

NATIONAL COUNCIL OF INSURANCE LEGISLATORS  
JOINT STATE-FEDERAL RELATIONS AND INTERNATIONAL INSURANCE ISSUES  
COMMITTEE  
NASHVILLE, TENNESSEE  
MARCH 15, 2019  
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Joint State-Federal Relations & International Insurance Issues Committee met at The Sheraton Grand Nashville Downtown Hotel in Nashville, Tennessee on Friday, March 15, 2019 at 11:15 a.m.

Senator Jerry Klein of North Dakota, Chair of the Committee, presided.

Other members of the Committees present were:

Asm. Ken Cooley (CA)	Asm. Andrew Garbarino (NY)
Rep. Matt Lehman (IN)	Sen. Bob Hackett (OH)
Sen. Dan "Blade" Morrish (LA)	Rep. Lewis Moore (OK)
Rep. George Keiser (ND)	Rep. Tom Oliverson, M.D. (TX)

Other legislators present were:

Rep. Deborah Ferguson (AR)	Sen. Vickie Sawyer (NC)
Sen. Mark Johnson (AR)	Rep. Tracy Boe (ND)
Rep. David Santiago (FL)	Asm. Kevin Cahill (NY)
Rep. Deanna Frazier (KY)	Asw. Pam Hunter (NY)
Sen. Paul Wieland (MO)	

Also in attendance were:

Commissioner Tom Considine, NCOL CEO  
Paul Penna, Executive Director, NCOIL Support Services, LLC  
Will Melofchik, NCOIL General Counsel

CONTINUED DISCUSSION ON DEVELOPMENT OF NCOIL INSURANCE BUSINESS TRANSFER (IBT) MODEL LAW

Sen. Klein stated that IBT laws have been growing in popularity across the country and Asm. Andrew Garbarino (NY) and Rep. Lewis Moore (OK) have introduced a discussion draft of an NCOIL IBT Model Law (Model). The Model is largely based on the Oklahoma IBT law that was enacted last year, and this Committee will be working on the Model throughout the year.

The Honorable Beth Dwyer, Superintendent of Insurance at the Rhode Island Department of Business Regulation, stated that RI was the first state to enact an IBT law. RI passed a commutation plan statute in 2002 which was based off of the U.K. solvent schemes of arrangement. The commutation plan is the type of situation where the company actually goes out of business after paying off anyone which is slightly different than an IBT law. A couple of years ago, the commutation plan statute and regulation was amended to allow for IBTs. The RI law is limited to commercial P&C business which is a distinction between the RI and OK IBT laws. RI has no personal

lines provisions in its IBT law. Another difference between the two laws is that the independent expert that is in the OK IBT law is actually a person employed by the RI insurance department as its expert. Also, in the RI IBT law, policies must be at least 5 years old to qualify for an IBT.

Supt. Dwyer stated that there are really two groups of statutes to discuss: IBT statutes, which Vermont also has but it is further limited to surplus lines business and requires approval by the insurance dep't but not by a court; and corporate division statutes (division statutes), which appear in IL, CT, PA, and AZ. Supt. Dwyer noted that the National Association of Insurance Commissioners (NAIC) is also studying IBT and corporate division statutes and has recently formed a working group (WG) that is co-chaired by herself and Buddy Combs, OK Deputy Cmsr. of IBTs. The WG is currently working on an overview of all IBT and division statutes which could also benefit NCOIL in its efforts in developing an IBT Model.

Supt. Dwyer stated that the WG has just been formed and will be having discussions and presentations at the NAIC Spring Meeting next month. The WG hopes to produce a white paper that will provide an overview of all IBT and division statutes in existence. Supt. Dwyer also noted that some bills have been introduced in other states relating to IBT and division statutes. The white paper will also examine the need for IBT and division statutes which is why the WG is asking people to come before it and explain why industry and consumers need these statutes and what the appropriate uses of them are. Consumer protections within the statutes will also be discussed and examined. Supt. Dwyer further stated that the WG has a subgroup which is charged with, among other things, studying the financial standards of IBT and division statutes. When you create an IBT, which is actually transferring business to a new company, you must know how much capital is going to that business because insolvency is obviously a huge concern.

