the Demotech Difference

Winter 2024/Vol.10, No.1

Texas State Representative Dr. Tom Oliverson, President of NCOIL

Page 10

Michelle Rafeld First Female Executive Director of the Coalition Against Insurance Fraud

Page 14

Tim Temple Elected Louisiana Commissioner of Insurance

Page 16

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Contents

Winter 2024/Vol.10, No.1

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Cover Features

In This Issue

Departments

More

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New Year, New Hopes for Positive Solutions to Challenges in the Industry

By Barbara Albert

There are three things in the world that deserve no mercy, hypocrisy, fraud, and tyranny. ***Frederick William Robertson***

Wherever I went in the last month, I heard people say how glad they were to move past 2023. The consensus was a genuine hope that 2024 would be better, or at least different, than the previous year.

Last year did bring challenges and perhaps frustrations most haven't felt as keenly in the recent past. Inflation, politics, employment … not a discussion point here, but important, none the less. Challenges like these are good in that they spur efforts to search for improvement.

In this issue, we have a thread running through the articles of efforts made by individuals and organizations toward improvement in the industry.

In our cover story, an interview with NCOIL President Texas State Rep. Dr. Tom Oliverson, he brings up a need to look at changes to improve affordability and availability of insurance in the P&C marketplace, as well as a serious look at the state of health insurance.

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Louisiana Commissioner of Insurance Tim Temple also has an eye on working with his team this year to take on the cost and availability of insurance, specifically in his state of Louisiana.

Combating fraud is the subject of several articles in this issue, and with good reason. According to the Michigan Department of Insurance and Financial Services 2023 Fraud Investigation Unit Annual Report, more than 60 percent of insurers say fraud has climbed over the last three years with 75 percent of insurers using automated systems to detect fraudulent claims. Michelle Rafeld, now executive director of the Coalition Against Insurance Fraud this year, has spent much of her career gaining experience to battle fraud, and will direct those energies through CAIF.

Lisa Clark discusses technology-enabled claim instigation and the deleterious effect this business model has had on insurance companies not prepared to understand dramatic increases in litigation. Joe Petrelli addressed a congressional subcommittee to describe the problem.

Let's hope 2024 brings a continuation of positive and lasting changes!

Barb Albert

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President
Joseph L. Petrelli, ACAS, ASA, MAAA, MBA

Vice President
Sharon M. Romano, CPCU, AIAF, ARC, CCP

Executive Editor
Barbara C. Albert

Copy Editor
Emily F. Grazier

Graphic Design
Darren Carlson

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Examinations and Confidentiality of Data Shared With Third Party Contractor/Examiners

By Mary Jo Hudson

State insurance regulators are increasingly utilizing third party contractors to conduct their financial and market conduct examinations, due to staff shortages and constraints caused by state fiscal and labor policies. This article looks at how data protections associated with insurance company materials shared with contract examiners may not be well protected from trade secret or breach impacting the insurance company data when a contract examiner is involved, and what an insurance company can do to protect itself and its data when sending data to contract examiners.

Existing Protections

In general, all records submitted to or generated by an insurance regulator are available for public review under state public records, or sunshine, laws unless such records are specifically protected from release by state law. Historically, state laws exclude the records and analysis associated with the financial or market conduct examinations conducted by state insurance regulators. Examination records and regulator analysis records are generally non-public or not available to any third party via a public records request. Exceptions to this protection are discussed below.

> **Examination records and regulator analysis records are generally non-public or not available to any third party via a public records request.**

There are several public policy reasons for limiting public access to sensitive financial and market conduct examination materials. One strong public policy reason is to ensure that insurers are candid with regulators in all disclosures. If an insurer believes that records may be disclosed, then they may respond without fully disclosing sensitive or proprietary data that is necessary for a fulsome response. Another reason is that state insurance codes are structured to ensure that the outcome of regulatory action is even-handed and does not rank or rate companies, directly or indirectly, through release of information gathered through the examination process. A third reason is based in the basic principles of financial services regulation of "do nothing to trigger a run on the bank." In other words, do not provide press, competitors or consumers with information that, taken out of context, could cause panic or concern for the company's solvency or stability and result in mass cancellations and surrenders.

Sharing Data Among Regulators and the NAIC

NAIC Model Law 390, the Model Law on Examinations, includes confidentiality protections for "ancillary information" collected in any financial or market conduct examination conducted by a state insurance regulator.[1] These protections extend to all "documents, materials or other information including … all working papers … created, produced or obtained by or disclosed to the commissioner or any other person in the course of an examination … or in the course of analysis by the commissioner of the financial condition or market conduct of a company" ("Examination Materials").[2] Model 390 extends these protections as an exemption to state public records law, subpoena or private civil action, as well as an exemption for regulators to testify about such Examination Materials in a private civil action.[3] Forty states have adopted Model Law 390 in some form.[4]

Surprisingly, even though most states have adopted some form of NAIC Model Law 390, the model itself is not

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1 NAIC MDL 390, §5(F)(1)(a); see NAIC Financial Condition Examiners Handbook (2023) at 16; NAIC Market Regulation Handbook (2023) at 176.
2 Id.
3 NAIC MDL 390, §§5(F)(1),(2).
4 NAIC MDL 390-SD.

specified as an accreditation standard. Instead, the NAIC Accreditation Program requires that "[s]tates should have the authority to share confidential information with other states, federal, and international regulatory agencies and law enforcement authorities, and the NAIC" as well as reciprocal authority to protect information shared with such states.[5] As a result, many states have some form of confidentiality for Examination Materials, but it is often not the blanket of coverage offered by Model 390. For example:

- **Michigan** protects all "work papers, correspondence, memoranda, reports, records and other written or oral information related to an examination report or an investigation" from public disclosure.[6] Michigan creates an exception and allows disclosure to "any relevant regulatory agency or authority" or "persons entitled to receive the information in order to discharge duties specifically provided for [under Michigan insurance law]" if such agency, authority or other person provides the insurance department with "assurances … that the information will be kept confidential."[7]

- **New Jersey** provides that all materials obtained during an examination are confidential, and generally provides for access to the NAIC as well.

- **Nevada** and **South Dakota** law both include simple blanket statutes that limit access to all Examination Materials and allows for NAIC access to such materials, with less detail than the Model but surprisingly the same or more protection of materials.[8]

- **Ohio** has a complex set of requirements that provide general protection for financial and market conduct examination records and allow for protected disclosure to the NAIC.[9] These sections also protect group capital calculations and enterprise risk reports, but do not protect Form D materials.

- **Texas** simply provides that "any information obtained during an examination" is confidential and privileged for all purposes.[10]

There are several public policy reasons for limiting public access to sensitive financial and market conduct examination materials.

Sharing Confidential Data With Third Party Contractors

With this patchwork of protection for sensitive insurance company data, insurance companies should be asking what happens to that data if they are subject to a financial examination or market conduct examination conducted by a third-party contractor who is working on behalf of any state. Model 390 is silent with respect to use of third-party contractors. The NAIC guidance provided to states is found in the "NAIC Financial Condition Examiners Handbook" (the Examination Handbook) but is open-ended and generalized. The Examination Handbook states that

> State insurance departments that utilize contract examiners should continue to remind such examiners of the responsibility to keep insurer-specific information confidential.[11]

The "NAIC Market Regulation Handbook" references contractors but is silent regarding confidentiality issues associated with their work.[12] Where an insurance company is subject to a financial or market conduct examination, the company is not provided with any choice or option to work with a contract examiner as opposed to a state employee who is an examiner. On some occasions, the company may not know when a contract examiner or analyst is working with their data. Yet, most state laws and the NAIC do not provide regulators with direction or guidance regarding requirements for private contractors, especially when it comes to handling non-public or confidential data.

CONTINUED ON PAGE 35

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[5] The NAIC Financial Regulation Standards and Accreditation Program (Jan. 2023) at 16 (the "Program Summary"). Surprisingly, the Program Summary is the only published comprehensive guideline of all elements of the NAIC Accreditation Program.
[6] MI Code § 500.222(7).
[7] Id.
[8] NV. Code §679B.285: S.D. Code §58-3-22.
[9] ORC §3901.35 (examination statute); §3901.36 (confidentiality). Sections §§3901.35-.36 specifically protect Form B filings and data obtained from affiliates of the insurer as confidential, but the Department does not interpret these sections to protect Form D material at all.
[10] TX Ins. Code §401.058. An "examination" is broadly defined to include examination of "the carrier's financial condition and ability to meet the carrier's liabilities and compliance with the laws of this state that affect the conduct of the carrier's business".
[11] "NAIC Financial Condition Examiners Handbook" (2023) at 16.
[12] See "NAIC Market Regulation Handbook" at 176-179 (confidentiality); 184 (examiner qualifications can include contractors).

December 2023 National Association of Insurance Commissioner's Regulatory Update




By Mary Jo Hudson, Doug Anderson, Pat Hatler, and Bevan Blake

NAIC Continues To Impose New Regulations on Investments

At its 2024 National Fall Meeting, the NAIC continued to move forward with new regulations, standards and reporting requirements governing investments to address perceived "gaps in the regulatory framework for insurer investments." These changes are occurring through various Financial Condition (E) Committee Task Forces and Working Groups, including the Valuation of Securities (E) Task Force, the Risk Based Capital Investment Risk and Evaluation (E) Working Group, and the Statutory Accounting Principles (E) Working Group.

The NAIC Is Moving Away From Reliance on Private Credit Ratings Related to Solvency and RBC Analyses

During the Fall National Meeting, VOSTF began its meeting with a presentation from Marc Perlman from the NAIC Investment Analysis Office as to the history of the filing exempt process governing investment securities. The filing exempt process allows insurers to rely on private credit ratings issued by a Nationally Recognized Statistical Rating Organization to determine NAIC designations for investments. NAIC designations measure the credit quality of an asset held by an insurer and dictate how the asset is factored into the risk-based capital (RBC) calculation reflecting the solvency of the insurer. The presentation highlighted the NAIC's Security Valuation Office's long history of reviewing credit ratings issued by NRSROs, and how it has often had the authority to downgrade an asset if necessary to reflect credit risk. The presentation's clear purpose was to support current initiatives at the NAIC aiming to provide the SVO with additional discretion to determine the credit quality of assets independent of private credit ratings.

Considering this historical perspective, VOSTF then presented and exposed for public comment an updated proposal to give the SVO discretion to challenge private credit ratings provided by NRSROs for insurers' investments and to remove the filing exempt status for certain investments. This proposal was based on a prior proposal exposed at the NAIC Summer National Meeting, updated to include the following additional elements based on feedback from interested parties:

(1) A preliminary review process wherein the SVO will initially designate ratings that they believe represent an "unreasonable assessment of risk" as "under review." Once an investment is placed under review insurers that hold the investment will have an opportunity to provide the SVO with additional information justifying the rating that has been received. The SVO will then make a final decision to remove the security from its filing exempt status if the SVO determines that the NRSRO assigned NAIC designation deviates three or more notches from the SVO's independently determined NAIC designation.

(2) A provision allowing insurers to hire an independent third party approved by the NAIC to rate an asset if they disagree with the analytical assessment of the SVO and the resulting NAIC designation.

(3) A provision allowing insurers to appeal an NAIC designation assigned by the SVO to VOSTF if the SVO failed to follow applicable procedures.

The filing exempt process allows insurers to rely on private credit ratings issued by a Nationally Recognized Statistical Rating Organization to determine NAIC designations for investments.

This proposal was exposed for comment by interested parties, and further action is likely to take place at the NAIC Spring National meeting in March 2024.

The NAIC Is Developing a Framework To Model Structured Securities and Other Emerging Asset Classes To Determine Their Credit Risk

In line with VOSTF's efforts to increase NAIC oversight of emerging investments, the RBC IRE WG is in the midst of a long-term project to evaluate the RBC treatment of collateralized loan obligations (CLOs). To assist in this project, the RBC IRE WG has engaged the American Academy of Actuaries to develop a set of principles to guide the development of new RBC factors for emerging asset types. The Academy originally outlined the principles at the NAIC 2023 Summer National Meeting and presented their updated principles based on regulator feedback at the Fall National Meeting. In addition to the principles, the Academy developed a flowchart to help regulators determine in the first instance when a new asset class would justify an update to the RBC formula.

The original Academy presentation included the following threshold question and principle that sowed some doubt of whether the RBC IRE WG would move forward with a new RBC treatment of CLOs. First, that the NAIC should undertake modeling of an emerging asset class only if the risk presented by the asset class is material and the expected benefit of modeling outweighs the expected costs when compared to the status quo. And second, since the RBC is a blunt filtering tool, potential new factors that would have a small impact on RBC ratios seldom justify a change to the RBC formula.

To affirm that the RBC IRE WG will continue their work on developing a new model for CLOs, regulators persuaded the Academy to include a new principle that emerging risks require regulatory scrutiny and may be addressed by adjustments to the RBC formula. This addition signaled that any efforts to halt the RBC IRE WG work on CLOs and other structured securities likely will not be fruitful, as they are determined to continue the work. The updated principles expressed by the Academy during its presentation were approved by the RBC IRE WG, and will be used by the group as it develops the RBC treatment for new and emerging assets classes including CLOs. Further action on this proposal is expected at the NAIC 2024 Spring National Meeting.

The NAIC Proposed a Conservative Approach To Valuing Structured Securities With Additional Reporting Requirements

The NAIC's SAPWG moved forward with its efforts to address perceived risks with structured securities and investments involving residual interests. In this regard, SAPWG exposed for public comment revisions to Statutory Statement of Accounting Principles (SSAP) No. 21R to address the accounting treatment of residual interests, expressing concern that current accounting rules allow companies to artificially inflate the value of such investments above their initial cost. To combat this concern, SAPWG proposed that the reported book/adjusted carrying value (BACV) of a residual interest will be limited to its initial cost, and that recognition of interest income/reduction of the cost basis will depend on the cash flows actually received. This revised methodology is intended to allow recognition of interest income over the life of a security, while not permitting an increase in the cost basis of investment-based future cash flow expectations. This change to SSAP 21R was exposed for comments, with action likely to be taken at the NAIC 2024 Spring Meeting. SAPWG also exposed for comment revisions to the financial reporting requirements applicable to private funds, joint ventures, partnerships and residual interests reported on Schedule BA, to ensure that these assets are reported based on their underlying characteristics and not on how they are described or packaged. The proposal, like other initiatives at the NAIC, is designed to provide regulators greater transparency into structured securities and emerging assets and certainty that financial reporting of assets reflects their attributes. The proposal was also exposed for public comment with action likely at the 2024 NAIC Spring National Meeting.

