NATIONAL COUNCIL OF INSURANCE LEGISLATORS
JOINT STATE-FEDERAL RELATIONS AND INTERNATIONAL INSURANCE ISSUES COMMITTEE
AUSTIN, TEXAS
DECEMBER 12, 2019
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Joint State-Federal Relations and International Insurance Issues Committee met at the JW Marriott Hotel in Austin, Texas on Thursday, December 12, 2019 at 9:00 a.m.

Senator Jerry Klein of North Dakota, Chair of the Committee, presided.

Other members of the Committees present were:

Asm. Ken Cooley (CA)
Rep. Richard Smith (GA)
Rep. Peggy Mayfield (IN)
Rep. Joe Fischer (KY)
Sen. Dan “Blade” Morrish (LA)
Rep. Tracy Boe (ND)
Rep. George Keiser (ND)
Sen. Neil Breslin (NY)
Asm. Andrew Garbarino (NY)
Sen. Roger Picard (RI)
Rep. Tom Oliverson, M.D. (TX)

Other legislators present were:

Rep. Deborah Ferguson (AR)
Sen. Dan McConchie (IL)
Rep. Edmond Jordan (LA)
Del. Mike Rogers (MD)
Sen. Gary Dahms (MN)
Sen. Paul Utke (MN)
Rep. Donna Pfautsch (MO)
Rep. Bruce Grubbs (MT)
Asw. Maggie Carlton (NV)
Asm. Kevin Cahill (NY)

Also in attendance were:

Commissioner Tom Considine, NCOL CEO
Paul Penna, Executive Director, NCOIL Support Services, LLC
Will Melofchik, NCOIL General Counsel
Cara Zimmermann, Assistant Director of Administration, NCOIL Support Services, LLC

QUORUM

Upon a motion made by Rep. George Keiser (ND) and seconded by Rep. Tracy Boe (ND), the Committee waived the quorum requirement without objection by way of a voice vote.

MINUTES

Upon a motion made by Rep. Keiser and seconded by Sen. Neil Breslin (NY), the Committee approved the minutes of its July 11, 2019 meeting in Newport Beach, CA without objection by way of a voice vote.

CONTINUED DISCUSSION ON NCOIL INSURANCE BUSINESS TRANSFER MODEL LAW

Asm. Andrew Garbarino (NY), sponsor of the NCOIL Insurance Business Transfer (IBT) Model Law (Model), stated that he believes the Model is close to being ready for a vote but some work still needs to be done. Since the last meeting of the Committee in March some changes have been made to the Model including: expanding the "purpose" section to more accurately explain the purpose of the Model and IBTs in general; a drafting note was added in Section 3L. to point out that states may wish to remove certain lines of insurance from the scope of an IBT; more information was added to Section 6 which governs what the IBT plan must contain when submitting it to the Insurance Commissioner for his or her review. Asm. Garbarino stated that he appreciates everyone's work on the Model thus far and he looks forward to continuing to work on it.

Karen Melchert, Regional VP of State Relations at the American Council of Life Insurers (ACLI), thanked Asm. Garbarino for continuing to work on the Model to get it to a point that perhaps ACLI could support it. There are varying opinions within ACLI's membership regarding IBTs. ACLI looks forward to continuing to work with Asm. Garbarino. ACLI would like to see its IBT principles in the Model but ACLI understands the need for the Model to be flexible for states to consider it. If ACLI's principles are not included in the Model then ACLI would ask that there be a requirement that regulations are promulgated. The ACLI has been told by a few states that they are not considering promulgating regulations regarding IBTs and ACLI believes there needs to be more of a map or guidelines for the regulators as IBTs come before them. The ACLI is developing language to that effect and will share it with NCOIL well in advance of NCOIL's Spring Meeting.

On behalf of the National Conference of Insurance Guaranty Funds (NCIGF), Barbara Cox stated that NCIGF is the coordinating body for the property/casualty guaranty funds. NCIGF has looked at IBT, restructuring, and corporate division statutes and has some concerns that as the current guaranty association laws are written there might not be coverage for the transferred business in many states. Since all types of insurance such as personal lines and workers compensation insurance could be involved – the types of business that the P&C guaranty funds would normally protect – NCIGF decided that needed to be fixed. Accordingly, NCIGF's position is as follows. If there was guaranty fund coverage before the transaction, there should be guaranty fund coverage after the transaction. Conversely, if it was non-admitted business such as surplus lines or a risk retention group, then there should be no guaranty coverage as a result of the transaction if there was no coverage before the transaction.

