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Attorneys & Counselors at Law

State Farm Florida and OIR Resolve Withdrawal Request

By: Travis Miller

State Farm Florida Insurance Company and the Florida Office of Insurance Regulation have entered into a [Consent Order](#) resolving a dispute arising from the insurer's planned withdrawal from the Florida property insurance market. State Farm Florida filed a withdrawal plan with the Office of Insurance Regulation announcing that it intended to discontinue its property insurance business in Florida over a two-year period. The Office of Insurance Regulation approved the withdrawal plan, but imposed several conditions on the withdrawal that the company found objectionable. State Farm Florida therefore filed an administrative challenge to the OIR's conditional approval.

The parties continued to discuss potential resolutions over the course of many months. Earlier this year, State Farm Florida began to address some of its concerns over rate adequacy by filing changes to the discount programs in its rating plan. The Office of Insurance Regulation approved changes to State Farm Florida's discretionary discounts that amounted to a 28.4% overall premium impact. The parties then continued to discuss the conditions of State Farm Florida's planned withdrawal, ultimately agreeing to the terms of the attached Consent Order.

The Consent Order provides that State Farm Florida may reduce its exposures by 125,000 policies over a one-year period. State Farm Florida is the largest voluntary-market personal residential insurer in Florida, and even after this reduction it will continue to be the state's largest private market insurer. State Farm Florida agents having servicing contracts with other insurers will be able to place the nonrenewed policyholders with those other insurers, subject of course to those insurers' underwriting requirements. If the agents cannot place the policies with another insurer, State Farm Florida will notify the consumers how they may receive assistance finding a new insurer through Florida's Market Assistance Plan.

Also as part of the Consent Order, the Office of Insurance Regulation has approved a 14.8% rate increase to be applied across the company's homeowners and condominium unit owners policies.

State Farm Florida will dismiss its pending administrative action following this agreement with the Office of Insurance Regulation

Happy Holidays!



As we close out 2009 all of us at Radey Thomas Yon & Clark wish you a happy holiday season. The 2009 year presented many difficult challenges for our clients and friends as well as new opportunities. As always, we appreciate the opportunity to work with you and to provide advice and counsel regarding your needs in Florida.

We look forward to 2010 and the opportunities it will bring and wish the very best to you in the New Year!



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GET TO KNOW...

By Karen Asher-Cohen

MARY BETH SENKEWICZ - Mary Beth is the Deputy Commissioner for Life and Health Divisions at the Florida Office of Insurance Regulation. Mary Beth received her B.A. in English and Philosophy at Cabrini College in Radnor, PA, and her J.D. at St. John's University School of Law in Queens, NY. She won the Craven National Moot Court Constitutional Law Competition while in law school. Her first job out of law school was as an instructor at the John Marshall Law School in Chicago for two years during which she established their moot court program. She then clerked for Judge Barrett at the U.S. 10th Circuit Court of Appeals in Wyoming for a year, before going on to the Wyoming State Bar, where she served as Executive Director for five years, and as Bar Counsel for 2-1/2 years. After being in private practice for 1-1/2 years, Mary Beth joined the Wyoming Department of Insurance as General Counsel for 2-1/2 years. She then joined the NAIC in D.C., where she served for 11-1/2 years, ultimately as Chief Health Counsel. After working as a private consultant in D.C. for 1-1/2 years, Mary Beth joined the Florida OIR in August, 2007.

Recently, I asked Mary Beth the following questions.

1. WHAT ARE THE BIGGEST ISSUES FACING THE OIR THESE DAYS?

On my side of the aisle, obviously the biggest issue is what will happen with health care reform. Whatever happens, and I believe that something will happen, there will be a tremendous impact on the Florida market and Florida companies, and on what accommodations we will have to make to Florida statutes and rules as a result of the reforms. The enormity of the undertaking that will have to take place as a result of health care reform cannot be overstated. Also, because of the demographics of Florida, we are always concerned with suitability issues related to annuities sold to seniors. When the new version of the NAIC model act passes, we will confer with our colleagues at the Department of Financial Services, to work on its implementation in Florida. The new law, and the new rule and forms in Florida are a step in the right direction.

