INFORMAL COMMENTS RELATING TO FIVE CONCPTUAL OUTLINES OF RULES INTENDED FOR THE IMPLEMENTATION OF HB 4409 AMENDMENTS TO CHAPTER 2210 INSURANCE CODE

Preamble: Each of the five Rule Outlines begins with an explanation of its purpose, and its statutory basis. A bullet point outline of the proposed Rule follows the explanation.

The following Coastal Windstorm Insurance Coalition [CWIC] comments on the five Rules are each based on consideration of the above, and are further based on the governing fundamental underlying principle upon which Chapter 2210, Insurance Code, as amended by HB 4409, is predicated: **"Sec. 2210.001 PURPOSE. The primary purpose of the Texas Windstorm Insurance Association is the provision of an adequate market for windstorm and hail insurance…".**

It is the CWIC opinion that in the context of the above PURPOSE, the word "adequate" clearly and necessarily includes the concepts of "availability" AND "affordability". Any market which is not available and affordable is by definition, NOT "adequate". The Texas Legislature does not waste its time enacting laws to make fools of its citizens, so it must be presumed to have enacted Chapter 2210, and HB 4409 amendments with the continuing intent of providing an adequate windstorm insurance market for Texans in the Seacoast Territory which have been abandoned by the voluntary market.

HB 4409 amendments include new limitations and restrictions reducing the relatively open availability of Texas Windstorm Insurance Association [TWIA] policies. The Rules adopted to implement HB 4409 must faithfully include these amendment provisions. It is imperative, however, that this be done in the context of an overriding presumption that the "PRIMARY PURPOSE" of the Act be maintained in this process.

I. DECLINATION PROGRAM

Bullet points one and two:

- Require that the declination come from an authorized insurer that is writing new property insurance policies that provide windstorm and hail coverage in the first tier coastal counties.
- A declination does not include a refusal to provide a windstorm and hail insurance policy by an authorized insurer that is only renewing and not writing new property insurance policies that provide windstorm and hail coverage in the first tier coastal counties.

CWIC categorically disagrees. Sec. 2210.202 specifies: "one declination from an insurer… ***writing***… windstorm and hail coverage in the first tier…" It neither prescribes that the insurer from which the declination is obtained write, or offer to write 'new' or additional policies—only that it is "writing" at the time of the declination, by renewal or otherwise. The proposal in the Outline would **add the significant word "new", which is not there, thereby changing the meaning of the statute**, causing a result contrary to the PRIMARY PURPOSE of the Act itself.

The trend in the marketplace has been accelerating toward writing less and less 'new' coverage. It is not far fetched to project this trend to a time when there will be few, if any, insurers writing 'new' coverage, making it nearly impossible to obtain a declination

from an insurer writing 'new' coverage. Texas property owners, desperately in need of an "adequate market", would be unable to obtain TWIA coverage. This 'Catch – 22' scenario would be a classic defeat of the statutory purpose. Please do not deprive Texans of the market of last resort by adding language to the statute.

Bullet point three:

- Nonrenewal of a property insurance policy that provides windstorm and hail coverage does not constitute a declination.

CWIC specifically disagrees**.** What part of refusing to renew—"non renewal"—is not "a refusal to offer coverage"? The statute specifies that "refusal to offer coverage" IS a declination. CWIC agrees with the statute.

Bullet point four and six:

- An offer made by an authorized insurer to provide an applicant a property insurance policy that includes windstorm and hail coverage at a rate higher than the rates approved for the association does not constitute a declination.
- An applicant who has an offer from an authorized insurer for a property insurance policy that includes windstorm and hail coverage is not eligible for coverage through the association even if the applicant has been declined by another authorized insurer.

CWIC disagrees with these provisions. An offer to write coverage at a higher rate than TWIA must be at a fair rate; otherwise it would be UNfair. TWIA rate development is changed substantially by HB 4409. It is reasonable to presume that the Legislature considers that its statute provides "correct" and fair rates. If the Legislature deems TWIA rates to be "correct" and fair, higher rates for the same risk are NOT correct and fair! The cost of coverage is a substantial factor in ascertaining the **'equivalent'** character of coverage. Just as the power to tax is the power to destroy, so the power to rate can be a weapon of destruction, if the state imposes an ultimatum: accept it or else.