The proposal, like other initiatives at the NAIC, is designed to provide regulators greater transparency into structured securities and emerging assets and certainty that financial reporting of assets reflects their attributes.

Industry Continues To Express Concerns With the NAIC's Scrutiny on Structured Securities and Private Equity

VOSTF, RBC IRE and SAPWG each work under and report to the E Committee at the NAIC. During the E Committee meeting at the 2023 Fall National Meeting, industry representatives stressed the importance of private credit ratings within the financial system and criticized NAIC initiatives to replace NRSRO analysis of the credit quality of investments with NAIC modeling of such assets. Importantly, private credit ratings are issued before an

CONTINUED ON PAGE 36

Texas State Representative Dr. Tom Oliverson New President of NCOIL

The Demotech Difference had the opportunity to speak with Texas State Representative Dr. Tom Oliverson, who is the incoming president of the National Council of Insurance Legislators. Oliverson brings so much talent and experience to the position. The Demotech Difference discussed his plans to harness those experiences to tackle the public policy issues facing NCOIL.

The Demotech Difference (TDD): We appreciate you being with us today. As the incoming president of NCOIL, a longtime state representative in Texas, and a physician, would you share some thoughts on attributes of the healthcare system that may not be well known or understood by consumers?

Tom Oliverson (TO): I think one of the things that people should know is that the American healthcare system, although it is expensive, provides more user-level access to cutting-edge therapies and treatments regardless of an individual's background or circumstances than you find in a country where you have a single-payer system. There's more options, and it's more consumer driven.

I believe that a successful healthcare marketplace is a marketplace where we have adequate networks and everyone's in the network.

As to cost, there's only two antidotes to the cost of healthcare. One is a single-payer system, which is going to eliminate choice and cutting-edge therapy. It will tend to result in the rationing of care because it has to do so. The only way a single payer (government) can control costs for expensive therapies is to limit who has access to them.

The other solution is increasing transparency in pricing. Healthcare is the only sector of our economy where a person

Dr. Tom Oliverson represents Texas' 130th State House District in northwest Harris County, including the communities of Tomball, Cypress, Waller, and Hockley. He was selected by Speaker Phelan to chair the Committee on House Insurance, and serves on the Public Health and Health Care Reform committees. Additionally, Oliverson was selected to be the vice-chair of the House Republican Caucus.

His first session culminated with him being chosen by his Republican colleagues as "Best Freshman Legislator" of the 85th legislative session. In his second session, he was named by Texas Monthly as one of the "best legislators of the 86th session." Oliverson has authored legislation on a diverse set of issues including healthcare, education, local government, religious freedoms, and the Second Amendment.

In addition to his role as president of NCOIL, Oliverson is active with the National Association of Christian Lawmakers where he served as the chair of the National Legislative Council. Oliverson serves on multiple healthcare taskforces including the Texas Conservative Coalition, American Legislative Exchange Council, and National Conference of State Legislatures. In his professional career, Oliverson is a board-certified anesthesiologist and partner at US Anesthesia Partners, the largest anesthesia group in Texas.

cannot price out a shoppable service that they need across a variety of providers in their community, and search for value. That is unlike anything else in our economy. We don't buy cars that way. We don't buy insurance that way. In those circumstances, prices are known up front. To my way of thinking, that is the best shot we have at preserving our unique level of access and cutting-edge aspects of our healthcare system — by increasing cost transparency.

TDD: How has the real-life experience of Dr. Oliverson translated into a legislative effort?

TO: The legislation that we passed in 2019, Senate Bill 1264 in Texas, which was our Texas out-of-network surprise billing solution, utilized my personal experience as a provider in terms of recognizing that the status quo left consumers to pay large out-of-network balances that they had no way of knowing were coming until after the care had been provided.

The reason I did it that way, the real-world example, is that I believe that a successful healthcare marketplace is a marketplace where we have adequate networks and everyone's in the network. I think a dysfunctional, unhealthy marketplace is a marketplace that has limited or deficient networks, and people find out, for whatever reason, they're better off being out of network. That's not good for providers. That's not good for consumers, and I don't even think that's good for health plans.

TDD: Let's discuss your newest position within NCOIL. What are your plans for your presidency?

TO: As president of NCOIL, I want to look at the changes in the property casualty marketplace, in terms of prices and coverages. I'm hearing about affordability and availability across the country. I want to have an honest conversation about the factors driving that because I know there's multiple factors. I want to see if there's any regulatory changes that we can make that would increase competition and help bring prices down for consumers.

I also want to look at the role that reinsurance plays in that marketplace, and how reinsurers add value. There may be a connection between the value that they bring, which is great, and the prices that they're charging for the value that they bring. I want to make sure there's a return on investment for the premium dollars paid.

We also are going to take a look at the surplus lines marketplace. It should continue, in most cases, to be the insurer of last resort or for unusual insurance and risk, and not essentially become the default pathway, much as we've seen the Employee Retirement Income Security Act of 1974 marketplace explode, I don't think that's what it was designed to do.

As president of NCOIL, I want to look at the changes in the property & casualty marketplace, in terms of prices and coverages.

We may spend some time looking in the healthcare arena, addressing mental health coverages and how things are going in the states in regard to mental health services.

TDD: Which of those would you classify as most critical to address first, or are all important?

TO: I've listed them somewhat in order of priority as far as I view them; however, there's been a lot of interest in the mental health issue, and parity, as we continue to see manifestations in our society of poor mental health — not just for adults but for children also. We must have an adequate regulatory structure to make sure that mental health services are accessible to everyone in our states.

TDD: How do you plan to measure the success of implementation of NCOIL's stated goals and objectives?

TO: I think the measurable success is that NCOIL creates model policy that ends up being adopted across state lines and adapted for different state situations; big states, small states, red states, blues states, urban states, rural states. When we have policies that address those needs, that's measurable success.

I'd also like to see NCOIL expand its reach. There are a number of states where we don't have much legislative participation. I want that to improve. There are key states with insurance issues where it would be beneficial for lawmakers to be part of NCOIL. One of my goals is to expand our legislative participation to include states that are currently not sending legislators.

TDD: What personal strengths and attributes have you leveraged during your career?

TO: I'll focus on the things that I think cross over. Anesthesiologists are good crisis managers. We are like airline pilots — we are busy at the beginning and the end of our jobs, respectively. In between, we're there in case something goes wrong. If something goes wrong, we have to figure out how to respond, like landing the plane on the Hudson.

CONTINUED ON PAGE 37

Captive Board Member Roles and Responsibilities

By Scott Simmons & Alan Lambert

The unique and varied structures deployed by captive insurance companies afford owners advantages that include flexibility and efficiency. Those advantages can be shared amongst the captives members. These structures are non-traditional when compared to property, casualty, and life insurers.

With flexibility and efficiency comes a huge pot of responsibility. That pot of responsibility lies firmly with the owners and the selected board of directors.

There are several key decisions and factors that should be considered by the captive and its proposed board members. These decisions are both before, during and after the formation process and are all major components to be considered by the captive and its board of directors.

Trust the experts …

Establishing and setting up a captive requires careful planning and utilization of industry experts such as captive managers to carry out feasibility studies and to offer owners advice on key topics such as operational structure, corporate governance, capitalization costs, choice of location, line of business selection, and regulatory requirements.

> **Risk retention groups and protected cell structures set ups are examples of captive structures with different nuances to them, and prospective board members should understand the roles and responsibilities being taken on.**

Prospective board members have a responsibility to ensure that before the captive launches, a full due diligence process has been completed. If it hasn't, then the implications further down the line, the potential failure of the captive, should have significant consequences for those involved. If you're involved, you have potential liability, which can lead to a D&O lawsuit.

There's no "I" in team … but hang on ...

Board members by involvement will have an affiliation with the captive and its members. Those same members subscribe to the captive setup and expect a positive experience to include risk management programs and cheaper insurance products than those available on the commercial market.

The unique environment that can bring together a host of experts across several industries varying from widget manufacturers to physician groups and drink distributors to auto part manufacturers can offer a melting pot of experience. It can also offer a melting pot of opinion. A member group in California could have a very different opinion to that of a member in Utah, even though both are members of the risk retention group.

Different structures, Different choices

Captives vary in terms of how they are set up and structured.

Risk retention groups and protected cell structures set ups are examples of captive structures with different nuances to them, and prospective board members should understand the roles and responsibilities being taken on. A clear fiduciary duty exists to play a role in delivering and maintaining a successful captive.

Strength in Numbers

By implementing a strong management and operational structure, including regular board meetings, the captive can devise a strategy designed to provide long term value and feedback to its members.

Once operational that review should include the following at a minimum:

- Is there a review of the business plan and accountability factors such as portfolio, profitability and solvency results?

- Are there regular reviews of financial and investment results, loss experiences, legal threats, and insurance coverages?

- How can the captive be sure it meets regulatory requirements? What are the procedures in place? Who has responsibility?

- How is the captive operating in line with the feasibility study carried out?

- Do the captive's formation documents address board election, structure, length of service, and re-election?

- Corporate governance policies and structure. Are there any current topics such as Environmental, Social and Governance (ESG) that the board should be reviewing?

- Does the reinsurance program meet regulatory and board requirements?

- Is the captive providing value to its members? Are there procedures in place to ensure the insurance and risk management programs offered are current and fit for purpose?

But there isn't any exposure to a director being sued at a captive, is there?

Wrong. There most definitely is. Examples of both derivative and class action claims brought against the captive and board members exist.

Below we highlight some of those claims experienced.

Examples:

- Alleged board mismanagement of reserving practices and financials leading to the insolvency of captives (separate insureds).

- Alleged board investment misrepresentation to captive members which led to a group of directors funneling investment into external vehicles.

- Healthcare provider and its board alleged to have used the captive to avoid paying Medicaid funded home care workers.

- Regulatory lawsuit against the board alleging improper methods used in calculation of deductibility of federal income taxes for purposes of premium payments made by brother/sister entities to captives.

The captive industry continues to build from strength to strength, which is a testament to those experts involved.

Regulatory Scrutiny

The captive industry is currently experiencing regulatory security under the eyes of the Internal Revenue Service. The IRS are investigating perceived abuses of the Micro Captive 831(b) tax election, and this could lead to management of the vehicles being sued in addition to either closure or fines and penalties being handed out against owners. More to come from us on this in a future article.

The above does highlight that in addition to allegations of wrongful acts from members, owners, shareholders and third parties, directors and officers of captive boards are open to regulatory investigations and potential claims.

Strength to Strength

The captive industry continues to build from strength to strength, which is a testament to those experts involved. This also demonstrates that a carefully thought-out feasibility study and the implementation of the plan, in addition to continued strong operational and financial controls, all hold the key to longevity in delivering results for those parties investing into the captive in the first instance.

As a director or officer either considering taking that step, or in a current captive board position, it's imperative to hold true and perform those associated duties in the utmost of good faith and best intentions. Do that, and you will be in the best place to avoid a D&O claim.

Scott Simmons and Alan Lambert are partners and co-founders of Verve Risk Services Ltd., a speciality and market leading MGA set up in 2016 with a focus on professional and management liability products for the insurance industry including insurance companies, captives, risk retention groups, reciprocals, self-insurance trusts, mutuals, insurance agents, brokers and MGAs.

Michelle Rafeld First Female Executive Director of the Coalition Against Insurance Fraud

The Demotech Difference had the opportunity to speak with Michelle Rafeld, former assistant director of Fraud and Enforcement with the Ohio Department of Insurance. With her experience, and other leadership positions in industry and consumer protection programs, we sought insights Rafeld gained throughout her career.

The Demotech Difference (TDD): Thank you for speaking to us. How did you first become acquainted with the insurance industry?

Michelle Rafeld (MR): I became acquainted with the insurance industry as a recent college graduate, who had majored in finance. I was having difficulties finding a job in the financial sector due to the stock market crashing and the economy heading towards a recession.

> **I enjoyed my time as an agent. The agency I joined provided exceptional training, and the agency's trainer did a fantastic job educating us about Mass Mutual's diverse product offerings.**

During summer breaks, I had worked for a stock brokerage in Cleveland, Ohio. A broker suggested I interview for an agent position with an insurance carrier who offered variable products. He explained working in the insurance industry would provide me the opportunity to obtain my Series 6 and Series 7 designations, and gain sales experience, which would make me more marketable to brokerages when they started re-hiring staff.

Taking his guidance to heart, I accepted a sales position with a large insurance agency who sold products for Mass Mutual, obtained my insurance and Series 6 licenses, and began selling insurance and mutual funds.

TDD: What was your experience working as an agent?

MR: I enjoyed my time as an agent. The agency I joined provided exceptional training, and the agency's trainer did a fantastic job educating us about Mass Mutual's diverse product offerings.

Michelle Rafeld's career as an insurance professional spans over three decades. Rafeld held various leadership roles within her distinguished 32-year career with the state of Ohio; most notably for serving as the agency's fraud director, a position she held from 2007 until she retired from state service in June 2023.

Rafeld effectively led local, state, and national collaborative efforts, leading to the successful implementation of industry and consumer protection programs. She served as vice-chair of the Antifraud Task Force and Title Consumer Shopping Tools Working Group and chaired the Title Insurance Task Force, the Promoting Appropriate Sales Practices in the Sale of Life Insurance & Annuities Working Group, and the Antifraud Task Force Education & Enhancement Working Group.

Rafeld also represented the NAIC Antifraud Task Force in an advisory capacity on the Healthcare Fraud Prevention Partnership, the National Insurance Crime Bureau's Law Enforcement Advisory Committee.

In 2020, Rafeld became the first woman appointed as the Coalition's Public Interest co-chair. On Jan. 1, 2024, she made history again by becoming the first female Executive Director of the Coalition Against Insurance Fraud.

What I truly enjoyed most about the job, however, was the opportunity to meet and connect with people and see how I could assist them in finding products that fit their specific needs and goals.

TDD: What moved you towards public service?

