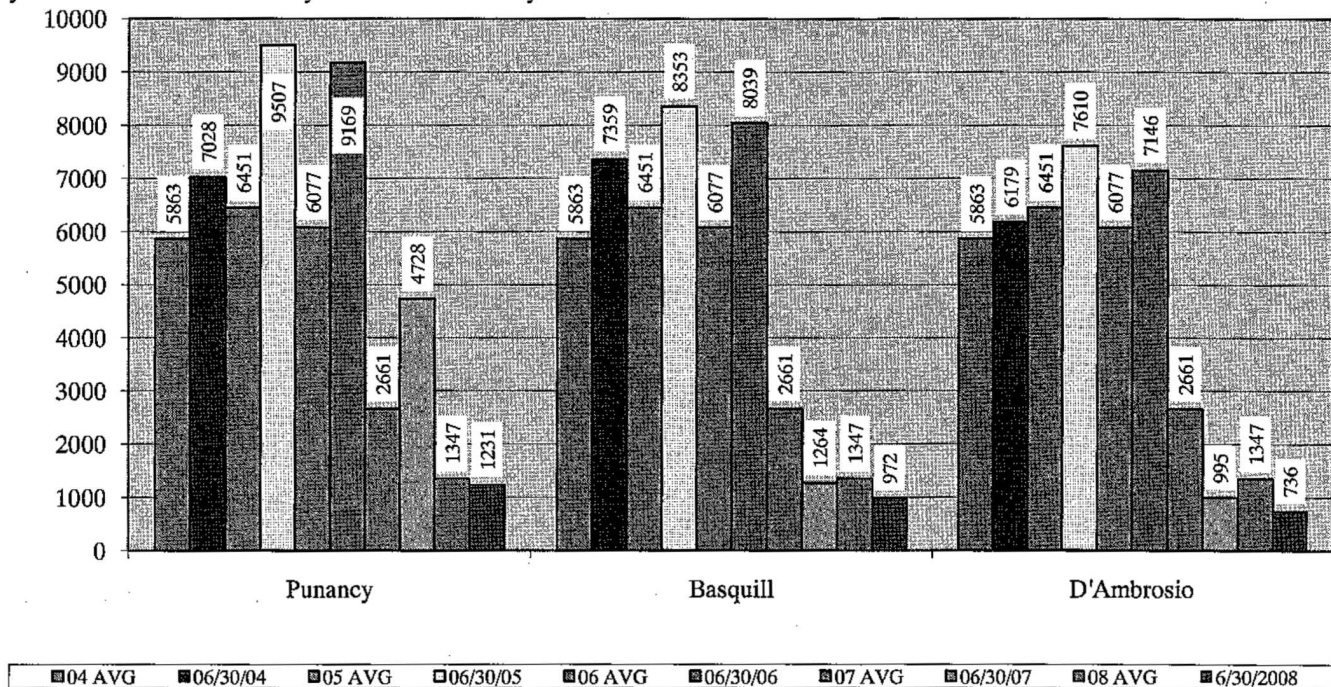
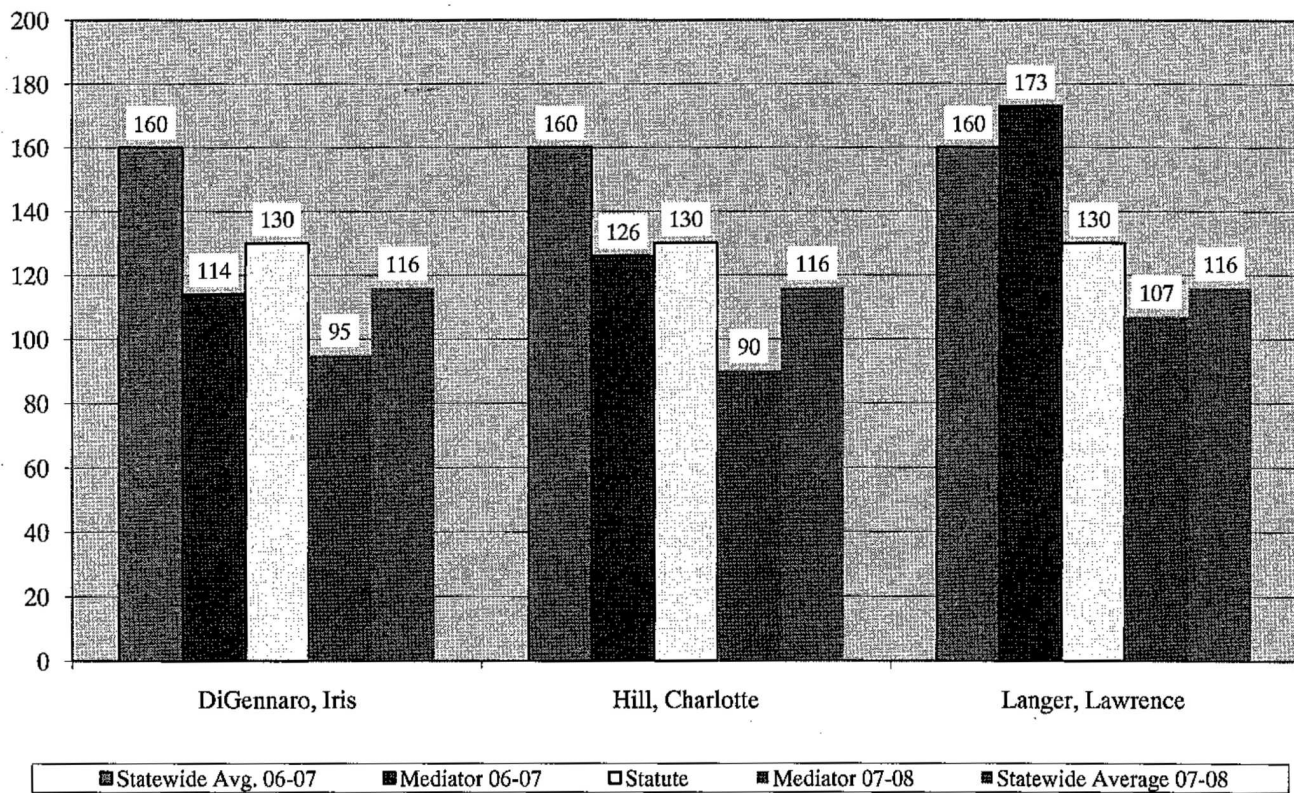


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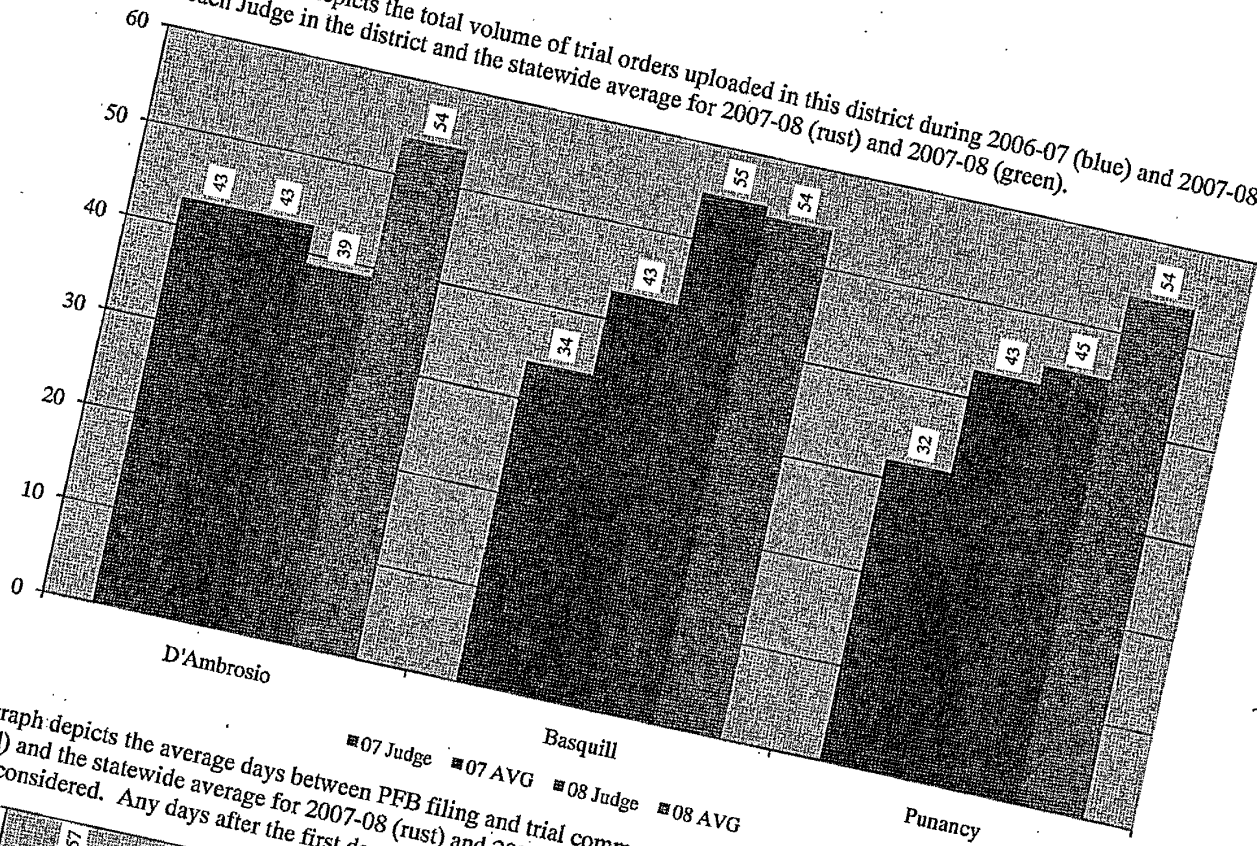
The following graph depicts the inventory of pending PFBs in this district at the conclusion of the last five fiscal years for each Judge in the district (multicolor bars, red on far right is 2008) and the statewide average for each year is represented by the blue bars immediately to the left of each year.



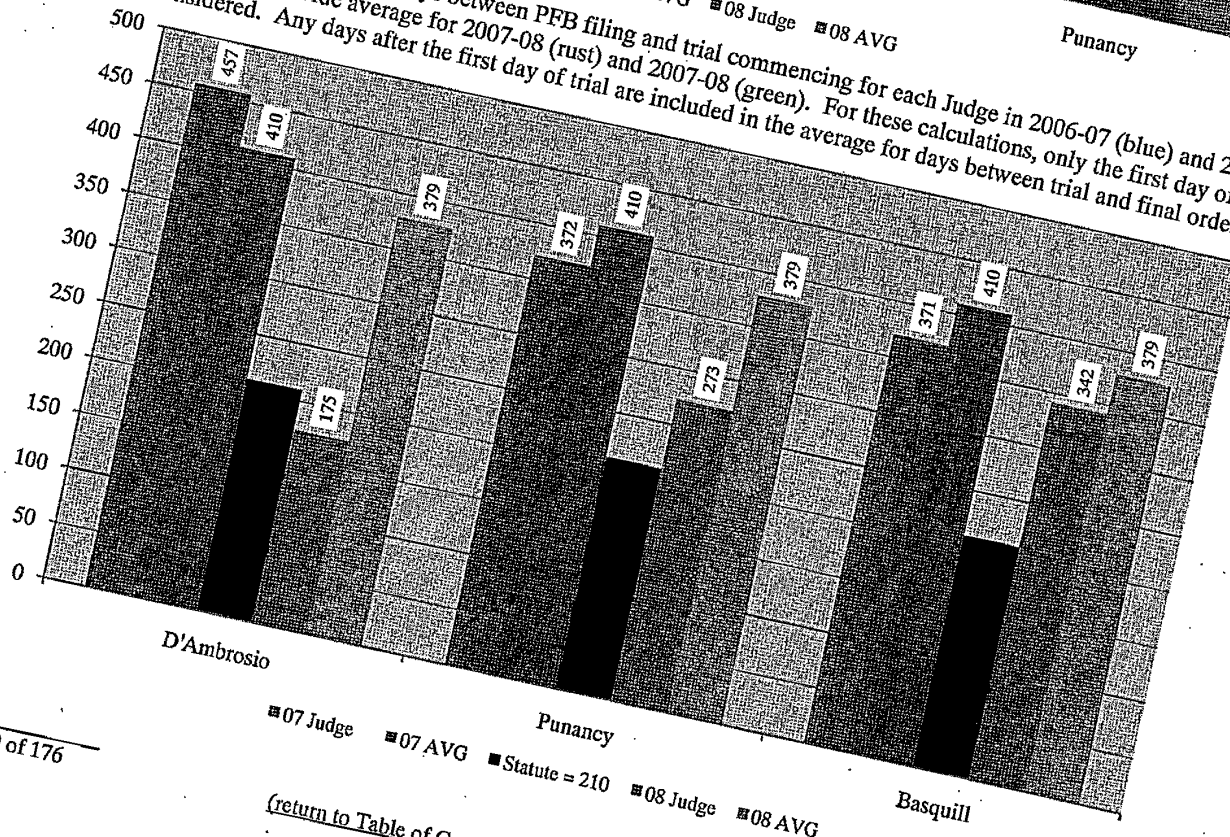
The following graph depicts the average number of days between PFB filing and the first mediation held thereon for each mediator in the district (purple (07) and red (08)) and the statewide average is represented (blue (07) and green (08)).



