

# Unclaimed Property and Life/Annuity Claims Settlement: Past, Present, and Future

*Interview of Iowa Commissioner Nick Gerhart*

by Katherine Evans of Dentons US LLP

The obligation of a life or annuity company to seek out the death status of a policyholder has been one of the hottest topics in the regulation of life insurance in the past five years. *The Regulator*® sat down with Iowa Commissioner Nick Gerhart to discuss past, present, and future developments on the issue.

Q. Although states have had laws relating to unclaimed property on the books for many years, the issue of whether life/annuity insurers must actively seek out the status of their policyholders has come up fairly recently. Can you take our readership through the recent history of this issue in the industry?

To really explain, it is important to start back at the beginning of it all. While unclaimed property laws vary from state to state, they typically derive from one of three model laws. Around 1954, the first variation of unclaimed property legislation was released. This legislation was revised in 1966. In 1991, a uniform law was introduced, which was revised again in 1995. Currently, these three variations of the uniform law are floating around in the states—fairly equally distributed among all the states. These laws relate to all forms of unclaimed property, not just life insurance. In addition to unclaimed

property laws, states have unfair claims and trade practices laws in effect. State insurance regulators focus on these laws.

State treasurers were first conducting examinations on the issue of unclaimed property in life insurance. Many state treasurers retained independent audit firms to run the exam focusing on company procedures and practices related to tracking and reporting unclaimed property. It is my understanding that, as a result of these audits, state insurance regulators started looking at the issue around 2010. In 2011, New York issued a Section 308 letter to life and annuity carriers outlining a reporting requirement on this subject. In addition, an Executive Task Force (“Investigations of Life/Annuity Claims Settlement Practice (D) Task Force”) was formed to coordinate multi-state examinations



## WHAT'S INSIDE

President's Remarks .....	3
Sea Change in the Life Insurance Industry.....	4
The Use of Social Media in the Business of Insurance .....	6
Joint Market Regulation Forum .....	7
Expanding the AIE™ and CIE™ Designations.....	8
Meet the Executive Board: Erin Mirza ..	9
'Zoning In' .....	10
Four State Regulators Receive Rookie of the Year Scholarships.....	12
What's Happening at IRES? .....	13
Hear Ye! Hear Ye! Hear Ye! .....	14
State Chapter News .....	14
ORSA: Three Ways It Can Up Your Game.....	15
New Members .....	18
New Designees .....	18
Spring 2013 MCM™ Designees.....	19
Meetings and Elections Update.....	19
In Memoriam.....	20
The Last Word .....	21

## MARK YOUR CALENDAR

**June 9-11, 2014**  
MCM® Designation Course  
Baltimore, MD

**August 3-6, 2014**  
Joint Market Regulation Forum  
St. Louis, MO



INSURANCE REGULATORY EXAMINERS SOCIETY  
The Professional Society Committed to Excellence in Insurance Regulation

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of claims settlement practices. Also in 2011, two state insurance departments—Florida and California—held public hearings on the issue. It was in 2010-2011 that this issue really became a major focus for life and annuity companies.

**Q. How did insurance regulators first become aware of the issue? Was this something recognized during market conduct exams?**

State treasurers first examined the issue, using third party auditors. Again, it is my understanding that state treasurers then engaged their insurance regulator counterparts.

**Q. Can you briefly describe the conduct regulators took issue with?**

The insurance regulators really took issue with the asymmetrical use of something called the Social Security “Death Master File.” The Death Master File, or DMF as it is commonly called, is a list published by the Social Security Administration that reports death information the Administration receives. Some carriers were using the DMF (or a vendor of the DMF) on the annuity side of the business but not on the life side. When they got a hit on the DMF indicating an annuity holder had died, carriers would stop payments to the consumer. However, some carriers were looking at this information primarily to stop annuity payouts and potential fraud, but did not then run the DMF against their in-force life insurance business to determine whether a claim should be opened and investigated to pay life insurance proceeds.

If the carriers were using death information from the DMF in order to stop annuity payments, they should have also been using this information on the life side to proactively identify potentially affected life insurance policies. This asymmetrical use of the DMF raised other questions of knowledge: what do carriers know, what do they have access

to, and what should they know. Insurance regulators took issue with this asymmetrical use of the DMF.

**Q. Some companies never used the DMF at all. Is there a difference, from the regulator's perspective?**

I believe there is at least one settlement that determined the company did not have violations because the company did not use the DMF asymmetrically. If a carrier wasn't using the DMF at all, I have heard regulators comment that is not a Market Conduct issue in their mind. From my perspective, I think insurance regulators will look at these issues and compartmentalize. The issue that the insurance regulators are really focusing on is asymmetrical use.

Of course, some states now have laws that require periodic searches of the DMF. Alabama, Kentucky, Maryland, Montana, Nevada, New Mexico, New York, North Dakota, and Vermont all have laws on their books, and most are based on the NCOIL model law to some varying degree.

**Some states now have laws that require periodic searches of the DMF.**

**Q. Speaking of which, can you walk us through the basic structure of the NCOIL model law?**

Sure. NCOIL (the National Conference of Insurance Legislators) proposed the model law in November 2011. The overall purpose of the law is to specifically require life insurers to compare their in-force life insurance business to the deaths reported on the DMF, and then to make a good faith effort to confirm any matches, determine whether benefits are due, locate the beneficiary, and provide claim forms.

**Q. I understand Iowa is considering its own legislation. Can you share with us the status of that legislation and any Iowa-specific variations on the requirements?**

The legislation didn't make it through the funnel week, which means it will not be considered this session. There continues to be a strong sense in the industry that moving forward with legislation is what makes sense.

**Q. As Commissioner in Iowa, your domestic insurers make up a big percentage of the life and annuity insurance marketplace. How have your domestics reacted?**

Iowa has seven carriers of the top 40 that are currently being audited or that have settled. Four Iowa carriers have settled and are making the agreed-upon changes to their practices under the terms of a regulatory settlement agreement. In talking to Iowa domestic carriers and non-domestic carriers, it is my understanding that many companies have voluntarily updated their procedures to incorporate a practice similar to what the regulatory settlements outline. As I mentioned before, the industry is pushing to have a version of the NCOIL model passed in Iowa.

**Q. State treasurers and controllers have also initiated exams of life insurers on the unclaimed property/use of the DMF issues. Do you have a view as to whether this is the jurisdiction of state treasury versus state departments of insurance?**

This is a case where dual jurisdiction may, in fact, be appropriate. Treasurers are administering unclaimed property laws. For example, in Iowa, we have “The Great Treasurer Hunt,” wherein the Treasurer created a website and an online system for the public to find their unclaimed property. Insurance Commissioners believe unclaimed property, as it

relates to life insurance proceeds being paid, is a consumer protection issue. For instance, in the case of smaller face value policies, consumers may not know that the coverage exists. By requiring certain conduct of the carrier, insurance regulators are getting to the heart of the consumer protection aspect. Of course, some carriers claim that regulators are changing the terms of their policies and that the NAIC should have addressed this through a Model Act or Standards. I anticipate that review and legislation on this issue will continue.

#### **Q. What coordination has gone on among the state commissioners, at the NAIC level or otherwise, on these issues?**

I am on the unclaimed property working group committee. Julie McPeak of Tennessee is the chair. We held our first meeting at the NAIC spring national meeting. We heard testimony from interested parties and had productive dialogue. I am hopeful the working group

will conduct its review quickly and make a set of recommendations.

#### **Q. Next steps: Where do you see this issue going in the next year? Next five years?**

In the next 12-18 months, the NAIC will continue to look at this. Through the work and recommendations of the working group, insurance regulators through the NAIC could present a model law or create a set of standards. It is too early to tell right now. At the same time, the NCOIL model law will go through some minor edits and tweaks at NCOIL and the current NCOIL Model or a variation of it will likely be passed in more states.

Also, there is a fair amount of litigation pending concerning these issues. In the next few years, more of these cases will have been concluded and, likely, new cases will have been brought, including private party litigation. In my estimation,

litigation on these issues will be here for a while.

Finally, in five years, I predict more states will have laws on the books defining duties of carriers. ■

Iowa Insurance Commissioner Nick Gerhart has held the position since February 1, 2013. Prior to being appointed Insurance Commissioner, Commissioner Gerhart worked for Sammons Financial Group as the vice president of compliance and regulatory affairs. Commissioner Gerhart is active in the Des Moines community and serves on numerous civic boards. He earned his law degree and health law certificate from St. Louis University School of Law and a Masters of Health Administration from St. Louis University School of Public Health. He earned his BA from the University of Northern Iowa.

Commissioner Gerhart and his wife Jessica reside in Des Moines, Iowa with their three children.

Katherine Evans is a partner in the Insurance Regulatory group of Dentons US, LLP.

## **President's Remarks**

by Holly Blanchard, FLCI, AIE, ACP, CCP, AINS, AIRC, Current IRES President

**A**fter what has been a very long winter for most of us, signs of spring are finally starting to show. Spring is my favorite time, as it seems like a new beginning and a time for growth. In the insurance industry, however, spring can also be indicative of a very busy season. Whether it is looming deadlines for Health Care Reform or a sure surge of claims and complaints due to the inevitable storms, spring is never lackluster for this profession.

