

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
PROPERTY-CASUALTY INSURANCE COMMITTEE
POINT CLEAR, ALABAMA
NOVEMBER 16, 2012
MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee met at The Grand Hotel Marriott Resort in Point Clear, Alabama, on Friday, November 16, 2012, at 1:30 p.m.

Rep. Steve Riggs of Kentucky, chair of the Committee, presided.

Other members of the Committee present were:

Rep. Greg Wren, AL	Rep. George Keiser, ND
Rep. Barry Hyde, AR	Rep. Don Flanders, NH
Sen. Travis Holdman, IN	Sen. Carroll Leavell, NM
Rep. Matt Lehman, IN	Sen. Neil Breslin, NY
Sen. Ruth Teichman, KS	Assem. Nancy Calhoun, NY
Rep. Ron Crimm, KY	Sen. William Larkin, Jr., NY
Rep. Robert Damron, KY	Sen. Jake Corman, PA
Sen. Dan Morrish, LA	Rep. Charles Curtiss, TN
Rep. Pete Lund, MI	Rep. Bill Botzow, VT
Sen. Dean Kirby, MS	Rep. Kathie Keenan, VT

Other legislators present were:

Rep. Jeff Greer, KY	Rep. Larry Taylor, TX
Rep. Susan Westrom, KY	Rep. James Dunnigan, UT
Sen. Pete Pirsch, NE	Rep. Tyler August, WI
Sen. David O'Connell, ND	Del. Harry Keith White, WV

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director
Ed Stephenson, Nolan Associates, NCOIL Director of Legislative Affairs–DC
Dan Valente, Nolan Associates, NCOIL Director of Legislative Affairs

MINUTES

After a motion made and seconded, the Committee voted unanimously to approve the minutes of its July 13, 14, and 15, 2012, meetings in Burlington, Vermont.

TITLE INSURANCE REGULATION

Ms. Thorson said that lawmakers at a Summer Meeting Legislators' Roundtable had expressed interest in considering title insurance issues and would be considering this as a proposed 2013 Committee charge. Commissioner Joe Murphy (MA) reported that a National Association of Insurance Commissioners (NAIC) Title Insurance Task Force was looking at the subject from multiple angles. He said the Task Force, which includes several working groups and subgroups, was:

- drafting a white paper on escrow theft
- collaborating with stakeholders to combat fraudulent real estate settlement activities
- researching various financial issues, including whether to establish title insurance risk-based capital standards and/or guaranty funds

Commissioner Murphy said the Task Force was reviewing recent Consumer Financial Protection Bureau (CFPB) decisions regarding, among other things, changes to consumer disclosure forms. He said that a Financial Crimes Enforcement Network (FinCEN), an agency within the U.S. Treasury, had asked for state regulator input into whether FinCEN should require escrow companies to establish anti-money laundering programs. In addition, he said, NAIC regulators were considering how to promote effective consumer shopping without delaying real estate closing schedules.

Justin Ailes, Vice President of Government & Regulatory Affairs with the American Land Title Association (ALTA), explained that title insurance protects against financial loss when there are defects in a property's title, as well as when mortgage liens are invalid or unenforceable. He clarified that title insurance protects against past events, whereas other forms of p-c insurance cover future losses, and that title insurance is paid for with a one-time premium.

Mr. Ailes reported that in 2011, title insurers had a higher combined ratio than other p-c insurers because title insurer operating expenses were significantly higher. He identified certain issues within the title insurance market—including those related to cost, competition, and transparency—but said the industry was working to develop best practices. He said the title insurance industry has significant direct and indirect impacts on the economy.

Robert Holman, President of General Title Insurance Company and President-Elect of the National Association of Independent Land Title Agents (NAILTA), also spoke to how title insurance works and its economic impacts. He expressed concerns, however, regarding:

- consolidation/competition in the industry, with four companies writing 90 percent of business
- the sale/solicitation of title insurance by referral sources, like banks and real estate firms
- the absence of an “enforceable” industry code of ethics
- a need for additional anti-fraud and other consumer protections
- weak standards for enforcing state title insurance law

During Committee discussion, panelists noted, among other things, that:

- If a new homebuyer uses the same title insurer as the seller did, then the title company can perform a less expensive “update” search, rather than beginning anew.
- Title insurance relies on information filed in the public record, not on property-line changes caused by a natural catastrophe or similar event.

