

FLORIDA INSURANCE REPORT

Keeping You Informed About Florida
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Early Session, Election Year Shape Florida Landscape

By: Travis Miller

Any work-from-home malaise will soon dissipate in Florida as the state gears up for a busy end to 2021 and start to 2022. The new year is an election year—one in which the positions of Governor and all three Cabinet offices are on the ballot. We preview these races later in this edition of the Report. It's also not just any election year. It's a reapportionment year as well. Every 10 years the legislature redraws the boundaries of the voting districts based on the most recent census data. This process always draws a lot of attention, and typically even some challenges.

Of course, the election year also prompts an early start to the legislative session. The 2022 session will begin early in the new year, on January 11. This in turn means the legislative committee process begins early this fall, and we're already seeing bills filed for consideration. Some of the early proposals relate to Citizens Property Insurance Corporation, which is not surprising considering its growing policy count, and to loss run statements. The House Speaker also has indicated he'll bring back a data privacy bill the insurance industry opposed in 2021 (primarily because it would have created a private cause of action rather than a state enforcement remedy). Rumors also have surfaced recently about another possible attempt at PIP repeal.

All of this points to the rest of 2021 and 2022 being one of the most active periods in recent memory for Florida government.

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FIRM NEWS

Three of our shareholders, Ed Lombard, Chris Lunny, and Travis Miller have been recognized by their peers in this year's list of Florida Trend's Legal Elite. Voting is open to all in-state members of the Florida Bar who are asked to name attorneys whom they hold in the highest regard or would recommend to others. Please join us in congratulating them.

Ed Lombard



Ed has been recognized in the area of Government and Administrative Law. For over 20 years Ed has been a complex commercial litigator with extensive experience in administrative tribunals and federal and state courts.



Chris Lunny

Chris has been recognized in the area of Labor and Employment Law. In his labor and employment practice, Chris represents management and has extensive experience assisting clients in the resolution of issues that arise in all phases of the employment relationship.

Travis Miller



Travis has been recognized in the area of Insurance. Travis practices primarily insurance regulatory law, business and transactional law, and administrative law. He regularly assists insurance companies and other regulated parties before the Florida Office of Insurance Regulation and the Florida Department of Financial Services.

Working from “Home?”

Now more than ever, our readers are working from home.... Or the beach.... Or anywhere else they can access cell phone coverage and wifi.

For many years, we've offered the Florida Insurance Report electronically by email. The email format steadily grew in popularity as many people sought to reduce paper, or to increase the number of people in their offices receiving the newsletter. This trend continues now as more people want the convenience of information delivered

to their inboxes instead of their offices.

If you've received a hard copy of this edition and would prefer to receive it by email in the future, please let us know by emailing Kendria Ellis at kellis@radeylaw.com. If there are others in your organization who would like to receive it, please let us know that as well as we'll be sure to add them.



Is PIP Repeal Dead?

By: *Travis Miller*

Observers of Florida's personal auto market are well aware of the legislative debates in recent years over the future of Florida's no-fault Personal Injury Protection (PIP) insurance laws. Proponents of PIP have pointed to it as a relatively fast, no-fault basis to ensure basic coverage amounts are in place for injuries arising from auto accidents. This is particularly important to some hospitals and other medical providers. PIP's opponents counter that it has become riddled with fraud and abuse, and most states have abandoned it.

PIP repeal seemed unattainable a few years ago. However, in the 2021 legislative session, the legislature passed a bill (SB 54) repealing PIP. Governor DeSantis then vetoed the bill, leaving the current no-fault system intact. Among the primary reasons for the veto, the Governor was concerned the bill replacing PIP with mandatory bodily injury requirements would increase premiums for many drivers who currently carry low limits, and potentially could increase the number of uninsured drivers. At the time, the Office of Insurance Regulation had released an analysis showing auto insurance premiums could increase by up to 13.3% for

Florida drivers.

Despite the veto and potential concerns with a bill that could increase premiums heading into the 2022 election cycle, some legislative leaders have expressed a willingness to consider auto insurance reform again. A recent article in Florida Politics points to a recent decision by House Speaker Chris Sprowls to name Representative Erin Grall as chair of the House Judiciary Committee. Representative Grall was a primary sponsor of last year's PIP repeal bill. Nonetheless, Speaker Sprowls has said revisiting PIP repeal is "not something that's been at the top of the list based on everything else that's been going on." Still, some observers have noted rumors have started to pick up regarding another possible effort at PIP repeal.

PIP repeal bills consume substantial time in the legislative process. The first step in assessing whether the commitment would be worthwhile in the 2022 session is to determine whether the concerns leading to the Governor's veto can be alleviated in a new bill.

NCCI Proposes a 4.9 Rate Decrease and a Separate Catastrophe Provision for Pandemics

By: *Bert Combs*

The National Council on Compensation Insurance (NCCI) submitted a workers' compensation insurance rate filing to the Florida Office of Insurance Regulation (OIR) on August 26, 2021. The rate filing proposes a statewide average premium decrease of 4.9% for the voluntary market effective January 1, 2022. In addition, NCCI has proposed a separate component in its filing to implement a new catastrophe provision in Florida.

