

It could happen to you!

One Regulator's False Claims History

by Tony Cignarale, J.D.

*Chief of Consumer Services Division
California Department of Insurance*

Buying a home is one of the most significant decisions anyone will make in their life. So it's natural to want to protect what is likely your greatest asset with insurance. Unfortunately, thanks to the misuse of electronic claims history databases, the insurance part of the home-buying equation is now a very real barrier to home ownership.

My name is Tony Cignarale. I'm the Chief of the Consumer Services Division of the California Department of Insurance, managing about 80 insurance professionals who assist consumers, including those who are refused coverage due to an alleged poor claims history. I have over 18 years of insurance experience and I'm a licensed attorney. So, you could say I'm a knowledgeable consumer.

A few weeks ago I was closing on the purchase of a 14-year-old home when I attempted to obtain insurance. I called a very large insurer and made an appointment to come in and complete the paperwork. But after going through most of the process, I ran into a brick wall. The agent advised me that she couldn't write the insurance since a the Comprehensive Loss Underwriting Exchange (CLUE) database had given her a report showing five claims in the past four years on the property - four of them water claims.

I was surprised, to say the least. But I was even more surprised when I contacted the seller and found out that there was actually only one claim against the property. That claim happened four years ago and the damage had been completely remedied. Two of the other "claims" listed on the CLUE report were unknown "no-payment" inquiries, and the final two were claims that had been filed regarding

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Range of Nebraska is new IRES president

SCOTTSDALE — Bruce Range of Nebraska was elected 2003-04 President of the Insurance Regulatory Examiners Society.

Range is Chief of Market Regulation for the Nebraska Department of Insurance. He has been a member of IRES since



Range

the Society's establishment in 1987, is a longtime member of the IRES Board of Directors and this past year served as chair of the Accreditation & Ethics Committee. He holds the CIE and CPCU designations.

The IRES Board also elected the following officers for the 2003-04 operating year: Kirk Yeager, Colorado, PRESIDENT-ELECT; Stephen King, unaffiliated, VICE PRESIDENT; Doug Freeman, Missouri, TREASURER; Polly Chan, California, SECRETARY; Jo LeDuc,

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Scottsdale 2003 CDS

Highlights of this year's Career Development Seminar, in story and pictures. See inside.



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From the President

On the Heels of Scottsdale

Carol Hogan's article in the July issue of *The Regulator* promised we wouldn't be disappointed with Scottsdale, and I can attest to the accuracy of her prediction.

Coupled with the fantastic location and facilities, this year's CDS was by all accounts a success. I would

like to extend a sincere thanks to Paul Bicica, Jo LeDuc, Stephen King, Ed Mailen, the section chairs, speakers and IRES staff who made it all happen.

Attendance was good in spite of the states' widespread budget woes. I think that serves as a strong indication that IRES members recognize the importance of keeping abreast of the wide variety of issues discussed and debated at our Career Development Seminars. It also reflects well on the dedication to professional development that IRES members share.

As I mentioned when Paul Bicica passed me the gavel, IRES has been fortunate to have an outstanding cast of past presidents and Board members that has built IRES into the fine organization it is today. The current IRES Board will not allow the organization to rest on its laurels. We have undertaken initiatives to keep IRES growing and improving.

Development of a certification program for market conduct examiners that goes beyond the AIE and CIE designations is a priority. The initial program moved from concept to development this year during the Saturday prior to the commencement of the CDS. Thanks to Shelly Schuman, Lynette Baker and the 20+ participants who donated their time, we should receive some great feedback and ideas.

It is crucial that market conduct regulators know that the work conducted by their counterparts in other states is consistent and reliable. While the AIE-CIE designations offer a rock-solid basis for insurance knowledge and competency, the program being developed should assist with the nuts and bolts "how-to" for managing a market conduct exam. We hope to receive guidance from NAIC officers and members so the program will be consistent with the initiatives undertaken at the NAIC level.



continued on next page

President's Column ...

IRES recognizes that such programs are also desirable for other regulatory functions, but decided to choose market conduct as an important starting point.

A strategic planning meeting was also recently held for IRES. Participants identified several top measurable long-term goals to be brought before the IRES Board. Included in the discussion were goals such as increasing membership; better promotion of IRES, the CDS and the IRES designations; enhanced communication and coordination with NAIC activities; and development of "award-winning" training and certification programs. In the months ahead, we will be working to refine these long-term goals and giving this important effort our highest priority.

None of these goals can be attained without IRES members' shared involvement. Therefore, I will end my initial President's column with a plea and a challenge to all members to become involved in some way with IRES this year. Involvement can be as simple as recruiting a new member, or as involved as organizing State Chapter meetings. Fresh faces and new ideas are key to the success of every organization.



Bruce Ramge, CIE
IRES President

Regulatory Roundup?

There was just too much CDS information to include "Regulatory Roundup" in this issue. The column will return in the next issue of "The Regulator."

Welcome new members

Barry C. Armstrong, NC
Debra A. Boothby, NH
Crystal M. Campbell, LA
Stewart M. Gillett, AZ
Joy R. Griggs, AL
Donald E. Hale, AK
Charles Piasecki, VT
Kris Radmall, UT
Janice D. Shaw, AIE, UT
Jack Yanosky, PA

C.E. News

The next CE reporting deadline is Oct. 1, 2003.

Don't miss it and risk the suspension of your designation.

The current compliance period is Sept. 1, 2002 – Sept. 1, 2003.

What happens if my NICE compliance report form is received within 30 days of the deadline date?

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

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

For those of you who picked up your 2003 CDS attendance certificate, you have been granted 15 CE hours automatically and do not need to file a compliance report. You may check the IRES website @ www.go-ires.org to confirm your credits.

If you did NOT pick up your attendance certificate at the CDS in Scottsdale, you are required to file a NICE compliance reporting form report requesting credit for actual hours attended with a maximum of 12 CE credits available.

