

Insurance Regulation Committee

SPECIAL FEATURE

RECENT NAIC DEVELOPMENTS

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Even though Hurricane Irene prevented the National Association of Insurance Commissioners (“NAIC”) from holding its Summer National Meeting in Philadelphia, the NAIC completed work on two major projects – the revisions to the Annuity Disclosure Model Regulation and revisions to the Credit for Reinsurance Model Law and Regulation. In addition, the NAIC’s work in the second half of 2011 set the table for a number of projects that the NAIC will undertake during 2012.

Annuity Disclosure Model Regulation

After more than three years of work, the NAIC Executive Committee and Plenary adopted the revisions to the Annuity Disclosure Model Regulation. The Annuity Disclosure Model Regulation was revised to include new requirements for the sale of variable annuities. It requires the delivery of a Buyer’s Guide and, after January 1, 2014, it requires that consumers receive a disclosure document setting forth specific information on the variable annuity being sold, unless the SEC adopts a summary prospectus rule or FINRA adopts for use a simplified disclosure form applicable to variable annuities.

Most significantly, the Annuity Disclosure Model Regulation was revised to include a new Section 6 that

sets forth the standards for fixed and fixed indexed annuity illustrations. The new requirements apply to “a personalized presentation or depiction prepared for and provided to an individual consumer that includes non-guaranteed elements of an annuity contract over a period of years.” The illustration must be accompanied by the required disclosure document. The required components of an illustration include:

- A tabular detail of the non-guaranteed illustrated values

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MESSAGE FROM THE CHAIR

Dear Colleagues,

Welcome to the Winter Newsletter of the ABA TIPS's Insurance Regulation Committee. The business of insurance and how it is regulated impacts all facets of our daily lives. The ABA TIPS's Insurance Regulation Committee exists to educate and provide expertise on insurance regulatory issues. The insurance regulatory landscape for

I encourage all of you reading this newsletter to participate in the Insurance Regulation Committee and contribute to the newsletter on any insurance regulatory issue, large or small, state specific or not. Our committee is composed of professionals that are on all sides of any regulatory issue. Our diversity means that someone in the Insurance Regulation Committee will have timely information or a different perspective to share. We would appreciate receiving short articles about regulatory issues that you have an interest in.

In addition to our newsletter, we are proud to be a co-sponsor of the 38th annual MidWinter Symposium on Insurance and Employee Benefits. The program will be held on January 12-14, 2012 in St. Petersburg, Florida. This is a great way to obtain CLE credits that are relevant to insurance regulatory issues or an insurance regulatory practice.

Also, in 2012, look for other publications by the Insurance Regulation Committee, such as, the annual survey article in the TIPS Journal, an edition of TortSource dedicated to insurance regulatory issues and topics, and our next newsletter to be published in the Summer of 2012.

We hope you will find valuable information and contacts through the Insurance Regulation Committee.

All the best in 2012. ⚖️

Kelly Cruz-Brown
Carlton Fields, P.A.

MESSAGE FROM THE EDITOR

This winter 2011 edition of the newsletter contains a summary of significant insurance regulatory/legislative developments during the past several months and a special feature concerning recent NAIC developments. I thank all members of the committee who submitted articles for this edition.

Please send me your articles for the summer 2012 edition by **May 18, 2012**. I will send out a reminder notice to those on the committee's e-mail distribution list in early May. In the interim, I wish you a very happy and healthy 2012. ⚖️

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Disasters Caused by Acts of Negligence

Sponsored by the ABA Tort Trial & Insurance Practice Section and Exponent
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ABA Midyear Meeting
February 3, 2012
New Orleans Marriott Hotel
New Orleans, LA

Throughout our history, past and recent, we have been plagued by disasters caused by negligence. If you were to Google this subject today, the search results would include "Katrina Flooding Caused by Army Corps of Engineers' Negligence", "Three Causes of BP's Oil Disaster", and among others "Readying for Trouble: Yearlong Initiative By TIPS Focuses On..." Please register today and join us for this educational, timely and extremely worthwhile program during the ABA Midyear Meeting.

Welcome and Introductory Remarks: Randy Aliment, Williams Kastner, Chair, ABA/TIPS

BP and Beyond: Litigation and Claims Following Mass Disasters 2:00pm-3:30pm

Moderator:

Allan Kanner, Kanner & Whiteley, L.L.C., New Orleans, LA

Speakers:

Theodore R. Henke, Senior Vice President and General Counsel, The OIL Group of Companies, Hamilton, Bermuda

Allan Kanner, Kanner & Whiteley, L.L.C., New Orleans, LA

Professor Francis McGovern, Duke University, Durham, NC

Honorable Lee Rosenthal, United States District Court, Houston, TX

This program will discuss the management of litigation which often is the result of Disasters caused by Negligent Acts. The panel features panelists with a depth of experience in the tools and techniques of managing the mass torts and class action litigation filed as a result of man-made disasters. The panel will discuss the litigation and claims arising out of the Deepwater Horizon oil spill that occurred in 2010 in the Gulf of Mexico. The oil spill resulted from an explosion that killed eleven men and injured several more. The after-effects of the spill were extensive and resulted in significant litigation as well as the creation of a compensation fund, the Gulf Coast Claims Facility, that is funded by BP and administered by Kenneth Feinberg. This panel will address the claims administration process and litigation arising from the spill, including a look at insurance coverage issues.

