

**TESTIMONY OF STEVE MARINO, REPRESENTING THE ACADEMY OF FLORIDA
TRIAL LAWYERS, BEFORE THE HURRICANE TASK FORCE REGARDING
SUGGESTED CHANGES TO THE MANAGEMENT OF THE RESIDUAL MARKET**

Introduction: The Academy of Florida Trial Lawyers applauds the Task Force's implicit decision to explore and implement pro-consumer changes to the management of the residual market, rather than tender windstorm coverage issues to a CAT fund (to be managed in the same way as the NFIP is handled by FEMA).

The Academy perceives that the difficulties in the residual market can be broken down into two categories: rates and management.

I. Rates:

1. The first, and perhaps most significant, issue to be addressed is the reduction of high-risk zones. The Academy suggests that Florida employ an approach similar to that used in California, whereby insurers who wrote multiple lines of business in the state were not permitted to withdraw from the windstorm market unless they withdraw from all markets in the state. The Academy is aware of the alleged potential abandonment of the state by the industries' standard carriers, but has not seen evidence to suggest that this event would actually occur.
2. The Academy encourages the purchase of additional reinsurance, and observes that the related increase in Citizens-insured premiums should roughly reflect the surcharge levied by Citizens against Florida residents insured by standard carriers.
3. Finally, the Academy suggests that an analysis should be performed as to the relationship between Citizens' claim costs and those of standard carriers handling similar claims. To the extent that the claim costs are greater, it is a reflection of Citizens claims management structure.

II. Management: Citizens' participation in the prior Hurricane Task Force meeting included a presentation listing the ways in which it was addressing admitted shortcomings. These included:

1. Opening a Miami-Dade Office: as 25% of the risks insured by Citizens are located in Miami-Dade county, and perhaps the single biggest difficulty experienced by consumers is in communicating with Citizens, the Academy welcomes the local placement of Citizens-employed adjusters.
2. New Adjusting Staff/New Software: again, as communication is a primary area of difficulty as between Citizens and its insureds, the addition of Citizens-employed adjusters implementing new software should increase the efficiency in communicating with insureds and properly adjusting their claims.
3. New Adjusting Philosophy: Citizens' presentation must be taken at face value, and the Academy is prepared to accept its representations as being made in the spirit in which they were offered. Citizens did not provide any details, however, as to what its adjusting philosophy was, or what changes were being made. The

Academy offers the following observations as to areas that anecdotal evidence indicates need to be addressed:

- a. Mediation attendance: the Office of Insurance Regulation created and sponsors a pre-suit mediation program designed to encourage the early settlement of hurricane claims. Citizens should review its policies and procedures with regard to compliance with both the letter and intent of the mediation program.
- b. Immunity from Bad Faith: Citizens frequently represents to its insureds and the courts of this state that it is immune from the mandates of Fla. Stat. §624.155 (the Bad Faith Statute) due to the wording of statute creating Citizens. This is, in our opinion, a misreading of the law and a position that runs counter to public policy. Citizens should act in the same manner as a standard carrier and be bound by the same restrictions if it fails to do so. By law, Citizens must charge more than the standard carriers, so its policy holders are paying more for the same coverage, the same for less coverage, or some combination. When they have a claim they should get at least the same "good faith" handling as the policy holders of standard carriers for property insurance and other lines like auto, etc. In fact, Citizens should embrace, not reject, the standards of fiduciary responsibility set forth by the Florida Legislature. The Academy acknowledges the concern that §624.155 allows for additional damages to be assessed against Citizens but suggests, in the absence of actuarial data breaking down Citizens' claim costs and the attendant litigation expenses, that Citizens' fiscal circumstances may be exacerbated by its refusal to adhere to the good-faith standards set forth in §624.155. If Citizens were to conduct its claims handling in the same manner (and under the same penalties) as standard carriers, it might incur fewer claims-related litigation expenses (*i.e.*, it would get sued less for not timely paying claims), thereby reducing its overall deficit.