

# FLORIDA INSURANCE REPORT

Keeping You Informed About Florida  
Volume XIV, Issue 2



## Who Will Be The Next Insurance Commissioner?

By: Karen Asher-Cohen

Now that Governor Rick Scott and CFO Jeff Atwater have deadlocked on their choice for the new Florida Insurance Commissioner, it is anyone's guess who will succeed Kevin McCarty after his announced departure from the Office of Insurance Regulation on May 2, 2016. By law, the Governor and the CFO must agree on the choice for Insurance Commissioner and must comprise two of the three majority votes of the Cabinet members, with the other two Cabinet members being Attorney General Pam Bondi and Agriculture commissioner Adam Putnam. At the March 29, 2016, Cabinet meeting, the (then) top two candidates, Jeffrey Bragg and Rep. Bill Hager, made presentations to the Cabinet and answered questions from the four members. Bragg was the Executive Director of the U.S. Department of Treasury's terrorism insurance program from 2003-2014. Hager was elected to the Florida House in 2010, and was the appointed Insurance Commissioner in Iowa from 1986-1990. At the conclusion of the presentations, Atwater made a motion to appoint Rep. Hager as the next Florida Insurance Commissioner, at a salary of \$190,000. However,

Governor Scott refused to second the motion. Instead, Scott re-opened the application process until April 15, 2016, with the goal of discussing the appointment at the next Cabinet meeting, scheduled for April 26<sup>th</sup>. The existing candidates will still be eligible for consideration.

Also, at the March 29, 2016, Cabinet meeting, the Cabinet unanimously voted to appoint Leon Biegalski as the new Executive Director of the Department of Revenue. Biegalski was most recently the Deputy Secretary of the Department of Business and Professional Regulation.

With no obvious heir apparent in sight, Commissioner McCarty, presumably at the request of the CFO, sent a letter to Governor Scott on April 20<sup>th</sup>, amending the effective date of his resignation to 45 days after his successor is appointed by the Financial Services Commission. McCarty wrote: "I take this action to honor my commitment to facilitate a smooth transition as the 2016 hurricane season approaches."

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## Karen Asher-Cohen Receives “Breaking the Glass Ceiling” Award



Left to Right - Leight, VanDyke, Resnick, Asher-Cohen

On Sunday, April 3<sup>rd</sup>, Radey shareholder Karen Asher-Cohen was honored as a recipient of this year’s *Breaking the Glass Ceiling Award* sponsored by the Jewish Museum of Florida – Florida International University. This year marked the 20<sup>th</sup> year of the awards that recognize Jewish women in Florida who have broken the proverbial glass ceiling in professional fields that are normally dominated by men.

“Justice, justice, you shall pursue,” has been the driving force of Karen Asher-Cohen’s love of the law. Her 33-year legal career in Florida has been all about breaking the glass ceiling and pursuing justice – first as the only woman felony prosecutor in Tallahassee and for the Office of the Statewide Prosecutor, and then in the traditionally male-dominated insurance industry and legal professions. Karen became Deputy Commissioner at the Florida Department of Insurance and went on to be a founding shareholder of our firm in 2003. She represents dozens of national and multi-national insurance companies and public boards in Florida on insurance regulatory and transactional issues and in commercial litigation.

In 1998, Karen started representing the State of Florida as a founding member of the International Commission on

Holocaust Era Insurance Claims (ICHEIC). She helped draft the original Memorandum of Understanding to create ICHEIC and she drafted the Florida “Holocaust Victims Assistance Act,” s. 626.9543, prosecuted European insurance companies and their subsidiaries for failure to pay Holocaust-era insurance claims, helped draft the ICHEIC claims process that ultimately was translated into more than 20 languages (at no cost to claimants), and audited Holocaust-era insurance policy documents in Germany and Switzerland. By using her power as an insurance regulator, along with her intricate knowledge of insurance law, sense of justice, and strong Jewish faith, Karen was able to help achieve justice for Holocaust survivors and their heirs, with results including more than \$500 million in insurance and humanitarian claims paid to more than 82,000 claimants.