Your IRES Publications Committee has also been very hard at work creating what I'm sure you will find to be an informative and interesting edition of *The Regulator*. Among other great articles, you'll find in this edition timely articles

on such areas of interest as the focus on unclaimed property and the use of the Death Master File in the life industry (written by Commissioner Nick Gerhart of Iowa and Mary Smith of the Illinois Department). For something a little different, we have an update on the use of social media in the business of insurance (written by Randa Zalman).

The IRES Publications Committee is not the only area that has been diligently working to make your IRES even better. The Accreditations and Ethics (A&E) Committee has been working hard on revising the applications to capture more information about our members



to ensure we are providing the most useful benefits and educational opportunities to meet our members' needs. Additionally, the A&E Committee has been updating the NICE manual to include the newly extended designations for our sustaining members. The Education Committee has been working hard to coordinate the 2014 MCM schedule. Currently, there are four MCM classes scheduled for the remainder of 2014: June 9-11 Maryland, August 6-8 Joint Forum, and September 17-19 Sacramento. The Membership and Benefits (M&B) Committee has been diligently working on website updates, Rookie

of the Year nominations, and fantastic webinars available to all of our members. This year, the Meetings and Elections Committee had a record number of nominations for the board of directors. The nominees are a very well respected, knowledgeable group. Each nominee would be a tremendous asset to the board of directors, and the voting membership will undoubtedly have a difficult time choosing the nominees to be appointed.

One of the certain highlights of the year is going to be the Joint Market Regulation Forum that is being hosted in coordination with the IRES Foundation August 3-6. The agenda has been posted to the IRES website, and I think you'll find this to be one of the best Forums that IRES has ever presented. The CDS Committee has been working hard to create an agenda that is educational, interesting, and innovative. The end result is nothing short of spectacular.

So, with the changing of the season comes growth in IRES. Additional designation assistance programs will be hosted, and more great webinars will be forthcoming, as well as more enhanced member services. As an IRES member, I really think you'll like the direction that we are going.

As always, if you have any ideas or comments on enhancements, outreach, or educational opportunities that need to be considered, please don't hesitate to reach out to me. This is your IRES and you can help make it great. Happy Spring! ■

Holly Blanchard is an assistant director at Examination Resources and was previously a regulator with the Nebraska Department of Insurance. She has been an active member of many committees and subcommittees of IRES throughout the years, and is looking forward to continuing to help IRES grow.

# Sea Change in the Life Insurance Industry

## *Making Timely Payments to Beneficiaries of Deceased Policyholders*

by Mary L. Smith

**D**uring the past few years, there has been much activity in the life insurance industry regarding the use of information from the Social Security Death Master File ("DMF") and the issue of unclaimed death benefits. This activity includes completed or settled examinations with some of the nation's forty largest life insurers, pending multi-state examinations with the remainder, several lawsuits, legislative activity, and press attention. These issues are being addressed by state departments of insurance in order to get unpaid life insurance and annuity benefits into the hands of beneficiaries.

Against this backdrop, several life insurance companies have worked cooperatively with state insurance departments and unclaimed property officials to negotiate agreements that ensure all death benefits are timely paid, even when, due to the passage of time or other reasons, the beneficiaries are not aware of their entitlement to the proceeds. As of early 2014, state insurance regulators have negotiated settlements with 13 insurers, including seven of the largest life insurers in the United States. With these settlements, insurers have agreed to implement consumer-friendly practices to identify deceased insureds and annuitants and timely pay benefits rightfully owed to beneficiaries. As of today, insurers comprising approximately 60% of the life insurance market by premium volume either have entered into settlements or already were using DMF information appropriately.

In addition, state controllers have entered into settlements with many insurers. Under those settlements, insurers agree to turn over to state unclaimed property offices benefits that are long overdue

and for which the insurer cannot locate a beneficiary.

The insurance departments' and unclaimed property officials' settlements reflect a sea change toward fair and proper use of DMF information. Nationally, those settlements have resulted in insurance companies returning more than \$1 billion to beneficiaries and more than \$1.3 billion being delivered to state unclaimed property offices. Those offices continue efforts to locate and pay beneficiaries.



**[The settlements] reflect a sea change toward fair and proper use of DMF information.**

### Asymmetrical Use of the DMF

The federal government attempts to list every person who dies in the United States on the DMF. Dating as far back as the early 1980s, many insurers have accessed the DMF, either directly or through a third-party service or vendor. These companies have used DMF information to identify deceased individuals covered by certain of their products, most often on annuities in a payout phase. Once deceased, the individual no longer qualifies for annuity payments and the insurer discontinues payments. But some of those same insurers did *not* use the DMF on the life insurance side of their business, or as to annuities not yet payable, to identify life insurance policyholders who died. The insurers did not take steps to contact beneficiaries or

attempt to pay death benefits. Indeed, in some instances, insurers did not even take the step of “cross checking” whether a *particular* annuity owner *also* was a life insurance policyholder.

In short, insurers used DMF information in a variety of ways for their financial advantage or business purposes, but often have not used this information in a manner that is in the best interests of their policyholders. Use of DMF information gave insurers the advantage of being able to *end* payouts on their annuity products or for some other aspect of their business, but insurers often did not use the same type of DMF information to locate beneficiaries and *make* payments on their life insurance products. It is estimated that, through these types of practices, insurers avoided or delayed paying billions of dollars in life insurance proceeds to beneficiaries and also failed to turn over unclaimed proceeds to state controllers throughout the United States.

### **Multi-State Examinations by State Insurance Departments**

In 2011, the National Association of Insurance Commissioners (“NAIC”) created the “Investigation of Life/Annuities Claim Settlement Practices Task Force.” Its purpose is to investigate the asymmetrical use of DMF information and other practices that might cause insurers not to timely pay life insurance and annuity benefits to beneficiaries when due. Pursuant to this effort, six “lead states” were charged with examining the practices of life insurers. The lead states on the multistate exams are Illinois, California, Florida, New Hampshire, North Dakota, and Pennsylvania. In some cases, the insurer’s domiciliary insurance regulator has also joined as a lead state.

As a result of this process, settlements have been reached with thirteen insurers: MetLife, Prudential, New York Life, John Hancock, Lincoln, Aegon (or Transamerica), AIG, ING, TIAA, Nationwide, Aviva (now Athene), Midland, and Genworth. Illinois acted as the managing

lead state on the MetLife, Aegon, TIAA, Aviva, Midland, and Genworth exams. The amounts benefiting consumers from these settlements are substantial. For instance, in the case of MetLife, almost \$44 million was reported to Illinois with more than \$4.2 million returned to Illinois residents through due diligence on the part of the companies.

### **Cooperation between the companies and their regulators can work to benefit consumers across the nation.**

Under these settlements, the insurers agreed to implement business reforms to promote a timely and efficient search for the beneficiaries of in-force life insurance policies and annuities. The insurers will regularly match all of the insureds and annuitants against the DMF to determine when an insured has died and the insurers will then attempt to locate and pay beneficiaries. The settlements generally require insurers to compare their records with the DMF update file monthly and against the entire DMF at least once a year, and provide quarterly reports to insurance regulators regarding the implementation of the agreements. As part of these settlements, the insurers make multi-statement examination payments.

Some of these settlements also acknowledge the fact that certain companies began to implement practice changes to symmetrically use the DMF even before reaching an agreement. For instance, the settlement agreement with Genworth that was announced by Illinois in January 2014 disclosed that the company began performing comparisons of its life insurance policies against the DMF in 2011 and 2012 and began running monthly comparisons of the DMF in January 2012.

The lead state insurance regulators issued “clean” exam reports for two companies: MassMutual and United Services Automobile Association (“USAA”). For

instance, a report issued in February of 2014 by the New Hampshire Insurance Department, as the managing lead state for the USAA multistate exam, determined that USAA life insurance and annuity units had used the DMF for more than a decade to locate unpaid beneficiaries. USAA and MassMutual’s symmetrical use of the DMF runs counter to some companies’ assertions justifying their self-benefiting asymmetrical use to the detriment of consumers.

### **A Look Ahead**

These settlements and resolutions between state insurance departments and insurance companies demonstrate that cooperation between the companies and their regulators can work to benefit consumers across the nation. As a result of these efforts, families across the country are receiving letters from insurance companies letting them know that they are the beneficiary of a policy that their loved ones intended for them. For example, one Illinois resident received a letter from MetLife informing her that she was the beneficiary of a policy that her husband took out in 1975. That beneficiary said that although she wished her husband was still here for her sons, she was grateful to have the policy proceeds to help her sons and their families. The son of another policy holder in Illinois also got a letter from MetLife. It was for a policy that his father, a factory worker, took out in 1944 of which the family was unaware. The son was grateful to have gotten the proceeds to share with his brother as the policy was something his father “had paid for.”

Some insurers still are fighting against the responsible and fair use of DMF information. But a new industry standard effectively has emerged in the face of settlements with approximately 60% of the industry. Illinois hopes the remaining 40% will recognize the importance to consumers of regular symmetrical use of DMF information and join the list of insurers following that standard. ■

Mary L. Smith is General Counsel of the Illinois Department of Insurance.

