Florida Insurance Report

Volume 7, Issue 8 | Keeping You Informed About Florida | August 26, 2009

RADEY | THOMAS | YON | CLARK

Attorneys & Counselors at Law

NCCI Makes Annual Rate Filing

By: David Yon

The NCCI delivered its annual workers' compensation rate filing to the Office of Insurance Regulation on August 20, 2009. The filing seeks an overall rate level change of -6.8%. The primary elements of the filing include the following:

Rate Filing Components	Impact
Due to Change in Experience	-10.1%
Due to Change in Trend	+1.1%
Due to Change in Benefits	0.0%
Due to Change in Expenses (excl P&C)	+0.3%
Due to Change in Profit & Contingency Factor	+2.2%
OVERALL RATE LEVEL CHANGE	**-6.8%**

The filing represents the 7th straight year of rate decreases since the 2003 legislative reforms were passed. "I am very pleased to receive another request for a reduction in workers' compensation rates," said Commissioner McCarty. "This is welcome news to Florida employers during these challenging economic times."

OIR will review the filing and schedule a public rate hearing sometime in October. The proposed effective date for the filing is January 1, 2010.

Mitigation Discounts Take Center Stage

By: Travis Miller

Issues relating to Florida's windstorm loss mitigation discount program have been the focal point of several recent meetings and will be the subject of continuing review this fall. The Florida Legislature in the 2009 session directed the Florida Commission on Hurricane Loss Projection Methodology to hold public meetings and receive testimony for the purpose of analyzing Florida's implementation of the mitigation discounts and developing recommendations for improving the system. Separately, the Office of Insurance Regulation recently held a workshop to discuss potential revisions to forms used in the mitigation discount process.

Modeling Commission Review

The modeling commission recently held its initial meeting to gather information about the mitigation discount requirements and hear from affected parties about concerns with the process. RTYC shareholder Travis Miller led off the modeling commission's meeting with an overview of the statutes and administrative rules that govern mitigation discounts. Although the presentation was scheduled to be a brief overview that would set the stage for further discussions, the commission jumped in with questions and considerable discussion of the issues raised by policy decisions underlying the implementation of the discounts. It soon became clear that discussion of these issues does not fit neatly into groupings such as legal, actuarial, etc. The meeting included discussion of insurers' appetite for risks when discounts are perceived to be too low, as well as concerns with implementation of the table as a discount-only table that assumes any home better than the weakest structure will qualify for some type of discount. The commission also heard about rampant errors, both unintentional and intentional, in the completion of mitigation discount forms. The commission will meet again on September 17 for further discussion of these issues.

Office of Insurance Regulation Workshop

The Office of Insurance Regulation conducted a workshop to discuss revisions to the notice form used by insurers to inform policyholders of available discounts

Continued on Bottom of Page 5

Inside this issue:

Get to Know...	2
CFO Sink Announces Daniel Y Sumner Fellowship in Law and Public Policy	3
FHCF Report Describes Impact of 2009 Legislative Changes	3
Claim Settlement Via Appraisal May Result in an Award of Attorney's Fees to Insured	4
Florida Supreme Court to Hear Oral Argument on Bad Faith Questions	5
Fees for the Public Model	7
Lobbyists Question Constitutionality of Florida Statutes Prohibiting Gifts & Requiring Disclosures	8

GET TO KNOW…

By Karen Asher-Cohen

DAN SUMNER - Dan joined the (prior) Department of Insurance on September 10, 1979. He served as Director of Insurance Rating, Executive Director of the first Property & Casualty JUA, and Deputy State Treasurer for Commissioner Gunter; as Director of Legal Services and Assistant General Counsel for Treasurer Gallagher; as General Counsel and Deputy for Legal Affairs for Commissioner Nelson; as Senior Counsel, and Interim Executive Director of the Property & Casualty JUA, and Deputy Director of the Division of Worker's Compensation for Treasurer Gallagher (2nd term); and as General Counsel for the CFO, prior to his current position.

