with the foreign defendants." The appellate court also found that group boycott activity under 15 U.S.C. section 1013(b) was clearly alleged by plaintiffs and, accepting those allegations as true, summary judgment was improper.

On July 24, the California Supreme Court granted the insurance industry's petition for review of the Second District Court of Appeal's May decision in ***California Automobile Assigned Risk Plan v. Gillespie***, 229 Cal. App. 3d 514 (1991). In its decision, the Second District ruled that insurers are not entitled to make a fair rate of return off CAARP business; rather, the fair rate of return to which insurers are entitled under Proposition 103, as interpreted by the California Supreme Court in *Calfarm v. Deukmejian*, 48 Cal. 3d 805 (1989), must be calculated with reference to an insurer's overall auto insurance rates and total revenue. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 134; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 140 and 144; and Vol. 10, No. 1 (Winter 1990) p. 108 for extensive background information on this case.)

In another case relating to CAARP, the Second District Court of Appeal recently ruled that Proposition 103's procedures for determining rate increases do not apply to assigned risk policies. In ***California Automobile Assigned Risk Plan v. Garamendi***, No. B047146 (July 25, 1991) (as modified Aug. 9, 1991), the appellate court found that the assigned risk program was closely regulated by the Insurance Commissioner prior to the passage of Proposition 103, and that the initiative "was not intended to alter the procedures for establishing the uniform rate set by the Commissioner for assigned risk policies." CAARP plans to seek review by the California Supreme Court.

On June 13, Commissioner Garamendi announced the voluntary revocation of FGS Insurance Brokers' license. FGS will no longer conduct any business in California and will have its assets liquidated by an independent bankruptcy trustee. This appears to be the last chapter in a long dispute between the Department and FGS. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 102–03 and Vol. 10, No. 4 (Fall 1990) p. 124 for background information.) Garamendi noted that the Department will continue its efforts to recover FGS assets in order to pay policyholders who have outstanding claims against the company. The assets of FGS are estimated to be $6–15 million.

Also on June 13, Garamendi announced a court-approved "early-access" distribution of $107 million from the estate of failed Mission Title Insurance Company. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 103; Vol. 10, No. 4 (Fall 1990) pp. 123–24; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 144 for background information.) This distribution will be made to 39 guarantee associations around the country which have paid $247 million in benefits to Mission policyholders through the end of 1990. The $107 million distribution, when added to the $78 million in statutory deposits being held by 22 states for outstanding claims against Mission, represents 78.8% of the benefits paid by the guarantee associations.

In ***ACL Technology v. Northbrook Property and Casualty Co.***, No. X-619576 (Aug. 6, 1991), Orange County Superior Court Judge Robert Jameson upheld an insurance company's owned-property exclusion clause and validated another exclusion clause that provides no coverage for pollution clean-up unless the pollution is sudden and accidental. In a case of first impression, the court was asked to decide whether costs arising from state-mandated clean-up of contaminated soil and groundwater from leaking underground storage tanks were recoverable in light of the owned-property exclusion and "sudden and accidental" clauses in the policy. In a major victory for insurance companies, the court upheld the validity of both exclusions. In refusing to recognize the corrosion of underground tanks as sudden, the court remarked that coverage would apply only to events that occurred "abruptly." The court also upheld the owned-property exclusion, which essentially relieves an insurer of liability for damages to property owned by the insured, by refusing to recognize the state-mandated clean-up as a third-party claim against the insurance policy. The exclusions addressed in the case, however, were predominantly used in policies issued prior to 1986, after which an absolute pollution exclusion clause was adopted by most insurers. The judgment is being appealed.

On July 18, the Fourth District Court of Appeal ruled that insurance companies that stonewall legitimate third-party claims may be liable for tort damages. In ***Weiner v. Fireman's Fund Insurance***, No. D011547, the court created an exception to the *Moradi-Shalal* ruling which bars civil action when an insurance company "unreasonably but in good faith" refuses to settle a third-party claim. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 97 and Vol. 8, No. 43 (Fall 1988) p. 87 for background information on the *Moradi-Shalal* case.) The appellate court found that *Moradi-Shalal* contemplates that suits for intentional infliction of emotional distress could be brought against insurers under certain circumstances. The pivotal element is conduct that is "so extreme as to exceed all bounds of that usually tolerated in a civilized society." Based on the egregious record, the court stated that a cause of action for intentional infliction of emotional distress existed. The insurer plans to seek review of this decision by the California Supreme Court.

