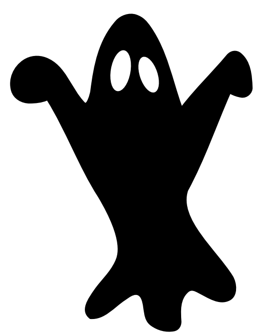
The Regulator®

INSURANCE REGULATORY EXAMINERS SOCIETY

Brokers cry for exorcist as new spirit engulfs regulatory bodies

by Karl LaFong

Well over a year has passed since Marsh & McLennan, this nation's leading brokerage firm, paid $850 million to resolve regulatory charges of fraud and anti-competitive behavior brought by New York's Attorney General Eliot Spitzer and the New York Insurance Department. A year or so has also passed since major disciplinary actions were imposed by various regulatory bodies against Aon ($190 million), Willis ($50 million), and Hilb Rogal & Hobbs ($30 million).



So what, if anything, has the insurance brokerage community learned from these well-publicized scandals?

In my estimation, brokers have learned that a new regulatory spirit — like a demon that possesses a human body — has taken over and inhabited some existing regulatory entities. There are at least two regulatory bodies that have been overcome by this powerful regulatory spirit: state insurance departments and the NAIC.

In addition, this new spirit has overtaken three other entities that historically had little or no involvement with the regulation of brokers: attorneys general, insurers and policyholders. These three entities now present a regulatory threat to the brokerage community.

Ultimately, this new, aggressive spirit will help usher in changes to brokers' business practices, but in the meantime, it is just scaring the hell out of them.

With respect to those that previously had little or no regulatory role over brokers, this new spirit has taken over the following three entities.

State Attorneys General

Formerly only tangentially involved with the regulation of insurance, state attorneys general are now fully and firmly engaged in the investigation and oversight of insurance industry practices. Where they once deferred to the expertise of insurance departments, state attorneys

continued on page 4

Is no-fault auto losing its sizzle?

by Scott Hoober
Special to The Regulator

One of the basic tenets of insurance is that sometimes things happen.

If your house burns down, your homeowners policy pays to make you whole. As long as you didn't do something felonious like pour gasoline on the carpet and toss in a match, you're covered — even if you smoke or fail to replace the battery in your smoke detector.

By the same token, your health insurance will pay, give or take some deductibles and copayments, to help you get better. And it won't rely on a tort-liability lawsuit to determine from whom you caught the disease in the first place.

Yet in auto insurance, we do indeed chase down the guy who, metaphorically speaking, sneezed on you and gave you the flu.

It seems logical to many that auto

continued on page 10

MAY 2006

From the President

A federal 'insurance charter' will add nothing but confusion

To begin, I would like to add my two cents regarding the "National Insurance Act of 2006," the optional federal charter legislation recently introduced by U.S. Senators John Sununu (R-NH) and Tim Johnson (D-SD).

I find it curious that this new legislation would provide a federal option to insurers since many existing state requirements would remain under this national act. Two regulatory entities will create a level of confusion the likes of which we haven't seen since FEMA was taken under the wing of Homeland Security. In addition, such legislation will add additional costs and further remove consumers from the regulatory process.

Although I understand that insurers are obligated to pay the costs for this new program, rest assured that these additional financial burdens would fall squarely on the shoulders of insurance consumers.

It should come as no surprise to anyone reading this column that I am a strong advocate of state regulation. As we all know, state regulators have made tremendous strides in modernizing and improving the efficiency and effectiveness of the regulatory arena. This optional federal charter concept will erode and eventually destroy a tried and true state regulatory system.

There, I've said it. Now, let me address some specific IRES matters.

For all new AIE and CIE designees who will be recognized at the Chicago CDS, financial assistance may be available for you to attend the CDS. The IRES Foundation will be offering a "scholarship" grant that will be used to help new AIE and CIE designees attend the CDS. Shortly, more information will be available regarding this program on our Web site, www.go-ires.org.

This past month the new IRES market conduct training and certification curriculum — known as "MC+" — took a step forward recently as the Executive Committee approved $2,500 to launch work on the initial curriculum. Many IRES members have already volunteered to author chapters that will make up the MC+ Program, but we could still use your help. If you are interested in sharing your knowledge and expertise and assisting with this program, please contact the IRES office.

I look forward to seeing you in Chicago . . . make your reservations now.

Take care and may God bless.

Stephen E. King, CIE
IRES President

IRES Membership Drive

The IRES Membership & Benefits Committee announces its 2nd annual membership drive. For this year's membership drive, the Membership & Benefits Committee is challenging each and every IRES member to recruit one new general member. Every member that meets the challenge and recruits at least one new general member will receive a token of appreciation from IRES.

It's as easy as 1, 2, 3.

