

“A Study on State Authority: Making a Case for Proper Insurance Oversight”

Prepared for the Insurance Legislators
Foundation

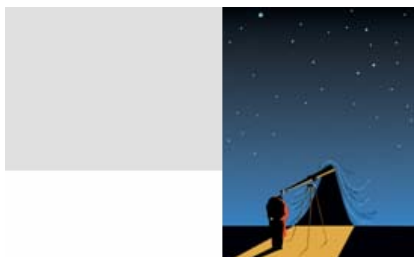
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Prepared by

James W. Schacht
Managing Director
Navigant Consulting, Inc.
30 South Wacker Drive, Suite 3100
Chicago, IL 60606
312.583.5844

Bruce W. Foudree
Attorney at Law
Locke Lord Bissell & Liddell LLP.¹
111 South Wacker Drive
Chicago, IL 60606
312.443.1830

Dr. Joseph F. Zimmerman
Professor of Political Science
The Rockefeller College of Public Affairs and Policy
State University of New York at Albany
135 Western Avenue
Albany, NY 12222
518.442.5378



1 "Effective October 2, 2007, Lord, Bissell & Brook LLP merged with Locke Liddell & Sapp PLLC to form Locke Lord Bissell & Liddell LLP."

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FOREWORD

This report was prepared for The Insurance Legislators Foundation by James W. Schacht and Lynne Prescott Hepler of Navigant Consulting, Inc., Project Leaders; Bruce W. Foudree of Locke Lord Bissell & Liddell LLP., and Dr. Joseph F. Zimmerman, Professor of Political Science in the Rockefeller College, State University of New York at Albany.

The views and statements expressed in this report are solely those of the authors and not necessarily representing those of the above-named firms or institutions or their clients. The content of this report was prepared solely by the authors without specific input or direction from the Insurance Legislators Foundation or the National Conference of Insurance Legislators other than the resolution and statements, which authorized and described the intended purpose of this study.

PURPOSE AND OBJECTIVES OF THE STUDY ON STATE AUTHORITY

Over a period of more than 30 years, the National Conference of Insurance Legislators (NCOIL) and its educational and research arm, the Insurance Legislators Foundation (ILF), have been steadfastly committed to helping legislators make informed decisions on insurance issues that affect their constituents and to declaring opposition to federal encroachment of state authority to oversee the business of insurance. Without question, the work of both NCOIL and the ILF have made a lasting impact in educating legislators on insurance issues, helping legislators interface effectively, improving the quality of insurance regulation and perhaps most importantly, asserting the prerogative of legislators when it comes to developing public policy with regard to insurance and opposing vigorously proposals infringing on state primacy in regulation.

The purpose of the Study on State Authority is to provide an introduction to the subject in two specific areas: (1) the role of the NAIC and (2) recent enforcement action by state attorneys general.

The Study will provide a constructive analysis of the components of state regulation — the legislative, executive, and judicial branches, as well as other state offices, such as the state attorney general — that presently interact and impact the regulation of insurance markets in the states.

NCOIL recognizes that there may be an ever increasing blurring and even infringement on the lines of responsibility with regard to state insurance regulation. The growing role in insurance public policymaking of state attorneys general through investigative actions, the strength of recent court decisions impacting insurance regulation, and the ever-changing role of the National Association of Insurance Commissioners (NAIC) as an organization and an “instrumentality of state government” have prompted the ILF to explore the following:

- The legal authority behind primary oversight of insurance and related consumer protections.
- The statutory authorities and responsibilities granted to legislators, executive and judicial branch members, and regulatory organizations, among others.
- Studies regarding the evolution and funding of regulatory entities.
- Recommendations to clarify and define the role of such entities and their oversight duties in order to promote an effective and efficient regulatory environment.

This report will provide the foundation for a potential subsequent study defining what state legislators must do to ensure a legitimate and competing state option for insurers that might consider a federal licensing option. Among the topics that could be addressed: rate regulation that is based on competition and cost-based pricing; regulatory oversight that provides consumer protection without encouraging litigation; greater harmony between the states; form regulation that relies upon the market as well as trade practice enforcement; market conduct oversight that places greater reliance on self-examinations, voluntary reporting and self-initiated corrective actions; consistent and effective solvency protection and administration of insolvent insurers; adequate preparation for catastrophes, consistency in consumer protection across state lines; and reciprocal or uniform licensing for agents and companies.

This Study is the first of its kind to be conducted by an unbiased legislative group. The findings and recommendations of this study will be used by NCOIL to set a strategic agenda for the development of a policy on state insurance regulation, which can be considered by each state for adoption.

IMPETUS FOR THIS STUDY

There are many factors that have entered into the ILF's request for this study on state authority and insurance oversight. The ILF believes this study is particularly timely as Congress considers proposals to create a federal insurance regulatory structure. Hearings have also taken place before the Antitrust Modernization Commission, a presidential panel examining current antitrust laws, with some calling for the potential repeal of the 1945 McCarran Ferguson Act through the elimination of the limited federal antitrust exemption for insurers.

NCOIL and the ILF recognize that the state system of insurance regulation faces challenges, and there is a need to harmonize and modernize regulation. State authority and its allocation is a critical element of this response. If the policy ambition of some to create an optional federal charter becomes a reality, the states must be in a position to have a real and legitimate state option for insurers that may contemplate securing a federal license. This study will assist in that effort since that sort of state option is not currently being addressed.

This Study will critically analyze the structure and allocation of authority given to state legislatures, administrative agencies and nongovernmental entities such as the NAIC for state insurance regulation.

Looking back, the growth in the NAIC operations and staff has been remarkable since 1958, when Robert Dineen, former New York Superintendent of Insurance and NAIC President, first suggested the creation of a permanent, independent NAIC staff. Today the NAIC's budget exceeds \$62 million. This exponential growth is, in part, reflective of the NAIC's departure from its original primary purpose — the development of uniform public policy to the various "processes of regulation." Some would say that the desire to create more "process" is influencing the development of public policy, without legislative authority or direction. The

origin of this trend can be traced at least back to the “early warning system,” the precedent of the NAIC statistical database. The Financial Regulation Standards and Accreditation program took the NAIC to a place it had never been, i.e., oversight of states’ regulators with strong incentives for the states to follow the NAIC accreditation standards. Again, this occurred without legislative direction or oversight. More importantly, the NAIC has become more involved and concerned with the processes of regulation than with the appropriate regulatory policy they are designed to support. By way of example, consider the SERFF system. Since the early 1990’s, the NAIC has worked to develop and expand the capabilities of the SERFF system for the efficient filing and handling of insurance policy rate and form filings.² Yet, the overarching policy issue of speed to market and the continued “necessity” for a rate and form approval regime has received little critical review.

Some state legislators see a growing trend of infringement upon state legislative authority in the wake of multimillion-dollar settlements, orchestrated in part by state insurance regulators that grew from the 2004 investigation by then-New York Attorney General, and now Governor, Eliot Spitzer into alleged anticompetitive acts by insurance brokers. Some asked, “Where were the insurance commissioners?” The settlement agreements had a direct impact on the settling parties, but also a chilling impact on others who were not parties to the settlement. They appeared to reflect the public policy of the state with regard to contingent commissions for example, which had been a long-standing industry practice.³ Legislators and others in the industry now question the quasi-legislative impact that enforcement actions by state attorneys general have had on public policy.

Following Mr. Spitzer’s high profile investigations on contingent commissions, he turned his attention to the use of finite risk products by such heavyweights as American International Group and Berkshire Hathaway. In Senate testimony on November 16, 2006, Mr. Spitzer commented that favoritism, secrecy, and conflicts rule the insurance industry, with his

² System for Electronic Rate and Form Filing. <http://www.serff.org/SERFF-Background.htm>. The original concept for SERFF was developed in the early 1990s by the NAIC. The Electronic Filing Submission’s intent was to provide a cost-effective method of handling insurance policy rate and form filings between regulators and insurance companies. In June 1996, the SERFF Consortium, an unincorporated group of interested states and companies, was formed in response to the demand for an automated system. SERFF has been an open, cooperative partnership with the mission to fund and oversee the development of the SERFF application from its beginning. This partnership has been very successful, because this approach enables both the states and the industry to participate directly in decisions relating to the development and use of SERFF. This has allowed the states and companies to jointly exert a measure of control over a mission-critical function that otherwise could overwhelm either party’s capability to respond to changing process requirements. Beginning in January 2000, Commissioner Nichols and the NAIC released a “Statement of Intent” that outlined changes that will be considered in the insurance regulatory environment. Part of this document addressed the “Speed to Market” issues that concern rate and form filings. Since March 2000, the NAIC membership and industry representatives have been actively discussing how changes can be made in the regulatory arena to improve the process.

³ Eleanor Barrett. “NCOIL Seeks Legislation to Draw Line of Legislative Turf.” *AM Best*, April 2, 2007.

unnamed targets including regulators. Mr. Spitzer concluded that “the federal government’s hands-off policy with regard to insurance combined with uneven state regulation has not entirely worked...regulators have not been sufficiently aggressive in terms of supervising this industry.”⁴ Many in the industry have observed that an attorney general declaring accepted industry practice (e.g., contingent commissions or finite reinsurance) illegal is a serious breach of the separation of powers and may undermine the carefully woven fabric of regulation across the state. They have questioned the legal soundness of these actions and whether they are based on political expediency.

CURRENT ENVIRONMENT

■ *State Insurance Regulatory System Is Under Attack*

For over 200 years, the regulation and taxation of the business of insurance has been executed by the states with a high degree of success, demonstrating the best aspects of our American federalism. In fact, the success of state insurance regulation has been unmatched by any federal regulatory power over other financial services segments of our economy.

Yet, the future of state-based insurance regulation is less certain than ever. Frustration with the existing state system has led to calls for systemic changes. Some suggest preemption of the states’ historic regulatory role through a federal charter option. Others have stated that state regulation has failed to meet the needs of the insurance industry and their ability to best serve consumers and compete effectively in the financial services marketplace. Yet others have complained of over-regulation resulting from imposing increasingly burdensome requirements on top of existing requirements without a clear understanding of regulatory goals and objectives. For example, the NAIC has recently adopted some of the “Sarbanes Oxley” requirements for insurers without complete consideration of the regulatory regime insurers are subject to versus publicly traded companies. Of course, Congress has reviewed the stewardship entrusted to the states under McCarran Ferguson several times over the last four decades, and following each of these Congressional reviews, state insurance regulation has changed in some fashion, but its primacy has remained.

The current challenge to the state system is far different. The wide dispersion and geographical decentralization of decision-making, as well as the states’ experimentation, which have long been valued in this country, are now principles that some are willing to abandon. It has been said before, if two amongst state regulators, the industry, and Congress agree, it would happen.

⁴ U.S. Senate. 2004. Committee on Governmental Affairs. Subcommittee on Financial Management, The Budget and International Security. *Testimony of Eliot Spitzer, New York State Attorney General: Hearing on Insurance Brokerage Practices*, 16 November.

Many in the insurance industry are actively and outwardly calling for federal regulation and see state insurance regulation as overly complex, anticompetitive, and excessively burdensome in that it increases the cost of compliance and delays the launching of new products. Some say that the burden of state regulation is a deterrent to their ability to compete effectively internationally. A federal system looks attractive to many, based on “the hope” that it would result in more streamlined, less duplicative and pro-competitive regulation. Whether the environment under a federal system ultimately will be better or worse for the industry and consumers is unknown. Yet the apparent convenience and efficiency of one regulator is very appealing, even though there is a plethora of examples of inefficiencies and delays among federal agencies. At least some are willing to take this risk because of their frustration.

The “national versus state regulation” issue as to whether our system, a private insurance business regulated by the states, is as good a means of attaining the public goals of insurance as are the available alternatives continues.

In an October 21, 1970 paper prepared for the American Life Convention in Washington, DC, Spencer L. Kimball, Professor of Law at the University of Chicago, noted that “a single regulatory agency in the national government would probably be more efficient and more uniform in its operation, and less susceptible to certain kinds of political pressures....and would offer a mechanical convenience to serve large enterprises....” Kimball went on to say, “Depending on where you sit, some or all of these are formidable advantages. But from the public point of view, they are outweighed by the advantages of a state system.”⁵

In Kimball’s view, there are four significant advantages to the state system.

First, and by no means inconsequential, the state system exists...even today, it is usually better to improve existing institutions than to throw them out and start over. Even assuming that regulation by the national government would preempt or oust the present system, such a shift to exclusive national regulation would preempt much that is good with the bad.

On the regulatory side, it would sweep away much of the accumulated, prescriptive competence to be found in the best state agencies. On the business side, such a shift would put in doubt for years many of the rules within which the business has taken shape and would leave many in the industry with no familiar way to making their views heard as those rules were being redesigned. On the consumer side, the known local points for applying citizen pressure would be dispersed, obscured, and removed.

⁵ Richard E. Stewart. Insurance and Insurance Regulation. New York: Chubb, 1980, p. 112-113.

Conversely, the hypothetical national regulatory agency does not exist. If state regulation goes, it will go with a bang or a whimper, after a sudden economic collapse or after years of miscellaneous encroachments. Whether it entered by calamity or stealth, the successor national agency would be of a form and substance quite beyond present control or present foreseeing. That might be a good gamble, but it should be recognized as a gamble and not mistaken for a choice.⁶

Kimball further believed that the pluralism and diversity within the state system was desirable.

In a field as imperfectly understood as government regulation of business, we can also favor a number of agencies over one agency. Such a system is conducive to experimentation and can confine the impact of experimentation. Similarly, pending the cure of all human failings, there are real advantages in a system of decentralized and limited jurisdiction, in which evil and incompetence can at least be quarantined.

And because of its pluralism, state regulation as a system should have greater vitality than would a single national agency. The scope for creative top leadership is greater in the smaller organizations and the likelihood that such leadership will be found at the top of an agency somewhere is, of course, greater in a system with many tops than in a system with only one.

Creative leadership is contagious. Vitality can spread through a state system, for the work of one vigorous agency will be initiated, competed with, and used as a standard in other states. The difficulty of keeping our regulatory agencies vital, capable of self-renewal, and capable of change to meet changed conditions is perhaps now, and will surely be in the future, a graver public concern than the occasional awkwardness of a multi-state regulatory system

A pluralistic regulatory system should also be less of a deterrent to creativity within the regulated industry. Unfortunately, any regulatory system tends to retard innovation and suppress diversity in the regulated industry, but a regulatory system that is itself diverse is at least more apt to be receptive and tolerant.

A final and unique advantage of state regulation is that the national alternative always hangs over it. The state agencies are subject to review, investigation and embarrassment by Congress and others in the national government. Congress always has the power to abolish us if it finds us incorrigible; we all know it and it concentrates the mind wonderfully.⁷

⁶ Stewart, p. 113-114.

⁷ Stewart, p. 116-118.

In looking at more recent events, a January 2007 report advocating for a federal insurance regulator and backed by New York governmental leaders, drew praise from The Optional Federal Charter Coalition and the top US insurance and financial services trade organizations. The report, “Sustaining New York’s and the US’ Global Financial Services Leadership,” prepared by McKinsey & Co., calls for the modernization of insurance regulation by creating an optional federal charter for insurance, as well as considering the possibility of a single regulator for national and global financial services firms operating in the US.⁸

The New York report included surveys of 50 respected financial services leaders in the US, who increasingly see the UK’s regulatory model as better suited to a global financial center – both because they consider the overall regulatory environment to be superior, and because they feel regulators are more responsive and efficient.⁹ Underscoring the importance of regulation to the business community, one need only look at the survey responses. “The third and fourth most important factors of competitiveness in the senior executive surveys are ‘government and regulators who are responsive to business needs’, and an attractive regulatory environment. Respondents to the CEO survey were even more emphatic, ranking attractiveness of the regulatory environment as the single most important issue determining the international competitiveness of a financial market.”¹⁰ Not surprisingly, interviewees and survey respondents strongly believed that the US regulatory structure with its overlaps at the state and national level is causing an increasing number of businesses to conduct more transactions outside the country.¹¹

The report concluded:

...an optional national insurance charter would benefit the competitiveness of both domestic and international firms doing business in the United States. A single charter would give US companies a uniform regulatory platform from which to operate and serve their customers more efficiently nationwide as well as globally. It would remove arbitrary pricing and product constraints that exist in many of the fifty state regimes, lower their duplicated regulatory costs, and ensure faster speed to market for new products under a uniform set of standards for serving customers effectively and efficiently. Moreover, it would give these companies a common regulatory regime more in line with their major competitors, especially in Europe. Foreign companies doing business here would have a single regulatory platform more comparable to what they enjoy in most of their home markets, which would make it easier for them to do business and establish operations across the United

⁸ Eleanor Barrett. “N.Y. Report Scores Kudos From National Optional Federal Charter Group.” [BestWire](#), January 25, 2007, p. 1.

⁹ McKinsey & Company. “Sustaining New York’s and the US’ Global Financial Services Leadership.” [A Report Unveiled at a January 25th Press Conference by Governor Eliot Spitzer](#), January 23, 2007, p. 78.

¹⁰ McKinsey, p. 79.

¹¹ McKinsey, p. 80.

States, rather continuing to meet the varying and often inconsistent regulations found in the current state-based system.¹²

In 2002, Mr. M.R. Greenberg, then Chairman and Chief Executive Officer of American International Group (AIG), the world's leading US-based insurance and financial services organization, submitted Congressional testimony on the future of state insurance regulation, as follows:

I strongly support providing insurers with a federal charter option. A federal charter would promote greater efficiency in the delivery of insurance products and services and significantly reduce unnecessary regulatory costs. Although I recognize that the States are pursuing a number of insurance reform initiatives, the institutional constraints they confront make Congress the only body that can bring consistent and lasting improvements to today's regulatory regime.

It should surprise no one that the business of insurance has experienced extraordinary changes since the McCarran-Ferguson Act was enacted in 1945. While the fundamental objective of ameliorating risk remains the same, we have moved into a global economy with an ongoing stream of varied products and mechanisms designed to achieve this goal. A regulatory system that is not responsive or adaptive to the evolving demands of our ever-changing marketplace will fail consumers and insurers alike.

Unfortunately, the current balkanized system of state regulation has proven insufficiently capable to meet these demands, especially for insurers and consumers operating on a national or international basis. Duplicative, conflicting, and inconsistent state rules create uncertainty, delay the introduction of new products, significantly increase compliance costs, create state-by-state barriers to entry, and reduce benefits to consumers. Even where there is disagreement on whether the state or federal government are best equipped to fix this situation, few would support maintaining the status quo.

Several proponents of a federal charter have presented testimony to the Committee, and I agree with their description of today's flaws and the need for federal involvement. Nevertheless, I want to emphasize three points that I believe are critically important for Congress to recognize as it considers whether to move forward in this area.

1. Maintaining an exclusive state-based regulatory system is inherently flawed and will never achieve national uniformity;

¹² McKinsey, p. 117-118.

2. Federal regulation of insurance should seek to improve and not merely replicate existing state regulatory practices; and
3. Efforts to achieve comprehensive reform should not preclude Congress from taking incremental steps to improve certain insurance markets today.¹³

■ ***Other Signs that State Regulation is Under Siege***

There is no question that certain environmental forces are at work. Indeed, the issue of federal regulation has been raised in earlier times, but today it is clearly driven by concerns about competition and costs.

As noted earlier, the US has enjoyed economic dominance and rapid growth in the financial services industry for more than 50 years, yet today there are other efficient markets in all corners of the globe. The changing reality is that technology and the free flow of capital to other parts of the world have resulted in a dynamic, ultra-competitive international insurance marketplace.

One need only look at how the marketplace is changing. A May, 2007 Insurance Information Institute report notes that not only are there fewer multi-line companies but also personal lines insurers are now selling insurance products from other sectors of the financial services industry. The report further notes the following: (1) More and more companies, large and small, are directing their attention to specialized market niches; (2) As large commercial lines insurers seek international markets, there is a growing divergence between these companies and small insurers with a more regionalized approach; (3) New capital in the insurance industry is going to specialized entities, not traditional insurers. In recent years, sophisticated commercial buyers have increasingly turned to alternative forms of risk transfer, especially captives, self-insurance arrangements, and large deductibles, (4) According to A.M. Best Co., more than 40 percent of commercial lines premium has now left the traditional insurance market. Middle market companies are increasingly using non-traditional mechanisms much like the largest of corporations.¹⁴

As noted in the February 24, 2007, edition of *The Economist*, and its "Special Report on Offshore Finance," offshore financial centers ("OFC's") are booming and no longer sit at the fringes of the global economy. As companies become increasingly multinational, they find it easier to move their activities and profits across borders and into OFC's. Financial

¹³ U.S. House. 2002. House Committee on Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises. *Statement of H.R. Greenberg, Chairman, and Chief Executive Officer. American International Group, Inc.: Statement on Insurance Regulation and Competition for the 21st Century*, 18 June, p. 2.

¹⁴ "Financial and Market Conditions." Insurance Information Institute. <http://www.iii.org/media/insurance>, May, 2007.

liberalization — the elimination of capital controls and the like — has made all of this easier.¹⁵

A bill introduced in the US House of Representatives attempts to address the frustration that burdens insurers and their customers have with certain states' regulation of surplus lines insurance and of reinsurance. House Bill 1065, introduced in February 2007, would not give authority to any federal agency to regulate surplus lines or reinsurance. Instead, the bill would specifically prohibit the multi-state taxation and regulation of both surplus lines insurance and reinsurance, allowing only one state to regulate those transactions.

This bill is designed to permit only the home state of an insured to tax and regulate a surplus lines transaction.¹⁶ More importantly, this bill reflects the industry's frustration with the NAIC's inability to bring harmony to state regulation. It is an attempt to force the states to come to some resolution on the issue of surplus line tax on multi-state risks. This bill also provides that should the home state of the ceding insurer allow credit for reinsurance, then all states must allow such credit. This bill was in part a response to a proposed California reinsurance regulation that would have changed traditional practices in the reinsurance industry.

In the face of an increasingly complex insurance industry, regulators must balance the need to limit insolvency risk while still allowing insurers to continue to innovate and compete in a relatively free market. The increased demands on regulators to monitor and enforce regulations governing more complex products, transactions and investment strategies creates significant pressure on regulatory resources. At the same time as these burdens have increased over the years, state insurance departments and divisions have seen their funding cut back. And so, while many states have historically been staffed with highly qualified individuals, state budget cuts in recent years have made it more difficult to retain talented staff.

Indeed the capacity, the resources of insurance regulation agencies at all levels, serves as a limitation upon what can be done and achieved. The financial regulation of entities involved in insurance and other activities, the demand for regulators to increase coordination with other countries, and shifting regulatory priorities due to public opinion pose additional challenges for regulators. Regulators must continually find ways to perform their functions more efficiently if they are to meet these challenges. The dramatic changes in the industry have prompted many to reconsider "the focus" of regulatory responsibilities and the increased reliance on competition and market forces to increase

¹⁵ Joanne Ramos. "Places in the Sun: A Special Report on Offshore Finance." *The Economist*, February 24, 2007, p. 4.

¹⁶ United States Congress House of Representatives. Bill to streamline the regulation of nonadmitted insurance and reinsurance, and for other purposes. 110th Cong. 1st sess. H.R. 1065.

market efficiency.¹⁷ Many have suggested that the law should be so structured to motivate people and companies to behave in a compliant way.

¹⁷ Robert W. Klein. *A Regulator's Introduction to the Insurance Industry*, New York: NAIC, 2005, p. 203-206.

BRIEF HISTORY OF INSURANCE REGULATION

The United States Constitution established the world's first federal system by delegating specific powers to Congress and reserving all other powers not prohibited "to the States respectively, or to the people." These reserved or residual powers may be placed in four major categories: the police power, provision of services to citizens, taxation, and creation and control of local governments. The common law police power is a regulatory power definable only in the broadest of terms as the power to regulate to promote and protect public health, public safety, public welfare, public morals, and public convenience. Exercise of the police power is subject to state and United States constitutional guarantees: Due process of law, equal protection of the laws, full faith and credit, interstate free trade, and privileges and immunities.

State regulation of the business of insurance commenced with the incorporation of stock insurance companies subsequent to ratification of the proposed United States Constitution by the thirteen states in 1788. State-issued corporate insurance company charters placed restrictions on the companies in the form of types of permitted investments, minimum capitalization, and required reserves and public financial reports.

State oversight was extremely limited until the New Hampshire General Court (State Legislature) in 1851 created the first Board of Insurance Commissioners with authority to examine the financial records of all insurance companies. New Hampshire's lead was followed shortly thereafter by Massachusetts, Vermont, and New York and by 1919 thirty-six states had established insurance regulatory agencies. The anti-trust movement during the progressive era resulted in congressional enactment of the famous *Sherman Antitrust Act of 1890* and enactment of similar laws in twenty-three states, between 1885 and 1912, prohibiting insurance combinations.¹⁸

UNITED STATES SUPREME COURT DECISIONS

State regulation was opposed by a number of insurance companies and agents who filed lawsuits challenging the validity of such regulation under the judicial doctrine of the dormant (unexercised) interstate commerce clause of the United States Constitution developed by the United States Supreme Court in *Gibbons v. Ogden* in 1824.¹⁹

¹⁸ *The Act of July 2, 1890* (Sherman Act), 26 Stat. 209, 15 U.S.C. §1.

¹⁹ *Gibbons v. Ogden*, 22 U.S. 1, 9 Wheaton 1 (1824).

Foreign corporations sought protection against state discriminatory regulation and taxation in Section 2 of Article IV of the United States Constitution that stipulates: “The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.” The United States Supreme Court in *Bank of Augusta v. Earle* in 1839 opined a corporation “must dwell in the place of its creation, and can not migrate to another sovereignty,” and hence is not entitled to privileges and immunities possessed by citizens.²⁰

- ***Paul v. Virginia***

A Virginia statute forbade a foreign insurance company to solicit customers in the Commonwealth unless the company obtained a Virginia license and deposited bonds with the Treasurer of the Commonwealth. Several New York insurance companies appointed Samuel Paul, a resident of Virginia, to conduct the business of insurance against fire. He applied for an agent license and offered to pay the license tax, but did not deposit the required bonds or produce the treasurer’s receipt. In consequence, his license application was rejected. Nevertheless, the companies offered insurance policies and issued a policy to a Virginia citizen. Paul was indicted for this statutory violation, convicted in the Circuit Court of the City of Petersburg, and fined fifty dollars. His appeal was rejected by the Virginia Supreme Court of Appeals and an appeal was made to the United States Supreme Court.

The Court in 1869 opined insurance contracts “are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one State to another, and then put up for sale....They are, then local transactions, and are governed by the local law.”²¹ This decision deprived Congress of the power to regulate the business of insurance under the interstate commerce clause of the Constitution. The court reaffirmed this decision in 1895 and 1913.²²

Resolutions were introduced in the United States House of Representatives and the Senate in 1914 and 1915 proposing a constitutional amendment reversing the court’ decision but they were not reported out of the judiciary committees. In consequence, states were free to regulate the business of insurance.

²⁰ *Bank of Augusta v. Earle*, 38 U.S. 519 at 520, 13 Peters 519 at 520 (1839). The court rendered a similar decision relative to the Fourteenth Amendment’s Privileges and Immunities Clause in *Orient Insurance Company v. Dagg*, 172 U.S. 561, 19 S.Ct. 281(1899).

²¹ *Paul v. Virginia*, 75 U.S.168 at 183, 8 Wallace 168 at 183 (1869).

²² *Hooper v. California*, 155 U.S. 648 at 654-55, 15 U.S.C. 207 at 210 (1895); *New York Life Insurance Company v. Deer Lodge County*, 231 U.S. 495 at 503-04, 34 S.Ct. 167 at 169 (1913).

UNITED STATES V. SOUTH-EASTERN UNDERWRITERS ASSOCIATION ET AL

States were shocked by the 1944 decision of the United States Supreme Court holding that the business of insurance involves interstate commerce.²³ The United States indicted the South-Eastern Underwriters Association and others for violating the *Sherman Antitrust Act* by (1) conducting a conspiracy to restrain interstate commerce by means of establishing and maintaining arbitrary and noncompetitive premiums on fire and allied lines of insurance and (2) monopolizing trade and commerce in the same insurance lines. The defendants responded by demurrer they were exempt from the act's requirements because the business of insurance is not commerce. The United States District Court for the Northern District of Georgia in 1943 sustained the demurrer by holding "the business of insurance is not commerce, either intrastate or interstate" and added, "it might be considered a trade subject to local laws, either State or Federal, where the commerce clause is not the authority relied upon."²⁴

The United States Supreme Court in 1944 reviewed its earlier insurance decisions, noted "the decisions of this Court upholding state insurance laws do not necessarily constitute a denial of federal power to regulate insurance..." and evidence is lacking Congress intended to exempt insurance companies from the *Sherman Antitrust Act*.²⁵ Justice Robert H. Jackson dissented in part and opined:

The Court's decision at very least will require an extensive overhauling of state legislation relating to taxation and supervision. The whole legal basis will have to be reconsidered. What will be irretrievably lost and what may be salvaged no one now can say, and it will take a generation of litigation to determine. Certainly, the states lose very important controls and very considerable revenues.²⁶

The decision almost immediately led insurers to challenge premium taxes levied in eleven states.²⁷ Responding to the challenge, the National Association of Insurance Commissioners (NAIC) drafted a bill reversing the Court's decision and the bill was introduced in amended form in Congress by Senators Patrick A. McCarran of Nevada and Homer Ferguson of Michigan and enacted into law in March 1945.²⁸

²³ *United States v. South-Eastern Underwriters Association et al.*, 322 U.S. 533, 64 S.Ct. 1162 (1944).

²⁴ *United States v. South-Eastern Underwriters Association*, 51 F. Supp. 712-14 (N.D. Ga. 1943).

²⁵ *United States v. South-Eastern Underwriters Association et al.*, 322 U.S. 533 at 545, 560, 64 S.Ct. 1162 at 1169, 1178.

²⁶ *Ibid.*, 322 U.S. 533 at 590, 64 U.S. 1164 at 1192.

²⁷ Kenneth J. Meier, *The Political Economy of Regulation; The Case of Insurance*, Albany: State University of New York Press, 1988, p. 69.

²⁸ *McCarran-Ferguson Act of 1945*, 59 Stat.33, 15 U.S.C. §1011.

THE MCCARRAN FERGUSON ACT

The act exempts states from congressional antitrust acts and devolves powers upon them to regulate the business of insurance by suspending the dormant interstate commerce clause. In 1946, the United States Supreme Court interpreted the act as validating a South Carolina gross receipts tax levied on foreign insurance companies and rejected an interstate commerce clause challenge of the constitutionality of the tax.²⁹

In 1981, Justice William Brennan identified three provisions of the United States Constitution “under which a taxpayer may challenge an allegedly discriminatory state tax: the commerce clause, the privileges and immunities clause, and the equal protection clause.”³⁰ The case involved a challenge by an Ohio insurance company of a California retaliatory tax authorized by a 1964 state constitutional amendment.³¹ The court rejected the privileges and immunities challenge and explained that under the act an interstate commerce clause challenge and equal protection of the laws clause challenge were inapplicable because the California State Legislature defined the tax as a privilege tax.

The Court in 1985, however, held the act does not protect a state tax discriminating against a foreign insurance company from an equal protection of the laws challenge and invalidated an Alabama statute levying a substantially higher gross premiums tax rate on foreign companies than the rate levied on domestic insurance companies.³²

In 1996, the Court in *Barnett Bank of Marion County v. Florida Insurance Commissioner et al.* reversed the decisions of the United States District Court for the Middle District of Florida and the United States Court of Appeals for the Eleventh Circuit and opined a 1916 congressional statute preempted a Florida statute prohibiting national banks to sell insurance.³³ The 1916 act authorized national banks in any location with a population of not more than 5,000 to “act as the agent for any fire, life, or other insurance company authorized by the authorities of the State.”³⁴

²⁹ *Prudential Insurance Company v. Benjamin*, 328 U.S. 408, 66 S.Ct. 1142 (1946).

³⁰ *Western & Southern Life Insurance Company v. State Board of Equalization*, 451 U.S. 648 at 655-56, 101 S.Ct. 2070 at 2076-077 (1981).

³¹ *Constitution of California*, Art. XIII, §14 4/5(f)(3).

³² *Metropolitan Life Insurance Company v. Ward*, 470 U.S. 869, 105 S.Ct. 1676 (1985).

³³ *Barnett Bank of Marion County v. Florida Insurance Commissioner, et al.*, 517 U.S. 25, 116 S.Ct. 1103 (1996). See also 43 F.3d 631 (1995).

³⁴ *Act of September 7, 1916*, 39 Stat. 753, 12 U.S.C. §92.

The court in 2003 addressed the question of whether the *Employees Retirement Income Security Act* of 1974 preempts the “any willing provider” provision of the Kentucky Health Care Reform Act.³⁵ The court issued a unanimous opinion acknowledging its two earlier McCarran-Ferguson decisions “raised more questions than they answer and provide wide opportunities for divergent outcomes.”³⁶ Abandoning the “McCarran-Ferguson factors,” the court held the Kentucky law was constitutional because it satisfied the requirement a law “must be specifically directed toward entities engaged in insurance” and “must substantially affect the risk pooling arrangement between the insurer and the insured.”³⁷

STATE REGULATION GENERALLY

Each state constitution devolves broad regulatory powers, including the police power, upon the State Legislature and may include a specific provision relating to insurance. Each legislative house has standing committees authorized to conduct inquiries and may create special investigation committees. The New York State Constitution contains a provision stipulating “nothing in this constitution contained shall prevent the legislature from providing for the aid, care, and support of the needy directly or...for the protection by insurance ...against the hazards of unemployment, sickness, and old age...”³⁸ And Section 28 of Article XIII of *The Constitution of California* is devoted to taxation of insurance companies.

State constitutions also devolve powers upon the governor, attorney general in forty states, and state auditor (Comptroller).³⁹ The Governor is granted the title of Chief Executive even though not all departments and agencies are under his/her control and is granted additional powers by the State Legislature. The Governor also is looked upon in most states as a legislative leader.

Statutes grant additional authority for attorneys general including (1) initiation of local prosecutions in 46 states, (2) intervention in local prosecutions in 45 states, (3) provision of assistance to local prosecutors in all states, and (4) super-session of local prosecutors in thirty-five states. An attorney general is specifically empowered by statutes to enforce the state’s antitrust and fraud laws and increasingly has been authorized by Congress to exercise concurrent enforcement authority with federal departments and agencies in regulatory fields previously limited to federal enforcement. The powers of the attorneys general in six states are examined in detail below. Former New York Attorney General Eliot Spitzer demonstrated the

³⁵ Kentucky Revised Statutes Annotated, §304, and Employee Retirement Income Security Act of 1974, 88 Stat. 829, 29 U.S.C. §1001.

³⁶ *Kentucky Association of Health Plans Incorporated et al. v. Miller*, 538 U.S. 329, 123 S.Ct. 471 (2003).

³⁷ *Ibid.*, 538 U.S. 329 at 341, 123 S.Ct. 1471 at 1479.

³⁸ *New York State Constitution*, Art. VII, §8(2).

³⁹ Joseph F. Zimmerman, “*Interstate Cooperation: The Roles of the State Attorneys General*,” *Publius: The Journal of Federalism* 28, Winter 1998, p. 73.

inadequacy of the Securities and Exchange Commission's oversight of the securities industry by using the state's 1921 *Martin Act* to bring successful suits against Merrill Lynch and other Wall Street firms that led to the ten largest firms agreeing in 2003 to pay \$1.4 billion in fines to settle the suits.⁴⁰

The fact Congress has devolved specific powers to state attorneys general should not be overlooked. The U.S. attorney general and district attorneys historically brought lawsuits when necessary to enforce congressional statutes. According recognition to the desirability of state enforcement assistance, Congress in a number of complete preemption statutes devolved authority to state attorneys general to bring suits in court to enforce the statutes, including several potentially affecting the business of insurance.

- The *Federal Environmental Pesticide Control Act of 1972* authorizes the EPA administrator to enter into cooperative enforcement agreements with state attorneys general and to make grants to states to cover part of their enforcement costs.⁴¹ The *Consumer Product Safety Improvement Act of 1990* amends the *Hazardous Substances Act* and the *Flammable Fabrics Act* to allow a state attorney general to bring a civil action for an injunction to enforce these acts.⁴² The *Oil Pollution Act of 1990* authorizes a state to enforce on its navigable waters the federal requirements for evidence of financial responsibility.⁴³ And the *Nutrition Labeling and Education Act of 1990* empowers a state to bring proceedings for the civil enforcement or to restrain violations of specified section of the act "if the food that is the subject of the proceedings is located in the State."⁴⁴
- The *Telephone Consumer Protection Act of 1991* empowers a state attorney general to bring a civil action on behalf of state residents against any person violating the act and regulations promulgated under its authority.⁴⁵ Congress enacted a partial preemption statute, the *Telephone Disclosure and Dispute Resolution Act of 1992*, devolving authority on a state attorney general to bring a civil action on behalf of his/her citizens in the U.S. district court to enforce compliance with rules and regulations promulgated under the act by the federal communications commission.⁴⁶
- The *Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994*, a complete preemption act, authorizes each state, as *parens patriae*, to "bring a civil suit in an appropriate District Court of the United States to enjoin such telemarketing, to enforce

⁴⁰ New York Laws of 1921, Chap. 649; New York General Business Law, §352.

⁴¹ *Federal Environmental Pesticide Control Act of 1972*, 86 Stat. 996-97, 7 U.S.C. §§136u-1336v.

⁴² *Consumer Product Safety Improvement Act of 1990*, 104 Stat. 3122, 15 U.S.C. §§ 1194(a).1264.

⁴³ *Oil Pollution Act of 1990*, 104 Stat. 506, 33 U.S.C. §2719.

⁴⁴ *Nutrition Labeling and Education Act of 1990*, 1-4 Stat. 2362, 21 U.S.C. §337(b)(1).

⁴⁵ *Telephone Consumer Protection Act of 1991*, 105 Stat. 2400, 47 U.S.C. §227(f).

⁴⁶ *Telephone Disclosure and Disputes Resolution Act of 1992*, 106 Stat. 4190, 15 U.S.C. §5712.

compliance with such rule of the [federal communications] commission, to obtain damages, restitution, or other compensation on behalf of” its residents.⁴⁷

- The Capital Markets Efficiency Act of 1996 (contained in the National Securities Markets Improvement Act of 1996) devolves enforcement authority upon states: “Consistent with this section, the securities commission (or any other office performing like functions of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions.⁴⁸
- Congress in 1996 enacted the Consumer Credit Reporting Reform Act devolving authority to each state attorney general to bring an action in the U.S. district court to enjoin a violation of the act, and also exempts from preemption any state law “relating to the prescreening of consumer reports” and other specified state laws in effect in 1996, including “section 54A(a) of chapter 93 of the Massachusetts Annotated Laws...”⁴⁹
- The Omnibus Consolidated Appropriations Act for Fiscal Year, enacted in 1996, amends the Fair Credit Reporting Act by allowing a state attorney general to bring an enforcement action against any person violating the act and to seek damages.⁵⁰
- The Children’s Online Privacy Protection Act of 1998 grants each state attorney general authority to bring a *parens patriae* civil suit in the U.S. district court if he or she believes “an interest of the residents of that state has been or is threatened, or adversely affected by the engagement of any person in a practice that violates any regulations of the commission” (federal trade commission).⁵¹
- The Twenty-First Amendment Enforcement Act of 2000 authorizes a state attorney general to bring a civil action for injunctive relief in the U.S. District Court to restrain an individual believed to be violating a state law regulating the importation of intoxicating liquor into the state and to enforce compliance with the law.⁵²
- The *Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003* authorizes attorneys general to bring a civil suit to protect state residents who have been or are “threatened or adversely affected” by an individual who violates the act.⁵³

⁴⁷ *Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994*, 108 Stat. 1548, 15 U.S.C. §6103.

⁴⁸ *Capital Markets Efficiency Act of 1996*, 110 Stat. 3419, 15 U.S.C. §77r(c).

⁴⁹ *Consumer Credit Report Reform Act of 1996*, 110 Stat. 3009-451 to 3009-453, 15 U.S.C. §1681s(2)(b-c).

⁵⁰ *Omnibus Consolidated Appropriations Act for Fiscal Year 1997*, 110 Stat. 3009-451, 15 U.S.C. §1681s(e)(1).

⁵¹ *Children’s Online Privacy Protection Act of 1998*, 112 Stat. 2681-733, 15 U.S.C. §6504.

⁵² *Twenty-First Amendment Enforcement Act of 2000*, 114 Stat. 1546, 27 U.S.C. §122a(b)(1-2).

⁵³ *Controlling the Assault of Non-solicited Pornography and Marketing Act of 2003*, 117 Stat.2712, 15 U.S.C. §7706.

