FUTURE MEETINGS

June 23 in Sacramento.
July 27 in Del Mar.
August 25 in Del Mar.
September 22 in San Mateo.
October 27 in Arcadia.
November 16 in Hollywood Park.
December 15 in Los Angeles.

DEPARTMENT OF INSURANCE

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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 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

Quackenbush/20th Century Settlement of Proposition 103 Rollback Obligation Challenged in Lawsuit. On January 27, DOI and 20th Century Insurance Company reached a settlement in their dispute over the amount of Proposition 103 rollbacks owed by the company to its policyholders. Commissioner Quackenbush issued a stop order on the $120 million in required rebates initially assessed against 20th Century by former Commissioner John Garamendi, and instead allowed the firm to reduce the amount payable to consumers to $46 million. Under the agreement, another $44 million would be transferred to company reserves to maintain required reserve ratios on possible liabilities, and the final $32 million would be forgiven if 20th Century's losses from the January 1994 Northridge earthquake reach $982 million. Any losses below $982 million would be added to the $46 million for customers, up to a maximum of $32 million. On January 30, 20th Century asked to be dismissed from the appeal to the U.S. Supreme Court of the California Supreme Court's unanimous decision in *20th Century Insurance Company v. Garamendi*, in which the California high court upheld the validity of the regulatory formula used to calculate the amount of 20th Century's required rebate (*see* LITIGATION).

Consumer groups protested the settlement vigorously, and petitioned the Commissioner to reject or rescind it. On February 21, the Proposition 103 Enforcement Project filed comments on the stipulated settlement. The filing took the form of a legal brief questioning the legality of the Commissioner's discharge of a statutorily-compelled 20th Century debt to its policyholders. The Project argued that a prior debt owed policyholders may not be discharged arbitrarily based on new debt arising from the Northridge earthquake, and that if 20th Century's insolvency is jeopardized by its subsequent business decisions, all creditors—including policyholders—should be paid on a *pro rata* basis from available funds.

Ironically, shortly after the settlement, the U.S. Supreme Court declined to review the matter, and left standing the California Supreme Court's decision which affirmed former Commissioner Garamendi's rollback regulations and the legality of the entire $120 million assessed against 20th Century. *[14:4 CRLR 129–31]* The Proposition 103 Enforcement Project complained bitterly that the insurance firm had greater success in negotiating with the new Commissioner than it had in its protracted court challenge. Commissioner Quackenbush contended that the lowered assessment is justified by the unexpected earthquake and accompanying losses, and that 20th Century needs adequate reserves to protect current policyholders and assure claims payment in the event of another widespread calamity.

On March 28, the Proposition 103 Enforcement Project filed a petition for writ of mandate in San Francisco Superior Court to void the settlement. The petition parallels the arguments made in the comments filed with the Commissioner (*see* LITIGATION).

Additional Proposition 103 Rollbacks Ordered; Industry Resistance Remains Strong. Shortly after taking office in January 1995, Commissioner Quackenbush promised that remaining rebates required by Proposition 103 would be ordered within six months. *[15:1 CRLR 110]* On April 18, he announced that six companies had agreed to pay $41.5 million in rebates. On May 12, he announced settlements by another ten insurance companies. However, all were extremely small firms rebating less than $250,000 each, except for Chubb & Son which settled for $6.67 million.

On May 13, the Commissioner requested a budget augmentation of $19 million to prosecute the holdouts, which account for the majority of funds ordered returned to policyholders. The remaining holdouts include State Farm Mutual Automobile Insurance Company and Farmers Insurance Group, the largest and third-largest property-casualty insurers in the state, respectively. Consumer advocates contend that over $1 billion in rebates ordered remains unpaid. The assessments now pending are based on a formula for calculating the Proposition 103-required refunds consistent with the California Supreme Court's decision in *Calfarm v. Deukmejian*, 48 Cal. 3d 805 (1989), and which has been unanimously upheld by the California Supreme Court in the landmark *20th Century* case (*see above*). Where insurance firms object to the imposition of the formula because of unusual circumstances applicable to them, they may request an individual administrative hearing. The extra $19 million in funds requested by the Commissioner is intended to finance those anticipated administrative hearings for the major objectors to formula application, and for subsequent court tests.

Meanwhile, Commissioner Quackenbush has reversed the policy of his predecessor John Garamendi, and has entertained and granted rate increases to firms which object to the rollback assessment amount and have refused to pay it. Although Garamendi rejected rate increases requested by companies which had not yet satisfied their rollback obligation, Quackenbush contends that the two issues are separate, and granted State Farm a 65% increase in its earthquake insurance rates which will provide $77 million in additional premiums on current policies, raising the average amount by $150 per year.

Auto Insurance Rating Factors. Upon taking office in January, Commissioner Quackenbush withdrew all rulemaking packages approved by his predecessor which were pending at the Office of Administrative Law (OAL)—including former Commissioner Garamendi's proposed permanent rules establishing the factors upon which auto insurance premiums may be calculated and the weight which may be given to various factors. *[15:1 CRLR 113]* The revision in criteria for charging between customers, particularly the removal or reduction of ZIP code territories as a major factor, was compelled by Proposition 103 in 1988.

Historically, auto insurance rates have varied substantially based on age and ZIP code (among other factors). Hence, persons living in some urban areas pay extraordinary insurance premiums, based not on a risk associated with them personally, but on a high claims record applicable to some of their neighbors. Included within Proposition 103 was the required alteration of that rate design. Noting the disproportionately high premiums in poorer neighborhoods, proponents of the initiative argued that rates should not be high because of the driving habits of one's neighbors. They argued that the fact of a statistical correlation between ZIP code areas and insurance claim patterns does not mean there is a causal connection appropriate for price assessment.

Proposition 103 requires that three mandatory factors be used to determine auto policy premiums, in decreasing order of importance: (1) driving safety record, (2) number of miles driven annually, and (3) number of years of driving experience. The initiative also permits the Insurance Commissioner to adopt, by regulation, other factors "that have a substantial relationship to the risk of loss." The fourth category was intended to allow the Commissioner to account for such factors as the safety features of a particular vehicle in order to lower insurance costs where safety is purchased and stimulate its proper marketplace reward. Finally, the proposition required companies to give a mandatory "good driver discount" to those with safe driving records.

A given driver with a bad safety record, driving many miles, and with little experience may be a risk since those factors may themselves cause accidents. The initiative intended to individualize causation more precisely, rather than infer greater risk based on the ancillary happenstance of where one lives. However, eliminating geography might lead to noticeable increases for large numbers of suburban and rural policy holders, and political costs for an official implementing it. Hence, geography has been reintroduced through the fourth "catch-all" factor.

In February, Commissioner Quackenbush submitted to OAL, as emergency regulations, sections 2632.5 and 2632.7, Title 10 of the CCR, the same auto rating factors utilized by his predecessors John Garamendi and Roxani Gillespie. They provide that an insurer's rating plan shall be established by means of a "sequential analysis" first analyzing the three mandatory factors with decreasing weight, followed by "optional" factors. The weight to be accorded the optional factors is specified. OAL approved section 2632.7 on February 2, and section 2632.5 on February 23. This marks the sixteenth time these rules have been adopted and approved on an emergency basis.

On February 15, the Proposition 103 Enforcement Project, joined by Citizen Action, the Center for Public Interest Law, Consumers Union, the City of Los Angeles, the County of Los Angeles, the Utility Consumers' Action Network, seven other consumer/civil rights/labor groups, and U.S. Representative Maxine Waters petitioned the Department to consider an auto insurance rate design regulation under Government Code section 11340.6. The consumer coalition's petition for rulemaking was based substantially on a report applying the law to existing market data prepared by the Office of Policy Research of the Department of Insurance itself. The 116-page report, *Impact Analysis of Weighting Auto Rating Factors to Comply with Proposition 103*, was issued in December 1994. *[15:1 CRLR 110]* Briefly, the report concluded that current differences between companies in rating practices appear to be arbitrary, that the three mandatory factors do not dominate, and that none of the insurers are complying with the law. The report notes in particular that several of the "optional" minor factors outweigh mileage driven. It suggests two approaches to standardizing the rating factors, each of which will bring companies into compliance with the law, and neither of which would cause enormous dislocation (4%, primarily those with bad driving records, would pay up to $100 more per year; about 4% would pay a similar amount less).

On March 13, the Commissioner denied the consumer coalition's petition for rulemaking, citing his own efforts under way to adopt auto rating factor regulations, and scheduled hearings to take place for their consideration. Interestingly, his denial decision described the *Impact Analysis* report as "drafted by analysts in [the Department of Insurance's] Office of Policy Research; consequently, those regulations have not been subjected to Department scrutiny to determine whether they meet [applicable] standards...." The Commissioner also contended that the rules proposed by the Project violated applicable standards for regulations in that they

were unclear, inconsistent with other law, and DOI lacks authority to adopt them.

