

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
LIFE INSURANCE & FINANCIAL PLANNING COMMITTEE
BOSTON, MASSACHUSETTS
JULY 9, 2010
MINUTES

The National Conference of Insurance Legislators (NCOIL) Life Insurance & Financial Planning Committee met at the Park Plaza Hotel & Towers in Boston, Massachusetts, on Friday, July 9, 2010, from 1:30 until 3:00 p.m.

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

Other members of the Committee present were:

Rep. Greg Wren, AL	Sen. Carroll Leavell, NM
Sen. Vi Simpson, IN	Assem. William Barclay, NY
Sen. Ruth Teichman, KS	Assem. Nancy Calhoun, NY
Rep. Ron Crimm, KY	Sen. Keith Faber, OH
Rep. Robert Damron, KY	Sen. Jake Corman, PA
Rep. Tommy Thompson, KY	Rep. Charles Curtiss, TN
Rep. Barb Byrum, MI	Rep. Gini Milkey, VT
Rep. George Keiser, ND	Sen. Mike Hall, WV

Other legislators present were:

Rep. Pat Patterson, FL
Sen. William Haine, IL
Rep. Susan Westrom, KY
Rep. Peter Koutoujian, MA
Sen. Jerry Klein, ND
Rep. Brian Kennedy, RI
Sen. Gerald Malloy, SC

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

Upon a motion made and seconded, the Committee unanimously approved the minutes of its March 6, 2010, meeting in Isles of Palms, South Carolina.

STRANGER-INITIATED ANNUITIES

Rhode Island Superintendent of Insurance Joseph Torti reported to legislators on recent legal cases that exposed the practice of stranger-initiated annuity transactions (STATs). He described STATs as schemes involving single-premium variable annuities which, like mutual funds and 401(k)s, are tied to stock and bond prices.

Supt. Torti said that death benefits are offered as contract add-ons that guarantee the owner's initial annuity amount upon death if the annuity's value decreases. He said that well-performing variable annuities pay out the initial amount plus any capital gains when a named annuitant dies. He said that, because STATs target terminally ill persons, the owners know the annuitant is unlikely to live long enough to begin receiving the annuity payments.

Supt. Torti described the various players in the Rhode Island STAT transactions, including "sponsors" who put the transactions together and recruited terminally ill patients through local hospice and Catholic newspapers. He said they did so by paying the patients between \$2,000 and \$5,000 to serve as the "measured life" or "annuitant" on the contract. He said that most of these people didn't realize they were involved in an annuity contract and he showed legislators advertisements where information about the annuity was not disclosed anywhere.

Supt. Torti said that sponsors also recruited contract "owners," who would serve as the funding source for the schemes. He said that investors first deposited relatively small amounts of \$250,000 into the annuity and then later added hundreds of thousands more. He said this practice helped to avoid raising red flags that could trigger insurance company suspicion and underwriting. He said that sponsors received large commissions from the insurer for initiating such expensive contracts.

Elizabeth Dwyer, a legal officer with the Rhode Island Insurance Division, expanded upon Supt. Torti's presentation by detailing the various legal arguments at play in the STAT cases. She said that two life insurance companies had filed lawsuits regarding seven annuity contracts, including rescission claims against the investor-owners of the contracts, breach-of-contract claims against the brokers, and fraud claims against brokers, agents, and the sponsors of the STATs. She said the defendants had filed a counter motion to dismiss these charges.

Ms. Dwyer said that the court had ruled against the companies' claims and said that Rhode Island's state insurable interest law applies only to life insurance, not annuity, contracts. She said that insurer efforts to have the contracts voided under incontestability clauses were also struck down, and the insurers were told to pay the annuity owners who had invested the money.

Ms Dwyer said the insurers had tried to void the contracts and keep the proceeds as part of likely future damages that might be awarded. She said that Rhode Island insurance regulators felt that insurers couldn't do this under state "rescission" laws. She said that a Federal court was still looking at allegations of fraud against the producers and sponsors.

Ms. Dwyer said that state "rebating" laws—which prevent producers from paying someone to sign a contract—would apply in STATs because of money given to terminally ill persons. She said this could result in future legal action against the defendants.

Supt. Torti urged legislators to proceed carefully before taking action to update long-standing insurable interest statutes, among others, because of unintended and potentially harmful consequences. He said that insurance companies were surprised by these practices and would take steps necessary to prevent future financial losses. He also said that he believed regulators had tools at their disposal to combat STATs.

