

# Florida and Federal Insurance Update

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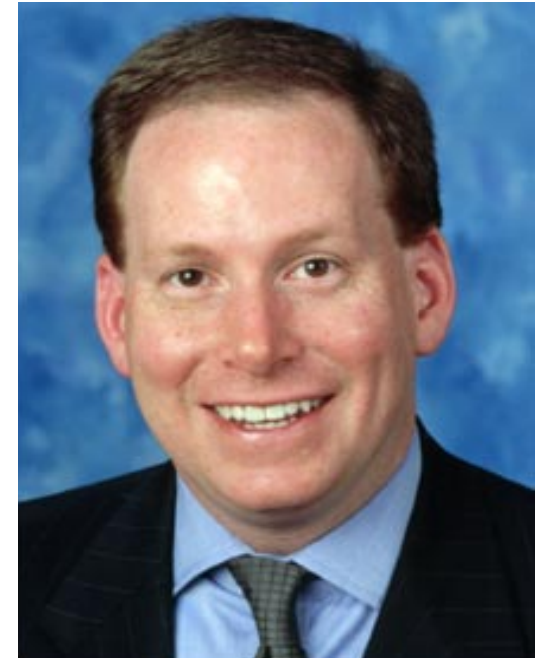


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# PROFESSIONAL BIOGRAPHY OF FRED E. KARLINSKY

- 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 and 2008 Florida Super Lawyer Magazine.



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# PROFESSIONAL BIOGRAPHY OF FRED E. KARLINSKY

- Mr. Karlinsky currently serves as Florida counsel to the Property Casualty Insurers Association of America (PCI) and general counsel and chief lobbyist for the Florida Property and Casualty Association (FPCA), 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.



# DISCLAIMER

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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.



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# OUTLINE OF PRESENTATION

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## Florida Property Insurance

- 2004 and 2005 Hurricane Seasons
- Legislature's Response
- Current Situation

## Related Federal Issues

- Insurance Regulation
- National Catastrophe Fund
- National Flood Insurance Program and TRIA



# OUTLINE OF PRESENTATION

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## **Auto Insurance**

- PIP's Sunset and Resurrection

## **Workers Compensation**

- Rate Decreases

## **Medical Malpractice**

- Recovery Trend



# FLORIDA PROPERTY INSURANCE

## 2004 Storms

- Charley
- Frances
- Ivan
- Jeanne

## 2005 Storms

- Dennis
- Katrina
- Rita
- Wilma



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# FLORIDA PROPERTY INSURANCE

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- Storms in 2004 and 2005 resulted in a total of \$36 billion in estimated losses.
- As a result of the 8 major storms that impacted Florida in 2004 and 2005, insurance premiums increased and public outrage soared over the lack of available, affordable property insurance.



# FLORIDA PROPERTY INSURANCE

- Citizens Property Insurance Corporation, which was a residual market insurer at that time, incurred over \$2.5 billion in losses and faced a \$1.7 billion shortfall after the 2005 storms.
- After Legislative appropriation, remaining deficit of \$1 billion is being assessed by Citizens over 10 years.
- 2006 Legislature created the Insurance Capital Incentive Build-Up Program in an effort to attract more private insurance capital to Florida.



# FLORIDA PROPERTY INSURANCE

- In response to growing concern, the Property and Casualty Insurance Reform Committee was created by Executive Order of then-Governor Jeb Bush.
- The Committee recommended augmentation of the Cat Fund and expansion of Citizens.
- A Special Session of the Florida Legislature was convened in January 2007 to exclusively address property insurance issues and the Committee's recommendations.



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# FLORIDA PROPERTY INSURANCE

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## Florida 2007 Special Session – House Bill 1A

- Temporary freeze on cancellations and non-renewals of existing homeowner policies by Executive Order.
- Longer notice required to cancel or non-renew policies during hurricane season.
- Cherry picking statute.



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# FLORIDA PROPERTY INSURANCE

## Florida 2007 Special Session – Citizens

- Legislature abandoned theory that Citizens should not compete with the voluntary market.
- Citizens' rates must now be “actuarially sound” and are subject to the standards that apply to private insurers.
- Citizens' rates were rolled back and the Legislature froze any Citizens rate increases until 2009.



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# FLORIDA PROPERTY INSURANCE

## Florida 2007 Special Session – Citizens

- Non-homestead properties now eligible for coverage by Citizens.
- Citizens' policyholders remain eligible for coverage regardless of any take-out offer of coverage from a private market insurer.
- Eligibility for coverage from Citizens now extends to new applicants who receive offers from private insurers that are 15 percent or greater.