Supt. Dwyer further stated that the WG will also be examining issues related to guaranty funds. Since the RI IBT law is limited to commercial P&C business, guaranty fund issues are less important because while theoretically you could have small businesses that are guaranty fund participants, that is not the norm and in fact, all of the IBTs in RI thus far have been reinsurance transactions, and therefore guaranty fund issues do not exist. Supt. Dwyer noted that the current RI IBT statute would essentially transfer liability for the guaranty fund in the new IBT company to the RI guaranty association. That is a very important thing for states to realize – that the new company may not be licensed in other states and therefore, if there is an insolvency, it may be your state that is on the hook for the guaranty association.

Mr. Combs stated that throughout 2017 and 2018, he was heavily involved in the drafting, introduction, passage, and implementation of OK's IBT law. Mr. Combs also stated that he is speaking before the Committee today on behalf of the OK insurance dep't, not the aforementioned NAIC IBT WG. Mr. Combs noted that passage and implementation of a law are two different things, which is why a follow-up piece of legislation to the IBT law that was enacted last year has been introduced in OK this year (SB 885). Mr. Combs then focused on two provisions of SB 885, the first dealing with confidentiality. The current OK IBT law, and the current draft of the NCOIL IBT Model, have no provisions relating to the confidentiality of documents that are submitted to the insurance department during the process of examining an IBT transaction. Insurance regulators should expect to see a host of very sensitive documents such as actuarial

information, financial information, and background information on the companies, many of which should be kept confidential. Mr. Combs noted that while SB 885 is pending in OK, the insurance department has told interested parties that it will treat the review of an IBT transaction like the examination of the financial condition or market conduct of the company so those relevant statutes would apply.

Mr. Combs stated that SB 885 states that all of the documents that are submitted are confidential so long as they are under review by the Commissioner. After such review is completed, the documents will remain confidential as long as they are otherwise confidential by law or the company has requested they remain confidential.

Conversations are also taking place with regard to making that provision more closely align with OK's examination statute which is very well understood by the industry and regulators. Mr. Combs stated that there should be some provision in any IBT law that outlines the confidentiality of documents that a regulator is going to receive throughout the process.

The next provision of SB 885 focused on by Mr. Combs related to guaranty fund application. There is a provision in SB 885 which states that nothing in the Act shall affect the guaranty association coverage that existed on the policies prior to them being transferred. OK does not have the legal ability to tell another state's guaranty fund association statute that it will apply in the event of an insolvency. There is a host of issues that accompany this serious issue as those in OK realize the possibility that if you transfer business to a company that is not licensed in the states in which those policies are written, the OK guaranty association could be on the hook for those orphan policies. Mr. Combs stated that OK is sensitive to that reality and stressed to the Committee that said reality will come up during its discussions throughout the year.

Mr. Combs stated that obviously the hope is that a future insolvency is not experienced during an IBT, and in fact, in the more than 250 part VII transfers that have occurred in the U.K., none have resulted in an insolvency. When you have a Form A process and a new party purchases a company, that is just an administrative process with the insurance commissioner and his/her staff. However, an IBT is a much more robust and comprehensive review consisting of an independent expert and judicial review. To the extent that you would have a transaction that would eventually end up in an insolvency, while not impossible, the hope is that there are enough protections in place to ensure that it remains a very remote possibility. Mr. Combs closed by stating that he is happy to offer himself as a resource to the Committee as it further considers an IBT Model law.

Robert Redpath, Senior Vice President & US Legal Director at Enstar, stated that Enstar is one of the largest acquirers of run-off business in the world and is therefore very interested in the IBT and division statutes in the U.S. With regard to the fundamental question of why do we need IBT and division statutes, Mr. Redpath stated that it is really about the efficient use of capital. The ability to divest non-core business and redeploy capital is important. One thing to note, at least on the P&C side, is that almost every single insurance company probably with the exception of a start-up, has run-off business. Accordingly, IBT and division statutes help redeploy capital, save costs, protect the financial solvency of the seller entity, and reduce management and other costs when there is an internal reorganization. Mr. Redpath further stated that IBT and divisions statutes allow for focused management of non-core lines. Very often a life carrier may go into a line of business, pull out of it, and that block of business is still

there and is not being managed properly. Accordingly, a specialized live or run-off carrier can handle the business more efficiently and better service policyholders.

