

State of Tennessee
County of Sevier

BEFORE ME, the undersigned Notary, Regina Fugate
(name of notary before whom affidavit is sworn), on this
9th (day of month) of August, 2016, personally
appeared Stephen A. Alexander, known to me to be a credible person
and of lawful age, who being by me first duly sworn on his oath,
deposes and says:

I declare the following information herein is true, accurate, complete,
and correct:

My name is Stephen A. Alexander. My address is 84 Pimlico Dr.,
Crawfordville, Florida. I am an actuary based in Crawfordville, Florida
with the credentials set forth in attachment A.

I was retained by James Fee, Jr., Esq. of the law firm of Druckman and
Fee, P. A. for the purposes of reviewing the entire 17.1%/19.6% 2016
workers' compensation rate filings submitted by NCCI to the Florida
Office of Insurance Regulation.

In the above capacity, I conducted an in – person review of NCCI's
filings at the Florida Office of Insurance Regulation offices on June 9,
2016 and July 15, 2016.

In addition, I reviewed on August 3, 2016 the 259 pages of rate filing
OIR number 16-12500 documentation made available on the OIR
website, effective August 3, 2016 subsequent to which I prepared a
data request attached herein as Attachment B.

In accordance with the filing reviews referenced above, I was able to
formulate my actuarial opinion set forth in the document entitled
"Actuarial Expert Testimony, prepared by: Stephen A. Alexander,
FCAS, FSA, MAAA, August 7, 2016", attached herein as Attachment C.

The opinions expressed by me in that document are true, correct, and
consistent with generally accepted actuarial standards of practice.

A. Alexander
(signature)

Stephen A. Alexander

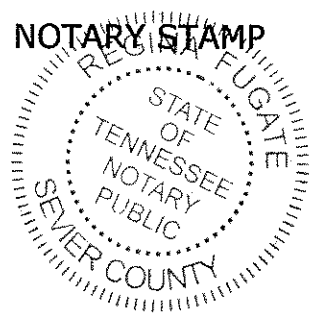
84 Pimlico Dr.
Address of affiant, line 1

Crawfordville, FL 32327
Address of Affiant, line 2

State of Tennessee
County of Sevier

Sworn to (or affirmed), and subscribed before me this 9th day of August, 2016, by Stephen A. Alexander.

Regina Treate
(Signature of Notary Public - State of Tennessee)
expires March 4, 2019



STEPHEN A. ALEXANDER, FCAS, FSA, MAAA
84 Pimlico Drive
Crawfordville, Florida 32327
(850) 339-5233

Employment:

**2015-
Present**

**Alexander Actuarial Consulting
Allegiant Actuarial Group**

- Provides actuarial expert testimony.
- Reviews rate filings.
- Conducts pricing and reserve reviews for insurance companies.

2005-2015

**State of Florida
Office of the Insurance Consumer Advocate and
Office of Insurance Regulation**
Actuary
Tallahassee, Florida

- Developed a predictive model of sinkhole frequency for the sinkhole prone counties in Florida using R open source statistical software.
- Examined private passenger and commercial auto, homeowners, medical malpractice, workers compensation, general liability and other property and casualty rate filings.
- Testified at rate hearings and before legislative committees.
- Prepared a comprehensive review of the Florida title insurance industry.
- Developed a proposal to reform the Florida property insurance market.
- Prepared analyses of various legislative proposals to modify the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation.
- Developed an Annual Report Card to grade residential property insurance companies in Florida.

2003-2004 **Mercer Oliver Wyman**
Senior Consultant
Atlanta, Georgia

- Performed reserve and funding studies for self-insurers and captive insurance companies.
- Areas of involvement included hospital and nursing home professional liability, workers compensation, product and product recall liability, commercial auto liability and commercial property.
- Completed an alternative retention analysis for a large self-insurer with extensive property and liability exposures in the state of Florida.

1999-2003 **Ernst & Young**
Manager
Atlanta, Georgia

- Conducted numerous actuarial audits of insurers and self-insurers.
- Conducted several medical malpractice reserve and funding studies for self-insureds, a large physician and surgeon trust fund and a mutual insurer.
- Completed a feasibility study for the formation of a lawyer's professional liability insurance company including recommended marketing strategy, policy forms and rates.
- Reviewed the adequacy of the reinsurance program of a large property insurer in the state of Florida.
- Conducted a statistical analysis of the workers compensation closed claim data of a large railroad.
- Completed reserve and funding studies for a state petroleum storage tank pollution liability insurance program.
- Conducted a reserve review of a large insurer with extensive product liability exposures.
- Developed IBNR reserves for a large Japanese reinsurer.