# The Use of Social Media in the Business of Insurance

## A Discussion with Randa Zalman of Redstone

by Stephanie Duchene of Dentons US LLP

**R**anda, as you know, the use of social media by insurance companies and producers has become widespread. Insurance companies use social media to market their products, communicate with insureds after catastrophic events, and even to investigate fraud. Producers are even more avid users of social media; they use it to build their reputation, develop relationships, and market products to an expanded network.

**What do you think are the most important objectives of a good social media program?**

Social media is a unique communication platform that can facilitate sincere, unvarnished conversations between you, your organization, your customers, your employees, your prospects, etc. Your objectives should reflect the power of the platforms while maintaining a strategic focus on what success looks like to your organization and to your target audience.

For example, some of the business objectives I like to include in my strategic plans are: establish a benchmark for future online/social media initiatives; create and expand awareness of who we are and what we do; learn more about the buying options and purchase cycle within the online platform.

I also like to consider objectives from the target audience's perspective. What do I want the target audience to do? Usually, social media objectives include actions: join to be part of the growing fan base; motivate click-through to a selected page for more information; facilitate a positive brand experience; reinforce awareness and credibility in services and expertise.

No matter how you're using social media—whether you're reaching out to advertise your products, communicating with others, or developing

relationships—it should all be tied to achieving your defined objectives.

*Although social media use in the insurance industry has increased significantly, there remains little state law specifically governing its use. Other than the Social Media White Paper released by the NAIC Social Media Working Group in December of 2011, there also remains little guidance from the states regarding expectations of compliance in using social media. We understand that most states view social media as simply another medium of communication that does not change the applicability of state insurance laws.*

**In your opinion, what are the biggest regulatory challenges that insurers and producers face when using social media?**

One of the great things about Facebook and other social media channels is that they are constantly changing. But that change also presents some of the largest challenges for those of us in the insurance industry. The degree and speed of the change can be problematic with respect to regulation and compliance.

**One of the great things about Facebook and other social media channels is that they are constantly changing.**

Insurers and producers have been conditioned to expect direction on exactly what is and is not compliant. Even with the advent of the Internet and websites, we saw a little regulation uncertainty as they were managed like typical print collateral. Social media is a completely different beast.



Randa Zalman



Stephanie Duchene

This is the first time that a communication channel has featured and encouraged immediate two-way communication. The amount of growth and interaction in this field is seismic. New social media platforms are popping up before regulators have a chance to properly understand the functionality and incorporate process and procedure for review and for regulatory definition. Additionally, the sheer volume of conversations is beyond companies' ability to monitor under traditional processes. Insurers and producers alike are going to have to get comfortable with a different regulation paradigm.

*Social media has evolved rapidly over the last decade and experts predict that more and more companies will use social media in the near future. In turn, we have seen an increased interest in the use of social media by state regulators. Regulators are addressing social media use via market conduct examinations and/or the consumer complaint handling process in the state.*

Given the dynamic nature of the medium, what advice would you give to state regulators that are charged with monitoring social media use in their state?

**Know the medium.** If you are charged with reviewing Facebook pages, I hope you're using Facebook personally. It's only when you use the platform on a daily basis that you can truly understand the inner workings of the functionality, particularly what kind of messages

are shown to whom and how those are shared with others. I've heard of situations in which insurers were criticized for a Facebook page or Twitter feed element that was native to the platform—the static information that was populated by the social media platform, not the producer. The producer had no control over what information popped up in that space but was still held accountable for the content. This was later appealed.

**Set up systems and automate monitoring whenever possible.** Many state regulators are trying to review social media platforms manually. This can be a waste of time and resources. While manual review may occasionally be necessary, consider investing in a software service that can help scan and alert you to questionable advertising. It could mean a substantial savings of time and resources in the long run.

**Be an active learner.** As mentioned above, social media is constantly changing. There are always new upgrades and changes to the current offerings. As they say in sports, the best defense is a good offense. Knowing what is available can be half the battle. Consider taking five to 10 minutes every day to read a social media driven online publication (such as mashable.com, techcrunch.com) to see what the latest changes are so you can proactively be ready to respond. ■

Randa Zalman is Chief Strategy Officer for Redstone.

Stephanie Duchene is a senior managing associate in the Insurance Regulatory group of Dentons US, LLP.

# Joint Market Regulation Forum

## Two Conferences, One Suitcase

by Kelsey Brunette

**A**fter years of cooperation in producing two highly attended conferences each year, IRES and the IRES Foundation have combined their efforts to provide one Joint Market Regulation Forum this coming August. As a member of both organizations and an IRES co-chair for the event, Robin Clover attributes the collaboration to the strong partnership between the organizations and to their continuing support of regulatory education.

The Forum will provide attendees the opportunity to hear Commissioners speak on emerging issues, attend interactive panels on hot topics, and enjoy attractions offered by the host city. Parker Stevens, IRES co-chair for the Forum, remarked that St. Louis is the perfect venue for this combined event as it is conveniently located for all attendees and there are lots of things to do in this great city. IRES Foundation Agenda Chair Chris Palmeri conveyed that "the Forum will provide the necessary knowledge for regulators to renew their continuing education while eliminating overlap

that has previously existed between the two conferences." The Forum combines the workshops and thinktanks of the IRES Career Development Seminar with the panel discussions utilized in the IRES Foundation School on Market Regulation, creating a robust agenda that expands on the topics covered in the past.

The Forum will allow all attendees to develop and maintain relationships. Cheryl Brunette, the IRES Foundation chair for the event, feels that the Forum will have "unprecedented regulator participation for the Industry/Regulator One-on-Ones," which gives Industry the opportunity to meet their Market Conduct Regulators in a collaborative atmosphere.

Registration for the Joint Market Regulation Forum is available on both the IRES and IRES Foundation websites or by visiting [www.ires-foundation.org/2014-school/home.html](http://www.ires-foundation.org/2014-school/home.html). ■



# Expanding the AIE™ and CIE™ Designations to Include Sustaining Members

by Tracy Miller Biehn

You may all recall that the IRES bylaws were rewritten by the board of directors in April 2013 and adopted by the general membership of the Society in July 2013. One significant provision added for sustaining members is the AIE and CIE designations awarded to a sustaining member who meets the Society's membership definition, which specifies that any sustaining member may obtain the AIE/CIE designation by successfully completing the current requirements for the AIE/CIE designation. The sustaining member may meet the regulatory service requirement of the AIE/CIE designation by attaining the Market Conduct Management (MCM) designation if the member or his/her firm has been a sustaining member of the Society for at least two years. Once the sustaining member has received their designation, they must become an individual sustaining member and comply with all continuing education requirements, as well as the requirements set forth in Article III, Section 3 to maintain the AIE/CIE designation.

The Accreditation & Ethics (A&E) Committee has been very fortunate this past year to have Mike Hailer from The Auto Club Group out of Dearborn, Michigan join the committee, attend the conference calls to suggest and provide valuable feedback on how non-regulators can go about obtaining the AIE/CIE designations, and assist with developing an AIE/CIE designation application for sustaining members. Mike Hailer has been a sustaining member since 2005 and requested that the A&E Committee review his application for a CIE designation.

I had the pleasure of speaking with Mr. Hailer about his background and desire to pursue the CIE program. Mr. Hailer is

the first and currently only non-regulator to obtain this CIE designation.

Here is a little about Mr. Hailer's background:

I have been in Regulatory Compliance at the Auto Club Group (AAA) since 2004. In my current role as Director, Regulatory Compliance, I manage regulatory compliance exposures for Auto Club Group's property and casualty insurance operations in all 15 of its states of operation, including member AAA clubs in Michigan, Florida, Georgia, Illinois, Tennessee, Indiana, Minnesota, Wisconsin, Iowa, Nebraska, and North Dakota, as well as joint insurance programs with other AAA clubs in several other states. Prior to joining the Auto Club Group, I worked at GMAC Insurance, now known as Ally Bank, where I started my career in property and casualty insurance in 1997.

My educational background includes a Juris Doctorate from the University of South Carolina School of Law, a Master of Business Administration from the University of Detroit-Mercy, and a Bachelor of Science in Business Administration from Bowling Green State University, as well as multiple insurance industry designations, including AMCM and now CIE. I also currently serve on the Insurance Regulatory Examiners Society Foundation Board of Directors. In my personal life, I enjoy spending time with my wife and children, and I coach youth football.

## What prompted you to take on this endeavor?

I have been attracted to the CIE program because it is held in very high esteem by the market regulation community. When it was opened to all, I was immediately interested. It has been a

sort of "forbidden fruit" because it has never been available to industry, only regulators.

## How long have you been thinking about pursuing this?

Even before I came to the Auto Club Group in 2004, I was aware of the CIE designation and the connotation it carries regarding professional knowledge and commitment to our field. When I first heard that I might be eligible to pursue it, I jumped at the chance.

## How do you feel about the outcome?

I am proud to have been awarded the CIE designation. It is humbling, as well, when I consider all of the contributions made to our field by others who have held the CIE.

## What is your next pursuit?

I will maintain my continuing education, but will take at least a short break before pursuing another designation program.

## Please provide anything else you would like to add.

I would like to thank all who made this possible for me, especially the IRES board and Executive Committee, as well as the entire membership. Thank you!

