

**Adopted Minutes of November 14, 2005, Meeting of  
Task Force on Long-Term Solutions  
for  
Florida's Hurricane Insurance Market**

The Task Force on Long-Term Solutions for Florida's Hurricane Insurance Market convened its third meeting on Monday, November 14, 2005, at 9:00 am in the Connector Atrium, University of South Florida Research Park, 3720 Spectrum Boulevard, Tampa, Florida 33612. This third meeting had been postponed from its original scheduled date of October 26, 2005, because of Hurricane Wilma.

Chair **Kevin M. McCarty**, Commissioner, Office of Insurance Regulation, called the meeting to order and recognized a quorum.

In addition to Chair McCarty, attending were the following Task Force members: **Steve Burgess**, Insurance Consumer Advocate, State of Florida; **Richard Cain**, Vice President, State Farm Insurance Company; **Leslie Chapman-Henderson**, President/CEO, Federal Alliance for Safe Homes, and Vice-Chair of the Task Force; **Dave Cobb**, President, Freedom Insurors, Inc.; **Randy Dumm**, Ph.D., Associate Professor of Risk Management and Insurance, Florida State University; **Dan Gilmore**, President, Florida Homebuilders' Association; **George Grawe**, Counsel, Allstate Floridian Insurance Company; **Tony Grippa**, Executive Vice President, Brown & Brown; **Robert P. Hartwig**, Ph.D., Senior Vice President and Chief Economist, Insurance Information Institute; and **James Wurdeman**, President/CEO, Poe Financial Group. Absent were **Blair Glenn**, Mortgage Banking Executive and Senior Vice President, Wachovia Mortgage Corporation, and **Harold Humphrey**, Vice Chairman, InSource, Inc.

Chair McCarty welcomed members of the Task Force, staff and members of the public who were attending. He noted that the meeting had been called in full compliance with Florida's "Government-in-the-Sunshine" Act, Section 286.11, Florida Statutes. Public notice of the meeting had been published, members of the public were invited and were attending and minutes of the meeting were being taken and would be made available publicly.

Chair McCarty asked Task Force members if they wished to make comments before the meeting began. Hearing no requests, he proceeded with the published agenda for the day.

1. **Approval of Minutes of September 28, 2005, Task Force Meeting.** Task Force members unanimously approved written minutes of the Task Force's second meeting on September 28, 2005, as presented to them in advance.

2. **Regulatory Overview: State Rating Laws, a National Perspective.** Eric Nordman, CPCU, CIE, Director of Research, National Association of Insurance Commissioners (NAIC), presented an overview of state insurance rate review laws and practices across

the nation. Materials outlining Mr. Nordman's presentation are available on the website of the Task Force at [www.fldfs.com/hurricaneinsurancetaskforce](http://www.fldfs.com/hurricaneinsurancetaskforce).

Mr. Nordman summarized the historical development of rate review, noting that regulation of insurance rates and forms advanced slowly until 1945 when the McCarran-Ferguson Act was passed by Congress. That Act declared that the continued regulation and taxation of the business of insurance by the states was in the public interest and that the insurance industry was exempt from Federal anti-trust laws to the extent it was "regulated by state law". Initial laws provided for the "prior approval" of all insurance rates by state regulators. In the 1960s, "open competition" rating laws allowed companies to "adjust" rates to fit the overall economic climate of the area and compete with other insurance companies. As long as the rate had a solid actuarial basis, it usually would not be deemed excessive, inadequate or discriminatory by regulators.

Mr. Nordman stated that, in the 1980s, various states adopted "file and use" or "use and file" methods of rate review, minimizing the time it took insurers to get their products to market. In the late 1980s, charges by some consumer organizations that insurance companies were involved in price fixing and in unfair and discriminatory pricing and underwriting practices, led to legislation and regulation in some states that permitted "loss cost rate making" based on the historical experience of companies and their projected coverage losses.

He advised that today's regulatory structure is a continuum, ranging from no rate filings required (one state, Wyoming) to informational filings (Illinois), use and file/file and use (majority of states), prior approval (17 states) and government promulgated rates (only one state, Massachusetts, for auto insurance). Flex-rating and hybrid systems provide additional subtle nuances in rate review.

