

**SUPREME COURT OF FLORIDA  
TALLAHASSEE, FLORIDA**

**MARVIN CASTELLANOS,**

Petitioner,

**CASE NO.: SC13-2082**

**vs.**

**Lwr. Tribunal: 1D12-3639;  
OJCC No. 09-027890GCC**

**NEXT DOOR COMPANY and  
AMERISURE INSURANCE CO.,**

Respondents. /

**APPENDIX  
TO  
REPLY BRIEF  
OF  
PETITIONER, MARVIN CASTELLANOS,  
ON THE MERITS**

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Certificate of Service

September 30, 2009

**Actuarial Analysis of  
Office of Insurance Regulation  
Filing Number 09-16045  
Workers Compensation Insurance  
National Council on Compensation Insurance, Inc.**

**Office of the Consumer Advocate  
State of Florida**

Prepared by:  
Stephen A. Alexander, FCAS, MAAA, MBA



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## EXECUTIVE SUMMARY

It is recommended that the National Council on Compensation Insurance (NCCI) reduce its rates by 12.8% rather than the 6.8% proposed by the NCCI. The NCCI's proposed rates are excessive, because the proposed underwriting profit provision is excessive. The proposed underwriting profit provision is excessive, because it contemplates risk-based returns on excess capital that is not reasonably at risk from underwriting workers compensation insurance. It is the position of the Insurance Consumer Advocate (ICA) that policyholders should not be expected to pay higher rates so that insurers can realize risk-based returns on excess capital that is not reasonably at risk.

To take an extreme example, if the current recession caused Florida's net written premiums to contract by 50% (all other factors unchanged), the NCCI would claim that its entire accumulated surplus is still at risk, and therefore its underwriting profit provision should increase so that insurers could still realize the same return on surplus.

Obviously, the NCCI's assumption that its entire capital is at risk regardless of how much premium is being written is flawed. Therefore, it is recommended that the OIR establish a net written premium to surplus ratio standard that the NCCI must use in its calculation of its underwriting profit. A net written premium to surplus standard of 1.5-to-1 is recommended (Exhibit 6, Sheet 1, Row (4)).

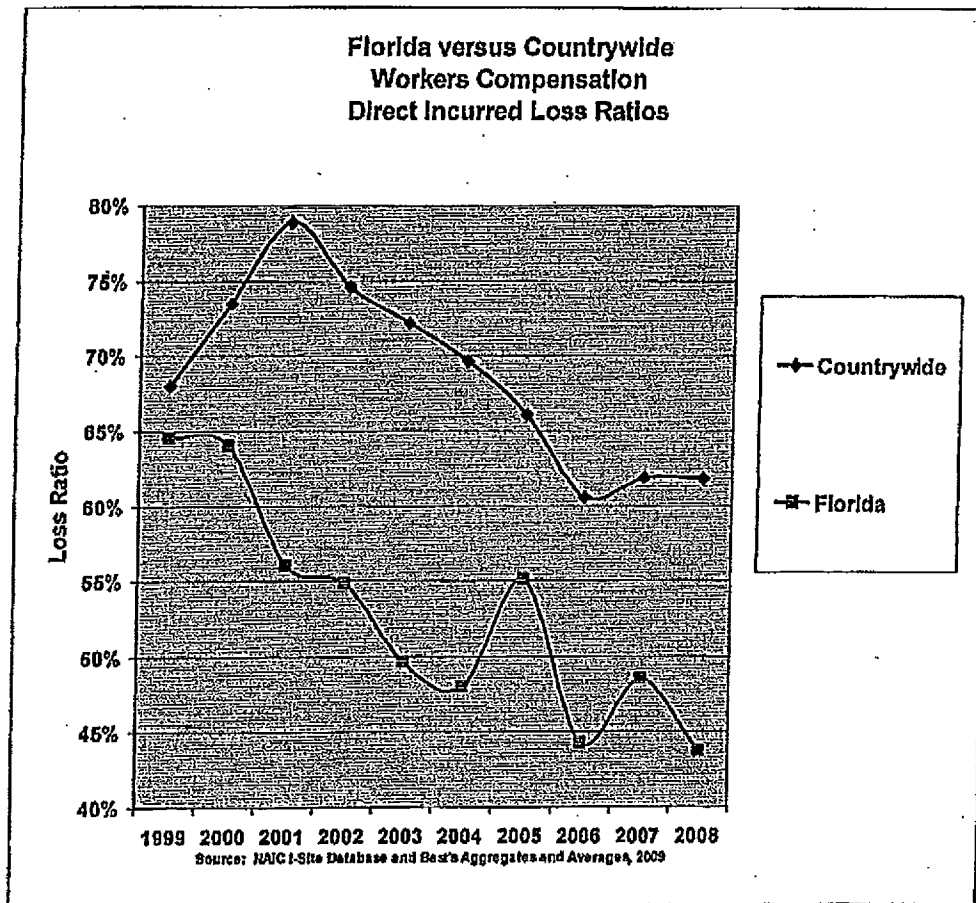
Florida's workers compensation rates have been reduced 60.5% since the reforms of 2003. Nevertheless, Florida's workers compensation system still only returned 43.7 cents of every premium dollar in claim payments to injured workers in 2008 while the nationwide average return was 61.8 cents.

Standard and Poor's estimated in July of 2009 that property and casualty insurers could safely operate at a net written premium to surplus ratio of 2-to-1 and estimated that the entire property and casualty insurance industry had excess capital of approximately \$238 billion. Even the Insurance Information Institute, an industry trade group, conceded in May of 2008 that the property and casualty insurance industry may have been overcapitalized by as much as \$100 billion.

