

FLORIDA INSURANCE REPORT

Keeping You Informed About Florida
Volume XVI, Issue II
November, 2018



The Counting Is Done

By: David Yon

The Presidential election in 2000 remains the standard by which all elections are measured. In that election, we learned what a “hanging chad” was and when it counted as a “vote.” In the end, 2,912,790 votes went to George W. Bush and 2,912,353 were counted for Al Gore. But not before many lawyers earned a lot of money and many courts got to cast their own votes about what should happen.

Going into this past weekend, it appeared 2018 was going to be the election to knock 2000 off the top. Florida had counted most of the votes twice and at least two statewide races were getting ready for manual counts. Federal District Court Judge Mark Walker was not impressed. “We have been the laughingstock of the world, election after election,” Judge Walker told lawyers last Thursday morning. “Yet we still chose not to fix it.”

But the weekend produced a little magic and now it seems

everything is settled. Florida’s new governor will be Republican Ron DeSantis. After a machine recount of the ballots, DeSantis received 4,075,445 votes, while Andrew Gillum received 4,041,762 votes. The difference of 33,683 (very close to the first count) was enough to avoid sending the counters to remedial school for hand counting.

The race for the U.S. Senate was tighter. The first recount did not resolve anything as the margin between the candidates stayed the same, below .25%, requiring a manual recount. Democrat Bill Nelson was seeking re-election but was approximately 12,000 votes behind Republican Rick Scott. After counting school, the “election team” started counting by hand and trying to determine “voter interest.” Scott maintained his lead, however, and before the end of the day Sunday, Nelson conceded.

Nikki Fried became the only Democrat to win a statewide election and she will become the state’s first woman to serve as Florida’s Agriculture Commissioner.

Inside This Issue

A Long Road Back	2
OIR Approved Workers’ Compensation Rate Decrease.....	3
Title Insurance Workshop.....	3
Off to the Races.....	4
Summary of 2018 Florida Constitutional Amendments.....	5
Recent Bad Faith Decision.....	7



A Long Road Back

By: David Yon



On October 11, Hurricane Michael roared through the Florida Panhandle with the same devastating winds that Hurricane Andrew used to flatten Homestead so many years ago. Most storms of late seem to rely on surge and rain to do their damage. Not Michael. He rolled up his fist and pounded anything that got

in the way. The storm left one acre of trees snapped in half and another uprooted. The only good news was the storm was small in area and moved through fast. A slight jog kept the worst of the storm west of Tallahassee. The city still took a hit, but nothing compared to our neighbors, family, and friends to the west.

The winds had hardly died down though when a great migration started moving west from Tallahassee—trucks loaded with diapers and baby wipes, gas cans, chain saws, and food followed. The Radey Law Firm is proud to be a part of this effort to help. Panama City, Mexico Beach, Blountstown, Altha, Marianna, Grand Ridge and many more places were destroyed, and it will take years to rebuild – if it can be done at all. Karen Jeter and her husband Mark joined up with the disaster relief team, a volunteer group helping people like the 70-year-old woman who lived in a single wide trailer she had just paid off. It was destroyed by multiple trees, but she needed access to her shed and deep freezers. The chainsaw gang went to work and cleared the necessary path as the woman watched them, repeatedly thanking them as she cried.



Radey CEO, Brent Johnson, has spent time in several small Panhandle communities and found them virtually destroyed.

Radey Associate Lauren Thompson grew up in Panama City and her family has lived there for more than 30 years. Panama City was one of the places Michael hit the hardest. The family home was heavily damaged while her



father's office was destroyed. On October 20th, Lauren loaded up a car with donations and supplies from her coworkers and delivered the supplies to the devastated downtown Panama City area. She also delivered supplies to a local church that, despite sustaining immense damage from the hurricane, was serving as a distribution center and feeding hungry hurricane evacuees. Associate Jordann

Allen made sure families in Marianna had "Trunk or Treat." The Radey team also collected items to send to Holmes County, specifically Bonifay, when an urgent need for diapers and formula was identified and relayed to the Tallahassee community.

