

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
LIFE INSURANCE & FINANCIAL PLANNING COMMITTEE
BURLINGTON, VERMONT
JULY 12, 2012
MINUTES

The National Conference of Insurance Legislators (NCOIL) Life Insurance & Financial Planning Committee met at the Hilton Burlington in Burlington, Vermont, on Thursday, July 12, 2012, at 9:00 a.m.

Sen. Mike Hall of West Virginia, chair of the Committee, presided.

Other members of the Committee present were:

Rep. Greg Wren, AL	Sen. Carroll Leavell, NM
Rep. Barry Hyde, AR	Sen. Neil Breslin, NY
Sen. Travis Holdman, IN	Assem. Nancy Calhoun, NY
Rep. Ron Crimm, KY	Sen. William J. Larkin, Jr., NY
Rep. Robert Damron, KY	Rep. George Keiser, ND
Rep. Joseph Fischer, KY	Rep. Brian Kennedy, RI
Sen. Dan Morrish, LA	Rep. Charles Curtiss, TN
Rep. Don Flanders, NH	Rep. William Botzow, VT

Other legislators present were:

Sen. Alan Hays, FL	Rep. Don Gosen, MO
Rep. Isaac Choy, HI	Sen. David O'Connell, ND
Rep. Dawn Pettengill, IA	Rep. Jay Hottinger, OH
Rep. Steve Riggs, KY	Rep. Jon Lundberg, TN
Sen. Gerald Long, LA	Sen. Ann Cummings, VT
Rep. John Picchiotti, ME	Rep. Michele Kupersmith, VT
Sen. Jim Marleau, MI	

Also in attendance were:

Susan Nolan, NCOIL Executive Director
Candace Thorson, NCOIL Deputy Executive Director
Michael Keegan, NCOIL Director of Legislative Affairs – D.C.
Michael Carroll, NCOIL Director of Legislative Affairs

MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its February 25, 2012, meeting in Biloxi, Mississippi.

CONTINGENT DEFERRED ANNUITIES

Commissioner Julie McPeak (TN), speaking on behalf of the National Association of Insurance Commissioners (NAIC), said that in 2010 the NAIC Life Insurance Actuarial Group began discussing whether contingent deferred annuities (CDAs) should be regulated as financial guaranty products or annuities. She noted that the NAIC began this investigation because there was disagreement in the states on how to properly classify CDAs, e.g., New York regulated CDAs as financial guaranty products, while other states did not. She reported that after studying the issue, the NAIC believes that CDAs should be regulated as annuities. Commissioner McPeak also noted that after making this determination, the NAIC formed a working group for the purpose of analyzing the regulatory structure of annuities to ensure that the unique characteristics of CDAs are currently addressed in

the existing regulatory framework. She noted that the working group is looking into identifying any regulatory gaps that may exist.

Lee Covington, General Counsel for the Insured Retirement Institute (IRI), reported that American consumers are faced with a retirement income crisis, and CDAs play an important role in helping mitigate longevity risk. Mr. Covington cited a 2011 report from the Employee Benefit Research Institute which found that nearly 50 percent of “baby boomers,” almost 35 million Americans, are at risk for having inadequate retirement income. He opined that American consumers are seeking solutions for this crisis by purchasing annuities. Mr. Covington reported that in recent years over 80 percent of consumers who have bought variable annuities (VA) have also purchased a guaranteed lifetime withdrawal benefit (GLWB), which provides the same longevity protection as CDAs.

Additionally, Mr. Covington stated that NAIC model laws for reserve and risk-based capital—Actuarial Guideline 43 and C3-Phase II—explicitly cover both GLWB and CDAs. He stated that the regulatory framework in place for annuities can be appropriately applied to CDAs.

Birny Birnbaum of the Center for Economic Justice (CEJ) stated that a CDA is not the same product as a GLWB, and that CDAs are not retirement income products. Instead, Mr. Birnbaum said that CDAs are essentially derivatives, and the New York State Department of Financial Services expressly stated that CDAs should be classified as financial guaranty insurance.

