

NATIONAL COUNCIL OF INSURANCE LEGISLATORS  
STATE FEDERAL RELATIONS COMMITTEE AND INTERNATIONAL INSURANCE  
ISSUES COMMITTEE  
PHOENIX, ARIZONA  
NOVEMBER 17, 2017  
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) State-Federal Relations Committee and International Insurance Issues Committee met at the Sheraton Grand Phoenix Hotel on Friday, November 17, 2017 at 9:15 a.m.

Senator Dan “Blade” Morrish of Louisiana, Chair of the State-Federal Relations Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert, AR  
Rep. Joseph Fischer, KY  
Rep. Steve Riggs, KY  
Rep. Michael Webber, MI  
Rep. Lois Delmore, ND  
Rep. George Keiser, ND

Sen. Jerry Klein, ND  
Sen. Neil Breslin, NY  
Sen. James Seward, NY  
Sen. Bob Hackett, OH  
Rep. Michael Henne, OH  
Rep. Bill Botzow, VT

Other legislators present were:

Rep. David Livingston, AZ  
Rep. Richard Smith, GA  
Rep. Martin Carbaugh, IN  
Rep. Jim Gooch, KY

Rep. John Wiemann, MO  
Asw. Maggie Carlton, NV  
Asm. Kevin Cahill, NY  
Rep. Tom Oliverson, TX

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 July 13, 2017 meeting in Chicago, Illinois.

### THE COVERED AGREEMENT – DISCUSSING THE ROAD AHEAD

Michael Considine, NAIC CEO and former Commissioner of the Pennsylvania Department of Insurance, stated that the Covered Agreement (Agreement) is a unique mechanism borne out of Dodd-Frank created to resolve a situation between the U.S. and Europe that has been around for decades and has been a source of tension – European reinsurers were required to post collateral on a U.S. ceded business whereas a U.S. reinsurer wasn't. The NAIC had revised its Credit for Reinsurance Model in an attempt to rectify the problem by providing collateral relief if a European or other reinsurer outside the U.S. met certain jurisdictional and solvency requirements. However, that

proved to not be enough which led to the Agreement mechanism in Dodd-Frank. The negotiation process surrounding the Agreement started in the Obama Administration and continued in the current Administration – the process had flaws. The Agreement states that in exchange for U.S. reducing, if not eliminating collateral requirements for European reinsurers, the U.S. receives some certainty around European requirements for U.S. groups doing business in Europe related to governance and capital.

Cmsr. Consedine stated that the NAIC had reservations about the Agreement because it represents a Federal intrusion into the state-based system of insurance regulation, but nonetheless, the NAIC worked with the Obama and Trump Administrations, along with members of Congress, to identify some areas that, if some clarity and certainty was provided on, the comfort level with the Agreement would be better. The Trump Administration released a policy statement on the Agreement which the NAIC believes provided such clarity and certainty. The policy statement re-affirmed the primacy of state insurance regulation and indicated that the group capital calculation approach the NAIC is working on will be recognized under the Agreement. Once the European Parliament executes their requirements pursuant to the Agreement, that will start a five-year clock where States have to evaluate how to go forward with implementing the Agreement. Options include: a.) not implementing the Agreement which would result in the federal government stepping in in five years to preempt state law and implement the Agreement; b.) during the five-year period, the States will control their own destiny in figuring out how best to implement the Agreement in a way that preserves the primacy of state insurance regulation. The NAIC is currently discussing whether to amend its Credit for Reinsurance Model Law to implement the Agreement. One issue the NAIC is discussing is whether to recognize other similarly situated jurisdictions and not just the EU in the zero-collateral approach – jurisdictions such as Switzerland, Bermuda, and Japan. Cmsr. Consedine welcomed NCOIL participation throughout this process.

Sen. Morrish asked if the Agreement has been officially agreed upon between the U.S. and EU. Cmsr. Consedine stated that it has effectively been agreed upon – there are a few procedural aspects that the European Parliament must complete.

