IN THE SUPREME COURT OF FLORIDA

Case No. SC13-2082

On Review from the First District Court of Appeal LT Case No. 1D12-3639; OJCC No. 09-027890-GCC

MARVIN CASTELLANOS,

Petitioners,

v.

NEXT DOOR COMPANY, et al.,

Respondents.

APPENDIX TO AMICUS CURIAE BRIEF OF THE FLORIDA JUSTICE REFORM INSTITUTE AND THE FLORIDA CHAMBER OF COMMERCE, INC.

IN SUPPORT OF RESPONDENTS

Mark K. Delegal, Esq.

Fla. Bar No.: 989924 mark.delegal@hklaw.com

Matthew H. Mears, Esq.

Fla. Bar No.: 885231

matthew.mears@hklaw.com

Holland & Knight LLP

315 S. Calhoun Street, Suite 600 Tallahassee, Florida 32301 Ph. (850) 224-7000

Fax (850) 224-8832

Counsel for Amicus Curiae Florida Justice Reform Institute and the Florida Chamber of Commerce, Inc. William W. Large, Esq.

Fla. Bar No. 981273 william@fljustice.org

Florida Justice Reform Institute

210 S. Monroe Street Tallahassee, Florida 32301 Telephone: (850) 222-0170 Facsimile: (850) 222-1098

Attorney for Florida Justice Reform Institute

APPENDIX INDEX

<u>Tab</u> <u>Document</u>

- Exhibit 1: Anthony DiDonato, FCAS, MAAA, National Counsel on Compensation Insurance, Inc. (NCCI), Filing Circular, FL-2008-19, ("NCCI Circular") (Nov. 14, 2008).
- Exhibit 2: Office of Insurance Regulation, Order on Rate Filing (Jan. 26, 2009), available at http://www.floir.com/siteDocuments/WorkersCompOrder012609.pdf, (visited 6/3/14).
- Exhibit 3: National Counsel on Compensation Insurance, Inc., slide presentation, Florida: Workers' Compensation Market (Oct. 1, 2013), *available at* http://www.floir.com/siteDocuments/NCCILovgren10012013.pdf, (visited 6/3/14).
- Exhibit 4: Dr. N. Mike Helvacian, *Economic Analysis: The Effects of* Murray *Decision on Florida Workers' Compensation Costs, Employment and Wages* ("Helvacian Report") (March 3, 2009).
- Exhibit 5: Bogdan Savych & Richard A. Victor, Workers Compensation Research Institute, *Did the Florida Reforms Reduce Attorney Involvement?* ("Savych Report") (June 2009), *available at* http://www.wcrinet.org/studies/public/books/wcri_FL_attorney_final.pdf (visited 6/3/14).
- Exhibit 6: Workers' Compensation Laws as of January 1, 2014, Table 14, a Joint Publication of the Workers Compensation Research Institute (WCRI) and the International Association of Industrial Accident Boards and Commissions ("IAIABC").

EXHIBIT 1



NOVEMBER 14, 2008

FILING CIRCULAR

FL-2008-19

Florida-Law-Only Filing Due to Impact of the Emma Murray Decision-Revised Workers Compensation Rates and Rating Values Proposed to Be Effective March 1, 2009

ACTION NEEDED

Please review this information before the rates and rating values are approved.

Keep this filing circular because it will be **supplemented but not replaced** by the approval circular upon regulatory approval. This filing circular and the approval circular will provide the entire package of relevant information for this change.

Caution: The filing has been submitted to the regulator, however at the time of publication of this circular, the filing has **not yet been approved**. This information is provided for your convenience and analysis. Please use this information "as is." Do not rely on the data until the filing has been approved by the regulator.

BACKGROUND

On October 23, 2008, the Florida Supreme Court issued its opinion in the case of Emma Murray vs. Mariner Health Inc. and ACE USA, No. SC07-244 (Emma Murray). The Supreme Court interpreted the statutory attorney fee changes included in Senate Bill 50A (SB 50A), a comprehensive workers compensation reform bill implemented on October 1, 2003. Prior to the Supreme Court's decision in Emma Murray, the lower courts had, in several cases, concluded that SB 50A limited claimant attorney fees to a schedule based on benefits secured. Hourly fees were only permitted in medical-only cases and capped at \$1,500.

The Supreme Court concluded that the SB 50A language limiting claimant attorney fees was ambiguous and, as a result, looked to sources outside Florida statute 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. Therefore the Court has, in effect, returned Florida to pre-SB 50A law on claimant attorney fees, namely hourly fees.

IMPACT

This filing proposes a rate-level increase of 8.9% for industrial classes and a rate-level increase of 2.7% for F-classes.

NCCI proposes that the increased rates will apply to new and renewal policies that are effective on or after March 1, 2009. Additionally, NCCI proposes 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. The revised rating factors, including those related to the coinsurance and deductible programs, the retrospective rating factors, and other miscellaneous values, but not including experience rating factors, will be effective on March 1, 2009 for new and renewal policies only. The revised rating factors will not apply to policies outstanding on March 1, 2009. This filing does not propose changes to the experience rating factors.

The filing was submitted to the regulator without rate pages. Rate pages will be prepared and submitted on a later date.

Use of the following endorsements may be appropriate/necessary:

- Pending Rate Change Endorsement (WC 00 04 04), which may be used to notify insureds that rates may change during the policy period
- Rate Change Endorsement (WC 00 04 07), which, once the rate change is approved, may be used to notify insureds of the application of the rate increase to outstanding policies

Both endorsements listed above are currently approved in the state of Florida.

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901 Peninsula Corporate Circle, Boca Raton, FL 33487

2857

FL-2008-19

NCCI ACTION

NCCI will announce in an approval circular the set of rates and rating values that are approved by the regulator. We will post the filed rates and rating values on **ncci.com**.

NCCI makes no representation or warranty, express or implied, as to any matter, including but not limited to an assurance that the proposed rates and rating values as detailed in this circular will be approved by the regulator.

PERSON TO CONTACT

If you have any questions, please contact: Technical Contact:

Lori Lovgren Tony DiDonato

State Relations Executive Director and Senior Actuary

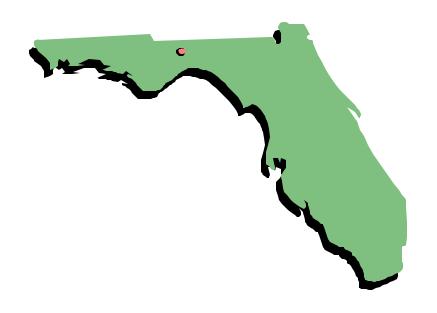
NCCI, Inc. NCCI, Inc.

901 Peninsula Corporate Circle
Boca Raton, FL 33487-1362
561-893-3337
901 Peninsula Corporate Circle
Boca Raton, FL 33487-1362
561-893-3116

Florida

Emma Murray v. Mariner Health

Law-Only Filing



Effective March 1, 2009



Lori A. Lovgren State Relations Executive Regulatory Services Division

November 14, 2008

Honorable Kevin M. McCarty Commissioner Office of Insurance Regulation 200 East Gaines Street Tallahassee, Florida 32399-0330

Re: Revised Workers Compensation Rates and Rating Values

Dear Commissioner McCarty:

In accordance with the applicable statutes and regulation of the state of Florida, we are filing revised voluntary rates and rating values for your consideration and approval.

This filing proposes a rate level increase of 8.9% for industrial classes and a rate level increase of 2.7% for "F" Classes, except for class code 9077 (United States Armed Service Risk - All Employees & Drivers). There is no impact to class code 9077.

This proposed increase results from the impact of the Florida Supreme Court's decision on October 23, 2008 in *Emma Murray vs. Mariner Health Inc. and ACE USA*, No. SC07-244.

The revised rates are proposed to be effective on March 1, 2009 for new, renewal and all outstanding policies. The revised rating factors including those related to the coinsurance and deductible programs, the retrospective rating program, and other miscellaneous values, but not including experience rating factors, will be effective on March 1, 2009 for new and renewal policies only. This filing does not propose changes to the experience rating factors.

This filing is made exclusively on behalf of the companies that have given valid consideration for the express purpose of fulfilling regulatory rate filing requirements and other private use of this information. Enclosed is a list of companies which are eligible to reference this information, as of the submission date of the filing. The inclusion of a company on this list merely indicates that the company, or group to which it belongs, is affiliated with NCCI in this jurisdiction, or has licensed this information as a non-affiliate, and is not intended to indicate whether the company is currently writing business or is even licensed to write business in this jurisdiction.

Please contact me at 561-893-3337 or Tony DiDonato at 561-893-3116 if you have any questions or need additionally information.

Respectfully submitted,

Lori Lovgren

State Relations Executive

LL:ah



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Actuarial Certification

The information contained in these filings have been prepared under the direction of the undersigned actuary in accordance with applicable Actuarial Standards of Practice as promulgated by the Actuarial Standards Board. The Actuarial Standards Board is vested by the U.S.-based actuarial organizations with the responsibility for promulgating Actuarial Standards of Practice for actuaries providing professional services in the United States. Each of these organizations requires its members, through its *Code of Professional Conduct*, to observe the Actuarial Standards of Practice when practicing in the United States.

Filing prepared by:

Anthony DiDonato, FCAS, MAAA

Director and Senior Actuary

Anthony DiDonate

Actuarial & Economic Services



FLORIDA VOLUNTARY

SUMMARY

P	roposed Effective Date	March 1, 2009
l.	Industrial Classifications Overall Proposed Change in Premium/Rate Level New, Renewal, and All Outstanding Policies	+ 8.9%
	By Industry Group Manufacturing Contracting Office & Clerical Goods & Services Miscellaneous Overall	+ 8.9% + 8.9% + 8.9% + 8.9% + 8.9%
II.	"F" Classifications Overall Proposed Change in Rate Level New, Renewal, and All Outstanding Policies	+ 2.7%

III. <u>Miscellaneous Values</u>

Miscellaneous Rating Value changes will be submitted shortly.



FLORIDA VOLUNTARY

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Affiliate Listing

NCCI Key Contacts



EXPLANATORY MEMORANDUM

Impact of Florida Supreme Court Decision in Murray v. Mariner Health/ACE USA

NCCI estimates that the Florida Supreme Court decision in *Murray v. Mariner Health/ACE USA* will increase overall workers compensation costs in Florida by +18.6%. This change is anticipated to emerge over a two-year period, with the first year impact equal to +8.9%.

This analysis only addresses the expected increase in Florida workers compensation system costs for accidents occurring on or after March 1, 2009. However, the decision in *Murray v. Mariner Health/ACE USA* is also expected to increase overall system costs in the state for accidents occurring prior to March 1, 2009 that have not yet been settled. Therefore, it is expected that a significant unfunded liability will be created due to the retroactive impact of this court decision.

Section I: Overview of Law-Only Filing

On October 23, 2008, the Florida Supreme Court issued an opinion in the case of *Emma Murray vs. Mariner Health Inc. and ACE USA*, No. SC07-244 ("*Emma Murray*"). The Supreme Court interpreted the statutory attorney fee changes included in Senate Bill 50A ("SB 50A"), a comprehensive workers compensation reform bill implemented on October 1, 2003. Prior to the Supreme Court's decision in *Emma Murray*, the lower courts had in several cases concluded that SB 50A limited claimant attorney fees to a schedule based on benefits secured. Hourly fees were only permitted in medical only cases and capped at \$1,500. The Supreme Court concluded that the SB 50A language purporting to limit claimant attorney fees is ambiguous and as a result, looked to sources outside Florida statute 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. The impact of the Supreme Court's decision is to eliminate the statutory caps on claimant attorney fees intended by the Florida Legislature and to return Florida to pre-SB 50A law on claimant attorney fees, namely hourly fees.

NCCI estimates that the full impact of *Emma Murray* will be an increase to Florida workers compensation system costs of 18.6%. NCCI anticipates that it will take two years for the full impact to be realized, and will therefore propose a first year increase of 8.9% in overall system costs in this filing. The proposed first year rate level increase is +2.7% for "F" classes, excluding code 9077 (United States Armed Service Risk – All Employees and Drivers). The proposed rate level change for "F" classes is less than the 8.9% increase applicable to industrial classes since federal benefits are applicable in many cases rather than state benefits, and the claimant attorney fee changes contained in SB 50A did not apply to cases involving federal benefits. Correspondingly, the decision in *Emma Murray* also does not affect these types of cases. There is no impact to class code 9077 since only federal benefits apply.

NCCI proposes that the increased rates will apply to new and renewal policies that are effective on or after March 1, 2009. An Appendix A, containing the proposed rates and rating values, will be supplied shortly after this filing submission.

Additionally, NCCI proposes 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. Though the *Emma Murray* decision occurred on October 23, 2008, the clear intent of the Supreme Court is it applies retroactively to cases not yet settled with dates of injury from October 1, 2003 and forward. Increased system costs will result from the *Emma Murray* decision, which were not contemplated in the development of prior workers compensation rates. Because workers compensation ratemaking is prospective only, insurers are not afforded the opportunity to recoup premium to cover such unforeseen increases in system costs. In addition, insurance companies that were required to make payments to past policyholders under Florida's Excess Profits statutes likely have limited recourse for recoupment of any payments made for diminished excess profits.



EXPLANATORY MEMORANDUM

Impact of Florida Supreme Court Decision in Murray v. Mariner Health/ACE USA

NCCI will be researching the unfunded liability for both insurers and self-insurers, and may provide additional information at a later date.

The filing includes pro-rata tables in Appendix B, which may be used by companies to assist in the appropriate calculation of premiums for policies outstanding as of March 1, 2009. The Pending Rate Change Endorsement WC-00-04-04, which NCCI understands is, as a general practice, attached by insurers to every Florida policy, notified insureds that rates may change during the policy period. Once the March 1, 2009 rate change is approved, the Rate Change Endorsement WC-00-04-07 may be used to notify insureds of the application of the rate increase to outstanding policies. Both endorsements are currently approved in the state of Florida.

The revised rating factors, including those related to the coinsurance and deductible programs, the retrospective rating program, and other miscellaneous values, but not including experience rating factors, will be effective on March 1, 2009 for new and renewal policies only. The revised rating factors will not apply to policies outstanding on March 1, 2009. This filing does not propose changes to the experience rating factors.

The proposed first year rate level increase of 8.9% does not contain any impact for the following:

- Any impact beyond the first year after the *Emma Murray* decision
- Any impact which may result from NCCI's annual experience review

Any impact related to the above changes will be contemplated in future rate filings made by NCCI.

The results of NCCI's analysis of the changes that will result from the *Emma Murray* decision are contained in the following narrative and supporting exhibits.



EXPLANATORY MEMORANDUM

Impact of Florida Supreme Court Decision in Murray v. Mariner Health/ACE USA

Section II: Background on SB 50A

In the years leading up to SB 50A, Florida's rates were among the highest in the country. See Appendix C-I containing the 2002 Oregon Workers Compensation Premium Rate Ranking Summary. At the same time, based on escalating system costs, NCCI's experience review was resulting in annual rate increase proposals. Rates were increased by a cumulative 20.6% between January 1, 1999 and April 1, 2003. The availability and affordability of workers compensation insurance in Florida was a significant issue. Some of the key cost drivers noted that influenced pre-reform system costs in Florida were the following:

- · High frequency of permanent total claims
- · High medical costs
- High attorney involvement

Governor Jeb Bush signed SB 50A into law on July 15, 2003. SB 50A was a comprehensive bill, which brought about changes to numerous provisions of the Florida workers compensation law. Primary components of the bill included:

- 1) Revisions to standards of compensability of claims and changes to indemnity benefits,
- 2) Revisions to medical services and reimbursements.
- 3) Changes in attorney fees and the dispute resolution process and
- 4) Changes to the Workers Compensation Joint Underwriting Association, exemptions, and other miscellaneous provisions.

On July 16, 2003, the Office of Insurance Regulation (OIR) ordered NCCI to make a filing to reduce rates to reflect the cost savings associated with SB 50A. NCCI proposed a rate level decrease of 14.0% for industrial classes. The reduced rates applied to new and renewal policies that were effective on or after October 1, 2003. Additionally, the reduced rates applied to all policies in effect on October 1, 2003 on a pro-rata basis through the remainder of the term of these policies.

Including the initial October 1, 2003 rate filing for the impact of SB 50A, there have been six workers compensation rate decreases approved in Florida subsequent to the enactment of SB 50A. The cumulative overall impact of these six rate decreases is -60.5%. As a result of the rate decreases, Florida has improved from having either 1st or 2nd highest rates in the country pre-SB 50A to an estimated 10th lowest in the country. Appendix C-II shows the 2008 Oregon Workers Compensation Premium Rate Ranking Summary. Note NCCI has adjusted Florida's ranking position shown in the attached Oregon study to reflect the additional reduction which will take effect January 1, 2009 in Florida. No other states' indexed values were adjusted in deriving this estimated 2009 ranking for Florida.



EXPLANATORY MEMORANDUM

Impact of Florida Supreme Court Decision in Murray v. Mariner Health/ACE USA

Section III: Retrospective Look Pre- vs. Post-SB 50A

NCCI's estimate of -14% for SB 50A was a first year impact only. NCCI stated in the law only filing for SB 50A that any additional impact would be reflected in subsequent data that is collected and used in future rate filings.

NCCI has subsequently reviewed its first year estimate of -14% for accuracy. NCCI's estimate of -14% was derived from an indemnity component of -20.6% and a medical component of -9.4%. Upon reviewing NCCI's Workers Compensation Statistical Plan (WCSP) data a year prior to the reform (2002) to a year after the reform (2004), indemnity costs appear to have dropped 18.4% to 22.1% and medical costs have risen 3.3% to 3.9%. If indemnity severity trends of approximately 0% (based on historical Florida experience) are assumed over the two-year time span, the indemnity estimate of -20.6% falls within the actual range of 18.4% to 22.1%. Similarly, if medical severity trends of approximately +7% are assumed over the two-year time span, medical costs would have risen by 14%, however medical costs only rose by 3.3% to 3.9%, which is a difference of approximately -10.1% to -10.7% compared to NCCI's estimate of -9.4%. Thus it appears that NCCI's estimate for the indemnity and medical impact was within a range of reasonableness.

NCCI did not, however, accurately predict the impact that SB 50A would have on lost-time claim frequency. The only provisions in SB 50A that were expected to impact lost-time claim frequency were those related to the compensability standards, which were as follows:

- Objective relevant medical findings are required; pain or other subjective complaints, in the absence of objective relevant medical findings, are not compensable
- Clear and convincing evidence is needed to prove causation of occupational disease or repetitive
 exposure
- The work-related accident must be more than 50% responsible for injury and subsequent disability
- Mental or nervous injury without accompanying physical injury requiring medical treatment is not compensable. The physical injury must be the major contributing cause of the mental or nervous injury. Benefits for mental or nervous injury will not be paid beyond six months after maximum medical improvement for the physical injury, or 104 weeks, whichever comes first

NCCI's original analysis of SB 50A showed that less than 0.1% of costs result from mental injuries without accompanying physical injuries and about 2% of total costs result from occupational disease or repetitive injury. Provisions dealing with evidentiary burdens of proof and causal connection to work injury, etc., were grouped so that their total effect could be considered. NCCI data showed that the number of compensable claims in Florida was about average when compared to other states. NCCI believed that tightening compensability would likely eliminate some claims. There was no data or methodology to precisely model the effect of these changes in compensability standards. However, NCCI estimated that the combined impact of the above provisions would reduce the number of compensable claims by 1% in the first year post SB 50A. NCCI also stated that any additional impact would be reflected in subsequent data that is collected and used in future rate filings.

In subsequent annual post-reform surveys that NCCI conducted of the top ten carriers in the state in terms of premium volume, the majority of carriers indicated that they did not use the SB 50A compensability standards to deny claims. Instead, most carriers stated that they used the revised compensability standards in negotiation to settle claims. As a result, the anticipated 1% reduction related to compensability standards is not believed to have materialized as expected. However, upon reviewing NCCI's Financial Call data a year prior to the reform (2002) to a year after the reform (2004), Florida's lost-time claim frequency had dropped 14% over the two year time span compared to the countrywide lost-time claim frequency decline of 8% during the same period. As Florida's lost-time claim frequency decline continued to outpace Countrywide at a



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Impact of Florida Supreme Court Decision in Murray v. Mariner Health/ACE USA

greater rate each year from 2005 to 2007, NCCI concluded that SB 50A was contributing to Florida's claim frequency decline.

It is reasonable to assume that SB 50A has had additional impacts beyond NCCI's first year estimate of - 14%. However, during the post-reform time period, there have been other non-reform-related impacts at work, such as ongoing declines in claim frequency and changes in the economy. It is important therefore to look at the major factors driving the Florida rate decreases and compare the same to countrywide figures:

	Florida	Countrywide
Change in Claim Frequency AYs 2000 & 2001 ¹ vs. AYs 2006 & 2007 ²	-37.2%	-27.2%
Change in Average Claim Costs AYs 2000 & 2001 vs. AYs 2006 & 2007	-11.6%	+19.9%
Change in Loss Development AYs 2000 & 2001 @ 12/31/2001 vs. @ 12/31/2007	-8.4%	+19.3%

While lost-time claim frequency has also been declining countrywide, Florida has in recent years been outpacing the countrywide average decline. Claim frequency declines are generally attributable to demographics, business efforts to promote safe working conditions, technological improvements, and the impact of global competition. Because Florida begins outpacing countrywide in 2003, which is the year SB 50A was implemented, NCCI believes SB 50A is contributing to the additional claim frequency decline above the countrywide trend.

As shown in the above chart, total (indemnity plus medical) average claim costs have also improved significantly in Florida relative to countrywide. It is likely that the majority of this improvement is related to SB 50A. Some of the reasons for the change in average claim costs include:

- · Reduced indemnity benefits and tighter eligibility standards for permanent total disability
- Lower average attorney fees
- Quicker claim closure
- Faster return to work

As a result of improving loss development, the ultimate value of claims has not been developing upwards as much as in prior years. Loss development may be improving because (1) fewer claims are unexpectedly exceeding set case reserves, and/or (2) claim behavior has become more predictable. The improvement in loss development started in Florida one year prior to SB 50A and it has continued in each year post-SB 50A. The fact that this same improvement is not occurring countrywide indicates the most likely explanation is SB 50A.

¹ Accident years 2000 and 2001 underlie the experience change included in the January 1, 2003 Florida rate filing.

² Accident years 2006 and 2007 underlie the experience change included in the January 1, 2009 Florida rate filing.



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Impact of Florida Supreme Court Decision in Murray v. Mariner Health/ACE USA

Section IV: Actuarial Analysis of the Impact of the Emma Murray Decision

In order to estimate the impact of the *Emma Murray* decision on Florida workers compensation system costs, it is necessary to first analyze how the provisions in SB 50A—specifically those relating to changes in claimant attorney fees—impacted system costs after its enactment.

The provisions relating to attorney compensation contained in SB 50A were as follows:

- Maintain "20/15/10/5" attorney fee formula
- Alternative hourly fees are eliminated with one exception; an alternative fee of up to \$1,500 may be awarded per accident for medical-only petitions
- Fees are to be based on benefits secured above the offer, only if the employer/carrier makes an offer including attorney fees and attorney fees are "taxed" against the employer/carrier

Experience emerging since the implementation of SB 50A in October 2003 has revealed dramatic decreases in the claim frequency rate, as well as the average costs of claims with claimant attorney representation (see Exhibits III and IV). In the original analysis of the claimant attorney fee changes contained in SB 50A, NCCI estimated the impact of the change on the cost of claimant attorney fees and the expected impact on the average cost of claims remaining in the system. The analysis indicated that claimant attorney fees were expected to decline by 19.5%, resulting in an overall system costs savings of 1.1%, and that the average overall cost per case was estimated to decrease by 1.0%. In total, a decrease of 2.1% in overall system costs was originally estimated for the first year impact of the claimant attorney fee provisions contained in SB 50A.

In NCCI rate filings subsequent to the enactment of SB 50A, further declines in Florida workers compensation costs were reflected through improved loss experience and in the selection of trend. As mentioned previously, workers compensation rates in Florida have decreased by 60.5% since the enactment of SB 50A. The changes to claimant attorney compensation included in SB 50A have been credited with a material portion of this decrease. NCCI has estimated that the Florida Supreme Court decision in *Emma Murray* will erode a significant portion of the 60.5% decrease in Florida system costs realized since SB 50A went into effect.

A summary of the actuarial analysis completed by NCCI is shown below. It is separated into the following components:

- A. Change in Lost-Time Claim Frequency for Claims with Claimant Attorney Representation
- B. Change in Average Costs Per Case for Claims with Claimant Attorney Representation
- C. Change in Claimant Attorney Fees

This filing is based on data from various sources, including, but not limited to, NCCI (Workers Compensation Statistical Plan, Detail Claim Information, and Financial Call data), the Florida Division of Workers Compensation (FDWC), United States Bureau of Labor Statistics, and the Division of Administrative Hearings (DOAH). In addition, NCCI conducted interviews with and gathered information from many stakeholders in the system.

A. Change in Lost-Time Claim Frequency for Claims with Attorney Representation

The enactment of Senate Bill 50A (SB 50A) has had a significant impact on the frequency of workers compensation claims with attorney representation in Florida. The reduction in lost-time claims with attorney



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involvement has equaled or exceeded the reduction in overall lost-time claims in Florida. From 1996 to 2003, prior to the implementation of SB 50A, lost-time claim frequency in the state decreased at an annual rate of 1.3%, lagging the corresponding annual Countrywide³ lost-time claim frequency rate of -4.3% (see Exhibit III, lines 8 and 18). The relative difference in annual trend factors between Florida and Countrywide over this time period was +3.1% (= (.987 / .957) – 1.0). That is, Florida's annual lost-time claim frequency trend had increased over and above the national average (excluding Florida) by 3.1% per year prior to SB 50A (see Exhibit III, line 19). All factors held constant, this suggests that Florida's annual lost-time claim frequency rate may have continued at this relatively higher pace in subsequent years without the passage of SB 50A.

From 2003 to 2007, after the implementation of SB 50A, lost-time claim frequency in Florida decreased at an annualized rate of 9.7%. For this same time period, Countrywide lost-time claim frequency decreased at an annualized rate of 4.9% (See Exhibit III, lines 27 and 35). The relative difference in annual trend factors between Florida and Countrywide over this time period was –5.0% (= (.903 / .951) – 1.0). In other words, Florida's annual lost-time claim frequency rate decreased over and above the national average (excluding Florida) by 5.0% per year after the enactment of SB 50A (see Exhibit III, line 36). This is in contrast to the frequency trend relativity exhibited prior to SB 50A shown above (+3.1%).

Based on NCCI Detailed Claim Information (DCI) data as of a second report ⁴, the percentage of lost-time claims with attorney involvement has not increased since the passage of SB 50A and may be slightly lower. Thus, lost-time claims with attorney representation have declined as much as, or more than, overall lost-time claims ⁵. The remarkable changes in lost-time claim frequency for claims with attorney representation in Florida are largely attributed to the enactment of SB 50A. In particular, the changes in claimant attorney compensation have been cited by numerous insurance carriers as one of the main drivers for the significant decrease in lost-time claims with attorney involvement in the state post-SB 50A implementation. In this pricing, NCCI has attributed a portion of the decline in the number of claims with attorney representation to the limitations placed on claimant attorney compensation in SB 50A. Specifically, the percentage decline in attorney-represented claim frequency attributable to the claimant attorney compensation changes is estimated to be the "excess" claim frequency (i.e., Florida to Countrywide frequency trend relativity) during the post-SB 50A time period.

As noted above, the annual frequency trend relativity for the 2003 to 2007 time period was indicated to be 1.031 (+3.1%) based on an eight-point exponential fit of frequency data from 1996 to 2003 (see Exhibit III, line 19). With the enactment of SB 50A, however, the actual annual frequency trend relativity was 0.950 (-5.0%) (see Exhibit III, line 36). Taking a ratio of these two frequency relativities gives a measure of the potential change in annual claim frequency for lost-time claims with attorney representation brought about as a result the claimant attorney fee changes contained in SB 50A. That is, the estimated annual frequency trend relativity that resulted from this part of SB 50A could be as much as 0.921 (= 0.950 / 1.031), or -7.9% per year (see Exhibit III, line 37). Alternatively, if one projects that the Florida claim frequency rate would have moved in tandem with the Countrywide frequency rate from 2003 to 2007 (as opposed to the indicated trend based on an eight-point exponential fit), the estimated annual frequency trend relativity that resulted is 0.950 (= 0.950 / 1.000). Note that the Countrywide claim frequency rate only modestly declined from the pre-SB 50A to post-SB 50A time periods (-4.3% vs. -4.9%) (refer to Exhibit III, lines 18 and 35).

In selecting the change in claim frequency attributable to the changes in claimant attorney compensation contained in SB 50A, NCCI gave equal weight to the above annual frequency trend relativities (-7.9% and

³ All references to "Countrywide" included in this section refer to all states where NCCI provides ratemaking services except for Nevada, Texas, and West Virginia.

⁴ A DCI second report contains data for accidents valued as of eighteen (18) months after the claim is reported to the insurer.

⁵ The cumulative DOAH new case decline provides additional evidence of the cumulative lost time claim frequency decline. See 2007-2008 Annual Report of the Office of the Judges of Compensation Claims.



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-5.0%) to reflect the uncertainty in how Florida's attorney-represented lost-time claim frequency would have changed in the absence of the claimant attorney fee changes contained in SB 50A. Consequently, NCCI estimates that the decrease in the lost-time claim frequency rate for claims with attorney representation due to the changes in claimant attorney compensation contained in SB 50A was -6.4% per year (see Exhibit III, line 38), or -23.2% (= .936 ^ 4 - 1.0) over the four year period (2003 to 2007) (see Exhibit III, line 39).

B. Change in Average Costs Per Case for Claims with Attorney Representation

In addition to the impact on claim frequency, the *Emma Murray* decision is also expected to have an effect on the average costs per case with claimant attorney representation. Data subsequent to the reform measure, as well as feedback from stakeholders, indicates that cases with attorney representation are being settled quicker post-SB 50A due in part to the changes in how claimant legal expenses are now set. In addition, the average length of time for workers to return to work has shortened since the enactment of SB 50A. Average claimant legal expenses paid have also declined, but this is addressed separately.

In the pricing of SB 50A, NCCI included a provision of 1.1% for the anticipated decrease in the percentage of cases with claimant attorney representation and its corresponding impact on average costs per case. With currently available data, highlighting the impact of the claimant attorney fee changes contained in SB 50A on average costs per case, an alternative calculation was employed in estimating the impact of the *Emma Murray* decision.

NCCI DCI data as of a second report was used to estimate the average costs per case for claims with attorney representation. The calculation of the average indemnity costs per case exclude amounts paid for claimant legal expenses—these are being addressed separately. In addition, total (indemnity and medical) average costs per case with claimant attorney representation were adjusted to a common cost and benefit level⁶. The total adjusted average costs per case with claimant attorney representation prior to the enactment of SB 50A (accident years 2000 through 2002) compared to post-SB 50A (accident years 2005 and 2006) reveals a change of -15.7% (= \$40,095 / \$47,588 – 1.0) in the average costs. Exhibit IV contains the data and calculations underlying the 15.7% decrease in the average costs per case with claimant attorney representation.

Reviewing the progression of year-to-year changes in column (11) of Exhibit IV, it can be seen that while the average costs per case with claimant attorney representation increased in the first year after the enactment of SB 50A (+6.5% = \$51,574 / \$48,405 – 1.0), the average costs per case decreased significantly in accident years 2005 (-18.4%) and 2006 (-9.5%). Based on these changes and anecdotal information on a continued emergence of workers compensation system cost savings due to the claimant attorney fee changes, a further decline in these costs into 2007 would have been anticipated prior to the decision in *Emma Murray*. Hence, a savings materially greater than the 15.7% decrease in average costs per case with claimant attorney representation post-SB 50A (cited above) may exist. NCCI did not, however, project the average costs per case with claimant attorney involvement to 2007 in determining the impact of the claimant attorney fee changes contained in SB 50A and used the -15.7% estimate shown above.

⁶ Source of cost adjustment factors is United State Bureau of Labor Statistics, both Current Population Survey (CPS) data for Florida and Medical Consumer Price Index (CPI) data for the South Urban region.

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Combined Impact of Change in Lost-Time Claim Frequency and Average Costs Per Case for Claims with Attorney Representation

The change in lost-time claim frequency and average costs per case estimated above are to be applied to the percentage of benefit costs that had claimant attorney representation prior to the implementation of SB 50A. NCCI employed data from accident year 2003 to estimate the percentage of costs impacted by these changes. NCCI DCI data for accident year 2003 as of the latest report indicates that claims with claimant attorney representation comprise 48.7% of lost-time claim costs. As claimant attorney fees are being analyzed separately, these costs need to be removed from this percentage. Claimant attorney fees were estimated to make up 5.8% of lost-time claims in the original pricing of SB 50A. This estimate was based on data provided by the FDWC. In addition, losses associated with lost-time claims constitute 94.1% of total losses for Florida for policy period 2003 based on NCCI Workers Compensation Statistical Plan (WCSP) data. Hence, NCCI estimates that benefits costs with claimant attorney representation comprise 40.4% (= (48.7% - 5.8%) x 94.1%) of total claim costs in 2003.

The decision in *Emma Murray* is expected to reverse both the 15.7% decrease in average costs per case for claims with claimant attorney representation (Exhibit IV) and the 23.2% "excess" reduction in lost-time claim frequency for claims with claimant attorney representation (Exhibit III). The estimated change in overall system costs due to the claimant attorney fee changes contained in SB 50A is -14.2% (= $[(1.0 - 15.7\%) \times (1.0.-23.2\%) -1.0\%] \times 40.4\%$). The decision in *Emma Murray* is expected to reverse these savings in lost-time claim frequency and average costs per case, thereby increasing overall system costs in Florida by the reciprocal or +16.6% (= 1.0 / (1.0 - 14.2%)). Exhibit II contains the aforementioned calculations.

C. Change in Claimant Attorney Fees

Provisions contained in SB 50A directly impacted compensation for attorneys representing injured workers. Based on NCCI DCI data as of a second report adjusted to the 2006 Florida average wage level, the average claimant legal expenses paid prior to the enactment of SB 50A (accident years 2000 through 2002) was \$4,382 (see Exhibit V, line 5). The average claimant legal expenses paid subsequent to the reform (accident years 2005 and 2006) was \$3,155 (see Exhibit V, line 6). Hence, the average claimant legal expense has decreased 28% since the enactment of SB 50A (see Exhibit V, line 7). The *Emma Murray* decision is anticipated to result in claimant attorney compensation reverting back to pre-SB 50A levels. NCCI estimates that claimant legal expenses will increase by 38.9% (= 1.0 / (1.0 - 28%)) from the current level due to the decision in *Emma Murray* (see Exhibit V, line 8).

The NCCI October 1, 2003 rate filing, reflecting the impact of SB 50A, contained an estimate of claimant attorney fees as a percent of lost-time claim costs. This estimate was based on data provided by the FDWC. The FDWC data showed that lump sum settlements represented 38.5% of lost-time claim costs and claimant attorney fees represented approximately 15% of lump sum settlement costs. As a result, claimant attorney fees as a percent of lost-time claim costs was estimated to be 5.8% (= 38.5% x 15%).

Since the FDWC no longer collects this information, and since on average both claimant attorney fees and lost-time claim costs have decreased since the enactment of SB 50A, NCCI adjusted the pre-SB 50A estimate for subsequent changes in benefit costs and claimant legal expenses. Based on NCCI Financial Call data valued as of December 31, 2007, total average costs per lost-time claim in Florida are estimated to have decreased by 11.6% (see Exhibit VII) over the same time period that claimant legal expenses declined 28% (see Exhibit V, line 7). The updated estimate of claimant attorney fees as a percentage of lost-time claim costs is 4.7% (= 5.8% x (1.0 - 28%) / (1.0 - 11.6%)). Based on NCCI WCSP data, losses associated with medical-only injuries comprise 6% of total losses for Florida for the most recent policy period available.



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Therefore, it is estimated that the change in claimant attorney fees due to the *Emma Murray* decision will increase overall workers compensation system costs in Florida by 1.7% (= +38.9% x [4.7% x (1.0 - 6.0%)]).

Combining the impacts on frequency, severity and attorney fees (section A, B, and C above), NCCI estimates that the Florida Supreme Court decision in *Emma Murray* will increase overall workers compensation costs in Florida by +18.6%. This change is anticipated to emerge over a two-year period, with the first year impact equal to +8.9% (= 1.186 ^ 0.5 - 1.0). This analysis only addresses the expected increase in Florida workers compensation system costs for accidents occurring on or after March 1, 2009. However, the decision in *Emma Murray* is also expected to increase overall system costs in the state for accidents occurring prior to March 1, 2009 that have not yet been settled. Therefore, it is expected that a significant unfunded liability will be created due to the retroactive impact of this court decision.



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Anticipated Impact of Emma Murray on Loss Adjustment Expense

While claimant attorney fees are included in the indemnity loss data reported to NCCI, defense attorney fees are included in Loss Adjustment Expense (LAE) data reported to NCCI. As claimant attorney behavior changed in response to SB 50A, there was a corresponding change in behavior related to defense attorneys. For example, there is qualitative input that as claimant attorneys worked fewer hours on cases and agreed to quicker settlements, defense attorneys also worked fewer hours on cases and earned reduced fees. The post-reform reduction in defense attorney costs has been reflected in the LAE component of Florida rates. The LAE component is a ratio of expenses to losses. It is anticipated that the *Emma Murray* decision will result in both increased expenses and increased losses. At this time, NCCI expects that both will increase at the same rate, so there is no proposed change to the LAE provision in this filing.

