Catastrophic Losses – Insight into the Surfside Condominium Collapse Litigation

Kathy J. Maus, Esq.
Partner-in-Charge, Tallahassee
Butler Weihmuller Katz Craig
3600 Maclay Boulevard, Suite 201
Tallahassee, Florida 32312
850-999-4009
kmaus@butler.legal

Douglas M. McIntosh
Shareholder
Segal McCambridge Singer & Mahoney
200 East Las Olas Boulevard, Suite 1820
Fort Lauderdale, FL 33301
954-869-0374
dmcintosh@smsm.com

Stephen P. Smith
Partner
Marlow Adler Abrams Newman & Lewis
4000 Ponce de Leon Blvd., Suite 570
Coral Gables, FL 33146
305-397-5307
ssmith@marlowadler.com

Kathleen (Kathy) J. Maus is a Partner at Butler, and serves as the Partner-in-Charge of the Tallahassee office. Kathy is active in her firm's bad faith, casualty, and first/third party insurance coverage practices. She is a recognized Super Lawyer in Insurance Coverage and was a three-term Board Certified Civil Trial Lawyer. Her memberships are varied, including Past Board Member of IADC and DRI, and Past Chair of the IADC and DRI Insurance Law Committees. Kathy was recently elected as the Secretary-Treasurer for DRI. Kathy is an author and served as a speaker at numerous seminars on issues including first and third party coverage and bad faith litigation.

Douglas M. McIntosh is a Shareholder in the Ft. Lauderdale office of Segal McCambridge, Singer & Mahoney, Ltd. Doug is a long-time (past) member of IADC, and has served sister organizations including DRI (Florida State Representative; National Director), Florida Defense Lawyers Association (Past President), and ADTA (frequent lecturer.) Doug is an elected Fellow of the American College of Coverage Counsel and concentrates his practice in areas of professional liability and catastrophic damages defense, as well as insurance coverage and bad faith litigation. Doug Co-Chairs Segal McCambridge's Insurance Coverage and Bad Faith Practice Group. Doug routinely counsels insurers and third party administrators on effective claims handling practices, and he frequently serves as a testifying expert in bad faith litigation and legal malpractice litigation in state and federal courts in Florida as well as other jurisdictions.

Stephen (Steve) P. Smith is a Partner at Marlow Adler Abrams Newman & Lewis in Coral Gables, FL. Steve focuses his practice on insurance coverage/defense, with a particular focus on first/third party property and construction disputes, in addition to professional liability defense and general liability/personal injury matters. He has presented to various insurance carriers and industry groups on insurance coverage issues unique to Florida and has been published in The Florida Bar Journal and other publications. Prior to beginning his legal career, he served as a law clerk to U.S. Magistrate Judge Gary R. Jones of the U.S. District Court of the Northern District of Florida.

I. Introduction

In the early hours of June 24, 2021, the Champlain Towers South Condominium Building ("CTS"), a 12-story beachfront condominium located in Surfside, Florida, suffered a catastrophic failure and partial collapse, resulting in the loss of 98 lives and substantial property damages. Due to a condemnation decree, the remaining portions of the building were leveled, resulting in the complete destruction of 136 condominium units. Within days of the collapse, more than one dozen law firms filed suit on behalf of varying individuals and groups of individuals, including a putative class action brought on behalf of all the families of victims and survivors, as well as those who sustained economic/property loss. The individual lawsuits, which totaled over fifteen, were ultimately consolidated with the class action. In less than one-year from the date of the collapse, the class-action lawsuit settled for over $1 billion dollars.

This paper will examine some of the issues faced by the defendants, their counsel and coverage counsel involved in the Surfside Condominium Collapse Litigation, all of whom played a vital role in accomplishing a historical global settlement before the one-year anniversary of the collapse. From issues related to the various subclasses of claimants, theories of liability and causation in mass casualty events, priority of coverage, subrogation, obscure condominium laws, to timed policy limit demands, this paper will focus on the nuances of catastrophic losses and in particular, the anticipated impact of the Surfside Condominium Collapse Litigation on future litigation, in Florida as well as nationally.