1. Identify potential new general members.
2. Initiate contact.
3. Follow up!

So take the Membership Challenge! Complete details and everything you need to promote IRES is available online at **www.go-ires.org**. For additional information about this year's membership drive, contact Jo A. LeDuc, Membership & Benefits Chair at jo.leduc@oci.state.wi.us or (608) 267-9708.

Welcome, new members

Constance Arnold, PA
Donald D. Bratcher, CIE, unaffiliated
Charlita R. Brown, DC
Carla J. Chu, HI
June A. Coleman, PA
Charlotte Ege, HI
Diane B. Freed, PA
Nicholas Gammell, CA
Mary Hartell, MN
Colin M. Hayashida, HI
Jerry L. Houston, PA
Susan G. Johnson, PA
Michael A. Jones, PA
David R. Langenbacher, CIE, CA
Leman D. McLean, unaffiliated
Joseph S. Meizen, PA
Eileen W. Mundorff, ID
Peggy N. Myers, LA
James R. Myers, PA
Gerald P. O'Hara, Jr., PA
Julie A. Phillips, AIE, OH
Desi Rheams, LA
Yonise A. Roberts Paige, PA
Alex Simmons, CA
Blake A. Sutton, KS
Mary K. Sutton, PA
Sam N. Thomsen, HI
Michael T. Vogel, PA
Elaine Wieche, AIE, CT

CIE·AIE℠
The Signs of Excellence

A new spirit engulfs the broker's world

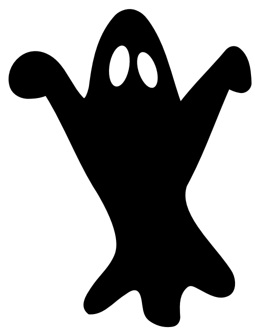
continued from page 1

general have at times elbowed aside those departments, and are now a potent force in the insurance regulatory arena.

They are? Yes, for at least three reasons.

First, an ambitious, *elected,* attorney general may have purely political motivations for launching a regulatory investigation, and thus may be more likely than an appointed insurance commissioner to initiate one. The public generally loves a good corporate lynching (witness Enron and its progenies), so what better way to obtain favorable press coverage and move up to higher office?

Second, unlike an insurance commissioner, an attorney general may *criminally* prosecute an individual or entity. Sure, insurance departments in many states have been statutorily empowered to refer a regulatory investigation for criminal prosecution. However, Spitzer took the process a step further and launched his own independent investigation of insurance brokers, before any insurance department involvement.



Third, attorneys general can now either agree with a fine levied by an insurance department, or disagree and demand payment of a *greater* fine. For example, Minnesota Attorney General Mike Hatch recently decided that AIG's $1.6 billion settlement was inadequate and filed his own lawsuit. He said that the $1.2 million allocated to Minnesota under the overall settlement should be closer to $10 million. Similarly, Florida Attorney General Charles Crist filed suit in March 2006 against Marsh, alleging many of the same bid-rigging charges originally made by Spitzer in October 2004.

In sum, it can be argued that Eliot Spitzer has effectively opened the regulatory door for an entire future generation of politically-ambitious prosecutors. In addition to attorneys general, the SEC will also be participating in insurance regulatory investigations more than ever before, as evidenced by the agency's involvement with the $1.6 billion AIG disciplinary action.

Policyholders

In the old days, a policyholder was first and foremost the "client" of a broker. The client was always treated with the utmost respect by a broker, and often lavishly courted. The policyholder typically looked to the broker for guidance in navigating the rough waters of coverage selection and risk management.

However, in the aftermath of the broker scandals, a broker may well be facing his client in a courtroom rather than in a restaurant. Policyholders are now much more aware of their rights, and of the potential for abusive practices by brokers. Consequently, lawsuits against brokers, and even class actions against brokers, may become commonplace as a result of perceived abusive practices.

As an example, note the huge class action, antitrust lawsuit that was filed last August in federal court in Newark, New Jersey. The case, known simply as "In Re Insurance Brokerage Antitrust Litigation," is now slowly making its way through discovery. As a result of the consolidations of two separate class actions, there are now nearly 20 plaintiffs taking on 37 brokers and an additional 78 insurers.

The complaint itself is well over 300 pages long, and the case's document inventory is in excess of one million records. Not surprisingly, the lawsuit repeats many of the allegations made by Eliot Spitzer in his lawsuit against Marsh. Even though motions to dismiss by the brokers and insurers are pending, the resolution of the case will be both long and costly. The case could, if determined in the plaintiffs' favor, establish a costly precedent for future suits.

Insurance Companies

Until recently, the relationship between insurance companies and brokers seemed canine in nature: The insurance company was the dog, and the insurance broker was the dog's master.

