

INSURANCE

Dave Heineman
Governor

Bruce R. Ramage
Director

A Message from the Director....



Bruce R. Ramage

Bruce Ramage Appointed to Serve as Director of Insurance

As newly appointed Director of Insurance, I would like to use this opportunity to comment on how fortunate I am for the opportunity to work with such a talented and dedicated group of fellow regulators here at the Nebraska Department of Insurance.

I am also pleased to announced that Christy Neighbors, who has been employed with the Department since 1997, has accepted the position of Deputy Director and General Counsel of the Department of Insurance. In addition to her role as general counsel and supervisor of the legal division, Christy oversees the operations of the Department’s human resources and the Senior Health Insurance Information Program (SHIIP). Christy is also taking a lead role in coordinating the activities relating to the administration of the Exchange Planning Grant.

If you are a Nebraska policyholder, a regulated entity or are otherwise impacted by insurance, please know that that our doors, emails, and telephones are open for communication.

This is an exciting yet challenging time. The Nebraska Department of Insurance is actively monitoring and planning for any necessary reforms, all the while performing our duties such as monitoring solvency, market conduct oversight, consumer assistance, public information, licensing, rate and form review, fraud prevention, and premium taxes. In all of these tasks, we continue to strive for effective and efficient ways to do our jobs. I hope you will find this quarterly newsletter informative and helpful.

I look forward to continuing the service provided by the Department to this great state of Nebraska.

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FRAUD DIVISION

2010 Insurance Fraud Statistics

During 2010, the Insurance Fraud Prevention Division (IFPD) received **510** case referrals regarding potential violations of the Nebraska Insurance Fraud Act. Of the referrals received, 309 (61%) were made through the National Insurance Crime Bureau (NICB) and 19 (4%) were made via the National Association of Insurance Commissioners (NAIC). The remainder of the referrals were submitted primarily by victims or concerned consumers.

Actual or **potential** monetary losses exceeding **\$31.1 million** accounted for 37% or 190 of the cases reported. Cases are evaluated based upon a number of criteria, including the statute of limitations, applicability of Nebraska statutes, and solvability factors. Upon completion of the case review, status letters are generated to the complainant informing them of the disposition.

The IFPD investigated the following types of insurance fraud cases during 2010:

- Property/Casualty = 394 Cases (78%)
- Life/Health = 42 Cases (8%)
- Agent or Internal Fraud = 62 Cases (12%)
- Other Fraud = 12 Cases (2%)

Upon completion of case investigation, the IFPD determines whether to classify the case as unfounded, insufficient evidence for prosecution, or sufficient evidence to forward the information to a prosecutor for consideration in filing charges. Before sending a case for a prosecutor's review, the IFPD prepares an investigative summary report outlining the circumstances of the investigation.

2010 Cases Sent for Criminal Prosecution: 30 cases; 16 suspects involved

2010 Convictions: 34 cases; 28 suspects involved

Cases referred to the IFPD for investigation had venue in 48 Nebraska counties, with Douglas, Lancaster, and Sarpy accounting for 345 (60%) of the cases.

2010 Court Ordered Restitution: 20 Cases; \$90,956.33

Nebraska Criminal Justice Information System: The IFPD continues to query insurance fraud suspects through the Nebraska Crime Commission's Criminal Justice Information System Database (NCJIS). A suspect's prior criminal history is checked pursuant to the investigation. There were 456 suspects queried through NCJIS; suspects with a positive NCJIS record totaled 287 (63%).

Fraud Cases

Douglas County Court, CR09-13425

State v. Gerald D. Mattea

Gerald D. Mattea, a licensed insurance agent, was charged in Douglas County with a violation of the Insurance Fraud Act. Mr. Mattea was accepted into the Douglas County Diversion Services Program requiring him to abide by terms and conditions of the program.

Douglas County Court, CR09-35068

State v. Lori L. Jensen

Lori L. Jensen, a licensed insurance agent, was charged in Douglas County with a felony violation of the Insurance Fraud Act. Ms. Jensen was accepted into the Douglas County Diversion Services Program requiring Ms. Jensen to abide by the terms and conditions of the program.

Douglas County Court, CR10-15838

State v. Tara L. Calhoun

Tara Calhoun was charged with one count of insurance fraud after being accused of fabricating an invoice pursuant to a homeowners claim. Ms. Calhoun was accepted into the Douglas County Diversion Services Program requiring compliance to conditions of the program.

