the transactions in July and August. As a result, the court held that the bank was entitled to judgment as a matter of law.

On May 23, the California Supreme Court denied Union Bank's petition for review in *Union Bank v. Ernst & Whinney*, No. S020408, in which the Second District Court of Appeal held that Ernst & Young is not liable to Union Bank for a $7 million loan default resulting from the ZZZZ Best stock swindle. (See CRLR Vol. 11, No. 2 (Spring 1991) pp. 53-54 for background information.) However, the Supreme Court also depublished the court of appeal's decision, which held that the claims against the accounting firm were barred by the statute of frauds, which requires that representations regarding the creditworthiness of a third party be in writing and signed by the attestor.

DEPARTMENT OF CORPORATIONS

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

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

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

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

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

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

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

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

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

MAJOR PROJECTS:

New Commissioner Appointed. Governor Wilson recently announced the appointment of Thomas Sayles of Los Angeles as the new DOC Commissioner. Prior to his appointment, Sayles was general counsel for TRW Space and Technology Group. Before joining TRW in 1982, Sayles was an Assistant U.S. Attorney in the Civil Division of the Los Angeles U.S. Attorney's Office, and a Deputy Attorney General with the California Attorney General's Office. Sayles graduated Phi Beta Kappa from Stanford in 1972, and received his law degree from Harvard Law School in 1975.

All California Thrift and Loans Now Insured by FDIC. California's $5.2 billion thrift and loan industry, regulated by DOC pursuant to Financial Code section 18000 *et seq.*, has completed its transformation from a privately insured system to one in which depositors have federal coverage. On April 4, Tom Cunningam, president of the Thrift Guaranty Corporation (TGC), the industry's privately funded insurance program, said that all 50 of the state's thrift and loan companies are now covered by the Federal Deposit Insurance Corporation (FDIC) for up to $100,000 per account.

As of 1985, 28 of California's 58 thrift and loans were members of TGC, which had only $4.6 million in assets to cover $476 million in deposits. That year, Senator Dan Boatwright and Assemblymember Bill Baker introduced a successful bill which required all California thrift and loans to obtain FDIC coverage by July 1990 or shut down. (See CRLR Vol. 5, No. 4 (Fall 1985) p. 51 and Vol. 5, No. 3 (Summer 1985) pp. 67-68 for background information.) Only two institutions did not meet the deadline. Riverside Thrift and Loan was seized last April by the state and the other, American Thrift and Loan Association of San Diego, was seized last August. TGC will go out of business after the conclusion of litigation involving the two thrifts.

Proposed Regulatory Action Under the Escrow Law. On April 12, DOC held a public hearing on its proposed addition of section 1727 to the Department's regulations, to implement section 17202 of the Financial Code. That statute permits an escrow agency applicant or licensee to obtain, in lieu of a surety bond, an irrevocable letter of credit approved by the Commissioner. New section 1727 would require that the letter be a personal obligation of the owner(s) of the escrow company; there be a board of directors' resolution authorizing the person(s) to obtain the letter of credit for the escrow company; the letter of credit be issued by a California branch of a national bank or a California-chartered bank; the beneficiary be the Department of Corporations and any person(s) who may have a cause of action against the escrow company under the Escrow Law; payment be made to the Department upon presentment of a written demand; payment be made to other persons, after obtaining written consent from the

Commissioner, upon written demand and presentment of a certified copy of a final judgment; any person who sustains an injury covered by the letter of credit may bring an action in his/her own name upon the letter for credit for the recovery of damages; and the letter of credit be automatically renewed unless written notice of nonrenewal is given.

At this writing, Department staff is still reviewing comments and testimony received at the April hearing.

Proposed Regulatory Action Under the Personal Property Brokers Law, Consumer Finance Lenders Law, and Commercial Finance Lenders Law Resubmitted to OAL. On May 28, DOC resubmitted its adoption of new section 1460 and its amendment to section 1556, which would restrict the types of promissory notes which lenders may sell to an institutional investor and restrict the manner in which lenders may make "guaranteed loan" offers, to the Office of Administrative Law (OAL). OAL had rejected this regulatory action on February 14. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 118; Vol. 1 (Winter 1991) p. 99; and Vol. 10, No. 4 (Fall 1990) p. 118 for detailed background information on these proposed changes.) At this writing, DOC is awaiting OAL's ruling.

