

The section is co-sponsoring a session at the Annual Meeting entitled “Rape and Sexual Assault as War Crimes: A Call to Action,” that will include a discussion to address what our legal community can do to increase awareness and respond to this important international issue.

In addition, the section took a position in favor of the abolition of the death penalty in Connecticut. The section also worked in favor of Proposed Bill No. 899—“An Act Implementing The Guarantee Of Equal Protection Under The Constitution Of The State For Same Sex Couples.”

INSURANCE LAW SECTION

EDWARD P. MCCREERY III, CHAIR

PURPOSE

The Insurance Law Section was created to meet the professional needs of CBA members who practice in all areas of insurance law. The section brings together practitioners from a variety of disciplines including litigators (representing both insurers and policyholders), insurance regulatory attorneys, and in-house counsel. The section serves as a forum in which practitioners can exchange information on a variety of topics related to insurance law including, but not limited to life insurance, insurance coverage issues, property & casualty insurance, health and disability insurance, and insurance regulation.

ANNUAL REPORT

For 2008–2009, the section implemented a formal position of *Case Update Reporter*. This position was filled by Charles Lee who scrutinized reported decisions from the Connecticut courts that impacted the practice of insurance law and provided summaries of the cases to the section members.

The section’s most significant meeting during the year invited as speakers, State of Connecticut Insurance Commissioner Thomas R. Sullivan and Mark Franklin Esq from his office. These gentlemen spoke about insurance company insolvencies in general and the distress of the AIG company in particular. The panel was supplemented by Attorneys Jeremiah Welch and Tobias Cushing of the firm of Saxe Doernberger & Vita who spoke on the practical considerations a lawyer should think about if their client’s carrier becomes financially distressed.

Commissioner Sullivan and Attorney Welch noted that first and foremost, steps should be taken to avoid customer panic, both by the companies in distress, and by the respective insurance commissioners. They discussed the efforts of their office to try and downplay some of the sensationalism portrayed by the press when it comes to AIG or other carriers. They try to stick to the straight facts and point out the positives in any particular situation. They felt that this was an important role of their office when the public read about bankruptcies or insolvencies on a daily basis. The commissioner felt that it was important for the average citizen to be cognizant of the fact that 90 percent of all insurance companies are financially solvent and in good shape. He also felt it was important not to forget that the insurance industry accounts for 70,000 jobs in Connecticut and one-fourth of all the Greater Hartford charitable giving.

The discussion of AIG focused on how the parent company got into its current financial predicament. The commissioner noted that risky ventures such as “credit default swaps” were not previously regulated by state insurance commissioners. He noted that some states are now looking into that possibility, as is the SEC. The commissioner stated that it was important to remember that most of AIG’s subsidiary insurance companies are independently in excellent condition. For example, companies such as The Hartford Steam Boiler Company have a positive cash flow and balance statement. Some of these companies would likely be sold off by AIG, allowing it to begin to pay back some of the federal bailout money. The commissioner

agreed with the U.S. government's conclusion that a failure of AIG could have had devastating effects on the U.S. economy. AIG is the #1 writer of workers' compensation coverage in 48 states, including Connecticut.

The manner in which the commissioner's office reviews the financial well being of carriers under its jurisdiction was discussed by Mark Franklin who reviewed the Risk Management Models used by his office. Connecticut's Insurance Commissioner's office has 50 examiners and supplements its staff through outsourcing. In light of the AIG situation in particular, the National Association of Insurance Commissioners is looking into making the Risk Models even more strict. The commissioner noted that his office has always been strict on their financial reviews of insurers and the amount and quality of cash reserves they require. Their policy is to ask: *if the insurer liquidated all of its assets tomorrow, could it pay off all its claims?* Their office limits an insurer's investment in non-traditional investments to 5 to 10 percent of its assets, and no more. Despite the excellent record of regulation by many states, such as Connecticut, and the fact that unregulated non-typical insurance products got AIG into trouble, the commissioner expects that the AIG situation will accelerate proposals calling for the federal licensing and regulation of insurers. He is hopeful however that any federal proposal will call for working hand-in-hand with the state regulators.

The commissioner reviewed the state's Guaranty Funds and how they work, but cautioned they do not cover some insurance products such as title insurance and variable annuities. The distinctions between CIGA (Connecticut Guaranty Association [for property & casualty coverage]) and CLHGA (Connecticut Life & Health Guaranty Association) were discussed. In most situations, there is cap on any potential recovery from the Guaranty funds, such as a \$400,000 cap for property/casualty claims. There are also net worth restrictions on the ability to submit claims against the funds. Rehabilitative Receivership vs. Liquidation procedures were also discussed by the commissioner and Attorney Franklin.

Attorneys Cushing & Welch offered practical advice that section members could provide to their clients. They identified the primary concerns a client should have in the event their carrier appears to be in financial distress. First, they suggest that a client should determine whether their policy can be cancelled so they can replace the coverage with another carrier. Hand-in-hand with that inquiry will be the question of what happens to any pre-paid premium. Secondly, a client should want to know what happens to coverage within their "tower" or "timeline" (i.e., excess or historical insurance) in the event their carrier goes out of business. The first recommendation was to contact the insurance company involved. They felt that most of them will be quite forthright with their customers and may offer payment plans to give the customer some assurance that they are not at risk of losing an entire pre-paid premium if something bad did happen. Connecticut does not appear to have a law similar to New York's which prohibits entire premium forfeiture upon cancellation by the customer. It may be possible to negotiate with the carrier to have a right to cancellation and premium refund if their rating drops below a certain level. Other suggestions included consideration of "shadow policies" to act as a back up to the policy provided by the at-risk insurer. Additionally, it was suggested that you can often negotiate with the excess carriers to provide "drop down" coverage in the event the primary carrier was unable to honor their policy obligations.

The section thanked the speakers for their informative presentation that was so packed with information that the meeting ran well over its prescribed time limit. The section is planning on featuring Patricia McCoy, recently appointed by the UConn Law School as the new director of its Insurance Law Center, as its next speaker.