MR: My career in public service resulted from answering a notice in the Cleveland Plain Dealer. While I enjoyed being an insurance agent, I wanted a position that offered a more stable income stream, so when I saw that a company was looking to pay $11 an hour to process insurance claims, I applied.

At the interview, I learned the company was the Ohio Bureau of Workers' Compensation, a state agency from which all Ohio employers are required to purchase workers' compensation coverage. The agency's Cleveland office had a 100,000 claim backlog, so they were looking to hire 30 college graduates as part of a pilot program to resolve the situation. Little did I realize it would lead me to a 32-year career in public service and change my life forever!

TDD: During your 32 years with the state, how many positions did you hold?

MR: During my career, I worked for two state agencies and held a total of seven different positions.

After a year in claims, I was promoted to an auditor position within BWC's Self-Insured Department, where I investigated complaints filed by injured workers and conducted compliance audits to ensure self-insured employers were complying with Ohio's workers' compensation laws.

In 1995, I was fortunate to be hired as a fraud analyst within BWC's Special Investigations Division, where I gained experience investigating injured workers, employers, and healthcare fraud.

In 2000, I moved into a management role within the SID, where I supervised investigative personnel and oversaw investigations.

Wanting to expand my investigative knowledge beyond workers' compensation fraud, in July of 2005 I transferred to the Ohio Department of Insurance (ODI) as a fraud and enforcement supervisor, where I supervised personnel as they investigated allegations of agent misconduct, unlicensed insurance activities, and healthcare provider fraud.

Within my first year with ODI, I was promoted to chief of the Fraud & Enforcement Division. In that role I managed the day-to-day operations of the division and supervisory staff.

I think individuals who enjoy a rapidly changing environment, have excellent listening, communication and critical thinking skills, as well as a strong desire to help others, would find public service fulfilling.

In 2007, former Insurance Commissioner Mary Jo Hudson offered me the position of assistant director of fraud, enforcement & licensing. In addition to overseeing the agency's fraud and enforcement efforts, my role was expanded to oversee the licensing of 180,000 licensed agents and 20,000 business entities. It was an incredible opportunity I'll always be grateful for, and I loved every minute of it.

TDD: How did your career with the state impact you as a professional?

MR: Each role I held with the state contributed to my growth as a professional. In addition to gaining a diverse and comprehensive insurance background, I gained an extensive knowledge of state-based regulation, consumer protection practices, industry and regulatory business processes, fraud schemes associated with various lines of insurance, effective investigative methods, and an understanding of legislative, criminal, and civil processes.

TDD: What qualities does a person need to be successful in public service?

MR: I think individuals who enjoy a rapidly changing environment, have excellent listening, communication and critical thinking skills, as well as a strong desire to help others, would find public service fulfilling.

TDD: Tell us about your philosophy when it comes to serving constituencies. What do you see as the vital areas to focus on with respect to service?

MR: In terms of customer service, I believe it's imperative individuals treat others how they would want to be treated if in the same situation. To assist someone, you must fully understand their situation, which requires active listening and communication. It's vital to ask questions, be objective,

CONTINUED ON PAGE 39

Tim Temple Elected Louisiana Commissioner of Insurance

The Demotech Difference had an opportunity to speak with Tim Temple as newly-elected Louisiana Commissioner of Insurance, about his vision in this position and for the state of Louisiana. Temple won election for Louisiana Commissioner of Insurance outright in the primary on Oct. 14, 2023, after the primary and general election were canceled. (Commissioner Elect at date of interview.)

The Demotech Difference (TDD): Commissioner Elect, thank you for speaking with us. Tell us about the experiences you've had that led to the position you assume in January.

Commissioner Elect Tim Temple (TT): I was an insurance agent for a time in my 20-plus year career in the insurance world, but it actually was a relatively short period. I started as an insurance agent in Shreveport back in 1994. As an insurance agent, when you interact with a customer or potential customer, you're trying to find out what their needs and problems are, and then you bring back an insurance solution. I think that's the focus the Department of Insurance needs. When interfacing with the consumer, we need to be finding out what the problem is, and how we can assist with that problem. If it's with an insurance carrier, adjuster, or one of the other entities in the insurance industry, then we need to do the same thing.

> **As an insurance agent, when you interact with a customer or potential customer, you're trying to find out what their needs and problems are, and then you bring back an insurance solution. I think that's the focus the Department of Insurance needs.**

It's also incumbent on the department when they're interfacing with insurance industry entities to look and see what the problem is, and what the solution is for that problem. Can we craft the solution together? That's how I would relate the two.

Tim Temple is a native of DeRidder, Louisiana and has over 20 years of experience in every facet of the insurance industry. He worked his way up in the industry from neighborhood insurance agent to insurance executive, helping businesses recover from the BP oil spill. Presently, Temple serves as president of Temptan, a family-owned business in Baton Rouge.

Additionally, Temple previously served as the chair and president of the Louisiana Committee of 100 for Economic Development, working outside of government to provide leadership and resources that focus on the economic growth of the Louisiana economy.

Temple aims to use his experience and success as a businessman and community leader to bring an outsider's perspective to the job of insurance commissioner. He understands through his professional and civic background how important affordable insurance is for not just our government and businesses, but for families stretching a dollar. He is committed to lowering insurance rates in order to provide a better quality of life for every citizen.

TDD: Louisiana is known for its response to the BP oil spill. You were actively involved in helping businesses recover during that time. What stands out as part of your learning experience, and how are you going to respond to those types of situations when you're at the helm?

TT: During the BP oil spill, there were over a million claims filed. BP allocated $20 billion to help fund that effort. I was engaged under Ken Feinberg. Our firm was involved in

Louisiana, Florida and Alabama. We were the only Louisiana firm that had multiple states. We directly interfaced with claimants as they came in the door to file their claim and have their claim processed. My role was to interact with elected officials to find out what was working and what wasn't working in the process, i.e., what was important to people and constituents.

I don't think it's the job of an insured to have to fight for their claim. They should be focused on repairing, recovering, and getting back into their house. The role of the commissioner should be to fight on behalf of the claimants. The BP claims process gave me a different, unique to me, perspective on how you can be more engaged, post-catastrophe, letting everyone understand each role and what the expectations are, and to do the best job to make that effort successful.

TDD: Given your breadth of experience and expertise, what was the beginning of your work path? What was your first job as a teenager?

TT: My first teenage job was as a lifeguard. My first job in insurance was at the age of 18.

The day after graduating high school, my father and I jumped on an airplane and we went to Europe and we were going to do a multi-week, multi-country, driving tour. My father was focused on building a business. He dropped me off in London. I started an internship at Lloyd's. I hadn't left to go to college yet, but spent the entire summer working at Lloyd's, working for a reinsurance brokerage firm. I fell in love with London and fell in love with the reinsurance process. I learned that relationships are a huge percentage of this industry, this business.

TDD: Do you characterize any of those people then or now as mentors?

TT: My father was a mentor even though he didn't know it. I grew up in the insurance business, under an insurance roof. My father and Millard Morris identified a problem in workers' comp, specifically, timber in the forestry business with the guys working as loggers. They created a work comp solution. They created the solution, and implemented it a couple of years later. AMERISAFE was started in 1984 as American Interstate.

TDD: What type of mission and values do you intend to bring to the department, so that the department will function in that same process? How might you measure, as commissioner, the success that mentality's brought to the department?

TT: The measurements consumers want are affordability and availability. They want insurance choice. Right now, in Louisiana, we have an availability issue, particularly in homeowners and commercial trucking, and commercial auto. We also have an affordability issue. We're the most unaffordable state in America when you look at the comparison of the percentage of the average income in Louisiana and the percentage of income that goes toward insurance.

> **I am open-minded and collaborative. I think that's the best way to move forward, especially when addressing a crisis. I also recognize the commissioner of insurance has a leadership role. There will also be times when I need to say "we're going this direction, follow me."**

TDD: We were down the coast in Venice, Louisiana. We saw the types of constructions that exist, whether mobile homes or manufactured homes. Any thoughts on building codes and whether or not that's even a practical discussion at this point?

TT: It needs to be part of the discussion. I believe Louisiana is lagging a year or two behind national building codes. The Louisiana coast has been described as a working coast — not vacation homes or multi-story condos. It is people who live and work in the Gulf or the marsh. You've got to have a balance. You can't make building codes too prohibitive. The working class can't afford that, yet we need to be attractive to the insurance market, so they want to come in and write.

TDD: What personal strengths are going to help you serve the citizens of Louisiana?

TT: I am open-minded and collaborative. I think that's the best way to move forward, especially when addressing a crisis. I also recognize the commissioner of insurance has a leadership role. There will also be times when I need to say "we're going this direction, follow me."

TDD: You'll be assuming the helm of a veteran department. Many are long tenured and probably close to retirement. Any thoughts on new blood versus experienced people helping you with the vision you have for the department?

TT: You certainly have to balance. I reached out to Commissioner Donelon and asked for a meeting. He was gracious enough to grant one. You certainly don't want to throw out the baby with the bathwater. That's not my mindset.

I don't have a fire list. I want people who are going to be open to learning. I don't want complacency. We're the regulator and when we see bad actors or someone tells us about them, we'll need to do something about it.

CONTINUED ON PAGE 41

Educar Preventivamente las Catástrofes

By Rafael Cedeño-Camacho

Introducción

Es del conocimiento general que el cambio climático está transformando nuestro mundo a un ritmo sin precedentes. El aumento en la frecuencia e intensidad de estos eventos, como huracanes, inundaciones, incendios forestales y sequías, está dejando una huella imborrable. En medio de esta turbulencia, las empresas de seguros desempeñan un papel crítico al proporcionar seguridad financiera en tiempos de adversidad climática. Sin embargo, la verdadera importancia radica en su capacidad para prevenir a sus clientes. En este artículo, me daré a la tarea de exponer mi perspectiva sobre como esta anticipación puede marcar la diferencia en la vida de los asegurados y en la sociedad en su conjunto.

Estos eventos pueden llevar a la pérdida de vidas, daños a la propiedad y desestabilización de comunidades enteras. En este contexto cuando las empresas de seguros pueden prevenir a sus clientes, se les brinda tiempo para la anticipación, lo cual es la clave para mitigar los efectos y tomar medidas, como la evacuación de zonas de riesgo y la protección de sus bienes.

La prevención también contribuye a la estabilidad financiera de las aseguradoras. Al tomar medidas proactivas, como una suscripción adecuada y la gestión de riesgos, las compañías de seguros pueden evitar pérdidas financieras masivas que podrían poner en peligro su existencia.

En mi opinión, las empresas de seguros que se comprometen con la prevención de catástrofes climáticas demuestran una sólida responsabilidad social corporativa, proporcionando información precisa sobre los riesgos climáticos y las medidas que los asegurados pueden tomar para protegerse. Esto incluye promover la construcción resistente a catástrofes, la importancia de contar con pólizas adecuadas y la preparación para emergencias.

Ada Monzón, Meteoróloga - Evento: Vientos de PReparación

La tecnología desempeña un papel vital en la prevención de hechos donde la naturaleza nos demuestra su poder. Las aseguradoras pueden utilizar datos climáticos, modelos predictivos y herramientas de análisis avanzado para evaluar riesgos y anticipar eventos. La inteligencia artificial también puede ayudarnos a identificar patrones climáticos y tendencias a largo plazo.

Grandes estrategias se han visto desde algunas compañías aseguradoras, las cuales incentivan a la prevención, por ejemplo, ofrecer descuentos a los asegurados que toman medidas para hacer sus propiedades más robustas, como la instalación de techos resistentes al viento o la elevación de viviendas en áreas propensas a inundaciones.

Charlas y foros que impulsan la preparación comunitaria y empresarial a las temporadas de eventos climáticos, teniendo como foco al público general, los asegurados, los productores y aliados de la industria de seguros ofreciendo herramientas y conocimientos necesarios

A translation, by Ariel Rivera, with Fun Insurance Solutions, LLC, can be found when viewing the online version of The Demotech Difference at www.demotech.com, under the Publications tab.

para enfrentar con éxito los tiempos de adversidad, los retos en la construcción, los procesos de reclamación y estructura de apoyo en caso de una emergencia.

Conclusión

> **En mi opinión, las empresas de seguros que se comprometen con la prevención de catástrofes climáticas demuestran una sólida responsabilidad social corporativa, proporcionando información precisa sobre los riesgos climáticos y las medidas que los asegurados pueden tomar para protegerse. Esto incluye promover la construcción resistente a catástrofes, la importancia de contar con pólizas adecuadas y la preparación para emergencias.**

Las empresas de seguros desempeñan un papel esencial en la protección de individuos y empresas frente a las crecientes amenazas del calentamiento global, la anticipación a sus efectos es una vital estrategia que puede marcar una diferencia significativa. Al fomentar la conciencia y utilizar la tecnología de vanguardia, las aseguradoras pueden ayudar a sus clientes a tomar medidas proactivas y afrontar estos desafíos con mayor resiliencia, no solo beneficiándolos, sino que contribuyendo al bienestar de la sociedad y al fortalecimiento de la industria aseguradora en un mundo en constante cambio. Es un recordatorio de que, en un mundo cada vez más volátil, la prevención y la preparación son la clave para un futuro más seguro y sostenible.

Wildaomaris González Ruiz, Responsable del Programa de Tsunamis en el Negociado para el Manejo de Emergencias – Evento: Preparación Sísmica

Dr. José Martínez Cruzado, Profesor del Departamento de Ingeniería Civil y Topografía de la Universidad de Puerto Rico en Mayaguez - Evento: Preparación Sísmica

Fotos EVENTOS CLIMATICOS

Rafael Cedeño Camacho
De nacionalidad Ítalo Venezolana, Contador público de profesión, Experto en la minería de Criptomonedas y poseedor de los siguientes títulos:

- *Global MBA en la Universidad de Miami*
- *Global MBA en la Universidad de Berkeley, California*
- *Dos títulos del programa ejecutivo de Singularity University en Silicon Valley*

Actualmente es el Fundador y Presidente (Chairman of the Board) de One Alliance Insurance Group, grupo de compañías de seguros con presencia en diferentes países de las Américas (República Dominicana, Puerto Rico y Estados Unidos), Axeso (Financiadora) y One Alliance Travel Assist (Asistencia de viajes world wide)

- *LinkedIn: Rafael Cedeño Camacho*
- *Página Web: rafaelcedeno.com*

Thoughts on P&C Insurer Stress Testing Criteria

By Donna Galer

Insurers take many steps to ensure that their capital position is sufficient to support the business, to meet regulatory requirements, and to secure an acceptable financial strength rating. One of these steps is to stress test capital levels under various circumstances. Although insurers have been stress testing for many years, too often the criteria chosen, i.e., the events or circumstances used, do not result in sufficiently robust testing. To avoid the risk that stress testing is not sufficiently strong in terms of the variety of stressors used, here are some points to consider.

