



FLORIDA INSURANCE REPORT

RADEY THOMAS YON & CLARK

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Keeping You Informed About Florida

RTYC Ranks for Second Time as “Best Companies to Work for in Florida”

By: Travis Miller

Radey Thomas Yon & Clark, P.A. is pleased to announce that Florida Trend magazine has again ranked it among the Top 100 Best Companies to Work for in Florida. Florida Trend annually ranks the “Best Companies to Work for in Florida,” and its August issue lists the 2012 winners. The firm is one of only four Tallahassee companies to appear on this year’s list. The firm also was named to the “Best Companies” list in 2011.

The annual “Best Companies to Work for in Florida” review considers Florida-based employers in all categories, including for-profit, not-for-profit and governmental entities. Participating companies are evaluated based on their responses to a comprehensive questionnaire regard-

ing company benefits and policies in categories such as career development, training and retention. Employees then are asked to complete detailed surveys covering a variety of topics related to their employers and their job satisfaction.



Top 100 Best Companies to Work For in FL

2 Years Running!

“We are pleased to again be named to Florida Trend’s Best Companies list,” said firm president Travis Miller. “We first participated in the program in 2011 to learn more about best practices and trends in the workplace. After being named to the list last year, we challenged ourselves this year to identify additional ways of enhancing our work environment and our employees’ well-being.”

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October 1, Filing Deadline for PIP Reform

By: David Yon

HB 119, the reform bill for Personal Injury Protection, requires auto insurers to submit filings, by October 1, to Florida OIR reducing their PIP rates by at least 10% or to certify why the reductions cannot be implemented. Many of the reforms created by HB 119 do not go into effect until January 1, 2013, and then only for policies written or renewed after that date. The law appropriated \$200,000 for the OIR to select a contractor to perform an analysis of expected savings. The OIR selected Pinnacle Actuarial Resources, Inc. to perform the study and the firm released its report in August. Pinnacle’s analysis suggested the law could reduce PIP premiums by an estimated statewide average of 14% to 24.6% (See Article on Page 3 for more). These savings (which will take a year to become fully effective) will likely be offset by a smaller increase in Bodily Injury and Uninsured/Underinsured Motorists Coverage costs, likely to be around 3.0% to 4.7%. In addition, the OIR noted that these savings could be offset by other expected premium increases and may simply reduce the rate of premium increases for PIP.



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Radey Thomas Yon & Clark employees cited the firm's strong commitment to employee benefits and collegial work environment as primary factors in their job satisfaction. In addition, the firm has supported a variety of initiatives to foster healthy lifestyles among its employees. Firm employees also participate in many charitable activities throughout

the community through their personal involvement and financial support.

"We have been fortunate enough to receive a number of accolades in the legal field," Miller said. "But the Best Companies recognition is special to us because it reflects the relationships we have within our firm and with our community."

OIR'S CHOICES Program Expanded to Include Auto Insurance

By: David Yon

The OIR has had a compare rate shop in place for homeowners since 2007. It was known as "Shop and Compare." Last month this program was expanded to include auto insurance and the name was changed to "CHOICES".

"I am very pleased to announce the expansion of our popular rate comparison system to include auto insurance rates," stated Florida Insurance Commissioner Kevin McCarty.

"We have leveraged the Office's resources to give consumers even more information, and to make the rates even more transparent. The foundation of a competitive marketplace is that consumers are educated about insurance products and prices for their particular circumstances. The purpose of this shopping comparison tool is to assist consumers in this regard."

The program may be accessed by going to OIR's website and clicking on the Consumer Resources/Rate Comparison Search Tools. There visitors can find comparisons for auto and homeowners, Medicare supplement and small

employer insurance rates.

The CHOICES program allows consumers to select among three standard risks for statutorily required coverages, or for more comprehensive coverages. After selecting the standard risk that best match their circumstances, consumers can select one of 67 Florida counties.

Consumers will then see a pop-up window ranking the rates of leading auto insurance companies in the county they selected.

The OIR advises that the rate quotes are for illustrative purposes only and reflect the most recent rate filings accepted by the Office. The listing of an insurance company in the CHOICES program does not constitute an endorsement by the Office. In addition, the rates do not reflect all possible surcharges or discounts and the Office encourages consumers to contact their agent or the company to obtain an official quote.