The broker would throw a stick (risk) to the insurer, the insurer would happily fetch (underwrite), and then the insurer would return to the broker to receive its reward (premium). Now, after the dog has had a few disappointing experiences with its master, (steering?), the dog may be as likely to bite its master as it is to fill its traditional role as man's best friend.

After the allegations of bid-rigging and steering emerged, one can only assume that insurers have increased and expanded their auditing of brokers. One would further assume that these audits are intended to target the business practices of brokers and are designed to prevent a repeat of the Marsh debacle.

In addition, insurers have already become more vigilant in ensuring that brokers are properly licensed in those states in which they are doing business. Since a failure of a broker to be properly licensed can be discovered during a market conduct examination of an insurer's records, and that failure could lead to a fine, insurers are focusing more on this potential problem area. (The licensing domain has always been a fertile area in which to probe brokers' compliance. For example, last November, a *small* agent paid $65,000 to the Massachusetts Division of Insurance to settle charges that it had placed business while not properly licensed.)

> ***"Until recently, the relationship between insurance companies and brokers seemed canine in nature: The insurance company was the dog, and the insurance broker was the dog's master."***

Finally, insurers have pared down, or even eliminated, the fun golf tournaments, a.k.a., educational conferences, to which insurers traditionally invited their best brokers. The investigations by Spitzer and Connecticut Attorney General Blumenthal have focused in part on "nonmonetary compensation" that brokers received from insurance companies. This nonmonetary compensation sometimes took the form of all-expense paid junkets to exotic locales.

In their settlements with the attorneys general, some brokers have agreed to no longer accept vacations, prizes, gifts or "any other thing of material value" from insurers. This means that all-expense paid trips are becoming as anachronistic as the high-priced lunches to which brokers formerly took insurers — in those halcyon days before the new spirit of regulation took over the souls of the insurers.

More bodies

And there are two regulatory bodies that traditionally have provided oversight to brokers, but are now doing so much more aggressively since filled with the new spirit. They are:

State Insurance Departments

Look for state insurance departments to become much more vigilant in the future. The days of ignoring seemingly minor infractions, or administering the proverbial slap on the wrist, are over. Why? Insurance departments resented getting caught napping when Spitzer uncovered a rat's nest. Insurance departments reacted quickly, albeit on a "me-too" basis, after Spitzer announced his suit against Marsh, and they won't want to be one-upped again.

Moreover, like those attorneys general who seek to make names for themselves, some *elected* insurance commissioners with politically ambitious agendas will do the same. Warning: 11 states currently elect their insurance commissioners, and many are certainly capable of waging regulatory rampages.

Furthermore, what if Attorney General Spitzer becomes Governor Spitzer in New York in 2007? How will his election impact the New York Insurance Department and the brokers it regulates? A regulatory-minded governor could induce major changes in how an insurance department regulates brokers.

The NAIC

Uncharacteristically, the NAIC instantly rocked into action soon after the Spitzer investigation commenced.

For the first time in years, the organization amended the Producer Licensing Model Act, and with record speed, too. A special compensation disclosure-

continued on next page

The broker's world

continued from previous page

related amendment was made to this Model Act in December 2004 — within two months of Spitzer's October announcement of the Marsh investigation.

This was surely a record for an institution that has had the Rand Corporation conducting an academic study of class action lawsuits for the past few *years*. Look for the NAIC to react quickly, if not actually initiate some new oversight proposals in the near future.

Final Thoughts

In view of the foregoing, 2006 may be the beginning of a very scary time for the insurance brokerage community. Brokers will find themselves under scrutiny, and in some instances under attack, from a variety of sources. Brokers will need to continue to develop and expand their codes of business conduct, and voluntarily refine their business practices, in order to avoid the long-armed reach of this new poltergeist of insurance regulation.

In the movie *The Exorcist*, Linda Blair's character was fortunate to have a member of the clergy come to her rescue. A similar Hollywood ending is unlikely for insurance brokers. ■

Karl LaFong is a pseudonym. The author, a former regulator, works in the insurance industry. The views expressed in this article are strictly those of the author.

C.E. News

IRES members with designations will receive continuing ed transcripts during May. It will show hours submitted so far and the number of hours still needed. The compliance year will end September 1, so there is still ample time to complete your requirements.

If you need CE hours, please consider attending the IRES CDS in Chicago, August 6-8. If you stay for the full seminar and pick up your attendee certificate, you will receive 15 CE credit hours.

If your NICE manual is more than a few years old, you may want to download an updated version from the IRES Website. Visit **www.go-ires.org** and click on National IRES Continuing Ed (NICE). There you will find a downloadable version in Microsoft Word format. The forms can be filled out from your computer. Print them out and mail them with your documentation.

N · I · C · E

National IRES Continuing Education

The mandatory continuing ed program for AIE and CIE designees

"Quote of the Month"

"We insist that everybody who drives a car has insurance, and cars are a lot less expensive than people."