According to Mr. Nordman, the regulator's role generally is to evaluate the impact that approval of a filing may have upon the insuring public, including the filer's market share, the percentage change in rate level requested, the dollar amount of premium change and the dates and magnitude of previous rate level adjustments. The regulator is alert to the level of competition in the marketplace, financial solvency, sound policy provisions and fair and adequate rates for the coverage provided.

He stated that regulation is intended to correct market failures and improve economic performance, promote financial solvency of insurers, prevent prices from rising too high or too low, and prevent other abuses that might arise from consumers' lack of information and unequal bargaining power. Regulation has benefits but also can distort market forces and hurt efficiency if it suppresses prices below costs.

Mr. Nordman suggested that the attachment point for Florida Hurricane Catastrophe Fund might be examined to ensure that the Fund serves as an effective reinsurance mechanism for private companies. He also supported the creation of a National Catastrophe Fund that will build on state and regional funds (such as Florida's Hurricane Catastrophe Fund) and provide back-up for major events.

Members of the Task Force asked Mr. Nordman questions and discussed the matters raised by his presentation. Several Task Force members expressed concern about the public's apparent view of insurance companies and asked for more information about polls that ranked insurers, government agencies and other institutions.

Mr. Nordman was asked about a possible regulatory system that would permit companies to determine rates without prior approval but would require them to disclose their rates to the public and to produce proof of financial solvency. Mr. Nordman noted that such a system was essentially a "use and file" system which permitted a company to determine and use rates before filing information with state regulators. "Use and file" systems have a number of variations, including the system used in Illinois that permitted rates to stand with an assumption that they were competitive unless information existed to the contrary. Mr. Nordman noted that the risk of natural disasters was different in Florida and in other states than it was in Illinois so there are other factors to consider in addition to market competition. Such a system might work for auto rates in Florida but probably not for homeowner rates, especially high-risk wind coverage. Given the dynamics of the property insurance market, de-regulation could result in more and greater price and other market fluctuations.

3-A. **Regulatory Overview: Florida Rate Review Process.** Mr. Ken Ritzenthaler, Actuary, Office of Insurance Regulation, presented an overview of the insurance rate review process in Florida. Materials are available at [www.fldfs.com/hurricaneinsurancetaskforce](http://www.fldfs.com/hurricaneinsurancetaskforce).

Mr. Ritzenthaler reviewed the specific forms used by insurance companies to file rates under Florida's "file and use" and "use and file" systems. The "file and use" system requires a filing 90 days prior to use; the "use and file" system permits use of rates 30 days in advance of filing. Under the "use and file" system, rates that later are determined to be excessive are subject to being retroactively refunded.

Mr. Ritzenthaler noted that the filings required information about "actual incurred losses", the costs of reinsurance (including Florida Hurricane Catastrophe Fund transactions) and details about expected losses which can include the results of computer-based modeling. He observed that rates that varied for different territories or geographic areas must be documented separately for each program and policy type. A competitive analysis must supplement any actual experience presented that "lacks credibility".

Mr. Ritzenthaler observed that Florida requires filings to be made on-line which speeds processing substantially. The Office of Insurance Regulation (OIR) assists companies with pre-filing conferences and other educational seminars. Florida has an annual rate filing or rate certification requirement to ensure that rates are adequate so that solvency concerns can be reduced.

Members of the Task Force then asked Mr. Ritzenthaler questions about Florida's rate review process. Mr. Ritzenthaler clarified that Florida permits insurers to use computer-

based hurricane catastrophe models as one way to calculate expected losses and that hurricane modeling companies now must submit actual data so that the state can evaluate their reliability. He noted that companies are responsible for defining their territories. Each different territory would require separate documentation. The state requires that Florida-only loss data be used in insurer filings. This data may be supplemented by other data, including countrywide data in certain circumstances. Mr. McCarty noted that about 60% of Florida's auto insurers used the Internet "use and file" system; about 30-to-40% of homeowner insurers do so. Mr. Ritzenthaler observed that Citizens Property Insurance Corporation had been relying on comparisons with Florida's "top 20" private insurers in the past but would be using actuarial data in the future. It uses the same forms and provides the same kinds of data as other insurance companies. Several Task Force members stated that they would be interested in reviewing the "expense loading" information used by Citizens for its filings. Chair McCarty stated that information on filings by Citizens that was available to OIR would be made available to the Task Force.

