

The Regulator[®]

INSURANCE REGULATORY EXAMINERS SOCIETY

Consumers have rights to private enforcements under Proposition 103

by Harvey Rosenfield

In the July issue of The Regulator, Dan Dunmoyer, President of the Personal Insurance Federation of California, voiced his organization's opposition to recent California court decisions that would permit California consumers to initiate private legal actions against insurers. In this article, Harvey Rosenfield, principal author of the state's Proposition 103, responds.

When California voters passed insurance reform Proposition 103 sixteen years ago, they authorized private parties to prosecute violations of the measure's provisions. In their endless endeavor to win from the courts what they lost at the ballot box in 1988, insurance companies have challenged this provision of Proposition 103 in recent years – even though the provision was upheld by the state Supreme Court in 1991. Their first attack was rebuffed in March by the Court of Appeal in *Donabedian v. Mercury Insurance Company*; another case before a different panel of the appellate court will be decided by October, and is expected to end the same way.

Insurers, with typical exaggeration, are describing their latest defeat in cataclysmic terms, claiming that Proposition 103 does not authorize private lawsuits against insurers. But, as the *Donabedian* decision affirms, the insurers' position is contradicted by the statutory

continued on page 7

Yeager of Colorado is new IRES president

DENVER — Kirk R. Yeager of Colorado was elected 2004-05 President of IRES during the Society's



Yeager

annual meeting and Career Development Society here at the Marriott City Center.

Also elected to the IRES Executive Committee at the annual meeting:

- President-Elect — Stephen E. King, CIE, unaffiliated examiner
- Vice President — Douglas A. Freeman, CIE, Missouri
- Treasurer — Bruce R. Ramage, CIE, Nebraska
- Secretary — Polly Chan, CIE, California
- At-Large — Jo LeDuc, CIE, Wisconsin
- At-Large — Katie Johnson, Virginia

Yeager is Deputy Commissioner of Market Regulation for the Colorado Division of Insurance and a longtime member of the IRES Board of Directors. He holds the CIE, CPCU and FLMI designations.

continued on page 6



IRES
2004 CDS
SPOTLIGHT
ON DENVER

The 2004 IRES Career Development Seminar

Regulators young and old flocked to the IRES 2004 annual Career Development Seminar in Denver. Though Hurricane Charley provided some tense moments for regulators traveling from the Southeast, the Denver meeting boasted our highest turnout since 2001.





SEPT 2004

Denver CDS photos	4-5
Put a face on your department ..	10
The MA Revolution	13
Commissioners' interview	14
What's new with CLUE?	17
Remembering Frank Seidel.....	18

The Regulator®

Wayne Cotter, CIE, Editor
quepasa1@optonline.net

Kathleen McQueen, Associate Editor

IRES PUBLICATION COMMITTEE

Polly Y. Chan, CIE, California, CHAIR

Angela K. Ford, CIE, N. Carolina, VICE CHAIR

Wayne Cotter, CIE, New York • Bruce Ramage, CIE, Nebraska
Kathleen McQueen, New York • Gerald A. Milsky CIE, Virginia
Kashyap Saraiya, AIE, New York
Christel L. Szczesniak, CIE, retired (CO) • Linda Yarber, California

IRES Officers & Board of Directors

Executive Committee

President Kirk R. Yeager, CIE, CO 303-894-7749
President-elect.... Stephen E. King, CIE, unaffiliated.. 540-588-7207
Vice President Douglas A. Freeman, CIE, MO..... 636-236-9642
Secretary..... Polly Y. Chan, CIE, CA 213-346-6685
Treasurer Bruce R. Ramage, CIE, NE 402-471-4607
At Large Jo A. LeDuc, CIE, WI 608-267-9708
At Large Katie Johnson, VA 804-371-9731

Board of Directors

Betty M. Bates, District of Columbia	Katie C. Johnson, Virginia
Lyle Behrens, CIE, Kansas	Stephen E. King, CIE, unaffiliated
Paul J. Bicca, CIE, Vermont	Delbert L. Knight, CIE, Arizona
Cynthia E. Campbell, CIE, Missouri	Wanda M. LaPrath, CIE, New Mexico
Polly Y. Chan, CIE, California	Jo A. LeDuc, CIE, Wisconsin
Gary L. Domer, CIE, unaffiliated	Stephen M. Martuscello, CIE, New York
Karen L. Dyke, CIE, Nebraska	Lee V. McLellan, AIE, District of Columbia
Dudley B. Ewen, AIE, Maryland	Bruce R. Ramage, CIE, Nebraska
Angela K. Ford, CIE, North Carolina	Eugene T. Reed, Jr., Delaware
Douglas A. Freeman, CIE, Missouri	Christel L. Szczesniak, CIE, Colorado
Larry D. Hawkins, Louisiana	Nancy S. Thomas, CIE, Delaware
Martin J. Hazen, Kansas	Kirk R. Yeager, CIE, Colorado
Paul J. Hogan, AIE, Arizona	James L. Young, CIE, Virginia

COMMITTEE CHAIRS

Executive Kirk R. Yeager, CIE, CO, chair
Accreditation & Ethics..... Stephen E. King, CIE, unaffil., chair
Meetings & Elections..... Jo A. LeDuc, CIE, WI, chair
Publications Polly Y. Chan, CIE, CA, chair
Education Katie Johnson, VA, chair
Membership Douglas A. Freeman, CIE, MO, chair-
Finance Bruce R. Ramage, CIE, NE, chair

Legal Counsel — John C. Craft and William C. Jolley
LATHROP & GAGE, L.C.

IRES Section Chairs

MARKET CONDUCT Leslie Krier, AIE, Washington Joy Morton, Virginia	PRODUCER LICENSING & CONTINUING ED John E. Braun, Jr., CIE, Utah
FINANCIAL Donald Carbone, CIE, New York	PROPERTY-CASUALTY Clarissa Preston, Louisiana
CONSUMER SERVICES & COMPLAINT HANDLING Stephen Martuscello, CIE, New York	LIFE-HEALTH Maryellen Baker, AIE, Ohio
	ENFORCEMENT & COMPLIANCE Betty Bates, Washington, D.C.

2005 CDS Chair

Paul J. Bicca, CIE, Vermont

THE REGULATOR is published every other month by the

 INSURANCE REGULATORY
EXAMINERS SOCIETY

12730 S. Pflumm Rd., Suite 102 Olathe, KS 66062
913-768-4700 FAX 913-768-4900
IRES Continuing Education Line: 913-768-NICE

David V. Chartrand, executive secretary
Susan Morrison, office manager
Susan Morrison, continuing ed coordinator

www.go-ires.org

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

©2004, All Rights Reserved,
by the Insurance Regulatory
Examiners Society

e-mail us at
ireshq@swbell.net

From the President

Adapting to a new regulatory culture

It has truly been an honor to be elected president of IRES; a great organization of professionals who work together like a family.



