



Insurance

Case Law & Insurance Regulation Update

Weeks Ending August 10 and 17, 2012

By the Carlton Fields Insurance Group

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I. STATE APPELLATE DECISIONS

- No Georgia decisions reported.
- **Castellanos, et. al., v. Citizens Property Insurance Corp. (Fla. 3rd DCA).** Trial court erred in dismissing former unit owners' claims against insurer. Neither Declaration of Condominium nor Articles of Incorporation prohibited Association from assigning potential insurance claims for hurricane damage to former unit owners. Furthermore, trial court did not abuse discretion in certifying unit owners as a class.
- **Lime Bay Condominium, Inc. v. State Farm Florida Insurance Co. (4th DCA).** Trial court properly dismissed bad faith complaint where insured's breach of contract suit against insurer was still pending and there had not yet been a final determination of liability on part of insurer.

II. FEDERAL DECISIONS

- **Royal Capital Development, LLC. V. Maryland Casualty Company, 23 Fla. L. Weekly Fed. C1379a (11th Cir. GA).** Pursuant to Georgia law, *Mabry* rule for car insurance, that a provision requiring insurer to pay for loss to insured's car requires insurer to also pay for diminution in value, applies to the insurance contract for buildings at issue in this case. Where insurance contract, providing coverage for "direct physical loss of or damage to" a building, allows the insurer the option of paying either "the cost of repairing the building" or "the loss of value," when the insurer elects to repair the building, it also must compensate insured for diminution in value of property resulting from stigma due to its having been physically damaged. Error to grant summary judgment for insurer.

- **Oriole Gardens Condominium Association I v. Aspen Specialty Insurance Company, 23 Fla. L. Weekly Fed. D299a (U.S Southern District Florida).** Declaratory judgment action filed by condominium association seeking determination that its supplemental claim for property damage allegedly caused by hurricane is covered under its policy. Supplemental claim for actual-cash-value benefits, brought years after settlement of insured's original Actual Cash Value (ACV) claim, is foreclosed by accord and satisfaction where insurer issued check to insured for full amount of ACV claim, which insured unconditionally accepted, and these facts establish that parties intended payment to satisfy insurer's liability for ACV element of property damage claim. Insurer entitled to summary judgment on supplemental claim for replacement-cost benefits, where records showed conclusively that insured did not satisfied policy's prerequisites for obtaining replacement-cost coverage, which required insured to notify insurer of replacement-cost claim within 180 days of date of loss and that insured first repair and/or replace damaged property. Insurer entitled to summary judgment on claim for increased costs of construction resulting from compliance with ordinance or law where policy made clear that an insured must first repair or replace damaged property before seeking benefits for increased costs of construction and that such repair or replacement generally must be completed within two years, and insured has not repaired or placed subject property.

III. ADMINISTRATIVE LAW/AGENCY DECISIONS

- **Florida OIR Issues Notice of Intent to Disapprove Praetorian Insurance Company's Rate Filing for Lender-Placed Insurance.** Praetorian requested a proposed statewide decrease of 2.2 percent in the rate filing for its property collateral protection program, also known as "lender-placed" or "force-placed" insurance. The OIR cited excessive rates, insufficient support for the loss trend selected, and indicated expenses and reinsurance cost reflecting allocation of costs to Florida were excessive relative to services rendered. Praetorian has 21 days from the date of the Notice of Intent to petition the OIR for an administrative hearing or submit a new filing to the OIR.
- **Florida OIR Allows Bermuda Reinsurer VALIDUS REINSURANCE, LTD. to Operate with Reduced Collateral and Become the 20th Eligible Reinsurer in Florida.** The Florida OIR signed a consent order that allows Validus Reinsurance, Ltd. to post reduced collateral and operate in Florida as an eligible reinsurer.

IV. NOTICES OF ADMINISTRATIVE RULEMAKING PROCEEDINGS

A. RULE DEVELOPMENT

- **Rule 19-8.010, F.A.C. – State Board of Administration Reimbursement Contract.** The purpose of the workshop is to discuss proposed amendments to Rule 19-8.010, F.A.C., Reimbursement Contract. A rule development workshop will be held on **August 30, 2012, 9:00 a.m. – 12:00 Noon (ET)**, Room 116 (Hermitage Conference Room), 1801 Hermitage Blvd., Tallahassee, Florida 32308. Persons who wish to participate by telephone may dial 1 (888) 670-3525 and enter conference code 7135858151.

