licensed escrow agents, to enable the Department of Corporations to fully fund its escrow agent regulatory program. The bill also strengthens and enhances the Commissioner's regulatory power, specifically authorizing the Commissioner to seek injunctions against an escrow agent's license for failure to comply with any order. This bill was signed by the Governor on September 21 (Chapter 1186, Statutes of 1990).

SB 1762 (Vuich), which authorizes the Commissioner to censure, deny, suspend or revoke a broker-dealer or investment adviser certificate for willful violation of the Commodity Exchange Act, was signed by the Governor on July 16 (Chapter 323, Statutes of 1990).

AB 2259 (Bentley), which, as amended August 15, authorizes a parent corporation to merge into its subsidiary corporation, was signed by the Governor on September 18 (Chapter 1018, Statutes of 1990).

SB 503 (Stirling) would have permitted the director of a corporation to consider and act in the best interests of the public as well as in the best interests of the corporation and its shareholders. This bill was spawned by statements of San Diego Gas & Electric (SDG&E) Company board members that they had to vote for the SDG&E-Southern California Edison merger because of their exclusive duty to their shareholders. This bill died in the Assembly Judiciary Committee.

LITIGATION:

In Re American Continental Corporation/Lincoln Savings and Loan Association, No. 589302 (Orange County Superior Court), the class action lawsuit filed on behalf of 23,000 investors who lost upwards of $200 million in the collapse of Lincoln Savings and its now-bankrupt parent company, American Continental Corporation (ACC), is still pending in superior court. The Department was dismissed as a named defendant in this action last May. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 138; Vol. 10, No. 1 (Winter 1990) pp. 103 and 113-14; and Vol. 9, No. 4 (Fall 1989) p. 100 for detailed background information.)

Recently, two of the remaining defendants—Karl Samuelian and Franklin Tom—announced a tentative agreement to pay $4.3 million up front to resolve claims by investors, and further agreed to pay an additional $10 million if plaintiffs are unable to collect from other defendants. However, this $10 million guarantee is apparently mooted, since defendant Charles Keating's primary law firm of Kaye, Scholer, Fierman, Hays & Handler has agreed to settle for $20 million. Further, in an unusual move to clear the Lincoln subsidiaries from the bankruptcy proceedings now pending in Arizona, the federal government (named as a defendant in the fourth amended complaint in this action, as holder of Lincoln) has decided to put up $21 million, of which approximately $16 million would go to satisfy bondholders in this class action. Partial settlements after certification of a class action must be approved by the court; however, there is no indication that approval will not be granted.

Three significant events increased the pressure on defendants to settle. First, in a related proceeding in U.S. District Court for the District of Columbia, after a six-month hearing, Judge Stanley Sporkin ruled that there was clear evidence of fraud warranting the government takeover of Lincoln. Judge Sporkin also chastised Lincoln's lawyers and accountants for not stopping the Lincoln violations, or at least disassociating themselves from the defendants. Second, on August 9, Keating was issued a restitution order for $40.9 million, which federal regulators claim was lost in three schemes involving Lincoln ($24.2 million from an illegal loan for the Ponchartrain Hotel in Detroit, $4.4 million from sale of Arizona desert land at inflated prices, and $12.3 million from an employee stock ownership plan that illegally purchased Keating's own stock). Third, as discovery continues in the Orange County Superior Court case, more and more damaging information is being uncovered. Because civil discovery efforts are running ahead of both federal and state agency inquiries, an agreement has been reached that provides federal and state access to plaintiffs' counsel's document depository and some attorney work product in the class action.

Partial settlements are expected to continue. The cut-off date for discovery is March 31, 1991; the trial is scheduled to begin in September 1991. It is still unknown when—if ever—investors will start recouping their losses.

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 Codes 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 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. Rates generally are not set by the Department, but through open competition under the provisions of Insurance Code sections 1850 *et seq.*; and

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

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. It receives more than 900 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, Investigations, or other sections of the USB.

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.