Basis for Assumption that SB 50A Savings Associated with Attorney Fee Changes Will Unwind Over 2 Years

The savings associated with SB 50A are based on four years of post-reform data up to and including 2007. While some of the SB 50A impacts were felt in the first year post-reform, others occurred in subsequent years. Division of Administrative Hearings (DOAH) data suggests that in 2004 and 2005, the majority of claimant attorney fee awards related to cases with pre-reform dates of accident. Claimant attorneys that worked on cases with pre-reform dates of accidents could continue to collect hourly attorney fees. Also, surveyed stakeholders have suggested that the claimant's bar initially acted under the assumption that the courts would eventually conclude that hourly fees could be awarded under the revised attorney fee provisions of SB 50A, either under some interpretation of the new law or by a declaration that the new law was unconstitutional. As a result, there was no immediate incentive for claimant attorneys to modify their practices.

It was not until the year 2006 that DOAH data shows that more claimant attorney fee awards were related to post-reform dates of accidents than pre-reform dates of accidents. It was also in 2006 that Florida's First District Court of Appeals issued its first opinions in both the *Wood v. Florida Rock Industries*, 929 So.2d 542 (Fla. 1st DCA) and *Lundy v. Four Seasons Ocean Grand Palm Beach*, 932 So. 2d 506 (Fla. 1st DCA 2006), upholding the SB 50A cap on claimant attorney fees and rejecting both statutory interpretation and constitutional arguments. These cases and others were appealed to the Florida Supreme Court in 2006 and the Supreme Court declined jurisdiction. It was not until late 2007 that the Supreme Court accepted jurisdiction of the *Emma Murray* case.

There is some evidence that some claimant attorneys, either by necessity or design, changed their behavior by downsizing their workers compensation law practices as a result of SB 50A, reducing their advertising (i.e., commercials, billboards, print ads, etc.) to injured workers, and accepting fewer workers compensation cases. Some diversified their law practices replacing their workers compensation caseload with other types of more lucrative work to make up for the loss of income from workers compensation cases.

The amicus brief of the Florida Worker Advocates, a statewide organization of attorneys who represent claimants in workers compensation cases, states "The rigid fee limitations in Section 440.34 hinder a claimants ability to obtain and maintain legal representation, particularly in time-consuming complex cases . . " (pg. 25).



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There is also qualitative input that injured workers had difficulty finding claimant attorneys who would take their cases.

- The amicus brief of Voices, Inc., a non-profit organization of injured workers and their supporters, states "Several rationales have been stated for the limitations on a claimant's ability to contract for attorney's fees. As will be demonstrated, none of these remain valid if the statutory construction of the First District is correct. The end result is that most workers compensation claimants have lost the right to legal representation." (pg. 6).
- The amicus brief of the Florida Police Benevolent Association, a statewide organization that represents law enforcement officers who are frequently claimants in workers compensation cases, states "One of the most significant legislative acts applying to law enforcement officers ever passed in Florida is the "Heart/Lung" bill, codified at Section 112.18, Fla. Stat. This law provides medical and other benefits for those law enforcement officers (as well as firefighters and correction officers) who contract hypertension, heart disease, or tuberculosis when certain prerequisites are satisfied ... It serves as a measure of protection for law enforcement officers who in turn risk their lives everyday protecting Florida's citizens. However, the act is meaningless if the governmental entities responsible for providing the benefits the act requires refuse to do so without protracted litigation and law enforcement officers cannot obtain legal counsel to assist them in such litigation. Both of these situations are now occurring with increasing frequency, and the blame for the latter rests squarely with the restrictive attorney fee provisions of Section 440.34." (pg 2-3).

The changes in claimant attorney behavior in 2006 and 2007 contributed to the substantial frequency declines in those years and drove the more significant Florida rate decreases for the January 1, 2008 (based on accident years 2005 and 2006) and January 1, 2009 (based on accident years 2006 and 2007) rate filings as opposed to the prior two.

The nature of the *Emma Murray* decision is such that NCCI does not expect that it will take four years to unwind the SB 50A savings associated with attorney fee changes. The attorney behavioral incentives post-*Emma Murray* are not the same as the attorney behavioral incentives post-SB 50A.

There was little claimant attorney behavioral incentive to change in the first two years post-SB 50A since the majority of incoming cases continued to have pre-reform dates of accident and were compensated with hourly fees. Because claimant attorney fees were not tied to a percentage of benefits secured, the value of the potential benefits to be secured on any particular pre-reform case was inconsequential. Even cases with low benefits to injured workers could result in high compensation to claimant attorneys, often more than the injured worker received. By continuing to work cases with pre-reform dates of accident, claimant attorneys may not have been required to make significant behavioral changes for as long as two years after SB 50A took effect on October 1, 2003.

Once claimant attorneys took cases with post-reform dates of accident and were compensated on the SB 50A scale based on benefits secured, the incentive changed. Because claimants attorneys were no longer compensated on an hourly basis, there was less incentive to take cases where the potential benefits to be secured were small. There was also less incentive to keep cases open, to conduct extended discovery, and to litigate as many issues. Examples of issues less often or rarely litigated on post-reform cases include authorization of medical testing or re-testing, authorization of second opinion, disputes over the average weekly wage calculation, medical mileage, and transportation. Instead, the incentive was to settle quickly and for lesser amounts than pre-SB 50A. NCCI DCI data shows that claim closure rates and return to work improved. NCCI DCI data also shows that Florida's average cost per case with attorney involvement, which



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was much higher than countrywide pre-SB 50A, dropped over time. DOAH data shows that petitions for benefits (PFBs) have been dropping over time (multiple PFBs can be filed on a single case).

Conversely, the claimant attorney behavioral incentive in the first two years post-*Emma Murray* is to immediately return to pre-SB 50A behavi or on current cases. It is anticipated that cases will be kept open longer, there will be more discovery, more issues will be litigated, cases will be more expensive to settle, it will take longer to close cases, and it will take longer for injured workers to return to work. In addition, there is incentive to take additional cases, no matter how small the potential benefits to be secured.

NCCI anticipates that the full impact of *Emma Murray* will not occur in the first year, because it will take some time for claimant attorney firms to increase staff to handle additional litigation, to get additional advertising in place to notify injured workers of the willingness of the claimant's bar to take cases, and for those in the workplace who may get injured to become aware of the change in the environment and to respond to increased attorney involvement. As a result, NCCI proposes to split the full impact of *Emma Murray* over two years. This filing represents the first year impact.



EXHIBIT I

Impact of Florida Supreme Court Decision in *Murray v. Mariner Health* on Florida Workers Compensation System Costs

			Overall Effect
(1)	Increase in Lost-Time Claim Frequency and Average Costs Per Case due to <i>Murray v. Mariner Health</i> (see Exhibit II)	+16.6%
(2)	Increase in Claimant Attorney Fees due to Murray v. Mariner Health (see Exhibit V)	+1.7%
(3)	Increase in Overall System Costs due to <i>Murray v. Mariner Health</i> = [1.0 + (1)] x [1.0 + (2)] - 1.0	+18.6%
(4)	Increase in Overall System Costs Expected in First Year After Murray v. Mariner Health 1 = { [1.0 + (3)] 4 0.5 } - 1.0	+8.9%
(5)	Increase in Overall System Costs Expected in Second Year After <i>Murray v. Mariner Health</i> ¹ = [1.0 + (3)] / [1.0 + (4)] - 1.0	+8.9%

¹ The full impact of the Murray v. Mariner Health is expected to emerge over two years. Therefore, only half of the indicated impact of +18.6% is being proposed in this filing.



EXHIBIT II

Impact of Florida Supreme Court Decision in *Murray v. Mariner Health* on Lost-Time Claim Frequency and Average Costs Per Case

		Impact
(1)	Change in Lost-Time Claim Frequency Resulting from Modifications to Claimant Attorney Compensation Contained in Senate Bill 50A (see Exhibit III)	-23.2%
(2)	Change in Average Costs Per Case Resulting from Modifications to Claimant Attorney Compensation Contained in Senate Bill 50A (see Exhibit IV)	-15.7%
(3)	Claim Costs with Claimant Attorney Representation as a Percent of Total Lost-Time Claim Costs ¹	48.7%
(4)	Claimant Attorney Fees as a Percent of Total Lost-Time Claim Costs ²	5.8%
(5)	Lost-Time Claim Costs as a Percent of Total Claim Costs ³	94.1%
(6)	Benefit Costs with Claimant Attorney Representation as a Percentage of Total Claim Costs = [(3) - (4)] x (5)	40.4%
(7)	Change in Lost-Time Claim Frequency and Average Costs Per Case Resulting from Modifications to Claimant Attorney Compensation Contained in Senate Bill 50A = $\{[1.0 + (1)] \times [1.0 + (2)] - 1.0\} \times (6)$	-14.2%
(8)	Increase in Lost-Time Claim Frequency and Average Costs Per Case due to Murray v. Mariner $Health = 1.0 / [1.0 + (7)] - 1.0$	+16.6%

¹ Based on NCCI Detailed Claim Information data for Florida for Accident Year 2003

² Estimate for Accident Year 2003 taken from Exhibit VIII-A of NCCI's October 1, 2003 Rate Filing Reflecting the Impact of Senate Bill 50A

³ Source is Exhibit X of the NCCI 2008 Annual Statistical Bulletin for Policy Period 2003



EXHIBIT III

Florida to Countrywide (excluding Florida) Frequency Relativity Calculation

Florida 8-Point Exponential Lost-Time Claim Frequency Trend—Pre-Senate Bill 50A

	(1)	(2) Lost-Time Claim	(3)	(4)	(5)
Exposure/ Accident		Frequency Per Million of Adjusted			Fitted Frequency
Year	Time Index	Premium ¹	Ln(2)	A x (1) + B	= Exp(4)
1996	1	19.838	2.988	2.986	19.806
1997	2	19.199	2.955	2.973	19.550
1998	3	19.053	2.947	2.960	19.298
1999	4	18.748	2.931	2.947	19.049
2000	5	19.960	2.994	2.934	18.803
2001	6	18.932	2.941	2.920	18.541
2002	7	18.342	2.909	2.907	18.302
2003	8	17.396	2.856	2.894	18.065
(6)	A:				-0.0132
(7)	B:				2.9995
(8)	Florida Pre-Senate Bill 5	50A Annual Frequency Trend	d Factor = e ^A		0.987

Countrywide Including Florida 8-Point Exponential Lost-Time Claim Frequency Trend—Pre-Senate Bill 50A

Calendar/ Accident Year	(9) Time Index	(10) Lost-Time Claim Frequency Per 100,000 Workers ²	(11) Ln(10)	(12) A x (9) + B	(13) Fitted Frequency = Exp(12)
1996	1	1,658	7.413	7.450	1,720
1997	2	1,666	7.418	7.409	1,651
1998	3	1,601	7.378	7.368	1,584
1999	4	1,564	7.355	7.327	1,521
2000	5	1,494	7.309	7.286	1,460
2001	6	1,391	7.238	7.245	1,401
2002	7	1,328	7.191	7.204	1,345
2003	8	1,274	7.15	7.163	1,291
(14)	A:				-0.0410
(15)	B:				7.4909
(16)	Countrywide Pre-Senate	e Bill 50A Annual Frequency	Trend Factor ³ = e	A	0.960
(17)	Florida as a Percentage	of Countrywide Based on Lo	ost-Time Claim Fre	quency Per 100,000	
	Workers for Accident Ye	ear 2003			10.0%
(18)	Countrywide Excluding = [(16) - (8) x (17)] / [1.0	Florida Pre-Senate Bill 50A A) - (17)]	Annual Frequency ⁻	Trend Factor	0.957
(19)	Pre-Senate Bill 50A Anr Florida = (8) / (18)	nual Frequency Trend Relativ	rity—Florida to Cou	untrywide Excluding	1.031

¹ Based on NCCI Financial Call data valued as of December 31, 2007

² Based on NCCI Financial Call data valued as of December 31, 2006

³ Countrywide includes all states where NCCI provides ratemaking services except for Nevada, Texas, and West Virginia



EXHIBIT III (cont'd)

Florida to Countrywide (excluding Florida) Frequency Relativity Calculation

Florida 5-Point Exponential Lost-Time Claim Frequency Trend—Post-Senate Bill 50A

Calendar/ Accident	(20)	(21) Lost-Time Claim Frequency Per	(22)	(23)	(24) Fitted Frequency
Year	Time Index	100,000 Workers ¹	Ln(21)	A x (20) + B	= Exp(23)
2003	1	1,383	7.232	7.249	1,407
2004	2	1,285	7.159	7.148	1,272
2005	3	1,172	7.066	7.046	1,148
2006	4	1,035	6.942	6.945	1,038
2007	5	928	6.833	6.843	937
(25)	A:				-0.1015
(26)	B:				7.3509
(27)	Florida Post-Senate Bill	50A Annual Frequency Tren	id Factor = e ^A		0.903

Countrywide Excluding Florida 5-Point Exponential Lost-Time Claim Frequency Trend—Post-Senate Bill 50A

(20)

(20)

(00)

	(28)	(29)	(30)	(31)	(32)
Calendar/		Lost-Time Claim			Fitted
Accident		Frequency Per			Frequency
Year	Time Index	100,000 Workers ¹	Ln(29)	A x (28) + B	= Exp(31)
2003	1	1,262	7.14	7.141	1,263
2004	2	1,215	7.102	7.091	1,201
2005	3	1,135	7.034	7.041	1,143
2006	4	1,067	6.973	6.991	1,087
2007	5	1,048	6.954	6.940	1,033
(33)	A:				-0.0501
(34)	B:				7.1909
(35)	Countrywide Excluding	Florida Post-Senate Bill 50A	Annual Frequency	Trend Factor ² = e ^A	0.951
(36)	Post-Senate Rill 504 Ar	inual Frequency Trend Relati	ivity—Florida to Co	ountrowide Excluding	
(50)	Florida = (27) / (35)	indan requestey frend relati	ivity i lorida to oc	dility wide Excidentig	0.950
(37)	Ratio of Post-Senate Bi	I 50A Annual Frequency Tre	nd Relativity to Pre	e-Senate Bill 50A Annual	
, ,	Frequency Trend Relati	vity = (36) / (19)	•		0.921
(38)	Selected Annual Freque	ency Trend Relativity—Florida	a to Countrywide E	Excluding Florida	
	= [(36) + (37)] / 2.0				0.936
(39)	Change in Lost-Time Cl	aim Frequency from 2003 to	2007 Resulting fro	om Modifications to	
	Claimant Attorney Com	pensation Contained in Sena	te Bill 50A = [(38)	^ 4] - 1.0	-23.2%

¹ Accident Years 2003 through 2006 based on NCCI Financial Call data valued as of December 31, 2006. Estimate of Accident Year 2007 uses preliminary NCCI Financial Call data valued as of December 31, 2007.

(00)

² Countrywide includes all states where NCCI provides ratemaking services except for Nevada, Texas, and West Virginia



EXHIBIT IV

Change in Average Costs Per Case Resulting from Modifications to Claimant Attorney Compensation Contained in Senate Bill 50A

		(1)	(2)	(3)	(4)	(5)	
						Average Indemnity	
						Benefit- and	
		Average Indemnity				Inflation-Adjusted	
		Incurred Benefit	Average	Factor to	Indemnity	Benefit Costs for	
		Costs for	Change in	Adjust to	Benefit	Claims with	
	Accident	Claims with	Wages From	2006	On-Level	Attorneys	
	Year	Attorneys ^{1,2}	Prior Year ³	Wage Level	Factor ⁴	$= [(1) \times (3) \times (4)]$	
	2000	21,864		1.230	0.794	21,352	
	2001	22,804	1.034	1.190	0.794	21,546	
	2002	19,953	1.036	1.149	0.794	18,203	
	2003	21,277	1.020	1.126	0.837	20,053	
	2004	22,331	1.029	1.094	1.000	24,430	
	2005	17,693	1.046	1.046	1.000	18,507	
	2006	15,335	1.046	1.000	1.000	15,335	
		(6)	(7)	(8)	(9)	(10)	(11)
						Average Medical	Average Total
		A	N 41:1			Benefit- and	Benefit- and
		Average Medical	Medical		Madiaal	Inflation-Adjusted	Inflation-Adjusted
		Incurred Benefit	Inflation	Factor to	Medical	Benefit Costs for	Benefit Costs for
		Costs for	Trend	Adjust to	Benefit	Claims with	Claims with
	Accident	Claims with	Adjustment	2006 Medical	On-Level	Attorneys	Attorneys
_	Year	Attorneys ¹	Factor ⁵	Inflation Level	Factor ⁴	$= [(6) \times (8) \times (9)]$	= (5) + (10)
	2000	27,478		1.164	0.987	31,569	52,921
	2001	22,463	1.023	1.138	0.984	25,154	46,700
	2002	22,967	1.013	1.123	0.967	24,940	43,143
	2003	26,268	1.023	1.098	0.983	28,352	48,405
	2004	25,044	1.025	1.071	1.012	27,144	51,574
	2005	22,873	1.036	1.034	0.997	23,579	42,086
	2006	23,023	1.034	1.000	0.989	22,769	38,104
	(40)	Average Dre Consta	Dill COA Danafi	t and Indiation As	liveted Depeti	Coots for Attorney	
	(12)	Average Pre-Senate		t- and inflation-Ad	ijustea Benefii	Costs for Attorney	
		Represented Claims		C			47,588
	(13)	Average Post-Senate		iit- and inflation-A	ajusted Benef	it Costs for Attorney	
		Represented Claims					40,095
	(14)	Change in Average (Claimant Attorney	
		Compensation Conta	ained in Senate	Bill $50A = (13) / ($	(12) - 1.0		-15.7%

¹ Source is NCCI Detailed Claim Information data for Florida as of a Second Report

² Excludes Claimant Legal Expenses

³ Source is United States Bureau of Labor Statistics Current Population Survey data for Florida

⁴ Refer to Exhibit VI

⁵ Source is United States Bureau of Labor Statistics Medical Consumer Price Index data for South Urban Region

⁶ Average of Column (11) for Accident Years 2000 to 2002

Average of Column (11) for Accident Years 2005 and 2006



EXHIBIT V

Changes in Claimant Attorney Compensation Due to *Murray v. Mariner Health*

		(1)	(2)	(3)	(4) Inflation-Adjusted	
		Average	A		Average Claimant	
		Claimant	Average Change in	Cumulative Wage	Legal Expense	
	Accident	Legal Expense	Wages From	Trend Adjustment	Incurred	
	Year	Incurred ¹	Prior Year ²	Factor	$= (1) \times (3)$	
	2000	3,709		1.230	4,563	
	2001	3,464	1.034	1.190	4,122	
	2002	3,883	1.036	1.149	4,462	
	2003	4,082	1.020	1.126	4,597	
	2004	2,932	1.029	1.094	3,207	
	2005	2,901	1.046	1.046	3,034	
	2006	3,275	1.046	1.000	3,275	
(5)	Pre-Senate Bill 50A	Inflation-Adjusted A	Average Claimant Lega	al Expense Incurred ³		4,382
(6)	Post-Senate Bill 50A	\ Inflation-Adjusted	Average Claimant Leg	al Expense Incurred	4	3,155
(7)		•	urred Due to Changes			-,
` '	= (6) / (5) - 1.0	- J -	.			-28.0%
(8)	. , . ,	t Legal Expense Ind	curred due to Murray v	. Mariner Health		
` ,	= 1.0 / [1.0 + (7)] - 1		•			38.9%
(9)			oense Incurred as a Pe	ercent of Lost-Time C	Claim Costs ⁵	5.8%
(10)			e Case from Pre- to P			-11.7%
(11)			pense Incurred as a F			
()	$= (9) \times \{ [1.0 + (7)] /$	-	•	•		4.7%
(12)	Medical-only losses		al Costs ⁶			6.0%
(13)	•		to Murray v. Mariner	Health = (8) x { (11)	x [1 0 - (12)] }	1.7%
()	c. cacc iii Glaiiilaii	. /	. to manay v. mannor	(0) X ((11)	χ[ο (.=/]]	/0

Source is NCCI Detailed Claim Information data for Florida as of a Second Report

Source is United States Bureau of Labor Statistics Current Population Survey data for Florida

³ Based on Column (4) for Accident Years 2000 to 2002

⁴ Based on Column (4) for Accident Years 2005 and 2006

⁵ Florida Division of Workers Claims data for Lost-Time Cases from Exhibit VIII-A of NCCI's October 1, 2003 Rate Filing Reflecting the Impact of Senate Bill 50A

⁶ Source is First Report Data from Exhibit X of the NCCI 2008 Annual Statistical Bulletin.



EXHIBIT VI - A

Indemnity Benefit On-Level Factors

dotor Adjusting Acc		lemnity Losses To Pres		(4)	(5)
	(1) Benefit	(2)	(3)	(4)	Adj. Factor
	Level	Cumulative		Product	Pres. Index
Date	Change	Index	Weight	(2) x (3)	Sum Col. (4
9/4/2005	Base	1.000	0.875	0.875	1.000
11/16/2006	1.000	1.000	0.125	0.125	
10/1/2007	1.000	1.000		0.000	
10/18/2007	1.000	1.000		1.000	
ctor Adjusting Acc	ident Year 2005 Ind	lemnity Losses To Pres	ent Benefit Level		
	(1)	(2)	(3)	(4)	(5)
	Benefit				Adj. Factor
	Level	Cumulative		Product	Pres. Index
Date	Change	Index	Weight	(2) x (3)	Sum Col. (4
7/4/2004	Base	1.000	0.356	0.356	1.000
5/9/2005	1.000	1.000	0.319	0.319	
9/4/2005	1.000	1.000	0.325	0.325	
11/16/2006	1.000	1.000		1.000	
10/1/2007	1.000	1.000			
10/18/2007	1.000	1.000			
	(1) Benefit Level	lemnity Losses To Pres (2) Cumulative	(3)	(4) Product	Pres. Index
Date 1/1/2004	(1) Benefit Level Change Base	(2) Cumulative Index 1.000	(3) Weight 0.508	Product (2) x (3) 0.508	Adj. Factor Pres. Index
Date 1/1/2004 7/4/2004	(1) Benefit Level Change Base 1.000	(2) Cumulative Index 1.000 1.000	(3) Weight 0.508 0.492	Product (2) x (3) 0.508 0.492	Adj. Factor Pres. Index Sum Col. (4
Date 1/1/2004 7/4/2004 5/9/2005	(1) Benefit Level Change Base 1.000 1.000	(2) Cumulative Index 1.000 1.000 1.000	(3) Weight 0.508	Product (2) x (3) 0.508 0.492 0.000	Adj. Factor Pres. Index Sum Col. (4
Date 1/1/2004 7/4/2004 5/9/2005 9/4/2005	(1) Benefit Level Change Base 1.000 1.000	(2) Cumulative Index 1.000 1.000 1.000 1.000	(3) Weight 0.508 0.492	Product (2) x (3) 0.508 0.492	Adj. Factor Pres. Index Sum Col. (4
Date 1/1/2004 7/4/2004 5/9/2005 9/4/2005 11/16/2006	(1) Benefit Level Change Base 1.000 1.000 1.000 1.000	(2) Cumulative Index 1.000 1.000 1.000 1.000 1.000 1.000	(3) Weight 0.508 0.492	Product (2) x (3) 0.508 0.492 0.000	Adj. Facto Pres. Index Sum Col. (4
Date 1/1/2004 7/4/2004 5/9/2005 9/4/2005	(1) Benefit Level Change Base 1.000 1.000	(2) Cumulative Index 1.000 1.000 1.000 1.000	(3) Weight 0.508 0.492	Product (2) x (3) 0.508 0.492 0.000	Adj. Facto Pres. Index Sum Col. (4
Date 1/1/2004 7/4/2004 5/9/2005 9/4/2005 11/16/2006 10/1/2007 10/18/2007	(1) Benefit Level Change Base 1.000 1.000 1.000 1.000 1.000 6ident Year 2003 Ind (1) Benefit	(2) Cumulative Index 1.000 1.000 1.000 1.000 1.000 1.000 1.000 1.000 1.000	(3) Weight 0.508 0.492 0.000	Product (2) x (3) 0.508 0.492 0.000 1.000	Adj. Factor Pres. Index Sum Col. (4 1.000
Date 1/1/2004 7/4/2004 5/9/2005 9/4/2005 11/16/2006 10/1/2007 10/18/2007	(1) Benefit Level Change Base 1.000 1.000 1.000 1.000 1.000 6ident Year 2003 Ind (1) Benefit Level	(2) Cumulative Index 1.000 1.000 1.000 1.000 1.000 1.000 1.000 1.000 I.000 Cumulative	(3) Weight 0.508 0.492 0.000 ent Benefit Level (3)	Product (2) x (3) 0.508 0.492 0.000 1.000	Adj. Factor Pres. Index Sum Col. (4 1.000
Date 1/1/2004 7/4/2004 5/9/2005 9/4/2005 11/16/2006 10/1/2007 10/18/2007 ctor Adjusting According	(1) Benefit Level Change Base 1.000 1.000 1.000 1.000 1.000 1.000 6ident Year 2003 Ind (1) Benefit Level Change	(2) Cumulative Index 1.000 1.000 1.000 1.000 1.000 1.000 1.000 1.000 I.000 Cumulative Index	(3) Weight 0.508 0.492 0.000 ent Benefit Level (3) Weight	Product (2) x (3) 0.508 0.492 0.000 1.000	Adj. Factor Pres. Index Sum Col. (4 1.000 (5) Adj. Factor Pres. Index Sum Col. (4
Date 1/1/2004 7/4/2004 5/9/2005 9/4/2005 11/16/2006 10/1/2007 10/18/2007 ctor Adjusting Accompany	(1) Benefit Level Change Base 1.000 1.000 1.000 1.000 1.000 1.000 Sident Year 2003 Ind (1) Benefit Level Change Base	(2) Cumulative Index 1.000 1.000 1.000 1.000 1.000 1.000 1.000 I.000 Cumulative Index 1.000	(3) Weight 0.508 0.492 0.000 ent Benefit Level (3) Weight 0.750	Product (2) x (3) 0.508 0.492 0.000 1.000 (4) Product (2) x (3) 0.750	Adj. Factor Pres. Index Sum Col. (4 1.000
Date 1/1/2004 7/4/2004 5/9/2005 9/4/2005 11/16/2006 10/1/2007 10/18/2007 ctor Adjusting Accompany Date 7/7/2002 10/1/2003	(1) Benefit Level Change Base 1.000 1.000 1.000 1.000 1.000 1.000 Sident Year 2003 Ind (1) Benefit Level Change Base 0.794	(2) Cumulative Index 1.000 1.000 1.000 1.000 1.000 1.000 1.000 I.000 Cumulative Index 1.000 0.794	(3) Weight 0.508 0.492 0.000 ent Benefit Level (3) Weight 0.750 0.175	Product (2) x (3) 0.508 0.492 0.000 1.000 (4) Product (2) x (3) 0.750 0.139	Adj. Factor Pres. Index Sum Col. (4 1.000 (5) Adj. Factor Pres. Index Sum Col. (4
Date 1/1/2004 7/4/2004 5/9/2005 9/4/2005 11/16/2006 10/1/2007 10/18/2007 ctor Adjusting Acc Date 7/7/2002 10/1/2003 12/4/2003	(1) Benefit Level Change Base 1.000 1.000 1.000 1.000 1.000 1.000 Sident Year 2003 Ind (1) Benefit Level Change Base 0.794 1.000	(2) Cumulative Index 1.000 1.000 1.000 1.000 1.000 1.000 1.000 I.000 Cumulative Index 1.000 0.794 0.794	(3) Weight 0.508 0.492 0.000 ent Benefit Level (3) Weight 0.750	Product (2) x (3) 0.508 0.492 0.000 1.000 (4) Product (2) x (3) 0.750 0.139 0.060	Adj. Facto Pres. Index Sum Col. (4 1.000 (5) Adj. Facto Pres. Index Sum Col. (4
Date 1/1/2004 7/4/2004 5/9/2005 9/4/2005 11/16/2006 10/1/2007 10/18/2007 ctor Adjusting Acc Date 7/7/2002 10/1/2003 12/4/2003 1/1/2004	(1) Benefit Level Change Base 1.000 1.000 1.000 1.000 1.000 1.000 sident Year 2003 Ind (1) Benefit Level Change Base 0.794 1.000 1.000	(2) Cumulative Index 1.000 1.000 1.000 1.000 1.000 1.000 1.000 I.000 Cumulative Index 1.000 0.794 0.794 0.794	(3) Weight 0.508 0.492 0.000 ent Benefit Level (3) Weight 0.750 0.175	Product (2) x (3) 0.508 0.492 0.000 1.000 (4) Product (2) x (3) 0.750 0.139	Adj. Factor Pres. Index Sum Col. (4 1.000 (5) Adj. Factor Pres. Index Sum Col. (4
Date 1/1/2004 7/4/2004 5/9/2005 9/4/2005 11/16/2006 10/1/2007 10/18/2007 ctor Adjusting Acco Date 7/7/2002 10/1/2003 12/4/2003 1/1/2004 7/4/2004	(1) Benefit Level Change Base 1.000 1.000 1.000 1.000 1.000 1.000 sident Year 2003 Ind (1) Benefit Level Change Base 0.794 1.000 1.000 1.000	(2) Cumulative Index 1.000 1.000 1.000 1.000 1.000 1.000 1.000 1.000 Cumulative Index 1.000 0.794 0.794 0.794 0.794	(3) Weight 0.508 0.492 0.000 ent Benefit Level (3) Weight 0.750 0.175	Product (2) x (3) 0.508 0.492 0.000 1.000 (4) Product (2) x (3) 0.750 0.139 0.060	Adj. Factor Pres. Index Sum Col. (4 1.000 (5) Adj. Factor Pres. Index Sum Col. (4
Date 1/1/2004 7/4/2004 5/9/2005 9/4/2005 11/16/2006 10/1/2007 10/18/2007 actor Adjusting According Accor	(1) Benefit Level Change Base 1.000 1.000 1.000 1.000 1.000 1.000 sident Year 2003 Ind (1) Benefit Level Change Base 0.794 1.000 1.000 1.000 1.000 1.000	(2) Cumulative Index 1.000 1.000 1.000 1.000 1.000 1.000 1.000 I.000 Cumulative Index 1.000 0.794 0.794 0.794 0.794 0.794	(3) Weight 0.508 0.492 0.000 ent Benefit Level (3) Weight 0.750 0.175	Product (2) x (3) 0.508 0.492 0.000 1.000 (4) Product (2) x (3) 0.750 0.139 0.060	Adj. Factor Pres. Index Sum Col. (4 1.000 (5) Adj. Factor Pres. Index Sum Col. (4
Date 1/1/2004 7/4/2004 5/9/2005 9/4/2005 11/16/2006 10/1/2007 10/18/2007 actor Adjusting According Accor	(1) Benefit Level Change Base 1.000 1.000 1.000 1.000 1.000 1.000 sident Year 2003 Ind (1) Benefit Level Change Base 0.794 1.000 1.000 1.000 1.000 1.000 1.000 1.000	(2) Cumulative Index 1.000 1.000 1.000 1.000 1.000 1.000 1.000 I.000 Cumulative Index 1.000 0.794 0.794 0.794 0.794 0.794 0.794 0.794 0.794	(3) Weight 0.508 0.492 0.000 ent Benefit Level (3) Weight 0.750 0.175	Product (2) x (3) 0.508 0.492 0.000 1.000 (4) Product (2) x (3) 0.750 0.139 0.060	Adj. Factor Pres. Index Sum Col. (4 1.000 (5) Adj. Factor Pres. Index Sum Col. (4
Date 1/1/2004 7/4/2004 5/9/2005 9/4/2005 11/16/2006 10/1/2007 10/18/2007 actor Adjusting Accompany Date 7/7/2002 10/1/2003 12/4/2003 1/1/2004 7/4/2004 5/9/2005	(1) Benefit Level Change Base 1.000 1.000 1.000 1.000 1.000 1.000 sident Year 2003 Ind (1) Benefit Level Change Base 0.794 1.000 1.000 1.000 1.000 1.000	(2) Cumulative Index 1.000 1.000 1.000 1.000 1.000 1.000 1.000 I.000 Cumulative Index 1.000 0.794 0.794 0.794 0.794 0.794	(3) Weight 0.508 0.492 0.000 ent Benefit Level (3) Weight 0.750 0.175	Product (2) x (3) 0.508 0.492 0.000 1.000 (4) Product (2) x (3) 0.750 0.139 0.060	Adj. Factor Pres. Index Sum Col. (4 1.000 (5) Adj. Factor Pres. Index Sum Col. (4

1.000

10/18/2007

0.794



EXHIBIT VI - A (cont'd)

Indemnity Benefit On-Level Factors

Factor Adjusting	Accident Year	2002 Indemnity	Losses To	Present Benefit Level

	(1)	(2)	(3)	(4)	(5)
	Benefit				Adj. Factor
	Level	Cumulative		Product	Pres. Index /
Date	Change	Index	Weight	(2) x (3)	Sum Col. (4)
9/30/2001	Base	1.000	0.517	0.517	0.794
7/7/2002	1.000	1.000	0.483	0.483	
10/1/2003	0.794	0.794	0.000	0.000	
12/4/2003	1.000	0.794		1.000	
1/1/2004	1.000	0.794			
7/4/2004	1.000	0.794			
5/9/2005	1.000	0.794			
9/4/2005	1.000	0.794			
11/16/2006	1.000	0.794			
10/1/2007	1.000	0.794			
10/18/2007	1.000	0.794			

Factor Adjusting Accident Year 2001 Indemnity Losses To Present Benefit Level

, ,	(1) Benefit	(2)	(3)	(4)	(5) Adj. Factor
	Level	Cumulative		Product	Pres. Index /
Date	Change	Index	Weight	(2) x (3)	Sum Col. (4)
1/1/1998	Base	1.000	0.747	0.747	0.794
9/30/2001	1.000	1.000	0.253	0.253	
7/7/2002	1.000	1.000	0.000	0.000	
10/1/2003	0.794	0.794		1.000	
12/4/2003	1.000	0.794			
1/1/2004	1.000	0.794			
7/4/2004	1.000	0.794			
5/9/2005	1.000	0.794			
9/4/2005	1.000	0.794			
11/16/2006	1.000	0.794			
10/1/2007	1.000	0.794			
10/18/2007	1.000	0.794			

Factor Adjusting Accident Year 2000 Indemnity Losses To Present Benefit Level

Factor Adjusting Accident Tear 2000 indennity Losses To Fresent Benefit Level						
	(1)	(2)	(3)	(4)	(5)	
	Benefit				Adj. Factor	
	Level	Cumulative		Product	Pres. Index /	
Date	Change	Index	Weight	(2) x (3)	Sum Col. (4)	
1/1/1998	Base	1.000	1.000	1.000	0.794	
9/30/2001	1.000	1.000	0.000	0.000		
7/7/2002	1.000	1.000	0.000	0.000		
10/1/2003	0.794	0.794		1.000		
12/4/2003	1.000	0.794				
1/1/2004	1.000	0.794				
7/4/2004	1.000	0.794				
5/9/2005	1.000	0.794				
9/4/2005	1.000	0.794				
11/16/2006	1.000	0.794				
10/1/2007	1.000	0.794				
10/18/2007	1.000	0.794				



EXHIBIT VI - B

Medical Benefit On-Level Factors

	(1)	(2)	(3)	(4)	(5)
	Benefit				Adj. Factor
	Level	Cumulative		Product	Pres. Index
Date	Change	Index	Weight	(2) x (3)	Sum Col. (4
9/4/2005	Base	1.000	0.875	0.875	0.989
11/16/2006	0.998	0.998	0.125	0.125	
10/1/2007	0.995	0.993		0.000	
10/18/2007	0.996	0.989		1.000	
octor Adjusting Ac	cident Vear 2005 Me	dical Losses To Presen	t Repetit Level		
ctor Adjusting Act	(1)	(2)	(3)	(4)	(5)
	Benefit	(2)	(0)	(4)	Adj. Facto
	Level	Cumulative		Product	Pres. Index
Date	Change	Index	Weight	(2) x (3)	Sum Col. (4
7/4/2004		1.000	0.356		0.997
	Base		0.319	0.356	0.997
5/9/2005	1.017	1.017		0.324	
9/4/2005	1.003	1.020	0.325	0.332	
11/16/2006	0.998	1.018		1.012	
10/1/2007	0.995	1.013			
10/18/2007	0.996	1.009			
ctor Adjusting Ac	cident Year 2004 Me	dical Losses To Presen	t Benefit I evel		
oto: /tajaotiiig /to	(1)	(2)	(3)	(4)	(5)
	Benefit	(-/	(-)	(- /	Adj. Facto
	Level	Cumulative		Product	Pres. Index
Date	Change	Index	Weight	(2) x (3)	Sum Col. (4
1/1/2004	Base	1.000	0.508	0.508	1.012
7/4/2004	1.005	1.005	0.492	0.494	1.012
5/9/2005	1.017	1.022	0.492	0.000	
			0.000	1.002	
9/4/2005	1.003	1.025		1.002	
11/16/2006	0.998	1.023			
10/1/2007	0.995	1.018			
10/18/2007	0.996	1.014			
ctor Adjusting Acc		dical Losses To Presen			
	(1)	(2)	(3)	(4)	(5)
	Benefit				Adj. Facto
	Level	Cumulative		Product	Pres. Index
Date	Change	Index	Weight	(2) x (3)	Sum Col. (4
= /= /0000	Base	1.000	0.750	0.750	0.983
7/7/2002		0.906	0.175	0.159	
7/7/2002 10/1/2003	0.906	0.300			
10/1/2003			0.075	0.068	
10/1/2003 12/4/2003	1.007	0.912	0.075	0.068	
10/1/2003 12/4/2003 1/1/2004	1.007 1.038	0.912 0.947	0.075	0.068 0.977	
10/1/2003 12/4/2003 1/1/2004 7/4/2004	1.007 1.038 1.005	0.912 0.947 0.952	0.075		
10/1/2003 12/4/2003 1/1/2004 7/4/2004 5/9/2005	1.007 1.038 1.005 1.017	0.912 0.947 0.952 0.968	0.075		
10/1/2003 12/4/2003 1/1/2004 7/4/2004 5/9/2005 9/4/2005	1.007 1.038 1.005 1.017 1.003	0.912 0.947 0.952 0.968 0.971	0.075		
10/1/2003 12/4/2003 1/1/2004 7/4/2004 5/9/2005	1.007 1.038 1.005 1.017	0.912 0.947 0.952 0.968	0.075		