— Massachusetts Governor Mitt Romney commenting on Massachusetts' new health insurance law that imposes monetary penalties for those failing to purchase health insurance.

IRES State Chapter News

DC — During our meeting on Friday, March 17, the IRES DC Chapter presented a "BYOB," an IRES Brown Bag Luncheon Recruitment Campaign. Highlights included **Betty M. Bates**, DC State Chair, giving the welcoming remarks and introductions of the DC Chapter members and **Lee McLellan** offering "Reflection" comments. IRES members showed prospective members "IRES Is For You," an enlightening PowerPoint presentation. They also shared a few of their personal IRES experiences with the audience. Acting Commissioner **Thomas E. Hampton** gave supporting and encouraging closing remarks. As a result, the DC Chapter was able to recruit new members!!!
—*Betty M. Bates; betty.bates@dc.gov*

LOUISIANA — Our Chapter held its meeting on February 9 with speaker **Alan Heumann**, Director of the Senior Health Insurance Information Program. Mr. Heumann gave a PowerPoint presentation on Medicare Part D. Another meeting was held April 6 with speaker **Tom McCormick**, CPA, Vice President of Finance for Louisiana Medical Mutual Insurance Company (LAMMICO). Mr. McCormick spoke on the method by which his company is addressing the NAIC Model Audit Rule relating to the Sarbanes-Oxley Legislation.
—*Larry Hawkins; lhawkins@ldi.state.la.us*

MISSOURI — The Missouri IRES State Chapter meeting was held December 5 through December 8, 2005, in Jefferson City and included extensive training in multiple uses of the NAIC I-SITE program. Our continuing education seminar also included reports by **Doug Freeman** on recent activities of the Accreditation and Ethics Committee, IRES membership growth potential among other Missouri state regulators and the 2006 CDS in Chicago. **Cyndy Campbell** provided an additional account of the ongoing work on the Market Conduct Certification Plus Program and developing the curriculum. **Gary Kimball** shared information from CMS about the new Medicare Part D benefit as well as the CDS Format subcommittee's work. Missouri IRES members offered several suggestions for future CDS meetings. **Carolyn Kerr**, the MDI's Market Conduct counsel, provided a legislative update and reviewed recent Missouri case law. **Ron Harrod**, a Department Investigator, explained the Department's initiatives in the regulation of variable products. **Doug Ommen**, MDI Deputy Director and General Counsel, reported on proposed legislation and plans to improve the Department's efficiency and productivity. **Mike Woolbright**, Chief Market Conduct Examiner, spoke about marketing issues on U.S. military bases. Breakout sessions were also held to review report writing and plans for future examiner training.
—*Gary W. Kimball, CIE; Gary.Kimball@insurance.mo.gov*

NEBRASKA — **Dee Knight**, Catastrophe Section Manager and **Chris Lapinskie**, Catastrophe Team Manager, both with State Farm, spoke at our February chapter meeting. They explained the company's experiences of adjusting claims in the hurricane disaster areas, including the difficulties in finding policyholders and the correct properties. Chris provided pictures of the damage inflicted by Hurricane Katrina in the areas around New Orleans' Lake Pontchartrain.
Details of upcoming meetings can be found on the IRES Web site, as they are scheduled.
—*Karen Dyke; kdyke@doi.state.ne.us*

OREGON — The Oregon chapter met on February 19. The guest speaker was **Gerry Curry** of the Oregon State Library, who introduced the group to services offered by the Library, including Lexis-Nexis, Firstgov, Findlaw, and Legislative Bill Tracking. Also, on March 17, our group heard from **Mark Jungvirt** of the Office of Private Health Partnerships. He shared information on the Oregon Health Plan and other state-sponsored health plans.
—*Cliff Nolen; Cliff.Nolen@state.or.us*

IRES 2006 Commissioner Guide

AK	Linda Hall	Appointed	907-269-7900
AL	Walter Bell	Appointed	334-269-3550
AR	Julie Benafield Bowman	Appointed	501-371-2600
AS[a]	Elisara T. Togiai	Appointed	684-633-4116
AZ	Christina Urias	Appointed	602-912-8400
CA	John Garamendi	Elected	916-492-3500
CO	David Rivera	Appointed	303-894-7499
CT	Susan F. Cogswell	Appointed	860-297-3800
DC	Thomas E. Hampton[b]	Appointed	202-727-8000
DE	Matt Denn	Elected	302-739-4251
FL	Kevin McCarty	Appointed	850-413-5914
GA	John Oxendine	Elected	404-656-2056
GU[a]	Andreas J. Jourdanou	Appointed	671-475-1843
HI	J.P. Schmidt	Appointed	808-586-2790
IA	Susan Voss	Appointed	515-281-5523
ID	Gary L. Smith	Appointed	208-334-4250
IL	Michael McRaith	Appointed	217-785-5516
IN	Jim Atterholt	Appointed	317-232-2385
KS	Sandy Praeger	Elected	785-296-3071
KY	Glenn Jennings	Appointed	502-564-6027
LA	James J. Donelon	Elected	225-342-5423
MA	Julianne Bowler	Appointed	617-521-7794
MD	R. Steven Orr	Appointed	410-468-2090
ME	Alessandro Iuppa	Appointed	207-624-8401
MI	Linda A. Watters	Appointed	517-373-0220
MN	Glenn Wilson	Appointed	651-296-5769
MO	Dale Finke	Appointed	573-751-4126
MS	George Dale	Elected	601-359-3569
MT	John Morrison	Elected	406-444-2040