Additionally, based on a risk-based capital analysis as of December 31, 2008 of the top ten workers compensation insurers in Florida, Florida's largest workers compensation insurers are on average holding surplus of over 300% of their minimum risk-based capital (Exhibit 9). Minimum risk-based capital is a statutorily required estimate of the minimum capital required to support all the risks that an insurer is subject to, such as: 1) investment risk, 2) pricing risk, 3) interest rate risk, 4) credit risk, 5) adverse loss reserve development risk, etc.

## EXCESSIVE RATES

In 2008 the state of Florida's workers compensation system only returned 43.7 cents of every premium dollar in claim payments to injured workers while the nationwide average return was 61.8 cents. For each of the last ten years the state of Florida's workers compensation system has returned a smaller percentage of the premium dollar to injured workers than the countrywide average. The odds against this happening by chance are more than 1,000 to 1. The following chart shows this consistent underpayment pattern:



### ***Excess Capital***

It is generally recognized in the insurance industry that property and casualty insurers are overcapitalized. In his article published on February 26, 2009 titled: "Top 10 Stories of 2008", National Underwriter Editor In Chief, Sam Friedman, details his choices for the 10 most interesting property-casualty insurance stories of the year. His #3 story was titled: "Economic Woes Do Not Stop Soft Market". He said: "Despite the capital crunch and surplus hit (*from the credit crisis*), carriers still are having a hard time raising rates. Overcapitalization continues to hold prices in check, as evidenced by the fact that the industry was able to take an estimated 8 percent, \$42 billion jolt to its surplus without having to radically raise rates."

Robert P. Hartwig, Ph.D., PCU, President of the Insurance Information Institute stated on May 20, 2008 that: "rapid surplus growth in recent years has left the industry with between \$85 billion and \$100 billion in excess capital, according to analysts."

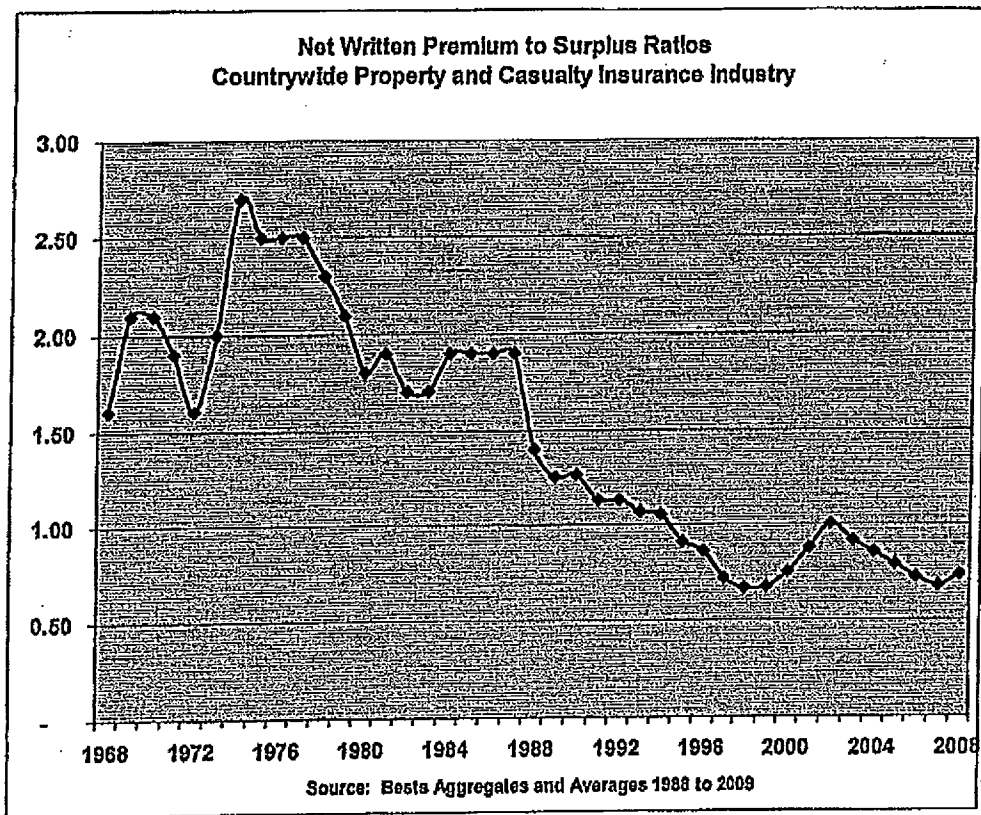
In the opinion of Standard and Poor's the property and casualty industry is overcapitalized by \$238 billion and could safely operate at a net written premium to surplus ratio of 2-to-1. Following is an excerpt from its analysis from its "Property and Casualty Insurance Industry Survey" of July 9, 2009:

"The 12% decline in surplus recorded in 2008 marked the first drop in surplus in more than five years and the sharpest drop in surplus in ten years. The last time surplus declined on a year-to-year basis was in the 2000-02 period, when it fell 5.1% in 2000, 8.7% in 2001, and 1.5% in 2002. As a result of the drop in surplus during 2008, the industry's leverage rose. In this instance, leverage refers to the degree to which the industry utilizes its capital (or surplus) to underwrite policies.