- The *Junk Fax Prevention Act of 2005* similarly grants authority to state attorneys general to bring a civil suit in the U.S. district court to enjoin unsolicited messages.⁵⁴

An attorney general upon request issues advisory opinions to state executive officers and legislators relative to the interpretation and constitutionality of statutes and bills, and interpretation of the state constitution. Attorneys general in recent years have engaged in multi-state litigation to enforce state statutes as illustrated by the June 20, 1997, agreement, signed by forty attorneys general and the Puerto Rico attorney general with five major tobacco companies, to settle the states' *parens patriae* and smokers' lawsuits providing for cash payments by the companies totaling more than \$368 billion.

The state auditor is elected by the voters in eighteen states, appointed by the governor in California and Indiana, appointed by the secretary of state in Oregon, selected by the legislature or committee in twenty-four states, and appointed by other officers in the remaining states. The Auditor possesses broad powers to prescribe accounting practices, including Generally Accepted Accounting Principles (GAAP), audit the books of all state agencies (including insurance departments and divisions) and recipients of state grants, assess the wisdom of spending decisions, and perform other legislatively assigned duties. The New York State Comptroller is unusual in possessing authority to conduct pre-audits as well as post-audits and is sole custodian of six retirement systems.⁵⁵

The state insurance commissioner (Superintendent in New York) is an important officer possessing substantial powers over the conduct of the business of insurance within the state. Section 201 of *The New York Insurance Law*, for example, stipulates the Superintendent possesses "the rights, powers, and duties, in connection with the business of insurance in this state, expressed or reasonably implied by this chapter or any other applicable law of this state." In addition, the Superintendent is empowered by Section 301 to promulgate regulations "effectuating any power, given to him under the provisions of this chapter to prescribe forms or otherwise make regulations," interpret the law, and conduct hearings to "examine and cross-examine witnesses and to receive documentary evidence." Furthermore, the Superintendent is empowered by Section 110 to cooperate with other regulatory agencies and by Section 330 to make the Department's ratings and statistics available to sister states.

CONGRESSIONAL PREEMPTION

State discriminatory taxation of foreign insurance companies and non-harmonious state laws and administrative regulations pertaining to the insurance industry have encouraged it to lobby Congress for relief. MetLife, for example, had to obtain the approval of fifty states and United

⁵⁴ *Junk Fax Prevention Act of 2005*, 119 Stat. 359, 49 U.S.C. §609.

⁵⁵ *New York State Constitution*, Art. 5, 9.

States territories for a new form of insurance and “it takes forever to get a new form approved.”⁵⁶

Congress enacted the *Gramm-Leach-Bliley Financial Modernization Act of 1999* that (1) reaffirms the *McCarran-Ferguson Act* as the law of the land, (2) forbids a person to engage in the business of insurance unless licensed by a state insurance regulator, and (3) facilitates affiliation among banks, security firms, and insurance companies.⁵⁷ The act also preempts state law by stipulating: “Except as provided in paragraph (2), no State may by statute, regulation, order, interpretation, or other action, prevent or restrict a depository institution, or any affiliate thereof, from being affiliated directly or indirectly or associated with any person, as authorized or permitted by this Act or any other provision of Federal law.”⁵⁸ In addition, states are not allowed to impose restrictions that are more burdensome than thirteen restrictions contained in the act.⁵⁹

The act also contains a contingent preemption provision stipulating a federal insurance agent licensing system will be implemented if twenty-six states do not adopt by November 12, 2002, a uniform licensing system for agents to be determined by the National Association of Insurance Commissioners (NAIC) after consulting state insurance commissioners.⁶⁰ On September 10, 2002, the NAIC certified thirty-five states had enacted statutes establishing such a system.⁶¹ The NAIC also promoted the enactment by state legislatures of a Producer Licensing Model Act providing for interstate reciprocity and drafted an Interstate Insurance Products Compact establishing uniform regulatory policies for annuity, disability income, life, and long-term health care products that has been enacted by thirty state legislatures and represents approximately one-half of all nationwide premiums.

The terrorists’ attacks on the World Trade Center in New York City and the Pentagon in Alexandria, Virginia, prompted Congress to enact three insurance preemption statutes. The *Air Transportation Safety and System Stabilization Act of 2001* stipulates liability claims arising from September 11, 2001, terrorist-related aircraft crashes against any air carrier are limited to the liability coverage maintained by the carrier and grants the United States District Court for the

⁵⁶ Telephone interview with Steven Maluk, Assistant Director of Policies of the New York State Department of Insurance, Albany, February 5, 2001.

⁵⁷ *Gramm-Leach-Bliley Financial Modernization Act of 1999*, 113 Stat. 1352, 15 U.S.C. §6701(a-b).

⁵⁸ *Ibid.*, 113 Stat. 1352, 15 U.S.C. §6701(c)(1)

⁵⁹ *Ibid.*, 113 Stat. 1353-356, 15 U.S.C. §6701(d)(B)(i-xiii).

⁶⁰ *Ibid.*, 113 Stat. 1422, 15 U.S.C. §6751.

⁶¹ “*Members Certify GLBA Reciprocity Requirement Met*,” a news released issued by the National Association of Insurance Commissioners, September 11, 2002.

Southern District of New York original and exclusive jurisdiction over all actions brought by claimants.⁶²

The *Terrorism Risk Insurance Act of 2002* contains a general preemption provision: “Any State approval of any terrorism exclusion from a contract for property and casualty insurance that is in force on the date of enactment of this Act, shall be void to the extent that it excludes losses that would otherwise be insurance losses.”⁶³ The act contains a December 31, 2005, sunset provision that was extended by the *Terrorism Risk Insurance Extension Act of 2005* to December 31, 2007⁶⁴

The NAIC, a private not-for-profit association of chief insurance regulatory officials of the 50 states, the District of Columbia and five U.S. territories and is used exclusively in coordinating the regulating activities of insurance commissioners. The NAIC functions in an advisory capacity and as a service organization. The roles of the NAIC are discussed later in this report.

⁶² *Air Transportation Safety and System Stabilization Act of 2001*, 115 Stat. 240-41, 49 U.S.C. §40101.

⁶³ *Terrorism Risk Insurance Act of 2002*, 116 Stat. 2322, 15 U.S.C. §6701.

⁶⁴ *Terrorism Risk Insurance Extension Act of 2005*, 119 Stat. 2660, 15 U.S.C. §6701.

SURVEY OF STATE AUTHORITY AND RESPONSIBILITY

In this section, we examine the current legal bases and structure of regulation of the business of insurance. In doing so, we look at the authority and responsibility for enforcing the insurance laws within the states. In particular, we examine the scope and nature of that authority. In order to do this, and to gain an understanding of state regulation, we specifically review the laws and actions of officials in six states: California, Connecticut, Illinois, Minnesota, New York, and Ohio. We have chosen these states as illustrative examples based on a number of factors including the size and stature of their offices as well as their roles in regulation. In that regard, we selected these states because their much-publicized actions against certain insurers and insurance brokers provide excellent examples for comparing and contrasting the enforcement activities of state insurance commissioners and attorneys general.

In fact, most of the essential law of insurance regulation is based upon model laws and regulations adopted by the National Association of Insurance Commissioners (“NAIC”). Consequently, we believe these statutes are representative of what one might typically find in other states.

Historically, the business of insurance has been regulated by the states. The current structure of insurance regulation exists at the state level and is founded on state law, with limited exceptions. However, it is federal law which authorizes the state regulation of insurance, That occurred in 1945, when Congress decided to permit the states to continue to regulate and tax the business of insurance. It did so by passing Public Law 15, commonly known as the “McCarran Ferguson Act.”⁶⁵ Although large in significance, its text is brief.

MCCARRAN FERGUSON ACT

Sec. 1011. Declaration of policy

Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

⁶⁵ *McCarran Ferguson Act*, 59 Stat. 33, 15 U.S.C. § 533.

Sec. 1012. Regulation by State law; Federal law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948

(a) State regulation

The business of insurance, and every person engaged therein, shall be subject to the laws of the several States, which relate to the regulation or taxation of such business.

(b) Federal regulation

No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: Provided, That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended,⁶⁶ shall be applicable to the business of insurance to the extent that such business is not regulated by State Law.

Sec. 1013. Suspension until June 30, 1948, of application of certain Federal laws; Sherman Act applicable to agreements to, or acts of, boycott, coercion, or intimidation

(a) Until June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, and the Act of June 19, 1936, known as the Robinson-Patman Anti-Discrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof.

(b) Nothing contained in this chapter shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

Sec. 1014. Effect on other laws

Nothing contained in this chapter shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act,⁶⁷ or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938,⁶⁸ or the Act of June 5, 1920, known as the Merchant Marine Act, 1920.⁶⁹

⁶⁶ 15 U.S.C. 41 et seq.

⁶⁷ 29 U.S.C. 151 et seq.

⁶⁸ 29 U.S.C. 201 et seq.

⁶⁹ 46 U.S.C. 861 et seq.

Sec. 1015. "State" defined

As used in this chapter, the term "State" includes the several States, Alaska, Hawaii, Puerto Rico, Guam, and the District of Columbia.

Congress' intent was therefore to preserve regulation of insurance by the states.

Generally, a state agency, or division of an agency, is charged by law with regulating insurance by enforcing the insurance laws of the state. The agency typically is headed by the chief insurance regulator, commonly entitled the insurance commissioner, superintendent, or director ("commissioner"). As such, the state legislature has intentionally invested that person with primary jurisdiction to exercise authority and responsibility over the business of insurance. The various state insurance codes generally express this delegation by providing that the commissioner has the authority and duty to enforce the insurance laws or laws related to insurance. Thus, a commissioner's authority is generally limited to enforcing those laws contained in the insurance code, and not others. These laws fall into two broad categories: regulation of financial condition of insurers (solvency), and regulation of their conduct in the marketplace (insurance trade practices).

Over the years, the states have developed a nationally-coordinated system of regulation through a Delaware not-for-profit corporation known as the National Association of Insurance Commissioners (NAIC). (See discussion of NAIC history above.)

Our review of state regulation in this Study closely examines the regulatory activities and roles of the commissioners vis-à-vis the attorneys general. We specifically look at the bases in law for their authority the scope and nature of that authority, their exercise of that authority, and the relationship between the two. In looking at the scope of authority, we are interested in the jurisdiction each has under the law.

The insurance commissioner normally enforces the insurance laws through administrative proceedings, such as cease and desist orders or sanctions for violations of the civil law. If the commissioner discovers criminal violations, he typically be refers these to a local county or district attorney for prosecution (or to another appropriate legal officer, such as a U.S. attorney).

The state attorney general is a constitutional officer and is responsible for bringing proceedings in court. In most states, the attorney general is the only one who files actions in court on behalf of the state (although in California and New York, the commissioner may do so).

More recently, state attorneys general have entered the regulatory scene and have sought to regulate insurers, agents, and brokers through the litigation process. A number of state attorneys general have filed suits against insurance companies and insurance brokers based in

part upon laws that are not contained in the state insurance codes and that have not historically been used for that purpose. These suits have been based upon state statutes pertaining to consumer protection, fraud, antitrust and competition, and securities, as well as common law including common law theories of fraud and unjust enrichment. In some instances, the attorneys general proceeded independently, and in others, they did so with commissioners.

In reviewing the various laws and enforcement actions by the attorneys general, it is apparent that insurers, insurance agents and producers, and insurance brokers are subject to more than just the insurance laws contained in the insurance codes of the various states. It is also apparent that in the last two to three years the state attorneys general have begun to aggressively enforce laws outside the insurance codes against the industry.

What follows is a state-by-state look at the actions of the insurance commissioners and the state attorneys general and the various state laws upon which they have proceeded.

California

Insurance Commissioner

The California statutes state governing the business of insurance are contained in the California Insurance Code.⁷⁰ It states,

All insurance in this State is governed by the provisions of this code.⁷¹

Further, it sets forth the authority of the commissioner.

The commissioner shall perform all duties imposed upon him or her by the provisions of this code and other laws regulating the business of insurance in this state, and shall enforce the execution of those provisions and laws.⁷²

The commissioner shall require from every insurer a full compliance with all the provisions of this code.⁷³

Thus, with the exception of workers compensation, mentioned below, the legislature has given the commissioner primary authority to enforce the insurance laws.

⁷⁰ Cal. Ins. Code § 1 et seq. (West 2007).

⁷¹ *Ibid.* at § 41.

⁷² *Ibid.* at § 12921.

⁷³ *Ibid.* at § 12926.

The California commissioner's power to enforce the laws is contained in language that is typical of most other states. He or she may order licensed persons, mainly insurers and insurance agents or producers, to comply with the law. The commissioner's authority lies in the ability to impose fines or suspend or revoke (or threaten to suspend or revoke) the licenses of insurers (their certificates of authority) and agents for specified violations.⁷⁴

The commissioner's power to revoke an insurers' certificate of authority provides a means of direct regulatory enforcement of the code's provisions governing market conduct and financial condition.⁷⁵ The code prohibits a broad range of "unfair" market conduct activities and vests the power to penalize insurers for violations in the commissioner.

No person shall engage in this State in any trade practice, which is defined in this article as, or determined pursuant to this article to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.⁷⁶

These provisions relating to unfair insurance trade practices are commonly found in state insurance codes because they are based upon model language promulgated by the NAIC.⁷⁷

The commissioner may also issue "corrective actions" when he or she finds that an insurer's risk based capital is inadequate.⁷⁸

And the commissioner has the authority to place an insurance company in "supervision" if he or she finds the company has failed to comply with the code's provisions ranging from fraudulent market conduct ("the business of the insurer is being conducted fraudulently") to financial solvency.⁷⁹

In addition, the California commissioner has powers that go beyond those normally given to commissioners.

Whenever the commissioner believes, from evidence satisfactory to him, that any person is violating or about to violate any provisions of this code or any order or requirement of the commissioner issued or promulgated pursuant to authority expressly granted the commissioner by any provision of this code or by law, the commissioner may bring an action in the name of the people of the State of California in the superior court of the State of California against such person to enjoin such

⁷⁴ *Ibid.* at § 701, 704, 706.5 (West 2007).

⁷⁵ *Ibid.*

⁷⁶ *Ibid.* at § 790.2. The various acts or practices are listed at § 790.03. The law imposes civil penalties for violations. *Id.* at § 790.035(a).

⁷⁷ *NAIC Model Unfair Trade Practices Act*, in NAIC Model Laws, Regulations and Guidelines, Vol. V at 880 (2004).

⁷⁸ *Ibid.* at § 790.4(b).

⁷⁹ *Ibid.* at § 1077.2(a).

person from continuing such violations or engaging therein or doing any act in furtherance thereof. In such action, an order or judgment may be entered awarding such preliminary or final injunction as is proper.⁸⁰

This provision is atypical in that it empowers the commissioner to bring actions in court to enforce the insurance laws or laws that expressly grant authority to the commissioner. The commissioner employed this authority in *Garamendi v. Metlife*.⁸¹

Garamendi v. Metlife. In *Metlife*, insurance commissioner Garamendi brought an action against numerous insurers for illegal actions under the insurance code. This case provides a good description of the types of violations that have been prosecuted by regulators and various state attorneys general against insurers and brokers in recent years. The case is also important in that it was brought by the insurance commissioner, not the state attorney general, unlike in a number of other states where the attorney general acted first or primarily to prosecute alleged illegal activity in the insurance business.

In this action, the commissioner alleged that the defendants, who sold group life, disability, health, dental, and other coverages to employers and their employees,

- paid undisclosed fees and other compensation, known as “contingent commissions, overrides, communication fees” and “kickbacks” to certain brokers, in return for which the brokers steered business to the defendants
- recouped these fees through increased insurance premiums, lower benefits or increased policy fees, services charges, etc. paid by insureds.
- concealed the fees from employers and did not disclose them on annual reports to those employers.
- engaged in “bid rigging” whereby defendants submitted false high bids at brokers’ requests, in order to allow brokers to steer the business to a given insurer whose bid would otherwise not have won (insurers who submitted false bids knew that even though they would not win the contact, their time would come later). (In engaging in bid rigging, brokers shared insureds’ current rates and policy terms as well as insureds’ confidential information, with defendant insurers.)
- by engaging in bid rigging, were able to avoid competing in the market.

⁸⁰ *Ibid.* at § 12928.6 (West 2007).

⁸¹ *California v. Universal Life Resources*, Superior Court of California, San Diego County (GIC838913), originally filed November 18, 2004. A second amended complaint was filed June 6, 2006, entitled *California v. Metlife, and Universal Life Resources* was removed as a defendant, having settled with the commissioner.

- by paying kickbacks, were able to fix, maintain or stabilize premiums paid by California insureds at artificially high levels, as well as capture additional market share.
- engaged in the unlawful practice of “low hanging fruit” whereby insurers “flipped” or referred existing insureds (without broker contracts) to preferred brokers and in return received special fees or compensation from those brokers, without the insureds’ knowledge. This collusion resulted in artificially high premiums.

The suit sought injunctive relief under section 12928.6, for violations of various sections of the insurance code, including the following.

Section 332:

Each party to a contract of insurance shall communicate to the other, in good faith, all facts within his knowledge which are or which he believes to be material to the contract and as to which he makes no warranty, and which the other has not the means of ascertaining.⁸²

Sections 330 and 331 pertaining to concealment:

Neglect to communicate that which a party knows, and ought to communicate, is concealment.⁸³

Sections 358 and /or 359 involve false representations.

Sections 790.02 (prohibits unfair trade practices) and 790.03(b) which specifically prohibits, as an unfair trade practice

making or disseminating . . . any statement . . . with respect to the business of insurance . . . which is untrue, deceptive, or misleading, and which is known . . . to be untrue, deceptive, or misleading.

Section 790.03(c) prohibiting the unfair practice of

Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

⁸² Cal. Ins. Code.

⁸³ Cal. Ins. Code § 330.

Section 781:

(a) A person shall not make any statement that is known, or should have been known, to be a misrepresentation (1) to any other person for the purpose of inducing, or tending to induce, such other person either to take out a policy of insurance, or to refuse to accept a policy issued upon an application therefore and instead take out any policy in another insurer, or (2) to a policyholder in any insurer for the purpose of inducing or tending to induce him or her to lapse, forfeit or surrender his or her insurance therein.

(b) A person shall not make any representation or comparison of insurers or policies to an insured which is misleading, for the purpose of inducing or tending to induce him or her to lapse, forfeit, change or surrender his or her insurance, whether on a temporary or permanent plan.

Section 1065.1, which prohibits persons doing business in California from conducting their “business and affairs in a manner which is hazardous to its policyholders, creditors or the public . . .”

In March 2006, the California insurance commissioner entered into a settlement with Marsh & McLennan Companies⁸⁴ concerning the much-publicized activities of certain of its insurance brokers. It followed a settlement entered into by the New York Attorney General and Insurance Superintendent with Marsh & McLennan Companies and Marsh, Inc., in January 2005 (New York Agreement, described below under New York). Like the *Metlife* case, the facts involved bid-rigging. Marsh agreed to implement various business reforms in California with respect to placing, renewing, consulting on, or servicing insurance policies. It also confirmed Marsh’s agreement under the New York Agreement to pay \$100 million to California policyholders as restitution.

The settlement is significant in that the insurance commissioner, as head of a state administrative agency, was able to secure restitution on behalf of insureds within its state, and thus went beyond imposing sanctions and civil penalties for statutory violations.

American Reliable Insurance Company. In June 2006, Commissioner Garamendi entered a administrative decision and order against American Reliable Insurance Company that followed a notice and order to show cause issued in May of that year. The commissioner determined that the insurer permitted its agents to collect fees from policyholders in addition to the premium the insurer was entitled to charged under approved rates. He found that the

⁸⁴ *In the matter of the Licenses and Licensing Rights of Marsh USA et al* (File No. DISP05047170-AP), Special Notice of Defense, (March 9, 2006) and Decision and Order (March 9, 2006).

insurer “constructively received the fees, which are therefore premium. American Reliable did not receive the Department’s prior approval to collect or have . . . [its agent] collect these fees.”⁸⁵ As such, it charged excessive premiums and engaged in unfair discrimination against other policyholders who were not charged such fees. This proceeding demonstrates that the commissioner was able to act against an insurer for violations of the rating and unfair trade practices provisions of the code and thereby enforce the insurance laws through an administrative proceeding.

Attorney General

The California attorney general has a broad mandate to enforce all of the laws of the state.

Sec. 13. Subject to the powers and duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced. . . . Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of the . . .⁸⁶

Generally, then, the attorney general has charge of “all legal matters in which the State is interested,” except those of the University of California Regents, and of other boards or officers authorized to employ attorneys.⁸⁷ And, the attorney general must prosecute or defend “all causes to which the State, or any State officer is a party in his or her official capacity.”⁸⁸

Other Officials

While the insurance commissioner has general authority to regulate the business of insurance, the California constitution and code grant the Division of Workers Compensation overlapping authority to conduct regulatory oversight of workers’ compensation insurance.⁸⁹

Also, while the insurance commissioner possesses authority to regulate all insurance in California, the Department of Managed Health Care has exclusive jurisdiction to regulate “health care service plans” as defined in the Knox-Keene Act of 1975 (codified in California’s Health & Safety Code). Both the Insurance Code and the Health & Safety Code create a structure in which the insurance commissioner has authority to regulate insurers while companies that fall within the definition of health care service plans (those who provide health

⁸⁵ *In the Matter of American Reliable Ins. Co.*, Decision and Order, June 30, 2006, at 6.

⁸⁶ *California Constitution*. Art. 5, § 13 (amended 1879).

⁸⁷ 10 CA Gov Code § 12511.

⁸⁸ *Ibid.* § 12512.

⁸⁹ *California Constitution*. Art. 4, § 15 (amended 1879); Cal. Lab. Code §§ 54, 59, and 60 (West 2007).

care services, including health care facilities) are under the jurisdiction of the director of the Department of Managed Health Care.⁹⁰

Connecticut

Insurance Commissioner

The insurance commissioner has broad powers delegated to him by the state legislature. The insurance code provides as follows:

The commissioner shall see that all laws respecting insurance companies and health care centers are faithfully executed and shall administer and enforce the provisions of this title. The commissioner has all powers specifically granted, *and all further powers that are reasonable and necessary* to enable the commissioner to protect the public interest in accordance with the duties imposed by this title.⁹¹

Further . . .

. . . The commissioner shall have power to examine the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any *unfair method of competition or in any unfair or deceptive act or practice* prohibited by sections 38a-815 to 38a-819, inclusive. When used in said sections, " person " means any individual, corporation, limited liability company, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society and any other legal entity engaged in the business of insurance, including producers and adjusters.⁹²

Among the listed unfair and deceptive trade practices are . . .

- (1) Misrepresentations and false advertising of insurance policies. Making, issuing or circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement, sales presentation, omission or comparison which: (a) Misrepresents the benefits, advantages, conditions or terms of any insurance

⁹⁰ See Cal. Ins. Code § 740 (health or medical insurance subject to commissioner's regulation, 742 (entities under the Health & Safety Code, such as service plans, are not subject to the Insurance Code) (West 2007); Cal. H&S Code § 1343(3) (West 2007) (generally persons organized and operating under a certificate from the commissioner are not subject to the Health & Safety Code).

⁹¹ Conn. Gen. Stat. § 38a-8 (2007) (emphasis added).

⁹² *Ibid.* at § 38a-815.

policy; (b) misrepresents the dividends or share of the surplus to be received, on any insurance policy; (c) makes any false or misleading statements . . .⁹³

Attorney General

The Connecticut constitution creates the office of the attorney general but is silent about his duties and responsibilities, other than his being part of the executive branch.⁹⁴ However, Connecticut law provides for the powers of the attorney general. It states

The Attorney General shall have general supervision over all legal matters in which the state is an interested party, except those legal matters over which prosecuting officers have direction. He shall appear for the state, the Governor, the Lieutenant Governor, the Secretary, the Treasurer and the Comptroller, and for all heads of departments and state boards, commissioners, agents, inspectors, committees, auditors, chemists, directors, harbor masters, and institutions . . . in all suits and other civil proceedings, except upon criminal recognizances and bail bonds, in which the state is a party or is interested, or in which the official acts and doings of said officers are called in question . . . in any court or other tribunal, as the duties of his office require; and all such suits shall be conducted by him or under his direction. . . . All legal services required by such officers and boards in matters relating to their official duties shall be performed by the Attorney General or under his direction. . . . All suits or other proceedings by such officers shall be brought by the Attorney General or under his direction. . . . He shall advise or give his opinion to the head of any executive department or any state board or commission upon any question of law submitted to him.⁹⁵

The attorney general has relied upon these powers to bring a number of actions against insurers and insurance brokers and producers.

Blumenthal v. Aon Corp. In March 2005, the attorney brought suit against Aon Corporation which was one of the early cases involving the steering of clients and so-called “contingent commissions” where fees and commissions paid by insurers (including the amount) depended on factors not disclosed to buyers.⁹⁶ That lawsuit alleged that Aon engaged in “unfair trade practices” in violation of Connecticut law. Specifically, the attorney general claimed that . . .

⁹³ *Ibid.* at § 38a-816 (emphasis added).

⁹⁴ *Connecticut Constitution*. Art. IV, § 1.

⁹⁵ C.G.S.A. § 3-125.

⁹⁶ *Blumenthal v. Aon Corp.*, (CT. Superior Ct., March 4, 2005).

99. The Defendant's actions . . . have been undertaken in the conduct of Trade or commerce as defined in Conn. Gen. Stat. § 42-110a(4).
100. The Defendant has made . . . directly or indirectly, explicitly or by implication, *representations and omissions which are material, false and likely to mislead* . . .
- ...
104. The Defendant's acts and practices . . . violate the public policy of the State of Connecticut, including but not limited to . . .
- a. the public policy prohibiting violations of trust, confidence, duties owed within a fiduciary relationship, as embodied in *common law*; and
 - b. the *public policy prohibiting misrepresentations of the terms of insurance . . . omissions, and/or false statements in the course of the sale of insurance products, as embodied in Conn. Gen. Stat. § 38a-815.*
105. The Defendant's acts and practices . . . are immoral, unethical, oppressive or unscrupulous and cause substantial and unavoidable injury to consumers . . .
106. The Defendant's acts or practices . . . violate § 42-110-18(e) of the Regulations [sic] of Connecticut State Agencies, because it *misrepresented the nature, characteristics, benefits and qualities of services provided by the Defendant.*
107. The Defendant's acts or practices . . . therefore constitute unfair or deceptive acts or practices in violation of Conn. Gen. Stat. § 42-110b(a).⁹⁷

We can see that in claiming Aon engaged in unfair trade practices, the attorney general relied upon not only on the Connecticut Unfair Trade Practices Act but also the insurance statutes that are subject to enforcement by the insurance commissioner as well as the common law. Clearly the primary nature of the alleged violations derive from the language contained in the insurance code, namely section 38a-816(1) which specifically defines misrepresentation as a type of unfair trade practice.

State of Connecticut v. Hilb Rogal & Hobbs Co. In August 2005, the attorney brought another suit, this one against the nation's eighth largest insurance agency, Hilb Rogal & Hobbs Co.⁹⁸ As with the *Aon* case, the suit alleged violations of the Unfair Trade Practices Act,⁹⁹ and the allegations were along the same lines as those against Aon, including unfair and deceptive practices because of misrepresentations, undisclosed fee arrangements, steering clients, etc. However, in this case, the attorney added a count for "Breach of the Connecticut Unfair Insurance Practices Act."¹⁰⁰

⁹⁷ *Ibid.* at 28 (emphasis added). Section 42-110a et seq. is the Connecticut Unfair Trade Practices Act.

⁹⁸ *Connecticut v. Hilb Rogal & Hobbs Co.* (CT Superior Ct, Aug. 31, 2005).

⁹⁹ Conn. Gen. Stat. § 42-110a et seq.

¹⁰⁰ *State of Connecticut v. Hilb Rogal & Hobbs Co.*, at 40, citing § 38a-815 et seq.

The case was settled, and the attorney general and insurance commissioner issued a joint press release. The statements in that press release tell us something about how the attorney general views his role in insurance regulation. The press release stated the agency had engaged in “surreptitiously steering clients to certain insurers in exchange for hidden commissions.”¹⁰¹ It noted that this settlement was the first to involve insurance agents who sell primarily to individual consumers and small businesses. The settlement included an agreement by the agency to pay a \$250,000 fine to the commissioner’s office for illegal rebating. Further, the press release stated, “This \$30 million settlement is a major milestone in our fight against improper insurance practices – the first to involve personal lines of insurance and to reveal hidden payments to agents as well as brokers,” Blumenthal said.¹⁰² “*My investigation* into insurance industry abuses is continuing vigorously and aggressively,” Blumenthal said.¹⁰³ Insurance commissioner Coggswell also commented saying the settlement was significant and indicated regulators’ commitment to aggressively pursuing violations to protect consumers. But the press release made it clear who acted first to protect those consumers, saying, “The settlement was reached after Blumenthal’s office uncovered several agreements where HRH secretly steered clients to certain insurers . . .”¹⁰⁴

State of Connecticut v. Marsh & McLennan. In September 2005, Attorney General Blumenthal brought another action, this time against the nation’s largest insurance broker, Marsh & McLennan, and Marsh USA.¹⁰⁵ This action alleged a “Corrupt Business Scheme”¹⁰⁶, “. . . Marsh’s corrupt scheme to increase premiums and commission payments . . .”¹⁰⁷, a “scheme to rig bids on insurance contracts purchased by Connecticut consumers and to illegally steering insurance contracts to those insurers paying Marsh undisclosed kickbacks.”¹⁰⁸ “In pursuing these corrupt and anti-competitive business practices, Marsh violated the Connecticut Antitrust Act, the Connecticut Unfair Trade Practices Act, and its fiduciary duties of loyalty and fair dealing to its clients.”¹⁰⁹ The attorney general brought the suit under Conn. Gen. Stat. §§ 35-32, 35-35, 35-38, (together, part of the Connecticut Antitrust Act), 42-110m, and 42-110o, “on behalf of the State of Connecticut and the People of the State of Connecticut for violations of the Connecticut Antitrust Act, and as *parens patriae* on behalf

¹⁰¹ Connecticut Attorney General’s Office Press Release, August 31, 2005, at 1.

¹⁰² *Ibid.* at 1-2.

¹⁰³ *Ibid.* at 2 (emphasis added).

¹⁰⁴ *Ibid.* at 2.

¹⁰⁵ *State of Connecticut v. Marsh & McLennan*, (Amended Complaint)(CT Superior Ct., Sept. 21, 2005).

¹⁰⁶ *Ibid.* at 6.

¹⁰⁷ *Ibid.* at 8.

¹⁰⁸ *Ibid.* at 1.

¹⁰⁹ *Ibid.* at 2.

of persons residing in Connecticut who were damaged . . . and for damages sustained by the general economy of the State of Connecticut and its political subdivisions.”¹¹⁰

More specifically, the suit alleged that Marsh’s actions violated Connecticut law¹¹¹ because they had the purpose or effect of “unreasonably restraining trade and commerce within the State of Connecticut *and throughout the United States.*”¹¹² As a result, Marsh’s actions constituted a breach of the Connecticut Unfair Trade Practices Act¹¹³ by making misleading and false representations.¹¹⁴ And Marsh violated “the public policy prohibiting violations of the trust, confidence, and duties owed within a fiduciary relationship” and the public policy against misrepresentations embodied in Connecticut Unfair Insurance Practices Act.¹¹⁵

In addition, the suit alleges Marsh’s acts violated “§ 42-110b-18(e) of the Regulations of Connecticut State Agencies, because they misrepresented the nature, characteristics, benefits and qualities of the services provided by Marsh.”¹¹⁶

And lastly, it adds a count for “Breach of Contract” with the State.¹¹⁷

State of Connecticut v. Liberty Mutual Holding Co., Inc. In May 2006, Blumenthal brought another action on behalf of the State and as *parens patriae*, this time against Liberty Mutual Holding Co., Inc., an insurance holding company of Liberty Mutual Insurance Company.¹¹⁸ In it, Blumenthal charged Liberty Mutual with conspiracy to rig bids “on insurance contracts purchased in Connecticut *and throughout the United States*” and illegally steering contracts for undisclosed kickbacks to brokers.¹¹⁹ He specifically accused Liberty Mutual of conspiring with Marsh, Inc., American International Group, Inc., ACE Limited, Zurich American Insurance Company, and others, to exploit Marsh’s position as the largest broker, in order to raise insurance prices in the excess insurance market.¹²⁰ The suit followed much the same pattern with largely the same legal bases as preceding suits and contained the following essential allegations:

¹¹⁰ *Ibid.* at 35-35.

¹¹¹ Conn. Gen. Stat. §§ 35-26 and 35-28.

¹¹² *Ibid.* at 36 (emphasis added).

¹¹³ *Ibid.* at 37 (Second Count, citing Conn. Gen. Stat. §§ 42-110a et seq.)

¹¹⁴ *Ibid.* at 37.

¹¹⁵ *Ibid.* at 38, citing Conn. Gen. Stat. 38a-815 et seq.

¹¹⁶ *Ibid.* at 40.

¹¹⁷ *Ibid.* at (Third Count, at 40).

¹¹⁸ *State of Connecticut v. Liberty Mutual Holding Co., Inc.* [cite]

¹¹⁹ *Ibid.* at 1 (emphasis added).

¹²⁰ *Ibid.*

- Breach of the Connecticut Antitrust Act by, among other things, entering into a corrupt, anti-competitive conspiracy with other insurers to submit fraudulent bids for the placement of insurance, to fix prices, thereby unreasonably restraining trade and Commerce in Connecticut “and throughout the United States.”¹²¹
- Breach of the Connecticut Unfair Trade Practices Act by submitting false bids, violating public policy by violating the trust of consumers, making misrepresentations, fraudulent quotes, inflating prices, “back-door payments to brokers,” and – something new – “commercial bribery in violation of Conn. Gen. Stat. § 53a-160.”¹²²

It is interesting that in bringing this and the following action, the attorney general named the corporations that owned the insurance companies and not the insurers. Perhaps one reason for his doing so was a belief that there was less of a chance of intruding on the jurisdiction of the insurance commissioner. However, under the Insurance Holding Companies Act insurance commissioners have authority to regulate transactions among insurance holding companies and their subsidiaries and affiliates.¹²³

State of Connecticut v. Hartford Financial Group, Inc. and Hartford Life, Inc. A few days after the above suit, the attorney general sued Hartford.¹²⁴ Like the actions before it, it essentially alleged breach of the Connecticut Unfair Trade Practices Act. Interestingly, it does not rely on the Connecticut Unfair Insurance Trade Practices Act.

State of Connecticut v. Accordia. In December 2006, Blumenthal brought one more action, this one against another broker. In this suit, the attorney general’s essential allegations were Breach of Connecticut Unfair Trade Practices Act including a violation of public policy as embodied in the Connecticut Unfair Insurance Trade Practices Act.

It should also be noted that the Connecticut Attorney General entered into a settlement with Zurich Insurance Company in March 2006. (See Zurich Insurance Company settlement described in the section on Illinois below.)

¹²¹ *Ibid.* at 18-19.

¹²² *Ibid.* at 20-21.

¹²³ See e.g. Conn. Gen. Stat. Title 38a, Ch. 698, Insurance Code §§ 38a-135 et seq.

¹²⁴ *Connecticut v. Hartford Financial Services Group, Inc. and Hartford Life, Inc.*, (CT Superior Ct., May 10, 2006).

Illinois

Insurance Director

The Illinois insurance code states:

The Director is charged with the rights, powers, and duties appertaining to the enforcement and execution of all the insurance laws of this State. He shall have the power

- (a) to make reasonable rules . . .
- (b) to conduct . . . investigations . . .
- (c) to conduct . . . examinations . . .
- (d) to institute such actions or other lawful proceedings as he may deem necessary for the enforcement of the Illinois Insurance Code or of any Order or action made or taken by him under this Code. The Attorney General, upon request of the Director, may proceed in the courts of this State to enforce an Order or decision in any court proceeding or in any administrative proceeding before the Director.¹²⁵

. . .

This delegation and delineation of authority is typical of that found in state insurance codes and confirms that it is normally the attorney general who goes to court. The director's investigatory authority is in addition to his other powers,¹²⁶ and when the Insurance Department carries out this authority with respect to possible violations with criminal penalties, it is deemed to be a criminal justice agency.¹²⁷ The director may issue cease and desist orders for violations of the insurance laws.¹²⁸

The Illinois Insurance Code contains provisions regulating unfair insurance trade practices similar to those found in other states including unfair methods of competition and unfair and deceptive acts and practices.¹²⁹

Attorney General

As stated in the statute quoted above, the attorney general is person who enforces the director's orders when it is necessary to do so in court. In addition, under the Illinois constitution,

¹²⁵ 215 ILCS 5/401 (2007).

¹²⁶ *Ibid.* at 5/401.5(e).

¹²⁷ *Ibid.* at 5/401.5(a).

¹²⁸ *Ibid.* at 5/401.1(2).

¹²⁹ *Ibid.* at 5/421 et seq. (Art. XXVI).

The Attorney General shall be the legal officer of the State, and shall have the duties and powers that may be prescribed by law.¹³⁰

Further, the code sets forth the powers and duties of the attorney general.

§ 4. The duties of the Attorney General shall be--

First--To appear for and represent the people of the State before the Supreme Court in all cases in which the State or the people of the State are interested.

Second--To institute and prosecute all actions and proceedings in favor of or for the use of the State, which may be necessary in the execution of the duties of any State officer.

...

Fifth--To investigate alleged violations of the statutes which the Attorney General has a duty to enforce and to conduct other investigations in connection with assisting in the prosecution of a criminal offense at the request of a State's Attorney.

...

Ninth-- . . . when necessary, prosecute corporations for failure or refusal to make the reports required by law.

...¹³¹

Madigan v. AON. In March 2005, Illinois Attorney General Madigan entered into a settlement by her and the Connecticut and New York attorneys general with Illinois-headquartered AON Corporation, the world's second largest insurance broker, after alleging numerous violations of Illinois law in its insurance operations. Specifically, she alleged violations of the Illinois Consumer Fraud and Deceptive Practices Act and the Illinois Insurance Code. In a press release, she stated, "Our investigation revealed Aon Corporation accepted secret payments from insurers for steering business," and this was a "direct conflict of interest" and "not only unethical, but illegal."¹³²

The settlement resolved a civil lawsuit she filed against AON alleging "hidden agreements" with and payoffs ("contingent commissions") from insurers in addition to regular commissions and fees that were disclosed. It also claimed AON repeatedly steered lucrative business to certain insurers depending on their willingness to pay the secret contingent commissions. In addition, it alleged those insurers would agree to use AON subsidiaries to broker reinsurance.

¹³⁰ *Illinois Constitution*. Art V, § 15.

¹³¹ ILCS 205/4.

¹³² Lisa Madigan Press Release, March 4, 2005.

The press release specifically states that Madigan’s investigation was conducted with the cooperation of the insurance regulators (the Department of Financial and Professional Regulation). In a significant recognition, it stated, “IDFPR has primary responsibility under Illinois law for regulating the insurance industry.”¹³³

The suit relied upon various provisions of the Insurance Code and claimed AON had a duty to avoid “fraudulent, coercive, or dishonest practices demonstrating untrustworthiness (215 ILCS 5/500-70(a)(8)).”¹³⁴

For her authority to bring the suit, the attorney general cited the Illinois Consumer Fraud and Deceptive Practices Act (“CFA”) which states, in part:

Whenever the Attorney General . . . has reason to believe that any person is using . . . any method, act or practice declared by this Act to be unlawful, and that proceedings would be in the public interest, he or she may bring an action in the name of the People of the State . . .” for an injunction.¹³⁵ The statute gives the court the power to “exercise all powers necessary” including injunctions, forfeitures, suspensions of licenses, appointment of a receivers, and dissolutions of domestic companies, as well as the imposition of civil penalties.¹³⁶

The CFA declares as unlawful

“. . . any [u]nlawful methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of such material fact . . . in the conduct of any trade or commerce . . . whether any person has in fact been mislead, deceived or damaged thereby.”¹³⁷

The suit also alleges the company violated “its obligation to be trustworthy, in violation of 215 ILCS 5/500-70(a)(8).

While AON did not admit to violations of law, the settlement involved the payment of restitution (\$190 million) and business reforms prohibiting contingent commissions.

The suit acknowledges that the IDFPR previously undertook an investigation of AON and that the attorney general has authority to represent it and the Division of Insurance.¹³⁸ Thus,

¹³³ *Ibid.* at 2-3.

¹³⁴ *Madigan v. AON*, (Cir. Ct. Cook Co., Chancery Div.), (Mar. 1, 2005).

¹³⁵ 815 ILCS § 505/7.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.* at 505/2.

¹³⁸ *Ibid.* at 3-4.

this case represents a situation where the attorney general acted pursuant to her authority under the consumer fraud laws and in the insurance code to represent the Division of Insurance.

