

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
STATE-FEDERAL RELATIONS COMMITTEE AND INTERNATIONAL INSURANCE
ISSUES COMMITTEE
NEW ORLEANS, LOUISIANA
MARCH 5, 2017
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) State-Federal Relations Committee and International Insurance Issues Committee met jointly at the New Orleans Downtown Marriott on Sunday, March 5, 2017 at 9:30 a.m.

Representative Joseph Fischer of Kentucky, Chair of the International Insurance Issues Committee, presided.

Other members of the Committee present were:

Rep. Sam Kito, AK	Rep. Greg Cromer, LA
Sen. Jason Rapert, AR	Sen. Dan "Blade" Morrish, LA
Asm. Ken Cooley, CA	Rep. Michael Webber, MI
Sen. Travis Holdman, IN	Asm. Will Barclay, NY
Rep. Matt Lehman, IN	Sen. Bob Hackett, OH
Rep. Steve Riggs, KY	

Other legislators present were:

Rep. Deborah Ferguson, AR

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Paul Penna, Executive Director, NCOIL Support Services, LLC
Will Melofchik, Legislative Director, NCOIL Support Services, LLC

MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its November 18, 2016 meeting in Las Vegas, Nevada.

DISCUSSION ON IMPACT OF COVERED AGREEMENT

Dave Snyder of the Property Casualty Association of America (PCA) stated that pursuant to Dodd-Frank, a period of 90 calendar days following the date of submission of the final text of the covered agreement to Congress must expire before the covered agreement is effective. At the end of 90 days, without Congressional action or revocation from the Trump Administration, the agreement goes into effect. That is different from a traditional trade agreement which requires a Congressional vote to go into effect. On February 16, 2017, a hearing was held on the covered agreement before the House Financial Services Subcommittee on Housing and Insurance during which the NAIC opposed the agreement and called for re-negotiation. Industry and legislators are divided on supporting the agreement. On February 24, 2017, a letter was sent to Treasury Secretary Mnuchin from Subcommittee Chairs Duffy and Ross that laid out several

procedural and technical questions about the covered agreement, and requested a response by March 10, 2017.

Eric Cioppa, Superintendent of the Maine Bureau of Insurance, stated that NAIC has urged a transparent re-negotiation of the covered agreement. While the NAIC recognizes that the U.S. received some benefits under the agreement, such as the elimination of local presence requirements, it doesn't provide for full equivalence or recognition of the U.S. regulatory system. Supt. Cioppa stated that the agreement places certain conditions on the ability of regulators to obtain information and to take certain actions currently authorized by State law. In addition to concerns with the substance of the agreement, Supt. Cioppa stated that the NAIC is concerned with how the negotiation process unfolded. Unlike a traditional trade agreement, there were no formal consultations with U.S. stakeholders and despite assurances to the contrary, the few in the negotiation room were merely observers subject to strict confidentiality requirements.

Joe Thesing from the National Association of Mutual Insurance Companies (NAMIC) stated that the covered agreement is a result of a simple lobbying job: European insurance companies did a great job convincing international regulators to come to the U.S. and fight for a regulatory regime that benefits them so that they can gain more market share to make more money. The problem is that the U.S. domestic marketplace loses because of that, particularly smaller U.S. insurers. Regarding reinsurance collateral, if the covered agreement goes into effect it will eliminate all collateral requirements for European reinsurers. The agreement says that U.S. companies can negotiate collateral requirements but the fact of the matter is that smaller U.S. insurers don't have the negotiating power to do so. Mr. Thesing also stated that for a State that hasn't adopted the NAIC Credit for Reinsurance Model Law, such as Texas, if the covered agreement goes into effect, collateral requirements will be zero because of the covered agreement provisions allowing for preemption of State law. Mr. Thesing urged NCOIL to voice its concerns about the covered agreement to Congress and offered assistance in doing so.

Ron Jackson from the American Insurance Association (AIA) stated that AIA agrees that the negotiation process in any future agreements needs to be improved and above all, more transparent. However, AIA believes the covered agreement provides critical protection for U.S. companies doing business in the E.U. that have suffered discriminatory treatment. Mr. Snyder stated that another key feature of the covered agreement is that it creates a joint committee for further work in analyzing the issues raised by the agreement and the committee will therefore be very important going forward. Mr. Snyder urged NCOIL to consult with the committee if in fact the covered agreement goes into effect. Rep. Joseph Fischer (KY) asked if the agreement goes into effect, is it self-executing against the States. Mr. Thesing stated that no one knows for sure.

NCOIL President Rep. Steve Riggs (KY) stated that the lack of transparency in the negotiation process was a big problem and asked Mr. Jackson if AIA agrees. Mr. Jackson agreed and stated that AIA supports H.R. 5143. Rep. Riggs asked if AIA could adopt a resolution or statement supporting transparency in future agreement negotiations. Mr. Jackson said that should not be a problem. Mr. Snyder stated that there are serious issues with transparency in other international settings as well such as the International Association of Insurance Supervisors (IAIS). Mr. Thesing stated that

the U.S. needs to simply say no to European micro-managing in the U.S. insurance regulatory regime. State legislators can help by putting pressure on their federal colleagues.

