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INSURANCE REGULATORY EXAMINERS SOCIETY

FSOC: One Year Later

by John Huff

For the past year, I have had the privilege of serving as the sole insurance regulator on the U.S. Financial Stability Oversight Council (FSOC). As you may know, the council was created by the Dodd-Frank Act of 2010 and is charged with identifying potential sources of systemic risk in the nation's financial sector.

In July, I testified before Congress to mark the one-year anniversary of the Dodd-Frank Act, signed into law on July 21, 2010. Testifying before the House Financial Services Subcommittee on Insurance, Housing and Community Opportunity, I joined NAIC President and Iowa Insurance Commissioner Susan Voss.

Serving on FSOC has been a rewarding and, at the same time, challenging experience. FSOC is loaded with banking and securities expertise but, until recently, I was the only member of the council with insurance expertise. That has changed recently with the appointment of former Illinois Insurance Director Mike McRaith to lead the Federal Insurance Office (FIO), also created by Dodd-Frank. And in another encouraging development, President Obama recently named former Kentucky Insurance Commissioner Roy Woodall to serve as the voting insurance representative on the council.

With invaluable support from the NAIC, I have gone to great lengths to explain that insurance is a unique product and that we have an outstanding system of state-based regulation that has served our nation and protected consumers for more than a century. Recognizing this uniqueness will be most vital when it comes to FSOC designating a non-bank company as a systemically important financial institution (SIFI), subjecting it to heightened supervision by the Federal Reserve.

I explained to the committee that, while bank products involve consumer deposits that are subject to withdrawal on demand at any time, insurance policies involve up-front payment in exchange for a legal promise to pay benefits in case of a future event. U.S. insurance companies are subject to stringent capital requirements, limits on the nature and extent of investments, quarterly analysis, and periodic examinations. In situations in which companies become troubled, insurance regulators have the ability to ring-fence insurers in order to protect policyholder assets. The longer-term nature of insurance products makes this an effective tool and enables regulators to wind troubled insurers down in an orderly manner. This stringent regulatory oversight enabled the insurance sector to weather the financial crisis better than other sectors.

For these reasons, it is my view (and that of the NAIC) that traditional insurance products and activities do not typically create systemic risk. However, connections with other financial activities and noninsurance affiliates may expose some insurers to the impact of systemic risk, and certain products may provide a conduit for systemic risk.

The council soon intends to provide additional guidance and seek additional public comment. I encourage all

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winner of the

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Holly Blanchard

first-ever recipient of the

Chartrand Communications Award

at this year's IRES CDS

What's Next?

A Letter from the President

by Tom Ballard, CIE, MCM

Hello! My name is Tom Ballard, and I'm the new president of our organization.

Thank you!

I'd like to thank everyone that worked to make our CDS a success and also thank those that attended in these hard economic times. Special thanks go to Mark Hooker of West Virginia and his committee for their outstanding work on the CDS. In a very generous move, Mark has agreed to again chair the CDS committee for next year, and we look forward to another great CDS. (More on this later.)

A ton of thanks goes to Leslie Krier, our immediate past president, for her leadership, and to the Executive Committee and the board of directors for the hard work, difficult decisions, and common goal of trying to do what was in the best interest of IRES.

As everyone knows, we've undergone our first transition involving our management company in 25 years. I would like to thank all those involved in that transition for making it as smooth as possible, including our longtime friends at Chartrand Communications and our new friends at Nonprofit Solutions.

We also must not forget to offer our heartfelt thanks to those members who worked on special tasks or subcommittees throughout the year. It is obvious our greatest asset is still our people.

What's next?

In the upcoming year, we have some opportunities to do some really great things for IRES.

The first thing we are focused on is rewriting our bylaws. This project was started last year by Leslie, and we are working to complete it by our next CDS in Ft. Lauderdale. Katie Johnson of the Virginia DOI is heading up the subcommittee working on this project. One of the things her group needs is ideas from you, the general membership. We have already asked the Past Presidents Council, the Executive Committee, and the full board of directors to assist us with suggestions, and all have agreed to help. If you have an idea, write it down, get it to Katie, and it will be considered. Stay tuned here for updates on our progress.

Another thing that will be done in the upcoming year is we plan to put IRES out there to the many regulators that never show up at our CDS. Some steps being formulated include on-site visits to state chapter meetings, the NAIC meetings, the IRES Foundation School, and the MCM classes. Our theme must be consistent, and it must be used by our entire membership: *We are a society for all regulators.* It is vitally important that we listen to our regulator brothers and sisters who are not presently members of IRES. This is very important to our goal of expanding our membership.

In a step to encourage new membership, our board of directors has already approved lowering the dues for first-year members to $45. This was done at our Tuesday board meeting at the CDS, and I appreciate the board acting so swiftly to give prospective members another motive to join our group. Our visits to the various groups will also give IRES a chance to market the benefits of our group and encourage membership by all regulators.

IRES is an important key in market regulation and a very important part of state regulation. As such, we must evolve with the changing landscape of today's insurance world. We are for all regulators and we must deliver that message.

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IRES Webinars… Coming Soon!

by Tanya Sherman, MCM

We are all aware that IRES has been undergoing significant changes in the past few years. The Membership and Benefits Committee has been discussing potential options for improving the organization; specifically, how to create and promote the membership as valuable for more than certifications.

In 2010, at the state chair meeting during the IRES CDS conference in Albuquerque, New Mexico, the state chairs were given an opportunity to share recommendations for enhancing the benefits of membership to the IRES organization. At the top of the list was a recommendation for IRES members to be able to attend short webinar sessions that were strategically targeted to hot topics and training on current issues.

IRES is built on supporting the regulation of the insurance industry. One of the main reasons individuals become members is to obtain certifications. Most of the certifications provided by IRES require that, each year, a person receive a specific number of continuing education credits (CEs) in order to keep the certification. Due to the weakened economy, both the industry and the states are trimming their budgets. The need for such timely training is now increasingly important as many states/companies have dramatically restricted travel or, in some cases, eliminated travel altogether.

The IRES Board of Directors and the IRES Foundation recognize the need to be able to remain competitive as a nonprofit society by producing training programs that are timely, cost-effective, and meaningful to our members.

Members of the IRES Membership and Benefits Committee and Wyn Douglas of Nonprofit Solutions conducted research to determine which companies provide the best means of conducting webinars. This research included a listing of various webinar products, the services provided,

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insurance sector participants to weigh in on that guidance.

You may have seen criticism regarding the pace of the FSOC's designation process. Some say it moves too slowly, while others say it moves too fast. I firmly believe our goal must not be just for timely completion but rather (more importantly) for the work to be done right.

State insurance regulators have fought to deliver the message that "one size does not fit all."

In July, FSOC released its first annual report, which underscores that insurance companies generally withstood the financial crisis well and have since strengthened their balance sheets. During the financial crisis, insurers felt some stress as asset prices fell and noncore activities such as securities lending resulted in some losses, but the insurance sector remained strong and there was little, if any, disruption in services to consumers. The report also describes several of the regulatory improvements that insurance regulators have completed since the financial crisis, including improvements to insurer disclosure requirements regarding derivatives and their securities lending programs and the changes that were made to more precisely evaluate the credit quality of insurer investments in commercial mortgage-backed securities (CMBS) and residential mortgage-backed securities (RMBS).

The report identified areas that insurance regulators need to continue to monitor closely, including insurer exposures to CMBS, RMBS, municipal bonds, and specific European investments. The report also notes the difficulties that financial guaranty and mortgage guaranty insurers (a relatively small portion of the industry) continue to face. These problems are associated with the decline in housing prices and market activity, the increased volume in residential real estate foreclosures, and the impairment in the RMBS markets. We also need to continue to monitor the higher than usual claims activity in the property and casualty sector due to severe weather and flooding in several parts of the United States, including my home state of Missouri.