OIR Approved Workers' Compensation Rate Decrease

By: *Travis Miller*

The Florida Office of Insurance Regulation has approved a statewide overall rate level decrease of 13.8 percent for workers' compensation insurance rates. The approval applies to new and renewal workers' compensation insurance policies effective as of January 1, 2019.

The National Council on Compensation Insurance submitted a rate filing in late summer providing for a statewide average rate decrease. As is typically the case, the Office of Insurance Regulation scheduled a public hearing on NCCI's filing. However, Hurricane Michael prompted cancellation of the hearing. The OIR instead accepted public input through email while also conducting its own review.

On November 2, 2018, the OIR informed NCCI that it largely agreed with the proposed decrease but believed limited additional revisions were appropriate that would result in a slightly larger decrease. NCCI accepted the suggested changes and submitted an updated filing on November 7, 2018.

Governor Rick Scott applauded the rate reduction as a further step in enhancing the ability of Florida businesses to grow and add jobs. Chief Financial Officer Jimmy Patronis added that the nearly half-billion dollar premium impact will help businesses and local economies. Patronis cautioned, however, that Florida must continue to watch the workers' compensation insurance market because market changes can lead to periods of rising rates.

Insurance Commissioner David Altmaier said about the rate approval, "Workers' compensation insurance is a critical operating cost for business owners and the 13.8 percent rate decrease approval will allow employers to better support Florida's families, visitors and labor force. This most recent decrease marks approximately \$454 million in savings for employers and can help facilitate additional cost savings for the communities they serve."

Title Insurance Workshop

By: *David Yon*

The Office of Insurance Regulation has noticed a workshop for November 28, 2018 at 10:00 a.m. the purpose of the workshop is to assist OIR in gathering information pertaining to title insurance rates. Section 627.782, Florida Statutes, requires OIR to adopt a rule specifying the premium to be charged in this state by title insurers. The OIR initiated a data call in 2014 regarding the collection of data for the adoption of title insurance rates pursuant to sections 624.307 and 627.782, F.S., and Chapter 69O-186.013-14, F.A.C. The purpose of this workshop is for the Office to receive input from affected entities and people.

OIR Summit Rescheduled

The Office of Insurance Regulation's annual summit was also impacted by Hurricane Michael. Originally set for October 24-25, 2018, it has been rescheduled for January 15-16, 2019.

The Summit provides two focused tracks - Life and Health or Property and Casualty - and staff from OIR will provide presentations on topics such as making a successful form and rate filing, addressing AOB issues, Florida's private flood insurance market, company risk and solvency position and reinsurance and catastrophe reporting. The Summit is a wonderful way to network and meet the employees of the OIR.

Off to the Races

By: Travis Miller

DeSantis Prevails in Governor's Race

By the time election night was over, Republican Ron DeSantis appeared to prevail over Democrat Andrew Gillum in the race to succeed Rick Scott as Florida's Governor. The margin of victory was small, but not quite as thin as in some other well-publicized races. Gillum called DeSantis on election night to congratulate him on the apparent victory.

As final results continued to come in, the difference between the candidates fell under 0.50%, which is the threshold for a mandatory machine recount under Florida law. If the difference is less than 0.25%, state law requires a hand recount.

The results of the machine recount took about a week to come in. They continued to show DeSantis with a lead of about 34,000 votes, or 0.41%. This result was substantially unchanged from election night. Gillum then conceded the race, wishing the Governor-elect well and emphasizing his appreciation for being able to engage and energize so many voters.

DeSantis is well into the transition process. DeSantis also offered that he and Gillum could have conversations about issues affecting Floridians. "We have both traveled the state and met Floridians from all walks of life. Shar-

ing these experiences will, I believe, help us unite our state and build toward unity on behalf of the people of Florida," DeSantis said.

DeSantis has outlined several priorities for his administration, including continuing job growth in Florida and addressing water quality issues including concerns with red tide.

