

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
PROPERTY-CASUALTY INSURANCE COMMITTEE
SANTA FE, NEW MEXICO
NOVEMBER 20, 2011
MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee met at the Eldorado Hotel & Spa in Santa Fe, New Mexico, on Sunday, November 20, 2011, at 7:00 a.m.

Rep. Chuck Kleckley of Louisiana, chair of the Committee, presided.

Other members of the Committee present were:

Sen. Travis Holdman, IN	Sen. Neil Breslin, NY
Rep. Matt Lehman, IN	Assem. Nancy Calhoun, NY
Sen. Vi Simpson, IN	Sen. James Seward, NY
Sen. Ruth Teichman, KS	Rep. Jay Hottinger, OH
Rep. Robert Damron, KY	Sen. Dave Thomas, SC
Rep. Steve Riggs, KY	Rep. Charles Curtiss, TN
Sen. Joe Hune, MI	Del. Harvey Morgan, VA
Rep. George Keiser, ND	Rep. William Botzow, VT
Sen. David O'Connell, ND	Sen. Mike Hall, WV
Sen. Carroll Leavell, NM	

Other legislators present were:

Sen. Jack Crumbly, AR
Sen. John Goedde, ID
Sen. Ralph Hise, NC

Also in attendance were:

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

CERTIFICATES OF INSURANCE MODEL ACT

Ms. Thorson reported that the proposed *Certificates of Insurance Model Act* was first aired at the Summer Meeting and that legislators later held a conference call to discuss the model and related amendments, including a proposed carve-out for commercial lenders. She said that legislators on the October call expressed interest in a companion bill approach, based on New York State insurance binder law, to address lender concerns that binders are not suitable alternatives to certificates. In New York, Ms. Thorson explained, binders do not expire and policies renew automatically unless an insurer cancels them or changes terms.

Ann Henstrand of the Association for Cooperative Operations Research and Development (ACORD), which produces certificate forms, overviewed her organization. She said that ACORD:

- was founded by insurance agents 40 years ago as a non-profit membership association
- publishes more than 700 standardized transaction forms, which are accepted in all states
- publishes data IT standards that promote global consistency when transmitting insurance info
- adopts forms, data standards, and revisions to those products through votes of its membership, except when responding to specific changes in state law

Rep. Keiser inquired about possible NAIC Fall Meeting activity related to ACORD documents, as well as about membership on an ACORD working group that had developed controversial revisions to Forms 27 and 28—regarding, respectively, evidence of property insurance and evidence of commercial property insurance. Ms. Henstrand said that she would research those items and provide him with further information.

COMMERCIAL LENDER REMARKS

Katherine Rodewald of Prudential Asset Resources said that results of a commercial lending-industry survey proved that lenders do not receive insurance policies in a timely fashion. She said that between October 1, 2010, and September 30, 2011, survey respondents received only 11 percent of policies on a reported 109,380 properties. Those properties, she said, represented nearly \$469 billion in unpaid principal balance. Ms. Rodewald reported that it took an average of 82 days to receive policies and an average of 79 days to receive other evidences of insurance, if the companies accepted other documentation. She said that it had been difficult to compile the survey results due to the complicated nature of many commercial transactions.

In response to Committee questions, Ms. Rodewald said that lenders are required by Fannie Mae, Freddie Mac, and other entities to secure proof of insurance coverage. She said that Prudential suffered a significant loss when a multi-family property, for which Prudential had been unable to secure evidence of insurance, was destroyed by Hurricane Katrina. She also said, and Jose Becquer of Wells Fargo agreed, that a case in Tennessee was particularly troubling because, in that instance, an ACORD 28 form had said that flood insurance existed on a destroyed property when, in fact, the insurance did not.

Regarding insurance binders, Ms. Rodewald said that significant discrepancies in state binder insurance laws—including expiration dates and a requirement in 12 states that a binder cannot be extended without individual approval of a regulator—made it difficult for lenders to accept binders as evidence of coverage. Mr. Becquer said that greater specificity of coverage was needed and that lenders should be recognized as loss payees.

Rep. Riggs noted that lenders can force-place insurance in many states and asked why lenders do not do so when they are unable to secure evidence of insurance in a timely manner. Ms. Rodewald said that force-placed insurance costs, which are passed along to borrowers, are high and may adversely impact a borrower's financial condition. Mr. Becquer described force-placing as a "nuclear" option.

Rep. Lehman asked whether lenders would be appeased if state laws prevented binders from expiring. Ms. Rodewald said that Prudential would be "very happy" if binders did not expire, but she also said that binders, in their current form, do not provide enough coverage specifics. Mr. Becquer commented that it would be less arduous to revise ACORD forms to make them official evidence of insurance than to change numerous state binder laws.