II. Subclasses of Claimants

Early in the Surfside Condominium Collapse Litigation, the court recognized the need to appoint a "Class Action Leadership Structure" to represent the interests of the various categories of putative subclass members. Those subclasses were comprised of (1) the economic loss and property damage subclass, (2) the personal injury subclass, and (3) the wrongful death subclass. Within those subclasses, other sub-subclasses also developed. Notably, each plaintiff attorney agreed to represent the plaintiffs with no right to attorney fee recovery of any amount or percentage, unless awarded by the court. The court made it clear that the attorneys could not take even one dime from any class member's recovery.

From the outset, the court asked the Board of Directors of the CTS Condominium Association to consider stepping aside and consenting to the appointment of a receiver to assume control of the Association, marshal its assets, defend against the anticipated avalanche of claims, and otherwise assume all duties/powers the Board possessed pursuant to Chapter 718, *et seq.*, of the Florida Statutes and common law. The Board did not oppose the appointment of a receiver.

In the context of mass tort cases, courts employ a variety of methods for addressing individualized money damage assessments. For example, *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 141 (2d Cir. 2001), the court described potential mechanisms for handling individual damages as follows:

> There are a number of management tools available to a district court to address any individualized damages issues that might arise in a

> class action, including: (1) bifurcating liability and damage trials with the same or different juries; (2) appointing a magistrate judge or special master to preside over individual damages proceedings; (3) decertifying the class after the liability trial and providing notice to class members concerning how they may proceed to prove damages; (4) creating subclasses; or (5) altering or amending the class.

In the Surfside Collapse Litigation, the creation of category specific damages' subclasses was a useful tool that helped facilitate settlement and streamline how any settlement funds would be allocated. However, by all preliminary assessments and mid-term predictions, the available funds to compensate each subclass member appeared woefully insufficient. Added to this limited funds expectation were the conflicts, which arose between individuals who suffered economic and/or personal injury losses and at the same time held potential liability for those losses, as discussed in more detailed below.

a. The Economic Loss and Property Damage Subclass

The economic loss and property damage subclass included those individuals who sought damages for loss of real and/or personal property. This subclass included condominium owners, tenants, and guests of the condominium on the evening of the collapse who lost their realty, home furnishings, personal items, cash, cars, and myriad tangible items. In order to value the loss of the condominium units, the court-appointed receiver retained an appraiser to develop a retrospective market value of the condominium units on the day prior to the collapse. The appraiser issued a report estimating the retrospective market value of 12 base unit models, ranging between $430,000 to $1,100,000. This sample valuation was then applied across similarly sized condominium units, regardless of individualized upgraded furnishings, to reach a valuation of $96 million for all 136 destroyed condominium units.

Years prior to the collapse, the Champlain Towers Condo Association obtained various surveys and estimates to repair varying condominium elements in advance of its 40-year certification. The Board eventually calculated a required assessment against the condominium owners for $15,000,000 to fix the building. That equates to $110,294 per unit (without adjusting for assessed value). The members of the condominium association never voted to approve the assessment and/or did not satisfy the assessment prior to the collapse and, therefore, the building was not repaired/renovated. As such, the Court determined that the condominium unit owners' recoverable value should be reduced by the $15,000,000 assessment.

The land on which the CTS Building sat ultimately sold at auction for approximately $120 million, $24 million higher than its (retroactively) appraised market value. The sale of the land itself was not without controversy, as many of the families of decedents wanted to build a memorial site where the CTS building previously stood. Others challenged that the amount awarded to unit owners was insufficient because the land sale brought a higher than anticipated recovery. Ultimately, the judge allowed the land sale to move forward on the basis that the insurance proceeds alone would be insufficient to compensate the number of victims.

