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**From:** Paul Knight <PKnight@ryanfl.com>  
**Sent:** Tuesday, October 17, 2017 9:17 AM  
**To:** Rate Hearings  
**Subject:** Rate decrease

I support the rate decrease for the workers comp.

PAUL KNIGHT  
*The Ryan Companies*  
1700 S. Powerline Road, Suite H  
Deerfield Beach, FL. 33442  
*Phone: 954-427-5599(O)*  
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**From:** Staffin Zearth <staffin.zearth@shenandoahconstruction.com>  
**Sent:** Tuesday, October 17, 2017 11:41 AM  
**To:** Rate Hearings  
**Subject:** Rate Decrease for Workmans Compensation

Thank you so much for your efforts. We want to make sure we have a safe work environment for all of our workers but reigning in excess is a huge help. Thank you!!

Staffin Zearth      CUC 1223821



**Corporate Office**  
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**From:** Jeff Gale <jeffgalelaw@bellsouth.net>  
**Sent:** Tuesday, October 17, 2017 2:19 PM  
**To:** Rate Hearings  
**Subject:** NCCI

Do not buy into the squawking from insurance industry lobbyists about the sky-is-falling consequences of the *Castellanos* case. Whatever sting carriers are feeling now from *Castellanos* is due primarily to pre-*Castellanos* claims handling practices. For nearly 14 years carriers adjusted claims with impunity, knowing that the negative consequences of a deny-and-delay policy were insignificant – e.g., the punishment in the *Castellanos* case for getting its butt whipped at trial was a measly \$164.01 (“\$1.53 per hour for 107.2 hours of work determined by the Judge of Compensation Claims (JCC) to be “reasonable and necessary”).

For the most part, the big attorney fee awards that have been entered since the *Castellanos* decision are the result of claims handling decisions made by carriers under the deny-and-delay policy. In 2009, I warned then Florida Representative Anitere Flores (and other politicians), who sponsored the bill removing the word “reasonable” from Section 440.34, Florida Statutes, that a *Castellanos* day would come and that when it did there would be hell to pay for carriers who abused the workers’ compensation system because they could. I described it as a bomb blowing up in their faces. It took seven years, but it happened.

To her credit, now Senator Flores publicly acknowledged during the last legislative session to being wrong about her 2009 position, and she was one of the strongest and most effective opposition voices to proposed legislation designed to undermine the *Castellanos* case.

*Castellanos* has already resulted in a vast improvement in the way carriers are handling cases, which will keep the large carrier-paid fee awards to a minimum in the future. Moreover, the quantity and quality of workers’ compensation benefits have steadily eroded over the past thirty years. Carriers with good business practices that obey the law should have no problem realizing a reasonable profit without policyholders being gouged.

Yours truly,

**Jeff Gale**

Jeffrey P. Gale, P.A.  
Personal Injury/Workers’  
Compensation/Property Claims  
(Commercial & Residential)

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**From:** Kelly Sutton <ksutton@mewilson.com>  
**Sent:** Monday, October 23, 2017 4:52 PM  
**To:** Rate Hearings  
**Subject:** NCCI

Good afternoon,

I am a commercial lines Account Executive with several commercial accounts that have a work comp rating anniversary date that falls between 12/1 and 12/31.

Last year, when the NCCI implemented the work comp rate increase effective 12/1/16, these insureds did not have the benefit of the 1/1/16 rates; instead, their work comp premium was affected by going from the 1/1/15 rates to the 12/1/16 rates. This was unfair and very difficult to explain to these insureds, in particular, why they should suffer more than their peers who have anniversary/effective dates prior to 12/1.

Now that a rate DECREASE is being considered, it is appalling to think that these same insureds will suffer once again by not being able to benefit from the reduction, simply because the proposed effective date by-passes them with a 1/1/18 effective date.

PLEASE, if a rate reduction is to occur, PLEASE allow the effective date to match with the prior rate change, effective 12/1.

Regarding NCCI allowing for anniversary dates to be changed, I think this is a huge mistake as it will create chaos with insureds constantly trying to maneuver/change their effective dates at a whim.

Thank you for your consideration.