N ■ I ■ C ■ E

'Real' threat of federal regulation, NAIC chief warns

by *Wayne Cotter*
Editor, *The Regulator*

"The threat of federal regulation is real, folks" cautioned NAIC President and Arkansas Insurance Commissioner Mike Pickens in his keynote CDS address on Tuesday, July 29, in Scottsdale. Pickens wasn't trying to frighten the hundreds of IRES members who participated in this year's annual seminar; he just wanted to make sure insurance regulators were aware of the federal government's latest attempt to supplant state regulatory authority.

Pickens focused his remarks on S.1373 (also known as "The Consumer Insurance Protection Act of 2003"), a bill introduced this summer by U.S. Senator Ernest F. Hollings (D-SC). The bill, if enacted, would effectively dismantle the current state-based system of insurance regulation.

Hollings' bill is not, Pickens noted, an optional federal chartering bill, like the one introduced last year by Senator Charles Schumer (D-NY). Hollings' bill would repeal the McCarran-Ferguson antitrust exemption and place all interstate life and most property/casualty companies under the regulatory authority of the federal government. The bill, said Pickens, would decimate a highly effective state regulatory structure, adversely impact consumers and would, in his view, be the insurance industry's "worst nightmare."

Publicly, said Pickens, Senator Hollings is saying the federal government should be regulating insurers because the industry is a national, not an intrastate, business that touches the lives of all Americans. Some, however, suspect the bill's emergence has more to do with the Senator's frustration over the insurance industry's recent efforts to introduce tort reform measures in medical malpractice and asbestosis liability lines.

Sense of Urgency

"I don't have to tell anybody in this room," said Pickens, "that since Gramm-Leach-Bliley was passed in November of 1999, our jobs have taken on an increased sense of urgency for our states, for the consumers we have to protect, and for our insurance

departments." Federal regulators, he said, cannot and will not do the job as effectively as the states. Moreover, the insurance industry generates \$10-to-\$12 billion in premium tax revenue each year, much of which states use to finance noninsurance initiatives. These revenues would essentially evaporate under a Hollings-like regulatory structure, said Pickens.

Over the past few years, said Pickens, the NAIC has moved rapidly toward a system of uniform producer licensing and to implement speed-to-market initiatives.



Pickens addressing IRES luncheon in Scottsdale

Under Oregon Commissioner Joel Ario's leadership, the NAIC has also made great strides toward achieving uniform market conduct standards. The NAIC now, said Pickens, has a Marketing Analysis Working Group to develop procedures — based on complaint data, financial data and other key information — to make market conduct investigations more efficient and less costly.

In addition, the NAIC has worked hard to develop good relationships with state legislatures and now works closely with the National Conference of State Legislatures (NCSL), the National Conference of Insurance Legislators (NCOIL), and the National Governors' Conference. It's our job as regulators, he said, to make state legislatures more aware of the implications to states of a federal takeover of insurance regulation.

Hollings Bill

According to Pickens, the Insurance Consumer Protection Act of 2003 would:

- Create a federal insurance regulator within the Department of Commerce regulating life and property/casualty lines;

Scottsdale
2003 CDS

- Regulate rates and forms;
- Establish a five-member Governing Board; and
- Create a national guaranty fund for interstate insurers.

Pickens said he first became involved in insurance regulation because of his long-standing belief in the state system of insurance regulation. State regulators, said Pickens, “are closer to the consumer in terms of proximity . . . in terms of ideology, and in terms of

aspirations and concerns about the future” than federal regulators could ever be.

He concluded his address with a plea to IRES members to keep up the good, hard work of insurance regulation and to work with commissioners to ensure that a solid market conduct system is in place that works for consumers.

Editor’s Note: *On Aug. 4, 2003, Senator Hollings announced he would not be seeking re-election in November 2004.*

SUMMARY:

Insurance Consumer Protection Act of 2003

Federal Regulation of Insurance: The Federal Insurance Commission would be an independent commission established within the Department of Commerce. Five commissioners appointed by the President would head the Federal Insurance Commission. Commissioners would serve seven-year terms and no more than three commissioners from the same political party would be permitted to serve on the Commission at the same time. The Commission would regulate most property and casualty lines as well as life insurance. Workers’ compensation and state residual workers’ compensation pools would be excluded.

Preemption: The McCarran-Ferguson antitrust exemption would be repealed. The Federal Insurance Commission would be the only regulator for interstate insurers. An insurer that only conducts business in the state in which it is domiciled would be regulated by that state.

Powers of the Commission: The Commission would be responsible for:

- Licensing and Standards for the Insurance Industry
- Regulation of Rates and Policies
- Annual Examinations and Solvency Review
- Investigation of Market Conduct
- Establishment of Accounting Standards

Investigation and Data Collection: The Commission would be able to investigate the organization, business, conduct, practices and management of any person, partnership, or corporation in the insurance industry. The Commission would also create a central insurance database.

Consumer Protection: An independent office would be created within the Commission to receive complaints about improper insurance industry practices from the public, and to represent consumers before the Commission. Consumers would have a right to challenge rate applications before the Commission.

Enforcement: The Commission would have the ability to issue cease and desist orders for practices that would place policyholders at risk, and to levy civil fines for violations of Commission regulations. Practices that require enforcement actions outside the scope of the Commission’s mandate would be referred to the proper agency.

Federal Guaranty Corporation: A national guaranty corporation would be created to provide payment of life and property and casualty claims when the insurer is unable to pay. The corporation would also be responsible for liquidating insolvent insurers.