Property

Insurers writing property business tend to focus on natural catastrophes as the single, most important criterion to use in their stress tests. They may choose one or more different natural catastrophe levels such as a "1 in 200" year event, a "1 in 500" year event, to see the impact on capital. Since multiple such events in one year is not uncommon, stress testing should reflect that.

In addition, climate events can happen at the same time as economic events, such as: 1) Interest rate fluctuation, 2) stock market volatility, or 3) rising inflation. Volatility in these could impact investment income, liquidity, claims costs and ultimately capital levels. So, a percentage (e.g., 7 percent, 10 percent, 15 percent) drop in investment income, both alone and in combination with a major natural catastrophe(s), and/or a percentage increase in inflation (e.g., 5 percent, 8 percent, 10 percent), especially inflation related to those items which comprise the bulk of claims costs, should also be considered. For personal property insurers, in particular, the impact of inflation on items such as roofing material, lumber and construction labor are key. For commercial property insurers, inflation related to the cost of steel, cement and construction labor might be key.

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All of these types of events can impact asset/liability matching (ALM), which is a basic factor affecting immediate solvency concerns. Managing ALM is quite important in maintaining solvency for short tail lines like property.

Another type of event that could be contemporaneous with climate events is systemic construction failure, for example, EIFS/mold and Chinese drywall have hit the industry in prior decades. It is not as though these failures are correlated with other types of events, but it is possible that they might occur at the same time.

> **Insurers writing property business tend to focus on natural catastrophes as the single, most important criterion to use in their stress tests.**

An altogether different type of event might involve reinsurance. What if an insurer's major reinsurer is downgraded or becomes insolvent? Or what if renewal rates rise exponentially?

These non-Cat scenarios are reality based and can serve as stress test criteria which augment the ones based on natural catastrophes. An insurer should choose those events to stress test which make the most sense based on its unique business model — geographic footprint, customer mix, product mix, reinsurance panel, etc.

Casualty

Natural catastrophe events tend to be less critical for casualty or specialty lines insurers compared to economic factors

CONTINUED ON PAGE 42

A Coming Digital Divide

By Johnny C. Taylor, Jr.

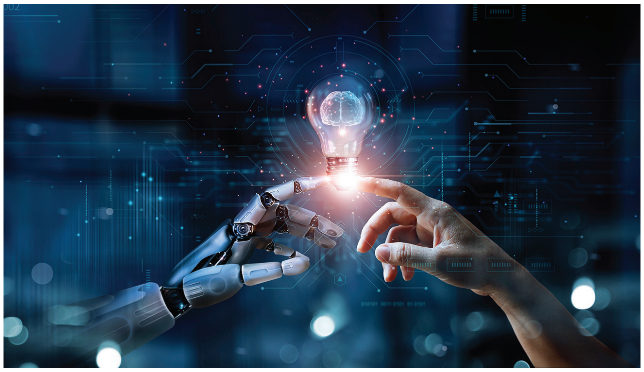
Artificial intelligence (AI) came on the scene in a whirlwind, filled with mixed flurries of fear and excitement. But just as no one knew the long-term effects COVID-19 would have on the workforce and society as a whole — four years later and we're just now starting to uncover trends and key research — it's equally difficult to predict the long-term effects of AI. Will it replace whole occupations and force the workforce to higher-level work? Potentially. Will it make possible groundbreaking scientific and medical achievements? Quite possibly. Will it change the workforce as we know it? Most definitely.

To anticipate the effects, we must first look at user data. Unsurprisingly, research from the Pew Research Center suggests the most prevalent user of ChatGPT is the educated young person. And it makes sense — Gen Z and millennials are the first two generations to have grown up immersed in technology. They have attended computer classes since grade school and have continued to use this technology all the way through adulthood.

Likewise, those with college degrees often have more career options available to them, particularly in careers that tend to use more advanced technology. Technology jobs such as software developers or data analysts, jobs in the medical profession, and many other technologically based occupations typically require college degrees. In contrast, many blue-collar jobs do not require a degree at all. Statistically, those with college degrees also make more than their non-degree-holding counterparts. According to the Association of Public & Land-Grant Universities, typical earnings for bachelors' degree holders are 84 percent higher than those with just a high school diploma. These findings suggest the potential for the adoption of AI to lead to a digital divide, where both older workers and those lacking college degrees — often those in lower economic classes — will be left behind.

Unsurprisingly, research from the Pew Research Center suggests the most prevalent user of ChatGPT is the educated young person.

This is where inclusion, equity, and diversity (IE&D) comes into play. In IE&D programs and strategies, I place inclusion first intentionally. Inclusion must be at the forefront of our workforce policies. Too often, inclusion is limited to race or gender, or quite frankly, the attributes the news tells us are worthy of inclusion. When people think inclusivity,



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their minds seldom jump to the older members of our workforce or to those without college degrees. But, if we are to successfully elevate our workforce through the use of generative AI, we must ensure this technology is accessible across generations, education thresholds, and economic classes. Neglecting to do so gives ripe potential for the creation of a digital divide with serious repercussions for the workforce.

Providing inclusive accessibility starts with the employer and will require recruiting from untapped talent pools. With five generations in the workforce, there has been a big push for companies to appeal to their younger population — namely Gen Z and millennials. But according to Johns Hopkins University, the data tells us nearly 21 percent of the U.S. workforce is 59 or older. Furthermore, the U.S. Bureau of Labor

CONTINUED ON PAGE 42

Fighting Fraud From the Air and in the Courts

Artificial Intelligence, Aerial Imagery, and the Judiciary — Top Fraud Fighters



By Tim Molony, Matt Monson and Lisa Miller

Recently, in Tampa, Florida, insurance fraud professionals and underwriting and claims leaders gathered to discuss how technology, used efficiently, can reduce fraud, improve policy acquisition, and better manage the claims process. Sound familiar? We see these sessions all the time with labels like "Full Stack" and "AI-enabled," but this session was different because there were experts in the room who spend their entire professional lives working with the right tools to ultimately improve a policyholder's experience. And that experience can be anything from the right rates charged to a swift claims resolution.

One of the lenses McKenzie Intelligence Services and BSC Forensics used to add much needed clarity to the entire insurance transaction, from underwriting to claims and in between, is the area of spatial analysis.

One of the lenses McKenzie Intelligence Services and BSC Forensics used to add much needed clarity to the entire insurance transaction, from underwriting to claims and in between, is the area of spatial analysis. MIS provides the front end of the analysis using satellite, aerial and on-the-ground imagery, as well as multiple other data sources to create damage assessments across the entire event, from a carrier's portfolio to individual policies and properties. BSC puts feet under the spatial analysis by providing post event subject matter expert vetted spatial analysis models of building envelopes and various mechanical and electrical components. For example, MIS shared their work with helping insurers immediately understand the geographic footprint of the Maui wildfires and the damage occurring on individual properties. My favorite message from Daniel was about the Turkish and Syrian earthquake where MIS provided intelligence which allowed their carrier clients to issue payments the day after the tragedy.

The audience learned a tremendous amount with actual post event data (satellite and aerial imagery) related to Hurricane Ian and the December 2021 Kentucky tornado to highlight ways to detect fraud from the air and pursue those perpetrating it.

Other speakers included Lisa Miller providing a regulator's view of the market, and lawyers Matthew Monson and Steve Badger walking the audience through all the public records and court filings of their shared efforts to stop, with a regulator's assistance, several sophisticated and well-funded fraud schemes affecting the P&C space. Louisiana Insurance Commissioner Jim Donelon exercised great leadership in protecting consumers by issuing cease and desist orders.

If you are interested in the presentation, please feel free to reach out to Tim Molony, who will connect you to the presenters and the platforms they provide to improve insurance policyholder outcomes by assisting insurers with their operations.

Tim Molony is the claims concierge at BSC Forensics, which provides high level engineering subject matter experts across the country.

Matthew Monson is the founder of The Monson Law Firm, which provides a full range of insurance defense legal representation to clients in Florida, Texas, Louisiana and Mississippi.

Lisa Miller is former deputy insurance commissioner in Florida and advisor to insurance stakeholders around the country. Her firm, Lisa Miller & Associates, is headquartered in Tallahassee, Florida.

Litigation Financing:
Proof That Tech-Enabled Claim Instigation Is a Lucrative Business Model

By Lisa Clark

"Nobody made a greater mistake than he who did nothing because he could only do little." These words spoken by Irish statesman, Edmund Burke, the 18th century philosopher and economist, resonate today. This quotation is pertinent when discussing "technology-enabled claim instigation" and how this issue came to the attention of the insurance industry.

When six Demotech-rated Florida insurers, including one highly rated by another insurer rating service, were rapidly depleted and forced to close their doors, Joseph Petrelli, president, Demotech, Inc. coordinated a post-mortem on each. Based upon his review, it appeared that the failures were due to a deluge of litigated claims disproportionate to the underlying functionality of the insurers.

Litigation funding can be problematic in many ways, not the least because in the U.S. the litigation company financing the claim is a third party and not always legally required to reveal their presence/identity in the case.

Unconvinced that billboards featuring plaintiff attorneys, even if supplemented by TV and radio advertising, could result in year-over-year hockey stick growth in litigated claims filed against each insurer, Petrelli retained data analytics and technology expert, Todd Kozikowski. As previous articles in The Demotech Difference have summarized, what was observed in Florida's residential property insurance marketplace was a bellwether for events in the entire insurance industry. The Florida trend validated Petrelli's instinct for additional research into the causation of the claim levels that resulted in carrier failures.

The subsequent research, undertaken by Kozikowski, discovered a business model that Petrelli and Kozikowski call "technology-enabled claim instigation" (TECI). Opportunists utilize this business model to create contested claims by leveraging internet-based technology and tactics. Technology, such as search engine optimization (SEO) or artificial intelligence (AI) within litigation platforms, enables a landslide of litigation that can overwhelm smaller insurers, and adversely impact the operating results of larger insurers. Kozikowski noted in The Demotech Difference, Spring 2023, "Although opportunists have been leveraging technology for years and, admittedly, have a head start, 4WARN, Inc. (the company now headed by Kozikowski) has discovered their presence and activity."

TECI starts with a confluence of issues identified by the initial research: Litigation financing (also called litigation funding, legal financing or litigation harvesting), litigation marketing, litigation platforms/software (AI), and search engine optimization. Although the financing component of TECI can be a driver of social inflation and nuclear verdicts, Petrelli believes litigation financing is a lagging rather than coincident or leading, indicator; i.e., investor money follows the success of tech-enabled claim instigation. Petrelli notes, "The monies associated with litigation financing, regardless of nomenclature, flow into the process due to the success of the business model."

According to The Westfleet Insider's 2022 Litigation Finance Market Report: "One of these trends is that demand for litigation financing continues to increase with no signs of slowing down anytime soon. In fact, new capital commitments to law firms and their clients grew by nearly 16 percent in 2022, the largest year-over-year growth rate ever reported in this publication."

Litigation funding can be problematic in many ways, not the least because in the U.S. the litigation company financing the claim is a third party and not always legally required to reveal their presence/identity in the case. The funds they offer the plaintiff seem helpful, but in the end, must be paid back out of the settlement, if there is a settlement reached. As stated by a Forbes.com article in 2022, “The Swiss Re study claims that litigation funds take a significant chunk of every settlement in which they are involved, ultimately leaving the plaintiff — the actual injured party — with only 43 percent of the settlement. The study also indicates that the case takes longer because of funding and could settle a year after non-litigation funded cases.” This is not only a problem in the U.S. — it also reaches overseas to the U.K. and Australia, to name a few countries that have been tracking the situation. The confluence of issues comprising TECI is leading to a more litigious and risky insurance industry.

This is not only a problem in the U.S. — it also reaches overseas to the U.K. and Australia, to name a few countries that have been tracking the situation. The confluence of issues comprising TECI is leading to a more litigious and risky insurance industry.

According to the Mactavish Insurance Claim Litigation Index 2023, “The results are not encouraging. Across the board litigation continues to rise. This is particularly worrisome because, unlike premium rates, there is no underlying reason for litigation to continue to rise year on year. Insurance claims will fluctuate with events, weather, disease, crime, but, there is no economic law which dictates a rise every year.” With Mactavish’s research showing a worldwide trend in litigation, the capability to track these trends and protect your business is crucial.

The Brookings article, “How AI will revolutionize the practice of law” of March 20, 2023, by John Villasenor, states that, “AI will make it much less costly to initiate and pursue litigation. For instance, it is now possible with one click to automatically generate a 1000-word lawsuit. Of course, there is a downside to lowered litigation costs as well. There will be people who exploit the nearly frictionless ability to automatically generate legal complaints to rapidly flood court systems in multiple jurisdictions with frivolous AI-written lawsuits. These plaintiffs will be expecting that in the resulting numbers game, a sufficient number of defendants will quickly settle, thereby making the enterprise profitable. It may be necessary to update laws … regarding vexatious litigants to impede these sorts of abuses.”

Perhaps in response to the success of the business model and the proliferation of sources willing to provide funding, the December 2022 United States Government Accountability Office’s Third-Party Litigation Financing report stated, “The third-party litigation financing industry is not specifically regulated under U.S. federal law. However, some states regulate consumer funding by, for example, limiting the fees funders can charge. There also is no nationwide requirement to disclose litigation funding agreements to courts or opposing parties in federal litigation, although courts have required disclosures of funding arrangements in some instances.”

