

BANKING AND INSURANCE

Board of Directors Minutes

March 22, 2012, Thursday, 2:00 P.M.

Attendance:

Artemio B. Ilagan, Chairman, and Banking and Insurance Commissioner

Board Members:

Edelfrida A. Ada

Antonita Camacho

Rosita Fejeran

Cesar Garcia

David Silva

William West Cassidy

Absent:

Mark O. Fish

Danilo Rapadas

Also Present:

John Q. Carlos, Regulatory Programs Administrator

Brian San Nicolas, Governor's Office

James Gebhard, Pacific Amusement, Inc.

Rodney Romero, Pacific Amusement, Inc.

Ricky Hernandez, Guam Legislature Office Finance and Budget

Call to Order:

Chairman Ilagan called the Banking and Insurance Board Meeting to order at 2:40 P.M. and acknowledged the presence of the (5) board members. West Cassidy via telephone.

The Chairman asked that a motion be made to recess and continue the meeting until Thursday. Ms. Del Ada made a motion to continue the meeting until next Thursday, March 29, 2012. The motion was seconded by Antonita Camacho. The meeting for Thursday at 2:00 P.M., March 29, 2012 was unanimously approved. Meeting was adjourned at 2:43 P.M.

BANKING AND INSURANCE
BOARD OF DIRECTORS MINUTES

March 29, 2012, Thursday, 2:00 P.M.

*Director's Conference Room, Department of Revenue and Taxation
1240 Army Drive (Route 16), Barrigada, Guam 96913*

Attendance:

Artemio B. Ilagan, Chairman, and Banking and Insurance Commissioner

Board Members:

Edelfrida A. Ada
Mark O. Fish

Antonita S. Camacho
Cesar Garcia

William West Cassidy
Danilo Rapadas

Absent: Rosita Fejeran David Silva

Also Present:

John Q. Carlos, Regulatory Programs Administrator
Brian San Nicolas, Office of the Governor
Ricky Hernandez, Guam Legislature, Office of the Financial Budget
Rodney Romero, Pacific Amusement
Vic Ryan, Pacific Amusement

The Chairman mentioned that there was a Board Meeting on March 22, 2012 and there was one member who participated via telephone. He said that the meeting was postponed to continue on March 29, 2012.

Call to Order:

Chairman Ilagan called the Banking and Insurance Board Meeting to order at 2:10 P.M. on March 29, 2012 and acknowledged the presence of the board members who were present.

Approval of Minutes:

The minutes of the prior board meeting of December 01, 2011, was presented and opened for review and discussion. Mr. West Cassidy asked for a clarification on his previous comment on the minutes regarding record retention. Mr. West Cassidy asked for clarification of his previous comment on the approval of the previous minutes regarding record retention. Mr. Cassidy corrected the statement on the December minutes and he stated "the record retention that was outside the current retention guidelines as far as the rules and regulations on any policy that insurer should be required to retain documents apply on any policy for which a claim is filed because of bodily injury."

A motion to approve the December 01, 2011, banking and Insurance Meeting Minutes, as corrected was made by Edelfrida Ada and seconded by Danilo Rapadas. The minutes were unanimously approved.

Old Business:

1. The Patient Protection Affordable Care Act (PPACA) became law on March 23, 2010. Guam is not included in the Temporary High Risk Pool. However, the Medicaid and Children Health Improvement were increased together with all Territories.

Mr. Brian San Nicolas, Health Policy Advisor, from the Governor's Office, gave a short talk on the Patient Affordable Care Act (PPACA). After the submission of all the requirements The Exchange Grant was approved in 2011. The approved Grant was for one year. Guam was not able to get anything definitive with CMS for the Health Insurance Exchanges (HIX). The Department of Revenue and Taxation is the one responsible for HIX until the beginning of this year. Guam applied that the Grant should be extended for another year. In requesting for extension of the grant Guam does not mean that Guam will go to the route of establishment of the HIX. We need the extension of the Grant so Guam can do a little bit more of research and prepare an analysis for the Governor to decide. On March 1st and 2nd, Mr. San Nicolas went to the Federal Regional Council the FRC in San Francisco that is where all Federal Agencies meet. American Samoa, Hawaii, CNMI and Guam attended the meeting. He met with Eric Alborg, Project Officer for HIX initiative on Guam. He gave two options regarding the HIX. Establish HIX on our own or a regional exchange, where we can join up with other region or Medicaid expansion. Guam cannot have a regional exchange because CNMI is not pursuing the HIX. Also American Samoa is not. Guam cannot partner with Hawaii because they said no for Guam to join the Hawaii Health Insurance Exchange. The only option is to run the HIX or Medicaid expansion. Guam is going to get a clarification from Eric Alborg on what exactly that Guam need in regards to Medicaid expansion.

Basically the money would have gone for HIX would go instead to Medicaid Expansion. How it works is not clear. Mr. San Nicolas is trying to set up a conference call so he can discuss a real quick preparation for the analysis that will be presented to the governor.

