consisting of "the alarming rate of rise of the groundwater level." In April 1983, Vaill attended a meeting of area property owners at which a County engineer discussed the danger of land movement caused by high groundwater. Vaill did not inform the Hudsons about the letter from the County or that she had attended the meeting.

Escrow closed on the Hudson's property in May 1983. Two months later, tiles began to crack inside the house; in September, a fourteen-foot crevice opened up in the bluff-facing side of the Hudsons' yard. By January 1984, the Hudsons' property became so unstable that they were compelled to move.

On October 10, 1986, the DRE Commissioner filed an amended accusation against Vaill containing two causes of accusation. The first alleged grounds for suspension or revocation of Vaill's license under Business and Professions Code sections 10176(a) and (i) (misrepresentation, fraud, or dishonest dealing). The second cause of accusation alleged that Vaill violated Business and Professions Code section 10177(g), in that, as a real estate salesperson, she was negligent or incompetent in connection with the sale of a house.

After a hearing, an administrative law judge (ALJ) determined that Vaill did not commit fraud, negligence, or incompetence. However, the DRE Commissioner rejected the ALJ's findings and concluded that Vaill negligently or incompetently failed to advise the Hudsons concerning groundwater levels and future costs which would be incurred in connection with the necessity of removing the groundwater. The Commissioner ordered the revocation of Vaill's license and authorized the issuance of a restricted real estate salesperson's license pursuant to Business and Professions Code section 10156.5. Vaill petitioned the superior court for a writ of mandate compelling the Commissioner to vacate his order revoking her real estate salesperson's license; in October 1989, judgment was entered for Vaill.

On appeal, the Second District noted that, in determining whether the trial court's findings are supported by substantial evidence, conflicts in the evidence must be resolved in favor of the judgment; where two or more inferences can be reasonably drawn from the facts, the reviewing court must accept the inferences deduced by the trial court. The Second District determined that substantial evidence supported the trial court's findings that Vaill was neither negligent nor incompetent in regard to her advice as to the groundwater and instability of the Big Rock Mesa area. The court identified five separate incidents which indicated that the Hudsons were made aware of the groundwater problem and/or the possibility of landslide. The court stated that a reasonable construction of the licensing statutes required Vaill to provide the Hudsons with existing geology reports, urge them to commission their own independent geologist, and disclose the groundwater and landslide problems suffered by a neighbor; the court determined that there was substantial evidence that Vaill did all of these things.

The Commissioner also contended that there was no substantial evidence to support the trial court's implied finding that Vaill was not negligent in failing to apprise the Hudsons of all of the matters which were discussed at the April 1983 meeting. Specifically, the Commissioner argued that Vaill should have disclosed to the Hudsons (1) that the County was disavowing any liability for the rising groundwater levels in the area; (2) that the County was recommending that a geologic hazard abatement district be established; and (3) the potential costs of such a district. The court stated that as a real estate agent representing the seller, Vaill was required to disclose to the buyer facts which would materially affect the value or desirability of the property. The court acknowledged that a failure to disclose the high groundwater level and the risk of landslides associated with the property would constitute a failure to disclose a material face resulting in a finding of negligence. However, the court determined that the nondisclosure of the other matters discussed at the meeting was not negligent and not material. According to the court, the information provided at the meeting—even if viewed as negative—could not have been material to the Hudsons. "Knowing that the high groundwater level and landslide risk were existent, they nevertheless determined to buy the property. Knowing the existence of the groundwater problems, it can also be presumed that they knew they might incur some expense in resolving the problem." The court determined that the information provided at the meeting established that steps were finally being taken to resolve a long-standing problem. "Assuming knowledge of the groundwater problem in Big Rock Mesa, disclosure of what occurred at the meeting could only positively affect the value and desirability of properties in the area."

DEPARTMENT OF SAVINGS AND LOAN

Commissioner: Wallace T. Sumimoto
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The Department of Savings and Loan (DSL) is headed by a commissioner who has "general supervision over all associations, savings and loan holding companies, service corporations, and other persons" (Financial Code section 8050). DSL holds no regularly scheduled meetings, except when required by the Administrative Procedure Act. The Savings and Loan Association Law is in sections 5000 through 10050 of the California Financial Code. Departmental regulations are in Chapter 2, Title 10 of the California Code of Regulations (CCR).

