

DEPARTMENT OF FINANCIAL SERVICES

# Division of Risk Management

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## Agenda

- Division of Risk Management Overview
- Premium Assessment
- Coverages and Claims
- Recommendations

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## Background - Division of Risk Management

- The Division of Risk Management was established in 1972 and its duties are outlined in Chapter 284, F.S.
- Prior to 1972, the State of Florida enjoyed sovereign immunity from tort claims and lawsuits.
- When the state waived sovereign immunity in 1972 with the enactment of Section 768.28, F.S., the Legislature realized it needed insurance coverage for the resulting claims.
- Forty-seven state agencies and universities are currently provided coverage by the Division.

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## Risk Management Trust Fund

- The Risk Management Trust Fund (a self-insured fund) was created to provide six specific insurance coverages to state agencies and universities:
  - federal civil rights/employment discrimination liability
  - general liability
  - automobile liability
  - liability for court-awarded attorney fees
  - workers' compensation
  - property (state buildings and contents)
- The Trust Fund is utilized by the Division to pay the claims of participating state agencies and the operating costs of the program.
- The Trust Fund is funded through annual premiums collected from participating state agencies (on a cash flow basis).

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## Agency and University Responsibilities

- Section 284.385, F.S., requires all agencies covered by the Fund to immediately report all claims to Risk Management and to cooperate with Risk Management in the handling of their claims.
- Per Florida Statutes, "No such claim shall be compromised or settled for monetary compensation without the prior **approval** of the Department of Financial Services and prior **notification** to the covered department."

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## Authority and Communication

- Although Risk Management has the authority to settle claims without agency approval, it is the philosophy of the Division to keep the agencies advised of significant events related to each claim and to seek agency input for settlement amounts and conditions.
- Further, we realize that claim decisions, particularly on employment discrimination claims, can affect agency programs and outcomes are important to the agencies.
- State agencies are our customers and we place a high emphasis on customer service. Our goal in each case is to reach a consensus with the agency about resolving the claim.

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## Managing the Claim Process

- The Division employs claim adjusters who investigate claims to determine the facts of the incident, potential damages, and legal liability.
- When a claim goes into litigation, the Division retains defense attorneys who have expertise in the applicable coverage line to defend the claim.
- Division adjusters monitor and supervise the litigation process, including attending mediations when necessary.
- We share our findings and recommendations to the agency, which includes the defense attorney's input, and hopefully a consensus can be reached.

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## Fiduciary Responsibility

- We also have a fiduciary duty to other members of the Fund to settle claims in the best interest of the state and the Fund.
- Fortunately, in most cases, we are able to reach a consensus on settlement strategy.

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## Our Goal

- Our goal is to fairly adjust claims as economically and expeditiously as possible, keeping in mind agency concerns and the overall impact to the Trust Fund.

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## Premium Assessment

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## The Premium Assessment Process

- The Revenue Estimating Conference determines the amount of premiums the Division must collect in order to support its claim handling responsibilities and loss payments for each fiscal year.
- For the last several years, the REC has set the annual premium for the casualty lines of coverage at \$183.7 million per year.
- Premiums are due to be paid in July of each year and each agency is provided budget authority to pay their Risk Management premium by the Legislature.

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## Allocation

### Allocation Components:

- 64% for Historical Average Loss  
Average of reserves and actual payments for accident dates occurring in the prior three completed fiscal years for WC, GL, and AL; FCR is 10 complete fiscal years
- 16% for Exposure  
An agency's budgeted FTEs/vehicles
- 10% for New Claims  
New claims with an accident date that occurred within the prior completed fiscal year
- 10% for New Payments  
New payments with a transaction date occurring within the prior completed fiscal year

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## Settlement Impacts on Premiums

- The total premium charged to all agencies does not change from year to year unless the REC changes the total premium based on Risk Management's program needs.
- There is not a one-to-one relationship between a settlement amount and an increase in an agency's premium.
- A settlement amount is included in the agency's overall loss history, but because every agency's loss history is included in the calculation, the impact can vary based on the fairly complicated calculation.

