



Florida Insurance Dilemma — Efforts to Manage the Unmanageable

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Natural Disaster and Government Reaction

During the 2004 and 2005 hurricane seasons, a total of eight hurricanes made landfall in Florida.¹ These storms caused an estimated \$36 billion in losses based on approximately 2.8 million claims.² Insurers generally reacted to these unprecedented losses by submitting new rate filings and asking for rate increases. Also, some insurers began to withdraw from the property insurance market or reduce their exposure in Florida's riskiest areas — primarily its heavily populated coastlines. In the aftermath of these storms, three of the state's largest insurers, State Farm, Allstate and Nationwide, collectively nonrenewed tens of thousands of homeowners policies in these coastal areas. These actions caused policyholders to be confused because many had never filed claims with their carriers.³

In early 2006, the Florida Legislature began taking steps to address a growing concern regarding the health of the state's voluntary insurance market. Of particular concern to state officials was the solvency of Citizens Property Insurance Corporation (Citizens), the state's "insurer of last resort." Citizens had been created in 2002 by the merger of Florida's existing Property and Casualty Joint Underwriting Association and Windstorm Joint Underwriting Association.⁴ During the 2004 and 2005 hurricane seasons, Citizens, as a residual market insurer, provided wind coverage to those Florida homeowners in certain designated high risk areas who were unable to procure policies in the voluntary market. In addition, Citizens offered multi-peril residential coverage in certain areas throughout the state.⁵

As a result of the 2005 storms, Citizens incurred more than \$2.5 billion in losses and was faced with a shortfall deficit of \$1.7 billion.⁶ In 2006, the Florida Legislature passed Senate Bill 1980, which granted Citizens a \$715 million appropriation to partially offset its deficit.⁷ The balance of the deficit of approximately \$1 billion was the subject of an emergency assessment amortized more than 10 years requiring certain Florida insureds to make a Citizens assessment payment on all new and renewal policies.⁸

The 2006 Legislature also created the Insurance Capital Incentive Build-Up Program to provide state funded low interest loans to insurers under certain conditions. Insurers which brought new capital to the Florida market would be eligible for a matching funds loan from the state. This program provided an incentive for private insurers to infuse new capital into the Florida market. With limited exception, insurers had to have at least \$50 million in surplus after participation in the program and were initially required to maintain at least a 2:1 surplus to net written premium ratio.⁹ A total of \$250 million was allotted for this loan program by the state¹⁰ and, by the middle of 2007, all money had been utilized.¹¹

Abstract

In the wake of two tumultuous storm seasons, Florida has experienced the significant growth of both its state-backed insurer and reinsurance fund. This article briefly summarizes the major legislative, regulatory and market developments in Florida's property insurance industry over the past four years. It is also intended to highlight the state's metamorphosis into a full-fledged market competitor and the deliberate steps the state took in making that transition. This article concludes with an overview of the new problems facing a state that continues to struggle with a shrinking voluntary property insurance market while state officials remain perplexed over the failure of recent reform to result in meaningful rate reduction.

The 2006 legislation did little, however, to stem ongoing nonrenewals of homeowners policies by private insurers. It also failed to address the decisions of some insurers to stop writing, or restrict the writing of, new business in a state that these insurers felt presented unacceptable levels of risk. Although smaller private insurers were encouraged — and were, at one time, promised bonuses — to remove policies from Citizens, the takeouts by these carriers did not ameliorate the problem of availability for many homeowners, who continued to have to seek coverage from Citizens. Additionally, premiums for these “take out” policies, as well as the policies of many insurers, reached new heights.¹²

By the summer of 2006, the combination of the decreased availability and affordability of homeowners insurance in Florida was continuing to breed discontent among residents in all parts of the state. Despite the \$715 million legislative appropriation, Citizens still faced a substantial deficit which was being recouped through policyholder assessments. In June 2006, in response to growing public concern, then-Governor Jeb Bush issued an Executive Order, creating the Property and Casualty Insurance Reform Committee.¹³ The Committee was charged with examining Florida’s insurance market and formulating recommendations to reduce the cost of premiums, increase the availability of insurance, reduce the risk to homeowners and businesses. Chaired by then-Lieutenant Governor, Toni Jennings, the Committee held public meetings across the state during a three-month period in 2006. The Committee heard testimony from multiple witnesses, including homeowners, carriers, reinsurers, catastrophe modelers, insurance agents, and even realtors, and it ultimately produced a report containing dozens of recommendations for legislative action.¹⁴

