

FLORIDA INSURANCE REPORT

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Keeping You Informed About Florida

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Attorneys & Counselors at Law

New Filings For Limited Reinsurance/Financing Costs

By: [Karen Asher-Cohen](#)

The Office of Insurance Regulation has created a new filing category on its I-file system to accommodate the new reinsurance cost filings established by HB 1495 (Section 7), which amended section 627.062, Florida Statutes, with a new subsection (2)(k). The new filing is labeled “Limited Reinsurance/Financing Costs” and is available now. It requires less components and contains less interrogatories than a typical, full base rate filing. The new statutory provision provides that an insurer may make the new limited reinsurance filing if, among other things: 1) the insurer includes no other changes to its rates; 2) has not implemented a rate increase in the six months preceding the filing; 3) does not file for a rate increase pursuant to any provision of section 627.062 for six months following the filing; and 4) the insurer only makes one such limited reinsurance filing every 12 months.

Because of the six-month prospective prohibition on any rate filing, Mike Milnes, Deputy Director of Property & Casualty Product Review, included the following clarification statement in the Office’s press release on July 2nd: “If an annual rate filing or annual rate certification is due during this six month period, the insurer will not be required to make the filing until six months have expired.”

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The OIR held a webinar to further explain the requirements for the filing on July 8, 2009. However, participation in the webinar was not required to make the filing.

For additional information on the new Limited Reinsurance/Financing Costs filing, or HB 1495, please contact any of our Insurance Team.



Insurance Agency Licenses Begin to Come Up for Renewal

By: [Tom Crabb](#)

Starting back on October 1, 2006, insurance agencies had to be licensed with the Florida Department of Financial Services Division of Agent and Agency Services. Those licenses are valid for three years and are therefore now starting to come up for renewal. The Department has issued a reminder about the renewal requirement. For now, the Department is mailing renewal notices to agencies 90 days before their license expires. In “the near future,” the Department will only e-mail the renewal notices so it is important that the Department have your agency’s current contact information on file. The agency license must be renewed online at the Department’s website at www.myfloridacfo.com/agents. There is

no fee by the Department to renew an agency license. The Insurance Code provides for administrative penalties of up to \$10,000 for failure to be properly licensed as an insurance agency.

Certain agencies that were in business prior to January 1, 2003, were able to file for agency “registration” in lieu of licensure back in 2006. Those agencies do not have to renew their registrations and remain exempt from the agency licensure requirement. If your agency has closed or is no longer transacting insurance in Florida, its agency license must be surrendered in writing to the Department. For more information about agency licensing and renewal requirements, please contact us.



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GET TO KNOW...

By Karen Asher-Cohen

BELINDA MILLER - Deputy Commissioner for Property & Casualty at the Florida Office of Insurance Regulation. Belinda has been at the OIR and the former Department of Insurance, off and on, since 1985. She started at the Division of Rehabilitation and Liquidation, and before assuming her current position, served as the Director of the (old) Division of Insurer Services, and Deputy General Counsel of the Division of Legal Services. Recently, I asked Belinda the following 5 questions:

1. What do you think is the biggest challenge facing property and casualty companies in Florida right now? *Definitely hurricane risk.*
2. How has insurance regulation changed in your time here? *The application filings are all electronic, as well as the rate and form filings, which makes things easier. We no longer have paper filings. We also have more sophisticated data collection. While we still have more work to do, the process is much better. Also, the Office is a more collegial team. It is not as bureaucratic or structured as it was years ago.*
3. What is the worst part of your job? *Trying to find a way to keep the property market vital, and the frustration that comes with ignorant misinformation people get about the insurance industry and the Office.*
4. What is the best part of your job? *I work with a wonderful group of people that make this a blast.*
5. How do you get away from all this? *I go fishing.*

Eric Lingswiler Named Director of Life & Health Product Review

By: David Yon

On July 2, 2009, Insurance Commissioner Kevin McCarty named Eric Lingswiler the permanent Director of Life & Health Product Review, a position he has held on an interim basis since last August.