*Kelly*



**Kelly B Sutton CISR, CIC**  
Commercial Lines Manager  
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**Risk Management, Insurance & Benefits**  
*Knowledge is the Best Insurance*

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**From:** James H. Tucker <jhtucker@theflyer.com>  
**Sent:** Monday, October 23, 2017 3:28 PM  
**To:** Rate Hearings  
**Subject:** NCCI

It is with great interest that I write you regarding the proposed worker's comp rate reduction. If as I read the reduction of 9.6% is what the experts think the appropriate amount, there is no reason to wait for an arbitrary date to effect the change. Please make the reduction effective immediately, but no later than 12-1-2017



**Jim Tucker**  
CFO  
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**From:** Karen Phillips <kphillips@fuba.org>  
**Sent:** Tuesday, October 24, 2017 4:05 PM  
**To:** Rate Hearings  
**Subject:** NCCI

The Florida United Businesses Association (FUBA) is a not-for-profit trade association representing employers across the state of Florida. While FUBA generally supports the rate filing made by the National Council on Compensation Insurance (NCCI) for 2018 workers' compensation rates, there is one element that we are opposed to: the requested reduction of the expense constant from the current \$200 per policy to \$160 per policy, with an offsetting adjustment of 0.3% added to the rate.

According to Basic Manual Rule 3 A 11, the "Expense Constant is a premium charge that is applied to every policy regardless of premium size. The expense constant contributes to the recovery of expenses common to issuing, recording, and auditing a policy." Since at least 1999 (the last year for which NCCI data is available online), the Insurance Commissioner has approved the expense constant at a flat rate of \$200, indicating that the Commissioner found this premium charge adequately addressed the fixed costs common to every workers' compensation policy and that the amount complied with the requirement of s. 627.062, Florida Statutes, that rates not be "excessive, inadequate, or unfairly discriminatory." NCCI presented no evidence at last week's rate hearing to support its contention that these fixed costs are decreasing. Industry experience shows that expenses for auditing policies are increasing, as the hourly rates insurance carriers are charged by independent audit companies increase annually.

In addition, if NCCI contends that the current expense constant portion of \$200 is excessive, it seems counter-intuitive to then include an additional premium charge in the rates employers pay to offset the reduction in the expense constant. NCCI's stated reason for the requested 0.3% increase in the rate is that it makes the reduction in the expense constant revenue neutral; however, this change is not neutral as applied to individual employers' premium calculation. An increase in the rate of 0.3% affects every employer's premium.

As we understand it, under NCCI's proposal, a small employer with an annual premium of \$2,500 would pay the reduced expense constant of \$160 plus an additional \$7.50 of rate due to the 0.3% offset, making their policy's total premium related to the expense constant \$167.50. By contrast, a larger employer with an annual premium of \$20,000 would pay a total premium related to the expense constant of \$310 [\$160 reduced expense constant plus the extra 0.3% in the rate]. Thus, this change appears to result in an inadequate rate for small employers and an excessive one for larger employers. Further, adding a portion of the expense constant to the rate and making it a function of payroll conflicts with the Basic Manual's stated purpose of the expense constant and that it is to be applied consistently to every policy regardless of premium size.

We believe that the current expense constant of \$200 is adequate and is not excessive or unfairly discriminatory across all employer sizes, and we do not believe the record supports NCCI's request to reduce the expense constant and add part of that cost to the rate. We fear that that a reduction in the expense constant for smaller employers could jeopardize the availability of workers' compensation for them, especially for those employers in the construction industry, because the expense constant will no longer be adequate to cover expenses associated with these policies. And we believe that adding 0.3% to the rate unfairly penalizes employers of a certain size with excessive rates.

FUBA respectfully requests that the Office of Insurance Regulation reject the portion of NCCI's rate filing that reduces the expense constant and adds an extra 0.3% to the rate and that expense constant be kept at the current \$200 per policy.

**Karen Phillips**  
General Counsel

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PO Box 1302  
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**From:** Anna Fentriss <afentriss@aol.com>  
**Sent:** Wednesday, October 25, 2017 10:26 AM  
**To:** Rate Hearings  
**Cc:** brett@frsasif.com; lisapate@floridarroof.com  
**Subject:** NCCI

Dear Commissioner Altmaier:

Thank you for the opportunity to submit comments on this year's workers' compensation rate filing.

Florida Roofing & Sheet Metal Contractors Association (FRSA) is an association representing roofing contractors, business owners, throughout Florida. As you know, two FRSA members, Charlie Kennedy and Adam Purdy testified at the October 18 hearing in Tallahassee. FRSA now wishes to make some additional comments.