The lack of specific regulation under federal law leads to confusion regarding litigation financing, by any name. According to the GAO report, some states have enacted legislation to close loopholes or establish guidelines for litigation financing, including Arkansas, Maine,

CONTINUED ON PAGE 43

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Deadly Deal Delays

By Jessica Seale

While divorce was quite taboo only a few decades ago, today blended families are extremely common. So, when a lovely lady and her trio of golden-locked girls met a man with three boys of his own, they knew it was more than a hunch that the bunch would make a great family. The couple purchased a 2,500 square foot split-level ranch home. The years passed and, as kids tend to do, the six children grew up and moved out of the family home to start their families. Mike and Carol were blessed with numerous grandchildren, each of the six children having two or three children of their own.

Although they were only parents to 3 of the 6 children, Mike and Carol made it very clear to the children that their estates were to be divided between them equally, and both executed a last will and testament providing the same. After battling a prolonged illness, Mike passed away. Carol hired an attorney who completed Mike's succession and a judgment of possession placing the 6 children in possession of Mike's estate was rendered, which included his half of the interest in the family home. Sadly, shortly thereafter Carol joined Mike in the great beyond. The children discussed opening Carol's succession, but since they used the life insurance policies to pay all final expenses, they didn't feel that there was any urgency in finalizing her estate.

As the rising interest rates had cooled the housing market, their consensus was to rent the property and split the monthly income.

As the rising interest rates had cooled the housing market, their consensus was to rent the property and split the monthly income. Jan suggested finalizing Carol's succession, forming a limited liability company, and transferring the property to the company to be managed. But, as usual, the middle child was ignored, and Greg and Marcia, as the oldest of the siblings, agreed to jointly manage the property, much to Jan's chagrin. "She's always got to be in charge! Marcia, Marcia, Marcia!" Eventually, after the cajoling of her siblings, Jan begrudgingly agreed to the arrangement. The plan went smoothly, and all were grateful for the supplemental income.

Years passed and the bunch themselves became grandparents, the Bradys now consisting of 16 clans and spreading out over several states. Eventually, the original six of the bunch also passed away. As Greg's children had moved to New York to pursue their careers, the management of the property fell to Marcia's children. A review of the books showed that the rental income was far less beneficial to the families, now that it was divided among the 16, than it had been to the original bunch of 6, so they decided to list the property for sale and the house was quickly under contract. The buyer had only two requirements: that the sale take place within 30 days, and that a policy of title insurance be issued. The Bradys jumped at the offer. After all, the property had been in their family for generations. Surely there were no issues with the title. The rush order was submitted, and the title work begun. However, after a cursory review of the records, the title attorney informed them that they may not be able to meet the 30-day deadline.

While customarily requesting closing in 30 days was an achievable goal, the manner in which Mike and Carol's

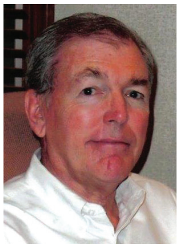
one pony/shutterstock.com

estates were addressed complicated matters. Had neither Mike nor Carol's successions been opened, the heirs could have petitioned the court to appoint a representative to sell the property on behalf of the estate. But because a judgment of possession had been rendered placing the original 6 heirs in possession of Mike's half of the property, all 6 of the children's successions must also now be addressed. Additionally, some of the grandchildren had also passed away. Their successions had been opened, but their interest in the property had not been included. As such, those successions would need to be amended to include the home. Lastly, as Greg was living in New York when he passed, his last will and testament would need to be probated by a New York court before the ancillary succession was completed where the property was located. And no title insurance policy could be issued until all of these issues had been resolved.

The Brady clan was devastated. Not only were they likely to miss the deadline and lose the sale, they would also incur thousands in attorney's fees and court costs to clear the title for sale. If only the bunch had contacted an experienced title attorney when Carol passed and educated themselves on how their decision could affect the title in the future, this all could have been avoided! But instead, their delays dealt their deal a deadly blow.

Jessica Seale is a partner with the law firm of Yorsch Law Group LLC and the primary closing attorney for NOLA Title Group LLC. Seale also works with clients in matters involving title insurance for distressed properties, possession and ownership disputes, foreclosures, sales and contracts, and quiet title lawsuits. Seale can be reached at jseale@yorsch.com.

NOLA Title is a full service real estate title company and a leading source and authority on title insurance for tax sale and adjudicated real estate. Licensed and staffed to handle all aspects of real estate transactions throughout Louisiana, our principal services include title abstracting, title examinations, title opinions, defective title curative work, title insurance, notary public services, escrow, settlement, and closing services. For more information, go to: www.nolatg.com.



Small Can Have a Big Impact

By Tom Harvey

As a nation we revere size. In the first paragraph of a book on leadership I recently finished, the author reminds readers the company he leads has 900 outlets, implying he must be a great teacher of leadership. But big numbers don't guarantee competency. Bernie Madoff managed over $50 billion in investments for 4,800 clients and was later sentenced to 150 years in jail for fraud.

But Americans still love bigness. In a 2017 article by Kirkpatrick Sale, published in The Post and Courier, he provides numerous examples of how bigness, for better and for worse, is pervasive in American culture. He provides the following examples:

A survey of 300 U.S. chefs revealed most serve portions two to four times what's recommended, while two-thirds of Americans are overweight. The average American home has almost doubled in size since 1973 while the average number of occupants is up only slightly.

Studies confirm that most Americans seek a bigger vehicle than they currently own when looking for a trade-in, even when gas prices are rising. The desire for bigger vehicles goes beyond added safety or due to wider highways. The search for more space has been part of the American psyche for decades. This desire also fueled the flight to the suburbs, which offer more space between houses and other people.

A driving contributor to America's infatuation with bigness is advertising. Ads constantly promote bigness; the biggest sale ever, Big Macs, Whoppers, Giant Sub, Grande, Super-Size and Super Long. Size seems to be the best measure of excellence in houses, audiences, salaries, buildings, fish and even tomatoes (Big Boy). America even has a literary form called the Tall Tale, e.g., about a giant lumberjack and a big blue ox.

As one European journalist put it, "To say that something is large, massive or gigantic is in America not a mere statement of fact but the highest commendation." In modern America bigger is not only better, it's often thought to be the best.

Sale makes a good case for the ways in which bigness influences our ideas of what is "the best." A 5'3" standout athlete in wrestling and baseball is unlikely to pursue a career in basketball. Yet Tyrone "Muggsy" Bogues did exactly that and excelled in the NBA where the average height is 6'6". He retired with a record in the top 7 in assists and top 10 in steals.

What do Beethoven, Enrico Fermi, Gandhi, Martin Luther King, James Madison, and Isaac Newton have in common? All were short (5'6" or less) yet had a dramatic and long-term impact.

> **Small companies are nimbler, with less bureaucracy and fewer organizational approvals to obtain before an innovation is developed and commercialized.**

Twelve ordinary men spread the world's largest religion, with 2.4 billion followers representing one-third of the global population. Its adherents, Christians, make up a majority in 157 countries.

In the battle of Thermopylae, 300 Spartans led a small Greek force and blocked 300,000 invading Persians. Some historians credit this event with the preservation of western civilization. At the Battle of Gettysburg, 350 Maine volunteers defended a hill known as Little Round Top and repulsed a superior Confederate force, a victory that many scholars believe was the turning point in the Civil War. During the Battle of Britain, the Royal Air Force had less than 750 fighter planes, yet held off over 2,500 attacking Luftwaffe aircraft and enabled England to continue their WWII campaign.

Michael Dell left college, and with $1,000 from his family, started a company. Because of the success of his direct-to-consumer strategy, Dell became the youngest CEO to head a Fortune 500 company. Dell reshaped the supply chain and assembly process for the personal computer industry and today provides jobs for 130,000 people.

In similar fashion, other startups with only a small number of employees reshaped the way we use technology while rapidly expanding employment opportunities. These include familiar ones such as Apple, founded by Steve Wozniak and Steve Jobs; Amazon, founded by Jeff Bezos; Google, founded by Larry Page and Sergey Brin; and Microsoft, founded by Bill Gates and Paul Allen. These four small companies, launched by a handful of entrepreneurs, grew to employ over 2 million people.

In America, just less than 50 percent of private sector workers are employed by small companies. Small businesses are critical to the U.S. economy, creating nearly two-thirds of all new jobs and driving innovation and competition.

Small business is better positioned to test out new ideas and processes with a minimal investment compared to their larger competitors. Small businesses are quicker at adapting to changes in the market. Small companies are nimbler, with less bureaucracy and fewer organizational approvals to obtain before an innovation is developed and commercialized.

Examples of such innovations include commercially successful electric cars, 3D printing, the plain paper copier, barbed wire, the carpet sweeper, the typewriter, a camera for consumers, online streaming, online search, AI chatbots, block chain and telehealth.

Big Often Has a Small Impact

As testimony to the myopia, hubris and sluggish bureaucracy that can often plague large organizations are some significant new product failures by previously successful companies.

Apple introduced Lisa, a high-speed PC; Pippin, a gaming console; Newton, a personal digital assistant; MacIntosh TV; FireWire, a USB alternative; eMate, a laptop/PDA combination; a cube-shaped PC; PINS, a social/music network; and HomePod, a smart speaker. All were failures losing millions of dollars.

Amazon launched Fire Phone, a 3D-enabled smartphone; Destinations, a travel service; Local, a Groupon alternative; Wallet, to store gift cards; Local Register, a mobile credit card processor; Music Importer, to store music; Test Drive, to test apps before downloading; WebPay, to transfer cash; Endless, to sell high end clothing; Askville, to answer questions; and in addition the company closed 87 retail locations. All were failures losing millions of dollars.

Google introduced Google+, a social media platform; BUZZ, a Twitter alternative; Offers, a coupon resource; Tango, an augmented reality platform; Wave, a

collaboration platform; Video, a YouTube alternative; Answers, paid answers for users; Health, to collect personal medical information; Knol, a Wikipedia alternative; and Google Glass, a wearable smart phone. All were failures losing millions of dollars.

Microsoft launched BOB, a user interface; KIN, a windows handset; Zune, a media player; Clippy, an office assistant; Portrait, a video conferencing platform; Lumia, a smart phone; Groove, a music platform; Millennium, an operating system; Band, a wearable smart watch; MSN TV, online TV; and VISTA, a novel operating system. All were failures losing millions of dollars

Larger organizations often become risk averse and fear looking foolish, slowing the pace of innovation, or they play it safe by launching "me-too products." They often conduct shallow market research, failing to assess different types of prospects while underestimating competitive reaction.

Why would the largest bank in America, JP Morgan-Chase, which already spends $12 billion a year on R&D, bother to invest in or acquire 80 small companies? Because they recognize small firms can be the source of many significant innovations. Their proximity to potential customers gives small companies a clearer view into emerging market segments that JP Morgan-Chase is struggling to serve currently or may wish to enter in the future.

As English writer and philosopher G.K. Chesterton observed, "One sees great things from the valley and only small things from the peak."

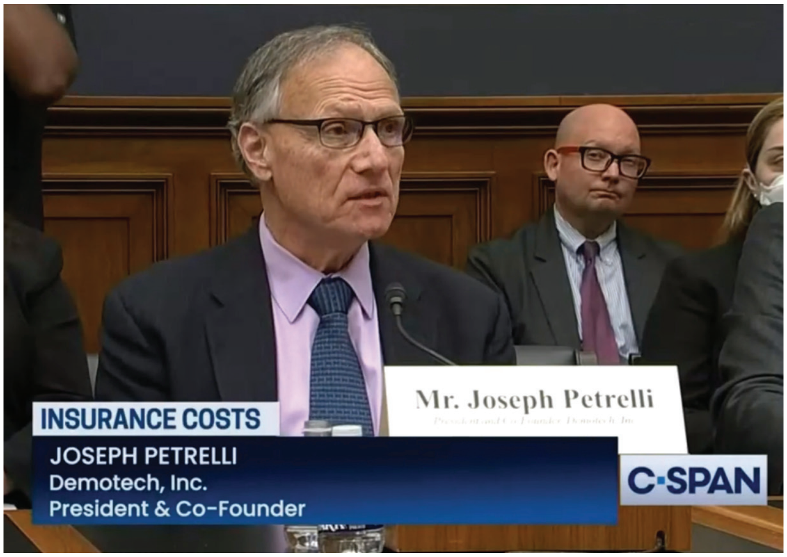
Tom Harvey was president and CEO of Assurex Global, an international partnership of independent insurance agents and brokers. He then joined the business faculty at The Ohio State University. Earlier, Harvey was a partner with a venture capital firm. He began his career in marketing with a Fortune 500 company after military service and graduating from Georgetown. Contact him at twharvey@columbus.rr.com

Demotech's Joe Petrelli Addressed the Congressional Subcommittee on Housing and Insurance Regarding the Factors Influencing the High Cost of Insurance

November 2, 2023, Joseph Petrelli was invited as part of a panel of witnesses giving testimony before the Congressional Subcommittee on Housing and Insurance in Washington D.C., on the topic of "Factors Influencing the High Cost of Insurance for Consumers." Petrelli submitted written testimony and then was joined on the panel by the following:

- Robert Gordon, senior vice president, American Property and Casualty Insurance Association.
- Frank Nutter, president, Reinsurance Association of America.
- Grace Arnold, commissioner, Minnesota Department of Commerce, on behalf of the National Association of Insurance Commissioners.
- Baird Webel, specialist in financial economics, Congressional Research Service.
- Sharon Lewis, executive director, Connecticut Coalition for Environmental Justice.

Committee Chairman Warren Davidson opened discussion with a welcome to the panelists, and a welcome to Petrelli, stating that Petrelli's decades of running an independent insurance rating agency gives him a unique perspective on the current challenges of the insurance market.



Source: C-SPAN

Joseph Petrelli addressing the Congressional Subcommittee on Housing and Insurance on November 2, 2023.

The hearing was one important part of the discussion of the domestic insurance market, and recent developments resulting in higher costs and reduced availability of property and casualty insurance, and what possible solutions may be realized for the issue in the future.

The panelists spoke to the Subcommittee regarding this troubling trend. They addressed increased risks due to climate change and more extreme weather, persistent inflation, and " … poor regulatory decision-making in certain places… " amongst other topics raised by the Subcommittee and the panelists that are pertinent to this issue. Besides state-based concerns, there are reinsurance issues at hand, including: "According to a recent report from broker Gallagher RE, U.S. Property catastrophe reinsurance rates rose by as much as 50 percent annually as measured by a key July 1 renewal date, with states such as California and Florida contributing significantly to these increases."

