

# INSURANCE

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Bruce R. Ramage

**Rebating and Crop Insurance**

In January 2008, the Department issued Bulletin CB-115 to give notice of a joint initiative between numerous states and the federal Risk Management Agency to target illegal rebating of Federal crop insurance premiums. This article is a reminder that rebating is not allowed under the Federal Crop Insurance Act at 7 U.S.C. §1508(a)(9) and Neb.Rev.Stat. §44-361.

A copy of CB-115, "State and Federal Rebating Enforcement Initiative," can be found on the Department's website at [www.doi.nebraska.gov/bulletin/cb115.pdf](http://www.doi.nebraska.gov/bulletin/cb115.pdf).

The Standard Reinsurance Agreement for federal crop insurance defines a rebate as "any benefit (including money, goods or services for which payment is usually made), discount, abatement, credit, or reduction of the premium named in the insurance policy and any other valuable consideration or inducement not specified in the policy."

Nebraska Revised Statutes §44-361 defines a rebate to include paid employment or contract for service, or advice of any kind, or "any other valuable consideration or inducement to, or for insurance, . . . which is not specified in the policy contract of insurance."

The Department expects all licensed insurance producers to be aware of the prohibition on rebating and comply with this requirement.

Questions regarding rebating and crop insurance may be directed to Laura Arp in the Department's legal division at 402-471-2201.

## FRAUD DIVISION

### **2013 Insurance Fraud Statistics**

The Insurance Fraud Prevention Division (IFPD) received **520** case referrals regarding potential violations of the Nebraska Insurance Fraud Act during 2013. Of the referrals received, 348 (67%) were submitted through the National Insurance Crime Bureau and 33 (6%) were submitted via the National Association of Insurance Commissioners' online fraud reporting system. The remainder of the referrals were submitted by victims, concerned consumers, or law enforcement agencies.

**Actual** or **potential** monetary losses, exceeding \$11.9 million, were reported.

Cases are evaluated based upon a number of criteria, including the statute of limitations, applicability of Nebraska statutes, and solvability factors. A status letter is sent to the complainant advising of the disposition upon completion of the case review.

The IFPD investigated the following types of insurance fraud cases during 2013:

- Property/Casualty = 446 Cases (86%)
- Life/Health = 36 Cases (7%)
- Agent or Internal Fraud = 31 Cases (6%)
- Other Fraud = 7 Cases (1%)

Upon completion of a case investigation, the IFPD makes a determination to close the case unfounded, insufficient evidence for prosecution, or sufficient evidence to forward the information to a prosecutor for consideration in filing a criminal violation of the Nebraska Insurance Fraud Act. Before sending a case for a prosecutor's review, the IFPD prepares an investigative summary report outlining the circumstances of the investigation.

#### **2013 Cases Sent for Criminal Prosecution:**

93 cases; 22 suspects involved; \$358,484.76 = Actual/Potential Losses

#### **2013 Convictions:**

201 cases; 26 suspects involved; \$255,473.03 = Actual/Potential Losses

#### **2013 Court Ordered Restitution:**

17 cases; \$162,925.73

Cases referred to the IFPD for investigation had venue in 52 Nebraska counties. Douglas, Lancaster, and Sarpy Counties accounted for 71% of cases (373 cases).

## **Fraud Cases**

### **United States District Court - District of Nebraska, 8:12-CR-100**

#### **United States of America v. Richard A. Odermatt**

Richard Odermatt pled guilty in federal court to one count of embezzlement from an employee benefit plan. Mr. Odermatt was charged, in part, with diverting \$13,727.54 he collected from employees for health and disability insurance premiums while the owner of Odermatt Floor Coverings. Mr. Odermatt was sentenced to six months in prison, three years of supervised release, and ordered to pay restitution.

### **United States District Court - District of Nebraska, 8:13-CR-57**

#### **United States of America v. Troy M. Ortmeier**

Troy Ortmeier pled guilty to one count of wire fraud in relation to a joint investigation conducted by the Insurance Fraud Prevention Division and the United States Postal Inspection Service. Mr. Ortmeier was accused of diverting money from Ortmeier and Associates. U.S. District Judge John M. Gerrard sentenced Mr. Ortmeier to three years of supervised release, 150 hours of community service, and \$73,856.45 in restitution.