B. PROPOSED RULES

- **Rule 59G-5.020, F.A.C. – Medicaid Provider Requirements.** Purpose of proposed amendment to Rule 59G-5.020, F.A.C. is to incorporate by reference the Florida Medicaid Provider General Handbook, July 2012. The handbook is updated to add policy relating to special services necessary for children and detailing the direction on requesting these services; give providers direction on requesting non-emergency out-of-state services by providing general guidelines, adding non-emergency out-of-state services, and requiring a new form; add policy regarding enrollment of cross-over only providers; reflect Medicaid Qualified Medicare Beneficiary (QMB) cost-sharing requirements and Medicaid cost-sharing for Medicare Part A and Part C services; and increase the oversight of the Medicaid program through the provision of general guidelines on termination, suspensions, and administrative sanctioning of Medicaid providers as directed by legislation. If requested in writing, a hearing will be held by the Agency for Health Care Administration if requested in writing on **September 10, 2012, 1:00 p.m. – 3:00 p.m.**, Agency for

Health Care Administration, 2727 Mahan Drive, Building 3, Conference Room A, Tallahassee, FL.

- **Rules 69J-7.004 Participating Contractors – Application and Participation Agreement; 69J-7.005 My Safe Florida Home Program, Forms For Use Regarding Grants and 69J-7.007 Grants – Medical Condition Exception.** The above rules noticed in Vol. 38, No. 28, July 13, 2012 issue of the Florida Administrative Weekly were withdrawn.

V. MEETING NOTICES OF INTEREST/MISCELLANEOUS

- **Florida OIR Expands CHOICES Tool to Include Auto Insurance Market.** The Florida OIR expanded its interactive program designed to encourage Florida residents to shop for the best insurance rates in the State of Florida to include the auto insurance market.
- **Repeal of Penalty Guidelines Rule 69O-142.011, F.A.C.** The OIR will for 10 days leave the record open so insurers can comment and make suggestions on the move to eliminate Rule 69O-142.011, F.A.C. concerning penalty guidelines. Insurers will have until close of business (5 p.m.) on **August 27** to submit their concerns and suggestions to the OIR.
- **Florida Hurricane Catastrophe Fund Receives Petitions for Variance or Waiver from Rules**
 - **Emergency Variance or Waiver from Rules 19-8.010 and 19-8.030, F.A.C., from American Coastal Insurance Company.** The Petitioner is requesting that the deadlines contained in these rules concerning timing of selections of optional coverage be waived and an untimely cancellation of optional coverage be allowed.
 - **Petition for Emergency Variance or Waiver from Rules 19-8.010 and 19-8.030, F.A.C., from Cypress Property & Casualty Insurance Company.** The Petitioner is requesting that the deadlines contained in these rules concerning timing of selections of optional coverage be waived and an untimely cancellation of optional coverage be allowed.
 - **Petition for Emergency Variance or Waiver from Rules 19-8.010, 19-8.028 and 19-8.030, F.A.C., from Homeowners Choice Property & Casualty Insurance Company, Inc.** The Petitioner is requesting that the deadlines in the above-referenced rules, which include the timing of selections of optional coverage, be waived and an untimely cancellation of optional coverage be allowed.
 - **Petition for Variance or Waiver from Rules 19-8.010 and 19-8.028, F.A.C., from American Integrity Insurance Company of Florida, Inc.** The above referenced rules address, among other things, the timing of selections of optional coverage. The Petitioner is requesting that the deadlines be waived and an untimely cancellation of optional coverage be allowed.
- **OIR Releases Draft Report entitled “Impact Analysis of HB 119” prepared by Pinnacle Actuarial Resources, Inc.** Purpose of the report is to determine the expected impact on losses and expenses that House Bill 119 will have. House Bill 119 relates to changes the Florida’s Personal Injury Protection Law (“PIP Law”). The draft report is subject to revision and the final report is due on **September 15, 2012**.
- **Florida Self-Insurers Guaranty Association, Inc., Audit Committee** – on **August 21, 2012**, 12:00 Noon, Orlando World Center Marriott, 8701 World Center Drive, Orlando, FL A copy of the agenda may be obtained by contacting: Brian Gee, Executive Director, (850) 222-1882.
- **Florida Self-Insurers Guaranty Association, Inc.** – on **August 21, 2012**, 3:00 p.m., Orlando World Center Marriott, 8701 World Center Drive, Orlando, FL A copy of the agenda may be obtained by contacting: Brian Gee, Executive Director, (850) 222-1882. Matters to be discussed: general business of the Board.

