The Regulator®
INSURANCE REGULATORY EXAMINERS SOCIETY

Insurance Regulation

Enlarged Role for Feds Likely in 2010

by Steve Tuckey
Special to The Regulator

This month the Senate will consider financial regulation legislation that will, among other things, establish a federal presence for the insurance industry and possibly put some insurance companies under the category of posing a systemic risk to the economic health of the nation.

The industry for the most part has supported the proposed Federal Insurance Office (FIO) with differing views as to its role and powers among the various segments, and has united against classifying any carrier as posing a systemic risk to the economy.

On Dec. 11, the House passed its version of the reform legislation (H.R. 4173) that would set up the FIO with relatively limited powers and essentially punted on just which, if any, insurance companies could gain the systemically risky branding.

David Sampson, president of the Property Casualty Insurers Association of America, said H.R. 4173 still poses some risk of having negative consequences for the property/casualty industry and will work to ensure that the final version that goes to the White House after a Senate vote and conference work will see these remedied.

His counterpart at the American Insurance Association, Leigh Ann Pusey, said she remains concerned that some carriers could face new guaranty fund-like obligations and regulations if they fall under the category of posing a systemic risk.

Sampson said he took heart from comments from House Financial Services Committee chairman Barney Frank, D-Mass., that indicated he would strive to meet property/casualty industry concerns. "Despite some improvements in the risk factor language, it does not go far enough to ensure that non-risky insurers will not be swept into a federal regulatory dragnet," he said.

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Special Issue: 2010 Regulatory Preview

2010 Brings Focus on Market Conduct Compliance

by Kathy Donovan
Wolters Kluwer Financial Services

As we look at what the insurance industry faced during the past year from a compliance perspective, and what may be on the horizon, it is clear many of the challenges lie within the claims and underwriting functions of insurance companies — areas that are often the subject of legislative and regulatory action.

Recurring Issues on MC Exams

- *P/C Insurers*

A review by our organization of recently criticized property and casualty compliance areas in market conduct exams shows recurring claims compliance issues generally focused on the failure to:

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From the President

Goodbye to a Tumultuous Year

Now that the holiday season is behind us, we can take a quick look back at 2009. It was truly a tumultuous year. The economy ventured into areas reminiscent of the 1930s. State budgets were diminished and departments of insurance, along with other government agencies, found it difficult to avoid reducing staff.

Couple the poor economic news with a renewed interest of Congress to reform financial services oversight and the continued discussion of overhauling health care coverage, and it's easy to understand why IRES members had a challenging year.

We now set our sights on the New Year. As you consider your New Year's resolutions, be sure to plan on our annual Career Development Seminar, scheduled for August 29 through August 31, 2010. This year's CDS will be held in Albuquerque, New Mexico. Mark Hooker and his CDS team are busy developing a timely and informative agenda. So be sure to mark those dates on your calendar.

In addition, consider turning this year's CDS into a full-blown vacation for you and your family. Make this year's summer vacation a truly memorable one and visit beautiful New Mexico. In this and future issues of *The Regulator,* we will be highlighting the great attractions available in and around Albuquerque. Additional information is also available on our Web site, **www.go-ires.org.**

Finally, please be sure to share your ideas and suggestions on ways that IRES may provide value to you. Looking forward to a great 2010!!

Dennis C. Shoop, MCM
IRES President

New Mexico and the 2010 IRES CDS: Breathtaking scenery and side trips

The IRES CDS always has great sessions which offer tremendous educational opportunities. The Education Committee is working diligently to ensure 2010 will continue this process in Albuquerque, New Mexico.

SEE THE EARLY BIRD 2010 CDS REGISTRATION FORM, PAGE 15 OF THIS ISSUE.

However, have you considered taking some time before or after CDS to explore other opportunities for education and fun? Here are a few suggestions:

- Grand Canyon National Park is six hours (driving time) west of Albuquerque
- On the way to the Canyon, you could also visit:
    - the Petrified National Forest
    - the Painted Desert
    - Meteor Crater where astronauts have trained
    - Walnut Canyon which contains ruins of cliff dwellings
    - Sunset Crater, an extinct volcano, with its neighboring park area
    - Wupatki ruins, which is a different style of ancient Native American dwellings

More possibilities for educational and fun trips will be presented in future issues of ***The Regulator.***

For additional information, check out the links on the IRES Web site!

C.E. News

Regulator membership dues invoices for 2010 were mailed out in December. Dues need to be paid by February 15. Unpaid memberships will result in lapsed IRES designations.

When completing the back of your dues invoice, review carefully to make sure your profile information is accurate — especially the e-mail address. Having an accurate e-mail on file is required to access the "Members Only" and the "My Credits" area of the IRES Web site.

N · I · C · E

National IRES Continuing Education

Welcome, new IRES Members!