I have also expressed to FSOC members and testified to Congress about my frustration with being restricted from consulting with my fellow insurance regulators on matters before the council that could impact the insurance sector. These limitations have been placed on me despite the fact that state regulation of insurance has thrived on collaboration and information sharing in confidential settings for many years.

It is vitally important that the uniqueness of the insurance business model and the strength of the state-based system of insurance regulation be recognized and leveraged as FSOC monitors systemic risk and determines which non-bank institutions to designate as SIFIs. My inability to communicate with fellow commissioners on a confidential basis could impact insurers and state insurance markets.

That must change, and I am hopeful that it will. I firmly believe that such consultation will be vitally important in the coming months as FSOC determines the criteria to be used to identify systemically important non-bank firms and evaluates firms for that designation.

The council must also decide how it will handle state insurance regulator involvement after the formal designation of an insurance company as a SIFI. FSOC, in conjunction with the Federal Reserve Board and the Federal Deposit Insurance Corporation, will review resolution plans filed by designated companies. Under Dodd-Frank, FSOC is meant to assist both entities in this regard. FSOC has the authority to recommend to the Federal Reserve heightened prudential standards to apply to designated firms. In the event that any insurers are designated, the ability of the council to receive advice and counsel from my fellow insurance regulators who are involved in the day-to-day regulation of such companies will be essential.

Another development that will be important to watch is the study of state-based insurance regulation to be released by the FIO. I hope the report will be honest and factual but, like NAIC, I continue to believe there is an inherent conflict in an office of the Treasury Department studying ways to further empower itself.

While the national, state-based system of insurance regulation has successfully protected consumers for decades, state regulators recognize that, like any regulatory system, it is not perfect. So we are open to hearing any suggestions FIO may have for improvements. To date, the NAIC has had a good relationship with FIO, and I look forward to continuing that relationship going forward and working with my friend and former colleague Mike McRaith.

Throughout the debate over and implementation of Dodd-Frank, state insurance regulators have fought to deliver the message that "one size does not fit all." Both the nature and regulation of insurance products are fundamentally different from the nature and regulation of banking and securities instruments. We remain hopeful that these differences will be adequately acknowledged and accommodated by FSOC. ■

John Huff was appointed director of the Missouri Department of Insurance, Finance, and Professional Registration in 2009. In addition to his appointment on FSCO, John serves as vice-president of the Midwest Zone at the NAIC and treasurer of the Interstate Insurance Product Regulation Commission. Before entering public service, John spent 11 years as an executive with leading insurers and reinsurers, including Swiss Re and GE Insurance Solutions. At these companies, John led global teams and was stationed in two different European markets (London and Zurich).

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and a final recommendation for test piloting a webinar site. The criteria included cost, number of users, ease of use, the ability for users to log in without having to download software (to avoid firewall issues), acceptable platforms, and a listing of all the various webinar features. The final product that was recommended was ReadyTalk.

In order to test the webinar site to its fullest, three pilot webinars were conducted for the State Chairs Subcommittee members hosted by Jim Mealer, Market Conduct Chief, Missouri; Ashley Natysin, Advanced Insurance Examiner, Wisconsin; Tanya Sherman, unaffiliated; and Chuck Vanasdalan, Market Conduct Chief, New Hampshire. The overall feedback from all three of the test pilot presentations was incredibly positive with a total of 44 individuals attending the sessions and a total of 14 ideas recommended for future webinar topics. The ReadyTalk website functionality included so many features that each class attendee was able to answer pre-developed survey questions implanted in the presentation, ask questions to the presenters, and provide input on the webinar site, content of the presentations, and future recommendations.

Now that the pilot webinars have been successfully conducted, the IRES Foundation has approved the funding necessary for a year's membership to the ReadyTalk webinar product. In addition, a special subgroup of the IRES Member and Benefits Committee, working in tandem with the IRES Education Committee, will figure out who will coordinate the ReadyTalk webinars, the topics for the webinars, which webinars will be offered, and how to proceed with future requests for funding.

It is important to remember that IRES is for everyone! We need your input to ensure that we are providing the most benefits to our members. If you have future ideas for webinar topics, please contact Holly Blanchard at 402-471-4742 or holly.blanchard@nebraska.gov. ■

Tanya Sherman, MCM, is a senior market analysis manager at INS Regulatory Insurance Services. You may contact her at 816-863-4874 or tsherman@insris.com.

The IIPRC at Five

by Karen Z. Schutter

The Interstate Insurance Product Regulation Commission (IIPRC) marked its fifth anniversary this year. Since its inaugural meeting on June 13, 2006, the IIPRC has achieved numerous benchmarks, including adding more states, adopting uniform standards for several product lines, building superior-quality product review operations, and becoming the preferred method of filing for efficiency-minded companies.

The IIPRC serves as an instrumentality of its member states by leveraging regulatory resources and expertise to establish uniform standards. These uniform standards are the foundation for the IIPRC's central point of electronic filing in the System for Electronic Rate and Form Filing (SERFF). The IIPRC is transforming the way asset-based insurance products are filed, reviewed, and approved, allowing consumers to have faster access to competitive insurance products in an ever-changing global marketplace while maintaining strong consumer protections.

IIPRC then and now

IIPRC began accepting filings in June 2007. At that time, there were only 26 members and six uniform standards in the individual life line. It received 38 product filings in that first year. The IIPRC has experienced significant growth since then, and now has 39 members, with Nevada becoming an effective member on October 1 and Oregon becoming an effective member on January 1, 2012, to increase the number of member states to 41 by the start of 2012.

The IIPRC has adopted 75 uniform standards to date, allowing companies to file a complete and wide array of products for individual life, annuity, and long-term care insurance. Uniform standards have also been modified to allow the filing of products that combine long term care insurance with life or annuity benefits. In addition, an entire suite of uniform standards for individual disability insurance are currently moving through the rulemaking process and should be adopted in the fall and available for filing in early 2012. Additional uniform standards for other product lines are also under development, including those for group life.

More than 140 companies have had more than 900 products approved since the IIPRC received its first filing in June 2007, equating to nearly 24,000 SERFF transactions that would have had to be made if the filers did not file through IIPRC. The IIPRC has also built a strong regulatory review team with highly qualified and experienced form reviewers and actuaries focused on thoroughly reviewing all product filings for full compliance with the uniform standards. In recognition of increased volume and in keeping with its mission, the IIPRC has recently increased its review team by hiring additional product and actuarial reviewers.

Structure

The Management Committee of the IIPRC directs its affairs and is comprised of 14 members encompassing a three-tier representation of states based upon premium volume, consisting of the six largest states, four mid-size states by premium volume, and one additional state from each of four regional NAIC zones.

The IIPRC also has six standing member subcommittees with membership from the ranks of the full Commission. Those committees are: Audit, Communications, Finance, Product Standards, Rulemaking, and Technology. Additionally, the Compact legislation provides for the IIPRC Legislative Committee to work as an active partner in this process with eight members appointed by the National Conference of State Legislators (NCSL) and National

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Conference of Insurance Legislators (NCOIL). A Consumer Advisory Committee and an Industry Advisory Committee are appointed by the Management Committee to represent the consumer advocacy community and the industry, respectively. These advisory committees provide regular input on the IIPRC standards-setting process.

IIPRC operations

There is an annual registration fee for insurers to file with the IIPRC. By registering, an insurer of any size can start to reap the many benefits and savings from filing through the IIPRC in terms of costs, effort, and time in systems development, product filing preparation, and product compliance and marketing. Many small and medium sized companies can take advantage of the reduced fee for regional insurers (12 states or fewer). The registration fee is also prorated by 50% after July 1.