The ratio used to measure leverage is the ratio of net written premiums to surplus. At December 31, 2008, the ratio of net written premiums to surplus equaled 0.95-to-1, up rather sharply from 0.85-to-1 at December 31, 2007. In other words, in the 12 months ended December 31, 2008, insurers wrote \$0.95 worth of premiums for every \$1 of surplus, versus \$0.85 worth of premiums for every \$1 of surplus in the same 2007 period. Though this represents a rather sharp increase, it's important to keep this in perspective.

If we assume a "typical" rate of leverage of 2-to-1 (which is what regulators usually allow), we estimate that the industry still had approximately \$238 billion of "excess" surplus at December 31, 2008.....Although we need to qualify this exercise as one designed to illustrate the degree to which the industry has excess capital, we do it to make the point that at year-end 2007, there was an enormous amount of excess capital in the insurance marketplace. Since then, some of this so-called "excess" capital has eroded in the wake of heavy investment losses and deteriorating underwriting results. However, while Standard & Poor's believes that the erosion in capital levels may serve as a catalyst for firmer insurance rates, we believe that the overall capital adequacy of most property-casualty insurers remains sound."

The following chart illustrates how the industry has increased its surplus relative to its net written premiums over the last forty years resulting in a significant decline in the ratios of net written premiums to surplus:





### ***Underwriting Profit Provision***

It is believed that the NCCI is only entitled to a reasonable underwriting profit on that portion of surplus that is reasonably at risk from writing workers compensation insurance. The NCCI's position is that the industry is entitled to an underwriting profit on its entire accumulated surplus even that portion of surplus that is not reasonably at risk from writing workers compensation insurance.

To take an extreme example, if the current recession caused Florida's net written premiums to contract by 50% (all other factors unchanged), the NCCI would claim that its entire accumulated surplus is still at risk, and therefore its underwriting profit provision should increase so that insurers could still realize the same return on surplus.

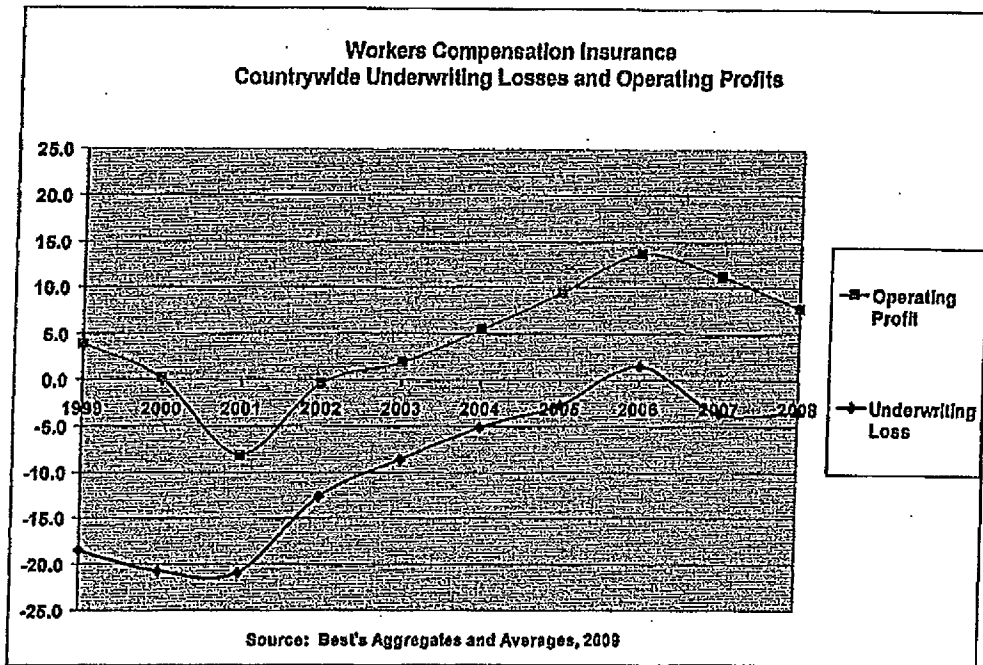
Obviously, the NCCI's assumption that its entire capital is at risk regardless of how much premium is being written is flawed. Therefore, it is recommended that the OIR establish a net written premium to surplus ratio standard that the NCCI must use in its calculation of its underwriting profit. A net written premium to surplus standard of 1.5-to-1 is recommended (Exhibit 6, Sheet 2).

The ICA recommends an underwriting profit provision of -2.26% compared to the NCCI's recommended profit provision of 2.5%. It is believed the difference in profit provisions is primarily due to a difference in the net written premium to surplus ratio assumptions between the ICA and the NCCI. Because the NCCI uses an internal rate of return model while the ICA uses a return on equity model, it is difficult to directly compare the two models.