Recently, I asked Dan the following questions:

1. *WHAT ARE THE BIGGEST ISSUES FACING DFS THESE DAYS?*

There are several. First, in the current budget environment, DFS is required to constantly do more with less. It is good to be as efficient as possible, but in the regulatory environment, there are limitations on how many resources can be cut and still be able to meet your mission. It is a difficult balancing act. Second, we have a challenge in the continuing evolution of the financial marketplace. For example, we see the evolving financial marketplace with insurance agents who sell products such as variable annuities, which have a securities aspect. We also see the financial interconnections in insurance fraud cases involving check-cashing entities, which we do not directly regulate, but are integral to the insurance fraud. More and more, we see that regulatory efforts have to be coordinated between different regulatory agencies to be sure that the public is being protected. Lastly, like all state agencies, DFS has to deal with the diminished attractiveness of state government service. Our ability to attract young talent to public service, where there are many complex issues, is a major challenge. The opportunity to expose highly talented young people to state government is the most exciting aspect of the Fellowship. *(See related story on next page)*

2. HOW HAS INSURANCE REGULATION CHANGED IN YOUR TIME HERE?

Regulation has changed very much for the better over the course of my career through vastly improved data collection capabilities. Today, regulatory decisions can be made based on real time data collected electronically rather than a statistical sampling or anecdotal information. This is far better for both the agency and the regulated entity.

3. LOOKING BACK WHAT ARE YOUR PROUDEST MOMENTS IN PUBLIC SERVICE?

From a personal point of view, one of my proudest moments in public service was when I argued the *Barnett Bank* case before the United States Supreme Court. One reason it was so memorable, besides the humbling nature of the experience and seeing how well prepared the Justices were, was that I felt that as a government representative arguing before them, the Justices gave me special respect. They looked at me as a person that was trying to represent the public and give them the public's view, and they respected me for that. Also, I am very proud that I have been able to adapt my skills and add value to different jobs in the Department. I have been able to contribute in many different ways, and not just always as a lawyer. One example was when I served as Interim Executive Director of the Commercial JUA in 2006. I really enjoyed that assignment.

4. WHAT IS THE BEST PART OF YOUR JOB?

The best part of my job is illustrated by my experience with the CFO and her team. When I started working for the CFO, I did not know any of the people on her team. But we coalesced rapidly around our mission and her vision. I greatly enjoy interacting with my team members and seeing our vision become a reality, and seeing successes from our work.

5. WHAT IS YOUR ADVICE FOR SOMEONE CONSIDERING STATE GOVERNMENT SERVICE?

I would tell someone in the private sector that consideration of government service should not be limited to people just starting out in their careers. The advantages of government service for people just starting out are well known. However, people who have worked in the private sector and have accomplished great things in that world should also consider joining state government. For instance, this is the first participation in government service for the CFO and her Chief of Staff, Jim Cassady. They are a great example of people who have accomplished a great deal in the private sector before coming to state government. They are not only able to apply

Cont. at Top of Next Page

those skills in making government better, but it is clear they are truly enjoying public service as well.

6. HOW DO YOU GET AWAY FROM ALL THIS?

I am fortunate in that I have pastimes that I have enjoyed my whole life, such as fishing. Fishing allows me to have a relaxing pastime, and to enjoy beautiful places, such as Alaska, Montana, and the Florida panhandle coastline.

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.

CFO Alex Sink Announces the Daniel Y. Sumner Fellowship in Law and Public Policy

By: Karen Asher-Cohen

On August 13, 2009, CFO Alex Sink announced the Daniel Y. Sumner Fellowship in Law and Public Policy at a luncheon honoring Dan Sumner. Dan, a 1975 graduate of the University of Florida College of Law, currently serves as the Deputy Chief of Staff for the CFO and the Department of Financial Services. The fellowship will be awarded to a recent graduate from the University of Florida Levin College of Law to participate in CFO Sink's legal and public policy work. The first Daniel Y. Sumner Fellow is Lindsay Roshkind of West Palm Beach. Roshkind graduated Summa Cum Laude from The George Washington University and Magna Cum Laude from the University of Florida Levin College of Law in 2008. She also received her LLM in Taxation from the University of Florida in 2009. Roshkind was admitted to the Florida Bar in 2008 and recently took the Georgia Bar.