Nancy Bennett of the American Academy of Actuaries (AAA) said that STATs violate the public interest and urged legislators to take necessary action to prevent future abuse. She cautioned that, if

insurers are required to check the health status of annuitants to prevent STATs, it would shift costs. She said these front-end costs would increase prices for consumers and would not serve anyone well.

Rep. Kennedy, who brought the issue forward at the 2009 NCOIL Annual Meeting for further exploration and discussion, urged the Committee to take action.

Sen. Hall disagreed and said that enough rules are in place at the point-of-sale to prevent STATs. He said that brokers licensed by the Financial Industry Regulatory Authority (FINRA), for example, must show where funding comes from for a variable annuity to prevent money laundering, among other things. Supt. Torti replied that the person brokering the sales in Rhode Island had left this question blank on the application. Sen. Hall said that FINRA regulations would likely apply and guilty parties would be penalized.

Rep. Koutoujian asked about property rights of the annuity contract. Ms. Dwyer said that the investor technically owned the contract, not the terminally ill annuitant or beneficiary.

Sen. Hudgens asked that a Subcommittee be formed to look at the issue and appointed Rep. Kennedy and Sen. Hall as co-chairs. He asked for a report at the November Annual Meeting in Austin, Texas.

Michael Lovendusky of the American Council of Life Insurers (ACLI) asked for more time to allow for legal case development, among other things. He said that life insurers were taking actions to prevent future abuses. Doug Head with the Life Insurance Settlement Association (LISA) agreed with Mr. Lovendusky that immediate Committee action was not necessary.

Rep. Curtiss said a Subcommittee would merely look closer at the issue to determine if further action is warranted and that it was unwise to sit back if further abuse could occur.

The Committee determined that a Subcommittee be formed to look at the issue and left open the possibility that interim meeting conference calls could be conducted.

DISCLOSURE OF LIFE SETTLEMENTS AS OPTIONS

Rep. Damron reported on a 2010 Kentucky law that directs the state insurance commissioner to develop a disclosure form informing life insurance policyholders of available alternatives to surrendering or lapsing their policy. He said that the law is similar to statutes in Maine, Washington, and Oregon, and that it would be provided to insurers by the insurance department for delivery with lapse notices.

Mr. Lovendusky said that insurance companies oppose the disclosures and feel they would fracture relationships with policy owners, among other things. He said they would be, in effect, advertising a competitor's business and creating an impression that all policies can be sold in the secondary life insurance market. He said that most life insurance policies don't have desirable characteristics to attract potential buyers, such as owners older than 70 with under-funded universal life policies averaging \$250,000 in face amounts. Mr. Lovendusky gave statistics from data on lapsed and settled policies in Washington and Georgia to support his argument and said that policy owners would face ongoing premium costs if they choose to keep funding a life insurance policy in search of buyers that aren't interested.

Michael Freedman of Coventry said that seven states had adopted disclosure requirements and that five others considered similar bills in 2009 and 2010. He disagreed with Mr. Lovendusky and said the disclosures were not about life settlements, but about consumer options. He said that in Washington, for example, eight different options were listed as alternatives to surrendering or lapsing a policy, only one of which was life settlements. He said an NCOIL model law could provide guidance to other states.

Mr. Freedman said that, in some cases, companies were prohibiting their agents from discussing life settlements with consumers. He said that consumers shouldn't be denied information to make their own decisions about their respective needs.

Chris Orestis of LifeCare Partners, Inc., said that access to this information is important for consumers. He described how long-term care costs were impacting the solvency of state Medicaid budgets and said that life settlements, among other options, could provide for a private market solution. He said that an older American with less need for life insurance, for example, could sell it and use the cash to extend the spend-down period before qualifying for Medicaid.

In response to a question from Rep. Byrum about costs, Rep. Damron said it was his understanding that in Kentucky, disclosure notices would be supplied to companies at no cost, and that they would be sent with lapse notices already going out to policy owners. He said the insurance department was developing regulations to further clarify this.

GUARANTEED MINIMUM BENEFITS FOR ANNUITIES

Rep. Damron asked that, in the interest of time, consideration of his proposed *Resolution Concerning Consumers' Rights in Annuity Contracts* be deferred to the Annual Meeting.

ADJOURNMENT

There being no other business, the Life Insurance & Financial Planning Issues Committee adjourned at 3:00 p.m.