Arthur J. Gallagher. A few months later, in May 2005, the Illinois Attorney General announced another nationwide settlement, this time with Chicago-based Arthur J. Gallagher & Co., the world's fourth-largest insurance broker. Joining her in a press release was the Illinois Insurance Director.¹³⁹ It stated the settlement was a resolution of an investigation that revealed steering of business in exchange for insurance company payments ("contingent commissions") that were not disclosed to clients.

In this case, the attorney general did not file a civil suit. Gallagher and her office entered into an "Assurance of Voluntary Compliance."¹⁴⁰ She proceeded under much the same law as in the AON case citing the Illinois Consumer Fraud and Deceptive Practices Act. The press release also acknowledged that, "Madigan's investigation was conducted in cooperation with the IDFPR's Division of Insurance, which has primary responsibility under Illinois law for regulating the insurance industry."¹⁴¹

While Gallagher did not admit to violations of the law, the settlement involved monetary relief of \$27 million and business reforms prohibiting contingent commissions. The funds were to be paid to policyholders and "no portion of the [funds] shall be considered a fine or a penalty."¹⁴² Also, Gallagher agreed to "fully and promptly cooperate with the Attorney General with regard to the investigation, and related proceedings and actions, of any other person, corporation or entity, . . . concerning the insurance industry."¹⁴³

Madigan v. Liberty Mutual Ins. Co. In July 2005, the Illinois Attorney General filed a complaint for declaratory judgment and injunctive relief against Liberty Mutual Insurance Co. and affiliates.¹⁴⁴ The suit alleged not only steering of business based on contingent commissions but also on reinsurance tying. As in previous cases and investigations, the attorney general acted under the Illinois Consumer Fraud Act and cited the same provisions of the act. This time, it included a representation that the defendants were engaged in "commerce" under the act, citing its language:

¹³⁹ Lisa Madigan Press Release, May 18, 2005.

¹⁴⁰ *In the Matter of Arthur J. Gallagher & Co.*

¹⁴¹ Press Release. at 3.

¹⁴² *In the Matter of Arthur J. Gallagher* at 11.

¹⁴³ *Ibid.* at 18.

¹⁴⁴ *Madigan v. Liberty Mutual*, (Cir. Ct. Cook Co., Chancery Div.). (July 5, 2005).

The terms 'trade' and 'commerce' mean the advertising, offering for sale, sale, or distribution of any services and any property . . . and shall include any trade or commerce . . . affecting the people of this State."¹⁴⁵

Zurich Insurance Company. In March 2006, the Illinois Attorney General entered into a \$153 million three-state settlement, along with the attorneys general of Connecticut and New York, with Illinois-based Zurich Insurance Company. The matter involved allegations similar to those brought against others in the insurance industry. As with Gallagher, the Zurich settlement was accomplished through an Assurance of Discontinuance and Voluntary Compliance.¹⁴⁶

ACE, Limited. In April 2006, the Illinois Attorney General, together with the Connecticut and New York attorneys general, announced a settlement with ACE, Limited and its U.S.-based insurance subsidiaries over charges of bid-rigging, steering of business, and accounting misconduct.¹⁴⁷ In addition to restitution of \$40 million to policyholders, ACE agreed to business reforms prohibiting contingent commissions and "to support *legislation banning contingent commissions* and requiring greater disclosure of compensation to brokers and agents."¹⁴⁸

The settlement noted that the Illinois Division of Insurance, along with the Connecticut and New York insurance departments, will monitor compliance with the settlement terms.

St. Paul Travelers. Illinois also joined in a settlement, with Connecticut and New York attorneys general, in August 2006, with St. Paul Travelers Insurance Company involving the same types of allegations. Like the other cases, this involved restitution (\$77 million) and business reforms prohibiting contingent commissions.

Madigan v. Accordia Inc. The Illinois Attorney General brought suit against Accordia Inc., a large insurance brokerage, in December 2006.¹⁴⁹ Accordia is a subsidiary of Wells Fargo Bank. As in the prior cases and investigations, the suit alleged that Accordia violated the Illinois CFA by steering business and paying undisclosed contingent commissions. The suit sought restitution, civil penalties, and injunctive relief. This suit is part of the wider investigation and actions against members of the insurance industry. (The New York and Connecticut attorneys general also brought suit.)

¹⁴⁵ *Ibid.* at 4, quoting 815 ILCS 505/1(f).

¹⁴⁶ *In the Matter of Zurich Holding Co. of America.*

¹⁴⁷ Lisa Madigan Press Release, April 26, 2006.

¹⁴⁸ *Ibid.* at 1 (emphasis added.)

¹⁴⁹ *Madigan v. Accordia*, (Cir. Ct. Cook Co., Chancery Div.)(Dec. 9, 2006).

Chubb Corporation. Also in December 2006, the attorney general announced a settlement in its investigation of the Chubb Corporation and its insurance operations. The settlement involved its activities in the excess casualty insurance market and included allegations of illegal steering of business, payment of undisclosed contingent commissions, participation in a bid-rigging scheme led by Marsh & McLennan Companies, and improper finite reinsurance transactions.¹⁵⁰ The settlement was also reached with the New York and Connecticut attorneys general, and as with others before it, it agreed to pay restitution (\$15 million), adopt business reforms, and support legislation banning contingent commissions.

A review of the various actions in Illinois shows that it was the attorney general who acted against the insurance industry for violations of the consumer fraud law, and the attorney general acted with the cooperation and support of the Illinois Insurance Director and Division of Insurance which did not itself bring any administrative actions for violations of the insurance code.

Minnesota

Insurance Commissioner

The Minnesota insurance code delegates to the commissioner of commerce the authority to regulate the business of insurance in that state. Specifically, it states

Powers of commissioner. The commissioner shall have and exercise the power to enforce all the laws of this state relating to insurance, and shall enforce all the provisions of the laws of this state relating to insurance in the manner provided by the laws defining the powers and duties of the commissioner of commerce, or in the absence of any law prescribing the procedure, by any reasonable procedure the commissioner prescribes.¹⁵¹

The code goes on to prohibit unfair trade practices and unfair or deceptive acts similar to those found in other state insurance codes including misrepresentations and false or deceptive statements.¹⁵² It is worth pointing out that among those prohibited acts is the following:

Suitability of insurance for customer. In recommending or issuing life, endowment, individual accident and sickness, long-term care, annuity, life-endowment, or Medicare supplement insurance to a customer, an insurer, either directly or through its agent, must have reasonable grounds for believing that the recommendation is suitable for the customer.

¹⁵⁰ Lisa Madigan Press Release, December 21, 2006.

¹⁵¹ Minn. Stat. § 60A.03.

¹⁵² *Ibid.* at 72A.19, subd. 1 and 72A.20.

...¹⁵³

The relevance of this provision will be noted in the commentary on the Minnesota attorney general below.

Also, ...

The commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether that person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by section 72A.19.¹⁵⁴

If the commissioner suspects a violation of the law, he may proceed under the codes sections providing for administrative hearings and proceedings.¹⁵⁵

Attorney General

The Minnesota constitution simply states that

Sec. 4. The term of office of the secretary of state, attorney general and state auditor is four years and until a successor is chosen and qualified. The duties and salaries of the executive officers shall be prescribed by law.¹⁵⁶

The Minnesota code does specify those duties in Chapter 8 (see below).

Minnesota v. American International Group. In February 2006, the Minnesota attorney general filed a complaint against American International Group (AIG), and this case nicely illustrates the attorney general's exercise of his powers.¹⁵⁷ The complaint centered on AIG's alleged under-reporting of premiums and payment of premium taxes for workers compensation insurance sold in Minnesota. (In February 2006, AIG and the State of New York entered into a settlement of claims on these actions, and this is discussed below under New York.) The suit also claimed AIG fraudulently caused insureds to pay sums for the full amount of taxes and assessments due even though AIG was not itself paying the full amounts to the state as required.

¹⁵³ *Ibid.* at 72A.20, subd. 34.

¹⁵⁴ *Ibid.* at 72A.21.

¹⁵⁵ *Ibid.* at 72A.32.

¹⁵⁶ *Minnesota Constitution*. Art. V, § 4.

¹⁵⁷ *Minnesota v. American International Group*, Dist. Ct., 2d Judicial Dist., Feb. 16, 2006.

The attorney brought the action pursuant to “common law authority, including *parens patriae* authority, and the authority of the following sections of Chapter 8 of the Minnesota Code¹⁵⁸ which applies to the attorney general:

8.01 APPEARANCE.

The attorney general shall appear for the state in all causes in the supreme and federal courts wherein the state is directly interested; also in all civil causes of like nature in all other courts of the state whenever, in the attorney general's opinion, the interests of the state require it. Upon request of the county attorney, the attorney general shall appear in court in such criminal cases, as the attorney general deems proper. . . .¹⁵⁹

8.31 ADDITIONAL DUTIES OF ATTORNEY GENERAL. Subdivision 1. **Investigate offenses against the provisions of certain designated sections; assist in enforcement.** The attorney general shall investigate violations of the law of this state respecting unfair, discriminatory, and other unlawful practices in business, commerce, or trade, and specifically, but not exclusively, the Nonprofit Corporation Act (sections 317A.001 to 317A.909), the Act Against Unfair Discrimination and Competition (sections 325D.01 to 325D.07), the Unlawful Trade Practices Act (sections 325D.09 to 325D.16), the Antitrust Act (sections 325D.49 to 325D.66), section 325F.67 and other laws against false or fraudulent advertising, the antidiscrimination acts contained in section 325D.67, the act against monopolization of food products (section 325D.68), the act regulating telephone advertising services (section 325E.39), the Prevention of Consumer Fraud Act (sections 325F.68 to 325F.70), and chapter 53A regulating currency exchanges and assist in the enforcement of those laws as in this section provided. Subd. 2. **Attorney general to assist in discovery and punishment of illegal practices.** When the attorney general has information providing a reasonable ground to believe that any person has violated, or is about to violate, any of the laws of this state referred to in subdivision 1, the attorney general shall have power to investigate those violations, or suspected violations, and to take such steps as are necessary to cause the arrest and prosecution of all persons violating any of the statutes specifically mentioned in subdivision 1 or any other laws respecting unfair, discriminatory, or other unlawful practices in business, commerce, or trade. . . .¹⁶⁰

8.32 CONSUMER AFFAIRS. Subdivision 1. **Generally.** The attorney general has the responsibilities and duties prescribed by this section. Subd. 2. **Duties.** The attorney general shall:(a) enforce the provisions of law relating to consumer fraud and unlawful practices in connection therewith as set forth in sections 325F.68 and 325F.69; (b) enforce the provisions of law set forth in sections 80D.19 and 80D.20 and Laws 1984, chapter 641, section 9; (c) make

¹⁵⁸ *Ibid.* at 3.

¹⁵⁹ Minn. Stat. § 8.01.

¹⁶⁰ Minn. Stat. § 8.31.

recommendations to the governor and the legislature for statutory needs that exist in adequately protecting the consumer.¹⁶¹

The suit noted the attorney has jurisdiction because AIG transacts business in the State of Minnesota and has committed acts in Minnesota causing injury in the state.¹⁶²

The suit alleged unfair and deceptive practices (Count I), and the attorney general quoted the Minnesota unfair trade practices laws in the insurance code, stating as follows:¹⁶³

Subdivision 1. **Misrepresentations and false advertising of policy contracts.** . . . using any name or title of any policy or class of policies misrepresenting the true nature thereof, . . . shall constitute an unfair method of competition and an unfair and deceptive act or practice in the business of insurance.

Subd. 2. **False information and advertising generally.** Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, . . . an . . . announcement, or statement, containing any assertion, representation, or statement with respect to the business or [sic] insurance, or with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading, shall constitute an unfair method of competition and an unfair and deceptive act or practice.

Subd. 6 **False entries.** Making any false entry in any book, report, or statement of any insurer with intent to deceive . . . any examiner lawfully appoint [sic] to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in an book, report, or statement of such insurer, shall constitute an unfair method of competition and an unfair and deceptive act or practice.

Subd. 18. **Improper business practices.** . . . engaging in fraudulent, coercive, or dishonest practices in connection with the insurance business, shall constitute an unfair method of competition and an unfair and deceptive act or practice.

¹⁶¹ Minn. Stat. § 8.32.

¹⁶² Citing Minn. Stat. § 543.19, subds. 1(b) and (c).

¹⁶³ *Minnesota v. American International Group*, in which the following quotes from Minn. Stat. 72A.20 appear at 10.

The attorney general added a second claim for deceptive trade practices (Count II), under the Uniform Deceptive Trade Practices Act, stating:

Minn. Stat. § 325D.44, subdivision 1 provides, in part, that:

Subdivision 1. A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:

(13) engages in any other conduct which similarly creates a likelihood of confusion of misunderstanding.¹⁶⁴

For an additional claim (Count III), the suit cited the Prevention of Fraud Act, stating:

Minn. Stat. § 325F.69, subdivision 1 provides that:

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others shall rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided herein.¹⁶⁵

Further, the suit “claimed common law fraud” (Count IV) for false and misleading statements that, among other things, was intended to deceive regulators and others.¹⁶⁶

And lastly, the suit claimed “unjust enrichment” (Count V).¹⁶⁷

Minnesota v. American Equity Life Investment Insurance Co. In April 2007, the attorney general brought another suit, this time against American Equity Investment Life Insurance Company.¹⁶⁸ It alleged that the company sold deferred annuities to elderly consumers and those annuities required a long-term investment strategy and did not pay benefits until the expiration of deferral periods of as many as 10 to 15 years or more. It further alleged the company misrepresented and/or did not adequately disclose the restrictive features of the products and issued them to seniors even if the deferral periods extended beyond their actuarial life expectancies, making it unlikely they would ever enjoy the intended benefits. At the same time, the company imposed substantial surrender penalties (up to 25% of the annuity’s value). The suit specifically alleged that, “During this time, American Equity has

¹⁶⁴ *Ibid.* at 10-11.

¹⁶⁵ *Ibid.* at 11.

¹⁶⁶ *Ibid.* at 12-13.

¹⁶⁷ *Ibid.* at 13.

¹⁶⁸ *Minnesota v. American Equity Investment Life Ins. Co.*, [cite], Dist. Ct., Fourth Judicial Dist., April 26, 2007.

not ensured that its deferred annuities were suitable for senior policyholders based on their age, needs, income, and other relevant circumstances.”¹⁶⁹

The suit claims the attorney general has jurisdiction over American Equity because it does business in Minnesota.¹⁷⁰ In bringing the suit, the attorney general specifically relied upon the following counts and statutes (sections beginning with 325 are from the state consumer protection and products & sales provisions of the code, outside the insurance code):

- Count I: Violations of Minn. Stat. 72A.20, Subd. 34. This is the same provision of the insurance code quoted above that imposes a suitability requirement and that the commissioner of commerce is charged with enforcing.

- Count II: Violation of Minn. Stat. § 60K.46 which provides in part:

In recommending the purchase of any life . . . annuity . . . insurance to a customer, a producer must have reasonable grounds for believing that the recommendation is suitable for the customer and must make reasonable inquiries to determine suitability. . .

- Count III: Violations of Minn. Stat. § 325D.44 which prohibits misleading or confusing conduct and misrepresentations.

325D.44 DECEPTIVE TRADE PRACTICES. Subdivision 1. **Acts constituting.**

A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:(1) passes off goods or services as those of another;(2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;(3) causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;(4) uses deceptive representations or designations of geographic origin in connection with goods or services;(5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;. . .

(7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;(8) disparages the goods, services, or business of another by false or misleading

¹⁶⁹ *Ibid.* at 2.

¹⁷⁰ *Ibid.* at 5.

representation of fact;(9) advertises goods or services with intent not to sell them as advertised;. . .

(11) makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;. . . (13) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding. Subd. 2. **Proof.** In order to prevail in an action under sections 325D.43 to 325D.48, a complainant need not prove competition between the parties or actual confusion or misunderstanding. Subd. 3. **Other law.** *This section does not affect unfair, deceptive, or misleading trade practices otherwise actionable at common law or under other statutes of this state.*¹⁷¹

- Count IV: Violations of Minn. Stat. § 325F.67 which prohibits untrue, deceptive, or misleading advertising.
- Count V: Violations of Minn. Stat. § 325F.69 which prohibits fraud, misrepresentations, misleading statements, or deceptive practices, with the intent that others rely thereon.

325F.69 UNLAWFUL PRACTICES. Subdivision 1. **Fraud, misrepresentation, deceptive practices.** The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is joinable as provided in section 325F.70.

- Count VI: Violations of Minn. Stat. § 72A.20, subd. 1 which defines unfair or deceptive acts or practices, including misrepresenting the terms of a policy or its benefits.
- Count VII: Violations of Minn. Stat. § 72A.20, subd. 2 prohibiting untrue, misleading or deceptive advertising.
- Count VIII: Violations of Minn. Stat. § 325F.71 which provides for additional penalties violations of the law when senior citizens are harmed.

From the above, we can see that the Minnesota attorney general based his suit on various provisions of the state consumer protection laws. But it is also interesting that the suit was

¹⁷¹ Emphasis added.

based on a number of provisions in the insurance code which, as noted, the law charges the commissioner of commerce with enforcing.

New York

Insurance Superintendent

The New York Insurance Code creates the office of Insurance Superintendent and spells out the powers of that office.

The insurance department The head of the department shall be the superintendent of insurance, . . . The superintendent shall possess the rights, powers, and duties, in connection with the business of insurance in this state, expressed or reasonably implied by this chapter or any other applicable law of this state.¹⁷²

Further, section 327 of the law provides:

a) The superintendent may maintain and prosecute, in the name of the people of the state, an action against any insurer, its officers, directors, trustees or agents or against any broker or adjuster or against any other person subject to the provisions of this chapter, for the purpose of obtaining an injunction restraining such person or persons from doing any acts in violation of the provisions of this chapter.

(b) In such action if the court finds that a defendant is threatening or is likely to do any act in violation of this chapter, and that such violation will cause irreparable injury to the interests of the people of this state, the court may grant an injunction restraining such violation. . . .

Like other insurance codes, the New York Insurance Law also contains provisions governing unfair methods of competition and unfair and deceptive acts and practices.¹⁷³

Attorney General

The New York constitution establishes the office of attorney general and his powers.

The . . . attorney-general shall be chosen at the same general election as the governor and hold office for the same term . . .¹⁷⁴

¹⁷² NY Consolidate Laws, Ch. 28, Art. 2, NY Ins. Law § 201.

¹⁷³ NY Consolidated Laws, Ch. 28, Art. 24, Ins. Law. §§ 2401 et seq.

¹⁷⁴ *New York Constitution*. Art V, § 1.

The code sets out the attorney general's duties in detail.

The attorney-general shall:

1. Prosecute and defend all actions and proceedings in which the state is interested, and have charge and control of all the legal business of the departments and bureaus of the state, or of any office thereof which requires the services of attorney or counsel, in order to protect the interest of the state No action or proceeding affecting the property or interests of the state shall be instituted, defended or conducted by any department, bureau, board, council, officer, agency or instrumentality of the state, without a notice to the attorney-general apprising him of the said action or proceeding, the nature and purpose thereof, so that he may participate or join therein if in his opinion the interests of the state so warrant.

...

3. Upon request of the governor, comptroller, secretary of state . . . or the head of any other department, authority, division or agency of the state, investigate the alleged commission of any indictable offense or offenses in violation of the law which the officer making the request is especially required to execute or in relation to any matters connected with such department, and to prosecute the person or persons believed to have committed the same and any crime or offense arising out of such investigation or prosecution or both, including but not limited to appearing before and presenting all such matters to a grand jury.

...

8. Whenever in his judgment the public interest requires it, the attorney-general may, with the approval of the governor, and when directed by the governor, shall, inquire into matters concerning the public peace, public safety and public justice. . . .

...

12. Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case . . . and the court may award the relief applied for or so much thereof as it may deem proper. The word "fraud" or "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions. The term "persistent fraud" or "illegality" as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct. The term "repeated" as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct, which affects more than one person.

In connection with any such application, the attorney general is authorized to take

proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. Such authorization shall not abate or terminate by reason of any action or proceeding brought by the attorney general under this section.

...

15. In any case where the attorney general has authority to institute a civil action or proceeding in connection with the enforcement of a law of this state, in lieu thereof he may accept an assurance of discontinuance of any act or practice in violation of such law from any person engaged or who has engaged in such act or practice. Such assurance may include a stipulation for the voluntary payment by the alleged violator of the reasonable costs and disbursements incurred by the attorney general during the course of his investigation. Evidence of a violation of such assurance shall constitute prima facie proof of violation of the applicable law in any civil action or proceeding thereafter commenced by the attorney general.¹⁷⁵

New York v. Marsh. In October 2004, the New York Attorney General, Eliot Spitzer, brought an action in the name of the People of New York against Marsh & McLennan Companies, the world's largest insurance brokerage and consulting firm.¹⁷⁶ The action was premised upon the Executive Law,¹⁷⁷ the General Business Law,¹⁷⁸ and the common law of New York.¹⁷⁹ We believe the suit was the first case to be brought attacking bid-rigging and a plan of "contingent commissions" paid by insurance companies in return for a broker steering business to them. In it, the attorney general sued

. . . to redress injury to the State, and to its general economy and residents, as well as on behalf of: (1) persons who purchased insurance brokerage services from Marsh; and (2) persons who purchased, sold or held shares of Marsh The State seeks disgorgement, restitution, damages including punitive damages, costs, and equitable relief with respect to defendants' fraudulent, anti-competitive, and otherwise unlawful conduct.¹⁸⁰

It is important to point out that the relief sought is not something insurance commissioners are empowered to seek in court or grant administratively (with limited exception, such as the California commissioner as described elsewhere in this Study).

¹⁷⁵ NY Exec. Law, § 63.

¹⁷⁶ *New York v. Marsh*, NY S. Ct. (Oct. 14, 2004).

¹⁷⁷ Executive Law § 63(12).

¹⁷⁸ Gen. Bus. Law, Arts. 22 & 23, §§ 340 et seq. (the Donnelly Act) and §§ 352 et seq. (the Martin Act).

¹⁷⁹ *New York v. Marsh*, at 1.

¹⁸⁰ *Ibid.* at 4.

The suit noted that numerous insurers had participated in the bid-rigging scheme with Marsh including AIG, ACE, and Hartford.

The suit alleged generally that Marsh unreasonably restrained trade, “both in New York and in interstate commerce” and committed fraud.¹⁸¹ More specifically, the counts can be summarized as follows:

First Cause of Action. Fraudulent business practices.

Second Cause of Action. Antitrust. Conspiracy to unreasonably restrain trade by limiting number of insurers competing, bid-rigging, allocating market, using inflated bids, prices and terms to mask open competition, creating a contingent commissions scheme.

Third Cause of Action. Securities law fraud of § 352-c of the General Business Law. Fraud, deception, concealment, suppression, false pretense. (Failure to disclose material information to purchasers of insurance.)

Fourth Cause of Action. Securities law violations of § 352-c of the General Business Law. Artifice, agreement, device, or scheme to obtain money, profit, or property.

Fifth Cause of Action. Unjust enrichment.

Sixth Cause of Action. Common law fraud. (. . . “actual and/or constructive fraud under the common law of the State of New York.”)¹⁸²

Of note is the fact that the legal bases for the suit did not include the state insurance laws.

Marsh Settlement.¹⁸³ In January, Marsh entered into a settlement with the attorney general and insurance superintendent of New York. The settlement referenced the attorney general’s investigation and also a citation issued against Marsh by the superintendent on October 21, 2004 (one week after the suit was filed). Under the settlement, Marsh did not admit or deny the claims of the suit but agreed to pay restitution to its clients in the amount of \$850 million and to institute business reforms. Theses included (a) accepting only specific fees and commissions that are disclosed to clients and to which they have consented in writing, (b) not

¹⁸¹ *Ibid.* at 27.

¹⁸² *Ibid.* at 30.

¹⁸³ Agreement Between the Attorney General of the State of new York and the Superintendent of Insurance of the State of New York, and Marsh & McLennan Companies, Inc., Marsh Inc. and their subsidiaries and affiliates (January 30, 2005).

accepting contingent compensation (c) not engaging in bid-rigging, (d) not engaging in “pay-to-play” arrangements, (e) not engaging in reinsurance leveraging, and (f) implementing company-wide written standards of conduct regarding compensation from insurers consistent with the settlement.

The agreement provided for Marsh to monitor its compliance and to file reports with the superintendent for a period of five years. It also specified that the company must cooperate and be subject to annual examination by the superintendent for five years. In addition, it stated that Marsh must fully cooperate with the attorney general with regard to ongoing investigations. Of note is the language providing that Marsh is subject to civil and criminal prosecution for material violations of the agreement “*as determined solely by the Attorney General.*”¹⁸⁴ With this provision, the attorney general assured his continued involvement in compliance by Marsh.

It appears that the New York Attorney General’s office continues to be involved in the permissibility of compensation arrangements between brokers and insurers. As brokers seek alternatives to the prohibited contingent commission arrangements due to lost revenues, the attorney general’s office has tacitly agreed to at least one alternative form of compensation sought by Chubb.¹⁸⁵

This is a good example of regulation of insurance being assumed by the attorney general on an on-going basis by virtue of his monitoring of the Marsh settlement. In a more general sense, the attorney general’s settlements with Marsh and others in the industry, coupled with his office’s ongoing monitoring of industry conduct under those settlements, indicate that the attorney general is functioning as a *de facto* insurance regulator. This is different than the attorney general simply filing litigation based on allegations of violation of statutes. It is also apparent that the attorney general is having a continuing impact on conduct by insurers and brokers who look to whether he will approve of certain activities before they implement them.

This kind of continuing oversight by the attorney could legitimately be viewed by the New York Superintendent of Insurance and other insurance commissioners as a preemptory assumption of the role legislatively delegated to commissioners. And the uncertainty that continues within the insurance industry concerning the legality of contingent or supplemental commissions of any kind illustrates that this is not a good way to regulate an industry.

¹⁸⁴ *Ibid.* at 12 (emphasis added).

¹⁸⁵ “Insurance Brokers Reconsider Taking Commissions,” Dow Jones New Service, July 11, 2007, reporting: “Although the New York Attorney General’s office did not comment on supplemental commissions for this story, it apparently has already given the idea tacit approval. Its December agreement resolving its Chubb investigation said that if Chubb pays a fixed commission that is set prior to the sale and based on the broker’s prior year’s performance, among other things, that it would not run afoul of the prohibition on contingent commissions.”

New York v. AIG. A few months later, in March 2005, the New York Attorney General and the New York Superintendent of Insurance filed suit against American International Group and Maurice Greenberg, its former Chairman and Chief Executive Officer.¹⁸⁶ In this case, the attorney general and insurance superintendent joined together in bringing the suit.

As in the *Marsh* suit, this one was brought by New York as *parens patriae* based on the attorney general's authority under the General Business Law, the Executive Law, the common law of New York, and on the superintendent's authority under sections 201 and 327 of the Insurance Law. As quoted above, under section 327 of the Insurance Law, the superintendent is authorized to seek injunctive relief against any insurer to enjoin violations of the insurance law.

In substance, the suit alleged that to counter the perception of declining loss reserves, which would have an adverse impact on its stock price, AIG entered into sham reinsurance transactions with GenRe and thereby created "false reserves." The idea, according to the suit, was for AIG to purchase up to \$500 million in reinsurance but the deal should be risk free (i.e. so that AIG could book hundreds of millions of dollars in reserves from GenRe, but AIG would not actually have to pay any claims). AIG then took steps to cover up the transaction, the suit claimed.

In addition to the above, the suit alleged that AIG participated in schemes to disguise underwriting losses as investment losses, to mischaracterize premiums paid on workers compensation insurance (by using secret side agreements), and to mislead regulators about offshore reinsurers it set up to reinsure AIG and its subsidiaries.

The suit's legal bases can be summarized as follows:

First Cause of Action. Fraudulent business practices, under Executive Law § 63(12).

Second Cause of Action. Securities fraud, under General Business Law § 352-c(1)(a).

Third Cause of Action. Securities law violations, under § 352-c(1)(c).

Fourth Cause of Action. Common law fraud.

Fifth Cause of Action. Insurance violations, under Insurance Law § 310(a)(3) (requiring cooperation and assistance in examinations)(AIG only).

¹⁸⁶ *New York v. AIG*, (NY S. Ct., March 26, 2005).

AIG Settlement. In January 2006, AIG settled the case with the attorney general. The settlement observed that the attorney general and insurance superintendent alleged that “AIG unlawfully deceived its policyholders, regulators and other authorities and shareholders by: (a) participating in schemes to steer business; (b) participating in rigging of bids . . . through Marsh; (c) underreporting to state insurance departments, taxing authorities and other entities the amount of workers compensation premium collected; (d) providing false and misleading information and responses to regulators, including misrepresentations concerning certain reinsurance arrangements; and (e) using fraudulent insurance transactions and “topside” accounting adjustments to bolster the quality, quantity and stability of its earnings . . .”¹⁸⁷

The insurance superintendent was not a party to the settlement.

Under the settlement, AIG, without admitting or denying the allegations of the complaint, agreed to pay \$343.5 million (for underpayment of workers compensation premium taxes and assessments), \$375 million to policyholders who purchased excess insurance, and a fine of \$100 million. In addition, AIG agreed to numerous business reforms and other terms much like those in the *Marsh* settlement.

A review of the settlement’s numerous, detailed, requirements for reform and reporting, reveals that these function as regulatory requirements specifically designed for and imposed upon AIG under the continuing supervision of the attorney general and the insurance superintendent.

Zurich Settlement. In addition to the Marsh and AIG settlements, as already noted, the attorney general entered into a three-state settlement with Zurich Insurance Company which is described above. (See section on Illinois, above.)

Other Actions and Settlements and Their Legal Grounds. The *Marsh* and *AIG* actions and settlements by the New York Attorney General and Insurance Superintendent are perhaps the most visible ones, but in addition to these there have been a number of others against members of the insurance industry. To describe each of these would require more space than permitted in this Study. However, these actions, and the legal bases for them, are summarized as follows in Appendix B to this Study.

¹⁸⁷ Agreement Between the Attorney General of the State of New York and American International Group, Inc. and its subsidiaries (January 18, 2006).

Ohio

Insurance Superintendent

The Ohio insurance code sets out the authority of the state's insurance regulatory official.

The superintendent of insurance shall be the chief executive officer and director of the department of insurance and shall have all the powers and perform all the duties vested in and imposed upon the department of insurance. The superintendent of insurance shall see that the laws relating to insurance are executed and enforced. When a violation of a law relating to insurance is reported to him, he shall take . . . testimony . . . If the superintendent decides there is sufficient evidence, he shall cause the person suspected of such violation to be arrested and charged with such offense, and he shall furnish the proper prosecuting attorney with all the information obtained by such superintendent . . .

The code further provides

Whenever it appears to the superintendent of insurance . . . that any person has engaged in, is engaged in, or is about to engage in any act or practice declared to be illegal or prohibited by the laws of this state *relating to insurance*, or defined as unfair or deceptive by such laws, or when the superintendent believes it to be in the best interest of the public and necessary for the protection of the people in this state, the superintendent. . . may do any one or more of the following:¹⁸⁸

. . .

(2) . . .

In the case of disobedience of any notice, order, or subpoena [to compel attendance of witnesses]. . . the court of common pleas of the county where is appropriate, on application by the superintendent, may compel obedience by attachment proceedings for contempt . . .¹⁸⁹

Thus, Ohio law gives the superintendent the authority to go to court to enforce his orders, and the means for doing so is a court order of contempt. What is significant, here, however, is that the superintendent can act and can go to court when he determines it is in the public interest to protect the citizens of the state.

However, the code further states that the superintendent may

(3) In a case in which there is no administrative procedure available to the superintendent to resolve a matter at issue, request the attorney general to commence

¹⁸⁸ Ohio R.C. 3901.011.

¹⁸⁹ *Ibid.* at 3901.04(B).

an action for a declaratory judgment under Chapter 2721 of the Revised Code with respect to the matter.¹⁹⁰

This would seem, then, to require the superintendent to go through the attorney general in all other civil matters necessary to enforce the insurance laws. As for criminal matters, the code provides that the superintendent may

(4) Initiate criminal proceedings by presenting evidence . . . to the prosecuting attorney of any county . . .¹⁹¹

This last provision is like that in other state statutes in that criminal enforcement is contemplated by local prosecutors.

Like other states, the Ohio insurance code contains provisions regulating unfair insurance trade practices including making misrepresentations or untrue, deceptive, or misleading statements.¹⁹²

In February 2006, the superintendent concluded a market conduct examination of Anthem Blue Cross and Blue Shield when they entered into a Consent Order finding that the company failed to comply with both the Ohio corporations' law, containing the Health Insuring Corporation Law, and the unfair trade practices provisions of the insurance code.¹⁹³ The order alleged that the company paid compensation to its agents in addition to fees they may have been collected from public sector entities in violation of the law.

Similarly, in April 2006, the superintendent concluded market conduct examination of UnitedHealthcare of Ohio when they entered into a Consent Order finding that the company failed to comply with the same provisions of Ohio law.¹⁹⁴ As in the Anthem case, the order alleged that the company paid compensation to its agents in addition to fees they may have been collected from public sector entities, and representatives of the company made inaccurate statements concerning this compensation.

The Ohio Health Insuring Corporations Law mirrors the state unfair trade practices law and applies to providers of health care services. It states, in part, as follows:

¹⁹⁰ *Ibid.* at R.C. 3901.04(B)(3).

¹⁹¹ *Ibid.* at R.C. 3901.04(B)(4).

¹⁹² *Ibid.* at R.C. 3001.21.

¹⁹³ *In the Matter of Anthem Blue Cross and Blue Shield Market Conduct Examination*, at 1. The order cites R.C. 1751.20 which is contained in the general corporations law (Title XVII: Corporations, Chapter 1751: Health Insuring Corporations Law, Sec. 1751.20) and also cites R.C. 3901.21 (the unfair trade practices law contained in the insurance code).

¹⁹⁴ *In the Matter of UnitedHealthcare of Ohio Market Conduct Examination*, at 1.

1751.20 Unfair, untrue, misleading, or deceptive acts.

(A) No health insuring corporation, or agent, employee, or representative of a health-insuring corporation, shall use any advertisement or solicitation document, or shall engage in any activity, that is unfair, untrue, misleading, or deceptive.

(B) No health-insuring corporation shall use a name that is deceptively similar to the name or description of any insurance or surety corporation doing business in this state.

(C) All solicitation documents, advertisements, evidences of coverage, and enrollee identification cards used by a health-insuring corporation shall contain the health insuring corporation's name. The use of a trade name, an insurance group designation, the name of a parent company, the name of a division of an affiliated insurance company, a service mark, a slogan, a symbol, or other device, without the name of the health insuring corporation as stated in its articles of incorporation, shall not satisfy this requirement if the usage would have the capacity and tendency to mislead or deceive persons as to the true identity of the health insuring corporation.

(D) No solicitation document or advertisement used by a health insuring corporation shall contain any words, symbols, or physical materials that are so similar in content, phraseology, shape, color, or other characteristic to those used by an agency of the federal government or this state, that prospective enrollees may be led to believe that the solicitation document or advertisement is connected with an agency of the federal government or this state.

(E) A health insuring corporation that provides basic health care services may use the phrase "health maintenance organization" or the abbreviation "HMO" in its marketing name, advertising, solicitation documents, or marketing literature, or in reference to the phrase "doing business as" or the abbreviation "DBA."

(F) This section does not apply to the coverage of beneficiaries enrolled in Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, pursuant to a medicare risk contract or medicare cost contract, or to the coverage of beneficiaries enrolled in the federal employee health benefits program pursuant to 5 U.S.C.A. 8905, or to the coverage of beneficiaries enrolled in Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended, known as the medical assistance program or medicaid, provided by the Ohio department of job and family services under Chapter

5111. of the Revised Code, or to the coverage of beneficiaries under any federal health care program regulated by a federal regulatory body, or to the coverage of beneficiaries under any contract covering officers or employees of the state that has been entered into by the department of administrative services.

“Health insuring corporations” are defined as follows:

1751.01 Health insuring corporation law definitions.

As used in this chapter:

...

(O) “Health insuring corporation” means a corporation, as defined in division (H) of this section, that, pursuant to a policy, contract, certificate, or agreement, pays for, reimburses, or provides, delivers, arranges for, or otherwise makes available, basic health care services, supplemental health care services, or specialty health care services, or a combination of basic health care services and either supplemental health care services or specialty health care services, through either an open panel plan or a closed panel plan.

Attorney General

The Ohio constitution provides

The executive department shall consist of a governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, and an attorney general, who shall be elected on the first Tuesday after the first Monday in November, by the electors of the state, and at the places of voting for members of the general assembly.¹⁹⁵

As quoted in the insurance code, the attorney general may bring actions in court when requested by the insurance superintendent if he has no adequate administrative remedy available to him. In addition, under the code

The attorney general is the chief law officer for the state and all its departments . . . Except as provided in division (E) of section 120.06 and in sections 3517.152 to 3517.157 of the Revised Code, no state officer or board, or head of a department or institution of the state shall employ, or be represented by, other counsel or attorneys at law. The attorney general shall appear for the state in the trial and argument of all civil and

¹⁹⁵ Ohio Constitution. Art. III, § 1.

criminal causes in the Supreme Court in which the state is directly or indirectly interested. When required by the governor or the general assembly, the attorney general shall appear for the state in any court or tribunal in a cause in which the state is a party, or in which the state is directly interested. Upon the written request of the governor, the attorney general shall prosecute any person indicted for a crime.¹⁹⁶

In October 2006, the attorney general and the insurance commissioner entered into a settlement with Zurich American Insurance Company and its subsidiaries. This settlement was made just with Ohio and separately from the settlements with other states (the Three-State Settlement and Multi-State Settlement described above). The attorney general alleged that the insurers acted to restrain trade in Ohio by allocating territories for insurance and insurance services and by fixing prices and fees for insurance, in violation of Chapter 1331 of the Ohio Revised Code (the antitrust laws). The commissioner alleged the insurers violated Chapter 3901 of the Code by (a) falsifying quotes at the request of brokers in order to steer business and by misleading, unfair, and deceptive practices.

General Observations on State Actions and Authority

Based upon our review of the various state actions and our research to date, we believe one can reasonably make certain observations and draw certain general conclusions about the current state of state regulation of the business of insurance.

The current state regulatory structure for insurance has evolved over a hundred years and is a finely crafted legislative construct designed to regulate the solvency and conduct of insurers. This is the structure under which the insurance commissioners operate. At the same time, the state attorneys general have acted pursuant to state constitutions and laws designed to protect the public interest and welfare. Clearly, those laws are broad in their scope, as illustrated by the ones reviewed in this Study.

What is apparent, however, is that the various powers and authorities granted by the laws of the states to the insurance commissioners and attorneys general intersect and overlap in certain areas. This is particularly noticeable in the area of unfair and deceptive business practices. It is to the credit of the legislatures, and state officials, that those laws have worked and have been enforced largely in a coordinated and cooperative fashion.

Nevertheless, in recent years the attorneys general have taken an interest in the business of insurance and have enforced their laws in the insurance sector. It is fair to say that in doing so they have enforced laws outside the insurance codes in ways not previously contemplated. The attorneys general have sought to apply those laws not only to alleged fraudulent and

¹⁹⁶ OH Tit. 1, ch. 109, § 109.02.

deceptive insurance practices but also to certain insurance practices, which have been commonly accepted in the industry over time, such as contingent commissions and finite reinsurance. And they have sought to impose requirements that are already found in the insurance laws of a number of states such as laws pertaining to fee disclosures. By actions such as these, the attorneys general have had the effect of modifying and expanding insurance law, without opportunity for public input or legislative oversight.

The numerous settlements between attorneys general (and commissioners) and industry defendants, such as the ones entered into by the New York Attorney General with Marsh & McLennan, contain many detailed requirements for business reforms and reporting. By virtue of these and provisions for continued monitoring and supervision by the insurance commissioner and attorney general to ensure compliance with the terms of the settlements, in our view these settlements are functioning as vehicles for regulating insurers and brokers. They are also allowing the state attorneys general to continue exercising insurance regulatory authority and oversight of the industry. Furthermore, the fact that some of the settlements, such as those with Zurich Insurance Company, provide for business reforms to be implemented nationwide means that some attorneys general are enforcing their laws across state lines and imposing reforms on entities engaging in business in all other states, not just the state of a given attorney general.

The regulation of the insurance industry which is a significant part of the U.S. financial services industry, vital to the U.S. economy and society and solely regulated at the state level, requires a person appropriately positioned within the state government hierarchy that commands respect, attention, as well as, power to get things done.

Positioning an insurance commissioner as a low-level bureaucrat does not accomplish these objectives, either at the local or national level. Elected commissioners are often driven by short-term political objectives rather than the long-term stability of insurance markets.

As the table below reflects, most state insurance commissioners are appointed by the governor or by a regulatory commission for a set term or “at will” subject to legislative confirmation. With few exceptions, the commissioner’s influence at the state level has been diluted by the expansion of state government over decades.