- **Agency for Health Care Administration** – on **August 29, 2012**, 9:00 a.m. – 12:00 Noon, 2727 Mahan Drive, Building 3, Conference Rooms A, B, and C, Tallahassee, FL; Conference Call: 1 (888) 670-3525, Participant Passcode: 8074710718#. Discussion of a DRG based reimbursement payment system for hospital inpatient services.
- **Department of Business and Professional Regulation, Board of Employee Leasing Companies** – on **August 28, 2012**, 9:00 a.m. and **August 29, 2012**, 11:00 a.m. at Embassy Suites Jacksonville – Baymeadows, 9300 Baymeadows Road, Jacksonville, FL 32256. Discussion of general business of the Board.
- **Agency For Health Care Administration Accelerated Life Benefits Working Group** - on **August 30, 2012**, 9:00 a.m. – 12:00 Noon, AHCA Headquarters, AHCA Conference Room D, 2727 Mahan Drive, Tallahassee, Florida 32308; Conference Call: 1 (800) 920-8654, Passcode: 90788966#. For those dialing in, please pre-register at the following website: <https://cossprereg.btc.com/prereg/key.process?key=R9BUR4YGK>. If you do not pre-register, you will not be able to dial in directly. The Working Group will discuss This workgroup will be discussing Accelerated Life Benefits for insurance policy holders living in Long-term Care facilities.
- **Florida Hurricane Catastrophe Fund Advisory Council Meeting** - on **August 30, 2012**, 1:00 p.m. (ET) – until conclusion of meeting. Conference Call: 1 (888) 670-3525, enter Conference Code: 7135858151. Matters to be include: 1) to obtain approval for the filing of a Notice of Proposed Rule 19-8.010, F.A.C., Reimbursement Contract, and for the filing of this rule for adoption if no member of the public timely requests a rule hearing or if a hearing is requested but no Notice of Change is needed; and, 2) other general business of the Council may be addressed.
- **Florida Health Maintenance Organization Consumer Assistance Plan** – on **September 5, 2012**, 1:30 p.m., Legends 12 Conference Room, Doral Golf Resort, 4400 N.W. 87th Avenue, Miami, FL. Conference call information: 1 (877) 434-2293 Passcode 8504251634. Matters to be discussed: Annual Board of Directors Meeting.
- **Florida Workers' Compensation Insurance Guaranty Association Workgroup** - on **September 5, 2012**, 2:00 p.m., Tallahassee, FL. The workgroup will meet to discuss issues and concerns resulting from recent insolvencies, including large deductible policies, collateral and employee leasing policies. A copy of the agenda may be obtained by contacting: Cathy Irvin, (850)386-9200.
- **Citizens Property Insurance Corp. Market Accountability Advisory Committee Meeting** – on **September 6, 2012**, 11:00 AM - 12:00PM EDT, Knott Building in Webster Hall (Enter via Capitol) 402 S. Monroe St., Tallahassee, FL. Teleconference: 866-361-7525 ID: 7849939192#.
- **Citizens Property Insurance Corp. Consumer Services Committee Meeting** – on **September 6, 2012**, 1:00 PM - 2:00PM EDT, Knott Building in Webster Hall (Enter via Capitol) 402 S. Monroe St., Tallahassee, FL. Teleconference: 866-361-7525 ID: 6487811620#.
- **Citizens Property Insurance Corp. Depopulation Committee Meeting** – on **September 6, 2012**, 2:30 PM - 5:00PM EDT, Knott Building in Webster Hall (Enter via Capitol) 402 S. Monroe St., Tallahassee, FL. Teleconference: 855-312-8651 ID: 4458606638#.
- **Citizens Property Insurance Corp. Board of Governors Meeting** – on **September 7, 2012**, 9:00AM - 12:00PM EDT, Knott Building in Webster Hall (Enter Via Capitol) 402 S. Monroe St., Tallahassee, FL. Teleconference: 888-942-8686 ID: 5743735657#.

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