



Insurance

Case Law & Insurance Regulation Update

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Week Ending November 16, 2012

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I. STATE APPELLATE DECISIONS

A. FLORIDA

- ***Citizens Property Insurance Corporation, etc. v. San Perdido Association, Inc., etc. (Fla. S.Ct.)*** Certiorari/prohibition/sovereign immunity. Rephrased certified question answered in the affirmative - Appellate review of a claim of immunity by Citizens Property Insurance Corporation, a state-created entity, from a bad faith cause of action arising out of the handling of a property damage claim, is not subject to appellate review before the entry of the final judgment. Writ of prohibition not available to challenge a non-final order denying a motion to dismiss based on a claim of sovereign immunity where sovereign immunity has been partially waived. Furthermore, Citizens failed to show the necessary elements for certiorari. Continuation a lawsuit is insufficient to show irreparable harm where limited waiver of sovereign immunity granted to Citizens by Legislature. Assertion of error in statutory interpretation where law is not settled does not meet certiorari threshold -- a ruling that departs from the essential requirements of law.
- ***Esis/Ace American Insurance Company and Delta Air Lines, Inc. v. Kuhn (Fla. 1st DCA)***. Workers' compensation/advance of funds. Award by Judge of Compensation Claims ("JCC") to claimant of a \$2,000 advance under section 440.20(12), Fla. Stat. reversed. Claimant seeking an advance of funds under section 440.20(12), Fla. Stat. must demonstrate some plausible nexus to the provision of medical and related care to a pending workers' compensation claim.
- ***First Protective Insurance Company v. Schneider Family Partnership (Fla. 2nd DCA)***.

Homeowner's insurance/appraisal. Trial court's grant of partial summary judgment to insured and denial of insurer's motion to compel appraisal under homeowner's policy reversed. Under 2005 version of section 627.7015, Fla. Stat., insurer is entitled to pursue an appraisal pursuant to the terms of the contract because the statute does not address situation where the insured requests mediation and the parties cannot reach agreement. Trial court's reliance on Florida Administrative Code Rule 69J-2.003(10) (2005) was erroneous because rule improperly expanded express statutory language and deprived insurer its right to an appraisal under the insurance contract.

- **Ross v. Charlotte County Public Schools and Employers Mutual, Inc. (Fla. 1st DCA).** Workers' compensation. Judge of Compensation Claims ("JCC") applied incorrect test to determine the compensability of claimant's injury. Claimant was not required to show increased risk of harm associated with her employment in order to establish causal connection between her employment and accident, in absence of any medical evidence establishing the existence of any pre-existing condition. In absence of established competing cause of claimant's accidental injuries, claimant satisfied major contributing cause requirements of sections 440.09(1) and 440.02(36), Fla. Stat.

B. GEORGIA

- No Georgia decisions reported.

II. FEDERAL APPELLATE DECISIONS

- No Florida or Georgia decisions reported.

III. ADMINISTRATIVE LAW/AGENCY DECISIONS

- **Florida Insurance Guaranty Association Order of Assessment.** The Florida Office of Insurance Regulation ("Florida OIR") has issued an Order of Assessment Levy to all member insurers writing premium in the *All Other* lines of business in the state of Florida. ***The 0.9% assessment is payable on or before December 31, 2012.*** These lines include: Fire, Other Liability, Allied Lines, Other Liability – Occurrence, Farmowners Multiple peril, Products Liability, Homeowners Multiple Peril, Products Liability – Occurrence, Commercial Multiple Peril (Liability Portion), Aircraft, Inland Marine, Burglary and Theft, Medical Malpractice, Boiler and Machinery, and Earthquake.

IV. NOTICES OF ADMINISTRATIVE RULEMAKING PROCEEDINGS

A. FLORIDA

- **Rule 59G-4.071, F.A.C. - Durable Medical Equipment and Medical Supply Services Provider Fee Schedules.** The proposed amendment to Rule 59G-4.071 updates Durable Medical Equipment (DME) and medical suppliers who provide services to Medicaid recipients. A public rule hearing is scheduled on **December 6, 2012**, from 10:00 a.m. to 11:00 a.m., Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Conference Room B, Tallahassee, FL.
- **Rule 59G-13.082, F.A.C. - Developmental Disabilities Waiver Services Procedure Codes.** The purpose of the amendment to Rule 59G-13.082 is to incorporate by reference the Developmental Disabilities Home and Community-Based Services Waiver Billing Code Matrix, January 1, 2008. An additional area to be addressed during the workshop will be the potential regulatory impact to Rule 59G-13.082 under sections 120.54 and 120.541, Fla. Stat. A rule development workshop will be held on **December 6, 2012**, 3:30 p.m. to 4:30 p.m., Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Conference Room D, Tallahassee, FL.
- **Rule 61G7-5.001, F.A.C - Application Procedure; Application Form; Fees; Confidential Information; Denial of Application; Request for Hearing.** The Board of Employee Leasing proposes the rule amendment to clarify language regarding initial licensure application submissions. If requested within 21 days of the date of the notice of proposed rule amendment, a

public rule hearing will be scheduled and announced in the next edition of the Florida Administrative Register.

