

NATIONAL COUNCIL OF INSURANCE LEGISLATORS
PROPERTY & CASUALTY INSURANCE COMMITTEE
SCOTTSDALE, ARIZONA
NOVEMBER 19, 2021
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Property & Casualty Insurance Committee met at The Westin Kierland Hotel in Scottsdale, Arizona on Friday, November 19, 2021 at 2:45 p.m.

Kentucky Representative Bart Rowland, Chair of the Committee, presided.

Other members of the Committee present were:

Asm. Ken Cooley (CA)	Asm. Ken Blankenbush (NY)
Rep. Stephen Meskers (CT)	Asw. Pam Hunter (NY)
Rep. Matt Lehman (IN)	Sen. Bob Hackett (OH)
Rep. Jonathan Carroll (IL)	Sen. Jay Hottinger (OH)
Rep. Joe Fischer (KY)	Rep. Carl Anderson (SC)
Rep. Derek Lewis (KY)	Rep. Tom Oliverson, M.D. (TX)
Rep. Chad McCoy (KY)	Sen. Mary Felzkowski (WI)
Rep. Edmond Jordan (LA)	Del. Steve Westfall (WV)
Sen. Paul Utke (MN)	
Sen. Michael McLendon (MS)	
Sen. Walter Michel (MS)	
Sen. Charles Younger (MS)	

Other legislators present were:

Rep. James Kaufman (AK)	Sen. Lana Theis (MI)
Rep. Tammy Nuccio (CT)	Rep. Hank Zuber (MS)
Sen. Jim Guthrie (ID)	Sen. Jim Burgin (NC)
Sen. Beverly Gossage (KS)	Sen. Eric Nelson (WV)
Sen. Julie Raque Adams (KY)	
Rep. Rachel Roberts (KY)	
Rep. Mary DuBuisson (LA)	
Rep. Kyle Green (LA)	
Rep. John Illg (LA)	

Also in attendance were:

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

QUORUM

Upon a Motion made by Rep. Derek Lewis (KY), and seconded by Asm. Ken Cooley (CA), NCOIL Vice President, the Committee voted without objection by way of a voice vote to waive the quorum requirement.

MINUTES

Upon a Motion made by Del. Steve Westfall (WV), and seconded by Sen. Bob Hackett (OH, the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's July 16, 2021 meeting in Boston, MA.

DISCUSSION ON STATE EFFORTS TO LOWER THE UNINSURED MOTORIST POPULATION

Victoria Kilgore, Director of Research at the Insurance Research Council (IRC) thanked the Committee for the opportunity to speak as this is her first NCOIL meeting. I understand you've been having several discussions about ways to reduce the rate of uninsured motorists in your states and to that effect I've been invited here just to kind of level set and make sure that everybody understands the measures that we use to estimate this issue. Obviously, this is a very important issue as the National Association of Insurance Commissioners (NAIC) has estimated that in 2017 \$14 billion in premiums were paid by policyholders to protect themselves against losses due to injuries from uninsured drivers. This conversation fits exactly into the mission of the IRC which I represent and we are a nonprofit institute formed to look at public policy issues that affect the P&C industry. So, this is the perfect audience for us to share our 40 years of research on the issue of uninsured motorists.

So, what I plan to share today, is first some background on some various methods that have been used to measure the uninsured motorist population, describe in detail the method that the IRC has been using since 1980 to estimate the uninsured motorist rate, share some of the most recent results both countrywide and state by state that we have released, and then talk about some of our other research that touches on the issue. So, what are some possible ways to measure the uninsured motorist rate? One possibility would just to be to ask people whether they're driving without insurance. And the IRC has done some survey research along those lines over the years. Obviously, one issue with that is are people going to tell you the truth? And that seems to vary according to what other questions you're asking as you ask those surveys.

But over the years we've asked consumers how many vehicles in their household are licensed and how many of those vehicles have insurance and come up with the percentage of households who have uninsured vehicles. But of course, just because they're licensed doesn't mean that they're actually being driven, so that isn't always the best way. Some other government data that can be used from the law enforcement community might be motor vehicle records, accident reports, police reports, citations for driving without insurance. But unfortunately, most of those data sources are either inaccurate or widely inconsistent across states, especially given that states have different requirements for reporting accidents.

A seemingly simple way would be to look at the aggregate number of vehicle registrations in the given state and then compare that to the number of insured vehicles reported by insurers. That would seem to be simple but is quite problematic in that sometimes you actually get measures that show a negative number of uninsured drivers in the given state. And the problem really is that you're comparing apples to oranges. That the registration data is looking at vehicles by body type, so a small truck may not be counted as a personal vehicle and the insurers are looking more closely at how the vehicle is being used. A more sophisticated way of really looking at registration data, comparing it to insurance data is to look at a very specific vehicle rather than aggregate numbers and then looking up whether or not that vehicle is insured.

Historically, these types of data programs were extremely difficult to implement, and very expensive and inaccurate. Obviously, data technology has come a long, long way since the early 1980's when the IRC first started computing our methods. But even this technology does

have some problems and you're going to get mismatches in registrations and finding the proper insurer. You still have out of state registrations, you have unregistered vehicles who are out there driving presumably not with insurance. And you have again, vehicles that are licensed but may not be actually driven and that could be a seasonal issue of people traveling out of state or even with the economic cycle. Insurers and state governments spend a lot of resources on these verification systems and newer technology is very promising as a way to look at this issue. But as I said, historically it seems that the way to accurately look at the issue is to look at insurance claims data. As I said, we first developed these estimates in the early 1980's and since then this estimate has proven to be a reliable way as to get a proxy for the rate of uninsured motorists that can be applied consistently across states and over time.

I apologize if this is going to be a little too basic but as part of my charge to level set, I thought I would very briefly go through where the uninsured motorist claims data comes from and how we use that. We conduct a data poll on a voluntary basis of insureds asking for their claim exposures and their claim counts for uninsured motorists, and which we call UM, and bodily injury liability coverage, or BI. And just as an example, if you and I were in an accident in which I was at fault and you were injured, normally you would file a claim against my insurance company, my bodily injury insurance because I was the at fault driver and that BI coverage would compensate you for the costs associated with your injury, medical expenses, lost wages and even general damages or the pain and suffering associated with your injury. But if I did not have insurance and you could not file a claim against my BI policy, you would then turn to your own uninsured motorist policy and that would be the way that you would receive compensation for the economic damages you experienced as a result of your injury, as well as the pain and suffering payments.

