FOCUS on the Insurance Industry

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In This Issue…

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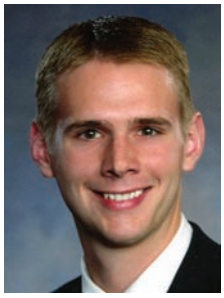

The GAO Recommends Actions to Enhance Competition in Title Insurance Markets

By Jay N. Varon and Andrew A. Oberdeck

The U.S. Government Accountability Office (GAO) has issued a report that suggests normal competitive forces may not be working properly in title insurance markets and recommends several actions by federal and state regulators to enhance competition in these markets.

The report, "Title Insurance: Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers,"[1] finds that several characteristics of title insurance markets, and allegedly illegal activities by some who market title insurance, raise questions about the prices consumers are paying for title insurance.

The report examines (1) the characteristics of title insurance markets across states, (2) factors influencing competition and prices within those markets, and (3) the current regulatory environment and planned regulatory changes. It is based upon available industry data and the GAO's detailed review of the laws, regulations, and market practices in California, Colorado, Illinois, Iowa, New York, and Texas. It includes specific recommendations to the U.S. Congress, the U.S. Department of Housing and Urban Development (HUD) and state insurance regulators.

Summary of Findings

Following is a brief overview of the major findings in the report:

- Title insurance markets are highly concentrated at the insurer level, as most states are dominated by two or three large title insurers, but otherwise differ in many aspects among states. For example, insurers' use of affiliated agents as opposed to independent agents varied across states, as did the extent of affiliated business arrangements (ABAs), the processes used to carry out title searches and examinations, the extent of agents' involvement in price-setting, claims-paying, and participation in the escrow and closing processes, and the cost of title insurance premiums.
- There are several factors related to the way title insurance is marketed and priced, which raise questions about the extent of price competition in the title insurance industry and the ability of consumers to affect market prices.

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In general, the factors cited by the report include:

- A lack of consumer knowledge or initiative regarding the title insurance transaction results in little pressure on insurers to compete on price
- The fact that title agents and insurers generally are selected by real estate and mortgage professionals instead of consumers creates conflicts of interest where the professionals making the referrals have a financial interest in the recommended agent
- As property values or loan amounts increase, prices that consumers pay for title insurance appear to increase faster than insurers' and agents' costs
- In states where agents' search and examination services are not included in the premium, it is not clear that underlying costs justify the additional amounts consumers pay to title agents

- In the states reviewed by the GAO, data collection efforts and regulatory oversight, especially of title agents, are limited. For example, states rarely audit agents; few require strong insurer oversight of agents; and, until recently, state regulators have done little to oversee ABAs or enforce laws intended to restrict business from affiliated sources. In addition, HUD officials indicated that they face resource limitations and difficulties in investigating increasingly complex ABAs.

Recommendations

The report contains the following recommendations:

- Matters for Congressional Consideration

  The GAO suggests that Congress may wish to consider modifications to the Real Estate Settlement Procedures Act (RESPA), including an increase in HUD's enforcement authority.

- Recommendations for HUD

  The report recommends that HUD take action to improve consumers' ability to comparison shop and to protect consumers from illegal title insurance marketing practices. To accomplish these goals, the GAO recommends four specific actions: (1) expand information in the HUD home-buyer information guide; (2) evaluate the costs and benefits to consumers from ABAs; (3) clarify regulations relating to referral fees and ABAs; and (4) enhance the agency's coordination with state regulators.

- Recommendations for State Regulators

  Similarly, the GAO recommends that state insurance regulators take action to improve consumers' ability to shop for title insurance and to increase their ability to detect and deter inappropriate and illegal practices. To accomplish these goals, the GAO recommends four specific actions: (1) increase the transparency of title insurance prices to consumers; (2) strengthen the regulation of title agents; (3) improve the oversight of title agents; and (4) identify approaches to increase cooperation between state insurance, real estate, and other regulators.

