

Making the Business Community's Case for Tort Reform

# 2023 Florida Business Forum



February 13, 2023

Augustus B. Turnbull III Florida State Conference Center  
Tallahassee



## SUMMARY

Associated Industries of Florida



*The Voice of Florida Business Since 1920.*

# 2023 Florida Business Forum

Making the Business Community's Case for Tort Reform



Brewster B. Bevis  
President & CEO

## A Message from the President & CEO

Associated Industries of Florida (AIF) held the 3rd Annual Florida Business Forum in Tallahassee on February 13, 2023. The Forum brings together AIF members, key associations and corporate leaders to discuss key issues that affect Florida's business community. It is our hope that this collaborative Forum will continue to raise the level of dialogue and bring to light the challenges that Florida's employers have to succeed in this great state. Previous Forums have focused on COVID-related issues that affect Florida employers and data privacy legislation that was introduced in recent legislative sessions.

This year's Florida Business Forum focused on tort reform, a significant, on-going threat for all employers due to the current, unfair and burdensome legal environment in Florida. Panel discussions ranged from areas of tort reform such as workers' compensation, civil justice fairness in healthcare, one-way fees, letters of protection and speculative 'lawsuiting.'

Industry representatives, lawmakers and business leaders served as panelists, moderators and speakers to discuss key components of each issue, some of which are listed below:

- Previous workers' compensation reforms helped to improve the market in the state.
- Florida's healthcare industry is facing considerable challenges from lawsuits filed by 'adult' children seeking to recover damages, even after the natural death of their parent. Moreover, as healthcare employees can also be the target of lawsuits, this industry is also coping with staffing shortages.
- One-way attorney fees have driven-up consumer prices because attorneys can manufacture price disputes and file excessive amounts of lawsuits.
- There is an urgent need for 'transparency in damages' because 'letters of protection' are being used to grossly inflate the size of settlements.
- Businesses are exposed to frivolous lawsuits in the areas of third-party bad faith, premises liability and data breach liability because of bad court decisions that have formed Florida's common law.



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Florida has long been considered a 'judicial hellhole' and a breeding ground for frivolous lawsuits that make it more difficult for business to operate. **Now is the time for significant tort reform.** **AIF SUPPORTS** the passing of the Civil Remedies legislation, HB 837 and SB 236 by Representative Tommy Gregory (R-Lakewood Ranch) and Senator Travis Hutson (R-Palm Coast), because they will provide significant benefits for Florida's vast business community, their employees, and the areas they support.



## Panel 1

# Workers' Compensation: Proof of Concept

**David Altmaier**, Former Commissioner, Office of Insurance Regulation

**Tom Koval**, TK Consulting

**Lisa Conley**, FCCI Insurance Group

The Workers' Compensation and Proof of Concept panel focused on how litigation reform significantly improved the workers' compensation market. Unfortunately, due to some wayward court decisions from the prior Florida Supreme Court that have unwound them and created other problems, Florida has seen a steady increase in the cost of commercial insurance premiums which drive up the operating costs for businesses and the consumer according to Altmaier.

Koval followed up the staggering statistic that Florida businesses had awarded attorneys over \$237 million in fees associated with workers' compensation cases in 2022 alone. Lisa Conley mentioned that this is partly due to workers comp being "sensitive to wage inflation and medical inflation." As inflation increases, so do jury verdicts. The increasing amount of workplace safety requirements have had a significant impact on this issue and will continue to keep the amount of litigation down, Altmaier said.



Senator Doug Broxson (R-Pensacola) addresses attendees at the Forum in Tallahassee.



