and directed the trial court to determine the appropriate amount of that award.

DEPARTMENT OF CORPORATIONS

Commissioner: Thomas Sayles
(916) 445-7205
(213) 736-2741

The Department of Corporations (DOC) is a part of the cabinet-level Business, Transportation and Housing Agency and is empowered under section 25600 of the California Code of Corporations. The Commissioner of Corporations, appointed by the Governor, oversees and administers the duties and responsibilities of the Department. The rules promulgated by the Department are set forth in Chapter 3, Title 10 of the California Code of Regulations (CCR).

The Department administers several major statutes. The most important is the Corporate Securities Act of 1968, which requires the "qualification" of all securities sold in California. "Securities" are defined quite broadly, and may include business opportunities in addition to the traditional stocks and bonds. Many securities may be "qualified" through compliance with the Federal Securities Acts of 1933, 1934, and 1940. If the securities are not under federal qualification, the commissioner must issue a "permit" for their sale in California.

The commissioner may issue a "stop order" regarding sales or revoke or suspend permits if in the "public interest" or if the plan of business underlying the securities is not "fair, just or equitable."

The commissioner may refuse to grant a permit unless the securities are properly and publicly offered under the federal securities statutes. A suspension or stop order gives rise to Administrative Procedure Act notice and hearing rights. The commissioner may require that records be kept by all securities issuers, may inspect those records, and may require that a prospectus or proxy statement be given to each potential buyer unless the seller is proceeding under federal law.

The commissioner also licenses agents, broker-dealers, and investment advisors. Those brokers and advisors without a place of business in the state and operating under federal law are exempt. Deception, fraud, or violation of any regulation of the commissioner is cause for license suspension of up to one year or revocation.

The commissioner also has the authority to suspend trading in any securities by summary proceeding and to require securities distributors or underwriters to file all advertising for sale of securities with the Department before publication. The commissioner has particularly broad civil investigative discovery powers; he/she can compel the deposition of witnesses and require production of documents. Witnesses so compelled may be granted automatic immunity from criminal prosecution.

The commissioner can also issue "desist and refrain" orders to halt unlicensed activity or the improper sale of securities. A willful violation of the securities law is a felony, as is securities fraud. These criminal violations are referred by the Department to local district attorneys for prosecution.

The commissioner also enforces a group of more specific statutes involving similar kinds of powers: Franchise Investment Statute, Credit Union Statute, Industrial Loan Law, Personal Property Brokers Law, Health Care Service Plan Law, Escrow Law, Check Sellers and Cashers Law, Securities Depositor Law, California Finance Lenders Law, and Security Owners Protection Law.

A Consumer Lenders Advising Committee advises the commissioner on policy matters affecting regulation of consumer lending companies licensed by the Department of Corporations. The committee is composed of leading executives, attorneys, and accountants in consumer finance.

MAJOR PROJECTS:

Regulatory Action Under the Health Care Service Plan Act. DOC recently adopted two packages of changes to its regulations under the Knox-Keene Health Care Service Plan Act of 1975.

First, the Department adopted changes to its rules relating to existing discrimination prohibitions and subscriber and group contract notification requirements. DOC repealed section 1300.67.10, Title 10 of the CCR, which prohibits discrimination by health care service plan (HCSP) contracts; this section was recently codified as Health and Safety Code section 1365.5. The Department also amended subsections (a)(6) and (a)(7) of section 1300.67.4, Title 10 of the CCR, to conform with recent legislation which added Article 5.5 (commencing with section 1374.20) to Chapter 2.2 of Division 2 of the Health and Safety Code. These new statutes require a specified written notice of changes in premium rates or coverage prior to a group contract renewal effective date. Thus, subsections (a)(6) and (a)(7) of section 1300.67.4 were amended to delete a hand-delivery mode of forwarding the notice and to provide for mailing at the most current address of record. Finally, DOC revised subsections (a)(2)(A) and (c)(9) of section 1300.67.4 to include an appropriate reference to the CCR. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 126 for background information.) At this writing, these proposed changes await review and approval by the Office of Administrative Law (OAL).