As the panel gave testimonies, Rep. Emanuel Cleaver identified some of the factors affecting increased costs, including inflation-related costs, rising asset prices in hazardous areas, increased cost of risk transfer, reinsurance costs, and litigation costs.

Frank Nutter stated that, "Property insurance is at the intersection of extreme weather and decisions made by individuals and by the communities in which they live about the features of properties at risk and the resilience of communities that are, in the words of one analyst, creating disasters by design." As such, he believes the rising costs and lesser availability of insurance are due to increases in the number and value of properties at risk to extreme weather, and inflation affecting construction costs.

An additional factor, according to Baird Webel, is that in some states like California and Florida, there have been factors in the insurance regulatory environment that have driven market issues and disruptions, and supply disruptions that will "feed through into prices in those states."

The effects noted by panelists are inequitable, stated Sharon Lewis, and put a heavy burden on certain populations. "For a community to become uninhabitable, it only needs to be uninsurable," Lewis said. "This has been an historic problem for low-income communities and communities of color."

Commissioner Grace Arnold noted some effective responses to this issue through the NAIC, such as implementation of climate-related risk disclosures by 85 percent of the insurance market, through their Climate Risk and Resiliency Taskforce efforts. She listed updated solvency formulas that reflect hurricane, earthquake, and wildfire risks, as well as partnership with FEMA to create more resilient and sustainable communities.

Petrelli summarized his written and spoken testimony:

"In addition to the traditional drivers of cost, research pioneered by Demotech in March 2022, undertaken by Todd Kozikowski, a technologist with 25 years of data analytics, and artificial intelligence expertise, discovered opportunists were using the internet in an effort to secure contested claims against insurers and other targeted established brands across industries.

"In response to this discovery, Demotech coined the term 'tech-enabled claim instigation' as the confluence of litigation funding, litigation marketing, litigation platforms and search engine optimization by opportunists seeking to secure contested claims.

"To paraphrase Allen Kerr, commissioner of insurance, state of Arkansas, 2015-2020, chairman of the National Association of Insurance Commissioners Industry Liaison Relations and Market Regulation and Consumers Affairs (D) Committee and the Market Analysis Working Group: 'the threat that … has been unearthed has never been presented at the state or national level until now. Every carrier should understand … this discovery and move to respond at the earliest possible time.'"

In response to Petrelli's testimony, Chairman Davidson stated that he would research tech-enabled claims instigation, and hoped that state-based regulators would do the same to find solutions to the rising costs of insurance premiums.

[1] "Housing and Insurance Subcommittee hearing entitled: "Factors Influencing the High Cost of Insurance for Consumers." Subcommittee on Housing and Insurance, Page Three, Committee Staff. Nov. 2, 2023.

[2] "Housing and Insurance Subcommittee hearing entitled: "Factors Influencing the High Cost of Insurance for Consumers." Subcommittee on Housing and Insurance, Page Two, Committee Staff. Nov. 2, 2023.

Niche Financial Analysis Provider of the Year [Insurance — USA]

Niche Financial Analysis Provider of the Year Annual Award 2023, and the Eight Years Prior!

Demotech, Inc. is proud to announce that it has secured Corporate America Today's Annual Award 2023 as "Niche Financial Analysis Provider of the Year [Insurance – USA]" for the ninth consecutive year. Our registration with the United States Securities and Exchange Commission Office of Credit Ratings as a nationally recognized statistical rating organization in the classification of Insurance Companies was accepted on July 11, 2022. Demotech has secured the Annual Award two consecutive calendar years subsequent to our registration.

We remained consistent in the application of our rating procedures and processes, secured a coveted registration, and were still viewed as the leader in our niche. It does not get much better than that! Learn more at www.demotech.com.

National Council of Insurance Legislators Annual Meeting of 2023 in Columbus, Ohio

In November, 2023, the National Council of Insurance Legislators held its annual meeting for calendar year 2023 in Columbus, Ohio. Consistent with prior years, the agenda was replete with critical current matters as well as discussion of the numerous emerging issues that consumers and legislators face. Detailed information can be found at https://ncoil.org/2023-annual-meeting-presentations-materials-columbus-ohio/.

Featured speakers included James J. Donelon, recently retired commissioner of insurance, state of Louisiana and a past president of the National Association of Insurance Commissioners.

Gov. Mike DeWine delivered an address to the group as did Lt. Gov. Jon Husted. Ohio Sen. Bob Hackett, chair, The Workers Compensation Insurance Committee, who coordinated an update on Federal workers compensation issues to his committee. The committee also discussed medical marijuana's impact on the workers compensation marketplace, and overall work comp trends in light of continued advancements in medical treatment and diagnosis.

Superintendent of Insurance Judy French also shared her thoughts with the officers and attendees of the Conference.

NCOIL elected Texas Rep. Tom Oliverson, M.D. as president; New York Assemblywoman Pamela Hunter as vice president; Minnesota Sen. Paul Utke as treasurer; and Louisiana Rep. Edmond Jordan as secretary. Arkansas Rep. Deborah Ferguson, DDS, remains in the leadership of NCOIL as immediate past president.

One of the issues before NCOIL and the other deliberative bodies will be litigation funding. As Demotech's research, coordinated by Todd Kozikowski, has identified litigation funding as but one of the four corners of tech-enabled claim instigation, Demotech is hopeful that it may share its research at a future meeting of NCOIL.

The spring meeting of NCOIL is scheduled for April 11-14, 2024. It will be held in Nashville, Tennessee, at the Sheraton Grand Nashville Downtown. Visit www.ncoil.org for details on the spring meeting.

James J. Donelon
Commissioner, LA

Lt. Gov. Jon Husted (OH)

Ohio Sen. Bob Hackett

Superintendent of Insurance Judy French (OH)

NCOIL is a legislative organization comprised principally of legislators serving on state insurance and financial institution committees around the nation. NCOIL writes model laws in insurance, works to both preserve the state jurisdiction over insurance as established by the McCarran-Ferguson Act 74 years ago and to serve as an educational forum for public policy makers and interested parties.

Founded in 1969, NCOIL works to assert the prerogative of legislators in making state policy when it comes to insurance and to educate state legislators on current and perennial insurance issues.

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
Sound Public Policy In 50 States For 50 Years

The National Association of Insurance Commissioners Elects 2024 Officers

Members of the National Association of Insurance Commissioners elected the 2024 officers at the conclusion of the NAIC Fall National Meeting in Orlando.

Here are the 2024 NAIC officers:

President: Connecticut Insurance Commissioner Andrew N. Mais. Mais was nominated commissioner of the Connecticut Insurance Department effective March 4, 2019.

President-Elect: North Dakota Insurance Commissioner Jon Godfread. Godfread was first elected commissioner of the North Dakota Insurance Department on Nov. 8, 2016, and re-elected on Nov. 3, 2020.

Vice President: Virginia Insurance Commissioner Scott A. White. White was appointed commissioner of the Virginia Bureau of Insurance effective Jan. 1, 2018.

Secretary-Treasurer: Rhode Island Superintendent of Financial Services Elizabeth (Beth) Kelleher Dwyer. Dwyer was appointed superintendent of insurance on Jan. 11, 2016, and effective May 2023, named director of Rhode Island's Department of Business Regulation.

The newly elected officers assumed their duties on January 1, 2024.

The NAIC members also elected 2024 zone officers during the Fall National Meeting. The NAIC is organized into four geographical zones, and within each zone, three officers are elected annually by the respective zone members.

Here are the 2024 zone officers:

Northeast Zone
Chair: Commissioner Trinidad Navarro (Delaware).
Vice Chair: Commissioner Kevin Gaffney (Vermont).
Secretary-Treasurer: Commissioner Gary Anderson (Massachusetts).

Southeast Zone
Chair: Commissioner Carter Lawrence (Tennessee).
Vice Chair: Commissioner Sharon Clark (Kentucky).
Secretary-Treasurer: Commissioner Alan McClain (Arkansas).

Midwest Zone
Chair: Director Anita G. Fox (Michigan).
Vice Chair: Commissioner Vicki Schmidt (Kansas).
Secretary-Treasurer: Director Eric Dunning (Nebraska).

Western Zone
Chair: Commissioner Michael Conway (Colorado).
Vice Chair: Commissioner Andrew R. Stolfi (Oregon).
Secretary-Treasurer: Commissioner Cassie Brown (Texas).

About the National Association of Insurance Commissioners:
As part of our state-based system of insurance regulation in the United States, the NAIC provides expertise, data, and analysis for insurance commissioners to effectively regulate the industry and protect consumers. The U.S. standard-setting organization is governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer reviews, and coordinate regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally.
Taken from the NAIC online post dated Dec. 4, 2023

Orange Insurance Exchange Launched in Florida

By Don Matz

Orange Insurance Exchange, a new residential property insurer in Florida, celebrated its successful December launch. As of Dec. 1, 2023, Orange began writing both personal and commercial residential properties. Additionally, Orange participated in the December 19 Citizens Property Insurance Corporation takeout and assumed over 7,000 policies as a result. Orange will also participate in the Feb. 20, 2024 CPIC takeout for additional policies.

Founded and capitalized by the investment firm, Griffin Highline, in October 2023, Orange has hit the ground running in an extraordinarily short window of time. From submitting its application to the Florida Office of Insurance Regulation on Sept. 9, 2023, to receiving its Certificate of Authority on Oct. 6, 2023, Orange has been on a fast track. Except for a deliberate pause to not add exposure during the remainder of the 2023 hurricane season, Orange has operated on an accelerated timeline.

Founded and capitalized by the investment firm, Griffin Highline, in October 2023, Orange has hit the ground running in an extraordinarily short window of time.

Griffin Highline is pleased to partner with Don Matz and Michael McNitt, with whom they have longstanding relationships. Matz, the former Tower Hill Insurance Group president, returns to the Florida property insurance market with the Orange platform and will lead the overall initiative as CEO of the Attorney-in-Fact (AIF), Orange Insurance Managers. Orange will partner with Cabrillo Coastal General Agency and its sister company, Harbor Claims, as both businesses will provide administrative and claims services on behalf of Orange. Cabrillo and Harbor are led by founder and longtime CEO, Michael McNitt, and have a sterling record in Florida. As part of the partnership, McNitt will also serve as the president and chief underwriting officer of the AIF. The Cabrillo/Harbor partnership brought the personnel, information technology, product expertise, customer service, marketing and claims bandwidth that allowed Orange to hit the ground running.

Another key to Orange's rapid launch was the ability of Demotech to work quickly with the Orange management team in their review process. With its Demotech rating, Orange is accepted by the secondary mortgage market and thus accepted by primary lenders. Also, the Demotech rating is readily accepted by agents' errors and omissions (E&O) insurers, thus enabling more marketing opportunities for Orange.

The decision to structure Orange as a reciprocal exchange was informed by Matz's previous experience in leading the launch of and serving as the first CEO of the AIF Tower Hill's reciprocal exchange in 2022. According to Matz, the reciprocal exchange structure is a well-suited model for Florida. Because policyholders receive ownership in the reciprocal exchange, Orange can attract policyholders with an owner's mentality.

Orange will provide coverage for both personal lines and commercial residential lines within the same exchange. Personal lines policies include homeowners (HO3), condominium owners (HO6) and landlord/secondary properties (DP3). Commercial lines policies are limited to commercial habitational risks such as condominiums, apartments and co-ops.

"We are enthusiastic about the opportunity ahead and excited to collaborate with Orange's broad network of independent insurance agents across Florida. Our goal is to provide superior service to our policyholders each and every day," says Matz.

ORANGE
INSURANCE EXCHANGE

Examinations
CONTINUED FROM PAGE 7

A "continuing reminder" of confidentiality obligations, as referenced in the Examination Handbook, with silence in the Market Regulation Handbook, is well-short of the complex issues associated with both protecting confidential material from being released by third party contractors, either directly or indirectly due to security issues. Likewise, this "continuing reminder" does nothing to provide an insurance company with recourse if a state's third-party contractor releases data collected in an examination or investigation of an insurance company.

Some of these issues where guidance is needed include:

(1) What records are "confidential?" Does the state or the third-party contractor define any records as excluded from this definition?
(2) What recourse does the insurance company have if a third-party contractor releases company information? Will the state take any action to retract the release? Will the insurance department take any action to halt the release or bring the releasing party to justice?
(3) Does the contract firm have conflict of interest and ethics policies that apply to the contractor working on the examination?
(4) Do state trade secret or other protections, including claims for attorneys' fees, apply to a release by a state contractor?
(5) What security protections does the state require the third-party contractor to take and maintain in their work with the state? How and where are materials stored?
(6) Does the contracting firm require their employees or contractors to sign a continuing non-disclosure agreement after they leave the firm?

Neither existing state laws nor the NAIC provide insurance departments with guidance regarding the issues raised above. Regulators and insurance companies should open conversations on these issues now to act in advance of any problems or concerns. Several immediate options are possible:

1. **Contract Terms.** The Examination Handbook and the Market Regulation Handbook should both be amended to outline terms that each state insurance department should include in their agreements with contract examiners. These terms should minimally include requirements for confidentiality, data security, conflicts of interest, ethics, and continuing applicability of these requirements after the examiner leaves his or her employment with the contracting firm.

2. **Non-Disclosure Agreements.** The Examination Handbook and the Market Regulation Handbook should both be amended to provide for a form of non-disclosure agreement that the insurance company and the third-party contractor must sign before the contractor begins work on the insurance company matters. Similar arrangements are made in other regulatory settings.[13] The NAIC template agreement would be fixed, via review and comment from interested parties, and would provide the insurance company with appropriate recourse against the third-party examiner in the event of a release of data.

3. **Update Model 390**. Model 390 should be targeted for amendment to recognize the realities of contract examiner involvement with financial and market conduct examinations.

Conclusion

Contract examiners have been utilized by regulators for many years. However, regulators are relying on more contract examiners today than ever before. Additionally, almost all data is transmitted and secured in electronic form today, making the storage and transfer of confidential data quicker and easier than ever before. These conditions create significant risks for regulators and regulated insurance companies that are not addressed in current law, current model laws, or in any NAIC manuals, which are incorporated by reference into every state insurance code.