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## Coverages and Claims

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## When To Get Risk Involved

- For pre-suits, we are not authorized to hire an attorney to file a response. This is why our involvement generally starts when the suit is filed and served.
- When the agency receives a charge and files a response, Risk can get involved if the agency wants us to assist in a pre-suit settlement.
- The advantage of having Risk involved as early as possible is that sometimes we can resolve the matter before defense fees and expenses are incurred.

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## The Role of Risk Management

- Upon receipt of a case, Risk establishes a file, assigns an adjuster, and hires outside counsel to manage the litigation process.
- The Risk adjuster is an integral part of the agency/defense counsel/risk management team.
- Risk Management's role is an active, not passive, role.
- In order to strategize a theory of defense, the defense attorney will work with the agency to obtain the facts of the case through document review and witness interviews. However, the Risk adjuster is kept "in the loop" and offers valuable feedback to both the defense attorney and the agency.
- Risk has a very experienced staff and the adjusters use their expertise to determine if Risk should vigorously defend a case or try to settle a case "early on."

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## Federal Civil Rights Coverage

"To pay on behalf of the insured all sums which the insured shall become legally obligated to pay, subject to the stated exclusions, arising from federal civil rights actions filed under 42 USC 1983, and other similar federal statutes. The coverage includes payment of claims and awards for plaintiff attorney fees where so provided by the above federal statutes."

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## Employment Discrimination Coverage

"To pay on behalf of the insured all sums which the insured shall become legally obligated to pay, subject to the stated exclusions, arising from employment discrimination actions filed under 42 USC 2000e, Title VII of the 1964 Civil Rights Act, the Rehabilitation Act of 1973 (handicap discrimination), the Age Discrimination in Employment Act of 1967, the Vietnam Era Veteran's Readjustment Act of 1974, and other similar employment discrimination acts and statutes."

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## Employment-Related Coverage Examples

- Florida's public sector Whistleblower's Act, §112.3187, *et.seq.*, F.S.
- Title VII of the Civil Rights Act of 1964, as amended (federal)
- Florida Civil Rights Act, Chapter 760, F.S.
- Rehabilitation Act of 1973 (federal)
- Workers' Compensation retaliation, §440.205, F.S.
- 42 USC 1983 (federal)
- Equal Pay Act (federal) and Florida Equal Pay Law, §725.07
- Family and Medical Leave Act (FMLA) (federal)
- Uniformed Services Employment and Reemployment Rights Act (federal)

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## Coverage Exclusions

- The State Risk Management Trust Fund Certificate of Coverage "does not apply
  - to punitive damages;
  - to actions of insureds committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property"

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## Coverage Exclusions (continued)

- The State Risk Management Trust Fund Certificate of Coverage “does not apply
  - to final judgments in which the insured has been determined to have caused the harm intentionally;
  - to awards for injunctive or prospective relief rendered against an insured by any federal or state court, agency or commission except plaintiff’s attorney fee awards if such actions are covered by the Fund;
  - The Fund will not pay any costs associated with implementing or monitoring a declaratory, injunctive or prospective relief award.”

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## **DFS-DO-852- Certificate of Property Coverage**

### **Contents**

As defined in the certificate contents is:

“Your business personal property in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises, consisting of the following:

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) “Stock”
- (4) All other personal property owned by you and used in your agency;

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### **DFS-DO-852- Certificate of Property Coverage**

- (5) Your improvements and betterments as a tenant. Improvements and betterments are fixtures, alternations, installations or additions:
- (a) Made a part of the building or structure you occupy but do not own; and
  - (b) You acquired or made at your expense but cannot legally remove

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### **PROPERTY NOT COVERED UNDER THE DFS-DO-852 CERTIFICATE OF INSURANCE\***

- Accounts, bills, currency, deeds, money, notes or securities
- Business personal property while airborne or waterborne
- Property that is covered under another policy, except of the excess amount due
- The cost to research, replace or restore the information on valuable papers and records
- Vehicles that are licensed for use on public roads
- Surplus Property

\* See DFS-DO-852 for complete list of Property Not Covered, Exclusions and Extensions

