

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
PROPERTY & CASUALTY COMMITTEE
NEW ORLEANS, LOUISIANA
MARCH 5, 2017
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Property & Casualty Committee met at the New Orleans Downtown Marriott on Sunday, March 5, 2017 at 8:00 a.m.

Assemblyman Ken Cooley of California, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert, AR	Sen. Dan "Blade" Morrish, LA
Rep. Matt Lehman, IN	Rep. Michael Webber, MI
Rep. Joseph Fischer, KY	Asm. Will Barclay, NY
Sen. Dorsey Ridley, KY	Sen. Bob Hackett, OH
Rep. Steve Riggs, KY	Rep. Michael Henne, OH
Rep. Greg Cromer, LA	

Other legislators present were:

Rep. Sam Kito, AK	Rep. John Wiemann, MO
Rep. Deborah Ferguson, AR	Asm. Andrew Garbarino, NY
Rep. Robin Lundstrum, AR	Rep. Lewis Moore, OK

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 November 17, 2016 meeting in Las Vegas, Nevada.

DETAILED DISCUSSION/CONSIDERATION OF AMENDMENTS TO LIMITED LINES TRAVEL INSURANCE MODEL LAW

Rep. Matt Lehman (IN) began by notifying the Committee of three (3) amendments to the Model in addition to what has already been proposed:

- 1.) strike section 2.C. because the language is vague;
- 2.) amend the definition of "Travel Insurance" in Section 3 by adding the following at the end of the definition after the word "deployed" – "or any other product that requires a specific insurance producer license." The concern is that the scope of a limited lines license shouldn't be expanded beyond what a limited lines producer can do. Because contained within the definition is "but not limited to," it could be interpreted as allowing the writing of auto liability in conjunction with someone's planned travel since auto is not one of the coverages listed;

3.) strike section 13.C. because the amount of the fine and enforcement language should come from the Commissioners' ability to take action in their respective States.

James Donelon, Louisiana Insurance Commissioner, stated that the NAIC formed its Travel Insurance Working Group in 2015 and it is charged with considering the development of a Model law or guidelines to establish appropriate regulatory standards for the travel and tourism industry. The Working Group began its work in the Spring of 2016 by considering three items: a.) refunds to consumers under free-look periods and whether such periods should be mandatory for travel insurance products. A model law or guideline could be drafted that promotes a consistent interpretation and treatment of that requirement; b.) Un-licensed producer activity. It does appear that current licensing laws across the country are relatively clear. However, given the variance in State laws regarding limited lines travel insurance licensing for producers, and variance in compliance with such laws, the Working Group in coordination with the producer licensing Working Group plan to review NAIC uniform producer licensing standards for limited lines travel insurance and the travel insurance limited lines law that have been enacted in the States and possibly recommend a Model that would make these laws consistent across all States; c.) travel insurance companies self-funding certain benefits without holding an insurer license.

The plan was to research and if necessary provide clarity regarding whether certain products are insurance and should be written through licensed insurers only or are other benefits being offered such as "cancel for any reason" coverage which may not constitute insurance and therefore not require a license to sell and payment of premium taxes. Further, the Working Group could address the packaging with other benefits that do not require a license to sell. Finally, it was expected that this determination would provide clarity as to the payment of premium taxes overall. In its first conference call last June, the Working Group members agreed that it would be helpful to first get more information regarding travel products. The members wanted to better understand what products are typically offered, what business and distribution models look like, and what part of the product is considered insurance. Various stakeholders including industry, trade organizations, and consumer representatives made presentations during subsequent conference calls and during the NAIC Summer and Fall Meetings. Prior to the Fall Meeting, the Working Group chair became aware of NCOIL efforts on these issues. Comments were received from industry, trade organizations, and consumer representatives on the NCOIL proposed amendments to its Limited Lines Travel Insurance Model and Commissioner Tom Considine, NCOIL CEO, made a presentation last week to the Working Group to further explain the amendments. Cmsr. Donelon stated that NAIC looks forward to working with NCOIL to use the proposed amendments as a starting point to discuss the unique features of the travel insurance industry and to further efforts to form a clear regulatory structure with strong consumer protections.

John Fielding, Steptoe & Johnson, representing the U.S. Travel Insurance Association ("UStiA") began by explaining that a travel protection plan is a single product comprised of insurance and non-insurance services. Insurance reimburses trip costs if the trip is canceled for a covered reason and also covers other personal risks incident to travel such as lost baggage and lost costs/expenses due to travel delay. Non-insurance services include things such as concierge services, ID theft, and crisis management.