The other three recipients were:

Ruth Van Dyke was one of the first women assigned to Special Operations Forces and combat brigades and retired from the U.S. Army after 22 years of active duty.

Wendy Mann Resnick is a disability advocate and served as Executive Director of United Cerebral Palsy of Sarasota for 20 years.

Dr. Lynn Leight is a pioneer in the field of sex education and founded 17 nationwide Sex, Health, Education (SHE) Centers, providing low cost treatment and referral services for women and families.

Radey President Travis Miller shared, “the firm is extremely proud Karen is being recognized for the very significant work embodied in this award. Karen brings this same level of focus and commitment to all of our clients she serves.”

## Unclaimed Property Bill Signed Into Law

By: Karen Asher-Cohen

Governor Scott has signed into law SB 966, a bill sponsored by Representative Bill Hager (one of the finalists for the Insurance Commissioner job) and Senator Lizbeth Benacquisto, which will require life insurance companies to search the United States Social Security Death Master File (“DMF”) and compare their life insurance records going back to 1992, in an attempt to locate additional life insurance beneficiaries. Florida has been a lead state, along with California, Pennsylvania, New Hampshire, and North Dakota, in the multistate examination process conducted by the NAIC Life/Annuities Claim Settlement Practices Task Force. To date, Florida has signed settlement agreements with over 70% of the life insurance market.

Among other things, the new law requires insurers annually to compare life insurance, annuity contract, and retained asset account records, that were in force on or after January 1, 1992, to the DMF. However, any insurer that has entered into a regulatory settlement agreement with Florida as of June 30, 2016, or has been found to have no such violations as the result of a targeted market conduct examination, must only conduct the comparison to all in-force policies.

Upon the passage of SB 966, Commissioner Kevin McCarty made the following statement:

I applaud the actions of the Florida Legislature today in passing SB 966 and its companion bill HB 1041, which will help to reunite millions of dollars of life insurance benefits with their rightful owners in our state. This effort has been made possible through the hard work and dedication of Chief Financial Officer Jeff Atwater, Representative Bill Hager, Senator Lizbeth Benacquisto and the many legislative committee members who fought off attempts by some parts of the life insur-

ance industry to limit the number of Floridians that would benefit from this important legislation. By searching all their records, both going forward and then retroactively to 1992 against the United States Social Security Death Master File, life insurance companies would have to make a reasonable effort to investigate a claim when they have actual knowledge of a life insurance policyholders death and either return those monies to the beneficiary or report and remit it to the CFO’s unclaimed property unit, who will forever have these funds available for the owners to collect.

After Governor Scott signed the bill, CFO Jeff Atwater similarly stated:

The purchase of a life insurance policy is one of the most important purchases a family can make, and yet it was discovered several years ago that many life insurance companies built in business practices that intentionally shielded them from knowledge of a policyholder’s death, a practice which drastically reduces the number of policies that are properly—and timely—paid out. Through more than five years of regulatory investigations, Florida has been a leader in securing national settlement agreements with twenty of the largest insurance companies in the nation—agreements that ensure these companies will seek out beneficiaries and pay them long overdue benefits. While these agreements corrected the course for the way these twenty companies conduct business, it was time to ensure that all companies operating in the state of Florida were held to the same standards of upholding the promises they made to policyholders.

## OIR Issues Guidance to Life & Health Insurers on PPACA Compliant Products and Timelines

By: Karen Asher-Cohen

Eric Johnson, the Chief Actuary and Director of the Life & Health Product Review Section of OIR, issued a 6-page letter of guidance to life and health insurers about the form and rate filing process for Patient Protection and Affordable Care Act (PPACA) compliant products in the small group and individual markets. Also, Johnson advised companies that while OIR would continue to process other life and health filings unrelated to PPACA, e.g., long-term care, Medicare supplement, and annuity products, during the May-August period, he asked that they delay making “any non-essential filings of these types during this period to allow analysts to focus on the PPACA filings.” The filing submission deadline for PPACA compliant products in the individual and small group markets is May 11, 2016. The OIR must finish its review of these filings by August 23, 2016. Moreover, Johnson advised that the filings would be reviewed in the order they are received, and OIR will not grant any

“expedited status” to any filings.

