Florida
Office of Insurance Regulation

2009 Workers' Compensation Annual Report
December 2009

Kevin M. McCarty
Commissioner

– INDEX –

Executive Summary

Subsection 627.211(6), Florida Statutes, mandates the Office of Insurance Regulation (OIR) provide an annual report to the President of the Senate and the Speaker of the House of Representatives which evaluates competition in the workers' compensation market in the state. The report is to contain an analysis of the availability and affordability of workers' compensation coverage and whether the current market structure, conduct and performance are conducive to competition, based upon economic analysis and tests. The report must also document OIR has complied with the provisions of Section 627.096, Florida Statutes, which require the OIR to investigate and study the data, statistics, schedules, or other information as it finds necessary to assist in its review of workers' compensation rate filings.

As mandated, the analysis presented in this report finds the following:

1. Based on a comparative analysis across a variety of economic measures, the workers' compensation market in Florida appears to be competitive.

    a. The workers' compensation market in Florida is served by a large number of independent insurers.

    b. None of the firms have sufficient market share to exercise any meaningful control over the price of workers' compensation insurance.

    c. The Herfindahl-Hirschman Index (a measure of market concentration) indicates that the market is not overly concentrated.

    d. There are no significant barriers for the entry and exit of insurers into the Florida workers' compensation market.

    e. Based on entries and voluntary withdrawals, it would seem that the Florida workers' compensation market is an attractive market for insurers.

2. Of the six most populous states, Florida is the largest market dominated by private market insurers, rather than a state sponsored residual market. This degree of private activity indicates that coverage should be generally available in the voluntary market. The residual market is small, suggesting that the voluntary market is absorbing the vast majority of demand.

3. One of the reforms in the Workers' Compensation law that is often credited with saving money in the workers' compensation system, and therefore in the rate needed by workers' compensation insurance companies, is the change in Section 440.34, Florida Statutes, that was made in 2003 providing a formula for attorney's fees. Part I of that law now states "A fee… may not be paid for a claimant in connection with any proceeding arising under this chapter, unless approved as reasonable by the judge of compensation claims …." "Any attorney's fee approved by a judge of compensation claims for benefits secured on behalf of a claimant must equal to 20 percent of the first $5,000 of the amount of benefits

secured, 15 percent of the next $5,000 of the amount of benefits secured, 10 percent of the remaining…."

In *Murray v. Mariner Health*, (Florida Supreme Court October 23, 2008), the Florida Supreme Court held that this statutory formula in the first part of the workers' compensation law did not limit attorneys' fees under a separate subsection (3) of the law, and therefore a lawyer representing a workers' compensation claimant is entitled to a "reasonable fee." The "reasonable fee" standard that was established in a prior case, Lee Engineering, was cited in *Murray v. Mariner Health* as the appropriate standard. This standard allows a workers' compensation judge awarding fees to consider a variety of factors including the complexity of the case and the skill required. Because the fee is not limited by the strict formula in 440.34(1), Florida Statutes, the *Murray v. Mariner Health* decision was being cited as one that returns attorneys' fee awards to the same system that existed prior to the 2003 reforms.

In May, the Florida Legislature passed House Bill 903 that restored the cap on attorney fees and clarified related statutory language that the Florida Supreme Court had determined to be ambiguous and Governor Charlie Crist signed the Bill into law. On June 3, 2009, Commissioner Kevin McCarty issued a final order effective July 1, 2009 approving a rollback from the April 1, 2009 rates to the lower workers' compensation insurance rates that became effective Jan. 1, 2009. The order was based on a filing by the NCCI that came as the result of Governor Charlie Crist's signing into law of House Bill 903. "I am pleased that Governor Crist and the Florida Legislature recognized the importance of keeping our workers' compensation rates down," said Commissioner McCarty in an OIR press release the same day. "I believe that injured workers still will have appropriate access to the legal system while also still keeping workers' compensation rates affordable for employers." Under the new law, attorneys will continue to be paid based on a fee schedule of 20/15/10/5 percent of benefits secured. Hourly fees will not be allowed.

4. Affordability within the Florida Workers' Compensation Joint Underwriting Association, Inc. (FWCJUA), which is the residual market, has been an on-going issue. Recently enacted legislative changes, Senate Bill 50-A in 2003 and House Bill 1251 in 2004, have addressed affordability in the voluntary and residual market respectively and both are having beneficial results.

5. The OIR is in compliance with the requirements of Section 627.096, Florida Statutes.

Purpose and Scope

Subsection 627.211(6), Florida Statues, mandates:

The office shall submit an annual report to the President of the Senate and the Speaker of the House of Representatives by January 1 of each year which evaluates competition in the workers' compensation insurance market in this state. The report must contain an analysis of the availability and affordability of workers' compensation coverage and whether the current market structure, conduct, and performance are conducive to competition, based upon economic analysis and tests. The purpose of this report is to aid the Legislature in determining whether changes to the workers' compensation rating laws are warranted. The report must also document that the office has complied with the provisions of s. 627.096 which require the office to investigate and study all workers' compensation insurers in the state and to study the data, statistics, schedules, or other information as it finds necessary to assist in its review of workers' compensation rate filings.

To accomplish these objectives, this report provides analysis of the following areas:

1. The competitive structure of the workers' compensation market in Florida by comparing financial operating ratios, the numbers of entities and their respective market positions, and the number of entities entering and exiting the market.

2. The availability and affordability of workers' compensation insurance in Florida. This includes an analysis of rate increases in Florida's admitted market, as well as the rating structure extant in the Florida Workers' Compensation Joint Underwriting Association.

3. The market structure in Florida, which includes the market concentration in Florida compared with other states, the growth of leading companies, and entry and exit of carriers in Florida during 2008.

4. Documentation of the OIR's compliance with Section 627.096, Florida Statutes, by investigating all workers' compensation carriers operating in Florida.

5. A comparison of pure loss costs for the ten largest workers' compensation class codes for Florida compared to the other states using the National Council of Compensation Insurance (NCCI) as their statistical rating organization.

Summary of the 2008 Annual Report

The 2008 Workers' Compensation Annual Report was the fourth report resulting from the statutory mandate, and concluded that the workers' compensation market is reasonably competitive. Specifically, the report showed that, during 2007:

- Florida's workers' compensation insurance market contained a large number of independent firms, none of which had enough market share to individually exercise market control in an uncompetitive nature.

- The Herfindahl-Hirschman Index indicated that Florida's market was not overly concentrated, and consequently exhibited a reasonable degree of competition.

- There were no significant barriers for entry and exit of insurers into and from the Florida workers' compensation insurance market.

- The residual market is small relative to the private market indicating that the voluntary market offers reasonable availability.

- There may be some small segments of the market that may have difficulty obtaining workers' compensation insurance including small firms and new firms.

The 2009 Workers' Compensation Annual Report continues to examine the workers' compensation insurance market from the same perspective and provides the Herfindahl-Hirschman Index (HHI) to compare Florida's market concentration versus the other 49 states. As well, the report provides a comparative analysis of key market characteristics among the six most populous states. The five other states are: California, New York, Texas, Illinois, and Pennsylvania.

Overview of the Workers' Compensation Insurance Market

To provide a context for the analysis in this report, background is provided that places Florida's workers' compensation insurance market in the context of the workers' compensation markets in other highly populated states to compare availability, affordability, and competitiveness.

An initial challenge in executing this analysis is that the six largest states have different regulatory structures regarding the provision of workers' compensation insurance. To address these differences, this report relies heavily on information from two sources. One important organization that affects the nationwide pricing and rating structure is the National Council on Compensation Insurance, Inc. (NCCI). This organization is the single largest source of information on workers' compensation, and is used as a major data source for much of this study. The National Association of Insurance Commissioners (NAIC) also collects statutory financial data for admitted carriers, and the NAIC financial databases are also used throughout this report.

In 2009, the NCCI provided advisory ratemaking and statistical services in 35 states (including Florida) and the District of Columbia.[1] In 12 of the states, local ratemaking or advisory organizations supplied the information.[2] However, in the following five states and territories, the majority of workers' compensation insurance is provided through an exclusive state fund[3]:

- North Dakota
- Ohio
- Puerto Rico
- Washington
- Wyoming

None of these states above are among the six most populous states used in the current analysis.

Self-Insurance Funds

In addition to the private market, composed of admitted carriers and the residual market as represented by the Florida Workers' Compensation Joint Underwriting Association (FWCJUA), workers' compensation insurance in Florida is also provided through self-insurance funds (SIFs).

"Self-Insurance" groups are a broadly defined group of entities that include group self-insurance funds, commercial self-insurance funds and assessable mutual organizations. By the early 1990s, self-insurance funds were a dominant part of the Florida workers' compensation insurance market, capturing more than half of the voluntary market. Legislative reforms in 1993 transferred the regulation of group self-insurance to the Department of Insurance, which later became the Office of Insurance Regulation (OIR). This legislative change occurred concurrently with the formation of the FWCJUA. Together, these two changes transformed the Florida workers' compensation insurance

[1] NCCI, Annual Statistical Bulletin, 2009 Edition, page 4.
[2] NCCI, Annual Statistical Bulletin, 2009 Edition, page 4.
[3] NCCI, Annual Statistical Bulletin, 2009 Edition, page 4.

market as self-insurance funds began converting into insurance companies. In 1994 there were 35 defined self-insurance funds, but by 2000 there were only four of these entities. As in the 2008 report, there continues to be four group self-insurance funds in 2009:

- Florida Rural Electric Self-Insurer's Fund
- Florida Retail Federation Self-Insurer's Fund
- FRSA Self-Insurer's Fund
- Florida Citrus, Business and Industries Fund

All four of these entities are domiciled in Florida, write exclusively in Florida, and together these Self-Insurance Funds (SIFs) represent only 5.58 percent of the workers' compensation insurance market in Florida.[4]

[4] The SIF total premium written was $ 136.8 million in 2008. The total Florida market including the Florida Workers' Compensation JUA was $ 2.4 billion in 2008.(The Florida Workers' Compensation JUA total direct written premium in 2008 was $6.4 million)

Comparisons to Other Populous States

The first part of the analysis provides an overview of the relative size of the various state workers' compensation markets. To facilitate subsequent comparisons, the analysis focuses on the six most populous states, and excludes SIFs. In addition to Florida, the five most populous states used in this analysis are California, Texas, New York, Illinois and Pennsylvania.

As expected, there is a strong correlation between state population and workers' compensation insurance written premiums. Below are the six most populous states in rank order of most workers' compensation insurance written in 2008:

Rank	State	2008 Written Premium
# 1	California	$ 7.6 billion
# 2	New York	$3.5 billion
# 3	Illinois	$2.6 billion
# 4	Texas	$2.6 billion
# 5	**Florida**	**$2.3 billion**
# 6	Pennsylvania	$2.2 billion

The table shows that there is not a direct correlation between state population and premium in the admitted market as Florida is, by population, the fourth largest state, yet ranked fifth in the most workers' compensation insurance premium written in 2008. When compared to 2007 results, some differences are evident. While Florida's total written premium remained relatively constant at $2.3 billion, and other states remained almost unchanged, California's premium volume continued its decline; to $7.6 billion in 2008, following $9 billion in 2007, $11.1 billion in 2006, and $14.6 billion in 2005. For a complete list of workers' compensation premium written in 2008 in all states, see Appendix A.

Number of Entities

Another indication of the competitiveness of the market is the number of different insurance companies writing in the state. For the six large states, the number of insurance companies writing workers' compensation insurance varied between 214 and 309. As shown below, Florida ranked fifth with 246 insurance companies writing workers' compensation insurance, that is seven companies more than the number that earned premium in 2007.

Rank	State	Entities
# 1	Illinois	309
# 2	Pennsylvania	298
# 3	Texas	278
# 4	New York	247
# 5	**Florida**	**246**
# 6	California	214

By this measure, Florida has a comparable number of entities operating within its borders relative to other populous states. For a complete state list see Appendix B.

