

Welcome to the Issues Forum

Kathleen McCain
Education Committee
Co-Chair



**INTERNATIONAL ASSOCIATION
OF INSURANCE RECEIVERS**
PROMOTING PROFESSIONALISM AND ETHICS

Louisiana's Corporate Governance Disclosure Act



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International Association of Insurance Receivers

NAIC Spring 2016 National Meeting Issues Forum

LOUISIANA'S CORPORATE GOVERNANCE ANNUAL DISCLOSURE ACT

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CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Corporate Governance Annual Disclosure Act

Act 304 of the 2015 Regular Legislative Session
enacted **LRS 22:691.51** *et seq.*

Regulation 104 by the Louisiana Department of Insurance:
Corporate Governance Annual Disclosure.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Applies to "**all insurers** domiciled in this state."

Must submit a corporate governance annual disclosure
(CGAD) no later than:

June 1st of each year.

May be submitted by the insurer
or the insurance group.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Purposes:

- To provide the commissioner a summary of an insurer or insurance group's **corporate governance structure**, policies, and practices;
- **Outline** the requirements for **completing** a corporate governance annual disclosure; and
- Provide for **confidential treatment** of the disclosure and related information.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

LRS 22:691.51 (B)

Nothing in the CGAD Act "shall be construed to **prescribe or impose corporate governance standards** and internal procedures beyond those required" under Title 22 or other laws of the state.

Intended to be a **reporting requirement**, not a set of rules and mandates that insurers are required to meet.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

LRS 22:691.52 (2)

"**Insurance Group**" means those insurers and affiliates included within an **insurance holding company system** as defined in the Insurance Holding Company System Regulatory Law, LRS 22:691.1, *et seq.*



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

LRS 22:691.53 (B)

The CGAD must be signed by the **chief executive officer or corporate secretary** of the insurer or insurance group attesting to the best of that individual's belief and knowledge that **the insurer has implemented the corporate government practices** and that a copy of the CGAD has been provided to the insurer's board of directors or appropriate committee.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

LRS 22:691.53 (D)

The CGAD disclosure may be made at the:

- **Ultimate Controlling Person (UCP)** level;
- **Intermediate** holding company level; or
- Individual **legal entity** (insurer) level.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

LRS 22:691.53 (D)

continued

Insurer is "encouraged" to make the disclosures at level that:

- The insurer/insurance group's **risk appetite** is determined;
- Where earnings, capital, liquidity, operations, and reputation of the insurer are **overseen, supervised, coordinated and exercised**; or
- Where **legal liability** for failure of general corporate governance duties would be placed.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

LRS 22:691.55

The insurer has "discretion over the responses to the CGAD inquiries..."

However, the CGAD "shall contain the **material information necessary** to permit the commissioner to gain an understanding of the insurer's or insurance group's **corporate governance structure, policies, and practices.**"



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

LRS 22:691.55

continued

LDOI "may **request additional information** deemed material and necessary to provide a clear understanding of the **corporate governance policies**, the **reporting or information system**, or **controls implementing those policies.**"

The disclosure "shall be prepared consistently with rules, regulations and orders" promulgated by the LDOI.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

LRS 22:691.56

The CGAD, and related documents, materials, or other information, disclosed to or created by the LDOI are **confidential and privileged**, not subject to the Public Records Law, and not subject to subpoena or discovery.

LDOI **may share** the information with state, federal and international regulatory agencies, including the NAIC, and third-party consultants.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

LRS 22:691.58

Any insurer that fails to timely file the CGAD, "without just cause," must pay a penalty of **\$100.00 for each day** that the disclosure is late, up to a **maximum of \$10,000.00**.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Regulation 104

Promulgated by the LDOJ under the Corporate Governance Annual Disclosure Act.

Reiterates many of the same requirements set forth in the Act, but also **expands** upon the type of information and disclosures necessary in the CGAD.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Regulation 104

continued

The insurer "shall have **discretion** regarding the appropriate **format** for providing the information required by these regulations and is permitted to **customize** the CGAD..."

Template.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Regulation 104

continued

§ 207 of Reg 104 sets out the required contents of
CGAD.

The insurer "shall be as **descriptive** as possible in completing the CGAD, with inclusion of **attachments or example documents** that are used in the governance process..."