OIR Publishes Profit and Contingency Factors

By: Travis Miller

The Florida Office of Insurance Regulation has issued an [administrative order](#) setting forth profit and contingency factors that insurers may use in their rate filings. Property lines of business generally have positive profit and contingency factors, such as homeowners at 4.1% and fire at 3.6%. Liability lines of business generally have negative P&C factors.

Donna Blanton Presents at Pat Dore Administrative Law Conference

By: David Yon

The Pat Dore Administrative Law Conference is generally considered the preeminent conference on Florida Administrative Law. RTYC is pleased to have one of its shareholders, Donna E. Blanton, presenting at the conference on November 8th. Donna will be addressing the topic "Just What is a Chapter 120 Agency?" Chapter 120, of course, is the Florida Administrative Procedures Act. The conference extends over two days, November 7 and 8th.



OIR Releases Final PIP Report

By: Travis Miller

The Florida Office of Insurance Regulation (OIR) has released the [final version of the actuarial report](#) of Pinnacle Actuarial Resources relating to the anticipated savings under 2012's Personal Injury Protection (PIP) reform law. The report estimates the savings associated with HB 119 that passed in this year's legislative session. Most of the provisions of the new law are slated to take effect January 1, 2013.

The report provides that the indicated premium savings range from 14% to 24.6%, arising from loss reductions estimated to range from 16.3% to 28.7%. As with an earlier draft of the report, the Office of Insurance Regulation cautioned readers against misinterpreting the report. First, the savings are based on premium indications and not actual premiums. An insurer's actual savings will depend, in part, on whether it has been filing for and gaining approval of its indicated rates or something less. In some instances, it is possible that the savings will serve to moderate increases that an insurer otherwise would need and not to reduce those premiums. Additionally, the OIR points out that the PIP portion of the overall auto insurance premium is about 20%. Any premium reductions therefore will be a small portion of the overall rate.

The report was due to the Governor and Legislature on September 15, 2012. The OIR was able to release it early, however, to allow companies to take advantage of it

when making their PIP rate filings as required by the new law.

The report met with prompt comment from Chief Executive Officer Jeff Atwater. "Through reforms passed last legislative session, we were able to target the fraud in Florida's auto insurance system that has caused rates to skyrocket for Florida drivers. The independent analysis . . . reflects my firm belief that getting at the root of the fraud in our personal injury protection system will give Florida's consumers the rate relief they deserve," said CFO Atwater. "I am eager to see these projected savings, if not more significant savings, passed on to Florida's insurance consumers. Florida's drivers deserve to see the full impact of these policy changes through lower auto insurance rates."

Insurance Consumer Advocate Robin Westcott added that she is pleased her office was able to contribute to the work performed by Pinnacle. "Pinnacle's use of data supplied by my office and discussions about the methodology employed by Pinnacle resulted in a substantial change in estimated savings for consumers – from a range of 12% to 20% in the draft report to a range of 14% to 24.6% in the final report," said Ms. Westcott. She went on to comment that she expects the true savings to be greater than the estimates, and that prior reforms in the workers' compensation and medical malpractice lines of business resulted in greater loss reductions than suggested by initial studies.

NCCI Submits Annual Filing

By: Travis Miller

The National Council on Compensation Insurance (NCCI) has submitted its annual rate filing for workers' compensation insurance rates in Florida. The proposed rate change is an increase of 6.1% to become effective on January 1, 2013. Even at this level, workers' compensation rates still would show a cumulative decrease of 56% in overall rates since the legislature passed workers' compensation reforms in 2003.

The OIR holds a hearing each year to review the rates and

allow interested parties to comment. The hearing is expected to take place in October.

Before the 2003 legislation, Florida's workers' compensation rates were among in the highest in the country. However, seven years of decreases following the law change have made Florida's rates much more competitive. At this point, the reforms are fully built into the rates, and the current filing reflects the third consecutive year of modest increases.

Residual Market Readies for Busy End to 2012

By: Travis Miller

2013 Rates Under Review

Citizens Property Insurance Corporation has filed its proposed 2013 rates with the Office of Insurance Regulation for its review and approval. Under Citizens unique rate-making statute, it submits recommended rates to the OIR. The OIR is charged with reviewing the recommendations and determining the final rate levels.