When the Levees Broke: Lessons Learned From Judicial and Governmental Response to Hurricane Katrina 3:30pm-5:00pm

Moderator:

Jennifer Kilpatrick, Degan, Blanchard & Nash, New Orleans, LA

Speakers:

Honorable Madeleine Landrieu, Judge, Civil District Court for the Parish of Orleans, State of Louisiana

Honorable Karen Wells Roby, Magistrate Judge, United States District Court for the Eastern District of Louisiana

Lieutenant General Russel L. Honoré, U.S. Army (Ret) and Commander of Joint Task Force Katrina (Invited)

Mitch Landrieu, Mayor, City of New Orleans (Invited)

Federal, state and local governments face unique challenges when faced with a disaster, as do members of the judiciary. This program will include speakers who have faced these issues in the wake of Hurricane Katrina and will discuss what they learned in the process.

REPORTS FROM THE STATES

DELAWARE

Delaware Insurance Department Provides Guidance on Application of Civil Union And Equality Act

On November 7, 2011, the Delaware Insurance Department issued a bulletin to provide guidance with respect to the implementation of the Civil Union and Equality Act of 2011 (the "Act"). The Act creates the recognized legal relationship of civil union in the state and provides that parties to a civil union will have the same rights, benefits, protections and responsibilities as married persons under Delaware law. The Act also provides that a party to a civil union shall be included in any definition or use of the terms "dependent", "family", "husband and wife", "immediate family", "next of kin", "spouse", "stepparent", "tenants by the entirety", and other terms, whether or not gender-specific, that denote a spousal relationship or a person in a spousal relationship, as those terms are used throughout Delaware law. Insurance policies subject to Delaware law must be in compliance with the Act when it becomes effective on January 1, 2012. Policies issued prior to the effective date will be construed by the Department to comply with the Act. The Department does not require companies to file amended forms.

In compliance with the Act, the Department will interpret the term "spouse" as used in any policy, contract or application to include a same-sex marriage and will not approve newly-filed forms that fail to provide identical coverage or treatment for a same sex spouse as for an opposite sex spouse. The Department advises that a company's processes and systems must be identical with respect to parties to a civil union and married spouses. Furthermore, rates for spousal or family coverage may not vary based on whether the couple is in a marriage or a civil union. The Department also outlines specific directions for determining the date of a civil union as a valid qualifying event for purposes of evaluating eligibility for benefits. Companies are strongly encouraged to notify their policyholders and insureds as to compliance with the Act and to make appropriate amendments to applications and other documents by January 1, 2012. The Department also recommends that companies with products such as annuities which are subject to disparate federal tax rules include a clear disclosure on their policies and application forms that explains disparate federal tax consequences and encourages parties to a civil union to

consult a tax advisor prior to the purchase of a product that provides certain benefits based on spousal status. In response to the enactment of similar laws in other states, various insurance departments have issued publications addressing implications the laws may have on their state's insurance industry. In 2011, the Illinois Department of Insurance and Rhode Island's Department of Business Regulation-Division of Insurance also published corresponding bulletins.

Delaware Insurance Department, Domestic/Foreign Insurance Bulletin 46, Nov.7, 2011. [Molly E. Lang](mailto:Molly.E.Lang@NLDHLAW.COM) -- *Nelson Levine de Luca & Horst, LLC*, (614) 456-1634, mlang@NLDHLAW.COM

FLORIDA

Florida Division of Administrative Hearings Remands Jurisdiction to Florida Office of Insurance Regulation on Property and Casualty Insurer Certificate of Authority in Affiliated Entity Case

In a June 2, 2011 order involving the Florida Office of Insurance Regulation's revocation of the Certificate of the Authority for Lillian Assurance Group, a Florida domestic property and casualty insurer, the Florida Division of Administrative Hearings relinquished its jurisdiction to the OIR, explaining that "... there are no material facts to be resolved by a formal evidentiary hearing." [Rich J. Fidei](mailto:Rich.J.Fidei@cfllaw.com) -- *Colodny, Fass, Talenfeld, Karlinsky & Abate*, (954) 332-1758, rfidei@cfllaw.com

Florida Governor Rick Scott Signs 2011 Insurance-Related Bills: CS/CS/HB 99, CS/HB 723 and CS/HB 1087

CS/CS/HB 99 relating to Commercial Insurance Rates, CS/HB 723 relating to Reciprocity in Workers' Compensation Claims and CS/HB 1087 relating to Insurance were signed by Florida Governor Rick Scott today, June 17, 2011. [Rich J. Fidei](mailto:Rich.J.Fidei@cfllaw.com) -- *Colodny, Fass, Talenfeld, Karlinsky & Abate*, (954) 332-1758, rfidei@cfllaw.com

Florida Governor Rick Scott Signs Senator Garrett Richter's 'Crashworthiness' Bill (CS/SB 142) Into Law