In the meantime, Governor Bush’s last term of office was coming to an end, and Republican Charlie Crist, then Florida’s Attorney General, was elected Governor of Florida. Governor Crist campaigned heavily on issues related to the availability and affordability of homeowners insurance. His term commenced in January 2007.¹⁵

Among the Committee’s most significant recommendations were the augmentation of the Florida Hurricane Catastrophe Fund (FHCF) and the expansion of Citizens. Many of these recommendations were carried out, in one form or another, during the January 2007 Special Session of the Florida Legislature. Spurred by newly elected Governor Crist, the Legislature enacted sweeping reforms that impacted many aspects of the property insurance industry in Florida. From revisions to the state building code to programs designed to fund home mitigation measures, the Special Session legislation had two chief goals: making insurance more available to, and affordable for, Florida homeowners.¹⁶

Availability and State-Backed Insurance

The Florida Legislature took a number of steps in 2007 to attempt to make insurance available to homeowners who had been nonrenewed by their carriers. The January 2007 Special Session legislation, along with an Emergency Order issued by Governor Crist, resulted in a temporary freeze on cancellations and nonrenewals of existing homeowners policies.¹⁷ The legislation also changed the rules for the required notice period necessary to cancel or nonrenew policies during hurricane season so insureds would receive longer advance notice in order to be able to find alternative coverage.¹⁸ It also prohibited insurers from writing, in the Legislature’s opinion, more profitable automobile insurance policies if the insurer wrote homeowners coverage in any other state unless the insurer also offered homeowners policies in Florida.¹⁹

A major component of the Legislature’s effort to increase availability, however, involved Citizens. As a residual market insurer, Citizens was previously required by

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statute to charge premiums higher than the state's top 20 voluntary market insurers.²⁰ However, Citizens' legally mandated high rates became increasingly unpopular as more homeowners faced cancellations or nonrenewals from their private carriers and found themselves paying significantly higher premiums for Citizens' coverage. In fact, after Citizens' policy population more than doubled between 2002 and 2006, frustrated Florida residents formed "Homeowners Against Citizens" and actively campaigned for Citizens to provide more affordable insurance rates.²¹

These demands were met in January 2007 when state legislators abandoned the original theory that Citizens, as a state-run insurer of last resort, should not compete with the voluntary market. Perhaps the most significant change implemented by the legislation was the requirement that Citizens' rates be "actuarially sound" and subject to the standards that apply generally to private carriers. As a result, Citizens became competitive with the voluntary market. Temporarily, the Legislature rolled back Citizens' rates to a prior, lower level and froze any rate increases by Citizens until 2009.²² These events, as well as rate increases in the voluntary market, made Citizens' rates lower than many carriers in the private market. Importantly, this created competitive disadvantages for the private market since Citizens does not have to maintain any surplus and its rates: (1) do not have to reflect private reinsurance costs or a profit margin; (2) are not subject to all of the taxes imposed on the private industry; and (3) can be lower because Citizens has the authority to make assessments for any deficits it incurs.

The 2007 legislation expanded eligibility for coverage in Citizens in the residential market by repealing a provision enacted in 2006 that rendered nonhomestead properties ineligible for coverage from Citizens. This restored Citizens' policyholder base to include vacation homes and other non-homestead properties. The legislation also provided that a Citizens policyholder would remain eligible for coverage with Citizens regardless of whether the policyholder received an offer of coverage from a private market insurer. This change allowed a policyholder to choose to stay in Citizens and to reject any "take-out" offers from the voluntary market. Eligibility for coverage with Citizens also was extended to new applicants who received offers from private insurers that were 15 percent greater than comparable coverage from Citizens, a lower threshold than previously existed.²³

The 2007 legislation also expanded Citizens' role in providing coverage for commercial risks and in offering multiperil coverage. Citizens assumed the commercial policies formerly held by the state's recently revived Property and Casualty Joint Underwriting Association.²⁴ Additionally, the legislation permitted Citizens to provide multiperil coverage for commercial residential properties in all areas of the state, including the multi-million dollar condominium developments that dominate significant parts of Florida's high-risk coastlines. In August 2007, Citizens began offering multiperil policies. In 2008, Citizens will begin offering commercial multiperil nonresidential policies.²⁵

Finally, the 2007 legislation substantially expanded the types of insurance policies and premiums that are subject to assessments to fund deficits of Citizens. The assessment base was expanded to encompass virtually the same base subject to assessment by the Florida Hurricane Catastrophe Fund (FHCF), including all lines of property and casualty insurance, but not workers compensation, accident and health, medical malpractice and miscellaneous others.²⁶

