

FLORIDA INSURANCE UPDATE AND EMERGING FEDERAL ISSUES

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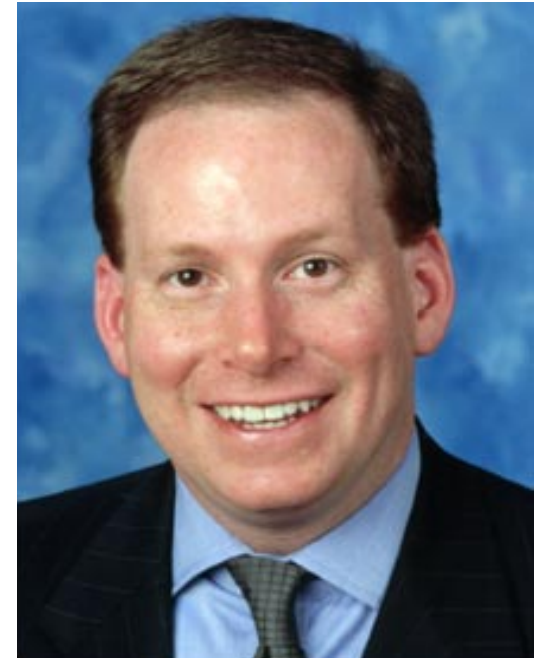


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PROFESSIONAL BIOGRAPHY OF FRED E. KARLINSKY

- Fred E. Karlinsky, a shareholder in Colodny, Fass, Talenfeld, Karlinsky and Abate in Fort Lauderdale and Tallahassee, focuses his practice on insurance regulatory matters, insurance legislative matters, insurance transactional matters and governmental affairs.
- An “AV” rated Martindale Hubbell attorney, Mr. Karlinsky was named to Florida Trend Magazine’s Florida Legal Elite in 2005 and 2006, named as a Top Lawyer by the South Florida Legal Guide for 2005, 2006, and 2007, and selected as a Super Lawyer and featured in the 2007 Florida Super Lawyer Magazine.



PROFESSIONAL BIOGRAPHY OF FRED E. KARLINSKY

- Mr. Karlinsky currently serves as Florida counsel to the Property Casualty Insurers Association of America (PCI), general counsel and chief lobbyist for the Florida Property and Casualty Association (FPCA) and lobbyist for the Florida Association of Health Underwriters (FAHU) among other clients.
- Mr. Karlinsky is a graduate of the University of Miami (B.S., 1989) and Florida State University College of Law (J.D., 1992).
- A member of the Florida Bar, Mr. Karlinsky is admitted to practice in all Florida state and appellate courts, the United States District Court for the Southern, Middle and Northern Districts of Florida, the United States Court of Appeals for the 11th Circuit, the United States Court of Federal Claims, the United States Tax Court and the United States Supreme Court.



PROFESSIONAL BIOGRAPHY OF FRED E. KARLINSKY

- Mr. Karlinsky is a member of the American Bar Association, the Broward, Miami-Dade, and Tallahassee Bar Associations, the Florida Academy of Professional Mediators, the Association of Insurance Compliance Professionals, the International Association of Insurance Receivers, the Federation of Regulatory Counsel, the Gerson Lehrman Group, the American Society of Workers Compensation Professionals, the Society of Financial Examiners, and the American Association of Managing General Agents.



DISCLAIMER

- The materials in this presentation are intended to provide a general overview of the issues contained herein and are not intended nor should they be construed to provide specific legal or regulatory guidance or advice. If you have any questions or issues of a specific nature you should consult with appropriate legal or regulatory counsel to review the specific circumstances involved.



OUTLINE OF PRESENTATION

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- A. 2004 - 2005 Hurricane Seasons
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OUTLINE OF PRESENTATION

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OUTLINE OF PRESENTATION

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OUTLINE OF PRESENTATION

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I. POLITICAL ENVIRONMENT



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POLITICAL ENVIRONMENT: 2004-2005 HURRICANE SEASONS

Unprecedented Hurricane Seasons (2004 and 2005)

- 2004 Season – Hurricanes Charley, Frances, Ivan and Jeanne resulted in \$25 billion in insured losses in Florida.
- 2005 Season – Hurricanes Dennis, Katrina, Rita, and Wilma resulted in another \$11 billion in insured losses in Florida.
- Total Losses – Estimated claim losses of \$36 billion for 2004-05 seasons in Florida.



POLITICAL ENVIRONMENT: FLORIDA ELECTIONS

Florida Elections – November 2006

- Between the 2006 and 2007 legislative sessions, public outrage over the lack of available, affordable property insurance soared.
- In November 2006, general elections were held. 3 of the 4 Cabinet positions changed hands.
- Charlie Crist (R) replaced Jeb Bush (R) as Governor; Alex Sink (D) replaced Tom Gallagher (R) as Chief Financial Officer; Bill McCollum (R) replaced Charlie Crist (R) as Attorney General; and, Charles Bronson remained Commissioner of Agriculture.
- In Florida, the Insurance Commissioner is an appointed position. Kevin McCarty remains Florida's Insurance Commissioner.



