

IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR MIAMI-
DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO. _____

JAMES F. FEE, JR.,
individually,

Plaintiff,

vs.

THE NATIONAL COUNCIL ON
COMPENSATION INSURANCE, INC.,
a Florida foreign not for profit corporation,
THE FLORIDA OFFICE OF INSURANCE
REGULATION, an agency of the State of
Florida, and DAVID ALTMAIER, as
Commissioner of the Florida Office of
Insurance Regulation,

Defendants.

_____/

COMPLAINT

Plaintiff James F. Fee, Jr. (“Plaintiff”), by and through undersigned counsel, hereby sues Defendants the National Council on Compensation Insurance, Inc. (“NCCI”), the Florida Office of Insurance Regulation (the “OIR”) and the OIR’s Commissioner, David Altmaier (the “Commissioner”) (collectively, “Defendants”), and alleges as follows:

STATEMENT OF THE CASE

1. This lawsuit seeks to introduce some required clarity and transparency into the opaque world of workers’ compensation insurance rates in Florida. Unlike some states, which

essentially have an open marketplace for this commonly-used insurance product, Florida delegates the rate-setting function to the Office of Insurance Regulation (the “OIR”)’s Commissioner, who approves an insurance rate based on a series of statutory criteria.

2. Further complicating the public’s understanding of this process, one private entity, the National Council on Compensation Insurance, Inc. (“NCCI”), proposes and files a single rate on behalf of almost all insurers in Florida, and does so with virtually no public scrutiny.

3. The goal of this lawsuit is to rely upon bedrock statutory principles – such as the Public Records Act and the Sunshine Law – to take this process out of the proverbial shadows and mandate that NCCI and the OIR operate in a manner that ensures that the rate proposed by NCCI and ultimately approved by the Commissioner serves the interests of both insurance companies and insureds in Florida.

4. In light of violations of Chapter 627 of the Florida Statutes (governing insurance rates), Chapter 286 of the Florida Statutes (the Sunshine Law), Chapter 119 of the Florida Statutes (the Public Records Act), Article I, Section 24 of the Florida Constitution (access to public records and meetings) and due process principles, this action seeks to, *inter alia*, void NCCI’s recently-proposed 19.6% increase in the Florida’s workers’ compensation insurance rate and enjoin an August 16, 2016 hearing set by the OIR on this proposed rate increase.

5. Such relief is required considering NCCI’s complete failure to (1) provide the public with any notice, let alone the notice required pursuant to Section 627.091(6), Florida Statutes, of committee meetings at which the proposed rate increase was discussed and selected, (2) provide the public with any meaningful opportunity to participate in these meetings, or (3)

respond to record requests that would enable Plaintiff to fully and meaningfully evaluate whether the proposed rate complies with all applicable statutory requirements.

6. In bringing this action, Plaintiff seeks to vindicate not only its own interest in ensuring transparency in government, but the public’s right to the open government requirements that are bedrock constitutional and statutory requirements in the State of Florida.

PARTIES, JURISDICTION AND VENUE

7. Plaintiff James F. Fee, Jr., Esq. (“Plaintiff”) is an individual who resides and has his place of business in Miami-Dade County. He is a licensed Florida attorney, the owner of Druckman & Fee, P.A., and a purchaser of workers’ compensation insurance from an insurer that operates within the State of Florida.

8. Defendant the National Council on Compensation Insurance, Inc. (“NCCI”) is a Florida foreign not-for-profit corporation registered to do business in the State of Florida, which is headquartered in Palm Beach County. NCCI is a licensed rating organization that is authorized to make insurance rate filings on behalf of workers’ compensation insurance companies, and makes such a filing on behalf of the majority of workers’ compensation insurers in the State of Florida. NCCI also creates the workers’ compensation class codes utilized in Florida and evaluates claims data for each group of employees and class code.

9. Defendant the Florida Office of Insurance Regulation (“OIR”) is the division within Florida’s Department of Financial Services that has primary responsibility for regulation, compliance and enforcement of statutes related to the business of insurance and the monitoring of industry markets. The Department of Financial Services is headquartered in Leon County and has an office in Miami-Dade County.

10. Defendant David Altmaier (the “Commissioner”) is the Commissioner of the OIR. He is sued solely in his official capacity as the Commissioner.

11. The Court has jurisdiction over this matter pursuant to Sections 86.011, 286.011 (“The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.”), 26.012 and 119.11 of the Florida Statutes, and Article V, Section 5(b) of the Florida Constitution.

12. Venue is appropriate in Miami-Dade County pursuant to Section 47.011, Florida Statutes considering that notice of the meetings at issue should have been transmitted to Plaintiff and other Miami-Dade County residents, as well as the fact that NCCI’s failure to provide such notice (and OIR and the Commissioner’s failure to remedy or otherwise address this lack of notice) occurred within this County. Moreover, in response to Plaintiff’s requests for records (made from Miami-Dade County), NCCI should have transmitted records to Miami-Dade County. Thus, the primary purpose of this lawsuit is to obtain direct judicial protection from an unlawful invasion of the constitutional and statutory rights of Plaintiff within this County. Venue is also proper considering that the Department of Financial Services (of which Defendant OIR is a division) operates and has an office in Miami-Dade County. Considerations of fairness and justice also weigh in favor of venue in Miami-Dade County, as a Florida resident should be permitted to protect him or herself against government invasion of his or her rights in the county in which he or she resides.

13. Plaintiff has retained the undersigned law firm for the purpose of bringing and maintaining this action, and is obligated to pay a reasonable fee for counsel’s services and for the costs of bringing the action. Section 119.12, Florida Statutes provides for an award of attorneys’ fees when records are successfully sought from an entity that refuses to produce them.

Additionally, Section 286.011(4), Florida Statutes provides for an award of attorneys' fees when a court determines that the defendant or defendants to such action acted in violation of the Sunshine Law.

GENERAL ALLEGATIONS

A. Florida Employers Must Provide Workers' Compensation Insurance Coverage

14. Florida's workers' compensation system is designed to cover medical costs associated with workplace injuries, provide benefits to injured workers, and facilitate workers' return to gainful reemployment at a reasonable cost to the employer. *See Fla. Stat. § 440.015 (2016) (Legislative Intent).*

15. With limited exceptions, all Florida employers with four (4) or more employees must have workers' compensation insurance coverage. *See generally* Chapter 440 of the Florida Statutes.

