



# Florida Workers Compensation 10/1/2016 Law-Only Rate Filing Overview

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# Components of the Rate Indication

Component	Impact
<i>Castellanos</i> (First-Year Impact)	+15.0%
Medical fee change (SB 1402)	+1.8%
<u><i>Westphal</i></u>	<u>+2.2%</u>
<b>Overall:</b>	<b>+19.6%</b>
	\$714M (19.6% x \$3.645B)

Note: Figures are multiplicative, not additive



# National Council on Compensation Insurance (NCCI)

Established in 1923 around the time states were first starting to adopt workers compensation laws

Licensed as rating/advisory organization and/or designated as statistical agent in almost 40 jurisdictions including Florida

Operates under a not-for-profit philosophy



## Quick Facts on NCCI Rate Filings

- NCCI rate filings are developed internally by staff and filed first with the OIR prior to sharing with other stakeholders
- NCCI is subject to regular exams/audits by the OIR—10 since 2001
- Since the 2003 reform, NCCI has made 17 rate filings; 12 of the 17 were for decreases
- Florida workers compensation rates are 60% lower today than prior to the 2003 reform
- Proposed WC rate ***increases*** of this magnitude are rare— last two in Florida were +18.6% in 2008 (split over 2 years) and +21.5% in 2002 prior to the 2003 reform



# Components of the Rate Indication

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# Today's Discussion

- Key Features of Today's Florida Workers Compensation System
- *Castellanos* Takes Florida Back to Pre-SB 50A
- Environment Since *Castellanos*
- Florida Relative to Other States
- Other Considerations





# Key Features of Today's Florida Workers Compensation System

# Most Florida WC Claims Require No/Little Time Away From Work

75% of claims in Florida are medical-only; average cost of a Florida medical-only claim is \$1,378

Medical-only claims represent 10% of total losses

25% of claims in Florida are lost-time claims; average cost of a Florida lost-time claim is \$39,296

Lost-time claims in Florida represent 90% of total losses

Source: NCCI's Annual Statistical Bulletin





# Most Florida WC Claims Are Paid and Closed Without Attorney Involvement

Attorney involvement is approximately 25% on lost-time claims

Since claimant attorney involvement is reported to NCCI as indemnity, a medical-only claim with claimant attorney involvement would be reported as a lost-time claim

If 25% of claims are lost-time and if there is 25% attorney involvement on lost-time claims, 6.25% of total claims in Florida would have attorney involvement

Lost time claims with attorney involvement:

- Cost on average approximately 3x more than lost time claims without attorney involvement
- Represent over 40% of total benefit costs

Source: NCCI's Annual Statistical Bulletin



# Attorney Involvement Has Two Aspects: Association With and Level of Litigation Activity on Claim

Percentage of claims associated with attorneys has remained fairly consistent in Florida over time regardless of how attorney fees are awarded

Level of litigation activity associated with these claims has changed in Florida depending on the type of fee schedule in effect

Before SB 50A, ability to deviate up from fee schedule to a higher hourly fee amount led to increased litigation activity on claims associated with attorneys

Limitation to fee schedule under SB 50A reduced litigation activity on claims associated with attorneys

# From Office of the Judges of Compensation Claims FY 04/05 Report (Dated 11/1/2005)

Then Deputy Chief Judge Scott Stephens wrote about pre-SB 50A attorneys fees:

- Attorneys' fees are widely and correctly seen as a key driver of workers' compensation costs, in part because of their direct cost but ***more fundamentally because of the nature and amount of litigation that result from the litigation incentives built into the system.***
- As an unintended consequence of the court's well meaning decisions in the *Davis* line of cases, it became ***commonplace for litigation to be commenced over very small stakes, with lawyers on both sides devoting hours of legal work out of proportion to the value of the benefits in controversy, often resulting in a concession by the carrier having little or no value to the claimant,*** but resulting in a fee predicated on an hourly rate of \$200 to \$300 for the attorney.
- It is easy to see that an attorneys' fee structure that guarantees a "reasonable" hourly rate as a minimum and also holds out the prospect of a windfall (statutory formula) ... creates ***a structure that systematically overcompensates attorneys for each case they undertake.***

## From Office of the Judges of Compensation Claims FY 04/05 Report (Dated 11/1/2005)

Then Deputy Chief Judge Scott Stephens wrote about post-SB 50A attorneys fees:

- Tying the attorney's pay to the amount of benefits secured aligns the interest of the attorney with that of the client—***the attorney gets more only if the client gets more.***
- The incentive structure of the ***statutory formula causes attorneys to focus on larger cases*** in which the insurer's refusal to pay is of greater economic consequence, but ***like all the rest of civil litigation it provides little incentive for attorneys to take on cases having small economic values.***



# *Castellanos Takes Florida Back to Pre-SB 50A*

# Castellanos By the Numbers

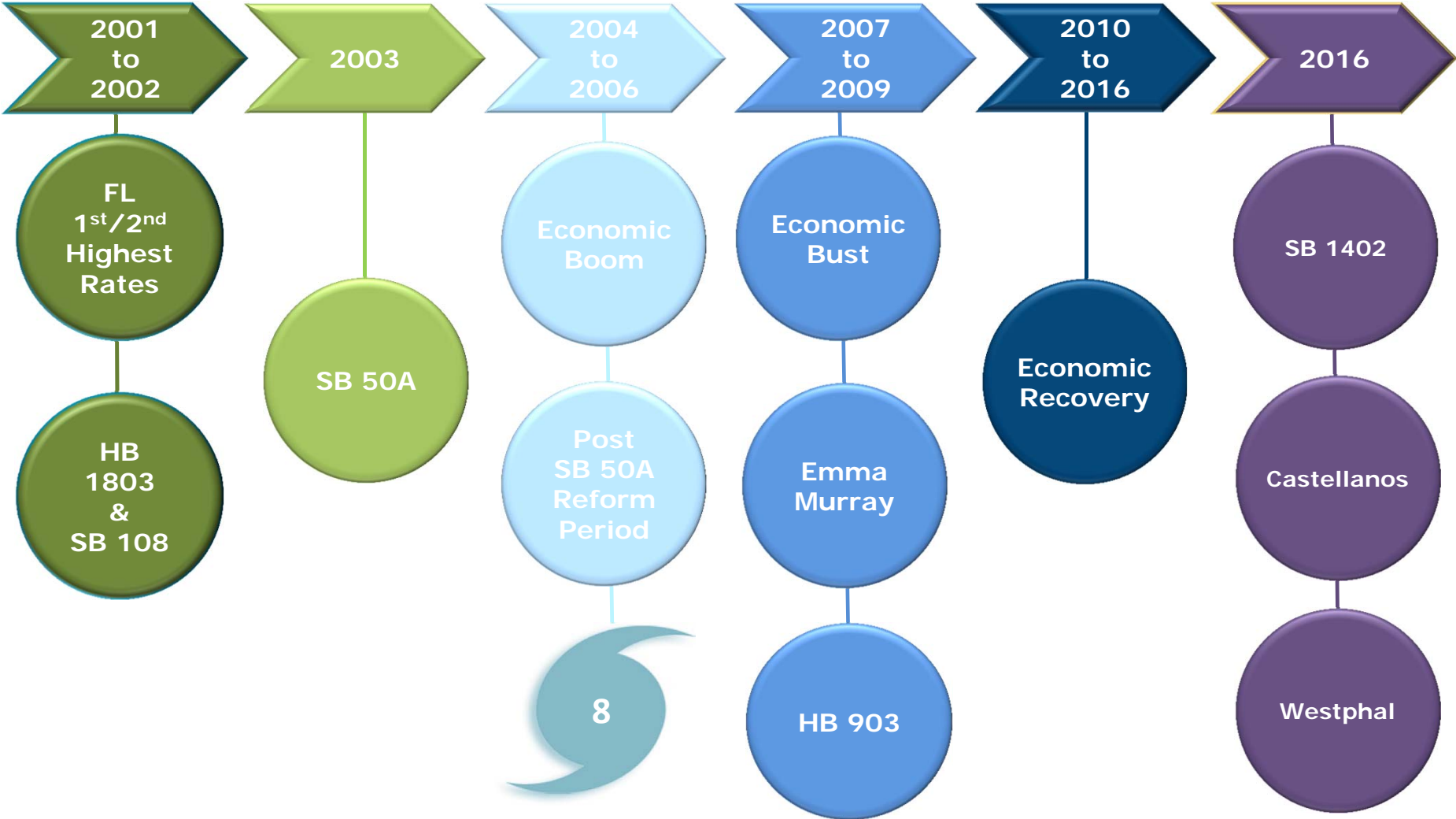
Benefit for Injured Worker	Attorney Fee Based on 440.34 <u>Before</u> Court Decision	Attorney Fee Based on 440.34 <u>After</u> Court Decision (Requested)	Impact on Claim Cost Before Court Decision	Impact on Claim Cost After Court Decision
<b>\$822.70</b>	<b>\$164.54</b> (20% of first \$5K benefits secured)	<b>\$37,520</b> (\$350/hour x 107.2 hours)	<b>\$987.24</b> (\$822.70 + \$164.54)	<b>\$38,342.70</b> (\$822.70 + \$37,520)
<p><b>Before <i>Castellanos</i>, attorneys fees were awarded based on a fee schedule (sliding scale percentage of benefits secured for the injured worker)</b></p>				
<p><b>After <i>Castellanos</i>, attorneys fees are awarded based on the fee schedule with deviation (hourly fees)</b></p>				