The guidelines also include what information and templates must be filed for all Qualified Health Plans, and addresses the required Drug Formulary Attestation. In addition to HIV/AIDS, the OIR will also monitor other chronic conditions, including Bipolar Disorder, Breast Cancer, Diabetes, Hepatitis C, Multiple Sclerosis, Prostate Cancer, and Rheumatoid Arthritis, to ensure that a company’s drug formulary is not discriminatory in benefit design, benefit implementation, or medical management techniques, and does not discourage enrollment of individuals with chronic health needs.




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## OIR Issues Informational Memorandum to Life & Health Insurers

By: Karen Asher-Cohen

OIR issued Informational Memorandum #OIR-16-01M on March 30, 2016, to notify all life and health insurers and HMO’s in Florida, that it would be initiating a data call on April 1, 2016, to collect Quarterly Comprehensive Health (QCH) data reporting. The Office will now include indemnity companies, along with the HMO’s, in the information collected to create its Managed Care Report. Additionally, OIR will be using a new template for this data call, which is a replica of the Annual Statement Analysis of Operations by Line of Business. The first quarterly report will be due on May 16, 2016, with the subsequent three reports due on August 15, 2016; November 15, 2016; and March 1, 2017.

## New Limited Sinkhole Coverage Authorized as of July 1

By: Travis Miller

A new law in Florida will allow insurers to offer a “limited sinkhole coverage insurance policy” beginning July 1, 2016. An insurer seeking a certificate of authority to transact the limited sinkhole coverage will be required to have only \$7.5 million in capital and surplus.

A limited sinkhole coverage insurance policy is a repair-only policy covering only the peril of sinkhole. The policy may, but is not required to, cover contents and additional living expenses. The policy may limit coverage to the repairs necessary to stabilize the building and repair the foundation in accordance with the recommendations of a professional engineer. Payments for the repairs must be made jointly to the insured and the contractor.

The forms used for limited sinkhole coverage are not subject to regulatory review and approval. The rates must be filed with the Office of Insurance Regulation for notice purposes, and the insurer must maintain actuarial support for the rates in the event the OIR chooses to review them.

The new law allowing limited sinkhole coverage takes effect July 1.

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## Department of Financial Services Proposes Prompt Notice Rule

By: Travis Miller

The Department of Financial Services has published notice of a rule development workshop relating to a potential amendment to Rule 69B-220.051, “Conduct of Public Adjusters.” An existing statute (section 626.854) requires a public adjuster to ensure that “prompt notice” of a claim is given to an insurer. The Department of Financial Services’ rule amendment would specify that a public adjuster is presumed to have given prompt notice of a claim if it notifies the insurer of the claim within five business days. The department’s rationale for the amendment is that, “Requiring public adjusters to notify insurers of claims within a specified time period will assist insurers in the assessment and timely settlement of such claims.” However, a presumption that the prompt notice requirement is satisfied when

notice is provided within five business days is not the same as “requiring” notice within five business days. It is therefore unclear whether the amendment will have any real value in assisting insurers in the settlement and timely settlement of claims as is the department’s stated intent.

The draft rule remains in its early stages, and interested parties are encouraged to provide comments relating to the potential change.

## FSU Risk Management Program Continues to Grow

Ranked 7th in the nation among all schools and 5th among public universities, the Risk Management & Insurance program is one of the highest ranked programs at Florida State University. The College of Business' online master's degree program (excluding MBAs) also is ranked 4th in the nation. The success of these programs has led to continued growth in the major. The major count typically was between 100-140 for a number of years, but climbed to 154 in 2015 and is now over 200.

Several factors have contributed to the increased number of students interested in Risk Management & Insurance. The College of Business has emphasized opportunities for students to interact with members of the insurance industry, such as through on-campus speakers, student attendance at industry seminars, and internships. In addition, the job placement rate is high, with nearly all gradu-

ates finding jobs within the industry. Starting salaries also are attractive compared to other industries, and graduates have opportunities for rapid advancement as the industry is in a transitional period with many employees nearing retirement and with technology playing an increasing role within the industry.