DEPARTMENT OF REAL ESTATE

Commissioner: Clark E. Wallace
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The Real Estate Commissioner is appointed by the Governor and is the chief officer of the Department of Real Estate (DRE). DRE was established pursuant to Business and Professions Code section 10000 *et seq.*; its regulations appear in Chapter 6, Title 10 of the California Code of Regulations (CCR). The commissioner's principal duties include determining administrative policy and enforcing the Real Estate Law in a manner which achieves maximum protection for purchasers of real property and those persons dealing with a real estate licensee. The commissioner is assisted by the Real Estate Advisory Commission, which is comprised of six brokers and four public members who serve at the commissioner's pleasure. The Real Estate Advisory Commission must conduct at least four public meetings each year. The commissioner receives additional advice from specialized committees in areas of education and research, mortgage lending, subdivisions and commercial and business brokerage. Various subcommittees also provide advisory input.

The Department primarily regulates two aspects of the real estate industry: licensees (as of September 1991, 257,599 salespersons and 96,310 brokers, including corporate officers) and subdivisions.

License examinations require a fee of $25 per salesperson applicant and $50 per broker applicant. Exam passage rates average 67% for both salespersons and brokers (including retakes). License fees for salespersons and brokers are $120 and $165, respectively. Original licensees are fingerprinted and license renewal is required every four years.

In sales or leases of most residential subdivisions, the Department protects the public by requiring that a prospective buyer be given a copy of the

"public report." The public report serves two functions aimed at protecting buyers of subdivision interests: (1) the report requires disclosure of material facts relating to title, encumbrances, and similar information; and (2) it ensures adherence to applicable standards for creating, operating, financing, and documenting the project. The commissioner will not issue the public report if the subdivider fails to comply with any provision of the Subdivided Lands Act.

The Department publishes three major publications. The *Real Estate Bulletin* is circulated quarterly as an educational service to all real estate licensees. It contains legislative and regulatory changes, commentaries and advice. In addition, it lists names of licensees against whom disciplinary action, such as license revocation or suspension, is pending. Funding for the *Bulletin* is supplied from a $2 share of license renewal fees. The paper is mailed to valid license holders.

Two industry handbooks are published by the Department. *Real Estate Law* provides relevant portions of codes affecting real estate practice. The *Reference Book* is an overview of real estate licensing, examination, requirements and practice. Both books are frequently revised and supplemented as needed. Each book sells for $15.

The California Association of Realtors (CAR), the industry's trade association, is the largest such organization in the state. As of September 1991, approximately 131,000 licensed agents are members. CAR is often the sponsor of legislation affecting the Department of Real Estate. The four public meetings required to be held by the Real Estate Advisory Commission are usually on the same day and in the same location as CAR meetings.

MAJOR PROJECTS:

New Commissioner Appointed. In May, Governor Wilson appointed Clark E. Wallace of Morgana as his new Real Estate Commissioner. An active participant within the real estate industry for more than thirty years, Commissioner Wallace has managed a real estate brokerage firm in Contra Costa County. Prior to his appointment, Commissioner Wallace served as a member of DRE's Real Estate Advisory Commission under two administrations. Additionally, Commissioner Wallace served as president of both the California Association of Realtors and the National Association of Realtors.

Former Acting Commissioner John R. Liberator will remain at DRE as Chief Deputy Commissioner. Mr. Liberator has served as Chief Deputy Commissioner since 1985.

Department Places Glen Ivy on Probation. In May, DRE accused Glen Ivy Properties, the nation's largest timeshare operator, of depositing buyer down payments into unacceptable bank accounts, permitting unauthorized personnel to make withdrawals, and failing to keep customer account records in compliance with state laws. On July 30, DRE suspended Glen Ivy's real estate license. However, Glen Ivy agreed to a settlement without admitting liability, stating that it would be far more costly in terms of management time and legal fees to litigate the matter. Glen Ivy paid $20,000 in penalties, the maximum fine allowed under state regulations, and agreed to a five-year probation in order to have the suspension immediately lifted. However, if the company commits any infractions through mid-1996, DRE may suspend its license without a court hearing.

Office of Real Estate Appraisers Sets Forth Licensing Requirements. In 1989, Congress enacted the Financial Institutions Reform Recovery, and Enforcement Act (FIRREA), one provision of which requires all states to institute a licensing and certification program for real estate appraisers. FIRREA mandates that after July 1, 1991 (since extended to January 1, 1992), only state licensed or certified appraisers may conduct appraisals for "federally-related" real estate transactions; such transactions include any real estate transaction involving federal insurance or assistance. As a result of the federal mandate, California enacted AB 527 (Hannigan) (Chapter 491, Statutes of 1990), which created the Office of Real Estate Appraisers (OREA) within DRE; AB 527 provided that on and after July 1, 1991, any person who engages in or proposes to engage in federally-related real estate appraisal activity shall be licensed or certified by OREA. (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 136–37; Vol. 10, No. 4 (Fall 1990) p. 127; and Vol. 6 No. 3 (Summer 1986) p. 55 for background information.)

