NATIONAL COUNCIL OF INSURANCE LEGISLATORS
FINANCIAL SERVICES & MULTI-LINES ISSUES COMMITTEE
ALEXANDRIA, VIRGINIA
SEPTEMBER 26, 2020
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Financial Services & Multi-Lines Issues Committee met at the Hilton Alexandria Old Town Hotel on Saturday, September 26, 2020 at 9:00 A.M. (EST)

Representative Edmond Jordan of Louisiana, Chair of the Committee, presided*.

Other members of the Committee present were (* indicates virtual attendance via Zoom):

Asm. Ken Cooley (CA)*
Sen. Matt Lesser (CT)*
Rep. Matt Lehman (IN)
Rep. Joe Fischer (KY)
Rep. Jim Gooch (KY)
Asw. Pam Hunter (NY)
Sen. Bob Hackett (OH)
Rep. Tom Oliverson, M.D. (TX)

Other legislators present were:

Rep. Peggy Mayfield (IN)*
Rep. Derek Lewis (KY)
Rep. Bart Rowland (KY)
Rep. Dean Schamore (KY)
Sen. Kirk Talbot (LA)
Rep. Kevin Coleman (MI)
Sen. Paul Utke (MN)
Sen. Vickie Sawyer (NC)

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Will Melofchik, NCOIL General Counsel

QUORUM

Upon a motion made by Asm. Ken Cooley (CA), NCOIL Vice President, and seconded by Rep. Matt Lehman (IN), NCOIL President, the Committee waived the quorum requirement without objection by way of a voice vote.

MINUTES

Upon a motion made by Asm. Cooley and seconded by Rep. Joe Fischer (KY), NCOIL Secretary, the Committee voted without objection by way of a voice vote to approve the minutes from the Committee's March 8, 2020 meeting. Sen. Matt Lesser (CT) abstained.

CONSIDERATION OF NCOIL MODEL ACT CONCERNING STATUTORY THRESHOLDS FOR SETTLEMENTS INVOLVING MINORS

Rep. Fischer thanked everyone for their work on the NCOIL Model Act Concerning Statutory Thresholds for Settlements Involving Minors (Model) and stated that he looks forward to the Committee proceeding with a vote on the Model today. The Model is fairly straightforward and represents a commonsense piece of model legislation and addresses an important issue. The

Model would apply mostly to situations where minimal amounts are involved with settlements involving minors, and the parties engaged want to settle without incurring additional costs for going into court and obtaining approval. It is similar to many laws in states that allow for settling small estates through affidavits. There are certain security measures in place to ensure that the settlement would be preserved for the minor. By settling through an affidavit, the Model would allow both parties in the matter to settle more quickly and allow the people who are injured to get their money faster.

Rep. Fischer stated that before proceeding with a vote he would like to point out one minor amendment both he and Rep. Tom Oliverson, M.D. (TX), co-sponsor of the Model, would like to make. In Section 3(3)(a) and (b), it is proposed that language be included to provide the settlement payor with flexibility in regard to the type of payment made - i.e. not requiring cash or direct deposit. Accordingly, those sections would include "by draft" among the methods available to make payment. Upon a Motion made by Rep. Fischer and seconded by Rep. Oliverson, the Committee voted to adopt the amendment without objection by way of a voice vote.

Rep. Oliverson stated that it has been a pleasure to work with Rep. Fischer. The Model represents a smart piece of legislation that removes unnecessary barriers, and he looks forward to the Committee adopting the Model.

Frank O'Brien, VP of State Gov't Relations at the American Property Casualty Insurance Association (APCIA), stated that the Model represents the value of NCOIL. The Model is a good piece of consumer legislation that provides flexibility with consumer protections. The Model is in keeping with NCOIL's innovation agenda and it is a type of issue that only NCOIL, because of its expertise in insurance related matters, would focus on. APCIA thanks the sponsors and the Committee and looks forward to the Model being adopted.

Andrew Kirkner, Regional VP, Ohio/Mid-Atlantic Valley at the National Association of Mutual Insurance Companies (NAMIC), thanked Chair Jordan, the Committee and the sponsors for their work on the Model. NAMIC is supportive of the Model and believes that the Model will increase efficiency and provide a benefit to consumers and also protect those minors who enter into settlements. Mr. Kirkner also thanked the sponsors for the inclusion of the technical amendments to the Model and noted that NAMIC also submitted a written statement in support of the Model.

