



Insurance

Case Law & Insurance Regulation Update

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Week Ending December 7, 2012

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I. STATE APPELLATE DECISIONS

A. FLORIDA

- ***Exotic Motorcars and Jewelry, Inc. v. Essex Insurance Company (Fla. 4th DCA)***. Final judgment entered in favor of surplus lines insurer in coverage dispute in action for declaratory judgment and breach of contract reversed and remanded to trial court for entry of an amended final judgment with findings. The Fourth District Court of Appeal found that the judgment was incapable of a meaningful review because it contained no findings of fact, conclusions of law, or other indication of the basis for the trial court's ruling.
- ***Florida Insurance Guaranty Association v. Karelis (Fla. 3rd DCA)***. Homeowners' insurance. Florida Insurance Guaranty Association ("FIGA") liable for homeowners' insurance claim where original policy was issued by a surplus lines insurer, but subsequent to issuance, the surplus lines insurer was acquired and merged into a Florida domestic insurer subject to FIGA, and which acceded to all of the surplus lines insurer's outstanding contractual obligations. Date of claim occurred after acquisition and merger by the Florida domestic insurer, which later became insolvent. Third District Court of Appeal held that section 631.54(6), Fla. Stat. is unambiguous and an insolvent insurer subject to the FIGA is a member insurer authorized to transact insurance in Florida either at the time the policy was issued or when the insured event occurred.
- ***Goheagan v. American Vehicle Insurance Company (Fla. 4th DCA)***. Automobile insurance/bad faith. Common law bad faith action against insurer by plaintiff who was assignee of insured and personal representative of estate of individual who lapsed into coma and ultimately died as result of catastrophic injuries sustained in automobile accident where insured rear-ended

decedent's vehicle. Summary judgment in favor of insurer reversed and case remanded to trial court. The Fourth District Court of Appeal determined that the trial court erred in granting summary judgment based on its assumption there could be no bad faith because the claimant was in a coma and therefore there was no one to whom to make an offer.

B. GEORGIA

- No Georgia decisions reported.

II. FEDERAL APPELLATE DECISIONS

- **Matthews v. State Farm Fire & Casualty Co. (Ga. 11th Cir.)**. Homeowners' insurance/breach of contract and bad faith. Plaintiffs sued for contract breach and bad faith arising from falling tree damage to their home and later water damage to the home, after the insurer paid the value of the cost to repair the scope of tree damage found by plaintiffs' retained engineer, but did not pay significantly higher damage estimates rendered by general contractors, whose estimates were not based on the engineering reports and included repairs beyond the scope of damage identified by engineers who inspected the tree damage. The district court granted summary judgment to the insurer on the contract breach and bad faith claims. The Eleventh Circuit Court of Appeals affirmed the trial court's judgment. It held that plaintiffs adduced no admissible evidence to substantiate a claim that the scope of damages caused by the fallen trees or the cost to repair those damages exceeded what the insurer paid. It also held that plaintiffs were not entitled to recover for subsequent water damage because they never filed a separate claim for it, as required by the policy, and because there was no evidence that the water damage was related to the earlier covered tree-damage loss. Applying Georgia's test for bad faith (lack of any reasonable grounds for the insurer to contest the claim), the Eleventh Circuit Court of Appeals affirmed the trial court's summary judgment for the insurer on plaintiffs' bad faith claim.

III. ADMINISTRATIVE LAW/AGENCY DECISIONS

- **In the Matter of Property and Casualty Insurance Policy Form Review Under Section 627.410, Florida Statutes, Case No. 13076-12 (December 3, 2012)**. The Florida Office of Insurance Regulation ("FOIR") issued Order No. 130176-12 amending the language for the certification that must accompany the informational form filing authorized in prior FOIR Order No. 126386-12 for property and casualty policy forms subject to [Section 627.410, Florida Statutes](#). Order No. 130176-12 no longer requires certification language to include the phrase "including but limited to statutes, rules, regulations and court decisions."

IV. NOTICES OF ADMINISTRATIVE RULEMAKING PROCEEDINGS

A. FLORIDA

- **Rule 59G-4.071, F.A.C. – Agency for Health Care Administration/Medicaid – Durable Medical Equipment and Medical Supply Services Provider Fee Schedules**. Notice of Correction noticed for Proposed Rule 59G-4.071, F.A.C. The amendment updates Durable Medical Equipment (DME) and medical suppliers who provide services to Medicaid recipients.
- **Rule 59G-5.020, F.A.C. Agency for Health Care Administration - Provider Requirements**. The Agency for Health Care Administration noticed a rule hearing concerning proposed changes to Rule 59G-5.020, F.A.C., on **December 19, 2012**, 10:00 a.m. - 11:00 a.m., Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Conference Room A, Tallahassee, FL. The changes specifically relate to changes to the Crossover - Only policy in an amendment to Rule 59G-5.020, Provider Requirements, which revises the Florida Medicaid Provider General Handbook, July 2012. A copy of the agenda may be obtained by contacting Arabella Reeves, Medicaid Services, 2727 Mahan Drive, Mail Stop 20, Tallahassee, FL 32308-5407, telephone: (850) 412-4771, e-mail: arabella.reeves@ahca.myflorida.com or at <http://ahca.myflorida.com/Medicaid/review/index.shtml>.
- **Rule 59G-13.070, F.A.C. – Agency for Health Care Administration - Developmental Disabilities Individual Budgeting Waiver Services**. The Agency for Health Care