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## PROPERTY VALUATION

**• UNDERSTANDING ACTUAL CASH VALUE**

- Under the State Risk Management Trust Fund Certificate of Property Coverage **DFS-DO-852**, all claim settlements on any State building, and the State's contents, is paid at **Actual Cash Value: (ACV)**
- **ACV** is defined in the State Risk Management Trust Fund Certificate of Property Coverage on **page 8, Definitions** as: "Replacement cost less depreciation." Under the certificate a loss deductible applies to each covered loss.
- Please **see page 7** of the State Risk Management Trust Fund Certificate of Property Coverage, it reads:  
**"3. Loss Payment**  
**a. In the event of loss or damage coverage by this Coverage Certificate, at our option, we will either:**  
*(1) Pay the "Actual Cash Value" of damaged property; which has been replaced with property of like kind and quality, or*  
*(2) Pay the cost of repairing; whichever is less."*
- **Depreciation:** Depreciation is calculated by evaluating an item's (RCV) (replacement cost value) and its life expectancy. RCV represents the current cost of repairing the item or replacing it with a similar one, while life expectancy is the items average expected lifespan.

- **Example:** Let's say three of the State of Florida's laptops were destroyed in a fire. Your agency bought the laptops two years ago, and they were in normal condition for their age before the fire. Three similar laptops are sold in stores today for a total of \$5,120.00 (RCV). These laptops have a life expectancy of five years, meaning they lose 20% of their value each year. Because your laptops were two years old, they have lost 40% of their value before being destroyed by the fire. Therefore, the (ACV) actual cash value (i.e., the value at the time of the loss) of your laptops are \$3,072.00.

**• Example on calculating payment with depreciation**

**\$5,120 - \$2,048 = \$3,072**  
 Cost of 3 new laptops today/ 40% depreciation Value of laptops  
 (RCV-Replacement cost value (2 years x 20% per year) (ACV)

**• Claim payment example would look something like this:**

(RCV) Replacement cost value	\$5,120.00
Less - non-recoverable depreciation	-\$2,048.00

(ACV) Actual cash value	\$3,072.00
Less DRM's loss deductible	-\$2,500.00

**• Net claim amount paid to agency \$572.00**

## THE DEPARTMENT OF RISK MANAGEMENT CLAIMS PROCESS

**HOW TO REPORT**

**A NEW CLAIM**

- New claims can be reported by submitting an incident through Origami.
- Start by clicking the report incident button on your dashboard.
- Select the appropriate coverage and you will be presented with a form to input claim information.
- Once you complete the incident you can drag and drop documents to attach to the incident such as photos or accident reports.

**Current Agency Personnel with Origami Access**

Wayne Meyer  
 Chris McLaughlin



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## Insured's Duties in the Event of Occurrence

"Written notice containing particulars sufficient to identify the insured, along with reasonably obtainable information with respect to the time, place and circumstances thereof, the names and addresses of the injured and all known witnesses, shall immediately be given by or for the insured to the Fund."

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## Insured's Duties in the Event of Notice of Claim or Suit

- "If claim is made by suit brought against the insured, the insured shall immediately forward to the Fund every demand, notice, summons, or other process received by him or his representative.
- Failure by the insured to advise the Fund of a claim or suit prior to a settlement agreement or the insured otherwise obligating itself, shall void coverage by the Fund for that claim."

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## Assistance and Cooperation of the Insured

- “The insured shall cooperate with the Fund . . . and the insured shall upon request, make available all agency records pertaining to a specific claim, shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
- The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expenses.”