**We listened carefully to the testimony of Mark Touby with the Florida Workers Advocates and we offer the following comments:**

- We appreciate the fact that Mr. Touby is a business owner, but we are concerned that he used that to purport to speak apparently as a representative of employers. This creates a difficulty, especially since he stated he was there representing Florida Workers Advocates.
- We believe the statistics Mr. Touby cited from the OJCC were taken out of context or selectively stated or both.
- We disagree with Mr. Touby's effort to equate attorney fees paid to claimant attorneys with those paid to defense attorneys. We believe Mr. Touby understands that there are substantial differences in the dynamics associated with each group that relate back to the motivations of the parties involved.

**We listened carefully to the testimony of Stephen Alexander with the Florida Workers Advocates and we offer the following comments:**

- We do not see that Mr. Alexander was qualified as an expert for the purpose of this rate hearing.
- Mr. Alexander stated that there is no longer a domestic market that needs to be protected from predatory pricing in Florida. There continues to be a domestic market in Florida.
- Earlier this year, Florida Workers Advocates legally challenged NCCI claiming that it did not operate in the sunshine when developing its proposed rates. Mr. Alexander submitted both written and verbal testimony recommending a rate decrease substantially different from that submitted by NCCI. It does not appear that Mr. Alexander or Florida Workers Advocates developed this rate recommendation in the sunshine with any opportunity for public input into their process, calculations, assumptions, or conclusions. This is not fair.
- Mr. Alexander spent a considerable amount of time attacking the current rating system in Florida and advocating for a scheduled rating type system, as if Florida's market was not already competitive. We believe the Florida market is extremely competitive as evidenced by the number of carriers writing in Florida and the very small number of policyholders in Florida's residual market, the FWCJUA (Florida Workers Compensation Joint Underwriting Association). We believe moving to a scheduled rating system would actually open up employers to a more unfair and discriminatory type of system where smaller employers would pay higher rates than the rates paid by larger employers. We appreciate the misunderstanding because their expertise lies elsewhere, but we do not believe that the Florida Workers Advocates has a very good understanding of the competitive nature of Florida's workers' compensation market, and we are concerned this group may be raising



these issues only to deflect from the pending crisis that may evolve from the recent 2016 Florida Supreme Court decisions.

- Overall, Mr. Alexander made a number of suspect conclusions particularly when comparing Florida's ratemaking process and insurer operations to those of other states. These may (or may not) have been explained or justified had the recommendations of Mr. Alexander and the Florida Workers Advocates been developed in the sunshine and submitted more than just a week before the rate hearing.

**We have read the written comments submitted by Karen Phillips, General Counsel, Florida United Businesses Association, in opposition to the requested reduction in the expense constant and we agree with these comments.**

We support the NCCI rate filing and we continue to support rate stability for the workers' compensation market in Florida. We appreciate the efforts of the Office of Insurance Regulation and the Division of Workers' Compensation to keep Florida's system strong, healthy and competitive.

Respectfully submitted,

Anna Cam Fentriss  
Florida Roofing & Sheet Metal Contractors Association  
FRSA Self Insurers Fund

cc: Lisa Pate, Executive Director, FRSA  
Brett Stiegel, Administrator, FRSA Self Insurers Fund

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**From:** Carol Brnich <cbrnich@emiindustries.com>  
**Sent:** Thursday, October 26, 2017 7:43 AM  
**To:** Rate Hearings  
**Subject:** NCCI

To Whom It May Concern:

Considering the rate INCREASE last year was effective December 1, 2016, we respectfully request that the proposed January 1, 2018 proposed effective date rate change be effective December 1, 2017.

Respectfully,

Carol Brnich

**CAROL BRNICH, SPHR, SHRM-SCP**  
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**From:** Vicky Dingwell <vdingwell@flains.org>  
**Sent:** Wednesday, October 25, 2017 4:00 PM  
**To:** Rate Hearings  
**Cc:** Cecil Pearce; Katrina Callaway  
**Subject:** NCCI  
**Attachments:** NCCI Rate Filing Letter 10-25-17.pdf

Please see the attached file.