Additional Considerations

As Congress, HUD, state regulators, and consumer groups consider the above recommendations, they also may want to consider the following related issues:

- If state regulators desire more price competition in title insurance, would it be appropriate to consider relaxing restrictions against discounting, discriminatory pricing, and rebating to purchasers (Florida permits the latter) and to eliminate the right to file rates on a collective basis?

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- If consumers get title insurance through title agents, where the competition for business and service is very fierce, does it really matter that the concentration of title underwriters is high?
- It would seem that the real estate and mortgage professionals who choose title providers have a strong incentive to refer their customers (whom they look to for future referrals and repeat business) to the best title agents available to avoid running the risk of an unhappy customer or a transaction that does not close. Indeed, the NAIC Title Working Group currently is considering whether having lenders pay for title insurance would result in more competition and efficient pricing because they theoretically are knowledgeable and regular purchasers of title services.
- Are not disclosures of financial interest in a referred party the appropriate way to deal with any potential conflict of interest (just like the disclosures that physicians who own ancillary medical care facilities provide)?

FOCUS looks forward to monitoring the ensuing debate on these matters that, like the similar debate about RESPA reform, can be expected to rage for many years.

[1] GAO-07-401, issued in April, 2007. This report follows previous reports issued in April 2006 (GAO-06-568 and GAO-06-569T), which provided an initial overview of competition and pricing in the title insurance industry and suggested areas for further study.

Supreme Court Decides Two Patent Cases That May Shape Intellectual Property Landscape Faced by Insurers

By David G. Luettgen

On April 30, 2007, the U.S. Supreme Court issued two opinions that may shape the intellectual property landscape faced by insurers.

In *KSR International Co. v. Teleflex Inc.*, No. 04-1350, the Supreme Court rejected a formulaic approach to the question of what may be considered "obvious" and thus not patentable for purposes of the U.S. patent law. In *KSR*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) undertook to apply a test for obviousness that, among other things, focused on the question whether a new combination of known elements would have been obvious to someone seeking to solve the patentee's particular problem. The Supreme Court stated, "The question is not whether the combination was obvious to the patentee but whether the combination was obvious to a person with ordinary skill in the art." For this purpose, it was necessary to examine whether a person of ordinary skill would have been moved to combine the elements in the way the claimed new invention did, even if the combination might not have been obvious to someone undertaking to solve the patentee's particular problem. The Supreme Court reversed the Federal Circuit's judgment that the innovation in question was patentable, stating, "Granting patent protection to advances that would occur in the ordinary course without real innovation retards progress and may, in the case of patents combining previously known elements, deprive prior inventions of their value or utility."

Insurance companies have expressed concern that patent applicants are able to obtain patents for minor tweaks to existing insurance products. Under *KSR*, the United States Patent and Trademark Office (USPTO) and district courts will have greater latitude to take into account the effects of demands known in the industry and the marketplace in determining an invention to be unpatentable. For example, if an insurance company introduces a new insurance product with a feature that is being offered primarily in response

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to a change in the law, and the new insurance product is nothing more than a predictable combination of old elements configured to address the change in the law, it will be easier for the USPTO to reject the patent application.

Only time will tell whether *KSR* turns out to be a tightening of the standard for patentability or merely a refocusing of the test. As many commentators have pointed out, even prior to the Supreme Court's decision in *KSR*, the USPTO had begun applying stricter standards and allowing fewer patents. With allowance rates already down at the USPTO, it is unlikely that *KSR* will result in further decreases in the number of patents issuing.

It is anticipated that most insurance companies will not change their approach to filing patent applications in response to *KSR*, at least not right away. The Supreme Court in *KSR* did not address the patentability of business methods, such as those that may be incorporated in insurance products, as a class of inventions. Under current Federal Circuit case law, patent protection for such an invention generally is available assuming the innovation is not obvious. Additionally, many insurance companies are now filing patent applications for innovations that are implemented in software (e.g., the software required to administer a new insurance product), and the patentability of software-implemented inventions is more settled.