## Panel 2

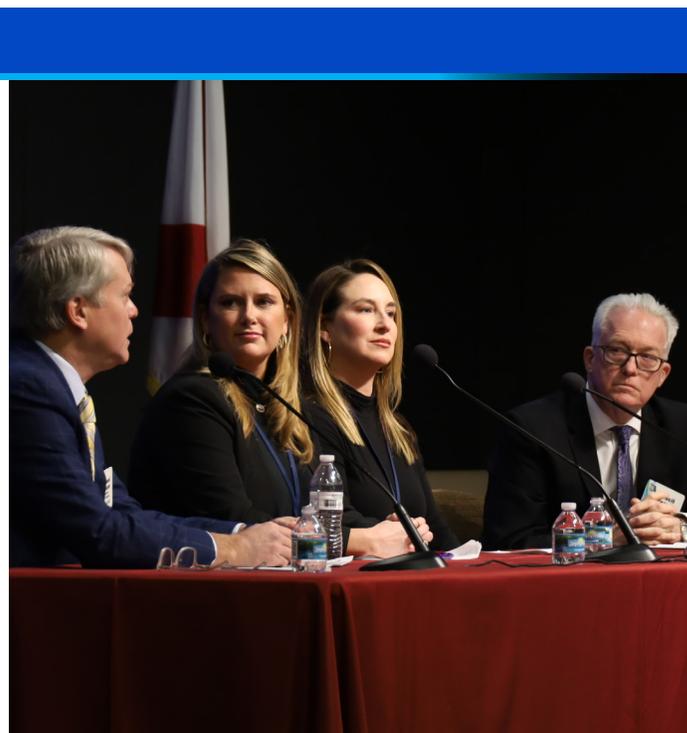
# Civil Justice Fairness in Health Care: A Check-Up

**Jason Hand**, Florida Senior Living Association  
**Donna Fudge**, Fudge Broadwater, PA  
**Michael Williams**, Florida Hospital Association

This panel took a deep dive into the litigious challenges that the healthcare industry has been facing in Florida. One of the main cost-drivers for hospitals and assisted living facilities are lawsuits centered around the recovery from medical negligence following the death of a patient. The trial bar uses existing loopholes, and in most cases, sees lawsuits from “advanced age adult children,” who are typically over the age of 60 and lose a parent. Trial attorneys sue hospitals and nursing homes for medical malpractice, even if the victim died of natural causes.

Donna Fudge reminded the audience that advanced age adult children are “profiting from the loss of their parent.” “Florida’s loss compensation rate is the highest in the country,” said Michael Williams. In most cases, the issue has nothing to do with medical malpractice. Jason Hand was quick to point out that litigation trends are not going in a positive direction and pose a continued threat to the healthcare industry in Florida, unlike other states with more stringent tort laws.

The panel concluded with high-lighting how staffing shortages at assisted living facilities, hospitals, and clinics are in-part due to the litigious environment of the industry. Many lawsuits not only target the healthcare facility, but the employees of that facility. Reforms in this field will ease the burden on healthcare providers and their employees.



## Panel 3

# One-Way Fees: 3rd and Goal

**Cecil Pearce**, Florida Insurance Council  
**Michael Carlson**, Personal Insurance Federation of Florida  
**Caitlin Murray**, National Association of Mutual Insurance Companies  
**Katherine Webb**, American Property Casualty Insurance Association

The 11:00am panel touched on an issue that is one of the more egregious abuses of the judicial process in Florida. One-way attorney fees have created a scam of manufactured price disputes, which is a weaponization of Florida law that drains the pockets of hardworking Floridians in favor of a cottage industry of lawyers in the state, year after year. The panel highlighted the ‘American Rule’ which sets the precedent of each side paying their own attorney fees.

Michael Carlson started the discussion on one-way fees in the insurance industry leading up to its repeal during the special session in 2022. Cecil Pearce made the point that before the special session, homeowners in Florida were paying a “tort tax,” adding to their cost of living. Katherine Webb provided staggering statistic that Florida makes up 8% of all homeowners’ insurance claims in the U.S. yet comprises of nearly 80% of the litigation. As severe as the property insurance crisis is, Caitlin Murray noted that the use of the one-way attorney’s fee to manufacture auto glass and PIP disputes are adding fuel to the litigation fire, and unnecessarily raising costs for drivers.