EXHIBIT VI - B (cont'd)

Medical Benefit On-Level Factors

Factor Adjusting	Accident	Year 2002 Medical L	Losses To Present Bene	it Level
-------------------------	----------	---------------------	------------------------	----------

	(1) Benefit	(2)	(3)	(4)	(5) Adj. Factor
	Level	Cumulative		Product	Pres. Index /
Date	Change	Index	Weight	(2) x (3)	Sum Col. (4)
9/30/2001	Base	1.000	0.517	0.517	0.967
7/7/2002	1.015	1.015	0.483	0.490	
10/1/2003	0.906	0.920	0.000	0.000	
12/4/2003	1.007	0.926		1.007	
1/1/2004	1.038	0.961			
7/4/2004	1.005	0.966			
5/9/2005	1.017	0.982			
9/4/2005	1.003	0.985			
11/16/2006	0.998	0.983			
10/1/2007	0.995	0.978			
10/18/2007	0.996	0.974			

Factor Adjusting Accident Year 2001 Medical Losses To Present Benefit Level

(4)
(4) (5)
Adj. Factor
roduct Pres. Index /
2) x (3) Sum Col. (4)
0.747 0.984
0.256
0.000
1.003

) (2) efit	(3)	(4)	(5)
efit			
			Adj. Factor
el Cumula	ative	Product	Pres. Index /
nge Inde	x Weight	(2) x (3)	Sum Col. (4)
se 1.000	1.000	1.000	0.987
12 1.012	2 0.000	0.000	
15 1.02	7 0.000	0.000	
0.930	0	1.000	
0.93	7		
38 0.97	3		
0.978	3		
17 0.99	5		
0.998	3		
98 0.996	6		
95 0.99 ⁻	1		
96 0.98	7		
((((nge Inde se 1.00 12 1.01 15 1.02 06 0.93 07 0.93 38 0.97 05 0.97 17 0.99 03 0.99 98 0.99 95 0.99	Index Weight se 1.000 1.000 12 1.012 0.000 15 1.027 0.000 06 0.930 0.937 38 0.973 0.978 17 0.995 0.3 03 0.998 98 0.996 95 0.991	Inge Index Weight (2) x (3) se 1.000 1.000 1.000 12 1.012 0.000 0.000 15 1.027 0.000 0.000 06 0.930 1.000 07 0.937 38 0.973 05 0.978 17 0.995 03 0.998 98 0.996 95 0.991 991



EXHIBIT VII

Change in Average Costs Per Lost-Time Case: Pre- to Post-Senate Bill 50A

	(1)	(2)	(3)	(4) Developed	(5)
				Indemnity	Indemnity
				Losses Adjusted	Average
	Ultimate	Ultimate	Factor to	to 2006	Cost Per
Accident	Lost-Time	Indemnity	Adjust to 2006	Wage Level ³	Lost-Time Claim
Year	Claim Counts ¹	Losses ¹	Wage Level ²	$= (2) \times (3)$	= (4) / (1)
2000	34,135	598,912,674	1.230	736,662,589	21,581
2001	33,072	599,881,384	1.190	713,858,847	21,585
2002	32,586	576,953,992	1.149	662,920,137	20,344
2003	31,380	518,594,517	1.126	583,937,426	18,609
2004	30,262	426,320,441	1.094	466,394,562	15,412
2005	30,611	422,441,668	1.046	441,873,985	14,435
2006	30,553	428,049,749	1.000	428,049,749	14,010
	(6)	(7)	(8)	(9)	(10)
	(6)	(1)	Developed	(9)	(10)
			Medical	Medical	Total
			Losses Adjusted	Average	Average
	Ultimate	Factor to	to 2006	Cost Per	Cost Per
Accident	Medical	Adjust to 2006	Wage Level ³	Lost-Time Claim	Lost-Time Claim
Year	Losses ¹	Wage Level ²	$= (6) \times (7)$	= (8) / (1)	= (5) + (9)
2000	737,212,647	1.230	906,771,556	26,564	48,145
2001	789,335,423	1.190	939,309,153	28,402	49,987
2002	818,122,218	1.149	940,022,428	28,847	49,191
2003	812,276,404	1.126	914,623,231	29,147	47,756
2004	789,118,126	1.094	863,295,230	28,527	43,939
2005	851,455,765	1.046	890,622,730	29,095	43,530
2006	892,132,089	1.000	892,132,089	29,199	43,209
(11)	Pre-Senate Bill 50A Tota	al Average Costs Per L	.ost-Time Claim⁴		49,108
(12)	Post-Senate Bill 50A To				43,370
(13)	Change in Average Cos	ts Per Lost-Time Claim	n Pre to Post-Senate Bil	I 50A	
	= [(12) / (11)] - 1.0				-11.7%

¹ Based on NCCI Financial Call data for Florida valued as of December 31, 2007. An average of Paid and Paid Plus Case losses were used in the ultimate loss projections.

² Refer to Column (3) of Exhibit V

Developed and wage adjusted loss amounts were not brought to the current respective benefit levels consistent with the handling of Claimant Legal Expenses in Exhibit V

Based on Column (10) for Accident Years 2000 to 2002

Based on Column (10) for Accident Years 2005 and 2006



<u>Florida</u>

Appendix B

Adjustment to Outstanding Policies

I. Industrial Classes

Unexpired Portion as of 3/1/2009	Adjustment Factor	Adjustment Percentage
1 month	1.0074	0.74%
2 months	1.0148	1.48%
3 months	1.0223	2.23%
4 months	1.0297	2.97%
5 months	1.0371	3.71%
6 months	1.0445	4.45%
7 months	1.0519	5.19%
8 months	1.0593	5.93%
9 months	1.0668	6.68%
10 months	1.0742	7.42%
11 months	1.0816	8.16%
12 months	1.0890	8.90%

II. "F" Classifications¹

Adjustment	Adjustment
Factor	Percentage
1.0023	0.23%
1.0045	0.45%
1.0068	0.68%
1.0090	0.90%
1.0113	1.13%
1.0135	1.35%
1.0158	1.58%
1.0180	1.80%
1.0203	2.03%
1.0225	2.25%
1.0248	2.48%
1.0270	2.70%
	Factor 1.0023 1.0045 1.0068 1.0090 1.0113 1.0135 1.0158 1.0158 1.0203 1.0225 1.0248

Note that the adjustment for "F" classes does not apply to class code 9077—United States Armed Service Risk; All Employees and Drivers

2002	2000			
ranking	ranking	State	Index rate	Effective date
1	3	California	5.23	January 1, 2002
2	1	Florida	4.50	January 1, 2001
3	8	Hawaii	3.48	July 1, 2001
4	16	Delaware	3.38	December 1, 2001
5	4	Rhode Island	3.29	November 1, 1998
6	7	Texas	3.29	January 1, 2002
7	2	Louisiana	3.19	May 1, 2001
8	6	New York	3.13	October 1, 2001
9	12	Montana	3.04	July 1, 2001
10	5	Nevada	3.02	July 1, 2001
11	18	Alabama	2.96	March 1, 2001
12	17	Connecticut	2.90	January 1, 2002
13	9	Ohio	2.89	July 1, 2001
14	28	Alaska	2.87	January 1, 2002
15	24	Kentucky	2.87	September 1, 2001
16	10	District of Columbia	2.86	June 1, 2001
17	20	New Hampshire	2.85	January 1, 2002
18	11	Oklahoma	2.82	8/1/99 State Fund, 12/1/01 private
19	15	Illinois	2.73	January 1, 2002
20	14	Colorado	2.73	January 1, 2002 January 1, 2002
21	22	Minnesota	2.60	January 1, 2002 January 1, 2002
22	25	Pennsylvania	2.57	April 1, 2001
23	13	West Virginia	2.53	July 1, 2001
23	33	Vermont	2.45	April 1, 2001
25	26	Missouri	2.39	January 1, 2002
26	29	Idaho	2.37	
27	29	Georgia	2.32	January 1, 2002 November 1, 2001
28	19	Maine	2.32	•
29	31	Tennessee	2.30	January 1, 2002 March 1, 2000
30	23	Michigan	2.25	•
31	23 27	_	2.25	January 1, 2002
32	32	New Jersey	2.25	January 1, 2002
	32 30	Wisconsin	2.22	January 1, 2002
33		Mississippi		March 1, 2001
34	43	North Carolina	2.17	April 1, 2001
35	34	OREGON	2.06	January 1, 2002
36	42	New Mexico	2.01	January 1, 2002
37	36	Massachusetts	1.98	July 1, 2001
38	39	Wyoming	1.97	January 1, 2002
39	45	Nebraska	1.93	February 1, 2001
40	46	Maryland	1.84	January 1, 2002
41	48	Kansas	1.84	January 1, 2002
42	49	South Carolina	1.82	May 1, 2001
43	41	lowa	1.74	January 1, 2002
44	47	Utah	1.67	December 1, 2001
45	38	Washington	1.65	January 1, 2002
46	37	Arizona	1.63	October 1, 2001
47	40	Arkansas	1.62	July 1, 2001
48	44	South Dakota	1.61	July 1, 2001
49	51	Virginia	1.50	April 1, 2001
50	50	Indiana	1.37	January 1, 2002
51	35	North Dakota	1.24	July 1, 2001

Source: Research and Analysis Section, Oregon Department of Consumer and Business Services (12/2002)

Note: Although some states may appear to have the same index rate, the ranking is based on calculations prior to rounding to two decimal places.

2009	2006		Indov	Doroont of		
2008	2006	Ctoto	Index	Percent of	E#active Date	
Ranking	Ranking	State	Rate	study median	Effective Date	
1	1 1	Alaska	3.97	176%	January 1, 2008	
2	5	Montana	3.50	155%	July 1, 2007	
3	12	Ohio	3.32	147%	July 1, 2007	
4	7	Vermont	3.14	139%	April 1, 2007	
5	19	New Hampshire	3.06	136%	January 1, 2008	
6	8	Maine	3.04	135%	January 1, 2008	
8	3	Delaware	2.96	131%	December 1, 2007	
8	4	Kentucky	2.96	131%	October 1, 2007	
9	9	Alabama	2.90	129%	March 1, 2007	
10	13	Oklahoma	2.89	128%	8/1/07 State Fund, 1/1/08 Private	
11	21	Illinois	2.79	124%	January 1, 2008	
12	11	Louisiana	2.76	122%	October 1, 2007	
13	25	South Carolina	2.74	121%	May 7, 2007	
14	2	California	2.72	121%	January 1, 2008	
15	18	Pennsylvania	2.68	119%	April 1, 2007	
16	23	New Jersey	2.66	118%	January 1, 2008	
17	17	Texas	2.61	116%	January 1, 2008	
18	30	Nevada	2.58	115%	March 1, 2007	
19	10	New York	2.55	113%	October 1, 2007	
20	14	Connecticut	2.46	109%	January 1, 2008	
21	26	Tennessee	2.44	108%	July 1, 2007	
22	37	North Carolina	2.43	108%	April 1, 2007	
24	21	Minnesota	2.33	103%	January 1, 2008	
24	32	Mississippi	2.33	103%	March 1, 2007	
25	41	Georgia	2.29	102%	August 3, 2007	
26	22	Rhode Island	2.26	100%	February 1, 2007	
28	6	Florida	2.20	98%	January 1, 2008	
28	25	Missouri	2.20	97%	January 1, 2008	
29	16	District of Columbia	2.16	96%	November 1, 2007	
32	27	New Mexico	2.15	95%	January 1, 2008	
32	39	Michigan	2.15	95%	January 1, 2007	
32	33	Nebraska	2.15	95%	February 1, 2007	
34	35	Wisconsin	2.12	94%	October 1, 2007	
34	32	Idaho	2.12	94%	January 1, 2008	
36	15	Hawaii	2.08	92%	January 1, 2008	
36	44	South Dakota	2.08	92%	July 1, 2007	
37	29	Wyoming	2.06	91%	January 1, 2008	
38	37	Washington	1.98	88%	January 1, 2008	
39	42	OREGON	1.88	83%	January 1, 2008	
41	34	West Virginia	1.86	83%	July 1, 2007	
41	45	Iowa	1.86	82%	January 1, 2008	
42	43	Kansas	1.77	78%	January 1, 2008	
43	29	Colorado	1.76	78%	January 1, 2008	
44	40	Maryland	1.72	76%	January 1, 2008	
45	46	Arizona	1.67	74%	January 1, 2008	
46	38	Utah	1.63	72%	December 1, 2007	
47	48	Arkansas	1.61	71%	January 1, 2008	
48	49	Virginia	1.43	63%	April 1, 2007	
49	47	Massachusetts	1.39	62%	September 1, 2007	
50	50	Indiana	1.23	55%	January 1, 2008	
51	51	North Dakota	1.08	48%	July 1, 2007	

Notes: Starting with the 2008 study, when two or more states' Index Rate values are the same, they now are assigned the same ranking. The index rates reflect appropriate adjustments for the characteristics of each individual state's residual market. Rates vary by classification and insurer in each state. Actual cost to an employer can be adjusted by the employer's experience rating, premium discount, retrospective rating, and dividends.

Employers can reduce their workers' compensation rates through accident prevention, safety training, and by helping injured workers return to work quickly.

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AFFILIATE LISTING

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ACE AMERICAN INSURANCE COMPANY

ACE FIRE UNDERWRITERS INSURANCE COMPANY

ACE INDEMNITY INSURANCE COMPANY

ACE PROPERTY & CASUALTY INSURANCE COMPANY

ACIG INS CO

ADVANTAGE WC INSURANCE CO

AEQUICAP INS CO

AEQUICAP PROPERTY AND CASUALTY INS CO

AIG CASUALTY CO

AIG NATIONAL INS CO

AIU INSURANCE CO (AIG CASUALTY CO)

AK NATIONAL INS CO

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ALLIANCE ASSURANCE COMPANY OF AMERICA (NEW)

ALLIANZ GLOBAL RISKS US INS CO

AMCOMP ASSURANCE CORPORATION

AMCOMP PREFERRED INS CO

AMERICA FIRST INSURANCE COMPANY

AMERICAN ALTERNATIVE INSURANCE CORPORATION

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AMERICAN CASUALTY COMPANY OF READING PA

AMERICAN COMPENSATION INS CO

AMERICAN ECONOMY INS CO

AMERICAN FAMILY HOME INS CO

AMERICAN FIRE AND CASUALTY CO

AMERICAN GUARANTEE AND LIABILITY INS CO

AMERICAN HOME ASSURANCE CO (AIG CASUALTY CO)

AMERICAN INS CO

AMERICAN INTERNATIONAL SOUTH INS CO

AMERICAN INTERSTATE INS CO

AMERICAN MODERN HOME INS CO

AMERICAN SAFETY CASUALTY INS CO

AMERICAN SENTINEL INS CO

AMERICAN STATES INS CO A SAFECO COMPANY

AMERICAN ZURICH INS CO

AMERICAS INSURANCE CO

AMERISURE INS CO

AMERISURE MUTUAL INS CO

AMERITRUST INS CORP

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ANSUR AMERICA

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ASSOCIATED INDEMNITY CORP

ASSOCIATED INDUSTRIES INS CO



AFFILIATE LISTING

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AUTOMOBILE INSURANCE CO OF HARTFORD

AXIS INSURANCE CO

AXIS REINSURANCE CO

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CINCINNATI INDEMNITY COMPANY

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COLONY SPECIALTY INS CO

COMMERCE AND INDUSTRY INS CO

COMMERCIAL CASUALTY INS CO

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COMPANION PROPERTY AND CASUALTY INS CO

CONSOLIDATED INS CO

CONTINENTAL CASUALTY CO

CONTINENTAL INDEMNITY CO

CONTINENTAL INS CO

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DAIMLER CHRYSLER INS CO

DAKOTA TRUCK UNDERWRITERS



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EMC PROPERTY & CASUALTY COMPANY

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EMPIRE INDEMNITY INSURANCE CO

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EMPLOYERS FIRE INSURANCE COMPANY

EMPLOYERS INS CO OF WAUSAU

EMPLOYERS MUTUAL CASUALTY CO

ESURANCE INS CO

EVEREST NATIONAL INS CO

EVEREST REINSURANCE CO (DIRECT)

EXCELSIOR INSURANCE COMPANY

F F V A MUTUAL INSURANCE COMPANY

FAIRFIELD INS CO

FAIRMONT SPECIALTY INSURANCE COMPANY

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FARMERS INSURANCE EXCHANGE

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FCCI INSURANCE COMPANY

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FIDELITY & GUARANTY INS UNDERWRITERS

FIDELITY & GUARANTY INSURANCE CO

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FIRST COMMERCIAL INS CO

FIRST FINANCIAL INS CO

FIRST LIBERTY INS CORP

FIRST NATIONAL INS CO OF AMERICA

FIRST NONPROFIT INS CO

FIRSTCOMP INSURANCE CO

FL HOSPITALITY MUTUAL INS CO

FL RETAIL FEDERATION SI FUND

FL ROOFING SHEET METAL AND AC CONT ASSN SI FUND

FL RURAL ELECTRIC SI FUND

FLORIDA CITRUS BUSINESS AND INDUSTRIES FUND

FLORIDA MUNICIPAL INS TRUST

FLORIDA WC JUA

FLORISTS INS CO

FLORISTS MUTUAL INSURANCE CO



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FRANKENMUTH MUTUAL INS CO

GA CASUALTY AND SURETY CO

GATEWAY INS CO

GENERAL CASUALTY COMPANY OF WISCONSIN

GENERAL INS CO OF AMERICA

GENESIS INS CO

GRANITE STATE INSURANCE COMPANY

GRAPHIC ARTS MUTUAL INS CO

GRAY INS CO

GREAT AMERICAN ALLIANCE INS CO

GREAT AMERICAN ASSURANCE COMPANY

GREAT AMERICAN INS CO OF NY

GREAT AMERICAN INSURANCE COMPANY

GREAT AMERICAN SECURITY INS CO

GREAT AMERICAN SPIRIT INS CO

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GREAT WEST CASUALTY COMPANY

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GUIDEONE MUTUAL INS CO

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HANOVER INS CO

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LIBERTY INS UNDERWRITERS INC

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LM GENERAL INS CO

LM INS CORP

LM PERSONAL INS CO

LM PROPERTY AND CASUALTY INS CO

LUMBERMENS UNDERWRITING ALLIANCE

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SELECTIVE INS CO OF THE SOUTHEAST



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SENTINEL INS CO

SENTRY CASUALTY CO

SENTRY INSURANCE A MUTUAL CO

SENTRY SELECT INSURANCE COMPANY

SFM MUTUAL INS CO

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SOUTHERN INS CO

SOUTHERN OWNERS INS CO

SPARTA INSURANCE COMPANY

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ST PAUL MERCURY INS CO

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STAR INS CO

STARNET INSURANCE COMPANY

STATE AUTO PROPERTY AND CASUALTY INS CO

STATE AUTOMOBILE MUTUAL INS CO

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STATE FARM GENERAL INS CO

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T I G INDEMNITY COMPANY

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TM CASUALTY INS CO

TNUS INSURANCE CO

TOKIO MARINE AND NICHIDO FIRE INS CO LTD US BRANCH

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TRANSPORTATION INS CO

TRAVELERS CASUALTY & SURETY CO OF AMERICA

TRAVELERS CASUALTY AND SURETY CO

TRAVELERS CASUALTY CO OF CONNECTICUT

TRAVELERS CASUALTY INS CO OF AMERICA

TRAVELERS COMMERCIAL CASUALTY CO

TRAVELERS COMMERCIAL INS CO

TRAVELERS INDEMNITY CO

TRAVELERS INDEMNITY CO OF AMERICA

TRAVELERS INDEMNITY CO OF CT

TRAVELERS PROPERTY CASUALTY CO OF AMERICA



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TX GENERAL INDEMNITY CO

ULICO CASUALTY CO

UNITED STATES FIDELITY AND GUARANTY CO

UNITED WI INS CO

UNIVERSAL UNDERWRITERS INS CO

US FIRE INS CO

US LIABILITY INS CO

US SPECIALTY INS CO

UTICA MUTUAL INS CO

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VANLINER INS CO

VIGILANT INS CO

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WAUSAU UNDERWRITERS INSURANCE COMPANY

WESCO INSURANCE COMPANY (AMTRUST GROUP)

WEST AMERICAN INS CO

WESTCHESTER FIRE INS CO

WESTFIELD INS CO

WESTPORT INSURANCE CORPORATION

WILLIAMSBURG NATIONAL INS CO

WORK FIRST CASUALTY CO

XL INSURANCE AMERICA INC

XL SPECIALTY INS CO

ZENITH INS CO

ZURICH AMERICAN INS CO

ZURICH AMERICAN INS CO OF IL

NCCI KEY CONTACTS

Tony DiDonato, FCAS, MAAA
Actuarial & Economics Services
National Council on Compensation Insurance, Inc. (NCCI)
901 Peninsula Corporate Circle
Boca Raton, FL 33487
561-893-3116
Fax: 561-893-5208

Greg Talbot, ACAS
Actuarial & Economics Services
National Council on Compensation Insurance, Inc. (NCCI)
901 Peninsula Corporate Circle
Boca Raton, FL 33487
561-893-3093
Fax: 561-893-5834

Lori Lovgren
Regulatory Services Division
National Council on Compensation Insurance, Inc. (NCCI)
901 Peninsula Corporate Circle
Boca Raton, FL 33487
561-893-3337
Fax: 561-893-5463

All NCCI employees can be contacted via e-mail using the following format:

First Name Last Name@ncci.com

EXHIBIT 2



FILED

JAN 26 2009

OFFICE OF
INSURANCE REGULATION
Docketed by:

OFFICE OF INSURANCE REGULATION

KEVIN M. MCCARTY COMMISSIONER

> REVISED WORKERS' COMPENSATION RATES AND RATING VALUES AS CONTAINED IN THE FILING SUBMITTED BY: NATIONAL COUNCIL ON COMPENSATION INSURANCE

Case No. 100044-08

ORDER ON RATE FILING

On November 14, 2008, the NATIONAL COUNCIL ON COMPENSATION INSURANCE ("NCCI") filed, pursuant to Section 627.091, Florida Statutes, Revised Workers' Compensation Rates and Rating Values (hereinafter the "Filing") for consideration and review by the FLORIDA OFFICE OF INSURANCE REGULATION ("OFFICE"). The Filing proposed an 8.9 percent increase in the overall rate level, to be effective March 1, 2009, on new, renewal and outstanding policies.

The **OFFICE**, having concluded that it would be in the public interest to hold a public hearing pursuant to Section 627.101, Florida Statutes, for the purpose of allowing the public an opportunity to speak or present evidence regarding the matters contained in the Filing, and by doing so assist the **OFFICE** in determining whether the Filing meets the applicable requirements of law, held a public hearing ("Hearing") on December 16, 2008, in the Cabinet Meeting Room at the Capitol in Tallahassee, Florida.

The Commissioner of the Office of Insurance Regulation, having considered the Filing and additional information submitted by **NCCI**, the supporting data, oral and written statements presented at the Hearing, rebuttal testimony subsequent to the hearing, the

analysis by the staff of the **OFFICE**, and being otherwise fully advised in the premises finds:

- 1. The Commissioner of the Office of Insurance Regulation has jurisdiction over the parties and the subject matter of these proceedings.
- 2. Notice of the Hearing was published in Vol. 34, No. 49, <u>The Florida</u>

 <u>Administrative Weekly</u> on December 5, 2008, on page 6394. Notice was also sent directly to **NCCI** and to other persons requesting to be notified of such events.
- 3. The proposed overall increase in rate level of 8.9 percent for new, renewal and outstanding business in the Filing has not been justified.
- 4. **NCCI** states that the proposed increase results from the impact of the Florida Supreme Court's decision on October 23, 2008 in <u>Emma Murray v. Mariner Health Inc.</u> and ACE USA, Case No. SC07-244.
- 5. NCCI acknowledges that the only data NCCI collects from its insurers on attorney fees or attorney involvement is limited to two optional fields in the Unit Reports and three fields in the Call for Detailed Claim Information (DCI); one of which is optional. Since the DCI data is only a sample of claims and the Claimant Legal Expenses Paid to Date field is optional, NCCI relies on data from the Office of the Judges of Compensation Claims or the Division of Workers' Compensation. The claimant attorney fees from the Office of the Judges of Compensation Claims are based on award date, which means that the amounts for a year include multiple accident years both before and after the 2003 reform. Thus, NCCI uses the much older data (years 1990 to 1999) from the Division of Workers' Compensation to estimate the portion of total claim cost due to Claimant Attorney Fees.

- 6. In the filing **NCCI** took the claims reported on the DCI call that have claimant attorney involvement; applied on-level factors for benefit level and wage level; and compared the average claim size for accident years 2005 and 2006 versus the average for accident years 2000 to 2002. **NCCI** attributes this entire difference of -15.7% in average claim size to the attorney fees required by Senate Bill 50A. The average size of a claim can be affected by a number of factors unrelated to the amount of the attorney fee as shown by the changes in average claim before Senate Bill 50A. Several participants at the hearing indicated that in their opinion, **NCCI** had underestimated the impact of attorney involvement on the average size of the claims. In fact, as the size of the average claim with attorney involvement was decreasing post reform, the size of the average claim without attorney involvement has increased. This implies that a return to pre-reform attorney fees could have an even greater affect on claims with attorneys than indicated by the change in average claim size for claims with attorney involvement.
- 7. In the filing, NCCI uses Financial Call data to calculate the claim frequency during the pre-reform period and post reform period for both Florida and Countrywide excluding Florida. NCCI calculates the ratio of Florida's post reform frequency to Countrywide excluding Florida frequency for the same period. NCCI compares the ratio of Florida frequency to Countrywide excluding Florida in the post reform period to the ratio of Florida frequency to Countrywide excluding Florida in the pre-reform period. Then, NCCI averages these two ratios to get an annual frequency decline due to lack of attorney involvement of -6.4%. This annual change of -6.4% is compounded over 4 years to get a total frequency decline of -23.2%. NCCI attributes this decline in frequency to the revision in attorney fees required by Senate Bill 50A. However, other states have had significant declines in frequency without changing the attorney fee

provisions. Since **NCCI** believes the decline in frequency is due to the revision in Senate Bill 50A for attorney fees, the expectation is that the percentage of claims with attorney involvement would also decline, but this has not occurred. Thus, this means that the number of claims has decreased for both claims with attorney involvement and for claims without attorney involvement. This suggests that some other factor could be contributing to the decline in claim frequency. While attorney involvement may have some impact on the frequency of claims, it is very difficult to quantify.

- 8. **NCCI** relies on the DCI call to evaluate the impact of attorney involvement on workers' compensation claims. There are a number of issues with DCI data including the under sampling of permanent totals and death claims, the improper coding of injury types and changes in database over time as claims are added or corrected. While these issues may not impact the specific analysis done by **NCCI**, it is not clear that an analysis was done to evaluate the impact of these potential problems.
- 9. Although not specifically quantified by NCCI, the effect of attorney involvement on claim closure and return to work was cited by several participants at the public hearing as having a significant impact on workers' compensation claims. At the hearing, NCCI presented an exhibit that shows a substantial increase in the closure rate after 2003 for claims that have an attorney. NCCI also provided an exhibit at the hearing that shows a significant improvement in return to work after the 2003 reforms. Somewhat surprising is the distribution of claims with attorney involvement after the 2003 reforms. Despite the reduced attorney fees, there is more attorney involvement in the smaller claims after the reform. However, it appears that claimant's attorneys are spending less time on the cases and seeking earlier settlements, which is reflected in the faster closure rate at 18 months after the accident. If attorneys have more incentives to keep

claims open due to being paid on an hourly basis, there will be an increase in workers' compensation cost, which could be substantial. The ratio of the average claim with attorney involvement to the average claim without attorney involvement was around three times before the 2003 reform but this ratio has declined to two times after reform. If the result of the Emma Murray decision is to reverse this ratio to what it was prereform, there will be a substantial impact on losses and rates.

WHEREFORE, in consideration of the foregoing and being otherwise duly advised in the premises, it is hereby ORDERED:

The Filing of **NCCI** is hereby DISAPPROVED. The Filing will be approved provided the Filing is amended to comply with all of the following and such amendments to the Filing are filed as soon as practicable.

- A. The statewide overall rate level change for the Filing for new and renewal policies for other than the "F" classifications shall be +6.4 percent (+6.4%), effective April 1, 2009.
- B. The statewide overall rate level change for the Filing for new and renewal policies for the "F" classifications shall be +2.0 percent (+2.0%), effective April 1, 2009.
 - C. There shall be no change in rates for outstanding policies.
- D. Considering the importance of attorney involvement in the workers' compensation system, NCCI should establish a way to collect this data from its insurers or from outside sources. As the Designated Statistical Agent for the OFFICE, NCCI shall begin collecting claimant attorney fees and employer attorney fees on Unit Reports using the Workers Compensation Statistical Plan for policies dated 4/1/2009 and thereafter on a mandatory basis instead of the current optional basis.

E. NCCI shall list and explain each and every change in the proposed manual pages, including the experience rating plan manual and the retrospective rating plan manual. These shall be shown in the summary exhibit and described by an explanatory memorandum.

F. The effective date of the rate change for new and renewal policies shall be no earlier than April 1, 2009. To meet statutory timeframes for an April 1, 2009 effective date, NCCI shall file the necessary amendments to the Filing as may be required to implement the terms of this Order as soon as practicable but no later than February 2, 2009. No râte change shall be implemented until such amendments are properly filed and final approval is issued by the OFFICE.

By making a filing to comply with this order, NCCI waives any right to any further proceedings and authorizes the OFFICE to enter a final order on the Filing.

DONE and ORDERED this 26 day of January, 2009.

Commissioner

Copies furnished to:

NATIONAL COUNCIL ON COMPENSATION INSURANCE 901 Peninsula Corporate Circle Boca Raton, FL 33487

THOMAS J. MAIDA, ESQUIRE Foley & Lardner P. O. Box 1819 Tallahassee, FL 32302

SEAN SHAW, CONSUMER ADVOCATE 200 East Gaines Street Tallahassee, Florida 32399-0308

NOTICE OF RIGHTS

Pursuant to Sections 120.569 and 120.57, Florida Statutes and Rule Chapter 28-106, Florida Administrative Code (F.A.C.), you may have a right to request a proceeding to contest this action by the Office of Insurance Regulation (hereinafter the "Office"). You may request a proceeding by filing a Petition. Your Petition for a proceeding must be in writing and must be filed with the General Counsel acting as the Agency Clerk, Office of Insurance Regulation. If served by U.S. Mail the Petition should be addressed to the Florida Office of Insurance Regulation at 612 Larson Building, Tallahassee, Florida 32399-4206. If Express Mail or hand-delivery is utilized, the Petition should be delivered to 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0300. The written Petition must be received by, and filed in the Office no later than 5:00 p.m. on the twenty-first (21) day after your receipt of this notice. Unless your Petition challenging this action is received by the Office within twenty-one (21) days from the date of the receipt of this notice, the right to a proceeding shall be deemed waived. Mailing the response on the twenty-first day will not preserve your right to a hearing.

If a proceeding is requested and there is no dispute of material fact the provisions of Section 120.57(2), Florida Statutes may apply. In this regard you may submit oral or written evidence in opposition to the action taken by this agency or a written statement challenging the grounds upon which the agency has relied. While a hearing is normally not required in the absence of a dispute of fact, if you feel that a hearing is necessary one may be conducted in Tallahassee, Florida or by telephonic conference call upon your request.

If you dispute material facts which are the basis for this agency's action you may request a formal adversarial proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes. If you request this type of proceeding, the request must comply with all of the requirements of Rule Chapter 28-106.201, F.A.C., must demonstrate that your substantial interests have been affected by this agency's action, and contain:

- a) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- b) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
 - c) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and
 - d) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

These proceedings are held before a State Administrative Law Judge of the Division of Administrative Hearings. Unless the majority of witnesses are located elsewhere, the Office will request that the hearing be conducted in Tallahassee.

In some instances, you may have additional statutory rights than the ones described herein.

Failure to follow the procedure outlined with regard to your response to this notice may result in the request being denied. Any request for administrative proceeding received prior to the date of this notice shall be deemed abandoned unless timely renewed in compliance with the guidelines as set out above.