Brad Finkle, President and CEO of Trip Mate, Inc., stated that the travel protection plans today bear no resemblance to those that existed prior to 1985. Prior to 1985, consumer

demand focused on air flight accidental death insurance and baggage coverage. Medical benefits were an afterthought and 24 hour travel assistant services didn't exist. During the 1970's when the tourism and cruise industries began to boom, there was a rise in pre-departure cancellation fee waivers. Around 1985, travel protection plans began to expand due to another increase in tourism, particularly international travel. Consumers wanted a simpler way to purchase travel insurance and travel assistant services rather than on an a la carte basis as was then customary. The modern period of travel protection plans, post-2001, has seen a consolidation of independently owned travel agencies into large travel agency networks, the rapid rise of online travel agencies, and insurance aggregator sites. We've also seen a rise in a different type of traveler who seeks more independent travel to more unique and remote locations. In response to that, travel protection plans have expanded coverage and services. Mr. Finkle stated that given all of these complex developments, the industry does not understand why regulators want to revert back to earlier practices that would make it tougher and more complex for consumers – it doesn't make sense.

Caren Alvarado, Vice President of Regulatory Affairs and Compliance at Crum & Forster, told a hypothetical story of a married couple's trip to Rome in order to illustrate the differences between travel insurance and travel assistance services, and why it benefits consumers to have them bundled into a travel protection plan. Ms. Alvarado stated that travel protection plans are a market-driven product that is highly valued by consumers. The travel industry has grown, and an industry doesn't grow unless its consumer are happy with the product. Industry survival depends on providing products that consumers want at a value they expect. Additionally, the products are a highly discretionary purchase that must prove value to each customer, each time. There are also very low consumer complaint ratios. In 2014 there was a UStiA study that showed that less than one-quarter of 1% of consumers complained about the product.

Jose Menendez, Executive Vice President, Generali U.S. Branch, provided some examples of how travel protection plans function and how they have benefitted consumers. Mr. Menendez stated that the plans are structured to provide complete protection that people want, need and expect.

Greg Mitchell, Frost Brown Todd LLC, stated that what is being sought today is similar to what was sought when NCOIL originally adopted its Limited Lines Travel Insurance Model in 2012. Prior to its adoption, there was a lack of clarity and regulatory structure in the marketplace and the Model helped tremendously.

Rep. Greg Comer (LA) asked how the plans interact with medical destination insurance. Mr. Finkle stated that there would be no interaction – there are specific exclusions for that in all policies.

Sen. Travis Holdman (IN) asked where is the entry point to sell travel insurance. Mr. Finkle stated that there are several: the airline; aggregator sites; travel insurance websites; travel agents. Sen. Holdman asked what the travel insurance that an airline typically offers him when he purchases tickets covers. Ms. Alvarado stated that there are numerous plan designs depending on what the consumer wants. Rep. Lehman agreed and stated that from his experience and those that he has interacted with, those who purchase the plans and use them are very happy with them.

A Motion was then made and seconded to waive the quorum requirement.

Wes Bissett of the Independent Insurance Agents and Brokers of America (IIABA) stated that IIABA does not object to the goals of the Model but feels that it needs some work. One concern is which particular State law would apply in an insurance sale. If you buy a Delta airline fare, what State disclosure requirements would apply. Another concern is some of the carve-outs in the Model relating to the Unfair Trade Practices Act. IIABA also has concerns over the timing of disclosure obligations. IIABA also urges the Model to address more thoroughly the problems with opt-out provisions. Mr. Bissett further stated that the Model does not properly address who the responsible party is and their licensing requirements when supervising travel agents. Asm. Cooley then asked Mr. Bissett, in the interest of time, to please memorialize all thoughts and concerns with the Model and send them to NCOIL staff and the Committee.

Birny Birnbaum of the Center for Economic Justice (CEJ) stated that he is speaking on behalf of CEJ, the Consumer Federation of America, and the U.S. Public Interest Research Group. Mr. Birnbaum stated that travel insurance is an important product but the issue is how best to provide the regulation that industry wants and how best to encourage consistent and uniform regulation and consumer protection. Mr. Birnbaum stated that regulators should be provided an opportunity to weigh in on the Model, particularly since there are some ongoing examinations involving travel insurance. Mr. Birnbaum stated that the part of the Model that states the travel insurance industry is competitive unless the Commissioner determines otherwise is an old feature that has been traditionally oriented towards the kind of products that are State-specific like auto and homeowners' insurance. Additionally, the Model sets forth provisions for filing and rate review but then declares travel insurance as an inland-marine product – that is contradictory. In response to Sen. Holdman's earlier question, Mr. Birnbaum stated that when you go to the Delta website it doesn't tell the consumer that they can buy travel insurance from anyone they want. Mr. Birnbaum stated that is not representative of a competitive market and is similar to consumer credit insurance. Mr. Birnbaum further stated that without knowing what the travel insurance market loss-ratios and market shares are, information that he has requested but has not been given, you can't determine if a market is competitive.

