

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
LIFE INSURANCE & FINANCIAL PLANNING COMMITTEE
WASHINGTON, DC
FEBRUARY 28, 2009
MINUTES

The National Conference of Insurance Legislators (NCOIL) Life Insurance & Financial Planning Committee met at the Hyatt Regency on Capitol Hill in Washington, DC, on Saturday, February 28, 2009, at 10:30 a.m.

Sen. Ralph Hudgens of Georgia, chair of the Committee, presided.

Other members of the Committee present were:

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| Rep. Gregory Wren, AL | Assem. Nancy Calhoun, NY |
| Sen. William Haine, IL | Sen. William Larkin, Jr., NY |
| Rep. Ronald Crimm, KY | Assem. Joseph Morelle, NY |
| Rep. Robert Damron, KY | Rep. Anthony Melio, PA |
| Rep. George Keiser, ND | Sen. Jake Corman, PA |
| Rep. Frank Wald, ND | Rep. Charles Curtiss, TN |
| Assem. William Barclay, NY | |

Other legislators present were:

Rep. Susan Westrom, KY
Rep. Barbara Byrum, MI
Sen. Neil Breslin, NY
Sen. James Seward, NY
Rep. Dan Dodd, OH
Rep. Todd Book, OH
Sen. John Sparks, OK
Rep. Brian Kennedy, RI
Sen. Ann Cummings, VT

Also in attendance were:

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

MINUTES

The Committee voted unanimously to approve the minutes of its November 20, 2008, meeting in Duck Key, Florida.

STATE/FEDERAL LIFE SETTLEMENTS ACTIVITY

Mr. Humphreys discussed federal review of life settlements issues. He said the United States Special Committee on Aging was researching stranger-originated life insurance (STOLI) schemes and other secondary life settlements market issues, including undisclosed tax

liabilities, decreased access to coverage, aggressive marketing, inadequate transparency, and proper oversight of life settlement-backed securities.

Mr. Humphreys said that Special Committee Chair Sen. Herb Kohl (WI) sent a January 16, 2009, letter to NCOIL President Sen. James Seward (NY) requesting detailed information on the development of NCOIL's *Life Settlements Model Act*. He said NCOIL responded in a January 30 letter.

Doug Head of the Life Insurance Settlement Association (LISA) and John Gerni of the American Council of Life Insurers (ACLI) said states were again active in 2009 legislative sessions to adopt and amend existing life settlements laws. Mr. Gerni said both the NCOIL model and the NAIC *Viatical Settlements Model Act* were good ways to combat STOLI. Mr. Head disagreed, however, and said the NCOIL model was doing well in the states and was the best approach.

SEC RULE 151A

Iowa Insurance Commissioner Susan Voss reported on a December 16, 2009, U.S. Securities and Exchange Commission (SEC) decision to approve Rule 151A, which she said would subject fixed indexed annuities to federal securities regulation. She said the National Association of Insurance Commissioners (NAIC), like NCOIL, was opposed to Rule 151A and felt that state insurance departments were best positioned to regulate the products and protect consumers. She said that she believed the SEC ignored the strong efforts of state insurance commissioners to regulate the products when they approved the rule. She said the NAIC had filed a lawsuit to challenge the rule and that a court decision was pending, which said that she would report on at the 2009 NCOIL Summer Meeting in Philadelphia, Pennsylvania

Ryan Wilson of the American Association of Retired Persons (AARP) disagreed with NCOIL and NAIC position against Rule 151A. He said that indexed annuity products are tied to a stock market index and are advertised to potential buyers as investments, not insurance. He said SEC Rule 151A would put in place uniform consumer protections not available to fixed indexed annuity consumers under state insurance laws. He said it was alarming that at least ten states, for example, hadn't incorporated the NAIC *Suitability in Annuity Transactions Model Regulation*. He said suitability requirements established under Rule 151A would provide uniform licensing, marketing, and disclosure standards that he believed would supplement, not supplant, state insurance regulation.

Jim Poolman of the Coalition for Fixed Indexed Annuity Products said the annuity industry had also filed a lawsuit against the SEC decision and that it would likely be combined with the NAIC suit for faster review. He said the industry was working with Members of Congress to seek an exemption from Federal securities laws.

Mr. Gerni said that if the SEC Rule isn't overturned in court or by Congress, than state legislators would need to amend existing suitability statutes to recognize a safe harbor for indexed annuities, similar to what they do with the variable annuities.

NAIC ANNUITY SUITABILITY/DISCLOSURE EFFORTS

Commissioner Voss said that legislators, regulators, and companies should ensure that consumers buy suitable products for their financial needs. She said that the NAIC, in addition to several state pilot projects, was looking at proper marketing illustrations and other suitable disclosures. She said that all fifty states enforced suitability through unfair trade practice laws. She said NAIC model suitability regulations, however, would provide additional protections for consumers.