The second regulatory package contains amendments to DOC's standards for Medicare supplement policies offered by HCSPs under the Department's jurisdiction. Through a series of statutes and regulations, the federal government has set forth a program for the certification of policies, certificates, and contracts offered by private HCSPs and other entities to supplement the benefits of the federal Medicare program (sometimes called "Medigap" policies). The federal program preempts state law, except in states with approved regulatory programs which (1) provide for the application of Medigap policy standards which are equal to or more stringent than the standards of the Model Regulation on such policies adopted by the National Association of Insurance Commissioners in 1979; and (2) require Medigap policy or contract performance which is expected to meet or exceed specified loss ratio standards. California is a state with an approved regulatory program, but it must amend its regulations to comply with the federal law. Thus, in August DOC proposed to amend seven existing Medigap policy regulations and adopt ten new ones. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 126 for background information.) Following a comment period ending on October 11, DOC adopted the proposed regulatory changes (with one exception) and submitted the rulemaking file to OAL for approval.

On November 25, OAL approved all but two of DOC's proposed actions; it disapproved the Department's amendments to section 1300.67.52 and its adoption of section 1300.64.54, which establish minimum benefit standards for Medigap supplement contracts offered by HCSPs. Health and Safety Code section 1367.15(a) requires such contracts to "[m]eet the minimum benefit standards as established by the Commissioner of Corporations and Insurance Commissioner jointly." According to OAL, none of the materials submitted for review addressed this "joint establishment" requirement. In response to

an inquiry by OAL during its review, the Corporations Commissioner submitted a statement of compliance that the minimum benefit standards have been established jointly by the two commissioners; however, this statement was not approved of or ratified by the Insurance Commissioner. OAL opined that the "joint establishment" provision of section 1367.15(a) "requires that the Insurance Commissioner act jointly with, approve of, or (at minimum) concur in or ratify the Corporations Commissioner's adoption of a regulation setting minimum benefit standards for plans offering Medicare supplement coverage. A unilateral action by the Corporations Commissioner cannot satisfy the statutory requirement for joint action."

At this writing, DOC is revising the rulemaking file in response to OAL's concerns and expects to resubmit an amended rulemaking file on the two disapproved sections in the near future.

Proposed Regulatory Action Under the Corporate Securities Law. On November 22, DOC announced its proposal to amend regulations relating to conforming California's investment adviser regulations to the regulations of the Securities and Exchange Commission and the North American Securities Administrators Association. Currently, DOC's regulations under the Corporate Securities Law (CSL) of 1968 do not contain provisions regarding "agency cross transactions for an advisory client" by a licensed investment adviser or affiliated licensed broker-dealer. The term "agency cross transaction for an advisory client" means a transaction in which a person acts as an investment adviser in relation to a transaction in which the adviser, or any person controlling, controlled by, or under common control with the adviser, also acts as a broker-dealer for both the advisory client and for another person on the other side of the transaction.

The Commissioner proposes to adopt section 260.235.3, Title 10 of the CCR, to specify that a licensed investment adviser or a person licensed as a broker-dealer controlling, controlled by, or under common control with a licensed investment adviser (collectively "persons") shall be deemed to be in compliance with section 25235(c) of the CSL in effecting agency cross transactions for an advisory client, if (1) the advisory client has executed a written consent authorizing the person to effect agency cross transactions provided that the written consent is obtained after full written disclosures, as specified; (2) the person sends to each client a written confirmation containing specified information; (3) the person sends to each client, at least annually, a written disclosure statement identifying the total number of transactions during the period since the date of the last statement and the total amount of all remunerations received or to be received; (4) each written disclosure or confirmation includes a conspicuous statement that the written consent may be revoked at any time by written notice; and (5) no transaction is effected in which the same person or an affiliate recommended the transaction to both any seller and any purchaser.

