The Regulator

INSURANCE REGULATORY EXAMINERS SOCIETY

What market conduct examiners need to know about financial regulation

by Victoria Savoy

Virginia market conduct examiners will tell you that they only need to know two things about financial regulation of insurance companies: phone numbers of the Bureau's financial regulation staff – and where our cubicles are!

Seriously, though, knowing how an insurance company is regulated from a financial perspective will give market conduct examiners a more complete picture of insurance company operations, which will in turn help them as market conduct examiners. The same theory holds (in reverse) for financial examiners and analysts.

This article is based upon my experience with the Virginia State Corporation Commission's Bureau of Insurance. Each state may be slightly different in its financial regulation of insurance companies.

Licensing standards

Financial regulation of an insurance company starts when a company submits a license application, because in order to transact the business of insurance in Virginia, by law, and with limited exceptions, an insurance company must be licensed by the Bureau. When an application is submitted, staff reviews the material and submits a recommendation to approve or disapprove. For the application to be approved and a license granted, an insurer must meet certain criteria, many of which are financial.

A company that is already licensed in another state must:

- Meet separate minimum capital and surplus requirements (currently set at $1 million and $3 million for Virginia),
- Report profitable operations over the last three years,
- Be actively engaged in the lines of business it intends to transact in Virginia,
- Provide a satisfactory examination report from the state of domicile that is no more than five years old, and
- Post a security deposit in Virginia, for the benefit of Virginia policyholders.

Currently, the Bureau receives about 40 license applications annually. About one in five of these are disapproved each year. Roughly eight of every ten applications are from property and casualty companies.

Virginia participates in the Uniform Certificate of Authority

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Could welding rods be the next asbestos for trial lawyers, insurers?

by Scott Hoober
Special to *The Regulator*

By one estimate, the insurance industry's asbestos liability could one day total $65 billion — more than the total paid out for 9/11 and Hurricane Andrew combined.

Since much of that money is collected with the promise of a large contingent-fee payout to a lawyer somewhere, you can see why, to the plaintiff bar, asbestos litigation is akin to the Holy Grail. And why every new potential liability is touted as the next asbestos.

One of the hottest new prospects for the title is welding rod litigation. The process of welding produces fumes, and one of the components of those fumes has been implicated in Parkinson-like symptoms.

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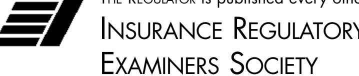

THE REGULATOR is published every other month by the INSURANCE REGULATORY EXAMINERS SOCIETY

Opinions expressed in this publication are the authors' and do not necessarily represent the opinions of the authors' employers or IRES.

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From the President

Passing the Torch

My time as IRES president has passed quickly.

During the year, my admiration for IRES and its members has grown tremendously (no small feat since it began at such a high level). It's truly amazing to observe first-hand how a disparate group of people from across the country can — through committees, conference calls, occasional meetings and e-mails —make this a top-notch organization. And they do it year after year.

Ramge

This year's executive committee members (Paul Bicica, Kirk Yeager, Stephen King, Doug Freeman, Jo LeDuc and Polly Chan) have been great to work with and are extremely supportive of IRES. We are fortunate to have them at the helm. Each member of each standing committee (Education, Accreditation & Ethics, Membership, Finance, Meetings & Elections and Publications) has worked hard behind the scenes to keep our programs running smoothly.

The Past President's Council continues to lend advice and assistance with development of the Market Conduct Examiner Certification program. We are receiving excellent feedback on the proposal outline.

Our Board of Directors, the CDS Chair, the Section Chairs and the State Chairs are really what IRES is about. They help bring about the programs that our members want, at both the state level and at a national level, through our CDS.

IRES is also fortunate to have the ongoing support of the IRES Foundation, a separate organization whose fundraising and market conduct school assist generously with our programs.

IRES also continues to benefit from the administrative services provided by David Chartrand and his accomplished staff at The Chartrand Companies.

continued on next page

I would also like to extend a sincere "thank you" to everyone (too numerous to mention by name) who has worked diligently to assist IRES this year. On behalf of IRES, I ask for your continued support. Even though my term is over, I plan to stay involved and assist in any way that I can.

As IRES members, here are a few things we have to look forward to:

- Ongoing market conduct and regulatory reforms, on both the state and national level, will provide IRES with an opportunity to offer additional support and education to its members.
- IRES has opportunities to partner with other insurance education and compliance organizations for joint ventures, such as seminars and articles.
- IRES's ongoing commitment to career development and continuing education.
- Lively and thought-provoking news and features in *The Regulator*.

Lastly, I would like to extend my congratulations to Colorado's Kirk Yeager, to whom I will pass the torch this August. Kirk has worked tirelessly for IRES over the years and will be an outstanding president of our organization.

I look forward to seeing all of you in Denver.

Bruce R. Ramge, CIE
IRES President

Remembering Art Chartrand Sr.

Arthur A. Chartrand, patriarch of The Chartrand Group in Olathe, Kan., passed away June 16. He was 79.

The Chartrand Group has been IRES's association management firm since the Society was founded. Until his health failed in the past year, Art supervised most banking-related tasks for IRES.

Many IRES members will remember Art's friendly face at the Society's early Career Development Seminars. His sons, David and Arthur, continue to manage the various Chartrand family businesses.

Financial regulation

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Application (UCAA) licensing process developed by the National Association of Insurance Commissioners (NAIC). Simply put, this means that Virginia has agreed, along with all other participating states, to require a standard group of documents and information as part of a license application. The application is still subject to Virginia's standards, but the decision is based on standard information included in the UCAA. As a UCAA state, Bureau staff is obliged to review most license applications in a 60- to 90-day time frame.

Occasionally, a license application is received from a new insurance company that wants Virginia to be the state of domicile. Different standards are used to judge a newly formed domestic company application, since it won't have operating history to use as a guide. The Bureau looks closely at how the company is organized, if it is part of a holding company and if so, what other companies are part of the group. We also look at management and service agreements, officers, and the company's business plan.

Reporting and exam requirements

Once licensed, an insurance company becomes subject to routine financial reporting and examination requirements. These requirements vary according to whether the company is domiciled in Virginia or elsewhere. Virginia-domiciled companies are subject to closer scrutiny by the Bureau, and therefore are subject to additional reporting requirements.

As in most states, all companies, both domestic and foreign are required to file quarterly and annual financial statements, and an annual independent certified public accountant report. Specific companies must also file monthly financial statements.

Domestic companies are subject to additional requirements. These include:

- State specific forms, such as the "Analysis of Excess Capital and Surplus Investments." This form breaks down a company's invested assets by type, and also compares them to the limitations established in the statute.
- If applicable, routine holding company filings that describe holding company activity during the previous calendar year are also required. Other types of holding company filings may be received throughout the year, such as requests for approval

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of extraordinary dividends, or participation in reinsurance arrangements, management agreements, etc. The Bureau must approve these requests before the transaction can occur.
- In addition, of course, domestics are subject to on-site financial examinations. By law, an exam of a domestic insurer is required once every five years, but the Bureau usually conducts them at least every three years. Like most state insurance departments, the Virginia Bureau of Insurance focuses on Virginia insurance companies. The Bureau relies on the state of domicile to examine foreign insurers that operate in Virginia. However, Virginia law does allow the Bureau to examine any insurer that is licensed in Virginia and the Bureau may participate with the state of domicile in the examination of a foreign insurance company.

