

The Shifting Sands of SSAP No. 61

by STEVEN KASS

As more modern reinsurance transaction structures have evolved to keep pace with industry developments in policy design, insurance companies have from time-to-time sought modifications to, or interpretations of, the reinsurance accounting provisions of the NAIC's Accounting Practices and Procedures Manual.

The California Insurance Department recently introduced proposed modifications to SSAP No. 61 and Appendix A-791 to address perceived problems with reserve credits when policies involving modal premium payments are coinsured (e.g., coinsurance of term products).

The proposed changes were presented for comment at the March 2006 meeting of the NAIC's Life & Health Actuarial Task Force ("LHATF"), and were slightly modified during a LHATF conference call held on May 8th. These modifications, if adopted, would essentially require ceding companies to include in their reserve credit calculations an offset against their deferred premium assets.

A likely next step, assuming LHATF decides to proceed with this over industry opposition, would be a referral to the NAIC's Statutory Accounting Principles Working Group.

PROPERTY & CASUALTY INSURANCE

Update on Katrina-Related Litigation

by AMOR C. ROSARIO

The 2005 hurricane season resulted in an estimated **\$4.2 billion underwriting loss** in 2005, largely erasing record underwriting profits of \$6.4 billion in 2004. The financial losses attributed to Hurricane Katrina could increase as a number of lawsuits related to hurricane damages are pending in state and federal courts and the Mississippi Attorney General investigates the handling of Hurricane Katrina claims by insurance companies.

In a setback for Gulf Coast policyholders, a federal judge in Mississippi ruled that provisions in homeowners insurance policies that exclude damage from flood waters "including, but not limited to surface water, waves, tidal water or overflow of any body of water, or spray from any of these, whether or not driven by wind" are valid and enforceable. Plaintiffs had argued that damage to their property had been caused by storm surges, and that their claims should be covered because storm surge is not specifically excluded by the policy. The court held that such damages were clearly encompassed within the definition of **flood water** and were therefore **excluded by the unambiguous policy language**. However, the plaintiffs' claim was not dismissed because a determination of whether wind or water was responsible for the damage to the homes remained for trial.



Total financial losses yet to be determined

Comparing insurance companies to "Nazis locking arms," the Attorney General of Mississippi has filed suit seeking to declare void and unenforceable certain provisions contained in property casualty insurance policies because the provisions are allegedly contrary to public policy, unconscionable, and/or ambiguous. At issue are standard water **damage and flood exclusions and so called anti-concurrent causation clauses**, which attempt to preclude coverage for losses resulting from an excluded cause even if a covered peril contributed to the loss. The Attorney General also seeks an injunction preventing insurers from using such provisions to deny or reduce coverage for hurricane damage or loss. Although the insurers had removed the case to the Southern District of Mississippi, the case was recently remanded to Mississippi state court due to lack of jurisdiction.

In a recent twist, a U.S. district court judge has recused himself from hearing all Katrina-related insurance cases due to his decision to file suit against his insurer for denying his claim and refusing to cover damage to his own storm-demolished home.