

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
STATE-FEDERAL RELATIONS COMMITTEE AND  
INTERNATIONAL INSURANCE ISSUES COMMITTEE  
LAS VEGAS, NEVADA  
NOVEMBER 18, 2016  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) State-Federal Relations Committee and International Insurance Issues Committee met jointly at the Paris Las Vegas Hotel on Friday, November 18, 2016, at 9:15 a.m.

Senator Dan "Blade" Morrish of Louisiana, Chair of the International Insurance Issues Committee, presided.

Other members of the Committees present were:

Sen. Jason Rapert, AR	Sen. David O'Connell, ND
Rep. Steve Riggs, KY	Rep. Don Flanders, ND
Sen. Dan "Blade" Morrish, LA	Sen. Neil Breslin, NY
Rep. Michael Webber, MI	Sen. James Seward, NY
Rep. George Keiser, ND	Rep. Bill Botzow, VT
Sen. Jerry Klein, ND	Rep. Richard Smith, GA

Other legislators present were:

Rep. David Livingston, AZ	Rep. Lana Theis, MI
Sen. Travis Holdman, IN	Rep. Lewis Moore, OK
Sen. John Shickel, KY	Rep. Marguerite Quinn, PA
Rep. Ken Goike, MI	

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO  
Paul Penna, Executive Director, NCOIL Support Services, LLC  
Will Melofchik, Legislative Director, NCOIL Support Services, LLC

## MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its July 16, 2016, meeting in Portland, Oregon.

### H.R. 5143 UPDATE/RECAP OF D.C. FLY-IN

Commissioner Tom Considine, NCOIL CEO, provided a brief recap of the D.C. Fly-In that occurred on September 7, 2016: NCOIL Secretary Sen. Jason Rapert of Arkansas, Asm. Will Barclay of NY, Sen. Bob Hackett of OH, Sen. Mike Hall of WV, Rep. Joseph Fischer of KY, Rep. Marguerite Quinn of PA, and NCOIL Vice President Steve Riggs of KY met and educated members of Congress and their staff about the importance of the state-based regulation of insurance and legislation such as H.R. 5143 and S. 1086. The aforementioned legislators also met with Rep. Blaine Luetkemeyer, sponsor of H.R. 5143, and his staff. The legislators also used the meetings as an opportunity to discuss

the problems facing the air ambulance industry. Somewhat surprisingly, many were not aware of the issue but found it troubling and were open to looking into it. Overall, the fly-in was a tremendous success.

John Huff, NAIC President and Director of the Missouri Department of Insurance, then provided an update on H.R. 5143. Dir. Huff stated that NAIC is supportive of H.R. 5143 and stressed that the United States insurance regulatory system is the most competitive and successful in the world. Dir. Huff stressed that any changes to that system should be at home by those who are accountable to policyholders. International insurance standard meetings are currently closed to the public and only include international regulators – that is very problematic. NAIC applauds the work that Rep. Luetkemyer has done with H.R. 5143. That piece of legislation, along with S. 1086, will go a long way towards bringing transparency to the international standard setting process and ensuring that such international standard setters comply with the relevant domestic standard setting system. Dir. Huff noted that such legislation is a bi-partisan effort and that NAIC is looking forward to seeing the legislation advance. Sen. Hackett stated that during the D.C. fly-in he heard some concerns that the process of discussing regulatory changes with U.S. regulators and legislators after they are agreed to during international meetings is very time-consuming – is there any way to speed up that process? Dir. Huff stated that making the international meetings transparent and open to U.S. regulators and legislators would solve that problem. Dir. Huff further stated that involving the people subject to change is a better process as opposed to forcing change and waiting on people to adapt. This is particularly important when dealing with international capital standards – NAIC is not yet convinced that additional capital needs to be held at a group level just to meet international standards.