Will Felvey, VA

Dennis Foley, MO

Alice Fontaine, NY

Heather M. Harley, MCM, Unaffiliated

Jennifer Kreitler, WA

Duane L. Manns, KY

Ronald J. Poplos, DE

Cheryl L. Topham-Coffee, IL

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Impact on Insurers

The legislation focuses primarily on the financial services industry in its effort to write new rules to help prevent another Great Meltdown of 2008 with insurance components for the most part incidental, but still of significance to the industry. It therefore appears that life and p/c companies will go about their business this year with both their regulations and regulators largely unchanged.

The big exception, of course, remains the health care industry that could see its own regulations and profitability greatly altered depending on what, if any, separate health care reform package goes to President Obama's desk for his signature.

And while the financial regulation reforms may, depending on your point of view, either drastically alter, or barely touch, the way banks and other financial operators conduct their business, there is a definite consensus that life and property/casualty carriers may only see some differences around the edge.

Illinois Director of Insurance Michael McRaith says the reason for this remains readily apparent. "The carcass of the economy has been exhumed, and there have been multiple autopsies. What has been confirmed has been that the insurance sector was not a cause of any of the economic failures we have seen to date," he said.

That is not to say life and property/casualty industry lobbyists have not been plying their trade for the past few months trying to ensure those areas in the reform legislation tangentially touching their industries meet their employers' concerns.

Impact on Regulators

First and foremost has been the establishment of the proposed **Federal Insurance Office** to collect insurance data for the federal government and act as an industry presence in the nation's capital. The FIO's putative powers have evolved over the past months to the point where state regulators no longer feel it is a threat to their domain and have gotten behind it.

"We believe that as currently drafted the prospects of preemption of state law are so narrow, it truly would be a circumstance of national or international import where such preemption would occur," McRaith said.

The director said that the key purpose of the FIO — to enhance the federal government's understanding of the insurance industry — has been well codified in the bill. "And we certainly support that objective," he said.

Commissioners were singing a different tune earlier in the fall when Pennsylvania Commissioner Joel Ario expressed wariness that the federal government was attempting to build its own knowledge base separate and apart from the states.

But the main concern centered on just how broad a mandate the new office would have to preempt state insurance law or whether those provisions would be stripped down enough to satisfy backers of state regulation.

The industry itself remains divided on what role the feds should play in insurance regulation, with the reinsurance, life and the big public companies of the p/c sector for the most part favoring the optional federal charter and presumably a more robust FIO.

That would explain the reservations AIA president Pusey had early last month when the House Financial Services Committee approved the current version. She noted that a necessary element of the FIO legislation would be the authority to negotiate international agreements on prudential insurance matters. "While we remain supportive of the bill, we still have concerns that the language in the current version does not provide the office with the authority it needs," she said.

The Property Casualty Insurers Association of America, an agnostic on the Optional Federal Charter issue, praised the revisions to the FIO law that made sure that the FIO would attempt to gather its information first from state regulators through the NAIC data bank. In other instances, the FIO would have to make clear to insurers why it needed the data. Sampson said the final version helped prevent costly new administrative tasks for insurers.

But McRaith and other state regulation advocates will still have to contend with the version of the FIO as proposed by Senator Chris Dodd (D-CT) that conforms to earlier House iterations with greater preemption powers.

The debate this fall both within the industry and in legislative chambers is pretty much a continuation of the effort started in the aftermath of the late 1999 passage of the Gramm-Leach-Bliley Act (GLBA) when big carriers put pressure on the state authorities to create a more nationalized system of regulation that would stop short of full blown oversight by the federal government.

Several years ago the NAIC proposed a compact process for life insurance regulation that tried to meld the goals of regulatory nationalization with state fears of signing off their rights to govern the business of insurance.

But the main difference this time is the events of 2008 for which measures such as the regulatory-easing GLBA have taken on some of the blame, and which the current proposed law attempts to fix.

And the issues go beyond the FIO and its powers.

Industry lobbyists have also joined together to help stave off inclusion of provisions that would permit particular carriers to be identified as posing a systemic risk to the overall health of the U.S. economy in general. Inclusion in the so-called "too big to fail" category would mean participation in a pre-funded mechanism comparable to state guaranty systems, in which they also take part.

McRaith said that while the NAIC supports the establishment of a systemic risk council, no one insurance company poses any systemic risk to the economy.

On this the property/casualty industry agrees. In a joint letter to Chairman Barney Frank of the House Financial Services Committee, p/c trade group leaders said that as a relatively low-leveraged business with a generally lower asset-to-capital ratio than banks and other financial services entities, inclusion of the p/c companies for additional prudential regulation would put an unfair burden on them.

"The insurance sector as a whole is significant and therefore the functional regulator of the insurance industry should participate in any systemic risk council," McRaith said, adding that the commissioners could appoint one of their own to serve on this council rather than someone from the new FIO.

But any new legislation still has the possibility of setting financial standards that could put several insurance carriers on the list, which the commissioners will strongly oppose. "There is just not one company that poses this risk. For example, if one of the largest companies goes down in the auto market there will still be other companies to fill that market place void," he said.

