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OFFICE OF
INSURANCE REGULATION

Docketed by: _____

OFFICE OF INSURANCE REGULATION

DAVID ALTMAIER
COMMISSIONER

Revised Workers' Compensation Rates and
Rating Values as Filed by the
NATIONAL COUNCIL ON
COMPENSATION INSURANCE, INC.

CASE NO.: 252466-19

ORDER ON RATE FILING

On August 27, 2019, the NATIONAL COUNCIL ON COMPENSATION INSURANCE, INC. ("NCCI"), filed, pursuant to Section 627.091, Florida Statutes, revised Workers' Compensation Rates and Rating Values ("Filing") for consideration and review by the FLORIDA OFFICE OF INSURANCE REGULATION ("OFFICE"). The Filing proposed a 5.4% decrease in the overall rate level, to be effective January 1, 2020, on new and renewal policies.

This experience-based Filing proposes a decrease in rate level based on data from Policy Years 2016 and 2017 valued as of year-end 2018. While a portion of the experience used as the basis for this Filing occurred before the 2016 Florida Supreme Court decisions [Marvin Castellanos v. Next Door Company, et al. ("*Castellanos*"), Case No. SC13-2082, and Bradley Westphal v. City of St. Petersburg, etc., et al. ("*Westphal*"), Case No. SC13-1930], 90% of the data analyzed involves claims that occurred after those decisions. Even after considering the impact of the *Castellanos* and *Westphal* decisions, other factors at work in the marketplace combined to contribute to the indicated decrease, which included reduced assessments, increases in investment income, and declines in claim frequency.

The OFFICE provided an opportunity for members of the public to comment on the Filing and held a public hearing on October 4, 2019.

Following a complete review of the entire record, and upon consideration of the Filing and additional information provided by NCCI, the supporting data, public comments received, and the analysis by the staff of the OFFICE, and being otherwise fully advised in the premises, the OFFICE finds as follows:

1. The OFFICE has jurisdiction over the parties and the subject matter of these proceedings.

2. NCCI is a licensed rating organization authorized to make rate filings on behalf of workers' compensation insurance companies in Florida pursuant to Section 627.091(4), Florida Statutes. Any insurer may make a filing to deviate from the NCCI rate level pursuant to Section 627.211, Florida Statutes, and Rule 69O-189.004, Florida Administrative Code.

3. NCCI provided on-level developed loss ratio data in the Filing that is the basis for the proposed annual indemnity and medical trend selections. NCCI also provided claim frequency (number of workplace injuries) and claim severity (average cost per injury) data but did not specifically select trends based on this data. From 2010 to 2017, the frequency of workplace injuries declined from 22.4 per million of wage-adjusted premium in 2010 to 16.9 per million of wage-adjusted premium in 2017. According to NCCI, claim frequency decline for workers' compensation is not unique to Florida; for numerous years frequency has been declining countrywide similar to Florida. A representative from NCCI testified that claim frequency decline is due, in part, to safer workplaces, enhanced efficiencies in the workplace, increased use of automation, and innovative technologies, and that the decline is expected to continue in the future.

4. Fitting the historical data provided in the Filing to an exponential curve allows for an analysis of the loss ratio trends. The loss ratio trend data in the Filing provides a range of fitted

annual trend values for indemnity from -4.7% to -2.7% and for medical from -5.7% to -2.6% using various exponential trend fits (15-point through 5-point) to the latest 15 years of policy year data for Standard Coverage. The NCCI's selected annual indemnity trend of -2.5% and the selected annual medical trend of -2.0% appear to be unreasonable relative to the ranges indicated above.

5. In this hearing and in prior hearings, the OFFICE received testimony regarding the uncertainties associated with the recent Florida Supreme Court decision, *Castellanos*. To ensure workers' compensation rates are not excessive, inadequate, or unfairly discriminatory, in compliance with Section 627.062, Florida Statutes, it is imperative that additional quantitative analysis be conducted to determine the effect the *Castellanos* decision is having on the Florida workers' compensation market and the data used to support future rate filings. The analysis may include alternative data sources and should examine changes to the Florida workers' compensation market that are attributed to, or observed as a result of, the recent court decision. These changes include, but are not limited to, reopening of claims from older years, changes in reserves or payment patterns, changes to claim closure or settlement rates, changes to claim frequency and severities, increasing attorney involvement, and fees paid to attorneys.

WHEREFORE, in consideration of the foregoing, and being otherwise duly advised in the premises, it is hereby ORDERED:

The Filing by NCCI is hereby DISAPPROVED. The Filing will be approved provided that the Filing is amended to comply with all of the following and that such amendments to the Filing are filed as soon as practicable, but no later than November 4, 2019.

A. Effective January 1, 2020, for new and renewal policies for other than the "F" classifications, the statewide overall rate level change shall be -7.5% for the Filing.