Eric has been a regulator since 1995 when he joined the then Department of Insurance as a forms analyst. During his almost 15 years with the agency Eric has worked in the oversight of the viatical settlement industry; became the chief of Property and Casualty Forms and Rates; investigated unauthorized and unlicensed insurance companies and now is Director of the Life and Health Product Review. "Eric has demonstrated that he has the extensive knowledge and skills we need to manage this Life and Health unit in a way that will best enable us to serve the people of Florida," said Commissioner McCarty.

Congratulations to Eric Lingswiler on his new position at the Office of Insurance Regulation.

Steven Szypula Receives Professional Designation from NAIC

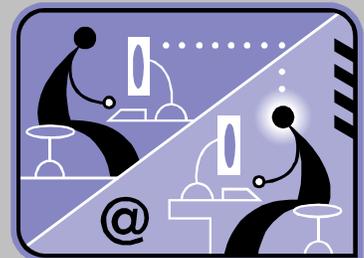
By: David Yon

OIR employee Steven Szypula became the first regulator in the country to earn the National Association of Insurance Commissioners' (NAIC) Senior Professional in Insurance Regulation (SPIR) designation. Commissioner McCarty presented the designation to Steven Szypula, the Office's chief analyst of property and casualty oversight, at the Summer Meeting of the NAIC. The SPIR is one of three designation levels a person can earn. The other two are Associate Professional in Insurance Regulation and Professional in Insurance Regulation.

The attorneys of Radey Thomas Yon & Clark wish to extend their congratulations to Mr. Szypula for his achievement.

Electronic v. Paper

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Crist Vetoes Condo Bill

By: David Yon

Upset that the Condo Glitch Bill (SB 714) delayed the deadline for retrofitting common areas of condominiums with fire sprinklers from 2014 to 2025, Governor Crist vetoed the bill in early June.

The bill had been a high priority of a number of insurer groups because of the confusion caused in the current condo law, chapter 718, Florida Statutes. The bill contained language designed to clarify when condo associations had responsibility for coverage for common areas and when the coverage might be the responsibility of the unit owner.

The bill also replaced the term "special assessment coverage" with the more specific term "loss assessment coverage" and included a \$250 deductible in the loss assessment. The bill also would have deleted a statutory provision allowing associations to force-place coverage on unit owners when the unit owners do not maintain their own policies. In addition, the bill would have eliminated a current requirement for insurers to

Insurance Premium Tax Dollars Can Now Be Redirected to Scholarships for Low-Income Children

By: Tom Crabb

Following the passage of House Bill 453, starting July 1, 2009, Florida insurance companies with premium tax liability can now redirect up to 75 percent of that tax liability to the Step Up For Students Florida Tax Credit Scholarship Program. According to its website (www.stepupforstudents.com), the Program serves 23,400 low-income students at approximately 1,000 K-12 private schools or out-of-district public schools. Insurance companies participating in the Program receive a full dollar-for-dollar tax credit for up to 75 percent of their insurance premium tax liability (after applying any other allowable credits). The average income for a family of four with a child in the Program is \$25,000.

"We've had insurance companies tell us they would love to be a part of helping turn around the lives of these disadvantaged students, and this will let them take full advantage," said Doug Tuthill, the President of Step Up For Students, in a press release. Payors of other state taxes have been allowed to make similar redirections to the Program for a number of years, with over \$475 million redirected to the Program since 2002, but

identify the associations as additional named insureds and loss payees on insurance policies. These provisions have proven to be unpopular and have created challenges in implementation, so the industry worked with key legislators to have them eliminated for current law. Unfortunately, with the bill's veto on other grounds, the industry will have to try again in 2010 to remove the troublesome language.

Crist in his veto letter acknowledged that the bill contained "several changes to laws that are important to Floridians residing in condominiums." But he said the provision that delayed the retrofitting requirement for fire sprinklers - which Gov. Jeb Bush had vetoed in 2006 - "presents an unacceptable safety risk, especially to Florida's elderly condominium residents."

