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# South Florida BUSINESS JOURNAL

## Regulator ruling deals blow to force-placed insurance industry

BY BRIAN BANDELL

A rate ruling by the Florida Office of Insurance Regulation dealt a blow to the controversial force-placed insurance industry, leaving some Miami class action attorneys feeling confident as they take on both insurers and banks.

Force-placed insurance is ordered by banks to protect collateral properties when homeowners decline to purchase insurance. The cost is passed on to borrowers. Some consumer advocates say the premiums are too high.

The OIR, which is investigating the force-placed insurance market, apparently agreed in the case of QBE Insurance Group.

Praetorian, a subsidiary of QBE, filed an application with the OIR to decrease rates 2.2 percent. The filing proposed to create a new insurance product by combining the force-placed business of QBE Specialty and Balboa Insurance. As of July 2011, the company's two subsidiaries had 115,049 policies in Florida for a total of \$494.4 million in annual premiums.

### REGULATOR REVIEWING RATES

However, the OIR stated that the company did not provide appropriate support for this, and its rates should be lowered 35 to 36 percent because they are already excessive.

Praetorian has 21 days to ask for an administrative hearing to challenge the ruling. It could also submit a new rate filing.

Praetorian is the larger of Florida's two force-placed insurance carriers. A study by Birny Birnbaum, executive director of the Center for Economic Justice, said Florida accounted for 35 percent of the nation's force-placed insurance premiums in 2011.

When considering Florida's entire homeowners insurance market, he estimated forced-placed insurance accounted for about 14 percent.

Birnbaum said the rejection of Praetorian's filing means that its rates will stay the same

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**Birny Birnbaum** | Center for Economic Justice

for now. It is possible the OIR could reject a rate filing from a previous year, he added.

However, one of the two plans in the application is a surplus line of insurance, so it does not have to file rates with the OIR.

"The only basis for going back and trying to do something about what they charged people is if the company made any materi-

al misrepresentations in their prior rate filings," Birnbaum said. "So the old programs will continue, and consumers will continue to be overcharged."



**Harke**

A handful of class action lawsuits in federal court in Miami seek to win reimbursements for consumers. One, led by Miami law firms Harke Clasby & Bushman LLP and Kozyak Troppin & Throckmorton, won class action status with allegations of inflated force-placed insurance premiums against Wells Fargo Bank and QBE. Partner Lance Harke said the case could go on trial in the summer of 2013, but a similar lawsuit against Wells Fargo and force-placed insurance provider Assurant could go to trial in December. He is also involved with similar lawsuits against Bank of America and JPMorgan Chase Bank.

"We are gratified that the OIR has taken a hard look at these excessive rates," Harke said. "Those insurance companies have a scheme with the banks to inflate the rates and kick back part of the premium to the banks."

### SOME RATES HARD TO JUSTIFY

Harke said he has ample evidence that banks have received "commissions" for obtaining force-placed insurance on properties. The rates are even harder to justify because they do not include all the protections of standard insurance, such as personal prop-

erty coverage, he added.



**Zelman**

Rich Zelman, an attorney with Miami law firm Sacher, Zelman, Hartman, Paul, Bailey & Sacher who often represents banks, said banks do not make money on force-placed insurance. They are often left with the bill because it is rare that a homeowner in foreclosure will be able to pay anything.

"The banks know that the rates are very high, and they don't like it," he said.

In the case where a bank is servicing a loan for an investor, such as Fannie Mae, the investor gets stuck with the force-placed insurance premium while the bank earns a kickback, Harke said.



**Dvorkin**

Howard Dvorkin, founder of Fort Lauderdale-based Consolidated Credit Counseling Services, said homeowners defaulting on their mortgages are not usually hurt by high force-placed insurance premiums because they often lose their homes. However, there can be an issue when a borrower attempts to modify a previously delinquent mortgage.

"Is it fair? No," Dvorkin said. "But neither is defaulting on your mortgage."

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