## *Castellanos* Applied in Practice

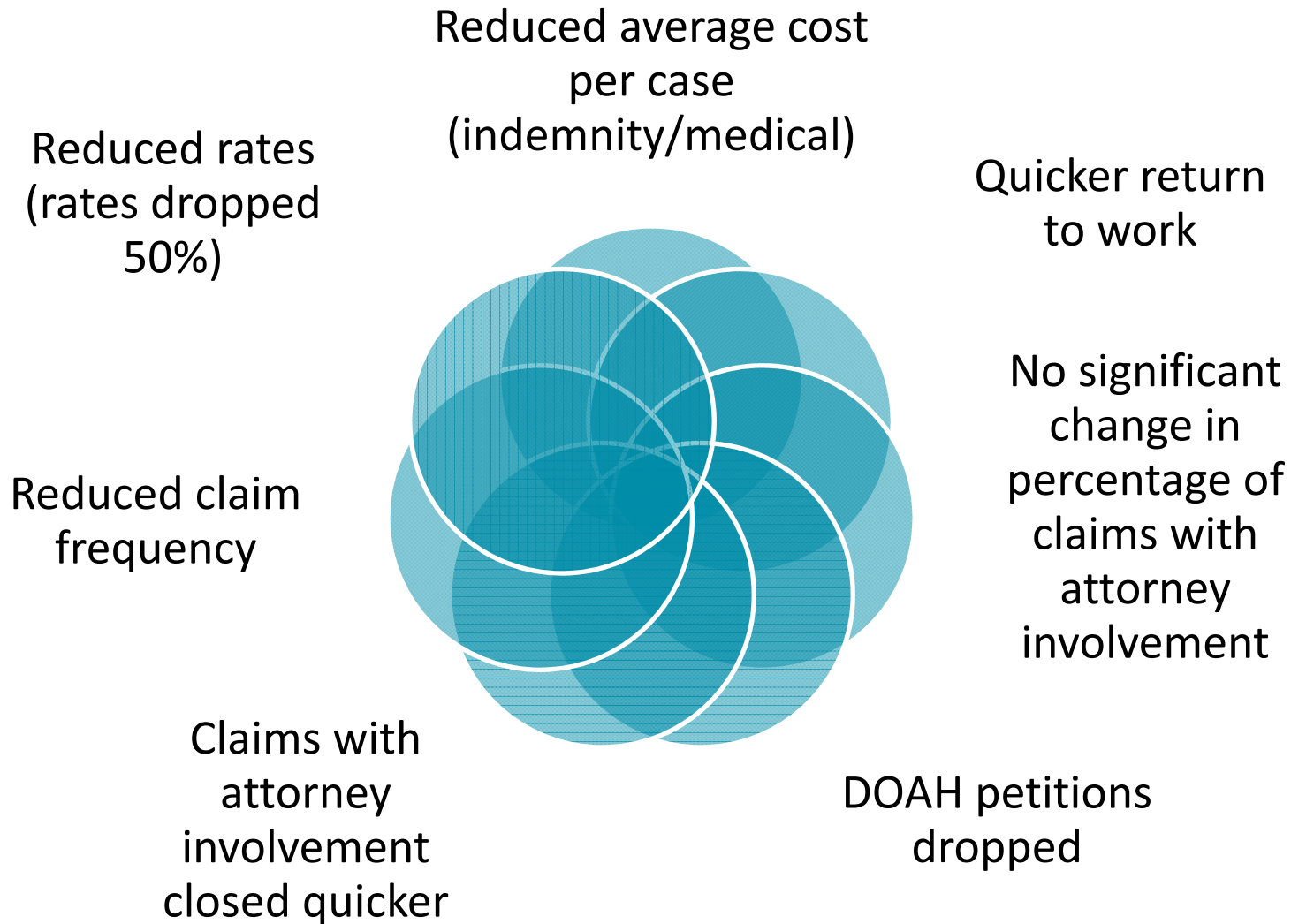
- Court in *Castellanos* states the fee schedule is the starting point and only if that fee is unreasonable will the claimant attorney be entitled to a fee that deviates. Is this any different than pre-SB 50A in practice? No.
- Pre-SB 50A, there was a sliding scale attorney fee schedule, with deviation permitted based on the *Lee Engineering* factors, and the *Alderman* case which maintained the fee schedule as the floor.
- NCCI has reviewed attorney fee awards by JCC's based on *Castellanos*
  - Most of the awards to date are based on hourly fees rather than the fee schedule
  - This has not been limited to the *Castellanos* fact situation of many hours spent to obtain a relatively low dollar benefit for the injured worker. Example: *Heinle v. Miami Dade Public Schools*. Benefit secured: \$17,401. Fee schedule: \$1,753. Hourly fee awarded: \$92,446.
  - Also similar to pre-SB 50A, there is at least one case where the fee schedule amount was awarded when the hourly fee would have been less
- NCCI's assumptions are consistent with early post-*Castellanos* awards