Current State Regulatory Structure

STATE	DEPARTMENT HEAD? ⁽¹⁾ YES OR NO
Alabama	Yes
Alaska	Yes
American Samoa	*(2)
Arizona	Yes
Arkansas	Yes
California	*
Colorado	No
Connecticut	*
Delaware	No
District of Columbia	*
Florida	No
Georgia	No
Guam	Yes
Hawaii	No
Idaho	*
Illinois	No
Indiana	*
Iowa	No
Kansas	*
Kentucky	No
Louisiana	*
Maine	No
Maryland	Yes
Massachusetts	No
Michigan	No
Minnesota	No
Mississippi	No
Missouri	*
Montana	No
Nebraska	Yes
Nevada	No
New Hampshire	Yes
New Jersey	Yes
New Mexico	No
New York	Yes
North Carolina	No
North Dakota	No
Ohio	Yes
Oklahoma	No
Oregon	No
Pennsylvania	Yes
Puerto Rico	*
Rhode Island	No
South Carolina	Yes
South Dakota	No
Tennessee	Yes
Texas	Yes
Utah	Yes
Vermont	No
US Virgin Islands	No
Virginia	No
Washington	No
West Virginia	*
Wisconsin	Yes
Wyoming	*

(1) Autonomous agency reporting directly to the governor

(2) Requires further research since available resources do not disclose the information.

HISTORY OF THE NAIC AND THE EVOLUTION OF ITS MISSION

The Early Years

Two decades after the creation of the first Board of Insurance Commissioners in New Hampshire, the industry, and regulators alike quickly realized that since insurance was becoming a national business it would be necessary to find a way to integrate the regulatory processes of the several states, particularly with respect to solvency regulation.

On May 24, 1871, only six years after the end of the Civil War, the chief insurance regulators of 19 of the 36 states gathered in New York City for the first meeting of the organization that later became known as the National Association of Insurance Commissioners (NAIC). The official NAIC record (the NAIC Proceedings) indicates that Superintendent George Miller of New York quite simply stated the function of the NAIC when he said:

The past and prospective increase in the number of state departments, each established under different laws and adopting different forms, rules, and regulations, has naturally tended rapidly to increase the labors and consequent expense of insurance companies, and, of course, to absorb by so much the security or funds of the insured. The most feasible and practicable mode of securing that simplification and unification both of form and of law, which public interests seem to demand, will be found in concert of action on the part of those several State officers charged by their respective States with the supervision of insurance.¹⁹⁷

As to the enactment of laws, the earnest recommendation of a convention of such State officers would, no doubt, be recognized as entitled to great consideration by the legislatures of the respective States.¹⁹⁸

By 1872, with more than 30 states represented, the fledgling NAIC put into form its objectives adopted at its second meeting:

The objective of this association shall be to promote uniformity in legislation affecting insurance; to encourage uniformity in departmental rulings under the insurance laws of the several states; to disseminate information of value to insurance supervisory officials in the performance of their duties; to establish ways and means of fully protecting the interest of insurance policyholders of the various states,

¹⁹⁷ Robert E. Dineen, Lillard W. Culver Jr., and R. Paul Rosenheimer. *Insurance Regulation in the Public Interest: A Better NAIC*, A seminar presented to Zone 4 of the National Association of Insurance Commissioners, February, 1958, p. 8-9.

¹⁹⁸ Robert E. Dineen, p. 9.

territories, and insular possessions of the United States and to preserve to the several states, the regulation of the business of insurance.¹⁹⁹

From the very beginning, the NAIC's work product reflected the importance of uniform regulation of national carriers, having sponsored the Reciprocal General Insurance Act at its opening meeting in 1871 and moving quickly to uniform reporting forms for fire, life and marine insurers.²⁰⁰

In the wake of the sobering Armstrong Committee investigation of the life insurance industry in 1905, and the resulting loss of confidence among the insurance buying public, the NAIC established its own Valuations Committee and hired its first salaried staff employee in 1909.²⁰¹ This Committee's work to adjust securities values in times of national economic stress or emergency ultimately led to the development of "convention values" in 1931.²⁰²

In May of 1940, a statement was prepared by the life insurance industry to refute the negative implications in the Temporary National Economic Committee's (T.N.E.C.) investigative report, portraying state regulation as inadequate and ineffective. This defense of state regulation and the NAIC by the life industry was an anomaly at the time...a segment of business subject to regulation had to take on the defense of those who supervised it...as the NAIC had no staff of its own to assemble and prepare its own defense.²⁰³

While the investigation was interrupted by World War II, one of the committee members representing the SEC, Sumner T. Pike, submitted his own statement containing recommendations. While Pike believed that the NAIC had made great strides in uniform reporting, examinations, and valuation procedures and contributed to strengthening state insurance regulation, he also noted the following:

¹⁹⁹ James W. Schacht, "NAIC Finances and Funding," A discussion paper for the 1995 NAIC Commissioners Conference, January, 1995, p. 3.

²⁰⁰ *Ibid.*

²⁰¹ Robert E. Dineen, p. 11.

²⁰² Robert E. Dineen, p. 11-12. Several times over the years, the NAIC, through its Valuations Committee, has taken steps to adjust values in times of national economic stress or emergency. As stated above, this was done during the panic of 1907. It was undertaken again during the market demoralization of 1914 and again in 1917. As a result of the stock market crash of 1929, the NAIC adopted so-called convention values in 1931. Thus, upon at least four different occasions, the NAIC, by realistic and timely action, became a potent factor in protecting the public against insolvency.

²⁰³ Robert E. Dineen, p. 15-16. In 1938, the Temporary National Economic Committee (T.N.E.C.) was created with representatives from both Houses of Congress, the Department of Justice, Labor, Treasury and Commerce, Federal Trade Commission and the Securities Exchange Commission. The purpose of the committee was to investigate monopolies and the concentration of economic power with perhaps the necessity of strengthening and enforcement of antitrust laws. The investigation was to lead to recommendations.

It is not, however, an association which is as effective as one might desire, for its budget is very limited, it has no permanent paid staff, it has no authority to enforce its resolutions and it is, of course, continually faced with the difficulties inherent in any attempt to standardize the regulatory programs of 49 separate jurisdictions. The high turnover of commissioners makes it less effective. Though it now has 25 or more standing committees, the meetings of the committees are few, for state officials have neither the time nor money to enter into the detailed collaboration which problems constantly before many of these committees require before satisfactory conclusions can be reached.²⁰⁴

Interestingly, when the Securities Valuation office (“SVO”) was created in 1909, it was funded by a new provision in the New York Insurance Law. Up to that time, the valuation of securities had been done internally by the New York Insurance Department staff. The New York law provided for the assessment of insurers to pay for the cost of the SVO and contained some other interesting features. The law authorized the Superintendent to enter into a contract with the NAIC’s Committee on Valuations to obtain reports and analyses prepared by the Committee. The law required the Superintendent to approve the budget of the SVO before the assessments could be levied on insurers. The law also authorized the Superintendent to audit the financial affairs and operation of the SVO.²⁰⁵

By 1909, Commissioner Hartigan of Minnesota urged the NAIC to create a more improved and integrated system for examining companies, ultimately leading to the establishment of a Committee on Examinations, the present zone system, and the creation of the examiner’s manual in 1947.²⁰⁶

In the early years of its existence, the NAIC used a task force approach to accomplishing its work and borrowed personnel from the state insurance departments either at the commissioner or departmental level to conduct necessary research. Frequently those states with the largest staff carried the bulk of the research responsibility for the NAIC. In many cases, the commissioners also had to rely on other outside resources, including those whom they regulated.²⁰⁷

Up to the 1940’s, the NAIC’s administrative duties were handled by the President, the Examinations Committee Chairman, and the Secretary Treasurer. In response to the increasing operations of the association, a central staff support office was established in Raleigh, North Carolina, on July 1, 1948.²⁰⁸

²⁰⁴ Robert E. Dineen, p. 15-17.

²⁰⁵ James W. Schacht, “NAIC Finances and Funding,” p. 6.

²⁰⁶ Robert E. Dineen, p. 10.

²⁰⁷ Robert E. Dineen, p. 2.

²⁰⁸ James W. Schacht, “NAIC Finances and Funding,” p. 5.

In 1950, the NAIC Central Office was moved to Chicago, and operated there for the next 18 years with a staff of two, the Executive Secretary, and his secretary. The Executive Secretary's functions included assistance in running two national meetings each year, preparing and indexing the NAIC proceedings and arranging for their publication and distribution, and providing administration and coordination between the national meetings of NAIC related activities.²⁰⁹

DINEEN URGES REGULATORS AND INDUSTRY TO STRENGTHEN THE QUALITY OF INSURANCE REGULATION IN 1958

By 1958, Robert Dineen, then an executive officer of Northwestern Mutual Life Insurance Company, also former New York Superintendent of Insurance and NAIC President, and others prepared a monograph urging regulators and the industry to consider strengthening the quality of state insurance regulation through the addition of a permanent NAIC staff, a top notch reference library and alternative methods of financing both.²¹⁰ Their proposal was based upon the assumption that while state regulation had been quite effective, it was essential to ensure the NAIC's existence as a "real and vital force in coordinating the activities of the individual states into an effective regulatory machine. Without it, state regulation cannot survive. The business and the states have a very real obligation to make it function effectively and survive as a force for good."²¹¹

It took until June 1968 before the NAIC adopted at its meeting in Portland, Oregon the concept of an enlarged Central Office staff for the main purpose of researching fundamental insurance regulatory problems under the supervision of the Executive Committee. An adopted Statement of Policy, including the following excerpts, described the purposes and assignments parameters of the increased staff:

The Central Staff will marshal facts, analyze issues, point up various available alternatives, and prepare reports. It will not assume a policymaking role. The ultimate decision as to what should be done with the research rests with the commissioners. The research will not be binding on either individual commissioners, in particular, or the NAIC in general.

At no time is it contemplated that an NAIC staff report should foreclose the discussion of the topic under consideration. It is quite important that persons holding contrary views to that of the Central Staff be able to present their ideas with the knowledge that the NAIC is not only uncommitted, but actually seeks fresh viewpoints to balance against those of the staff. Through this technique, it is believed that the NAIC and the individual commissioners will be the beneficiaries of extensive and objective research

²⁰⁹ James W. Schacht, "NAIC Finances and Funding," p. 5.

²¹⁰ Robert E. Dineen, p. 3.

²¹¹ Robert E. Dineen, p. 14.

in depth, which will afford an opportunity to make informed policy decisions based on various documented alternatives.²¹²

EXPONENTIAL GROWTH IN THE NAIC'S ACTIVITIES DURING THE 1980'S AND 1990'S

By the 1970's, the focal point of regulation moved well beyond the annual statement through the development of a national computer data bank. Through a series of financial ratios, regulators could now identify in advance companies that were trending to a potentially hazardous condition and could focus valuable examination resources on problem companies, not merely detection. These activities resulted largely from a 1973 McKinsey & Company study on the effectiveness of financial surveillance.²¹³

In 1978, the Central Office, the Non-Admitted Insurers Information Office ("NAIIO"), and the Securities Valuation Office were consolidated into one staff operation (although the SVO physically remained located in New York City) with the Executive Secretary having the responsibility for the complete operation. By that time, the NAIC had authorized the Central Office not only to perform its own research, but also to provide various expanded administrative services in support of NAIC committees and individual state insurance departments.

With the adoption of a new constitution in 1981, the NAIC's purposes were restated in the form of the following three summary statements:

- Maintenance and improvement of state regulation of insurance in a responsive and efficient manner
- Reliability of the insurance institution as to financial solidity and guarantee against loss; and
- Fair, just, and equitable treatment of policyholders and claimants.²¹⁴

By 1987, the NAIC staff had grown to a total of about 70 people, with a budget of \$5.9 million clearly reflecting the state's increasing reliance on the NAIC to regulate a growing industry that operated nationally.²¹⁵

The 1980's also brought a rash of insurer insolvencies that prompted controversy, promises of reform from state insurance regulators and congressional proposals for federal takeover of

²¹² James W. Schacht, "NAIC Finances and Funding," p. 6.

²¹³ National Association of Insurance Commissioners. Proceedings of the National Association of Insurance Commissioners, 1972, Volume I, p. 391.

²¹⁴ National Association of Insurance Commissioners. Proceedings of the National Association of Insurance Commissioners, 1981, Volume I, p. 8 & 20.

²¹⁵ Susan Randall. "Insurance Regulation in the United States: Regulatory Federalism and the National Association of Insurance Commissioners." Florida State University Law Review, Volume 26: 625, 1999, p. 635-636.

insurance regulation. In June of 1990, the NAIC undertook as its highest priority, the Solvency Policing Agenda, a program designed to comprehensively upgrade solvency regulation in each of the 50 states to be coordinated by the NAIC. The Solvency Policing Agenda was designed to concentrate on (1) reinsurance valuation, (2) financial regulatory standards, (3) examination processes assessment, (4) enhancement of IRIS, and (5) review of adequacy of annual statement disclosures and prevailing capitalization and reserving requirements.²¹⁶ At the same time, the U.S. General Accounting Office (GAO) and the House Energy and Commerce Committee's Subcommittee on Oversight and Investigation produced a series of investigative reports and conducted numerous hearings.²¹⁷ By 1990, these efforts were reflected in a highly critical report entitled, "Failed Promises: Insurance Company Insolvencies."²¹⁸

Congressional criticisms were levied at many state specific regulatory practices, including the lack of independently verified financial statements²¹⁹ the lack of actuarial certification of reserves, inadequate capital and surplus requirements,²²⁰ and lack of enforcement of regulations, leaving the blame for the insolvencies of the 1980's with both regulators and insurance companies.²²¹

In response to these federal criticisms and other factors, the NAIC launched its Financial Regulation Standards and Accreditation Program.²²² By June 1989, the NAIC had quickly moved to adopt a set of substantial financial regulation standards for state insurance departments, which identified model laws and regulations and regulatory personnel and organizational processes and practices necessary for effective solvency regulation.²²³ The goal of the program was to ensure that a state's solvency regulation met certain minimum requirements so that other jurisdictions could have a degree of confidence in a state's oversight of its domiciliary companies.²²⁴ To provide the necessary guidance and motivation for the states

²¹⁶ National Association of Insurance Commissioners. Proceedings of the National Association of Insurance Commissioners, 1990, Volume IA and Volume II, p. 4 & 36.

²¹⁷ Staff of the U.S. House of Representatives Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, "Failed Promises: Insurance Company Insolvencies." Washington: U.S. G.P.O., 1990.

²¹⁸ *Ibid.*

²¹⁹ United States General Accounting Office. "Insurance Regulation: State Handling of Financially Troubled Property/Casualty Insurers" (GAO/GGD-91-92), A Report to the Chairwoman, Subcommittee on Commerce, Consumer Protection, and Competitiveness, Committee on Energy and Commerce, House of Representatives, May, 1991, p. 27.

²²⁰ Staff of the U.S. House of Representatives Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, "Failed Promises: Insurance Company Insolvencies." Washington: U.S. G.P.O., 1990, p. 57.

²²¹ Staff of the U.S. House of Representatives Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, "Failed Promises: Insurance Company Insolvencies." Washington: U.S. G.P.O., 1990, p. 61-62.

²²² National Association of Insurance Commissioners. Proceedings of the National Association of Insurance Commissioners, 1992, Volume IA, p. 6.

²²³ Susan Randall, p. 644-645.

²²⁴ Robert W. Klein. *A Regulator's Introduction to the Insurance Industry*, New York: NAIC, 2005, p. 10-25.

to put these standards in place, the NAIC adopted a formal accreditation program in June 1990.²²⁵

Criticisms of the accreditation process came from regulators and industry alike. While the standards addressed many of the concerns articulated by critics of state oversight of solvency, critics pointed to the lack of specificity in the standards, the absence of market conduct standards, a faulty review process, and the inability of the NAIC to force compliance with the standards²²⁶ Many legislators sensed that the NAIC had essentially bypassed them in forcing states to pass model laws, particularly those required for accreditation. The industry viewed any NAIC activity unrelated to solvency regulation as inappropriate and criticized the NAIC for failing to solicit outside commentary on accreditation standards.²²⁷

Individual state battles ensued over the accreditation process. In 1995, Vermont enacted a law specifically designed to control the NAIC, requiring the NAIC to report annually its fiscal, regulatory and other activities.²²⁸ Through the efforts of state legislators, Michigan adopted a bill that would cut off state funding to the NAIC if its activities threatened state sovereignty.²²⁹

The history of state insurance regulation and the history of the NAIC clearly reflect the ever-present tension between the dual goals of uniform, centralized, regulation and the preservation of regulation by the states.

More than one authority has noted over the years, that the NAIC's stated objectives have reflected its conflicting commitments to both "centralized regulation" and the preservation of regulation by the states. "The goal of uniform law and nationalized regulation is facially inconsistent with the preservation of autonomous regulation by the states. To preserve state insurance regulation, the NAIC has increasingly assumed a national role, centralizing many basic regulatory functions and operating as a quasi-federal agency by attempting to enforce national standards."²³⁰

State regulators and the NAIC have undertaken major initiatives in recent years to improve the efficiency of regulation. Beginning in the mid 1990's, the NAIC established a Special Committee on Regulatory Re-Engineering, identifying several areas that warranted review: company licensing; special deposit requirements; counter signature requirements; deregulation of

²²⁵ Robert W. Klein, p. 10-26.

²²⁶ Susan Randall, p. 651.

²²⁷ L.H. Otis. "NAIC Accreditation Plan Draws Fire." National Underwriter Property & Casualty-Risk & Benefits Management, October 10, 1994.

²²⁸ Vermont Superintendents Association. 8 V.S.A. § 3551 (2007).

²²⁹ Michigan Compiled Law Service. MCL § 500.479 (2007), MCL § 500.478 (2007).

²³⁰ Susan Randall, p. 635.

commercial lines; rate and form review, among others.²³¹ Subsequent NAIC reports in 2000, 2003 and 2005 assessed the states' progress and established objectives for further improvements in the national system of state-based insurance regulation.²³²

During this period, several initiatives to improve regulatory efficiencies moved forward:

- Enhanced consumer protection, encompassing the Consumer Information Source (CIS) Web site.
- More efficient market regulation, encompassing the *Market Analysis Handbook*.
- "Speed to Market for Insurance Products," encompassing the Interstate Insurance Product Regulation Compact and the System for Electronic Rate and Form Filing (SERFF).
- Uniform forms and processes for producer licensing, encompassing the National Insurance Producer Registry (NIPR).
- Standardized insurance company licensing, encompassing the Uniform Certificate of Authority Application (UCAA).
- Improved solvency regulation, encompassing the Financial Data Repository (FDR).
- Streamlined changes of insurance company's control, encompassing the Form A Database.²³³

In June 2004, the NAIC issued a "roadmap" that identified numerous areas where it believed national standards could be implemented by the states to streamline insurance regulation across the United States. These areas included:

- Market Conduct Uniform Standards
- Company Licensing
- Agent Licensing
- Life Insurance
- Property/Casualty Commercial Insurance
- Property/Casualty Personal Lines
- Surplus Lines
- Reinsurance
- Antifraud Network
- McCarran-Ferguson Antitrust Exemption and Rate Regulation
- State-National Insurance Coordination Partnership

²³¹ Robert W. Klein. *A Regulator's Introduction to the Insurance Industry*, New York: NAIC, 2005, p. 209.

²³² National Association of Insurance Commissioners. [Proceedings of the National Association of Insurance Commissioners](#), 2005, 4th Quarter, p. 218

²³³ *Ibid.*

- Viatical Settlements
- Interstate Compact for Health Insurance Products
- Enhancing Financial Surveillance
- Receivership²³⁴

Today, the efficiency of state regulation gives rise to heated and emotional debate. Reform proposals at the national level include (1) a dual (federal/state) chartering system similar to the banking industry's dual regulatory system, allowing companies to choose between the state system and a national regulatory situation that would ease the burdens of interstate commerce, and (2) "modernization" of state regulation.

THE NAIC TODAY

Looking back, the NAIC's growing role in the regulation of insurance since 1958, when Robert Dineen, former New York Superintendent of Insurance and NAIC President, first suggested the creation of a permanent, independent NAIC staff is remarkable. Mr. Dineen's notion that commissioners needed an independent staff was not immediately embraced, as many feared that such a staff would threaten their power and authority. Tight commissioner control and modest staff increases were the order of the day for almost two decades.

Today, the growing role of the NAIC is reflected in its complex organizational structure, its diversity of tasks, a large staff, and a budget that today exceeds \$62 million²³⁵. This exponential growth is, in part, reflective of the states' increasing reliance on the NAIC for certain services, particularly in the area of data, as well as systems to manipulate and analyze that data. This growth also reflects the NAIC's departure from its original primary purpose—the development of uniform public policy of insurance regulation through model laws and regulations.²³⁶

Over the years, there has been a growing shift in the focus of the NAIC activities away from public policy to the various processes of regulation. In fact, the desire to create more process is influencing public policy. The origin of this trend can be traced at least back to the "early warning system," the precedent of the NAIC statistical database. The Financial Regulation Standards and Accreditation program took the NAIC to a place it had never been—oversight with strong incentives to follow the NAIC standards. The substantial data repositories developed over the years by the NAIC for use by state regulators, and the applications and infrastructure needed for reporting and access has gradually shifted the organization's activities

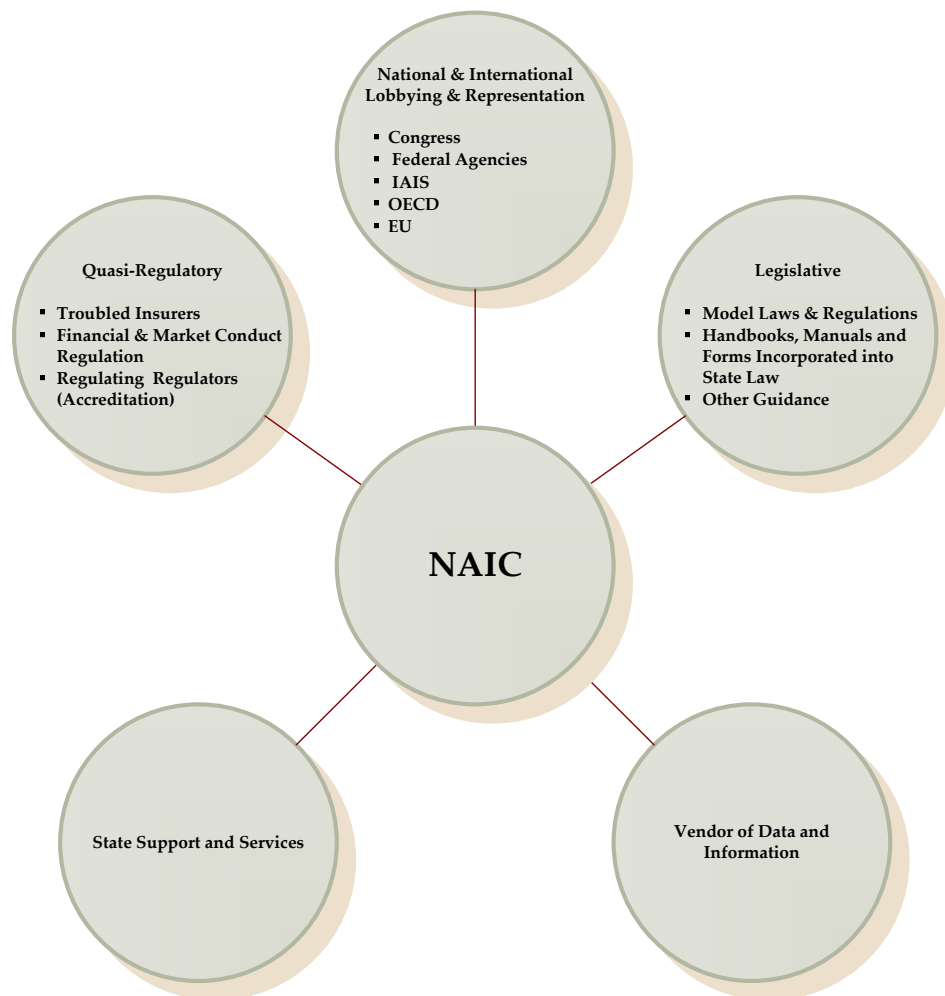
²³⁴ National Association of Insurance Commissioners. Proceedings of the National Association of Insurance Commissioners, 2004, Volume II, p. 114-125.

²³⁵ National Association of Insurance Commissioners. Proposed 2007 Budget and Business and Fiscal Impact Statements. http://www.naic.org/documents/about_budget_07budget_proposed_budget.pdf. In contrast to the NAIC, NCOIL's actual revenue for 2006 was \$721,000 and expenditures of \$670,000.

²³⁶ James W. Schacht, "State Lawmakers Must Drive Regulatory Reform." Business Insurance, June 18, 2001.

to servicing the states directly. This started in a small way, but has grown significantly. This delegation of tasks, normally carried out by state insurance departments, occurred without legislative knowledge, input, or concurrence. There is concern that the process of regulation serves as a distraction from the public policy debate on the future of state regulation and what must be done to preserve and strengthen it.

The NAIC has two organizational elements: (1) the group of state insurance commissioners; and (2) a centralized support and services office. The major activities of these two organizational elements can be set forth as follows:



While identification of these major activities can be done, the NAIC does not completely reveal how much of their resources are spent annually for each activity or necessarily what organizational element participates in each activity.

The following thoughts and observations of others were noted during the course of this study and are presented for further consideration and are not all inclusive. While these observations reflect concerns and criticisms, the NAIC has played an important and evolving role in assisting the states to work collectively.

- » Some have questioned whether the NAIC's self-proclaimed status as a private not-for-profit educational entity is accurate, given its close association with state government and the nature of its activities. They note further that the IRS is closely scrutinizing the operations and affairs of not-for-profit organizations, and it may be an appropriate time for the NAIC to review its corporate status.
- » Others feel that it is imperative that clarity and attention be given to safe guarding private data and information received from regulated entities, and the use of public information that comes into the possession of the NAIC. For example, the NAIC receives public data in the form of insurers' annual statement data, which the NAIC then sells directly to others. The NAIC receives substantial revenue for this activity. These same individuals wonder if this practice should be authorized by state legislatures.

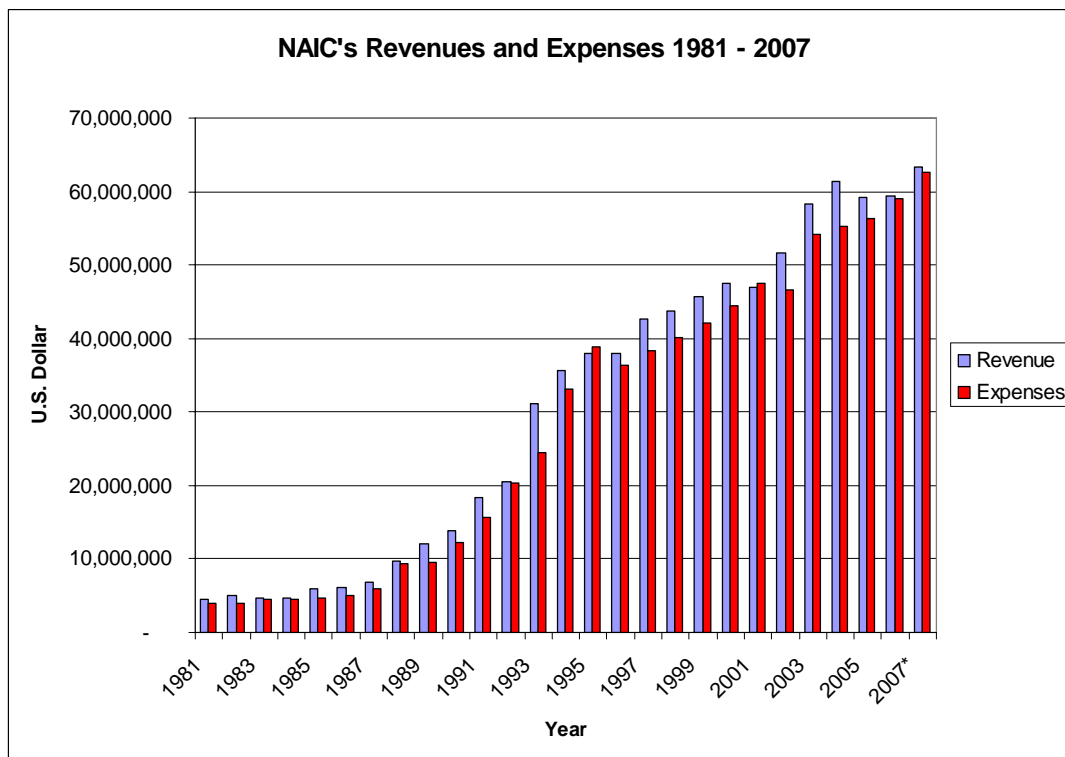
The NAIC also comes into the possession of private data and information of regulated entities. State law protects this data and information when it is received by a state regulator. When this information is received by the NAIC, it is unclear whether these data and information is similarly protected. This area has become even more clouded as the NAIC engages in activities wherein their right to such information is not defined by state law or by the obligations and responsibilities they have assumed as a recipient of such information.

- » Some have suggested that NCOIL and the NAIC should be working cooperatively to fend off federal preemption or optional federal chartering so as to maintain state regulation and state tax revenues. They recommend that NCOIL create a set of principles for a new state regulatory framework that would create greater harmony and consistency across state boundaries. The NAIC's expertise could then be utilized to create a new regulatory structure and implementing mechanism. Without question, this would be a major undertaking, but may be the sort of initiative that would be required to preserve state regulation and tax revenues. Of course, a source of funding for such an effort would have to be identified. This could be accomplished with the support of the NAIC and its substantial resources, as some have noted.
- » It appears to some that while the NAIC has a written policy stating under what circumstances an NAIC meeting may be closed to other than insurance commissioners and their staff, the policy is often ignored. The standing of state legislators and their staff and NCOIL staff to attend otherwise closed meetings is also unclear. Recently, these issues have been raised again by several state legislators.

- » Given the important and ever increasing role the NAIC has in the system of state insurance regulation, some have questioned why there are no requirements in state laws mandating commissioners' membership and participation in the NAIC. The states rely on the NAIC, yet they do not have direct statutory authority or oversight of its role, activities, or finances. While this may have been unnecessary in prior times, some question whether this situation should continue to exist under the present environment.
- » Observers of the NAIC have questioned whether the NAIC can be relied upon to effectively advocate for the preservation of state regulation of the insurance industry and the state taxation of the industry as the NAIC did in the mid-1940's.

FINANCES AND FUNDING

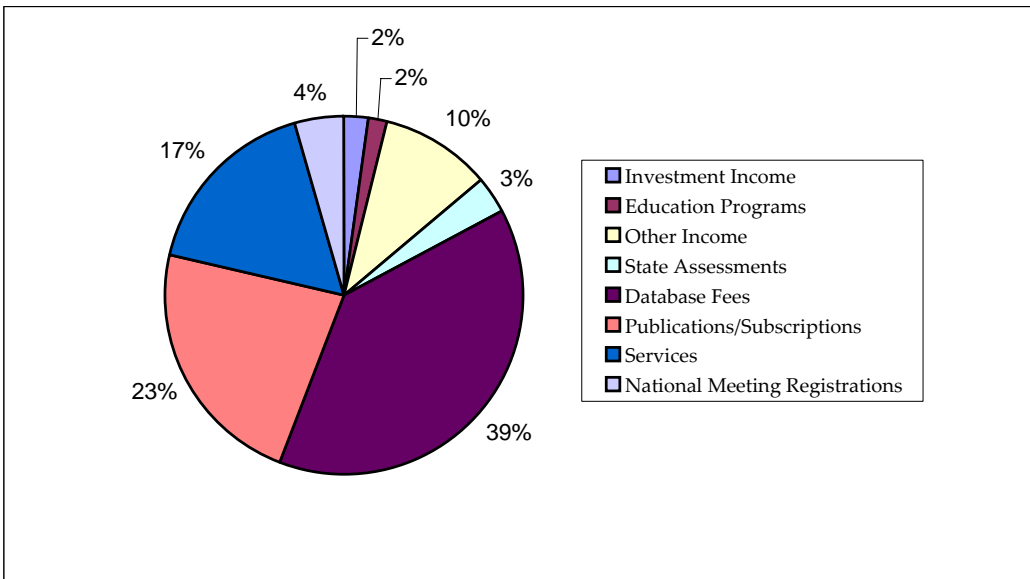
The purpose of this section is to provide a brief overview of the NAIC's finances and funding. The chart that follows presents a historical overview of the NAIC's Revenues and Expenses for the period 1981-2007:



As the above chart reveals, there has been a dramatic growth in the NAIC's revenue and expenditures from the early 1990's through 2007. A review of the 2007 proposed budget which the NAIC adopted in December 2006, reflects the various sources of its revenue and the various categories of intended expenditures as follows:

Composition of NAIC Consolidated Revenues
Revenue - 2007 Budget After Fiscal Impact Statements*

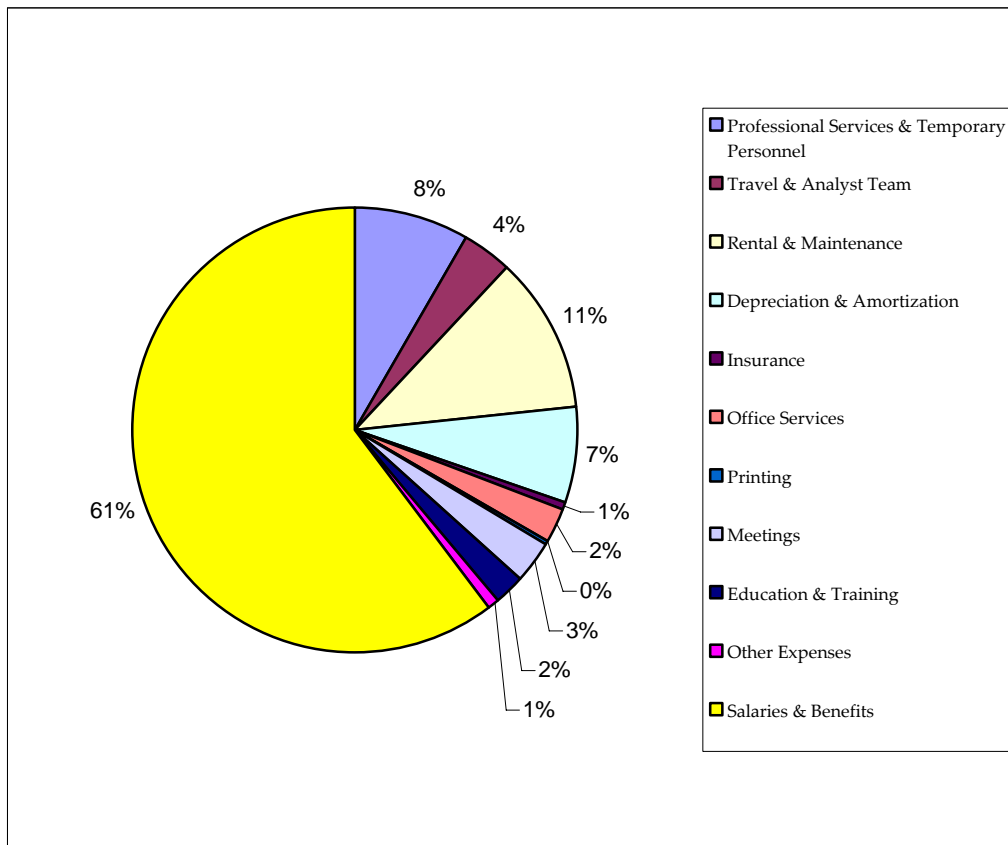
Investment Income	1,397,162	2%
Education Programs	1,013,990	2%
Other Income	6,478,814	10%
State Assessments	2,015,609	3%
Database Fees	24,470,912	39%
Publications/Subscriptions	14,488,796	23%
Services	10,734,358	17%
National Meeting Registrations	2,780,791	4%
	\$ 63,380,432	100%



* Fiscal impact statements are a description of new initiatives funded by the proposed budget.

**Composition of NAIC Consolidated Expenses
Expenses - 2007 Budget After Fiscal Impact Statements**

Professional Services & Temporary Personnel	5,161,863	8%
Travel & Analyst Team	2,338,903	4%
Rental & Maintenance	7,118,947	11%
Depreciation & Amortization	4,286,219	7%
Insurance	452,045	1%
Office Services	1,556,656	2%
Printing	226,698	0%
Meetings	1,768,224	3%
Education & Training	1,483,043	2%
Other Expenses	574,381	1%
Salaries & Benefits	37,707,862	60%
	\$ 62,674,841	100%



The above amounts are referred to by the NAIC as ‘consolidated’ amounts, in that they include a combining of the NAIC’s general fund and the special funds the NAIC has created for specific purposes summarized as follows:

	2007 Budget	
	After Fiscal Impact Statements	
	Revenue	Expenditures
■ General Fund	\$60,410,002	\$58,368,592
■ NAIC Zones	225,480	235,000
■ SERFF	2,171,957	2,365,934
■ SBS	572,993	569,262
■ Educational Fund	0	0
■ International Education Fund	0	78,820
■ FDR	0	598,471
■ 2301 McGee	0	458,762
Total	<u>\$63,380,432</u>	<u>\$62,674,841</u>

FINANCIAL POSITION

The 2006 NAIC Annual Report reflects the following as of December 31, 2005 and 2006.

Assets

Assets	2006 (Millions)	2005 (Millions)
Cash and Cash Equivalents	\$6.9	\$6.5
Accounts Receivable, Net of Allowance of \$2,764,901 in 2006 and \$3,961,027 in 2005		
Interest Receivable	0.2	0.2
Prepaid Expenses	1.4	1.5
Inventories	0.2	0.2
Investments	42.6	36.6
Total Current Assets	51.3	44.9
Property and Equipment, Net	11.5	11.8
Total Assets	<u>\$62.8</u>	<u>\$56.7</u>
Liabilities		
Accounts Payable and Accrued Expenses	\$7.5	\$6.9
Deferred Revenue	3.4	2.9
Total Liabilities	<u>\$10.9</u>	<u>\$9.9</u>
Net Assets		
Board-Designated Endowment	-	0.1
Allocated	58.7	53.7
Unallocated	0.9	0.8
Minimum Pension Liability Adjustment	(1.0)	(0.3)
Total Unrestricted Net Assets	58.7	54.4
Total Liabilities and Net Assets	<u>\$69.5</u>	<u>\$64.2</u>

Revenue

The largest single revenue source is database fees. This fee is paid by insurers when they file their annual financial report with the NAIC. Approximately a dozen states require by statute licensed insurers to file their reports with the NAIC and pay the fee established by the NAIC. Most of the remaining states only require insurers to file with the NAIC and the insurers pay the fee voluntarily. As will be discussed later, this revenue source has been an area of some controversy over the years.

The next largest revenue source is 'Publications and Insurance Data Products'. This consists of revenue generated from the sale of various reference materials, handbooks, subscriptions and information and data stored within the NAIC's financial database. It also includes royalties the NAIC receives from the sale of certain products by outside vendors. The largest component of this revenue item results from the sale of insurance company data extracted from insurer annual statement filings.

The third largest income source is 'Services' which consists of fees for services from the NAIC's Securities Valuation Office (SVO) and the International Insurers Department (IID). The SVO fees amount to \$7.6 million for 2007 and IID fees at \$.4 million. The IID fees are received from non-US insurers that are 'listed' by the NAIC. States utilize this list to determine which insurers are eligible for placement of US business. The SVO fees consist primarily of valuation services for non-public rated securities held by insurers.

'State Assessments' or that amount paid by NAIC members from state government sources is approximately 3% of the NAIC's total revenue. The fee is assessed each state based on premium volume of domestic insurers in relation to total premium for all insurers countrywide. It is interesting to note that these state assessments have continued even though the NAIC has a large surplus of approximately \$59 million.

Expenses

As might be anticipated, the largest single expense item in the NAIC's budget is Salaries & Benefits consisting of 60% of total expenses. The next largest category is Rental and Maintenance at 11%, and the third largest is Professional Service and Temporary Personnel at 8% of the total. Some brief commentary and cursory observations on several expense items and certain others are below:

Salaries – Projected to increase by 7% in 2007, the major source of this increase relates to existing employees. It is difficult to gain much insight about this expense item since the limited detail does not contain basic information, such as an employee headcount or an organization chart.

Rental & Maintenance – the principal part of this expense item is the NAIC’s office space in Kansas City, Missouri, which is a leasehold of 126,000 square feet costing \$25.69 per square foot. This leasehold is planned to expand in 2007 by 6,000 square feet.

Travel – Approximately 50% of this expense item is commissioner and insurance department travel to various NAIC-related activities and international travel to International Association of Insurance Supervisor Symposiums, OECD and others.

Professional Services – The components of this expense item for 2007 include approximately \$620,000 for the accreditation review teams, \$257,000 for the NAIC’s investment advisor, \$213,880 for federal activities, as well as a variety of other consulting and legal services.