The IIPRC utilizes SERFF for filing submissions and filers may select up to 39 (soon to be 41) jurisdictions during filing preparation. There is only one submission. The IIPRC filing platform on SERFF has been enhanced with unique qualities to meet the needs of its members and filers. It contains features that can only be found in the IIPRC. For instance:

- All filing fees are submitted to the IIPRC using EFT, including all applicable state fees (even for non-EFT states), and are seamlessly passed through to the member states.
- The "Add a State" tab in IIPRC SERFF is available for filers to add states to their already approved filings as they roll out products in additional areas, without the need for additional approvals. New member states can also be added to filings using this feature or when there is a new member state. This year, many filers have already taken advantage and were able to add the states of Illinois, New Jersey, and Alabama, receiving an acknowledgement the same day.
- Member states receive a message in their SERFF message center whenever it is included in an IIPRC filing. Members have "read-only" access to filings in the IIPRC instance and can monitor the progress of a product filing.
- The Statement of Intent Schedule (SOI) assists filers in "mixing and matching" IIPRC-approved forms with those already approved at the state level as permitted by the IIPRC Product Filing Rule and if specified in the applicable uniform standard. The IIPRC will also reopen approved filings at any time to allow the SOI to be updated with additions and deletions of forms and states.
- The SOI also provides for the entry of state filing information in a field-based

IRES Says Goodbye to a Good Friend

by Douglas A. Freeman, CIE, MCM

Gary Anthony Hernandez, nationally recognized insurance regulatory lawyer and community servant, passed away unexpectedly at the age of 52 on Friday, May 27, 2011, of respiratory failure as a result of a pulmonary embolism.

Gary grew up in Merced, California, and earned a scholarship to the University of California, Berkeley, where he was a member of the varsity wresting team and Sigma Chi Fraternity. After receiving his BA degree in 1981, he attended law school at University of California Davis and was the student speaker at his commencement. In 1990, Gary joined the California Department of Insurance, where he served as Deputy Commissioner for Enforcement, before going into private practice at Long & Levit. In 1997, he joined the law firm of SNR Denton (formerly Sonnenschein), becoming the founding chairman of the firm's insurance regulatory practice. The global growth of the practice and depth of the team's talent is a testament to the vision Gary began implementing 15 years ago.

Gary's commitment to the community was among his highest priorities. Named one of the "Most Influential Hispanics of the United States," he served on the board of directors of the California Coastal Conservancy and as a founding trustee of the University of California, Merced Foundation. Additionally, he served as a long-time board member of both the Latino Community Foundation and San Francisco Legal Aid Society. His many civic honors include being named California Attorney of the Year in 2004 and one of the 50 most influential minority lawyers in America.

All who benefited from Gary's leadership and mentoring know that the most important thing to Gary, after his wife Teri, was the success of those around him—whether you were a life-long friend, professional colleague, client, or simply someone whose life was touched by his generous spirit. IRES and the IRES Foundation were some of the many beneficiaries of Gary's business, speaking, and personal talents. As a former California Department of Insurance Deputy Commissioner for Enforcement (overseeing market conduct and other divisions) and an IRES Foundation board member, Gary had a fond spot in his heart for IRES and the IRES Foundation and generously contributed his time and resources for numerous years.

Donations can be made in Gary's name to California Rural Legal Assistance, Inc. (http://www.crla.org) or a charity of your choice. ■

data format providing templates and copy/paste functionality for easier input. The SOI format assists member states in monitoring the use of appropriate forms and is especially useful for market analysis and surveillance purposes.

- A "mix and match" indicator appears in the filing information section of every IIPRC filing and message. Member states can flag such filings based on their own priorities.
- In addition to the basic SERFF search and export features, special search and export fields have also been added to facilitate the tracking of mix-and-match information.
- Member states may also make specified updates to filings in the state fields (for example, tracking numbers, descriptions, statuses, reminders, etc.) within their respective SERFF instances.
- Reviewer checklists have been developed using each uniform standard and in accordance with speed-to-market best practices. Prior to approval, review of the product's compliance with each applicable uniform standard is evidenced by the completion of reviewer checklists posted as reviewer notes in SERFF that can be viewed by member states.
- Submission requirements and procedures are posted in SERFF filing rules, general instructions, and on the IIPRC website and include a reference to the applicable uniform standard and/or provision of the IIPRC rules.

Product filings must be reviewed within 60 days in accordance with the provisions of the IIPRC rules. The IIPRC provides very detailed objections with citations to the applicable provision of the uniform standard. Filing submissions that have exceeded the 60-day period usually involve filers that need additional time to comply.

Website tools and information

The IIPRC website contains useful information for filers, member states, and consumers.

- The Docket has uniform standards, rules, and operating procedures moving through the process toward adoption, including any proposed amendments. Once adopted, these move to the Record.
- The Insurance Company Resource page contains a wide variety of information critical to the preparation and submission of a compliant IIPRC filing, including reviewer checklists and on-demand tutorials for completing the SOI and basic filing preparation.
- The Regulator Resource page provides historical, legislative, and statistical information needed to keep abreast of product filing activity, trends, and premium volume. It also includes on-demand tutorials for regulators, one of which provides details about viewing and exporting IIPRC filing information.
- The Consumer Resources page provides information for accessing IIPRC information and contacting insurance departments in member states.

The business case has never been stronger for companies to use the IIPRC and for states to become members. We are committed to our goal of increasing efficiency by allowing companies to make one product filing and to receive a single comprehensive review under detailed and uniform product requirements that can then be utilized in the compacting states. We have made tremendous progress in just five short years and continue to build upon our strong foundation as we add even more states, develop more uniform standards, and welcome more filers.

For more information about the IIPRC and information available to regulators and industry, visit the IIPRC website at http://www.insurancecompact.org or send e-mailtocomments@insurancecompact.org. ■

Karen Z. Schutter is the executive director of the Interstate Insurance Product Regulation Commission.

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As I mentioned earlier, our next CDS will be in Ft. Lauderdale, Florida, next August. It will be at the Westin Diplomat Hotel in Hollywood, Florida. I would encourage all of you to consider attending what I think will be one of our best CDS meetings ever. I would also ask that you go to the website of the hotel to see what a great location it is. There will be lots more coming about this meeting, but let me just mention three things: One, we have the federal travel rate for this meeting for our regulators (presently $113); two, the hotel sits on the beach and has several pools; and three, it has a convention center next door for our use.

The year ahead has lots of opportunities for us and I'm excited to be part of taking advantage of them. One of the ways you as members can contribute is to volunteer to write something for *The Regulator*. Don't say you can't or don't know how. Before this letter, I had never written anything for *The Regulator*, and I've been a member since 1987. So get with it and send something to our editor, Melissa Hull.

Again, thank you very much for the opportunity, honor, and extreme privilege to serve as your president for the coming year. ■

Tom Ballard, CIE, CFE, MCM, FLMI, ALHC, is the current president of IRES and works as a market conduct examiner. Tom has more than 24 years of insurance regulatory experience (including working for various state departments of insurance) along with 15 years of experience working for various companies.

Market Regulation Accreditation

Is Now the Time?

by Donald P. Koch, CIC, MCM

The 2010 and 2011 IRES Foundation School and the 2011 IRES CDS each featured roundtables in which commissioners discussed the progress of market regulation accreditation. In each of those forums, the commissioners noted concern over progress on this issue. Specifically, highlighted concerns included the lack of resources or the potential for acquiring the necessary resources due to budgetary constraints in the current economic climate. Other issues also need to be addressed before the commissioners could consider and develop a workable and viable accreditation program. My comments are primarily focused on the examination component of market regulation accreditation.