Source: *S. 1373 and a bill summary issued 7/9/03 by the office of Senator Ernest F. Hollings.*

Note: *S. 1373 is available online at <http://thomas.loc.gov/cgi-bin/query/z?c108:S.1373>:*

Regulating in a 'broader context'

Three insurance commissioners speak out

by Scott Hooper

Special to *The Regulator*

Editor's Note: *The following is a Q&A session, conducted by Scott Hooper of The Regulator, with three state insurance commissioners — Charles Cohen, Arizona Director of Insurance, Kevin McCarty, Director of the Florida Office of Insurance Regulation, and Mike Pickens, Arkansas Commissioner of Insurance (and current NAIC President). The session was conducted immediately after the Commissioners Roundtable that traditionally opens the Career Developments Seminar. (Jann Goodpaster, CIE, of the Oregon Department participated in the Roundtable, but was unable to join the commissioners for this session.)*

Regulator: *The issue of state v. federal regulation of insurance came up several times during the Commissioners Roundtable. What do you want to add to the discussion?*

Pickens: What I said during the discussion was that you have to have a system that's got to fit together. There's no way you could go about creating a completely uniform, coordinated market oversight system from top to bottom. You wouldn't even want to have that. I don't think you could ever have a system that would supplant state regulation.

McCarty: You really have to have a bifurcated approach. I think you have to have monitoring on the local level on market issues. I think you need to be cognizant of those issues in a larger context, so you don't have, you know, 37 states going into a company [dealing with] the same constellation of issues. And that's where it makes sense to do it on a regional basis, or on a national basis — to focus on those.

We're moving away from a lot of that and we're looking more . . . in a broader context . . . away from a kind of

rote [approach] every three or five years — and . . . more on leveraging . . . issues that have more of an interest.

I know I'm using all of my resources in market conduct to address unauthorized entities, because that's the biggest problem that is costing the most. It's not whether or not somebody is charging the right workers' comp premium. My concern is [making sure] consumers don't get stuck with all this coverage [that is not credible]. . . .

And so we're looking at marshalling our resources in those areas that are causing the most harm to our consumers. And then leveraging them in all the other states on these national issues.



Cohen: The issue of national market conduct enforcement isn't just an issue for the industry — in fact, I would make that secondary. I think the issue for regulators is to be able to have the capability to be effectively regulating market conduct activity that can only be understood when you look at it nationally.

We have to make sure that we're not susceptible to a divide-and-conquer approach by the insurance industry. I think we've all probably experienced it: When there's something going on with one of the big property-casualty companies, when clearly they've made some sort of national business decision, a national strategy doesn't necessarily have to do with what they think of Arizona or Florida or Arkansas.

By going into each state one by one and talking to you about it and dealing with your little piece of it, they're able to manage the situation and basically evade meaningful regulation. I think that's really their objective, not just doing something that's efficient for them, but something that affects national regulation.

Pickens: There really is regulatory power and strength in numbers, if you stick together.

Regulator: *There's more to market conduct than the examination process, isn't there?*

McCarty: It's the analytical process. And what we're trying to do is what Jann Goodpaster's commissioner has been saying: that we need to replicate a lot of the things that we've done on the financial side. Not necessarily making it an accreditation criterion, but certainly financial surveillance is more than just examinations. It's doing the analytical work.

It's not just whether they check this [box], whether they comply with your statutory capital and surplus, but what about the effects of the trends and conditions that are driving the market — the fact that their capital has been depleting over the last couple of years and some personnel have left and that kind of stuff.

So you know where to put your resources.

We are all of limited resources, and we need to give deference to the home state where that makes sense, and we need to focus our resources in the areas that affect our consumers — in our own states and collectively, in all our jurisdictions.

Pickens: Even though we have this Financial Analysis Working Group, the FAWG, we've also developed over the last couple of years what we call MAWG, the Market Analysis Working Group. So just like Kevin said, we're starting to develop . . . standardization in the procedures and the exchange of more information among states in handling coordinated, targeted market conduct examinations.

Regulator: *Another thing that Jann said is that although credit scoring works, it just seems intuitively wrong. Are the companies going to be able to keep credit scoring? They certainly want it.*

McCarty: In a major way, and they've lobbied legislatures successfully around this country . . .

Pickens: . . . and the federal government . . .

McCarty: . . . and the federal government. The public policy issue has been answered in our state, and in a number of states. We've said it's a permissible practice. And I think . . . the issues that have been raised about medical records, those have been addressed to some extent in the NCOIL model.

Regulator: *In Missouri, for one, if you have no credit it doesn't count against you.*



Moderator Bill Bailey (at left) poses questions to the commissioners.

McCarty: That's our practice in Florida too. The industry is very uncomfortable with that, because their data is overwhelming with regard to no-hits information. But that raises the issue of, for instance, the religious conservative who doesn't

believe in debt. They are unfairly penalized — we've been cognizant of that and sensitive to that. But my concern then goes to something like: Is it a permissible practice as a matter of public policy to penalize somebody because they get divorced? As an underwriting criterion, I think most people would say no. But is it a surrogate to say that because they get divorced, they have worse credit, and therefore you're really penalizing them for divorce, as opposed to relating it to credit scoring?

I think that is the kind of issue that eventually gets ferreted out in this process. Not so much as to whether there is a correlation — I think that there is. The substantive evidence is pretty overwhelming with regard to that. But does that mean it's a surrogate for something that we would not ordinarily think is permissible? Years ago, people who were divorced did pay higher premiums. Today, we would think that's pretty outrageous.

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Congratulations, new AIE and CIE designees!!