So, the UM coverage designed to compensate policyholders for these injuries caused by an at fault driver who is not insured, it is, as I'm sure you know, required in many states. In some states their insurers are required to offer it but insureds are allowed to decline and in other cases the insureds have to specifically ask for UM coverage. So, to get a measure of how many uninsured motorists there are we could look at the frequency of UM claims or the number of UM claims made per insured vehicles. That does give some information but there are some problems when we try to look across states or over time, because there are other factors that are going to impact the frequency of uninsured motorist claims. Most notably, that would be accident frequency, if you think back of the past almost two years now, while we haven't done any research on UM statistics during the pandemic era, I think it's safe to say that the frequency of uninsured motorist claims will have fallen. And that's not because loads of people who had not previously had insurance decided to go out and buy it. Rather it's just that the accident frequency has gone down because they're not out there running into other people.

So, what we do to make these consistent across states and across time, is that we divide the uninsured motorist frequency by the bodily injury claim frequency to create a UM to be a claim frequency ratio. Literally, what that means, is that produces a measure of the probability that an injury to an insured car's occupant will have been the fault of a driver who was not insured. That's kind of a mouthful, so that's basically a proxy for the percentage of drivers who are out there driving without insurance. Like other measures, it's not perfect and it does rely on some key assumptions. One of those assumptions is that uninsured drivers experience the same frequency of at fault accidents as do insured drivers. If you believe that the accident rate for uninsured drivers is greater than that for insured drivers, which is logical, perhaps that's why they are uninsured because they have a poor driving record and hence, have high rates, and are hence uninsured.

If that's true, then our estimate is going to understate the true prevalence of uninsured driving. If on the other hand, uninsured drivers are less likely than insured drivers to get in an accident, maybe they're extra careful because they know they don't have insurance. In those instances, we would be overstating the prevalence of uninsured drivers. Some other assumptions behind this is that claiming behavior, specifically the propensity to file a claim is the same whether someone's deciding to file a BI claim versus deciding a UM claim. UM claims also provide coverage for hit and run accidents. Not having insurance may be one reason why a person may not stop when they have caused an accident but clearly, there are other reasons. And finally, in some states it's difficult to distinguish between UM claims and UIM claims, or underinsured claims in the states data sets.

So, onto our results that we've gotten from our most recent study. This was based on as I said insurance data collected for the years 2015 through 2019. And we found that in 2019 the ratio of UM claim frequency to BI claim frequency was .126, or 12.6%. In other words, when someone was injured in an auto accident in the U.S. in 2019 the chances were about 12.6% or one in eight that an at fault driver in the accident was uninsured. This estimate of 12.6% is up slightly from the low that we saw of 11% in 2015. It is lower than the 16% that we saw in the 1980's and early 1990's. And for many years now this estimated UM rate has remained within a fairly narrow range. The range becomes a little more interesting and really this is where most of the attention from the media goes to our IRC research is to look at the wide variations across states.

In 2019, the UM rate ranged from a high of 29% in Mississippi to a low of 3% in New Jersey. At the higher end states where the UM rate was more than one out of five we had Michigan, Tennessee, New Mexico, Washington and Florida. Other states in addition to New Jersey which had a low rate were Massachusetts, New York, Maine which were all below 5%. I will provide a copy of the full report that we issued in 2019 so you can see all of the state information. I will be giving that to NCOIL staff so that they can forward that to the members of the committee. And then just to turn very briefly to some of our other research that looks at the issue. I've mentioned before that we have done public opinion surveys and noted some of the issues with using that as a measure of the UM rate. But one advantage is that we can get some more information about the people who say that they do have uninsured vehicles and we can ask them some questions about their attitudes towards it.

When we look at the characteristics of the people who are most likely to say they have uninsured vehicles, that's really not too surprising, it's the younger folks, those with lower household incomes, lower educational attainment level, and those who have fewer assets to protect. We did also ask some opinions about the rights of uninsured motorists to compensation if they themselves were injured by an insured driver. We did find that two thirds agreed that the right to recover damages for pain and suffering should be limited for uninsured drivers and more than half even agreed that we should be limiting compensation even for economic damages, not just the pain and suffering. Finally, some of our research has looked into the factors behind differences in the uninsured motorist rate, both over time and across states. One thing that comes to mind of course, is the cost of auto insurance and when we've compared the affordability of auto insurance with the UM rate we have found that yes the uninsured motorist rate is higher in states where insurance is less affordable. A little bit of a chicken and the egg in terms of are people uninsured because insurance is so unaffordable? Or is insurance unaffordable because the policyholders are paying for the uninsured motorists?

Several years ago we did publish a study that specifically looked at no pay no play laws. And the results of that study did find that the enactment of such laws could have the effect of lowering a UM rate, although the effects were fairly modest. We were able to provide estimates by state for

the amount of compensation that would be saved by such laws. More recently, in 2019 we hired Milliman to conduct some statistical analyses looking at factors associated across states. They did some simple correlations and found, as I mentioned, that UM rates were correlated with education level and income. We found that states where they had higher penalties for driving without insurance tended to have lower UM rates. We found that tort liability systems a rating of how business friendly the tort environment in the state was seemed to have correlation in that UM rates were higher in states where the tort system was judged to be less business friendly. And finally again, with no pay no play laws, we found that states with a no pay no play law had smaller UM rates. Again, by a small amount. And then they put all of this together to see how these factors interacted and the basic summary of their report is that it really was the economic and employment numbers that had the largest explanatory value for the differences that we see in UM rates across states. Some of the policy levers that they also looked at did have an effect although they were significantly smaller.

So, in summary we may not have super easy answers or simple answers on how to solve this complex problem of uninsured motorists, an issue that continues to challenge the industry and you all as legislators. The IRC will continue to look at this issue. Some of the things that we haven't even looked at or talked about yet that further complicate the issue will be things such as the prevalence of undocumented drivers and how legislation to allow them to have a driver's license, what impact that will have on uninsured motorists. And then finally, what will be the impact of the pandemic as economic hardship, especially at the lower ends of the income scale, will interact with the dramatic changes in driving behavior. And as I said, we will continue to investigate this issue as we have for the past 40 years.