Further, current regulations implementing the CSL do not contain provisions regarding financial and disciplinary disclosures by investment advisers. The Commissioner proposes to adopt section 260.235.4, Title 10 of the CCR, to provide that it shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 25235 of the CSL for any investment adviser to fail to disclose to any client or prospective client all material facts regarding (1) a financial condition that is reasonably likely to impair the ability of the adviser to meet contractual commitments to clients if the adviser has discretionary authority, custody of funds or securities, or requires prepayment of advisory fees; and (2) a legal or disciplinary event that is material to the evaluation of the adviser's integrity or ability to meet contractual commitments to clients.

Finally, DOC's regulations implementing the CSL do not contain provisions regarding fair, equitable, and ethical principles of investment advisers. Proposed section 260.238, Title 10 of the CCR, would provide that certain activities do not promote "fair, equitable, or ethical principles" as that phrase is used in section 25238 of the CSL. The regulation then categorically lists those activities, which include—among others—recommending to a client any purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable, and inducing excessive trading in a client's account. DOC was scheduled to receive public comments on these proposed regulations until January 24; no public hearing is scheduled at this writing.

On December 6, the Commissioner published notice of his intent to amend section 260.165, Title 10 of the CCR, which currently sets forth the consent to service of process form required to be filed by Corporations Code section 25165. The Commissioner intends to amend section 260.165 to reflect current Department practices to allow the filing of either (1) the form as contained in the rule; or (2) the Uniform Consent to Service of Process (Form U-2). DOC accepted public comments on this proposed change until January 24; at this writing, no public hearing is scheduled.

On December 27, DOC published notice of its intent to amend sections 260.101.1 and 260.101.3, Title 10 of the CCR, to implement Corporations Code section 25101(b), which provides an exemption from the qualification requirements of section 25130 (dealing with non-issuer transactions) for any security which meets the enumerated requirements of section 25101(b) if there is filed with the DOC Commissioner a notice in the form specified by the Commissioner in rulemaking. Section 25101(b) provides that the National Association of Securities Dealers, Inc. (NASD) may file the notice required by the Commissioner on behalf of an issuer whose securities meet the requirements of the exemption under Corporations Code section 25101(b). During the past two years, DOC and NASD have worked to develop a filing procedure by computer tape or disk to implement section 25101(b). Thus, the regulatory amendments are proposed to facilitate the notice filing by NASD under section 25101(b). Additionally, DOC has proposed technical, clarifying amendments to the two regulatory sections. DOC was scheduled to accept public comments on these proposed changes until February 21; at this writing, no public hearing is scheduled.

Last July, DOC published numerous proposed regulatory changes to the Commissioner's securities qualification standards for real estate programs in the form of limited partnerships. Many of the proposed changes are intended to conform with the Guidelines of the North American Securities Administrators Association. The proposed revisions affected 53 different sections of the CCR. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 126; Vol. 11, No. 3 (Summer 1991) p. 122; and Vol. 11, No. 1 (Winter 1991) p. 98 for background information.) DOC dropped this proposal, but has since reopened it in response to public comment. DOC expects to renotice a new, revised proposal in the future.

In other rulemaking action, DOC's proposed regulatory changes to sections 260.140.8, 260.140.41, 260.140.42, its proposed repeal of section 260.140.41.2; and its proposed adoption of section 260.140.46, relating to employee benefit plans, were approved by OAL on December 5. (See CRLR Vol. 11, No. 4

(Fall 1991) p. 126; Vol. 11, No. 3 (Summer 1991) p. 122; and Vol. 11, No. 1 (Winter 1991) pp. 98–99 for background information.)

Department Amends Conflict of Interest Code. DOC's proposed amendments to the Appendix to regulatory section 250.30, relating to "designated employees" for the purpose of the Department's conflict of interest code, were approved by OAL on November 4. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 126 for background information.)

DOC Drops Proposed Regulatory Action Under the Escrow Law. The Department has decided not to pursue the proposed addition of section 1727 to its regulations, to implement section 17202 of the Financial Code. That statute permits an escrow agency applicant or licensee to obtain, in lieu of a surety bond, an irrevocable letter of credit approved by the Commissioner. New section 1727 would have required, among other things, that the letter be a personal obligation of the owner(s) of the escrow company. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 126 and Vol. 11, No. 3 (Summer 1991) pp. 121–22 for more detailed information.)

