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IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA

JAMES F. FEE, JR.,

Plaintiff,

v. Case No. 2016 CA 2159

THE NATIONAL COUNCIL ON
COMPENSATION INSURANCE, INC.,
etc., THE FLORIDA OFFICE OF
INSURANCE REGULATION, etc., and
DAVID ALTMAIER,

Defendants.
_____/

ORDER ON NON-JURY TRIAL AND FINAL JUDGEMENT PROVIDING DECLARATORY AND INJUNCTIVE RELIEF

THIS CAUSE came before the Court on November 9, 2016 for non-jury trial/evidentiary hearing on all pending matters in this Sunshine Law and Public Records Law action for declaratory and injunctive relief regarding the workers' compensation rate setting process.

The Parties

1. Plaintiff James F. Fee, Jr. [Fee] is an attorney who owns the law office of Druckman and Fee, which has

various insurance policies, including worker's compensation.

2. Defendant National Council on Compensation Insurance [NCCI] is a corporation licensed, inter alia, as a rating organization authorized to request rate changes [increases and decreases] for insurers selling worker's compensation and employer liability insurance coverage in Florida when there is a perceived need for a change in rates, either upward or downward. NCCI is headquartered in Boca Raton, Florida, where it employs more than 800 actuaries and regulatory services personnel to interact with executive branch insurance regulatory personnel in several states. As is pertinent here [Florida workers' compensation rate setting], insurers who provide employers with either worker's compensation or employer liability coverage may either submit rate filings themselves or, as is almost universally done, subscribe to a recognized rating organization such as NCCI to prepare the rate proposal for them. Historically, insurance rating matters are

done in the public eye, with public meetings noticed as specified by law, and with statutorily mandated minutes kept.

3. Defendant the Florida Office of Insurance Regulation, with its Commissioner David Altmaier [jointly, OIR] is the regulatory agency responsible for setting insurance rates.

The Pleadings

4. Plaintiff contends the NCCI and OIR defendants have violated applicable provisions of the Florida Government in the Sunshine Law [section 286.011] and the Florida Public Records Laws [Article 1, section 24 of the Florida Constitution and section 119.07(1)], provisions made applicable to the NCCI and OIR defendants in sections 627.091 and 627.291, Florida Statutes.

5. The August 10, 2016 complaint contains four counts. Counts I, III and IV seek declaratory relief against NCCI for its failures to comply with the public

meetings requirements of the Florida Government in the Sunshine Laws and its failures to provide documents to which the plaintiff claims to be entitled pursuant to chapter 119.07(1). Count II seeks declaratory and injunctive relief against to all of the defendants due to the recent worker's compensation rate setting activities which did not take place in the sunshine as required.

6. The defendants deny the allegations and claim NCCI does not have to comply with the Sunshine Laws because it no longer use a committee to prepare the rate filing submission. NCCI also contends the plaintiff lacks standing to assert the access to records issue. All defendants contend the single, publicly noticed hearing on August 16, 2016 and the OIR rejection of the initial and amended rate requests constitute sufficiently independent, compliant action that any NCCI deficiencies have been cured, a contention the plaintiff disputes.

7. As set forth more fully herein, the 2016 worker's compensation rate adjustment process was not properly open to the public, the plaintiff and his actuarial expert were not given records and information to which they were entitled, and the recently set rate increase of 14.5% - which arose from a series of mostly private interactions contrary to law - must be found to be void *ab initio*, because the lack of sunshine so permeated the process. This is consistent with the directives of the Florida Supreme Court in Tolar v. School Board, 398 So.2d 427 (Fla. 1981) and Town of Palm Beach v. Gradison, 296 So.2d 473 (Fla. 1974). See, also, Monroe County v. Pigeon Key Historical Park, Inc., 647 So.2d 857, 861 (Fla. 3d DCA 1994) ("Tolar effectively sounded the death knell of an unadulterated Sunshine Law. [cit.om.] Governmental actions will not be voided whenever governmental bodies have met in secret where sufficiently corrective final action has been taken"). Because there was "no sufficiently

corrective final action here, the void *ab initio* result from Gradison controls.

The Hearing

8. All parties were present with counsel, and counsel gave opening statements.

Background

[Based on the parties' papers, arguments and supporting authorities, as well as the witnesses' demeanor, credibility and testimony and other evidence]

9. This case involves the intersection of the Florida workers' compensation insurance rate setting and the extent of the government in the sunshine requirement.

10. Earlier this year, the Florida Supreme Court issued opinions in two cases that had the potential to impact the solvency of the workers compensation trust fund.

11. In Castellanos v. Next Door Co., 192 So.3d 431 (Fla. 2016), decided in late April 2016, the Florida Supreme Court found the statutory attorney fee limit in

section 440.34, Florida Statutes to be unconstitutional.

12. In Westphal v. City of St. Petersburg, 194 So.3d 311, (Fla. 2016) the Florida Supreme Court ruled that the then-current limit of 104 weeks on temporary total disability benefits in section 440.15(2)(a), Florida Statutes was unconstitutional, reverting to the prior statute which established a 260-week limitation on temporary total disability benefits.

The Issues and Analysis

13. The primary issues before this Court are whether NCCI had an obligation to conduct its meetings regarding the rate increase in the sunshine and, if so, what remedy or other action is needed, and whether NCCI had an obligation to provide the plaintiff with the documents and information in section 627.291, Florida Statutes.

14. As pertinent here, the OIR is responsible for making sure that workers' compensation insurance rates

are sufficient to avoid insolvency and are not excessive where insureds would be paying more than needed.

15. Insurers who want their rates adjusted may either submit their own rate filing justifying the rate adjustment requested or they may have a licensed rating organization such as NCCI[1].

16. The Legislature has recognized the important role recognized rating organizations play, mandating in section 627.093, Florida Statutes that the rating organizations comply with Florida's Government in the Sunshine meeting requirements [section 286.011, Florida Statutes]:

> Section 286.011 shall be applicable to every rate filing, approval or disapproval of filing, rating deviation from filing, or appeal from any of these regarding workers' compensation and employer's liability insurances.

Id., supra.

[1]The evidence indicated that NCCI acts on behalf of essentially all worker's compensation insurers in Florida, more than 250.

17. More particularly, Florida's Legislature has made clear in section 627.091(6), Florida Statutes how rating organizations with responsibility for workers' compensation insurance rates must comply with the Government in the Sunshine public meeting provision:

> 6. Whenever the committee of a recognized rating organization with responsibility for workers' compensation and employer's liability insurance rates in this state meets to discuss the necessity for, or a request for, Florida rate increases or decreases, the determination of Florida rates, the rates to be requested, and any other matters pertaining specifically and directly to such Florida rate, such meetings shall be held in this state and shall be subject to s. 286.011. The committee of such a rating organization shall provide at least 3 weeks' prior notice of such meetings to the office and shall provide at least 14 days' prior notice of such meeting to the public by publication in the Florida Administrative Register. Section 627.091(6), Florida Statutes.

