

# Risk Management Solutions



COLODNY · FASS · TALENFELD · KARLINSKY · ABATE

**Hotel Victor  
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[www.cftlaw.com](http://www.cftlaw.com)**

# FIRM PROFILE

- Colodny, Fass, Talenfeld, Karlinsky & Abate, P.A. maintains a comprehensive insurance regulatory, legislative, transactional and litigation practice representing insurance companies, reinsurers, managing general agencies, agents, reinsurance intermediaries and premium finance companies.
- The firm's areas of expertise are life, health, property and casualty insurance, including automobile, homeowners, commercial, medical malpractice and workers compensation insurance, reinsurance, annuities and surety.
- Over the years, the firm has maintained long standing close relationships with numerous senior officials within Florida's Legislative and Executive branches and with the Departments of Insurance in many other states.



# FIRM PROFILE

- The firm, which has offices in Fort Lauderdale and Tallahassee, has significant regulatory experience involving a wide range of licensing and compliance issues and has been instrumental in assisting clients in establishing beneficial relationships with various state Departments of Insurance.
- The firm's professionals represent clients in connection with the formation and financing of insurers, mergers and acquisitions, adding lines of business and expansion into other states, various licensure matters, multiple compliance issues, market conduct and financial examinations, financial issues, statutory accounting procedures, risk-based capital levels, capital infusion issues and financing arrangements, rate, form and rule filings and agent and agency matters.



# REPRESENTATIVE CLIENT PROFILE

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- The firm represents more than 150 insurance-related clients in connection with legal, legislative and regulatory matters in Florida.
- The firm also represents numerous clients in connection with regulatory matters in many states, including Alabama, Georgia, Illinois, Louisiana, Mississippi, Nebraska, Nevada, Oklahoma, Pennsylvania, South Carolina and Texas, among others.



# REPRESENTATIVE CLIENT PROFILE

- The firm represents a majority of Florida's domestic insurance companies and Florida start-up companies and many foreign insurers conducting business in Florida.
- The firm also represents several national insurance entities, including Nationwide Mutual Insurance Company, Guy Carpenter & Co., Inc. and Marsh & McLennan Companies, Inc.



# REPRESENTATIVE CLIENT PROFILE

- In addition to its corporate clients, the firm represents some of Florida's largest insurance associations, including:
  - Florida Property and Casualty Association (FPCA), which includes as members twenty-six Florida domestic property and automobile insurance companies. The FPCA includes a property division and an automobile division, with each division pursuing its own agenda.
  - Property Casualty Insurers Association of America (PCIA), a nationwide association that advocates industry positions and has taken a leadership role in insurance matters in Florida.



# FLORIDA'S POLITICAL ATMOSPHERE

- **The Executive Branch and Agencies**

- Cabinet, Financial Services Commission and State Board of Administration
  - Governor: Charlie Crist (R)
  - Chief Financial Officer: Alex Sink (D)
  - Attorney General: Bill McCollum (R)
  - Commissioner of Agriculture: Charles Bronson (R)
- Office of Insurance Regulation
  - Commissioner: Kevin McCarty
- Department of Financial Services
  - Chief Financial Officer: Alex Sink (D)



# FLORIDA'S POLITICAL ATMOSPHERE

- The Florida Senate

- Republican majority with 26 Republicans and 14 Democrats
- Republican leadership
  - Senate President: Ken Pruitt (Dist. 28)
  - Majority Leader: Daniel Webster (Dist. 9)
- Democratic leadership
  - Minority Leader: Steven Geller (Dist. 31)
- Banking & Insurance Committee
  - Chair: Bill Posey (Dist. 24)



# FLORIDA'S POLITICAL ATMOSPHERE

- **The Florida House of Representatives**
  - Approximately 2/3rds Republican
  - Republican leadership
    - Speaker: Marco Rubio (Dist. 111)
    - Majority Whip: Ellyn Bogdanoff (Dist. 91)
  - Democratic leadership
    - Minority Leader: Dan Gelber (Dist. 106)
  - Insurance Committee
    - Chair: Donald Brown (Dist. 5)
  - Jobs & Entrepreneurship Council
    - Chair: Ron Reagan (Dist. 67)



# OFFICE OF INSURANCE REGULATION

- **Legislative Priorities**

- Insurance Commissioner Kevin McCarty, who chairs the NAIC Property and Casualty Insurance Committee, has spearheaded efforts to create a national or regional catastrophe plan.

- **Regulatory Priorities**

- OIR has addressed the “presumed factors” requirement of the new legislation.
- Mitigation discounts must be addressed in rate filings.
- Windstorm Mitigation Study Committee has concluded its deliberation and submitted its report regarding mitigation efforts and a uniform home grading system to the Legislature, which will consider the findings and recommendations of the Committee during its Regular Session.