Kirk Yeager

As I indicated in my comments at the Denver conference, IRES reflects the hard work and vision of many prior presidents and executive committee members who have given much of themselves to develop an organization that has grown to national prominence in a short time.

The success of IRES is incredible. It seems, then, that all the current board need do is take the wheel and drive since all of the hard work of creating and building the organization is done. Unfortunately, this is not the case.

IRES is now a mature organization, requiring a somewhat different level of attention and care than in the past, somewhat resembling, metaphorically, how parenting skills require change as a child moves into the teenage years.

Of greatest concern for me is that some of the groundwork and decisions of prior presidents and boards have not been memorialized. During the upcoming year, particular attention must be given to the development of procedures and guidelines for each of the committees so each new group of officers need not re-invent the same wheel, year after year.

Likewise, the organization needs to develop higher standards of accountability as it transitions from a small, informal management style to meet larger and more dynamic expectations. At the conference I challenged the board to become more ac-

countable to the membership to verify and assure that IRES is meeting the needs and expectations of its membership.

Board members need to reach out to IRES members to make certain that their needs are being met and ensure that board decisions are adequately communicated. In turn, board members are also challenged to communicate their findings to the board with recommendations on how IRES can incorporate those needs and suggestions into its strategic plan.

The challenge for the executive committee is to become fully accountable as the management of the organization. Even though the members of the executive committee are volunteers, there must be a high level of commitment and involvement in order to assure that IRES is on track with its strategic plan and that IRES is operating as efficiently as possible. Executive committee members are challenged to step up to the plate as active managers.

This level of accountability and involvement is urgently required due to the rapidly changing environment of insurance regulation. As initiatives and inquiries from the federal government and NCOIL require changes to current regulatory practices, IRES must be ready to assist its members in adapting to the new regulatory culture by providing cutting-edge training and support.

As states continue to face reduced budgets and as other professional organizations attempt to provide similar programs, IRES must make certain that dollar for dollar, its members see the direct value of making the commitment to be a productive member of IRES.

I am excited about the upcoming year and would like to hear directly from members regarding their vision for what IRES should be.



Kirk R. Yeager, CIE
IRES President

Welcome, new members

Tangela Ayo, LA
Maryellen Baker, AIE, OH
Lynette A. Baker, OH
Terri Barrett, WV
Suzanne Birmingham, CO
Carly R. Boone, VA
Gary L. Boose, PA
John M. Castillo, AIE, TX
Nannette Cheri, LA
Cheryl L. Davis, OH
Paul L. Fichtenau, OK
David E. Fusco, MD
Andre U. Gagne, NH
Teresita A. Gomez, CA
Stephen Guilbeau, LA
Daryl Hepler, VA
Mark A. Hooker, WV
Jenny Jeffers, Multi-State
Nobu A. Koch, DE
John M. Lim, AIE, TX
Rita E. Mgbemena, DC
Carol O'Bryan, CO
Stephanie Paswaters, CO
John E. Pfaender, CIE, MO
Jimmy R. Potts, CIE, NM
Vincent Rapacciuolo, MS
Charles F. Simon, AIE, IN
Laura Sloan-Cohen, MN
Helene I. Tomme, AIE, AZ
Charles W. Vanasdalan, NH
Brenda G. Walters, WV
Kristine M. Williams, AZ

And congrats to all of our new designees



This year's AIE Class



This year's CIE Class

Moderator Birny Birnbaum poses questions to Insurance Commissioners (left to right) Ciszar of North Carolina, Praeger of Kansas, Poolman of North Dakota and Dean of Colorado.



THE DENVER CAREER SEMINAR



From the Commissioners Roundtable (above) to the individual workshop sessions (below), the 2004 IRES Career Development Seminar in downtown Denver was a memorable occasion. At more than 470 attendees, the crowd was bigger than any meeting in the past three years. The seminar featured 35 panels and lectures over two days. For more photos from Denver, check out www.go-ires.org.



The Round Robins (above) were a great chance to share ideas — and then there were all those hallway conversations and casual get-togethers, where regulators from different states have a chance to meet and share ideas.





Jann Goodpaster of the Oregon Insurance Department makes a point about market analysis



Polly Chan (at left) of California addresses the IRES Board of Directors



(CLOCKWISE FROM LEFT) Gary Urich of Iowa and wife Sharon chat with Nancy Thomas of Maryland (sitting) during a program break

- Jack Casper of Texas (far right) visits with colleagues
- Volunteer Zack King of Virginia helps a member check in at the IRES registration desk
- Doug Freeman of Missouri (far left) passes a document past Bruce Ramage of Nebraska and over to Kirk Yeager of Colorado
- John Reimer of Kansas flashes a smile



C.E. News

The next CE reporting deadline is Oct. 1, 2004. The current compliance period is Sept. 1, 2003 – Sept. 1, 2004. Don't miss the reporting deadline and risk suspension of your designation.

What happens if I miss the deadline but my NICE compliance report form is received within 30 day of the Oct. 1 deadline?

A \$30.00 late fee will be assessed to any designee holder who submits their NCIE compliance report within 30 days following the Oct. 1 reporting deadline. (Note: courses or seminars must be completed before the Sept. 1 deadline)

How do I know I received credit for attending the Denver CDS?

For those of you who picked up your 2004 CDS attendee certificate, you have been granted 15 CE hours automatically and do not need to file a compliance report. You may check the IRES Web site at www.go-ires.org to confirm your credits. Click on MY CREDITS.

If you did NOT pick up your attendance certificate at the CDS, you're required to file a NICE compliance reporting form reporting actual hours attended, with a max of 12 CE credits.

Our new Accreditation & Ethics Committee chairperson is Stephen E. King. IRES would like to thank Kirk Yeager for all his hard work during the past year.

One of the new programs the A&E committee will be offering during the 2004-05 compliance year is a "Reach Back" program designed for those who are unable to meet the 15 CE hours annual requirement. There will be more on this in the November issue of *The Regulator*.

N I C E

Yeager is new IRES prez

continued from page 1

Yeager has worked in the business of insurance or in regulation of insurance since 1980 and has been affiliated with the Colorado Division of Insurance since 1989. Previously, he worked with insurance claims, research and development, and agency for various insurers. He was a market conduct examiner for the Nebraska Department of Insurance for four years.

At the Colorado Division of Insurance, Yeager has supervised the Property and Casualty Section, which handles consumer complaints and market conduct exami-



Bruce Ramge (left) and Kirk Yeager nations for property and casualty insurers. Subsequently, as Chief Market Conduct Examiner, he supervised the Market Conduct Section. In addition to supervising market conduct, he oversees the Market Analysis, Actuarial, Rates and Forms, and Investigations departments for the division.

As a member of various working groups for the National Association of Insurance Commissioners, he has participated in the development of the Consumer Complaints Best Practices White Paper, the Market Conduct Examiner's Handbook, is Co-chairperson of Market Information Systems, and he's active on numerous committees and working groups related to market conduct and market analysis.