18. Section 627.091(3) also mandates that "A filing and any supporting information shall be open to public inspection as provided in s. 119.07(1)" (the Florida Public Records Law).

19. Records subject to Florida's Public Records Laws "are open for personal inspection and copying by

any person". Section 119.01 and 119.07(1), Florida Statutes.

20. Public meetings must not only be publicly noticed in advance but minutes of the meetings must be "promptly recorded, and such records shall be open to public inspection". Section 286.011, Florida Statutes.

21. Subsections 627.291(1) and (2), Florida Statutes identify the information to be provided regarding workers' compensation and employer liability coverage to insureds:

627.291 Information to be furnished insureds; appeal by insureds; workers' compensation and employer's liability insurances.—
(1) As to workers' compensation and employer's liability insurances, every rating organization and every insurer which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.
(2) As to workers' compensation and employer's liability insurances, every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his or her authorized representative, on his or her written request to review the manner in which such rating system has been applied in connection with the insurance afforded him or her. If the rating organization or insurer fails to grant or rejects such request within 30 days after it is made, the applicant may proceed in the same manner as if his or her application had been rejected. Any party affected by the action of such rating organization or insurer on such request may, within 30 days after written notice of such action, appeal to the office, which may affirm or reverse such action.

22. In joint pretrial statement, the parties stipulated to various facts (paraphrased here)

pertinent here, for which no proof was required, including the following:

a. The OIR is the agency which regulates activities concerning insurers, including review and approval or disapproval of rate filings made by or on behalf of workers' compensation insurance companies.

b. NCCI is the licensed rating organization which made the workers' compensation rate filings pertinent here; the rate filings were on behalf of the large number of workers' compensation insurers which subscribe to NCCI for NCCI to make workers' compensation rate filings on their behalf.

c. Chapter 627, Florida Statutes requires workers' compensation insurers, or a licensed rating organization to which they subscribe, to file with the OIR "every manual of classifications, rules and rates, every rating plan, and every modification of any of the foregoing which it proposes to use".

d. After receiving a proposed rate filing from NCCI [or an insurer or another rating organization], the OIR must review the filing to ensure such filing complies with the chapter 627 rate standards.

e. On May 27, 2016, NCCI submitted its [post-Castellanos] workers' compensation rate filing proposing a 17.1% increase in the overall statewide workers' compensation insurance rate level; this is the original rate filing, file log no. 16-12500 in the OIR electronic system.

f. On June 30, 2016, NCCI submitted its amended [post-Westphal] rate filing to propose an additional rate increase of 2.2% [for a total proposed rate increase of 19.6%]; this is the amended rate filing in OIR file 16-12500.

g. The OIR set a public hearing to take place on August 16, 2016 on the amended rate filing. OIR sent NCCI a notice setting the hearing on July 1, 2016 and published the notice of hearing in the Florida Administrative Register on July 7, 2016.

h. The public hearing was held on August 16, 2016. A number of members of the public attended in person, and many [including actuary Stephen Alexander on behalf of the plaintiff] testified.

i. The public comments were accepted until August 23, 2016 at 5:00 p.m.

j. On September 27, 2016, OIR issued its order disapproving the pending amended 19.6% rate filing and advising NCCI if it would submit a further amended filing within one week, OIR would approve a 14.5% increase in workers' compensation insurance rates. NCCI complied and without further public hearing, OIR approved the 14.5% increase [the testimony established that this is the largest workers' compensation rate increase in at least the last six years].

k. The revised rates are set to go into effect on December 1, 2016.

23. Although not part of the parties' formal stipulated facts, the undisputed evidence established that none of the meetings at NCCI were open to the public, established that no minutes were kept and established that there was no notice to the public in advance of the meetings. Further, the undisputed

evidence established that NCCI did not provide plaintiff Fee with all of the rate-related information he requested on more than one occasion.

The Events of This Year's Rate Filing Process

24. In the past, NCCI had two committees that dealt with rate filings: the Classification and Rates [C&R] Committee and the Underwriting Committee. Some time ago, NCCI reconfigured its Underwriting Committee so that, while it still exists, it does not deal with or discuss rate filings. The C&R Committee has apparently been disbanded. NCCI contends it has delegated to a single actuary [in this case Jay Rosen] the responsibility for preparing the workers' compensation off-cycle rate filings such as the ones done this year.

25. The preparation of the NCCI rating organization rate filing entailed several NCCI meetings [including but perhaps not limited to a Phase I meeting shortly after the April 28 Castellanos ruling, a mid-May Technical Peer Review [TPR] meeting involving actuary Rosen and other actuaries, a pre-Phase II meeting with

at least actuary Rosen and NCCI official Christopher Bailey, a Phase II meeting with actuary Rosen and various NCCI regulatory services division staff including Lori Lovgren].

26. In addition to the NCCI rate related meetings, NCCI officials had a series of meetings [some in person some by phone, some with some folks present in person, others on the phone] in which the impending rate filings were discussed with OIR regulatory staff, including the Commissioner, OIR actuary Cyndi Cooper and others [including but not limited to a May 10 meeting involving NCCI personnel Lovgren, Bailey and outside counsel Maida with OIR staff, a May 27 "delivery meeting" in which NCCI personnel Bailey, Lovgren and Rosen not only handed in the original post-Castellanos filing but gave a presentation including a power point and discussion and interaction with OIR staff, a June 22 meeting with NCCI attorney Maida and "a large number" of OIR staff, including former Commissioner McCarty, Belinda Miller, new Commissioner

David Altmaier and OIR actuary Cyndi Cooper, a July 13, 2016 meeting regarding OIR actuary Cooper's requests for information].

27. Not one of the meetings listed above was publicly noticed, no minutes were made and no members of the public were present.

28. The plaintiff's requests for the statutory supporting information were not timely complied with, and the plaintiff's actuary was not allowed to make any copies of the information he was shown before the hearing. [OIR allowed actuary Alexander to look at some of the information in its files, but contrary to the public records law, did not allow him to have copies; NCCI did not provide actuary Alexander or the plaintiff with the statutorily required information].

29. Following the April Castellanos decision, NCCI began working on a rate adjustment submission, formally proposing on May 27, 2016 that the OIR authorize an increase in the workers' compensation rates of 17.1%.

30. After the June Westphal decision, NCCI submitted an amended rate filing for an additional rate increase of 2.2%, with the total proposed rate increase of 19.6%[2]. There were more meetings and conversations in conjunction with this requested increase.

31. During its preparation of the two submissions, NCCI held no public meetings and gave no notice to any interested person of meetings it was holding, NCCI also kept no minutes.

