

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
PROPERTY-CASUALTY INSURANCE COMMITTEE
PHILADELPHIA, PENNSYLVANIA
JULY 11, 2013
MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee met at the Philadelphia Marriott Downtown in Philadelphia, Pennsylvania, on Thursday, July 11, 2013, at 8:30 a.m.

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

Other members of the Committee present were:

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| Rep. Kurt Olson, AK | Sen. Jerry Klein, ND |
| Rep. Greg Wren, AL | Rep. Donald Flanders, NH |
| Sen. Jason Rapert, AR | Sen. Carroll Leavell, NM |
| Rep. Rich Golick, GA | Sen. Neil Breslin, NY |
| Sen. Travis Holdman, IN | Sen. William J. Larkin, Jr., NY |
| Rep. Ron Crimm, KY | Rep. Michael Stinziano, OH |
| Rep. Robert Damron, KY | Rep. Brian Kennedy, RI |
| Rep. Steve Riggs, KY | Rep. Charles Curtiss, TN |
| Rep. Susan Westrom, KY | Rep. Bill Botzow, VT |
| Sen. Dan Morrish, LA | Rep. Kathie Keenan, VT |
| Rep. George Keiser, ND | |

Other legislators present were:

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| Rep. Lindsey Holmes, AK | Rep. Don Gosen, MO |
| Sen. Greg Walker, IN | Assem. Will Barclay, NY |
| Sen. Laura Kelly, KS | Assem. Kevin Cahill, NY |
| Rep. Joseph Fischer, KY | Rep. Michael Henne, OH |
| Rep. Bart Rowland, KY | Rep. Nick Kotik, PA |
| Rep. Jeffrey Roy, MA | Rep. Marguerite Quinn, PA |
| Sen. Delores Kelley, MD | Sen. Roger Picard, RI |
| Rep. Keith English, MO | Sen. Mike Hall, WV |

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

MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its March 9 and 10, 2013, meetings in Washington, DC.

NFIP ONGOING CHALLENGES

Mike Angelina, representing the American Academy of Actuaries (AAA), said that significant changes to rate setting for the National Flood Insurance Program (NFIP) would take place as a result of a 2012 Biggert-Waters reform law. He said that subsidized rates were being phased out and would no longer be available for newly purchased properties, among other categories; that remapping, including levee decertification, could lead to higher premiums; and that there was a

move toward actuarial soundness. He then commented that the NFIP's approximately \$24 billion debt must be addressed in order to ensure the program's financial viability.

During Committee discussion, Mr. Angelina said, among other things, that:

- It would be difficult and costly to move toward a private-sector approach to flood insurance.
- Forty (40) percent of NFIP premiums go toward expenses, such as administrative costs, general overhead, funds provided to insurers that service NFIP policies, and agent commissions.

Dennis Burke of the Reinsurance Association of America (RAA) said that reinsurers were interested in participating in the flood insurance market. He said that Biggert-Waters included a provision that required FEMA to evaluate whether there is a reinsurance "appetite." He also said that Biggert-Waters required FEMA to develop a protocol for sharing its data with the private industry—an effort, he said, that was progressing slowly.

PROPOSED CONSUMER LEGAL FUNDING MODEL ACTS

Rep. Lehman said the Committee had discussed consumer litigation financing for some time. He spoke to similarities and differences between the three proposed models for Committee consideration, commenting that both Rep. Curtiss' draft *Consumer Legal Funding Model Act* and Sen. Breslin's draft *Civil Justice Funding Model Act* would establish important disclosures and other regulatory requirements. He explained that his proposed *Model Consumer Lawsuit Lending Alignment Bill* was different because it focused on the rates that lenders can charge. He asserted that consumer legal funding transactions are loans and that states should regulate them similarly.

Sen. Breslin commented that consumer legal funding establishes a level playing field for consumers with small claims who need money to get by while waiting for a settlement or decision. He also said, among other things, that the funding transactions are not loans because they are non-recourse, meaning that a funding company has no guarantee of repayment.

