

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
PROPERTY-CASUALTY INSURANCE COMMITTEE  
NASHVILLE, TENNESSEE  
NOVEMBER 23, 2013  
MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee met at the Hilton Nashville Downtown in Nashville, Tennessee, on Friday, November 22, 2013, at 11:30 a.m.

Rep. Matt Lehman of Indiana, chair of the Committee, presided.

Other members of the Committee present were:

Rep. Kurt Olson, AK	Assem. Will Barclay, NY
Rep. Greg Wren, AL	Sen. Neil Breslin, NY
Sen. Jason Rapert, AR	Assem. Kevin Cahill, NY
Sen. Travis Holdman, IN	Sen. William J. Larkin, Jr., NY
Rep. Ron Crimm, KY	Sen. James Seward, NY
Rep. Robert Damron, KY	Rep. Mike Henne, OH
Rep. Steve Riggs, KY	Rep. Michael Stinziano, OH
Rep. Bart Rowland, KY	Sen. David Bates, RI
Rep. Mike Huval, LA	Rep. Brian Kennedy, RI
Sen. Dan Morrish, LA	Rep. Steve McManus, TN
Rep. Gene Reynolds, LA	Sen. Larry Taylor, TX
Rep. Pete Lund, MI	Rep. Bill Botzow, VT
Rep. George Keiser, ND	Rep. Kathie Keenan, VT
Sen. Jerry Klein, ND	Rep. Michele Kupersmith, VT
Sen. Carroll Leavell, NM	

Other legislators present were:

Sen. Brian Bushweller, DE	Sen. David O'Connell, ND
Rep. Romy Cachola, HI	Sen. Robert Hayes, SC
Rep. Martin Carbaugh, IN	Rep. Michael Gambrell, SC
Rep. Peggy Mayfield, IN	Sen. Ann Cummings, VT
Rep. Janice Cooper, ME	Rep. Michael Marcotte, VT
Rep. Ken Goike, MI	Sen. Mike Hall, WV
Rep. Paul Wieland, MO	

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director  
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director  
Jennifer Webb, Nolan Associates, NCOIL Director of Legislative Affairs—DC  
Eric Ewing, Nolan Associates, NCOIL Director of Legislative Affairs

#### ACORD 875 ENHANCED INSURANCE BINDER ACTIVITY

Kori Johanson of ACORD reported on recent ACORD efforts to facilitate possible development of an "enhanced" insurance binder form, tentatively referred to as an ACORD 875. She said that following a May 2013 ACORD meeting in New York City, property-casualty insurance industry representatives had submitted a list of outstanding questions for the Mortgage Bankers Association (MBA). She said that the MBA and the ACORD Certificates Working Group chair were updating the MBA responses, with a goal of sharing the updated MBA answers during a December 17 Working Group meeting.

## CONSUMER LEGAL FUNDING PROPOSALS/ISSUES

### LEGISLATOR COMMENTS

Rep. Lehman said the Committee would discuss possible approaches to regulating consumer litigation funding, including his proposed *Model Consumer Lawsuit Lending Alignment Bill* and Sen. Breslin's proposed *Civil Justice Funding Model Act*, and noted that states were addressing the practice in various ways. He commented that capping the fees that third-party litigation financiers can charge consumers may be necessary to prevent predatory lending.

Sen. Breslin, speaking based on his experiences as an attorney, outlined situations in which consumer legal funding may play, he said, a critical role in ensuring that plaintiffs have the financial resources needed to pursue legal claims against insured defendants. He noted that consumer legal financing differs from bank loans because legal financing is non-recourse, meaning that a financing company receives no repayment if a plaintiff loses or does not settle. Sen. Breslin said that his proposed *Civil Justice Funding Model Act* would establish specific requirements of consumer legal funding companies but would not cap their fees because it would be difficult to determine appropriate caps for individual cases. He said that his proposal aimed to establish a standard for fairness.

Rep. McManus said that legislators needed to determine whether consumer legal funding was a loan or an investment. He said that if lawmakers decided that legal funding was a loan, then caps would be unnecessary because the funding transactions would be subject to state usury laws. He overviewed legislative activity in Tennessee and said that, in his opinion, litigation financing was an investment. Proposed legislation being drafted in Tennessee might, he said:

- omit any references to loans, caps, or interest rates
- require consumer legal funding companies to register with and provide disclosures to the Secretary of State
- establish that the attorney general would oversee complaints

Rep. Damron urged the Committee to defer a final vote on proposed consumer legal funding model legislation until the 2014 Summer Meeting, when legislators would be out of session and more able to travel. Rep. Lehman agreed, saying that the Committee would discuss the issue in the spring but would defer action on proposed legislation until the summer. Sen. Breslin also supported a deferral.

