FLORIDA INSURANCE REPORT

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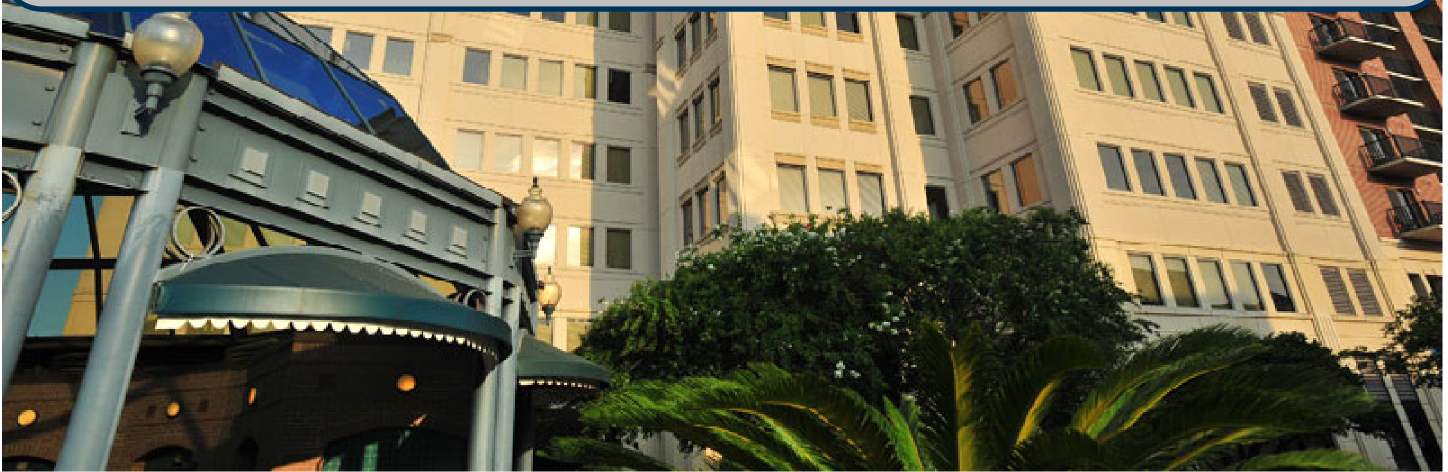

Residential Property Insurers Required to Submit Closed Claim Report

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The new year marks the beginning of the initial reporting period for a new closed claim reporting obligation applicable to residential property insurers. In the 2021 legislative session, the Florida Legislature adopted SB 76 which, among other things, amends Section 624.424 pertaining to insurers' annual statements.

The new requirement specifies that beginning January 1, 2022, each authorized residential property insurer must file a supplemental report with its annual statement. The reporting requirement applies to both personal lines and commercial lines residential property insurers. The report submitted each year will contain numerous data elements about claims closed in the preceding calendar year. These data elements include:

- Date and location of the loss
- Type of peril
- Types of vendors involved
- Public adjusters involved
- Information about the claimants' attorneys
- Indemnity paid
- Loss adjustment expenses paid
- Attorneys' fees paid
- Any contingency risk multipliers applied

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The reporting requirement applies to both personal lines and commercial lines residential property insurers.

Closed Claim Report - Cont.

Sometimes new reporting requirements apply to claims or policies issued after a law's effective date. However, in this case, because the new requirement applies to claims closed during the year regardless of when they opened, the requirement undoubtedly will encompass claims received well prior to the law's effective date. This likely will mean that the data gathered under the new requirement will improve over time as insurers adapt, especially taking into account that some of the data elements are not items insurers historically have needed to track.

The Office of Insurance Regulation, through the Financial Services Commission, is tasked with adopting a reporting form for the new requirement. In late 2021, the OIR published a notice of a rule workshop to begin the rulemaking process for adopting the form. The OIR has not yet held the workshop, but anticipates doing so perhaps in mid-to-late February.

--Travis Miller

Domestic Surplus Lines Bill Passes First Committee

A proposal in the Senate (SB 1402) and House (HB 951) would authorize "domestic surplus lines insurers" to issue policies in Florida. The bills have gone through 2 of their 3 committee stops unchanged, but reported favorably.

