

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
STATE-FEDERAL RELATIONS COMMITTEE AND INTERNATIONAL INSURANCE  
ISSUES COMMITTEE  
CHICAGO, ILLINOIS  
JULY 13, 2017  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) State-Federal Relations Committee and International Insurance Issues Committee met jointly at the Chicago Intercontinental Magnificent Mile Hotel on Thursday, July 13 2017, at 2:00 P.M.

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

Other members of the Committees present were:

Rep. Sam Kito, AK	Rep. Lana Theis, MI
Sen. Jason Rapert, AR	Rep. Michael Webber, MI
Rep. Matt Lehman, IN	Rep. Don Flanders, NH
Rep. Peggy Mayfield, IN	Sen. Neil Breslin, NY
Rep. Steve Riggs, KY	Sen. Roger Picard, RI
Rep. Bart Rowland, KY	Rep. Bill Botzow, VT

Other legislators present were:

Rep. Deborah Ferguson, AR	Asw. Maggie Carlton, NV
Rep. Dick Hamm, IN	Rep. Lewis Moore, OK
Sen. Rick Girdler, KY	Rep. Glen Mulready, OK
Rep. Lois Delmore, ND	

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 March 5, 2017 meeting in New Orleans, Louisiana.

## UPDATE ON COVERED AGREEMENT

Mike Kreidler, Washington State Insurance Commissioner, stated that the current Covered Agreement (Agreement) snuck up on everyone in the last days of the Obama Administration. Rep. Joseph Fischer (KY), Chair of the International Insurance Issues Committee, asked Cmsr. Kreidler if the Agreement had to be approved by the U.S. Senate. Cmsr. Kreidler stated that it does not. Cmsr. Kreidler stated that the purpose of the Agreement was to harmonize the business of insurance between the European Union (EU) and the U.S. The concern that insurance regulators have about it is that it dictates to the point where it compromises protections in the insurance market by virtue

of the ambiguity of some of the language contained in it. The National Association of Insurance Commissioner (NAIC) feels strongly that such ambiguity should be clarified if the Agreement is to be enacted. The NAIC also prefers that the Agreement be re-negotiated so that States could play a more active role. Another concern that the NAIC has is that, under the terms of the Agreement, all State insurers would be treated equally and that is problematic from the standpoint of a one-size-fits-all approach is not workable for all insurers.

Dave Snyder of the Property Casualty Insurance Association of America (PCIAA) stated that while Congress is not required to take action for the Agreement to go into effect, it was given a review period, which has expired, that consisted of hearings and an exchange of letters. There are both supporters and critics of the Agreement throughout the insurance industry and Congress. Some think that mere clarification of provisions in the Agreement is better than outright rejection of it. The EU has a different approval process – they require a Parliamentary vote which Mr. Snyder believes will occur this Fall - and their other approval processes have been completed.

Mr. Snyder stated that prior to the negotiation of the Agreement, a number of U.S. insurance companies were subject to negative regulatory actions in several European countries which ceased upon negotiation of the Agreement. The Agreement needs to be signed by the U.S. Secretary of Treasury U.S. Trade Representative in order to be finalized. The other thing to keep in mind is that in September, U.S. reinsurers are going to be in the process of negotiating reinsurance contracts for next year and the Agreement could affect those negotiations. Mr. Snyder stated that PCIAA has no formal position on the Agreement.

Bruce Ferguson of the American Council of Life Insurers (ACLI) stated that ACLI continues to support the Agreement to make sure that there is parity in reinsurance collateral – something that has been a challenge for many years. However, ACLI's support was contingent upon State insurance regulators and State policymakers being involved in the development and negotiation of the Agreement, and that is unfortunately not what happened. Mr. Ferguson stated that ACLI wants to make sure that the Agreement respects the primacy of State insurance laws and regulations, and that while testimony from former Federal Insurance Office (FIO) Director Michael McRaith cleared up some ambiguities in the Agreement, there are further clarifications to be made. Mr. Ferguson stated that he does not think the USTR and Treasury are interested in signing the Agreement unless States are satisfied that the standards included therein are consistent with those adopted by the States. Mr. Ferguson closed with reiterating ACLI's support of the Agreement in a way that is compatible with the current state insurance regulatory and legislative framework.

