



FLORIDA INSURANCE REPORT

*Keeping You Informed About Florida
Volume XI, Issue IV*

New Decade, New Look

By: Travis Miller

In this edition of the Florida Insurance Report, our clients and friends will see that we've updated the look of the newsletter and have embraced "Radey" as the brand name of the firm. The updated look and brand name coincide with the 10th anniversary of the firm, which we celebrate this year. It's hard to believe that ten years have passed since the founders of this firm joined together to open an office in a temporary location in downtown Tallahassee. Since then, we've achieved many milestones and have enjoyed the opportunity to continue working together in an environment that reflects our commitment to high quality legal work, involvement in our community, and well-balanced lives outside of the office. We remain deeply appreciative to all of you who have supported us through our first ten years.

We've had a good time this year reflecting on the firm's first ten years. The enjoyment we've had over this decade can be attributed to the stability of the firm and the camaraderie among our owners and employees. Of the ten original owners of the firm, eight remain with us today —John Radey retired from the practice of law about three years ago and Elizabeth McArthur accepted a position as an Administrative Law Judge. David Yon, Karen Asher-Cohen, Bert Combs, and I still lead the insurance regulatory and transactional team at the firm, just as we have since 2003. In fact, I think David and I hold the record among the firm's attorneys for working together for the longest time — it's hard to believe, but we're approaching twenty years working together.

Harry Thomas, Donna Blanton, Chris Lunny and Jeff Frehn have been at our side, ready to lend their hands in civil and administrative litigation when the need arises. Of course, we've added some new faces along the way as well. Tom Crabb started with us as a part-time law clerk, eventually becoming an associate attorney and this year becoming a shareholder in the firm. Angela Miles worked here as a law clerk for two summers and subsequently clerked at the First District Court of Appeal before she returned to us as an associate attorney. Patrick Flemming also joined us as an associate attorney last year after previously clerking here and interning in the Florida Legislature. Brittany Adams Long joined the firm last year after serving as Assistant General Counsel for the Department of Management Services where she focused on advising the state purchasing department. Brittany has also served as the Assistant General Counsel at the Florida Department of Health.

We're also pleased to have Nick Iarossi and Ron LaFace, Jr. as part of the firm in an "of counsel" capacity. Nick and Ron are principals in Capital City Consulting, a premier lobbying and governmental relations firm they continue to own with well-known insurance lobbyist Gerald Wester. We've known Nick and Ron since before this firm was founded and have remained friends with them over the years. We were

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pleased when they decided about two years ago to affiliate with us for legal services, and their experience in governmental consulting and political affairs is a strong complement to the firm's regulatory and administrative practices.

We've done a lot more than looking back in this anniversary year. We've taken the opportunity to look ahead as we approach our next decade as a firm. The trend in law firm names is toward shorter, simpler law firm names. Over the years, many people have come to call us "Radey" or the "Radey firm," so adopting this as our brand name comes easy for us (to the extent anything comes easy when discussing

it with ten lawyers!). The Radey identity also allows us to maintain the firm we've built thus far while establishing a foundation for the future. Law firm names inherently tend to emphasize a subset of the firm's lawyers, while we attribute our successful first decade to the combined efforts of all of the firm's shareholders over these years. Perhaps more importantly, we expect that the future success of the firm will depend not only on the firm's current owners but also those who join us in the future.

As we begin our second decade as a firm, we thank you for the many friendships we have developed over the years and for the opportunity to serve you.

Radey Shareholders Recognized in Florida Trend Legal Elite

RTYC Press Release

The tenth edition of *Florida Trend Legal Elite* has been issued and we are proud to announce that Karen Asher-Cohen and Christopher Lunny have been recognized by their peers this year. Lawyers were asked to name those fellow attorneys who they hold in the highest regard or would recommend to others.



Karen is a member of the firm's Insurance Team, having served many years at the Office of Insurance Regulation, ultimately reaching the position of Deputy Commissioner. Karen has over twenty-five years' experience primarily in the areas of litigation, insurance, and regulatory law. Karen provides advice to clients concerning compliance with state and federal insurance laws and rules, product development, rate filings, formation and acquisition of companies, and reinsurance transactions.