2. HOW HAS YOUR LIFE CHANGED SINCE COMING TO WORK AT THE OIR IN FLORIDA?

It is very different being a state regulator from being an NAIC staff person. I am now involved in the day-to-day administration and regulation of companies. Here, I am dealing with actual companies and their conduct. At the NAIC, I was exclusively working on policy issues. Now, I work on policy issues, but I am much more involved with practical issues, such as whether to fine a company, approve a market conduct examination, or instigate an investigation. The oversight of insurance companies is very different from what I did at the NAIC, but I absolutely love this job. I have a great staff and a great relationship with my boss, the Commissioner. However, I have not gotten used to the weather in Tallahassee - it is so hot and humid. This is like the worst of D.C., but for seven months.

3. YOU CAME FROM D.C. AND YOU TESTIFIED BEFORE CONGRESS THIS YEAR. WHERE DO YOU SEE THE ROLE OF THE FEDERAL GOVERNMENT GOING, REGARDING STATE REGULATION OF INSURANCE?

I testified twice this year - once about long term care, and once about life settlement issues. The federal government has always been greatly involved in insurance issues, especially on the health side. There is a long history of federal involvement - for example, ERISA passed in 1972, then we had standardized plans for Medicare supplement, and HIPAA in 1994. Also, the federal government is involved in the larger picture because of the financial services industry, the essential role of insurance in the financial markets, and of course, because of the recent economic meltdown. Congress has always had an interest in insurance, but now it's even more so because of the state of the financial services industry. I think it is incumbent on state regulators to demonstrate the strength of the state-based regulatory system. The states are the best choice for the job because they have so much expertise and time invested in the process. But the federal government will always be involved to some extent.

4. WHAT'S THE BEST PART OF YOUR JOB?

That's easy - it's the people I work with. The people here are dedicated public servants who are working on behalf of the people of Florida every day.

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5. HOW DO YOU GET AWAY FROM ALL THIS?

I am an avid home chef. I love to cook and I cook a lot. I have every kitchen implement known to man. I love to cook on the weekends. It really helps because I can never leave my desk for lunch – this way, I have good food to bring for lunch every day.

I also love to read, and I have a tremendous interest in art and love to go to museums. I can't wait to go back to Italy.

Karen Asher-Cohen brings a unique perspective to our Insurance and Litigation teams, having been the Director of Insurer Services and Deputy General Counsel at the (then) Florida Department of Insurance. Karen has over 25 years of experience as a Florida lawyer, in areas such as insurance regulatory law and complex litigation, including the defense of class action lawsuits.



Two Florida Legislators Revive Deregulation Bill

By: David Yon

During the 2009 Legislative session Representative Bill Proctor, R-St. Augustine and Sen. Mike Bennett, R-Bradenton guided a “deregulation bill” through the Florida Legislature. The bill would have permitted many large insurers to offer homeowners insurance policies at rates that exceeded the approved rates they had on file. To be eligible for this reduced rate regulation, insurers had to have large surpluses available. Governor Charlie Crist vetoed that bill. The veto produced a storm of controversy as Senator Bennett especially criticized the Office of Insurance Regulation for providing what he believed to be incomplete information to the Governor that helped convince the Governor to veto the bill.

Representative Proctor and Senator Bennett announced at a press conference on December 8, 2009 that they have revised the bill to be applicable to all admitted carriers and intended to file it for consideration during the 2010 session (see [HB 447](#)). The release announcing the filing stated that the “Consumer Choice homeowners’ insurance bill, which would allow consumers to decide for themselves if they want to have their home protected by a private insurer offering market-based rates, has been revised and re-filed for the Spring 2010 annual session. “The new version of the bill has been retooled to address the continuing erosion of the competitive private market,” said Senator Mike Bennett, R-Bradenton.”