After assuming the IRES president's gavel from outgoing president Bruce Ramge, Yeager appointed these Executive Committee members to chair the Society's Standing Committees:

- Accreditation & Ethics — Stephen King, CIE
- Membership & Benefits — Douglas Freeman, CIE
- Finance & Budget — Bruce Ramge, CIE
- Publications — Polly Chan, CIE
- Meetings & Elections — Jo LeDuc, CIE
- Education — Katie Johnson

In other voting during the Denver meeting, six regulators were elected to four-year terms on the IRES Board of Directors: Angela Ford, North Carolina; Paul Hogan, Arizona; Larry Hawkins, Louisiana; Lyle Behrens, Kansas; Dudley Ewen, Maryland; and Wanda LaPrath, New Mexico.

In addition, the Board appointed three people to one-year at-large positions: Betty Bates, Washington, D.C.; Jim Young, Virginia; Delbert Knight, Arizona. ■

Consumer rights to private enforcements under Prop 103

continued from page 1

language and clear intent of Proposition 103.

When the voters enacted Proposition 103, they knew – just as every reader of *The Regulator* knows – that even a well-funded Department of Insurance cannot possibly catch and prosecute every violation of the state’s insurance laws. This shortcoming is even more pronounced under Proposition 103, because of the far greater responsibilities it imposed upon both insurers and the Insurance Commissioner. Its staff must review thousands of filings submitted by hundreds of property-casualty insurers each year, and then monitor insurers’ subsequent activity in the marketplace.

So Proposition 103 explicitly made the state’s antitrust and consumer protection laws apply to insurers, sweeping away the statutory immunities the industry had enjoyed. And it went on to accord citizens the right to use those statutes as private “attorneys general” to enforce the statute against insurers as well as the Insurance Commissioner (which 103 made an elected post). Section 1861.10(a) of Proposition 103 states:

Any person may initiate or intervene in any proceeding permitted or established pursuant to this chapter, challenge any action of the commissioner under this article, and enforce any provision of this article.

[Note: Personal Insurance Federation president Dan Dunmoyer’s quotation of this section of the statute in the July issue was incorrect.]

In *Donabedian v. Mercury*, a private citizen filed suit against the Mercury Insurance Company under California’s consumer protection law, the Unfair Competition Act, alleging that the insurer had charged Donabedian and others a higher auto insurance premium because they lacked prior insurance. Such a surcharge is a violation of Proposition 103, which explicitly bars the use of “no prior insurance” as a factor in underwriting and premium-setting. Donabedian requested both

an injunction against Mercury’s practice and restitution, i.e., the repayment of the surcharges.

In its defense, Mercury argued that Donabedian had no right to bring a lawsuit, because the Insurance Commissioner had “exclusive jurisdiction” over insurance rates and practices. Mercury claimed two vestiges of the 1947 insurance law, which Proposition 103 had gutted, conferred immunity from suit and liability upon the insurer. (Similar immunity statutes can be found in the insurance codes of most other states.) Unaware of §1861.10(a), the trial court agreed with Mercury and dismissed the suit. Donabedian appealed, and our organization submitted an amicus brief to focus the ap-

pellate court’s attention on a proper reading of the statutes.

The Court of Appeal reversed the lower court’s decision, holding that “the plain language of Proposition 103 and its legislative history” authorized the suit. The Court also rejected the argument by Mercury (as well as State Farm and several other insurers in their “friend of the court” briefs) that the 1947 statutes, which conferred immunity for antitrust violations, also conferred immunity for an insurer’s unilateral violation of Proposition 103. The insurers’ reading of the statutes was incorrect and, more important,

in conflict with the voter-approved statutes, which must take precedence. The court makes it very clear that, in California, the Insurance Commissioner no longer has “exclusive jurisdiction” over the practices of insurance companies.

None other than California’s present Insurance Commissioner made the same point to the court. California courts have accorded the Insurance Commissioner much authority under Proposition 103, and the Court of Appeal emphasized that an amicus brief filed by Insurance Commissioner John Garamendi strongly supported the right of citizens to sue an insurer for its illegal practices. Noting that, “like all administrative agencies, the Department must balance its statutory responsibilities with the available resources when

“

Proposition 103 explicitly made the state’s antitrust and consumer protection laws apply to insurers, sweeping away the statutory immunities the industry had enjoyed.

”

continued on next page

Consumer rights under Proposition 103

continued from previous page

exercising its discretion to deploy its prosecutorial authority,” Commissioner Garamendi concluded that “the voters saw fit to . . . allow private attorneys general to apply their resources and technical skill to ferret out and challenge those violations of law that pass through the Department’s administrative review without either detection or action.”

Contrary to the comments of industry spokespeople, *Donabedian* does not mean that insurers can be sued for lawful conduct. To the contrary, *Mercury’s* “no prior insurance” surcharge was unlawful. However, the Court of Appeal refused to decide what would happen if *Mercury’s* surcharge had been “approved” by the Commissioner. The insurers insisted that the Commissioner’s approval would have in effect legalized the unlawful conduct. They cited a four-year-old decision by a different court of appeal, *Walker v. Allstate Indemnity Co.*, in support of that argument.

The court in *Donabedian* didn’t decide the question, because there was no evidence of such approval in the record. But its opinion leaves no room for the insurers’ insistence that the vestigial provisions of the 1947 insurance code provide immunity for “approved conduct.” The decision makes clear that, contrary to the *Walker* opinion, those statutes cannot be read to grant immunity, whether the conduct was approved or not. Moreover, neither § 1861.10(a) nor any other provision of the insurance code contains any exception to the right to sue provided by Prop. 103.

The voters were alert to the limitations of the agency: a rule that rewarded “hide the ball” tactics would be poor public policy. Moreover, the *Donabedian* court agreed with Insurance Commissioner Garamendi’s statement that insurers should not be protected for wrongdoing “creatively stowed away in a voluminous regulatory filing.” Finally, under California law, no public official has the authority to authorize the violation of a statute.

Drawing a further distinction, lawyers for the insurance industry assert that approved rates would be immunized by the “filed rate doctrine,” jurisprudence that forbids certain lawsuits challenging tariffs filed with a federal agency. But as the California Attorney General has opined, the filed rate doctrine does not apply to Proposition 103.

However, while nothing bars a suit against an insurer for charging excessive rates, insurers still enjoy substantial protections against any financial liability from using illegal rates that have been approved. For one, California courts can require the Insurance Commissioner to provide its opinion on whether a rate was lawful when approved; presumably, the Commissioner would stand by its prior decisions except in cases of gross error or impropriety. Most courts would defer to the commissioner’s view. Moreover, under California law, courts will not grant restitution when the result would be unfair, i.e., if the insurer believed in good faith that its rates were proper. Because of the difficulty of bringing such lawsuits, there has been only one reported case. The industry’s fears, if genuine, are overblown.

