



Overview of the Proposed Florida Workers Compensation Rate Filing **Effective January 1, 2020**

I. Summary

The purpose of this overview is to provide context and further explanation for the accompanying proposed -5.4% rate decrease, effective January 1, 2020, that was filed by the National Council on Compensation Insurance (NCCI) on August 27, 2019, with the Florida Office of Insurance Regulation (OIR). NCCI is a licensed rating organization authorized to make rate filings on behalf of workers compensation insurance companies in Florida. NCCI's rate filing is objectively prepared, in compliance with actuarial standards. The proposed filing is submitted to the state insurance commissioner for review and approval.

The filing, based on experience data as of year-end 2018 from Policy Years 2016 and 2017, shows continued significant improvement in loss experience. This is consistent with prior experience filings in Florida and in line with recent filings submitted by NCCI in other states. In 2016, two separate Florida Supreme Court decisions resulted in changes to the Florida workers compensation landscape. Those cases, *Castellanos v. Next Door Company, et al.* and *Westphal v. City of St. Petersburg, et al.* brought about retroactive changes to claimant attorney fee and benefit levels. In response, the OIR approved a +14.5% rate increase effective December 1, 2016. Since that time, favorable loss experience has more than offset the combined cost increases that have emerged from those Court decisions. As a result, the last two approved experience filings in Florida have resulted in significant rate decreases; -9.5% effective January 1, 2018 and -13.8% effective January 1, 2019.

For this filing, more than 90% of the data analyzed relates to policies that became effective after the *Castellanos* and *Westphal* decisions. NCCI believes the *Castellanos* and *Westphal* decisions are now exerting upward pressure on system costs, and they will continue to influence Florida workers compensation insurance rates. Policy Year 2017 is the first full policy year post-*Castellanos*; however, the full effects of that decision will still not materialize for several years to come as workers compensation insurance is a "long-tail" line that often involves a long period of time for claims to be resolved.

II. Current Environment

This filing comes at a time when the workers compensation system is experiencing unprecedented results. The combination of underwriting discipline, moderating severity, declining frequency and adequate reserves has resulted in five straight years of combined ratios under 100% (below 100% is indicative of an underwriting profit).

For decades, with few annual exceptions, frequency has continued on a clear downward path driven by technology, safer workplaces, improved risk management, and a long-term shift from manufacturing to service sectors. NCCI has no expectation that this trend will change course. For the last several years, severity trends have remained fairly moderate, tracking very closely with wage inflation. For these reasons, NCCI's analysis has indicated decreases across most of its jurisdictions, with double-digit decreases occurring in several states.

III. Emerging Impact of the *Castellanos* Decision

An assessment of the emerging impact of the *Castellanos* decision on Florida's workers compensation marketplace was undertaken as part of this year's filing review pursuant to the *Order on Rate Filing* issued by the OIR on October 31, 2017. Specifically, NCCI reviewed insurance company feedback, the change in claimant attorney fees, and the change in loss experience that has occurred since the *Castellanos* decision. To date, observed system changes in each of these areas are directionally consistent with NCCI's initial assessment of how the *Castellanos* decision would impact the Florida marketplace.

A. Insurance Company Feedback

Individual feedback was obtained from the state's largest workers compensation writers reporting financial data to NCCI. As carriers' books of business vary, input received across carriers differed with respect to the impact that the *Castellanos* decision has had on their specific books of business. Consistent with the information obtained in past years, most of the carriers interviewed specifically said they have experienced claim cost increases after the Supreme Court's decision, while a minority of carriers have not been materially impacted by the decision. Increases in claimant attorney fees were reported by all carriers interviewed. In addition, the carriers once again underscored the fact that litigated claims generally tend to take longer to close and are costlier when compared with non-litigated claims. Some carriers reported that litigated claims now represent a relatively larger portion of their book of business versus their experience prior to the *Castellanos* decision. These comments are relevant in that historical loss development patterns may not be reflective of future loss development.

Claimant attorney fees are reported as indemnity losses in the NCCI Financial Call data on which this filing is based. An analysis of these loss development factors indicates a notable shift in development has occurred. The table below shows indemnity loss development factors from a 1st to 19th report for year-end valuation dates for two years before (2014 and 2015) and two years after (2017 and 2018) the *Castellanos* decision. This table shows that the historical loss development factors for the before-*Castellanos* valuation dates are lower than those observed after the decision and may not be reflective of loss development patterns expected in the future.

