

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
SPECIAL EXECUTIVE COMMITTEE/ILF BOARD MEETING REGARDING INSURANCE  
LEGISLATORS FOUNDATION STUDY ON STATE AUTHORITY  
LAS VEGAS, NEVADA  
NOVEMBER 16, 2007  
MINUTES

The National Conference of Insurance Legislators (NCOIL) Executive Committee and Insurance Legislators Foundation (ILF) Board met jointly regarding an ILF *Study on State Authority: Making a Case for Proper Insurance Oversight* at the Rio All-Suite Hotel & Casino in Las Vegas, Nevada, on Friday, November 16, 2007.

Sen. Alan Sanborn, NCOIL president, presided.

Other members of the Executive Committee/ILF Board present were:

Sen. Joseph Crisco, CT	Assem. Nancy Calhoun, NY
Rep. Pat Patterson, FL	Sen. William J. Larkin, Jr., NY
Rep. Robert Damron, KY	Sen. James Seward, NY
Rep. Tommy Thompson, KY	Sen. Jake Corman, PA
Rep. Fulton Sheen, MI	Rep. Brian Kennedy, RI
Sen. Robert Dearing, MS	Rep. Craig Eiland, TX
Rep. George Keiser, ND	Rep. Larry Taylor, TX
Sen. Harvey Tallackson, ND	Sen. Ann Cummings, VT
Rep. Frank Wald, ND	Rep. Kathleen Keenan, VT
Rep. Donald Flanders, NH	Rep. Gini Milkey, VT
Sen. Carroll Leavell, NM	Del. Harry Keith White, WV

Other legislators present were:

Rep. Joseph Fischer, KY

Others present were:

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

#### APPROVAL OF MINUTES

Upon a motion made and seconded, the Committee voted unanimously to approve the minutes of its July 19, 2007, ILF Board meeting in Seattle, Washington.

#### REPORT ON PHASE II: STUDY RECOMMENDATIONS

James Schacht of Navigant Consulting, a co-sponsor of the study, introduced other co-authors, including Bruce Foudree of Locke Lord Bissell & Liddell, LLP, and Lynne Hepler of Navigant.

Mr. Schacht also recognized Dr. Joseph Zimmerman of the Rockefeller College of Public Affairs & Policy at the State University of New York (SUNY) in Albany, who was not in attendance.

Ms. Hepler said the objective of the study was to provide a constructive analysis of entities that interact and impact the regulation of U.S. insurance markets in order to help states set a strategic agenda for necessary reform.

Ms. Hepler discussed the general development of the NAIC as an organization, its increasing powers and budget, and its growing shift away from public policy and toward the process of regulation. She discussed how state insurance departments over the last two decades have delegated their authority to the NAIC and said that such delegation often took place without legislative knowledge.

Ms. Hepler said the ILF report examined the regulatory environments of six representative states. She discussed findings of the study and said that the various powers and authorities granted by the six states to their insurance commissioners and attorneys general overlap in certain areas. She said that recent investigative and enforcement actions by some attorneys general had, in effect, established state insurance regulatory policy through litigation.

Mr. Schacht said the report proposed increasing NCOIL resources in order to help the organization expand its role in insurance regulation, addressed the potential of interstate insurance compacts, and said that state legislators, through NCOIL, should take a comprehensive look at state insurance regulation in order to consider necessary changes.

With respect to increasing NCOIL funding, Mr. Schacht said the report recommended diverting state assessments from the NAIC to NCOIL. He discussed the nature of this revenue and said it represented approximately two to three percent of total NAIC income.

Mr. Foudree discussed the report's second recommendation, which would clarify the regulatory roles of state insurance commissioners and attorneys general. He said the report recommended restoring the position of insurance commissioners to heads of cabinet-level departments—noting that, in some states, the insurance department had devolved into a subsidiary division.

Mr. Foudree said the role of the attorney general and insurance commissioner should be clarified with respect to insurance law enforcement. He said states should examine their trade practices statutes and ensure that these laws are enforced solely by the insurance commissioner. He also told Committee members that the study recommended revising state insurance codes to grant authority to insurance commissioners to seek judicial relief, similar to powers granted to California's insurance commissioner.

Mr. Foudree then outlined the report's third recommendation, which involved legislative oversight of state insurance department activities. He said this could be accomplished:

- if NCOIL were more closely involved in the adoption of NAIC model laws
- by establishing best practices and standards for insurance commissioners, similar to codes-of-conduct

- by establishing a mechanism for regulator accountability to legislatures, similar to that which exists at the federal level for the Government Accountability Office (GAO)

Mr. Foudree said the report's fourth recommendation was to establish a process to ensure that NAIC meetings are open, with certain limitations. He said this could be accomplished via amendments to state open meetings laws or insurance codes, in order to ensure that when a state commissioner attends an NAIC meeting, that commissioner must follow his or her state open meetings law.