Christina Urias, former Director of the Arizona Department of Insurance, agreed with Cmsr. Consedine's statement that the policy statement on the Agreement was encouraging because it clarified some issues and supported the state based system of insurance regulation. Dir. Urias stated that there are three major areas in the Agreement: a.) reinsurance collateral – the Agreement seeks to make it equal in terms of what collateral is charged. In the past, U.S. reinsurers did not have to put up any collateral on the risks they undertook but European reinsurers had to put up 100% collateral. Notably, the Agreement allows for the parties to negotiate a separate collateral agreement; b.) group supervision – the Agreement eliminates the requirement for U.S. reinsurers doing business in Europe to comply with Solvency II requirements. U.S. groups are exempt from EU reporting requirements. U.S. groups can obtain information on EU reinsurers parent companies. And the NAIC group capital calculation standards will satisfy the Agreement's group capital assessment standards. Notably, the NAIC does not anticipate any changes to its Model Holding Company Act; c.) information exchange – the gold standard for that is the IAIS MMOU agreements although they are not specifically mentioned in the Agreement.

Dir. Urias noted the Agreement creates a joint committee consisting of EU and US members that would resolve disputes that may arise under the Agreement. The policy

statement on the Agreement states that state insurance regulators will be “consulted” about the disputes. Dir. Urias also noted that there will likely be a public hearing on the Agreement in February as to how best to proceed with changes to the NAIC Credit for Reinsurance Model Law to recognize the Agreement.

Rep. George Keiser (ND) asked Dir. Urias if she thought that Europe “won” the negotiations involved with the Agreement. Dir. Urias stated that she was not in favor of the Agreement - the best regulation is local in nature, and policyholders need the protection of collateral. But, it was a negotiation, and now that insurance is more global in nature, we must work with our counterparts. Dir. Urias stated that, having said that, she would not be in favor of any future Agreement’s.

Sen. Bob Hackett (OH) asked if other States, in addition to Ohio, lowered the 100% collateral requirement for international reinsurers. Dir. Urias stated that other States had done that – the NAIC Credit for Reinsurance Collateral Model Law sets a sliding scale from 0 to 100 for collateral, based on the financial solvency of the reinsurer. Almost every State has adopted that Model. The Agreement does in fact remove the collateral requirements – although it still allows the parties to negotiate – so it is most important for U.S. regulators to work with European counterparts to make certain of the financial solvency of the reinsurer.

Rep. Joe Fischer (KY) asked what penalty the Federal government can impose on a State if it chooses not to comply with the Agreement. Dir. Urias stated that the Agreement provides for the creation of a Joint Committee that is charged with resolving disputes. Ultimately, Dir. Urias stated that she believes Treasury would determine if the Agreement preempts State law.

Sen. Morrish asked Dir. Urias if the Agreement mentions the state-based system of insurance regulation. Dir. Urias stated that yes, both the Agreement and accompanying policy statement mention it and support said system.

Dennis Burke of the Reinsurance Association of America (RAA) stated that 41 States have adopted the NAIC Credit for Reinsurance Model Law and that the five-year period for States to implement the Agreement is in reality shorter because each State’s insurance department and legislature operate on different timelines. For example, Texas’ legislature meets in regular session every other year. Mr. Burke stated that Rep. Fischer asked the right question earlier – the main issue is preemption of State law given how quickly the Agreement’s five-year implementation period will move. Mr. Burke encouraged regulators, legislators and interested parties to work together to move as quickly as possible.

Dave Snyder from the Property and Casualty Insurance Association of America (PCI) stated that the Agreement should be a topic of discussion at NCOIL meetings in the future because there is a lot of work to be done for implementation. Mr. Snyder noted that there is pending Federal legislation that states future Agreement’s cannot impose additional prudential requirements on U.S. companies besides those that currently exist in U.S. law. It is also important to make sure going forward that U.S. companies doing business in the EU get the full benefit of the Agreement.

Joe Thesing from the National Association of Mutual Insurance Companies (NAMIC) stated that NAMIC has long been an opponent to the Agreement. However, the policy

statement on the Agreement is a positive step. Mr. Thesing stated that one thing to keep an eye on in the future is that when collateral requirements go away, it is an open question as to whether small and regional companies will have the negotiating power to require any collateral. And, it is an open question as to how those small and regional companies will be viewed in the regulatory community.

