The Florida Senate

Interim Project Summary 2001-001 *October 2000*

Committee on Banking and Insurance Senator James A. Scott, Chairman

WHETHER FLORIDA'S INSURANCE LAWS ARE ADEQUATE TO RESPOND TO THE NEXT MAJOR HURRICANE

SUMMARY

1. The limited funding available for the Florida Insurance Guaranty Association (FIGA) poses a serious threat that FIGA may not be able to fully pay claims after a major hurricane. Providing legislative authority for such funding in advance may eliminate the need to convene a special session and would lessen the time for FIGA to collect needed funds to pay policyholders. The following options should be considered: (1) Increase the maximum 2% annual assessment for FIGA's "other insurance" account to 4%; (2) Merge FIGA's 3 accounts into 1 account and apply assessments to all property and casualty lines covered by FIGA (i.e., including motor vehicle insurance, but not including workers' compensation);
(3) Pre-fund FIGA by assessing insurers at a 2% rate each year (as New York law provides), whether or not an insolvency has occurred to reserve for future insolvencies; and/or (4) Authorize FIGA to impose a special 2% assessment, in addition to the regular 2% assessment, if necessary to pay claims after a hurricane, and to issue bonds secured by the special assessment.

2. Exempt the Florida Residential Property and Casualty Joint Underwriting Association from assessments imposed by FIGA, except for assessments levied by FIGA to secure bonds to pay covered claims of insolvent insurers related to any hurricane.

3. Allow the current "moratorium completion" statutes [ss. 627.7013(2) and 627.7014(2), F.S.], to be repealed as scheduled, on June 1, 2001, which currently limit the percentage of residential property insurance policies that may be terminated. Replace these provisions with authority for the Insurance Commissioner or, alternatively, the Governor and Cabinet, to issue an order limiting policy terminations after a declared state of emergency if a finding is made that a substantial number of policy terminations are likely and that such terminations pose a serious threat to the economy of the state.

4. Provide specific statutory authority for the Department of Insurance to adopt rules limiting public adjuster commissions after a hurricane. Alternatively, specify the limitations in the statute, by limiting commissions to 10 percent of the insurance settlement.

5. Authorize the department to adopt rules requiring insurers to have an adjuster visit a claimant and make an initial claims adjustment within a specified time after a hurricane claim is filed. Authorize the department to adjust the claim or contract for an adjuster at the insurer's expense if an insurer fails to meet its obligations. Alternatively, enact specific legislation imposing such requirements.

6. Authorize the department to adopt rules that extend any time limit upon an insured to perform any act or transmit information or funds with respect to his or her insurance coverage, if a determination is made that damage from a hurricane has been so extensive as to impair the ability of insureds to comply with contractual time limits.

BACKGROUND

During the months that followed Hurricane Andrew in 1992, the Department of Insurance responded with a series of emergency rules and the Legislature convened a special session to address the most immediate insurance problems. Since that time, major changes have been made to Florida's property insurance laws. But certain problems that occurred after Hurricane Andrew and which are likely to occur after the next major hurricane have not been addressed. This report examines whether Florida's insurance laws provide regulatory officials with adequate authority to respond to consumers' insurance problems following another major hurricane.

METHODOLOGY

Staff reviewed the rules issued by the Department of Insurance after Hurricanes Andrew, Opal, and Erin, and related property insurance laws. Estimates of assessment revenues were obtained from the Florida Insurance Guaranty Association and summaries of guaranty fund laws of each state were obtained from the National Conference of Insurance Guaranty Funds. Financial information on insurers was obtained from the Department of Insurance and the Florida Hurricane Catastrophe Fund. Staff reviewed studies of insurer solvency by A.M. Best Company, the U.S. Governmental Accounting Office, and the Wharton School of the University of Pennsylvania. Residual market data was obtained from the Florida Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association. Case law was reviewed regarding the moratorium law. Staff interviewed representatives of the Department of Insurance, the Office of the Attorney General, and insurance companies.

FINDINGS

Hurricane Andrew resulted in the insolvency of ten insurers. The Florida Insurance Guaranty Association (FIGA) is required to pay claims of insolvent insurers, up to a limit of $300,000 per claim. However, after Andrew, FIGA estimated that it would experience a shortfall of about $500 million. FIGA had a cash balance of $50 million and could collect an additional $63 million by assessing property and casualty insurers up to 2% of written premium for the prior year. This clearly posed an emergency, given thousands of policyholders waiting for claims payments, many without roofs over their heads.