32. During the time between the release of the two Supreme Court rulings, NCCI held a number of meetings with its personnel and held a number of meetings and exchanged information in other ways with OIR staff involved in reviewing and analyzing the rate increase recommendations, both before the noticed public OIR meeting of August 16, 2016 and after.

[2]Because of the way the numbers were submitted, adding the two numbers - 17.1% and 2.2% to total 19.3% - does not give the accurate total amended rate increase proposal, which was actually 19.6%.

The Hearing

33. As directed by the Court, the parties submitted a joint pretrial statement containing a list of facts that were admitted and required no proof at the trial, excerpted above.

34. As directed by the Court, the parties submitted a joint pretrial statement containing a list of various pertinent issues of fact and law remaining in dispute. Some of the issues were repetitive and duplicate, some were not relevant. In presenting the list of factual and legal issues to be determined, the Court has taken the liberty of grouping some issues with related ones, and restating others:

a. Whether NCCI has a committee with responsibility for Florida workers' compensation rates;

b. Whether an NCCI "committee" subject to 627.091(6), Florida Statutes met to discuss matters related to the necessity for, or a request for,

Florida rate increases or decreases, the determination of Florida rates, the rates to be requested, and any other matters pertaining specifically and directly to such Florida rates with respect to the original and or amended rate filing;

c. Whether any such meeting violated the requirements set forth in sections 286.011 or 627.091(6), Florida Statutes:

d. Whether any possible Sunshine Law violation relating to the original or amended rate filing was cured by OIR's public rate hearing on August 16, 2016;

e. Whether NCCI has been delegated the performance of any governmental duty or public function with respect to rate filings for workers' compensation insurance in Florida;

f. Whether NCCI acts solely on behalf of its subscribing insurers when it makes rate filings for

workers' compensation in Florida, or whether it acts in place of the OIR when it makes rate filings for workers' compensation in Florida;

g. Whether the Amended Rate Filing is void *ab initio;*

h. Whether the OIR's order approving the reviews 14.5% workers' compensation insurance rate increase is also void *ab initio;*

i. Whether, if NCCI does have a committee for purposes of 627.091(6), Florida Statutes, and that same committee meets to discuss matters related to future rate filings, and such meeting is not held in compliance with sections 627.091(6) and 286.011, Florida Statutes, such future rate filings will be void ab initio;

j. As to section 627.291(1), whether Fee is an insured, whether Fee is or was affected by the original or amended rate filing and whether Fee has standing to bring his claims;

k. As to section 627.291(1), what constitutes "pertinent information as to such rate";

l. Whether NCCI violated section 627.291(1), Florida Statutes;

m. Whether Fee is entitled under section 627.291(1), Florida Statutes to NCCI information relating to "rule" filings;

n. Whether NCCI is subject to chapter 119, Florida Statutes;

o. Whether NCCI must comply with chapter 119 with respect to Fee's request for information and records;

p. Whether the relief Fee requested as to the OIR August 16, 2016 public hearing and the OIR September 27, 2016 Order are moot;

q. Whether Fee waived his right to injunctive relief as to the October 5, 2016 final order on rate filing;

r. Whether this Court has jurisdiction to order injunctive relief against the OIR, based on its own actions or inactions or those of NCCI;

s. If attorney's fees or costs are appropriate pursuant to sections 119.12 and 286.011, Florida Statutes, which party or parties are entitled to recover them;

t. Whether NCCI provided Fee with the material appropriate to properly review the proposed original and amended rate requests for compliance with the requirements set forth in chapter 627, Florida Statutes; and

u. Whether NCCI violated sections 286.011 or 627.091(6), Florida Statutes by not providing notice to the public or giving them an opportunity to be present or heard at meetings between NCCI and the OIR.

Pertinent Legal Principles

35. Florida principles of open government, including the Sunshine Law and Public Records, are protected in statutes pertinent here [sections 286.011 and 627.091 and sections 627.291 and 119.07(1), Florida Statutes] and in Florida's Constitution, Article 1, section 24 [public records and meetings].

> The only question to be determined is whether the citizens planning commission composed of private citizens, which was established by the Town Council and the members thereof appointed by the Town Council, was subject to the government in the sunshine law.
>
> Every meeting of any board, commission, agency or authority of a municipality should be a marketplace of ideas, so that the governmental agency may have sufficient input from the citizens who are going to be affected by the subsequent action of the municipality. The ordinary taxpayer can no longer be led blindly down the path of government, for the news media, by constantly reporting community affairs, has made the taxpayer aware of governmental problems. Government, more so now than ever before, should be responsive to the wishes of the public. These wishes could never be known in nonpublic meetings, and the governmental agencies would be deprived of the benefit of suggestions and ideas which may be advanced by the knowledgeable public.
>
> Also such open meetings instill confidence in government. The taxpayer deserves an opportunity

> to express his views and have them considered in the decision-making process.
>
> * * * *
>
> The principle to be followed is very simple: HN3 When in doubt, the members of any board, agency, authority or commission should follow the open-meeting policy of the State. See Florida Law Review, Government in the Sunshine by Ruth Mayes Barnes, Vol. XXIII, 361, 365 (Winter 1971).
>
> HN4 Mere showing that the government in the sunshine law has been violated constitutes an irreparable public injury so that the ordinance is void *ab initio*. Times Publishing Co. v. Williams, 222 So.2d 470 (Fla.App.2d.1969). Florida Law Review, Government in the Sunshine by Ruther Mayes Barnes, Vol. XXIII, p. 369 (Winter 1971).

Palm Beach v. Gradison, 296 So.2d 473, 475 and 477, Florida Statutes.

36. In Palm Beach v. Gradison, 296 So.2d 473, (Fla. 1974), the Florida Supreme Court affirmed the district court's ruling that violation of the Sunshine Laws to have meetings "in the shade" meant that actions subsequently taken in public to ratify information exchanged secretly or in the shade did not cure the taint: the Sunshine Law violation's rendered the actions taken void *ab initio*. The Court noted at 477:

> [T]o prevent at non-public meetings the crystallization of secret decisions to a point just short of ceremonial acceptance. . . .The statute

should be construed so as to frustrate all evasive devices. Id. 477.

37. In Tolar v. School Board, 398 So.2d 427 (Fla. 1981), the Florida Supreme Court held that Sunshine Law violations could be cured if there were subsequent, final, independent action in the sunshine that was "not merely a ceremonial acceptance . . .and . . .a perfunctory ratification of secret decisions." Id. 429.

38. Relying on Tolar, and the specific facts in cases where there were clearly substantive, open, non-ceremonial public meetings, courts have found that such meetings could properly be found to have cured extant Sunshine Law violations. See, e.g. Sarasota Citizens for Responsible Government v. City of Sarasota, 48 So.3d 755 (Fla. 2010) and Monroe County v. Pigeon Key Historical Park, 647 So. 2d 857 (Fla. 3rd DCA 1994). However, as noted in Tolar and Pigeon Key, a cure of the taint from violating the Sunshine Law only occurred where the final action was substantive and deliberative, and actually remediated the violations.