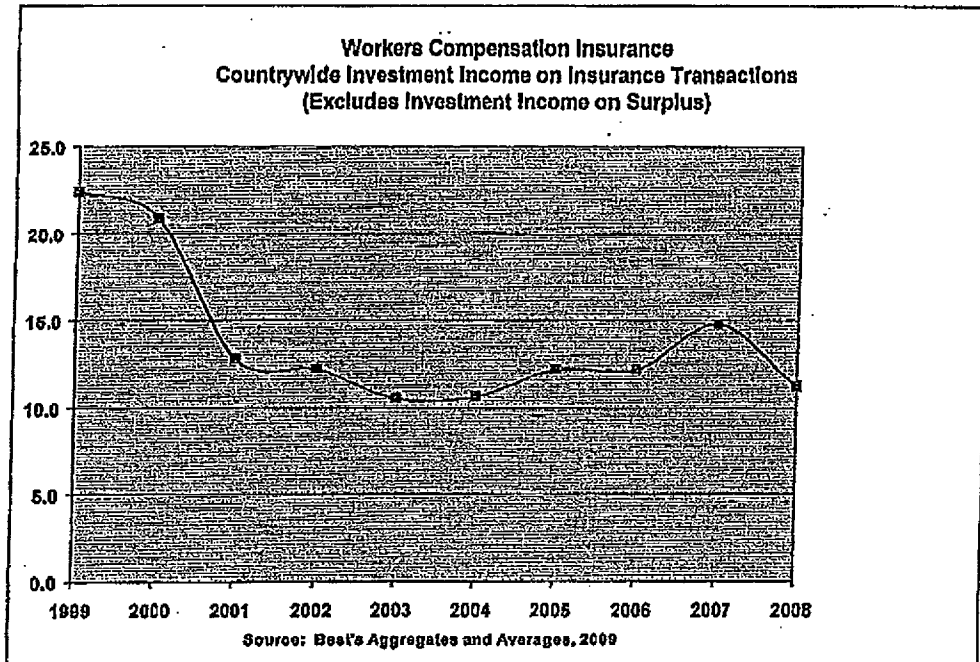
Nevertheless, it is estimated that the net written premium to surplus ratio implied by the NCCI internal rate of return model is .855-to-1 compared to the ICA assumed ratio of 1.50-to-1 in this report. The net written premium to surplus ratio implied by the NCCI internal rate of return model of .855-to-1 is nearly identical to the median net written premium to surplus ratio of .880 of the 10 largest writers of workers compensation in the state of Florida (Exhibit 7).

The reasonableness of the two recommended profit provisions can be assessed by reviewing countrywide workers compensation underwriting results over the last ten years. During this time period the industry has averaged an underwriting loss of 9.5%, which has been more than offset by investment income of 14.0% resulting in a net operating profit of 4.5% (operating profit excludes investment income on surplus). The large amounts of investment income in workers compensation insurance are due to the long lag time on average between the collection of premiums and payment of losses and loss adjustment expenses.

It is estimated in this report that for every \$1.00 of premium Florida workers compensation insurers will collect, they will hold \$2.29 of loss, loss adjustment and unearned premium reserves earning investment income. Countrywide, workers compensation insurers have experienced underwriting losses in 9 of the last 10 years including both 2007 and 2008. Therefore, it is believed that it is reasonable to propose a negative underwriting profit provision for the subject filing, because countrywide results probably reflect greater price competition than exists in Florida's "administered pricing system" market. The following charts display countrywide workers compensation underwriting losses and operating profits due to high levels of investment income:



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### ***Risk-Based Capital***

Risk based capital analysis provides further evidence that workers compensation insurers in Florida are significantly overcapitalized. Risk-based capital analysis exists for the protection of policyholders of insurance companies. Insurance regulators place minimum capital requirements upon insurers based on the premise that policyholders will receive limited payments should an insurer fail.

Based on a risk-based capital analysis of the top ten workers compensation insurers in Florida, this state's major workers compensation insurers are on average holding surplus of over 300% of their minimum risk-based capital (Exhibit 9). Minimum risk-based capital is a statutorily required estimate of the minimum capital required to support all the risks that an insurer is subject to, such as: 1) investment risk, 2) pricing risk, 3) interest rate risk, 4) credit risk, 5) adverse loss reserve development risk, etc.

### ***Relative Riskiness of Workers Compensation Insurance***

By using the same methodology presented by Dr. David Cummins in his testimony at last year's hearing, it is concluded that workers compensation insurance is of approximately the same level of riskiness as all property and casualty lines combined using the latest 10 years of industry experience (Exhibit 11). Dr. Cummins testified at last year's hearing that workers compensation was a more risky line of insurance based on the latest 20 years of industry experience.

Workers compensation insurance presents about the same level of risk as all property and casualty lines combined, because the coefficients of variation are nearly identical. The coefficient of variation of the operating ratios for workers compensation is slightly higher than for all lines combined (6.8% for workers compensation and 6.7% for all lines combined), but the coefficient of variation of the operating profits for workers compensation is slightly lower than for all lines combined (142.8% for workers compensation versus 158.8% for all lines combined) over the last 10 years. Ten years of experience is a sufficient time period over which to do this calculation, because it represents approximately one full underwriting cycle. A longer period of 20 years, such as proposed by Dr. Cummins, probably is not as relevant to current workers compensation insurance market conditions.

Therefore, it is concluded that the NCCI's indicated required rate of return on capital of 10.45% in the subject filing, based on the experience of all lines of property and casualty insurance combined, is a reasonable estimate of the appropriate level of return for workers compensation. Furthermore, it is believed that the industry required rate of return in the subject filing should not be viewed as a minimum as recommended by Dr. Cummins in his testimony last year.

## **AUTHORITY**

This actuarial examination has been conducted pursuant to the responsibility of the Office of the Insurance Consumer Advocate to represent the general public of the state in matters affecting insurance rate and form filings.

Specifically, at Section 627.0613(3), Florida Statutes:

"The consumer advocate has such powers as are necessary to carry out the duties of the office of consumer advocate, including, but not limited to, the powers to:

.....  
(3) examine rate and form filings submitted to the office, hire consultants as necessary to aid in the review process, and recommend to the department or office any position deemed by the consumer advocate to be in the public interest.  
....."

