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## INTRODUCING DELAWARE'S NEW CAPTIVE TEAM

### *CONTINUED COMMITMENT TO QUALITY, CONSISTENCY, ACCESSIBILITY, AND GROWTH*

*BY NEIL B. GLASSMAN, MARLA HIRSHMAN NORTON, & GIANCLAUDIO FINIZIO*

With a 122% growth rate in captive licenses during calendar year 2008 and the current total number approaching fifty, Delaware has emerged as an onshore captive domicile of choice. Delaware's steady growth as a captive domicile has been sparked by the 2005 adoption of revised captive legislation, at a time when only five captives were domiciled in the state, and its subsequent expansion in 2007 to add a new subchapter expressly authorizing the formation of special purpose financial captive insurance companies.

While Delaware has a proven track record in updating statutory schemes to stay abreast of current developments, legislation is not the sole factor driving Delaware's captive growth. Other factors include the collaboration between government and the private sector; Delaware's reputation as the forum of choice for corporations; limited liability companies; limited partnerships and statutory trusts; and Delaware's continued emphasis on sound regulatory oversight and expertise.

Delaware Insurance Commissioner Karen Weldin Stewart has expressed her commitment to continue this growth trend by raising awareness of the benefits that Delaware offers as a captive domicile and by emphasizing the collaboration between government and the private sector. Commissioner Stewart maintains that the Delaware captive domicile is uniquely positioned to provide captive solutions and that many of the benefits Delaware has to offer the captive industry are largely untapped to date.

One of her first public actions in the captive area since becoming Commissioner in January 2009 was to reengineer the former Delaware Captive Division to form the Bureau of Captives and Financial Insurance Products (BCFIP).<sup>1</sup>

BCFIP is led by Steve Kinion, Senior Advisor to the Commissioner, who has succeeded former Captive Administrator William P. White, who had run the Delaware captive program since 2006. To ensure a seamless transition, both Kinion and White worked closely during the three months leading up to White's final day as Captive Administrator. Kinion acknowledges that his predecessor's accomplishments will facilitate Kinion's efforts in carrying out his captive responsibilities and achieving BCFIP's overall goals: "We are very thankful to Bill for his expertise, diligence and determination in putting the Delaware captive domicile on the map and in establishing the necessary foundation upon which we now may build. We have every intention of continuing to build upon and improve our regulatory infrastructure in continuing to provide only the highest standards of regulatory oversight. The Commissioner's establishment of BCFIP and her selection of the BCFIP core team is a significant step in continuing in the right direction."

<sup>1</sup> The focus of this article is on BCFIP's captive administration structure and goals. In addition to captive growth, BCFIP's mission includes developing, implementing and growing several other potential revenue streams including bringing new insurance carriers to Delaware, planning and realizing the creation of an insurance exchange and exploring the proposal of becoming a domicile for de-mutualized companies.





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Complementing Kinion, the core BCFIP team is rounded out by John Tinsley, Special Deputy for Examinations; Edmond Ianni, Director of Strategic Development; and Mary Jo Lopez, Director, Business Development.

### **The BCFIP Team**

The BCFIP team brings nearly a century of combined insurance, regulatory, business, and legal experience and oversight to the Department of Insurance. The team's impressive array of expertise and unique blend of perspectives add enormous value for current and prospective captive licensees in Delaware.

Specifically, Kinion holds both a law degree (J.D.) and a Masters Degree in Business Administration (MBA), providing him with an ability to analyze, understand and appreciate sophisticated structures. A former Deputy Insurance Commissioner for Oklahoma, Kinion's specialization areas include insurance regulation and compliance, insurer taxation, and insurance company insolvencies.

Tinsley, Special Deputy for Examinations, has almost three decades of insurance experience encompassing all aspects of financial regulation, including market conduct examinations, solvency and market analyses, and the supervision, rehabilitation and liquidation of insurance companies.

Serving as Director of Strategic Development, Ianni provides counsel in strategic, policy and regulatory management matters, and critical support of the Commissioner's efforts to foster economic development through the growth of the captive insurance industry. Ianni holds both domestic and foreign law degrees including degrees from Oxford University in England. A nationally-recognized authority on governance, asset/risk management and strategy, Ianni has been quoted or cited in numerous national news sites, the most-read daily newspapers in the U.S., and publications including *CFO*, *Private Asset Management*, *The Bond Buyer*, and *ABA Trust Letter*. In addition, Ianni has served as Chairman of the Delaware State Bar Association's Corporate Counsel Section and International Law Section.

Lopez, Director, Business Development, is the founder of Affinity Group, LLC, an insurance management consulting firm. Her experience includes acting as senior executive for insurance run-offs, with direct responsibility for marshalling assets, directing all business operations, claims evaluation, reinsurance collections, and distributions to creditors. Over the past ten years, Lopez has developed a talent for identifying synergies among organizations and creating viable business opportunities for them. In her new role as Director, Business Development, Lopez seeks to identify unmet industry needs and bring appropriate parties together to capitalize on potential synergies using Delaware captive vehicles.