MAJOR PROJECTS:

DSL Merger with Banking Department Still Under Consideration. Despite the September 1991 announcement by Carl Covitz, Secretary of the Business, Transportation and Housing Agency, that DSL would be merged into the State Banking Department by June 1992, no subsequent action has been taken to authorize or facilitate that merger. *[12:1 CRLR 128]* According to a spokesperson for Covitz, the merger would reduce duplication and lower costs to the state. Although the state's plan appears to be to keep the actual examination functions and costs of the respective industries separate even after the merger, the declining number of state-chartered savings and loans may require the state to consider complete consolidation of the various regulatory activities.

SB 506 (McCorquodale), currently pending in the Assembly Committee on Banking, Finance and Bonded Indebtedness, would require the Agency to conduct a study on the feasibility and advisability of consolidating some or all of the state's regulatory functions involving banks, savings associations, and—at the discretion of the Agency—other financial institutions; that report would be submitted to the legislature and the Governor by March 1, 1993 (*see infra* LEGISLATION).

DSL has processed no new state charter applications since 1985 and, at this writing, regulates only 41 state-chartered thrifts, compared to 158 during the mid-1980s. *[11:4 CRLR 142]*

RTC Requests More Bailout Funds. On April 1, the Resolution Trust Corporation's (RTC) statutory authority to spend money expired, leaving the agency without access to $17 billion remaining in funds previously authorized for its use by

Congress. On that day—and just prior to adjourning for a two-week recess—the House of Representatives rejected emergency legislation which would have extended the statutory deadline and enabled RTC, the federal agency charged with disposing of failed savings institutions taken over by the federal government, to allocate that $17 billion. Although RTC can still seize insolvent institutions and keep them open under government control, it cannot proceed with takeover deals to protect depositors of the failed thrifts without such legislation.

On May 13, RTC Chair Albert Casey and Office of Thrift Supervision (OTS) Director T. Timothy Ryan announced that the government would begin seizing troubled S&Ls previously targeted for taxpayer-assisted sales if Congress did not allocate new bailout funds by Memorial Day. In addition to the $17 billion, OTS and RTC are requesting an additional $25 billion in order to continue all of their operations. According to Ryan, the present lack of funding will delay the completion of such operations and add at least $2 million per day to the taxpayers' total tab.

President Eliminates "Red Tape" on Interstate S&L Activity. On April 2, the Bush administration announced unilateral action to remove regulatory safeguards and allow S&L associations to open branches anywhere in the country. According to a White House statement, this move eliminates "needless regulatory burdens and red tape" on financial institutions and will make thrifts more efficient and competitive. Implementing the administration's proposal, OTS announced its adoption of a rule allowing S&Ls to open branches anywhere in the country without governmental restrictions. That rule, which became effective May 11, has been criticized by the Independent Bankers Association of America (IBAA), the Conference of State Bank Supervisors, and U.S. Representative Henry Gonzalez (D-Texas), who contended that the plan could expose thrifts to more of the same risks that caused the multibillion-dollar S&L disaster. IBAA and other bankers' trade associations are considering a lawsuit to block the Bush administration's action.

Nation's Unseized S&Ls Post $2 Billion Profit. In March, federal regulators announced that the nation's savings and loans—not including those taken over by the federal government—posted almost $2 billion in profits during 1991; as recently as 1990, the industry suffered $2.9 billion in losses. According to OTS Director T. Timothy Ryan, 86% of the S&Ls operating without government management were profitable in 1991. According to the California League of Savings Institutions, unseized S&Ls in this state earned $218 million in 1991, compared to an $888 million loss in 1990.

DSL Urges Lenient Policies Toward Riot Victims. On April 29, Governor Pete Wilson declared a state of emergency in Los Angeles County as a result of the civil unrest following the controversial verdict in the criminal trial of police officers accused of using excessive force on Los Angeles resident Rodney King. On May 8, DSL Commissioner Wallace Sumimoto alerted all state savings and loan associations, savings banks, and all interested parties that DSL is urging state institutions to adopt policies of leniency and forbearance concerning those homeowners and borrowers whose ability to meet contractual obligations has been impaired as a result of the recent events, and to expedite the granting of loans to rebuild or repair the destroyed or damaged properties.

