Florida Insurance Report

Keeping You Informed About Florida
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Legislative Edition

Session Winds Down, but Political Season Will Continue

By: Travis Miller

The 2014 legislative session is over, but in some respects this only means the political process will shift forums. In the political arena, we tend to get two primary questions– what is going to happen in the legislative session? And what is going to happen in the Governor's race? We now know the answer to the first question (subject, of course, to watching to see whether the Governor vetoes any measures passed by the legislature), which only means that the second question will come into greater focus. The television airwaves already are active with campaign commercials, and with both Governor Scott and former Governor Crist having plenty of resources, we can expect to see this continue through the primary and general election cycles.

Several weeks ago polls showed Charlie Crist leading Governor Scott by up to eight percentage points. Another poll showed Crist and Scott deadlocked. It's always hard to say what any of this means so far in advance of election day, except that the race will be hotly contested and polls probably will reflect several momentum swings along the way as the candidates strive to get out their messages and attempt to sway the relatively few undecided voters.

New Bill of Rights to Take Effect July 1st

By: Travis Miller

The legislature passed SB 708 establishing, among other things, an obligation for personal residential insurers to send a claims bill of rights beginning July 1, 2014. The bill makes a series of changes relating to the insurance claims process, including:

Policy Rescissions– Section 627.409 provides that omissions or incorrect statements in insurance applications may prevent recovery under a policy if material to the acceptance of the risk or the hazard assumed, or if the insurer would not have issued a policy or would have issued a policy with different terms. The legislature has amended this provision to now specify that for residential property insurance policies in effect for more than 90 days, an insurer cannot deny a claim based on credit information available in public records. The legislature also has made a corresponding change at section 627.4133 relating to cancellations and nonrenewals, now providing that once a

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residential policy has been in effect for more than 90 days the insurer cannot cancel or terminate it based on credit information that was available in public records.

Property Insurance Claim Mediators-- The bill gives the Department of Financial Services authority to adopt rules relating to the denial of applications submitted by mediators as well as rules relating to the suspension, revocation and other penalties applicable to mediators.

Conflicts of Interest in Appraisals-- The bill would allow an insurer or policyholder to challenge the impartiality of an umpire in appraisals if the umpire has a familial relationship with a party or representative of a party; the umpire has previously represented a party in the same claim or relating to the same property; the umpire has represented someone in the same or a substantially related matter in a matter adverse to a party; or the umpire has worked as an employer or employer of a party within the preceding five years.

Neutral Evaluators-- The Department of Financial Services gains the authority to deny applications for, or suspend or revoke the certification of, neutral evaluators based on certain criteria relating to lack of fitness, violations of the insurance code, or dishonest practices.

Homeowner's Claims Bill of Rights-- An insurer issuing a personal residential policy must provide the policyholder with a Homeowner's Claim Bill of Rights within 14 days after receiving an initial communication with respect to a claim, unless the claim follows an event that has produced a declared state of emergency. The bill is intended to provide a simple summary of the claims process and does not create a civil cause of action against the insurer. In addition, the bill of rights is specifically declared to not enlarge, modify or contravene existing law. The bill of rights will inform policyholders that they should receive acknowledgment of a reported claim within 14 days and should receive a confirmation of coverage, or denial, within 30 days of submitting a proof of loss. The bill of rights also reiterates the provision of current law requiring insurers to pay the undisputed portion of any losses within 90 days. The bill of rights also informs policyholders of certain obligations under their policies, including their obligation to review the contract for any managed repair or preferred vendor requirements, to document emergency repairs, to require contractors to provide proof of licensing and insurance, and to take precautions to secure their homes.

Legislature Authorizes Return of Premiums by Electronic Transfer

By: Travis Miller

Although SB 1344 deals primarily with administrators, the legislature managed to include a couple of additional topics in the bill. Among these, the legislature made two changes relating to the return of unearned premiums. First, section 626.9541 contains requirements and limitations on the ability of insurers to accept credit cards in insurance transactions. Among these, current law requires that an insurer returning unearned premiums to an insured must do so directly to the insured (instead of through the credit card facility). SB 1344 would clarify that unearned premiums may be returned by mail or by electronic transfer, while continuing to specify that the funds must be remitted to the insured/credit card holder.