During the implementation process of what had been approved by the general membership in July 2013, it became very evident that sustaining members actually have a more difficult time obtaining these designations because they are required to also obtain the Market Conduct Management (MCM) designation in order to qualify and apply. Additionally, the member or his/her firm has been a sustaining member of the Society for at least two years.

The A&E Committee was very excited to explore—and ultimately have approved through the Membership & Benefits (M&B) Committee, the board, and Executive Committee—this new opportunity for insurance industry professionals.

Through these efforts, a new sustaining individual member rate was also approved. The proposal to change the rate for sustaining members was discussed on multiple calls by both the M&B and A&E Committees, since it overlapped. It was ultimately taken to the Executive Committee for approval and then to the board for their approval. The rate has actually been reduced to the same rate as other designations at renewal time.

**The new AIE/CIE sustaining membership application is now available on the IRES website.**

The new AIE/CIE sustaining membership application is now available on the IRES website: [www.go-ires.org/accreditation/curriculum](http://www.go-ires.org/accreditation/curriculum). The AIE/CIE sustaining membership application is posted in the same location as the original AIE/CIE application, along with the Certified Insurance Consumer Service Representative (CICSR) application. In order to differentiate between the new AIE/CIE sustaining membership application and the original AIE/CIE application, we renamed AIE/CIE application to read AIE/CIE “general membership” application.

While creating the AIE/CIE sustaining membership application, the Curriculum Subcommittee also updated the different applications to address the revisions to the bylaws, Code of Professional Conduct and Ethics Attestation, and numerous course changes that have taken place.

Sustaining members, we encourage you to take some time to review the information on the IRES website and within the NICE Manual and the new AIE/CIE sustaining member application.

We look forward to the increased membership as we move forward into the future. ■

Tracy Miller Biehn, LPCS, MBA, is Deputy Commissioner for the North Carolina Department of Insurance, Market Regulation Division.

## Meet the Executive Board: Erin Mirza

**E**rin Mirza, AMCM, current at-large member of the Executive Board, is chair of the Membership and Benefits (M&B) Committee and has been since the 2013 Career Development Seminar. Erin has been a member of IRES since June of 2011 and is the 2013 Chartrand Communications Award recipient. She participates on a majority of the standing committees in addition to M&B. She was formerly chair of the website subcommittee (Publications) and the state chairs subcommittee (M&B).

One of the major accomplishments of the M&B Committee since Erin began chairing included a revamp of the general membership application, which involved robust updates to the membership profile area of the IRES website in order to expand its member database. The committee is currently working on a



lapsed member drive for those members that did not renew in 2014. They are also collaborating with the Accreditation and Ethics Committee on detecting and implementing updates to the various IRES publications and website in order to reflect the extension of the Accredited (AIE) and Certified (CIE) Insurance Examiner designations to the industry and, along the same lines, the committee is working with the Website/Publications

Committee on a featured member area of the IRES website that will initially feature the first industry recipient of the CIE.

Erin currently serves as an Insurance Examiner - Advanced in the Market Regulation Bureau at the State of Wisconsin, Office of the Commissioner of Insurance (OCI) in Madison. Her responsibilities include evaluating, developing, recommending, and implementing program policy and procedure relating to the market conduct exam process; coordinating market analysis to determine need for examinations; and assisting examiners in pre-examination preparations. Formerly, she was an Insurance Examiner - Senior with the department and handled consumer complaints and participated in market conduct exams and market analysis.

While at the OCI, Erin has been invited to participate on numerous Compliance and Ethics Forums for Life Insurers (CEFLI; formerly the Insurance Marketplace Standards Association [IMSA]) and panels and webinars on various subjects, including the Focus of Regulatory Examinations and Annuity Suitability. She has presented at Great Lakes Chapter meetings on social media and insurance regulation for the Association of Insurance Compliance Professionals (AICP), for which she has also written an article on the subject for the *AICP Journal* June 2011 issue. She also participated on a panel at the 2013 CDS regarding elements of an efficient examination and exam management.

Preceding her career with the OCI, Erin worked as a risk management specialist for the State of Wisconsin, Department of Administration, Bureau of State Risk Management (BSRM), where she performed numerous ergonomic assessments, developed safety webcasts, and assisted the workers' compensation staff on preparing for hearings, among other tasks. She also created various benchmarking and lag time reports for the Bureau.

Erin received her Bachelor of Science in Occupational Safety Management from the University of Wisconsin-Platteville in 2009. To keep her safety skills fresh, in her spare time, she trains individuals at various State of Wisconsin agencies on performing office ergonomic assessments.

Erin and her husband, Rauf, an insurance financial examiner with OCI, reside in Madison, Wisconsin with their St. Bernewfie, Blue, who is anxiously awaiting the arrival of her new baby sibling, expected on Independence Day, right before the 2014 Joint Market Regulation Forum. ■

# 'Zoning In'

By Scott G. Paris

## Northeastern Zone

### Maine Bureau of Insurance Bulletin Addresses Duties Owed by Personal Lines Agents

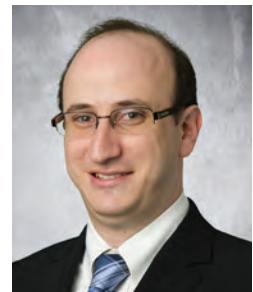
On March 6, 2014, the Maine Bureau of Insurance issued a bulletin (Bulletin 391) addressing situations in which insurers are not renewing policies because the appointment of the producer who sold the policy has ended. The bulletin explains that, under the Cancellation Control Act, insurers cannot nonrenew a policy except for permitted reasons. Further, producers cannot move an insured's business without the customer's permission. The bulletin encourages producers and insurers to coordinate with each other to provide clear, accurate, and consistent information to customers. The bulletin states that, at a minimum, customers should be informed that they may stay with their current insurer and use a different agent, change insurers and stay with their existing agent, or change insurers and use a different agent. Further, if an insured decides to apply for a policy with a new insurer, their application may be rejected or subject to different terms.

### New York Adopts Rules for Life Insurers for Identifying Unclaimed Property

The New York State Department of Financial Services has recently enacted regulations (N.Y. Comp. Codes R. & Regs. tit. 11, § 226.0 *et seq.*) requiring insurers to implement procedures to locate beneficiaries and identify unclaimed death benefits. The regulations require that insurers, when delivering a policy or establishing an account, must request sufficient information to ensure the payment of benefits or disbursement of funds to appropriate persons upon the death of the policy or account holder. Insurers must, at least on a quarterly basis, cross-check their existing policies and accounts against information in the most recent version of the Death Master File maintained by the U.S. Social Security

Administration. After learning about the death of an insured or account

holder, insurers must check if they have any other policies for that individual, which requires checking for policies held by affiliates, parents, or subsidiaries of the insurance company. The rules also require that insurers respond to and initiate claims following a request from the superintendent to search for a specific policy or policies owned by an individual.



### Rhode Island Issues Bulletin Regarding Valuation of Total Loss Vehicles

On March 24, 2014, the Rhode Island Department of Business Regulation issued a bulletin (Bulletin 2014-2) stating that "fair market value" for vehicles determined to be a total loss should be determined through the use of valuations from the National Automobile Dealers Association (NADA) and Kelly Blue Book (KBB). Pursuant to the new bulletin, insurers must pay the actual loss, and if that amount exceeds the minimum value, the insurer must pay the higher amount. Insurers may not reduce values using items such as dealer preparation, reconditioning, or an amount that a dealer might accept for a comparable vehicle. In cases where NADA or KBB do not have a listing for a particular vehicle, insurers may use services that provide comparable vehicle listings; however, insurers may not vary from those comparable vehicle listings by using factors other than mileage, options, and condition.

### Maryland Adopts Rule Requiring Notice of Reasons for Cancellation of Commercial Insurance Policies

The Maryland Insurance Administration has enacted Md. Code Regs. 31.08.17.01

*et seq.*, which requires insurers to provide a statement listing the actual reason for cancelling or nonrenewing a commercial insurance policy. An insurer must allow an insured 30 days to request additional information to support the insurer's stated actual reason for cancelling or nonrenewing the policy. The insurer's notice must include a notice of the deadline for requesting additional information and an address for sending the request for additional information.

## Southeastern Zone

### Kentucky Issues Advisory Opinion Discussing Disclosures During the Replacement of Life Insurance

On January 29, 2014, the Kentucky Department of Insurance issued Advisory Opinion 2014-2, which interprets regulations regarding the replacement of insurance. Insurers issuing a replacement life insurance policy or annuity contract must agree in writing that, to the extent that the replacement policy is equal to or less than the replaced policy, it will not be contestable beyond the value of the replaced policy. The advisory opinion states that the company that is replacing life insurance must advise the consumer in writing of what benefit amount is contestable and for how long that contestability period will lasts.

### West Virginia Circuit Court Ruling Interprets State's Uniform Unclaimed Property Act

On December 27, 2013, the West Virginia Circuit Court ruled that West Virginia's Uniform Unclaimed Property Act ("UPA") does not impose a duty on insurers to search the Social Security Administration's Death Master File ("DMF"). Under the UPA, "presumed abandoned" property must be reported and ultimately paid or delivered to the administrator property. The court noted that insurance contracts are only presumed abandoned when it has been "three years after the obligation to pay arose," or if the still living policyholder would have reached the limiting age under the mortality table. The court

held that, until the beneficiary has made a valid claim and submitted proof of death or the insured obtains the limiting age, there is no "property" subject to or reportable under the UPA. The court also held that insurers do not have "good faith" duty to search the DMF.