Examinations also allow a state insurance department to:
- Detect as early as possible those insurers in financial trouble, or that are engaging in unlawful or improper activities, and
- Develop information and support documentation that is necessary for timely, appropriate, and feasible regulatory action.

The focus of financial examinations is on verification of the financial statements that have been filed with the Bureau, as well as compliance with applicable laws and regulations. Focus is also placed on assessing the quality and technical ability of management to perform critical functions, the internal-control environment, and the accounting system that produces the financial statements.

There are two types of examinations:
- Full-scope examinations, which report on an insurance company's financial position as a whole, can last anywhere from a couple of days for a small single-state company, up to a year or longer, for a large group.
- Limited-scope examinations focus on one or more specific areas, such as investments, reinsurance, holding company activity, etc., and are completed in between full-scope examinations.

Examinations are conducted in accordance with the *NAIC Financial Condition Examiners Handbook*. This reference book, similar to the *NAIC Market Conduct Examiners Handbook*, establishes guidelines for calling, planning, and conducting an examination, as well as creating the examination report, and documenting findings. The book also includes "Specific Risk Analysis" objectives and procedures, sampling procedures, sample work papers, and an overview of reinsurance.

> *"Codification is a comprehensive guide to statutory accounting principles, for use by insurance departments, insurers and auditors, that was adopted in most states in 2001."*

GAAP/ SAP differences

Insurance accounting is not the same as Generally Accepted Accounting Principles (GAAP) accounting (the accounting one learns in college). Insurance accounting is also known as "statutory accounting" because the accounting methods are specified in the state statutes. Statutory accounting principles (SAP) focus on a company from a solvency basis. Assets and liabilities are valued conservatively, to determine a company's ability to satisfy its obligations to policyholders. The balance sheet is the main focus of the financial statement.

Examples of some differences between GAAP and SAP accounting include the fact that fixed assets, such as furniture and equipment, are not recognized as assets in statutory accounting. Reserve calculations can be different – usually statutory reserves are more conservative than GAAP. And certain investment reserves must be established to recognize default risks, interest rate changes, and market value adjustments in the investments held by certain insurance companies. The important thing to remember is that financial statements prepared on a statutory basis are not the same as financial statements prepared on a GAAP basis.

Codification

It is not uncommon for the term 'Codification' to come up when discussing financial reporting and

examinations. Codification is a comprehensive guide to statutory accounting principles, for use by insurance departments, insurers, and auditors, that was adopted in most states in 2001. The *Accounting Practices and Procedures Manual*, published by the NAIC, contains the Statements of Statutory Accounting Principles and supporting appendices, as well as a Preamble.

Codification has resulted in more complete disclosures and more comparable financial statements, as well as uniform accounting rules. Although a state's laws may still pre-empt codified statutory accounting, if that occurs, disclosure of the financial effect will be required in the annual statement and the annual CPA report.

Basically, this means an analyst can look at a financial statement for an insurance company anywhere in the United States, and be fairly certain that the same accounting treatment has been used to prepare the statement. The disclosure that is required when a company deviates from statutory accounting is prominently included in the 'Notes to Financial Statement' in the Annual Statement. It helps the financial analysts that are assigned to monitor the solvency of foreign insurers because the dollar effect of deviations can easily be determined. The Bureau has taken action against a number of foreign insurance companies that have accounting practices that do not follow Virginia law. (Examples include allowing large discounts on reserves, or the admittance of normally non-admitted assets.)

One financial area that both the analysts and examiners look at closely is investments. The Code of Virginia limits the types and amounts of investments that an insurance company can hold. An entire chapter in the Code of Virginia is dedicated to investments held by insurance companies. For example, an insurance company cannot invest more than 5% of its admitted assets in common stock of banks or trust companies. There are also per obligor and per issuer limits. Basically, one could consider these limits a "forced diversification."

Why does the Bureau put so much effort into regulating investments? Because they represent a large portion of the balance sheet assets of many insurance companies.

The insurance industry has more than $3 trillion in invested assets. More than 70% of this amount is held by companies filing an NAIC Life Annual Statement.* This makes sense because premiums may be paid on a life policy for 40 years or more before any claims are paid out. In contrast, auto and homeowners' companies, which are subject to losses of a much shorter duration, do not have nearly as much premium to invest as life companies.

Regulatory actions

What happens if a company is in declining or poor financial shape? Standards have been established in Virginia that the Bureau can use as a guide for identifying domestic and foreign insurers found to be in a condition that would render their continued operation hazardous to policyholders, creditors, or the public. These standards have been enacted in most states.

When a company appears to be operating in a hazardous financial condition, the Bureau will usually work with the company to try and get it headed in the right direction. When an insurance company's surplus to policyholders falls below the statutory requirement, it is impaired and action is quick. Generally, the company is given ten days to eliminate the impairment, which is often accomplished through an infusion of funds from a parent company. If the company cannot correct the impairment within ten days, the Bureau usually recommends official regulatory action. This can be a fairly common occurrence.

If the State Corporation Commission agrees with the Bureau's recommendation, it issues an Order which places the insurer's license in an impaired status, and gives the company a limited amount of time, usually 60 to 90 days to eliminate the impairment. From an operating perspective, this means that the insurance company cannot write any new business in Virginia while its license is impaired.

Other regulatory "tools" the Bureau has to assure compliance with the law include fines, orders requesting a company to "cease and desist" from certain acts of noncompliance, prohibiting a company from writing new business, and, more common with foreign or alien companies, suspending or even revoking a company's license to transact insurance.

When the problems cannot be rectified, there are

* 2003 Best's Aggregates and Averages, 2003 Edition. A.M. Best Company, Oldwick, N.J.

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A court decision threatens the stability of California's insurance market

by Dan Dunmoyer, President,
Personal Insurance Federation of California

If after more than 16 years of on-and-off court cases attempting to interpret the ambiguous and contradictory language of Proposition 103 isn't enough, another interpretation was handed down in April 2004 from the Second District Court of Appeals. The ruling, from a case known as *Donabedian v. Mercury,* states that under Proposition 103, any citizen has the right to act as a "private citizen attorney general" and directly sue any insurance company if he or she disagrees with the company's rates, rules or underwriting plans which have been approved by the California Department of Insurance (CDI).

Dunmoyer

Sam Donabedian, a private citizen, filed a lawsuit against Mercury Insurance Co. in the California Superior Court, claiming that under Proposition 103, it was illegal for the company to use a prior insurance record — approved by CDI — as part of its underwriting and pricing practices. Judge Carolyn Kuhl agreed with Mercury's argument that only the Insurance Commissioner, not the courts, can hear consumer complaints. The judge cited a 1947 law giving the State Insurance Department regulatory authority over the insurance industry. The case was then taken to the Appellate Court. Interestingly, two friends-of-the-court briefs were filed: one by Harvey Rosenfield, author of Proposition 103 and counsel to the Foundation for Taxpayer and Consumer Rights, and the second by CDI.

In his brief, Insurance Commissioner John Garamendi threw a bombshell into the court case. He urged the court to approve citizen lawsuits against insurance companies, explaining that CDI "simply lacks sufficient resources to pursue every allegation."