### **Dodge County Court, CR13-2**

#### **State v. Tyler H. Ramirez**

Tyler Ramirez was charged with several counts including conspiracy to commit burning to defraud an insurer. After pleading no contest to amended charges, Mr. Ramirez received a one-year jail sentence and payment of court costs.

### **Dodge County Court, CR13-3**

#### **State v. Daniel W. Lambert**

Daniel Lambert was charged with several counts including conspiracy to commit burning to defraud an insurer. Mr. Lambert pled no contest to amended charges and received a six-months' jail sentence.

### **Douglas County District Court, CR13-935**

#### **State v. Yvonne R. Hurt**

After being charged with two felony counts of insurance fraud, Yvonne Hurt was accepted into a pretrial diversion program.

### **Douglas County District Court, CR13-2379**

#### **State v. Jerald R. Kincaid**

On September 30, 2013, Jerald Kincaid pled no contest to a Class IV felony count of insurance fraud. District Court Judge Joseph S. Troia sentenced Mr. Kincaid to 150 days in jail and he was ordered to pay the costs of prosecution. Mr. Kincaid alleged an acquaintance backed into his 2001 Chevrolet Impala causing \$1,506.32 in damage. Mr. Kincaid submitted a claim to the individual's insurance company in an attempt to receive money for the damage to his vehicle. Investigation revealed Mr. Kincaid's vehicle had pre-existing damage and Mr. Kincaid had offered a portion of the claim settlement to the owner of the other vehicle in an attempt to collect on this fraudulent claim.

### **Hall County District Court, CR13-95**

#### **State v. Jason N. Kucera**

Jason Kucera was convicted of a criminal attempt of a fraudulent insurance claim, a Class IV felony. Mr. Kucera purchased a vehicle with existing damage. Mr. Kucera attempted to submit a claim to his insurance company for the vehicle's prior damage. District Judge William T. Wright ordered Mr. Kucera to pay court costs and sentenced him to 60 days in jail and four years of probation upon his release.

## ***Fraud Cases (continued)***

### **Hall County District Court, CR13-166**

#### **State v. Charles E. Colclasure**

On October 8, 2013, a jury found Charles Colclasure guilty of a Class III felony count of insurance fraud. Mr. Colclasure was accused of filing a fraudulent slip and fall claim with the insurance company of a local business. District Judge James D. Livingston sentenced Mr. Colclasure to 24 months of probation. Mr. Colclasure must meet specific conditions to successfully complete his probationary requirements.

### **Sarpy County Court, CR13-2240**

#### **State v. Darren T. Temoshek**

After being charged with two felony counts of insurance fraud, Darren Temoshek was accepted into a pretrial diversion program.

### **Sarpy County District Court, CR13-139**

#### **State v. Shown R. Boldan**

Shown Boldan was accepted into a pretrial diversion program after being charged with one felony count of insurance fraud.

### **Sarpy County District Court, CR13-218**

#### **State v. Jonathan D. Wilmarth**

Jonathan Wilmarth was charged with one felony count of insurance fraud after he reported the theft of his 2003 Ducati motorcycle. Investigation by the insurance company's special investigator, and follow up by the Insurance Fraud Prevention Division, revealed Mr. Wilmarth wrecked the motorcycle prior to reporting it stolen. Mr. Wilmarth subsequently pled no contest to an amended charge of one misdemeanor count of insurance fraud. Mr. Wilmarth was fined \$250 and ordered to make restitution and pay court costs.

## **LIFE & HEALTH DIVISION**

### ***Interest Rate on Death Proceeds***

The 2014 interest rate to be paid on death proceeds not paid within 30 days of receipt of proof of death is 2.041%. Pursuant to [Neb.Rev.Stat. §44-3,143](#), interest shall accrue from the date of receipt of proof of death to the date of payment at the rate calculated pursuant to section 45-103 in effect on January 1 of the calendar year in which occurs the date of receipt of proof of death.

The court sets the rate, and the court may change the rate during the year, but the rate in effect on January 1 applies to death claims. The website of the court can be found at [www.supremecourt.ne.gov/5017/judgment-interest-rate](http://www.supremecourt.ne.gov/5017/judgment-interest-rate).