B. Regulation of Workers' Compensation Insurance in Florida

16. Over 250 insurance companies offer workers' compensation insurance to Florida employers.

17. Regulation of insurance rates, including workers' compensation insurance rates, is set forth in Chapter 627 of the Florida Statutes. The purpose of Chapter 627 is to, *inter alia*, "promote the public welfare by regulating insurance rates as herein provided to the end that they shall not be excessive, inadequate, or unfairly discriminatory," and "protect policyholders and the public against the adverse effects of excessive, inadequate, or unfairly discriminatory insurance rates, and to authorize the office to regulate such rates." Fla. Stat. § 627.031(1)(a) and (2) (2016).

18. To further these goals, Chapter 627 sets forth numerous restrictions and requirements. Among them, it forbids insurance rates from being “excessive, inadequate, or unfairly discriminatory,” and requires that “[i]nsurers or rating organizations [] establish and use rates, rating schedules, or rating manuals that allow the insurer a reasonable rate of return on the classes of insurance written in this state.” Fla. Stat. § 627.062 (2016).

19. Chapter 627 also requires each insurer to file with the OIR “every manual of classifications, rules, and rates, every rating plan, and every modification of any of the foregoing which it proposes to use.” Fla. Stat. § 627.091(1) (2016).

20. To ensure public access to such information, Section 627.093, Florida Statutes provides that “Section 286.011,” also known as the Sunshine Law, “shall be applicable to *every rate filing*, approval or disapproval of filing, rating deviation from filing, or appeal from any of these regarding workers’ compensation and employer’s liability insurances.” (emphasis added).

C. NCCI’s Significant Role in the Workers’ Compensation Insurance Rate-Making Process

21. As an alternative to filing their own manual of classifications, rules, rates and rating plans, as required by Section 627.091(1), Florida Statutes, insurers may “becom[e] a member of, or a subscriber to, a licensed rating organization which makes such filings and by authorizing the office to accept such filings in its behalf.” Fla. Stat. § 627.091(4) (2016).

22. The overwhelming majority of workers’ compensation insurers select this option, and utilize NCCI to make rate filings on their behalf. In fact, almost without exception, the nearly 260 workers’ compensation insurance companies who write insurance in Florida utilize NCCI to make their rate filings.

23. Thus, NCCI effectively sets a single insurance rate for nearly all workers’ compensation insurers in the State of Florida.

D. Regulations Applicable to NCCI and the OIR's Rate-Making Process

1. A Multitude of Factors are to be Taken Into Consideration in the Setting of Interest Rates

24. Pursuant to Chapter 627, a multitude of factors must be taken into consideration in “the determination and fixing of rates.” These factors include, among others, “the past loss experience and prospective loss experience within and outside this state,” “the conflagration and catastrophe hazards,” “a reasonable margin for underwriting profit and contingencies,” “[d]ividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers,” “[i]nvestment income on unearned premium reserves and loss reserves,” “[p]ast expenses and prospective expenses, both those countrywide and those specifically applicable to this state,” and “[a]ll other relevant factors, including judgment factors, within and outside this state.” Fla. Stat. § 627.072 (2016).

2. NCCI Committee Meetings Must be Held “in the Sunshine” After Proper Notice

25. Moreover, central to the instant action, Section 627.091(6), Florida Statutes requires public notice of committee meetings of recognized ratings organizations – like NCCI – at which matters pertaining to insurance rates are discussed. This section requires that whenever

the committee of a recognized rating organization with responsibility for workers' compensation and employers' liability insurance rates in this state [like NCCI] meets in this state to discuss the necessity for, or a request for, Florida rate increases or decreases, the determination of Florida rates, the rates to be requested, or any other matters pertaining specifically and directly to such Florida rates such meeting shall be held in the state, and shall be subject to s. 286.011.

(emphasis added).

26. Section 286.011, Florida Statutes (referenced in Section 627.091, Florida Statutes), in turn, requires that meetings of public boards or commissions be “*open to the public*”

at all times,” and that “the Board or commission...*provide reasonable notice of all such meetings.*” Fla. Stat. § 286.011(1) (2016) (emphasis added).

27. Chapter 627 provides guidance as to the type of notice that is to be provided to the public in advance of rating organizations’ committee meetings. It requires that “[t]he committee of such a rating organization shall provide at least 3 weeks’ prior notice of such meetings to the [OIR] and *shall provide at least 14 days’ prior notice of such meetings to the public by publication in the Florida Administrative Register.*” Fla. Stat. § 627.091 (2016) (emphasis added).

28. Chapter 627 further mandates that NCCI provide insureds with access to information regarding workers’ compensation rates that affect them. Section 627.291(1), Florida Statutes states:

[a]s to workers’ compensation and employer’s liability insurances, every rating organization and every insurer which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.

29. Significantly, NCCI must also provide “reasonable means whereby any person aggrieved by the application of its rating system may be heard...on his or her written request to review the manner in which such rating system has been applied in connection with the insurance afforded him or her.” Fla. Stat. § 627.291(2) (2016).

30. The Sunshine Law (Section 286.011, Florida Statutes) also demands that, “[t]he minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.” Fla. Stat. § 286.011(2) (2016).

31. It also provides that “[a]ny person who is a member of a board or commission of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.” Fla. Stat. § 286.011(3)(b) (2016).

E. The OIR and the Commissioner’s Role in Review and Approval of Proposed Rate Filings

32. After a proposed rate has been filed by NCCI (or an insurer) and before it becomes effective, the OIR is to review the filing to determine if that rate is “excessive, inadequate, or unfairly discriminatory...in accordance with generally accepted and reasonable actuarial techniques.” Fla. Stat. § 627.062(3)(b) (2016).

33. In connection with this analysis, the OIR “shall consider” approximately fifteen (15) distinct factors, including: “[p]ast and prospective loss experience within and without this state...,” “[p]ast and prospective expenses...,” “[t]he degree of competition among insurers for the risk insured,” “[i]nvestment income reasonably expected by the insurer...,” “[t]he reasonableness of the judgment reflected in the filing,” “[d]ividends, savings, or unabsorbed premium deposits allowed or returned to policyholders, members, or subscribers in this state,” “[t]he adequacy of loss reserves,” “[t]he cost of reinsurance,” “[t]rend factors, including trends in actual losses per insured unit for the insurer making the filing,” and “[t]he cost of medical services, if applicable....” Fla. Stat. § 627.062(3)(b) (2016).

34. The OIR may also hold a public hearing to conclude whether the filing meets the requirements of Chapter 627, if it believes it is in the public interest to do so. Fla. Stat. § 627.101 (2016).