Reference materials – It is somewhat ironic that the expense item that directly relates to the original formation of the NAIC staff and support office decades ago – reference materials - have declined in the last three years.

Meetings – This expense item includes amount to cover national meetings. However, we note that it also include approximately \$642,000 for hosting the 2007 International Association of Insurance Supervisors’ conference (excluding staff and other internal costs). The NAIC anticipates 500 attendees at this three-day event, resulting in a per person cost in excess of \$1,250. The NAIC hopes this cost will be recouped through registration fees.

A review of certain fiscal impact statements, which outline the new initiatives for 2007 provide some insight into the breadth of the NAIC’s activities and involvement in state insurance regulation. These are as follows:

- *Interstate Insurance Product - Regulation Compact Commission* – The NAIC provided \$500,000 to cover start-up activities in 2006 and intends to contribute \$550,609 in 2007 to cover operating costs.
- *Introduction to Health Insurance - Education program* – This is a new educational program designed not for insurance regulators but congressional staff and the media. Anticipated registration fees \$59,000, projected expenses \$22,000; net revenue \$37,000.
- *Insurer “U” /Fight Fake Insurance Campaign – Year II* - \$150,000 for continuation of the consumer education program.
- *National Portal Framework – Phase III* - About \$350,000 is provided to make an Internet portal a reality.

- *Various Technological Enhancements* – A number of enhancements are planned in 2007 in various software and hardware systems that support NAIC activities, many of which are utilized by state insurance departments. For 2007, expenditures total \$1.6 million.

NAIC BUDGET PROCESS

The NAIC's budget for the coming year is prepared June of each year by the NAIC staff under the oversight and direction of the Executive Vice President and CEO, and eventually by the NAIC Officers, Internal Administration (EX 1) Subcommittee and the Executive Committee. In September of each year, the budget is exposed for comment from the "public." In November, a "public hearing" is held to receive commentary on the budget. The public exposure and comment procedure was developed as a result of the concerns expressed by the industry, certain NAIC members, and others in the mid-1990's.

FINANCES AND FUNDING ISSUES

Over the last decade or two, a number of issues have been raised by others with regard to the NAIC's budget process, overall finances and revenues. Some of these concerns are listed below:

- Perhaps one of the most contentious issues has been the database fees, the NAIC's largest revenue source. In the early and mid 1970's when the NAIC's early warning system commenced, the industry voluntarily agreed to fund the attendant costs. Until sometime in 1981, a separate fund was maintained by the NAIC for these funds. During 1981 and 1982, the NAIC increased the fees and used them for non-database activities. Because of the industry's concerns about lack of accountability and inappropriate fiscal policies, a Memorandum of Understanding was entered into between the industry and the NAIC, which provided for the industry and the NAIC to mutually agree to enhancements in the database if the industry was expected to pay for it and specified that the database fees only be used for database activities.
- In the mid and late 1980's, the database fees were increased to enhance NAIC solvency activities. This occurred without repercussions primarily because the revenue was clearly identified and the use articulated to the payors. In the early and mid-1990's, and sporadically since then, the payors questioned the amount of fees and the use of the funds; however, no substantial changes were made by the NAIC. Since the fee is based on premium, it continues to grow each year with the rise in insurers' premiums. In 1984, the NAIC adopted a model law which requires licensed insurers to file their annual statements with the NAIC. All states have adopted this requirement, but only a dozen or so require payment of a fee to the NAIC. Therefore, the largest NAIC revenue source relies principally on voluntary contributions from the industry. Periodically, some insurers do not pay their database fees, particularly when upset with NAIC policy or procedures. Since the mid-

1990's, the NAIC has created new and additional revenue sources, such as the sale of annual statement data. The search for new revenue sources is a continuing effort.

- Several observers have questioned the growth in the NAIC's net assets, as well as the existence of such a large surplus. As previously mentioned, on December 31, 2006, it was \$58.7 million representing approximately 93% of the NAIC's total assets. Net assets have grown over the last seven years in excess of \$10 million. The NAIC has designated almost all of its net assets as funds set aside as an "operating reserve." The NAIC's purpose for maintaining such a reserve level is to "ensure stability in the financial operations of the association, in the event of emerging risks and uncertainties."²³⁷ A consultant retained by the NAIC a few years ago verified the need for the operating reserve, but the report was not made public.
- Others have expressed concern over the NAIC's budget presentation. Some see a lot of words and numbers, but not much substance to determine what activities are being supported and to what extent. New initiatives are well explained, but the base budget is not equally detailed. For example, basic information, such as an organizational chart and employee headcount is not in the budget document. Programmatic information is also missing. Some specifically note it is not possible to discern from the budget disclosures what resources the NAIC is devoting to preserving state regulation or what strategy is planned or implemented to do so.
- Some have questioned the propriety of the NAIC's practice of selling annual statement data at substantial mark-up. They note that the data are public information. In 2007, the NAIC projects to receive \$14 million in receipts from the sale of such data and other information to third parties. Further, they note that it is not entirely clear what the basis for the NAIC's claims of ownership for such data is, since it is public information. Similarly, there are issues as to the access and protection of that data property rights the NAIC claims, not only over annual statement data, but other data and information, and whether state insurance departments have free and complete access to all data and information whether protected or not.

DELEGATION OF STATE AUTHORITY TO THE NAIC

While the NAIC possesses no legislative power or regulatory authority, the states have delegated by statute to the NAIC a myriad of requirements that insurers are to follow. In the last two decades or so, the number and scope of these requirements has increased significantly.

²³⁷ National Association of Insurance Commissioners. Proposed 2007 Budget and Business and Fiscal Impact Statements. http://www.naic.org/documents/about_budget_07budget_proposed_budget.pdf, p. 6.

This can be largely attributed to the impact of the NAIC's Financial Regulation Standards & Accreditation Program.

For purposes of our study, we selected six states²³⁸ to review in detail to determine the frequency and areas where state statute required insurers to follow an NAIC pronouncement (Form, instructions, manual, handbook and the like) on internal process. These generally fell within one of the following categories:

- » Formula for determining reserves or required capital (RBC)
- » Annual and interim statement reporting form and instructions
- » Accounting conventions (statutory accounting)
- » Various report forms
- » Procedures for conducting examinations
- » Annual audit requirements
- » Verification of licensing states
- » Surplus note agreements
- » Reinsurance and risk transfer requirements
- » Software for filing policy forms
- » Various ministerial functions
- » Reporting to complaint database
- » Qualification of surplus line agents
- » Reports from IRIS to determine whether an insurer is hazardous
- » Centralized agent license reporting
- » Actuarial opinions

The results of our survey are included in Appendix A. Several states in our sample require insurers to report to the NAIC material acquisitions and dispositions of assets, and substantial changes to reinsurance agreements. The statute directing such reporting requires the NAIC to treat such information as confidential and further states that such information is not subject to subpoena. What other information the NAIC receives through means that is not similarly protected is not discernable.

In the course of performing its various functions, the NAIC comes into possession of a variety of non-public information and data. Concerns have been expressed about the organization's ability to maintain the confidentiality of such information. Such information is often received by the NAIC in connection with the coordination of activity relating to a financially troubled company, an insurer with significant market conduct problems, or other regulatory issues and concerns.

²³⁸ These jurisdictions were the same ones selected for the state authority and responsibility survey set forth in the preceding section.

The survey revealed some unique and interesting statutory provisions. For example, Connecticut requires its Commissioner to develop a program of periodic reviews to ensure compliance with the minimum standards established by the NAIC for effective financial surveillance and regulation of insurance companies. Minnesota grants immunity in absence of actual malice to the members of the NAIC and all others charged with the responsibility of collecting, reviewing, analyzing, and disseminating information developed from the annual statement since they are acting as agents of the Commissioner. As mentioned earlier, both Michigan and Vermont have adopted statutes requiring oversight of the NAIC's activities and finances. It is our understanding that little if any activity has occurred with respect to these statutes.

Our survey did not produce any instance among these six states of a statutory provision requiring the insurance commissioner to participate in the NAIC. Needless to say, the statutes were also silent on the nature, behavior, activities, etc. expected of that organization. This is somewhat surprising given the reliance these states place on the NAIC, not only statutorily but also practically. It is also interesting to note that our research did not disclose any instance where the NAIC was subject to a review by a state auditor of any state even though the NAIC performs services for the states and collects funds at the direction of the states.

The power that the states have statutorily delegated to the NAIC can be illustrated by the following provisions from Illinois Insurance Law:

...the annual statement is to be prepared in accordance with the annual statement instructions and the Accounting Practice and Procedures Manual adopted by the National Association of Insurance Commissioners.²³⁹

The practical impact of this provision is that it allows the NAIC to effectively legislate through the annual statement and the accounting manual that the NAIC promulgates. While such a provision is good from the standpoint of creating uniformity among the states, it vests significant authority in an entity that the State does not control or oversee.

Another provision from Illinois law provides the following and illustrates further the state's reliance on the NAIC's accreditation program in discharging a key regulatory responsibility of a state:

In lieu of an examination of any foreign or alien insurer authorized or licensed in this State, the Director may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, those reports may only be accepted if (1) the insurance department was at the time of the examination accredited under the

²³⁹ 215 ILCS 5/136.

National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program...²⁴⁰

AUTHORITY ASSUMED BY THE NAIC

Besides the authority delegated to the NAIC by statute, it has taken on a number of other programs and activities on the belief and presumption that it has the prerogative to do so. This does not necessarily mean that these programs are unneeded, wasteful or not done for a good purpose. But what it does mean, is that the NAIC and its insurance commissioner members can bypass customary legislative authorization and the constraints and accountability that occur within the legislative process. When the program or activity imposes burdens and costs on regulated entities, as well as regulators, it becomes a concern. With the large surplus the NAIC has accumulated, the organization has the resources to institute a host of new initiatives, and is only constrained by its "operating reserve" which can be modified whenever needed, if a majority of the members agree.

Besides those mentioned in this report, some recent initiatives that demonstrate the almost limitless range of endeavors that the NAIC feels it can undertake, include a new reinsurance evaluation office to establish rules for when an insurer can reduce its reserves for business ceded to a reinsurer. It would effectively put the NAIC in the business of rating reinsurers from around the globe. A much less significant proposal seeks to establish a new professional designation program for insurance regulators that the NAIC would administer.

Of late, the NAIC has entered into Memorandums of Understanding with a number of foreign governments and associations of foreign insured regulators, which seek to provide a framework for cooperating, exchange of information, and technical assistance. The agreements say the NAIC is acting on behalf of its members. Setting aside the propriety of these agreements, it is another illustration of an authority the NAIC has assumed.

THE NAIC AS A FUNCTIONAL REGULATORY AGENCY

The regulatory activities of the NAIC are extensive and pervasive. As we have observed, the NAIC has assumed and acts in multiple regulatory and quasi-regulatory capacities. While it has no separately identifiable statutory authority to enforce insurance laws per se, it has inserted itself so thoroughly into the regulatory process that, by virtue of its size, position, and multiple roles, arguably it functions as a de facto regulatory agency. What follows is a list and brief summary of some of the key regulatory activities of the NAIC. The wording is that of the NAIC itself as it appears on the various locations of the NAIC website.

²⁴⁰ 215 ILCS 5/132.3(c).

■ **NAIC Securities Valuation Office (SVO)**²⁴¹

The NAIC's Securities Valuation Office (SVO), located in New York City, is responsible for the day-to-day credit quality assessment and valuation of securities owned by state regulated insurance companies. Insurance companies report ownership of securities to the SVO when such securities are eligible for filing on Schedule D or DA of the NAIC Financial Statement Blank. The SVO conducts credit analysis on these securities for the purpose of assigning an NAIC designation and/or unit price. These designations and unit prices are produced solely for the benefit of NAIC members who may utilize them as part of the member's monitoring of the financial condition of its domiciliary insurers. Unlike the ratings of nationally recognized statistical rating organizations, NAIC designations are not produced to aid the investment decision-making process and therefore are not suitable for use by anyone other than NAIC members.

■ **Related Links**

SVO Determinations provide an anchor to a variety of regulatory mechanisms such as statutory accounting, Annual Statement Instructions and Risk-Based Capital. The links below are to NAIC Committees, Task Forces, and Working Groups that deal with these issues.

- Statutory Accounting Principles (E) Working Group
- Emerging Accounting Issues (E) Working Group
- Blanks (E) Working Group
- Life Risk-Based Capital (E) Working Group
- Property Risk-Based Capital (E) Working Group
- Hybrid Risk-Based Capital (E) Working Group

■ **The NAIC Insurance Products & Services Division (IPSD)**²⁴²

The NAIC is the authoritative source for insurance industry information. Our expert solutions support the efforts of regulators, insurers, and researchers by providing detailed and comprehensive insurance information. The IPSD division also markets and maintains the System for Electronic Rate and Form Filing (SERFF) and State Based Systems (SBS).

The NAIC maintains one of the world's largest insurance regulatory databases. Information on available products can be found in the catalog located above. Contact us to find out about standard data products or customizations.

²⁴¹ <http://www.naic.org/svo.htm>

²⁴² http://www.naic.org/store_home.htm

Download key annual and quarterly statement data in PDF format giving you immediate access to information filed with the NAIC for thousands of insurance companies via INSDATA at the link above. Search capabilities allow you to find information by either the company name or the NAIC Company Code (cocode).

The NAIC's Valuation of Securities database contains more than 250,000 securities from over 40,000 issuers. This wealth of information is at your fingertips with a subscription to the Automated Valuation Service.

AVS is the fastest and most efficient way to obtain crucial information about the securities in your portfolio. Whether you need it for a single security or your entire portfolio, our web-based application gives you the NAIC designation and review date, pricing, SIC code, SVO group code, and market indicator. No need to wait for the delivery of the quarterly CD-ROM!

- **SERFF – System for Electronic Rate and Form Filing**

Maintained by the NAIC IPSD.

In December 1997, the consortium and the NAIC agreed that the NAIC would take over the operation of SERFF . . .

As of January 1, 2006, all 50 states, the District of Columbia, Puerto Rico and over 1,700 insurance companies are committed to SERFF. Reflecting on the past five years, SERFF has had a tremendous growth. 2006 is already on target for another impressive year, due to the strong SERFF commitment from states and industry.

- 2001 – 3,694 Filings
- 2002 – 25,528 Filings
- 2003 – 76,932 Filings
- 2004 – 143,818 Filings
- 2005 – 183,362 Filings

The NAIC encourages states and insurers to become active in a voluntary SERFF program that offers a technological solution to address rate and form filing and approval process. SERFF offers a decentralized point-to-point, web-based electronic filing system. SERFF facilitates communication, management, analysis, and electronic storage of documents and supporting information. The system is designed to improve the efficiency of the rate and form filing and approval process and to reduce the time and cost involved in making regulatory filings. It also provides up-to-date filing requirements when they are needed.

■ **State Based Systems (SBS)**²⁴³

Maintained by the NAIC IPSD, the State Based Systems (SBS) is a robust Web application that automates and streamlines state insurance department regulatory processes. SBS is designed to assist with the full life cycle of insurance regulatory activity, including licensing, consumer services, product approvals, revenue management, and a host of other activities. SBS ensures efficient and accurate processing through a fully integrated system.

■ **The NAIC Government Relations Office**

The NAIC Government Relations office is the point of contact for the NAIC and the state departments of insurance on all federal legislative/regulatory and international issues. The office prepares and circulates the Federal Affairs Capitol Report to keep members briefed on key issue developments.

The NAIC Government Relations Office works closely with key federal regulatory bodies to ensure coordination on regulatory matters and facilitate effective communication among federal and state regulators. Staff assists regulators in federal law implementation and brief federal regulators on state insurance regulation.

■ **Uniform Regulation Through Technology**²⁴⁴

Uniform Regulation through Technology (URTT) was introduced by NAIC members at the December 2000 National Meeting, as a resolution reconfirming their commitment to technology initiatives.

The resolution changes the name of the program from State Regulation 2000 (SR2000) to Uniform Regulation through Technology (URTT). This program is a collection of technology projects that represent a significant strategic investment in the use of automation for regulatory purposes.

These technology initiatives dramatically enhance communication and the interaction between the nation's insurers and its insurance regulators in the areas of:

- Agent and broker licensing and continuing education;
- Licensing process for foreign insurers.
- Filing and approval process for rates and policy forms;
- Reporting of financial data used by insurance regulators.

²⁴³ <http://www.statebasedsystems.com/>

²⁴⁴ http://www.naic.org/urtt_home.htm

The goals of *Uniform Regulation through Technology* are to:

- Provide states with new regulatory tools to enhance their ability to regulate a \$900 billion insurance industry;
- Reduce multi-state licensing and approval barriers;
- Increase the uniformity and consistency of processing and regulation across state boundaries; and
- Leverage state and NAIC technology to achieve economies of scale through automation initiatives.

Several voluntary NAIC initiatives comprise the foundation for URTT. These initiatives leverage the technology and resources of the NAIC and the states to bring greater efficiencies and economies that position state insurance regulators to be able to effectively and efficiently regulate an industry that is becoming more multi-state or even multi-national in scope. These technology initiatives allow a regulatory scheme that has flourished for more than a century to grow and adjust to changing times. Thus, one of the advantages of state regulation — the ability of states to react to local conditions and concerns — is preserved. At the same time, unnecessary burdens to insurers that do not add value to consumers can be identified and eliminated.

- **National Insurance Producer Registry (NIPR)**²⁴⁵

Incorporated in October 1996, the National Insurance Producer Registry (NIPR) is a non-profit affiliate of the National Association of Insurance Commissioners (NAIC). NIPR developed and implemented the Producer Database (PDB) and Electronic Appointments/Terminations (formerly PIN). NIPR is governed by a 13-member board of directors, with six members representing the NAIC, six industry trade association representatives, including three producer trades and the EVP/CEO of the NAIC as an ex-officio voting board member.

The PDB is an electronic database consisting of information relating to insurance agents and brokers (producers). The PDB links participating state regulatory licensing systems into one common repository of producer information. The PDB also includes data from the Regulatory Information Retrieval System (RIRS) to provide a more comprehensive producer profile. The key benefits of PDB are:

- Financial/Time Savings
- Reduction in Paperwork
- Real Time Information
- Verify License and Status in All Participating States

²⁴⁵ http://www.licenseregistry.com/about_nipr.htm

- Ease of Access via the Internet
- Single Source of Data vs. Multiple Web Sites

The NIPR Gateway is a communication network that links state insurance regulators with the entities they regulate to facilitate the electronic exchange of producer information. Data standards have been developed for the exchange of license application, license renewal, appointment and termination information. All data flowing over the NIPR Gateway will conform to these standards. The key benefits of NIPR Gateway are:

- Reduction in paperwork and data entry
 - Development of national standards regarding electronic transmission of licensing data
 - Faster turnaround time
- **Reinsurance Supervision Review Department**

As we write our recommendations, the NAIC is considering expanding its regulatory reach by establishing a new office to regulate non-U.S. reinsurance companies reinsuring the business of US insurance companies. Specifically, the NAIC would establish a new Reinsurance Supervision Review Department to review and approve the levels of collateral deposits by non-U.S. In order for the non-U.S. reinsurers to qualify and receive approval, the domiciles of those non-US reinsurers would need to meet certain regulatory guidelines established by the Department.²⁴⁶ It appears the new Department would function in much the same way as the current Securities Valuation Office. The Georgia Insurance Commissioner has noted that some disagree about whether the NAIC has the authority to impose its rules.²⁴⁷

²⁴⁶ NAIC weighs in on non-U.S. regs, Business Insurance, Sept. 17, 2007.

²⁴⁷ *Ibid.*

HOW THE NAIC DEFINES ITS PURPOSE AND LEGAL STATUS

The NAIC's organizational structure, history and constitutional purposes clearly reflect that the NAIC was originally organized and intended to function as an instrumentality of the states to assist in achieving fundamental regulatory objectives.²⁴⁸

It is important to note that over the years, the IRS has consistently viewed the NAIC as an instrumentality of state government for the purpose of federal tax exemptions.²⁴⁹

In a May 23, 1955 ruling, the IRS ruled that NAIC employees are exempt from mandatory social security taxes as well as federal unemployment taxes. "The IRS specifically found, at the time, that the NAIC is "an instrumentality wholly-owned by the states, the representatives of which comprise its membership..."²⁵⁰ In its May 23, 1955, ruling, the IRS indicated that it considered the following factors:

1. Whether it is used for a governmental purpose and performing a governmental function;
2. Whether performance of its function is on behalf of one or more states or political subdivisions;
3. Whether there are any private interests involved, or whether the state or political subdivisions involved have the power and interests of an owner;
4. Whether control and supervision of the organization is vested in public authority or authorities;
5. If express or implied statutory authority is necessary for the creation and/or use of such an instrumentality, whether such authority exists ; and
6. The degree of financial autonomy and the source of its operating expenses.

After reviewing these factors, the IRS concluded upon reconsideration of the matter that the Association is an instrumentality wholly owned by the States.²⁵¹

²⁴⁸ James W. Schacht, "The NAIC is an Instrumentality of State Government," May 1995, at the NAIC, p. 1.

²⁴⁹ James W. Schacht, "The NAIC is an Instrumentality of State Government," p. 2.

²⁵⁰ H.T. Swartz. Internal Revenue Ruling Letter to Charles W. Tye. May 23, 1955. See also IRS Revenue Ruling Rev.Rul.57 -128, p. 1.

²⁵¹ *Ibid.*

In IRS Revenue Ruling 57-128, that corresponded to the May 23, 1955, letter ruling sent to the NAIC, the IRS gave a more detailed explanation of its determination that the NAIC is an instrumentality of the states. The IRS ruling describes the NAIC as follows:

It serves as a central unit in the performance of duties common to each member in his official capacity as head of the insurance department of his state. Further, it takes the place of a comparable administrative unit, which would otherwise have to be maintained in the insurance department of each state. Consequently, it appears that the association constitutes a part of the state governmental machinery for the administration of the insurance laws of the respective states.²⁵²

In a letter dated December 23, 1955, the IRS clarified that the NAIC was exempt from federal income tax because it is an instrumentality of the states.²⁵³ In this letter ruling the IRS expressly modified its February 18, 1953 letter ruling indicating that the NAIC was exempt from federal income tax as a section 101 (7) business league.²⁵⁴ Because the IRS viewed the NAIC as an instrumentality of state government, it exempted the NAIC from filing a Form 990 information return, which must be filed by all 501(c) organizations. On October 29, 1956, Hugh Tollack, NAIC Assistant Secretary, confirmed this IRS change in classification to an “instrumentality wholly owned by the States.”²⁵⁵

On August 30, 1974, the District Director of the IRS issued an official determination letter exempting the NAIC from federal excise taxes.²⁵⁶ That letter indicated that the NAIC qualified for the federal excise tax exemption in Sections 4221 (a) (4) and 4292 of the Internal Revenue Code, which exempts from tax the sale of articles or payments for services furnished “to a State or local government for the exclusive use of a State or local government.” The letter specifically found that the NAIC is a “wholly-owned” instrumentality of the states as manifested by the interest, authority and powers exercised by their official representatives.²⁵⁷

Prior to 1989, the NAIC consistently considered itself a quasi-governmental entity.²⁵⁸ With a 1989 change in its by-laws, the NAIC called itself a 501(c)(3) organization. The NAIC

²⁵² James W. Schacht, “*The NAIC is an Instrumentality of State Government*,” May, 1995, at the NAIC, p. 3.

²⁵³ National Association of Insurance Commissioners. Proceedings of the National Association of Insurance Commissioners, 1953, Volume II, p. ?.

²⁵⁴ National Association of Insurance Commissioners. Proceedings of the National Association of Insurance Commissioners, 1953, Volume II, p. 1.

²⁵⁵ National Association of Insurance Commissioners. Proceedings of the National Association of Insurance Commissioners, 1957, Volume I, p. 47.

²⁵⁶ M.L. Phillips. Letter to National Association of Insurance Commissioners, August 30, 1974, p. 1.

²⁵⁷ M.L. Phillips, p. 1.

²⁵⁸ James W. Schacht, “*The NAIC is an Instrumentality of State Government*”, p. 4.

Proceedings reflected that this was done to effect a technical change for IRS clarification relative to the taxation status of some of its activities.²⁵⁹

As the NAIC assumed a more expansive and central role in state regulation during the 1980's and well into the 1990's, it was accused of waffling on its legal status to what some said was unfair advantage.

By May 1995, the NAIC was being called upon by certain of its members, insurers who paid NAIC fees and state legislators who sought to limit the NAIC's activities, to firmly establish its legal identity and authority.²⁶⁰ At the time, the NAIC Bylaws Section 8 stated that the NAIC is "organized exclusively for one or more of the following purposes: religious charitable, scientific, testing for public safety, literacy, or education purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1954."²⁶¹

At the same time, the NAIC found itself responding to the heated debate over opening NAIC meetings and records to the public by officially maintaining that it was a private trade association similar to a 501(c)(6).²⁶² As such, the NAIC maintained that "it had no more duty to open its records and high level meetings than the industry trade groups which lobby it."²⁶³ Yet, the tax rulings dating back to the 1950's, and referred to earlier, reflected otherwise.

In 1999, the NAIC amended its constitution, adding a New Article XII, permitting reorganization of the NAIC as a Delaware not-for-profit corporation, with 501(c)(3) tax status.²⁶⁴ The NAIC Proceedings at the time, noted that the advantage to this change included: (1) positive public perception of 501(c)(3) status; (2) ability to expand education activities, (3) contributions made to the NAIC would be tax deductible; (4) possible exemptions from sales tax and property tax would be available; (5) no probable change in filing requirements; (6) eligibility for alternative employee benefit plans. The Proceedings also pointed to "better governance" as a reason for moving to an incorporated status as a not-for-profit corporation, which would protect the membership from litigation issues.²⁶⁵

²⁵⁹ National Association of Insurance Commissioners. Proceedings of the National Association of Insurance Commissioners, 1989, Volume II, p. 10.

²⁶⁰ L.H. Otis. "Just What is the NAIC? Legal Status up for Grabs." National Underwriter Property & Casualty-Risk & Benefits Management, May 22, 1995.

²⁶¹ L.H. Otis, p. 2.

²⁶² *Ibid.*

²⁶³ *Ibid.*

²⁶⁴ National Association of Insurance Commissioners. Proceedings of the National Association of Insurance Commissioners, 1999, Volume I, p. 6.

²⁶⁵ National Association of Insurance Commissioners. Proceedings of the National Association of Insurance Commissioners, 1999, Volume I, p. 6.

Today, the NAIC views itself as a voluntary organization of chief insurance regulatory officials of the 50 states, the District of Columbia, America Samoa, Guam, Puerto Rico, the US Virgin Islands and the North Mariana Islands. As noted earlier, the NAIC is organized under the General Corporation Law of the State of Delaware. “The mission of the NAIC is to assist state insurance regulators individually and collectively, in serving the public interest and achieving the following fundamental insurance regulatory goals in a responsive, efficient and cost effective manner, consistent with the wishes of its members.” The mission of the NAIC, as set forth at the organization’s website, is to:

- Protect the public interest;
- Promote competitive markets;
- Facilitate the fair and equitable treatment of insurance customers;
- Promote the reliability, solvency and financial solidity of insurance institutions;
- Support and improve state regulation of the industry.²⁶⁶

The NAIC Bylaws set forth the following provisions among others with regard to membership:

- The Membership of the NAIC shall be comprised of those persons designated as members in the Certificate of Incorporation. Each member of the NAIC shall have the power to vote and otherwise participate in the affairs of the NAIC as set forth herein or as required by applicable law. This power may be exercised through a duly authorized representative who shall be a person officially affiliated with the member’s department and who is wholly or principally employed by said department.
- The organization may charge members an annual assessment, the amount of which shall be determined by the Executive Committee. Members failing to pay all NAIC assessments on a timely basis shall be placed in an inactive status. Members in an inactive status shall not have any voting rights and shall be denied membership on NAIC committees and task forces, access to mailing and services of the NAIC Executive Headquarters and satellite offices, as well as access to zone examination processes and other benefits of membership in the NAIC.²⁶⁷

The NAIC’s committee system is the primary means for commissioners to become involved in the Association. The business and affairs of the NAIC are managed by and under the direction of the Executive Committee, made up entirely of members of the NAIC. The Executive Committee has the authority and responsibility to:

²⁶⁶ National Association of Insurance Commissioners. [Our Mission](http://www.naic.org/index_about.htm).http://www.naic.org/index_about.htm.

²⁶⁷ National Association of Insurance Commissioners. [NAIC Bylaws](http://www.naic.org/index_members.htm).http://www.naic.org/index_members.htm.

- Manage the affairs of the NAIC in a manner consistent with the Certificate of Incorporation and Bylaws;
- Make recommendations to achieve the goals of the NAIC based upon either its own initiative or the recommendations of the Standing Committees or Subcommittees reporting to it, for consideration and action by the members at any NAIC Plenary Session;
- Create and terminate one or more Task Forces reporting to it to the extent needed and appropriate;
- Establish and allocate, from time to time, functions and responsibilities to be performed by each Zone;
- To the extent needed and appropriate, oversee an Executive Headquarters and satellite office to assist the NAIC and the individual members in achieving the goals of the NAIC;
- Submit to the NAIC at each National Meeting, during which Plenary Session is held, its report and recommendations concerning the reports of the standing committees. All standing committee's reports shall be included as part of the Executive Committee report;
- Plan, implement, and coordinate communications and activities with other state, federal, and local government organizations in order to advance the goals of the NAIC and promote understanding of state insurance regulation.²⁶⁸

²⁶⁸ National Association of Insurance Commissioners. NAIC Bylaws. http://www.naic.org/index_members.htm.

PREFACE

The recommendations emanating from this study are set forth below along with a brief rationale for each. We offer these recommendations for NCOIL's consideration in setting a strategic agenda for preserving and improving state insurance regulation, an integral part of which is the proper delegation of state authority and allocation of state resources. The efforts needed to develop and implement this strategic agenda will require NCOIL to have additional financial resources. Thus, our first recommendation addresses NCOIL's need for enhanced funding.

1. Increase NCOIL Funding Resources & Membership

NCOIL has been assuming an ever-increasing role in the development of public policy for insurance regulation in a variety of ways. In addition to developing model laws and regulations, it is playing a role in the current debate over repeal of the *McCarran-Ferguson Act* and optional federal chartering. In 2003, NCOIL completed a comprehensive study of the market conduct surveillance system in the United States and adopted a new model law on the subject following the study.²⁶⁹ In addition, NCOIL has developed model laws addressing rate modernization, flex rating, natural disasters and credit scoring. NCOIL relies principally on meeting registration fees for funding which even under today's responsibilities are inadequate. NCOIL needs a new source of funding if it is going to assume an even greater role.

As we noted in our report, NAIC presently assesses each NAIC member or state a fee based on premium value. NAIC anticipates its 2008 revenue from this source will be \$2,063,932. Given the NAIC's substantial surplus and its other funding sources, these state assessments could be reallocated to NCOIL without impacting adversely NAIC operations. These funds could be appropriated by each state legislature for payment to NCOIL rather than the NAIC. There may be a few states where legislative amendments would be required. This proposal would provide an interim method to enhance NCOIL's resources.

This source of funding is entirely appropriate given the tasks and activities NCOIL has and will be undertaking. Maintaining state regulation and state revenue from the insurance industry is critical to state government.

²⁶⁹ James W. Schacht and Lynne Prescott Hepler, PricewaterhouseCoopers LLP and Robert Klein, Georgia State University, "*The Path to Reform – The Evolution of Market Conduct Surveillance Regulation.*" A report prepared for the [Insurance Legislators Foundation](#), July 1, 2003.

NCOIL needs to continue its efforts to have all states as active participants in NCOIL. Additional resources and greater visibility as described in this report should assist in that effort.

2. Clarifying Regulatory Roles; Enhancing Insurance Regulators' Authority by Restoring Agencies' Stature

Over the course of the past two decades or more, we have seen the dilution of the authority of numerous insurance regulators resulting from organizational changes in government that were implemented to improve management efficiency but which have weakened insurance regulators' ability to carry out their legislative duties. These include reducing insurance departments to divisions of "super" agencies, as noted in our report.

We have also observed the recent actions of some state attorneys general that amount to the establishment of state insurance regulatory policy by litigation and resulting settlements (including their ongoing monitoring of compliance with those settlements). And we noted the current state of affairs, with increasing involvement of state attorneys general in insurance regulation, has led to uncertainty and confusion as to who regulates and the scope of that regulation.

We believe NCOIL should consider whether concerned legislatures should restore the position of insurance regulatory agencies to that of department status with the insurance commissioner or chief regulatory official as agency head. The change would be commensurate with regulators' statutory authority and economic impact and would help attract the most qualified persons.

We also believe it is appropriate to consider legislation (1) to address insurance regulatory requirements imposed by the attorneys general settlements in areas of the business of insurance where they have assumed responsibility under those settlements, and (2) to more clearly define the roles of the attorneys general and the insurance commissioners by giving exclusive jurisdiction to the insurance regulators to enforce laws applicable to the insurance industry.

As to the first step, each state has its own constitutional and statutory language pertaining to the authority of the state attorney general. However, where the authority and responsibilities of the attorney general are contained in a state's statute the legislature could revisit such language to clarify the role of the attorney general in relation to the state insurance regulator. (As we have noted, some state constitutions set forth the authority and duties of the attorney general, while others only provide that the attorney general is a constitutional officer and are silent on the authority and duties of the office and leave it to the legislature to spell these out.)

In the second step, we recommend that legislatures should consider modifying consumer protection and consumer fraud statutes to avoid the current overlapping jurisdiction and confusion with respect to insurance. We think the existing state insurance trade practices laws are the proper place for consumer protection in the business of insurance. These laws are the foundation for market regulation of insurers.

Also, in the second step, we recommend amending insurance codes to give insurance commissioners the authority to seek judicial relief “. . . when the superintendent believes it to be in the best interest of the public and necessary for the protection of the people in this state . . .” (as stated in the OH insurance code).²⁷⁰ This authority would allow the commissioner to act when he or she determines it is in the public interest, which is similar to the authority of the attorneys general. In this regard, we specifically recommend granting insurance regulators authority to order restitution if they find violations of insurance laws that directly impact policyholders. Historically, restitution has often occurred in practice by consent of the regulated (usually on the threat of a fine or license revocation).

As noted in the study, drafting the above statutory changes would require further study because the subject is complex and potentially involves constitutional issues.

3. Increase Legislative Oversight of Insurance Regulation

It is important for insurance regulators to remember that state legislatures are the source of their authority over insurance regulation. Insurance regulation involves the executive branch’s exercise of authority delegated to it by the state legislature. Our current system of regulation is the result of legislatures in every state delegating authority to insurance regulators and to NAIC. Consequently, legislators have an obligation to monitor the regulators in their exercise of the authority delegated to them including authority assumed by the NAIC indirectly through its members.

Over the years, this system of insurance regulation has come under attack by critics citing numerous shortcomings. However, there is little doubt that a greatly improved state regulatory apparatus has emerged out of the battle between advocates of federal regulation and advocates of continued state regulation of the business of insurance. Much stronger state laws, due in large part to state legislatures’ adoption of NAIC model laws and the Financial Regulation Standards and Accreditation Program, and a much larger and more active NAIC, have helped the states fulfill their responsibilities.

²⁷⁰ See Ohio R.C. §3901.04(B).

One consequence of the work to improve state regulation, however, has been the exponential expansion of the NAIC. Today, the actions and roles of the NAIC can be said to fall into four general categories

- Legislative (model laws, guidelines, manuals, forms; *e.g.* annual statement)
- National and international lobbying and representation (Congress, federal agencies, IAIS, OECD, European Union)
- Regulatory (statutory and *de facto*) (SVO; accreditation; SERFF; coordination of multi-state market conduct and financial examinations; Market Analysis Working Group (MAWG))
- Support and services (NAIC staff)

There is little doubt, however, that this continuing growth has meant more and more NAIC regulatory activity as the state legislatures grant authority to it to act on their behalf. As a result, state legislatures have increasingly lost part of their ability to oversee and control the nature and level of regulation, regulatory policy, and how resources are allocated and monies spent.

In performing these various activities, the NAIC functions much like a regulator. While it does not have delegated statutory authority to oversee and enforce the various state insurance laws, its activities and involvement in the regulation of insurance are so pervasive that the NAIC can be said to have *de facto* authority in practice. (See section on the NAIC as a Functional Regulatory Agency.)

Nevertheless, serious shortcomings in the system of insurance regulation continue to exist.²⁷¹ Even considering the system's strongest tool, NAIC Financial Regulation Standards and Accreditation Program, the system continues to have significant deficiencies.²⁷²

The Accreditation Program amounts to NAIC members monitoring themselves. Also, an unintended consequence of the Accreditation Program has been a lack of legislative input in the creation and selection of the model laws and regulations comprising a large part of the Program. State legislators on occasion commented the public policy making prerogatives of the legislative branch have been impinged upon by the Accreditation Program, and some are convinced there are inadequate legal safeguards in the Program. There is no effective legislative input into the Program to address these issues.

²⁷¹ See *e.g.* the U.S. General Accounting Office (GAO) 1992 and 2001 reports assessing the Financial Standards and Accreditation Program and listing its deficiencies. The reports can be found at <http://archive.gao.gov/d38t12/146423.pdf> and <http://www.gao.gov/new.items/d01948.pdf>

²⁷² *Ibid.*

In addition, the Program is aimed at financial solvency regulation and does not address market regulation including regulation of insurance trade practices. There is a great need for legislative oversight of market regulation by the states in order to address inconsistent enforcement, over-regulation, poor coordination of examinations, wasting of resources by inefficient regulation, improvement of professionalism and training for examiners, and failure to follow the law. Legislatures need a means for holding states accountable beyond the appropriation process. Two examples of how the states should provide legislative input on policy issues or oversight generally are noted below.

First, many NAIC programs have been undertaken for apparent beneficial reasons but are carried out without legislative direction or input. For example, under the rubric of “speed to market” for insurance products, the NAIC created a high-tech system for the electronic filing of rates and forms. No doubt the program was beneficial to company personnel responsible for such filings; however, it ignored the public policy question of whether the oversight of rates and forms should be continued as presently done. Many economists and others have stated that consumers may be better off relying upon competition to set rates rather than government. With regard to policy forms, the system also appears to accommodate and promote state differences rather than create uniformity.

A second example of the need for legislative oversight can be found in the failure of the largest property and casualty insurer. Based upon available public information, no legislative committee of any state or the NAIC conducted any inquiries into the failure and why it was not detected earlier, what was done to minimize or prevent the failure and other related questions.

Therefore, we believe it is time for legislators to undertake greater legislative oversight of regulators’ exercise of the authority and duties delegated to them to regulate the business of insurance. These duties include regularly monitoring of (1) the performance of regulators in carrying out their responsibilities and using resources provided to them and (2) NAIC itself. Doing so will allow legislators to assure themselves that their delegation of authority to regulators and NAIC for the promulgation of various regulatory forms, requirements, and standards is being properly carried out.

NCOIL is in the best position to provide the needed leadership. NCOIL should consider various means for it, or its members, to monitor and approve the exercise of that delegated authority. One way for it to do so is for legislatures to require NCOIL’s concurrence with or approval of NAIC models. NCOIL could play a valuable role in that process and should not be ignored by NAIC. On the contrary, NAIC members should welcome and encourage an ongoing dialogue with insurance legislators who, after all, have much to contribute in maintaining strong state regulation of the business of insurance.

- **Standards and Best Practices.** As part of this monitoring process, there needs to be a means to ensure state insurance regulators are following best practices and standards, and preferably these should be set forth in law. Here again, we believe NCOIL could play a lead role in overseeing insurance regulators' exercise of authority by monitoring whether they are conforming to best practices and standards. That role could even include making recommendations for standards and best practices for assessing the actions of each state. For a model of establishing standards and best practices for *regulators*, NCOIL could look to principles-based regulation. Under the system of principles-based regulation in the United Kingdom, several principles establish both regulatory priorities as well as the approach to regulation. These include operating with efficiency, recognizing the role of senior management in meeting regulatory responsibilities, respecting innovation, and having due regard for the impact of regulation on competition.
- **An Insurance Accountability Office.** The monitoring function should be performed by an entity with authority to audit and review the performance of state insurance agencies. While insurance departments are regularly audited by state auditors or comptrollers who perform financial and program audits, they do not have a knowledge of or expertise in insurance to accurately assess the performance of insurance regulators.

Therefore, we recommend that NCOIL consider establishing an independent review body responsible for monitoring state insurance regulators in the exercise of their authority including their activities as NAIC members. Such an entity could be a division or committee of NCOIL and might be called the Insurance Accountability Office. It would be managed and directed by state legislators and they would be assisted by others either appointed by them to the Office or to an advisory committee including, for example, insurance professionals, industry representatives, consumers, and former regulators.

