

## Time Out!

***"Many baseball fans look upon an umpire as a sort of necessary evil to the luxury of baseball, like the odor that follows an automobile." - Hall of Fame Pitcher Christy Mathewson***

Spring is here, and with it a new baseball season. As a new season begins, the past is history, optimism abounds and no team is "mathematically eliminated" from a run for the championship. Spring also reminds us of the structure of the game as pitchers loosen arms, batters regain their timing and fielders retrain their reflexes. And then there are the umpires – the enforcers of the rules – universally unloved but necessary to the game.



Peter H. Bickford

For the business of insurance, the state insurance departments are the umpires enforcing the rules of the game, which means they are more often than not booed for bad calls but seldom cheered for the good ones. They are unloved but often patronized by the regulated out of fear for the power they hold.

In New York, the role falls to the Department of Financial Services headed by Superintendent Benjamin Lawskey, and more specifically to the Insurance Division of DFS headed by Executive Deputy Superintendent Rob Easton. I have been riding the DFS Insurance Division pretty hard in past columns, as is the prerogative of any fan of the insurance business. However, in homage to Spring, I thought it would be appropriate to take a momentary step back – a time out – to discuss the essential role of our beloved regulators to ensure a robust and successful insurance industry in the state.

Most insurance people only see a part of the regulatory system that directly affects them, such as the broker dealing with the licensing bureau, the underwriters dealing with the rate and form units of the property, life or other bureau, or the claims units dealing with consumer complaints. All of these regulatory functions are central to the business, although we may disagree strongly about the need for or effectiveness of par-

ticular rules or requirements, or the extent of the regulators' interference in the business. Those disagreements are the never-ending natural conflict between regulator and regulated that will continue forever. They reflect the day-to-day tension that prevails on the playing field and in the stands between the players, fans and umpires.

The role of the regulator, however, goes beyond the routine functions of individual regulatory units. The regulator also serves as a valuable buffer between the industry participants, policyholders, claimants, legislators, politicians and the media. A review of the DFS reaction to the effects of Superstorm Sandy helps illustrate this role.

As demonstrated by DFS press releases issued since Superstorm Sandy, Superintendent Lawskey's boss, Governor Cuomo, took ownership of all policy decisions relating to Sandy, mostly aimed at "forcing" the insurance companies to do their job and pay claims quickly. For the four months from the time of the storm through February 2013, the DFS issued 34 Sandy related press releases of which 13 referred to announcements by Governor Cuomo. All 21 of the other releases were announcements by the DFS of locations of insurance assistance facilities. Not one Sandy related release in this four-month period was an announcement by Superintendent Lawskey. All policy related press releases addressing Superstorm Sandy were issued in the name of Governor Cuomo and none in the name of the chief regulator of the business of insurance in New York! *The press releases set the tone for the Cuomo administration's message – insurance companies better not try any of their usual shenanigans to avoid paying claims! And they better pay up quickly!*

Never mind that this is what the large majority of companies do as a matter of course without having to be goaded by regulators, politicians or the media. Never mind that the administration repeatedly scolds the industry for following statutory contract provisions and time requirements

mandated by law. And never mind that forcing quick resolution of claims may not, in fact, be in the best interest of many policyholders.

Poor Superintendent Lawskey! (Pay attention: this may be the only time I will ever use the adjective "poor" before Superintendent Lawskey!) He is left with the unenviable task – as the umpire of the insurance business in New York – of carrying out those orders and suffering the slings and arrows of the industry on the one hand, and the consumers on the other.

*Despite the Sandy-induced anti-insurance industry political and media frenzy, the Insurance Division of the DFS has worked closely with industry and policyholder representatives for a balanced and effective response to the many legitimate and difficult issues resulting from the storm and its aftermath.* Superintendent Lawskey, his chief insurance regulator Rob Easton, and the staff of the Insurance Division of the DFS deserve credit for their efforts to deal with the unprecedented logistical, contractual and personal issues in responding to the storm, and for providing necessary attention to and flexibility in meeting certain requirements by all sides, while assuring legislators in Albany that, on the whole, the industry has performed well (yes, we are not all crooks and thieves!).

Sandy does not represent the first, nor will it be the last time that the insurance industry bears undue criticism for a response to an extreme event. While the industry may have many issues and disagreements with regulators, it can generally count on them – politics notwithstanding – to be even handed in their assessment of the industry responses, and to work with the industry and its customers to ensure as smooth a response as possible.