## Panel 4 Real Damages, Real Verdicts

**Alix Miller**, Florida Trucking Association

**William Large**, Florida Justice Reform Institute

This panel leaned into the need for comprehensive tort reform in the personal injury medical damages space. They provided examples of settlements totaling over one billion dollars from trucking companies to plaintiffs in situations where the trucking company was not at fault, or the damages were drastically overexaggerated to increase the payout adjudicated by a jury. William Large began by stressing the need for “transparency in damages.” Large went on to provide the audience with an example of how ‘letters of protection’ (LOP’s) are used to inflate the sizing of verdicts or settlements in Florida. In Florida, it is legal for a physician to work with a plaintiff’s attorney to inflate the amount of medical expenses from a car accident by as much as 600%—or more—to trigger a lawsuit from the insurance company that disputes it. Large added that many jurors are unable to have access to the real value of the past medical damages as juror forms and civil procedure often inhibit their ability to do so.

Alix Miller followed up with real-world examples of how the trial bar has used the loopholes given to them to attack trucking companies. One example was a 45-car pileup in Quincy, Florida. It was raining and several vehicles became involved in a collision which triggered a 45-car pileup. A truck driver, well behind the accident and cautiously aware of the situation, parked his truck on the shoulder of the interstate. A motorcyclist slid into the truck from behind and was injured. The truck was the only commercial vehicle involved in the crash. The settlement from the trucking company was \$411,000,000. Miller stressed that 90% of all trucking companies in Florida are small businesses or only operate with three trucks or less.

One of the more powerful examples Miller used was a picture of a small car with a slight dent on the hood. The total damages for the car totaled over \$2,800 while the medical damages skyrocketed to well over \$900,000. This is why, without ‘transparency in damages,’ verdicts will continue to be adjudicated at exorbitant amounts that can have a devastating impact on companies both small and large.



## Panel 5 Lions, Tigers, and Billboards: An Uncommon Perspective on the Common Law

**Ashley Kalifeh**, Capital City Consulting

**Rick Parker**, Butler, Weihmuller, Katz, Craig, LLP

**Alfred Saikali**, Shook, Hardy, & Bacon LLP

This panel discussion focused on several pitfalls resulting from bad court decisions that have formed Florida’s common law on third party bad faith, premises liability, and data breach liability. Rick Parker began with a simple rundown of the bad faith environment in Florida and how it has been affecting businesses and consumers since 1971. Al Saikali mentioned the severity of the issue that tech companies, or any business, that store data on behalf of customers finds themselves in with the legal climate in Florida. All companies are subject to cyber attacks and the trial bar is fully aware of this. Saikali, who handles data breach claims, explained that under the Florida Data Breach Protection Act, any company that stores data is required to post a ‘notice of breach’ on their website. As harmless as that sounds, plaintiff’s firms, according to Saikali, hire paralegals to comb the internet and constantly hunt for data breaches that can lead to potential litigation.

The second half of the discussion transitioned into the premises liability issues facing the Florida business community. Florida’s common law has evolved to a strict liability standard for owners and operators to guarantee the safety of their patrons against unknown third party criminal behavior. This law differs depending on where in the state one lives, and leaves business and property owners vulnerable to litigious attacks against them. Ashley Kalifeh discussed several examples of businesses being held liable for “negligent security” for the mere sin of being located in a “bad neighborhood,” creating an insidious and harmful disincentive for businesses to operate in neighborhoods that experience more crime.



## Panel 6 Speculative Lending Lawsuiting

**Representative Toby Overdorf**, V-Chair, House Judiciary Committee

**Tim Nungesser**, National Federation of Independent Businesses  
**Jason Gonzalez**, Lawson, Huck, Gonzalez

The final panel of the 2023 Florida Business Forum was focused on the speculative lending problem in Florida. There are corporations that clearly understand the litigious environment in Florida and they seek the opportunity to profit from it. Rep. Overdorf gave several examples of how speculative lending corporations advertise their services to the public. Many of these advertisements are enticing. Tim Nungesser compared this issue to “Las Vegas casinos betting on blackjack players.” Nungesser says companies like *Sunrise Lawsuit Funding* and *Oasis Financial* play the odds of how many cases win a jury trial and fund them accordingly. In many circumstances, these companies make a 100% profit off the plaintiff and their case. Many of these companies are aligned with law firms in Florida.