39. NCCI claims it no longer uses the same committee structure it used before and contends that because it has amended its prior committee structure and delegated the decision-making inherent in the rate filing process to a single person, Section 627.091(6) no longer applies. A deposition exhibit, a 1986 letter from then-Insurance Commissioner Gunter referred to the rate setting process as being one subject to the meeting in the Sunshine requirement was sent by the OIR in September 2014 to NCCI, reminding NCCI of the applicability of the Sunshine Law to its rate filing preparation meetings.

40. The Florida Government in the Sunshine Manual [online at http://www.myfloridalegal.com/sun.nsf/sunmanual] addresses the delegation of authority to a single individual:

> The Sunshine Law does not provide for any 'government by delegation' exception; a public body cannot escape the application of the Sunshine Law by undertaking to delegate the conduct of public business through an alter ego. IDS Properties, Inc.

> v. Town of Palm Beach, 279 So. 2d 353, 359 9Fla. 4th DCA 1973), certified question answered sub nom., Town of Palm Beach v. Gradiaon, 296 So.2d 473 (Fla. 1974). See also, News-Press Publishing Company, Inc., v. Carlson, 410 So.2d 546, 547-548 (Fla. 2d DCA 1982) (when public officials delegate *de facto* authority to act on their behalf in the formulation, preparation, and promulgation of plans on which foreseeable action will be taken by those public officials, those delegated that authority stand in the shoes of such public official insofar as the Sunshine Law is concerned).

Id. at 18-19. The difference is whether the one to whom authority is delegated is merely acting as a fact-finder, or is acting in a delegated decision-making role. The Manual cites numerous opinions of Florida's Attorney General to emphasize that decision making must be done in the Sunshine: AGO 74-294, 84-54, 75-41, 74-84, 90-1795-06 10-15, while fact-finding activities are not subject to the Sunshine Law: AGO 95-06, 93-78.

The Witnesses

James Francis Fee

41. Plaintiff James Francis Fee, Jr. testified

first. He is an attorney with a law firm, Druckman and Fee, P.A. He is the owner of and sole attorney with the firm.

42. Fee filed the action to bring transparency to the workers' compensation insurance rate process.

43. He was not provided with all of the information by NCCI in a timely fashion. His first request was May 20, 2016, a letter sent by certified mail after seeing an April press release regarding an analysis of the Florida Supreme Court Castellanos attorney fee ruling. Plaintiff's exhibit 1 is a copy of his letter [admitted in evidence without objection].

44. Fee was seeking the information to inform himself and be able to provide input regarding premiums his firm and other employers he represents are asked to pay and for which premium audits are done.

45. He also represents people injured at work, which can lead to legislative action. Rate setting information for stakeholders is important.

46. He renewed the request for information in a June letter [Plaintiff's 2].

47. The initial request related to the initial rate filing which was expected to go into effect August 1, 2016, but he still had not received the information.

48. Plaintiff's exhibit 3 is correspondence to him on behalf of NCCI, responding to the May and June letters; the letter is not a full and complete response.

49. Plaintiff's exhibit 4 is a letter to NCCI letter, pointing the lack of completeness of the response in plaintiff's exhibit 3 which offered only the 34 page then-pending rate filing.

50. Plaintiff's exhibit 5 is a July letter to NNCI's attorney Maida after receiving the 34 pages, requesting [again] the additional information asked for, but not received, in addition to the amended filing for the 19.6% rate increase and information

regarding compliance with the public meeting requirements, going back to 2006.

51. Plaintiff's exhibit 6 is a July 21, 2016 letter Mr. Fee wrote to the Commissioner regarding the lack of transparency. He did not receive a written response from the Commissioner, but met with the Commissioner and staff on July 27, 2016 to discuss the Sunshine Law requirement. The Commissioner and staff said they did some investigation, did not think NCCI had a committee, and said they were going forward with the public meeting. There were five or so there, Commissioner, General Counsel and three or four ladies in the room.

52. Plaintiff's exhibit 7 is a response to the letter to attorney Maida, relating to the amended rate filing.

53. Plaintiff's exhibit 9 is a response to attorney Maida's August 2 letter [Plaintiff's 8]; the public hearing was pending at the time, set for two weeks later, August 16, 2016.

54. Plaintiff's exhibit 9 also sought actuary data for Mr. Fee's actuary.

55. Apart from its role as a licensed rating organization for workers' compensation, NCCI is also the sole contracted statistical agent for the OIR as to all of the workers' compensation information, and is responsible for collecting all of that information and providing it to OIR.

56. Mr. Fee never received the actuarial information requested. He was not personally present at the August 16, 2016 rate hearing, due to his wife's health and some family time together. [He had planned the together time around a rate hearing which ended up being changed following the amended rate filing].

57. Fee had contracted with Stephen Alexander, an actuary formerly with the Consumer Advocate's office to give testimony; actuary Alexander indicated he did not have all of the information he needed to provide full input.

58. If the information Fee requested had been provided, there would have been an opportunity to determine what other information could have been helpful in developing pertinent information, which he could have done if there had been a public meeting at which the NCCI information was discussed.

59. Seventy percent of Fee's firm's cases involve representation of injured workers. He also has a workers' compensation policy for his business, his law firm. The policy holder is his firm, which insures him.

60. Actuary Alexander reviewed the rate filing at the OIR but was told he could not make copies. At some point later, after May, Mr. Alexander reviewed the amended rate filing, going to the OIR office when NCCI had not provided copies.

61. Fee does not know of any documents provided to the OIR by NCCI that he has not received, but had asked to be provided with information that was considered by NCCI and not relied upon; that information was not provided.

62. There was an issue about claim information after the 2008 Murray decision, which NCCI said was not relevant when NCCI provided OIR information from the 2003 time frame instead.

62. The deposition testimony established that there were packets of documents that Fee did not receive, he did not receive the interrogatory information. He is not sure if that information was available on the website as of August 2, 2016.

63. Fee may have visited the OIR website, but does not recall when. His request includes what the statute says he is entitled to.

64. He contends he is entitled to more than what NCCI provided to the OIR.

65. There may have been alternate filings considered and other documents mentioned during the phase I and phase II documents and TPR documents.

66. If there are internal drafts of rate filings that were being discussed, he is entitled to those

pursuant to 627.291(1) and internal correspondence relating thereto.

67. Fee is entitled to see documents relating to rates and the rate filing, even if the documents were not provided to the OIR.

68. He did not give notice of his meeting with the Commissioner about the Sunshine Law and did not know if the OIR noticed the meeting.

69. The rate filing submitted initially by NCCI was rejected and the OIR directed NCCI to submit a further submission if it did not want to pursue litigation regarding the rejection.