FHCF Report Describes Impact of 2009 Legislative Changes

By: David Yon

The Florida Hurricane Catastrophe Fund (FHCF) issued a report at the end of July describing the impact of the 2009 legislative changes on the FHCF capacity and the coverage selections made by insurers. The report identified the following changes to be implemented for this year from HB 1495.

- ✓ Phase out of the Temporary Increase in Coverage Limit (TICL) over a six year period. This top layer of the FHCF was reduced by $2 billion (from $12 to $10 billion) for the 2009-2010 year.
- ✓ An increase in the cost of TICL coverage intended to bring the cost of this coverage in line with the private reinsurance market. For 2009-2010 this cost was increased by a factor of 2.
- ✓ The FHCF was directed to implement a cash build up factor in its premium charge. For 2009-2010 this factor was to be 5% of premium.

The report stated that the 2009 legislative changes have resulted in companies selecting less FHCF coverage. In fact, the FHCF estimates approximately $6.4 billion of capacity has moved from the FHCF to the private market (primarily the reductions in TICL layer coverage offered and selected). Approximately $5.5 of the remaining $10 billion available in the TICL layer was purchased by insurers with the largest purchaser of TICL coverage being Citizens (over 60%). The report also included a list of the largest private insurers to purchase coverage in the TICL layer.

For the 2009-2010 year, the FCHF report states that the FHCF maximum potential capacity based on the coverage selected by insurers is $23.173 billion. If insurers had selected the maximum available this amount would have been $28.275 billion. The reduced coverage amounts have helped reduce the estimated overall FHCF claims paying capacity shortfall to $7,173 billion, down from an estimated shortfall on January 1, of $18.5 billion. The reduction in the shortfall was identified as coming from a reduction in statutorily available coverage ($2 billion), reduced coverage selected ($4.4 billion), increased bonding capacity ($5 billion) and increased premium sources ($.5 billion).

If you would like a copy of the report please visit the Resources section of our website or contact David Yon or any of our insurance professionals.

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.

Claim Settlement Via Appraisal May Result in an Award of Attorney Fees to the Insured

By: Harry Thomas

With the five year statute of limitations about to run on claims from Hurricane Ivan and only a year left on the limitations period for Hurricane Dennis claims, the RTYC litigation team has recently been asked to defend belatedly filed wind damage claims allegedly arising from those storms. In our experience the claims are generated by public adjusters who are mining Florida Gulf Coast counties for potential claimants and the claims are relatively low dollar value claims. Due to the passage of time, the ability to determine when the damage actually occurred and the extent of the damage at the time of loss is severely compromised.

Due to the relatively low dollar value of the claims, one approach to resolving the claim is to demand an appraisal under the appraisal clause of the policy. In evaluating whether to demand an appraisal a major factor that should be considered is whether a suit to recover on the claim has already been filed by the claimant. If suit was filed before appraisal was demanded and the appraisal results in an award to the insured the insured is entitled to recover attorney fees under Fla. Stat. § 627.428.