A controversial 2001 Florida Supreme Court ruling that defined how motor vehicle "crashworthiness" cases were tried was overturned with the enactment of CS/SB 142 Relating to Negligence, which Florida Governor Rick Scott signed into law on June 23, 2011. [Rich J. Fidei](mailto:Rich.J.Fidei@cfllaw.com) -- *Colodny, Fass, Talenfeld, Karlinsky & Abate*, (954) 332-1758, rfidei@cfllaw.com

First District Court of Appeal Confirms Attorney's Fees Are Limited to Percentage of Benefits Obtained in Workers' Compensation Cases

In *Kauffman v. Community Inclusions, Inc./Guarantee Insurance Co.*, 57 So. 3d 919 (Fla. 1st DCA 2011), the First District Court of Appeal confirmed that the workers' compensation statute, section 440.34, Fla. Stat., limits claimants' attorney's fees to a percentage of benefits obtained based on a statutory formula. [Rich J. Fidei -- Colodny, Fass, Talenfeld, Karlinsky & Abate, \(954\) 332-1758, rfidei@cftlaw.com](#)

Emergency Rule Filed to Implement New Definition of 'Losses' Under CS/CS/CS/SB 408

To ensure Reimbursement Contract forms are appropriately amended and made effective as soon as possible, the State Board of Administration filed Emergency Rule 19ER11-2 (19-8.010) on July 1, 2011 to change the definition of "losses" reimbursable by the Florida Hurricane Catastrophe Fund ("FHCF") pursuant to provisions of CS/CS/CS/SB 408. [Rich J. Fidei -- Colodny, Fass, Talenfeld, Karlinsky & Abate, \(954\) 332-1758, rfidei@cftlaw.com](#)

Florida Supreme Court Finds 2005 Asbestos Lawsuit Restrictions Unconstitutional

In rulings issued July 8, 2011, the Florida Supreme Court found that the Florida Legislature acted unconstitutionally in 2005 by placing new restrictions on lawsuits filed by asbestos exposure victims. [Rich J. Fidei -- Colodny, Fass, Talenfeld, Karlinsky & Abate, \(954\) 332-1758, rfidei@cftlaw.com](#)

Third District Court of Appeal Withdraws Opinion Allowing Bad Faith Claims to Go Forward Solely on Basis of Appraisal Award

In a July 20, 2011 *en banc* opinion, the Third District Court of Appeal withdrew its previous opinion in *State Farm Florida Ins. Co. v. Seville Place Condominium Association*, 2009 WL 3271300 (Fla. 3d DCA 2009), which had allowed bad faith claims against State Farm to go forward without full resolution of the underlying claims dispute. [Rich J. Fidei -- Colodny, Fass, Talenfeld, Karlinsky & Abate, \(954\) 332-1758, rfidei@cftlaw.com](#)

Supreme Court of Florida Finds Automobile Policy Household Exclusion to be Unambiguous

In *State Farm Mutual Automobile Ins. Co. v. Gilda Menendez*, 70 So.3d 566 (August 25, 2011), the Supreme Court of Florida held in favor of State Farm on the question of "whether the household exclusion barring coverage for 'any bodily injury to' 'any insured or any member of an insured's family residing in

the insured's household' unambiguously eliminates coverage for bodily injuries suffered by the members of the household of a permissive-driver insured." [Rich J. Fidei -- Colodny, Fass, Talenfeld, Karlinsky & Abate, \(954\) 332-1758, rfidei@cftlaw.com](#)

Florida Department of Financial Services' Division of Consumer Services Instructs Neutral Evaluators on SB 408 Sinkhole Claims Changes

Upon further review to the recent amendments to Florida's neutral evaluation program made by SB 408, the Florida Department of Financial Services issued a September 13, 2011 letter instructing neutral evaluators on corresponding changes to all new and pending neutral evaluations. [Rich J. Fidei -- Colodny, Fass, Talenfeld, Karlinsky & Abate, \(954\) 332-1758, rfidei@cftlaw.com](#)

Florida Senate Committee on Judiciary Released Interim Report 2012-132 on Insurance Bad Faith

The Florida Senate Committee on Judiciary released Interim Report 2012-132 on Insurance Bad Faith on November 16, 2011. The Report outlines current practices based on the experiences of legal practitioners, insurance companies and others with expertise in insurance bad faith. [Rich J. Fidei -- Colodny, Fass, Talenfeld, Karlinsky & Abate, \(954\) 332-1758, rfidei@cftlaw.com](#)

Third District Sides with the Fourth District in Finding PIP Fee Schedules Permissive

In *Geico Indemnity Co. v. Virtual Imaging Services, Inc.*, -- So.3d --, 2011 WL 5964369, a succinct opinion issued on November 30, 2011 by the Third DCA, the court ruled that insurers may not limit provider reimbursement to 80 percent of the schedule of maximum charges set forth in Florida's Personal Injury Protection statute unless the policy provides a specific election to do so. [Rich J. Fidei -- Colodny, Fass, Talenfeld, Karlinsky & Abate, \(954\) 332-1758, rfidei@cftlaw.com](#)