Market conduct examinations generally tend to be transactional and historical in nature. This means that the results of such activities are going to be state specific, thus limiting the utility or use of the examining state's findings for another state. It also means that the compliance issues have already occurred and must be corrected after the fact. Certainly, the examination work of a state may have some limited utility in another state provided there are essentially the same demographics and a similarity in the supporting statutes and regulations. As long as this is true, it is evident that commissioners will relegate accreditation to the back burner.

Even though some progress existed in recent years, the suggestion that a multi-state examination process is the answer tends to ignore the fact that such examinations are narrowly focused and difficult to structure. This makes it difficult to have adequately coordinated supporting statutes and regulations for each state.

History

Even though market conduct concern was one of the founding issues when the NAIC was formed in 1871, the first known market conduct examinations did not occur until approximately 1969. These examinations were performed by the Illinois Insurance Department and followed by their neighboring state, Missouri, in 1972. Alaska performed some rate examinations in the mid 1970s, as did Washington, Oregon, and California. In 1974, the NAIC-funded McKinsey report suggested that a new examination format (other than financial) was necessary. In 1979, the General Accounting Office (GAO) was particularly critical of regulatory failure to systematically analyze complaint data and to use that data in an examination process. The criticism went further concerning the exchange of that information and efficient use of state resources in its market regulation efforts.

Many say that you have to learn to crawl before you can learn to walk, and learn to walk before you can learn to run. These early efforts were the crawling stage and, admittedly, there were mistakes. At the time, the information age was not really underway, and the necessary information sharing, communication needs, and data gathering capabilities were viewed as futuristic. State laws governing market issues were viewed as too diverse to allow for multi-state or collaborative efforts. As a result, the form taken was somewhat vague and provided for an individual state quantitative review. Nevertheless, states began to commence efforts aimed at enhancing the new examination process.

Beginning in 1994, some states realized that it was time to learn to walk. The Market Conduct Examiners Handbook ("Handbook") at that time contained little in the way of guidance to a state wishing to conduct a market conduct examination. States recognized that, even though the various state statutes supporting their reviews were diverse, there was sufficient similarity to allow for general standards or expectations to be developed. It was these standards that they later used to move in the direction of uniformity. This was a considerable departure for many in the field. Although states developed relatively uniform market conduct standards, market conduct examinations did not receive the same attention given to financial examinations that were broadly accepted earlier. The absence of a similar level of oversight in the market conduct examination area of regulation allowed inefficiencies and other issues to develop unchecked. Nevertheless, with the adoption of standards, the market conduct examination process learned to walk.

Many say that you have to learn to crawl before you can learn to walk, and learn to walk before you can learn to run.

The standards selected were designed to be at a high enough level that most states could adopt the standards with existing supporting statutes and regulations. The introduction of this level of uniformity was an initial step in constructing a process with broad state-based utility. Since that time, the working group charged with responsibility for maintaining this process has linked the standards and its review criteria to the various NAIC model statutes and regulations. It has also addressed new concerns as they have arisen but have done so with the same structure as that developed in the mid-1990s.

Nevertheless, the use of this Handbook remains primarily state specific. The drafters of that mid-1990s Handbook had intended that it continue to develop as a dynamic document. However, the examination components of the Handbook have not developed as anticipated. This does not diminish the Handbook's utility as a useful

tool for states conducting a market conduct examination.

The Handbook was intended to be the vehicle for a state to develop a state-specific handbook to recognize that there were distinct differences in the review criteria needed by many states to reflect the nuances in a state's statutes and regulations. This fact impacts the move to accreditation. The states are rarely uniform in their statutes and regulations, and any expectation that accreditation will drive that kind of uniformity is likely to fail.

What is missing?

When I was still working for the Alaska Division of Insurance, I had occasion to send an examiner out on an assignment to a company that had an undue number of complaints as well as other indicators that suggested we needed to conduct a review. When my examiner came back, he had a well-written report that listed numerous errors and violations, each of which was well-documented. When I asked him to tell me what was driving this particular level of error, he was not able to pinpoint the reason. When I queried the company examined, they had the same difficulty. Ultimately, we came to the conclusion that the management of the company should have known what was causing the errors and violations and that a review of the company processes and procedures for the particular area of slippage was appropriate. It was time to learn to run.

The issues for a company that result in compliance failures are almost always based on the processes and controls utilized by a company—or lack of them. With this realization, we started working on an examination process that reviews how the management of a company structures and establishes its processes, how it downstreams its processes and procedures to the operating levels of the company, the kinds of controls it exercises to ensure that the processes and procedures are working as intended, and what is in place to adjust the processes and procedures as necessary on an ongoing basis. It would be a process review or corporate governance type of examination.

We have used this methodology in several states. Our results illustrate that it is almost surgical in the methodology's precision in identifying causation. This allows the examining state to engage in meaningful dialogue when it attempts to encourage a company to adjust its processes and avoid errors and violations. Further, since the processes and procedures used by a company are generally company-wide, the findings of such an examination have utility for each state in which that company operates. The examining state can provide useful review information about the company for other states not necessarily engaged in that review.

With this approach, accreditation starts to make sense. This methodology would use the same standards that currently appear in the Handbook. It would be necessary for some adjustment to the review criteria. The information developed during this type of an examination would also be quite valuable if included in the market analysis process that has been developed in recent years. It would allow the states to focus on those issues and concerns where the company processes are not all that they need to be.

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2011 President's Award

by Leslie Krier, AIE

One of the truly fun moments in being president of IRES is when you get to recognize a person who has made an outstanding commitment to IRES over the years. Wanda LaPrath, this year's recipient of the President's Award, is a person that has demonstrated that commitment over and over again.

Our award winner has been involved in insurance as an industry person or as a regulator since 1977. Her list of credentials is long and includes CIE, MCM, CFE, FLMI, and ARC. She has been a member of IRES since 2000. With a background in financial exams and then moving to market conduct, Wanda belongs to SOFE, the Institute of Management Accountants, and the International Association of Insurance Receivers. Wanda has served on the IRES board of directors and the Executive Committee; chaired the Membership & Benefits Committee, Publications Committee, and L&H CDS Section; and served as a member on the Education Committee and the Meetings & Elections Committee.

Congratulations, Wanda! ■

2011 Al Greer Award Winner

by Holly Blanchard, AIE, ALMI, AIRC, AINS, ACP

Over the past 13 years, IRES has honored a regulator with the prestigious Al Greer Award. This award was created to recognize those individuals who have been exemplary in the regulator field. Through their actions, examples, and contributions, these individuals are the embodiment of a great regulator.

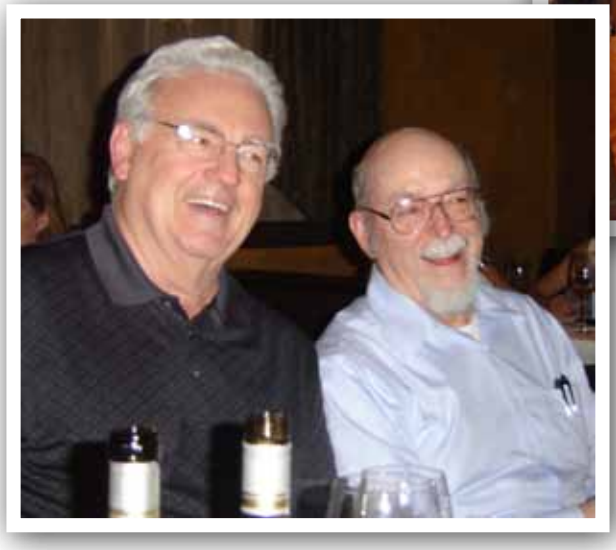
Like the recipients before him, this year's award recipient is that exemplary regulator, and IRES is proud to present this award to Eric Nordman.