Earlier this year Citizens considered distinguishing its new business rates from the rates applicable to renewal business. By law, existing policyholders' rates cannot increase by more than 10% per year, with limited exceptions. Arguably this limit does not apply to new business. Citizens ultimately decided against creating separate rates for new and renewal business, but it did decide to pursue a risk load. The rate increases vary by territory, by form and by Citizens account. However, in many instances, the recommended rate changes are near the 10% cap, or even slightly above it, due to the FHCF's continued implementation of the rapid cash buildup factor. Citizens' rates for sinkhole coverage also are not subject to the cap, and Citizens is proposing to continue phasing in a more actuarially appropriate rate for its sinkhole coverage. Sinkhole losses in Citizens have been substantial, although policymakers continue to hope the changes of SB 408 from 2011 will have a favorable effect.

The Office of Insurance Regulation held a public hearing on Citizens' rates on September 20 in Miami. See page 6 for more detail.

Office of Insurance Regulation Approves Insurers to Remove up to 150,000 Policies in November

Unfavorable conditions in the private market over the last couple of years reduced Citizens depopulation activity to a trickle. However, the trend seems to have reversed itself as the number of policies already assumed in 2012 has picked up and the remainder of the year is expected to see more depopulation activity. Earlier this month, the OIR approved four insurers' proposals to remove a combined 150,000 policies from Citizens in November.

"The leadership and commitment by Florida's domestic companies to expand their business in our state sends a clear signal that we have a reinvigorated homeowners' insurance marketplace," stated Commissioner McCarty. "It gives me great pleasure to announce that the latest take-out figures have the potential to make 2012 the largest take-out year for Citizens since 2008."

Surplus Note Program Remains Under Review

Citizens invited discussion earlier this year about ways it could increase private market interest in assuming its policies. One of the barriers to assuming many of its 1.4 million policies is the suppressed rates Citizens charges in relation to rates prevailing in the private market. Several groups submitted ideas for dealing with this problem, and Citizens further evaluated several of them. This eventually led to a proposal by which Citizens might make available \$350 million of its surplus to the private market in the form of a surplus note program.

Discussions among the Citizens board and staff suggest that the program is viewed as a cost-effective way of transferring risk to the private sector. The "cost" of this program to Citizens would be significantly less than the cost of purchasing reinsurance resulting in a similar magnitude of risk transfer. On the other hand, the Office of Insurance Regulation has approved 150,000 policies for removal in November for insurers that have not proposed to take a surplus note, and additional assumption activity is expected in November.

The Citizens board is expected to resume consideration of the program at a committee meeting and board meeting to take place in mid-October. Citizens also will be hosting a public forum at which interested parties may comment on the proposal.

Another Look at the Notice of Change in Policy Terms

By: Travis Miller

The 2011 Florida Legislature established a new opportunity for insurers to inform policyholders of changes in their policies. Case law in Florida previously suggested that insurers seeking to continue coverage with material changes in terms should nonrenew existing policies and offer replacement policies with the new terms. This process could be confusing for policyholders, who might not understand why their policies were being nonrenewed or how they could accept the renewal offer. The legislature decided the process would be simpler if insurers could simply provide a notice to insureds letting them know of policy changes. This led to the creation of section 627.43141, Florida Statutes, allowing a “Notice of Change in Policy Terms.”

The Notice of Change in Policy Terms has two primary roles in insurers’ regulatory processes. First, insurers can use the notice for the purpose mentioned above; informing insureds how their policies are changing from year-to-year without having to do so through a potentially confusing non-renewal notice. Second, an insurer seeking to certify the compliance of its product forms with Florida law often will be required to submit any notice of change with the certification filing in order for the filing to be considered complete.

For purposes of the statute, a “change in policy terms” means the modification, addition, or deletion of any term, coverage, duty, or condition from the previous policy. Not every revision to the policy constitutes a change—the correction of typographical or scrivener’s errors or the application of mandated legislative changes is not a change in policy terms. However, aside from these limited exceptions, the legislature’s view of what is considered a change is broad and encompasses most substantive changes.