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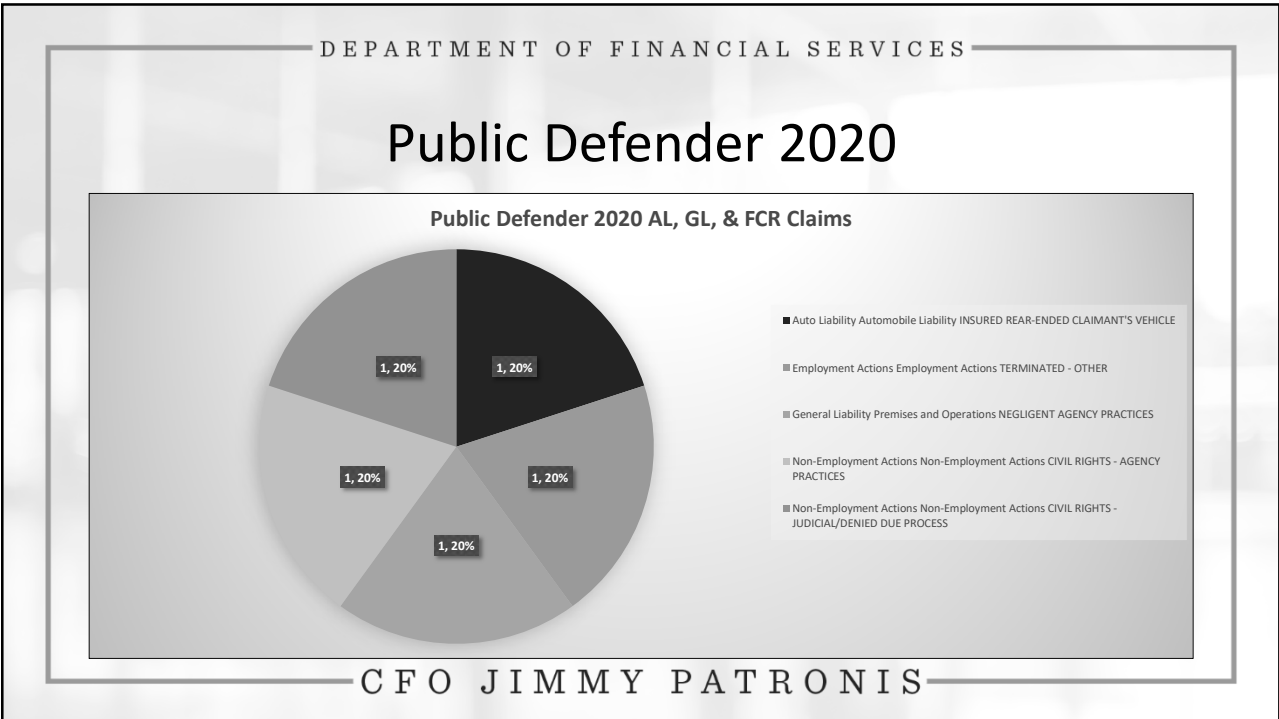
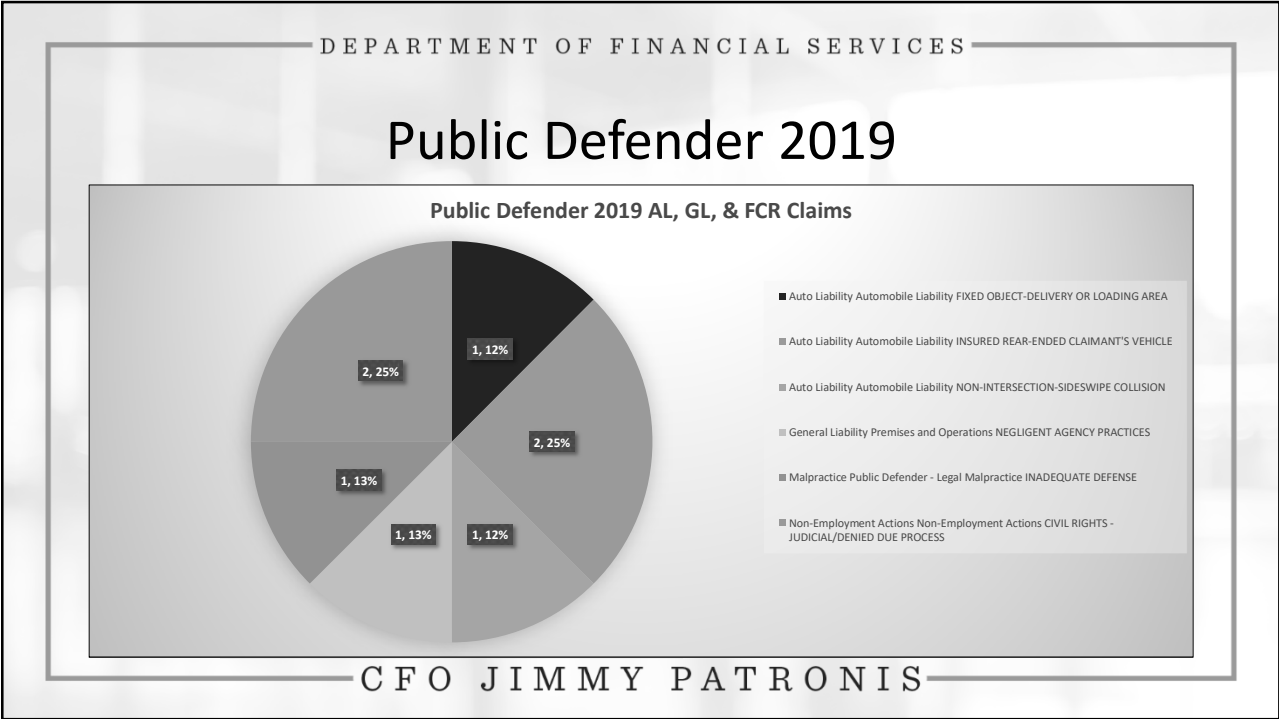
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## Justice Administrative Commission