CDI told the court that it did not have the "resources" to check every single activity of the insurance industry in California, but welcomed private citizen lawsuits to help CDI do its job. CDI has more than 1,350 employees, making it the second largest insurance department in the United States. CDI also has the largest budget of any insurance department in the United States — $170 million for fiscal year 2004. Yet the Appellate Court reversed the lower court decision and concluded that consumers do have the right to sue and thus enforce Proposition 103 by doing it through the state's Unfair Competition Law (UCL). The Personal Insurance Federation of California (PIFC) disagrees with the Appellate ruling.

The following is taken directly from the California Insurance Commissioner's Web site, indicating what the commissioner believes are the duties of CDI:

"Insurance is a $106-billion-a-year industry in California. Overseeing the industry and protecting the state's insurance consumers is the responsibility of the California Department of Insurance (CDI). CDI regulates, investigates and audits insurance business to ensure that companies remain solvent and meet their obligations to insurance policyholders."

As administrator, the Commissioner enforces the laws of the California Insurance Code and promulgates regulations to implement these laws. That seems very clear to PIFC.

What the insurance law states

Proposition 103 changed the insurance commissioner's position from an appointed position to a statewide elected post**.**The reason for this is to ensure that the Commissioner is accountable to the people for his actions as Insurance Commissioner. The Appellate Court ruling allows private citizen lawsuits against insurance companies for rating plans approved by the Commissioner.

However, Proposition 103 explicitly states: 1) "Insurance Code section 1860.1 grants to the Commissioner *original and exclusive jurisdiction* over insurance ratemaking matters." It states that no insurance rate may be charged unless approved by the Commissioner. With the massive budget and staff available to the Commissioner, why would Mr. Garamendi require help from the public to regulate the California insurance industry?

California insurance law also states: "The Commissioner is charged with enforcement of the Insurance Code, and in particular with the review and

approval of proposed rates and class plans to ensure that rates are not "excessive, inadequate, unfairly discriminatory, or otherwise in violation of Chapter 9 of Division 1, Part 2 of the Insurance Code."

Therefore, by allowing any of the 36 million private California citizens the right to sue an insurance company over lawfully approved rates violates the very spirit — and letter — of what Proposition 103 intends, because Proposition 103 gives only the California Insurance Commissioner exclusive original jurisdiction over the rate-making process. The Insurance Commissioner would also be in violation of Proposition 103 because private citizens would be permitted to sue over rates that should be exclusively approved by the Commissioner himself.

The ramifications of the appellate ruling go even deeper. There is also a "double-enrichment" aspect to the new court ruling. Let me explain. First, under the Appellate Court ruling, any insurance company that wants to raise or lower its rates would, under Proposition 103, proceed with a filing request to CDI, which could take up to 18 months or longer for approval, amendment or denial.

> *Commissioner John Garamendi threw a bombshell into the court case. He urged the court to approve citizen lawsuits against insurance companies.*

But wait

But didn't the author of Proposition 103, Harvey Rosenfield, also write a section into the initiative that allows consumer groups, like the author's own group — Foundation for Taxpayer and Consumer Rights (FTCR) — to *intervene* on any insurance filing or procedure by any insurance company before the CDI? So not only can his group or any qualified group under the Proposition 103 definition, intervene in proceedings, they also get hourly wages, and expenses — including hotels, taxis and meals while participating in the proceedings – all paid for by the insurance companies appearing before CDI.

Since 1988, when Proposition 103 narrowly passed by 51%, Harvey Rosenfield's groups have collected more than $2 million in intervenor fees through the CDI, which is paid for by insurance companies. Some of these interventions even occurred when some of those companies applied for rate reductions! Rosenfield's groups intervened in some rate decrease hearings and demanded that the companies be granted larger decreases than those filed.

Double-enrichment.

Under the Appellate Court ruling, if and when the filing for a rate change is granted to an insurance company, the author of Proposition 103 and his partners, who may have intervened in a CDI hearing concerning a rate request, can now sue the company, stating they believe the approved rate is illegal. It's a double lottery windfall for the so-called consumer groups, and a giant bite out of the wallets of consumers, who eventually will have to pay all of the exorbitant, unnecessary costs collected *from insurers* by the consumer groups.

Here's *Auto Insurance Report* publisher Brian Sullivan's take on the subject, from one of his recent issues:

"An insurance company uses territory as its most important rating factor. Under rules promulgated by the insurance department, this is allowed. But a consumer group says it believes that Proposition 103 forbids this practice, and earlier court rulings supporting the regulation are wrong. So they sue personally to try and overturn the rules. It means that the insurance industry in California now has 36 million citizen regulators who can sue and 1,400 insurance department employees who scrutinize every filing, setting the insurance companies up for lawsuits under this Appellate Court ruling."

Mercury Insurance Company has filed a petition

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Donabedian v. Mercury

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for review with the California Supreme Court in the *Donabedian* case. Meanwhile, a similar case, *Poirer v. State Farm Mutual Auto Insurance Company,* is pending in the Court of Appeals. Although the case is similar, there are some differences. Vanessa Wells, State Farm's legal counsel in the *Poirer* case, is confident that at some point the courts will realize the damage a plaintiff's verdict would bring to the highly regulated insurance business.

"As a matter of both law and public policy, there is no question that a decision that would allow every Department of Insurance-approved rate filing to be challenged in front of a jury would be as much anti-consumer as it would be anti-insurer," she said.

"We are confident the courts will recognize that consumers need a healthy, and competitive insurance industry in the state and a decision that creates regulatory gridlock by the courts will lead to neither industry health nor competition."

My hope is that the courts will agree and bring resolution to this troubling matter. ■

Next month: Harvey Rosenfield explains why he supports a private right of action for California insurance consumers.

THIS JUST IN . . .

California High Court Won't Hear 'Persistency' Case

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California's Supreme Court has let stand a lower court ruling finding that auto insurers can be sued by their customers over the premium they charge, even where those rates were previously approved by the Department of Insurance.

Denying an appeal by the Mercury Insurance Co., the high court announced it would not review the Second District Court of Appeals' March ruling that policyholder Sam Donabedian was within his rights — under the state's Proposition 103 — to bring action against the insurer for failing to provide him with the same "persistency" discount they grant to drivers with comparable driving records, but who, unlike Donabedian, had previously held uninterrupted insurance coverage.

Passed by voters in 1988, Prop. 103 requires auto insurers to determine rates, premiums and insurability based only on allowed rating factors, and includes a provision mandating that "absence of prior automobile coverage, in and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums or insurability."

The Santa Monica-based Foundation for Taxpayer and Consumer Rights, which authored Prop. 103, has filed suits against Safeco, Auto Club and GEICO, claiming each is violating the same provision.

However, Mercury General attorneys had argued that, because former Insurance Commissioner Harry Low declined to hear Donabedian's complaint when it was brought to him in January 2002, the company's use of "persistency" as one of the optional rating factors allowed to auto writers was consistent with state law that gave ultimate authority to approve or deny rates to the Department of Insurance.

CDS: Rewarding, fun too

The heart of the annual Career Development Seminar is the intensive professional-development sessions — though equally valuable are interactions with peers. See P. 16 to sign up.

See you in Denver!

by Kirk Yeager, CIE
IRES President-Elect

Welcome *back* to Denver! For those of you who attended the last IRES conference here more than a decade ago, you will find many surprises since your last visit. In this short time, the city has added three new world-class sports arenas, an international airport, an aquarium, a convention center, a state-of-the-art library, a major amusement park and blocks of new restaurants and clubs for exciting night life.