The Legislature convened a special session in December 1992, and authorized the issuance of $500 million in municipal bonds to fund the FIGA shortfall. To fund the bonds, the Legislature authorized FIGA to impose a special assessment on property and casualty insurers of up to 2% of premiums, in addition to the regular 2% assessment. Insurers were allowed to pass the assessments on to policyholders through premium increases. (Ch. 92-345, L.O.F.)

FIGA ultimately paid over $499 million in Andrew-related claims. The 2% special assessment was levied for 4 years from 1993 through 1996, plus a partial amount in early 1997, collecting $374.3 million. In addition, FIGA levied regular assessments at the maximum 2% rate in 1992 ($63 million), 2% in 1993 ($68 million), and 0.75% assessment in 1994, and allocated most of these revenues to Andrew-related claims. Since then, FIGA has levied a 0.125% assessment in 1996 and a 0.125% assessment in 1997. No assessments have been collected since 1997.

The current law still limits FIGA assessments in any one year to 2% of net written premiums for the prior year. The law divides FIGA into three accounts and limits assessments to the premiums written in each account. One account covers auto physical damage claims and a separate account covers auto liability insurance claims. The third account covers “all other” property and casualty lines. A fourth account previously established for workers’ compensation, was transferred by 1997 legislation to a new guaranty association. As of September 30, 2000, FIGA had a balance of $51.8 million in its “all other” account, received from the estates of liquidated insurers and earned on investments. Assessing insurers in this account at the maximum 2% rate in 2000 could collect an additional $121.6 million. FIGA may also borrow from the two auto insurance accounts which have a combined balance of $21.8 million.

Florida’s guaranty fund law is typical of other states’ guaranty fund laws. Thirty-seven (37) states, including Florida, cap assessments at 2% of premium, 13 states cap assessments at 1% of premium, and one state caps at 1.5%. Florida is one of 34 states that divide their property and casualty guaranty funds into separate accounts and limit assessments to the lines of insurance within those accounts. The other 17 states have only one account for property and casualty insurance which provides a broader assessment base.

New York is the only state that collects assessments at the 2% rate each year, whether or not insolvencies have occurred. This enables the New York fund to build its cash reserves and provides greater assurance that all claims will be covered. However, on occasion, the New York Legislature has “raided” the fund by making appropriations for other purposes.

It is difficult to determine whether FIGA is presently any more or less vulnerable to unfunded claims after a major hurricane, as compared to 1992. This, of course, largely depends on the claims-paying ability of property and casualty insurers in Florida, and the evidence is mixed.

Certain factors that exist today should help mitigate insurers’ hurricane losses and shield FIGA. The Florida Hurricane Catastrophe Fund (“Cat Fund”), created in 1993, will reimburse insurers for a portion of their residential hurricane losses. Reimbursement from the

Cat Fund in one year is limited to $11 billion for all insurers combined, above a retention of $3.2 billion in 2000. The Cat Fund may issue bonds financed by up to a 4% annual assessment on property and casualty insurers. To fund multi-year storms, the law allows an additional 2% annual assessment.

Hurricane Andrew caused $15.5 billion in insured losses, of which $10 billion were residential losses that would now be partially covered by the Fund. But, the Insurance Services Office estimates that Andrew's $15.5 billion loss would be $22.9 billion, after being adjusted for inflation through 1999, population growth, and property value per person. By this measure, residential losses from Andrew would be $14.8 billion, of which the Cat Fund would pay about $10 billion and insurers would pay $4.8 billion. The Cat Fund would reach its $11 billion limit if insured residential losses totaled $16.1 billion or greater.

Another factor that limits FIGA's exposure, compared to 1992, is the market share of the residual market. FIGA is not responsible for guarantying payment of losses by either of the two residual market insurers, which have their own assessment mechanisms to fund losses. The Florida Windstorm Underwriting Association (FWUA) has 430,256 policies in force insuring nearly $91 billion, and the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) has 64,950 policies in force, insuring about $7.3 billion in property value, as of September 30, 2000. When Hurricane Andrew struck, the RPCJUA did not yet exist and the FWUA insured only about 62,000 policies statewide and none in Dade, Broward, or Palm Beach Counties. This year, the FWUA accounts for 23 percent of the Cat Fund premiums, which nearly equates to 23 percent of the expected residential hurricane losses in the state.