Prior Prior work history includes employment in the insurance industry and state government as an agent, risk manager and actuary.

Education:

- MBA - University of Utah, 1978
- BS Meteorology - University of Utah, 1967
- BS Mathematics - University of Michigan, 1965

Professional:

- Fellow - Casualty Actuarial Society, 2001
- Fellow - Society of Actuaries, 2014
- Member - American Academy of Actuaries, 2000

Stephen A. Alexander, FCAS, FSA, MAAA
Alexander Actuarial Consulting

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salex.actuary@gmail.com

8/3/2016

David Altmaier, Commissioner
Mrs. Cynthia Rachel Cooper, ACAS, Actuary
Anoush Arakalian Brangaccio, General Counsel
Florida Office of Insurance Regulation
200 East Gaines Street
Larson Building, Suite 238C
Tallahassee, FL 32399

I have been retained by James Fee of Druckman & Fee, P.A. to review Florida Office of Insurance Regulation rate filing number 16-12500 made by the National Council for Compensation Insurance on May 27, 2016. In order to do a comprehensive independent actuarial review of the filing, the following data, information and answers to interrogatories are requested (all exhibits, data, analyses and text to be provided in Excel or Word format).

These formats are necessary so that my analysis can be performed without having to rekey or reenter the information and data into Excel spreadsheets and Word documents. It is recognized that you may not have the requested data, information and responses to interrogatories, and therefore it is requested that you request on my behalf from the NCCI any such data, information and responses to interrogatories that you cannot provide.

It is believed the requested information and data is available in the proper formats or can easily be converted. Not providing the information and data in the proper formats (for example only providing data in pdf format) severely limits my ability to do my analysis. For the record, it should be noted that in order to have sufficient time to do an appropriate independent actuarial analysis, the following information, data and satisfactory answers to interrogatories should be provided at least 15 days in advance of my rendering an unqualified opinion.

Beginning today, the public has access to NCCI rate filings on the OIR's EDMS rate filing system, and consequently, I was able to download all 259 pages of rate filing 16-12500 in pdf format. At the time of my last review on 7/15/16, the file materials consisted of far fewer pages. The items requested below were based upon information I believed to be essential, but missing, at the time of the 7/15/16 review. Therefore, I cannot determine whether all of the following requests for additional information and interrogatories are now included in the filing. However, I am confident that my requests for additional data, information and interrogatories related to *Castellanos* for the time period 2008 through 2011 are not included.

1. All of the Aggregate Data Call and Detailed Claim Information (DCI) data used by NCCI to produce its pre- and post-reform indemnity and medical severity and frequency estimates. Such data to separately display paid and incurred losses, Defense and Cost Containment Expense (DCCE) and claimant attorney fees as well as any loss development factors to bring such data to their ultimate values.
2. The NCCI applied several adjustments to the data displayed in the exhibits in filing number 16-12500 to bring the data to current wage, cost, rate and benefit levels. Please provide the reasoning underlying such adjustments, all assumptions made and the specific adjustments and adjustment factors applied as well as the underlying data and supporting exhibits used to derive such adjustments and adjustment factors.
3. How did the NCCI audit for accuracy, lack of bias and completeness each individual insurer's reported loss reserves, defense and cost containment expenses and all other data provided in the Aggregate Data Call and DCI data used in filing 16-12500?
4. The NCCI's review of the 2003 reforms estimated a 12.35% overall impact with a 2.0% impact for attorney fees. In filing 16-12500, why is it reasonable and appropriate to assume that the NCCI's initial estimate of 10.15% (1.1235/1.02-1) for all the other reforms was correct and the only estimate that was incorrect was the 2.0% estimate for attorney fees?
5. All the NCCI's evaluations of the 2003 reforms provided to Florida legislators and the associated rate filing made with the OIR including all supporting exhibits, analyses and data in support of the 12.35% overall impact and 2.0% impact for attorney fees of the 2003 reforms.
6. All of the data used by NCCI to produce its estimate of an overall average rate increase of 1.8% to update the Florida Workers Compensation Health Care Provider Reimbursement Manual. Additionally, please provide the reasoning and methodology underlying such estimate, all assumptions made and the supporting exhibits used to derive the estimated 1.8% rate increase.