There are numerous opportunities for insurance industry officials to become involved with the FSU Risk Management & Insurance program. These opportunities range from recruiting and hiring students to offering internships, and serving as mentors for students with interests in particular fields to financial support.

\*Travis Miller currently serves as chairman of the Executive Council for the Florida State University College of Business Risk Management & Insurance Program.

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## Radey Welcomes Two New Shareholders

By: Travis Miller



Radey is pleased to announce that Brittany Adams Long and Angela Miles have become shareholders of the firm. Brittany is board certified by the Florida Bar in State & Federal

Government and Administrative Practice. She practices primarily administrative law and appellate law. In the administrative arena, Brittany has substantial experience assisting clients in government procurements, rule challenges and public records/Sunshine Law issues. Prior to joining Radey, Brittany served as assistant general counsel of the Florida Department of Management Services, which is the state agency responsible for handling most governmental procurements. She also previously worked in the appellate section of the prosecution services unit of the Florida Department of Health. Brittany clerked for the Honorable Robert. T. Benton at the outset of her legal career.



Angela practices employment law and administrative law. She regularly assists regulated industries and other businesses with employment related issues such as wage and hour claims, employee leave issues, and issues arising out of employee terminations.

Angela frequently provides training to employers regarding emerging employment practices. Angela also represents clients in administrative law issues including procurements, challenges to agency actions, and agency rulemaking. Angela clerked for Florida's First District Court of Appeal before beginning her career with Radey.

"We are pleased that Brittany and Angela have accepted our offer to become shareholders of the firm," said firm president Travis Miller. "They have played a significant role in helping the firm provide strategic advice and litigation services to the regulated industries we serve."

## McCarty Extends Service as Search Continues

By: Travis Miller



Insurance Commissioner Kevin McCarty announced earlier this year that he would be leaving his position in the first week of May. This triggered a search for a replacement that remains ongoing, with the next interviews expected to take place at an April 26 meeting of the Financial Services Commission.

With the effective date of his resignation soon approaching, Commissioner McCarty today informed the Financial Services Commission that he will extend his service until 45 days following the naming of his successor. McCarty cited his commitment to facilitating a smooth transition, especially with the 2016 hurricane season approaching, as the reason for delaying the effective date of his resignation.

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## ORSA is Coming

By: Travis Miller

Governor Scott has signed SB 1422 into law, meaning that Florida has adopted the Own-Risk and Solvency Assessment (“ORSA”) reporting requirement. SB 1422 is now known as Chapter Law 2016-206. A companion bill, SB 1416 (now known as Chapter Law 2016-205), provides for the confidentiality of information contained in the ORSA reports.

An Own-Risk and Solvency Assessment is an internal assessment, appropriate to the nature, complexity, and scale of an insurer or insurer group, of the material and relevant risks associated with the business plan of the insurer or group and the sufficiency of capital resources to support these risks. Each insurer subject to the requirement will be required to maintain a risk management framework for identifying, assessing, monitoring, managing and reporting material and relevant risks.

An insurer subject to the law will be required to conduct

an ORSA at least annually, and whenever there are changes to the risk profile of the insurer or group. The insurer will be required to submit an ORSA summary report each calendar year. The insurer must notify the Office of Insurance Regulation by December 1, 2016, of its selected annual submission date and must submit its initial ORSA summary report by December 31, 2017. The report will be signed by the insurer’s chief executive officer or chief risk officer.

The new law contains several exemptions, most notably for an insurer with less than \$500 million in written premiums or for members of an insurer group with less than \$1 billion in written premiums. The law also allows the OIR to require an exempt insurer to file an ORSA report in certain circumstances.

The same law also will require insurers to file a Corporate Governance Annual Disclosure beginning in 2018.

## Experience.Service.Success.

The Radey Law Firm believes that service to clients must be efficient and dedicated. Our location in Tallahassee, Florida, provides us the opportunity to be at the heart of the regulatory, legislative, and judicial arenas. The Florida Insurance Report is provided to our clients and friends in a condensed summary format and should not be relied upon as a complete report nor be considered legal advice or opinion.

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