McRaith and the NAIC will still hope that any such systemic council will perform merely an information-sharing function, especially if an insurer is on the list, and not take on some new form of a dual regulator function.

McCarran-Ferguson Exemption

The insurance industry and its regulators are also of like mind that Congress should not tinker with the 64-year-old limited anti-trust exemption embedded in the 1945 McCarran-Ferguson Act that permits the states to regulate insurance. While the Senate rejected that provision, the issues remains alive as part of the House bill and could reemerge in conference.

Senator Pat Leahy (D-VT), who chairs the Senate Judiciary Committee, raised the possibility of striking the exemption for health and medical malpractice carriers in a seeming fit of pique after the health insurance lobby started taking a tough stand against the public option, which many lawmakers felt was an essential ingredient of the health care reform package. (The bill passed by the Senate in December did not include a public option.)

In the spring, President Obama joined hands with the health care lobbyists pledging to overhaul the entire system with the aim of reducing the percentage of uninsured. But all that seeming comity broke down in the summer when the president changed the name of the game from health care reform to health insurance reform and the gloves came off.

Pusey said that any exemption repeal would undercut the primary purpose of anti-trust laws, which is to promote competition free from government or private interference. "It would also completely disrupt the industry's business environment, and create substantial legal uncertainty and unnecessary litigation."

In introducing the measure, Leahy said "ending this cozy arrangement is another way to strengthen consumer choice through a competitive marketplace."

And finally, the insurance industry has been unanimous in fighting efforts to include its products under the jurisdiction of the proposed Consumer Financial Protection Agency. There is a good chance

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the banks will succeed in killing off the agency *in toto*. But if that does not happen then insurers hope that current plans to place credit, mortgage and title lines under the scope of the agency does not come to pass. References to any p/c insurance line were taken out of the final House bill.

While the NAIC is fighting the good fight against those in Congress and the industry who would like to see the federal government play a greater role in the regulation of insurance, commissioners must also contend with those who think they are not doing enough to preserve states' autonomy in this area.

In that regard, the NAIC earlier this year proposed a framework for something called a National Insurance Supervisory Commission (NISC) that states could join and develop uniform regulatory standards in certain areas which could lead to that dreaded bugaboo of federal preemption. During a December hearing on the NISC proposal at the NAIC's winter meeting in San Francisco, McRaith got an earful from some state legislative and trade association representatives who felt the proposal was moving too fast toward national regulation at a time when interest seemed to be waning for that in Congress.

State Rep. Robert Damron of Kentucky, who recently took over as president of the National Conference of Insurance Legislators, told the regulators at the hearing that any involvement of the federal government in this area would be the first step to a total takeover.

He and his group even oppose the current iteration of the Federal Insurance Office. "We believe any such office will lead to an unnecessary federal regulatory presence," he said.

At the hearing, McRaith expressed some frustration that critics had not fully understood the proposal. But in an interview a week later he said that the proposal is merely in an information-gathering stage, and there was no definite timetable for final approval by the NAIC plenary body.

As for the Optional Federal Charter proposal itself, Chairman Frank has said that it is something that will be taken up in 2010. If nothing else, this will keep the lobbyists on both sides of the issue well employed in an otherwise challenging economy. ■

Steve Tuckey has written on insurance issues for more than ten years for national publications, including Risk and Insurance, National Underwriter and Business Insurance.

Quote of the Month

"Stronger regulation and supervision aimed at problems with underwriting practices and lenders' risk management would have been a more effective and surgical approach to constraining the housing bubble than a general increase in interest rates."

— Federal Reserve Chairman Ben Bernanke responding to critics who have claimed that low interest rates helped usher in the subprime mortgage crisis. Mr. Bernanke made his remarks as part of a presentation, Monetary Policy and the Housing Bubble, delivered at the annual meeting of the American Economic Association on January 3, 2010, in Atlanta.

Surplus Lines Burdens May Ease in 2010

Surplus lines carriers may soon find some of their administrative burdens eased this year with the anticipated passage of federal legislation that would require purchases in the surplus lines market to be governed by the tax policies and licensing procedures of the buyer's home state rather than spread out over any number of jurisdictions where the covered risk is located.

For decades surplus lines industry leaders have sought this kind of streamlining legislation, but for any number of reasons the issue has failed to gain traction in Congress.

In September, the House passed the Non-admitted and Reinsurance Reform Act of 2009 (NRRA) that accomplished those streamlining goals, as well as similar aims in the reinsurance sector.

> *"For decades surplus lines industry leaders have sought this kind of streamling legislation ... but the issue has failed to gain traction in Congress."*

But when it appeared unlikely that the measure would gain a hearing in the Senate, backers of the proposal managed to incorporate it into the omnibus financial regulation package in both the House and Senate that deals primarily with a new oversight regime for banks and other financial institutions in the aftermath of the Great Meltdown of 2008.

The reinsurance components of the bill would put all secondary carriers under the sole supervision of the domiciliary state regulator for financial solvency issues, and represents the first step in the reinsurance industry's effort to be regulated solely by the federal government. In addition, states could see some of their authority in the credit-for-reinsurance realm curtailed in a further streamlining effort.