Mr. Birnbaum stated that the CEJ has great concern about CDAs because the product will either produce massive profits for consumers or catastrophic losses for insurance companies, creating systemic risk for financial markets. For example, Mr. Birnbaum noted that CDAs carry no downside risk for consumers because they provide guaranteed lifetime payments. Therefore, Mr. Birnbaum continued, a rational consumer will invest in the riskiest portfolio allowed by the insurance company in order to maximize their profits. He stated that CDAs will lead to catastrophic claims for insurers if catastrophic market failure occurs. Mr. Birnbaum acknowledged that there is a need for retirement income products, but said the products must not carry systemic risk.

During Committee discussion that followed Rep. Keiser asked if any CDA problems have occurred and, if so, if the problems indicate systemic risk. Mr. Birnbaum responded that he could not point to any specific problems because CDAs are relatively new products. He stated, however, that it is not proper to wait for symptoms of systemic risk to occur before taking action to protect consumers.

Commissioner McPeak responded that there have been no problems or red flags in the CDA market as of yet. Mr. Covington said that there are currently no problems in the CDA market that indicate the existence of systemic risk. He noted that the life insurance industry endured a real stress test during the 2008 market collapse, and that no insurer “went under” because it was forced to pay GLWB.

PRINCIPLES-BASED RESERVING INITIATIVES

Commissioner McPeak said that the NAIC *Standard Valuation Law* (SVL), passed in 2009, was designed to change the reserving practices for life insurance companies for the first time in a century. She stated that the current formulaic process for calculating reserves is not beneficial for the life industry. Commissioner McPeak said that the NAIC expects to adopt a *Standard Valuation Manual* (SVM), which will define the language used in the SVL by the end of 2012. She noted that it is important for the states to uniformly adopt the SVL and SVM, so that states take a consistent approach to reserving practices. Additionally, Commissioner McPeak reported that the adoption of a principles-based approach to reserving will be a landmark change for life insurance companies.

Nancy Bennett, Senior Life Fellow for the American Academy of Actuaries (AAA), said that using a principles-based approach to value insurance would replace 150 years of established reserving practices. She stated that the AAA fully supports the NAIC SVL and SVM. However, Ms. Bennett noted that state resources need to be allocated to establish a review process that evaluates the effectiveness of principles-based reserving (PBR). She stated that a review process for PBR is necessary because reserves are established based on judgment and weighing various factors, e.g. a company's unique set of risks, a company's own experience, etc., rather than engaging in formulaic calculations. Ms. Bennett summarized that the AAA supports adoption and implementation of the PBR methodology, but that it would not be prudent or responsible to adopt a principles-based approach without first committing resources for the development of a review process.

Scott Harrison, Executive Director of the Affordable Life Insurance Alliance (ALIA), said that the ALIA was the first group to publicly call for a modern principles-based approach to life insurance reserving in the United States. Mr. Harrison noted that there are limitations in using the current formulaic approach for calculating reserves, especially in light of the financial collapse in 2008. He stated that PBR will create a statutory and regulatory framework allowing companies to change their reserves based on market factors. He noted that PBR is a dynamic approach to reserving that enables companies to hold reserves that are appropriate for their risk levels. Mr. Harrison reported that the ALIA strongly supports the adoption of the SVL, the SVM, and all of the work that is being done on this issue by the NAIC.

During the Committee discussion that followed:

- Rep. Damron expressed his concern that states adopting the NAIC's principles-based approach may be ceding too much policy-making authority to an organization of appointed officials. Rep. Damron stated that he does not want the insurance industry to be able to calculate their own reserve requirements under PBR, especially since the current reserve requirements have worked well.
- Mr. Harrison noted that the adoption of PBR is a positive development because it is a dynamic methodology that provides insurance companies and regulators with the ability to alter reserve levels based on actual market changes.
- Sen. Larkin said that state legislators need to know the specific structural problems that exist with PBR before the states can commit money to monitor the implementation of this new methodology.