A Consumer Advisory Panel (CAP) has been named by the Commissioner as an internal advisor to DOI. CAP members are appointed by the Commissioner. The Panel's function is to advise the Department on methods of improving existing services as well as the creation of new services. Additionally, the CAP aids in the development and distribution of consumer educational and informational materials.

MAJOR PROJECTS:

Commissioner Applies Fair Rate of Return Standard to Two Insurance Companies. Unsurprisingly, the proceedings to implement Proposition 103 have become procedurally complex and confused. Part of the confusion is derived from two separate provisions in the 1988 initiative—one requiring rate rollbacks to levels 20% below 1987 rates, and refunds to consumers of charges above that maximum rate; and a separate provision requiring "prior approval" of insurance rate changes after November 7, 1989. Additional complexity has occurred due to the Commissioner's delay in establishing standards and procedures by rulemaking to guide the Department's rollback and prior approval rate decisions; court challenges to the constitutionality of the measure; disputatious administrative proceedings (often involving accusations of bias against the administrative law judges (ALJs) assigned by the Commissioner to propose rules and to adjudicate individual cases); and numerous court proceedings brought by insurance companies contesting the administrative proceedings *pendente lite*.

Following the California Supreme Court's May 1989 *Calfarm* decision upholding most of the reform initiative, the Commissioner filed emergency regulations detailing how insurance firms could obtain relief from required rollback/refund requirements. Virtually all insurance firms filed rate increase requests with the Commissioner under these rules. The Attorney General responded by protesting each and every request, to trigger the mandatory review requirements established by the law.

On August 1, 1989, the Commissioner noticed hearings for various insurers to adjudicate rollback and refund requirements. Those hearings purported to apply an 11.2% rate of return minimum guarantee for an insurance firm, below which no rollback or refund would be ordered. The hearings commenced as to various insurers in late 1989 before ALJ Paul Geary. However, during the course of these hearings (and in response to a lawsuit filed by consumer groups), the Commissioner issued a "Notice of Bifurcation and Consolidation" and announced new hearings to determine "generic issues," including the setting of rates of return for both the rollback/refund and prior approval parts of Proposition 103 and specifying how the rates would be applied. These hearings were divided into two parts: the "02 Hearings" (referring to automobile insurance provisions outlined in Insurance Code section 1861.02, added by the initiative); and "05 Hearings" (pertaining to rate approval procedures for all lines of insurance and corresponding to Insurance Code section 1861.05).

The 02 Hearings were conducted during November 1989 before ALJ Jerry Whitfield. The auto rating criteria regulations resulting from these proceedings were later revised, rejected in coordinated proceedings contesting them before the Los Angeles County Superior Court, and are currently on appeal *(see infra "DOI Rulemaking")*. The O5 Hearings before ALJ William Fernandez took place from December 4, 1989 to April 3, 1990. On May 3, 1990, Judge Fernandez issued his proposed decision. The Commissioner declined to accept the recommendation, and issued her own decision on June 13, 1990. In her decision, Commissioner Gillespie approved a fair rate of return standard to guide the premium refunds ordered by Proposition 103. For these purposes, the Commissioner adopted a rate of return of 11.2%. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 139-40; Vol. 10, No. 1 (Winter 1990) pp. 106-08; Vol. 9, No. 4 (Fall 1989) pp. 92-94; and Vol. 9, No. 3 (Summer 1990) pp. 82-87 for detailed background information on DOI's implementation of Proposition 103.)

Following her rate of return decision, the Commissioner issued a notice to five insurer groups, including SAFECO and California State Automobile Association (CSAA), to attend a rollback hearing to begin July 18, 1990. However, on July 2, the insurers sought a writ of mandate in Los Angeles County Superior Court challenging the rate of return selected and the methodology for applying it. The rollback hearing was continued pending the court's decision. On July 31, Superior Court Judge Dzintra I. Janavs (now handling the consolidated challenges to Proposition 103 implementation) denied the insurers' attempt to enjoin the administrative hearings to assess rollback requirements under the methodology adopted by the Commissioner, finding the request premature and that the insurers had not exhausted administrative remedies.