Despite the enactment of SB 1028 (Presley), which postpones the date after which real estate appraisers must be licensed or certified from July 1, 1991 to January 1, 1992 (*see infra* LEGISLATION), OREA has adopted emergency regulations setting forth licensing and certification procedures, requirements, fees, and processes; these regulations are codified at section 3500 *et seq.*, Title 10 of the CCR. Among other things, the regulations set forth distinct requirements for the four licensing and certification categories: (1) license; (2) provisional license; (3) residential certification; and (4) general certification. The licensed level (full or provisional) requires 75 accredited classroom hours in subjects related to real estate appraisal, with particular emphasis on the appraisal of one- to four-unit residential properties. The certified level (residential or general) requires 165 accredited classroom hours in subjects related to real estate appraisal, with particular emphasis on the appraisal of one- to four-unit residential properties if applying for residential certification, or on the appraisal of non-residential properties if applying for general certification. In addition, each applicant must pass an exam administered by OREA. Furthermore, OREA requires license applicants to complete 2,000 hours of work experience; certification applicants must complete 2,000 hours of work experience over a minimum period of two years.

Under separate guidelines announced by OREA, licensed appraisers (full or provisional) may conduct appraisals of non-complex one- to four-unit residential properties up to a transaction value of $1 million and appraisals of complex one- to four-unit residential properties up to a transaction value of $250,000. Certified residential appraisers may conduct appraisals of residential transactions without regard to transaction value or complexity. Certified general appraisers may conduct appraisals of all real estate transactions without regard to transaction value or complexity. Those persons who cannot meet the requirements of a regular license because they have not fully completed only one of the critical elements of education or experience may apply for a provisional license, but a person may only apply once for such a license.

Other Proposed Regulatory Changes. In September, DRE announced its intent to adopt new sections 2708, 2709, 2724, and 2792.11, and amend sections 2810.1, 3002, and 3011, Chapter 6, Title 10 of the CCR. New section 2708 would define when an application for a permit or license is considered complete, specify when notifications by DRE must occur, and provide that the term "days" means calendar days when used in proposed section 2709. Proposed section 2709 sets forth the median, minimum, and maximum times for processing a permit or license issued by DRE. This section will also establish time periods for notifying applicants for such permits and licenses whether the application is complete or deficient, and the time periods within which DRE must reach a decision.

Proposed section 2724 would permit an employing broker to authorize either a salesperson or a broker of the employing broker to supervise certain activities of unlicensed employees acting under the exemption contained in Business and Professions Code section 10131.01.

Proposed section 2792.11 would require a subdivider to keep records of subdivider payments of homeowners association assessments, offsets, or credits against such assessments and association records if those records have not been turned over to the association. This section would also require the subdivider to make the records available to DRE for inspection and copying. Proposed amendments to section 2810.1 would apply section 2792.11 to timeshare projects.

Currently, section 3002 does not set forth the elements required in an application for approval of an equivalent course of study within the meaning of Business and Professions Code sections 10153.2, 10153.4, or 10153.5. The proposed amendments to this section would list the elements required in such an application, define a material change from an approved course of study, and require submission and approval of material changes prior to use.

Proposed amendments to section 3011 would revise the criteria for determining equivalent activities for continuing education credit, and would give equivalency credit for instruction or presentation of real estate-related topics if the material contains reasonably current information designed to assist real estate licensees in providing a high level of consumer protection or service.

DRE was scheduled to hold a public hearing on these proposed changes on November 14.

At this writing, DRE is still reviewing comments received on its proposed amendments to sections 2746, 2792.17, 2792.18, and 2806, and its proposed adoption of sections 2706 and 2807, Chapter 6, Title 10 of the CCR. These regulatory changes were the subject of a public hearing on May 23. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 135 for detailed background information on these changes.)

DRE resubmitted the modified text of new sections 2833, 2849, 3050, 3051, 3052, 3053, 3054, and 3055, and amended sections 2785, 2792.14, 2792.20, 2792.22, 2800, 2834, 2840, 2849, 3000, 3004, 3007, 3008, 3012.2, and 3104, Chapter 6, Title 10 of the CCR, regarding agents' conduct, to the Office of Administrative Law (OAL) for approval. OAL approved these changes on July 12. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 135; Vol. 11, No. 2 (Spring 1991) p. 127; and Vol. 11, No. 1 (Winter 1991) pp. 103–04 for extensive background information on these changes.)