Douglas County District Court, 181992

State v. Paulette Rose

Paulette Rose pled guilty to a reduced charge of insurance fraud after submitting a bogus claim to her automobile insurance carrier. Ms. Rose was fined \$500 and must pay court costs in the amount of \$153.50.

Douglas County District Court, 182616

State v. Elijah Bass

Elijah Bass was charged in Douglas County with one felony count of insurance fraud. Mr. Bass was accused of providing bogus documentation pursuant to a disability claim. On July 13, 2010, Mr. Bass pled guilty to a Class III felony. Judge Troia sentenced Mr. Bass to five years of probation and ordered payment of restitution to the insurance company in the amount of \$5,000.

Douglas County District Court, 184188

State v. Latricia Graham

After having her property damage accident denied by the other driver's insurance company, Latricia Graham purchased an automobile policy through a different company. Shortly thereafter, Ms. Graham reported a hit-and-run accident and attempted to claim vehicle damages that were pre-existing. Ms. Graham was charged in Douglas County with one felony count of insurance fraud. In lieu of prosecution, Ms. Graham was accepted into a diversion program. Ms. Graham must abide by several terms and conditions of the program including payment of court costs, diversion program fees in the amount of \$425, 100 hours of community service, and restitution to the State of Nebraska for investigative costs.

Dakota County District Court, CR10-43

State v. Jeffery A. Peterson

On August 24, 2010, Jeffery A. Peterson was sentenced in Dakota County after entering a guilty plea to one felony count of submitting a fraudulent insurance claim, a Class III felony. Mr. Peterson was alleged to have received benefits pursuant to a disability policy that was in effect through his employer. Mr. Peterson was gainfully employed during this disability period. Mr. Peterson was ordered to pay \$28,335 in restitution to the disability insurer, a fine of \$500, and received two years of supervised probation.

Adams County Court, CR10-1067

State v. Amy A. Wolfe

Amy A. Wolfe, an ex-Nebraska state employee, pled no contest to one felony count of insurance fraud as it related to a workers' compensation injury claim she filed while employed with the State of Nebraska. Ms. Wolfe was sentenced to 12-months' probation and costs associated with the court action. Ms. Wolfe must reimburse the State of Nebraska \$2,146.24 and pay the IFPD's investigative costs of \$712.21.

Buffalo County District Court, CR10-57

State v. David E. Jackson

David E. Jackson, a former insurance agent, pled no contest to three counts of theft by deception. Mr. Jackson was ordered to serve 18-months of unsupervised probation, refrain from unlawful conduct, and pay costs as ordered by the court. In addition, Mr. Jackson was ordered to pay restitution to the victim in the amount of \$32,500 and to return the victim's diamond ring.

Washington County District Court, CR10-62
State v. Jamie L. Jacobsen

On December 10, 2008, the Washington County Sheriff's Office responded to a remote location car fire. The 2009 Kia Spectra was a total loss. The vehicle had been reported stolen in Omaha, Nebraska by the owner, Jamie L. Jacobsen. After paying the lien holder over \$14,000, the insurance company received information from Ms. Jacobsen's acquaintances that this was a bogus theft. The acquaintances alleged Ms. Jacobsen was directly involved with the destruction of her vehicle. A criminal investigation was conducted resulting in criminal charges filed against Ms. Jacobsen. Ms. Jacobsen was initially charged with four felony counts - burning to defraud insurer, fraudulent insurance act, conspiracy, and criminal mischief. Ms. Jacobsen subsequently pled guilty to burning to defraud insurer (§28-505) and criminal mischief (§28-519). District Court Judge John E. Samson sentenced Ms. Jacobsen from 18-months to 36-months for each count to be served through the Nebraska Department of Correctional Services and the cost of prosecution.

Sarpy County District Court, CR10-74
State v. Richard J. Hotz

Richard J. Hotz was arrested for insurance fraud soon after reporting the theft of his vehicle to law enforcement authorities. Mr. Hotz was subsequently found guilty on the charges of insurance fraud, false reporting, and obstructing a peace officer. Mr. Hotz must pay a \$1,000 fine and serve 12-months' probation in conjunction with the insurance fraud charge. Mr. Hotz was also fined \$500 for each count of false reporting and obstructing a peace officer.

