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## MEMORANDUM

**To:** Guy Carpenter & Co.

**From:** Fred Karlinsky, Esq.  
Mike Colodny, Esq.  
Rich Fidei, Esq.  
Erin Treacy, Esq.  
Katherine Scott, Esq.  
Rhett O'Doski  
Michelle Hawken

**Date:** April 24, 2006

**Re:** FLORIDA LEGISLATIVE UPDATE AND SUMMARY

The information set forth in this memorandum and materials provided are not intended to constitute, and shall not be deemed to be, legal advice or opinion of a general or specific nature. Any questions of a specific nature should be directed to an attorney for review and evaluation based upon the facts and circumstances involved. The dissemination of any information set forth herein does not waive any Attorney-Client privilege, any confidentiality protections with respect to any Attorney-Client communications, or any other privileges which may otherwise apply.

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The House of Representatives and Senate Committee meetings wrap-up tomorrow and the 2006 Legislative Session concludes on May 5, 2006. As Florida's 2006 Legislative Session draws to a close, this memorandum is provided as a supplement to our previous memorandum dated March 9, 2006, which is attached hereto. Please review the legislative proposals discussed below and provide us with any comments or concerns as quickly as possible. Please keep in mind that these proposals will likely be modified several times before the end of the session.

### **Joint and Several Liability**

The House of Representatives spearheaded an effort to repeal the last vestiges of joint and several liability in Florida. House Speaker Allan Bense made the repeal of joint and several liability his top priority for the 2006 Legislative Session. The bill, House bill 145 filed by Representative Don Brown (R – DeFuniak Springs), passed on March 30, 2006. The bill is now awaiting the Governor's signature



## **Insurance Related Issues in the 2006 Legislative Session**

The major issues relating to insurance this Session include a major effort to reform the property insurance market, the reformation and/or sunset of No-Fault automobile insurance laws, and the allocation of additional sales tax revenues collected as a result of hurricane repairs and agent termination procedures.

### **Property Insurance**

The House Insurance Committee approved its property insurance package, CS/CS/HB 7225, in early March, and the bill has been progressing through the committee process. A copy of the latest version of the bill is attached. The bill was heard today by the Commerce Council, and will next be heard on the House floor.

The most notable items contained in the House bill are as follows:

1. Makes residential homes and condominiums valued over \$1 million ineligible for coverage from Citizens Property Insurance Corporation ("Citizens") High Risk Account and allows insurers to write these policies without rate regulation as of July 1, 2006;
2. Creates a new account in Citizens for non-homestead property, provides that homes in this account must have rates for a 250-year PML and limits assessments in this account to the policy holders in this account;
3. Requires Citizens to establish rates based on a 100 – year PML for homestead property;
4. Contains a rapid-cash build-up for the Florida Hurricane Catastrophe Fund ("FHCF"). The bill was amended to include a provision allowing limited apportionment companies to buy down their FHCF retention to one-third of their surplus for the 2006 hurricane season, under certain conditions;
5. Delays the implementation of the High Risk Account territory reduction from 2007 to 2013;
6. Provides a low-interest loan program for homeowners to retro-fit their homes;
7. Allows companies writing fewer than 500 policies to be exempt from the annual rate filing and certification requirement;
8. Provides for flex rating of 5% statewide and no more than 10% in a single rating territory;
9. Provides for automatic approval of private insurer's rates for policies in Citizens' High Risk Account if those rates are lower than Citizens' rates;
10. Requires insurers to issue checks for emergency living expenses and contents damage directly to policyholders without a lien-holder endorsement;
11. Requires the Financial Services Commission ("FSC") to adopt standards for emergency rules to be imposed following hurricanes;
12. Authorizes additional assessment authority for the Florida Insurance Guaranty Association ("FIGA"); and,
13. Mandates that the Office of Insurance Regulation ("OIR") study and report on the insurability of attached structure or free-standing structures.