But, there are also indications that FIGA's exposure could be greater than its pre-Andrew status. Thirty-four insurers have taken over 927,000 policies out of the RPCJUA, many of which are new Florida insurers. A.M. Best expressed concerns that several insurers, not rated by A.M. Best. would not survive a single catastrophic event, let alone a second event during the same policy year. The report stated, "Florida has given thinly capitalized, opportunistic insurers incentives – "take-out fees" – to assume the riskiest properties in Florida. These companies are dependent on private and state-sponsored reinsurance and half are not rated by A.M. Best." (*Florida Insurers May Be Unprepared for Major Storms,* Best's Viewpoint, February 7, 2000.) In a corrected update on March 13, 2000, A.M. Best stated that it "may have over-stated that many of the takeout companies may be impaired by just one or two category 1, 2, and 3 storms."

After Andrew, the state's largest property insurers formed Florida subsidiary corporations to protect their parent companies' surplus from the risk of Florida hurricanes. These subsidiaries have a lower amount of surplus than their parent companies previously had available to pay for Florida hurricanes, but the subsidiaries have greater reinsurance. Also, the major insurers have lowered their exposure to hurricane losses by being less concentrated in high-risk areas, selective non-renewals, higher deductibles, and other hurricane coverage limitations.

The U.S. General Accounting Office issued a report, *Insurers' Ability to Pay Catastrophe Claims* (February 8, 2000), which found that between 1990 and 1998, the surpluses of property and casualty insurers that operated in Florida increased 152 percent. However, this does not reflect the reduction in surplus that later resulted from the formation of Florida-only subsidiaries of the major insurers. The GAO reported that two leading reinsurance firms estimated that about $13 billion to $15 billion of catastrophe, excess-of-loss reinsurance is in force in the U.S. per region, per type of catastrophic event, which is about twice the amount of reinsurance that they estimated was available in 1994.

The GAO obtained catastrophe loss estimates from two firms. One firm estimated that Florida faced a $42.8 billion estimated loss for a 1-in-100-year storm and a $71.5 billion loss for a 1-in-250-year storm. The second firm estimated that the Gulf region states faced a $35.2 billion loss for a 1-in-100-year storm and a $47.3 billion loss for a 1-in-250 year storm. The GAO determined that in Florida, 45% of insurers may experience claims that would exceed 20% of their surplus in a 1-in-100-year catastrophe loss. The 45% estimate was greater than for any of the ten states reviewed. But the GAO did not estimate or include recoveries from reinsurance or from the Florida Hurricane Catastrophe Fund. The GAO cited a 1999 study that determined that insurance companies that operated in Florida in 1997 could have paid at least 99 percent of a $20 billion Florida hurricane or at least 90 percent of a $100 billion Florida hurricane, compared to 94 percent and 72 percent at 1991 capitalization levels. But this study also determined that a $100 billion Florida hurricane would cause either 10 corporate family or 34 individual insurer insolvencies. (*Can Insurers Pay for the "Big One?" Measuring the*

Capacity of the Insurance Market to Respond to Catastrophe Losses, Wharton School, University of Pennsylvania, July 14, 1999.)

Even if insurers' claims paying capacity in Florida has improved since Andrew, the limited funding available for FIGA and the hurricane loss scenarios pose a serious threat that FIGA may not be able to fully pay claims after another major hurricane. FIGA may be viewed as a limited safety net that is not intended to fully fund all insolvencies, particularly for a major catastrophe. But, the Andrew experience indicates that the Legislature is likely to provide some additional funding to meet FIGA obligations. Authorizing such funding in advance may eliminate the need to convene a special session and would allow FIGA to more quickly obtain needed funds. For these reasons, the following options should be considered:

(1) Increase the maximum 2% annual assessment for FIGA's "other insurance" account to 4%, which would increase available funding from $121.6 million to $243.2 million, as applied to 1999 premiums;
(2) Merge FIGA's 3 accounts into 1 account and apply assessments to all property and casualty lines covered by FIGA (i.e., including motor vehicle insurance, but not including workers' compensation) which would increase available funding from $121.6 million to $289.5 million at the 2% rate, as applied to 1999 premiums;
(3) Pre-fund FIGA by assessing insurers at a 2% rate each year (as New York law provides), whether or not an insolvency has occurred, which would enable the Fund to collect and invest about $121 million each year, subject to premium growth, to reserve for future insolvencies; and/or
(4) Authorize FIGA to impose a special 2% assessment, in addition to the regular 2% assessment, if necessary to pay claims after a hurricane, and to issue bonds secured by the special assessment.