*The 2014 interest rate to be paid on death proceeds not paid within 30 days of receipt of proof of death is 2.041%.*

*Individual and small group health insurance policies issued or renewed on or after January 1, 2014, must comply with the provisions outlined in the Affordable Care Act.*

## **Health Policy Renewals**

On November 22, 2013, a notice concerning health policy renewals was issued by Director Ramage to all insurers licensed to write health insurance in Nebraska. It is the opinion of the Department that individual and small group health insurance policies issued or renewed on or after January 1, 2014, must comply with the provisions outlined in the Affordable Care Act. The notice can be obtained from the Department's website at [www.doi.nebraska.gov/notices/notc2013/notice12.pdf](http://www.doi.nebraska.gov/notices/notc2013/notice12.pdf).

## **Issuance of Health Insurance Policies to Individuals Who Are on Medicare Due to Disability**

*The affected NECHIP population who has Medicare due to disability may seek coverage in health plans offered in the State of Nebraska, but it is up to the insurer to decide whether or not it wishes to accept these individuals into a health plan.*

On January 10, 2014, the federal Department of Health and Human Services (HHS) issued a bulletin indicating that individuals in high risk pools who were on Medicare due to disability could seek health insurance coverage in or outside of the health insurance marketplace. A notice was sent out by Director Ramage on January 23, 2014, informing all health insurers of the bulletin. See [www.doi.nebraska.gov/notices/notc2014/notice01.pdf](http://www.doi.nebraska.gov/notices/notc2014/notice01.pdf).

The Department received clarification from the federal government that this bulletin is also applicable to members of the Nebraska Comprehensive Health Insurance Pool (NECHIP). The Department is hereby informing health insurers that the affected NECHIP population who has Medicare due to disability may seek coverage in health plans offered in the State of Nebraska, but it is up to the insurer to decide whether or not it wishes to accept these individuals into a health plan.

A full copy of the CMS bulletin can be found at [www.cms.gov/Medicare/Health-Plans/Medigap/Downloads/Sale-of-Individual-Market-Policies-to-Certain-Medicare-Beneficiaries.pdf](http://www.cms.gov/Medicare/Health-Plans/Medigap/Downloads/Sale-of-Individual-Market-Policies-to-Certain-Medicare-Beneficiaries.pdf).

## **Federally Facilitated Marketplace List of Producers**

The federal government recently released the list of insurance producers who passed their certification test with the federal government. These producers are allowed to sell plans on the federally facilitated marketplace. The list can be found on our website at:

<http://www.doi.nebraska.gov/aca/Copy%20of%20NE%20Licensed%20Producers%20for%20FFM%20JAN%202014.pdf>

Additionally, a list of registered Navigators and Certified Application Counselors can be found at <http://nehealthinsuranceinfo.gov/documents/Navigator-List.pdf>.

## PRODUCER LICENSING DIVISION

### ***Agency License Renewal Process***

Agency licenses will expire on April 30, 2014.

All agency renewals are available online at **www.nipr.com**. Agencies may also be renewed by returning the following to the Department no later than March 15, 2014:

- A check in the amount of the license fee (refer to the renewal form for the amount due).
- A completed renewal form.

### ***Adding or Deleting a Designated Producer For An Agency***

Adding or deleting a name from the license may be done while renewing online or by submitting Amendment Form 9002A with the renewal form. The person added must hold a Nebraska producer license.

### ***Change of Address***

If the agency address has changed, the address may be updated at renewal. However, for each licensed producer associated with the agency, an address change must be submitted to change the individual's business address. Questions regarding the renewal process may be directed to the Producer Licensing Division at 402-471-4913 or via email to **doi.licensing@nebraska.gov**.

### ***Appointment Renewal Process***

The appointment renewal date begins May 1, 2014 and ends July 31, 2014. Nebraska will again process all appointment renewals electronically through the National Insurance Producer Registry (NIPR). Other key information regarding the appointment renewal process includes:

- Only appointments for producers with active licenses on PDB will be renewed. If the producer has an inactive license on PDB, they will not be included in the invoice.
- Appointment renewal invoices and the list of appointment renewals due will be available on the NIPR website at **www.nipr.com** beginning at 8:00 AM (CST) May 1, 2014 through 4:00 PM (CST) July 31, 2014. From the website, click on Company Appointment Renewals.
- Appointments are renewed for one year for individuals and business entities. All appointments must be renewed annually by July 31, 2014 or the appointment will become inactive.
- Appointment terminations can only be processed for appointments that are shown as active on the PDB at the time the termination transaction is sent to NIPR.
- All producers and agencies with active appointments on PDB, as of April 15, 2014, will be included on the appointment renewal invoices for companies that have active licenses in Nebraska.