DRE Amends its Conflict of Interest Code. Pursuant to Government Code section 87300, DRE has proposed numerous changes to its Conflict of Interest Code, Article 36, Chapter 6, Title 10 of the CCR. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 135 for background information.) DRE sent the proposed revisions to the Fair Political Practices Commission (FPPC) for review; on September 16, the FPPC responded that it will approve the revisions once DRE makes several minor changes.

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 3 (Summer 1991) at pages 136–37:

SB 1028 (Presley). The Real Estate Appraisers' Licensing and Certification Law enacted by AB 527 (Hannigan) (Chapter 491, Statutes of 1990) provides that on and after July 1, 1991, any person who engages in or proposes to engage in federally related real estate appraisal activity shall be licensed or certified. (*See supra* MAJOR PROJECTS.) As amended June 14, this bill changes the licensing and certification deadline to January 1, 1992. This bill also requires the Business, Transportation and Housing Agency or the Director of the Office of Real Estate Appraisers to adopt regulations to implement the Real Estate Appraisers' Licensing and Certification Law on or before December 31, 1992, and provides that any regulations or amendments to regulations adopted on or before December 31, 1992, may be adopted as emergency regulations. This bill was signed by the Governor on June 30 (Chapter 84, Statutes of 1991).

SB 606 (Hill), as amended September 3, provides an alternative standard for the issuance of a specified permit with respect to a qualified resort vacation club which is an out-of-state land promotion. This bill, which makes a number of other changes relating to qualified resort vacation clubs, was signed by the Governor on October 13 (Chapter 947, Statutes of 1991).

AB 1973 (Frazee) repeals the provision of existing law which provides that the holder of an inactive real estate license who applies for activation of the license shall present evidence of compliance with established continuing education requirements, if the applicant has not held an active real estate license within the four years immediately preceding the date of application for activation. This bill was signed by the Governor on August 5 (Chapter 328, Statutes of 1991).

AB 1822 (Frazee). Under existing law, real estate brokers engaging in certain activities with respect to transactions involving the sale of real property sales contracts or debt instruments secured by real property, and meeting either one of two prescribed criteria, are subject to special requirements as to advertising, reporting, trust funds, and disclosure. As introduced March 8, this bill adds an additional criterion under which a real estate broker is subject to these special requirements. This bill was signed by the Governor on October 8 (Chapter 742, Statutes of 1991).

AB 360 (Johnson). Existing law does not require an advertisement for a loan which utilizes real property as collateral to disclose the license under which the loan would be made or arranged. As amended July 11, this bill requires that disclosure with respect to advertisements disseminated primarily in this state placed by any person. This bill also prohibits any real estate licensee, among others, from placing an advertisement disseminated primarily in this state for a loan unless the license under which the loan would be made or arranged is disclosed. This bill was signed by the Governor on August 5 (Chapter 320, Statutes of 1991).

SB 630 (Boatwright), as amended September 4, provides that all obligations created under specified provisions, all regulations issued by the Real Estate Commissioner relating to real estate salespersons, and all other obligations of real estate salespersons to members of the public, shall apply regardless of whether the relationship between the real estate salesperson and the broker is one of "independent contractor" or of "employer and employee." This bill was signed by the Governor on October 7 (Chapter 679, Statutes of 1991).

AB 1436 (Floyd). Existing law requires the transferor of certain residential real property to disclose specified information to the prospective transferee on a prescribed disclosure form. As introduced March 7, this bill would additionally require the transferor to disclose whether the property is covered by home warranty protection. This two-year bill is pending in the Assembly Committee on Housing and Community Development.

SB 1083 (Robbins), as introduced March 8, would provide that persons licensed as real estate brokers are deemed to be attorneys-in-fact for the purpose of depositing or transferring

client funds to or from individual or pooled client trust deposits with banks, and that the authorized signatures and instructions of these licensees on items deposited and transfers made to and from the trust deposit of their clients are valid. This two-year bill is pending in the Senate Judiciary Committee.

SB 71 (Kopp), as amended April 15, would enact as a part of the Real Estate Law a Real Property Finance Broker Law for the purpose of regulating specified mortgage brokering activities. The bill would require a real estate broker conducting these activities to obtain prescribed certification, and certain other persons to obtain licensure from DRE to conduct these activities. This two-year bill is pending in the Senate Committee on Banking, Commerce and International Trade.