Similarly, SB 1344 would amend current law requiring insurers to mail unearned premiums upon cancellation of auto policies to alternatively allow them to remit unearned premiums by electronic transfer.

SB 1672 Makes Minor Adjustments to Citizens

By: Travis Miller

As with prior legislative sessions, the 2014 session began with a variety of competing proposals affecting Citizens Property Insurance Corporation, many of which were intended to continue efforts to significantly reduce the size of the residual market. However, by the end of the session, the more ambitious proposals such as allowing surplus lines insurers to participate in the Citizens clearinghouse gave way to more minor adjustments.

The legislature specified in SB 1672 that effective July 1, 2014, Citizens Property Insurance Corporation must cease offering new commercial residential policies providing multiperil coverage and instead will offer wind-only commercial residential policies. Citizens also may offer commercial residential policies excluding wind. This restriction affects only new business, and Citizens may continue to renew commercial residential policies on buildings that are insured on multiperil policies as of June 30, 2014.

The bill also specifies that protests relating to Citizens procurement matters must be heard by the Division of Administrative Hearings (DOAH). DOAH will have jurisdiction to determine the facts and law relating to a procurement protest and to issue a recommended order. DOAH procedural rules will apply, except that the requirements for a protester to post a bond do not apply in challenges to Citizens procurements. Following an administrative law judge's issuance of a recommended order, the Citizens board of governors must consider the recommendation at a public meeting and take final action on the protest. Any appeal then must be taken to the First District Court of Appeal.

SB 1672 moves to March 1 the current January 15 deadline for Citizens to prepare a report each year on its non-catastrophe loss ratios. Citizens also will be required in May of each year to provide information to the legislature and the Financial Services Commission relating to its estimated bonding capacity and claims-paying capacity for the ensuing 12-month period.

The bill also gives the Department of Financial Services discretionary authority to suspend or revoke the license of an agent or other licensee for directly or indirectly accepting any compensation, inducement or reward from an inspector for the referral of a property owner to the inspector or inspection company when the inspection is intended for use in connection with obtaining property insurance or determining the applicable premium. A corresponding provision will prohibit authorized mitigation inspectors from accepting these types of inducements.

SB 1672 further prohibits a public adjuster or public adjuster apprentice from entering into any contract or accepting a power of attorney that gives the public adjuster or apprentice the effective authority to determine the person or entities that will perform repair work on a property insurance claim.

Current law allows an insurer to independently verify, at its expense, the content of mitigation discount forms before accepting them as valid. SB 1672 then provides that an insurer, at its option, may exempt from its independent verification process forms submitted by an inspector or inspection company having a quality assurance program that has been approved by the insurer. With respect to Citizens Property Insurance Corporation, if a mitigation discount form comes from an inspector or inspection firm having a quality assurance program it has approved, the form is not subject to independent verification and remains valid for the term stated on the form, absent any material changes to the structure.

Finally, the bill specifies that a contractor may not knowingly or willfully pay, waive or rebate all or any part of an insurance deductible applicable to repairs to property covered under a property insurance policy.

The new provisions will become effective July 1, 2014 assuming the bill becomes law.

SB 542 Aims to Encourage Private Flood Insurance Programs

By: Travis Miller

The Florida legislature adopted SB 542 intended to encourage admitted market insurers to write personal residential flood insurance programs. If approved by the Governor, the bill will make changes to Florida's rating law and modeling review process to facilitate private flood products.

Section 627.062, Florida Statutes, lists factors to be considered by the Office of Insurance Regulation when evaluating rates. The bill expands these factors to include projected flood losses, which may be estimated using a model found by the Florida Commission on Hurricane Loss Projection Methodology ("Modeling Commission") to be acceptable or reliable. The bill also provides for the averaging of flood models.

The bill makes corresponding changes to the statute governing the Modeling Commission to expand its authority to include reviewing flood loss projections. New statutory provisions would allow insurers to use not only the results of a model found to be accurate or reliable by the Modeling Commission but also to use a straight average of multiple models. This differs from current procedures relating to hurricane loss projection models. The bill would require the Modeling Commission to adopt models or output ranges by July 1, 2017.