Revised 02/04/2008

EXHIBIT 3



Florida

Workers Compensation Market 2013

October 1, 2013

Lori_Lovgren@ncci.com

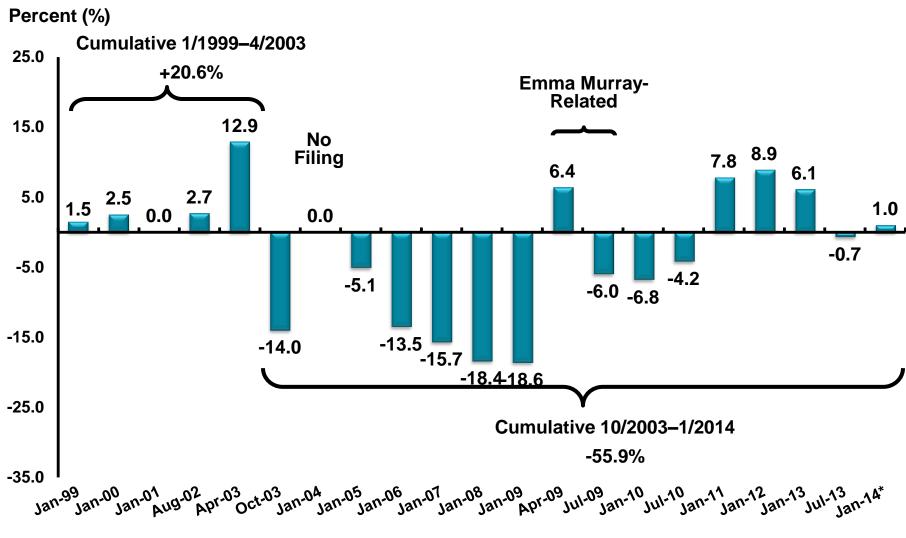
561-893-3337

Florida Workers Compensation Rates

	Proposed Change 1/1/2014	Cumulative Change* 10/1/2003 – 1/1/2014
Manufacturing	-3.2%	-53.7%
Contracting	+3.5%	- 57.5%
Office & Clerical	+0.3%	-58.1%
Goods & Services	+1.1%	-54.3%
Miscellaneous	+0.9%	-54.0%
Overall Average	+1.0%	-55.9%

NCCI

Florida Historical Rate Changes



Calendar Year

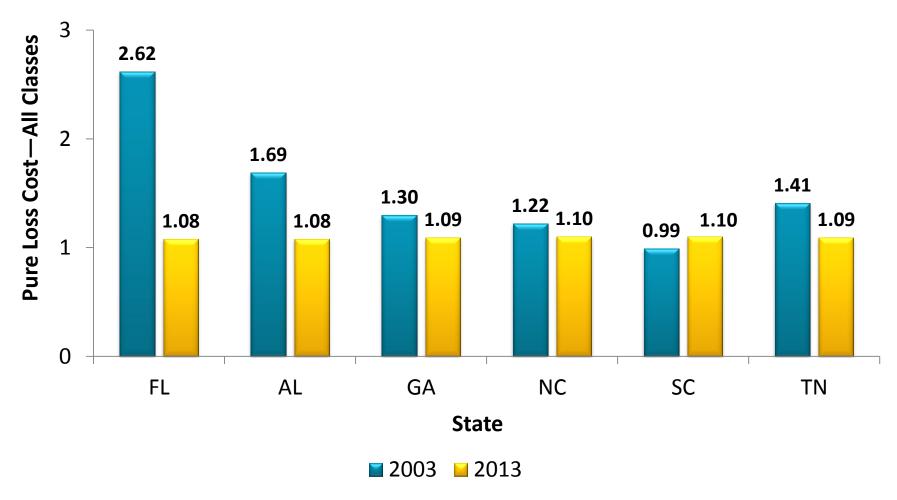
^{*} Pending

Florida Has Reached Point of Stability for First Time Since 2003 Reform

- Rate changes within +/-5% generally reflect "normal" year to year changes
- Items worthy of note about this rate filing:
 - NOT NEW: The experience change is minor this year (same for last several rate filings)
 - NEW THIS YEAR: Proposed trend change is minor (reflects expectation of stability going forward)



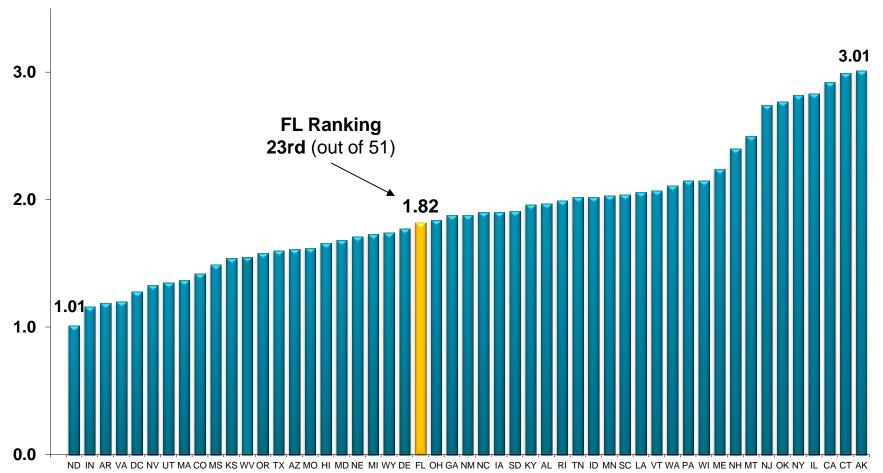
Current Average Voluntary Pure Loss Costs Using Florida's Payroll Distribution





Workers Compensation Premium Rate Ranking

Premium Rate Index per \$100 of Payroll



Source: 2012 Oregon Workers' Compensation Premium Rate Ranking Summary

Indexes based on rates in effect on January 1, 2012

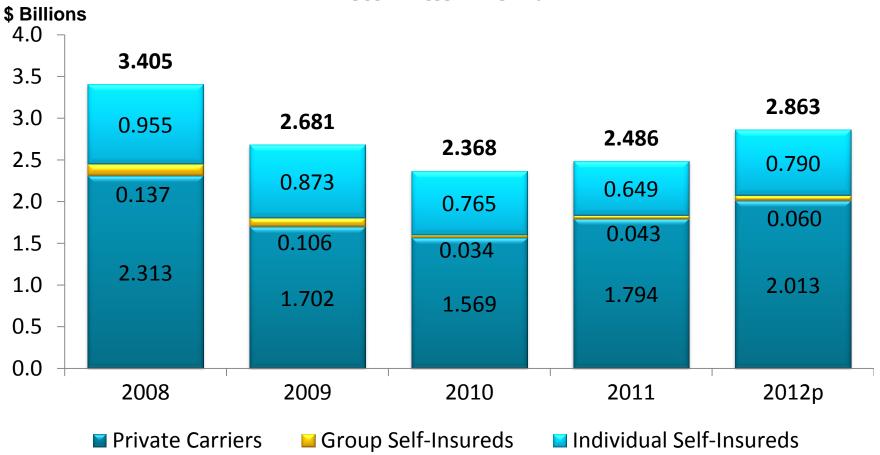




Market Indicators

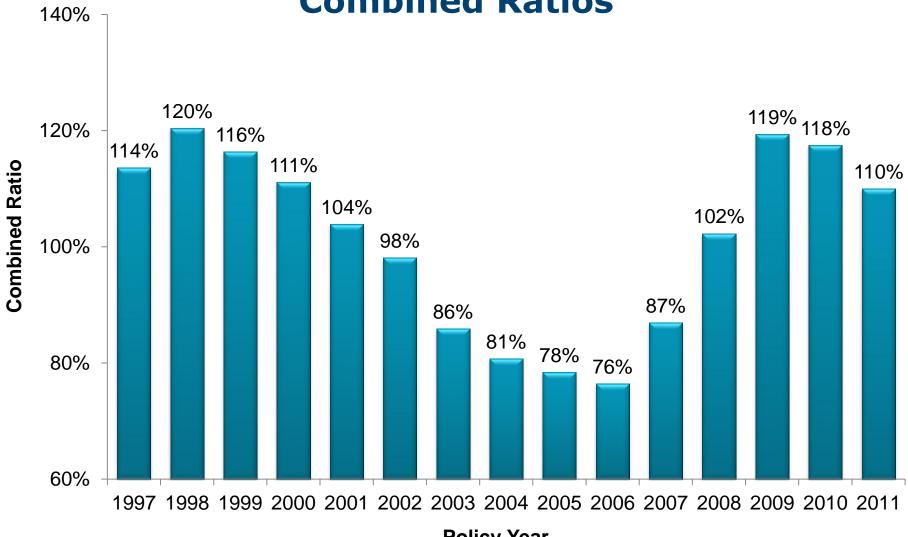
Florida's Workers Compensation Premium Volume

Direct Written Premium





Florida Policy Year Combined Ratios

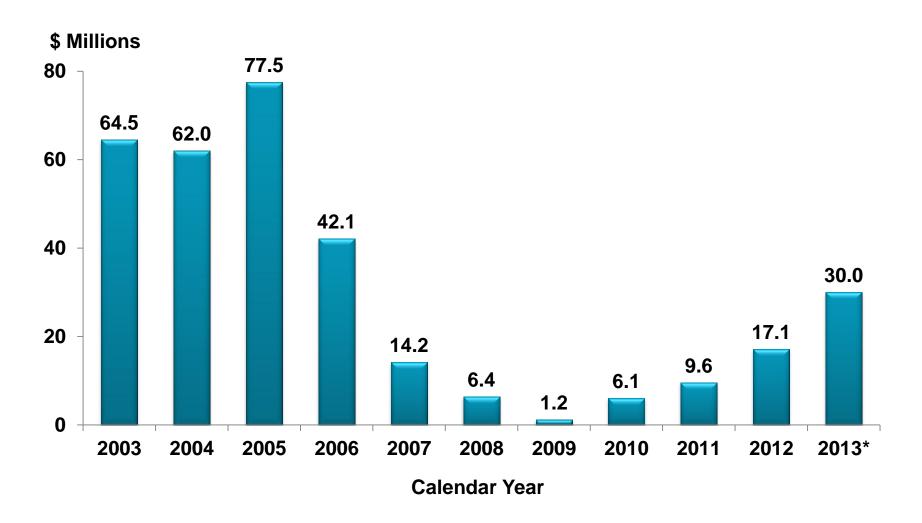


Policy Year

Source: NCCI financial data



Florida WCJUA Written Premium



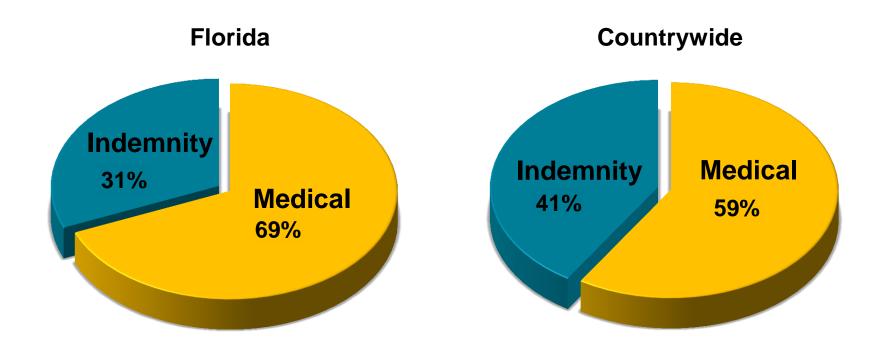
Data provided by the Florida Workers Compensation Joint Underwriting Association (WCJUA) *Projected





Cost Drivers

Medical Benefits Constitute the Majority of Total Benefit Costs in Florida





2012 Medical Cost Distributions vs. Countrywide

	Florida ¹	Countrywide ²	Difference
PHYSICIANS	31.8%	39.8%	-8.0%
DRUGS	15.1%	11.2%	+3.9%
SUPPLIES	5.8%	7.6%	-1.8%
OTHER	1.8%	4.4%	-2.6%
HOSPITAL INPATIENT	18.6%	15.0%	+3.6%
HOSPITAL OUTPATIENT	18.8%	16.7%	+2.1%
ASC	8.1%	5.3%	+2.8%
TOTAL	100%	100%	0%



¹Source: Derived from data provided by Florida Division of Workers' Compensation for service year 2012.

²Source: Derived from NCCI Medical Data Call, for Service Year 2012.

Potential Areas for Savings

Drugs

- SB 662 (drug repackaging) could impact distribution in 2013
- Other options: Restrict physician dispensing, lower reimbursement rate, lower dispensing fee, introduce drug formulary, strengthen prescription drug monitoring program
- 10% decrease in drugs → approx. 1% impact on rates

Facilities

- Hospital Inpatient
- Hospital Outpatient
- Ambulatory Surgical Centers
- 10% decrease in facilities → approx. 3% impact on rates

Other Areas of Concern: 2013 Case Law (Not Reflected in Current Rate Filing But Could Impact Future Rate Filings)

- Westphal 1st DCA recently issued new decision, but certified a question to the Florida Supreme Court; NCCI currently pricing new decision
 - Is a worker who is totally disabled as a result of a workplace accident, but still improving from a medical standpoint at the time temporary total disability benefits expire, deemed to be at maximum medical improvement by operation of law and therefore eligible to assert a claim for permanent and total disability benefits?
- Morales Awaiting decision of Florida Supreme Court
 - Most critical question: Does the policy operate to exclude coverage of the Estate's simple negligence claim against Zenith or the resulting tort judgment?



Florida Workers Compensation Market— In Summary: Mixed Results

- Statewide premium indicates Florida payroll is up in 2011 and 2012 - first two years since the end of the recession in 2009
- Florida combined ratios are high 110% PY 2011 but coming down since peak during 2009
- WC JUA premium creeping up in 2011 and 2012; projected to increase further in 2013
- Case law uncertainty may be already impacting current behavior of stakeholders in the workers compensation system



Can Stability Be Maintained?

- Even including 1.0% increase, Florida rates would still be down 56% from the peak in 2003 and are still relatively low
- Most of the post-reform rate reductions have been maintained (reached 64.7% in 2010 and now would be 56%)
- Even including 1.0% increase, Florida loss costs would be at the average for the southeastern states (FL 1.09 vs. 6 state average 1.09)
- Recent cases should be closely monitored as certain outcomes could have significant impacts on the workers compensation system



EXHIBIT 4

Economic Analysis:

The Effects of Murray Decision on Florida Workers' Compensation Costs, Employment and Wages

Prepared for:

Florida Justice Reform Institute 210 South Monroe Street Tallahassee, FL 32301-1824

Prepared by:

N. Mike Helvacian, Ph.D. 556 Summit Street Englewood Cliffs, New Jersey 07632 (201) 569-3062

March 3, 2009

The Florida Justice Reform Institute (FJRI) commissioned this study. The FJRI's mission is to fight wasteful civil litigation through legislation, to promote fair and equitable legal practices, and to provide information about the state of civil Justice in Florida.

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Data Sources

Claims Data NCCI Detailed Claim Information (DCI)

Frequency NCCI Financial Calls as reported in the 2004 and

2008 Annual Statistical Bulletins, Exhibit XII.

Employment BLS, State and Area Employment, Hours and

Earnings.

Wages BLS, Occupational Employment Statistics.

Employer Costs BLS, Employer Costs for Employee Compensation

Executive Summary I.

The Florida Supreme Court in the Murray decision¹ reversed the attorney fee provisions of the Florida workers' compensation reform law (SB- 50A).² The SB-50A was enacted in mid 2003 and became effective October 1, 2003. While SB-50A was a comprehensive reform of Florida's workers' compensation system, the data and econometric analysis presented in this report show that the attorney fee provisions of the reform account for a large part of the reductions in the system costs in the post-reform period.

The SB-50A ushered in an unprecedented era of declining workers' compensation costs and insurance premiums for the state's employers.

- The costs declined for self-insured employers as a result of declining claim costs and frequencies.
- The insurance rates for the insured employers declined 60.5% from NCCI's initial rate filing in 2003 through 2008.³
- The cost reductions were also associated with a post-reform era of accelerated growth in the state's employment levels and wages unmatched in the neighboring states.

The attorney fee provisions of the reform targeted the high level of claim disputes and attorney involvement in the state, particularly in Permanent

¹ Emma Murray vs. Mariner Health Inc. and ACE USA, NO. SC07-244 ("Murray"), October 23, 2008. ² Florida Senate Bill 50A.

³ NCCI, Florida Emma Murray v. Mariner Health Law-Only Filing, November, 2008.

Impairment claims (PI).4 The SB-50A introduced a new method of calculating attorney fees in workers' compensation claims.

- The reform based an attorney's fee on the *benefits secured* on the behalf of a claimant, which were previously based on *services* rendered.
- The term *benefit secured* was defined in the PI cases as *only that* amount awarded to the claimant above the amount specified in the offer to settle with lump-sum payments.⁵
- Hence forward, the attorneys could not bill for unlimited hours of service at the customary fees.
- None of the other major provisions of the SB 50-A could have any significant impacts as this provision on the PI indemnity costs and frequencies.

The restructuring of the attorney fees had profound effects in the way that claim disputes were resolved in the system. For the first time the attorneys were obligated to demonstrate the value added in terms of dollar amount of benefits they secured for their claimants. This accomplished the following behavioral changes:

- The claimants where the attorneys could not add value or were not likely to add significant value to their cases did not seek attorney representation.
- In PI cases, restructuring encouraged employers and insurers to make the best possible first offer to the claimants in order to minimize the possibility of attorney involvement in the claims.

⁴ The Permanent Partial Disabilities are referred as Permanent Impairments in Florida. ⁵ SB-50A allowed attorney fees in medical-only cases, but capped them at \$1,500.

 In smaller Temporary Disability (TD) cases attorney fees were also determined by benefits secured, which removed the attorneys' incentives to keep claims open.

Attorney Involvement

The claims data analysis shows that the percentage of lost-time claims with attorneys actually remained relatively stable, around 20% between pre- and post- reform periods (Table 1).

- However, there was a large reduction in the attorney involvement in PI cases (-7.5%), particularly in the large PI cases.
- This reduction was associated with an increase in attorney representation in Temporary Disability (TD) cases (14.2%).
- Over the same periods, the attorney involvement increased in lost-time claims and in PI cases in the Other Gulf States.
- In Florida, proportionately more claimants received PI awards without the assistance of attorneys in the post-reform period. In other words, the likelihood of obtaining a PI classification without an attorney increased in the post-reform period.

Table 1	Attorney Involvement in Workers Compensation Claims						
	Percentage		Percent			Percent	
	Florida		Diff.	Other Gulf States		Diff.	
	Pre-	Post-		Pre-	Post-		
All Lost Time C	19.36%	20.21%	4.38%	15.45%	24.70%	59.85%	
TD	12.06%	13.77%	14.15%	12.44%	23.40%	88.02%	
PI	41.25%	38.17%	-7.46%	28.44%	30.40%	6.90%	

Claim Closures

The claims data also shows that a larger percent of claims closed within 18 months of injury (the closure rate) in the post-reform period, with and without attorney involvement.

• This generally meant that for the same severity of injuries claimants return to work faster than in the pre-reform period.

Table 2	Percent of Closed Claims							
	18 Months	18 Months from the date of Injury						
	Florida	Florida Other Gulf States						
	Pre-	Post-	Pre-	Post-				
	SB50A	SB50A	SB50A	SB50A				
All	78.8%	85.7%	79.7%	80.6%				
No Attorney	83.4%	89.0%	83.3%	83.1%				
With Attorney	59.7%	73.0%	60.0%	73.1%				

- The improved claim closure rates resulted in lower systems costs.
- The improved claim closures also benefited the claimants directly in that they were able to return to gainful employment sooner than before.

Attorney Fees

In Florida claims, the average size of an attorney's fee was over 42% of the average lump-sum payments in the pre-reform period (Table 3).

- The average attorney fee declined 13.6%, and lump-sum payments declined 9.2% in the post-reform period.
- However, even with this decline, the attorneys in Florida still commanded over 40% of the lump-sum payments, compared to about 35% in the Other Gulf States.

Table 3	Att	torney Fees	and Lump Su	m Payments			
		Florida a	nd Other Gulf	States			
	Florida			Other Gulf Sta	ates		
	Pre-	Post-	Percent	Pre-	Post-	Percent	
	SB50A	SB50A	Change	SB50A	SB50A	Change	
Attorney Fees	3,752	3,247	-13.46%	6,288	6,164	-1.96%	
Lump Sum Payments	8,882	8,069	-9.16%	18,615	17,670	-5.08%	
Attorney Fees as a Percentage:							
Lump Sum Payments	42.25%	40.25%	-4.73%	33.78%	34.89%	3.29%	

- When a PI claim closes without an attorney, the dollar amount of savings is about 40% of the lump-sum payments. The fact that proportionately fewer PI claims closed in the post-reform period without an attorney indicates that in these cases the PI claimants and the employers were both better off in the post-reform period.
- The claims data also indicate that on the average lump-sum amounts was less in the post-reform period (\$8,069 vs. \$8,882).
- The claimants' share of the lump-sum payments was slightly greater in the post-reform period (59.8% vs. 57.8%).

Lost-Time Claim Costs

The average costs for lost-time claims increased 12.5% in Florida between pre- and post-reform periods, in contrast to a 27.9% increase in the other Gulf States over the same periods (Table 4). ⁶ These cost increases are not adjusted for wages or claim mix difference. The claims data also indicate that indemnity costs increased 0.8% between the pre- and post-reform periods, but medical costs increased 22.4% over the same period. The comparable data for the Other Gulf States indicate that indemnity costs increased 24.0% between the pre- and post-reform, while medical costs increased 31.6% (Table 4).

- The fact that medical costs in Florida increased at a slower rate than in the Other Gulf States indicates that the medical fee related changes in SB-50A were effective in containing medical costs.
- The indemnity costs largely account for the difference in the claim cost increases between Florida and the Gulf States, which would be affected by the lower attorney fees and proportionately fewer PI claims without attorneys in the post-reform period.

			Table 4				
l		Ave	erage Claim	Costs			
ı	Incurred C	Costs of Lost	-Time Claim	s, 18 Months After Inju	ry		
ı			Florida Clair	ns			
l	SB 50A		%	Other	SB 50A		%
Florida	Pre-	Post	Diff	Gulf States	Pre-	Post	Diff.
Total Cost	21,920	24,650	12.5%	Total Cost	23,121	29,561	27.9%
Indemnity Costs	10,086	10,164	0.8%	Indemnity Costs	11,291	13,998	24.0%
Medical Costs	11,834	14,487	22.4%	Medical Costs	11,830	15,563	31.6%

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⁶ By lost-time we mean lost-time beyond the waiting period to receive temporary disability wage benefits. In Florida, the waiting period is 7 days. However, the benefit loss to the claimant associated with the waiting period is indemnified if the duration of temporary disability exceeds the retroactive period of 21 days. .

Permanent Impairment Claim Costs

The incurred costs of PI claim increased 15.2% in Florida between pre- and post-reform periods without an attorney, but declined 5% with attorneys over the same periods (Table 5). In the Other Gulf States, the total costs of PI claims increased 23% without attorney representation and increased almost 40% with attorney representation. These changes are not adjusted for wages and injuries that may affect claim costs. In the impact analysis, we measure the changes in the PI claim costs after controlling for these factors using econometric models.

- The decline in the PI costs with attorneys in the post-reform period is partly caused by the decline in the attorney fees.
- More importantly, the increase in the PI costs without attorneys is caused by an increasing number of claimants obtaining more costly PI benefits without an attorney in the post-reform period.

Table 5	Average	Costs of P	ermanent I	mpairment	Claims	
	Incurre	d Total Co	sts, at 18 M	onths After	Injury	
	No Attorne	y		With Atto	rney	
	SB 50A		%	SB 50A		%
Florida	Pre-	Post	Diff	Pre-	Post	Diff.
Permanent Impairment	30,344	34,948	15.2%	45,021	42,748	-5.0%
Other Gulf States						
Permanent Impairment	36,115	44,344	22.8%	50,092	69,984	39.7%

Claim Frequencies

The frequency of lost-time claims declined in the post-reform period in Florida and in the Other Gulf States (Table 6). The frequency is defined as number of claims per 100,000 workers. The decline in the frequency was slightly greater in Florida post-reform period than in the Other Gulf States. However, the frequency of PI claims declined substantially more in Florida than in the Other Gulf States (-17.4% vs. -8.4%).

The relative decline in the Florida PI claim frequency can be explained by the fact that lost-time claims in Florida were less likely to become PI claims in the post-reform period. This issue is analyzed by an econometric model and discussed further below.

Table 6	Frequency of Injuries: 2001-2005						
		Pe	r 100,000 work	cers			
	SB 50A			Other	SB 50A		
Florida	Pre-	Post-	Difference	Gulf States	Pre-	Post	Difference
All Lost-Time Claims	1442	1151	-20.2%	All Lost-Time Claims	1110.5	932.75	-16.0%
Permanent Impairment	379	313	-17.4%	Permanent Impairment	295.5	270.75	-8.4%
Temporary Disability	1024	815	-20.4%	Temporary Disability	798.25	645.25	-19.2%

The Impact on System Costs

The impact of the SB-50A on the Florida system costs are based on evaluations with the two econometric models that are discussed in the Methodology and Data section of the Introduction (Section II) and in the impact analysis in (Section IV). The impact analysis is comprised of six interdependent parts that measure the impact on: Permanent Impairment (PI) claim costs and frequencies, attorney fees, Temporary Disability (TD) claim costs and frequencies, and the impact on the total system costs.

Impact on Claim Costs

An econometric cost model of Florida PI claims measures the impact of attorney involvement and the claim closure rates on costs. Based on the claims data analysis, the attorney fee provisions of the SB- 50A affected both the attorney involvement and claim closure rates in the post-reform period.

The percent change assumptions for the two variables in the model are strictly based on the claims data. They are measured as percent change between the pre- and post-reform periods in Florida relative to the Other Gulf States: 13.4% decline in the attorney participation, and 29.7% decline in the percent of open claims.⁸

⁷ P. Borba and M. Helvacian, *Factors That Influence the Amount and Probability of Permanent Partial Disability Benefits*, Workers Compensation Research Institute, (June, 2006).

⁸ The percent of open claims is the complement of the claim closure rate and measure the same concept.

The combined impact of these measures is a 26.8% decline in the PI claim costs between the two periods (Table 7).

Table 7 Impact of Attorney Involvement and Percentage of Open Claim on the Permanent Impairment Claim Costs						
	Model	%	%			
	Parameter	Change	Impact			
Attorney Participation	0.932	-13.4%	-12.6%			
Percent Open	0.506	-29.7%	-16.3%			
Total Impact			-26.8%			

- The total impact on the PI claim costs, including reductions in the attorney fees (5%) not captured in the econometric model evaluations, is 30.5% in the post-reform period.
- The faster claim closures have an effect on the TD claim costs as well, but not attorney involvement. As the claims data indicates, the attorney involvement increased in TD claims in the post-reform period.
- The impact of the faster claim closures is a 16.3% reduction in the TD claim costs. This figure includes a small 1.4% reduction associated with attorney fee reductions that affect about 12% of TD claimants.
- The combined impact of SB-50A on the lost-time claim costs⁹ (PI and TD costs) is a substantial 26.6% reduction in the lost-time claim costs.

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⁹ Permanent total claims and death claims are not included in the analysis. For a more detailed discussion, see the methodology section of the Introduction (Section II).

Impact on Frequency

A logistic econometric model of Florida lost-time claims measures the likelihood of lost-time claims becoming PI claims. ¹⁰ The likelihood or probability is measured as the number of PI claims in the total lost-time claims. The model measures the likelihood of PI claims in lost-time claims associated with attorney involvement. A second variable is the impact of a higher payoff if the claim was to become a PI claim. The results of the analysis are summarized in Table 9.

The probability of lost-time claims becoming PI claims is reduced in the post-reform period by 6.8%. An effect that is measured by the logistic model.

Table 8	Probability of Permanent Impairment Claims					
Variable	Model Parameter	Change	Prob of PI	1 - Prob Pl	Impact	
Expected PI Pay	0.197	-0.2683	0.2701	0.7299	-1.04%	
Attorney Involver	2.276	-0.1343	0.2701	0.7299	-5.85%	
Full Impact					-6.82%	

- An additional impact of 5% in the PI frequency is derived from the overall reduction in the lost-time frequency in Florida, relative to the Other Gulf States.
- The above two effects result in an impact of 11.5% reduction in the frequency of Florida PI claims in the post-reform period.
- However, this impact is offset by an increase in the frequency of TD cases.

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¹⁰ P. Borba and M. Helvacian (June, 2006).

■ The net impact on the frequency of lost-time claims is small, -2.8%, between the pre- and post-reform periods.

Impact on the System Costs

The impact on the system costs is a composite of the impacts on the lost-time claim costs and frequencies. These effects are summarized in Table 10.

Table 9 Impact on the System Costs: PI and TD Cost Components							
	Frequency	Claim Costs	Total				
PI Claims	-11.5%	-30.5%	-38.5%				
TD	0.5%	-17.5%	-17.1%				
Total Impact	-2.7%	-26.6%	-28.6%				

- The system costs associated with PI and TD claims are reduced substantially, but a 38.5% reduction in the PI costs is the greatest source of impact on the system costs.
- The impact of attorney fee provisions of SB-50A is a 28.6% reduction in the workers' compensation system costs between pre- and postreform periods.
- The Murray decision will reverse this improvement fully, raising the system costs by 28.6%.

The Impact on Employment and Wages

An increase in the workers' compensation costs is a direct cost on the Florida employers. The exact costs would depend on the size of employers' payroll and their workers' compensation costs. Higher risk industries, such as construction and manufacturing, generally have higher workers' compensation costs, and the impact on them would be greater than for the lower risk industries. The effects of higher workers' compensation costs are similar to increasing the employers' payroll taxes. It is a proportional tax based on the employers' payroll, similar to increasing employers' part of the Social Security Tax or the State Unemployment Insurance.

- Unlike a payroll tax, however, the employers' payments will not become revenue to the state, but a new source of income to attorneys representing the claimants among other service providers.
- The claims data presents some evidence that a greater percentage of lump-sum amounts will go to the attorneys.

A 28.6% increase in workers' compensation costs would also affect the state's employees and their wages. With rising labor costs, the employers' demand for labor will decline, particularly for low skilled workers, placing a downward pressure on the growth of employment and wages. ¹¹

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¹¹ For a given supply of labor, a decline in the demand for labor will lower both wages and number of employed workers.

Growth in Employment

Among the five states examined, the growth rate in employment in Florida was 2.78% per year over the post-reform period, higher than the annual growth rate in any of the other four states (Table 10). The annual growth in employment was 1.51% for the Other Gulf States combined.

- Following the enactment of SB-50A, Florida experienced an unprecedented growth in employment, 3.8% in 2004 and 4.4% growth in 2005.
- On the average, the employment growth in Florida was 1.3% per year greater than in the Other Gulf States from 2003 through 2008 (2.8% 1.5%).

Table 10	Growth Rates in Private Non-Farm Employment 2002 to 2007							
	Other							
	Florida		Georgia	Alabama	Louisiana	Mississippi	Gulf States	
2003-2004		3.80%	1.52%	1.66%	0.60%	0.94%	1.28%	
2004-2005		4.44%	2.77%	2.08%	-1.14%	0.80%	1.55%	
2005-2006		2.75%	2.22%	2.22%	-0.84%	1.37%	1.48%	
2006-2007		0.17%	1.31%	1.30%	3.75%	0.75%	1.74%	
2003-2007		2.78%	1.95%	1.82%	0.57%	0.96%	1.51%	

Growth in Wages

The Florida workers' annual wages increased from an average \$32,540 in 2003 to \$37,260 in 2007, a 3.4% average annual increase (Table 11). In the Other Gulf States, the wage growth was only greater in Mississippi, 3.8% per year, where the wage levels are substantially below the other states.

Table 11	Annual Wages						
	All Occupation - Non-Farm Employees Florida Georgia Alabama Louisiana Mississippi OGS						
2003	32,540	34,880	31,330	30,410	27,310	32,240	
2004	33,320	35,670	31,590	31,000	38,180	34,112	
2005	34,420	36,290	32,310	31,430	29,100	33,558	
2006	35,820	37,150	33,440	32,900	30,460	3 <i>4</i> ,678	
2007	37,260	38,320	34,950	34,060	31,730	35,925	
CGR 2002-07	3.44%	2.38%	2.77%	2.87%	3.82%	2.74%	

Impact on Employment and Wages

A 28.6% increase in workers' compensation costs implies that the employers' total employee compensation costs will increase to 6.8%, assuming workers' compensation costs are 5% of the employers' payroll.

- A 6.8% increase in the employee costs would reduce the growth in employment by 1% per year and the wage growth by 0.5% per year.
- The state's annual growth in employment would be cut by a third, from 2.8% to 1.8%.
- The wage growth would be reduced by 15%, from 3.4% per year to
 2.9% per year.
- The effects would vary by industry. The growth in employment and wages would be lower in the high risk industries and occupations.

These are large effects that will raise costs of doing business in the state, reduce employment opportunities and reduce workers' wages. Table 12 shows the projected impact in terms of jobs and wage losses over a five year period.

Table 12						
Impact on Jobs and Wages Over Five Years						
	2008	Impact	Percent			
Employment (1,000s)	6,795.60	(337)	-4.96%			
Wages in 2007	\$37,260	(\$934)	-2.51%			

- A 28.6% increase in workers' compensation costs translates to a loss of 337,000 jobs in Florida, a 5% impact on the 2008 level of private employment; and, a \$934 wage reduction per worker in constant 2007 dollars, a 2.5% impact on the average wages in 2007.
- The impact would be much greater to workers engaged in high risk occupations and industries.

Conclusion

The Murray decision will have a substantial adverse impact on the state's employers and workers. The employers' costs of workers compensation benefits will increase by a substantial 28.6%, back to the pre-SB-50A levels. This increase will be driven by large increases in the Permanent Impairment claim costs and frequencies. The claim costs for Temporary Disability claims will also increase, but the frequency will not.

The claims data indicate that the beneficiaries of the Murray decision will not likely be the claimants, but attorneys representing the claimants. The claim closure rate will decline, which implies later return to work, and higher attorney fee payments out of the settlement benefits.

The state's employment growth will be cut by a quarter and the wage growth by 15%, resulting in a substantial net loss in terms of jobs and in lower wages. The impact will be greater for workers in the higher risk occupations and industries.

The reduction in workers' compensation costs that followed SB-50A reduced the cost of doing business in the state, promoting an environment where growth in private sector could flourish. The Murray decision, however, will bring the era of declining workers' compensation costs and premiums, rapid growth rates in the state's employment and wages, to an undeserving end.

II. Introduction

The Florida Supreme Court in the Murray decision¹² reversed the attorney fee provisions of the Florida workers' compensation reform law (SB-50A). The SB-50A was enacted in mid 2003, and became effective October 1, 2003. While SB-50A was a comprehensive reform of Florida's workers' compensation system, the data and econometric analysis presented in this report show that the attorney fee provisions of the reform account for a large part of the reductions in the system costs in the post-reform period.

The SB-50A ushered in an unprecedented era of declining workers' compensation costs and insurance premiums for the state's employers. The workers' compensation costs declined for self-insured employers as a result of declining claim costs and frequencies. The insurance rates for the insured employers declined 60.5% from NCCI's initial rate filing in 2003 through 2008. 14 The cost reductions were also associated with a post-reform era of accelerated growth in the state's employment levels and wages unmatched in the neighboring states.

The reforms that were introduced by the SB-50A included changes in the following:

Claimant attorney fees and dispute resolution process;

¹² Emma Murray vs. Mariner Health Inc. and ACE USA, NO. SC07-244 ("Murray"), October 23, 2008. ¹³ Florida Senate Bill 50A.

¹⁴ NCCI, Florida Emma Murray v. Mariner Health Law-Only Filing, November, 2008.

- Compensability standards for permanent total disability and temporary partial disability;
- Rules regarding initial medical care, limits on independent medical examinations, and medical reimbursements;
- Rules for supplemental benefits; and,
- Death benefits.

The attorney fee provisions of the reform targeted high level of claim disputes and attorney involvement in the state, particularly in Permanent Impairment (PI)¹⁵ claims. The PI claims are those that generally close after a payment of a lump-sum settlement to the claimant when he or she achieves maximum medical improvement. The payment or award is to compensate the claimant for remaining usually small impairment—for example, 7% loss of arm or shoulder that is deemed to be permanent in nature. In fact, the amount of the PI award is negotiated between the attorneys representing the claimants and the defendants in over 40% of these cases. The workers with the stipulated agreements and awards generally return to work either with their past employers or obtain new employment.

None of the other major provisions of the SB 50-A could have any significant impacts on the indemnity costs and frequency of PI claims. In fact, the new limits on the compensability standards for permanent total disability cases would raise the costs and frequency of PI claims in the post-reform period. The permanent total cases are more costly claims that will likely be classified as PI cases under the reform rules. The provisions regarding the medical fees, limits on medical examinations and

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¹⁵ The Permanent Partial Disabilities are referred as Permanent Impairments in Florida.

reimbursements targeted medical cost containment. The claim costs by medical and indemnity costs in the next section present some evidence that these measures helped contain growth in medical claim costs in the post-reform period. However, the impact of the medical costs is small relative to the impact of the indemnity costs in explaining the change in the claim costs between the pre- and post-reform periods.

The reform benefited injured workers in the state in a number of ways. Proportionately more claimants received permanent impairment benefits without an attorney and without payments for the attorney's services out of the lump-sum benefits. On the average, attorney fees comprise over forty percent of the lump-sum benefit payments. Those workers that needed the assistance of an attorney continued to retain attorneys at the same rate as in the pre-reform period. The proportion of attorney in lost-time claims remained relatively stable, but the proportion of PI claimants receiving benefits with an attorney declined sharply in the post-reform period. Most importantly, the claims closed at a faster rate than before, which meant that workers returned to gainful employment sooner than in the pre-reform period.

The reductions in workers' compensation costs reduced the cost of doing business in the state, promoting an environment where the growth in private sector could flourish. The employment and wages in Florida grew at rates that far exceeded the growth in employment and wages in the neighboring states. This too benefited injured and non-injured workers, as well as the employers of the state.

The Florida Supreme Court's decision in the Murray case in effect nullifies the attorney fees provisions of the SB-50A reverting fee determination rules back to the pre-reform era. In the pre-reform period attorneys billed for services rendered on an hourly basis and/or provided services on a contingency fee basis that depended on the lump-sum amount of the permanent impairment benefit payments. On smaller claims the attorneys billed for hours of service rendered at customary fees without any constraints that tied the fees to dollar amount of benefits obtained on behalf of their clients.

Attorney Fee Provisions of SB-50A

The SB 50A introduced a new method for calculating attorney fees in workers' compensation claims. The reform based an attorney's fee on the *benefits secured* on the behalf of a claimant, which were previously based on *services rendered*. The term *benefit secured* was defined in the PI cases as *only that amount awarded to the claimant above the amount specified in the offer to settle claims with lumps-sum payments*. ¹⁶ Hence forward, the attorneys could not bill for unlimited hours of service at the customary fees. Other terms of the fee structure were unchanged by the reform, including the percentage fees associated with the amounts secured. ¹⁷

The restructuring of the attorney fees had profound effects in the way that claim disputes were resolved in the system. For the first time the attorneys

¹⁶ SB50A allowed attorney fees in medical-only cases, but capped them at \$1,500.

¹⁷ The rates for contingency fees were 20% of the first \$5,000 of the amount of benefits secured, 15% of the next \$5,000, 10% of the remaining amount of the benefits secured to be provided during the first 10 years after the date the claim is filed, and 5% of benefits secured after 10 years.

were obligated to demonstrate the value added in terms of dollar amount of benefits they secured for their claimants. This reform provision had the following accomplishments. First, the claimants where the attorneys could not add value or were not likely to add significant value to their case did not seek attorney representation. It also lowered the attorney fees in cases where the added value of the benefits did not warrant the attorney fees based merely on services rendered. It encouraged employers and insurers to make the best possible first offer to the claimants in order to minimize the possibility of attorney involvement in the claims. Finally, it removed the incentives to attorneys to keep claims open for long periods.

The claims data analysis shows that the percentage of lost-time claims with attorneys remained relatively stable between pre- and post- reform periods, about 20% of the lost-time cases. However, there was a large reduction in attorney involvement in PI cases, particularly in large PI cases, and an offsetting increase in attorney representation in Temporary Disability (TD) cases. Proportionately more claimants received PI awards without the assistance of attorneys in the post-reform period. In other words, the likelihood of obtaining a PI classification without an attorney increased in the post-reform period.

The claims data also shows that a greater percent of claims closed within 18 months of injury – the closure rate -- in the post-reform period with and without attorney involvement. This generally meant that for the same severity of injuries claimants return to work faster than in the pre-reform period. The analysis shows that improved claim closure rates result in lower

systems costs. The improved claim closures also benefit the claimants directly in that they are returning to gainful employment sooner than before.

The Study Objectives

The study is designed to address the following questions:

- To what extent did the attorney involvement, attorney fees and claim closure rates change between pre- and post-reform periods?
- What is the impact of these measures on the Permanent Impairment claim costs and frequencies?
- What is the impact on the system costs, and what will be the likely impact of the Murray decision on the future system costs?
- How will be the Murray decision affect the state's growth in employment and wages?

Methodology and Data

The report consists of three interdependent parts. The first part is an analysis of detailed claims data that was provided for this purpose by the NCCI. In this part, we analyze claim costs, frequencies and claim characteristics, such as attorney involvement and claim closure rates in the pre- and post-reform periods. We evaluate the Florida experience with reference to outcomes in four other states: Georgia, Alabama, Mississippi and Louisiana. Three of these are Gulf States, while Georgia is a neighboring state. None of these other states reformed their attorney fee provisions as the Florida's SB-50A. In the report we refer to the comparisons with these states as outcomes in the "Other Gulf States".