United States District Court - District of Nebraska, 8:09CR-00129
United States of America v. Bryan S. Behrens

Bryan S. Behrens was sentenced in United States District Court on one count of securities fraud. Mr. Behrens received a five-year prison sentence, three years of supervised release, special assessments, and restitution in the amount of \$6,841,921.90.

United States District Court - District of Nebraska, 4:10CR-03129
United States of America v. Stella M. Levea, James P. Masat, Kenneth W. Mottin

Stella M. Levea, James P. Masat, and Kenneth W. Mottin, three principals involved with First Americans Insurance Service, Inc., located in Grand Island, Nebraska, were charged in a 25-count indictment in federal court. Charges included conspiracy, mail fraud, and defrauding insurance regulators in connection with false statements and financial reports presented to the Nebraska Department of Insurance. Several agencies were involved in the criminal investigation including the Federal Bureau of Investigation, the Nebraska State Patrol, and the Insurance Fraud Prevention Division.



Save the Date—
Aaron Beam to Speak at 11th Annual Insurance Fraud Conference

Hear Aaron Beam, HealthSouth's co-founder and former CFO, tell of their success story in the healthcare field. This thriving company was discovered to be one of the largest perpetrators of fraud in this country's history, ultimately leading to HealthSouth's downfall.

The Insurance Fraud Prevention Division's (IFPD) 2011 Insurance Fraud Conference will be held at Eugene T. Mahoney State Park, Ashland, Nebraska, on **June 7, 2011**. Conference information will be available within the next few months. If you would like to receive a conference brochure, please email your request to Connie Drake at connie.drake@nebraska.gov.

LIFE & HEALTH DIVISION

Interest Rate on Death Proceeds

The 2011 interest rate to be paid on death proceeds not paid within 30 days of receipt of proof of loss is 2.188%.

The 2011 interest rate to be paid on death proceeds not paid within 30 days of receipt of proof of loss is 2.188%. Neb.Rev.Stat. §44-3,143 requires that interest be paid from the date of receipt of proof of death to the date of payment. Information can also be found on the Department's website at www.doi.ne.gov/lh/rate.htm.

Premium Review Grant

In March 2010, the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 were signed into law. The two laws are collectively referred to as the Affordable Care Act (ACA). The ACA provides grant funding to assist states in planning, development, and implementation of parts of the ACA.

Section 2794 of the ACA requires full evaluation of the premium rate increases proposed by health insurance carriers. To support this legislative mandate, the U.S. Department of Health and Human Services awarded \$46 million to forty-five states and the District of Columbia to enhance current state processes for reviewing health insurance premium increases. The Nebraska Department of Insurance (NDOI), on behalf of the State of Nebraska, was awarded \$1 million in Cycle I grant funds on August 16, 2010, to improve the review of proposed health insurance premium increases, take action against insurers seeking unreasonable rate increases, and ensure that consumers receive value for their premium dollars.

The NDOI seeks to contract with a vendor under a Request for Proposal wholly funded by these federal funds to provide actuarial consulting services for detailed review of rate filings. The funds will also be used to develop rate review procedure manuals and make information technology enhancements to the system to ensure a more robust review process is in place. Additionally, the funds will be used to increase consumer transparency and education regarding health rates and acquire information technology resources that will assist in decision-making regarding rates by using medical trends, ratios and projections.

In response to the workload presented under the Premium Review Grant, the Life and Health Division has hired two new individuals to assist. **Judy Overfield** has been hired as the Federal Aide Administrator and is tasked with the oversight of implementation of grant requirements. **Cari Clauss** has been hired as the staff assistant for the Premium Review Grant and is tasked with gathering information for reporting requirements and preparation of data in accordance with grant requirements.

PROPERTY & CASUALTY DIVISION

Update on Division Changes

Thanks to all of you who have worked with us through some major changes.

SERFF: During 2010, the division completed 4,024 filings. Of these, 3,853 were received electronically through SERFF. We approved 412 filings, disapproved 12, had 87 filings withdrawn and accepted the balance as filed or on a file-and-use basis. We went to SERFF-only filing on May 1, 2010, with the exception of companies who have a Nebraska-only Certificate of Authority.