P.O. Box 749 \* Tallahassee, FL 32302-0749 \* TEL: 850.386.6668

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October 25, 2017

**Via Electronic Mail to: [ratehearings@fioir.com](mailto:ratehearings@fioir.com)**

Florida Office of Insurance Regulation  
200 East Gaines Street  
Tallahassee, FL 32399

Re: Rate Filing submitted by NCCI on August 28, 2017

Dear Sir:

The Florida Insurance Council is Florida's largest trade association for insurance companies. Our membership includes many insurers that write workers' compensation insurance. Thus, our member companies have an interest in the workers' compensation rate filing proposed by NCCI on August 28, 2017.

On behalf of the many workers' compensation members of the Florida Insurance Council, I write to address the issues regarding the proposed rate filing and our concerns about the lack of support thereto.

We believe the premise to this filing is faulty – that the 14.5% rate filing made in 2016 adequately addressed Castellanos. Analyzing only experience/trend for 2014 and 2015, absent consideration of the Castellanos effect, is not appropriate to apply to rates in 2018, a policy year incepting almost two years post-Castellanos.

To this point, NCCI testified in support of the "law only" filing in 2016 that their estimate was only for the **first year impact** of Castellanos. As noted in the 2016 Order approving the "law only" filing, NCCI's testimony, when comparing both cost and benefit differences by regions and by pre-SB 50A and post-SB 50A was as follows:

- On the lost cost analysis of **one year** post-SB50A, NCCI put the increase between 13.8% and 37.5%
- On the benefit analysis, NCCI put the increase **for the first year impact** between 15% and 18.1%.

This is borne out in the data from the OJCC office that there has been a 191% increase in aggregate amount of fees paid since Castellanos - \$25 million to \$79 million generated by litigation prompted by both the Castellanos case and the Miles case. The Deputy Chief Judge has suggested that this is the result of "hoarding fee claims," but with that magnitude of an increase, along with the concurrent increase in PFBs since Castellanos, we believe "hoarding" plays a small part. The fact is, however, that the underlying reason for this "hoarding" is exactly why the claim costs will rise post Castellanos – it revived the incentive to file claims to get a larger fee, a cost-driving phenomenon.

Testimony at the House Commerce Committee meeting given by both NCCI and the OJCC Deputy Chief Judge showed unequivocally that they all expect that this will continue to grow.

Here is what we believe is important external data that should be included to ensure adequacy for 2018. The history of litigation and the impact of SB 50A, the Emma Murray case, the 2009 fix to Murray, and the Castellanos decision demonstrate why this filing cannot be supported without considering this data.

**Exhibit 1** shows the clear correlation between all four of these events. PFBs rise dramatically prior to SB 50A, they decline after SB 50A, they rise again after Murray in 2008 and decline in 2009 after the Murray legislative fix. And, as could be predicted, they go up again after Castellanos.

Frequency should likewise be examined from external data. **Exhibit 2** contains two graphic illustrations of frequency that must be considered in terms of its timing to Emma Murray. Albeit, economic factors may have existed, but compared to the longstanding continuous drop in frequency nationwide, the frequency charts used by NCCI show a temporal connection uniquely around the Murray decision. We believe that frequency post-Murray was affected as people who were out of work found availability of lawyers. We believe this promoted late filing as the first notice to the carrier or employer. Regardless, the uptick bucks the trend and the temporal relationship to Murray should not be overlooked.

**Exhibit 3** shows the 6 - 7% increase in litigation – these are PFBs actually filed after Castellanos, not the "hoarding" effect. Judge Langham and Jeff Eddinger both testified at the House Commerce Committee that they expect this will continue to rise.


**Exhibit 4** may be the single most illustrative example of what will happen post Castellanos. This data from the OJCC office shows the impact of SB 50A on the system and the reversal of the practice of keeping claims open for attorney fee purposes. Claims started settling in whole because it no longer rewarded a lawyer to keep a claim open in order to continue to file for benefits simply for fee purposes. Prior to SB 50A and after the Murray 2008 decision, cases did not settle completely as frequently for that simple reason -- leave them open to produce fee opportunities, a practice that increases claim costs. Just like then, the employers and carriers are now in the position of having to make economic decisions to pay regardless of the legitimacy of

the claims for the simple fact of expense associated with litigation. The return of hourly fees due to Castellanos promotes this behavior.