Attorneys should be prohibited from having an interest in a third party having a financial stake in a court case for their client. “Courts have no role in changing the substantive law but do have a role in changing procedural law,” said Jason Gonzalez, leading to a recommendation that this issue be

explored by the Florida Supreme Court in the context of the Florida Rules of Civil Procedure. The integrity of our judicial process is vital to sustaining a non-frivolous, well intentioned business climate for businesses in the State of Florida.

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The Florida Legislature is uniquely positioned to take on civil justice reform. The Governor and both presiding officers have stated their desire for significant changes in this area, and have filed HB 837 & SB 236. **AIF strongly SUPPORTS these bills. With an opportunity now on the table, tort reform is a “top-tier issue”** for AIF during this Legislative Session.

Frivolous lawsuits, inflated damages, and a pervasive litigious climate have impacted costs for both businesses and consumers. We outline in our *2023 AIF Session Priorities* publication specific ways the Legislature can enact significant tort reform that is beneficial for Florida’s vast business community, their employees, and the areas they support.

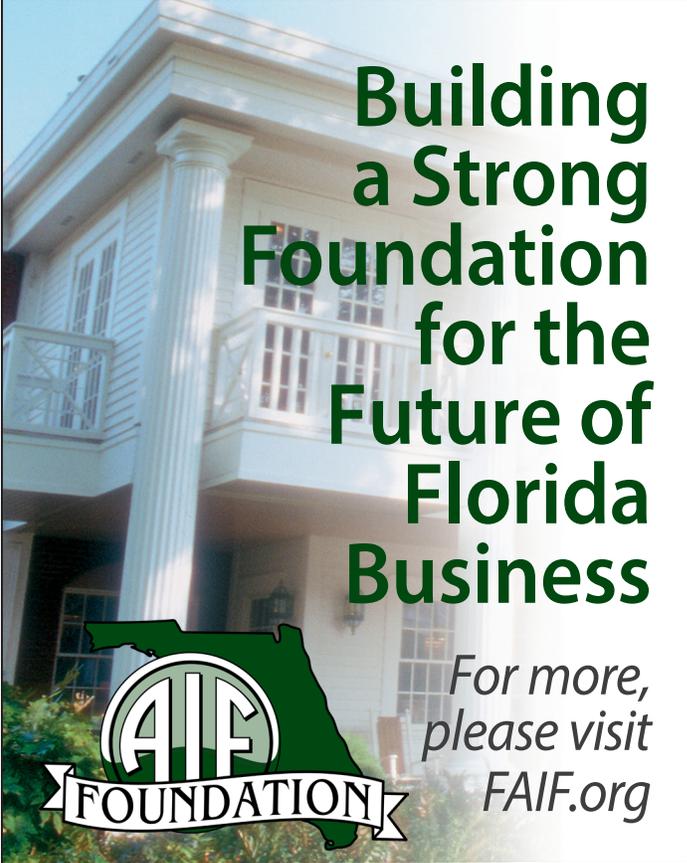
**Please visit [AIF.com](http://AIF.com) for more information.**



For over 100 years, it has been AIF's mission to create and foster an economic climate in Florida that is conducive to the growth, development and welfare of Florida's industry and business community.

We will continue to fight for the advancement of economic prosperity in Florida through education, lobbying, political activity and other means to have a positive affect on state public policy.

*The Voice of Florida Business  
Since 1920.*



# Building a Strong Foundation for the Future of Florida Business

For more, please visit [FAIF.org](http://FAIF.org)



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## AIF Policy Councils and Coalition

Bringing together unique sectors of the business community to develop and promote issues vital to those respective industries, these groups are the backbone of our policy-making at AIF. Member companies of each group voice their issues, concerns, and ideas to develop and shape the policies that are presented to our Board of Directors for approval.

As a member, you can take a leadership role in the public policy issues that affect your company.

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