As for the attractions you enjoyed on your last visit, those are still flourishing and include excellent shopping, easy access to the most beautiful vacation destinations in the country and, of course, a mild summer climate.

Although Denver is now a vibrant financial center, its history is one of dynamic development, riding out the booms and busts of the national economy for more than two centuries. The city, built by gold miners, cattlemen and railroaders, has grown in surges beginning with the discovery of gold, silver, copper and other minerals in the 19th century. The 20th century continued to bring modern pioneers to the region in waves to extract uranium, coal and oil shale from the Rocky Mountains. By the millennium Denver had become a center of high-tech commerce focusing on energy, communications, aerospace and cable television.

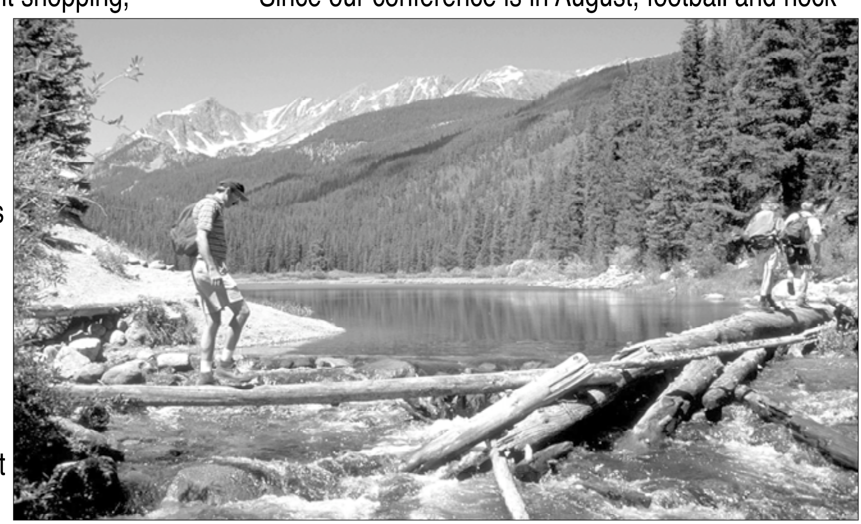
Since Denver and its surrounding area provide so many wonderful attractions, you will probably want to extend your stay. While in the Denver Marriott City Center, you'll find much is easily accessible by free shuttle busses that run the length of the 16th Street Mall every few minutes.

Going southeast on 16th from the hotel, you'll find the Colorado Capitol and the Denver County and City Building, which face each other across Civic Center Park. Near this complex are the Denver Art Museum, the new City Library, the Historical Society Museum and the Byers-Evans house, which served as the home of one of Colorado's leading families for four generations.

Taking the mall shuttle to the northwest will lead you to historic Larimer Square and many fun shops and restaurants. Taking the shuttle further in the same direction, you'll discover Lodo, Denver's new nightlife center, featuring restaurants and clubs for all tastes. This area boasts more brew pubs than any other city in the country!

To see Denver's cultural side, just go several blocks west of the hotel. Here you will find the Denver Center for the Performing Arts (DCPA). Oh, by the way, did I mention the new Buell Theater with the other new stuff? The Buell, part of DCPA, is home to many Broadway and opera productions. Next door is the Boettcher Center, which features the Denver Symphony. Information regarding performances and tickets is available at www.denvercenter.org.

Since our conference is in August, football and hockey fans will miss the Broncos and the Avalanche, but baseball aficionados can catch the Colorado Rockies at Coors Field. Gamblers can find tour buses for an evening at the casinos in Blackhawk and Central City. And racing enthusiasts should know that Downtown Denver will sponsor Grand Prix auto races in mid-August.


Tall mountains, clear streams, people in hiking boots . . . yes, there's plenty of this kind of recreation around Denver — but there's lots to do in town too!

If you're a golfer, don't pass up the many spectacular public golf courses close to the center of the city, including City Park, Kennedy and the Welshire. And even if your game isn't what it used to be, these courses all boast spectacular views of the Denver skyline as well as the magnificent peaks of the front range of the Rocky Mountains.

Within a short cab ride, shoppers who want to explore beyond 16th Street, can visit Cherry Creek Mall. There you'll find everything from Saks and Nieman Marcus to local specialty shops. Also within a short cab ride is the Denver Museum of Nature and Science, home of some awesome dinosaurs and neighbor to the Denver

continued on next page

The Denver Pavilion is one of many shopping and dining destinations in Denver, many of them a short walk or ride from our hotel. Other attractions include Prehistoric Journey and Ocean Journey (right), two of the many historical and cultural activities available to CDS-goers and their families. And then there's Coors Field (lower right), home of the Denver Rockies.

City Zoo. And don't forget the Molly Brown House, the Victorian home of the colorful Denver socialite who survived the sinking of the Titanic and was made famous on Broadway as *The Unsinkable Molly Brown*.

Short trips from the city include Rocky Mountain National Park's Trail Ridge Road, the highest paved highway in the continental United States, plus treks to Pike's Peak, Mount Evans or St. Mary Glacier.

Further into the mountains, former boomtowns such as Leadville, Marble and Georgetown can provide a glimpse of the area's exciting past. Current mountain "boomtowns" include the resort communities of Vail, Aspen, Breckenridge and Winter Park. Although known primarily as ski destinations, these communities thrive in the summer months as centers for hiking, bicycling, sightseeing and music and art festivals.

You may wish to check the following Web sites for further information regarding vacationing in the Rocky Mountain region: www.denver.org, www.denver.milehighcity.com, www.colorado.com, www.colorado.rockies.mlb.com

See you in Denver. ■

Kirk Yeager, who lives and works in Denver, is deputy commissioner of market regulation for the Colorado Division of Insurance. Kirk will be sworn in as IRES president during next month's CDS.

Financial examinations

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additional steps the Bureau can take to deal with a troubled insurance company. If the troubled insurer is foreign, the decision is simpler; suspend or revoke the license, or request that the company withdraw its license, depending on the circumstances. If a domestic insurer is involved, the options are different, and range from rehabilitation of the insurance company to liquidation.

The Code of Virginia contains a chapter that specifically discusses the rehabilitation and liquidation of insurers. Although this chapter does allow the Commission to put a foreign insurance company into rehabilitation or liquidation, in reality we defer to the state of domicile.

What's it all mean?

So what does all of this mean to the market conduct examiner?