### Arkansas Issues Bulletin Regarding Notice Requirements for Terminating a Producer

On February 13, 2014, the Arkansas Insurance Department (the "Department") issued Bulletin No. 4-2014, which outlines requirements for providing information to the Department following the termination of an insurance producer. The Bulletin states that many insurers are improperly reporting terminations as being "for cause." Arkansas law states that the Department must be notified if a producer is fired for one of several reasons listed in Ark. Code Code 23-64-512(a). The listed reasons include, but are not limited to, providing false statements on a licenses application, the improper withholding of money, and committing a felony or dishonest business practices. Violations of company policies or requirements should not be reported as terminations "for cause." If an insurer indicates that a producer is terminated "for cause," they must also provide additional information, documents, records, and other data pertaining to the producer's actions.

## Midwestern Zone

### South Dakota Enacts Legislation Establishing Consumer Protection Standards

On March 13, 2014, the South Dakota legislature enacted legislation to establish consumer protection standards pertaining to insurance claims practices. The new law establishes requirements including, but not limited to, providing claims forms within fifteen days of a request with reasonable explanations regarding their use, prompt acknowledgement of claims communications, and affirming or denying coverage of a claim within a reasonable time after having completed

the claim investigation. It may be determined that an insurer engaged in an unfair claims practice if it has committed violations flagrantly and in conscious disregard of the legislation or it violated the act with such frequency as to indicate a general business practice. The act does not provide for a private right of action. The legislation takes effect on July 1, 2014.

### Iowa Enacts Law Regarding Electronic Delivery of Policies

Iowa has enacted a law (Iowa Code Ann. § 505B.1 *et seq.*) allowing for the electronic posting and transmission of insurance notices and documents. The law allows for the electronic delivery of a document for which several methods are required, including but not limited to first class mail, prepaid postage, and/or certified mail. Both parties must consent to the receiving of electronic notice and the insurer must provide a notice including specific information and disclosures. The law also includes rules and requirements for posting policies and endorsement on an insurer's website instead of delivering the policy.

### Missouri Adopts Regulations Based on NAIC's Credit for Reinsurance Model Act and Regulation

The Missouri Department of Insurance, Financial Institutions and Professional Regulation has adopted regulations (Mo. Code Regs. Ann. tit. 20, § 200-2.100 *et seq.*) that are consistent with the NAIC's Credit for Reinsurance Model Act and Regulation permitting the Director to determine the minimum capital and surplus and financial strength rating requirement for an reinsurer to be eligible for reduced collateral, provided the reinsurer is domiciled in a "qualified jurisdiction." Reinsurers seeking reduced collateral will have to file specific forms and information. Much of the information will need to be updated annually. Rating agency information is used as a starting point to determine the amount of collateral a reinsurer must maintain. Each rating category corresponds with

a collateral requirement ranging from 0% to 100%. The Department will also consider information including, but not limited to, the reinsurer's reputation for the prompt payment of claims and regulatory actions against the reinsurer. Application forms seeking reduced collateral are attached to the regulation.

## Western Zone

### **Montana Issues Bulletin Regarding Improper Billing Practices for Outside Counsel**

On January 29, 2014, the Montana Commissioner of Securities and Insurance issued an Advisory Memorandum on insurers' billing and practice guidelines provided to appointed counsel for insureds. The Advisory Memorandum lists unfair or deceptive practices that are prohibited from being included in the insurers' billing or practice rules, guidelines, or agreements. These prohibited practices include requiring approval before performing a particular legal task or incurring a legal cost, blanket refusals or limitations that interfere with the insured counsel's independent judgment, requiring the disclosure of confidential client information to third parties, or requiring consent to divulge confidential client information to any third party.

### **New Mexico Bulletin Addresses How to Keep Rate and Form Filings Confidential**

On January 14, 2014, the New Mexico Office of the Superintendent of Insurance issued Bulletin 2014-004, which outlines the process for requiring that information contained in rate and form filings remain confidential. When a filing contains both confidential and non-confidential information, it must be divided into two sections. These sections should be labeled either "public" or "confidential." Insurers seeking to keep information confidential must also submit a SERFF Confidentiality Index identifying the data to be kept confidential. Confidential sections should be clearly marked and the statement

"confidential handling requested" should be listed.

### **Oregon Issues Regulations Regarding Revisions to the NAIC Model Holding Company Act**

The Oregon Division of Insurance has adopted new reporting requirements for insurance holding companies adopting the NAIC's revisions to the insurance holding company system model regulation. The new regulations, codified at Or. Admin. R. 836-027-0005, require the filing of a Form E, which addresses a proposed merger or acquisition, or a Form F, which is an annual filing addressing Enterprise Risk. The new regulations also require that insurers include, in their Form B, a statement from their board of directors overseeing corporate governance and internal controls. Templates for the new Forms E and F are included in the regulation. ■

"Zoning In" is developed by members of Nelson Levine de Luca & Hamilton's Insurance Regulation Practice Group. With a team of professionals that includes former insurance regulators, Nelson Levine assists insurance companies with a broad range of regulatory issues affecting the business of insurance. Monthly contributors to "Zoning In" include: Susan T. Stead (614-221-7543, [stead@nldhlaw.com](mailto:sstead@nldhlaw.com)); Molly E. Lang (614-456-1634, [mlang@nldhlaw.com](mailto:mlang@nldhlaw.com)); Jason M. Kurtz (212-233-2633, [jkurtz@nldhlaw.com](mailto:jkurtz@nldhlaw.com)); and Scott G. Paris (212-233-2716, [sparis@nldhlaw.com](mailto:sparis@nldhlaw.com)).

The above material is for informational purposes only and should not be construed as legal advice, nor is it designed to create any attorney-client relationship.



## **Four State Regulators Receive Rookie of the Year Scholarships**

The Insurance Regulatory Examiners Society (IRES) and the IRES Foundation sponsored the 3rd Annual Al Gross/Jim Long Rookie of the Year Scholarship this year (2014). This award is named after two long-serving insurance commissioners who passed away shortly after retiring from their positions: North Carolina Insurance Commissioner Jim Long and Virginia Commissioner of Insurance Al Gross. Both of these commissioners were dedicated to serving their constituents.

The scholarship is being awarded to the following four State Regulators who have demonstrated exceptional promise, professionalism, and a commitment to continual improvement. We are pleased to announce this year's recipients.

- Midwestern Zone **Jody Ullman**, Wisconsin
- Northeastern Zone **Rachel Chester**, Rhode Island
- Western Zone **Adrienne Bliss Monroe**, Nevada
- At-Large Recipient **Ching Ting Huey**, New York

These recipients will be reimbursed up to \$1,000 in travel-related expenses as well as waived registration fees at one of the following programs:

- IRES and IRES Foundation Joint Market Regulation Forum: August 3-6, 2014, in St. Louis, Missouri
- MCM (Market Conduct Management) Designation Program

Congratulations, recipients! ■

# What's Happening at IRES?

## Committee Reports

by Stacy Rinehart, CIE, AMCM, CICSR, Publications Chair

### Accreditation and Ethics Committee

*Chair: Tanya Sherman  
(tsherman@risdelaware.com)*

The Committee is currently in the process of conducting the two-year audit on continuing education (CE) credits.

A new subcommittee with members from the Membership and Benefits Committee, the Website Subcommittee, and A&E members has been tasked with reviewing and updating the website and NICE manual with edits related to the bylaw changes approved in 2013.

The newly revised AIE/CIE general membership CE application, the AIE/CIE sustaining membership CE application, and the CICSR application forms have all been posted on the website.

The A&E Committee is also working on revisions to the continuing education application on the IRES website that will make it easier for everyone to view all of their submitted and automatic CEs in one location.

Submitted CEs would include proof of attendance at SOFE annual meeting, articles written, supplemental qualified training events, etc.

Automatic CEs would include any IRES related events such as webinars, IRES CDS attendance, MCM, AMCM, etc.

### Education Committee

*Chair: Andrea Baytop  
(andrea.baytop@scc.virginia.gov)*

Future MCM courses are planned for June 9-11 in Baltimore, MD; August 6-8 in St. Louis, MO (immediately following the Joint Market Regulation Forum); and September 17-19 in Sacramento, CA.

After completion of the AMCM pilot classes, future AMCM courses are scheduled for August 3 in St. Louis, MO (a morning and afternoon session immediately prior to the Joint Market Regulation Forum) and August 6 in St. Louis, MO (immediately following the Joint Market Regulation Forum).

### Meetings and Elections Committee

*Chair: Mark Hooker  
(mark.hooker@wvinsurance.gov)*

Kallie Somme's Elections Subcommittee has assembled an outstanding pool of nominees running for the IRES Board of Directors this year.

Don Bratcher and the Site Selection Subcommittee have narrowed down sites for the 2016 Career Development Seminar to Red Rock, NV, Scottsdale, AZ, and Austin, TX; we have already begun contacting convention bureaus and are certain to have a fabulous location that year.