### **Future Trends**

The BCFIP team views Delaware's 2008 success as an opportunity to continue the momentum by actively engaging key industry service providers and educating them to the benefits Delaware offers as a captive domicile. "We believe that the increase we saw in 2008 is only the tip of the iceberg. In our meetings with various service providers, we are experiencing positive reactions to our infrastructure upgrades and engaging in serious discussions about prospective captive structures,"



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says Lopez. Kinion sees the current difficulties in the capital and credit markets as a catalyst to propel captives to the forefront of risk management and financing options. “Based on our recent success, the current capital and credit market trends and our emphasis on building upon our existing infrastructure, we believe that we will continue to see growth in the number of captives selecting Delaware as their domicile,” adds Kinion.

## **BCFIP Team Efforts**

However, the BCFIP team isn’t resting on its laurels, expecting captives to come to Delaware without any effort on its part. In fact, the BCFIP team has taken quite the opposite approach. In addition to continuing to develop prior proven relationships, the BCFIP team is aggressively pursuing other avenues in its efforts to achieve additional growth. “Continuing the strong collaborative relationship with the Delaware Department of State and the Delaware Economic Development Office is at the core of our economic development efforts” says Ianni. In an effort to build upon these core relationships, the BCFIP team, in cooperation with the Delaware Secretary of State and the Delaware Captive Insurance Association, has been meeting with key service providers. The meetings have centered around innovative captive solutions with an emphasis on ensuring that Delaware understands the insurance challenges facing companies today and, in so doing, ensuring that Delaware is in a position to address such challenges and add value to a captive that selects Delaware as its domicile.

While most people know Delaware as the corporate capital and the leader in terms of alternative entity laws, one of the goals of the BCFIP team in reaching out to companies and service providers is to illustrate the overlapping benefits between Delaware’s flexible captive statute and its alternate entity laws that allow for greater captive structure flexibility. “It is this very flexibility that opens up countless captive structure options in all captive areas including pure, association, sponsored, protected cell, industrial, special purpose, special purpose financial, and risk retention groups,” says Ianni. Delaware’s alternate entity leadership position and its nationally recognized Court of Chancery are considered key distinctions when comparing Delaware to other domiciles.

## **Regulatory Consistency and Continued Growth**

BCFIP, however, is quick to point out that the flexibility afforded by Delaware’s statutes is not to be misinterpreted as Delaware being relaxed on regulatory oversight. “Statutory flexibility and consistent regulatory oversight are not mutually exclusive,” says Tinsley and adds that “consistent regulatory oversight provides licensees and applicants with the comfort of knowing what to expect from the Department while also providing the greatest protection to the success and longevity of Delaware’s reputation as an onshore domicile of choice.” In moving forward, the BCFIP team anticipates continued growth in the captive area based on its accessibility to discuss innovative captive solutions and its sensitivity to business needs, balanced by sound and consistent regulatory oversight. ■

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## MEET THE AUTHORS



**NEIL B. GLASSMAN** is chairman of the Board of Directors of Bayard and chairs the firm's bankruptcy group. Neil focuses his practice on bankruptcy and insolvency law, and regularly represents debtors, official committees of unsecured creditors or equity holders, secured lenders, banks, insurance companies, and other creditors in large bankruptcy cases and other insolvency proceedings including insurance company insolvencies. An experienced transactional attorney, Neil has also developed a substantial practice representing clients in relation to the law of Delaware business entities including corporations, business trusts, general and limited partnerships, limited liability companies, and captive insurance companies. Neil serves on the board of directors of the Delaware Captive Insurance Association. Neil joined Bayard in 1986.

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**MARLA HIRSHMAN NORTON** is a director at Bayard. She concentrates her practice on alternative business entities, corporate governance, and third party legal opinions. Marla has over twenty (20) years of experience in a variety of corporate and commercial transactions, including securitization transactions, corporate formation and governance, mergers and acquisitions, contract negotiation and drafting, and secured lending. Her practice also includes advising clients regarding captive insurance matters. Marla serves on the legislative committee for the Delaware Captive Insurance Association.

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**GIANCLAUDIO FINIZIO** is an associate at Bayard. His practice includes advising clients on the formation and licensure of captive insurance companies. During 2008, GianClaudio performed the duties of Deputy Insurance Commissioner for then Insurance Commissioner of Delaware (now Lieutenant Governor) Matthew Denn. His transactional practice includes structuring, negotiating and documenting transactions, and general corporate and business law matters. GianClaudio serves on the marketing committee of the Delaware Captive Insurance Association.

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