POLITICAL ENVIRONMENT: LEGISLATURE

- House of Representatives (78 Republicans, 42 Democrats)
 - Leadership
 - Speaker – Marco Rubio (R- Miami)
 - Majority Leader – Adam Hasner (R- Delray Beach)
 - Minority Leader – Dan Gelber (D- Miami Beach)
 - Jobs and Entrepreneurship Council Chair – Ron Reagan (R- Sarasota)
 - Insurance Committee Chair – Don Brown (R- Defuniak Springs)
- Senate (26 Republicans, 14 Democrats)
 - Leadership
 - President – Ken Pruitt (R- Port St. Lucie)
 - President Pro Tem – Lisa Carlton (R- Osprey)
 - Majority Leader – Dan Webster (R- Winter Garden)
 - Minority Leader – Steve Geller (D- Hallandale Beach)
 - Banking and Insurance Chair – Bill Posey (R- Rockledge)



POLITICAL ENVIRONMENT

- Governor Crist immediately made property insurance his main focus.
- State legislators – some newly-elected and some incumbents – followed Governor Crist's lead.
- A Special Session of the Florida Legislature was convened in January 2007 to exclusively address property insurance issues in Florida. It resulted in sweeping changes in Florida's Insurance Code.
- The Regular Session of the Florida Legislature produced additional changes and clarifications related to the Special Session legislation.



II. SELF INSURANCE FUNDS



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COMMERCIAL SIFS

2006 Version of Section 624.462 of the Florida Statutes: Overview

- The following entities or groups of entities could create SIFs for the purpose of pooling and spreading liabilities for its group members in any commercial property or casualty risk or surety insurance:
 - Not-for-Profit Trade Association;
 - Self Insurance Trust Fund;
 - A Group of ten (10) or more Health Care Providers; and,
 - Not-for-Profit Group comprised of no less than ten (10) condominium associations.



COMMERCIAL SIFS

2006 Version of Section 624.462: Specifics

- Commercial Self Insurance Fund defined as:
 - A group of members, operating individually or collectively through a trust or corporation that **MUST** be one of the following four entities:



COMMERCIAL SIFS

1. Not-for-profit trade association, industry association, or professional association of employers or employees which:
 - Has a constitution or by-laws;
 - Is incorporated under the laws of Florida;
 - Which has been organized for purposes other than obtaining or providing insurance; and,
 - Which has operated in good faith for a continuous period of one (1) year.



COMMERCIAL SIFS

2. A self-insurance trust fund

- Organized pursuant to Section 627.357;
- Maintained in good faith for a continuous period of one (1) year;
- Maintained for purposes other than obtaining or providing insurance pursuant to this Section (624.462); and,
- Each member of a SIF established under this Section (624.462) must maintain membership in the self insurance trust fund organized pursuant to Section 627.357.



COMMERCIAL SIFS

3. A group of ten (10) or more health care providers
 - For purposes of providing medical malpractice coverage.



COMMERCIAL SIFS

4. A not-for-profit group comprised of no less than ten (10) condominium associations

- Incorporated under the laws Florida;
- Which restricts its membership to condominium associations only; and,
- Which have been organized and maintained in good faith for a continuous period of one (1) year for purposes *other than* obtaining or providing insurance.



COMMERCIAL SIFS

January 2007 Special Session: Overview

- House Bill 1A (“HB 1A”) amended Section 624.462, *Fla. Stat.*
- Section 624.462(a)(4) now provides that the following entities or groups of entities can create SIFs for the purpose of pooling and spreading liabilities for its group members in any commercial property or casualty risk or surety insurance:
 - Not-for-Profit Trade Association;
 - Self Insurance Trust Fund;
 - A Group of ten (10) or more Health Care Providers; and,
 - Not-for-Profit Group Comprised of ***one or more community*** associations.

(Emphasis illustrates amended language)



COMMUNITY ASSOCIATION SIFS

January 2007 Special Session: Specifics

- The specific changes are as follows:
 - Not-for-Profit Group comprised of ***one or more community*** associations;
 - ***Responsible for operating at least fifty (50) residential parcels or units created and operating under Chapter 721, or Chapter 723;***
 - Which restricts its membership to ***community*** associations only; and,
 - Which has been organized and maintained in good faith ***for the purpose of pooling and spreading the liabilities of its group members relating to property or casualty or surety*** insurance.

(Emphasis illustrates amended language)



COMMUNITY ASSOCIATION SIFS

Definition of Community Association

- The law defines an “association” as follows:
 - “in addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership.”



COMMUNITY ASSOCIATION SIFS

January 2007 Special Session Cont'd

- HB 1A created a new law which allows for not for profit corporations organized under the laws of Florida to formulate SIFs *for the purpose of* pooling and spreading the liabilities of its group members in any one or combination of property or casualty risks, provided the not for profit corporations meet certain requirements.



COMMUNITY ASSOCIATION SIFS

May 2007 Regular Session: Overview

- House Bill 7031 (“HB 7031”) further amended Section 624.462(a)(4) related to community association SIFs.

- Current Version of Section 624.462(a)(4), as amended by the addition of sections 4, 5 and 6 below:
- *A not-for-profit group comprised of one or more community associations responsible for*
 1. Operating at least 50 residential parcels or units created and operating under chapters 718, 719, 720, 721 or 723;
 2. Which restricts its membership to community associations only;



COMMUNITY ASSOCIATION SIFS

3. Which has been organized and maintained in good faith for the purpose of pooling and spreading the liabilities of its group members relating to property or casualty risk or surety insurance;
4. Which, in accordance with applicable provisions of part I of chapter 626, appoints resident general lines agents only;
5. Which does not prevent, impede or restrict any applicant or fund participant from maintaining or selecting an agent of choice; and,
6. The fund may not refuse to appoint the agent of record for any fund applicant or fund member and may not favor one or more such appointed agents over other appointed agents.