Coverage	Location Code	Status	Report Date	Accident Date
Automobile Liability	5350 - JUSTICE ADMINISTRATIVE COMMISSION	Closed	05/19/2016	04/14/2016
Automobile Liability	5350 - JUSTICE ADMINISTRATIVE COMMISSION	Closed	04/10/2009	03/27/2009
Court Awarded Attorney Fees	5350 - JUSTICE ADMINISTRATIVE COMMISSION	Closed	05/07/2008	04/10/2008
Court Awarded Attorney Fees	5350 - JUSTICE ADMINISTRATIVE COMMISSION	Closed	05/21/1982	01/27/1981
Personal Injury	5350 - JUSTICE ADMINISTRATIVE COMMISSION	Closed	02/23/1979	04/09/1975
Premises and Operations	5350 - JUSTICE ADMINISTRATIVE COMMISSION	Closed	12/15/1997	07/15/1997
Employment Action	5350 - JUSTICE ADMINISTRATIVE COMMISSION	Closed	08/23/2005	02/01/2005
Employment Action	5350 - JUSTICE ADMINISTRATIVE COMMISSION	Closed	08/26/1994	07/07/1994
Automobile Liability Suspense	5350 - JUSTICE ADMINISTRATIVE COMMISSION	Closed	07/19/2017	07/14/2017
General Liability Suspense	5350 - JUSTICE ADMINISTRATIVE COMMISSION	Closed	11/01/2021	02/04/2017
General Liability Suspense	5350 - JUSTICE ADMINISTRATIVE COMMISSION	Closed	11/07/2019	05/20/2019
General Liability Suspense	5350 - JUSTICE ADMINISTRATIVE COMMISSION	Closed	04/06/2017	01/20/2017
General Liability Suspense	5350 - JUSTICE ADMINISTRATIVE COMMISSION	Closed	03/28/2017	05/19/2016
General Liability Suspense	5350 - JUSTICE ADMINISTRATIVE COMMISSION	Closed	04/14/2009	08/29/2008
General Liability Suspense	5350 - JUSTICE ADMINISTRATIVE COMMISSION	Closed	12/13/2007	11/21/2007
General Liability Suspense	5350 - JUSTICE ADMINISTRATIVE COMMISSION	Closed	02/08/2007	01/01/2007
General Liability Suspense	5350 - JUSTICE ADMINISTRATIVE COMMISSION	Closed	02/11/2002	01/01/2002
General Liability Suspense	5350 - JUSTICE ADMINISTRATIVE COMMISSION	Closed	06/06/1995	01/01/1995
General Liability Suspense	5350 - JUSTICE ADMINISTRATIVE COMMISSION	Closed	09/12/1986	08/22/1986

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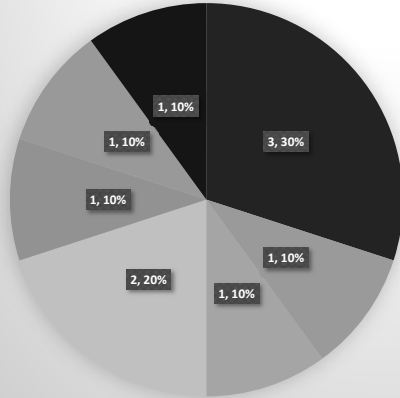




