

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
PROPERTY-CASUALTY INSURANCE COMMITTEE
DUCK KEY, FLORIDA
NOVEMBER 21, 2008
MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee met at the Hawk's Cay Resort in Duck Key, Florida, on Friday, November 21, 2008, at 10:15 a.m.

Sen. Robert Dearing of Mississippi, co-chair of the Committee, presided.

Other members of the Committee present were:

Sen. Joseph Crisco, CT	Assem. William Barclay, NY
Rep. Carl Von Epps, GA	Assem. Joseph Morelle, NY
Sen. Ralph Hudgens, GA	Sen. Keith Faber, OH
Rep. Ron Crimm, KY	Sen. David Bates, RI
Sen. Ed Gaffney, MI	Rep. Brian Kennedy, RI
Sen. Alan Sanborn, MI	Sen. William Walaska, RI
Rep. George Keiser, ND	Rep. Charles Curtiss, TN
Rep. Frank Wald, ND	Rep. Gini Milkey, VT
Rep. Donald Flanders, NH	Del. Harry Keith White, WV
Sen. Carroll Leavell, NM	

Other legislators present were:

Rep. Greg Wren, AL	Sen. Lee Yancy, MS
Sen. Vi Simpson, IN	Rep. Jay Hottinger, OH
Rep. Robert Damron, KY	Rep. Ron Peterson, OK
Rep. Steven Riggs, KY	Sen. John Sparks, OK
Rep. Arnold Simpson, KY	Sen. Steve Southerland, TN
Rep. Susan Westrom, KY	Rep. Kathleen Keenan, VT
Rep. Charles Kleckley, LA	Sen. Frank Deem, WV
Rep. Linda Scheid, MN	Sen. Jeffrey Kessler, WV
Sen. Michael Watson, MS	

Also in attendance were:

Susan Nolan, NCOIL Executive Director
Candace Thorson, NCOIL Deputy Executive Director
Mike Humphreys, NCOIL Director of State-Federal Relations
Jordan Estey, NCOIL Director of Legislative Affairs & Education

MINUTES

After a motion made and seconded, the Committee voted unanimously to approve the minutes of its July 11, 2008, meeting in New York City.

SUBCOMMITTEE ON NATURAL DISASTER INSURANCE LEGISLATION

Assem. Barclay, vice chair of the Subcommittee, said the Subcommittee had heard reports regarding pending state and federal activity, an NAIC mega-catastrophe plan, and state tax incentive initiatives.

He said legislators had received information regarding Institute for Business and Home Safety (IBHS) efforts to establish a new disaster research facility similar to the testing facility run by the Insurance Institute for Highway Safety (IIHS). Assem. Barclay also said that legislators had expressed strong interest in continuing their work as a Subcommittee and had adopted two Subcommittee-specific charges that the full P-C Committee would discuss later in the meeting.

NATIONAL FLOOD INSURANCE PROGRAM

Ed Pasterick of the Federal Emergency Management Agency (FEMA) said Congress had extended the current program until March because lawmakers could not reach consensus on controversial reform bills passed by the U.S. House and Senate. He said FEMA was most interested in Congress forgiving the flood program's multi-million dollar, post-Hurricane Katrina loan from the U.S. Treasury—since, Mr. Pasterick commented, it was unlikely that the NFIP could repay it.

Mr. Pasterick said it was uncertain what impact the incoming administration would have on FEMA and the NFIP, though he acknowledged growing interest in divorcing FEMA from Department of Homeland Security (DHS) oversight.

In response to a question from Rep. Kleckley, Mr. Pasterick said FEMA had closed roughly half of the approximately 5,000 claims from Hurricane Ike and had paid out nearly \$700 million.

NAIC CLIMATE CHANGE DISCLOSURE PROPOSAL

Eric Nordman of the National Association of Insurance Commissioners (NAIC) said the group's *Climate Risk Disclosure* proposal was based on a similar framework that investor state pension organizations had developed for other lines of business. He said the NAIC plan was in its third iteration and that it asked insurers nine questions.

Responses to six of those questions, Mr. Nordman noted, would be public, and insurers would submit them to the NAIC for compilation and online posting. Responses to the three remaining questions, which Mr. Nordman described as business-sensitive, would be kept private, and insurers would submit their disclosures to their domestic state regulators. Other regulators interested in the information, Mr. Nordman said, would need to sign confidentiality agreements with the domestic regulators in order to access the data.