In sum, the unit owner subclass recovered a combined amount of $83,000,000, comprised of $50,000,000 in first party property insurance proceeds (these insurers waived their right of subrogation) and an allocated $33,000,000 from the land sale, to be apportioned per unit per category assigned. The remaining proceeds of the land sale were dedicated for the remaining injury/death subclasses.

b. The Personal Injury and Wrongful Death Subclass

The personal injury and wrongful death subclass included individuals and family members of unit owners, residents, occupants and guests who lost their lives or sustained personal injuries. Automatic recovery values were set for each class member, whether the personal representative of the estate of a decedent, a survivor, or one with a negligent infliction of emotional distress claim, to recover with minimal proof in support of each claim. The Judge, with the help of a Magistrate, and proceeding extra-judicially as a Qualified Settlement Fund Claims Administrator, personally met with all other claimants who wished to recover more than the standard set value, to individually hear proof and assess the value of each claim.

c. Conflicts of Interest

Over the course of the litigation and in particular, after settlement but before allocation of the settlement fund, conflicts arose between many of the families of those who perished and those with purely economic loss claims. Specifically, the families of many of the wrongful death claimants took issue with the surviving unit owners claims for damages beyond the previously assessed value of their units. As well, many families of tenants/invitees (the families of non-owners who lost their lives) expressed their belief that surviving unit owners who only suffered economic and property loss, should not recover anything for the value of their home, and felt those funds should be solely allocated to the wrongful death claimants. Conflicts were publicly available in the numerous court filings and news interviews surrounding this horrific saga. Although varied, the controversial statements from class members fell into one of the following expressed sentiments:

- Yes, your family member died, but she at least has a place to live [heaven] and I am out on the street with no place to lay my head.

versus

- You, condominium owners (and board members), should recover nothing for your losses because you failed to fix the condominium and are at fault for its collapse.

As noted above, the court anticipated conflicts of interest would arise. For this reason, the Judge appointed separate conflict-free class counsel to coordinate claims and lead settlement negotiations, e.g., one attorney who represented clients with non-owner economic loss only claims, one appointed to lead negotiations on behalf of the surviving property owners, and another attorney to represent clients with wrongful death or injury claims.

III. Theories of Liability

The biggest questions that remain unanswered to this day are *what caused the collapse* and *who was at fault*? Even as of the date of this paper, the National Institute of Standards & Technology ("NIST") remains in possession of all site debris and continues its testing mode, without any report, preliminarily or otherwise, on causation. Contractors, engineers, inspectors, board members, security companies and even the law firm that represented the condominium association are a few examples of defendants named in the litigation. Plaintiffs asserted various theories of liability. One theory was whether the collapse was the result of structural concrete deterioration and cracking as noted in a 2018 report from a consultant hired by the condominium board years prior to the collapse. The report detailed major structural damage throughout the building, including concrete spalling and cracking on the balconies, in the garage flooring, columns and ceiling, and in the concrete structural slab beneath the pool deck. The Association hired the same consultant again in 2020 as part of a 40-year recertification required under Florida law. The 2020 inspection revealed that the structural problems and concrete damage at the building had worsened "exponentially" since 2018. Evidence produced in the litigation revealed that in April 2021, a letter from the condominium board's president warned residents that "concrete deterioration is accelerating" and provided an estimate for necessary repairs and of the needed assessment. In fact, significant deterioration and damages were found in the underground parking garage, which was captured in photographs taken by a pool contractor just thirty-six (36) hours before the collapse.

Another theory concerned the design and building codes in place at the time of the original construction of the building. An expert retained by the Miami Herald opined that multiple defects existed with regard to the engineering and original construction of the building, including insufficient support under the pool deck, issues with the concrete strength, waterproofing, and placement of support columns. The 2018 report by the association's consultant specifically pointed to deficiencies in the design of the pool deck stating, "Since the reinforced concrete slab is not sloped to drain, the water sits on the waterproofing until it evaporates. This is a major error in the development of the original contract documents prepared by William M. Friedman & Associates Architects, Inc., and Breiterman Jurado & Associates, Consulting Engineers." Both of those entities were out of business by the time of the collapse.