35. After the above-described analysis takes place, the OIR's Commissioner approves or denies the proposed rate filing. Once approved by the Commissioner, the proposed rate filing becomes effective.

F. NCCI's Recent Proposed Rate Filings and Failure to Comply with Applicable Notice Requirements and Sunshine Law

36. On May 27, 2016, NCCI submitted a filing to the OIR proposing a rate increase of 17.1% to go into effect on August 1, 2016.

37. This proposed increase followed the Florida Supreme Court's April 28, 2016 *Castellanos v. Next Door Co., et al.* (No. SC13-2082) decision, which declared unconstitutional the statutory cap on a claimant's attorneys' fees in a workers' compensation case (set forth in Section 440.34, Florida Statutes).

38. Upon information and belief, prior to the submission of this proposal, an NCCI committee or committees met at least once in the State of Florida to discuss and decide upon the proposed rate increase. However, the nature of the discussion and information taken into consideration at this meeting or meetings remains unknown, as does the identity of the meeting or meetings' participants. The role, if any, that the OIR or the Commissioner played in this meeting or meetings is also unknown.

39. NCCI did *not* provide the public with any notice of this meeting or meetings, let alone the specific notice required pursuant to Chapter 627. Accordingly, the public did not have an opportunity to attend or participate in this meeting or meetings.

40. On June 9, 2016, the Florida Supreme Court entered its decision in *Westphal v. City of St. Petersburg*, which found the 104-week statutory limitation on temporary total disability benefits set forth in Section 440.15(2)(a), Florida Statutes unconstitutional, and reinstated a 260-week limitation.

41. In light of the *Westphal* decision, on June 30, 2016, NCCI amended its filing to increase its proposed rate to 19.6% to become effective on October 1, 2016 (“Amended Rate Filing”).

42. Upon information and belief, prior to this submission, an NCCI committee or committees met at least once in the State of Florida to discuss and decide upon the proposed rate increase. However, the nature of the discussion and information taken into consideration at this meeting or meetings remains unknown, as does the identity of the meeting or meetings’ participants. The role, if any, that the OIR or the Commissioner played in this meeting or meetings is also unknown.

43. NCCI did *not* provide the public with any notice of such meetings, let alone the notice required pursuant to Chapter 627. Accordingly, the public did not have an opportunity to attend or participate in this meeting or meetings.

44. Moreover, since Plaintiff (a) did not receive notice of or have an opportunity to participate in the committee meetings at which the rate at issue was discussed and decided on, and (b) has not been provided with the universe of documents necessary to assess the rate at issue for compliance with the applicable provisions of the Florida Statutes, he cannot meaningfully participate in the rate-making process, which affects its property, and his procedural due process rights are being violated. *See* Art. 1, § 9, Fla. Const.; U.S. Const. Amend. XIV, § 1.

G. Hearing Scheduled on Amended Rate Filing Despite Failure to Provide Notice of and Access to NCCI Committee Meeting(s)

45. The OIR has scheduled a public hearing for August 16, 2016 in Tallahassee, allegedly to give NCCI an opportunity to discuss the Amended Rate Filing and interested parties the opportunity to provide testimony or comments.

46. Neither Plaintiff nor the public received any notice of and/or had any opportunity to be present during or meaningfully participate in any underlying NCCI committee meeting at which the Amended Rate Filing (or its proposed insurance rate increase of 19.6%) was discussed.

47. Moreover, what, if any, information NCCI has presented to the OIR and the Commissioner in support of the Amended Rate Filing is unknown. Thus, whether the OIR and the Commissioner have been provided with the information necessary to evaluate the approximately fifteen (15) factors to be taken into consideration in evaluating the proposed rate is also unknown.

H. Plaintiff Asks NCCI to Produce Information Regarding Insurance Rates

48. In light of Plaintiff's serious concerns about the public's lack of notice of or meaningful participation in the NCCI meetings at which the Amended Rate Filing was discussed, on May 20, 2016, Plaintiff wrote to NCCI requesting (pursuant to Section 627.291(1), Florida Statutes), "all pertinent information relating to all NCCI rate and rule filings affecting Florida Workers' Compensation premiums that were in effect for the calendar years 2006 through 2016." A copy of this request is attached hereto as Exhibit 1.

49. Plaintiff also asked NCCI to allow this "correspondence to serve as [his] request to be heard in person, or through [his] authorized representative, as [he was] aggrieved by the application of NCCI's rating system and how it ha[d] been applied in connection with the workers' compensation insurance afforded to [his] business." He noted that, pursuant to Section 627.291(2), Florida Statutes, he would "deem [his] request rejected if NCCI fail[ed] to grant or reject [it] within the statutorily mandated 30 days."

50. After Plaintiff made a subsequent request for documents in mid-June, on June 22, 2016, counsel for NCCI responded to Plaintiff and described his request as “overbroad and unduly burdensome.” He offered to provide only a copy of the “pending rate filing,” which consisted of just thirty-four (34) pages.

51. On June 28, 2016, Plaintiff sent NCCI a check for the offered “pending rate filing,” but noted that, in doing so, he was not agreeing or acquiescing that he was not entitled to additional materials.

52. On July 6, 2016, NCCI produced the thirty-four (34) page rate filing.

53. On July 11, 2016, Plaintiff wrote to counsel for NCCI and renewed his request to be “provided with all of the pertinent information relating to any and all NCCI rate and rule filings affecting Florida workers’ compensation premiums that were in effect for the calendar years 2006 to 2016.”

54. Plaintiff specifically asked for “any and all pertinent information relating to NCCI’s most recent Florida workers’ compensation premium rate filing whereby NCCI is seeking a 19.6% rate increase to become effective as of October 1, 2016.”

55. In making this request, Plaintiff sought to, among other things, identify and evaluate the materials submitted by NCCI in connection with the Amended Rate Filing in an effort to assess whether the OIR and the Commissioner were provided with information that would permit a full analysis of the Amended Rate Filing for compliance with Chapter 627’s requirements.

I. NCCI Fails to Provide Complete Production of Requested Documents or Acknowledge its Failure to Provide Requisite Notice of and Access to Meetings

56. On July 26, 2016, counsel for NCCI responded to Plaintiff’s July 11, 2016 letter. A copy of this correspondence is attached hereto as Exhibit 2.

1. NCCI Fails to Provide Complete Production of Requested Documents

57. Counsel offered to provide Plaintiff with the forty-one (41) page Amended Rate Filing, but declined to provide Plaintiff with “rule filings,” as opposed to “rate filings,” claiming that Section 627.291(1), Florida Statutes does not require NCCI to do so.