Written Premium per Entity

Another useful comparison measure is the average amount of premium per entity. As shown below, Florida ranks in the middle at third in the average premium per insurance entity among the six most populous states:

Rank	State	Premium per Entity
# 1	California	$35.7 million
# 2	New York	$14.2 million
# 3	**Florida**	**$9.4 million**
# 4	Texas	$9.3 million
# 5	Illinois	$8.4 million
# 6	Pennsylvania	$7.4 million

This comparison suggests there are fewer "small" competitors in Florida than are present, on average, in the other most populous states, although except for California, the data is comparable. The analysis above closely mirrors the first table showing the largest voluntary workers' compensation markets in the country. A more sophisticated measurement of the competitive aspects of state market structures is to use the Herfindahl-Hirschman Index (HHI).

Herfindahl-Hirschman Index Comparison by State

The Herfindahl-Hirschman Index (HHI) is a calculation constructed to determine market concentration. This ratio first appeared in A.O. Hirschman's *National Power and Structure of Foreign Trade* published in 1945.

The calculation is straightforward. The measured market share of every company operating in the market is squared. The highest index value is then defined as 10,000 (100 percent squared --- a monopoly), and the lowest outcome is close to zero. The U.S. Department of Justice (DOJ) uses this index when researching acquisitions and mergers for compliance with the anti-trust legislation most notably, the Sherman Anti-trust Act of 1890. DOJ considers a result of less than 1,000 to be a "competitive" marketplace. Results of 1,000 to 1,800 are considered "moderately concentrated." Results of greater than 1,800 are considered "highly concentrated," and consequently, not very competitive. These ranges are not necessarily relevant to lines of insurance business, but serve as a benchmark.

For the purposes of this report, comparing the HHI among states is difficult as the data for the self-insurance trust funds for other states must be calculated. Moreover, while some states have their state funds report financial information to the NAIC, other states, such as Florida with its FWCJUA, do not. The report includes a calculation of Florida's HHI without the SIFs included to be comparable to the other populous states.

The state ranked # 1 is the most concentrated, and conversely, least competitive, all else equal.

Rank	State	HHI
# 1	New York	1,776
# 2	Texas	966
# 3	California	612
# 4	**Florida**	**333**
# 5	Illinois	156
# 6	Pennsylvania	141

With an HHI of 333 in 2008, the Florida workers' compensation insurance market ranks among the more competitive within the sample states. Within this state sample group, New York is not considered a competitive market as it has an entity that holds roughly 40 percent of the market share. For a complete list of HHIs by state for 2008, see Appendix C.

Dominant Firms and Competition

Another interesting comparison is to review the largest competitor in each of the six most populous states, to determine if there is a "dominant firm." Below are the leading workers' compensation carriers in 2008 for the six most populous states, and their market shares within those states:

State	Leading Carrier	Market Share
New York	State Insurance Fund	38.7%
Texas	Texas Mutual Insurance Co.	29.3%
California	State Compensation Insurance Fund	22.6%
Florida	**Bridgefield Employers Insurance Co.**	**13.0 %**
Illinois	Zurich American Insurance Co.	5.2%
Pennsylvania	Erie Insurance Exchange	4.1%

The most obvious difference between the states is the relative market size of the state sponsored workers' compensation insurance entity. In New York, California and Texas, the entity with the largest market share is the state sponsored entity, while in Florida, Illinois and Pennsylvania, the largest market share is not only considerably lower but is also held by a private insurer. Put another way, Florida continues to be the largest state in the country for which the private market insurance industry is the dominant provider of workers' compensation insurance.

Bridgefield Employers Insurance Co.'s business in Florida has the largest market share of any private insurer in the six most populous states. However, it should be noted that at 13.04 percent of the market (which would be 12.28 percent if the SIFs and FWCJUA were included) it would not appear that this is enough of a market share to create an uncompetitive marketplace.

Profitability and Loss Ratios

Another goal of this report is to analyze the profitability of the Florida workers' compensation insurance marketplace. One measure that is reported on a state-by-state basis in the statutory financial statements filed with the NAIC is the loss ratio, which is calculated as the total losses paid divided by earned premium for each state for the line of business. The purpose of this ratio is two-fold: to assist in determining profitability, and, indirectly, to address premium sufficiency. Among the six most populous states, the aggregate loss ratios for 2008 are:

Rank	State	Loss Ratio
# 1	New York	73.0%
# 2	Illinois	77.6%
# 3	Pennsylvania	64.4%
# 4	California	58.3%
# 5	Texas	46.8%
# 6	**Florida**	**43.7%**

While this is a very rough measure of profitability, it does show that for the workers' compensation markets in 2008, Florida's profitability compares favorably with the other most populous states.

Adding reported defense cost and containment expense (DCC) to the loss ratio above provides a somewhat broader measure of profitability (or rate sufficiency). Companies with a ratio of 100 percent, by definition, are not considered profitable in their core business *(note that this is with respect to underwriting and does not consider investment income).* The combined aggregate ratio data are as follows:

Rank	State	DCC Ratio	DCC + Loss Ratio
# 1	Illinois	6.7%	84.1%
# 2	New York	6.5%	79.7%
# 3	Pennsylvania	6.9%	71.3%
# 4	California	8.1%	66.4%
# 5	Texas	6.7%	53.5%
# 6	**Florida**	**9.2%**	**52.9%**

Because loss amounts generally greatly exceed the direct cost and containment expenses, it is not surprising that this list closely mirrors the list of states with the highest loss ratio. The two changes to note are that with the inclusion of the DCC expenses, Florida moves from the lowest expense state of the six to number five and Illinois moves from the second highest expense state to number one. For 2008, Florida's reported DCC ratio is marginally the highest of the six most populous states.

Overview of Florida's Largest Carriers

In 2008, 251 entities reported writing workers' compensation business in the state of Florida, including 246 insurance companies, 4 group self-insurance funds and the FWCJUA. The 10 largest companies based on written premium were:

Rank	Company	Written Premium	% of Market	CUM %
# 1	Bridgefield Employers Insurance Co.	$300,848,355	13.04%	13.04%
# 2	Zenith Insurance Co.	$ 151,785,939	6.20%	19.24%
# 3	FCCI Insurance Co.	$ 127,023,418	5.19%	24.42%
# 4	Insurance Company of the State of PA	$ 98,019,277	4.00%	28.42%
#5	The Florida Retail Federation SIF	$96,917,033	3.96%	32.38%
# 6	FFVA Mutual Insurance Company	$85,709,050	3.50%	35.88%
# 7	Twin City Fire Insurance Company	$69,005,692	2.82%	38.70%
# 8	Zurich American Insurance Company	$63,461,734	2.59%	41.29%
# 9	Technology Insurance Company, Inc.	$57,929,413	2.36%	43.65%
# 10	Guarantee Insurance Company	$ 67,957,644	2.19%	45.84%
	TOTAL IN FLORIDA	**$ 3,116,698,968**		

As was the case in last year's report, the ten largest companies wrote under 46 percent of the workers' compensation insurance premium in Florida in 2008. All of the companies with the exception of The Florida Retail Federation SIF (organized as a self-insurance fund) are property and casualty companies, organized as stock companies. Five of the top ten writers are domestics[5], while the foreign corporations have home offices in New York, Pennsylvania, New Hampshire, California, and Indiana.[6]

One of the ten companies (Insurance Co. of the State of PA) is member of the AIG insurance group. In light of the financial turmoil of 2008 and the impact on AIG, the OIR has been closely monitoring developments affecting all AIG companies, especially those that write in Florida, including Insurance Company of the State of PA. To date, the OIR

---

[5] Domestics and their locations include: Bridgefield Employers (Lakeland, FL), FCCI Insurance (Sarasota, FL), The Florida Retail Federation SIF (Lakeland, FL), FFVA Mutual Insurance Company (Maitland, FL), and Guarantee Insurance Company (Fort Lauderdale, FL).

[6] Foreign companies and their locations include: Zenith Insurance (Woodland Hills, CA), Twin City Fire Insurance Company (Indianapolis, Indiana), Zurich American (New York, NY), Insurance Co. of State of PA (Harrisburg, PA) and Technology Insurance Company (Nashua, NH).

has not found any solvency issues for that company related to the problems at the AIG parent company, but is continuing to monitor developments.

Diversification

Another area of analysis is the diversification of Florida's leading providers of workers' compensation insurance. Diversification, both by geography and by line of business can present a different picture of an insurance company than would by examining a particular line of business within a particular state.

Geographic Distribution

Although workers' compensation loss rates are likely more homogeneous geographically than other lines, such as homeowners' insurance, industry analysts generally believe that it is important for companies to have some geographic diversification within their book of business. Especially for workers' compensation insurance, where coverage and benefits are mandated by state legislatures, an understanding of the geographic distribution of premium can again provide a fuller profile of the companies. For the top ten companies presented above, the states where the companies wrote a majority of their workers' compensation business were calculated. The five leading states for each company are listed below:

Company	State 1	State 2	State 3	State 4	State 5	All Other
Bridgefield Employers Insurance Company	**FL 100%**					0%
Zenith Insurance Company	CA 46.83 %	**FL 28.80%**	TX 5.71%	PA 5.34%	IL 3.29%	10.03%
FCCI Insurance Company	**FL 80.5 %**	GA 5.32%	IN 4.20%	IL 3.29%	NC 2.14%	5.14%
Florida Retail Federation SIF	**FL 100%**					
Insurance Company of the State of PA	**FL 11.51%**	GA 1.36%	IN 0.95%	IL 3.25%	NC 1.72%	63.74%
FFVA Mutual Insurance Company	**FL 73.04%**	GA 13.57%	TN 5.32 %	KY 3.43%	MS 2.64%	1.99%
Twin City Fire Insurance Company	TN 11.46%	**FL 9.16%**	GA 8.98%	NY 7.29%	SC 4.97%	58.13%
Zurich American Insurance Company	TN 15.21%	NY 10.53%	MS 7.28%	SC 6.3%	NJ 6%	54.67%
Technology Insurance Company Inc.	GA 22.04%	NY 17.8%	**FL 10.04%**	LA 8.17%	SC 6.8%	35.17%
Guarantee Insurance Company	GA 46.02%	AL 9.84%	CA 8.21%	LA 7.38%	OK 5.65%	22.9%

In line with other market studies conducted by the OIR for other lines of business, there is normal geographic diversification among the top writers. Two companies write almost exclusively in Florida. The leading states for these carriers other than Florida include: Georgia, Indiana, South Carolina, Illinois, Tennessee, Kentucky, California, Texas, Pennsylvania, New York, North Carolina, Mississippi, Alabama, Louisiana, New Jersey and Oklahoma. Florida represents the state with the largest book of business for five of these ten companies. For the five companies that do not write most of their workers' compensation insurance in Florida, one writes the most in workers' compensation insurance in California, two in Tennessee and two in Georgia.

Line of Business Distribution

This report also examined the other lines of business written by the top 10 workers' compensation insurance carriers. For presentation purposes, the lines of business are segmented into five categories: 1) Workers' Compensation[7], 2) Other/Products Liability[8], 3) Commercial Multi-Peril[9], 4) Automobile (includes Private Passenger and Commercial for both damage and liability)[10], and 5) All Other.

Company	Workers' Comp	Other/Product Liability	Commercial Multi-Peril	Auto	All Other
Bridgefield Employers Insurance Company	**100%**				
Zenith Insurance Company	**100%**				
FCCI Insurance Company	**69%**	6%	8%	9%	7%
The Florida Retail Federation SIF	**100%**				
Insurance Company of the State of PA	**52%**	18%	0%	22 %	8%
FFVA Mutual Insurance Company	**100%**				
Twin City Fire Insurance Company	**45%**	34%	5%	13%	3%
Zurich American Insurance Company	**28%**	36%	5.4%	10%	20%
Technology Insurance Company, Inc.	**73%**	13%	0%	0%	13%
Guarantee Insurance Company	**100%**				

The table shows that seven of the ten top writers of workers' compensation insurance focus on this specific line of business having nearly 70 percent or more of their total book

[7] Annual Statement Exhibit of Premiums and Losses, Line 16.
[8] Annual Statement Exhibit of Premiums and Losses, Lines 17.1, 17.3 and 18.
[9] Annual Statement Exhibit of Premiums and Losses, Lines 5.1 and 5.2.
[10] Annual Statement Exhibit of Premiums and Losses, Lines 19.1, 19.2, 19.3, 19.4, 21.1 and 21.2.

of business in that line. Other lines of business commonly written include auto, commercial multi-peril and other/product liability. Zurich American Insurance Company, FCCI Insurance Company, Insurance Company of the State of PA, Twin City Fire Insurance Company, Technology Insurance Company, have more diverse books of business which includes lines such as fire and allied lines, ocean and inland marine, medical malpractice and earthquake insurance to name a few.