Another significant theory raised in the litigation was that the neighboring construction of "Eighty Seven Park," an 18-story, 71-unit luxury condominium, weakened the integrity of the CTS building. It was theorized that vibratory sheet pile installation and site dewatering of the new Eighty Seven Park construction negatively impacted the structural stability of the adjacent Champlain Towers structures. Evidence in the case revealed that during the construction of the Eighty Seven Park building, residents at the CTS building complained about the ongoing construction project. For example, the Consolidated Class Action Complaint included emails from residents expressing that they were "very concerned because of the daily tremors we encounter, in our apartments, sitting, standing, lying in bed" and advised of cracking on the walls and near the balconies.

Lastly, the Plaintiffs also asserted claims under a variety of theories of liability against Securitas Security Services, the security firm contracted with the Association to provide security

and fire/alarm monitoring to the building. The security guard on duty the night of the collapse, who was only employed at the building for five months prior to the collapse, later gave media interviews in which she reported that she only began to realize there was a problem when she began to hear strange noises in the hours leading up to the collapse. She eventually became so alarmed by the noises that she called 911 approximately ten minutes before the complete collapse. However, Plaintiffs argued she should have activated a mass in-unit voice alarm system that would trigger an audible voice alert inside each unit, and provide each unit owner with notification of the impending collapse of the building. Given the time of night the collapse occurred, it may have awoken at least some of the sleeping residents and provided a chance for them to evacuate the building, eliminating at least some of the ninety-eight deaths that ultimately occurred.

How long would they have to react? Based on various estimates, triggering the in-unit voice evacuation alert system would provide an additional five-to-seven-minute window for building residents to evacuate the building prior to its ultimate collapse. A deposition of a Securitas manager responsible for training several of the security guards staffed at the building reflected that the company had not trained all its guards on how to use this system to alert residents to evacuate. It was unclear whether the security guard on duty the night of the collapse knew how to operate the in-unit voice evacuation alert system. Discovery also revealed that the security guard, who admitted hearing strange noises immediately prior to the collapse, tried to call each of the 129 units in the building to alert building residents. Given how time-consuming making 129 individual calls was, Plaintiffs questioned whether the guard on duty was one of the properly trained Securitas staff, not only in the use of the building-wide voice evacuation alert system, but in how to properly respond to any type of emergency. Several media interviews only reinforced this point, although the guard never testified under oath as to any of these issues.

Forensic examination of the building's fire alarm systems also reflected that certain parts of the building's fire safety system were either not working properly or not functioning at all. For example, examiners pulled the manual fire alarm in the building lobby, but it did not properly circulate throughout the entire building as it was designed to do. Plaintiffs alleged this was yet another missed opportunity to notify building residents prior to the collapse. The limited discovery also reflected additional potential lapses in maintenance and/or operation of the various security and safety monitoring systems in the building.

IV. Coverage Issues

Some complaints about the neighboring construction dated back to 2016, more than five years prior to the collapse, inevitably prompting coverage questions with respect to the date(s) of "occurrence" and number of occurrences by the Eighty Seven Park insurers (notwithstanding liability defenses). Generally, four trigger-of-coverage theories exist for determining the date of an "occurrence" under a CGL policy: (1) exposure; (2) manifestation; (3) continuous trigger; and (4) injury in fact. The exposure trigger deems the property damage or bodily injury to have occurred during exposure to the injurious or harmful condition, or in the case of property damage, when the *installation* of the defective product occurs. The manifestation trigger deems the property damage or bodily injury to have occurred at the time damage or injury manifests itself or is *discovered*. The continuous trigger deems the property damage or bodily injury to occur *continuously* for all policies in effect during any exposure, actual injury or manifestation. Lastly,

the injury-in-fact trigger considers coverage to be triggered when the property damage or bodily injury actually occurred.

