



FLORIDA INSURANCE REPORT

RADEY THOMAS YON & CLARK

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www.radeylaw.com

Keeping You Informed About Florida

Happy Holidays from Radey Thomas Yon and Clark

The holiday season presents a time each year for us to reflect on the year gone by and look forward to the year ahead. The Florida insurance market has presented challenges for many insurers, and those challenges have been compounded by broader economic concerns in recent years. We appreciate the opportunity to work with our many clients and friends in the insurance industry to navigate these concerns. As we look forward to 2013, we welcome new opportunities, and we want to thank our clients and friends for your support and friendship over the years. We hope you have an enjoyable holiday season and a prosperous new year.



Weatherford Names Insurance Committee

By: Travis Miller

New House speaker Will Weatherford has announced the membership of the House of Representatives' Insurance & Banking Subcommittee. A familiar name continues to head the insurance-related issues in the House as Representative Bryan Nelson of Apopka has been named the subcommittee chair. Nelson owns an insurance agency. The full membership of the committee is as follows:

Bryan Nelson (R), Chair
Bill Hager (R), Vice Chair
Doug Broxson (R)
Matthew Caldwell (R)
Tom Goodson (R)

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Senate Banking and Insurance Committee Appointed

By: David Yon

Dan Gaetz is President of the Florida Senate and he has appointed Orlando area Senator David Simmons to be chairman of the Senate Banking and Insurance Committee. Simmons, a Republican, is an attorney from Altamonte Springs and replaces Garret Richter, R-Naples. Richter has been designated Senate President Pro Tempore and President's Gaetz's top lieutenant.

Senator Jeff Clemens, D-Palm Beach County, has been appointed as vice chairman of the Banking and Insurance Committee. The other committee members are:

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RTYC Welcomes Brittany Adams Long and Patrick Flemming

RTYC Press Release

Radey Thomas Yon & Clark is pleased to welcome Brittany Adams Long and Patrick Flemming as the firm's newest attorneys. Brittany most recently served as an assistant general counsel for the Department of Management Services where she focused on advising the state and departmental purchasing departments on matters relating to procurement. This included working on bid protests, drafting statutory language, and reviewing and negotiating contracts.

Brittany also has significant experience in appellate law. After spending two years as a law clerk to the Honorable Robert T. Benton at the First District Court of Appeal, she worked for three years in the appellate section of the prosecution services unit of the Florida Department of Health. In that role, Ms. Long served as appellate counsel to that Department in over 50 license disciplinary cases, including responding to petitions for review of emergency suspension orders.

She graduated with high honors from the Florida State University College of Law in 2001, where she was editor-in-chief of the Florida State University Law Review. She received her undergraduate degree from Florida State University in 1998, with a double major in Psychology and Criminology and a certificate in the Juvenile Justice Role Model Program.

"We are pleased that Brittany has joined the firm," said RTYC president Travis Miller. "Many of us have known Brittany and her family for many years, and she's a great addition to our team. Her experience with administrative and appellate issues as a government attorney will complement our strengths in representing regulated industries."

Patrick Flemming joins the firm as an associate attorney after recently passing The Florida Bar. Patrick previously was a law clerk at the firm and was a legislative intern with the Florida House Finance & Tax Committee. While in law school, Patrick was a notes & comments editor and executive editor of the Florida State University Law Review.

"Patrick's academic credentials and prior clerking experience provide an excellent background for him as he begins his career," said firm president Travis Miller.

People on the Move

By: Karen Asher-Cohen

Commissioner McCarty has appointed Jack McDermott as the new Director of Life & Health Product Review at OIR. Jack will replace Suzetta Furlong, who was briefly at OIR and is now at the Department of Management Services. Jack has been at the OIR for 16 years, most recently as the Director of Communications. In his new position, Jack will supervise a staff of approximately 20 professionals who have the responsibility of reviewing all form and rate filings for the life and health insurance area.

Meanwhile, at the NAIC, current CEO Dr. Terri Vaughan will leave the NAIC effective November 30, earlier than her

originally announced departure date. Commissioner McCarty, the current NAIC President, commented: "On behalf of the NAIC Officers and membership, I want to thank Terri for her outstanding service to our organization." Vaughan has served as the CEO of the NAIC since February, 2009, and previously served as the Iowa Insurance Commissioner. The NAIC leadership is currently conducting a national search for the new CEO. Following Vaughan's departure, Andrew Beal will serve as acting CEO. Beal has been at the NAIC for 13 years and currently is the COO and Chief Legal Officer of the NAIC.