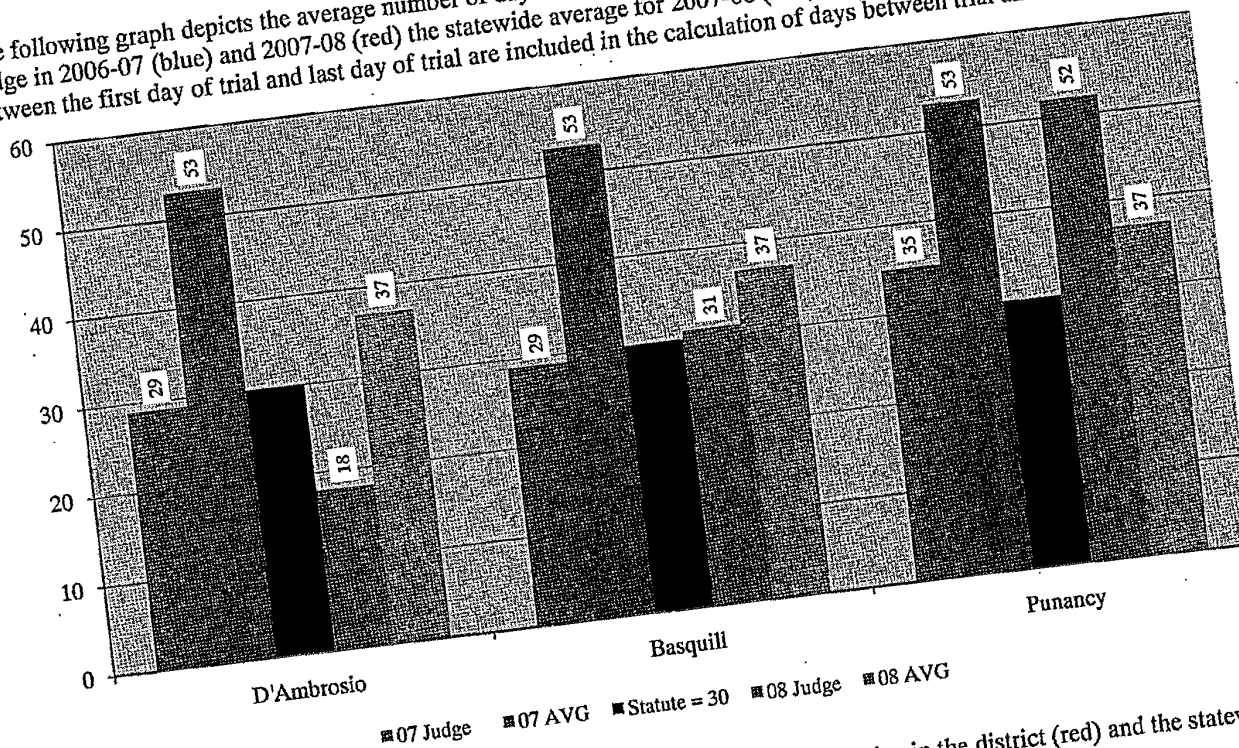
The following graph depicts the total volume of trial orders uploaded in this district during 2006-07 (blue) and 2007-08 (red) for each Judge in the district and the statewide average for 2007-08 (rust) and 2007-08 (green).



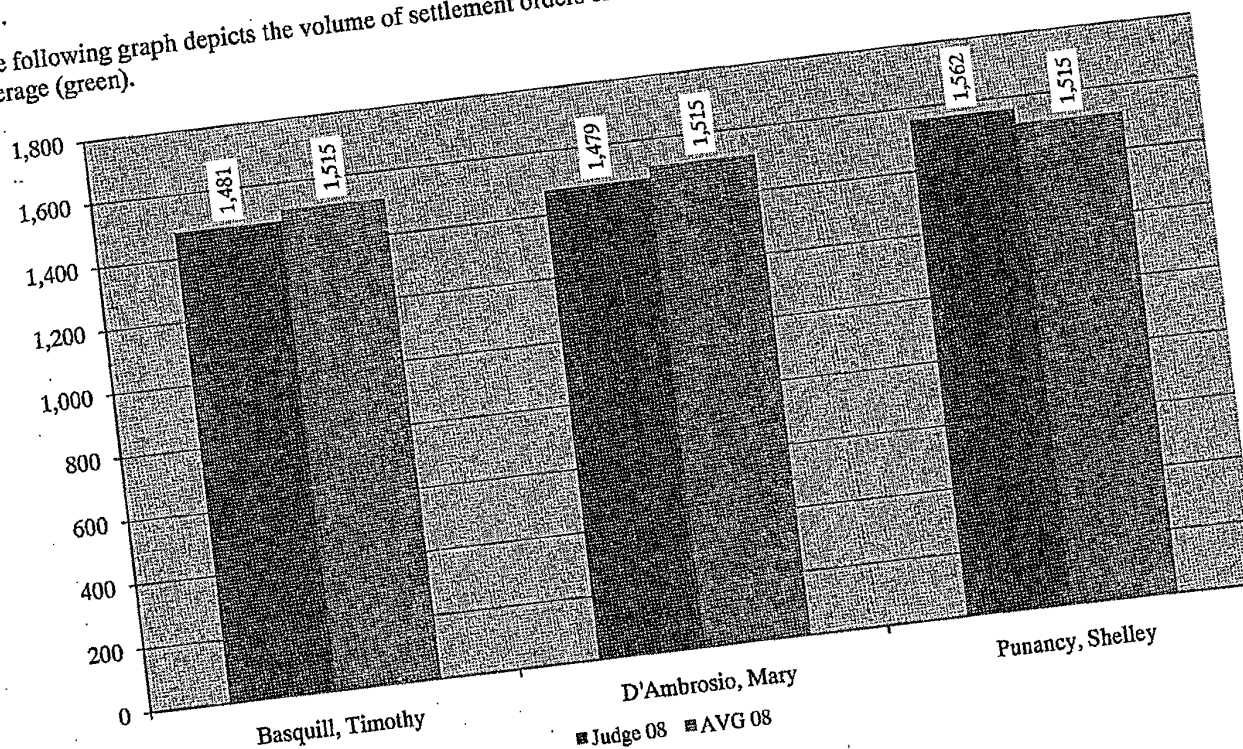
This graph depicts the average days between PFB filing and trial commencing for each Judge in 2006-07 (blue) and 2007-08 (red) and the statewide average for 2007-08 (rust) and 2007-08 (green). For these calculations, only the first day of trial is considered. Any days after the first day of trial are included in the average for days between trial and final order.



The following graph depicts the average number of days between trial (commencing) and the final order entry for each Judge in 2006-07 (blue) and 2007-08 (red) the statewide average for 2007-08 (rust) and 2007-08 (green). All days between the first day of trial and last day of trial are included in the calculation of days between trial and final order.

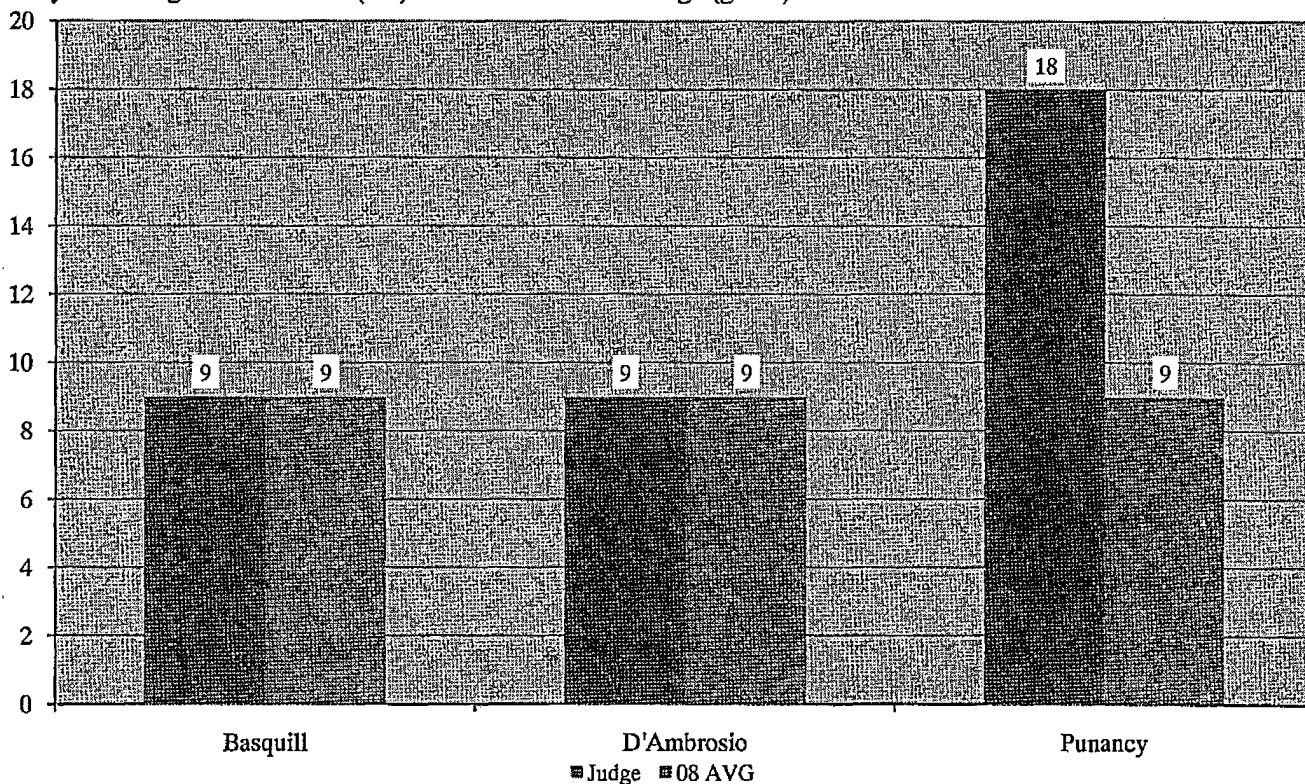


The following graph depicts the volume of settlement orders entered by each Judge in the district (red) and the statewide average (green).

