

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
LIFE INSURANCE AND FINANCIAL PLANNING COMMITTEE  
POINT CLEAR, ALABAMA  
NOVEMBER 15, 2012  
MINUTES

The National Conference of Insurance Legislators (NCOIL) Life Insurance and Financial Planning Committee met at the Grand Hotel Marriott Resort in Point Clear, Alabama, on Thursday, November 15, 2012, at 2:30 p.m.

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

Other members of the Committee present were:

Rep. Greg Wren, AL	Rep. Don Flanders, NH
Sen. Travis Holdman, IN	Sen. Carroll Leavell, NM
Sen. Ruth Teichman, KS	Sen. Bill Larkin, NY
Rep. Ron Crimm, KY	Sen. Jake Corman, PA
Sen. Tommy Thompson, KY	Rep. Brian Kennedy, RI
Sen. Dan Morrish, LA	Rep. Charles Curtiss, TN
Rep. Pete Lund, MI	Rep. Bill Botzow, VT
Rep. George Keiser, ND	Del. Harry Keith White, WV

Other legislators present were:

Rep. Jeff Greer, KY	Sen. David O'Connell, ND
Rep. Steve Riggs, KY	Sen. Peter Pirsch, NE
Rep. Susan Westrom, KY	Rep. Tyler August, WI
Rep. Michael Costello, MA	

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director  
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director  
Ed Stephenson, Nolan Associates, NCOIL Director of Legislative Affairs—DC  
Daniel Valente, Nolan Associates, NCOIL Director of Legislative Affairs

## MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its July 13, 2012, meeting in Burlington, Vermont.

## ANNUITY SALES/REGULATION

Lee Covington of the Insured Retirement Institute (IRI) stated that there are approximately \$2.1 trillion in assets under management in annuities and that, of those assets, \$1.6 trillion are in variable annuities (VA). He stated that 80 percent of the \$1.6 trillion in VAs are sold with a guaranteed living withdrawal benefit (GLWB) to provide a consumer with a guaranteed stream of income. He stated that the VA assets are held by insurance companies, but that financial advisors and consumers want to have more control over their assets. He stated that of the 79 million "baby boomers" nearing retirement, 50 percent are at risk for inadequate retirement income. He said that consumer need for guaranteed income has never been greater.

Mr. Covington stated that contingent deferred annuities (CDA) offer protections similar to those provided by GLWBs and that the financial and actuarial risks are similar as well. He said that the insurance industry is demonstrating its ability to manage CDA risks. He said that financial advisors are more often discussing CDAs with their clients because today's economic environment is risky.

Mr. Covington stated that current regulatory oversight and enterprise risk management provide sufficient CDA consumer protections. He said he agreed with a National Association of Insurance Commissioners (NAIC) Deferred Annuity Working Group, which determined that CDAs should be subject to the same market and consumer protection regulations as are VAs. Mr. Covington said, therefore, that changing state laws is not necessary.

Commissioner James Donelon (LA), President-Elect of the NAIC, said that the NAIC has formed a CDA Working Group aimed at further examining existing laws and regulations applicable to the solvency and consumer protections of annuities. He said that he expects to bring forward the Working Group's recommendations by the NAIC 2013 Spring National Meeting.

Nancy Bennett of the American Academy of Actuaries (AAA) stated that a regulatory framework is in place for CDAs and that there is no need for additional regulations to accommodate or facilitate the sale of CDA products. She said she encourages regulators to question insurers to make sure that their risk management practices are sufficient. She stated that while CDAs are important and viable products for some consumers, there may be a need to clarify some state regulations.

Rep. Damron asked the panel if legislative action would be required to approve the issuance of CDAs in the states. Commissioner Donelon said he is unaware of any activity towards a model law.

Rep. Keiser asked what areas of risk have been identified as problematic for CDAs. Ms. Bennett stated that market risk is a major factor and that CDAs are similar to VAs because the products will fluctuate with the market. She stated that the longevity of a person's life is also a factor and that assumptions on the lifetime expectancy of the consumer are necessary.

#### PRINCIPLES-BASED RESERVING

Commissioner Eleanor Kitzman (TX) stated that the NAIC has worked to change the way that reserves for life insurance products are established. She referenced the development of a revised Standard Valuation Law (SVL). She said the law would establish a manual that outlined principles-based reserve (PBR) and non-PBR requirements, as well as identified insurer exemption criteria. Commissioner Kitzman stated that the NAIC is expected to adopt the manual at its next meeting and that until then, PBR will not take effect. She said that if regulators adopt the revised SVL, there will be a three-year transition period to allow companies to implement PBR. She stated that the manual will be updated annually and that any changes would require passage by a super-majority of the states.