In a second decision, *Microsoft Corp. v. AT&T Corp.*, No. 05-1056, the Supreme Court enforced the territorial limits of the U.S. patent laws. In *Microsoft*, AT&T argued that its patent on an apparatus for digitally encoding and compressing recorded speech was being infringed by foreign computer manufacturers. These manufacturers were installing Microsoft Windows software that would enable their computers to process speech in a manner claimed by the AT&T patent. AT&T undertook to enforce a statutory exception to the general rule that no infringement occurs under U.S. patent law when a patented product is made and sold in another country. In this exception, an infringement occurs where one supplies components of a patented invention from the United States for combination abroad. The Supreme Court held that this statutory exception as written did not protect AT&T because the foreign manufacturers had installed the Microsoft software from copies they had made and Microsoft thus had not exported from the United States the copies actually installed on the foreign-made computers.

Beyond the manufacture of computers, the Supreme Court's decision highlights the territorial limits of the reach of U.S. patent laws. "The presumption that United States law governs domestically but does not rule the world applies with particular force in patent law," the Supreme Court said. For insurance companies with business in other countries outside the United States, the *Microsoft* decision means that the foreign operations of such companies are less likely to get ensnared in a dispute relating to U.S. patents.

Twenty years ago, a Supreme Court decision on patents would have drawn collective yawns from many segments of the business community. In recent years, however, interest in intellectual property has increased as the percentage of corporate value that is tied up in intangible assets has increased. Insurance companies are at the forefront of this trend, with things like underwriting techniques and innovative product features often being considered the "crown jewels" of the company. As a result, intellectual property now may play a significant role in the future fortunes of insurers.

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Florida Legislative Update:

Action on Property Insurance; No Action on PIP Sunset

By Thomas J. Maida and Leonard E. Schulte

After a January special legislative session that substantially changed Florida's approach to regulating property insurance, most Florida legislators returned to Tallahassee in March expecting that the property insurance front would be quiet for the legislature's annual 60-day regular session, with one exception. Most expected that the legislature would address the scheduled October 1, 2007, sunset of Florida's 35-year-old no-fault auto insurance law. In fact, however, by the time the session ended on May 4, the legislature had enacted further substantial changes to the property insurance system, while it did not address the scheduled repeal of the no-fault law.

Property Insurance: Making the Residual Market More Competitive While Imposing Additional Constraints on the Private Sector

The new property insurance act[1] reinforces two of the policy decisions made earlier in the year:[2] (1) the decision to restrict the operations of Florida-domiciled subsidiaries of multi-state insurers and (2) the decision to make the residual market, Citizens Property Insurance Corp. (Citizens), competitive with the admitted voluntary market.

In January, the enactment of restrictions on Florida subsidiaries of multi-state insurers, commonly referred to as "pup" companies, was a major goal of the newly-elected, populist governor and his legislative allies. The result of their efforts was a $50 million minimum surplus requirement for any new Florida-domiciled residential property insurance subsidiary of an insurer authorized to do business in any other state.

During the regular session, legislators considered several proposals that would have imposed further restrictions on subsidiaries, including a requirement that would have terminated the certificates of authority of existing subsidiaries. The final product was somewhat less draconian. Under the new act, formation of new Florida-domiciled residential property insurance subsidiaries will be prohibited as of December 31, 2008. In addition, the rate filing of any Florida-domiciled subsidiary must "include information relating to the profits of the parent company…." The rate filing requirement also takes effect December 31, 2008, and it is not limited to property insurance.

The legislature also revised the $50 million surplus requirement for Florida-domiciled residential property insurance subsidiaries. Under the new act, this requirement will not apply to a Florida-domiciled subsidiary of a Florida-domiciled parent.

January's legislation substantially changed Florida's residual market entity, Citizens Property Insurance Corp. Instead of being an insurer of last resort prohibited from competing with the private sector, Citizens received the mandate to lower its rates and compete with the private sector. The new act includes two provisions intended to make Citizens more competitive. Citizens' rates had already been rolled back to pre-2007 levels and capped at that level for calendar year 2007. Now, Citizens may not increase its rates over the pre-2007 levels until January 1, 2009.