SCOTTSDALE — The 2002-03 “class” of new AIE and CIE designees were honored July 28 at the annual IRES conferment ceremony and luncheon at the Hyatt Regency. Photos shown here are of those new designees who attended the CDS in Scottsdale. :

This past year’s new AIE designees are

Frank R. Basnett, AIE, SC
Juli-Kay Baumann, AIE, NM
Darrell W. Cartwright, AIE, ID
Christopher DiLorenzo, AIE, CT
Gerard Edimo, AIE, TX
Adrienne-jo F. Evans, AIE, RI
Roger Fournier, AIE, NH
Patricia S. Hahn, AIE, IL
Linda L. Hofman, AIE, Multi-State
James J. Huber, AIE, KY
David R. Israel, AIE, IL
Jeffery Johnson, AIE, DC
Delbert L. Knight, AIE, AZ
Gina K. McBride, AIE, ID
Mary Ann Midyett, AIE, Retire
Ashley T. Natysin, AIE, WI
Timothy R. Nutt, AIE, Multi-State
James M. Potter, AIE, LA
Timothy J. Reagan, AIE, AZ
Karen L. Rimel, AIE, MO

Nestor J. Romero, AIE, NM
Mari A. Sanchez, AIE, Multi-State
Janet S. Schopp, AIE, FL
Gary Stephenson, AIE, OR
Parker W. Stevens, AIE, DE
Joel S. Thomsen, AIE, ME
David M. Tucker, AIE, CO
James Wright, III, AIE, MA



The new CIE designees are:

Daniel J. Atkisson, CIE, OH
Charlotte A. Carter, CIE, NM
Jack E. Casper, CIE, MO
Kathleen S. Drake, CIE, LA
Mark J. Duffy, CIE, CT
Kimberlee A. Hewitt, CIE
Nancy A. Hulsebus, CIE, Unaffiliated
Gary Kimball, CIE, MO
George J. Lazur, CIE, WA
Jeffery Olson, CIE, CO
George Rabb, Jr., CIE, LA
Margaret C. Spencer, CIE, Multi-State
Wayne C. Stephens, CIE, CO
Derek Stepp, CIE, DE
Debra R. Vernon, CIE, MS





Quote of the Month



“It’s a procedural ‘melt down.’ The government has not backed off on its deadline but a great number of payers and providers are still trying to find their way through the thicket of technical requirements, code sets, and other regulatory challenges. Many are seriously behind on their implementation processes and there will be consequences.”

— John L. Phelan, HIPAA expert and healthcare consultant with Milliman USA warning that many organizations will fail to meet the October 16, 2003 deadline for the Transaction and Code Set mandates of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). (The deadline was originally 10/16/02, but was extended a year for entities that submitted compliance plans.)

IRES STATE CHAPTER NEWS

Louisiana — The Louisiana Chapter held its Annual Business Meeting on June 26 and elected new officers for the 2003-2004 fiscal year. The newly elected officers are:

- **Trent Beach**, President
- **Mike Calamari**, Vice President
- **Crystal Campbell**, Secretary
- **Linda Gonzales**, Treasurer

Larry Hawkins remains the State Chair until the next election. As of July 10, Louisiana has 51 members of the National Chapter of IRES.

— *Larry Hawkins*

California — **Polly Chan** is the Secretary for the IRES Executive Committee and chair of the 2003-04 Publication Committee. **Linda Yarber**, Chief of California’s Consumer Communication Bureau will also serve on the Publication Committee. In addition, a California supporting group with varied expertise is joining the club! (See article on Publication Committee, p. 17.)

— *Polly Chan*

Colorado — **Dave Edwards**, President of Western Guaranty Fund Services conducted a presentation on the Colorado Insurance Guaranty Association during Colorado’s June Chapter meeting. The August session focused on e-commerce. Upcoming sessions will address Medicare Supplement, including changes to Colorado’s regulation, confidentiality and long-term care.

— *Dayle Axman*

Oregon — In July, Oregon’s Chapter meeting began with an NAIC update from the Oregon Insurance Division Administrator **Joel Ario**. **Jim Kleen**, Oregon Life and Health Guaranty Association, then provided an overview of the Life and Health Guaranty Association in Oregon. IRES members also heard from **Kim Wirtz**, Regence BlueCross BlueShield of Oregon, on the effects on insurers of HIPAA privacy laws.

— *Gary Holliday*

Regulators take the



It was hot in Scottsdale, Arizona, as more than 400 regulators and industry experts attended the 15th annual IRES Career Development Seminar at the Hyatt Regency Scottsdale.

But then it's always hot in Arizona. And the IRES CDS is always a big hit with regulators. The seminar opened with a dramatic "hoop dance" performed by Hopi Indians, followed by the annual Commissioners Roundtable. From



Hopi Indians kick off the Monday morning session with a ritual "hoop dance" for the crowd of more than 400



CDS Section Chairs Jamie Key of Wisconsin and John Reimer of Kansas review program notes



Arkansas Commissioner Mike Pickens (left) and Arizona's Chuck Cohen



State regulators listen during a breakout session at the 2003 CDS

heat at 2003 CDS

there it was on to two days' worth of discussions, debates and information sharing — the kind of learning experience that has made the IRES CDS one of the most popular learning experiences available anywhere for state insurance regulators.

IRES wishes to thank the IRES Section Chairs, CDS Chair Jo LeDuc, President Paul Bicica and all the many volunteers who helped make it a successful seminar.



Regulators could pick from nearly 40 different breakout sessions and special programs



Scott Borchert, a Minnesota state regulator, poses a question from the audience



Another of the nearly 40 breakout programs for regulators during the IRES Career Development Seminar in Scottsdale



New AIE-CIE designees were honored during a Monday afternoon cocktail reception

Scottsdale scenes and sights



Al and Jean Joseph at the opening reception



Dolores King and daughter Molly



Bruce Ramge, Nebraska, presides at IRES Board of Directors



Polly Chan, California, and Doug Freeman, Missouri visit after the Board meeting



Angela Ford and Ernest Nickerson of North Carolina (left) with Ron Musser of Louisiana, during a program break



Jim Fryer of Promissor, Inc. and LeRoy Brungardt of Kansas

Third-party vendors: To regulate or not to regulate

Tuesday morning's opening general session was a sometimes testy debate about whether states should regulate the activities of companies that provide third-party service to insurance companies. Left to right: Art Chartrand, attorney; Birny Birnbaum, consumer activist; market conduct independent examiner Don Koch; Mike Woolbright, Missouri Insurance Department (background) and Don Cleasby, National Association of Independent Insurers.