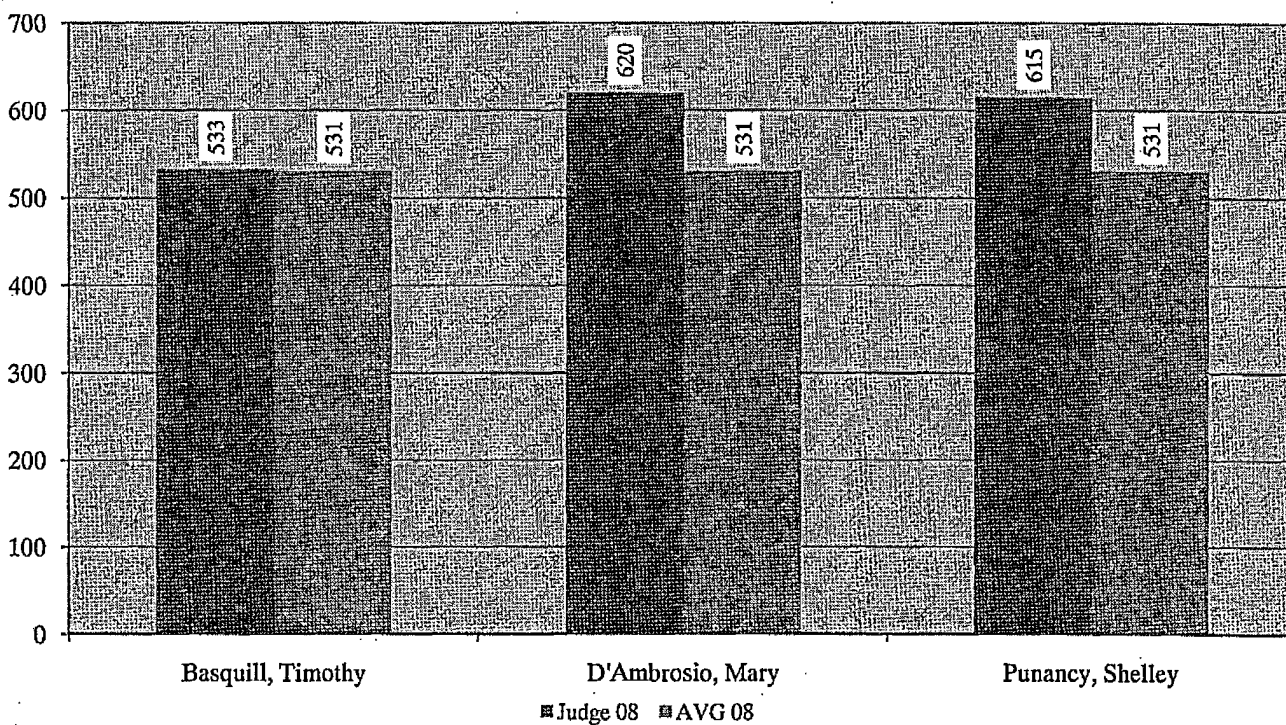




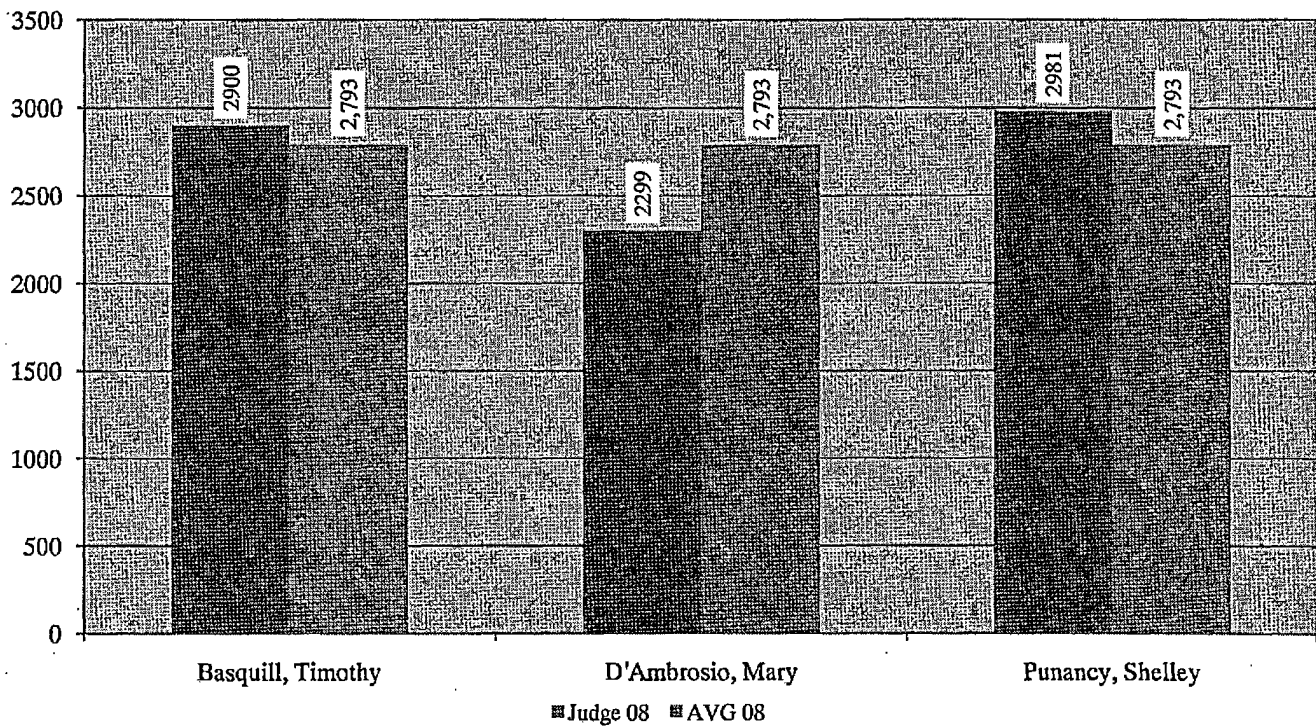
The following graph depicts the average number of days between filing of a settlement motion and entry of a settlement order by each Judge in the district (red) and the statewide average (green).



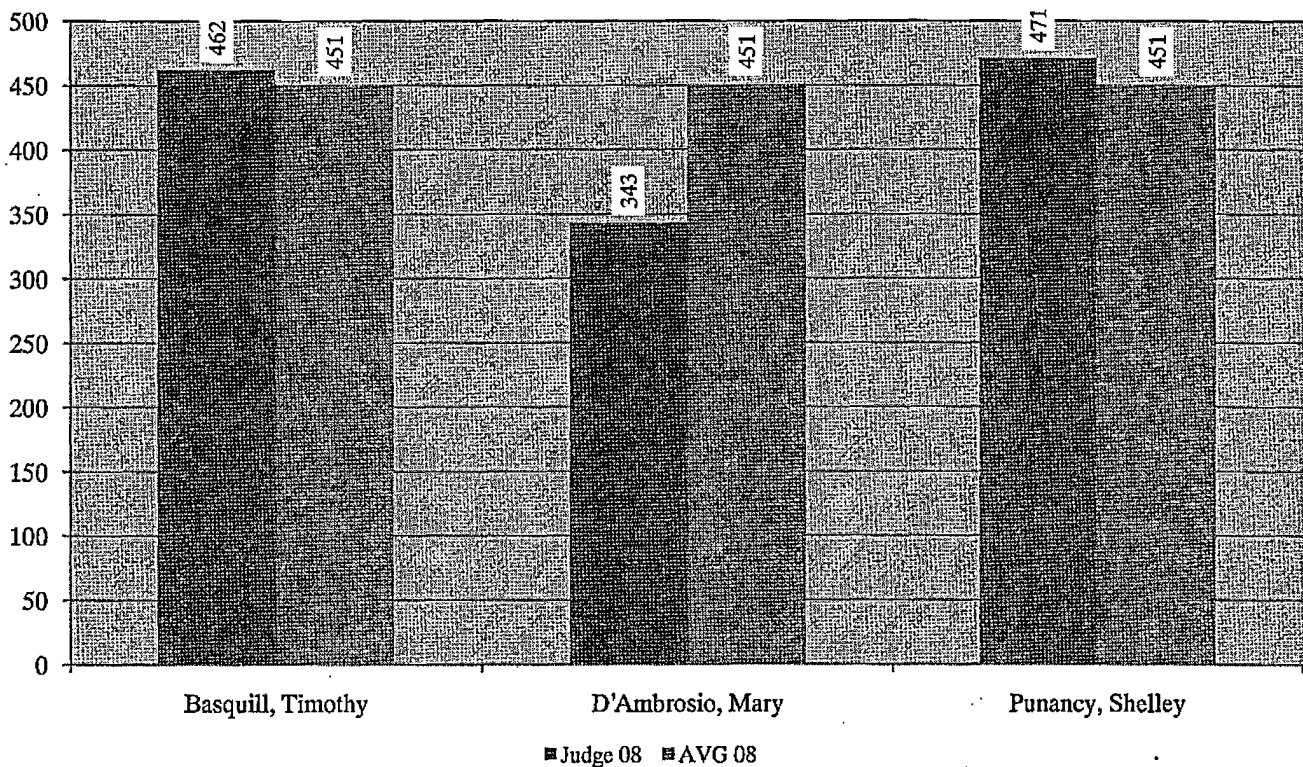
The following graph depicts the volume of stipulation orders entered by each Judge in the district (red) and the statewide average (green).



The following graph depicts the volume of “other” (meaning not settlement or stipulation) orders entered by each Judge in the district (red) and the statewide average (green).



The following graph depicts the volume of “other” (meaning not trials) hearings recorded as “held” by each Judge in the district (red) and the statewide average (green).



## Endnotes:

1 Fla. Stat. §440.45(5): "Not later than December 1 of each year, the Office of the Judges of Compensation Claims shall issue a written report to the Governor, the House of Representatives, the Senate, The Florida Bar, and the statewide nominating commission summarizing the amount, cost, and outcome of all litigation resolved in the previous fiscal year; summarizing the disposition of mediation conferences, the number of mediation conferences held, the number of continuances granted for mediations and final hearings, the number and outcome of litigated cases, the amount of attorney's fees paid in each case according to order year and accident year, and the number of final orders not issued within 30 days after the final hearing or closure of the hearing record; and recommending changes or improvements to the dispute resolution elements of the Workers' Compensation Law and regulations. If the Deputy Chief Judge finds that judges generally are unable to meet a particular statutory requirement for reasons beyond their control, the Deputy Chief Judge shall submit such findings and any recommendations to the Legislature."

2 All OJCC reports are published on the internet at [www.fljcc.org](http://www.fljcc.org), in the "Reports" section.

3 The Division website is <http://www.fldfs.com/WC/>.

4 The Florida Statutes are available online at: <http://www.flsenate.gov/Statutes/>

5 For example, it is common for a PFB to contain a claim for past medical care (payment for care by a medical provider or providers) and a claim for future medical care (authorization of a particular medical provider or specialty, i.e. orthopedic surgeon) and a claim for some form of lost-wage ("indemnity") benefit such as temporary total or temporary partial disability benefits. Many PFBs seek payment of attorney's fees and costs, and penalties and interest are commonly claimed when any form of indemnity is sought.

6 The appropriate method to seek determination of attorney fee entitlement or amount is usually by motion. Therefore, a significant volume of each JCCs workload comprises these significant motions that require evidentiary hearings.

7 Anecdotally, there is evidence that some attorneys file multiple PFBs in the same OJCC case on the same date. The logic or reason for this practice is not known. What is clear, however, is that this practice artificially increases the overall PFB volume because in those instances two (2) or even three (3) PFBs are filed to seek a group of benefits that could more logically (and inexpensively as PFBs are served by certified mail) have all been sought in a single PFB. There is also some anecdotal support for the conclusion that this practice is more prevalent in some geographic regions of the state than in others.

8 As this report goes to press, the rate issue remains in doubt. A rate was submitted by NCCI, and rejected by the Office of Insurance Regulation (OIR). Thereafter an amended rate filing was made, and approved to become effective January 1, 2009. However, the Supreme Court then rendered its decision in *Murray v. Mariner*. The implications and effects of this decision are not known at this time.

9 The conclusions reached by the DLES have previously been published. These conclusions are available for analysis. However, none of the raw source data used for those analyses was provided to the DOAH when the OJCC was transferred in 2001. The statistics published by the DLES are therefore expressed in this report for illustrative comparison only.

10 Mediation may be scheduled, on a previous PFB, at the time a subsequent PFB is filed. The OJCC Procedural Rules require that all pending PFBs are to be mediated at any mediation. Therefore, a distinct mediation does not necessarily occur for each PFB, and mediation of multiple PFBs at one mediation is common. Some PFBs are scheduled for expedited final hearing. These PFBs regard issues that are of a moderate financial value (\$5,000.00 or less), and mediation is not required for these PFBs.

11 There is anecdotal evidence that some divisions exhibit significant delays in the entry of final orders following trials. Each Judge's average time for entry of an order is illustrated in the appendices to this report. A 2006 audit of final orders entered by all Judges of Compensation Claims demonstrated average delays of over one year between trial and entry of a corresponding final order in some cases in some divisions. Such delays may inappropriately result in parties reaching settlement or resolution after trial through frustration with the Judge's unwillingness to enter a timely order. In other instances, the outcome of evidentiary rulings during trial may be sufficiently illuminating to the parties to allow meaningful analysis of the probable outcome of a given case and may result in a negotiated resolution before even a prompt and timely order may be entered.

12 The total OJCC budget for fiscal 2007-08 (\$19,522,773) included a special appropriation for the renovating an upgrading the MIA District office. This project included demolition of space, floor to ceiling renovation, furnishing, and significant technological upgrades including two video teleconference hearing facilities for use by visiting Judges of Compensation Claims and administrative law judges. This one-time special appropriation amount (\$1,154,914) has been deducted from the total budget (\$19,522,773) of the OJCC in order to yield the 2006-07 OJCC operating budget of \$18,367,869.

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14 In the last several years, the talents of Deputy Chief Judge Scott Stephens and Judge Mily Rodriguez-Powell were lost to  
the Circuit Court bench. In fiscal 2004-05, the OJCC lost the service of Judge Maria Ortiz to the County Bench. In recent  
fiscal years, the OJCC also has recently lost the talents of Judge Wilbur Anderson and Judge Richard Thompson to the  
private sector.

15 The aggregate cost of salary, taxes and benefits for 32 state mediators was \$3,112,736.65. This figure divided by the  
20,021 mediations conducted yield the cost per mediation of \$155.47. This figure does not include the costs of staff  
support or facilities or equipment. Therefore, this is a conservative cost figure.

16 Some percentage of PFBs may be excused from the mediation process by the assigned JCC if the issues are instead  
scheduled for expedited final hearing pursuant to Fla. Stat. §440.25. A very small percentage of mediations (six mediations  
in fiscal 2006-07) are waived by order of the Deputy Chief Judge of Compensation Claims.

17 Attorney's fees and costs are claimed in most petitions filed. Those claims are generally dependent upon the Claimant  
prevailing in a claim for medical or income benefits also claimed therein. Most trials on PFBs filed result in the award or  
denial of those substantive benefits. Entitlement to fees and costs is usually also resolved, and jurisdiction is reserved for  
determination of amount. By the same token, when parties resolve issues prior to trial it is common for entitlement to these  
ancillary or pendant claims to be stipulated with a similar reservation of jurisdiction regarding amount. Therefore, although  
an outcome of "all issues resolved except fees" still leaves an issue for potential trial, that result is not significantly different  
from the manner in which a trial leaves fee amount as an unresolved issue.

18 The 2006-07 figures include the category "washout" which was used interchangeably with "settled." In 2007-08 the  
"washout" nomenclature was not used.

19 This report is replete with examples that cast some doubt on the accuracy of the statistics maintained by the OJCC even  
since the transfer to the DOAH. However, the raw data for conclusions since 2001 remains available and can be re-verified  
and corrected. The OJCC continually does so, as reflected in numerous endnotes to the 2006-07 OJCC Annual Report.  
Therefore, while no statistic is ever above all suspicion, the figures since OJCC transfer to the DOAH are clearly more  
trustworthy than summary information available for prior years.

20 During the 2004 tropical cyclone season, Florida was affected by Hurricanes Charlie, Frances, Ivan, and Jeanne. Almost  
every District Office was affected by at least one tropical cyclone in 2004 and therefore the increase in continuances that  
year has been blamed to some extent on these unavoidable natural phenomena.