The bill would allow a personal residential insurer to offer standard flood insurance coverage (in a policy or endorsement), preferred flood insurance coverage, or customized or supplemental coverage. Standard coverage will cover flood losses using terms equivalent to those offered under the National Flood Insurance Program. Preferred coverage includes the same coverage as under a standard policy while also providing coverage for (i) losses from water intrusion originating outside of a structure, (ii) additional living expenses, and (iii) personal property at replacement cost. Customized flood coverage must be broader than the coverage under a standard policy, and supplemental coverage is a policy or endorsement designed to supplement an NFIP policy or a standard or preferred policy. Examples of supplemental coverages include jewelry, art, deductibles, and additional living expenses.

An insurer will establish flood coverage rates in accordance with the standards set forth in section 627.062. However, for rates filed with the Office of Insurance Regulation before October 1, 2019, the insurer may establish its rates using a notification process instead of the standard rate review. The insurer must maintain actuarial data supporting the rates, which the OIR can examine to ensure the rates are not excessive, inadequate or unfairly discriminatory.

The bill also allows a surplus lines agent through July 1, 2017, to export flood coverage without having to make a diligent effort to seek coverage from at least three authorized insurers.

An insurer seeking to offer flood coverage must provide at least 30 days' notice to the OIR and must provide a plan of operation and financial projections relating to the coverage. The bill clarifies that the FHCF will not provide reimbursement for losses caused by the peril of flood even if the losses arise during a covered event otherwise triggering FHCF coverage.

The bill will take effect upon becoming law.

Tax Cut Package Includes Break for Hurricane Supplies

By: Travis Miller

A $105 million tax cut package passed by the legislature on the last day of session includes a break from sales taxes for consumers purchasing hurricane preparedness supplies as the 2014 hurricane season approaches. Consumers buying hurricane supplies between May 31 and June 8 will be able to do so free from sales tax.

The tax cut package fulfills Governor Scott's goal of achieving a $500 million reduction in fees and taxes this session. The legislature previously passed a $400 million rollback in auto registration fees. The registration fee rollback is notable for insurers because a similar proposal in 2013 was linked to a repeal of the salary tax credit against the insurance premium tax. The insurance industry pointed to the clearly-measurable jobs benefit associated with the salary tax credit, and ultimately the registration fee rollback did not pass last year. This year, the rollback was not linked to the salary tax credit, which remains intact. The registration fee rollback also is interesting in its implications for the Governor's race. Lawmakers increased the fee during the Crist administration as the economic slowdown reduced state revenues, and the fee decrease comes during the Scott era as the Governor and former Governor are expected to square off this fall.

In addition to hurricane preparedness supplies, the legislature passed sales tax holidays for school supplies (August) and energy-saving appliances (September). The sales tax holidays together make up $36.9 million of the $105 million in tax and fee reductions.

A pleased Governor Scott said, "This is an extraordinary year. Let's think about what we accomplished. $500 million back in Florida families' pockets."

Gun Discrimination Bill Headed to Governor

By: Travis Miller

The Florida House of Representatives passed SB 424 by a 74-44 margin, sending the bill to Governor Rick Scott. The bill prohibits any personal lines property or auto insurer from refusing to issue or renew a policy, or charging a differential rate, based upon the policyholder's lawful ownership, possession or use of a firearm. The new provision would be added to Florida's unfair insurance trade practices act at section 626.9541.

Supporters of the proposal point to policyholders' Second Amendment rights, arguing that the bill prevents an impermissible infringement on gun ownership. Critics meanwhile suggest that the bill is unnecessary because there is little indication that personal lines insurers are taking gun ownership into account when underwriting or rating policies.

Omnibus Bill Fails on Session's Final Day

By: Travis Miller

It sounds like a riddle: Why does a non-controversial bill fail in the legislative session's final days? The answer typically is that a bill originally containing relatively non-controversial provisions suddenly becomes one of the few remaining bills with a chance to survive, thereby attracting amendments that bog it down. Although bills in this position typically contain provisions that are important to select segments of the industry, they often are issues for which the legislature can "take it or leave it," so increasingly controversial amendments tip the balance against passing bills that otherwise appear to have been well-positioned.