Asm. Cooley stated that he believes expanding the language through the amendment adopted provides flexibility and is an important safeguard to not be handcuffed to only having the options of cash or attorney trust funds. The amendment adds commercial realism which has practical benefits in terms of the manner of which the payout is made.

Rep. Jordan stated that as a practicing attorney who has dealt with minor settlements, not only can it be costly, but it can be time consuming getting on the judge's calendar. With the pandemic, it can be months before you can get into seeing a judge and getting somebody to sign off on a settlement. Rep. Jordan stated that he appreciates the work that has been done and supports the Model.

Returning to the original Motion made by Rep. Fischer and Rep. Oliverson, the Committee voted to adopt the Model as amended without objection by way of a voice vote.

INTRODUCTION AND DISCUSSION ON NCOIL INSURER DIVISION MODEL ACT

Sen. Lesser, sponsor of the NCOIL Insurer Division Model Act (Model), stated that NCOIL adopted an Insurance Business Transfer (IBT) Model Act this past March. Like the IBT Model Act, corporate division statutes address the significant limitations in the current methods available to insurers to transfer or assume blocks of insurance business in an efficient and cost-effective manner that provides needed legal finality. In 2017, Connecticut was the first state to enact an insurance-specific corporate division law. Since then, other states have followed including Illinois, Michigan, Iowa and Georgia. While IBTs and insurer divisions are similar in some respects, they are nonetheless distinct restructuring mechanisms with different functions. Accordingly, following NCOIL's adoption of its IBT Model Act, Sen. Lesser stated that he believes it makes sense that there should not be one Model without the other for states to consider adopting. Sen. Lesser stated that he is proud to sponsor the Model and looks forward to discussing and developing it throughout the next several months.

Jared Kosky, General Counsel at the Connecticut Insurance Department, stated that he would like to provide some background with regard to CT's insurance division Act that Sen. Lesser mentioned, provide a status update as to CT's Act, and note some differences between the Act and the Model. Mr. Kosky stated that a few years ago then Governor Dannel Malloy and his administration had requested legislative proposals as part of an initiative to enact business friendly laws in CT. Under that initiative, the insurance industry primarily, spearheaded by The Hartford, drafted and proposed a bill that sought to permit insurance company divisions. The particular bill was based on existing corporate division laws that had already existed in Arizona and Pennsylvania and the CT bill was specific to the insurance industry.

The purpose behind the proposal was that the U.S. insurance regulatory framework offered limited options to insurers that desired to achieve legal and economic finality when the insurer changed its business strategy, internally reorganized or exits or acquires a line or block of insurance business. So, the intent of the bill was to promote the efficient allocation of capital and better alignment of the insurance risks with an insurer's current business strategy and dedicated management. The bill ultimately passed and is now the CT insurance division Act and became effective in 2017.

As a general overview, the Act seeks to provide legal and economic finality to the reorganization and transfer of insurance risks in order to benefit, reinsurers and most importantly from CT's standpoint, policyholders, as the CT DOI's main charge is consumer protection. The Act does this by authorizing an insurer to divide into two or more insurers in a corporate level transaction that is in essence the reverse of a merger. Instead of two or more insurers being merged into one insurer as happens in a merger, what happens here is that you have one existing domestic insurer that is divided into two or more resulting insurers. As part of that division, the assets and obligations, including the insurance policies of the dividing insurer, are allocated to the resulting insurers as provided in the plan of division that is submitted. Those resulting insurers are deemed to be the legal successors of the dividing insurer and the assets and obligations are allocated to them as a result of succession and not by direct or indirect transfer.

From CT's standpoint, the insurance regulatory issues in a division are akin to those that we see in a merger and that is why the provisions of the Act regarding regulatory review of a division are similar to those that are applicable to a merger and that is also similar to what is contained in the Model. Further, if a division is part of a larger transaction that also involves a change of control of an insurer, that change of control will also require regulatory approval under CT's usual standards and procedures. In that case, it is the Form A procedures that govern which regulators have been doing for awhile and are very familiar with.

Mr. Kosky stated that although CT has received a number of inquiries from companies interested in making use of the division Act, an application has not yet been received and the regulatory process has not been engaged. CT DOI has heard from industry that the lack of activity comes down to two primary reasons. One is that CT has some very narrow language as to who can make use of the Act and who ultimately the resulting insurers are to be. That means that only domestic insurers may make use of it but the resulting insurers, under the CT Act, must also be domestic insurers. That is unique to CT and may be a reason why there has been a lack of activity. That language does not appear in the Model. The second reason is just the general uncertainty in the industry around the newness and ongoing review of restructuring mechanisms – both divisions and IBTs. The National Association of Insurance Commissioners (NAIC) has established a Working Group to review these mechanisms. There does seem to be a bit of a wait and see approach in the industry.

