

Naples Daily News

The great Ian insurance battle: \$11 million Naples-area claim delay exposes Florida problem



Kate Cimini

Fort Myers News-Press

Published 5:01 a.m. ET Aug. 8, 2024 | Updated 9:11 a.m. ET Aug. 9, 2024

The storm did millions of dollars in damage to the condo complex on Little Hickory.

Ian's 12-foot storm surge yanked all the greenery out by the roots and carried it away. It sucked the one-story pool house out to sea, leaving only debris and a foundation behind.

It vanished 8-foot-high steel lockers that lined the parking lot, filled the pool with twisted metal and concrete, and pulled down the plumbing and electrical lines, leaving them tangled on the ground, like so much spaghetti.

The 155-miles-an-hour winds damaged roofs; cracked and broke windows; ripped away stairs and filled first-floor condos with water, sand and mud.

But Dolphin Way, on the small barrier island just north of Bonita Beach, was lucky.

All three buildings remained standing. Few of its condos were waterlogged, due to the elevated design. And none of its residents died in the storm.

And yet, the storm is still battering Dolphin Way.

Nearly two years later, condo owners have spent roughly \$9 million in repairs, fronting about half of that themselves. They're still waiting on their insurer to come through.

Each of the 75 condo owners of Dolphin Way has paid out more than \$50,000 of their own money over the last year and ten months in special assessments and even more in quarterly fees to restore water and electricity, rebuild the stairs, repair and replace the elevators, and

more. So far, the work has resulted in just under \$4 million total in special assessments to owners; the homeowner's association board took out two small business loans totaling another \$5 million. Nothing has come cheap: It took \$1 million just to fix the pipes that ran below the building.

Yet more work has gone uncompleted as the board awaits payment from wind carrier American Coastal. One building's roof remains unfixed, the pool languishes behind a barricade. Dozens of windows still need to be replaced – the board and owners estimate it will take millions more to finish the job.

American Coastal's human resources department, claims division director, vice president of claims operations, or any other executive contacted by the USA TODAY Network-Florida did not respond to repeated phone calls, website and LinkedIn messages, emails or other requests for comment.

Residents fear years of waiting before they can recoup the money they've fronted, or even being stiffed entirely. They've dipped into savings, taken out lines of equity against their homes and businesses, or cashed out stocks meant to cover their retirements in order to pay for the repairs thus far.

Residents say American Coastal is doing this on purpose to exhaust Dolphin Way's residents, and make them so desperate, they'll agree to anything. Frustrated, they also blame Florida's lax treatment of insurance companies, to which Ian exposed many previously happy homeowners.

"We're dealing with a shoddy legal system in the state of Florida that has allowed insurance companies to cheapen the product they offer, kick the can down the road and make it as painful for customers as possible," said Tom O'Connell, a broker who heads up the insurance committee for the Dolphin Way HOA board.

"I'm working with a legal system," O'Connell said, "that is not in our favor."

Insurance consumer advocates back their protests up. Nearly two years after Hurricane Ian pounded Florida's southwest Gulf coastline, many homeowners are still struggling to get their insurance companies to pay out, evidenced by complaints filed with the state, lawsuits filed in Lee, Charlotte and Collier counties, and state data that shows that thousands of claims were closed out with no payment.

“While there have been changes in the Florida market (since Ian), we are concerned about the lack of effective law enforcement to hold insurers accountable for not paying honest claims,” said consumer advocacy group American Policyholder’s Association executive director Doug Quinn.

“The lobbyists got into the pockets of politicians and made things as difficult as possible for consumers,” O’Connell said.

‘Wash, rinse, repeat’

The reporter for this story interviewed six condo owners, including two current and former HOA board members, and reviewed the association’s contracts with all insurance carriers, American Coastal communication with Dolphin Way residents, and HOA board meeting minutes, board emails, assessment details, and other communications between the association and its residents.

What emerged was a story of diligence, frustration and devastation.

American Coastal rose from the ashes of United Property and Casualty Company, or UPC, a residential property insurer that went bankrupt following Ian, leaving policyholders in the lurch.

American Coastal, which was incorporated in 2007 and specialized in commercial residential coverage in Florida, hit the NASDAQ in December of 2022.

UPC announced its bankruptcy in February 2023 and began shedding policies.

American Coastal absorbed many of UPC’s clients. It is headquartered in UPC’s former St. Petersburg office building.

“We call this wash, rinse, repeat,” said Quinn, adding that Florida has been through this cycle before. “I wouldn’t be surprised if we were having this same conversation in five or eight years.”

But the Florida Office of Insurance Regulation says it’s cracking down on bad actors.