OIR Approves New Reduced Cost Mortgage Title Insurance Product

By: *Karen Asher-Cohen*

Commissioner McCarty announced that the Office of Insurance Regulation has approved a new, alternative title insurance product for modifications to existing mortgage loans, at a reduced cost to lenders. The new product will be available at a flat rate of \$125 and is called a Mortgage Priority Guarantee policy. "This product is being offered at a time when innovative solutions from the insurance industry are needed to assist businesses and consumers," commented Florida Commissioner McCarty. "I appreciate the title insurance industry for taking the initiative on this

effort." At present, three companies have been approved to sell this new product: Old Republic National Title Insurance Company, Westcor Land Title Insurance Company, and WFG National Title Insurance Company. Title insurance generally protects lenders or owners against losses incurred due to problems with property records. This new product will be available to lenders who amend an existing mortgage loan agreement to help current homeowners who may not be able to pay their mortgage payments, due to the current economic difficulties.

OIR Offers Resource for Life and Health Product Filings

By: *Travis Miller*

The Florida Office of Insurance Regulation (Office) has unveiled a new resource for allowing interested persons to provide input on life and health insurance form and rate filings. "Hearing the opinions of Florida's consumers about proposed changes to their insurance is considered a top priority of the Office. This feature presents a suitable forum for those opinions to be heard and considered," said Commissioner Kevin McCarty.

The Office of Insurance Regulation encourages consumers to visit its website at www.floir.com. Consumers then can select the "Filing Search" option under several of the tabs across the top of the homepage. This will take users to the i-file search engine where they can review filings. From the Filing Search page, users can click on a

link to submit comments on a filing. Comments submitted through this link will be compiled and reviewed by staff at the Office.

The comment form accessed through the link provides text boxes to enter the selected form or rate filing's log number, the company's name, consumer's e-mail address (required for contact purposes), and any comments the consumer might have. The user will receive a confirming e-mail indicating that the comment has been received.

Florida has a broad public records law. This means comments submitted through the website are subject to public review. Users therefore should not include sensitive information in their submissions.

New Take-Outs Announced

By: *Karen Asher-Cohen*

The Office of Insurance Regulation announced its approval of up to approximately 66,000 policies to be removed in January, 2013, by five Florida domestic insurance companies from Citizens Property Insurance Corporation. These policies would be in addition to the approximately 300,000 that were previously approved for removal in November and December, 2012. Among the companies slated for the January take-outs are: Florida Peninsula Insurance Com-

pany, Southern Oak Insurance Company, Heritage Property and Casualty Insurance Company, and United Property & Casualty Insurance Company. The current Citizens policyholders will be notified of the assumption of their policies and will have 30 days to accept or decline the offer. If a policyholder does not respond, the policy is then assumed by the company.

A New Insurer for the Florida Keys?

By: Travis Miller

Residents of the Florida Keys have long believed the deck is stacked against them in Florida's residential property insurance market. The perceived risk of writing in the Keys, and the associated reinsurance costs, dried up the private market long ago. Most of the property insurance policies in the Keys are written with Citizens Property Insurance Corporation. However, residents point out that premiums paid under these policies have greatly exceeded the claims payouts over an extended period.

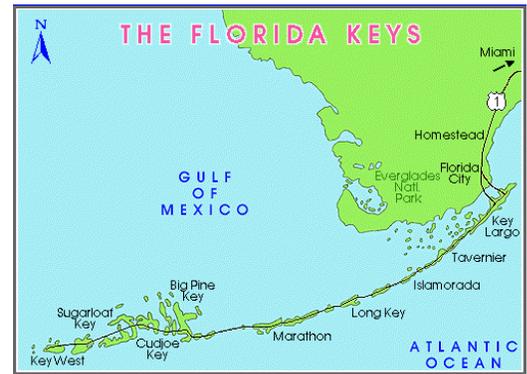
Former Florida Representative Ron Saunders isn't content to just accept the status quo. After being term-limited out of the House and failing in his bid to win a Senate seat, Saunders is now looking at opportunities to change the insurance options available to residents of the Keys. Saunders reportedly has met with representatives of Citizens Property Insurance Corporation and the reinsurance industry about forming a new insurer to write in the Keys. Details of the proposal have not been developed, but the working concept involves a mutual insurance company or similar format where policyholders participating in

the company are its owners.

Saunders contends that

often the Keys "really haven't had windstorm losses because we either have flood damage or we just don't have a lot of damage because it's . . . a linear county."

Saunders believes the chances of restoring private market capacity are dim, prompting him to act. "The argument is always 'Free market, competition drives prices,' but you're assuming there's a free market and there's competition. But if there's no competition, the rates will be higher not lower. That's what we're trying to show Citizens is that if you want to divest there has to be an available market out there to divest to," Saunders said.