Partially as a result of these changes and market conditions, Citizens has become the largest property insurer in Florida. Citizens currently has more than 1.2 million policies and more than \$3 billion in direct written premium.²⁷

Affordability and State-Backed Reinsurance

The other principal focus of the January 2007 Special Session was the expansion of the Florida Hurricane Catastrophe Fund. FHCF was created by the Florida Legislature in 1993 in the aftermath of Hurricane Andrew, which caused an estimated \$20 billion worth of damage. Financed through mandatory premiums paid by insurance companies that write residential property insurance in the state, FHCF functions as a reinsurer, offering participating insurers reimbursement for a percentage of their catastrophic losses. FHCF was originally intended to serve as a supplement to, but not a replacement for, the private reinsurance market. The FHCF has certain advantages not available to private reinsurers, in that the FHCF is not obligated to pay federal income tax and can issue tax-exempt bonds. This allows the FHCF to offer lower rates for reinsurance than is otherwise available in the private reinsurance market.²⁸

The Florida Legislature, believing that the availability of cheaper reinsurance would lead to lower homeowners premiums, entered the January 2007 Special Session determined to expand the role of FHCF in the reinsurance market. The 2007 legislation allowed insurers to select options to expand their FHCF coverage either above or below the then existing level of coverage and established two types of coverage — mandatory and optional. “Mandatory” coverage was simply a continuation of FHCF’s traditional coverage, and every insurer writing residential property insurance in the state is required to purchase at least a portion of its reinsurance from FHCF. Each insurer’s individual retention, or deductible, is determined by its share of FHCF reimbursement premiums and based on a factor, or retention multiple. For example, if the factor is 2.5 for the 2008 FHCF contract year, then an insurer that pays a \$1 million FHCF reimbursement premium for 2008 will have a retention of \$2,500,000. Although an insurer’s retention is on a “per occurrence” basis, there is a fixed and limited amount of coverage to which an insurer is entitled for all hurricane events causing losses in a contract year.²⁹

The new “optional” coverages could be obtained either above or below the FHCF mandatory coverage layer. The Temporary Emergency Additional Coverage Option (TEACO) allowed an insurer to purchase its share of a specified layer of coverage below the mandatory coverage at rate-on-line pricing.³⁰ The Temporary Increase in Coverage Limits (TICL) allowed an insurer to purchase one of 12 layers of coverage above the mandatory FHCF coverage. Pricing is based on the average annual loss, plus expenses, without a risk load or a rapid cash build up factor. Unlike the mandatory FHCF layer of coverage, the optional layers of coverage are fixed and do not expand with exposure growth.³¹ These layers were established only for a three year period starting in the 2007 FHCF contract year. During this period, the TEACO industry-wide retention will be set as low as \$3 billion and the TICL industry-wide capacity will be as high as \$32 billion.³²

Because of the substantial expansion of FHCF, the 2007 legislation mandated that private insurers pass on to policyholders the savings they would enjoy from the purchase of the expanded, lower-priced, state provided reinsurance. The Office of Insurance Regulation (OIR) calculated presumed factors which were to provide an actuarial estimation of the rate reductions expected as a result of the FHCF expansion. Each insurer was required to utilize these presumed factors in formulating its new rates. The savings to be reflected in the presumed factors rate filings applied to any policy written or renewed on or after June 1, 2007. Importantly, these savings needed to be reflected in rate filings before many insurers’ catastrophe reinsurance programs, and the costs related thereto, had been finalized.³³

Subsequently, insurers were required by September 30, 2007, to make “true up” filings based on their actual reinsurance costs and pass on to the insureds the actual savings which resulted from the expanded FHCF coverage.³⁴ The “true up” filings by some

companies have been the subject of high profile criticism by the Governor, various members of the Legislature and OIR because the savings and rate reductions have not been as significant as anticipated and suggested by OIR.

Significant Issues Persist

In one sense, the Florida Legislature's 2007 efforts met with a certain amount of success in the view of many policymakers. Many homeowners were able to procure coverage through Citizens. They also paid lower rates than they otherwise would have paid thanks to the Citizens' rate rollback and temporary rate increase freeze. For these homeowners, property insurance certainly became more available and somewhat more affordable in the short term.