The act also makes Citizens more competitive by making more applicants eligible for Citizens

coverage. Under the law enacted in January, an offer of coverage from the private sector would not disqualify an applicant for coverage from Citizens unless the private sector premium quote was more than 25 percent higher than the Citizens premium. Under the new act, the threshold is lowered to 15 percent.

The new act also addresses two claims-handling issues that created potential compliance problems for insurers. Under legislation enacted in 2006, Citizens was required to contract with insurers to provide adjusting services for windstorm claims on properties for which Citizens provided the windstorm coverage and the insurer covered other perils. This requirement was repealed.

The special session legislation created a claims-handling deadline that many insurers considered vague or unreasonably burdensome. Each property insurer was required to pay or deny a property insurance claim within 90 days after receiving notice of the claim. Insurers were unclear as to the meaning of the word "pay" in the context of this law, were concerned about their ability to meet the deadline with respect to complex commercial claims, and were concerned that the vagueness of the law could result in class-action litigation. The new version of the 90-day pay-or-deny law limits applicability to residential policies and to non-residential commercial policies covering structures no larger than 10,000 square feet, and it requires the insurer to pay or deny the claim or a portion of the claim within the 90-day period. Late payments will be subject to an interest penalty. To address concerns about civil actions, the new act provides that the failure to comply with the 90-day pay-or-deny deadline may not be the sole basis for a private cause of action.

Auto No-Fault: October 1, 2007 Repeal of No-Fault Law Allowed to Stand, for Now

Under a 2003 law,[3] Florida's auto no-fault system, including the mandatory first-party personal injury protection (PIP) coverage, is scheduled to be repealed effective October 1, 2007. The 2006 legislature passed an act that would have delayed the sunset date until January 1, 2009, but then-Governor Jeb Bush vetoed it. The 2007 legislature considered a variety of approaches.

Many legislators responded to the concerns of health care practitioners and the plaintiff's bar, who have consistently supported retention of the current PIP law. Hospitals also have supported retention of the current law, but they have not opposed alternatives that would assure full payment for emergency care costs. Other legislators have responded to insurers, which have been split into three groups: supporters of major reform, including medical fee schedules, utilization controls, and restrictions on attorney fees; supporters of repeal; and a handful of companies that prefer retention of the current law.

The initial position of the Senate reflected the concerns of the pro-reform segment of the industry. A proposal to retain PIP and apply a medical fee schedule equal to 200 percent of Medicare won the support of the Banking & Insurance Committee, but it was subsequently amended to provide only for a five-year continuation of PIP, together with additional funding for insurance fraud investigators and prosecutors. The amended version of the bill passed the Senate on a unanimous vote but was not heard in the House.

In the House, the leadership supported several variations on a proposal that would have allowed the no-fault system to sunset and would have replaced PIP with mandatory first-party emergency care coverage. The last iteration of this proposal would have limited coverage to $10,000, with up to $3,000 available for

non-emergency treatment. This proposal was controversial among House members and did not come up for a final vote.

Governor Charlie Crist was not publicly involved in the issue during the regular session, but he apparently supports including PIP in the agenda for a property tax reform special session scheduled for June. On May 6, 2007, he was quoted in one newspaper as saying, "I think having that kind of coverage is important. It doesn't sunset until October, and obviously that gives us an opportunity to continue it."[4]

The scheduled October 1, 2007 repeal date is creating uncertainties for insurers. If the no-fault system is allowed to die effective October 1, 2007 and insurers need to revise their rates or forms for other coverages, it is not clear that they will be able to have their new rates or forms in place in time for October 1, 2007 renewals and the associated notice deadlines. If PIP is replaced with another form of first-party coverage, insurers will need to create new forms and rate plans and obtain the necessary approvals in time for October 1, 2007 renewals, which would appear unlikely even under the most expedited review process.

