly, the American population — about the dangers that we’re facing,” Mr. Schwarcz said.

His proposed solution: Let insurers charge whatever they want to for policies in disaster-prone areas. Eventually, that would lead people to stop building homes and businesses that were very likely to be destroyed by natural disasters. “That would actually result in a more resilient infrastructure, more adaptive to climate change.”

Birny Birnbaum, an insurance expert who is the executive director of the Center for Economic Justice, a nonprofit working toward equal access to economic opportunity, said Mr. Schwarcz’s idea — letting market forces dictate how homeowners respond to climate change risks — would not fly.

“That’s like saying, ‘As long as I can keep paying more and more each year, I don’t care if my house burns down because there will always be more to pay for it,’” Mr. Birnbaum said. “That’s insane.”

Insurers in Florida and other states where the disaster threats are higher, like California, are struggling because the reinsurance companies they’re turning to for help managing their risks are charging too much, and no one is regulating them, Mr. Birnbaum said.

Reinsurers offer insurance companies a guarantee that if something huge goes wrong like a giant hurricane hitting southwest Florida, they’ll be able to find the cash to pay for it. The reinsurance market, though large, tends to be volatile, with prices spiking quickly just when insurers are least prepared to handle the increases.

Mr. Birnbaum, who sits on a committee that advises the Treasury Department on insurance matters, said reinsurers should have their rates regulated more like consumer insurance companies do. He also argued that the federal government should create a national reinsurance backstop similar to its terrorism insurance program, which guarantees that the government will step in and help cover catastrophic losses once they reach a certain dollar amount.

The Reinsurance Association of America, a leading trade group representing dozens of reinsurers doing business in the United States, did not respond to requests for comment about the role of the industry or debates about more stringent regulation.

The cost of reinsurance in Florida jumped 40 to 70 percent this year over last year, according to the Insurance Information Institute. But Mr. Friedlander, the group’s spokesman, said reinsurance rates were higher in Florida than in other storm-prone states because of insurer losses tied to lawsuits.

“Legal system abuse and claim fraud are the man-made factors that have generated Florida’s property insurance crisis, not catastrophe losses,” Mr. Friedlander said. In Florida, insurance companies feel it’s too easy for people to sue them, he said. More than 100,000 lawsuits have been filed each year against insurers in Florida for the past several years, he added.

Insurers have been demanding more protection from lawsuits, and Florida legislators have recently delivered. Since 2021, the State Legislature has passed five bills to make it harder for policyholders to sue insurers. The new laws change the way policyholders can get compensation for legal costs and prohibit them from passing off responsibility for a claim to a third party, like a construction company, willing to fight for payment.

“These are the first steps toward a stable market environment but it may take several years to see improvements due to the treacherous conditions Florida consumers and insurers have faced for so long,” Mr. Friedlander said.

Emily Flitter covers finance. She is the author of “The White Wall: How Big Finance Bankrupts Black America.” More about Emily Flitter