On Dec. 11, the House passed the omnibus bill with the NRRA amendment and the Senate is expected to take it up later this month.

National Association of Professional Surplus Lines Offices (NAPSLO) officials voiced satisfaction with the House move and optimism that finally their efforts would come to fruition. NAPSLO executive director Richard Bouhan said that by "establishing that the home state of the policyholder governs a transaction, the surplus lines industry would no longer face trying to comply with confusing and conflicting laws and regulations of multiple states on a multi-state transaction."

In addition, what NAPSLO terms as multiple, duplicative and overlapping compliance requirements will be eliminated on surplus lines policies that insure risks across state lines.

Joel Wood, senior vice president of the Council of Insurance Agents and Brokers, was among industry leaders active in the effort to reform surplus lines law. "Unfortunately, access to the surplus lines marketplace for policyholders that are seeking to insure risks in more than one state is greatly impaired by extensive, duplicative and sometimes conflicting state statutory and regulatory requirements which impede the effectiveness of the market and increase the costs to surplus lines consumers," he wrote to House lawmakers last year urging passage of the amendment.

Surplus lines advocates could face disappointment not only if Congress fails to reach agreement on a final omnibus bill, but also if the more controversial reinsurance portion of the amendment jettisons its chances for success entirely.

The surplus lines portion is not generally noncontroversial since it has passed three times in the House without a single negative vote but has never made it to the Senate for full consideration. "The Senate likes to handle big sweeping issues and I guess this just never made the cut," said one industry observer. ■ — *Steve Tuckey*

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- Acknowledge, pay or deny claims within specified time frames;
- Pay claims properly, including the correct sales tax and loss of use calculations;
- Document claim files properly;
- Provide required and appropriate disclosures, such as statute of limitations;
- Provide reasons for denials; and
- Communicate a delay in the settlement of claims in writing.

Another key aspect of noncompliance evidencing itself is the failure to properly terminate a policy, including inadequate notice, improper reasons, and omission of required language.

The use of unapproved or unfiled forms and rates, as well as rating errors, and failure to provide required and appropriate disclosures, such as selection/rejection or coverage notices in the underwriting process, appear to be consistently noted as well. Rounding out property/casualty compliance issues overall are those generally associated with underwriting issues.

• *Health Insurers*

While some of the above p/c claims compliance criticisms surface fairly consistently in health insurer exams, the following two failures are unique to some health claim processing:

- The failure to adhere to grievance, appeals and utilization review requirements, and
- The failure to provide required disclosures, such as explanation-of-benefits statements and right of appeal notices.

Other failures frequently noted for health insurers include failure to pay claims properly; improper policy terminations; and inadequate fraud warning requirements, advertising and file documentation.

• *Life and Annuity Insurers*

And, of course, life and annuity exams and enforcement actions present some specific findings, including failure to adhere to replacement requirements and failure to provide required disclosures, free-look periods or guaranty fund notices.

Spike in Legislative & Regulatory Activity

Having a reference point for the frequent and consistently criticized compliance areas provides a distinct advantage when looking at current legislative and regulatory activity. A significantly high number of statutes and regulations were introduced, enacted or promulgated in 2009. More than 11,000 insurance-related bills were introduced in 2009, with nearly 2,500 enacted. Overall, approximately 24,000 statutes, regulations and other insurance administrative documents, such as bulletins and circular letters, were enacted, adopted, or issued last year.

Such substantial activity — with many consumer protection changes — presents challenges for insurance companies and regulators alike. It is critical that the impact of these new and revised requirements be recognized and implemented in insurers' operational systems and incorporated into examiners' state review procedures. With key elements in state regulatory oversight being the market conduct exam and enforcement action process, reflection on some of the recent state legislative and regulatory changes can highlight the need for insurer process updating and a possible shift in focus for market conduct reviews by the states.

Oregon

Oregon revised procedures in 2009 in response to concerns over property/casualty claims. The Oregon Insurance Division developed a "Vehicle Total Loss Notice," which outlines the claimant's rights and a typical claims process. This new regulatory requirement is part of the implementation of a new law intended to provide additional clarity, transparency and structure to the motor vehicle total loss claims process in that state. In addition to incorporating the new form into their claims processes, insurers will also be required to provide the insured or third-party owner any valuation or appraisal reports relied upon by the insurer to determine value.

Connecticut

New market conduct-related requirements in Connecticut for automobile claims handling include time-sensitive disclosure of an insured's automobile insurance policy limits required after a request is received. The resulting disclosure by the insurer must indicate all private passenger automobile coverage provided by the insurer to the insured, including any applicable umbrella or excess liability insurance issued by the insurer.

Maine

In a similar manner, the Maine State Legislature enacted a requirement that upon written request by a claimant or the claimant's attorney, the insurer must provide the liability coverage limits within 60 days of receipt of that written request.