21 The following 16 Judges heard cases outside of their District in 2006-07, Beck, Dane, Lorenzen, Jenkins, Murphy,  
Remsnyder, Hafner, Thurman, Sculco, Condry, Portuallo, Lazzara, Sturgis, Spangler, Roesch, and Winn.

22 This data entry by OJCC personnel is not necessary when the PFB is created by counsel through the OJCC website using  
the e-PFB web-form. This is the reason that use of the e-PFB represents significant financial and time savings for the  
OJCC.

23 Fla. Stat. §440.34(1) provides in part: "A fee, gratuity, or other consideration may not be paid for services rendered for a  
claimant in connection with any proceedings arising under this chapter, unless approved as reasonable by the judge of  
compensation claims or court having jurisdiction over such proceedings."

24 Fla. Stat. §440.105(3)(b) provides: "It shall be unlawful for any attorney or other person, in his individual capacity or in his  
capacity as a public or private employee, or for any firm, corporation, partnership, or association to receive any fee or other  
consideration or any gratuity from a person on account of services rendered for a person in connection with any  
proceedings arising under this chapter, unless such fee, consideration, or gratuity is approved by a judge of compensation  
claims or by the Chief Judge of Compensation Claims."

25 Rule 6.124(4): "No later than October 1 of each year, all self-insurers, third-party administrators, and carriers shall report  
by electronic transmission to the OJCC the amount of all attorney's fees paid to their defense attorneys in connection with  
workers' compensation claims during the prior July 1 through June 30 fiscal year."

26 The data for this report was generated from the JCC Application database in August 2007, after each JCC had verified that  
all attorney fee and settlement orders for fiscal 2006-07 had been uploaded. In October 2007, the query was repeated and  
twenty additional orders had by then been uploaded to the database, altering the total figure. The ability to identify the  
individual staff responsible for such late uploading enhances the OJCC's ability to provide focused individual training to  
prevent recurrence in the future and to protect the integrity of the information reported in these reports.

27 The OJCC requires reporting of defense fees pursuant to statute. In 2007-08, the OJCC received inquiries that identified a  
potential flaw in defense fee data. A self-insured county inquired as to how to report defense fees inasmuch as all defense  
of their claims is provided though the efforts of some member of the county attorney's office. A carrier, similarly, inquired  
as to how services of in-house counsel could be captured for reporting. In each of these instances, the attorneys providing  
services are involved in workers' compensation and other legal services for the particular carrier (such as general liability  
or automobile issues). Therefore, no rational basis may exist to attribute the salary expenditures of carriers or counties or  
municipalities because of these complications. It is suspected that the defense fees aggregate reported annually by the  
OJCC understates the actual volume of defense fees.

28 The deadline for Carrier and Servicing Agent reporting of defense fees is October 1. Rule 60Q6.124(4). On that date the



OJCC compared the list of carriers that had reported to date with the list of all carriers that reported last fiscal year. There were several carriers identified that had not reported for fiscal 2007-08. These carriers were contacted individually to prompt compliance and the reporting website remained active to facilitate their late reporting. On October 27, 2007 the reporting link was closed, and this figure represents the total reported through that date. Visitors to that website thereafter will be afforded the opportunity to submit further data, but through a mechanism that will allow the OJCC to easily identify any carrier or servicing agent reporting thereafter. As of the closure of the link, Volusia County and Protective Insurance had not reported, but were on the 2006-07 list of reporting carriers.

Of the fees approved in fiscal year 2006-07, percent were for accidents in the seven years prior to calendar year in which the OJCC fiscal year ended (2000-2006). This is reasonably consistent with the fees approved in 2005-06. That year 76.31% of fees approved were for accident dates in the seven similar years prior (1999-2005).

The 210-day parameter applies by definition to the trial of PFB. Because the effort involved in trial of many other evidentiary matters are equally involved, the OJCC has defined "trial" to include hearings on PFB, attorney fee motions/petitions, SDTF reimbursement and other significant evidentiary motion hearings. The OJCC measures "time to trial" from the filing of the operative pleading (PFB/Motion) to the first day of trial. The time periods between the filing of these significant motions/petitions and the trial thereon are included in the averages for OJCC aggregates and for the various Judge's charts included herein.

The 30-day parameter applies by definition to the entry of final orders on PFB. For the same reason that the OJCC includes more than PFB hearings in the "trial" definition, the OJCC likewise includes the resulting orders in the definition of "trial orders." The time to order is measured from the first day of trial through the ultimate entry of a final order. An abbreviated order is counted as the final order unless it is subsequently vacated, in which case the ultimately entered final order is counted. The time periods between the hearing of these significant motions/petitions and order thereon are included in the averages for OJCC aggregates and for the various Judge's charts included herein.

Fla. Stat. §440.45(2)(c): "Each judge of compensation claims shall be appointed for a term of 4 years, but during the term of office may be removed by the Governor for cause. Prior to the expiration of a judge's term of office, the statewide nominating commission shall review the judge's conduct and determine whether the judge's performance is satisfactory. Effective July 1, 2002, in determining whether a judge's performance is satisfactory, the commission shall consider the extent to which the judge has met the requirements of this chapter, including, but not limited to, the requirements of ss. 440.25(1) and (4)(a)-(e), 440.34(2), and 440.442. If the judge's performance is deemed satisfactory, the commission shall report its finding to the Governor no later than 6 months prior to the expiration of the judge's term of office." (emphasis added).

Fla. Stat. §440.25(1): "Forty days after a PFB is filed under s. 440.192, the judge of compensation claims shall notify the interested parties by order that a mediation conference concerning such PFB has been scheduled unless the parties have notified the judge of compensation claims that a private mediation has been held or is scheduled to be held. A mediation, whether private or public, shall be held within 130 days after the filing of the PFB. Such order must give the date the mediation conference is to be held. Such order may be served personally upon the interested parties or may be sent to the interested parties by mail. If multiple PFBs are pending, or if additional PFBs are filed after the scheduling of a mediation, the judge of compensation claims shall consolidate all PFBs into one mediation. The claimant or the adjuster of the employer or carrier may, at the mediator's discretion, attend the mediation conference by telephone or, if agreed to by the parties, other electronic means. A continuance may be granted upon the agreement of the parties or if the requesting party demonstrates to the judge of compensation claims that the reason for requesting the continuance arises from circumstances beyond the party's control. Any order granting a continuance must set forth the date of the rescheduled mediation conference. A mediation conference may not be used solely for the purpose of mediating attorney's fees."

Fla. Stat. §440.25 (4)(a): "If the parties fail to agree to written submission of pretrial stipulations, the judge of compensation claims shall conduct a live pretrial hearing. The judge of compensation claims shall give the interested parties at least 14 days' advance notice of the pretrial hearing by mail."

Fla. Stat. §440.25(4)(b): "The final hearing must be held and concluded within 90 days after the mediation conference is held, allowing the parties sufficient time to complete discovery. Except as set forth in this section, continuances may be granted only if the requesting party demonstrates to the judge of compensation claims that the reason for requesting the continuance arises from circumstances beyond the party's control. The written consent of the claimant must be obtained before any request from a claimant's attorney is granted for an additional continuance after the initial continuance has been granted. Any order granting a continuance must set forth the date and time of the rescheduled hearing. A continuance may be granted only if the requesting party demonstrates to the judge of compensation claims that the reason for requesting the continuance arises from circumstances beyond the control of the parties. The judge of compensation claims shall report any grant of two or more continuances to the Deputy Chief Judge."

Fla. Stat. §440.25(4)(c): "The judge of compensation claims shall give the interested parties at least 14 days' advance notice of the final hearing, served upon the interested parties by mail."

Fla. Stat. §440.25(4)(d): "The final hearing shall be held within 210 days after receipt of the PFB in the county where the



injury occurred, if the injury occurred in this state, unless otherwise agreed to between the parties and authorized by the judge of compensation claims in the county where the injury occurred. However, the claimant may waive the timeframes within this section for good cause shown. If the injury occurred outside the state and is one for which compensation is payable under this chapter, then the final hearing may be held in the county of the employer's residence or place of business, or in any other county of the state that will, in the discretion of the Deputy Chief Judge, be the most convenient for a hearing. The final hearing shall be conducted by a judge of compensation claims, who shall, within 30 days after final hearing or closure of the hearing record, unless otherwise agreed by the parties, enter a final order on the merits of the disputed issues. The judge of compensation claims may enter an abbreviated final order in cases in which compensability is not disputed. Either party may request separate findings of fact and conclusions of law. At the final hearing, the claimant and employer may each present evidence with respect to the claims presented by the PFB and may be represented by any attorney authorized in writing for such purpose. When there is a conflict in the medical evidence submitted at the hearing, the provisions of s. 440.13 shall apply. The report or testimony of the expert medical advisor shall be admitted into evidence in a proceeding and all costs incurred in connection with such examination and testimony may be assessed as costs in the proceeding, subject to the provisions of s. 440.13. No judge of compensation claims may make a finding of a degree of permanent impairment that is greater than the greatest permanent impairment rating given the claimant by any examining or treating physician, except upon stipulation of the parties. Any benefit due but not raised at the final hearing which was ripe, due, or owing at the time of the final hearing is waived."

38 Fla. Stat. §440.25(4)(e): "The order making an award or rejecting the claim, referred to in this chapter as a "compensation order," shall set forth the findings of ultimate facts and the mandate; and the order need not include any other reason or justification for such mandate. The compensation order shall be filed in the Office of the Judges of Compensation Claims at Tallahassee. A copy of such compensation order shall be sent by mail to the parties and attorneys of record at the last known address of each, with the date of mailing noted thereon."

39 Fla. Stat. §440.442: "The Deputy Chief Judge and judges of compensation claims shall observe and abide by the Code of Judicial Conduct as adopted by the Florida Supreme Court. Any material violation of a provision of the Code of Judicial Conduct shall constitute either malfeasance or misfeasance in office and shall be grounds for suspension and removal of the Deputy Chief Judge or judge of compensation claims by the Governor."

40 Fla. Stat. §440.34(2): "In awarding a claimant's attorney's fee, the judge of compensation claims shall consider only those benefits secured by the attorney. An attorney is not entitled to attorney's fees for representation in any issue that was ripe, due, and owing and that reasonably could have been addressed, but was not addressed, during the pendency of other issues for the same injury. The amount, statutory basis, and type of benefits obtained through legal representation shall be listed on all attorney's fees awarded by the judge of compensation claims. For purposes of this section, the term "benefits secured" does not include future medical benefits to be provided on any date more than 5 years after the date the claim is filed. In the event an offer to settle an issue pending before a judge of compensation claims, including attorney's fees as provided for in this section, is communicated in writing to the claimant or the claimant's attorney at least 30 days prior to the trial date on such issue, for purposes of calculating the amount of attorney's fees to be taxed against the employer or carrier, the term "benefits secured" shall be deemed to include only that amount awarded to the claimant above the amount specified in the offer to settle. If multiple issues are pending before the judge of compensation claims, said offer of settlement shall address each issue pending and shall state explicitly whether or not the offer on each issue is severable. The written offer shall also unequivocally state whether or not it includes medical witness fees and expenses and all other costs associated with the claim."

# Florida Office of Insurance Regulation



2008 Workers' Compensation Annual Report

January 2009

Kevin M. McCarty  
Commissioner

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## 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 (HHI) 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% of the next \$5,000 of the amount of benefits secured, 10 percent of the remaining....”

In *Emma Murray v. Mariner Health Inc. and ACE USA*, SC07-244 (hereinafter referred to as the *Murray* decision), 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 the *Murray* decision 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* decision is being cited as one that returns attorneys’ fee awards to the same system that existed prior to the 2003 reforms.

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 Statutes, 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 FWCJUA.
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 2007.
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 2007 Annual Report

The 2007 Workers' Compensation Annual Report was the third report resulting from the statutory mandate, and concluded that the workers' compensation market is reasonably competitive. Specifically, the report showed that, during 2006:

- 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 HHI 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 2008 Workers' Compensation Annual Report continues to examine the workers' compensation insurance market from the same perspective. The HHI is used 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 framework 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 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 financial data for admitted carriers, and the NAIC financial databases are also used throughout this report.

In 2007, the NCCI provided advisory ratemaking and statistical services in 35 states (including Florida) and the District of Columbia.<sup>1</sup> In 12 of the states, local ratemaking or advisory organizations supplied the information.<sup>2</sup> However, in the following five states and territories, the majority of workers' compensation insurance is provided through an exclusive state fund<sup>3</sup>:

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

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

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<sup>1</sup> NCCI, Annual Statistical Bulletin, 2007 Edition, page 4.

<sup>2</sup> NCCI, Annual Statistical Bulletin, 2007 Edition, page 4.

<sup>3</sup> NCCI, Annual Statistical Bulletin, 2006 Edition, page 4.

## Self-Insurance Funds

In addition to the private market, composed of admitted carriers and the residual market as represented by the 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, SIFs 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. This legislative change occurred concurrently with the formation of the FWCJUA. Together, these two changes transformed the Florida workers' compensation insurance 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 2007 report, there continues to be four group self-insurance funds in 2008:

- Florida Rural Electric Self-Insurers Fund
- Florida Retail Federation Self-Insurers Fund
- FRSA Self-Insurers Fund
- Florida Citrus, Business and Industries Fund

All four of these entities are domiciled in Florida, write exclusively in Florida, and together these SIFs represent only 5.97% of the workers' compensation insurance market in Florida.<sup>4</sup>

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<sup>4</sup> The SIF total premium written was \$ 186.1 million in 2007. The total Florida market including the FWCJUA was \$ 3.3 billion in 2007. The FWCJUA total direct written premium in 2007 was \$18.9 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, New York, Texas, 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 2007:

Rank	State	2007 Written Premium
# 1	California	\$ 9.0 billion
# 2	New York	\$4.2 billion
# 3	Florida	\$3.1 billion
# 4	Texas	\$2.7 billion
# 5	Illinois	\$2.7 billion
# 6	Pennsylvania	\$2.3 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 third in the most workers' compensation insurance premium written in 2007.

