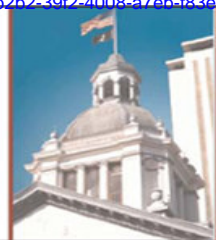


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Capitol Report

Government Affairs and Lobbying



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*Insurance Industry Braces for
Another Difficult Session*

Florida Supreme Court Rulings Result in 2009 Legislative Issues for Insurers and Businesses



It is fair to say that the insurance industry has had its “political day” in Tallahassee these past few sessions. This Capitol Report discusses a number of important issues that will surface in 2009.

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As the opening of the 2009 Legislature approaches in March, it is clear from recent activities that issues involving a variety of insurance lines will again be at the forefront of the political debate.

Indeed, many bills have already been filed and are now being heard during interim committee meetings that directly impact the insurance industry.

Among these issues, we expect the Legislature to address two key opinions issued in 2008 by the Florida Supreme Court affecting 1) Workers' Compensation Insurance and 2) Surplus Lines Insurance.

Workers' Compensation Insurance *Murray v. Mariner Health,* **994 So. 2d 1051 (Fla. 2008)**

In this case, the Court held that reasonable attorneys' fees for claimants when not otherwise defined in the workers' compensation statute, are to be determined using Rule 4-1.5(b) of the Rules Regulating the Florida Bar. In essence, the *Murray* opinion elimi-

nates some of the reforms enacted in 2003 that have resulted in lower premiums and a general stabilization of workers' compensation insurance in Florida. If the *Murray* opinion is not addressed by the Legislature, workers' compensation premiums will likely increase in Florida.

In testimony before the Florida Senate Committee on Banking and Insurance this week, a representative from the National Council on Compensation Insurance (NCCI) stated that NCCI will file for a rate increase of 6.4 percent effective April 1, 2009, based on Florida Insurance Commissioner Kevin McCarty's indication that the increase would be approved.

The NCCI, in Boca Raton, manages the nation's largest database of workers' compensation insurance information and is the State of Florida's statistical agent for workers' compensation insurance. It analyzes industry trends, prepares workers' compensation insurance rate recommendations, determines the cost of proposed legislation, and provides a variety of services to the insurance industry to maintain a healthy workers' compensation system.

In further testimony, Jim Watford, chief actuary for workers' compensation insurance for the Florida Office of Insurance Regulation indicated that the NCCI request for increased rates is the first of many increases predicted to occur, if attorneys' fees are not addressed by the Legislature following the *Murray* opinion.

Surplus Lines Insurance

Essex Ins. Co. v. Zota,
985 So. 2d 1036 (Fla. 2008)

In another key opinion issued by the Florida Supreme Court, surplus lines insurance may be subject to greater regulation by the Florida Office of Insurance Regulation.

State Farm has chosen to exit the Florida property market, leaving unanswered questions about the state's private carrier capacity and next political moves by the Florida Legislature and Governor.

Surplus lines insurance policies cover risks that are unique, unusual, or difficult to evaluate that authorized insurance carriers prefer not to cover. An insurance agent must obtain three denials for coverage from the admitted market before a surplus lines policy can be issued to an insured.

Because of this unique risk, surplus lines carriers are given relaxed regulation, particularly in the area of policy forms and rates that otherwise must be approved by the state. This approach helps to encourage the coverage of unique risk issues and encourages surplus lines carriers to write coverage in the Florida market.

However, in *Zota*, the Court ruled that surplus lines insurers were not exempt from all parts of Chapter 627, Florida Statutes, including the regulation of policy forms.

Therefore, surplus lines insurers may now be required to comply with substantive standards concerning policy form content imposed by Chapter 627, Florida Statutes, including mandatory coverages and contract provisions. The Court ruling bodes ill for the future of hard to cover risks in the state, as surplus lines carriers may well choose not to cover such risks if they are subject to policy form regulation.

An industry sponsored bill will be filed with the Legislature to address and reverse the *Zota* opinion. We anticipate that the Florida Plaintiffs' Bar will mount a serious challenge to the passage of this bill.

Florida Hurricane Catastrophe Fund

We expect the Republican-led legislature to revisit property insurance issues. Florida citizens continue to be heavily burdened with paying assessments imposed by the Florida Hurricane Catastrophe Fund ("Cat Fund") due to the exposure of hurricane property damage in Florida. The Cat Fund is woefully under-funded and does not have sufficient assets to meet its claims payment obligations.

The Legislature will be closely analyzing this situation and will consider ways to reduce the Cat Fund's current and future obligations.

Citizens Property Insurance Corporation

It is anticipated the Legislature will again evaluate the coverages and rate adequacy of Citizens Property Insurance Corporation ("Citizens"). Citizens is a government-created organization with a purpose to be the "insurer of last resort." However, since the 2004 and 2005 hurricane seasons, the company has grown to become the largest property insurance carrier in the state.

In recent prior legislative sessions, Citizens' rates were frozen by lawmakers and its ability to compete with private insurers was expanded. Opponents of this legislative intervention assert that Citizens' premiums are woefully inadequate and that the company is hugely financially unsound – in billions of dollars – to cover its current risk.

The Legislature may consider lifting the existing rate freeze and increase Citizens' rates over a period of time until they reach actuarial soundness.

It is fair to say that the insurance industry has had its "political day" in Tallahassee these past few sessions; so much so that State Farm has chosen to exit the Florida property market, leaving many unanswered questions about the state's private carrier capacity and next political moves by the Florida Legislature and Governor. It is all very topsy-turvy. ■

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