Fla. Stat. § 627.428 provides that "[u]pon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any named or omnibus insured" the court shall adjudge against the insurer a reasonable sum as fees for the insured's attorney. In a recent decision by the Second District Court of Appeal, *Goff v. State Farm Florida Insurance Company*, 999 So. 2d 684 (Fla. 2nd DCA 2008)(rehearing denied 2009) the court held that under section 627.428 that actual rendition of an order or decree is not an absolute prerequisite to an insured's entitlement to attorney fees under the statute. In *Goff,* after a portion of the amount claimed was paid, the insured brought suit for breach of contract. The insurer moved to compel an appraisal under the terms of the policy and the court granted the motion. The appraisal awarded the insured an additional amount on the claim. The insured moved to confirm the appraisal award and the insurer paid the amount. The insured then moved for summary judgment to recover attorney fees under section 627.428. The insurer filed a cross-motion for summary judgment asserting that the lawsuit was unnecessary, it had complied with all policy terms, and the appraisal process, not the lawsuit, resolved the dispute. The trial court granted the insurer's motion for summary judgment ruling that the insurer did not breach the contract.

In reversing, the appellate court relied on cases holding that when an insurer pays policy proceeds after suit has been filed but before judgment has been rendered, the payment of the claim constitutes the functional equivalent of a confession of judgment or verdict in favor of the insured, thereby entitling the insured to attorney fees. The court also adopted the reasoning of the Fifth DCA's 2008 opinion in *Jenkins v. USF&G Specialty Ins. Co.,* 982 So. 2d 15 (Fla. 5th DCA 2008) and its own 2007 opinion in *First Floridian Auto & Home Ins. Co. v. Myrick,* 969 So. 2d 1121 (Fla. 2nd DCA 2007). In *Jenkins* the insurer argued that fees were inappropriate because the dispute was resolved by appraisal rather than litigation. The trial court denied the award of fees but the Fifth DCA reversed holding that payment of the appraisal award acted as a "confession of judgment" entitling the insured to attorney fees. In *Myrick* the court affirmed an attorney fees award where the insurer paid an appraisal award after suit was filed because filing of suit resulted in payment of substantial additional funds. In *Goff* the court relied on *Jenkins* and *Myrick* to conclude that the insureds were entitled to attorney fees because the insured's suit forced the insurer to demand an appraisal and to pay significant additional amounts. Finally, by way of contrast, the court cited the case of *Federated Nat'l Ins. Co. v. Esposito,* 937 So. 2d 199 (Fla. 4th DCA 2000) in which attorney fees were denied to an insured where the insurer had already initiated the appraisal process when the insured filed suit.

Accordingly, when deciding whether to use the appraisal clause of an insurance contract to dispose of belated low dollar value claims an insurer needs to factor in an award of attorney fees if suit is filed before the demand for appraisal is made. If appraisal is to be used, consideration should be given to demanding it very shortly after receipt of an inquiry from the insured, public adjuster or the insured's attorney regarding the potential claim. Waiting until after suit is filed to demand appraisal will result in an award of attorney fees to the insured if the appraisers award an amount on the claim to the insured.

Harry Thomas has over 30 years of experience in complex civil litigation, including class action defense in both state and federal courts. Harry has represented many insurance company clients in class actions and related regulatory administrative litigation.

Florida Supreme Court to Hear Oral Argument on Bad Faith Questions

By: Donna E. Blanton

The Florida Supreme Court has scheduled oral argument in a case that poses crucial questions concerning when a cause of action for bad faith against an insurer can be maintained. Oral argument will be held on October 9, 2009 in *Perera v. United States Fidelity and Guaranty Company*, Supreme Court Case No. SC08-1968.

The questions were certified to the state supreme court from the United States Court of Appeals for the Eleventh Circuit, which found Florida law on the issues presented in the case unclear. *See Perera v. United States Fidelity and Guaranty Company*, 544 F.3d 1271 (11th Cir. 2008). The questions are:

> 1. Can a cause of action for bad faith against an insurer be maintained when there is not an excess judgment against the insured?
>
> 2. Even if an excess judgment is not always required, can a cause of action for bad faith against an insurer be maintained when the insurer's actions never resulted in increased exposure on the part of the insured to liability in excess of the policy limits of [the] insured's policies?

