



# Florida's Latest Legislative Reforms

*2023 LDI Conference*

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**LDI** Louisiana  
Department of  
Insurance

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# Biography

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Fred E. Karlinsky is the Co-Chair of Greenberg Traurig's Global Insurance Regulatory and Transactions Practice Group. Fred has nearly thirty years of experience representing the interests of insurers, reinsurers, and a wide variety of other insurance-related entities on their regulatory, transactional, corporate and governmental affairs matters.

Fred has been recognized for his work in insurance law by *Best Lawyers* and *Chambers and Partners*. In addition to his role with Greenberg Traurig, Fred has been an Adjunct Professor of Law at Florida State University College of Law since 2008, where he teaches a course on Insurance Law and Risk Management. Fred currently chairs the Supreme Court Judicial Nominating Commission, which he has served on since 2014.

# Agenda

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- How We Got Here
- Florida's Insurance Marketplace
- Key Leaders Impacting Florida's Insurance Market
- Past Legislative Reforms
- 2023 Legislative Efforts
- What's Next?



# How We Got Here

# Hurricane Andrew

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Many of the insurance market changes that have occurred nationally over the last two decades can be traced to the wakeup call delivered by Hurricane Andrew. These include:

- More carefully managed coastal exposure.
- Larger role of government in insuring coastal risks.
- Introduction of hurricane deductibles.
- Greater use of reinsurance capital from around the world.
- The birth and rapid evolution of sophisticated catastrophe modeling.
- Strong support for strengthened building codes and the importance of enforcement of these codes, as well as enhanced understanding of the necessity of mitigation.

# Property Insurance Post-Andrew

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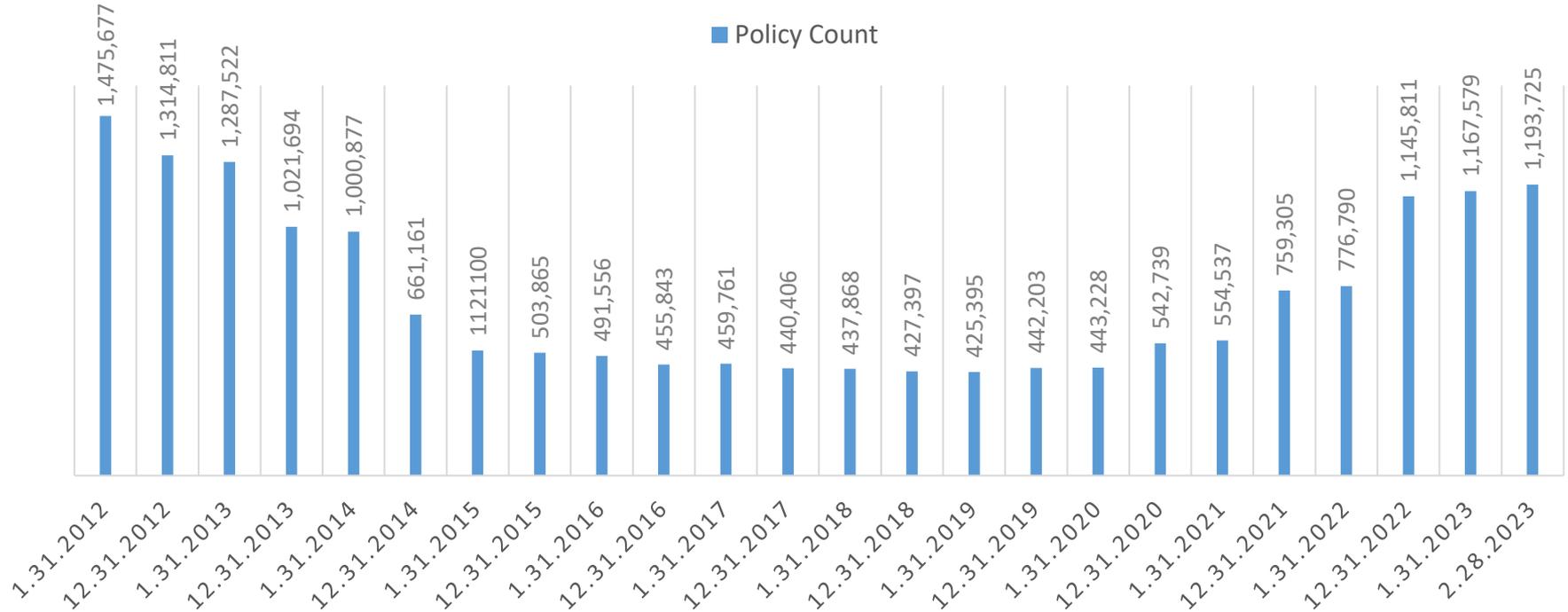
- In 1992, the property/casualty market in Florida was 6 percent domestic carriers and 94 percent foreign
- After Hurricane Andrew, there was 68 percent domestic carriers and 32 percent foreign
- Florida Hurricane Catastrophe Fund was formed in 1993
- Citizens Property Insurance Corporation was formed through the merger of FWUA and FRPCJUA in 2002