	<u>Year-end Valuation</u>	<u>Indemnity Paid 1st:19th</u>	<u>Indemnity Paid+Case 1st:19th</u>
Before	2014	2.352	1.554
	2015	2.220	1.508
After	2017	2.498	1.601
	2018	2.676	1.653

The increase in paid loss development is directionally consistent with NCCI’s expectations in Florida’s post-*Castellanos* workers compensation environment. Carriers interviewed suggested that additional increases in system costs may be expected in the future—as system participants continue to adapt to and determine how best to operate in the current Florida workers compensation marketplace. For example, carriers reported that over the last couple of years, claimant attorneys have increasingly become involved with claims that went without representation prior to the *Castellanos* decision.

B. Claimant Attorney Fees

The increase in claimant attorney fees communicated by the carriers is supported by data obtained from the Florida Division of Administrative Hearings (DOAH). DOAH data received through the middle of June 2019, has shown the following increasing trend in the ratio of attorney fees to benefit and settlement amounts:

	(1)	(2)	(3) = (1) / (2)
<u>Year</u>	<u>Claimant Attorney Fees</u>	<u>Benefits & Settlements</u>	<u>Claimant Attorney Fees / Benefits & Settlements</u>
2014	136,290,766	1,050,978,421	13%
2015	133,744,267	1,055,780,685	13%
2016	165,142,032	1,071,072,283	15%
2017	187,212,242	974,410,525	19%
2018	212,341,592	951,756,424	22%
2019*	101,665,483	452,106,886	22%

* Incomplete year

The increase in claimant attorney fee percentages is particularly evident in 2017 and after. This is consistent with the expectation that claimant attorney fees would represent a larger proportion of system costs in Florida’s post-*Castellanos* workers compensation environment.

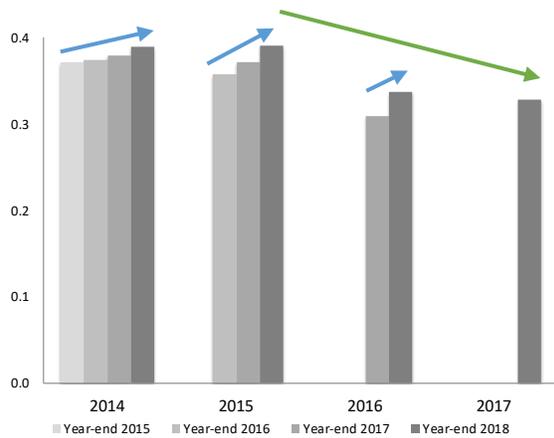
C. Loss Experience

The current workers compensation environment has been one of improving loss experience across the country, and Florida has proven to be no exception. While the impacts of the *Castellanos* decision can be observed, they have been more than offset by the continued improvement in loss experience. This is illustrated in the charts below showing indemnity paid and paid+case loss ratios. Both of these charts illustrate the following patterns:

- (i) Worsening results over time when focused on a single policy year
- (ii) Improving results over time when focused across policy years

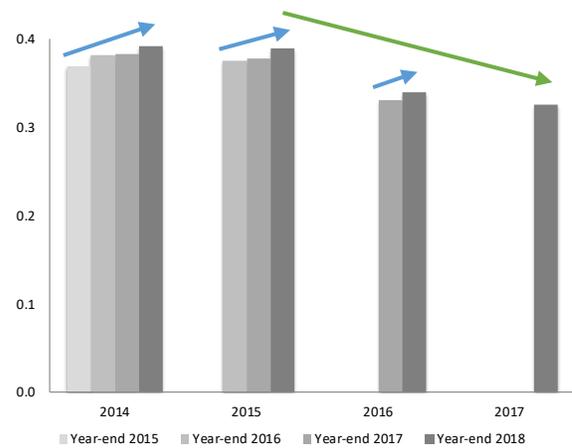
Florida Policy Year Indemnity Paid Loss Ratios

Developed to Ultimate and on Current Level



Florida Policy Year Indemnity Paid+Case Loss Ratios

Developed to Ultimate and on Current Level



The worsening of results over time can be observed by focusing on the loss ratios for Policy Years 2014, 2015, and 2016 at different valuations. The blue arrows highlight the worsening of Policy Years 2014, 2015, and 2016 for both paid and paid+case loss experience. The impact of the *Castellanos* decision has likely contributed to this pattern.

Improving results over time can be observed by focusing on the most recent loss ratios (year-end 2018) for each policy year. The green arrows highlight the improvement in the loss ratio over time with the 2017 loss ratio being the lowest of all. This pattern is consistent with the very favorable workers compensation industry results observed countrywide. The combination of two counteracting impacts has contributed to the current state of the Florida workers compensation system.