File and Use versus Prior Approval: The past decade has brought about numerous other changes in the regulation of property/casualty. We have evolved from the concept of prior approval for all filings received to a file-and-use approach for most lines for both rates and forms. We have eliminated the filing of subjective rating programs through a +/- 40% flex rating program that applies to most commercial lines. We are pleased to note that Nebraska went from a fairly conservative state to one that we feel is one of the pioneers of a much more user-friendly approach to regulation. We introduced a regulation that deals with exempt commercial policyholders. We understand that filed rates and forms often are not appropriate for some risks because of their size. This regulation takes that into consideration and allows for more negotiation between the insured and the insurer on the forms needed for the coverage desired, and the appropriate charge.

Staff: We have been fortunate in that we have not had a turnover in our staff for several years. The “new kid on the block” has been here over six years, and the five staff in our division account for a total of approximately 64 years of experience with the Department of Insurance. On occasion, we change the lines for which staff is responsible so that we have more than one person in the division familiar with each line. We will be making a change such as this soon and will post the new assignments on our website at www.doi.ne.gov/pc/email.pdf. The listing will include the lines of insurance to which the individual has been assigned, an email address, and a phone number for contact.

PRODUCER LICENSING DIVISION

Agency License Renewals

Notices have been mailed to insurance agencies outlining the agency license renewal procedure for May 1, 2011 to April 30, 2012. The notice also contains information regarding agencies licensed under DBA names, adding or deleting a designated producer for an agency, deleting a name, and changing an agency name or address.

Forms required to effectuate any necessary additions, deletions, or changes may be obtained from the Department's website at www.doi.ne.gov; click on the "Producer" drop-down box, and then click on "Forms."

A full copy of the notice regarding the renewal procedure can also be found on the Department's website at www.doi.ne.gov/notices/notc2011/notice02.pdf. If you have any questions concerning the process, please email Jason McCartney at jason.mccartney@nebraska.gov.

Obtaining an Insurance Consultant's License

Qualifications:

- Applicant shall be at least 18 years of age.
- Applicant shall have been licensed as an agent, broker, or consultant in this state or another state for the three years immediately preceding the date of application or have successfully completed a specific program of study which has a broad national or regional recognition as determined by the Director.
- Applicant shall pass the appropriate qualifying examinations.
- **Nonresident Applicants** – The Director may exempt from examination any nonresident applicant whose resident state or province has examination standards substantially the same as those of Nebraska.

Procedure:

- Submit Form DOI 4-101-C, Application for Insurance Consultant's License, found on the Department's website at www.doi.ne.gov/license/apps/Individual%20Consultant.pdf after the applicant has met all of the qualification requirements, along with a fee in the amount of \$60.00.
- **Nonresident Applicants** – In addition to the application and license Fee, nonresident applicants who have qualified for a consultant's license in their state of residency may need to submit an original home state certification not more than 90 days old, if the resident information cannot be accessed on the National Producer Database.

Examination Procedure:

- Contact Prometric at www.prometric.com or by phone at 1-800-853-4753 for examination instructions and to access the Nebraska licensing information bulletin for test content outlines.

Change of Address:

- Any person, corporation or partnership licensed under the Insurance Consultant's Act shall notify the Department within thirty (30) days of any change of residential or business address. Form DOI-9110, which can be found at www.doi.ne.gov/license/apps/DOI9110.pdf, must be submitted to report a change of address.

Two-Year Continuing Education Requirements - Applies to Resident Licenses Only:

- A resident consultant is required to complete 24 hours of continuing education activities; three (3) of the 24 hours must be in the area of insurance-related ethics. Detailed information regarding the two-year continuing education requirements is available from the Department upon request from Jason McCartney at jason.mccartney@nebraska.gov.

License Duration:

- Initial individual licenses are issued to expire the last day of the month in the licensee's birth month in the first year after issuance in which his/her age is divisible by two.
- Individuals born in **even** numbered years renew their license on their birthday in the **even** numbered years and individuals born in **odd** numbered years renew their license on their birthday in the **odd** numbered years.