Regulatory Update. On March 11, the Office of Administrative Law approved DSL's amendments to its conflict of interest code, which is codified in section 102.300, Chapter 2, Title 10 of the CCR. *[12:1 CRLR 128]* As amended, section 102.300 designates DSL employees who must disclose certain investments, income, interests in real property, and business positions, and who must disqualify themselves from making or participating in the making of governmental decisions affecting those interests.

LEGISLATION:

AB 3469 (T. Friedman). Existing provisions of the Savings Association Law prescribe various criminal offenses and penalties for violations thereof, and provide for forfeiture of property or proceeds derived from these violations. As amended May 11, this bill would expand the list of criminal offenses, as specified, the violation of which subjects the violator to the forfeiture provisions. This bill would also provide that a petition for forfeiture may be filed prior to, in conjunction with, or subsequent to a criminal proceeding, and if filed prior to the criminal proceedings, the prosecuting agency shall provide concurrent notice to any parties subject to the proposed forfeiture that they are targets of an anticipated criminal action. The petition and any injunctive order shall be dismissed unless a criminal complaint is filed within 120 days after the filing of the petition. The bill would also provide that no injunctive order shall impair the ability of a defendant or interested party to pay legal fees relating to the criminal charges.

Existing law provides that the proceeds of forfeited property shall be distributed to the bona fide or innocent purchaser, conditional sales vendor, or holder of a valid lien, mortgage, or security interest, as specified. This bill would provide that the balance of any forfeited funds shall also be distributed to the victim of specified crimes committed by the defendants. *[A. W&M]*

ABX 45 (Peace) would prohibit state, city, and county governments from contracting for services with financial institutions with $100 million or more in assets unless those companies file reports annually with the state Controller; those reports would include specified information regarding the nature of the governance of the companies and their lending and investment practices, with regard to race, ethnicity, gender, and income of the governing boards and of the recipients of loans and contracts from the institutions. *[A. CPGE&ED]*

SB 1396 (Marks). Existing law provides that any person who regularly assembles, evaluates, or disseminates information on the checking account experiences of consumer customers of banks or other financial institutions is subject to the laws that govern consumer credit reporting agencies. As amended May 13, this bill would require banks and other financial institutions that permit that activity to give specified notices to new customers. This bill would also prohibit persons who assemble, evaluate, or disseminate this information from reporting information which is more than three years old, except as to cases resulting in a criminal conviction. (*See supra* report on CONSUMER ACTION for related discussion.) *[S. Floor]*

The following is a status update on bills reported in detail in CRLR Vol. 12, No. 1 (Winter 1992) at pages 128-29:

SB 506 (McCorquodale), as amended January 6, would direct the Business, Transportation and Housing Agency to conduct a study on the feasibility and advisability of consolidating some or all of the state's regulatory functions involving banks and savings associations and, at the discretion of the Agency, other financial institutions. The study would be required to be reported to the legislature and the Governor on or before March 1, 1993. *[A. BF&BI]*

The following bills died in committee: ***AB 1463 (Hayden)*** and ***SB 950 (Vuich)***, which would have amended provisions specifying the maximum percentage of assets that an association chartered by this state under the Savings Association Law,

may invest in specified loans made for agriculture, business, commercial, or corporate purposes; ***AB 1594 (Floyd)***, which would have repealed the Savings Association Law and abolished DSL on January 1, 1993; ***AB 1593 (Floyd)***, which would have transferred the licensing and regulatory functions of DSL, the State Banking Department, and the regulation of credit unions by the Department of Corporations to a Department of Financial Institutions, which the bill would have created; ***AB 1596 (Floyd)***, which would have amended the California Public Records Act's exemption for records of any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions; ***SB 893 (Lockyer)***, which would have authorized the establishment of the California Financial Consumers' Association to inform, advise, and represent consumers on financial service matters; and ***AB 2026 (Friedman)***, which would have expanded the list of criminal offenses, as specified, the violation of which subjects the violator to the forfeiture provisions (*see supra* AB 3469).