70. The OIR does not directly make rate filings itself; NCCI submits rate filings on behalf of insurers, not the OIR.

71. If NCCI did not exist, insurers would have to do their own filings or submit filings through another licensed rating agency.

72. Plaintiff Fee is not an actuary.

73. Actuary Stephen Alexander testified on plaintiff's behalf at the August public hearing.

74. Fee does not contend the August 16, 2016 public hearing was not properly noticed; it was noticed in the Register, but there were problems before.

75. Florida is in the lower half of premium returns in the country and returns the lowest amount of premiums. [The Oregon scale ranks the cost of workers' comp premiums; he believes Florida is between 28th and 38th].

76. Fee is aware there may be two or three insurers who do their own filings, rather than use a filing agent.

77. Fee personally sent no comments to the Commissioner, based on the Commissioner's comments at the in-person meeting, believing it would be futile.

78. Fee asked that they go forward the right way, but that was denied.

79. Mr. Alexander gave the best input he could without the full information, giving his caveat he did not have the full information available.

80. He listened to some of the hearing [transcript in the joint exhibit notebook, joint exhibit 6].

81. Mr. Alexander said it would be reasonable to set an increase of no more than 5.7% if the OIR felt compelled to do something, but would have liked the rest of the information to give a more accurate number.

82. Actuaries are bound by certain standards. Plaintiff Fee's concern and interest are in the process, and its transparency.

83. Mr. Alexander made it clear in his submissions that he lacked certain information; Fee recalls seeing that somewhere.

84. Plaintiff Fee's deposition [taken shortly before the trial] is also in evidence and was reviewed by the Court.

Cyndi Cooper

85. OIR Actuary Cyndi Cooper testified next. She reviews and analyzes documents and makes recommendations to the Commissioner. She reviews everything submitted to the OIR, and sometimes looks at outside source information to make the recommendations.

86. The statistical agent data contract between OIR and NCCI is for NCCI to gather and review outside data which OIR reviews and verifies in conjunction with a rate filing.

87. NCCI collects the data on behalf of the Office, to help review and verify the rate filings by NCCI. Primarily she relies on information provided by NCCI.

88. All of the NCCI documents are public records.

89. The OIR holds meetings with NCCI which sometimes brings documents to the meeting.

90. There was an NCCI powerpoint brought to the intial delivery meeting at the OIR office in late May, that was not made available to the public right away.

91. There are emails, but they [like the powerpoint] would only be provided if specifically requested.

92. She worked at NCCI before going to work at OIR. She is the OIR actuary.

93. She is not aware of any workers comp insurers in Florida who do not use NCCI for rate filings.

94. As to NCCI/ OIR meetings at which the rate filings were discussed, including May 16, 2016, Commissioner Altmaier was present, she does not remember if interim former insurance commissioner Kevin McCarty was present as well.

95. She identified interrogatory[3] responses as to who was invited to the May meeting between OIR and NCCI. Belinda Miller is the chief of staff, the general counsel was present, there was another deputy

[3]When she needs more information about a rate filing proposal as the OIR actuary, she sends written requests for information to the submitted of the rate filing proposal.

commissioner. The meeting was to discuss the Castellanos ruling.

96. The next OIR/NCCI meeting was May 27, 2016; the interrogatory shows who was invited, but not necessarily who was present. That meeting was a filing and delivery meeting.

97. The next OIR/NCCI meeting was June 27, 2016. Again, several were present; that meeting was to discuss the rate hearing.

98. The next OIR/NCCI meeting was July 13 2016, a phone call between her and NCCI attorneys and staff; they got clarification on some items they sent.

99. The next OIR/NCCI meeting was August 1, 2016; at that meeting the rate hearing was discussed.

100. The next OIR/NCCI meeting was a telephone call August 10; it was a call to discuss if additional information was needed.

101. The next OIR/NCCI meeting was September 20, 2016. NCCI was represented at that meeting, which was to make sure the OIR had the information needed.

102. None of those meetings mentioned were publically noticed or open to the public.

103. Plaintiff's exhibit 13 is a September 12, 2014 letter Cooper sent. She did not write the letter but signed it. She wrote the September 12, 2014 email to NCCI official Chris Bailey regarding the NCCI underwriting committee relating to the Sunshine Law requirement in section 627.091(6).

104. She does not know of any follow up.

105. Plaintiff's exhibit 21 contains four letters: June 14, 2016, June 7, 2016 letter, July 21, 2016 and July 1, 2016.

106. She requested additional information or data as an actuary so she could have more data to look at. Sometimes NCCI does not have the information or data.

107. Her deposition taken shortly before trial is also in evidence, and was reviewed by the Court.

Christopher Bailey

108. NCCI official Christopher Thomas Bailey testified next; he works for NCCI as to Florida and another state [Iowa] as a liaison with OIR.

109. He participated various meetings internally, Phase I as to the "landscape", met with the actuary, then a phase II meeting, then a technical peer review [TPR].

110. The actuary presents information to other actuaries, for questions and vetting as to assumptions.

111. This year's TPR regarding the rate filing was June 24, 2016 as to the Westphal decision. There were several actuaries and managing actuaries and several others who were invited to that meeting. It was set for an hour and a half; it was not open to the public.

112. A phase II meeting allows the responsible actuary to present the process used and answer managing

staff's questions; the May 23, 2016 meeting was for the Castellanos decision.

113. There were multiple phase II meetings and TPR meetings regarding workers' compensation rates in Florida this year.

114. There were between five and ten or more attendees present, from various NCCI departments, including the chief actuary and other actuaries, attorneys and officers.

115. There was a phase II meeting for both the Castellano and the Westphal decision; neither was open to the public.

116. None of the TPR meetings were open to the public.

117. Bailey received the Cooper letter in Plaintiff's 13 in September 2014; he is not aware of any follow up by the OIR.

118. Mr. Bailey's deposition taken shortly before trial is in evidence and was reviewed by the Court.

Lori Lovgren

119. NCCI division director Lori Lovgren testified next. She has worked with NCCI for several years, 17 years.

120. Lovgren is Bailey's manager. Lovgren has attended meetings about rate filings, including the TPR meeting relating to the original rate filing in May 2016.

121. At that meeting, the first after the Castellanos decision, there was a determination of the rate filing and this was the TPR meeting.

122. There was a TPR meeting for the amended rate filing at which there were a group of actuaries.

123. She was at the phase II meetings, there was a smaller number of folks present, from regulatory, to ask questions and find out how actuary Rosen came up with the number.

124. She attends Phase I meetings as well, first tier meetings, but there were none relating to the filings here pertinent to the two cases.

125. Preliminary issues are addressed at the Phase I meetings.

126. There was a packet of data prepare for the TPR meetings in May and the second TPR meeting.

127. There was a document for the Phase II meeting, regarding methodology.

128. She was involved in preparing the answers to the plaintiff's interrogatories regarding internal NCCI meetings and meetings between NCCI and OIR; the interrogatories are plaintiff's exhibit 30.

