



REGULATORY AGENCY ACTION

On October 7, Diablo Development #1, a California limited partnership, was issued a desist and refraining order for violating the Corporate Securities Law. Securities in the form of limited partnership interests in an oil and gas program were offered and sold to the public without first obtaining a permit from the Department of Corporations. Although no permit had been issued, a Limited Offering Exemption Notice under section 25102(f) of the California Corporations Code had been filed. A review of the transactions disclosed that the company did not qualify for the exemption.

On October 16, Paul Weil, an attorney for and director of Southwest Bancorp, stipulated to a desist and refrain order issued on August 11. Mr. Weil is prohibited from acting as securities counsel to Southwest Bancorp for five years. The order was issued in reference to a 1984-85 transaction in which Southwest Bancorp offered its preferred shareholders an exchange of common stock for their preferred stock. Under section 25120 of the California Corporate Securities Law, such an exchange requires approval of the commissioner. This offer and exchange was carried out despite the fact that Mr. Weil had been previously notified by the Department of Corporations that approval was required. Because the exchange offer constituted the offer and sale of a security which was neither qualified nor exempt from qualification, the commissioner considered the order necessary for the protection of existing and potential investors in Southwest Bancorp.

On October 24, the Department of Corporations obtained a preliminary injunction in Los Angeles Superior Court against Corporate Guarantee, Inc. The defendant was enjoined from offering or selling securities without a permit or on the basis of fraud and misrepresentation, and from operating as a broker-dealer without a license. Investors were solicited through advertisements in the *Los Angeles Times*, and were promised a 21% return on their money through high quality bonds which would be purchased by the defendant. At least \$300,000 has been invested, and to date, no investor has received any return. The complaint alleges that the defendant violated the Corporations Code by transacting business as a broker-dealer without the required license, and that it used false statements in order to induce investors.

On November 4, Commissioner Tom adopted a proposed decision from the Office of Administrative Hearings in the

matter of *Commissioner v. Cal State Properties Fund-85, Ltd.* (Cal State). The administrative law judge found that the Department's refusal to issue a permit to Cal State to sell limited partnership interests in a real estate syndication to the public was appropriate. Cal State had failed to file an accurate application, made untrue statements of fact, and omitted to provide material facts in its application. The evidence showed that Cal State was unable or unwilling to comply with the applicable statutes and regulations.

On November 4, a desist and refrain order was issued to McMurry Companies, Johanna Southwest Corporation, Kimkel Corporation, and Gene McMurry for violation of the California Corporate Securities Law. McMurry approached investors sometimes as an insurance salesman, and sometimes as a "certified financial planner," and induced them to invest in oil and gas drilling programs to be conducted by the above-mentioned companies. Others were induced to invest in arbitrage agreements, and their money was used to invest in trading in commodities and securities. At least 21 investors invested over \$240,000. No investor has received any of the promised interest payments, at a rate of 24% to 36%, or any of their principal.

On December 1, the Los Angeles Superior Court issued a temporary restraining order and an ex parte appointment of receiver over Marlin Properties, Inc., Marlin Industries, Inc., and Marlin Equities, Inc. These corporations were acting as general partners of 18 limited partnerships formed for the purpose of rehabilitating historical landmarks for tax shelter investments. The Marlin entities allegedly did not perform the rehabilitation work, and investors' funds were used for other purposes. Because of the use of funds for other purposes, there were insufficient funds to meet the debt service obligations of the partnerships, resulting in foreclosure of some of the buildings. The unusual remedy of seeking a receivership and temporary restraining order without notice to the defendants was viewed as necessary because of extensive commingling and abuse of investor funds, and fear that books and records might be destroyed and additional funds diverted.

LEGISLATION:

AB 3837 (*Stirling*) amends sections 8302, 8304, and 8321 of the Commercial Code, and amends section 163, 174, 183, 313, 407, 409, 411, 412, 416, 417, 418,

422, 423, 509, 705, 1302, 1303, 1305, 2115, 2201, 2251, 5342, 5515, 7515, 9414, 12465, and 25117, and adds sections 109.5, 156.1, 171.1, 191.1, and 12446 to the Corporations Code.

This bill deleted provisions of the Commercial Code which specified that: (1) the priority of a secured party is unaffected by a bona fide purchaser of an interest in a security free from adverse claims, and (2) the first person to perfect a security interest using specified registration has priority over other secured parties.

Certain provisions of a corporation's articles of incorporation may now be made dependent upon facts ascertainable outside the articles or terms of an agreement of a merger. The bill also changes the requirements for foreign corporations to be exempt from certain provisions of the Corporations Code. The 45-day notice required for an amendment to the bylaws or articles of a public benefit corporation that would terminate memberships may now be waived, if all members entitled to vote receive prior written notice and sign the waiver. Existing law provided for the escheat to the state of certain property; under this bill, a proprietary interest in a consumer cooperative corporation shall become the property of the corporation. Exemptions from constitutional usury provisions has been extended to evidence of indebtedness that has a rating by an agency or system that has been certified by rule or order of the commissioner. This bill has passed both houses and has been chaptered.