Alex Hageli, Director of Personal Auto, Electronic Issues, Specialty Lines & Counsel Policy, Research & International, at the American Property Casualty Insurance Association (APCIA), thanked the Committee for the opportunity to speak and stated I am also the Chair of the Insurance Industry Committee on Motor Vehicle Administration, an insurance trade association that focuses entirely on compulsory insurance law enforcement. I want to thank you for the opportunity to speak on this topic today. It is something that is very near and dear to my heart. A quick overview, my presentation builds on the information that Ms. Kilgore just reported on to all of you. Here is a quick overview in terms of the uninsured motorist situation. Currently, 48 states compel motorists to purchase auto insurance, the exceptions are New Hampshire which is the live free or die state and Virginia which allows motorists to pay a \$500 a year uninsured motorist vehicle fee. But generally speaking across the country you're required to buy auto insurance.

Despite those laws, as the IRC report mentions, approximately 12.6% of motorists nationwide do not comply with those laws and purchase auto insurance. So, what are the states doing to make sure that people buy auto insurance? There is a lot going on here, this is the obviously a map of the United States with IRC numbers for each individual state overlaid with the type of program that each state operates. Starting from the bottom, the white states up at the north don't have any kind of enforcement program. Just for an example, the state of Wisconsin just adopted, well not just, but they were the last state to adopt compulsory auto insurance laws about eight years ago now. So, they haven't really had time to adopt a program to enforce. The next type of program is a just a couple states have a random sampling program where they pull out a certain percentage of motorists and try to verify their coverage on an annual basis. Most of the states have a database program which is simply collecting business data from auto insurers in any given state and matching that up with the Department of Motor Vehicles (DMV's) registered motorists. Theoretically, at least if you do that process you match up who has insurance with who has a car, you will determine who does not have insurance and attempt to enforce or require

them to buy insurance. But it's not so simple, and I'll talk more about that. And then finally, the dark shade is the latest iteration, what I believe to be the superior method of enforcing compulsory auto insurance. And again, I'll talk a little bit more about that in detail but web services for sure in terms of what states are doing to verify coverage, web services is certainly the wave of the future, at least I believe it is.

So, what are the results overall of that map basically? It's interesting to note based on the IRC numbers that three of the top five lowest UM states as well as four of the top five highest, they all have some type of programs. But I would note that perhaps the IRC numbers with respect to no fault states have a little bit of an issue accurately capturing the UM rate. I really have a hard time believing that New Jersey is under 5% uninsured motorist. It's got to be triple that. The top five with the highest rates, Michigan, Mississippi, New Mexico and Tennessee four of them they all have programs. Two of them have database programs, two of them have the web services program. Web services is alternatively referred to as online verification (OLV), but the bottom line is the majority of states with above average UM numbers have database programs.

What are the problems with the database programs that most states run? Well, it's the same problem any database has, which is the data that's in the database becomes dated the second it is uploaded to that database. So, that's an issue, number one. Number two is simply matching motor vehicle registration records with insurance coverage issues is a surprisingly complicated endeavor. It's not that easy. It sounds easy, and I can't tell you how many people outside of this arena will just say, well why don't you just have the insurance companies report data and match it up with the DMV registration and you'll know who's uninsured. It's not that simple at all. Other problems are that these database programs are relatively speaking in the IT arena, very old and a lot of them aren't even serviced anymore and the software's not being serviced anymore. So, they're kind of stuck in time. The bottom line with all the data is that there's just no proof that they actually reduce UM rates.

A subset of database programs are what are called transactional databases. And I'll kind of skim through this because this is just more detail. But, some of the iterations of a database was well just tell us when there's a cancellation and a new business and through collecting that data and matching it up with registration records we'll figure out who doesn't have insurance. But my gosh, it creates so many problems. Typically, people will buy new coverage today to cover them starting at some point in the future, like a week or two weeks. So, the business will get reported immediately to the DMV but then the cancellation comes in two weeks later and that cancellation will actually cancel out that new business that hasn't even kicked in yet. So, basically the transactional database, there are a whole host of problems beyond even those that just your usual database have.

What are the alternatives to a database? So, of course you have increased enforcement efforts, and mandatory fees that cannot be reduced and increased law enforcement presence at courthouse. About 10 years ago, in my hometown of Chicago one of the two major city newspapers put a reporter out in the parking lot of a local courthouse, took pictures of people who were going to court, had their license suspended for not having insurance or what have you. There were pictures of them getting right back in their car and driving off to work. And they did a daily newspaper article every day with those pictures on them for like a week. Of course, the local law enforcement felt compelled to respond to that. So, then they increased the law enforcement presence. But everybody understands when the heat dies down those police officers will be moved elsewhere and it'll go right back to what it was before. An interesting project was started in Indiana – previously there in Indiana there was an uninsured registry where people who were identified as driving without insurance were placed on a registry

basically and subject to random verification requests over a period of five years. But, the American Civil Liberties Union (ACLU) stepped in and interfered.

Another interesting program is the Oklahoma Temporary Motorist Liability Plan. If you were pulled over and you did not have insurance they would actually take your license plate off your vehicle, automatically enroll you in pool coverage and then when you went to go collect your license plate from the police station, they would hand you a bill for however long you didn't have coverage. I'm not actually sure if this program is still in place because Oklahoma has since moved to a web services program but it was certainly a unique take on things. Ms. Kilgore already talked a little bit about no pay no play laws which simply prohibits uninsured motorists from suing insured motorists to collect on economic damages, basically pain and suffering. The most recent state to adopt no pay no play was Indiana. We're at 11 states total. Ms. Kilgore also mentioned that they did do a study that no pay no play legislation results in a statistically significant drop in the UM rate. The great thing about no pay no play is there's no enforcement expense. It's self-executing. Regarding OLV and web services, this is the wave of the future for enforcing compulsory auto insurance laws in the country. So, as a result of those deficiencies with databases that I mentioned, the insurance industry got together to develop web services, OLV to remedy those deficiencies. Web services provides instantaneous verification of coverage at any particular time that you need it. Whether it's on a traffic stop at the side of the road, or with a DMV clerk that's attempting to register or renew a vehicle and it gives you an instantaneous answer as to whether or not that person has insurance.