129. Pages 6 and 7 of the Plaintiff's exhibit 30 show several meetings between NCCI and the OIR, none of which were noticed as public meetings; the public was not present, and minutes were not kept.

130. The packets of documents used at the internal meetings were not present at the OIR meetings.

131. The NCCI powerpoint was dropped off with the initial rate filing. There were discussions about some of Ms. Cooper's [OIR] questions.

132. NCCI did submit prefiled testimony before the public hearing.

133. Jay Rosen had primary responsibility for Florida rate filings and may have asked others to run data but at the end of the day he would make the decision himself.

134. The others are staff members who assisted him with data, that consists of a variety of data.

135. This was not a normal filing, but rather in response to the two cases, with some medical information.

136. Any data Rosen ultimately used was submitted; Ms. Cooper asked for other data, which was given if available.

137. Lovgren does not know what the difference is between what Rosen looked at and what he ultimately used.

138. Exhibit A to plaintiff's exhibit 30 listed the 10 to 15 NCCI meetings relating to the rate filings.

139. Some of the meetings were internal, some were external like the delivery meeting with OIR. None of the meetings were publicly noticed.

140. The rate filings were discussed at the internal NCCI meetings.

141. Plaintiff's exhibit 16 is a 2014 letter from Foley Lardner attorney Maida to OIR actuary Cooper; Ms. Lovgren has seen the letter before. That is the only letter regarding the public meeting subject she is aware of.

142. Foley Lardner was NCCI counsel; NCCI never received a further response from the OIR.

143. Lovgren helped with the creation of the letter; NCCI was of the opinion the meetings did not need to be open to the public.

144. A C&R committee is a classification and rate committee in existence in the early 1990's, made up of insurance company subscribers.

145. The C&R committee was subject to the Sunshine Law; that committee and all of them were disbanded in 1991.

146. NCCI staff now prepares the rate filings and are not previewed by any "committee" before submission to insurance regulators.

147. There is an annual cleanup day regarding reviewing retained records. She does not know the retention period for packets used during internal meetings.

148. Lovgren says since there are no committees that perform any of the items in the statute, NCCI says

it has no responsibility under the statute to act in the sunshine regarding rate filing.

149. This rate filing authority was just with Jay Rosen; she sees no need to comply with section 6.

150. She knows insurers have certain obligations regarding rate filings and can comply with those by subscribing to NCCI.

151. The rate filing includes an interpretation of data, to see whether an increase or decrease is needed; those factors are set forth in chapter 627.

152. Plaintiff's exhibit 27 has three versions of the statistical data compilation contract between NCCI and OIR, one early in the 2000's, one in 2007 and one in 2011.

153. The data collection is separate from the licensing as a rating organization.

154. There are four different data types provided in the contracts, including claims, policy, financial and statistical.

155. There is an NCCI division for IT and data. Jay Rosen and Regulatory Services collect the data for rate filing.

156. The OIR can require NCCI to provide the data relied upon.

157. The OIR asked for the data they want and need and NCCI provides what it can.

158. As to information considered by Jay Rosen but not used, she knows it was requested but does not know if it was provided.

159. Ms. Lovgren's deposition taken shortly before trial is also in evidence, and was reviewed by the Court.

Cyndi Cooper Further Testimony

160. OIR actuary Cyndi Cooper was recalled for further testimony.

161. Cooper reviews filings by individual insurers; some use outside actuarial firms. It is common for the OIR to accommodate requests for meetings.

162. Cooper received sufficient responses from NCCI to allow her to render an actuarial opinion.

163. If Cooper did not have sufficient information, she would generally not render an actuarial opinion; when that happens, she disapproves the requested rate change.

164. She was at the August public hearing; everyone who submitted a card was allowed to speak.

165. Prior filings are on the OIR website, back to 2001.

166. Most of the rate filing information was submitted by "I-file", the OIR efiling system, except an email with some calculations that was separately provided.

167. All of the information she requested before the hearing was on the e-file site.

168. The record of the rate hearing was not closed at the end of the public comment, but was extended to August 23, 2016.

169. Cooper reviewed everything received after the hearing.

170. The recommendation Cooper made to the Commissioner was her recommendation.

171. The overall average rate increase or decrease applies equally to all NCCI subscribers, but the insurer can request a deviation higher or lower for that company; that deviation would have to be supported.

172. There are three deviations currently in effect. There is an excess rate that can be charged if the insurer and insured to higher rate if they agree before the end of the policy period. There are quite a few filings regarding large deductibles. A retrospective rating plan is adjusted based on actual losses, where the premium would not be based on the

base rate. There are self-insured workers comp employers, such as Disney and Walmart. A significant portion of the deviation market is made up of these self-insured employers, about one quarter of all workers' comp premiums and imputed premiums.

173. There has been a general decrease in workers' compensation rates since 2003.

174. Florida ranks in the middle of the pack, number 33, median rate charge.

175. The Office looked into whether NCCI had an actual committee, based on the information provided by NCCI's counsel.

176. She is not involved in the drafting of the current NCCI statistical data collection contract but is familiar with it.

177. The information submitted by NCCI relative to the data contract is public record.

178. When Cooper looked at the data to complete her analysis, she was looking at medical information.

179. The rate hearing is to make sure the public can be involved in the process, and try to coordinate very early on in the process, to make sure NCCI and the OIR are prepared and the hearing is at a convenient time.

180. NCCI presents first, then the OIR asks questions, the Consumer Advocate may participate and the public can participate, but she is not aware if the public can ask questions of NCCI re justification for the rate hike.

181. The hearing is carried online for the public to watch if they wish. All information submitted by NCCI is either online in advance publicly or is available pursuant to public record request.

182. She is familiar with the rate filing statute and knows she can ask NCCI for more information as to what they considered or relied upon.

183. Subsection 2(b) says NCCI can submit information relied upon and analyzed in support of the rate filing.

184. She does not interpret the data but analyzes it.

185. In a peer review, people challenge the analysis of the actuary.

186. Cooper does not think she needs to hear their discussion to do her analysis.

187. Cooper does not put all of her questions in writing to NCCI. She can send an interrogatory. An interrogatory is a public record.

188. There generally are no minutes taken at meetings.

189. The majority of the information is provided in writing.

190. Cooper does a lot of telephone conversations to understand things.

191. Most if not all of the information was in writing.

192. The May 27 meeting was the background information.

193. Even the meeting for the clarification meeting, the majority of the information was in writing.

194. She cannot remember every single conversation she had with them.

195. The total of all the meetings with NCCI was more than two hours.

196. A lot of the discussion had to do with the analysis of the need for an increase and the meeting.

197. She can't say if it is important for her to understand the interpretation of the NCCI folks.

Other Evidence

198. The joint exhibits 1 through 9 are in evidence, including the original and amended rate

filing and the transcript of the August 16, 2016 public OIR hearing.