COMMUNITY ASSOCIATION SIFS

HB 7031's Other Amendments

- Section 624.462(2)(b)(5) was also amended to provide that a community association SIF shall be considered an insurer for the purpose of any assessment levied by the Florida Hurricane Catastrophe Fund (FHCF) or by the Citizens Property Insurance Corporation (Citizens).
- Additionally, the Office of Insurance Regulation (OIR) is required to establish the method for determining the imputed premium that is subject to any of the above referenced assessments.
- Finally a community association SIF must hold a certificate of authority issued by OIR under Section 624.462 for one of its policies to be considered a “covered policy.”



COMMUNITY ASSOCIATION SIFS

What Does All This Mean?

- Community Associations can now form SIFs for the purpose of pooling and spreading the liabilities of its group members relating to property or casualty risk or surety insurance provided that the SIF meets the statutory requirements.
- Community Association SIFs are considered insurers for assessments levied by the FHCF or by Citizens.
- Community Association SIFs that hold a certificate of authority are now considered to provide a covered policy for purpose of the FHCF.



COMMUNITY ASSOCIATION SIFS

- This means that the not for profit community association SIF can access the FHCF, provided it satisfies the other eligibility provisions related to the FHCF, and that it is also subject to the FHCF assessments.
- Community Associations have insurance options *other than* the private market or Citizens.



GOVERNMENTAL SIFS

2006 Version of Section 624.4622 of the Florida Statutes

- Any two or more local governmental entities may enter into interlocal agreements for the purpose of securing the payment of benefits.



GOVERNMENTAL SIFS

January 2007 Special Session

- HB 1A also amended Section 624.4622 which governs local government SIFs.
- This amendment to Section 624.4622(1) provides that any two or more local governmental entities may enter into interlocal agreements for the purpose of securing the payment of benefits **or** self-insuring real or personal property of every kind and every interest in such property against loss or damage from any hazard or cause.



GOVERNMENTAL SIFS

In addition, local governmental self-insurance funds must:

1. Have annual normal premiums in excess of \$5 million;
2. Maintain a continuing program of excess insurance coverage and reserve evaluation to protect the financial stability of the fund in an amount and manner determined by a qualified and independent actuary;
3. Submit annually to the office an audited fiscal year-end financial statement by an independent certified public accountant within six (6) months after the end of the fiscal year; and
4. Have a governing body which is comprised entirely of local elected officials.



GOVERNMENTAL SIFS

Other Requirements of Section 624.4622

- A local government self-insurance fund that meets the requirements of this section is not subject to rules related to group self-insurance funds and is not required to file any report with the office.
- If any of the requirements of this section are not met, the local government self-insurance fund is subject to the requirements of group self-insurance funds.



GOVERNMENTAL SIFS

- A local government self-insurance fund created under this section after October 1, 2004, shall initially be subject to the requirements of a commercial self-insurance fund and, for the first five (5) years of its existence, shall be subject to all the requirements applied to commercial self-insurance funds or to group self-insurance funds, respectively.



GOVERNMENTAL SIFS

- A local government self-insurance fund formed after January 1, 2005, shall, for its first five (5) fiscal years, file with the office full and true statements of its financial condition, transactions and affairs.
- An annual statement covering the preceding fiscal year shall be filed within sixty (60) days after the end of the fund's fiscal year, and quarterly statements shall be filed within forty five (45) days after the end of each quarter.
- OIR may, for good cause, grant an extension of time for filing an annual or quarterly statement.



GOVERNMENTAL SIFS

- The financial statements shall contain information generally included in insurers' financial statements prepared in accordance with generally accepted insurance accounting principles and practices and in a form generally used by insurers for financial statements, sworn to by at least two executive officers of the self-insurance fund.
- The form for financial statements shall be the form currently approved by the National Association of Insurance Commissioners for use by property and casualty insurers.
- Each annual statement shall contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries.
- Workpapers in support of the statement of opinion must be provided to the office upon request.



GOVERNMENTAL SIFS

What Does All This Mean?

- Local governments can create SIFs for the purpose of self-insuring real or personal property of every kind and every interest in such property against loss or damage for any hazard or cause and against any loss consequential to such loss or damage.



III. 2007 SPECIAL SESSION



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2007 SPECIAL SESSION: OVERVIEW

House Bill 1A amended several provisions of the laws regarding the insurance industry including:

- FHCF
- Citizens
- Coverage Exclusion
- Deductibles
- Payment of Premiums
- Insurance for Condominiums and Similar Entities
- Discounts
- Premium Notice
- Timely Payment of Claims
- Insurer Affiliates and Subsidiaries (“PUPs”)
- Cherry Picking by Auto Insurers
- Hurricane Mitigation
- Legislative Intent for Grant Program to Low-Income Persons
- Florida Building Code
- Insurance Consumer Advocate
- Self-Insurance Funds
- Bonding Authority
- Insurance Rating Law
- Reinsurance
- Catastrophic Ground Cover Collapse Coverage
- Sinkholes
- Hurricane Claims Data
- Florida Disaster Recovery Initiative
- Florida Insurance Guarantee Association
- Insurance Capital Build-Up Incentive Program.



2007 SPECIAL SESSION: CITIZENS

- House Bill 1A abandons the original theory that Citizens, as a state-run insurer of last resort, should not compete with the voluntary market. These changes will almost certainly fuel the rapid growth of Citizens to the detriment of the voluntary market.



2007 SPECIAL SESSION: CITIZENS

- More specifically, the bill:
 - Expanded Residential Eligibility:
 - Places Citizens in more direct competition with the voluntary market. Although new applicants to Citizens are not eligible if they are offered coverage from a private insurer, there is an exception if the insurer's premium is more than 25 percent greater than the premium for comparable coverage from Citizens (Senate Bill 2498 reduced the threshold to 15%).
 - Current Citizens policyholders remain eligible for coverage regardless of any offer of coverage from a private market insurer.