The Eleventh Circuit opinion explained the underlying facts: The case arose from a workplace incident at Estes Express Lines Corporation ("Estes") when an employee was crushed to death by a piece of equipment. The employee's personal representative ("Perera") filed a wrongful death suit against Estes and certain Estes employees. Estes maintained three liability insurance policies: a workers' compensation/employer liability policy issued by USF&G with a limit of $1 million after Estes' self-insured retention of $350,000; a commercial liability policy issued by Cigna Property and Casualty Insurance Company with a limit of $1 million and a $500,000 deductible; and an excess liability policy issued by the Chubb Group of Insurance Companies with a limit of $25 million.

Following mediation, Perera, Estes, Chubb and Cigna reached a settlement agreement of $10 million. The settlement agreement called for half of the $10 million to come from a bad faith lawsuit against USF&G. According to the Eleventh Circuit opinion, USF&G maintained that the intentional acts exclusion in the USF&G policy precluded coverage of Perera's claim against Estes. The court said the other parties asked USF&G to leave the mediation when USF&G insisted on its coverage defense.

Following the settlement, Perera -- as Estes' assignee -- sued USF&G for breach of contract and bad faith. The district court granted summary judgment to Perera on the coverage obligation, which required USF&G to pay its policy limit. A jury also later found that the actions of USF&G rose to the level of bad faith. However, the district court granted summary judgment to USF&G on the bad faith claim, holding that without an excess judgment against the insured, there can be no cause of action for bad faith. Given the amount of coverage Estes maintained, the $10 million judgment agreed to in settlement was far less than the amount necessary to constitute an excess judgment. Perera appealed the district court's decision.

The Eleventh Circuit opinion stated that Florida law is unclear as to whether an excess judgment is a necessary part of claim for bad faith. The Eleventh Circuit also found it unclear whether, under Florida law, a bad faith claim against an insurer can be maintained when the insurer's actions never resulted in increased exposure on the part of the insured to liability in excess of the policy limits of the insured's policies.

Donna Blanton practices in the areas of Florida administrative law and appellate advocacy, with an emphasis on cases involving public procurement, insurance regulation, energy, telecommunications and public utility law, professional licensing and discipline, and affordable housing.

Mitigation - *Continued from Page 1*

and the verification form used by policyholders to request mitigation discounts. The workshop was well-attended, with representatives of engineering firms, contractors, inspectors and others involved in the business of inspecting homes comprising the largest segment of the audience. Participants had relatively few questions about the notice form. Most notably, one industry representative remarked that the form should not imply that both mitigation discounts and deductible reductions are available when insurers typically do not offer both. The inspection form attracted much more attention. Although much of the discussion centered on disagreements among members of the inspection industry about who should be able to sign the forms, the insurance representatives offered a number of suggestions for ways the form can be revised to limit erroneous and fraudulent submissions. Travis Miller attended this workshop and provided comments in this area. Please contact Travis or any of our insurance professionals for additional information about the status of these forms or the mitigation discount review process in Florida.

Patients' Right to Know Trumps Fact Work Product Doctrine as to Reports of Adverse Medical Incidents

By: Tom Crabb

In 2004, voters passed Amendment 7 to the Florida Constitution, which gave patients the right to access "records made or received in the course of business by a health care facility or provider relating to any adverse medical incident." In two recent cases, Florida courts held that Amendment 7 trumps the common law fact work product doctrine when it comes to reports of adverse medical incidents. The work product doctrine protects certain materials prepared in connection with litigation from discovery by the other side in a lawsuit. Work product falls into two categories: "fact" work product, which is factual information gathered or prepared in connection with a case; and "opinion" work product, which is an attorney's mental impressions, conclusions, opinions, or theories concerning his or her client's case. Fact work product may be subject to discovery following a showing of need, while opinion work product is essentially absolutely privileged and thus not subject to discovery. Patients in two recent cases sought production of a health care provider's reports of adverse medical incidents, even though those reports were fact work product. In other words, does Amendment 7 trump the fact work product doctrine? The Second and Fifth District Courts of Appeal have now held that it does.