Administration noticed a workshop to discuss additional updates and changes to the Developmental Disabilities Individual Budgeting Medicaid Waiver Coverage and Limitations Handbook, December 2012. The workshop is scheduled for **December 14, 2012**, 3:00 p.m. - 5:00 p.m., Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Conference Room A, Tallahassee, FL. A copy of the agenda may be obtained by contacting Susan DeBeaugrine at (850) 412-4261 (telephone) or at susan.debeaugrine@ahca.myflorida.com.

- ***Rule 690-137.004, F.A.C. – Florida Office of Insurance Regulation – Gross Annual Premium Report.*** The FOIR noticed proposed rulemaking to update and revise the Gross Annual Premium (GAP) report (Form OIR-B2-1094). The FOIR will hold a workshop on **December 19, 2012**, will have a demonstration of the new reporting requirements as well as an opportunity to make suggested improvements in the form.

B. GEORGIA

- ***Proposed Rule and Regulation Chapter 120-2-101 – Child Only Individual Health Coverage.*** The Georgia Office of the Commissioner of Insurance (“GA “OCI”) held a public hearing on **December 7, 2012**, 9:00 a.m., Hearing Room of the Office of Commissioner of Insurance, Seventh Floor, West Tower, Floyd Building, Two Martin Luther King, Jr. Drive, Atlanta, GA. to add new Rule and Regulation 120-2-101 to implement recent changes to Title 33 resulting from the passage of House Bill 1166 during the most recent session of the Georgia General Assembly. Click [here](#) for the full text of proposed Rule and Regulation 120-2-101.

V. MEETING NOTICES OF INTEREST/MISCELLANEOUS

- ***Citizens Property Insurance Corporation Information Systems Advisory Committee Meeting.*** On **December 11, 2012**, 2:00 p.m., Conference Call, 1-866-361-7525. A copy of the agenda may be obtained at <https://www.citizensfla.com> or contacting Stephanie Raker at (850) 521-8305.
- ***Florida Department of Financial Services - Division of Workers' Compensation Meeting Cancelled.*** Meeting of the Three-Panel Board scheduled for **December 11, 2012**, 1:00 p.m., Room 116, Larson Bldg., 200 E. Gaines St., Tallahassee, FL has been **cancelled**.
- ***Citizens Property Insurance Corporation Market Accountability Advisory Committee Meeting.*** On **December 13, 2012**, 8:30 a.m. – 10:00 a.m., The Peabody Hotel, 9801 International Drive, Orlando, FL. Teleconference: 1-866-361-7525 Participant Code: 7849939192#.
- ***Citizens Property Insurance Corporation Consumer Services Committee Meeting.*** On **December 13, 2012**, 10:30 a.m., The Peabody Hotel, 9801 International Drive, Orlando, FL, Dial in Number: (866) 361-7525; participant code: 6487811620#. Items of discussion include, but are not limited to, business before the Consumer Services Committee. A copy of the agenda may be obtained by contacting: Connie Bryan at (904) 208-7238.
- ***Citizen Property Insurance Corporation Audit Committee Meeting.*** On December 13, 2012, 12 Noon – 1:30 p.m., The Peabody Hotel, 9801 International Drive, Orlando, FL. Teleconference: 866-361-7525 Participant Code: 3877541849#.
- ***Citizens Property Insurance Corporation Depopulation Committee Meeting.*** On **December 13, 2012**, 2:00 p.m. – 4:00 p.m. The Peabody Hotel, 9801 International Drive, Orlando, FL, Teleconference: 855-312-8651 Participant Code: 4458606638#.
- ***Citizens Property Insurance Corporation Finance and Investment Committee Meeting.*** On **December 13, 2012**, 4:30 p.m. – 5:30 p.m., The Peabody Hotel, 9801 International Drive, Orlando, FL, Teleconference: 866-361-7525 Participant Code: 2478401990#.
- ***Citizens Property Insurance Corporation Board Meeting.*** On **December 14, 2012**, 9:00 a.m. – 12 Noon, The Peabody Hotel, 9801 International Drive, Orlando, FL, Teleconference: 1-888-942-8686 Participant Code: 5743735657#.