2007 SPECIAL SESSION: CITIZENS

- Expanded Commercial Nonresidential Eligibility:
 - Integrates the Commercial Property and Casualty Joint Underwriting Association into Citizens.
 - Citizens is authorized to offer multiperil coverage for commercial nonresidential properties in all areas of the state, subject to the certain qualifications applicable to Citizens' High Risk Account (HRA).
 - Citizens' Plan of Operation may require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.



2007 SPECIAL SESSION: CITIZENS

- Competitive, Actuarially Sound Rates:
 - Deletes the requirement that Citizens' rates be non-competitive and no lower than the top 20 insurers. Now requires Citizens' rates to be "actuarially sound" and subject to the standards that generally apply to property insurers (i.e., prohibits property insurance rates that are excessive, inadequate or unfairly discriminatory).



2007 SPECIAL SESSION: CITIZENS

- Multiperil and Wind-Only Coverage in High Risk Account:
 - Citizens may now offer multiperil coverage and/or wind-only coverage for personal and commercial residential risks and commercial nonresidential risks located in areas eligible for coverage in the HRA.



2007 SPECIAL SESSION: CITIZENS

- Assessments for Citizens' Deficits:
 - The new law expands Citizens' assessment base to be substantially the same as that of the FHCF. Now that base includes all lines of property and casualty insurance, including auto insurance. It does not include workers' compensation, accident and health, medical malpractice and miscellaneous other lines. This provision expands Citizens' assessment base four-fold, from about \$8.2 billion to \$35 billion, based on 2006 premiums.
 - It also delays until 2008 the requirements established in SB 1980 that Citizens impose up to a 10 percent of premium assessment on all nonhomestead policyholders if a deficit occurs.



2007 SPECIAL SESSION: CITIZENS

- Other Changes to Citizens:
 - Clarifies that the plan of operation may establish maximum limits of coverage.
 - Specifies that policies taken out, assumed, or removed from Citizens are considered to be the sole obligation and direct insurance of the take-out company (so that Citizens does not retain liability for such policies).
 - Requires Citizens to be subject to assessments levied by the Florida Insurance Guaranty Association.
 - Allows the SBA to invest and manage the assets of Citizens.
 - Clarifies that the appointing officers may recall members of the Citizens Board of Directors at will.



2007 SPECIAL SESSION: CITIZENS

- Creates the Task Force on Citizens Property Insurance Claims Handling and Resolution. The task force has seven members, and is to research, hold hearings, and make recommendations as to issues regarding Citizens, including improving customer service and claims handling, and make recommendations as it deems appropriate for legislative action during the 2006-2008 legislative biennium. The task force expires after the 2006-2008 legislative biennium.



2007 SPECIAL SESSION: FHCF

- Florida Hurricane Catastrophe Fund
 - The FHCF offers new options for state-sponsored reinsurance. The Legislature intends the changes to the FHCF to increase the availability and affordability of reinsurance to insurers. HB 1A mandates that insurer pass these savings on to policyholders.

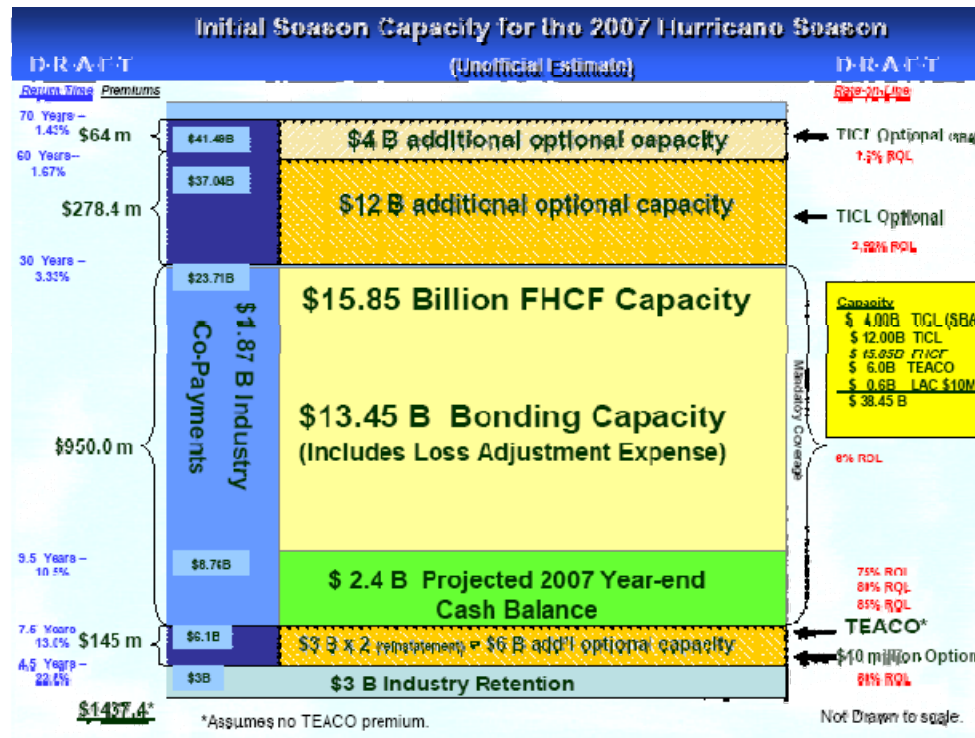


2007 SPECIAL SESSION: FHCF

- New options for additional coverage
 - Temporary Increase in Coverage Limit option (“TICL”) and Temporary Emergency Additional Coverage Option (“TEACO”) offer residential property insurers the opportunity to purchase different levels of reinsurance.
 - TICL – Provides for additional FHCF capacity up to \$12 billion industry-wide, which may be purchased by insurers.
 - TEACO – Allows an insurer to reduce its FHCF retention. The coverage equals the company’s share of a layer between the \$6.089 billion FHCF retention and a \$3, \$4, \$5 billion TEACO retention.
 - Certain eligible residential property insurers can purchase up to \$10 million in additional FHCF drop down coverage at a level significantly below the normal FHCF rate.