If an insurer should provide notice of a policy change, the timing and format of the notice are important. By statute, the notice must be entitled, “Notice of Change in Policy Terms” and the notice must be enclosed with the notice of renewal premium. This means the notice of change is sent with less advance notice than a nonrenewal notice would be sent for residential insurance policies. Of course, this is because the policyholder has the opportunity to renew coverage rather than face the certain need to seek alternative coverage as is the case with nonrenewal notices. For lines

of business other than the residential lines, the renewal premium notice is sent with about the same lead time as a non-renewal notice.

The statute allows an insurer to demonstrate proof of mailing through a United States Postal Service proof or by using registered mail. However, the statute does not required an insurer to use these methods. An insurer will want to be able to demonstrate that it sends the notices because failure to provide the notice means the affected coverages remain intact until a proper notice is given. Insurers have discretion in how they demonstrate the notices are sent.

Because the notice of change is sent with the renewal premium notice, the law specifies that an insurer’s receipt of the insured’s premium payment for the renewal policy constitutes the insured’s acceptance of the new policy terms. This makes the renewal process easy to administer for both the insurer and insured.

Form Filing by Certification

The Office of Insurance Regulation is allowing property and casualty insurers in all lines of business except workers’ compensation to certify their form filings’ compliance with Florida law as an alternative to seeking prior approval. The OIR’s order creating this opportunity (Order 126368-12) specifies that when an insurer seeking to certify a form that involves a change in terms to which section 627.43141 would apply; the insurer must submit a completed version of the Notice of Change in Policy Terms in the certification filing. Certification filings are submitted 30 days prior to the forms’ anticipated use and typically result in the OIR’s marking them filed for informational purposes (subject to any concerns with the content of the certification or filing).

The Florida Legislature created the Notice of Change in Policy Terms as a more efficient way of allowing insurers to communicate with policyholders than was implied by case law. This has led to a new form and process in the renewal cycle for Florida business. In light of the importance of the form in signifying product changes and in the form certification process, it looks like these notices will play an important continuing role in Florida going forward.

OIR Moving Forward with Penalty Rule Repeal

By: *Travis Miller*

The Office of Insurance Regulation has decided to move forward with repealing the so-called “penalty rule” (69O-142.011 “Insurer Conduct Penalty Guidelines”) despite uniform support among industry representatives for keeping the rule, with appropriate revisions. The existing rule categorizes many types of violations of the insurance code, informing the public and the insurance industry about the relative severity of the various violations. The rule also identifies factors that can either compound or mitigate insurers’ violations. This helps guide insurers’ conduct, informing them how they should (and should not) respond to violations that are discovered. The rule further specifies that insurers will not be penalized when they discover violations and implement corrective measures on their own. This provision affirms the state’s intent that insurers should conduct self-evaluations independently of the regulatory review process.

The OIR contends the rule is out of date because the underlying statutes have changed since it was adopted. However, industry representatives responded that the statutory changes have been to increase monetary fine amounts, which easily can be incorporated into an amended rule rather than throwing out the entire rule. Representatives of both property and casualty insurers and life and health insurers suggested that all parties should work together on a revised rule instead of allowing the current rule to be repealed. My own comments to the Office of Insurance Regulation were consistent with this approach—the rule is beneficial in guiding insurer conduct, and the rule helps ensure that regulatory policies are carried out consistently over time, which is an important consideration to investors evaluating whether to deploy their capital in this state.

Notwithstanding support for retaining the rule, the OIR intends to present its repeal to the Financial Services Commission (Cabinet) on October 23.

Citizens Property Insurance Corporation Rate Hearing

By: *David Yon*

The OIR held a public hearing in Miami at Miami Dade College on September 20, 2012 to discuss Citizens’ proposed rate increases for its business in the Coastal Account and the Personal Lines Account (PLA). The filings list includes:

- 12-13991: overall 11.1% increase to Homeowners (Coastal)
- 12-13992: overall 12.0% increase to Homeowners (PLA)
- 12-14190: overall 11.2% increase to Dwelling Fire Wind Only (Coastal)
- 12-14191: overall 12.2% increase to Dwelling Fire (PLA)
- 12-14394: overall 3.6% increase to Mobile Home (PLA)
- 12-14395: overall 10.7% increase to Mobile Home (Coastal)
- 12-14400: overall 3.7% increase to Mobile Home Physical Damage (PLA)
- 12-14401: overall 10.6% increase to Mobile Home Physical Damage (Coastal)
- 12-14702: overall 11.4% increase to Commercial Lines (Other than Condo Association)
- 12-14703: overall 11% increase to Commercial Lines (Condo Association)
- 12-14707: overall 10% increase to Commercial Lines (Non-Residential)