GEORGIA

***Flynt v. Life of the South Ins. Co.*, -- S.E.2d --, 2011 WL 5305431, No.:A11A1379, Georgia Court of Appeals (Nov. 7, 2011)**

On November 7, 2011, the Georgia Court of Appeals reversed a trial court's denial of the plaintiff's motion for summary judgment that the defendant-insurance carrier was precluded from rescinding a credit life insurance policy the plaintiff's deceased husband obtained in connection with three loans. In this case, the decedent originally obtained the credit life insurance in 2003 and 2004 but was issued a new certificate each time the loans were renewed. According to case records, the decedent

allegedly made materially false representations about having diabetes in a “Statement of Debtor’s Physical Condition” that was submitted to the insurance carrier in 2006 in connection with a revised application when the insurance carrier revised the group life insurance policy and policy certificates, which the insurance carrier used as the basis for rescinding the policy based on decedent’s fraud. Using principles of contract construction, the Court of Appeals read the terms of each of the renewals together with the original policy and agreed with the plaintiff that the insurance carrier was precluded from rescinding the policy because the two-year incontestability period commenced at the time the original certificate was issued and not each time the certificate had been renewed. The Court wrote that “[i]f the incontestability clause were interpreted to mean that the two-year period would begin to run upon the issuance of each new certificate of insurance, it would render the clause ineffectual because of the certificate issued to the decedent had not more than a one-year term of duration. As such, if the two-year period ran anew upon the issuance of each certificate, the incontestability clause could never become operative.” [Brian T. Casey](#) -- *Locke Lord Bissell & Liddell LLP*, (404) 870-4638, bcasey@lockelord.com and [William M. Osterbrock](#) -- *Locke Lord Bissell & Liddell LLP*, (404) 870-4624, wosterbrock@lockelord.com

[Durrach v. State Farm Fire & Casualty Co., 312 Ga.App. 49, 717 S.E.2d 554, Georgia Court of Appeals \(Oct. 14, 2011\)](#)

On October 14, 2001, the Georgia Court of Appeals affirmed a trial court’s dismissal of a plaintiff’s action filed against her uninsured motorist (“UM”) carrier, State Farm Fire & Casualty Co., resulting from an accident she had with an uninsured motorist. In this action, the plaintiff failed to provide personal service of the complaint to the uninsured motorist in a renewal action, which was filed after the statute of limitations had expired. The Court of Appeals agreed with the trial court “based upon the rule that when an uninsured motorist is dismissed based on lack of personal service before a plaintiff obtains a nominal judgment against the UM carrier, the case against the UM carrier must be dismissed as well.” The Court also stated that since the plaintiff could no longer obtain a judgment against the uninsured motorist she was unable to recover from the UM carrier, denying the plaintiff’s argument that [O.C.G.A. § 33-7-11](#) did not require that a judgment must first be obtained against the uninsured motorist prior to being able to recover uninsured motorist benefits. [Brian T. Casey](#) -- *Locke Lord Bissell & Liddell LLP*, (404) 870-4638,

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[Colony Bank v. Hanover Insurance Co., 2011 WL 5419459, No.: 4:10-CV-131 \(CDL\), United States District Court for the Middle District of Georgia \(Nov. 9, 2011\)](#)

On November 9, 2011, the U.S. District Court for the Middle District of Georgia granted the defendant insurance carrier’s motion for summary judgment in an action brought against the insurance carrier by the plaintiff lienholder of a commercial building that sustained substantial fire damage which loss occurred 13 months after the commercial insurance policy was cancelled by the carrier. The issue before the Court was whether the cancellation of the commercial insurance policy was ineffective as to the lienholder, when the insurance carrier failed to provide notice of cancellation to the plaintiff. The Court found that even though the policy provided for notice to be sent to the lienholder any time the property owner cancelled or failed to renew the policy and [O.C.G.A. § 33-24-44\(b\)](#) provides that an insurer must provide a notice of cancellation to the insured and any lienholder, unlike in the case of automobile and homeowners’ insurance policies where the failure to provide notice of cancellation to the lienholder makes a cancellation by an insurer ineffective, Georgia law does not provide for any adverse consequences to insurers when they fail to provide the required notice to lienholders with respect to a commercial insurance policy. [Brian T. Casey](#) -- *Locke Lord Bissell & Liddell LLP*, (404) 870-4638, bcasey@lockelord.com and [William M. Osterbrock](#) -- *Locke Lord Bissell & Liddell LLP*, (404) 870-4624, wosterbrock@lockelord.com

[Hernandez Auto Painting & Body Works, Inc. v. State Farm Mutual Automobile Co., -- S.E.2d --, 2011 WL 5830465, Nos.: A11A0962, A11A0962, A11A0963, Georgia Court of Appeals \(Nov. 21, 2011\)](#)