Reminders for Consultants

- An insurance consultant is defined as any person or firm who charges a fee for any advice, counsel, opinion, or service regarding insurable risks. This would include the benefits, coverages, or provisions under any policy of insurance or involving the advantages or disadvantages or any such policy of insurance that could be issued in this state. A licensed agent is not deemed to be acting as an insurance consultant if they give advice incidental to the normal course of the agent's insurance business and does not charge a fee other than commissions received from insurance written.
- No person or firm may advertise as an insurance consultant, public adjustor, or any similar title unless the person or firm holds an insurance consultant's license.
- There is no statutory provision for the licensing of company or independent insurance adjusters in the state of Nebraska. Public adjusters must obtain a license as an insurance consultant.
- A licensed individual or firm may not charge a consulting **fee** and receive any part of a **commission** or compensation from an insurer or agent of an insurer in connection with the sale or writing of any insurance which is within the subject matter of any consulting service performed prior to the sale of insurance. A renewal of insurance is not considered a sale of insurance.
- An insurance consultant is obligated to serve with objectivity and complete loyalty the interests of a client and render such information, counsel, and service that best services the client's insurance needs and interests. An insurance consultant agreement with a client must be in writing and executed in duplicate, and shall define the subject matter of the consulting services, outline the nature of the work to be performed and state the fee for the work. The insurance consultant must retain a copy of the agreement for not less than five years after the completion of the consulting services.

Please direct any questions regarding insurance consultants to Jason McCartney, Producer Licensing Administrator, at jason.mccartney@nebraska.gov.

CONSUMER AFFAIRS DIVISION

Storm-Related Concerns

Each storm claim is evaluated on its own merits and the deductible applies to each occurrence.

Adjusters are reminded to adhere to this practice and to do what they can to ensure that insureds understand their responsibility to mitigate and repair damages, even if the cost of repair does not exceed the deductible.

It is possible for consumers to overlook notices of policy changes which accompany renewal offers.

Companies are asked to encourage policyholders and agents to conduct routine reviews of policy benefits and coverage exclusions before disaster occurs.

The Consumer Affairs Division has received reports from a number of consumers who allege the adjuster told them to wait with a claim or with repairing the damaged portion of their roofs until more storm damage occurs. By waiting, consumers believe they might later qualify for complete replacement of their entire roofs.

This practice is clearly contrary to policy provisions. As you know, each storm claim is evaluated on its own merits and the deductible applies to each occurrence. Companies are asked to remind adjusters to adhere to this practice and to do what they can to ensure that insureds understand their responsibility to mitigate and repair damages, even if the cost of repair does not exceed the deductible.

Routine Reviews of Policies

Nebraska's active storm seasons have made some policyholders become much more familiar with the terms—and limitations—of their homeowners' insurance policies. Insureds have been disappointed to learn after the fact that they were not covered for repair of a collapsed roof, for full replacement costs, or for additional costs necessitated by changes to ordinances or laws.

It is possible for consumers to overlook notices of policy changes which accompany renewal offers. Please encourage policyholders and agents to conduct routine reviews of policy benefits and coverage exclusions before disaster occurs. Policyholders should also be reminded that floods are not covered under homeowner's insurance and should be invited to consider the purchase of National Flood Insurance.

Please contact the Consumer Affairs Division to respond to any insurance-related questions or concerns you might have by calling the toll-free consumer hotline at 1-877-564-7323.

LEGAL DIVISION

Employer-Sponsored Small Group Health Insurance Requirement

Under the Patient Protection and Affordable Care Act (PPACA), the number of employees required for purposes of the issuance of small group health insurance has been increased to 100, however, a state may opt to keep that number at 50, which is current Nebraska law.

After consideration of this issue, the Department has opted to retain the current statutory grouping of 2-50 for purposes of all small group health insurance issues, except for purposes of the medical loss ratio (MLR) calculation. The Department will allow companies to use 1-100 employees for purposes of determining the MLR for small group health insurance.

Questions may be directed to Martin Swanson at martin.swanson@nebraska.gov.

Department Concerned About Issuance of Certificates of Insurance

The Department recently reached a consent order imposing a \$500 administrative penalty against an insurance producer who issued a certificate of insurance on the basis of a binder, showing a one-year duration of coverage. The consent order stated that this conduct demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state.

In response to requests from insurance producers, the Department amended bulletin CB-118, dated December 7, 2010, reiterating its concerns regarding issuance of certificates of insurance by insurance producers. The Department is concerned that these certificates of insurance, intended only to be notice of the existence of coverage, are being used in an attempt to modify the terms of the underlying insurance agreement. The amended bulletin states that in addition to viewing such conduct as a potential violation of the Property and Casualty Insurance Rate and Form Act, to the extent that the modification misrepresents the terms of the underlying policy, the insurance producer engaging in this conduct may violate the terms of the Insurance Producers Licensing Act.