# Florida History

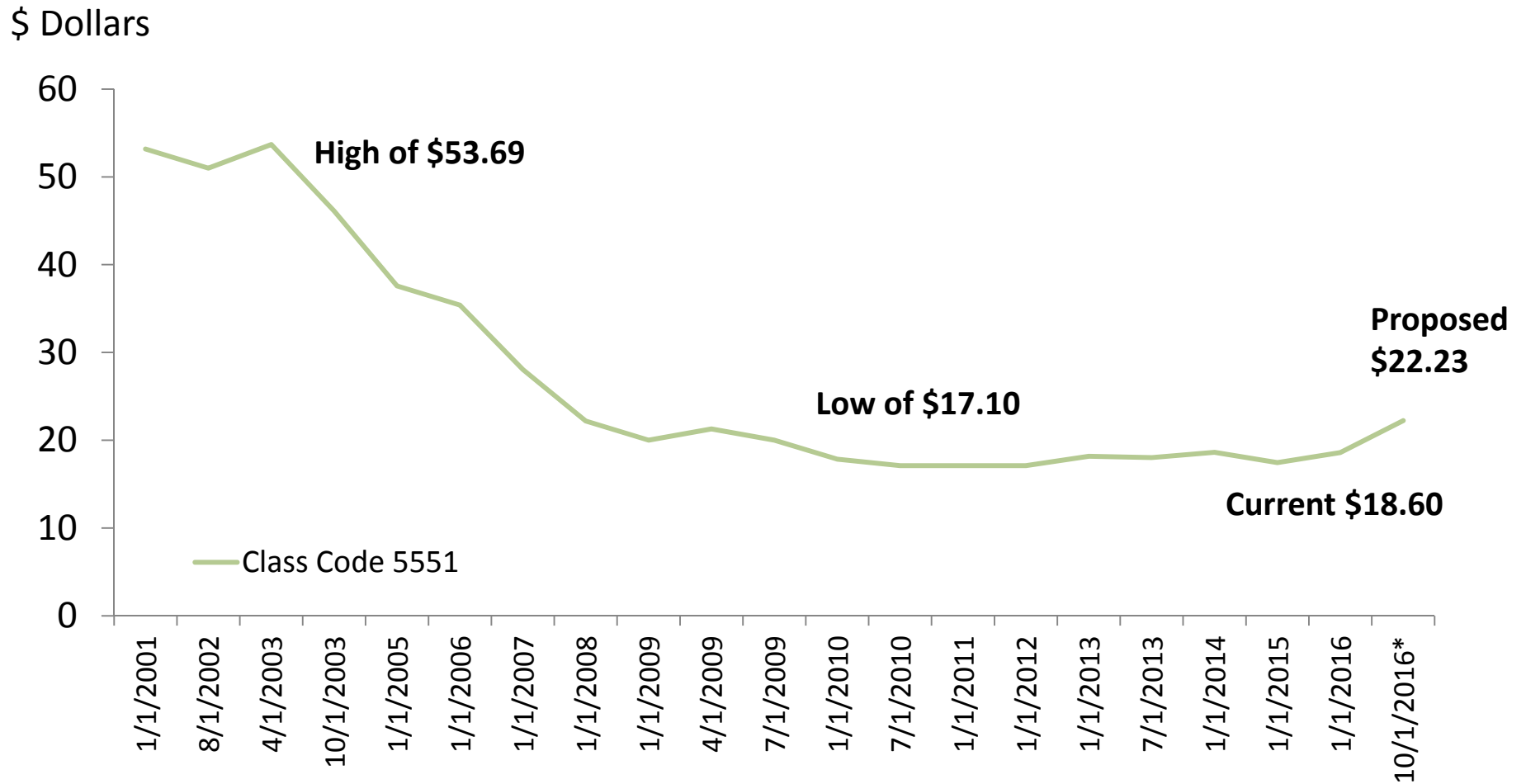




# Trends During Post-Reform Period (Through 2006)



# Florida Roofing Rate At Lowest Was 68% Below Pre-Reform Rate



\* Pending

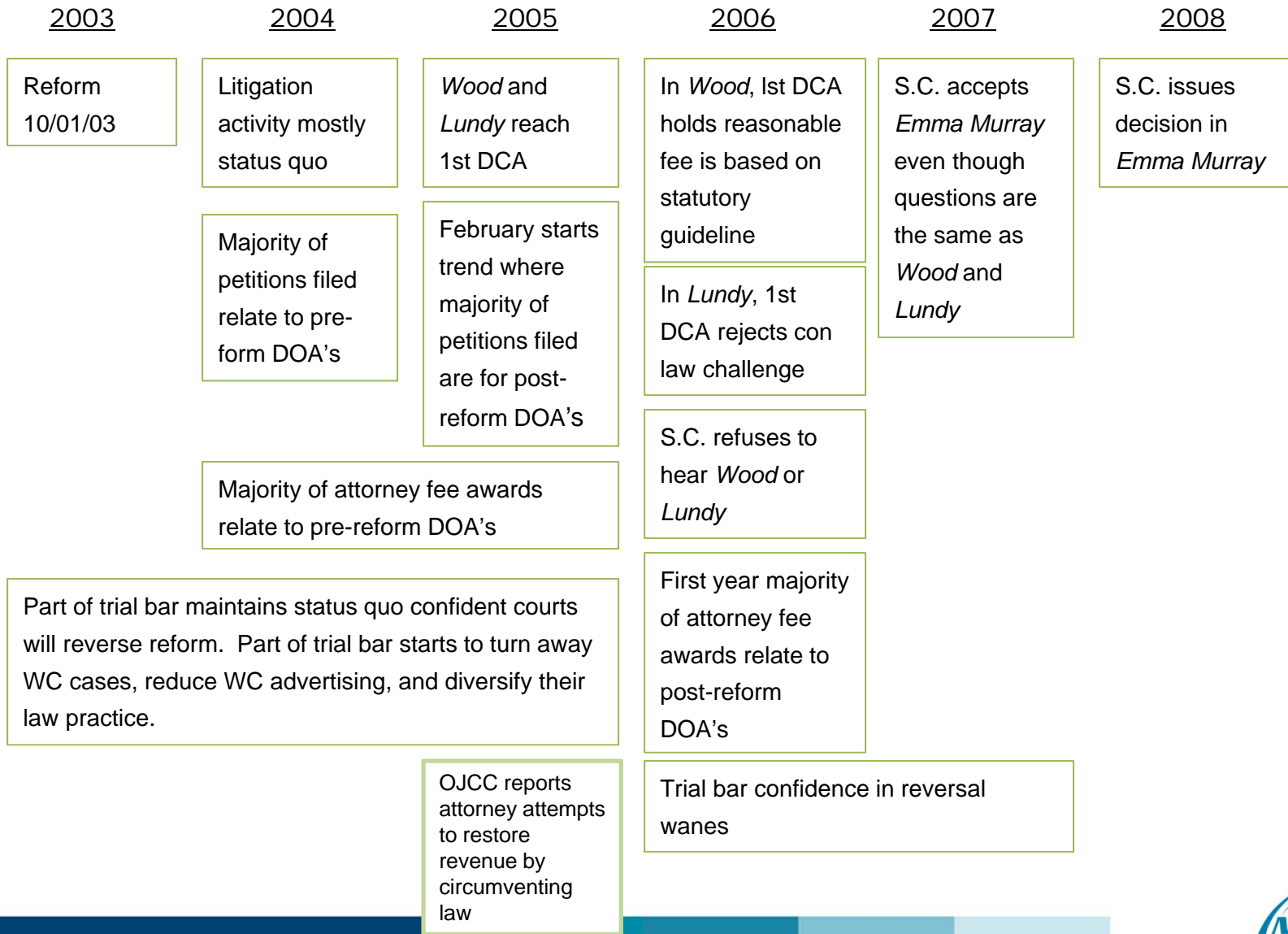


# Stakeholders Believe Change in Attorneys Fees Was Linchpin of SB 50A

- During the first year post-reform, stakeholders implemented other aspects of SB 50A but attorney behavior did not change
- For example, permanent total (PT) claims were reduced, in part, because of changes to the PT statutory definition (captured in initial pricing of SB 50A); changing the attorney fee schedule reduced litigation activities that typically led to PT claim status (captured in years subsequent to SB 50A)
- As attorney behavior started to change in the post-reform period, there was a corresponding period of 4 years of double digit declines representing, in large part, the impact that changing the attorney fee schedule had on total claim costs



# Attorneys Delayed Behavioral Changes After SB 50A



## From OJCC FY 04/05 Report (Dated 11/1/2005)

Deputy Chief Judge Scott Stephens wrote:

- It is estimated that ***just over half of the full litigation cost reduction effect of the 2003 amendments has been realized in the most recent fiscal year, and by the end of FY 2005-06 the bulk of the cost reductions from the new act will have been experienced.***
- The attorney fee limits in the 2003 reforms have been ***spectacularly successful in reducing the volume and cost of litigation***, with new filings declining by about 30% since the law took effect.
- This year, the offices began to eliminate the backlog that had built up during the time ***when the structure of the attorney fee law provided an incentive to litigate extensively every issue, including those involving minimal stakes.***
- In 2004-05, the OJCC began clearing out a backlog of cases that built up when attorney fees often amounted to 40% of the clients' recovery, and ***for the most part the judges now strictly enforce the 2003 reforms.***



## Less Incentive to Delay Behavioral Changes After *Castellanos*

- After *Emma Murray* in 2008, reaction was not immediate:
  - Court decision turned on the presence of a single word “reasonable” within 440.34
  - Stakeholders thought court decision could be quickly and fully addressed by the legislature
  - Attorneys had “wait and see” attitude
  - NCCI responded with slower rollout of increase (+18.6% over two years)
- After *Castellanos*, reaction has been more immediate:
  - Court decision based on constitutional grounds
  - Not as easy to address quickly and fully as a single word
  - Evidence suggests there is no attorney “wait and see” attitude
  - NCCI is responding to difference with a faster rollout to match the environment (+15% as first-year impact)