Joe Thesing from the National Association of Mutual Insurance Companies (NAMIC) stated that beyond the NAIC, NAMIC is the only national trade association that has stated strong and official opposition to the Agreement. The easiest way to summarize the opposition is that it is a bad deal for U.S. only domestic insurance companies – it provides nothing but increased costs in the form of collateral requirements and group capital standards. Mr. Thesing stated that the Agreement is nothing more than a good lobbying job from European companies, and it was negotiated and signed essentially in private. It provides European regulators with unprecedented authority to work with the USTR and Treasury to change U.S. laws. It is undisputable that it will provide some benefits to U.S. companies in Europe but the potential detriment to U.S. domestic

companies outweighs any such benefits. The whole idea behind the Agreement was to get to a point where European regulators would recognize the U.S. system of insurance regulation as “equivalent” but there is no guarantee that will happen under the terms of the Agreement. Mr. Thesing stated that NAMIC is working closely with Treasury to, at a minimum, make changes to ambiguous provisions in the Agreement.

Rep. Fischer asked if the Agreement would preempt a State’s collateral requirements for an unaccredited reinsurer, and if so, pursuant to what authority. Cmsr. Kreidler stated that Dodd-Frank authorizes the creation and implementation of the Agreement and that NAIC believes the Agreement would supersede any such State laws that Rep. Fischer mentioned. Mr. Snyder stated that the Agreement does contain some safeguards and regulatory leeway to ensure that the companies that are granted the reduction in collateral requirements are financially sound.

Rep. Fischer asked if the Agreement required States to reduce their collateral requirements by 20%. Mr. Thesing stated that the Agreement is not clear on that issue but it is NAMIC’s fear and belief that if the Agreement goes into effect, the standards that have been set in the States to create a sliding scale for reinsurance collateral essentially disappear, and smaller U.S. companies don’t have the capacity to negotiate collateral with foreign reinsurers. Mr. Ferguson stated that the challenge that the Agreement is trying to address is to how to make sure there is parity in the area of reinsurance collateral. ACLI believes that the Agreement met that challenge and that any ambiguities in it will be clarified before it is implemented.

#### DISCUSSION ON THE OFFICE OF INDEPENDENT INSURANCE ADVOCATE – REFOCUSING FEDERAL INVOLVEMENT IN INSURANCE

Cmsr. Kreidler stated that The Office of the Independent Insurance Advocate (Office) is part of the CHOICE Act and essentially puts a new coat of paint on the Federal Insurance Office (FIO). The NAIC does not see a need for its creation and it would represent unnecessary federal encroachment into the state-based system of insurance regulation, to the detriment of consumers. Rep. Fischer asked who exactly the Office would represent – would it be a liaison between consumers and the Federal government or between states and the Federal government? Cmsr. Kreidler stated that is a good question and the best answer at this time is that it will essentially operate similar to the FIO – a quasi-Federal insurance regulator.

Mr. Snyder agreed with Cmsr. Kriedler’s statements and sated that the ultimate question is, in the context of a robust state insurance regulatory system, what do you really need or want the Federal government to add? PCI does not see a role for the Federal government in domestic insurance issues and that its role internationally should primarily be to fulfill the Constitutional requirement that the Federal government does have the ultimate representational responsibility for the U.S. in international affairs. Mr. Snyder stated that the Federal government needs to consistently support the state based system of insurance regulation and that there needs to be greater transparency in international negotiations. There should be a requirement that the Federal government reach consensus with State representatives before they split and thereby weaken the U.S. voice overseas.

Mr. Ferguson stated that ACLI does not believe there will be any wholesale Dodd-Frank reform anytime soon but some piecemeal reform that could occur is: requiring Federal

consultation with State representatives before international negotiations; the Senior Safe Act of 2017 (S. 223); and extending the term of the insurance expert on FSOC.

Ron Jackson of the American Insurance Association (AIA) stated that AIA has not taken a formal position on the creation of the Office, but in general, AIA has supported a strong Federal non-regulatory voice in the insurance sphere that would support the state-based system of insurance regulation.

Mr. Thesing stated that NAMIC has not yet taken a position on the creation of the Office but has called for the elimination of FIO.

Rep. Fischer asked if it was likely that the Senate would approve elimination or a downgrade of the FIO. Cmsr. Kreidler stated that he believes it could be more effective to reshape the FIO as a supporter and coordinator of the state-based system of insurance regulation, rather than eliminating it altogether. Mr. Thesing stated that the justifications for FIO were to have a Federal touchstone on insurance and to have an office that could negotiate treaties – those functions could be rolled into an existing Federal office and there is no need for such a standalone Federal agency. Mr. Snyder stated that NCOIL's consistent participation in these issues is needed and a principal position would be to call for the total elimination of the Federal authority to supersede State insurance regulation, and to have a Federal office of insurance that advocates for continuation of the state-based system of insurance regulation. Mr. Ferguson stated that one positive outgrowth of FIO is that it has reached out to various stakeholders so that the Federal government has an understanding of the insurance industry.