A related issue is whether the RPCJUA should be subject to FIGA assessments. The law does not expressly address this issue. In practice, FIGA does assess the RPCJUA but does not assess the FWUA. This is the result of the department having issued a certificate of authority to the RPCJUA due to concerns by bond underwriters that a substantial number of policies placed in the RPCJUA would have impaired the revenues collected by the special assessment unless it applied to the RPCJUA. The main argument for not imposing FIGA assessments on either the RPCJUA or the FWUA, is that FIGA does not provide any protection for these two insurers. Also, the RPCJUA is seeking to obtain exemption from federal income taxation and it is believed that an exemption from FIGA assessments would enhance its chances of success.

Limitations on Cancellations and Non-Renewals; Scheduled for Repeal on June 1, 2001

Prior to Hurricane Andrew there were no laws in Florida that limited the number of property insurance policies that an insurer could non-renew. After Hurricane Andrew, many insurers sought to reduce their exposure to hurricane losses in Florida by non-renewing policies. In response, the Department of Insurance issued a series of emergency rules limiting insurers authority to cancel or non-renew policies.

In the May 1993 Special Session, the Legislature imposed a moratorium on non-renewals, prohibiting insurers from non-renewing any personal lines residential property insurance policy for the purpose of reducing hurricane exposure during the 180-day period from May 19 until November 14, 1993. In the November 1993 Special Session, the Legislature enacted a 3-year "moratorium phase-out" that followed the 180-day moratorium, that limited the number of residential property insurance policies that insurers were permitted to non-renew for the purpose of reducing hurricane exposure. The law prohibited insurers from non-renewing more than 5 percent of their policies in the state or more than 10 percent in any one county in any 12-month period. Exceptions were provided for insurers that could demonstrate an unreasonable threat to their solvency.

The 3-year "moratorium phase-out" was scheduled to expire on November 14, 1996. But, the 1996 Legislature replaced it with a 3-year "moratorium completion" that ran from June 1, 1996, until June 1, 1999. It applied to policies in effect on June 1, 1996, and did not apply to policies written after that date. This moratorium continued the same percentage limits on non-renewals and added condominium association policies to its scope. However, the 1996 law allowed insurers to transfer policies to another authorized insurer and allowed an insurer to apply to the department for approval of a greater number of non-renewals of the windstorm portion of policies in areas eligible for windstorm coverage from the FWUA. The department approved such plans for the state's two largest writers, State Farm and Allstate.

In 1998, the Legislature again extended the limitation on termination of residential policies, until June 1, 2001, which is the current law in ss. 627.7013 and 627.7014, F.S. The limitations continue to apply only to those policies that were in effect on June 1, 1996. Legislative findings state that as of January 1, 1998, the general instability of the market was reflected by the fact that the FWUA had more than 400,000 policies in force, approximately half of which were initially issued after January 1, 1997, and that the RPCJUA still had approximately 500,000 policies in force. The law provides that the moratorium will also cease to operate once the property exposures of the FWUA and RPCJUA, combined, remain below $25 billion for 3 consecutive months.

In 1998, the U.S. Court of Appeals for the Eleventh Circuit upheld the facial constitutionality of the moratorium statute, but left open the possibility that the statute could be unconstitutional as applied, in the case of *Vesta Fire Ins. Co. v. State of Florida, Department of Insurance*, (141 F.3d 1427). The Court held that the law did not violate the constitutional prohibition against a state law impairing the obligation of contracts. The Court recognized that a substantial impairment to insurance contracts existed, but also found that Florida demonstrated a legitimate public purpose of protection and stabilization of the Florida economy, particularly the real estate market. The Court determined that unless the State itself is a contracting party, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure. In this case the State was not party to the insurance contracts, so based upon the legislature's judgment, the statutes' impact on existing insurance contracts was not an unconstitutional impairment.