2007 SPECIAL SESSION: FHCF



2007 SPECIAL SESSION: FHCF

- Mandatory Rate Filings

- All residential property insurers were required to make a rate filing with the OIR by March 31, 2007, reflecting the savings or reduction in loss exposure to the insurer due to the expanded FHCF coverage.
- Each rate filing must take into account the presumed factor for any policy written or renewed on or after June 1, 2007, to reflect all expanded FHCF coverage options available to the insurer, whether or not the insurer purchases the coverage.



2007 SPECIAL SESSION: FHCF

- Mandatory Rate Filings
 - Insurers cannot factor into their rates any additional costs for private reinsurance or loss exposure that duplicates the expanded FHCF options.
 - Moreover, insurers cannot obtain rate increases due to the election of coverage options from the FHCF.



2007 SPECIAL SESSION: REGULATORY ISSUES

- Coverage Exclusions
 - Insurers must allow policyholders to opt to exclude windstorm and/or contents coverage for homeowners' policies, if the policyholder provides a written statement that he or she does not want such coverage and provides documentation of approval by any mortgage or lien holder.
- Premium Payment Plans
 - Insurers must allow personal lines residential and commercial policyholders to pay premiums on a quarterly or semiannual installment plan and that an insurer must provide the policyholder the option of selecting an appropriate reduction in the policy's hurricane deductible or selecting the appropriate discount credit or other rate differential.



2007 SPECIAL SESSION: REGULATORY ISSUES

- Nonrenewal Restrictions
 - Insurers must provide policyholders with either 100 days' written notice of their intent to nonrenew a residential property policy or notice by June 1, whichever is earlier, for any nonrenewal effective between June 1 and November 30.
- Insurance Rating Law
 - Through January 1, 2009, property and casualty insurers are prohibited from implementing a rate change prior to obtaining approval from the OIR (the current "use and file" option) unless the insurer files for a rate that is less than the insurer's most recent rate approved by the OIR. All filings that do not seek a lower rate must be made under the "file and use" procedures that require filing at least 90 days prior to the proposed effective date.



2007 SPECIAL SESSION: REGULATORY ISSUES

- Sworn Statements
 - The chief executive officer or chief financial officer and the chief actuary of a property insurer are required to sign a sworn certification, subject to perjury and administrative penalties, that the information in the rate filing does not contain any untrue statements of a material fact or omit material facts and that the rate filing reflects premium savings that are reasonably expected to result from legislative enactments and are in accordance with accepted actuarial techniques.



2007 SPECIAL SESSION: REGULATORY ISSUES

- Insurer Affiliates and Subsidiaries
 - The new law increases the minimum surplus requirement from \$5 million to \$50 million for a domestic residential property insurer that is a wholly owned subsidiary (“pup company”) of an insurer authorized to do business in another state.



2007 SPECIAL SESSION: REGULATORY ISSUES

- “Cherry-Picking” Provision
 - Effective January 1, 2008, an insurer writing private passenger automobile insurance in Florida and which also writes homeowners’ policies in other states must also write homeowners’ coverage in Florida, unless an affiliate writes homeowners insurance in Florida.



2007 SPECIAL SESSION: REGULATORY ISSUES

- Catastrophic Ground Cover Collapse Coverage & Sinkholes
 - Property insurers are required to provide coverage for “catastrophic ground cover collapse” as defined in the statute.
 - Insurers must continue to make sinkhole coverage as currently defined in the statute available for an appropriate additional premium.
 - Insurers offering policies that exclude coverage for sinkhole losses must provide written notice to the policyholder in 14-point type.



2007 SPECIAL SESSION: FLORIDA BUILDING CODE

- Florida Building Code
 - The new law requires that the Florida Building Code be revised to repeal the so called “Panhandle exemption” and other changes to strengthen the windstorm resistance requirements of the code, specifically:
 - Requires the Florida Building Commission to amend the Florida Building Code by July 1, 2007, to adopt the windborne-debris protection requirements of the International Building Code (2006) and the International Residential Code (2006) within the windborne-debris region (120 mph+) as defined by those codes;



2007 SPECIAL SESSION: FLORIDA BUILDING CODE

- Prohibits amendments or modifications that diminish provisions related to wind resistance or water intrusion. However, the Commission may amend such provisions to enhance those requirements;
- Requires local jurisdictions to immediately enforce these wind-borne debris protection requirements upon the effective date of the Act (i.e. for building permits issued on or after that date) pending adoption by the Florida Building Commission; and
- Requires the Florida Building Commission to develop voluntary “Code-Plus” guidelines for increasing the hurricane resistance of buildings that may be modeled on the Miami-Dade Building Code.