# Florida Hurricane Catastrophe Fund

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- Formed in 1993 after Hurricane Andrew caused over \$15 billion in losses
- The State of Florida provided an additional \$2 billion in reinsurance allocated across the 2022 and 2023 hurricane seasons to private insurers, separate from FHCF, to provide another layer of coverage before FHCF reimbursements

# Citizens Property Insurance Corporation



# Citizens Property Insurance Corporation

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- Gov. DeSantis' Comments:
- “Maybe, yeah, I’d be willing to look at that for sure,” DeSantis said. “I think most people know Citizens has not been solvent. If you did have a major hurricane hit with a lot of Citizens property holders, it would not have a lot to pay out.”
- Comments came hours before just hours before the Citizens board of governors voted to spend more in reinsurance bonds.

# Citizens Property Insurance Corporation

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- The board of Florida's Citizens Property Insurance Corporation recently approved the spend necessary to proceed with the issuance of its new \$400 million to \$500 million Lightning Re Ltd. (Series 2023-1) catastrophe bond, the insurers' first industry-loss triggered deal.
- The cost of the Lightning Re cat bond, if it upsizes to the top-end to provide \$500 million of protection, could be around \$61 million in year-one, the board were told.

# Hurricane Ian Claims

Total Estimated Insured Losses: \$13,937,676,794

*OIR required insurers report estimated and paid losses. Estimated or case incurred losses include indemnity case reserves and payments to date.*

Lines of Business	Number of Claims Reported	Number of Open Claims with Payment	Number of Open Claims without Payment	Number of Claims Closed with Payment	Number of Claims Closed without Payment	Percent of Claims Closed
<b>Residential Property</b>	494,078	67,911	41,165	238,843	146,159	77.9%
<i>Homeowners</i>	397,966	55,923	33,486	183,235	125,322	77.5%
<i>Dwelling</i>	52,390	7,397	4,173	26,498	14,322	77.9%
<i>Mobile Homeowners</i>	40,809	4,172	2,769	28,094	5,774	83.0%
<i>Commercial Residential</i>	2,913	419	737	1,016	741	60.3%
<b>Commercial Property</b>	32,869	5,381	13,782	5,189	8,517	41.7%
<b>Private Flood</b>	4,852	1,096	670	2,039	1,047	63.6%
<b>Business Interruption</b>	493	52	79	275	87	73.4%
<b>Other Lines of Business*</b>	175,963	6,927	6,333	138,515	24,188	92.5%
<b>TOTALS</b>	708,255	81,367	62,029	384,861	179,998	79.8%

*Data as of March 9, 2023*



# Florida's Insurance Marketplace

# General Market Conditions

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- Litigious Environment
- Insolvencies
- Net underwriting losses exceeding \$1B each year
- No Replacement Capacity

# Man Made Problems



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# Insolvencies

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- United Property & Casualty Insurance Company – February 6, 2023
- FedNat Insurance Company – September 27, 2022
- Weston Property and Casualty Insurance Company – August 8, 2022
- Southern Fidelity Insurance Company – June 15, 2022
- Lighthouse Property Insurance Corporation – April 28, 2022
- Avatar Property and Casualty Insurance Company – March 14, 2022
- St. Johns Insurance Company- February 25, 2022
- Gulfstream Property and Casualty Insurance – July 28, 2021
- American Capital Assurance Corporation – April 14, 2021
- Florida Specialty Insurance Company – October 2, 2019
- Sawgrass Mutual Insurance Company- October 1, 2018



