

EXHIBIT D

NOTICE

FINANCIAL SERVICES COMMISSION

OFFICE OF INSURANCE REGULATION

RULE TITLE:

RULE NO.:

Claims Adjustment Requirements

69OER04-19

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC

HEALTH, SAFETY OR WELFARE: The Financial Services Commission and the Office of Insurance Regulation hereby state that the following circumstances constitute an immediate danger to the public health, safety, or welfare:

The 2004 hurricane season has been particularly destructive for Florida. Insured losses due to the multiple storms have been estimated to be collectively \$17 billion. Tropical Storm Bonnie caused damage in north Florida. Substantial damage in southwest and central Florida was caused by Hurricane Charley, which hit the Punta Gorda and Port Charlotte area on August 13, 2004, as a Category 4 Hurricane with sustained winds up to 145 miles per hour. Hurricane Charley crossed northeast through the center of the state exiting near Daytona Beach. In a 10-mile wide path extending from the southwest coast there was widespread major damage to homes, loss of personal belongings and corresponding temporary loss of employment.

Additional damage was caused by Hurricane Frances, which hit the east coast of Florida coast on September 4, 2004, as a Category 2 Hurricane, and slowly crossed

the peninsula. Hurricane Frances, though less intense than Charley, caused damage over a much wider area of the state.

On September 16, 2004, Hurricane Ivan caused massive damage in the Florida Panhandle. Hurricane Ivan impacted the Gulf Coast as a Category 4 Hurricane with sustained winds up to 130 miles per hour. The eye made land fall just west of the western Florida state line, bringing hurricane force winds to much of the Florida Panhandle. The hurricane also produced tornados that destroyed and damaged structures in the Florida Panhandle. There was extensive damage in the Pensacola area, which was hit by the strong northeast quadrant of the storm as it made landfall.

This emergency rule is also necessitated by the damage resulting in Florida from Hurricane Jeanne, which made landfall near Stuart, Florida, the night of September 25, 2004, as a Category 3 Hurricane with sustained winds up to 120 miles per hour. On September 26, 2004, the storm made a path northwest across the state.

The Governor of Florida has issued four orders declaring a state of emergency due to the storms (Executive Orders 04-182, 04-192, 04-206, and 04-217). The President of the United States has declared most of Florida a federal disaster area.

In response, the Office of Insurance Regulation has implemented a data call to gather statistics on reported claims, and has instituted methods to monitor insurer performance with regard to the number of claims settled and average days for settlement. The Office of Insurance Regulation has dispatched investigators to insurance company offices to inspect the claim handling practices implemented by insurers in response to the 2004 Hurricanes and to require corrective action where

warranted. The Department of Financial Services has established a presence in all affected areas for personal assistance to citizens affected by the 2004 Hurricanes and has implemented an electronic reporting system available at the disaster relief centers throughout the state to facilitate the reporting of claims to insurers. The Office of Insurance Regulation and the Department of Financial Services have contacted insurers on an individual basis and have encouraged the prompt settlement of claims. The Office of Insurance Regulation and the Department of Financial Services have issued bulletins or informational memoranda to insurers and to adjusters. The Department of Financial Services has implemented a specialized mediation program to assist in the resolution of disputed claims. The Office of Insurance Regulation (Office) has issued an Order to all insurers requiring participation in the mediation program.

Insurers have reported in excess of 1.3 million property insurance claims as a result of the four hurricanes. While the efforts of the insurance industry under these extraordinary circumstances have been commendable, complaints filed with the Department of Financial Services indicate that in thousands of cases no adjuster or other insurance representative has, as yet, met with the claimant; and in many instances where the consumer has met with a company representative, claim payment to repair the damaged property has not been made. The failure to resolve claims, and the resultant inability of insureds to repair damage to residences, poses an immediate threat to public safety and welfare.

This rule is necessary in order to promote the expeditious settlement of claims. The rule establishes timeframes for initial damage assessments, processing, and

settlement, of personal lines residential property claims resulting from Hurricanes Charley, Frances, Ivan, Jeanne, and Tropical Storm Bonnie.

REASONS FOR CONCLUDING THAT THE PROCEDURE USED IS FAIR UNDER THE CIRCUMSTANCES: The Financial Services Commission believes that adopting an emergency rule is the fairest method to protect the public because the nature and extent of the destruction caused by the 2004 Hurricane Season. An Office bulletin addressed to all regulated persons and insurers would reach them, but would not be legally binding. A permanent rule would not have the flexibility and immediacy to protect the public welfare.

In consideration of the emergency conditions currently existing, and given the Office's responsibility to protect the public interest and implement the Insurance Code, an emergency rule is necessary.

SUMMARY OF THE RULE: Section 626.9541(1)(i) 3.c., Florida Statutes, prohibits insurers and insurance adjusters from failing to act promptly upon communications with respect to insurance claims. Section 626.9541(1)(i) 3.e., Florida Statutes, requires insurers to affirm or deny coverage within 30 days after proof of loss statements have been completed. With the heavy volume of claims generated by the damage from multiple storms impacting the state, the statutory burden on insurers compels greater effort and resources than in usual circumstances. To identify and clarify specific acts or practices that are prohibited by statute in the context of the present emergency situation, the Financial Services Commission is adopting this rule. This emergency rule establishes deadlines for processing claims related to Hurricanes Charley, Frances, Ivan, Jeanne and Tropical Storm Bonnie.