You can also schedule it to do ongoing verification, you know every month, every six months because, everybody knows when you go in you register your vehicle, you buy the coverage the day before, or even on the way to the DMV. You get your card, you get your papers, you show the state in fact you do have insurance at that moment. So, they go ahead and renew your registration. And then you call up the insurance company within the hour and get all your money back or most of your money back. This addresses that by a setting up periodic reviews to make sure that you're actually maintaining coverage. How does this system actually work? Four data elements are inputted into the system and sent directly to the insurance company. It basically uses the cloud to send a query directly to the insurer that you're attempting to verify coverage with and that information is provided to the insurer and then it's up to the insurer to say yes there is coverage on this vehicle or no there is not coverage.

In order to provide those four data elements it was hoped that insurers could get away from book of business reporting to the states but that's not realistic. So, insurance companies in web services states continue to report book of business to the state so that they are able to create what we call a pointer file, which basically tells the system which insurance company to ask to verify coverage against. Because a lot of times people don't want to input the data, type it in on the side of the road, which I understand. People don't have their insurance ID card with them, I understand that, so the book of business, the pointer file helps alleviate that gap. And then finally, there are variations of the program where you can broadcast to see if you don't know who the carrier of record is, you're able to send out certain data points to find coverage for that person. How much does it cost? So, it's an open-source model. It was created via the insurance industry and basically just turned over to the jurisdictions and said here this is the better way to go. So, there's no cost to using it. There is a setup cost and states can either build it in house with their own IT personnel or retain a vendor who will run a system for them and based on the numbers that I've heard from various DMVs, the program more than pays for itself. Who uses all OLV's? You saw the map earlier but here's the list of states. And again, the trend is to move off of a static database which is a dated system, to OLV which is much more dynamic. What conclusions can we draw from this data? The IRC numbers suggest traditional database

programs have little effect on UM rate. Targeted enforcement is probably a better way to go, but if you're going to do a comprehensive system, OLV is certainly superior to database programs.

Andrew Kirkner, Regional Vice President, Ohio/Mid-Atlantic Region at the National Association of Mutual Insurance Companies (NAMIC), thanked the Committee for the opportunity to speak on the important topic of uninsured motorists. During my comments, I want to address two things. I thought it might be helpful for the committee to understand a little bit about why insurance is expensive, specifically auto insurance. I think anyone that has taken a look at uninsured motorist rates would agree that cost and affordability is at least a part of the equation where we see higher uninsured rates. And I'm going to do that in the context of a white paper that NAMIC has coming out probably in the next two weeks which outlines some of those cost drivers. I know in your states when you have hearings on affordability or availability, cost drivers are something that comes up. So, hopefully the paper can serve as a resource to you. And then the second item I'd like to touch on very briefly is to return the committee back to the Fairness for Responsible Drivers Model Act (Model) that is currently pending before NCOIL. So, to dig into the forthcoming NAMIC auto insurance cost drivers paper, I have bad news. And the bad news is that insurance is expensive and the price of auto insurance is rising and there are a number of items that are causing that and I'm going to briefly touch on those, but the good news is hopefully we have some solutions to offer the committee as you do your work here and head back into your states.

So, why is auto insurance getting more expensive? The first thing is there are more drivers on the road so there are more opportunities for risk. The United States population has grown approximately 10% in the last decade. There are 230 million licensed drivers on the roads, which is a pretty wild statistic and before preparing for this testimony, I did not realize it was that high. The second item is that there's riskier driving and there are consequences that come with riskier driving. So, data has shown that despite overall miles driven decreasing over the last year and a half during the pandemic, fatalities have actually increased by about 7% which is a pretty harrowing statistic. I believe 2019 there were more than six million crashes and that's a number that has increased year over year in nine of the last ten years. That probably ties back into the fact that there are more drivers on the road but it certainly speaks to the safety in terms of how people are driving. There were 38,000 traffic deaths in 2020. That's the highest number since 2007. Again, a pretty sobering statistic to consider. Finally, distracted driving – there is more distracted driving with there being nearly one million distracted driving related incidents in 2019 alone. The next cost driver is what I've sort of described as shiny new objects. If you see a new car commercial, the majority of the commercials are spent on sort of the bells and whistles. Whether that is back up cameras in bumpers or flip down tailgates and that tailgate is exponentially more expensive than an F-150 tailgate from 25 years ago. It's got sensors in it and it's got various items that make it more expensive but that kind of cuts two separate ways. Not only does it have those items but manufacturers rightly or wrongly are becoming more proprietary in terms of replacement parts and what can go back into those vehicles.

And then you have labor. Gone are the days where you could take any car into your local garage and they can get it fixed for you and get it back out the door. It makes sense that the more specialized parts are the harder it is to source labor and so costs have increased there as well. We've also seen a significant uptick and in increased medical costs. From 2010 to 2017, medical care costs generally are up 30% and hospital care costs are up 45% - huge increases. And certainly, that impacts auto insurance carriers as they pay out claims related to medical costs. Finally, other cost drivers are weather and fraud. We've seen an uptick in catastrophe claims and weather related claims - a 4% uptick over the last decade, which may not seem like a huge number but when you combine that or compound that I should say with the other cost

drivers it's certainly significant. And then auto theft is also a large cost driver. Statistics show a 9% increase in 2019 and I keep using 2019 because that's the last year of available data for some of these statistics.

So, that is why auto insurance is increasing, or appears to be increasing. Again, that's a national level overview and certainly state to state there are varying reasons but let's bring that back to uninsured motorist coverage. I was listening to the earlier panelist and Michigan was mentioned as one of the higher uninsured motorist rates in the country. And we have Sen. Lana Theis here who worked on a comprehensive auto insurance reform. I think reasonable minds on either side of the aisle on all ends of the spectrum can agree that cost is at least one source of uninsured motorist coverage. It's a dangerous game to try to project out but if you had to project what will happen to that uninsured motorist rate in Michigan, I think as insurance becomes more affordable you will see that number trend down somewhat. So, that's certainly the theory and it's being put to test in Michigan and hopefully it's the goal of NCOIL and certainly each member here to lower that uninsured motorist rate and I guess the accommodation would be to lower the cost of insurance.