NC	Jim Long	Elected	919-733-3058
ND	Jim Poolman	Elected	701-328-2440
NE	Tim Wagner	Appointed	402-471-2201
NH	Roger A. Sevigny	Appointed	603-271-2261
NJ	Steven M. Goldman	Appointed	609-777-4443
NM	Eric P. Serna	Appointed	505-827-4601
NV	Alice A. Molasky-Arman	Appointed	775-687-4270
NY	Howard D. Mills	Appointed	212-480-2289
OH	Ann Womer-Benjamin	Appointed	614-644-2658
OK	Kim Holland	Elected	405-521-2828
OR	Joel Ario	Appointed	503-947-7980
PA	Diane Koken	Appointed	717-783-0442
PR[a]	Dorelisse Jurabe Jimenez	Appointed	787-722-8686
RI	Joseph Torti III	Appointed	401-222-5466
SC	Eleanor Kitzman	Appointed	803-737-6212
SD	Merle D. Scheiber	Appointed	605-773-4104
TN	Paula Flowers	Appointed	615-741-6007
TX	Mike Geeslin	Appointed	512-463-6464
UT	Kent Michie	Appointed	801-538-3800
VA	Alfred W. Gross	Appointed	804-371-9694
VI[a]	Vargrave A. Richards	Appointed	340-774-7166
VT	John P. Crowley	Appointed	802-828-3301
WA	Mike Kreidler	Elected	360-725-7000
WI	Jorge Gomez	Appointed	608-267-1233
WV	Jane L. Cline	Appointed	304-558-3354
WY	Ken Vines	Appointed	307-777-7401

[a] AS: American Samoa; GU: Guam; PR: Puerto Rico; VI: Virgin Islands

[b] As of May 1, this individual was serving as Acting Superintendent.

SOURCE: National Association of Insurance Commissioners. Index is current as of May 1, 2006.

Individual state Web site addresses available via www.naic.org.

Prepared by Kathleen McQueen

Who took the sizzle out of no-fault?

continued from page 1

insurers should pay their own policyholders, and that aggrieved motorists shouldn't be permitted to sue for additional damages (or shouldn't be permitted to sue except in the most extreme of cases).

A great idea

That was the idea behind no-fault auto back when it was first promulgated, in the late 1960s and early '70s.

Though about half the states allow policyholders to get medical care following an auto accident directly from their own insurers — one of the key features of no-fault — only 12 states, plus Puerto Rico, today offer no-fault. That is, they've placed restrictions on the right to sue, reducing reliance on tort liability.

In theory, reducing lawsuits and lawyers' fees would save big bucks, ultimately resulting in lower premiums. Then there's reality.

"No-fault in principle is a very good idea," said Robert Hartwig, director of research for the Insurance Information Institute (I.I.I.).

"It was a very popular idea back in the early '70s, and many states adopted it. But slowly, over time, the number of states in the no-fault system has been shrinking, most recently in Colorado."

If it's such a good idea, why the shrinkage?

"No-fault has basically become the last, greatest open checkbook for health care in America," said Hartwig. "It has allowed a great deal of fraud and abuse to enter the system."

If it looked so good back in the 1970s, why doesn't it still? A lot comes down to changes in the nation's health-care system. In the '70s, most everyone had employer-sponsored medical coverage, and that coverage was mostly fee-for-service. There wasn't much of a difference between claims filed through your auto policy and the kind of claims you might file if you got sick or hurt yourself in a gardening accident.

Today, though, Hartwig said, "You've got managed care in some form or another, you've got many people without any health insurance coverage, and you've pretty much got a system that is open for abuse."

The whole idea behind no-fault is that people injured in auto accidents should be able to get the care they need, with no oversight from insurers — or anyone else.

As the cost of health care has gone up and up, and as more people seem willing to game the system, such a system is asking to be scammed.

Sure enough, from fake accidents to fake health care, the scammers proliferated, starting in the obvious places like New York and New Jersey, then spreading to Massachusetts, Florida and beyond. By some estimates, added costs to insurers and their customers come to billions a year.