OIR Approves Workers' Compensation Rate Increase

By: David Yon

The Office of Insurance Regulation (OIR) has approved a rate increase of 6.1% for workers' compensation rates effective January 1, 2013. The news release by OIR stated that the decision was based on evidence submitted by the National Council on Compensation Insurance (NCCI) in its rate filing.

"NCCI has provided sufficient evidence to support a rate increase based on a variety of cost factors experienced in the marketplace," said Commissioner McCarty. "Even with this rate increase, Florida's rates are still 56 percent below the rates prior to the 2003 reforms, and are competitive with other states nationally. However, I look forward to working with Florida's policymakers during the upcoming legislative session to address cost-drivers in the system."

Following the reforms of 2003, Florida experienced seven consecutive years of rate declines, although a chart prepared by the Office, illustrates that this trend has changed in recent years. A copy of the chart can be found in the Resources area on our website at www.radeylaw.com.

Administrative Law Judge Invalidates OIR Wind Mitigation Discount Forms; OIR Appeals

By: Tom Crabb

In the case of *Secure Enterprises, LLC v. Office of Insurance Regulation*, Case No. 12-1944RX (DOAH Final Order Oct. 19, 2012), OIR's wind mitigation discount forms have been invalidated for failing to provide proper discounts for homes with wind-resistant garage doors. Administrative Law Judge Robert Meale invalidated OIR form OIR-B1-1699 ("Windstorm Mitigation Discounts; Single Family Residences (10/06)") as applied to existing pre-2001 construction (page one of form 1699) and form OIR-B1-1655 ("Notice of Premium Discounts for Hurricane Loss Mitigation (02/10)") in its entirety, as well as the administrative rule that adopts form 1655. The ALJ concluded that OIR's omission of discounts for increases in wind resistivity of doors and windows, and omission of discounts for increases in impact resistivity of doors, modifies and contravenes the law implemented by the forms and is arbitrary.

The forms and related rules were challenged by a company that manufactures a residential garage door bracing system. The system is the sole product having Florida Building Code approval for strengthening garage doors in the Hurricane Retrofit Guide published by the Division of

Emergency Management. The challenger claimed that form 1699 unlawfully failed to provide a discount for Florida Building Code-compliant nonglazed garage doors and that form 1655 unlawfully fails to require insurers to give insureds notice of such discounts. ALJ Meale agreed, concluding that form 1699 "unlawfully omits discounts for fixtures and construction techniques that increase the wind resistivity of doors, but also that Form 1699 unlawfully omits discounts for fixtures and construction techniques that increase the wind resistivity of windows and impact resistivity of doors." Because of how discounts combine and work in relation to one another, the "entire matrix" was invalidated.

On November 19, 2012, the OIR filed a notice of appeal of the ALJ's decision invalidating the forms with the First District Court of Appeal (Case No. 1D12-5521). It is expected that the OIR will begin the process of modifying the forms notwithstanding the appeal. Insurers including Citizens Property Insurance Corporation are not abandoning the forms or taking other action pending the decision by the First District. We will continue to monitor the appeal and any actions by the OIR to modify the forms.

FIGA Assessment Payable by December 31

By: Travis Miller

At the recommendation of the Florida Insurance Guaranty Association (FIGA), the Office of Insurance Regulation has issued an order levying an assessment of 0.9% of net direct written premiums for FIGA's "All Other" account. This account encompasses most lines of property and casualty insurance other than auto and workers' compensation. For example, it includes fire, allied lines, homeowners, farm owners, commercial property, medical malpractice and liability lines.

The assessment is payable by member insurers by December 31, 2012. Insurers are able to recoup the amount of their assessment payments by making recoupment filings with the Office of Insurance Regulation.

House Insurance...continued from Page 1

Clay Ingram (R) George Moraitis, Jr (R)
David Santiago (R) John Tobia (R)
Larry Lee, Jr. (D) Kevin Rader (D)
Dwayne Taylor (D)

Meanwhile, Mike Fasano was a frequent critic of the insurance industry while in the Senate. Prevented from running for re-election to the Senate by term limits, Fasano won a seat in the Florida House this fall. He wasted no time making his feelings known, saying that naming Nelson the subcommittee chair is like having the “wolf guard the henhouse.” He believes Nelson “carries the water for the insurance industry” and is one of the “worst things to happen to the consumer.” Fasano is particularly agitated that no one representing the Pasco/Hernando area was named

Senate Insurance...continued from Page 1

Lizbeth Benacquisto (R)
Nancy Detert (R)
Miguel Diaz de la Portilla (R)
Alan Hays (R)
Tom Lee (R)
Gwen Margolia (D)
William Montford (D)
Garrett Richter (R)
Jeremy Ring (D)

Both Committees are meeting next week in preparation for the 2013 Legislative Session.