## **BACKGROUND**

The Office of Insurance Regulation (OIR) received the subject NCCI Filing on August 20, 2009, OIR File # 09-16045. The filing was submitted on a "prior approval" basis with an effective date of January 1, 2010, for new and renewal business and requests a 6.8% average rate reduction.

## **CREDENTIALS & BIO**

Stephen A. Alexander is a Fellow of the Casualty Actuarial Society and a Member of the American Academy of Actuaries. He has over 30 years of actuarial and risk management experience in government, consulting and the insurance industry. Currently, Mr. Alexander examines homeowners, medical malpractice, workers compensation, private passenger auto, commercial auto, general liability and other property and casualty rate filings for the Office of the Consumer Advocate. He testifies at rate hearings and before legislative committees. Mr. Alexander prepared a comprehensive review of the Florida title insurance industry and prepared analyses of various legislative proposals to modify the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation.

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## **Florida Workers' Compensation Insurance**

Work Comp Specialists (The Campbell Agency) is the largest insurance agency in Florida dedicated solely to workers' compensation insurance for Florida employers.

We are an independent agency that specializes 100% in Florida workers' compensation insurance and we provide our employers their coverage at the lowest possible price. We have spent the past twenty years helping clients that range from those that are brand new in business to seasoned companies with hundreds of employees.

At Work Comp Specialists/The Campbell Agency we don't just know Florida workers' compensation insurance – we share our knowledge and understanding with our clients through personal consulting, helpful seminars, informative newsletters, and monthly safety topics, all with the goal of minimizing your premiums.

We are committed to:

- Finding all possible premium reductions for each individual client.
- Providing personal, one-on-one service to our clients.
- Providing real people to answer questions and provide information.
- Client Satisfaction. Work Comp Specialists has a 98 percent client retention rate.

Finding discounts, credits, and mistakes in your workers' compensation insurance should be no accident. At Work Comp Specialists, we make it our business – our exclusive business – to ensure our clients have the lowest Florida workers' compensation premiums possible.

We offer two guarantees to our clients who favor us with their Florida workers' compensation insurance business.



methods to save you profits. We will deliver these results for you without you even asking. It is our service promise.

Secondly, we will earn our commission that is paid to us. Your current agent makes about 10% of the annual premium you pay in commission.

Do they earn it? How?

We earn the commission you pay us by delivering knowledge and executing methods to attack these cost factors.

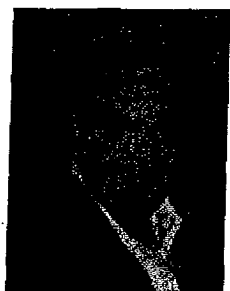
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## Meet Our Specialists

### The Campbell Agency / Work Comp Specialists

#### Kevin Campbell, Chief Executive Officer



Kevin Campbell is a graduate of the University of Arkansas, BSBA '80, with a major in Insurance and Marketing. His family has an eighty (80) year history in sales, management, and ownership of insurance agencies. He has twenty-seven years of experience in sales and management of insurance. He founded The Campbell Agency in 1991, specializing in finding solutions for employers with their workers' comp expense. Kevin is also an author of two books on saving money on workers' comp.

#### Mary Wilson, Corporate Secretary



Mary is a licensed agent responsible for all new business and works as a liaison between the producers and carriers. She has been with The Campbell Agency since 2004 and was named Corporate Secretary in 2010. She oversees all loss sensitive accounts.

#### Kian Ostovar, Agent / Work Comp Specialist

Kian has been an agent with Work Comp Specialists since 2005 and works out of the Gainesville, Florida office. As a graduate of the University of Florida, Kian has developed a passion for helping his clients control the high cost of Work Comp coverage. His philosophy is simple, "Work Comp insurance is too big of an expense for a business not to have it handled by a Specialized Agent."



## Janie Freeman CSR / Drug Free Specialist

Janie has been the voice of The Campbell Agency/Work Comp Specialists since 2008. She specializes in certificates of insurance, workplace safety and drug free policies, history checks and administers our online certificate service 24/7.



## Angela Cyrus Claims Specialist / Administrative Assistant

Angela has been with The Campbell Agency/Work Comp Specialists since moving to Panama City Beach in 2009. Prior to relocating to Northwest Florida, she and her husband operated a small painting business on the East Coast. Angela handles all aspects of claims. She works individually with the insured(s), insurance carriers and producers to manage the overall progress of reported claims.

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  - [Coverage and Rates \(florida-workmans-compensation#coverageAndRates\)](#)
  - [Exemptions from Coverage \(florida-workmans-compensation#exemptionsFromFloridaWorkmans\)](#)
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## **ZURICH Agent/Broker Compensation Disclosure**

### **Workers' Compensation**

#### **Base Compensation**

Zurich pays commission to agents and brokers as compensation for their work in placing and servicing your insurance. Such commission is generally expressed as a percentage of the premium you pay.

#### **The Process**

The actual commission that your agent or broker is paid depends on a number of factors. The following describes the process that is generally used to determine the commission.

- As we develop our quote, the commission is based on factors that may include the type of insurance policy, the premium size, individual policy underwriting considerations, other services provided by your agent or broker, and the compensation arrangements we may have with your agent or broker. Also, the actual commission paid may include additional commission amounts payable to certain producers.
- For each type of policy for a particular insurance market segment, Zurich determines a maximum commission that is generally the most Zurich will pay. For some types of policies, it is a flat percentage, and for other types of policies, the percentage is reduced as the policy premium increases.
- In some instances, an agent or broker may request a quote with no commission because compensation arrangements are being made directly with the customer. Please note for those specific instances in which an agent or broker declines to accept commission, we may not be permitted by state law to lower the premiums charged.