3-B. **Consumer Perspective on Rate Review Process: Bob Hunter.** Chair McCarty noted that Mr. Hunter, Director of Insurance for the Consumer Federation of America, was unable to attend the Task Force meeting but had submitted a paper, "Why is Regulation of Insurance Necessary?" that is available on the Task Force's website at [www.fldfs.com/hurricaneinsurancetaskforce](http://www.fldfs.com/hurricaneinsurancetaskforce).

Mr. Hunter's paper discusses the reasons for insurance regulation, including prevention of insolvency, prevention of unfair and deceptive policies and practices, promotion of insurance availability, prevention of "reverse competition", and promotion of information for consumers. He states that these original reasons for regulation are as relevant, or in some instances even more relevant, today than years ago because of advances in technology, extended use of insurance, increased competition and new requirements by governments and lenders that consumers be insured. He argues that unregulated competition alone cannot guarantee a fair, competitive insurance market and that regulation is consistent with, instead of incompatible with, competition.

4. **Consumer Perspective on Rate Review Process: Birny Birnbaum.** Mr. Birney Birnbaum, Consulting Economist, Center for Economic Justice, addressed the Task Force with a consumer perspective on rate review. He noted that "deregulation" of the rate process was not a solution to any problem in the Florida insurance market and that mandatory and aggressive loss mitigation steps had a much greater probability of increasing insurance availability.

Mr. Birnbaum observed that historical approaches to rate review and regulation usually do not distinguish among (1) policy forms, (2) risk classification and (3) overall rate levels. These three very different considerations usually are lumped into a single rate filing. The modern regulatory framework should distinguish among the three issues.

On policy forms, he noted that prior approval by regulators is needed because the forms are complex and the ordinary consumer does not have adequate information to make independent judgments about forms.

On risk classifications, including underwriting by insurance companies, he noted that this, too, should be subject to prior approval by regulators and should be much more refined and tailored to individual circumstances than it now is. He observed that part of the problem has been a dramatic movement away from close interactions between insurance companies and agents and consumers on loss mitigation matters. He noted that successful fire prevention activities over the years illustrate the positive impact of active involvement of insurers with consumers on loss mitigation and the need for very tailored risk classifications to reflect the reality of individualized risk exposures.

On overall rate levels, he thought that these did not need prior regulatory approval if policy forms and risk classifications had been approved in advance.

Mr. Birnbaum observed that insurance markets have unique characteristics that are not generally recognized: they are smaller than a state, can't be truly competitive because of the industry's anti-trust exemption, do not face strong consumer power, have a "herd mentality" among industry participants, do not know what they are doing – e.g., insuring large amounts of expensive and high-risk coastal properties, and otherwise uninformed about market conditions. He thought that complete deregulation of the industry would result in disaster.

Mr. Birnbaum argued for "loss prevention partnerships" between insurance companies and consumers, with cooperative fire prevention as an excellent example over the last century. He said that we should not just try to figure out how to pay for bigger and bigger catastrophic events but must look to more fundamental solutions, especially to loss prevention and mitigation. He observed that this was an important economic development opportunity since loss prevention and mitigation could help to create jobs and add important value to dwellings. Insurers could help to finance loss prevention and mitigation activities by providing deep discounts in premiums and loan financing. Federal and state governments could assist in making loans or providing guarantees.

Mr. Birnbaum offered his opinion that support for the arbitration process used for disputes about proposed rates was the "height of hypocrisy" by those who advocated tort reform because arbitration led to long and costly procedures rather than to quick, reliable, and fair decisions. He thought that the arbitration process for rates should be repealed.