OIR Proposes Revisions to PIP Forms to Meet Requirements of HB 119

By: Bert Combs

OIR intends to revise two forms that insurers use in connection with Personal Injury Protection (PIP) benefits. Formal rulemaking proceedings will be conducted by OIR as required with the opportunity for public or insurer comment but no hearings have been scheduled. The proposed changes are intended to make the forms consistent with legislative changes in House Bill 119 that become effective January 1, 2013.

Rule 69O-176.013 requires insurers to notify insureds of PIP benefits using Form OIR-B1-1149 (“Notification of Personal Injury Protection Benefits”) within 21 days after receiving from the insured notice of an automobile accident or claim involving personal injury. This notice form is being revised to add a fraud advisory notice and to more specifically describe the new benefits and limitation in PIP policies effective January 1, 2013. The form edition date will be updated from August 30, 2006 to January 1, 2013. The revised rule will simply reflect the new edition date, and the final version of the form will be available on OIR’s website upon completion of the rulemaking process.

Rule 69O-170.0155 is the rule that formally adopts Form OIR-B1-1809 (“Health Care Provider Certification of Eligibility for PIP Benefits”). This form is used by health care providers and is given to insurers to certify that the medical benefits meet statutory PIP requirements. This form edition will be updated from January 2008 to January 2013. The changes to the form simply update statutory references and make other editorial changes relating to the way practitioners are referenced on the form. The revised rule will be changed to reflect the new edition date, and the final version of this form should also be available on the OIR’s website upon completion of the rulemaking process.

Black line versions of the proposed forms and rules are available in the Resources section of our website at www.radeylaw.com. Final versions of the forms and rules will also be available upon completion of the rulemaking process.

Florida Considers Affordable Care Act

By: *Travis Miller*

The State of Florida has not moved forward with efforts to create a health insurance exchange under the Affordable Care Act. However, with President Obama winning another term and the Affordable Care Act being here to stay, Florida is now considering a range of health care issues. Governor Rick Scott recently requested the opportunity to meet with federal officials about the Act and other healthcare issues. Among these other issues, the state wants approval of its effort to put most Medicaid beneficiaries in managed care plans.

Governor Scott expressed to U.S. Health and Human Services Secretary Kathleen Sebelius that Florida and the federal government "share the same goals when it comes to lowering the costs of health care and addressing the need for better access to quality health care." However, Governor Scott remains skeptical that certain provisions

of the law (namely the health insurance exchanges) will be effective in achieving these goals. The Governor also pointed out that Florida's Medicaid managed care proposals have not been approved by CMS. "Statewide Medicaid managed care is one way we can act immediately to encourage more competition in health care which would drive down costs and increase outcomes and services," said the Governor.

Meanwhile, incoming Senate President Don Gaetz and House Speaker Will Weatherford have indicated in recent days that Florida will not meet a deadline for indicating whether Florida will operate a health insurance exchange. Even though the federal government has extended the deadline for states to make their intentions known, Florida's legislature will not meet until spring 2013.

House and Senate to Have Obamacare Committees

By: *Travis Miller*

Both the House of Representatives and Florida Senate have announced they will have select committees focused entirely on implementation of the Federal Patient Protection & Affordable Care Act. Senate President Don Gaetz announced his intention to create this committee in the Senate, and House Speaker Will Weatherford soon agreed he will use this approach in his chamber. The

House's select committee will be chaired by Rep. Richard Corcoran (R), who is in line to become House Speaker in 2016. The Vice Chair is Matt Hudson (R).

Senator Joe Negron (R) has been appointed to chair the Senate Select Committee on Patient Protection & Affordable Health Care. The Vice Chair is Eleanor Sobel (D).

OIR Releases Draft of Holding Company Model Act

By: *Karen Asher-Cohen*

The Office of Insurance Regulation has released a legislative package, which would implement the NAIC insurance holding company model act, and includes an exemption from the public records law for a company's Enterprise Risk Report. This bill is important to OIR because it would bring the Florida Insurance Code into compliance with the NAIC Model Holding Company Act, and adoption of the updated Model Holding Company Act is a prerequisite for NAIC accreditation. Florida is once again scheduled for its NAIC Accreditation Review in 2013. Copies of the draft legislation can be found in the Resources section of our website at www.radeylaw.com.

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.



Happy Holidays from our Insurance Team



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