The Commissioner proceeded with his promised investigatory hearings in San Diego on April 11, Los Angeles on April 12, and Sacramento on April 18. Extensive testimony was delivered by the Proposition 103 Enforcement Project, using expert testimony from Allan I. Schwartz of A.I.S. Risk Consultants, Inc. in New Jersey. The testimony generally supports the Department's 1994 *Impact Analysis* report and its recommendations. The Project and Schwartz emphasized the need to "minimize" the impact of territory on rates under Proposition 103, the fact of current violation as indicated in the Department's 1994 report, and the need to adopt enforceable rules to preclude any of the optional factors, or all of them combined, from outweighing the three mandatory individual factors. The Project's expert opined that of the two ways to statistically calculate the weight given to allowable factors—the "average class" and "single omit" methods, the latter is preferable because it does not require use of "standardized rating factors." Those standardized factors would, in turn, require perhaps numerous additional sets of hearings to determine which variables to use for each factor, and numerical factors for each variable. The Project has argued for the simpler "single omit" alternative, given the seven years which it contends have already transpired without compliance with the Proposition's intent.

Both consumer groups and the industry await final rules from the Commissioner, expected to be published by September. Most observers have some sympathy for the position of the new Commissioner in the implementation of automobile insurance rating factors: He assumed office seven years after the enactment of a legal requirement implying considerable political cost—only to have the troublesome task handed to him substantially *de novo* by his predecessor.

In the meantime, Assemblymember David Knowles has introduced AB 341, which would codify in statute the "sequential analysis" rating factors currently in the CCR, despite the fact that DOI's report indicates that the "sequential analysis" fails to comply with the intent of Proposition 103 (*see* LEGISLATION).

New CAARP Auto Insurance Rates. Following a public hearing in January, Commissioner Quackenbush approved a 5.2% rate increase for the California Automobile Assigned Risk Plan (CAARP) on March 14. This plan is the system for providing coverage to those who are denied insurance by private insurers. CAARP is advised by an Advisory Committee which includes both insurance industry and public members. The CAARP system requires all insurers to cover a portion of rejected insurance applicants (usually those with poor safety records). Rates charged by all insurers for various customer groups and coverages are specified, and changes must be approved by the Commissioner. The plan is deemed necessary given the theoretical legal requirement to have minimum insurance to drive a vehicle; it is also intended to counter "cream-skimming," or the selection by insurers of only older and wealthier drivers with lower statistical risk.

The rate increase, which was proposed by the CAARP Advisory Committee, was reviewed by a special panel appointed by the Commissioner, and including Deputy Insurance Commissioner Reid McClaran, senior staff actuary Eric Johnson, and senior staff counsel Elizabeth Mohr and Tim Morgan.

CAARP had originally requested a 12.8% average increase, later reduced to 10.4%—which was vigorously opposed by consumer groups. At a January 10 public hearing, Selwyn Whitehead of the Economic Empowerment Foundation filed opposition testimony which included a report by actuary Allan Schwartz. The testimony consisted of a dissenting report from Schwartz contending that the proper indicated rate change is an increase of only 3.7% overall, with rates for two sublines appropriately decreased. The report cites disagreement with the CAARP data underlying its request as to purported "loss trend," excessive overhead expenses, and a 5% add-on for "contingencies" which "lacks empirical support or explanation."

The January 10 hearing also included the oral testimony of former CAARP Advisory Committee member Javier Rodriguez, who noted that the requested increase emanated solely from the industry members of the Committee; all six public members opposed it.

Following the hearing, and until the record was effectively closed in late February, CAARP Advisory Committee members and objectors submitted extensive written testimony and rebuttal. On January 31, Public Advocates—a San Francisco-based public interest organization—joined with six ethnic associations to file testimony in opposition to the proposed increase. Their expert was national actuarial expert J. Robert Hunter. His extensive testimony included 15 exhibits and opined that CAARP's request omitted needed information about rate design (the overall rate structure establishing which customer groups will be charged what to yield revenue), the proposed premiums were not cost-based, and—most important—it does not solve the problem of insurers failing to give the good driver discounts as required by Proposition 103.

Hunter contended that insurers are advertising heavily to sell CAARP coverage at two to three times voluntary market rates and then signing up good drivers who should qualify for good driver discounts below voluntary insurance levels. He argued that by placing good drivers in the CAARP plan (which has a specified charge), insurance companies have been improperly avoiding the required discount for those with safe driving records as mandated by Proposition 103. This misplacement occurs particularly in redlined (underserved) areas, where a substantial number of good drivers are refused insurance or charged extremely high rates due to their ZIP codes, and hence are compelled to purchase the CAARP policies the insurers must offer. Hunter estimated that as many as two-thirds of the 110,000 motorists now receiving CAARP coverage may be good drivers properly eligible for lower voluntary insurance rates and good driver discounts.

Hunter also contended that CAARP's filing fails to exclude unreasonable expenses expressly disallowed in insurance ratemaking—including the rates applicable outside of CAARP, thus providing an incentive to insurers to load all of those expenses into the CAARP segment to achieve "back-door" allowance. Finally, Hunter argued that the proposed plan fails to include easily obtained (and anticipated) savings from fraud reduction, uses inappropriate trend selections, perpetuates "double-dipping" by failing to deduct for loading factors not applicable, and inflates anticipated medical payments at an impossible claim level (averaging a level higher than applicable policy limits).

Hunter noted that the 85% CAARP rate increase allowed in 1990 *[10:4 CRLR 121]* caused a large drop in participation. However, those no longer purchasing did not stop driving; instead, they added to the increasing population driving unlawfully without insurance. Instead of an increase, Hunter advocated a reduction of 18%, which Public Advocates proposed as an alternative to the requested increase.

Michael Miller, Glenn Fresch, and Richard J. Manning provided testimony in support of CAARP's request, with rebuttal testimony from most of them and Robert Hunter extending through February 14. One of the two major disputes accounting for the disparity between CAARP and Hunter concerns possible insurance fraud reductions, with CAARP contending in rebuttal that savings have not been sub-

stantial in recent years. One source of such savings not addressed by witnesses or the Commissioner may come from recent legislation to assess all automobile policies to fund special antifraud units in California's offices of district attorney and which have begun in 1994–95 to increase insurance fraud prosecutions markedly. *[14:1 CRLR 104; 13:4 CRLR 115; 13:2&3 CRLR 132]*

On March 1, DOI's Statistical Analysis Bureau issued a report on uninsured drivers which the Commissioner added to the record *post hoc*. The report found that 27.75% of vehicles driven in California are uninsured, with percentages in Los Angeles County averaging 37% and in low-income neighborhoods at a 50–90% level. As noted, CAARP participation dropped from 1.4 million in 1990 to 110,000 in 1991 following the CAARP 85% rate hike. That exodus was also stimulated by the change in policy to not require insurance coverage to renew vehicle registrations or licenses. The DOI report indicates that the "voluntary" insurance market has not picked up those who have left.

The panel and the Commissioner ultimately rejected both the 10–13% rate increase proposed by the industry members of the CAARP Advisory Committee, and the 18% reduction proposed by Public Advocates. The Commissioner accepted some of the contentions of consumer objectors, and—as noted—his order will result in an overall 5.2% rate increase. As to the major specific elements, CAARP bodily injury rates will be reduced by 4% and property damage rates reduced by 3.1%. However, uninsured motorist rates were raised 125.2% in recognition of the mass exodus from CAARP coverage, and the radical increase in the number of uninsured motorists. Such an increase makes claims more likely on CAARP policies since more vehicles causing damage to CAARP policyholders will be driven by the uninsured. Finally, medical payment rates were increased by 25.1%. At this writing, the new rates will take effect on June 1.

Revised CAARP Auto Insurance Rules. In December 1994, then-Commissioner Garamendi proposed regulatory amendments governing how CAARP obligations are to be met by insurers, and allocated among them. Insurance Code section 11620 requires the Commissioner to adopt a reasonable plan to apportion applicants unable to procure insurance through ordinary means. The previous allocation rules have become outdated by assigned risk law, market experience, and the impact of Proposition 103. Accordingly, Garamendi proposed the adoption of new sections 2400–2441, Title 10 of the CCR, replacing existing sections 2400–2454. *[15:1 CRLR 113]*

On February 16, the CAARP Advisory Committee held a public hearing in San Francisco on the proposed amendments. Some of the testimony focused on proposed section 2418, which establishes an "installment premium payment plan" permitting CAARP policyholders to pay their premiums in seven monthly installments, with a $2 charge tacked onto each installment and installment payment notices issued 30 days in advance of the due date. John Lusandi of California Eagle Insurance Company testified on behalf of producers (agents who submit applications to CAARP). He stated that the proposed installment charge of $2 is inadequate and proposed a $4 fee; he also contended that the 30-day payment notice would make it difficult to cancel a policy when payments are late without loss.

Robert Ford of the Center for Public Interest Law argued that the entire annual policy is paid for over its first seven months and is partly a prepayment, giving insurers unapproved interest income inappropriate in a non-voluntary plan. Ford also suggested a multi-language warning to CAARP policy applicants that the policy is "one of last resort" and that less expensive policies should be available. Ford argued that CAARP should take only bad drivers, not those being redlined—who should have access to the less expensive voluntary market.

The public comment period ended on April 4; at this writing, staff is reviewing the comments received and incorporating them into revised language.

CAARP Producer Certification and Performance Standards. In November 1994, the Department published notice of its intent to adopt new rules to certify "insurance producers" (licensed auto insurance agents) to sell CAARP policies to those eligible and to get a commission from the Plan. The proposal would implement SB 1721 (Johnston) (Chapter 1092, Statutes of 1994), which added new Insurance Code section 11622.5, by adopting sections 2431.1, 2431.2, and 2431.3, Title 10 of the CCR. The proposed regulations would establish performance standards for producers to remain certified, and include recordkeeping and enforcement details for the "CAARP Manager," who is expected to report producer violations to the CAARP Advisory Committee and the Commissioner. *[15:1 CRLR 113]*

DOI held a public hearing on the proposed rules on January 31 in Los Angeles; at this writing, staff is reviewing the comments received and preparing the rulemaking file for submission to OAL.