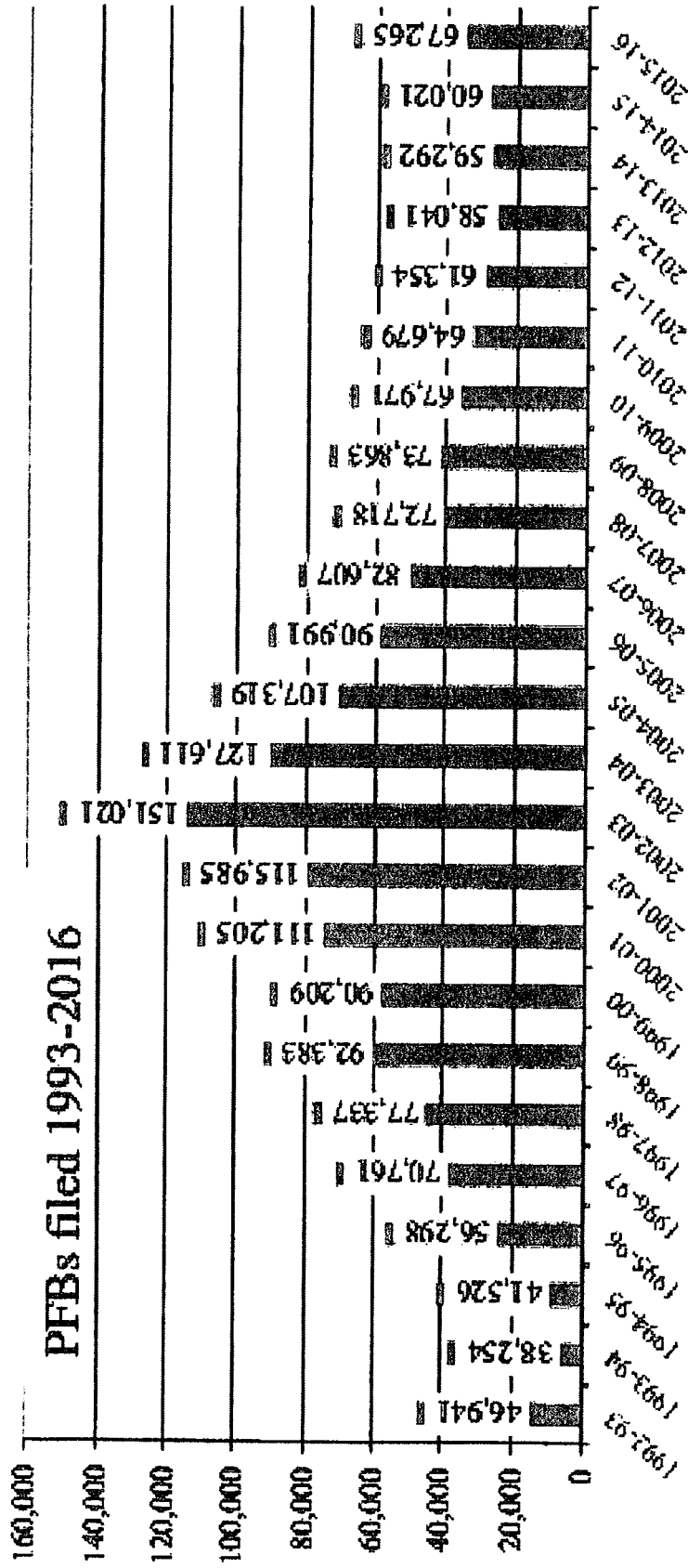
**Exhibit 5** shows a 1% increase in "new cases" filed. New case filings both post and pre-Castellanos are virtually flat (except to 1%). This more accurately means that there has always been availability of lawyers in the system. Further, if frequency is down to the extent NCCI says it is, then even a 1% increase demonstrates a more dramatic increase in filings than the 1% implies.

In summary, we would ask that the NCCI rate filing be disapproved as filed, as it could result in an inadequate rate given the lack of consideration of the post Castellanos and Miles experience. That experience is well documented in third-party external data and the use of such data has been appropriate, particularly in "law only" filings where either no mature data existed or alternatively, abundant third-party external data was available. We also believe the 2016 "law only" filing does not represent exposures for 2018 and going forward.