Members of the Task Force commented on Mr. Birnbaum's remarks and asked questions. Vice-Chair Chapman-Henderson noted that we needed to redefine the true "cost of housing" to include the major costs of displacement caused by catastrophic events. With aggressive mitigation activities, such as those underway in Florida, total costs can be reduced about 40% through several basic steps that will be discussed subsequently in the meeting.

Mr. Grawe observed that Florida's rate levels clearly were an issue and asked Mr. Birnbaum to clarify his remarks about regulatory approval of rates. Mr. Birnbaum stated that he distinguished between "risk classification" and "overall rates". If risk

classification were conducted carefully and objectively, and tailored to individual situations, rate approval would be much less of an issue because insurers could properly “spread their risks” across properties of varying risk classifications rather than simply matching individual risk to price. Still, he noted, Florida has hurricanes more frequently than any other state and needs more regulatory oversight to continue insurance as a financial security tool and to promote loss prevention and mitigation.

Mr. Cobb asked about CLUE (Comprehensive Loss Underwriting Exchange) reports as ways to encourage mitigation. Mr. Birnbaum observed that CLUE reports appear to be used to record inquiries by consumers as negative claims and consequently discourages loss mitigation and prevention partnerships between insurers and consumers. He believes that insurers should go to each and every property, inspect it, determine needed improvements for adequate loss prevention and work with homeowners to get such improvements accomplished. Mr. Wurdeman concurred and stated that the industry might be able to develop standard benchmarks and ratings to assist.

Mr. Cain observed that his company had good consumer relationships and did not know why “deregulation would be a disaster”. He thought that it could have an important impact on coverage by encouraging companies to offer insurance at adequate rates and that companies would stay in Florida if they could “get their rates”. Mr. Birnbaum reviewed “deregulation” in several states, focusing on Texas which he said resulted in “massive price fluctuations and stripping of coverage”. He also noted that, in Florida, major companies seem to want to get rid of high-risk wind coverage at any price so rate increases would not necessarily result in additional coverage of high-risk properties. He thought that the state could assist companies in arranging their portfolios so that risks were spread across a variety of low and high risk categories. If companies also actively assisted consumers with loss prevention and mitigation, he thought rates could remain reasonable while coverage remained in place.

Mr. Hartwig asked about “deregulation” on the commercial side of homeowners’ insurance, noting that it appeared to be a healthy “deregulated” market with good coverage, as compared with “regulation” on the single family residential side with inadequate coverage. Mr. Birnbaum observed that Florida’s regulatory system for both commercial and other homeowner properties was exactly the same so the extent of regulation was not a factor in creating or preventing adequate coverage. He noted that commercial structures had more consumer bargaining power because they were much larger and sophisticated. Individual homeowners had very little bargaining power. The difference in bargaining power was an important market fact and argued for state protection of individual homeowners.

Mr. Grippa suggested that individual homeowners be given more consumer options, similar to those offered to commercial structures, including variations in deductibles. Mr. Birnbaum noted that choices were good as long as companies did not force individuals to make certain choices, such as large deductibles in order to continue coverage. He observed that regulation was necessary to help to protect individual homeowners.

Mr. Gilmore asked Mr. Birnbaum to comment on the mobile home situation in Florida. Mr. Birnbaum opined that these homes have to be upgraded so that they meet hurricane building standards. Mr. Gilmore noted that “hardening” of homes presented serious difficulties for some homeowners, especially when they must comply with Florida’s “50% rule” and that requirements to “harden” dwellings amounted to “unfunded mandates” which the state should, at a minimum, help homeowners finance.

Mr. Birnbaum stated that he would submit written comments for the record.

5. **Introduction to Disaster Resistant Construction.** Bill York, President, W.H. York Consulting, presented a “Blueprint for Safety Program and the Florida Building Code”. Materials can be found at [www.fldfs.com/hurricaneinsurancetaskforce](http://www.fldfs.com/hurricaneinsurancetaskforce).

Mr. York showed members of the Task Force a video entitled “Tale of Two Houses” that illustrated different impacts on two houses hit by Hurricane Charlie in Punta Gorda Isles in 2004. A home built before Florida’s new building code suffered substantial damage; a home built after the new code suffered very little damage.