In June, the California Supreme Court refused the pleas of insurers to review the *Donabedian* decision. Notably, the court also rejected their alternative requests that the court simply eliminate the case as a citable precedent. With *Donabedian* the law of the land, insurers are hoping that a different panel of the Court of Appeal will decide an identical case differently. However, at the oral argument in *Poirer v. State Farm*, the panel indicated it would follow *Donabedian*. That decision is due by Oct. 2.

As with all of the hundreds of legal assaults launched by the insurance industry against Proposition 103, the insurers are unlikely to find a court willing to roll back a voter-approved law to suit the desires of the industry. (Indeed, *Mercury Insurance*, hedging its bet on winning the *Donabedian* litigation, subsequently managed to get the California Legislature to enact a bill purporting to repeal 103’s ban on “no prior insurance,” in an attempt to legalize *Mercury’s* misconduct. However, Proposition 103 forbids the legislature from making such hostile amendments, and a court has declared *Mercury’s* statute void.)

It is easy to understand why the industry would like to confine all disputes to regulatory agencies, many of which are badly understaffed, unable to order restitution and often friendlier to insurance interests than to the public interest. However, California has shown that accountability in the courts is a crucial adjunct to even the best efforts of a regulatory

agency. Indeed, as the backers of “tort reform” are well aware, the threat of a lawsuit is a powerful deterrent to any kind of misconduct. The public interest, and the regulatory agencies that are charged with protecting it, are best served when insurers police themselves and rigorously adhere to the dictates of the law. Such self-policing is far more likely to occur when the threat of private legal actions hovers over the industry’s decisions. ■

Harvey Rosenfield is the author of Proposition 103 and founder of the non-profit Foundation for Taxpayer and Consumer Rights (FTCR). A copy of the Donabedian v. Mercury decision and FTCR’s brief in the related Poirer v. State Farm case, can be found on the foundation’s website, www.consumerwatchdog.org/insurance/pr/pr004081.php3.

Gibbons of Missouri receives Al Greer Achievement Award

DENVER – Missouri’s Michael Gibbons was named the 2004 recipient of the prestigious Al Greer Achievement Award in August at the annual IRES Career Development Seminar.

Gibbons, who has over 23 years regulatory experience with the Illinois and Missouri DOI’s, has been a market conduct examiner-in-charge with the Missouri DOI since 1993.

A member of IRES since 1987, Gibbons is a Certified Insurance Examiner (CIE). He also holds the designations of CLU, FLMI, ALHC and HIAA.

Over the years, Gibbons has been instrumental in helping recover thousands of dollars in premium refunds, claims that consumers would not have otherwise received.

Regulators who have been fortunate enough to work with Gibbons, have seen him go beyond the call of duty to assist policyholders and consumers in the uncovering of unfair trade practices.

IRES applauds Gibbons and is proud to have him as a member. ■



Mike Woolbright (left) of Missouri accepts the 2004 Al Greer Achievement Award on behalf of colleague Michael Gibbons. Presenting the plaque is Stephen King, chair of the Society’s Membership Committee.

President’s Award goes to Gary Domer

DENVER — Outgoing IRES President Bruce Range presented the 2004 President’s Award to Gary Domer.

Domer served as IRES President in 1994 and currently is chairperson of the IRES Past President’s Council.

During this past year, Gary has chaired the special subcommittee that is designing a curriculum for a Market Conduct Examination Certification program, a gigantic undertaking that has involved many hours of meetings, conference calls, research and study.



Range (left) and Domer

He has also worked with the Past President’s Council to develop a letter to be sent the NAIC leadership, outlining IRES’s accomplishments and the significant role that IRES could play should there be any future accreditation initiatives.

Gary has served as chairman of the IRES Meetings & Elections Committee, Accreditation & Ethics Committee and Membership & Benefits Committee. And he’s been on the Board of Directors since 1992. Along with Board member Stephen King and others, Gary was on the team that helped design and develop the Society’s continuing education program.

Gary graduated from Washburn University with a bachelor’s in business administration. He worked at the Kansas Insurance Department from 1973 to ‘95. He began as a policy examiner and when he left, he was supervisor over market conduct, admissions and securities. Gary, who is now an independent market conduct examiner, has served as a presenter for NAIC training programs.

In addition to being an experienced and highly regarded regulator, Gary is an all-around great person to know and work with. He is a long-time supporter of IRES, and we are proud to count him as one of our members. ■

Putting a face on your depart-

by Gerry Milsky, J.D., CIE, ACS, FLMI

In a sparsely but enthusiastically attended session on Monday afternoon, the Consumer Services and Complaint Handling Section presented a panel discussion, "Putting a Face on Your Department." The discussion addressed the outreach efforts of three state insurance departments, focusing on a practical discussion of what works and what doesn't. Outreach is a subject that is becoming more and more important, as state regulators seek to demonstrate the very real distinctions between state and (potentially) federal regulation of insurance.

The panel was comprised of Kirk Yeager of Colorado, Phyllis Sabino of New Jersey and Mike Woolbright of Missouri, with Vi Pinkerton of Colorado as moderator.

New Jersey formed an outreach unit in 1999, and its original focus was on creating a program about automobile insurance aimed at high school sophomores. When they discovered that teachers in the schools were learning as much as the students, they expanded the program to the general population, adding information about homeowners. As with the auto insurance program, New Jersey was trying to reach *first-time* homeowners.

As the program became more popular, staff branched out from formal presentations and consumer guides to consumer information tables at various fairs, offices, and other locations, where they provide written information and respond to consumer questions. According to Phyllis Sabino, what works is information tables at DMV offices, conducting 12 to 15 outreach events per month, providing consumers with lots of material to take home (along with little "gifts"), and word of mouth.

Missouri's program is similar to New Jersey's, but Mike Woolbright emphasized Missouri's creation of a "teen Web initiative" that is designed in conjunction with other agencies and high schools to offer informational programs. The emphasis, as

in New Jersey, is to teach people about insurance *before* they start buying it. Missouri also developed (in cooperation with state education agencies) lesson plans in downloadable form, available to anyone, and convinced the governor to declare an "insurance education month."

In Colorado, the key to outreach is communication with consumers. Departments must know their goal. Is it to generate more complaints via increased publicity? Decrease complaints through education? Funnel the most appropriate complaints into the department, while reducing the number of unjustified or irrelevant complaints? According to

Kirk Yeager, the term "outreach" is only part of the story.

Departments also need to focus on their own employees who have direct dealings with the public, help their commissioners prepare for public presentations, conduct surveys and follow up on presentations, and educate the insurance

industry (particularly key complaint, underwriting and compliance staff). All of these functions, while not ordinarily considered "outreach," ultimately assist the public in understanding insurance issues and understanding that their friendly, local state regulator is there to help.