Mr. Birnbaum stated that bundling travel insurance and travel assistance services to form a travel protection plan does not exist in any other line of insurance. Mr. Birnbaum asserted it is important to recognize that consumers have specific rights when purchasing insurance that they don't have with other services/products. Separating travel insurance from assistance services and giving the consumer the option to purchase what they want is also beneficial to regulators because they can easily identify what products they must oversee and which are subject to premium tax. Mr. Birnbaum also stated that the competitive market section in the Model should be deleted and welcomes working with NCOIL to improve the Model.

Rep. Lehman stated that consumers need to be given some credit in that they don't always need to be shown a list, as Mr. Birnbaum suggested, of other places to purchase travel insurance. A consumer that goes to Walmart.com doesn't need to be told that they can purchase a hammer at Lowe's, Home Depot, etc. Some consumers might also like the ease of doing business by simply having an extra \$30 added to their ticket price when on Delta.com rather than spending time searching for other prices and coverages. Regarding the issue of bundling, Rep. Lehman stated that it already exists in other lines of insurance such as auto insurance - services such as emergency road side service

and rental car coverage are commonly included. Rep. Lehman closed by saying it is important to recognize that when drafting a large Model law like this one, the focus should be on whether what's in the Model is the appropriate general framework and States can then tweak it to their liking. Mr. Birnbaum disagreed with Rep. Lehman and stated that a consumer shopping at Walmart knows that they can get a hammer somewhere else but that's not the case with travel insurance. Mr. Birnbaum also stated that the bundling examples Rep. Lehman provided are incorrect and urged the Committee to not adopt the Model at this time so regulators can provide feedback.

NCOIL President Rep. Steve Riggs (KY) stated that bundling is when you offer two products for one price such as auto and homeowners insurance. With travel protection plans, the marketing and promotion is bundled but travel insurance and travel assistance services are separate. NCOIL Vice President Sen. Jason Rapert (AR) disagreed with Mr. Birnbaum's comments and stated that legislators and regulators shouldn't be required to make decisions for consumers from "cradle to grave." Sen. Rapert stated that all consumer need to do is google "travel insurance" and they will be presented dozens of options. Mr. Birnbaum stated that he supports making travel insurance available to consumers because it is a good product and again expressed concern over the competitive market section in the Model. Asm. Cooley stated that the section is important because it effects how rating law is applied. Rep. Lehman stated that he agreed with Mr. Birnbaum and Mr. Bissett that it is important to have proper regulatory review, and that is in fact why the Model has been presented – there were and are unnecessary regulatory actions taken against the travel insurance industry because of the lack of a regulatory framework.

Jack Zemp, Vice President and Deputy General Counsel, Allianz Global Assistance, stated that there is no doubt that the travel insurance market is competitive. Rates have been the same for past 20 years, coverage has expanded, and consumer complaints have been low. The industry has responded to the fact that consumers don't care whether what they purchase is insurance or not – they just want help and they don't want surprises when they travel.

Ed Schwartz, Steptoe and Johnson, stated that the concept of bundling comes out of anti-trust law where it has been recognized as typically pro-consumer. Bundling in anti-trust law has been discussed for decades, including at the Supreme Court. The first and most important question that a judge asks when analyzing a bundled product is: is there a competitive market? Put another way – does the supplier have market power? If the answer is no, then judges will typically approve the bundled product because they recognize the free market is working. All the data in the travel insurance market shows that it is competitive.

Terry Dale, President and CEO of the U.S. Tour Operators Association stated that the Model is a big step forward for the industry because it provides clarity, consistency, continuity, and compliance. When those things can be packaged together, the consumer always benefits.

Melinda Bourgeois, Travel Central and American Society of Travel Agents, supports the Model and stated that it is very important for travel agents to have a regulatory framework to work with. Ms. Bourgeois also stated that bundling is extremely pro-consumer.

Rep. Joseph Fischer (KY) asked, given how competitive the market is and the low number of complaints, why is this regulatory framework needed? Mr. Zemp stated that over the past few years, some regulators began interpreting laws in a new fashion which led to an investigation of the industry in an effort to “transform” it. Accordingly, clarity and understanding of the regulatory environment is needed. Commissioner Tom Considine, NCOIL CEO, stated that when in conflict with State unfair trade practice law, the Model would govern. That is necessary because unfair trade practice law is extremely general which has led to travel insurance companies being the target of market conduct exams due to, in essence, a difference of interpretation and the lack of a clear regulatory structure for the industry.