SB 952 (Dills), as introduced March 8, would enact a Mortgage Loan Broker Law; establish an Office of Mortgage Loan Broker Licensure within DRE; and require the DRE Commissioner to adopt requirements for certification as a mortgage loan broker. This two-year bill is pending in the Senate Business and Professions Committee.

SB 492 (Leonard), as amended April 4, would provide that the Commissioner may suspend or revoke a real estate license at any time the licensee, acting as a licensee in performing or attempting to perform any act in connection with a transaction coming within the scope of specified real estate regulations, has knowingly or willfully disregarded the instructions of a principal to protect the interests of a third party holding a junior obligation secured by property listed by the licensee, or disregarded the instructions of a principal to protect the interests of a third party that owns, holds, or claims an interest in the real property which was the subject of a transaction subject to those real estate regulations. This two-year bill is pending in the Assembly Committee on Consumer Protection, Governmental Efficiency, and Economic Development.

AB 1593 (Floyd), as amended April 18, would transfer the licensing and regulatory functions of the State Banking Department, the Department of Savings and Loan, and the Department of Corporations to a Department of Financial Institutions, which the bill would create; enact a Mortgage Broker Law and transfer to the Department of Financial Institutions responsibility for regulating specified mortgage brokering activities conducted under a real estate broker's license; and require a real estate broker conducting these activities to obtain prescribed certification from the Department of Financial Institutions. This two-year bill is pending in the Assembly Committee on Banking, Finance and Bonded Indebtedness.

AB 814 (Hauser). Existing law provides that certain provisions of the Real Estate Law do not apply to any stenographer, bookkeeper, receptionist, telephone operator, or other clerical help in carrying out their functions. As introduced February 27, this bill would provide that these provisions do not apply to any clerk or other employee of a condominium complex who is responsible for accepting or arranging reservations for transient occupancy of less than thirty days or who acts as a cashier for the collection of deposits or rental fees for transient occupancy of less than thirty days. This two-year bill is pending in the Assembly Consumer Protection Committee.

AB 776 (Costa), as introduced February 26, would authorize DRE, using funds from the Education and Research Account in the Real Estate Fund, to develop a research report to explore options for the state to provide for a residential mortgage guarantee insurance program for low-downpayment mortgages for California first-time homebuyers not currently served by the private market or by the Federal Housing Administration, and for low- and moderate-income rental housing. This two-year bill is pending in the Assembly Committee on Housing and Community Development.

AB 1234 (Frazee), as amended May 14, would provide that, within the limits of the fees charged and collected under the laws regulating real estate, and within the limits of prudent administration, the Real Estate Fund shall be maintained at a level equal to DRE's projected annual budget. This two-year bill is pending in the Assembly Higher Education Committee.

DEPARTMENT OF SAVINGS AND LOAN

Commissioner: Wallace T. Sumimoto
(415) 557-3666
(213) 736-2798

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 to Merge With Banking Department. After shrinking dramatically in size and scope over the past two years, DSL will be absorbed into the State Banking Department (SBD) by the end of June 1992, according to Carl Covitz, Secretary of the Business, Transportation and Housing Agency. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 128 and Vol. 10, No. 4 (Fall 1990) pp. 127–28 for background information.)

Congress' passage of the 1989 Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), barring state S&Ls from risky investments traditionally prohibited to federal S&Ls, eliminated the advantages of a state charter. Previously, a state S&L was permitted to loan the equivalent of its net worth to one borrower and make direct investments in real estate, a boon for real estate developers; these activities are prohibited under FIRREA. Additionally, a state-chartered institution must pay yearly assessments to DSL on top of its fees to the federal government. These and other factors have caused many state-chartered S&Ls to convert to a federal charter. As of September 19, there were only 47 state-chartered thrifts left, compared with 158 during the mid-1980s.

DSL currently has about 31 employees in Los Angeles and San Francisco, down from more than 130 employees in 1987. DSL staff members, although transferring to SBD, will continue to concentrate on regulating thrifts which still retain their state charter. No layoffs are currently planned, since both agencies are funded by industry assessments.

High Interest Rates Used to Increase Deposits in Ailing Thrifts. The Resolution Trust Corporation (RTC), overseer of the federal government's S&L bailout, is currently operating almost 200 insolvent S&Ls. As part of its attempt to lure wealthy depositors, RTC is offering very high interest rates, apparently in violation of its own policies and without the knowledge or consent of Congress, which must appropriate taxpayer money to pay for the failures. RTC estimates that it has accepted over $8 billion in so-called "hot money" deposits upon which above-market interest is being paid in an effort to delay or prevent the collapse of some of the S&Ls. Critics of RTC's tactics contend that "hot money" increases the government's cost of operating these S&Ls; such a maneuver is considered