58. On August 3, 2016, Plaintiff was provided with approximately 259 additional pages of data.

59. Plaintiff conducted an initial review of this data, and found that it contains only a small fraction of the material that would be necessary to fairly, properly and meaningfully review the proposed rate request for compliance with the requirements set forth in Chapter 627.

60. Without a complete production of the records Plaintiff requested, Plaintiff cannot assess the Amended Rate Filing for compliance with Chapter 627 nor can he assess whether the OIR or the Commissioner has been provided with sufficient data to assess the proposed rate increase for compliance with Chapter 627’s requirements. If a sufficient universe of documents indeed exists but has not been provided to Plaintiff, NCCI has violated Section 627.291(1), Florida Statutes by not producing them. On the other hand, if such data does not exist, the OIR and the Commissioner have abdicated their responsibility to assess these factors in violation of Section 627.062, Florida Statutes.

2. NCCI Denies Plaintiff’s Other Requests, Including Request for Documentation of Compliance with Notice Requirements

61. With respect to Plaintiff’s request for documentation of NCCI’s compliance with meeting notice requirements, counsel’s July 26, 2016 letter advised:

NCCI does not have a committee which “meets to discuss the necessity for, or a request for, Florida rate increases or decreases, the determination of Florida rates, the rates to be requested, [or] any other matters pertaining specifically and directly to such Florida rates.” See section 627.291(6), Florida Statutes. Such a committee did exist in the

distant past, but it was disbanded in 1991, and it has not been replaced by a committee performing any of the functions described in the cited statute.

(emphasis added).

62. As for Plaintiff's request that he be heard under Section 627.291(2), Florida Statutes, counsel opined that this section "does not provide an insured with a process for disputing rates approved by the Florida Office of Insurance Regulation." Instead, he advised, it provides only a process for "disputing how the rating system is applied in connection with the insurance afforded to you...." He noted that the August 16, 2016 hearing would include time for "public comment."

J. The Commissioner Does Not Acknowledge NCCI's Failure to Provide Requisite Notice and Access to Meetings

63. On July 18, 2016, Plaintiff wrote to the OIR Commissioner as both a "concerned attorney" and "small business owner." A copy of this correspondence is attached hereto as Exhibit 3.

64. Plaintiff noted that he had been advised of the proposed 19.6% rate increase and that it did not appear that NCCI had complied with the requirements set forth under Florida law in making the Amended Rate Filing.

65. In particular, Plaintiff noted that by failing to "properly place notification in the Florida Administrative Register of meetings that it undoubtedly participated in during the weeks and months prior to the issuance of its 17.1% [and] 19.6% rate increases," NCCI had failed to comply with Sections 286.11 and 627.091, Florida Statutes.

66. Plaintiff asked that:

[g]iven the effect that this proposed rate increase would have on my own insurance premiums, as well as those of many of my clients, ***I must respectfully request that NCCI's recent rate filings be deemed null and void and that the rate making hearing***

scheduled for August 16, 2016 be cancelled and not rescheduled until such time as NCCI has properly complied with Florida law.

(emphasis added).

67. On July 27, 2016, Plaintiff met with the Commissioner in person to address these same issues. At this meeting, the Commissioner took the position that NCCI had disbanded its “committee” in 1991 and, therefore, NCCI was not subject to the Sunshine Law or its requirements.

68. Thus, notwithstanding NCCI’s complete failure to (1) provide notice of any meetings at which the Amended Rate Filing was discussed, (2) open these meetings to the public or (3) produce records relating to the Amended Rate Filing, the OIR and the Commissioner plan to consider and possibly approve the filing at or soon after the scheduled August 16, 2016 hearing.

COUNT I
DECLARATORY RELIEF – VIOLATION OF
FLA. STAT. §§ 627.091 AND 286.011 (AGAINST NCCI)

69. Plaintiff incorporates and re-alleges the allegations set forth in paragraphs 1 through 68 as though fully stated herein.

70. This is a count for declaratory relief pursuant to Chapter 86 of the Florida Statutes.

71. Pursuant to Sections 86.021, Florida Statutes, any person whose rights, status, or other equitable or legal relations are affected by a statute, or any regulation made under statutory authority may have determined any question of construction or validity arising under such authority, and obtain a declaration of rights, status, or other equitable or legal relations thereunder.

72. There is a presently ascertainable set of facts and present controversy for this Court to resolve. Moreover, Plaintiff and NCCI have antagonistic and adverse interests in the subject matter of this controversy, which are all before this Court.

73. Section 627.091(6), Florida Statutes, requires public access to all committee meetings of recognized ratings organizations (like NCCI) at which matters pertaining to insurance rates are discussed.

74. Section 627.091(6), Florida Statutes specifically requires that:

[w]henver the committee of a recognized rating organization with responsibility for workers' compensation and employer's liability insurance rates in this state meets to discuss the necessity for, or a request for, Florida rate increases or decreases, the determination of Florida rates, the rates to be requested, and any other matters pertaining specifically and directly to such Florida rates, such meetings shall be held in this state and shall be subject to s. 286.011. The committee of such a rating organization shall provide at least 3 weeks' prior notice of such meetings to the office and shall provide at least 14 days' prior notice of such meetings to the public by publication in the Florida Administrative Register.

75. NCCI contends that it does not have a committee.

76. Plaintiff contends that NCCI certainly has at least one committee, and that an NCCI committee or committees met to discuss matters related to the Amended Rate Filing prior to its submission to the OIR on at least one occasion.

77. "Committee" is not defined in Chapter 627, and is broadly defined in Webster's Legal Dictionary as "a group of people who are chosen to do a particular job or to make decisions about something."

78. Moreover, NCCI meetings at which insurance rates are discussed constitute "committee meetings" for purposes of the Sunshine Law since the State of Florida and the OIR have delegated to NCCI "the performance" of a "public purpose" or decision-making function – *i.e.*, establishing and filing insurance rates for the state's insurers. *See Mem'l Hosp.-West*

Volusia, Inc. v. News-Journal Corp., 729 So. 2d 373, 382-83 (Fla. 1999). The function of a meeting, as opposed to the formal name of the group holding a meeting, controls. *See Krause v. Reno*, 366 So. 2d 1244, 1252 (Fla. 3d DCA 1979) (holding that group involved in the decision-making process was a “board” for purposes of Section 286.011).

79. Relatedly, to the extent that the Florida Statutes do not provide detail as to the Commissioner’s role in the rate-making process, this constitutes an improper delegation of the rate-making power to NCCI.