What to do? In many states, including, in 2003, Colorado, the answer was to cut their losses and return to the tort-liability system. Over the short term, auto premiums even declined, though a lot of the medical costs, especially for the uninsured, simply shifted to doctors and hospitals.

In Florida this year, rather than tossing out no-fault lock, stock and barrel, the Legislature decided reform was possible. At this writing, it appears that no-fault will be extended, with a fee schedule for doctors to keep costs down, plus additional fraud examiners to penalize those who game the system.

Will it work? Or is Florida on the way to a watered-down system that retains the flaws in no-fault plus the flaws in a system that relies on lawsuits?

Pure no-fault

Currently, state auto-liability laws fall in four clusters along the continuum from pure no-fault to pure tort:

- A system based entirely on the traditional tort-liability system;
- One that requires an insurance company to pay first-party benefits, regardless of who was at fault in the accident, but retains the right to sue;
- A system that provides no-fault first-party benefits but restricts the right to sue except under certain conditions; and
- Those states that provide a choice between the traditional liability system and no-fault.

Today, pure no-fault is remembered primarily for pay-at-the-pump, a seemingly rational scheme for universal auto coverage that died in every state where it was proposed.

The purest no-fault today allows lawsuits, but only above a threshold. (Generally, lawsuits are permitted for pain and suffering when medical expenses are above a specific dollar amount, though some states have verbal limits: descriptive language that defines what injuries merit going to court.)

Michigan today comes closest to pure no-fault, and its verbal limits are considered state-of-the-art.

In New York, long one of the top no-fault states, reforms have kept the system working, particularly upstate.

Richard Lynde, who specialized in no-fault until his retirement two years ago from the New York Department of Insurance, says verbal limits are superior to monetary ones, but that some of New York's are vague enough to provide loopholes for lawsuits. (One, for instance, refers to "significant limitation of use of a body member, organ or system.")

Other states offer add-ons — no limits on suits, say, or reduced or optional first-party coverage — and some offer the option of no-fault, with additional personal injury protection (PIP) and other protections (e.g., if a no-fault driver is in an accident with a tort-liability driver, the tort driver collects from the no-fault driver's uninsured-motorist coverage, and the no-fault driver can't sue or be sued).

Lynde says he feels offering no-fault as an option under a choice system is the way to go (and the route that the father of no-fault, Jeffrey O'Connell, also came to favor).

Hartwig thinks no-fault is slated for further declines in popularity. But if you wanted to fix it, what could you do? His list includes:

- Binding fee schedules for medical treatment, with treatment protocols based on best practices, such as those used in workers' compensation, Medicare or Medicaid.
- Aggressive prosecution of the crime rings perpetrating most of the fraud.
- Stiffening the penalties: revoking medical licenses, disbarring misbehaving lawyers and increasing insurance-related crimes from misdemeanors to felonies.

Though Florida's current bill adds fraud investigators, Hartwig said what works in other states is aggressive enforcement by local district attorneys.

"You also need district attorneys interested in it, making sure they know this is responsible for driving up auto insurance costs in their communities, that there are thieves who are pickpocketing the honest drivers in the state, and it's in their best interest to crack down.

"In places like New York and Massachusetts, it became ultimately fashionable to crack down on these people, because it made the DAs look good."

Lynde says that simple reforms can make a difference. For instance, when New York tightened up timeframes for notice of claims and submission of medical bills, insurers' claims experience improved and premiums came down.

The future

Though reform can work, many state legislators may decide to take the easy way out and return to the old system.

There are some good signs. In Florida, for instance, the state's trial lawyers have actually come out in favor of reforming no-fault, rather than killing it. Apparently they'd prefer a system that allows a limited number of valid suits rather than one in which they have the opportunity for more but less-profitable litigation — or else they've found the loopholes and don't want to have to start over.

But Hartwig thinks reform is too difficult, or at least perceived as too difficult.

"I wouldn't be surprised in the next few years if an additional state or two decides to get rid of their no-fault system," he said. "We'll just have to see. I think that the future of no-fault is a little bit cloudy right now."

Lynde is more positive. "It's a good system," he said, "just one that too many lawyers and doctors will exploit if they can."

However it washes out, there's one great irony.

The great hole in no-fault is the lack of insurance company oversight of medical expenses. Wait, you mean the insurers who, according to the press, are at this moment ripping off Gulf Coast victims of Katrina, are better gatekeepers than the marketplace?

"It doesn't seem right," Hartwig agreed.

"Theoretically, no-fault is a good idea. I don't think anyone doubts that. That's why it became so popular in the early '70s. But the reality of it is that it becomes difficult to control the costs, and some insurers believe that even if they have to engage in tort actions in individual claims, they have a better handle on the costs.