When conducting a market conduct examination, reviewing a rate filing, or researching a complaint, there are some activities that generally demand a closer look. These activities often involve the holding company, or the other insurance companies within a group. The NAIC has compiled a list of operational and financial factors and activities that may indicate a potentially troubled company in its *Troubled Insurance Company Handbook*. Activities observed by the Bureau, and noted by the NAIC, include:

- Numerous purchases and sales of business. This can take the form of whole companies or blocks of business (policies). It can indicate that an insurance company is trying to buy market share, which might be okay. If a company is selling profitable blocks of business, it can mean that the company is trying to raise cash for some reason, possibly to offset bad business it cannot unload.
- Unusual asset transfers between affiliates. This can also indicate that an insurance company needs to increase its liquidity, or dispose of assets that would be considered non-admitted in statutory accounting, in order to boost surplus. Examples include the sale of furniture and equipment, or receivables.
- Management or service fee arrangements that appear excessive. Often in a troubled company situation, one company is subsidizing another by means of management fees. Management fees are supposed to be reasonable, and service fee arrangements are usually "at cost." By statute, the Bureau has prior approval authority over management contracts for domestic insurers. So, any management agreement involving a domestic insurance company that has not been filed for approval is definitely a red flag!
- Personnel changes, especially management changes. Routine personnel changes can be expected, but when the changes appear excessive or a wholesale change in management occurs, it might indicate internal turmoil, or disagreement with the company's goals or business practices.
- Churning of invested assets. Excessive purchases and sales of invested assets, such as bonds and stocks, can indicate problems. Is the insurance company trying to create positive cash flow by selling off assets?
- Is there a lot of regulatory correspondence with states in which the company is operating? That is, does the company appear to be in violation of state statutes in other states.
- An increase in the licensing of agents, which can indicate relaxed underwriting standards. (placing bad business on the books in order to generate revenue and cash flow).
- An increase in holding company activity, which is explained simply as being "tax-driven," without details being provided.
- Frequent changes in actuarial or auditing firms. Perhaps the insurance company and the firm cannot agree on findings.

This by no means is an exhaustive list. In Virginia, there are separate market conduct and financial examination sections, and separate examinations are conducted. Therefore, the market conduct examiners may not observe all of the above scenarios. In those states where joint market conduct and financial examinations are conducted, an examiner may be more likely to uncover this type of activity. No matter how a department is set up, market conduct examiners and financial examiners need to work in tandem when fulfilling their regulatory duties under the insurance laws of their respective states. ■

Victoria Savoy serves a chief financial auditor for the Virginia State Corporation Commission, Bureau of Insurance.

IRES State Chapter News

Colorado — In May, **Tom Abel** of the Division of Insurance did a presentation on long term disability insurance entitled "LTD Insurance 101: Everything You Want to Know About Long Term Disability Insurance But Were Afraid to Ask!" **Martin Wolf**, Ph.D., from the National Council on Compensation Insurance presented a session regarding economic developments in Colorado.
— Dayle Axman; dayle.axman@dora.state.co.us

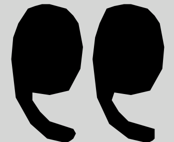
Louisiana — Sam Brooks of our Life & Annuities Division spoke on the Life Insurance Contact Database at our April meeting. The nominating committee members were named and were charged with obtaining a list of prospective candidates for the election of officers at our June meeting.

Ballots were e-mailed to all active Chapter members in June.
— Larry Hawkins; lhawkins@ldi.state.la.us

Nebraska — The April chapter meeting featured **Betty Johnson**, Driver and Vehicle Records Administrator with the Nebraska Department of Motor Vehicles, who provided an informative presentation outlining the newly established Motor Vehicle Insurance Database. She explained that the creation of the database would allow the Department of Motor Vehicles to electronically verify liability insurance coverage during the vehicle registration process. Changes to the motor vehicle salvage title laws were also discussed. **Bruce Ramge**, Chief of Market Regulation with the Department of Insurance and current IRES president, concluded the chapter meeting with a review of the IRES Foundation's National Insurance School on Market Regulation, held in April.
— Karen Dyke; kdyke@doi.state.ne.us

Oregon — Our April guest speakers were **Timothy Kemp** of First American Title Insurance Company and **Richard Carlston** and **Sunny Knight** of the law firm Miller, Starr & Regalia. They discussed mortgage impairment/lien priority insurance. In May, the guest speaker was **John Mangan** of the American Council of Life Insurers who reviewed state legislative and regulatory developments in annuity products. All of the speakers were very informative and did an outstanding job conveying the current state of the industry.
— Gary Holliday; Gary.R.Holliday@state.or.us

Virginia — The May Virginia IRES Chapter meeting featured a program on Virginia's new insurance statutes, the NAIC/NCOIL draft Market Conduct Surveillance Model Law and the Market Analysis Handbook. Deputy **Commissioner Gerry Milsky**, Assistant Deputy Commissioner **Jackie Cunningham**, and **Bob Wright**, Principal Insurance Analyst, summarized the new Virginia law for IRES members. **Weldon Hazlewood**, Supervisor, Life and Health Market Conduct, gave a brief summary of the NAIC/NCOIL Draft Model Law and the new Market Analysis Handbook. Thirty-six members attended.
— Weldon Hazlewood; whazlewood@scc.state.va.us



Quote of the Month

"NCOIL has grave concerns that the proposed 'Oxley-Baker Roadmap' mandating national insurance regulatory standards could have [a] disastrous impact on state insurance regulation. While well intentioned, NCOIL believes that such a proposal could create a legislative vacuum whereby Congress would establish insurance regulatory standards and the state insurance commissioners would enforce them. That could nullify state legislators' ability to respond to specific marketplace and consumer protection issues."

— Florida State Senator Steven Geller, President, National Conference of Insurance Legislators (NCOIL), from a June 11 letter to U.S. House Financial Services Committee Chairman Michael Oxley (R-Ohio). For more on Oxley-Baker, see the May 2004 issue of The Regulator.

Welding rods: the next asbestos?

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If you don't think the trial lawyers are salivating at the prospects, go to Google and enter "welding rod." You'll have to go halfway down the first page to find anyone simply selling welding rods. Most of the entries, and most of the sponsored links (those are the paid listings on the right) are from law firms trolling for plaintiffs.

So does it look as if welding rods are the next asbestos?

Asbestos vs. mold

At first, the parallels seem pretty strong. After all, a great many people have been exposed to asbestos and welding fumes over the years. In fact, one of the first industries to expose workers to asbestos insulation in large numbers — World War II ship-building — also involved lots of welding.

The problem is that, while asbestos clearly causes serious health problems to consumers as well as workers, the evidence is a whole lot less compelling for manganese, the key target of welding-rod litigation.

(Never mind that some people allege that, to date, the majority of asbestos money has gone to people who have been exposed to asbestos but don't yet show any symptoms. There are in fact many people with serious, debilitating, even fatal lung conditions linked by solid science to having inhaled asbestos particles years before.)

Upon closer examination, though, welding rods seem closer to mold than to asbestos when it comes to liability.

As with mold, many people have been exposed to manganese fumes without harm. And, again as with mold, the epidemiological evidence linking the alleged toxin with actual harm is pretty scanty.

Abraham Lieberman, M.D., a neurologist who specializes in Parkinsonism, agrees that there's plenty of interest in whether or not environmental toxins can cause Parkinson.

In the first place, what some toxins may cause is a Parkinson-like disorder, not Parkinson itself. "The term Parkinson-like disorder is used, in place of Parkinson disease, because the changes in the brain associated with the toxins are not the changes of Parkinson disease," he said.

There have been some correlations in research done to date.

"Toxins that have been identified [as possibly leading to Parkinson-like symptoms] include carbon monoxide (prolonged exposure with a period of coma), manganese poisoning (in manganese miners who inhale large quantities of manganese dust) and MPTP, a street drug," Lieberman has written in an article on the National Parkinson Foundation's Web site.

There have also been studies of whether organic chemicals, such as pesticides, can cause parkinsonism. "The evidence is circumstantial and not compelling," says Lieberman, though there does seem to be some relationship between exposure to hydrocarbon solvents and development of Parkinson.