## DISCUSSION ON THE FUTURE OF SIFI DESIGNATIONS

Cmsr. Consedine stated that Dodd-Frank created the FSOC which has several roles, one of which is to identify and designate banks, insurance companies, and other financial services entities, as “systematically important.” Such a designation involves additional regulatory supervision and capital requirements. After the financial crisis, AIG, Metlife and Prudential were the “designated” insurance company entities. From the beginning, there were concerns with the designation process because there was not a foundational basis to support the notion that insurance companies were systemically risky. Additionally, the designation process was flawed because state insurance regulators did not have voting authority. Recently, Metlife and AIG have been de-designated. The NAIC continues to advocate for changes to FSOC, including the reform of the SIFI designation, if not entirely eliminating it. Cmsr. Consedine noted that the recent U.S. Treasury report on the asset management and insurance industries is encouraging because it supports the state based system of insurance regulation.

Dir. Urias urged the Committee to review the Treasury report that Cmsr. Consedine mentioned. The recommendations set forth in the report are very strongly supportive of the state based system of insurance regulation. Regarding the evaluation of systematic risk, the recommendations state that the focus should not be on entity-based regulation but rather on products and the activities the companies are undertaking. Dir. Urias believes that insurance companies do not pose systemic risk. It remains to be seen whether FSOC will change or eliminate its evaluation and designation process. Similarly, it will be interesting to see what the Financial Stability Board (FSB) does with its designation of globally systematically important insurers (G-SII's) given the Treasury report's recommendation of activities-based approaches to risk evaluation. Dir. Urias noted that the NAIC initiated a macro-prudential surveillance initiative at its prior meeting this past Summer which focuses on new liquidity assessments.

Mr. Snyder stated that this morning, Treasury issued a detailed report on its recommended changes to the SIFI designation process. The report recommends an activities-based evaluation approach as opposed to designating large companies, and to involve state regulators more in the process after a systemic risk has been identified. The report also recommends a cost-benefit analysis as to whether additional regulation will provide a beneficial reduction in systemic risk, and the establishment of a clean “off ramp” for removal of the designation. Mr. Snyder noted that while the recommendations set forth in the report are supportive of the state based system of insurance regulation, that can turn on a dime, and it is therefore important for NCOIL to continue to be engaged in the process.

Rep. Keiser asked Mr. Snyder for clarification on what constitutes an activities-based evaluation approach. Mr. Snyder stated that is a good question and exactly what constitutes “activities” needs to be evaluated and clarified going forward to make sure that it doesn't put U.S. companies at a competitive disadvantage.

## REVIEW OF FEDERAL INSURANCE FRAUD PREVENTION EFFORTS

Howard Goldblatt from the Coalition Against Insurance Fraud stated that the U.S. Senate Commerce Committee Subcommittee on Consumer, Product Safety, Insurance, and Data Security held a hearing on insurance fraud this past August. The purpose of the hearing was to examine insurance fraud trends in the United States and explore tools available to states, insurers and consumers to protect against these crimes.

One issue discussed that has gained traction since the hearing is the issue of sharing claims data among property-casualty insurers. Specifically, the Healthcare Fraud Prevention Partnership (HFPP), in which public and private health insurers and other stakeholders share data about medical schemes, has enabled \$300 million in fraud savings. However, property-casualty insurers aren't privy to the HFPP data because of HIPAA restrictions. The issue of whether sharing such data being violative of HIPAA is not clear. Accordingly, it is arguable that this is an opportunity because many medical providers who defraud health insurers also file false claims with P&C and workers' compensation carriers. Mr. Goldblatt stated that the Coalition has been working with the Subcommittee to help property-casualty insurers gain access to that data.