Jimmy Patronis Continues as State Chief Financial Officer

Florida's Chief Financial Officer is a Cabinet-level position responsible for serving as the state treasurer. More germane to the insurance industry, the Chief Financial Officer also oversees the Division of Agent & Agency Services, which is responsible for regulating insurance agents, adjusters and other licensees, and the Division of Workers' Compensation, which oversees employers' adherence to state workers' compensation laws. The state Chief Financial Officer also is a member of the four-person Financial Services Commission (along with the Governor, Attorney General and Commissioner of Agriculture). The Financial Services Commission is responsible for appointing Florida's insurance commissioner and for promulgating administrative rules regulating the insurance industry.

Four years ago, Republican Jeff Atwater was re-elected Chief Financial Of-



ficer. He later stepped down to become a Vice President of Florida Atlantic University. Governor Rick Scott then appointed Jimmy Patronis to succeed Atwater. Patronis ran in the 2018 election cycle to keep his seat. He faced Democrat Jeremy Ring, a former state senator and early executive of Yahoo!

Patronis prevailed on election night despite strong showings from Democrats. CFO Patronis had a sufficient margin of victory to avoid to recount uncertainties and animosity that have characterized other statewide races. The CFO therefore will retain his position and continue to be a member of Florida's Cabinet and Financial Services Commission.

CFO Patronis is from Panama City, Florida. He has many family members and friends in the Panhandle. In recent weeks, CFO Patronis has been focused on assisting Floridians in the Panhandle who were affected by Hurricane Michael only about a month ago.

Summary of 2018 Florida Constitutional Amendments

By: Karen Asher-Cohen



Florida voters, in the November 6, 2018 Midterm election, voted to approve eleven out of the twelve Florida constitutional amendments on the ballot. Originally, thirteen amendments appeared on the ballot; however, amendment 8 was struck from the ballot by the Florida Supreme Court. Six other amendments were challenged as well. As an example, Leon County Circuit Court judge, Karen Gievers, ruled that amendments 7, 9, and 11 be removed from the ballot for improper bundling of issues. Subsequently, the Florida Supreme Court overturned Judge Giever's decision and the three challenged amendments remained on the ballot.

Of the twelve amendments that appeared on the ballot, only amendment 1, the Homestead Exemption Increase Amendment, was defeated as it received less than the minimum percentage of votes required to pass. In order for a constitutional amendment to be approved, the amendment must receive, at a minimum, 60 percent of the vote.

The following constitutional amendments were approved:

Amendment 2, Limitation On Property Tax Assessments

This amendment retains constitutional provisions that currently limit increases of property tax assessments, for certain nonhomestead real property, to 10 percent per year. This provision excludes school district taxes.

Amendment 3, Voter Control Of Gambling In Florida

This amendment provides Florida voters with the exclusive right to determine the authorization of casino gambling in Florida. For casino gambling to be authorized pursuant to law, the amendment requires citizen-initiated ballot measures. As a result, amendments authorizing casino gambling cannot be offered by the Constitutional Revision Commission or the Legislature. The amendment does not affect the Legislature's ability to regulate gambling and gaming activities. Additionally, the amendment specifically excludes "parimutuel wagering on horse racing, dog racing, or jai alai exhibitions" from the definition of "casino gambling."

Amendment 4, Voting Restoration

This amendment automatically restores voting rights to former felons who have completed the full terms of their sentence, including probation and parole. This amendment excludes those who have been convicted of murder or felony sex offenses, and strictly applies to voting rights. It does not affect restoration of other civil rights. Currently, felons are not permitted to apply for restoration of voting rights for a minimum of five years after completing the terms of their sentence, provided they have not been convicted of certain enumerated crimes that would increase the time in which they are prevented from applying.

Amendment 5, Supermajority Vote

Required to Impose, Authorize, or Raise State Taxes or Fees

This amendment requires the legislature to pass legislation by a two-thirds vote of the house and senate in order to impose, authorize, or raise a state tax or fee. However, counties, municipalities, school boards, and special districts are exempt from this requirement, as the amendment specifically provides that it does not apply to those entities.