Illinois

A measure enacted in Illinois provides that if an insurer denies, cancels or does not renew a policy of personal insurance based on credit information, it must provide the affected party with a specific notice, as well as provide an opportunity for the consumer experiencing this adverse action to explain the credit information.

Additional provisions of this bill require insurers using credit information in underwriting or rating risks to re-underwrite and re-rate the insured's personal insurance policy upon the request of an insured or an insured's agent at annual renewal unless the policyholder's renewal falls under one of the specified circumstances listed in the bill.

Arkansas

The Arkansas Insurance Department adopted Department Rule 97, "Life Insurance and Annuities Replacement," which became effective Jan. 1, 2010. This Rule requires a written memorandum based on a comparison of the provisions of the existing life insurance policy or annuity contract and the proposed policy or contract. The Department provided a form that lists a number of provisions that may be compared when appropriate. Referred to as "The Life Insurance and Annuities Replacement Memorandum," it represents the format required to satisfy Rule 97.

South Carolina

On a similar note, South Carolina revised its Regulation 69-12.1, "Replacement of Life Insurance and Annuities," in recognition of the updates made to Model Regulation 613 by the National Association of Insurance Commissioners (NAIC). In bringing the state regulation in line with the recent Model's update, South Carolina has established additional consumer protection when replacement activities are involved in an insurance transaction and has aligned its provisions with others states that have adopted the Model.

Missouri-New Jersey

Apart from replacement activities, unfair trade practices pertaining to life insurers denying, refusing to renew, canceling, restricting or rating a policy based upon an applicant's or insured's past or future lawful travel were addressed last year in Missouri and New Jersey.

Maryland

Under a new law (Chapter 379 of the Laws of 2009), Maryland now prohibits insurers that write personal, homeowner, commercial or motor vehicle liability insurance from canceling policies midterm except under specified circumstances.

Another Maryland law (Chapter 376) now requires commercial and workers' compensation insurers to send a specified notice to the named insured of any premium increase (or a reasonable estimate of the increase) at least 45 days prior to the renewal date.

Health insurance initiatives were also a very visible area of concern as evidenced by the ongoing federal health insurance reform debate.

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Focus on Market Conduct Compliance

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Of particular focus in 2009 were policy rescissions and post-claims underwriting. The Maryland General Assembly enacted provisions last year directing that a health insurance or nonprofit health service application form may not contain inquiries about a pre-existing condition, illness or disease for which the applicant has not received medical care or advice from a licensed health care provider during the seven years immediately before the date of application.

What Lies Ahead

• Property/Casualty

As we move ahead in 2010, insurers and regulators should pay close attention to pending legislation and regulatory activity for potential market conduct impact. For example, **New York** recently proposed changes to its no-fault Regulation 68, citing necessary reform measures are needed to control costs and work towards reducing fraud. Additionally, the **Michigan** Legislature has seen a package of consumer protection bills filed recently, including a measure that seeks to prohibit the use of employment, trade, business, occupation, profession, education level or credit history in refusing to continue to insure, limiting the amount of coverage available, or charging a different rate or premium for the same coverage.

• Health

On the health side, the continuing area of concern seen in the federal health insurance reform debate and recent market conduct exams in **California** is that of policy rescissions. Proposed regulations on this practice establish multiple standards for California health insurers, including requirements that all underwriting be completed prior to policy issuance and that health history questions are clear and not ambiguous. Final adopted or enacted provisions from proposals such as these can affect insurers' compliance, as well as the regulatory information relied upon during an exam.

• State Implementation Steps

Many implementation steps and mandatory compliance dates that play key roles in the market conduct review can easily be overlooked in the midst of all this activity, resulting in claims, underwriting and other insurer processes that are inconsistent with individual state mandates. Given the market conduct content associated with so much of this activity, and its relationship to frequently cited examples of noncompliance across all lines, increased awareness of and responsiveness to state changes are critical.

The states' consumer protection role is perhaps even more visible now than in the past, given the various federal initiatives proposed in 2009. Maintaining review processes that include all updated state compliance requirements will continue to play a critical role this year.

Final Thoughts

As we move into 2010, insurance professionals must brace themselves for more state initiatives that speak to the inherent consumer advocate and protection roles, as well as evolving federal proposals that bear watching and oftentimes beg clarification from the industry. In a regulatory environment with more monitoring and enforcement activities across all lines of business, challenges exist for both regulator and the regulated alike to keep pace with the compliance required of insurers. ■

Kathy Donovan is Senior Compliance Counsel, Insurance Compliance Solutions, of Wolters Kluwer Financial Services. For more information regarding this article, please contact her at Kathy.Donovan@wolterskluwer.com or at 800.481.1522 ext. 246689.