Trends in Florida's Workers' Compensation Insurance Market

Entry and Exit from the Workers' Compensation Market

Another measure of the competitiveness of a marketplace is the ease of entry and exit from the market.

As of December 31, 2008, Florida had 411 entities eligible to participate in the workers' compensation marketplace including one residual market company (the Florida Workers' Compensation JUA) and 23 other entities.[11] These 411 entities also included 387 companies with a certificate of authority including: 382 property and casualty companies, one reciprocal company and four group self-insurance funds. Of these, 246 companies in the voluntary market along with four self-insurance funds, and the Florida Workers' Compensation JUA were actively writing business.

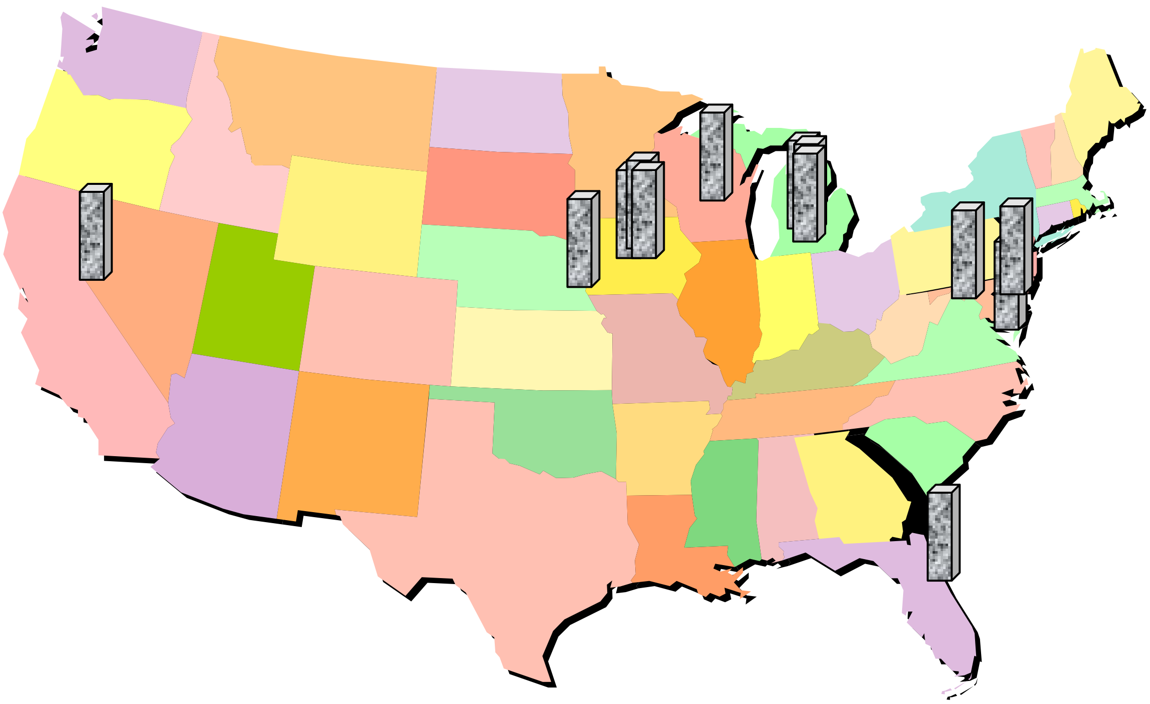
During 2008, 14 new entities entered the market. 13 were new to the state, while one[12] company was already operating in Florida, and expanded by adding the line of workers' compensation. All 14 of the new entities were property and casualty companies. Of the 14, only one (Main Street America Protection Insurance Company) is domiciled in Florida. The other 13 companies were domiciled in Connecticut, Delaware, Iowa (three), Michigan (three), Nebraska, Nevada, New York, and Pennsylvania. New entities authorized to operate in the Florida workers' compensation insurance market in 2008 together with their state and city of domicile were:

Wesco Insurance Company – Dover, Delaware
Main Street America Protection Insurance Company – Jacksonville, Florida
Allied Property and Casualty Insurance Company – Des Moines, Iowa
Amco Insurance Compnay – Des Moines, Iowa
Depositors Insurance Company – Des Moines, Iowa
Accident Fund General Insurance Company –Lansing, Michigan
Accident Fund National Insurance Company – Lansing, Michigan
Accident Fund Insurance Company of America – Lansing, Michigan
Arch Indemnity Insurance Company – Omaha, Nebraska
Employers Insurance Company of Nevada – Reno, Nevada
Castlepoint Insurance Company – New York, New York
Allied Eastern Indemnity Company – Lancaster, Pennsylvania
Eastern Alliance Insurance Company – Lancaster, Pennsylvania
United Wisconsin Insurance Company – Madison, Wisconsin

Two[13] of the new entrants reported writing direct workers' compensation premiums in 2008. Of the remaining 14, 13 held an active Certificate of Authority and one held a Letter of Approval.

[11] The 23 miscellaneous organizations do not directly write workers' compensation insurance. These include Advisory Organizations (8), Rating Organizations (7), and Accredited Reinsurers (8).
[12] Allied Property and Casualty Insurance Company
[13] Accident Fund Insurance Company of America, Eastern Alliance Insurance Company.

As the map below shows, the 14 new workers' compensation insurers are domiciled in 9 different cities in 9 different states. This is potentially beneficial to Florida's economy, as well as the market itself, as 13 companies represent investment capital coming from outside the region:



During 2008, 11 entities that were previously operating in Florida left the market. Those 11 companies continue to have an active Certificate of Authority, and specifically withdrew their authority to write workers' compensation line of business in Florida, as they were not writing any premiums. One company, had their property and casualty insurer certificate of authority denied in 2008[14]. Three companies withdrew their applications for property and casualty insurer certificate of authority.[15] No companies had their certificate of authority suspended in 2008. These data suggest that there is freedom to both enter and exit the market, again supporting the competitive aspects of the Florida workers' compensation insurance market.

Statistical Trends

The analysis to this point compares the workers' compensation market in Florida to the markets of the other most populous states in terms of total amount of premium, number of entities operating in the state, premium per entity, and various financial ratios. Generally, Florida compares favorably to other states, having a significant number of entities in the state, lower loss ratios, and a lower loss + defense containment cost (DCC) ratio. Further, Florida is a "competitive" market as measured by the Herfindahl-Hirschman Index (HHI).

However, another aspect of the market that is important to examine are trends over the last five years to determine if Florida's market is consistently moving in the right direction as a vibrant

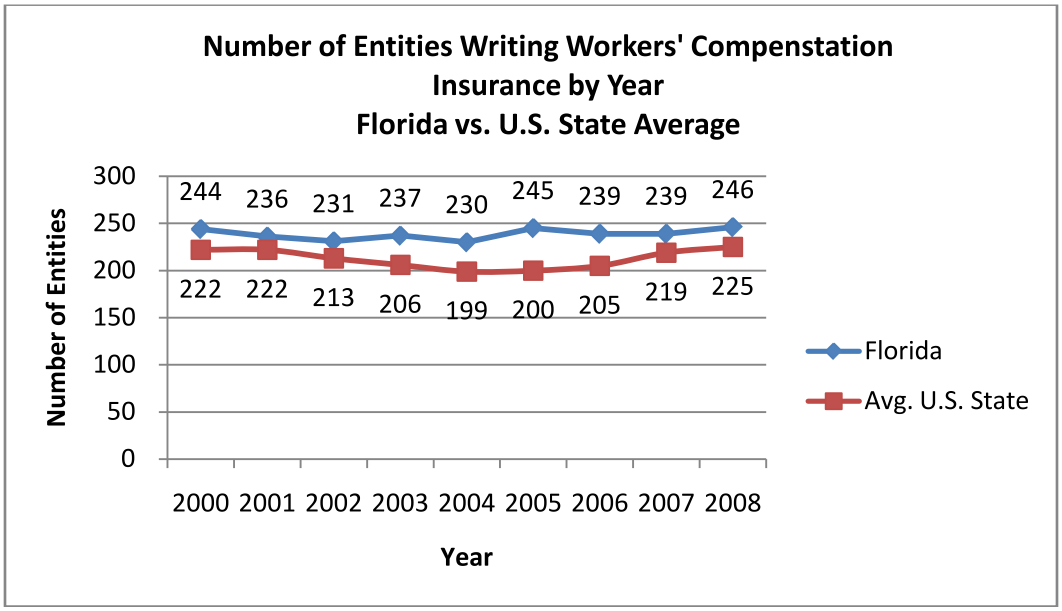
[14] Dallas National Insurance Company
[15] Castlepoint Florida Insurance Company, Florida Tropical Insurance Company, and Preserver Insurance Company

market and to compare these trends to the other comparison states. For the comparative purposes here, the four self-insurance trust funds were again excluded.

The Nature of the Market

One of the first indicators of the robustness of the market is to simply look at the number of companies actively engaged in the market. The chart below shows the number of entities writing in Florida from 2000 through 2008 and compares that to the average number of entities writing in the voluntary market excluding other states.

Entities Writing Workers' Compensation Insurance Premium by Year
Florida vs. U.S. State Average



Note: The US average excludes North Dakota, Ohio, Washington, West Virginia, and Wyoming for years 2000 through 2006 and North Dakota, Ohio, Washington, and Wyoming for 2007, because these states have exclusive state funds. West Virginia had an exclusive state fund until July 1, 2006. NCCI now provides advisory ratemaking and statistical services.

Over the last nine years the number of writers in Florida has remained relatively stable. Meanwhile, on the national level, the number has steadily decreased from 2000 to 2005, although showed a marginal increase in 2006 and after that with the opening of the West Virginia market. From a state perspective, in 2000 there were roughly 22 more insurance companies writing in Florida than the average U.S. state and 21 more insurance companies in 2008.

Another area to consider is the overall growth of the workers' compensation insurance market. Like other sectors of the economy during the current economic downturn, the data show a decline in the amount of written premium, both nationally and in Florida. Certainly, in Florida's case the decline in premium from 2006 can be explained by not only the economic downturn, but the effect of broad, significant rate reductions over the year. These trends are shown below:

Workers' Compensation Insurance Written Premium
(Expressed in $ Billions)

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Florida	$2.66	$2.78	$2.97	$3.19	$3.35	$3.72	$3.74	$3.11	$2.31
Avg. U.S. State	$0.65	$0.74	$0.84	$0.95	$1.02	$1.10	$1.07	$1.03	$0.97

Note: The US average excludes North Dakota, Ohio, Washington, West Virginia, and Wyoming for years 2000 through 2006 and North Dakota, Ohio, Washington, and Wyoming for 2007, because these states have exclusive state funds. West Virginia had an exclusive state fund until July 1, 2006. NCCI now provides advisory ratemaking and statistical services.

