

**JOINT REPORT TO
THE PRESIDENT OF THE FLORIDA SENATE
AND
THE SPEAKER OF THE FLORIDA HOUSE OF REPRESENTATIVES**

BY

THE FLORIDA DEPARTMENT OF FINANCIAL SERVICES

**DIVISION OF INSURANCE FRAUD
AND
DIVISION OF WORKERS' COMPENSATION

I. DIVISION OF INSURANCE FRAUD

The Bureau of Workers' Compensation Fraud (BWCF) continues to implement a proactive approach in addressing the issue of fraudulent practices in the workers' compensation system. The Bureau continues to work closely with the Division of Workers' Compensation Compliance (BWCC) and the Department of Professional and Business Regulation (BPBR) by sharing information and participating in joint enforcement sweeps throughout the state. These sweeps have resulted in over twenty arrests for violations of workers' compensation statutes.

The Bureau continues to work several very large and complicated premium fraud cases, some in cooperation with federal investigative agencies. The Bureau along with the FBI will arrest five subjects after a year and one-half investigation, in January 2005, in which \$600 million in fraudulent activity took place in a nationwide scheme, \$300 million in Florida alone. Additionally, a case being investigated by the Bureau along with the U.S. Department of Labor, the FBI and U.S. Immigration and Customs Enforcement (ICE) Service with a documented \$500,000 of fraudulent activity in Florida should conclude in early 2005 with six arrests.

The Bureau developed and implemented an online reporting system, for insurance carriers to comply with F.S. 626.9891 (6) with regard to Workers' Compensation Anti-fraud efforts. The bureau also developed an internal Microsoft SharePoint Team Services site to allow criminal workers' compensation fraud investigators to share information, forms, and legal information necessary to conduct their criminal investigations.

We continue to provide training throughout the year to our criminal investigators to ensure that they are aware of recent legislative changes in workers' compensation enforcement and have made online training available to investigators who are not exclusively assigned to workers' compensation matters to familiarize them with this criminal activity so they may assist in these investigations if called upon to do so.

1. Statewide Statistics FY 2003-2004 (July 1 – June 30)

| Referrals | Cases Opened | Cases Closed | Cases Presented | Arrests | |
|-----------|--------------|--------------|-----------------|---------|--|
| 1863 | 562 | 463 | 144 | 113 | |

2. Referrals by Source

| | Insurance Carriers | DWC-Compliance | Others |
|----------|--------------------|----------------|--------|
| Received | 606 | 113 | 1144 |
| Opened | 253 | 45 | 264 |

3. Referrals sent to Division of Workers' Compensation Compliance- 19

4. Convictions- Total 84

| Type | Number of Convictions |
|---|-----------------------|
| Claimant Fraud | 46 |
| Working Without Workers' Compensation Insurance | 18 |
| Premium Fraud | 6 |
| Fraudulent Certificate of Insurance | 10 |
| Uttering a Forged Instrument | 0 |
| Grand Theft | 2 |

Number of Convictions by Judicial Circuit

| Circuit | Convictions | Circuit | Convictions |
|---------|-------------|---------|-------------|
| 1st | 10 | 11th | |
| 2nd | 7 | 12th | |
| 3rd | | 13th | 12 |
| 4th | 9 | 14th | 1 |
| 5th | 2 | 15th | 5 |
| 6th | 1 | 16th | |
| 7th | | 17th | 2 |
| 8th | 1 | 18th | 1 |
| 9th | 14 | 19th | 10 |
| 10th | 3 | 20th | 6 |