- Any appointment submitted on or after April 15, 2014 will not be included on this year's invoice and will automatically receive the appointment status date of May 1, 2014.
- The "black-out" period for Nebraska appointments will be April 15, 2014 through April 30, 2014. During this time, no appointments will be allowed to be submitted. Terminations may continue to be submitted during this time. During the blackout period, NIPR will receive and hold for processing any new appointments. The effective date will not be honored. Instead, May 1, 2014 will be the new effective date.
- Terminations can be made by NIPR Subscribers through the Interactive Appointment/Termination Application or the Company Appointment Reconciliation Report (CARR). If you are not a subscriber, please contact NIPR at 816-783-8467 or **marketing@nipr.com** for subscription information. You may also utilize the services of a NIPR Authorized Business Partner which can be found at **[http://www.nipr.com/authorized\\_business\\_partners.htm](http://www.nipr.com/authorized_business_partners.htm)**.
- Appointment renewal and NIPR fees are non-refundable.
- Please contact the Nebraska Department of Insurance if you have a dispute regarding a specific appointment and documentation to verify you previously terminated the appointment. Disputes must be resolved prior to April 30, 2014. Invoices as posted must be paid.
- By using NIPR's electronic appointment renewals, you can be assured that the NIPR invoice will be updated as paid, and the transactions to renew will be forwarded to the state within 24 business hours.
- NIPR will display the invoices as paid, once payment is received.

### ***Important Payment Information for Appointment Renewals***

- Payments for Nebraska appointment renewals **must** be received by NIPR through the Electronic Options made available.
- **NOTE—NO PAPER CHECKS**
- Companies that submit a payment to NIPR via paper check will not have their renewal invoice processed and will have the payment returned to them.
- Since receipt of a paper check is through a lock box account, NIPR may take several days to post the paper check and issue a return check to your company. NIPR is not responsible if late fees or non-renewal terminations are incurred during this period.

NIPR has posted a notice to its website regarding 2014 Nebraska appointment renewals that provides details and directives on key information, payments, transaction fees, and fees charged by other states for retaliatory purposes. A copy of the notice can be obtained from the NIPR website located at **[www.nipr.com](http://www.nipr.com)**.

Questions regarding the appointment renewal process may be directed to NIPR Customer Service at 1-855-674-6477 or [abpdirect@nipr.com](mailto:abpdirect@nipr.com) or to the Nebraska Department of Insurance Producer Licensing staff at 402-471-4913 or [doi.licensing@nebraska.gov](mailto:doi.licensing@nebraska.gov).



## LEGAL DIVISION

### **Workers' Compensation Experience Modification Factor Verifications**

*Insurance producers who are asked to provide verification of a client's experience modification factor must provide accurate information that is not misleading.*

When construction contractors or subcontractors bid on jobs, they may be asked to submit verification of their experience modification factor. An experience modifier is the adjustment of annual premium based on previous loss experience. A low experience modifier indicates that the client's loss experience is equal to or less than the expected losses for a company in that line of work, and a high experience modifier indicates higher than average losses. Construction project managers accepting bids may take a contractor's experience modification factor into account in deciding which bid to accept.

*The Department is aware of several instances in which an agent produced "revised" experience modifier verifications without explaining the basis for the revisions.*

Insurance producers who are asked to provide verification of a client's experience modification factor must provide accurate information that is not misleading. The Department is aware of several instances in which an agent produced "revised" experience modifier verifications without explaining the basis for the revisions. Insurance producers are subject to discipline under Neb.Rev.Stat. §44-4059(1)(e) and (h) if they intentionally misrepresent the terms of an actual or proposed insurance contract, use fraudulent or dishonest practices, or demonstrate incompetence, untrustworthiness, or financial irresponsibility in the conduct of business.

*Any time a formula other than the NCCI worksheet is used to formulate an experience modification factor, the producer must provide a disclaimer stating that the number is not the product of an NCCI worksheet.*

Insurance producers providing verification of a client's experience modifier must provide complete and accurate information. Nebraska uses the National Council on Compensation Insurance ("NCCI") experience modifier calculations. Therefore, any verification must provide the client's actual NCCI experience modification factor. If producers want to provide an additional "revised" number, the basis for that number must be stated on the same page.

Any time a formula other than the NCCI worksheet is used to formulate an experience modification factor, the producer must provide a disclaimer stating that the number is not the product of an NCCI worksheet.