Ms. Cox stated that NCIGF is undertaking a multistate effort to revise the guaranty association acts to include transferred business which was guaranty-fund covered before the transaction. The template language is almost ready. There is some variation among state guaranty fund laws. A lot of them do adhere to the NCIGF and NAIC model, and the NCOIL Model Guaranty Association Act, but the template will need to be adjusted for those variations which NCIGF is quite willing to do. This effort has been vetted with the NCIGF board which includes 8 fund managers and 12 industry persons. NCIGF also has a public policy committee with essentially the same makeup. NCIGF believes its legislative effort will have wide support. There may be some guaranty fund members who take a different position as NCIGF is a voluntary organization and cannot compel anyone to go along with anything. Nevertheless, NCIGF believes it has wide support for the effort and does not believe that the "fix" for this will come through the NCOIL Model. NCIGF would probably at some point request that the NCOIL Model

Guaranty Association Act be amended to deal with this issue. Ms. Cox stated that she hopes that the NCIGF legislative effort will be supported in states as it is very positive for covered claimants.

Bob Ridgeway, Senior Gov't Relations Counsel at America's Health Insurance Plans (AHIP), stated that AHIP's members are reasonably comfortable with ACLI's IBT principles and believe that the principles should be in some way incorporated into the statutory language if at all possible. That is not to say necessarily that those things must happen but perhaps a listing of the principles with language saying that the Commissioner, and probably the independent expert, must take consideration of these issues in reaching their decision. With regard to guaranty fund coverage, Mr. Ridgeway stated that he would like to look at some language that was offered as an amendment to the Illinois restructuring law. Some language that has been offered for consideration regarding the guaranty fund coverage issue is awkward and could be improved to address the issue as it is very important to not create guaranty fund coverage where it didn't exist, nor take it away where it did exist.

Asm. Garbarino stated that he spoke with ACLI regarding his concerns that the ACLI's principles were vague and ACLI has taken steps to work on that so that the principles could be included in the Model. Asm. Garbarino stated that he thinks it could be a good idea to require the Insurance Commissioner to adopt regulations rather than simply authorizing he or she to do so. Asm. Garbarino further stated that he is certainly open to new language that would better address the guaranty fund coverage issues discussed today.

Sen. Klein asked Ms. Melchert if the ACLI is getting close to the point where it believes that the Model sufficiently addresses ACLI's concerns. Ms. Melchert replied yes and noted that it is still a work in progress.

The Honorable Glen Mulready, Commissioner of the Oklahoma Insurance Department, stated that as the author of the Oklahoma IBT legislation and now the regulator overseeing it, he does not disagree with anything said today but cautioned changing the Model. Cmsr. Mulready stated that the IBT process is still new and that if you have seen one IBT, you have seen one IBT. The very first IBT that the OK Insurance Department has will have its first hearing at the court level next week and it is all runoff business – typical longtail business that has not sold a policy since 1972. The second IBT that is in the Department is all reinsurance and discussions are ongoing with other potential transactions. The ACLI's principles are well thought out and great principles and they should absolutely be considered by the independent expert, regulator and court.

Regarding the guaranty fund issues, Cmsr. Mulready stated that the whole process is set up so that policyholders are not materially adversely impacted and that is why the three step process exists involving the independent expert, regulator, and court. If a lot of policyholders did have guaranty fund coverage and then did not, they would be materially adversely impacted. Cmsr. Mulready stated that if such a transaction came to his office, it would be disapproved. It is important to trust the process – a process that has worked for almost 20 years in the UK involving almost 300 transactions without a failure.