Three Insurance commissioners speak out in Scottsdale

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Pickens: To answer your original question, I think it's going to depend on how the industry uses credit scoring. If they continue to push the limits . . . we've made some concerns evident in the past, but if they still try to use them as bona fide criteria, I think they're going to have problems. They need to learn from the credit scoring issue and all the controversy that there are [limits in the] use of political force. I think CLUE reports are the next thing that could get them in trouble. Just because somebody's had a claim on a piece of property and the insurance company's paid to replace the roof, why should that be a mark against that property?

Regulator: Insurance companies say that credit reports help at least as many consumers as they hurt.

Pickens: We're going to find that out, because part of our bill was we had to conduct a study of who benefits and who doesn't. So we'll find out, at least in our state.

Cohen: I'm sure there are some people who benefit. But there's another issue in the whole thing, and that is one that doesn't apply only to credit but to a whole bunch of lines of insurance. And that is, with the development of computers and the Internet, the availability of information science, how far are we going to let insurers go with predictive criteria?

At what point has good underwriting caused the insurance mechanism to break down? Insurance is a social contract, because it's good for all of us to share the costs of certain losses. If insurance companies have someone locked away in a room somewhere trying to figure out how to predict who's going to have losses, and get better and better and better at it, at what point [does it end].

We have the issue with genetic tests. This is going to come up again and again, because our society is evolving exponentially with respect to these capabili-

ties. And the big issue, as everybody has said, is public policy. You can have actuaries study this till the cows come home, and they'll always be disagreeing with each other, and the lawyers will always be disagreeing with each other, and the regulators will always be disagreeing with each other.

I feel the issue is fully developed enough at this point that a responsible, well-intentioned legislature that really wanted to get into it could sit down and study these issues and make the kind of public policy

decisions that ultimately are just in your gut. If you're an elected official, that is what people elect you to act on: your gut feelings. That's what needs to happen, but you know, the problem is with the legislatures. I hate to say it, but it's just lobbying



The Scottsdale Commissioners Roundtable: Mike Pickens of Arkansas (left) and Chuck Cohen of Arizona

Pickens: The other concern I've always had

[about credit scoring *et al.*] is, where do you stop? I mean you could look at all underwriting criteria — men pay more for life insurance, women pay less — is that fair? There's actuarial justification for it.

McCarty: And why do men have more car accidents? Can we fully explain that? We know they're more aggressive.

Cohen: Those too are critical public policy issues. And just as we were saying, we file underwriting criteria for homeowners and auto insurance, and if somebody filed an underwriting criterion that said you were going to be charged a higher premium because you got divorced, I'd have no problem with that. I don't think most public policy people would.

McCarty: To expand on what Chuck said, we are eventually going to find a perfect loss-cost basis. And then where are we? We're self-insured.

continued on next page

Commissioners speak out at Scottsdale CDS

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Pickens: To me, genetic testing is an easy one. I just don't think genetic testing should be used — that's an easy one to me. Just because you're predisposed to cancer, I've heard experts say, doesn't mean you're going to get cancer. Even though you could predict a probability, you still can't predict it with any degree of certainty. And it wouldn't be fair if you could.

McCarty: To the extent that those things are personal choices . . . I'm a big believer in personal choice, both its rewards and its penalties. If I choose to smoke, then I need to pay a higher premium for my health insurance. I can't help my genetic code, that's not anything that I have personal [control over], but to the extent that you want to have modified community rating — there's a higher exposure in Miami to carcinogens, there's a higher exposure to [smoke] if you smoke — [it's] an issue of choice. But birth is not a matter of choice.

Pickens: I agree. And that brings me back to credit scoring to some extent. Don't you want to try to incentivize good things if you can? I think you do. But when do you go too far?

Regulator: *And if the formula isn't transparent, consumers don't know what they need to do to improve their credit scores.*

Pickens: Because of the regulatory pressure — and I would credit the NAIC and others — ChoicePoint now is coming to the table and saying, hey, we're willing to let you see [formulas].

McCarty: Some others are not, and I think that we as regulators ought to reward those who are putting forth the mechanisms and the algorithms [behind their ratings] and willing to explore that in a public fashion. Transparency is a critical area. We ran into a buzzsaw in Florida with computer modeling.

I don't care that every reinsurance company is using modeling, but I can't explain to a little lady in Palm

Beach County that her rates just went up 40% because of some darn computer program that I can't look at. And I'm telling you, if you can build public confidence — that's why we're building a public model — the results are going to be largely the same, but you'll eliminate that issue.

Cohen: You know, there's an interesting thing that goes on there. The insurance industry is trying to burn the candle at both ends. They also advocate for open competition rate regulation systems and deregulation.

Here in Arizona, I've got a problem. We do have an open competitive . . . system. It's use and file — you don't even have to file until 30 days after you've started using. So if those computer models are filed, from what I've seen in the bill that's in the Arizona Legislature, they can only

be reviewed by the regulators. They won't be public documents, but we understand the regulators should be able to look at them.

At the same time, [we're] in an open competition system, where I really have no authority to do anything. We can disapprove it after it's been filed, after due process. But I have to find unfair discrimination, and I'd have to be able to prove that.

Regulator: *Can you find the rates to be excessive?*

Cohen: Not unless I find that a market is not competitive, and I first have to do a whole proceeding on that. In Arizona, for most property-casualty lines, unless I make that finding, I don't regulate excessiveness. And actually, the way the law is set up, it would be absurd to go through the effort to do that. Because what I get to do, if I find that they're not competitive, is impose a prior-approval type of system, and I haven't figured out how that's going to solve my problem. Basically it's regulation for adequacy and unfair discrimination, frankly both of which are incredibly hard to prove under the standards I have.