Mr. Nordman said that the NAIC proposal, if passed, would be phased in over time. He said disclosure requirements for 2009 data, which insurers would submit in April or May of 2010, would be mandatory for insurers writing more than \$500 million in premium. He said the threshold for the following year would be \$300 million.

In response to a question from Rep. Keiser, Mr. Nordman said that he did not believe the private data could be subject to subpoena but that the issue warranted further review. He said the NAIC had drafted the climate change questions to be in the same vein as insurer working papers that are confidentiality protected.

Eric Goldberg of the American Insurance Association (AIA) expressed concern regarding several of the questions slated for public disclosure. For instance, he said, insurers would be required to publicly speculate on climate change's impact on their investment portfolio. Mr. Goldberg said this could have unintended financial-market consequences and could result in anti-insurer litigation. He said speculative data should not be included on the annual financial statement, and he spoke to the

controversy surrounding climate change, saying that the year-to-year nature of property-casualty insurance made speculating on climate change's impact on any one year especially difficult.

Mr. Goldberg said AIA had suggested to the NAIC what AIA believed would be suitable alternatives. He said the NAIC could require disclosure on a portion of the annual financial statement that would allow insurers to submit narratives, rather than answer specific questions. Or, Mr. Goldberg said, the NAIC could collect the data via its confidential financial exam process. On a related note, he said that AIA had encouraged the NAIC to prompt insurance companies to post on their Web sites information regarding the insurers' climate change efforts. Mr. Goldberg said that such efforts could include offering new "green" insurance policies that reward consumers for driving hybrid vehicles and/or using environmentally friendly building materials, among other things.

Julie Gackenbach of Confrere Strategies, representing the National Association of Mutual Insurance Companies (NAMIC), said the Securities and Exchange Commission (SEC) already requires publicly traded companies to disclose some of the climate change information contemplated by the NAIC. She said the SEC was planning to offer interpretive guidance in response to insurer requests for such additional explanation. She cautioned the NAIC against creating a duplicative regulatory system and added that the Senate Banking Committee was examining the issue.

Sen. Dearing said the Committee would monitor the climate change discussion.

INSURER USE OF EDUCATION/OCCUPATION

Ms. Thorson overviewed insurer activity regarding use of education and occupation data and said, among other things, that although the practice was not seen to be widespread, consumers and certain attorneys general had raised concerns, and several state insurance regulators were investigating.

Mr. Goldberg said GEICO was the primary user of such data. He said that after a 28-year absence from New Jersey, GEICO had reentered the market in 2004 and, with the ability to consider education/occupation factors, in two years had become the third largest auto insurance writer in the state. Mr. Goldberg outlined the conclusions of an April 2008 New Jersey State Banking & Insurance Department report that reviewed state insurance laws and regulations and determined that use of education and occupation information was widely allowable throughout the country. The report, Mr. Goldberg continued, said that use of the data was actuarially credible.

Mr. Nordman said that state insurance departments have recognized potential for unfair racial and ethnic discrimination but appear to have little legislative guidance on how to treat schooling and employment data. He said the states that had examined the issue determined that these factors are actuarially justified, and he said that insurers that have applied to use the information have generally been able to do so.

Mr. Nordman said that a Maryland study, issued in June 2006, concluded that education/occupation underwriting and rating was objective and did not have a disparate impact on any protected class. In response to a question from Assem. Morelle, Mr. Nordman said the Maryland study found that consumers with higher incomes are less likely to file claims.

Responding to questions from Sen. Walaska, Mr. Nordman said regulators would feel more comfortable if legislators provided guidance, and he added that the NAIC had taken no position on the issue. Mr. Nordman then drew a parallel between the public policy implications of using education/occupation and those of using consumer credit experience.

Sen. Bates expressed concern regarding what he described as a “narrowing” of risk classifications and strongly urged the Committee to devote significant time to investigating the education/occupation issue at the NCOIL Spring Meeting.

Carmen Balber of Consumer Watchdog said that studies conducted by the Consumer Federation of American (CFA) and the Florida Division of Insurance found that using schooling and employment data unfairly discriminates against certain income levels and races. She said the issue was a public policy matter and that lawmakers should ban use of these factors, as legislators had prohibited consideration of race years ago.

Rep. Wald noted that insurance, by its nature, is discriminatory. Ms. Balber responded that factors that are “so clearly predictive” of race and income should fall outside the line.