Proposed Regulatory Action Under the Credit Union Law. At this writing, DOC staff is still reviewing the comments received in response to its proposal to amend section 976, which concerns loans secured by real property. (See CRLR Vol. 11, No. 1 (Winter 1990) pp. 97-98 for detailed background information on these changes.)

Proposed Regulatory Action Under the Corporate Securities Law. At this writing, the Department is still reviewing the comments it received on its proposed amendments to section 260. 105.34 of its regulations, which would exempt "rated debt securities" from the non-issuer qualification requirement of Corporations Code section 25130; but would exclude from the rated debt securities exemption those debt securities which are collateralized by debt securities 5% of more of the fair market value of which are not investment grade securities (commonly referred to as "junk bonds"). (See CRLR Vol. 11, No. 1 (Winter 1991) p. 98 for background information.)

The Department is also still reviewing the public comments it received on its proposed regulatory changes to sections 260.140.8, 260.140.41, 260.140.42, and 260.140.45, and its proposed repeal of section 260.140.41.2, relating to employee benefit plans. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 98-99 for detailed background information.)

Proposed Regulatory Action Under the Industrial Loan Law. On April 19, OAL approved DOC's amendments to regulatory sections 1152, 1154, 1155, 1189, and 1190.3 under the Industrial Loan Law. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 99 for background information on these changes.)

LEGISLATION:

AB 1669 (Margolin), as amended April 18, would increase regulatory fees paid to DOC by health care service plans (HCSP) regulated by the Department pursuant to the Knox-Keene Health Care Service Plan Act. This bill passed the Assembly on May 30 and is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 698 (Boatwright), as amended April 16, would prohibit the Secretary of State from filing articles of incorporation for any entity in which the words "industrial loan company," "investment and loan company," "thrift company," or "thrift and loan company" appear, unless the name is used in connection with articles filed for a corporation organized under the Industrial Loan Law. This bill would also prohibit persons not authorized to engage in the industrial loan business from doing business under any name or title that contains those terms. This bill passed the Senate on April 25 and is pending in the Assembly Committee on Banking, Finance and Bonded Indebtedness.

SB 1196 (Russell). Existing law authorizes the Commissioner to petition the court for relief against certain persons who are subject to regulation by the Commissioner under the Corporate Securities Act, and in connection with that action, to seek the appointment of a receiver, monitor, conservator, or other person. As amended May 7, this bill would provide that for provisions of specified laws administered by the Commissioner, upon a proper showing, an injunction, restraining order, or writ of mandate shall be granted and a receiver, monitor, conservator, or other designated fiduciary or officer of the court may be appointed, or ancillary relief may be granted. This bill would provide that expenses and fees may be paid from property held by the receiver, monitor, conservator, or other designated fiduciary or officer, but that the state, the Business, Transportation and Housing Agency, and DOC shall not be liable for those expenses and fees unless provided for by contract. This bill passed the Senate on May 30 and is pending in the Assembly Banking Committee.

AB 622 (Bane). Existing law authorizes the creation of an unincorporated interindemnity or reciprocal or interinsurance contract, between members of a cooperative corporation whose members consist only of physicians, which contracts indemnify solely in respect to medical malpractice claims against members, and which do not collect in advance of loss any moneys other than contributions by each member to a collective reserve trust fund or for necessary expenses of administration. Existing law authorizes the Commissioner of Corporations to investigate such arrangements and to bring court actions to enforce compliance with law.

As amended April 3, this bill would provide that the cost of any review, examination, audit, or investigation made by the Commissioner shall be paid by the person subject to the review, examination, audit, or investigation, and the Commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction. This bill would also provide that the Commissioner shall be awarded costs and reasonable attorneys' fees in any action under those provisions. This bill passed the Assembly on May 16 and is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 244 (Robbins). Existing law provides a method which the Commissioner may use in determining the costs of administration or enforcement of existing laws regulating HCSPs. As amended May 15, this bill would require, rather than permit, the Commissioner to use the specified method.

Existing law requires the Commissioner to use a deposit maintained by an insolvent HCSP to pay the claims of noncontracting HCSPs and claims of enrollees, for the costs of health care services provided by the noncontracting providers. This bill would specify that only the claims of health care services that are covered by the HCSP's contract with the enrollee shall be reimbursed by the Commissioner or, if a receiver has been appointed for the plan, by the receiver from the assets available in the deposit. This bill passed the Senate on April 18 and is pending in the Assembly Insurance Committee.