# Environment Since *Castellanos*

# Carrier Survey Results Suggest *Castellanos* Has Changed Environment

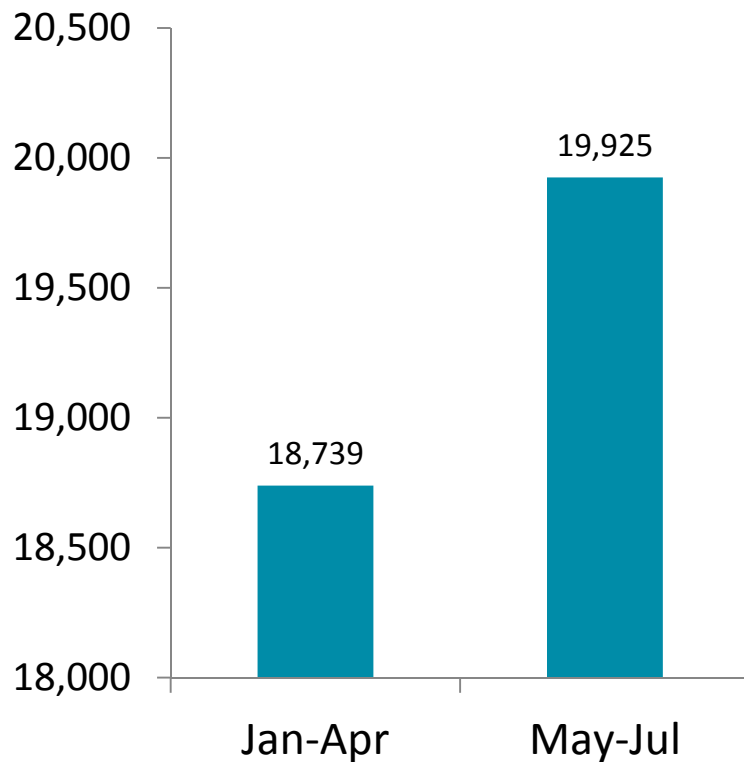
- NCCI conducted survey mid-June/mid-July 2016 of 10 large Florida writers representing 66.5% of Florida workers compensation market share (excluding self-insurers)
- Before *Castellanos*, many carriers noted environmental changes starting to occur in anticipation of the *Castellanos* decision:
  - Delayed settlements
  - Delayed claim closure
  - High/low fee arrangements
- After *Castellanos*, many carriers noted:
  - Reopening of older claims
  - Higher attorney involvement
  - Higher hourly fees
  - Claims are harder to settle
  - Increased petitions
  - Increased depositions
  - Increased petitions on minor issues - average weekly wage, fringe benefits, and mileage requests



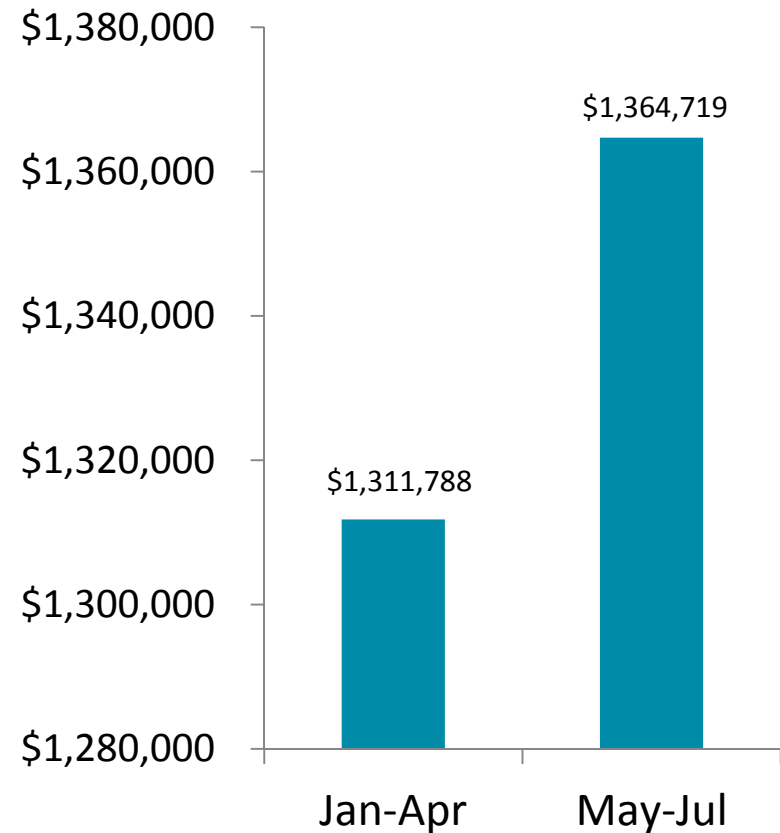


# Claimant Attorney Advertising Up Slightly (TV, Radio, Newspaper) By Top 20 Filers of Petitions with OJCC

**+6% Average Month  
Number of Spots**



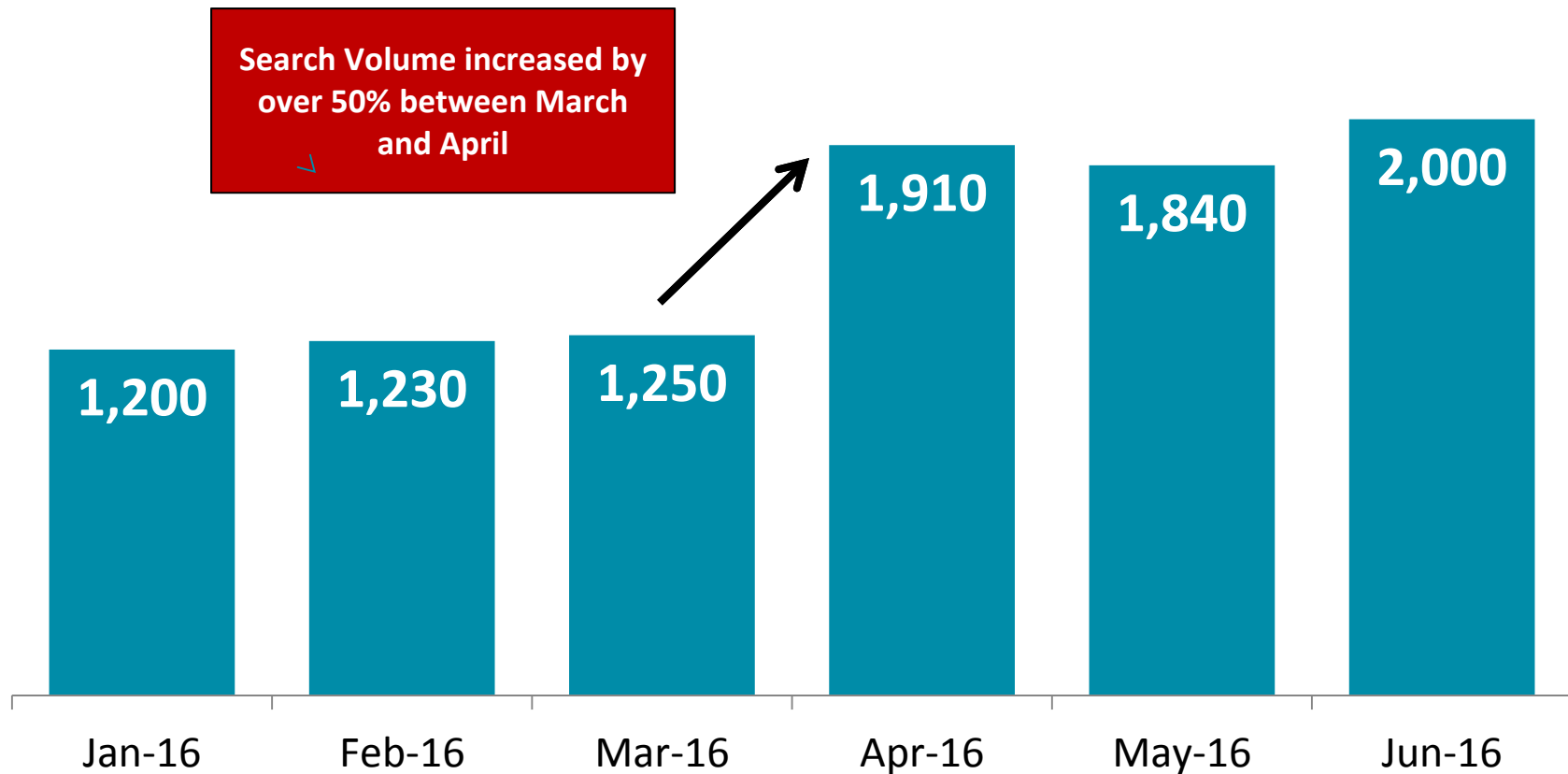
**+4% Average Month Spend**



Source: Media Monitors Competitive Spend Reports 2015/2016. Florida market.