In more and more parts of the Catastrophe Area, there is essentially ZERO voluntary market. In such an area, a single predator insurer could cherry pick risks, offer to write coverage at any rate it dreams up [it happened routinely before 1991: masked insurers arbitrarily charged up to 400% of promulgated 'manual' rates]. As the bullet language is written, the predator's offer would disqualify the property for TWIA coverage. The property owner would be forced to accept the predator's offer, or go uninsured. Isn't this the way extortion works? Even if the insurer was financially weak, there is no choice.

An appropriate solution is to require acceptable voluntary coverage to be priced according to an acceptable standard. CWIC believes the Legislature has provided that standard: TWIA rate development.

Bullet point five:

- Documentation and procedures necessary for agents to comply with the rule and consequential actions that may result from the failure to comply with the statute and rules.

The language in the Outline is not clear. Sec. 2210.202 (b) provides relatively simple requirements, the law does seem clear: "Each application for initial or renewal coverage must also contain a statement that the agent possesses proof of the declination described by subsection (a) and proof of flood insurance coverage or unavailability of that coverage as described by section 2210.203 (a-1)."

II FLOOD INSURANCE

Bullet points one, two, and three:

- The rule will apply to structures constructed, altered, remodeled, or enlarged on or after September 1, 2009.
- Flood insurance will be required for structures located in Zones V, VE, and V1-30, if flood insurance is available through the National Flood Insurance Program.
- If the National Flood Insurance Program offers flood insurance for such structures, then flood insurance shall be considered available and the cost of flood insurance shall not be a factor in determining whether flood insurance is available.

CWIC adds no comment to the Outline.

Bullet point four:

- Flood insurance must be obtained and maintained in an amount equal to the lesser of:
  - a. the limits of coverage provided in the Association policy, or
  - b. the maximum limits of coverage available through the National Flood Insurance Program.

CWIC would advocate for a third acceptable alternative amount of flood insurance coverage to be obtained and maintained:

(c) the actual cash value of the property.

Many properties are insured for their replacement cost, an amount in excess of their actual cash value. This is in keeping with coverage forms which provide potential to collect replacement cost of insured damage, if the required percentage of replacement value coverage limits is purchased. However, replacement cost coverage is not available under many flood insurance policies. The Rule should avoid requirement of the purchase of flood coverage in excess of that which could be used by an owner.

Bullet point five:

- TWIA policies shall be amended to specify that coverage is void or will terminate on the day flood insurance lapses or flood insurance is otherwise not maintained in compliance with the rule. Actions contributing, causing, or affecting the insured's compliance will be given appropriate consideration in making this determination.

CWIC agrees with the concept of changing TWIA policies to provide for affect on TWIA coverage for failure to comply with HB 4409 flood insurance requirements. However, CWIC reserves the opportunity to comment, AFTER the missing Outline language is provided regarding "actions contributing, causing or affecting the insured's compliance…" to be considered???

Bullet point six:

- The rule will specify agent procedures for documenting and submitting evidence of flood insurance or evidence of application and payment for flood insurance, notifying the association of coverage lapses, and consequential actions that may result from failure to comply with the statute and rule.

CWIC must reserve the opportunity to comment regarding unspecified agent procedures for documenting and submitting evidence of flood insurance coverage, etc. The language does not provide enough information on which to base a comment. Response to bullet point five under Concept I, Declinations, is also included here by reference, to the extent it is applicable to this bullet point six.

III MINIMUM PREMIUM

Bullet points one, two, three, four and five:

- The rule will amend the association's existing plan of operation to specify the minimum retained premium must be for a period of 180 days from the effective date of the policy.
- The rule will also specify a minimum earned premium of $100, which is consistent with the association's current manual rules.
- The following four statutory exceptions to the minimum 180 day retained premium will be included in the rule: 1. the purchase of similar coverage in the voluntary market; 2. sale of the property to an unrelated party; 3. death of the policyholder; or 4. total loss of the property. Suggestions for other possible exceptions will be considered.
- Consistent with existing Sec. 2210.204(a) and (d) the rule will apply to the cancellations by :
    - 1. an agent or other person, firm, or corporation that finances the payment of all or a portion of the premium for insurance coverage including a premium finance co.); and
    - 2. the insured.
- The rule may also address issues concerning policies that are financed and notice to mortgagees.

CWIC adds no comment to the Outline. Suggested other exceptions include cancellations related to court actions [i.e. divorce, probate, receivership], or related to lender required actions [i.e. new loan, lender required new policy]; or any cancellation of coverage being simultaneously replaced with a new TWIA policy.