The report's fifth recommendation, as discussed by Mr. Foudree, involved strengthening state insurance regulation via interstate compacts. Mr. Foudree suggested, for instance, expanding the interstate compact for life insurance and related products so as to include other regulatory functions.

Mr. Schacht discussed the report's sixth and final recommendation, regarding fixing and enhancing the state insurance regulatory system. He cited company licensing and new product licensure as examples of areas that need reform. Mr. Schacht said the sixth recommendation called for appointing an independent, national commission under the auspices of NCOIL. He said the goal of this commission would be to identify ways in which the current system should be changed and to create models for such reform.

Rep. Keiser complimented the authors and cited a recent North Dakota Attorney General opinion, which found that the state's insurance commissioner was not subject to North Dakota open meetings law when he attended NAIC meetings. Rep. Keiser said he had drafted legislation to revise that policy and said that legislators should focus similar efforts on entities in addition to the NAIC.

Sen. Leavell asked panel members to expand upon their recommendation regarding granting insurance commissioners power to seek judicial relief. Mr. Foudree responded that the California model was the basis for the recommendation. He discussed various facets of the California statute.

Rep. Wald asked whether there were legal issues in diverting existing funding from the NAIC to NCOIL. Mr. Schacht replied that he had not identified any legal issues.

Rep. Eiland said that other organizations, such as the National Conference of State Legislatures (NCSL), might also be interested in the assessment revenue. Mr. Schacht replied that this was a possibility but that other organizations were not as deeply involved in insurance matters.

Sen. Seward said he agreed with all of the report's recommendations but inquired as to their prospects in state legislatures. Mr. Schacht replied that the NAIC might be supportive, given the mutual legislator-regulator goal of preserving state regulation. Mr. Foudree said industry frustration was driving federal efforts to establish a new regulatory entity. He also said that some of the report's recommendations could be implemented without the need for legislation.

Rep. Keiser noted that, regarding financial reserving standards, the NAIC operated within Internal Revenue Service (IRS) guidelines. He questioned, though, whether the guidelines were appropriate for the NAIC. Mr. Schacht said the issue had been controversial. He said the NAIC had commissioned an outside consultant's study on the matter, which the NAIC had not made public, that found NAIC reserve levels to be appropriate.

Rep. Kennedy said that restoring an insurance commissioner to a cabinet-level position might be unrealistic in some circumstances. He said he agreed with the recommendation to increase legislative oversight but was unsure how this could be accomplished. He also questioned how to create and operate a proposed "insurance accountability office."

Mr. Schacht spoke generally to the importance of the insurance commissioner's role in state government. Mr. Foudree echoed his sentiments, discussing the economic impacts of insurance to the states and the importance of the commissioners' role in overseeing the insurance industry. He further discussed the concepts embodied in the recommendation calling for the creation of an "insurance accountability office."

Rep. Damron discussed reserving principles and asked how the NAIC receives state assessments. He inquired as to the consequences of a state not paying its NAIC assessment. Mr. Schacht discussed the process used in Illinois, which he said likely was similar in other states. He said an NAIC representative could better respond to the question regarding non-payment. Mr. Foudree suggested that the NAIC articles of incorporation or bylaws might address the subject.

Scott Gilliam of Cincinnati Insurance Companies offered support for the single-state domiciliary system proposed in the report. He questioned what NCOIL would do with an additional \$2 million. He suggested that NCOIL make a case as to how it could better spend the money than the NAIC.

Mona Carter of the National Council on Compensation Insurance (NCCI) suggested that many of the NAIC data collection activities were undertaken because of a lack of adequate state resources. She spoke to development of interstate compacts and commented that all stakeholders must be a part of proposed regulatory solutions.

Neil Alldrege of the National Association of Insurance Companies (NAMIC) said it was important for NCOIL to determine exactly how the NAIC spent its money.

Ms. Nolan said, in response to Mr. Gilliam's comment, that the recommendation to reallocate assessment income to NCOIL could assist NCOIL in implementing other recommendations contained in the ILF report.

Rep. Keiser suggested that legislators accept the report's recommendations in concept and said a business plan should be developed prior to final adoption. Rep. Kennedy agreed.

Rep. Eiland suggested waiting to formally adopt a proposed resolution on allocation of state resources, pending further review and discussion. He also suggested discussing the subject with the NAIC.

Rep. Wald recommended that Rep. Kennedy, as NCOIL president, appoint a special subcommittee to examine implementing report recommendations.

Upon a motion made and seconded, legislators voted unanimously to accept the recommendations in concept.

#### ILF FINANCIAL REPORT

Upon a motion made and seconded, the Committee voted unanimously to accept the June 30, 2007, and September 30, 2007, unaudited ILF financials.

#### ADJOURNMENT

There being no further business, the Committee adjourned at 4:15 p.m.