Supplemental interrogatories related to Westphal

7. In reference to the Amended Law Filing (OIR filing # 16-12500), Exhibit IV, please provide the following data referenced in the footnotes of this exhibit as well as all intermediate exhibits and calculations resulting in the numbers that appear on Exhibit IV. All data and exhibits to be provided in Excel format:
 1. Division of Florida Workers Compensation data used to derive Rows (1), (10) and (11).
 2. Transactional data licensed to the NCCI to derive Row (3).
 3. NCCI Workers Compensation Statistical Plan data in support of Rows (4), (12) and (15).
 4. All NCCI Financial Call Data in support of Row (7).

8. The OIR Request 15 is: "provide a revised Exhibit 1 which includes PYs 1998, 1999, 2004 and 2007 - 2014. The NCCI referred OIR to its Response 14 and exhibit OIR-14 and also provided OIR-20. However, both these exhibits are limited to 2008 and prior years. It is believed critical that the NCCI prepare a revised Exhibit 1 for the years 2007, 2008, 2009, 2010 and 2011 as requested by OIR, because the Murray decision introduced an 8 month period of reasonable attorney fees that could have been used by the NCCI to assess the impact of a return to the fee schedule effective July 1, 2009 based upon HB930. Why did the NCCI limit its response to years 2008 and prior?"

10. In reference to 8. above, Actuarial Standard of Practice 23, Data Quality specifies that an actuary should consider "whether the data are sufficiently current":

3.2 SELECTION OF DATA

In undertaking an analysis, the actuary should consider what data to use. The actuary should consider the scope of the assignment and the intended use of the analysis being performed in order to determine the nature of the data needed and the number of alternative data sets or data sources, if any, to be considered. The actuary should do the following:

- a. consider the data elements that are desired and possible alternative data elements; and
- b. select the data with due consideration of the following:
 1. appropriateness for the intended purpose of the analysis, including whether the data are sufficiently current [emphasis added];
 2. reasonableness and comprehensiveness of the necessary data elements, with particular attention to internal and external consistency;
 3. any known, material limitations of the data;
 4. the cost and feasibility of obtaining alternative data, including the ability to obtain the information in a reasonable time frame;
 5. the benefit to be gained from an alternative data set or data source as balanced against its availability and the time and cost to collect and compile it; and
 6. sampling methods, if used to collect the data.

Why is data pre- and post- the 2003 reforms deemed "sufficiently current" and more appropriate by the NCCI when more recent data from 2008 through 2011 related to Murray is available for the same purpose and is not confounded by other reforms?

Sincerely,

A handwritten signature in cursive script that reads "A. Alexander".

Steve Alexander

THE OFFICE OF INSURANCE REGULATION

National Council on Compensation Insurance (NCCI) Public Rate Hearing

August 16, 2016

Actuarial Expert Testimony

Prepared by: Stephen A. Alexander, FCAS, FSA, MAAA

August 9, 2016



Stephen A. Alexander, FCAS, FSA, MAAA

I represent James F. Fee, Jr. of the law firm Druckman & Fee, P.A. in conjunction with his status as a workers compensation policyholder. Mr. Fee's workers compensation insurance carrier is Technology Insurance Company, policy numbers TWC3473081 and TWC3546391. My qualifications to provide my testimony are attached in my resume.

The basic assumption underlying the NCCI's analysis of *Castellanos* is that its initial estimate of 10.15% for all of the 2003 reforms except for attorney fees was correct and the only estimate that was incorrect was its initial estimate of 2.0% for the attorney fee schedule. Senate Bill 50A, The Workers Compensation Reform Act of 2003 was a comprehensive reform with many changes.

It is only known what happened to workers compensation losses in total after these reforms. In my opinion, there is no actuarially sound way of quantifying the effect of any individual reform such as the attorney fee schedule, because all these reforms are inextricably intertwined, and the NCCI's attempt to do so is misleading and deceptive.

This was made clear at the OIR hearing on December 16, 2008 subsequent to the Murray decision as reported by WorkCompCentral:

"The greater than 60% rate decrease experienced by industry since 2003 could be attributed to many reasons including improved claims closure rates, improved return to work procedures, declines in accident frequency, increased emphasis on compliance, redefinitions of permanent to[tal] compensable accidents, increased emphasis on fraud detection, and changes in attorney fees payable to injured workers attorneys.

The difficulty in determining whether there should be a rate increase based only on the Emma Murray decision is quantifying the impact of reducing attorney fees payable as a component of the experienced rate decreases since 2003. Surveys of insurance carriers indicated the substantial cost reductions realized were in significant part as a result of the changed provisions relating to how much attorney fees were paid to injured workers attorneys."¹

Actuarial Standard of Practice 23, Data Quality specifies that an actuary should consider "whether the data are sufficiently current". The NCCI has disregarded more recent experience data reflective of the change from a fee schedule to reasonable fees and back again as a result of the Florida Supreme Court decision in the *Emma Murray* case and HB930 effective July 1, 2009.