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Regulation 104
continued

"The CGAD shall describe the insurer's or insurance group's **corporate governance framework and structure** including consideration of the following..."

Highlights.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Regulation 104

continued

- Describe the board and various committees thereof ultimately responsible for overseeing the insurer or insurance group, and the level at which that oversight occurs
- Discuss and describe the rationale for the current board size and structure.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Regulation 104

continued

- The duties of the board and each of its significant committees, and how they are **governed** (e.g., bylaws, charters, informal mandates, etc.).
- How the board's **leadership** is structured, including the roles of the CEO and chair of the board.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Regulation 104

continued

- Describe the policies and practices of the most senior governing entity and the significant committees thereof.
- Discuss how the qualifications, expertise and experience of each board member meets the needs of the insurer or insurance group.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Regulation 104

continued

- Discuss how an appropriate amount of **independence** is maintained on the board and its significant committees.
- Number of meetings held by the board over the past year, and information on **director attendance**.
- How board members are nominated, elected and re-elected.
- Whether a nomination committee is in place, and whether a board diversity policy is in place.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Regulation 104

continued

- Processes in place for the board to evaluate its performance and the performance of its committees.
- The policies and practices for directing senior management.
- What suitability standards, if any, determine whether officers and key persons have the appropriate background, experience and integrity.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Regulation 104

continued

- Discussion of the code of **business conduct and ethics** of the insurer or insurance group, including:
 - Compliance with laws, rules, and regulations; and
 - **Proactive reporting** of any illegal or unethical behavior.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Regulation 104

continued

- Processes for performance evaluation, compensation and corrective action to ensure **effective senior management**.
- Description of the objectives of **compensation programs**, including information to allow the LDO to understand how such programs do **not** encourage or reward excessive risk taking.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Regulation 104

continued

- The board's role in **overseeing** management compensation programs and practices.
- The various **elements of compensation** awarded in the compensation programs, and how each element of compensation is **determined and calculated**.
- Plans for CEO and senior **management succession**.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Regulation 104

continued

- Describe the processes by which the board, its committees and senior management ensure an **appropriate amount of oversight of critical risk areas** impacting the insurer's business activities.
- How oversight and **management responsibilities are delegated** between the board, its committees and senior management.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Regulation 104

continued

- Discuss how the board is kept informed of the insurer's **strategic plans and the associated risks**, and how senior management monitors and manages those risks.
- How reporting is organized for **each critical risk area**, including how often information on **each critical risk area** is reported to the board and senior management.



CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Regulation 104

continued

- Some example critical risk areas:
 - Actuarial function;
 - Investment decision-making processes;
 - Reinsurance decision-making processes;
 - Business strategy/finance decision-making processes;
 - Compliance function;
 - Financial reporting/internal auditing; and
 - Market conduct decision-making processes.



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Case Study of a Recent Louisiana Insolvency

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Bostick/Crawford Consulting Group

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Louisiana Department of Insurance



MOTHE/DLE SUCCESSFUL
REHABILITATION



LOUISIANA HEALTH
COOPERATIVE REHABILITATION



IAIR ~ NEW ORLEANS NAIC
MEETING APRIL 4, 2016

A Presentation to the International Association of
Insurance Receivers

Mothe/DLE Transaction

□ Background

□ Entities

- Mothe Life Insurance Company
- DLE Life Insurance Company
 - Combination of:
 - Dixie Life Insurance Company
 - Lafourche Life Insurance Company
 - Evangeline Life Insurance Company
- Mothe ~ Insolvent by approximately (\$5.2 million)
- DLE ~ Owned 100% by Mothe and solvent by approximately \$7 million

Mothe/DLE Transaction

□ Background & Impediments

- Mothe & DLE placed in Rehabilitation on October 1, 2015
- Immediately petitioned the court and received approval for process to sale Companies
 - Met with LLHIGA to discuss participation in sale
- Judicial Impediments
 - Judge refused to approve motions for fee applications of Receiver and contractors ~ not paid for first 8 months of Receivership
 - Judge appoints and approves contract for co-counsel to assist Receiver's counsel
 - Judge subsequently denies contract to approve Receiver's counsel
 - Judge placed undo burden on Receiver in her attempts to sale real estate requiring initial approval and subsequent review of closing documents
 - Recusal motion filed against Judge
 - Attorney General requires appointed attorneys to file motion to withdraw
 - Attorney General files motion to withdraw