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# Public Defender 2021

Public Defender 2021 AL, GL, & FCR Claims



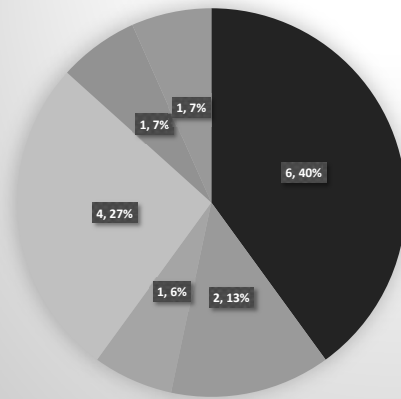
- Auto Liability Automobile Liability INSURED REAR-ENDED CLAIMANT'S VEHICLE
- Auto Liability Automobile Liability REAR-END/BACKING-OUR UNIT HIT OTHER VEHICLE
- Malpractice Public Defender - Legal Malpractice IMPROPER PROSECUTION
- Malpractice Public Defender - Legal Malpractice MALPRACTICE UNCLASSIFIED
- Non-Employment Actions Non-Employment Actions CIVIL RIGHTS - AGENCY PRACTICES
- Non-Employment Actions Non-Employment Actions CIVIL RIGHTS - JUDICIAL/DENIED DUE PROCESS
- Non-Employment Actions Non-Employment Actions MALICIOUS PROSECUTION