In his veto message, Crist said he was directing the Department of Business and Professional Regulation to initiate "a comprehensive review of actual retrofit costs and the impacts retrofitting may have on insurance premiums." He said that department may hold workshops to solicit input from insurers and other stakeholders. Crist asked the department to submit its findings and recommendations by Oct. 1, 2009.

insurance companies had been unable to contribute because of the way the premium tax is factored into a company's corporate income tax liability.

The basic process for obtaining the credits is straightforward. First, a company wishing to participate must reserve its tax credit with the Florida Department of Revenue. This does not oblige the company to participate, instead it simply ensures that the aggregate maximum in tax credits available (\$118 million this year) is not oversubscribed. Once it has received approval from the Department, the company remits the funds directly to one of the participating schools. The school then provides a Certificate of Contribution to the company, which is attached to its state tax return. Participating insurance companies need not be Florida domiciled. If a company has Florida premium tax liability, it qualifies.

In sum, through this innovative program, insurance companies can redirect funds that they would already pay to the State of Florida to these scholarships for the neediest of our children. As bill sponsor Will Weatherford (R-Tampa) said, "we can't afford *not* to support a program such as this." For more details about participating, please visit the Program's website or contact us for additional information.

Workers' Compensation Rate Decrease Approved

By: David Yon

It did not take Florida Insurance Commissioner Kevin McCarty long to announce the National Council on Compensation Insurance (NCCI) workers' compensation insurance rates would be reduced to reflect the limits in attorney fees provided for in HB 903.

On Feb. 26, Commissioner McCarty had approved a 6.4 percent increase in response to the Oct. 23 Supreme Court opinion in the case of *Emma Murray v. Mariner Health Inc.* The Supreme Court's decision eliminated the statutory caps on attorney fees that were imposed as a result of the 2003 reforms under SB 50A and would have enabled claimant attorneys handling workers'

compensation claims to collect increased fees for their services. Under the new law, however, attorneys will continue to be paid based on a fee schedule of 20/15/10/5 percent of benefits secured. Hourly fees will not be allowed.

McCarty's order reducing rates is based on a recent filing by NCCI that came after Gov. Charlie Crist signed into law HB 903, the legislation that restores the cap on attorney fees and clarifies related statutory language that the Florida Supreme Court had determined to be ambiguous.

"I am pleased that Gov. Crist and the Florida Legislature recognized the importance of keeping our workers' compensation rates down," said Commissioner McCarty. "I believe that injured workers still will have appropriate access to the legal system while also still keeping workers' compensation rates affordable for employers."

Workers' Compensation Assessments

By: David Yon

The Department of Financial Services issued orders on June 26, 2009 assessing workers' compensation policies .08% for the Workers' Compensation Administration Trust Fund and 4.52% for the Special Disability Trust Fund. The actual calculated need for the Special Disability Trust fund exceeded 4.52%, however that is the maximum amount allowed by the statute.

My Safe Florida Program Left Unfunded

By: David Yon

One of the casualties of the 2009-2010 budget shortfall was the funding for the My Safe Florida Program. The program has provided over 400,000 free inspections for Florida homes. Many of these inspections resulted in reduced premium to policyholders intended to reflect hurricane mitigation features in the home. In addition, the program provided more than 30,000

grants for home improvements designed to improve hurricane safety and protection in the homes, mostly in coastal areas. It is estimated that approximately \$30 million of unspent revenue reverted to general revenue on June 30, 2009 the end of the fiscal year.



Citizens' Board Moves Forward With Rate Change

By: David Yon

Citizens' Board of Governors has voted to move forward with a proposed rate filing that will cap rate changes at 10% of existing premium. Citizens rates were frozen by law for three years. This past session HB 1495 authorized Citizens to file actuarially sound rates, but capped any increases at 10%. While many policyholders have indications of a rate increase, there are also approximately 80,000 policyholders with negative rate indications. Citizens proposes to give these policyholders the benefit of a decrease of up to 10%. Assuming the filing is approved, it would result in an overall increase of 6.7%. If the cap were not in place, Citizens' filing would be seeking a 47.7% increase that would produce new revenue of \$1.08 billion based on existing policy count. The proposed effective date for the filing which is still subject to OIR review is January 1.