Mothe/DLE Transaction

□ Background & Impediments *continued*

- Receiver left with no counsel during first quarter of 2015
- Case reassigned in first quarter 2015 pending recusal hearing
- Counsel approved shortly after reassignment
- Counsel required to re-file all fee applications in re-assigned division as Judge refused to transfer docket
- Reassigned Judge responds timely to all filings
- Hearing held on January 7, 2016 to approve the acquisition of Mothe
- Closing Status report filed with court on March 23, 2016
- Rehabilitator's counsel scheduled to file Motion to Dismiss the Recusal motion the week of April 4th as this matter is now considered moot

Mothe/DLE Transaction

□ Sale approach

- Continue operations: sales, customer service, claims payments and administration
- Identify potential bidders
 - Prior interest, La licenses, surplus minimums, premium volume minimums {145 solicitation letters}
- Execute non-disclosure agreements {25 executed}
- Create electronic data room of relevant information
 - Generates more interest due to lower evaluation cost to buyer
 - Shortens evaluation period
- Receipt of non-binding Letter of Intent (9)

Mothe/DLE Transaction

- Sale approach *continued*
 - Establish criteria and evaluate non-binding LOI's and select top bids
 - Surplus of bidder
 - UCP of bidder
 - Reach out to regulators in other states re: UCP
 - Contingency language in bids
 - Consideration
 - Invite selected parties to conduct in-depth due diligence
(3)

Mothe/DLE Transaction

- Sale approach *continued*
 - After due diligence accept and evaluate Binding Offers
 - Reinsurance transaction
 - PSA ramifications
 - Stock purchase agreement
 - LLHIGA contribution
 - Discuss evaluation with LLHIGA and LDI
 - Discuss selection criteria
 - Agree on critical elements of each bid
 - Jointly (LDI, LLHIGA, Receiver) select and agree on winning bid

Mothe/DLE Transaction

- Sale approach *continued*
 - Draft stock purchase agreement
 - Begin Expedited Form A process
 - Avoids notice period
 - Secure court approval

Mothe/DLE Transaction

- Sale approach *continued*
 - Elements of LLHIGA contribution
 - Negative Surplus (\$9.3 million)
 - Negative Surplus included agreed write-downs of real estate
 - Purchase price ~ \$12 million
 - Add back AVR ~ \$.6 million
 - LLHIGA contribution ~ \$5.2 million
 - Capital target per bid ~ (\$3.5 million)
 - Surplus at release \$8.5 million
 - True-up
 - Financial position February 29, 2016
 - Minus daily burn rate March 1 through March 18
 - Minus sum of hole + purchase price + capital target
 - Equals LLHIGA contribution

Mothe/DLE Transaction

- Sale approach *continued*
 - Closing and transfer
 - Maintain system image and electronic copy of all receivership records
 - Close Rehabilitation and release Receiver

Networking Break



Cybersecurity Respecting Your Sensitive Data



Jenny Jeffers

Jennan Enterprises, Inc.

Michael Morrissey

Morrissey Consultants, Inc.



Respecting Sensitive Data

Jenny Jeffers
Jennan Enterprises

Michael Morrissey
Morrissey Consultants



Why is Your Data so Sensitive?

- Is it really yours?
- What is the information worth?
 - To you?
 - To the owners?
 - To thieves?
- What is the impact if it became public?
 - Liability
 - Fines
 - Reputation



“Sensitive” because it contains:

- Classified government information
- Intellectual property
- Personally Identifiable Information – PII
- Personal Healthcare Information – PHI
- Personal or Company Financial Data



THREATS & RISKS

- Who wants sensitive data?
- How are they going to get it?
- What are they going to do with it ?

What's the Likelihood of Loss?