This Web site provides information about the nature and range of commissions by line of business. The Commission Payment table below will show information on the commission payments that apply to your policy's line of insurance business. The actual percentage commission that we would pay on your individual policy is not provided on this Web site. All commission arrangements are subject to the laws of the applicable jurisdiction(s).

## Line of Business: Workers' Compensation

Policy Type	Lowest commission rate paid in 2013 <sup>1</sup>	5th percentile commission rate paid in 2013 <sup>2</sup>	Average commission rate paid in 2013 <sup>3</sup>	95th percentile commission rate paid in 2013 <sup>4</sup>	Maximum commission rate <sup>5</sup>
New	0.06%	3.00%	11.94%	18.10%	90.76%
Renewal	0.08%	3.00%	11.06%	15.00%	34.17%

### Notes:

- The percentages shown above only reflect those policies where a commission was paid; they do not include policies where the customer paid a fee in lieu of Zurich paying a commission.
- In addition to the commission amounts set forth above, Zurich may pay an additional commission or fee to some of its producers for additional services they provide to Zurich, such as underwriting. This additional commission can range from 1% to 11% of premium.

<sup>1</sup> 0% of the policies have a commission lower than this amount

<sup>2</sup> 5% of the policies have a commission lower than this amount

<sup>3</sup> Average Commission Rate is the mean commission

<sup>4</sup> 95% of the policies have a commission lower than this amount

<sup>5</sup> Maximum Commission Rate is generally the most Zurich will pay for this line of business. The maximum shown is based on policy type for a particular insurance market segment, and is provided above on a countrywide basis only and is subject to individual state requirements.

The 2013 commission information displayed is based on direct-booked policy year 2013 business as of 01/31/2013.

## Contingent Compensation \*

Contingent Compensation is another form of compensation that may be paid to some agents or brokers if certain business results are achieved. We design our contingent compensation programs to encourage agents and brokers to work with us in building and retaining a profitable book of business. Some agents and brokers choose not to participate in contingent compensation programs with us.

## The Contingent Compensation Formula

Contingent compensation is based on a formula that usually includes consideration of your premium and losses along with that of other Zurich customers served by your insurance agent or broker. To determine whether your insurance agent or broker is eligible for an award at the end of the calendar year, we review your agent or broker's business in light of the formula. The formula normally includes one or more of the following components:

## **Premium volume**

We pay a percentage of the eligible business written depending on the total amount of the eligible premium. For most insurance distributors, premium volume consists of existing business and new business. In most instances, it is desirable for us to encourage premium growth. To do so, we have some incentive agreements that specifically reward growth over the prior period or the development of new business.

## **Profitability**

Profitability of the business is determined by comparing 1) the losses that are incurred and; 2) in some instances the general expenses to 3) the premium.

## **Premium business**

We may pay contingent compensation for the placement of particular types of business with us.

## **Maximum and Average Contingent Compensation**

For 2013, Zurich American Insurance Company and its affiliates paid an average of 3.10% of written premium in contingent compensation to participating agents/brokers. For 2014, the maximum contingent compensation that Zurich could pay is 7.20% of written premium. For Program Administrators, Zurich paid an average of 1.25% of written premium in contingent compensation in 2013. For 2014, the maximum contingent compensation Zurich could pay its Program Administrators is 17.00% of written premium.

\* Please note that this information is not an indication that your agent or broker participated in a contingent compensation agreement with Zurich. Please contact your agent or broker for specific compensation arrangements associated with your policy.

## **Other Compensation**

In addition to paying base compensation and contingent compensation to agents and brokers in connection with specific policies, we may also provide other benefits to them in the course of our business dealings, including paying for certain meal and entertainment expenses.

Some benefits are promotional events to which agents and brokers may be invited. Promotional events serve to promote Zurich as an insurance carrier available to agents and brokers to place insurance, strengthen our relationships, and enable the agents and brokers to learn more about our products and services. Such events range from lunches, dinners and local sporting events to the Zurich Classic of New Orleans golf tournament. In the course of sponsoring larger events such as the Zurich Classic of New Orleans, we may pay lodging, travel, meals, entertainment and other expenses of agents, brokers and their guests and also may provide gifts and prizes to the agents

We may also sponsor educational events so that agents and brokers can learn more about our products and services; we may also pay for their professional continuing education.

In addition, we may pay for expenses incurred by agents and brokers for sales or marketing activities, or other customer outreach. Upgrades to agent and broker computer systems are sometimes funded by Zurich.

Also, we may retain agents and brokers for their expertise in providing services such as risk engineering, or underwriting. We may support charities designated by agents and brokers. In some instances, we may provide loans to agents or brokers or acquire an equity interest in them. We also may provide brokers and agents certain gifts of modest value.

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**WORKERS' COMPENSATION**  
**CONTRACT OF REPRESENTATION, POWER OF**  
**ATTORNEY AND TRUST AGREEMENT**

I, Marvin Castellanos, THE UNDERSIGNED,  
was injured in an accident that occurred on Oct. 12, 2009 while employed  
by Next Door Company.

I, the undersigned, hereby retain and employ TOUBY & WOODWARD, P.A., the undersigned, as my attorney to represent me with respect to the industrial accident and injury described above in any workers' compensation claim I may have, under the following terms and conditions:

1. **AUTHORIZATION**. I authorize my attorney to act on my behalf in prosecuting my workers' compensation claim. My attorney is authorized to make such investigations, undertake such legal proceedings and to expend such monies on my behalf as my attorney may deem necessary.

