

NCCI Proposes Florida Workers Compensation Rate Increase Effective August 1, 2016

Overview of Castellanos Decision

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.

NCCI Proposes Rate Increase

NCCI estimates that the first year impact of *Castellanos* will be an increase in overall Florida workers compensation system costs of **15%**. This estimate does 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* court decision.
- 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.

On May 27, 2016, NCCI submitted its filing to the Office of Insurance Regulation (OIR). It includes components for two law changes:

- First year impact for *Castellanos* of **15%**
- Impact of **1.8%** in response to SB 1402 which ratified updates to the Florida Workers’ Compensation Health Care Provider Reimbursement Manual

The combined impact of the two components is 17.1% or \$623M (17.1 x \$3.645B). NCCI proposes that the increased rates will apply to new and renewal policies that are effective on or after August 1, 2016. Additionally, NCCI proposes that the increased rates will apply to all policies in effect on August 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 Southeast¹ ranging from 0.94 to 1.14. If the rate filing is approved as filed increasing rates by 17.1%, Florida at 1.16 would rank as the highest state in the Southeast.

Retroactive Impact of Castellanos Decision is Not Part of Proposed Rate Increase

This *Castellanos* component of this filing only addresses the expected increase in Florida workers compensation system costs for accidents occurring on or after August 1, 2016. However, the decision in *Castellanos* is also expected to increase overall system costs in the state for accidents occurring prior to August 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 impact of this court decision. NCCI is currently in the process of estimating the unfunded liability and will provide further information at a later date.

¹ Using Florida’s payroll distribution. Southeast includes FL, AL, GA, NC, SC, TN, MS, LA.