NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
PROPERTY-CASUALTY INSURANCE COMMITTEE
SANTA FE, NEW MEXICO
NOVEMBER 18, 2011
MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee met at the Eldorado Hotel & Spa in Santa Fe, New Mexico, on Friday, November 18, 2011, at 2:30 p.m.

Rep. Chuck Kleckley of Louisiana, chair of the Committee, presided.

Other members of the Committee present were:

Rep. Kurt Olson, AK	Rep. Don Flanders, NH
Rep. Greg Wren, AL	Sen. Carroll Leavell, NM
Rep. Barry Hyde, AR	Sen. Neil Breslin, NY
Rep. Rich Golick, GA	Assem. Nancy Calhoun, NY
Sen. Travis Holdman, IN	Assem. Joseph Morelle, NY
Rep. Matt Lehman, IN	Sen. James Seward, NY
Sen. Vi Simpson, IN	Rep. Jay Hottinger, OH
Sen. Ruth Teichman, KS	Sen. Dave Thomas, SC
Rep. Ron Crimm, KY	Rep. Charles Curtiss, TN
Rep. Robert Damron, KY	Rep. Charles Sargent, TN
Rep. Steve Riggs, KY	Del. Harvey Morgan, VA
Rep. Pete Lund, MI	Rep. William Botzow, VT
Rep. George Keiser, ND	Rep. Herb Russell, VT
Sen. David O'Connell, ND	Sen. Mike Hall, WV

Other legislators present were:

Rep. Nancy McLain, AZ	Rep. Andrea LaFontaine, MI
Sen. John Goedde, ID	Rep. Joe Hoppe, MN
Sen. William Haine, IL	Sen. Ralph Hise, NC
Rep. Jeff Greer, KY	Sen. Jean Hunhoff, SD
Sen. Dan Morrish, LA	Sen. Maralyn Chase, WA
Rep. Kirk Talbot, LA	

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director
Mike Humphreys, Nolan Associates, NCOIL Director of State-Federal Relations
Jordan Estey, Nolan Associates, NCOIL Director of Legislative Affairs & Education

MINUTES

After a motion made and seconded, the Committee voted unanimously to approve the minutes of its July 17, 2011, meeting in Newport, Rhode Island.

NFIP OVERHAUL EFFORTS

Dennis Kuhns, Director of Risk Management with the Federal Emergency Management Agency (FEMA), reported that the National Flood Insurance Program (NFIP) had received approximately 62,000 claims stemming from Hurricane Irene and Tropical Storm Lee and had paid $692 million in losses. He said that losses had been less severe than FEMA had anticipated.

Regarding congressional activity, Mr. Kuhns said that bipartisan legislation had overwhelmingly passed in the House but that the full Senate had yet to act. He said that reform bills attempted to make the NFIP more actuarially sound by phasing in risk-appropriate rates, among other things. He suggested that Congress would enact long-term NFIP reform by year's end.

During Committee discussion that followed, Mr. Kuhns said that approximately 35 percent of NFIP-covered properties pay subsidized rates and that a new mapping program, known as Risk Map, was being rolled out to help property owners understand potential loss.

Legislators then offered their observations on the NFIP, commenting, among other things, that:

- New flood maps overstate the risk behind certain levees.
- FEMA should rethink how it treats repetitive loss properties.
- Flood maps should account for both erosion and inundation flooding.
- FEMA has a responsibility to property owners who experienced loss but were not required to buy flood insurance.
- Allowing retroactive coverage is an interesting but perhaps unworkable proposal.

GULF COAST INSURANCE CONCERNS

Rep. Wren said that losses along the Gulf Coast have national repercussions and that recent natural disasters in the area have challenged insurance markets and prompted some consumers to seek relief in the court system. He suggested that NCOIL consider regional approaches to insurance market reform.

Joe Thesing of the National Association of Mutual Insurance Companies (NAMIC) said that a NAMIC task force created after Hurricanes Katrina and Rita had determined that only super-catastrophes—which NAMIC defined as storms worse than Hurricane Andrew—would warrant a catastrophe backstop. He said the bedrock of an effective catastrophe approach is risk-based pricing, actuarially sound rating, and loss mitigation. He noted the importance of statewide building codes and said that NAMIC and other members of a Build Strong Coalition were advocating for H.R. 1339 in the U.S. House, which would create incentives for states to adopt strong codes. Mr. Thesing then said that rate reform, such as via an NCOIL flex-rating model, was also important.