The panel agreed that the following practical "tips" were worth pursuing by any state insurance department:

- Make sure it's clear which organizations will advertise an outreach event, and make sure that someone is going to do so. It helps for the department to develop a generic announcement that organizations can utilize.
- Always resist the urge to recommend or "trash" a company in a public setting.
- Two-person teams work best.
- Be sure to pick up informational brochures from other agencies. They can provide sources for future contacts as well as ideas to improve your own outreach materials.
- Adjust your presentation to your audience.



A “canned” presentation won’t work for everyone.

- Make certain that all presentations contain up-to-date material. There’s nothing worse than presenting material that has been nullified in some way by this morning’s newspaper!
- Depend on experienced staff for outreach; it’s not a good place to throw an employee who is still wet behind the ears. ■

Award for best story goes to California staff

DENVER — The 2004 IRES Schrader-Nelson Publications Award was presented here to California’s rate regulatory staff for the best feature article in *The Regulator* during the past year.

IRES Publications Committee Chair Polly Chan presented the award to Doug Barker and the California rate-filing staff for their January 2004 article, “From turmoil and crisis comes reform for California’s workers’ comp system.”

Barker cited the assistance provided by his associates at the department, including former Rate Regulation Deputy Commissioner Maureen Mason and Deputy Commissioner Norman Williams.



Doug Barker (center) chief of California’s Rate Filing Bureau, accepts the Schrader-Nelson Publications Award from Polly Chan and Wayne Cotter.

IRES STATE CHAPTER NEWS

Colorado — For our July meeting, **Sue Ankele** and **Mary Tuttle** of the Colorado Department of Motor Vehicles discussed the Motorists’ Identification Database. We did not have a local chapter training session in August due to the annual IRES CDS.

— Dayle Axman; dayle.axman@dora.state.co.us

Louisiana — Our Annual Business Meeting was held in June. The following officers were elected: **Trent Beach**, President; **Crystal Campbell**, Vice President; **Clarissa Preston**, Secretary; **Linda Gonzales** and **Mary Vanlandingham**, Co-Treasurers and **Larry Hawkins**, State Chair. Members were encouraged to participate in one of the following committees: Meeting/Program; Designations/Education; Professional Standards; Phone/Mail; Membership or Newsletters/Bulletins. Our Officers and State Committee members met in July to discuss the upcoming year’s events.

— Larry Hawkins; lhawkins@ldi.state.la.us

Nebraska — **Martin Swanson**, attorney with the Nebraska Department of Insurance, spoke at the June chapter meeting on NAIC-related life and health issues. These included reformation of Medicare supplement regulations, the lines of insurance planned for inclusion in the Interstate Compact, Coordination of Benefits, ERISA handbook development and the U.S. Supreme Court decision on *Aetna v. Divilla*. Details of future meetings can be found on the IRES Web site.

— Karen Dyke; kdyke@doi.state.ne.us

Oregon — Our guest speaker in June was **Rocky King**, Administrator for the Insurance Pool Governing Board. Mr. King reviewed the Oregon Medical Insurance Pool and the Office of Medical Assistance Programs. In July, former IRES President **Jann Goodpaster** addressed our group. Ms. Goodpaster discussed Modernizing the Insurance Regulatory Structure: The NAIC Framework for a National System of State Based Regulation. Our second speaker for July was **Gayle Meaders** of the Oregon Senior Health Insurance Benefits Assistance, who discussed a hot topic for seniors, the new Medicare-approved drug discount cards.

— Gary Holliday; Gary.R.Holliday@state.or.us

NAIC chief urges regulators to rethink regulatory debate

Fortunately, South Carolina escaped the brunt of Hurricane Charley's wrath. As a result, South Carolina Insurance Commissioner and NAIC President Ernst Csiszar was in Denver to deliver his keynote address to IRES members during their Monday luncheon general session. (**Editor's Note:** On the Wednesday following his keynote address, Csiszar resigned his public sector positions to become president and CEO of the Property Casualty Association of America.)

Csiszar opened his remarks with a challenge to IRES members to rethink the state v. federal debate. "I actually think," said Csiszar, "that the entire discussion of state versus federal [regulation] is misconceived. It has a false foundation. What we really should think about is good regulation versus bad regulation.

"The system has outlasted its usefulness in many ways," said Csiszar. "The market has outstripped, in essence, the efficacy of the regulatory system."

He explained that regulators tend to over-regulate the trivial, such as requiring reams of paperwork for a company to change its name, and under-regulate some of the essentials, like financial solvency and corporate governance issues.

"It would serve us well every once in a while," Csiszar advised IRES members, "to step back and say 'you know, government sometimes can do more harm than

good. And sometimes government intervention is not the answer.'"

He spoke of the unprecedented "colossus" of regulations that flows from federal and state agencies, such as the IRS, EPA and state insurance departments. "What we are doing," offered Csiszar, "is always solving last year's problems, not next year's."



South Carolina's Ernst Csiszar addressing the IRES annual meeting in Denver in August

He emphasized that we as regulators tend to be more concerned about process than outcomes, caring more about improperly completed forms than improperly rendered judgments.

The industry's mistake, said Csiszar, is that they look to the federal government in the mistaken belief that it offers a better alternative. He, however, believes strongly in a state-based insurance regulatory system and in the notion that state regulators are the ones holding the key to a more effective and efficient regulatory environment.

"The answers are not in Washington," said Csiszar, "they're here in this room." ■

**“
What we are
doing is always
solving last year's
problem, not next
year's.”**

— Ernst Csiszar

Market analysis is here to stay

by Wayne Cotter, edi-

Using market analysis (MA)* techniques to more effectively pinpoint insurers with market conduct deficiencies was a theme permeating the 2004 IRES CDS. At least four sessions were devoted to helping IRES members get up to speed on the MA revolution. Although presenters disagreed on the specifics, they were unanimous on one major point: Market analysis is here to stay.

A Monday afternoon session, led by consumer advocate Birny Birnbaum and Maine Insurance Department attorney Robert Wake, focused on altering industry practices through the use of market analysis data.

Birnbaum, a long-time advocate of market analysis techniques, stressed that using only one tool in your market conduct toolbox — the market conduct exam — is no longer an acceptable regulatory approach. Insurance departments, Birnbaum said, lack the resources to conduct extensive exams, frequently explore areas unrelated to the insurer's core deficiency, may replicate exams conducted by other states and often lead to regulators being more process- than results-oriented.

According to Birnbaum, most market conduct regulators lack basic information regarding which insurers are selling what policies to whom, and whether unfair sales, claims and underwriting practices are taking place. That's where market analysis comes in. He cited the NAIC first edition of the Market Analysis Handbook as one source for information on how to obtain and use such data. The current handbook — which focuses on the uses of complaint data, IRIS ratios and the state pages of the annual statement — is available to regulators through the NAIC.

Birnbaum also cited the Texas Insurance Department's aggressive use of data calls to obtain market conduct information during the time he worked for the department in the late 1990s. The data calls confirmed

what many had long suspected: Texas auto writers were writing far less business in communities with relatively high percentages of minorities than in communities with lower percentages. The Texas approach is outlined in a publication by Birnbaum's Center for Economic Justice, "A Consumer Advocate's Guide to Getting, Understanding and Using Insurance Data."