The bill would permit an insurer to use a rate “different from” the rate otherwise filed under section 627.062. The insurer must submit a filing under section 627.062(2)(l), Florida Statutes. Such filings could be disapproved for including a rate that is inadequate or which results in a rate that charges any insured or applicant a higher premium solely because of the insured's or applicant's race, color, creed, marital status, sex, or

national origin. However, so long as the insurer complies with section 627.7031, Florida Statutes, the required filing is not subject to rate review for being excessive.

To comply with section 627.7031, and therefore be eligible to make such a filing, the insurer must be offering a residential homeowners policy that includes the peril of wind and must make the disclosures required by the statute, including a notice that the policyholder may be able to buy insurance from Citizens Property Insurance Corporation. An insurer offering such policies may not purchase coverage from the Florida Hurricane Catastrophe Fund under the temporary increase in coverage limit option under s. 215.555(17). Unlike last year's bill, this one contains no minimum surplus requirements as last year's did.

The bill also contains language that clarifies that the Citizens policyholder surcharge (15% of premium) should begin immediately upon issuance of an order levying the assessment. The assessment should apply to the initial issuance of a policy within the first 12 months after the date of the order and should be payable upon any cancellation or termination of a policy, upon renewal of the policy, or upon issuance of a new policy within the first 12 months after the date of the levy. The bill also makes the levy of an assessment on Citizens policyholders a precondition to levying an assessment on the general market.

Sen. Bennett said the purpose of the bill is to attract as much capital and as many new companies to Florida as possible. He said we should “trust the consumer.” If a consumer is willing to pay a little more to keep a particular company and a particular agent, they should be allowed to do so. The Senate version of the bill ([SB 876](#)) was filed on December 9, 2009.

David Yon has practiced primarily in the area of insurance, administrative, regulatory, and business law for over twenty-five years. He has represented many of the major insurance writers in the country, as well as small start up companies in the Florida regulatory process.



Consumer Advocate Seeks to Expand Powers

By: Travis Miller

Sean Shaw, Florida's Insurance Consumer Advocate, is proposing legislation that would significantly expand the authority of the Consumer Advocate's office. Although the proposal has not been incorporated into a bill, a preliminary draft of the proposals is available. Among the key powers sought by the Consumer Advocate's office are:

- **Intervening as a Party in Rate Filings**--The Consumer Advocate's office could elect to participate in rate filings as a party to the filings. This would allow the Consumer Advocate to direct inquiries to insurers, to which the insurers would be obligated to respond. In addition, the Consumer Advocate would be allowed to make recommendations to the OIR, and the OIR would be obligated to respond to those recommendations in connection with its actions on the filings. Further, the Consumer Advocate would be authorized to request public hearings on rates filings, and the OIR would be prohibited from approving or disapproving the rate filings until the requested public hearings are held.
- **Expanding the Data Required for the Insurer Report Card**--Insurers would be required to provide incurred claims and closed claim information for the preceding five-year period as part of expanded requirements for development of the insurer report cards. The new data submission would be made under oath, signed by each insurer's Chief Executive Officer or Chief Financial Officer. The letter grade requirement in the current law would be eliminated, allowing the Consumer Advocate to use some kind of grading system that is not based on letter grades.
- **Establishing Examination Authority**--The Consumer Advo-

cate would be given authority to examine sales practices such as violations of the Unfair Insurance Trade Practices Act. Any alleged violations would be referred to the Office of Insurance Regulation for further action.

- **Allowing the Consumer Advocate to Exercise Administrative Rights as a Party**--In cases where the Consumer Advocate is a party, the Consumer Advocate could initiate administrative challenges under the Florida Administrative Procedure Act. In light of the requested authority to intervene in rate filings, this presumably means that the Consumer Advocate could elect to initiate administrative litigation upon the OIR's approval or disapproval of a rate filing.
- **Requiring the OIR to Publish the Consumer Advocate's Recommendations**--Under the proposal, the OIR would be required to publish on the Internet any recommendations on rate filings submitted by the Consumer Advocate's office.
- **Granting the Consumer Advocate Access to Public Model Data**--The Consumer Advocate would be granted access to the loss and exposure data gathered by the OIR or Florida International University in the development of the public model.