P-C AGENT REMARKS

Wes Bissett of the Independent Insurance Agents & Brokers of America (IIABA) said that lenders were legitimately concerned over the timeframe to receive insurance policies, but he asserted that the lending industry's solution to the problem—a proposed amendment to the model that would exempt lenders—would not resolve the issue. He said that a proposed IIABA amendment would more directly help the lending industry by requiring an insurer to provide the coverage listed in a binder. Under the IIABA amendment, Mr. Bissett continued, a binder would be valid until the insurance policy was issued or the binder itself was cancelled.

Mr. Bissett, noting that the draft NCOIL model would prevent certificate fraud, said that the lender carve-out would create a loophole that could perpetuate fraud in certain instances. He said that the carve-out would effectively create a “new document” that would lead to uncertainty and litigation.

David Eppstein of the National Association of Independent Insurance Agents (PIA) stated that PIA also opposed the lender exemption. He supported the draft IIABA amendment and echoed the need to ensure that the proposed model’s anti-fraud provisions applied to all certificates.

P-C INSURER REMARKS

Eric Goldberg of the American Insurance Association (AIA) asserted that insurers have business relationships with borrowers, not with lenders. He said that exempting lenders from the model would create a separate category of certificate that would inappropriately substitute for the policy itself and would lead to litigation. He said that certificates of insurance have always been informational, even when called “evidence of insurance” for use in lending transactions. He added that insurance policies are lengthy, and therefore more difficult to review than two-page certificates, because policies reflect years of fine-tuning in states and in the courts, among other things.

Mr. Goldberg challenged the lenders’ hesitancy to force-place insurance, saying that force-placing seemed appropriate given the size of some lending transactions. He said that the property-casualty industry was willing to work with lenders to reform state binders laws as needed.

Chris Hackett of the Property Casualty Insurers Association of America (PCI) said that an NCOIL certificates of insurance model act may not be necessary, since approximately 45 states have addressed the issue via legislation and/or regulation.

OTHER COMMENTS/DISCUSSION

Rep. Curtiss said that the certificate controversy had broad ramifications for construction and other industries. He commented that lenders in the future may decide to buy insurance for their borrowers up front in order to ensure that coverage exists, rather than to wait for evidence of insurance. Mr. Bissett responded by saying, among other things, that agents and brokers can always provide a form that summarizes coverage.

Sen. Seward supported development of an NCOIL model law that would prevent fraud and would assure certificate accuracy. He said he had introduced such a bill in New York but that insurance regulators there had asked to address the issue administratively first. He said that he was “baffled” over lenders’ inability to receive timely documentation of insurance coverage, and he suggested that the Committee respond to lenders’ concerns via a separate model law. He said he was aware of certificate fraud in New York but not of concerns regarding insurance binders.

Mr. Bissett urged the Committee not to develop two models, saying that a dual approach would be confusing. He said that the IIABA amendment would address lender concerns within the context of the existing proposal.

Rep. Keiser agreed with lenders that force-placing insurance was indeed a “nuclear” option because it imposed significant costs on borrowers. Mr. Goldberg reiterated his opinion that it makes sense for a lender to ensure that a borrower of a sizeable loan has coverage, even if that means force-placing. He said that it was “unthinkable” to him that an insurer would not provide a borrower, who is faced with the possibility of paying for forced-place insurance, with some official documentation that coverage exists.

Sen. Thomas asked for clarification on why lenders would close on a loan without evidence of insurance. Mr. Bissett agreed that lenders should have official proof before finalizing a loan and stated that the property-casualty insurance industry can always provide a lender with a document that is “right-conferring” or, in other words, a document that is the “sole source” of the policy’s contractual rights. If the policy has not been issued, he said, then the “right-conferring” document is the insurance binder.

Ms. Rodewald replied that Prudential would never close on a loan without sufficient evidence of insurance and stated that the company’s greatest challenge is at policy renewal. She explained, regarding force-placed insurance, that Prudential buys coverage after the date that a policy might have expired and that the coverage protects Prudential from any uncovered loss that took place 90 days before the purchase. She said that this practice helps to shield consumers from additional costs by giving borrowers time to prove that insurance on the property was extended.

Ms. Rodewald then disputed Mr. Goldberg’s comment that ACORD forms have always been informational. She said that a 1997 ACORD publication had described the evidence-of-insurance forms used by lenders as unique from informational certificates because lenders, as loss payees, are distinct from other certificate holders.

Ms. Rodewald noted that recent certificate of insurance legislation in five states—Maryland, Missouri, North Carolina, Oklahoma, and Texas—had included lender carve-outs.

Mr. Becquer remarked that insurers do not provide “right-conferring” documents before a policy is issued because binders do not confer the same rights to lenders that borrowers have under the insurance policy. He reiterated his concern that binders are too general. He also said that the New York State binder language, which would prevent a binder from expiring, would be helpful but that a revised ACORD form would be more effective nationwide.

Upon a motion made and seconded, the Committee voted to defer until the Spring Meeting, due to time constraints, its consideration of the draft *Certificates of Insurance Model Act*. Sen. Leavell asked that the spring discussion also address proof of liability insurance.

ADJOURNMENT

There being no further business, the meeting adjourned at 8:10 a.m.