# 2007 SPECIAL SESSION

- In January 2007, a Special Session of the Florida Legislature was called specifically to address the affordability and availability of property insurance in the State of Florida.
- The Special Session produced CS/HB 1-A, a bill aimed at reducing hurricane-related insurance costs for Florida homeowners and businesses.
- The legislation, which passed unanimously in the Florida Senate and by a vote of 116-2 in the Florida House of Representatives, makes considerable changes to both the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation, among other things.



# 2007 SPECIAL SESSION

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- The bill was signed into law by Florida Governor Charlie Crist shortly after its passage.
- CS/HB 1-A produced notable changes to existing Florida law, especially to Citizens Property Insurance Corporation (Citizens), the Florida Hurricane Catastrophe Fund (Cat Fund), insurers' rate filings and various other matters.



# 2007 SPECIAL SESSION

- **Citizens Property Insurance Corporation**

- Extensive changes were made to Citizens, which is currently the largest property insurer in the State of Florida.
- In an attempt to provide immediate rate relief to Citizens' policyholders, the new law deletes the requirement that Citizens' rates be non-competitive and no lower than the top 20 insurers.
- Instead, Citizens' rates are required to be "actuarially sound" and subject to the standards that generally apply to property insurers.



# 2007 SPECIAL SESSION

- **Citizens (continued)**

- A new applicant to Citizens is not eligible for coverage if he or she received an offer from an insurer at its approved rate unless the insurer's premium is more than 25 percent greater than the premium for comparable coverage from Citizens.
- Policyholders of Citizens will remain eligible for Citizens coverage regardless of any offer of coverage from a private market insurer.
- The requirement that Citizens charge rates sufficient to purchase reinsurance up to specified PMLs has been eliminated.



# 2007 SPECIAL SESSION

- **Citizens (continued)**
  - The new law freezes Citizens' rates at the December 31, 2006, level for the remainder of 2007, rescinds the approved rate increase that took effect January 1, 2007, and requires Citizens to provide refunds to persons who have paid this rate.
  - Under the new law, Citizens is authorized to offer multiperil coverage for commercial nonresidential properties in all areas of Florida, subject to the qualifications applicable to Citizens' High Risk Account (HRA).
  - Citizens is entering the commercial lines market through the assumption of the Property and Casualty Joint Underwriting Association (PCJUA).



# 2007 SPECIAL SESSION

## ▪ Florida Hurricane Catastrophe Fund

- The new law substantially increases the amount of hurricane losses covered by the Cat Fund.
- The new law creates new Temporary Increase in Coverage Limit options (TICL options). The TICL options, available to residential property insurers for the 2007 through 2009 hurricane seasons, allow an insurer to purchase additional reinsurance of up to \$12 billion, in \$1 billion increments, above the Cat Fund industry limit of \$16 billion estimated for 2007 (for a total of \$28 billion).
- The SBA may further increase the \$12 billion coverage limits up to an additional \$4 billion (for up to a total of \$32 billion).



# 2007 SPECIAL SESSION

## ▪ Cat Fund (continued)

- The new law creates Temporary Emergency Additional Coverage Options (TEACO), which allow residential property insurers to purchase additional coverage below each insurer's market share of the Cat Fund retention.
- Insurers are allowed to select their share of an industry retention level of \$3 billion, \$4 billion or \$5 billion for 2007, 2008, and 2009 to cover 90 percent, 75 percent, or 45 percent of their losses up to the normal retention for the mandatory Cat Fund coverage.
- Coverage based on a \$3 billion retention will be priced at an 85 percent rate-on-line; \$4 billion retention at an 80 percent rate-on-line; and \$5 billion retention at a 75 percent rate-on-line.
- The TEACO coverage applies to two hurricanes for each contract year.



# 2007 SPECIAL SESSION

## ▪ Cat Fund (continued)

- The new law also allows eligible residential property insurers to purchase up to \$10 million in additional Cat Fund coverage at a level significantly below the normal Cat Fund rate. The \$10 million coverage amount is above a retention equal to 30 percent of the insurer's surplus, as of December 31, 2006.
- The premium is set at 50 percent of the coverage amount (i.e., \$5 million for \$10 million coverage). The coverage applies to two hurricanes and is offered only for the 2007 contract year.
- This coverage, which was previously available only to the "limited apportionment companies" described in Section 627.351(6)(c), is now available to insurers who participated in 2006, limited apportionment companies who began writing property insurance in 2007, and insurers approved to participate in either 2006 or 2007 for the Insurance Capital Build-Up Incentive Program. This coverage is available through May 31, 2008.



# 2007 SPECIAL SESSION

- **Mandatory Rate Filings**
  - Residential property insurers are now required to make a rate filing with the Office of Insurance Regulation (OIR) reflecting the savings or reduction in loss exposure to the insurer due to the expanded Cat Fund coverage.
  - Each rate filing must take into account the "presumed factors" calculated by OIR for any policy written or renewed on or after June 1, 2007 to reflect all expanded Cat Fund coverage options available to the insurer, whether or not the insurer purchases the coverage.