Florida law remains somewhat unsettled on the issue of the applicable trigger of coverage. While some courts applied the manifestation trigger theory, *Auto Owners Ins. Co. v. Travelers Cas. & Sur. Co.*, 227 F. Supp. 2d 1248, 1266 (M.D. Fla. 2002) ("Florida courts follow the general rule that the time of occurrence within the meaning of an 'occurrence' policy is the time at which the injury first manifests itself."), most recently the courts, and in particular the Eleventh Circuit Court of Appeals, held that injury-in-fact is the proper trigger theory. *See Carithers v. Mid-Continent Case. Co.*, Case No. 14-11639 (11th Cir. Apr. 7, 2015).

In the context of the Surfside Collapse Litigation, numerous allegations of faulty construction, negligent inspections and other events occurred prior to the collapse. For example, the vibratory sheet pile installation at the adjacent construction of Eighty Seven Park, wherein residents of the CTS building complained of cracking on the walls of the balconies. These factual nuances raised coverage questions regarding whether the claim should be evaluated as a single "occurrence" with a defined date of loss, or potentially one that implicated more than one policy year that pre-dated the collapse.

Prior to settlement, Plaintiffs and Defendants initiated in-depth testing, including test pits and drilling samples to determine whether the vibrations emitted as a result of sheet pile installation ultimately impacted the structural stability of the soil and adjacent structures. However, efforts to complete the testing were delayed for a number of reasons, including concerns that the testing itself could potentially impact the integrity of neighboring structures.

Due to the accelerated global settlement and inability to complete testing, the actual cause of the collapse remains unknown. Ultimately, dozens of entities, companies, and their insurance carriers participated in the monumental settlement, which even included companies with very little connection to the CTS building and its collapse.

V. Subrogation claims

While most of the insurance carriers that issued homeowners policies to the owners of the units at the CTS building paid out the limits of the policies, and agreed to waive any right to subrogation, one insurer brought a separate subrogation lawsuit against the defendants in the litigation, seeking recovery of over $6 million in monies paid to homeowners that suffered loss in the collapse. Although that insurer initially filed a "limited objection" to the proposed Final Judgment and Proposed Receivership Bar Order, which was part of the global settlement, the insurer ultimately withdrew its objection and voluntarily dismissed its subrogation lawsuit, without prejudice.

VI. Interplay of policies

Defendants in the case held a myriad of insurance policies, ranging from commercial general liability to professional liability, owner-controlled insurance program ("OCIP") and contractor controlled insurance program ("CCIP") policies, including excess and umbrella

policies. With a ten-figure damages exposure and dozens of contractors, engineers and other professionals implicated, the Surfside Collapse Litigation presented significant questions concerning "Who Is An Insured," the trigger of coverage for property damage versus bodily injury claims, "priority of coverage," horizontal versus vertical exhaustion, the "made-whole" doctrine, OCIP/CCIP policy issues, material misrepresentation/rescission issues, and numerous others, Each of these issues was ripe for declaratory judgment litigation. As one example, insurers for the developer and general contractor for the neighboring Eighty Seven Park construction procured insurance through a "wrap up" program, a CCIP, as well as the general and excess liability practice program of policies. The policies in the CCIP contained varying terms regarding erosion of limits for defense expenses, while the separate practice policies contained their own varying features concerning the interplay with the policies in the CCIP. However, given the extreme amount of publicity the disaster experienced, some worried if parties "fought the victims" on legitimate coverage issues, the outcry would be significant, and of course all parties had further concern about missing out on a global settlement opportunity.

VII. Unique issues

a. Obscure Condominium Laws

One of the many unique issues that arose in the Surfside Collapse Litigation involved the application of an obscure provision in the Florida Condominium Act. Section 718.119, Florida Statutes, provides, in relevant part:

> (2) The owner of a unit may be personally liable for the acts or omissions of the association in relation to the use of the common elements, but only to the extent of his or her pro rata share of that liability in the same percentage as his or her interest in the common elements, and then in no case shall that liability exceed the value of his or her unit.