# Key Leadership

# Governor Ron DeSantis

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# Attorney General Ashley Moody

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# Commissioner of Agriculture Wilton Simpson

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# Chief Financial Officer Jimmy Patronis

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# Insurance Commissioner Mike Yaworsky

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# Legislative Leadership

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Senate President Kathleen Passidomo



House Speaker Paul Renner





# Past Legislative Reforms

# HB 7065 – 2019

## Insurance Assignment Agreements

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- Established requirements for the execution, validity, effect, and rescission of an AOB;
- Capped the amount an assignee can receive under an AOB for a residential property insurance claim executed in an emergency;
- Allowed a policy prohibiting an AOB, in whole or in part, under certain conditions;
- Transferred pre-lawsuit duties under an insurance contract to the assignee;
- Set a formula that determine which party, if any, receives an award of attorney fees in litigation related to an AOB.

# Letter from Insurance Commissioner Altmaier



OFFICE OF INSURANCE REGULATION

DAVID ALTMAIER  
COMMISSIONER

April 2, 2021

Dear Chair Ingolia,

On February 24, 2021, the Office of Insurance Regulation (OIR) had the opportunity to provide you and your Committee with a report related to the challenges currently facing Florida's property insurance market, and the impact to consumers that depend on that market. We appreciate your ongoing leadership and partnership regarding this critical issue, as well as the opportunity to continue serving as a data-driven resource as you address a topic that affects all Floridians.

#### National Litigation Statistics

Since our February 24 response, [linked here](#), OIR has mined additional information from the National Association of Insurance Commissioners (NAIC) Market Conduct Annual Statement (MCAS) Data Call to further provide information on litigation trends in the Florida insurance market. By way of background, MCAS is a regulatory tool developed in 2002 by state insurance regulators to collect information from insurers<sup>1</sup> on a uniform basis in order to identify concerns regarding claims and underwriting. In 2019, over 750 homeowners' insurance companies reported data via MCAS<sup>2</sup> using uniform definitions and reporting requirements across all states.<sup>3</sup> While the NAIC makes certain aggregated data available to the public, other information is considered confidential under Florida law.<sup>4</sup>

OIR has aggregated certain MCAS data in a manner compliant with Florida law to provide information regarding the number of suits opened in the United States<sup>5</sup> for the 2016 – 2019 reporting periods, and the ratio of suits opened in each year to the number of claims opened in each year.

Based on the most recent MCAS data available, in 2019, Florida accounted for 8.16% of all homeowners' claims opened by insurance companies in the U.S. However, in 2019, Florida accounted for 76.45% of all homeowners' suits opened against insurance companies in the U.S.

<sup>1</sup> Participation requirements available here: [https://content.naic.org/sites/default/files/inline-files/2020%20MCAS%20Part%20Reqmts-Gen%20Info\\_.pdf](https://content.naic.org/sites/default/files/inline-files/2020%20MCAS%20Part%20Reqmts-Gen%20Info_.pdf)

<sup>2</sup> Additional Information regarding MCAS can be found at [https://content.naic.org/csr\\_topics/naic\\_market\\_conduct\\_annual\\_statement\\_mcas.htm](https://content.naic.org/csr_topics/naic_market_conduct_annual_statement_mcas.htm)

<sup>3</sup> North Dakota and New York do not participate. Data is collected based on \$50,000 premium threshold.

<sup>4</sup> See sections 624.319(3), 624.4212 and 624.4213, Florida Statutes, which provides for the confidentiality of certain

FINANCIAL SERVICES  
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CHIEF FINANCIAL OFFICER

ASHLEY MOODY  
ATTORNEY GENERAL

NICOLE "NIKKI" FRIED  
COMMISSIONER OF  
AGRICULTURE

Year	Percent of Nationwide Homeowners' Claims Opened in Florida	Percent of Nationwide Homeowners' Suits Opened in Florida
2016	7.75%	64.43%
2017	16.46%	68.07%
2018	11.85%	79.91%
2019	8.16%	76.45%

# SB 76 – 2021

## Property Insurance Reform

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- Required a claimant to provide written notice of intent to initiate litigation at least 10 days before filing suit;
- Created a strong presumption that a lodestar fee is sufficient and reasonable in claims arising under a property insurance policy issued by a surplus lines carrier;
- Established a Demand-Judgment Quotient for the award of attorney fee in a property insurance lawsuit;
- Provided for the use of a roof covering reimbursement schedule a personal lines residential property insurance policy

# 2022 Special Session D

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- The Florida Legislature concluded a Special Legislative Session on May 26, 2022, specifically to address property insurance.
- The Legislature passed two bills – Senate Bill 2D and Senate Bill 4D
- Governor DeSantis signed each on May 26, 2022.