Regulator: *Many of the things we've been talking about involve new initiatives, but of course budgets keep getting tighter. Where's that going to end up?*



Scottsdale
2003 CDS

Cohen: Regulation costs money. Regulation requires resources. And I'm sure these guys have had the same experience that I have: making yourself blue in the face down at the Legislature, saying that over and over and over again. And having legislators think I'm just a shrill bureaucrat. For me here in Arizona, that's the issue on rate regulation. If you want even a little bit of rate regulation, you have to give us something to work with.

This is a major endeavor. I really only know one insurance department really well, but I can tell you that the difference between having an open competition system here in Arizona and some other rate regulation system would probably mean making my department half again as large. I really believe that.

Regulator: *Any of you guys pay your own way? In other words, is the money you generate used to fund your department?*

Pickens: We do. We're dedicated-funded, which means that fees and such from the companies go into a trust fund. The Legislature still has to appropriate that money, but the money cannot be used for any other purpose. [To increase spending in a particular area] we'd have to make our case to the Legislature. This year we got four new market conduct examiners, because we told them our two did not get the job done.

McCarty: Florida has a number of trust funds. Unfortunately, trust fund does not connote what it really means, which is really just a separate taxing source. Unlike the state of Arkansas, the trust funds are raided on a fairly regular basis. And when they had a budgetary shortfall this year, they took every dollar out of the trust fund in excess of what it cost to fund the Department of Financial Services. So we're just fortunate that Governor Bush gave us six additional positions in a very, very grim time, when they were cutting other departments.

We have a full contingent of actuaries to review our forms and rates. We have a modified open rating system, we do have use and file, and we have the ability to disapprove a filing and go into due process and appear before a judge. Once that happens, the provision is that the consumers are made whole . . . I think that provides true balance: companies can put their rate into effect, but at the same time they have to very be careful how they do that.

It's interesting, the debate in so many legislatures now, talking about deregulation. And that's fine, that's certainly a public policy choice. But in the same breath, when they're talking about medical malpractice, they're talking about Prop 103. Whatever framework we make really has to work for all lines of business, and it has to work in good markets and in bad. Prior approval, as you've already articulated, doesn't make availability any greater.

Cohen: From my experience, I would take some kind of hybrid system like you just described. The one that appeals to me is the band. [A kind of flex rating.] Having gone through now some of the property-casualty underwriting cycles, but also having seen how regulation affects the marketplace, I think that makes

sense to me, where you would have your band, plus or minus 10% or 7%. It's open competition, but prior approval or some type of regulatory approval up or down from that.

McCarty: Chuck, is that 7% Arizona statewide, or is that 7% uniformly applied? I think that's interesting, because you get into the area of unfair discrimination and evaluation of the relativity curve, etc. But within the 7%, you could have a 45% increase in Little Havana and a decrease in Pensacola. On average you're 7%, but you could have a huge hit for somebody in that area. That's the thing I'm concerned about.

I think that the flex rating makes a lot of sense. Certainly no one wants to put the same talent and effort

“
I don't care that every reinsurance company is using modeling, but I can't explain to a little lady in Palm Beach County that her rates just went up 40% because of some darn computer program that I can't look at.
”
— Florida's Kevin McCarty



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Commissioners speak out at Scottsdale CDS roundtable

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into a 7% increase as you do for a 50% increase because it doesn't have the same impact. And there ought to be a cursory review, a perfunctory review, so if you meet the minimum standards, you should just put them into effect. But how do you apply that to the individuals across the state?

Regulator: *You mentioned med mal. That's a cyclical line, but it seems to have gone way beyond the cyclical.*

Cohen: I think that there are obviously some factors that affect med mal that make it a unique case within the property-casualty underwriting cycle. Most notably, its relationship to the health care and health insurance and civil justice system — those are major factors that may be different from, say, workers' comp.

Regulator: *Are caps indeed the simple solution to so complicated a problem?*

McCarty: I think it's one thing you can do that, as long as it's done right, probably has some beneficial effect. But there are so many variables affecting the availability and affordability of med mal that there's no way that would be a complete solution.

Pickens: And I'm opposed to caps for compensatory damages. I just don't think that's fair to the consumer. I do think reasonable caps for punitives [are OK], with the exception of when there's willful and wanton conduct — something you can clearly describe as egregious.

I think the bigger problems are trying to level the playing field in the courtroom, placing in statutes another entry limitation and limits on venues, where

you can try cases, so you don't have a lot of forum shopping. . . .

I like the idea of a database too, so you know who the bad docs are, and who the good docs are. I know a couple of states have talked about that.

McCarty: We maintain a database on medical malpractice, and it is probably the most frequently visited Web site in the state. It's used for two purposes. It's

used by consumers to determine whether or not the doctor that they're about to have perform an operation on them has been subject to medical malpractice lawsuits. But it's also a mining ground for trial lawyers.

Once again, no good deed goes unpunished. We've been rated by the Consumer Federation of America. It's a great database to have out there for consumers. But as a consequence there's a

potential for class-action lawsuits.

Back to your original question. . . . This is the argument we hear throughout the whole thing. A simplistic answer . . . to an extremely complex problem that has to do with the civil justice system, it has to do with bad faith, it has to do with changing human behavior. It has as much to do with minimizing the incidence of medical malpractice, managing people's expectations on outcomes vs. true malpractice cases, as well as a truly flawed judicial system that can be corrected without necessarily just saying let's restrict people's access to courts.

Pickens: Just think about it, though. We have modernized practically every government institution in the country except our civil justice system. [It's] basically operating — particularly the small counties in our state — the same as it was since our states came into the union. ■



I think that there are obviously some factors that affect med mal that make it a unique case within the property-casualty underwriting cycle. Most notably, its relationship to the health care and health insurance and civil justice system — those are major factors that may be different from, say, workers' comp.