IV CERTIFICATE OF COMPLIANCE TRANSITION

CWIC strongly supports the premise that voluntary market coverage of a property is irrefutable evidence that the property has been [and continues to be until changed] in "… an insurable condition against windstorm and hail as determined by normal underwriting standards.", there being no change in the property, only the insurer. This 'qualified' status is sufficient reason to support an exception to a technical rule as a means to support the primary purpose of the Act. It is not reasonable to require more stringent qualification for coverage by the "standby, last chance, replacement" market which is TWIA, than has been required by the market which has been withdrawn.

EXISTING PROGRAM:

Bullet point one:

- The rule will provide for continuing association coverage on those residential structures that have an association policy in effect as of 12:01 am, September 1, 2009 under the approval program initiated April 12, 2006.

Makes a correct statement, but by specifying a limited class of risks, raises the implication that other classes of risk may NOT be allowed to "…continue coverage through the association…" CWIC agrees with the bullet statement, but objects to any possible limitation, which is clearly NOT contained in Sec. 2210.251 (f). The ONLY limitation is the stated condition that Sec. 2210.258 inspections of future work, if any, must be made. Since Sec. 2210.258 applies to work done AFTER June 19, 2009, if no work is done, there is no limitation. This is true whether a property is insured with TWIA under the April 12, 2006 program or not.

Bullet point two:

- Qualifying residential structures may renew association insurance coverage without a certificate of compliance. Any lapse in coverage will result in the removal of the structure from the program.

CWIC would advocate that the word "lapse" in coverage is neither intended by HB 4409, nor is it of any consequence in the risk of loss to a property. CWIC believes that the language: "… residential structure insured by the association as of September 1, 2009, *may continue coverage* through the association…" identifies a *continuing* ***'eligibility'*** for TWIA coverage, whether it is continuously maintained or not. This meaning is supported in the statutory phrase: "…, subject to the inspection requirements imposed under Sec. 2210.258." This indicates that if there is a 'change of risk', further action is required to continue eligibility; no other action is stated, including uninterrupted TWIA coverage. No change of risk, no change of eligibility.

TWIA'S rigid requirements for application and renewal, i.e. specified computer valuation software, check with app, specific type of mail used to deliver an app, even the "storm rules" which can prevent an intended inception date, etc., etc., often result in a hiatus or lapse of coverage. TWIA has denied coverage for scores of applicants for coverage on a single day: September 13, 2008. None of these many occurrences changed the risk of loss exposure of the properties involved. As the cost of TWIA coverage has soared, some owners cannot afford the cash premium on the renewal date. New minimum premiums negate most premium finance practicalities. Is the punishment for a day, week, month or year of [usually unintentional] self insurance to be denial of 'last resort' coverage forever?

Other changes which do not 'continue' coverage the "same", such as a code compliant, inspected, and certified structural change which requires a different policy form [i.e. dwelling to commercial] should retain eligibility for TWIA coverage.

Please reconcile this Section with the PRIMARY PURPOSE of the Act. Please consider a meaning for Sec. 2210.251 (f) consistent with the primary purpose and common sense, to-wit: …*may continue [eligibility for] coverage.*….

Bullet points three and four:

- Current waiver program provisions allowing a policyholder to transfer waiver coverage to a different structure will not be continued.
- Program requirements will also include:
    - 1. compliance with the mandatory building code requirements under Sec. 2210.258 which was effective June 19, 2009,
    - 2. compliance with the declination requirements under Sec. 2210.202, and
    - 3. if applicable, compliance with the flood insurance requirements under Sec. 2210.203.

CWIC adds no comment to the Outline.

TRANSITION PROGRAM:

As amended by HB 4409, Section 2210.004 DEFINITION OF INSURANBLE PROPERTY: provides in applicable part: "…in an insurable condition against windstorm and hail, **as determined by normal underwriting standards."** CWIC advocates that the simple fact that a property was in fact insured by a voluntary policy is conclusive evidence that the property has met, and until changed, continues to meet 'normal underwriting standards'. Withdrawal of the insurer is no more germane to the issue of **the property meeting normal underwriting standards** than if coverage had

ended for having failed to pay premium. Each of these reasons has nothing to do with underwriting standards. The property met normal underwriting standards before; that remains unchanged.