When compared to 2006 results, some differences are evident. While Florida's total written premium remained relatively constant at \$3.1 billion, and other states remained almost unchanged, California's premium volume continued its decline; to \$9 billion in 2007, following \$11.1 billion in 2006, and \$14.6 billion in 2005. For a complete list of workers' compensation premium written in 2007 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 212 and 290. As shown below, Florida ranked in the middle with 241 insurance companies writing workers' compensation insurance, the same number of companies that earned premium in 2007.

Rank	State	Entities
# 1	Pennsylvania	290
# 2	Illinois	297
# 3	Texas	260
# 4	Florida	241
# 5	New York	239
# 6	California	212

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	\$43.5 million
# 2	New York	\$17.9 million
# 3	Florida	\$13.0 million
# 4	Texas	\$10.5 million
# 5	Illinois	\$9.9 million
# 6	Pennsylvania	\$8.1 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 HHI.

### Herfindahl-Hirschman Index Comparison by State

The 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. Hirschman limited its usage to export/import trade. C. Herfindahl applied the concentration index to industries in his Ph.D. dissertation in 1950.

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% squared equals 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	1,827
# 2	Texas	904
# 3	California	819
# 4	Florida	363
# 5	Illinois	179
# 6	Pennsylvania	162

With an HHI of 363 in 2007, 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% of the market share. For a complete list of HHIs by state for 2007, 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 2007 for the six most populous states, and their market shares within those states:

State	Leading Carrier	Market Share
New York	State Insurance Fund	40.7%
Texas	Texas Mutual Insurance Co.	27.5%
California	State Compensation Insurance Fund	26.6%
Florida	Bridgefield Employers Inc.	13.5%
Illinois	Zurich American Insurance Co.	7.2%
Pennsylvania	Erie Insurance Exchange	4.7%

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 is the largest state in the country for which the private market insurance industry is the dominant provider of workers' compensation insurance.

Bridgefield Employers Inc.'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 13.5% of the market (which would be 12.65 % 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 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 2007 are:

Rank	State	Loss Ratio
# 1	New York	69.1%
# 2	Illinois	67.3%
# 3	Pennsylvania	63.6%
# 4	California	54.5%
# 5	Texas	50.7%
# 6	Florida	48.9%

While this is a very rough measure of profitability, it does show that for the workers' compensation markets in 2007, 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%, 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	New York	3.9%	73.0%
# 2	Illinois	5.0%	72.3%
# 3	Pennsylvania	6.2%	69.8%
# 4	California	6.2%	60.7%
# 5	Florida	6.9%	55.8%
# 6	Texas	4.5%	55.2%

Because loss amounts generally greatly exceed the defense cost and containment expenses, it is not surprising that this list closely mirrors the list of states with the highest loss ratio. The one change to note is that with the inclusion of the DCC expenses, Florida moves from the lowest expense state of the six to number five. For 2007, Florida's reported DCC ratio is marginally the highest of the six most populous states.

## Overview of Florida's Largest Carriers

In 2007, 246 entities reported writing workers' compensation business in the state of Florida, including 241 insurance companies, four group SIFs and the FWCJUA. The 10 largest companies based on written premium were:

Rank	Company	Written Premium	% of Market	CUM %
# 1	Bridgefield Employers	\$420,330,457	13.49%	13.49%
# 2	Zenith	\$ 198,423,279	6.37%	19.85%
# 3	FCCI	\$ 156,064,852	5.01%	24.86%
# 4	The Florida Retail Federation SIF	\$ 130,236,991	4.18%	29.04%
# 5	Zurich American	\$ 117,850,249	3.78%	32.82%
# 6	American Home Assurance	\$ 107,890,937	3.46%	36.28%
# 7	Commerce and Industry	\$ 94,608,185	3.04%	39.32%
# 8	Insurance Co. of the State of PA	\$ 89,817,237	2.88%	42.20%
# 9	FFVA Mutual Insurance Co.	\$ 86,528,007	2.78%	44.98%
# 10	Technology Insurance Co. Inc.	\$ 67,957,644	2.18%	47.16%
<b>TOTAL IN FLORIDA</b>		<b>\$ 3,116,698,968</b>		

As was the case in last year's report, the 10 largest companies wrote almost 48% of the workers' compensation insurance premium in Florida in 2007. All of the companies with the exception of The Florida Retail Federation SIF are property and casualty companies, organized as stock companies. Four of the top ten writers are domestics<sup>5</sup>, while the foreign corporations have home offices in New York (three), Pennsylvania, New Hampshire, and California.<sup>6</sup>

<sup>5</sup> Domestics and their locations include: Bridgefield Employers (Lakeland, FL), FCCI Insurance (Sarasota, FL), The Florida Retail Federation SIF (Lakeland, FL), and FFVA Mutual Insurance Company (Maitland, FL).

<sup>6</sup> Foreign companies and their locations include: Commerce and Industry (New York, NY), Zenith Insurance (Woodland Hills, CA), Zurich American (New York, NY), and American Home Assurance (New York, NY), Insurance Co. of State of PA (Harrisburg, PA) and Technology Insurance Company (Nashua, NH).



Three of the ten companies (American Home Assurance, Commerce and Industry, and Insurance Co. of the State of PA) are members of the same insurance group, AIG. 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 these three companies. To date, the OIR has not found any solvency issues for these companies related to the problems at the AIG parent company, but is continuing to monitor developments. Moreover, the companies' domestic regulators have not noted any solvency concerns.

### **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 description 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	FL 100%					0%
Zenith	CA 45 %	FL 32%	TX 6%	PA 4%	NC 2%	11%
FCCI	FL 82 %	GA 5%	IN 3%	SC 3%	IL 2%	4%
Florida Retail Federation SIF	FL 100%					
Zurich American	CA 15%	IL 10%	TX 8%	FL 6%	PA 5%	56%
American Home Assurance	CA 20%	TX 6%	IL 6 %	FL 5%	NY 4%	60%
Commerce and Industry	FL 9%	CA 7%	NY 7%	IL 6%	GA 6%	65%
Insurance Co. of the State of PA	NY 28%	MA 16%	FL 11%	TX 7%	CA 3%	36%
FFVA Mutual Insurance Co.	FL 83 %	GA 13%	AL 1%	TN 1%	KY 1%	1%
Technology Insurance Co. Inc.	FL 29%	IL 15%	GA 11%	PA 11%	VA 4%	30%

In contrast to other market studies conducted by the OIR for other lines of business, there is less geographic diversification among the top writers. Instead, four companies write almost exclusively in Florida. The leading states for these carriers other than Florida include: Georgia, Indiana, South Carolina, Illinois, Tennessee, and Kentucky. Florida represents the state with the largest book of business for six of these ten companies. For the four companies that do not write most of their workers' compensation insurance in Florida, three write the most in workers' compensation insurance in California and one in New York.

### 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 six categories: 1) Workers' Compensation<sup>7</sup>, 2) Other/Products Liability<sup>8</sup>, 3) Commercial Multi-Peril<sup>9</sup>, 4) Automobile (includes Private Passenger and Commercial for both damage and liability)<sup>10</sup>, and 5) All Other.

<sup>7</sup> Annual Statement Exhibit of Premiums and Losses, Line 16.

<sup>8</sup> Annual Statement Exhibit of Premiums and Losses, Lines 17 and 18.

<sup>9</sup> Annual Statement Exhibit of Premiums and Losses, Lines 5.1 and 5.2.

<sup>10</sup> Annual Statement Exhibit of Premiums and Losses, Lines 19.1, 19.2, 19.3, 19.4, 21.1 and 21.2.

Company	Workers' Comp	Other/Product Liability	Commercial Multi-Peril	Auto	All Other
Bridgefield Employers	100%				
Zenith	100%				
FCCI	50%	9%	16%	16%	9%
The Florida Retail SIF	100%				
Zurich American	25%	27%	10%	8%	29%
American Home Assurance*	29%	34%	2%	9%	26%
Commerce and Industry Insurance Co. of the State of PA	30%	35%	2%	10%	23%
FFVA	100%				
Technology Insurance Co. Inc.	65%	25%	0%	10%	0%

The table shows that 4 of the ten top writers of workers' compensation insurance focus on this specific line of business having nearly 75% or more of their total book of business in that line. Other lines of business commonly written include auto, commercial multi-peril and other/product liability. Zurich American, FCCI, American Home Assurance, Commerce and Industry, and Insurance Co. of the State of PA 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, 2007, Florida had 399 entities in the workers' compensation marketplace including one residual market company (the FWCJUA) and 23 miscellaneous entities.<sup>11</sup> These 399 entities also included 375 companies with a certificate of authority including: 370 property and casualty companies, one reciprocal company and four group self-insurance funds. Of these, 241 companies in the voluntary market along with four self-insurance funds, and the FWCJUA were actively writing business.

As of December 2006, there were 390 entities. During 2007, 12 new entities entered the market. Three were new to the state, while nine companies were already operating in Florida, and expanded by adding the line of workers' compensation. All 12 of the new entities were property and casualty companies. Of the 12, only one (Normandy Harbor Insurance Company, Inc.) is domiciled in Florida. The other 11 companies were domiciled in New York, Delaware, New Jersey, New Hampshire, Nebraska, Missouri, Minnesota (two), Kansas, California, and Arizona. New entities authorized to operate in the Florida workers' compensation insurance market in 2007 were:

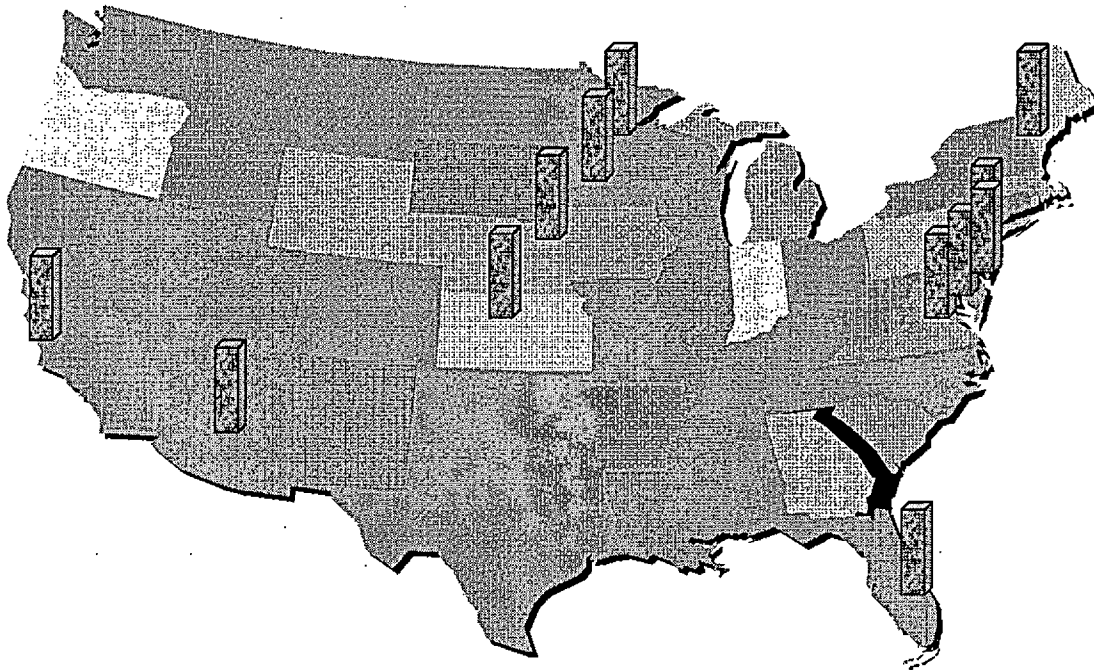
Benchmark Insurance Company  
Employers Compensation Insurance Company  
Gateway Insurance Company  
Hanover American Insurance Company  
Munich Reinsurance America, Inc.  
New York Marine and General Insurance Company  
Normandy Harbor Insurance Company, Inc.  
Preferred Professional Insurance Company  
Redland Insurance Company  
Riverport Insurance Company  
SFM Mutual Insurance Company  
Washington International Insurance Company

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<sup>11</sup> The 23 miscellaneous organizations do not directly write workers' compensation insurance. These include Advisory Organizations (8), Rating Organizations (7), and Accredited Reinsurers (8).

Four<sup>12</sup> of the new entrants reported writing direct workers' compensation premiums in 2007. The remaining six held an active Certificate of Authority.

As the map below shows, the 12 new workers' compensation insurers are domiciled in 11 different cities in 11 different states. This is potentially beneficial to Florida's economy, as well as the market itself, as 11 companies represent investment capital coming from outside the region:



During 2007, three entities that were previously operating in Florida left the market. In 2007, one company that had a license to write workers' compensation insurance had its certificate of authority suspended.<sup>13</sup> One company continues to have an active certificate of authority, but specifically withdrew its authority to write workers' compensation insurance in Florida<sup>14</sup> and one company has surrendered its certificate of authority.<sup>15</sup>

<sup>12</sup> Employers Compensation Insurance Company, Hanover American Insurance Company, Redland Insurance Company and SFM Mutual Insurance Company.