B. The following changes are effected in the underlying indication:

1. Three-year averages have historically been relied upon for development factor selection, as they result in a reasonable balance between responsiveness and stability; thus, three-year averages should be used in this Filing. Compliance with this part of the ORDER does not encumber NCCI selection in the future.

a. The use of two-year averages for selecting paid loss development factors as presented in Sections E, F, I, and J of Appendix A-II of the Filing is DISAPPROVED.

b. The use of two-year averages for the selection of development factors for the ratio of paid defense and cost containment expenses (“DCCE”) to paid Indemnity plus Medical loss, in the calculation of Age-to-Ultimate Development Factors in Section F of Exhibit II of the Filing, is DISAPPROVED.

c. The use of a two-year averages for the most recent accident years, to select the DCCE Ratio and the adjusting and other expenses (“AOE”) Ratio in Section F of Exhibit II of the Filing, is DISAPPROVED.

2. The Selected Indemnity Annual Loss Ratio Trend Factor of 0.975 in Section B of Appendix A-III is DISAPPROVED as excessive. A Selected Indemnity Annual Loss Ratio Trend Factor of 0.970 should be used. Compliance with this part of the ORDER does not encumber NCCI selection in the future.

3. The Selected Medical Annual Loss Ratio Trend Factor of 0.980 in Section B of Appendix A-III is DISAPPROVED as excessive. A Selected Medical Annual Loss Ratio Trend Factor of 0.975 should be used. Compliance with this part of the ORDER does not encumber NCCI selection in the future.

C. When refiling pages S1 to S4, a flat factor may be used to adjust the rates originally filed on August 27, 2019.

D. In future rate filings, NCCI shall provide a detailed explanatory memo and quantitative analysis regarding the effect the recent Florida Supreme Court decision of *Castellanos* is having on the Florida workers' compensation market and the data used to support future rate filings.

E. For any filing submitted to the OFFICE, NCCI shall list and explain each and every change in the proposed manual pages, including but not limited to, the rating plan manual, the experience rating plan manual, and the retrospective rating plan manual. These shall be shown in the summary exhibit and described by an explanatory memorandum.

F. NCCI shall provide a monthly report to the OFFICE of the average intrastate experience modification factors for the policies effective during the month. This monthly report shall be filed with the OFFICE within 7 days of the end of the month.

G. Section 627.4133, Florida Statutes, requires insurers to give at least 45 days' notice of renewal premium. Therefore, to meet statutory timeframes for a January 1, 2020, effective date, NCCI shall file the necessary amendments to the Filing as may be required to implement the terms of this Order as soon as practicable but no later than November 4, 2019. No rate change shall be implemented until such amendments are properly filed and final approval is issued by the OFFICE. If NCCI fails to file the necessary amendments to the Filing to implement the terms of this Order, the OFFICE will initiate proceedings under Section 627.141, Florida Statutes, to disapprove the current rates.

H. By making a filing to comply with this order, NCCI waives any right to any further proceedings and authorizes the OFFICE to enter a final order on the Filing.

DONE and ORDERED this 24 day of October, 2019.



David Altmaier

David Altmaier, Commissioner
Office of Insurance Regulation

COPIES FURNISHED TO:

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NOTICE OF RIGHTS

Pursuant to Sections 120.569 and 120.57, Florida Statutes and Rule Chapter 28-106, Florida Administrative Code (F.A.C.), you may have a right to request a proceeding to contest this action by the Office of Insurance Regulation (hereinafter the "Office"). You may request a proceeding by filing a Petition. Your Petition for a proceeding must be in writing and must be filed with the General Counsel acting as the Agency Clerk, Office of Insurance Regulation. If served by U.S. Mail, the Petition should be addressed to the Florida Office of Insurance Regulation at 612 Larson Building, Tallahassee, Florida 32399-4206. If Express Mail or hand-delivery is utilized, the Petition should be delivered to 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0300. The written Petition must be received by, and filed in the Office no later than 5:00 p.m. on the twenty-first (21) day after your receipt of this notice. Unless your Petition challenging this action is received by the Office within twenty-one (21) days from the date of the receipt of this notice, the right to a proceeding shall be deemed waived. Mailing the response on the twenty-first day will not preserve your right to a hearing.

If a proceeding is requested and there is no dispute of material fact the provisions of Section 120.57(2), Florida Statutes may apply. In this regard you may submit oral or written evidence in opposition to the action taken by this agency or a written statement challenging the grounds upon which the agency has relied. While a hearing is normally not required in the absence of a dispute of fact, if you feel that a hearing is necessary one will be conducted in Tallahassee, Florida or by telephonic conference call upon your request.

If you dispute material facts which are the basis for this agency's action you may request a formal adversarial proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes. If you request this type of proceeding, the request must comply with all of the requirements of Rule Chapter 28-106.201, F.A.C., must demonstrate that your substantial interests have been affected by this agency's action, and contain:

- a) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- b) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- c) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and
- d) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

In some instances you may have additional statutory rights than the ones described herein.

Failure to follow the procedure outlined with regard to your response to this notice may result in the request being denied. Any request for an administrative proceeding received prior to the date of this notice shall be deemed abandoned unless timely renewed in compliance with the guidelines as set out above.

Revised 9/4/2008