CONTINUED DISCUSSION OF PROPOSED AMENDMENTS TO NCOIL MARKET CONDUCT SURVEILLANCE MODEL LAW

The Honorable Dean Cameron, Director of the Idaho Department of Insurance and NAIC Secretary-Treasurer, stated that market conduct surveillance is very important to the NAIC and is important to make sure that consumers are protected and that there are not actors out there acting inappropriately. The NAIC wants to make sure that whatever Model is brought forth does not throw the baby out with the bathwater and make it more difficult for regulators to do their job or make it more difficult to protect consumers. At the same time, the NAIC recognizes that there are changes and improvements that can be made and there are opportunities to collaborate with NCOIL and the industry.

Dir. Cameron stated that there are a couple of issues that the NAIC sees in the current draft of the Model that gives the NAIC some heartburn and concern. There is a provision in the draft Model relating to cybersecurity which states "nothing in this act shall authorize a market conduct examination of the insurer's cybersecurity protection measures which is otherwise provided for in domiciliary sate financial examinations consistent with the NAIC's coordinated approach to examinations." The intent of that language may be reasonable, but the language gives the NAIC heartburn. The NAIC does not want a situation where a Commissioner cannot examine a company on a cybersecurity breach. If you think about some of the cyber breaches that have occurred, such as the Anthem breach, Anthem did not handle that situation well and regulators need to be able to go in and see when the carrier knew that it had a cyber breach, what steps it took to mitigate the breach, and what steps it took to inform customers and regulators.

Dir. Cameron stated that another proposed amendment to the Model talks about material violations to the law and reliable and credible sources; and another proposed amendment requires that before notifying the company, that there be an examination. Dir. Cameron stated that is an awkward chicken-and-the-egg type of approach as the only way regulators can appropriately do an examination is to have a discussion with the carrier so as to indicate what the problem is. Dir. Cameron stated that he realizes there are times when that has not happened appropriately but for most regulators, the first step when there is a situation that the regulator thinks needs examining is to sit down with the carrier and lay out the issue and state how the regulator would like to look at records to make sure it has been handled appropriately. Dir. Cameron noted that the NAIC does not believe that market conduct examinations ought to be fishing expeditions nor should they last forever.

Another provision in the draft Model that gives the NAIC some heartburn is the provision in Section 7 regarding the change in estimated budgets. Dir. Cameron stated that he does not believe an arbitrary cap is needed as that would tie the hands of the regulator who is conducting an examination if one is needed. Obviously there can be discussions about how to determine if an examination is needed and why it is needed, but a threshold on budget is not the threshold that should be there.

Rep. George Keiser (ND) stated that, with regard to the budgetary cap, it seems there are two forces at play. One is to limit the currently unlimited exposure to the company because they ultimately are paying the bill. But as the amendment is currently written, if you hit that cap then the examination must be closed down despite what is discovered in the examination. Therefore, Rep. Keiser questioned whether the language should state that anything over 10% should be discussed and presented back for justification. Rep. Keiser noted that the current situation is an open checkbook and companies are not happy with that fact that you can come in and hire outside people that charge significantly different rates. Those issues should be addressed but the current language regarding the budgetary cap may not be appropriate due to the ability to essentially shut down the examination regardless of what is discovered.

Dir. Cameron agreed with Rep. Keiser's interpretation of the language but noted that not every state conducts examinations as described by Rep. Keiser. Idaho does not charge for market conduct examinations – they are on the department's dime. Idaho charges a fee for being licensed and that covers their financial examination and/or a market conduct examination. Also, depending on the size of the insurance department, it does become difficult for the regulator because oftentimes a market conduct examination is needed but the department does not have adequate staff to do it so they end up hiring an outside contractor which sometimes can be a little unwieldy for the department to control and for the carrier to pay the bill. There needs to be an accommodation.

Dir. Cameron stated that he is not sure if every state does this but in Idaho, he makes staff come to him and discuss why they want to conduct a market conduct examination. Obviously if there is a carrier that is violating mental health parity and mental health issues, that is a stronger market conduct examination than one initiated for carriers not appointing agents appropriately just because of signature and dating issues. With regard to the latter, that is not a priority for an examination although it may be an issue that the department would point out to the carrier. Also, if the examination is going to last a long time, Dir. Cameron stated that he makes staff come back to him after a certain length of time to justify its continuation. Dir. Cameron stated that he believes those are reasonable issues to consider but an arbitrary 10% budgetary cap would be harmful to consumers.