Anti-Redlining Report and Regulations. On February 16, Commissioner Quackenbush issued his first *Report on the Underserved Communities*, as required by section 2646.6(c), Title 10 of the CCR. The report lists communities by ZIP code which are statistically underserved in automobile insurance coverage, and maps those areas in Los Angeles and Alameda counties. South Central Los Angeles and the East Bay in Oakland are two areas particularly underserved, by DOI measurement. The data used came from three sources: DOI's 1990 auto liability database, the Department of Motor Vehicles' database, and the 1990 census.

A community was defined as "underserved" if it met any one of three criteria. First, where the percentage of uninsured motorists is 10 points above the state average *and* per capita income is below the 50th percentile for the state *and* two-thirds or more of the community is composed of minority residents, the community is considered underserved. The other two criteria will be applicable in future surveys of underservice in other lines of insurance. One applies where the proportion of uninsured businesses or residences is more than 10% above the state metropolitan average. A third alternative criterion is met where members of a community have contacted three agents in a given line of insurance and are refused although ready, willing, able, and qualified to purchase.

On March 6, the state's largest auto insurer, State Farm Mutual Automobile Insurance Company, announced that it intends to increase its presence in inner-city Los Angeles. In conjunction with the Greenlining Institute—a group promoting investment and service in poorer neighborhoods, State Farm Vice President Roger Tompkins identified 40 ZIP codes stretching 22 miles from the Griffith Park area to Compton where the company will be encouraging agents to open new offices. Tompkins noted that the firm had conducted a study of 21 urban areas of California, and concluded that Los Angeles "stood out as the one place where State Farm had a lower-than-expected level of business in lower-income areas." He noted that the program also comes in response to community concern over State Farm's recent moratorium on sale of new homeowners insurance (*see below*), which was disproportionately affecting poor homeowners requiring insurance for real property-secured loans. Hence, the company would be making an exception to its "no-growth" decision on homeowners insurance, and will sell up to $2.2 billion in new homeowners and renters insurance in the target area.

In late April, DOI announced its intent to substantively revise section 2646.6, Title 10 of the CCR, the anti-redlining regulation which requires insurers to submit detailed data on the extent to which they are servicing the needs of the entire community. *[14:4 CRLR 145–25]* Although, at this writing, details of the proposed revisions are not expected to be released until June, Commissioner Quackenbush stated that his intent is to streamline data gathering and facilitate the reporting process.

Other DOI Rulemaking. The following is a status update on other DOI rulemaking proceedings covered in detail in recent issues of the *Reporter*:

• ***Regulations to Prohibit Redlining in Surety Insurance Dropped.*** Following a May 1994 public hearing, DOI adopted new section 2646.7, Title 10 of the CCR, which is patterned after its generic anti-redlining regulation (*see above*) but focuses specifically on surety insurance. Among other things, section 2646.7 would require surety insurers to annually compile and report to the Commissioner specified information related to the number of applications received and granted for surety bonds for construction projects, the total number of surety bonds for construction projects provided to minority-owned firms, and the total dollar amount of surety bonds issued for construction projects generally and for minority-owned firms. Under the rule, the Commissioner would compile these data on an annual basis and make the data on each surety insurer available for public inspection. *[15:1 CRLR 114; 14:2&3 CRLR 130]*

However, the Quackenbush administration declined to submit this rulemaking file to OAL, and has since dropped the proposal because the new Commissioner has appointed a Surety Task Force to advise him on whether to proceed with this rulemaking action.

• ***Objective Rating Criteria for Non-Auto Lines of Insurance.*** In December 1994, DOI held a public hearing on its proposal to implement the statutory standard prohibiting premiums which are "excessive, inadequate, or unfairly discriminatory." For auto insurance, Proposition 103 delineates major factors to use in varying rates between customers (*see above*), but the way rates are distributed in other lines of insurance is circumscribed only by the general three terms of art listed above. Then-Commissioner Garamendi proposed new sections 2360.0–2360.8, Title 10 of the CCR, to provide greater specificity in the property and casualty lines of insurance, but these regulatory changes were suspended by new Commissioner Quackenbush upon assuming office. *[15:1 CRLR 111–12]*

At this writing, staff is analyzing the comments received, and incorporating them into a modified version of the proposed rules; staff hopes to release the modified version for a 15-day public comment period during the fall.

• ***Quackenbush Drops Rulemaking on Telephone Quote Accuracy and Availability.*** In October 1994, DOI held public hearings on the problem of inaccurate quotes given by auto insurers, usually by telephone to inquiring consumers. Thereafter, the Department adopted proposed section 2632.14.4, Title 10 of the CCR, to require auto insurers to maintain toll-free telephone numbers and provide telephone and/or written price quotes for automobile insurance. However, Commissioner Quackenbush withdrew this rulemaking file from OAL upon taking office. *[15:1 CRLR 113–14; 14:4 CRLR 124; 14:1 CRLR 101]* At this writing, Commissioner Quackenbush does not intend to resubmit these rules to OAL.

Homeowners/Earthquake Insurance "Crisis" Update. At this writing, Commissioner Quackenbush and the legislature continue to formulate plans to address the problems posed by the industry-wide pull-out of the homeowners line of insurance. *[15:1 CRLR 112; 14:4 CRLR 122; 14:2&3 CRLR 131]*

Before the end of 1994, the largest homeowner insurers in California—accounting for 75% of the market—announced they would sell no new homeowner policies. Two other companies—Cigna and Republic—announced that they are leaving the state *en toto*. Still others—including State Farm, Southern California Automobile Association, Fireman's Fund, Chubb, and Mercury—announced that they will write new policies only in certain geographic areas. The latter possibility raised "redlining" concerns, given a pattern of insurance exclusion of the poor. Insurance is a requirement in order to obtain financing to own a home, which could pose a long-term barrier to lower middle class home finance and ownership. In addition, over 70 companies demanded rate increases during August to December of 1994—many by more than 100%.

The industry has based its moratorium and rate increase requests on "huge losses" from the 1994 Northridge earthquake claims. Since the quake, the industry has been demanding several legislative changes, the most important of which is the removal of the requirement in Insurance Code section 10081 that homeowners insurance include an earthquake coverage option. Insurers also seek enactment of a new state-backed earthquake insurance pool to replace the flawed and now-defunct Green-Hill-Areias-Farr California Residential Earthquake Recovery Fund initiated by the Deukmejian administration after the 1989 Loma Prieta earthquake *[12:2&3 CRLR 173; 12:1 CRLR 121–22; 11:4 CRLR 134]*, and/or passage of federal legislation which would impose a surcharge on all homeowners policies to cover natural disasters.

Consumer groups, however, contend that the industry is fabricating the "crisis" in order to facilitate undeserved rate increases, and have implied that the industry has violated antitrust law (which Proposition 103 for the first time applies to the insurance industry in California). The consumer groups, organized in a coalition by Harvey Rosenfield's Proposition 103 Enforcement Project, contend that low interest rates and investment returns account for lower profits to insurers, rather than radically increased claim payments. The coalition has noted that, for 23 years (since the 1971 Sylmar earthquake), southern California homeowners have paid insurance premiums which include an annual 2–6% "catastrophic load factor" in anticipation of another severe seismic disturbance. And insurance companies have been selling earthquake insurance at a price often equal to 50% of the cost of the regular homeowners policy and have insisted on deductibles that exclude coverage for all but the most severe quakes. The consumer coalition seeks retention of section 10081, a moratorium on cancellation or nonrenewal of homeowners policies, a joint underwriting authority to ensure the availability of homeowners and earthquake coverage to new customers under Insurance Code section 1861.11, and rejection of the public bailout plans of the insurers.

In January 1995, the consumer coalition filed a petition with Commissioner Quackenbush, repeating its the allegations of a manipulated "crisis." In its letter, the coalition contended that most companies have indicated they will still sell earthquake insurance (thus admitting that earthquakes are not "uninsurable") but only at exorbitant rates. The groups urged rulemaking and investigatory hearings to determine the actual seismic risk in California and to develop appropriate rules. Quackenbush never formally responded to the letter, instead focusing his efforts on the development of his own plan to deal with the problem—the details of which have not been announced at this writing—and scheduling a July hearing on the certification of computer models which are used to set earthquake insurance rates.

On March 23, Quackenbush also extended the authorization of the California

Fair Access to Insurance Requirements (FAIR) program to offer homeowners, earthquake, and fire insurance statewide. FAIR is a nonprofit insurance pool established to assure the availability of basic property insurance to persons who, after diligent effort, are unable to obtain insurance through normal channels; it consists of all insurers admitted to write property insurance in California, and each insurer is required to cover a policy volume in the same proportion as its market share. Absent action by Quackenbush, FAIR's authorization to sell earthquake insurance policies would have expired at the end of March.

The legislature has heeded the insurance industry's call for repeal or suspension of section 10081, and is considering SB 58 (Lewis) and AB 13 (McDonald), two bills to accomplish that feat, and a number of other bills related to earthquake and homeowners insurance (*see* LEGISLATION).