For millions of other Florida homeowners, however, the results have been less favorable. Despite the expansion of state backed reinsurance through FHCF and the resultant rate filings to reflect the benefits of this expanded coverage, the average price of property insurance has not sharply declined, but in many instances, has continued to rise. At the height of the 2007 insurance reform effort, state leaders indicated homeowners could expect to see reductions in premiums ranging from 24 percent to 50 percent.³⁵ One year later, OIR reported that approximately one-third of Florida policyholders had experienced no rate relief.³⁶ One of the state's largest insurers, State Farm, previously agreed to a 9 percent rate reduction.³⁷ Nationwide also reduced its rates after proceeding to arbitration following OIR's disapproval of a previously filed rate increase.³⁸ However, the large insurers have continued to drop policies throughout the state and there is growing concern by some that more policyholders are now being insured by smaller, more thinly capitalized insurers.

Compounding the apparent failure of the legislative reforms to increase voluntary market participation and decrease prices is the enormous financial risk now resting squarely on the state's shoulders. In the event of a significant catastrophic event like Hurricane Katrina, or a series of smaller storms as seen in 2004 and 2005, Citizens could deplete its cash on hand and find itself in the unpopular position of having to levy assessments. The state could then find itself in a familiar position — facing a massive deficit and looking to policyholders to supply the difference through payment of assessments.

FHCF, with its \$29 billion exposure, would be even more deeply affected by a catastrophic event since both Citizens and private insurers would turn to it for reimbursement. Although the state has authorized FHCF to sell \$30 billion in bonds to finance its risk exposure, critics note that the largest sale of municipal bonds in American history was an \$11 billion bond issue in California. There is no guarantee that sufficient bond buyers could be found, especially in view of the fact that Citizens and the Florida Insurance Guarantee Association (FIGA) may also be in a position of having to issue bonds to fund their deficits. In fact, FHCF was only able to initially sell approximately \$3.5 billion in bonds from a \$7 billion issuance. Liquidity issues with FHCF could impair its ability to timely pay insurers reinsurance benefits due to them which would implicate solvency issues for those insurers in the aftermath of a hurricane or series of hurricanes.³⁹

In any event, each entity would be required to fund bond repayments. All of these entities would still be faced with the daunting task of paying for any bonds they did sell. To do so, FHCF would levy an assessment which would be borne by all policyholders within its assessment base. Under the 2007 legislation, the expanded policyholder assessment base would also be responsible for any Citizens assessment. As noted, a further compounding factor is that policyholders could be required to pay assessments of FIGA if any private insurers are forced into liquidation as a result of storm claims.

The Aftermath of the 2007 Legislative Session

State officials were perplexed over the failure of the 2007 insurance reforms to bring about meaningful rate reduction. In October 2007, the OIR served Allstate with broad subpoenas, demanding an explanation of the criteria Allstate used when it began dropping 300,000 homeowners policies starting in 2005 and justification for its rate filings. These subpoenas requested voluminous documentation regarding a variety of issues, including communications involving the trade associations, rating agencies, and risk modelers. This reflected public accusations of possible collusion among various industry groups in the rate making process.⁴⁰

After Allstate failed to comply with the subpoenas, Insurance Commissioner Kevin McCarty suspended nine Allstate insurer affiliates from writing new policies in the state until they complied with the OIR's request. Subsequently, a state appellate court upheld the propriety of the Commissioner's suspension order.⁴¹ Commissioner McCarty ordered a stay of the suspension of the Allstate licenses after Allstate finally submitted an affidavit certifying it had complied with OIR's requests.⁴²

Other companies have been subpoenaed by OIR, including Cincinnati Insurance Group, Auto Owners Insurance Company and certain of its affiliates and various State Farm insurer entities. Furthermore, the Florida Senate has convened a Select Committee on Property Insurance Accountability, which took testimony regarding the availability and affordability of insurance. Senior insurance executives from Hartford, American Strategic Insurance Company, Nationwide, Florida Farm Bureau, and Allstate Floridian testified before the Senate Committee, and many faced difficult questioning and harsh rebukes regarding various market issues.⁴³ The Committee also requested that Allstate provide documentation similar to what was subpoenaed by OIR and all internal documents having to do with the 2007 Special Session legislation for their review.

These actions reveal the depths of the frustration experienced by state officials with Florida's insurance industry. In January 2008, Governor Crist announced that he had commissioned a team of attorneys to determine whether the state could file a class action lawsuit against the insurance industry on behalf of state residents.⁴⁴ Governor Crist and Commissioner McCarty have recently updated a web site to assist consumers looking to acquire or change homeowners insurance. Commissioner McCarty stated there are more than 25 new homeowners insurers in Florida since 2006, and consumers are encouraged to shop around for a better price.⁴⁵

2008 Regular Legislative Session

Several significant insurance related bills were passed in the 2008 regular legislative session, including the "Homeowner's Bill of Rights Act." This ombudsman insurance bill contained multiple provisions extending the legislature's role in insurance reform.