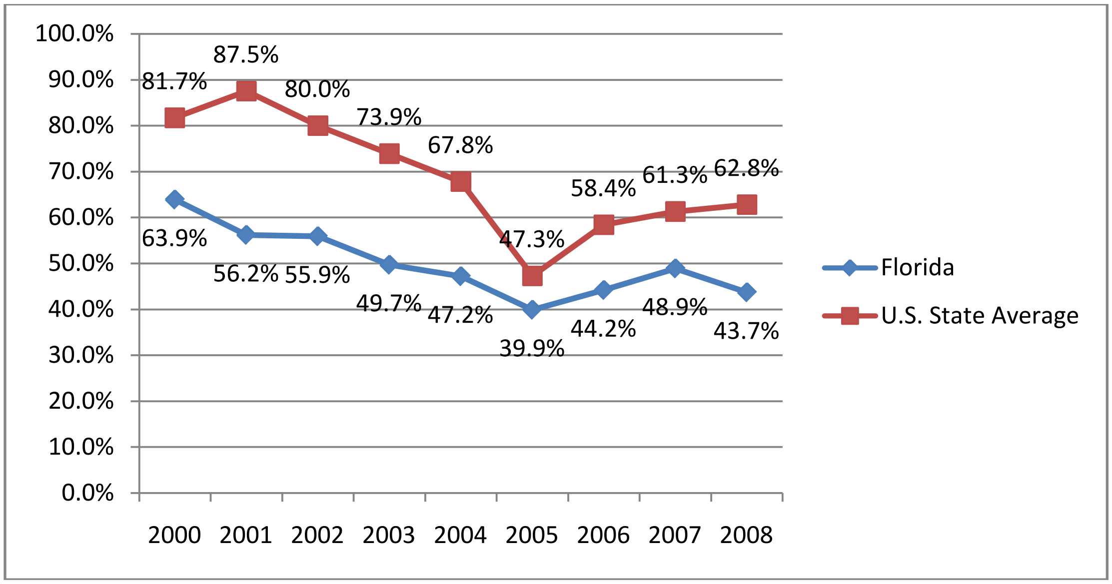
From 2000 to 2008, the total workers' compensation insurance premium paid for the average U.S. state has increased 58 percent, which outdistances the 17 percent increase in Florida, even though Florida's working population grew at a rate much faster than the national average. Interestingly, the amount of workers' compensation insurance dipped nationally in 2006, while simultaneously rising marginally in Florida. In 2007, the amount of workers' compensation insurance decreased both nationally by 4 percent and in Florida by 17 percent and in 2008 the amount of premium written decreased nationally by 6 percent and in Florida by 26 percent . Once again, this may not include a complete picture of the entire market as it only includes activity in the voluntary market, but it is a broad indication of what is transpiring in the workers' compensation market.

Financial Aspects of the Market:

This report also reviews the financial statistics to determine trends in loss ratios and loss + DCC ratios. This indirectly measures the profitability, competitiveness, and premium adequacy of the market. In 2008, Florida had a lower loss ratio and lower loss + DCC ratios while at the same time nationally, the loss ratios and the loss + DCC ratios increased in the past year.

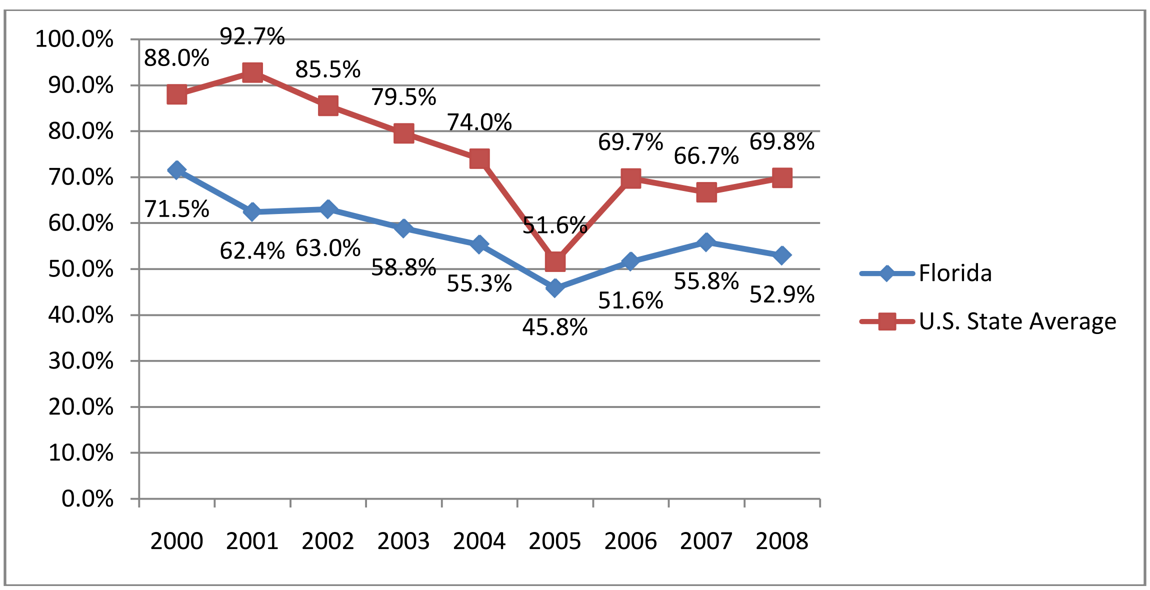
The trends in the loss ratios are shown on the next page:

Workers' Compensation Insurance Loss Ratios
Florida vs. U.S. State Average[16]



As a broader measure, the loss + defense and containment cost ratio shows a similar pattern

Workers' Compensation Insurance Loss + DCC Ratios[17]



[16] The 62.8percent pure loss ratio used here is an unweighted average. A weighted average, which includes the data for states with exclusive state fund, would produce a national loss ratio of 63percent.
[17] The 69.8percent DCC + loss ratio used here is an unweighted average. A weighted average would produce a national DCC + loss ratio of 69.90percent.

Workers' Compensation Rates

A comprehensive slate of reforms was passed into law during the 2003 Legislative Session. The package known as Senate Bill 50-A (Chapter 2003-412 Laws of Florida), continues to dramatically impact Florida's workers' compensation insurance rates. Some of these reforms included a reduction (cap) in attorneys' fees, tightening construction industry requirements, doubling impairment benefits for injured workers, increasing the medical fee schedule, and eliminating the Social Security disability test.[18]

Consequently, workers' compensation rates have declined in Florida, which is atypical for the rest of the country. In 2000, Florida had the highest workers' compensation insurance rates in the country. In 2003, the OIR approved a 14 percent rate reduction, with an additional reduction of 5.2 percent in 2004. These rate reductions continued unabated through to the most recent rate reduction of 6.8 percent approved by Commissioner McCarty on October 26, 2009 to take effect on January 1, 2010. It is the seventh consecutive annual drop in worker's compensation rates since the Florida Legislature passed the reforms in 2003; it follows the two previous largest decreases - 18.6 for 2008 which stands as the largest one-year decrease on record, and 15.7 percent for 2007. The last seven filings represent the largest consecutive cumulative decrease on record in Florida workers' compensation rates – dating back to 1965. With the most recent rate change, the cumulative overall statewide average rate decrease since 2003 will be more than 63 percent.

Before the 2003 legislative reforms, Florida consistently ranked as the first or second state with the highest workers' compensation rates in the country. Post-reform, Florida dropped out of the top 10 rankings. Last year, studies of the rate changes approved earlier in 2008, showed that Florida has dropped to the 28th place and its ranking could now be among the 10 lowest states in the country based on the approved rates for 1/1/2010.

On August 20, 2009, the National Council on Compensation Insurance (NCCI) proposed an overall workers' compensation rate level decrease of 6.8 percent for the voluntary market industrial classes to be effective January 1, 2010. The Office conducted a hearing on October 6, 2009, and heard testimony from NCCI, industry experts and the public about NCCI's initial rate filing. On October 15, 2009, Commissioner Kevin McCarty issued an order finding the 6.8 percent rate reduction in NCCI's original filing justified, but he took exception to some of NCCI's methodologies used in determining that rate; including its calculation of policyholder dividends, cost of capital, investment yields, minimum premiums and proposed roofing rate. That order requested NCCI to modify its original filing and resubmit it. On October 19, 2009, NCCI resubmitted an amended filing in accordance with the OIR request. The Commissioner approved the amended filing for an average rate reduction of 6.8 percent on October 26, 2009 and noted all requested changes in Commissioner's October 15 Order have been made. With the implementation of the decrease of 6.8 percent, the rate impact for the main industry groups will be as follows:

---

[18] "Florida Cracks Down on Construction Sites without Workers' Compensation Insurance," Best Wire, August 2, 2005, which utilizes information from an earlier article in BestWire, July 15, 2003.

Industry Sector	Rate Adjustment 01/10	Cumulative since 2003
Manufacturing	**-4.7%**	**- 60.0%**
Contracting	**- 10.8%**	**- 65.4%**
Office and Clerical	**- 6.2%**	**- 63.3%**
Goods and Services	**- 3.8%**	**- 62.2%**
Miscellaneous	**- 6.7%**	**- 62.1%**
TOTAL	**-6.8%**	**-63.2%**

This rate reduction is the seventh annual rate reduction since the 2003 workers' compensation reforms, giving Florida businesses a cumulative decrease of 63.2 percent. In a press release dated October 31, 2009, Commissioner McCarty remarked that "the cost of doing business in Florida has become less expensive," due to these cuts.

NCCI Proposes Rate Increase in Response to Florida Supreme Court Decision (*Murray v Mariner Health*)

On October 23, 2008, the Florida Supreme Court issued its opinion in the case of *Emma Murray v. Mariner Health Inc.* and ACE USA, No. SC07-244. The Supreme Court concluded that the Senate Bill 50-A language aiming to limit claimant attorney's fees is ambiguous and looked to sources outside of Florida Statutes to interpret the meaning of "reasonable attorney's fee". The Court held that a reasonable attorney's fee is determined based on factors in the rules regulating the Florida Bar, including time spent. Thus, the Supreme Court's decision eliminated the statutory caps on attorney's fees that were imposed as a result of the 2003 reforms under SB 50A and would have enabled claimant attorneys handling workers' compensation claims to collect increased fees for their services.

In October, 2008, Commissioner Kevin McCarty had approved an 18.6 percent reduction in workers' compensation rates, to become effective Jan. 1, 2009. It was the sixth consecutive drop in rates since the Florida Legislature passed the reforms in 2003. In its filing from August 27, the NCCI had initially requested a 14.1 percent decrease. The larger reduction in rates of 18.6 percent was projected to save Florida employers more than $610 million. With that change, the cumulative statewide average rate decrease since 2003 would have been more than 60 percent.

However, following the Court's decision, NCCI submitted a rate filing that reflected the impact of the decision. NCCI estimated that the full impact would be an increase in overall Florida workers' compensation costs of 18.6 percent. On November 14, 2008, NCCI submitted its filing for a proposed first year rate level increase of 8.9 percent. NCCI anticipated that it would take two years for the full impact to be realized, and therefore proposed a first year increase of half to the full impact. NCCI proposed that the increased rates would apply to all policies in effect on March 1, 2009 on a pro-rata basis through the remainder of the term of these policies. The OIR held a public hearing on the NCCI rate request on December 16, 2008.

On Jan. 26, Commissioner McCarty issued an order denying the NCCI's Nov. 14 rate filing for an 8.9 percent increase as a result of the impact on rates it projected of the Oct. 23 Florida Supreme Court opinion in the case of *Emma Murray v. Mariner Health Inc.* In disapproving the filing, the Commissioner cited disagreements with the data and methodology the NCCI had used to calculate the projected effect of the Court's ruling. On February 10, 2009, Commissioner McCarty announced that he had issued a final order approving a 6.4 percent increase in workers' compensation rates, based on an amended filing by the NCCI. The increase would apply to new and renewal business and would become effective April 1, 2009. The 6.4 percent rate increase would add about $172 million in insurance costs for Florida employers. But, in combination with the 18.6 percent rate decrease that took effect Jan. 1, the net savings to Florida employers would still be $438 million.

"Although it is still somewhat early to know for sure what the full impact of the Supreme Court's decision on workers' compensation rates will be, I felt it was necessary to approve this modest increase," said Commissioner McCarty. "I hope that the legal and business communities will be able to come to an agreement on a plan for legislation that will maintain appropriate access to the legal system for injured workers while also still keeping workers' compensation rates affordable for employers."

In May, the Florida Legislature passed House Bill 903 that restored the cap on attorney fees and clarified related statutory language that the Florida Supreme Court had determined to be ambiguous and Governor Charlie Crist signed the Bill into law. On June 3, 2009, Commissioner Kevin McCarty issued a final order effective July 1, 2009 approving a rollback from the April 1, 2009 rates to the lower workers' compensation insurance rates that became effective Jan. 1, 2009. The order was based on a filing by the NCCI that came as the result of Governor Charlie Crist's signing into law of House Bill 903. "I am pleased that Governor Crist and the Florida Legislature recognized the importance of keeping our workers' compensation rates down," said Commissioner McCarty in an OIR press release the same day. "I believe that injured workers still will have appropriate access to the legal system while also still keeping workers' compensation rates affordable for employers."

The June 3 rate decrease effectively restored the 18.6 percent rate reduction that took effect Jan. 1, 2009 with a projected savings of $610 million for Florida employers.

The decrease applies to new and renewal business and became effective July 1, 2009.