The NCCI's justification for not reviewing this time period is based on the assumption that stakeholder's adopted a "wait and see attitude" after *Murray* assuming that "stakeholders knew that the Legislature could easily address the *Emma Murray* decision by removing the word "reasonable" and restore the sliding scale of attorney fees based on benefits secured."²

However, the NCCI did not offer any objective evidence to support this assumption. In my opinion, the analysis of industry and individual company experience impacted by *Murray* is absolutely essential, because it is more recent and is not confounded by multiple other reforms.

¹ "*Emma Murray*" Decision Will Spark Work Comp Changes in Florida: [2009-01-17], WorkCompCentral.

² Response 23 To Requests from The Office of Insurance Regulation, June 7, 2016. National Council On Compensation Insurance, Inc., Florida, Workers Compensation Filing, August 1, 2016, OIR Filing 16-12500.

Moreover, the uncertainty surrounding the impact of *Castellanos* presents the OIR with the opportunity to encourage members and subscribers to NCCI rates to file rate deviations based upon their independent evaluations of their own and industry experience. Florida law provides that any NCCI member or subscriber company may file for a deviation from NCCI approved rates:

"Every member or subscriber to a rating organization shall, as to workers' compensation or employer's liability insurance, adhere to the filings made on its behalf by such organization; except that any such insurer may make written application to the office for permission to file a uniform percentage decrease or increase to be applied to the premiums produced by the rating system so filed for a kind of insurance, for a class of insurance which is found by the office to be a proper rating unit for the application of such uniform percentage decrease or increase, or for a subdivision of workers' compensation or employer's liability insurance."³

The NCCI attempts to buttress its rate need by including in its rate filing the following statement: "Increased system costs which will result from the *Castellanos* decision were not contemplated in the development of workers compensation rates for all policies affected." This statement is disingenuous, because the essence of the insurance business is to assume risk and not all risks can be known in advance of setting rates.

For this reason, the OIR includes a profit and contingency provision in the NCCI's approved rates, which is intended to compensate insurers for the assumption of known and unknown risks. Furthermore, my analysis of the profitability of Florida workers compensation for the last ten years shows that it has been significantly more profitable than countrywide (see attached exhibit).

Florida workers compensation insurers' excess profits were approximately \$1.8 billion (8.0% of \$23 billion of direct earned premium over the last ten years). Therefore, the potential for increased and decreased system costs has historically been included in NCCI rates, and historically favorable system costs are reflected in the substantially greater profits of Florida insurers.

Before August 3, 2016, I was only permitted to view filings on a computer terminal at the OIR offices in the Larsen Building on two separate occasions on June 9, 2016 and July 15, 2016. I was not allowed to copy any of the data or information. I did not have any data in the proper formats to perform an analysis as detailed in my attached data request. It would have been extremely difficult for any actuary to conduct a fair and complete analysis under these circumstances.

Additionally, such data and analyses that was available for viewing for the purpose of evaluating NCCI's proposed 15.0% increase regarding *Castellanos* was too old and inappropriate, as detailed above, to be of any value in forming an opinion as to the reasonability of the NCCI's requested 15.0% portion of its total rate need. On August 3, 2016 I was able to download into pdf format 259 pages of filing 16-12500.

³ 627.211(1), F.S.

The attached data request lists all of the data that appeared to be missing from the filing as of August 3, 2016. In my opinion, it cannot be determined based on the data and information in the filing that the NCCI's requested rate need is either "...excessive, inadequate, or unfairly discriminatory under the law," as per 627.031(2) FS. specifically, as it pertains to the 15.0% requested rate increase for *Castellanos* with the possible exception of as much as a 2.0% increase as noted below.

I have reviewed all the data, information, interrogatories and responses to interrogatories in support of the requested 2.2% rate increase for *Westphal* and the 1.8% proposed rate increase to update the Florida Workers Compensation Health Care Provider Reimbursement Manual (Manual). In my opinion, the requested rate increase for the Manual appears to be adequately supported. For *Westphal*, the NCCI speculates that:

“claimants may [emphasis added] alter their behavior and attempt to delay reaching MMI in order to continue receiving TTD benefits. To the extent claimants are successful at delaying a finding of MMI, in addition to the impacts on indemnity benefit costs described above, a different mix of medical services may be provided resulting in an increase in medical costs.”