5. Staffing

| Office Location | Workers' Compensation Funded Investigators | General Fraud Investigators |
|-----------------|--|-----------------------------|
| Pensacola | 1 | 4 |
| Tallahassee | 0 | 3 |
| Jacksonville | 3 | 4 |
| Tampa | 2 | 5 |
| St. Petersburg | 2 | 4 |
| Orlando | 4 (1 vacant) | 6 |
| West Palm #1 | 0 | 6 |
| West Palm #2 | 5 | 1 |
| Ft. Myers | 2 | 2 |
| Broward #1 | 1 | 6 |
| Broward #2 | 0 | 6 |
| Broward #3 | 1 | 6 |
| Miami #1 | 0 | 5 |
| Miami #2 | 0 | 6 |
| Miami #3 | 4 (1 vacant) | 2 |
| Totals | 25 | 66 |

6. Prosecutions Declined

| Judicial Circuit | Number of Prosecutions | Reason For Decline |
|------------------|------------------------|--|
| 1st | 2 | Successful prosecution unlikely |
| 2nd | 1 | Successful prosecution unlikely |
| 3rd | 0 | |
| 4th | 10 | 6- Civil Settlement 4- Successful prosecution unlikely |
| 5th | 6 | 3- Civil Settlement 3- Successful prosecution unlikely |
| 6th | 0 | |
| 7th | 0 | |
| 8th | 1 | Civil Settlement |
| 9th | 0 | |
| 10th | 2 | Civil Settlement |
| 11th | 0 | |
| 12th | 0 | |
| 13th | 3 | 2- Civil Settlement 1- Successful prosecution unlikely |
| 14th | 0 | |
| 15th | 5 | 1-Victim refused to cooperate 2- Civil Settlement 2- ASA accepted restitution in lieu of prosecution |
| 16th | 0 | |
| 17th | 0 | |
| 18th | 0 | |
| 19th | 0 | |
| 20th | 2 | 1- Statute of Limitations 1- Successful prosecution unlikely |

7. Average Caseload and Turnaround Time by Case Type

*Indicates workers' compensation fraud funded investigator

Caseload averages may include all types of cases not only workers' compensation fraud cases.

| OFFICE LOCATION/ INVESTIGATOR# | AVERAGE CASELOAD | AVERAGE TURNAROUND TIME IN MONTHS | | | |
|---|----------------------------|-----------------------------------|----------------------------------|--------------------------|------------------------|
| | | Working Without | Premium Fraud | Claimant Fraud | False Certificate |
| Pensacola: 01012 00897 01539 01217 01172*(vacant 11 months) | 15 17 17 16 | 11 7 6 | | 2 15 11 3 | 7 |
| Tallahassee: 01496 | 18 | 12 | 7 | 7 | |
| Jacksonville: 01547* 01011 01505* 01013 01009 01233*(vacant 11 months) | 24 22 15 11 21 | 9 2 8 3 | 12 2 | 5 3 5 20 14 | 8 3 |
| Miami: 01548* 01549* 01193 01186* 01610* | 15 17 21 14 23 | 1 2 3 | 2 4 | 21 10 5 8 19 | 6 5 3 |
| West Palm Beach: 01307* 01611* 01310* 01183* 01308* | 12 12 12 12 25 | 9 14 14 3 | 13 11 9 9 29 | 2 | |
| Ft. Myers: 01260* 01201* | 16 13 | 6 7 | 8 | 6 | 9 |
| Broward County: 01173* 01609* | 19 15 | 8 9 | 7 66 | 5 | |
| Orlando: 01156* 01504* 01191 01234* 01139* | 28 23 19 20 28 | 6 3 | 2 | 3 4 12 3 | 7 4 3 12 3 |
| St. Petersburg: 01536 01312* 01503* | 16 23 20 | 4 9 7 | 8 | 5 4 | 3 11 |
| Tampa: 01157* 01235* | 19 17 | 4 6 | 7 | 2 5 | 7 9 |

Value of fraud cases presented - \$ 5,444,532.00

II. DIVISION OF WORKERS' COMPENSATION (Division)

1. Referrals between the Division of Insurance Fraud (DIF) and other Agencies

The Division of Workers' Compensation and the Division of Insurance Fraud continue to closely cooperate in carrying out our respective statutory duties. The Division of Workers' Compensation enforces administrative compliance with the workers' compensation law, pursuant to s. 440.107, F.S., while the Division of Insurance Fraud enforces the criminal provisions of the workers' compensation law, pursuant to s. 440.105, F.S. Our jointly developed referral program facilitates the efficient referral of cases between the divisions and allows each division to determine if an investigation will be initiated based upon a referral. Referrals are made to each division within 24 hours of a suspected violation of the law, and are considered a priority to be acted upon immediately.