Comparative Profitability

Comparative profitability between states for the workers' compensation line of business is complicated by several factors. State law varies as to coverage and payment for claims, tort restrictions vary by state, and the basis for rate determination varies as well. Nonetheless, such a comparison, noting the above difficulties, can be useful.

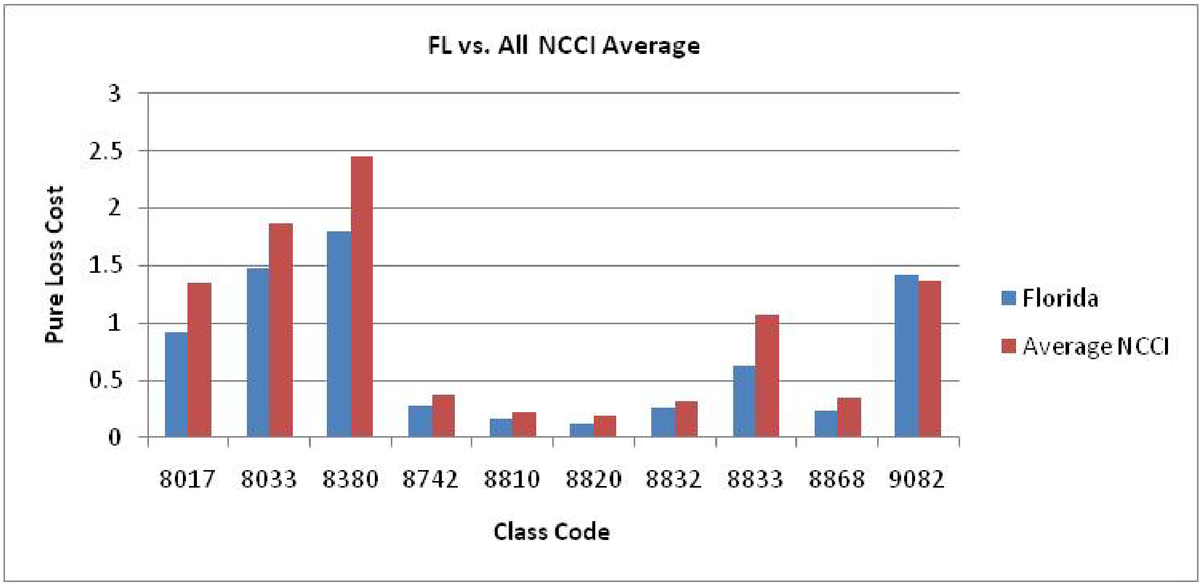
During 2009, the OIR requested that NCCI prepare a comparison of loss cost estimates for the ten largest class codes of workers' compensation insurance evident in the Florida market with the loss costs for the same class codes in the other 34 jurisdictions for which NCCI is the statistical rating agent. The pure loss cost was chosen as the metric as it is the variable that is calculated in a consistent manner. Final allowed rates begin with the loss costs, and are then modified for risk loads and profit factors in different manners across jurisdictions.

Initially, there are two commonly used definitions of calculating the "largest" class codes; by exposure amounts (e.g. the amount of insured exposure in dollars) and by policy count. The analysis below is repeated for each definition.

When measured by exposure, the ten largest class codes, the average loss cost across NCCI jurisdictions based on the most recent available data, Florida's loss cost and Florida's rank among jurisdictions (one being lowest, 36 being highest) are reported below:

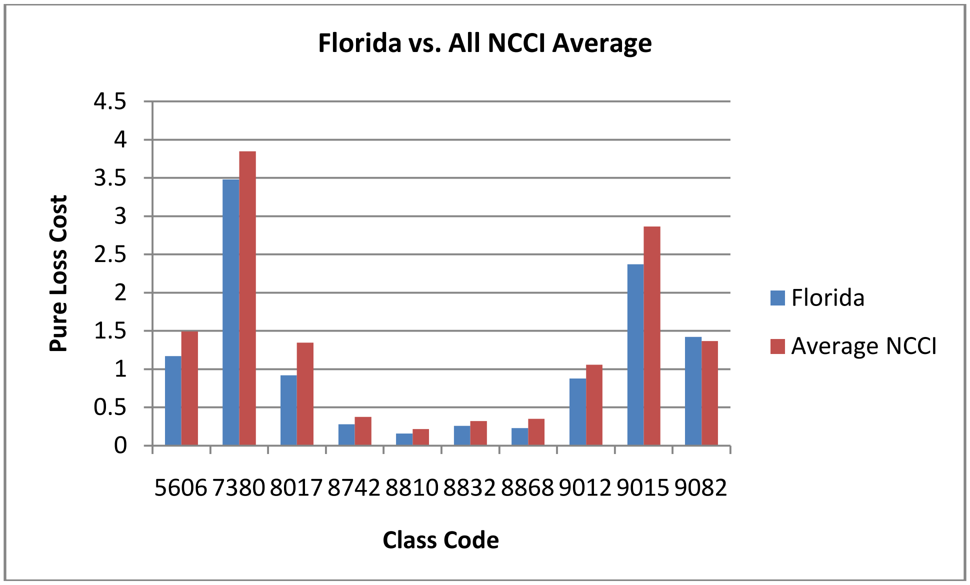
Comparative Pure Loss Cost: Largest Class Codes by Exposure				
Class Code	**Description**	**Avg. NCCI**	**FL**	**2008 FL Rank**
8017	STORE: RETAIL NOC	1.35	0.92	10
8033	STORE: MEAT, GROCERY AND PROVISION STORES COMBINED-RETAIL NOC	1.86	1.48	13
8380	AUTOMOBILE SERVICE OR REPAIR CENTER & DRIVERS	2.45	1.8	9
8742	SALESPERSONS OR COLLECTORS-OUTSIDE	0.38	0.28	13
8810	CLERICAL OFFICE EMPLOYEES NOC	0.22	0.16	9
8820	ATTORNEY-ALL EMPLOYEES & CLERICAL, MESSENGERS, DRIVERS	0.19	0.13	9
8832	PHYSICIAN & CLERICAL	0.32	0.26	8
8833	HOSPITAL: PROFESSIONAL EMPLOYEES	1.07	0.63	4
8868	COLLEGE: PROFESSIONAL EMPLOYEES & CLERICAL	0.35	0.23	7
9082	RESTAURANT NOC	1.37	1.42	21

Graphically, these data show that in all but one case (9082: Restaurant NOC), Florida's loss cost is below the class average:



When the largest class codes are defined by policy count, the results are largely the same (although the actual classes are somewhat different):

Comparative Pure Loss Cost: Largest Class Codes by Policy Count				
Class Code	**Description**	**Avg. NCCI**	**FL**	**2008 FL Rank**
5606	CONTRACTOR--PROJECT MANAGER, CONSTRUCTION EXECUTIVE, CONSTRUCTION MANAGER OR CONSTRUCTION SUPERINTENDENT	1.49	1.17	13
7380	DRIVERS, CHAUFFEURS, MESSENGERS AND THEIR HELPERS NOC-COMMERCIAL	3.85	3.48	16
8017	STORE: RETAIL NOC	1.35	0.92	6
8742	SALESPERSONS OR COLLECTORS-OUTSIDE	0.38	0.28	13
8810	CLERICAL OFFICE EMPLOYEES NOC	0.22	0.16	9
8832	PHYSICIAN & CLERICAL	0.32	0.26	8
8868	COLLEGE: PROFESSIONAL EMPLOYEES & CLERICAL	0.35	0.23	7
9012	BUILDINGS-OPERATION BY OWNER, LESSEE, OR REAL ESTATE MANAGEMENT FIRM: PROF. EMPLOYEES, PROPERTY MANAGERS AND LEASING AGENTS & CLERICAL, SALESPERSONS	1.06	0.88	11
9015	BUILDINGS - OPERATION BY OWNER OR LESSEE OR REAL ESTATE MANAGEMENT FIRM: ALL OTHER EMPLOYEES	2.86	2.37	13
9082	RESTAURANT NOC	1.37	1.42	21



Using this definition of size, the loss cost is below average in Florida with the exception of class code 9082 (Restaurant NOC).
A more detailed presentation of the class codes and pure loss costs by state can be found in Appendix E.

Florida Workers’ Compensation Joint Underwriting Association

One of the most significant indicators of an availability problem in an insurance market is the size of the residual market mechanism. In Florida, the Florida Workers’ Compensation Joint Underwriting Association, Inc. (FWCJUA) is the market of last resort. Only employers that cannot find coverage in the voluntary market are eligible for coverage in the FWCJUA. Thus, the size of the FWCJUA is a measure of availability of coverage in the voluntary market.

The Florida Workers’ Compensation Insurance Plan (FWCIP) was the residual market for Florida until the FWCJUA was created on January 1, 1994. All insurance companies writing workers’ compensation in Florida funded the FWCIP. If there was a deficit in the FWCIP, then those workers’ compensation carriers were assessed to cover the deficit. In 1993, the FWCIP issued 48,430 policies with written premiums of $328 million. The FWCJUA in contrast has varied from 5,434 policies to 1,721 policies, with written premium varying from $77.5 million to $6.4 million. At the end of November 2009, the FWCJUA had 826 policies on its book and with corresponding premiums of $5.7million. The FWCJUA’s written premium as a percent of total market has not exceeded 2% since 1995 and has been below 1% for most years.

In 2007 the Florida Legislature passed two bills that have had a significant impact on the FWCJUA. These bills are Senate Bill 1894 (Chapter 2007-146 Laws of Florida) and House Bill 7169 (Chapter 2007-202 Laws of Florida). Detailed summaries of Senate Bill 1894 and House Bill 7169 are available from the FWCJUA and Legislative websites.

The provisions of Senate Bill 1894 were designed to address the following major areas:

1. Provisions to assist the FWCJUA in achieving exemption from federal income tax.
2. Provisions to address funding issues with sub plan D and other sub plans or tiers by allowing the use of the surplus attributed to sub plan C and extending the life of the below the line assessments. OIR 27 of 40 January 1, 2008
3. Provisions related to the Code of Ethics, financial disclosures, and procurement of goods and services were modeled after legislation enacted last year to provide greater accountability and oversight of Citizens Property Insurance Corporation.

Senate Bill 1894 included a provision that clearly made the FWCJUA records subject to the Public Records law in Chapter 119, Florida Statutes. As a result, there was a need to exempt certain records that contained confidential and personal information. House Bill 7169 created an exemption for certain records and portions of meetings of the FWCJUA including portions of underwriting files, claims files, medical records, audit records, proprietary information, attorney-client information, and reports of fraud, among other records.

House Bill 1251, which passed in 2004, created a tier system for rating employers. Tier 1 is for employers with good loss experience; Tier 2 is for employers with moderate loss experience and non-rated new employers and Tier 3 is for employers not eligible for

Tiers 1 or 2. Specific eligibility requirements can be obtained from the FWCJUA.

The FWCJUA was originally created to be self-sufficient with no ability to obtain funding from the voluntary market. Currently, there is a mechanism for funding deficits in Tier 1 and 2 by issuing a below the line assessment against all workers' compensation policies. However, it is unlikely that this assessment will be needed due to the amount of surplus in the FWCJUA. The primary funding mechanism for any deficits in Tier 3 is through the assessment of FWCJUA Tier 3 policyholders. Assessing policyholders after their policy has expired can create a financial hardship for the policyholders and should be avoided if possible. Thus, the FWCJUA Board has a goal of avoiding assessments and this has contributed to the high level of rates and surcharges.

The rate differential for FWCJUA versus the voluntary market rates has varied from 1.25 to 3.278 and was 1.429 prior to the 2003 reforms. There are surcharges in addition to the rate differential that affect the total premium paid by FWCJUA policyholders. There was a 99% surcharge applied to Sub-plan "C" premiums in excess of $2,500, an Assigned Risk Adjustment Program (commonly known as, "ARAP") surcharge for experience rated policies and a $475 flat surcharge added to every policy. The creation of Tiers 1, 2 and 3 by House Bill 1251 has resulted in a restructuring of the rates and surcharges used by the FWCJUA.

As of January 1, 20010, the premium for Tier 1 is 28% above the voluntary rates, Tier 2 is 124% above voluntary and Tier 3 is 124% above (2.24 times the voluntary rates), plus the ARAP surcharge applies for Tier 3. Additionally, all three tiers have a flat surcharge of $475. Tier 3 policyholders have a burden that Tiers 1 and 2 do not have. Tier 3 policies are assessable if premiums are not sufficient to cover losses and expenses.