This office or committee would function much like the Government Accountability Office (GAO) does at the federal level. It would be charged with making investigations, recommendations, and findings of fact. It could also be given the role of receiving complaints and recommendations from interested persons concerning the operations of state insurance departments.

The legal authority for an Insurance Accountability Office would be based in statute, just as the delegated authority of NAIC is now. This change could be accomplished by each member of NCOIL, and any other interested state, amending its insurance code to establish and set forth the authority and duties of the office. To assist its members, NCOIL could develop a model law creating such an Office. Then, it would only be necessary for a single state to enact the model in order for the office to begin its existence.

As more states enact the model, the office would gain greater authority and ability to accomplish its purposes, thereby giving each participating state a means to monitor and evaluate its own state regulators. The Office would report at least annually to each state legislature that enacts the model.

The Office would function like the GAO at the federal level by helping legislatures monitor the performance and ensure the accountability of state government to its citizens.²⁷³ In particular, the Office would be invaluable to state legislatures in their oversight of the use of public funds, regulatory policy, funding decisions and the improvement of government economy, efficiency, and effectiveness.

Alternatively, NCOIL members might consider using the mechanism of an interstate compact (described below) as a vehicle for overseeing state insurance departments' activities and specifically NAIC. The purpose of such a compact would be to provide a legal, constitutionally-sanctioned mechanism for oversight of activities including those of NAIC such as its funding, effectiveness, and the processes by which it operates.

4. Open NAIC Meetings

NAIC is an organization comprised of state agency members who are subject to open meetings laws. It is an organization whose functions are similar to a government agency in many respects. It is therefore appropriate to expect NAIC members to follow standards of conduct similar to those required of them under the state open meetings laws. The matter is not a simple one to address. However, the breadth of the NAIC's roles and activities since 1968 suggests that rules need to be established that are clear and binding.

Most would agree that discussions about particular insurers, personnel matters, litigation, and other similar sensitive areas could be properly closed. However, what about other matters? Should strategy sessions involving model laws, federal issues or proposed federal legislation be open? If not always open, when should they be closed?

Over the past five years, the number of closed meetings and meetings held in executive session at NAIC national meetings has increased greatly. Furthermore, one of the key tools of regulation, NAIC Financial Regulation Standards and Accreditation Program, examined elsewhere in this Study, involves the element of secret meetings. The Program is administered by NAIC Financial Regulation Standards and Accreditation Committee (FRSAC) and operates as described in the NAIC Accreditation Informational Pamphlet, which states:

²⁷³ See www.gao.gov

The Financial Regulation Standards and Accreditation Committee of the NAIC . . . , consisting of regulators from across the country, decides whether a state meets the requirements set forth in the Standards. The meetings in which matters of state accreditation are discussed are held in executive session to protect the states, regulators, and in some instances, insurers from disclosure of confidential information.²⁷⁴

But what is “confidential?” Who decides that question? And are such decisions overly broad thereby precluding scrutiny and public knowledge?

In our view, most deliberative discussions and debates regarding model laws and regulations, manuals, and handbooks applicable to insurers should be open to the public. Compliance will be enhanced if the regulated understand the background and concerns that regulatory requirements are seeking to address. Also, regulators can benefit in understanding industry issues and the insight industry may have to offer.

After definitive requirements are established for NAIC meetings and records, what needs to be done to ensure they will be followed? Experience has shown NAIC policy statements can be suspended when some members or staff decide to do so.

We suggest a new model be considered to bring clarity and certainty to this area. Such a law would describe the rules and procedures of behavior required of the NAIC in order for the insurance commissioner to participate. Specifically, state insurance codes could be amended to provide that insurance regulators may not participate in meetings or discussions involving the development or debate of regulatory policy and model laws unless they are open to the public. These statutory changes could be used to address for example the extent to which conference calls should be used for official committee meetings as is the case with the receivership task force. The public’s right of access to NAIC proceedings, reports and various databases containing information collected pursuant to state authority and the need for the NAIC to follow open record laws could also be addressed. While NCOIL has always exhibited transparency and openness in its deliberations and activities, consideration might be given to including NCOIL in any such model law.

²⁷⁴ The pamphlet can be found at http://www.naic.org/documents/committees_f_FRSA_pamphlet.pdf

5. Consider Strengthening State Insurance Regulation Through Expansion of the Interstate Compact.

The interstate compact is a powerful structure for strengthening and improving state insurance regulation. Currently, two interstate insurance regulatory compacts exist. The first one, The Interstate Insurance Receivership Compact, dates to 1996.²⁷⁵ The second one is the Insurance Product Regulation Compact.²⁷⁶ Enacted by 30 state legislatures, it began operations on June 2, 2007 and received its first filing on June 25, 2007. A third compact, to be called The Surplus Lines Insurance Compliance Interstate Compact, has been drafted, but no state legislature has enacted the compact yet.

Under the Insurance Product Regulation Compact, the states established the Interstate Insurance Product Regulation Commission to regulate life insurance, group annuities, disability insurance, and long-term care insurance. It is also notable that the Commission created a Legislative Committee, comprised of legislators appointed by the National Conference of State Legislators and NCOIL, and this committee works with the Commission and makes recommendations. The compact also provides for advisory committees for insurance industry and consumer representatives.

The states should consider expanding the compact to other areas of insurance regulation. We recognize, however, that doing so would require time and effort. Section 3 of Article XIII of the Interstate Insurance Product Regulation Compact states:

Amendments to the Compact may be proposed by the Commission for enactment by the Compacting States. No amendment shall become effective and binding upon the Commission and the Compacting States unless and until all Compacting States enact the amendment into laws.

Thus, expanding the scope of the interstate compact would require amending Section 1 to Article I of the compact. For example, an amendment to expand the product lines under the Commission's jurisdiction might read as follows:

Article I (1) of the Interstate Insurance Product Regulation Compact is hereby amended by adding "commercial liability" and "personal automobile insurance."

Any proposed amendment would need to be accompanied by a supporting rationale.

²⁷⁵ The compact was originally adopted by four states: Illinois, California, Nebraska, New Hampshire, and shortly thereafter by Michigan. California and New Hampshire subsequently withdrew.

²⁷⁶ See http://www.insurancecompact.org/compact_faq.htm

Because unanimous state action is required before an amendment becomes effective, expanding the scope of the compact would be difficult. Nevertheless, each amendment adopted by compact member states would result in stronger and more uniform regulation of insurance.

In making this recommendation, however, we offer one caution. While there is no doubt that compacts are effective in achieving uniformity in regulation, we believe that a proliferation of interstate compacts regulating insurance, each devoted to a single area, could result in multiple regulatory bodies. The result would be costly and inefficient, and ultimately counterproductive by fracturing regulation of the business of insurance. For this reason, we believe our recommendation to amend the existing Insurance Product Regulation Compact is a better approach.

6. Support an Independent Commission of Stakeholders in Considering How State Insurance Regulation Can Be Further Strengthened

During the course of our Study it became apparent that a comprehensive review of the current structure of and approach to state regulation of the business of insurance would be invaluable

As noted in our Study, state insurance regulation is under attack from various quarters. In part, the call for federal regulation results from the industry's frustration with the current system and the belief that it adversely impacts the industry's ability to compete. High profile investigations of the insurance industry have suggested to some consumers that state insurance regulation is inadequate and uneven. Additionally, others have observed that the business of insurance has experienced extraordinary change since the McCarran-Ferguson Act. While the fundamental objective of insurance has remained the same, the environment in which the insurance industry operates has changed dramatically. As our Study notes, there have been several reports in recent months suggesting excessive regulation and litigation are impairing the ability of the United States to compete with other world financial centers. The successes of London and Bermuda in attracting financial activity away from the U.S. are often attributed to the responsiveness of their regulatory models to business and consumer needs.

In contrast with the rules-based approach followed by insurance regulators in the U.S., there is considerable industry discussion and literature relating to the regulatory shift in the UK, Canada, and elsewhere towards "principles based regulation" with the intended goal of promoting flexibility and innovation while protecting consumers. We recognize that there are significant issues with such an approach, and whether it would be appropriate, or even work, in the United States is debatable. Nevertheless, it is worth considering whether aspects of it might be borrowed. A re-thinking of insurance regulation with the goals of reducing burdens on interstate commerce, promoting healthy price and product

competition, and eliminating regulatory micromanagement of price and product decisions is but one area in which core principles could provide the foundation for a reformed state regulatory framework. In its 2003 study of market conduct surveillance in the U.S. (referred to above), NCOIL recommended a system that places reliance on self-examinations, voluntary reporting, and deference to the domestic state, and this too is illustrative of the type of critical re-thinking we envision.

State legislatures are uniquely positioned to protect the welfare of local citizens and to ensure that promises made by insurers are kept. Their closeness to constituents allows for a prompt and effective response to the needs of citizens. Many believe that the success of state insurance regulation has been unmatched by any federal regulatory power over other financial services segments of our economy. Yet the economic realities of a global, highly competitive, and dynamic marketplace will require a number of systemic changes to strengthen state insurance regulation and achieve greater consistency between jurisdictions. This transformation will require deliberate and mature thought and a comprehensive review of the current regulatory framework.

How might such a review be undertaken and achieved? We suggest that an independent commission of various stakeholders could be created either by statute or legislative resolution enacted by each state or a group of states setting forth membership, scope, objectives, and timetables or by appointment by NCOIL. The source of funding would have to be determined to cover commission costs and to engage or hire support staff. But whatever the means decided upon, we think such a review would be a worthwhile endeavor for improving the regulation of the business of insurance by the states.

APPENDIX A – STATE SURVEY

National Conference of Insurance Legislators

California

Statutes and Regulations

Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product

Financial Regulation

Article 4.1	Risk-Based Capital for Insurers	§739.2 - Reports on RBC levels by domestic insurers	Relies on the Risk-Based Capital formula developed by the NAIC
Article 10.1	California Insurance Community Investment	§926.2 - Biennial report on all the Community Development Investments and Community Development Infrastructure Investments in California (Repealed January 1, 2011)	Relies on the NAIC annual statement filed pursuant to Section 900 or Section 11131 regarding the aggregate amount of identified California investments and the aggregate amount of California public debt purchased by insurers
Article 14.7	California Life and Health Guarantee Association	§1067.11 - Detection and Prevention of insurer insolvencies or impairments	Uses the NAIC Insurance Regulatory Information System (IRIS) ratios and listings of companies not included in the ratios developed by the NAIC
Chapter 6	Surplus Line Brokers	§1765.1 - Placement of coverage with nonadmitted insurer by surplus line broker; Requirements	Relies on NAIC Accounting Practices and Procedures Manual
Article 5	Pension Funds, Separate Accounts	§10506.4 - Issuance of policies, contracts or agreements containing guarantees	Issuers of interest bearing obligations must be rated by an independent nationally recognized rating agency approved by the commissioner or by the Securities Valuation Office of the NAIC
Article 5	Pension Funds, Separate Accounts	§10506.4 - Issuance of policies, contracts or agreements containing guarantees	Relies on the NAIC Life, Accident, and Health Annual Statement Instructions and the Valuation of Securities Manual in determining the "asset valuation reserve factor"
Article 6	Medicare Supplement Policies	§10192.17 - Renewal or continuation provision; Acceptance of riders and endorsements; Limitations; Notice of right to return; Guide to health insurance; Notice of changes; Outline of coverage; Additional notices and disclosures; Notice regarding prescription drug coverage	The outline of coverage relies on the chart set forth in Section 17 of the Model Regulation to implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, adopted by the NAIC in 2004
Article 10	Financial Statements of Insurers	§922.2 - Reinsurance contract provisions regarding credit	NAIC Accounting Practices and Procedures Manual sets payment deadlines pursuant to a reinsurance contract
Article 6	Foreign Investments	§1241.1 - Other foreign investments	Relies on the NAIC Securities Valuation Office regarding admitted assets
Article 7	Financial Matters	§11136 - Minimum standard of valuation	Relies on mortality, industrial mortality, individual annuity mortality, displacement rate, termination rate, and accidental death benefit tables adopted after 1980 by the NAIC
Chapter 3.5	Life Insurance Policy Illustrations	§10509.960 - Illustration actuaries	Illustration actuaries shall certify that the disciplined current scale used in illustrations is in conformity with the Actuarial Standard of Practice for Compliance with the NAIC Model Regulation on Life Insurance Illustrations promulgated by the Actuarial Standards Board
Article 10	Financial Statements of Insurers	§922.6 - Foreign ceding insurers	Statements must be completed in conformity with the Accounting Practices and Procedures Manual adopted by the NAIC
Article 1	Deposits by Workers' Compensation Insurers	§11693 - Annual adjustment of deposit	Relies on the companies investment yield determined by the NAIC Insurance Regulatory Information System Ratio Number 5 for Property and Casualty Companies
Article 3a	Standard Valuation Law	§10489.3 - Minimum standard for annuity and pure endowment contracts	Relies on the individual and group annuity mortality tables adopted after 1980 by the NAIC
Article 10.5	National Association of Insurance Commissioners	§934 - Sanctions for failure to file statement	The Commissioner may suspend, revoke, or refuse to renew the certificate of authority of any insurer failing to file its annual or quarterly statement with the NAIC when due
Article 4.7	Insurance Holding Company System Regulatory Act	§1215.4 - Registration by members of insurance company systems	Every insurer subject to registration shall file a registration statement on a form prescribed by the NAIC
Article 3.5	Disclosure of Material Transactions	§1185 - Filing of report	Domestic incorporated insurers must file complete report to the NAIC
Article 4	Property Authorized for Excess Funds Investments	§1194.6 - Indebtedness issued by corporation incorporated under laws of alien government	Any bond, note or other evidence of indebtedness is evaluated by the NAIC as a bond which may be carried at amortized cost
Article 4	Examination by Commissioner	§730 - Circumstances calling for examination; Scheduled examinations; Acceptance of out-of-state examination reports	Commissioner may rely on the Examiner's Handbook adopted by the NAIC to determine nature, scope, and frequency of examinations

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California		Statutes and Regulations	Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product
Article 4.6	Hedging	§1212 - "Insurance futures contracts"; Transactions in insurance futures contracts	The Commissioner may adopt rules and guidelines establishing standards and requirements relative to practices authorized in this section. The commissioner shall issue a bulletin by June 30, 1994, setting forth the accounting, reporting, and valuation practices and procedures for insurance futures contracts. A bulletin is not required if prior to the June 30, 1994, accounting practices and procedures are officially promulgated by the NAIC.
Article 4	Property Authorized for Excess Funds Investments	§1196.1 - Medium or lower grade obligations	Relies on the NAIC Securities Valuation Office to rate obligations
Article 2	Special Deductions	§24410 - Dividends received deduction with respect to qualified dividends received by corporation from corporation that is insurer; Election; Regulations	Relies on the NAIC Accounting Practices and Procedures Manual, Annual Statement Instructions and Risk Based Capital Instructions
Article 4.6	Hedging	§1211 - Conditions authorizing domestic incorporated insurer to engage in derivative transactions	Quarterly reports shall comply with applicable financial requirements promulgated by the commissioner and requirements included in the NAIC's Purposes and Procedures Manual, Accounting Practices and Procedures Manual and Annual Statement Instructions
Article 10	Financial Statements of Insurers	§900.2 - Annual audit; Promulgation of regulations	Annual audit shall be conducted and the audit report prepared and filed in conformity with the Annual Audited Financial Reports instructions contained in the annual statement instructions adopted by the NAIC
Article 3	Rating and Other Organizations	§11752 - Examination of rating organizations	In lieu of an examination the commissioner may accept the report of examination made by the insurance supervisory official of another state or the report of a representative designated by the NAIC
Article 4	Examination by Commissioner	§733 - Powers of Commissioner	The commissioner conducting the examination shall observe the guidelines and procedures set forth in the Examiner's handbook adopted by the NAIC
Article 3a	Standard Valuation Law	§10489.94 - Bulletin providing tables of select mortality factors and other data; Superseding regulations	Bulletin and superseding regulations shall contain provisions of the NAIC Valuation of Life Insurance Model Regulation Number 830
Article 4	Property Authorized for Excess Funds Investments	§1192.10 - Securities related to pool of financial assets held by unaffiliated business entity	Relies on the NAIC's Securities Valuation Office investment rating
Article 3a	Standard Valuation Law	§1315 - Interest rates	NAIC is responsible for the method that determines the reference interest rate
Article 4	Property Authorized for Excess Funds Investments	§1192.95 - Excess Funds investments; Investment cash management pools	Relies on the NAIC's Securities Valuation Office rating of assets in a cash management pool
Article 1.6	Medicare Supplement Coverage	§2220.58 - Annual Premium Rates and Loss ratio Experience Filing Requirements for Medicare Supplement Insurance	Insurers must provide a NAIC Experience Exhibit for each individual policy form or group certificate which covers 100 or more California residents
Article 3	Annual Statements Premiums in Course of Collection	§2303.19 - Denial of Statement Credit and Non-Admission of Assets	NAIC Accounting Guidance shall be followed
Article 12.3	Valuation of Life Insurance Policies	§2542.4 - General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves	Relies on valuation mortality tables adopted by the NAIC after July 1, 2000
Article 4.5	Loss and Loss Expense Reserves	§2319.3 - Minimum Reserves	The method used by the NAIC for calculating the excess of statutory reserves over statement reserves in the annual statement is adopted for the minimum reserve requires of section 11558
Article 11	Separate Account or Accounts - Variable Contracts	§2531 - Required Reports	Insurer shall submit to the Insurance Commissioner a statement of the business of its separate account or accounts in such form as may be prescribed by the NAIC
Article 2	Valuation of Properties and Securities	§2282 - Bonds and Stocks	The Insurance Commissioner requires a mandatory securities valuation reserve be established in accordance with the rules and instructions of the Committee on Valuation of the NAIC
Article 4	Determination of Reasonable Rates	§2644.12 - Efficiency Standard	All data shall be taken from the NAIC database of the statutory annual statement state page and of the Insurance Expense Exhibit
Article 3	Annual Statements Premiums in Course of Collection	§2303.12 - Transfer of Risk - Property & Casualty	Transfer of risk shall be determined by application of the risk transfer requirements of the NAIC Accounting Guidance
Article 3	Annual Statements Premiums in Course of Collection	§2303.24 - Effective Date	Licenses shall continue to conform to the requirements of the NAIC Accounting Guidance

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California

Statutes and Regulations

Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product

Valuation of Life Insurance Policies	§2542.5 - Calculation of Minimum Valuation Standard for Policies with Guaranteed Nonlevel Gross Premiums or Guaranteed Nonlevel Benefits (Other than Universal Life Policies)	Calculations use the Maximum Valuation Interest Rate and the 1980 CSO Valuation Tables with or without Ten-year Select Factors, or any other table adopted by the NAIC after July 1, 2000
Article 12.3	Annual Statements Premiums in Course of Intermediaries	Examinations shall observe the guidelines and procedures set forth in the Examiner's Handbook adopted by the NAIC
Article 3	Annual Statements Premiums in Course of Intermediaries	The agreement shall meet the credit for reinsurance requirements of the NAIC Accounting Guidance Credit
Article 3	Annual Statements Premiums in Course of Intermediaries	The agreement shall meet the credit for reinsurance requirements of the NAIC Accounting Guidance Credit
Market Conduct		
Article 3.7	Consumer Protection	Relies on the "Long-Term Care Insurance Personal Worksheet," contained in the Long-Term Care Insurance Model Regulations of the NAIC
Article 3	Licensing	Relies on NAIC Uniform Nonresident Application
Article 6	Medicare Supplement Policies	Requires issuers of health insurance policies, certificates, or contracts that provide hospital or medical expense coverage on an expense incurred or indemnity basis, other than incidentally to persons eligible for Medicare to provide applicants a Guide to Health Insurance for People with Medicare developed jointly by the NAIC and the Centers for Medicare and Medicaid Services
Chapter 6.5	Reinsurance Intermediaries	Non-Residents must submit a completed NAIC Uniform Nonresident Application to the commissioner
Article 4	Implementation	Notwithstanding any other provision of law, the commissioner may require the administration by an insurer of the contingent benefit upon lapse, as described in Section 26 (A), (D) (3), (E), (F), (G) and (J) of the Long-Term Care Insurance Model regulation promulgated by the NAIC
Article 3	General Provisions (First of two)	Any regulations adopted by the commissioner shall substantially reflect the loss ratio standards contained in section 10 of the NAIC's Long-term Care Model Regulations
Article 3	Licensing	The Insurance commissioner may verify the producer's licensing status through the Producer Database maintained by the NAIC
Chapter 5.6	Life Insurance Cost Index	A buyer's guide is a document that contains, and is limited to, the current buyer's guide recommended for use by the NAIC
Article 4	Loans	No surplus note or other agreement may be issued unless it conforms to the requirements set forth at the time the note is issued in the Accounting Practices and Procedures Manual adopted by the NAIC
Article 2	Organization of Exchange	No surplus note or other agreement may be issued unless it conforms to the requirements set forth at the time the note is issued in the Accounting Practices and Procedures Manual adopted by the NAIC
Article 6	Medicare Supplement Policies	A required notice regarding replacement of Medicare supplement coverage for an issuer shall be in the form specified by the commissioner, using a model notice prepared by the NAIC
Article 4.5	Procedures Governing Persons Subject to Title 18 United States Code Section 1033	Prohibited persons must submit to the Department (NAIC) a Short Form Application for Written Consent to engage in the Business of Insurance

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California		Statutes and Regulations	Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product
Article 1.6	Medicare Supplement Coverage	§2220.55 - Informational Brochure	Requires issuers issuing policies which provide hospital or medical expense coverage on an expense incurred or indemnity basis, other than incidentally to persons eligible for Medicare to provide applicants a Guide to Health Insurance for People with Medicare developed jointly by the NAIC and the Health Care Financing Administration
Article 11.1	Separate Account or Accounts - Variable Life Insurance Contracts Procedures Governing Persons Subject to Title 18	§2531 - Qualification of Insurer to Issue Variable Life Insurance §2175.9 - Standard Form of Application for Requesting Written Consent	Commissioner may request biographical data with respect to officers and directors of the insurer on the NAIC Biographical Data Form Prohibited persons seeking the commissioner's written consent will use the NAIC Short Form Application for Written Consent to engage in the Business of Insurance
Article 4.5	United States Code Section 1033		

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Connecticut		Statutes and Regulations		Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product	
Financial Regulation					
Chapter 698	Insurers Part 1 In General. Costs	§38a-53a - Annual statement convention blank filing with the National Association of Insurance Commissioners. Financial statements and other information filing with the National Association of Insurance Commissioners			Each insurer authorized to transact insurance in the state shall annually on or before March first of each year, file electronically with the NAIC a copy of its annual statement and addendums to the annual statement
Chapter 697	General Provisions: Part 2 Insurance Commissioner. Powers and Duties	§38a-8 (Formerly Sec. 38-4) Duties of commissioner. Regulations. Sharing and Maintenance of confidential information. Use of outside experts. Plan re medical malpractice industry			Commissioner shall develop a program of periodic review to ensure compliance by the insurance department with the minimum standards established by the NAIC for effective financial surveillance and regulation of insurance companies
Chapter 698	Insurers Part 2 Financial Requirements	§38a-70 - Accounting Standards			When adopting accounting rules and minimum valuation standards, the commissioner shall follow the accounting and valuation procedures and practices published by the NAIC's Accounting Practices and Procedures and Annual Statement Instructions Manual
Chapter 698	Insurers Part 1 In General. Costs	§38a-53 (Formerly Sec. 38-24) Requirements re filing of annual reports and financial statements by company. Late filing fee.			Each insurance company or health care center shall annually file a report of its financial condition in accordance with the NAIC's Annual Statement Instructions Handbook and following the accounting procedures and practices prescribed by the NAIC's Accounting Practices and Procedures Manual
Chapter 698	Insurers Part 2 Financial Requirements	§38a-71 - Minimum asset requirements. Minimum capital and minimum surplus requirements			Relies on the NAIC's Accounting Practices and Procedures Manual
Chapter 698	Insurers Part 2b Financial Guaranty Insurance Act	§38a-93C - Contingency reserves			Each licensed financial guaranty insurance corporation shall establish and maintain a contingency reserve calculation in accordance with the requirements of the NAIC's Accounting Practices and Procedures Manual
Chapter 698	Insurers Part 2b Financial Guaranty Insurance Act	§38a-92e - Unearned premium reserve			Each licensed financial guaranty insurance corporation shall establish and maintain an unearned premium reserve calculated in accordance with the requirements of the NAIC's Accounting Practices and Procedures Manual
Chapter 698	Insurers Part 2b Financial Guaranty Insurance Act	§38a-92d - Reserves against unpaid losses and loss expense			Each licensed financial guaranty insurance corporation shall establish and maintain reserves against unpaid losses and loss expense. Reserves shall be calculated in accordance with the requirements of the NAIC's Accounting Practices and Procedures Manual
Chapter 700d	Fraternal Benefit Societies Part 1 In General	§38a-610 (Formerly Sec 38-222) Maintenance of Institutions for benefit of members			Property used to create, maintain and operate charitable, benevolent or educational institutions for the benefit of a society's members shall be reported in every annual statement of the society in accordance with the NAIC's Accounting Practices and Procedures Manual
Chapter 698	Insurers Part 2 Financial Requirements	§38a-80 (Formerly Sec. 38-164) Premium reserve for health, accident and liability business			Each insurance company participating in health, accident and liability policies shall maintain a premium reserve on all such policies in force in accordance with the requirements of the NAIC's Account Practices and Procedures Manual
Chapter 698	Insurers Part 1 In General. Costs	§38a-67 - Reporting requirement for cancellations and revisions of coded reinsurance agreements			Every insurer domiciled in the state shall file a report with the NAIC disclosing material acquisitions, dispositions of assets or material nonrenewals and cancellations or revisions of coded reinsurance agreements
Chapter 698a	Health Care and Related Service Groups Part 1 Health Care Centers	§38a-193 - Protection against insolvency			Every health care center, when determining liabilities, shall include an amount estimated in the aggregate to provide for unearned premium and for payment of all claim expenditures which have been incurred. Liabilities shall be calculated in accordance with the NAIC's Accounting Practices and Procedures Manual and Annual Statement Instructions
Chapter 697	General Provisions: Part 2 Insurance Commissioner. Powers and Duties	§38a-14 (Formerly Sec. 38-7) Examination of affairs of the insurance companies, corporations, associations or health care centers collecting underwriting data. Costs			Commissioner may rely on the Examiner's Handbook adopted by the NAIC to determine nature, scope, and frequency of examinations

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Connecticut		Statutes and Regulations		Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product	
Chapter 698	Insurers Part 3 Investments	§38a-102d - Affiliate relationships in the investment of admitted assets. Limitations		In determining the financial condition of an insurance company, its investments in subsidiaries or affiliates shall be valued in accordance with a valuation method approved by the commissioner and consistent with procedures promulgated by the NAIC	
Chapter 698	Insurers Part 2 Financial Requirements	§38a-78 (Formerly Sec. 38-130e) Ascertainment of reserves for life insurance policies and annuity and pure endowment contracts. Annual reporting of reserves to commissioner. Issuance of opinion by qualified actuary. Memorandum in support of opinion. Additional reserves as determined by qualified actuary not deemed a higher standard of valuation. Minimum standards of valuation for health insurance plans. Regulations.		Relies on the NAIC mortality, industrial mortality, disablement rate, termination rate, accidental benefit, individual annuity and group annuity tables. NAIC is responsible for the method that determines the reference interest rate	
Chapter 698	Insurers Part 6 Monopolies. Sale or Exchange of Stock. Mergers. Conversions	§38a-147 (Formerly Sec. 38-37a) Solicitation of Proxies		Regulations shall conform to those prescribed or approved by the NAIC, including such exceptive provisions as may be prescribed by or contained in the regulations of the association	
Chapter 698	Insurers Part 2 Financial Requirements	§38a-87 - Qualified United States financial institutions		Requires determination by the commissioner or NAIC that the institution has met standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of the financial institution whose letters of credit will be acceptable to the commissioner	
Chapter 700d	Fraternal Benefit Societies Part 1 In General	§38a-614 (Formerly Sec. 38-237) Annual report. Synopsis mailed to members. Valuation of Certificate. Reserves		Every society transacting business in the state shall annually file a report with the commissioner a true statement of its financial condition. The statement shall be in general form and context as approved by the NAIC for fraternal benefit societies	
Chapter 701a	Insurance Producers and Agents	§38a-702h - Exemption from examination. Requirements for producers in other states who become residents of Connecticut. Waiver of examination for certain chartered underwriters		Relies on database records maintained by the NAIC to determine if applicant was in good standing for the line of authority requested	
Chapter 698c	Risk Retention groups	§38a-253 (Formerly Sec. 38-533) Submission of information to Insurance Commissioner from risk retention groups domiciled outside state. Financial examination		Examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the NAIC	
Chapter 704c	Insurers Rehabilitation and Liquidation Act and Termination of Domestic Life Insurance Companies Part 1 Model Insurers Rehabilitation and Liquidation Act	§38a-944a - Additional rights. Netting agreements. Qualified financial contracts. Security arrangements.		Relies on the NAIC Security Valuation Office re eligibility for netting	
Chapter 700	Property and Casualty Insurance Part 4 Professional Liability Insurance	§38a-395 (Formerly Sec. 38-370d) Medical malpractice data: Closed claims reports. Database. Annual report.		Relies on the severity of injury scale developed by the NAIC which is required in a closed claim report	
Chapter 700c	Health Insurance Part 1b Health Insurance: Preferred Provider Networks	§38a-479bb - Requirements for managed care organizations that contract with preferred provider networks. Requirements for preferred provider networks		Required to provide the NAIC annual statement for the managed care organization	
Chapter 698	Insurers Part 2 Financial Requirements	§38a-77 (Formerly Sec. 38-130) Valuation of Service		Any company may adopt as a legal minimum standard any mortality table approved or adopted by the NAIC	
Chapter 698	Insurers Part 5 Acquisition of Controlling Interest	§38a-136 (Formerly Sec. 39h) Requirements re transactions between insurance companies and affiliates. Extraordinary dividends or distributions. Prohibited transactions between domestic insurance companies and controlling persons		Any domestic insurance company of which control has been acquired pursuant to section 38a-130 shall, be required to submit to a financial examination and a market conduct examination within 30 days after such acquisition in accordance with procedures set forth by the examiner's handbook of the NAIC	
Title 38A	Insurance - Insurance Department Connecticut Standard Valuation Law	§38a-78-6 Required opinions		Relies on the Examiner Team of the NAIC to determine priority of the company	

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Connecticut		Statutes and Regulations		Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product	
Title 38A	Insurance - Insurance Department Separate Accounts Funding Guaranteed Minimum Benefits Under Group Contracts	§38a-459-14 - Asset maintenance requirements for market value separate accounts supporting contracts other than index contracts		For debt instruments, the percentage shall be the NAIC's asset valuation reserve "reserve objective factor" as set forth in the instructions for the NAIC's Annual and Quarterly Statement Blank. For assets that are not debt instruments, the percentage shall be the NAIC's asset valuation reserve "maximum reserve factor"	
Title 38A	Insurance - Insurance Department Guaranteed Investment Contracts	§38a-459-8 - Reserves for synthetic guaranteed investment contracts		For debt instruments, the percentage shall be the NAIC's asset valuation reserve "reserve objective factor" as set forth in the instructions for the NAIC's Annual and Quarterly Statement Blank. For assets that are not debt instruments, the percentage shall be the NAIC's asset valuation reserve "maximum reserve factor"	
Title 38A	Insurance - Insurance Department Mortality Table	§38a-439-14 - Gender-blended tables		The company may choose from among the blended tables developed by the American Academy of Actuaries CSO task force, proposed to the NAIC's Life and Health Actuarial Task Force	
Title 38A	Insurance - Insurance Department Actuarial Opinion	§38a-53-2 - Statement of actuarial opinion		For the property and casualty insurance companies, the Statement of Actuarial Opinion for the property and casualty lines of business shall be in the format of and the information required by the "Annual Statement Instructions: Property and Casualty" which is published by the NAIC	
Title 38A	Insurance - Insurance Department Actuarial Opinion	§38a-53-2 - Statement of actuarial opinion		For health care centers, the Statement of Actuarial Opinion shall be in the format of and the information required by the "Annual Statement Instructions: Health maintenance Organization" which is published by the NAIC	
Title 38A	Insurance - Insurance Department Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities	§38a-78-34 - Conditions		Unless exempted by the commissioner, every authorized insurer using the 2001 CSO preferred Class Structure Mortality Table shall file annually with the commissioner, with the NAIC, or with a statistical agent designated by the NAIC, statistical reports showing mortality	
Title 38A	Insurance - Insurance Department Annual Audited financial report	§38a-54-4 - Contents of annual audited financial report		Notes to financial statements. Notes shall be those required by the appropriate NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual	
Title 38A	Insurance - Insurance Department Annual Audited Financial Reports	§38a-54-8 - Scope of examination and report of independent certified public accountant		The examination of an insurance company's financial statements shall be conducted in accordance with generally accepted auditing standards and consideration should be given to such other procedures illustrated in the Financial Condition Examiner's Handbook promulgated by the NAIC	
Title 38A	Insurance - Insurance Department NAIC Model regulation Permitting Smoker/Nonsmoker Mortality tables For Use in Determining Minimum Reserve Liabilities	§38a-78-17 - Purpose		The purpose of sections 38a-78-18 to 38a-78-20, inclusive, is to permit the use of mortality tables that reflect differences in mortality between smokers and nonsmokers in determining the minimum reserve liabilities for plans of insurance with separate premium rates for smokers and nonsmokers	
Title 38A	Insurance - Insurance Department Standards on Hazardous Financial Condition	§38a-8-103 - Standards		The commissioner may rely on the NAIC's Insurance Regulatory Information System and its related reports to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to the policy holders, creditors or the general public	
Title 38A	Insurance - Insurance Department Credit for Reinsurance	§38a-88-4 - Credit for reinsurance - Reinsurers maintaining trust funds		The assuming insurer shall report annually to the Commissioner substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the Commissioner to determine the sufficiency of the trust fund	
Title 38A	Insurance - Insurance Department Life Insurance Illustrations	§38a-819-66 - Annual Certifications		The illustration actuary shall certify that the disciplined current scale used in the illustrations is in conformity with the Actuarial Standard of Practice for Compliance with the NAIC Model Regulation on Life Insurance Illustrations	
Title 38A	Insurance - Insurance Department Risk Based Capital for Insurers	§38a-72-2 - RBC reports		Every domestic insurer shall prepare and file a report of its RBC Levels as of the end of the calendar year to the NAIC in accordance with the RBC instructions	
Title 38A	Insurance - Insurance Department Risk-Based Capital Requirements for Health Care Centers	§38a-193-2 - RBC reports		Every health care center shall prepare and file a report of its RBC Levels as of the end of the calendar year to the NAIC in accordance with the RBC instructions	
Title 38A	Insurance - Insurance Department Credit for Reinsurance	§38a-88-6 - Reduction from liability for reinsurance ceded to an unauthorized assuming insurer		Relies on the Securities Valuation Office of the NAIC re qualifying admitted assets	

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Connecticut		Statutes and Regulations		Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product	
Title 38A	Insurance - Insurance Department Standards on Hazardous Financial Condition	§38a-8-104 - Commissioner's authority		If the commissioner determines that continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to the policy holders, creditors or the general public, the commissioner may, upon his determination, issue an order requiring the insurer to file, in addition to regular annual statements, interim financial reports on the form adopted by the NAIC	
Title 38A	Insurance - Insurance Department Requirements for Insurance Companies Applying for a license to do Business in the State of Connecticut	§38a-41-3 - General qualifications		Each insurance company shall file applications using the licensing requirements, forms and procedures as set forth in the Uniform Certificate of Authority Application (UCAA), and any supplemental forms promulgated pursuant to the UCAA published by the NAIC	
Title 38A	Insurance - Insurance Department Surplus Lines Insurers	§38a-740-4 - Standards for eligible surplus lines insurers		Trust funds required by this subsection shall substantially satisfy the requirements of the Standard Form Trust Agreement required for listing with the NAIC International Insurers Department	
Market Conduct					
Chapter 701a	Insurance Producers and Agents	§38a-702g - Nonresident licenses		Commissioner may verify the producer's licensing status through the producer database maintained by the NAIC	
Chapter 701a	Insurance Producers and Agents	§38a-702f - Producer licenses. Reinstatement. Waivers. Notice to commissioner re change in information. Commissioner authorized to contract for performance of ministerial functions re licensing		The commissioner may contract with nongovernmental entities, including, but not limited to, the NAIC to perform any ministerial functions related to producer licensing that the commissioner deems appropriate	
Chapter 701	Personal and Commercial Risk Insurance Rating Practices	§38a-688 (Formerly Sec. 38-201x) Review of rates re personal risk insurance and residual markets in competitive or noncompetitive markets		An insurer may file rates by reference, with or without deviation, to rates charged by another insurer which were filed and are in effect if the insurer's direct written premium for the applicable line of insurance is less than one-half of one percent of the total state-wide direct written premium for that line, as determined from the annual statements filed by insurers licensed to do business in this state and as calculated by the NAIC	
Title 38A	Insurance - Insurance Department Accident and Health Insurance Contracts	§38a-434-1 - Guide for filing and approval		The official guide for the filing and approval of accident and health contracts is issued by the NAIC	
Title 38A	Insurance - Insurance Department Submission and Review of Rates for Medicare Supplement Insurance	§38a-474-2a - Electronic filing		Insurers may file rates with the commissioner electronically using software known as the system for Electronic Rate and Form Filing (SERFF), Version 2.0 or higher, or any subsequent system adopted by the NAIC	
Title 38A	Insurance - Insurance Department Approval of Form of Life Insurance and Annuity Policies and Contracts	§38a-430-3a - Electronic filing		Insurers may file a copy of a form with the commissioner electronically using software known as the system for Electronic Rate and Form Filing (SERFF), Version 2.0 or higher, or any subsequent system adopted by the NAIC	
Title 38A	Insurance - Insurance Department Approval of Group Accident, Group Health, and Group Accident and Health Policy Forms	§38a-480-10a - Electronic filing		Insurers may file a copy of a form with the commissioner electronically using software known as the system for Electronic Rate and Form Filing (SERFF), Version 2.0 or higher, or any subsequent system adopted by the NAIC	
Title 38A	Insurance - Insurance Department Approval of Form of Life Insurance, Endowment and Annuity Policies and Contracts Providing Additional Benefits for Accidental Death and Waiver of Premium Benefits	§38a-480-13a - Electronic filing		Insurers may file a copy of a form with the commissioner electronically using software known as the system for Electronic Rate and Form Filing (SERFF), Version 2.0 or higher, or any subsequent system adopted by the NAIC	
Title 38A	Insurance - Insurance Department Approval of Individual Accident and Health Policy Forms	§38a-481-3a - Electronic filing		Insurers may file a copy of a form with the commissioner electronically using software known as the system for Electronic Rate and Form Filing (SERFF), Version 2.0 or higher, or any subsequent system adopted by the NAIC	
Title 38A	Insurance - Insurance Department Approval of Form of Fraternal Benefit Society Policies and Contracts	§38a-640-3a - Electronic filing		Insurers may file a copy of a form with the commissioner electronically using software known as the system for Electronic Rate and Form Filing (SERFF), Version 2.0 or higher, or any subsequent system adopted by the NAIC	

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Connecticut		Statutes and Regulations	Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product
Title 38A	Insurance - Insurance Department Approval of Credit Life Insurance and Credit Accident and Health Insurance Policy	§38a-651-3a - Electronic filing	Insurers may file a copy of a form with the commissioner electronically using software known as the system for Electronic Rate and Form Filing (SERFF), Version 2.0 or higher, or any subsequent system adopted by the NAIC
Title 38A	Insurance - Insurance Department Modified Guaranteed Annuities	§38a-433-14 - Authority of Insurers	Before a company shall deliver or issue such annuities, the commissioner may request biographical data with respect to officers and directors of the company on the NAIC uniform biographical data form
Title 38A	Insurance - Insurance Department Modified Guaranteed Life Insurance	§38a-433-24 - Authority of Insurers	Before a company shall deliver or issue for delivery such life insurance, the commissioner may request biographical data with respect to officers and directors of the company on the NAIC uniform biographical data form
Title 38A	Insurance - Insurance Department Medicare Supplement Insurance Minimum Standards	§38a-495a-13 - Required disclosure provisions	Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide those applicants a Guide to Health Insurance for People with Medicare in a form jointly developed by the NAIC and the Centers for Medicare and Medicaid Services
Title 38A	Insurance - Insurance Department Medicare Supplement Insurance Minimum Standards	§38a-495-10 - Required disclosure provisions	Issuers issuing accident and sickness policies, certificates or subscriber contracts which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare by reason of age shall provide those applicants a Medicare supplement Buyer's Guide in the form jointly developed by the NAIC and the Health Care Financing Administration

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Minnesota		Statutes and Regulations		Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product	
Financial Regulation					
Chapter 60E	Risk Retention Groups	60E.03 - Risk Retention Groups Chartered in This State		All risk retention groups chartered in this state shall file an annual statement with the NAIC in accordance with its instructions and the NAIC Accounting Practices and Procedures Manual.	
Chapter 60A	General Insurance Powers Insurance Regulatory Information System	60A.91 - Filing Requirements		An insurer who is authorized to transact insurance in this state shall annually on or before March 1 of each year, file with the NAIC a copy of its annual statement blank, along with additional filings prescribed by the commissioner for the preceding year.	
Chapter 60E	Risk Retention Groups	60E.04 - Risk Retention Groups Not Chartered in This State		Before offering insurance in this state, a risk retention group shall submit to the commissioner risk retention group data on a form prescribed by the NAIC.	
Chapter 60A	General Insurance Powers Insurance Regulatory Information System	60A.92 - Immunity		In absence of actual malice, members of the NAIC and all others charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement convention blanks are acting as agents of the commissioner.	
Chapter 60A	General Insurance Powers Financial Regulation	60A.13 - Annual Statement, Inquiries, Renewal Licenses		Every insurance company, including fraternal benefit societies, and reciprocal exchanges, doing business in this state, shall file annually with the commissioner the appropriate verified NAIC annual statement blank in accordance with the associations instructions handbook and following those accounting procedures and practices prescribed by the association's accounting practices and procedures manual.	
Chapter 60A	General Insurance Powers Financial Regulation	60A.13 - Annual Statement, Inquiries, Renewal Licenses		All companies required to file an annual and or quarterly statements under this subdivision may also be required to file with the commissioner and the NAIC a copy of their annual and or quarterly statement.	
Chapter 60A	General Insurance Powers Financial Regulation	60A.13 - Annual Statement, Inquiries, Renewal Licenses		No company shall transact any new business in this state after May 31 in any year unless it shall have previously transmitted its annual statement to the commissioner and filed a copy of the statement with the NAIC. The commissioner may by order annually require that each insurer pay the required fee to the NAIC for filing of annual statements.	
Chapter 60A	General Insurance Powers Minimum Standard of Valuation for Health Insurance	6A.768 - Specific Standards for Morbidity, Interest, and Mortality		Relies on the 1985 NAIC Cancer Claim Cost Tables; Other mortality tables adopted by the NAIC and commissioner may be used in the calculation of the minimum reserves if appropriate for the type of benefits.	
Chapter 60E	Risk Retention Groups	60E.08 - Notice and Registration Requirements of Purchasing Groups		A purchasing group that intends to do business in this state shall, prior to doing business, furnish notice to the commissioner on forms prescribed by the NAIC.	
Chapter 60A	General Insurance Powers Risk-Based Capital for Health Organizations	60A.51 - RBC Reports		A domestic health organization shall prepare and submit a report of its RBC levels to the NAIC in accordance with the RBC instructions.	
Chapter 60A	General Insurance Powers Regulation of Risk-Based Capital	60A.61 - Risk-Based Capital Reports		A domestic insurer shall prepare and submit a report of its RBC levels to the NAIC in accordance with the RBC instructions.	
Chapter 61A	Life Insurance Standard Valuation Law	61A.25 - Standard Valuation Law		Relies on mortality, industrial mortality, individual annuity mortality, displacement rate, termination rate, accidental death benefit, individual annuity, and group annuity tables adopted after 1980 by the NAIC.	
Chapter 65A	Fire and Related Insurance Minnesota Fair Plan Act	65A.35 - Administration		Participation by each member in the plan is determined annually by the plan on the basis of such premiums written during the second preceding calendar year as disclosed in the annual statements and other reports filed by the member with the NAIC.	
Chapter 60A	General Insurance Powers Financial Regulation	60A.135 - Report; Certain Transactions		Every insurer domiciled in the state shall file a report with the NAIC disclosing material acquisitions, dispositions of assets or material nonrenewals and cancellations or revisions of ceded reinsurance agreements.	
Chapter 60A	General Insurance Powers Financial Regulation	60A.093 - Reduction from Liability for Reinsurance by a Domestic Insurer; Collateral Requirements		Relies on the NAIC Securities Valuation Office regarding admitted assets; Requires determination by the commissioner or NAIC that the institution has met standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of the financial institution whose letters of credit will be acceptable to the commissioner.	