The Commissioner subsequently ruled that the 11.2% standard, applied through her approved formula, yielded a required rollback of $41 million for SAFECO and $92 million for CSAA. Both were ordered to pay these amounts to consumers, apparently as an initial test case to judge the constitutionality and legality of the adopted standards. Although these amounts are substantially less than the 20% rollback and refunds ordered by Proposition 103, the Commissioner ruled that both companies could not be assessed additional sums or they would fail to achieve the minimum 11.2% rate of return she had ruled all firms are entitled to receive in calculating rollbacks and refunds.

Consumer advocates charged that the refunds were inadequate, the guaranteed 11.2% rate of return too high, and—most significantly—that the measurement of invested capital for calculating total return the insurance companies must be guaranteed (the rate base or invested capital by which 11.2% is multiplied) was grossly inflated, or not properly measured (that is, the Commissioner used questionable "premium to surplus" norms).

Both CSAA and SAFECO protested any rollback or refund assessment and requested a variance, to be heard in an administrative adjudicative proceeding before the Commissioner. The insurers contended that the 11.2% rate is confiscatory, and even if applied, should not produce a refund obligation of the size ordered. In addition, both insurance companies "challenged" ALJ Frank Britt, scheduled to hear the case, asking

Superior Court Judge Janavs to order the substitution of ALJ Geary in his stead. The court ruled that Judge Geary had been properly assigned to the case, and he was substituted for Judge Britt.

The hearings commenced on September 26—except nobody told the Attorney General's office, which is at this point the major surviving advocate in the proceedings purporting to represent consumers. At the September 27 rollback hearing, Special Counsel to the Attorney General Fredric Woocher objected to all evidence entered on the previous day and moved to strike the testimony. The AG's counsel was not present for the September 26 testimony because he had been misinformed by a DOI employee that the hearings were postponed until September 27. When the AG discovered that the hearings would in fact commence on September 26, he phoned the ALJ with an objection, and then requested a conference call with the ALJ, both of which were summarily denied. During the hearings on September 26, therefore, the Attorney General was not present. ALJ Geary denied the AG's motion.

During the September 27 rollback hearing, Department of Insurance counsel Karl Rubenstein and Special Counsel Woocher cross-examined SAFECO actuary Gary Bellinghausen, seeking to establish that SAFECO overstated its reserves as a way of showing a lower rate of return. Special Counsel Woocher carefully questioned the witness on the data and methods used by SAFECO to calculate its rate of return. DOI regulations require that the rate of return be calculated based on a retrospective approach by looking at a single calendar year. SAFECO's self-assessment of its rate of return is based on a different method of calculation. SAFECO has requested that it be granted a variance from DOI regulations on how to calculate the rate of return.

These hearings—which are still pending at this writing—represent a precedent likely to be repeated by virtually all of the insurers of California in calculating appropriate rollback/refund amounts. Counsel for or officials from approximately twenty major insurers are monitoring the proceedings. (Throughout the administrative proceedings implementing Proposition 103, the insurance industry has maintained a consistent presence of 20-60 attorneys either monitoring or participating.)

In addition to accounting methodology, a major issue in the CSAA/SAFECO test case hearings is the scope of allowable discovery in these proceedings and in rate proceedings generally before the Commissioner. The Attorney General contends that disclosure of information about operations in other states by multistate carriers is critical to prove the appropriate allocation of California revenues and costs. The insurers contend that, even with protective orders limiting disclosure, such information has trade secret implications of enormous consequences.

The various consumer groups heretofore participating in the consolidated and other hearings to implement Proposition 103 are not active at these rollback implementation hearings. Consumers Union, Voter Revolt, Public Advocates, and the Center for Public Interest Law have all decided that the discovery decisions of the various ALJs are so limited that the proceedings cannot reasonably determine actual rates of return. These groups all have refused to participate in a process they believe is a sham. Most consumer groups have decided to await the results of the November election for Insurance Commissioner, and seek to participate thereafter under the possibly more consumer-oriented policies of the current Commissioner's successor.