### Membership and Benefits Committee

*Chair: Erin Mirza (erin.mirza@wisconsin.gov)*

Working on a revamp of the general membership application, which involved robust updates to the membership profile area of the IRES website in order to expand its member database

Conducting a lapsed member drive for those members that did not renew in 2014.

Working with the Website Subcommittee of the Publications Committee on a featured member area of the IRES website.



### Publications Committee

*Chair: Stacy Rinehart  
(srinehar@ksinsurance.org)*

Excited to announce a new editor of The Regulator®! A team from Dentons US LLP—including Kara Baysinger, Katherine Evans, Stephanie Duchene, Meeghan Buckley, and Bella Shirin—have willingly stepped up to the task.

Working with the Membership and Benefits Committee on a featured member area of the IRES website.

Editing a new IRES brochure for publication, originally created by the State Chair Subcommittee. ■

These committees are staffed by volunteers. If you are interested in participating in one of the committees listed above, please contact the committee chair. Alternatively, you may contact the IRES office at [info@go-ires.org](mailto:info@go-ires.org). Thank you for volunteering!

# Hear Ye! Hear Ye! Hear Ye!

*We Want to Hear from YE!*

**E**veryone involved in IRES makes a contribution to the success of the organization. You share your expertise, lend an ear and encouragement, learn from your peers, and advance the professionalism and mission of IRES in being “Your Network of Knowledge for Insurance Regulation.” Significant contributions to the mission of IRES are not only appreciated, they are also rewarded.

Here’s where we’d like to **hear ye** and your suggestions of individuals and organizations especially deserving of recognition. Please take a look at the Al Greer Achievement Award and Chartrand Communication Award criteria below and complete a nomination form. It’s *your* organization; make sure *your* voice is heard.

## Al Greer Achievement Award

As a founding father of IRES, Al Greer helped fashion the mission of IRES; namely, to raise insurance regulation to a highly respected profession marked by technical proficiency and ethical behavior. Since 1998, the Al Greer Achievement Award has been presented annually to an insurance regulator and IRES member who not only embodies the dedication, knowledge, and tenacity of a professional regulator, but who exceeds those standards. The following nominee criteria must be met:

- Have at least ten years of regulatory experience
- Have at least five years as an IRES general member
- Be a current general member of IRES, and
- Not currently serve on the IRES Board of Directors

## The Chartrand Communications Award

To honor the legacy and 20 years of work Chartrand Communications did for IRES, the Executive Committee and board of directors created the Chartrand and Associates Award. This award is to recognize those who have made a difference to IRES through their actions. Who has really strived to keep IRES moving toward the future? Who has helped increase membership and promoted us outside the conference and in the insurance community? Who continually tries to make a difference in IRES? We know these unsung heroes deserve to be recognized. The following criteria apply to the Chartrand Communications Award:

- The nominee must be a general member, a sustaining member, or an organization and
- Have at least two years’ involvement with IRES.

**Nominations must be received no later than May 31, 2014.**

Both the Al Greer Achievement Award and the Chartrand Communications Award nomination forms can be found on the Leadership page of the IRES website: [www.go-ires.org/leadership/halloffame#chartrand](http://www.go-ires.org/leadership/halloffame#chartrand).

For questions, contact Al Greer / Chartrand Communications subcommittee chair Carla Bailey at 206-587-5185 or [carlab@oic.wa.gov](mailto:carlab@oic.wa.gov), or M&B chair Erin Mirza at 608-267-4555 or [erin.mirza@wi.gov](mailto:erin.mirza@wi.gov). ■

## State Chapter News

### California

On March 13, 2014, California regulators Polly Chan, Kam Fong, and John Huh met with six insurance delegates from Korea. They discussed insurance/service contracts, marketing opportu-

nities, and expansion of the Korean market.

California is hosting a 2014 MCM class September 17-19, 2014 in Sacramento, California. Andrea Baytop, IRES Education Committee, is our contact person. ■



# ORSA: Three Ways It Can Up Your Game

by Carol Stern, FLMI, AIRC, ACS

The ultimate purpose of the ORSA model and its reporting requirement is to give the company's management and regulators a more accurate way to evaluate material risks that might cause an insurer to fail.

There is good news for the industry, since regulators have stated that they will be using the ORSA summary reports to decide which companies should be targeted for risk focused examinations. This should lead to fewer examinations overall for companies with strong ERM programs and well-documented ORSA reports.

## Historical Perspective

The Own Risk Solvency & Assessment (ORSA) National Association of Insurance Commissioners (NAIC) Model Law 505 has been called a "game changer" by some regulators and was adopted unanimously by the NAIC commissioners—a rare occurrence. In addition, this new Model Law was made part of the NAIC accreditation requirements for state insurance departments, which means that all states and jurisdictions will likely adopt it without variations. All of these efforts highlight the importance that the NAIC is placing on the ORSA model and puts added pressure on states who want to maintain their accreditation status.

**ORSA requires [a framework] that monitors, assesses, and reports *all areas of risk* within the insurer**

The ORSA Model Law was enacted by the NAIC as a response to Europe's Solvency II program and it is one part of the NAIC's Solvency Modernization Initiative (SMI). Ultimately, ORSA is intended to be a replacement for the Holding Company Model Act (HCA), whose FORM F risk report will be replaced by filing the ORSA summary report. The adoption of ORSA is seen as non-controversial by most regulators and should move quickly through the legislative process in many states during 2014 for a January 1, 2015 effective date. To date, eight states have adopted the model (IA, NY, CA<sup>1</sup>, NH, ME, RI, VT, PA) and seven states have proposed the model (CT, TX, IL, MD, OH, VA, WY).

ORSA might also bring about a cultural change for both regulators and insurance companies, since it brings a new *prospective* view of solvency. This shift requires companies to understand and communicate their company's "story" about the future of their capital management. A group assessment will also be required if an insurer is part of a group of insurers or an affiliate of a holding company. ORSA requires an Enterprise Risk Management (ERM) framework that monitors, assesses, and reports *all areas of risk* within the insurer (and the group, if applicable), including the *quantification of non-financial risks* such as reputation and brand risk.

## ORSA and the ERM Framework

The NAIC published a guidance manual for the ORSA Model Law in a revised format in March 2013, available at no



charge at [www.naic.org](http://www.naic.org). The manual does not prescribe *how* a company should implement their ERM program; regulators want to highlight that not all ERM programs are alike, but that the framework should be "appropriate to the nature, scale, and complexity of the insurer's risks, in a manner that is adequate to support risk and capital decisions."<sup>2</sup>

ERM defined under ORSA is "a risk management framework to assist the insurer with

- identifying (potential risks tied to company objectives/strategic plan)
- assessing (the likelihood and effect of its occurrence)
- monitoring (procedures that mitigate the risks)
- managing (the occurrence and impact) and
- reporting (to the board and regulators, as required)

on its **material and relevant risks**.<sup>3</sup> The ORSA model gives an insurer complete control of the implementation process and the details of how the program will look, which means a small or medium company may have a very different ERM structure than a large company.

However, Part I of the ORSA Guidance Manual does give specific direction on five key principles of an effective ERM framework:

1. "Risk Culture and Governance – Governance structure that clearly

<sup>1</sup> Circular Letter 14 (2011) – requires all domestic companies to implement an ERM program and file an annual risk report. It refers to ORSA but does not adopt the Model Law.

<sup>2</sup> NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual As of March 2013 ([www.naic.org/...e\\_orsa\\_wg\\_related\\_docs\\_guidance\\_manual\\_2013.pdf](http://www.naic.org/...e_orsa_wg_related_docs_guidance_manual_2013.pdf))

<sup>3</sup> Ibid.

defines and articulates roles, responsibilities and accountabilities; and a risk culture that enables accountability for risk-based decision making.

2. Risk Identification and Prioritization
  - An ongoing process that is key to the organization. Responsibility for this activity is clear. The risk management function is responsible for ensuring that the process is appropriate and functioning properly at all organizational levels.
3. Risk Appetite, Tolerances and Limits
  - Foundational elements of risk management for an insurer is a formal risk appetite statement and associated risk tolerances and limits. Understanding the risk appetite statement helps ensure alignment with risk strategy by the Board of Directors and all levels of management.
4. Risk Management and Controls
  - Managing risk, including the establishment of controls, is an ongoing ERM activity, operating at all levels within the organization.
5. Risk Reporting and Communication – The transparency provided by such reporting gives key constituents access to the risk-management processes and facilitates active, informal decision-making measures on risk identification and management.”<sup>4</sup>

## ORSA Responsibility and Governance

One of the biggest changes for insurers is the new ORSA governance structure that clearly defines and articulates roles, responsibilities, and accountabilities. The board of directors is responsible for making the ultimate decisions for risk management policy. This does not mean the day-to-day risk decisions should be made by the board, but that the company must have a risk governance team or risk committee with responsibility for daily oversight with respect to risk management as well as development of

applicable policies and procedures for the company to help avoid or mitigate those risks. Under ORSA, the chief risk officer (CRO) will run this risk governance team and report to the board in a regular, transparent manner. The board will set the overall risk policy and make key risk policy management decisions.

Some regulators have indicated that board members will be interviewed as a part of a risk-focused examination based on the ORSA report filing. Boards, unlike in the past, must have sufficient training to make sure they understand their new ORSA role with risk governance responsibilities.