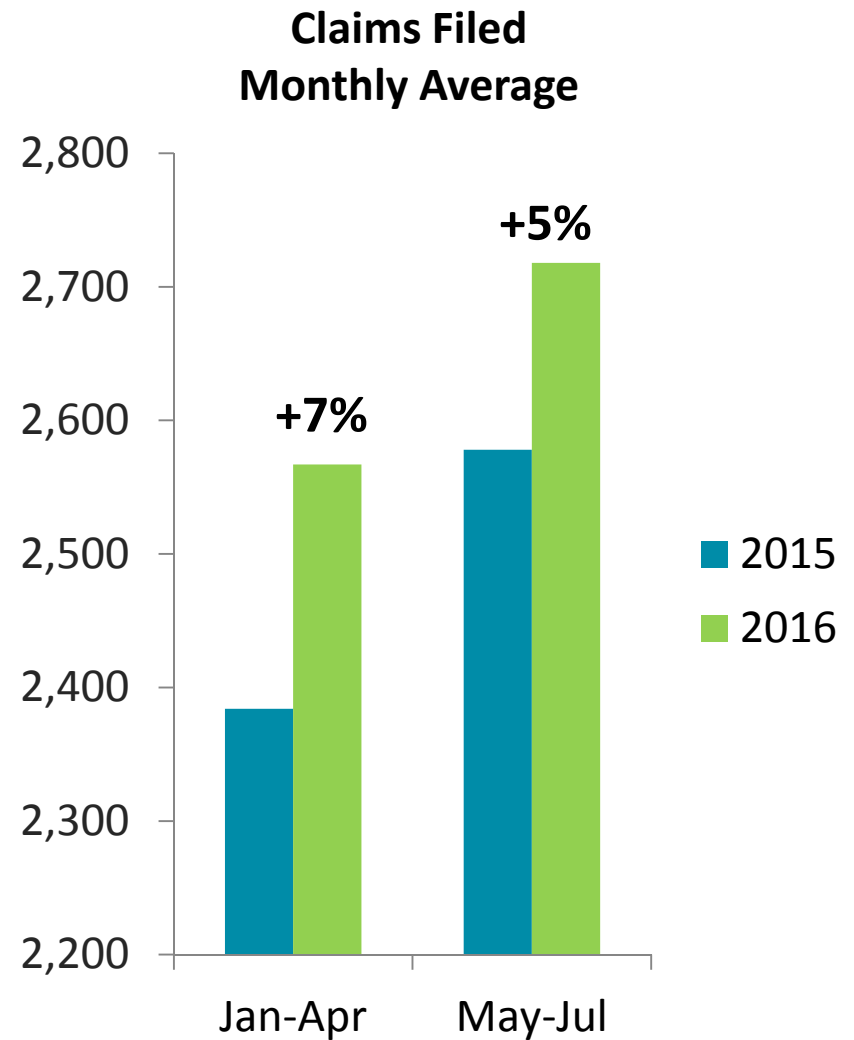
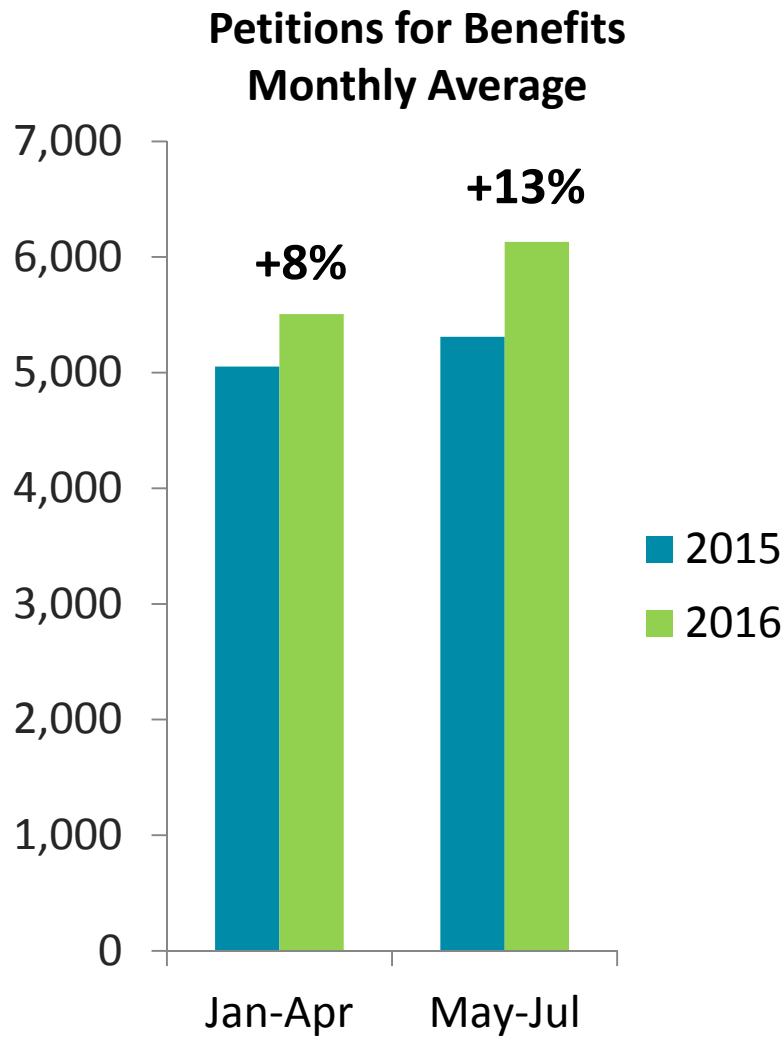
# Google Search Term Volume for Workers Compensation Lawyer/Attorney Keywords Increased in 2nd Quarter



Source: Google AdWords, Search terms included: Workers Compensation Lawyer, Workers Compensation Attorney, Workers Comp Lawyer, Workers Comp Attorney, Work Injury Lawyer, Work Injury Attorney. Location of searcher was limited to the state of Florida.