80. NCCI’s committee meetings were not conducted in accordance with the requirements set forth in Sections 286.011 or 627.091(6), Florida Statutes. Indeed, no advance notice was given to members of the public, nor was there any opportunity to be present or heard.

81. Moreover, NCCI did not provide “at least 14 days’ prior notice of such meetings to the public by publication in the Florida Administrative Register.” Fla. Stat. § 627.091(6) (2016). In fact, NCCI failed to publish any notice of these meetings in the Florida Administrative Register.

82. The OIR has scheduled a hearing on August 16, 2016 at or after which the Commissioner may approve or deny the Amended Rate Filing. In light of NCCI’s failure to provide requisite notice and opportunity to participate in committee meetings related to the filing, it is not proper for the OIR to consider the Amended Rate Filing for approval.

83. Under these circumstances, there is a bona fide, actual, practical and present need for declaratory relief as it relates to these statutory requirements.

84. Pursuant to Section 86.111, Florida Statutes, the Court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

WHEREFORE, Plaintiff respectfully requests that this Court:

- (i) provide a speedy hearing with respect to this cause of action;
- (ii) enter a judgment in Plaintiff's favor (a) declaring that NCCI violated Sections 286.011 and 627.091(6), Florida Statutes by not providing notice of or a meaningful opportunity to participate in committee meetings at which rate filings, including the Amended Rate Filing, were discussed, and (b) declaring that all future NCCI committee meetings must comply with the requirements set forth in Section 286.011, Florida Statutes and Chapter 627 of the Florida Statutes, including but not limited to Section 627.091(6);
- (iii) award Plaintiff his costs pursuant to Section 86.081, Florida Statutes; and
- (iv) award such other relief that this Court deems proper within its equitable jurisdiction.

**COUNT II – VIOLATION OF SUNSHINE LAW
(AGAINST NCCI, THE OIR AND THE COMMISSIONER)**

85. Plaintiff incorporates and re-alleges the allegations set forth in paragraphs 1 through 68 as though fully stated herein.

86. NCCI, the OIR and the Commissioner have a mandatory legal duty to comply with the provisions of Section 286.011, Florida Statutes (the Sunshine Law), which was enacted for the public benefit and which should be liberally construed to give effect to its public purpose. *See Bd. of Public Instruction of Broward Cnty. v. Doran*, 224 So. 2d 693 (Fla. 1969); *see also Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974) (“One purpose of the government in the sunshine law was to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance. Rarely could there be any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. The statute should be construed so as to frustrate all evasive devices.”).

87. Section 627.091(6), Florida Statutes makes clear that when “the committee of a recognized rating organization with responsibility for workers’ compensation [] insurance rates” meets to discuss insurance rates, those meetings “shall be subject to s. 286.011.”

88. NCCI is undeniably a recognized rating organization with responsibility for workers’ compensation insurance rates, and is currently proposing an increased insurance rate.

89. NCCI’s cannot avoid its obligations pursuant to Sections 627.091(6) and 286.011, Florida Statutes by maintaining that it “disbanded its committee.” *See Gradison*, 296 So. 2d at 477.

90. This is especially so considering that the State of Florida and the OIR delegated to the NCCI “the performance” of a “public purpose” – *i.e.*, establishing and filing the State’s insurance rates. *See Mem’l Hosp.-West Volusia, Inc.*, 729 So. 2d at 382-83.

91. Article I, Section 24 of the Florida Constitution also recognizes a right of access to meetings of public bodies and provides that:

[a]ll meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public. . . .

Art I, § 24(b), Fla. Const.

92. Thus, with respect to the Amended Rate Filing and other proposed rate increases, NCCI violated the Sunshine Law by failing to provide any notice, let alone “reasonable notice” of any committee meetings, as required by Section 286.011(1), Florida Statutes and failing to allow the public an opportunity to meaningfully participate in these meetings.

93. “Reasonable notice” would entail at least “3 weeks’ prior notice of such meetings to the [OIR] and shall provide at least 14 days’ prior notice of such meetings to the public by publication in the Florida Administrative Register.” Fla. Stat. § 627.091 (2016).

94. None of the exemptions to the Sunshine Law apply to these NCCI committee meetings.

95. These violations of the Sunshine Law prohibit Plaintiff and the public from the opportunity to meaningfully comment on, discuss and/or object to the deliberation at and/or relating to this meeting.

96. Accordingly, they constitute irreparable public injury – violations that, once established, are presumed prejudicial. *Gradison*, 296 So. 2d at 477 (holding that a mere showing that the Sunshine Law was violated is *per se* irreparable harm under Section 286.011, Florida Statutes).

97. Moreover, by proceeding with the August 16, 2016 hearing and considering the Amended Rate Filing, the OIR and the Commissioner are violating the Sunshine Law.

98. Actions taken in violation of the Sunshine Law are void *ab initio* and future actions taken in reliance on past acts must also be enjoined. *See Silver Express Co. v. Dist. Bd. of Lower Tribunal Trustees*, 691 So. 2d 1099, 1101 (Fla. 3d DCA 1997) (concluding that the Sunshine Law provides statutory remedy “to permit any citizen to vindicate the public’s interest in open government”); *see also Gradison*, 296 So. 2d at 477-78 (“Fla. Stat. § 286.011(1), F.S.A., specifically provides that ‘no resolution, rule, regulation or formal action shall be considered binding’ where the government in the sunshine law is violated.”).

99. Since NCCI failed to comply with the Sunshine Law, the Amended Rate Filing should *not* be considered for approval by the OIR's Commissioner at the August 16, 2016 hearing or otherwise.

100. Defendants cannot cure the Sunshine Law violations at issue without NCCI first undertaking a rate-making process that complies with the Sunshine Law, including properly-noticed committee meetings. *See Zorc v. City of Vero Beach*, 722 So. 2d 891, 903 (Fla. 4th DCA 1998) (“[O]nly a full, open hearing will cure a defect arising from a Sunshine Law violation. Such a violation will not be cured by a perfunctory ratification of the action taken outside of the sunshine.”).

WHEREFORE, Plaintiff respectfully requests that this Court:

- (i) declare that the Amended Rate Filing, which is the product of Sunshine Law violations, as well as any related actions or determinations, are void *ab initio*;
- (ii) declare that any future NCCI rate filings must comply with requirements set forth in the Florida Statutes, including, but not limited to, the notice requirements applicable to NCCI committee meetings, or they, too, will be void *ab initio*;
- (iii) enjoin all actions associated with the aforementioned NCCI committee meetings conducted in violation of Florida's Sunshine Law, including, but not limited to (1) the August 16, 2016 hearing and (2) any decision (*e.g.*, approval or denial of) the Amended Rate Filing; and
- (iv) enter all further and supplemental relief that this Court deems equitable and just, including but not limited to, an award of Plaintiff's reasonable attorneys' fees and costs pursuant to Sections 286.011(4) and (5), Florida Statutes.