Eric Goldberg of the American Insurance Association (AIA) said that artificially suppressed insurance rates encourage development in catastrophe-prone areas. He said that if risk-based prices are too high for some property owners, it should be the government's role, rather than insurers', to provide subsidies. He also said that building codes, land-use planning, and sanctity of insurance contracts were important, as was long-term reauthorization/reform of the NFIP.

During Committee discussion that followed, Rep. Kleckley highlighted Louisiana's success in establishing strong building codes and attracting homeowners' insurers, and Sen. Haine expressed interest in making the NFIP a stand-alone agency.

SUNSETTING MODEL LEGISLATION

Ms. Thorson said the Committee was scheduled to review, as per NCOIL bylaws, three model laws. She reported that a *Flex-Rating Regulatory Improvement Model Act* would create a 12 percent flex band within which an insurer could expeditiously file rate changes once in any 12-month period. She said that the streamlined filing would apply to aggregate statewide rates.

Ms. Thorson then noted that a *Model Act Regarding the Use of Insurance Claims History Information in Homeowners and Personal Lines Residential Property Insurance* would limit how insurers use prior claims experience and would mandate certain disclosures, among other things.

The Committee simultaneously readopted the flex-rating and claims-history model acts.

Ms. Thorson reported that the third model law, a *Model State Legislation Creating a Natural Catastrophe Fund*, would create a mechanism based on the Florida system. She said the model was meant to work in conjunction with NCOIL building code and land use initiatives.

Insurance industry opponents of the catastrophe fund model made the following assertions:

- States have not significantly embraced the NCOIL bill.
- Catastrophe funds are inherently dysfunctional.
- The Florida fund has not enhanced availability or affordability in the state.
- Private reinsurers already backstop the insurance market.
- States are pursuing alternate approaches.

Industry supporters of the NCOIL catastrophe fund bill made the following assertions:

- The model is good public policy that responds to unique state needs.
- States are considering the NCOIL model as they explore possible market reforms.
- The Florida cat fund helps to promote insurer operations in the state.
- A catastrophe fund can be part of more comprehensive preparedness system.

During Committee discussion, legislators made the following assertions:

- With federal relief funds in doubt, states need to find their own solutions.
- State interest in catastrophe legislation is growing.
- The NCOIL model is an important blueprint that states might follow.
- NCOIL should not readopt the model without considering other state options.

Upon a motion made and seconded, the Committee unanimously deferred its bylaws-required review of the catastrophe fund model until the Spring Meeting in order to explore alternate state reforms.

THIRD-PARTY LITIGATION FINANCING

Dr. Bob Detlefson with NAMIC said that state legislatures were beginning to consider legislation to regulate non-recourse litigation loans provided by third parties. Under such loans, he said, a third party gives money to someone to pursue a civil lawsuit, in return for receiving money from any settlement or award. The third-party lender gets nothing, Dr. Detlefson said, if the person loses the case. The money loaned to a person is often used to pay daily expenses while the lawsuit is pending, he said. He added that the third-party loans are common in bodily injury cases.

Dr. Detlefson reported that third parties often charge three to five percent monthly interest rates, which the consumer pays when he wins his lawsuit. Depending on the length of the trial, Dr. Detlefson said, the cumulative interest fees could equal what the consumer originally borrowed.

In certain scenarios, Dr. Detlefson said, hedge funds and similar entities give millions of dollars to commercial businesses that are suing other commercial businesses, often over things such as intellectual property. He commented that the hedge funds view the practice as “high stakes” investment opportunities and that their involvement often drives settlement demands up to unreasonable levels.

After urging the Committee to support a ban on third-party funding, Dr. Detlefson said that such financing encourages people to file lawsuits, particularly those with questionable merit.

Sen. Teichman made a motion to consider a proposal at the Spring Meeting that would address third-party litigation funding issues. The Committee unanimously supported her motion.

PROPOSED 2012 COMMITTEE CHARGES

Ms. Thorson said the proposed Committee charges for 2012 were as follows:

- continue consideration of a proposed *Certificates of Insurance Model Act*
- investigate and develop a position on state/federal auto safety initiatives
- explore concerns regarding litigation financing arrangements
- engage with state/federal officials on NFIP reform
- review NCOIL auto insurance fraud, catastrophe fund, claims database, and flex-rating models, as per bylaws

Ms. Thorson said the Committee would strike reference to the claims database and flex-rating models, as legislators had recently readopted them.

Rep. Damron then suggested adding the following charge:

- adopt model law language setting forth the requirements and process for travel suppliers and others offering and disseminating travel insurance

Upon a motion made and seconded, the Committee adopted the amended charges via unanimous voice vote.

ADJOURNMENT

There being no further business, the meeting adjourned at 3:50 p.m.

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