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Minnesota

Statutes and Regulations

Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product

Chapter 61A	Life Insurance Investments	61A.28 - Domestic Companies, Investments	Investments must be valued in accordance with the valuation procedures established by the NAIC, unless the commissioner requires or finds another method of valuation reasonable under the circumstances
Chapter 60 A	General Insurance Powers Surplus Lines Insurance	60A.206 - Qualification as Eligible Surplus Lines Insurer	Each alien surplus lines insurer shall have current financial data filed with the NAIC's Nonadmitted Insurers Information Office
Chapter 60 A	General Insurance Powers Surplus Lines Insurance	60A.206 - Qualification as Eligible Surplus Lines Insurer	Eligible surplus lines insurers domiciled outside the United States shall file an annual statement on the standard nonadmitted insurers information office financial reporting format as prescribed by the NAIC
Chapter 60A	General Insurance Powers Financial Regulation	60A.11 - Investments Permitted For Domestic Companies	Investments must be valued in accordance with the valuation procedures established by the NAIC, unless the commissioner requires or finds another method of valuation reasonable under the circumstances
Chapter 60A	General Insurance Powers Financial Regulation	60A.031 - Examinations	The examiner shall observe the guidelines and procedures in the examiner's handbook adopted by the NAIC
Chapter 60A	General Insurance Powers Insurance Regulatory Information System	60A.93 - Confidentiality	All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the department by the NAIC's Insurance Regulatory Information System are confidential and may not be disclosed by the department
Chapter 64B	Fraternal Benefit Societies	64B.26 - Reports	Every society transacting business in the state shall annually file a report with the commissioner a true statement of its financial condition. The statement shall be in general form and context as approved by the NAIC for fraternal benefit societies
Chapter 60G	Administrative Supervision	60G.20 Standards	The commissioner may rely on the NAIC's Insurance Regulatory Information System and its related reports to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to the policy holders, creditors or the general public
Chapter 60A	General Insurance Powers Financial Regulation	60A.12 - Assets and Liabilities	When, in judgment of the commissioner, the loss reserves, calculated in accordance with statutory accounting practices as set forth in the NAIC's accounting practices and procedures manual are inadequate, the commissioner may require the corporation to maintain additional reserves
Chapter 61	Life Insurance Standard Valuation Law	61A.255 - Smoker and Nonsmoker Mortality Tables	The tables may be utilized as provided in the model rule permitting smoker and nonsmoker mortality tables for use in determining minimum reserve liabilities and nonforfeiture benefits adopted by the NAIC
Chapter 60G	Administrative Supervision	60G.21 - Commissioner's Order	If the commissioner determines that continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to the policy holders, creditors or the general public, the commissioner may, upon his determination, issue an order requiring the insurer to file, in addition to regular annual statements, interim financial reports on the form adopted by the NAIC
Chapter 67A	Township Mutual Companies Insurance Companies	67A.231 - Deposit of Funds; Investment, Limitations	Relies on the Securities Valuation Office of the NAIC re rating of bonds or other interest bearing obligations
Chapter 60D	Insurance Holding Company Systems	60D.19 - Registration of Insurers	Every Insurer subject to registration shall file the registration statement on a form prescribed by the NAIC
Chapter 60A	General Insurance Powers Reinsurance Intermediary Act	60A.715 - Required Contract Provisions; Reinsurance Intermediary-Brokers	Relies on the NAIC Securities Valuation Office regarding investment ratings
Chapter 61A	Life Insurance Investments	61A.29 - Foreign Investments	Relies on the NAIC Securities Valuation Office regarding investment ratings
Chapter 62A	Accident and Health Insurance Medicare Supplemental Insurance	62A.36 - Loss Ratio Standards	An insurer shall collect and file with the commissioner by May 31 of each year the data contained in the NAIC Medicare Supplement Refund Calculating form, for each type of Medicare supplement benefit plan
Chapter 68A	Title Insurance Companies	68A.03 - Reserves	The actual certification required of a title insurer must conform to the NAIC annual statement instructions for title insurers
Chapter 60A	General Insurance Powers Nonprofit Risk Indemnification	60A.29 - Nonprofit Risk Indemnification Trust Act	Relies on the general rules for allowance of reinsurance credits stated in the Financial Condition Examiners Handbook adopted by the NAIC

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Minnesota		Statutes and Regulations		Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product	
Chapter 2747	Valuation of Life Insurance Policies	2747.0030 - General Calculation Requirements For Basic Reserves and Premium Deficiency Reserves		Relies on mortality tables adopted by the NAIC	
Chapter 2747	Valuation of Life Insurance Policies	2747.0040 - Calculation of Minimum Valuation Standard For Policies With Guaranteed Nonlevel Gross Premiums or Guaranteed Nonlevel Benefits Other Than Universal Life Policies		Relies in the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after January 1, 2000, by the NAIC	
Chapter 2747	Valuation of Life Insurance Policies	2747.0050 - Minimum Valuation Standard For Certain Flexible Premium and Fixed Premium Universal Life Insurance Policies; Secondary Guarantee Period Policies		Relies in the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after January 1, 2000, by the NAIC	
Market Conduct					
Chapter 60K	Insurance Procedures	60K.38 - License		The commissioner may contract with nongovernmental entities, including the NAIC to perform any ministerial functions related to producer licensing that the commissioner deems appropriate	
Chapter 60A	General Insurance Powers Insolvency, Suspension, and Discipline of Insurers	60A.26 - Suspension of Insurers; Notifications and Reports		The commissioner of commerce shall report public regulatory actions, investigative information, and complaints to the appropriate reporting system or database of the NAIC	
Chapter 62A	Accident and Health Insurance Medicare Supplemental Policies	62A.319 - Reporting of Multiple Policies		An insurer shall report every individual resident of this state for which the insurer has in force more than one Medicare supplement policy or certificate on the NAIC Reporting Medicare Supplement Policies form.	
Chapter 60A	General Insurance Powers	60A.99 - Interstate Insurance Product Regulation Compact		Relies on the NAIC Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation re protections for customers	
Chapter 62S	Qualified Long-Term Care Insurance Policies	62S.315 - Producer Training		The commissioner shall approve producer training requirements in accordance with the NAIC Long-Term Care Insurance Model Act provisions	
Chapter 62S	Qualified Long-Term Care Insurance Policies	62S.30 Suitability		An insurer or entity marketing long-term care insurance shall include presentation to the applicant, at or prior to application, of the "Long-Term Care Insurance Personal Worksheet." The worksheet used by the insurer or entity shall contain, at a minimum, the information in the format contained in appendix B of the Long-Term Care Model Regulation adopted by the NAIC	
Chapter 61B	Life and Health Guaranty Association	61B.27 - Prevention of Insolvencies		Uses the NAIC Insurance Regulatory Information System (IRIS) ratios and listings of companies not included in the ratios developed by the NAIC	
Chapter 62S	Qualified Long-Term Care Insurance Policies	62S.31 - Requirement to Deliver Shopper's Guide		A long-term care insurance shopper's guide in the format developed by the NAIC shall be provided to all prospective applicants of a long-term care insurance policy or certificate	
Chapter 60K	Insurance Producers	60K.39 - Nonresident Licensing		The Insurance commissioner may verify the producer's licensing status through the Producer Database maintained by the NAIC	
Chapter 62S	Qualified Long-Term Care Insurance Policies	62S.25 - Reporting Requirements		Reports shall include the information contained in Appendix E (Claim Denial Reporting Form) and in Appendix G (Replacement and Lapse Reporting Form) of the Long-Term Care Model Regulation adopted by the NAIC	
Chapter 62S	Qualified Long-Term Care Insurance Policies	62S.081 - Required Disclosure of Rating Practices to Consumers		An insurer shall use the forms in Appendices B (Personal Worksheet) and F (Potential Rate Increase Disclosure Form) of the Long-Term Care Model Regulation adopted by the NAIC	
Chapter 60A	General Insurance Powers	60A.03 - Commissioner of Commerce		Per diem salary fees may be based upon the approval examination fee schedules of the NAIC	
Chapter 60K	Insurance Producers	60K.40 - Individuals Licensed in Another State; Exemption From Examination		The Insurance commissioner may verify the producer's licensing status through the Producer Database maintained by the NAIC	

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Ohio		Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product	
Statutes and Regulations			
Financial Regulation			
Chapter 3960	Risk Retention	§3960.02 - Requirements for risk retention group to transact business; notice to NAIC; application of laws; taxes	The superintendent, upon the filing of an application by a risk retention group for a certificate of authority to transact the business of liability insurance in this state, shall provide summary information to the NAIC
Chapter 3907	Domestic Legal Reserve Life Insurance Companies	§3907.20 - Valuation of Securities	All investments shall be valued in accordance with the valuation standards published by the NAIC
Chapter 3901	Superintendent of Insurance Prompt Payments to Health Care Providers	§3901.42 - Participation in insurance regulatory information system required	An insurer who is authorized to transact insurance in this state shall annually on or before March 1 of each year, file with the NAIC a copy of its annual statement blank, along with additional filings prescribed by the superintendent of insurance for the preceding year.
Chapter 3903	Reserve Valuation; Rehabilitation and Liquidation Risk-Based Capital For Insurers Model Act	§3903.82 - Insurer's annual report on RBC levels; superintendent to adjust inaccuracies; legislative findings	Funds held directly by the ceding insurer or in trust on behalf of the ceding insurer shall be in the form of cash or securities that are listed by the securities valuation office of the NAIC and that qualify as admitted assets
Chapter 3901	Superintendent of Insurance Disclosure of Material Transactions Model act	§3901.76 - Security valuation expense fund	As used in this section, "Securities" means stocks, bonds, debentures, and other assets subject from time to time to valuation by the committee on valuation of securities of the NAIC
Chapter 3901	Superintendent of Insurance Disclosure of Material Transactions Model act	§3901.77 - Forms, instructions, manuals; determination of accounting practices and methods	The superintendent of insurance shall adopt the forms, instructions, and manuals prescribed by the NAIC, for the preparation and filing of statutory financial statements and other financial information
Chapter 3903	Reserve Valuation; Rehabilitation and Liquidation	§3903.72 - Annual valuation of reserves for life insurance policies, annuity and pure endowment contracts	Relies on mortality, industrial mortality, individual annuity mortality, displacement rate, termination rate, accidental death benefit, individual annuity, and group annuity tables adopted after 1980 by the NAIC
Chapter 3901	Superintendent of Insurance Credit for Reinsurance Ceded	§3901.63 - Credit for reinsurance ceded as reduction of liability where security is provided	Funds held directly by the ceding insurer or in trust on behalf of the ceding insurer shall be in the form of cash or securities that are listed by the securities valuation office of the NAIC and that qualify as admitted assets
Chapter 3901	Superintendent of Insurance Credit for Reinsurance Ceded	§3901.63 - Credit for reinsurance ceded as reduction of liability where security is provided	Requires determination by the superintendent of NAIC that the institution has met standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of the financial institution whose letters of credit will be acceptable to the superintendent
Chapter 3956	Life and Health Guaranty Association	§3956.12 - Detection and prevention of insolvencies or impairments	To aid in the detection and prevention of insolvencies or impairments, the superintendent shall furnish to the board of directors the NAIC's insurance regulatory information service (IRIS) ratios and listings of companies not included in the ratios developed by the commissioners
Chapter 3956	Life and Health Guaranty Association	§3956.12 - Detection and prevention of insolvencies or impairments	The board of directors, upon majority vote, may request that the superintendent order an examination of any member insurer that the board in good faith believes may be an impaired or insolvent insurer. The examination may be conducted as a NAIC examination or may be conducted by the persons the superintendent designates
Chapter 3925	Domestic Insurance Companies Other Than Life surplus	§3925.08 - Investment of accumulated funds or surplus	Relies on the Securities Valuation Office of the NAIC re rating of bonds or other interest bearing obligations
Chapter 3960	Risk Retention	§3960.03 - Foreign risk retention groups	Examination shall be conducted in an expeditious manner and in accordance with the NAIC's examiner handbook
Chapter 3960	Risk Retention	§3960.03 - Foreign risk retention groups	A risk retention group doing business in this state shall submit to the superintendent a copy of its financial statement under criteria established by the NAIC
Chapter 3901	Superintendent of Insurance	§3901.07 - Examination of financial affairs of insurer	Personnel conducting an examination shall be compensated for each day or portion thereof worked at the rates provided in the examiners' handbook published by the NAIC or the rates applicable to such personnel under section 124.15 or 124.15Z of the revised code, whichever are higher
Chapter 3915	Life Insurance Policy Provisions	§3915.071 - Paid-up nonforfeiture benefit or alternative: cash surrender value	The superintendent may approve the use of any ordinary or industrial mortality table adopted after 1980 by the NAIC in determining the minimum nonforfeiture standard for such policies
Chapter 3915	Life Insurance Policy Provisions	§3915.071 - Paid-up nonforfeiture benefit or alternative: cash surrender value	The superintendent may approve the use of any extended term insurance table adopted after 1980 by the NAIC for use in determining present value

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Ohio		Statutes and Regulations		Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product	
Chapter 3921	Fraternal Benefit Societies	§3921.26 - Certificates of compliance			Every fraternal benefit society transacting business in the state shall annually file a report with the superintendent a true statement of its financial condition. The statement shall be in general form and context as approved by the NAIC for fraternal benefit societies
Chapter 3929	Domestic and Foreign Insurance Companies Other Than Life Reports	§3929.301 - Report by property and casualty insurers on claims and profits or losses			The superintendent of insurance may by rule modify the requirements of this section in order to adopt national standards approved by the NAIC, which may be used by any reporting company as an alternative to the requirements of this section
Chapter 3907	Domestic Legal Reserve Life Insurance Companies	§3907.14 - Investment of capital, surplus, and accumulations			Relies on the purposes and procedures of the Securities Valuation Office of the NAIC re investments of government money market funds
Chapter 3901-6	Life Insurance	3901-6-12 - Permitting the recognition of preferred mortality tables for use in determining minimum reserve liabilities			Unless exempted by the superintendent, every authorized insurer using the 2001 CSO preferred class structure table shall annually file with the superintendent, with the NAIC, or with the statistical agent designated by the NAIC and acceptable to the superintendent, statistical reports showing mortality
Chapter 3901-6	Life Insurance	3901-6-12 - Permitting the recognition of preferred mortality tables for use in determining minimum reserve liabilities			The form of the mortality reports shall be established by the superintendent or the superintendent may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the superintendent
Chapter 3901-3	Acquisitions and Mergers; Insurance Holding Company Systems	3901-3-11 - Actuarial opinion and memorandum			Relies on the Examiner Team of the NAIC to determine priority of the company
Chapter 3901-6	Life Insurance	3901-6-10 - Valuation of life insurance policies			Relies on valuation mortality tables adopted by the NAIC and NAIC Standard Valuation Law
Chapter 3901-3	Acquisitions and Mergers; Insurance Holding Company Systems	3901-3-05 - Valuation of Investments			The Valuation of Securities Manual and Purposes and Procedures Manual of the NAIC Securities Valuation Office and the Accounting Practices and Procedures Manual as published by the NAIC are to be used for valuing investments for which valuations are not otherwise defined by statute or rule
Chapter 3901-3	Acquisitions and Mergers; Insurance Holding Company Systems	3901-3-16 - Credit for reinsurance			The assuming insurer shall report annually to the superintendent substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the superintendent to determine the sufficiency of the trust fund
Chapter 3901-3	Acquisitions and Mergers; Insurance Holding Company Systems	3901-3-18 - NAIC manuals			The purpose of this rule is to adopt the forms, instructions and manuals prescribed by the NAIC for the preparation and filing of statutory financial statements and other financial information
Chapter 3901-6	Life Insurance	3901-6-11 - Recognition of the 2001 CSO mortality table for use in determining minimum reserve liabilities and nonforfeiture benefits			Gender-blended tables - The company may choose from among the blended tables developed by the American academy of actuaries CSO task force and adopted by the NAIC in December 2002
Chapter 3901-1	General Provisions	3901-1-50 - Annual audited financial statements			The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards and consideration should be given to such other standards in the Financial Condition Examiner's Handbook promulgated by the NAIC
Chapter 3901-6	Life Insurance	3901-6-04 - Life Insurance Illustrations			The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the actuarial standard of practice for compliance with the NAIC model regulation on life insurance illustrations promulgated by the actuarial standards board
Chapter 3901-3	Acquisitions and Mergers; Insurance Holding Company Systems	3901-3-13 - Health insurance reserves			Mortality tables adopted by the NAIC and promulgated by the superintendent may be used in the calculation of the minimum reserves if appropriate for the type of benefits and if approved by the superintendent
Chapter 3901-6	Life Insurance	3901-6-08 - Variable life insurance			Any insurer authorized to transact the business of variable life insurance in this state shall submit an annual statement of the business of its separate account or accounts in such form as may be prescribed by the NAIC
Chapter 3901-3	Acquisitions and Mergers; Insurance Holding Company Systems	3901-3-04 - Hazardous financial condition standards			The superintendent may rely on the NAIC's Insurance Regulatory Information System and its related reports to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to the policy holders, creditors or the general public

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Ohio		Statutes and Regulations		Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product	
Chapter 3901-3	Acquisitions and Mergers; Insurance Holding Company Systems	3901-3-06 - Admitted Assets		Relies on the Accounting Practices and Procedures Manual published by the NAIC re the definition of an admitted asset	
Chapter 3901-3	Acquisitions and Mergers; Insurance Holding Company Systems	3901-3-09 - Requirements for domestic insurers employing the services of reinsurance intermediaries		Requires determination by the superintendent or NAIC that the institution has met standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of the financial institution whose letters of credit will be acceptable to the superintendent	
Market Conduct					
Chapter 3915	Life Insurance Policy Provisions	§3915.16 - Interstate insurance product regulation compact		Any uniform standard established by the commission for long-term care insurance products must at least have the same or greater protections for consumers set forth in the NAIC Long-term Care Insurance Model Act and Long-term Care Insurance Model Regulation, adopted as of 2001.	
Chapter 3901	Superintendent of Insurance Prompt Payments to Health Care Providers	§3901.42 - Participation in insurance regulatory information system required		In absence of actual malice, members of the NAIC and all others charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement convention blanks are acting as agents of the superintendent	
Chapter 3905	Insurance Producers Licensing Act	§3905.26 - Centralized agent license registry		The superintendent of insurance may participate, in whole or part, with the NAIC or any of its affiliates or subsidiaries, in a centralized agent license registry in which insurance agent licenses and appointments are centrally or simultaneously effected for all states that require an insurance agent license and that participate in the registry	
Chapter 3905	Insurance Producers Licensing Act	§3905.12 - Rules		The superintendent may contract with nongovernmental entities, including, but not limited to, the NAIC to perform any ministerial functions related to agent licensing that the superintendent deems appropriate	
Chapter 3905	Insurance Producers Licensing Act	§3905.041 - Exceptions to examination requirement		To determine an applicant's licensure and standing in another state, the superintendent of insurance may utilize the producer database maintained by the NAIC or its affiliates or subsidiaries	
Chapter 3905	Insurance Producers Licensing Act	§3905.07 - Nonresident insurance agent or surplus lines broker license		To determine an applicant's licensure and standing in another state, the superintendent of insurance may utilize the producer database maintained by the NAIC or its affiliates or subsidiaries	
Chapter 3916	Viatical Settlements Model Act	§3916.07 - Duties of provider generally; confidentiality of medical information		A viatical provider shall use the NAIC's form for verification unless standards for verification are developed by the superintendent	
Chapter 3916	Viatical Settlements Model Act	§3916.06 - Disclosures to accompany application for viatical settlement and to precede signing of contract, change in ownership or beneficiary		The viatical settlement provider or viatical settlement broker shall use the NAIC's form for the brochure unless one is developed by the superintendent	
Chapter 3901	Superintendent of Insurance Disclosure of Material Transactions Model Act	§3901.78 - Certificates of compliance		Upon request or in any other circumstance that the superintendent determines to be appropriate, the superintendent may issue certificates of compliance to insurance companies and associations authorized to do business in this state, which shall be on either forms established by the NAIC or on such other forms as the superintendent may prescribe	
Chapter 3901	Superintendent of Insurance Prompt Payments to Health Care Providers	§3901.3812 - Administrative remedies for consistent pattern or practice of violations		In making a finding under this division, the superintendent shall apply the error tolerance standards for claims processing contained in the market conduct examiners handbook issued by the NAIC in effect at the time the claims were processed	
Chapter 3903	Reserve Valuation; Rehabilitation and Liquidation	§3903.721 - Determination of valuation interest rate		If such corporate bond rate average is no longer published or the NAIC determines that such average is no longer appropriate, the superintendent may approve the use of any alternative method for the determination of the reference interest rate adopted by the commissioners	
Chapter 3901-5	Continuing Education; Prelicensing Education	3901-5-09 - Agent licensing and appointments		Applicants shall submit a completed NAIC producer application form	
Chapter 3901-5	Continuing Education; Prelicensing Education	3901-5-09 - Agent licensing and appointments		A nonresident individual who wishes to obtain a nonresident insurance agent license application in this state, including a limited lines license must complete the NAIC uniform application	
Chapter 3901-6	Life Insurance	3901-6-03 - Life Insurance Disclosure		A company must use the current buyer's guide, which has been recommended for use by the NAIC, no later than six months after approval by the NAIC	
Chapter 3901-6	Life Insurance	3901-6-08 - Variable life insurance		The superintendent may request biographical data with respect to officers and directors of the insurer on the NAIC Biographical Data Form	

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Ohio		Statutes and Regulations	Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product
Chapter 3901-1 General Provisions	3901-1-23 - Inland marine risks		Inland marine risks shall be established by the nation-wide marine definition, approved and recommended by the NAIC on December 9, 1976
Chapter 3901-4 Long-Term Care Insurance	3901-4-01 - Long-term care insurance		Every insurer or other entity selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those that the insured voluntarily effectuated and shall annually furnish this information to the superintendent in a format prescribed by the NAIC
Chapter 3901-1 General Provisions	3901-1-41 - Medicare supplement		Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide those applicants a Guide to Health Insurance for People with Medicare in the form jointly developed by the NAIC and the Centers for Medicare and Medicaid Services ("CMS")

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New York		Statutes and Regulations		Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product	
Financial Regulation					
Article 3	Administrative and Procedural Provisions	§333 - Assessments to defray expenses of Committee on Valuation of Securities of the National Association of Insurance Commissioners			The purpose of this section is to provide means of making funds available, not in excess of two hundred fifty thousand dollars in any one year, to the committee on Valuation of Securities of the NAIC to defray the expenses of such committee, in the investigation, analyses and valuation of securities and the determination of the amortizability of bonds, owned by insurers, for the purpose of furnishing to the several states on a uniform basis information needed in the supervision of insurers licensed to transact business in several states
Article 41	Property/Casualty Insurance Companies	§4117 - Loss and loss expense reserves			Minimum reserves shall be calculated in accordance with any method adopted or approved by the NAIC
Article 42	Life Insurance Companies and Accident and Health Insurance Companies and Legal Services Insurance Companies	§4217 - Valuation of insurance policies and contracts			Relies on mortality, industrial mortality, individual annuity mortality, displacement rate, termination rate, accidental death benefit, individual annuity, and group annuity tables adopted after 1980 by the NAIC
Article 59	Risk Retention Groups and Purchasing Groups	§5903 - Domestic risk retention groups			Before it may offer insurance in any state, each domestic risk retention group shall submit to the superintendent for approval a plan of operation or feasibility study, and shall also submit a completed NAIC risk retention report form to the superintendent
Article 59	Risk Retention Groups and Purchasing Groups	§5903 - Domestic risk retention groups			Immediately upon receipt of any application for licensing as a domestic risk retention group, the superintendent shall provide summary information concerning the filing to the NAIC
Article 13	Assets and Deposits	§1322 - Risk-based capital for life and accident and health insurance companies			Every domestic insurer shall prepare and file a report of its RBC Levels as of the end of the calendar year to the NAIC in accordance with the RBC instructions
Article 42	Life Insurance Companies and Accident and Health Insurance Companies and Legal Services Insurance Companies	§4233 - Annual statements of life insurance companies			Every annual statement of every life insurance company doing business in this state shall conform substantially to the form of statement adopted by the NAIC
Article 45	Fraternal Benefit Societies	§4526 - Investments of fraternal benefit societies			Relies on the Securities Valuation Office of the NAIC re qualifying admitted assets
Article 3	Administrative and Procedural Provisions	§307 - Annual statements; audited financial statements			Every annual statement form which differs from or is in addition to those adopted from time to time by the NAIC, the superintendent shall cause to be prepared and furnish to every insurer, pension fund or retirement system required by law to report to him, printed forms of the statements and schedules required by him
Article 14	Investments	§1404 - Types of reserve investments permitted for non-life insurers			Relies on the Securities Valuation Office of the NAIC re quality of investments
Article 59	Risk Retention Groups and Purchasing Groups	§5904 - Risk retention groups not chartered in this state			Any risk retention group doing business in this state shall submit to the superintendent a copy of the annual financial statement submitted to the state in which the risk retention group is chartered and licensed, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist under criteria established by the NAIC
Article 14	Investments	§1414 - Valuation of Investments			If the superintendent finds that the interests of policyholders so permit or require, he may permit or require any class of insurers authorized to do business in this state to value their investments or any class thereof as of any date heretofore or hereafter in accordance with any valuation method approved by the NAIC
Article 69	Financial Guaranty Insurance Corporations	§6902 - Organization; financial requirements			Relies on the Securities Valuation Office of the NAIC re quality designation of government obligations
Article 42	Life Insurance Companies and Accident and Health Insurance Companies and Legal Services Insurance Companies	§4221 - Standard nonforfeiture law			Any ordinary mortality tables, adopted after 1980 by the NAIC, that are approved by the superintendent for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table

National Conference of Insurance Legislators

New York		Statutes and Regulations		Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product	
Part 83	Financial Statement Filings and Accounting Practices and Procedures	§83.2 - Background		Except in regard to filings made by Underwriters at Lloyd's, London, the superintendent has prescribed forms and Annual and Quarterly Statement Instructions that are adopted from time to time by the NAIC	
Part 83	Financial Statement Filings and Accounting Practices and Procedures	§83.2 - Background		The Accounting Practices and Procedures Manual shall be used in the preparation of Quarterly Statements and Annual Statement for 2006, which will be filed in 2007	
Part 27	Excess Line Placements Governing Standards	§27.13 - Duty to inquire about authorized users		Prior to placing business with an unauthorized insurer, an excess line broker shall review and retain a copy of the insurer's most recent annual financial statement in the form filed with its home jurisdiction and, if an alien insurer, the financial statement filed with the NAIC	
Part 94	Valuation on Individual and Group Accident and Health Insurance Reserves	§94.10 - Specific standards for morbidity, interest and mortality		Other mortality tables adopted by the NAIC and promulgated by regulation by the superintendent may be used in the calculation of the minimum reserves if appropriate for the type of benefits and if approved by the superintendent for use by an insurer in calculating such reserves	
Part 95	(Regulation 126) Regulations Governing an Actual Opinion and Memorandum	§95.6 - Required Opinions		Relies on the Examiner Team of the NAIC to determine priority of the company	
Part 125	(Regulation 17, 20, and 20-A) Credit for Reinsurance From Unauthorized Insurers	§125.4 - Credit for reinsurance involving risks other than life, annuity and accident and health from unauthorized insurers		Relies on any rating agency recognized by the Securities Valuation Office of the NAIC re obligations	
Part 83	(Regulation 172) Financial Statement Filings and Accounting Practices and Procedures	§83.4 - Conflicts and exceptions		A Supplemental Schedule A is submitted for informational purposes only and is not intended to supersede the Schedule A filed as part of the NAIC Annual Statement Health Blank	
Part 78	(Regulation 59) Evaluation of Subsidiaries of Insurance Companies	§78.3 - Valuation of a Subsidiary		May rely on the value the NAIC placed on the stock of a subsidiary	
Article 1 - Part 361	Regulations Under Disability Benefits Law	§361.3 - Required deposit or surety		May rely on the Securities Evaluation Office to Determine if a bank is a qualified bank	
Part 317	Group Self-Insurance	§317.8 - Integrity of the group self-insurer's trust fund		May rely on the Securities Valuation Office of the NAIC re obligations	
Part 317	Group Self-Insurance	§317.5 - Security		May rely on the Securities Evaluation Office to Determine if a bank is a qualified bank	
Part 53	(Regulation 74) Life and Annuity Costs Disclosure and Sales Illustrations	§53-3.7 - Annual certifications		The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the actuarial standard of practice for compliance with the NAIC model regulation on life insurance illustrations promulgated by the actuarial standards board	
Part 27	Excess Line Placement Governing Standards	§27.14 - Trust Fund		Except in connection with the trust fund specified in paragraph (1) of subdivision (i) of this section, a trust agreement form designed for these purposes and prescribed by the superintendent, or the NAIC standard trust form agreement designed for these purposes as amended by any New York supplement prescribed by the superintendent, shall be utilized to comply with the requirements of this section and section 27.15 of this part	
Part 100	Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits	§100.7 - Gender-Blended Tables		The insurer may choose from among the blended tables developed by the American Academy of Actuaries CSO task force and adopted by the NAIC in December 2002	
Part 27	Excess Line Placements Governing Standards	§27.15 - Trust fund disbursements		Notwithstanding subdivisions (a) and (b) of this section, a trust fund that meets the requirements of the NAIC will be deemed to satisfy the provisions of this section	
Part 95	(Regulation 126) Regulations Governing an Actual Opinion and Memorandum	§95.5 - General Requirements		Relies on the accreditation by the NAIC of an insurance supervisory regulator	
Part 95	(Regulation 126) Regulations Governing an Actual Opinion and Memorandum	§95.11 - Minimum reserve requirements with and without an acceptable actuarial opinion and memorandum		Relies on the Examiner Team of the NAIC to determine priority of the company	
Part 95	(Regulation 126) Regulations Governing an Actual Opinion and Memorandum	§95.7 - Statement of actuarial opinion not including an asset adequacy analysis		Relies on the Examiner Team of the NAIC to determine priority of the company	
Market Conduct					

National Conference of Insurance Legislators

New York		Statutes and Regulations		Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product	
Article 21	Agents, Brokers, Adjusters, Consultants and Intermediaries	§2135 - Administration of certain functions		The superintendent may designate the NAIC or any affiliates or subsidiaries that the NAIC oversees to perform ministerial functions, including the collection of fees, related to producer licensing under this article that the superintendent may deem appropriate	
Article 42	Life Insurance Companies and Accident and Health Insurance Companies and Legal Services Insurance Companies	§4224 - Life, accident and health insurance; discrimination and rebating; prohibited inducements and interdependent		N.Y. Ins. Law §4224(b)(2) is taken from the NAIC's Model Regulation on Unfair Discrimination in Life and Health Insurance on the Basis of Physical or Mental Impairment § III	
Article 42	Life Insurance Companies and Accident and Health Insurance Companies and Legal Services Insurance Companies	§4224 - Life, accident and health insurance; discrimination and rebating; prohibited inducements and interdependent		N.Y. Ins. Law §4224(b)(2) is taken from model regulation from the NAIC on Unfair Discrimination § III	
Article 32	Insurance Contracts - Life, Accident and Health, Annuities	§3209 - Life Insurance, annuities and funding agreements disclosure requirements		No policy of life insurance shall be delivered or issued for delivery in this state after the applicable effective date, unless the prospective purchaser has been provided a copy of the most recent Buyer's Guide adopted by the NAIC	
Article 21	Agents, Brokers, Adjusters, Consultants and Intermediaries	§2112 - Certificate of appointment of an insurance producer to act as an agent and notice of termination of an insurance producer		Nothing in this article shall prohibit the superintendent from releasing final, adjudicated actions including cause terminations that are open to public inspection pursuant to article six of the public officers law to a database or other clearinghouse service maintained by the NAIC	
Article 21	Agents, Brokers, Adjusters, Consultants and Intermediaries	§2103 - Insurance agents; licensing		The superintendent may verify the producer's licensing status through the Producer Database maintained by the NAIC	
Article 21	Agents, Brokers, Adjusters, Consultants and Intermediaries	§2104 - Insurance agents; licensing		The superintendent may verify the producer's licensing status through the Producer Database maintained by the NAIC	
Part 83	Financial Statement Filings and Accounting Practices and Procedures	§83.2 - Background		A codification manual was initially adopted by the NAIC in March of 1998 with an effective date of January 1, 2001. The manual has been subject to a prescribed and deliberate maintenance process at the NAIC. As a result the anticipated procedure is that the NAIC will publish an updated manual in March of each year.	
Part 27	Excess Line Placements Governing Standards	§27.13 - Duty to inquire about authorized users		Prior to placing business with an unauthorized insurer, an excess line broker shall evidence, if an alien insurer, that such insurer appears in the most recent NAIC IID list of alien insurers	
Part 53	(Regulation 74) Life and Annuity Costs Disclosure and Sales Illustrations	§53-2.7 - Life Insurance Buyer's Guide		Relies on the Life Insurance Buyer's guide prepared by the NAIC	
Part 202	(Regulation 65) Compensation to Agents and Fees or Other Allowances Payable for Individual Life Insurance	§202.0 Preamble		Relies on the Code of Ethical Practices with Respect to the Insuring of the Benefits of Union or Union-Management Welfare and Pension Funds adopted by the NAIC	
Part 52	(Regulation 62) Minimum Standards For Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure	§52.18 - Rules relating to content of forms for group insurance		Issuers of accident and health certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide those applicants a Guide to Health Insurance for People with Medicare in the form jointly developed by the NAIC and the Health Care Financing Administration	
Part 95	(Regulation 126) Regulations Governing an Actual Opinion and Memorandum	§95.9 - Description of actuarial memorandum		Relies on the accreditation by the NAIC of an insurance regulator	
Part 52	(Regulation 62) Minimum Standards For Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure	§52.1 - Rules relating to content of forms for individual insurance		Issuers issuing accident and health policies which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide those applicants a Guide to Health Insurance for People with Medicare in the form jointly developed by the NAIC and the Health Care Financing Administration	
Part 52	(Regulation 62) Minimum Standards For Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure	§52.25 - Rules relating to the content and sale of forms for long term care insurance, nursing home insurance only, home care insurance only, and nursing home and home care insurance		Every insurer or other entity selling or issuing long term care insurance, nursing home insurance only, home care insurance only, and nursing home and home care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those that the insured voluntarily effectuated and shall annually furnish this information to the superintendent in a format prescribed by the NAIC	

National Conference of Insurance Legislators

Illinois

Statutes and Regulations

Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product

Financial Regulation

Article 8	Part 1 - General Provisions	§215 ILCS 5/126.7 - Valuation of Investments	The value at which assets of an insurer are required to be reported for statutory accounting purposes as determined in accordance with procedures prescribed in published accounting and valuation standards of the NAIC, including the Purposes and Procedures of the Securities Valuation Office, the Valuation of Securities manual, the Accounting Practices and Procedures manual, the Annual Statement Instructions or any successor valuation procedures officially adopted by the NAIC
Article 7B	Risk Retention Companies	§215 ILCS 5/123B-3 - Risk retention groups organized in this state	All risk retention groups chartered in this state shall file an annual statement with the Department and the NAIC in accordance with the annual statement instructions and the NAIC Accounting Practices and Procedures Manual
Article 11	Reinsurance	§215 ILCS 5/173.11 - Credit allowed a domestic ceding insurer	Requires determination by the Director or NAIC that the institution has met standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of the financial institution whose letters of credit will be acceptable to the superintendent
Article 9	Provisions Applicable To All Companies	§215 ILCS 5/136 - Annual Statement	Every company authorized to do business in this state or accredited by this state shall file with the Director 2 copies of its financial statement for the year ending December 31st immediately preceding on forms prescribed by the Director, which shall conform substantially to the form of statement adopted by the NAIC
Article 9	Provisions Applicable To All Companies	§215 ILCS 5/136 - Annual Statement	Unless the Director provides otherwise, the annual statement is to be prepared in accordance with the annual statement instructions and the Accounting Practices and Procedures manual adopted by the NAIC
Article 9	Provisions Applicable To All Companies	§215 ILCS 5/136 - Annual Statement	Each domestic, foreign, and alien insurer authorized to do business in this state or accredited by this state shall participate in the NAIC Insurance Regulatory Information System, including the payment of all fees and charges of the system.
Article 9	Provisions Applicable To All Companies	§215 ILCS 5/136 - Annual Statement	Each company shall file with the NAIC a copy of its annual financial statement along with any additional filings prescribed by the Director for the preceding year.
Article 9	Provisions Applicable To All Companies	§215 ILCS 5/136 - Annual Statement	Each company shall file with the NAIC annual and quarterly financial statement information computer readable format as required by the Insurance Regulatory Information System
Article 11E	Special Purpose Reinsurance Vehicle Law	§215 ILCS 5/179E-85 - Asset and investment limitations	Assets of the SPRV held in trust to secure obligations under the SPRV contract may be held in securities listed by the Securities Valuation Office of the NAIC
Article 2A	Risk-Based Capital	§215 ILCS 5/35A-10 - RBC Reports	Every domestic insurer shall file its RBC Report with the NAIC in accordance with the RBC Instructions
Article 5 3/4	Group Workers' Compensation Pools; Pooling; Insolvency Fund	§215 ILCS 5/107a.12 - Annual Statement	A pool authorized to do business in this state shall file with the Director 2 copies of its financial statement for the year ending December 31st immediately preceding on forms prescribed by the Director, which shall conform substantially to the form of statement adopted by the NAIC
Article 5 3/4	Group Workers' Compensation Pools; Pooling; Insolvency Fund	§215 ILCS 5/107a.12 - Annual Statement	Unless the Director provides otherwise, the annual statement is to be prepared in accordance with the annual statement instructions and the Accounting Practices and Procedures manual adopted by the NAIC
Article 8	Part 2 Life and Health Insurers - Investments of Domestic Companies	§215 ILCS 5/126.15 - Mortgage loans and real estate	A mortgage loan that is held by an insurer under Section 126.3F or acquired under this Section and is restructured in a manner that meets the requirements of a restructured mortgage loan in accordance with the NAIC Accounting Practices and Procedures Manual or successor publication shall continue to qualify as a mortgage under this article
Article 8	Part 3 Property and Casualty Insurers - Investments of Domestic Companies	§215 ILCS 5/126.28 - Mortgage loans and real estate	A mortgage loan that is held by an insurer under Section 126.3F or acquired under this Section and is restructured in a manner that meets the requirements of a restructured mortgage loan in accordance with the NAIC Accounting Practices and Procedures Manual or successor publication shall continue to qualify as a mortgage under this article

