NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
STATE-FEDERAL RELATIONS COMMITTEE
SANTA FE, NEW MEXICO
NOVEMBER 19, 2011
MINUTES

The National Conference of Insurance Legislators (NCOIL) State-Federal Relations Committee met at the Eldorado Hotel & Spa in Santa Fe, New Mexico, on Saturday, November 19, 2011, at 8:00 a.m.

Rep. Robert Damron of Kentucky, acting chair of the Committee, presided.

Other members of the Committee present were:

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| Rep. Greg Wren, AL | Rep. Don Flanders, NH |
| Rep. Barry Hyde, AR | Sen. Carroll Leavell, NM |
| Sen. Jason Rapert, AR | Sen. James Seward, NY |
| Sen. Travis Holdman, IN | Rep. Michael Stinziano, OH |
| Sen. Vi Simpson, IN | Sen. David Thomas, SC |
| Sen. Ruth Teichman, KS | Rep. Charles Curtiss, TN |
| Rep. George Keiser, ND | Rep. Herb Russell, VT |

Other legislators present were:

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| Sen. Jack Crumbly, AR | Rep. Jonathan McKane, ME |
| Rep. Reginald Murdock, AR | Sen. Ralph Hise, NC |
| Rep. Nancy McLain, AZ | Sen. David O'Connell, ND |
| Rep. Ken Ito, HI | Sen. Neil Breslin, NY |
| Sen. John Goedde, ID | Rep. Glen Mulready, OK |
| Rep. Matt Lehman, IN | Sen. Gerald Malloy, SC |
| Rep. Ron Crimm, KY | Sen. Jean Hunhoff, SD |
| Rep. Susan Westrom, KY | Rep. William Botzow, VT |

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 15, 2011, meeting in Newport, Rhode Island.

INTERSTATE INSURANCE PRODUCT REGULATION COMMISSION
Rep. Damron said an Interstate Insurance Product Regulation Compact was a successful example of state collaboration, in this case of getting life insurance products to market more efficiently. He said the Committee would consider a draft resolution encouraging Compact membership, and he acknowledged letters in support from MassMutual, the American Council of Life Insurers (ACLI), and Prudential Financial.

Karen Schutter of the Interstate Insurance Product Regulation Commission (IIPRC) reported, among other things, that:

- The Compact comprises 41 states representing 70 percent of the nationwide premium volume for life, annuity, long-term care, and individual disability insurance products.

- The IIPRC has :
    - completed individual product standards for these products and would next develop uniform standards for group products
    - 132 companies registered in 2011
    - increased its self-generated revenue 33 percent since November 2010
    - hosted webinars for consumer advocates, regulators, and companies and intends to work with its Legislative Committee on webinars for legislators

Rep. Damron emphasized efficiencies provided by the Compact and said that member states continue to receive filing fees through the IIPRC. Upon a motion made and seconded, the Committee then unanimously approved a *Resolution Encouraging States to Join an Interstate Insurance Product Regulation Compact*.

FEDERAL INSURANCE OFFICE

Mr. Humphreys reported that the Treasury Department had recently appointed seven state insurance regulators, six industry representatives, a consumer representative, and an academic to a new Federal Advisory Committee on Insurance (FACI) charged to provide advice and recommendations to the Federal Insurance Office (FIO). He said that FIO was required to develop a report on modernizing U.S. insurance regulation and that responses to an FIO request-for-comment were due by December 16. Mr. Humphreys said that the request-for-comment addressed a possible federal role in insurance, systemic regulation, national uniformity, and international coordination, among other things. He said that FIO Director Michael McRaith had indicated during a recent Congressional hearing that he intends to meet a January 2012 Dodd-Frank Act deadline to submit the report to Congress.

Rep. Keiser encouraged interested parties to submit comments on the FIO study. He said that he had interpreted Director McRaith's comments at a recent NAIC meeting as indicating that the FIO perceived itself as a future partner in insurance regulation.

Julie Gackenbach of Confere Strategies said that, in her opinion, Director McRaith interpreted the FIO "monitoring" role to mean that the Office should be making recommendations and seeking systematic improvements. She said that she believed Mr. McRaith does not think the status quo is acceptable or sustainable. Ms. Gackenbach also said that FIO took over as the official U.S. representative at the International Association of Insurance Supervisors (IAIS)—replacing the National Association of Insurance Commissioners (NAIC)—and that FIO was planning a December meeting of industry and company representatives, consumer advocates, and regulators, among others, to discuss insurance oversight. Ms. Gackenbach said she feels that Director McRaith thinks the FIO should educate other federal regulators about insurance and about the impact of other agencies' rulemaking on insurance.

Kevin McKechnie of the American Bankers Insurance Association (ABIA) read an FIO request-for-comment provision regarding national uniformity and regulatory duplication in the U.S. He described the IIPRC as a poor commentary on national uniformity and offered state licensing procedures as an example of duplicative regulation. He said that interested parties might recommend establishment of federal standards to achieve uniformity or recommend giving states a deadline for conforming to an existing standard. Mr. McKechnie expressed concern that a Consumer Financial Protection Bureau could try to regulate certain ancillary insurance products by incorporating them into its definition of "credit transaction costs." He also said that dual regulation was an ABIA concern.