This was the case for the so-called omnibus bill in 2014, which began in the House of Representatives as HB 565 and in the Senate as SB 1260. These bills covered a range of topics and included changes to the Insurance Code that largely were not objectionable. Unfortunately, the bills failed on the last days of session as the bills bounced back and forth between the chambers. In several instances, provisions in these bills also were included in other bills that did pass. However, a few provisions died with the bill. The following are among those that did not survive:

- Amending the rating law to allow insurers to use a straight average of approved models. Current law has been interpreted to allow insurers to use the output of only a single model in insurance ratemaking.
- Allowing ZIP codes to serve as rating territories for auto insurance rates.
- Revising the personal residential nonrenewal notice requirement to simply provide for a 120-day notice period. Current law distinguishes between nonrenewals effective between June 1 and November 30 and those during the remainder of the year, and also between policies in effect for five years or more and those in effect for less time. The proposal would have created uniformity in the nonrenewal process.
- Allowing a Notice of Change in Policy Terms to be sent independently of the renewal notice, as is required by current law.

SB 1308 Updates Solvency Regulation & Holding Co. Requirements

By: Travis Miller

The legislature passed SB 1308 during the 2014 legislative session to update solvency and holding company regulations in Florida. The bill was a priority of the Office of Insurance Regulation after a similar proposal stalled last year.

Insurance Code Definitions

The bill amends section 624.10 providing definitions to be used throughout the Insurance Code. The statute now will provide definitions of "affiliate," "affiliated person," and "control." Insurers familiar with holding company statutes and acquisition requirements are likely to find the concepts in these definitions to be familiar, including a statement that control is presumed to exist at a ten percent ownership level.

Examinations

The bill specifies through an amendment to section 624.319 that documents produced by an insurer during the course of an OIR examination or investigation do not constitute a waiver of any attorney-client privilege or work-product privilege.

Risk-Based Capital Requirements

Effective January 1, 2015, the bill extends risk-based capital requirements to health maintenance organizations and prepaid limited health service organizations that are authorized in Florida and one or more other states.

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Statutory amendments also would result in a company action level event occurring for life and health insurers reporting on the health annual statement forms, and for property and casualty insurers, reporting risk-based capital less than three times the authorized control level and triggering the relevant trend test.

Actuarial Opinion Summary

An amendment to the annual statement filing requirement will specify that insurers must annually submit an actuarial opinion summary. The amendment also confirms that proprietary business information included in the summary is confidential and exempt from public disclosure or from testimony by the OIR in civil actions. The information may be used, however, in actions brought by the OIR in furtherance of its official duties.

Captive Reinsurance

Under the bill, an insurer that procures reinsurance from a captive insurance company, without regard to the domiciliary status of the reinsurer, must file with its annual statement a report containing financial information relating to the reinsurer. The report will be provided as a separate schedule to the annual statement and, among other things, will disclose the assets of the captive reinsurer and include a stand-alone actuarial opinion identifying differences between the assets the ceding insurer would be required to hold and the assets held by the captive reinsurer.

Principle-Based Reserving

The bill makes a series of changes to implement a principle-based reserving approach for life insurers. Commissioner Kevin McCarty commented, "Principle-based reserving will replace the current 'one-size-fits-all' formula to determine appropriate reserve levels with an approach that more closely reflects the risks associated with today's highly complex insurance products." The OIR believes the new approach will "right-size" reserves, reducing reserves that may be too high for some products while increasing reserves that may be too low for others. Florida would become the 14th state to adopt the new standard, which will take effect in 2017 upon 42 states adopting it.

Acquisition of Insurers

Those familiar with Florida's acquisition statute recall that section 628.461 has long required an acquiring party to submit an acquisition statement upon acquiring five percent or more of a Florida-domiciled insurer or its parent, unless the acquisition involved ownership of between five and ten percent and the acquirer wished to disclaim control. The legislature has moved this threshold to ten percent for acquisition statement filings. The existing requirement to notify the OIR of a transaction within five days and to file the full acquisition statement within thirty days remains intact. The acquisition statement also has been amended to require an acquiring party to affirm that it will provide sufficient information upon request to allow for the evaluation of enterprise risk.

Under a newly added provision, a controlling person of a domestic insurer that seeks to divest its controlling interest must notify the OIR and the insurer at least thirty days before the proposed cessation of control. The bill allows the OIR to determine circumstances in which approval of the divestiture will be required. A filing relating to divestiture remains confidential until the transaction is completed absent a regulatory need for disclosure.