2. **ATTORNEY FEE**. I agree to pay to my attorney a reasonable attorney's fee for such services rendered with respect to my workers' compensation claim. I request that my employer and its carrier (or servicing agent) make all payments of workers' compensation indemnity benefits payable jointly to me and my attorney in care of my attorney at his address.

I authorize my attorney to retain in trust from any benefits paid the following to secure the payment of my attorney's fees and costs:

20% of the first \$5,000.00 of all benefits obtained;

15% of the next \$5,000.00 of all benefits obtained;

10% of all benefits obtained in excess of \$10,000.00;

although my attorney's fee may be greater or less than the sums retained in trust, depending on the amount of time my attorney expends in the prosecution of my claim, the difficulty, novelty or complexity of my case and the amount ultimately paid or awarded.

**THE JUDGE OF COMPENSATION CLAIMS WILL MAKE THE FINAL DETERMINATION AS TO THE AMOUNT OF/AND MY ATTORNEY'S ENTITLEMENT TO AN ATTORNEY'S FEE.**

To the extent the money held in trust exceeds my attorney's fees and costs, or if all or part of my attorney's fees and costs are paid by my employer and its carrier (or servicing agent), the balance held in trust will be returned to me.

Under some circumstances, my employer and its carrier (servicing agent) may be found liable to pay all or part of my attorney's fee and costs. Those circumstances are:



When my employer or its carrier has denied that I had an on the job accident or injury;

When my employer or its carrier has refused to provide me with medical care and I am not at that time entitled to any other benefits;

When my employer or its carrier files a notice of denial of benefits claimed and I subsequently receive those benefits.

I understand that the recovery of attorney fees and costs in addition to my benefits may require a separate proceeding for which I may incur additional cost and attorney's fees. If my employer or its carrier is required to pay my attorney a fee for any benefit my attorney obtains for me, I will not be obligated to pay an additional fee for obtaining that benefit.

~~A. Referral/Participation Fees. It is understood and agreed to, by the client that, Attorney \_\_\_\_\_ referred the client to the law firm of Touby & Woodward, P.A. It is further understood and agreed to by the client that said law firm shall pay said referring attorney a total of 25% of any net attorney's fees obtained by the undersigned law firm and the law firm shall keep the balance of 75% of the net attorney's fees so obtained.~~

B. Lien by Prior Attorney or Law Firms. If the undersigned client was represented by a previous law firm or attorney and that previous law firm or attorney has filed a lien for fees and/or costs, then the client agrees to assume responsibility for the satisfaction of said lien.

3. COSTS. I agree to reimburse my attorney for all costs associated with the prosecution of my claim to the extent that these costs are not recovered from the employer and its carrier (servicing agent), regardless of the outcome of my claim. My attorney may use any monies held by him in trust under this contract to pay any costs incurred on my behalf. These costs would include, but are not limited to, copying costs, medical records, witness fees, service of process fees, fax copies, investigation costs, courier fees, paralegal/interpreting/translating services, travel reimbursement and long distance phone calls.

4. EMPLOYEE'S RESPONSIBILITIES: I agree to promptly and fully advise my attorney as to any developments or information which may have a bearing on my workers' compensation claim and to keep my attorney advised at all times as to my whereabouts and correct mailing address and current phone number.

I will promptly attend any appointments made for me by my attorney and will submit to any medical or vocational examinations or evaluations arranged by my attorney or scheduled by the employer/carrier that my attorney approves.

I will not discuss my case/claim from this date forward with any person not specifically authorized by my attorney including insurance adjusters, my employer or their investigators.

I agree to cooperate fully with my attorney and immediately inform him of any change in my work status, any change in my medical condition, or any other change that occurs during this handling of my case.

I understand that my attorney expressly relies on the truthfulness of all statements made by me, and that I may be subject to criminal prosecution if I make false or misleading statements in connection with my workers' compensation claim.

I will return to the doctor authorized by the insurance carrier within nine (9) months of my last authorized visit in order to preserve my right to future medical treatment under the workers' compensation law.

**I UNDERSTAND THAT MY ATTORNEY MAY TERMINATE THIS CONTRACT OF REPRESENTATION IF I DO NOT FULLY COMPLY WITH THIS AGREEMENT.**

5. **ATTORNEY'S RESPONSIBILITIES.** The undersigned attorney agrees to diligently pursue the employee's workers' compensation claim and to keep the employee fully informed as to his/her claim. The attorney accepts the trust provisions of this agreement and will account to me as to any monies received, expended or held on my behalf at my request.

6. **PHONE CALLS TO OFFICE.** I agree that I will only call my attorney's office to inform him of any change as indicated in paragraph 4 or any emergency situations. I understand that in order to handle workers' compensation claims economically, it is necessary to handle a large volume of cases and it is not possible to speak with me personally on each and every occasion I call. I agree to leave a detailed message with my attorney's staff which will be passed on to the attorney for comments or action. I understand that the more detailed the message the quicker I will have an answer to my question.

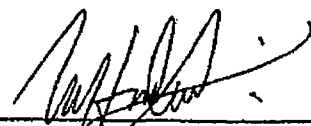
7. **LIMITED POWER OF ATTORNEY.** The undersigned employee does hereby make, constitute and appoint the undersigned attorney as his/her agent and attorney-in-fact to act in the employee's name, place, and stead to negotiate the employee's workers' compensation benefit checks or drafts only for the purposes of this contract.