So, how can we fix it - how can you go back to your states and help try to lower the cost? The first thing I would suggest is read the NAMIC paper and do everything it says. But short of that, we have some more targeted suggestions. The first one would be the instant verification or OLV verification, and education and enforcement are absolutely critical to lowering uninsured motorist rates. The second is continued tort reform efforts. Part of what we've seen in the increase in auto insurance candidly is a broader conversation around social inflation. I'll leave that there and I'm happy to answer any questions there. The third is right to repair laws - making sure that consumers have abilities to repair vehicles in a more cost effective sense and I should say, insurers and policyholders. And then finally, and I'll close with this, you've heard both of the earlier panelists mention in a different context the Model that is currently pending before NCOIL that would, in our view, help decrease the uninsured motorist population. In short, if you haven't heard of the Model before, it would prohibit illegally uninsured motorists from receiving non-economic damages. In other words, it would stop those drivers from receiving windfalls and getting the benefits of a system in which they do not participate. I think from a fairness standpoint, that makes a lot of sense but it's not lost on me that I'm in a room with folks who have to go back and continually get the mandate of the people through election. So, I was happy to hear from IRC earlier that it also polls well - I think two thirds was the figure that was cited of folks supporting similar efforts. I'll end there and I would reiterate NAMIC's support for the Model and certainly would request your support as well.

Sen. Paul Utke (MN) stated that as I'm listening to all this I'm just looking at the title of this section and it was you know efforts to lower the uninsured motorist population and I think we heard a lot about trying to collect the data and various things and I was hoping there was going to be more on how to actually reduce that number. There's been a couple things that are brought up and number one, how do you institute personal responsibility into the driver and the owner? Because we talk about the high cost of insurance but, if you're a responsible person and have a good insurance rate and everything like that, I mean I look at my insurance and I think it's pretty darn cheap for what I drive and what it costs. But you've got a lot of people on the other end, the ones that end up being the uninsured because they get themselves in trouble with their driving habits, or lose their driver's license and get caught without insurance, or without a license, then goes their insurance. So, it kind of goes full circle. How do we get to that personal responsibility? I think education and enforcement are going to help that. The no pay no play laws I think is a big deal but that's just one of the things. I think we all know what the problem is, but how do we get to the root of it and change people's habits?

Mr. Kirkner stated that in many ways we're fighting a losing battle with human nature in some context but I think more broadly speaking a healthy and competitive insurance market keeps rates as low as possible. Insurers are unique. We are asked to price a product before we know what it costs. And so, as part of that calculus we have to figure out what an individual's risk profile is before we sell them a product. So, I would say anything that you can do to allow insurers to price risk more accurately and then to go out in the marketplace and compete on price will help the consumers and drive rates lower.

Mr. Hageli stated that I think you do that by a sum of everything that the speakers have touched upon. I think enforcement does work. I think it's a cultural thing. My home state of Illinois did not have any type of program and everybody knew what was going on. Everybody knew that you could buy coverage right then and there, get your car registered, then cancel it. Everybody knew that. But now Illinois has adopted an OLV system and it's going to take time to change that culture, that mentality of I got this smartphone that cost me \$100, I got a car, I can afford it, I just don't want to pay for it. So, I think it's going to take time but I think it's doable.

Rep. Jonathan Carroll (IL) stated that I am glad to hear about my home state of Illinois because it seems like no one here is from Illinois. I have a question about the Model you were talking about which is very interesting about how uninsured motorists can't go after insured motorists. I'm going to guess that in the state like Illinois where the trial lawyers have a lot of power, that they're not going to love that. Is that sort of a fair perception of that? Mr. Hageli replied what do you think? Rep. Carroll stated that I think it's a great idea and I would be very curious to look at it in Illinois but I think the problem is, it's going to be fighting an uphill battle to begin with. Mr. Hageli replied yes, absolutely but we're ready to fight that battle. Rep. Carroll stated that I wish you luck and you should come and see me about it because I'd be interested to have more of a conversation but I know in a case like that it's going to be a real uphill battle but I like the premise of the idea.

Mr. Kirkner stated that I think the Model before NCOIL does thread the needle a little bit. So, what it would do is prohibit the collection of non-economic damages, that pain and suffering element. We have some trial lawyers amongst the membership here today and that issue is not going to I think neutralize trial lawyers and their opinion of the Model but I do think it's a good job by NCOIL to at least try to thread the needle a little bit to say you can still collect economic damages but if you're not participating in the insurance system which is against the law to do that in 48 states, then you should not have the benefits of a system that you are not paying into and so, I think it sends a clear message. I think education will be a key element. Letting folks know that, look if you're driving around without insurance, you're going to be in a tight spot when you get in an accident that's your fault. I think it sends a strong message and it would be important for NCOIL to do. Rep. Carroll stated that I fully agree with you, I'm just saying that I know what I know, and I know that as soon as you limit the ability to take something forward, it's going to create those challenges. So, if you guys have an idea of how to do that, I'm all ears.

Rep. Chad McCoy (KY) stated that with regards to the Model you're talking about, you said when they're in a wreck where they're at fault, and if you could clarify that because I was hearing it to be if I'm not at fault but I'm also not insured, so I'm a poor person and I couldn't afford coverage I get hit through no fault of my own, that's when I'm limited is what I was understanding. So, if you could just clarify that I'd appreciate it. Mr. Hageli stated that I may want to return to the Model to give you an accurate answer but I believe that the Model would prohibit the collection of non-economic damages across the board. But it does have two exceptions including where a driver is injured through intentional conduct, through a DUI, and I believe there's some additional

exceptions. So, it would be an across-the-board prohibition to your point but there are exceptions. Rep. McCoy stated but isn't insurance already excluded for those under the crime rule and intentional conduct? So, the insurance wouldn't apply regardless. Mr. Hageli replied I think there's some additional exceptions, but I'd have to get back to you on that.