Holding Company Requirements

The bill requires an insurer to submit a holding company registration statement by April 1 of each year. In addition, an insurer must continue to file transactions with affiliates as currently required by rule. Beginning January 1, 2015, the ultimate controlling person of every insurer will be required to file an enterprise risk report by April 1. The report must identify material risks within the holding company system that could pose enterprise risk to the insurer. The report will be filed with the lead state office of the holding company system as determined by procedures in the NAIC Financial Analysis Handbook. The report is exempt from public disclosure. An insurer may satisfy this requirement by providing the OIR will the most recently filed SEC filings of a publicly traded parent as long as those filings provide appropriate enterprise risk information.

Also beginning January 1, 2015, the OIR may examine insurers and affiliates to ascertain the financial condition of the insurer and the enterprise risk to the insurer. Except where otherwise noted, the requirements of SB 1308 take effect October 1, 2014, assuming it becomes law.

OIR Memorandum Addresses Trade Secrets in I-File

By: Travis Miller

The Office of Insurance Regulation has issued informational memorandum OIR-14-02M notifying insurers of changes to the I-File system relating to the handling of trade secret documents. The I-File system accepts, tracks and makes publicly available insurers' form and rate filings. However, certain required documents might be trade secrets, which can be protected in the I-File system and pursuant to section 624.4213, Florida Statutes.

The OIR made changes to the I-File interface effective Friday, May 2, 2014. The system now allows an insurer to upload documents under a heading for "Trade Secret Supplementary Information." The system accomplishes this by creating a check box for the insurer to select when supplementary information it is uploading contains trade secrets. When the insurer checks the trade secret box, a note appears advising the insurer that it must comply with the requirements of section 624.4213 or else it risks waiving the trade secret claim. The statute allows an insurer to submit a document to the OIR as a trade secret as long as the insurer marks every page of the document as a trade secret, segregates the trade secret information from other non-trade secret information, and provides an accompanying affidavit.

HB 785 Adopts Workers' Compensation Large-Risk Rating Provision

By: Travis Miller

HB 785 amended Florida's workers' compensation rating law to create flexibility in large-risk rating. The bill amends section 627.072 to specify that a retrospective rating plan may contain a provision allowing for negotiation of a premium between the employer and the insurer for employers having (i) exposure in more than one state, (ii) an estimated annual standard premium in Florida of at least $100,000, and (iii) an estimated annual countrywide standard premium of at least $750,000. An insurer must have at least $500 million in surplus in order to participate.

Any such plans must be filed by a rating organization and approved by the Office of Insurance Regulation. However, the premium negotiated between the employer and the insurer pursuant to an approved plan is not subject to review.

If the bill becomes law, its provisions will be effective July 1, 2014.

Electronic Version of Newsletter

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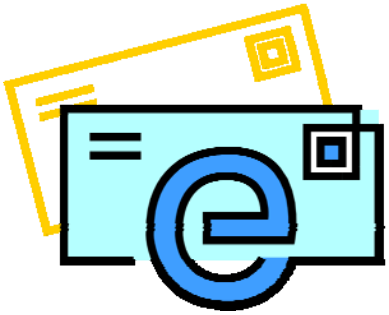

PIP Challenge Over...For Now

By: Travis Miller

The Florida Supreme Court has announced that it will not hear an appeal relating to the 2012 revisions to Florida's Personal Injury Protection law. This means the reforms remain in effect. The reforms have been taken into account in insurers' rate filings, so the Supreme Court's decision keeps the legal reforms in line with the mandated reductions.

The 2012 law sought to curb increases in PIP rates by requiring people involved in auto crashes to seek treatment within 14 days and by allowing up to $10,000 in benefits for emergency care, while limiting non-emergency care to $2,500. The law also limited or excluded services by acupuncturists, massage therapists, and chiropractors.

Circuit Judge Terry Lewis ruled in March 2013 that the reforms unlawfully prevented accident victims from using PIP coverage to pay for treatment by acupuncturists and massage therapists and impermissibly limited the services from chiropractors. Judge Lewis considered that the PIP system acts as a substitute for injured persons' access to courts, but erosions in PIP coverage over the years, most notably in the 2012 reforms, tipped the balance against injured persons far enough that the PIP system no longer serves as a viable alternative to the court system.

The First District Court of Appeal, however, found that plaintiffs had not shown an actual instance of an injured person's having his or her right to access the courts infringed upon. The court indicated that the providers complaining of the new law needed to show that actual accident victims have been affected by it. The district court therefore lifted an injunction entered by Judge Lewis, and the PIP law remained in effect as the case was appealed to the Florida Supreme Court.

