

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
PROPERTY-CASUALTY INSURANCE COMMITTEE
BOSTON, MASSACHUSETTS
JULY 10, 2010
MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee met at the Boston Park Plaza Hotel in Boston, MA, on Saturday, July 10, 2010, at 10:15 a.m.

Sen. Ruth Teichman of Kansas, chair of the Committee, presided.

Other members of the Committee present were:

Sen. Ralph Hudgens, GA	Assem. Nancy Calhoun, NY
Sen. Vi Simpson, IN	Sen. William Larkin, Jr., NY
Rep. Ron Crimm, KY	Sen. James Seward, NY
Rep. Robert Damron, KY	Sen. Keith Faber, OH
Rep. Steven Riggs, KY	Sen. Jake Corman, PA
Rep. Barb Byrum, MI	Rep. Brian Kennedy, RI
Rep. George Keiser, ND	Rep. Charles Curtiss, TN
Sen. Jerry Klein, ND	Rep. Craig Eiland, TX
Rep. Don Flanders, NH	Rep. Hubert Vo, TX
Sen. Carroll Leavell, NM	Rep. Kathy Keenan, VT
Assem. William Barclay, NY	Rep. Gini Milkey, VT

Other legislators present were:

Rep. Susan Westrom, KY
Sen. Dave Thomas, SC

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

PROPOSED AUTO-BODY STEERING MODEL ACT

Ms. Thorson overviewed Committee activity regarding a proposed *Model Act Regarding Insurer Auto Body Steering*. She said that anti-steering provisions previously had been included in a more comprehensive proposed NCOIL model that primarily addressed use of aftermarket crash parts. At the NCOIL Spring Meeting, she said, the Committee had separated the steering language into its own model law on the grounds that steering was unrelated to auto crash parts. She reported that the original anti-steering provisions would have banned requiring or recommending use of a specific repair facility unless a consumer asked. They were based on New York State law, she said.

Ms. Thorson stated that prior to the Summer Meeting, Sen. Teichman had released for discussion a proposed [substitute amendment](#) to the original draft that drew from Rhode Island and Virginia law. She said the substitute would ban an insurer from mandating use of a specific repair shop but would allow insurer recommendations. She said that the substitute amendment would prohibit insurer coercion, intimidation, or interference with consumer choice and would address payments to non-

preferred body shops. She noted that interested parties had submitted markup revisions to the substitute amendment.

INTERESTED-PARTY /LEGISLATOR COMMENTS

AUTO BODY REPAIR

Steven Regan of the Society of Collision Repair Specialists (SCRS) characterized insurer auto-body steering as the number one problem in the collision repair industry. He said the proposed NCOIL model was a good starting point and that it would create “symmetry” with other state approaches.

Mr. Regan also said, among other things, that body shops did not oppose an insurer’s right to recommend repair locations. What they opposed, he said, were deceptive practices, including call centers that said an insurer wouldn’t guarantee a non-preferred shop’s work or insurers that delayed a repair authorization if the work would be performed by a non-preferred facility.

Phil Mosley of the U.S. Alliance of Collision Repair Professionals agreed, adding that auto insurers should provide up-front disclosure to consumers regarding shops in the insurer’s preferred network.

AUTO GLASS REPLACEMENT/TPAs

Brian DiMasi of SafeLite Group, Inc. said his organization opposed the anti-steering substitute amendment, on grounds that it is a solution in search of a problem because the insurer network system works well.

Sen. Faber suggested that there was little difference between auto repair networks and in-network healthcare programs. Mr. DiMasi agreed, commenting that both preferred-provider systems shielded consumers from high costs and promoted quality service.

Rep. Byrum and Mr. DiMasi debated whether SafeLite phone recordings of customer calls proved that SafeLite tried to impede use of glass shops not affiliated with the company. Rep. Byrum said that although the recordings did not indicate official “steering,” she believed that in some cases SafeLite representatives took excessive time to simply confirm that a consumer had auto coverage. Mr. DiMasi said there were reasons why SafeLite might have trouble confirming coverage including, among others, issues with consumer payment of premiums.

Michael Russo of the Independent Glass Association (IGA) expressed frustration with the role of insurer third-party administrators (TPAs) in window glass repair. He described situations in which TPAs read from prepared scripts and, he commented, hindered use of non-preferred shops. He said that a focus on low pricing, as evidenced by use of TPAs and also poor quality window glass, was forcing independent shops to close their doors.

In response to IGA materials submitted to the Committee, Sen. Faber expressed concern over allegations that TPAs were directly “taking” consumers from non-preferred facilities. He said that such behavior would violate existing state anti-fraud laws.

Rep. Byrum asked how many TPAs owned glass repair companies and how many owned auto body shops. Mr. DiMasi said that between three to five TPAs owned retail glass shops in Rep. Byrum’s home state of Michigan. Regarding auto repair, Mr. Regan and Mr. Passmore spoke to a TPA-insurer connection, saying that nationally only one auto insurer had a financial interest in a TPA.