Eric is routinely called upon by state commissioners to draft congressional testimony, participate in conference panels, and provide professional advice on a wide range of issues. In between these charges, he still finds time to be the NAIC's Director of Regulatory Services. Please take the time congratulate this year's winner at enordman@naic.org. ■

2011 IRES Career Development Seminar

MINNEAPOLIS, MN • HILTON • JULY 31 - AUGUST 2

Photo Memories



Tom Ballard (current IRES president) and Don Koch

Ann McClain

Bruce Ramge, Nebraska Insurance Commissioner, keynote address

Dolly Chan (CA), Wayne Cotter (NAIC), Ken Allen (CA), Towanda David (CA)

Photo Memories

Parker Stevens, Holly Blanchard, Betty Bates

Eric Nordham, Winner of the 2011 Al Greer Award

Market Regulation continued from page 9

This methodology assures that the regulator will gain a much better understanding of the company it regulates and continue that understanding on a current and ongoing basis. It is more efficient to repair a process before it generates violation than to react to the results.

Financial examiners are currently using a risk focused or corporate governance examination methodology. The methodology is sufficiently similar in that it encourages dialogue between financial examiners and market examiners, and I believe that would be healthy for regulation in general. Some of the techniques and questions posed during an examination would be similar. However, they would also reflect the appropriate discipline. The financial examiner would pose questions and glean from the answers things related to his or her particular discipline, and the same would be true of the market examiner.

How will states use it?

I am not suggesting that we eliminate the transactional market conduct examinations. I believe there is still a place for that type of examination, and there will continue to be a need. It could still be used to quantify errors and violations arising from processes that are flawed. It is frequently used to test compliance with new statutes, and that is likely to continue, as well as testing compliance with past recommendations. Market analysis, the continuum, the corporate governance examination methodology, and the conventional transactional methodology should all be tools available for market regulation.

The corporate governance methodology is a stand-alone examination. It would supplement a conventional examination through which examiners found extensive errors and the state wishes to pinpoint the flaws. The result of a corporate governance review facilitates development of corrective action plans, since error causation can be pinpointed in the review report.

The use of the corporate governance methodology should reduce the "piling on" frequently seen with the conventional market conduct examinations.

I suggest that each state perform such an examination of its domestics and share the results with the states in which that domestic operates. Examination of surplus lines insurers done in this fashion would do much to allay the concerns of states in which the insurer operates as a non-admitted insurer yet have no authority to examine directly.

The duration of this kind of examination is frequently shorter than a conventional examination unless the examining state also conducts a sampling of files. In those cases in which the processes are flawed or nonexistent, sampling is recommended as a means to confirm findings.

Conclusion

NAIC adoption of corporate governance methodology would aid in moving to an accreditation mechanism for market regulation by considering the areas in which uniformity does exist to a great extent. Of course, the devil is in the details, and that is likely to be true here. Since some states are already using parts of the concept, the transition should not be very difficult. Designing a phase-in of the concept is a workable means of adding this methodology to our tool bag and then moving to accreditation. ■

Don Koch, CIE, MCM is the director of market regulation and a principal of NorthStarExams, LLC. His insurance career started in Philadelphia in 1960. He worked for the Alaska Division of Insurance for 27 ½ years, where he served as chief of market surveillance. Don held concurrent positions at various times as acting director of insurance, acting deputy director of insurance, and special deputy. He chaired the NAIC Working Group that drafted the current Market Conduct Examination Handbook and participated in numerous other working groups and committees. Following his tenure in Alaska, he was the supervising market conduct examiner under contract in Delaware for nine years.

Demystifying Title Insurance

A Two-Part Report on Title Insurance

by Joe Bieniek, CPCU, AIE, CCP, CIC, ARC, MCM, AIS, AU, AINS

Is it any wonder people get confused and do not understand title insurance when terminology like closer, affiliated business arrangement, closing protection letter, RESPA, direct operations, good faith effort, and title plant is used? People, including regulators and insurance professionals, think title insurance includes such things as title search, abstracts, document preparation fees, curing defects fees, and several other costs. Many seem to think that title insurance is a property and casualty product, but it is not. Items related to financial statements are unique for title insurance compared to other lines of business, and the NAIC has developed annual statement reporting requirements separately for title insurance companies.

Consumers have a hard time understanding what title insurance is as they feel they do not have a choice in choosing their insurance company or their agent. Most people think that title insurance is the price they have to pay so the lender can sleep well at night. Also, the premium drives up the costs they need to shell out at closing. It's not only the premium, but many other costs related to getting a clean title that consumers feel is all wrapped up in purchasing this insurance—"what others tell me I must buy." They simply do not see the benefit.

The coverage

State definitions of title insurance are fairly lengthy. Most (but not all) states have adopted the NAIC model law version of title insurance. In its simplest form, title insurance is a contract insuring or indemnifying *someone* who has a lawful interest in real or personal property against loss or damage arising from *problems* existing on or before the effective date of the policy. We'll get into the full definition shortly.

Did you notice how this definition is different than other lines of business definitions? *"Someone,"* as referred to above, is typically the owner(s) or mortgage company.

Title insurance generally comes in two flavors. The first is an owner's policy. For a newlywed couple, the owner's policy protects the two partners for any *problems* discovered regarding the title of their property after the policy effective date. It protects them for any costs associated to remedy the *problems* that were discovered in the title. The second item of importance is the protection they purchased covers them from that point forward; there is no expiration date and they do not even have to own the property any longer. A *problem* with the title or previous ownership of the land and home someone purchased might be discovered many years later and it might be the responsibility of those newlyweds to get the title corrected even if they no longer own the property. They should hold on to their policy because it protects them from the date the policy was effective.

The second form of title insurance is referred to as a lender's policy. The lender's policy protects the lender from any *problems* and associated costs to fix the *problems* up to the amount of the outstanding loan on the policy at the time of the loss. The definition above included the words "lawful interest" and that is why the lender is protected only up to the amount of the loan balance. From that short description, it sounds like a lender's policy does provide a benefit and is a good thing for lenders to purchase. The only problem is that lenders do not purchase the policy; they require the owners purchasing a property to get the policy for the lender. In some cases, it's the seller who purchases the lender's policy on behalf of the purchasers.

Many consumers do not understand insurance. They don't like it and they don't like paying for it. When someone is buying a home and s/he is securing a mortgage, s/he's told that s/he must buy a homeowners policy and title insurance with title insurance coming in two flavors: an owner's policy and a lender's policy. The insurance industry gets the unfortunate bad reputation as consumers often say "I had to buy that insurance" even though it was the lender requiring them to do so. On top of the two policies purchased, there are all these other costs: title search, abstracts, document preparation fees, curing defects fees, and other costs they had to pay for that they think are a part of insurance. For most people, it's the house that interests them—not the insurance and other costs, which they consider to be a nuisance.

The following is the definition of title insurance policy from the NAIC Title Insurers Model Act (Model Act 628):

> "Title insurance policy" or "policy" means a contract insuring or indemnifying owners of, or other persons lawfully interested in, real or personal property or any interest in real property against loss or damage arising from any or all of the following conditions existing on or before the policy date and not excepted or excluded:
>
> (1) Defects in or liens or encumbrances on the insured title;
>
> (2) Unmarketability of the insured title;
>
> (3) Invalidity, lack of priority, or unenforceability of liens or encumbrances on the stated property;
>
> (4) Lack of legal right of access to the land; or
>
> (5) Unenforceability of rights in title to the land.