Based upon the Supreme Court's refusal to take up the issue, the PIP reforms remain in effect. As noted by Commissioner Kevin McCarty, "nothing changes" with respect to the PIP revisions. It is likely, however, that in the coming months and years, other cases involving actual injured persons will wind their way through the courts and eventually result in a decision on the merits of the PIP reforms.

Legislature Revises Administrator Statutes

By: Travis Miller

The Florida legislature made several changes to statutes governing administrators (commonly referred to as third party administrators or TPAs). The legislature passed SB 1344, which will take effect July 1, 2014 assuming the Governor does not veto it. The bill allows an administrator applying for a certificate of authority to demonstrate its qualifications through individuals employed or retained by it.

Under current law, if an administrator administers benefits for more than 100 certificate holders, the insurer must review the administrator's operations semi-annually. The bill allows the insurer to contract with a qualified third party for the review.

Current law also requires calendar-year reporting for administrators. This is a burden for organizations that otherwise report on a fiscal-year basis that differs from the calendar year. The legislature therefore has created an opportunity for administrators to file their annual statements within three months of the ends of their fiscal years, and their audited financial statements are due within five months of the ends of their fiscal years.

Florida Supreme Court Overturns Statutory Cap on Wrongful Death Non-Economic Damages

By: Karen Asher-Cohen and Ted Prekop

The Florida Supreme Court released its long-awaited opinion on the constitutionality of Florida's statutory cap on wrongful death non-economic damages in *Estate of McCall v. United States of America*, No. SC11–1148, 2014 WL 959180 (Fla. March 13, 2014). In a 5-2 decision, the Court held that the $1 million cap on wrongful death non-economic damages in section 766.118, Florida Statutes, violates the Equal Protection Clause of the Florida Constitution.

The facts of this case are short, but tragic. In February, 2006, Michelle McCall was nine months pregnant and received treatment at a United States Air Force Clinic as an Air Force dependent. Tests revealed that McCall was suffering from severe preeclampsia and that labor had to be induced immediately by Air Force family practice doctors, so the doctors transferred McCall to the Fort Walton Beach Medical Center. Despite the delivery of a healthy baby boy, McCall lost an extreme amount of blood. When the placenta did not deliver as normal, the family practice doctors tried without success to extract it. The hospital then called in an obstetrician to the remove the placenta and perform additional surgery to repair lacerations, but the hospital's nurse anesthetist failed to properly inform the obstetrician of McCall's extensive blood loss and low blood pressure during the procedure. After the procedure, the obstetrician ordered an immediate blood test, but a nurse did not arrive to take a blood sample for another hour. By the time the nurse arrived, McCall had gone into shock and cardiac arrest. McCall never regained consciousness and was removed from life support on February 27, 2006. McCall's Estate, on behalf of her child and parents, filed suit against the United States under the Federal Tort Claims Act.

At the trial level, the United States District Court for the Northern District of Florida determined that Petitioners' non-economic damages totaled $2 million, including $500,000 for McCall's son and $750,000 for each of her parents. However, the district court limited the Petitioners' recovery of wrongful death non-economic damages to $1 million ($250,000 for McCall's son and $375,000 for each of her parents) based on Florida's statutory cap on wrongful death non-economic damages.

On appeal to the Eleventh Circuit, the Petitioners challenged Florida's wrongful death non-economic damages cap on a number of United States and Florida Constitutional grounds. The Eleventh Circuit found that Florida's cap on non-economic damages did not violate the United States Constitution, and certified four Florida Constitutional issues to the Florida Supreme Court. The relevant questions were whether Florida's wrongful death non-economic damages cap violated the following provisions of the Florida Constitution: (1) equal protection, (2) access to the courts, (3) right to trial by jury, or (4) separation of powers.

In a plurality opinion, Justice Lewis, joined by Justice Labarga, found that Florida's wrongful death noneconomic damages cap violated the Equal Protection Clause of the Florida Constitution. The Florida Constitution provides that "All natural persons, female and male alike, are equal before the law." Art. I, § 2, Fla. Const. Since a fundamental right was not involved, the Florida Supreme Court applied a rational basis test to the wrongful death non-economic damages cap. To satisfy a rational basis test, the Petitioners must prove that the wrongful death non-economic damages cap does not bear a rational and reasonable relationship to a legitimate state objective, and that the cap is arbitrarily or capriciously imposed. *Dep't of Corr. v. Fla. Nurses Ass'n*, 508 So. 2d 317, 319 (Fla. 1987).