JoAnne Kron of Allstate Insurance Companies—the auto insurer with the TPA affiliation—said that the TPA, known as Sterling, was part of Allstate’s non-insurance holding company. She, other interested parties, and Committee members then discussed, among other things, how the Allstate-TPA relationship might or might not lower consumer and insurer costs, including the fact that consumers paid the same deductibles even though there were state variations in how much body shops charged insurers.

Interested parties also spoke to the existence and importance of up-front disclosure regarding how insurers settle claims, including use of TPAs.

INSURANCE COMPANY

Joe Thesing of the National Association of Mutual Insurance Companies (NAMIC) said that although insurers had submitted joint comments on the substitute amendment, as per NCOIL request, insurers strongly opposed the bill. He said consumers benefited from insurer recommendations on repairers in their preferred networks and that insurers had a constitutional right to offer such information.

Mr. Thesing spoke to state activity, saying that NCOIL action was unwarranted because 46 states had already addressed the issue and because insurance departments received few if any consumer complaints related to insurer in-network programs.

Robert Passmore of the Property Casualty Insurance Association of America (PCI) said that courts applied a three-point test to determine when government was justified in restricting commercial free speech. He said that the proposed NCOIL limit on insurer auto-body referrals failed to meet those standards.

Eric Goldberg of the American Insurance Association (AIA) echoed the remarks of Mr. Thesing and Mr. Passmore. In addition, and in response to questions from Sen. Hudgens, Mr. Goldberg and other insurer representatives said that use of preferred repair shops benefited both insurers and consumers because it promoted quality repairs and could lower repair and premium costs.

OTHER COMMENTS

Assem. Calhoun said that the proposed substitute amendment tried to fix a problem that didn’t exist and noted that a recent New York State Insurance Department study had found no evidence of steering in that state. Sen. Seward echoed her remarks, commenting that the lack of consumer complaints indicated lack of a problem.

Sen. Seward also said that a competitive market, such as existed in New York, encouraged insurers to provide consumers with fair pricing and favorable repair experiences. He said that insurers could pass along their cost savings in the form of lower premiums.

Sen. Seward then urged independent glass repairers to contact their insurance departments regarding potentially illegal TPA practices and also urged glass shops to pursue better glass safety standards by reaching out to federal authorities.

Sen. Teichman asked for the Committee's will regarding the draft substitute amendment, noting that the Committee had not discussed specific language. Upon a motion made by Rep. Keiser, the Committee determined through voice vote to defer consideration until the NCOIL Annual Meeting.

DISCUSSION OF BP OIL SPILL INSURANCE IMPACTS

Ms. Thorson drew the Committee's attention to NCOIL-compiled information regarding insurance arrangements related to the BP Deepwater Horizon oil spill, as well as regarding insurance coverages typically held by energy companies, among other things.

Alison Jones of the Louisiana Department of Insurance overviewed Department activity related to the spill. She said the Department was recommending that consumers file initial claims with BP, since the company had committed to paying all legitimate claims and had recently agreed to set aside \$20 billion to cover spill-related expenses. Ms. Jones also said, among other things, that insurance regulators had little authority over BP settlements because BP was paying people directly and thus bypassing insurer participation.

In response to Committee concerns regarding business interruption losses and BP payment mechanisms, Ms. Jones said that business interruption coverage would come into play only if the loss was due to a specific covered peril, rather than a more general reduction in business activity. She also said, in part, that the Department had not weighed in on whether the business interruption amounts paid by BP were appropriate and did not have regulatory authority over the BP captive insurer that was paying claims.

Reid Edwards of Risk Management Solutions (RMS) spoke to insurance costs and estimates. He said RMS projected insured losses from the BP spill to run between \$1 and \$3 billion and estimated that final overall costs related to the event would well exceed BP's \$20 billion fund, potentially exacerbated by an active hurricane season. He said these sums brought into question the ability of oil companies to effectively insure their operations going forward, especially since Congress was considering retroactively raising an individual company's liability from \$75 million to \$10 billion for any one catastrophe. Mr. Edwards noted, among other things, that oil-rig insurance premiums were already rising.

Dennis Burke of the Reinsurance Association of America (RAA) spoke to reinsurance impacts, saying that the industry would pay a sizeable percentage of covered insurance claims. He expressed concern over the federal effort to retroactively raise liability caps, stating that today's reinsurance premiums were based on laws in place when the contracts were written.

Mr. Burke next outlined prospects for liability litigation, saying among other things that BP and other stakeholders in the well could challenge each other in court, that shareholders could challenge the stakeholders in court, and that aggrieved consumers could sue BP or an insurer that imposes pollution exclusions, among other scenarios.

Legislators and interested parties then generally agreed that it was too early to determine whether payment from the BP fund would preclude filing an insurance claim or bringing a tort lawsuit. Rep. Eiland noted that BP was paying all legitimate claims without requiring waivers of liability, although he said that would change once the Feds began administering payments.

ADJOURNMENT

There being no further business, the meeting adjourned at 12:40 p.m.