Sen. Holdman said Indiana is considering developing a rating bureau in response to concerns over disparities between locations and the rates that title insurers charge to underwrite them. He said the bureau would be something of a compromise between the insurance department's wishes and those of the title insurance industry. He said there are concerns over certain market conduct actions taken against title insurers in the state, and he encouraged the Committee to further explore title insurance matters.

Rep. Keiser commented that title insurance searches are complex and that legislators should consider how free-market influences may affect the title insurance market.

NATIONAL FLOOD INSURANCE PROGRAM (NFIP)

Ed Pasterick, Senior Advisor in the Federal Insurance and Mitigation Administration (FIMA) of the Federal Emergency Management Agency (FEMA), overviewed FEMA's disaster response unit in order to distinguish it from FIMA, which handles flood insurance. Mr. Pasterick explained that the disaster response component coordinates with local officials and other responders following a disaster, helps to secure temporary housing, and provides grants, often to people without flood insurance.

Regarding Superstorm Sandy, Mr. Pasterick said that the NFIP had received approximately 127,000 claims so far—including roughly 65,000 in New Jersey and 51,000 in New York. He said the NFIP had paid approximately \$4 million in closed claims and \$81 million in partial payments. He reported that, according to one estimate, the NFIP ultimately would pay between \$6 and \$8 billion in Sandy-related claims. He predicted that payments of such a magnitude would require Congress to increase the NFIP debt limit, which currently is at approximately \$20 billion.

Mr. Pasterick noted that a Biggert-Waters *Flood Insurance Reform Act*, signed into law in July 2012, did not address NFIP borrowing authority. He said the law did, however:

- extend the NFIP for five years
- require use of actuarial rates for second homes, as well as repetitive loss and commercial properties
- require use of actuarial rates for properties at increased flood risk, as per flood-map updates
- raise a cap on annual rate increases to 20 percent from 15 percent
- increase the minimum deductible
- create an NFIP reserve fund

In response to Committee questions, Mr. Pasterick said, among other things, that “actuarial rate” means the same thing to the NFIP as it does to private insurers, that the NFIP was financially stable until Hurricane Katrina hit in 2005, that flood insurance claims must be settled in no more than 60 days, and that the NFIP often uses a single adjuster to determine both wind and flood losses.

Craig Hanna, Director of Public Policy with the American Academy of Actuaries (AAA), noted that although NFIP rates are actuarially sound, the program itself is not actuarially stable because the NFIP is legally unable to charge full rates to all policyholders.

Rep. Keiser then spoke to the structure and function of the NFIP, commenting that the program has a different business model than private insurers.

LIMITED LINES TRAVEL INSURANCE

Rep. Damron, sponsor of a draft *Limited Lines Travel Insurance Model Act*, said that as directed by the Committee on a recent conference call, interested parties had submitted proposed consensus amendments to the draft model law. He said that NCOIL received the proposed revisions, in the form of a substitute amendment, after the 30-day deadline and just prior to the Annual Meeting.

John Fielding of Steptoe & Johnson LLP, representing the U.S. Travel Insurance Association (UStiA), said the proposed changes would enhance the model’s disclosure requirements, among other things.

Wes Bissett, Senior Vice President of Government Affairs with the Independent Insurance Agents & Brokers of America (IIABA), said the proposed substitute amendment was an improvement over the original draft.

The Committee—because the changes were submitted after the 30-day deadline—waived the 30-day rule and adopted the proposed amendments via two unanimous voice votes. The Committee then unanimously adopted the draft model as amended. All Committee members attending the meeting were present at the time of the votes, except for Rep. Wren, Sen. Holdman, and Sen. Morrish.

THIRD-PARTY CONSUMER LEGAL FUNDING

Rep. Curtiss, sponsor of a draft *Consumer Legal Funding Model Act*, said he envisioned his draft to be a starting point for discussion of a possible NCOIL model, should NCOIL determine that states need to establish stronger consumer protections regarding such financing transactions.

