



THE FLORIDA SENATE
SELECT COMMITTEE ON
PROPERTY INSURANCE ACCOUNTABILITY

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March 13, 2008

The Honorable Ken Pruitt
President, The Florida Senate
Suite 400, The Capitol
Tallahassee, FL 32399-1100

Dear President Pruitt:

Thank you for the opportunity to serve as co-chairs of the Select Committee on Property Insurance Accountability. The committee hearings revealed a tremendous amount of valuable information, which will help guide the Legislature in considering changes to the insurance laws.

The hearings were particularly informative with regard to how insurance companies responded to the legislative mandate contained in the 2007 property insurance reforms to make rate filings reflecting the savings of the expanded state reinsurance coverage. Although most companies complied with this requirement by making rate filings reflecting the "presumed factor" savings estimated by the Office of Insurance Regulation (OIR), some companies attempted to increase rates by offsetting their reinsurance savings with other factors, such as increased profit levels, using unapproved hurricane loss models to project greater hurricane losses, or the purchase of additional reinsurance for higher loss levels. The 2007 legislation prohibited any rate increases prior to approval by OIR and very few increases were approved. However, committee questions posed to insurance officials and state insurance regulators under oath about these rate filings have enabled the committee to better identify the points of contention and the potential need for changes to our insurance laws. It is essential not only that consumers obtain the benefit of the 2007 reforms, but also that we prevent any unjustified rate increases in the future and hold insurance companies accountable for any unlawful activity.

As OIR officials have acknowledged, the committee hearings also revealed important new information to the Office of Insurance Regulation about the rate filings of the insurance companies that testified. OIR officials also informed us that our hearings played an instrumental role in resolving rate filings that were pending at the time the committee began its hearings, to the benefit of hundreds of thousands of policyholders.

After being appointed on January 10, 2008, the committee met on January 22 and heard testimony from the Insurance Commissioner, Kevin McCarty, on the status of the presumed factor rate filings and from J. Robert Hunter, Director of Insurance for the Consumer Federation of America, who served as a consulting actuary to the OIR in developing the presumed factor savings that insurers were required to reflect in their rate filings.

We then invited officials from five insurance companies, who appeared before the committee for two full days of hearings on February 4th and 5th. The committee questioned high-ranking officials from Allstate, Nationwide, Florida Farm Bureau, the Hartford Group, and American Strategic Insurance Company about a wide range of issues regarding their rate filings, use of hurricane loss models, reinsurance contracts, profit levels, ratings from private insurance rating organizations, nonrenewal of policies in Florida, claims handling, and other business practices. The committee also questioned officials of the OIR and the Insurance Consumer Advocate, together with each insurer's panel of representatives, including questions from Steve Burgess, with the Office of the Public Counsel, who we asked to assist the committee. This forum proved very fruitful in eliciting the factors that insurers use to attempt to justify rate increases and, conversely, the reasons why OIR disapproves filings based on certain factors. It also revealed the need for greater communication between insurers and OIR and should act to facilitate resolutions of rate filings in the future.

The committee then met on February 19 and heard testimony from an invited reinsurance expert, Paul Walther with Reinsurance Directions; representatives of the Florida Commission on Hurricane Loss Projection Methodology, the state commission that approves hurricane loss projection computer models; and AIR Worldwide Corporation, one of the private companies that has developed hurricane loss models. This provided further information as to how reinsurance contracts and hurricane loss models affect insurance company rate filings and the extent to which Florida law can affect these factors.

Given that the 2008 Regular Session is underway, as co-chairs we feel it is important to submit to you proposals that should be considered by the standing committees. Even though the select committee has not made formal recommendations, we have identified issues from the comments and recommendations made by the committee members during the hearings and further input we have received from individual members since that time. We have tried to limit these proposals to those that are consistent with the purpose of the committee and the charge that you gave, which is the accountability of property insurers for complying with Florida law, particularly with regard to their pricing practices and rates charged to policyholders.

We recommend that the following proposals be given further consideration by the appropriate standing committees:

RATE FILINGS

1. Use and File

Repeal the “use and file” option, or extend the temporary prohibition on insurers making a “use and file” rate filing that allows an insurer to increase rates before approval by OIR.

2. OIR Indications

2.a. Require insurers to certify in a rate filing that the insurer has reviewed the OIR indications used in approving the insurer’s last rate filing.

2.b. Require insurers to identify factors used in its current rate filing that are inconsistent with factors used by OIR in its indications for approving the insurer’s last rate filing.

3. Approved Models

3.a. Require that rates be based on hurricane loss models approved by the Commission on Hurricane Loss Projection Methodology, without any modifications to the model.

3.b. Require that approved models be used by an insurer in determining its probable maximum loss (PML).

4. Profit and Contingency Factor

4.a. Repeal the provision that requires OIR to approve a rating factor for hurricane losses that are not reinsured that provides the insurer a reasonable rate of return commensurate with the risk.

4.b. Require or authorize OIR (through the Financial Services Commission) to adopt rules establishing standards for allowable profit and contingency factors in rate filings.

4.c. Require or allow OIR to consider an insurer’s stock buy-back program in approving its profit and contingency factor.