Sincerely,

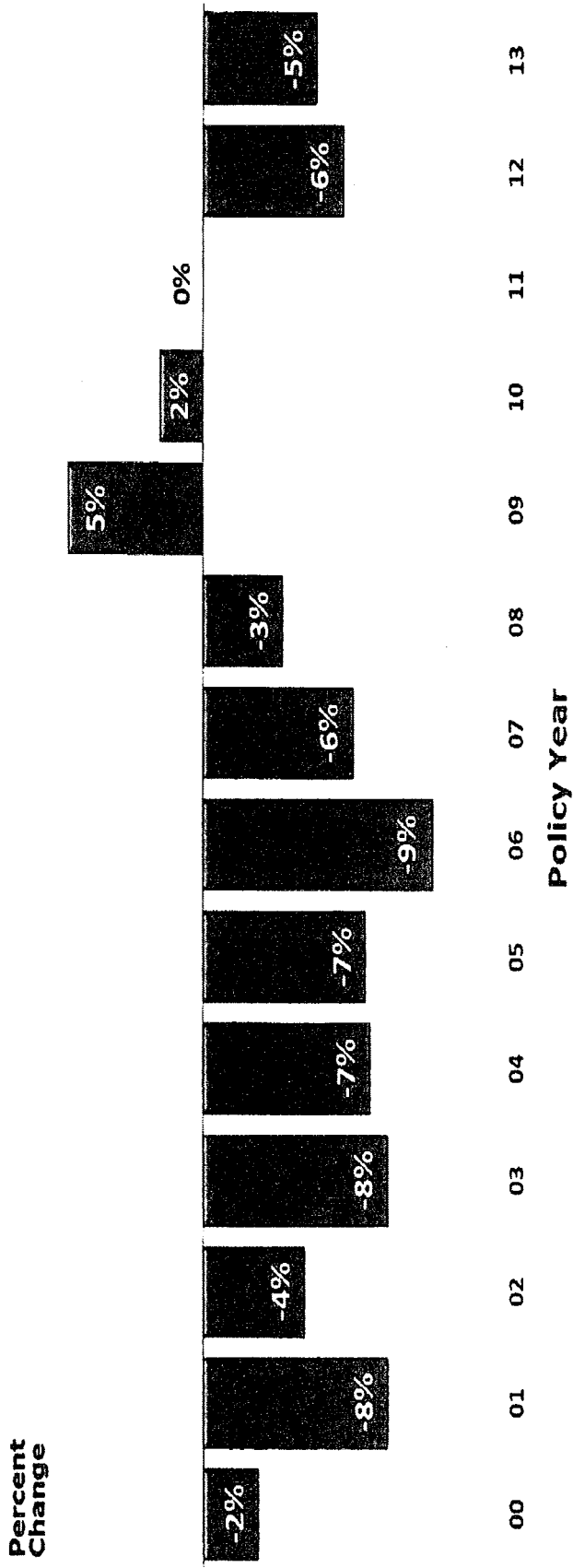
  
Cecil Pearce  
President

# Exhibit 1



# Florida Workers Compensation Lost-Time Claim Frequency

## Lost-Time Claims



Based on data through 12/31/2014, developed to ultimate

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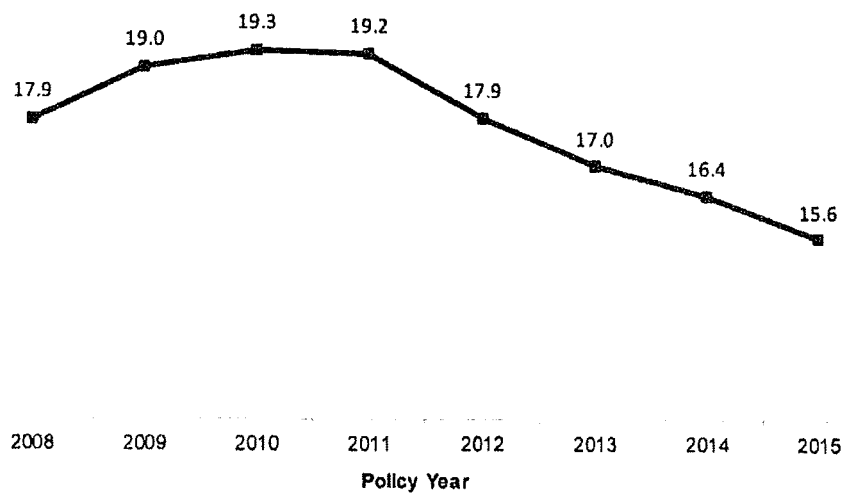
## Florida

### Workers Compensation Rate Filing – January 1, 2018

#### Selections Underlying the Proposed Changes

The following charts show a measure of the number of workplace injuries (claim frequency) and the average cost of each of these injuries (claim severity).