The Bureau of Compliance and Division of Insurance Fraud made the following referrals during the period of July 1, 2003 through June 30, 2004:

The Division of Workers' Compensation referred 113 employers to the Division of Insurance Fraud for possible criminal investigation.

The Division of Workers' Compensation received 19 referrals from the Division of Insurance Fraud for administrative investigations.

In addition to referral activities with the Division of Insurance Fraud, the Division of Workers' Compensation established a referral program with the Department of Business and Professional Regulations (DBPR). If an employer is suspected of failing to secure workers' compensation coverage during a DBPR investigation, the employer is referred to the Division of Workers' Compensation for further investigation. If, during a Division investigation, an employer is suspected of working without a required state license, the Division will refer the employer to DBPR for further investigation.

The Division of Workers' Compensation has recently initiated a program to notify the U.S. Immigration, Customs, & Enforcement Department when persons engaged in work in Florida are suspected to be illegal citizens.

The Division also works closely with many local building and permitting agencies. These relationships mutually benefit the Division and the local agencies. The local agencies assist the Division in identifying employers who may not have workers' compensation insurance, while the Division refers unlicensed employers and employers who violate local ordinances to the local agencies.

The Division recognizes the importance of cooperating with other state and local enforcement agencies and will continue to facilitate these partnerships. The partnerships help maximize the Division's resources as well as enhance employer compliance with the various state and local statutory requirements.

2. Enforcement Activities and Workers' Compensation Exemptions

Stop Work Orders and Sweep Operations

During the period of July 1, 2003 through June 30, 2004, the Division served 1,791 stop work orders; assessed \$19,787,285 in penalties; caused \$25,474,512 in additional workers' compensation insurance premium to be generated; and caused 13,192 new employees to be covered by workers' compensation insurance.

In June 2004, the Bureau of Compliance conducted a three-day workers' compensation compliance sweep in the following areas: Panama City (Bay County), Tampa (Manatee and Pasco Counties), and Ft. Myers (Collier and Lee Counties). General contractors, drywall contractors, and drywall subcontractors were the primary focus of the

sweep. During the sweep, the investigators contacted the following number of employers to determine if workers' compensation coverage was in effect:

Panama City sweep team - 308 contacts and issued 37 stop work orders;

Tampa sweep team- 260 contacts and issued 29 stop work orders; and

Ft. Myers sweep team -356 contacts and issued 15 stop work orders.

A total of 81 stop work orders were issued during this three-day sweep operation. A sweep was also planned for September 2004, however, due to the Division's active involvement with hurricane relief efforts, the sweep was postponed until the first quarter of 2005.

Conditional Release of Stop-Work Orders and Periodic Payments of Penalty Plans

Effective July 1, 2004, section 440.107(7)(a), Florida Statutes was amended to authorize the Division of Workers' Compensation to conditionally release an employer from a stop work order upon a finding that the employer has complied with the coverage requirements of Chapter 440, Florida Statutes, and has agreed to remit periodic payments of the penalty pursuant to a payment agreement schedule. An employer is required make an initial down payment that equals at least 10% of the total assessed penalty or \$1,000, whichever is greater. Depending on the remaining amount of the penalty, an employer has either 12 or 24 equal monthly payments to repay the remaining penalty.

The Division has engaged in rulemaking to identify the requirements for the issuance of an Order of Conditional Release from Stop Work Order and the terms and conditions that an employer must meet to enter into a Payment Agreement Schedule for Periodic Payment of Penalty.