199. Plaintiff's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 13, 16, 21, 27 and 30 are in evidence,

200. The OIR exhibits 1 through 9 are in evidence.

201. NCCI exhibits 2, 4, 5, 6, 7, 8, 9, 10 and 11 are in evidence.

202. The depositions of Stephen Alexander, Christopher Bailey, Cyndi Cooper, James Fee and Lori Lovgren are in evidence, with their respective attached exhibits.

Findings of Fact and Conclusions of Law

The Court having carefully considered the testimony, credibility and demeanor of the witnesses, having carefully considered all of the documentary and other evidence, and being otherwise fully advised in the premises, it is hereby

FOUND as follows:

1. As a statutorily recognized workers' compensation rating organization, NCCI is required to conduct its rate filing preparation meetings in public, following proper public notice. Sections 627.091(6) and 286.011, Florida Statutes. NCCI was aware of the statutory requirement for public meetings, but instead of complying tried to delegate its way out of the Sunshine even though it was providing the same rate filing proposal envisioned by the statutes.

2. The credible evidence shows that NCCI's approach clearly involves committees, even as it tries to claim otherwise. [Even if there were no committee meetings involved, NCCI's preparation of the rate filing through even one delegated person responsible does not exempt NCCI's rate filing preparation from the public meeting requirement; only the Legislature can change the law]. That NCCI has attempted to eliminate its responsibility to have its rate preparation meetings in public by changing the configuration of its "committee" structure and delegating to a single actuary all of the

decisional responsibility of preparing the rate filing submitted on behalf of its subscribers by NCCI is an improper, ineffective way to repeal the statutes and shed its responsibility for its rate filing meetings [including the Phase I meetings, the TPR (technical peer review meetings) and the Phase II meetings].

3. The statutory public meeting requirement attaches to the licensed rating organization, in this case NCCI. Whether NCCI arranges for its historical committee to prepare the rate filing or tries to make it the responsibility solely of actuary Jay Rosen, the Legislature has in the statutes made clear the decisional work relating to the rate filing should be transparent, and controlled by the Florida Sunshine Law.

4. The preponderance of the evidence supports plaintiff Fee's contention he is entitled to the documents he requested from NCCI pursuant to sections 627.291 and 119.07, Florida Statutes.

5. The totality of the evidence supports the contentions of plaintiff Fee that NCCI violated the statutes and withheld from him information to which he was entitled pursuant to sections 627.291 and 119.07. The lack of the full information to which plaintiff Fee was entitled meant that neither he nor his actuary had the appropriate ability to meaningfully comment in the single public hearing that occurred.

6. The clear and convincing evidence demonstrated that NCCI and the OIR held a series of secret meetings, in the shade proscribed by Florida's Sunshine Law and Gradison, and not in the Sunshine as required, meetings at which decision maker NCCI [through its staff] discussed and decided the substance of the rate increases NCCI proposed.

7. Far from being the meetings in the Sunshine required by law, the meetings between the OIR staff and NCCI staff were designed to, and had the effect of shutting the public out of meaningful participation in the rate making process.

8. This is not a situation analogous to Tolar, Pigeon Key and the City of Sarasota. In those cases the public meetings that did occur were actually independent meetings in which a responsible governing entity independently addressed the merits of the issue. While the OIR may have attempted to cure the pervasive taint by rejecting the NCCI amended filing, it went further. Its directive that it would approve 14.5% is obviously based on the already inescapably tainted information. NCCI's submission of the new amended filing without the required public meeting further compounded the public injury.

9. In this situation, there are several sequential events that combined to thwart public participation in the Sunshine, involving both the absence of public meetings and the improper withholding of information:

a. First, NCCI's unilateral decision to delegate the decision-making to actuary Rosen, to use semantics to claim that it does not have to conduct its internal [Phase I, TPR and Phase II meetings with groups of its

staff] in the public eye, with the advance notice and written transcripts required by section 286.011 and is ineffective as noted in the Florida Government in the Sunshine Manual to excuse its obligation to conduct these meetings in the public eye.

b. By ignoring its separate obligation to provide plaintiff Fee with information relevant to "all information pertinent as to such rate" as specified in section 627.291 and 119.07, the plaintiff, his actuary and any other person who requested the information were not properly equipped to meaningfully participate in the August 16, 2016 meeting.

c. The numerous secret, non-noticed meetings between NCCI and OIR regarding the substance of the rate increases requested constituted further, uncurable violations of the Sunshine Law, with the damage compounded by the complete lack of any minutes or transcripts of the meetings.

d. The August 16, 2016 did not cure the taint of the built in shade from the secret meetings, especially under the circumstances here. The OIR order rejected the tainted original and amended filings, but did not stop there. Instead, after allowing NCCI not to comply with the law regarding the production of information, and after participating with NCCI in a series of secret meetings contrary to law, the OIR order indicated that if NCCI would file an amended rate increase of 14.5%, that increase [a record setter for at least the past six years if not longer] would be approved. The OIR did not direct nor provide for any public participation in that rate submission process, and ignored how the conduct of the process in more secrecy than permitted had deprived Florida's business owners and workers' compensation insureds from being meaningfully involved in the process. Stated differently, unlike the governmental public meetings in Tolar and its progeny, the OIR's actions did not cure the built in taint from the secret meetings, it compounded and increased it,

requiring the rate filing adopted and the process to be found to be void *ab initio* as proscribed in Gradison.

10. Turning to the issues of fact and law which the parties disputed and for which they sought rulings here, the questions with the pertinent answers are set forth:

a. The credible evidence shows NCCI clearly does use committees, with a series of meetings to finalize its rate flings. These committee meetings [Phase I, TPR and Phase II, and whatever else NCCI might call them in trying to avoid its public meeting responsibility should have been properly noticed, and held in the Sunshine, with proper minutes. Separately, whether NCCI had a "committee" subject to section 627.091(6) is irrelevant to its obligation to conduct the decisional rate filing preparation meetings in public. As it happens, its process includes several groups of people who meet sequentially with its delegated actuary to make the decisions and prepare the filing, which means it is clearly within the statutory

parameters of section 627.091(6) requiring the meetings to comply with section 286.011. Its secret meetings with OIR also are violative of section 286.011, Florida Statutes. Even if NCCI's decisional process were actually limited to a single actuary, that decisional process is subject to the Government in the Sunshine public meeting requirement as mandated by law, despite NCCI's preferences to exclude the public.

b. Licensed rating organization NCCI's committees/groups of people met to discuss the subjects set forth as requiring Sunshine Law meetings, i.e., matters relating to the necessity for, or a request for, Florida rate increases, the determination of Florida rates, the rates to be requested, and other matters pertaining specifically and directly to such Florida rates with respect to the original and or amended rate filing.