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Guided by its decision in *St. Mary's Hospital, Inc. v. Phillipe*, 769 So. 2d 961 (Fla. 2000), the Plurality found the cap unconstitutional because "it imposes unfair and illogical burdens on injured parties when an act of medical negligence gives rise to multiple claimants." *McCall*, 2014 WL 959180 at 4. The Plurality failed to find any rational relationship between the cap and alleviating the medical malpractice insurance crisis, the Legislature's original basis for passing the law in 1993. The Plurality stated that the cap treats multiple claimants less favorably than a single claimant for no rational reason, and as a result, fails to pass a rational basis test. The Plurality noted that application of the wrongful death non-economic damages cap gives rise to the scenario in which "the greater the number of survivors and the more devastating their losses are, the less likely they are to be fully compensated for those losses." *McCall*, 2014 WL 959180 at 1. Since the Plurality found the cap violated the Equal Protection Clause of the Florida Constitution, it declined to rule on Petitioners' other constitutional challenges to the cap.

The Plurality distinguished the instant case from several prior cases that upheld statutory damages caps, including *Samples v. Florida Birth-Related Neurological Injury Compensation Ass'n*, 114 So. 3d 912 (Fla. 2013), *Mizrahi v. North Miami Medical Center*, 761 So. 2d 1040 (Fla. 2000), and *University of Miami v. Echarte*, 618 So. 2d 189 (Fla. 1993). Additionally, the Plurality found that the cap bears no rational relationship to the crisis it is meant to address, that is, the alleged medical malpractice insurance crisis in Florida. The Plurality went on to examine the report of the Governor's Select Task Force on Healthcare Professional Liability Insurance that the Florida Legislature relied on in enacting the cap on wrongful death non-economic damages. Specifically, the Plurality took issue with the Task Force's finding that non-economic damage awards were a primary cause of the alleged medical malpractice crisis in Florida. Rather than large jury verdicts or settlements, the Plurality found that the alleged medical malpractice crisis was due more to increases in the amount of money reserved for claims due to prior systematic under-reserving of funds. Even if non-economic damage awards were a primary cause of the crisis in Florida, the Plurality expressed skepticism that a cap would reduce premiums or help alleviate the crisis in any meaningful way. Finally, if a medical malpractice insurance crisis did indeed exist in Florida, the Plurality found that the crisis had subsided and thus no rational basis currently exists between the cap and any legitimate state purpose.

The concurring in result opinion by Justice Pariente, joined by Justices Quince and Perry, agreed with the Plurality's opinion that the wrongful death non-economic damages cap violated the Equal Protection Clause of the Florida Constitution. However, the Concurrence took issue with the judicial fact-finding section of the Plurality's opinion, particularly its examination of the Governor's Task Force Report. The Concurrence found that the Plurality's expansive investigation into the Legislature's findings was only appropriate for a strict scrutiny standard of review, not the rational basis review applied in the instant case. Notably, the Concurrence stated that there was no showing that the Legislature's finding of a crisis was "clearly erroneous." Despite these reservations about the Plurality's fact-finding section, the Concurrence agreed that the wrongful death non-economic damages cap violated the Equal Protection Clause of the Florida Constitution.

Chief Justice Polston, joined by Justice Canady, dissented from the Plurality's opinion. The Dissent rejected the Plurality's notion that *Samples* was distinguishable from the instant case by virtue of its no-fault compensation award. Like the Concurrence, the Dissent also took issue with the "inappropriate and unprecedented" review of medical malpractice issues. *McCall*, 2014 WL 959180 at 35. The Dissent stated that Florida has a legitimate state interest in decreasing medical malpractice insurance rates. The Dissent found that the Legislature could have reasonably believed that a cap on wrongful death non-economic damages could lead to lower medical malpractice insurance rates by making the market more predictable. Thus, under the Dissent's view, the wrongful death non-economic damages cap is rationally related to the legitimate government purpose of lowering medical malpractice insurance rates and should be upheld.

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