**COUNT III - DECLARATORY RELIEF - VIOLATION
OF FLA. STAT. § 627.291 (AGAINST NCCI)**

101. Plaintiff incorporates and re-alleges the allegations set forth in paragraphs 1 through 68 as though fully stated herein.

102. This is a count for declaratory relief pursuant to Chapter 86 of the Florida Statutes.

103. Pursuant to Section 86.021, Florida Statutes, any person whose rights, status, or other equitable or legal relations are affected by a statute, or any regulation made under statutory authority may have determined any question of construction or validity arising under such authority, and obtain a declaration of rights, status, or other equitable or legal relations thereunder.

104. There is a presently ascertainable set of facts and present controversy for this Court to resolve. Moreover, Plaintiff and NCCI have antagonistic and adverse interests in the subject matter of this controversy, which are all before this Court.

105. Section 627.291, Florida Statutes requires recognized ratings organizations (like NCCI) to provide access to all information related to insurance rates to any affected insured who makes a request.

106. Section 627.291(1), Florida Statutes specifically requires:

As to workers' compensation and employer's liability insurances, every rating organization and every insurer which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, ***all pertinent information as to such rate.***

(emphasis added).

107. On May 20, 2016, Plaintiff wrote to counsel for NCCI and requested any and all pertinent information relating to any and all NCCI rate and rule filings affecting Florida Workers' Compensation premiums that were in effect for the calendar years 2006 through 2016 pursuant to Section 627.291(1), Florida Statutes.

108. NCCI responded to Plaintiff's May 20, 2016 request by offering to provide only a copy of the "pending rate filing," but not any supporting documentation.

109. On July 11, 2016, Plaintiff wrote to counsel for NCCI and renewed his request to be "provided with all of the pertinent information relating to any and all NCCI rate and rule filings affecting Florida workers' compensation premiums that were in effect for the calendar years 2006 to 2016." He also asked for "any and all pertinent information relating to NCCI's most recent Florida workers' compensation premium rate filing whereby NCCI is seeking a 19.6% rate increase to become effective as of October 1, 2016."

110. On July 26, 2016, counsel for NCCI wrote that there was a "difference of opinion over NCCI's obligations under section 627.291, Florida Statutes" and offered to provide only a copy of its revised rate filing, but did not offer any supporting documentation.

111. Upon information and belief, there are numerous records relating to these proposed rate increases that NCCI is withholding. Thus, NCCI is in violation of Section 627.291(1), Florida Statutes due to its continued failure to provide "all pertinent information" described and requested by Plaintiff.

WHEREFORE, Plaintiff respectfully requests that this Court:

- (i) provide a speedy hearing with respect to this cause of action;
- (ii) declare that NCCI violated Section 627.291(1), Florida Statutes by denying Plaintiff access to the requested records;

- (iii) award Plaintiff his costs pursuant to Section 86.081, Florida Statutes; and
- (iv) and award such other relief that this Court deems proper within its equitable jurisdiction.

**COUNT IV – VIOLATION OF PUBLIC RECORDS ACT
(AGAINST NCCI)**

112. Plaintiff incorporates and re-alleges the allegations set forth in paragraphs 1 through 68 as though fully stated herein.

113. In the State of Florida, access to public records is a matter of such importance that it is both constitutionally and statutorily guaranteed. *See* Art. I, § 24(a), Fla. Const.; Fla. Stat. § 119.01 (2016).

114. Private not-for-profit corporations are likewise required to provide access to public records under Chapter 119 when they are acting “on behalf of” a governmental agency. *See News & Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Grp., Inc.*, 596 So. 2d 1029, 1031 (Fla. 1992) (setting forth a “totality of factors” test for determining whether private entity would be subject to Public Records Act); *Econ. Dev. Com'n v. Ellis*, 178 So. 3d 118, 121 (Fla. 5th DCA 2015) (discussing various cases in which Florida courts utilized the “delegation of function” test in place of the *Schwab* “totality of factors” test).

115. The legislature of the State of Florida has exercised its power to regulate and control workers’ compensation insurance rates. *See* Fla. Stat. § 20.121(3)(a)1 (2016) (creating the Office of Insurance Regulation, “which shall be responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates....”).

116. Because NCCI is responsible for researching, analyzing and filing such rates on behalf of the vast majority of insurers within the State, it has been delegated an otherwise governmental responsibility.

117. Lending credence to this conclusion is the fact that NCCI's committee meetings are subject to the Sunshine Law, as well as the fact that the Florida Statutes mandate that insurers furnish all pertinent information to insureds upon request. *See Fla. Stat. §§ 627.091(6) (2016) and 627.291(1) (2016); Cape Coral Medical Center, Inc. v. News-Press Publishing Co., Inc.*, 390 So. 2d 1216, 1218 n.5 (Fla. 2d DCA 1980) (noting that inasmuch as the policies behind the Public Records Act and Sunshine Law are similar, they should be read together).

118. The requested documents are not subject to any exceptions to the Public Records Act.

119. Thus, NCCI is required to produce the records requested by Plaintiff.

120. Pursuant to Section 119.11, Florida Statutes, Plaintiff is entitled to an expedited hearing compelling the production of the requested documents.

WHEREFORE, Plaintiff respectfully requests that this Court:

- (i) provide an expedited hearing as required by Section 119.11, Florida Statutes;
- (ii) declare that NCCI must comply with Florida's Public Records Act with respect to Plaintiff's request;
- (iii) order NCCI to respond to the request received within five (5) days;
- (iv) award Plaintiff his attorneys' fees and costs incurred in bringing this action pursuant to Section 119.12, Florida Statutes; and
- (v) and award such other relief that this Court deems proper within its equitable jurisdiction.