Mr. Kosky then highlighted some differences between the CT Act and the Model while noting that the Model does track very closely to the CT Act. One difference is the one noted earlier regarding the resulting insurer in CT needing to be a CT domestic company. The Model in Sections 3 and 12 talks about the ability of the resulting insurer allowed to be a domestic of another jurisdiction. Another key difference relates to the standards by which an Insurance Commissioner must approve a transaction. The Model has an additional standard that guaranty association coverage must be part of the standard for approval. The third major difference relates to the notice requirement. The CT Act has a notice and hearing requirement, but the notice requirement is sort of strictly related to the hearing itself. Mr. Kosky stated that he reads the Model language to be broader and allow for greater notice to policyholders and perhaps reinsurers.

Kathy Belfi, Director of Financial Regulation at the CT DOI, stated that she can provide a practical view as she is a regulator who would be looking at these types of transactions. Ms. Belfi thanked the Committee for its work introducing the Model and believes it was thoughtfully put together. CT feels good about the Model. Ms. Belfi stated that she would like to talk about two key issues that are in the Model and have been the subject of a lot of discussions among insurance regulators. The first issue relates to transparency through a public hearing. As Mr. Kosky mentioned, the CT Act is very similar to what CT already does and all of the change of controls in mergers are done for the most part through public hearings and that is very important to have as transparency is extremely important.

The other issue relates to the use of a contracted independent expert. In the CT Act, the Commissioner has the discretion to use a contracted expert and the key word is that the Commissioner "may" do so. There are some that feel that the Commissioner must use a contracted independent expert but CT DOI feels that it has decades of experience and it knows whether it has to use a contracted independent expert or not. Contracted experts are very good when needed. An example is that CT DOI has had many health mergers and CT DOI has had to use economic experts. However, Ms. Belfi stated there have been at least 50 transactions where she felt very comfortable that DOI staff could fully evaluate the transaction and either disapprove or approve. Accordingly, CT DOI believes that allowing for Commissioner discretion in this area is extremely important because ultimately contracted experts are expensive and not always are what is best for the consumer and quite often the use of them is not very efficient.

Asm. Cooley thanked Sen. Lesser for introducing the Model and stated that it is very important that there are mechanisms in place to allow insurance enterprises to evolve and manage their exposure in the marketplace, particularly during challenging times. Asm. Cooley stated that he believes it is important for NCOIL to go back and look at its guaranty association Model. The

basic rule is to protect consumers through solvency protection and making sure carriers are healthy. The second line of defense for consumers are guaranty funds so that if carriers sometimes run into trouble the consumer has coverage. Asm. Cooley stated that as we envision that a book of business may be transferred, it is important to ensure that guaranty fund protection follows the customer. It is important for NCOIL to speak with a common voice among the guaranty fund Model and measures like this current Model which Asm. Cooley stated he believes the industry needs.

Asm. Cooley stated that he is supportive of the Model but noted that it is important to review the guaranty fund Model and determine if any tweaks are needed so that the customer's expectancy is always met. Asm. Cooley stated that he believes that is a concern for insurance departments as well and does not believe it is a problem to make sure that the technical terminology in all Models harmonize seamlessly. Asm. Cooley thanked Sen. Lesser again for introducing the Model.

Bridget Dunn, Head of Gov't Affairs at Talcott Resolution (Talcott), stated that Talcott was formed in 2018 after the purchase of The Hartford's closed block of life and annuity insurance. Talcott is privately owned and has been working in the past two years to set up the company and to establish itself as a strategic risk partner for the insurance industry. This has been effective as earlier this week, The Hartford Courant named Talcott the number one mid-sized company in CT for the second year in a row. Talcott is poised for growth as it has built a platform where it wants to acquire other closed blocks of runoff business, primarily annuity insurer's insurance blocks, and one of the methods that it would like to use to acquire those policies is insurer divisions.