Mr. Redpath reiterated that, unlike the RI IBT statute, the OK IBT statute applies to all lines of insurance and is not limited to runoff business. The OK IBT statute is very similar to existing legislation in the U.K. known as the Part VII transfer that has been very successful. The U.K. Part VII transfer allows for the transfer of a block of business by way of a statutory novation; transfers outwards reinsurance with the policies (as well as other assets and liabilities where required); requires U.K. regulator approval; and requires court approval and an independent expert report.

In response to the concern that IBT and division statutes are a way to simply get rid of bad business, Mr. Redpath stated that there is a very robust procedure of checks and balances. The OK IBT law, and the draft NCOIL IBT Model, require: approval of the domestic regulator of the transferring company; regulatory review and approval by the domestic regulator of the assuming company; independent expert review; and court review and approval. Mr. Redpath stated that he believes the reason why there have been no issues thus far in Europe under similar legislation is due to that robust procedure.

Mr. Redpath noted that due process is an issue that must be examined when discussing IBT and division statutes since such statutes may deal with the novation of policies without the consent of the policyholder. In order to deal with that, extensive notice provisions are in place in the OK IBT statute involving policyholders, agents and brokers of record, state regulators, state guaranty funds, and reinsurers. All of them have the ability to comment and present evidence to the court at a hearing. The assuming insurer is also expected to have the same licenses for the business that is coming to it, which touches upon the state licensing and guaranty fund issues mentioned earlier.

Mr. Redpath stated that a Model IBT Law is needed because there is a need for consistency among states and it is not beneficial to the industry or regulators to have conflicts. Also, IBT and division statutes both have value and one might be better for a particular state depending on that state's needs. Mr. Redpath also noted that part VII transfers in the U.K. are derived from EU directives requiring other EU members to implement similar legislation relating to IBTs which therefore makes the process smoother.

Doug Wheeler, Senior Vice President of Gov't Affairs at New York Life, first stated that as a former regulator at the NJ Dep't of Banking and Insurance he can appreciate the comments made by Supt. Dwyer and Mr. Combs. There is a group of companies that are concerned with IBT and division laws. Mr. Wheeler stated that he believes that RI and OK are the strongest IBT laws in existence and there are other state division laws that lack a lot of the protections present in the RI and OK laws. Mr. Wheeler further stated that the IBT process is extraordinary and a dramatic shift in longstanding state law because a promise the transferring insurer made to the policyholder is essentially being broken when it transfers the policy to another insurer, without the policyholder's consent. That is not to say that the IBT process should not be allowed, but a careful and deliberate approach needs to be taken.

Mr. Wheeler stated that policyholder consent is a critical issue and should be included in any national IBT model law or regulation. Also, a concerning issue is the creation of a

possible good company – bad company situation which could increase the chances for a company insolvency. Company insolvencies do occur, and states have protections in place to account for them, but incentives should not be created for companies that could lead to increased insolvencies which could erode trust in the industry and products sold. Mr. Wheeler also noted that the most recent life and long term care (LTC) insurer insolvencies were experienced by monoline companies, where diversification and scale are reduced.

Mr. Wheeler encouraged the Committee members to speak to those who have experience in the U.K. with the Part VII transfer process. In his conversations with a U.K. law firm with such experience, one of the things highlighted was that the independent expert must consider whether the new company is at least as strong, from a solvency perspective, as the old company, which is a very high burden to meet. That is one of the main reasons why the U.K. Part VII transfer process has been so successful. Another reason why is that the process requires the transferring insurer who has business in other countries to obtain licenses in those countries and the regulators in those countries have to sign-off on the transfer. That requirement is not in the OK IBT law or the NCOIL draft IBT model law.

Mr. Wheeler stated that the most concerning issue with the IBT process is the guaranty association coverage issue mentioned by Supt. Dwyer and Mr. Combs. To use the Penn Treaty insolvency as an example, if Penn Treaty had become a monoline company through the Illinois corporate division process and it only had a license in Illinois, it would have taken 10 years for that insolvency to run through the system and would have bankrupted the Illinois guaranty association fund. Mr. Wheeler encouraged the Committee members to reach out to Peter Gallanis, President of the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) as he is an expert on these issues and NOLHGA has concerns. Mr. Wheeler also stated that NY Life believes that the independent expert involved in these transfers needs to be truly independent and a very strong standard of review should be in place such as the requirement that the new company be as strong as the old company solvency-wise. The most important issue when discussing these transfers is ensuring that policyholders are protected.