## DISCUSSION ON CONGRESSMAN DUFFY'S LEGISLATION (H.R. 3762, H.R. 3746, H.R. 3861) – REASSERTING THE STATE BASED SYSTEM OF INSURANCE REGULATION

Ray Farmer, Director of the South Carolina Department of Insurance, stated that H.R. 3762, H.R. 3746, and H.R. 3861 are part of a trend in Congress beginning to recognize that the state-based system of insurance regulation that has been in place for 150 years works well, and will continue to work well if Congress does not interfere. It is important to take advantage of this "window" that is now open to promote the state-based system of insurance regulation.

Mr. Snyder stated that H.R. 3762, and S. 1360, stand for the proposition that the state based system of insurance regulation is accountable and transparent, and that the international system should be the same. The legislation addresses that over 80% of international regulatory meetings are closed to U.S. consumers and companies. Additionally, the legislation states that the U.S. federal representatives in international negotiations need to coordinate, consult, and advocate a position that has been agreed to by the states. That is important because in the past, we have seen the federal government go in a difference direction from the states in terms of international insurance policy.

Mr. Thesing stated that NAMIC supports the three pieces of legislation introduced by Congressman Duffy and it is important to note that all three pieces are bi-partisan. H.R. 3861, the Federal Insurance Office Reform Act of 2017, right-sizes FIO – it caps the number of its employees, limits its subpoena authority, and requires more consultation with state insurance regulators. H.R. 3762, the International Insurance Standards Act of 2017, is a positive step in the right direction of improving the transparency and accountability of international insurance negotiations. H.R. 3746 clarifies the jurisdiction of the Consumer Financial Protection Bureau (CFPB) over the business of insurance.

Peter Kochenburger, Associate Clinical Professor of Law and Executive Director of the Insurance LLM Program and Deputy Director of the Insurance Law Center at the University of Connecticut School of Law, stated that he is a firm supporter of the state based system of insurance regulation. However, said system is a means to an end, it is not the end, and it is important to look at legislation like this through the lens of not just preserving the state based system of insurance regulation as an end to itself, but rather, does the legislation further the goals of said system which is to promote competitive markets and protect consumers. Prof. Kochenburger stated that he does not believe H.R. 3861 is necessary because FIO is already minimal in its authority and because the Federal government needs to have a role in the insurance industry since it is the largest such market in the world. Additionally, as the insurance market becomes more global in nature, States do not have the ability to communicate internationally as necessary. The proposed restriction on information gathering and reporting requirements does not serve the state based system of insurance regulation. Information is important, particularly on the national level. By limiting the number of employees in FIO we are shooting ourselves in the foot. There have been complaints that FIO does not properly understand the state based system of insurance regulation – the more we limit FIO's ability to gather information, the less informed it will be.

Mr. Snyder stated that FIO can continue to gather information but only through the channels that have been established under the state based system of insurance regulation, namely NAIC. Mr. Snyder urged NCOIL to continue to support Congressman Duffy's legislation and remain engaged.

Sen. Morrish asked what are the chances of the legislation advancing. Mr. Snyder stated that it is not clear at this moment which is why it is important for NCOIL to stay engaged. Mr. Snyder also noted that based on his conversations with members of Congress and their staff, NCOIL has made an impression with them on these issues.

Rep. Steve Riggs (KY) then provided a brief summary of the NCOIL D.C. fly-in that was held this past September. Nine state legislators, along with Cmsr. Tom Considine, NCOIL CEO, and NCOIL staff, attended. Congressman Duffy's legislation, along with the reauthorization of the NFIP, was discussed throughout over 50 meetings with members of Congress and their staff. Rep. Riggs stated that he looks forward to future NCOIL D.C. fly-ins since they help raise NCOIL's profile and promote issues that support the state based system of insurance regulation.

#### RE-ADOPTION OF MODEL LAWS

Rep. Riggs made a Motion to re-adopt the Exhaustion of Administrative Remedies Model Legislation. Rep. Fischer seconded the Motion. The Committee then voted without objection by way of a voice vote to adopt the Model.

Sen. Hackett made a Motion to re-adopt the Producer Compensation Disclosure Model Amendments to the Producer Licensing Model Act. Rep. Fischer seconded the Motion. The Committee then voted without objection by way of a voice vote to adopt the Model.

#### ADJOURNMENT

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