On November 21, 2011, the Georgia Court of Appeals reversed a trial court’s denial of the defendant insurance carrier’s motion to dismiss the claims brought by the plaintiff automobile repair facility against the insurance carrier for allegedly “steering” consumers away from using the plaintiff’s facilities. In this case, the plaintiff claimed that, through the insurance carrier’s actions, the insurance carrier committed trade libel and violated the provisions of the Georgia Motor Vehicle Accident Reparations Act (“MVARA”). After surveying case law precedent, the Court of Appeals held that (a) no Georgia court has recognized the tort of trade libel and it refused to create such a right of action at this time and (b) that

the MVARA created no private right of action and only the Georgia Insurance Commissioner had the authority to enforce any requirements thereunder. [Brian T. Casey](#) -- *Locke Lord Bissell & Liddell LLP*, (404) 870-4638, bcasey@lockelord.com and [William M. Osterbrock](#) -- *Locke Lord Bissell & Liddell LLP*, (404) 870-4624, wosterbrock@lockelord.com

Department of Health & Human Services Grants Georgia Commissioner of Insurance's Request to Adjust 80% Medical Loss Ratio Requirement for Georgia Insurers.

In a letter dated November 8, 2011, the federal Department of Health & Human Services (the "DHHS") responded to the Georgia Commissioner of Insurance's (the "Commissioner") request to lower the eighty percent (80%) medical loss ratio ("MLR") standard applicable to individual health insurers in the State of Georgia. Although the Commissioner requested that the MLR be adjusted to 65%, 70% and 75% for reporting years 2011, 2012 and 2013, respectively, the DHHS granted the request but only adjusted the MLR to 70% for 2011 and 75% for 2012, stating that "the MLR standard sought by the [Commissioner] exceeds the adjustment necessary to avoid the likelihood of market destabilization between now and 2014, and therefore would unnecessarily deny consumers some of the benefits of section 2718" of the Public Health Service Act. [Brian T. Casey](#) -- *Locke Lord Bissell & Liddell LLP*, (404) 870-4638, bcasey@lockelord.com and [William M. Osterbrock](#) -- *Locke Lord Bissell & Liddell LLP*, (404) 870-4624, wosterbrock@lockelord.com

Georgia Commissioner of Insurance Issues Bulletin Regarding Impact of Nonadmitted and Reinsurance Reform Act of 2010.

On September 12, 2011, Georgia's Commissioner of Insurance issued Insurance Bulletin 11-EX-3 (the "Bulletin") in order to outline nationwide regulatory changes affecting the placement of nonadmitted insurance in Georgia, which was occasioned by the passage of the Nonadmitted and Reinsurance Reform Act of 2010 (the "NRRA"), which became effective on July 21, 2011. One of the purposes of the Bulletin was to make clear that the NRRA did not have any impact on the scope of the types of insurance products that an insurer may write on a nonadmitted basis in Georgia, which remain unchanged. The Bulletin also explains how an insured's "home state" is determined for purposes of premium tax allocation, the allocation methodology when a surplus lines insurance policy covers risks or exposures located or to be performed inside and outside of the state, changes to the diligent

search requirements of a surplus lines insurance broker before procuring insurance on a surplus lines basis and the preemptive nature of the NRRA's restrictions on the ability of states to place eligibility requirements on nonadmitted insurers. [Brian T. Casey](#) -- *Locke Lord Bissell & Liddell LLP*, (404) 870-4638, bcasey@lockelord.com and [William M. Osterbrock](#) -- *Locke Lord Bissell & Liddell LLP*, (404) 870-4624, wosterbrock@lockelord.com

ILLINOIS

Update on Workers' Compensation Reform

Contrary to the Summer 2011 narrative on workers' compensation and reform not being passed, the rumors of its death turned out to be premature. In late session activity, a compromise bill reforming workers' compensation was indeed passed and was signed by Governor Pat Quinn on June 28, 2011. The changes signed into law included slashing of medical rates payable under the system, creation of a new set of standards used to determine the extent of a worker's disability and the institution of a number of safeguards aimed at preventing the abuses of the system currently believed to be taking place. The reforms did not come easily, but were the product of intense discussions between the governor's office, business groups and unions, and doctors and attorneys. Like any compromise legislation, no side was entirely pleased with the end product, but it is a start and believed to be a dent in an area that has been seen as inefficient and broken. Governor Quinn stated that estimated savings under the reforms will be \$500 million per year. [Daniel A. Cotter](#) -- *Korey Cotter Heather & Richardson, LLC*, (312) 259-4285, cotter@kchrllaw.com

Cap on Form Filing Fees

On August 26, 2011, Illinois Governor Pat Quinn signed a new law (Public Act 97-603) that sets a cap for form filing fees, effective immediately. The new law provides that fees charged for a filed policy may not exceed \$1,500 for insurance companies and \$2,500 for advisory or rating organizations, regardless of the number of forms comprising the policy.