Amendment 6, Rights of Crime Victims; Judges

Amendment 6 implements the creation of constitutional rights for crime victims, allows for victims to enforce their rights, and also requires the court to facilitate victims' rights. This amendment raises the retirement age for justices and judges from seventy years to seventy-five years of age, and deletes authorization for a justice or judge to complete a term if one half of the term is served by the time they reach the age of retirement. Finally, amendment 6 imposes Article V, Section 21, which requires a state court or hearing officer to interpret statutes or rules de novo, rather than deferring to an administrative agency's interpretation.

Amendment 7, First Responder & Military Member Survivor Benefits; Public Colleges and Universities

This amendment provides for death benefits for qualifying survivors of first responders and military members who

Cont. on Next Page

Constitutional Amendments - cont.

die while performing their official duties, as well as a waiver of certain educational expenses incurred by the child or spouse of the deceased. Requirements are set forth to determine eligible first responders and military members. Amendment 7 also establishes the existing state college system as a constitutional entity and sets forth a governance structure. Further, the amendment requires a supermajority vote of the board of trustees or board of governors, to raise, impose, or authorize any fee, if approval by the board of trustees or board of governors is required by law.

Amendment 9, Prohibits Offshore Oil & Gas Drilling; Prohibits Vaping in Enclosed Indoor Workplaces

Amendment 9 revises two separate articles of the Florida Constitution: Article II and Article X. Article II is revised to prohibit offshore drilling, for purposes of extraction or exploration of oil or natural gas, specifically beneath state waters that have not been alienated and “lie between the mean high water line and the outermost boundaries of the state’s territorial seas.” Transportation of such products produced outside the specified area is not prohibited by this amendment.

Article X, Section 20 is amended to include vaping in the prohibition of smoking in indoor work places. Section 20, as it is presently written, prohibits only tobacco smoking indoor work places. Further, the amendment allows for the adoption of more restrictive ordinances regulating vaping.

Amendment 10, State and Local Government Structure and Operation

This amendment requires the legislative session to commence in January during each even-numbered year, and removes authorization for the legislature to alter the commencement date. The following language is removed from Article III, as it pertains to the start of the legislative session: “or such other date as may be fixed by law.” This amendment additionally creates the Office of Domestic Security and Counterterrorism, within the Department of Law Enforcement, and requires the legislature to provide for the Department of Veterans’ Affairs. This amendment requires the following offices to be elected by the electors of each county: sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the court. Further, this amendment adds language to Article VIII that prohibits a county charter from abolishing the abovementioned offices, transferring the duties of the offices, changing the length of the terms, or establishing any other method for selection other than election.

Amendment 11, Property Rights; Removal of Obsolete Provisions; Criminal Statutes

Amendment 11 eliminates discriminatory language pertaining to real property rights, specifically rights of aliens who are ineligible for citizenship. Currently, Article I, Section 2, provides that “the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law.” Additionally, this amendment removes language regarding high speed rail, and deletes text

pertaining to the amendment of a criminal statute, such that only prosecution of a crime that was committed before the repeal of a statute, and not the amendment of a statute, is authorized.

Amendment 12, Lobbying and Abuse of Office by Public Officials

This amendment provides for the expansion of restrictions currently in effect on lobbying by former public officers. Additionally, amendment 12 establishes new lobbying restrictions for former justices and judges, as well as serving public officers. The following exception is added to Article II, Section 8(f)(4): “[t]his subsection shall not be construed to prohibit a public officer from carrying out the duties of his or her public office.” Finally, the amendment prohibits the abuse of office, by a public officer or public employee, for purposes of obtaining a disproportionate benefit.

Amendment 13, Ends Dog Racing

This amendment phases out wagering on commercial dog racing (most notably, greyhound racing) by the year 2020. The amendment provides that it does not affect a licensed greyhound permitholder’s eligibility to conduct pari-mutuel activities that are authorized by law. This amendment was found to be misleading and inaccurate by Judge Karen Gievers. Ultimately, the Florida Supreme Court reversed the ruling of the lower court, and ordered that amendment 13 appear on the ballot.