Twelve American Coastal officers and directors have been removed or reassigned from the company by the office since 2023, Florida Office of Insurance Regulation communications

director Samantha Bequer told The USA TODAY Network-Florida.

Their removals were spaced out and would not have impacted the company's response to Dolphin Way, she said.

American Coastal did not respond to questions about the removal of board members, but a June press release noted only that its board had been reduced to five members, down from 10. Another issued in early spring announced that they had recently replaced their CFO.

Insurance Commissioner Michael Yaworsky's office provided a statement.

"Following Hurricane Ian, OIR issued numerous data calls to track market impacts and initiated more than 50 market conduction investigations to evaluate aspects of the claims handling process," said Bequer. "Based on the findings of an examination or investigation, OIR's market regulation units may take administrative action, impose administrative penalties, and require corrective action in order to protect insurance consumers from unlawful or harmful business practices.

"OIR takes many steps to ensure companies are honoring their contracts with policyholders," Bequer said, mentioning OIR's Property and Casualty Market Regulation unit, which examines and investigates insurers regarding business practices and patterns of alleged violations of the Florida Insurance code.

The office also reviews data from the Florida Department of Financial Services Division of Consumer Services, direct consumer complaints, National Association of Insurance Commissioners' market conduct annual statements, insurance agents, and other industry stakeholders on a monthly basis, she added.

Still, Dolphin Way remains entangled in legal netting, thanks to new, insurer-friendly legislation passed in recent years that ensured customers face financial barriers to bringing lawsuits against a carrier. Additional restrictions have been placed on policyholders since Ian, such as SB 2-A, which lowered the amount of time customers had to file a claim to one year; another bill increased the penalties for bringing a claim deemed to be in bad faith.

The legislature has also passed some bills in the policyholders' favor, however. HB 989 required carriers respond to customer complaints within 14 days. HB 1611 requires insurance companies provide policy and claims data to the Office of Insurance Regulation on a monthly basis. HB 7073 establishes property insurance discounts.

Still, consumer advocates, insurance attorneys and frustrated residents call the bills toothless.

"It's a sham," said Tampa-based insurance attorney group founder and president William "Chip" Merlin. Merlin has worked in insurance law for more than 40 years, and consults for the American Policyholders Association. "The Florida legislature passed these time deadlines -- seven days to receive a claim, 45 days to begin an inspection -- but what if they don't do it? Nothing.

"Legislators tried to give the perception that they're really doing something for policyholders on deadlines, when in fact, they've taken away the policyholder rights to enforce those things. Customers are getting harmed by insurance companies failing to responding to these deadlines, and there's no penalties.

"It's like saying let's get tough on drunk driving and not having any penalties for the drunk driver."

Paying out of pocket hurts policyholders

Stephen Miller and his wife bought a fourth-floor condo at Dolphin Way about 17 years ago after they traded a week at their timeshare with friends who owned a condo in the community.

"In my mind, I kind of pictured it as not much more than a little thatched hut," Miller said, chuckling. "Which was not the case."

The Millers fell in love with the modern design of Dolphin Way, and decided to buy one as well. They closed at \$464,000, which was, at the time, the highest price anyone had paid for a Dolphin Way condo.

Miller, a certified public accountant in Bloomington, Indiana, would go on to use it as a family vacation property a few months out of the year, and rent it out the other ten months.

That arrangement suited them nicely, he said. They always made enough to cover the cost of the quarterly dues, and sometimes more.

"The condo was part of my retirement plan," Miller said. "I could rent it out when I wasn't using it, so I could enjoy it and it wouldn't cost me anything."

But the condos didn't even pass inspection until December 2023, leaving Miller and others who counted on the income from in-season rentals hard-up.

Now, Miller said, their finances are strained after so many assessments and the doubling of their quarterly dues, from \$2,450 to \$4,895.

He's taken out a line of credit on his business and a home equity line to float the tens of thousands he owed in assessments – and residents anticipate another \$60,000 coming due in winter 2025.

“Any idle cash I have I've got in the stock market, and the stock market was in the crapper,” Miller said. He would have lost money if he'd sold his stocks.

Miller is 74 years old, and still working because, he says, “I'm trying to pay for past sins.” The unexpected cost of assessments has probably pushed his retirement off further.

“I've got to live that long first,” he said.

‘Why is it we can't get their attention?’

After the winds had settled and Ian moved across Florida, slow and relentless, the work began on Dolphin Way.

The board hired a law firm with a public adjuster to help them estimate cost of damages. Jim Peacock, the assistant vice president at Dolphin Way, initially took charge of the insurance claim efforts, but retired from the board in February 2024. He said they began sending copies of invoices to American Coastal in October 2022 as proof of claim and also asked them to recommend or sign off on contractors.