- **Florida Market Assistance Program Board Meeting.** On **December 14, 2012**, 12 Noon – 1:00 p.m., The Peabody Hotel, 9801 International Drive, Orlando, FL, Teleconference: 1-888-942-8686 Participant Code: 5743735657#
- **Agency for Health Care Administration Workgroup Meeting.** On **January 4, 2013**, 9:00 a.m. - 12:00 Noon, Agency for Health Care Administration, Bldg 3, AHCA Conference Room B, 2727 Mahan Drive, Tallahassee, FL. Dial-in Number: (877) 809-7263, Passcode 623-997-99#. The Workgroup will discuss Accelerated Life Benefits for insurance policy holders living in Long-term Care facilities. A copy of the agenda may be obtained by contacting Danielle Pigott at Danielle.Pigott@ahca.myflorida.com.
- **Agency for Health Care Administration, Pharmaceutical and Therapeutics Committee Meeting.** On **January 11, 2013**; 1:00 p.m. - 5:00 p.m., Tampa Airport Marriott, Tampa International Airport, Tampa, FL. Subject matter to be discussed: Recommendations for drugs to be included on the Preferred Drug List are made at this meeting. Members of the public who wish to speak at this meeting must contact Vern Hamilton at (850) 412-4154. A copy of the agenda may be obtained by contacting Vern Hamilton at: vern.hamilton@ahca.myflorida.com.
- **Agency for Health Care Administrations Drug Utilization Review Board and Prescribing Pattern Review Panel Meeting.** On **January 12, 2013**; 8:00 a.m. – 12:00 Noon, Tampa Airport Marriott, Tampa International Airport, Tampa, FL. Subject matter to be discussed: Review and approve drug use criteria and standards in both prospective and retrospective drug use reviews; apply these criteria and standards in the application of the DUR activities; review and report the results of drug use reviews; and recommend and evaluate educational intervention programs. A copy of the agenda may be obtained by contacting: vern.hamilton@ahca.myflorida.com.
- **Agency for Health Care Administration - Low Income Pool (LIP) Council Meeting.** **January 16, 2013** and **January 28, 2013**; 10:00 a.m. - 4:00 p.m., Agency for Health Care Administration, Building 3, Tallahassee, FL. To participate by telephone, please dial: **January 16, 2013** – (866) 631-2413, Conference Code 75579054 and on **January 28, 2013** – (866) 631-2413, Conference Code 75582595. General subject matter to be considered: Discussion of the LIP program including legislative updates, funding methodology, policies and procedures in accordance with the approved Medicaid Reform Section 1115 Demonstration. All meeting discussion material, including an agenda, will be posted to the LIP website at http://ahca.myflorida.com/medicaid/medicaid_reform/lip/lip.shtml.
- **Agency for Health Care Administration – Medicaid Meeting.** On **January 17, 2013**; **February 28, 2013**; **March 28, 2013**; **April 25, 2013**; **May 23, 2013**; **June 27, 2013**; 9:30 a.m. – 11:00 a.m., Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, FL, Building 3, Conference Room C. Those not able to attend in person may call into the meeting by using the Dial-in Number: 1.888.670.3525, Conference Code: 3876460157#. Subject to be discussed: Technical and Operational Issues Related to the Day-to-Day Operations of Medicaid Health Plans.
- **Florida Surplus Lines Service Office, Board of Governors Meeting.** On **January 23, 2013**, 9:00 a.m., Maclay Commerce Drive, Suite 200, Tallahassee, FL. Matters to be considered: Quarterly Board meeting to discuss general business matters of the FLSO. A copy of the agenda may be obtained by contacting: Georgie Barrett, gbarrett@fslso.com.
- **Florida OIR Announced International Insurance Group (BUPA) to Expand its Presence in Florida.** The FOIR announced that it approved BUPA, through its subsidiaries (Bupa Insurance (Bolivia) S.A., Bupa Ecuador S.A. Compañía de Seguros Y Reaseguros, and Bupa Mexico Compañía de Seguros, S.A. de C.V.), been approved to operate as an offshore insurer in Florida. BUPA is the second international insurance group to utilize **House Bill 1087** passed during the 2011 Florida General Legislative Session designed to enhance the attractiveness of Florida's business climate.
- **Agency for Health Care Administration Requests Amendment to the Medicaid State Plan.** The amendment will increase Federally Qualified Health Center (FQHC) services to allow up to

three visits (one medical, one dental, and one mental health) per recipient, per day. Interested parties may contact the following staff for further information: Ronique Hall, 2727 Mahan Drive, Mail Stop 20, Tallahassee, Florida 32308-5407, (850)412-4281 or by e-mail: ronique.hall@ahca.myflorida.com.



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