Bruce Ferguson of the American Council of Life Insurers (ACLI) stated that while PBR is not in place for life insurance policies, it has been implemented for property-casualty policies and so regulators should be comfortable with the concepts. Mr. Ferguson stated that the current low interest rate environment impacts life insurers and that the current formula-based approach doesn't work. He stated that more flexible and dynamic approaches, like the PBR approach, to deal with interest rate guarantees would be helpful.

#### INSURERS AND LIFE SETTLEMENTS

Kate Kiernan of the ACLI said that 31 states have adopted life settlements laws. She said that as good as the laws are, there are still many fraudulent Stranger-Originated Life Insurance (STOLI) activities in the marketplace. She said that regulators and members of the industry should remain vigilant in order to limit the number of fraudulent cases in the future.

Ms. Kiernan referenced a November 15, 2012, ACLI letter to the Committee, which responded to allegations raised by the life settlements industry against life insurers. She said the letter addressed

allegations that insurers fail to pay interest on claims, ask illegal questions on policy applications, “gag” agents by including non-compete clauses in agent-insurer contracts, and make unauthorized changes to ownership data. Ms. Kiernan expressed interest in working with all parties of the life settlement industry to address those concerns.

Darwin Bayston of the Life Insurance Settlement Association (LISA) addressed the November 15 letter and stated that LISA is not attempting to discredit life insurers, but rather asking that insurers perform their obligations completely and in a timely manner when a consumer chooses to sell his or her policy. Mr. Bayston said there appear to be carrier abuses and that carriers do not consider secondary market owners to be consumers in the same context as the original owners. He said that all consumers, regardless of type, need to be treated equally and have the same rights.

Michael Freedman of The Coventry Group addressed the November 15 letter and stated that The Coventry Group is not interested in discrediting life insurers because it is not in Coventry’s best interest or in the best interest of the life settlements industry. He stated that life insurance companies sometimes say that the legitimate life settlements market is small and that everything else is STOLI. Mr. Freedman said that life settlements have nothing to do with STOLI. He referenced claims by the ACLI that there are currently 200 to 300 STOLI lawsuits, but he stated that none of the lawsuits list life settlement companies as defendants or make any allegations against them. Mr. Freedman stated that over the past four years there has been a report of six (6) consumer complaints involving life settlements. He said that 41 states have laws regulating life settlements and that there are currently no active investigations.

Mr. Freedman referenced a survey conducted by The Coventry Group, which looked at over 1,000 death claims. He said the survey found that in fewer than four percent of the cases, interest was not being paid when required under the contract. He stated that in 70 percent of the cases where interest was not being paid, when the companies were contacted they paid the interest owed without a dispute. He said that in 30 percent of the cases, there were disputes for legitimate matters.

#### REPORT ON NCOIL UNCLAIMED BENEFITS MODEL

Ms. Nolan overviewed state enactment of the NCOIL *Model Unclaimed Life Insurance Benefits Act*. She said that some states had been waiting to consider the model, originally adopted in July 2012, because the Committee was in the process of reviewing proposed amendments.

Rep. Wren said that each state should do what is in its best interests, and he recommended that using the NCOIL model would allow each state to customize its laws in accordance with their particular circumstances.

Rep. Damron said that without the model, each state would be forced to deal with regulations developed by lawyers, auditors, and others, and that the regulations may not be in consumers’ best interest. He encouraged each legislator to look at the model and take it as a blueprint. He said that the states are not obligated to pass the model exactly as it is written, but do so in a manner that brings control of the issue legislatively, rather than through litigation.

#### 2013 COMMITTEE CHARGES

Upon a motion made and seconded, the Committee unanimously adopted the following 2013 Committee charges:

- continue to consider state, insurance market impacts of principles-based reserving
- explore impacts of federal proposals to change tax treatment for life insurance and annuities
- work toward proper regulation of contingent deferred and other annuities
- continue to monitor company unclaimed insurance benefit practices

- continue to monitor and report on emerging state and federal activity regarding life settlements and on implementation of state life settlements laws, including marketplace behavior and practices of insurers and life settlement licensees

#### ADJOURNMENT

There being no other business, the Committee adjourned at 3:30 p.m.