*If you receive a fee for your services in providing advice about which policy to choose, you cannot receive a commission on that sale.*

*If a client is informed from the outset that you will receive a commission from any sale that results from your advice, there is nothing wrong with collecting a commission if you do not charge a consulting fee.*

*You do not need a consultant's license if you are a licensed agent giving advice incidental to the normal course of your insurance business and you do not charge a fee other than commissions received from insurance written.*

## **Insurance Consultant or Insurance Producer, but Not Both**

**Scenario:** You are a licensed insurance consultant and a licensed insurance producer. Your client seeks advice about which insurance policy will best suit his company's needs. You provide the client with two options, both of which you would be able to sell the client as an appointed agent for those carriers.

**Question:** *Are you acting as an insurance consultant or insurance producer?*

**Answer:** It depends on what you tell your client and how you get paid. If you receive a fee for your services in providing advice about which policy to choose, you cannot receive a commission on that sale. On the other hand, if your client is informed that you are selling insurance to make a commission and you do not charge a fee for providing advice, you may collect a commission on the resulting sale.

An insurance consultant is obligated to serve the interests of his client with objectivity and complete loyalty, providing information, counsel, and service in good faith to best serve his client's insurance needs and interests. See Neb.Rev.Stat. §44-2629. Insurance consultants are not allowed to collect "any part of any commission or compensation paid by 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 and for which such consultant has contracted to receive a fee." See Neb.Rev.Stat. §44-2631.

Insurance consultants are also insurance producers, and sometimes, the commission may provide more compensation than the consulting work. If a client is informed from the outset that you will receive a commission from any sale that results from your advice, there is nothing wrong with collecting a commission if you do not charge a consulting fee. By not collecting a fee, you no longer meet the definition of an insurance consultant at Neb.Rev.Stat. §44-2607.

The Insurance Consultant's Act specifically states that you do not need a consultant's license if you are a licensed agent giving advice incidental to the normal course of your insurance business and you do not charge a fee other than commissions received from insurance written. See Neb.Rev.Stat. §44-2616.

## ***Regulation Updates***

### **Amended Regulation**

#### **TITLE 210 NEB. ADMIN. R. & REGS. 87 - HEALTH CARRIER EXTERNAL REVIEW**

Amended Chapter 87 prescribes a series of forms which are required to be used by health carriers, covered persons, and independent review organizations under the Health Carrier External Review Act, Neb.Rev.Stat. §44-1301, et seq. The Health Carrier External Review Act applies to any claim submitted on and after January 1, 2014. The amended regulation was filed with the Secretary of State for adoption on December 2, 2013, with an effective date of December 7, 2013. A copy of Amended Chapter 87 can be found on the Department's website at [www.doi.nebraska.gov/legal/rule\\_reg/n87draft\\_2013\\_07\\_15.pdf](http://www.doi.nebraska.gov/legal/rule_reg/n87draft_2013_07_15.pdf).

### **Company Bulletin**

#### **CB-131 - TITLE INSURER ONSITE REVIEW OF TITLE AGENT**

CB-131 was issued on December 31, 2013 for the purpose of providing clarification of onsite reviews by title insurers of title insurance agents in accordance with Neb.Rev.Stat. §44-1993(3) and 210 Neb. Admin. Code §§34-005 to 34-007. A copy of CB-131 can be found on the Department's website at [www.doi.nebraska.gov/bulletin/cb131.pdf](http://www.doi.nebraska.gov/bulletin/cb131.pdf).

## ***Medical Malpractice Surcharge Set for 2014***

A hearing was held before the Director of Insurance on November 6, 2013, as required by Neb.Rev.Stat. §44-2830, to consider adjusting the amount of surcharge for 2014. On the basis of the public hearing giving due regard to the size of the existing Fund, the number and size of potential claims against the Fund, the number of participating providers, change in the cost of living, and sound actuarial principles, the Director set the surcharge for the year 2014, effective January 1, 2014, at eighteen percent (18%) for all health care providers.

## ***Case Summaries***

### **State Farm Fire & Casualty Company v. Jerry Dantzler and David Chuol, 21 Neb. App. 564**

State Farm brought action to determine whether a rental dwelling insurance policy issued to property owner Dantzler covered lead-based-paint claims made against him by his tenants. The district court found that the policy excluded coverage of the claims against Dantzler based on the "pollution exclusion" in the policy which excluded from coverage: "bodily injury or property damage arising out of the actual, alleged or threatened discharge, dispersal, spill, release or escape of pollutants...at or from premises owned, rented or occupied by the named insured."