The second part is an analysis of the impact of measures that would be affected by the attorney fee provisions of SB-50A on the claim costs and frequencies using econometric models for Florida. The econometric models have the ability to directly measure the impact of reduced attorney involvement and improved claim closure rates on the claim costs and frequencies. The models control for the mix of injuries, claimants' pre-injury wages and demographic characteristics such as age, and industries that simple average comparisons do not.

The controls are necessary because changes in these variables can affect simple cost comparison. For example, as claimants' wages increase over time, the indemnity benefit payments that depend on the claimants' wages will be higher in the post-reform period. A comparison of average costs without accounting for the wage growth would not adequately measure the impact of the policy variables on costs. Similarly, with regard to claimants' age and other control variables.

The analysis is based on two separate Florida claim specific econometric models. ¹⁸ The first model evaluates the impact on the costs of Permanent Impairment claims, and the second is a logistic model that evaluates the likelihood that a lost-time claim will be classified as a PI claim. The first model is used to evaluate impact on the claim costs, and the second is used to evaluate the impact on the frequency of PI and TD claims in the post-

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¹⁸ P. Borba and M. Helvacian, *Factors That Influence the Amount and Probability of Permanent Partial Disability Benefits*, Workers Compensation Research Institute, (June, 2006).

reform period. The impact on the PI and TD costs is a composite of these two evaluations.

The models measure the relationship between the dependent variables, PI claim costs and probability of PI classification, and the independent variables, which include the policy variables and controls. The two policy variables that are considered are the percentage of attorney involvement in PI claims and the rate with which claims closed 18 months from the date of injury. The logistic model also considers the effects of a higher payoff if the claims were to become PI. The control variables include the following: claimants' pre-injury wages, claimants' demographics regarding age, sex and marital status, types of injuries, and industries.

We limited the analysis to measuring the impact on Permanent Impairment (PI) claims and Temporary Disability (TD) claims. We do not sort out the effects on the medical only cases, deaths and permanent total disabilities cases for the following reasons. The underlying claims data is based on a stratified sampling of reported claims not designed to capture claims in these three categories. Consequently, these claim types were not adequately sampled or represented in the sample. Secondly, their share of the system costs is small relative to the PI and TD cases that make up about 90% of the system costs.

The data source for the claims analysis is the NCCI's DCI database. The DCI is a large stratified sample of claims from insured and self-insured

employers by states and accident year.¹⁹ It is designed to capture a minimum number of PI claims from each state. For the pre-reform analysis, we selected all lost-time claims in the DCI data base from Florida and the Other Gulf States with accident dates from January 2000 through the first half of 2002. For the post-reform analysis, we selected all lost-time claims from the second half of 2004 through December of 2006. The claims were evaluated on the average 18 months after the date of injury. There were a total of 4,436 claims in the pre-reform period in Florida, and 5,769 claims in the post-reform period. The claim sizes were similarly large in each of the other four states.²⁰ The data source for the claim frequencies by type of disability is the NCCI's Financial Data as reported in the 2004 and 2008 Annual Statistical Bulletins, Exhibit XII.

The third analysis explores a possible relationship between the workers' compensation costs on the state's employment and wage growths in the post-SB-50A period. The objective here is to quantify the effects of the Murray decision on the state's workers in terms of future jobs and wages. We first compare the post-reform growth rates in employment and wages in Florida with the Other Gulf States from 2003 through 2007. We then evaluate the effects of higher workers' compensation costs on the growth of employment and wages. Finally, we project future losses to the state that could result from the Murray decision in terms of loss of jobs and reduced wages.

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¹⁹ The average costs, frequencies and other measures that we report are weighted by the inverse of the sampling ratios in order to generalize to the observations to the state claim population.

²⁰ We actually selected all lost time claims countrywide with some minor exceptions, in addition to claims from the Other Gulf States and performed the claims analysis on these claims as well. The results with the countrywide claims did were not significantly different than the analysis of comparing Florida claims with the Other Gulf States.

The data source for the employment data by state is the Bureau of Labor Statistics (BLS), *State and Area Employment, Hours and Earnings;* and, the source of data on the state wages is the BLS, *Occupational Employment Statistics*. In addition, data on the workers' compensation benefit costs, used as reference in the calculations, is from the BLS, *Employer Costs of Employee Compensation*.

Report's Organization

The claims data analysis in the next section (Section II) compares costs, frequencies and claim characteristics in Florida pre- and post- SB-50A periods with the Other Gulf States. These are simple averages of costs and claim counts by various features that compare Florida outcomes with the Other Gulf States. The section includes two of the three parts of the claims analysis. First part evaluates system measures that were expressly or directly targeted by the reform provisions. These include claimant attorney involvement, attorney fees and claim closure rates. The second part presents data on the Florida claim costs and cost components between pre- and post-reform periods in comparison to the Other Gulf States.

The third part of the claims analysis is in the Statistical Appendix. In this section we present data on Florida claims regarding claimants' pre-injury wages, demographic characteristics and distribution of claims by injury and industry categories. These are control measures that were used in the econometric models.

Section III evaluates the impact of the SB-50A on the Florida system costs and the likely effects of the Murray decision on the future costs. The evaluations are based on the two econometric models that were discussed above. The analysis is comprised of six interdependent parts that measure the impact on: the Permanent Impairment (PI) claim costs and frequencies, the attorney fees, the Temporary Disability (TD) claim costs and frequencies, and the impact on the total system costs.

Section IV explores the relationship between the workers' compensation costs in Florida and the growth in the state's employment and wages in the post-SB-50A period, with the objective of quantifying the effects of the Murray decision on the state's workers in terms of future jobs and wages. A brief summary of the report's findings and projections are in the Conclusion.

III. Claims Data Analysis

The claims data analysis compares costs, frequencies and claim characteristics in Florida pre- and post- SB 50A periods with the Other Gulf States. The Other Gulf States are used as a point of reference to the Florida outcomes, how costs and frequencies might have been in the post-reform period without the SB-50A. The analysis is comprised of three parts. First of the three parts evaluates the impact of the reform on the system measures that were expressly or directly targeted by changes introduced by the attorney fee provisions of the reform. These are policy variables and include the following:

- Claimant attorney involvement;
- Claimant attorney fees; and,
- Claim closure rates.

The claim closure rate is defined as the percentage of claims that closed within 18 months of the accident. An improvement in the closure rates means that a greater percentage of claims of similar severity were resolved within this period. The government policy can influence the closure rates by discouraging attorney involvement and other measures that facilitate claim resolutions. This analysis evaluates how these policy measures faired in Florida post-reform period in comparison to the neighboring states. They are also used in the next section to evaluate the impact SB-50A had on the claim costs and frequencies.

The second part gives data on the Florida claim costs and cost components, again in comparison to the Other Gulf States, and how they changed in the post-reform period. These costs and frequencies would be affected by the policy variables that were targeted by the reform. The system cost measures include average claim costs, claim frequencies by major claim and disability categories, including Permanent Impairment (PI) and Temporary Disability (TD) claims. These are the measures that are evaluated in the impact analysis in the next section.

The third part is a statistical review of the control variables that are used in the econometric models for the impact analysis. The control variables are not likely to be affected by the reform legislation, at least over short periods of two to three years. However, changes in theses variables can affect the system costs measures such as average costs between the two periods. The control variables include claimants' pre-injury wages, demographic characteristics, distribution of injuries, employers' payroll size and claim distribution by industry. As with the others, we compare Florida statistics on these measures with the Other Gulf States pre- and post-reform periods. This data is presented is the Statistical Appendix.

Policy Measures Attorney Involvement

Attorney involvement in workers compensation claims varies among the states depending on a number of factors, including the state's attorney fee provisions, the formal process for ending temporary disability payments, and whether claims may be closed out with a lump-sum payment.²¹ The PI claims in Florida often involve a lump-sum payment, while the temporary disability claims only involve periodic wage replacement benefit payments, until the worker achieves maximum medical improvement (MMI) and returns to work without any residual or permanent impairment. The claimant attorney representation rates are much greater for the PI claims.

The claimant attorney representation in Florida was considerably greater than in the Other Gulf States prior to SB-50A (Table 1.1). The attorney involvement was over 41% in Florida PI claims, and 28% in the Other Gulf States. The attorney involvement remained high for the PI claims in the post-reform period, and it was three times greater in PI claims than in Temporary Disability (TD) claims. Only 12% of TD claimants involved attorneys in Florida in pre-reform period, in comparison to 15% of TD claimants in the Other Gulf States.

Interestingly, attorney involvement declined in PI claims to 38% in Florida in the post-reform period, but increased to 14% in TD claims. The decline in Florida PI claims was considerably greater relative to the Other Gulf States.

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²¹ M. Helvacian "Permanent Partial Disability Claims: Policy Recommendations to Reduce Frequency and Costs," *The Journal of Workers Compensation*, (Winter 2006), Vol. 15 No.2, pp. 9-23.

The relative decline in the attorney involvement 13.4% in Florida PI claims, ²² we believe, was a direct result of changes introduced to the attorney fees in SB- 50A.

Table 3.1	Attorney Involvement in Workers Compensation Claims						
	Percentage		Percent	Percent			
	Florida		Diff. Other Gulf States		Diff.		
	Pre-	Post-		Pre-	Post-		
All Lost Time C	19.36%	20.21%	4.38%	15.45%	24.70%	59.85%	
TD	12.06%	13.77%	14.15%	12.44%	23.40%	88.02%	
PI	41.25%	38.17%	-7.46%	28.44%	30.40%	6.90%	

In summary, while the claimant attorney representation as a percentage of all lost-time claims remained steady around 20% in Florida in the post-reform period, the attorney representation decreased in PI claims. In the next section we will demonstrate that large size PI claims account for the decline in attorney involvement in these claims.

Distribution of Claims with Attorneys

This section explores the issue of how claims with attorneys were distributed by indemnity cost categories in the pre- and post-reform periods. It may be thought that the fee provisions of SB-50A would limit attorney involvement to larger claims, as attorneys might have less financial incentives to get involved in smaller size claims in the post-reform period. If true, this may not be a desirable policy outcome, as the claimants with relatively small

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²² {(38.17/41.25)/(30.40/28.44)}-1

claims would be denied access to attorneys in filing claims. The statistical evidence presented below rejects this argument.

Table 3.2 shows the distribution of Florida PI and TD claims by indemnity cost categories pre- and post-reform periods. In the pre-reform period, about 10% of the PPD claims with attorneys were in the greatest cost category, above \$50,000. Little over 5% of the PI claims with attorneys were in the lowest cost category, less that \$3,000. But in the post-reform period, only 4% of the claims with attorneys were in the greatest cost category and 9% in the lowest cost category. A similar pattern also may be observed in TD claims, where there was a decrease in percentage of claims with attorneys in the greatest cost category.

These observations indicate that the most costly claims were the source of reduction in the attorney involvement in the PI claims in the post-reform period. The SB-50A based attorney fees on the benefits attorneys secured on behalf of their claimants. The data indicate that this provision reduced the attorney involvement in more costly claims. The attorney representation in the lowest indemnity cost levels was either not affected in TD cases, or increased in PI claims.

Table 2.2	Distributio	a of Claims have been	ana situ. Caata		
Table 3.2	Distributio	n of Claims by Ind	emnity Costs		
	Claims Wi	th Attorney Repre	se ntation		
	Pre- aı	nd Post- Reform P	eriods		
	TD Claims		PPD Claims		
Indemnity Costs	Pre-SB50A	Post-SB50A	Pre-SB50A	Post- SB50A	
Less than \$3,000	21.28%	22.99%	6.29%	9.38%	
\$3,000 to \$7,000	16.49%	29.85%	19.69%	22.35%	
\$7,000 to \$12,500	14.89%	17.39%	22.02%	20.20%	
\$12,500 to \$25,000	18.75%	14.92%	26.81%	28.03%	
\$25,000 to \$50,500	21.41%	8.89%	14.92%	15.70%	
Greater than \$50,000	7.18%	5.95%	10.26%	4.34%	

Attorney Fees

In this section we analyze claimants' attorney fees in Florida and compare them to the other Gulf States. In Florida claims, the average size of attorney fees was over 42% of the average lump-sum payments in the pre-reform period (Table 3.3). The average size of attorney fees declined 13.6% in the post-reform period and the lump-sum payments declined 9.2%. The comparable figures in the Other Gulf States were a 2.0% decline in attorney fees and a 5% decline in lump-sum payments. However, even with this decline, the attorney fees remained over 40% of the lump-sum payments. This ratio compares to about 35% in the Other Gulf States. The decline in the average size of an attorney fees in Florida relative to the other Gulf States was 11.7%. We attribute this change directly to the SB 50A fee provisions.

Table 3.3	Att	torney Fees	and Lump Sum	n Payments		
		Florida a	and Other Gulf !	States		
	Florida			Oth	ner Gulf Sta	tes
	Pre-	Post-	Percent	Pre-	Post-	Percent
	SB50A	SB50A	Change	SB50A	SB50A	Change
Attorney Fees	3,752	3,247	-13.46%	6,288	6,164	-1.96%
Lump Sum Payments	8,882	8,069	-9.16%	18,615	17,670	-5.08%
Attorney Fees as a Perce	ntage of Cos	ts and Payr	ments:			
Lump Sum Payments	42.25%	40.25%	-4.73%	33.78%	34.89%	3.29%

When a PI claim closes without an attorney, the dollar amount of savings is about 40% of the lump-sum payments. The fact that proportionately fewer PI claims closed in the post-reform period without an attorney indicates that in these cases the PI claimants and the employers were both better off. The claims data also indicate that on the average lump-sum amounts was less in the post-reform period (\$8,069 vs. \$8,882). But, the claimants' share of the lump-sum payments was slightly greater in the post-reform period.

Claim Closures Rates

An important public policy objective of the Florida workers' compensation system is to return disabled workers back to gainful employment after a reasonable period from the date of injury. Even though there are no reliable measures of when a claimant returns to work, it is a known fact that the claimants generally return to work either just before or soon after the claims are closed. An improvement in the closure rate implies a greater percentage of the claimants returned to work within 18 months of the accident date. In this section we compare the claim closure rates in Florida pre- and post-reform periods and in the Other Gulf States.

Attorneys are generally involved in Permanent Impairment claims that close at slower rates, because they are more likely to be more severe and costly PI cases. In Florida, attorneys are more likely to get involved in smaller PI cases than in other states.²³ When attorneys are involved in claims of comparable severity, the claims with attorneys still close at slower rates. A public policy objective of the workers' compensation systems is to facilitate faster claim closures, and returning claimants to work when that is medically possible.

Table 3.4 gives data on the claim closure rates, the percentage of claims that closed within 18 months of the accident date, in the pre and post-reform periods. In the pre-reform period, 79% of Florida claims, and 80% of the Other Gulf States closed within this time. In the post-reform period, the claim closure rate increase to almost 86% in Florida, but remained roughly the same in the Other Gulf States. This improvement in Florida was a result of the SB-50A, as fewer cases involved disputes and attorneys for resolution.

The claim closure rates with attorneys improved considerably in the post-reform period in Florida and in the Other Gulf States. The claim closure rates improved in the post-reform period with and without attorney involvement in Florida. But the improvement was considerably greater with attorneys. This implies that the reform provisions that targeted the attorneys' behavior, basing attorney fees on the benefits secured rather than hourly fees, achieved their objective of quicker claim resolutions. We attribute the

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²³ P. Barth, M. Helvacian and T. Liu, *Who Obtains Permanent Partial Disability Benefits*, Workers Compensation Research Institute, (December, 2002).

overall relative improvement in the claim closure rates in Florida to the attorney fee provisions of the SB-50A.

Table 3.4		Percent of Closed Claims 18 Months from the date of Injury						
	Florida	Florida Other Gul						
	Pre-	Post-		Pre-	Post-			
	SB50A	SB50A		SB50A	SB50A			
All	78.8%	85.7%	All	79.7%	80.6%			
No Attorney	83.4%	89.0%	No Attoney	83.3%	83.1%			
With Attorney	59.7%	73.0%	With Attorney	60.0%	73.1%			

The improved claim closure rates in Florida resulted in lower systems costs (Section IV, below). The improved claim closures also benefited the claimants directly in that they were able to return to gainful employment sooner than before.

System Costs

Claim Costs

The magnitude of lost-time claim costs in Florida and in the other Gulf States was similar in the pre-SB-50A period: \$21,920 in Florida, and \$23,121 in the other Gulf States (Table 3.5). However, the claim costs in Florida increased 12.5% between the pre- and post-reform periods, in contrast to a 27.9% increase in the other Gulf States over the same periods. ²⁴ These cost increases were not adjusted for the claim mix differences. In Section IV, we analyze claim costs after controlling for other factors that

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 $^{^{24}}$ By lost-time we mean lost-time beyond the waiting period. In Florida, waiting period is XXXX days, however, the loss associated with 24

may affect average claim costs comparisons. What cost components account for the difference in these growth rates?

The claimant attorney fee provisions of SB-50A are expected to have a greater impact on indemnity claim costs than on medical costs. The indemnity costs include claimants' attorney fees in addition to benefits paid to the claimants. A decline in the attorney fees will directly affect the indemnity costs in the post-reform period. The average indemnity costs can also be affected if there were proportionately fewer PI claims in the post-reform period.

The data in Table 3.5 indicate that the indemnity costs increased 0.8% between the pre- and post-reform periods in Florida claims. The medical claim costs increased 22.4% over the same period. The comparable data for Other Gulf States indicate that indemnity costs increased 24.0% and medical costs increased 31.6% between pre-and post reform periods. The medical costs in Florida increased at a slower rate than in the other Gulf States, but the indemnity costs account for most of the difference in the cost moderation in Florida claims.

Table 3.5		Aver	age Claim (Costs			
	Incurred Co	sts- Lost-Ti	me Claims	18 Months After Inju	ry		
			Florida Cla	ims			
	SB 50A		%	Other	SB 50 A		%
Florida	Pre-	Post	Diff	Gulf States	Pre-	Post	Diff.
Total Cost	21,920	24,650	12.5%	Total Cost	23,121	29,561	27.9%
Indemnity Costs	10,086	10,164	0.8%	Indemnity Costs	11,291	13,998	24.0%
Medical Costs	11,834	14,487	22.4%	Medical Costs	11,830	15,563	31.6%

The fact that medical costs in Florida increased at a slower rate than in the Other Gulf States indicates that the medical fee related changes in SB-50A were effective in containing medical costs. The indemnity costs that account for the cost moderation in Florida, would be affected by lower attorney fees and proportionately fewer PI claims without attorneys in the post-reform period.

Claim Costs with Attorney Involvement

We investigate this issue further by comparing data on Florida claim costs with and without attorney involvement between pre- and post- periods. The costs of claims with attorney involvement in the pre-reform period were almost three times greater than costs without attorney involvement. The cost difference can partly be attributed to the fact that claims with attorneys are involve more severe injuries. The cost differences with attorneys exist in both medical and indemnity costs.

In the pre-reform period, the indemnity claim costs with an attorney are 3.2 times greater than without an attorney, and medical claim costs 2.5 times greater with an attorney (Table 3.6). However, in the post-reform period, the indemnity costs are 2.4 times greater with an attorney and medical costs 2 times greater. The indemnity costs are 14.7% lower in post-reform claims with attorneys, and medical cost 4.7% greater. But, the medical costs are considerably greater, 31.8%, when no attorneys are involved in the post-reform period. This implies that medically more severe claims make up a greater percent of claims in the post-reform period. As medically more severe claims shift from PI to TD category, this change in the mix of claims

will tend to increase the average medical cost of TD claims. This phenomenon will occur with or without attorney representation. We address this issue more fully below.

In summary, the Florida claim costs with attorneys on the average have lower costs in the post-reform period. The indemnity and medical claim costs with no attorneys have increased substantially in the post period. The likely reason for this increase is the fact that post-reform claims without an attorney are more severe in nature than pre –reform claims without an attorney.

Table 3.6		Δve	erage Claim	Costs			
Tuble 3.0	Incurred (•	18 Months After Inju	ry		
			Florida Cla	ims			
With	SB 50A		%	No	SB 50 A		%
Attorney	Pre-	Post	Diff	Attorney	Pre-	Post	Diff.
Total Cost	45,716	43,497	-4.9%	Total Cost	16,208	19,878	22.6%
Indemnity Costs	22,546	19,240	-14.7%	Indemnity Costs	7,095	7,865	10.9%
Me dical Costs	23,169	24,257	4.7%	Medical Costs	9,113	12,012	31.8%

Permanent Impairment Claim Costs

The Permanent Impairment (PI) claim costs in Florida and in other states account for about 50% of the system costs. These costs depend on two components, average claim costs of PI claims and their frequency—defined as number of PI claims per 100,000 workers. In this section we address the claim cost component of PI claims in the pre-and post-reform periods, in the next section we address issues related to the claim frequency.

The incurred costs of PI claim in Florida increased 15.2% between pre- and post-reform period without an attorney, but declined 5% with attorneys over the same periods. In the Other Gulf States, the costs of PI claims increased 23% without attorney representation and increased almost 40% with attorney representation. These changes are not adjusted for other factors that may affect claim costs. What accounts for the differences in PI costs in Florida and the Other Gulf States?

As attorney fees are reflected in the PI claim costs, the decline in the PI costs with attorneys in the post-reform period is partly caused by the decline in the attorney fees. The increase in the PI costs without attorneys indicates that an increasing number of claimants are obtaining more costly PI benefits in the post-reform period without an attorney. In the econometric analysis we analyze the impact of these shifts, after controlling for many factors.

Table 3.7	Average Costs of Permanent Impairment Claims Incurred Total Costs, at 18 Months After Injury						
	No Attorne	ey .		With Atto	rney		
	SB 50A		%	SB 50A		%	
Florida	Pre-	Post	Diff	Pre-	Post	Diff.	
Permanent Impairment	30,344	34,948	15.2%	45,021	42,748	-5.0%	
Other Gulf States							
Permanent Impairment	36,115	44,344	22.8%	50,092	69,984	39.7%	

Claim Frequencies

In this section we analyze frequency of lost-time claims in Florida and the Other Gulf States pre-and post-SB-50A periods. The figures in Table 3.8 are from the NCCI Annual Statistical Bulletins, 2004 and 2008 editions. The frequency is defined as number of PI claims per 100,000 workers. They are unadjusted for changes in other factors that can affect frequencies over the time periods.

The data indicate that the frequency of lost-time claims declined in the post-reform period in Florida and in the Other Gulf States. The decline in Florida, however, was 4.2% points greater than in the Other Gulf States. In fact, both the frequency of permanent impairments and the frequency of temporary disability claims declined substantially in Florida post-reform period. However, in comparison to the other Gulf States the decline was substantially greater in the frequency of PI claims, -17.4% and -8.4%, respectively.

The econometric analysis below attributes the decline in the frequency of PI claims to the faster claim closures and fewer attorneys in the post-reform period, a key element of the system cost containment in the post-cost reform period. The relative decline in the Florida PI claim frequency can be explained by the fact that lost-time claims in Florida were less likely to become PI claims in the post-reform period. This issue is analyzed by an econometric model and discussed further below.

Table 3.8	Frequency of Injuries: 2001-2005						
		Per	100,000 wor	kers			
	SB 50A			Other	SB 50A		
Florida	Pre-	Post-	Diffe rence	Gulf States	Pre-	Post	Difference
All Lost-Time Claims	1442	1151	-20.2%	All Lost-Time Claims	1110.5	932.75	-16.0%
Permanent Impairment	379	313	-17.4%	Permanent Impairment	295.5	270.75	-8.4%
Temporary Disability	1024	815	-20.4%	Temporary Disability	798.25	645.25	-19.2%

Probability of Receiving Permanent Impairment Benefits

In this section we evaluate the probability that lost-time claims will be classified as PI claims when the claimants are represented by an attorney. ²⁵ This is an important consideration when evaluating the impact of the SB-50A because PI claims are more costly than temporary disability claims. PI claims with attorneys are also more costly than similar claims without attorneys. A lower probability of PI claims with attorneys implies a higher probability that the claim will be classified as a TD claim, and/or as lower cost PI claim without an attorney. In other words, a reduction in the probability of PI claims with attorneys means lower claim costs in the post-reform period.

How did the attorney fee provisions of SB-50A affect the likelihood that a lost time claim with become a PI claim?

Table 3.9 below shows the unadjusted probabilities of obtaining a permanent impairment classification with and without an attorney in pre- and post-SB-50A periods. It shows that the probability of obtaining a PI rating with an attorney was 53% in the pre-SB-50A, but it declined to 48.9% in the post-

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²⁵ These probabilities give the percentage of PI claims in lost-time claims when an attorney was representing the claimants and the percentage of TD claims in lost-time claims when an attorney was representing the claimant. Also, the percentage of PI claims in lost-time claims when no attorney was representing the claimant and the percentage of TD claims in lost-rime claims when no attorney was representing the claimant.

reform period. On the other hand, the probability of obtaining a PI rating without an attorney increased to 20.1% in the post-reform period from 18.1% in the pre-reform period. Conversely, the probability of obtaining a TD rating with an attorney increased in the post-reform period. These finding indicate that the probability of having a lower cost claim increased in the post reform period.

Table 3.9		Probability of a Permanent Impairment Rating When a Claimant is Represented by an Attorney						
			Florida					
With Attorney	Pre-	Post	Diff	No Attorney	Pre-	Post-	Diff	
PI	53.0%	48.9%	-7.7%	PI	18.1%	20.1%	10.8%	
TD	46.5% 50.1% 7.9% TD 81.3% 79.5% -2.2%							

Summary of Claims Analysis

The claims analysis in three distinct parts compared system costs and cost components in Florida pre- and post-reform periods with the Other Gulf States. The first part described system performance measures that were targeted by SB-50A, including attorney involvement in permanent impairment claims, attorney fees, and claim closure rates. The second part analyzed claim costs, frequencies, and their components, which are measures that would be affected by the targeted policy variables.

The third part in the Statistical Appendix reviews data on a number of control variables that are used in the econometric models. The control variables can also affect the claim costs and frequencies between the two periods. The controls include claimants' pre-injury wages and demographic characteristics, types of injuries and employer features.

In the first part we showed that while the claimant attorney representation as a percentage of all lost-time claims remained steady around 20% in Florida in the post-reform period, it increased sharply in the Other Gulf States. Moreover,

- Attorney involvement declined in Permanent Impairment claims, the disability type that is most likely to be affected by the attorney fee provisions of SB-50A.
- The source of the decline in the attorney representation was the largest cost claims, those involving greater than \$50,000 of indemnity costs.

The attorney fees also declined sharply in Florida in the post-reform period.

■ The decline in attorney fees, -13.5%, was sharper than the decline in lump-sum payments, -9.2%, which implies that the reductions were largely borne not by the benefit recipients but their attorneys.

We also showed that the claim closure rates improved with attorney involvement in Florida and in the Other Gulf States in the post-reform period. Most importantly,

- The claim closure rates in Florida improved for claims without an attorney, but not in the Other Gulf States.
- An improvement in the claim closure rates also implies that workers returned to work sooner than before SB-50A, an indication that the reform achieved a policy objective of resolving claims without an attorney involvement.

The second part is an analysis of claim costs, cost components medical and indemnity costs, PI and TD claim costs with and without attorney involvement, claim frequencies pre- and post reform periods, and probability of receiving a permanent impairment award with and without an attorney.

In this section, we showed the following:

- The average claim costs in Florida increased at a slower rate than in the Other Gulf States.
- The slower growth in Florida was a result of the indemnity claim costs, where attorney involvement in claims affects costs.
- The indemnity costs remained flat between the pre- and post-reform periods, even though workers wages and benefits increased.
- The medical costs increased sharply in Florida and in the Other Gulf States, but the increase was less in Florida than in the Other Gulf States. This may be a result of the medical fee and other medical provisions of the SB-50A.
- The source of the cost containment was indemnity component of the claim costs when attorneys were involved. The claim costs without attorneys increased 11% over these periods.
- Focusing on the PI claims, which make up about 50% of the system costs, their costs increased without attorney involvement (15.2%), but declined when attorneys were involved.
- The last two findings imply that the benefits received by the claimants actually increased over this period as they attained PI classification without an attorney.

With regard to frequency of injuries, the decline that was experienced in Florida post-reform period was greater than in the Other Gulf States. Most importantly,

• The frequency of permanent impairment claims declined sharply in Florida, -17.4%, in comparison to the Other Gulf States, -8.4%. This relative decline can be attributed to the SB-50A provisions regarding to the attorney fees.

Finally in this section we examined data on the probability of receiving a Permanent Impairment rating in Florida with and without attorney involvement.

- Here we showed that probability of receiving a permanent impairment classification with an attorney declined in the post-reform period, but increased without an attorney.
- The decline in the frequency of PI classification was caused by the decline in the probability of receiving a PI award with an attorney.

The summary of claim results below is based on the Statistical Appendix. We reviewed data on the claimants' pre-injury wages, demographics, injuries and employer categories. These are control variables that were used in the econometric models that can affect unadjusted cost and frequency comparisons. The data indicated the following:

The claimants' pre-injury wages increased at a faster rate in Florida than in the Other Gulf States, 15.1% and 11.2%, respectively. This finding is consistent with the BLS data on wages discussed in Section V below.

- The higher wage growth in Florida implies that indemnity claim costs declined in real wages, which was sharper in Florida than the Other Gulf States.
- The analysis also showed that claimants with lower wages are more likely to use attorneys.
- The data regarding changes in the claimants' age and marital status also indicate that the decline in the average indemnity costs in Florida post-reform period would be greater controlling for these variables.
- With regard to distribution of injuries, there was a sharp reduction in lower back injuries in Florida claims in the post-reform period without attorney involvement.

IV. The Impact on System Costs

This section evaluates the impact of the SB-50A on the Florida system costs and the likely effects of the Murray decision on the future costs. The evaluations are based on econometric models that measure the effects of attorney involvement and claim closure rates on the Permanent Impairment claim costs and the frequency of Permanent Impairment claims, after controlling for other variables.²⁶

The analysis is comprised of the following parts:

- Impact on the Permanent Impairment (PI) claim costs
- Impact on the attorney fees
- Impact on the frequency of PI claims
- Impact on the Temporary Disability (TD) claim costs
- Impact on the TD frequencies
- Total impact on the system costs.

The total impact on the system costs is a composite of the first five parts in the above list. It should be noted that claims data on the post-reform period is for accidents that occurred from mid-2004 through the end of 2006, with a mid point in mid 2005. As such it captures the impact of the SB-50A on the system costs through 2006.

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²⁶ The full model specification and coefficients are in Borba, P. and M. Helvacian, (2006).

The Impact on Permanent Impairment Costs

The analysis is based on an econometric model of the Florida claim costs that measures the impact of many factors on paid costs²⁷ for Permanent Impairment claims. The two policy measures, which were targeted by the claimant fee provisions of SB-50A, are attorney involvement in PI claims and the speed with which claims closed within 18 months of the injuries (the closure rates).

The attorney fees provisions directly affect the percentage of attorneys that are involved in PI claims, as the fees under SB-50A are now based on the amount of benefits that an attorney secures for his client. They also affect the degree of contestation and dispute in the system. With fewer cases that involve attorneys, the degree of contestation falls and claims close at faster rates.

The model parameters measure the effects of these two policy variables on the PI paid costs. The model parameter with regard to attorney involvement is near unity (0.93), which means that for every one percentage increase in the attorney participation rate the claim costs increased almost by one percent. This relationship is sensible for the pre-reform period when the attorney fees were on a contingency fee basis and/or hours of service rendered with no limits.

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²⁷ The paid costs in this section exclude attorney fees associated with the lump-sum settlements and exclude claim reserves set for future payments.

The model also measures the effects of percent of claims that remained open on the PI paid costs.²⁸ The percent of open claims is the complement of the claim closure rates— the percent of claims that closed 18 months from the date of injury. An increase in the percent of open claims is associated with higher PI claim costs, while a reduction in the percent of open claims with lower PI claim costs. A 1% decline in the open claims is associated with a 0.5% decline the PI claim costs.

Attorney involvement in PI claims was over 41% in the pre-reform period, and then declined to 38% in the post-reform period, a 7.5% decline between the two periods. The percentage decline was greater in comparison to the Other Gulf States, 13.4%, as the attorney involvement in PPD claims increased in the Other Gulf States. We believe the relative decline in the percentage of PI claims with attorneys to be direct result of the attorney fee changes introduced in the SB 50A. Without these changes the attorney involvement in PI claims would have continued to increase as it did in the neighboring states. For the impact analysis, we use the 13.4% decline in the attorney participation rate (Table 4.1).

The percentage of claims that remained open as of 18 month evaluation from the time of accident declined 32.6%, from 21.1% to 14.3%, while this measure remained relatively stable in the Other Gulf States. In relative terms, the decline in the percentage of open claims in Florida was slightly less, 29.7%, as claim closure rates also improved slightly in the Other Gulf

²⁸ The variable used in the model is the percentage of open claims after 18 months from the accident dates. This is the complement of the claim closure rate; an increase in the closure rates corresponds to a decline in the percentage of open claims.

States. We attribute this decline also to the attorney fee provisions of the SB-50A.

The impact of each one of these assumptions is in column 4 of Table 4.1. A 13.4% decline in the attorney participation results in a 12.6% reduction in the PI claim costs. Similarly, a 29.7% reduction in the percentage of open claims results in a 16.3% lower PI claim costs. The total impact of the two changes is a 26.8% reduction in the PI claim costs, a large impact that is consistent with the relative cost comparisons in the previous sections.

Table 4.1 Impact of Attorney Involvement and Percentage of Open Claim on the Permanent Impairment Claim Costs						
	Model	Standard	%	%		
	Parameter	Error	Change	Impact		
Attorney Participation	0.932	0.029	-13.4%	-12.6%		
Percent Open	0.506	0.038	-29.7%	-16.3%		
Total Impact				-26.8%		

The Impact of the Attorney Fees

The above analysis of paid PI costs does not include attorney fees associated with lump-sum payments. In this section, we evaluate the impact of attorney fee reductions on the lump-sum payments.

The average attorney fees in Florida declined 13.5% in the post-reform period, relative to a 2.0% reduction in the Other Gulf States. In relative terms, the attorney fees declined 11.7% in Florida, which we attribute fully to changes introduced by the SB-50A. Using the percentage of attorney

fees to lump-sum payments, 42.2%, we attribute a 5% reduction in the PI costs to the attorney fees reductions in the post-reform period (Table 4.2, below).

Table 4.2	Impact of Attorney Fee Reductions on the Permanent Impairment Claim Costs					
	% Change	Atty. Fees to Lump Sum	% Impact			
Attorney Fee Reduction	-11.7%	42.2%	-5.0%			
Total Impact	-5.0%					

The limits placed on attorney fees in the SB-50A would also affect indemnity cost component of the Temporary Disability (TD) claims that involved attorneys. A 12.1% of the TD claims involved attorneys in the prereform period, which increased to 13.8% in the post-reform period. The impact on the TD claim costs is evaluated using the pre-reform percentage of 12.1%. We attribute 1.4% reduction in the TD claim costs to the attorney fee provision of the SB-50A (Table 4.3 below).

Table 4.3	Impact of Attorney Fee Reductions on the Temporary Disability Claim Costs					
	% Change	Percent with Atty.	% Impact			
Attorney Fee Reduction	-11.7%	12.1%	-1.4%			
Total Impact -1.4%						

Impact on the Frequency of PI Claims

A logistic econometric model of Florida lost-time claims measures the likelihood of lost-time claims becoming PI claims. The likelihood or probability is measured as the number of PI claims in the total lost-time claims. The model parameter associated with the attorney involvement gives the probability that a lost-time claim will be classified as a PI claim when an attorney is involved, holding the effects of all other variables constant.²⁹

A second variable is the impact of a higher payoff if the claim was to become a PI claim. A higher payoff for PI cases will raise the claimants' incentives to file for PI benefits and increase the likelihood of receiving PI benefits. Conversely, a lower payoff for PI claims relative to TD claims will lower the likelihood of receiving PI benefits.³⁰

Table 4.4 gives the model coefficients for the attorney involvement and for the PI payoff. The model parameters indicate that the probability of PI classification improves 2.3 times with attorney involvement, while the effects of the payoff are relatively small, 0.2 times greater likelihood of PI classification for each percentage increase in the payoff amount.

We make the same assumption that 13.4% decline in the attorney involvement can be fully attributed to the SB-50A. We use 26.8% cost

²⁹ The model parameter is based on data using defense attorney involvement in lost-time claims. There is a very high degree of correlation between the presence of a claimant attorney and a defense attorney. In the impact analysis we use this parameter to evaluate the impact of an attorney involvement on the PI probability. 30 This issue is explored in greater detail in

reduction computed in the previous section as a reduction in the payoff for PI classification.

The probability of PI claims was 27% in the pre-reform period (Table 4.4, column 3). Using this percentage, we project a 6.8% reduction in the probability of PI in the post-reform periods (Table 4.4, column 4). This figure is used to evaluate the impact of SB-50A on the frequency of PI claims in the post-reform period.

Table 4.4	Probability of Permanent Impairment Claims				
Variable	Model Parameter	Change	Prob of PI	1 - Prob Pl	Impact
Expected PI Pay	0.197	-0.2683	0.2701	0.7299	-1.04%
Attorney Involver	2.276	-0.1343	0.2701	0.7299	-5.85%
Full Impact					-6.82%

The claims data indicated that the frequency of the PI claims declined 17.4% in the post-reform period and declined 8.4 in the Other Gulf States, resulting in a relative decline of 9.9% in Florida post-reform period. The 9.9% decline is greater than the model projection of a 6.8% decline. We use the projection for the impact analysis.³¹

The second part of the analysis is based on an evaluation of the decline in the frequency for all lost-time claims. This decline was 20.2% in Florida, in comparison to a 16.0% decline in the Other Gulf States. In relative terms the

claims in the post-reform period.

