

FROM: Director, Worldwide Markets EXTN: 5998
DATE: 23 December 2004 REF: Y3473
SUBJECT: **Florida: Forthcoming Act relating to Insurance Deductibles**
SUBJECT AREA(S): Contracts insuring residential property in Florida against hurricanes
ATTACHMENTS: Appendix 1 - FLORIDA ACT RELATING TO HURRICANE DEDUCTIONS:
SUMMARY OF PROVISIONS

ACTION POINTS: **Managing agents to note proposed requirements and provide appropriate notification to coverholders**
Lloyd's is seeking confirmation on the application of these provisions to surplus lines insurance

DEADLINE(S): **The first part of these provisions will be subject to deadlines which have not yet been set by the Florida Department of Financial Services. Details will be provided in due course.**

The second part of these provisions applies to policies renewing or incepting on or after 1 May 2005.

Purpose of bulletin

To inform the market of new requirements in Florida affecting hurricane deductibles on residential property insurance, which are expected to be signed into law shortly.

This bulletin will be of interest to underwriters and brokers underwriting or placing residential property risks from Florida and the reinsurances of such risks.

The Act containing these requirements is not yet in force, and requires Florida to draw up and promulgate regulations before underwriters can comply with it in full. In addition, Lloyd's representatives are in the midst of discussions with the Department of Financial Services as well as the Florida Office of Insurance Regulation regarding the scope of the new requirements and their applicability to surplus lines insurers, such as Lloyd's.

Lloyd's is notifying the market of these provisions at this stage, so that practitioners can inform their coverholders and be prepared to start the work that may be necessary for compliance. Nevertheless, it may be determined in due course that some of these provisions do not apply to surplus lines insurers, including Lloyd's underwriters. Further advice will be provided in due course.

New legal provisions

The new provisions are contained in the "Act relating to Hurricane Deductibles" ("the Act"), which is expected to be signed into law quite shortly. Its provisions, which apply to residential property insurance, are summarised in the appendix. In outline, they are as follows:

- *Reimbursement of hurricane deductibles:* Policyholders can apply to the Florida Department of Financial Services ("DFS") for reimbursement of the portion of claims that were not paid

because the insured property was damaged by two or more hurricanes in 2004 and two or more deductibles therefore applied. The reimbursement shall be the amount of the claim that was not paid due to application of the second or subsequent deductible, as limited by the legislation. The reimbursement is to be funded by the Florida Hurricane Catastrophe Fund. This applies to residential property claims and applications must be made by March 1 2005 on a form to be provided by the DFS.

- *Change to the application of hurricane deductibles:* For policies issued or renewed on or after May 1 2005, hurricane deductibles on residential property policies will apply on an annual basis to all covered hurricane losses that occur during the calendar year.

Impact on insurers

The Act requires insurers to:

- Provide the Florida DFS, on request, with information from claim files that will assist the DFS in determining the validity and reasonableness of an insured's claim for reimbursement of a deductible. This is subject to the policyholder's authorisation of release. (s. 2(6)).
- Mail notices to residential property insurance policyholders:
 - Who filed claims with the insurer for two or more hurricanes in 2004; and
 - To whom the insurer applied more than one hurricane deductible, whether there was a claims payment or not. (s. 2(7)).

The DFS will provide a standard form of this notice, as well as details of how and within what time it must be mailed to its policyholders. Lloyd's will provide the market with further information on this requirement once it is available.

- For subsequent claims, the insurer must provide the notice at the time that the insurer notifies the policyholder of the application of the second deductible. (s2(7)).
- Provide the Florida Office of Insurance Regulation ("OIR" – part of the DFS) with requested data regarding the number of claims filed by policyholders for two or more hurricanes for the 2004 hurricane season, the number of those claims for which the insurer applied two or more deductibles, including the dollar amount, and any additional information. (s.2(11)).

Lloyd's expects the OIR to provide further details of this data collection exercise in due course, and will provide this information to the market as soon as it is available.

- **If this applies to surplus lines:** For policies incepting or renewing after May 1 2005, apply a hurricane deductible to residential property policies on an annual basis, to all covered hurricane losses that occur during the calendar year. (s.4).