Regulators should now work through the NAIC to standardize and address the terms and conditions that all contract examiners should be subject to regarding the confidentiality of data they review and analyze as they work for state regulators. Likewise, regulators should include a template non-disclosure agreement in their Examination Handbook and Market Regulation Handbook to bridge the divide between contract examiners and examination subjects to ensure lasting confidentiality protections. Finally, Model 390 should be updated to address the use of contractors and their connection to state confidentiality requirements. These changes would strengthen the examination processes for all state insurance departments.

Mary Jo Hudson serves as a strategic adviser, regulatory advocate and thought leader for global, national and regional insurance
CONTINUED ON PAGE 36

[13] See e.g., 12 Del. Code §§1177, 1178 (contracts between state and outside contractor). See form of non-disclosure agreement at https://vda.delaware.gov/wp-content/uploads/sites/66/2017/03/Delaware-VDA-Form-of-NDA-August-2015.pdf.

Examinations

CONTINUED FROM PAGE 35

companies, trade associations, businesses and litigants in insurance law, regulatory compliance, and unclaimed property audit defense matters.

As a former insurance commissioner for the state of Ohio, she understands regulators' perspectives and provides insurance company leaders with keen insights and trusted strategic advice and counsel on a wide range of matters.

Hudson is active defense counsel for a number of multistate unclaimed property audits, working on behalf of holders on privileged internal analysis, responding to auditor demands, and assisting holders with VDAs and providing strategic advice on unclaimed property law compliance. She wrote the definitive white paper on life insurance and unclaimed property, published by the American Council of Life Insurers.

As Ohio's director of insurance from 2007 until 2011, Hudson served as a member of the NAIC Executive Committee, chair of the Ohio Health Care Coverage and Quality Council, and chair of the Interstate Insurance Product Regulation Commission. She also has prior experience as general counsel for the Office of the Ohio Insurance Liquidator and as a special services attorney for the Ohio Department of Insurance.

December

CONTINUED FROM PAGE 9

investment is acquired by an investor, allowing insurance company investors to know the credit quality of the asset, and its resulting NAIC Designation and RBC treatment, prior to purchase. In contrast, the NAIC modeling of an investment is proposed to occur after an investment is acquired, resulting in uncertainty to the impact on the insurer's RBC requirements. This uncertainty is likely to create a chilling effect on markets for structured securities, which have been shown to be safe investments with the potential for higher returns than traditional asset classes. These concerns were reflected in industry comments at the E Committee meeting, including concerns expressed by certain private equity owned insurers that the NAIC was fueling unfounded attacks in the press regarding emerging assets. The industry commenters stressed that any methodology for evaluating credit risk should be founded on the principle of "equal capital for equal risk." While the NAIC has recently reduced the strong rhetoric it has used in prior meetings to support its reforms, it remains to be seen whether the NAIC will take a thoughtful approach to determining investment quality for structured securities and emerging investments, as opposed to taking actions designed to suppress the market for such assets.

While the NAIC has recently reduced the strong rhetoric it has used in prior meetings to support its reforms, it remains to be seen whether the NAIC will take a thoughtful approach to determining investment quality for structured securities and emerging investments, as opposed to taking actions designed to suppress the market for such assets.

Conclusion

The NAIC and state insurance regulators are taking bold steps to increase their oversight of emerging asset classes, focused on structured securities and investments that include residual interests. In each instance, industry advocates are pressing the NAIC and regulators to improve checks and balances on the proposals or modify them to better align with actual market practices. These proposals will continue to be debated throughout 2024.

The Squire Patton Boggs Financial Services/Insurance Team includes former senior insurance regulators and former general counsel with many years of providing strategic counsel on domestic company and captive formations, insurance company M&A transactions and related regulatory approvals, insurance company reorganizations and redomestications, operational and remedial compliance measures for solvency, multi-line product and claims administration, development and operation of complex distribution networks, data use and privacy, data security, and defense of regulatory examinations. Former Ohio Department of Insurance Director Mary Jo Hudson and former Ohio Department of Insurance Assistant Director Doug Anderson serve as litigation experts on insurance regulatory matters on a regular basis, with Hudson maintaining a special emphasis on life insurance and Anderson maintaining special emphasis on health insurance. Our team member Pat Hatler has significant in-house experience with insurance companies. Michael Mullaly focuses his litigation practice on defense of adversarial regulatory matters and insurance coverage-related disputes. Bevan Blake focuses his practice on corporate matters as well as financial regulation compliance.

Oliverson

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Colonel Boyd of the United States Air Force in the 50s talked about the OODA loop — observe, orient, decide, act. Anesthesiologists are good at that. They have to orient themselves. They have to gather information. They have to make a decision. They have to act quickly. We don't often suffer from the analysis paralysis trap.

Also, as an anesthesiologist, a lawmaker and a Christian, humility has always been an important value to me. I've always told my colleagues, "I don't need my name on the bill. I just want the policy. It doesn't matter to me whose bill it is, give me the good policy." It's helped me to be successful

> **I think the insurance industry is amazing. If you think about it, what the insurance industry does is it helps to provide certainty where there is uncertainty, assigning a monetary value to risk and allowing people to mitigate that risk through entering into a contract with someone who's willing to accept a premium payment in exchange for the possibility of having to help that person.**

as a lawmaker in terms of getting things done. I don't have to take the credit for it. As an anesthesiologist, you're never as important as the surgeon. We're used to giving credit to others. My humility comes from my Christian faith. It has helped me to be successful in the legislature and in the operating room because it's not about me.

TDD: What strength or attribute had to be developed over your career?

TO: Public speaking. Public speaking is challenging and takes some time to develop. I'm a lot better today than I was when I first ran. I used to have to write everything down and say the words exactly as I'd written them on the page. I've gotten better as I've gone through the process. It relates to being humble. I acknowledge that I don't know everything, and I'm not expected to know everything. Sometimes it's more important to listen than to talk.

TDD: Who, over the years, would you characterize as mentors in your life?

TO: My father, Raymond Oliverson, has always been a mentor to me. He's a former Air Force pilot, a successful businessman. He impressed upon me from a young age the importance of what he had put on his tombstone — "He kept his word." A person is only as good as their word. That's made a profound influence on me.

I've met some lawmakers along the way who have inspired me. There's a former congressman from Ohio by the name of Bob McEwen, who, with his wife Liz, encouraged me to run for office. I would also say the lieutenant governor of Texas, Dan Patrick, has also been an inspiration to me in terms of running for office. My roommate in medical school, Eric Miller, who's a pain management physician in New Braunfels, is the one who persuaded me to go into anesthesia. I would say that my wife, Jennifer, has had a tremendous influence on me through the years, especially in terms of my spirituality and my walk with my Lord Jesus Christ along with my wife. We're very proud of the traditional family, and traditional family values that we practice.

TDD: For young people who are thinking about the insurance industry, what would you tell them about this industry as a career path?

TO: I think the insurance industry is amazing. If you think about it, what the insurance industry does is it helps to provide certainty where there is uncertainty, assigning a monetary value to risk and allowing people to mitigate that risk through entering into a contract with someone who's willing to accept a premium payment in exchange for the possibility of having to help that person.

There are so few industries where I can say, you're always going to have a job and you're always going to be needed. Healthcare is one of those industries as well.

TDD: What would you say to young people interested in going into the medical field?

TO: Same thing. There's always going to be a need for healthcare providers. In fact, if you can start tomorrow, that would be great, because we have shortages across the board in healthcare right now, and those aren't going to get better anytime soon. I have three kids, and as far as I know, all three of them are thinking about professions in healthcare. I'm supportive of that because I recognize they'll never be unemployed. Their skills will always be needed.

TDD: You're co-founder of the National Association of Christian Legislators, NACL. Tell us more about that organization and mission.

TO: NACL is the abbreviation of National Association of Christian Lawmakers and also the chemical formula for table salt, a biblical concept itself. That was intentional. The need for an organization such as NACL was first espoused by Alexander Hamilton. He expressed concern when he started to see people running for office, trying to serve in the government for self-serving reasons as opposed to self-sacrificial reasons. We saw this too, and so the organization was created.

CONTINUED ON PAGE 38

Oliverson

CONTINUED FROM PAGE 37

The founder of NACL is Jason Rapert, a past president of NCOIL. We met at NCOIL. He said, "I'm working on this. What do you think?" I said, "I think this is brilliant and you have to do it. And I'm going to help you in any way that I can." It's an organization of lawmakers from across the United States, committed to exploring policies and initiatives that reflect a biblical worldview. Our first ever model resolution was affirming the right of Israel to exist. We're strongly in support of the nation of Israel and encouraging the United States to be also.

TDD: Could you give, in general, your thoughts on personal learning and educating others? It seems like something you do both as a medical professional and a legislator.

TO: Let me see if I can answer your question a different way. I take NCOIL's mission of educating lawmakers about the issues of insurance very, very seriously. Because we are a sector of the economy that is predominantly overseen and managed by state lawmakers, not federal lawmakers, it's truly important that state lawmakers understand how insurance works, what's good for a healthy insurance market, what's bad for a healthy insurance market, and what innovations in the insurance market may be coming down the pike and what emerging issues there might be and how best to respond to them. It is, I think, buried in the details of McCarran-Ferguson. Yes, we believe strongly in state-based systems of insurance regulation, but we also hope that insurance, regulators, and lawmakers across all 50 states would tend to move in concert with one another towards the common goal of promoting a vibrant, competitive, healthy marketplace for insurance products within their own states. To a certain extent, that requires a fair amount of interoperability and commonality, so I think that NCOIL's mission of educating lawmakers about insurance is paramount. I can tell you that 90 percent of what I know about the insurance industry was learned at an NCOIL meeting.

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TDD: Now we have what we call our lightning round. To start, what is your favorite meal?

TO: Barbecue, and I would tell you that the standard by which all barbecue must be judged is the quality of the lean sliced brisket. And you don't put sauce on it either. If you put barbecue sauce on it, you're masking the flavor of the meat.

TDD: Your favorite snack?

TO: Beef jerky.

TDD: How about a book you would recommend or that you've enjoyed reading?

TO: My most favorite book I've ever read was Moby Dick.

TDD: A favorite movie?

TO: The movie that keeps popping up in my head is "Gladiator." It may not be my favorite movie, but it is a must-see movie. Russell Crowe's performance was tremendous. Joaquin Phoenix was phenomenal as well. It's a sad story, but you get the sense that family is important, as are relationships, honor, integrity, truthfulness. These are things worth fighting and dying for. That's a good message. I've been in a number of men's Bible studies where the movie "Gladiator" has come up as an example of a characteristic that a Christian man, a Christian husband, a Christian father should embrace.

TDD: Cat or dog person?

TO: I'm kind of in the middle. As a young person, I was a cat person, because I was allergic to dogs, but when I got married, we got our first dog that lived in the house. Now, I have two Rhodesian Ridgebacks. I love them dearly. They're really amazing companions.

TDD: How about a hobby you enjoy, or you wish you had more time to pursue?

TO: I have several hobbies, but I think the one that I love and wish I had more time to pursue is playing guitar. I started learning about four years ago kind of late in life, but it's become a passion. It's something that I can do in my free time. I have a guitar in my capital office. I've been known to sit there, between meetings and strum, as a stress reliever. I love the sound of music. I've always been a musically inclined person.

TDD: That's all we have for the lightning round. We really appreciate your time and your thoughts today. Thank you.

TO: Thanks, y'all.

Rafeld

CONTINUED FROM PAGE 15

exercise patience, show empathy, and most importantly, take steps to let the individual know they've been heard.

TDD: Did you have a mentor? If so, what is your most important recollection of his or her advice?

MR: I was fortunate to have had a number of mentors during my career. While each mentor had a different style and area of expertise, each individual dedicated time to provide input, ensure I was well trained, and encouraged me to ask questions and use my creativity. They also exposed me to new experiences, encouraged me to take on added responsibility, and most importantly, they made me feel valued.

TDD: Tell us about the Ohio Department of Insurance, and comment on how the agency may distinguish itself from other regulatory organizations.

MR: The Department is one of Ohio's oldest consumer protection agencies, and was established to oversee Ohio's insurance industry, ranked as one of the top 10 largest markets in the United States. Its mission is to provide consumer protection through education and fair but vigilant regulation while promoting a stable and competitive environment for insurers. The agency takes its role very seriously.

I personally think what sets the Department apart from other regulatory agencies is the open communication established with stakeholders, and its active involvement with the National Association of Insurance Commissioners.

TDD: What types of clients does ODI serve?

MR: The Department serves a diverse group of stakeholders as they assist consumers, consumer organizations, insurers, agents, agencies, professional organizations, members of the legislature and Ohio's governor.

TDD: Tell us more about ODI's Fraud & Enforcement Division, and how it plays a key role in the Department's mission to provide consumer protection.

MR: The division is classified as a criminal justice agency. It is responsible for conducting civil and criminal investigations into allegations of unlicensed insurance activity, agent misconduct, insurance fraud, and crimes related to insurance. On an annual basis, the division identifies millions of dollars in fraud losses, and works with local, state and federal prosecutors to ensure insurance agents, agencies, consumers, medical providers and third parties who violate Ohio's insurance laws are held accountable.

TDD: How did you define "success" for your team?

MR: I always measured success using a combination of metrics that allowed me to gain a comprehensive understanding of our team's performance. In addition to using performance data to gauge team productivity, I'd review statistics and outcomes to gauge the success of process improvement initiatives.

In the world of investigations, our team measured a great deal of our success through the outcomes of our cases, as it was incredibly rewarding for all when the successful prosecution of an individual resulted in victimized consumers or carriers being made whole.

After more than 20 years in leadership, however, I believe the most important sign of success is a postive team culture, where team members feel valued and appreciated for their ideas and contributions.

TDD: Does ODI support ongoing training and education to stay current in their field?

MR: Absolutely. The Department recognizes training and education are key to staff development as well as the agency being able to effectively address emerging issues.

TDD: Was there a defining moment when you might have exited the insurance industry rather than stay?

MR: In 2016, after my husband and I had our twin girls, we questioned whether I should stay at home or return to work.

Because ODI's leadership team allowed employees flexibility, we decided it would be in our family's best interest for me to finish my career in state service.

TDD: Is the insurance industry changing as fast as the world around it?

MR: I don't think any industry can change as fast as the world around it, but I think the industry has done a great job exploring and utilizing new technology to help streamline business processes, mitigate cost, and improve the overall customer experience.

