

First Report - Other Areas of Interest: Conference Call - August 1, 2007

1) Monitor the new re-opened claims, mediation, appraisal, litigation

Action: Citizens to include this information in its report via email on September 1; written report by October 1; and presentation at the October 5, 2007, meeting in Tallahassee.

2) Citizens has three accounts: Personal Lines Account (PLA); Commercial Lines Account (CLA) (both of which are multi-peril policies); and High-Risk Account (HRA) (which is for hurricane wind-only policies. Citizens' financial advisor, bond counsel and attorneys are expected to complete their review in August 2007, and are requested to provide a copy to the Task Force.

Action: Citizens will provide an update as soon as its review is complete.

3) Office of Internal Auditor

Action: Discussion by Task Force at the August 1 conference call.

4) Citizens' Consumer Claim Department (Daily Claims):

- **Communications with claimant**
 - **Current status**
 - **Settlement agreements**
 - **Denials**
 - **Closures**
- **Implement the use of debit cards for Additional Living Expenses (ALE)**
- **Define mitigated damages**

Action: Discussion by Task Force at the August 1 conference call.

- **Citizens subject to Section 626.9541(1)(i), Florida Statutes**

Action: Continue to monitor – topic for a future meeting.

- **Claim Payments Advisory – “Cashing this check does not constitute the closure of this claim.”**

Action: Discussion by Task Force at the August 1 conference call.

- **Monitor Independent Adjusters Training:**
 - **Certification process**
 - **Florida Building Codes**
 - **County Code - Location of Assignments**
 - **Sensitivity Training**
- **Monitor – re-inspection program (quality controls)**

Action: Citizens to address at the August 1 conference call and update at the October 5, 2007

- **In-house Staffing, Communication and Technology needs**

Action: Continue to monitor – topic for a future meeting.

- **Monitor trends in the claims process – common adjuster, contractor, public adjuster; attorney**

Action: Discussion by Task Force at the August 1 conference call.

- **Statute of Limitations for filing a new claim in Florida, Louisiana, Mississippi, and Georgia.**

Action: Discussion by Task Force at the August 1, conference call.

Florida: Section 95.11, F.S. (2007), addresses the “Limitations other than for recovery of real property.” Subsection (2)(b) provides “a legal or equitable action on a contract, obligation, or liability founded on a written instrument” **must be commenced within five years that an action must be commenced within five years. The Florida Supreme Court determined that “Using the date the insurance contract is breached is the most logical event to begin the running of the statute of limitations.”** State Farm Mut. Auto. Insurance Company v. Lee, 678 So.2d 818, 821 (Fla. 1996). Section 95.03, F.S. (2007) voids any provision in contract that provides less time than the applicable statute of limitations provided by law.

Louisiana: Prior to an amendment adopted in 2006, La. R.S. 22:629(A)(3), prohibited an insurance contract from “limiting right of action against the insurer to a period of less than *twelve months* next after the inception of the loss. . . .” Acts 2006, Nos. 739 and 802, were enacted which extended the time limitation under which claims arising from Hurricanes Katrina and Rita may be filed. **The legislation extended the time period to approximately two (2) years from the hurricane event. These provisions were challenged as unconstitutional. The Supreme Court of Louisiana upheld them as constitutional.**

Mississippi: Pursuant to Miss. Code Ann. § 15-1-49(2007), **the general statute of limitations provides for a three-year time period.** Miss. Code Ann. § 15-1-5 (2007) prohibits the period of limitation prescribed by code from being changed by contract.

Georgia: Section 9-3-24, Official Code of Georgia (2007), provides “**All actions upon simple contracts in writing shall be brought within six years after the same become due and payable.** However, this Code section shall not apply to actions for the breach of contracts for the sale of goods under Article 2 of Title 11 or to negotiable instruments under Article 3 of Title 11.” Insurance is a matter of contract, and the applicable statute of limitations on a simple contract is 6 years. Smith v. State Farm Mut. Auto. Ins. Co., 152 Ga. App. 825, 264 S.E. 296 (1979), rev’d on other grounds, 245 Ga. 654, 266 S.E. 2d 505 (1980). It should be noted however, that in General Electric Credit Corp. v. Home Indemnity Co., 168 Ga. App. 344, 309 S.E.2d 152 (1983), the Court of Appeals of Georgia, stated “**Georgia has no statute preventing parties from contracting to limit the time within which an action on an insurance policy may be brought.** In fact, the Georgia cases have held: ‘A shorter period than the statutable period for the institution of suits, by agreement of the parties in their contract, violates no principle of public policy, provided the period fixed be not so unreasonable as to raise a presumption of imposition or undue advantage in some way.’” [cites omitted]

➤ **Contracts with AYO Insurers**

Action: Discussion by Task Force at the August 1 conference call.

5) Monitor Enhancements of Citizens' Customer Care Center:

➤ **Correspondence and Call Team**

- **Acknowledge**
- **Routing**
- **Consistent handling**
- **Uniform responses**
- **Turnaround times**
- **Deadlines**
- **Reporting process**
- **In-house staffing, communication and technology needs**

Action: Discussion by Task Force at the August 1 conference call.