Since July 1, 2004, the Division has issued 1,043 stop work orders and assessed \$17,952,500 in penalties. Of the 1,043 stop work orders issued, 320 employers have entered into periodic payment plans with assessed penalties totaling \$6,942,272.

Notification to Employers about New Exemption Requirements

Senate Bill 50-A changed the eligibility requirements for obtaining a construction industry workers' compensation exemption. Effective January 1, 2004, only officers of a corporation who own at least 10% of the stock of the corporation are eligible for a construction industry workers' compensation exemption. Exemptions held by a sole proprietor or a partner of a partnership engaged in the construction industry became invalid on January 1, 2004.

In response to the legislative changes, the Division mailed a letter to all construction industry exemption holders on September 25, 2003 containing a detailed explanation of the January 1, 2004, exemption requirements, an application for re-issuance of their exemption and instructions for completing the re-issuance application. This letter was mailed to approximately 132,000 construction industry exemption holders, was posted on the division's website, and an announcement of the letter was sent to a number of Florida's construction trade associations.

In October 2003, the Legislature enacted provisions during a special session that allowed members of a limited liability company (LLC) engaged in the construction industry to be eligible for an exemption if the individual member provided proof of owning at least 10% of the limited liability company. A second letter was sent on November 5, 2003 to all construction industry exemption holders informing them of the LLC option.

From November 2003, through March 2004, all Division of Workers' Compensation, Bureau of Compliance staff (including investigators) was dedicated to processing and re-issuing exemptions. The Division made the processing and re-issuing of exemptions its top priority during this transitional period so that exemption holders who complied with the new exemption requirements would be able to continue to work without processing delays. As of December 21, 2004, a total of 96,284 exemptions have been re-issued.

Accessing other Agencies' Data to Assist in Enforcement Activities

The Division of Workers' Compensation has worked with the Department of Revenue to identify employers who may not have workers' compensation coverage. Employers file unemployment data with the Department of Revenue. Insurance carriers file proof of workers' compensation coverage data with the Division. The Division compared employers who filed unemployment data with employers that have workers' compensation insurance policies. The comparison resulted in an unmatched file of employers who had submitted unemployment data, but may not have secured workers' compensation insurance. The data comparison was further broken down by the number of employees for each unmatched employer. Unmatched employers with 100 or more employees were referred to investigators for an on-site inspection to determine if workers' compensation coverage was in effect. The next phase of the project is to identify and investigate unmatched employers with 50-99 employees.

The Division of Workers' Compensation has also obtained a listing of all the corporations that have been administratively dissolved by the Division of Corporations. The Division of Workers' Compensation is in the process of comparing the list of dissolved corporations with its exemption database to determine which exemption holders are no longer eligible for an exemption because the corporation specified in their exemption application has been dissolved.

Construction Policy Tracking Database

The Division has developed a Construction Policy Tracking Database. This database system provides information to contractors and other interested parties regarding the workers' compensation coverage status of the sub-contractors they use. The system is designed to send automatic electronic notification to the contractor concerning any changes to the sub-contractors' coverage status. This database is also a useful tool for local permitting and licensing officials and insurers. As of December 6, 2004, a total of 3,332 Construction Policy Tracking Database registrants are tracking 13,025 workers' compensation policies.

Anti-Fraud Public Service Announcement (PSA)

The Division launched a 13-week statewide radio campaign that focused on employer fraud and premium evasion. The radio campaign ends in February 2005. The PSA was produced in English and Spanish. The text of the PSA is provided below:

THE FLORIDA DEPARTMENT OF FINANCIAL SERVICES IS COMMITTED TO STOPPING WORKERS COMPENSATION FRAUD. EMPLOYERS WHO PAY CASH TO THEIR EMPLOYEES AND FAIL TO REPORT THESE CASH PAYMENTS TO THEIR INSURANCE COMPANY ARE BREAKING THE LAW. IF YOU SUSPECT AN EMPLOYER IS COMMITTING SUCH A CRIME OR DOES NOT HAVE WORKERS COMPENSATION COVERAGE... CALL 1-800-742-2214. IF YOUR TIP LEADS TO A CRIMINAL CONVICTION YOU MAY BE ELIGIBLE FOR A REWARD OF UP TO \$25,000. AGAIN THAT NUMBER IS 1-800-742-2214.