Underwriting Guidelines

Most state insurance departments do not require personal lines insurers to file underwriting guidelines. Birnbaum considers this a huge mistake. Underwriting decisions to him are equivalent to rating decisions since a consumer's rate is ultimately based on the rating tier or classification to which he's initially assigned. In order to conduct meaningful market analysis, regulators must review the basis for insurers' underwriting decisions, says Birnbaum.

Maine's Wake noted that even though complaint data tend to lag problems in the marketplace, complaints could be a valuable tool, particularly when regulators look at the kinds of complaints generated by their insurers. He also cited the

success Maine has achieved in reviewing its Administrative Hearing Requests to determine what prompted such requests.

Wake noted that most states are or soon will be using targeted, rather than periodic, market conduct exams given the limited resources of state insurance departments and the many stakeholders (*e.g.*, insurers, state legislators, consumer groups, the NAIC, the General Accounting Office) who support the effort.

So where does this leave market conduct examiners laboring in the field? Communication is key. Discuss MA issues with your peers and supervisors. And remember, despite the presence of an NCOIL model law (and an upcoming NAIC model law), much of the MA revolution can be accomplished administratively, with no change in state statutes. Don't sit on the sidelines. Get involved in the market analysis revolution.



**Market analysis is the collection and analysis of company and market information to help identify market conduct problems. Such information can include, but is not limited to, market share data, underwriting guidelines, complaint information, ZIP code data, cancellation/nonrenewal data, IRIS ratios and annual statement data.*

For more information on market analysis, see the special market conduct issue of The Regulator (March 2004), featuring an article by Birny Birnbaum.

The commissioners' interview

State regulation at the crossroads?

Following the Commissioners Roundtable that kicked off the 2004 CDS, the four commissioners participating in the Roundtable gathered for a wide-ranging interview with *The Regulator*. Taking part were Doug Dean, Commissioner of host state Colorado; Ernst N. Csiszar, Director of Insurance in South Carolina and this year's NAIC president; Jim Poolman, North Dakota's Commissioner of Insurance; and Sandy Praeger, Commissioner of Insurance in Kansas. The second part of the interview will appear in a future issue of *The Regulator*. Note that due to space limitations, some of the responses by the Commissioners have been shortened. [Since this interview, Csiszar has resigned and accepted a position in the private sector.]

Regulator: *There are a lot of regulators out there working very hard — trying to do more with less — but there's a big bear breathing down their necks called federal regulation. Rank and file regulators don't know a whole lot of specifics about the Oxley-Baker proposals. What, at this point, can you tell our readers about these federal proposals?*

Csiszar: Clearly — particularly from a market conduct standpoint — the legislation would mandate the adoption . . . of either an NCOIL or an NAIC [Market Conduct] model. Hopefully, we'll be able to pass at the NAIC the same model as NCOIL did. It would be a benefit to the NAIC and to consumers in general to have one model as opposed to having two different models between the two organizations.

Certainly when it comes to the product approval process, we are working on national standards. That is something, by the way, that is *not* included in the federal legislation. The federal legislation *seems* to address the issue of implementation beyond the interstate compact, but does not address the issue of what standards to apply under that interstate compact.

So there are two areas where there's clear impact, where you're going to need new resources, where you are going to need training resources and I can tell you, those resources are going to be hard to come by. So we're going to face a real imple-

mentation issue in many of the states.

Regulator: *How likely do any of you feel that we will see some changes in the next year?*

Dean: I think it's going to be very difficult for any real change to come in the next year for the reasons that Ernie said [during the Commissioners Roundtable] and because of the fact that the Senate's really not engaged in this issue yet. However, that doesn't mean that we at the NAIC

should sit back and not do anything. It's something that Congress is going to continue to look at. If they don't look at it this year or next, they're not going to drop it. We need to continue to work with them to make sure that any type of reform is done with our participation.

Csiszar: Let me outline what I might

describe as the "nightmare scenario" in all of this. Although it is true that only certain individuals, albeit powerful individuals, like Mr. Oxley, are very actively engaged in the process, and though there may be a little less interest in the issue in the Senate, in the aftermath of an election that [situation] can change dramatically — that's number one.

The second thing that can happen: What's going to be the enforcement mechanism for these mandated changes? In the case of a highway mandate, well that's easy. The feds would hold the money. In this case, you don't have that tool so you have to find some other enforcement mechanism and we don't know what that is yet.

But the nightmare scenario, in my mind, would be a House that focuses on the federal tools approach and a Senate that might be more inclined to look at a federal optional charter approach and



Poolman (left) and Csiszar

a combined bill that essentially says if you don't do what the House tells you to do, the penalty box is a federal optional charter. So I think you've got to take this seriously and you've got to make those changes. That's why I think Doug is absolutely right, complacency is the *wrong* answer, a terribly wrong answer.

Regulator: *What about from the consumer's perspective? I've never come across a consumer who said "We're very disappointed with state regulation, we'd like to have federal regulation." I haven't seen a consumer organization advocate a federal role, at least not to the extent that Congressmen Oxley and Baker are talking about.*

Praeger: There've been consumer surveys that show consumers would prefer to have state-based regulation and I think that the knowledgeable consumer, the informed consumer prefers state-based regulation. I think the data's out there, but I don't think consumers are engaged in this debate right now. They wouldn't be engaged until it elevated to a political or campaign issue within the various states. [Oxley-Baker] could happen without the consumer really having much knowledge of the issues at all.

Poolman: If you go speak to service clubs or noninsurance-type groups explaining what you do as an insurance commissioner . . . I always like to compare it to the Department of Labor or the IRS. People just get panic stricken if they're going to have to deal with the federal government on an insurance problem when they have someone locally they can deal with.

Regulator: *Let me move in a slightly different direction. What's your take on the decision by state regulators to suspend the credit-scoring study that was being undertaken by eight states in favor of the Congressionally mandated study on the same topic? Could this be another sign of a larger role by the federal government in insurance regulation?*

Praeger: We passed credit scoring [legislation] two years ago in Kansas and this is the first year that it's been implemented. We were going to be

part of the study, but we decided — as did several other states — to pull out. Number one we've already passed our legislation; we're gathering our own data — obviously it's Kansas-specific — but the experience we're having can inform the discussion about credit scoring. The study in Missouri [generated] a lot of criticism about how the questions were going to be asked and how the data were going to be collected.

Poolman: But with the reauthorization of FCRA (the Fair Credit Reporting Act), there was an authorization of a study within the law.

Praeger: Right.

Poolman: Rather than having a small group of states do their own study where the methodology could be criticized by either other states or consumer groups or the industry, why not work col-

laboratively with the federal government? They're going to do a study anyway, which was authorized by FCRA, to make sure that *all* views are represented, to come out with something jointly, which is then much more difficult to criticize.