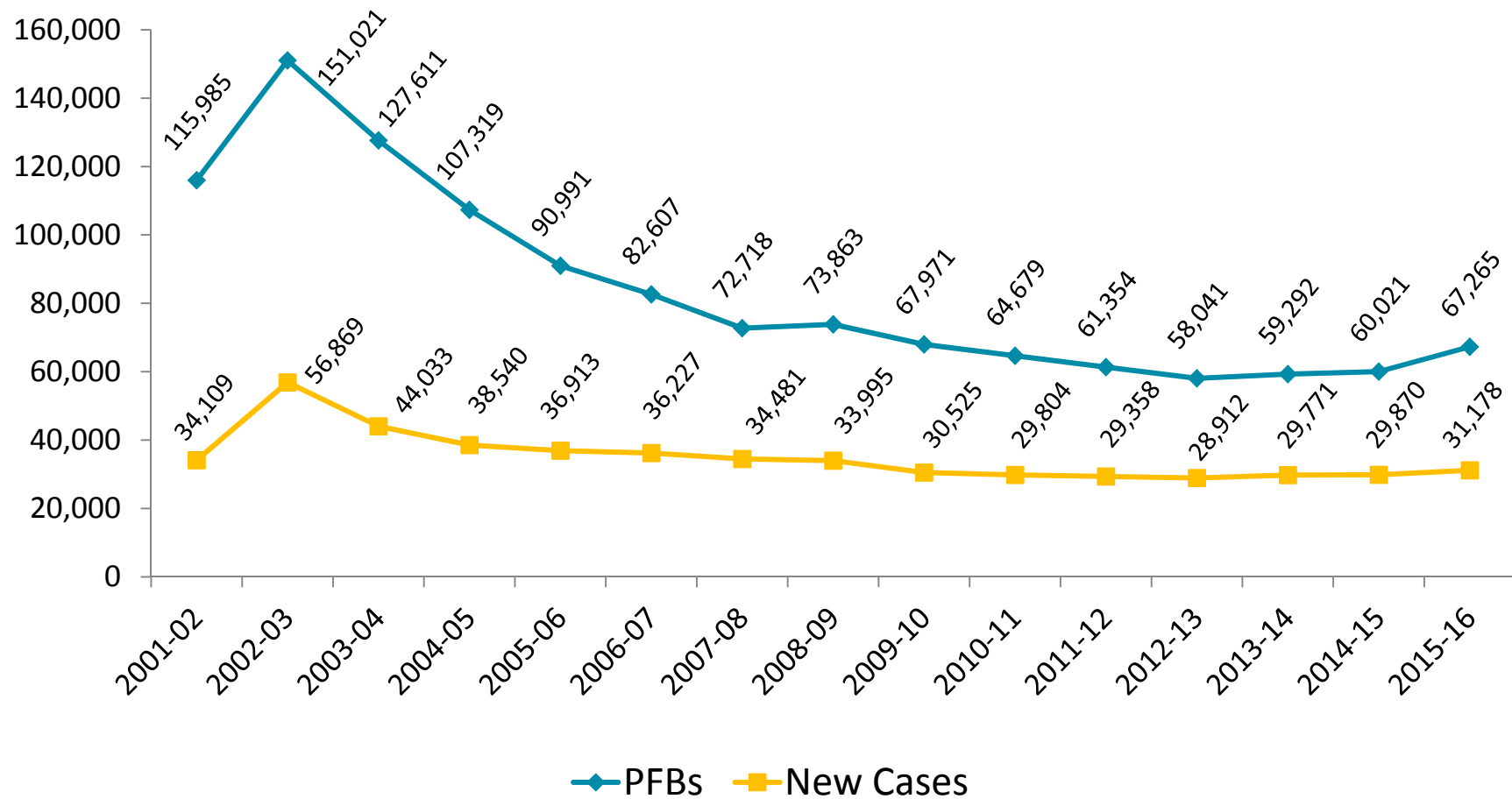


# Petitions for Benefits Up After *Castellanos*

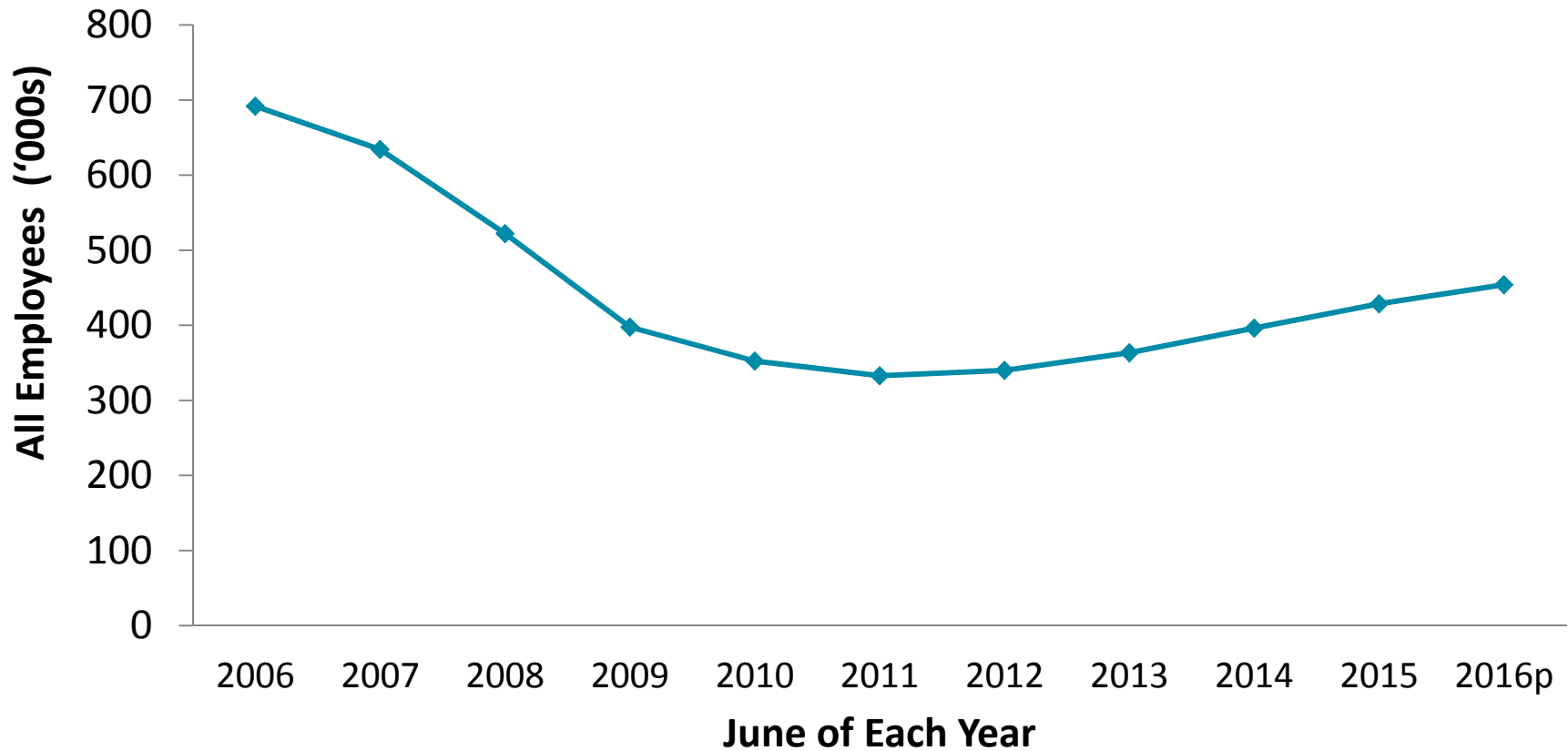


# “New Cases” Stable During Recovery from Recession But Showing Recent Increase

“New Cases” and PFB Filings



# If Growth in Florida Construction Jobs Were the Reason for Recent Uptick in New Cases, Uptick Would Likely Have Started Years Ago