STATE LIFE SETTLEMENTS ACTIVITIES

Michael Kreiter, Director of Legislative and Regulatory Affairs for the Life Insurance Settlement Association (LISA), said that for the past decade LISA has worked to pass laws that ensure a fully transparent and consumer friendly life settlements market. Mr. Kreiter noted that since the implementation of the NCOIL *Life Settlements Model Act* in 2007, 22 states have passed the model or model provisions. He stated that LISA is a strong advocate of this model act and applauds states that have passed it. Additionally, Mr. Kreiter cited a report from the NAIC Consumer Information Source (CIS) which stated that since 2009 there have only been six reported consumer complaints regarding the life settlements market. Mr. Kreiter stated that this report provides strong evidence indicating that the life settlements market has been successful in protecting the interests of consumers.

Furthermore, Mr. Kreiter stated that since the adoption of the NCOIL *Life Settlements Model Act* in 2007, which addressed issues with stranger-originated life insurance (STOLI), 29 states have adopted laws to prohibit STOLI. Mr. Kreiter noted that no life settlement company has ever been accused by insurance regulators, law enforcement agencies, or other parties of violating anti-STOLI laws.

Mr. Kreiter also addressed LISA's growing concern with life insurer conduct. He noted that life insurance companies have embarked on a crusade to delay and contravene the life settlement process to the detriment of consumers. Mr. Kreiter stated that these bad acts include, among others, failing to convert term policies, gagging and dismissal of agents, routinely issuing false and misleading statements about life settlements, and asking illegal questions on applications. Mr. Kreiter asked that the Committee look at these conduct issues in more depth at the NCOIL Annual Meeting.

Bruce Ferguson, Senior Vice President of the American Council of Life Insurers (ACLI), said that ACLI has not seen any document outlining LISA's concerns with life insurer conduct. However, Mr. Ferguson noted that the ACLI would look into these issues and respond accordingly.

Rep. Damron made a motion to have a list outlining the alleged conduct prepared for ACLI, and that the Committee should address the topic of insurer conduct at the Annual Meeting in November. This motion was seconded, and then unanimously adopted by the Committee.

UNCLAIMED LIFE INSURANCE BENEFITS

Carolyn Atkinson of the National Association of Unclaimed Property Administrators (NAUPA) stated that NAUPA and ACLI reached an agreement on most of the major amendments listed in the [markup to the NCOIL Model Unclaimed Life Insurance Benefits Act](#). She noted that NAUPA and ACLI issued a [joint letter](#) outlining and explaining the amendments on which they both agreed. Ms. Atkinson said that she would be happy to address any issues relating to the amended model during the special working session of the Life Insurance Committee.

Bruce Ferguson said that the ACLI worked with NAUPA to refine the NCOIL model in key areas where improvements were necessary. For example, Mr. Ferguson said that using the Death Master File (DMF) is a new requirement for many life insurance companies, and the amendments attempt to make the use of the DMF more efficient. Mr. Ferguson stated that he would reserve further comments for the special working session.

Scott Cipinko of the Consumer Credit Industry Association (CCIA) said that it is impossible for consumer credit insurance companies to run DMF searches as described in the NCOIL model. He noted that consumer credit customers are identified only by numbers (not by social security number, name, or address), and this makes a search of the DMF impossible. Therefore, he said, it is necessary for consumer credit insurance companies to be exempt from the requirements of the NCOIL model.

Rep. Damron noted that he serves as the sponsor of the amended NCOIL model, and many of the amendments were agreed to previously by the ACLI and NAUPA.

Rep. Keiser said that the amendments to the model are necessary to help make it "more workable." For example, Rep. Keiser said that it is reasonable for the model to include a delayed effective date so that smaller insurance companies that have never used the DMF can adapt to these changes.

Rep. Wren stated that Alabama adopted the NCOIL model, with certain variations, in 2012. He said that he would address the amended model in further detail at the special working session.

ADJOURNMENT

There being no other business, the Committee adjourned at 10:15 a.m.