1 + 1 = 3

Then there's synergy. Take those World War II shipyards. If you were a welder in a Kaiser shipyard, there's a good chance you were exposed to both welding fumes *and* asbestos. Now, no one has yet accused asbestos of being a neurotoxin, but what if inhaling it increases the effects of welding fumes?

Could there be synergies between manganese and other elements of those fumes?

And how about smoking? There are data indicating that welders are more likely to smoke than other Americans. Does smoking increase the effect of inhaling welding fumes?

Unlikely? Sure. But can you prove it?

That's the essence of the problem with blaming manganese or other elements of welding fumes for Parkinson's or anything else. There just aren't a whole lot of data, and what studies have been done aren't necessarily conclusive.

"It's pretty well known that exposure to manganese leads to a condition called manganism,which is different from parkinsonism" said Jim Antonini, Ph.D., a toxicologist with the National Institute of Occupational Safety and Health (NIOSH).

"The lawyers are seeing there's a potential to cause these neurological problems. And now if any welder or former welder has any kind of neurological problem, they're trying to blame that on exposure to

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welding fumes."

The trouble is that the relationship is based more on assumptions and anecdotes.

"We've done a real complete search of all the medical literature," Antonini said, "and there are very few cases where manganese and welding fumes cause problems for welders.

"In most cases, where there are problems, it's when welders are exposed to very high concentrations: maybe working in a confined space, or in an area that isn't well ventilated.

"If welders are in a well-ventilated area, where exposure limits are met, it appears that it's not a problem. But it seems to be a hot area of research right now."

One often-cited study that seems to prove the link involves manganese miners. But miners are most likely exposed to much higher levels of manganese than welders. If ill effects occur independent of dose — i.e., at very low levels of exposure — you'd expect to see a whole lot more problems.

As Antonini put it: "There are hundreds of thousands of welders in the world [400,000 in the U.S. alone by one estimate], and you would think that if this was a major problem, there would be thousands of welders with these neurological problems.

"That doesn't seem to be the case."

This isn't to say that welding fumes aren't toxic. Just that there doesn't seem to be the kind of clear-cut cause-and-effect — and clear-cut liability — that persuades juries to hand out deep-pocketed corporations' money to plaintiffs (and, incidentally, their lawyers).

The science

Welding involves joining metals together by electric arc with a filler material, known as a consumable, that's usually a coated electrode or wire that contributes metal to the joint. In any of the four kinds of welding — tungsten inert gas, metal inert gas, metal active gas and manual metal arc — as the arc melts the parent metal and the consumable, fumes and gases are produced (with 80-95% of them from the consumable).

Those fumes can contain fluorine, manganese, zinc, lead, arsenic, calcium, sulfur, chrome and nickel, as well as several gases, including carbon monoxide, carbon dioxide and fluorine.

If lead were a common byproduct of welding, no one would be talking about manganese, since lead has been known to cause neurological problems for a lot longer than manganese. Yet in reality, lead is only occasionally part of the fumes that welders are exposed to.

In the absence of hard data, a number of reputable organizations have simply assumed there's a hazard.

"A number of health problems are attributed to welding fumes," according to one study published on www.parkinson.org.

"Welding may cause acute upper respiratory symptoms, pulmonary edema (water on the lung), pulmonary fibrosis (scarring of the lung) and lung cancer," the article continues. "Welding has also been associated with bladder and throat cancers. Cataract formation from ultraviolet radiation may be produced by the arc if eye protection is not worn. Neurologic complications of welding include confusion and delusions, probably from exposure to the fumes (called 'fume fever'), and lead poisoning caused by heating lead-based paint."

The MSDS (material safety data sheet) for welding consumables lists Parkinson disease as a "potential hazard."

Yet no study has yet established a direct relationship — statistical or causative — between exposure to welding fumes and Parkinson-like symptoms.

Welding certainly releases noxious fumes, and welders have long been known to be prone to various ailments. It's simply going too far to say that, without question, welding causes parkinsonism.

And, by corollary, that manufacturers of welding rods (and their insurers) should pay through the nose.

Liability

Manufacturers have begun putting warning labels on their products. The trial lawyers have countered that it's too late, that their clients were exposed to harm years ago, before there were labels.

Whether that argument persuades a jury is up to the jurors. Outside of the courtroom, what's clearly needed is additional research. Which is underway at NIOSH.

As Fred Blosser of the agency put it: "Earlier this year, NIOSH published the single most comprehensive review of scientific literature on health effects

associated with welding.

"The article, 'Health Effects of Welding,' noted that past investigations have found bronchitis, airway irritation and other respiratory illnesses in large numbers of welders. However, critical differences between the studies and a shortage of dose/response data make it difficult to compare results and confidently link given exposures with given effects.

"Some studies have suggested that welding fumes may pose risks for lung cancer and nervous system damage," he added. "This is because such fumes may contain nickel, chromium and manganese.

"Nickel and hexavalent chromium are classified as potential occupational carcinogens, while studies have associated chronic exposure to manganese with a risk for a Parkinson's-like disease. But data are lacking for 1) determining whether welders are exposed to those or other fume components at levels that could trigger such effects and 2) understanding how exposures at given levels may lead to serious, long-term effects."

> *As the NIOSH study makes clear, it's simply too early to make any such claims. Too early to make them in scientific journals, any - way, though perhaps not too early to make them in a courtroom in some plaintiff-friendly venue.*

NIOSH is in the midst of both toxicological and epidemiological studies to learn more about the risks of welding — including work at the agency's Health Effects Laboratory Division in Morgantown, W.Va., where a sophisticated robotic arm can be programmed to weld at specific intensities, using specified techniques, for given durations. The arm has an exhaust trunk that collects the resulting fumes and sends them to a chamber for further use in exposure tests.

Besides looking at the manganese-parkinsonism link, NIOSH is looking at the role that welding fumes may play in immunosuppression, lung cancer, neurotoxicity, skin damage, reproductive disorders and the like.

Antonini predicts that rather than a ban, or recommendations that welders wear respirators on the job, the outcome of the research is likely to be exposure limits and other such rule changes

One law firm active in this area boldly asserts: "Exposure to high levels of manganese by inhalation in humans results primarily in central nervous system effects. Inhalation of fumes or dusts of manganese causes neurological symptoms. Exposure to heavy concentrations of dusts or fumes for as little as three months may produce the condition."

But as the NIOSH study makes clear, it's simply too early to make any such claims. Too early to make them in scientific journals, anyway, though perhaps not too early to make them in a courtroom in some plaintiff-friendly venue.

Where it will end up

Meanwhile, in the absence of any hard data that might come out of those tests, allegations of neurological damage continue to stream into court.

Antonini says that of all the cases filed over the last five or six years, only one has been settled — that of Larry Elam, a 65-year-old maintenance worker who has Parkinson's and who was awarded $1 million in damages.

Trial lawyers claim there's evidence that manufacturers of welding rods and equipment knew all about the health risks as far back as the '30s and did nothing to protect workers. But then again, if there's little good data today, there had to be even less back then.

Some might say that based on *Elam v. BOC Group, Inc.,* (filed in the renowned "judicial hellhole" of Madison County, Ill.) there's not much of a case (or simply that it's too early to detect a trend). Or, as has been argued, that this one win might embolden trial lawyers to file more such cases.