As a result, the Department believes that an insurance producer is not allowed to execute a certificate of insurance that includes any statements that purport to amend, extend, or alter coverage or indicate that a certificate holder has a right to notice of cancellation, nonrenewal, or any similar notice not contained in the underlying policy.

The Department asks that insurers forward copies of the amended bulletin to their appointed producers and asks insurers to provide instructions to those producers to help them comply with the terms of the amended bulletin. The full text of the amended bulletin can be found on the Department's website at www.doi.ne.gov/bulletin/cb118_2010_12_07.pdf.

Actions Taken Against Companies

CAUSE NO.	ALLEGATION	DISPOSITION
C-1863 Knights of Columbus Supreme Council Connecticut	Violated Title 210 NAC Chapter 19 §009.01B. Replacement of Life Insurance and Annuities regulation.	Consent Order \$1,000 admin. fine 10/29/2010
C-1867 Aetna Life Insurance Company Connecticut	Violated <u>Neb.Rev.Stat.</u> §§44-1539, 44-1540(13), and Title 210 NAC Chapter 61 §008.01. Unfair Insurance Claims Settlement Practices Act; Unfair Life, Sickness and Accident Claims Settlement Practices regulation.	Consent Order \$18,025 admin. fine 12/23/2010

Actions Taken Against Producers

CAUSE NO.	ALLEGATION	DISPOSITION
A-1882 Lenders First Choice Agency Frisco, TX	Violated <u>Neb.Rev.Stat.</u> §§44-1525(11) and 44-4054(8). Failed to respond within 15 business days; failed to notify the department of change of address within 30 days.	Order Agency license revoked 10/28/2010
A-1887 Darin Swall Boise, ID NPN - 7377511	Violated <u>Neb.Rev.Stat.</u> §§44-1524, 44-1525(12), and 44-4059(1)(b), (g), (h), & (l). Committed an unfair trade practice; accepted an application from an unlicensed producer; violated any insurance law; used fraudulent, coercive, or dishonest practices.	Consent Order \$1,000 admin. fine 10/22/2010
A-1891 Dawn Standage Kearney, NE NPN - 3192844	Violated <u>Neb.Rev.Stat.</u> §44-4059(1)(h). Used fraudulent, coercive, or dishonest practices.	Consent Order \$1,000 admin. fine 10/22/2010
A-1892 Rhoderick J. Beery, III Lincoln, NE NPN - 7233754	Hearing requested for reconsideration of denial of application for resident producer license.	Order Producer license denied 12/13/2010
A-1893 Charlotte C. Bartsch Papillion, NE NPN - 3191657	Violated <u>Neb.Rev.Stat.</u> §44-4059(1)(h). Used fraudulent, coercive, or dishonest practices.	Consent Order \$500 admin. fine 12/6/2010

Actions Taken Against Producers (cont.)

CAUSE NO.	ALLEGATION	DISPOSITION
A-1894 Empire Title of Nebraska, Inc. & Deanna J. Chandler Omaha, NE NPN - 3189843	Violated <u>Neb.Rev.Stat.</u> §§44-1997, and 44-4059 (1)(b) & (h). Charged unapproved fees; violated any insurance law; used fraudulent, coercive or dishonest practices.	Consent Order \$1,000 admin. fine; restitution of fees 12/6/2010
A-1895 Sherry A. Taxman Omaha, NE NPN - 775741	Violated <u>Neb.Rev.Stat.</u> §44-4059(1)(n). Failed to pay state income tax.	Consent Order \$3,000 admin. fine 12/6/2010
A-1896 Joseph Phillip Langin Imperial, NE NPN - 3912921	Violated <u>Neb.Rev.Stat.</u> §§44-1525(11) and 44-4059(1)(b). Failed to respond in 15 business days; violated any insurance law.	Consent Order \$500 admin. fine 1/11/2011
A-1897 Edward Schwartz Omaha, NE NPN - 100734	Violated <u>Neb.Rev.Stat.</u> §§44-1525(11) and 44-4059(1)(b). Failed to respond in 15 business days; violated any insurance law.	Order Producer license revoked 1/6/2011
A-1900 Julie K. Nash Gretna, NE NPN - 4685744	Violated <u>Neb.Rev.Stat.</u> §44-4059(1)(h) & (j). Used fraudulent, coercive, or dishonest practices; forged another's name to an insurance-related document or application.	Consent Order \$750 admin. fine 12/21/2010