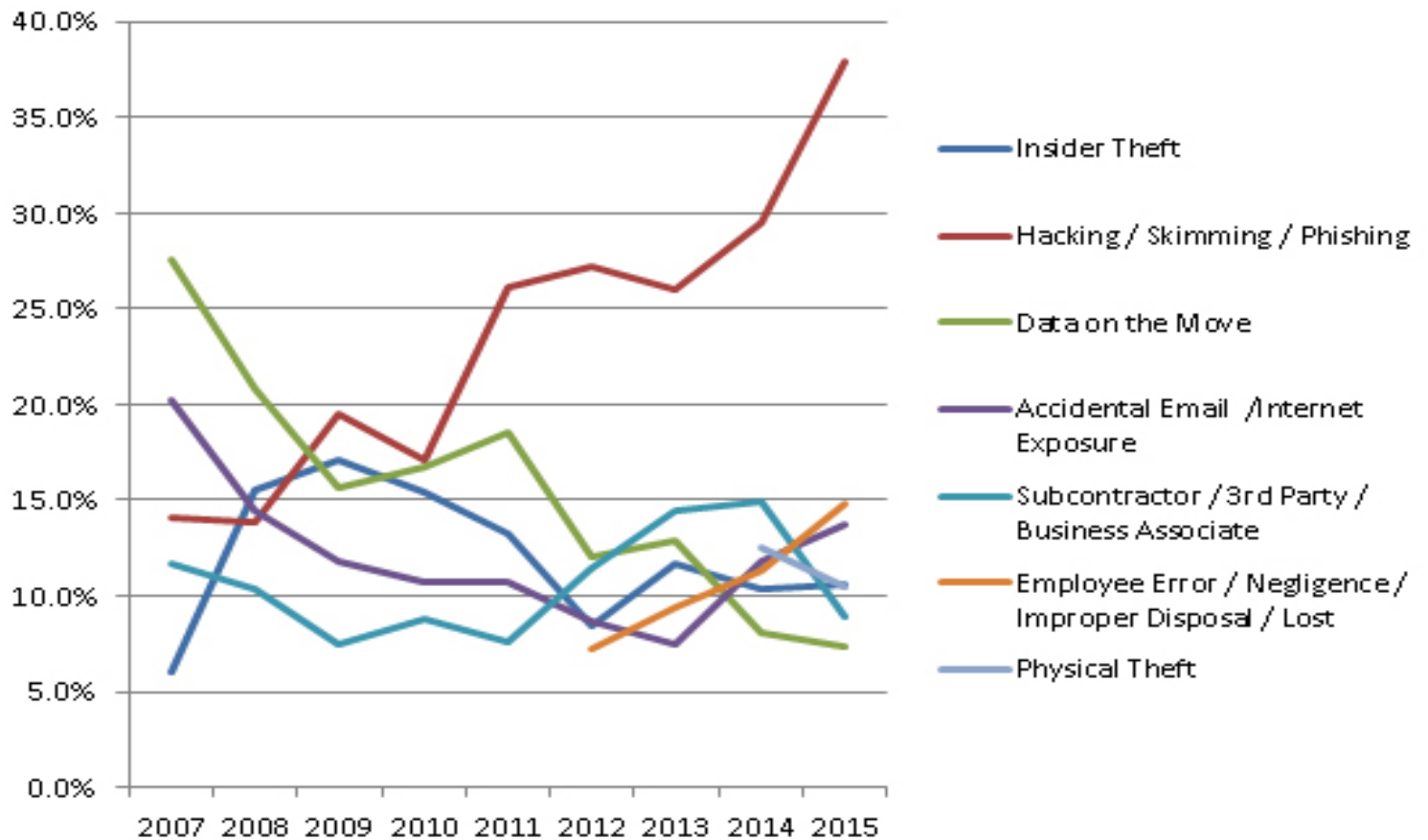
2005 to December 31, 2015

Number of breaches reported= 5,810

Number of Records =847,807,830

Eight hundred fifty million records!

