

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
PROPERTY-CASUALTY INSURANCE COMMITTEE  
WASHINGTON, DC  
MARCH 9, 2013  
MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee met at The Hyatt Regency on Capitol Hill in Washington, DC, on Saturday, March 9, 2013, at 12:45 p.m.

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

Other members of the Committee present were:

Sen. Jason Rapert, AR	Sen. James Seward, NY
Sen. Travis Holdman, IN	Sen. Kevin Bacon, OH
Sen. Dan Morrish, LA	Rep. Michael Stinziano, OH
Rep. Pete Lund, MI	Rep. Brian Kennedy, RI
Rep. George Keiser, ND	Rep. Bill Botzow, VT
Sen. Neil Breslin, NY	

Other legislators present were:

Rep. Kurt Olson, AK	Rep. Don Gosen, MO
Rep. Greg Cromer, LA	Sen. Norman Sanderson, NC
Sen. Ronnie Johns, LA	Sen. David O'Connell, ND
Rep. Jane Pringle, ME	Rep. Michael Henne, OH
Rep. Kevin Cotter, MI	Rep. Marguerite Quinn, PA
Rep. Tom Leonard, MI	Rep. Mary Czaja, WI
Sen. Jim Marleau, MI	Sen. Dale Schultz, WI
Rep. Margaret O'Brien, MI	

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  
Eric Ewing, Nolan Associates, NCOIL Director of Legislative Affairs

## MINUTES

After a motion made and seconded, the Committee voted unanimously to approve the minutes of its November 16 and 18, 2012, meetings in Point Clear, Alabama.

## FLOOD INSURANCE/SUPERSTORM SANDY ACTIVITY

Ed Pasterick, Senior Advisor in the Federal Insurance and Mitigation Administration (FIMA) of the Federal Emergency Management Agency (FEMA), reported that the National Flood Insurance Program (NFIP) had received 143,000 claims related to Superstorm Sandy, closed 83 percent of them, and paid out \$5.7 billion.

Mr. Pasterick predicted that rebuilding would be a long and difficult process that would depend on community willingness to meet NFIP elevation and other construction standards. He reported that New Jersey Governor Chris Christie had adopted FEMA post-Sandy advisory building standards at the state level and was encouraging local communities to adopt them as well.

Regarding NFIP reform, Mr. Pasterick said that the primary effect of a 2012 Biggert-Waters *Flood Insurance Reform Act* would be to raise rates and reduce subsidies. He said there would be an immediate effect on some policies, such as those for vacation homes and commercial properties, and a more phased-in impact on others. Mr. Pasterick noted, however, that the number of subsidized properties may not be as great as some observers think.

In response to concerns expressed by Rep. Kennedy regarding coastal building, Mr. Pasterick commented that availability of flood insurance along shorelines likely did not encourage development in those areas. He said that communities and states were responsible for deciding where people can and cannot build. He noted that properties along coasts account for roughly one percent of all flood insurance policies, though the public aftermath of storms like Sandy make that percentage seem much greater.

During Committee discussion, Mr. Pasterick also said, among other things, that it was more costly to comply with FEMA elevation requirements than with other FEMA rebuilding standards.

Brad Kading, President and Executive Director of the Association of Bermuda Insurers and Reinsurers (ABIR), said that based on publicly reported insurer estimates, Sandy had resulted in \$18.2 billion of insured losses, including \$3 billion in losses to Bermuda companies and \$8.5 billion in losses to other non-U.S. insurers. He said that Bermuda companies were the largest providers of U.S. property-casualty reinsurance, paying more than \$35 billion in U.S. catastrophe losses from 2001 to 2012. He also said, in part, that U.S. benefits of reinsurance included:

- increased capacity/coverage
- reduced credit risk
- diversification (more capacity at lower prices)
- external capital contribution

#### TITLE INSURANCE REGULATION & POSSIBLE REFORMS

Chara Bradstreet, Government Relations Policy Advisor with the National Association of Insurance Commissioners (NAIC), reported that an NAIC Title Insurance Task Force was pursuing three major items. She said these included drafting a white paper on escrow theft, monitoring the title insurance industry and working to combat fraudulent real estate settlement activities, and researching financial-related issues, such as the possibility of creating guaranty funds and risk-based capital requirements for title insurers.

In outlining specific Task Force working group and subgroup activity, Ms. Bradstreet said, among other things, that:

- Members of a Market Conduct & Mortgage Fraud Working Group were meeting monthly in regulator-only sessions to discuss ongoing title insurance concerns and had reached out to the Consumer Financial Protection Bureau (CFPB) to encourage its participation on the calls.
- A Title Insurance Financial Reporting Working Group was evaluating the effectiveness of recent changes in financial reporting by title insurers.
- Regulators were monitoring recent CFPB actions, including revisions to mortgage disclosure forms, and were considering the feasibility of promoting consumer shopping for title agents/insurers that would not delay real estate closings.

Timothy Kemp, Deputy General Counsel with The First American Financial Corporation, distinguished between title insurance and other types of property-casualty coverage and said, in part, that title insurance is retrospective while other p-c coverages are prospective. He reported that title insurers and other industry members had launched a marketing campaign to better communicate the benefits of coverage and had worked to simplify insurer rate structures and make

them more transparent, establish online cost calculators and comparison sites, and combat title insurance rebating and other abuses.

Mr. Kemp then recommended that to thwart escrow theft, also known as defalcation, states should establish strong licensing standards for title insurance agents.

In response to Rep. Kennedy's concerns regarding purchasing title insurance when refinancing, Mr. Kemp said that discounts were available when the same lender was used for the refinance as for the original transaction.