#### CONTINUED DISCUSSION REGARDING COVERED AGREEMENTS AND EU EQUIVALENCE

David Mattax, Commissioner of the Texas Department of Insurance stated that if a jurisdiction is not found to be “equivalent,” it can result in that jurisdiction being subject to more stringent regulatory requirements for that jurisdiction’s companies doing business in the European Union (EU). This has the result of either imposing the Solvency II upon jurisdictions or placing jurisdictions at a competitive disadvantage to its own industry. Some European countries have already begun imposing restrictions on U.S. companies such as branching requirements. Last year, the EU granted the U.S. provisional equivalence to the U.S. group solvency regime which largely benefited EU insurers. Fundamentally, that means the EU has imposed solvency requirements on its members which require additional capital. When you tie up additional capital, that restricts the ability of markets and companies to grow. By granting provisional equivalence, what the EU has said is, for a European company, for your business in the U.S., you may use U.S. statutory reserve principles but for your business in the EU you have to comply with Solvency II. What the EU has told American companies is, because you’re not equivalent, for both your European and American businesses you have to use Solvency II. That is a fundamental disadvantage for American companies. To address that, FIO entered into “covered agreement” negotiations. Cmsr. Mattax stated that it is difficult to see how the recent election will impact such negotiations and that it is up to State legislators, regulators, and the insurance industry to analyze a covered agreement, if enacted, and to tell Congress if it is a good deal for America.

Rep. Moore asked whether a covered agreement/equivalence discussions will impact American companies competing in America or American companies competing in Europe? Cmsr. Mattax stated principally it will affect American companies competing in Europe and the main point is that for those companies to get a fair deal, they will have to give something up during negotiations. It is then important for the companies not competing in Europe to not be adversely affected by the negotiations. Rep. Moore asked if the idea of a compact, quarterbacked by NCOIL, been considered to ensure that States are briefed and aware of this issue? Cmsr. Mattax stated that such an idea has already been executed by expanding NAIC Model Acts such as the Credit for Reinsurance Model Law and Regulation. Dir. Huff stated that one concern is that we currently have a lot of foreign reinsurance, particularly on the natural catastrophe side, which is good because it diversifies the risk if there is a significant event. But in very large measure, there is confidence that the credit risk of those foreign reinsurers is accounted for in the U.S. system by analyzing foreign reinsurers ability and willingness to pay. If that credit risk is diminished by a covered agreement, there are only two other places to place that credit risk: consumers, which we will not do, and U.S. insurers that buy that reinsurance which many people think is not a good option.

## DISCUSSION OF BUILDING CODES

John Doak, Commissioner of the Oklahoma Insurance Department began a presentation titled: "Building Resilient Homes – A Better Way Forward." Natural disasters such as tornadoes and earthquakes are relevant across the entire country. Many towns are comprised of buildings that are very old. Cmsr. Doak stated that the theory is by strengthening building codes, there will be less damages for towns and cities to deal with. An example can be found in Moore, Oklahoma: wind load standard was raised to 135 mph from 90 mph; vertical load path throughout house and garage was strengthened; enhanced roof sheathing fasteners and fasteners schedules; narrowed spacing of roof framing; enhanced connections in the roof framing including the use of hurricane straps and strengthening of gable and walls and wall sheathing; and structural changes made to garages and wind rated garage doors. Those are minimal changes but they have a dramatic change. The estimated cost to meet new building codes is only \$2 per square foot and in Cleveland County, OK, if all homes had been constructed to the new standards, the additional cost would have been less than 2% of the residential insured losses in that county.

Cmsr. Doak stated that in 2009, a new law went into effect that requires insurance companies to provide a premium discount, rate reduction, or other adjustment for individuals who build or retrofit their home to certain standards. The adjustments are based on the company's own actuarial analysis and the standards include the Insurance Institute for Business & Home Safety (IBHS) Fortified Home High Wind and Hail and Fortified Home Hurricane Standards. Cmsr. Doak noted that in Tulsa, OK, the first Habitat for Humanity home was built with the IBHS standards and hopefully that trend continues. Cmsr. Doak also noted that a recent University of Alabama study showed that switching from a conventional construction standard to a Fortified designation increases the value of a home by nearly 7%, holding all other variables constant.

Cmsr. Doak stated that the plan in Oklahoma is to: introduce legislation similar to Alabama's that incorporates certain building standards into homeowners' insurance underwriting; work with realtors and Multiple Listing Service (MLS) to get resilient construction standards included in the MLS listing; and work with appraisers to

determine if resilient construction can be a factor in home appraisals. Lastly, Cmsr. Doak welcomed all to the National Tornado Summit & Disaster Symposium in Oklahoma in February, 2017 to further discuss these important issues. Sen. Morrish asked if the Oklahoma building code enforcement will be on the State or county level. Cmsr. Doak stated that is something Oklahoma is still studying. Sen. Morrish also asked if the Oklahoma legislation will apply to only new construction? Cmsr. Doak stated for now, the legislation will probably be focused on only new construction but they are not sure yet. Rep. Keiser asked what are insurance companies saying about underwriting the standards/construction? Cmsr. Doak stated that interestingly the IBHS is funded by the insurance industry and that the industry is willing to discuss underwriting issues.