IRES Chapter News

LOUISIANA — The Louisiana Chapter held a State Chapter meeting on October 19. **Darrell Langlois**, Compliance & Privacy Officer of Louisiana Health Service & Indemnity Company (Blue Cross Blue Shield of Louisiana) spoke on Fraud: An Insurer's Perspective. He also delivered a PowerPoint presentation, Health Care Fraud – State of the Union. In his presentation, Mr. Langlois discussed the magnitude of health care costs, the fight against health care fraud and the likely impact of the current health care reform initiatives. There were 32 attendees.

The Louisiana Chapter hosted an after-work hour membership drive at a local restaurant on November 6.

The Louisiana Chapter held another State Chapter meeting on November 20. The Chapter members voted to amend the Chapter By-Laws during the business portion of the meeting. **John Wells**, Director of Operations & Logistics of the Louisiana Insurance Guaranty Association (LIGA) addressed the group. Mr. Wells delivered a PowerPoint presentation titled Guaranty Funds: A State Based Framework for Policyholder Protection. There were 22 attendees at the meeting.
— *Larry Hawkins; lhawkins@ldi.state.la.us*

NEW YORK — The New York Insurance Department's Property Bureau recently hosted an all-day Bureau-wide educational conference. **Arthur Flitner** of the American Institute for CPCU and the Insurance Institute of America presented a comprehensive explanation of recent revisions to ISO's standard commercial insurance coverage forms. The conference was widely attended by Department staff in New York City, with Albany staff participating via a live video feed. Active IRES members attending the session earned CE credits toward their annual continuing education requirements.

This is one of a series of educational conferences regularly hosted by various Department Bureaus to provide professional staff with information and insights on timely topics of interest and import. They have proved to be an invaluable tool in helping us hone our regulatory skills.
— *Maurice Morgenstern; MMorgens@ins.state.ny.us*

ARKANSAS — After many years of dedicated service to the Arkansas Insurance Department and the State of Arkansas, **William "Woody" Woodall** – Chief Examiner, retired as of June 30, 2009. Woody served the Department with great integrity as Chief Examiner for 12 years. The knowledge and support he provided to his examination staff, his dedication to the job, and his strong faith will be sorely missed at the Department. He will be enjoying his retirement on his acreage near Sheridan, Arkansas and spending quality time with his wonderful wife, Pat, and his daughter, Anna, and I am sure he may fit in some fishing. Those IRES friends who would like contact information for Woody, please e-mail me (Mel Heaps) at the address below.
— *Mel Heaps; mel.heaps@arkansas.gov*

VIRGINIA --- Virginia held its quarterly meeting on November 5. Twenty-nine IRES members and three guests attended. **Tom Bridenstine** and **Julie Blauvelt**, examiners at the Bureau, spoke on the current status of the federal health care reform bills. The meeting was very informative with a helpful PowerPoint presentation. The presenters had an impressive grasp of the topic and responded to several questions that the presentation generated.
— *Andrea Baytop; andrea.baytop@scc.virginia.gov*

Regulatory Roundup

by
Stroock & Stroock & Lavan LLP

New York — Governor signs bill reducing minimum board size of domestic insurers
Last year, Governor Paterson signed into law S3635, a bill that reduces the number of directors necessary to incorporate a stock or mutual insurance company from thirteen to seven and the number of directors who must be residents of New York State from two to one. The Bill also removes the requirement that the residence address of the proposed incorporators and directors be published in a newspaper and contained in the corporate charter and requires, instead, that only the city and state of residence be published. In addition, the "inside director" requirement for the boards of domestic mutual insurers was reduced from two to one. The memorandum in support of the Bill noted that in today's global economy, a smaller board of directors allows more companies to incorporate and respond to the rapidly changing economy. Furthermore, it noted that there is no apparent rationale for requiring at least two of the board members to be New York State residents since many insurers in New York are global enterprises and, given the increased demands for improved corporate governance being placed upon financial services corporations, having one resident director was sufficient. The bill became effective immediately upon signing. To view S3635, visit the New York State Legislature's Website at **www.assembly.state.ny.us**.

Connecticut — Governor signs flex-rating extension
Connecticut's Governor Jodi Rell has signed into law HB 6280, a bill that extends for two years Connecticut's flex-rating law, which would have expired on July 1, 2009. Flex-rating was first implemented in Connecticut for personal lines insurance in 2006, and permits insurers to adjust premiums up or down by six percentage points, without requiring approval from the state's insurance department. The six percentage point limit, however, does not apply on an individual insured basis, and no more than one flex-rating filing may be made by an insurer within any 12-month period unless the filing, when combined with all filings made by the insurer within the preceding 12 months, does not result in an overall statewide increase or decrease of more than 6% in the aggregate for all coverages subject to the filing. To view HB 6280, visit the Connecticut General Assembly's Web site at **www.cga.ct.gov**.