- **Rule 61G7-5.0012, F.A.C. - Historical Sketch.** The Board of Employee Leasing proposes rule amendments to update incorporated materials in the rule. If requested within 21 days of the date of the notice of proposed rule amendment, a public rule hearing will be scheduled and announced in the next edition of the Florida Administrative Register.
- **Rule 61G7-10.001, F.A.C. - Quarterly Reporting Regarding Working Capital Requirements.** The Board of Employee Leasing proposes a rule amendment to address the requirements for quarterly reporting of financial statements. If requested within 21 days of the date of the notice of proposed rule amendment, a public rule hearing will be scheduled and announced in the next edition of the Florida Administrative Register.
- **Rule 61G7-10.003, F.A.C. - On-Site Investigations.** The Board of Employee Leasing proposes a rule amendment to clarify language regarding on-site inspections and performing of audits. If requested within 21 days of the date of the notice of proposed rule amendment, a public rule hearing will be scheduled and announced in the next edition of the Florida Administrative Register.
- **Rule 69B-221.051, F.A.C. - Actively Engaged in Business; Place Suitably Designated; Accessible to Public.** The proposed rule provides that monthly-filed employment reports for temporary bail bond agents must be received by the Department of Financial Services no later than the last day of the month following the month being reported on the form. The proposed rule is further amended to require both the supervising bail bond agent and the temporary bail bond agent to certify that the hours reported reflect the actual hours worked. The proposed rule clarifies that the "salary or wages" received by a temporary bail bond agent must meet or exceed the requirements of section 448.110, Fla. Stat. (also known as the "Florida Minimum Wage Act"). The proposed rule also adds a definition for the term "Reasonable distance" and revises two forms that are incorporated by reference. If requested in writing, a hearing will be held on **December 17, 2012**, 10:00 a.m., 116 Larson Building, 200 East Gaines Street, Tallahassee, Florida.
- **Rule 69O-148.001, F.A.C. - Funding of Preneed Contracts with Life Insurance or Annuities.** Notice of proposed rule development for Rule 69O-148.001. The rule addresses requirements for insurance policies which fund preneed funeral contracts. The proposed amendments seek to remove the dollar amount cap and refer instead to the statute which contains the dollar amount and bring the rule in compliance with current law. If requested in writing and not deemed unnecessary by the agency head, a rule development workshop will be held on **December 3, 2012** at 9:30 a.m., 116 Larson Building, 200 East Gaines Street, Tallahassee, FL.
- **Rule 69O-170.0155, F.A.C. - Forms.** The purpose of the rulemaking development is to update and revise Form OIR-B1-1809 "Health Care Provider Certification of Eligibility" for Personal Injury Protection Benefits (PIP) due to statutory revisions as the result of H.B. 119 (Chapter 2012-197, Laws of Florida). If requested in writing and not deemed unnecessary by the agency head, a rule development workshop will be noticed in the next available Florida Administrative Register.

B. GEORGIA

- No Georgia rulemaking proceedings noticed.

V. MEETING NOTICES OF INTEREST/MISCELLANEOUS

- **Florida OIR Announces New Resources for Consumers to Comment on Life and Health Form and Rate Filings.** Consumers and interested parties will be able to provide feedback regarding proposed changes to filings received by the Office from life and health insurance companies.
- **Citizens Property Insurance Corporation Claims Committee.** On **November 26, 2012**, 1:00 p.m. (EDT) via Conference call: (866) 361-7525, Conference ID: 5219676193#. Items of discussion include, but are not limited to, business before the Claims Committee. A copy of the

agenda may be obtained by contacting: Debbie Rambo, (904) 407-0384.

- **Citizens Property Insurance Corporation Board of Governors.** On **November 27, 2012**, 11:00 a.m. - 4:00 p.m., The Knott Building in Webster Hall, Room 212 / Enter via Capitol, 402 S. Monroe St., Tallahassee, FL. Citizens will conduct a budget workshop.
- **Citizens Property Insurance Corporation Actuarial and Underwriting Committee.** On November 28, 2012, 1:00 p.m. (EDT), via Conference Call: 1 (866) 361-7525 Conference ID: 8632017402#. Items of discussion include, but are not limited to, business before the committee.



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