Bills to Chapter Laws – 2009 Session

By: David Yon

Following is a list of some of the bills we tracked during the 2009 legislative session and what action has been taken by the Governor. For more information about any of these bills visit our website under the Legislative Update tab or ask anyone on our insurance team to help you out.

Signed by Governor

Life & Health

HB 135 - Public Records/Insured Dependents/Agency Group Plan (2009-104)

HB 162 - Electronic Health Records (2009-172)

HB 185 - Access to Health Care (2009-41)

HB 675 - Medicare Supplement Policies (2009-141)

SB 1122 - Health Insurance/Payment of Benefits/Claims Forms (2009-124)

SB 2158 - Public Records/Claims Files and Medical Records (2009-186)

Property & Casualty

HB 741 - Insurance Premium Financing (2009-84)

SB 742 - Property Insurance Rate Reduction a/k/a Sinkhole Losses (2009-178)

HB 853 - Surplus Lines "Essex" Fix (2009-166)

HB 1495 - Insurance (Big Property Bill) (2009-87)

Workers' Compensation

HB 845 - Self-Insurance Funds (2009-116)

HB 903 - Workers' Compensation Attorney's Fees (Murray) (2009-94)

Auto

SB 1778 - Department of Highway Safety & Motor Vehicles/ Increase in Fees (2009-71)

SB 2282 - First-responder Services (2009-191)

General

HB 453 - Tax Credits for Contributions to Nonprofit Scholarship-funding Orgs. (2009-108)

HB 483 - Investor Protection (2009-242)

Vetoed by Governor

SB 714 - Condominium Insurance

SB 1171 - Consumer choice/homeowners insurance (Deregulation)

OIR Proposes "Report Card Rule" for Workshop

By: David Yon

The OIR has distributed a copy of proposed rule 69O-236.01 to "establish procedures to be used by the Office of the Insurance Consumer Advocate in preparing an annual report card for personal residential property insurers." A workshop will be held August 6, 2009 at 2:00 p.m. The Division of Consumer Services will divide complaints into two categories for purposes of the report card - premium related complaints and loss related complaints. To be included in the grading system a complaint must be "valid." The rule identifies numerous complaints considered "not valid." Among the examples the rule lists as a "not valid" complaint are where the company's position is upheld. The Consumer Advocate will determine a numerical score for each insurer based on the following four factors:

- (a) The insurer's market share of premium related complaints compared to its market share of in-force policies on a calendar year basis;
- (b) The insurer's share of loss related complaints compared to its share of the prior year's in-force policies on a calendar year basis;
- (c) The insurer's share of valid complaints compared to its share

of the average of the latest year's and the prior year's in-force policies on a calendar year basis; and

(d) The insurer's average number of months to pay claims compared to the median number of months to pay claims of all insurers on a calendar-accident year basis.

Grades will then be assigned as follows:

- (a) A grade of A if the insurer's score is in the top 15% of the total number of scores;
- (b) A grade of B if the insurer's score is in the next 20% of the total number of scores;
- (c) A grade of C if the insurer's score is in the next 30% of the total number of scores;
- (d) A grade of D if the insurer's score is in the next 20% of the total number of scores; and
- (e) A grade of E if the insurer's score is in the last 15% of the total number of scores.

A weighted average is then applied to each category to derive an overall grade.

For more information and a copy of the draft rule please contact anyone on our Insurance Team.

Obama Administration Outlines Regulatory Plans for Insurance and Financial Markets

By: Travis Miller

President Obama recently unveiled his administration's white paper on modernizing the regulation of financial markets, including the insurance industry. The white paper, entitled *Financial Regulatory Reform: A New Foundation* can be found in the Insurance section of our website (www.radevlaw.com) under the Resources tab.

The President commented that the unraveling of financial institutions and a lack of adequate regulatory structures to prevent abuse and excess was one of the most significant factors in the country's economic downturn. The President contends that the current outdated regulatory system was simply overwhelmed by the speed, scope and sophistication of today's global economy.