Currently, because surplus lines insurers issuing policies in Florida by law are unauthorized insurers, they cannot simultaneously be domiciled in this state and yet authorized to issue surplus lines policies. The bill would allow the Florida Office of Insurance Regulation to make Florida domestic insurers eligible to transact surplus lines policies in Florida. A domestic surplus lines insurer must have at least $15 million in surplus as to policyholders.

A domestic surplus lines insurer would be required to meet all financial and solvency requirements imposed by Florida law on admitted domestic insurers. However, the domestic surplus lines insurer would not be required to file and gain approval of its policy forms, rates and rating plans. Domestic surplus lines insurers also would not be subject to admitted market restrictions on policy cancellations, nonrenewals and renewals. As with surplus lines insurers under current law, the policies issued by a domestic surplus lines insurer would not be subject to guaranty fund protection.

Supporters of the bill believe allowing domestic surplus lines insurers would increase capacity and coverage options available to policyholders in a hard insurance market. On the other hand, those questioning the merits of the proposal point out that admitted market insurers have been adversely affected by the absence of effective legislative solutions to problems plaguing the Florida market for the last decade, including the prevalence of litigation associated with assignments of benefits (AOBs) and the proliferation of represented and litigated claims. By allowing domestic surplus lines insurers, the legislature essentially would favor insurers that are not subject to Florida regulations while leaving the admitted market with limited tools to continue working through Florida's market crisis.

--Travis Miller

Use of Credit Reports

New Notice Required as of January 1

Effective January 1, 2022, insurers using credit reports or credit scoring for underwriting or rating purposes must provide a new notice to consumers. The notice must state:

The Department of Financial Services offers free financial literacy programs to assist you with insurance-related questions, including how credit works and how credit scores are calculated. To learn more, visit www.MyFloridaCFO.com.

The Florida Legislature adopted this new requirement in SB 1598 during the 2021 legislative session. The requirement has been added to the existing Section 626.9741, Florida Statutes. The statute already required insures to notify insureds or applicants if credit reports or credit scores would be obtained in the underwriting or rating process. The statute also requires insurers making adverse decisions based on credit to provide consumers with free copies of their reports. Further, insurers must inform consumers of the reasons for their adverse decisions.

—Travis Miller

Service of Process Law Clarified

Florida's Chief Financial Officer (CFO) is the agent for service of process for all Florida-licensed insurers, and many other entities or persons licensed under the Florida Insurance Code. Bills pending in the Senate (SB 1874) and House (HB 959) clarify when that service of process is valid and binding.

Under current law, service of process is considered valid and binding service on the insurer when the process documents are served on the CFO and sent or made available to the insurer via registered or certified mail, or alternatively electronically through an online portal, rather than at such time the insurer receives the process documents. The bills amend existing law to clearly state that service of process on the CFO is to be done electronically and is valid and binding on the insurer on the date the insurer is notified that such information is available on a secure online portal. Additionally, the bills state that service of process submitted through the secure online portal is the sole method of service of process upon an insurer authorized to do business in Florida.

The bills respond in part to recent court cases that addressed similar questions related to whether service of process on an insurer is perfected at the time served on the CFO or at the time received by the insurer. In one instance, a court was asked to determine whether a proposal for settlement served on the insurer 91 days after service of the complaint on the CFO but 88 days after the complaint was forwarded by the CFO to the insurer, constituted valid service. Procedural rules dictate that such proposals "shall be served no earlier than 90 days after service on that defendant." The insurer argued that the proposal for settlement which would result in the award of attorney fees to the plaintiff was served before the 90-day deadline, and therefore plaintiff was not entitled to attorney fees. The trial court agreed, but that decision was reversed on appeal and plaintiff was awarded fees finding that service on the CFO was valid for purposes of the 90-day requirement.

—Bert Combs

Redistricting to be a Focal Point of 2022 Session

Florida's once-a-decade redistricting process is underway in conjunction with the 2022 legislative session. Following the most recent census data, the legislature must reshape state House, Senate and congressional districts to reflect population changes.