Rep. Fischer asked Supt. Cioppa if the NAIC has done an analysis as to which State laws could be preempted by the covered agreement. Supt. Cioppa stated that is an ongoing process and also stated that if the States don't modify their reinsurance agreements within four years, there is going to be preemption of State reinsurance laws. Supt. Cioppa also stated that there are many ambiguous provisions in the covered agreement and a lot of unanswered questions. He urged all to read it carefully and voice their concerns.

Dennis Burke of the Reinsurance Association of America (RAA) agreed with Mr. Jackson's statements. U.S. companies were prohibited from doing business in several E.U. countries and there was a danger that if the covered agreement was not reached, U.S. companies would see more barriers to operating in Europe. Mr. Burke stated that the agreement can be re-negotiated while in place and it also has a termination provision in it. Mr. Burke further stated that RAA agrees that the negotiating process was flawed and needs more transparency. Rep. Fischer asked who has the authority to cancel the agreement. Mr. Burke said he is not sure but he knows the States do not. Mr. Snyder closed by saying: due to the short turnaround (90 days from submission of the agreement to Congress), NCOIL needs to move quickly if it wants to be involved; that U.S. companies have reported that the discrimination has ceased since the covered agreement was reached; and PCI is willing to provide to NCOIL its legal analysis of the covered agreement.

DISCUSSION ON IAIS INITIATIVES

Mr. Snyder stated that the IAIS continues to work on its insurance capital standards and unfortunately, many at the IAIS continue to maintain a hard line that there should be a single standard. Mr. Snyder stated that standard is not reflective of how the U.S. operates.

Mr. Snyder then noted that there are many other international insurance regulation developments ranging from governance, market conduct, resolution, the role of technology, systematic risk and enhanced supervision, and cyber discussions. This past Friday, IAIS issued over 150 pages of material on several issues and a lack of transparency continues to be a problem. Mr. Snyder stated that one example of the direction the IAIS is headed is reflected in the issue of suitability – the notion that members of the board, CEO's, key people that control various government functions, as well as company owners, are not only subject to review in terms of "did they do anything bad in the past", but under the IAIS standards, the regulator has the authority to determine whether he or she thinks a board member/CEO is competent. That is typically left to the free market and that is one example of the intrusive nature of some of the IAIS standards and their lack of providing things like due process, transparent regulatory provisions, and the role of the judiciary. Such actions blur the line between the regulator and the regulated entity. Mr. Snyder noted that the Trump Administration has issued core principles for financial services regulation that fit well with Organization for Economic Cooperation and Development (OECD) recommendations on how best to regulate financial services. Mr. Snyder urged NCOIL to stay involved on international

insurance developments and assured the Committee that its involvement makes a real difference.

FIO/FACI ACTIVITY

Mr. Thesing stated that NAMIC supports elimination of the FIO and believes it has not provided any value during its existence. Commissioner Tom Considine, NCOIL CEO, stated that NCOIL does not support elimination of the FIO at this time. We might be arriving at a time of “new Federalism” and it would be shortsighted to call for its elimination because the current temperature of the new Administration and Congress and its respect towards State rights might lead to someone leading the FIO who internationally advocates for the state-based regulation of insurance.

PROPOSED RESOLUTION ENCOURAGING FIO TO CREATE A NEW PROPOSAL FOR THE STUDY OF AUTO INSURANCE AFFORDABILITY IN ACCORDANCE WITH TITLE V OF DODD-FRANK

Mr. Thesing stated that NAMIC supports the Resolution and that the study didn’t look at any loss costs and cost drivers that you need to look at to determine in any sort of accurate way whether a product is affordable or not. What’s interesting about the study is that it said 91% of those considered to be low-income individuals find auto insurance to be affordable. Mr. Thesing stated that FIO essentially used its bully pulpit to promote a half-baked study that is not accurate.

A motion was then made and seconded to waive the quorum requirement.

Sen. Dan “Blade” Morrish stated that, in the interest of time, he would not thoroughly discuss the Resolution but urged the Committee to focus on the fifth and final action the Resolution calls for: “confirm in the study or in writing now that the FIO affordability index will not be used in any fashion or forum to undermine, impair or supersede the state regulation of insurance rates as being inadequate, excessive, or unfairly discriminatory.”

Birny Birnbaum of the Center for Economic Justice (CEJ) stated that CEJ thinks the Resolution is counterproductive. Mr. Birnbaum stated that this would resurrect an issue that long ago “died” and asked why NCOIL would ask the Federal government to do more work on this issue when NCOIL thinks FIO shouldn’t be collecting data from insurers – that is contradictory. Mr. Birnbaum stated that NCOIL should ask State regulators to perform the study and offered help in doing so.

Upon a motion made and seconded, the Committee unanimously adopted the Resolution.

ADJOURNMENT

There being no further business, the Committee adjourned at 10:45 a.m.