SB 361 (Robbins), as amended April 1, would require the Commissioner to annually publish the Knox-Keene Health Care Service Plan Act of 1975, and make it available for sale to the public. This bill passed the Senate on April 18 and is pending in the Assembly Ways and Means Committee.

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

SB 852 (Bergeson), as introduced March 7, would authorize a HCSP to enter into a new or modified plan contract or publish or distribute, or allow to be published or distributed on its behalf, a disclosure form or evidence of coverage without having filed the same for the Commissioner's approval if the contract, disclosure form, or evidence of coverage is pursuant to a contract with the federal Health Care Financing Authority to provide Medicare benefits and services. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

AB 1124 (Frizzelle), as introduced March 5, would prohibit HCSPs and specialized HCSPs which provide one or more optometric services from interfering with the professional judgment of a person engaged in the practice of optometry pursuant to the plan. This bill, which would impose additional requirements on HCSPs relating to optometry, is pending in the Assembly Health Committee.

AB 1189 (Peace), as amended April 15, would provide that a proxy includes an electronic transmission authorized by a shareholder or attorney in fact, and would require a proxy transmitted by an electronic transmission to set forth or be submitted with information from which it may be determined that the proxy was authorized by the shareholder or his/her attorney in fact. This bill passed the Assembly on May 9 and is pending in the Senate Committee on Insurance, Claims and Corporations.

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

AB 1597 (Floyd). Under existing law, the Commissioner may refuse to issue a permit for the qualification of securities in a recapitalization or reorganization unless the Commissioner finds that the proposed plan of recapitalization or reorganization and the proposed issuance of securities are fair, just, and equitable to all security holders affected. As introduced March 8, this bill would permit the Commissioner to refuse to issue that permit unless, in addition to finding that the proposed plan and issuance of securities is fair, just, and equitable to all security holders affected, the Commissioner finds that the proposed plan does not result in the termination or impairment of any labor contract covering persons engaged in employment in this state and negotiated by a labor organization, collective bargaining agent, or other representative. This bill is pending on the Assembly floor.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 2 (Spring 1991) at pages 118-20:

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

SB 893 (Lockyer), as introduced March 7, would, among other things, authorize the establishment of the California Financial Consumers' Association, a private, nonprofit public benefit corporation established to inform and advise consumers on financial service matters, represent and promote the interests of consumers in financial service matters, intervene as a party or otherwise participate on behalf of financial service consumers in any regulatory proceeding, sue on behalf of members in regard to any financial service matter, and take related actions. This bill is pending in the Senate Banking Committee.

SB 935 (Roberti). Existing law sets forth specified criteria for determining whether foreign corporations are subject to the corporate laws of this state. As introduced March 8, this bill would delete existing criteria and add new criteria for determining whether a corporation, regardless of its jurisdiction or incorporation, is a "Foreign-California Corporation" subject to the corporate laws of this state. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

AB 991 (Lancaster). Existing law provides that the Commissioner may summarily issue a stop order denying the effectiveness of or suspending or revoking effectiveness of any registration of a franchise based on specified grounds. As amended April 4, this bill would clarify these grounds by providing that the Commissioner may issue a stop order upon a finding that the involvement of any person identified in the application or any officer or director of the franchisor in the sale or management of the franchise creates an unreasonable risk to prospective franchisees and that the person meets specified criteria. This bill is pending in the Assembly Banking Committee.

AB 938 (Speier), as amended May 15, would require banks, savings associations, and credit unions to process credits to deposit accounts before processing debits, including fees for dishonored checks; require specified items drawn on an account with insufficient funds to be presented at least twice before the item is returned unpaid, unless otherwise requested by the customer who deposited the item; and limit the fees which financial institutions may charge for dishonored checks. This bill is pending on the Assembly floor.

AB 82 (Kelley). Existing law provides that any corporation may voluntarily elect to dissolve by the vote of shareholders holding shares representing 50% or more of the voting power. Whenever a corporation has elected to dissolve, it must file a certificate of election to wind up and dissolve; when the corporation has been completely wound up, a certificate of dissolution also must be filed. As amended March 5, this bill would provide that in instances where the election to dissolve is made by the vote of all outstanding shares and a statement to that effect is added to the certificate of dissolution, the separate filing of a certificate of election to wind up and dissolve is not required. This bill passed the Assembly on April 18 and is pending in the Senate

Committee on Insurance, Claims and Corporations.