Between 2010 and 2020, Florida's population increased from 18,801,310 to 21,538,187. The average number of people in each congressional district increased from a little over 696,000 to almost 770,000. Due to Florida's population growth, the state has gained one seat in the U.S. House of Representatives.

Most observers believe the final new maps won't be approved until near the end of the session (scheduled to end March 11). This means the debate over such an important and sometimes contentious issue could crowd out consideration of other topics. Republican Senator Joe Gruters recently downplayed this possibility, saying "I don't think you're going to see a lot of food fights." Gruters reasons that most lawmakers want the session to progress smoothly, and many statewide and locally elected officials have campaigns they'll want to resume well in advance of this fall's elections. Democratic Senator Evan Jenne seems skeptical, saying "I think redistricting is taking all the oxygen out of the room." Jenne believes redistricting might leave little room for other weighty topics such as auto insurance (PIP) reform.

The Florida Constitution prohibits district boundaries from being drawn intentionally to help or hurt a party or an incumbent lawmaker. Nonetheless, the process sometimes is, or at least is perceived to be, politically charged between the parties and sometimes within parties as the line-drawing process favors or disfavors specific incumbents or candidates.

--Travis Miller

1st DCA Certifies Conflict on Certiorari Review of Medical Experts in Medical Malpractice Cases

In *University of Florida Board Of Trustees and Shands Teaching Hospital and Clinics v. Carmody*, 46 Fla. L. Weekly D2434b (Fla 1st DCA 2021), the Petitioners sought certiorari relief from the 1st DCA because Carmody allegedly failed to comply with the presuit requirements for medical expert corroboration of the Medical Malpractice Act. Petitioners argued that Carmody's expert doctor was not qualified to opine on the proper standard of care in that case. The court dismissed the Petition for lack of jurisdiction, pursuant to the Florida Supreme Court's decision in *Williams v. Oken*, 62 So. 3d 1129 (Fla. 2011). The court held that "certiorari review is not available to review arguably erroneous rulings on the qualifications of medical-expert affiants under chapter 766 (as opposed to reviewable process-compliance issues)." However, the court also recognized that more recent decisions from the 2nd and 5th District Courts of Appeal conflicted with *Williams*, and therefore certified the conflict with the other districts.

--Karen Asher-Cohen

Gubernatorial Fundraising

DeSantis Continues to Lead Candidates in Fundraising

As three candidates battle in the Democratic primary, incumbent Republican Governor Ron DeSantis continues to lead all candidates in fundraising. According to recent reports, DeSantis currently has cash on hand exceeding $68 million, which exceeds the amount he raised during the entirety of his 2018 campaign. Meanwhile, the three Democrats vying to challenge him collectively have only $7.5 million on hand.

Current Chief Financial Officer Jimmy Patronis thus far has not drawn an opponent as he seeks reelection this fall. Likewise, Attorney General Ashley Moody is heading toward reelection without an opponent.

Florida's Commissioner of Agriculture position is the only statewide office that is sure to have a newly elected official this fall. Current Commissioner Nikki Fried is one of the Democratic candidates running for Governor. By entering the gubernatorial race, she opened the door for candidates from both parties to seek his Cabinet post in the only race that won't require unseating an incumbent.

--Travis Miller

Proposed FHCF Revisions Draw Opposing Views

From time to time, the Florida Legislature considers adjustments to the Florida Hurricane Catastrophe Fund (FHCF) in response to market cycles. In particular, in times of rising reinsurance costs and primary insurance rates, the legislature sometimes considers reducing the FHCF's attachment point. Current market concerns have caused this concept to resurface in the 2022 session.

The FHCF attachment point adjusts over time based upon exposures. The current attachment point is about $8.2 billion. Some legislators support reducing the attachment to a significantly lower level, such as $4.5 billion. The proposal would be beneficial for residential property insurers, and ultimately consumers, in the sense that lowering the attachment point would mitigate insurers' need to purchase private market reinsurance below the FHCF, where it is most expensive. Opponents of the measure express concern with increasing the FHCF's exposure to loss. Lowering the attachment point will increase the probability that future hurricanes reach the FHCF and erode its ability to respond, which in the long run will increase its borrowing costs and likelihood of assessments.