6) Public Adjusters (FAPIA):

➤ **National Association of Insurance Commissioners model law**

➤ **Review and Make Recommendations**

- **Regulation**
- **Licensing requirements**
- **Continuing education**
- **Apprentice program**
- **Solicitation and the offer of gifts**
- **Commissions and fees for both hurricane claims and daily claims**

➤ **Conference August 8 – 10, 2007**

Action: Task Force members to review recommendations and provide feedback to staff by August 15, 2007.

Many of the recommendations were submitted to the Task Force by the Florida Association of Public Insurance Adjusters and have been discussed with the Department of Financial Services (DFS), Division of Agent and Agency Investigations.

Public Adjusters - Recommendations:

- 1) Create a written Florida Public Adjuster's examination and continuing education courses specifically for public adjusters with in-depth study of the Florida Insurance Code
- 2) Require proctored testing for licensure and designations
- 3) Levels of Licensure:
 - a. Public Adjuster
 - b. Public Adjuster Apprentice – a person employed and appointed for one (1) year by a public adjusting firm in good standing
- 4) Qualifications for Licensure:

- a. Two (2) years of experience working as a residential company adjuster, independent adjuster, agent, broker or the equivalent of (2) years of insurance education from an accredited institution
- 5) Appointment requirement:
 - a. One (1) year appointment as a public adjuster apprentice by a public adjusting firm in good standing prior to being eligible for self-appointment
- 6) Require DFS's written Florida Public Adjuster's examination to be retaken if the public adjuster's license lapses for any reason
- 7) Nonresident Public Adjuster shall be:
 - a. required to take DFS's written Florida Public Adjuster's examination in order to qualify for licensure, and
 - b. licensed for a period of three (3) years in good standing in his or her state of residence
- 8) Maximum cap on contingency fees:
 - a. 15% of the settlement for daily claims
 - b. Settlements made prior to the execution of the contract shall not be subject to contingency fees
- 9) Anti-Fraud Statement on all Public Adjusters' Contracts
- 10) Prohibit public adjusters and public adjuster apprentices from giving a client, prospective client, and others, for the purposes of advertising, any article or merchandise having a value of not more than \$25.00 (Section 626.9541(1)(m), F. S.)
- 11) Cooling Off Period – no contract can be executed within 72 hours of the loss
- 12) Prohibit public adjusters from making monetary loans to a client or prospective client

Insurance Property Appraisers:

Based on our research, insurance property appraisers are not regulated or required to be licensed in the State of Florida.

7) Monitor Appointed Insurance Agents:

- **Training**
- **Responsiveness to Policyholders**
- **Commissions**

Action: Discussion by Task Force at the August 1, conference call.

8) Mediation Program (21/10 days)

Action: Discussion by Task Force at the August 1 conference call.

9) Xactimate

Action: Discussion by Task Force at the August 1 conference call.

10) Replacement Cost Estimator (MBS)

Action: Discussion by Task Force at the August 1 conference call.

11) Underwriting Criteria

- **Renewal Process**
- **Inspections**

Action: Discussion by Task Force at the August 1 conference call.

12) Citizens claims files subject to public disclosure – Legal Opinion

Action: Discussion by Task Force at the August 1 conference call.

Section 627.351(6)(w)1., Fla. Stat., which is materially identical to section 768.28(16)(b), Fla. Stat., leads DFS's Senior Attorney to the conclusion that Citizens' closed claims files are generally subject to the public records act and must be released on request, subject to redaction of social security numbers, personal health information, and other specific information made confidential by specific statute. Without knowing exactly what is contained in any given file, DFS cannot be more specific about what to redact; specific and limited exemptions to the public records act now take several single lined pages of the Florida Statutes just to index. The overwhelming majority of those exemptions will be inapplicable to Citizens' files, but each file should be carefully examined before release to ensure compliance with all exemptions

13) Coastal States Catastrophic Fund

Action: Continue to monitor – topic for a future meeting.

14) Monitor Court Decisions:

- **Wind / Flood**

Action: Pending court decision. Continue to monitor – topic for a future meeting.

- **Permit Fees**

Action: The following summary provides a response to this area of interest.

Section 626.9744, F.S., does not exclude coverage for building permits. An insurer must pay all cost to repair or replacement cost up to the policy limit unless there is a specific exclusion. In recent discussions with Marshall Swift / Boeckh, Citizens replacement cost estimator includes cost for architect fees, permits, certificate of occupancy fees, contractors overhead and profit and other costs associated with reconstruction.

Note: Citizens pays for permit fees when the consumer produces a receipt.

15) Tax Revenue Funding for Catastrophic Events

Action: Continue to monitor – topic for a future meeting.

16) Sarbanes-Oxley

Action: Discussion by Task Force at the August 1 conference call.

17) Value Policy Law, Section 627.702, Florida Statutes

Action: Pending court decision. Continue to monitor – topic for a future meeting.

18) Wind Driven Rain Exclusion

Action: Discussion by Task Force at the August 1 conference call.

627.4025 Residential coverage and hurricane coverage defined:

(2) As used in policies providing residential coverage:

(a) "Hurricane coverage" is coverage for loss or damage caused by the peril of windstorm during a hurricane. The term includes ensuing damage to the interior of a building, or to property inside a building, caused by rain, snow, sleet, hail, sand, or dust **if the direct force of the windstorm first damages the building, causing an opening** through which rain, snow, sleet, hail, sand, or dust enters and causes damage.