It is unrealistic to expect that an actuary's best estimate, which is a prediction of future contingent events, will always coincide with future results. It is understood and usually explicitly acknowledged that the results for a particular year can be higher or lower than the actuary's estimate. The consequences of the results being higher or lower than the estimate affect the actuary's judgment and ultimate selections.

In a situation with substantial financial resources, it may be acceptable for the actuary's estimate to be high half of the time and low half of the time, as long as over time the predictions coincide with the average result. In other words, if there is a billion dollars in surplus, the company may not be concerned if the actuary's estimate is $50 million high or low in a particular year as long as it balances over a number of years.

If, however, there is only $10 million in surplus, the company cannot afford for the estimate to be $10 million lower than the estimate because they will be bankrupt. In this latter situation the consequences of being low are more important than the consequences of being high and this will impact the degree of conservatism that is appropriate in the actuary's selection.

The FWCJUA has been in a situation where the consequences of reserving too low or having rates that are too low (i.e. retroactive assessments to policyholders) have been greater than the consequences of reserves being too high or rates too high. If the rates are too high, there may be some complaints from policyholders and others (and there could be federal income taxes that have to be paid) but, if there are assessments due to the rates being too low, every policyholder is affected, even those whose policy expired. At the extreme, some of the policyholders could face severe financial distress or even be put out of business as a result of the assessment.

As a result of these circumstances, the degree of conservatism used in determining FWCJUA rates and surcharges has contributed to the level of rates needed. The main contributor to the FWCJUA rates, however, has been the level of expenses and losses incurred. Both of these were adversely impacted when the volume of FWCJUA business decreased in the late 1990s. As a result of all these factors and others, the FWCJUA rates have been very high in comparison to the residual markets in other states.

Currently, the Tier 1 rates for most employers are more affordable than the previous sub-plans A, B and C. However, Tier 2 and Tier 3 rates remain very high compared to the residual market in other states.

Having the goal of a small residual market is desirable, but it needs to be balanced with having an affordable residual market. The FWCJUA was very small in comparison to the total voluntary market from 1997 through 2006. This occurred during a period when the FWCJUA rates were not very affordable to many employers and the voluntary market was very competitive. The high premiums in the FWCJUA discouraged many employers from even applying to the FWCJUA. These employers decided to close their business, go without coverage (which may be unlawful), or sought the services of a Professional Employer Organization (PEO). Coupled with a very competitive market by insurers who aggressively sought new policyholders, this created an extremely small residual market.

Ultimately, availability should not be an issue as coverage can be found in either the voluntary market or the FWCJUA, although affordability may well remain an issue for employers utilizing the FWCJUA.

Composition of the Buyer

Much of the analysis of the workers' compensation market, owing to a lack of more detailed data, is done at a high level by the insurer or in aggregate. The reality is that the workers' compensation market is segmented based on a number of characteristics, such as size of employer, type of industry, past experience of the employer or the lack of experience. The market for large employers versus small employers can be markedly different. The market for construction risks is different from employers with office workers. New businesses typically have trouble obtaining coverage due to the lack of historical experience that can be a measure of not only the insurance exposure but also the credit worthiness of the insured.

The majority of complaints about not being able to get coverage in the voluntary market come from small employers, new businesses and construction employers. Employers with a combination of these characteristics are especially difficult to place in the voluntary market. In some cases, coverage is related to the availability of agents in the local area and the number of insurers the local agents represent.

On January 31, 2003, "*A Study of the Availability and Affordability of Workers' Compensation Coverage for the Construction Industry in Florida*", was provided to the Florida Legislature and it concluded that construction employers, especially small construction employers, are having difficulty finding affordable workers' compensation coverage. While the restructuring of the FWCJUA has helped this situation, the problem still exists as documented by the number of employers found by the Department of Financial Services (DFS) to have no coverage.

The DFS Division of Workers' Compensation conducts random sweeps at construction sites to ensure compliance with workers' compensation laws. In Fiscal Year 2007-2008 the Bureau of Compliance within the DFS' Division of Workers' Compensation issued almost 1937 stop-work orders to companies that were not carrying insurance for all of their workers. As a further result of their efforts, an additional 5,463 new employees received coverage under Florida's workers' compensation law adding over $4.4 million to the premium base.

Professional Employee Organizations (PEOs) have been a part of the Florida workers' compensation market since the early 1990s. PEOs have had an erratic history of being able to obtain coverage in the workers' compensation insurance market. In the early 1990s coverage was difficult to obtain. By the mid-1990s coverage was broadly available and relatively easy to obtain. In the early 2000s coverage became scarce and in 2003 after CNA stopped writing PEOs, coverage was nearly impossible to find.

Insurers have historically been reluctant to write workers' compensation coverage due to the risks inherent with PEO coverage (*Workers' Compensation Large Deductible Study*, National Association of Insurance Commissioners/ International Association of Industrial Accident Boards and Commissions Joint Working Group, March 2006). Some PEOs have adapted to this changing market and some have formed their own insurance company. PEOs have been a source of workers' compensation coverage for many employers in Florida that could not obtain coverage in the voluntary market, particularly small employers. When the premiums for the FWCJUA have been deemed too high by employers, the PEO market has been the only available option for many employers who want to remain in business and comply with the law. A survey conducted by the Florida Association of Professional Employment Organizations in 2009 found that they provided more than 50,000 employers with nearly 700,000 work-site employees, representing a payroll in excess of $24 billion.[19]

The PEO industry has also entered a period of consolidation and acquisitions. Analysts say the merger activity is a positive development since the financial trends favor PEOs with more clients and work-site employees. It is also pushing up the values of leasing companies, in some cases by two and three times as much. Wanda Silva, of the Atlanta-based Silva Capital Company, who specializes in PEO acquisitions, says it makes sense for PEOs to expand since it is a stable financial and regulatory environment. “It makes a lot of sense to merge and grow larger because the more work-site employees you have the less you pay for workers’ comp and health care,” she said. “The Florida market is more competitive than other states,” Silva added.[20]

Market Structure, Conduct and Performance to Promote Competition

The previous sections of this report do not suggest any obvious impediments to a workers’ compensation market that has been found to be reasonably competitive. This section concentrates on the ability of the market to promote competition.

Mandatory Rating Plans

Before discussing the methods that workers’ compensation insurers compete in the marketplace, it is useful to summarize the rating and premium pricing variations that result from the mandatory rating plans currently in effect. The following rating plans are required of all insurers in the state of Florida:

- Experience Rating Plan – This plan recognizes differences between individual employers by comparing the actual experience of an individual employer with the average expected experience of employers in the same classification. The plan produces an experience modification factor that may increase or decrease premiums. An employer is eligible for this program if the average annual premium is at least $5,000.
- Premium Discounts by Size of Policy – The premium discount plan adjusts the employer’s premium to reflect the relative expense of servicing large premium policies as a percent of premium is less than that for small premium policies. For example, the policy issuance costs for a $200,000 policy may be higher than those for a $20,000 policy, but the cost are not ten times as high.
- Drug-Free Workplace Premium Credit – A 5 percent premium credit provided to employers that certify the establishment of a drug-free workplace program.
- Employer Safety Premium Credit – A 2 percent premium credit provided to employers that certify the establishment of a safety program.
- Florida Contracting Classification Premium Adjustment Program - A premium credit is provided for policies with one or more contracting classifications that pay above average hourly wages. The credit amount increases as the average wage paid increases. The credit

[19] The Florida Association of Professional Employer Organizations (FAPEO) 2009 Census Brochure
21 Florida Underwriter as of March 1, 2006, Resurgence of the PEO Market, article by Michael H. Adams, Editor.

is calculated based on payroll and hours worked information submitted by the employer to NCCI.

- Small Deductibles - For a reduced premium, the employer agrees to reimburse the insurer for each claim up to the deductible amount and the carrier covers benefits for each claim above the deductible amount. Small deductibles range from $500 to $2,500 and are required by Section 440.38(5), Florida Statutes. An insurer may refuse to issue a policy with a deductible based on financial stability of employer.
- Coinsurance - For a reduced premium, the employer agrees to reimburse the insurer 20 percent of each claim up to $21,000. This option is required by Section 440.38(5), Florida Statutes. An insurer may refuse to issue a policy with a coinsurance amount based on the financial stability of the employer.

Optional Plans Used by Insurers to Compete Based on Price

Insurers use the following plans to compete on price:

- Policyholder Dividends - Insurers reward their policyholders by returning some of their profit at the expiration of the policy by issuing policyholder dividends, which may be based on the policyholder's experience, the carrier's experience, and other factors.
- Deviations –Section 627.211, Florida Statutes, allows insurers to file a uniform percentage increase or decrease that is to be applied to all rates an insurer charges or to rates for a particular class or group of classes of insurance.
- Intermediate Deductibles - For a reduced premium, the employer agrees to reimburse the insurer for each claim up to the deductible amount and the carrier covers the amount of the claim above the deductible amount. Intermediate deductibles range from $5,000 to $75,000.
- Large Deductibles – Large deductible policies operate similarly to the small and intermediate deductible, but have a deductible amount of $100,000 and above. In order to qualify for the large deductible program, an employer must have standard premium of at least $500,000.
- Consent to Rate – The insurer and employer agree to a rate in excess of the approved rate. The insurer must limit this option to no more than 10 percent of policies written or renewed in each calendar year.
- Retrospective Rating Plans – The final premium paid by the employer is based on the actual loss experience of the employer during the policy, plus insurer expenses and an insurance charge. If the employer controls the amount of claims, they pay lower premiums. Before there were large deductible programs, retrospective rating plans were the dominant rating plan for large employers.
- Waiver of Subrogation - For an additional premium, the insurer may waive its right of recovery against specifically named parties liable for injury covered by the policy.

Non-Price Competition

In addition, insurers compete in ways unrelated to the determination of premium such as:

- Offering premium payment plans that vary the amount of money paid initially and through installments;
- Demonstrating the availability and effectiveness of specialized loss control;
- Demonstrating the effectiveness of their claims handling including fraud detection;
- Paying higher agent commissions or providing other incentive programs, and/or;
- Emphasizing policyholder service in auditing, policy issuance or certificates of insurance.

Deviations

In the mid 1980's, the use of deviations as a means of competing was commonplace. From 1983 to 1985 over 40 percent of the market was written at deviated rates. However, by 1989 only 9 percent of the market was written at deviated rates. After the two year legislatively required moratorium (1990 and 1991) on deviations, the use of deviations has ceased to be a meaningful factor in the workers' compensation marketplace in Florida.

Despite the changes in Section 627.211, Florida Statutes, made by chapter law 2004-82 (Senate Bill 1926) to allow for easier approval of deviations, only one insurer has filed for a new deviation since the law became effective on July 1, 2004 and that was approved during 2006. Two insurers have renewed their prior deviation, which means there are currently only three insurance companies with a deviation in Florida (the average deviation is downward 10 percent).

Large Deductibles

In the early 1990's, insurers approached the Department of Insurance about filing a rating plan for large employers (defined as having $500,000 in standard premium) that would be more flexible in how the premium would be determined. The justification for the flexibility would be based on the following general concepts:

- The rating plan would be used only for very large employers. These employers would generally be eligible to be individually self-insured.
- Rating is similar to rating for excess insurance that is purchased by individual self-insureds.
- The minimum deductible is $100,000 and could be in the millions. Thus, the employer will be responsible for the vast majority of claims.

The Department ultimately agreed to these type plans with restrictions that were incorporated in Administrative Rule 69O-189.006 (formerly 4-189.006).

As large deductible programs have been implemented, there has been a dramatic shift in premiums. The typical large deductible policy will have a deductible credit that can range from 30 percent to 90 percent. Thus, the premiums paid by employers and reported by insurers will be a fraction of premiums paid for other rating plans. This means that premiums in the annual statement and premiums reported for assessments and taxes are much lower than they were previously.

As the volume of large deductible policies written in Florida has increased, the effect has been to lower the base for assessment and taxes such that Section 440.51(1) (b), Florida Statutes, have been revised to require premiums to be reported without the deductible credit.

An ancillary effect of large deductibles has been the movement for very large employers to cease being individually self-insured and to buy an insurance policy from an insurance company with a large deductible program.