The district court granted summary judgment in favor of State Farm. Dantzler brought his appeal to this court on the grounds that the district court erred in finding that the lead-based-paint claims made against him were excluded from coverage under State Farm's insurance policy.

The issue in this case was whether it can be decided as a matter of law that the pollution exclusion in State Farm's insurance policy excludes the lead-based-paint claims made against Dantzler from coverage. In determining this issue, the court had to determine two things: whether lead is a "pollutant" as defined in the policy; and if so, whether the pollution exclusion's requirement of a "discharge, dispersal, spill, release or escape" of the pollutant was satisfied in this case.

In looking at whether lead is a "pollutant" as defined in the policy, the court was guided by the Nebraska Supreme Court's decision in *Cincinnati Ins. Co. v. Becker Warehouse, Inc.*, 262 Neb. 746. In that case, the insurance policy issued contained a pollution exclusion nearly identical to the one at issue in the present case. The court there held that the definition of "pollutant" was clear and unambiguous. The court in this case held the same and concluded that lead and lead found in paint is a pollutant as defined in State Farm's policy.

Next, the court looked at whether the pollution exclusion's requirement of a "discharge, dispersal, spill, release or escape" of the pollutant was satisfied without question in this case. The court looked to other jurisdictions to determine whether exposure to lead-based paint constitutes a "discharge, dispersal, spill, release or escape" of pollutants. The analysis in a Connecticut case, *Danbury Ins. Co. v. Novella*, 727 A.2d 279 (Conn.Super.1998), proved to be persuasive to the court and applicable to the instant case. In *Danbury*, the court concluded that although "it is arguable, and several courts have found, that the presence of lead dust or chips in an apartment qualified as 'discharge,' 'dispersal,' or even more generally as 'release,'" it is not necessarily clear that lead needs to be released into an apartment's environment for a child to be exposed. In this case, there is no evidence regarding the method by which the child of the tenant in Dantzler's apartment building was exposed to toxic levels of lead. Because this court cannot determine if the child's injuries resulted from a "discharge, dispersal, spill, release or escape" of lead, there is more than one reasonable interpretation of these terms. Therefore, ambiguity exists regarding the application of the pollution exclusion clause.

In conclusion, although the court determined lead to be a pollutant under the "pollution exclusion" clause of State Farm's policy issued to Dantzler, the application of the clause regarding the nature of resulted injuries presents questions of material fact. Therefore, the Nebraska Court of Appeals held that the district court's grant of summary judgment in favor of State Farm was not appropriate and should be reversed with the case remanded for further proceedings.

### **Peterson v. Homesite Indemnity Company, 287 Neb. 48**

Peterson contracted with a "shipper agent" to move his household goods and personal property from Nebraska to Florida. The shipper agent then contracted with other movers to perform the actual move. The movers took possession of Peterson's property and demanded an additional \$5,100 before delivery of the property to Florida. The property was never delivered to Florida or returned to Peterson. Peterson filed a theft claim with Homesite Indemnity Company, "Homesite", his insurer. Coverage was denied on the basis that a theft had not occurred.

Peterson filed suit and the district court granted summary judgment finding that Peterson lost his property in a contractual dispute after voluntarily delivering the property into the custody of the movers and that there was "no showing of criminal intent." Peterson appealed.

The issues in this case are whether Peterson suffered a loss of personal property due to theft as it is defined in his Homesite homeowner's insurance policy and, because the district court granted summary judgment in favor of Homesite, whether there is a material issue of fact in dispute that should have been decided at the district court level.

The court first looked at the definition of “theft” under Peterson’s insurance policy. In *Modern Sounds & Systems, Inc. v. Federated Mut. Ins. Co.*, 200 Neb. 46, the court decided that in the absence of an explicit definition for the term “theft” in a specific perils policy, a broad definition to the term should be applied. Based on this analysis, the court held that the theft provision should be interpreted as to cover any loss of Peterson’s personal property caused by an unlawful or wrongful taking with criminal intent.