3. Division of Workers' Compensation Response to Hurricanes

Recovery and Relief Assistance

Much of the Division's Bureau of Compliance staff is located in field offices throughout the state. Several of the field offices were in the path, or in close proximity of the path of the 2004 hurricanes. As a result, the staff of the Bureau of Compliance was called upon to be part of the frontline of the Department of Financial Services personnel in providing assistance and information to citizens affected by the hurricanes.

Bureau of Compliance staff assisted in manning disaster centers throughout the state. The Division developed and distributed a hurricane recovery and relief informational flyer to homeowners. The flyers were distributed door-to-door in some of the hardest impacted areas of the state as well as to churches, stores, civic organizations, and neighborhood centers. A copy of the informational flyer is attached to this report titled "Insurance and Reconstruction Information for Property Owners." Bureau of Compliance staff participated in Construction Industry Fair days in Ft. Myers and Pensacola where they provided insurance information to homeowners and contractors.

The DWC also produced a radio public service announcement (PSA) that reminded homeowners to use a licensed and insured contractor. The PSA was aired in hardest hit areas from the hurricanes. The text of the PSA is provided below.

IN THE AFTERMATH OF A HURRICANE ...HOMEOWNERS CAN FACE ANOTHER DANGER...UNINSURED AND UNLICENSED CONTRACTORS. THE FLORIDA DEPARTMENT OF FINANCIAL SERVICES WANTS YOU TO KNOW THAT CONTRACTORS MUST HAVE WORKERS' COMPENSATION INSURANCE OR A VALID EXEMPTION. IF NOT, YOU COULD BE ON THE HOOK IF THEY ARE INJURED WHILE WORKING ON YOUR HOME. FOR MORE INFORMATION, CALL OUR HOTLINE AT 1-800-22-STORM.

Out-of-state Contractor Notification

The Division anticipated that many out-of-state contractors would come to Florida to aid in the clean-up and rebuilding effort. The Division developed a flyer to inform out-of-state contractors of the coverage requirements of Florida's Workers' Compensation Law and the consequences for not meeting those requirements. The Division then contacted many state and national trade associations throughout the country and informed them of Florida's workers' compensation coverage requirements. The Division asked the associations to distribute the flyers to their members. Some of the associations that were contacted included American General Contractors Inc., American Subcontractors Association Inc., and the National Roofing Contractors Association. The Division also contacted out-of-state chambers of commerce and asked them to distribute the flyer to their members.

A copy of the informational flyer is attached to this report titled "Important Workers' Compensation Information for Contractors".

4. Internal Training

During 2004, the Division of Workers Compensation held numerous workers' compensation enforcement training sessions for its compliance investigators, which are summarized below:

Special Training

The division held several specialized training sessions over the past year, some of the sessions included distance-learning conferences for those who were not able to attend in person. The primary focus of the training sessions was to give each investigator greater technical skills to enhance their enforcement efforts.

Spanish Training – An eight-hour course was provided to the investigators in the Pensacola and Jacksonville District Offices. This course provided basic Spanish communication for practical use. The investigators learned to pronounce and recognize words and phrases commonly used during an investigation at a construction site to better communicate with Spanish speaking employers and employees.

Ethics Training - This was an eight-hour course taught by a certified instructor from The Florida Department of Law Enforcement that assisted investigators in identifying potential ethical dilemmas, analyzing different situations that face investigators, and provided investigators with additional tools to assist in making ethical decisions. The ethics training was provided to all newly hired investigators.