"It's a different world now than it was 35 years ago." ■

Regulatory Roundup

by
Stroock & Stroock & Lavan LLP

California – Proposed Department of Insurance regulation limits surcharges on homeowners insurance policies

On January 31, the California Department of Insurance issued a proposed regulation (RH06050472), which implements guidelines with respect to the conditions under which insurers may impose rate increases or surcharges on homeowners insurance policies and establishes certain acknowledgements to be made pursuant to the sale or renewal of such policies. Under the proposed regulation, an insurer may not impose a premium surcharge at the inception or renewal of a homeowners policy because of claims or losses arising out of natural forces (e.g., damage caused by weather or other natural phenomena) or third-party acts committed by someone who is not a resident of the insured dwelling.

In addition, an insurer may not calculate rates or premium surcharges based on data that includes unpaid or "minor claims." "Minor claims" is defined as a claim where the payment by the insurer does not exceed the applicable deductible for the particular claim upon which benefits are paid including any adjustments for successful subrogation. However, loss data may be used to calculate rates or premium surcharges if the data related to claims or losses identifies or confirms that a substantial relationship to loss exposure continues to exist, there is a material change in the risk assumed or where a breach of contractual duties creates a substantial relationship between the loss data and the risk of loss. The proposed regulation also mandates additional disclosures, both at the point of sale and annually, regarding the use of claims history to nonrenew or impose surcharges. A public hearing on the proposed regulation was held on April 13. To view the proposed regulation, visit **www20.insurance.ca.gov/epubacc/REG/72749.htm**.

The New York-based Stroock & Stroock & Lavan LLP Insurance Practice Group includes 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 Robert Fettman, an associate in the group. This column is intended for informational purposes only and does not constitute legal advice.

New York – Senate introduces legislation imposing health care assessments on large employers

In an effort to increase the amount of employer based-coverage in New York State, on March 21 the New York State Senate introduced Senate Bill 7090, which would require all employers with 100 or more employees to pay an annual assessment to the state based on the total hours worked by their employees to help pay for the cost of providing health care to their employees. Revenue from the assessment will be deposited into a newly established Fair Share for Health Care Fund to be used to expand the state's public health care programs and to provide subsidized coverage for uninsured employees of large employers.

The assessment will initially be $3.00 per hour per covered employee multiplied by the number of hours each covered employee worked during the tax year, and thereafter adjusted annually by the consumer price index for medical care. Hours worked by employees in an executive, administrative, or professional capacity who make more than $600 per week would not be covered by the assessment. Under the Bill, covered employers, which exclude manufacturing and agricultural employers, may claim a credit against the assessment in the amount of the employer's total health care expenditures each year for covered employees up to the full amount of the assessment. The Bill requires the New York State Commissioners of Health, Taxation and Finance, and Labor to implement and collect the assessment based upon the methods currently used for collecting unemployment taxes. If Senate Bill 7090 is enacted, a covered employer's obligation to pay the annual assessment would commence with the first tax year after the Bill is enacted into law. As of March 21, the Bill had been referred to the Senate Health Committee. To view Senate Bill 7090, visit the New York State Senate's Web site at **www.senate.state.ny.us**.

Georgia – Insurance Commissioner promulgates emergency regulation limiting contractual provisions in property/casualty policies
On February 20, the Georgia Commissioner of Insurance (the "Commissioner") promulgated a new regulation (Regulation Section 120-2-19-.01-0.19) on an emergency basis entitled "Unfair Trade and Claims Settlement Practices" to prevent a practice that the Commissioner believes effectively prevents consumers from having their claims settled fairly. Specifically, the Commissioner determined that certain insurers were including contractual limitations in property and casualty insurance policies under which no suit or action for the recovery of any claim can be commenced unless all the requirements of the policy have been complied with, and unless commenced within 12 months of the inception of the loss, instead of the statutory period for actions on written contracts in general. The Commissioner concluded that this could be harmful to the policyholder if he or she is unable to comply with the policy requirements until more than 12 months after the loss. The emergency regulation therefore provides that no property, casualty, credit marine and transportation or vehicle policies providing first-party coverage to any type of real or personal property may contain contractual limitations requiring commencement of a suit or action within a period of less than four years after the inception of the loss. The emergency regulation is effective for policies written or renewed on or after March 1, 2006. To view the emergency regulation, visit the Georgia Insurance and Safety Fire Commissioner's Web site at **www.inscomm.state.ga.us**.