Ms. Dunn stated that like the IBT Model that NCOIL adopted earlier this year, insurer division statutes address the significant limitations to the current methods available to insurers to transfer or assume blocks of insurance business in an effective and cost effective manner that provides needed legal finality. As stated by the CT DOI, both IBTs and division are restructuring mechanisms but they go through different processes as to how an insurer can transfer or assume different policies. With divisions, it is a legal entity transaction that is like a reverse merger that must be approved by the state insurance regulator after a rigorous review process, a public hearing and a notice. The U.S. insurance regulatory framework offers limited options to provide the legal and economic finality of insurance risks when an insurer changes its business strategy or decides to internally reorganize, completely exit, or acquire new business. Divisions provide that legal and economic finality to insurers and allows for more efficient allocation of capital which can benefit policyholders. More efficient allocation of capital can lead to better product pricing. Policyholders also benefit when insurance businesses are aligned with an insurer's current business strategy and are the current focus of management, shareholders and regulators. Rather than being a distraction for an insurer who is focused on different lines of business under the current business strategy, policyholders can benefit when companies focus on that core business.

Ms. Dunn stated that the need for the legal and economic finality is reflected in the way that corporate and insurer division acts have been enacted or considered across the country. As previously mentioned, five states currently have insurance specific division laws, including CT, IL, MI, IA, and GA. A bill was introduced in CO and was being considered during the previous legislative session. The bill did not go the floor for a vote, but it is expected that it will be introduced during next session. There are also division laws in AZ and PA which apply to all industries. Delaware authorizes a division of limited liability companies and TX has a provision in its merger statute to allow a divisive merger where a single organization including an insurer

can merge with the same effect as a division. Ms. Dunn stated that Talcott is thrilled that NCOIL is considering the Model. Just like IBTs, mechanisms are needed to keep the insurance regulatory system modernizing.

Karen Melchert, Regional VP of State Relations of the American Council of Life Insurers (ACLI), thanked Sen. Lesser for introducing the Model and stated that ACLI would like to see a Model enacted by NCOIL that ACLI can support in states that wish to enact corporate division laws. That being said, Ms. Melchert stated that she would like to review some of ACLI's principles that it uses to evaluate restructuring mechanisms and reflect that there is some work to be done on the Model. First and foremost, ACLI's focus when evaluating these proposals is the protection of policyholders and for that to happen ACLI believes that impacted stakeholders and policyholders must have access to the process. That is one issue that ACLI spotted in its review of the Model - the hearing is not required unless the dividing insurer requests it. Access to the process and policyholder notification of a hearing is something that ACLI seeks to have as a requirement and not discretionary.

With regard to policyholder notification, the Model states that policyholder notification may be required by the Commissioner but there is no mandatory requirement. ACLI suggests that such notification be required in the Model. Also, ACLI believes that independent experts must be retained for protection of the policyholder. ACLI believes that the more people look at a division plan, the more likely it is to be viewed as good for the policyholders and good for the companies and it is actually something that is paid for by the dividing insurer so there is no cost to the DOI. The cost is something that ACLI believes is worthwhile and should be included in the Model.

Ms. Melchert stated that another issue centers around mandatory approval of a division plan which is similar to the language you see in mergers, but it doesn't give the Commissioner discretion to not approve a plan. Even if it meets all of the financial requirements and protections it doesn't give the Commissioner the opportunity to say "I am not comfortable for a certain reason." There are some transactions that the Commissioner may not want to approve for several reasons. Accordingly, there should be discretion involved there. Ms. Melchert further stated that there are also some technical edits that ACLI will suggest later.

Ms. Melchert noted then the CO bill that was referenced earlier, HB 1091. ACLI was engaged in that process and was successful in drafting amendments with the proponent of the bill and working with the CO DOI. Those amendments were adopted by the Committee but not adopted on the floor as that is the process in CO. If they were adopted into the legislation that would be something that ACLI would support. Accordingly, ACLI suggest the Committee look at the CO bill going forward. The CO bill was based on the IL statute which was based on the CT statute which reflects that there have been iterations of this type of legislation across the country.

Another issue that ACLI believes is important relates to guaranty association coverage. ACLI believes that the language in the Model needs to be stronger or at least more fleshed out so it is clear how it works. ACLI looks forward to working with the Committee to adopt a Model that ACLI can support and turn to when working on the issue in other states. ACLI recognizes that divisions are an important mechanism for the industry to have to be nimble and reactionary to the times at hand. Accordingly, ACLI requests that it works with the Committee to get it right. ACLI did have some issues with the IBT Model adopted earlier this year as ACLI was not successful in translating its principles into statutory language. However, ACLI believes it has done so in the CO bill and looks forward to using that experience to perfect the Model before the Committee that can be supported by ACLI.