So where's the welding rod issue going?

Antonini's a toxicologist, not an attorney, but he seems to have a pretty good fix on things. Are large settlements in the future?

"Based on the science, I would predict no, but you never know with juries and lawyers. And there's a lot of money behind the lawyers." ■

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If registering after June 30, add $40.00. No reservation is guaranteed until payment is received by IRES

A $25 cancellation fee will be assessed if cancelling for any reason.

Hotel rooms: You must book your hotel room directly with the Hyatt Regency Scottsdale. The room rate for IRES attendees is $135 per night for single-double rooms. Call group reservations at 480-991-3388. The IRES convention rate is available until June 30, 2003, and on a space-available basis thereafter. Our room block is often sold out by early June, so guests are advised to call early to book rooms. See the hotel's Web site at http://scottsdale.hyatt.com.

CANCELLATIONS AND REFUNDS

Your registration fee, minus a $25 cancellation fee, can be refunded if we receive written notice before June 30, 2003. No refunds will be given after that date. However, your registration fee may be transferred to another qualifying registrant. Refund checks will be processed after Sept. 1, 2003.

SPECIAL NEEDS: If you have special needs addressed by the Americans with Disabilities Act, please notify us at 913-768-4700 at least five working days before the seminar. The hotel's facilities comply with all ADA requirements.

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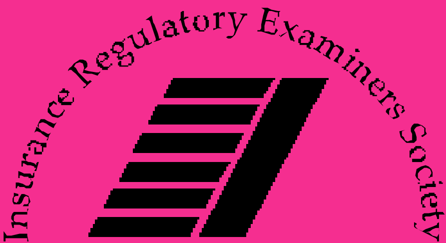

Call for more details: 913-768-4700. Or see IRES Web site: www.go-ires.org

Regulatory Roundup

by
Stroock & Stroock
& Lavan LLP

CONNECTICUT – Legislation concerning the exclusion of mold-related losses from insurance coverage dies in committee

The Senate Insurance and Real Estate Committee recently declined to report out of committee Connecticut S.B. 417, which places restrictions on insurers' exclusion of mold-related losses from coverage under personal and commercial risk policies. The Bill prohibits, among other things, the exclusion or limitation of coverage for loss from mold or remediation where the proximate cause of the loss is fire or lightning. The Bill also prohibits the inclusion of a deductible that applies only for loss from mold or remediation. In testimony before the Senate Insurance and Real Estate Committee, Connecticut Insurance Commissioner Susan F. Cogswell recently expressed her concerns with the Bill. Commissioner Cogswell identified distinctions between S.B. 417 and the Department's existing guidelines (issued on Aug. 7, 2002) on mold exclusions. She pointed out, for example, that, while the Department's guidelines separately address property coverage and liability coverage, the Bill does not. As a result, the Bill's provisions as to commercial policies appear to conflict with other provisions in the Bill. Commissioner Cogswell also communicated the following position on mold legislation generally: "The Department does not believe a statute is necessary for mold. The current guidelines allow us to have the necessary flexibility to regulate what the companies are doing and to continue to monitor the situation and revise the bulletin to reflect market changes. The insurance regulators from the northeastern states continue to discuss market issues relating to mold coverage affecting this region of the country." *To view Senate Bill 417, visit www.cga.state.ct.us/2004. To view the Department's guidelines, dated August 7, 2002, visit http://www.ct.gov/cid/lib/cid/moldguid.rtf.*

The New York-based Stroock & Stroock & Lavan LLP Insurance Practice Group includes partners Donald D. Gabay, Martin Minkowitz, William D. Latza and William Rosenblatt. The Insurance Practice Group also includes insurance finance consultants Vincent Laurenzano and Charles Henricks. They gratefully acknowledge the assistance of Todd Zornik, an associate of the group. This column is intended for informational purposes only and does not constitute legal advice.

TEXAS – Department of Insurance adopts regulations concerning underwriting based on mold damage

The Texas Department of Insurance recently adopted amendments to Section 21.1007 of Title 28 of the Texas Administrative Code concerning underwriting guidelines based upon previous mold damage, mold damage claims, water damage claims and appliance-related claims. The regulations are intended to implement recent legislation enacted by the Texas Legislature. The stated purpose of Section 21.1007, as revised, is "to protect persons and property from being unfairly stigmatized in obtaining residential property insurance by previous mold damage or by the filing of mold damage claims, a water damage claim, or certain appliance-related claims, under a residential property insurance policy." Among other things, the amendments to Section 21.1007 prohibit the use of previous mold damage or a claim for mold damage in underwriting residential property insurance where: (i) the applicant has property that is eligible for such insurance coverage, (ii) such property has been the subject of mold damage, (iii) subsequent mold remediation has been performed and (iv) a Certificate of Mold Damage Remediation (MDR-1) has been obtained in accordance with the regulation. Section 21.1007 also requires insurers to file with the Texas Department of Insurance all underwriting guidelines pertaining to water damage claims, previous mold damage or mold damage claims. Revised Section 21.1007 became effective on January 1, 2004. *To view Section 21.1007, visit www.tdi.state.tx.us.*

SOUTH DAKOTA – Legislature enacts commercial lines regulatory modernization legislation

On March 2, 2004, Governor Rounds signed into law South Dakota Senate Bill 37, which exempts from specified filing requirements certain property/casualty insurance policy forms and rates issued to exempt commercial policyholders. "Exempt commercial policyholder" is defined to mean any applicant for property/casualty insurance, other than workers' compensation insurance, who uses a qualified risk manager and who meets at least two of several enumerated qualifi-

continued from previous page

cations. The enumerated qualifications include, among others, the purchase of insurance with aggregate premiums of at least $150,000 during the most recent calendar year, possession of a net worth of at least $10 million, annual net revenues or net sales of at least $10 million, and employment of 100 or more full-time employees. An insurer or insurance producer, as applicable, must provide an exempt commercial policyholder and its risk manager with a notice that premiums or rates and policy forms may be used that are not subject to rate and form filing requirements. Insurers selling any insurance to an exempt commercial policyholder are required to maintain for five years specified records relating to such insurance sales. *To view Senate Bill 37, visit http://legis.state.sd.us/sessions/2004/index.cfm.*

MASSACHUSETTS – Legislature considers commercial lines regulatory modernization legislation
The Massachusetts House of Representatives has passed House Bill 1700 relating to the regulation of certain commercial contracts of insurance. As of April 5, 2004, the Bill had been referred to the Senate Steering and Policy Committee. As in South Dakota S.B. 37 (described above), Massachusetts H.B. 1700 would likewise exempt from specified rate and form filing requirements certain property/casualty policies that are issued to large commercial policyholders. Similar to the definition of "exempt commercial policyholder" in S.D. Senate Bill 37, House Bill 1700 also requires a "large commercial policyholder" to meet at least two of several enumerated qualifications. However, those qualifications differ in several ways. For example, H.B. 1700 includes qualifications specifying net revenue or net sales of $5 million (S.D. Senate Bill 37 requires $10 million) and the employment of more than 25 employees per individual company or more than 50 employees per holding company in the aggregate (S.D. Senate Bill 37 requires employment of at least 100 full-time employees, either individually or in the aggregate among affiliates). In addition, the risk manager requirement under Massachusetts House Bill 1700 is not a stand-alone requirement as it is under S.D. Senate Bill 37; rather, it is included among the enumerated qualifications, two of which must be satisfied to meet the definition of large commercial policyholder. Additionally, H.B. 1700's minimum aggregate property/casualty insurance premiums ($30,000) is a stand-alone requirement. The minimum insurance premiums requirement ($150,000) in S.D. Senate Bill 37, in contrast, is included among the enumerated qualifications. *To view Massachusetts House Bill 1700, visit www.state.ma.us/legis/bills/house.*

