

FLORIDA INSURANCE REPORT

Keeping You Informed About Florida
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Happy Holidays From All of Us at Radey

As 2013 draws to a close, we reflect on the year that has passed and look forward to the year ahead. We appreciate the opportunity to work with our many clients and friends in the insurance industry as they pursue new opportunities or navigate challenges in the Florida market. We thank our clients and friends for your support and friendship over the years. We hope you have an enjoyable holiday season and we wish you the best in the new year.

Holiday Season Means Community Involvement

By: David Yon

The Radey Law Firm views the Thanksgiving to Christmas holiday season as a time to get involved in the Tallahassee community. We believe it is important for firms like ours to give back to the community we live in. Since the firm started in 2003, we have adopted a family as our holiday project. The goal is to make a family's holiday season special. Among other things that means firm employees go shopping and bring back their purchases to wrap them up for delivery. This year the firm adopted two families. It will result in a lot of smiles on Christmas morning.

The firm was also a major sponsor of the Tallahassee Turkey Trot, both financially and through the time staff

put into directing and organizing the event. This year runners, who could choose between a 1 mile run, a 5K race, a 10K race or a 15K race, were greeted by very cold temperatures. A record number of runners who had signed up, just rolled over and went back to sleep because of the cold. Still almost 5,000 participants finished one of the races. That is a lot of calories burned, justifying the right to eat more food afterwards. Proceeds from the race benefit a lot of great causes. The largest includes Gulf Winds Track Club, The Refuge House, The Shelter and the Boys and Girls Club. It was a great way to spend Thanksgiving morning.

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Staff Changes Announced at OIR

By: David Yon

Rebecca Matthews has been appointed Chief of Staff for the Office of Insurance Regulation. Ms. Matthews has served as the Interim Chief of Staff since October of 2013. Ms. Matthews began working at the Office in 2008. Her primary areas of oversight have included government affairs initiatives, covering both legislative and cabinet affairs; market research and technology; and serving in an advisory role to the Chief of Staff for agency administration and operations. Before joining the Office, Ms. Matthews served as Legislative Affairs Director for both the Florida Department of Management Services and the Florida Lottery. She also served in lead communications positions, including as Vice President of Communications at the Florida Bankers Association.

Monte Stevens has also been named as Deputy Chief of Staff with a primary focus on government affairs. Mr. Stevens previously led government affairs efforts for the Office during 2007 - 2012. Most recently, Mr. Stevens was the Director of Government Affairs and Public Policy at the Florida Medical Association. Additionally, he served as a Senior Legislative Analyst in the Florida House of Representatives Majority Office and as Deputy Director of Legislative Affairs at the Florida Department of Financial Services and Florida Agency for Health Care Administration.

Citizens Clearinghouse Launching in Late January

By: Travis Miller

Citizens Property Insurance Corporation anticipates launching its clearinghouse on January 27, 2014, instead of January 2nd as originally intended. Speaking before the Senate Banking and Insurance Committee, Citizens president Barry Gilway said that moving the date back "gives us the opportunity to conduct far more user-acceptance testing, and, with a much more degree of confidence when we launch this system, that it will operate as advertised."

The legislature adopted the clearinghouse in the 2013 legislative session. The clearinghouse will seek to match Citizens' applicants and existing policyholders with interested private market insurers according to those insurers' underwriting criteria. Applicants who receive offers of coverage within 15 percent of the Citizens premiums will not be eligible for Citizens policies. For renewal business, policyholders will not be able to remain in Citizens if they receive offers of coverage at or below the Citizens rates. The system is not scheduled to become operational for renewal business until July 1.

Gilway mentioned that due to the three-week delay in implementation, the number of participating insurers is expected to grow from three to seven.

Meanwhile, Citizens' policy count continues to decline due to depopulation activity and improved private market writings. Citizens policy count remains just over 1 million, which is down from its peak of more than 1.4 million. Citizens expects its policy count to drop to about 925,000 by next hurricane season.

FSU Storm Center Report Discusses FHCF Payout Options

By: Travis Miller

The 2013 legislature appropriated funds to the Florida Catastrophic Storm Risk Management Center associated with Florida State University for a report on potential alternative methods for managing the size of the Florida Hurricane Catastrophe Fund. The report identifies four options that may be used individually or perhaps in some combinations to set the amount of coverage provided by the FHCF each year. These approaches are intended to be alternatives to the current process of simply setting the FHCF's capacity by statute.

Current law provides that the FHCF will pay out up to \$17 billion above an industry retention, subject to its ability to actually generate those funds. Although the FHCF can be relatively sure of being able to reach the \$17 billion limit when its liquid fund balance is high, its ability to pay out the full limit is uncertain or even doubtful in years in which it would need to rely predominantly on bonding. The Storm Center report observes that the FHCF needs to be of an appropriate size and structure to act as a stabilizing force in the market and to offset private market reinsurance volatility while not being so large as to jeopardize its ability to pay. The report also suggests that the FHCF should be structured such that it is capable of "recharging" after being depleted in a hurricane season. If it is unable to recharge, insurers will be forced to replace coverage previously purchased from the FHCF with private market reinsurance at higher costs. This will cause rates to increase and can lead to significant nonrenewals if insurers are not able to receive approval of, implement and collect the increased rates quickly enough.