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³¹ The SB-50A also tightened the requirements for permanent total (PT) disabilities, which would have an impact on the frequency of PI cases. The PT claims more likely became PI cases in the post-reform period. The unadjusted change in the frequency of PI and the econometric model estimates do not account for this shift in the claim composition. As a result both figures understate the actual decline in the frequency of PI

frequency declined 5.0% in Florida post-reform period. We attribute this relative improvement in Florida to reduced litigation that resulted form the attorney fee provision of SB-50A. The full impact on the frequency of PI claims is assessed at 11.5%. 32

Impact on the TD Claim Costs

The faster claim closures would also have an impact on the TD claim costs, but not attorney involvement as only 12.1% of TD claims in the pre-reform period involved attorneys. In fact attorney involvement in TD cases increased in the post-reform period. The faster claim closures in the post-reform period, on the other hand, will have proportionately the same impact on the TD claim costs as on the PI claims. We compute the impact of these changes on the TD claim costs, using the same model parameter. The result of this analysis in Table 4.5 is a 16.3% reduction in the TD claim costs.

Table 4.5 Impact of Attorney Involvement and Claim Closure Rates on Temporary Disability Claim Costs					
	Model Parameter	% Change	% Impact		
Percent of Open Claims	0.506	-29.7%	-16.3%		
Total Impact			-16.3%		

Impact on the TD Claim Frequency

The claims data indicated that Florida experienced a sharp 20.4% reduction in the frequency of temporary disability claims in the post-reform period. However, this reduction was only slightly greater than the experience in the

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 $^{^{32}}$ Computed as 0.115= 1-.8852, where 0.8852= (1-0.087) x (1-0.05).

Other Gulf States (19.2%). There are two counteracting effects at work on the TD frequency.

The first effect result from the fact that TD claims in the post-reform period include claims that would have become PI cases pre-SB-50A. This effect raises the frequency of TD claims in the post-reform period. The second effect is derived form reduced ligation and this effect reduced the frequency of TD claims. We use the overall reduction in the frequency of lost-time cases, 5% reduction, as the measure of the second effect. This decline however is offset by the first effect. The net impact of the SB-50A is 0.5% increase³³ in the frequency of TD claims.

Impact on the System Costs

The impact of SB-50A fee provisions on the workers' compensation system costs is a composite of the effects of SB-50A on the PI and TD costs. Table 4.6 summarizes the results of the analysis. The system costs associated with PI and TD claims are reduced substantially, 30.5% and 17.5%, respectively. A 38.5% reduction in the PI claim costs is the greatest improvement in the system costs.

The impact of attorney fee provisions of SB-50A is a 28.6% reduction in the workers' compensation system costs between pre- and post-reform periods. The Murray decision will reverse this improvement and raise system costs by 28.6%.

- 2

³³ Calculated as $1.005 = (1-.05) \times (1+0.058)$.

Table 4.6 Impact on the System Costs: PI and TD Cost Components						
	Frequency	Claim Costs	Total			
PI Claims	-11.5%	-30.5%	-38.5%			
TD	0.5%	-17.5%	-17.1%			
Total Impact	-2.7%	-26.6%	-28.6%			

V. The Impact on Employment and Wages

In this section we evaluate the effects of the Murray decision on the state's future employment and wages. In the previous sections we investigated the effects of reduced attorney involvement on the workers' compensation system costs. We showed that the attorney fee provisions of SB-50A reduced the incentives for attorney involvement, improved claim closure rates and reduced the system costs. Conversely, we showed that a fee based system would have higher attorney involvement and system costs. With the Murray decision the system costs would be substantially greater, 28.6%.

An increase in the workers' compensation costs is a direct cost on the Florida employers. The exact costs would depend on the size of employers' payroll and their workers' compensation costs. Higher risk industries, such as construction and manufacturing sectors, generally have higher workers' compensation costs, and the impact on them would be greater than for the lower risk industries. The effects of higher system costs are similar to increasing the employers' payroll taxes. It is a proportional tax based on the employers' payroll, akin to increasing employers' part of the Social Security Tax or the State Unemployment Insurance.

Unlike a payroll tax, however, the employers' payments will not become revenue to the state, but a new source of income to attorneys representing the claimants among other service providers. The claims data presented evidence that a greater percentage of lump-sum amounts will go to the attorneys.

For an employer with a payroll of \$3,000,000 and workers compensation costs or premium that is 5% of the payroll, a 30% increase in workers compensation costs would mean a \$45,000 (1.3 x .05 x \$3,000,000) annual increase in costs (\$195,000 – \$150,000), enough to pay a worker's annual wages. For each new employee that a business may hire at an annual wage of \$45,000, the workers' compensation costs would go up \$675 per year, up from \$2,250 to \$2,925 per year. For high risk employers, such as those in construction and manufacturing, with workers' compensation costs that are in excess of 10% of the payroll, a 28.6% increase in their workers' compensation costs would naturally have a much greater impact.

A 28.6% increase the employers' workers' compensation costs would also affect the state's employees and their wages. With rising labor costs, the employers' demand for labor will decline, particularly for low skilled workers, placing a downward pressure on the growth of employment and wages.³⁴

Growth in Employment

We first compared the post-reform growth rates in employment and wages in Florida with the Other Gulf States from 2003 through 2007. The post-reform period also corresponds to an expansionary phase of the last business cycle in the United States. Table 5.1 shows the growth rates in the private non-

³⁴ For a given supply of labor, a decline in the demand for labor will lower both wages and number of employed workers.

farm employment in Florida and in the Other Gulf States publish by the Bureau of Labor Statistics.

Table 5.1	Growth Rates in Private Non-Farm Employment						
	2002 to 2007						
	Other					Other	
	Florida		Georgia	Alabama	Louisiana	Mississippi	Gulf States
2003-2004		3.80%	1.52%	1.66%	0.60%	0.94%	1.28%
2004-2005		4.44%	2.77%	2.08%	-1.14%	0.80%	1.55%
2005-2006		2.75%	2.22%	2.22%	-0.84%	1.37%	1.48%
2006-2007		0.17%	1.31%	1.30%	3.75%	0.75%	1.74%
2003-2007		2.78%	1.95%	1.82%	0.57%	0.96%	1.51%

Among the five states examined, the growth rate in employment in Florida was 2.78% per year over the post-reform period, higher than the annual growth rate in any of the other four states. The annual growth in employment was 1.51% for the Other Gulf States. It is interesting that following the SB-50A, Florida experienced an unprecedented growth in employment, 3.8% in 2004 and 4.4% growth in 2005. These rates are even greater than those in Georgia and Alabama, two states that were not severely affected by Hurricane Katrina. On the average, the employment growth in Florida was 1.3% greater per year than in the Other Gulf States.

Growth in Wages

In Table 5.2, we examine growth in Florida non-farm wages for all occupations from 2003 through 2007. The average annual wages increased from \$32,540 in 2002 to \$37,260 in 2007, a 3.4% average annual increase. Among the Other Gulf States, the wage growth was only greater in Mississippi, 3.8% per year, where the wage levels were substantially below the wages in the other states.

Table 5.2	Annual Wages					
	All	l Occupatio	n - Non-Far	m Employee	es	
	Florida	Georgia	Alabama	Louisiana	Mississippi	OGS
2003	32,540	34,880	31,330	30,410	27,310	32,240
2004	33,320	35,670	31,590	31,000	38,180	34,112
2005	34,420	36,290	32,310	31,430	29,100	33,558
2006	35,820	37,150	33,440	32,900	30,460	3 <i>4</i> ,678
2007	37,260	38,320	34,950	34,060	31,730	35,925
CGR 2002-07	3.44%	2.38%	2.77%	2.87%	3.82%	2.74%

Impact on Employment and Wages

A 28.6% increase in workers' compensation costs implies that the employers' total employee compensation costs will increase to 6.8%, assuming workers' compensation costs are 5% of the employers' payroll.

- A 6.8% increase in the employee costs will reduce the growth in employment by 1% per year, and the wage growth by a 0.5% per year.
- The state's annual growth in employment would be cut by a third, from 2.8% to 1.8%.
- The wage growth would be reduced by 15%, from 3.4% per year to 2.9% per year.
- The effects would vary by industry. The growth in employment and wages would be lower in the high risk industries and for high risk occupations.

These are large effects that will raise costs of doing business in the state, reduce employment opportunities, and reduce workers' wages. Table 5.3 shows the projected impact in terms of job and wage losses over a five year period.

Table 5.3							
Impact on Jobs and Wages Over Five Years							
2008 Impact Percent							
Employment (1,000s)	6,795.60	(337)	-4.96%				
Wages in 2007	\$37,260	(\$934)	-2.51%				

A 28.6% increase in workers' compensation costs translates to a loss of 337,000 jobs, a 5% impact on the state's 2008 employment level; and, a \$934 wage reduction per worker in constant 2007 dollars, a 2.5% impact on the average wage in 2007. The impact would be much greater to workers engaged in high risk occupations and industries.

Summary of Impact on Employment and Wages

In the post-SB 50A period, the state's workers saw a robust growth in the economic activity, with expending employment and growing wages that surpassed the growth in the neighboring states. The analysis indicates that a the impact of the Murray decision, a 28.6% increase in the workers' compensation system costs, will cut the growth rate in employment by a quarter, and the growth rate of wages by 15%. The impact will be much worse in the high risk industries where workers' compensation costs are a larger percentage of the payrolls. The impact of this decision will be to reduce employment by 337,000 jobs and to reduce wages by \$934 per worker.

VI. Conclusion

The Murray decision will have a substantial adverse impact on the state's employers and workers. The employers' workers' compensation costs will increase by a substantial 28.6%, back up to pre-SB50A levels. This increase will be driven by large increases in the Permanent Impairment claim costs and frequencies. The claim costs for Temporary Disability claims will also increase, but their frequency will not.

The impact of this large increase in employers' costs will also be felt by the workers, particularly those in the higher risk occupations and industries. The claims data indicate that the beneficiaries of the Murray decision will not likely be the claimants, but attorneys representing the claimants. The claim closure rate will decline, which implies later return to work, and increase in attorney fee payments out of benefits settlement amounts. The state's employment growth will be cut by a quarter and the wage growth by 15%, resulting in a net loss of jobs and lower wages.

The reduction in workers' compensation costs that followed SB-50A reduced the cost of doing business in the state, promoting an environment where the growth in private sector could flourish. The Murray decision, however, will bring the era of declining workers' compensation costs and premiums, rapid growth rates in the state's employment and wages to an undeserving end.

Statistical Appendix

Control Variables

In this section we review data on the control variables, claimants' pre-injury wages and demographic characteristics, distribution of claims by injuries, employers' payroll size and industries. These are variables that are used in the econometric models that are not likely to be affected by the reform legislation in the short run, but can affect comparisons of the average costs and the frequencies between the two periods.

Pre-Injury Wages

The claimants' pre-injury wages in Florida grew at a rate faster than in the other Gulf States between the two periods, 15.1% and 11.2%, respectively (Table S.1). This observation is consistent with the analysis in Section V that wages in Florida increased at a faster rate. The data also indicate that the attorneys generally represented lower wage claimants in both pre- and post-reform periods in Florida and in the other Gulf States. This is specially the case in Florida for the post-reform period.

The higher pre-injury wages in the post-reform period has important claim cost and frequency implications. The unadjusted claim costs would be greater in the post-reform period compared with costs in the pre-reform period, because periodically paid indemnity benefits and lump-sum settlements are dependent on the claimants' wages. However, higher wage workers have lower frequency of injuries. The unadjusted claim frequencies

in the post-reform period would be lower than in the pre-reform period with the higher wage levels.

Table S-1	Claimants' Pre-Injury Wage						
				(Average)			
Florida	Pre-	Post-	%	Other	Pre-	Post-	%
	Reform	Re form	Change	Gulf States	Reform	Reform	Change
All	471.6	543.0	15.1%	All	483.0	537.1	11.2%
No Attoney	477.0	560.7	17.5%	No Attoney	491.7	556.0	13.1%
With Attorney	448.8	473.0	5.4%	With Attorney	435.1	480.0	10.3%

Demographic Characteristics

Age

The claimants generally were older in the post-reform period in Florida and in the other Gulf States (Table S-2), consistent with the national trend in aging. As with wages, the effects of age on the claim costs would be positive: the older workers would have greater claim costs and indemnity costs than their younger counterparts. But older workers also have lower frequency of injuries. It is important to note that the increase in age between these two periods is small in magnitude and will not have significant a impact.

	/^,	i i					
	(A)	(Average)					
Post-	% Point	Other	Pre-	Post-	% Point		
n Reform	Change	Gulf States	Reform	Reform	Change		
5 41.5	2.0	All	39.3	39.9	0.6		
2 41.7	2.4	No Attoney	39.9	40.6	0.7		
8 40.9	0.1	With Attorney	40.6	40.9	0.3		
	m Reform 5 41.5 2 41.7	m Reform Change 5 41.5 2.0 2 41.7 2.4	m Reform Change Gulf States 5 41.5 2.0 All 2 41.7 2.4 No Attoney	m Reform Change Gulf States Reform 5 41.5 2.0 All 39.3 2 41.7 2.4 No Attoney 39.9	m Reform Change Gulf States Reform Reform 5 41.5 2.0 All 39.3 39.9 2 41.7 2.4 No Attoney 39.9 40.6		

Marital Status

The marital status of workers also has effects on the claim costs and frequencies. The data indicate that the claimants were more likely to be married in the post-reform period in Florida and in the Other Gulf States (Table S.3). The married workers comprised about 31% of the claimants in Florida post-reform period, but only 26% of the married claimants had attorneys. The married workers' claims have greater costs, but this change would not have a significant impact on the frequency of PPD claims.

Table S.3	Percent o	Percent of Married Claimants				
	Florida		0	ther Gulf Sta	ates	
	Pre-	Post-		Pre-	Post-	
	SB50A	SB50A		SB50A	SB50A	
All	28.3%	30.9%	All	39.3%	40.9%	
No Attorney	28.4%	32.1%	No Attoney	40.3%	40.2%	
With Attorney	27.8%	26.0%	With Attorney	33.9%	42.9%	

Claim Distribution by Injury

We analyzed claim distributions by part of body, nature of injury and cause of injury categories. Table S.4a shows top four categories in the Florida claims for each type of injury classification. The accompanying Table S.4b shows the claim distributions for these categories in the Other Gulf States.

In the pre-reform period, the lower back claims were the most prevalent injuries in Florida, comprising 21.8% of claims that had attorney representation, and 18.7% of the claims without attorneys. It is interesting to note that the percentage of lower back cases has declined in the post-reform period in Florida and in the other Gulf States. The claimants with lower back injuries are still more likely to use attorneys in the post-reform period, especially relative to knee injuries in Florida.³⁵

Sprain/Strain injuries comprise about 40% of injuries in Florida and in the Other Gulf States. This percentage is slightly greater in Florida with attorney representation in the post-reform period. About 10% of Florida claims are for fracture injuries. However, when a claimant is represented by an attorney, the percentage of the claims for a sprain/strain injury is greater than 40% in the post-reform period.

The strain injuries and Fall/Slips make up about 60% of the cause of injuries in Florida and in the Other Gulf States. Motor Vehicle accidents account for another 5% of the injuries. The percentage of motor vehicle claims with attorneys is double the percentage without attorney representation.

In summary, having reviewed the distribution of claims in the pre- and postreform period with and without attorney representation, we conclude that

³⁵ This does not appear to be the case in the post-reform period in the Other Gulf States, where the likelihood of claimants represented with an attorney appear to have declined sharply for the lower back injuries.

there are some notable changes in these distributions. However, the effects of these shifts on the claim costs and frequencies would not be statistically significant.

Table S.4a

Distribution of Claims In Florida					
	Injury Typ	ef Body Cate	gories		
	No Attorn	e ys	With Attorneys		
	Pre-	Post-	Pre-	Post-	
Part of Body Categori	es				
LOWER BACK	18.7%	12.9%	21.8%	19.3%	
ARM/SHO ULDERS	16.2%	16.0%	19.8%	16.4%	
MULTIPLE BODY	10.9%	15.7%	17.1%	21.3%	
KNEE	10.8%	11.9%	8.2%	9.9%	
Nature of Injury					
SPRAIN/STRAIN	42.6%	39.7%	40.3%	42.3%	
OTHER_TRAUMA	10.6%	13.9%	17.5%	19.3%	
CONTUSION	11.6%	10.9%	11.8%	11.7%	
FRACTURE	10.8%	10.5%	7.9%	8.8%	
Cause of Injury					
STRAIN	33.5%	32.2%	29.1%	33.3%	
FALL/SLIP	27.6%	24.6%	28.5%	29.1%	
STRUCK BY	8.4%	12.3%	8.7%	9.7%	
MOTOR VEHICLE	4.6%	4.7%	8.2%	7.3%	

Table S.4b

Distribution of Claims In the Other Gulf States						
	Injury Typ	ef Body Cate	gories			
	No Attorn	e ys	With Atto	Attorneys		
	Pre-	Post-	Pre-	Post-		
Part of Body Categories						
LOWER BACK	18.0%	15.6%	23.6%	11.5%		
ARM/SHOULDERS	18.4%	18.2%	14.6%	16.1%		
MULTIPLE BODY PARTS	8.0%	10.8%	13.4%	14.5%		
KNEE	13.5%	14.4%	12.4%	13.3%		
Nature of Injury						
SPRAIN/STRAIN	40.2%	38.2%	37.7%	37.1%		
OTHER_TRAUMA	11.4%	12.4%	12.5%	10.2%		
CONTUSION	8.1%	9.5%	9.4%	15.2%		
FRACTURE	13.3%	13.8%	13.0%	11.9%		
Cause of Injury						
STRAIN	34.0%	31.6%	28.4%	30.0%		
FALL/SLIP	25.9%	25.1%	25.6%	24.4%		
STRUCK BY	10.8%	10.5%	12.4%	10.4%		
MOTOR VEHICLE	4.8%	5.7%	8.5%	7.9%		

Claim Distribution by Employer Characteristics

Payroll Size

Tables S.5a and S.5b give the claim distributions by size of employers' payroll in Florida and in the Other Gulf States. The Florida claimants work for larger size companies in comparison to the Other Gulf States. The percentage of claimants working for employers over \$10 million increased in the post-reform period with and without attorney representation. We note that there has not been a significant shift in these distributions to affect the claim cost comparisons in the pre- and post-reform periods.

Table S.5a

Distribution of Florida Claimants by Emloyers' Payroll Size					
	No Attorn	e ys	With Atto	rneys	
	Pre-	Post-	Pre-	Post-	
No Payroll	2.2%	2.8%	2.5%	3.0%	
Less than \$100K	21.5%	22.8%	23.0%	17.0%	
\$100K to \$1 Million	15.7%	19.2%	21.2%	19.5%	
\$1 Million to \$10 Million	34.2%	22.4%	25.3%	25.9%	
Over \$10 Million	26.4%	32.7%	28.0%	34.6%	

Table S.5b

Distribution of Claimants In Other Gulf States by Employers' Payroll Size					
	No Attorn	eys	With Atto	rneys	
	Pre-	Post-	Pre-	Post-	
No Payroll	5.5%	6.8%	7.2%	4.4%	
Less than \$100K	25.2%	22.7%	25.3%	15.2%	
\$100K to \$1 Million	20.9%	20.8%	19.3%	25.6%	
\$1 Million to \$10 Million	24.4%	23.1%	20.4%	29.9%	
Over \$10 Million	24.1%	26.6%	27.8%	24.9%	

Industries

In this section we examine data on the claimants' industries pre- and post-reform periods. A smaller percentage of claimants in Florida come from the manufacturing sector than in the Other Gulf States, 13% and 21%, respectively. In the post-reform period, there was a decline in the percentage of Florida claimants from the manufacturing industries. This decline is offset by an increase in the percentage of claims from the goods and services sector. The shift in the claim distribution between the manufacturing and goods and services sectors is not as large in the Other Gulf States. These changes would not have statistically significant effects of the claim costs and frequencies.

Table S.6a					
Distributi	Distribution of Florida Claimants by Emloyers' Industry				
	No Attorn	eys	With Atto	rneys	
	Pre-	Post-	Pre-	Post-	
MANUFACTURING	12.1%	13.2%	15.1%	10.7%	
CONSTRUCTION	19.0%	18.8%	19.6%	19.9%	
OFFICE/CLERICAL	15.0%	14.9%	15.3%	12.9%	
GOODS/SERVICES	37.9%	38.2%	39.8%	44.1%	
OTHER_INDUSTRY	16.1%	14.9%	10.2%	12.4%	

Table S6.b					
Distribution of	Claimants In	Other Gulf S	tates by Employers	' Industry	
	No Attorneys With Attorneys				
	Pre-	Post-	Pre-	Post-	
MANUFACTURING	22.3%	20.5%	19.2%	16.1%	
CONSTRUCTION	12.8%	13.1%	17.0%	17.7%	
OFFICE/CLERICAL	13.7%	13.8%	10.1%	10.0%	
GOODS/SERVICES	36.1%	38.0%	41.1%	40.1%	
OTHER_INDUSTRY	15.0%	14.5%	12.5%	16.0%	

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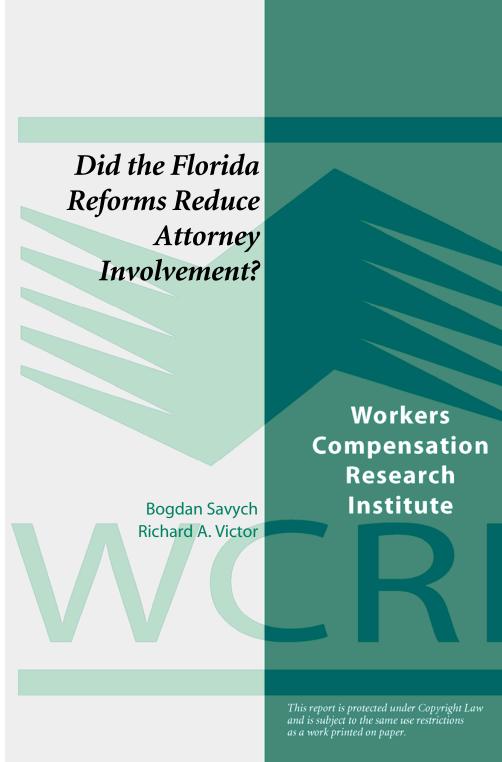
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EXHIBIT 5



DID THE FLORIDA REFORMS REDUCE ATTORNEY INVOLVEMENT?

DID THE FLORIDA REFORMS REDUCE ATTORNEY INVOLVEMENT?

Bogdan Savych Richard A. Victor

> WC-09-16 June 2009

Workers Compensation Research Institute Cambridge, Massachusetts

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Bogdan Savych Richard A. Victor Cambridge, MA June 2009

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EXECUTIVE SUMMARY

In 2003, the Florida legislature enacted a series of reforms to the workers' compensation system. Among the most controversial of these reforms was a change to the way that workers' attorneys were paid. In October 2008, this provision was struck down by the Florida Supreme Court (*Emma Murray v. Mariner Health and Ace USA*¹). In March and April 2009, both houses of the Florida legislature actively debated two bills—one would reinstate the 2003 reform provision; the other offered an alternative approach to computing fees for workers' attorneys. The bill reinstating the 2003 reform has passed and it is likely to face another constitutional challenge in the future.

Prior to the reforms, attorneys could receive either a contingent fee or an hourly fee (or both) at the discretion of the judge. The reforms limited the fee to a contingent fee in indemnity cases.

In *Murray*, the worker's attorneys challenged the constitutionality of the reform provision—arguing that it violated due process, equal protection, and the right of access to the courts. In concept, the provision could have significantly reduced the incentives for attorneys to take cases, especially cases where the contingent fee was small (in *Murray* it was \$648). Alternatively, the reform provision might have had little effect. Ultimately the question need not be a theoretical one. In this report, we provide some evidence about how attorney involvement changed in the year after the reforms, especially in cases where the attorney fee was small.

MAJOR FINDINGS

QUESTION 1: DID THE FLORIDA REFORMS REDUCE THE ABILITY OF THE AVERAGE WORKER TO RETAIN AN ATTORNEY?

Analyzing a sample of 47,294 cases where some income benefit payment was made to the worker, we find:

 After the reforms, a significant proportion of workers were able to hire attorneys. For cases arising between October 2003 and September 2004,

¹ Emma Murray v. Mariner Health and Ace USA, 2008 WL 4659381, Fla., October 23, 2008 (No. SC07-244).

38 percent of workers with indemnity claims had attorneys, compared with 43 percent before the reforms (cases arising from October 2000 to September 2003). This reduction could be due to the limit on hourly fees for workers' attorneys; however, it may be due to other reform provisions (e.g., the permanent total disability [PTD] or permanent partial disability [PPD] changes) or due to changes in the characteristics of cases between the two time periods.

When we control for changes in the characteristics of cases, we find that the proportion of workers who had attorneys after the reforms was 3.6 percentage points lower than similar cases prior to the reforms. We cannot determine if this change was due to the reform that limited hourly fees for workers' attorneys or other reforms (principally the PTD and PPD changes). However, this change was relatively modest because only one out of every twelve workers that had an attorney prior to reforms would not have one after the reforms.

QUESTION 2: IN CASES WHERE THE ATTORNEY FEE IS LIKELY TO BE SMALL, DID THE REFORMS REDUCE THE ABILITY OF WORKERS TO RETAIN AN ATTORNEY?

To address this question, we focus on a subsample of 9,304 cases with PPD and/or lump-sum payments that were under \$2,500 (in 2004 dollars), yielding an attorney fee of less than \$500 (note that the fee in *Murray* was \$648). We also conducted the analysis for other dollar thresholds: \$1,000 (\$200 fee), \$1,500 (\$300 fee) and \$2,000 (\$400 fee). We find:

- After the reforms, a significant proportion of workers were was able to hire attorneys, even where the attorney fee was likely to be less than \$500. For cases arising between October 2003 and September 2004, 34 percent of workers with indemnity claims and PPD and/or lump-sum payments of under \$2,500 had attorneys. Even among workers with PPD and/or lump-sum payments under \$1,000, 21 percent had attorneys after the reforms.
- When we control for changes in the characteristics of cases, we find mixed evidence on whether the workers had greater difficulty retaining an attorney in these smaller fee cases. Analyzing cases with PPD and/or lump-sum payments under \$1,000 and under \$2,500, we find a reduction in attorney involvement of about 1 percentage point, which is not statistically significantly different from "no effect." This evidence suggests no decline or a small decline in the ability of workers to retain an attorney. When

analyzing cases under \$1,500 in PPD and/or lump-sum payments of under \$2,000, we find small but statistically significant effects of the reforms on attorney involvement (lower by 2.5–3.4 percentage points). Hence, we conclude that the evidence is mixed regarding the impact of the reforms on a worker's ability to retain an attorney if that worker had a case that would yield a small attorney fee in the post-reform period. However, the evidence is consistent that any effect was likely to be small.

Few studies are without limitations. Chapter 4 of this report presents a half dozen caveats and limitations of which the reader should be aware. For example, the study examines whether it was harder for workers to retain an attorney. One possible effect of the reforms was that attorneys took cases but invested fewer hours in them. If more hours were necessary, then the quality of representation might have been reduced. This possibility is not addressed in this study.

Second, the study examines only the first year after the reforms. Although attorneys should adjust quickly to changes in their fees, some observers cautioned that attorneys may have continued to accept cases with low fees with the expectation that the hourly fee would be reinstated. Also, some adjustment processes may take more than a year to reach their ultimate effect.

Third, several other reform provisions may have affected the incentives for attorneys to take cases—especially the PPD benefit and PTD eligibility reforms. The effect of these would be more pronounced in the average and above average payment cases. Still, there may be some effect in the small attorney fee cases highlighted in this report.

Fourth, it is possible that we underestimate the attorney fee in some cases. We based the expected attorney fee on the contingent fee schedule and the PPD and/or lump-sum payments. The attorney may have also have earned an additional fee in the case by helping the worker to receive temporary disability benefits and medical services.

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DID THE FLORIDA REFORMS REDUCE ATTORNEY INVOLVEMENT?

1

Introduction and Policy Background

In 2003, the Florida legislature enacted a series of reforms to the workers' compensation system. Among the most controversial of these reforms was a change to the way that workers' attorneys were paid. Prior to the reforms, the attorneys could receive (1) a fee based on the benefits secured by the attorney for the worker¹ and (2) a "reasonable fee" typically based on an hourly rate and the number of hours spent on the case. The attorney fee might be based on either or both approaches. The reforms ended hourly fees in all but medical-only cases² and tied fees for workers' attorneys to the percentages of actual benefits (medical or indemnity) that workers receive. After the reforms were enacted, in cases involving income benefit payments, workers' attorneys fees were based on the contingent fee alone.

Prior to the reforms, the judge of compensation claims had discretion to review the attorneys' fee requests and approve a final fee, taking into account, among other factors, time and labor required, the novelty and difficulty of a case, customary fees charged for similar services, and the amount involved in the dispute and the benefits resulting to the worker.³ The statutory language for determining the fee was "reasonable." The judge could substitute the hourly fee for the contingent fee or could award both.

The contingent fee is structured as follows: 20 percent of the first \$5,000 of benefits secured; 15 percent of the next \$5,000; 10 percent of the amount over \$10,000 that is secured for the first 10 years; and 5 percent of the balance received. These benefits secured may include any benefits that the attorney secures for the clients including medical care, adjustments to temporary total disability (TTD), and lump-sum settlements.

² After the reform, a judge of compensation claims may approve, for medical-only cases, an attorney's fee not to exceed \$1,500, based on a maximum rate of \$150 per hour, if it is determined that the contingent fee schedule does not provide fair compensation for the attorney, as described in Florida Statute, 440.34(7)(2003).

³ See Florida Statute 440.34(1)(a-f)(2002).

Since enactment, there have been a series of unsuccessful legal challenges to the limitations on the hourly fee as the basis for setting attorneys' fees. However, in October 2008, the Florida Supreme Court did invalidate this provision in *Emma Murray v. Mariner Health and Ace USA.* The petitioner (Murray) challenged the provision on several constitutional grounds, including due process, equal protection, denial of the right to access the courts, and violation of the separation of powers between the judicial and legislative branches. In deciding the case, the court did not reach any of the constitutional issues; rather, the decision was based on statutory grounds—conflict with another Florida statute.

In the spring of 2009, the Florida legislature re-enacted limits on hourly attorney fees after extensive policy debates. The new law addressed the statutory ambiguity that led the Florida Supreme Court to void the provision in the 2003 law that limited hourly attorney fees. The opponents of this most recent legislative change are expected to continue challenging the legislation on constitutional grounds.

This study seeks to inform both the recent and future policy debates. Information from this study has been used in the recent legislative deliberations and we expect that it will be used in future court filings. Below we examine the empirical basis for several of the constitutional arguments raised by the petitioner in the *Murray* case.

THE CONSTITUTIONAL ISSUES RAISED BY THE PETITIONER (MURRAY) AND THE RESEARCH QUESTIONS ADDRESSED IN THIS STUDY

In the petitioner's brief, attorneys Sutter and McCabe advanced four constitutional arguments as bases for the court to invalidate the contested attorney fee provision of the 2003 reforms.⁵ Here, we review each of the arguments so that the reader can see how the research questions addressed in this study are related to the public policy debate.

 The provision violates Murray's right to due process under both the Florida and U.S. constitutions.

- The provision violates Murray's right to access to the courts, which is guaranteed under the Florida constitution.
- The provision violates Murray's right to equal protection under both the Florida and U.S. constitutions because there is no corresponding limitation on the fees paid to defense attorneys.
- The legislative provision that regulates fees for workers' attorneys violates
 the separation of powers provisions of the Florida constitution, because this
 matter is the exclusive domain of the judicial branch.

The first two constitutional challenges listed above—due process and access to the courts—presume that the limits on hourly fees materially reduced the ability of a worker to retain an attorney. They postulate that there is a notable fraction of cases where fees for workers' attorneys, absent the hourly rates, will be so low that attorneys would be unwilling to take these cases. In the *Murray* case, the attorney fee was \$648, and it was argued that for such cases, it was especially difficult for workers to retain an attorney.

This study addresses two research questions:

- Did the Florida reforms reduce the ability of the average worker to retain an attorney?
- In cases where the attorney fee is likely to be small, did the reforms reduce the ability of workers to retain an attorney?

MAJOR FINDINGS

QUESTION 1: DID THE FLORIDA REFORMS REDUCE THE ABILITY OF THE AVERAGE WORKER TO RETAIN AN ATTORNEY?

Analyzing a sample of 47,294 cases where some income benefit payment was made to the worker, we find:

- After the reforms, a significant proportion of workers were able to hire attorneys. For cases arising between October 2003 and September 2004, 38 percent of workers with indemnity claims had attorneys.
- Before the reforms (cases arising from October 2000 to September 2003),
 43 percent of workers had attorneys. So there appears to be a reduction in attorney involvement following the reforms. This reduction could be due to the limit on hourly fees for workers' attorneys; however, it may be due to

Emma Murray v. Mariner Health and Ace USA, 2008 WL 4659381, Fla., October 23, 2008 (No. SC07-244).

⁵ Brian Sutter and Bill McCabe, Petitioner's Initial Brief on the Merits, Emma Murray v. Mariner Health and Ace USA, (December 2007) Florida Supreme Court, Case No.: SC07-244.

- other reform provisions (e.g., the permanent total disability [PTD] or permanent partial disability [PPD] changes) or due to changes in the characteristics of cases between the two time periods.
- When we control for changes in the characteristics of cases, we find that the proportion of workers who had attorneys after the reforms was 3.6 percentage points lower than in similar cases prior to the reforms. We cannot determine if this change was due to the reform that limited hourly fees for workers' attorneys or other reforms (principally the PTD and PPD changes). However, for the average worker, this change was relatively modest, since only one out of every twelve workers who had an attorney prior to reforms would not have one after the reforms.

QUESTION 2: IN CASES WHERE THE ATTORNEY FEE IS LIKELY TO BE SMALL, DID THE REFORMS REDUCE THE ABILITY OF WORKERS TO RETAIN AN ATTORNEY?

To address this question, we focus on a subsample of 9,304 cases with PPD and/or lump-sum payments that were under \$2,500 (in 2004 dollars), yielding an attorney fee of less than \$500 (note the fee in *Murray* was \$648). We also conducted the analysis for other dollar thresholds: \$1,000 (\$200 fee), \$1,500 (\$300 fee), and \$2,000 (\$400 fee). We find:

- After the reforms, a significant proportion of workers were able to hire attorneys, even where the attorney fee was likely to be under \$500. For cases arising between October 2003 and September 2004, 34 percent of workers with indemnity claims and PPD and/or lump-sum payments of under \$2,500 had attorneys. Even among workers with PPD and/or lump-sum payments under \$1,000, 21 percent had attorneys after the reforms.
- Before the reforms (cases arising from October 2000 to September 2003), in cases with under \$2,500 in PPD and/or lump-sum payments, 37 percent of workers had attorneys. So there appears to be a small reduction in attorney involvement. This reduction could be due to the limitation on hourly fees for workers' attorneys; however, it may also be due to changes in the characteristics of cases between the two time periods or to other aspects of the PPD reforms.
- When we control for changes in the characteristics of cases, we find mixed evidence on whether workers had greater difficulty retaining an attorney in these smaller-fee cases. For example, for cases with PPD and/or lump-sum payments of under \$2,500, the fraction of workers who had attorneys after

the reforms was 0.9 percentage points lower than in similar cases prior to the reforms—statistically this is not significantly different from zero. This evidence suggests little to no decline in the ability of workers to retain an attorney. For cases with PPD and/or lump-sum payments under \$1,000, we find the rate of attorney involvement was 1.2 percentage points lower after the reforms, but this change is not statistically significant. Based on these two thresholds, we might conclude that the reforms had no effect on attorney involvement for workers with PPD and/or lump-sum payments when the attorney fee was small. However, we find small but statistically significant effects of the reforms on attorney involvement for the analyses that examine cases with PPD and/or lump-sum payments under \$1,500 (lower by 3.4 percentage points) and under \$2,000 (lower by 2.5 percentage points). Hence, we conclude that the evidence is mixed regarding the impact of the reforms on a worker's ability to retain an attorney, if that worker had a case that would yield a small attorney fee in the post-reform period. However, the evidence is consistent that any effect was likely to be small.

ORGANIZATION OF THE REPORT

This study is organized as follows. In chapter 2, we provide a discussion of the research approach and data. In chapter 3, we provide results on the change in attorney representation after the reforms. In chapter 4, we summarize a series of caveats about which the reader should be aware. We also summarize tests of the robustness of the results reported. In chapter 5, we offer some concluding observations. The report also contains a technical appendix that documents the results, key assumptions, caveats, and robustness tests.

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RESEARCH APPROACH AND DATA

We begin this section with a short description of the main components of the Florida reforms that may shape attorneys' incentives to represent workers' compensation cases. Next, we provide a conceptual discussion of how the reforms might have affected a worker's ability to retain an attorney. Then we describe the data used in this analysis and discuss some limitations. Finally, we provide details on the empirical methods employed.

SELECTED COMPONENTS OF THE FLORIDA REFORMS AND THEIR EXPECTED IMPACT ON WORKERS' ATTORNEY INVOLVEMENT

Several elements of the 2003 Florida reforms are potentially important to analyzing the change in the workers' attorney involvement. We do not intend to describe all components of the reforms nor do we intend to provide discussion on how the reforms changed the performance of the workers' compensation system. These topics are covered in detail elsewhere. Four changes were most germane to this analysis.