In announcing his administration's plans, the President noted that regulators in some cases lacked authority to take action due to gaps in regulatory systems. In other cases, regulatory systems overlapped and resulted in a lack of accountability among regulators. The President points out that while many regulators were responsible for overseeing individual firms, no one was responsible for protecting the overall system. His administration intends to eliminate the gaps that allowed large firms to present financial risk to the economy while increasing the accountability of regulatory authorities by streamlining the oversight process.

The President proposes that new authority be given to the Federal Reserve to regulate bank holding companies and

other large firms that pose a threat to the economy. The administration also will create an oversight council to coordinate regulation across markets and share information. The proposal also will call for an agency charged with protecting consumers.

The Obama administration's plans for updating regulatory systems include components directed to the insurance industry. To enhance oversight of the insurance sector, the administration proposes to create an Office of National Insurance within the Treasury. The Office of National Insurance will be charged with gathering information, developing expertise, negotiating international agreements, and coordinating policy in the insurance sector. The Treasury will support proposals to modernize the overall regulatory structure and improve insurance regulation with six basic principles in mind:

1. Effective systemic risk regulation with respect to insurance--The administration intends to address risks to the financial system posed by various companies, including insurers.
2. Strong capital standards and an appropriate match between capital allocation and liabilities for all insurance companies--The administration intends to focus on risk management, including management of liquidity and duration risk.
3. Meaningful and consistent consumer protection for insurance products and practices--The white paper in several instances points to state variations in regulations and consumer protections. The administration contends that it will not accept regulatory changes that weaken or undermine consumer protections, but instead will seek to implement new regulations that enhance protections for consumers.

4. Increased national uniformity through either a federal charter or effective action by the states--The administration contends that state-based regulation has led to fragmented, inconsistent and ineffective regulation. The new scheme will seek to increase consistency in the regulatory treatment of insurance, including strong capital standards and consumer protections.
5. Improve and broaden the regulation of insurance companies and affiliates on a consolidated basis, including those affiliates outside of the traditional insurance business--Repeating its theme that significant gaps exist in the regulatory system, the administration intends to decrease the threat associated with holding company activities outside of the insurance business.
6. International coordination--The Treasury would increase the international competitiveness of U.S. insurers through a unified approach to international transactions, which in turn would expand opportunities for the insurance industry to export its services abroad.

Proponents of a federal charter have been encouraged by the President's statements suggesting movement toward increased uniformity. At the same time, proponents of the state-based regulatory system have pointed to comments from the President suggesting that regulatory reforms can take place within the current framework. In any event, it is clear following the recent economic downturn and troubles of high profile companies that regulatory changes are ahead for the financial services sector as a whole, and the insurance industry will be part of these changes.

Medicare Secondary Payer Reporting Requirements Affect Liability Insurers Including Auto and Home

By: Travis Miller

Insurers writing liability insurance, including auto and home insurers, should already be in the process of registering to report payments to Medicare beneficiaries under new federal requirements. Although the implementation deadline has been delayed, the requirements still are on the horizon and the penalties for non-compliance are substantial (\$1000 per day).

The Medicare, Medicaid, and SCHIP Extension Act of 2007 added a new provision to the Medicare Secondary Payer requirements providing mandatory reporting requirements for group health plans, liability insurance (including self-insurance), no-fault insurance, and workers' compensation. This article focuses on the application of the new reporting requirements to liability insurers.

Section 111 of the 2007 Act specifies that liability insurers must report to the Centers for Medicare & Medicaid Services (CMS) when Medicare beneficiaries receive settlements, judgments, awards or other payments under liability policies. The purpose of the requirement is to ensure that Medicare does not pay for medical claims that are paid first by another source. CMS implementation guidelines specifically indicate that the reporting requirements will apply to, but are not limited to, auto liability insurance, uninsured motorist insurance, homeowners liability insurance, and malpractice insurance. The requirements also apply to no-fault coverages such as medical payments coverages, personal injury protection coverages, and medical expense

coverages under auto or other types of policies.