Gillespie Raises CAARP Premiums

DOI is currently holding hearings on a requested 160.5% increase in premiums for auto insurance policies under the California Automobile Assigned Risk Plan (CAARP). (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 141; Vol. 10, No. 1 (Winter 1990) p. 108; and Vol. 9, No. 4 (Fall 1989) p. 94 for background information.) However, in mid-proceeding, Commissioner Gillespie on September 19 ordered an immediate 85% CAARP rate increase in order to "take some of the tension out of the auto insurance market pricing structure."

CAARP, which was originally created to provide insurance to bad drivers who were otherwise uninsurable, has over the past decade become the insurer of choice for many California drivers (as private insurance rates in red-lined areas increased above the specified CAARP rates). The Department of Motor Vehicles estimates that 25% (or five million) of California drivers are currently uninsured. With dramatic increases in CAARP premiums—perhaps exceeding 100% in Los Angeles and Orange counties—and the upcoming expiration of part of California's mandatory insurance law, many observers are projecting dramatic increases in the number of uninsured motorists.

Immediately upon Gillespie's announcement, consumer groups blasted the move as unlawful. Consumers Union and Public Advocates stated that they were seriously contemplating a lawsuit to invalidate the announced increase, alleging that DOI violated the due process requirements of Proposition 103 in that the Commissioner failed to hold public hearings or base her decision on specific evidence. Only last December, the Commissioner denied CAARP's request for a 112% rate increase. That ruling was reversed by the Los Angeles County Superior Court; the Commissioner's appeal of the court's ruling is pending. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 141 and Vol. 10, No. 1 (Winter 1990) p. 108 for background information.)

DOI Rulemaking. The Commissioner announced the upcoming commencement of several rulemaking proceedings:

-DOI seeks to add numerous sections to its rules in Title 10 of the CCR to implement sections 1855.1-.5 of the Insurance Code, added by Proposition 103 in November 1988. These statutes require the Commissioner to review and approve policy and bond forms developed by advisory organizations. The proposed regulations would allow advisory organizations to file policy or bond forms for approval, together with appropriate fees and the necessary information for the Commissioner to review and approve them. The regulations are necessary to provide for required hearings in the event of a disapproval or revocation of approval, and will establish a procedure for the participation of consumer representatives and other interested persons. DOI was scheduled to hold a public hearing on these proposed regulations on November 19 in Los Angeles.

-DOI also proposes to add sections 2695.1-.10 to its regulations in Title 10 of the CCR. These regulations pertain to unfair claims settlement practices, and would (among other things) require insurance claims to be paid more promptly, set standards for computing amounts paid for auto and homeowner policy claims, and establish other safeguards for California insurance consumers. According to the Commissioner, the proposed regulations are based on a model regulation published last May by the National Association of Insurance Commissioners (NAIC), and California would be one of the first states to adopt them. Key provisions of the proposed regulations would require insurers to investigate claims within thirty days in most cases; answer letters from claimants within fifteen days; fully disclose policy provisions relating to claims; promptly provide forms and other information or assistance needed to file claims; give policyholders a full explanation of actions taken on claims; and warn claimants when time limits on

filing claim-related lawsuits are expiring. DOI was scheduled to hold public hearings on these proposals on November 13 in San Francisco and November 15 in Long Beach.

-On November 16 in San Francisco and November 20 in Los Angeles, DOI was scheduled to hold public hearings on proposed sections 2632.1-.18, Title 10 of the CCR. These regulations—which implement Proposition 103 by establishing private passenger automobile rating factors, good driver discount policies, collection of historical loss cost data, and rates for private passenger automobile insurance—were adopted as emergency regulations by the Commissioner on August 6; the proposed regulatory action would adopt the emergency regulations as permanent regulations.

