

## Contributing Author

John C. Gurley  
 jgurley@lordbissell.com  
 312.443.0318

www.lordbissell.com

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In the 2004 *Reactions* legal survey, Lord, Bissell & Brook ranked #1 in all six categories of insurance and reinsurance legal matters.

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## UPDATE: Lord, Bissell & Brook LLP Team Counsels Clients On Investigations Of Insurance Industry

New York Attorney General, Eliot Spitzer, shocked the world-wide insurance industry when he filed a lawsuit against Marsh & McLennan Companies, Inc. and Marsh, Inc. on October 14, 2004 alleging Marsh (a) had a conflict of interest concerning receipt of undisclosed contingent commissions from certain insurance companies, and (b) engaged in anti-competitive bid-rigging activity which enabled Marsh to steer business to the insurance companies which paid Marsh the contingent commissions.

In response, Lord, Bissell & Brook LLP assembled a special team of experienced insurance lawyers and non-lawyer experts to advise its clients concerning the issues raised in Mr. Spitzer's lawsuit and other lawsuits which had been filed previously by private plaintiffs. [Click here to read our October 2004 Client Alert: http://www.lordbissell.com/newsstand\\_story.cfm?NSID=684](http://www.lordbissell.com/newsstand_story.cfm?NSID=684). In order to support the team's work, the firm set up an Extranet which is accessible to interested clients and which includes (a) copies of the various lawsuits filed by Mr. Spitzer, the California Commissioner of Insurance and private plaintiffs, and (b) information which tracks actions taken by federal agencies (SEC, DOL, etc.), state departments of insurance, the National Association of Insurance Commissioners, state attorneys general, insurance industry trade associations and foreign countries such as the United Kingdom, Australia, Canada and the European Union.

Following is a summary of Lord, Bissell & Brook's activities on these issues:

- ◆ Counseling clients and assisting them in preparing timely responses to subpoenas, demands for information and similar requests they have received from the **Illinois** Division of Insurance, the Illinois Attorney General, the **North Carolina** Insurance Department, the **Alaska** Division of Insurance, the **California** Department of Insurance, the **Connecticut** Insurance Department, the **Delaware** Department of Insurance, the **Florida** Attorney General, the **Pennsylvania** Insurance Department, the **Virginia** Bureau of Insurance, the **Washington** State Insurance Commissioner's office, the **West Virginia** Insurance Commissioner, the West Virginia Attorney General and the City and County of **San Francisco**.
- ◆ Counseling clients on the impact Mr. Spitzer's lawsuit and his ongoing investigation will have on the debate over whether the federal government should have increased responsibility for regulation of the insurance industry. [Click here to read our April 2004 Client Alert: http://www.lordbissell.com/newsstand\\_story.cfm?NSID=559](http://www.lordbissell.com/newsstand_story.cfm?NSID=559). In this connection, we continue to closely monitor (a) the hearings which resulted in the introduction of the State Modernization and Regulatory Transparency Act (the "SMART Act"), (b) the work of the Antitrust Modernization Commission's Immunities and Exemptions Working Group which is examining, among other things, the continued viability of the McCarran-Ferguson Act, (c) the hearings held in November 2004 by former Senator Peter Fitzgerald concerning regulation of the insurance industry, and (d) hearings concerning the insurance industry which the Senate Banking Committee and other Congressional Committees plan to conduct in 2005.
- ◆ Monitoring the expansion of Mr. Spitzer's investigation from one originally focused on the property and casualty business to one that now is examining (a) the life, health, disability, employee benefits, and reinsurance industries, and (b) consultants, adjusters and other service providers.
- ◆ Counseling clients concerning subpoenas they have received from the **New York** Attorney General's office and assisting them in preparing responses in a timely manner.

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- ◆ Counseling clients regarding the legality of contingent commissions, the fiduciary obligations of agents and brokers, the disclosure obligations of insurance companies and brokers, and the different obligations imposed on retail brokers/agents, wholesalers and other intermediaries.
- ◆ Counseling clients concerning the legal ramifications of paying contingent fees contracted for the 2004 year and whether it is appropriate to continue such arrangements in 2005, including making recommendations regarding the kinds of provisions which should be considered for inclusion in broker and agent contracts.
- ◆ Counseling clients regarding interpretation of New York Circular Letter 1998-22 (which imposed disclosure obligations on brokers receiving contingent commissions).
- ◆ Counseling clients in analyzing the impact of (a) the NAIC's proposed amendment to the NAIC Producer Licensing Model Act which would require disclosure of contingent commissions by brokers and, under some circumstances, agents, and (b) proposed regulations by the **California** Department of Insurance, the **Tennessee** Department of Commerce and Insurance and the **Nevada** Insurance Division which would impose disclosure obligations on brokers and agents different from what would be required under the NAIC proposal.
- ◆ Counseling clients on issues and representing clients in connection with litigation and investigations relating to the sale of finite and loss mitigation insurance products which were added to the scope of the New York Attorney General's investigation of the insurance industry. [Click here to read our November 2004 Client Alert: http://www.lordbissell.com/newsstand\\_story.cfm?NSID=703.](http://www.lordbissell.com/newsstand_story.cfm?NSID=703)
- ◆ Counseling clients with internal review of their operations which involves (a) designing of and planning for interviewing the client's staff, (b) reviewing and analyzing the information obtained from staff, and (c)

analyzing and synthesizing the information, preparing reports, making recommendations, and reporting the findings to the clients' boards of directors or other governing bodies.

If you would like additional information, please contact your Lord, Bissell & Brook LLP attorney or Brian Casey in our Atlanta office, Mark Goodman, Joe Coughlin or John Gurley in our Chicago office, David Hauge or Carey Barney in our Los Angeles office, David Greene, Kevin Walsh or Greg Casamento in our New York office, Doug Faucette in our Washington, D.C. office, or Bob Robinson in our London office.

### ABOUT THE AUTHOR

John Gurley is a senior partner in our internationally known insurance law practice. He has more than 30 years of experience in all areas of corporate insurance, including regulatory.

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