Praeger: And actually I've talked with the Missouri Director [of Insurance] and I think he's grateful that there's



Editor Cotter (left) with Dean and Praeger

going to be one national study that has the opportunity to be more informing.

Csiszar: I can tell you in our case . . . we were able to do our [credit scoring rules] through regulation because our legislation specifically authorizes credit scoring; we don't know quite how it got in there that way.

Regulator: *For underwriting and rating?*

Csiszar: Yes. The reality is . . . we used to get complaint after complaint after complaint [on credit scoring]. I don't think we get one or two complaints a month now. Mostly it's inquiries because people are actually seeing how they also benefit from credit scoring.

Praeger: We have found a number of violations of the Act that was passed two years ago in Kan-

continued on next page

The IRES Commissioner Interview

continued from previous page

sas, but some of them are violations of FCRA, not even following the federal law in terms of informing so it's been a good process for us to have regulations in place. The other big issue is whether or not you can be re-rated — have an adverse action taken — based solely on your credit score. And we're saying that should not happen. There need to be other factors.

Poolman: The word “solely” becomes a little bit of a dicey thing.

Praeger: Oh yes, but what we're saying is that you can have the worst credit or the best credit and your rates ought to be equal if all the other factors are equal.

Regulator: *We now have a trial lawyer running for the vice-presidency and we have Republicans talking about tort reform as a significant national issue. In your particular state, is tort reform considered a “hot issue” at this time?*

Praeger: Kansas was fortunate in the mid-eighties to pass many of the things that are included in the California tort reform law. We have the caps on noneconomic damages; we have joint and several liability; we have pretty good reform in place. We still have a problem in Kansas . . . so in spite of all of the best efforts of our Legislature, we're still having difficulty because we don't have enough companies . . . writing malpractice coverage.

Poolman: . . . Our state court system is pretty similar from the standpoint that we have pretty conservative judges, we've got \$500,000 caps on noneconomic damages. There is still a movement from physicians and clinics to try to move to \$250,000, but even the defense lawyers are saying that if you move to \$250,000 you run the risk of the whole thing being declared unconstitutional, so take what you have and run with it. Even the companies are saying about a \$250,000 cap on noneconomic damages: “We're not sure your rates are going to come down that much.”

Csiszar: All of you, I think, know my philosophical bent, but I really think on the tort issue, and I'm not taking the side of defense lawyers, but they have a point.

Poolman: Absolutely.

Csiszar: Doctors need a much better way of policing themselves. The problem with malpractice starts with malpractice. Tort reform is the mechanism here, but in terms of how doctors themselves behave when there are clear cases of malpractice, the way they sanction their brethren, the way they don't disclose that information, that could do a whole lot to bring this malpractice market back to health, combined with some tort reform.

Praeger: . . . It is a bunker mentality. If a mistake occurs in a hospital, the hospital legal staff says “don't say anything; don't acknowledge anything.” When what they ought to be doing is creating an environment that encourages people to come forward when a mistake happens so they can fix the mistake.

The other movement is toward evidence-based medicine. I'm always amused at that whole name because what were they using before? One potential solution — that I don't think the medical community likes — is to use evidence-based medicine as a defense. If you've done everything according to the current medical evidence, then that could at least be part of the defense in a medical malpractice case. The problem is that [doctors] will argue that evidence-based medicine tends to become a cookie-cutter approach to medicine and stifles creativity.

Dean: In Colorado, we're one of the few states that really don't have a crisis in medical malpractice and I think it's a combination of things. We do have caps [on noneconomic damages]. It was \$250,000, but was recently raised to \$300,000. The trade-off was we raised the cap to get disfigurement added into the things that are disqualifiers for lawsuits. We've actually had articles written . . . about physicians fleeing to Colorado. They're literally coming here from other states and they're taking huge pay cuts because they actually come out ahead because their medical malpractice premiums are lower. ■

Part 2 of this interview will appear in a future issue.

CLUE: What's true, what's appropriate

by **Scott Hooper**

"Data is neutral," said Jeffrey A. Skelton, assistant vice president at ChoicePoint, during a session on "CLUE and other Models for Rating and Underwriting Homeowners."

"As long as it's accurate," he added.

The gulf between those two quotes took up much of the Monday afternoon session, with four panelists debating the pros and cons of CLUE — Comprehensive Loss Underwriting Exchange — and similarly computer-based methods of reporting losses and valuing property.

The data tend to bear out a correlation between a property's loss history and future claims. But that still leaves a few points of friction: privacy vs. disclosure, conflicts with FCRA (the Fair Credit Reporting Act) and whether inquiries and unpaid claims may fairly be counted.

Since many states have enacted legislation or regulations relating to the use of this kind of data, the question of uniformity also arises.

CLUE is one of those data-mining tools that have come of age over the past few years, with more powerful computers and more widespread availability of computerized databases.

Yet complaints from homeowners — who may think they have coverage and then, at the last minute, all because of CLUE, find that they don't — have kept the technique controversial.

Skelton stresses that CLUE isn't a model. It's a database that can give consumers "a price that sticks."

Companies report consumer-generated losses monthly to ChoicePoint, whether they were paid or denied. Though the database goes back 10 years now, only claims filed over the previous five years are used to create CLUE reports.

The CLUE database is covered by FCRA, meaning that consumers are entitled to a look at the data if they get an adverse action letter, and they're permitted to respond. If the insurer doesn't respond to ChoicePoint within 30 days, the questionable data are removed from the database.

As with credit reports, consumers are allowed to add an explanation to the record, such as "We got rid of the dog."

At that point, though, it's up to the insurer to decide how to respond. One company might accept the explanation, while another may use the comment as an investigative tool — in this case, going out to check on whether the dog really is gone.

"The loss occurred," Skelton said. "That's true. But the company chooses how to respond."

Gregg Mecherle, CPCU, CLU, a San Francisco attorney, told the session that CWPs — claims that are closed without a payment — are at the heart of the controversy over CLUE reports. Yet they are predictive, even in the absence of other indicators, and shouldn't be dropped from the database.

"Something's happening out there on the property," he said. Similarly, "theoretical coverage inquiries," with a homeowner

calls to ask about coverage, often involve real damage.

As consumers have become worried about price or availability, they've begun buying higher deductibles and paying smaller claims out of pocket. Indeed, the total number of claims has been dropping, while their severity has been increasing. Mecherle says this is a good thing.

Insurance shouldn't be used as a maintenance tool, he said, but saved for major claims.

There's a consensus that valuing homeowners' policies on the basis of simple-minded techniques, such as adding up square feet, isn't such a hot idea. Peter M. Wells, senior vice president with Marshall & Swift/Boeckh, explained his company's alternative method is currently used by more than 95% of insurers.

"The housing stock that insurers insure is changing all the time," he told his CDS audience.