Paul Martin, VP of State Relations at the Reinsurance Association of America (RAA), stated that from RAA's perspective there are four keys to ensuring that a division Model is most effective. The first is notice to and opportunity to be heard for all parties – not just the dividing parties but also the policyholders and reinsurers. The second is confidentiality of sensitive financial information. As one can imagine in the middle of a transfer and division there is a lot of information and some of it is sensitive so it is important to make sure there are protections in the Model that are there to protect that information. The third is respect for contractual rights of parties. A division inherently involves an involuntary substitution of a party to which some parties to the contract don't necessarily have a say to unless there is notice and opportunity to be heard. Lastly, transparency of the proposed division plan is important. Everybody needs to know what is happening in the plan so there is transparency and no questions down the road.

Mr. Martin stated that with regard to the Model, there are some concerns. Similar to what Asm. Cooley mentioned, there needs to be more defined terms in the Model. RAA would also like to see beefed up adequate notice to all parties, not just reinsurers, including policyholders. RAA would also like to see a reasonable description of all the assets and liabilities that are going to be divided – RAA believes it can work on language for that. RAA also has some concerns about the asymmetrical treatment of creditors on one hand and policyholders, annuity holders and reinsures on the other hand. Lastly, RAA would like to see sufficient authority for the DOI to review or disapprove the plan. RAA would like for the Commissioner to have the authority to do that.

Mr. Martin stated that, as Ms. Melchert mentioned, there is an outstanding guide for the Committee to follow – the amended version of CO HB 1091. All of the stakeholders are happy with that bill and that is the best work product for the Committee to follow when drafting the Model going forward. RAA looks forward to working with the Committee going forward.

Bob Ridgeway, Senior Gov't Relations Counsel at America's Health Insurance Plans (AHIP), thanked the Committee for its work thus far and stated that AHIP agrees with most of the comments made by ACLI and RAA. Mr. Ridgeway stated that as he reads the Model, a transaction could be completed and approved without shareholder approval which he does not understand. Section 7(a) of the Model has provisions that he reads to say that the transaction could be approved without any hearing and that the hearing does not require policyholder consent in some circumstances and in some circumstances may not even require notice to policyholders.

Mr. Ridgeway stated that in Section 11(f)(1) of the Model, the policyholder's rights are probably only going to be applicable to the resulting insurer. As a practical matter, most of us know that when a consumer picks an insurance policy, they usually pick a particular insurer for a reason and often times it is because of a company's reputation or their financial standing and how strong they are. If we change the policyholder's contract without their consent and perhaps not even notice, that is not what the policyholder bargained for.

Mr. Ridgeway stated that his confidence is uplifted knowing that Ms. Belfi has looked at the Model and is supportive of it and he also sees some promising provisions in the Model relating to guaranty fund coverage. However, guaranty fund coverage does not always make all policyholders whole – sometimes they are left with only partial relief. Accordingly, there are some provisions that concern Mr. Ridgeway and he has spoken to people in the guaranty fund industry who have concerns about the Model and legislation like it in general for many of the reasons stated by Mr. Ridgeway. Having said that, Mr. Ridgeway stated that he looks forward

to working with Sen. Lesser, industry, and the Committee going forward to improve the Model to a point where it can be supported by everyone.

Sen. Lesser stated that he appreciates all of the comments made today in an effort to improve the Model and he looks forward to working with everyone going forward.

Daniel Lewallen, Esq. at Faegre, Drinker, Biddle & Reath LLP, stated that he is speaking today on behalf of the National Organization of Life and Health Insurance Guaranty Associations (NOLGHA) and the National Conference of Insurance Guaranty Funds (NCIGF). Those are the coordinating bodies of the state insurance guaranty system and both organizations want to ensure that the Model will achieve what everyone agrees is a key objective to preserving guaranty association fund coverage for all affected policyholders following a division. NOLGHA and NCIGF are reviewing the Model and plan on submitting comments to that point in the future. Mr. Lewallen stated that he appreciates the comments made by Asm. Cooley and other speakers made earlier and he looks forward to working on the Model with the Committee going forward.

ADJOURNMENT

Upon a Motion made by Asm. Cooley and seconded by Rep. Lehman, the Committee adjourned at 10:00 a.m.