Regulation Updates

Amended Regulation

210 NEB. ADMIN. R. & REG. 71 – VALUATION OF LIFE INSURANCE POLICIES REGULATION

Chapter 71 was amended, as part of the Regulatory Asset Adequacy Issues Summary required of life insurers each year, to require that the appointed actuary make an added statement as to the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods. The amended regulation was filed with the Secretary of State on October 28, 2010, with an implementation date of November 2, 2010.

Company Bulletins

CB-118 (Amended) - ISSUANCE OF CERTIFICATES OF AUTHORITY

CB-118 was amended on December 7, 2010 for the purpose of advising insurers and insurance producers that certificates are not the proper method by which to amend a policy, that amending such certificates may create an errors and omissions exposure, and that such activity violates a number of statutory provisions. A copy of CB-118 (Amended) can be found at www.doi.ne.gov/bulletin/cb118_2010_12_07.pdf.

Case Summaries

State ex rel. Wagner v. Amwest Surety Insurance Company, 280 Neb. 729 (2010)

NetBank, Commercial Money Center (CMC) and Amwest Surety Insurance Company (Amwest) entered into seven agreements throughout 1999 to 2000. Amwest was to perfect NetBank's security interests in CMC's underlying collateral (leases) so that NetBank would be protected from subsequent creditors or a CMC bankruptcy. Amwest never perfected the security interests and CMC later filed for bankruptcy. This left NetBank an unsecured creditor in CMC's bankruptcy. The bankruptcy court determined that because NetBank did not have a perfected first priority security interest in the lease agreements, the leases were a general asset in the bankruptcy estate. This left NetBank with little recourse against CMC.

NetBank additionally filed a breach of contract claim with the Amwest liquidator overseeing Amwest's estate. Amwest asserted that NetBank waived their ability to make the breach of contract claim by failing to do so before the liquidation date. The question to the Court was whether Amwest was in breach of contract, by not perfecting the interests, before the date of the liquidation.

The court determined that Amwest had breached their contract by not perfecting the interests within a reasonable amount of time. The court determined that waiting months to perfect a security interest was unreasonable. Additionally, because NetBank did not know of Amwest's failure to perfect the security interests, the bank did not waive its breach of contract claim by failing to file before the liquidation date.

Countryside Co-Op v. Harry A. Koch Co., 280 Neb. 795 (Nov 12, 2010)

In 2004, a gentleman in Lancaster County was injured by the explosion of a tank mounted on a trailer that was adjacent to his property. The tank was owned by Countryside Cooperative who was insured under two liability insurance policies: a commercial general liability policy issued by Michigan Millers and a commercial pollution legal liability policy issued by American International. Harry Koch, as the broker for the American International policy, was timely notified of the gentleman's claim. Koch then failed to notify American International within the required reporting period. Initially, the gentleman's claim was denied due to the failure to report, but eventually after much negotiation a settlement was reached. After the settlement, in 2006, Michigan Millers and Countryside jointly sued Koch alleging negligence in failing to timely report the claim to American International.

Koch contended that neither Michigan Millers nor Countryside possessed rights which would entitle them to recover damages in this case. Koch also argued that the late report was only one of four reasons American International gave when denying the claim. As a result there was never a judicial determination that the American International policy would have covered the claim regardless of the late reporting. The court disagreed with both of these arguments.

First, the court found that although Countryside suffered no monetary loss, it had interests and rights that could be protected by this action. Second, the court found that Michigan was a proper party to the action with actual damages caused by defense costs from the personal injury claim. Third, the court determined American International's denial of the claim, because of the failure to comply with the reporting requirement, was sufficient to defeat coverage. Thus the other three factors reasonably could have been irrelevant in denying the claim. Additionally, the court held that the insured (Countryside) and the commercial general liability insurer (Michigan Millers) was not required to bring suit against the other insurer (American International) before bringing suit against the insurance broker, concluding that an insurance broker acts as an agent of the insured.