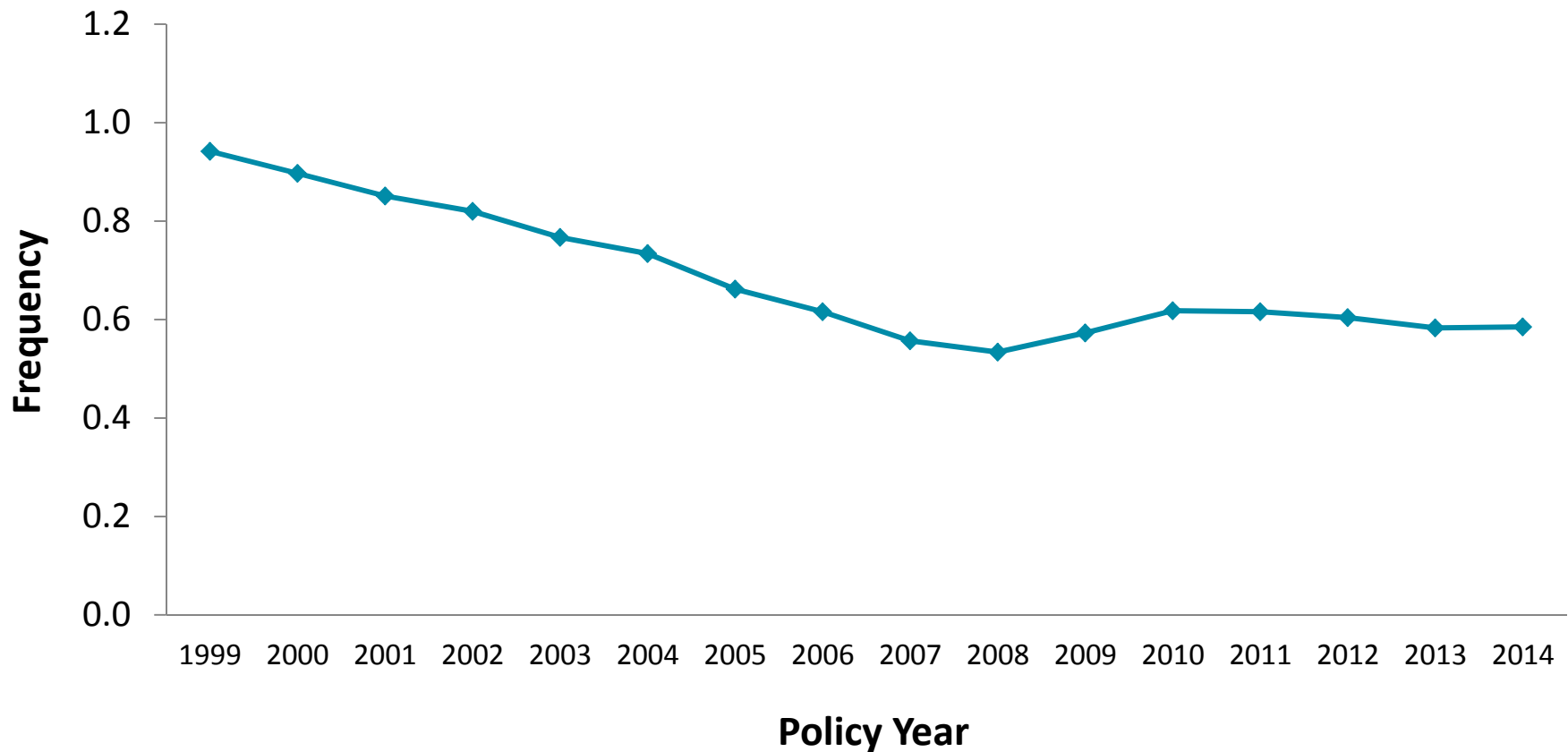


p Preliminary  
Source: U.S. Bureau of Labor Statistics , June 2016



# Florida Bucks Trend: Claim Frequency Traditionally Up During Tough Times and Down During Good Times/Recovery

Contracting Industry Group  
Lost-Time Claims at First Report per \$1M of Payroll



Excludes large deductible policies  
Payroll is adjusted to current wage level



## Sample JCC Attorney Fee Awards Post-*Castellanos* \*

Benefits Secured	Fee Awarded	Fee Schedule
\$8,956	\$42,000	\$1,583
\$93,000	\$25,000	\$10,050
\$352,935	\$51,112	\$36,044
\$6,200	\$15,000	\$1,180
\$17,401	\$92,446	\$1,753
\$1,150	\$5,025	\$287
\$38,798	\$15,431	\$4,630
\$200	\$7070	\$40
<b>Average (8 Cases)</b>	<b>\$31,636</b>	<b>\$6,946</b>

\* Cases as of early August in which benefits secured, fee awarded, and fee schedule were available.