Florida's property insurers are looking forward to a summer that is both free of legislative activity and free of hurricane activity. Florida's auto insurers, despite their varied positions on the no-fault issue, appear to be looking forward to a summer in which their uncertainties will be resolved.

[1] CS/SB 2498, 3rd Engrossed, available online at http://www.flsenate.gov/data/session/2007/Senate/bills/billtext/pdf/s2498er.pdf.

[2] See Ch. 2007-1, Laws of Florida (HB 1A), available online at http://election.dos.state.fl.us/laws/07laws/ch_2007-001.pdf.

[3] Ch. 2003-411, Laws of Florida, available online at http://election.dos.state.fl.us/laws/03laws/ch_2003-411.pdf.

[4] "No-fault might be revived," *St. Petersburg Times*, May 6, 2007, available online at http://www.sptimes.com/2007/05/06/State/No_fault_might_be_rev.shtml.

Regulators Continue Effort to Revise Reinsurance Collateral Requirements

By Brian S. Kaas

State insurance regulators at the National Association of Insurance Commissioners (NAIC) continue to work out the details of a substantial overhaul of the collateral requirements applicable to reinsurers. In 2006, state insurance regulators at the NAIC took measures to advance a rating-based proposal that would ease collateral requirements for certain non-U.S. reinsurers. The basic idea behind the proposal is to develop a regulatory system that distinguishes financially strong reinsurers from weak reinsurers and imposes collateral requirements accordingly. While efforts are underway to develop a more detailed framework for the rating-based proposal, members within the insurance industry remain divided on how or whether the current collateral requirements should be revised.

Current Collateral Requirements

Current reinsurer collateral requirements are imposed under state credit-for-reinsurance regulations. Generally speaking, these regulations require U.S. insurers to obtain acceptable forms of collateral from non-licensed or non-accredited reinsurers in order to take financial statement credit for reinsurance ceded to these reinsurers. In these situations, credit for reinsurance is permitted only in an amount equal to collateral posted by the reinsurer. Conversely, ceding companies that cede risks to reinsurers that are licensed or accredited in the ceding company's state of domicile are permitted to take full financial statement credit without obtaining any collateral from the reinsurer. In other words, existing regulations focus exclusively on a

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reinsurer's licensing or accreditation status with no consideration given to the reinsurer's financial strength or stability. Most companies that post collateral are non-U.S. companies.

Proposal to Revise Collateral Requirements

The proposed collateral requirements seek to tie a reinsurer's collateral obligations to its financial strength. According to the proposal, the intent is to develop enhanced regulatory requirements that provide reasonable and prudent controls over the reinsurance credit risk exposure of U.S. ceding insurers. These new requirements would apply to all reinsurers, regardless of their licensing or accreditation status or geographic location.

The proposal calls for the creation of an organization within the NAIC referred to as the Reinsurance Evaluation Office (REO). The REO would examine and rate the financial strength of all reinsurers transacting business in the United States. Based on this evaluation, each reinsurer would receive a rating placing it into one of six categories. A reinsurer's collateral obligation would correspond to its rating. A reinsurer receiving an REO-1 rating would not be required to post any collateral, whereas a reinsurer receiving an REO-6 rating would be required to secure its reinsurance obligations at 100 percent or higher. These ratings would be affirmed or modified through periodic reviews by the REO.

Under the proposal, reinsurers seeking a rating from the REO would go through a detailed application process. The REO would review these applications and assign an appropriate rating to each reinsurer based on various credit criteria. These criteria would include (i) the financial strength ratings issued to the reinsurer by nationally recognized statistical rating organizations such as A.M. Best, Standard & Poors, Moody's, and Fitch Ratings, (ii) the strength of financial solvency regulation in the reinsurer's home jurisdiction, (iii) the length of time a reinsurer has been in business, and (iv) the reinsurer's reputation for prompt payment of valid claims.