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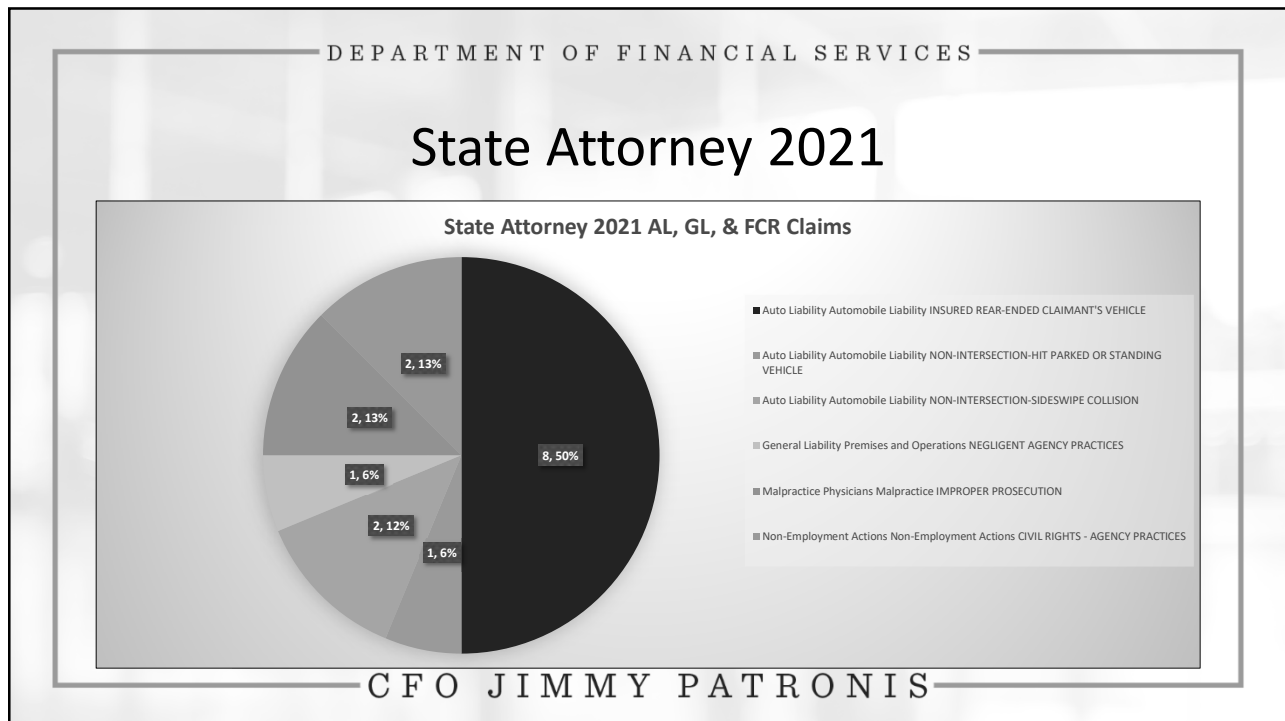
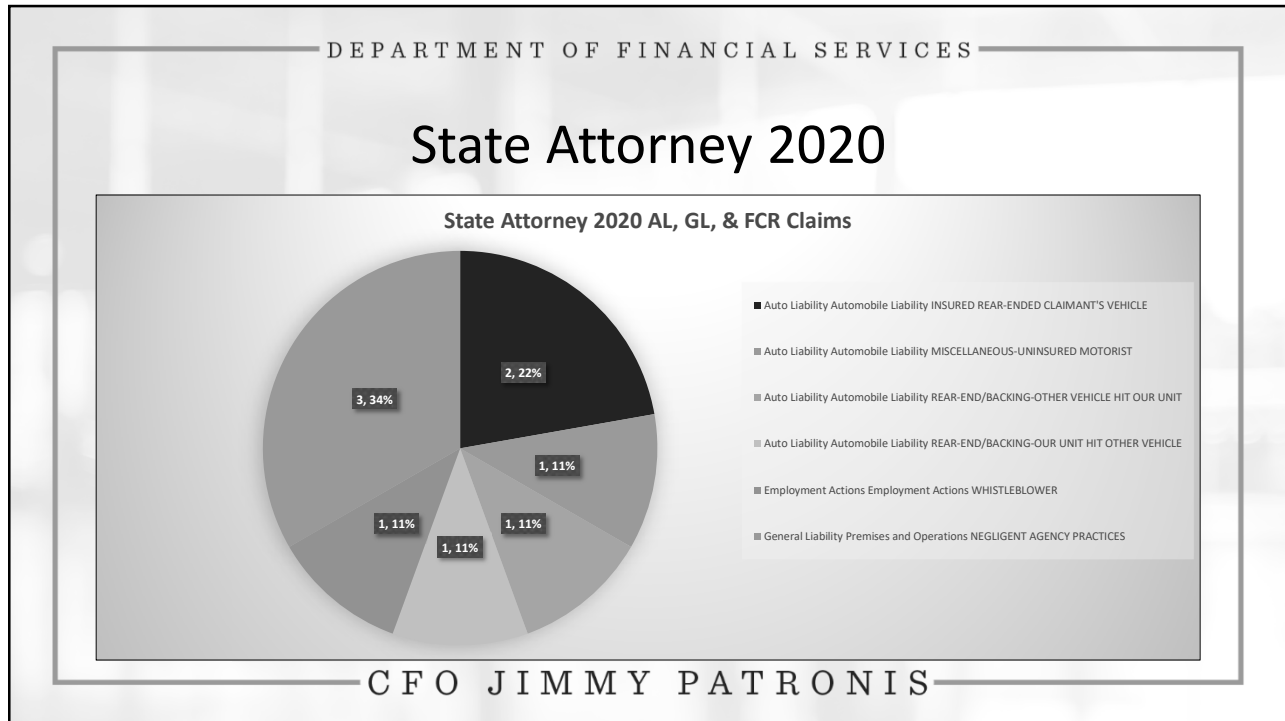
# State Attorney 2019

State Attorney 2019 AL, GL, & FCR Claims



- Auto Liability Automobile Liability INSURED REAR-ENDED CLAIMANT'S VEHICLE
- Auto Liability Automobile Liability INTERSECTION-OUR UNIT TURNING
- Auto Liability Automobile Liability REAR-END/BACKING-OUR UNIT HIT OTHER VEHICLE
- General Liability Premises and Operations NEGLIGENT AGENCY PRACTICES
- Non-Employment Actions Non-Employment Actions CIVIL RIGHTS - AGENCY PRACTICES
- Non-Employment Actions Non-Employment Actions MALICIOUS PROSECUTION

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# Recommendations

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# General Guidelines

- Auto/General Liability:
  - Pictures/Written Statements and contact information
- Enforce written policies consistently
- Document employment problems (including in evaluations)
- Evaluate case at the administrative stage
  - Conduct thorough investigation
  - Prepare thorough FCHR / EEOC response
  - Weigh risks early

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# Questions?

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Kelly Hagenbeck is the State Liability Claims and Property Bureau Chief at the Division of Risk Management. He has worked in claims management for both the public and private sector for 30 years. We are happy to have him here today.