Chairman Ilagan mentioned that the grant amount is \$1 million dollars and an exchange has to be established. If the exchange is not established then we have to give back the \$1 million. Of the \$1 million, \$11,000 was used. Some people went to a conference regarding the exchange. Guam HIX has to be self-sustaining. Guam is not ready. An estimate of around \$70 million for one (1) year is needed for advance premium rate subsidy. The estimate was based on Guam household income. The advance premium rate subsidy is good for the residents of Guam. However, due to the cost, this has to be looked at on how it will affect our island, our people, and our government revenue.

Mr. San Nicolas also mentioned that territories don't enjoy what the 50 states are enjoying. The rules for CNMI, American Samoa and Guam rules will be different if we have a regional exchange. Virgin Islands and Puerto Rico are both looking at it.

1. SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OR SAFE ACT WAS APPROVED AS P.L. No. 30-151 on May 25, 2010.

The Rules and Regulation was sent to the Legislature early part of March. The Legislature has introduced a bill for the regulations. The Insurance and Banking Division is working with the Guam Legislature to finalize the rules and regulations.

2. VINCENT INSURANCE SERVICES CORPORATION. The requirements for the renewal of the certificate of authority was not timely met and Vincent Insurance is asking the Insurance Commissioner to do the insurance certificates of authority to be retroactive for the past years. The AG ruled that the insurance certificates of authority cannot be issued to be retroactive for the past years. An audited financial statement must be filed with the Insurance Commissioner. Vincent Insurance Services Corporation contested the hearing against Insurance and Banking and Attorney Robert Cruz was hired as our hearing officer. Mr. Robert Cruz has not called Chairman Ilagan for an update despite the fact that the same was submitted for decision. Mr. Mark Fish asked that if Mr. Cruz is not responding, why have we not pursued this with his supervisor or boss? Chairman Ilagan replied that the Department of Revenue and Taxation hired Mr. Cruz, an outside counsel and is a contract with the Department of Revenue and Taxation. Mr. Mark Fish brought up some of his

concerns, the number of years Vincent Insurance Services Corporation has been on the agenda, the unreasonable amount of time Mr. Cruz has been working on the issue and if the decision on the matter rests with the Banking and Insurance Commissioner or the Board itself? Mr. Mark Fish expressed concern that Mr. Cruz cannot give the Chairman a timely update then we need to approach this in another manner. He also said that our inaction on this matter is not fair to the people of Guam and to the industry of insurance. Chairman Ilagan assured the board that he will make a follow-up.

3. STATUS OF WHETHER FEDERAL CREDIT UNIONS OPERATING IN GUAM must pay a licensing fee for the establishment and operation of automated teller machines (ATMs).

The Banking and Insurance Division requested for opinion with the Attorney General's office regarding ATMs owned and operated by federal credit unions. (The letter requesting opinion on ATMs was sent on December 29, 2009). Mr. Mark Fish expressed his concern that this is more than two years and asked why we are not following up on this? In other words, why are we not demanding response and timely performance?" He also said that it is either that they are not listening or we are not following-up, either way the situation is not satisfactory. Chairman Ilagan and Mr. John Carlos said we will make a follow-up.

4. IN REGARDS TO THE LETTER REQUIRING THE GOVERNMENT OF GUAM autonomous agencies to deposit funds (particularly TCDs) with eligible banks.

A request for opinion regarding deposits of Government of Guam autonomous agencies that are placing deposits with credit unions in Guam. (The letter requesting opinion was sent on August 4, 2010). Chairman Ilagan said we will follow-up from the AG's Office.

For all pending matters where outside assistance is requested, Mr. Fish requested that dates be henceforth inserted in the minutes to reflect the date that original request was e so we can track response performance and time lines

With regarding to the foregoing matters and action to date, he also said that it does not appear that we are moving much forward on here!

NEW BUSINESS

1. PACIFIC AMUSEMENT, INC. has refused to submit comprehensive financial statements.

The company has retained an attorney to challenge the requirement. Chairman Ilagan, asked Mr. Carlos to clarify the Law on the submission of financial statement. Mr. Carlos stated that Pacific Amusement, Inc. is a nonbank entity. If you are a nonbank entity you are required to submit comprehensive financial statement and the review of its finances. Mr. Rapadas, asked what is the board being requested to do regarding this action. Mr. Carlos, replied what the lawyer is saying it is the Board not the Commissioner that can define what is meant by comprehensive financial review of its finances. This is on the GCA 104101 sub-section (c) (1). What the lawyer for the Pacific Amusement, Inc. was saying is the Commissioner himself cannot ask for an audited financial statement. It is only the board who can ask for that. As maybe required by the board the entity should submit a comprehensive financial statement. Mr. Carlos mentioned that there is \$1 million bonding requirement. Mr. Mark Fish said we are talking of ATMs here and not of vending machines. ATMS, if affixed with card readers, may be capable of capturing personal information and using the information for unauthorized purposes such as identity theft. In terms of the requirement for submission of audited financial statements for ATM licensing purposes, Mr. Fish stated that in his opinion, this was not unreasonable. Audited financial statements are an assurance of financial reporting quality and reliability. Audited financial statements are prepared in accordance with GAAP (generally accepted accounting principles).