Recent Bad Faith Decision

By: Karen Asher-Cohen and Lauren Thompson

On September 20, 2018, in *Harvey v. GEICO General Insurance Company*, the Florida Supreme Court quashed the Fourth District Court of Appeal's decision below, because the 4th DCA had misapplied Florida Supreme Court bad faith precedent and relied on federal precedent that was inapplicable to the proceeding. Therefore, the Court found that GEICO had acted in bad faith by failing to settle the claim, and remanded with instructions to reinstate the judgment.

The insured, James Harvey, was involved in an automobile accident. The other driver involved in the accident, John Potts, died as a result of injuries sustained in the crash, leaving behind a wife and three children. The insured's vehicle was registered in the insured's name as well as his business's name, with \$100,000 in insurance coverage. GEICO resolved the issue of liability adversely to its insured.

Potts' estate, through its attorney, communicated to the GEICO claims adjuster its request for a statement from the insured, to determine any additional assets the insured

may own. The adjuster denied the request and never told the insured of the request. GEICO subsequently tendered policy limits, and provided Potts' attorney with an affidavit of coverage and a release. Subsequently, Potts' estate returned the check received from GEICO and instead filed a wrongful death action against the insured. The estate was awarded \$8.47 million in damages, which was assessed against the insured for the full amount. The insured then filed a bad faith action against GEICO.

The Court held that the Fourth District's finding that the evidence was insufficient to prove the insurer exhibited bad faith by failing to settle its insured's claim was erroneous. Viewing the evidence in the light most favorable to the insured as the nonmoving party, "GEICO's independent investigation of the facts revealed, within days after the accident, that this was a case of clear liability and substantial damages, and a jury verdict could exceed the insured's \$100,000 policy limit." The Court found that "there was competent, substantial evidence to support the jury's finding that GEICO acted in bad faith in failing to settle the estate's claim against Harvey [GEICO's insured]."

Ashley Moody Elected as Florida's Next Attorney General

With current Attorney General Pam Bondi facing term limits, Floridians knew they would be selecting someone new to serve as Attorney General. The race was between Republican Ashley Moody and Democrat Sean Shaw. Moody prevailed with a strong enough margin to avoid the recounts found in other statewide races.

In the race, Moody emphasized her experience as both a prosecutor and a circuit judge. Shaw, on the other hand, had served as a state representative and a trial lawyer. Shaw also previously had been Florida's Insurance Consumer Advocate. One of the strengths of Moody's campaign was the bipartisan support she received from many sheriffs across the state. Her campaign also focused on her principles of supporting law enforcement, respecting the rule of law and protections of the Constitution, continuing to fight the opi-

oid epidemic, and protecting seniors against fraud and predatory practices.

Fried Wins Race for Commissioner of Agriculture

The race to succeed current Commissioner of Agriculture Adam Putnam was the closest of all. When election night drew to a close, Republican Matt Caldwell appeared to hold a razor-thin edge. However, as elections officials continued to count ballots in Democrat strongholds, the balance shifted in favor of Democrat Nikki Fried. Fried moved ahead by about 6,000 votes and held onto that lead through the recount process. This win truly went down to the wire considering that more than 8 million votes were cast. Fried became the only Democrat elected to the Cabinet this year. Her campaign focused on the three "W's" that are prominent discussion points in Florida right now--weapons (safety and regulation), weed (availability of medical marijuana) and water (stemming toxic algae blooms that have affected the state).

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.

Our Insurance Team



Karen Asher-Cohen
Shareholder
karen@radeylaw.com



Bert Combs
Shareholder
bcombs@radeylaw.com



Travis Miller
Shareholder
tmiller@radeylaw.com



David Yon
Shareholder
david@radeylaw.com



Donna Blanton
Shareholder
dblanton@radeylaw.com



Laura Dennis
Associate
ldennis@radeylaw.com



Drew Parker
Of Counsel
dparker@radeylaw.com



Tom Crabb
Shareholder
tcrabb@radeylaw.com



Angela Miles
Shareholder
amiles@radeylaw.com



Lauren Thompson
Associate
lthompson@radeylaw.com

Florida's Capital Law Firm for Regulated Industries

301 South Bronough Street, Suite 200, Tallahassee, FL 32301

850-425-6654/850-425-6694 (Fax)

www.radeylaw.com