Erin Collins, Asst. VP of State Affairs for the National Association of Mutual Insurance Companies (NAMIC), thanked Sen. Travis Holdman (IN), NCOIL Immediate Past President and sponsor of the proposed amendments to the Model, and the Committee for having this discussion. NAMIC believes that this conversation is important, and many aspects of the Model address some important issues in the insurance market, some of which were outlined by Dir. Cameron. NAMIC has shared goals with Dir. Cameron and the NAIC in terms of looking at the market conduct examination process. Ms. Collins stated that one of the problems that the industry has faced over the last decade or so as conversations have begun about the need for risk based regulation is that there needs to be an according conversation about changing the old way of regulating the insurance industry so that we are not just building new frameworks on top of old frameworks and ending up with redundant regulatory mechanisms. That does not help the industry, the market or the regulators.

Ms. Collins stated that Dir. Cameron made some excellent points and NAMIC looks forward to working on improving the proposed amendments to the point where they are adopted. Regarding the cybersecurity issue previously discussed, the intent of the proposed language is to make sure that by virtue of examining cybersecurity among multiple facets across the regulatory structure, a cybersecurity risk is not created in and of itself in the companies as all of that information goes back and forth through different portals. Regarding the budgetary cap issue, the intent there is to put some belt and suspenders on so that it does not teeter into ongoing, unending concepts. NAMIC looks forward to working on the amendments with Dir. Cameron and the Committee.

Birny Birnbaum, Director of the Center for Economic Justice (CEJ), stated that today, everyone's collecting more and more data about the consumer, from the consumer and about the natural and built environment. Insurers collect more and more data to be able to perform analytics and take action in real time – whether for underwriting, claims settlement, anti-fraud or loss prevention. Financial regulators collect vast quantities of data and routinely expand their data collection. For example, insurers report every bond, every equity, every reinsurance agreement, every investment – why? So regulators can assess immediately what impact a financial market event will have on individual insurers and industry. The exception to more data, better analytics and greater efficiency is insurance market regulation. Market regulation is still based on an audit methodology and not an analytics methodology. It makes no sense to require a market conduct examination to gather data for analysis. And industry complaints about market regulation costs and inefficiencies are tied to the audit type approach. Proposals that place more hurdles in front of regulators to perform market analysis and take action to protect consumers not only harms consumers, but raises the costs of market regulation for insurers.

Mr. Birnbaum stated that unfortunately, the proposed amendments don't move market regulation towards a more data-based approach but create even more bureaucracy while delegating legislative authority to administrative agencies. Throughout the proposed amendments there are references to "material violations of law and consumer harm" before anything can be done. For example, in the definition of "market analysis" – which is the process by which information is gathered to assess whether there are issues that need to be investigated further or taken action on – it says that the patterns or practices of insurers licensed to do business in this state that deviate materially from state law or significantly from the norm or regulations and that may pose a demonstrated material potential risk to the insurance consumer. This proposal directs the commissioner to take on the role of the Legislature and decide which laws to enforce and which to not. It introduces vague terms that encourage lack of uniformity across the states – deviating materially from law and pose a material potential risk. Mr. Birnbaum stated that he guarantees there will be 51 different interpretations of those terms if the Model was enacted across the states.

Instead of making market regulation more efficient, the proposal will make it less efficient by giving insurers yet another tool to object to regulatory action – insurers will object to regulatory actions claiming the regulator did not prove the violations are material and did not prove the material risk to consumers. These changes will make an already cumbersome process even more cumbersome and will hamstring the people in charge of consumer protection. Another problem in the proposal is in the section regarding complaints. It is important to understand how insurance regulators deal with complaints and what the difference is between a confirmed complaint and an unconfirmed complaint. A confirmed complaint is one in which the insurer is determined to be at fault. But regulators get many more complaints that provide useful information – for example, if there are a number of complaints from consumers regarding coverage they thought they had, that's useful information to prompt a review of how an insurer explains its coverage even if it is not the fault of the insurer. However, the proposal limits market analysis to confirmed complaints and is therefore telling regulators to ignore useful data - that does not make sense.