FLORIDA – Legislature considers legislation amending state's insurer insolvency law
The Florida House Insurance Committee has favorably reported House Bill 1687, which, if enacted, would amend the state's laws governing insurer insolvency. Among other provisions, the Bill would give the Circuit Court of Leon County exclusive jurisdiction over assets and property of any insurer (and claims against such assets and property) subject to an order of conservation, rehabilitation or liquidation. According to the legislative analysis accompanying House Bill 1687, certain real property actions involving a company in receivership currently can be filed in the county where the property is actually located. The Bill would require all such actions to be filed in the Second Judicial Circuit, thereby reducing the costs incurred by the Florida Division of Insurance in responding to such actions. House Bill 1687 would also void any arbitration provision contained in any agreement to which an insurer in receivership is a party and replace it with a specified arbitration provision. That arbitration provision requires settlement of disputes pursuant to the American Arbitration Association Commercial Arbitration Rules and Chapter 682 of the Florida Statutes. Disputes are to be settled by a panel of three arbitrators, one to be chosen by each party and a third by the two selected arbitrators. Arbitrators must possess at least 10 years of experience in the insurance industry. House Bill 1687 would further void any transfer or lien involving the property of an insurer that inures to the benefit of certain "insiders" of the insurer (*e.g.*, directors, officers, employees, managing general agents or any relatives of such individuals), if such transfer or lien is made or created between four months and one year prior to the commencement of any delinquency proceeding. If enacted, House Bill 1687 will become effective on the date of its enactment. *To view House Bill 1687, visit www.flsenate.gov.*

PENNSYLVANIA – Senate passes legislation addressing insurer insolvency issues

The Pennsylvania Senate recently passed S.B. 815, which, if enacted, would amend existing law to clarify certain issues involving the administration of insolvent insurers. The Bill provides, for example, that collateral held by an insolvent insurer under a deductible agreement is to be used to secure the policyholder's obligation to fund or reimburse claims payments within the deductible amount. Where a claim that is subject to a deductible agreement is not covered by a guaranty association and the policyholder does not agree to assume payment of the noncovered portion of the claim, the receiver is to adjust and pay the noncovered claims using the collateral in accordance with the Bill's provisions. Claims by third-party claimants against such collateral will not constitute a claim against the insurer's estate for the purpose of releasing the policyholder to the extent of policy coverage. Once such collateral has been exhausted, and a claimant is unable to obtain the difference from the policyholder directly, the claim is to be treated as a claim against the insurer's estate. The insolvency of an insurer does not constitute a defense to a policyholder's payment of the deductible amount. In cases where the insurer has not contractually agreed to allow the policyholder to fund its own claims within the deductible amount, and guaranty fund coverage applies, the receiver must promptly bill the policyholder for any corresponding guaranty fund payments. The receiver must promptly reimburse the guaranty fund upon receipt of such deductible amount from the policyholder. If the policyholder fails to pay within 60 days of billing, the receiver must reimburse the guaranty fund out of the collateral and may pursue collections against the policyholder. *To view Senate Bill 815, visit legis.state.pa.us.*

Casual Observations

Charles Ives

This year marks the 50th anniversary of the death of one of the 20th century's most influential classical composers, Charles Ives. Big deal, you say, and what's that have to do with insurance?

Well, more than any other artist, Charles Ives pondered the links between insurance and music. After all, he co-owned one of the most successful life insurance agencies in New York City, Ives & Myrick.

Ives would compose symphonies on his daily commute from Connecticut to his New York agency. He also devoted inordinate portions of his weekends to his musical compositions.

Ives was also a firm believer in life insurance and viewed the gradual acceptance of the product in the early years of the 20th century as evidence that man had reached a new plateau. In fact, Ives' passion for life insurance rivaled his passion for music. "My work in music helped my business," said Ives, "and my work in business helped my music."

Ives effectively stopped composing original material in 1927 due to failing health, and left his insurance business in 1930 for the same reason. The remaining 24 years of his life were devoted to revising, finishing and publishing his existing works.

In 2004, Charles Ives will be remembered throughout the musical world in a series of special concerts, including a New York Philharmonic tribute. But let's not forget that this exceptional man also served the insurance community with grace and dignity. After all, if Ives had chosen, say, banking over insurance, who knows whether we'd be celebrating his music today.

Anything's Possible

Don't tell author Stephen Frey that accounting is boring. He doesn't believe it for a second. In fact, Frey views accountants as the linchpins of corporate chicanery in his latest suspense thriller, *Shadow Account*. "Remember," says one hot-shot accountant in Frey's tale, "almost anything is possible if accountants comply."

Shadow Account has its share of uncorrupted accountants as well, but it's those evil CPAs that drive this chilling tale of financial intrigue, duplicity and murder. Frey delves into holding company transactions, short selling and merger and acquisition activity to weave a tale that should send the most savvy number-cruncher's head spinning.

Author Stephen Frey worked for years at J. P. Morgan and other similar financial services firms and blends in actual accounting firms (Deloitte and Touche) with ersatz ones (Baker Mahaffey). Readers who get confused can be assured that all evil accounting firms are fictional in this tale. (Frey also knows libel law.)

The book is highly recommended summer reading, especially for IRES members who toil in the shadows of statutory accounting. After finishing *Shadow Account*, IRES members should be thankful they're employed in the public sector. They may be underpaid, but at least they don't worry about bullets in their back. Oh yes, *Shadow Account* may also prompt you to take a second look at those CPA-audited financial statements.

— W.C.

BULLETIN BOARD

√ Past IRES President and current IRES Board member **Gerry Milsky** has left the Virginia Insurance Department. He has asked that his name be withdrawn as a nominee for re-election to the Board. He is also requesting that IRES members *not* vote for him at the CDS, even though his name will be appearing on the ballot. Gerry, thanks for all you've contributed to IRES over the years. We look forward to seeing you in Denver.

√ In addition, **C. Kenneth Johnson** has resigned his position with the South Carolina Insurance Department and will no longer be working as a regulator. He too has asked that his name be withdrawn as a nominee for election to the Board. We wish the best of luck to Mr. Johnson as he embarks on a new career.

In the next REGULATOR:

Denver CDS in words and photos

Harvey Rosenfield responds

√ **Norris Clark,** a 31-year veteran of the California Department of Insurance, has retired as deputy commissioner, financial surveillance, effective Aug. 1. A founding IRES member, Clark was a past president of SOFE.

√ If you're interested in how your Society is run, we welcome you to attend a meeting of the IRES Board of Directors during the Career Development Seminar in Denver. The current board will be meeting at 4 p.m. Sunday, and the new board at 4 p.m. Tuesday. Both meetings are open to the public.

Published by the
Insurance Regulatory Examiners Society
12730 S. Pflumm Rd., Suite 102, Olathe, Kansas 66061
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www.go-ires.org

What market conduct examiners need to know about financial regulation
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