Sen. Dearing said the Committee would hold a special session on the issue in the spring.

PAY-AS-YOU-DRIVE AUTO INSURANCE INITIATIVES

Ms. Thorson said that some insurers have begun offering optional pay-as-you-drive plans, in which an insurer attaches a device to a consumer’s vehicle that tracks his/her miles driven. She said the plans correspond to the nation’s growing interest in fuel efficiency. She noted that consumers had raised concerns regarding the plans and that California had actively debated the issue.

Ms. Balber said Consumer Watchdog, based in California, strongly supports mileage-based rating but worries over the insurance industry’s interest in broadening use of pay-as-you-drive mileage devices. For instance, she said, Progressive offers a policy in six states that also tracks how often a person brakes and what time of day he/she drives, among similar factors—information that she said would be subject to subpoena in civil and criminal cases. Ms. Balber offered examples of why, in the opinion of Consumer Watchdog, tracking such information is misleading and unfair. She added that tracking devices also raise privacy concerns, as they could monitor where a consumer is at any given time.

Legislators and Ms. Balber discussed items including rural versus city driving and the voluntary nature of pay-as-you-drive programs. She said, in part, that a better way to monitor mileage would be for insurance agents to view their clients’ odometers before and after policy inception.

Sen. Hudgens questioned whether Progressive’s program could track posted speed limits and not just driving speed. He said there was great difference between driving 65 miles per hour in a 75-mile/hour zone and driving 65 miles per hour in a 35-mile/hour zone. Mr. Goldberg said he would need to investigate that issue.

Lynn Knauf of the Property-Casualty Insurance Association of America (PCI) said the pay-as-you-drive approach was not new. She said a Texas law specifically allowed insurers to offer such plans; that laws in other states did not prohibit them; and that there had been efforts in Georgia, Oregon, and Vermont to encourage pay-as-you-drive programs in order to more accurately capture driving behavior.

CROP INSURANCE REFORMS

David Eppstein of the National Association of Professional Insurance Agents (PIA) said the federal crop insurance program began in the 1930s during the Dustbowl and that it responds to the private market's unwillingness to write multi-peril coverage due to its high risk concentration. He added that a few private insurers do offer hail-only coverage and that crop insurance is available in every state.

Mr. Eppstein said the federal program expanded significantly in the 1980s, resulting in the crop insurance system that exists today, and that Congress had enacted important reforms earlier in 2008 that would take effect in 2009. A critical component of the new legislation, he said, related to anti-fraud laws that try to curb crop insurance rebating schemes. An example of such a scheme, Mr. Eppstein explained, is when a group of farmers unite to form an insurance company and then offer potential insureds discounted rates, or other benefits, if the insured agrees to buy the farmers' crops. He said that state legislators could contribute to this antifraud effort by making sure that their states have appropriate anti-rebating laws.

Mr. Eppstein distinguished the federal multi-peril crop insurance program from the National Flood Insurance Program (NFIP), calling them "two different creatures." He said the U.S. House and Senate agriculture committees have jurisdiction over the crop insurance system, which is overseen by the Department of Agriculture through the Risk Management Agency (RMA). By contrast, he said, the House Financial Services and Senate Banking Committees are responsible for the flood program, which is administered by FEMA.

The multi-peril crop insurance system, Mr. Eppstein commented, is "immense," covering more than 270 million acres across the country, while the NFIP's reach is far more limited, he said. He stated that an insurance agent selling crop insurance has a far greater workload than an agent selling flood insurance because crop insurance requires ongoing interaction with farmers regarding their crops, yields, and insurance needs. NFIP coverage has fewer variables, he added.

Regarding model legislation, Mr. Eppstein said NCOIL might discuss the control-of-business provisions included in the new federal reforms. These provisions, he said, aim to reduce conflicts of interest by limiting how much of their own crops farmers can insure—prohibiting growers from insuring more than 30 percent of their own crops. He said that some states, such as North Dakota and Nebraska, currently allow higher thresholds. Mr. Eppstein also said that legislators could expect to hear concerns regarding crop insurance adjuster licensing—an area that he said "screams for uniformity."

Rep. Curtiss said he was especially pleased that the Committee was examining multi-peril crop insurance because the program impacts every state and because crop insurance is essentially mandatory—a farmer must have crop coverage, he said, in order to participate in any other federal disaster relief when a catastrophe hits his/her geographic area. Rep. Curtiss noted that a farmer only receives crop insurance money when there's more than a 50 percent crop loss. The problem, he commented, is that most adjusters are from out of state and manipulate their adjustments so that a farmer is recorded as having less than a 50 percent loss. He said this happens even when the actual damage is far greater.