#### UPDATE ON DODD-FRANK AND CFPB DEVELOPMENTS

Mr. Ferguson stated that regarding the Consumer Financial Protection Bureau (CFPB), ACLI believes that it has been clear from the beginning that it has no authority on insurance products and if it continues in existence, ACLI would like that reaffirmed.

Rep. Fischer asked for some background on the CFPB and its creation. Mr. Snyder stated that leading up to the enactment of Dodd-Frank, Congress thought the states had done a very good job regulating insurance, but for other financial products, the existing regulations had focused on the financial elements and not enough on market conduct. The CFPB was created to fill that gap. Rep. Fischer asked if the CFPB is a threat to the state-based system of insurance regulation. Mr. Snyder stated that Federal agencies have a habit of seeking to increase their scope and power, but as it currently exists, it does not pose a threat.

#### DISCUSSION ON IAIS INITIATIVES

Cmsr. Kreidler stated that interactions with the International Association of Insurance Supervisors (IAIS) to address the issues of insurance capital standards have been ongoing. IAIS is also working to address its systemic risk assessment mythology so that there is a common understanding from one country to another. The IAIS is currently field-testing its common framework for supervisions of international active insurance groups (ComFrame). ComFrame is a set of international supervisory requirements focusing on the effective group-wide supervision of internationally active insurance groups (IAIGs). An IAIG is a large, internationally active group that includes at least one sizeable insurance entity. ComFrame sets out a comprehensive range of quantitative

requirements specific to IAIGs, and requirements for supervisors of IAIGs. ComFrame is built and expands upon the high-level requirements and guidance currently set out in the IAIS Insurance Core Principles (ICPs) which generally apply on both a legal entity and group-wide level.

Mr. Snyder stated that IAIS is a voluntary group of insurance regulators from around the world. The reason behind its creation was that there was a need for a forum for discussion among regulators due to the increased interconnectedness of insurance markets across the world. The IAIS issues ICPs which are basic standards that are not directly binding on the U.S. but are used to issue a report card on the U.S. compliance with international standards, issued by the World Bank and International Monetary Fund. Shortly before the financial crisis, Europe began to develop a new solvency system – Solvency II. At the same time, it was taken to the IAIS and, regrettably, a lot of the standards issued by the IAIS are based on Solvency II. The capital standards that the IAIS are working on reflect the European approach that because insurers are closely linked to banks, they cannot fail. The U.S. separates banks and insurers in its regulatory approach. Mr. Snyder stated that the difficulty with the IAIS insurance capital standard is that it will probably result in U.S. companies putting aside a lot of capital which will result in higher consumer prices. It's not that capital standards are wrong – the U.S. has them – but the U.S. supplements its standards with a vigorous and robust system of data collection and regulation with other requirements relating to the investments and reserves of insurance companies that other countries don't have. The basic approach going forward is that standards should not be one-size-fits-all – international standards are needed that understand there are different ways of doing things.

Mr. Thesing agreed with Mr. Snyder and stated that Solvency II is a reflection of the European regulatory failures and that should have nothing to do with how insurance is regulated in the U.S. Additionally, there are fundamental differences between how insurance is regulated among countries. For instance, there is no price regulation in Europe but in the U.S. we have file-and-use, flex-rating, use-and-file, etc. Those differences need to be considered.

Rep. Fischer asked if anything adopted by the IAIS would have to be taken to the States for approval before enactment. Mr. Snyder replied yes, and stated that they would also have to be taken to the Federal government to the extent it has any direct supervisory authority over insurance companies – those designated as systematically important and those that were affiliated with lending businesses. Cmsr. Kreidler stated that it is important to note that the IAIS activities are voluntary and advisory, and there are huge incentives for there to be comparable protections built in to the global insurance regulatory system. If there is a country not doing its job in protecting consumers and ensuring a sound regulatory framework, it should have to pay a price. Mr. Snyder stated that while the focus has been on capital standards, the IAIS is involved in every aspect of insurance regulation – governance, market conduct, cyber issues, and data issues. It therefore requires constant vigilance to ensure there is not detrimental encroachment into the state-based system of insurance regulation.

#### DISCUSSION ON DRAFT LEGISLATION – THE INTERNATIONAL INSURANCE STANDARDS ACT OF 2017

Mr. Snyder stated that bi-partisanship is rare in Washington but one example of its success is the draft legislation from Congressmen Duffy and Heck, "The International

Insurance Standards Act of 2017.” It focuses on two main issues: requiring federal agencies engaged in international insurance regulatory standards discussions to reach consensus with the states; and to ensure more transparency from federal agencies in international decision making, both of which are extremely important. Mr. Ferguson and Cmsr. Kreidler agreed and urged NCOIL to support the draft legislation.

#### ADJOURNMENT

There being no further business, the Committee adjourned at 3:30 P.M.