Next, the court looked at whether genuine issues of material fact existed based on this interpretation. The material facts in this case were related to whether there was an unlawful or wrongful taking of Peterson’s property with criminal intent. Homesite argued that there was no theft because Peterson was merely involved in a contract dispute with the movers. Peterson then presented evidence showing that the movers’ actions leading up to and during his move cast doubt upon their affiliation with legitimate businesses engaged in the interstate transportation of household goods. Among other things, the telephone numbers the movers provided on paperwork were disconnected, and the addresses listed corresponded to vacant lots that were for sale.

In conclusion, the court found that there were reasonable inferences that the movers wrongfully took Peterson’s property with criminal intent when they refused delivery in an attempt to elicit additional money from Peterson. These inferences demonstrate the existence of a genuine issue of material fact as to whether a theft occurred. Therefore, the district court erred in granting Homesite’s motion for summary judgment on the breach of contract claim. The Nebraska Supreme Court, reversed the order of the district court and remanded the case for further proceedings.

### ***Actions Taken Against Producers***

| <b>CAUSE NO.</b>  | <b>ALLEGATION</b>   | <b>DISPOSITION</b>                                  |
|---|---|---|
| A-1969<br><b>Myron Anthony Owens</b><br>Lincoln, NE<br><br>NPN - 762582 | Violated <u>Neb.Rev.Stat.</u> §44-4059(1), 44-4065(1). Violated any insurance law; failed to report any administrative action taken by another governmental agency.           | Consent Order<br>\$500 admin. penalty<br>12/19/2013 |
| A-1973<br><b>Eric Birkhead</b><br>Omaha, NE<br><br>NPN - 15161787       | Violated <u>Neb.Rev.Stat.</u> §§44-1525(11), 44-4059 (1)(b), 44-4059(1)(h). Failed to respond; violated any insurance law; used fraudulent, coercive, or dishonest practices. | Order<br>\$1,000 admin. penalty<br>10/22/2013       |
| A-1992<br><b>Ricky Bredthauer</b><br>Aurora, NE<br><br>NPN - 3186986    | Violated <u>Neb.Rev.Stat.</u> §44-4059(1)(h) and 44-4059(1)(n). Used fraudulent, coercive, or dishonest practices; failed to pay state income tax.                            | Order<br>Producer license suspended<br>12/19/2013   |
| A-1993<br><b>Michael Cruise</b><br>Omaha, NE<br><br>NPN - 16870230      | Violated <u>Neb.Rev.Stat.</u> §44-4059(1)(a). Provided incorrect, misleading, incomplete or materially untrue information in an insurance producer’s license application.     | Order<br>Producer license revoked<br>12/3/2013      |

## **Actions Taken Against Companies**

| <b>CAUSE NO.</b>   | <b>ALLEGATION</b>  | <b>DISPOSITION</b>                   |
|--|--|--------------------------------------|
| C-2050<br><b>New York Life Insurance Company, New York Life Insurance and Annuity Corporation and NYLife Insurance Company of Arizona</b><br>(New York)                                      | Nebraska participated in the Multi-State Market Conduct Examination led by California.   | Multi-State Settlement<br>11/26/2013 |
| C-2051<br><b>Aviva Life &amp; Annuity Company and Aviva Life, Annuity Company of New York</b><br>(Iowa)  | Nebraska participated in the Multi-State Market Conduct Examination led by Illinois.     | Multi-State Settlement<br>11/26/2013 |
| C-2052<br><b>Aviva Life and Annuity Company, Aviva Life, Annuity Company of New York, First Allmerica Financial Life Insurance Company and Presidential Life Insurance Company</b><br>(Iowa) | Nebraska participated in the Multi-State Market Conduct Examination led by Illinois.     | Multi-State Settlement<br>11/26/2013 |
| C-2066<br><b>Lincoln National Life Insurance Company, Lincoln Life and Annuity Company of New York and First Penn Pacific Life Insurance Company</b><br>(Indiana)                            | Nebraska participated in the Multi-State Market Conduct Examination led by Pennsylvania. | Multi-State Settlement<br>12/19/2013 |
| C-2067<br><b>Midland National Life Insurance Company and North American Company for Life and Health Insurance</b><br>(Iowa)  | Nebraska participated in the Multi-State Market Conduct Examination led by Illinois.     | Multi-State Settlement<br>12/19/2013 |

## **MARKET CONDUCT DIVISION**

### **Staff Updates**

The division is pleased to announce the addition of two examiners. **Megan Keck and Kevin Schlautman** will be joining staff in examining insurance companies, producers and performing market conduct duties as assigned. **Cathy Hoban** has accepted the Market Analyst position within our Division transitioning from an examiner.