Given the scope of these changes, the proposals obviously will draw significant attention if they ultimately surface in a filed bill for the 2010 legislative session. As the legislative session draws closer, we will be tracking the key proposals on our website at www.radeylaw.com.

Travis Miller practices primarily insurance regulatory law, business and transactional law, and administrative law. He regularly assists insurance companies and other regulated parties before the Florida Office of Insurance Regulation and the Florida Department of Financial Services. Travis is Board Certified by The Florida Bar in State and Federal Administrative and Governmental Practice



OIR's Spudeck Receives National Award

By: Travis Miller

Dr. Ray Spudeck of the Florida Office of Insurance Regulation received the NAIC's Robert Dineen Award at the association's December meeting. Dr. Spudeck is a Senior Research Economist with the OIR. He was cited for his recent work on a federal legislative proposal for creating a National Catastrophe Risk Consortium that would allow states to join for purposes of transferring catastrophe risk. Dr. Spudeck also has served as an advisor to congressional staff on property insurance market issues.

The Robert Dineen Award is the NAIC's most prestigious individual honor. It is awarded to individuals in honor of their outstanding achievement as career regulators.

"Ray's profound and far-reaching contributions to developing a national catastrophe plan are invaluable to our system of state regulation," said NAIC president Roger Sevigny. "Additionally, his prolific work on international economic matters has substantially increased the NAIC's visibility on a global level."

Congratulations to Dr. Spudeck and the OIR.

McCarty Named NAIC Vice President

By: Travis Miller



Florida Insurance Commissioner Kevin McCarty has been elected Vice President of the National Association of Insurance Commissioners (NAIC). McCarty's one-year term takes effect immediately. Most recently, Commissioner McCarty has been serving in the elected capacity of secretary-treasurer of the NAIC.

Commissioner McCarty has long been active in NAIC governance, serving as a member of the Executive Committee, on the Government Relations Leadership Council, as a member of the International Insurance Relations Leadership Group, and as chairman of the Property & Casualty (C) Committee and on the Catastrophe Insurance Working Group.

"I am humbled and honored to be elected to serve as vice president of this esteemed organization," said Commissioner

McCarty. "I intend to bring the experiences gained as commissioner of the fourth largest state in the country to this new post, and to remain an effective part of the NAIC leadership group. As a team, we will strive to keep a balance between the challenges facing the insurance industry and protecting our consumers."

"The recession we are experiencing has led to the creation of proposals to create federal offices to oversee the financial markets and the insurance industry. I am a proponent of state-based insurance regulation, because it affords better consumer protection, encourages products tailored to local markets and leads to the increased scrutiny that helps to ensure the financial solvency of insurance companies. I will continue to work with my colleagues to assist the U.S. Congress in the formation of these new entities as they relate to the regulation of insurance."

McCarty, of course, continues to serve as Florida's Insurance Commissioner during his term as NAIC vice president.

Congratulations to Commissioner McCarty and the Florida OIR on this recent election.

CFO Sink Appoints New Chief of Staff

By: Travis Miller

Beginning in January, Tammy Teston will take over as Chief of Staff of the Florida Department of Financial Services. Ms. Teston currently serves as Deputy Chief Financial Officer for the Department. Jim Cassidy, the CFO's initial and current Chief of Staff, continues to hold his position through the end of the year and is assisting in the transition of his duties.

The Chief of Staff of the Department of Financial Services is responsible for managing the CFO's office and the nearly 2,000 employees working for DFS in its many divisions. The Department of Financial Services currently has an annual budget of over \$200 million.

In her current role, Ms. Teston already oversees four divisions—the Divisions of Consumer Services, Agent and Agencies, Rehabilitation and Liquidation, and Funeral, Cemetery and Consumer Services, with the first three pertaining to the insurance industry.

Ms. Teston formerly served as the Senior Vice President and

Market Director for Bank of America Investment Services in Sarasota. She received a Master of Business Administration from Georgia State University and a Bachelor of Science in Business Administration from the University of Florida.