Another idea for reducing insurers' costs is to possibly eliminate the FHCF's rapid cash buildup factor. The rapid cash buildup factor historically has been designed to increase the rate at which the FHCF builds up liquid claims-paying resources, beyond its actuarially-determined premiums. The rapid cash buildup factor helps reduce the likelihood that the FHCF will need to rely on assessments as a result of a large event or in subsequent years following depletion of the fund. The FHCF currently has more than $11 billion on hand, leading some to believe that near-term relief in the form of reducing insurers' costs would be more beneficial than continuing to hoard cash for the future. The concept of eliminating the rapid cash buildup factor, especially after the FHCF reaches certain thresholds such as $10 billion in cash, seems to attract less opposition than lowering the attachment point. Still, supporters of the factor point to the stabilizing role the FHCF has on the Florida market and the vital role the FHCF will play in subsequent seasons if the FHCF is depleted in an initial season.

--Travis Miller

Loss Run Statement Requirements for Insurers Being Revised

Bills in the House (HB 275) and Senate (SB 156) propose to revise the requirements for insurers to provide loss run statements to policyholders. SB 156 and HB 275 revise the statutes that were enacted in 2020 to address when, and how, insurers must provide loss run statements. Pursuant to the 2020 law, for all lines of insurance written in the admitted and surplus lines markets, insurers must provide loss run statements with a five-year loss run history within 15 days of receiving an insured's written request. For personal lines insurance, an insurer may provide the insured information about how to obtain a loss run statement at no charge through a consumer reporting agency. However, the insured may still ask the insurer for a loss run statement even after receiving information from a consumer reporting agency.

The proposed changes in SB 156 and HB 275 would revise the number of years of loss history that an insurer must provide ~ from a minimum of five years to a minimum of three years to better reflect industry practice. The bills also (1) provide that the loss run requirements do not apply to life insurers; (2) add requirements that loss run requests be provided to "an individual or entity designated by the insurer" to receive such requests; and (3) clarify that for personal lines insurance, the insurer has 15 days to provide a loss run statement if the insured asks for that statement after receiving information from a consumer reporting agency.

The proposed changes will also resolve a conflict between the 2020 statutes and an existing statute regarding loss run statements for group health insurance policies by repealing that health-specific statute in section 627.6647, F.S. Repealing that statute will create a consistent process for requesting a loss run statement regardless of the type of insurance involved. The bills also state that as applied to group health insurance, a loss run statement must include premiums paid, number of insureds on a monthly basis, and dependent status. In addition, for group health insurance, only plan sponsors, not individual employees covered by the group policy, may request a loss run statement.

--Bert Combs

New Requirements for Insurance Agencies that Cease Operations

Bills in the Senate (SB 1874) and House (HB 959) propose the creation of a new statute that would require insurance agencies that cease doing business to notify DFS and take other specified actions within a certain time frame. The requirements of the bills vary and may change before any final passage. However, SB 1874 in its present form specifies that if a licensed insurance agency "permanently ceases the transaction of insurance" or "ceases the transaction of insurance for more than 30 days" then the agent in charge, director or officer of the agency must do all of the following within 35 days after the agency first ceases the transaction of insurance:

- Cancel the insurance agency's license by completing and submitting a form prescribed by DFS to notify DFS of the cancellation of the license.

- Notify all insurers by which the agency or agent in charge is appointed regarding the date on which operations ceased, the identity of any agency or agent to which the agency's current book of business has been transferred, and the method by which agency records may be obtained.

- Notify all policyholders currently insured by a policy written, produced, or serviced by the agency regarding the date on which operations ceased; and the identity of the agency or agent to which the agency's current book of business has been transferred or, if no transfer has occurred, a statement directing the policyholder to contact the insurance company for assistance in locating a licensed agent to service the policy.

- Notify all premium finance companies through which active policies are financed regarding the date on which operations ceased and the identity of the agency or agent to which the agency's current book of business has been transferred.

- Ensure that all funds held in a fiduciary capacity are properly distributed to the rightful owners.

SB 1874 would also provide for penalties against the agent in charge or director or officer that violates the new law. However, no fines would accrue until after a person has been notified in writing of the nature of the violation, been afforded 10 business days to correct the violation, and failed to do so.

--Bert Combs

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