NCCI's filing last year, which resulted a 6.6% rate decrease, did not include COVID-19 claims data, and the filing did not include explicit adjustment for the potential impact of a pandemic. The current filing also does not include an explicit adjustment, and the data in the filing excludes the impact of the COVID-19 event. However, NCCI determined that a catastrophe provision would be the most appropriate way to include exposure to future pandemics. Its filing therefore proposes a Catastrophe (other than Certified Acts of Terrorism) provision for any single event or peril resulting in workers' compensation losses in excess of \$50 million nationwide (which may include pandemics). The proposed catastrophe rate is \$.01 per \$100 of payroll. Both rate filings are pending at OIR.



DeSantis Expected to Seek Re-election

Familiar Democrats to Face Off in Primary

Republican Governor Ron DeSantis has not formally announced that he intends to seek re-election in 2022. Nonetheless, the Governor has been highly successful in early fundraising efforts in anticipation of an expected bid for re-election. The Governor's political committee raised more than \$4 million in July and about \$5 million in August. The committee reportedly has more than \$50 million on hand. The committee's July report listed more than 18,000 individual donors, which is a remarkably high number for a state-level politician. More than 17,000 of those contributions were \$100 or less, showing grassroots support for the Governor. In August, the Governor had more than 8,100 individual donations, with more than 6,600 being less than \$100 and more than 7,700 being less than \$1,000. The number of separate contributors and amount raised signal the Governor's popularity not just in Florida but increasingly throughout the country. Speculation about a potential presidential run in 2024 helps fuel interest in the Governor's campaign from sources outside of Florida.

While Governor DeSantis has a clear path to the 2022 general election ballot assuming he so chooses, the same is not true for the Democrats. The primary for the Democrats will pit current U.S. Representative (and former Republican governor) Charlie Crist against state Commissioner of Agriculture Nikki Fried. Crist, then a Republican, served as Florida's governor from 2007-2011. Crist's

time as a Republican ended when he squared off against Marco Rubio in a battle for the U.S. Senate. As Rubio overtook Crist in the polls, Crist left the Republican Party to continue his campaign as an independent. Rubio went on to defeat Crist in the election, and Rubio has continued to serve in the U.S. Senate since then.

Crist then backed Senator Barack Obama in the 2012 presidential election, and in December 2012 Crist became a Democrat. Crist later ran for governor again, this time as a Democrat, against incumbent Rick Scott (who succeeded Crist in 2011). Governor Scott won re-election. In 2016, Crist won election to the U.S. House of Representatives. In July, Crist raised \$503,000 from 2,900 donors, bringing the total on hand in his two political accounts to \$2.2 million.

Florida's Commissioner of Agriculture, Nikki Fried will face Crist in the primary. Fried trailed Crist in July fundraising, but has more cash on hand. Fried is Florida's lone statewide elected Democrat. When the Governor and Cabinet first took office nearly three years ago, it appeared Fried would chart a collaborative course in seeking to work with her Republican counterparts. However, over the last two years, Fried has been a frequent and vocal critic of the Governor.

The race at the top of Florida's ticket in 2022 will be costly, with experts saying the Governor might raise as much as \$150 million and the Democrats might raise \$100 million.

CFO Patronis Yet to Draw an Opponent for 2022

Florida's Chief Financial Officer Jimmy Patronis has announced he's running for re-election in 2022. Thus far, CFO Patronis has not attracted an opponent among the Democrats.

CFO Patronis was appointed to the job in July 2017 after

previously serving on Florida's Public Service Commission. Prior to that, He was a member of the state House of Representatives. CFO Patronis ran for a full term in 2018 and defeated Democrat Jeremy Ring.

CFO Patronis has a little more than \$2.2 million between his campaign account and a political committee, Treasure Florida.

Attorney General Currently Unopposed in Re-Election Bid

Republican Attorney General Ashley Moody will be seeking another term in the 2022 election cycle. So far, no one has emerged to challenge her in this quest. The political

committee Friends of Ashley Moody raised \$134,000 in July and had almost \$2.3 million cash on hand in an August report.



Candidates for Agriculture Commissioner Remain Unclear

Current Commissioner of Agriculture Nikki Fried is vying with Charlie Crist for the opportunity to run against incumbent Governor Ron DeSantis. This means Fried's current position as Commissioner of Agriculture will be the only statewide elected office in which the current officeholder is not seeking reelection. Despite the open Cabinet seat, candidates thus far have not lined up to fill the position.

Senate President Wilton Simpson, a Republican, formally announced in early September that he will seek the position. Simpson's political committee known as Jobs for Florida has about \$1.95 million in cash on hand. This sizable war chest will help Simpson hit the ground running with resources similar to those of all of the other statewide candidates except Governor DeSantis.

Meanwhile, Democrat Ryan Morales and Republicans Richard Olle, Jr. and James Shaw, have opened campaign accounts but have raised little money.