Mr. Danilo Rapadas expressed that the public must be protected. This is the only way to make sure that the public is protected. For the record nobody from the Pacific Amusement, Inc. made a presentation for the company.

Mr. Mark Fish proposed that for the purposes of ATM licensing that the definition "comprehensive financial statements" be defined by the Board henceforth as "consolidated audited financial statements of the applicant. Regardless of the identity of the applicant, this definition should be uniformly used for the protection of the public. The chairman asked that the definition proposal be reduced to formal Board motion. Mr. Fish so moved and the motion were seconded by Mr. West Cassidy. Approving vote was unanimous.

2. THE NATIONWIDE MORTGAGE LICENSING SYSTEM & REGISTRY (NMLS) transition to launch funds needed to send 1 or 2 examiners for training in Hawaii in April 2012 for the NMLS database training requirement.

Mr. Carlos indicated that we need to have training for the employees under the Banking Commissioner. The training will be helpful to assist applicants whether they are from a deposit insured institution or a non-insured institution like the finance companies or the mortgage loan originators. It is the intent of the NMLS that the institution and Banking Division of the Revenue and Taxation of Guam should be able to assist those who are going to apply for license and/or registration with the NMLS. In line with that there is an officer from NMLS from Washington, D.C. She has agreed to go to Hawaii to do the training for some people from Hawaii to include Guam. The Commissioner and the Director have requested approval for two, but there will be one person to be sent to Hawaii and that person will be able to attend the training in Hawaii. We can move after the training and we are ready.

3. REQUEST FOR PROPOSAL FOR FINANCIAL EXAMINATION OF INSURANCE COMPANIES LICENSED IN GUAM AND REQUEST FOR PROPOSAL FOR INSURANCE RATE REVIEW for small employer group and for the individual group.

Mr. Carlos said that although there was a document reviewed by the AG five years ago there were some changes. Now we need to send them to the AG for review to make sure that there are no problems. We have outlined proposals and there is no problem showing them to the board members as soon as we finish the draft that will be sent to the AG. It is basically the same as the one approved by the board about five years ago. The request for proposal will be open for on-island and off-island bidders or interested qualified parties. Mr. Mark Fish raised his concern regarding possible conflict of interest. Mr. Carlos said he will look on this provisions regarding conflict of interest in the request for proposal.

4. THE FINANCIAL CRIMES ENFORCEMENT NETWORK (FINCEN) has issued the Anti-Money Laundering Program and Suspicious Activity Report Filing Requirements for Residential Mortgage Lender and Originators.

Final Rule, dated February 14, 2012. This regulation on Anti-Money Laundering Program and Suspicious Activity Report must be complied with by Residential Mortgage Loan lenders and servicers. There was no further discussion taken on this issue. As per the Board Members this was also was discussed on the topic of Nationwide Mortgage Licensing System & Registry (NMLS).

5. COMPLAINT LETTER OF ATTORNEY VAN DE VELD (representing Mrs. Ina Gill) to the Banking and Insurance Board, regarding violations of Guam Insurance Laws by Takecare Insurance Company.

Mr. Carlos spoke about the complaint filed by Mrs. Ina Gill. The son of Mr. Gill hired a private jet and took Mr. Gill to the Asian Hospital in the Philippines. Unfortunately, Mr. Gill died. Takecare Insurance denied the compensation for the private jet indicating that in the health policy contract the only provision is that the patient should get a commercial airline approved by the Insurance Company which is a lot cheaper. According to the Insurance Company the other issue is that the health insurance made it very clear that Mr. Gill cannot be treated in the Philippines, He is supposed to be treated only in an accredited hospital in the United States that is accredited to treat Medicare patients because Mr. Gill is over sixty five. Takecare is saying if Mr. Gill is treated in the United States the primary payer is Medicare. Atty. Van De Veld's position is that the Takecare policy is the primary payer. These are the two main issues of claims that were denied by Takecare. We do not know how they resolved the issues. The board members were provided a Withdrawal of Complaint from Atty. Van de Veld. The letter stated that Takecare and Ms. Gill have negotiated an amicable resolution of the complaint. As a result the complaint is withdrawn and the District Court case against Takecare Insurance Company was dismissed also.

OTHER MATTERS:

1. National Insurance Producer Registry (NIPR). Chairman Ilagan spoke on the on-line registration with the NIPR for agents, producers and brokers.
2. Education Requirements on Insurance. According Mr. Carlos fifty (50) states require educational requirements. In Guam it is not done yet. There is a provision in our Insurance Law that the Board is authorized to promulgate regulations on the educational requirements. As a matter of reciprocity with the other states we will be required that there must be continuing education for our insurance agents, producers and brokers. We will be working on the regulation for continuing education and submit it to the Board for review and approval.

A motion to adjourn the Meeting was made by Ms. Del Ada; the motion was seconded by Mr. Danilo Rapadas. The Banking and Insurance meeting was adjourned at 2:55 P.M.

Please note, the minutes are subject to the approval of the Board Members.