The fee cap was sought to lessen the costly impact that Illinois domestic insurers endured due to the retaliatory filing fees that were charged by other states. In this regard, other states charged Illinois insurance companies the same uncapped form filing fees that Illinois charged all insurance companies, including those domiciled in the other jurisdictions. Under the new law, the Illinois fee cap applies to all insurers and will protect

Illinois insurers as they file programs with insurance departments across the country, which will be expected to honor the newly-enacted fee cap. [David I. Schonbrun](#) -- *Hiscox USA*, (914) 273-7487, David.Schonbrun@Hiscox.com

LOUISIANA

Update on Louisiana Citizens Property Insurance Corporation Depopulation Program

With the latest round of annual depopulation completed, Louisiana Insurance Commissioner Jim Donelon has announced that the homeowners insurer of last resort, Louisiana Citizens Property Insurance Corporation, has moved an additional 10,890 homeowners policies into the private insurance market. This should decrease Citizens' market share from 5.3% at the end of 2010 to approximately 4.3%. Access Home, Capitol Preferred, Centauri Specialty, Lighthouse and Occidental insurance companies all made successful bids to assume policies from Citizens. Since the Louisiana Department of Insurance began the Citizens Depopulation Program in 2008, more than 67,000 policies have been assumed by private insurers from Citizens. [Van R. Mayhall, III](#) -- *Breazeale, Sachse & Wilson, LLP*, (225) 381-3169, van.mayhall.iii@bswllp.com

MASSACHUSETTS

Massachusetts Implements Municipal Health Insurance Reform

In July, 2011, Massachusetts enacted a municipal health insurance reform law. In Massachusetts each city and town negotiates and contracts for health benefits separately, while state employees are insured through the state Group Insurance Commission. Facing exorbitant health care costs and decreased revenues, some municipalities had resorted to laying off employees and diverting funds earmarked for public services in order to pay for health benefits. The purpose of the legislation is to provide municipalities with the tools to effectively manage escalating health care costs. The new legislation gives municipalities two options to cut health insurance costs: 1) an expedited collective bargaining process to negotiate new health insurance plans, which can be used to adopt co-pays, deductibles and other cost-sharing features and 2) the ability to transfer employees into the state Group Insurance Commission if the transfer would result in at least a 5% savings compared to the municipal health plan. The reform legislation includes protections for retirees and employees with exceptionally high health care costs. The collective savings for Massachusetts municipalities is projected at more than \$100 million.

The legislation is being lauded as one of the most significant measures to assist Massachusetts cities and towns in the past thirty years.

The new law is codified in Massachusetts General Laws chapter 32B and is implemented by the regulations in [805 Code of Massachusetts Regulations 8.01](#) et seq. [Karen Breda](#) -- *Boston College Law School*, (617) 552-4407, bredaka@bc.edu

MINNESOTA

Minnesota Department of Commerce Reorganization

The Minnesota Department of Commerce has undergone a significant and strategic reorganization. The Department created the Division of Insurance to house its insurance units and to unify regulatory oversight of all insurance activities. The Division of Insurance will include the insurance financial solvency and actuarial groups formerly part of the Financial Institutions Division, as well as the Insurance Product Filing unit and Life, Health, Workers Comp and Self-Insurance Staff. The Enforcement Division will retain authority over insurance related enforcement matters. "Consolidating all of the department's insurance regulatory activity into one cohesive, collaborative division is crucial to the mission of our department," Commissioner Rothman said on the Department's website. "From settling a claim to filing a complaint to complying with the state's licensing requirements, this new Division of Insurance will provide a single accessible resource for consumers and businesses working to navigate complex insurance matters in our state." [Michelle M. Carter](#) -- *Arthur Chapman*, (612) 375-5980, mmcarter@arthurchapman.com

NEW YORK

Large Commercial Insureds

Under legislation effective November 15, 2011, New York has expanded commercial deregulation by amending New York Insurance Law Article 63, to permit insurers admitted in New York to provide more kinds of insurance to large commercial insureds, defined in detail in the amendment, without prior approval of rates and forms. Article 63 established the New York Free Trade Zone to permit the sale of policies to large commercial insureds, in the admitted market, with reduced regulatory oversight. Policies issued under the new standards must comply with New York policy requirements. The Superintendent has authority to order an insurer to cease using a non-complying form, after notice and a hearing. Among the types of insurance that can now be issued

to qualifying large commercial insureds are fidelity-surety, motor vehicle and legal services insurance. The amendments come on the heels of amendments to the New York surplus lines law providing for commercial exempt policyholders as mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act. William K. Broudy, wbroudy@optonline.net and Francine L. Semaya, flsemaya@gmail.com

Merger of New York's Banking and Insurance Departments Creates the Department of Financial Services

On October 3, 2011, New York's Department of Financial Services (DFS) began operations, headed by Superintendent Benjamin Lawsky. Created as part of Governor Andrew Cuomo's budget legislation, the DFS merges the Banking and Insurance Departments, following the lead of New Jersey, Florida and other jurisdictions. Deputy Superintendents head the Banking and Insurance Divisions of the DFS. The Financial Frauds and Consumer Protection Division, the Real Estate Finance Division and the Capital Markets Division of the DFS provide expanded consumer protection. All current banking and insurance licensing and regulations remain in place. Circular Letters and determinations issued by the former New York Insurance Department in addition to stipulations entered into by the former Insurance Department also remain effective.