— Arizona's Chuck Cohen

Meet the IRES Publications Committee for 2003-04

by Polly Chan, CIE, CPCU, AU
Chair, IRES Publications Committee

The Publication Committee is responsible for issuing *The Regulator* and publicizing activities and events sponsored by IRES. *The Regulator* is a professional resource and an excellent channel for states to share their vision and insights and learn about emerging issues and insurance newsmakers. IRES is fortunate to have retained several experienced Committee members and recruited new talent with diversified expertise.

The following is a current list of the Publication Committee Members:

Chair: **Polly Chan**, CIE, CPCU, AU (California Senior Insurance Rate Analyst)

Vice Chair: **Angela Ford**, CIE, CPCU, FLMI (North Carolina Senior Deputy Commissioner)

Editor: **Wayne Cotter**, CIE, MBA (New York Director of Research)

Associate Editor: **Kathleen McQueen** (New York Assistant Director of Research)

Christel L. Szczesniak, CIE, CPCU, AIM, ARM, CPIW (former Colorado Regulatory Administrator)

Pam Donnewald, CIE, CPCU (Illinois Assistant Deputy Director, Property & Casualty Compliance)

Gerald Milsky, J.D., CIE, ACS, FLMI (Virginia Deputy Commissioner)

Kashyap Saraiya, AIE, CPCU (New York Director of Insurance Policy Analysis)

Linda Yarber (California Chief, Consumer Communications)

In addition, the Committee Chair has secured a Supporting Team from California. The Supporting Team will provide consultation and support for the Committee. The team members may perform

technical reviews, contribute articles, or suggest ideas on an individual case basis.

The following is a list of the California Supporting Team:

Norris Clark, CFE (Deputy Commissioner)

Woody Girion, CIE, (Chief, Financial Analysis)

James Holmes, J.D. (Senior Staff Counsel)

Tomoko Stock, FLMI (Investment Officer)

Joan Koyama, AIAF (Senior Insurance Rate Analyst)

Ken Allen, CPCU (Senior Insurance Rate Analyst, Workers' Compensation)

Adam Gammell, CPCU (Senior Insurance Rate Analyst, Personal Auto)

The Committee encourages state regulators to submit articles, suggest topics of common interest, and offer feedback on *The Regulator*. At year's end, the Committee will select the Schrader-Nelson "Article of the Year" Award winner. The Committee also urges State Chairs to inform members of state chapter activities by submitting "Chapter News" reports to *The Regulator*.

And don't forget: Back issues of *The Regulator*, beginning in 1998, are available on

the IRES website (www.go-ires.org) along with a complete index of articles, by subject.

Individual participation does make a difference in maintaining exemplary insurance regulation and consumer protection. The Committee and the CA Supporting Team look forward to a bright new year. Anyone interested in submitting an article or suggesting a topic can contact any Publications Committee member or e-mail Wayne Cotter directly at quepasa1@optonline.net. ■

THE REGULATOR
INSURANCE REGULATORY EXAMINERS SOCIETY

Regulators juggling responsibilities in light of stringent state budgets
by Scott Hooper
Special to *The Regulator*

A few years ago, at least in part to improve the health of their citizens, a group of state attorneys general joined in a lawsuit against the big tobacco companies.

Today, with millions in tobacco money rolling in to state coffers — but other sources of revenue shrinking — some states have put aside health concerns and begun defending the tobacco industry, lest the golden calf be turned into veal.

Yes, budget crunches make strange bedfellows. After all, the states are short \$30 billion in revenue this year, says the National Governors Association, and likely to be \$82 billion short next year.

Meanwhile, as made clear by ire over CLUE reports, credit scoring, rising med mal premiums and a host of other insurance company practices, insurers and consumers need effective regulation today every bit as much as a few years ago, when the good times were rolling. But statewide budget cuts make it difficult to do the job properly.

How have the hard times affected insurance regulation?

There's tremendous variation from state to state in the percentage of fee revenue, as well as other factors affecting the bottom line. But here's a snapshot of how several states are managing to maintain services to both companies and consumers.

Oregon
This isn't the first time the states have been hard-hit by declining tax revenues. Another recession, in the '80s, was particularly tough on the Oregon Insurance Division.

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Insurance and the risk of terrorism
by Conning Research & Consulting

In a society where free speech, no matter how distasteful or fatuous, is protected and promoted, it is very difficult to understand suicide terrorism. It seems incomprehensible that people are willing to sacrifice their lives to inflict harm on non-combatants. Nevertheless, suicide terrorism is not new.

Until recently, most terrorism was suicide terrorism. Given the lack of sophisticated, long-distance weaponry, there were not many other options. Since most weapons, such as daggers, pistols, and explosives, were effective only at short-range, most of the assaults did not even attempt to get away.

Whether we review the near-term or the distant past, history is replete with examples of suicide terrorism. The tyrannicides of ancient Greece, the regicides of the Middle Ages are two noteworthy examples. Throughout history and

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Jann Goodpaster of Oregon receives President's Award

Hazlewood and Milsky of Virginia also honored at Scottsdale CDS

Jann Goodpaster of the Oregon Department of Insurance was honored here as the 2003 recipient of the Insurance Regulatory Examiners Society's annual President's Award.

Ms. Goodpaster, CIE, is the Consumer Protection Manager for the Oregon Department. She is a Past President of IRES, former chair of its Accreditation & Ethics Committee and a longtime member of the Society's Board of Directors and Executive committee.

In presenting the award, IRES President Paul Bicica (Vermont) called Goodpaster "one of the most dedicated and hard working people I know and someone I am honored to call my friend."