c. As to whether any such meeting violated the requirements set forth in sections 286.011 or 627.091(6), Florida Statutes, clearly all of the NCCI

meetings internally for Phase I, Technical Peer Review and Phase II for supervisory interaction violated both statutes, as did the secret meetings at which discussions about the rate increase took place between OIR and NCCI. There should also have been one final public meeting of NCCI regarding the rate filing proposal prepared to address the OIR order, especially since there remained unanswered the question of why NCCI did not rely on more recent claims data [which NCCI collected and maintained under its separate contract with OIR regarding statistical data] after the Murray court opinion in 2008 and relied instead upon older data from early in this century.

d. As indicated above, the Sunshine Law violations relating to the original and amended rate filings were not cured by the August 16, 2016 public rate hearing, because the needed, required information mandated by section 627.291 and 119.07(1), Florida Statutes continued to be withheld.

e. The statutes spell out the obligations of licensed rate organizations such as NCCI when acting on behalf of their subscribers in making rate filings. Further NCCI is obligated to provide OIR with supplemental information when requested, as NCCI is also separately obligated to provide workers' compensation insureds with the section 627.291 information. Because section 27.291 clearly provides plaintiff Fee with the rate to information, the "totality of factors" test described in News & Sun-Sentinel Co. v. Schwab, etc., 596 So.2d 1029 (Fla. 1992) to determine whether NCCI has a separate obligation is irrelevant here.

f. In collecting the statistical data pursuant to its contract with the OIR, NCCI acts on behalf of the OIR. When submitting its rate filings, NCCI is to be acting on behalf of its subscribing insurers in conducting its public meetings for the purpose of preparing the NCCI rate filings, generally. In this case, when preparing a further amended rate filing

directed by OIR [one NCCI had been told would result in the largest workers' compensation rate increase in several years], NCCI was acting at the direction of the OIR while acting on behalf of its subscribers.

g. The original Castellanos, amended Westphal and final amended rate filings were all tainted by the Sunshine Law violations and the public's lack of information NCCI should have provided requires the finding that the rate filings are void *ab initio*.

h. The OIR ordered 14.5% worker's compensation insurance rate increase is also void *ab initio*.

i. Whether future NCCI rate filings will be void *ab initio* cannot be determined at this time and will have to be assessed at the time in light of the then-existing facts.

j. Plaintiff Fee is an insured, has been, is and will continue to be affected by workers' compensation rate filings, and has standing to bring this action to obtain the records to which he is entitled pursuant to

section 627.291 and 119.07(1), and to compel the defendants to comply with the public meetings requirement of Florida's Sunshine Law pursuant to section 627.091(6) and 286.011, Florida Statutes.

k. "Pertinent information as to such rate", referred to in section 627.291(1), Florida Statutes refers to information used or relevant to determination of a rate under chapter 627, Florida Statutes. It includes information referred to by NCCI actuaries, whether relied upon or not, and includes claims data between the time of the Murray decision in 2008 and the present as well as the information actually looked at between the early 2000's and the time of the Murray decision. It also, obviously, includes the packets of information compiled for use by each of the NCCI groups in conjunction with any and all Phase I, TPR and Phase II group sessions relative to the increases sought as a result of the Castellanos and Westphal rulings.

l. NCCI's actions and failures to act relative to records requested but not provided to plaintiff Fee violate section 627.291, Florida Statutes.

m. To the extent NCCI information relating to "rule" filings relates to rates and how they have been applied, as required in section 627.291, Florida Statutes.

n. NCCI is subject to chapter 119, with respect to its role as a licensed rating organization in preparing a rate filing and with respect to its contractual status as the OIR agent responsible for data collection and dissemination.

o. NCCI was and is obligated to comply with chapter 119 [and section 627.291], Florida Statutes with respect to plaintiff Fee's request for information and records.

p. Fee's requests for relief as to the August 16, 2016 public hearing and the OIR September 27, 2016 OIR Order are not moot.

q. Given the inherent and non-cured violations of Florida's Sunshine Law, there has been no waiver of Fee's request for injunctive relief.

r. This Court has the requisite subject matter jurisdiction over this matter, including the request for injunctive relief necessary to prevent the effect of the unlawfully set rate increase.

s. Plaintiff Fee is entitled to recover his fees and costs, NCCI and OIR are not.

t. While NCCI belatedly and begrudgingly provided Fee with some of the information needed, NCCI did not provide a large quantity of key information requested, including the NCCI-compiled document packets used in conjunction with any Phase I, Technical Peer Review and Phase II meetings, as well as the post-public hearing meeting at which the final amended filing was prepared [all of which should have been public meetings], as well as all information referred to NCCI personnel on which NCCI chose not to rely. Also, the post-Murray

decision [2008] claims information should have been provided, as requested.

u. NCCI [and the OIR] violated sections 627.091(6) and 286.011, Florida Statutes by not providing notice to the public or giving the public an opportunity to be present or heard at meetings between NCCI and the OIR. Neither NCCI nor the OIR [nor the two acting together] is legally authorized to change the law, only the Legislature is empowered to change our laws, until the meetings in the Sunshine and Public Records laws are changed, the defendants must comply by conducting the public meetings in the Sunshine while providing the public records requested.

Based on the foregoing, and the Court being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. Because the multiple non-public, secret meetings held by NCCI internally and with the OIR before the August 16, 2016 public hearing and NCCI's further

violation of the Sunshine Laws after the August 16, 2016 public hearing violate Florida's Sunshine Law, the 14.5% rate increase order and the underlying amended rate filing are void *ab initio;* the increase shall not take effect on December 1, 2016. Similarly, the original Castellanos rate filing and the post-Westphal amended rate filing are null and void, *ab initio*.

2. NCCI shall promptly provide plaintiff Fee with any records not already provided, including but not limited to the packets prepared and referred to during any Phase I, Technical Peer Review and Phase II meetings relating to rate increases related to the Castellanos and Westphal cases, as well as the information considered but not relied upon by NCCI personnel relating to the 2016 off-cycle workers' compensation rate increases proposed in 2016.

3. NCCI's request for attorneys' fees and costs against plaintiff Fee is denied.

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4. As and to the extent indicated above, the plaintiff's request for declaratory relief is granted as to NCCI as to Counts I, III and IV, and his requests for injunctive and declaratory relief as to NCCI and the OIR as to Count II is granted.

5. The Court retains jurisdiction to address the amount of the Plaintiff's fees and costs. Plaintiff Fee is entitled to recover his attorney's fees and costs relating to section 286.011, Florida Statutes as to all defendants, and is entitled to recover his attorney's fees and costs relating to section 119.12, Florida Statutes as to defendant NCCI.

ORDERED this 23rd day of November, 2016 in Tallahassee, Leon County, Florida.

KAREN GIEVERS
Circuit Judge

Copies furnished to:

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