I also think they've done a fantastic job developing new and emerging products to address the ever-changing needs of consumers and businesses.

TDD: What do you think is the greatest opportunity facing ODI in the near future? The biggest threat?

MR: I think the answer to both of those questions is innovation and technology. Innovation and technology can tremendously assist the department, as well as departments

Rafeld

CONTINUED FROM PAGE 39

of insurance across the country, to more efficiently and effectively regulate the industry.

I also see it as a threat and believe state regulators should begin to expand their staffing models to incorporate technology specialists so they are prepared to assess and respond to security and usage concerns that could result in significant consumer harm.

TDD: What risks are most likely to affect businesses, and which of these would have the biggest financial consequences were they to occur?

MR: In today's environment, I feel the misuse of data and technology are some of the biggest risks that could financially harm insurers. In addition to proactively anticipating potential risk associated with the use of data, AI, and other technology, it's imperative insurers have robust anti-fraud measures in place to ensure data, AI and other technology can't be used against them by the sophisticated criminals working tirelessly behind the scenes to identify and exploit insurer vulnerabilities.

TDD: Looking back at your time in the insurance industry, what did you learn?

MR: I think the most important thing I learned was just how important the insurance industry is to the global economy. I don't think many outside the industry realize it's such a key component of the world's economic stability.

TDD: What is your most cherished professional accomplishment?

MR: Being selected to serve as the Executive Director of the Coalition Against Insurance Fraud has been my most cherished professional accomplishment to date.

TDD: Share your thoughts on why a young professional should consider the insurance industry for a career?

MR: As I found out from personal experience, the insurance industry is so incredibly interesting, and there's so much room for professional growth.

TDD: How should we monitor the external talent pool so as to attract young talent to insurance?

MR: I would love to see the insurance industry and the NAIC establish a robust recruitment program with universities from all across the country to expose students to the world of insurance early on in their college careers.

While the establishment of insurance tracks in college curriculums has been a fantastic first step, I think a national push for long-term internships with industry members and state regulators can expose students to insurance career paths they never could imagine.

TDD: What is a closing thought that summarizes your remarkable career?

MR: When I answered that ad in the newspaper, never in my wildest dreams could I have ever imagined it would lead me to a 32-year career in state government, a job I absolutely loved going to each and every day; the opportunity to travel and see our beautiful country; the ability to meet, learn from, and collaborate with extremely talented professionals from all over the world; invitations to lead working groups, task forces and organizations; life-long professional and personal relationships; and most importantly, my husband, with whom I've built a beautiful family.

I am proud to have served as a public servant for more than three decades, and I will be forever grateful to the leaders who gave me the opportunity to grow and become the professional I am today, and I look forward to seeing what's in store for the next chapter of my professional career!

TDD: What does the future hold for you? What are your plans for next year and beyond?

MR: I'm excited about my new role as the Coalition's Executive Director and am looking forward to working with the Coalition's amazing staff, Executive Committee, and members on new initiatives to help combat insurance fraud.

TDD: What is one technology you can't live without?

MR: I have no idea what I'd do without my iPhone. It's probably been one of the most life-altering technologies ever developed in my lifetime.

TDD: What was the last movie you saw? If you enjoyed it, why did you enjoy it? If not, why not?

MR: This past week I watched "The Big Short," which was a fantastic film about the financial housing crisis in 2007/2008. The movie resonated with me, as I so clearly remember the impact the situation had on the insurance industry as people desperate to get out from under the mountain of debt they were left with turned to the filing of fraudulent homeowner claims as a means to an end.

TDD: What is something most people don't know about you?

MR: In high school, I aspired to become an FBI agent. I successfully went through the recruitment process, and in 1998, was offered an agent position. While I was incredibly thrilled at the opportunity, I absolutely loved working for BWC's Special Investigations Division, so I decided to see where state service would take me.

Temple
CONTINUED FROM PAGE 17

TDD: You've had an incredible experience working at Lloyd's, company formations within your family, runoffs and other things — a wealth of experience. What are some of the advantages of a career in the insurance business, and why should young people consider insurance as a career?

TT: It's a great question. I was in Monroe and the school there at MLU has a risk management program. The head of that program, Dr. Barry, brought six students to one of the speeches I gave. I thanked those students for attending. I acknowledged that they are the future of the industry. When you gather people from the industry, there's a lot of gray hair in the room. We need to do a better job recruiting people to this industry. Even though I grew up in it, I can tell you I didn't go to college thinking I was going to be in the insurance industry.

> **I want all stakeholders to have the opportunity to be engaged, if they choose to do so. If you change nothing, nothing changes.**

TDD: Insurance issues continue to bubble up to the top. How do we prioritize? Is it a resources issue, education issue? What do you think?

TT: In Louisiana, there's one crisis or another. We're myopic when we focus on only one crisis. While you're putting the fire out in the kitchen, the couch and the living room are smoldering and about to catch fire. It''s almost like running from one burning room to another. I think a crisis is an opportunity to create a solution.

Insurance worked pretty well here in Louisiana, but it's been a long time since we've really taken a hard look. What can we tweak? Commercial property is a challenge in Louisiana. I hear it, especially from South Louisiana, whether you've got a building or multifamily housing units. Those are problematic here and countrywide. We need to make sure that we include appropriate reform issues in all lines that need them. I know citizens and elected officials are up to the challenge. I know the industry is too.

TDD: You were the chair and president of the Louisiana Committee of 100 for Economic Development. Do you see that expertise and experience aiding you in terms of getting people together, and educating stakeholders?

TT: It gave me an opportunity to develop relationships with CEOs, business leaders, and heads of higher education schools and universities around the state. The biggest benefit of having been engaged with C100 for 10 years as a member, and chair for two years before that, is that we looked through the lens of economic development policies that promote development for Louisiana. I want to promote a competitive market that helps the state economy as well as individuals.

TDD: Do you have any additional thoughts for us?

TT: I read a proverb that said "if you want to go fast, travel alone; but if you want to go far, travel together." It's back to that collaborative process. I want all stakeholders to have the opportunity to be engaged, if they choose to do so. If you change nothing, nothing changes.

TDD: Now for the lightning round of personal preferences. What is your favorite meal?

TT: A favorite meal would be a Ruth's Chris steak.

TDD: Is there a movie you'd recommend?

TT: My favorite movie is "Giant." I don't know why, it's always been. It's stuck with me forever.

TDD: How about a book you would recommend, or you intend to read?

TT: I just ordered "The Frackers." It's about the fracking industry that exploded in East Texas and Northwest Louisiana. I wouldn't say I can recommend it yet, but it's one I start reading soon.

TDD: Cat or dog person?

TT: Both. We have three dogs and one cat.

TDD: How's the cat doing?

TT: Rules the roost.

TDD: How about a hobby you have or a hobby you wish you had the time to do?

TT: I enjoy being outdoors, whether it's the mountains or on the water. Not really a hobby, but it's what I really enjoy.

TDD: Commissioner, thank you for speaking with us.

TT: I appreciate the opportunity.

Criteria

CONTINUED FROM PAGE 20

or unanticipated claim escalation. However, if insurers are writing a lot of business interruption coverage or certain specialty lines, climate events can be an important factor in stress testing.

The state of the economy and its effect on investment income is a very crucial factor for long tail casualty lines. Stress test criteria should include possible investment income declines, as mentioned above, bond rate fluctuations, and dips in the value of alternative investments. An overall economic slowdown could not only impact investment income but also premium levels. When that happens, revenues and expense become misaligned and, if significant, solvency could be impacted.

Another key stress test criterion for casualty writers is claims trending. Claims cost escalation can grow exponentially each year depending on such things as social inflation, the regulatory environment, and the overall business climate. Major events such as a systemic cyber-attack or other black swan event could be used in stress testing for casualty lines.

Just as in the case of property carriers, a criterion relative to reinsurance is also relevant. Reinsurance rate escalation or a major reinsurer's inability to cover losses could serve as criteria that might affect a primary insurer's solvency.

Conclusion

Insurers in both property and casualty should consider a wide variety of stressors when designing their stress tests. Although there is no such thing as a "run on the insurance company" as there is in banking, when multiple events occur in the same year, these can have an effect similar to a "run." The focus on stress testing by regulators and rating agencies will continue. Therefore, a robust model using a number of criteria in combination is best practice.

The result of all the testing should provide valuable information that can be used in decision-making and strategy setting which serve to increase an insurer's long-term viability and success.

Donna Galer is currently a senior advisor at Hanover Stone Partners, a consulting firm, and is an author of three books on ERM. She was the former chairwoman of the Spencer Educational Foundation and former executive vice president - CAO at Zurich Insurance for world-wide general insurance. She held a number of other positions over the years at the company both in Switzerland and North America. She began her insurance career at Crum and Forster Insurance.

Divide

CONTINUED FROM PAGE 21

Statistics finds Americans over the age of 55 will take roughly half of all new jobs created in the next decade, and the biggest jump in labor force growth will come from those 75 and older. It's time to face it — between the declining birth rate and increased life expectancy, we have an aging population and will need older workers to help sustain our nation's existing productivity rate.

> **When people think inclusivity, their minds seldom jump to the older members of our workforce or to those without college degrees.**

We also need to reassess our hiring requirements. Opting for credential-based hiring rather than degree-based will allow qualified candidates previously overlooked to compete for jobs, thereby combatting the creation of a digital divide that negatively affects those without a college degree. Too many qualified applicants have been dismissed for lacking a paper certificate. And, while a degree should carry some weight — it guarantees a certain level of training and education-derived experience — it should not be the sole deciding factor. Equally important, if not more-so, is hands-on experience, trainings, and certifications.

The advance of AI technology brings with it a world of possibility — for both positive and negative change. As with any tool, it must be wielded correctly and thoughtfully to achieve the desired results. With mindful recruitment practices and hiring requirements, employers can foster an inclusive and innovative workplace that empowers every individual to thrive in the evolving landscape of technological progress.

Johnny C. Taylor Jr. is president and CEO of SHRM, the world's largest HR professional society, and author of "Reset: A Leader's Guide to Work in an Age of Upheaval."

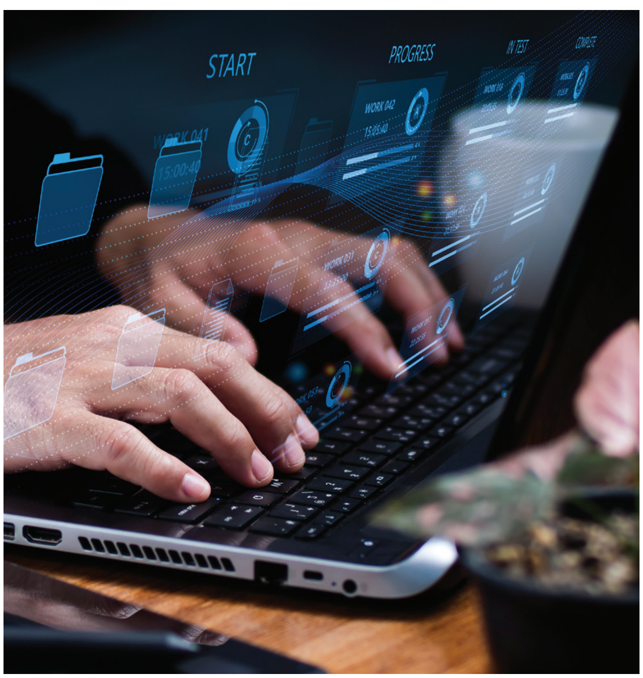
CONTINUED FROM PAGE 25

Nebraska, Nevada, Ohio, Oklahoma, Tennessee, Vermont, West Virginia, and Wisconsin. Many federal and state courts are also adopting rules requiring certain disclosures related to third-party litigation financing.

The growth and implicit acceptance of funding brings to the forefront the problematic way that AI can potentially

> **Since unearthing tech-enabled claim instigation and viewing the growth in funding sources and claim harvesting, Petrelli and Kozikowski have sounded the warning bell of a trend that is entrenched in the insurance industry and will continue to grow.**

be manipulated and used in unexpected ways. A few of the many reasons that litigation is on the rise include: AI-enhancement of litigation capabilities; opportunism by some third parties after storms or accidents; and the



U-STUDIOGRAPHY DD59/shutterstock.com

streamlined effect of filing remote claims. Due to court closures during the pandemic, a backlog was in place when courts reopened. With e-filing fully instituted, it may now be easier for litigants to file cases in bulk.

Since unearthing tech-enabled claim instigation and viewing the growth in funding sources and claim harvesting, Petrelli and Kozikowski have sounded the warning bell of a trend that is entrenched in the insurance industry and will continue to grow. The growth and success of this business model has and will continue to attract capital. In a carriermanagement.com article in 2023, Chad Hemenway quotes Chubb CEO Evan Greenberg, who stated, "The plaintiff should have to disclose who's funding the lawsuit," he said, adding that the jury would have more clarity regarding "whose interests are being served." Greenberg stated, "Excessive litigation is a tax on the economy, and the business community as a whole must take the lead if we're to bring this back to a more rational place. Innovation and progress are impacted by an excessively litigious society."

Litigation financing is proof that tech-enabled claim instigation is a lucrative business model. Addressing the rise of tech-enabled claim instigation will require carriers to act differently. First, carriers must recognize that today's modern law firm has access to AI-driven insights that arm attorneys on how to best optimize their lawsuit. Second, law firms leverage a constellation of advanced digital engagement tactics that drive claim frequency, a phenomenon unparalleled anytime in history. Last, using advanced data frameworks that can monitor these digital tactics, compute the risk of being targeted, and provide approaches to re-fortify a carrier's business model will become a requirement for 2024 and beyond.

As the data scientist and technologist who undertook Petrelli's research project, Todd Kozikowski and his team at 4WARN are uniquely positioned to assess an organization's tech-enabled litigation risk and provide insights to support and enhance a company's financial position. To learn more about your organization's current risk and targeting profile, visit www.4warn.com to contact the team.

Lisa Clark, project manager and strategic initiatives/senior researcher at Demotech, has a background in academic writing and a career in social justice issues that bring a unique perspective to her position in the company. She has a Bachelor of Arts in Interdisciplinary Studies, and a Master of Arts in Social Justice from Methodist Theological School.

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