The Al Greer Achievement Award was presented to R. Weldon Hazlewood, CIE, of the Virginia State Corporation Commission's Bureau of Insurance. Mr. Hazlewood is the Market Conduct Supervisor for Life and Health at the Virginia Bureau. He was honored for his many years of service as a Virginia regulator as well as



Jann Goodpaster and outgoing IRES President Paul Bicica in Scottsdale



Weldon Hazelwood (center) with Scott Laird Texas and Jann Goodpaster in Scottsdale

his years of volunteer service to IRES and its activities. Mr. Hazlewood served on the IRES Board of Directors, including several years as Treasurer.

The Schrader-Nelson Publications Award was presented to Gerald A. Milsky, J.D., CIE, ACS, FLMI, Deputy Commissioner of the Virginia State Corporation Commission's Bureau of Insurance. The award is presented each year to the author of the best original article published in *The Regulator*, the Society's bimonthly journal. Mr. Milsky was recognized for his in-depth article on the issue of insurance pro-

ducer licensing, entitled, "Uniformity for the Sake of Uniformity?" which appeared in the July 2002 issue of *The Regulator*.

Mr. Milsky is a Past President of IRES, former chair of the IRES Education, Meetings &

Elections, and Membership & Benefits committees and currently serves as a member of the IRES Board of Directors and secretary of the IRES Past Presidents Council. He was recipient of the Society's President's Award in 1995. With this award, Mr. Milsky becomes the first person to win both an IRES President's Award and the Schrader-Nelson "Article of the Year" award. ■



Gerry Milsky (right) receives the Schrader-Nelson Award from Wayne Cotter, NY, and Shirley Jones, NC.

It could happen to you!

A Regulator's False Claims History

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a completely different property owned by the seller in a different city.

Apparently, the seller had insurance on both properties with the same company. When the insurance company reported the claims against the other property to CLUE, it used the insured's mailing address, not the property address. This resulted in those claims being tagged against the property I was purchasing.

I advised the potential insurer of this fact, but the agent still said that until the CLUE report was corrected, the company would not write the coverage.

But that was just the beginning. I then contacted an insurance broker who tried four other companies, none of whom would place coverage simply because of the CLUE report. There were no investigations, no questions, and no coverage. The best they could do was place me in the surplus lines market for premiums that were three to five times higher than my original quote.

Finally, with one day left before the close of escrow, I went to the company that had insured the house for the sellers. That company, knowing the true loss experience against the property, agreed to place the coverage. Its representatives stated that they knew the report was inaccurate, that the claims amounts were incorrect, that the losses occurred on two different properties, and that the single loss on the purchased property had happened in 1999 and had been fully remedied.

Unfortunately, none of this information is in the CLUE report.

It's clear that some companies are using loss history reports to make coverage decisions without verifying the accuracy of the information in the reports. That's wrong.

The emergency regulations recently issued by California Insurance Commissioner John Garamendi will go a long way towards ensuring that consumers are not refused coverage because of incorrect information on a CLUE report. They shouldn't have to face the difficulties I did. ■

EDITOR'S NOTE: California's emergency regulations, promulgated July 21, 2003, can be found at www.insurance.ca.gov/docs/FS-Homeowner.htm.

IRES elects new officers

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Wisconsin, AT LARGE; Paul Bicica, Vermont, PAST PRESIDENT.

Also at the meeting, the following members were elected to four-year terms on the Board of Directors: Paul J. Bicica, Vermont; Cynthia E. Campbell, Missouri; Gary L. Domer, unaffiliated; Martin J. Hazen, Kansas; Jo A. LeDuc, Wisconsin; Stephen Martuscello, New York.

During the newly elected Board's first meeting in Scottsdale, three regulators were appointed to fill open positions on the Board: Karen Dyke of Nebraska was appointed to fill the position, expiring in 2006, recently vacated by Ed Mailen of Kansas. In addition, Paul Hogan of Arizona and Larry Hawkins of Louisiana were appointed to one-year, at-large Board positions.

Bruce Ramge

Bruce graduated from Dana College in 1979 and received a Master of Business Administration degree from the University of Nebraska at Omaha in 1982. He joined the Nebraska Department of Insurance Market Conduct Division in September of 1984. In March 2000, he moved from Market Conduct to accept the position of Chief of Market Regulation, coordinating Nebraska's Market Conduct, Consumer Affairs, Producer Licensing, Property and Casualty, Life and Health, and Senior Outreach (NICA) divisions.

Bruce has assisted various workgroups of the National Association of Insurance Commissioners with development of the NAIC Market Conduct Examiners Handbook.

Ramge enjoys spending time with his wife and two sons, and has been active in their local Boy Scouts of America troop. Ramge enjoys outdoor activities such as camping and hiking. Recently he has undertaken the task of restoring a weekend cottage on a nearby family farm site. He explains that progress is slow but sure and that so far he has got more paint on himself than on the house.

Ramge told us that the most recent book he read was "Beyond Suspicion" by James Grippando. He explained that it is a fictional account of a viatical settlement "gone bad." ■



BULLETIN BOARD

√ Many thanks to the many volunteers who worked at the IRES registration center during the Scottsdale Career Development Seminar. We are particularly grateful to the King family, the Ramge family, Sharyn Milsky, Stacey Bicica, Lee McLellan, Dick Kelly and more.

√ A number of the speaker handouts and presentations from the Scottsdale CDS are posted on the IRES Web site: www.go-ires.org

√ Want to stay current on the latest trends in market conduct regulation? It's time to mark your calendar, and plan your travel budget, for the 2004 IRES Foundation "National Insurance School on Market Regulation" to be held April 18-20 at the Marriott Waterside Hotel in Tampa. For information go to: www.ires-foundation.org. Or call 913-768-4700 or send email to info@ires-foundation.org

In the next REGULATOR:

- ✓ Learning the basics about mold
- ✓ U.S. Supreme Court looks at insurance

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