For instance, their surveys indicate that fully 25% of all policyholders are planning to upgrade their property, with an average value of \$10,000



continued on page 19

Remembering a colleague and a friend

by Nancy S. Thomas, CFE, CIE, CPA

It was Monday and I was hurrying to my first session in San Diego at the SOFE CDS when I learned of Frank Seidel's passing at age 69. Like many of us, I felt a sense of loss, not only for myself and his family, but for all of us in the professional examination community of SOFE and IRES. His unselfish contributions have had a profound impact on how the two organizations operate today.

Frank's life began in Germany in the mid-1930s. He came to this country as a young man, served in the armed forces and graduated from LaSalle University. He also lettered in soccer at the University of Illinois-Chicago. He spent a number of years as a chemist before making a mid-life career change around age 40.

His professional career as a financial examiner started in 1974 with the Pennsylvania Insurance Department. His colleague and friend Jack Joyce remembers Frank as a person who "brought to his work a passion and a healthy skepticism of an academic, fomenting exams with his energy and personality and always making friends along the way."

Frank believed in the professionalism of the examiner, both in the arenas of market conduct and financial. For SOFE, he became an activist in the Pennsylvania Chapter. He was one of the first State Chapter presidents to hold semi-annual dinner meetings with distinguished speakers. I attended some of these meetings and in many regards, they were mini-career development seminars. In 1993, he won the Don Fritz Memorial Award, an award presented by SOFE to the year's best State Chapter President. In the late 1990s, Frank was elected to the SOFE Board.

In the late 1980s when IRES was formed, Frank embraced another challenge. He became chair of the Financial Section and became editor-in-chief of our newsletter, *The Regulator*. I remember Frank calling upon several commissioners for interviews which eventually became feature articles.

Frank was also the driving force behind (and named) the annual Schrader-Nelson Award for the best article written in *The Regulator* during the preceding year.

Frank Seidel was probably one of the best promoters and visionaries in IRES. Many of his ideas of yesteryear have been transformed into the realities of today. He also had a way of energizing others to participate and become involved. I can attribute my own involvement in both organizations largely to Frank.

Frank retired from the Pennsylvania Insurance Department in 2001. He and his wife of 46 years, Joanne, were avid world travelers and loved cruises.

In Denver, IRES President Bruce Ramage announced that the 2004 CDS would be dedicated to Frank's memory. We all will miss his leadership, vision, and most of all friendship. ■



Frank Seidel

“Quote”
of the Month

***“The answers are not
in Washington. They’re
here in this room.”***

— Former NAIC president and South Carolina insurance commissioner Ernst Csiszar, from his keynote address to the CDS in Denver

CLUE: What to do about it

continued from page 17

per upgrade. Yet most such improvements aren't picked up by insurers.

M&SB data indicate that in 2003, even using ITV (insure to value), 64% of homes were undervalued by 27%.

One particular problem is the use of standardized indexes to increase coverage year to year. With the average policy remaining in place for eight years, there's just too great a chance of remodeling or other major changes. Of course, it

doesn't take CLUE to keep in touch with policyholders and track property changes.

Mecherle defended the idea of seeking out new correlations that predict future losses. Unless they're illegal, unless the factor being measured is a proxy something that is specifically prohibited, Mecherle said that companies should use any information they can — not to raise premiums, but to redistribute them more equitably and to match rates and risks more closely. ■

Casual Observations

Colorado Musings: Attitudes and Altitudes

We first suspected it during lunch at a smoke-filled roadside restaurant in Idaho Springs, Colorado, where a Marlboro seemed to be most patrons' appetizer of choice. We gathered further evidence at a local rodeo where pint-sized kids competed in a wild "mutton busting" competition (aka, lamb riding).

The next morning, bungee-cord trampolining was taking place just outside our hotel room. We watched from our window as children tethered to bungee cords were launched to incredible heights from hotel trampolines. At the same time, daredevil teens were outdoing each other in a resort-sponsored skateboard competition. Later that day, we held our breath as mountain climbers scaled the heights of Colorado Springs' Garden of the Gods. And that evening, while driving the Interstate, scores of helmetless motorcyclists whirred past us, their ponytails flapping defiantly in the sweet Rocky Mountain breeze.

Our suspicions needed no further confirmation: *These folks definitely march to a different drummer.* We had just left the angst-ridden East Coast, where lawsuit fears seem to drive our every waking moment and entered a world that we had almost forgotten existed. Colorado residents, of course, aren't immune to liability concerns, it's just that they'll be damned if they'll let them impact their lifestyles.

Perhaps Colorado Insurance Commissioner Doug Dean put it best. "Colorado has a very independent streak," said Dean during an interview for *The Regulator* following the IRES Monday-morning Commissioners' Roundtable. "Colorado's more of a 'live and let live' kind of state. We don't like to pass a lot of mandates."

"When I was a legislator," Dean recalled, "I voted against seat belts for children in the back seats of cars. Why? Is it because I'm pro-accident? No . . . I make my kids wear seat belts. I always make sure they're buckled up. And I wear my seat belt, but I don't want the government telling me that's the way we have to live. In Colorado that attitude seems to be more prevalent than in a lot of other states."

We thought back to our local community's roller rinks that thrived in our youth, but are now shuttered due in large part to liability concerns. And while most amusement parks, playgrounds and white water rafting facilities have managed to remain open, none has escaped the pinch of rising liability insurance rates.

Sure, we're probably marginally safer now, but something was lost in the process. Call it fun. Call it freedom. We're not sure what to name it, but we caught a glimpse of it during our week's stay in the Rocky Mountain State during this year's CDS.

— W.C.



BULLETIN BOARD

✓ Thanks so much to our volunteers who worked at the registration desk during last month's CDS in Denver.

✓ Thanks also to those who made donations in Denver to the Hurricane Charley relief fund established at the CDS registration desk. The money collected has been sent to the American Red Cross.

✓ Due to space limitations, there is no "Regulatory Roundup" in this issue. The feature will return in the November REGULATOR.

✓ Did you enjoy the Denver CDS? Have ideas for next year's program? We are looking for volunteers to help plan sessions for next year's program in Tampa. Volunteers can call IRES at 913-768-4700. Or send an email to ireshq@swbell.net

In the next REGULATOR:

✓ **Special issue: the state of state regulation**

✓ On a personal note, we were saddened to learn of the passing of Frank Seidel, who served with distinction as editor of this publication in the early 1990s. Frank approached his responsibilities like he did everything else – with passion, commitment and integrity.

✓ In response to feedback from our members, IRES will soon be announcing a program under which AIE and CIE holders can "carry over" a small number of continuing credits from a prior year. It's called a "reach back" system and will take effect in fall 2005. Watch upcoming issues of THE REGULATOR for official announcements and explanations.

The Regulator®



Published by the
Insurance Regulatory Examiners Society
12730 S. Pflumm Rd., Suite 102, Olathe, Kansas 66062

e-mail: ireshq@swbell.net
www.go-ires.org

AUTO

First Class Mail
U.S. Postage Paid
Kansas City, MO
Permit No. 1794

