

**FEDERATION OF REGULATORY COUNSEL, INC.**

**MINNESOTA LEGISLATIVE AND REGULATORY UPDATE**

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**MINNESOTA LEGISLATURE**

The second half of the 2009-2010 Minnesota legislative session began on Thursday, February 4, 2010. Traditionally, the second year of the biennium focuses on the State's bonding efforts; however, much of the focus this session has been on addressing the State's \$1.2 billion budget deficit. Nevertheless, insurance continues to be front and center. In mid-December, members of our firm, Winthrop & Weinstine, P.A., hosted a gathering at our Minneapolis office for clients to meet and discuss in-depth with Minnesota Department of Commerce ("Department") Deputy Commissioner Manny Munson-Regala the Department's plans for insurance legislation in the 2010 session of the Minnesota Legislature. Mr. Munson-Regala shared that the Department's Omnibus Market Assurance Bill will pursue a number of relatively noncontroversial measures. Included in the package will be clarification of the Department's regulation of health underwriters; clarification of a statute recently enacted providing that a Certificate of Insurance does not amend the terms of an insurance policy; a change in the statutory notice of non-renewal or cancellation from 60 to 59 days; a change in continuing legal education for insurance producers; and clarification of laws passed in prior sessions regarding electronic notices provided by insurers to their insureds.

The Department is also considering an overhaul to Minnesota's title insurance laws. Although the Department is willing to explore less sweeping changes to the laws governing title insurers and title insurance agents, it has indicated that it intends to propose the National Association of Insurance Commissioners' ("NAIC") Model Title Insurers Act and the NAIC Model Title Insurance Agents Act. The reason for these legislative initiatives is the sharp uptick in fraudulent and dishonest practices that the Department has witnessed by title insurance agents and their closers over the last handful of years. The Department has suggested that the current "supervisory" system used by title underwriters to "manage" their agents is insufficient, which puts consumers at risk and makes regulatory oversight more difficult. Possible legislative outcomes are: 1) keeping the laws as they exist; 2) making more explicit the specific supervisory responsibilities of the title underwriters; 3) adopting the NAIC model laws; or 4) adopting a "strict liability" standard like Nebraska (i.e., the underwriter is held strictly liable for its issuing agents' acts). We should know more by the end of May as the legislature is required by the Minnesota Constitution to adjourn by that time.

In addition, the Department will be examining opportunities to advance Governor Tim Pawlenty's initiative regarding sale of health insurance across state lines. <sup>1</sup> The Department has taken notice of the provisions in Congressional health insurance reform bills allowing an interstate compact for approval of health insurance policies and will advance the compact should the federal legislation pass. In addition, the Department is looking at opportunities for ways which will allow Minnesota to accept unilaterally policies, forms and rates filed in other states. In particular, the Department sees an opportunity in the individual health insurance marketplace to allow Minnesota licensed insurers to offer health insurance plans approved in other jurisdictions.

**ENFORCEMENT ACTIONS**

The Minnesota Department of Commerce is widely regarded as one of the most "active" insurance regulators in the country, and calendar year 2009 was no exception. There were a number of significant enforcement cases that the Department commenced or resolved. In a case that received significant attention in numerous

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national insurance journals including, among others, *National Underwriter* and *The Insurance Forum*, the Department, on April 16, 2009, commenced enforcement action in *In the Matter of the Resident Insurance Producer License of Michael J. Antonello and the Resident Insurance Agency Producer License of Wealth Management Advisors, LLC*. Department File No. 2612 MBF. The case related to the purchase of stranger-originated life insurance. In its thirty-nine page Order, which summarily suspended the licenses, the Department alleged that Antonello made material misrepresentations on clients' life insurance applications by failing to disclose or significantly underreporting in-force policies. In total, the Department alleged that Antonello submitted 61 applications to 19 companies for a face amount of \$198 million on the lives of four clients. In December 2009, Antonello and the Department resolved their dispute by way of a Consent Order. Stranger-originated life insurance will continue to be an enforcement target for the Department.

The fallout continued from the real estate meltdown as the Department continued to investigate and take enforcement action against numerous title insurance producers and real estate closers. In one representative case, the Department commenced enforcement action against a title insurance agency and its three principals by summarily suspending their licenses. The Department alleged that the licensees failed to remit a significant amount of premiums to their underwriter, misappropriated or converted funds, failed to pay taxes, and failed to record numerous mortgages and other real estate instruments. In November 2009, the Administrative Law Judge found in the Department's favor, and the matter is currently pending before the Commissioner for final disposition.

The Department also concluded a five year examination of Marsh USA by entering into a Consent Order with Marsh in August 2009. The Consent Order resolved allegations relating to, among other things, Marsh's compensation disclosure activities prior to 2004, which, more than five years ago, made front page national news as a result of former New York Attorney General Eliot Spitzer's investigation.

As she has since first coming into office in 2007, the Minnesota Attorney General continues her suitability crusade against life insurers doing business in Minnesota. After suing and/or settling with numerous life insurers regarding the suitability of the sale of annuities to Minnesota seniors, it continued into 2009. As recently as December 22, 2009, the Attorney General entered into a settlement with Great American Life Insurance Company and its affiliate, Annuity Investor's Life Insurance Company. According to the settlement, the Attorney General has secured refunds for consumers of approximately 2,000 policies and will require a more rigid suitability review by the company on a prospective basis. This settlement follows on the heels of four other settlements between the Attorney General and Allianz Life, American Equity Investment Life, AmerUs Life and American Investors Life (now part of Aviva), Midland National Life. At present, there is one lawsuit brought by the Attorney General regarding the suitability of annuity sales and marketing, and other investigations are pending.

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### **Endnotes**

1. Governor Tim Pawlenty is not planning to run for re-election in 2010 and is strongly considering a run for President in 2012.