



FOWLER WHITE BOGGS BANKER

ATTORNEYS AT LAW

Bethany Crawley, Shareholder
Insurance Regulation and Litigation Group

Legislative Update Regarding Property Insurance Issues

Florida's 2008 legislators continue to focus on property insurance issues. In particular, the Senate's Banking & Insurance Committee approved what has become an omnibus Senate insurance package. Below are a few significant provisions in the package being considered by the Legislature.

The Proposed Extension of Florida's Anti-Trust Law to the "Business of Insurance."

Under Florida statutory law "[e]very contract, combination, or conspiracy in restraint of trade or commerce in this state is unlawful." *Fla. Stat. § 542.18* "It is also unlawful for any person to monopolize, attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of trade or commerce in this state." *Fla. Stat. § 542.19* Should the Legislature extend these anti-trust laws to the business of insurance, a significant broadening of the law will occur, opening insurers to additional liability in the State to which they have not previously been exposed. There may also be some question as to whether inclusion of the proposed language will open insurers to federal anti-trust law as well. In particular, the McCarran-Ferguson Act ("Act"), a federal law, provides that "the business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business." The Act -- through a series of complicated twists -- exempts from federal antitrust liability the state-regulated "business of insurance." With this express extension of Florida's anti-trust law to the "business of insurance," there may be some question as to whether the McCarran-Ferguson exemption would apply to protect insurers from federal anti-trust liability as well other federal laws that may no longer "invalidate, impair, or supersede the state regulatory regime." *Bristol Hotel Management Corp. v. Aetna Cas. & Sur. Co.*, 20 F.Supp.2d 1345, 1349 (S.D.Fla. 1998).

The Permanent Repeal of Use-and-File Rate-Making Submissions for Property Insurers, excepting those Filings requesting a Rate Decrease.

Florida's Insurance Code currently affords property insurers the choice to file for rate approval no later than 30 days after a proposed rate is to go into effect. However, under current law, Florida Statute, § 627.062 has disallowed this "use and file" option for property insurers seeking a rate increase before December 31, 2008, requiring instead a "file and use" submission. In other words, at least 90 days before the proposed, increased property rate is to go into effect, submission must be made for approval by the OIR. The proposed provision would make this protocol a permanent requirement for property insurers seeking an increased rate. Under the current "file and use" law, if the OIR does not finalize its review of the proposed rate within 90 days, the requested increased rate is deemed approved.

The Permanent Repeal of Arbitration of Property Rate-Making Disputes.

In the event that the OIR disapproves a rate filing, Florida law now affords the insurer an opportunity to arbitrate the rate filing dispute with the OIR, in lieu of demanding a hearing pursuant to the Administrative Procedure Act. *Fla. Stat. §627.062(6)*. The current law, however, also provides that “the arbitration option provision in this subsection does not apply to a rate filing that is made on or after the effective date of this act until January 1, 2009.” It appears that the proposed revision would permanently extinguish the arbitration option once extended to insurers.

The Restriction in Property Ratemaking of the Extent to which the Costs of Reinsurance may be Considered for the Insurer.

Under current law, a property insurer may, through the premiums it charges to policyholders, fully recoup its “reasonable costs of reinsurance,” except for those reinsurance costs that duplicate coverage provided by the Florida Hurricane Catastrophe Fund. *Fla. Stat. § 627.062(5)*. The proposed revision being considered by the Legislature may temper property insurers’ ability to “fully recoup” those costs. It appears that the OIR may still consider the insurer’s costs of reinsurance, within specified parameters. However, whether property insurers will be enabled to effectively spread those costs among their policyholders through the premiums charged remains an open question under the proposed revisions.