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# FLORIDA PROPERTY INSURANCE

## Florida 2007 Special Session – Citizens

- Citizens is entering the commercial lines market through the assumption of policies previously written by the Property and Casualty Joint Underwriting Association.
- Citizens is now authorized to offer multiperil coverage for commercial residential properties.
- The types of insurance policies and premiums subject to assessment have been expanded substantially.



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# FLORIDA PROPERTY INSURANCE

## Florida Hurricane Catastrophe Fund

- Originally created in 1993 in the aftermath of Hurricane Andrew.
- Cat Fund functions as a reinsurer.



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# FLORIDA PROPERTY INSURANCE

## Florida 2007 Special Session – Cat Fund

- Insurers can now select options to expand their Cat Fund coverage.
- Expansion of Cat Fund coverage was expected to result in savings which private insurers were to pass on to policyholders.
- Failure of the insurers to reduce rates as expected has led to increased scrutiny and criticism.



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# FLORIDA PROPERTY INSURANCE

## Current Situation

- Enormous financial risk now rests squarely on the state's shoulders by virtue of Citizens' and the Cat Fund's expanded liabilities.
- Ability to bond liquidity of Citizens and Cat Fund remain issues.
- Florida's Chief Financial Officer Alex Sink has a proposal to reform Florida's Cat Fund to reduce the potential for future Cat Fund assessments on Florida's insurance consumers.



# FLORIDA PROPERTY INSURANCE

## Current Situation

- The Legislature and Office of Insurance Regulation are investigating why the reforms did not bring about expected rate reduction.
- Allstate is under fire for dropping homeowners policies, filing for rate increases, and failing to comply with subpoenas.
- The new Select Committee on Property Insurance Accountability was formed by the Florida Senate to further investigate these issues within the property insurance industry in Florida.



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# INSURANCE REGULATION

## McCarran-Ferguson Act

- Congress passed the Act in 1945 to provide that state law and regulations that regulate the business of insurance may not be preempted by federal law.
- Under McCarran-Ferguson, insurance is exempt from some federal antitrust statutes.
- McCarran-Ferguson is under attack in part due to the perceived reactions by insurers to the 2004-2005 hurricane seasons.



# INSURANCE REGULATION

## Debate Regarding Federal or State Regulatory Authority

- Unified federal system would promote uniformity; reduce costs; more highly paid staff; reduce influence of powerful insurance industry.
- State regulatory authority: decentralizes power; relies upon long history of regulatory control; is a known commodity; smaller and more flexible to respond to changing needs.
- Significant problem with state control involves limited funding and insufficient personnel. Also creates fragmented regulatory environment for multi-state businesses.



# NATIONAL CATASTROPHE INSURANCE PLAN

- Congress is considering bills to establish a national catastrophe fund.
- The National Association of Insurance Commissioners (NAIC) supports a national cat fund.
- The Bush administration and insurance trade groups voiced strong opposition to the proposed legislation.
- Under the proposed legislation that passed the House, state would have the option of joining a consortium of state-based insurance funds.



# OTHER FEDERAL ISSUES

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- National Flood Insurance Program – proposals have been made to amend the program.
- Terrorism Risk Insurance Act (TRIA), adopted in 2002, created a 3 year federal program to provide partial compensation for losses resulting from certain terrorist-related events.
- TRIA was extended in 2005 for 2 years. TRIA was again extended in December for another 7 years to 2014.



# FLORIDA AUTO INSURANCE

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- PIP and the No-Fault System became a vehicle for fraud.
- Many auto insurers did not support the extension of PIP.
- Many health care providers lobbied for the extension of PIP.
- PIP's Sunset and Resurrection.
- It remains to be seen whether fraud reform will help lower rates.



# WORKERS' COMPENSATION

- Florida is the largest market dominated by private market insurers (compared to state sponsored residual market entities in New York and California).
- A recent rate decrease of 18.4 percent that took effect January 1, 2008 marks the 5<sup>th</sup> consecutive year of workers' compensation rate decreases for a total cumulative decrease in rates of 51.4 percent since 2003.
- Other favorable trends include overall decline in workers' compensation claim frequency.
- *Murray v. Mariner Health*



# MEDICAL MALPRACTICE

- Prior to 2003, Florida experienced double-digit rate increases and a lack of availability of medical malpractice insurance.
- Many health care providers stopped carrying coverage.
- Legislative reforms enacted in 2003 appear to be effective. A recent report from the Office of Insurance Regulation shows a net decline in medical malpractice rates for physicians and surgeons.
- The report also shows that 7 new medical malpractice carriers entered the market in 2006.



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# FOR MORE INFORMATION

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