2007 SPECIAL SESSION: OTHER CHANGES

- The new legislation makes the following additional changes to Florida law:
 - Authorizes the OIR to waive or lower the deposit requirement for reinsurers licensed in other countries, based on criteria related to the financial strength of the insurer and the quality of the regulatory jurisdiction;
 - Requires the Insurance Consumer Advocate to provide an annual report card on insurance companies, using a letter grade scale established by the Financial Services Commission;
 - Modifies insurance provisions in the Condominium Act to limit insurance requirements to “residential” condominiums, as defined, and to specify what constitutes “adequate insurance”; and



2007 SPECIAL SESSION: OTHER CHANGES

- For fiscal year 2006-2007, provides an appropriation of \$100,066,518 from the Florida Small Cities Community Development Block Grant program fund to the Department of Community Affairs. The funding must be used to harden single-family and multi-family affordable housing, to mitigate against hurricane damage and costs of property insurance.



2007 SPECIAL SESSION: FIGA

- Florida Insurance Guaranty Association
 - Clarifies the Legislature's intent of a 2006 law that FIGA has the authority to use an emergency assessment of up to 2 percent of premium either to directly pay the covered claims of insolvent insurers or to utilize such emergency assessment proceeds to retire the indebtedness of bonds.



IV. 2007 REGULAR SESSION



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2007 REGULAR SESSION: SENATE BILL 2498

- The legislature needed to clarify many of the provisions enacted during the Special Session.
- While many of these glitch issues eased some of the stringent regulation from House Bill 1A, the Governor successfully added provisions to the bill that further expanded Citizens. The bill:
 - Revises Citizens' legislative intent language emphasizing the need for affordable property insurance to be provided by Citizens;
 - Lowers the threshold for Citizens eligibility to apply when the premium for comparable coverage from a private insurer is 15% greater than Citizens' premium. Previously, the threshold was 25%;



2007 REGULAR SESSION: SENATE BILL 2498

- Extends the Citizens rate increase freeze through 2008;
- Extends the ineligibility for Citizens coverage on property insured for \$1 million or more to January 1, 2009, rather than July 1, 2008;



2007 REGULAR SESSION: SENATE BILL 2498

- Provides that effective December 31, 2008, new certificates of authority may not be issued to a Florida domestic residential property insurer that is a wholly owned subsidiary of an insurer authorized to conduct business in another state (prohibits new “pup” companies);
- Requires “pup” companies to include information relating to the profits of its parent company in any rate filings;
- Clarifies that “pup” companies that are wholly owned subsidiaries of a parent company domiciled in another state are required to maintain \$50 million in surplus;



2007 REGULAR SESSION: SENATE BILL 2498

- Provides an exception for insurers writing only manufactured housing policies in the state to obtain a \$7 million surplus note even if the insurer applies for the surplus note after July 1, 2006 but before June 1, 2007. To be eligible, the insurer must write at least 40 percent of its policies covering manufactured housing. The bill also gives priority to the insurer writing the highest percentage of its policies covering manufactured housing;
- Clarifies that limited apportionment companies, companies participating in the Insurance Capital Build-Up Incentive Program, and companies that bought supplemental FHCF coverage in 2006 will qualify for the same supplemental coverage in 2007;



2007 REGULAR SESSION: SENATE BILL 2498

- Extends the exemption for medical malpractice insurance from FHCF emergency assessments to May 31, 2010;
- Requires that insurers pay or deny a claim or a portion of the claim within 90 days of receiving notice of the claim. Further, any portion of the claim not paid within 90 days will be subject to the calculation of interest unless there are factors beyond the control of the insurer which reasonably prevent payment;
- Amends the definition of "diligent effort" by allowing insureds who have residential homes with a replacement cost of \$1 million or more to be eligible for surplus lines coverage if they have been rejected once by a private insurer;



2007 REGULAR SESSION: SENATE BILL 2498

- Requires an insurance agent to provide written notice that Citizens coverage may be available and less expensive than surplus lines coverage, but the notice must also state that Citizens coverage may be less comprehensive and the policyholder may be subject to higher assessments;
- Provides that all filings made or submitted after January 25, 2007, but before December 31, 2008, be on a “file and use” basis (this provision does not apply to policies for motor vehicle insurance);



2007 REGULAR SESSION: SENATE BILL 2498

- Provides an exemption from the standard notice of cancellation, nonrenewal or renewal premium for revisions in sinkhole coverage and for policies nonrenewed by Citizens when the policies have been assumed by an authorized insurer;
- Authorizes, but does not mandate, the Office of Insurance Regulation to establish a pilot program to offer optional sinkhole coverage;



2007 REGULAR SESSION: SENATE BILL 2498

- Amends several provisions relating to the FIGA:
 - The bill permits all municipalities and counties in the state to issue bonds to assist FIGA. Previously, only counties and municipalities that were substantially affected by a hurricane had that authority,
 - The bill amends the powers and duties of FIGA so that emergency assessments may be used for insolvencies caused by the effects of a hurricane,
 - The bill exempts any kind of self-insurance fund, liability pool, or risk management fund from coverage by FIGA;



2007 REGULAR SESSION: SENATE BILL 2498

- Provides that effective August 1, 2007, a renewal premium must specify the dollar amount recouped for assessments by the FHCF, Citizens, and FIGA and the dollar amount of any premium increase that is due to an approved rate increase and coverage changes;
- Provides that an insurer must make available windstorm coverage, but also offer an exclusion for windstorm coverage at the option of the policyholder;
- Creates the Citizens Property Insurance Corporation Mission Review Task Force to return Citizens to its former role as a noncompetitive corporation. However, the Governor vetoed the \$600,000 appropriation for this task force;



2007 REGULAR SESSION: SENATE BILL 2498

- Allows insurance companies to choose to offer monthly payment plans for personal lines residential and commercial lines property insurance. The bill maintains the requirement that quarterly or semiannual payment plans must be offered at a minimum;
- Allows Citizens to offer a monthly payment plan;



2007 REGULAR SESSION: SENATE BILL 2498

- Transfers policy transparency requirements (clearly identifying the potential combinations of discounts, credits, rate differentials, or reductions in deductibles for windstorm mitigation) from the auto insurance section to the property insurance section in order to achieve the original legislative intent. (Originally, these provisions were erroneously drafted in the auto insurance section of HB 1A); and
- Specifies that OIR may, at the earliest, request claims reporting data from insurance companies in January of the year after the hurricane season, so that companies can focus their efforts on processing claims in the wake of the storms.