The Senate Banking and Insurance Committee also approved a property insurance package (CS/CS/SB 1980), a copy of which is attached. This bill is likewise ready to be heard on the floor of the Senate. The major components of the Senate property insurance proposal are as follows:

1. Makes residential homes or condominiums valued at \$1 million or more ineligible for Citizens coverage as of July 1, 2011; however, effective January 1, 2007, these policies would be subject to a 25% surcharge;
2. Creates a 25% premium surcharge on non-homestead property in Citizens, and an additional 25% surcharge on non-homestead property in the case of a Citizens assessment;
3. Contains a rapid cash build-up factor for the FHCF. Although not contained in the Senate package, several proposals are circulating that would reduce the retention level of the FHCF to \$3 billion, and/or allowing limited apportionment companies to purchase coverage from the FHCF at a much lower level;
4. Delays the date Citizens must reduce the area contained in its High Risk Account from 2007 to 2009;
5. Provides a low interest loan program for homeowners to retro-fit their homes;
6. Requires the OIR to develop a process to expeditiously approve rate increases due to increasing reinsurance rates;
7. Requires insurers to issue checks for emergency living expenses and contents damage directly to policyholders without a lien-holder endorsement as well as pay the lesser of \$20,000.00 or 20% of the estimated claim directly to insured without requiring an endorsement by the mortgage or lien holder;
8. Requires the CEO and CFO of an insurer, or a CPA acting on their behalf, to sign a sworn statement certifying the veracity of the company's rate filing;
9. Requires private companies that write the underlying perils in Citizens' High Risk Account policies to adjust Citizens hurricane claims;
10. Increases the assessment authority for the FIGA;
11. Establishes a 25% surcharge for mobile homes with Citizens coverage; and,
12. Contains certain standards of conduct for Citizens' senior employees.

These property insurance proposals will likely develop and change as the legislative process continues. Additionally, Citizens has testified that it opposes the legislative proposal contained in the House bill creating a fourth account in Citizens for new policies that are no longer eligible for coverage in Citizens' existing accounts, citing issues with the funding mechanism in place for these policies.

We expect that the property bill will be one of the last bills addressed by the House of Representatives and the Senate during this Session.



Additionally, several bills have been filed relating specifically to Citizens. These include bills intended to reduce sinkhole claims and litigation, as well as bills relating to the use of sales tax revenues to pay for deficits in Citizens.

Senator Mike Fasano (R – New Port Richey) and Representative John Legg (R – New Port Richey) have been working in concert to pass legislation regarding sinkhole claims this session. Both have publicly stated that Citizens is the major property insurer in Pasco County and other Tampa bay areas, which have a history of sinkhole claims. These bills (CS/SB 286 and CS/HB 217) create several requirements and processes for sinkhole claims, including a new two-step process for verifying the presence of a sinkhole, both phases of which require testing by either an engineer or professional geologist and written reports with findings and recommendations for repairs. These bills also allow insurers to directly pay a contractor or other person designated by the homeowner to make repairs. Additionally, these bills establish an alternative dispute resolution process for resolving disputes between homeowners and insurance companies utilizing “neutral evaluators” designated by the Department of Financial Services (“DFS”). Policyholders can appeal an unfavorable decision by the evaluator in court, but, in that event, the insurance company would not be liable to pay the policyholder’s attorneys’ fees incurred in connection with the appeal. The text of this bill has been included in the Senate property insurance package; however, the House bill remains a separate proposal. The House bill has been approved by all committees of reference and is now poised to be heard on the House floor. The Senate bill was approved by the Banking and Insurance Committee on April 7, 2006, and is on the agenda for the Judiciary Committee for April 25, 2006. The content of Senate bill is included in the Senate property package as well.

Further, the House and Senate budget contain appropriations allocating a certain amount of hurricane related sales tax revenue to Citizens to off-set the deficits currently facing Citizens. The revenue estimating conference has estimated that Florida will see a substantial “windfall” in sales tax revenues resulting from purchases related to the hurricanes that impacted Florida in 2004 and 2005. The House of Representatives has proposed an appropriation of approximately \$920 million and the Senate has proposed an appropriation of approximately \$750 million. At this time it is unclear if the Legislature will appropriate funds for both the 2004 and 2005 assessment or for only the 2005 assessment. This issue will be decided in budget negotiations within the next week.

In addition, CFO Gallagher has endorsed legislation that would require insurers to pay 20% or \$20,000 of an insurance claim's proceeds directly to policyholders and immediately pay policyholders for additional living expenses or to replace damaged belongings. This language is currently in the Senate property proposal, but only part of this is contained in the House proposal.