The rule specifies actions that must be taken by specified dates to assess, process and, settle claims. Those actions are:

(a) All insureds entitled to additional living expenses will have been advanced appropriate funds; and

(b) All damage will have been evaluated and an initial assessment of loss will have been made; and

(c) A good faith and reasonable effort will have been made to settle all claims, and, when applicable, earnest negotiations toward settlement of disputed claims will have begun. Deadlines for these actions vary based on storm to which the claim is attributed, and the date the claim is filed.

Section 626.9561, Florida Statutes, grants authority to the Office to examine and investigate the affairs of every person involved in the business of insurance in this state in order to determine whether such person has been engaged in practices which violate chapter 626, Part IX, Florida Statutes. As a means of accomplishing this function, the rule also adopts forms for monitoring compliance with the deadlines imposed by the rule. The rule also establishes a penalty for non-compliance as authorized by Section 626.9521(2), Florida Statutes.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS:

Stephen C. Fredrickson, Assistant General Counsel, Legal Services, Office of Insurance Regulation, 200 East Gaines Street, Tallahassee, FL 32399-4206, (850) 413-4144.

THE FULL TEXT OF THE EMERGENCY RULE IS:

[69OER04-19 Claims Adjustment Requirements](#)

(1) This rule applies to all insurers with personal lines residential property claims in the State of Florida, resulting from Hurricanes Charley, Frances, Ivan, Jeanne, and Tropical Storm Bonnie, which struck Florida during the 2004 hurricane season. This rule applies to insurers with direct claims and does not apply to assuming reinsurers.

(2) For all personal lines residential property claims which have been filed with an insurer subject to this rule through the close of business on October 21, 2004, as a result of Tropical Storm Bonnie, Hurricane Charley, or Hurricane Frances, the insurer shall have completed the following actions no later than the close of business on November 22, 2004:

(a) All insureds entitled to additional living expenses will have been advanced appropriate funds; and

(b) All damage will have been evaluated and an initial assessment of loss will have been made; and

(c) A good faith and reasonable effort will have been made to settle all claims, and, when applicable, earnest negotiations toward settlement of disputed claims will have begun.

(3) If any claim, as specified in Subsection (2) above, has not been resolved by November 22, 2004, and mediation of such claim has not been initiated under Emergency Rule 69BER04-18, the claim shall be considered a disputed claim for purposes of that rule.

(4) For all personal lines residential property claims which have been filed with an insurer subject to this rule through the close of business on November 8, 2004, as a result of Hurricane Ivan, or Hurricane Jeanne, the insurer shall have completed the following actions no later than the close of business on December 8, 2004:

(a) All insureds entitled to additional living expenses will have been advanced appropriate funds; and

(b) All damage will have been evaluated and an initial assessment of loss will have been made; and

(c) A good faith and reasonable effort will have been made to settle all claims, and, when applicable, earnest negotiations toward settlement of disputed claims will have begun.

(5) If any claim, as specified in Subsection (4) above, has not been resolved by December 8, 2004, and mediation of such claim has not been initiated under Emergency Rule 69BER04-18, the claim shall be considered a disputed claim for purposes of that rule.

(6) As to any personal lines residential property claim, filed on a date subsequent to the dates indicated in this rule, and arising from any 2004 tropical storm or hurricane, the insurer is required to complete the actions required by paragraphs (a) through (d) of subsections (2) and (4) no later than 30 days from the date that the claim is filed.

(7) If any claim, as specified in Subsection (6) above, has not been resolved within 60 days of filing, and mediation of such claim has not been initiated under Emergency Rule 69BER04-18, the claim shall be considered a disputed claim for purposes of that rule.

(8) The failure of an insurer to comply with the requirements of Subsections (2), (4) and (6) shall be prima-facie evidence in any administrative proceeding, that an insurer has failed to act promptly upon communications with respect to a claim.

(9) All insurers subject to this rule shall file Form OIR-B1-1608, "Affidavit," rev. 10-04, which is hereby adopted and incorporated by reference to attest to their compliance

with this rule. As to claims filed through October 21, 2004 for Tropical Storm Bonnie, Hurricane Charley, and Hurricane Frances, Form OIR-B1-1608, Part I shall be furnished to, and received by, the Office no later than the close of business on November 29, 2004. As to claims filed through November 8, 2004, for Hurricane Ivan and Hurricane Jeanne, Form OIR-B1-1608, Part II shall be furnished to, and received by, the Office no later than the close of business on December 15, 2004. The forms shall be submitted by US mail to: Bureau of Market Investigation, Office of Insurance Regulation, 200 East Gaines Street Tallahassee, FL 32399, or by electronic submission. The form is available at www.fldfs.com.

(10) As to any claim resulting from Tropical Storm Bonnie, Hurricane Charley, or Hurricane Frances, and filed after October 21, 2004, or any claim resulting from Hurricane Ivan or Hurricane Jeanne filed after November 8, 2004, Part III of the form shall be filed, and received by the Office, filed on or before January 1, 2005, and the first day of each month thereafter.

(11) If an insurer is unable to identify which storm caused the damage which is the subject of a claim, claims filed before October 21, 2004, shall be considered to have resulted from Tropical Storm Bonnie, or Hurricanes Charley or Frances, and claims filed after that date shall be considered to have resulted from Hurricanes Ivan or Jeanne.

(12) Pursuant to the provisions of Section 626.9521, Florida Statutes, any insurer which does not comply with the reporting deadlines will be assessed an administrative fine of \$2,500.00 for each day the affidavit has not been received by the Office.

(13) Nothing in this rule shall be construed to create a private cause of action.

Specific Authority: 120.54(4), 624.308, 626.9611 FS. Law Implemented: 624.307,
626.621, 626.9521, 626.9541(1)(i)3.c. and e., 626.9561, FS. History – New.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE
UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.