8. **LIMITATIONS OF ACTIONS/STATUTE OF LIMITATIONS.** It is understood by the undersigned that there is a statute of limitations governing workers' compensation cases within which certain activity must be undertaken by the Claimant/Employee or his right to continuing workers' compensation benefits and medical can be terminated. Once a Petition for Benefits/Claim is filed there in a one (1) year statute of limitations for prosecution of the claim. This means that a pleading or other activity must be undertaken within one (1) year of the Petition for Benefits/Claim being filed or that a claim is subject to dismissal. Therefore, it is important that the Claimant/employee always leave his/her current address and phone number so he/she can be reached at all times. If the Claimant/employee fails to keep the attorney advised as to his/her current whereabouts and fails to contact the attorney after a minimum of six (6) months, his/her case is liable to be set aside and eventually dismissed.

The second statute of limitations involves the Claimant/employee's duty to see an authorized doctor within one (1) year of the last authorized appointment. If the Claimant fails to see a doctor authorized by the insurance company within one (1) year, then his/her right to future medical is terminated and abolished. Therefore, in order to preserve your right to continuing medical care, you acknowledge by your signature below that you return to you authorized doctor a minimum of nine (9) months from the last visit. It is understood that it is impossible for the attorneys to keep track of every single client to determine if he/she is returning to his/her doctor for reasonable and necessary treatment. Therefore, in order to obtain full benefits under the Workers' Compensation Act, you must call the doctor, make an appointment and return to the authorized doctor on your own and immediately notify the attorney of the date and time of the appointment and the results of the examination. A visit to your own private doctor, health plan doctor or any other doctor that is not authorized by the workers' compensation insurance company will not preserve your right to future medical benefits under the Workers' Compensation Act.

9. **POTENTIAL LIENS AGAINST LUMP-SUM PROCEEDS.** The employee acknowledges that compensation under the Florida Workers' Compensation Law may be subject to liens including, but not limited to, past due child support payments, Medicaid liens, Internal Revenue Services (IRS) lien, and liens established by the Florida Agency for Health Care Administration (AHCA). It is the employee's responsibility to inform the undersigned attorney of any and all potential liens.

\_\_\_\_\_  
Witness

X   
\_\_\_\_\_  
Employee

\_\_\_\_\_  
Witness


10/14/09  
\_\_\_\_\_  
Date Executed

25

2009.

The above employment is accepted by me on this 20 day of OCTOBER,

MARK A. TOUBY, ESQ.  
TOUBY & WOODWARD, P.A.  
2030 S. Douglas Road, Suite 217  
Coral Gables, Florida 33134  
Office: (305) 442-2318  
Fax: (305) 442-2319

  
\_\_\_\_\_  
ATTORNEY FOR CLAIMANT

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via e-mail this 11<sup>th</sup> day of July, 2014, to: Michael J. Winer, Esq. (mike@mikewinerlaw.com), Law Office of Michael J. Winer, P.A., 110 North 11th Street, 2nd Floor, Tampa, FL 33602; Raoul G. Cantero, Esq. (raoul.cantero@whitecase.com) and David P. Draigh, Esq. (ddraigh@whitecase.com), White & Case, L.L.P., Southeast Financial Center, Suite 4900, 200 South Biscayne Blvd., Miami, FL 33131; Christopher Smith, Esq. (chris@cjsmithlaw.com), 2805 W. Busch Blvd., Suite 219, Tampa, FL 33618, Kenneth B. Schwartz, Esq. (kbs@flalaw.com), Kenneth Schwartz, P.A., 1803 S. Australian Avenue, Suite F, West Palm Beach, FL 33409; Richard W. Ervin, Esq. (richardervin@flappeal.com) and Susan W. Fox, Esq. (susanfox@flappeal.com), Fox & Loquasto, P.A., 1201 Hays Street, Suite 100, Tallahassee, FL 32301; William J. McCabe, Esq. (Billjmccabe@earthlink.net), 1250 S. Hwy. 17-92, Suite 210, Longwood, FL 32750; Kimberly A. Hill, Esq. (kimberlyhillappellatelaw@gmail.com), 821 S.E. 7th Street, Ft. Lauderdale, FL 33301; Noah Scott Warman, Esq. (NWarman@sugarmansusskind.com), Sugarman & Susskind, P.A., 100 Miracle Mile, Suite 300, Coral Gables, FL 33134;

Geoffrey Bichler, Esq. (geoff@ bichlerlaw.com), Bichler, Kelley, Oliver & Longo, 541 South Orlando Avenue, Suite 310, Maitland, FL 32751; and Mark L. Zientz, Esq. (mark. zientz@mzlaw.com), Law Offices of Mark L. Zientz, P.A., 9130 S. Dadeland Blvd., Suite 1619, Miami, FL 33156; Mark K. Delegal, Esq. (Mark.delegal@hklaw.com) and Matthew H. Mears, Esq. (Matthew.mears@hklaw.com), Holland & Knight, L.L.P., 315 S. Calhoun Street, Suite 600, Tallahassee, FL 32301; William W. Large, Esq. (William @fljustice.org), 210 S. Monroe Street, Tallahassee, FL 32301; and Rayford H. Taylor, Esq. (rtaylor@caseygilson.com), Casey Gilson, P.C., 980 Hammond Drive, Suite 800, Atlanta, GA 30328.

A handwritten signature in black ink, appearing to read 'Richard A. Sicking', is written over a horizontal line.

Richard A. Sicking