Following a lengthy administrative proceeding, the Commissioner originally adopted these regulations (sometimes called "auto rating criteria") in April 1990. However, less than one month later, the Los Angeles County Superior Court invalidated them as "unfairly discriminatory" toward rural drivers, and preliminarily enjoined their use and enforcement. (See CRLR Vol. 10, Nos. 2 & 3, (Spring/Summer 1990) p. 140 and Vol. 10, No. 1 (Winter 1990) pp. 106-07 for background information.) The Commissioner has appealed this ruling.

The Commissioner's August 6 emergency regulations and the newly-proposed permanent regulations comport with the court's order: they define the three mandatory auto rating factors set forth in Proposition 103, and specify the manner in which their order of importance is to be established; further, the Commissioner has designated additional optional rating factors which may be used by insurers, and has set forth the weight that each factor is to be given; finally, the regulations clarify the definition of "good driver" and establish the means by which insurers are to comply with the requirement that they offer good driver discount policies. The proposed regulations also continue the temporary rate cap on private passenger automobile insurance imposed by the Commissioner on October 3, 1989. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 92-94 for background information.)

-Finally, DOI proposes to adopt numerous regulations establishing standards, methodologies, and procedures for the prior approval of property and casualty insurance rates, also to implement the provisions of Proposition 103. The initiative provided, among other things, that certain insurance rates for coverages issued or renewed on or after November 7, 1989, would be subject to review and approval by the Commissioner prior to their use. DOI was scheduled to hold a public hearing on these proposed regulations on November 26 in Los Angeles.

LEGISLATION:

SB 1979 (Robbins), as amended August 15, provides for the establishment of the Robbins-Seastrand California Health Insurance Guaranty Association, to provide coverage for insurers unable to pay claims under health and supplemental policies or contracts due to insolvency or impairment, as specified. This bill was signed by the Governor on September 22 (Chapter 1246, Statutes of 1990).

SB 2902 (Hill), as amended August 30, creates the California Residential Earthquake Recovery Fund, to be administered by the Insurance Commissioner; requires insurers issuing policies of residential property insurance covering privately owned single-family dwellings to collect a surcharge for each policy, which will be deposited into the fund; provides earthquake coverage for the peril of structural damage to residential real property for property for which the surcharge was collected, subject to specified limits and deductibles; and requires DOI to study the availability, cost, and adequacy of commercial insurance in covering property and business interruption losses due to earthquake and to report to the legislature on or before January 1, 1992. This bill was signed by the Governor on September 21 (Chapter 1165, Statutes of 1990).

The following is a status update on bills reported in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 141-43:

AB 2650 (Peace), as amended August 30, would have made a number of changes regarding motor vehicle insurance, including requiring motor vehicle insurers to report specified information to the Commissioner, and requiring the Commissioner to make the information available to the public and local law enforcement agencies. This bill died in the Senate Judiciary Committee.

AB 2701 (Areias), as amended August 29, would have required certification, on and after July 1, 1991, of all persons selling policies or certificates of disability insurance to persons eligible for Medicare by reason of age; and would have imposed certification requirements consisting of completion of a course, continuing education, and signing a code of ethics. This bill was vetoed by the Governor on September 28.

AB 3641 (Johnston), for purposes of CAARP policies, authorizes groups of insurers not under common ownership or management to form a limited assignment distribution arrangement, under which one servicing carrier would write assigned risk business on behalf of the members of the arrangement in return for consideration from the other participating carriers for not writing the business. The servicing carrier will be subject to the approval of the Commissioner. This bill was signed by the Governor on August 10 (Chapter 509, Statutes of 1990).

AB 3683 (Hauser), as amended July 27, prohibits motor vehicle liability insurers from refusing applications or issuance of insurance or from cancelling insurance solely for the reason that the applicant is on active duty service in the Armed Forces of the United States. This bill was signed by the Governor on September 16 (Chapter 956, Statutes of 1990).

SB 2569 (Rosenthal), as amended August 22, requires the Commissioner to establish a program on or before July 1, 1991, for the handling of insurance complaints registered with DOI, for responding to inquiries and, where warranted, for bringing enforcement actions against insurers. This bill, which also requires DOI to develop a complaint handling evaluation form, was signed by the Governor on September 26 (Chapter 1375, Statutes of 1990).

