



ONE-WAY ATTORNEY FEES

FJRI supports SB 236 to extend a provision of 2022 SB 2-A to all litigation and repeal the one-way attorney fee statutes for all litigation.

Issue Background

Under well-established common law rule, neither prevailing plaintiffs nor prevailing defendants are entitled to recover attorney's fees unless authorized by contract or statute. Section 627.428, Florida Statutes, is an exception to that common law rule. Often called the "one-way attorney fee" statute, the law authorizes an award of attorney's fees to certain prevailing parties in disputes with insurers.

Historically, one of the arguments for having a fee-shifting statute was that finding an attorney was no small feat, but while in 1959 there were only 7,520 members of the Florida Bar, today there are 95,483.

In December, 2022, the Legislature passed SB 2-A, which repealed application of the one-way attorney fee for claims arising under residential and commercial property insurance policies.

The Problems

Current Florida law creates a lop-sided system that incentivizes plaintiffs and their attorneys to bring lawsuits, forcing insurers to decide whether to pay a suspicious claim, or fight the claim and be subject to massive attorneys' fees if the judge or jury finds that the plaintiff is entitled to even \$0.01 more than the insurance company paid or offered.

In addition, the one-way attorney fee statute is no longer necessary to ensure insureds find representation. In fact, many of these cases involve service providers using assignments of benefits, standing in the shoes of the policyholder and suing insurance companies without the risk of paying legal fees, even if they lose. Further, many disputes are often over de minimis amounts – the calculation of interest, for example – simply to generate source of attorney fees.

The endless pursuit of one-way fees has infected other first-party insurance coverages, particularly motor vehicle physical damage coverage and personal injury protection insurance, and driven Florida's auto insurance rates far above rates in other states.

The Solutions

The same reasons supporting the end of one-way attorney fees in property insurance coverage disputes requires the end of those fees for other coverages too, which have similarly been plagued by rampant litigation. For all these reasons, the Florida Justice Reform Institute legislation to repeal the one-way attorney fee under sections 627.428 and 626.9373, Florida Statutes.