Karen Melchert, Regional VP of State Relations at the American Council of Life Insurers (ACLI), stated that ACLI is still in the process of developing its principles and guidelines that it wants to see considered in IBT and division laws. Ms. Melchert stated that it is important to consider the division laws moving forward in addition to the IBT laws. ACLI is focused on ensuring that policyholder protection is the primary objective when developing these types of laws. The financial conditions of the assuming insurer, regulatory approval, court approval, notice and public hearing, utilization of an independent expert, and the impact on state guaranty associations are other very important issues that ACLI is examining. ACLI has not yet taken a formal position on these types of laws but it recognizes the need for such a business/division transfer mechanism. The fact that such mechanisms are increasing among the states makes it all the more important to work together to make sure policyholders are protected and the success rate mirrors that of the U.K. Part VII transfer process. ACLI looks forward to being involved in the Committee's work on the IBT Model law proposal.

Asm. Garbarino asked Mr. Wheeler what changes, if any, he would like to see made to the Model's provisions regarding the use of an independent expert. Mr. Wheeler stated that the independent expert utilized in the OK IBT law resides in the OK insurance

department and it is his belief that the independent expert used to review these transfers should be truly independent and outside the insurance department. Mr. Combs stated that the OK IBT law actually states that the two insurers have to jointly nominate two independent experts and then the Commissioner selects one. Therefore, the expert chosen is not someone who resides within the insurance department.

The OK IBT law also sets forth certain standards that the expert must meet in order to qualify, including but not limited to: not having a financial interest in either the assuming insurer or transferring insurer; not being employed by or having acted as an officer, director, consultant or other independent contractor for either the assuming insurer or transferring insurer within the past twelve (12) months. Therefore, Mr. Combs stated that OK agrees that the independent expert needs to be very independent. Supt. Dwyer noted that the independent expert in RI is employed by the insurance department but is still independent as the statute has a lot of the same qualifying criteria as mentioned by Mr. Combs. The expert acts more as an advisor to the department and the court. Mr. Combs further stated that one of the provisions in SB 885 states that nothing in the act will create a duty for the independent expert to the transacting companies. The duty of the independent expert is to the court and to the insurance regulator and SB 885 aims to make clear that even though the independent expert is paid by the transacting companies, they work only for the court and regulator.

Rep. Moore stressed that the most important issue that was discussed in OK was the protection of policyholders and he looks forward to working with the Committee to ensure that remains so when developing an NCOIL IBT Model law.

Asm. Garbarino asked if selling blocks of business is common in the insurance industry and if there are any differences between IBTs and what occurred between MetLife and Brighthouse. Supt. Dwyer stated selling blocks of business is very common, particularly in the life insurance industry. With regard to MetLife and Brighthouse, there was no court novation. Court novation is essential in an IBT which is essentially a court saying “your first company is no longer your company. The contract is changed and you are now with the new company.”

Nancy Davenport of Brighthouse Financial stated that the aforementioned MetLife-Brighthouse situation was a Form-A process in Delaware. Notice was given to policyholders and a hearing was conducted but the process did not require policyholder consent. The hearing also included independent experts who had to weigh in and ultimately a judge gave his opinion to the insurance commissioner who then allowed it. Brighthouse was actually formally part of MetLife which held MetLife’s U.S. retail individual life and annuity business. Three companies were then formed and for the Delaware company which is the 49-state company that writes the majority of the business, “ML USA”, it was essentially just a name-change – it was the same company that was writing the policies that had been writing them before. Ms. Davenport stated that she is involved with the ACLI’s IBT discussions and would be happy to discuss any of these issues with members of the Committee.

Sen. Bob Hackett (OH) asked for the panel’s thoughts on how IBT and division laws can be utilized for LTC business and whether or not that is a concern. Mr. Combs stated that when discussing IBT and division laws, LTC business is the elephant in the room. The RI statute only applies to commercial P&C business, but the OK statute is open to any line of business. Mr. Combs stated that OK is aware of the concerns in the industry and

among regulators. OK Insurance Commissioner Glen Mulready has advised that even though the statute allows for any line of business, that does not mean that every line of business is going to get the same level of scrutiny. LTC business scares OK regulators as much as it scares everyone else. Any future IBT involving LTC is not going to just be an OK transaction; several regulators will be at the table working together to collaborate.