Dated: August 10, 2016

Respectfully submitted,
SHUBIN & BASS, P.A.
46 S.W. First Street, Third Floor
Miami, Florida 33130
Tel (305) 381-6060
Fax (305) 381-9457
jshubin@shubinbass.com
lbrunswick@shubinbass.com
mgraffton@shubinbass.com

By: /s/ John K. Shubin, Esq.
JOHN K. SHUBIN, ESQ.
FLA. BAR NO. 771899
LAUREN G. BRUNSWICK, ESQ.
FLA. BAR NO. 84055
MARK E. GRAFTON, ESQ.
FLA. BAR NO. 118233

Attorneys for Plaintiff

EXHIBIT 1

LAW OFFICES
DRUCKMAN & FEE, P.A.
COURTHOUSE TOWER - SUITE 235
44 WEST FLAGLER STREET
MIAMI, FLORIDA 33130-1610

JAMES F. FEE, JR.

TELEPHONE (305) 374-7750
TELEFAX (305) 374-7751

IRA J. DRUCKMAN
(1930 - 2008)

May 20, 2016

Certified Return Receipt
US Mail # 7013 3020 0000 6024 9027

NCCI
901 Peninsula Corp Circle
Boca Raton, FL 33487

**RE: REQUEST FOR INFORMATION TO BE FURNISHED TO INSURED
PURSUANT TO F.S. 627.291(1) AND REQUEST TO BE HEARD
PURSUANT TO F.S. 627.291(2)**

Policy Holder: Druckman & Fee, P.A.
Carrier: Technology Insurance Company
Policy Number: TWC3473081
TWC3546391

Dear NCCI:

Please allow this correspondence to serve as Druckman & Fee, P.A.'s request to be furnished with all pertinent information relating to any and all NCCI rate and rule filings affecting Florida Workers' Compensation premiums that were in effect for the calendar years 2006 through 2016. A copy of Florida Statute 627.291 is attached for your reference.

Additionally, please allow this correspondence to serve as my request to be heard in person, or through my authorized representative, as I am aggrieved by the application of NCCI's rating system and how it has been applied in connection with the workers' compensation insurance afforded to my business. Pursuant to Florida Statute 627.291(2), I will deem my request rejected if NCCI fails to grant or reject my request within the statutorily mandated 30 days.

Thank you for your attention to this matter.

Very truly yours,

James F. Fee, Jr.

JFF:mdf
Enclosure

EXHIBIT 2

July 26, 2016

Via FedEx

James F. Fee, Esq.
Druckman & Fee, P.A.
Courthouse Tower - Suite 235
44 West Flagler Street
Miami, Florida 33130-1610

Re: Request for Information Pursuant to Section 627.291, Florida Statutes, and Request for Confirmation of NCCI's Compliance with Sections 627.091(6) and 286.011, Florida Statutes

Dear Mr. Fee:

Thank you for your letter of July 12, 2016. As you correctly noted, NCCI previously voluntarily provided you with a copy of the rate filing made with the Florida Office of Insurance Regulation, which had a proposed effective date of August 1, 2016. Subsequent to your request, and following the rendition of the Supreme Court's opinion in *Westphal v. City of St. Peterburg*, NCCI revised its rate filing and proposed an effective date of October 1, 2016 (the "Revised Filing"). The Revised Filing is comprised of 41 pages, and we will be pleased to furnish you a copy upon receipt of payment of copying charges in the amount of \$41.00.

We seem to have some difference of opinion over NCCI's obligations under section 627.291, Florida Statutes, and we wish to address that disagreement here and advise you of our interpretation of that statutory section.

First, we observe that section 627.291(1), Florida Statutes, uses the term "rate." As an insured, section 627.291(1), Florida Statutes, entitles you to all pertinent information as to the rate by which you are affected. In your initial correspondence to NCCI, you supplied the following two policy numbers for your business - TWC3473081 (5/27/2015-5/27/2016) and TWC3546391 (5/27/2016-5/27/2017). In order to satisfy NCCI's statutory obligations, NCCI will provide you with copies of the rate filings affecting the provided policy numbers. These filings are comprised of 380 pages and we will furnish you a copy upon receipt of payment of copying charges in the amount of \$380.00.

Second, we note that section 627.291(1), Florida Statutes, does not require NCCI to provide you with rule filings. Therefore, to the extent you requested copies of rule filings, NCCI declines your request.



FOLEY & LARDNER LLP

July 26, 2016

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Third, with respect to your request to be heard under 627.291(2), Florida Statutes, as we have previously noted, this section establishes the statutory authority for the dispute resolution process and pertains to the application of the "rating system" in connection with the insurance afforded. It does not pertain to the "rate." Section 627.291, Florida Statutes does not provide an insured with a process for disputing rates approved by the Florida Office of Insurance Regulation.

If you are interested in disputing how the rating system is applied in connection with the insurance afforded you, in accordance with section 627.291(2), Florida Statutes, please respond to Maureen Longanacre's previous letter of June 9, 2016 requesting information regarding the nature of your grievance. For further information regarding the dispute resolution process, please refer to the Florida Dispute Resolution Process, effective February 1, 2013, which accompanied Victoria Dorsey's July 1 and July 5, 2016 letters to you.

If you are interested in the process by which the Florida Office of Insurance Regulation reviews proposed workers compensation rates in Florida, including methodology and procedural considerations by which the rates are developed, please be advised that the Florida Office of Insurance Regulation has scheduled a public hearing on the Revised Filing on August 16, 2016, at 9:00 a.m., in Room 401, Senate Office Building, 404 South Monroe Street, Tallahassee, Florida. The Office has set aside time at the hearing for public comment.

With respect to your request for documentation of NCCI's compliance with the public meeting notice requirements of sections 627.091(6) and 286.011, Florida Statutes, please be advised that NCCI does not have a committee which "meets to discuss the necessity for, or a request for, Florida rate increases or decreases, the determination of Florida rates, the rates to be requested, [or] any other matters pertaining specifically and directly to such Florida rates." See section 627.291(6), Florida Statutes. Such a committee did exist in the distant past, but it was disbanded in 1991, and it has not been replaced by a committee performing any of the functions described in the cited statute.

We hope this letter adequately addresses the issues raised in your July 12 correspondence. Please let us know if you require any additional information.

Sincerely yours,

Thomas J. Maida

TJMA:bb

cc: Adam Levell, Esq.

EXHIBIT 3

LAW OFFICES
DRUCKMAN & FEE, P.A.
COURTHOUSE TOWER - SUITE 235
44 WEST FLAGLER STREET
MIAMI, FLORIDA 33130-1610

JAMES F. FEE, JR.