**One of the biggest changes for insurers is the new ORSA governance structure that clearly defines and articulates roles, responsibilities, and accountabilities.**

The risk governance team could be a new function of an existing senior management team or comprised of senior officers with ultimate responsibility for decision-making in their roles as head of various company departments. For a small company, the president or CEO should create a team with at least one other officer and not take sole responsibility for the risk governance. Updating the company organization chart for these new roles and responsibilities can be part of the required documentation of the new ORSA risk governance framework.

If the company does not have a CRO, the risk governance team should immediately appoint either a CRO or, at a minimum, an ERM program director. The program director or CRO (or designee) should begin to take minutes at team meetings and document other steps in the implementation of the five ERM program elements.

## ORSA Risk Culture

ERM requires a risk culture in which risk management and consistent use of controls are ongoing activities, operating at all levels within the organization. This includes ongoing assessments for all risks, including risk of criminal conduct (the company's response under the Federal Sentencing Guidelines for Organizations), operational risk, compliance risk, and reputational risks in addition to all financial risks.

The risk governance team must take appropriate steps to design, implement, and modify the program to help mitigate the risks found. A risk culture must sustain accountability in risk-based decision making. To document a risk culture, the company can use all the existing compliance and risk manuals as well as all supporting policies and procedures that make up the framework of the program. Once the ERM program documentation is completed, the risk governance team should formally adopt the program and the team meeting minutes should reflect this adoption. The program should be reported to the board by the CRO for its ultimate review and approval.

The ERM requirement for risk identification and prioritization appropriate and functioning properly at all organizational levels necessitates an effective monitoring and auditing infrastructure. Those controls involve the development of key risk indicators and risk metrics that can be used as red flags for substantive risks. A formal risk appetite statement and associated risk tolerances and limits are foundational elements of risk management for a company and required by the ORSA Model Law.

## Risk Decisions

Once an initial risk assessment is complete, the risk governance team is responsible for deciding how to handle each material risk based on the company's risk appetite and tolerance.

<sup>3</sup> Ibid.

## Managing risk is an ongoing [Enterprise Risk Management] activity, operating at all levels within the organization.

There are four basic ways any risk can be managed:

1. **Risk avoidance.** Take action to avoid the risk, such as process changes, divestiture, or additional controls.
2. **Risk mitigation.** Establish triggers for action to take when the risk occurs and define those actions, such as proactive outreach or additional controls.
3. **Risk transfer.** Have other entities share the risk, such as through insurance or reinsurance.
4. **Risk acceptance.** Identify the risk as acceptable and within the risk appetite of the company and let it happen.

For every risk decision, the recommendation must be documented along with (if applicable) the plan for action and to amend any controls, policies, and procedures. Any of these four risk decisions are acceptable outcomes to the risk assessment and risk prioritization as long as the decisions are based on the risk appetite and tolerance ranges for the company. The CRO is responsible for reporting and communication to the board of directors, providing transparency into the risk management processes and the documented decisions on risk taking and risk management.

### Assessment of Risk Exposure and Risk Reporting

Managing risk is an ongoing ERM activity, operating at all levels within the organization. Regular reports from each business unit to the risk governance team should contain key risk indicators and risk metrics, which will give the risk governance team all the elements of transparency required for ongoing communication of risk management.

The CRO is responsible for selecting the risk metrics for reports to the board of directors, so they will have everything they need to perform their responsibility for ultimate decision-making for the risk management program.

Part II of the ORSA manual gives guidance on how the ORSA summary report should be documented. It emphasizes providing a high level summary of the quantitative and/or qualitative assessments of risk exposure in both normal and stressed environments for each substantive risk category from the company's risk assessment. The guidance manual highlights some elements that regulators will expect to see in the ORSA report:

- “The likelihood and impact that each material and relevant risk will have on the firm’s balance sheet, income statement and future cash flows.
- Methods for determining the impact on future financial position, which may include simple stress tests or more complex stochastic analyses.
- The evaluation of each risk analysis when viewed in both normal and stressed environments.
- Risk assessments that consider the impact of stresses on capital, which may include consideration of risk capital requirements, available capital, as well as regulatory, economic, rating agency and/or other views of capital requirements.
- Documentation that the analysis is conducted in a manner consistent with the way in which the business is managed, whether on a group, legal entity, or holding company basis.”<sup>5</sup>

### Aggregate Risk

Part III of the ORSA manual gives guidance to insurers who are part of an insurer group or holding company. Group assessment of risk capital is evaluated by comparison of aggregate available capital against all substantive risks that

may adversely affect the enterprise. The ERM program for an insurer that is part of a group of insurers (or part of a holding company with insurer and non-insurer affiliates) must take into account all the risks of the entire enterprise.

The manual establishes the expectation that insurers have an integrated ERM framework and decision-making culture within which risk reports are fed up to the higher entity and the group assessment of available capital is evaluated and integrated into its capital management activities.

The ORSA Guidance Manual provides ideas on how an insurer may assess risk capital, including through metrics and future forecasting periods, and reflecting varying time horizons, valuation approaches, and capital management strategies. The guidance gives some specific considerations for the approach to and assessment of group-wide capital adequacy:

- “Elimination of intra-group transactions and double-gearing where the same capital is used simultaneously as a buffer against risk in two or more entities;
- The level of leverage, if any, resulting from holding company debt;
- Diversification credits and restrictions on the fungibility of capital within the holding company system, including the availability and transferability of surplus resources created by holding company system level diversification benefits;
- The effects of contagion risk, concentration risk and complexity risk in the group assessment of risk capital; and
- The effect of liquidity risk, or calls on the insurer’s cash position, due to microeconomic factors (i.e., internal operational) and/or macroeconomic factors (i.e., economic shifts).”<sup>6</sup>

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

## Group Assessment of Risk Capital and Prospective Solvency Assessment

Prospective solvency assessment is the final element in Part III of the ORSA Guidance Manual. It emphasizes that the process of capital assessment by the insurer must be embedded into the overall strategic business plan of the holding company or the group of insurers.

Again, the guidance states that the goal of the assessment is to “provide an overall determination of risk capital needs for the insurer, based upon the nature, scale and complexity of risk within the group and its risk appetite, and to compare that risk capital to available capital to assess capital adequacy. It says that the insurer is required to have a robust capital forecasting capability, which supports its overall ERM framework, its time horizon for risk management and its risk appetite statement.”<sup>7</sup>

### Summary

Implementation of the ERM framework in compliance with ORSA will (1) give your management a more accurate way to evaluate material risks that might trigger insolvency; (2) potentially reduce the number of future risk-based examinations; and provide a well-documented ERM program and ORSA report, which will ultimately (3) mitigate and prevent future exam findings. ■

Carol Stern is a senior consultant with First Consulting & Administration, Inc.

*Publisher's Note: This article was first published by the CPCU Society in the Regulatory & Legislative Interest Group Committee publication Compliance Matters. Republished by permission.*

<sup>7</sup> Ibid.

## New Members

### Welcome!

The following members 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!

### GENERAL MEMBERS

- ★ Linda Smith Armstrong, MCM
- ★ Nour Benchaaboun
- ★ Jason Carr
- ★ Thea Cook
- ★ William Fisher
- ★ Dennis Allen Fitzpatrick
- ★ Joseph Fitzpatrick
- ★ Ingrid Franklin
- ★ Frank M Fricks, AIE, CFE, FLMI (MN)
- ★ Ned Gaines
- ★ Kathryn Green
- ★ Jennifer Haile
- ★ August Hall
- ★ Sara James, AIE
- ★ Salama Karim-Camara
- ★ Megan K Keck
- ★ Soo Kim
- ★ Kelly Krakowski
- ★ Patricia Lee
- ★ Betty Patterson
- ★ Chris Pattison
- ★ John M Rucidlo
- ★ Margaret A Salamone
- ★ Kevin Schlautman
- ★ Kristen Sharow
- ★ Joanne Smith
- ★ Tommy Southwick
- ★ Lonnie Lee Suggs
- ★ William George Fifer Sullivan
- ★ Bunlue Ushupun
- ★ Karen Veronikis
- ★ Donald Wilson

### SUSTAINING MEMBERS

- ★ Nancy L. Campbell, AIE, ACS, ALMI, AIRC, AIAA (unaffiliated)
- ★ Stacy Coleman
- ★ Richard Davis
- ★ Michele Edgerley
- ★ Reba Jones, MCM
- ★ Scott Lawson
- ★ Andromeda Monroe
- ★ Mattia Scharfstein

### ORGANIZATIONAL MEMBERS

- ★ Lora Lee Hart, MCM
- ★ Cynthia J Lamar
- ★ Kimberly Lawrence, MCM
- ★ Jennifer L Stephen
- ★ Rhonda Sullivan, MCM
- ★ Carol Wulfekotter, MCM

## New Designees

### Congratulations!

The following members have received their Accredited Insurance Examiner (AIE™), Certified Insurance Examiner (CIE™), Certified Insurance Consumer Service Representative (CICSR), or Market Conduct Management (MCM™) designation since the last issue of *The Regulator*. Please join us in congratulating them!