### INTERESTED-PARTY COMMENTS

#### BUSINESS/INSURER REPRESENTATIVES

Thurbert Baker, former Georgia attorney general representing the U.S. Chamber of Commerce's Insurance Institute for Legal Reform, commented that consumer legal funding was bad for consumers and negatively impacted the civil justice system. He said that subjecting the practice to state fair lending laws, as the proposed *Model Consumer Lawsuit Lending Alignment Bill* would do, would increase transparency and would address what he said were extremely high interest rates charged by legal funding companies. He agreed that the fundamental question was whether or not such funding transactions were loans. Mr. Baker also spoke to, among other things, recent litigation in Colorado, in which a court of appeals had upheld the state's determination that consumer legal funding transactions were loans.

Joe Thesing of the National Association of Mutual Insurance Companies (NAMIC), echoing support for the proposed *Model Consumer Lawsuit Lending Alignment Bill*, said that property-casualty insurance industry believed that consumer legal funding interfered with the claims settlement process, discouraged reasonable settlements and, among other things, increased litigation costs. He said that over past four legislative sessions, legislators in 12 states had defeated a total of 18 bills that were similar to the proposed NCOIL *Civil Justice Funding Model Act*.

## CONSUMER LEGAL FUNDING REPRESENTATIVES

Jack Kelly of JGWPT, LLC, representing the American Legal Finance Association (ALFA), said the Oklahoma legislature in 2013 had passed a law that he said was 85 percent similar to Sen. Breslin's proposed *Civil Justice Funding Model Act*. Mr. Kelly spoke to certain provisions in Sen. Breslin's proposal, saying that it would require funding companies to register with the state and to file their forms; to notify consumers of their rights of recession and of the importance of conferring with their attorneys; and, among other requirements, to identify how much the consumer ultimately would owe the company. He asserted that consumer legal funding transactions were not loans because there was no guarantee of repayment, and he said that funding companies could not determine, in advance, what rate to charge because the companies did not know when the arrangement with the consumer would conclude.

Eric Schuller of Oasis Legal Finance said that a recent study indicated that consumers who received legal funding were more apt to settle their cases than consumers who had not received such money. He said those findings proved that consumer litigation financing did not negatively impact the claims settlement process. Mr. Schuller then spoke to certain state activity and said, among other things, that the Colorado situation was unique because the state definition of "loan" included the word "advance." He asserted that rate caps were inappropriate because there was no guarantee of repayment and that no existing consumer legal funding laws capped the rates that funders could charge. He then echoed Mr. Kelly's support of the proposed *Civil Justice Funding Model Act*.

## COMMITTEE Q & A

During discussion that followed, among other things:

- Mr. Baker said that an American Bar Association (ABA) commission had raised concerns regarding how legal funding affected the attorney-client relationship.
- Mr. Schuller said that many of the ABA commission's recommendations were included in Sen. Breslin's proposed model.
- Mr. Kelly said there was a competitive marketplace for consumer legal financing but that competition would decrease if legislators imposed rate caps.
- Mr. Baker commented that the rate of default on consumer funding transactions may be low.
- Rep. Lehman stressed the importance of determining what "consumer friendly" truly means.

## PROPOSED 2014 COMMITTEE CHARGES

Upon a motion made and seconded, the Committee unanimously adopted the following proposed 2014 Committee charges:

- Finalize consideration of proposed consumer legal funding model law
- Work to reduce uninsured/underinsured motorist populations through development of public policy guidance, such as regarding "no play, no pay"
- Examine availability/affordability issues regarding NFIP and catastrophe insurance coverage, and weigh in as appropriate
- Continue to explore issues related to cost, competition, and fraud in the title insurance market
- Review, as per NCOIL bylaws, the NCOIL insurance scoring model act, and monitor other activity related to property-casualty insurance underwriting
- Monitor state rate-filing regulatory efforts, including as related to NCOIL use-and-file and flex-rating model laws

## ADJOURNMENT

There being no further business, the meeting adjourned at 12:45 p.m.