# 2022 Special Session D

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- SB-2D: Property Insurance
  - ❑ Enacts pro-consumer measures to help alleviate rising insurance costs, increases insurance claim transparency, and cracks down on frivolous lawsuits which drive up costs for all Floridians.
  - ❑ Specific provisions include:

# 2022 Special Session D

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- **RAP Program**

- \$2 billion in reinsurance relief through the Reinsurance to Assist Policy (RAP) program to benefit policyholders over the next two years. The program requires insurance companies to file a supplemental rate filing once enrolled in the program to provide relief to policyholders.

# 2022 Special Session D

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- **My Safe Florida Home Program**
  - \$150 million for the My Safe Florida Home Program to provide grants to Florida homeowners for hurricane retrofitting, making homes safer and more resistant to hurricane damage, which can result in premium discounts for those who participate in the program.

# 2022 Special Session D

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- **Roof claims**

- ❑ Prohibiting insurance companies from denying coverage solely based on the age of a roof if the roof is less than 15 years old or if the roof is determined to have at least 5 years of useful life remaining. The bill further prohibits contractors from making written or electronic communications that encourage or induce a consumer to contact a contractor or public adjuster for the purposes of making a property insurance claim for roof damage unless such solicitation provides certain notices.

# 2022 Special Session D

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- **Adjustment of claims**

- The bill requires insurance companies to provide policyholders with a reasonable explanation if they deny or partially deny a claim and provides consumers with greater access to information during the claim adjustment process. More specifically, SB D2 requires property insurers to conduct any physical inspection of the property related to a claim within 45 days of receiving proof of loss statements. This provision does not apply to hurricane claims, however.

# 2022 Special Session D

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- SB-2D further requires insurers to notify policyholders of their right to receive any detailed report generated by an insurer's adjuster that estimates the amount of the loss.

# 2022 Special Session D

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- SB-4D: Building Safety:
  - ❑ Creates new requirements for condominium and co-op buildings three or more stories tall.
  - ❑ The bill requires that the Florida Building Code to stipulate that when 25 percent or more of a roofing system or roof section is being repaired, replaced, or recovered, only the portion of the roofing system or roof section undergoing such work must be constructed in accordance with the current Florida Building Code in effect at that time.

# 2022 Special Session A

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- The Florida Legislature convened for a Special Session specifically to address property insurance and other topics starting December 12, 2022.
- Among the legislation, the Legislature passed Senate Bill 2A, which made sweeping changes to the property insurance claims process, reinsurance, regulation of insurance companies and more.
- Governor DeSantis signed on December 16, 2022.

# 2022 Special Session A

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- SB-2A: Property Insurance
  - ❑ Eliminates one-way attorney's fees, banishes assignments of benefits (AOBs), allows for mandatory binding arbitration clauses in policies, requires a final judgment or decree of an adverse adjudication to have been rendered against the insurer before the filing of a bad faith action, and reduces the deadline for policyholders to report a claim.



# 2023 Legislative Session

# 2023 Legislative Dates

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- August 1, 2022 - Deadline for filing claim bills
- January 27, 2023 - Deadline for submitting requests for drafts of general bills
- March 3, 2023 - Deadline for approving final drafts of general bills
- March 7, 2023 - Regular Session convenes 12:00 noon, deadline for filing bills for introduction
- April 22, 2023 - Motion to reconsider made and considered the same day. All bills are immediately certified
- April 25, 2023 50th day – Last day for regularly scheduled committee meetings
- May 5, 2023 60th day – Last day of Regular Session

# FY 2023-24 State Budget

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- Framework for Freedom Budget (FY 2023-24): \$114.8 billion
  - General Revenue: \$42.4 billion
  - Total Reserves: \$15.7 billion
- Record Taxpayer Savings
- Freedom in Education
- Protecting Natural Resources
- Investing in Infrastructure
- Building a Robust Public Health Network

# Environmental, Social, and Corporate Governance (ESG)

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- Stops financial institutions from discriminating against customers for their religious, political, or social beliefs.
- Bans the financial sector from considering so called “Social Credit Scores” in banking and lending practices.
- Blocks the use of ESG in all investment decisions at the state and local level, ensuring that only financial factors are considered to maximize the return on investment.