Sen. Bob Hackett (OH) asked if there was any discussion between NCOIL and NAIC to work together on this Model. Cmsr. Considine stated that the NAIC has indicated that they want to draft their own Model using parts of ours and information from market conduct exams. Sen. Holdman stated that NCOIL and NAIC need to do a better job of working together on Model laws.

The Committee then unanimously voted to adopt the Model as amended earlier in the Committee proceedings.

REBATES, REFERRALS AND REWARDS – WHAT’S OK AND WHAT’S NOT?

Former Massachusetts Insurance Commissioner Joe Murphy and current Chief Operating Officer at Coverys stated that the NAIC Model Unfair Trade Practices Act (Act) has been adopted in 48 States. Cmsr. Murphy stated that during his time as Massachusetts Insurance Commissioner, the issue of how rebates, referrals and rewards were viewed by that Act constantly arose. Most of the issues arose from complaints filed by companies against a competitor company/agent, not from consumers.

Cmsr. Murphy stated that under the Act approves any coverage or benefit including rebate of premium or dividend opportunity, provided it is specified in the insurance policy. The Act disapproves something of value offered/given to sell a policy, if the item of value is not provided in the policy itself. For example: cash, refund of all or part of an agent or broker’s commission, services, gifts, contributions, payment of premiums – anything of value; and any special advantage over other applicants or insureds in dividends, profits, or other benefit to sell a policy, if it is not provided in the policy itself. Cmsr. Murphy noted that some States like Washington and Georgia have set dollar thresholds/bright-lines. Washington (RCWA 48.30.140(4)): “This section shall not apply to advertising or promotional programs conducted by insurers or insurance producers whereby prizes, goods, wares, gift cards, gift certificates, or merchandise, not exceeding one hundred dollars in value per person in the aggregate in any twelve month period, are given to all insureds or prospective insureds under similar qualifying circumstances.” Maine is considering raising its statutory exemption and allowing the insurance department to increase the value through regulation.

Regarding referrals, Cmsr. Murphy stated that most if not all States provide that only licensed persons can receive compensation for insurance business placed. Sharing commissions with a licensed person is ok, but not with unlicensed persons. Unlicensed persons may be compensated for potential business referrals, provided that compensation is not tied to actual business written. Regarding rewards, items given to

consumers for promotional purposes, if given at “de minimis” value, a reward can be ok and not considered a rebate. For example, trade show trinkets and offering cash for a quote may be ok if it is offered for a quote and not the result of a quote, i.e. not tied to purchase. Cmsr. Murphy closed by stating that more uniformity and clarification is needed on these issues and looks forward to working with NCOIL in the future. Rep. Lehman stated that he hopes NCOIL continues consideration of these issues since there are some grey areas.

DISCUSSION ON ASBESTOS CLAIMS TRANSPARENCY MODEL LAW

Cmsr. Considine stated that when drafting a Model law, NCOIL staff will look to the West Virginia law on this issue given the bi-partisan support it received. Cmsr. Considine recommended that the Committee, in addition to the presentation it heard at the Annual Meeting in Las Vegas and the one it will hear today, familiarize themselves with the West Virginia law and the issue in general between now and the Summer Meeting in Chicago.

Former U.S. Congressman Barry Goldwater, Jr. from Goldwater-Taplin stated that asbestos litigation is a very serious issue and supports the Committees efforts in considering adoption of an Asbestos Claims Transparency Model Law.

Mark Behrens, Esq., Shook, Hardy & Bacon, LLP, stated that the culpable asbestos companies were largely forced into bankruptcy but reorganized and are immune from personal injury lawsuits. As a result of those bankruptcies, privately managed trusts were created that collectively hold about \$37 billion dollars available to those exposed to and harmed from asbestos. But the litigation did not stop there – plaintiff’s lawyers got creative about bringing in new, peripheral defendants in litigation. Plaintiffs today have two different sources of recovery: the trust system, and the tort system. But by waiting to file trust claims until after the tort case is resolved, the jury in the tort case is misinformed about all of the plaintiff’s exposures. Eight States have passed, and other States are considering, legislation to bring the two sources of recovery together by allowing the juries to hear about all of the plaintiff’s asbestos exposures. Mr. Behrens recommended that the Committee read the “Garlock” case to gain a better understanding of the issues. Sen. Rapert said that Arkansas is considering this issue and supports NCOIL Model drafting efforts.

ADJOURNMENT

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