"Tammy's decades of business experience and expertise in standing up for Florida's consumers is invaluable and she is well-prepared for this new role," said state Chief Financial Officer Alex Sink. "Tammy wakes up everyday looking for new, innovative ways to serve the people of Florida, and I have every confidence that she will be a tremendous asset to our state as my Chief of Staff."

"I am honored to serve the people of Florida in this new capacity," said Tammy Teston. "I look forward to working under CFO Sink's leadership to continue to run our Department as efficiently and cost-effectively as possible, and protect citizens' taxpayer dollars."

ALJ Concludes That OIR's Viatical Provider Exam Manuals Do Not Constitute Unadopted Rules

By: Tom Crabb

In conducting market conduct examinations of viatical settlement providers, the OIR uses certain internal procedure manuals. Those manuals provide that when an examination is being conducted on a viatical settlement provider that is licensed in Florida, but not domiciled in Florida, the provider has to produce information and documentation about out of state viatical settlement contracts (i.e., those neither effectuated in Florida nor involving Florida residents) as well as Florida contracts. The OIR claims that it examines the non-Florida transactions only to verify that they are in fact not Florida transactions.

Coventry First, LLC, a foreign-domiciled provider that is licensed in Florida, was required to produce such documents about its out of state transactions to the OIR. In response, it challenged the OIR's authority to examine such transactions by arguing that the OIR's internal procedures manuals constituted

administrative rules that were never properly adopted as such by the OIR. An Administrative Law Judge with the Division of Administrative Hearings disagreed. ALJ Suzanne Hood concluded that the procedures manuals were not intended to create rights or require compliance because they are not mandatory guides for examiners to use during examinations. Instead, examiners can deviate from the manuals and can rely solely on certain Florida Statutes that require the production of all books and records of a provider, without limiting it to Florida documents. ALJ Hood said "OIR's manuals and letters are not statements of general applicability and do not have the consistent effect of law. They do not create or adversely affect any rights. A viatical settlement provider is not afforded any additional rights or burdened by any further obligations as a direct or immediate consequence of the documents." Accordingly, Coventry's petition was dismissed and the OIR does not have to have its internal procedures manuals related to the examination of viaticals promulgated by rule. *Coventry First, LLC v. Office of Insurance Regulation*, Case No. 09-3944RU (DOAH Final Order, November 13, 2009). For a copy of the Final Order or more information about this case, please contact me.

OIR Levies 0.8% Assessment For The Florida Insurance Guaranty Association

By: Tom Crabb

Claims arising from the 2004 and 2005 hurricane seasons continue to drain cash from the Florida Insurance Guaranty Association ("FIGA"). FIGA pays covered claims of insolvent Florida insurance companies that are FIGA Members by having the OIR assess solvent insurance companies. On November 6, 2009, the OIR levied a \$124 million dollar FIGA regular assessment on Florida insurers. The new insolvencies of American Keystone Insurance Company and First Commercial Insurance Company, together with continued claims of the Poe Companies, are primarily responsible for this assessment. This FIGA assessment is set at 0.8% of each insurer's 2008 net direct written premium for

lines of business in the FIGA "all other" account, which includes most property and casualty lines. The invoices were sent in November and companies have until December 15, 2009, to pay the assessment. FIGA assessments are "pay and recoup" assessments, as opposed to the "pass through" assessments of other Florida assessing entities, such as the Florida Hurricane Catastrophe Fund. Therefore, after paying the full amount of the FIGA assessment, an insurer can make a rate filing with the OIR to recoup the assessment from its policyholders. For more information about this FIGA assessment or the recoupment process, please contact myself or anyone on our Insurance Team.

Associate Tom Crabb practices insurance regulatory law as well as insurance-related commercial litigation and corporate law. His recent experience includes preparing companies for risk-focused financial examinations, company and producer licensure issues, and viatical settlement law.