NCCI Class Code Training - This five-hour training course was provided for all investigators. The class code assigned to an employer determines if an employer is considered in the construction or non-construction industry and whether the employee is properly classified for the work performed. The investigators learned about the most common construction codes, the codes' restrictions and differences, uncommon construction codes, techniques on how to find uninsured subcontractors, and interviewing skills as they relate to class code determination.

Supervisor Meetings – These quarterly meetings serve as strategic planning sessions for the Bureau of Compliance in which we review and update operating procedures, compare and analyze data, and identify areas of improvement within the enforcement process. These sessions are attended by the Investigation Managers, District Supervisors, Bureau Chief and may include the Director and Assistant Director.

New Investigator Training – New investigators attended a four-hour training session in Tallahassee on the Mission and Goals of the Division and on the Bureau of Compliance's official database, the Compliance and Coverage Automated System (CCAS). As new investigators are hired, the District Supervisors provide individualized training on policy and procedure, processes, forms, databases, and customer service. The investigator is then assigned to accompany experienced investigators in the field prior for two to three months prior to being assigned to perform enforcement action independently.

Bi-annual statewide meeting – In the spring and fall of each year, the Division conducts statewide training sessions in Orlando for its compliance investigators and examiners. The primary focus of these training sessions is to update staff on new procedures, policies, rule development, and projects the Bureau of Compliance is undertaking. During the statewide meetings in 2004, staff was trained on the legal issues that pertain to testifying in a deposition or proceeding. Techniques for preparing for the administrative hearing or deposition and conduct and demeanor for testifying were presented. The Division of Risk Management informed Investigators about the liability associated with driving a state vehicle as well as the Bureau's policies and procedures concerning state vehicles. The Division also provided a one-hour training session conducted by the Division of Insurance Fraud that highlighted the investigative process of a fraud investigator and focused on cooperation between the Division of Workers' Compensation and the Division of Insurance Fraud.

OSHA Training - The Miami District Office coordinated a three-hour training session with OSHA for Investigators. This training focused on key safety procedures for an investigator to follow when visiting a construction site.

Future Training

CLEAR Training – The Council on Licensure, Enforcement and Regulation (CLEAR) provides a 24-hour Certified Investigator Training Course for regulatory investigators. The Investigator must obtain a passing score to receive the national certification. During the three-day session, the investigator is trained on professional conduct, inter-agency relations, administrative law, the investigative process, principles of evidence, interviewing techniques, report writing, and the administrative and criminal process. (Scheduled for January 26-28, 2005)

5. DWC Office Locations and Staff

Last year, the Legislature provided the Division of Workers' Compensation funding to add 35 new Bureau of Compliance investigators. From an organizational perspective, the state is separated into a northern and a southern region. The northern region consists of the following offices: Pensacola, Tallahassee, Jacksonville, Panama City, Fort Walton Beach, Ocala, St. Augustine, Orlando, Daytona Beach, Cocoa, and Tavares. The southern region consists of the following offices: Miami, Ft. Myers, West Palm Beach, Plantation, Tampa, Sarasota, and New Port Richey. The enforcement staff now consists of 71 Investigators, 7 District Supervisors, and 2 Investigation Managers strategically located in 18 cities throughout the state.

| Office Locations | Number of Investigators |
|-------------------------|--------------------------------|
| Jacksonville | 5 |
| Ocala | 2 |
| Pensacola | 3 |
| Panama City | 2 |
| Ft. Walton Beach | 3 |
| Tallahassee | 4 |
| West Palm Beach | 7 |
| Plantation | 5 |
| Tampa | 3 |
| Sarasota | 5 |
| New Port Richey | 2 |
| Orlando | 6 |
| Daytona Beach | 2 |
| Cocoa | 1 |
| Miami | 9 |
| Ft. Myers | 9 |
| Tavares | 1 |
| St. Augustine | 2 |
| Total | 71 |

6. Average Caseload

For the period of July 1, 2003 through June 30, 2004, a total of 24,672 Bureau of Compliance cases were closed. The average caseload for each compliance investigator was 17.37 per month.