AB 4282 (Johnston), as amended August 28, imposes several restrictions on the advertisement, solicitation, and issuance of Medicare supplement policies, such as requiring a copy of every Medicare supplement policy advertisement to be filed with the Commissioner thirty days before its use. This bill was signed by the Governor on September 24 (Chapter 1291, Statutes of 1990).

SB 2136 (Robbins), as amended August 14, requires member insurers to disclose the amount of any California Insurance Guarantee Association surcharge on billing or declarations sent to insureds under policies of automobile insurance and certain property insurance. This bill was signed by the Governor on September 11 (Chapter 794, Statutes of 1990).

SB 2163 (Hart), as amended July 6, would have required the Insurance Commissioner, among others, to adopt regulations governing ex parte communications, as defined, with respect to his/her department. This bill died in the Assembly Ways and Means Committee.

SB 2179 (Robbins), as amended August 13, repeals and reenacts existing

provisions which impose various annual reporting requirements on insurers, the Insurance Commissioner, the Judicial Council, and DOI's Bureau of Fraudulent Claims. Among other things, this bill removes an existing requirement that the Commissioner contract on an annual basis with the Judicial Council for a specified report and instead requires the Commissioner to provide the legislature with that report. This bill was signed by the Governor on September 19 (Chapter 1110, Statutes of 1990).

SB 2299 (Davis), which would have required owners of private passenger vehicles registered in the state to have either liability insurance or compensation insurance, died in the Senate Judiciary Committee.

SB 2618 (Robbins), which would have required disability insurers and certain health care providers to pay an annual fee in order to fund increased investigation and prosecution of fraudulent health insurance claims and the compilation of health insurance claims data, died in the Assembly Finance and Insurance Committee.

SB 2642 (Robbins), as amended August 20, requires licensed insurance agents and brokers to annually and satisfactorily complete certain specified courses and programs as may be approved by the Commissioner. This bill also provides for prelicense education, and requires the Commissioner to appoint a curriculum board, as specified. This bill was signed by the Governor on September 27 (Chapter 1420, Statutes of 1990).

SB 2682 (Hart), as amended August 28, would have required, on and after July 1, 1991, insurers engaged in writing homeowner's insurance policies to also offer liability coverage in specified coverage amounts for licensed family day care homes, as specified. This bill was vetoed by the Governor on September 26.

SB 2777 (Robbins), as amended July 5, would have provided that CAARP shall not refuse to accept and assign applications from persons who are eligible for a good driver discount policy, and would have prohibited CAARP from requiring rejection by an insurer as a precondition to obtaining insurance through the plan. Also, this bill would have required the Commissioner to increase additional premium charges imposed on the basis of penalty points in an amount necessary to recoup losses projected to accrue from issuing policies to good drivers. This bill died in the Assembly Finance and Insurance Committee.

SB 2851 (Hill), as amended July 7, would have deleted the existing requirement that every driver and owner of a motor vehicle maintain a form of financial responsibility, and would instead have required each owner of a private passenger motor vehicle, other than a motorcycle, to provide insurance that would provide personal injury protection benefits. This bill died in the Senate Judiciary Committee.

AB 4144 (Epple), as amended June 25, would have prohibited the Commissioner from making or participating in, or using his/her official position to influence, any of various specified governmental decisions, if he/she knows or has reason to know that he/she has a financial interest. This bill died in the Senate inactive file.

AB 3014 (Lancaster), as amended August 24, requires the Commissioner to adopt regulations governing administrative hearings within specified time limits, and provides that the sole remedy for failure to adopt those regulations within prescribed time periods or to abide by the regulations once adopted is a writ of mandate to compel the Commissioner to adopt the regulations or commence or resume hearings. This bill was signed by the Governor on September 30 (Chapter 1583, Statutes of 1990).