OIR Establishes High Risk Account Rate Increase

By: *Travis Miller*

The Office of Insurance Regulation has entered an administrative order setting the rates for Citizens Property Insurance Corporation's High Risk Account. The order establishes the following average rate changes:

Homeowners	5.2%
Dwelling Fire	4.0%
Mobile Home Owners	11.0%
Commercial- Nonresidential	9.3%
Commercial- Residential	9.4%

The approved rates are slightly less than initially requested by Citizens. The OIR established the rates after a November 10 hearing at which interested parties were invited to provide comments. A group representing policyholders in Monroe County made several key points about whether the public model used by Citizens gives appropriate recognition for improvements to building codes and the storm-worthiness of homes in Monroe County. As part of setting Citizens rates in the order, the OIR is directing Citizens to further study some of the issues raised by the Monroe County policyholders.

For additional information about the HRA rate increase, please see Travis Miller's blog in the insurance blog section of our website at www.radeylaw.com.

FSU Panel Discussion to Cover Regulatory Reform

By: *Travis Miller*

The Risk Management & Insurance department of the Florida State University College of Business is hosting a luncheon and panel discussion on January 28, 2010, on the topic of insurance regulatory reform. Florida Insurance Commissioner McCarty has agreed to participate on the panel, along with Moira Campion McConaghy, manager of government relations for the NAIC, and Dr. Andreas Richter of Ludwig-Maximilians-Universität in Munich, Germany.



The luncheon event will be held from 11:30-2:00 p.m. This is the first event of its kind for the RMI program, although other departments within the College of Business have seen similar forums grow into significant annual events. Given the significance of insurance issues in Florida over the course of many years, we believe the same will hold true for the RMI's program's event.

For more information about the panel discussion, please feel free to contact Travis Miller.

RTYC Hosts United Way Kickoff Event

By: *Travis Miller*

RTYC recently held the "kickoff" event for its 2010 United Way campaign. The firm has supported the United Way of the Big Bend for many years, and each year's kickoff event recognizes employees for their past participation while announcing the beginning of the following year's campaign. The kickoff event featured a tailgate-style lunch, with employees wearing the attire of their favorite sports teams. Although FSU apparel dominated the crowd, we had selections from around the country with the St. Louis Cardinals being the most distant choice.

Representatives of the United Way and the Refuge House spoke about how the United Way benefits our local community. Refuge House director Meg Baldwin gave special thanks to RTYC's David Yon. David directs Tallahassee's largest running event each year (the Tallahassee Turkey Trot), the proceeds of which benefit local charities including the Refuge House.

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Experience.Service.Success.

Radey Thomas Yon & Clark, P.A. believes that service to clients must be efficient and dedicated. Our location in Tallahassee, Florida, provides us the opportunity to be at the heart of the regulatory, legislative, and judicial arenas. The Florida Insurance Report is provided to our clients and friends in a condensed summary format and should not be relied upon as a complete report nor be considered legal advice or opinion.

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OIR Continues to Pursue Mitigation Discount Form

By: *Travis Miller*

The Office of Insurance Regulation held a public hearing on its mitigation discount verification form and notice of mitigation discounts. These are mandatory forms used in connection with Florida's statutorily-mandated mitigation discount program.

The notice form attracted relatively few comments at the hearing. One industry trade group asked the OIR to delay further development of the form because the law requiring it might be changed in the 2010 legislative session. Other presenters mentioned possible problems with the way that 2001 and newer construction is characterized.

Most of the comments, however, focused on the mitigation verification form. The current draft of the form contains significant improvements over the version currently in effect, including requiring the inspected property to be identified on each page and requiring the asserted discounts to be supported with photographs. Industry representatives generally urged the OIR to continue with the form's adoption, subject to any technical revisions that might be needed. Other presenters represented contractors, engineers, inspection companies and others involved in the inspection process. These parties raised questions about who should be allowed to sign the forms and whether the standards imposed by the forms are too strict.

For additional information, including copies of the current drafts of the verification form and notice, please see my blog at <http://www.radeylaw.com/blog/>.