In sum, Florida Condominium Law imposes personal liability on a unit owner for acts or omissions of the association, up to the value of that owner's unit, when damages exceed the liability insurance carried by the association. Filings in the record reflect that the court-appointed receiver recognized the "unique procedural posture of this case" was such that many unit owners or their estates were plaintiffs bringing personal injury or wrongful death claims while also potentially facing liability under the statute. This was certainly not an outcome that was anticipated when section 718.119 was enacted in 1976.

Ultimately, the obscure law was one of many driving forces that paved the way for a global settlement of the property loss claims, which included a broad release for any unit owners' exposure to liability under section 718.119(2).

b. Publicity

Perhaps no mass tort case has garnered more attention in the last few decades than the Surfside Collapse Litigation. Dozens of news outlets regularly attended the *weekly* hearings, and

often reported before the hearing concluded. Although the liability of many of the defendants was disputed and untested, the case undeniably presented inherent risks if tried before a jury by virtue of the extensive media coverage and outpouring of public sympathy.

c. Claims against Securitas

The claims against the building's security monitoring firm, Securitas, also raised unique issues related to the firm's role in causing the collapse and/or increasing the scope of ultimate damages. Although its insurers ultimately paid over $500 million towards the global settlement, discovery remained in its infancy. Based on 1) the lack of recoverable physical evidence following the tower's collapse, and 2) the subsequent destruction of much of the relevant evidence that would demonstrate whether the alarm systems were triggered and/or how widespread the failures to adequately maintain some of the equipment were, numerous questions remained unanswered regarding the degree to which inadequate training of the security guards versus poor maintenance of the building's various safety monitoring systems, if any, contributed to the damages. The same risks that led many other defendants/their respective insurers to settle the case before the liability issues were remotely clear also led Securitas and its respective carriers to do the same.

VIII. Timed Policy Limit Demands

In Florida, upon request, insurers must disclose the limits and copies of all policies that *may* provide coverage for a claim against their insured. This was certainly requested early on and the court even issued an order requiring such disclosures in record time. While the defendants prepared for an early mediation, the plaintiffs in the Surfside Collapse Litigation presented some, if not all, of the defendants with thirteen (13) day (or less) timed policy limit demands, which expired *before* mediation in the full amount of the tower of coverage for each defendant. Most insurance coverage practitioners are intimately familiar with timed policy limit demands, used as a tool to pressure insurance companies to promptly settle claims that present significant damages exposure, in order to avoid exposing the insured to an excess verdict, or subject the insurer to allegations of "bad faith" claims handling.

Rarely, however, are those timed policy limit demands conditioned on the global participation of dozens of insurers, with upwards of nine-figures worth of policy limits. In so doing, the defendants, their insurers and coverage counsel were forced to take on the herculean effort to (1) coordinate a consensus on an appropriate response; (2) resolve outstanding coverage issues; (3) ascertain whether and to what extent the demand fully and completely extricated all insureds from exposure from all possible claimants, including any related future claims, subrogation claims, or claims for contribution or indemnification; and (4) obtain necessary authority to offer the respective policy limits for contribution toward the "settlement pot."

The foregoing steps were compounded by the arguably ambiguous settlement conditions set forth in the timed policy limit demands. This presented yet another obstacle, in that insurers and coverage counsel were forced to delicately broach their questions to plaintiffs' counsel to seek clarification on a number of issues, without undermining the entire settlement for risk of the inquiry constituting a counteroffer and thus a "rejection" of the demand.