<sup>13</sup> Providence Washington Insurance Company's Florida Certificate of Authority has passed the 2-year statutory limit for suspension, (F.S. 624.421(4)) and has, therefore, been revoked, effective August 15, 2007. The company shall continue to service its existing business in Florida including all claims and liabilities.

<sup>14</sup> MetLife Insurance Company of Connecticut

<sup>15</sup> Security Insurance Company of Hartford

Two companies both entered and exited within 2007 – North Pointe Insurance was authorized on March 29, 2007, but then withdrew its certificate of authority on May 2, 2007 and Employers Insurance Co. of Nevada was authorized on January 17, 2007 and withdrew its certificate of authority the same day. 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 ratio. Further, Florida is a "competitive" market as measured by the HHI.

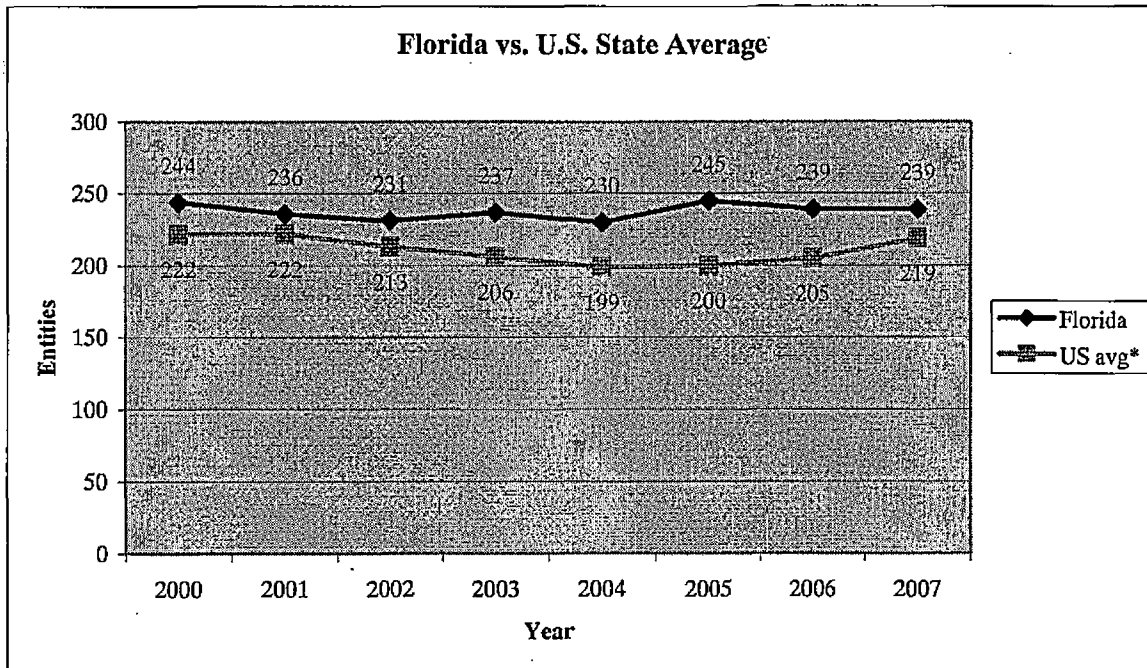
However, another aspect of the market that is important to examine are trends over the last five years to determine if Florida's market is consistently moving in the right direction as a vibrant market and to compare these trends to the other comparison states. For the comparative purposes here, the four SIFs 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 2007 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 six 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 a more substantial increase in 2007 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 the number was again the same in 2007.

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
<b>Florida</b>	\$2.66	\$2.78	\$2.97	\$3.19	\$3.35	\$3.72	\$3.74	\$3.11
<b>Avg. U.S. State</b>	\$0.65	\$0.74	\$0.84	\$0.95	\$1.02	\$1.10	\$1.07	\$1.03

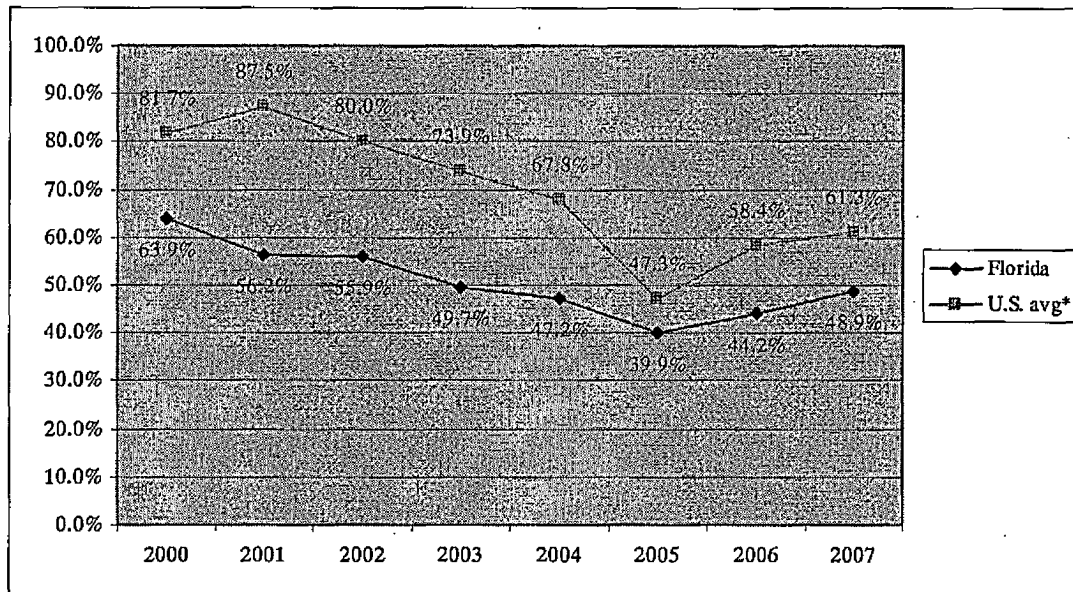
From 2000 to 2007, the total workers' compensation insurance premium paid for the average U.S. state has increased 58%, which outdistances the 17% increase in Florida, even though Florida's working population grew at a rate much faster than the national average. Interestingly, the amount of workers' 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% and in Florida by 17%. 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 2007, Florida had a higher loss ratio and a higher loss + DCC ratio, although these mirror a national trend of higher loss ratios and higher loss + DCC ratios.

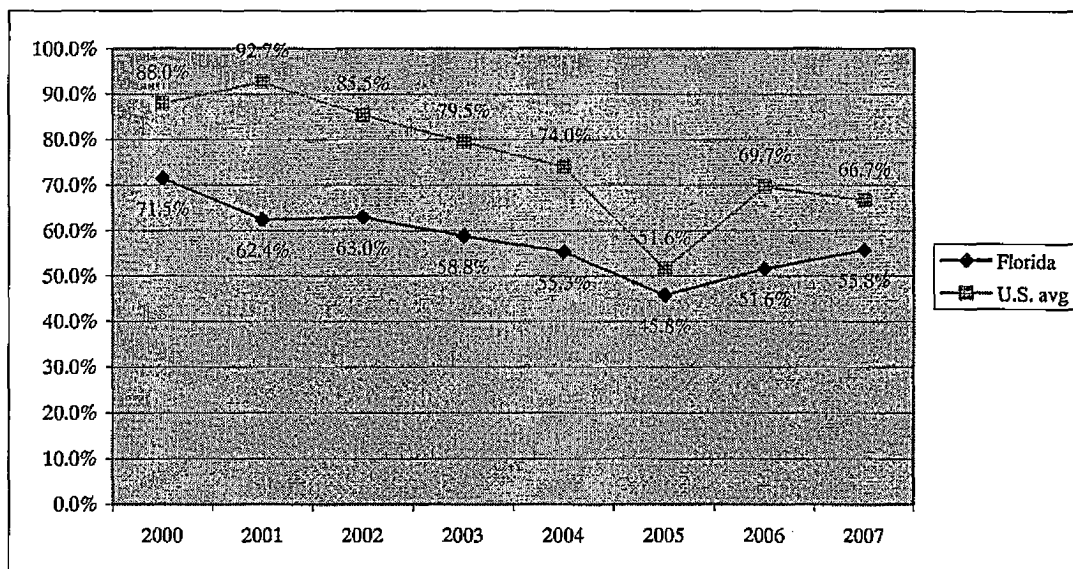
The trends in the loss ratios are shown on the next page:

## Workers' Compensation Insurance Loss Ratios Florida vs. U.S. State Average<sup>16</sup>



As a broader measure, the loss + DCC ratio shows a similar pattern:

## Workers' Compensation Insurance Loss + DCC Ratios<sup>17</sup>



## Workers' Compensation Rates

<sup>16</sup> The 61.3% 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 58.9%.

<sup>17</sup> The 66.7% DCC + loss ratio used here is an unweighted average. A weighted average would produce a national DCC + loss ratio of 67.0%.

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.<sup>18</sup>

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% rate reduction, with an additional reduction of 5.2% in 2004. These rate reductions continued unabated through to the most recent rate reduction of 18.6% approved by Commissioner McCarty on October 30, 2008 to take effect on January 1, 2009. With this rate change, the cumulative overall statewide average rate decrease since 2003 would be more than 60%.

In 2008, based on its annual review of the most recent data available, the NCCI proposed an overall workers' compensation rate level decrease of 14.1% for the voluntary market industrial classes to be effective January 1, 2009. On October 15, 2008, the OIR requested that NCCI submit an amended filing for a further decrease of 4.5%, bringing the total rate reduction down to -18.6%. In requesting the NCCI to amend its filing, Commissioner McCarty cited disagreements with the methodology NCCI used to calculate the profit factors and trend factors. Trend factors incorporate changes in wages, paid losses, and claim frequency. On October 23, 2008, NCCI submitted an amended filing for -18.6% in accordance with the OIR request. The commissioner approved the average rate reduction of 18.6% on October 30, 2008. If the decrease of 18.6% were implemented, the rate impact for the main industry groups would be as follows:

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<sup>18</sup> "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 01/09	Cumulative since 2003
Manufacturing	-19.8%	- 58.0%
Contracting	- 19.2%	- 61.2%
Office and Clerical	- 20.6%	- 60.9%
Goods and Services	- 18.9%	- 60.7%
Miscellaneous	- 13.6%	- 59.4%
<b>TOTAL</b>	<b>-18.6%</b>	<b>-60.5%</b>

This rate reduction is the sixth rate reduction since the 2003 workers' compensation reforms, giving Florida businesses a cumulative decrease of 60.5%. In a press release dated October 31, 2008, Commissioner McCarty remarked that "the cost of doing business in Florida has become less expensive," due to these cuts.

There have been two primary reasons for the continued rate reductions. The national data continues to show the claims frequency for workers' compensation claims have been decreasing faster than medical costs have increased. Another reason is the continued crackdown on companies fraudulently avoiding payment for workers' compensation insurance.

### **NCCI Proposes Rate Increase in Response to Florida Supreme Court Decision**

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 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.

Following the Court's decision, NCCI submitted another rate filing that it feels reflects the impact of the decision. NCCI estimates that the full impact will be an increase in overall Florida workers' compensation costs of 18.6%. On November 14, 2008, NCCI submitted its filing for a proposed first year rate level increase of 8.9%. NCCI anticipates that it will take two years for the full impact to be realized, and therefore proposes a first year increase of half to the full impact. NCCI proposed that the increased rates will apply to all policies in effect on March 1, 2009 on a pro-rata basis through the remainder of the term of these policies.

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The OIR held a public hearing on the most recent NCCI rate request on December 16, 2008. As of this report, a final order has not been issued.