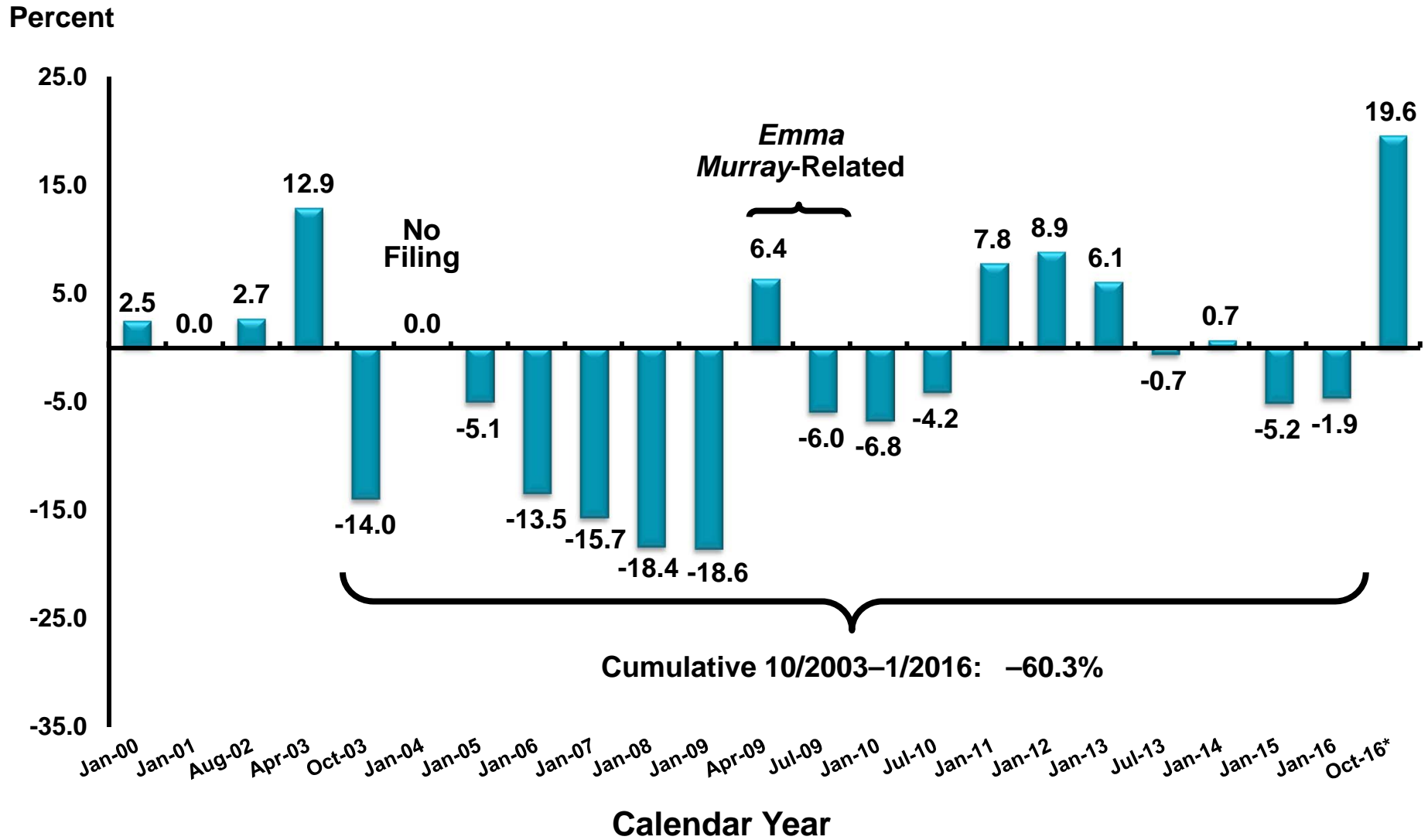




# Florida Relative to Other States



# Florida's Historical Rate Changes



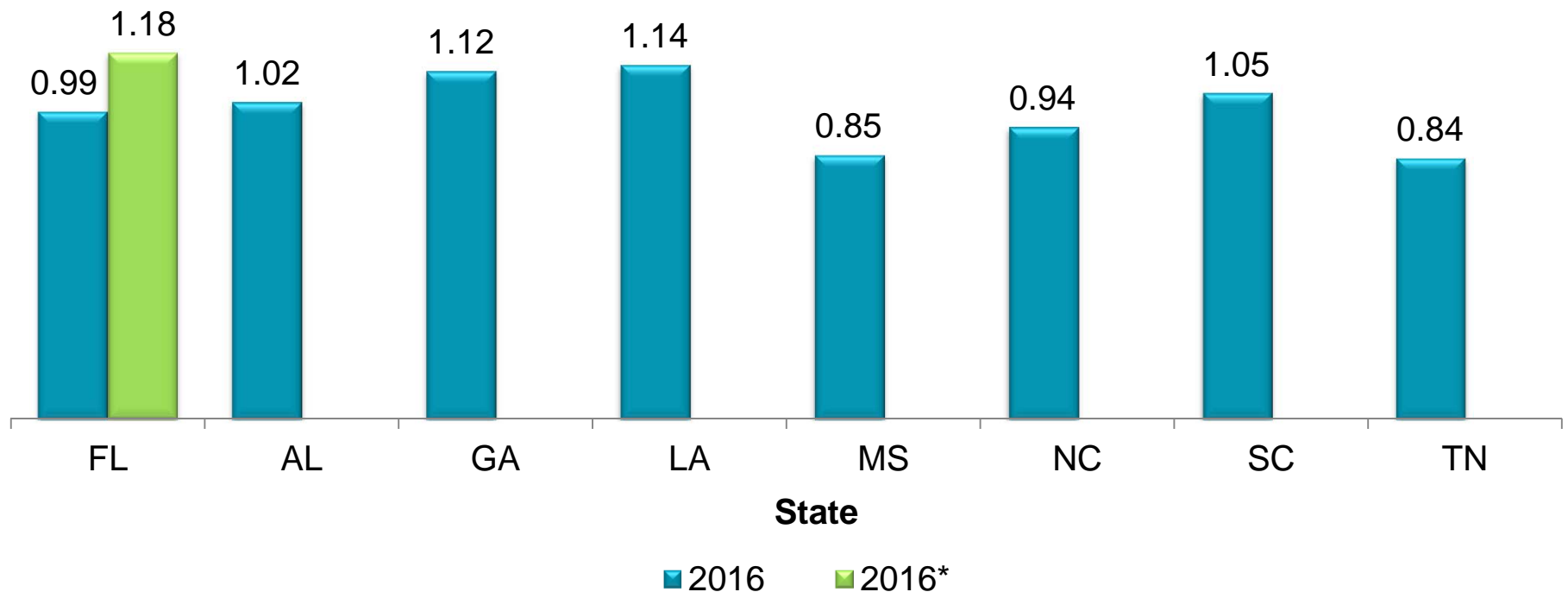
\*Pending



# Current Average Voluntary Pure Loss Costs Using Florida's Payroll Distribution

(Pure Loss Cost—All Classes)

\$ Dollars



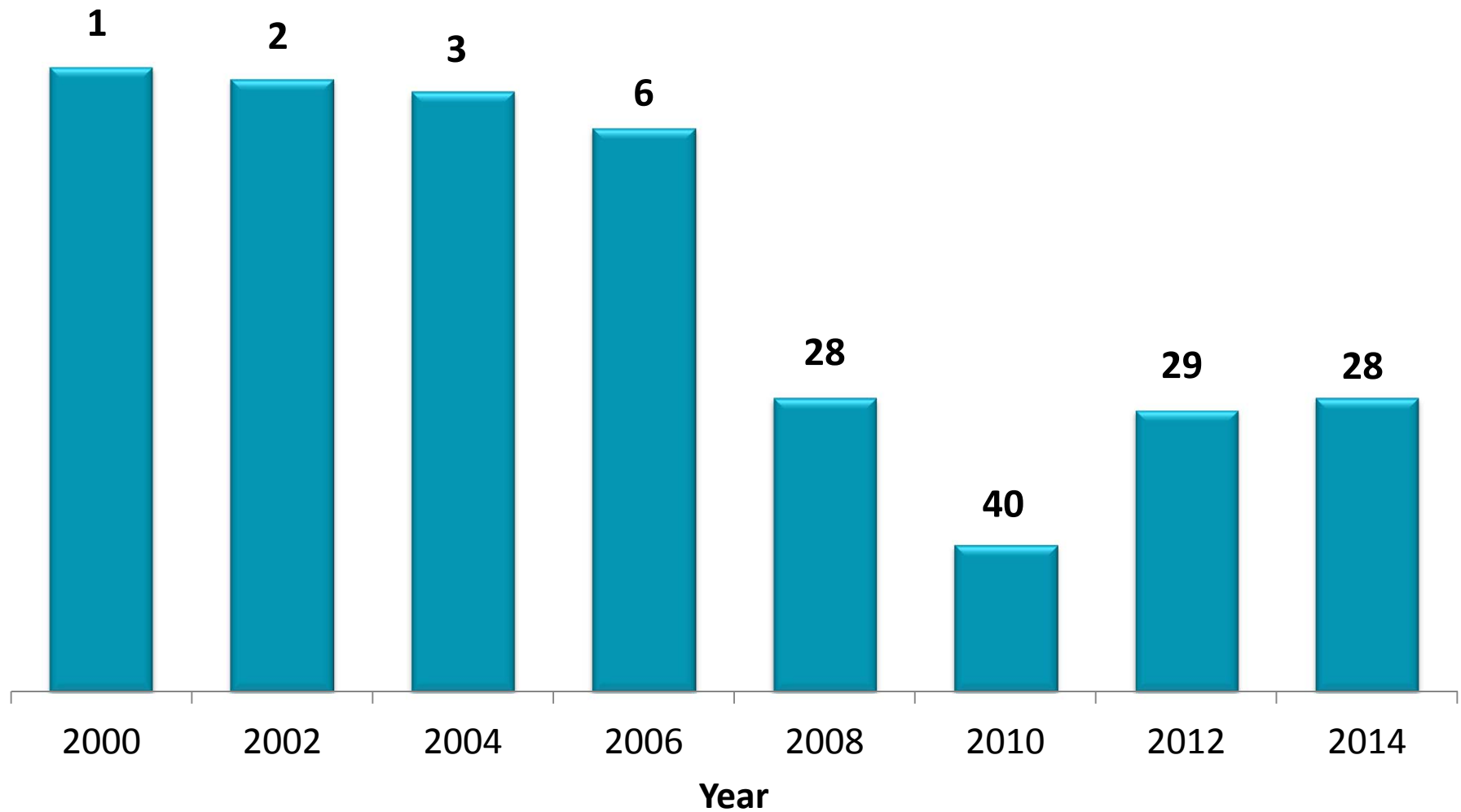
Based on the latest NCCI approved rates and loss costs in the various states

\*Represents the FL pure loss cost multiplied by 1.196 (1.18 = 0.99 x 1.196)



# Florida's Oregon Ranking by Year

(1 is Highest Cost, 51 is Lowest Cost)





# Other Considerations

## Not Considered in October 1, 2016 Filing

Impacts related to *Miles v. City of Edgewater Police Department* (“*Miles*”) declaring unconstitutional certain restrictions on claimant-paid attorney fees

Other first- or subsequent-year impacts related to *Castellanos* or *Westphal* that NCCI is unable to quantify

Unfunded liability

# Unfunded Liability

Statewide unfunded liability related to *Emma Murray, Castellanos, and Westphal* could exceed \$1B



Court decisions have retroactive impact on claims occurring prior to 10/1/2016 that remain open or are re-opened



Cost will be borne by insurance companies, individual self-insured employers, and employers with deductible policies



If the filing effective date of 10/1/2016 is delayed, each month of delay would likely increase the unfunded liability in the tens of millions of dollars

# NCCI Proposing No Annual Experience Filing For January 1, 2017

- Data collected by NCCI would need to be supplemented to reflect the post-*Castellanos/Westphal* environment
- NCCI would need to review additional data and information from external sources as part of its ratemaking analysis
- NCCI does not expect that such data will become available in 2016



# In Summary

- Rates today are down 60% from prior to Senate Bill 50A; 50% during the post-reform period which lasted through 2006
- There's good reason to believe that the change in attorney fees was the linchpin of SB 50A (remember: not just the fee itself but how it drives the level of litigation activity; both impact average cost of claim)
- Other SB 50A reform elements were implemented first year; attorneys did not change their behavior immediately but once they started to, the level of litigation activity began to drop and significant additional savings rolled in
- The *Castellanos* puts the law on attorneys fees back to pre-SB 50A; *Miles* and *Westphal* are aggravating factors (ie these cases further incentivize increased level of litigation activity)
- In just over 3 months, there are already signs of increased attorney involvement – carrier survey, advertising, web hits, petitions, fee awards – and no signs of a “wait and see” attitude
- Impacts 6% of total number of claims but over 40% of total costs (claims with attorneys 3x higher than claims without attorneys now; 4x higher prior to SB 50A)
- +19.6 only includes 1<sup>st</sup> year impact of *Castellanos*; insurers/employers also dealing with unfunded liability potentially over \$1B