Rep. Damron cited the *Nonadmitted and Reinsurance Reform Act*'s surplus lines provisions as an example of Congress offering states time to act before new standards would take effect.

Legislators, Ms. Gackenbach, and Mr. McKechnie also discussed Dodd-Frank Act repeal and legal challenges, among other things, and Ms. Gackenbach and Mr. McKechnie shared that they did not believe the law would be repealed.

MARKET CONDUCT

Rep. Keiser said that industry representatives had provided data to NCOIL, upon request, on market conduct exam issues, and he cited handouts submitted by ACLI, the American Insurance Association (AIA), and the National Association of Mutual Insurance Companies (NAMIC).

John Gerni of the ACLI said that some responses to an ACLI survey of member companies indicated a need for states to enact an NCOIL *Market Conduct Surveillance Model Law*. He said that the survey showed, among other things, that the average company surveyed had been subject to 101 market conduct actions in the past 18 months and, in at least one instance, had dealt with as many as 88 actions at a single time. He said that the survey showed that comprehensive exams were a smaller percentage of total actions than in the past—a result he called positive—and that when a multi-state exam was initiated, an average of 19 states participated. He said that on average, companies paid state examiners $161,345 for each exam.

Deirdre Manna of the Property Casualty Insurers Association of America (PCI) reported that 46 companies had participated in a PCI survey conducted by PCI and the Ward Group. She said that survey results showed that 54 percent of respondents had engaged in a market conduct exam in 2010, that on average a company had 1.7 exams per year, and that exams averaged 287 days in length and $80,115 in cost. She said that NAIC Market Regulation and Consumer Affairs (D) Committee Chair Commissioner Sharon Clark (KY) recently mentioned that she plans to collect market conduct exam data in early 2012, first from state market conduct regulators and then from the industry.

Ray Farmer of AIA said that the trend had turned away from comprehensive exams and toward more-efficient, targeted approaches. He said that the NCOIL model law provided protocols for targeted exams that allowed companies to manage expectations for scope, cost, and duration of exams. He said that AIA supported the NCOIL model and he suggested that additional provisions could address confidentiality of insurer self audits and guidelines for penalties against insurers. He also said that regulator resources should focus on areas that present the most harm to consumers and that regulators should engage in a cost-benefit analysis prior to convening an exam.

Joe Thesing of NAMIC reported that NAMIC had surveyed its 25 largest members and found that on average companies faced 42 market conduct actions over an 18-month period, with the average exam lasting 618 days. He said that the average cost per exam was $143,000. He urged legislators to introduce the NCOIL model in their states. Regarding an NAIC Market Conduct Annual Statement (MCAS), he said that when the NAIC adopted MCAS, its purpose was to promote a data-driven exam process. Instead, Mr. Thesing said, NAIC appeared to have layered MCAS on top of an older exam process. He questioned why regulators could coordinate financial exams but not market conduct exams.

Rep. Keiser said that during an NCOIL-NAIC Dialogue meeting, regulators asserted that the industry survey term “market conduct action” was broader than a market conduct examination. Responding to a question from Rep. Keiser, Mr. Gerni confirmed that in a case where three states conducted general exams of the same company, the exam counted as three actions for survey purposes.

Nick Hacker of the American Land Title Association (ALTA) said that in ALTA’s experience, third-party exams cost six times more than exams conducted by insurance departments and averaged nearly two years long—with some reaching five years. He reported that 60 ALTA companies

reported more than 90 exams over an 18-month period. He commented that third-party examiners did not always understand title insurance and that their invoices were not transparent.

SUNSETTING MODEL LEGISLATION

*MARKET CONDUCT*

Rep. Damron stated the NCOIL *Market Conduct Surveillance Model Law* was up for its bylaws-required review and that the representatives of ACLI, AIA, NAMIC, and PCI had indicated their support for the model. He said that the NCOIL model addressed the use of third-party examiners.

Mr. Humphreys overviewed NCOIL market conduct efforts and said that the model was adopted in 2006 to prevent unnecessary market conduct exams, enhance state collaboration, and cut down on burdensome exam costs. He said the model focused on market analysis measures prior to examination, a structure for performing targeted exams, and domiciliary state responsibility. He noted that at least six states had enacted laws based largely on a version of the NCOIL model law.

Rep. Keiser encouraged legislators to pass the model in their respective states. He cited market conduct, producer licensing, and speed-to-market as areas that industry had argued are inconsistent, duplicative, and expensive. He noted that states had moved toward greater consistency in producer licensing and speed-to-market. He said that enacting the market conduct model would be a proactive step toward regulatory modernization that states could bring to the FIO.

Upon a motion made and seconded, the Committee unanimously readopted the NCOIL model law.