Conclusion

Based on the number of entities and market shares of actively writing companies in the market, the number of entities entering and exiting the market and the financial performance of the entities in the market, Florida's workers' compensation market can readily be characterized as a competitive market.

Availability does not appear to be a significant concern in the aggregate, although it does appear that small firms, new firms, and construction firms may face some market shortfalls in the voluntary market. The residual market is small, suggesting that the voluntary market is absorbing the vast majority of demand. While not without risk, the growth of the use of PEOs among smaller employers has, as well, helped availability by making coverage affordable.

For an employer, availability is not particularly important if the coverage is not affordable. In the voluntary market, rates have declined by nearly over 63 percent since reform legislation was passed in 2003.

OIR Certification of Compliance with Section 627.096, Florida Statutes

Section 627.096, Florida Statutes, was created in 1979 as part of the "wage loss" reform of the workers' compensation law. This statute has three basic requirements as it pertains to this report:

1. An investigation and study of all insurers authorized to write workers' compensation in Florida. The OIR has accomplished this objective by its thorough review of the quality and integrity of the data submitted in the most recent National Council on Compensation Insurance (NCCI) filing.

2. A study of the data, statistics or other information to assist and advise the OIR in its review of filings made by or on behalf of workers' compensation insurers. In addition to the NCCI filing mentioned above, the Consumer Advocate's offices hired an independent actuary to review the filing and make recommendations. Also there are public hearings regarding the NCCI filing which further allow an opportunity for third parties to register their opinions and input.

3. The statute gives the Financial Services Commission the authority to require all insurers to submit data to OIR. The NCCI has been collecting workers' compensation data in Florida for more than 50 years; therefore, the OIR has contracted with NCCI to perform these statistical services for the state of Florida.

-- APPENDIX A –

2008 Workers' Compensation Premium Written by State

2007 Rank	2008 Rank	State	Written Premium (in millions)
1	1	California	$7,640.8
2	2	New York	$3,501.4
5	3	Illinois	$2,591.0
4	4	Texas	$2,586.3
3	5	**Florida**	$2,306.6
6	6	Pennsylvania	$2,213.5
7	7	New Jersey	$1,949.2
8	8	Wisconsin	$1,617.2
9	9	North Carolina	$1,405.0
10	10	Georgia	$1,251.0
12	11	Michigan	$990.1
13	12	Missouri	$882.3
17	13	Tennessee	$878.8
18	14	Maryland	$868.4
11	15	Massachusetts	$865.9
14	16	Louisiana	$855.6
19	17	Virginia	$848.0
16	18	Colorado	$843.7
21	19	Minnesota	$791.5
20	20	Arizona	$776.1
22	21	South Carolina	$715.6
15	22	Oregon	$714.6
23	23	Indiana	$712.1
24	24	Connecticut	$693.0
26	25	Kentucky	$593.5
27	26	Iowa	$563.5
30	27	Oklahoma	$486.6
25	28	West Virginia	$485.6
31	29	Kansas	$447.5
29	30	Utah	$442.6
28	31	Nevada	$430.6
32	32	Alabama	$368.0
28	33	Nevada	$337.4
34	34	Mississippi	$331.6
33	35	Idaho	$320.2
36	36	Alaska	$285.2

2007 Rank	2008 Rank	State	Written Premium (in millions)
39	37	New Mexico	$261.5
38	38	Arkansas	$260.0
40	39	New Hampshire	$250.6
37	40	Hawaii	$238.8
42	41	Maine	$223.0
41	42	Delaware	$195.6
43	43	Rhode Island	$183.8
44	44	Vermont	$173.6
45	45	District of Columbia	$142.2
46	46	South Dakota	$138.0
47	47	Montana	$112.4
		Total	$45,769.6

***Source: 2008 NAIC Annual Statements**
(Companies with Exclusive state funds were not included.)

-- APPENDIX B –

2008 Number of Entities Writing Workers' Compensation by State

2007 Rank	2008 Rank	State	Entities
1	1	Illinois	309
3	2	Tennessee	306
2	3	Georgia	303
5	4	Pennsylvania	298
4	5	Indiana	297
9	6	Texas	278
6	7	Virginia	277
8	8	North Carolina	268
12	9	Michigan	260
13	10	Iowa	260
7	11	Wisconsin	258
14	12	Missouri	258
10	13	Maryland	257
11	14	South Carolina	256
22	15	Minnesota	248
16	16	Kansas	248
18	17	New York	247
17	18	New Jersey	247
15	19	**Florida**	246
23	20	Alabama	246
20	21	Arkansas	241
19	22	Kentucky	235
21	23	Mississippi	233
25	24	Nebraska	230
24	25	Oklahoma	229
26	26	Colorado	221
27	27	Arizona	220
29	28	California	214
28	29	Massachusetts	212
30	30	Connecticut	209
32	31	Louisiana	208
31	32	Delaware	206
34	33	New Mexico	200
33	34	South Dakota	198
35	35	Utah	196
36	36	New Hampshire	193
37	37	Nevada	190
38	38	District of Columbia	190
39	39	Oregon	187
40	40	Vermont	168
41	41	Idaho	163

2007 Rank	2008 Rank	State	Entities
43	42	Rhode Island	161
42	43	Montana	159
44	44	Maine	148
47	45	West Virginia	145
45	46	Alaska	131
46	47	Hawaii	128

***Source: 2008 NAIC Annual Statements**
(Companies with Exclusive state funds were not included)

-- APPENDIX C –

2008 HHI Index Ranking Market Competitiveness

“Competitive Markets”

2008 Rank	2007 Rank	State	HHI		2008 Rank	2007 Rank	State	HHI
1	1	Tennessee	135		19	19	New Hampshire	251
2	4	Virginia	139		20		District of Columbia	268
3	3	Pennsylvania	141		21	21	Vermont	294
4	2	Indiana	146		22	25	Mississippi	317
5	6	Georgia	151		23	20	South Dakota	324
6	5	Illinois	156		24	24	Missouri	329
7	8	Nebraska	180		25	23	Florida	333
8	12	South Carolina	183		26	22	Massachusetts	333
9	14	Delaware	191		27	26	Michigan	341
10	9	North Carolina	191		28	27	Nevada	401
11	7	Connecticut	193		29	28	New Mexico	491
12	11	Arkansas	195		30	29	New Jersey	523
13	10	Iowa	206		31	32	California	612
14	18	Kansas	218		32	31	Hawaii	713
15	15	Minnesota	227		33	30	Kentucky	760
16	13	Wisconsin	228		34	34	Maryland	777
17	17	Oklahoma	231		35	35	Louisiana	955
18	16	Alabama	232		36	33	Texas	966

“Moderately Concentrated Markets”

2008 Rank	2007 Rank	State	HHI		2008 Rank	2007 Rank	State	HHI
37	37	Alaska	1222		39	40	Guam	1557
38	36	Montana	1262		40	39	New York	1776

“Highly Concentrated Markets”

2008 Rank	2007 Rank	State	HHI		2008 Rank	2007 Rank	State	HHI
41	41	Arizona	2489		46	45	Maine	3896
42	42	Utah	2798		47	47	Rhode Island	3930
43	44	Colorado	3333		48	48	Virgin Islands	4633
44	43	Oregon	3409		49	50	Northern Marianas Islands	5345
45	46	Idaho	3879		50	49	West Virginia	8839

***Source: 2008 NAIC Annual Statements; HHI Calculations Made by the Florida Office of Insurance Regulation. Companies with exclusive state funds were removed from this analysis. West Virginia had an exclusive state fund until July 1, 2006. NCCI now provides advisory ratemaking and statistical services**

-- APPENDIX D –

2008 Workers' Compensation Premium to Worker Ratios

2008 Rank	2007 Rank	State	Written Premium ($)	Population Employed	Prem/Worker
1	1	Alabama	$367,996,511	2,099,332	$175.3
2	2	Arkansas	$260,009,735	1,279,942	$203.1
3	4	Virginia	$848,037,782	4,013,110	$211.3
4	3	Michigan	$990,129,039	4,574,867	$216.4
5	6	Texas	$2,586,260,007	11,570,855	$223.5
6	7	Indiana	$712,096,008	3,096,105	$230.0
7	5	Montana	$112,377,249	487,800	$230.4
8	19	Massachusetts	$865,885,476	3,397,414	$254.9
9	9	Mississippi	$331,611,250	1,273,009	$260.5
10	12	Arizona	$776,135,781	2,971,780	$261.2
11	10	Georgia	$1,251,028,408	4,620,189	$270.8
12	**24**	**Florida**	**$2,306,630,570**	**8,460,008**	**$272.7**
13	14	Minnesota	$791,511,008	2,830,175	$279.7
14	8	Oklahoma	$486,578,840	1,734,410	$280.5
15	13	New Mexico	$261,471,423	912,269	$286.6
16	17	Maryland	$868,431,703	2,978,398	$291.6
17	15	Tennessee	$878,772,316	2,936,985	$299.2
18	20	Missouri	$882,295,602	2,909,310	$303.3
19	11	Kansas	$447,549,720	1,467,795	$304.9
20	16	Kentucky	$593,460,303	1,924,530	$308.4
21	21	North Carolina	$1,405,033,814	4,478,090	$313.8
22	18	South Dakota	$137,959,952	428,005	$322.3
23	26	Colorado	$843,667,936	2,610,900	$323.1
24	22	Maine	$222,980,377	668,176	$333.7
25	31	Utah	$442,616,082	1,323,183	$334.5
26	33	Nevada	$430,557,068	1,283,706	$335.4
27	30	New Hampshire	$250,580,534	721,785	$347.2
28	29	South Carolina	$715,591,923	2,058,671	$347.6
29	27	Rhode Island	$183,820,957	526,207	$349.3
30	25	Nebraska	$337,382,969	961,540	$350.9
31	23	Iowa	$563,532,930	1,604,262	$351.3
32	39	Hawaii	$238,766,684	674,035	$354.2
33	28	Pennsylvania	$2,213,535,103	6,049,234	$365.9
34	35	New York	$3,501,406,235	9,460,235	$370.1
35	32	Connecticut	$692,972,276	1,796,541	$385.7

2008 Rank	2007 Rank	State	Written Premium ($)	Population Employed	Prem/Worker
36	40	Oregon	$714,611,612	1,843,026	$387.7
37	34	Illinois	$2,591,045,970	6,363,483	$407.2
38	37	Louisiana	$855,597,417	2,009,876	$425.7
39	38	Idaho	$320,189,348	729,558	$438.9
40	41	California	$7,640,837,265	17,285,550	$442.0
41	36	New Jersey	$1,949,218,666	4,397,722	$443.2
42	44	Delaware	$195,593,473	426,750	$458.3
43		District of Columbia	$142,215,548	309,521	$459.5
44	42	Vermont	$173,588,952	340,342	$510.0
45	43	Wisconsin	$1,617,203,934	2,972,547	$544.0
46	46	West Virginia	$485,589,005	786,722	$617.2
47	45	Alaska	$285,233,796	359,150	$794.2
		Total	$45,769,598,557	138,007,100	

***Source: 2008 NAIC Annual Statements and U.S. Census Bureau -- 2007 American Community Survey Profile Statistics by State**

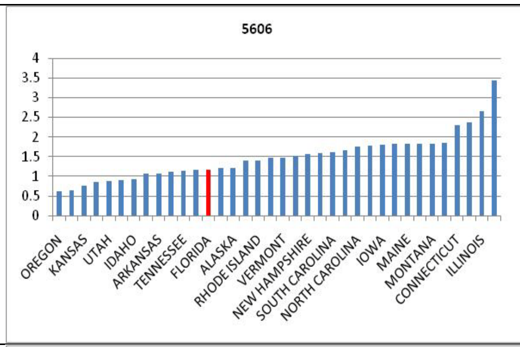
Employment Status: "In Labor Force" -- includes armed forces.