This bill, among other things, maintains Citizens' rates at their current level through January 1, 2010; clarifies that the maximum percentage for regular Citizens assessments is lowered from 10 percent to six percent, after accounting for the Citizens policyholder surcharge; for deficits incurred in or after 2008, a surcharge upon renewal or issuance of policies shall be issued for up to 12 months, and the maximum policyholder surcharge upon renewal or issuance of a policy is increased to 15 percent; requires 180 days advance notice of nonrenewal, cancellation or termination of a personal lines or commercial residential policy if the policy has been in effect for five or more years; provides an insurer planning to nonrenew more than 10,000 residential policies within a 12 month period must provide 90 days' advance notice to OIR; extends for another year the prohibition on use-and-file rates for property insurance; requires that projected hurricane losses must be estimated using a commission-approved model; requires

insurers to use, without modification or adjustment, commission-approved models in determining probable maximum loss for rate filings made more than sixty days after the model is approved; and requires the seller of residential property to disclose the property's windstorm mitigation rating to the buyer.

Of significance, the provision in the bill that would have allocated \$250 million from Citizens' surplus for funding the Insurance Capital Build-up Incentive Program was vetoed by Governor Crist. This would have provided funding to continue the previously successful low interest matching loan program that was designed to encourage the infusion of more private capital into Florida's residential property market.

The bill also created the Citizens Property Insurance Corporation Mission Review Task Force. The task force was to review available data and recommend changes necessary to return Citizens to its former role as a state-created non-competitive residual market. The members of the task force included a regulator, a Citizens representative, consumer advocates, and industry experts. They indicated that they would issue findings and recommendations without consideration of any political issues related to the implementation of their recommendations. The task force submitted its report to the Governor and Legislature after a series of meetings and consideration of oral and written testimony and evidence.⁴⁶

The recommendations of the task force included: (1) implement "glide path" rate increases (over a period of years) so as to mitigate against substantial Citizens rate increases; (2) require Citizens' new rates, which have been frozen, to be implemented as soon as possible after OIR approval; (3) require eligibility certifications from agents and applicants that any private market coverage offers were greater than 15 percent above Citizens rates; (4) increase mitigation program advocacy; (5) improve Citizens auditing of agents to assure compliance with the law; (6) eliminate statutory requirements that Citizens provide commercial non-residential policies; and (7) require new applications from policyholders who have been with Citizens for more than three years.

Many other recommendations have been made by the task force. These recommendations will be considered by the Legislature during its 2009 Legislative Session.

Another insurance related bill that was a product of the 2008 regular legislative session was HB 7103 relating to hurricane mitigation enhancement. The bill makes several changes to the My Safe Florida Home program administered by the Department of Financial Services (DFS) that provides hurricane mitigation inspections and grants for specified improvements; requires insurers to accept as valid uniform mitigation verification forms certified by DFS or signed by specified professionals; and sets aside \$10 million to implement the program.⁴⁷

There was one significant insurance related bill that did not pass during the 2008 regular legislative session. Florida CFO Alex Sink proposed reform to FHCF to reduce the potential for future FHCF assessments on Florida's insurance consumers.

As previously indicated, House Bill 1A, enacted during the January 2007 Special Session, created the TICL layer for insurers to purchase additional coverage from the FHCF above the maximum limits of the mandatory coverage layer. The TICL layer option allows an insurer to purchase additional coverage for its share of \$12 billion, in \$1 billion increments, above the mandatory FHCF coverage limit.

The bill proposed by CFO Sink would have reduced the TICL layer from \$12 billion to \$9 billion. The bill also would have limited FHCF's reimbursement to 70 percent of the insurer's losses. Under existing law, FHCF reimburses insurers at either 45 percent, 75 percent or 90 percent of their losses, with the vast majority of insurers electing the 90 percent reimbursement option. However, CFO Sink's proposed legislation failed to pass.⁴⁸

On June 9, 2008, the Florida Hurricane Catastrophe Fund Advisory Council (Council) met to discuss post-event revenue bonds and pre-event financial products for FHCF. The Financial Services Team commissioned by the Council had been evaluating reinsurance and other financial product options for pre- and post-event debt financing.