Chris heads up the firm's labor and employment practice and also practices corporate law and litigation. Chris represents management and has extensive experience assisting clients in the resolution of issues that arise in all phases of the employment relationship. In litigation, Chris represents public and private employers in all forms of employment-related litigation, including breach of non-competition agreements, trade secret concerns, Fair Labor Standards Act litigation, and the defense of race, age, disability, pregnancy, gender discrimination/sexual harassment and whistleblower claims. Chris has been nominated to *Florida Trend's Legal Elite* for the past seven consecutive years.

Congratulations to Karen and Chris.



OIR to Hold Workshop on Title Insurance Reporting Rule

By: Travis Miller

The Office of Insurance Regulation will be holding a rule development workshop on July 10 to discuss a potential statistical reporting rule applicable to title insurance underwriters. A rule development workshop is the first step in the administrative rulemaking process. The OIR is holding the workshop to allow interested parties to provide initial feedback, which the OIR can incorporate into its rulemaking process before formally proposing the rule.

The draft rule is numbered 690-186.014. The rule will require title insurance underwriters to submit a statistical report each year beginning in 2015 using a form adopted by the OIR. The first report will encompass five years of data through December 31, 2014. The reports will be submitted using the OIR's electronic portal in a manner similar to other data reports currently filed electronically with the OIR.

Chambers USA Continues Top Ranking for Radey

The Radey Law Firm has again been named to the top tier of insurance law firms in Florida in the 2013 edition of Chambers USA. In addition to the firm's top ranking, Chambers USA cited the work of firm shareholders David Yon, Harry Thomas and Travis Miller. David Yon is listed as one of the state's top insurance lawyers for his work in the areas of regulatory compliance, acquisitions, and rate filings. Harry Thomas is identified for his civil litigation and class action defense representations of the insurance industry, and Travis Miller is cited for his work in regulatory affairs.

"We appreciate that our insurance practice has again been recognized as one of the top practices in the state by Chambers USA," said firm president Travis Miller. "Chambers USA researches firms and their attorneys by contacting clients and colleagues, so we are grateful that both our clients and our peers continue to speak highly of our insurance regulatory and litigation services."



David Yon



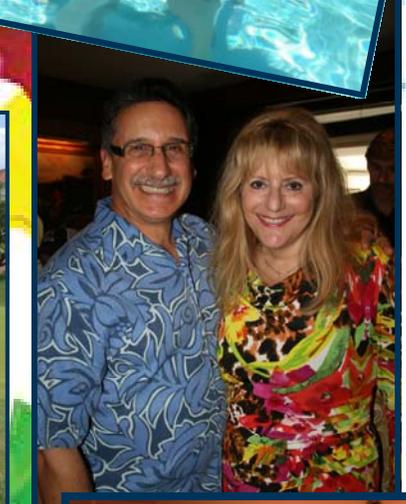
Harry Thomas



Travis Miller

RADEY LAW FIRM 10TH ANNIVERSARY CELEBRATION





OIR Extends Forms Certification for Personal Lines Filings

By: Karen Asher-Cohen

On June 24, 2013, Commissioner McCarty issued Order 137063-13, essentially extending a portion of a 2012 Order that established a Forms Certification Pilot Program for commercial and personal lines property and casualty insurance forms, excluding workers' compensation insurance. The Program was created to address the backlog of commercial and personal lines forms waiting for review and approval by the OIR. The Program allows companies to certify to their forms' compliance with Florida law, with a certification included in the Order, and file the forms on an informational basis, as opposed to the prior approval process required by section 627.410, F.S.

During the 2013 legislative session, the Florida Legislature codified the portion of the 2012 Order that applied to commercial lines property and casualty policy forms, excluding workers' compensation insurance, in SB 468 (Chapter 2013-66), creating a new statute, section 627.4102, "Informational Filing of Forms." The Legislature also gave OIR 10 new analyst positions to help with the form filing backlog.

However, the personal lines portion of the certification program would have expired on June 24, 2013, but for the new Order being issued by OIR. The new Order will expire on December 31, 2013.