Florida employs the "mirror image" rule. Under this rule, in order for a contract or settlement agreement to be formed, acceptance of an offer must be absolute, unconditional and identical with the terms of the offer. *See Harrell v. Wood & Assocs. of Am., Inc. (In re Harrell)*, 351 B.R. 221, 243 n.10 (Bankr. M.D. Fla. 2006). "Consequently, if one assents to a certain thing and the other assents to it only with modifications . . . no agreement or contract arises therefrom." *See Suarez Trucking FL Corp. v. Souders*, 47 Fla. L. Weekly S263 (Fla. October 20, 2022)(*citing Strong & Trowbridge Co. v. H. Baars & Co*., 60 Fla. 253, 54 So. 92, 93 (Fla. 1910)). An attempted acceptance can become a counteroffer "either by adding additional terms or not meeting the terms of the original offer." *See Grant v. Lyons*, 17 So. 3d 708, 711 (Fla. 4th DCA 2009); *see also Peraza v. Robles*, 983 So. 2d 1189, 1189 (Fla. 3d DCA 2008) (determining that insurer's inclusion of a proposed hold harmless agreement and subrogation waiver release "constituted a separate additional requirement that conditioned the settlement on the submission of the requested documents," which acted as a counteroffer and rejection of plaintiff's original settlement offer).

With the use of the court-appointed mediator and *hundreds* of joint calls and meetings amongst the insurers and coverage counsel, a monumental global settlement was ultimately achieved in under one year from the date of the collapse. Remarkably, the appointed mediator accepted the case with no promise of payment. Even after the monumental settlement, he refused to accept a single penny for his hundreds, if not a thousand, hours of work.

IX. Anticipated Impact on Future Litigation and on the Insurance Industry

The tragedy of the CTS Collapse is certain to have long-term implications on the way in which large-scale catastrophic claims are evaluated and litigated. While the hope is that we will never see a tragic event like the CTS Collapse again, we can expect the plaintiffs' bar to try to use this case as precedent in order to pressure insurance companies to pay their full policy limits early in the litigation, without regard for a full assessment of liability.

The vast settlement fund raised in this case will also increase the public perception of a reasonable value for the loss of life or limb. Although the ultimate settlement awards remain confidential, the public court record and the news accounts contain the amounts paid to the unit owners for their property ($83,000,000) and the attorney's fees ultimately awarded to counsel (significantly less than $100,000,000). By simple subtraction, the public can calculate the first and third party insurance recoveries, less the fixed property damage and other settlement amounts, which equals the remainder that went to the personal representatives of the 96 decedents and other injured/damaged parties.

Further, the CTS Collapse will certainly have implications with respect to the property and liability insurance market. The property insurance market in Florida, in particular, is already strained due to the unique risks faced by property owners in Florida. Florida forced more than six Florida property insurers into insolvency in 2022 alone, resulting in thousands of customers turning to state-backed Citizens Property Insurance Corp., which was created by the Florida Legislature after eleven insurance companies were bankrupted in the aftermath of Hurricane Andrew in 1992. We can also expect an increase in premiums, especially for developers, contractors and associations who face significant risks, as demonstrated by the Surfside Collapse Litigation.

We can also expect to see insurance carriers changing their underwriting procedures and imposing stricter inspection requirements to confirm signs of structural issues, especially as concerns older structures, like the CTS building. In fact, in direct response to the CTS Collapse, Florida passed a state-wide condominium safety reform bill (S.B. 4-D) earlier this year, imposing shorter and more stringent recertification requirements. In particular, the bill shortened the 40-year recertification to 30 years, and eliminated the option for association members to waive and/or redirect certain reserve funds set aside for building components deemed critical to structural soundness and safety. This will also significantly increase condominium association market values, assessments and monthly fees and make Florida less attractive as a destination for retirees on a fixed income.

X. Conclusion

The Surfside Collapse Litigation presents far-reaching implications, especially in terms of the speed and manner in which mass tort claims were handled, evaluated and ultimately settled. The myriad of complex insurance coverage issues added to the enormity of the task. Tens of thousands of person hours were devoted to this case. We can expect this tragedy will ultimately result in changes to insurance and underwriting requirements, construction industry standards, and building codes, both in Florida and nationally.