SB 2135 (Robbins), which would have prohibited an insurer from engaging in any marketing action that would have the effect of discouraging or limiting the right of a person to purchase a good driver discount policy, died in the Senate Committee on Insurance, Claims and Corporations.

SB 2396 (Roberti), as amended July 7, would have provided that political contributions are not to be included in determining the expenses of an insurer, and would have required insurers to file a list of political contributions. This bill died in the Assembly inactive file.

SB 3 (Roberti), which would have created the Insurance Consumer Advocate's Office in the state Department of Justice, died in the Assembly Finance and Insurance Committee.

SB 207 (Boatwright), which would have required insurers subject to Proposition 103 ratesetting regulations to submit a quarterly report to the Commissioner relating to the Commissioner's ratesetting procedures, died in the Assembly Finance and Insurance Committee.

SB 464 (Robbins) provides that the ownership or financial control, in part, of an insurer by any other state, the United States, or by a foreign government, or by any political subdivision or agency thereof, shall not restrict the Commissioner from issuing or renewing or continuing in effect the license of that insurer to transact insurance business in this state, under specified conditions. This bill was signed by the Governor on September 18 (Chapter 1061, Statutes of 1990).

SB 604 (Green), which would have required the Commissioner to annually report to the legislature on defined property/casualty insurance lines, died in the Assembly Finance and Insurance Committee.

SB 1518 (Nielsen), which would have prohibited the Insurance Commissioner from being employed in the insurance industry for two years after leaving office, died in the Assembly Finance and Insurance Committee.

SB 1695 (Keene), which would have enacted changes in DOI's Bureau of Fraudulent Claims, died in the Assembly Finance and Insurance Committee.

AB 1721 (Friedman), as amended August 29, prohibits life and disability insurers from discriminating, as to eligibility or rates, on the basis of sexual orientation. This bill also prohibits health care service plans from refusing to enter into, cancelling, or declining to renew or reinstate a contract because of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, or age; and prohibits modification of the terms of the contract, including terms relating to price, for those reasons, except that premium, price, or charged differentials based on sex or age will be permitted if based upon specified data. However, the bill provides that these provisions shall not be construed to permit a health care service plan to charge different premium rates to individual enrollees within the same group solely on the basis of the enrollee's sex. This bill was signed by the Governor on September 27 (Chapter 1402, Statutes of 1990).

AB 37 (Bane), as amended June 7, would have provided that a person guilty of insurance fraud or filing false claims would be liable for a penalty of ten times the amount of the claims, plus reasonable attorneys' fees, in addition to any other penalty already provided by law. Although AB 37 passed through the legislature without receiving a single vote in opposition, the Governor vetoed this bill on September 17.

LITIGATION:

As reported in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at page 144, the Insurance Commissioner has taken over the Mission Insurance Companies, as trustee in receivership for the State of California. In June, the Second District

Court of Appeal affirmed the decision of Superior Court Judge Kurt J. Lewin and held that Underwriters Reinsurance must pay to DOI the present value of future policyholder claims (which have yet to be reported). This amounts to approximately $1.5 billion in damages. Underwriters had argued that it should only have to pay on actual claims as they become due. In early August, the California Supreme Court denied a petition for review in this matter.

In mid-August, a New York federal district court judge released almost $11.5 million in letters of credit posted by Mission's reinsurers. The letters of credit had been the subject of a restraining order sought by the reinsurers, claiming that they might suffer irreparable harm if the letters were released. U.S. District Court Judge John F. Keenan disagreed, saying that the California courts could handle any problems that might arise.

On August 13, DOI filed a suit against the former officers, directors, and shareholders of Coastal Insurance Company, FGS Insurance Agency, and the Advent Company. This is a major lawsuit seeking $66 million in direct damages, and $130 million more in punitive damages under the Racketeering and Corrupt Practices (RICO) Act. The suit claims that the defendants engaged in RICO violations, fraud, gross mismanagement, and breach of fiduciary duties which caused the insurance company to go bankrupt. DOI's complaint alleges that the defendants raided the company through gross overpayment of commissions, illegal bonuses and commissions, and self-dealing. Allegations include failure to disclose to consumers that their premiums were being financed at interest rates ranging up to 40%, and that their insurance was being placed through the CAARP system. Interestingly, DOI also alleges that defendants authorized the purchase of FGS Insurance Agency from Sid Field for $17.5 million, and less than two years later sold the company back to Field for $156,000.