The following are the main requirements for certification under the new Order:

- The form filing must be sent at least 30 days prior to the proposed effective date.
- The filing must contain a notarized certification on the insurer's letterhead and must be signed and dated by the insurer's president, chief executive officer, general counsel, or an employee of the insurer responsible for the filing on behalf of the insurer.
- The certification must contain the language required by the order and no other language.
- The certification must include language that every form contained within the filing is in compliance with all applicable Florida laws and rules. By "Florida laws and rules" the Office means all applicable Florida statutes and rules.
- If the changes submitted in the filing would require a Notice of Change in Policy Terms, as required under s. 627.43141(2), Florida Statutes, the insurer must submit a completed Notice of Change in Policy Terms form with the filing.
- A detailed explanatory memorandum must accompany each filing. The memorandum should explain the filing's contents, including a list of forms and endorsements within the filing, a listing of coverage changes being made to the forms and endorsements, and a side-by-side comparison of proposed policy language versus the current policy language to show each policy language change being made.

Also in the 2013 Order, the OIR stated that it will conduct an audit of previously certified form filings to gauge compliance with Florida law: "The Office is undertaking an audit of selected form filings certified under the previous Orders to ascertain if any such forms contain violations of the Florida law. If such violations are discovered, the Office will take appropriate regulatory action to protect consumers."

For a copy of the 2013 Order, please visit our website at www.radeylaw.com.



Appellate Fireworks Surround Independence Day

By: Travis Miller

Four appellate decisions in the Florida courts addressed wide-ranging issues in the days surrounding the July 4th holiday. Please see the Blog page of our website at www.radeylaw.com for more information about the following cases:

Trinidad v. Florida Peninsula Ins. Co. – The Florida Supreme Court ruled on July 3 that an insurer issuing a replacement cost policy under the 2008 version of section 627.7011, F.S., would be obligated to pay an amount attributable to a contractor’s overhead and profit even if the insured elected not to repair the damage.

GEICO General Ins. Co. v. Virtual Imaging Services, Inc. – Also on July 3, the Supreme Court found that under the version of the PIP statute in effect through July 1, 2012, an insurer could not base its reimbursements for medically necessary services on the Medicare fee schedule unless its policy disclosed that it

would do so.

Washington National Ins. Co. v. Ruderman – The Supreme Court’s third July 3 opinion found a home health services insurance contract to be ambiguous, ultimately meaning that an annual percentage increase intended to apply to the maximum daily benefit also would apply to the per-occurrence benefit and the lifetime maximum benefit. The policy specified that the percentage increase would apply to the daily benefit, but an accompanying schedule introduced ambiguity when it was generally described as increasing the policy benefit.

Angellota v. Security National Ins. Co. – The Fifth District Court of Appeal found that a golf cart modified for street use constituted a covered auto under an auto insurer’s policy resulting in a finding of liability.

Insured May Now Rebut Presumption of Prejudice to Insurer

Hope v. Citizens Property Ins. Corp., No. 3D11-3147, 2013 WL 2420496 (Fla. 3d DCA 2013)

By: Karen Asher-Cohen and Kyle Blyth*

Florida insurance providers should be aware of a recent decision by the Third District Court of Appeal, which assessed the validity of a “timely notice of loss” claim. On June 5, 2013, in *Hope v. Citizens Property Ins. Corp.*, the court held that an insured’s failure to comply with an insurer’s timely notice provision under the policy is not alone sufficient to grant summary judgment for the insurer, even though the notice of claim was filed four years late.

In *Hope*, the trial court found that the insured’s filing of a notice of loss claim against the insurer, four years late, was alone sufficient to bar the claim. The trial court never addressed any issue of prejudice toward the insurer and instead stated that the failure to provide timely notice to the insurer was the reason

for summary judgment being granted.

The Third District Court of Appeal reversed, holding that an insurer is no longer awarded summary judgment solely because the notice of loss claim is filed past the date under the policy. The Court found that a presumption of prejudice to the insurer is created by an untimely notice of loss claim, but the insured now has an opportunity to rebut “by a showing that the insurer has not been prejudiced by the lacking of notice.” If the insured cannot overcome the presumption of prejudice to the insurer, then the insurer should be entitled to summary judgment.

* Kyle Blyth is currently a Law Clerk with the Radey Law Firm



Experience.Service.Success.

The Radey Law Firm 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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