Where appropriate, Lloyd's underwriters may ensure compliance with these requirements by instructing their coverholders to carry out specified tasks. Underwriters may therefore instruct a coverholder or (where relevant) third party administrator:

- to provide the DFS with requested information from a claim file;
- to identify residential property policyholders who, in 2004, have had more than one hurricane deductible applied to them by the underwriter and send them a notice in the required (to be advised) form;

- to provide the required notice to any claimant to whom a second deductible is applied.

The best means of complying with the requirement to provide data to the OIR will be determined once the OIR provides further details of what they want and how they want it.

As noted above, we expect this legislation to be signed shortly into law by the Governor and for further details to be forthcoming from the DFS, including the required notice form. We recommend that underwriters ensure that their coverholders handling Florida residential property insurance are aware of this new Act, and carry out preparatory work, such as identification of the policies and claims affected.

Further information

If you have any queries about this bulletin please contact:

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This bulletin has been sent to active underwriters and the compliance officers of managing agents and Lloyd's brokers.

Julian James
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Appendix

FLORIDA ACT RELATING TO HURRICANE DEDUCTIONS: SUMMARY OF PROVISIONS

1. Provisions relating to deductible reimbursement – sections 2 & 6 of the Act

Reimbursement of deductibles: The Florida Department of Financial Services (“DFS”) will reimburse policyholders of residential property insurance whose property was damaged by two or more hurricanes in 2004 and whose insurer applied more than one hurricane deductible to the insurance claims. The reimbursement shall be the amount of the claim that was not paid due to application of the second or subsequent deductible, as further limited by this legislation. (s.2(2)).

Eligibility for reimbursement: To be eligible for reimbursement, the policyholder must meet the criteria of the above and:

- (a) Apply to the DFS by March 1 2005, on a form provided by the department. The applicant must provide documentation from the insurer showing that the insurance claim was not paid, in full or in part, due to application of the deductible.
- (b) Have incurred damages in excess of the full amount of a single hurricane deductible.
- (c) Meet a \$100 deductible for a second and each subsequent hurricane claim, in addition to the amount that must be met under para. (b).
- (d) Provide written authorisation for the department to obtain information from the policyholder’s insurer related to the claim for reimbursement.

Limits on reimbursement; Reimbursement may be provided only for damages that would have been paid under the policy but for application of the deductible. Maximum payouts:

- (a) \$10,000 per policy for damage caused by 2 hurricanes.
- (b) \$20,000 per policy for damage caused by 3 or more hurricanes.
- (c) For a policy issued to a condominium association, \$3,000 multiplied by the number of condominium units, or the maximum amount in para (a), para (b), or para (c), whichever is greater.
- (d) If more than one residential structure is insured under the policy and a separate hurricane deductible applies to each residential structure, \$10,000 per structure.

Total amount of funds paid to policyholders is limited to the amount appropriated for this purpose. Payments are made in accordance with a set order of priority.

Obligations on insurers: An insurer issuing the policy to the applicant must provide to the department, on request, “such information in the applicant’s claim file that would assist the department in determining the validity and reasonableness of the claim, subject to the policyholder’s authorisation to release such information.” (s. 2(6)).

Insurers must mail notices to “those residential property insurance policyholders who filed claims with the insurer for two or more hurricanes in 2004 and to whom the insurer applied more than one hurricane deductible, whether there was a claims payment or not.” (s.2(7)). The notice must be in a

form that will be provided by the DFS and must be mailed in such a manner and within such time that will be specified by the DFS.

For subsequent claims, the insurer must provide the notice at the time that the insurer notifies the policyholder of the application of the second deductible.

It is a violation of the Insurance Code for an insurer to change its method of determining whether to waive or apply multiple hurricane deductibles to multiple claims due to the provisions of this law (s. 2(10)).

The Office of Insurance Regulation (“OIR”) must collect data from residential property insurers regarding the number of claims filed by policyholders for two or more hurricanes for the 2004 hurricane season, the number of those claims for which the insurer applied two or more deductibles, including the dollar amount, and any additional information. (s. 2(11)).