LITIGATION:

On April 6, the U.S. Supreme Court refused to review the Ninth Circuit's decision in ***Spiegel v. Ryan***, No. 90-55942 (Oct. 11, 1991), which upheld OTS' statutory authority to issue a temporary cease and desist order requiring a former officer of a savings and loan association to make restitution pending an administrative hearing to determine whether a permanent cease and desist order should issue. *[12:1 CRLR 129]* In his petition for certiorari, former Columbia Savings and Loan CEO Thomas Spiegel argued to the Supreme Court that the order deprived him of his property "in contravention of the most fundamental principle of due process." However, the Ninth Circuit's decision noted that the Supreme Court has allowed outright seizure without opportunity for a prior hearing if specified conditions exist; finding that all such conditions were present in the instant matter, the Ninth Circuit found that due process does not entitle Spiegel to a predeprivation hearing.

DEPARTMENT OF INDUSTRIAL RELATIONS

CAL-OSHA

Executive Director: Steven Jablonsky (916) 322-3640

California's Occupational Safety and Health Administration (Cal-OSHA) is part of the cabinet-level Department of Industrial Relations (DIR). The agency administers California's programs ensuring the safety and health of California workers.

Cal-OSHA was created by statute in October 1973 and its authority is outlined in Labor Code sections 140–49. It is approved and monitored by, and receives some funding from, the federal OSHA. Cal-OSHA's regulations are codified in Titles 8, 24, and 26 of the California Code of Regulations (CCR).

The Occupational Safety and Health Standards Board (OSB) is a quasi-legislative body empowered to adopt, review, amend, and repeal health and safety orders which affect California employers and employees. Under section 6 of the Federal Occupational Safety and Health Act of 1970, California's safety and health standards must be at least as effective as the federal standards within six months of the adoption of a given federal standard. Current procedures require justification for the adoption of standards more stringent than the federal standards. In addition, OSB may grant interim or permanent variances from occupational safety and health standards to employers who can show that an alternative process would provide equal or superior safety to their employees.

The seven members of the OSB are appointed to four-year terms. Labor Code section 140 mandates the composition of the Board, which is comprised of two members from management, two from labor, one from the field of occupational health, one from occupational safety, and one from the general public. The current members of OSB are Jere Ingram, Chair, John Baird, James Grobaty, John Hay, and William Jackson. At this writing, OSB continues to function with two vacancies—an occupational safety representative and a labor representative.

The duty to investigate and enforce the safety and health orders rests with the Division of Occupational Safety and Health (DOSH). DOSH issues citations and abatement orders (granting a specific time period for remedying the violation), and levies civil and criminal penalties for serious, willful, and repeated violations. In addition to making routine investigations, DOSH is required by law to investigate employee complaints and any accident causing serious injury, and to make follow-up inspections at the end of the abatement period.

The Cal-OSHA Consultation Service provides on-site health and safety recommendations to employers who request assistance. Consultants guide employers in adhering to Cal-OSHA standards without the threat of citations or fines.

The Appeals Board adjudicates disputes arising out of the enforcement of Cal-OSHA's standards.

MAJOR PROJECTS:

Cal-OSHA Proposes HIV/HBV Exposure Prevention Regulations. On April 10, OSB published notice of its intent to add section 5193 to Title 8 of the CCR, to provide procedures and controls to reduce the potential for exposure to occupational incidents involving bloodborne infectious disease in general, and both the human immunodeficiency virus (HIV) and hepatitis B virus (HBV) in particular. These proposed changes are intended to bring California into compliance with federal OSHA standards concerning occupational exposure to bloodborne pathogens (29 C.F.R. Part 1910.1030 (Dec. 6, 1991)).

Among other things, proposed section 5193 would require each employer having an employee or employees with occupational exposure potential (reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties) to establish a written Exposure Control Plan which incorporates specified procedures for handling blood, blood products, body fluids, or other potentially infectious material to reduce the potential for exposure. Among many other settings, the section would apply to offices of physicians and dentists, nursing homes, hospitals, medical and dental laboratories, home health and hospice care settings, hemodialysis centers, government clinics, drug rehabilitation centers, medical equipment repair facilities, and especially research