The need for pre-event financial products stems from an increase in the size of FHCF to approximately \$29 billion. FHCF currently has approximately \$8 billion available to pay claims — \$3 billion in cash and \$5 billion in pre-event financing.

The two products discussed included liquidity products (i.e., put options) and risk transfer products (i.e., reinsurance). The Financial Services Team reported that risk transfer options have a higher front-end expense and are not an ideal product for the FHCF. Liquidity options, historically used by FHCF, are also not ideal because financial market liquidity is at a historically low capacity.

Through a “put option,” a financial institution would promise to purchase potential bonds at a price set at the time of the option contract. The rough estimated cost of this product on \$5 billion was approximately 4.5 percent (\$225 million). A risk transfer option such as private reinsurance on \$5 billion would be approximately \$1.5 billion.

On July 2, 2008, SBA authorized FHCF to issue \$4 billion in bonds through a tax-exempt “put” option with Berkshire Hathaway for \$224 million. This “put” option guarantees Berkshire Hathaway will purchase \$4 billion in bonds if FHCF is subjected to a certain amount of losses at the TICL coverage layer. The Florida Cabinet approved the deal on July 29, 2008. Governor Crist and CFO Sink voted in favor of the arrangement, while Florida Attorney General Bill McCullom called the agreement “a bad deal.”⁴⁹ Based on recent events involving the credit crisis and economy, there is serious concern that bonding capacity for the FHCF, or, for that matter Citizens, is extremely limited at best. In fact, financial advisors offered a forecast to the FHCF Advisory Council during a meeting held on October 15, 2008 that the FHCF would not be able to meet its financial obligations under certain circumstances.

Conclusion

Citizens’ actuaries and executives testified before the 2008 legislature that their rates are substantially below what would be considered adequate. Furthermore, the rates are frozen through the end of 2009. Interestingly, had a similar rate freeze not been imposed in 2000, Citizens would have had enough reserves to pay its losses from the 2004–2005 hurricanes without additional assessments. Now, a family with a residential insurance policy and two automobile policies could potentially incur three policy assessments from three sources: Citizens, FHCF and FIGA.⁵⁰

While new companies have entered the Florida insurance market and removed thousands of policies from Citizens, these “takeout” companies are required to charge rates at or below what policyholders are currently paying Citizens. This raises additional concerns that a catastrophic hurricane could render the new companies insolvent, requiring FIGA to pay claims that would result in further assessments on policyholders.⁵¹

The Florida Financial Services Commission recently adopted a ratings-based reinsurance collateral rule that will allow “eligible” reinsurers — that are not authorized or accredited in Florida — to post less than 100 percent collateral for their reinsurance obligations if they satisfy the conditions of the rule, including the maintenance of defined ratings from at least two nationally recognized ratings agencies. At this point, it is difficult to assess whether this ratings-based collateral approach will have a material impact upon the capacity or pricing of reinsurance in Florida. Theoretically, the ability of certain unauthorized and unaccredited reinsurers to not have to deploy capital for the normal 100 percent collateral requirement should positively affect their ability to

direct more capital to increase reinsurance capacity which, in turn, should lead to better pricing for reinsurance.

On the other hand, a decision recently issued by the 11th Circuit Court of Appeals in *CNL Hotels and Resorts Inc. versus Twin City Fire Insurance Company*, 2008 WL 3823898, at *5 (11th Cir. 2008) appears to require surplus lines insurers to obtain prior approval for their policy forms by OIR. This has not been a requirement of Florida law or, for that matter, the law of any other state, except in certain limited scenarios. The continued imposition of this requirement would most likely have a significant chilling effect upon the surplus lines industry in Florida, which represents a large portion of the Florida market. Many surplus lines insurers could decide to exit Florida thereby imposing further stress on the market. This is a significant issue that may be addressed by the Florida Legislature when it convenes in March, 2009.

Whether further state intervention into the voluntary market will, in the long run, achieve the goal of lower rates and improve the availability of coverage continues to remain an open issue. Significant questions have been raised as to whether these efforts have served to stabilize the Florida insurance market or discouraged private insurers and reinsurers from investing more capital into the market. The capacity of both Citizens and FHCF to pay claims is also in question, thereby implicating the claims paying capacity and solvency issues for the private market. In the meantime, millions of Floridians will again anxiously await the first sign that the wind is starting to blow.

Earlier versions of this article have been published in the Journal of Reinsurance and in the publication of the International Association of Insurance Receivers.

Endnotes

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