There are many issues arising from the actions of the Cuomo Administration that will need to be reviewed and addressed in the future, including the propriety of certain of the emergency changes to the insurance law and regulations, interference with private contracts, and forcing quick settlements. Sandy will not be the last catastrophic event we will face in the future. To the extent possible, insurance companies and their customers should be able to know

*continued on page 8*

**We want  
to buy your  
Agency if  
you want to  
sell!**

**Looking to retire  
and pass the torch  
to a company who  
cares about your  
clients?**

**We have a strong track  
record, excellent mar-  
kets, a powerful cen-  
tralized staff, the  
capital, the expertise,  
and the blueprints  
for building well into  
the future while  
keeping your clients  
our TOP priority.**

**Give us a call  
today  
and speak to  
Kevin  
848.863.7105  
kevinkkins@gmail.com**

**KK Insurance  
Neptune, New Jersey**

## [INSIGHT]

*continued from page 6*

the rules that will apply to such events. In the coming months and years, serious efforts should be made to review post-Sandy responses – not just by the industry, but by the Administration and the regula-

tors as well. Knowing how the rules will change in advance of a similar future emergency will benefit everyone. Not even the umpire should be able to change the rules during the game!

OK. Time out is over! Back to business! [A]

*“I’ve never questioned the integrity of an umpire.  
Their eyesight, yes.” – Leo Durocher*

## [IN THE ASSOCIATIONS]

### ***A.G. Arrests NYC Psychiatrist for Couching \$230k From Medicaid***

**N**EW YORK, N.Y.—Following an undercover investigation, Attorney General Eric T. Schneiderman announced the arrest of Dr. Jean Elie, a Brooklyn psychiatrist, on grand larceny charges for billing the state’s Medicaid program \$230,000 for services he did not provide. Dr. Elie, 59, of Elmont, wrote prescriptions for Seroquel valued at over a million dollars over a three-year period to a revolving door of clients. Dr. Elie, who worked out of the Family Practice offices at 1155 Broadway, in Brooklyn, faces up to 15 years in prison.

According to a complaint filed in Brooklyn Criminal Court today, Elie billed over \$232,000 for therapy sessions which he falsely claimed lasted a minimum of 45 minutes. Instead, the sessions routinely lasted less than ten minutes. By law, physicians are required to submit claims for payment using billing codes which accurately reflect the services they provided.

As described in the court papers, undercover investigators from the Attorney General’s office, posing as patients, signed up for seven sessions with Elie. None of these sessions lasted for more than six minutes. Even so, the doctor billed Medicaid using a code, known as the “hour code,” which requires, in addition to a medical evaluation, 45 to 50 minutes of face-to-face therapy with a patient.

Between 2009 and 2012, Elie wrote prescriptions for Seroquel valued at over a million dollars, making him one of the top prescribers of Seroquel in the State. The anti-psychotic medication is frequently abused and has a street value among

addicts. Elie’s prescribing patterns and the observations made by MFCU investigators during the course of the investigation appear to indicate that some of Elie’s patients sought prescriptions for medications they could sell on the street.

The arraignment follows a successful effort by Attorney General Schneiderman to overhaul the state’s prescription drug monitoring system in order to prevent overprescribing by doctors. In June 2012, the legislature unanimously passed the Internet System for Tracking Over-Prescribing Act, or I-STOP. First introduced by Attorney General Schneiderman, I-STOP requires doctors to review a patient’s prescription drug history and update it in real time when writing prescriptions for certain controlled substances. Had such a system been in place at the time Elie committed his crimes, authorities could have detected it more quickly.

At his arraignment, prosecutors charged that Elie worked at the Family Practice offices for only four hours a day but routinely billed Medicaid for therapy sessions that, if legitimate, would have taken longer than the 24-hour period he claimed they occurred in. On one date, Elie billed the hour code 30 times; and on 94 separate dates he billed it 20 or more times.

Elie is charged with Grand Larceny in the Second Degree, which carries a maximum prison term of 5 to 15 years. He also faces multiple counts of Offering a False Instrument for Filing, which carry a maximum term 1 and 1/3 to 4 years behind bars. The charges against Elie are accusations and, of course, he is presumed innocent until and unless proven guilty. [A]