Sen. Breslin, sponsor of a draft *Civil Justice Funding Model Act*, said his bill aims to clarify and expand upon Rep. Curtiss' proposal. Sen. Breslin said that consumer legal funding serves an important role but acknowledged that additional oversight may be appropriate.

Jack Kelly, Director of Government Affairs with JGWPT, LLC and on behalf of the American Legal Finance Association (ALFA), explained that third-party legal finance is non-recourse, meaning that a funding company is reimbursed only if a plaintiff wins. He said that prohibiting a funding company from assessing fees more than three years after the date of an original loan, as Rep. Curtiss' proposed model would do, would not most effectively protect consumers. He said that nothing would prevent a funding company from charging excessive fees for each of those three years. He also commented that consumers would benefit more from Sen. Breslin's approach, in which a consumer would receive a schedule of fees that shows exactly how much he/she would pay each month.

Mr. Kelly outlined other elements of Sen. Breslin's proposed model, saying that it adds important new definitions, includes more stringent funding-company filing requirements, adds a requirement for funding companies to identify their officers and directors, and specifies that banks do not make the third-party consumer loans.

During Committee discussion that followed, among other things, Rep. Lehman and Mr. Kelly discussed circumstances that determine when a third-party lender loans money. Rep. Keiser expressed concerns over the degree to which the issue is insurance-related and over the practice's similarities to gambling.

Joe Thesing, State Affairs Manager with the National Association of Mutual Insurance Companies (NAMIC), spoke to a third proposal, a *Model Consumer Lawsuit Lending Alignment Bill*, that interested parties had submitted earlier that day, therefore missing the 30-day deadline. He said that the proposed model was drafted by the U.S. Chamber Institute for Legal Reform (ILR) and that the draft would require appropriate disclosures and would ensure that consumer legal loans are subject to state unfair lending laws.

Oriana Senatore, Senior Policy Council with the Institute, commented that the draft *Model Consumer Lawsuit Lending Alignment Bill* looks to strike balance between banning consumer legal funding and developing legislation that would allow such funding "from operating outside the umbrella" of state lending laws. She said the draft model would require a state to apply its already-existing laws on consumer credit transactions—which include interest fee caps—to third-party legal funding. She also said, after commenting that legal funding can benefit consumers, that the proposed model would require certain disclosures and transparency.

Sen. Breslin opined that higher interest rates for consumer legal funding are appropriate because the loans are non-recourse, with no guaranty that a funder will be repaid. He asserted that the transactions promote a level playing field for consumers and that concerns over whether a funding transaction ultimately will disadvantage a consumer may be unfounded. A reason, he said, is because a consumer would consult with counsel before accepting a loan in order to analyze whether the involvement of a lender would reduce how much the consumer ultimately receives from the settlement.

In Committee discussion that followed:

- Rep. Keiser said that it would be inappropriate to apply state consumer lending laws to non-recourse loans because non-recourse transactions are inherently different from bank loans.
- Ms. Senatore said that “contingent,” rather than “non-recourse,” is a more appropriate term to describe consumer legal funding and that state laws do regulate contingent financing.
- Mr. Kelly said that no state deems consumer legal funding to be a loan, though he acknowledged that a Colorado court had determined the contrary. He said the Colorado case was being appealed.
- Rep. Damron commented that consumer legal funding is similar to venture capitalism.
- Assem. Calhoun suggested that the financing transactions, which the lending industry estimates to average \$1,800 per consumer, would only assist consumers for a brief time and may not be in their best interests.

Upon a motion made by Sen. Teichman, the Committee unanimously deferred, due to time constraints, the three proposed model acts until the 2013 Spring Meeting and agreed to hold interim calls, if appropriate.

PROPOSED 2013 COMMITTEE CHARGES

Upon a motion made and seconded, the Committee unanimously adopted the following proposed 2013 Committee charges:

- finalize review of proposals regarding an NCOIL insurance binder model act
- finalize review of model legislation on third-party litigation financing
- investigate title insurance concerns (e.g., costs, competition) and take a position, as appropriate
- engage with state/federal officials, among others, on NFIP and catastrophe insurance reforms

ADJOURNMENT

There being no further business, the meeting adjourned at 4:00 p.m.