But, he said, they refused to do so.

Too, Peacock said, they routinely went silent, ignoring questions or requests, frustrating owners.

After months of work on Dolphin Way and receipts submitted, American Coastal offered a flat payment of \$250,000. Condo owners, aghast, rejected the offer.

Peacock recalled the insurer sent a letter which stated it did not believe it was responsible for

covering the damage done to the buildings, but he did not remember the reason for denial. O'Connell, who took over for Peacock, did not respond to multiple requests for a copy of the letter.

The reporter who reviewed Dolphin Way's insurance policy with the carrier found it carries a hard limit of \$250,000 on damage from wind-driven rain. American Coastal did not respond to questions asking if this was a factor.

The process began again. Months later, American Coastal next offered \$500,000, documents show. But Dolphin Way owners again rejected the offer.

"We were devastated," said Peacock. "Why is it that we can't get their attention?"

They filed a civil remedies notice, which is the first step in suing an insurer. Dolphin Way was scheduled to begin mediation with the carrier in late July. However, Peacock said, they may be forced to sue to recoup some of the money their owners paid if mediation does not prove effective.

American Coastal has done everything by the book, current and former board members say, so legally, they may be in the clear. Condo owners and board members are incensed at American Coastal's lowball offers and delay of claim payment -- and at the state that has allowed their insurer to drag their feet for so long.

"Bottom line is: we paid a lot of money for this insurance," Peacock said. "They basically snubbed their nose at us."

O'Connell agreed.

"American Coastal, they keep kicking the can down the road. They know what they're doing," O'Connell said. "They're making it as painful for us they can so we'll take the lowest claim they offer."

"That's what these guys do," O'Connell said. "That's what we're being drawn into."

Florida's insurance problem

Ian claims are just the tip of the iceberg. Across the state, Floridians report delayed or lowball claims, and consumer advocates believe Florida's insurer-friendly atmosphere has worsened

customer experience.

Of more than 550,000 Ian-related claims made by homeowners, roughly 358,000 have been closed out with pay to policyholders for claims related to the storm, according to the state's dashboard.

But another 150,000 have been closed with no payment in sight. Just under 40,000 remain open.

Consumer advocates like Quinn say customers are in this pinch because Florida isn't regulating its insurance market appropriately, allowing companies to treat the market in the Sunshine State "like a playground."

Small, risky insurance companies over-use Florida homeowners' premiums to support other ventures, leaving too little cash in reserve to deal with the surge in claims they experience during hurricane season, he said.

Ultimately, he said, they fold.

Office of Insurance Regulation's Bequer obliquely acknowledged Quinn's point, saying in a statement that the office recently issued an informational memo to all property and casualty insurers in Florida, ordering them to "continue to ensure they have all available resources in place to appropriately and swiftly facilitate consumer claims."

Still, throughout the past five or so years, the hurricane-riddled state has actively worked to become more friendly to insurers in an attempt to lure them and strengthen the troubled industry.

In that time, Florida's GOP-led legislature has tightened the noose around customers, repeatedly making it harder for customers to sue their insurance carriers. The insurance industry has repeatedly complained of "frivolous lawsuits" against insurance carriers, which, they say, account for Florida's sky-high insurance policy costs.

But the data suggests carriers' own delays in paying claims trigger most policyholder lawsuits.

An Office of Insurance Regulation January analysis of insurance claims found most claimant lawsuits came only after carriers delayed payment to policyholders, sometimes by more than

a year.

According to the state's Office of Insurance Regulation, insurance carriers have reported over \$21 billion in insured losses in the state from Hurricane Ian. That pales, however, in comparison to the more than \$100 billion in property damages the National Hurricane Center estimate Ian did in Florida.

Much of that loss was uninsured, either because the owners didn't carry a policy, or because the policy didn't cover the damage.

In response to this tangle, Quinn said, so many are going bare that insurers in the state of Florida are projected to lose up to 20% of their customer base.

"The average person is not aware of the amount of claims not being honestly paid until they go through the delay, deny, defend tactic themselves," Quinn said.

"They feel the pinch of the premiums but don't know there's a significant chance they won't get treated fairly if they file a claim."

Claim denial: exploitation or careful money management?

In theory, insurers assume risk on behalf of their customers in exchange for a premium, which is calculated based on historical data aggregated from many policies similar in size, scope, and even location, according to the Insurance Information Institute. Customers pay their premiums up-front, but the actual cost of the policy to the carrier isn't known until the policy concludes and the carrier pays out any claims.