Dennis Burke of the Reinsurance Association of America (RAA) stated that under current law in many states there exists an obligation to get the consent of policyholders when transferring a book of business. The IBT statute in OK and the draft NCOIL IBT Model would permit one state to conduct an IBT that would obviate the legislative intent of the other states. That is an important consideration to discuss as NCOIL considers whether it wants to develop and adopt an IBT Model law.

Mr. Redpath stated that having been through the experience of trying to conduct a 50-state novation process, it is virtually impossible because there are so many different types of laws among the states to consider and comply with. In the run-off scenario, policyholders do not care or do not understand that they still have a policy since it is so old and will therefore throw the notice in the trash or contact the sender and ask why they are being contacted as they thought they did not have a policy. Therefore, uniformity is needed and that is why an IBT Model Law is important.

#### DISCUSSION ON PROPOSED AMENDMENTS TO NCOIL MARKET CONDUCT SURVEILLANCE MODEL LAW

Sen. Klein stated that there are no specific amendments to the NCOIL Market Conduct Surveillance Model Law (Model) at this time. The conversation today is meant to start a broader discussion of market conduct exams in general and whether there should be amendments made to the Model such as, for example, more specificity regarding regulatory and statutory standards. At the Summer Meeting in July, the Committee will aim to have some specific amendments to consider.

Paul Martin, Regional VP – Southwestern Region at the National Association of Mutual Insurance Companies (NAMIC), stated that NAMIC appreciates the value of market conduct exams and understands that they provide both regulators and consumers the protection and confidence they need in the companies to move forward. However, there are some situations that NAMIC has been made aware of over the last 3 to 4 years regarding the scope and the nature of some ongoing market conduct exams. Mr. Martin stated that NAMIC is working on a red-line draft of the Model to suggest how to improve the exam process. Some ideas so far include: putting up some guardrails regarding the scope, timing, frequency, and cost of exams; clear delineations of when a full-blown market conduct exam is needed as opposed to a more targeted approach; preservation of due-process rights for companies, particularly on more extensive exams; and some sort of delineation of what constitutes a true harm vs. a de minimus violation of a regulation or statute. Mr. Martin stated that the red-line draft will be offered to the committee prior to the Summer Meeting in July.

#### INTERSTATE INSURANCE PRODUCT REGULATION COMMISSION (IIPRC) UPDATE

Karen Schutter, Executive Director of the IIPRC (Compact), stated that the Compact is a state-based collaboration of legislators and regulators cooperating to modernize the insurance product approval process for life, annuities, and disability income. Many

insurance legislators participate in the Compact as the Compact has a legislative committee. NCOIL President, Sen. Dan “Blade” Morrish (LA) just recently joined the committee, as well as NCOIL Vice President, Rep. Matt Lehman (IN). Asw. Maggie Carlton (NV) is also on the committee, as was Sen. Hackett. Other members include Senator Bob Duff (CT); Rep. Matt Dollar (GA); Sen. Laura Fine (IL); and Rep. Jim Dunnigan (UT).

Ms. Schutter stated that the Compact is awaiting one more appointment from NCOIL for the northeastern zone. The Compact has 46 states and it represents a state-based solution for the industry in terms of speed-to-market, uniformity, and ability to compete with the banking and securities products that are regulated at the federal level. Ms. Schutter also noted that the Compact will have an in-person meeting on April 5<sup>th</sup> in conjunction with the NAIC Spring Meeting. The meeting will be focused on strategic-planning as this is the 13<sup>th</sup> year of the Compact and this year was the first in which it made a significant profit. Ms. Schutter welcomed NCOIL’s engagement in the Compact’s strategic planning as NCOIL is a very important part of the Compact.

Rep. Matt Lehman (IN), NCOIL Vice President, noted that he understands the conversation regarding market conduct exams was brief due to time constraints and he looks forward to further discussing the topic throughout the year.

#### MINUTES

Upon a Motion made by Rep. George Keiser (ND) and seconded by Rep. Moore the committee waived the quorum requirement. Upon a Motion made by Rep. Keiser and seconded by Rep. Moore, the committee approved the minutes from its December 7, 2018 meeting. Both motions carried without objection by way of a voice vote.

#### ADJOURNMENT

There being no further business, the Committee adjourned at 12:15 p.m.