LEGISLATION

SB 58 (Lewis). Under Insurance Code section 10081, a policy of residential property insurance may not be issued, delivered, or—under certain circumstances—initially renewed by any insurer unless the named insured is offered coverage for loss or damage caused by an earthquake. If an offer of earthquake coverage is accepted, the coverage must be continued at the applicable rates and conditions, if the residential property insurance policy is not cancelled by the named insured or the insurer. Additionally, under existing law, an insurer must offer earthquake insurance every other year to an insured in connection with any continuation, renewal, reinstatement, or replacement of a policy, as specified. As amended April 25, this bill would provide that for a policy issued or renewed from the effective date of the bill until the Insurance Commissioner certifies to the Secretary of State that, in the Commissioner's opinion, federal legislation has been enacted that creates a nationwide program that adequately insures losses due to earthquake, insurers do not have to comply with the preceding provisions. In addition, the bill would provide that for policies sold prior to the effective date of the bill or after certification by the Commissioner, if an offer of earthquake coverage is accepted, the coverage must be continued only for the policy term, provided the residential property insurance policy is not cancelled by the named insured or the insurer.

Existing law provides that an insurer may not refuse to renew, reject, or cancel a policy of residential property insurance after an insured has accepted an offer of earthquake insurance solely because the insured has accepted that offer, unless the policy is terminated by the insured. This bill would provide that an insurer may refuse to renew a policy if the decision to refuse is based on sound underwriting principles, if the Commissioner finds that the exposure to potential losses will threaten the solvency of the insurer or place the insurer in a hazardous condition, if the insurer has a reduced opportunity to obtain reinsurance, or for other specified grounds. These provisions would be repealed upon certification by the Commissioner to the Secretary of State that specified federal legislation creating a nationwide earthquake insurance program has been enacted.

The bill would also make legislative findings and declarations, and would become operative only if SB 266 is also enacted. *[S. Floor]*

SB 266 (Rosenthal). Existing law authorizes all insurers licensed in this state to form an industry placement facility, the California FAIR Plan Association, to formulate and administer a program for the equitable apportionment of policies of basic property insurance. In addition, all insurers that sell residential property insurance are required to offer coverage for the peril caused by earthquake. As amended April 25, this bill would provide that section 10081's requirement of offering earthquake coverage may be satisfied by successful placement of coverage with the California FAIR Plan. The bill would also make related changes.

This bill would require FAIR's plan of operation to contain a provision establishing a mediation procedure in the event of a dispute in the resolution of any claim for damages under a policy issued by the plan. The bill would become operative only if SB 58 is also enacted. *[S. Jud]*

AB 1366 (Knowles). Under existing law, a policy of residential property insurance may not be issued, delivered, or—under certain circumstances—initially renewed by any insurer unless the named insured is offered coverage for loss or damage caused by an earthquake to all insured property. As amended April 26, this bill would require an insurer to offer earthquake coverage only on the primary dwelling insured by the policy, excluding the dwelling contents and appurtenant structures. An insurer would be required to offer contents coverage limited to $10,000 if the dwelling is a total loss. The bill would make conforming changes. *[S. Ins]*

AB 13 (McDonald), as introduced December 5, 1994, would make legislative findings relative to insurers and the provision of earthquake insurance and would suspend, for a limited period of time, section 10081's requirement that earthquake insurance be offered with homeowners insurance. The bill would also provide that an insurer may not cancel or refuse to renew a residential property insurance policy issued prior to January 1, 1996, solely because the insured has accepted the offer of earthquake coverage, but may cancel or refuse to renew in specified instances. This provision would be repealed as of January 1, 1998.

The bill would provide that DOI shall, at the Commissioner's discretion or on the request of a consumer or homeowners' group, conduct a survey of the availability of earthquake insurance for residential property and make this information available. The bill would require the Commissioner to authorize the formation of a market assistance program, in which insurers, agents, and brokers may participate on a voluntary basis to assist in securing earthquake insurance for loss or damage to residential property. A homeowner would be required to have an agent or broker certify that no coverage is available to the homeowner as a condition of obtaining coverage through the plan.

This bill would authorize the California FAIR Plan Association to provide earthquake property insurance coverage. The bill would provide guidelines for the governing board to set rates for earthquake insurance coverage, and provide that loss and risk of loss shall be allocated in the same manner as under the California FAIR Plan. The bill also provides limitations on the coverage that may be offered through the program. These provisions would be repealed on January 1, 1998.

The bill would also permit insurers to reduce the coverage contained in existing policies providing earthquake insurance coverage to coverage comparable to that provided under the earthquake program of the California FAIR Plan, on specified noticed to insureds. *[A. Floor]*

SB 1327 (Johnston), as amended May 9, would provide that no person may perform an earthquake risk assessment of a condominium project on a specific site for the purpose of underwriting a federally related loan secured by that project unless the analytical assumptions and methodology used in the assessment have been approved by the Insurance Commissioner. *[S. Floor]*

SB 882 (Rosenthal). Existing law requires the Insurance Commissioner to establish a program to investigate complaints and respond to inquiries regarding insurers; the program includes procedures for mediation of complaints. As amended May 16, this bill would require DOI to

establish a pilot program for the mediation of certain disputes over claims arising out of the 1994 Northridge earthquake and any subsequent earthquake, excluding claims involving allegations of fraud. DOI would contract with a diverse pool of mediators to provide mediation services, and may provide training to the mediators. An insured is not required to participate in mediation. If an insured and an insurer do participate, neither party is required to accept an agreement proposed during the mediation. If the insured elects to have counsel present for the mediation, the insurer may also have counsel present. If an insured elects to participate, the insured may rescind the settlement agreement within three days after reaching the agreement unless the insured has counsel at the mediation who signs the settlement agreement. A mediator would have the authority to protect information from disclosure if the mediator determines that the materials are privileged or otherwise confidential. In addition, all statements by the parties, negotiations, and documents produced at the mediation are confidential, subject to DOI's access for the purpose of evaluating the conduct of the parties or the mediator, and other provisions of law concerning discoverability and admissibility of documents. DOI would be authorized to adopt regulations to implement the program.

These provisions would become inoperative on March 31, 1999, and be repealed on January 1, 2000. By January 1, 1999, the Commissioner would be required to report on the pilot program to the Governor and the legislature, as specified. The bill would declare that it is to take effect as an urgency statute. *[S. Appr]*

SB 267 (Rosenthal). Existing law prohibits a person in the business of financing the purchase of real or personal property or lending money on the security of that property from requiring that the borrower negotiate any insurance through any particular agent, but provides that this provision does not prevent a person from approving or disapproving, for reasonable cause as determined by regulatory authority, of the insurer underwriting the insurance. As amended May 15, this bill would provide that no person making a loan of money on the security of residential real property shall reject or refuse to accept a policy of fire and casualty insurance underwritten by an insurer chosen by the borrower where the required insurance is not in excess of the amount of a loan which qualifies for purchase by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Corporation, the insurer is properly admitted to transact the business of insurance in this state, and meets minimum quality ratings. It would provide for loans that have insurance requirements in excess of that amount, no lender shall require an insurer selected by a borrower to meet standards or ratings reflecting financial solvency or status which exceed the ratings or standards of any insurer utilized by the lender in the event the borrower fails to provide insurance required pursuant to a contract or mortgage. However, it would permit a lender to reject insurance from an insurer where the Insurance Commissioner has determined its financial condition to be impaired and in other specified circumstances.

The bill would also provide that a lender or purchaser of a mortgage shall provide a copy of the insurance policy covering the real property to any third party that the lender or purchaser of a mortgage contracts with to sell the mortgage to, so that the third party may verify that the borrower has obtained or is maintaining insurance required by the mortgage. *[S. Floor]*

AJR 23 (Hauser), as amended April 27, memorializes the President and the Congress to prevent the Federal Home Loan Mortgage Corporation from imposing new earthquake insurance requirements for condominiums upon California. *[S. Jud]*

AB 1083 (Archie-Hudson), as introduced February 23, would require any insurer providing coverage for motor vehicle insurance to act in good faith toward, and deal fairly with, current and prospective policyholders and other persons intended to be protected by any policy of motor vehicle insurance. This bill would authorize policyholders or third-party claims against an insurer or licensee for violation of specified laws and regulations prohibiting unfair competition and unfair or deceptive acts or practices, thus reversing the California Supreme Court's decision in *Moradi-Shalal v. Fireman's Fund Insurance Companies*, 46 Cal. 3d 287 (1988), and reinstating the so-called "*Royal Globe*" cause of action. *[A. Ins]*

AB 341 (Knowles) is a controversial bill which would—among other things—codify in statute the optional automobile premium rating factors which have been adopted as emergency regulations by three different Insurance Commissioners over the past six years (*see* MAJOR PROJECTS). The bill would also codify the "sequential analysis" method of weighting the various optional factors, such that the optional factors (including geographical territory or ZIP code where the automobile is housed) could outweigh the three mandatory factors established in Proposition 103 as the primary basis of auto premium rates (driving record of the insured, number of miles driven annually, and number of years of driving experience of the insured). Opponents of this measure argue that one of the major goals of Proposition 103 was to outlaw so-called "territorial rating" (rates based on ZIP code rather than on factors specific to the individual driver), and this bill would reinstate territorial rating contrary to the initiative. *[A. Ins]*

