

## **Insurance bailout fund crippled by lawsuits, claims as Louisiana policyholders wait for relief**

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Debt from collapsed insurers will weigh on LIGA for years

If it weren't for a healthy savings account, Rosanna "Roshi" Mason might still be living in a cramped disaster relief trailer in her front yard with her husband and two kids.

Maison Insurance Co. was supposed to pay for the damage to their home in LaPlace, but the insurer went belly-up and was taken over by the state. Maison had sent "settlement" checks, but they were frozen before her lawyer could get them endorsed and cashed.

Mason said she and her husband were anxious to do what it took to keep their new insurance policy with Allied Trust, so they shelled out at least \$35,000 from their own savings for urgent repairs.

"Everything that we did, we did out of pocket," Mason said. "There's still more work to be done on the outside of the house, but we're flatlined. We can't put nothing else up."

The couple has joined some 25,000 others still seeking relief from the state's industry bailout program, the Louisiana Insurance Guaranty Association. The once-obscure organization has been thrust onto the frontlines of the state's insurance crisis after at least 11 insurance companies that write business in Louisiana folded in the wake of multiple hurricanes.

The safety net that is LIGA was created for the rare instances when an insurer is bankrupted. But the size and frequency of the failures over the last two years have stretched LIGA to its limits. The association

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had to borrow \$600 million this year — a debt that will actually cost \$874 million once interest and fees are included.

The organization will close out 2022 with 17 times the number of unresolved claims than it typically carries into the next year. It's a daunting workload. Some consumers like Mason have been told it could take as long as six months before their claim is in the hands of an adjuster.

LIGA is meant to protect consumers and, in many ways, it does. But some laws designed to help consumers fight insurers don't apply to the association. Plaintiffs' attorneys say it's already an uphill battle fighting insurers, who tend to lowball damage estimates, and their negotiating position is weakened against LIGA.

"It is tragic when companies go bankrupt, but it's rare. What's not rare is the fact that every carrier that I've been involved with is underpaying these claims intentionally by 75%," said John Houghtaling, a managing partner with the New Orleans law firm Gauthier, Murphy & Houghtaling.

"It's a tragedy to go through it, because not only do they have an underpaid report of damages but now they have to go through this whole process."

#### Borrowing to keep pace with failures

Insurance companies don't regularly fail, but when they do, every state operates a bailout fund to cover unpaid claims. To build the fund, LIGA can charge fees, called "assessments," from other licensed insurers, collecting as much as \$100 million a year.

After the first four insurance companies collapsed in late 2021, LIGA assessed Louisiana's solvent property insurers for the first time in nearly two decades. Then another two companies failed in early 2022, so LIGA collected another \$100 million for the fund.

As more insurers went under and the volume of unpaid claims shot up, LIGA was allowed to borrow \$600 million in July so it could cover unsettled claims. The alternative would have left consumers waiting for the annual assessments to come in every year, in installments of \$100 million.

In the end, LIGA borrowed \$142 million from banks in August and \$458 million more by issuing bonds in

November.

John Wells, LIGA's executive director, said the bank notes allowed the association to quickly raise cash needed to continue paying policyholders. The organization has spent more than \$390 million so far on claims and premium refunds, according to data shared with The Times-Picayune | The Advocate.

"The delay is coming to terms with people on what the damages are," Wells said. "The things that were obvious have been paid; the things that are in dispute are what's taking time to develop."

Meanwhile, the number of insolvent companies has kept growing. By the end of hurricane season, 11 homeowners insurers were in court-ordered liquidation. Another insurer, United Property & Casualty Insurance Co., appears to be on the brink of closure; it has already begun pulling out of the state.

So many companies have fallen in such a small window of time that close observers of the industry worry it could get worse.

"It's unsustainable," said Kevin Cunningham, a lobbyist for the insurance industry in the state. "You don't want an industry operating in an environment where you constantly have failed insurers that have to go to the guaranty fund to pay claims."

**Hefty debt, paid with taxes**

By relying on the guaranty fund, Louisiana has kept the fiscal reality of the insurance crisis at arm's length for most state residents. But the hangover from borrowing will stick with taxpayers for years.

LIGA plans to repay its current debt — now \$874 million — over 15 years. By comparison, the state borrowed \$1 billion by issuing bonds to aid Louisiana Citizens Property Insurance Corp., the state's insurer of last resort, after Hurricane Katrina.