The process of providing title insurance

Following is the process when a title agent or title company receives an order for title insurance. For the most part, I have copied this from the "Title Agent Statistical Data Plan Implementation Guideline" that is

continue to page 14

Title Insurance continued from page 13

weaving its way through the implementation process at the NAIC. I like this guideline, as it includes the difference between title insurance and property and casualty insurance. The guideline can be found on the NAIC's website.

In the course of searching for and examining land records, title agencies fulfill their main role in the title insurance process of identifying actual and/or potential clouds or defects on the title that may lead to future losses. Agents may work to correct or eliminate the title defects that can be fixed and inform the insured of which ones cannot be cured by the agent and will be listed as exceptions in the policy. Title agents may also cure defects at the direction of the buyer, the lending institution, or the title insurer. Depending on the state, this function may be performed by an escrow agent, a title agent, or another third party.

Sometimes, an entity will spend numerous hours evaluating and eliminating risk before the premium is even paid. This is one of the fundamental differences between title insurance and casualty insurance. While technology helps to some extent, automated land records do not eliminate the cost of searching for and addressing defects in title. In most jurisdictions, automated land records are no more than automated indices and images of documents. Although these systems can reduce the time and effort necessary to search land records, the actual process is unchanged. Title insurance producers or abstractors still must search all records, find those related to a property, and manually examine each document. While some software systems collect and store information, they can be prohibitively expensive for many agencies.

The title agent often performs the functions of an underwriter, which is another difference between property and casualty insurance and the other lines of business. The following is the definition from the NAIC Title Insurers Model Act:

> "Title insurance agent" or "agent" means an authorized person, other than a bona fide employee of the title insurer, who, on behalf of the title insurer, performs the following acts in conjunction with the issuance of a title insurance report or policy:
>
> (1) Determines insurability and issues title insurance reports or policies, or both, based upon the performance or review of a search or abstract of title; and
>
> (2) Performs one or more of the following functions:
>
> (a) Collects or disburses premiums, escrow or security deposits, or other funds;
>
> (b) Handles escrows, settlements, or closings;
>
> (c) Solicits or negotiates title insurance business; or
>
> (d) Records closing documents.

Because the process of issuing a title policy involves underwriting to be sure the land title is clean before a policy is written, the number of resulting claims is therefore lower. Commission structures of title agents are very dissimilar to property and casualty insurance. Due to the underwriting done before a policy is issued, the acquisitions costs are higher as compared to property and casualty and, with the upfront underwriting performed, the loss ratios for title insurance are much lower as compared to property and casualty insurance.

Earlier in my simple definition of title insurance, I used the word *problems* which are covered in a policy. The NAIC definition of title insurance policy also includes some generalities regarding what is covered on a policy. Here are some specific defects found and/or fixed in a search when title insurance is purchased: the land may not have been indexed properly in the land records; missing or unknown heirs to an estate come to light after a property is sold; there could be forged deeds; there may be invalid deeds; and there may be mistakes in recording legal documents.

Title agents can provide abstracts unrelated to providing title insurance. The NAIC definition: "Abstract of title" or "abstract" means a written history, synopsis, or summary of the recorded instruments affecting the title to real property. Title agents may or may not perform closings. A closer is someone who handles the settlement or closing or escrow transactions, which involves the written documents and money/funds in the process of transferring title. Because this is a separate function, an escrow, settlement, or closing fee will be charged, even if the title agent is involved in this function.

Many consumers do not understand insurance. They don't like it and they don't like paying for it.

Closing protection letters

At the closing, it is incumbent upon the parties that all liens are paid on the property before title is passed to the new owner. One way to ensure this occurs is the use of closing protection letters. Closing protection letters are sometimes used in the process of purchasing real property. Some advocate for their use in all property transactions; it's possible to mitigate title agent defalcations through the use of closing protection letters as the letter includes protection against the fraud or dishonesty of the agent issuing the title underwriter's policy. A closing protection letter provides an assurance that all funds will be correctly handled to clear all the encumbrances (debts owed as all lienholders will be paid what they are owed) on the property and provides an indemnification due to the issuing agent's handling of funds or documents in connection with the closing. Closing protection letters are issued to lenders and owners when required by law or to a lender or owner who requests them. Because a different function is performed and additional documents are prepared, there will more than likely be an additional charge for providing closing protection letters.

RESPA's involvement

When consumers are told by their mortgage company or their real estate broker that "I must buy" title insurance, a product they do not know or understand, what do they do next? Generally, the consumers listen to the person who told them to buy this insurance and use the title agent and/or title company referred to them. Purchasers of real property do have a choice at this

point to shop around for title insurance. However, most consumers, such as the newlyweds mentioned earlier, are focusing on buying the new home and wondering how to get everything in order and purchase new furnishings for their home. Excitement is in the air—and shopping for title insurance is not part of that excitement.

The federal Real Estate Settlement Procedures Act (RESPA) helps consumers become better shoppers for settlement services and is in place to eliminate kickbacks and referral fees. RESPA prohibits a person from giving or accepting anything of value for referrals of settlement service business related to a federally related mortgage loan. It prohibits a person from giving or accepting any part of a charge for services that are not performed. It also prohibits home sellers from requiring home buyers to purchase title insurance from a particular company. Many insurance departments, the NAIC, and other entities have been involved and will continue to be involved in providing additional information to consumers about their choices related to purchasing title insurance and the other related expenses associated with purchasing property.

When borrowers apply for a mortgage loan, mortgage brokers and/or lenders must give the borrowers a Special Information Booklet, which contains consumer information regarding various real estate settlement services, and a Good Faith Estimate (GFE) of settlement costs, which lists the charges the buyer is likely to pay at settlement. This is only an estimate and the actual charges may differ. If a lender requires the borrower to use a particular settlement provider, then the lender must disclose this requirement on the GFE and a Mortgage Servicing Disclosure Statement, which discloses to the borrower whether the lender intends to service the loan or transfer it to another lender. If the borrowers do not get these documents at the time of application, the lender must mail them within three business days of receiving the loan application. RESPA has other requirements for disclosures, including some that are disclosed after the settlement occurs.

The HUD-1 Settlement Statement is a standard form that clearly shows all charges imposed on borrowers and sellers in connection with a settlement. RESPA allows the borrower to request to see the HUD-1 one day before the actual settlement. The settlement agent must then provide the borrower with a completed HUD-1 based on information known to the agent at that time. Separate HUD-1 forms may be prepared for the borrower and the seller.

Other terms

The term "title agents" includes various and different types of people and entities. Some are not agents at all as attorneys provide the functions of a title agent. Following is a listing of the different groups.

- An "affiliated title agency" is a title agency that is owned, either wholly or in part, by a title insurance company/underwriter but does not operate as an underwriter direct agency.
- An "attorney firm/title agency" is a title agency that is owned and operated by an attorney or law firm.
- An "independent title agency" is a title agency that is not part of an ownership arrangement with a real estate settlement producer or with a title insurance company/underwriter.
- A "direct operation" involves the title company also having title agents on staff as employees in procuring title insurance or a title agency that is wholly owned and operated by a title insurance company. The licensing of title agents, attorneys and the like varies by state.
- An "affiliated business arrangement" is an arrangement in which a settlement producer (such as a real estate broker, developer, mortgage loan originator, or bank, or any other individual or entity that is in a position, directly or indirectly, to refer settlement business to a title entity) also maintains a direct or beneficial ownership interest in that title entity.
- A "title plant" means a set of records consisting of documents, maps, surveys, or entries affecting title to real property or any interest in or encumbrance on the property, which have been filed or recorded in the jurisdiction for which the title plant is established or maintained.