SB 905 (Leslie). Existing provisions of law that regulate insurance rates provide that a person is qualified to purchase a good driver discount policy if, among other things, he/she has been licensed to drive a motor vehicle for the previous three years and meets certain traffic violation criteria for the previous three years. The above provisions are amendments added by Proposition 103, an initiative statute that may be amended by the legislature only by a two-thirds vote and in furtherance of its purpose (*see* LITIGATION). As amended May 11, this bill would amend these provisions to exclude from eligibility for a good driver discount a person who has been convicted of certain driving under the influence (drug or alcohol) related driving offenses or vehicular manslaughter while under the influence within the previous seven years. *[A. Ins]*

SB 968 (Johnston). Under existing law added by Proposition 103, insurers issuing private passenger automobile insurance are required to offer good driver discount policies. Existing law requires agents or representatives representing insurers under common ownership, management, or control to provide good driver coverage at the lowest rates applicable within the common ownership, management, or control group. As amended March 27, this bill would provide that this requirement also applies even if the agent, company representative, or submitting producer is not appointed by the affiliated company with the lowest rate. *[A. Ins]*

SB 1229 (Killea), as introduced February 24, would modify California's tort liability and insurance laws by implementing "no-fault" automobile insurance and limiting the recovery of non-economic damages in automobile accident cases. It would establish a first-party no-fault system for resolving auto accident cases; a first-party personal injury protection no-fault policy would provide coverage for basic economic loss (including medical care, wage losses, and incidental expenses of up to $25 per day per person) of up to $15,000. Tort liability for basic economic losses (up to $15,000) would be eliminated. This policy would cost good drivers $220 until July 1, 1997, and thereafter

may be increased to an actuarially sound rate pursuant to the Proposition 103 rate approval process.

As noted, this bill would also limit tort liability and insurance coverage for non-economic damages (*e.g.*, pain and suffering). Persons would be unable to pursue claims or be sued for non-economic damages unless the injury is "serious," as defined. *[S. Jud]*

SB 49 (Lockyer), as amended April 18, would make major changes in the existing tort system for automobile accident cases, including the following:

• The bill would modify the existing "collateral source rule," which makes inadmissible, in an action to recover damages for an injury, evidence of benefits that the injured party is entitled to receive from collateral sources. SB 49 would provide that in a third-party action for personal injury arising out of the operation or use of a motor vehicle, the recovery shall be reduced by amounts paid as a medical payment benefit under a policy of motor vehicle insurance.

• SB 49 would establish a division of small claims court for automobile claims involving between $5,000 and $10,000, and permit representation by attorneys in those cases, subject to various limits.

• SB 49 would distinguish between "serious" and "non-serious" injuries, limit discovery in non-serious injury cases, and require insurers to sell a "no-litigation" policy in which the insured agrees to submit any third party, non-serious bodily injury claim arising out of an auto accident to binding arbitration.

• This bill would require the mutual exchange of information in connection with third-party claims that seek or contest a claim for money damages arising from a motor vehicle accident. The bill would also permit the use of a medical injury profile as evidence in a third-party action involving a non-serious bodily injury.

• Existing law provides for judicial arbitration of claims where the amount in controversy does not exceed $50,000. This bill would require judicial arbitration of motor vehicle accident claims involving third-party liability for bodily injury if the amount in controversy does not exceed $50,000, and provide for sanctions in certain instances.

• Existing law requires owners and operators of motor vehicles to maintain liability insurance in the amount of $15,000 for bodily injury to one person, subject to a limit for bodily injury of $30,000, and in the amount of $5,000 for property damage. SB 49 would reduce those amounts to $10,000, $20,000, and $3,000, respectively, and permit insureds to waive the property damage coverage if they are good drivers and purchase minimum coverage, but would require medical payment coverage; the bill would also provide that policies include binding arbitration of third-party disputes concerning property damage or non-serious bodily injury unless waived.

• Existing law provides for payment under uninsured motorist coverage where the owner or operator is unknown only if the injury arose out of physical contact between the uninsured vehicle and the insured or with an automobile which the insured is occupying. SB 49 would provide for payment in that circumstance only if the bodily injury has arisen out of action of the motorist that caused physical contact between property of that motorist and the insured or with an automobile which the insured is occupying.

• Existing law does not authorize motor vehicle liability and casualty insurers to require insureds and other claimants for motor vehicle repair costs to have those repairs performed at a repair facility under contract to the insured. SB 49 would authorize policies issued by these insurers to require insureds and other claimants for repair of motor vehicle damage in this state to have those repairs done at repair facilities designated by, and under contract with, the insurer; the bill would limit monetary liability of insurers to the cost of repairs at a repair facility under contract with the insurer.

• Existing law does not generally limit fees that health care providers may charge. This bill would provide that the charges for health care services that are incurred as a result of an injury arising from a motor vehicle accident may not exceed specified amounts.

• Existing law prohibits certain false and fraudulent acts in connection with insurance claims. SB 49 would provide for a five-year sentence enhancement and prohibit probation if the false claim, along with previous false claims, involves $100,000 or more.

• This bill would also require the Department of Motor Vehicles (DMV) to require, upon registration of a motor vehicle, evidence satisfactory to DMV that the owner of the motor vehicle is in compliance with the financial responsibility laws. *[S. Floor]*

AB 650 (Speier), as amended May 4, would require DMV to require, upon application for renewal of registration of a vehicle and within ten days of an application for original registration or transfer of registration, any one of several forms of evidence that the applicant is in compliance with the financial responsibility laws of this state, except as specified. This provision would become operative on January 1, 1997. The bill would require an insurance company or a surety company to notify DMV upon the issuance, renewal, and termination of any automobile policy or bond issued by that company. The notice would be required to include specified information.

Existing law requires every driver and every owner of a motor vehicle to be able, at all times, to establish financial responsibility for the vehicle. This bill would require every person who drives upon a highway a motor vehicle required to be registered in this state to provide evidence of financial responsibility for the vehicle upon demand of a peace officer, and would prohibit a peace officer from stopping a vehicle for the sole purpose of determining whether the vehicle is being driven in violation of this provision.

The bill would prohibit a person from knowingly providing false evidence of financial responsibility when requested by a peace officer pursuant to the provision specified above, and make violation of the provisions described above (except the provision relating to peace officers) a misdemeanor, punishable by specified fines and, in the case of the provision prohibiting knowingly providing false evidence of financial responsibility, a specified term in the county jail.

The bill would exempt a person from the provisions described above if the person was driving, with the permission of the person's employer, a motor vehicle owned, operated, or leased by that employer, make the provision applicable to the employer, and require a notice to appear issued pursuant to the above provision to be issued to the employer rather than the driver. The bill would require the driver to notify the employer of the receipt of the notice to appear not later than five days after receipt.

The bill would authorize the removal from the highway of the vehicle of a person who violates the above-specified provision, relating to providing evidence of financial responsibility for a vehicle when requested to do so by a peace officer. The bill would authorize dismissal of charges related to violation of the above-specified provision, relating to providing evidence of financial responsibility upon request of a peace officer, upon receipt of written evidence of financial responsibility by the clerk of the court. The bill would provide that no public entity or employee is liable for any loss, detriment, or injury resulting from failure to request evidence of financial responsibility, inaccurately recording that evidence, or as a result of the driver producing false or inaccurate financial responsibility information. *[A. Appr]*

AB 1752 (Knowles), as introduced February 24, would require DOI to conduct a "closed claim" study of automobile accident insurance claims, designed to identify the insurance loss costs associated with automobile insurance. This bill would require that the study be completed by July 1, 1996, and that a written report be presented to the Governor and legislature no later than that date. This bill would appropriate $250,000 from the Insurance Fund to DOI for purposes of this study. *[A. Ins]*

SB 672 (Lewis). Existing law requires the filing of an annual report on an insurer's assigned risk automobile insurance business as to loss ratio, loss adjustment expense ratio, expense ratio, and combined ratio. The Insurance Commissioner may require insurers with combined ratios that are 10% above the mean combined ratio to report additional information; that information is a public record and is required to be reported by the Commissioner annually to the legislature. Existing law provides for the reporting of other information under the Rosenthal-Robbins Auto Insurance Nondiscrimination Law, which information is confidential. As amended April 26, this bill would repeal that provision in the assigned risk law and, instead, require that information to be filed in the annual record of loss statements required to be filed under the Rosenthal-Robbins Auto Insurance Nondiscrimination Law. *[A. Ins]*

SB 464 (Rosenthal). Existing law sets forth requirements applicable to the cancellation and nonrenewal of property insurance, and limits the grounds for cancellation of a policy. As amended April 17, this bill would provide that no policy of property insurance may be cancelled or nonrenewed by the insurer if any claim relating to damage to the insured premises that affects insurability remains unresolved. The bill would authorize the Insurance Commissioner to adopt regulations to govern the determination of whether an outstanding claim affects insurability. The bill would require a notice of cancellation or nonrenewal that is mailed while a claim is pending to contain a specified notice. *[A. Ins]*

AB 1602 (Poochigian). Existing law requires uninsured motorist coverage for personal injury or death to be included in a policy of motor vehicle insurance unless waived by the insured. Existing law provides that no cause of action accrues under that coverage unless, within one year, suit is filed against the uninsured motorist, agreement as to the amount due has been concluded, or the insured has formally instituted arbitration proceedings. As amended April 26, this bill would require the insured to have informed the insurer of the arbitration proceedings, in writing. It would also provide that no benefits are payable under that coverage if the claim is not concluded by settlement or arbitration award issued within three years of the accident. *[S. Ins]*

SB 306 (Rosenthal). Under existing law relating to automobile insurance policies, an insurer is required to deliver to the named insured or mail to the named insured a written or verbal offer of renewal of the policy or a notice of nonrenewal at least twenty days prior to policy expiration. As amended April 18, this bill would require that notice of nonrenewal be delivered or mailed at least thirty days before policy expiration. In addition, if an insured declines a verbal offer of renewal, the insurer must deliver or mail to the insured written confirmation of the offer and rejection. The insurer must offer the insured the opportunity to accept the offer.