Lenners v. St. Paul Fire and Marine Insurance Company and American Family Mutual Insurance Company _N.W.2d_ December 28, 2010

In March 2003, Kelly Lenners and David Leafy drove the vehicles involved in a two-car collision. Leafy was killed. St. Paul Fire and Marine Insurance Company (St. Paul) was the insurer of the liability insurance policy on Lenners' vehicle. This policy included uninsured motorist coverage. American Family Mutual Insurance (American Family) was the liability carrier for Leafy and his estate. Lenners was injured in the accident and pursued monetary damages for her injuries from American Family.

In April 2007, the county court appointed Lenners as personal representative of Leafy's estate. In October 2008, Lenners filed a petition seeking a court order requiring her, as the personal representative, to pay her claim for personal injuries. American Family objected to Lenners' petition on several grounds. In December 2008, Lenners filed a petition requesting to be removed as the personal representative of the estate but was unable to find a replacement and then withdrew her petition to pay herself the claim. Lenners then pursued a claim against St. Paul attempting to benefit from her uninsured motorist coverage. St. Paul asserted that the statute of limitations had run on Lenners' claim. Lenners argued that her claim in Leafy's estate commenced a proceeding sufficient to prevent the four-year statute of limitations from expiring.

The court concluded that for the purposes of any statute of limitations restriction, the proper presentation of any claim under Neb.Rev.Stat. §30-2486 is equivalent to the commencement of a proceeding on a claim. This means Lenners filed her claim at an acceptable time under Neb.Rev.Stat. §30-2404. Additionally, neither Lenners' previous status as Leafy's personal representative nor her failure to find a replacement had an effect on the operation of Neb.Rev.Stat. §30-2484. As a result, Lenners' claim is not barred by the statute of limitations and the case was reversed and remanded for further proceedings.

Behrens v. Blunk, _N.W.2d_ December 30, 2010

Behrens and three other plaintiffs brought attorney malpractice claims against Christian R. Blunk and the law firms for which Blunk worked. Behrens owned a company that offered insurance products. In 2002, Behrens purchased a Nevada real estate company. There he defrauded investors and induced some of his insurance and securities clients to cash-out their annuities to invest in the new company. Behrens alleges that Blunk negligently advised him to purchase the Nevada company, to "borrow funds" from his insurance customers, and to rechannel the funds through his first company. Behrens invoked his Fifth Amendment privilege against self-incrimination in response to Blunk's requests for promissory notes, bank statements, financial statements, and other information during the case's discovery process. The district court dismissed the action as a sanction for Behrens' failure to comply with its order to compel discovery, which required Behrens to turn over the requested documents. Behrens appealed.

The Nebraska Supreme Court held that before an action can be dismissed because the plaintiff invoked the Fifth Amendment, in response to discovery requests, the trial court must first balance the parties' interests and, second, consider whether a less drastic remedy could accommodate the plaintiff's privilege against self-incriminations while maintaining fairness to the defendant. The Nebraska Supreme Court reversed the district court's ruling and remanded the issue for further proceedings.

EXAMINATION DIVISION

Deputy Chief Examiner Named

Dan Kosmicki has been promoted to the position of Deputy Chief Examiner. Dan replaces Tom James, who has retired after 37 years of service to the Department.

Financial Examinations Completed During Fourth Quarter, 2010

Blue Cross Blue Shield of Nebraska

Financial examination reports become public documents once they have been placed on official file by the Department. Copies may be obtained from the Department at the cost of \$.50 per page.

2011 NAIC ASSIGNMENTS FOR NEBRASKA

- ☆ Member International Insurance Relations Leadership Group
- ☆ Member Solvency Modernization Initiative (EX) Task Force
- ☆ Member Life Insurance and Annuities (A) Committee
- ☆ Member Life Actuarial (A) Task Force
- ☆ Member Health Actuarial (B) Task Force
- ☆ Member Regulatory Framework (B) Task Force
- ☆ Member Senior Issues (B) Task Force
- ☆ Member Property and Casualty Insurance (C) Committee
- ☆ Chair Title Insurance (C) Task Force
- ☆ Member Financial Condition (E) Committee
- ☆ Member Accounting Practices and Procedures (E) Task Force
- ☆ Member Examination Oversight (E) Task Force
- ☆ Member Reinsurance (E) Task Force
- ☆ Member Valuation of Securities (E) Task Force