## 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 2008, 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.

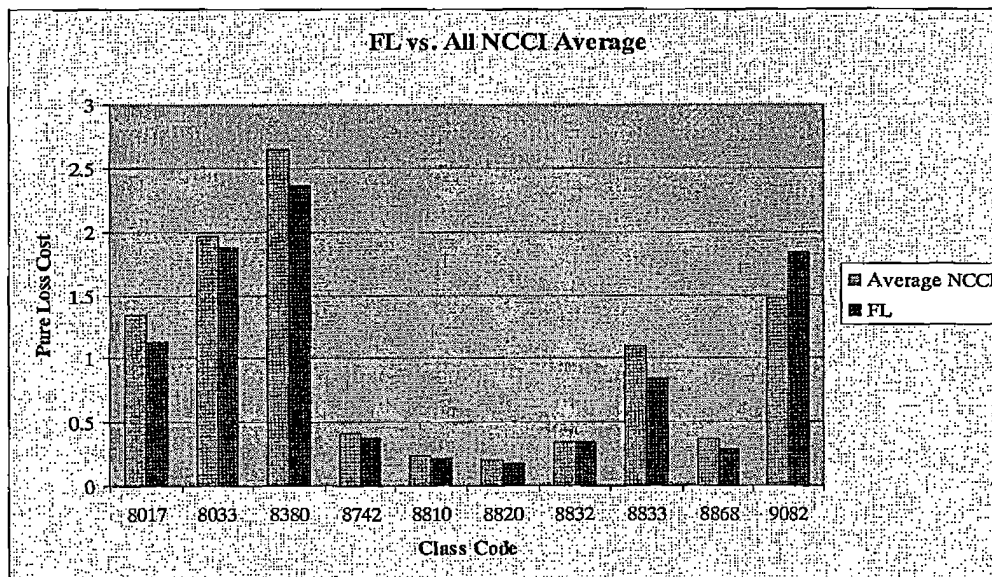
When measured by exposure, the ten largest class codes, the average loss cost across NCCI jurisdictions based on the most recent available data, Florida's loss cost and Florida's rank among jurisdictions (one being lowest, 35 being highest) are reported below:

Comparative Pure Loss Cost: Largest Class Codes by Exposure				
Class Code	Description	Avg NCCI	FL	FL Rank
8017	STORE: RETAIL NOC	1.35	1.13	13
8033	STORE: MEAT, GROCERY AND PROVISION STORES COMBINED-RETAIL NOC	1.96	1.87	18
8380	AUTOMOBILE SERVICE OR REPAIR CENTER AND DRIVERS	2.65	2.36	15
8742	SALESPERSONS OR COLLECTORS-OUTSIDE	0.41	0.38	16
8810	CLERICAL OFFICE EMPLOYEES NOC	0.24	0.22	18
8820	ATTORNEY-ALL EMPLOYEES AND CLERICAL,	0.21	0.17	11



Comparative Pure Loss Cost: Largest Class Codes by Exposure				
Class Code	Description	Avg. NCCI	FL	FL Rank
	MESSENGERS, DRIVERS			
8832	PHYSICIAN AND CLERICAL	0.34	0.34	22
8833	HOSPITAL: PROFESSIONAL EMPLOYEES	1.10	0.84	10
8868	COLLEGE: PROFESSIONAL EMPLOYEES AND CLERICAL	0.36	0.28	8
9082	RESTAURANT NOC	1.47	1.84	31

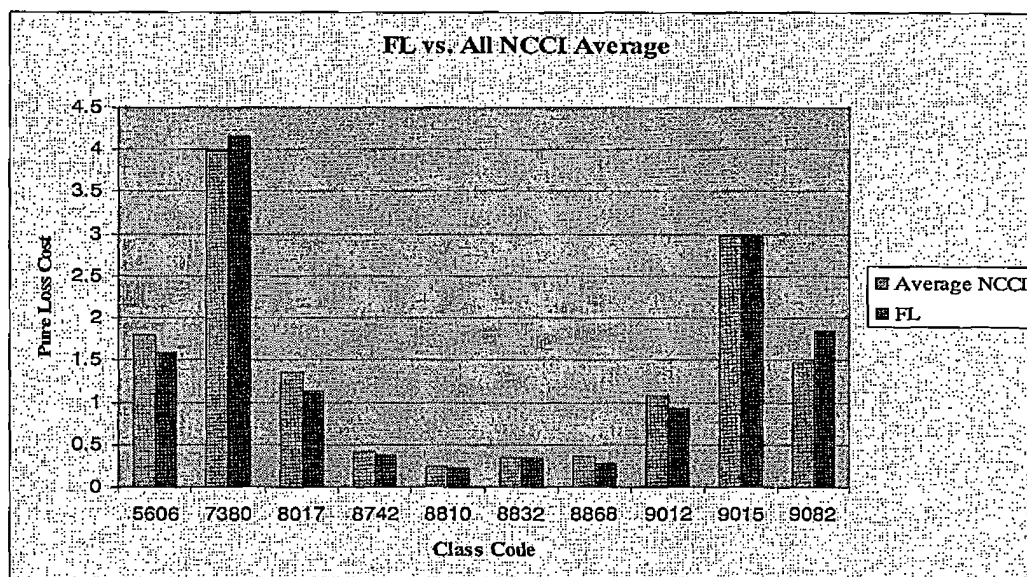
Graphically, these data show that in all but one case (9082: Restaurant NOC), Florida's loss cost is below the class average:



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	FL Rank
5606	CONTRACTOR-PROJECT MANAGER, CONSTRUCTION EXECUTIVE, CONSTRUCTION MANAGER OR CONSTRUCTION SUPERINTENDENT	1.80	1.59	14
7380	DRIVERS, CHAUFFEURS, MESSENGERS AND THEIR HELPERS NOC-COMMERCIAL	3.99	4.15	21
8017	STORE: RETAIL NOC	1.35	1.13	13
8742	SALESPERSONS OR COLLECTORS-OUTSIDE	0.41	0.38	16
8810	CLERICAL OFFICE EMPLOYEES NOC	0.24	0.22	18

Comparative Pure Loss Cost: Largest Class Codes by Policy Count				
Class Code	Description	Avg. NCCI	FL	FL Rank
8832	PHYSICIAN and CLERICAL	0.34	0.34	22
8868	COLLEGE: PROFESSIONAL EMPLOYEES AND CLERICAL	0.36	0.28	8
9012	BUILDINGS-OPERATION BY OWNER, LESSEE, OR REAL ESTATE MANAGEMENT FIRM: PROF. EMPLOYEES, PROPERTY MANAGERS AND LEASING AGENTS AND CLERICAL, SALESPERSONS	1.08	0.92	9
9015	BUILDINGS-OPERATION BY OWNER, LESSEE, OR REAL ESTATE MANAGEMENT FIRM: ALL OTHER EMPLOYEES	2.97	2.98	25
9082	RESTAURANT NOC	1.47	1.84	31



Using this definition of size, the loss cost is below average in Florida with the exception of class codes 7380 (Drivers, Chauffeurs, etc) and 9082 as before.

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 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 13,933 policies to 522 policies, with written premium varying from \$77.5 million to \$5 million. At the end of November 2008, the FWCJUA had 1,460 policies on its book and with corresponding premiums of \$10.4 million. 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).

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.
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 (Chapter 2003-367 Laws of Florida), 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, 2009, the premium for Tier 1 is 35% above the voluntary rates, Tier 2 is 126% above voluntary and Tier 3 is 139% above (2.39 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 (e.g., 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 and Tier 2 rates for most employers are more affordable than the previous sub-plans A, B and C. However, 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 2,518 stop-work orders to companies that were not carrying insurance for all of their workers. As a further result of their efforts, an additional 6,427 new employees received coverage under Florida's workers' compensation law adding over \$8 million to the premium base.

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 2006 found that they provided more than 50,000 employers with nearly 700,000 work-site employees, representing a payroll in excess of \$17 billion.<sup>19</sup>

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.<sup>20</sup>

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<sup>19</sup> Florida Underwriter as of March 1, 2006, Resurgence of the PEO Market, article by Michael H. Adams, Editor.

<sup>20</sup> Florida Underwriter as of March 1, 2006, Resurgence of the PEO Market, article by Michael H. Adams, Editor.

## **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% premium credit provided to employers that certify the establishment of a drug-free workplace program.
- **Employer Safety Premium Credit** – A 2% 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 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.
- **Coinurance** - For a reduced premium, the employer agrees to reimburse the insurer 20% 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% 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% of the market was written at deviated rates. However, by 1989 only 9% 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%).

## **Large Deductibles**

In the early 1990's, insurers approached the Department of Insurance (DOI) 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 DOI 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% to 90%. 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 60% 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 --**

**2007 Workers' Compensation Premium by State**

<b>2007 Rank</b>	<b>2006 Rank</b>	<b>State</b>	<b>Written Premium (in millions)</b>
#1	#1	California	\$ 8,980.9
#2	#2	New York	\$ 4,228.5
#3	#3	Florida	\$ 3,116.7
#4	#4	Texas	\$ 2,740.5
#5	#5	Illinois	\$ 2,677.3
#6	#6	Pennsylvania	\$ 2,300.4
#7	#7	New Jersey	\$ 1,977.7
#8	#8	Wisconsin	\$ 1,756.5
#9	#9	North Carolina	\$ 1,522.6
#10	#10	Georgia	\$ 1,346.8
#11	#12	Massachusetts	\$ 1,122.1
#12	#11	Michigan	\$ 1,091.4
#13	#13	Missouri	\$ 989.3
#14	#19	Louisiana	\$ 956.3
#15	#22	Oregon	\$ 954.0
#16	#16	Colorado	\$ 951.8
#17	#17	Tennessee	\$ 948.0
#18	#14	Maryland	\$ 943.7
#19	#15	Virginia	\$ 924.4
#20	#21	Arizona	\$ 894.1
#21	#18	Minnesota	\$ 867.0
#22	#23	South Carolina	\$ 798.9
#23	#20	Indiana	\$ 791.3
#24	#24	Connecticut	\$ 731.2
#25	N/A	West Virginia	\$ 712.9
#26	#25	Kentucky	\$ 637.1
#27	#26	Iowa	\$ 554.0
#28	#27	Nevada	\$ 528.8
#29	#28	Utah	\$ 511.3
#30	#29	Oklahoma	\$ 461.3
#31	#30	Kansas	\$ 429.7
#32	#31	Alabama	\$ 399.4
#33	#32	Idaho	\$ 360.0
#34	#36	Mississippi	\$ 352.9
#35	#34	Nebraska	\$ 342.1
#36	#35	Alaska	\$ 331.0
#37	#33	Hawaii	\$ 325.7
#38	#38	Arkansas	\$ 286.9
#39	#39	New Mexico	\$ 280.4
#40	#37	New Hampshire	\$ 271.4
#41	#40	Delaware	\$ 266.0
#42	#41	Maine	\$ 240.4
#43	#43	Rhode Island	\$ 201.9
#44	#42	Vermont	\$ 190.1
#45	#44	South Dakota	\$ 138.6
#46	#45	Montana	\$ 113.2

\*Source: 2007 NAIC Annual Statements  
(Companies with Exclusive state funds were not included.)

**-- APPENDIX B --**

**2007 Number of Entities Writing Workers' Compensation by State**

2007 Rank	2006 Rank	State	Entities
#1	#3	Illinois	297
#2	#4	Georgia	296
#3	#1	Tennessee	296
#4	#5	Indiana	290
#5	#2	Pennsylvania	290
#6	#6	Virginia	274
#7	#7	Wisconsin	266
#8	#8	North Carolina	263
#9	#14	Texas	260
#10	#12	Maryland	259
#11	#13	South Carolina	252
#12	#10	Michigan	248
#13	#11	Iowa	247
#14	#9	Missouri	247
#15	#16	Florida	241
#16	#19	Kansas	241
#17	#17	New Jersey	239
#18	#15	New York	239
#19	#20	Kentucky	237
#20	#23	Arkansas	231
#21	#22	Mississippi	231
#22	#18	Minnesota	228
#23	#21	Alabama	224
#24	#27	Oklahoma	224
#25	#24	Nebraska	220
#26	#26	Colorado	217
#27	#25	Arizona	215
#28	#33	Massachusetts	213
#29	#28	California	212
#30	#29	Connecticut	208
#31	#32	Delaware	207
#32	#30	Louisiana	197
#33	#34	South Dakota	195
#34	#31	New Mexico	194
#35	#35	Utah	191
#36	#36	New Hampshire	188
#37	#38	Nevada	182
#38	#37	Oregon	180
#39	#39	Vermont	163
#40	#40	Idaho	158
#41	#41	Montana	159
#42	#42	Rhode Island	155
#43	#43	Maine	143
#44	#45	Alaska	134
#45	#44	Hawaii	129
#46	N/A	West Virginia	76

\*Source: 2007 NAIC Annual Statements  
(Companies with Exclusive state funds were not included)

**-- APPENDIX C --**

**2007 HHI Index Ranking Market Competitiveness**

**“Competitive Markets”**

2007 Rank	2006 Rank	State	HHI	2007 Rank	2006 Rank	State	HHI
#1	#4	Tennessee	154	#18	18	Kansas	289
#2	#2	Indiana	156	#19	19	New Hampshire	314
#3	#1	Pennsylvania	162	#20	24	South Dakota	351
#4	#7	Virginia	175	#21	22	Vermont	353
#5	#3	Illinois	179	#22	25	Massachusetts	356
#6	#8	Georgia	180	#23	23	Florida	363
#7	#5	Connecticut	195	#24	20	Missouri	363
#8	#9	Nebraska	197	#25	21	Mississippi	367
#9	#10	North Carolina	218	#26	29	Michigan	437
#10	#6	Iowa	225	#27	26	Nevada	493
#11	#17	Arkansas	236	#28	28	New Mexico	545
#12	#12	South Carolina	236	#29	27	New Jersey	585
#13	#11	Wisconsin	242	#30	31	Kentucky	772
#14	#15	Delaware	245	#31	30	Hawaii	773
#15	#13	Minnesota	254	#32	33	California	819
#16	#14	Alabama	261	#33	32	Texas	904
#17	#16	Oklahoma	278	#34	34	Maryland	915

**“Moderately Concentrated Markets”**

2007 Rank	2006 Rank	State	HHI	2007 Rank	2006 Rank	State	HHI
#35	#35	Louisiana	1,073	#37	#37	Alaska	1,321
#36	#36	Montana	1,242				

**“Highly Concentrated Markets”**

2007 Rank	2006 Rank	State	HHI	2007 Rank	2006 Rank	State	HHI
#39	#38	New York	1,827	#45	#43	Maine	3,900
#40		Guam	3,070	#46	#44	Idaho	3,966
#41	#39	Arizona	3,285	#47	#45	Rhode Island	4,547
#42	#40	Utah	3,286	#48		Virgin Islands	9,379
#43	#41	Oregon	3,414	#49	N/A	West Virginia	9,829
#44	#42	Colorado	3,496	#50		Northern Mariana Islands	10,000