Mr. York concluded that the new Florida building code was working and was helping homeowners “harden” their homes. He reviewed “Seven Things You Need to Know Before Rebuilding Your Hurricane-Damaged Home”, prepared by the Federal Alliance for Safe Homes (FLASH Inc.), and discussed the following items: roof deck and attachment, secondary water barrier, roof covering, roof shape and bracing, gabled ends, roof to wall connections, opening protection, and doors.

Mr. York reported that the 2001 Florida Building Code became effective March 1, 2002, and that building permit applications received prior to that date are not subject to the Code. Many builders submitted applications prior to March 1, 2002, ensuring that most buildings constructed during 2002 do not necessarily meet the Code’s standards.

Mr. York noted that the 2001 Florida Building Code made major changes in standards and criteria for hurricane protection, including continuous load path, wind speed map to include 3-second gusts, wind-borne debris regions, high velocity hurricane zone provisions, higher wind-rated roof coverings and ASCE-7 national standard for designing buildings and other structures.

In addition, Florida Statutes Section 627.0629 requires insurance companies to offer homeowners “discounts, credits, or other rate differentials” for construction techniques that reduce damage and loss in windstorms. Companies were required to submit filings by March 2003 that provide for these wind mitigation discounts with filings effective during 2003.

Other changes in 2004 included adopting the International Family of Building Codes (with Florida specific modifications) and adopting the latest version of ASCE-7 on November 1.

Three major issues are pending:

- Examining the definition of the wind-borne debris region in the panhandle. ASCE-7 includes in the definition all areas that are subject to 120 mph winds. Other definitions include all areas within a mile of the coastline, whether or not they are subject to 120 mph winds, and may not include other areas that are subject to 120 mph winds. A study is underway on this matter with a report due in March 2006.
- Examining exposures “B” and “C” with respect to the ASCE-7 definition. Exposures of a building to wind velocity forces vary widely depending on the amount of open space around a building and the existence of other buildings in the immediate area. Engineering standards require that each site be measured and classified differently. The Florida Building Commission is reviewing this matter.
- Prohibiting local jurisdictions from allowing the use of partially enclosed designs (design internal pressure) as an alternative to providing wind-borne debris protection in wind-borne debris areas. Florida has adopted the International Family of Building Codes which eliminates the design internal pressure option. Mr. York agrees with this change and thinks local jurisdictions should not be able to change it.

Members of the Task Force then asked Mr. York questions. The Vice-Chair noted that the Task Force must consider changes made to the Florida Building Code and report back to the Legislature, especially the ASCE-7 definitions, homeowner discounts, and other matters.

Mr. Cobb asked whether insurance companies offered different rates for different roof structures. Mr. York noted that the 2003 filings were supposed to permit such differences. Mr. Hartwig asked if hurricane protection steps must be disclosed to purchasers when a home is offered for sale. Mr. York replied that there is no such requirement, that consumer awareness is low on the availability of discounts and that hurricane protection does not seem to have had much impact on home sales.

Chair McCarty noted that mobile homes are not covered by the Florida Building Code and that Florida has had a program to “harden” these homes but it was small compared to the need.

Mr. York noted that insurance companies, banks and governments could assist homeowners with financing the costs required to “harden” their dwellings so that they conform to the Florida Building Code and offer greater hurricane protection. Building codes need to be continuously strengthened and enforced so that homeowners can be protected even more as knowledge increases about what protections are the most effective.

6. **Solvency and Capacity Overview.** Sharon Binnun, Deputy Commissioner of Insurance Regulation, Office of Insurance Regulation, presented information to the Task Force on Florida’s solvency requirements for insurance companies and an overview of

current and future insurance capacity in the State. Materials are available at [www.fldfs.com/hurricaneinsurancetaskforce](http://www.fldfs.com/hurricaneinsurancetaskforce).