There's one main difference: The Katrina-era bonds are charged directly to property owners, through fees tacked on every property insurance bill until 2026.

To repay its debt, LIGA will continue charging existing insurers annual fees. But the state picks up the tab in the end.

The companies are allowed to deduct one-tenth of each contribution to the bailout fund from their annual premium taxes over 10 years, ultimately recouping all of it.

A state economist recently confirmed the projections during the state's Revenue Estimating Conference, warning lawmakers to expect a future drop in insurance taxes that normally flow into the general fund.

If LIGA, for example, collects \$100 million from each annual assessment, insurers can claim one-tenth of that — or \$10 million — in premium tax rebates each year. And the value grows by \$10 million every year — as long as the organization depends on the assessments to settle its debt.

The repayment plan is a sharp change in direction. Before the current crisis, LIGA had not charged assessments for nearly 17 years. Now, it will be pulling capital from private insurers until 2038 — who in turn will be paying less in taxes to the state.

“That part is particularly problematic in the long run,” Cunningham said. “It works as a stopgap measure, but any company constantly faced with using their capital — which is what they use to invest — with no return on that investment becomes unsustainable.”

#### Stalled legal settlements

In addition to the claims, LIGA also inherited at least 1,355 claim-related lawsuits from the recent insolvencies. The association is responsible for compensating home and business owners up to \$500,000 for each claim. But consumers will find that the same laws often used to encourage payments from tight-fisted insurers don't apply to LIGA.

Those laws are designed to keep insurers that collect premiums accountable, whereas LIGA isn't trying to make a profit, said Wells, the association's executive director. “We're not an insurance company. The only reason we exist is to help folks,” he said.

Nishi Kothari, a partner at the Brasher Law Firm, said a half-million dollars may seem like a lot of money, but it's not much for businesses and owners of large homes faced with a total loss of their property.

Some attorneys might also use the threat of seeking extra damages and legal fees as a cudgel to get insurers to move on a claim. Those aren't available in lawsuits against the bailout fund operator.

“Under LIGA, you don’t get any of the extra-contractual damages,” Kothari said. “You only get exactly what was allowed under the contract and of course, they’re going to want to negotiate off of that.”

Plaintiff’s attorneys say advocating for clients under LIGA in some cases has been hindered by delays and uncertainty.

For several weeks Maison Insurance languished in what regulators call a “solvent run-off” status, which allowed the insurer to settle existing claims even as its long-term solvency was in question. In August, regulators merged Maison with an affiliated company, Fednat Insurance Co., and shuttered them both in a court-ordered receivership the next month.

Kothari said all litigation related to Maison and Fednat has stopped. But there is no definite date when cases will be allowed to resume and whether LIGA will honor existing settlements.

“Even those defense attorneys who originally were handling the cases have no authority to do anything,” Kothari said. “You just have to wait when your turn comes and a LIGA adjuster gets appointed.”

Long wait for relief

Stagnant legal negotiations. A growing pileup of claims.

It all sounds familiar to Amy Bach, executive director for United Policyholders, a consumer advocacy group based in California.

“You don’t hear good reports on the claim handling out of LIGA,” said Bach, who also worked in the state after Katrina. “They probably don’t have enough staff; that’s generally what we see with these programs so then they outsource to people who know how to keep insurance companies happy by playing hardball on claims and delaying. None of this is good for the consumer.”

LIGA continues to employ a small army of adjusters who have worked through about two-thirds of its claims, Wells said. Some claims are left open so consumers can file for other policy benefits.

In other cases, there may be disputes over damages, Wells said, so closing them out can be delayed for several reasons.

“There’s a lot that goes into these claims,” Wells said. “It’s not just writing one check and you never see the person again.”

The financial relief can’t come soon enough for people like Mason in LaPlace. One year after her home was damaged by Hurricane Ida, she was happy to finally move back into her house.

The spacious home, with vaulted ceilings and new epoxy floors, was finally ready to be reoccupied on a rainy afternoon in August. Although Mason and her husband dipped into their savings to get it done, she figured hiring a lawyer would be enough to help recover the money they spent.

But LIGA still hasn’t received the claims information from the Florida regulators overseeing the receivership. And the number of estimated claims related to Maison and Fednat is in the ballpark of 1,500.

“We’re just waiting so we can put our money back (in savings) and finish what we need,” Mason said. “You don’t know when; you kind of just forget about it because if you keep thinking about it, it’ll drive you crazy.”