Justin Ailes, Vice President of Government & Regulatory Affairs with the American Land Title Association (ALTA), said that title insurers must abide by state insurance law, by a federal *Real Estate Settlement Procedures Act* (RESPA), by a "wide body" of federal statutes related to mortgage closings, and by a combination of state and common law statutes related to closings. Regarding state insurance oversight, Mr. Ailes said that 27 states regulated only the cost of a title insurance risk, four states evaluated both the cost of the risk and the examination, and 19 states regulated the costs of the risk, the title search, and the examination.

Mr. Ailes said that new ALTA *Title Insurance and Settlement Company Best Practices* helped regulators and consumers to know what to expect from title insurers and settlement agents and also helped lenders to manage their financial, regulatory, and reputational risks at closing.

In response to Rep. Lehman's concerns regarding agent pricing abuses, Mr. Ailes that ALTA best practices encouraged agents to charge correct rates, among other things.

Joseph Petrelli, President of Demotech, Inc., said that title insurers do most of their work before they issue a policy because any unresolved matters after that date may become title insurance claims. He said that title insurance inherently is different from life, health, and other property-casualty coverages, which are more prospective in nature. Mr. Petrelli opined that statutory accounting formats for p-c carriers were ill-suited to the title insurance business model and so did not convey the value of title coverage.

Mr. Petrelli explained that for each property transferred in the U.S., a title insurer prepares a title insurance commitment on behalf of the property owner. He said the commitment shows all the work that the insurer did before policy issuance to find and resolve any title concerns. Mr. Petrelli said it would be helpful to review a representative sample of such commitments to aid consumers in understanding why title insurance is important.

Robert Holman, President of General Title Insurance Company and President-Elect of the National Association of Independent Land Title Agents (NAILTA), reported that approximately 65 percent of all land title insurance transactions in the U.S. are conducted through independent land title agents. He said that this equated to roughly \$6 billion in annual revenue. He commented that getting consumers to appreciate what a title insurance policy does had been a problem for 30 years.

Mr. Holman also said that title insurance regulation was problematic because some states had no statutory authority over agents while some states with oversight had "no meaningful enforcement." He asserted that title insurance-specific regulation was appropriate because the industry was highly specialized.

Birny Birnbaum, Executive Director of the Center for Economic Justice (CEJ), said that title insurance "tends to suffer" from reverse competition and kickback arrangements because title insurers typically do not market their products to consumers who buy them. Rather, he said, insurers market to lenders, realtors, and others who refer consumers to the insurers.

Mr. Birnbaum said it was difficult for state insurance regulators to “wrap their arms” around title insurance because it involved non-insurance entities. He commented that states with the greatest success at overseeing the title insurance industry gave their insurance regulators broad financial services authority.

Mr. Birnbaum then expressed concerns regarding closing protection letters. He explained that in a number of states, lenders required borrowers to pay for letters that essentially ensure that the title agent will not abscond with escrow funds. He opined that because the title insurer appoints the agent, the insurer ultimately should be responsible for agent fraud.

#### CONSUMER LEGAL FUNDING PROPOSALS

Sen. Breslin, sponsor of a proposed *Civil Justice Funding Model Act*, made a motion to defer consideration of consumer legal funding issues until the Summer Meeting so that Rep. Charles Curtiss, who sponsored a draft *Consumer Legal Funding Model Act*, could participate. The Committee unanimously deferred consideration of the proposed models until the Summer Meeting.

#### GRADUATED DRIVERS LICENSES/FUNDING

Jackie Gillan, President of the Advocates for Highway & Auto Safety, reported that the number of motor vehicle accident deaths increased seven percent in 2012. She said that states needed to enact many key safety measures, including primary seatbelt laws, graduated drivers’ licenses, and texting bans.

Ms. Gillan highlighted findings in her organization’s *2013 Roadmap of State Highway Safety Laws* and said, among other things, that 14 states were making significant progress in their efforts to promote auto and highway safety, 30 states needed improvement, and six (6) states “were falling dangerously behind.”

Ms. Gillan asserted that highway safety initiatives save lives and prevent injuries; reduce state costs related to Medicaid, hospitalization, public assistance, and law enforcement; and qualify for new federal incentive grant money related to teen driving, ignition interlock systems, occupant protections, and distracted driving.

Sen. Holdman, who authored graduated driver license legislation in Indiana, said that one of his constituents had developed a device that blocked cell phone transmissions when a car was moving but that the Federal Communications Commission (FCC) had not cleared the device for use.

#### HUD DISPARATE IMPACT RULING/MCCARRAN-FERGUSON IMPACTS

Julie Gackenbach of Confrere Strategies reported that the U.S. Department of Housing & Urban Development (HUD) had released a draft rule in November 2011 to clarify the application of a disparate impact standard under the *Fair Housing Act*. She said HUD had indicated it would apply the standard to the pricing and provision of homeowners’ insurance. She said that following a lengthy comment process, HUD finalized its proposed rule on February 8.

Ms. Gackenbach said the insurance industry had strongly opposed the draft rule and that the final version, which would become effective on March 18, was very similar. In the rule, she said, HUD viewed the McCarran-Ferguson Act as “guidance to the court” rather than as a general prohibition against taking action that could invalidate or supersede state law.

Mr. Birnbaum of the Center for Economic Justice (CEJ) said that NCOIL should work to identify and end practices that lead to unfair discrimination against minorities, rather than oppose the HUD rule. He said the HUD decision only opposed a practice leading to a disparate impact if the practice was not justified by a business purpose and if there was a less discriminatory alternative. He said the fundamental question was whether an insurer should be allowed to intentionally discriminate based on race.

#### ADJOURNMENT

There being no further business, the meeting adjourned at 2:10 p.m.