Under existing law, where the reason for cancellation does not accompany or is not included in the notice of cancellation of automobile insurance, the insurer is required to, upon written request of the named insured, send the insured written reasons for the cancellation. This bill would repeal this provision and instead require that a notice of cancellation or nonrenewal be accompanied by a clear and concise statement of the reasons for the cancellation or nonrenewal, unless the ground for cancellation is nonpayment of premium and that ground is stated in the notice. The bill would also provide that failure to fully comply with these provisions is not a basis on which an insured can allege coverage, provided the insurer has provided timely notice of cancellation.

Under existing law, the notice of cancellation of certain forms of property insurance is not effective unless it is based on the occurrence of specified events. This bill would add to this provision the requirement that a notice of cancellation or nonrenewal be accompanied by a clear and concise statement of the reasons for the cancellation or nonrenewal, unless the ground for cancellation is nonpayment of premium and that ground is stated on the notice. The bill would also provide that failure to fully comply with these provisions is not a basis on which an insured can allege coverage, provided the insurer has provided timely notice of cancellation.

This bill would also provide that an increase of premium on an individual life insurance policy that provides for premium changes by the insurer may not be effective unless written notice is delivered to the policyholder.

Under existing law, for a policy of individual life insurance that is cancelled by the insured or owner, the insurer is required to return to the insured or owner all unearned premiums and other moneys due the insured or owner in relation to that policy as expeditiously as possible, but in no event more than 45 days from the date the insurer is notified that the insured or owner has cancelled the policy. This bill would provide when a cancellation or surrender of a life insurance policy is effective. This bill would further provide that the Insurance Commissioner may, upon receipt of a complaint or inquiry, request of an admitted insurer or other DOI licensee to provide to DOI copies of any document relating to the complaint or inquiry. *[S. Floor]*

AB 1839 (Figueroa). Existing law requires the Insurance Commissioner to establish a program to receive complaints and inquiries, investigate complaints, prosecute insurers when appropriate and pursuant to specific guidelines, and respond to complaints and inquiries by members of the public concerning the handling of insurance claims. As amended April 17, this bill would authorize the Commissioner, upon receipt of a complaint or inquiry, to request an admitted insurer or other DOI licensee to provide to DOI copies of any and all documents relating to a complaint or inquiry, except as specified. It would also authorize the Commissioner to charge a reasonable fee to any insurer or other licensee that fails to timely provide requested information. *[A. Appr]*

AB 1152 (Bordonaro). Existing law provides for the licensure and regulation of health care service plans (HCSPs) administered by the Commissioner of Corporations. Under existing law, willful violation of any of these provisions is a misdemeanor. Existing law also provides for the regulation of policies of disability insurance and nonprofit hospital service plan contracts administered by the Insurance Commissioner. Existing law requires that HCSPs, disability insurers, and nonprofit hospital service plans provide coverage for certain benefits and services. As amended May 10, this bill would require every HCSP contract, nonprofit hospital service plan contract, or disability insurance policy, issued, amended, delivered, or renewed on or after January 1, 1996, to, in certain circumstances, provide coverage or be responsible for payment for services provided by an enrollee's or insured's traditional provider, as defined, or terminated provider. *[A. Appr]*

SB 761 (Greene). Existing law requires HCSP contracts, disability insurance policies, and nonprofit hospital ser-

vice plan contracts, that provide hospital, medical, or surgical expense coverage under the plan of an employer subject to federal continuing medical insurance requirements, known as "COBRA," to permit an employer to provide extended coverage to eligible former employees and their spouses. In order to be eligible for extended coverage, the employee must be over 60 years of age on the date employment ends, and must have worked for the employer for at least the five prior years. Existing law also requires any employer subject to these provisions to provide continuation coverage for an eligible employee and the employee's spouse, if the employee continues coverage under COBRA; the coverage begins after the COBRA coverage ends, on the same terms as the COBRA coverage, at a premium not to exceed 213% of the applicable group rate, as defined, and continues until a specified event. As amended April 17, this bill would require the insurers and plans that provide hospital, medical, or surgical expense coverage under an employer-sponsored plan for an employer subject to COBRA to offer that continuation coverage to former employees, as specified. The bill would also place certain notification duties upon former employers as respects the availability of continuation coverage beyond the date coverage under COBRA ends. *[A. Health]*

AB 852 (Hoge). Under existing law, an insurer may not cancel a policy of commercial insurance except for specified reasons, and no change in rates, reduction in limits, or change in conditions is effective unless upon 30 days' notice, and only if based on specified reasons. Existing law provides that these limits do not preclude the imposition, pursuant to the policy and while the policy is in force, of limitations or exclusions upon coverage by a policy insuring dentists or physicians and surgeons against professional liability if certain requirements are met. As introduced February 22, this bill would instead provide that these limits do not preclude the imposition of remedial underwriting action upon coverage insuring dentists or physicians against professional liability if certain requirements are met. *[S. Ins]*

AB 853 (Hoge). Existing law authorizes two or more domestic reciprocal insurers to merge, and sets forth procedures for that merger. As amended April 18, this bill would repeal that provision and enact provisions for the merger of a reciprocal insurer with another domestic reciprocal insurer, or with a domestic or foreign incorporated insurer, subject to various procedures.

Existing law sets forth special procedures applicable to the merger or consolidation of a domestic mutual insurer with another admitted mutual insurer. This bill would make those provisions applicable to a merger or consolidation with another insurer, without restriction that it be a domestic mutual insurer; specify that provisions relating to conversion of an incorporated mutual life or life and disability insurer into an incorporated stock life insurer do not apply to such a transaction; provide that in the event a mutual insurer is merged, consolidated, or part of a reorganization under those provisions, and the surviving, consolidated, or continuing company is a stock insurer, the plan shall provide for an equitable distribution of the mutual insurer's surplus to current members, as specified; and provide that, notwithstanding any other provision of law, the distribution constitutes full payment and discharge of the members' property interest in the domestic mutual insurer and the members have no other rights with respect thereto to their property interests. *[S. Ins]*

AB 854 (Hoge). Existing law generally prohibits the intentional and nonconsensual eavesdropping on, or recording of, a confidential communication. However, existing law also provides that specified law enforcement officers acting within the scope of their authority shall not be prohibited from overhearing or recording any communication that they could lawfully overhear or record prior to January 1, 1968. As amended April 6, this bill would make the latter provision applicable to DOI's Chief of the Bureau of Fraudulent Claims or any investigators designated by the Chief.

Existing law provides that DOI's Chief of the Bureau of Fraudulent Claims and designated investigators are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest; these peace officers may carry firearms only if authorized and under those terms and conditions specified by DOI. This bill would delete the above provisions and provide instead that the DOI Chief and designated investigators are peace officers whose authority extends to any place in the state, provided that the primary duty of these peace officers shall be the enforcement of the laws relating to insurance fraud. These peace officers would be authorized to carry a loaded firearm. *[A. PubS]*

AB 859 (Campbell). Existing law requires an insurer that provides certain types of commercial insurance or workers' compensation coverage to provide notice if the insurer will not renew the policy or, for commercial insurance policies, will condition renewal of the policy upon specified changes in the policy terms. As amended May 8, this bill would provide that the insurer must attach a premium and loss history report for the preceding five years to the notice of nonrenewal, for certain types of commercial insurance, and to the notice of nonrenewal for workers' compensation insurance policies. The notice requirement would not apply to professional liability insurers. *[A. Ins]*

AB 1024 (Aguiar). Existing law prohibits an admitted insurer from assuming or reinsuring any of the liability of a nonadmitted insurer on insurance upon subject matter located in this state, except where the admitted insurer assumes the entirety of that insurance of the nonadmitted insurer together with all the liabilities arising therefrom. As introduced February 23, this bill would eliminate that prohibition. *[S. Ins]*

AB 1112 (Rogan). Existing law provides for enforcement of various child support delinquency provisions by the district attorney. As introduced February 23, this bill would provide that insurance companies shall notify the state Department of Social Services (DSS) prior to making any payment equal to or in excess of $3,000, in order for DSS to determine if a child support order or judgment exists. *[A. Ins]*

AB 1274 (McDonald). Under existing law, in the Insurance Commissioner's application for an order for the liquidation of a domestic corporation in the insurance business, or at any time thereafter, the Commissioner may apply for, and the court is required to make, an order dissolving the corporation. As amended May 9, this bill would also provide that at any time during proceedings for the liquidation of certain domestic insurance corporations the Commissioner may apply for, and the court shall make, an order to permit the Commissioner to sell the charter and license of the corporation while continuing to administer and distribute the remaining assets, as specified.