Proposed Regulatory Action Under the Credit Union Law. On October 31, OAL approved DOC's amendments to section 976, which concerns loans secured by real property. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 97–98 for detailed background information on these changes.)

On December 27, DOC published notice of its intent to repeal section 909 and adopt a new section 909, Title 10 of the CCR. Existing section 909 sets forth various requirements regarding surety bonds and/or insurance policies requiring, among other things, that the bonds be written for the protection of the credit union on the basis of faithful performance of duty; that all surety bonds and/or insurance policies protect the credit union against loss or damage due to specified acts; and that no termination of the bond and/or insurance policy shall take effect prior to the expiration of thirty days after written notice has been filed with the DOC Commissioner.

DOC's proposed new section 909 would clarify when bond or insurance coverage is deemed "commensurate with risks involved." Among other things, the bond form or insurance policy must be approved by rule or regulation of the National Credit Union Administration. In addition, the bond form or insurance policy must also provide coverage for loss caused by fraud or dishonesty or through the failure of an officer, credit manager, or employee to faithfully perform his/her trust; provide coverage for loss caused by noncompliance with any provision of federal or state laws or regulations dealing with specified subjects; and contain a requirement that the issuer of the bond or insurance policy give the Commissioner at least thirty days' written notice prior to termination. The proposed regulation would set forth minimum coverage amounts and minimum deductibles based on the gross assets of the credit union. DOC was scheduled to accept public comments on this proposed change until February 21; at this writing, no public hearing is scheduled.

Enforcement. On September 19, Commissioner Sayles adopted Administrative Law Judge Samuel D. Reyes' decision in the matter of the Accusation against Mary N. Walkup and Escort Escrow Corporation of Fullerton, revoking Escort's license and barring Walkup from any employment, management, or control of any escrow licensee regulated by DOC. Walkup and the entire escrow industry were warned to avoid unusual transactions which exhibit characteristics of kiting or money laundering. The Commissioner found that Walkup and Escort opened a number of escrows involving no real property on behalf of North American Savings and Loan, Janet McKinzie (who was formerly prosecuted by the U.S. Attorney for money laundering and found guilty on a number of charges; Walkup had been a government witness during McKinzie's prosecution), and an affiliated company. The parties then made disbursements without receiving any written instructions. DOC found that at least $16 million was deposited by North American, McKinzie, and the affiliated company with Walkup at Escort and was disbursed on unilateral verbal instructions soon after the funds were received, indicating that the only purpose of the transaction was the transfer of funds from one account to another.

On December 18, DOC announced that orders to discontinue business and the disbursement of trust funds and taking of the company were issued to General Money Order Company, Inc. (General), located in Los Angeles; under the orders, DOC took possession of the company as of December 17. General is licensed under the Check Sellers and Cashers Law to sell money orders; General sells its money orders through a network of approximately 1,400 agents including liquor stores, convenience stores, check cashers, and others located in southern California. Sales of these money orders during the month of November totalled approximately $60 million for 300,000 money orders. The order to discontinue business was issued as a result of a shortage of at least $3.16 million in funds available to pay outstanding money orders. The shortage is alleged to have been caused in part by the failure of some agents to remit funds from money order sales. In addition, DOC is investigating possible wrongdoing by General and one or more of its agents.

LEGISLATION:

S. 263 (Dixon) is a federal legislation which would reform the regulation of financial services and strengthen the enforcement authority of depository institution regulatory agencies. Among other things, the bill would repeal existing provisions of the Banking Act of 1933 which (1) prohibit a bank that is a member of the Federal Reserve System (member bank) from affiliating with a securities firm; and (2) prohibit member banks from employing officers, directors, or employees who are also employed by a firm primarily engaged in securities activities. The bill would allow bank holding companies to own shares of securities affiliates which engage in (1) underwriting, distributing, or dealing in securities of any type; (2) securities brokerage, investment advisory, or other accepted securities activities; and (3) other activities permitted by the Board of Governors of the Federal Reserve System. The bill would also prohibit mergers between certain large banks or bank holding companies (those having assets of more than $30 billion) and large securities firms (those having assets of more than $15 billion). This bill is pending in the Senate Banking, Housing, and Urban Affairs Committee.