SURFSIDE COLLAPSE: IMPLICATIONS FOR THE FUTURE RELATIONSHIP BETWEEN PROPERTY INSURANCE AND BUILDING STANDARDS

The Honorable Greg Serio, Partner & Managing Director at Park Strategies and former Superintendent of the New York Department of Financial Services, stated 40 years ago, about a month separated two of the three largest building disasters in the United States. They were different in their respective natures. One was a building collapse and the other was a failure of a skywalk inside a hotel but both events managed to have a very similar impact in terms of the lives lost or irreparably changed and in terms of their impacts upon the insurance market and the building construction community in both Kansas City and in Florida. And in fact, it's curious to - to note that with the Surfside Condominium collapse actually, there were fewer fatalities there than in the skywalk collapse in the Hyatt Regency in Kansas City. In that case, two skywalks on the second and fourth floors broke loose, pancaked on one another and then collapsed onto a dance taking place in the lobby of that hotel.

The reason I bring this up is that NCOIL held a series of hearings on the intersection of insurance and building codes to determine what if any action state insurance legislators should have taken, or take to essentially leverage insurance and public policy to compel needed changes in building codes and construction methods. This action by NCOIL in its early days back in 1981 helped to establish its interest and its role in a wide variety of issues beyond the traditional four corners of insurance legislation. Senator John Dunne from New York who was the Chairman of that task force at the time, he immediately came to my mind after hearing about the collapse of the Surfside Condominium. Once again, it was a calamitous engineering event with a devastating human and property cost. It created the nexus that brought NCOIL to the Hyatt Regency four decades ago. In the case of the condominium collapse, it's a question of the engineering oversight of an aging structure impacted by natural and manmade forces and clearly suffering from deferred maintenance issues. As for the Hyatt, it was a brand new structure that failed on its first big stress test, the cause of which was determined to be human error in the engineering. Irrespective of the new construction or the aging infrastructure the role of insurance and insurance legislators was clear - overseeing the covering of the country's construction activities and using their collective influence to understand why disasters of insured structures occur and what we need to do to limit their occurrence and/or their impact in the future. This committee understands that past and is to be commended for assembling our panel here today to see where we have come over the past 40 years and where we need to go from here.

We were also going to be joined by Dottie Mazarella of the International Code Council (ICC), she's known to many of you here at NCOIL and she and I had worked together in insurance regulation back in the day. She unfortunately had a scheduling conflict and couldn't be here but she left behind a three page memo on what the ICC has found in the aftermath of the Florida disaster including and there's a number that is striking that more than 70 Florida communities have not adopted minimum building or property maintenance codes for existing structures. Not talking about new construction but talking about for existing structures. The issue of existing structures and the codes they operate under clearly provides an important interface for insurers, property owners and managers, and public officials and the ICC on her behalf looks forward to working with NCOIL on this issue as we go forward. So, now I'd like to turn it over to Daniel

Dean, Risk Mitigation Officer at Bridgepoint Global Property Consultants, to talk about some of the risk mitigation issues that arose out of the Florida collapse.

Mr. Dean thanked the Committee for the opportunity to speak and stated that Bridgepoint specializes in bringing solutions to manage large catastrophic claims so we do a lot of hurricane work where we come in and do damage assessments and apply building science to understand the magnitude of damages. So, throughout my course of work, I work a lot with different engineers, different companies who are used to responding to disasters especially with a lot of hurricanes. We are based in Florida and it's one of our biggest issues and now here with Surfside it's raising even more concerns which is really rippling through the insurance community as well as the reinsurance markets and I think it's interesting to note that there have been some studies done that have really brought to light two different issues. So, on one side we have what are the implications of how the laws that govern how inspections are posted and also things with the bylaws with the condominium associations.

And then on the other hand it's looking more at the physical structure and how do we capture that information from an engineering standpoint. This is a very serious issue and we need to understand that there were a number of people who died in this incident, I believe 98 and the thing really to look at and to realize is that this is a situation that could have been avoided, and should have been avoided, and there was data and information that was presented to Board Members of this condominium association. Engineering reports were done and the engineering reports were complying with regulations that applied to Dade and Broward Counties. In those two counties, condominium associations of more than three stories are subject to doing a 40-year inspection and that 40 year inspection, the purpose obviously is life and safety preservation to make sure that the building is sound.

And unfortunately, we're dealing with a building that was 40 years old, which brings to light when should these inspections be carried out and we had a task force that came together with various engineers from Florida and there was another task force through the Florida Bar Association and looking at the situation, recommendations were given and one of the recommendations that came out was to establish statewide minimum structural inspections for all existing buildings over a certain size throughout Florida. I think that's fairly obvious but getting into the minutia of it you can see that there's specific requirements that need to be looked at. One of them is the forty-year inspection. The proposed recommendation was to move that to a thirty year and also using that thirty year to establish how often the reserve studies need to be done. Digging in further, in the case of Champlain Towers this is a building that's located directly on the beach and if you're not from Florida, what you maybe don't realize is that we're kind of in a sweatbox for most of the year. It's very humid and it's a hostile environment for buildings. It's a hostile environment for concrete and rebar and most of these buildings that are in South Beach, that are on our coast, are concrete buildings with either post tension or rebar construction.

And in looking at Champlain Towers what they have found is that this is a building that was compromised by those conditions. This is a building that needed to have more attention done which also brings up another issue that is key in this situation, which is bringing forth some way of legislating or some new laws that will bring to attention, how do we manage the maintenance? How is the maintenance reported out to the members of the condominium association? So, it really is bringing forth a lot of important items that get to be looked at right now in terms of on a local level and on a statewide level. I can tell you there are not enough engineers in Florida to do all of these inspections and what needs to be looked at is a hybrid model of capturing the data and then having engineers sign off on that data. I get to do a lot of cool things with my job. We go out and we respond to disasters, and one of the overwhelming messages that I've heard here

in this panel and this conference has been that we need to make insurance more affordable and there's a lot of tools there such as artificial intelligence and light detection and ranging such and creating three-dimensional models of these buildings.

So, with the technology that we have now, we can apply that technology to a more substantial underwriting pool and underwriting process and supply these insurance companies and the reinsurers with detailed 3D models of these buildings so that we can properly identify the exposure for the insurance market. In the current system now, it relies on information from the Boards, it relies on the broker going out and quickly putting together whatever's required from the different carriers for underwriting and the information is often not very comprehensive and it allows for the condominium associations to go out and obtain insurance. It often does not. In Florida, we really are in a situation where we're in crisis. We have over 100,000 claims in litigation in the state of Florida and we have a system that is begging for change and there are solutions out there that can be applied right now and it really comes down to disaster planning. There needs to be a comprehensive way of looking at buildings whether they are on the coast or in the interior of Florida and as you know, as we progress over the years, we've seen more and more events.