With regard to the cybersecurity issue, Mr. Birnbaum stated that the proposal conflicts with both the NAIC Cybersecurity Model and the recently adopted chapters and checklists in the Market Regulation Handbook which provides market regulators with post-breach checklists for market regulation activities. If the intent is cooperation between market regulators and financial regulators, then that is what should be required – but market regulators should not be barred from doing the job they should do in the event of a breach.

Another issue in the proposal deals with domestic deference and a state's acceptance of another state's market conduct examination. In financial regulation, the accreditation program of the NAIC requires one state to accept the financial examination of the insurers' domiciliary state. But the accreditation program is designed to ensure that every state has the resources and expertise to perform a competent financial examination. Accordingly, there are not states saying that they don't have enough money to hire a financial examiner so the job won't be done – the accreditation program says that states must do so, so it ensures that states have the resources and skills to do a competent financial examination.

Mr. Birnbuam stated that the market conduct model proposal seems to import that procedure for market conduct examinations – acceptance by regulators in one state of a market conduct examination by another state. There is no rationale for such a provision for at least three reasons. First, unlike the financial condition of an insurer which doesn't vary from state to state, market conduct can and will vary state by state due to differences in legal requirements and insurer practices. Second, unlike financial examinations, there are no standards – accreditation or otherwise – for market conduct resources for a state. Third, for market conduct issues which do cross state lines, state insurance regulators already have a tool called multi-state examinations. Mr. Birnbaum questioned whether the Committee would want the Commissioner in Indiana to rely upon the New Mexico Commissioner to tell him or her whether insurers were paying the proper premium tax in Indiana? Or whether an agent licensed in NM was also properly licensed in Indiana? Or whether disclosures required by the Indiana legislature were being provided to Indiana consumers? Or whether insurers in Indiana were complying with prompt pay laws? Mr. Birnbaum stated that he does not believe Committee members would do that or want that.

On the issue of examination costs, Mr. Birnbaum stated that if you fund your departments sufficiently, you can eliminate the need for most contract examiners. There are many departments that have no market conduct examiners on staff, so they have no choice but to use contract examiners. If you want to eliminate the majority of contract examiners, states should follow what Idaho does. Also, it doesn't make sense to cap regulatory expenses, when insurers can drive up the cost by lack of cooperation. Mr. Birnbaum stated that he has worked on market regulation issues since 1991 and that he interacts with market conduct examiners and market regulators all the time. There are stories about what drives up their time and costs and it is because when they make a request for information, they don't get what they asked for and have to ask for it again. That drives up the cost and therefore it does not make sense for regulators to be limited in their ability to carry out their responsibilities through no fault of their own.

While CEJ has concerns with the current draft, CEJ would like to work with the Committee to modernize insurance market regulation and bring market regulation into the age of data analytics. CEJ would suggest that the Committee's efforts should be focused on empowering regulators to collect more data and provide them with the tools to analyze the data in real time. For example, instead of finding out a year after the fact that there is a rogue agent engaged in unsuitable sales, it would be better to collect data in real time about sales in the marketplace so that it can be highlighted and focused on and narrowly targeted instead of having to do a market conduct examination of the company to identify one rogue agent.

Sen. Klein asked Mr. Birnbaum for comments on how the Committee should proceed with the amendments to the Model. Mr. Birnbaum stated that he does not believe any of the amendments move the industry towards modernization. The Model as-developed already is a strong foundation and the changes that are needed are those that better empower regulators to collect and analyze data because it is the ability to do so that will move market regulation towards greater efficiency. The market conduct examination is a blunt tool and in an era of data analytics, regulators should be given sharper tools.

Dir. Cameron stated that upon returning home, Committee members should talk to their regulators about the needs of their state when it comes to market conduct. Dir. Cameron agrees that certain changes can be made to the market conduct process in order to make the approach more efficient and there are some circumstances where examinations have taken longer than needed and they have not been as focused as they should have been. The NAIC welcomes working with NCOIL and the industry to work on improving the process but the first step will be to really define what the issues are and what they are within individual states. Dir. Cameron noted that there is a difference regarding cybersecurity exams. When a financial examination is occurring, the goal is to see if a carrier has cybersecurity plans and methodologies and approaches in place. When a market conduct exam is occurring, there already has in many cases been a cyber breach and the goal is to find out if the carrier handled it according to their own plan or according to state/federal law. Just because the carrier is examined for cyber under the financial examination does not mean that should be the end of it.