Funding the reimbursement

To provide funding, the State Board of Administration will transfer \$20m to the DFS’s Insurance Regulatory Trust Fund from the Florida Hurricane Catastrophe Fund’s cash balance by January 15 2005 and a further \$130m as required. (s.6)

The State Board of Administration must increase future premiums to the Florida Hurricane Catastrophe Fund by the amount appropriated, plus additional amounts necessary to cover lost investment income, less any refunds. The increase will be spread over 5 years, beginning June 1 2006. (s. 6(6)).

Under normal circumstances, surplus lines insurers such as Lloyd’s do not contribute towards the Florida Hurricane Catastrophe Fund, nor can they obtain reimbursement of any part of their losses from it. Nevertheless, if the Fund’s expenses are not met by its revenue, the OIR has the power to levy an emergency assessment on direct premiums for all property and casualty lines of business in Florida, including the property and casualty business of surplus lines insurers (*see the Act relating to the Florida Hurricane Catastrophe Fund, section 215.555, Florida Statutes, (b) 6.*).

2. Provisions relating to a change in the application of hurricane deductibles – sections 4 & 5 of the Act

The Act amends s. 627.701 of the Florida Statutes, which contains provisions concerning hurricane deductibles. A new subsection (5) is added. It requires the hurricane deductible of any residential property insurance policy to be applied as follows:

- (a) “The hurricane deductible shall apply on an annual basis to all covered hurricane losses that occur during the calendar year for losses that are covered under one or more policies issued by the same insurer or an insurer in the same insurer group.
- (b) “If a hurricane deductible applies separately to each of one or more structures insured under a single policy, the requirements of this subsection apply with respect to the deductible for each structure.
- (c) “If there was a hurricane loss for a prior hurricane or hurricanes during the calendar year, the insurer may apply a deductible to a subsequent hurricane that is the greater of the remaining amount of the hurricane deductible or the amount of the deductible that applies to perils other than a hurricane. Insurers may require policyholders to report hurricane losses that are below the hurricane deductible or to maintain receipts or other records of such hurricane losses in order to apply such losses to subsequent hurricane claims.

- (d) "If there are hurricane losses in a calendar year on more than one policy issued by the same insurer or an insurer in the same insurer group, the hurricane deductible shall be the highest amount stated in any one of the policies. If a policyholder who had a hurricane loss under the prior policy is provided or offered a lower hurricane deductible under the new or renewal policy, the insurer must notify the policyholder, in writing, at the time the lower hurricane deductible is provided or offered, that the lower hurricane deductible will not apply until January 1 of the following calendar year."

This applies only to policies issued or renewed on or after May 1, 2005.

3. Definition of "residential property insurance"

The provisions apply to "residential property insurance", meaning "residential coverage as described in s. 627.4025(1), Florida Statutes." That section states that residential coverage includes:

- Personal lines residential coverage - homeowner's, mobile home owner's, dwelling, tenant's, condominium unit owner's, cooperative unit owner's, and similar policies, and
- Commercial lines residential coverage - condominium association, cooperative association, apartment building, and similar policies, including policies covering the common elements of a homeowners' association.

Residential coverage for personal lines and commercial lines includes policies that provide coverage for particular perils such as windstorm and hurricane or coverage for insurer insolvency or deductibles.

4. Definition of "hurricane"

Section 627.4025(1), Florida Statutes, defines "hurricane coverage", as used in residential coverage policies, as follows:

"(a) "Hurricane coverage" is coverage for loss or damage caused by the peril of windstorm during a hurricane. The term includes ensuing damage to the interior of a building, or to property inside a building, caused by rain, snow, sleet, hail, sand, or dust if the direct force of the windstorm first damages the building, causing an opening through which rain, snow, sleet, hail, sand, or dust enters and causes damage."

It further defines "hurricane" as "...a storm system that has been declared to be a hurricane by the National Hurricane Center of the National Weather Service. The duration of the hurricane includes the time period, in Florida:

"1. Beginning at the time a hurricane watch or hurricane warning is issued for any part of Florida by the National Hurricane Center of the National Weather Service;

"2. Continuing for the time period during which the hurricane conditions exist anywhere in Florida; and

"3. Ending 72 hours following the termination of the last hurricane watch or hurricane warning issued for any part of Florida by the National Hurricane Center of the National Weather Service."

A hurricane is not the same as a tropical storm. Provisions regulating the application of hurricane deductibles do not apply to deductibles applied to tropical storms.