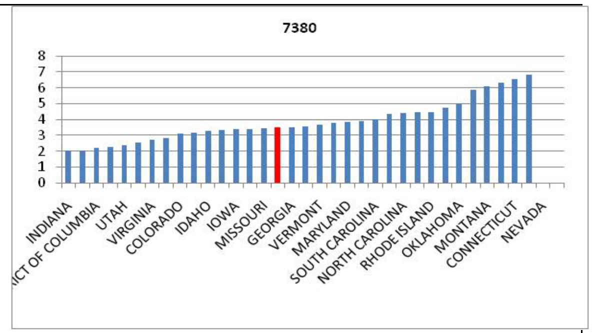
Companies with exclusive state funds were removed from this analysis. West Virginia had an exclusive state fund until July 1, 2006. NCCI now provides advisory ratemaking and statistical services.

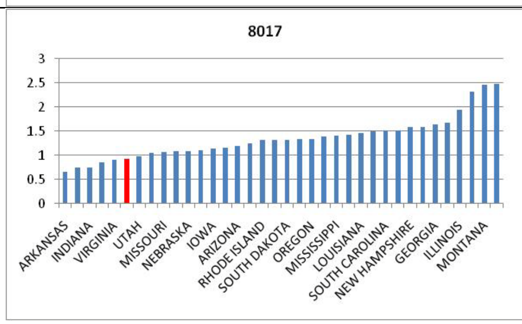
-- APPENDIX E –

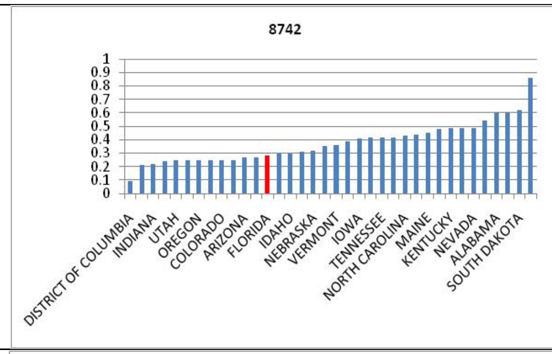
2008 Comparative Loss Cost by Class Code

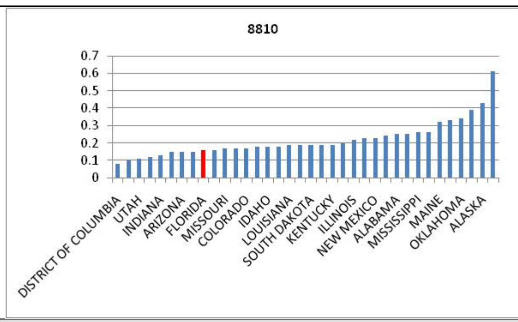
2008 Comparative Loss Cost by Class Code
By Policy Count (FL is in red)

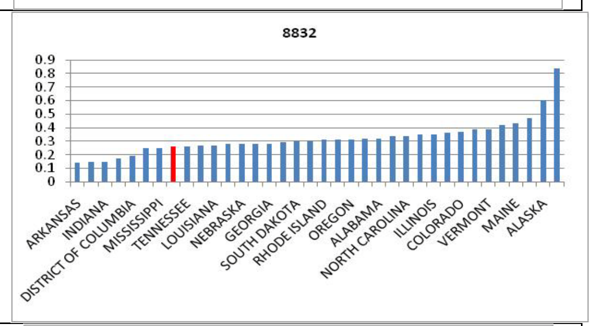


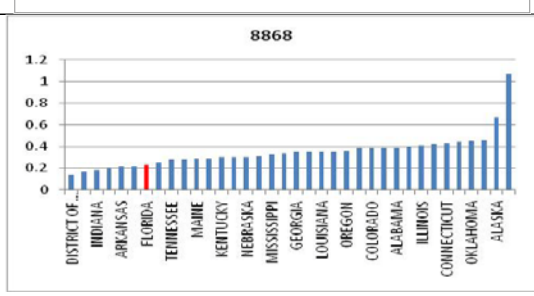


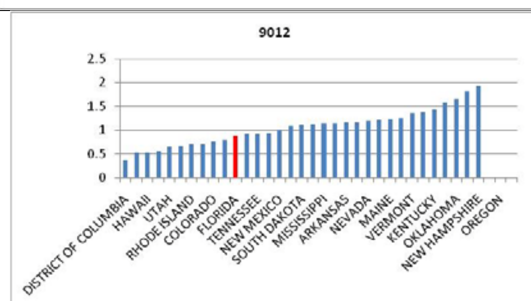


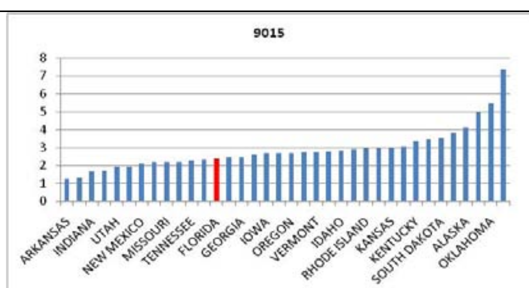


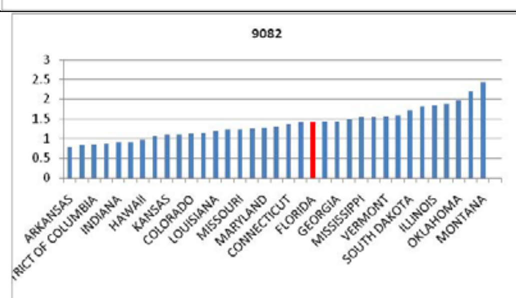




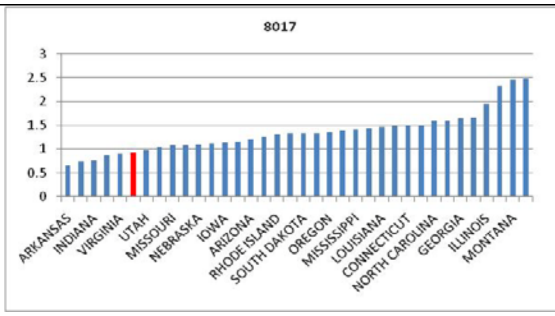


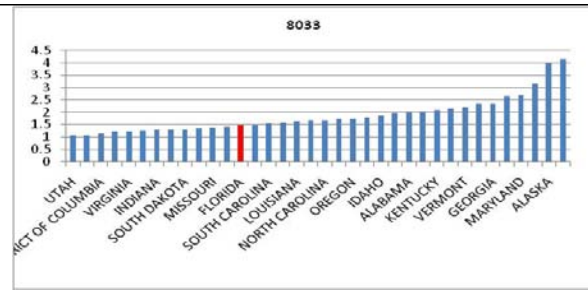


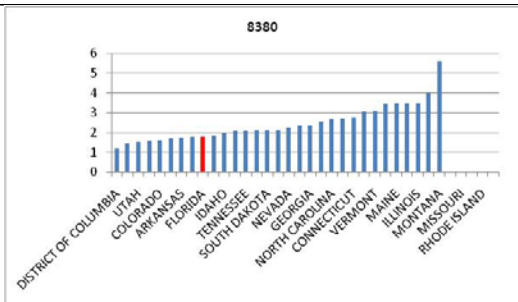


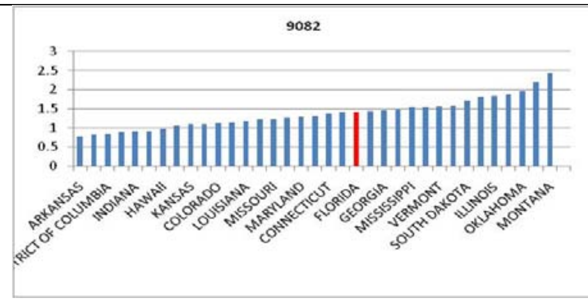


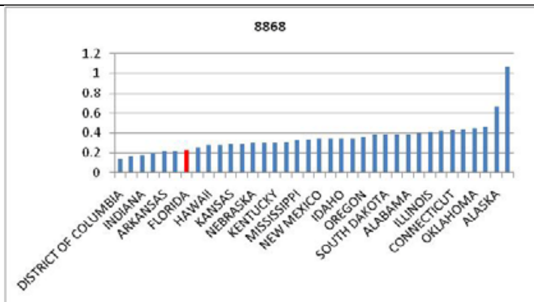
2008 Comparative Loss Cost by Class Code
By Exposure (FL is in red)

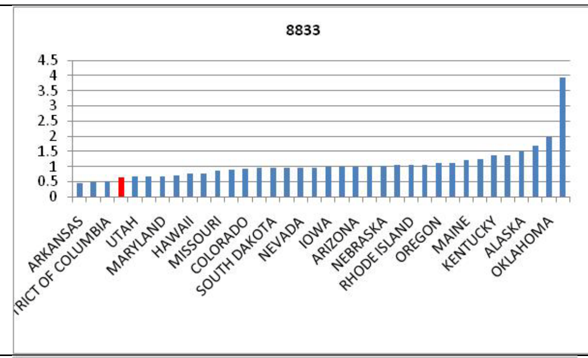


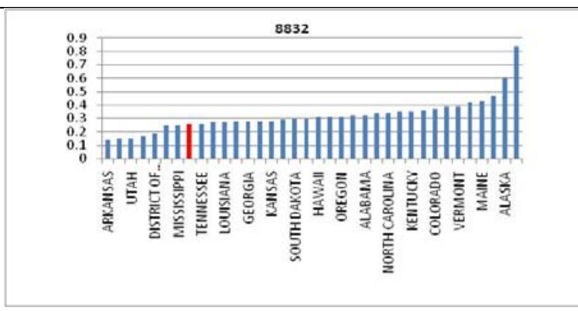


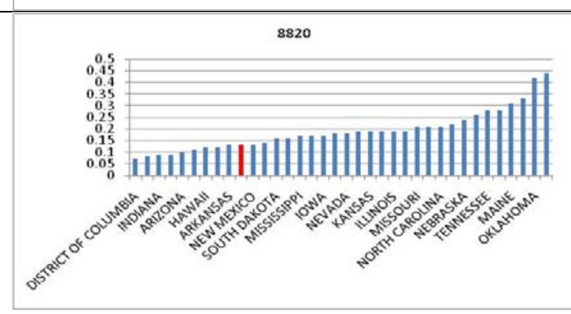


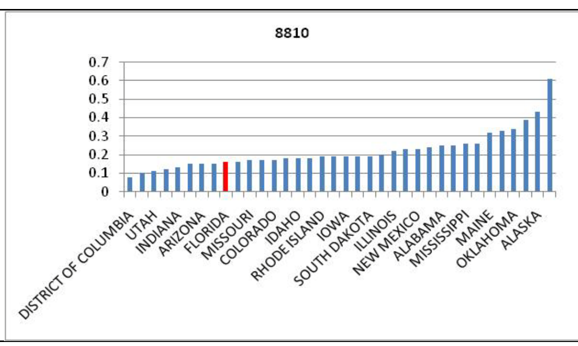


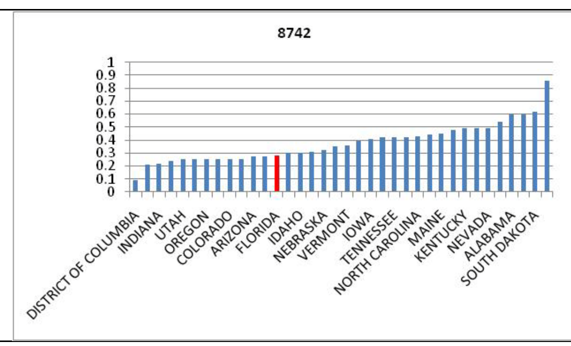












Class Code	Class Code Description
5606	Contractor -Project Manager, Construction Executive, Construction Manager or Construction Superintendent
7380	Drivers, Chauffeurs, Messengers And Their Helpers National Occupational Classification (NOC)-Commercial
8017	Store: Retail NOC
8033	Store: Meat, Grocery And Provision Stores Combined-Retail NOC
8380	Automobile Service or Repair Center and Drivers
8742	Salespersons or Collectors-Outside
8810	Clerical Office Employees NOC
8820	Attorney-All Employees and Clerical, Messengers, Drivers
8832	Physician and Clerical
8833	Hospital: Professional Employees
8868	College: Professional Employees and Clerical
9012	Buildings-Operation By Owner, Lessee, Or Real Estate Management Firm: Prof. Employees, Property Managers And Leasing Agents & Clerical, Salespersons
9015	Buildings - Operation By Owner Or Lessee Or Real Estate Management Firm: All Other Employees
9082	Restaurant NOC