Sen. Gary Dahms (MN) stated that the proposal is well thought out, but it is important to not lose sight of the fact that different states handle these examinations different. Sen. Dahms stated that he understood where Mr. Birnbaum is coming from but noted that sometimes the insurance departments treat the insurance companies the way Mr. Birnbaum believes that insurance companies sometimes treat their clients. Accordingly, it is important to be cautious as to how the Committee proceeds with this proposal and make sure that there are some rights built in for the insurance companies. Sometimes the companies are not even told why the regulators are coming in to examine and when the exam will end or how much it will cost. Regulating those areas is important in order to keep costs down because if you have an insurance company with a market conduct exam that goes on for years with accompanying bills, rates will increase because the costs must be borne somehow.

DISCUSSION ON THE REAUTHORIZATION OF THE TERRORISM RISK INSURANCE ACT

Jim Lynch, Chief Actuary and VP of Research and Education at the Insurance Information Institute (III), stated that the terrorism risk insurance act (TRIA) was triggered by the 9/11 attacks which inflicted about $47 billion dollars of damage that went across different lines of insurance. Immediately after those attacks, the insurance markets froze up. The III put together a white paper that documented the way that the insurance markets have behaved since 9/11 when there was no TRIA. Insurance market froze after 9/11 because insurance companies are very good at managing risks when they understand the risks but if they don't understand the risks things can go haywire. From an insurance standpoint, terrorism is hard to underwrite because there is not a lot of historical data; acts of terrorism are not random; there are many "attack modes"; and the attacks are often geographically concentrated. For example, before 9/11, insurance companies anticipated that the worst thing that could happen at the World Trade Center was if a commercial airliner crashed into it but they did not contemplate that someone would concentrate that risk by directing two planes towards the twin towers.

Mr. Lynch stated that quickly after 9/11, Congress passed TRIA. TRIA has been renewed and changed over the years and it has a lot of moving parts to it. Generally, TRIA functions such that most commercial lines of insurance must offer terrorism coverage. In exchange, for events causing over $200 million dollars in damage (in 2020), each insurer can recover 80% of their losses after they have satisfied their own internal deductible. Then, the government – except for the very large events – must recover 100% of its outlay from policyholders. How that plays out is complicated because the program has been renewed and changed.

The III worked with the Reinsurance Association of America (RAA) which has a very highly regarded model that can say, given a certain type of event in a certain city, how much losses are going to be, how much of those losses are going to be insured, and how those losses are going to be split between what the federal government ends up paying net, what insurers end up paying net, and then what the policyholder surcharge is that the government recoups post-event. Accordingly, III and RAA ran a scenario asking what if 9/11 happened again under the original terms of TRIA, under the 2020 terms, and under the 2030 terms. In the first scenario, the net amount that the federal government pays falls to zero – there will still be initial funds going out upfront but the government will recover all of it. The amount that the insurers must pay will rise consistently through 2030. The amount that policyholders must pay via the surcharge will continue to increase.

Mr. Lynch noted that TRIA was supposed to do two things: make terrorism insurance available (which it did) and make terrorism insurance more affordable. Since 2003, the cost of risk is down about 80% as estimated by some of the brokerage firms that are involved heavily in the market. Regarding the take up rate of the insurance, Mr. Lynch noted that it varies state to state but there is pretty good concentration in the geographic areas that are most exposed to terrorism risk.

Mr. Lynch noted that the second time there was no terrorism insurance program was for about three weeks in 2015 when the enabling legislation expired. There was some concern because many thought that if TRIA was not renewed, insurers were likely to invoke exclusions in existing policies that disallow claims for terrorism, and banks were likely to deny credit for the projects that require such insurance as part of a loan agreement. However, TRIA-renewal legislation was ultimately passed very quickly in early 2015.