The Storm Center report suggests the following possible ways of setting the FHCF's coverage level:

- Grant responsibility for managing the FHCF's size to

an independent panel of experts-- Under this approach, a separate, politically-independent body would be established to review market conditions and determine the FHCF's capacity. The report draws an analogy to the Florida Public Service Commission, which oversees utilities.

- Grant statutory authority to the trustees of the State Board of Administration to determine the limit-- The FHCF is administratively housed within the SBA. The trustees of the SBA are the Governor, Chief Financial Officer and Attorney General. Because the trustees already are versed in FHCF affairs, the report points out they might be better positioned than the legislature to periodically evaluate and set the FHCF's capacity. In addition, each of the trustees is elected statewide and therefore has an incentive to weigh all of the competing considerations rather than being unduly influenced by representing limited geographic areas.
- Create a formulaic approach-- The report suggests that the FHCF's capacity could be established as an aggregate limit with certain bands within which the limit would be adjusted based on market conditions. For example, the formula might adjust the FHCF's limit up or down based on changes in private market reinsurance costs as determined according to established benchmarks.
- Create a methodology that preserves subsequent season capacity-- This approach would call for a more balanced allocation between initial season and subsequent season capacity than is found in current law.

Office of Insurance Regulation Publishes Profit & Contingency Factors

By: Travis Miller

The Office of Insurance Regulation has issued an order establishing profit and contingency factors that may be used in property and casualty insurance rate filings. The OIR has adopted an administrative rule setting forth the manner in which investment income is used in rate calculations. According to the rule, the Office of Insurance Regulation will establish underwriting profit and contingency factors that may be used by insurers when they are unable to produce credible or appropriate profit and contingency factors from their own data. The profit and contingency factors are as follows:

Allied Lines	3.9%
Boiler & Machinery	1.9%
Burglary & Theft	3.9%
Commercial Auto Liability	0.3%
Commercial Auto Physical Damage	4.9%
Commercial Multiple Peril - Business Owners	1.4%
Credit	3.9%
Earthquake	3.7%
Farmowners	4.2%
Fidelity	2.0%
Financial Guaranty	5.0%
Fire	3.8%
Homeowners	4.1%
Inland Marine	3.8%
Medical Malpractice - Claims Made	-3.8%
Medical Malpractice - Occurrence	-10.6%
Mortgage Guaranty	0.2%
Other Liability - Claims Made	-3.9%
Other Liability - Occurrence	-4.5%
Products Liability - Claims Made	-6.5%
Products Liability - Occurrence	-9.2%
Surety	3.1%

OIR Issues Report to Legislature on Secondary Life Insurance Market

By: Travis Miller

The Florida Legislature directed the Office of Insurance Regulation to “review Florida laws and regulations to determine whether there are adequate protections for purchasers of life insurance policies in the secondary life insurance market to ensure that this market continues to exist for Florida seniors.” The OIR conducted a public hearing, gathered information, surveyed life insurance companies and ultimately issued a report to the legislature in response to its request.

The OIR explained that under Florida law, an insurance interest must exist at the inception of a life insurance policy or else the policy is void ab initio. After the policy is issued, however, it is an asset that may be sold or otherwise transferred. The OIR points out that the initial sale of a life insurance policy in Florida is a viatical settlement, which is regulated by the insurance code. Viaticated policies then may be sold to investors in the secondary market.

The Office of Insurance Regulation expressed concern with Stranger-Owned Life Insurance, or STOLI, which involves initiating life insurance policies for the benefit of third party investors that, at the inception of the policies, do not have insurable interests in the lives of insureds.

The OIR’s report concludes that adequate protections appear to exist for purchasers of life insurance policies in the secondary life insurance market. Although certain parties have proposed legislative initiatives in this area, the OIR believes the proposals are aimed at narrow circumstances that are adequately addressed by the courts. In addition, the OIR opposes some of the changes on the basis they might have the unintended consequence of encouraging STOLI or fraud. The OIR does not recommend any legislative changes at this time, although its report indicates that it might further investigate certain issues identified during its review.

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The FHCF’s total capacity is estimated to be \$24.8 billion, with \$17 billion being available in an initial season. The initial season capacity therefore comprises 68% of the total amount the FHCF believes it could raise. The report suggests that the legislature might gradually step down the percentage of the aggregate capacity that is allocated to an initial season.

The report points out that the above approaches are not mutually exclusive, and the legislature might consider employing a combination of them. For example, the trustees could declare the minimum capacity the FHCF will offer in a given year and turn over to a panel of independent

experts the analysis of whether a larger amount should be made available. In any event, the report discussed that capacity determinations must be made sufficiently in advance to allow insurers to plan the purchase of their reinsurance programs.

Finally, as with recent legislative sessions, the upcoming 2014 session will include discussion of issues such as the proper retention and copayment options of the FHCF. The Storm Center report only addressed the determination of the FHCF’s capacity and did not attempt to address the issues of how and where the capacity is allocated, which the report suggested are public policy considerations.