Rep. Curtiss said that consumer litigation financing serves an important need but that legislators should ensure that consumers are protected. He said he didn't oppose capping lending company fees but that such limits should be higher than caps on loans, since consumer legal funders are not assured of repayment.

Jeremy Kidd, Ph.D., a business and law professor at Mercer University, said it would be a mistake to say that consumer legal financing transactions are loans. He said that consumer legal funding is more like an "unorthodox" investment because there is no guarantee of repayment. He commented that usury laws, which regulate interest rates, are a "bad fit" for consumer litigation financing because interest rates do not apply to such transactions. He also said that consumers would be harmed if states applied usury laws to consumer legal funding, since doing so would create barriers to the market that would reduce competition and raise rates, among other things.

In response to Committee questions, Dr. Kidd said that:

- He was unaware of any instance in which states cap fees that private companies charge.
- Despite concerns regarding a possible role for private equity firms in the consumer legal funding market, funding companies should have no problem meeting their obligations because their money is provided to the consumer up front.
- Litigants have the benefit of legal counsel to help them understand consumer litigation financing contracts.

Sen. Holdman expressed interest in learning how many states supervise consumer legal funding through their insurance or financial services departments, as opposed to through court-imposed

disciplinary actions. As a follow-up to his comments, Rep. Keiser asked how such transactions should be regulated if they are not subject to usury laws. Dr. Kidd suggested that securities law may be appropriate because consumer legal funding transactions are a form of investment.

Retired Georgia Attorney General Thurbert Baker, speaking on behalf of the U.S. Chamber Institute for Legal Reform, commented that consumer litigation financing presents significant legal and ethical challenges for consumers and lawyers. He said that lawsuit lending is similar to predatory lending because needy consumers pay charges “far in excess” of market interest rates. State attorneys general, he reported, have begun taking notice and working to bring consumer litigation financing within the ambit of state lending laws. He added that more transparency is needed and that consumer legal funding increases litigation costs.

TITLE INSURANCE REGULATORY APPROACHES

Michael Stinziano, speaking on behalf of Demotech, Inc., reported on Demotech efforts to detail the kinds of concerns that title insurers work to identify and resolve. He highlighted findings from Colorado, Florida, and Louisiana, saying that Demotech had analyzed 240 policies in those three states and had uncovered at least 2,004 problems that title insurers found, fixed, or addressed. He said that review of additional documentation would reveal a significantly higher number of such actions. Demotech, he noted, had reached out to representatives of title insurers and agents in order to expand the scope of Demotech’s studies.

Commissioner Michael Consedine (PA), Secretary-Treasurer of the National Association of Insurance Commissioners (NAIC), said the organization was focusing primarily on consumer education, since title insurance is a rather unique product. He said the NAIC also was exploring market conduct issues and working to ensure that laws related to solvency and financial regulation are applied appropriately to the title insurance industry. Commissioner Consedine noted that the Consumer Financial Protection Bureau (CFPB) was looking to require additional disclosure forms and other things, and that this effort was an example of the federal government involving itself in a realm traditionally regulated by the states.

Bruce Strombom, Ph.D., Managing Principal of the Analysis Group, spoke to competitiveness in the title insurance industry. He said that competition was strong, as evidenced by the:

- significant number of insurers entering the market over the last five years
- volatility of market shares of competing firms
- declining concentration of firms in large markets, with a leveling off in small markets
- operating profit margins, which are at or below those of benchmark industries

Susan Johnson, Executive Director of the Real Estate Services Providers Council, Inc. (RESPRO), outlined state and federal regulations governing affiliated business arrangements. She said a 1974 federal Real Estate Service Providers Act (RESPA) and guidelines issued by the U.S. Department of Housing & Urban Development (HUD) apply to the industry. She added that the Dodd-Frank Act imposed certain civil penalties for violating RESPA and other consumer financial protection laws.

Ms. Johnson said, regarding state oversight, that an NAIC model law regulates title insurance agencies. Other state-level laws/regulations that pertain to affiliated arrangements, she said, place restrictions on financial institutions and insurance agencies, and cap how much business a title insurance agency can receive from an affiliate, among other things.

ADJOURNMENT

There being no further business, the meeting adjourned at 10:00 a.m.