There was the freeze in Texas this past year. It was estimated that those damages were at \$55 billion and as I travel through and work on these large catastrophic losses I can't help but see an opportunity to start working now more with engineers and architects to build buildings and to influence code enforcement and new coding laws so that we are creating a more disaster resilient community which in turn is going to allow for insurance companies to understand their exposure and at the same time, protect people against having to be relocated due to disasters and it's a very interesting issue that I'm passionate about and I'm just looking forward to seeing what will come out of legislation in Florida mid-2022. With that I'm going to hand it over to Dennis Burke, Vice President of State Relations at the Reinsurance Association of America (RAA).

Mr. Burke thanked the Committee for the opportunity to speak and stated that since not all of you are veterans of NCOIL, reinsurance is simply insurance for insurance companies. It is a risk management tool that insurers use to address a variety of capital needs that are based upon the exposure they may have to a windstorm, earthquake or even liability issues. So, it is tailor made for the insurance company based upon its needs. With regard to SurfSide, I'll openly start by saying that this is not really an insurance issue. If you're looking for my conclusion, what is the insurance legislation we should pass in response to SurfSide? The conclusion is don't do anything. Do not pass insurance legislation because it's not necessary. These are structural and maintenance issues. That's not an insurance issue. It affects insurance, it will affect how insurers look at a building, and it also affects whether or not the building stands.

Going forward, stated simplistically, insurers like insuring buildings that stand on their own. Is the market going to change? Less than two hours ago there was a national underwriter article that came across in my email and that article said, who knows? They basically said, this is the type of information that insurers should be interested in but it's a great opportunity for another broker to come in, swoop through and get the account and go to a different insurer who won't require as much data. So, the jury is out like I said, do something different. The issue in Florida with SurfSide in addition to the absolute lack of maintenance was a failure of Florida's condo laws and rules which do not require them to have adequate reserves for their capital needs and it's a problem with their inspection laws. There is not an insurance legislation response, but there are issues with, if you run into a similar situation, how do you take a \$15 million assessment and get that paid? You need money up front and the condo's need to be able to borrow money and spread it over time and then in the SurfSide situation, the condo owners

refused to acknowledge that they had a problem. They wanted to put their heads in the sand and ignore it. They need to have some way to address these issues, whether it's judicial or otherwise to force an appropriate life safety response.

Lisa Miller, CEO and Owner of Lisa Miller Consultants and former Florida Deputy Insurance Commissioner, thanked the Committee for the opportunity to speak and stated that I live in Tallahassee, Florida and I am watching what's coming out of our legislature in terms of the response to SurfSide. As Mr. Burke rightfully said, there are not insurance bills that are coming out. There are bills that are coming out to hold board members accountable. For those of you that live in a condo association, I dare say that many of you probably won't volunteer to be on boards anymore because you can imagine the SurfSide board members, their lives have been ruined. I can't even imagine how they spend their days. There's proposed legislation that would make it a felony if a board member takes a kickback from a vendor. I'm sure you've heard in your respective states that board members do business with vendors that will kickback some of their fees.

There is legislation to take all of our data and put it in one place. Kevin Guthrie, our state emergency manager, he is an amazing American. He is Florida's emergency manager and spent 47 days in SurfSide, every single day with the Mayor and his biggest frustration is there's no centralized database of our condominium association buildings in Florida. Every condominium association that has what's called a declaration of condo, which is not to be confused with the declarations page of an insurance policy, those are filed in the individual clerks of court in every county. We have 67 counties. So, there was no way possible for us to even find out how many buildings are in the same shape as SurfSide. To say that our condo market has been ruined by this is an understatement. We have about seven carriers in our state that write 90% of this business and for the sake of perspective, the Florida realtors estimate there are 900,000 condo buildings that are over 30 years old.

So, when Mr. Dean says there's not enough engineers to go look at them, he's absolutely right. His artificial intelligence and the platform that he and his team put together is kind of a hybrid between what a building inspector does and what an engineer does. He works with engineers. I'm sixty-one years old, this kind of technology is fascinating if I may say so and it is helping so much for the condo associations that have reached out to him and others to say, "we want to know what's in our structures." And there are two types of Boards. There are Boards who don't want to know. They just don't want to know what's going on with their buildings and then there are those that do and are leaning in. What's driving those that are leaning in are the insurance companies who are saying, "I want to see all your maintenance records. I want to see your board meeting minutes to see if there were discussions of deferred maintenance. We want to see if there are any reports of engineers you've had in the past few years." The insurance companies, the seven or eight of them that are writing 90% of this business have gotten very, very smart after this. So much so that one of the companies that writes about 2,500 of these policies, and that might not sound a lot, but 2,500 condo associations is millions of residents in those condos. And they sent letters to about 500 of them and those letters said something like this, "We appreciate your business but if you want to find insurance somewhere else, we wish you well."

So, there's not a lot of appetite right now as you can imagine. There's a little bit of skepticism about this market. We have a lot of challenges in Florida but I think that if the legislature does a few things to strengthen what happens with Board members that would help. Should there be any volunteers that want to volunteer for boards? Strengthening databases and ways to track the data of these condominium associations would be helpful and educating those that live in

these condo associations that sticking your head in the sand and trying to avoid an assessment for structural reinforcements is a ruse, it's just not the way to go. The Building Officials Association of Florida, a great group, participated with several of these task forces that have come out. They work closely with the ICC. To say that this is probably going to suck all the oxygen out of the room in our legislature is an understatement. Between redistricting and this issue, we will be very busy. And the Senator who's district this was in, Senator Jason Pizzo, the videos that he posted are fascinating and we watch them daily and he was there every single day during that tragedy.

So, for those of you from the other states that have condos, we're all happy to work with you. I can keep you posted on what's going on in Florida and can connect you to those that are involved in this from a stakeholder standpoint because you don't want this happening in your state. And for those that say this is just a onetime thing, I know how old these buildings are in Miami. If you've not been to Miami and driven along the beach, you'll see these old buildings. They're fascinating and they look vintage, but they're dangerous. So, I'm happy to work with all of you and appreciate you taking the time to listen to what we're saying. We need to know what's going on with these buildings. We need to take a proactive approach to make sure they stand up, so that folks like Mr. Burke and his members will continue to reinsure them.