In *Florida Eye Clinic v. Gmach*, the plaintiff patient sought production of incident reports concerning complaints of infections and related investigations at the clinic, including investigations into possible infections and related quality improvement reports. The defendant clinic argued that Amendment 7 (now codified at Article X, Section 25 of the Florida Constitution) was not intended to eliminate common law privileges such as the work product privilege. The Court disagreed, holding that "the plain language of amendment 7 evinces an intent to abrogate any fact work product privilege that may have existed prior to the passage of amendment 7." "Adverse medical incident" as defined in Amendment 7 includes "incidents that are reported to or reviewed by any . . . risk management . . . committee, or any representative of such committee." The Court thus concluded that the incident reports were records relating to an "adverse medical incident" and that because Amendment 7 abrogated any fact work product privilege that may otherwise have attached to these records, they were discoverable by the patient. The Court took care to distinguish opinion work product, noting that the incident reports sought by the patient did not contain any attorney's mental impressions, conclusions, or theories about the case and that defense counsel had not even yet been consulted about the case. The Court said that it is "hard to imagine that the voters contemplated the potential chilling effect that may result in the legal community if an attorney's mental impressions contained in such a report could be made readily available to a requesting patient under the amendment." Therefore in the Fifth District following *Florida Eye Clinic*, opinion work product remains protected but fact work product contained in such incident reports, even if prepared for potential litigation, is discoverable. *Florida Eye Clinic v. Gmach*, 34 Fla. Law Weekly D1080a, Case No. 5D09-64 (Fla. 5th DCA 2009).

Lakeland Regional Medical Center v. Neely presented essentially the same situation. The plaintiff patient sought discovery of reports of adverse medical incidents pursuant to Amendment 7 and the defendant hospital claimed those reports were protected by the work product doctrine because they were prepared in anticipation of litigation. The Court concluded there was "no basis to except work product materials from the reach of Amendment 7." The hospital argued that just because the reports were prepared in anticipation of litigation by health care professionals and not lawyers, the electorate did not necessarily intend for these reports to be made available to patients. The Court concluded that Amendment 7 was intended to abrogate the existing common law work product doctrine and that the work product doctrine did not provide a substantive, vested right on which health care providers could rely. The reports of adverse medical incidents were therefore subject to discovery, notwithstanding that prior to Amendment 7 they would have been protected under the work product doctrine. Just as the Fifth District did in *Florida Eye Clinic*, the Second District noted that these reports did not contain opinion work product or privileged attorney-client communications, which therefore remain protected. *Lakeland Regional Medical Center v. Neely*, 34 Fla. Law Weekly D931a, Case No. 2D08-4102 (Fla. 2d DCA 2009). The Second District then went the extra step of certifying the question to the Florida Supreme Court as to whether Amendment 7 preempted the common law work product doctrine as it applies to existing reports of adverse medical incidents. The Supreme Court, however, concluded that it lacked jurisdiction to decide the question. We will continue to monitor this important issue.

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.

Fees for the Public Model

By: David Yon

OIR held a public hearing on August 20 to consider a request by Florida International University (FIU) to increase the fees for running data though the public model. The current fees are set forth in rule 69O-170.0144 and that rule would be amended if the fee increase is approved.

Dr. Shahid S. Hamid, the project director, stated the fee increase was necessary to end the subsidy that FIU was contributing to the cost of running the model. The record will be held open until August 31. OIR anticipates it may hold a second hearing on this rule.

The current fee formula is $2,400 base charge, plus an additional charge per policy – 3 cents per policy up to 200,000; 1.5 cents per policy for over 200,000 and up to 400,000; and 0.5 cent per policy for everything over 400,000.

The proposed new formula is $3,600 base fee plus 4 cents per policy up to 200,000 and 1 cent per policy for everything over 200,000 policies. Below are some examples of costs under both the old and new structure.