SB 315 (*Montoya*). (See CRLR Vol. 6, No. 2 (Spring 1986) p. 63.) As amended in July, this bill would have required financial planners to be subject to licensure pursuant to the existing requirements in the Corporations Code for investment advisors. The commissioner would have been required to establish specified standards, procedures, and fees for regulation of financial planners. Disclosure requirements would have been imposed on financial planners, and they would be subject to civil and criminal penalties. SB 315, however, was vetoed by the Governor.

FUTURE MEETINGS:

To be announced.

DEPARTMENT OF INSURANCE

Acting Commissioner:

Roxanni Gillespie
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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 Codes sections 12919 through 12931 provide for the commissioner's powers and duties. Authorization for the Insurance Department is found in section 12906 of the 800-page Insurance Code.

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 1,300 insurance companies, which carry premiums of approximately \$26 billion annually. Of these, 650 specialize in writing life and/or accident and health policies.

In addition to its licensing function, the Department is the principal agency involved in the collection of annual taxes paid by the insurance industry. The Department also collects over 120 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) regulates compliance with the general rating law. Rates generally are not set by the Department, but through open competition under the provisions of Insurance Code sections 1850 *et seq.*; and

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

Through the California Insurance Code, the commissioner has the power to order a carrier to stop doing business within the state, but does not have the power to force a carrier to pay a

claim, a power reserved to the courts. The commissioner can hold an administrative hearing to determine if a particular broker or carrier is complying with state law.

The commissioner is aided by a staff of over 400, located in San Diego, Sacramento, Los Angeles and San Francisco, the Department's headquarters. The commissioner directs ten functional divisions and bureaus, including the recently reestablished Consumer Affairs Division. This division has been expanded and now includes the Rate Regulation Division. The Consumer Affairs Division is specifically designed to make the Department accessible to consumers and more accountable to their needs and questions.

The Consumer Service Bureau (CSB) is part of the Consumer Affairs Division and handles daily consumer inquiries. CSB receives over 300 calls each day. Almost 50% of those 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 policy services, investigation or CSB.

Since 1979, the Department has maintained the Bureau of Fraudulent Claims, charged with investigation of suspected fraud by claimants. The California insurance industry claims losses of more than \$100 million annually to such claims. Licensees pay an annual fee of \$150 to fund the Bureau's activities.

Commissioner Bunner resigned June 6, 1986, after three and one-half years as commissioner. Mr. Bunner stated that he originally agreed to take the position for only two years and stayed longer than he had planned. His resignation was accepted one day following his proposal that the legislature establish an assigned risk plan for liability insurance. Commissioner Bunner planned to leave insurance and return to the public accounting field he left in 1983.

Roxanni Gillespie, the Department's Chief Deputy Commissioner, is Governor Deukmejian's appointee to replace Mr. Bunner. Ms. Gillespie joined the Department in 1983. She was Vice President of Industrial Indemnity's San Jose Division before she joined the Department.

MAJOR PROJECTS:

California Automobile Assigned Risk Plan (CAARP). Commissioner Gillespie recently introduced a new program to cut auto insurance rates as much as 24% for some policyholders residing in California's inner cities.

CAARP is intended to force insurance companies to write policies at market rates in high-risk inner cities, thus providing minimal liability coverage for drivers who cannot buy insurance elsewhere. In return for a company's participation, the company will be exempt from participating in the state-controlled assigned risk plan. The regulations establishing this program were approved by OAL.

LEGISLATION:

AB 3581 (Papan) has been chaptered. The new law authorizes industrial loan companies, personal property brokers, and consumer finance lenders to provide credit loss-of-income insurance to borrowers under prescribed conditions.

AB 4406 (Brown) has been chaptered. Existing law requires every insurer doing business in the state to file an annual statement with the commissioner containing specified information regarding the operations of the insurer, and makes confidential all communications to the commissioner regarding the holder of, or an applicant for, a certificate or license issued by the commissioner. This law requires the insurer to file an additional report each year containing further information for certain classes of insurance, as specified. It requires the commissioner to designate those classes of insurance that are generally unavailable or unaffordable or for which there have been unusually great premium increases, and those classes and other designated classes would be required to report specified information. It also prohibits insurers from ceasing to offer any class of commercial liability insurance without prior notification to the commissioner.