### AIE™

- ★ Sean Betta, AIE, MCM
- ★ Lisa Rene Brandt, AIE, MCM, CICSR (WI)
- ★ Robin Clover, AIE, MCM
- ★ Dennis Allen Fitzpatrick, AIE
- ★ Tate Flott, AIE (KS)
- ★ Jennifer Haile, AIE
- ★ Randy A. Helder, AIE (NAIC)
- ★ Song Hee Hong, AIE, MCM
- ★ Sara James, AIE
- ★ Nick J. Marrangoni, AIE, MCM

- ★ Peter McKay, AIE, CA
- ★ Martha L. Morris, AIE, MCM (WV)

**CICSR™**

- ★ Lisa Rene Brandt, AIE, MCM, CICSR (WI)

**CIE™**

- ★ Laura Buck, AIE, CIE
- ★ Michael Hailer, CIE, MCM, AMCM
- ★ Kevin Richard Jones, AIE, CIE
- ★ Mary Masi, AIE, CIE (ME)

**MCM™**

- ★ Linda Smith Armstrong, MCM
- ★ Sally Carr, MCM
- ★ Robin Clover, AIE, MCM
- ★ Thea Cook, MCM
- ★ Joseph F Evans, MCM
- ★ Lora Lee Hart, MCM
- ★ Patricia Johnson, MCM
- ★ Reba Jones, MCM
- ★ Amol Khar, MCM
- ★ Dennis Kluk, MCM
- ★ Kimberly Lawrence, MCM
- ★ Jason Nemes, MCM
- ★ Michana Rhinock, MCM
- ★ Rhonda Sullivan, MCM
- ★ Carol Wulfekotter, MCM

## Spring 2013 MCM™ Designees

### *Congratulations!*

The following members attended the March 2013 MCM held in New York. Due to an unfortunate oversight, they were left out of *The Regulator*®. We sincerely apologize, and wish to give them the recognition they deserve.

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>★ LeeAnne W Creevy, MCM</li> <li>★ Myra E. Dixon, CIE, MCM (NY)</li> <li>★ Michael E Dolphin, MCM</li> <li>★ Patricia Ellenwood, MCM</li> <li>★ Patricia R Gabriel, MCM</li> <li>★ Janice Genchur, MCM</li> <li>★ Ed Hall, AIE, CIE, MCM</li> </ul> | <ul style="list-style-type: none"> <li>★ Song Hee Hong, AIE, MCM</li> <li>★ Rolf N. Kaumann, CIE, MCM (NY)</li> <li>★ Gail Fern Keren, CIE, MCM (NY)</li> <li>★ Maurice Morgenstern, CIE, MCM (NY)</li> <li>★ Colette M. Perri, MCM</li> <li>★ Isaac Zamdas, CIE, MCM (NY)</li> </ul> |
|--|---|

## Meetings and Elections Update

### 2014 Election

Kallie Somme's Elections Subcommittee has assembled an outstanding pool of nominees running for the board this year. The following people are either seeking election or reelection to the IRES Board of Directors:

- Donald Bratcher (KY)
- Doug Ommen (IA)
- Douglas Pennington (FED)
- Gregory Bronson (TN)
- Matthew Regan (MA)
- Randy Helder (NAIC)
- Richard "Rick" Nelson (Unaffiliated-Eide Bailly LLP)
- Roshanak "Roshi" Fekrat (Unaffiliated Global)
- Sam Binnun (Unaffiliated, Risk Regulatory Consulting)

We are enthusiastic about having so many people express willingness to serve, and we wish them all the best of luck.

### 2016 CDS

Don Bratcher and the Site Selection Subcommittee have narrowed down sites for the 2016 CDS to Red Rock, NV, Scottsdale, AZ, and Austin, TX. We have already begun contacting convention bureaus and are certain to have a fabulous location that year. ■

# In Memoriam

We would like to recognize and pay tribute to some of our colleagues and fellow IRES members that have recently passed away. They will be dearly missed.

## Carol O'Bryan

*Submitted by Scott O'Bryan*

Carol Dena O'Bryan was born on January 10, 1967, of Dave and Linda Arko. She learned a good appreciation for both music and science from her parents, who were both teachers. Carol knew how to play multiple instruments while she was in grade school and high school, but her true passion lay in math and statistics. She attended MIT for three years and finished her degree at metro due to financial reasons. She immediately went to work for the State of Colorado on April 10, 1989, working for Parks and Recreation before finally settling in the Colorado Department of Regulatory Agencies on January 4, 1992, where she stayed until her death.

Carol had a passion for protecting consumers in the department, participating in multiple committees both locally and nationally. Her motivation was always that she felt she was doing right by people and truly believed in the work she had done for the division.

Carol passed suddenly on November 23, 2013, of an infection. She is survived by her husband of twelve years, Scott O'Bryan, and her two children Zoe (7) and Robert (5). They are comforted by that fact that Carol liked what she did professionally, the love she had for the people she worked with, and the support shown by her friends at the Colorado Division of Insurance and others whom she had the opportunity to work with over the years.

## Wanda LaPrath

*Submitted by Jenny Jeffers*

It is with a sad heart that we share the passing of Wanda LaPrath, longtime member of IRES, SOFE, and IAIR. Wanda's insurance career spanned more than three decades, culminating with her position as president and CEO of the Huff Group, LLC. Prior to that time, she was a senior manager of Regulatory Insurances Services at Dixon Hughes Goodman, PLLC as well as being a vice president of Huff Thomas.

Wanda was an excellent leader and teacher. She served as Examiner In Charge for both financial and market conduct examinations for many states and trained many of the current examiners throughout the country. Many of us think of her as a mentor.

For those fortunate to know Wanda outside of her insurance career, they found a very warm, caring, and loyal friend who was a great listener. She was born in Colorado and attended college in California. She had a career in nursing before insurance; she became an officer's wife and, while stationed in Okinawa, Japan, their son was born. She later grew roots in California, where an advanced degree took her into accounting and the insurance field. At one time, she served in a financial reporting capacity in the life insurance industry. The experiences she had in insurance, including the reinsurance world, brought her eventually to Arizona and ultimately into the world of exams.

She had several passions in her life, including her two grandsons. Wanda also was an avid hockey fan and maintained season tickets beginning with the Coyote's debut season in Phoenix. She was not a morning person. We all knew that, AND we knew we'd better not try to compete with her hockey games! She was also quite a country western dancer

and could line dance and two-step with the best.

She is greatly missed by all who knew and loved her. She will remain in our memories and hearts forever.

## Ronald Poplos

*Submitted by Brian Tinsley*

It is with great sadness that IRES reports the passing of Ronald J. "Ron" Poplos, CFS. Ron passed away on December 31, 2013. Ron was a veteran of the U. S. Army, serving two tours of duty in the Republic of Vietnam and receiving a Bronze Star, a Purple Heart, and a commendation medal before being honorably discharged. He had a notable career as a special agent/criminal investigator for the Internal Revenue Service and, after retiring, he became a fraud investigator for the Delaware Insurance Department.

Ron proved to be an invaluable asset in the Delaware Insurance Department's efforts to investigate and prosecute fraudulent activity, participating in numerous successful investigations and providing guidance and training to his coworkers. In 2005, the Department created the Agency Market Conduct Section and Ron was chosen to supervise it. Most recently, Ron was working for the Delaware Insurance Department as a market conduct examiner.

Those who had the pleasure of working with Ron will miss his intelligence, dedication to the Department, and—more importantly—his good humor and true friendship. IRES extends our deepest sympathy to Ron's family and friends, most especially his wife, son, daughter, and four grandchildren. ■

# The Last Word

## Editor's Corner

by Kara Baysinger

We hope you have enjoyed this issue of *The Regulator*<sup>®</sup>. We were very fortunate to have two regulatory perspectives on the issues arising at the intersection of unclaimed property law and the life insurance industry, and we thank Commissioner Gerhart of Iowa and Mary Smith, General Counsel of the Illinois Department of Insurance, for taking the time to share their views with us.

I would like to encourage each of you to attend the first Joint Market Conduct Forum in St. Louis in August 2014. The Forum will combine workshops and interactive panels, providing a great

opportunity for attendees to develop and maintain relationships with other Market Conduct Regulators and industry professionals.

Finally, I would like to introduce myself and my team as the new editors of *The Regulator*<sup>®</sup>. Dentons is the new global law firm created by international law firm Salans LLP, Canadian law firm Fraser Milner Casgrain LLP (FMC), and international law firm SNR. While Dentons has only existed for the past year, SNR Denton (and Sonnenschein, Nath, and Rosenthal before it) have a multi-decade history of involvement with IRES and the IRES Foundation.

On behalf of our entire Insurance Regulatory team, we are honored to take on the stewardship of this publication.

Please let me know if you have any feedback on this issue, or ideas for upcoming issues. It's *your* organization; make sure *your* voice is heard—right here in *The Regulator*<sup>®</sup>!

See you in St. Louis! ■



## Comprehensive ERM/ORSA Consulting Services

First Consulting now offers a full range of consulting services to create or enhance an Enterprise Risk Management (ERM) and Own Risk & Solvency Assessment (ORSA) Compliance Program for any insurance company.

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Contact us at [TheRegulator@go-ires.org](mailto:TheRegulator@go-ires.org).

— Your staff at *The Regulator*® (Kara, Meeghan, Stephanie, Katherine, Bella, and Paul)