However, the Court in *Vesta* also determined that a factual issue existed as to whether or not the moratorium statute was an unconstitutional "regulatory taking." The Fifth Amendment states, in part " …nor shall private property be taken for public use, without just compensation." The Court stated that the Supreme Court recognized three factors that must be considered to identify a regulatory taking: (1) the economic impact of the challenged regulation or statute on the plaintiff; (2) the extent to which the regulation interferes with investment-backed expectations; and (3) the nature of the challenged action. The Court held that it was improper for the lower court to grant summary judgment for the State on this issue and remanded the case for evidentiary findings. However, upon remand, the insurer and the State of Florida reached a settlement in this case.

The arguments for allowing the current limitations on policy terminations to expire, as scheduled, on June 1, 2001, are that they have very limited effect, are no longer necessary, and may be unconstitutional if extended. Those insurers that were seeking to reduce their hurricane exposure have already taken actions to do so, through a combination of non-renewing policies up to legal limits, restrictive underwriting, forming Florida-only subsidiaries, and increasing deductibles and other coverage limits. The RPCJUA has been reduced to about 65,000 policies and the FWUA has remained at about 430,000 policies. While still significant, the residual market appears to have leveled off. The mere passage of time lessens the impact of the moratorium, which does not apply to any policy issued after June 1, 1996. It is very doubtful that expiration of the moratorium would have any noticeable effect on the market, absent a future hurricane.

If the current limitations expire, the question remains whether any laws are needed to authorize the Department of Insurance to limit policy terminations after the next major hurricane. It may be argued that such laws would discourage insurers from writing coverage, but it can also be argued that insurers expect the state to again restrict non-renewals after the next major hurricane and have already taken this into account. It may even be preferable, from an insurer's perspective, to know the extent of the restrictions in advance. Constitutionally, the state may be on sounder footing for restrictions that are enacted prior to affected policies being written or renewed, because a contract is not impaired by a law in effect at the time the contract is entered. Also, based on *Vesta*, determining whether a law is an unconstitutional taking of property depends, in part, on the expectations of insurers.

It can be argued that a restriction on policy terminations is an exercise of the state's police power that should be implemented only when the Legislature determines it is actually needed. Having a moratorium statute "on the shelf" may be too easy to implement and might even weaken constitutional arguments. This concern could possibly be addressed by legislatively authorizing the Governor and Cabinet to order such restrictions, rather than the department alone.

Are any restrictions needed? When another major hurricane strikes, will insurers again seek to reduce their hurricane exposure in Florida, or has market restructuring made massive cancellations less of a threat? The fact that many take-out insurers are heavily dependent upon reinsurance makes them vulnerable to price increases and coverage limits by reinsurers which are likely after a major hurricane. The Florida Hurricane Catastrophe Fund will have a reduced capacity to help fill this void. This could again trigger policy cancellations on a large scale.

The establishment of the RPCJUA assures that coverage is available, but if a hurricane results in significantly more policies in the RPJCUA and the FWUA, the magnitude of potential future assessments increases. Assessments will have already been triggered to pay residual market claims and to fund Cat Fund obligations. The residual market may be unable to secure adequate financing to cover a second storm after a large bond issue has been issued for the first storm. The state's interest in reducing potential assessments and assuring that the residual market can obtain financing justifies the need to limit insurers' ability to terminate policies after the next major hurricane. The argument for authorizing an executive order limiting policy terminations are: (1) insurers would be put on notice that such restrictions may be triggered; (2) the legal argument may be stronger that such limits do not unconstitutionally impair contracts or constitute a taking of property; and (3) the Legislature would not need to convene a special session to impose such limits, which could be effective as soon as an executive order was issued.

Availability of coverage from the residual market argues against the need for authority to order a prohibition on all policy terminations following a hurricane, which would be short-term at best. For eight years, Florida insurers have been operating under a prohibition against canceling more than 5% of their residential property policies in any 12-month period, or more than 10% in a single county. One option is to enact these same limits that would become effective after a declared state of emergency, upon order of the Department of Insurance or, alternatively, the Governor and Cabinet, if a determination is made that it was likely that a substantial number of policies would be terminated and that such terminations posed a serious threat to the economy of the state. Like the current law, the limitations could allow insurers to exceed these limits, based on significant impairment to solvency. The law could limit the maximum time period the order could be in effect to one year, requiring a legislative determination of any extension.