**Market Conduct Examinations Completed During 2013**

American Guaranty Title Insurance Company  
 Blue Cross and Blue Shield of Nebraska  
 Chicago Title Insurance Company  
 Commonwealth Land Title Insurance Company  
 EnTitle Insurance Company  
 Fidelity National Title Insurance Company  
 First American Title Insurance Company  
 FirstComp Insurance Company  
 First National Life Insurance Company of the USA  
 Globe Life and Accident Insurance Company  
 Investors Title Insurance Company  
 National Title Insurance of New York, Inc.  
 Old Republic National Title Insurance Company  
 Stewart Title Guaranty Company  
 Westcor Land Title Insurance Company

**EXAMINATION DIVISION**

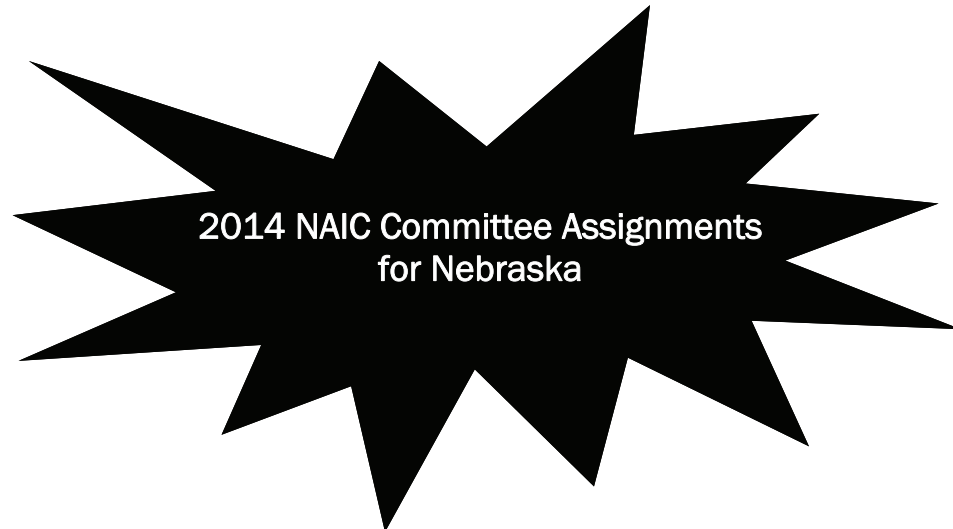
**Financial Examinations Completed During Fourth Quarter, 2013**

Acceptance Casualty Insurance Company  
 Acceptance Indemnity Insurance Company  
 Nebraska Farmers Mutual Reinsurance Association  
 Norfolk Mutual Insurance Company

**Pre-Need Examination Completed During 4th Quarter, 2013**

Aspen Aftercare Cremation and Burial Services, Inc.  
 Beyer-Snider Memorial Funeral Home  
 Duesman Funeral Chapel  
 Jolliffe Funeral Home, Inc.  
 Lauber Funeral Service, Inc.  
 Merten-Butler Mortuary, Inc.  
 Peters Funeral Home, Inc.  
 PVMS, LLC  
 Reichmuth Funeral Homes  
 Roder Mortuaries, Inc.  
 Sandoz' Chapel of the Pines  
 Stonacek Memorial Chapel, Inc.  
 Svoboda Funeral Home, Inc.  
 Trump Funeral Homes  
 Wintz Funeral Home, Inc.

Financial examination reports become public documents once they have been placed on official file by the Department. The most current report of financial examination can now be found on the Department's website at [www.doi.ne.gov](http://www.doi.ne.gov). Copies can be obtained from the Department at a cost of \$.50 per page



**2014 NAIC Committee Assignments  
for Nebraska**

- ☆ Member NAIC Executive Committee—Midwest Zone Secretary
- ☆ Member International Insurance Relations (EX) Leadership Group
- ☆ Member SERFF Advisory Board
- ☆ 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
- ☆ Chair Title Insurance (C) Task Force
- ☆ Member Market Regulation and Consumer Affairs (D) Committee
- ☆ Member Antifraud (D) Task Force
- ☆ 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
- ☆ Member International Insurance Relations (G) Committee
- ☆ Member NAIC/Industry Liaison Committee