2007 REGULAR SESSION: HURRICANE MITIGATION

- Committee Substitute for House Bill 7057 by Representative Trey Traviesa (R- Tampa). The act:
 - Creates a no-interest loan program that will allow certain homeowners to be eligible for up to \$5,000 in three years, subject to requirements by their lender, to retrofit homes;
 - Allows the Department to allocate \$10 million of the \$250 million initially appropriated to the My Safe Florida Home Program for the no-interest loan program;
 - States that to be eligible for a grant the home must have an insured value less than \$300,000, be located in a "wind-borne debris region," and have a building permit application for initial construction before March 1, 2002;



2007 REGULAR SESSION: HURRICANE MITIGATION

- Requires the OIR, the Department of Community Affairs and the Florida Building Commission to conduct wind loss mitigation studies and provide their report by January 1, 2008;
 - Requires personal lines residential policyholders with structures valued at \$750,000 or more in the wind-borne debris regions to implement certain mitigation features to remain eligible for insurance coverage by Citizens; and
 - Requires that roof replacements comply with stringent guidelines, and further instructs the Florida Building Commission to develop rules in this regard.
- This act became effective as of June 12, 2007.



2007 REGULAR SESSION: INSURANCE BRANCH AGENCIES

- Committee Substitute for Committee Substitute for House Bill 1381 by Representative Garrett Richter (R- Naples). The act:
 - Authorizes certain agencies designated as a branch office to file an application for registration in lieu of licensure;
 - Provides an exemption from a required written examination to certain applicants for licensure as a claims adjuster;
 - Authorizes certain licensed agents to be the agent in charge of branch locations under certain circumstances; and
 - Revises the requirements for identification of insurers, agents, and insurance contracts.
- This act became effective as of June 12, 2007.



2007 REGULAR SESSION: WORKERS' COMPENSATION

- Senate Bill 746 by Senator J.D. Alexander (R- Lake Wales) generally increases the likelihood that first responders are eligible for Workers' Compensation benefits. The bill:
 - Provides a standard of proof for first responders having injury or disease caused by exposure to toxic substances;
 - Provides that any adverse result or complication regarding smallpox vaccinations is an injury by accident arising out of employment;
 - Sets forth a standard of proof in cases involving occupational disease; and
 - Provides for continuation of permanent total supplemental benefits after age of 62 for certain first responders.
- The bill was signed by the Governor on June 8, 2007 and became effective on that date.



2007 REGULAR SESSION: WORKERS' COMPENSATION

- Senate Bill 1894 by Senator Bill Posey (R- Rockledge) provides for additional oversight of the Florida Workers' Compensation Joint Underwriting Association (JUA) and helps the JUA seek tax exempt status. Specifically, the bill:
 - Provides requirements for joint underwriting plan of insurers which operate as a JUA;
 - Revises restrictions on who may serve on the JUA board;
 - Requires that a market assistance plan be periodically reviewed and updated;



2007 REGULAR SESSION: WORKERS' COMPENSATION

- Requires that excess funds received by the plan be returned to the state; and
- Provides for the applicability of specified statutes regulating ethical standards.
- This bill was signed by the Governor on June 15, 2007 and is effective as of July 1, 2007.



2007 REGULAR SESSION: WORKERS' COMPENSATION

- House Bill 7169 by Representative Ron Reagan (R- Sarasota) exempts certain documents and portions of meetings by the JUA as public:
 - Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files;
 - Claims files of the JUA until the termination of all litigation and settlement of all claims arising out of the accident;
 - Medical records related to the medical condition or medical status of an individual;
 - Records obtained or generated by an internal auditor until the audit is completed or, if the audit is part of an investigation, until the investigation is closed or ceases to be active;
 - Proprietary information licensed to the JUA under contract when the contract requires the JUA to maintain confidentiality;



2007 REGULAR SESSION: WORKERS' COMPENSATION

- Records relative to the participation of an employee in an employee assistance program;
- Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations;
- Reports regarding suspected fraud or other criminal activity and producer appeals and related reporting regarding suspected misconduct until the investigation is closed or ceases to be active;
- Information received from the Department of Revenue regarding payroll information and client lists of employee leasing companies authorized under Sections 440.381 and 468.529, *Fla. Stat.*



2007 REGULAR SESSION: WORKERS' COMPENSATION

- A public record prepared by an attorney retained by the JUA to protect or represent the interests of the JUA or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the JUA; and
- A transcript or minutes of exempt portions of meetings of the board of directors or any subcommittee of the board at which confidential and exempt records are discussed until termination of all litigation and settlement of all claims with regard to that claim.
- This bill was signed by the Governor on June 19, 2007 and is effective as of July 1, 2007.