Under existing law, upon making an order to liquidate an insurance business, the Commissioner is required to publish a notice to the policyholders. The order and notice shall require claimants to file claims within six months of the first date of publication. This bill would instead provide that the claims shall be filed within six months to one year, at the Commissioner's discretion. This bill would also vest discretion in the Commissioner regarding liquidations, as specified.

Under existing law, the above notice is required to be published in a newspaper of general circulation in the county in which the proceeding is pending. This bill would

require that the notice also be published in specified counties.

Under existing law, claims founded upon unliquidated or undetermined demands are required to be filed within a specified time limit for the filing of claims, but claims founded upon these demands shall not share in any distribution to creditors of a person proceeded against until such claims have been definitely determined, proved, and allowed, as specified. Thereafter, these claims shall share ratably with other claims of the same class in all subsequent distributions. This bill would provide an exception regarding these claims upon the Commissioner's ability to demonstrate certain factors, as specified.

Under existing law, upon taking possession of the property and business of a person, either as conservator or liquidator, the Commissioner has the authority to engage in specified activities, including, without notice, to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, real or personal property, as specified, and to invest and reinvest, in a manner as the Commissioner may deem suitable for the best interests of the creditors of that person, as specified. However, no transaction involving real or personal property shall be made where the market value of the property involved exceeds the sum of $20,000, and no investment or reinvestment shall be made which exceeds the sum of $100,000, without first obtaining permission of the court, and then only in accordance with any terms that court may prescribe, as specified. This bill would revise these dollar amounts.

This bill would also establish a nonprofit public benefit corporation that is authorized to perform various functions on behalf of the Commissioner, as specified. *[A. Floor]*

SB 1217 (Polanco). Under the federal Community Reinvestment Act, lending institutions are required to advertise and make available mortgages in low- and moderate-income markets. As amended May 10, this bill would encourage insurers admitted in California to make community development investments, as defined. The investments should be designed to promote job creation, small business development, or microenterprise development in low-income or very low-income communities. The Insurance Commissioner would be required to compile information and report concerning community development investments by insurers. *[S. Inactive File]*

AB 1557 (Lee). Existing law does not require insurers admitted to transact the business of insurance in this state to invest in low-income and very low-income communities in this state, as a condition of maintaining a certificate of authority. As amended April 19, this bill would enact the Community Investment Act to require admitted insurers that generate a specified income to invest in economically targeted investments in low-income and very low-income communities in this state. *[A. Ins]*

AB 1278 (McDonald). Under existing law, an insurer doing business in this state is required to make and file with the Insurance Commissioner annual statements exhibiting its condition and affairs, as specified. As introduced February 23, this bill would require, as part of these annual statements, a community investment report that states specified information regarding the type, number, and dollar amount of economically targeted investments. *[A. Ins]*

AB 1619 (Tucker), as introduced February 24, would—with respect to private passenger automobile liability, private passenger automobile physical damage, commercial automobile liability, and homeowners' multiple peril—require insurers issuing those policies to annually file, under penalty of perjury, with the Insurance Commissioner, a community service statement disclosing the number and total of earned premiums, and identifying race or national origin of applicants and insureds, as specified. *[A. Ins]*

AB 1746 (Knowles). Existing law contains two different provisions that require a notice to be included on insurance application and claim forms as to the penalty for fraud. As amended April 17, this bill would repeal these provisions.

Existing law contains two provisions making insurance fraud a crime, one of which is to remain in effect until January 1, 1999. This bill would provide that the other provision shall become operative on January 1, 1999.

Among other things, these existing provisions make it unlawful to knowingly present a false or fraudulent claim for the payment of a loss. This bill would also provide that it is unlawful to knowingly present a false or fraudulent claim for the payment of an injury. *[S. Ins]*

AB 1748 (Knowles). Existing law provides an application process whereby a self-funded or partially self-funded multiple employer welfare arrangement may apply for a certificate of compliance to do business in this state. In determining the qualification of a multiple employer welfare arrangement, the Insurance Commissioner is required to consider various enumerated factors. As introduced February 24, this bill would additionally require the Commissioner to consider evidence submitted and certified by management to demonstrate compliance with requirements to become eligible for a certificate of compliance, as specified. *[A. Ins]*

AB 115 (McDonald), as amended May 16, would prohibit a life or disability insurer from refusing to accept an application, refusing to issue or renew a policy, cancelling any policy, or denying coverage under any policy because the applicant for life or disability insurance or any person who is or would be insured is, or has been, a victim of domestic violence. *[A. Floor]*

AB 1307 (Cunneen). Existing law requires, on or before the first day of April, a surplus line broker to file an annual statement with the Insurance Commissioner containing an account of the business transmitted by the surplus line broker for the prior year. Existing law provides that if a premium is billed and payable in installments, the invoice date of the first installment shall be no more than 60 days after the policy effective date and no more than 60 days after the insurance was placed with a nonadmitted insurer, and thereafter each installment shall be no more than one installment period after the invoice date of the immediately preceding installment. As amended May 4, this bill would instead require the filing of that annual statement to be on or before the first day of March annually, and would specify that the amount of gross premium to be reported, if premiums are billed and payable in installments, shall be the amount of the installment premium.

Existing law requires on or before March 1, of each year, surplus line brokers whose annual tax for the preceding year was $5,000 or more, to make monthly installment payments relative to gross premium tax, and, requires the Commissioner to mail installment payment forms, as specified. This bill would delete those provisions and, instead, require on or before February 1, of each year, the Commissioner to mail payment forms, as specified. It would also specify that certain deficiency assessment appeal provisions with respect to insurers are applicable to surplus line brokers.

This bill would also revise certain requirements as to taxes owed by a surplus line broker and other payments to DOI being paid by electronic transfer. Among other things, it would provide that payment is deemed complete on the date the electronic funds transfer is initiated if settlement occurs on or before, rather than before, the date transfer is initiated. The bill would also make provisions relating to the examination of an insurer's tax return applicable to surplus line brokers. *[A. Appr]*

AB 702 (Cunneen), as amended May 8, would require, commencing January 1, 1997, specified DOI licensees to promi-

nently affix or cause to be printed on printed materials the licensee's license number in type the same size as any indicated telephone number, address, or fax number. The term "printed materials" is limited to letterhead, business cards, and printed advertisements for publications printed exclusively for distribution in this state. The Insurance Commissioner would be authorized to initiate an enforcement action and levy certain fines to enforce the requirement. *[S. Ins]*

AB 1150 (Morrissey), as amended April 26, would authorize the Commissioner to develop informational sheets in non-English languages regarding the terms used in insurance policies. This bill would further provide that the development of informational sheets or the use of these informational sheets by insureds, insurers, agents, brokers, or the state shall not be interpreted as creating a duty or obligation to provide additional information or insurance policies in a non-English language. This bill would provide that its provisions do not prevent an insurer or licensee from advertising an insurance policy, or the availability of a foreign language informational sheet, in a language other than english if the advertisement clearly states that the insurance policy is only available in English. The bill would also specify that in the case of a dispute, the insurance policy is controlling. *[S. Ins]*

AB 1719 (Isenberg). The California Constitution requires the California Citizens Compensation Commission to establish the annual salaries of members of the legislature, the Governor, the Lieutenant Governor, the Attorney General, the Controller, the Insurance Commissioner, the Secretary of State, the Superintendent of Public Instruction, the Treasurer, and members of the state Board of Equalization. As amended April 26, this bill would require the salary of those state officers to be reduced by the amount of any state or local retirement allowance received by the officer and require retirement allowance information to be furnished to the Controller. *[A. Inactive File]*

SB 354 (Rogers). Existing law, to be repealed effective January 1, 1998, sets forth requirements for mandatory prelicensing and continuing education requirements with respect to licensure as a fire and casualty broker-agent or as a life agent. The Insurance Commissioner must appoint a curriculum board to develop the prelicensing and continuing education curriculum. The curriculum board shall develop or recommend specified courses of study covering certain lines of insurance and course study on ethics, among other things. As amended April 27, this bill would delete that date of repeal and, in addition, provide for an agency management or business practices course study. It would also provide that courses of study in agency management or business practices may account for up to eight hours of the course or program requirement for license renewal. *[S. Floor]*

SB 1179 (Rosenthal). Existing law requires life insurers to file an annual risk-based capital report concerning various risks to the insurer's assets. It requires certain actions by insurers based on the report, and, in some instances authorizes the Insurance Commissioner to take action. As amended March 30, this bill would repeal and reenact these provisions to make them applicable to life and health insurers and to property and casualty insurers generally. *[S. Floor]*

SB 1323 (Senate Committee on Insurance). Existing law authorizes the Insurance Commissioner to issue a certificate of authority for a grant and annuity society, which is authorized to receive a transfer of property in exchange for payment of an annuity. A grant and annuity society is required to comply with specified requirements, including the maintenance of a reserve fund adequate to meet future annuity payments. As introduced March 16, this bill would revise the method of computing the reserve fund, by revising the method for computing annuities under agreements made on and after January 1, 1992, and permitting the Insurance Commissioner to authorize other tables of mortality. *[S. Floor]*

SB 87 (Kopp). Existing law provides that the written consent of the Attorney General is required prior to the employment of counsel for representation of any state agency or employee in any judicial proceeding. There is an express exception provided to specified state agencies and to the Insurance Commissioner with respect to certain delinquency proceedings. Existing law also provides that an exception may be made by other statutory waivers. As introduced January 10, this bill would delete the exception provided to the Commissioner and remove the specific authority of the Commissioner to employ counsel in connection with delinquency proceedings. This bill would also make legislative findings that it is in the best interest of the state that the Attorney General be provided with the resources needed to perform specified duties.