*COMPANY LICENSING*

Mr. Humphreys said that an NCOIL *Company Licensing Modernization Model Act*, adopted in 2002 and readopted in 2004 and 2006, was up for Committee review as per NCOIL bylaws. He said that the model requires use of the current version of an NAIC *Uniform Certificate of Authority Application* (UCAA) to license insurers, incorporates revisions to the UCAA into law, and repeals all company licensing requirements and forms not specifically contained in the UCAA.

Amanda Weaver of the NAIC said that the NAIC developed the UCAA process to streamline and simplify company licensing. She said that all states had adopted the UCAA and that the NAIC continues to work toward uniformity by seeking to reduce state-specific application requirements. She explained how a company uses each of the UCAA primary, expansion, and corporate amendments applications, among other things.

Upon a motion made and seconded, the Committee unanimously readopted the NCOIL model law.

2012 COMMITTEE CHARGES

Mr. Humphreys cited the proposed 2012 Committee charges as follows:

- review FIO reports on U.S. regulation and take a position as appropriate
- work to expand the Interstate Insurance Product Regulation Compact
- advance state implementation of the *Surplus Lines Insurance Multi-State Compliance Compact* and monitor NRRA compliance
- work towards enhancement of state producer licensing and market conduct regulation
- continue to monitor federal activity and support state regulation

Upon a motion made and seconded, the Committee unanimously adopted the 2012 charges.

SURPLUS LINES INSURANCE REFORM/SLIMPACT

Rep. Damron said that NCOIL, the Council of State Governments (CSG), and the National Conference of State Legislatures (NCSL) supported a *Surplus Lines Insurance Multi-State Compliance Compact (SLIMPACT)* to respond to Dodd-Frank Act NRRA provisions. He said that nine states had enacted SLIMPACT in 2011. He said that an NAIC-backed *Nonadmitted Insurance Multistate Agreement (NIMA)* only addressed tax issues and did not fully respond to Dodd-Frank.

Rep. Wren described a July Subcommittee hearing of the U.S. House Financial Services Committee, in which he participated on behalf of NCOIL. He said that Chairwoman Judy Biggert (R-IL) had challenged state legislators and regulators to come to an agreement on surplus lines reform. Rep. Wren expressed disappointment that there was still conflict within the states. He commended fellow lawmakers in the nine states for enacting SLIMPACT legislation in less than 120 days.

Mr. Humphreys reported on 2011 surplus lines legislative efforts. He said that Alabama, Indiana, Kansas, Kentucky, New Mexico, North Dakota, Rhode Island, Tennessee, and Vermont had enacted SLIMPACT. He said that 12 states had entered into NIMA and that at least 15 states had enacted legislation authorizing the state to join some compact or agreement. He said that nine states had enacted NRRA-compliance legislation that did not include tax allocation authority.

Rep. Damron said he did not understand why regulators opposed SLIMPACT, as the SLIMPACT Commission comprised regulators with delegated authority to make certain decisions.

Ms. Nolan said that NCOIL and CSG had hosted three public webinars following the 2011 NCOIL Summer Meeting. She said that Commission members had elected Commissioner Clark as interim chair during an August 18 webinar. Ms. Nolan then reported that NCOIL and NCSL had appointed legislators to serve on a SLIMPACT Legislative Committee that was modeled after the IIPRC Legislative Committee.

Rick Masters of CSG said the most pressing issue for SLIMPACT was getting a tenth member state. He overviewed recent SLIMPACT activity, noting that the Commission had tentatively endorsed an allocation formula developed by the Kentucky Insurance Department. He said the Commission had established two working groups to develop reporting requirements and to address certain administrative issues. Mr. Masters also said the SLIMPACT statute would not prevent NIMA states from entering into a contract with SLIMPACT to utilize its clearinghouse.

Dan Maher of the Excess Line Association of New York (ELANY) called SLIMPACT the best approach for providing uniformity and simplicity under the NRRA. He said that ELANY had heard only complaints from brokers about NIMA. He said that NIMA lacks uniformity, is being implemented differently in member states, has changed since states first entered it and, unlike SLIMPACT, is vulnerable to a challenge that it is not a legal approach to instituting a tax-sharing agreement.

Steve Stephan of the National Association of Professional Surplus Lines Offices (NAPLSO) called the Kentucky allocation formula the “right approach” and commented that the NIMA formulas do not work because they require information that is not collected during the normal course of business. He also said that brokers were confused about tax payments because NIMA-state bulletins regarding tax collection for the third and fourth quarters of 2010 had been reversed.

Rep. Keiser said that legislators and regulators had recently discussed how to move forward on surplus lines reform. He agreed with Mr. Masters that while SLIMPACT cannot legally contract with NIMA, NIMA states could contract with SLIMPACT. He cautioned that the federal government could take further action to address surplus lines regulation if states don’t make more progress on reform.

Mr. Humphreys then commented that U.S. House Financial Services Committee staff had indicated that members remained interested in the issue. He said that Congress could consider a resolution restating their intent that states develop a single tax allocation system.

ADJOURNMENT
There being no further business, the meeting adjourned at 9:45 a.m.


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