Regulators sitting on the Reinsurance Task Force heavily debated the current proposal at the Winter 2006 NAIC meeting, where it ultimately passed by a 15-5 vote. A sub-group was formed this spring for the purpose of drafting a preliminary operational framework for the REO. If the collateral proposal ultimately is adopted, it will require a major rewrite of the existing credit-for-reinsurance regulations.

Mixed Reactions to Collateral Proposal

The latest collateral proposal has received mixed reactions within the insurance industry. Proponents of the proposed collateral requirements have argued that the new rules would eliminate unnecessary costs and disincentives for non-domestic reinsurers to write U.S. business by eliminating collateral requirements where they are not reasonably required. They also claim that the new rules are necessary to ensure that U.S. credit-for-reinsurance requirements are consistent with developments in international reinsurance standards. Not surprisingly, most non-U.S. reinsurers favor the proposed ratings approach, which they view as leveling the playing field with their U.S. competitors.

Many insurers and reinsurers based in the United States, on the other hand, remain opposed to the proposed rules. Some claim the collateral proposal would undermine the financial security of U.S. ceding companies and diminish the incentive of non-U.S. reinsurers to become licensed in the United States. Others assert that the new collateral requirements would put U.S. reinsurers at a disadvantage because they would be required to comply with the collateral obligations at the same time they are subject to U.S. licensing requirements. Opponents favor maintaining the current collateral requirements or exploring different alternatives.

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Fourth Circuit Rules That Virginia Viatical Settlement Regulation Does Not Violate the Dormant Commerce Clause

By Jennifer K. Schroeder

In a case of first impression, the Fourth Circuit U.S. Court of Appeals recently ruled that the Virginia Viatical Settlements Act (Act) does not violate the dormant Commerce Clause of the U.S. Constitution. In *Life Partners, Inc. v. Morrison*, Nos. 06-1370 and 06-1371, 2007 WL 1240301 (4th Cir. Apr. 30, 2007), the viator was a terminally ill Virginia resident. The viator filed a complaint with the Virginia Bureau of Insurance against the Texas-based viatical settlement provider, Life Partners, Inc. (Life Partners), five months after accepting a settlement amount from Life Partners that was below the minimum permitted under the Act.

Viatical Settlement Regulation

Viatical settlement regulation developed in the 1990s due to regulatory concern over potential abuses in viatical settlements, transactions in which life insurance policies held by terminally ill insureds are purchased for less than the expected death benefit. The National Association of Insurance Commissioners (NAIC) initially developed the Viatical Settlements Model Act (Model) over 11 years, from 1993 to 2004. Although *Life Partners, Inc.* involved a terminally ill viator, viatical settlement regulation has been under review recently by a number of states and the NAIC due, in part, to the growth of the life settlement industry, which involves settlements in which the policyholder is not terminally ill. Under the Model, both types of settlements are governed as "viatical settlements."

The state statutes and regulations based on the Model regulate viatical settlements and the individuals or entities involved in these transactions in a variety of ways, including: provider and broker licensing requirements; form filing and approval requirements; annual reporting requirements; privacy restrictions with respect to disclosing the identity and the financial or medical information of an insured; examination and investigative authority; disclosure requirements; prohibited practices; advertising regulations; fraud prevention and control; and provisions for criminal penalties, civil remedies, and regulatory enforcement actions.[1] The Model has been subject to extensive amendment during the course of its development, and the NAIC is currently in the process of amending it further.

Dormant Commerce Clause Challenge

In *Life Partners, Inc.*, Life Partners claimed that enforcement of the Act violated the dormant Commerce Clause because the Act gives Virginia regulators authority over all viatical settlements involving Virginia viators, resulting in regulatory control that affects commerce occurring outside Virginia. On motion for summary judgment, the State Corporation Commission (Commission) made two arguments. The Commission argued, first, that the law did not violate the dormant Commerce Clause and, second, that Congress authorized state regulation of viatical settlements through the McCarran-Ferguson Act. The district court ruled that the Virginia law did not violate the dormant Commerce Clause, relying on the balancing test in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). The district court found that (1) the Act did not discriminate against interstate commerce, (2) the Act served a legitimate and important local purpose, and (3) any burden on commerce was only incidental. The district court did not reach the Commission's second argument.