# Environmental, Social, and Corporate Governance (ESG)

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- Prohibits state and local governments from using ESG as part of the procurement and contracting process.
- Eliminates consideration of ESG factors by state and local governments when issuing bonds.
- Directs the Attorney General and Commissioner of Financial Regulation to enforce these provisions to the fullest extent of the law.

# Flooding and Resiliency

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- House Agriculture, Conservation & Resiliency Subcommittee
- Senate Select Committee on Resiliency

Source: [ballotpedia.org](https://ballotpedia.org)

# Tort Reform Sponsors

Representative Tommy Gregory & Senator Travis Hutson



# Tort Reform

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- Eliminate one-way attorney fees for all lines of insurance and attorney fee multipliers.
- “Bad faith” law would be modernized to balance the scales between plaintiff attorneys and insurance companies to incentivize good faith between both parties and promote the best interest of the consumer.
- Institute reforms to protect small businesses from being subjected to paying exorbitant damages when they are not primarily at fault.

# Tort Reform

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- Institute reforms to protect small businesses from being subjected to paying exorbitant damages when they are not primarily at fault.
- Set standards for awarding medical damages to prevent fraudulent practices to include requiring medical records, procedure codes, and information regarding health insurance reimbursement to ensure accurate settlements are reached between parties.

# Civil Remedies Legislation

- Modifies the “bad faith framework, eliminates one-way attorney’s fees and fee multipliers, and ensures that Floridians can’t be held liable for damages if the person suing is more at fault.”
- Also expands immunity for property owners who are defending against a criminal who is injured on their property and reduces the statute of limitations for general negligence cases from four years to two years.
- Makes changes to Florida’s comparative negligence system so a plaintiff who is more at fault for his or her own injuries than the defendant cannot generally recover damages from the defendant.
- Expands immunity for property owners who are defending themselves from a lawsuit against a criminal actor who was injured on the property and requires a judge or jury to consider the fault of all persons who contributed to an injury.

# Civil Remedies Legislation

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- CS/CS/HB 837 passed largely along party lines off the House floor with an 80-31 vote.
- Senate adopted CS/CS/HB 837, passing the measure off the Senate floor with a 23-15 vote.
- Governor Ron DeSantis swiftly signed the tort package into law on March 24.



**What's Next?**

# Civil Remedies Legislation Fallout

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- Plaintiff lawyers moved to file tens of thousands of claims lawsuits before the new restrictions kick in.
- An email from one of Florida's largest insurance defense law firms was sent to the firm's lawyers and has been forwarded around the state.
- Email relates to a phone conversation with Matt Morgan, partner with Morgan & Morgan, one of the country's largest plaintiffs' firms.
- Morgan noted that the Orlando-based firm will have filed 25,000 insurance-claim cases by end of last week.

# Civil Remedies Legislation Fallout

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- According to reports, other plaintiffs' firms took similar actions and the state saw as many as 100,000 suits total.
- John Morgan, head of the firm, said last Thursday in a statement to Insurance Journal: "At this moment we are doing what all lawyers should be doing – protecting the interests of our clients."

# Civil Remedies Legislation Fallout

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- Billboard lawyers are already mounting an assault on other states following Florida's major tort reform package.
- John Morgan is flooding markets with billboards.
- Morgan & Morgan expects its yearly ad budget in Detroit to exceed \$20 million in the next two to three years.
- Likely to prey on other states and Judicial Hellholes.

# Civil Remedies Legislation Fallout

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## Judicial Hellhole Rankings:

- 1. Georgia
- 2. Pennsylvania Supreme Court & the Philadelphia Court of Common Pleas
- 3. California
- 4. New York
- 5. Cook County, Illinois
- 6. South Carolina Asbestos Litigation
- 7. Louisiana
- 8. St. Louis



**Questions?**

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