The Financial Frauds and Consumer Protection Division is empowered to hold hearings with respect to such issues as intentional misrepresentations in the sale of financial products or services and to impose civil penalties up to \$5000 without the necessity of a court proceeding. The Consumer Protection Division is also authorized to conduct research, studies and analyses of issues affecting consumers. Holders of licenses issued by the Insurance Department remain subject to current penalties for violations as set forth in the New York Insurance Law. William K. Broudy, wbroudy@optonline.net and Francine L. Semaya, flsemaya@gmail.com

VIRGINIA

Summary of Certain 2011 Administrative Letters Issued by the Virginia Bureau Of Insurance

The Virginia Bureau of Insurance ("VABOI") has published two Administrative Letters since July 2011 to provide guidance on (1) Gramm-Leach-Bliley-Act ("GLBA") Privacy Notices, and (2) Advisory Filings by Rate Service Organizations. The following is a brief summary of these Administrative Letters.

Gramm-Leach-Bliley Act Privacy Notices

On July 18, 2011, the VABOI issued Administrative Letter 2011-06 to all insurance institutions in Virginia to clarify that insurance institutions may use the new federal Model Privacy Form consistent with the federal instructions and as amended to comply with the instructions in the Administrative Letter as a safe harbor for compliance with GLBA's requirements set forth in Virginia's Financial Information Collection and Disclosure Practices Notice requirements (the "Virginia Privacy Notice"). These notice requirements apply to life insurance, accident and sickness insurance, and property and casualty insurance primarily for personal, family, or household purposes. Use of the Model Privacy Form is not required and insurance institutions may continue to use their existing privacy notices that meet Virginia's specific requirements. Insurance institutions choosing to use the Model Privacy Form should add the Virginia specific information to the "Other Important Information" box on page 2 of the Model Privacy Form. Virginia specific information includes a description of the categories of persons to whom financial information may be disclosed and the policies and procedures for protecting the confidentiality and security of financial information. Also, when describing the categories of parties to whom financial information is disclosed, it is not necessary to list the statutory exceptions and it is sufficient to state that disclosures are made to other nonaffiliated companies "as permitted by law." Insurers and agents should note that use of the federal Model Privacy Notice as amended to comply with Virginia's requirements only provides a safe harbor for Virginia's Privacy Notice (§ 38.2-604.1) and does not provide a safe harbor for Virginia's Notice of Insurance Information Collection and Disclosure Practices required by [Virginia Code § 38.2-604](#). The two notices are different with different triggers. As a result, insurers and agents are reminded they are still required to provide the notice required by [Virginia Code § 38.2-604](#). Scott J. Sorkin – *Bland & Sorkin, P.C.*, (804) 747-6667, ssorkin@blandsorkin.com.

Rate Service Organizations – Advisory Filings

On October 25, 2011, the VABOI issued Administrative Letter 2011-07 to all property and casualty insurers and Rate Service Organizations ("RSOs"), announcing that effective immediately RSOs will be permitted to submit Advisory Filings in addition to filing forms and supplementary rate information *on behalf of* insurers that are members or subscribers of the RSO. The VABOI included in the Administrative

Letter an outline of the process it has established for administering the filing and adoption of Advisory Filings, and included an Advisory Filing Adoption Form (AFAF-1) which an RSO's member or subscriber insurer must use if it decides to adopt an Advisory Filing. The Administrative Letter includes a list of questions and answers to guide RSOs and insurers regarding the adoption of an RSO's Advisory Filings. The VABOI

also reminds insurers in the Administrative Letter that a failure to comply with the applicable filing requirements may result in penalties as set forth in [Virginia Code § 38.2-218](#). Please note that this is just a summary of the Administrative Letters issued by the VABOI since July 2011. [Scott J. Sorkin](#) – *Bland & Sorkin, P.C.*, (804) 747-6667, ssorkin@blandsorkin.com. ⚖️

RECENT NAIC ...

Continued from page 1

- A narrative summary
- A numeric summary

Specific requirements also apply to fixed index annuities.

Credit for Reinsurance Model Law and Regulation

After more than three years of discussions, the NAIC adopted amendments to the Credit for Reinsurance Model Act and Regulation. Prior to the amendments, the Models generally required that a non-US domiciled reinsurer post 100% collateral securing its reinsurance payment obligations for a cedent to obtain full financial statement credit for reinsurance ceded to that reinsurer. The amendments add as an alternative to full collateral a ratings-based, state certification process that determines required minimum collateral levels based in large part upon the reinsurer's financial strength ratings. Several states, including Florida and New York, previously implemented their own versions of a reduced collateral program, but there have been no indications as to whether those programs will be changed to align fully with the NAIC Models. The effectiveness of this new program will depend upon a number of factors, including which states adopt this program and how the various components of the program are implemented.

2011 Continuing Projects for 2012

SOCIAL MEDIA

The Social Media Working Group is working to finalize *The Use of Social Media in Insurance* White Paper. The latest December 1 draft is posted on the

NAIC website; a conference call to discuss adoption of the draft was scheduled for December 15. If adopted by the Working Group, the White Paper will be sent to the (D) Committee. The Working Group indicated that a NAIC model law on Social Media is unlikely, but that the NAIC may wish to modify sections in the Market Regulation Handbook to address social media.