**\*Source: 2007 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 --**

**2007 Workers' Compensation Premium to Worker Ratios**

2007 Rank	2006 Rank	State	Written Premium (in Millions)	Labor Force	Prem/Worker
#1	N/A	West Virginia	\$712.90	810,469	\$879.70
#2	#2	Alaska	\$331.00	378,315	\$874.90
#3	#5	Delaware	\$266.00	442,563	\$601.00
#4	#6	Wisconsin	\$1,756.50	3,053,420	\$575.30
#5	#4	Vermont	\$190.10	354,367	\$536.40
#6	#3	California	\$8,980.90	18,180,970	\$494.00
#7	#14	Oregon	\$954.00	1,935,244	\$493.00
#8	#7	Hawaii	\$325.70	673,782	\$483.40
#9	#8	Idaho	\$360.00	755,856	\$476.30
#10	#11	Louisiana	\$956.30	2,038,802	\$469.10
#11	#9	New Jersey	\$1,977.70	4,528,864	\$436.70
#12	#10	New York	\$4,228.50	9,714,313	\$435.30
#13	#15	Illinois	\$2,677.30	6,679,055	\$400.90
#14	#17	Nevada	\$528.80	1,330,660	\$397.40
#15	#16	Connecticut	\$731.20	1,889,441	\$387.00
#16	#18	Utah	\$511.30	1,328,668	\$384.80
#17	#13	New Hampshire	\$271.40	738,359	\$367.60
#18	#23	South Carolina	\$798.90	2,175,693	\$367.20
#19	#20	Pennsylvania	\$2,300.40	6,296,148	\$365.40
#20	#22	Rhode Island	\$201.90	559,363	\$360.90
#21	#19	Colorado	\$951.80	2,658,703	\$358.00
#22	#21	Nebraska	\$342.10	976,783	\$350.20
#23	#12	Florida	\$3,116.70	8,973,645	\$347.30
#24	#27	Iowa	\$554.00	1,628,843	\$340.10
#25	#24	Maine	\$240.40	707,008	\$340.00
#26	#32	North Carolina	\$1,522.60	4,614,600	\$330.00
#27	#26	Missouri	\$989.30	3,017,929	\$327.80
#28	#29	Massachusetts	\$1,122.10	3,494,567	\$321.10
#29	#31	South Dakota	\$138.60	433,918	\$319.40
#30	#28	Maryland	\$943.70	3,040,898	\$310.30
#31	#25	Kentucky	\$637.10	2,057,264	\$309.70
#32	#30	Tennessee	\$948.00	3,075,893	\$308.20
#33	#33	Minnesota	\$867.00	2,908,673	\$298.10
#34	#34	New Mexico	\$280.40	946,232	\$296.30
#35	#37	Arizona	\$894.10	3,034,574	\$294.60
#36	#36	Kansas	\$429.70	1,486,769	\$289.00
#37	#35	Georgia	\$1,346.80	4,801,199	\$280.50
#38	#38	Mississippi	\$352.90	1,342,946	\$262.80
#39	#40	Oklahoma	\$461.30	1,777,575	\$259.50
#40	#39	Indiana	\$791.30	3,253,104	\$243.20

2007 Rank	2006 Rank	State	Written Premium (in Millions)	Labor Force	Prem/Worker
#41	#41	Texas	\$2,740.50	11,729,077	\$233.70
#42	#45	Montana	\$113.20	498,476	\$227.10
#43	#42	Virginia	\$924.40	4,090,492	\$226.00
#44	#44	Michigan	\$1,091.40	5,021,667	\$217.30
#45	#43	Arkansas	\$286.90	1,340,909	\$214.00
#46	#46	Alabama	\$399.40	2,185,248	\$182.80

**U.S. Census Bureau -- 2007 American Community Survey Profile Statistics by State**

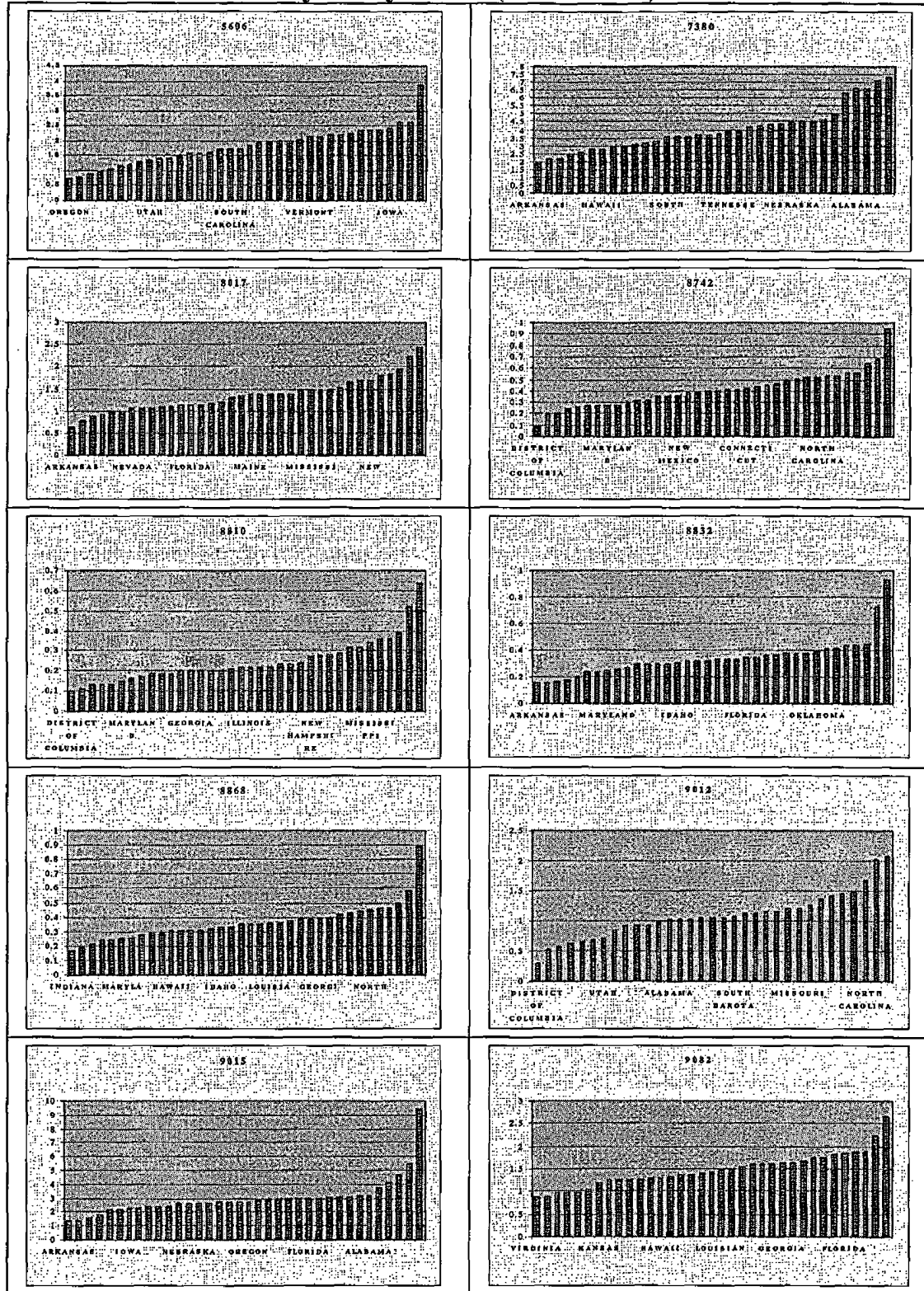
**Employment Status: "In Labor Force" -- includes armed forces.**

**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.**

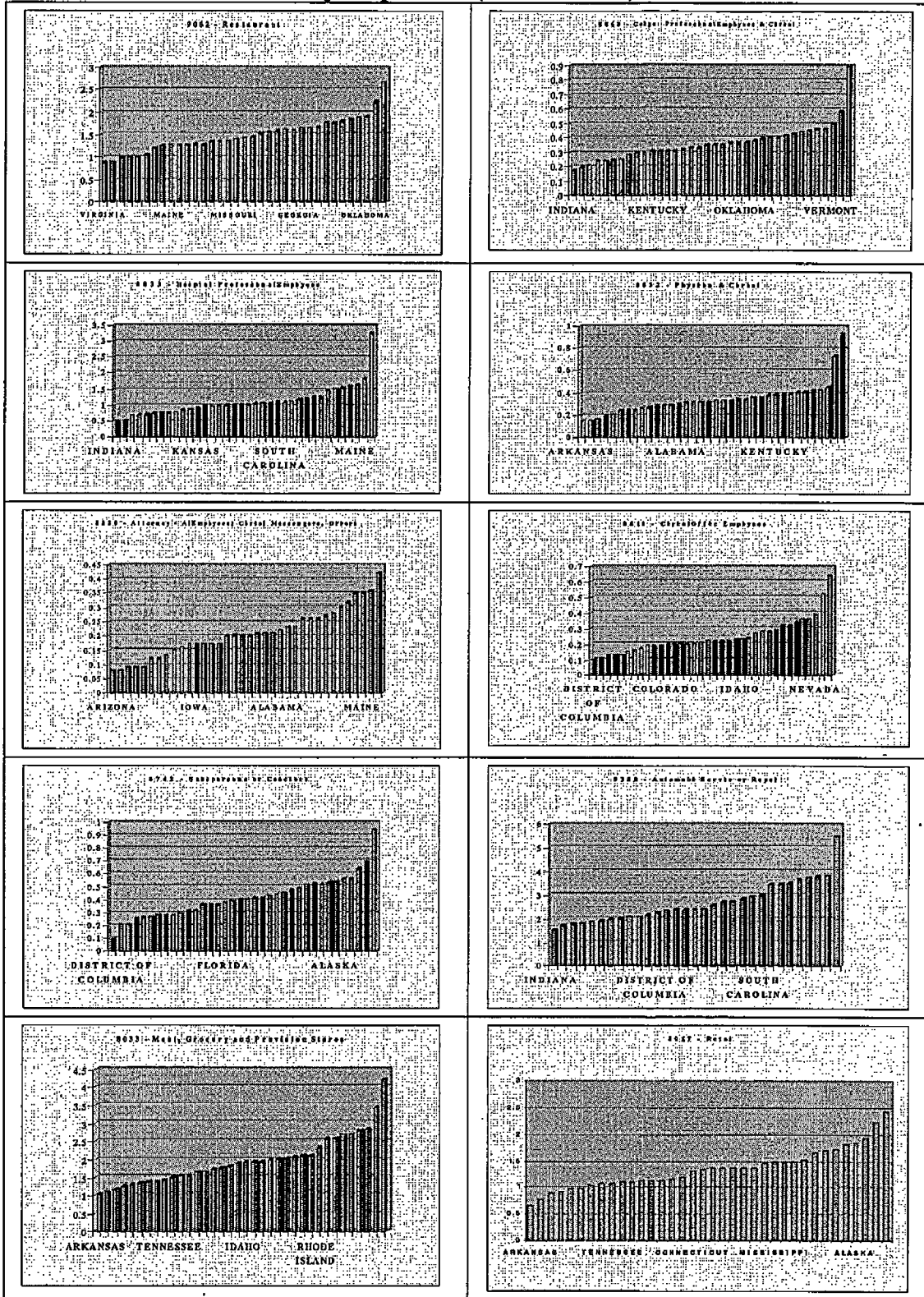
**-- APPENDIX E --**

**2007 Comparative Loss Cost by Class Code**

**2007 Comparative Loss Cost by Class Code  
By Policy Count (FL is in red)**



# 2007 Comparative Loss Cost by Class Code By Exposure (FL is in red)





## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via e-mail this 8<sup>th</sup> day of April, 2014, to: Roberto Mendez, Esq. (rmendez@mendezlawgroup.com), The Law Group of Mendez & Mendez, P.A., 7061 Taft Street, Hollywood, FL 33024; Michael J. Winer, Esq. (mike@mikewinerlaw.com), Law Office of Michael J. Winer, P.A., 110 North 11th Street, 2nd Floor, Tampa, FL 33602; Mark A. Touby, Esq. (mark.touby@tgclegal.com), Touby, Chait & Sicking, PL, 2030 South Douglas Road, Suite 217, Coral Gables, FL 33134; Christopher Smith, Esq. (chris@cjsmithlaw.com), 2805 W. Busch Blvd., Suite 219, Tampa, FL 33618, Kenneth B. Schwartz, Esq. (kbs@flalaw.com), Kenneth Schwartz, P.A., 1803 S. Australian Avenue, Suite F, West Palm Beach, FL 33409; Richard W. Ervin, Esq. (richardervin@flappeal.com), Fox & Loquasto, P.A., 1201 Hays Street, Suite 100, Tallahassee, FL 32301; Geoffrey Bichler, Esq. (geoff@bichlerlaw.com), Bichler, Kelley, Oliver & Longo, 541 South Orlando Avenue, Suite 310, Maitland, FL 32751; and Mark L. Zientz, Esq. (mark.zientz@mzlaw.com), Law Offices of Mark L. Zientz, P.A., 9130 S. Dadeland Blvd., Suite 1619, Miami, FL 33156.

  
Richard A. Sicking