In response to a question from Sen. Hudgens, Commissioner Voss said that products should be suitable for all potential buyers, but that there were, however, senior-specific concerns that needed to be addressed. She said the NAIC had worked with state securities regulators to develop model regulations necessary to protect seniors from the abusive use of senior-specific designations. She said insurance and securities regulators had received growing levels of complaints about these designations, which were deceptive titles used by an agent or producer to imply a misleading level of expertise to senior consumers.

Rep. Keiser asked if states had different suitability requirements for securities and insurance products and why there was a difference. Commissioner Voss agreed that suitability requirements should be the same for most of the products, because there was mutual jurisdiction among both securities and insurance regulators. She said that six state insurance commissioners regulated both securities and insurance and that they were working to advance uniform suitability standards across products.

Eric Dupont of MetLife, Inc said some states, such as Indiana and Missouri, had developed uniform suitability language for both insurance and securities products. He agreed with the other speakers and urged legislators to take up NAIC model regulations in their states, because uniformity would benefit companies, regulators, and consumers. He said most life insurance companies complied with the NAIC Annuity in Suitability Transactions Model regardless of a state's specific law but they struggled with the lack of uniformity among states.

District of Columbia Department of Insurance, Securities and Banking Commissioner Thomas Hampton said that state and federal securities regulation tends to focus on compliance, while insurance departments focus on company solvency. He said the ultimate goal of insurance regulators and state legislators should be to adopt NAIC model annuity suitability regulations into statute and promote a seamless structure to monitor compliance and protect consumers from abusive practices.

LIFE INSURER CAPITAL & SURPLUS RELIEF PROPOSALS

Commissioner Hampton, speaking on behalf of the NAIC, said the ACLI had asked the NAIC Executive Committee in a November letter to consider nine changes to certain accounting, risk-based capital, reinsurance, variable annuity, and deferred tax asset requirements as a way to provide economic relief for life insurance companies during the economic downturn. He said that the NAIC acted quickly in November and charged a Capital & Surplus Relief Working Group to quickly review the nine proposals.

Commissioner Hampton said the Capital & Surplus Relief Working Group had various technical working groups review the proposals and make recommendations. He said that, as

a result, the Working Group approved four of the proposals, rejected three, and provided alternatives for the other two recommendations. He said the Executive Committee, however, decided not to approve the Working Group's recommendations. He said that several individual states were considering and implementing some of the changes on an individual basis and that the working group would continue to look at the recommendations ongoing.

Bruce Ferguson of the ACLI said his organization's goal was to have the changes debated and approved by the NAIC in advance of 2008 reporting periods. He said life insurance companies recognized that 2008 market conditions would have a negative impact on them and that several changes to certain reserve standards could free redundant reserves to give companies more liquidity. He said that the life insurance industry was concerned about the market and felt the nine proposals were appropriate changes that would enable companies to get ahead of the curve.

Mr. Ferguson said the nine recommendations were widely recognized as overly conservative and had been under consideration at the NAIC for several years. He said some of the standards required companies to maintain redundant reserves, for example, in ways that nobody anticipated when they were originally developed. He concluded by saying that several individual states were making the changes, despite the NAIC decision not to approve them on a national scale. He urged legislators to finish the job and look at the recommendations ongoing.

Rep. Damron said that NCOIL leadership in a January 25, 2009, letter to the NAIC cautioned regulators about the timing of the proposals and urged them to take a step back. He said state insurance regulation had been successful because of the conservative statutory accounting and reserve standards. He said regulators and legislators should protect policyholders at all costs by ensuring that companies have enough reserves to pay out claims, especially in an economic recession.

Scott Harrison with the Affordable Life Insurance Alliance (ALIA) said the media and other groups mischaracterized the proposals by turning them into a false dichotomy. He said that the proposals were inaccurately cast as only benefiting insurance companies at the expense of consumers. He said he believed that consumers would benefit from financially strong companies.

NAIC PRINCIPLES-BASED RESERVING UPDATE

Commissioner Hampton reported on NAIC ongoing work to develop a principles-based approach to assess life insurance reserves. He said the project, once completed, would be the biggest insurance regulatory change in over fifty years. He said an NAIC *Standard Valuation Law* and corresponding *Valuation Manual* were close to completion, and that at least 40 states would need to adopt them in statute before the new system could be enforceable.

Commissioner Hampton said regulators would need to engage in conversations about the benefits of a principles-based approach with other regulators, consumers, and legislators ongoing because he believed there was a common misunderstanding about the regulation's intent. He said there was a common misconception that a principles-based approach would reduce reserve redundancies. He said this was not true, and that a principles-based approach

would incorporate more of a company's or product's risk characteristics when determining necessary reserves.

Dave Sandberg of the American Academy of Actuaries (AAA) said a principles-based approach would provide a more accurate assessment of any risks and that extreme 2008 financial events should have caused people to think about insurance reserves differently. He urged legislators, along with regulators and consumers, to take an honest look at companies, their products, and the nature of the global financial services market. He said older statutory accounting and reserve standards were developed without a full understanding of how they would work in the extreme situations.

ADJOURNMENT

There being no further business, the Committee adjourned at 11:40 a.m.