The Title Insurance (C) Task Force of the NAIC conducted a survey of each jurisdiction's laws and regulations regarding the collection of title agent data and other issues related to title insurance. The survey was conducted by the NAIC and began in August 2009. Respondents were the insurance department or other jurisdictional agency responsible for title agents or title insurance as appropriate in each jurisdiction. The survey was concluded and summarized in March 2010. The survey includes information by state related to such items as the different functions allowed or performed by different entities and what entities are licensed or appointed. The results are available at http://www.naic.org/documents/committees_c_title_tf_survey_state_laws.pdf.

Summary of benefits to consumers

Consumer benefits of purchasing title insurance and obtaining a closing protection letter include:

- Providing peace of mind knowing there is clear title and, if the title is not clear, there is insurance to protect the owner for any losses involved;
- Believing all payments were made to prior lienholders;
- Covering the owners for an unlimited amount of time;
- Paying for title insurance once; and
- Knowing that escrow funds were set up properly.

Regulators must be certain that the benefits are provided to consumers.

The next issue of *The Regulator* will include information related to market conduct examinations of title insurers and title insurance agents. ■

Joe Bieniek, CPCU, AIE, CCP, CIC, ARC, MCM, AIS, AU, AINS, is senior regulatory services advisor with the NAIC. Before joining the NAIC in 2006, Joe spent nine years at Wolters Kluwer Financial Services and more than 20 years of his insurance career with the nation's largest personal lines stock company. Joe currently serves as an elected board member of the Kansas City Chapter of the CPCU Society and as chair of the Regulatory and Legislative Interest Group Committee of the CPCU Society.

Regulatory Wrap-Up

The Experiment Continues...

Florida

by Rich J. Fidei and Fred E. Karlinsky

U.S. District Court denies coverage for Chinese drywall claims under commercial general liability policies

In a March 2011 order granting summary judgment in the case of *General Fidelity Ins. Co. v. Katherine L. Foster, et al.,* a Florida U.S. District Court applied the "Florida Total Pollution Exclusion Endorsement" to find that General Fidelity Insurance Company ("GFIC") was not obligated to defend a developer from a homeowner's Chinese drywall claims under the developer's GFIC commercial general liability policies. Contradicting another March 2011 Florida case, *Walker v. Teachers Insurance Co.,* the Court found that the excessive sulfur and strontium in the drywall were excluded "pollutants" because they were "irritants," as defined by Webster's Dictionary. The Court also noted that the total pollution exclusion was clear and not ambiguous.

Appeal ruling prohibits personal injury protection ("PIP") carriers from using Medicare Part B Fee Schedules unless explicitly included in policy language

In a May 2011 opinion, *Kingsway Amigo Insurance Co. v. Ocean Health, Inc.,* Florida's Fourth District Court of Appeal appears to have precluded PIP carriers from using the Medicare Part B Fee Schedules (as permitted by the Florida No-Fault Act) unless explicitly included in the insurance carrier's policy language. The decision affirmed a final summary judgment in favor of Ocean Health and answered the following certified question in the negative: "May a PIP insurer nevertheless elect to use the Medicare Part B Fee Schedules set forth in Fla. Stat. 627.736(5)(a)(2) when the subject PIP policy specifies that the PIP insurer will pay 80 percent of medically necessary expenses?"

Third District Court of Appeal denies contractual appraisal process due to carrier's failure to provide policyholders with notice of right to mediation

On May 25, 2011, the Florida Third District Court of Appeal issued an opinion in *Universal Property and Casualty Insurance Company v. Colosimo* that strictly construed the requirements of section 627.7015, F.S., which requires insurers to notify first-party claimants of their right to participate in mediation. The Court rejected Universal's arguments that compliance with § 627.7015, F.S. was not necessary, inasmuch as the policyholders in question had knowledge of the mediation process due to a contemporaneously filed claim and because their insurance policy contained language apprising them of their right to mediation. The Court also rejected Universal's argument that the policyholders' participation in appraisal bound them to complete the process.

Florida Office of Insurance Regulation notifies residential property insurers of statutory changes to minimum surplus requirements

Pursuant to the enactment of SB 408, the 2011 comprehensive Florida residential property insurance overhaul, the Florida Office of Insurance Regulation ("OIR") has advised all residential property insurers in the State of Florida of changes to the minimum surplus requirements for new domestic insurers to receive authority to transact residential property insurance, as well an amendment to Section 624.408, F.S. relating to surplus required for property and casualty insurers authorized to underwrite any line of residential property insurance to maintain a certificate of authority. As amended, Section 624.408(1)(g), F.S. now provides that the surplus required to maintain a certificate of authority for property and casualty insurers authorized to underwrite any line of residential property insurance holding a certificate of authority before July 1, 2011, and until June 30, 2016 is $5 million; on or after July 1, 2016, and until June 30, 2021, $10 million; on or after July 1, 2021, $15 million. For new insurers, Florida law now provides that $15 million is the surplus required for domestic property and casualty insurers that are not a wholly owned subsidiary of an insurer domiciled in any other state to receive authority to transact residential property insurance.

Florida Supreme Court finds 2005 asbestos lawsuit restrictions unconstitutional

In July 8, 2011 rulings, the Florida Supreme Court found that the Florida Legislature acted unconstitutionally in 2005 by placing new restrictions on lawsuits filed by asbestos exposure victims. Specifically, the 2005 Legislature addressed these claims by passing the Asbestos and Silica Compensation Fairness Act ("ASCFA"), which applied retroactively to all claims other than those already in litigation and raised the burden on claimants. The ASCFA enumerated various elements of a prima facie case and established that a claimant must make a prima facie showing of the enumerated elements before being permitted to bring a claim. Subsequently, ASCFA was challenged on constitutionality grounds and struck down by the Florida Supreme Court because the retroactive application of the ASCFA violates the due process clause of the Florida Constitution. During Florida's 2011 Legislative Session, the ASCFA was proposed as a model to create the "Sinkhole Compensation Fairness Act" in an effort to control the cost of sinkhole tail claims (those that are made subsequent to the effective termination date of the occurring policy period) by weeding out questionable claims and ensuring that only real sinkhole claims qualify for consideration. This Act did not pass during the 2011 Session.

Emergency rule implements new definition of Florida Hurricane Catastrophe Fund losses

To ensure Florida Hurricane Catastrophe Fund (FHCF) Reimbursement Contract forms are appropriately amended and made

effective as soon as possible, Florida's State Board of Administration filed Emergency Rule 19ER11-2 (19-8.010) on July 1, 2011, to change the definition of "losses" reimbursable by the FHCF pursuant to provisions of SB 408, a comprehensive residential property insurance bill enacted in 2011. In addition to specifying certain exclusions, the new law defines "losses" as "all incurred losses under covered policies, including additional living expenses not to exceed 40 percent of the insured value of a residential structure or its contents and amounts paid as fees on behalf of or inuring to the benefit of a policyholder." ■

Rich J. Fidei and Fred E. Karlinsky are with Colodny, Fass, Talenfeld, Karlinsky & Abate, P.C. Rich can be reached at rfidei@cftlaw.com or 954-492-4010; Fred can be reached at fkarlinsky@cftlaw.com or 954-492-4010.

Georgia

by Tony Roehl

Georgia Department permits pass through of credit card charges

On July 19, 2011, the Department issued Bulletin 11-EX-2, which rescinds Bulletin 87-EX-1. This Bulletin recognizes a change in federal law regarding a prohibition on the imposition of fees to cover interchange fees incurred with the use of a credit card and reverses the Department's prior position to now permit agents and insurers to pass through interchange fees to consumers paying for insurance with a credit card. All fees, however, must be prominently disclosed to the consumer in writing. A link to the Bulletin is available at http://bit.ly/pPoI8J.