Florida Supreme Court to Address Workers' Compensation

By: Travis Miller

The Florida Supreme Court will answer a question certified to it by the First District Court of Appeal in *Westphal v. City of St. Petersburg*, which will clear up confusion and bring finality to a lengthy dispute over disability benefits under Florida's workers' compensation laws. The First DCA asked the Supreme Court in September 2013 to consider the following question as one of great public importance:

Is a worker who is totally disabled as a result of a workplace accident, but still improving from a medical standpoint at the time temporary total disability benefits expire, deemed to be at maximum medical improvement by operation of law and therefore eligible to assert a claim for permanent and total disability benefits?

Earlier this month, the Florida Supreme Court indicated it will address the issue. This will bring closure to an issue that has seen a First DCA panel opinion declaring part of Florida's workers' compensation statutes to be unconstitutional, a subsequent en banc decision by the same court withdrawing the earlier opinion, and a series of concurring and dissenting opinions strongly arguing not only the workers' compensation law itself but also judicial procedure and the extent to which the court should be guided by prior opinions.

The case arose when an injured worker reached Florida's 104-week limit for temporary total disability benefits but was determined to have not yet reached maximum medical improvement (MMI). The worker initially was determined to have fallen in a "gap" in the workers' compensation law. His benefits therefore were cut off at 104 weeks pending a future determination whether upon reaching MMI he could return to work or would be declared permanently totally disabled. In the ensuing appeal, the First DCA declared the portion of the workers' compensation

law limiting temporary total disability benefits to 104 weeks to be unconstitutional. The court observed that under the Florida Constitution, citizens must have access to the court system to seek redress for injuries. If access to the courts is limited, such as in a statutory scheme like workers' compensation, the alternative remedy must present an adequate substitute for aggrieved person's abilities to pursue issues in the courts. The First DCA concluded that while Florida's workers' compensation laws provided an adequate alternative remedy for many years, the subsequent legislative restriction on temporary total disability coverage to 104 weeks so greatly eroded workers' rights that the limitation became unconstitutional. The court therefore struck the limitation on a prospective basis.

Following a motion for rehearing en banc, the full First DCA then revisited the issue. The full court withdrew the panel's opinion and therefore retreated from its finding that part of the workers' compensation law was unconstitutional. The court did, however, find that an injured worker who reaches the end of his or her 104-week benefit period for temporary total disability is deemed to be at MMI for purposes of potentially qualifying to permanent total disability.

The *Westphal* case has involved varying interpretations of Florida's workers' compensation law as it relates to benefits for total disabilities. The complexity of the issues can be seen in the widely varying outcomes of court decisions, even at the appellate level. Regardless of the final outcome, the Florida Supreme Court's decision to accept the case and answer the certified question will bring needed clarity to the issues.



Governor Scott Proposes to Roll Back Vehicle Registration Fees Without Eliminating Salary Tax

By: Travis Miller

Governor Rick Scott is proposing to rollback \$400 million in increased motor vehicle registration fees enacted during the Crist administration. The Florida Senate sought a rollback in the 2013 legislative session, but its proposal would have funded the reduction by eliminating the salary tax credit available to insurers. The insurance industry rallied to show that the salary tax credit has worked to create jobs in Florida, and unlike other forms of government incentives, the salary tax credit is inextricably linked to actual job creation. The Florida House of Representatives did not embrace eliminating the salary tax credit, and the proposal therefore failed. However, the demise of the proposal wiped out an entire bill that contained many noncontroversial and beneficial revisions to the insurance code.

Scott can advance the proposed fee cut this year without attacking the salary tax credit because state revenues are expected to grow. The proposed reduction in fees amounts to \$25 per registration.

In a sign of the political season approaching, Republican-turned-Independent-turned Democrat candidate Charlie Crist in essence said “it’s about time” Scott sought to repeal the fees because they were intended to be temporary in the first place. Meanwhile, other Democrats criticized the proposal as a gimmick and said Scott should keep the fees in place and use the funding for schools.

A legislative proposal to cut the auto registration fee is already pending in the Senate, but it proposes only a \$12 reduction in fees instead of the \$25 Governor Scott is seeking. The Senate also has not ruled out revisiting the salary tax credit as a way of funding some of the tax rollbacks it hopes to pass in early 2014.

Electronic Proof of Insurance Rule Advances

By: Travis Miller

The Florida Cabinet has authorized the Department of Highway Safety and Motor Vehicles to move forward with a proposed rule that would allow insurers to provide proof of auto insurance electronically. In the 2013 session, the Florida Legislature authorized motorists to provide proof of insurance electronically rather than by showing the paper card that has been required for many years. The Department of Highway Safety and Motor Vehicles is revising administrative rule 15A-3.006 “Identification Cards” to accommodate the electronic format as an alternative to the paper format. The statute contemplates electronic proof of insurance, but until the rule is revised it only contemplates a paper card of 3 ½ inches by 2 ¼ inches formatted in a specific way. The rule, assuming it is adopted, will apply to new and renewal policies after June 1, 2014. Florida reportedly would be the 30th state to allow electronic proof of insurance.

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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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