SB 488 (Mello). Existing law provides that every credit union shall obtain insurance, a guaranty of shares, or a form of comparable insurance or guaranty of shares acceptable to the Commissioner of Corporations, for the purpose of insuring its members' share accounts. As amended May 20, this bill would specify that the comparable insurance or guaranty of shares acceptable to the Commissioner is to be provided by a guaranty corporation licensed pursuant to this bill. This two-year bill is pending in the Senate Committee on Banking, Commerce and International Trade.

SB 852 (Bergeson) would authorize a HCSP to enter into a new or modified plan contract or publish or distribute, or allow to be published or distributed on its behalf, a disclosure form or evidence of coverage without having filed the

same for the Commissioner's approval if the contract, disclosure form, or evidence of coverage is pursuant to a contract with the federal Health Care Financing Administration to provide Medicare benefits and services. This two-year bill is pending in the Senate Committee on Insurance, Claims and Corporations.

AB 1124 (Frizzelle) would prohibit HCSPs and specialized HCSPs which provide one or more optometric services from interfering with the professional judgment of a person engaged in the practice of optometry pursuant to the plan. This two-year bill, which would impose additional requirements on HCSPs relating to optometry, is pending in the Assembly Health Committee.

SB 1596 (Floyd). The California Public Records Act generally requires that records of state and local agencies be open to public inspection, with specified exceptions, including specified documents filed with the state agencies responsible for the regulation or supervision of the issuance of securities or of financial institutions. As amended April 30, this bill would revise this exception and limit it to records of any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, when the records are received in confidence and are proprietary and their release would result in an unfair competitive disadvantage to the person supplying the information or the records constitute filings or reports whose disclosure would be counterproductive to the regulatory purpose for which they are used. This two-year bill is pending in the Assembly Governmental Organization Committee.

AB 1597 (Floyd), as amended June 3, would permit the Commissioner to refuse to issue a permit for the qualification of securities in a recapitalization or reorganization unless, in addition to finding that the proposed plan and issuance of securities is fair, just, and equitable to all security holders affected, the Commissioner finds that the proposed plan does not result in the termination or impairment of any labor contract covering persons engaged in employment in this state and negotiated by a labor organization, collective bargaining agent, or other representative. This two-year bill is pending in the Senate Banking Committee.

AB 1593 (Floyd), as amended April 18, and ***SB 506 (McCorquodale)***, as amended April 8, would transfer the licensing and regulatory functions of the Department of Corporations, the Department of Savings and Loan, and the State Banking Department to a Department of Financial Institutions, which both bills seek to create, and which would be headed by a Commissioner of Financial Institutions, appointed by the Governor and subject to Senate confirmation. AB 1593 is pending in the Assembly Committee on Banking, Finance and Bonded Indebtedness; SB 506 is pending in the Senate Banking Committee.

SB 893 (Lockyer) would authorize the establishment of the California Financial Consumers' Association, a private, nonprofit public benefit corporation established to inform and advise consumers on financial service matters, represent and promote the interests of consumers in financial service matters, intervene as a party or otherwise participate on behalf of financial service consumers in any regulatory proceeding, sue on behalf of members in regard to any financial service matter, and take related actions. This two-year bill is pending in the Senate Banking Committee.

SB 935 (Roberti) would delete existing criteria and add new criteria for determining whether a corporation, regardless of its jurisdiction or incorporation, is a "Foreign-California Corporation" subject to the corporate laws of this state. This two-year bill is pending in the Senate Insurance Committee.

SB 703 (Royce), as amended May 9, would require HCSPs that advertise, solicit for, enter into, amend, or renew any plan contract which provides any dental services to provide prescribed basic dental services; this bill would permit the HCSPs to require certain copayments for these services. This two-year bill is pending in the Senate Insurance Committee.