Bullet point five and six:

- The rule will provide that qualifying residential structures may obtain association insurance coverage without a certificate of compliance after 12:01 am, September 1, 2009, until the end of the program, which will be in approximately two years.
- Coverage for the structure may be renewed once during the transition program period.

CWIC would advocate that rather than provide a fixed date for termination of this program, the program should be established "until changed". As reason, CWIC would argue that the rationale set out above in this section is satisfied by the program's requirement that only a property covered by a voluntary insurer within the previous 12 months can qualify for the program. More to the point, the program fulfils the fundamental primary purpose of TWIA, as set out at the beginning of these comments, without compromising the 'normal underwriting standard' criteria.

It should be noted that since 1971 there have been several instances in which the Legislature has approved like concepts in order to achieve the primary purpose of TWIA, to-wit: a.) in 1971 TWIA was enacted; the original act included a building code; preexisting structures were 'grandfathered'; b.) prior to 1/1/88, TWIA utilized an "approved cities" program to satisfy code compliance requirements without certificates; c.) when part of Harris County was first added to the Catastrophe Area, no existing property had WPI-8 certificates—neither inspections nor certificates were not available in Harris County prior to coming into the Catastrophe Area; WPI-8s were not required for TWIA policies; d.) in 1993 a large block of properties, previously insured voluntarily, were suddenly abandoned by their voluntary insurers because of "cracked slab" concerns; like Inland County areas in 2009 many properties had not been certified; a version of Sec. 2210.251 was enacted, allowing TWIA coverage for properties which could prove 'underwriting acceptance' by showing prior voluntary policies. This succession of "cures" establishes the validity of the exception to the rule. The Rule should now be changed, to *include* the exception, without expiration, until changed by the Legislature.

Bullet points seven and eight:

- A qualifying residential structure must:
  - 1. within the twelve month period prior to the date of the application for association coverage have been insured on an annual basis under a property policy that included windstorm and hail coverage; and
  - 2. the insurer that underwrote the policy on the structure:
    - Discontinues providing windstorm and hail insurance under the policy; or
    - The insurer that underwrote the policy on the structure discontinues providing residential property insurance in the portion of the catastrophe area where the structure is located.
- Program requirements will also include:
  - 1. compliance with the mandatory building code requirements under Sec. 2210.258 which was effective June 19, 2009;
  - 2. compliance with the declination requirements under Sec. 2210.202; and
  - 3. if applicable, compliance with the flood insurance requirements under Sec. 2210.203.

CWIC comment: there is no apparent reason to require "written on an *annual* basis".

Bullet point nine and ten:

- The Department is considering proposing in a separate rule a process for structures insured under the transition program to continue eligibility for association coverage after the end of the program.
- After the transition program ends, applicants not in the existing program or participating in the transition program must obtain a certificate of compliance in order to obtain coverage through the association.

The above comments include support for approval of the Rule being considered to continue eligibility "after the end of the program", and more. The alternative: ending eligibility for properties covered under the program after a fixed period, would saddle an owner with the same no-coverage-available problem at the end of the program instead of at the beginning; it would merely delay the inevitable and damaging 'ineligibility'.
The logic which supports the existence of the program does not change; it has been utilized several times; it will certainly be needed again and again for the same reasons it has been needed before. It is counterintuitive to harm the citizens who need help because their insurer abandons them. The citizen did nothing wrong; the only actor is the insurer.

V CLASS 2 PUBLIC SECURITIES SURCHARGES

The many bullet point technical details in the outline are not rewritten.

CWIC comment on the Outline for this Rule is to advocate provision for collection of data, and use of calculation of surcharges faithful to the information provided to the HB 4409 Conference Committee. [**See chart herewith,** titled: Funding as provided by HB 4409, per Conference Committee Report] This chart indicates that for the full $1 Billion Class 2 Post-Event Bonds, repayment would require an estimated annual member assessment totaling $40 Million, plus an estimated annual surcharge of Catastrophe Area policies in the amount of 2.8% of P & C Premiums. As stated in the footnotes, these estimates are based on variable data subject to change: an assumed 10 years repayment period, an assumed 6% interest rate, and assumed premium base, etc. The data sources, and the methodology for determining the amounts at the time of implementation, however, should not change substantively from that used to calculate these estimates, upon which the Conference Committee would have relied.

Respectfully submitted,
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