National Conference of Insurance Legislators

Illinois		Statutes and Regulations	Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product
Article 5 3/4	Group Workers' Compensation Pools; Pooling; Insolvency Fund	§215 ILCS 5/107a.11 - Admissible assets	Relies on the Securities Valuation Office of the NAIC re rating obligations
Article 5 3/4	Group Workers' Compensation Pools; Pooling; Insolvency Fund	§215 ILCS 5/107a.11 - Admissible assets	Relies on any rating agency recognized by the Securities Valuation Office of the NAIC re government money market funds and fixed income bond funds
Article 2	Certificate of Authority, General Corporate and Financial Requirements	§215 ILCS 125/2-7 - Annual statement; audited financial reports	A health maintenance organization shall file with the Director 2 copies of its financial statement for the year ending December 31st immediately preceding on forms prescribed by the Director, which shall conform substantially to the form of statement adopted by the NAIC
Article 2	Certificate of Authority, General Corporate and Financial Requirements	§215 ILCS 130/2007 - Annual statement; audited financial reports	A limited health service organization shall file with the Director 2 copies of its financial statement for the year ending December 31st immediately preceding on forms prescribed by the Director, which shall conform substantially to the form of statement adopted by the NAIC
Article 9	Provisions Applicable To All Companies	§215 ILCS 5/141.4 - Disclosure of material transactions	Every insurer domiciled in the state shall file a report with the NAIC disclosing material acquisitions, dispositions of assets or material nonrenewals and cancellations or revisions of ceded reinsurance agreements
Article 9	Provisions Applicable To All Companies	§215 ILCS 5/132.3 - Authority, scope, and scheduling of examinations	Examinations - The Director shall consider the results of the financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria set forth in the Examiners' Handbook adopted by the NAIC
Article 3	Investments	§215 ILCS 1255/3-1 - Investment Regulations	All investments shall be valued in accordance with the valuation standards published by the NAIC
Article 7B	Risk Retention Companies	§215 ILCS 5/123B-4 - Risk retention groups not organized in this state	Any risk retention group doing business in this state shall submit to the Director a copy of the groups financial statement submitted to the state in which the risk retention group is organized and licensed, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist under criteria established by the NAIC
Article 7B	Risk Retention Companies	§215 ILCS 5/123B-4 - Risk retention groups not organized in this state	Any risk retention group must submit to an examination by the Director to determine its financial condition. Examination shall be in accordance with the NAIC's Examiner Handbook
Article 14	Legal Reserve Life Insurance	§215 ILCS 5/233 - Director to value policies - Legal standard of valuation	Relies on mortality, industrial mortality, displacement rate, termination rate, accidental death benefit, individual annuity, and group annuity tables adopted after 1980 by the NAIC
Chapter 9	Provisions Applicable To All Companies	§215 ILCS 5/132.4 - Conduct of Examinations	The examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the NAIC
Article 5 1/2	Insurance Exchange	§215 ILCS 5/107.13a - Periodic filings of syndicates	Every syndicate doing business on the Exchange shall file with the Board and Director of Insurance a copy of its financial statement for the year ending December 31st immediately preceding on forms prescribed by the Director, which shall conform substantially to the form of statement adopted by the NAIC
Article 17	Fraternal Benefit Societies	§215 ILCS 5/306.1 - Reports	Every society transacting business in this state shall annually file with the Director a true statement of its financial condition in general form and context as approved by the NAIC for fraternal benefit societies
Article 7C	Domestic Captive Insurance Companies	§215 ILCS 5/123C-9 - Reports, Statements, and Mandatory Reserves	Unless the Director provides otherwise, the financial condition report is to be prepared in accordance with the Accounting Practices and Procedures manual adopted by the NAIC
Article 14	Legal Reserve Life Insurance	§215 ILCS 5/229.2 - Standard Non-forfeiture Law for Life Insurance	Any ordinary mortality tables, adopted after 1980 by the NAIC, that are approved by the Director for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table
Part 951	Credit Life and Credit Accident and Credit Health Insurance	§951.60 - Experience Reports and Adjustment of Prima Facie Rates	Each insurer doing business in this state shall annually file with the Director and the NAIC's Support & Services Office a report of credit life business written in Illinois on a calendar year basis. The report shall utilize the Credit Insurance Supplement - Annual Statement Blank as approved by the NAIC

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Illinois		Statutes and Regulations	Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product
34683	Insurance Notices and Bulletins	Diskette Filing (CB# 94-5)	Pursuant to Section 136(4) of the Illinois Insurance Code, the department requires authorized insurers reporting on the Property and Casualty Blank, the Life, Accident and Health Blank and the Fraternal Blank to submit certain Annual and Quarterly Statement data on computer diskettes as prescribed by the NAIC Diskette Specifications. The diskettes and a printed copy of each filing must be submitted directly to the NAIC
34241	Insurance Notices and Bulletins	Quarterly Diskette Filings (CB# 93-12)	Effective for the year 1994, fraternal benefit societies are hereby notified of the additional requirement to file computer diskettes of certain financial data as prescribed in the NAIC Diskette Specifications on a quarterly basis. The diskettes and a printed copy of each filing must be submitted directly to the NAIC
34318	Insurance Notices and Bulletins	Diskette Filing (CB# 93-14)	Pursuant to Section 136(4) of the Illinois Insurance Code, the department requires authorized insurers reporting on the Property and Casualty Blank, the Life, Accident and Health Blank and the Fraternal Blank to submit certain Annual and Quarterly Statement data on computer diskettes as prescribed by the NAIC Diskette Specifications. The diskettes and a printed copy of each filing must be submitted directly to the NAIC
35414	Insurance Notices and Bulletins	Diskette Filing (CB# 96-11)	Pursuant to Section 136(4) of the Illinois Insurance Code, the department requires authorized insurers reporting on the Property and Casualty Blank, the Life, Accident and Health Blank and the Fraternal Blank to submit certain Annual and Quarterly Statement data on computer diskettes as prescribed by the NAIC Diskette Specifications. The diskettes and a printed copy of each filing must be submitted directly to the NAIC
35414	Insurance Notices and Bulletins	Diskette Filing (CB# 95-11)	Pursuant to Section 136(4) of the Illinois Insurance Code, the department requires authorized insurers reporting on the Property and Casualty Blank, the Life, Accident and Health Blank and the Fraternal Blank to submit certain Annual and Quarterly Statement data on computer diskettes as prescribed by the NAIC Diskette Specifications. The diskettes and a printed copy of each filing must be submitted directly to the NAIC
Part 5421	Health Maintenance Organization	§5421.30 - Valuation of Investments	The Valuations of Securities Manual, as of December 31, 1994, as published by the NAIC, shall be used for valuing securities for which valuations are not otherwise defined by statute or rule
Part 2004	Accident and Health Reserves	§2004.10 - Application and Effective Date	The standards established by this part will no longer be applicable to policies issued and claims incurred on or after January 1, 2002. After that date, applicable standards are as prescribed by the NAIC
34677	Insurance Notices and Bulletins	Combined Life, Accident, & Health Annual Statement	Effective for the year 1994, all companies authorized to write life and/or accident and health insurance in Illinois (excluding fraternal) which are in a group of affiliated insurers that includes more than one U.S. life, accident and health insurer shall complete a combined annual statement. The statement and diskette must be filed directly to the NAIC
Part 1406	Individual and Group Life Insurance Policy Illustrations	§1406.1000 - Annual Certifications	The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the Actuarial Standard of Practice No. 24, Compliance with the NAIC Life Insurance Illustrations Model Regulation promulgated by the Actuarial Standards Board
Part 1104	Credit for Reinsurance Ceded	§1104.40 - Credit for Reinsurance - Reinsurers Maintaining Trust Funds	The assuming insurer shall report annually to the Director substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the Director to determine the sufficiency of the trust fund
Part 1104	Credit for Reinsurance Ceded	§1104.40 - Credit for Reinsurance - Reinsurers Maintaining Trust Funds	Relies on the Accounting Practices and Procedures Manual and annual statement instructions of the NAIC
Part 1408	Actuarial Opinion and Memorandum	§1408.50 - Required Opinions	Relies on the Examiner Team of the NAIC to determine priority of the company
35384	Insurance Notices and Bulletins	SVO Compliance Certification (CB # 96-9)	Pursuant to the terms set forth in 50 Ill. Administrative Code 801.30, all Illinois domestic companies must submit certain information regarding security investments to the NAIC Securities Valuation Office (SVO). Failure to submit the SVO Compliance Certification according to the terms of the NAIC Annual Statement Instructions may result in a fine

National Conference of Insurance Legislators

Illinois		Statutes and Regulations	Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product
34670	Insurance Notices and Bulletins	Independent Public Accountant's Supplemental Schedule of Assets and Liabilities	Effective for the year 1994, pursuant to the 1994 Annual Statement Instructions, all companies authorized to write life and/or accident and health insurance (excluding Fraternal) in Illinois shall require the independent certified public accountant to subject the information included in the Supplemental Schedule of Assets and Liabilities to the auditing procedures applied in the audit of the current statutory financial statements
34072	Insurance Notices and Bulletins	Adoption of the NAIC Model Actuarial Opinion and Memorandum Regulation (CB 93-3)	The purpose of this memo is to inform all Illinois licensed companies that the Illinois version of the NAIC Model Regulation was officially adopted on March 23, 1993
36875	Insurance Notices and Bulletins	NAIC Accounting Practices and Procedures Manual (CB 2000-11)	Effective January 1, 2001, the NAIC's Accounting Practices and Procedures Manual will become the reporting standard for statutory financial statements filed with the Illinois Department of Insurance
36822	Insurance Notices and Bulletins	NAIC Accounting Practices and Procedures Manual (CB 2000-10)	Effective January 1, 2001, the NAIC's Accounting Practices and Procedures Manual will become the reporting standard for statutory financial statements filed with the Illinois Department of Insurance
Part 806	Derivative Instruments	§806.40 - Guidelines and Internal Control Procedures	The calculation and reporting of the asset valuation reserve shall comply with the filing requirements for Replication Synthetic Asset Transactions contained in the Purposes and Procedures Manual of the Securities Valuation Office of the NAIC
Part 1409	Valuation of Life Insurance Policies Including the Use of Select Mortality Factors	§1409.40 - General calculation requirements for Basic Reserves and Deficiency Reserves	If select mortality factors are elected, they may be the Ten-year mortality factors incorporated into the amendments to the NAIC Standard Valuation Law
Part 925	Annual Audited Financial Report	§925.50 - Contents of Annual Audited Financial Report	Notes to financial statements shall be those required by the appropriate NAIC Annual Statement Instructions and the NAIC
Part 2901	Workers' Compensation Self Insurance Regulation	§2901.30 - Pool Administration	Relies on the Securities Valuation Office of the NAIC re rating obligations
Part 1250	Corrective Orders	§1250.20 - Criteria	The Director may rely on the NAIC's Insurance Regulatory Information System and its related reports to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to the policy holders, creditors or the general public
Part 925	Annual Audited Financial Report	§925.90 - Scope of Examination and Report of Independent Certified Public Accountant	The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards and consideration should be given to such other standards in the Financial Condition Examiner's Handbook promulgated by the NAIC
Part 5421	Health Maintenance Organization	§5421.80 - Financial Reporting	Every entity possessing a Certificate of Authority to transact the business of an HMO shall report the financial condition and results of its HMO operations in a form that shall conform substantially to the form of report adopted by the NAIC
Part 1451	Variable Contracts	§1451.70 - Required Reports	The company shall submit annually to the Director a statement of the business of its separate account or accounts in such a form as prescribed by the NAIC
Part 1401	Security Valuation Reserve	§1401.10 - Requirements in Filing Annual Statement	Every life insurance company, assessment legal reserve company and fraternal benefit society which is authorized to do business in this state shall include in its annual statement each year to be filed with the Illinois Department of Insurance, under liabilities, a Security Valuation Reserve on its stock and bond holdings calculated in accordance with the report of the Sub-Committee on Valuation of Securities adopted by the NAIC
Part 1601	Security Valuation Reserve	§1601.10 - Requirements in Filing Annual Statements	Every life insurance company, assessment legal reserve company and fraternal benefit society which is authorized to do business in this state shall include in its annual statement each year to be filed with the Illinois Department of Insurance, under liabilities, a Security Valuation Reserve on its stock and bond holdings calculated in accordance with the report of the Sub-Committee on Valuation of Securities adopted by the NAIC
Part 1702	Security Valuation Reserve	§1702.10 - Requirements in Filing Annual Statements	Every life insurance company, assessment legal reserve company and fraternal benefit society which is authorized to do business in this state shall include in its annual statement each year to be filed with the Illinois Department of Insurance, under liabilities, a Security Valuation Reserve on its stock and bond holdings calculated in accordance with the report of the Sub-Committee on Valuation of Securities adopted by the NAIC

National Conference of Insurance Legislators

Illinois		Statutes and Regulations		Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product	
Part 936	Supplemental reports for Property and Casualty Insurance Companies	§936.40 - Notification Procedures		A company may be notified by the Director that supplemental reporting requirements must be met if the company has been exempted by the Director from filing the actuarial opinion for any reason outlined in the in the appropriate NAIC Annual Statement Instructions	
Part 927	Anticipated Salvage and Subrogation Recoverable	§927.30 - No credit permitted		Any credit taken under this section shall be in accordance with the annual statement instructions and the Accounting Practices and Procedures Manual adopted by the NAIC	
Part 2510	Annual Privilege Tax	§2510.90 - Annual Privilege Tax Filing Requirements		The applicable premium information as set forth in illustration D of this part which are blank copies of the Direct Business pages filed with the annual statement as established by the NAIC	
Part 5601	Requirements	§5601.70 Financial Statements		Each trust approved pursuant to the Act shall file audited financial statements in accordance with the requirements of section 14 of the Act containing a complete and detailed listing of each asset or investment held, such listing similar to the appropriate investment schedules contained in the Convention Annual Statement of the NAIC	
Part 8100	Title Insurance Act	§8100.1300 - Report of Condition		The NAIC Form 9 is acceptable as a report of condition pursuant to this section	
Part 1104	Credit for Reinsurance Ceded	§1104.60 - Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer		Relies on the Securities Valuation Office of the NAIC re rating securities	
Part 5106	Requirements	§5106.75 - Loss reserve discounting		The trust shall file with the Director a statement of actuarial opinion by a qualified independent actuary, setting forth his or her opinion regarding the adequacy of the trust's reserves for losses and loss adjustment expenses, in such a form and of such content as specified in the NAIC's Annual Statement Instructions: Property and Casualty	
34639	Insurance Notices and Bulletins	Risk Based Capital Reporting in the State of Illinois (CB # 94-10)		The RBC Report provided to the Department shall be calculated in accordance with the RBC Instructions adopted by the NAIC	
Part 1412	Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits	§1412.60 - Gender Blended Tables		The company may choose from among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the NAIC	
Market Conduct					
Article 31	Insurance Producers, Limited Insurance Representatives and Registered Firms	§215 ILCS 5/500-35 - License		The Director may contract with the NAIC or any affiliates or subsidiaries that the NAIC oversees to perform ministerial functions, including the collection of fees, related to producer licensing under this article that the Director may deem appropriate	
Article 9	Provisions Applicable To All Companies	§215 ILCS 5/141a - Managing general agents and retrospective compensation agents		Unless specifically required by the Director, the provisions of this section shall not apply to arrangements between a managing general agent not underwriting any risks located in Illinois and a foreign insurer domiciled in an NAIC accredited state that has adopted legislation substantially similar to the NAIC Managing General Agents Model Act	
Article 8 1/2	Insurance Holding Company Systems	§215 ILCS 5/131.12a - Acquisitions involving insurers not otherwise covered		A pre-acquisition notification shall be in such form and contain such information as prescribed by the Director, which shall conform substantially to the form of notification adopted by the NAIC relating to those markets	
Article 14	Legal Reserve Life Insurance	§215 ILCS 5/233 - Director to value policies - Legal standard of valuation		If such corporate bond rate average is no longer published or the NAIC determines that such average is no longer appropriate, the Director may approve the use of any alternative method for the determination of the reference interest rate adopted by the commissioners	
Chapter 215	Insurance	§215 ILCS 107/5.05 - Accredited State		"Accredited state" means a state in which the insurance regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the NAIC	
Article 31	Insurance Producers, Limited Insurance Representatives and Registered Firms	§215 ILCS 5/500-45 - Exemption from examination		The Director may verify the producer's licensing status through the Producer Database maintained by the NAIC	
Article 31	Insurance Producers, Limited Insurance Representatives and Registered Firms	§215 ILCS 5/500-40 - Nonresident licensing		The Director may verify the producer's licensing status through the Producer Database maintained by the NAIC	
Part 3119	Pre-licensing and Continuing Education	§3119.30 - Provider Responsibilities		Use of the NAIC Midwest Zone Form is also permissible for certification	

National Conference of Insurance Legislators

Illinois		Statutes and Regulations	Brief Description of Instances where the Statute or Regulation Reference a NAIC Work Product
37120	Insurance Notices and Bulletins	Illinois producer licensing bill, signed	Provides a total re-write of the present producer licensing law to conform with the NAIC model regarding definitions, exceptions to licensing, termination notifications, and reciprocity provisions. The face page of the Buyer's Guide shall read, "This guide has been prepared by the Illinois Department of Insurance, in part using materials developed by the National Association of Insurance Commissioners"
Part 930	Life Insurance Solicitation	§930 - Exhibit A - Life Insurance Buyer's Guide	A traditional long-term care insurance shopper's guide in the format developed by the NAIC, or a guide developed or approved by the director shall be provided to all prospective applicants of a traditional long-term care insurance policy or certificate
Part 2012	Traditional Long-Term Care Insurance	§2012.140 - Requirement to Deliver Shopper's Guide	Prior to an insurer offering traditional group traditional long-term care insurance to a resident of this state shall file with the Director evidence that the group policy or certificate thereunder has been approved by a state that has adopted the NAIC's model legislation on Long-Term Care Insurance and attendant regulations
Part 2012	Traditional Long-Term Care Insurance	§2012.100 - Filing Requirement	Companies are allowed to electronically transmit certain policy form filings to the Department of Insurance in Illinois as long as the transmission utilizes a system that has been approved by the Director, including the NAIC SERFF system, for purposes of nationwide electronic rate and form filing transmissions
37183	Insurance Notices and Bulletins	Electronic Transmittal of Life, Accident, Health, Property or Casualty Forms in Illinois	

APPENDIX B – LEGAL AUTHORITY CITED INCLUDING AUTHORITY

CONTINGENT COMMISSION COMPLAINTS

CITED LEGAL AUTHORITY

A. Cited Attorneys General Authority to Bring Suit

New York v. Marsh & McLennan, October 14, 2004, brought by Attorney General

1. Articles 22 and 23-A of the General Business Law; § 63(12) of the Executive Law; common law of the State of New York.

2. State of New York sues in its sovereign and quasi-sovereign capacities, as *parens patriae*, and pursuant to § 63(12) of the Executive Law, General Business Law §§ 340 *et seq.* (the Donnelly Act) and General Business Law §§ 352 *et seq.* (the Martin Act).

3. State of New York sues to redress injury to the State, and to its general economy and residents, as well as on behalf of: (1) persons who purchased insurance brokerage services from Marsh; and (2) persons who purchased, sold or held shares of Marsh during the period in which the cited acts occurred.

Connecticut v. Marsh & McLennan, January 21, 2005, brought by Attorney General

1. Chapter 735a of the General Statutes, more particularly, Conn. Gen. Stat. § 42-110g.

2. Action under Conn. Gen. Stat. § 42-110g, of the Connecticut Unfair Trade Practices Act, Chapter 735a of the Connecticut General Statutes, for alleged violations of Conn. Gen. Stat. § 42-110b(a), which governs unfair or deceptive acts and practices.

Florida v. Marsh & McLennan, March 14, 2006, brought by Attorney General and CFO of the Florida Department of Financial Services

1. The Department of Financial Services regulates the business and transaction of insurance in Florida, and enforces the laws meant to protect the public from misconduct by the insurance industry.

2. The Attorney General is the chief legal officer of the State of Florida and is an enforcing authority for Chapters 542 and 895, Florida Statutes.

New York v. Acordia, December 19, 2006, brought by Attorney General

1. State of New York sues in its sovereign and quasi-sovereign capacities, as *parens patriae*, pursuant to Articles 22-A of the General Business Law; § 63(12) of the Executive Law; common law of the State of New York.

APPENDIX B – LEGAL AUTHORITY CITED INCLUDING AUTHORITY

2. State of New York sues to redress injury to the State, and to its general economy and residents, as well as on behalf of persons who purchased insurance.

Connecticut v. Acordia, December 19, 2006, brought by Attorney General

Attorney General brings this action pursuant to Conn. Gen. Stat. § 42-110m at the request of the Commissioner of the Department of Consumer Protection for the State of Connecticut.

Illinois v. Acordia, December 19, 2006, brought by Attorney General

Attorney General brings this action pursuant to the provisions of the Consumer Fraud Act and her common law authority as Attorney General to represent the People of the State of Illinois.

New York v. Aon, March 3, 2005, brought by Attorney General

Attorney General brings this action pursuant to Articles 22-A of the General Business Law (the Martin Act), § 63(12) of the Executive Law, and common law of the State of New York.

Blumenthal v. Aon, March 4, 2005, brought by Attorney General

Attorney General brings this action pursuant to the authority of Chapter 735a of the General Statutes, more particularly, Conn. Gen. Stat. § 42-110m(a) at the request of the Commissioner of the Department of Consumer Protection for the State of Connecticut.

Illinois v. Aon, March 4, 2005, brought by Attorney General

1. Attorney General is authorized and empowered to enforce the Illinois Consumer Fraud and Deceptive Practices Act by Section 7 of the act, 815 ILCS § 505/7.

2. The Department of Financial and Professional Regulation, Division of Insurance, which previously commenced an investigation of the practices described in this Complaint, is represented herein by the attorney General, in her constitutional capacity, to redress and remedy violations of the Illinois Insurance Code.

3. Attorney General is further authorized to represent the Division of Insurance by 215 ILCS 5/401(d).

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Connecticut v. Hilb Rogal & Hobbs, August 31, 2005, brought by Attorney General

Attorney General brings this action pursuant to Conn. Gen. Stat. § 42-110m at the request of the Commissioner of the Department of Consumer Protection for the State of Connecticut and at the request of the Commissioner of the Connecticut Department of Insurance.

New York v. AIG, May 26, 2005, brought by Attorney General and Superintendent of Insurance

1. Action brought by Attorney General on behalf of People of State of New York based upon his authority under Article 23-A of the General Business Law, § 63(12) of the Executive Law, and the common law of the state of New York.

2. Action also brought by Howard Mills, Superintendent of Insurance of the State of New York upon his authority under Insurance Law §§ 201 and 327.

Minnesota v. AIG, February 16, 2006, brought by Attorney General

Attorney General of the State of Minnesota is authorized under Minnesota Statutes Chapter 8, including Minn. Stat. §§ 8.01, 8.31, 8.32, and under other statutory and common law authority, including *parens patriae* authority, to bring this action on behalf of the State of Minnesota and its citizens, to enforce Minnesota law.

New York v. Hartford, May 10, 2006, brought by Attorney General

Section 63(12) of the Executive Law of the State of New York.

Connecticut v. Hartford, May 10, 2006, brought by Attorney General

Attorney General of the State of Connecticut, brings this action at the request of the Commissioner of the Department of Consumer Protection for the State of Connecticut, pursuant to Conn. Gen. Stat. § 42-110m of the Connecticut Unfair Trade Practices Act.

New York v. Liberty Mutual Holding, May 5, 2006, brought by Attorney General

New York sues in its sovereign and quasi-sovereign capacities, as *parens patriae*, and pursuant to General Business Law § 349 *et seq.*, Executive Law §§ 63(1) and 63(12), Insurance Law § 2316 and the New York Donnelly Act, General Business Law § 340 *et seq.* and the common law of the State of New York.

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Connecticut v. Liberty Mutual Holding Company, May 5, 2006, brought by Attorney General

Attorney General of the State of Connecticut brings this action pursuant to the Connecticut Antitrust Act, Conn. Gen. Stat. §§ 35-24 *et seq.*, and, at the request of the Commissioner of Consumer Protection for the State of Connecticut, pursuant to Conn. Gen. Stat. § 42-110m of the Connecticut Unfair Trade Practices Act.

Illinois v. Liberty Mutual Holding Company, no date, brought by Attorney General

Attorney General brings action pursuant to the provisions of the Consumer Fraud Act and her common law authority as Attorney General to represent the People of the State of Illinois.

New York v. Universal Life, November 12, 2004, brought by Attorney General

Attorney General brings this action pursuant to Articles 22-A of the General Business Law (the Martin Act), § 63(12) of the Executive Law, and common law of the State of New York.

California v. Metlife, Second Amended Complaint, June 3, 2005, brought by Insurance Commissioner

1. The Insurance Commissioner is vested with the duty and power to protect the rights of all Californians concerning the activities of insurance agents, brokers, insurers, and other conducting the business of insurance within California.

2. The Insurance Commissioner brings this action pursuant to Cal. Ins. Code § 12928.6 to enjoin Defendants from engaging in unlawful conduct which targets California businesses, organizations, employers, employees, and others that have purchased insurance products and services from Defendants as part of employee benefit plans.

B. Cited Causes of Action Authority

New York v. Marsh & McLennan, October 14, 2004, brought by Attorney General

1. Executive Law § 63(12); fraudulent business practices; repeated and fraudulent or illegal acts; demonstrated persistent fraud or illegality in the carrying on, conducting, or transaction of a business.

2. Gen. Bus. Law § 340, *et seq.*; antitrust; acted unreasonably to restrain trade and commerce.

3. Gen. Bus. Law § 352-c; Article 23-A of the General Business Law; securities fraud; use or employment of a fraud, deception, concealment, suppression, or false pretense, engaged

APPENDIX B – LEGAL AUTHORITY CITED INCLUDING AUTHORITY

in to induce or promote the issuance, distribution, exchange, sale, negotiation, or purchase within or from this state of securities.

4. Gen. Bus. Law § 352-c; Article 23-A of the General Business Law; securities; engage in an artifice, agreement, device, or scheme to obtain money, profit or property.

5. Unjust Enrichment; unjustly enriched themselves and deprived their clients and the investing public of a fair market price.

6. Common Law Fraud; acts constitute actual and/or constructive fraud under the common law of the State of New York.

Connecticut v. Marsh & McLennan, January 21, 2005, brought by Attorney General

1. Conn. Gen. Stat. § 42-110b(a); conduct constituted unfair or deceptive acts or practices.

2. Conn. Gen. Stat. § 38a-815, *et seq.*; misrepresentation of the terms of insurance, misrepresentations of financial condition, omission, and/or false statements in the course of the sale of insurance products.

3. Regulations of Connecticut State Agencies § 42-110b-18(e); misrepresented the nature, characteristics, benefits, and qualities of the services provided.

4. “[A]s embodied in the common law”; violation of public policy prohibiting violations of the trust, confidence, and duties owed within a fiduciary relationship.

Florida v. Marsh & McLennan, March 14, 2006, brought by Attorney General and CFO of the Florida Department of Financial Services

1. Fla. Stat. §§ 895.03, 895.05, 895.05; Violation of Florida’s RICO Statute; conduct of or participation in an enterprise through a pattern of racketeering activity;

- (a) theft against the state;
- (b) conspiracy to commit theft against the state;
- (c) mail and wire fraud committed against the state;
- (d) conspiracy to commit mail and wire fraud against the state;
- (e) theft committed against Florida insureds;
- (f) conspiracy to commit theft against Florida insureds;

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- (g) mail and wire fraud committed against Florida insureds;
- (h) conspiracy to commit mail and wire fraud against Florida insureds;

2. Fla. Stat. §§ 542.18, 542.27(2), 542.21(1); Violation of Florida’s Antitrust Act; agreed to restrain trade or commerce.

New York v. Acordia, December 19, 2006, brought by Attorney General

1. Executive Law § 63(12); fraudulent business practice; engaged in repeated fraudulent or illegal acts or otherwise demonstrated persistent fraud or illegality in the carrying on, conducting, or transaction of business.

2. Unjust enrichment; enriched themselves and deprived their customers and the investing public of a fair market place.

3. Common law fraud; acts constitute actual and/or constructive fraud under the common law.

4. Breach of Fiduciary Duty; breached their fiduciary duties to their clients.

Connecticut v. Acordia, December 19, 2006, brought by Attorney General

1. Conn. Gen. Stat. § 42-110a, *et seq.*; Breach of the Connecticut Unfair Trade Practices Act; made or caused to be made to Connecticut consumers, directly or indirectly, representations that were material, likely to mislead, and false; thereby breached fiduciary and contractual duties to Connecticut consumers.

2. Regulations of Connecticut State Agencies § 42-110b-18(e); misrepresented the nature, characteristics, benefits, and qualities of the services provided by it.

Illinois v. Acordia, December 19, 2006, brought by Attorney General

815 ILCS § 505/2; Illinois Consumer Fraud Act; Unfair methods of competition or deceptive acts or practices; soliciting and receiving contingent commissions from insurers resulting in the steering of insurance to those insurers; failing to disclose to Illinois clients the terms and conditions of their agreements with insurers, despite their actual knowledge that these omissions were misleading and deceptive.

New York v. Aon, March 3, 2005, brought by Attorney General

1. Executive Law § 63(12); Fraudulent business practice; engaged in repeated fraudulent or illegal acts or otherwise demonstrated persistent fraud or illegality in the carrying on, conducting, or transaction of business.

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2. Unjust enrichment; enriched themselves and deprived their customers and the investing public of a fair market place.

3. Common law fraud; acts constitute actual and/or constructive fraud under the common law.

4. Gen. Bus. Law § 352-c; Article 23-A of the General Business Law; Securities Fraud; use or employment of a fraud, deception, concealment, suppression, or false pretense, engaged in to induce or promote the issuance, distribution, exchange, sale, negotiation, or purchase within or from this state of securities.

5. Gen. Bus. Law § 352-c; Article 23-A of the General Business Law; Securities; engage in an artifice, agreement, device, or scheme to obtain money, profit or property.

Blumenthal v. Aon, March 4, 2005, brought by Attorney General

1. Conn. Gen. Stat. § 42-110b(a); Connecticut Unfair Trade Practices Act, Chapter 735a of the Connecticut General Statutes; unfair and deceptive acts and practices; made or caused to be made to Connecticut consumers, directly or indirectly, representations that were material, likely to mislead, and false; thereby breached fiduciary and contractual duties to Connecticut consumers.

2. Regulations of Connecticut State Agencies § 42-110b-18(e); misrepresented the nature, characteristics, benefits, and qualities of the services provided by it.

Illinois v. Aon, March 4, 2005, brought by Attorney General

1. 815 ILCS § 505/2; Illinois Consumer Fraud and Deceptive Business Practices Act; Unlawful Practices; engaging in unfair and/or deceptive practices, including, but not limited to, the misrepresentation, concealment, suppression, or omission of material facts, while participating in the trade or commerce with the knowledge and/or intent that the State of Illinois and others would rely on their deceptive conduct.

2. 215 ILCS § 5/500-70(a)(8); Illinois Insurance Code; violation of the obligation to be trustworthy.

Connecticut v. Hilb Rogal & Hobbs, August 31, 2005, brought by Attorney General

1. Conn. Gen. Stat. § 42-110a, *et seq.*; Breach of the Connecticut Unfair Trade Practices Act; made or caused to be made to Connecticut consumers, directly or indirectly, representations that were material, likely to mislead, and false; thereby breached fiduciary and contractual duties to Connecticut consumers.

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2. Regulations of Connecticut State Agencies § 42-110b-18(e); misrepresented the nature, characteristics, benefits, and qualities of the services provided by it.

3. Conn. Gen. Stat. § 38a-815 *et seq.*; Breach of the Connecticut Unfair Insurance Practices Act.

New York v. AIG, May 26, 2005, brought by Attorney General and Superintendent of Insurance

1. Executive Law § 63(12); Fraudulent business practices; repeated and fraudulent or illegal acts; otherwise demonstrated persistent fraud or illegality in the carrying on, conducting, or transaction of a business.

3. Gen. Bus. Law § 352-c; Article 23-A of the General Business Law; Securities Fraud; use or employment of a fraud, deception, concealment, suppression, or false pretense, engaged in to induce or promote the issuance, distribution, exchange, sale, negotiation, or purchase within or from this state of securities.

4. Gen. Bus. Law § 352-c; Article 23-A of the General Business Law; Securities; engage in an artifice, agreement, device, or scheme to obtain money, profit or property.

6. Common Law Fraud; acts constitute actual and/or constructive fraud under the common law of the State of New York.

7. Insurance Law § 310(a)(3); did not facilitate and aid Insurance Department examiners in the examination of American Home Assurance Company, and AIG subsidiary, to wit, AIG failed to report Union Excess and Richmond Reinsurance Company as affiliated reinsurers in AIG's regulatory filings with the Insurance Department, when it was in AIG's power to do so.

Minnesota v. AIG, February 16, 2006, brought by Attorney General

1. Minn. Stat. § 72A.20; Unfair and Deceptive Practices; including but not limited to false entries in books and reports that are subject to examination by or reporting to Minnesota regulators including the Departments of Commerce and Revenue; false, untrue, and misleading statements and practices regarding the amount of its Minnesota workers' compensation premiums in Minnesota, on the basis of which other assessments are made; and false and untrue statements regarding the nature of its insurance policies written in Minnesota.

2. Minn. Stat. § 325D.44, subdivision 1(13); Uniform Deceptive Trade Practices Act; creating a likelihood of confusion or misunderstanding on the part of other Minnesota licensed insurers, Minnesota regulators and industry groups, and AIG's insured regarding the extent and nature of AIG's workers' compensation insurance business in Minnesota.

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3. Minn. Stat. § 325F.69, subdivision 1; Prevention of Fraud Act; false written representations about the nature, quality, and dollar value of workers' compensation premiums obtained in Minnesota with the intent that Minnesota regulators, industry groups, other licensed insurers, and AIG's insureds would rely thereon.

4. Common Law Fraud; false and misleading statements about the nature, type, and dollar volume of its workers' compensation insurance policies and premiums in Minnesota.

5. Unjust Enrichment; false and misleading reports; unfairly reduced, or avoided, its fair share of those payments and assessments.

New York v. Hartford, May 10, 2006, brought by Attorney General

1. Executive Law § 63(12); Fraudulent business practices; repeated and fraudulent or illegal acts; otherwise demonstrated persistent fraud or illegality in the carrying on, conducting, or transaction of a business.

2. Gen. Bus. Law § 340, *et seq.*; Antitrust; acted unreasonably to restrain trade and commerce.

3. Unjust Enrichment; unjustly enriched themselves and deprived their clients and the investing public of a fair market price.

4. Common Law Fraud; acts constitute actual and/or constructive fraud under the common law of the State of New York.

Connecticut v. Hartford, May 10, 2006, brought by Attorney General

1. Conn. Gen. Stat. § 42-110a, *et seq.*; Breach of the Connecticut Unfair Trade Practices Act; made or caused to be made to Connecticut consumers, directly or indirectly, representations that were material, likely to mislead, and false; thereby breached fiduciary and contractual duties to Connecticut consumers.

2. Regulations of Connecticut State Agencies § 42-110b-18(e); misrepresented the nature, characteristics, benefits, and qualities of the services provided by it.

New York v. Liberty Mutual Holding, May 5, 2006, brought by Attorney General

1. Executive Law § 63(12); Fraudulent business practices; repeated and fraudulent or illegal acts; otherwise demonstrated persistent fraud or illegality in the carrying on, conducting, or transaction of a business.

2. Ins. Law § 2316, Gen. Bus. L. § 340 *et seq.*; Anti-Competitive Behavior; conspired unreasonably to restrain trade and commerce.

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3. Common Law Fraud; acts constitute actual and/or constructive fraud under the common law of the State of New York.

4. Unjust Enrichment; unjustly enriched themselves and deprived their clients and the investing public of a fair market price.

5. Inducement of Breach of Fiduciary Duty; engaging in the acts and conduct described above, Liberty Mutual unjustly enriched itself and deprived its clients and the investing public of a fair market place.

Connecticut v. Liberty Mutual Holding Company, May 5, 2006, brought by Attorney General

1. Conn. Gen. Stat. §§ 35-32 *et seq.*; Breach of Connecticut Antitrust Act; entered into contracts and agreements and engaged in corrupt, unfair, and anti-competitive conspiracy with various insurance companies around the United States and overseas to cause insurance companies to refrain from submitting genuine, competitive bids for the sale and placement of insurance in Connecticut and throughout the United States.

2. Conn. Gen. Stat. §§ 42-110a *et seq.*; Breach of the Connecticut Unfair Trade Practices Act; made, directly or indirectly, explicitly or by implication, representations which are material, reasonably interpreted, false and likely to mislead.

Illinois v. Liberty Mutual Holding Company, no date, brought by Attorney General

815 ILCS § 505/2; Illinois Consumer Fraud and Deceptive Business Practices Act; Unlawful Practices; engaging in unfair and/or deceptive practices, including, but not limited to, the misrepresentation, concealment, suppression, or omission of material facts, while participating in the trade or commerce with the knowledge and/or intent that the State of Illinois and others would rely on their deceptive conduct.

New York v. Universal Life, November 12, 2004, brought by Attorney General

1. Executive Law § 63(12); Fraudulent business practices; repeated and fraudulent or illegal acts; otherwise demonstrated persistent fraud or illegality in the carrying on, conducting, or transaction of a business.

2. Gen. Bus. Law § 340, *et seq.*; Antitrust; unreasonably to restrain trade and commerce.

3. Gen. Bus. Law § 352-c; Article 23-A of the General Business Law; Securities; engage in an artifice, agreement, device, or scheme to obtain money, profit or property.

4. Unjust Enrichment; unjustly enriched themselves and deprived their clients and the investing public of a fair market price.

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5. Common Law Fraud; acts constitute actual and/or constructive fraud under the common law of the State of New York.

California v. Metlife, Second Amended Complaint, June 3, 2005, brought by Insurance Commissioner

1. Cal. Ins. Code § 332; failed to communicate in good faith material facts surrounding compensation paid to brokers with which they have override and other compensation agreements, the steering of clients to purchase their insurance products, bid-rigging practices in connection with their placement, nondisclosure of broker compensation on governmental forms, and the terms, benefits or other advantages of the insurance policy.

2. Cal. Ins. Code §§ 790.02, 790.03(b); made or have caused to be made untrue, deceptive, or misleading statements about their scheme and common course of conduct.

3. Cal. Ins. Code §§ 790.02, 790.03(c); inadequately disclosed payments of overrides, communication fees and other types of remuneration, steering and bid-rigging practices have involved acts of boycott, coercion or intimidation resulting in or tending to result in an unreasonable restraint of, or monopoly in, the business of insurance.

4. Cal. Ins. Code § 781; made or have caused to have made by certain brokers, misrepresentations for the purpose of inducing, or tending to induce, persons to take out, change, or renew policies of insurance and/or to place or renew policies of insurance with a particular insurance carrier instead of another.

5. Cal. Ins. Code § 1065.1; conduct their business and affairs resulting in loss and posing a risk of financial loss to California policyholders.