AB 1141 (Woodruff) would authorize a HCSP to expand its geographic service area, under specified conditions, if the plan has notified the Commissioner of its intent to modify its plan by expansion, and the Commissioner has not approved, disapproved, suspended, or postponed the effectiveness of the modification within the prescribed time limit. This two-year bill is pending in the Assembly Insurance Committee.

SB 917 (Kopp), as amended June 11, would require certain HCSPs that proposed to offer a pharmacy benefit or change their relationship with pharmacy providers to give written or published notice to pharmacy service providers of the plan's proposal and give those providers an opportunity to submit a proposal to participate in the plan's panel of providers on the terms proposed. This two-year bill is pending at the Assembly desk.

AB 2083 (Felando), as amended July 11, would provide that HCSPs and disability insurers that choose to retain, but do not employ, licensed health care providers to review claims for health care services that are rendered by a health care provider licensed in California, and who render opinions on final appeals concerning reimbursement of those reviewed claims, shall ensure, when reasonably available, that the reviewing licensed health care provider holds a current California license of the same license class as the provider of services being reviewed. This two-year bill is pending in the Senate Insurance Committee.

SB 366 (Robbins), as amended September 11, would require the Commissioner to prepare and publish a booklet describing for the public or potential HCSP enrollees the health care coverage regulated under the Knox-Keene Health Care Service Plan Act, and require the Commissioner to establish and maintain a toll-free telephone number for purposes of providing consumer service information and receiving complaints with respect to HCSPs regulated by the Commissioner. This two-year bill is pending in the Assembly inactive file.

AB 1282 (Filante), as amended July 14, would require every HCSP, disability insurer (with specified exceptions), and nonprofit hospital service plan that covers hospital, medical, or surgical expenses on an individual basis to offer a coverage option to individuals for health care expenditures in excess of $3,000 per insured individual per year; require the coverage options to provide rate incentives for covered individuals or enrollees to adopt "healthful lifestyles," and the rate incentives to be based on actuarial considerations related to the differences in lifestyle; and require the Commissioner to adopt guidelines defining what constitutes a "healthful lifestyle" for HCSPs. This two-year bill is pending in the Senate Insurance Committee.

AB 1251 (Hauser) would establish the Bureau of Community Associations in the Department, with a Community Associations Commissioner as its chief executive and a 15-member Advisory Commission; authorize this Commissioner to employ persons and issue regulations relating to common interest developments, such as condominiums and planned developments which are managed by an association; require each community association to register with the Bureau and pay an annual fee; and require persons engaging in the business of a managing agent of a common interest development to be licensed.

This two-year bill is pending in the Assembly Committee on Housing and Community Development.

AB 889 (Mays) would extend the January 1, 1992 repeal date of section 5047.5 of the Corporations Code, which immunizes from liability directors or officers of certain nonprofit corporations who serve without compensation for acts or omissions committed in the exercise of the director's or officer's policymaking judgment. This two-year bill, which would extend the life of this provision until January 1, 1997, is pending in the Assembly Judiciary Committee.

LITIGATION:

On December 4, a Los Angeles Superior Court jury convicted financier Charles H. Keating on 17 of 18 state securities fraud counts stemming from the failure of Lincoln Savings and Loan. In ***People v. Keating***, the jury found Keating guilty of failing to tell bondholders and new bond buyers that regulators had indicated the institution could be seriously overextended. Following a nine-week trial, the jury spent eleven days deliberating and reviewing exhibits and testimony. Keating faces a maximum penalty of ten years in prison and $250,000 in fines; sentencing was scheduled for February 7. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 130; Vol. 11, No. 2 (Spring 1991) pp. 129–30; and Vol. 11, No. 1 (Winter 1991) p. 105 for extensive background information.)

On December 12, the Securities and Exchange Commission filed civil securities fraud and insider trading charges against Keating and nine others, alleging, among other things, that Keating earned $7.5 million through insider trading in the shares of Lincoln's parent company, American Continental Corporation, and that he engaged in a phony stock swap with David Paul, the former chair of another failed thrift, CenTrust Savings Bank of Miami. The 86-page civil complaint filed by the SEC in U.S. District Court for the Central District of California alleges that Keating and his co-defendants engaged in a complicated series of phony transactions and paper profits that helped keep Lincoln afloat until it was seized by regulators in April 1989.