The Commissioner of Agriculture position might not intuitively seem like one that directly impacts the insurance industry. However, the Governor and Cabinet (CFO, Attorney General and Commissioner of Agriculture) serve as the four-member Financial Services Commission (FSC). The FSC has the authority to appoint and remove the Insurance Commissioner by majority vote, as long as both the Governor and CFO are in the majority. The FSC also has ultimate rule making authority over rules adopted and implemented by the Florida Office of Insurance Regulation.



FIO Requests Information of Climate Change

By: *Travis Miller*

The Federal Insurance Office (FIO) of the U.S. Department of the Treasury (Treasury) has issued a Request for Information (RFI) seeking public input on climate-related financial risks and their impact on the insurance industry. The RFI requests written comments from interested parties on or before November 15, 2021. FIO notes that the United States has experienced increased frequency and severity of climate-related catastrophes, which in turn has led to increased economic losses. This has been compounded by trends such as urbanization and continuing migration of the population toward higher-risk areas. According to FIO, these factors are adversely affecting the affordability and availability of property insurance coverage in certain markets.

FIO asserts that an assessment of climate-related financial risks should include how life and property & casualty (P&C) insurers' business models, including their underwriting activities, market activities, and investment activities, are affected by each category of risk. According to FIO, state regulatory tools like the Own Risk and Solvency Assessment (ORSA) might capture data on some climate-related financial risks but generally are not adequate to assess climate-related risks over an extended time horizon.

FIO's Role on Climate-Related Issues

FIO intends to initially focus on the following three climate-related priorities:

1. Insurance Supervision and Regulation: Assess climate-related issues or gaps in the supervision and regulation of insurers, including their potential impacts on U.S. financial stability.

FIO seeks to identify and fill any gaps in insurance supervision with a focus on assessing climate-related financial risks. FIO also plans to assess supervisory practices and resources, including but not limited to examination policies and procedures, solvency assessment and techniques, data availability and integrity, public disclosures, modeling, and forward-looking assessments.

2. Insurance Markets and Mitigation/Resilience: Assess the potential for major disruptions of private insurance coverage in U.S. markets that are particularly vulnerable to climate change impacts; facilitate mitigation and resilience for disasters.

FIO points to evidence that climate change may be associated with a decline in the availability and affordability of private sector insurance coverage. According to FIO, the creation and expansion of insurers of last resort in various states reflect this problem. FIO intends to assess the availability and affordability of insurance coverage in high-risk areas, particularly for traditionally underserved communities and consumers, minorities, and low- and moderate-income persons.

3. Insurance Sector Engagement: Increase FIO's engagement on climate-related issues; leverage the insurance sector's ability to help achieve climate-related goals.

FIO plans to take a leadership role in analyzing how the insurance sector may help mitigate climate-related risks. FIO says it will engage with the insurance industry to assess how the industry may help achieve national climate-related goals, including mitigation, adaptation, and transition to a lower carbon economy. This could include

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Climate Change - Cont.

evaluations of underwriting activities, investment holdings, and business operations to support a low emissions economy. This also might encompass the insurance industry's transition of its operational and attributable greenhouse gas emissions. According to FIO, only one state has passed legislation that is intended to leverage the insurance sector's ability to affect greenhouse gas emissions.

Invitation for Public Comment

In the RFI, FIO presents 19 questions for public response.

The questions seek comments on the FIO's role and stated priorities related to the impact of climate-change on the insurance industry. The requests also ask for input on the types of data needed to measure and assess insurers' exposures to climate-change financial respects, as well as factors related to developing climate-related financial disclosures.

For a complete list of the FIO's requests for public comment and additional information about the RFI, please visit the blog page of our website at www.radeylaw.com.

Trial Set for Next Summer in Case Challenging Limitations on Roof Advertisements

By: *Travis Miller*

This summer a federal district court granted a preliminary injunction in the case of *Gale Force Roofing & Restoration, LLC, et al. v Julie I. Brown, in her official capacity as Secretary of the Florida Department of Business and Professional Regulation*, barring the enforcement of portions of the 2021 property insurance reform bill (SB 76) aimed at curtailing solicited roof claims. Two additional roofing companies have intervened in the case. The topic of contrived roof claims generated a lot of debate during the 2021 session as lawmakers searched for ways to improve Florida's struggling residential property insurance market. Among the reforms, the legislature sought to prevent roofing contractors from soliciting customers for the purpose of submitting roof claims. A roofing contractor immediately sought an injunction against that portion of SB 76, arguing that the restrictions violate its right to free speech. The district court agreed, finding that the new law went too far in trying to limit suspect roofing claims to the point that it prohibited valid commercial speech.

The court recently scheduled the trial in this case for May 2022. Therefore, unless the case is resolved earlier, potentially in motions for summary judgment, the ultimate disposition of this issue won't be known until the middle of next year. Of course, the preliminary injunction entered by the court earlier this year is more than just an indicator of its views in the case—one of the key standards for issuing a preliminary injunction is a finding that the party seeking the injunction is likely to succeed on the merits.

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