Ms. Binnun noted that the mission of the Office of Insurance Regulation (OIR) was “to ensure that insurance companies licensed to do business in Florida are financially viable, operating within the laws and regulations governing the insurance industry, and offering insurance policy products at fair and adequate rates which do not unfairly discriminate against the buying public.” She noted that OIR was actively engaged in retaining and expanding the number and capacity of insurance companies in the state, a challenge given recent changes in the frequency and severity of catastrophic events.

She stated that some reinsurers are being downgraded by A.M. Best and some carriers are reducing exposure or completely withdrawing from Florida. She stated that rates do not contemplate multiple hurricanes in one season and that modeling helps to project ultimate risk, but is uncertain. As mitigating factors, some carriers leaving the market are finding substitutes to continue coverage, new carriers are entering the market, reinsurance probably will be available despite cost questions, new reinsurers are being formed, rates do not appear to have been inadequate for a typical year without multiple major storms, rate increases have been approved, FMAP is keeping policies out of Citizens, some new capital is entering the state and hedge funds may be interested in investing in the market.

Ms. Binnun noted that 12 Florida companies became insolvent after Hurricane Andrew in 1992 but only one insolvency occurred in Florida after a series of 2004 hurricanes. Lessons learned include that the Florida Hurricane Catastrophe Fund worked, OIR’s requirement to reinsure up to the 100-year storm worked, and OIR solvency regulation worked.

She summarized proposals for a National Catastrophe Fund, private sector and regional funds, tax-deferred reserves, personal responsibility for mitigation and prevention, improved and enforced building codes, tax deferred savings accounts for mitigation and other regional and national programs that could improve insurance capacity in Florida. Task Force members then asked Ms. Binnun questions. Mr. Cobb asked how OIR monitored the financial performance of companies. She responded that companies submitted substantial information to OIR and that OIR was in constant communication with them. Mr. Cobb asked for 2004 information about solvency concerns to be available at the next Task Force meeting.

Mr. Gilmore asked Ms. Binnun how insurance companies responded when asked to insure mobile homes. She noted that mobile homes built after HUD standards were issued in 1994 could obtain coverage; those built before that date were finding few carriers. She stated that the capacity to insure mobile homes in general was very limited.

Mr. Gilmore also inquired about the views of companies she is trying to recruit to write policies in Florida. What interests them: rates; deregulation; other matters? Ms. Binnun responded that most insurers think Florida is not likely to deregulate rates, solvency or other important insurance issues, but that the state now has the reputation of being

flexible and willing to cooperate. She noted that most companies were interested in obtaining adequate rates for the risk involved and did not seem concerned about whether those rates were regulated or not.

Mr. Cobb noted concerns about mobile home owners and asked if HUD or another national program could subsidize upgrades and relocations. Mr. Hartwig observed that Florida, and not the national treasury, should take care of these needs. Ms. Binnum noted that the proposed National Catastrophe Fund could help.

Mr. Cain noted the low insolvency rate after the 2004 storms, but observed that other Florida companies required major capital infusions from their affiliated companies and that, in his opinion, the marketplace in Florida was shakier than Ms. Binnum had noted. Mr. Grawe also noted that Florida companies required outside capital infusions.

Members of the Task Force also discussed assessments by Citizens, increased demand for coverage in the state, and adequacy of rates charged by Citizens and other companies.

7. **Public Testimony.** Members of the public were offered the opportunity to make short presentations to the Task Force. A total of 35 residents registered to make presentations. Sixteen of the 35 indicated that they were members of the Federation of Manufactured Home Owners of Florida, Inc. (FMO). These 16, plus many of the remaining 19 presenters, described substantial problems with the availability of insurance coverage for mobile or manufactured homes, abrupt cancellations, inadequate notices of cancellation, inability to obtain new coverage, apparent “cherry-picking” by companies when offering coverage, difficult-to-understand policy forms, “intimidations” when reporting problems, dramatic and “unaffordable” rate increases, and other matters.

8. **Meeting Schedule.** The Task Force is scheduled to meet on November 30, 2005, in Room 110 of the Senate Office Building in Tallahassee, Florida, from 10 am until 5 pm.

Hearing no further business, Vice Chair Chapman-Henderson adjourned the meeting at 3:00 pm.