Connecticut – House introduces proposed legislation to permit file and use flex-rate
On March 30, the Connecticut House of Representatives introduced HB 5463, which would allow insurers to adjust rates within a predetermined percentage range without obtaining prior regulatory approval. The Bill permits property and casualty insurers, including automobile insurers, to file a premium rate for policies with the Connecticut Insurance Department (the "Department") and begin using it effective the day it is filed and for two years thereafter if the new rate results in a state-wide increase or decrease of no more than 4% in the aggregate for all coverages that are subject to the filing. Insurers can submit more than one such rate filing to the Department in any 12-month period if all filings made within the 12-month period, in combination, do not exceed the 4% flex-rate. Rate changes in excess of 4% however would still require the Department's prior approval. The Bill also requires the insurance commissioner to order an insurer to stop using a rate change within the 4% band if the commissioner determines that the rate change is inadequate or unfairly discriminatory. An earlier version of the Bill provided for a 12% flex-rate and did not contain a sunset provision, but subsequent amendments lowered the flex-rate to 4% and introduced a two-year sunset provision. If enacted, the bill would have an effective date of July 1, 2006. To view HB 5463, visit the Connecticut General Assembly's Web site at **www.cga.ct.gov**.

Rhode Island – Insurance Division issues bulletin regarding producer compensation disclosure
On February 27, the Rhode Island Department of Business Regulation, Insurance Division, issued Bulletin No. 2006-2, which implements certain statutory disclosure requirements regarding producer compensation. Pursuant to the Bulletin, producers whose compensation is limited to commissions paid by an insurer must inform insureds that they will be paid a commission by the insurer. If a contract between the insurer and the producer provides for any other potential compensation (*i.e.*, contingent commissions) the producer must also inform the insured that he or she may receive performance-based compensation from the insurer in addition to the policy commission.

The notification to the insured may be made at any time but no later than policy delivery. Moreover, if a producer receives compensation from the insured he or she may not accept any form of compensation from the insurer or a third party unless the producer provides to the insured a description of the methods and factors utilized in calculating such compensation and the producer obtains the insured's documented acknowledgement. Producers may notify an insured at any time during the sale, solicitation or negotiation of the insurance sale, provided the insured receives the information prior to consummation of the transaction. However, if a producer is an employee of an insurer and his or her compensation is received solely from that insurer, no disclosure regarding compensation is required. To view Bulletin No. 2006-2, visit the Rhode Islands Department of Business Regulation's Web site at **www.dbr.state.ri.us**.

Casual Observations

Living with Generation Debt

It's no coincidence that price increases for two essential services — health care and college — are far outpacing this nation's inflation rate. It's no coincidence because each allows the ultimate users of these services — patients and students — to circumvent basic laws of supply and demand.

Under our employer-based health care system, most of us are shielded from the true costs of medical services. Likewise, the widespread availability of college loans to students makes rational economic thought nearly impossible, particularly for the young and financially naïve.

Thus, the presence of third-party payors – whether insurance companies or lending institutions – leads to price increases for health care and college that dwarf those in most other industries.

Most 18-year-olds never have taken a basic economics course, yet they are expected to enter into sophisticated college loan arrangements that could adversely impact their lives for decades.

We were dismayed to read of one 20-year old college student who recently told *The New York Times* he chose to go into debt so he could attend a college significantly more expensive than the one his parents had in mind. "I only go to college once," he said, "if I have to pay an extra $20,000 a year that's what I have to do." Yes, college comes around only once, but debt can be a lifetime companion.

With health care it's a different story. New grads are opting out of the system; therefore state legislators are looking to boost the age of dependency, the age at which children become responsible for their own health insurance. For years, it was commonplace to wean children from their parents' health insurance policies at age 19 (23 for students). Now, states are rushing to lift that age to 25, 26 or higher.

This month New Jersey implements legislation that will allow young adults to remain tethered to their parents' health policies *until age 30*. Those that marry, however, must find their own coverage. We predict that "to keep our health insurance" will soon be the #1 reason young Jersey couples choose to delay their vows.

It's a mixed message we send to our young people when college graduates are considered responsible enough to be saddled with six-figure debt, but still need Mommy and Daddy to provide basic health insurance protection. Welcome to the world of Generation Debt.

Young people don't always make sound economic choices, but with college and health care costs shooting through the roof, what options do they have? Right now Generation Debt is bearing an undue financial burden, one far greater than most of us endured at their age. We've let our children down.

— W.C.

CHICAGO

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BULLETIN BOARD

√ Senior Market Analyst - National Association of Insurance Commissioners. Duties include performing market analysis; identifying insurers exhibiting potential regulatory problems; reporting to the Market Analyst Working Group; providing support for collaborative regulatory efforts; and providing committee staff support. Qualifications include a bachelor's degree and five years of insurance industry experience. CIE, CPCU, CLU, ARC, FLMI or ACP required. Some travel required. Submit resume' to http://www.naic.org/index_employment.htm.

√ After nearly 25 years at the New York State Insurance Department, Wayne Cotter has retired to accept a position with the NAIC in New York. He will continue working as REGULATOR editor.

In the next REGULATOR:

The future of America's health insurance system

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Brokers cry for an exorcist
page 1

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