

# NCCI Amends Pending Florida Workers Compensation Rate Filing To +19.6% Proposed Effective October 1, 2016

## Overview of Court Decisions

On April 28, 2016, the Florida Supreme Court issued an opinion in the case of *Castellanos vs. Next Door Company, et al.*, No. SC13-2082 (“*Castellanos*”) declaring Section 440.34, Florida Statutes, unconstitutional. The anticipated impact of the decision is the elimination of the statutory caps on claimant attorney fees and a return to hourly fees.

On June 9, 2016, the Florida Supreme Court issued its opinion in the case of *Bradley Westphal vs. City of St. Petersburg, etc, et al*, No. SC13-1930 (“*Westphal*”) declaring the 104-week limitation on temporary total disability benefits established in Section 440.15(2)(a), Florida Statutes, unconstitutional. The anticipated impact of the decision is a combined 260-week limitation on temporary disability benefits (temporary total disability and/or temporary partial disability).

## NCCI Proposes Rate Increase

On May 27, 2016, NCCI submitted its filing to the Office of Insurance Regulation (OIR). It included components for two law changes - the first-year impact for *Castellanos* of **+15%** and an impact of **+1.8%** in response to SB 1402 which ratified updates to the Florida Workers’ Compensation Health Care Provider Reimbursement Manual.

On June 30, 2016, NCCI amended the above-mentioned filing to include a third component as a result of the *Westphal* decision. NCCI estimates that the impact of *Westphal* will be an increase in overall Florida workers compensation system costs of **+2.2%**. At the direction of the OIR, NCCI amended the effective date of the filing to October 1, 2016.

The estimates for the *Castellanos* and *Westphal* decisions do not include the following:

- Impacts related to the First District Court of Appeal decision dated April 20, 2016 known as *Miles v. City of Edgewater Police Department* (“*Miles*”) declaring unconstitutional certain restrictions on claimant paid attorney fees. After *Miles*, claimant attorney fees can be earned regardless of whether benefits are secured. Depending on the scenario, the source of claimant attorney fees could be the claimant, the employer/carrier, or both. Claimant attorneys may now have the potential to earn greater compensation than that which would result from the *Castellanos* decision on its own, putting additional upward pressure on system costs in Florida. NCCI is unable to separately determine the *Miles* impact.
- The entire unfunded liability created in the state due to the retroactive nature of the *Castellanos* and *Westphal* court decisions.<sup>1</sup>
- Unanticipated cost impacts not otherwise reflected in this filing that may emerge over time such as additional stakeholder behavioral changes or interactions that may result in changes to workers compensation benefits or practices in Florida.

The combined impact of the three components is **+19.6%** or \$714M (+19.6% x \$3.645B). NCCI proposes that the increased rates will apply to new and renewal policies that are effective on or after October 1, 2016. Additionally, NCCI proposes that the increased rates will apply to all policies in effect on October 1, 2016 on a pro-rata basis through the remainder of the term of these policies. Currently, Florida has a voluntary pure loss cost of 0.99 that is comparable to other states in the Southeast<sup>2</sup>, ranging from 0.84 to 1.14. If the rate filing is approved as filed increasing rates by 19.6%, Florida at 1.18 would rank as the highest state in the Southeast.

The OIR is expected to schedule a public hearing to be held in August. NCCI will not comment further on the pending rate filing prior to the public hearing.

<sup>1</sup> The *Castellanos* and *Westphal* components of this filing only address the expected increase in Florida workers compensation system costs for accidents occurring on or after October 1, 2016. However, the decisions in *Castellanos* and *Westphal* are also expected to increase overall system costs in the state for accidents occurring prior to October 1, 2016 that remain open or are re-opened. Because workers compensation ratemaking is prospective only, insurers are not afforded the opportunity to recoup premium to cover such unforeseen increases in system costs. Therefore, it is expected that a significant unfunded liability will be created due to the retroactive impacts of these court decisions. NCCI is currently in the process of estimating the unfunded liability and will provide further information at a later date.

<sup>2</sup> Using Florida’s payroll distribution. Southeast region includes FL, AL, GA, LA, MS, NC, SC, and TN.