#### Florida Lost-Time Claim Frequency



(Frequency per Million on On-Levelled, Wage-Adjusted Premium)

Florida's lost-time claim frequency has generally declined since 2010.

*Exhibit 2(b)*

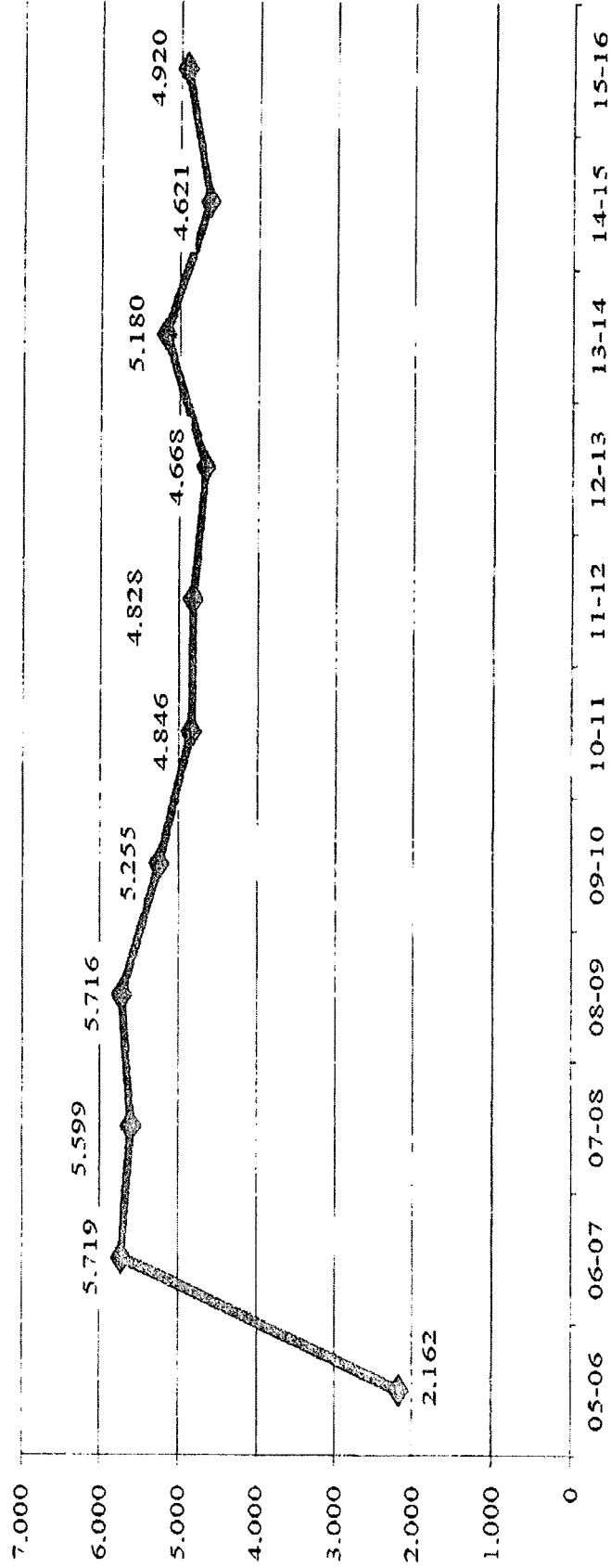
Exhibit 3

PFB'S

	2015-16	2016-17	Change
July	5618	5637	0%
August	5443	6514	20%
September	5411	6125	13%
October	5788	5335	-8%
November	4982	5375	8%
December	5115	5461	7%
January	5035	5720	14%
February	5481	5488	0%
March	6002	6530	9%
April	5494	5457	-1%
May	6119	6,399	5%
June	6777		
Average	5499	5822	6%

Exhibit 4

Overall "Settled"



# Exhibit 5

## NEW CASES

	2015-16	2016-17	Change
July	2740	2538	-7%
August	2529	2936	16%
September	2625	2650	1%
October	2744	2406	-12%
November	2330	2509	8%
December	2354	2400	2%
January	2363	2487	5%
February	2600	2378	-9%
March	2739	2799	2%
April	2579	2497	-3%
May	2638	2868	9%
June	2937		
Average	2567	2588	1%