A related issue is that of insurers seeking to withdraw from the state. Section 624.430, F.S., provides that an insurer desiring to surrender its certificate of authority, withdraw from the state, or discontinue the writing or any kind or line of insurance must give 90 days' notice in writing to the department setting forth its reasons for doing so. After Hurricane Andrew, the department issued an emergency rule that interpreted the statute as authorizing the department to allow the department to impose such reasonable terms and conditions as necessary to prevent or ameliorate adverse consequences to policyholders. (Rules 4ER92-11 and 4ER93-5, F.A.C.). Later, the department adopted a permanent rule establishing procedures for withdrawal which prohibits an insurer from taking any action until 90 days after the receipt by the department of the notice required by s. 624.430, F.S. (4-141.020, F.A.C.) The notice must describe what treatment will be given to affected Florida policyholders and what steps will be taken regarding processing of any outstanding claims. The rule also provides, "No surrender or attempted surrender of a certificate of authority is effective until accepted by order of the department."

As mentioned, one option is to authorize the department or Cabinet to issue an order prohibiting insurers from terminating a specified percentage of policies if certain findings are made following a hurricane. If that option is enacted, further limitations on the right of an insurer to withdraw from the state may not be necessary. If, however, that option is not enacted, other options may need to be considered to limit an insurer's right to withdraw. One option is to amend s. 624.430, F.S., to incorporate key provisions of the department's rule, summarized above, to provide clear legislative authority. Another option is to prohibit any insurer seeking withdrawal from canceling any policy mid-term and require that coverage be continued through the end of the policy term.

Licensing of Emergency Adjusters; Ethical Standards and Commission Limits

Section 626.874, F.S., authorizes the department, in the event of a catastrophe or emergency, to issue adjuster licenses to persons "under the conditions which it shall fix and for the period of the emergency as it shall determine." The department adopted emergency rules for the emergency licensure of adjusters after Hurricane Andrew in 1992 (4ER92-1, F.A.C.) and adopted a permanent rule in 1993 (4-220.001, F.A.C.). The rule permits insurers, independent adjusters, and general lines agents to immediately utilize emergency company adjusters or independent adjusters under certain conditions, subject to post-licensure by the department. However, *public adjusters* who contract with claimants to negotiate claims on their behalf, must obtain advance approval from the department and are subject to greater restrictions than company adjusters and independent adjusters.

Section 626.878, F.S., requires adjusters to subscribe to a code of ethics adopted by rule of the department, Rule 4-220.201, F.A.C., prohibits adjusters from negotiating with a claimant at a time when the claimant may reasonably be expected to be in serious emotional distress associated with a loss. The rule also requires that a public adjuster's contract with a client be cancelable by the claimant for at least 3 business days after the contract has been entered.

After Hurricanes Erin and Opal in 1995, the department issued emergency rules that limited commissions for public adjusters to no more than 10 percent of any insurance settlement. (4ER95-4 and 4ER95-5, F.A.C.) The emergency rule for Hurricane Erin also required department approval of all contracts by a public adjuster with a claimant regarding total loss to the claimant's residence. According to the department, based on their experience with Hurricane Andrew, unscrupulous public adjusters took advantage of the vulnerability of the storm's victims by charging unreasonably high fees. The commission limitations and contract approval requirements for public adjusters in previous emergency rules have expired and are not addressed in the permanent rule. The cited authority for the emergency rules was the same as for the permanent rule, s. 626.878, F.S., which authorizes the department to adopt a code of ethics for adjusters. It may be questioned whether this statutory authority is sufficient if the department adopts similar emergency rules after another hurricane.
One option is for the Legislature to provide specific statutory authority for the department to adopt rules limiting public adjuster commissions and to approve total loss contracts after a catastrophe and for the department to amend its permanent rule to include these requirements. A second option is to specify the limitations in statute, in order to give legislative consideration to the policy issues involved and to avoid rule challenges. Both options are based on the assumption that the merits of such restrictions do not appear to depend on the unique situation of a particular hurricane and to eliminate the need for adopting emergency rules after each hurricane.