Rep. Curtiss expressed strong support for standardized adjuster licensing, noting that some states do not regulate crop insurance adjusters at all and other states do so inconsistently. He said NCOIL could do a great service to farmers around the country by working to develop model legislation that would provide uniformity.

Rep. Wald discussed instances of crop insurance fraud in North Dakota and affirmed the national importance of the program, noting its impact on food prices. He agreed that the subject was important for NCOIL to consider.

Rep. Keiser compared illegal rebating in the crop insurance program to the legal ability, under the Gramm-Leach-Bliley Act, that financial services professionals have of offering “one-stop financial services shopping.” He said that rebating concerns extend beyond multi-peril crop insurance.

PROPOSAL TO EXPAND FEDERAL RISK RETENTION ACT

Ms. Gackebach, again speaking on behalf of NAMIC, said that the House Financial Services Committee had passed H.R. 5792, the *Increasing Insurance Coverage Options for Consumers Act of 2008*, sponsored by Rep. Dennis Moore (D-KS). She said that due to a number of concerns lawmakers had never brought the bill to the House floor. She said Congress was expected to consider the bill in the next session.

Ms. Gackebach said that H.R. 5792 would do two major things: it would allow risk retention groups (RRGs) to begin writing commercial property insurance coverage, and it would impose new corporate governance requirements on RRGs, requirements that fall in line with certain Government Accountability Office (GAO) recommendations. She said the bill also clarifies that RRGs cannot participate in state guaranty funds.

Ms. Gackebach noted that NAMIC had sent a letter to the Financial Services Committee during its consideration of H.R. 5792 that opposed the bill and outlined three primary concerns. First, she said, the bill would have created an unlevel playing field by singling out a certain segment of the industry for reform based on its corporate structure. Second, there was no national crisis, she commented, that would necessitate such “sweeping” change. Finally, Ms. Gackebach said that H.R. 5792, as drafted, could have been interrupted to include personal lines coverage in addition to commercial. She said that lawmakers had somewhat narrowed the relevant definition but that many insurers still found it troublesome.

Ms. Gackebach said that a key premise of open competition is that insurers play by the same ground rules—not that some insurers, based on their corporate structure, abide by stricter regulations. She said the NAIC had raised concerns with H.R. 5792 but that, due to general organization policy, regulators had taken a “non-support” position rather than official opposition. She called for broad regulatory reforms that affect all industry players, rather than just a certain group.

In response to questions from Rep. Wald, Ms. Gackebach said RRGs do pay premium taxes but cannot participate in guaranty funds. She said that H.R. 5792 would preserve these rules but would allow RRGs to form their own guaranty mechanisms if they so chose.

Mr. Nordman explained that the GAO corporate governance suggestions included in H.R. 5792 were based on the recommendations of an NAIC working group—and so the NAIC supported that part of the bill. He said that within the NAIC there was far less agreement regarding the rest of the proposal. As a word of caution, he said, RRGs often rely on lines of credit as part of their capital bases—and so the economic downturn may affect the RRGs’ ability to expand into coastal property coverage. He said promoting coastal insurance coverage was the impetus behind H.R. 5792.

2009 COMMITTEE CHARGES

Ms. Thorson reported that proposed 2009 Committee charges were as follows:

- examine use of education/occupation in underwriting in order to form an NCOIL position
- explore federal crop insurance developments, and establish a position as appropriate
- monitor and report on state anti-fraud activity, and establish a position as appropriate
- monitor and report on National Flood Insurance Program (NFIP) activity
- monitor credit-based insurance scoring efforts, and input if needed
- *Subcommittee on Natural Disaster Insurance Legislation*: explore options related to natural catastrophe financing, and develop positions as appropriate

Ms. Thorson said that, in lieu of the final charge regarding the Subcommittee on Natural Disaster Insurance Legislation, the Subcommittee had adopted its own separate charges as follows:

- explore proposed structures and triggers for a national natural catastrophe fund in order to form an NCOIL position
- examine state tax incentive initiatives in order to form an NCOIL position

Upon a motion made and seconded, the Committee adopted the proposed charges, as revised, via unanimous voice vote.

ADJOURNMENT

There being no further business, the meeting adjourned at 11:35 a.m.