AB 3542 (Lancaster) has been chaptered. The law authorizes (rather than requires) the revocation of an insurer's certificate of authority who pays commissions or other compensation to certain of its directors, officers, or employees contingent upon issuance, procurement of an application for issuance, or renewal of life or disability insurance.

AB 3604 (Wright) has been chaptered. The new law requires, at the commissioner's request, the filing of additional supplemental information by insurers when any insurer requires immediate regulatory attention.

AB 3875 (Brown) has been chaptered. With respect to commercial insurance providing coverage of real and personal property, legal liability, and errors and omissions liability (with specific excep-



tions), this law prohibits an insurer from cancelling those policies after they have been in effect for sixty days unless cancellation is based upon certain enumerated factors, and specified notice has been given.

SB 831 (Robbins) has been chaptered. The law exempts from licensure as an agent, broker, or solicitor under the Insurance Code employees of a creditor who secures and forwards information for the purpose of obtaining group credit life, credit disability, or involuntary unemployment insurance, or for enrolling individuals.

SB 6 (Robbins) would create a health coverage association to provide insurance to persons who are not otherwise able to obtain health insurance, and do not qualify for coverage through the state's Medi-Cal program. The bill would establish a seventeen-member California Health Coverage Association board to administer the program.

AB 151 (Stirling), introduced December 22, would prohibit motor vehicle liability insurers from requiring the name of an insured's spouse or other member of the insured's household to appear on the insurance policy, if insurance coverage is not extended to those persons.

Anticipated Legislation. A draft report written by Michael Strumwasser, special counsel to Attorney General John Van de Kamp, proposes several legislative changes, including repeal of the insurance industry's exemption from state and federal antitrust laws and restrictions on the ability of insurance companies to limit the cost of defending policyholders. Mr. Strumwasser also suggests that the Department assess the level of competition within the industry, and act to prohibit unreasonable rates.

RECENT MEETINGS:

At its November 6 meeting, the chairs of the several subcommittees of the Consumer Advisory Board updated the Board on the progress of each subcommittee's project.

The toll-free information/action number (800-233-9045) is in full operation from 8:00-5:00 on Monday through Friday to receive complaints from insurance customers. Personnel involved in this program are taking several insurance classes to familiarize themselves with common problem areas.

The Comparative Premium Survey of Automobile Insurance for California and the California Personal Lines Automobile Complaint Ratio Study for October 1986 were completed and copies

were distributed to Board members. The Department also printed one million additional copies of the Buyers Guide to Car Insurance, which will be distributed when individuals have their pictures taken for a driver's license.

The subcommittee studying the "senior citizen gap" (see CRLR Vol. 6, No. 4 (Fall 1986) p. 64) discussed a proposal to network senior citizen organizations. The subcommittee has received a favorable response from these organizations, and proposed that a hearing on this issue be held to air complaints and allow industry members accused of detrimental action to speak on their own behalf. The Department has held previous hearings addressing the issue which have resulted in cease and desist orders to the organizations involved.

In response to a concern that some senior citizens do not understand Medicare, the Department is preparing a brochure on "Medigap."

The subcommittee for industry members is still discussing various proposals (see CRLR Vol. 6, No. 4 (Fall 1986) p. 64).

The Consumer Advisory Board (CAB) has formed another subcommittee to address the issue of availability and affordability of private passenger automobile insurance programs. Leroy Mobley will chair this subcommittee.

Attendance has been a problem at recent CAB meetings. The November 25 meeting was devoted to solving this issue. After receiving three resignations from its members, CAB is in the process of evaluating applicants to return the Board to full strength. To solve its attendance problem, the Board established a predetermined schedule to meet on the first Thursday of every month beginning in February.

FUTURE MEETINGS:

To be announced.

DEPARTMENT OF REAL ESTATE

Commissioner: James A. Edmonds
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The Real Estate Commissioner is appointed by the Governor and is the Department's chief officer. 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, subdivision and commercial and business brokerage. Various subcommittees also provide advisory input.

The Department primarily regulates two aspects of the real estate industry: licensees (185,878 salespersons, 89,548 brokers, 15,538 corporations) and subdivisions.

Licensee examinations require a fee of \$25 per salesperson and \$50 per broker. Exam passage rates average 45% for salespersons and 53% for brokers. License fees for salesperson and broker are \$120 and \$165, respectively. Original licensees are fingerprinted and license renewal is required every four years.

In sales or leases of certain subdivisions, the Department protects the public by requiring that a prospective buyer be given a copy of the "public report." The report contains various disclosure statements relating to title, encumbrances and similar information. Recent legislation mandates that a purchaser be given the latest financial report for the project in addition to governing instruments and disclosure of any delinquent assessments. The commissioner will not issue the public report if the subdivider fails to comply with any provision of subdivision law.

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 \$10.

The California Association of Realtors (CAR), the industry's trade associa-