# 2007 SPECIAL SESSION

- **Miscellaneous Matters**

- The bill provides options for coverage exclusions and deductibles.
- All rate increase filings made on or before December 31, 2008 must be “file and use” filings.
- Under the bill, all property insurers are required to submit a certification under oath signed by the insurer’s chief executive officer or chief financial officer and chief actuary with all rate filings.
- The bill extends the period of notices of nonrenewal and cancellation, with certain exceptions, from 90 days to 100 days and provides that notices to cancel or nonrenew policies during hurricane season must be sent the earlier of 100 days in advance or by June 1st.



# EMERGENCY RULE

- The Emergency Rule, which was proposed by Governor Crist and approved by the Cabinet, prohibits insurers from nonrenewing personal residential insurance policies until an insurer makes a rate filing incorporating the presumed factors.
- Additionally, the Rule provides that rates for residential property insurance coverage shall remain at the rates in effect as of the date CS/HB 1-A became law until a new rate filing reflecting the effects of CS/HB 1A is made and approved.
- Insurers may make filings for rate reductions and for changes that do not result in increases in policyholder premiums.



# EMERGENCY RULE

- Insurers may make form filings, but may not reduce coverage except as allowed by statute.
- OIR later issued a “clarification” to the Rule indicating that it applies to all cancellations and nonrenewals after the date of the Rule regardless of when the notice was sent and that a moratorium applies to any future notices until the insurer makes the required rate filing.
- The Florida Insurance Council (FIC) filed a lawsuit and administrative challenge to the Rule on constitutional grounds and on the basis that there was no emergency or other authority to issue the Rule. Within less than a week, both the lawsuit and administrative challenge were withdrawn by FIC.



# ORDER ON PRESUMED FACTORS

- On February 19, 2007, Insurance Commissioner McCarty issued an Order requiring insurers to make a filing incorporating the presumed factors determined by OIR on or before March 15, 2007. The presumed factors were issued by OIR on March 1, 2007.
- The rate decreases reflected by the filings will be effective for any policies written or renewed on or after June 1, 2007.
- Until a rate filing reflecting these discounts is made, insurers may not cancel or nonrenew any policyholders; although, upon making the filing, nonrenewals and cancellations may continue under prior notices so long as the moratorium period under the Rule is not counted.



# UPCOMING LEGISLATIVE ISSUES

- Legislative leadership has suggested that the Legislature will not revisit property insurance issues during the regular session, except that it will pass a "glitch bill" clarifying certain provisions of CS/HB 1-A.
- However, we may see gubernatorial or legislative backlash based on the FIC lawsuit and insurers' responses to the Emergency Rule.
- Additionally, we anticipate that the Legislature will debate a myriad of other insurance related issues, such as the PIP sunset, making the Insurance Commissioner an elected position and using premium taxes to offset property taxes.



# UPCOMING LEGISLATIVE ISSUES

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- Recently Senate leaders have expressed a concern with the hurricane models and the effectiveness of the Commission on Hurricane Loss Projection Methodology.
- As such we may see legislation reforming or abolishing the Commission.



# RMS IN FLORIDA

- RMS has positioned itself as a leader in Florida's marketplace. During the January 2007 Special Session of the Florida Legislature, lawmakers relied on models developed by RMS.
- RMS was the only modeling company involved in the negotiations of various aspects of the recently enacted legislation from Special Session.
- RMS is currently working with OIR to fully answer the 51 questions raised by OIR regarding the RMS model and models in general.
- As a result of RMS' efforts, legislators and regulators are beginning to appreciate the importance of risk modeling and the role it can play in stabilizing Florida's property insurance market.



# RMS ACCOMPLISHMENTS

- Unlike other modeling companies, RMS has taken an active role in familiarizing Florida's Legislative and Regulatory officials with its models. Because of RMS' involvement with these various projects, Florida's Legislative and Regulatory leaders have gained a familiarity and respect for RMS.
- RMS' education efforts have been extremely important in view of the recent questions regarding the legitimacy of hurricane risk models, most likely due to a lack of understanding.
- Through its efforts to educate others regarding the nature and benefits of risk modeling, RMS is poised to overcome these negative reactions.



# FUTURE RMS GOALS

- It is crucial that RMS continue its education and outreach efforts:
  - These efforts must be directed to legislators with special emphasis on party leaders since they are best-suited to disseminate information to fellow party members.
  - RMS also must educate the members of the Cabinet and OIR senior staff.
  - Finally, RMS should continue to reach out to the public via the media in order to foster a better understanding of the function of risk modeling in the formulation of insurance rates.
- RMS should continue to work with the Modeling Commission, while remaining cognizant of potential legislative initiatives to eliminate the Commission.
- RMS should continue to learn more about the Florida insurance industry and its political and regulatory environments.



# FUTURE RMS GOALS

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- RMS should continue to work with industry and other political and business leaders.