Responsible insurers keep capital easily accessible to pay claims promptly in the event of a hurricane or other major disaster. As such, most park their assets in high quality income-paying government and corporate bonds.

State law says insurers must acknowledge claims within seven days, and must deny or pay out claims within 90 days, unless a claim is under investigation.

It is this last clause Dolphin Way residents say American Coastal is exploiting.

But industry experts say there's at least half a dozen reasons why insurers might investigate or deny a claim.

Lack of proper documentation, policy exclusions, a dispute between wind and water carriers over whose policy should cover the bulk of the claim, litigation, preexisting disrepair of the damaged building or even simple dispute over the value of the loss all might come into play in situations like these, said industry research organization Insurance Information Institute's director Mark Friedlander.

The III, as it is called, is primarily funded by member insurance carriers, but also receives some funding from academic institutions and consulting companies, among others.

Despite widespread reporting on insurance carriers slow-walking and lowballing Ian claims in Southwest Florida, Friedlander says most carriers executed their fiduciary duty towards clients.

"Post-Ian, from what we saw in most cases, insurers acted as emergency first-responders and took care of their policyholders in a proper fashion," Friedlander said.

He applauded the Florida Office of Insurance Regulation's recent actions, pointing to the \$1 million fine insurer Heritage was subjected to last month for not promptly acknowledging claims, not paying or denying claims within 90 days and not maintaining complete records.

But Quinn called the fine, the largest the state has been able to administer in nearly 20 years, laughable, as it amounted to a pittance for a company like Heritage, which collected tens of millions of dollars annually in premiums.

Heritage, which lowballed and denied at least one large condo claim for nearly a year in Fort Myers, until The News-Press / Naples Daily News reported on the story, took in \$341.4 million in premiums in the first quarter of 2024, up 7.7% from the prior year, per its quarterly report. It spent just 95 cents in claims for every dollar received in premiums, a strong showing in insurance terms.

American Coastal, too, would easily withstand a similar penalty. Its financial statements show the insurer is profitable – no small feat in an unstable market. The insurer boasts an annualized revenue of \$293 million and a total revenue of \$66 million in the first quarter of 2024. As of July 15, American Coastal stock sold for \$10.98 a share on the NASDAQ.

American Coastal is also the subject of a number of consumer complaints, both for handling of Ian claims and others. Data provided by the Department of Financial Services, under which Florida's Office of Insurance Regulation sits, shows customers lodged 16 complaints

alone regarding Hurricane Ian claims; the majority complained of delay of claim payment. Roughly one-third were settled.

This number excludes claims that have gone to mediation or lawsuits.

'Most people...don't have \$54,000 in their checking account'

Boehme and his wife, AnneMarie Surfaro-Boehme, own a modest one-bedroom condo in Dolphin Way that houses them and their cats.

“We were looking around,” Boehme said. “We sort of stumbled onto Hickory Island by mistake. Made a wrong turn.”

But there, they found Dolphin Way.

Snowbirds from Connecticut, they bought the condo on the cheap, and sunk a good chunk of money in renovations.

“It was a gut job,” Boehme said.

What got them, he said, was the view. And it is breathtaking. A clear, straight-shot to the blue-green waters of the Gulf, every condo at Dolphin Way has the same, unobstructed view of the sand and surf. And for a while, they were happy here.

Until Ian.

Boehme, while not on the association's board, has been active in the battle with American Coastal. He attends every board meeting, stays up-to-date on every detail, and has memorized the cost of repairs. Ask him how much it cost to restore the elevator, the roof, the electricity, and he'll tell you. Boehme even organized a property-wide letter-writing campaign to American Coastal, asking the carrier to respond to their property's claim.

In return, American Coastal FedExed Boehme a letter at his Dolphin Way condo, requesting he refrain from contacting them again. He found it on a quick trip in early June from Connecticut, waiting at his front door.

He's watched his neighbors struggle to afford the assessments. Some have put their condos on the market; others wrestle with the decision to sell. While he and AnneMarie are sticking

around, the three special assessments that have come due in the past two years pinched when he was forced to sell stocks.

"I don't have \$54,000 in my checking account," Boehme said. "Most people don't."

But mostly, he said, what gets him is that this treatment Dolphin Way is enduring is perfectly, perfectly legal.

"Where's the justice? Where's the morality in all this?" he asked. "We sign a contract and we pay. We have a hurricane, and they call you up and say, hello, who are you?"

Kate Cimini is the Florida Investigative Reporter for the USA TODAY-Network Florida, based at The News-Press and The Naples Daily News. Contact her at 239-207-9369 or kcimini@news-press.com.