Mr. Lynch stated that TRIA is scheduled to expire at the end of 2020 and there is legislation already introduced to renew the program. The reason why the effort to renew has started so early is because reinsurance treatises cover risks that span several years. Also, for insurance policies that are renewed next year in 2020 – anything that is renewed after January 1st will at least be trivially exposed to terrorism risk without TRIA. That is especially true in workers' compensation because it is statutory coverage and does not make an exception for terrorism so that terrorism risk continues on and that could create a complicated situation for insurers. There also could be possible rate pressures. If the insurance market starts to freeze up and coverage does not become available, one way that the market will clear, is by seeking rate increases where it is legally available to do so. Currently, insurers are also introducing conditional endorsements and other conditional items – all conditioned upon the expiration of TRIA. Those are all reasons why there is a drive to renew TRIA in a timely manner.

Mr. Lynch noted that there are two bills currently pending in Congress regarding TRIA reauthorization. One bill overwhelmingly passed the House on November 19th. On November 20th, virtually identical legislation passed the Senate Banking Committee. TRIA reauthorization is a major initiative for the insurance and reinsurance companies and their lobbying groups. To this point there is no significant substantive opposition inside or outside of Congress. The Consumer Federation of America did release a statement that TRIA should not be renewed because it believes that the market can already support terrorism insurance, but Mr. Lynch stated that when he speaks with insurance trade organizations, they are being told different by their members.

Asw. Maggie Carlton (NV) asked if throughout the evolution of TRIA the definition of terror has changed, particularly given then occurrence of events such as what occurred in Las Vegas recently. Mr. Lynch stated that the definition of terror in TRIA is defined by the Secretary of Treasury. The legislation also requires Congress to consult with the Attorney General and other branches of the federal government. Being declared a terrorist event within TRIA, therefore, comes from the federal government. In terms of insurance policies, however, that is an issue for the individual policies. Mr. Lynch noted that no events since 9/11 have met the federal definition of a terrorist event, including the Las Vegas incident referenced by Asw. Carlton. The Boston Marathon tragedy was thought by many to be an act of terrorism but for purposes of TRIA, it was not. The Boston Marathon bombing also had trouble meeting the $5 million dollar damage threshold set forth in TRIA. Mr. Lynch stated that he believes the bombing might have reached the threshold but just barely.

Rep. Keiser stated that he owns a small company and he purchased cyber insurance and terrorism insurance. The threshold to get to the federal terrorism backstop is so high that if there were a cyber terrorist event in his community, it is doubtful that it would meet that threshold. The exclusions and deductibles in the policies are also very high and therefore Rep. Keiser asked if small businesses that have purchased this type of insurance really have insurance and how difficult is it for such businesses to prove that a cyber event is a terrorist attack.

Mr. Lynch stated that if you have cyber, the TRIA legislation was written before cyber-attacks were really thought about as insured events. Since then there has been regulatory guidance from the Federal Insurance Office (FIO) that states that for the cyber coverage that has been written in the lines of businesses that are covered by TRIA, if a cyber-attack meets the federal definition of a terrorist event the attack could be covered by TRIA. If there is an event that is considered to be terrorism, but the federal government does not define it as such, there may be coverage under specific policies. The way that the policies are written is such that terrorism is excluded from the policy but then you can buy back terrorism coverage. So that means that if there is a loss that's terrorism and you did not buy back the coverage then you are in tough spot. But if that event was not labeled a terrorism loss, as in Boston, then that means there is no way for the insurance company to invoke a terrorism exclusion. So, the way the legislation is written is such that it creates a bit of clarity there.

If the event is defined as a terrorism event, insurance will still respond even if it is not large enough to meet the TRIA threshold. Rep. Keiser stated that if you read the policy it has out of pocket limits and the maximum coverage is extremely limited which is how they can underwrite it. Therefore, your exposure may be up to $200,000 but the event may be $250,000, $500,000 or $1 million and people have no coverage and they don't realize that. Mr. Lynch stated that is sounds like what is being borne by the small business in Rep. Keiser's statement are deductibles and limits that fall short of being able to protect the business adequately. Rep. Keiser stated that having the policy helps one sleep at night but reading the provisions does not. Mr. Lynch stated that is something that should be discussed with a risk manager.

ADJOURNMENT

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