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

AB 1141 (Woodruff), as introduced March 5, would authorize a HCSP to expand its geographic service area, under specified conditions, if the plan has notified the Commissioner of its intent to modify its plan by expansion, and the Commissioner has not approved, disapproved, suspended, or postponed the effectiveness of the modification within the prescribed time limit. This bill is pending in the Assembly Insurance Committee.

SB 118 (Robbins), as introduced December 19, would expand the Commissioner's powers and authorities in administering the Knox-Keene Health Care Service Plan Act. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 99-100 for details on this bill.) This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 917 (Kopp), as amended May 2, would require certain HCSPs that proposed to offer a pharmacy benefit or change its relationship with pharmacy providers to give written or published notice to pharmacy service providers of the plan's proposal and give those providers an opportunity to submit a proposal to participate in the plan's panel of providers on the terms proposed. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

AB 2083 (Felando), as amended May 20, would provide that a licensed health care provider, retained by a disability insurer or HCSP to review claims for health care services rendered by a licensed health care provider, who is authorized to render final opinions on claims, must hold a current license of the same license class as the health care provider being reviewed. This bill is pending in the Assembly Insurance Committee.

SB 366 (Robbins), as amended May 29, would require the Commissioner to prepare and publish a booklet describing for the public or potential HCSP enrollees how to purchase health care coverage regulated under the Knox-Keene Health Care Service Plan Act and long-term care coverage which may be offered by health maintenance organizations regulated under federal law. This bill would also require the Commissioner to establish and maintain a toll-free telephone number for purposes of providing consumer service information and receiving complaints with respect to HCSPs regulated by the Commissioner. This bill passed the Senate on May 16 and is pending in the Assembly Insurance Committee.

AB 1282 (Filante), as amended May 15, would require every HCSP, disability insurer, and nonprofit hospital service plan that covers hospital, medical, or surgical expenses on an individual basis to offer a coverage option to individuals for health care expenditures in excess of $3,000 per insured individual per year; require the coverage options to provide rate incentives for covered individuals or enrollees to adopt "healthful lifestyles," and the rate incentives to be based on actuarial considerations related to the differences in lifestyle; and require the Commissioner to adopt guidelines defining what constitutes a "healthful lifestyle" for HCSPs. This bill is pending in the Assembly Ways and Means Committee.

SB 1165 (Davis), as introduced March 8, would prohibit any HCSP which offers or provides one or more chiropractic services as a specific chiropractic plan benefit, when those services are not provided pursuant to an affiliation contract, from refusing to give reasonable consideration to affiliation with chiropractors for provision of services solely on the basis that they are chiropractors. This bill passed the Senate on May 24 and is pending in the Assembly Insurance Committee.

AB 1251 (Hauser), as introduced March 1, would establish the Bureau of Community Associations in the Department, with a Community Associations Commissioner as its chief executive and a 15-member Advisory Commission; authorize this Commissioner to employ persons and issue regulations relating to common interest developments, such as condominiums and planned developments which are managed by an association; require each community association to register with the Bureau and pay an annual fee; and require persons engaging in the business of a managing agent of a common interest development to be licensed. This bill is pending in the Assembly Committee on Housing and Community Development.

SB 948 (Vuich), as introduced March 8, would provide that any director, officer, stockholder, trustee, employee, or agent of an escrow agent who abstracts or willfully misappropriates money, funds, trust obligations, or property deposited with an escrow agent is guilty of a felony, and is subject to court-ordered restitution to the escrow agent and the Fidelity Corporation. This bill would also prohibit persons convicted of specified felonies from being an officer, director, trustee, agent, or employee of an escrow agent. This bill passed the Senate on May 30 and is pending in the Assembly Banking Committee.

AB 889 (Mays), as introduced February 28, would extend the January 1, 1992 repeal date of section 5047.5 of the Corporations Code, which immunizes from liability directors or officers of certain nonprofit corporations who serve without compensation for acts or omissions committed in the exercise of the director's or officer's policymaking judgment. This bill, which would extend the life of this provision until January 1, 1997, is pending in the Assembly Judiciary Committee.

