

stability and predictability. Frequent system changes prevent the orderly adjudication of claims and increase frictional costs. At the same time, participant gaming, conflicting court decisions, and over-litigation can turn an otherwise stable workers' compensation system into disarray.

It took three years of persistent and consistent effort by the Coalition of Business & Insurance Industry to convince

the Florida Legislature to pass one of the best reform bills ever deliberated. Yet, in *Murray v. Mariners*, the Florida Supreme Court chose to substitute its judgment for that of the Legislature. Unless addressed during the 2009 regular session, the reintroduction of hourly attorneys' fees into the workers' compensation system will increase litigation and raise costs.

The Florida Legislature has a full plate

this year. Budget issues and the slowing Florida economy will no doubt take center stage, but the Coalition of Business and Insurance Industry, of which PCI is a founding member, will be urging the Florida Legislature to say "we meant what we said when we said it the first time," and once again prohibit hourly attorneys' fees. Especially in these difficult times, Florida cannot afford anything less. ▲

## Will The Legislature Get It Right This Time?

By Mary Frederick, communications director, Professional Insurance Agents of Florida

**T**he Florida Legislature must think that insurance companies and agents are made of rubber.

That is, both must bend and bend, (but not break) while providing the best possible coverage at rock-bottom prices for their customers. The well-known problem in the homeowners' market is that hurricanes are inevitable — and with massive buildup of buildings along



▲ Mary Frederick

Florida's coastline (the longest in the continental U.S.), the risk is enormous.

Yet some legislators want to bend and stretch the property insurance market to their will.

They keep tweaking Florida's insurance regulatory system so they can go home to their constituents with news of ever-lower insurance rates. But the only rate control they really have is with Citizens Property Insurance Corp., and in recent years they have directed Citizens to charge actuarially unsound rates, morphing it from a "market of last resort" to a de facto "market of first resort." Other companies, fed up with regulatory and rate limitations, have simply reduced their risk or left the state, shifting even more risk to Citizens.

Is it any wonder that State Farm is packing its bags? State Farm indicates it does not want to leave Florida but it cannot afford to stay, claiming it is losing an estimated \$20 million a month in our state. While some regulators (and Gov.

Charlie Crist) are saying good riddance to State Farm, these same regulators are also trying to mandate that State Farm limit its non-renewals to two percent a year. This doesn't make sense.

### Some Sound Recommendations

Legislators did a positive thing in the 2008 session when they mandated the creation of a Citizens' task force to develop a report of statutory and operational changes needed to return it to its original mission of being the market of last resort. The task force developed a comprehensive report outlining suggested recommendations in time for the 2009 session.

The first and foremost recommendation was to implement Citizens' rate increases beginning in 2010. Actuaries have estimated that Citizens is facing more than \$400 billion in potential exposure, yet it only has about \$3.4 billion in net assets. Not only does this put all Floridians on the hook for Citizens' losses, but it also puts insurance agents in a terrible position: Do they place customers in Citizens to save some money, knowing that Citizens could be on the brink of financial disaster, or do they place the risk with another company that may or may not be properly funded?

Currently, agents are prohibited from discussing the Florida Insurance Guaranty Fund with their customers. This limits agents in their duty to provide important information so their customers can make wise insurance choices. The task force recommends repealing this onerous statutory language, and Professional Insurance Agents of Florida agrees.



The task force has some other far-reaching recommendations to curb Citizens' risk. The members recommend that any new structure erected on Florida's coast be ineligible for Citizens' coverage. Developers and coastal municipalities will not like that, but Florida, as the most hurricane-prone place on earth, should take steps to mitigate its overall hurricane risk.

In addition, the task force recommends that home-strengthening programs be developed and promoted. The popular *My Safe Florida Home* program exhausted its funding last year. We are not sure where additional money would come from to continue the program, but regardless, homeowners need to take the necessary steps (and assume the responsibility) to strengthen their homes.

### Some Not-so-Sound

Other task force recommendations include a number of bureaucratic steps for agents that put them in a position of chasing after coverage that everyone knows is not readily there. Knowing that the devil is in the details, we hope that the Legislature weighs these carefully.

The recommendations include a series of provisions for agents to ensure that their customers are in fact eligible for Citizens — from certification of the 2007 “15-percent rule,” reconfirmation of Citizens’ eligibility every year for their Citizens’ policyholders, and limiting automatic renewals. If the agent or the applicant violates any of the eligibility requirements, then the task force recommends that both can be fined or penalized. Let’s not put agents in an even worse position by mandating that they spin their wheels, instead of ensuring that their customers are properly insured.

Other recommendations just do not take into account the fact that Florida’s insurance market is extremely volatile. It sounds nice to recommend the elimination of Citizens’ coverage of non-residential commercial properties, especially now that that market has opened a bit, but what happens if the market tightens again?

The same thing goes for the recommendation that Citizens-appointed agents demonstrate their appointments with actively writing companies. That’s

## THE FLORIDA LEGISLATURE MUST THINK THAT INSURANCE COMPANIES AND AGENTS ARE MADE OF RUBBER.

an exercise in futility. Companies are very fickle in opening and closing of territories, and agents must bend with the market flow the best they can.

### Let the Market Determine Rates

There’s one recommendation that is beyond the scope of the task force, but that we hope our legislators will heed: It is time to let the free market come to the Florida insurance arena and allow companies to compete with one another with actuarially sound rates. We’re sure that this basic principle of capitalism will ruffle the feathers of some legislators who promise their constituents low insurance rates, even at the risk of putting Florida in serious financial jeopardy. But the free market is the only way the Florida Legislature can reduce Citizens’ market share, reduce the state’s liabilities in the Cat fund and in the guaranty fund, and let insurance companies

actually compete with one another. That’s the only way our insurance market will stabilize, providing policyholders the best coverage and the best price.

Let’s look at another coastal state’s insurance market as a comparison. Louisiana’s private property insurance companies can adjust their rates as necessary, and as a result their insurance market thrives. For the most part, Louisiana’s last-resort insurance company cannot offer competitive prices. And guess what? The number of policies placed there continues to drop.

Agents, by Florida law, must act in “good faith... with respect to the public.” Although an agent’s fiduciary responsibility is not codified in Florida statute, it is clear that Florida agents are in a Catch-22 when placing coverages for their clients. Let’s hope the Legislature will take the necessary steps to allow agents to actually act in good faith. ▲

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