First, after the reforms, workers' attorneys were paid based on a contingent fee schedule in indemnity benefit cases. The judicial discretion to increase or reduce fees for workers' attorneys based on hourly rates was eliminated. As we have described in the Introduction to this report, prior to the reforms, the attorneys could receive an hourly fee based on the time that an attorney invested in a case and/or a contingent fee based on the benefits that an attorney secured for a worker. The attorney would petition for the higher fee and the judge would rule on that petition.

For a complete description of the provisions of the Florida reforms, see the summary of the legislation published by the Florida Department of Financial Services (2003). For a discussion on how the performance of the system has changed between pre- and post-reform periods, see Telles et al. (2007, 2008) and Yang et al. (2009).

It is believed that hourly fees were fairly common prior to the reforms, although firm estimates of their frequency are not available. The *Murray* case provides one example of how a judge would exercise discretion to award an hourly fee. In *Murray*, the worker's attorney reported investing approximately 80 hours to resolve the case in which the worker received \$3,244.21 in medical and indemnity benefits. Under the contingent fee schedule, the attorney would be entitled to 20 percent, or \$648. The judge awarded a \$16,000 attorney fee, based on an hourly rate of \$200. Other examples of issues where hourly fees were granted included those where the attorney aided the worker to obtain disputed medical care or an adjustment in the temporary total disability (TTD) rate.

To illustrate the choices facing the judge, consider an example in which the attorney spends 25 hours on a case. At \$150 to \$200 per hour, the attorney fee based on an hourly rate would be \$3,750 to \$5,000. To earn that fee under the contingent fee schedule the benefits secured would have to total \$30,000 to \$42,500. Only 4.1 percent of indemnity cases received PPD payments or lumpsum settlements in excess of \$30,000 prior to the reforms.² Hence, the hourly rate would be preferred by the attorney in most cases with PPD payments and/or lump-sum settlements. Likewise, in cases where the attorney helped the worker to obtain disputed medical care, the hourly rate would also be preferred by the attorney. The key questions for this study are: (1) whether or not attorneys would take a case that generated a fee of less than \$150 to \$200 per hour; and (2) if so, how much less.

Second, the standard for eligibility for PTD benefits was changed. Prior to reforms, Florida had one of the broadest eligibility criteria. Eligibility for PTD was determined based on the Social Security Disability Income (SSDI) guidelines. It was believed that the threat of PTD payments was reflected in the settlement amounts in a large number of settled cases. The reforms established stricter thresholds for eligibility for PTD. These changes were expected to reduce the average size of lump-sum settlements as well as the frequency of the settlements (Telles et al., 2007). In reducing the size of the lump sums, the reforms also reduced the expected fees for workers' attorneys. In most cases in which this "threat" was credible, the benefits secured were likely to be sizeable, and the attorney fee would not be small. While conceptually the lower fees might mean that fewer attorneys took these cases—because the fees were not small even after the reforms—it is unlikely that the attorney fee provision of the reforms had a much of an effect on these types of cases.

Third, the 2003 legislation also increased the weekly rate for PPD. Prior to the reforms, the PPD rates were equal to 50 percent of the worker's amount of weekly TTD payment. After the reforms, the weekly PPD payments were increased to 75 percent of the weekly TTD amount. This policy change would be expected to increase the average PPD and/or lump-sum payments per claim. In doing so, it increases the benefits secured by the attorney and the incentives for attorneys to become involved in workers' compensation cases with PPD and/or lump-sum payments.

Fourth, the legislation also reduced weekly PPD benefits if the worker returned to work and had earnings equal to or higher than his or her preinjury wage. Prior to reforms, the rates of PPD did not depend on whether the worker returned to work. After the reforms, the PPD impairment benefits were reduced 50 percent for each week during which the worker has earnings equal to or in excess of his or her preinjury average weekly wage. This would be expected to reduce PPD and lump-sum payments among claims where workers returned to work and earned at least the preinjury wages. In doing so, it decreased the benefits secured by the attorney and the incentives for workers' attorneys to become involved.

Overall, the reforms reduced the amount of PPD and/or lump-sum payments per claim. Previous WCRI studies estimate that the average PPD/lump-sum payments per claim decreased 22 percent, and the frequency of PPD/lump-sum claims decreased 3 percent, in the post-reform period (Yang et al., 2009). Hence, we would not be surprised if the net effect of the three benefit reforms was to reduce attorney involvement in cases with relatively small expected fees for workers' attorneys.

Table 2.1 summarizes the relevant reforms and their expected effects on the rate of workers' attorney involvement.

Table 2.1 Conceptual Effects of the 2003 Reforms on Involvement of Workers' Attorneys

Reform Provision	Conceptual Effect on Attorneys' Willingness to Take a Case
Limits on hourly fees	Lower attorney involvement
Permanent total disability eligibility	Lower attorney involvement among medium and larger cases
Permanent partial disability benefit increase	Higher attorney involvement for cases with permanent partial disability
Lower permanent partial disability rate if worker returns to work at same or higher wage	Lower attorney involvement for cases with such a return to work

About 2.4 percent of indemnity cases received lump-sum settlements in excess of \$30,000 after the reforms.

This conceptual model assumes that the reforms did not affect the workers' demand for attorneys. It also assumes that attorneys can substitute other work (either other workers' compensation cases or non-workers' compensation cases) for the workers' compensation cases that they decline. In the short run, this will not always be true. Since we analyze data from about a year after the reforms, our estimates may understate the ultimate effects of the reforms on attorney involvement.

DATA

In this report, we use a subset of claims drawn from WCRI's Detailed Benchmark/Evaluation (DBE) database. These claim records are provided to WCRI by national and regional payors, including claims from private insurers, state insurance funds, and self-insured employers. The database and the processes used to clean and standardize the data are described in earlier WCRI publications.³

In this study, we use claims based on injuries and illnesses that occurred from October 2000 through September 2004 and are evaluated at 36 months of experience. This covers the three years prior to the effective date of the reforms and one year after. The 36-month valuation is sufficient to observe most of the eventual attorney involvement. Based on data for claims arising in 2003, 98 percent of cases that ultimately involved attorneys (at 48 months) also involved attorneys at 36 months.

The sample includes only claims in which some indemnity benefits were paid. The sample includes 47,294 cases—32,816 before the reforms and 14,478 after. This represents 20 percent of the market in Florida throughout the study period. We do not have data on cases where compensability was contested and either the worker did not pursue the claim or the employer prevailed at a hearing. We also exclude medical-only cases. Fewer than 3 percent of medical-only claims involved attorneys.

To better address the issues raised in the constitutional challenges in the *Murray* case, the study also examines a subset of cases with small expected fees for workers' attorneys after the reforms. We analyze four different groups—all of which had relatively small PPD and/or lump-sum payments, hence small fees for workers' attorneys. The groups were cases with PPD and/or lump-sum payments under: \$1,000 (\$200 fee), \$1,500 (\$300 fee), \$2,000 (\$400 fee), and \$2,500 (\$500

³ A full description of this data set can be found in Telles et al. (2008).

fee). Prior to the reforms, some of these cases may have been eligible for fees for workers' attorneys based on hourly rates.

The measure of attorney involvement comes from the payor's administrative records. These capture whether an attorney is involved at any stage in the claim. Typically payors learn of the attorney's involvement when a notification letter is received from the attorney. Attorneys have strong incentives to send these notices shortly after they are retained.

Table TA.2 in the Technical Appendix presents descriptive statistics for the full sample, separately for pre- and post-reform periods.

STATISTICAL METHODS USED

This report combines the results of simple descriptive statistics and more sophisticated regression analyses. We start by exploring trends in attorney involvement over time. These trends show how the rate of attorney involvement changed after the reforms. We also examine this change for the full sample and for a special subsample where the expected attorney fee would be small, absent the provision for hourly fees for workers' attorneys.

The primary results come from a regression approach to adjust for possible differences in the claim, injury, worker, and employer characteristics over time. Because we are interested in examining changes in attorney involvement before and after the reforms (without making predictions about the probability that a given worker would retain an attorney), we estimate a linear probability model. This approach fits a linear regression to the data where a dependent variable, attorney involvement in a claim, takes on two possible values: "1" to indicate that the worker is represented by an attorney and a value of "0" otherwise. We adjust for characteristics of cases by controlling for injury type, employer's industry and size, worker's preinjury wage, age, gender, marital status, and tenure.

Our estimates from the linear probability model are similar to the estimates from nonlinear approaches that can be used for our data. Because the probability

⁴ The linear probability model has a linear structure and can be written as a linear equation (see the formula in the Technical Appendix). In contrast, logit and probit probability models are nonlinear. Such models are generally preferable to the linear probability model; however, the estimates from the linear probability model are similar to the estimates from a nonlinear model when the average probability of attorney involvement is not in the tails of the distribution. The estimates from the linear probability model are easy to interpret, making it appealing in our circumstances.

of hiring an attorney lay in the linear part of the cumulative distribution function,⁵ the results of the linear probability model are close to those of nonlinear models, such as probit or logit.⁶

FOCUS ON CASES WITH SMALL EXPECTED FEES FOR WORKERS' ATTORNEYS

To better address several of the constitutional issues raised in *Murray*, we identify a subset of cases with small expected fees for workers' attorneys absent the hourly fees—cases with less than \$500 in fees under the contingent fee schedule based on PPD and/or lump-sum payments. In *Murray*, the fee that was argued to be unconstitutionally low was \$648. The cases in this study are those with PPD and/or lump-sum payments under \$2,500. Under the contingent fee schedule in effect both before and after the reforms, the attorney would receive 20 percent of the benefits secured. In addition, prior to the reforms, the attorney could also receive an hourly fee at the discretion of the adjudicator.

It is possible that we have misclassified some cases that are included in the subsample with small expected fees for workers' attorneys. In selecting these cases, we focus only on the PPD and/or lump-sum amount and the fee determined by the contingent fee schedule. However, attorneys in some of these cases may have become involved in the case earlier and helped the worker to secure temporary disability benefits or disputed medical care. If so, the attorney may have earned a fee for this prior work, and the case should be classified as having expected fees for workers' attorneys greater than \$500. The practical effect of this potential misclassification of some cases on the results discussed in Chapter 3 depends on whether the timing of the attorney involvement in these cases has changed considerably as a result of the reforms.

Ideally, we could also study the impact of the limitation on hourly fees on other types of cases with small expected fees for workers' attorneys—for example, disputes solely about medical treatment. Unfortunately, we are unable to identify such cases in the data. However, if the effort required to represent the worker in disputes about medical treatment is not greater than the effort required to represent the worker in a case with a small PPD and/or lump-sum

payment, then the lessons from the cases that we study are likely to be generalizable to the cases involving disputes about medical treatment.

It would be useful to know what proportion of attorneys received payments based on hourly fees in the pre-reform period. If such data were available, we would be able to improve the precision of our results in Chapter 3.

Table TA.3 shows the descriptive statistics for this subsample of cases, separately for the pre- and post-reform periods.

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⁵ The cumulative distribution function maps the probability that a random outcome x is less than or equal to a stated value X. The cumulative distribution function is s-shaped when the random variable is distributed by a bell-shaped curve—for example, normal, logistic, or binomial.

⁶ We obtain qualitatively similar results when we use a probit regression model or logistic regression approach. These results are available from the authors upon request.

EMPIRICAL RESULTS

In this section, we present and discuss the results of the statistical analysis. First, we examine the change in the probability that the average worker retained an attorney—before and after the reforms. This provides us with an overall change in attorney representation that can be attributed to reforms—all four reforms that were described earlier. Then, we examine the impact of the reforms on cases with small expected fees for workers' attorneys. The second analysis addresses several of the constitutional challenges to the reforms raised by the petitioner in the *Murray* case.

ATTORNEY REPRESENTATION AFTER THE REFORMS REMAINED SIGNIFICANT, BUT DECLINED BY 3.6 PERCENTAGE POINTS

When we control for differences in the characteristics of cases in the pre-reform and post-reform periods, we find that attorney involvement fell by 3.6 percentage points. Many workers had no difficulty retaining attorneys after the reforms—workers had attorneys in 38 percent of indemnity cases.

We observe a decline in attorney representation among all indemnity claims with 36 months' maturity—before adjusting for differences in the characteristics of cases. Forty-three percent of workers injured in the pre-reform period (between October 2000 and September 2003) were represented by an attorney, compared to the post-reform figure of 38 percent. While consistent with the hypothesis that fewer workers were able to find attorneys after hourly fees were limited, in reality, the change could be due to a number of other factors: (1) differences in the characteristics of cases between the two periods; (2) the PTD reform, which contained incentives to reduce attorney involvement; or (3) the reduction in PPD benefits for workers who returned to work at the same or higher wages. When we control for differences in the characteristics of cases,

we find that workers were less likely to have attorneys after the reforms, but only by 3.6 percentage points. That means that one in twelve workers who had attorneys prior to the reforms would not have retained one after the reforms—3.6 percentage points of the 43 percent that had attorneys in the pre-reform period.

AT MOST, THERE WERE SMALL REDUCTIONS IN ATTORNEY INVOLVEMENT IN CASES WITH SMALL FEES FOR WORKERS' ATTORNEYS

Among cases with small fees for workers' attorneys, attorney involvement remained common and changed little after the reforms. This analysis is based on several subsets of cases with PPD and/or lump-sum payments under \$2,500—resulting in fees for workers' attorneys of less than \$500 under the contingent fee schedule. The petitioner in the *Murray* case argued that in such cases, the reforms would materially impair the worker's ability to retain an attorney—violating due process and the right to access the courts. The small fee that was the subject of the *Murray* case was \$648.

Among these alternative subsets of cases with small fees for workers' attorneys (indemnity claims with PPD and/or lump-sum payments under \$1,000, under \$1,500, under \$2,000, or under \$2,500),¹ the percent with workers' attorneys declined from the pre-reform period to the post-reform period (Table 3.1)—before adjusting for differences in the characteristics of cases from year to year. The thresholds are set in constant dollars from 2004.

When we control for differences in the characteristics of cases in the prereform and post-reform periods, we find mixed evidence on whether the workers had greater difficulty retaining an attorney in these smaller-fee cases. For example, for cases with PPD and/or lump-sum payments of under \$2,500, the fraction of workers who had attorneys after the reforms was 0.9 percentage points lower than among similar cases prior to the reforms—not surprisingly, this was not statistically significantly different from zero. For cases with PPD and/or lump-sum payments under \$1,000, we find the rate of attorney involvement was 1.2 percentage points lower after the reforms, but again this was not statistically significant. Based on these two thresholds, we might conclude that the reforms had little or no effect on attorney involvement for workers with PPD and/or lump-sum payments when the attorney fee was small. However, we find small but statistically significant effects of the reforms on attorney involvement for the analyses that examine cases with PPD and/or lump-sum payments under \$1,500 (lower by 3.4 percentage points)² and under \$2,000 (lower by 2.5 percentage points).³ Hence, we conclude that the evidence is mixed regarding the impact of the reforms on a worker's ability to retain an attorney if that worker had a case that would yield a small attorney fee in the post-reform period. However, the evidence is consistent that any effect was likely to be small.

Table 3.1 Attorney Involvement in Small Fee Cases, before and after the Florida Reforms

Permanent Partial Disability and/or Lump-Sum Range	(not adjusted f	Involvement or differences in acteristics)	Impact of Reforms on Attorney Involvement (adjusted for differences in
(constant 2004 dollars)	Before Reforms	After Reforms	case characteristics)
\$1-\$1,000	25%	21%	-1.2%
\$1-\$1,500	31%	25%	-3.4%**
\$1-\$2,000	33%	29%	-2.5%*
\$1-\$2,500	37%	34%	-0.9%

Notes: Statistical significance: ** 0.01 level; * 0.05 level.

Data from before the reforms are for injuries arising from October 2000 to September 2003; data from after the reforms are from October 2003 to September 2004.

We selected the \$2,500 threshold in light of the facts in the *Murray* case—to approximate cases with similar or smaller fees. Because other elements of the reforms both raised and lowered the weekly PPD rate, we cannot determine whether the cases that fall under this threshold are similar in terms of severity or propensity to return to work at the preinjury wage or higher. However, they are similar in the fees for workers' attorneys expected under the contingent fee schedule. We refrain from splitting the sample into small mutually exclusive groups based on PPD amounts because such an approach would increase the likelihood that workers before and after the reforms are not similar in terms of their underlying severity of injury and propensity to return to their preinjury employer.

That is, one in nine workers in this group who had retained an attorney prior to the reforms would not have done so after the reforms.

³ That is, one in twelve workers in this group who had retained an attorney prior to the reforms would not have done so after the reforms

4

CAVEATS AND LIMITATIONS

Few studies are without limitations. This section presents some caveats and limitations about which the reader should be aware. Some are discussed further in the Technical Appendix.

First, one of the more important caveats involves the impact of the hourly fee limits on the hours invested by the workers' attorneys. This study analyzes the impact of the reforms on the ability of the worker to retain an attorney—especially in cases that are likely to yield small fees for workers' attorneys. The focus here is on whether or not the worker retained an attorney. We find that the reforms had little to no effect on this. However, it is possible that the reforms, especially the limit on hourly rates, might not deter attorneys from accepting cases, but rather lead them to reduce the number of hours they spend on a case. In concept, this reduction in hours could mean that some workers with attorneys did not get necessary medical care that would have improved their health or return-to-work outcomes. It might also mean that some workers received lower PPD and lump-sum payments than the payments for which those workers are truly eligible.

It could also mean that after the reforms, the attorney reduced the hours she or he spent on work that previously generated hourly fees, without improving outcomes for injured workers. What kind of work might this be? For example, if the additional work involved help getting access to an MRI that was not necessary (e.g., did not change the course of treatment or was inconsistent with evidence-based treatment guidelines), the workers' outcomes would not be affected. Another example of work that we would define as unnecessary is work that an attorney did which extracted a higher settlement than the payments for which the worker was entitled. This can happen when the costs to the payor of resisting a claim are greater than the incremental settlement amount; this can result from strategic behavior by attorneys. Payment of hourly fees strengthens the incentives for this outcome to occur.

We attempted to examine this issue using data from surveys of injured workers in Florida. The surveys asked about recovery of health and function, as well as return to work. We hypothesized that if attorneys in the post-reform period were working fewer hours than necessary, compared with the pre-reform period, then we would see poorer worker outcomes after the reforms. Conversely, if attorneys had reduced the work that was unnecessary, then there would be no effect on worker outcomes.

Although we found a small post-reform improvement in recovery of health and function, and a large improvement in return to work, we deem these results quite inconclusive for two reasons. First, the samples available (cases with small PPD and/or lump-sum payments that had attorneys) were small—just 31 cases before the reforms and 42 cases after the reforms. Second, we cannot isolate the impact of the attorney fee reform from the impact of the PPD reform. One aspect of the PPD reform reduced PPD benefits for workers who returned to work at the same or higher wage. Some post-reform cases that fell under the dollar thresholds which define the groups of cases with smaller fees for workers' attorneys would not have done so before the reforms. These were cases in which the worker had a somewhat more serious PPD injury (e.g., greater than \$2,500) and returned to work at the same or higher wage. Pre-reform, this worker would not have been in the group of cases that we analyzed. On one hand, these cases had somewhat more serious injuries; on the other hand, these workers had stronger motivations to return to work and stronger relationships with their supervisors. These differences may have affected the decision to seek an attorney or the decision of the attorney to accept the case. Since we cannot identify these cases separately, we are not able to isolate the effect of the attorney fee reform from the PPD reform.

Second, for the sample of cases with any indemnity payment, we cannot definitively separate the effects of the hourly fee limit from the PPD and PTD reforms. As described earlier, the PTD reform reduced the incentives for attorneys to take cases. The increase in PPD benefits increased the incentives for attorneys to take cases. However, the provision that reduced PPD benefits for workers who returned to work at the same or higher wages had the effect of reducing the attorney incentives to take the case. Since we do not know precisely which cases would have received hourly fees, but for the limits on hourly fees we cannot isolate the impact of this reform from the others.

Third, we use the cases with small PPD and/or lump-sum amounts to represent cases with small expected fees for workers' attorneys. Ideally, we could also study the impact of the limitation on hourly fees on other types of cases with small expected fees for workers' attorneys—for example, disputes solely about medical treatment. Unfortunately, we are unable to identify such cases in the

data. However, if the attorney's work (hours) to represent the worker in disputes about medical treatment is not greater than the work (hours) to represent the worker in a case with a small PPD and/or lump-sum payment, then the lessons from the cases that we study are likely to be generalizable to the cases with disputes about medical treatment.

Fourth, we do not have data that identify the types of business model that law firms use when deciding to accept or handle cases. Observers in many states describe two common business models. In the first model, firms rely on a large volume of cases and make modest investments per case. This business model may make more intensive use of different types of personnel (e.g., paralegals) or settlement strategies. In the second model, firms are more selective in the cases that they take. These firms may rely more heavily on the ability of experienced attorneys to successfully select cases based on the expected returns to the firm exceeding some minimum rate of return. The intake decisions of the first type of firm would be less affected by the elimination of hourly rates.

Fifth, we examine the effect in the first year after the reforms. In theory, attorneys should adjust relatively quickly to changes in their fees, as long as they can substitute other workers' compensation cases or non-workers' compensation cases for those cases that are no longer profitable in the absence of the hourly fees. However, this adjustment may take longer than the period studied. Moreover, some attorneys may continue accepting the smaller-fee cases while waiting to see the resolution of the challenges to the 2003 law. If so, we underestimate the ultimate impact of the reforms on the workers' ability to retain an attorney. Future analysis should reexamine whether patterns of attorney involvement change as more time passes after the reform and more data are released.

Another possible concern is that by focusing solely on PPD and/or lump-sum payments, we may be underestimating fees for workers' attorneys. We cannot determine whether an attorney was involved only in securing PPD and/or lump-sum payments, or whether an attorney also helped the worker to receive temporary disability benefits and medical services. This implies that in some cases the attorney would receive more in fees than we attribute.

This research area would also benefit from analysis that uses detailed information on the timing of attorney involvement and on the claim resolution process. Future analysis might also consider when an attorney became involved in a claim, how much effort an attorney exerted on a claim, which benefits an attorney secured for a worker, how the claim was resolved, and what other parties helped in the resolution of the claim.

CONCLUSIONS

This report examines how attorney representation changed after the Florida reforms of the workers' compensation system that were implemented in 2003. One of the most controversial aspects of the reforms concerned limits on hourly fees for workers' attorneys. Prior to the reforms, attorneys could charge for their services based on hourly fees or based on contingent fees, or both. The reforms, however, eliminated hourly fees for workers' attorneys in most indemnity cases. In concept, without the hourly fee, attorneys might be less willing to take cases with small expected fees (as computed solely under the contingent fee schedule).

Consequently, the petitioners in *Murray* argued that the limitation on hourly fees violated the constitutional rights of injured workers to due process and access to the courts—especially in cases where the expected fee under the contingent fee schedule was small (as in *Murray*). The recent *Murray* decision by the Florida Supreme Court reinstated hourly fees on statutory grounds and reignited the debate about whether the limitation on hourly fees was good public policy. Several bills have been introduced to restore the limit on hourly fees.

The argument against limits is very plausible in concept and raises a very important public policy issue. Ultimately, the question is an empirical one. Did the limitation on hourly fees actually reduce the ability of workers to retain attorneys—especially in cases with small expected fees? When we examine a set of cases with expected fees for workers' attorneys less than \$500, (cases with under \$2,500 in PPD and/or lump-sum payments), we find that after the reforms, a significant fraction of workers (34 percent) were represented by attorneys, despite the low expected fee. A more sophisticated statistical analysis found mixed results—for cases with PPD and/or lump-sum payments under \$1,000 or under \$2,500, there was no statistically significant change in attorney involvement after the reforms. For cases with PPD and/or lump-sum payments under \$1,500 or under \$2,000, there was a small (2.5–3.4 percentage point) decrease in attorney involvement that was statistically significant. From this we

conclude that, in the absence of the hourly rate provision that was part of the reforms, the reforms had little to no impact on the ability of the worker to retain an attorney in cases with small expected fees for workers' attorneys.

The reader is reminded that Chapter 4 of this report describes some important caveats of the analysis presented here.

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TECHNICAL APPENDIX

This appendix supplements the analysis described in the main part of the report. Additional information is provided about the data and measures, the estimating methods and models, and the specifics of the regression results.

VALIDATING THE MEASURE OF ATTORNEY INVOLVEMENT

As described in Chapter 2, the analysis used claim data from WCRI's Detailed Benchmark/Evaluation (DBE) database for Florida for injuries arising from October 2000 through September 2004. The data come from a diverse group of payors. Because not all data providers consistently record whether an attorney is representing an injured worker in a claim, we limit our analysis only to a subset of claims with reliable measures of attorney representation. To determine the quality of the measure indicating that a worker retained an attorney, we compared the claim records to surveys of workers who were injured in Florida in 2001 and in 2004. In the survey, the workers were asked: "Did you have a lawyer represent you when you were trying to collect workers' compensation?" Of the 482 claims in both the claim data and the survey data, 92 percent had the same measures in both data sets (both administrative and survey records indicated that an attorney was involved or both records indicated that no attorney was involved). Only 3 percent reported no attorney representation in the claim data although the survey indicated attorney involvement. In 5 percent of cases, the claim data indicated attorney involvement, but the survey did not.

REPRESENTATIVENESS OF THE CLAIM DATA

The data in the DBE for Florida have been externally validated as reasonably representative of the claims in the state for the years in this study. As Table TA.1 shows, the sample used in this study is very similar to the DBE data on a wide range of measures. However, there are a few exceptions. For example, in the study sample claims of temporary disability average 8–14 percent shorter durations than in the DBE data. They also have more complete data on firm size.

¹ These surveys of injured workers are described in Belton, Victor, and Liu (2007).

And the workers are 6–13 percent less likely to be married. None of these differences are likely to influence the results in a material way.

Table TA.1 Comparing Characteristics of the Full DBE Sample for Florida and the Study Sample

	Before Reforms (10/2000–9/2003)			After Reforms (10/2003-9/2004)		
	All DBE Claims	Study Sample	Difference	All DBE Claims	Study Sample	Difference
% of cases with workers' attorney	NA	43%		NA	38%	
Average permanent partial disability and/or lump-sum payment per claim	\$5,716	\$5,601	-\$115	\$4,177	\$3,931	-\$246
% of claims with permanent partial disability and/or lump-sum payments	55%	58%	3%	53%	53%	0%
Average temporary disability payment per claim	\$5,394	\$5,072	-\$322	\$4,753	\$4,629	-\$124
% of claims with temporary disability benefits	84%	81%	-3%	83%	83%	0%
Type of injury (perce	entage of ca	ses)				
Back and neck sprains, strains, and non-specific pain	20%	21%	1%	18%	19%	1%
Other sprains and strains	21%	19%	-2%	22%	20%	-2%
Lacerations and contusions	15%	12%	-3%	15%	14%	-2%
Fractures	9%	8%	0%	9%	9%	1%
Inflammation	7%	8%	1%	7%	8%	1%
Neurologic spine pain	5%	8%	3%	4%	6%	2%
Upper extremity neurologic (carpal tunnel)	2%	3%	1%	2%	2%	0%
Other injuries	23%	22%	-1%	24%	23%	-1%

Table TA.1 Comparing Characteristics of the Full DBE Sample for Florida and the Study Sample (continued)

	Before Reforms (10/2000–9/2003)			After Reforms (10/2003–9/2004)		
	All DBE Claims	Study Sample	Difference	All DBE Claims	Study Sample	Difference
% with surgery	23%	20%	-4%	21%	18%	-3%
Average duration of temporary disability (weeks)	16	14	-14%	13	12	-8%
% with no temporary disability payments	20%	30%	10%	23%	30%	7%
Firm size (percentag	e of cases)					
Payroll of \$0 to \$10 million (up to 200 employees)	25%	19%	-6%	21%	20%	-1%
Payroll of \$10 to \$30 million (200- 600 employees)	5%	6%	2%	5%	6%	1%
Payroll over \$30 million (over 600 employees)	34%	59%	25%	36%	62%	25%
Payroll values missing	36%	15%	-21%	38%	13%	-25%
Industry (percentag	e of cases)					
Manufacturing	11%	12%	2%	11%	13%	3%
Construction	16%	10%	-6%	12%	12%	0%
Clerical and professional	9%	11%	1%	9%	11%	1%
Trade	13%	16%	3%	14%	13%	-1%
High-risk services	25%	23%	-2%	23%	22%	-1%
Low-risk services	14%	15%	1%	16%	15%	-1%
Other industry	13%	14%	2%	15%	15%	0%

continued

Table TA.1 Comparing Characteristics of the Full DBE Sample for Florida and the Study Sample (continued)

	Before Reforms (10/2000-9/2003)			After Reforms (10/2003–9/2004)		
	All DBE Claims	Study Sample	Difference	All DBE Claims	Study Sample	Difference
% in Miami-Dade, Palm Beach, or Broward County	31%	25%	-6%	32%	27%	-5%
Average weekly wage	\$494	\$489	-\$5	\$526	\$513	-\$13
Mean age (years)	41	41	0	42	42	0
% married	38%	26%	-13%	39%	33%	-6%
% male	59%	59%	1%	61%	63%	3%
Mean tenure (years)	3.5	3.5	0.0	4.1	3.8	0.3
Tenure (percentage	of cases)					
Under 6 months	25%	29%	4%	24%	28%	5%
6.1 months to 1 year	16%	13%	-3%	15%	12%	-3%
1.1 to 5 years	30%	34%	4%	31%	34%	3%
5.1 to 10 years	9%	10%	1%	11%	12%	1%
Over 10 years	11%	11%	0%	13%	11%	-2%
Equal to 0 or missing	9%	4%	-5%	7%	3%	-5%
Observations	121,550	32,816		39,736	14,478	

Key: DBE: Detailed Benchmark/Evaluation database; NA: Not available.

ADJUSTING FOR CHANGES IN CASE MIX BETWEEN THE PRE- AND POST-REFORM PERIODS

Certain claims characteristics affect the rate of attorney involvement. If the mix of such characteristics changes in the post-reform period, then conclusions about the impact of the reforms on attorney involvement could be erroneous. That is, changes in attorney involvement could be due to the changes in claim characteristics and not to the reforms. Hence, we control for changes in the characteristics of cases. Table TA.2 compares the values for the study sample in the two periods. It shows minor changes in most characteristics.

Descriptive statistics in Table TA.2 suggest important changes in the outcomes of the claims. In particular, the post-reform cases had smaller PPD and/or lump-sum payments and shorter durations of temporary disability than the pre-reform claims. One might be tempted to conclude that the post-reform cases were less severe than those in the pre-reform period. However, data from surveys of workers who were injured in 2001 or in 2004 indicate that the injury severity reported by these workers was similar in both periods. These outcomes could have changed either because of the reforms (as may be the case with payments for PPD and/or lump sum) or because of the change in the attorney behavior in a given claim. Since these two outcomes are endogenous to attorney involvement, we exclude them from our regression specifications.

Estimates in Table TA.2 also suggest that some characteristics of the claims change over time. In particular, injured workers in the post-reform sample are more likely to be married, more likely to be male, and have longer job tenure. In the next section, we discuss the methods and models used to adjust for the changes in the characteristics of cases.

Similarly, for the subset of cases with small expected fees for workers' attorneys, there are minor changes in most case characteristics (Table TA.3). The principle exceptions are that the post-reform sample includes more workers who are male, married, have longer tenure, and are older, on average.

Table TA.2 Comparing the Characteristics of the Pre-Reform and Post-Reform Samples

	Before Reforms (10/2000-9/2003)	After Reforms (10/2003-9/2004)	Difference (% Change)
% of cases with workers' attorney	43%	38%	
Average permanent partial disability and/or lump-sum payment per claim	\$5,601	\$3,931	-\$1,670 (-30%)
% of claims with permanent partial disability and/or lumpsum payments	58%	53%	-5%

continued

Lower amounts of PPD and lump-sum payments in the post-reform period may suggest that the policies that reduced the amount of PPD and lump-sum payments had a larger effect on the outcomes than the parts of the reform that increased the benefit amount. The change in the amount of the temporary disability payments may be explained by reduced incentives of the attorneys to prolong the case either due to the decrease in PTD payments or due to elimination of hourly fees. In any case, these variables are likely to be endogenous to the attorney representation and should be excluded from the regression analysis.

Table TA.2 Comparing the Characteristics of the Pre-Reform and Post-Reform Samples (continued)

	Before Reforms (10/2000–9/2003)	After Reforms (10/2003-9/2004)	Difference (% Change)
Average temporary disability payment per claim	\$5,072	\$4,629	-\$443 (-9%)
% of claims with temporary disability benefits	81%	83%	2%
Type of injury (percentage of ca	ases)		
Back and neck sprains, strains, and non-specific pain	21%	19%	-2%
Other sprains and strains	19%	20%	0%
Lacerations and contusions	12%	14%	2%
Fractures	8%	9%	1%
Inflammation	8%	8%	0%
Neurologic spine pain	8%	6%	-2%
Upper extremity neurologic (carpal tunnel)	3%	2%	-1%
Other injuries	22%	23%	1%
% with surgery	20%	18%	-2%
Average duration of temporary disability (weeks)	14	12	2 (-13%)
% where duration of temporary disability is zero	30%	30%	0%
Firm size (percentage of cases)			
Payroll of \$0 to \$10 million (up to 200 employees)	19%	20%	0%
Payroll of \$10 to \$30 million (200-600 employees)	6%	6%	-1%
Payroll over \$30 million (over 600 employees)	59%	62%	3%
Payroll values missing	15%	13%	-2%

Table TA.2 Comparing the Characteristics of the Pre-Reform and Post-Reform Samples (continued)

	Before Reforms (10/2000-9/2003)	After Reforms (10/2003-9/2004)	Difference (% Change)
Industry (percentage of cases)			
Manufacturing	12%	13%	1%
Construction	10%	12%	2%
Clerical and professional	11%	11%	0%
Trade	16%	13%	-3%
High-risk services	23%	22%	-1%
Low-risk services	15%	15%	0%
Other industry	14%	15%	1%
% in Miami-Dade, Palm Beach, or Broward County	25%	27%	2%
Average weekly wage	\$489	\$513	\$24 (5%)
Mean age (years)	41	42	2%
% married	26%	33%	8%
% male	59%	63%	4%
Mean tenure (years)	3.5	3.8	0.3 (9%)
Tenure (percentage of cases)			
Under 6 months	29%	28%	0%
6.1 months to 1 year	13%	12%	0%
1.1 to 5 years	34%	34%	0%
5.1 to 10 years	10%	12%	2%
Over 10 years	11%	11%	0%
Equal to 0 or missing	4%	3%	-2%
Observations	32,816	14,478	

Table TA.3 Comparing the Characteristics of the Pre-Reform and Post-Reform Samples of Claims with Permanent Partial Disability and/or Lump-Sum Payments under \$2,500 (in 2004 dollars)

	Before Reforms (10/2000–9/2003)	After Reforms (10/2003–9/2004)	Difference (% Change)
% of cases with workers' attorney	37%	34%	-\$204 (-3%)
Average permanent partial disability and/or lump-sum payment per claim	\$1,345	\$1,141	-\$99 (-15%)
Average temporary disability payment per claim	\$3,468	\$3,369	-3%
% of claims with temporary disability payments	62%	64%	2%
Type of injury (percentage of ca	ses)		
Back and neck sprains, strains, and non-specific pain	16%	15%	-1%
Other sprains and strains	20%	22%	1%
Lacerations and contusions	12%	12%	0%
Fractures	11%	11%	0%
Inflammation	10%	10%	-1%
Neurologic spine pain	6%	6%	0%
Upper extremity neurologic (carpal tunnel)	3%	3%	-1%
Other injuries	22%	23%	1%
% with surgery	24%	23%	-1%
Average duration of temporary disability (weeks)	10	9	-1 (-15%)
% where duration of temporary disability is zero	47%	47%	0%
Firm size (percentage of cases)			
Payroll of \$0 to \$10 million (up to 200 employees)	22%	22%	0%
Payroll of \$10 to \$30 million (200–600 employees)	6%	6%	0%
Payroll over \$30 million (over 600 employees)	57%	61%	4%
Payroll values missing	15%	12%	-3%

Table TA.3 Comparing the Characteristics of the Pre-Reform and Post-Reform Samples of Claims with Permanent Partial Disability and/or Lump Sum Payments under \$2,500 (in 2004 dollars) (continued)

	Before Reforms (10/2000-9/2003)	After Reforms (10/2003-9/2004)	Difference (% Change)
Industry (percentage of cases)			
Manufacturing	13%	14%	1%
Construction	9%	9%	0%
Clerical and professional	12%	14%	1%
Trade	15%	13%	-2%
High-risk services	20%	20%	0%
Low-risk services	15%	16%	1%
Other industry	15%	15%	-1%
County unemployment rate	5%	5%	-5%
% with county unemployment rate missing	18%	18%	0%
% in Miami-Dade, Palm Beach, or Broward County	25%	26%	1%
Average weekly wage	\$485	\$528	\$43 (9%)
Age			
Mean age (years)	42	44	4%
Age 15–24	9%	6%	-2%
Age 25–39	32%	30%	-3%
Age 40–54	43%	44%	1%
Age 55–59	8%	11%	3%
Age 60+	8%	9%	1%
% married	24%	34%	10%
% male	55%	58%	3%
Mean tenure (years)	4	5	1 (20%)
Tenure (percentage of cases)			
Under 6 months	24%	24%	0%
6.1 months to 1 year	12%	11%	0%
1.1 to 5 years	35%	34%	-2%
5.1 to 10 years	11%	14%	2%
Over 10 years	13%	15%	2%
Equal to 0 or missing	5%	3%	-2%
Observations	6,001	3,211	

APPROACH FOR ESTIMATING CHANGES IN ATTORNEY REPRESENTATION ADJUSTED FOR CASE CHARACTERISTICS

When examining the change in attorney representation before and after the reforms, we control for changes in the characteristics of the claims using a regression approach. We start from a basic linear model with the following structure:

$$Y_i = \alpha + \beta Reform_i + \gamma X_i + e_i$$

Where

i: individual claim

Y: attorney representation, 1 if claim *i* is represented by an attorney, 0 otherwise

: a constant term

Reform: indicator for a post-reform claim, 1 if claim i represents an

injury that occurred after the reforms were implemented, 0

otherwise

 β : represents the change in the attorney representation associated

with the reforms

 X_i : individual, firm, and injury characteristics of claim i

e: individual disturbances independent of *X*.