#### UPDATE ON EFFECT OF BREXIT ON U.S. INSURANCE MARKET

Dave Snyder of the Property Casualty Insurers Association of America (PCI) stated that Brexit's negative effects on stock markets were short-lived. However, a court decision has since been released that stated that the British Parliament had a right to make a decision on Brexit before the government could take the U.K. out of the EU – that is currently on appeal so there is a degree of uncertainty out there. If and when Brexit occurs, the U.S. may have to negotiate its trade agreements and other arrangements with the EU – the U.S. may have to separately negotiate them with the U.K.

Mr. Snyder then stressed that despite the benefits and success of the U.S. state-based system of insurance regulation, there have never been more challenges facing said system. For example, Dodd-Frank gave limited new roles to the U.S. Treasury and the Federal Reserve Board (FSB) to use in connection with the representatives of the States in international regulatory discussions. And unfortunately, the federal agencies have pressed the envelope of their authority and have frequently failed to support state-based regulation in international discussions that were often held behind closed doors, beyond the reach of governors, state legislators and even Congress. Mr. Snyder noted that advocacy for state-based insurance regulation has been working and praised NCOIL's efforts. For example, the FSB announced that it would not follow international accounting and capital standards unless they make sense domestically. Mr. Snyder stressed, however, that such advocacy needs to continue.

Mr. Snyder also noted that in a recent study sponsored by PCI and NAMIC found that if Solvency II capital standards were applied in the U.S., the average auto and homeowner insured would pay between \$50-\$100 per year per policy as a result of the increased capital standards that provide very little additional consumer protection. Mr. Snyder stated that Congress is responding to efforts like NCOIL's D.C. fly-in and that the efforts need to continue – the job is not done until legislation is enacted. Lastly, Mr. Snyder urged that the Committee pass Rep. Quinn's Resolution Reaffirming Support for the U.S. State-Based System of Insurance Regulation in Response to Recent Federal Encroachment. Rep. Keiser stated that with the U.K. out of the EU, the EU's capacity to make loans and/or give bailouts is significantly reduced – what impact on the banking industry would Brexit have? Mr. Snyder stated that the impact will certainly not be positive and that there are significant concerns that the EU will financially struggle in the wake of Brexit.

Dennis Burke of the Reinsurance Association of America stated that a number of European countries have closed their doors to American companies due to the issues of Solvency II, equivalence and covered agreements. Mr. Burke stated that he and his

colleagues do not anticipate covered agreement negotiations being successful. Mr. Burke applauded NCOIL's consideration of a Brussels trip, and if that trip occurs, NCOIL should explicitly ask EU leaders for the U.S. to be deemed equivalent under Solvency II, something that the NAIC has never done. Mr. Snyder stated that an NCOIL trip to Brussels would be very helpful to deliver a clear message that the damage being done to the U.S. insurance regulatory system needs to stop.

#### NCOIL EFFORTS TO VISIT BRUSSELS

Sen. Holdman stated that many EU leaders are unaware that State legislators are the policymakers for the largest insurance market in the world and that NCOIL needs to educate them on how our system actually works. Notably, prior to speaking in Portland, Oregon, Dr. Nicholas Whyte stated that he had never spoken to a State legislator before. He stated that he found the Portland conference to be extremely educational for him as to how our system works. Dr. Whyte encouraged NCOIL to get involved with EU leaders. Sen. Holdman said he is hopeful to have a Brussels trip set up by late Spring or early Summer 2017 and that support has already been offered to ensure the trip occurs.

#### CONSIDERATION OF RESOLUTION REAFFIRMING SUPPORT FOR THE U.S. STATE-BASED SYSTEM OF INSURANCE REGULATION IN RESPONSE TO RECENT FEDERAL ENCROACHMENT

Rep. Quinn, sponsor of the Resolution, stated that the Resolution is essentially a reaffirmation of NCOIL's main purpose: supporting the U.S. state-based system of insurance regulation. Rep. Quinn urged the committee to adopt the Resolution. Upon a motion made and seconded by Rep. Fischer, the Resolution was unanimously adopted.

#### RE-ADOPTION OF MODEL LAWS

Upon a motion made and seconded, the Company Licensing Modernization Model Act and the Market Conduct Surveillance Model Law were unanimously re-adopted.

#### ADJOURNMENT

There being no further business, the Committee adjourned at 10:30 a.m.