It is my understanding that insurers uniformly choose Florida physicians who will restrict the number of days the claimant is kept on temporary disability. Even the most moderate physicians recognize that they are under constant pressure to return claimants to a point of maximum medical improvement as quickly as possible.

In my opinion, *Westphal* will have no effect on increased medical costs, because every medical service has to be specifically approved by the insurer. An insurance company is not going to be any more willing to authorize an injection, MRI, x-ray, diagnostic study, surgery, etc. at the 110th week of temporary disability than they would have at the 90th week merely because of *Westphal*. All medical services have to be approved as being medically necessary. Therefore, no more than 1.8% should be approved for *Westphal* (1.022/1.004 -1).

If the OIR feels compelled to approve some rate increase at this time, it would be reasonable to approve no more than a 2.0% rate increase for *Castellanos* based upon the NCCI's initial estimate of a 2.0% rate impact and in consideration of the OIR's prior approval of a 14.0% decrease in rates effective October 1, 2003. The OIR's prior approval of a 6.4% rate increase in December, 2008 for *Murray*, in my opinion, is not relevant, because actual experience now exists for the eight-month period of reasonable fees following *Murray*.

Given the lack of transparency in this process related to *Castellanos*, I see no need to rush to judgment, and it is my opinion that the OIR should not approve any increase in rates related to *Castellanos* until a full and complete disclosure has been made as I have outlined in my testimony and attached data request for the *Murray* impacted 2008 through 2011 years. Furthermore, in my opinion, the OIR should encourage individual insurers to file deviations from NCCI approved rates based upon their independent evaluations of the impact of *Castellanos*.

Therefore, in conclusion, if the OIR feels compelled to approve some rate increase at this time to account for all three components of the overall 19.6% rate increase, it would be reasonable in my opinion to approve no more than a 5.7% rate increase (1.02 x 1.018 x 1.018 - 1) to account for all aspects of the proposed rate increase, i.e. the impact of the Florida Supreme Court's decision in *Castellanos*, to account for the Florida Supreme Court's decision in *Westphal* and to update the Florida Worker's Compensation Health Care Provider Reimbursement Manual.

Florida versus Countrywide
Net Profit Before Federal Income Taxes
Workers Compensation Insurance
2006 - 2015

	Countrywide				Florida				
	Net Underwriting Profit	Net Investment Income from Insurance Transactions	Net Investment Income from Capital and Surplus	Net Profit Before Federal Income Taxes	Net Underwriting Profit	Net Investment Income from Insurance Transactions	Net Investment Income from Capital and Surplus	Net Profit Before Federal Income Taxes	Profit Difference
2006	-3.1%	12.2%	5.6%	14.8%	10.3%	12.2%	5.6%	28.1%	13.4%
2007	1.2%	12.5%	7.1%	20.8%	9.0%	12.5%	7.1%	28.6%	7.8%
2008	-3.9%	15.2%	9.5%	20.8%	4.6%	15.2%	9.5%	29.3%	8.5%
2009	-4.5%	11.8%	6.8%	14.1%	-3.5%	11.8%	6.8%	15.1%	1.0%
2010	-10.0%	15.8%	9.2%	15.0%	-15.3%	15.8%	9.2%	9.7%	-5.3%
2011	-18.9%	23.0%	11.8%	16.0%	10.4%	23.0%	11.8%	45.3%	29.3%
2012	-17.9%	17.6%	10.9%	10.6%	-5.3%	17.6%	10.9%	23.2%	12.6%
2013	-11.3%	17.2%	11.0%	16.9%	4.4%	17.2%	11.0%	32.6%	15.6%
2014	-2.4%	13.4%	9.5%	20.4%	-3.0%	13.4%	9.5%	19.9%	-0.5%
2015	3.6%	12.7%	8.5%	24.8%	0.0%	12.7%	8.5%	21.2%	-3.6%
Total	-6.0%	14.8%	8.8%	17.7%	2.5%	14.6%	8.6%	25.7%	8.0%

Notes:

Data sources are the state pages of the statutory annual statements and insurance expense exhibits. Includes all sources of net profit as percentage of net earned premium. Net underwriting profits for Florida estimated based upon Florida direct experience and countrywide direct and net experience. Investment income percentages for Florida assumed to be equal to countrywide percentages. Since Florida underwriting profits averaged 8.5% more than countrywide, the assumption that Florida net investment income from insurance transactions equals countrywide likely understates this source of Florida income.