On August 16 in *AIU Insurance Company v. Gillespie*, No. B045007, the Second District Court of Appeal upheld the provision of Proposition 103 requiring insurance firms to renew all policies except under three limited conditions. The insurance firm had petitioned the court to require the Commissioner to set aside her order finding AIU in violation of the renewal requirement of the law. AIU argued that because it mailed its notices of nonrenewal before the effective date of the initiative, it did not apply to those notices. However, the proposition provides that a notice of nonrenewal shall "be effective" only if it is based on premium nonpayment, fraud, or a substantial increase in the hazard insured against, and it expressly applies to all policies in effect when the measure took effect. The notices of nonrenewal were sent before the expiration of the relevant policies; but the court reasoned that nonrenewal cannot occur until the policy expires. The court held that "the determining fact is whether the policy was in effect when Proposition 103 was enacted. If it was, then the nonrenewal restriction applies; if it was not, the restriction does not apply."

In *Tricor California, Inc., et al. v. Superior Court of Los Angeles County*, No. B047910 (May 22, 1990), the Second District Court of Appeal extended the California Supreme Court's *Moradi-Shalal* decision disallowing third-party statutory bad faith causes of action to first-party claims asserted by insureds. The court reasoned that the legislature never intended to create any private causes of action under Insurance Code section 790.03. In following the Fourth District's August 1989 decision in *Zephyr Park Ltd. v. Superior Court*, the Second District stated: "[F]irst-party insureds are not significantly affected by denial of the right to bring a statutory claim." Common law bad faith causes of action may still be pursued. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 97 and Vol. 8, No. 4 (Fall 1988) p. 87 for background information on the *Zephyr Park* and *Moradi-Shalal* cases.)

The First District Court of Appeal recently held that an insurer is not entitled to equitable indemnification from an insured's negligent attorney. In *California State Automobile Ass'n v. Bales*, No. A044424 (June 14, 1990), CSAA claimed that the negligence of an insured's attorney led to the delay in settling the insured's case, which was later the basis for a bad faith cause of action against CSAA. The appellate court reasoned that while "CSAA's claim might have merit in another context...," it would be inappropriate for a court to issue a ruling which may prevent an attorney from zealously representing his/her client or causing a divergence of interest between an attorney and his/her client.

On September 10, the Center for Public Interest Law (CPIL) filed a Public Records Act (PRA) suit against DOI on behalf of Joseph M. Belth, a professor of insurance at Indiana University. Professor Belth sought copies of DOI records on First Executive Corporation, a financially troubled life insurance holding company. DOI denied the request, asserting the documents were confidential. Immediately after the lawsuit was filed, DOI turned over the requested documents; CPIL is now seeking its attorneys' fees under the PRA.

DEPARTMENT OF REAL ESTATE

Commissioner: James A. Edmonds, Jr. (916) 739-3684

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

The Department primarily regulates two aspects of the real estate industry: licensees (as of September 1989, 234,979 salespersons, 91,365 brokers, 18,272 corporations) and subdivisions.

License examinations require a fee of $25 per salesperson applicant and $50 per broker applicant. Exam passage rates average 53% for salespersons and 43% for brokers. License fees for salespersons and brokers are $120 and $165, respectively. Original licensees are fingerprinted and license renewal is required every four years.

In sales or leases of most residential subdivisions, the Department protects the public by requiring that a prospective buyer be given a copy of the "public report." The public report serves two functions aimed at protecting buyers of subdivision interests: (1) the report requires disclosure of material facts relating to title, encumbrances, and similar information; and (2) it ensures adherence to applicable standards for creating, operating, financing, and documenting