Data Breach Incidents - By Type



Source: Identitythefcenter.org

Totals for Category: Banking/Credit/Financial	# of Breaches: 71 % of Breaches: 9.1%	# of Records: 5,063,044 %of Records: 3.0%
Totals for Category: Business	# of Breaches: 312 % of Breaches: 39.9	# of Records: 16,191,017 %of Records: 9.6%
Totals for Category: Educational	# of Breaches: 58 % of Breaches: 7.4%	# of Records: 759,600 %of Records: 0.4%
Totals for Category: Government/Military	# of Breaches: 63 % of Breaches: 8.1%	# of Records: 34,222,763 %of Records: 20.2%
Totals for Category: Medical/Healthcare	# of Breaches: 277 % of Breaches: 35.5	# of Records: 112,832,082 %of Records: 66.7%
Totals for All Categories:	# of Breaches: 781 % of Breaches: 100.0	# of Records: 169,068,506 %of Records: 100.0%

Source: IDTheftCenter.org



Recent Events

- Anthem and healthcare breaches
- OMB
- iPhones and the FBI
- MedStar - Randomware

New Rules for Data Protection

- NIST - Cybersecurity Framework
(Executive Order 13636, February 12, 2013)
- NAIC - Principles for Effective Cybersecurity
Insurance Regulatory Guidance – 12 Principles Issued May 2015
- Security Breach Notification Laws
47 States have breach laws
See National Conference of State Legislatures <http://www.ncsl.org>
- New Model

Function Unique Identifier	Function	Category Unique Identifier	Category
ID	Identify	ID.AM	Asset Management
		ID.BE	Business Environment
		ID.GV	Governance
		ID.RA	Risk Assessment
		ID.RM	Risk Management Strategy
PR	Protect	PR.AC	Access Control
		PR.AT	Awareness and Training
		PR.DS	Data Security
		PR.IP	Information Protection Processes and Procedures
		PR.MA	Maintenance
		PR.PT	Protective Technology
DE	Detect	DE.AE	Anomalies and Events
		DE.CM	Security Continuous Monitoring
		DE.DP	Detection Processes
RS	Respond	RS.RP	Response Planning
		RS.CO	Communications
		RS.AN	Analysis
		RS.MI	Mitigation
		RS.IM	Improvements
RC	Recover	RC.RP	Recovery Planning
		RC.IM	Improvements
		RC.CO	Communications

NIST CYBERSECURITY FRAMEWORK



Rule1: Where is the Sensitive Data?

- DATA RISK ASSESSMENT
- NETWORK INVENTORY
 - DATA SOURCES
 - DATA DISTRIBUTION
 - ARCHIVE LOCATIONS



Rule 2: Classify All Data by Type, Risk

- RAW DATA FILES
- EXCEL SPREADSHEETS
- CORRESPONDENCE LETTERS
- OTHERS?



Rule 3: Restrict Sensitive Data

- ROLE BASED ACCESS – WHO AND WHY
- PASSWORD POLICIES
- ISOLATE SENSITIVE DATA
- CONTINUOUS MONITORING OF ACCESS



Rule 4: Encrypt Sensitive Data

- “AT REST” ENCRYPTION – EFFECTIVE ?
- SERVERS
- LAPTOPS
- PORTABLE STORAGE DEVICES
- DATA IN TRANSIT
- CLOUD REPOSITORIES



Rule 5: Monitor Systems and Data

- DATA CHANGES
- DATA LOCATION CHANGES
- ACCESS CHANGES
- SYSTEM CONFIGURATION CHANGES
- LOGS OF ACTIVITY – REVIEWED AND ARCHIVED

IPS/IDS systems can automate to some extent



Rule 6: Have an Incident Response Plan - Who you gonna call?

- What constitutes a security event?
- Steps to identify and assess a breach
- Seek professional help before hand
- Cyberinsurance ?
- Notification – the painful part
- Repair and learn



Dealing with Sensitive Data in Practice

- Analyze the data – who, what where...
- Can you scrub it?
- Encryption “at rest”
- Encryption in transit
- Portable drive encryption
- Data sharing
- Delete it!



Questions & Comments ?

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Thank You.



Receivership Insolvency Task Force Update

James Kennedy, Counsel
Counsel, Texas Department of Insurance
Chair, Receivership Model Law Working Group

A scenic sunset over a body of water, likely a bay or estuary. The sky is a mix of deep blue, orange, and yellow, with wispy clouds. In the foreground, there are silhouettes of tall reeds on the left and several trees, possibly cypresses, along the water's edge. The water reflects the colors of the sky. The overall mood is peaceful and serene.

IAIR Reception
5-6 PM

See you in San Diego