Under existing law the Attorney General has the authority to appoint and employ any legal counsel that he/she deems necessary to assist the Commissioner in the performance of his/her duties. This bill would require the Attorney General, upon request of the Commissioner, to petition the court for determination in the event the Commissioner and the Attorney General disagree as to the need to employ counsel outside of state service or the compensation of that counsel. *[S. Floor]*

LITIGATION

On February 21, the U.S. Supreme Court declined to hear the insurance industry's appeal in ***20th Century Insurance Co. v. Garamendi***, 8 Cal. 4th 216 (1994). This unanimous California Supreme Court decision upheld the validity of former Commissioner Garamendi's Proposition 103 rate rollback regulations. *[15:1 CRLR 116; 14:4 CRLR 121, 129–31]*

In a related action, on March 28, the Proposition 103 Enforcement Project filed ***Proposition 103 Enforcement Project v. Quackenbush***, No. 968348 (San Francisco Superior Court), a petition for writ of mandate to void Commissioner Quackenbush's settlement of 20th Century's rollback obligation with the company. The settlement reduced the original $120 million rebate order to an assured $46 million (*see* MAJOR PROJECTS). The Project contends that the Commissioner lacks legal authority to excuse the payment of legally required rollbacks; that the statutorily-required payments due policyholders could not be offset based on subsequent business losses of 20th Century; and, if there is a bankruptcy or other dissolution of the company's assets, that policyholder creditors are entitled to at least equal preference in distributing assets. Finally, the petition faults the Commissioner for failing to hold a requested hearing to consider policyholder contentions.

The Project was particularly critical of the settlement given the fact that the $120 million assessment was vigorously resisted by the company, and upheld as lawful by the courts. Project director Harvey Rosenfield argued in a press conference on March 28 that the settlement is not analogous to a "plea bargain," but is more akin to "letting a criminal walk after a jury has convicted him."

The Commissioner's rationale is to give the company latitude after the Northridge quake unexpectedly exhausted its reserves. In order to keep the company viable and its existing policyholders protected, the Commissioner contends he was compelled to allocate a substantial portion of the original assessment to the company's reserves to assure capacity to pay claims.

At this writing, the Commissioner is preparing his response to the petition, and 20th Century has intervened as real party in interest; oral argument on the Project's petition is set for November 17.

Another major Proposition 103 case is still pending before the California Supreme Court. In ***Amwest Surety Insurance Company v. Wilson***, 35 Cal. App. 4th 1355 (Dec. 8, 1993), the Second District Court of Appeal struck down a 1990 statute exempting surety companies from the rollback and prior approval provisions of Proposition 103 because it does not "further the purposes" of the initiative and is thus beyond the authority of the legislature. *[14:2&3 CRLR 139; 14:1 CRLR 108; 13:2&3 CRLR 130]* At this writing, oral argument is set for December 5.

On May 3, the California Supreme Court heard oral argument in the insurance industry's appeal of the First District Court of Appeal's decision in ***Manufacturers Life Insurance Company, et al. v. Superior Court (Weil Insurance Agency, Real Party in Interest)***, 27 Cal. App. 4th 67 (July 29, 1994); in that decision, the First District held that an insurance brokerage may not bring a private cause of action for redress of an unlawful group boycott by other insurers under the Unfair Insurance Practices Act (UIPA), Insurance Code section 790 *et seq.*, but it may pursue antitrust remedies under the Cartwright Act, Business and Professions Code section 16720 *et seq.*, and injunctive and restitutionary relief under the Unfair Competition Act (UCA), Business and Professions Code section 17200 *et seq. [15:1 CRLR 116–17; 14:4 CRLR 131; 14:2&3 CRLR 139]* At this writing, the court has not yet issued its decision.

NEW MOTOR VEHICLE BOARD

Executive Secretary:
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Pursuant to Vehicle Code section 3000 *et seq.*, the New Motor Vehicle Board (NMVB) licenses new motor vehicle dealerships and regulates dealership relocations and manufacturer terminations of franchises. It reviews disciplinary action taken against dealers by the Department of Motor Vehicles (DMV). Most licensees deal in cars or motorcycles.

NMVB is authorized to adopt regulations to implement its enabling legislation; the Board's regulations are codified in Chapter 2, Division 1, Title 13 of the California Code of Regulations (CCR). The Board also handles disputes arising out of warranty reimbursement schedules. After servicing or replacing parts in a car under warranty, a dealer is reimbursed by the manufacturer. The manufacturer sets reimbursement rates which a dealer occasionally challenges as unreasonable. Infrequently, the manufacturer's failure to compensate the dealer for tests performed on vehicles is questioned.

MAJOR PROJECTS

NMVB's Award of Attorneys' Fees Questioned. *Mathew Zaheri Corporation, dba Hayward Mitsubishi v. Mitsubishi Motor Sales of America, et al.*, Petition No. P-233-92 and Protest No. PR-1254-92, is a complex matter which involves a number of issues stemming from Mathew Zaheri's claim that Mitsubishi unfairly charged back to Zaheri over $137,000 in warranty claims over a two-year period. The dispute between Zaheri and Mitsubishi has been pending in both state and federal court for several years; in 1993, the First District Court of Appeal dismissed Zaheri's civil complaint against Mitsubishi on the basis that the plaintiff failed to exhaust his administrative remedies before NMVB. *[13:4 CRLR 201]* In October 1994, NMVB found that Mitsubishi unfairly charged back over $57,000 in claims; however, NMVB also found that Zaheri had engaged in "massive warranty fraud," and that it claimed reimbursements for work not done and parts not used in somewhere between 50 and 2,000 claims. Accordingly, the Board denied Zaheri's petition and protest, and awarded costs and reasonable attorneys' fees against Zaheri in favor of Mitsubishi. *[15:1 CRLR 162–63]*

On March 21, NMVB adopted the proposed ruling of Administrative Law Judge (ALJ) Douglas Drake which granted $68,132.62 in attorneys' fees and $38,239.91 in costs to Mitsubishi. According to NMVB, in May 1994, the pending federal action between Zaheri and Mitsubishi was remanded to NMVB, so that "under the doctrine of primary jurisdiction, [NMVB] should decide the federal issues raised in the [federal] lawsuit...." The Board's decision also declared that NMVB "has jurisdiction to award attorneys' fees once the case has been the subject of a Petition for Writ of Mandate to the California Superior Court," and that NMVB has jurisdiction to award attorneys' fees even when none were requested by Mitsubishi "because the fees were requested in the federal action and the Board was requested to determine all facts necessary to decide the federal issues." The only statutory basis for an award of attorneys' fees in any of the pending actions stems from Zaheri's allegation in the federal proceeding that Mitsubishi violated the Civil Rights Act.

In a dissenting opinion, NMVB member George Leaver was highly critical of the Board's decision, stating that it "is based upon the erroneous and absurd premise that...the United States District Court for the Northern District of California ruled in *Hayward Mitsubishi v. Mitsubishi Motor Sales of America* that the Board should decide the federal issues raised in that lawsuit." Leaver stated that the U.S. District Court "made no such ruling," and explained that the court stayed action on two federal causes of action "pending the Board's determination of the Petition of Hayward Mitsubishi before the Board involving the validity of its warranty claims." Further, Leaver stated that the U.S. District Court "in its order makes it abundantly clear that the Board's determination of the validity of the warranty claim should provide the federal court with a solid factual foundation on which the federal court may rely in deciding the federal claims." Leave also wrote that "[s]ince no one disputes the fact that the only statutory basis for an award of attorneys' fees in any of the pending actions stems from the provisions of the federal Civil Rights Act, and since the Federal District Court and only the Federal District Court, will decide whether that Act was violated, only the Federal District Court can decide the issue of attorneys' fees. The Board simply has no jurisdiction to make such an award."

Protest/Petition Actions. On March 21, NMVB adopted an ALJ's proposed decision in *Santa Monica BMW, Inc. v. BMW of North America and BMW of Beverly Hills* (Petition No. P-225-91), rejecting petitioner's claims that—among other things—BMW of North America (BMWNA) violated Vehicle Code sections 11713.3(d) and (o). In 1991, over the objections of BMW of Santa Monica, BMWNA purchased the assets of Zipper BMW in Beverly Hills; BMWNA created BMW of Beverly Hills in 1991 and operated the dealership from August 1991 through April 1994. Between August 1991 and late 1992, BMWNA attempted to negotiate the sale of the dealership to Hans Geisler, a former Zipper general manager, who was ultimately unable to obtain sufficient capital to purchase the franchise. Upon the failure of the Geisler negotiations, BMWNA offered the franchise for sale in both the *Los Angeles Times* and *Automotive News*; BMWNA received approximately six responses to the advertisements, and eventually sold the franchise in 1994.

Petitioner claimed that BMWNA violated Vehicle Code section 11713.3(d), which provides that it is unlawful for a manufacturer or distributor to prevent or require the sale or transfer of any part of a dealer's interest in the dealership to another person. Specifically, the petitioner