5. Costs of Reinsurance

5.a. Establish a standard for allowable reinsurance expenses included in a rate filing, such as setting a minimum percentage of expected recoveries, unless the insurer demonstrates cause for higher expenses.

5.b. Prohibit reinsurance purchased from a parent or affiliated company from charging brokerage fees and from requiring a reinstatement premium after an event.

5.c. Prohibit rates from including reinsurance costs that duplicate coverage provided by the Florida Hurricane Catastrophe Fund (FHCF), regardless of the effective date of coverage (thereby requiring insurers to assure that reinsurance contracts allow for adjustment for

subsequent changes in FHCF coverage). This may lead to discussion of pledging the full, faith, and credit of the State of Florida for bonds issued for obligations of the FHCF.

6. Non-renewal of policies

Require insurers to certify in a rate filing the number of policies they intend to non-renew and that the reduced risk is calculated into their rates. Require the insurer to make a new rate filing if it non-renews more than a specified greater percentage of policies to demonstrate that its rate is not excessive.

7. Arbitration

Repeal the arbitration option, or extend the temporary prohibition on allowing insurers to use the option of appealing to an arbitration panel a rate filing disapproved by OIR. (This would limit the insurer's option to an administrative hearing under chapter 120, F.S., before a hearing officer of the Division of Administrative Hearings).

8. Administrative Hearings

Prohibit insurance companies from introducing information in support of a rate filing at a DOAH hearing if it has not been provided to the Office of Insurance Regulation.

COMPANY PRACTICES

1. Fines and Criminal Penalties for Violations

1.a. Increase maximum fines for an insurer that violates the Insurance Code, in order to provide meaningful sanctions that can be imposed by OIR as an alternative to suspension or revocation of the insurer's authorization to sell insurance.

1.b. Provide that a company's refusal to comply with a subpoena is a violation of health, safety, and welfare that allows OIR to issue an immediate final order to suspend or revoke the insurer's certificate of authority.

1.c. Provide criminal penalties for insurance officials who knowingly, with intent to deceive, make false material statements or reports to OIR.

1.d. Provide criminal penalties for insurance officials, employees, or agents who corruptly obstruct or impede the proper administration of any investigation or proceeding by OIR, DFS, or contract examiner.

2. Trade Secrets

2.a. Establish procedures for insurers to identify documents as trade secrets that are required to be submitted to OIR, including a certification by the insurer that the document meets the statutory definition of a trade secret and that the insurer has taken specified measures consistent with this definition.

2.b. Require an insurer to be liable for attorney fees and costs or be subject to a fine if a court determines that a document identified by an insurer as a trade secret is not a trade secret and is a public record.

2.c. Authorize OIR to make a preliminary determination that a document labeled as a trade secret is not, in fact, a trade secret, and to make such information publicly available upon providing specified notice to the insurer and an opportunity to obtain an injunction or ruling from a court.

2.d. Allow OIR (and other state agencies) to share trade secret documents with other state agencies for matters within the scope of their authority.

3. Excess Profits Law

Strengthen the excess profits law (a 10-year test) by deleting the criterion that an insurer must have surplus equal or greater than its 250-year probable maximum loss. The remaining criterion would be that the insurer earned an underwriting profit over a 10-year period that was in excess of 10 percent of earned premium above the anticipated underwriting profit approved in the insurer's rate filings.

4. Antitrust

Remove the exemption for insurance companies and for insurance rating and advisory bodies from state antitrust laws.

5. Claims Adjusting

Prohibit insurers from considering age, race, income level, education, credit score or any other personal characteristics of a policyholder in evaluating or adjusting a property insurance claim.

6. Auto Insurance

Specify stronger requirements or authorize OIR (through the Financial Services Commission) to adopt rules to strengthen the requirement that insurers writing auto insurance in Florida must write homeowners insurance, if the insurer or its affiliate is writing property insurance in other states.

7. Approval of Non-Renewal Plan

Require insurers to submit to OIR for approval their plans for non-renewal of a significant number of policies, to assure that non-renewals are staggered over a reasonable time period or that arrangements have been made for offering replacement coverage in the private market.

8. Moratorium on Cancellations

Establish a statutory moratorium on cancellations and non-renewals of residential property insurance policies following a hurricane, subject to exceptions necessary for preventing substantial impairment of an insurer's financial condition.

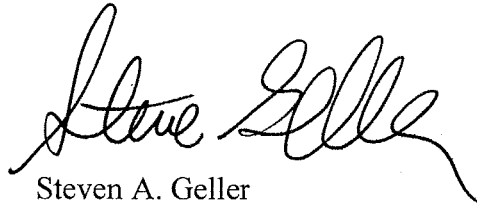
FUNDING PROPOSALS

1. Provide funding for the My Safe Florida Home Program to provide free inspections and matching grants for hurricane mitigation improvements.
2. Provide funding for the Insurance Capital Build-Up Program to provide surplus notes (loans) to insurance companies that contribute an equal amount of new capital and commit to writing a specified level of property insurance policies.

Sincerely,



Jeff Atwater
Co-Chair



Steven A. Geller
Co-Chair

Cc: to file
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