Rep. Derek Lewis (KY) asked how often are these buildings being inspected? Ms. Miller stated that Miami and Broward County have a provision that 40 years and older have inspections. There are recommendations in these reports that have come out that say any building that's over 30 years old will have an inspection that can be statewide. Some counties are being proactive and doing things individually. After 20 years they'll have an inspection but I see the look on your face. You're sitting there thinking, you know we have people come into our homes what every three or four years and check our water and heater or whatever. It's just amazing to me that some folks think that inspecting a building every 20 years is acceptable but I'm not sitting as an elected official. Rep. Lewis stated you talked a lot about taking a proactive approach and I think it starts off with the inspections and I appreciate your insight. Mr. Dean stated that the ICC also is looking for uniformity of it. So, it's not only a question of whether they inspect, and when, but the fact there's no set schedule for anybody so in the same state you'll have a variety of dates, if they do it at all. And of course, without uniformity they may or may not be happening and you have no idea what the standard might be from one community to the next.

Mr. Burke stated that it goes to the vintage of the building and the structure particularly buildings that may have been repurposed from a commercial structure to a residential structure. That's the other thing, that it wasn't originally built to be a residential structure. So, it goes to the vintage and the nature of the construction and where they're located. If you go from Florida to Long Island in New York, you'll get the same exposure – a lot of wind, a lot of water, a lot of sand and concrete buildings right on the water. They may not be condos but they're rental apartments, they are converted commercial structures and things like that. You really have to look at the nature of the exposure regardless of what title might be on it.

DISCUSSION ON SAFETY AND INSURANCE REQUIREMENTS FOR ALL TERRAIN VEHICLES (ATVs)

Jon Schnautz, Regional Vice President at NAMIC, thanked the Committee for the opportunity to speak and stated that he is happy to be attending my first NCOIL meeting. This is very much in the category of an emerging issues kind of discussion. What I'm going to talk about very briefly today are off highway vehicles and some of the issues that can happen at the intersection of those and insurance. What are we talking about with off highway vehicles? Well, broadly these

are as the name implies vehicles that are not intended to be used on public highways, they have an engine and then within that broad description three different categories.

All-terrain vehicles or ATV's it's things that you basically straddle and have handlebars. I think everybody's kind of visually familiar with those. What are called recreational off highway vehicles, these have bench or bucket seats, more auto type controls, go up to about 30 mph. And then the third category are what are known as utility terrain vehicles, UTV's. These are, if you know what a mule is, kind of similar to that. It has a seat, it's mostly for cargo. That's kind of the big picture of the category of things we're talking about and just in the interest of describing the complexity of something that sounds very simple, there are a couple of national trade associations for these OHV's. One of their websites has a fifty-state comparison of laws and it's got 14 different categories of separate things that states regulate all the way from whether they have to be registered, and whether there's an age limit. The tiny sliver of that that I want to talk about today, is just around insurance and public road use of these.

Why talk about this today? Well, this is a growing market. Why is that? I don't know exactly but I think part of it could be, kind of the growing interest that may or may not be sustained in outdoor recreation that is kind of happening everywhere, partially driven by COVID. Just to kind of go into some of the numbers. I need to correct something a little bit on that statistics as you see a market value of \$20 billion, that was actually a 2018 number, but if you just do the math on that, basically the projection is that in about six years this market is going to increase by about 40%. So, that's a pretty big growth spurt and it's all fun and games until someone needs coverage. With all good fun comes risk. There are some federal statistics from the consumer product safety commission on injuries and deaths from these. There are about 85,000 injuries in a year and roughly 900 fatalities related to OHVs. The interesting thing about the fatalities statistic is that these are not intended for highway use, and the manufacturers are very explicit about that more than half the fatalities occur on public roads. So, there is clearly some public road use of these going on. Move forward with some good news on this, there is a market response going on in the P&C market. There are insurers that offer coverage for these, either as a rider to homeowners or farm and ranch policy, or standalone.

So, the development of an insurance market around these would come with all the usual questions. Should coverage ever be mandated? If it is mandated, under what circumstances? What limits? What other ancillary coverages might be included in that? I think going forward an issue is that there is going to be a lot of definitional things that will have to be worked there that would go to the specifics of when coverage would be required, if ever. Some examples include for those of you who aren't familiar with kind of the emerging places where this might be an issue, West Virginia and Kentucky both have these extensive trail systems that are very popular and they sort of rely on limited use of public roads or crossing public roads to work, because they're very extensive. Something interesting I found out from one of my states, New Mexico, is that a question came up with their department of insurance about a month ago, just out of the blue, and had nothing to do with preparing for this presentation. New Mexico is one of many states that generally prohibits these on public roads but allows for local options otherwise.

So, a locality can say, "yes, you can use them here." Well, apparently New Mexico already has a requirement that if they are used on public roads, they are subject to state minimum liability for auto at exactly the same limits. Frankly, I'm not sure that anyone knew that because when we had the conversation with the department it was kind of an ah ha moment. So, there's probably kind of a public education role here too going forward in terms of where all this might be headed from NAMIC's perspective. This is something where we are still in the stages of kind of evaluating and looking at what a proper policy might be here that would help inform your

discussions if you want to look at this issue further. Probably, the best place to start is whether it's appropriate in situations where these are being used on public roads to subject them to some kind of minimum liability requirement when they start to cross over into things that look like more what cars do and start interacting with other traffic. The only other thing that we would say on top of that is, whatever you all might decide to do here in terms of future discussions, it's important to provide as much flexibility for the market to meet this need across the country in different ways.

ANY OTHER BUSINESS

Rep. Rowland stated that one topic that's been brought up to my attention is that NCOIL a few years ago passed model legislation around transportation network companies (TNCs) and how we regulate them and what insurance coverages are for them. But since that time, services like DoorDash, Grubhub, Uber Eats and have popped up. So, I would like the Committee and those present here today to think about whether this is an issue that you think we need to address. Please send any thoughts to me or NCOIL staff.

ADJOURNMENT

Hearing no further business, upon a motion made by Sen. Utke and seconded by Sen. Bob Hackett (OH), the Committee adjourned at 4:15 p.m.