LITIGATION:

People of the State of California v. American Continental Corporation (ACC), the Department's civil fraud action against Charles H. Keating, Jr., the now-bankrupt ACC, and two of ACC's top officers, is still pending in federal court in Arizona under U.S. District Court Judge Richard Bilby. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 117-19 and 128-29; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 135-38 and 149-50; and Vol. 10, No. 1 (Winter 1990) pp. 103 and 113-14 for extensive background information on the Lincoln/ACC scandal.) The Department, which authorized ACC to sell junk bonds from branch offices of its subsidiary, Irvine-based Lincoln Savings and Loan, charges defendants with securities fraud, fraud in application for qualification, offer/sale of unauthorized securities, and unauthorized advertising.

Although the Department's case was filed in Los Angeles County Superior Court in March 1990, the defendants removed the case to federal court; it was then transferred to Judge Bilby along with numerous other civil actions concerning Keating, ACC, and Lincoln. Although the case is technically stayed due to ACC's bankruptcy, the Department has been permitted to file a motion for summary judgment in the case; defendants have not yet responded because they have yet to complete discovery. The Department has also filed a motion for default against Keating, for his failure to file a responsive pleading to the Department's complaint since he was served in May 1990. An April 19 hearing on both motions was postponed indefinitely.

In Re American Continental Corporation/Lincoln Savings and Loan Association, No. 589302 (Orange County Superior Court), the class action filed on behalf of 23,000 investors who lost approximately $300 million in the collapse of Lincoln/ACC through their purchase of now-worthless junk bonds, has also been transferred to Judge Bilby. The Department was dismissed as a named defendant in this action in May 1990. Plaintiffs' objection to the transfer to federal court (triggered by defendants' filing of cross-complaints alleging federal questions) is still on appeal in the U.S. Court of Appeals for the Ninth Circuit. The March 1991 trial date in the class action has been postponed until at least January 1992. At this writing, partial settlements totalling $40 million have been negotiated and approved by the court.

DEPARTMENT OF INSURANCE

Commissioner: John Garamendi
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Toll-Free Complaint Number:
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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 1,450 insurance companies which carry premiums of approximately $53 billion annually. Of these, 650 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) regulates compliance with the general rating law; 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 ten 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:

Personnel Changes at DOI. DOI Commissioner John Garamendi, the first elected Insurance Commissioner in the state's history, has made a number of interesting personnel changes in the Department. The newly elected Commissioner has hired as staff or as consultants a substantial number of people who have long been active in insurance issues on behalf of consumers—including two of his election opponents.

Walter Zelman, former executive director of California Common Cause and one of Garamendi's opponents in the November 1990 election, has been hired as a special deputy on health care matters, and to advise Garamendi on methods of protecting consumer interests. San Francisco plaintiffs' attorney Ray Bourhis, also an unsuccessful candidate for Insurance Commissioner, has been appointed as a DOI consultant and special master overseeing the settlement of his lawsuit challenging the Department's enforcement practices (*see infra* for details). Steven Miller, previously of the Insurance Consumer Action Network (ICAN), was appointed as deputy commissioner in charge of rate regulation and the implementation of Proposition 103. Commissioner Garamendi also hired Carl Oshiro, San Francisco litigation director for the Center for Public Interest Law and an experienced public interest attorney previously associated with Consumers Union, to serve as a DOI administrative law judge.

In addition, former California deputy attorneys general Michael Strumwasser and Fred Woocher were hired as contract counsel to the Department, to continue their work on proposed rules to implement Proposition 103, particularly the rollback and prior approval rate review systems. Since 1989, both have taken the lead within the office of former Attorney General John Van de Kamp in defending Proposition 103 and urging its full implementation. However, in early May, new Attorney General Dan Lungren announced that his office is concerned over the possible application of "revolving door" prohibitions on the annual contract signed by Strumwasser and Woocher, in light of their prior service for the Attorney General in representing the Commissioner in a public capacity. Both Strumwasser and Woocher disputed the application of any prohibitory law to their contract, and Lungren has not pursued the matter to date. However, the Attorney General retains the discretion under law to approve outside contracts for legal services for state agencies, and is not expected to approve a subsequent contract or renewal for Strumwasser and Woocher.

Former Commissioner Roxani Gillespie, although stating in December 1989 that she would not return to the insurance industry, recently accepted employment as an attorney with the insurance specialty law firm of Buchalter, Nemur,