Also on December 12, federal authorities presented Keating and four co-defendants with a 77-count indictment charging them with bank and securities fraud, conspiracy, misapplication of funds, and transporting stolen property. If convicted of these racketeering charges, Keating could be sentenced to up to 510 years in prison. In addition to these charges, Keating is also the defendant in a number of other pending actions, including ***People of the State of California v. American Continental Corporation (ACC)***, the Department's civil fraud action against Keating, the now-bankrupt ACC, and two of ACC's top officers. DOC's action is still pending in federal court in Arizona under U.S. District Court Judge Richard Bilby with trial scheduled to commence on March 2.

DEPARTMENT OF INSURANCE

Commissioner: John Garamendi
(415) 557-3848
Toll-Free Complaint Number:
1-800-927-4357

Insurance is the only interstate business wholly regulated by the several states, rather than by the federal government. In California, this responsibility rests with the Department of Insurance (DOI), organized in 1868 and headed by the Insurance Commissioner. Insurance Code sections 12919 through 12931 set forth the Commissioner's powers and duties. Authorization for DOI is found in section 12906 of the 800-page Insurance Code; the Department's regulations are codified in Chapter 5, Title 10 of the California Code of Regulations (CCR).

The Department's designated purpose is to regulate the insurance industry in order to protect policyholders. Such regulation includes the licensing of agents and brokers, and the admission of insurers to sell in the state.

In California, the Insurance Commissioner licenses approximately 1,300 insurance companies which carry premiums of approximately $63 billion annually. Of these, 600 specialize in writing life and/or accident and health policies.

In addition to its licensing function, DOI is the principal agency involved in the collection of annual taxes paid by the insurance industry. The Department also collects more than 170 different fees levied against insurance producers and companies.

The Department also performs the following functions:

(1) regulates insurance companies for solvency by tri-annually auditing all domestic insurance companies and by selectively participating in the auditing of other companies licensed in California but organized in another state or foreign country;

(2) grants or denies security permits and other types of formal authorizations to applying insurance and title companies;

(3) reviews formally and approves or disapproves tens of thousands of insurance policies and related forms annually as required by statute, principally related to accident and health, workers' compensation, and group life insurance;

(4) establishes rates and rules for workers' compensation insurance;

(5) preapproves rates in certain lines of insurance under Proposition 103, and regulates compliance with the general rating law in others; and

(6) becomes the receiver of an insurance company in financial or other significant difficulties.

The Insurance Code empowers the Commissioner to hold hearings to determine whether brokers or carriers are complying with state law, and to order an insurer to stop doing business within the state. However, the Commissioner may not force an insurer to pay a claim—that power is reserved to the courts.

DOI has over 800 employees and is headquartered in San Francisco. Branch offices are located in San Diego, Sacramento, and Los Angeles. The Commissioner directs 21 functional divisions and bureaus.

The Underwriting Services Bureau (USB) is part of the Consumer Services Division, and handles daily consumer inquiries through the Department's toll-free complaint number. It receives more than 2,000 telephone calls each day. Almost 50% of the calls result in the mailing of a complaint form to the consumer. Depending on the nature of the returned complaint, it is then referred to Claims Services, Rating Services, Investigations, or other sections of the Division.

Since 1979, the Department has maintained the Bureau of Fraudulent Claims, charged with investigation of suspected fraud by claimants. The California insurance industry asserts that it loses more than $100 million annually to such claims. Licensees currently pay an annual assessment of $1,000 to fund the Bureau's activities.

MAJOR PROJECTS:

Garamendi Orders $1.5 Billion in Proposition 103 Refunds After Governor Overrules OAL, Approves Emergency Rollback Regulations. On October 7, Governor Wilson overruled the Office of Administrative Law's (OAL) rejection of Commissioner Garamendi's emergency regulations implementing Proposition 103's rollback requirement.

Last August, following numerous public hearings and three revisions,