TELEPHONE (305) 374-7750
TELEFAX (305) 374-7751

IRA J. DRUCKMAN
(1930 - 2006)

July 18, 2016

Via FedEx #8592 9599 4784

David Altmaier
Insurance Commissioner
Florida Office of Insurance Regulation
200 E. Gaines Street
Tallahassee, FL 32301

Re: August 16, 2016 hearing to consider NCCI's proposed 19.6% increase in workers' compensation rates

Dear Commissioner Altmaier:

Good afternoon. I write to you as a concerned attorney and small business owner who has been advised that NCCI has proposed a 19.6% rate increase on all Florida Workers' Compensation insurance policies to become effective October 1, 2016. My legal practice specializes in representing businesses and employees in the context of Florida workers' compensation claims, and in this capacity, I have become familiar with the process by which NCCI sets rates to be approved by your office. Based upon my review of the applicable statutes governing the rate make process and a public records request that I have made, it does not appear that NCCI has complied with Florida Law in arriving at the proposed rate increases. Given the effect that this proposed rate increase would have on my own insurance premiums, as well as those of many of my clients, I must respectfully request that the NCCI's recent rate filings be deemed null and void and that the rate making hearing scheduled for August 16, 2016 be cancelled and not rescheduled until such time as NCCI has properly complied with Florida Law.

In my investigation regarding the process by which rates are set in Florida, I have reviewed Florida Statutes 627.091 (6) and 286.011. As you are aware, those statutes state, in pertinent part, the following:

DRUCKMAN & FEE, P.A.

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F.S. 627.091 Rate filings; workers' compensation and employer's liability insurances –

(6) Whenever the committee of a recognized rating organization with responsibility for workers' compensation and employer's liability insurance rates in this state meets in this state to discuss the necessity for, or a request for, Florida rate increases or decreases, the determination of Florida rates, the rates to be requested, and any other matters pertaining specifically and directly to such Florida rates, such meeting shall be held in this state, and shall be subject to s. 286.011. **The committee of such a rating organization shall provide at least three weeks prior notice of such meetings to the office and shall provide at least 14 days prior notice of such meetings to the public by publication in the Florida Administrative Register.**

F.S. 286.011 Public meetings and records; public inspection; criminal and civil penalties.—

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken **are declared to be public meetings open to the public at all times**, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

(2) **The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection.** The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

(3)(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Whenever an action has been filed against any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision to enforce the provisions of this section or to invalidate the actions of any such board, commission, agency, or authority, which action was taken

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in violation of this section, and the court determines that the defendant or defendants to such action acted in violation of this section, the court shall assess a reasonable attorney's fee against such agency, and may assess a reasonable attorney's fee against the individual filing such an action if the court finds it was filed in bad faith or was frivolous. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission. However, this subsection shall not apply to a state attorney or his or her duly authorized assistants or any officer charged with enforcing the provisions of this section.

(5) Whenever any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision appeals any court order which has found said board, commission, agency, or authority to have violated this section, and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such board, commission, agency, or authority. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission.

(6) All persons subject to subsection (1) are prohibited from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility.

(7) Whenever any member of any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision is charged with a violation of this section and is subsequently acquitted, the board or commission is authorized to reimburse said member for any portion of his or her reasonable attorney's fees.

(8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations

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or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation.

It is my concern as an aggrieved policyholder, and the representative of employers who are likely to be similarly aggrieved, that prior to the issuance of either its initial 17.1% proposed rate increase, or its current 19.6% proposed rate increase, NCCI failed to comply with the provisions of F.S. 286.011, as it was required specifically to do under F. S. 627.091. More specifically, my position is that NCCI certainly is the recognized rating organization with responsibility for workers' compensation rates in Florida. In that capacity, I see no plausible way for NCCI to deny that prior to the issuance of the above referenced rate increase proposals, a committee of their organization met on one or more occasions to discuss the necessity for these specific rate increases. Any such meetings were to have been held in Florida and subject to the provisions of 286.011. In addition, NCCI's committee was required to provide at least three weeks prior notice of such meetings to your office, and provide at least 14 days prior notice of such meanings to the public by publication in the Florida Administrative Register. I made a public records request from the Florida Administrative Register for all notices of public meetings, pertaining to Florida workers' compensation, NCCI has published in the Florida Administrative Register between 2006 and 2016. I received the documents that are attached to this letter. As you can see, there is no evidence that at any point relevant to this issue did NCCI place notice in the Florida Administrative Register of its intention to have a public meeting

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to discuss its recommendation of a proposed rate increase of either 17.1% or 19.6%. As a result, they failed to comply with their obligations under F.S. 627.091 (6).

Under the pertinent provisions of F.S. 286.011, any such meetings that were held by NCCI to discuss these proposed rate increases were to have been in compliance with the following:

1. The meetings are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.
2. The minutes of the meeting shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purpose of this section, upon application by any citizen of the state.

It is my belief that the purpose of providing notice in the Florida Administrative Register is to allow interested individuals or entities to attend such meetings, determine the content of information discussed at such meetings so as to better inform themselves, and to be offered the opportunity to express concerns or opinions regarding the content of the items discussed at such meetings. In this particular case, if NCCI had issued, as we believe it was required to, notification of a public hearing to discuss their intention to raise rates by 17.1%/19.6%, I, as a potentially aggrieved policyholder, would have been afforded the opportunity to attend such meetings. My attendance would have allowed me to better understand the data and methodology relied upon by NCCI for formulating their proposed rate increases, and to express concerns or questions as to that data/methodology. As it stands now, a rate hearing is being scheduled before your office in less than five weeks, yet I have been provided with no opportunity to obtain insight into this process. I firmly believe NCCI has failed to comply with its legal obligations under these statutes, and their failure to comply leads to the strong possibility that I, as policyholder, and many of my clients as policyholders, will be detrimentally and irrevocably affected by any rate increase that emerges from the 8/16/16 meeting.

I request that you investigate my contention that NCCI has failed in its obligations under these two particular statutory provisions by failing to properly place notification in the Florida Administrative Register of meetings that it undoubtedly

David Altmaier, Insurance Commission

Re: August 16, 2016 hearing to consider NCCI's proposed 19.6% increase in workers' compensation rates

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participated in during the weeks and months prior to the issuance of its 17.1%/19.6% rate increases. Should you conclude that my concerns have been accurately and validly raised, I specifically request that you postpone the presently scheduled August 16, 2016 hearing on NCCI's requested rate increase until such time as NCCI has properly complied with their obligations under the statutory sections cited herein.

If I can be of any additional assistance in this process, or if you have any questions you wish to discuss with me, please do not hesitate to contact me at (305) 374-7750.

Sincerely,

James F. Fee, Esq.

JFF:mdf

Enclosures: Public Records Request