District of Columbia — Court overturns SEC rule treating equity index annuities as securities
On July 21, 2009, the United States Court of Appeal for the District of Columbia (in *American Equity Inv. Life Ins. Co. v. SEC*, No. 09-1021) overturned and remanded for further consideration Securities and Exchange Commission ("SEC") Rule 151A (17 C.F.R. §230.151A) that fixed indexed annuities ("FIAs") are subject to the Securities Act of 1933 (the "Act") instead of being subject solely to state insurance laws. The Act governs the offer or sale of any "security" which is defined to include any "investment contract" (15 U.S.C. §77b(a)(1)). At issue was whether Section 3(a)(8) of the Act, which provides an exemption for an "annuity contract" subject to state insurance laws, included FIAs. Traditionally, this exemption was applied to fixed annuities, which are contracts issued by life insurers, under which the purchaser makes a series of premium payments to the insurer in exchange for a series of periodic payments from the insurer to the purchaser at agreed upon later dates. In a fixed annuity, the insurance company guarantees that the purchaser

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The New York-based Stroock & Stroock & Lavan LLP Insurance Practice Group includes Donald D. Gabay, Martin Minkowitz, William D. Latza, Boris Ziser, Thomas Weinberger, Bernhardt Nadell and Keith Andruschak. The Insurance Practice Group also includes insurance finance consultants Vincent Laurenzano and Charles Henricks. They gratefully acknowledge the assistance of Robert M. Fettman, an associate in the group.

will earn a minimum rate of interest over time. An FIA, conversely, is a hybrid financial product that combines some of the benefits of fixed annuities with the added earning potential of a security, but unlike a traditional fixed annuity, the purchaser's rate of return is not based upon a guaranteed interest rate but rather on the performance of a securities index. In arguing that FIAs fell outside the Act's annuity exemption, the SEC reasoned that Congress intended to include in such exemption only those policies and contracts for which the underwriting and investment risk are borne by the insurer. Purchasers of FIAs, the SEC claimed, are exposed to significant investment risk due to the volatility of the underlying securities index, the type of exposure which the Act was intended to address. The Court of Appeals held that while the SEC's interpretation of the Act that FIAs were not exempt from the Act was in fact reasonable, its consideration of the effect of Rule 151A on "efficiency, competition and capital formation," a technical requirement under §2(b) of the Act for certain SEC rulemakings, was arbitrary and capricious. The court therefore remanded the SEC to further consider the effects of Rule 151A to satisfy its obligations. To view the Court of Appeals' decision, visit **http://pacer.cadc.uscourts.gov/docs/common/opinions/200907/09-1021-1197327.pdf**.

Missouri— State eases captive insurer requirements and adopting Interstate Insurance Compact
Last year, Missouri Governor Jay Nixon signed an omnibus insurance bill (HB 577) that, *inter alia*, makes improvements to the state's captive insurance laws by simplifying the process of moving offshore captive operations to Missouri. In its main provisions the Bill: (i) authorizes the redomestication of an alien captive insurer; (ii) allows an association captive insurer or an industrial insured captive insurer to be organized as, converted into or merged with a reciprocal insurer; (iii) removes the requirement that a captive insurer hold at least 35% of its assets in Missouri; and (iv) reduces from two to one the number of Missouri residents required to incorporate or organize a special purpose life reinsurance captive. The Bill also adopted the Interstate Insurance Product Regulation Compact, which appoints a multi-state public entity, the Interstate Insurance Product Regulation Commission (the "Commission"), to serve as a central point for member states to electronically file certain insurance products, including life insurance, annuities, disability income and long-term care insurance. Any insurance product approved by the Commission may be sold in those compacting states in which the insurer is authorized to do business. HB 577 became effective August 28, 2009. To view HB 577, visit **www.house.mo.gov**.

Casual Observations

Happiness is . . . ?

So did you happen to see the state-by-state happiness rankings? Two researchers — one from New York, one from England — conducted surveys between 2005 and 2008 and released their findings last month, just before the holidays. The researchers asked respondents to evaluate their happiness on several levels and combined these responses with more "objective" data, such as weather, public land and commuting times to determine the happiest (and unhappiest) states.

You may be surprised that Louisiana turned out to be the happiest state, but the researchers caution that they collected much of their data prior to Hurricane Katrina. Our only first-hand experience with Louisiana was in New Orleans during the August 2000 CDS. We've never sweated so much before or since. We're sure New Orleans is great for Mardi Gras and someday we hope to find out, but we'll stay away in August.

Directly following Louisiana in terms of happiness were Hawaii, Florida, Tennessee, Arizona and Mississippi. We've never been to Hawaii, but imagine we could be quite happy there. Sure the cost of living is high, but heating costs are low. They also have near-universal health insurance coverage. And we love pineapples and coconuts. No, we can't quibble with Hawaii being near the top of the list.

We do note a certain similarity in weather patterns among the next four happy states: Florida, Tennessee, Arizona and Mississippi. Noel Coward wrote only "Mad Dogs and Englishman go out in the midday sun" in Hong Kong, Bangkok, and Burma. Much the same applies for these four states.

What about the least happy states? The survey pegged New York as the unhappiest. Since we call the Empire State our home, we take umbrage. We do admit, however, that we see few smiling faces as we cram our way on the subway each morning. Likewise, the Long Island Expressway (affectionately known as the world's longest parking lot) is not a great source of pleasure.