In addition, the filing includes indicated rate changes for sinkhole coverage that range from a decrease of 35.1% to an increase of 111.9%. The Office raised an number of

questions about the filings including how Citizens used computer models to determine hurricane and reinsurance costs. Citizens relied primarily on the AIR Model and the Public Model generally selecting the higher of the two indications in each territory to comply with the statutory mandate that the Public Model indications form the floor for its rates.

Testimony objecting to the proposed increases was presented by Citizens’ policyholders and Consumer Advocate, Robin Westcott. In addition Senator Mike Fasano and Representatives Frank Artiles and Luis Garcia spoke in opposition to the filing citing excessive expenses, increased revenues from reinspections of homes and numerous other issues. Representative Artiles also used the forum to voice his concerns about some of the Citizens’ depopulation programs that include surplus note loans.

Florida Insurance Commissioner Kevin McCarty said he and his staff were there to listen and would not make a decision right away. A decision is expected around Oct. 1.

When is a Hurricane a Hurricane?

By: Travis Miller

No matter how long we've looked at these issues, new fact patterns continue to come along calling into question what we think we know. This was the case last month when Tropical Storm-turned-Hurricane Isaac went through the Florida Keys on its way to making landfall on the Gulf Coast, causing additional damage in Northwest Florida. Before Isaac had cleared away, the question arose—would the hurricane deductible apply, or would the all other perils deductible apply? The essential facts were:

- Portions of Florida were under a hurricane watch as Isaac approached, even though Isaac remained a tropical storm
- Isaac passed through the Keys as a tropical storm
- Isaac continued to move more westward than originally anticipated, eventually leading to the hurricane watch being dropped for Florida
- After the watch was dropped, but within 72 hours, Isaac became a hurricane

The question arose upon review of section 627.4025, Florida Statutes, and policy provisions that read similarly. The statute says that the duration of a hurricane (1) begins at the time a hurricane watch or hurricane warning is issued for any part of Florida by the National Hurricane Center of the National Weather Service; (2) continues for the time period during which the hurricane conditions exist anywhere in



Florida; and (3) ends 72 hours following the termination of the last hurricane watch or hurricane warning issued for any part of Florida by the National Hurricane Center of the National Weather Service.

Strictly applying these standards to Isaac would mean that the duration of Isaac as a “hurricane” actually began when it was a tropical storm approaching Florida. However, the statute presupposes that the storm actually *must be* a hurricane when it defines a hurricane to mean a storm having that declaration by the National Hurricane Center. The OIR clarified this issue in an informational memorandum (OIR-12-05M). The OIR determined that Isaac was a tropical storm, and the all other perils deductible would apply, all the way until the actual declaration of its hurricane status by the National Hurricane Center at 11:20 a.m. CDT on August 28. After that time, Hurricane Isaac truly was a hurricane and the hurricane deductible would apply. In the end, section 627.4025 sets time limits on what constitutes a hurricane but does not turn a non-hurricane into a hurricane before it is declared to be one.

SBA Updates Status of FHCF

By: Travis Miller

Speaking at the September 18, 2012 meeting of the Florida Cabinet, SBA Executive Director Ash Williams provided an update on the status of the Florida Hurricane Catastrophe Fund. Mr. Williams noted that the FHCF has \$8.5 billion in cash on hand. Nonetheless, the FHCF seeks to move forward with pre-event bond financing because, as pointed out by Mr. Williams, changes in the global markets can affect liquidity at any time. Entering into pre-event financing transactions creates greater predictability for the FHCF.

Mr. Williams also described the decline in TICL coverage over the course of the legislatively-mandated phase out. The maximum TICL coverage available next year will be \$2 billion, but its rate will be six times the actuarially indicated rate. The FHCF therefore does not anticipate many insurers will purchase the coverage.

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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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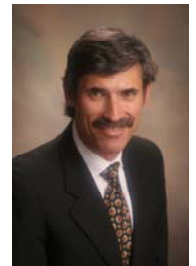
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