We control for claim characteristics that may be important correlates of attorney involvement, including injury type, industry, firm size, and the worker's preinjury wage, age, tenure, marital status, and gender.

We estimate this equation of interest using a linear probability model. This approach fits an ordinary least squares regression to the data. The main coefficient of interest (β) can be interpreted as a change in the probability of attorney involvement after reforms when we control for claim characteristics. We correct standard errors for heteroscedasticity using the Huber-White estimator implemented in Stata.

We estimate this model for the full sample and for several subsets of cases that are more likely to have small fees for workers' attorneys. We use several alternative subsets with different thresholds for "small" fees for workers' attorneys to examine the robustness of the results.

REGRESSION ESTIMATES OF CHANGES IN ATTORNEY REPRESENTATION: FULL SAMPLE

Table TA.4 provides estimates of the linear probability model for the full sample of indemnity claims. In Column 1, we estimate the change in the likelihood that a worker will retain an attorney without controls for other factors that may affect attorney involvement. These estimates suggest that attorney representation in the post-reform period declined by 5.3 percentage points, although this estimate does not take into account the possible impact of changes in the characteristics of the claims.

In Column 2, we present estimates that control for the changes in the characteristics of cases. This model finds that the likelihood that a worker retained an attorney declined by 3.6 percentage points after reforms.

Table TA.4 Estimates of the Factors Affecting the Likelihood of a Worker Retaining an Attorney

	(1)	(2)
	Coefficient	Standard Error	Coefficient	Standard Error
Reform (1 if post-reform injury, 0 otherwise)	-0.053**	(0.005)	-0.036**	(0.005)
Injury				
Back and neck sprains, strains, and non-specific pain			0.154**	(0.009)
Other sprains and strains			0.037**	(0.009)
Lacerations and contusions			0.008	(0.010)
Fractures			Base case	
Inflammation			0.097**	(0.011)
Neurologic spine pain			0.336**	(0.011)
Upper extremity neurologic (carpal tunnel)			0.084**	(0.016)
Other			0.090**	(0.009)
Firm size				
Payroll of \$0 to \$10 million (up to 200 employees)			Base case	
Payroll of \$10 to \$30 million (200–600 employees)			0.016	(0.010)
Payroll over \$30 million (over 600 employees)			0.052**	(0.006)
Payroll values missing			0.063**	(0.008)

continued

Table TA.4 Estimates of the Factors Affecting the Likelihood of a Worker Retaining an Attorney (continued)

	(1)	(2))
	Coefficient	Standard Error	Coefficient	Standard Error
Industry				
Manufacturing			Base case	
Construction			0.054**	(0.009)
Clerical and professional			0.001	(0.009)
Trade			-0.018*	(0.009)
High-risk services			-0.002	(0.008)
Low-risk services			-0.006	(0.008)
Other			-0.032**	(0.009)
Miami-Dade, Palm Beach, or Broward County			0.060**	(0.005)
County unemployment rate			0.015**	(0.003)
Log of preinjury wage			0.006	(0.019)
Square of the log of preinjury wage			-0.004*	(0.002)
Age				
Age 15–24			-0.118**	(800.0)
Age 25–39			Base case	
Age 40–54			0.026**	(0.005)
Age 55–59			0.007	(0.009)
Age 60+			0.001	(0.009)
Marital status: married			-0.036**	(0.005)
Gender: male			-0.056**	(0.005)
Tenure				
Under 6 months			0.076**	(0.006)
6.1 months to 1 year			0.028**	(0.007)
1.1 to 5 years			Base case	
5.1 to 10 years			-0.094**	(0.008)
Over 10 years			-0.156**	(800.0)
Equal to 0 or missing			0.062**	(0.012)
Constant	0.434**	(0.003)	0.377**	(0.058)
Observations	47,294		47,294	
R-squared	0.002		0.072	

Note: Robust standard errors in parentheses; * significant at 0.05 level; ** significant at 0.01 level.

REGRESSION ESTIMATES OF CHANGES IN ATTORNEY REPRESENTATION: CLAIMS WITH SMALL FEES FOR WORKERS' ATTORNEYS

Table TA.5 shows the estimates for cases with potentially small fees for workers' attorneys. For this estimate, we use alternative subsets with different thresholds of fees for workers' attorneys. The alternative subsets of cases with small fees for workers' attorneys are indemnity claims with PPD and/or lump-sum payments under \$1,000, under \$1,500, under \$2,000, or under \$2,500. Under the contingent fee schedule, these would yield fees for workers' attorneys of \$200, \$300, \$400, and \$500, respectively. All values are set in constant dollars in 2004. We estimate the equation for alternative subsets in order to test the robustness of the results and conclusions derived.

While the estimates in each of the subsets in Table TA.5 are different in an economic sense, they are not different from each other in a statistical sense. While the estimate of the change in attorney involvement in the group of cases with PPD and/or lump-sum payments between \$1 and \$1,500 is statistically different from zero, it is not statistically different from -0.009, the estimate of the change in attorney involvement for the cases with PPD and/or lump-sum payments between \$1 and \$2,500. The variation in the estimates between different subsamples in Table TA.5 may be explained by different patterns of severity and return to work in the pre-and post-reform subsamples with the same PPD thresholds.

Table TA.5 Estimates of the Factors Affecting the Likelihood of a Worker Retaining an Attorney in Cases with Small Fees for Workers' Attorneys—Alternative Definitions of Smaller Fees for Workers' Attorneys

		th Permanent F Sum Payment		•
•	\$2,500	\$2,000	\$1,500	\$1,000
Reforms (1 if post-reform claim, 0 otherwise)	-0.009	-0.025*	-0.034**	-0.012
Injury				
Back and neck sprains, strains, and non-specific pain	0.253**	0.258**	0.259**	0.238**
Other sprains and strains	0.115**	0.106**	0.120**	0.117**
Lacerations and contusions	0.131**	0.111**	0.107**	0.087**
Fractures		Base case		
Inflammation	0.072**	0.060**	0.073**	0.112**
Neurologic spine pain	0.267**	0.281**	0.302**	0.330**
Upper extremity neurologic (carpal tunnel)	0.092**	0.082**	0.093**	0.023
Other	0.131**	0.125**	0.137**	0.130**
Firm size				
Payroll of \$0 to \$10 million (up to 200 employees)		Base case		
Payroll of \$10 to \$30 million (200–600 employees)	0.042*	0.029	0.036	0.010
Payroll over \$30 million (over 600 employees)	0.060**	0.061**	0.068**	0.060**
Payroll values missing	0.085**	0.075**	0.077**	0.053*
Industry				
Manufacturing		Base case		
Construction	0.037	0.028	0.016	0.010
Clerical and professional	-0.038*	-0.045*	-0.056**	-0.044
Trade	-0.047**	-0.045*	-0.049*	-0.054*
High-risk services	0.005	0.002	-0.011	-0.018
Low-risk services	-0.006	-0.006	-0.012	-0.015
Other	-0.029	-0.024	-0.030	-0.040

Table TA.5 Estimates of the Factors Affecting the Likelihood of a Worker Retaining an Attorney in Cases with Small Fees for Workers' Attorneys—Alternative Definitions of Smaller Fees for Workers' Attorneys (continued)

		th Permanent I Sum Payment		-
	\$2,500	\$2,000	\$1,500	\$1,000
Miami-Dade, Palm Beach, or Broward County	0.045**	0.048**	0.049**	0.045**
County unemployment rate	0.015*	0.003	0.006	0.009
Log of preinjury wage	0.044	-0.016	-0.013	-0.072
Square of the log of preinjury wage	-0.013**	-0.008	-0.006	0.001
Age				
Age 15–24	-0.048*	-0.060**	-0.044	-0.046
Age 25–39		Base case		
Age 40-54	-0.025*	-0.019	-0.005	-0.001
Age 55–59	-0.087**	-0.079**	-0.057**	-0.051*
Age 60+	-0.152**	-0.132**	-0.109**	-0.089**
Married	-0.037**	-0.046**	-0.060**	-0.062**
Gender: male	-0.024*	-0.021	-0.024	-0.023
Tenure				
Under 6 months	0.117**	0.094**	0.072**	0.059**
6.1 months to 1 year	0.031	0.007	-0.004	-0.044*
1.1 to 5 years		Base case		
5.1 to 10 years	-0.088**	-0.089**	-0.072**	-0.060**
Over 10 years	-0.116**	-0.111**	-0.094**	-0.074**
Equal to 0 or missing	0.163**	0.147**	0.141**	0.148**
Constant	0.381**	0.562**	0.459*	0.501*
Observations	9,304	7,731	5,740	3,656
R-squared	0.125	0.118	0.100	0.086
Estimates with no controls for chan	ges in case mi	x		
Reforms (1 if post-reform claim, 0 otherwise)	-0.034**	-0.045**	-0.065**	-0.039**
Constant	0.370**	0.333**	0.313**	0.249**
Observations	9,304	7,731	5,740	3,656
R-squared	0.001	0.002	0.005	0.002

Note: * significant at 0.05 level; ** significant at 0.01 level.

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- What are the consequences of proposed solutions?
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The Institute's work takes several forms:

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EXHIBIT 6

information on whether the agency provides ombudspeople or other worker and/or employer advocates, the basis of attorney fee calculations, who determines attorney fees, whether there are additional fees allowed and under what dircumstances, whether laypersons can represent claimants, what the source of payment to a worker's attorney is, and whether defense attorney fees are regulated.

		Public Advocates Or Ombudspeople Provided By Agency				Formula For		
Jurisdiction	Laypersons Can Represent Workers	For Employee	For Employer	Fees For Worker's Attorney Established By	Worker's Attorney Fee Formula	Medical-Only Disputes	Source Of Payments To Worker's Attorney	Worker's Attorney Fee Must Be Approved By
Alabama	No	No	No	Statutory formula	15% of award	No	15% of award	None
Alaska	Yes	No	No	Statutory & administrative rule; fees must be approved by adjudicative body	25% of first \$1,000 and 10% of remainder; or actual fees are awarded if requested by attorney	No	Employer/insurer	Alaska Workers' Compensation Board
Arizona	No	Œ)	No	The Commission may set attorney fees only if a petition is filed under A.R.S.§ 23-1071	If attomey fees are awarded under A.R.S. §23-1071, the fees shall not be more than 25% up to 10 years from the date of the award; in cases involving solely loss of earning capacity, the maximum shall be 25% up to 5 years from the date of the final award; when the payment of the award to the claimant is made in installments, or in other than a lump sum manner, in no event may an amount in excess of 25% of any one such installment payment be withheld for the attorney's fees	No	Paid out of worker's benefits	None unless either party requests they be approved by the Commission
Arkansas	Yes	No (2)	No	Statutory formula; determined in each case by the judge or commissioner	25% of indemnity awarded	No fee is allowed for only medical benefits	1/2 comes from award, 1/2 from carrier	Arkansas Workers' Compensation Commission
California	Yes, as long as he or she is not a disbarred attorney	Neutral information and assistance officers at each office	Neutral information and assistance at each office	Administrative rule	Based on time spent, results obtained, responsibility assumed, and care exercised per California Code of Regulation 10775	No	Comes out of an award but lay representatives cannot be paid	Workers' Compensation Appeals Board
Colorado	Yes	No	No	Statutory up to 20%, excess at the Director's discretion	A fee in excess of 20% of the benefits awarded is to be presumed unreasonable, but the Director can make exceptions for cases that have been appealed	Reasonable fees calculated on a per hour basis; contingent fee if approved by Director	Paid out of the worker's benefits	None
Connecticut	Yes, during informal hearings	No	No	Administrative rule	20% of total award	No	Paid out of the worker's benefits	Workers' Compensation Commissioner hearing the case
Delaware	No	Yes	No	Statutory formula; determined in each case by the judge, commissioner, and magistrate; by agreement of the parties	The Board can award as costs 10 times the state AWW	No	Employer/carrier and employee benefits	The Industrial Accident Board; fees must be approved only as part of an award for commutation
District of Columbia	No	No	No	Statute	Not to exceed 20% of benefits secured	No	Paid out of the worker's benefits, but there are exceptions	

Information on whether the agency provides ombudspeople or other worker and/or employer advocates, the basis of attorney fee calculations, who determines attorney fees, whether there are additional fees allowed and under what circumstances, whether laypersons can represent claimants, what the source of payment to a worker's attorney is, and whether defense attorney fees are regulated.

		Public Advocates Or Ombudspeople Provided By Agency				Formula For		
Jurisdiction	Laypersons Can Represent Workers	For Employee	For Employer	Fees For Worker's Attorney Established By	Worker's Attorney Fee Formula	Medical-Only Disputes	Source Of Payments To Worker's Attorney	Worker's Attorney Fee Must Be Approved By
Florida	Ombudsman can intervene on injured worker's behalf but cannot represent the injured worker before the judge	Ombudsman	No	Statutory formula	20% of first \$5,000 of the amount of the benefits secured; 15% of the next \$5,000 of the amount of the benefits secured; 10% of the remaining amount of the benefits secured to be provided during first 10 years after the date the claim is filed; 5% of the benefits secured after 10 years	\$1,500 once per accident based on hourly rate of \$150	Employer, in addition to employee's benefits/the employee, unless the employee prevails before a judge, then it would be the employer/carrier	The Office of Judges of Compensation Claims
Georgia	No	No	No	Statutory formula	Fees over \$100 approved by the Board; maximum fee is 25% of income benefits	No fees unless medical unreasonably denied	Employee or employer/insurer if unreasonable defense	If over \$100.00, approved by the Board
Hawaii	Yes	No	No	Administrative rule	None	No	Is a lien upon compensation to be paid to employee	Disability Compensation Division
Idaho	No	No	No	Administrative rule	25% of benefits secured by the attorney without hearing, 30% with hearing	No	A set percentage of the benefits paid to the employee that were secured by the attorney, or if employer/surety actions are found unreasonable, employee's attorney fees are paid by employer/surety as awarded by the Commission	Subject to approval by the
Illinois	No (3)	No	No	Statutory formula; additional fees by order of Commission	20% of disputed amount up to 364 weeks of benefits at permanent total disability rate	No	Out of award; employer may be ordered to pay fee as penalty	IWCC
Indiana	No	No	No	Statutory formula	20% of first \$50,000; 15% of in excess of \$50,000	No	Comes out of employee's recovery	None
lowa	No	No	No	Agreement of parties	None	No	From award of benefits or percentage of settlement	None
Kansas	No	Yes	Yes	Statutory formula	25% of the amount of compensation recovered and paid	No	Comes out of the employee's award	Department of Labor, Division of Workers Compensation administrative law judge
Kentucky	No	No	No	Statutory	20% of first \$25,000 of the income benefits recovered in an award or settlement; 15% next \$10,000; 5% remainder with \$12,000 max.	N/A	Income benefits recovered on behalf of the worker by way of award or settlement	Administrative law judge with Department of Workers Claims
Louisiana	No	Yes (very limited)	Yes (very limited)	Statutory formula	20% of award	No	Paid out of the employee's benefits	Louisiana Office of Workers' Compensation
Maine	Yes	Yes	No	Agreement of parties and subject to limits and appealable to a hearing officer	May not exceed 30% of award after deducting expenses	No	Deducted from employee's award	None
Maryland	No	No	No	Administrative rule; determined in each case by the judge, commissioner, magistrates	For PPD, up to 20% of the first 75 weeks awarded, up to 15% of the amount due for the next 120 weeks, and up to 10% of the amount due in excess of 195 weeks (see COMAR 14.09.01.25)	Absent exceptional circumstances, no fee allowed	Injured worker's weekly benefit is reduced by the amount of the fee	Workers' Compensation Commission

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		Public Advocates Or Ombudspeople Provided By Agency				Formula For			
Jurisdiction	Laypersons Can Represent Workers	For Employee	For Employer	Fees For Worker's Attorney Established By	Worker's Attorney Fee Formula	Medical-Only Disputes	Source Of Payments To Worker's Attorney	Worker's Attorney Fee Must Be Approved By	
Massachusetts	Yes	No	No	Statutory formula, percentage of lump-sum agreement	20% of lump-sum settlement or award ordered by administrative judge	N/A	Attorneys are entitled to fees if an administrative judge awards benefits in a conference order or a hearing decision; a percentage is taken out of any lump-sum settlement (20% if liability is established, 15% if not)	Department of Industrial Accidents, but rates are set by statute (see M.G.L. c. 152, Secs. 12A and 13A)	
Michigan	No	No	No	Statutory formula and by administrative rule	Reasonable expenses and then a fee no more than 30% for a redemption or 15% of the first \$25,000 and 10% thereafter (see 408.44 for details)		Paid out of benefits awarded to employee	Approved by workers' compensation magistrate under Michigan Administrative Hearing System Agency (MAHS)	
Minnesota	No	Yes	Yes	Statutory formula; by agreement of the parties with judge's approval; attorney may petition for additional fees	20% of the first \$130,000	Same formula applies to the dollar amount of disputed medical benefit awarded; where no dollar value is ascertainable, the amount is hourly or \$500, whichever is less	Employee's awarded benefits, unless contingency fee is inadequate to reasonably compensate the attorney in medical and rehabilitation cases, in which case the employer or insurer is liable for the attorney fees (4)	A compensation judge at the Office of Administrative Hearings	
Mississippi	No	No	No	Statutory rule: 25%	25% of total award	No	Only from the award	Mississippi Workers' Compensation Commission	
Missouri	No	Yes, limited (5)	Yes, limited (5)	Determined in each case by the ALJ or, the Labor and Industrial Relations Commission (LIRC) (6)	No statutory formula	No	Generally, the employee's attorney's fee is paid out of the sum paid to the employee by settlement or award, subject to the approval of the ALJ or LIRC, but see [7]	Missouri Division of Workers' Compensation or the Labor and Industrial Relations Commission of Missouri	
Montana	Yes <u>(8)</u>	No	No	Determined in each case by the judge or by agreement of the parties (39-71-613, MCA)	20% of benefits gained through attorney's efforts; 25% if prevails in court	N/A	Paid out of worker's benefits, unless court assesses fee against the insurer	Employment Relations Division	
Nebraska	No	No	No	Determined in each case by the judge, commissioner, magistrates, or by agreement of the parties	"Reasonable"	No	Paid out of worker's benefits, and may be awarded in addition to benefits paid to the worker	Workers' Compensation Court in order to be an enforceable lien	
Nevada	Yes	Yes	No	By agreement of both parties	None	No	Paid by the state if represented by the Nevada Attorney for Injured Workers	None	
New Hampshire	Yes	Yes	No	Administrative rule	20% of the retroactive indemnity benefits	Yes (9)	Award comes from employee award (10)	Department of Labor	
New Jersey	No	No	No	Statutory formula but determined in each case by the judge, commissioner, etc.	Statutory formula up to 20% of award, but determined in each case by the judge, commissioner, etc.	No	From award and/or paid all or in part by respondent	Division of Workers' Compensation	

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		Public Advocates Or Ombudspeople Provided By Agency				Formula For		
Jurisdiction	Laypersons Can Represent Workers	For Employee	For Employer	Fees For Worker's Attorney Established By	Worker's Attorney Fee Formula	Medical-Only Disputes	Source Of Payments To Worker's Attorney	Worker's Attorney Fee Must Be Approved By
New Mexico	Yes (11)	Yes	Yes	Determined in each case by the judge or by agreement of the parties	None	No	Fees are usually split between worker and employer/insurer, but offers of judgment can shift fees all to worker or all to employer	Workers' Compensation Judge
New York	Yes (12)	Yes	Yes	Determined in each case by the judge or Board members based upon provisions of Workers' Compensation Law § 24 and 12 NYCRR 300.17 [13]	None	None	Worker's attorney's fee comes out of the award to the worker	NYS Workers' Compensation Board
North Carolina	No	No <u>(14)</u>	No (14)	Statute permits contract between the parties subject to approval of the Industrial Commission	Contract between the parties, subject to the approval of the industrial Commission based upon "not unreasonable" standard (15)	No (16)	The employee's compensation (16)	NC Industrial Commission
North Dakota	No	Yes <u>(17)</u>	No	Statutory formula; administrative rule (92-01-02-11.1)	Subject to maximum fee set by administrative rule (92-01-02-11.1)	No	WSI is the source of payment	None
Ohio	Yes	No	No	Individual contract between injured worker and attorney	No statutory formula	No	Paid out of the benefits awarded to the employee	None
Oklahoma (18)	No	No	No	Statutory formula	10% of TTD when contested; 20% of PPD, PTD, and death compensation	Reasonable fee determined by the court	The attorney fee is deducted from the employee's award	By court order
Oregon	No—hearings are held before the Workers' Compensation Board whose rules prohibit lay representation	Yes	Yes	Statute and administrative rule	Varies according to type of dispute (19)	Yes, based on value of disputed service and attorney time devoted to the matter (20)	Approved fees are paid out of the worker's compensation award and are a lien on the worker's compensation; assessed fees are paid by the insurer or self-insured employer	Workers' Compensation Division or Workers' Compensation Board depending on type of dispute
Pennsylvania	No	No	No	Statute	Up to 20% of compensation awarded	No	Usually paid out of the award to the worker, but there are exceptions	Fee must be approved by either the workers' compensation Judge or, in certain cases, the Workers' Compensation Appeal Board
Rhode Island	No	No	No	Determined in each case by the judge or by agreement of the parties	No statutory formula	No	Usually paid in addition to the benefits paid to the worker, for a settlement, fees are generally paid out of worker's award and are not to exceed 20%	Workers' Compensation Court
South Carolina	No	Yes	Yes	Statutory formula	33% for claimant attorney	None	Deducted from award	SC Workers' Compensation Commission

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	Laypersons Can Represent Workers	Public Advocates Or Ombudspeople Provided By Agency				Formula For		
Jurisdiction		For Employee	For Employer	Fees For Worker's Attorney Established By	Worker's Attorney Fee Formula	Medical-Only Disputes	Source Of Payments To Worker's Attorney	Worker's Attorney Fee Must Be Approved By
South Dakota	No, unless a medical- only dispute of \$8,000 or less	No	No	Statutory rule	Maximum of 25% of disputed benefits if settled, 30% if hearing, 35% if appealed to courts	No	Out of employee's award unless insurer's conduct unreasonable/vexatious	DLR
Tennessee	No	No	No	Statutory formula; determined in each case by the judge, commissioner, and magistrate; by agreement of the parties	The attorney's fees to be charged employees shall not be in excess of 20% of the amount of the recovery or award to be paid by the party employing the attorney	No, but worker's attorney can recover a fee not in excess of 20% of the amount of the recovery or award for disputed medical bills	Worker's attorney fees come from the award	Worker's Compensation Division or Courts
Texas	Yes (21)	Yes, provided by a separate state agency—Office of Injured Employee Counsel	No	By administrative rule and are determined in each case by the judge, commissioner, magistrates	Number of hours multiplied by hourly fee; number of hours and maximum hourly fee established by rule	No	Paid from employee's weekly income benefits; amount may not exceed 25% of weekly benefit amount	Texas Department of Insurance, Division of Workers' Compensation or a court of competent jurisdiction
US Federal Programs - FECA	Yes	No	No	Claimant and representative agree on fees, OWCP approves them—no contingency fees allowed	N/A	N/A	N/A	The Office of Workers' Compensation Programs
US Federal Programs - Longshore	Yes	No	No	Market rates; determined in each case by the tribunal before whom earned	None	No	Employee (though fees may shift to employer/carrier in certain circumstances)	DOL
Utah	No	No	No	Statutory formula; administrative rule	25% of first \$25,000; 20% of second \$25,000; and 10% of remainder up to a maximum of \$17,468	Paid by employer/carrier using same formula	If the total award is \$4,000 or less, attorneys' fees are paid by the employer/carrier using same formula	Labor Commission
Vermont	No	No	No	Administrative rule and determined in each case by the judge, commissioner	Up to 20% of award or up to \$145.00 per hour	No	If awarded by commissioner/judge, fee paid by the employer/carrier in addition to employee's benefits	None
Virginia	No	No	No	Determined in each case by the Commission	None	No	Payable by worker directly or paid out of comp award unless bad-faith defense on part of employer/insurer, in which case all or part can be assessed against employer/insurer	Virginia Workers' Compensation Commission
Washington	Yes	Yes	No	Statutory formula or by agreement of the parties	30% of increase in award or benefits secured by the attorney	No	Paid out of the benefits awarded to the employee	None
West Virginia	No	No	No	Statute	20% of indemnity benefits to a maximum of 20% of 208 weeks of benefits (22)	N/A	Paid from employee's benefits; attorney fees may be ordered to be paid by carrier for medical issues and TTD denials when the denial is deemed to be "unreasonable" (23)	None <u>(24)</u>

information on whether the agency provides ombudspeople or other worker and/or employer advocates, the basis of attorney fee calculations, who determines attorney fees, whether there are additional fees allowed and under what circumstances, whether laypersons can represent claimants, what the source of payment to a worker's attorney is, and whether defense attorney fees are regulated.

		Public Advocates Or Ombudspeople Provided By Agency		Face Say Worker's Attorney		Formula For	Course Of Bouncasts To Worker's		
Jurisdiction	Laypersons Can Represent Workers	For Employee	For Employer	Fees For Worker's Attorney Established By	Worker's Attorney Fee Formula	Medical-Only Disputes	Source Of Payments To Worker's Attorney	Worker's Attorney Fee Must Be Approved By	
Wisconsin	Yes (25)	No	No	Statutory formula; administrative rule	20% of the disputed amount; if no dispute, 10% of the amount awarded up to a maximum of \$250	No	Paid out of employee's award	An administrative law judge in the Worker's Compensation Division	
Wyoming	No	No	No	Administrative rule	None	No	Always paid in addition to the worker's benefits whether the worker wins or loses	Attorney General's office	
anadian Jurisdic	tions Participating								
British Columbia	Yes	Yes <u>(26)</u>	Yes <u>(26)</u>	Policy item #100.40 of the RSCM sets out that WorkSafeBC does not pay expenses for any advocate or any fees for legal advice or advocacy	N/A	N/A	N/A	N/A	
New Brunswick	No	No (27)	No (27)	Worker and employer advocates are a free service provided by the provincial government and funded by WorkSafeNB	N/A	N/A	N/A	N/A	
Nova Scotia	Yes	Yes	No	N/A (28)	No fees	N/A	N/A	N/A	
Ontario	Yes	WSIB funds the Office of the Worker Advisor	WSIB funds the Office of the Employer Advisor	Arrangement between the worker and their attorney	None	No	Arrangement between the worker and their attorney	N/A	
Prince Edward Island	Yes	Yes	Yes	Legal fees are not covered	N/A	N/A	N/A	N/A	
Saskatchewan	Yes	Yes	No	Attorneys are not involved in our system	N/A	N/A	N/A	N/A	
Notes:				amounts for U.S. Jurisdictions are s					
	and the second s				ride legal advice or advocate for the employee	in a hearing.			
	3 Illinois - Except a legal of	rs are available to both part	ies and the public b	ut are not advocates.					
	4 Minnesota - A portion of medical expenses with	of fees are reimbursed to the	er notice of injury or		rney successfully procures payments from a de unsuccessfully resists the payment of rehabilit				
	5 Missouri - The Missouri	Division of Workers' Compe	ensation has a volun	tary alternative dispute resolution p	rocess to mediate disputes that arise soon afte	r an injury occurs ove	r issues such as medical treatment and lo	st wages.	
	-				nable and must be approved by the ALJ or the				
	7 Missouri - §287.560, RSI employee's attorney's fe		provide that, if the	ALJ or the LIRC determines that any	proceedings have been defended without rea	sonable ground, it ma	ay order the employer to pay the whole co	ost of the proceedings, including the	
	8 Montana - If they are no								
	The second secon	nable fees if bills are ordere							
	10 New Hampshire - Unles			eals Board.	100000000000000000000000000000000000000				
	11 New Mexico - A non-att							many American Assessment	
	12 New York - If they are lic			ng due regard for the financial statu	s of the worker, whether the attorney engaged	d in dilatory tactics or	failed to comply with Roard rules in a tim	ely manner in no case shall the fee	

Information on whether the agency provides ombudspeople or other worker and/or employer advocates, the basis of attorney fee calculations, who determines attorney fees, whether there are additional fees allowed and under what circumstances, whether laypersons can represent claimants, what the source of payment to a worker's attorney is, and whether defense aftorney fees are requisited.

		Public Advocates O Provided B				Formula For						
Jurisdiction	Laypersons Can Represent Workers			Worker's Attorney Fee Formula	Medical-Only Disputes	Source Of Payments To Worker's Attorney	Worker's Attorney Fee Must Be Approved By					
	14 North Carolina - Informa pertaining to all aspects of			presented by an attorney, employer	rs, or other parties in protecting their rights,	but they do not give le	gal advice or appear at proceedings. Info	rmation specialists answer question:				
	15 North Carolina - The Ind	ustrial Commission can t	ax attorney fees as co	sts for appeals in a limited class of ca	ases. The attorney fee is determined by mult	tiplying the number of	hours reasonably expended on the case l	by a reasonable hourly rate.				
	16 North Carolina - The Indedefendant's attorney or the				brought, prosecuted, or defended without i	reasonable ground; it m	nay assess the whole cost of the proceedi	ngs, including reasonable fees for th				
	17 North Dakota - Decision	17 North Dakota - Decision Review Office Statute 65-02-27 and Admin Rule 92-01-03.										
	18 Oklahoma - Please note t	18 Oklahoma - Please note that the Oklahoma workers' compensation system underwent significant legislative change on February 1, 2014.										
	pay compensation, fees a failure to pay disputed cla	re based on results achie aim settlement is based o	ved and time devoted on the percentage of s	d; the statute provides the maximum ettlement proceeds allocated to the	s up to 25% of amount due, based on matrix n fee and administrative rule provides the m e claimant's attorney as fees; administrative r nsurer requests review and the worker preva	atrix. The fee is adjusterule provides the matrix	d annually based on the change in average a. Assessed fees are not based on the forn	ge weekly wage. The fee for insurer nula and must be reasonable; factor				
	20 Oregon - ORS 656.385; O	AR 436-001-0410 - By pt	iblished matrix, based	on the value of the benefit received	d and number of hours attorney worked on t	the issue.						
Bar Marada, and					remuneration, directly or indirectly, for the r							
mile!	22 West Virginia - In the cas benefits, may not exceed				edical and indemnity benefits. However, this	fee, when combined w	rith any fees previously charged or receiv	ed by the attorney for PPD or PTD				
	23 West Virginia - Also can	be paid if the denial of co	ompensability is deter	mined unreasonable.								
	24 West Virginia - Yes, if there has been an unreasonable denial of medical or TTD benefits.											
	25 Wisconsin - The lay repre appear.	sentative must be appro	ved by the WC Divisio	n if he or she has had three or less a	ppearances in formal hearings. If the lay per	son has had more than	three appearances, he or she must be a l	icensed representative in order to				
					er advocates are not funded by WorkSafeBC.							
	27 New Brunswick - Public a	dvocates are available fo	or both employees and	d employers as a free service, howev	er they are provided by the Provincial gover	rnment.						
					ite body, the Workers' Advisors Program, wh							

HOLLAND & KNIGHT LLP

/s/ Mark K. Delegal

Mark K. Delegal, Esq.

Fla. Bar No.: 989924

 $\underline{mark.delegal@hklaw.com}$

Matthew H. Mears, Esq.

Fla. Bar No.: 885231

matthew.mears@hklaw.com

Holland & Knight LLP

315 S. Calhoun Street, Suite 600

Tallahassee, Florida 32301

Ph. (850) 224-7000

Fax (850) 224-8832

Attorneys for Florida Justice Reform Institute and the Florida Chamber of Commerce, Inc.

-and-

William W. Large

Fla. Bar No. 981273

william@fljustice.org

Florida Justice Reform Institute

210 S. Monroe Street

Tallahassee, Florida 32301

Telephone: (850) 222-0170 Facsimile: (850) 222-1098

Attorney for Florida Justice Reform Institute

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document has been furnished by E-

Mail on this 13th day of June, 2014, to the following:

Richard A. Sicking, Esq. 1313 Ponce De Leon Blvd, #300 Coral Gables, FL 33134 E-Mail: sickingpa@aol.com Co-Counsel for Petitioner

Michael J. Winer, Esq. Law Office of Michael J. Winer, P.A. 110 North 11th Street, 2nd Floor Tampa, FL 33602 E-Mail: mike@mikewinerlaw.com

Co-Counsel for Petitioner

Mark A. Touby, Esq.
Richard E. Chait, Esq.
Touby, Grindal & Chait, P.L.
2030 South Douglas Road, Suite 217
Coral Gables, FL 33134
E-Mail: mark.touby@tgc1egaLcom
Co-Counsel for Petitioner

Roberto Mendez, Esq.
The Law Group of Mendez & Mendez, P.A.
7061 Taft Street
Hollywood, FL 33024
E-Mail:
rmendez@mendezlawgroup.com
Co-Counsel for Respondents

Raoul G. Cantero, Esq.
David P. Draigh, Esq.
White & Case LLP
Southeast Financial Center
200 South Biscayne Boulevard, Suite
4900

Miami, Florida 33131-2352 Telephone: (305) 371-2700 Facsimile: (305) 358-5744

E-mail: <u>raoul.cantero@whitecase.com</u> ldominguez@whitecase.com

E-mail: ddraigh@whitecase.com
mgaulding@whitecase.com
Co-Counsel for Respondents

Kimberly A. Hill, Esq. 821 SE 7th St. Fort Lauderdale, Florida 33301 E-Mail:

kimberlyhillappellatelaw@gmail.com Counsel for Amicus Curiae, Florida Workers' Compensation Advocates

Mark Lawrence Zientz, Esq.
Two Datran Ctr
9130 S Dadeland Blvd, Ste 1619
Miami, Florida 33156
E-Mail: mark.zientz@mzlaw.com
Counsel for Amici Curiae, MP Workers'
Injury Law and Advocacy Group WILG

Christopher Smith, Esq. 2805 W. Busch Blvd., Suite 219 Tampa, FL 33618

E-Mail: chris@cjsmithlaw.com
Counsel for Amicus Curiae, Workers'
Compensation Section of The Florida
Bar

William J. McCabe, Esq. 1250 S. Hwy. 17-92, Ste. 210 Longwood, FL 32750

E-Mail: <u>billjmccabe@earthlink.net</u>

Counsel for Amicus Curiae, Voices, Inc.

Susan W. Fox, Esq.
Fox & Loquasto, P.A.
122 East Colonial Drive, Suite 100
Orlando, FL 32801
E-Mail: susanfox@flappeal.com
Co-Counsel for Amicus Curiae, Florida
Justice Association

Richard W. Ervin, II
Fox & Loquasto, P.A.
1201 Hays Street, Suite 100
Tallahassee, Florida 32301
E-Mail: richardervin@flappeal.com
admin2@)flappeal.com

Co-Counsel for Amicus Curiae, Florida Justice Association Geoffrey Bichler, Esq.
Bichler, Kelley, Oliver & Longo
541 South Orlando Avenue, Suite 310
Maitland, FL 42751
E-Mail: geoff@bichlerlaw.com
Counsel for Amicus Curiae, Fraternal
Order of Police

Rayford H. Taylor, Esq.

Casey Gilson P.C.
Suite 800
980 Hammond Drive
Atlanta, GA 30328
E-Mail: rtaylor@caseygilson.com
Counsel for Amici Curiae, Associated
Industries of Florida, Inc.; Associated
Builders & Contractors; Florida
Electric Cooperatives Association;
Florida Retail Federation; Florida
Roofing, Sheet Metal and Air
Conditioning Contractors Association;
Florida United Businesses Association;
and Publix Supermarkets.

Kenneth B. Schwartz, Esq.
Kenneth B. Schwartz, P.A.
1803 S. Australian Ave., Suite F West
Palm Beach, FL 33409
E-Mail: kbs@flalaw.com
Co-Counsel for Amicus Curiae, Florida
Workers' Compensation

Noah Scott Warman, Esq. Sugarman & Susskind, P.A. 100 Miracle Mile, Suite 300 Coral Gables, Florida 33134 E-Mail:

NWarman@sugarmansusskind.com Counsel for Amici Curiae, Florida Professional Firefighters, Inc. International Association of Firefighters, AFL-CIO Amy L. Koltnow, Esq.
Maria Elena Abate, Esq.
Colodny, Fass, Talenfeld,
Karlinsky, Abate & Webb, P.A.
One Financial Plaza, 23rd Floor
100 Southeast Third Avenue
Ft. Lauderdale, FL 33394
E-Mail: AKoltnow@cftlaw.com
Counsel for Amici Curiae, Property
Casualty Insurers Association of
America, The Florida Insurance
Council, American Insurance
Association, and National Association
of Mutual Insurance Companies

/s/Mark K. Delegal

Attorney