On the other hand, we have Broadway, dozens of museums, Central Park and the best bagels in the world. Moreover, New Yorkers are unrivaled in their ability to come together during a crisis.

New York, it should be noted, finished last in a survey that for the most part was conducted *prior to* the Great Recession. Just imagine if respondents had factored in the banking crisis, the AIG federal takeover, 10% unemployment and a state budget drowning in red ink.

Connecticut and New Jersey, both neighbors of New York, were the next unhappiest states. Misery loves company.

We spent our formative years in Connecticut and still enjoy visiting the state. The people seem friendly enough, but perhaps it's all a sham. We recall those benign, robot-like Stepford Wives (who, incidentally, lived in the fictional town of Stepford, Connecticut) and start to wonder.

New Jersey, a state whose vehicular transportation system is based on jughandles, is just above Connecticut on the list. A jughandle, for those fortunate enough *not* to know, forces a driver to turn right to make a left turn. Even with a state-of-the-art GPS, we always get lost in New Jersey. New Jersey makes us unhappy and we acknowledge a certain degree of *schadenfreude* knowing its residents share that unhappiness.

So why is one state happier than another? The researchers shed little light on the reasons. We wondered if there was any link between, say, the cost of living or the cost of insurance and the relative happiness of a state. A rank correlation analysis, however, found virtually no relationship between a state's happiness ranking and its cost of living or auto insurance costs.

We suspect that a person's overall happiness has more to do with personal relationships with family and friends than with money. A wise man once said that happiness stems from counting your blessings not your cash. Another wise man, Albert Schweitzer, said happiness is nothing more than good health and a bad memory. So our New Year's resolution is to count our blessings, stay healthy, and try to forget this past decade. Maybe we can even help bolster New York's happiness ranking.

— W.C.

Albuquerque

2010 IRES Career Development Seminar

AUGUST 29-31, 2010 HYATT REGENCY

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Yes! Sign me up for the IRES Career Development Seminar.
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SPECIAL NEEDS: If you have special needs addressed by the Americans with Disabilities Act, please notify us at 913-768-IRES (4737) at least five working days before the seminar. The hotel's facilities comply with all ADA requirements.

SPECIAL DIETS: Only those requesting a special dietary meal in advance will have one available during the CDS.
Circle: Diabetic Kosher Low salt Vegetarian

Seminar Fees

(includes lunch, continental breakfast and snack breaks for both days)

Check box that applies

☐ IRES Member (regulator)............. $330

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☐ **If registering after July 29 add $40**

**No registration is guaranteed until payment is received by IRES.
A $25 cancellation fee will be assessed if canceling for any reason.**

Seating for all events is limited. IRES reserves the right to decline registration for late registrants due to seating limitations.

Hotel Rooms: You must book your hotel room directly with the Hyatt Regency Hotel. Call group reservations at 888-591-1234 or hotel direct at 505-842-1234. The IRES convention rate is available until July 29, 2010 and on a space-available basis thereafter. Our room block often is sold out by early June, so guests are advised to call early to book rooms.

$140.00 Regulator hotel rate

$165.00 Non-Regulator hotel rate

CANCELLATIONS AND REFUNDS

Your registration fee minus a $25 cancellation fee can be refunded if we receive written notice before July 29, 2010. No refunds will be given after that date. However, your registration fee may be transferred to another qualifying registrant. Refund checks will be processed after Sept. 1, 2010.

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

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BULLETIN BOARD

✓ Dues notices were mailed to members the last week of December. Remember, payment is due February 15, 2010. If you haven't received your notice, contact Susan Morrison at the IRES office. Also, please fill out the form accompanying the dues notice. We are always looking for volunteers and this is a easy way to let us know you want to be involved.

✓ **Maryland Commissioner**: The State of Maryland is seeking an expert in regulatory affairs and consumer protection with unimpeachable integrity and credibility to be the Commissioner of the Maryland Insurance Administration. The Commissioner will be appointed, by the Governor with Senate advice and consent, to the remainder of a four-year term which expires on May 31, 2011. For a listing of responsibilities and minimum (preferred) qualifications, visit the Job Seekers Page at www.dbm.maryland.gov. Go to "Job Openings" and then follow "Current Recruitments" to the Executive Service announcements. Information regarding how to apply is also available through this site.

In the next REGULATOR:

• *Identity Theft Insurance*

✓ Our sympathies go out to IRES board member Vi Pinkerton whose daugter, Carla Lewis, died unexpectedly on January 5. Carla, 44, was a long-time teacher in the Austin, Texas school system. She resided in Texas with her husband Matthew and her daughter, Brittany.

New IRES phone number: Effective Jan. 31, the Society will have a new phone number. The last two digits of our current number will change.

The new office number will be 913-768-IRES (4737).

The current number (913-768-4700) will remain operational indefinitely as everyone gets used to the change. The fax number will remain 913-768-4900. The IRES mailing address and all e-mail addresses remain unchanged.