The obligation to submit reports under the new requirements lies with the so-called Responsible Reporting Entity. In the case of liability insurance, the Responsible Reporting Entity generally is the insurer. In a recent CMS-sponsored telephone conference, CMS officials indicated they are considering whether an affiliated entity, such as a holding company, can serve as the Responsible Reporting Entity for a group of insurers to eliminate the need for multiple registrations for the group. At last check, this issue had not yet been decided, but insurers may proceed to register with CMS individually.

Some insurers might choose to use a third party reporting agency to submit their data. In this case, the insurer should recognize that it is still the Responsible Reporting Entity and remains solely responsible for compliance with the Medicare Secondary Payer reporting requirements and for the accuracy of data submitted.

Insurers are required to report whenever a settlement, judgment, award or other payment is made to a Medicare beneficiary. This is the case regardless of whether or not there is an admission or determination of liability in the claim. Insurers should take note that the new requirements will necessitate collecting data that they likely have not collected in the past (i.e., insurers must be able to identify whether persons receiving payments are Medicare beneficiaries).

Under the revised implementation timeline released by CMS in May 2009, liability insurers may register between May 1, 2009, and September 30, 2009. The test function became available on July 1, 2009, for Responsible Reporting Entities that have registered. Between January 1, 2010 and March 31, 2010, all liability

insurers will go through a testing period for Claim Input files. Insurers then will begin reporting in the second quarter of 2010, with a goal that all insurers are operational on the new reporting system by July 1, 2010.

CMS is holding periodic telephone conferences to discuss both the information technology aspects of reporting and the underlying policy considerations. Recent telephone conferences have suggested that insurers should have a basic familiarity with the reporting requirements and the CMS policy announcements to-date to gain value from participating.

The Political Scene

By: David Yon

It sometime seems we are always in an election year. That is more true than ever as the campaign season has expanded well beyond a year even for State offices. There will be a free-for-all in Florida as none of the four cabinet members plan to run for re-election. Governor Charlie Crist was the first to change course as he decided to run for the U.S. Senate instead of running for Governor. That in turn left the door open for CFO Alex Sink (D) and Attorney General Bill McCollum (R) to square off against each other in the Governor's race. Senate President Jeff Atwater (R) became the first to announce for the CFO race. He was followed by Pat Patterson (R). They will square off in the Republican primary. So far, no Democrats have announced for CFO. State Senators Dan Gelber (D) and Dave Aronberg (D) are running against each other in the Attorney General's race. Lt. Governor Jeff Kottkamp has indicated he will run, but has not formally announced yet. So far Eric Draper (D), Scott Maddox (D) and Adam Putnam (R) have jumped into the Agriculture Commissioner's race.

We're on the Web at
www.radeylaw.com

301 South Bronough Street
Suite 200
Tallahassee, FL 32301
850-425-6654 - Phone
850-425-6694 - Fax

Editors &
Contributors

Kendria Ellis*
kellis@radeylaw.com
850-425-6686

Travis Miller
tmiller@radeylaw.com
850-425-6654

David Yon
david@radeylaw.com
850-425-6671

Karen Asher-Cohen
karen@radeylaw.com
850-425-6654

Tom Crabb
tcrabb@radeylaw.com
850-425-6654

* not an attorney

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OUR INSURANCE TEAM

<i>Karen Asher-Cohen.....karen@radeylaw.com</i>	<i>Christopher Lunny.....chris@radeylaw.com</i>
<i>Donna Blanton.....dblanton@radeylaw.com</i>	<i>Elizabeth McArthur.....emcarthur@radeylaw.com</i>
<i>Bert Combs.....bcombs@radeylaw.com</i>	<i>Travis Miller.....travis@radeylaw.com</i>
<i>Thomas A. Crabb.....tcrabb@radeylaw.com</i>	<i>John Radey.....jradey@radeylaw.com</i>
<i>Toni Egan.....tegan@radeylaw.com</i>	<i>Harry Thomas.....hthomas@radeylaw.com</i>
<i>Jeffrey Frehn.....jfrehn@radeylaw.com</i>	<i>David Yon.....david@radeylaw.com</i>

Follow Us on Twitter

By: Travis Miller



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