Georgia adopts new requirements for individual and small group health insurance rate filings

On July 13, 2011, the Department issued Directive 11-EX-7 to notify insurers writing major medical health insurance coverage in Georgia in the individual and small group markets of new rate filing requirements effective September 1, 2011. The Department is committed to operating an effective rate review program as defined in new federal regulations related to requirements under the Affordable Care Act for state regulation of health insurance rates. Specifically, the Department has adopted the additional filing requirements in the regulation found at 45 CFR § 154.301. The new filing requirements apply to any proposed rate increase equal to or greater than 10%. A link to the Directive is available at http://bit.ly/ocFil3.

Small group policyholders have a right to know how rate was determined

On June 20, 2011, the Department issued Bulletin 11-EX-1. This bulletin reminds insurers writing small group (50 or fewer employees) health insurance in Georgia of the requirement to provide a response within ten days to a request from the customer for documentation of how their proposed rate compares to the small group pool rate. Georgia requires all small group rates to be developed off of a pooled rate for the entire small group of business of a carrier. Group policies issued in Georgia are required to include a notice that information on how the rate was developed is available from the insurer. A link to the Bulletin is available at http://bit.ly/nLxTNM. ■

Tony Roehl is with Morris, Manning & Martin, LLP. He can be reached at troehl@mmmlaw.com or 404-495-8477.

State Chapter News

VIRGINIA – On August 11, 2011, the Virginia Chapter held a meeting to inform IRES members of the topics discussed at the Career Development Seminar. The speaker panel included Carly Daniel, AIRC, AIE and Jackie Myers, FLMI, AIE, ACS, MHP from the Life & Health Market Regulation Division and Andrea Baytop from the Property & Casualty Division. Fourteen members were in attendance.

On August 25, 2011, the Virginia Chapter held a meeting to discuss common problems revealed during the investigation of property & casualty insurance agents and agencies in Virginia. Linwood Bennett and Mike Nacy, senior investigators for the Property & Casualty Agents Investigation Section, were the presenters. Twenty-seven members were in attendance. After the meeting, Tom Ballard, CIE, MCM and current IRES president, gave an inspiring presentation on the benefits of IRES membership.

by Greg Lee, FLMI, CIE, senior insurance market examiner for the State Corporation Commission of Virginia, Bureau of Insurance, gregory.lee@scc.virginia.gov

Congratulations!

The following members have received their AIE, CICSR, CIE, or MCM designation since the last issue of *The Regulator*. Please join us in congratulating them!

AIE

- ★ Robert Reichart, AIE, MO

CIE

- ★ Jacqueline Butler, CIE, TX
- ★ Catherine Hoban, CIE, CICSR, NE
- ★ James Wang, CIE, NY

CICSR

- ★ Cyndy Campbell, CIE, MCM, CICSR, unaffiliated
- ★ Catherine Hoban, CIE, CICSR, NE
- ★ John Koenig, CIE, CICSR, NE

MCM

- ★ Victor Agbu, MCM, NY
- ★ Sherry Bass-Pohl, MCM, MI
- ★ Karen Becker, MCM, WI
- ★ Donald Bratcher, CIE, MCM, AR
- ★ Lucinda Casillas, MCM, unaffiliated
- ★ Kristi Cooper, MCM, unaffiliated
- ★ Eileen Crenshaw, MCM, unaffiliated
- ★ Jason Decker, MCM, MD
- ★ Stephanie Duchene, MCM, unaffiliated
- ★ Roshanak Fekrat, MCM, unaffiliated
- ★ Dennis Foley, CIE, MCM, MO
- ★ Pierre Glover, MCM, unaffiliated
- ★ Kathleen Hamilton, MCM, unaffiliated
- ★ Christopher Helmick, MCM, unaffiliated
- ★ Benita Hirsch, CIE, MCM, NY
- ★ Darren Jordan, CIE, MCM, MO
- ★ Teresa Koerkenmeier, CIE, MCM, MO
- ★ Theresa Lavenburg, MCM, unaffiliated
- ★ Sheri Marston, MCM, NAIC
- ★ Desiree Mauller, MCM, WV
- ★ Erin Mirza, MCM, WI
- ★ Robert Moore, CIE, MCM, MT
- ★ Aram Morvari, MCM, unaffiliated
- ★ James Myers, MCM, PA
- ★ Matt Regan, MCM, MA
- ★ Cynthia Sikorski, MCM, OK
- ★ Jennifer Stephen, MCM, unaffiliated
- ★ Coleen Vandepas, MCM, CA
- ★ Doris Walker, MCM, CA
- ★ Benjamin Weinstein, MCM, unaffiliated
- ★ Peggy Willard-Ross, CIE, MCM, NV
- ★ Kathie Woolcott, MCM, unaffiliated
- ★ Nykol Wynn, MCM, MD
- ★ Moua Yang, MCM, WI
- ★ Lynn Zukus, AIE, MCM, unaffiliated

Welcome, New Members!

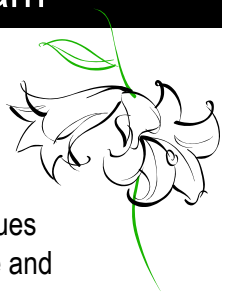
The following individuals have joined IRES since the last issue of *The Regulator*. Visit the online member directory to learn more about them—and please join us in welcoming them!

- ★ Victor Agbu, NY
- ★ Karen Becker, WI
- ★ Beth Blackwell, NC
- ★ Kristi L. Cooper, unaffiliated
- ★ Willard Dean, AL
- ★ Betsy DeBord, WV
- ★ Arthur W. Dodd, VA
- ★ Jim Englese, MCM, unaffiliated
- ★ Roshanak Fekrat, PA
- ★ Daniel P. Ferris, unaffiliated
- ★ Bryan Fuller, MO
- ★ Kathy Graham, unaffiliated
- ★ Tony Greer, MS
- ★ Kathleen Grogan, NY
- ★ Amy Groszos, FL
- ★ Marritta Hager-Dummer, FLMI, FLHC, CCP, AIRC, HIA, MHP, ACS, AAIA, unaffiliated
- ★ Janice Hatridge, AR
- ★ Frank T Hunt, NY
- ★ Shawn Jernigan, NY
- ★ Colin Johnson, DC
- ★ Vicky Kidman, IL
- ★ Royston Lanning, TX
- ★ Costanzo Larussa, AL
- ★ Elaine Leighton, unaffiliated
- ★ Desiree D. Mauller, WV
- ★ Joe May, AL
- ★ Dale Miller, MS
- ★ Erin Mirza, WI
- ★ Aram Morvari, KS
- ★ James Madison Pafford Jr, FL
- ★ Besar Perdja, NY
- ★ Greg Reents, unaffiliated
- ★ James R. Ruegg, FLMI/M, CLU, ACS, unaffiliated
- ★ Carol Schaefer, OH
- ★ Coleen Vandepas, CA
- ★ Ellen Vigil, WI
- ★ Benjamin Weinstein, FL
- ★ Wendy Wilensky, MA

The following organizations have also joined IRES since the last issue of *The Regulator*.

- ★ Navigators Group, Inc. (Illinois)
- ★ Nelson Levine de Luca & Horst, LLC (Ohio)
- ★ USAA

in memoriam



IRES would like to extend its heartfelt sympathy to the families, friends and colleagues of Rhett Jeansonne and Kim Sledge, Louisiana Department of Insurance employees, shot and killed while on the job.

THE REGULATOR®

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MARK YOUR CALENDAR

October 2-5, 2011
SILA – National Education Conference
Austin, TX

October 3-6, 2011
NAIC – 2011 Summer National Meeting
Conference Calls & Summaries
Philadelphia, PA

2011/12 MCM courses are currently being planned. Stay tuned for specifics as they're confirmed.

Watch the calendar at www.go-ires.org for more upcoming events.

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