On appeal, the Fourth Circuit considered the McCarran-Ferguson argument, stating that "if the McCarran-Ferguson Act authorizes the States to regulate viatical settlements, the issue of whether

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the Virginia Viatical Settlements Act burdens interstate commerce becomes irrelevant." *Life Partners*, 2007 WL 1240301, at *6. The court summarized the relationship between the McCarran-Ferguson Act and the dormant Commerce Clause in this context, stating that the McCarran-Ferguson Act protects from a dormant Commerce Clause challenge any state law (1) related to the regulation of the business of insurance or (2) enacted for the purpose of regulating the business of insurance, reserving from its operation only the federal antitrust laws.

In determining whether the Act falls under the scope of the McCarran-Ferguson Act, the court considered the purpose of the Act, which is to protect terminally ill Virginia residents who find it necessary to sell their life insurance policies. The court noted the need for regulation in this area because "[t]he power imbalance between the viator and the provider creates a substantial potential for abuse." *Id.* at *2. The court also noted that the Act regulates agreements that essentially modify the two-party arrangement between insurer and insured to include a third party. When viatical settlements are entered into, both the insurer and insured face changed obligations and economic risks. The court also noted the state's interests in viatical settlements, notably: (1) that residents be protected from the potentially unscrupulous conduct of viatical settlement providers, and (2) that residents not defraud insurers in an attempt to realize a quick financial return. *Id.* at *10. The court stated that, most importantly, the Act "regulates directly the conduct and relationships of those traditionally engaged in the insurance business — insurers and insureds." *Id.* at *13.

After considering the factors described above, the court

> ha[d] little difficulty in concluding that the Virginia Viatical Settlements Act relates to the regulation of the business of insurance; was enacted for the purpose of regulating the business of insurance; and indeed regulates directly and substantially the actual business of insurance. Thus the McCarran-Ferguson Act saves the [Viatical Settlements] Act from any dormant Commerce Clause challenge.

Id. at *14.

The opinion presents obstacles for similar dormant Commerce Clause challenges to state viatical settlement regulation in the Fourth Circuit and perhaps in other circuits as well. Both insurers and viatical settlement providers are encouraged to follow developments in this rapidly evolving area of the law.

[1] NAIC, Viatical Settlements Model Act (2005); NAIC, Viatical Settlements Model Regulation (2005).

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Announcements

Successes

Foley Partner **Thomas J. Maida** and Public Affairs Director **Leonard E. Schulte** co-authored the article, "Florida Property Insurance: 2006 Elections Bring a Sea of Change," which appeared in the May 15, 2007 issue of *Insurance Finance & Investment*.

Recent Speaking Engagements

On May 18, 2007, Partners **John N. Gavin** and **David B. Goroff** presented on the "Transfer of Health Insurance/Managed Care Business" in Foley's Web conference series, Friday Focus.

On May 7, 2007, Partner **Richard Bromley** moderated the panel, "NAIC – What the Heck Is It and What Does It Do," at the Insurance Tax Conference in Chicago, Illinois. Also on that same day, Special Counsel **Christine A. Gustafson** spoke on the panel, "State Insurance Department Audit Issues for Life Companies." On May 8, 2007, Partner **John N. Gavin** spoke on the panel, "Redomestication, a Boon or a Boondoggle?"

Foley Partner **Brett H. Ludwig** moderated a session called "Structuring Claims Provisions on Right to Associate, Access to Records and Confidentiality" at the American Conference Institute's Third National Forum on Reinsurance Agreements. The conference took place March 13 – 14, 2007 in New York City.

Partners **Brett H. Ludwig**, **Eric L. Maassen**, and **Brian S. Kaas** spoke at the 2007 Committee Rendezvous sponsored by the Brokers & Reinsurance Markets Association on March 25 – 27, 2007.

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