2007 REGULAR SESSION: PIP

- During the 2007 Regular Session, the Legislature, through inaction, left open the opportunity for the Florida Motor Vehicle No Fault (“PIP”) laws to expire or “sunset” on October 1, 2007.
- Although the Legislature did not pass a bill regarding PIP, there were several proposals considered during the Committee process throughout the Regular Session.
- Senator Bill Posey (R- Rockledge) took the lead on the issue in the Florida Senate and Majority Whip, Representative Ellyn Bogdanoff (R- Fort Lauderdale) took the lead in the Florida House.



2007 REGULAR SESSION: PIP

- Senate Bill 1880 by Senator Bill Posey
 - Would have reenacted the PIP laws through 2009 and allowed insurers to limit amounts paid to providers to 200 percent of the Medicare Part A or B participating fee schedules. Also, if the treatment services were not reimbursable under Medicare Part A or B, then insurers may limit payments to the maximum reimbursable amount under workers' compensation. If the treatment was not reimbursable under Medicare or workers' compensation, then it was not reimbursable under PIP.
 - The bill also would prohibit a provider from billing an insured any amount in excess of the fee schedule payment limit.



2007 REGULAR SESSION: PIP

- The bill would have removed existing fee schedules for certain medical procedures (i.e., cephalic thermograms, peripheral thermograms, spinal ultrasounds, extremity ultrasounds, video fluoroscopy, and surface electromyography).
- The bill was discussed and debated in two Senate Committees as well as the Senate Floor. During the debates, there was public testimony on the bill from the insurance industry, hospital industry, chiropractic industry and others. Senators were also heavily involved in the discussion. Insurance representatives expressed concerns with the bill and provided alternatives such as establishing a no fault system similar to workers' compensation and providing for meaningful fraud reform.



2007 REGULAR SESSION: PIP

- House Bill 7215 by Representative Ellyn Bogdanoff
 - This bill would have replaced the current PIP laws with mandatory emergency care coverage and follow up treatment coverage up to \$15,000.
 - The bill was filed late in the Session and referred only to the Rules and Calendar Council, which typically does not consider substantive legislation. Several democratic leaders including Minority Leader Dan Gelber were critical of this process because it had not been discussed in either the House Insurance Committee or the Jobs and Entrepreneurship Council.



2007 REGULAR SESSION: PIP

- What happens if PIP sunsets?
 - There have been conflicting opinions regarding the impact of PIP sunseting. The Department of Highway Safety and Motor Vehicles told *The Miami Herald* that it does not believe Florida law will require any mandatory automobile insurance coverage if No Fault sunsets.
 - On this point, State Farm representatives are taking a contrary position. They are of the opinion that if PIP expires, the requirement to purchase property damage liability coverage still exists.
 - At this point, it is unclear whether mandatory property damage coverage remains after October 1, 2007.



2007 REGULAR SESSION: PIP

- The PIP discussion may return:
 - It is possible that the PIP laws may be considered during a Special Session in September or October.



V. FEDERAL ISSUES



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FEDERAL ISSUES:

McCARRAN-FERGUSON ACT

- Partial Repeal of McCarran-Ferguson Act
 - Congress passed the Act to provide that state laws and regulations that regulate the "business of insurance" may not be preempted by federal law.
 - Under the current Act, insurance is exempt from some federal antitrust statutes.
 - However, Congress has introduced a bill that would repeal the limited exemption from federal antitrust laws granted to the insurance industry by the McCarran-Ferguson Act in 1945.
 - The insurance industry contends that this legislation would reduce competition, create more litigation and increase the cost of doing business and drive up the cost of insurance to the public.



FEDERAL ISSUES: NATIONAL INSURANCE ACT

- National Insurance Act
 - Similar to the legislation introduced in 2006, the 2007 bill proposes a new federal role in insurance regulation which is based on the dual banking regulatory system.
 - Under the bill, insurers operating under multiple state jurisdictions could choose to be regulated at the national level under a new "Optional Federal Charter".



FEDERAL ISSUES: NATIONAL CATASTROPHE INSURANCE PLAN

- National Catastrophe Insurance Plan
 - Proposals for a national catastrophe insurance plan have support from many state insurance commissioners and some large insurers, such as State Farm and Allstate.
 - However, trade groups such as AIA and RAA oppose the creation of federal and state catastrophe funds, although PCI recognizes that the federal government could play a role in assisting in the financing of mega-catastrophe risk.
 - Florida Insurance Commissioner, Kevin McCarty, recently testified before Congress and urged them to create a National Commission on Catastrophe Preparation to further study the issues.



FEDERAL ISSUES: TRIA

- The Terrorism Risk Insurance Act (TRIA)
 - TRIA was adopted in November 2002, to stimulate business investment and stabilize the insurance market after the events of September 11, 2001.
 - On December 22, 2005, President Bush signed into law the Terrorism Risk Insurance Extension Act (TRIEA) of 2005, which extends TRIA until December 31, 2007.
 - On June 18, 2007, HR 2761 was introduced in the House of Representatives that would extend TRIA for 10 years and provide nuclear, biological, chemical and radiological (NBCR) coverage.



FEDERAL ISSUES: TRIA

- The renewal of terrorism coverage is the top legislative priority for some groups in the property-casualty insurance industry.
- However, other groups have concerns with the provision that requires insurers to provide NBCR coverage.
- The bill is expected to pass the House but have trouble in the Senate.



FEDERAL ISSUES: TRIA

- The Treasury Department stated on June 21, 2007 in front of the Capital Markets Subcommittee that HR 2761 “does not meet [the Treasury Department’s] objectives” for an acceptable extension of TRIA, which are:
 - TRIA remains temporary and short-term;
 - Private sector retentions are increased;
 - There is no expansion of the program.



FOR MORE INFORMATION

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