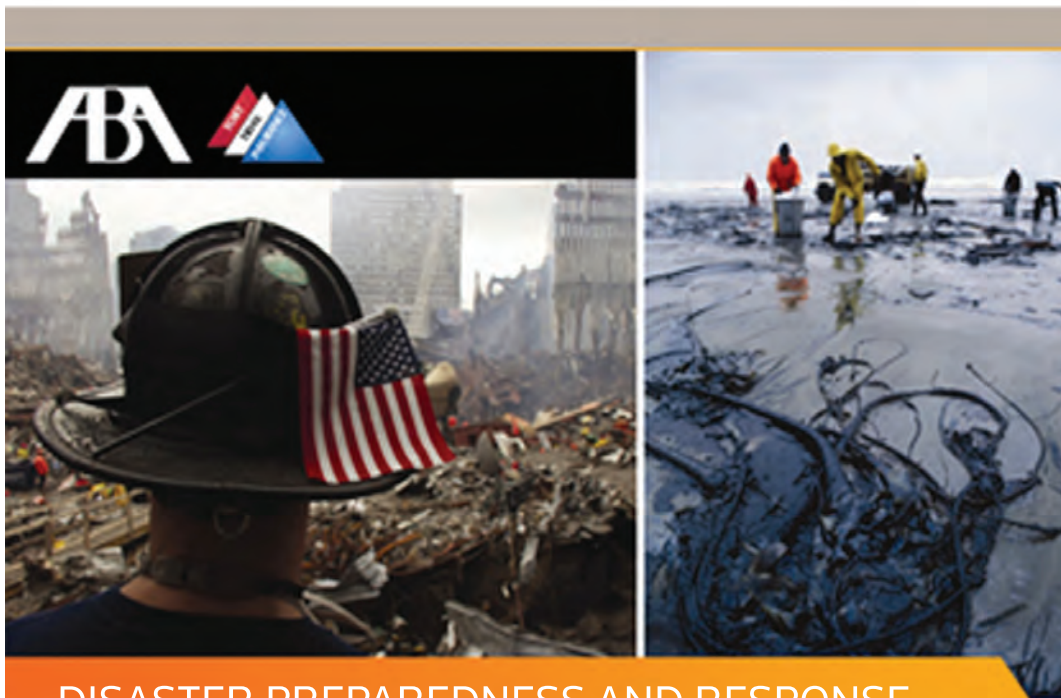
CONTINGENT ANNUITIES

During the fall of 2011, the Life Insurance and Annuities Committee addressed the Life Actuarial Task Force ("LATF") referral as to whether contingent annuities should be classified as an annuity or financial guaranty product. The American Academy of Actuaries' Contingent Annuity Work Group presented an analysis supporting the conclusion that contingent annuities are an annuity product that can benefit consumers. LATF decided to form a subgroup of the (A) and (E) Committees to further study the issue.

SEPARATE ACCOUNT FINANCIAL STATEMENTS

At the Fall Meeting, the Financial Condition (E) Committee charged the Receivership Separate Accounts (E) Working Group with proposing separate accounts blank reporting changes in order to distinguish between separate accounts that are "insulated" from the creditors of the insurer's general account and "non-insulated" separate accounts. On November 17, the Working Group circulated its proposal; comments were due on December 7. The Working Group anticipates finalizing its proposal by February 12, so that it can be exposed at the Spring Meeting and potentially adopted and effective for 2012 annual filings. ⚖️

West LegalEdcenter and ABA Tort Trial & Insurance Practice Section presents a series of programs dedicated to Disaster Preparedness and Response



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For more information and to submit a nomination, please contact Jennifer LaChance at Jennifer.LaChance@americanbar.org

Nomination Deadline: February 28, 2012

A special thanks to The Edmund S. Muskie Archives and Special Collections Library for their use of the Edmund S. Muskie photograph.

2012 TIPS CALENDAR

January 2012

25-27 Fidelity & Surety Committee Midwinter Mtg. Waldorf~Astoria
Contact: Felisha A. Stewart – 312/988-5672 Hotel, New York, NY

February 2012

2-5 ABA Midyear Meeting New Orleans Marriott
Contact: Felisha A. Stewart – 312/988-5672 New Orleans, LA

February 3, 3:00 – 5:00 p.m

CLE Program: Disaster Preparedness & Response Series

16-19 Insurance Coverage Litigation Arizona Biltmore
Midyear Meeting Resort and Spa
Contact: Ninah Moore – 312/988-5498 Phoenix, AZ

March 2012

8-10 Workers' Compensation CLE Program The Westin
Contact: Donald Quarles – 312/988-5708 Riverwalk Hotel
San Antonio, TX

29-30 Emerging Issues in Motor Vehicle Product Arizona Biltmore
Liability Litigation National Program Resort and Spa
Contact: Donald Quarles – 312/988-5708 Phoenix, AZ

30-31 Toxic Torts & Environmental Law Committee Arizona Biltmore
Midyear Meeting Resort and Spa
Contact: Felisha A. Stewart – 312/988-5672 Phoenix, AZ

April 2012

14-18 TIPS National Trial Academy Grand Sierra Resort & Casino
National Judicial College Reno, NV
Contact: Donald Quarles – 312/988-5708