Investigation and Adjustment of Claims

After Hurricane Andrew, the department issued an emergency rule which required insurers to meet specified time limits to have an insurance adjuster visit all claimants; advance appropriate funds to all insureds entitled to additional living expenses; inspect all damage and make an initial assessment; and make a good faith effort to settle all claims. (4ER92-20, F.A.C.) Another emergency rule allowed the department to conduct an examination of an insurer after repeated instances of violations and for the department, its contract examiner, or an independent adjuster acceptable to the department to adjust the claims. (4ER92-16, F.A.C)

The current law prohibits certain unfair claim settlement practices in s. 626.9541(1)(i), F.S., including "failing to affirm or deny full or partial coverage of claims, and as to partial coverage, the dollar amount or extent of coverage, or failing to provide a written statement that the claim is being investigated, upon the written request of the insured within 30 days after proof-of-loss statements have been completed." This provides a general requirement that claims be investigated within 30 days, but only prohibits actions that are performed with such frequency as to indicate a general business practice. It does not specifically require that an adjuster visit a claimant within a specified time, or require an advance of additional living expenses, or specifically authorize the department to take actions to have claims adjusted if an insurer fails to meet its obligations. The Legislature should consider enacting requirements in this regard or authorizing the department to adopt such requirements by rule.

Extension of Grace, Claims Filing, Reinstatement, and Miscellaneous Periods

The disruption of mail delivery and displacement of persons from their homes after Hurricane Andrew, was the primary justification for the department’s emergency rule that extended any time limit upon an insured in certain counties to perform any act or transmit information or funds with respect to his insurance coverage. Acts such as payment of renewal premiums were extended for 60 days and a subsequent rule further extended this grace period. The Legislature should consider authorizing the department to adopt such rules if a determination is made that damage from a hurricane has been so extensive as to impair the ability of insureds to comply with contractual time limits.

RECOMMENDATIONS

1. The limited funding available for the Florida Insurance Guaranty Association (FIGA) poses a serious threat that FIGA may not be able to fully pay claims after a major hurricane. Providing legislative authority for such funding in advance may eliminate the need to convene a special session and would lessen the time for FIGA to collect needed funds to pay policyholders. The following options should be considered: (1) Increase the maximum 2% annual assessment for FIGA’s “other insurance” account to 4%; (2) Merge FIGA’s 3 accounts into 1 account and apply assessments to all property and casualty lines covered by FIGA (i.e., including motor vehicle insurance, but not including workers’ compensation); (3) Pre-fund FIGA by assessing insurers at a 2% rate each year (as New York law provides), whether or not an insolvency has occurred; and/or (4) Authorize FIGA to impose a special 2% assessment, in addition to the regular 2% assessment, if necessary to pay claims after a hurricane, and to issue bonds secured by the special assessment.

2. Exempt the Florida Residential Property and Casualty Joint Underwriting Association from assessments imposed by FIGA, except for assessments levied by FIGA to secure bonds to pay covered claims of insolvent insurers related to any hurricane.

3. Allow ss. 627.7013(2) and 627.7014(2), F.S., to be repealed as scheduled, on June 1, 2001, which currently limit the percentage of residential property insurance policies that may be terminated. Replace these provisions with authority for the Insurance Commissioner or, alternatively, the Governor and Cabinet, to issue an order limiting policy terminations after a declared state of emergency if a finding is made that a substantial number of policy terminations are likely and pose a serious threat to the economy of the state.

4. Provide specific statutory authority for the Department of Insurance to adopt rules limiting public adjuster commissions after a hurricane. Alternatively, specify the limitations in the statute, by limiting commissions to 10 percent of the insurance settlement.

5. (a) Authorize the department to adopt rules requiring insurers to have an adjuster visit a claimant and make an initial claims adjustment within a specified time, after a hurricane claim is filed. (b) Authorize the department to adjust the claim or contract for an adjuster at the insurer’s expense if an insurer fails to meet its obligations. (c) Alternatively, enact specific legislation imposing such requirements.

6. Authorize the department to adopt rules that extend any time limit upon an insured to perform any act or transmit information or funds with respect to his or her insurance coverage, if a determination is made that damage from a hurricane has been so extensive as to impair the ability of insureds to comply with contractual time limits.

COMMITTEE(S) INVOLVED IN REPORT ***(Contact first committee for more information.)***
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MEMBER OVERSIGHT
Senators Clary and Geller