### **No – Fault Insurance**

Florida’s Automobile No-Fault laws are scheduled to “sunset” on October 1, 2007, unless the Legislature repeals the law creating the “sunset” during the 2006 Legislative Session. These laws require insured drivers in Florida to purchase personal injury protection (“PIP”) insurance that provides up to \$10,000.00 in benefits, regardless of a person’s fault in an accident.



Reenactment of this law has proven controversial this session, with representatives from the insurance industry, the trial bar, the Florida Medical Association, chiropractors and hospitals all weighing in on the issue. Both the House and Senate Insurance Committees have proposed and approved bills relating to the re-enactment of Florida's No-Fault laws.

The House Insurance Committee released and approved CS/HB 7263 relating to the reenactment of No-Fault in Florida. The bill was approved last week by the House Commerce Council, and is now poised to be heard on the House floor. Although we expect the text of this bill to change considerably, at the present time the bill contains the following major components:

1. Deletes the sun-set provision that would take place October 1, 2007;
2. Requires a plaintiff to submit a notice to an insurer that provides details of the claim and details of the alleged bad-faith conduct as a condition precedent to bringing a lawsuit for first or third party bad faith;
3. Strengthens the verbal threshold;
4. Contains many "fraud fixes" including increased penalties for committing fraud under the No-Fault sections;
5. Increases the disability benefits from 60% to 70% and the death benefit from \$5,000.00 to \$7,000.00;
6. Allows only physicians licensed under chapters 458 or 459 to render opinions of "permanent injury";
7. Provides for certain language to be contained in an assignment of benefits;
8. Provides that venue for actions for PIP benefits lie in the jurisdiction where the insured resides, where the accident occurred or where the treatment was rendered;
9. Increases the amount of time by which an insurer may respond to a demand letter from 15 days to 21 days;
10. Requires insurers to compensate providers for information / documentation requested by the insurer;
11. States that an attorney's contingency fee risk multiplier be inapplicable in actions for PIP benefits; and,
12. Requires motorcyclists between the ages of 16 and 21 to obtain PIP insurance.

The Senate Banking and Insurance Committee also issued and approved a bill, CS/CS/CS/SB 2114, regarding Florida's Automobile No-Fault law. The bill initially contained provisions creating a medical fee schedule for services provided as a result of a PIP claim, eliminated the ability of a court to add a contingency fee multiplier to attorneys' fee awards and provided additional resources to combat fraud. The bill has been substantially amended, and it now contains the following:

1. Provides various anti-fraud measures also contained in the House bill;
2. Increases the amount of time by which an insurer may respond to a demand letter from 15 days to 21 days;



3. Provides that venue for actions for PIP benefits lie in the jurisdiction where the insured resides, where the accident occurred or where the treatment was rendered; and,
4. Creates a new sunset provision effective January 1, 2009.

Representatives from the insurance industry were generally supportive of the initial versions of these bills, but stated that the bills "didn't go far enough" and should be amended to include additional provisions to address and/or eliminate the current abuse and fraud in the PIP system. These bills are expected to develop further throughout the remainder of this Legislative Session.

### **Termination of Agents**

Other legislation of interest includes House bill 355 regarding the termination of agents. As originally filed, this bill extended the time period by which an insurer is required to give an agent notice of termination. Current law sets this time at 60 days or another amount of time as specified by contract. Originally, House bill 355 extended the advance notice period to 120 days and rescinded the provision allowing insurers and agents to contract for another advance notice period. The bill was amended to include the language allowing insurers and agents to contract for another period of time. The bill was passed by the House last week. The Senate companion bill, Senate bill 1060, has been placed on the Banking and Insurance Committee agenda for April 25, 2006. We expect the supporters of this bill to attempt to amend the bill again to remove the provision allowing insurers and agents to contract for a specified advance notice provision. This will be an ongoing issue throughout Session.

Attached hereto please find copies of the bills discussed in the above memorandum:

1. Senate bill 1980 and House bill 7225 relating to property insurance;
2. Senate bill 2114 and House bill 7263 relating to No-Fault insurance;
3. Senate bill 286 and House bill 217 relating to sinkhole reform;
4. Senate bill 1060 and House bill 355 relating to the termination of agents.

We will provide a condensed update to this memorandum on Sunday, April 30, 2006 and a final 2006 Florida Legislative Session Report on Monday May 8, 2006.

Should you have any questions or require any additional information, please do not hesitate to contact any member of our insurance team.

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