Number of policies	Old Fee	New Fee
10,000	$2700	$4000
50,000	$3900	$5600
100,000	$5400	$7600
300,000	$9900	$12,060

For more information contact David Yon or any of our insurance professionals.

Consumer Advocate Seeks Assurance

By: David Yon

Consumer Advocate, Sean Shaw, has delivered a letter to Insurance Commissioner Kevin McCarty seeking assurances that the Commissioner is reviewing "the nature and extent of the use of Ingenix databases by health insurance companies in Florida." Shaw began his letter by describing investigations by New York Attorney General Andrew Cuomo and a number of recent settlements and court findings that suggested or found that Ingenix system was leading to consumers paying more for out-of-network costs for providers than they should have. The database was allegedly not correctly identifying the "usual, customary and reasonable" rates for such payments. Shaw concluded his letter by stating that "If an investigation reveals that Ingenix has been used by insurers in Florida, I encourage you to not only recommend solutions for halting this practice but also to work toward securing restitution for Florida consumers who were underpaid by their health insurers."

OIR Addresses Issue of Genetic Information

By: David Yon

The Office of Insurance Regulation is proposing a rule, 69O-156.020, F.A.C., which will, if adopted, prohibit an issuer of Medicare supplement policies or certificates from using genetic information to deny or condition the issuance or effectiveness of a policy or certificate on the basis of genetic information. The notice states that the proposed rule adopts the September 24 version of the NAIC model regulations on the same topic which implement the Genetic Information Nondiscrimination Act of 2008. OIR conducted a hearing on the proposed rule on August 25. For a copy of the rule visit the Resources section on our website or contact any of our insurance professionals.

Citizens Withdraws Rate Filing

By: David Yon

During the 2009 legislative session, Citizens Property Insurance Corporation was authorized to submit a rate filing seeking a rate increase of up to 10%. Citizens did in fact submit a filing on July 17, 2009 after considerable debate about whether to recommend decreases for policyholders with negative indications. The filing sought both increases and decreases. OIR's transparency sheet states the overall increase sought by Citizens was 3.7%. A public hearing was scheduled by OIR on August 25, 2009. Shortly before the hearing, Citizens withdrew the filing due to "technical reasons" according to OIR's release on the subject. On August 5th, OIR sent Citizens a letter containing 27 items seeking clarification or questioning various parts of the filing. Additional information was provided in response to this letter, but it appears there was enough unresolved items still pending for Citizens to decide to withdraw the filing.

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

Donna Blanton
dblanton@radeylaw.com
850-425-6654

Harry Thomas
hthomas@radeylaw.com
850-425-6654

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

Toni Egan
tegan@radeylaw.com
850-425-6654

* not an attorney

RADEY | THOMAS | YON | CLARK
Attorneys & Counselors at Law

Success for Clients is Our 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.

OUR INSURANCE TEAM

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

Lobbyists Question Constitutionality of Florida Statutes Prohibiting Gifts and Requiring Disclosures

By: Toni Egan

The Florida Association of Professional Lobbyists, two lobbying firms, and two individual lobbyists (collectively referred to as "the Lobbyists") recently filed a petition with the United States Supreme Court, asking the Court to rule on the constitutionality of sections 11.045 and 112.3215, Florida Statutes. The statutes regulate legislative and executive lobbying by (1) prohibiting all gifts for the purpose of lobbying; and (2) requiring the disclosure of the identities of individuals who pay for grassroots lobbying (i.e. drafting opinion articles, issuing advertisements, and letter writing campaigns). The Lobbyists argue that the statutes violate the First and Fourteenth Amendments of the United States Constitution because they are vague and overly broad: the law is "so strict that it prohibits a lobbyist even from buying a legislator a cup of coffee." The petition appeals the Eleventh Circuit Court of Appeals ruling upholding the validity of the statutes.

Associate Toni Egan practices primarily in the areas of employment and insurance law and litigation. Her recent experience includes advising clients on issues related to the Fair Labor Standards Act and Family Medical Leave Act.