

NATIONAL COUNCIL OF INSURANCE LEGISLATORS  
PROPERTY & CASUALTY INSURANCE COMMITTEE  
NASHVILLE, TENNESSEE  
MARCH 17, 2019  
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Property & Casualty Insurance Committee met at The Sheraton Grand Nashville Downtown Hotel in Nashville, Tennessee on Sunday, March 17, 2019 at 9:00 a.m.

Representative Edmond Jordan of Louisiana, Chair of the Committee, presided.

Other members of the Committees present were:

Sen. Jason Rapert (AR)	Rep. George Keiser (ND)
Asm. Ken Cooley (CA)	Sen. Jerry Klein (ND)
Rep. Matt Lehman (IN)	Asm. Kevin Cahill (NY)
Rep. Joseph Fischer (KY)	Asm. Andrew Garbarino (NY)
Rep. Bart Rowland (KY)	Sen. Bob Hackett (OH)
Sen. Dan "Blade" Morrish (LA)	Rep. Tom Oliverson, M.D. (TX)
Sen. Paul Wieland (MO)	

Other legislators present were:

Rep. Deborah Ferguson (AR)  
Rep. Daire Rendon (MI)

Also in attendance were:

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

#### MINUTES

After a motion was made by Rep. George Keiser (ND) and seconded by Sen. Jerry Klein (ND) to waive the quorum requirement, the Committee unanimously approved the minutes of its December 7, 2018 meeting in Oklahoma City, OK upon a Motion made by Sen. Dan "Blade" Morrish (LA), NCOIL President, and seconded by Sen. Bob Hackett (OH).

#### DISCUSSION ON DEVELOPMENT OF MODEL LEGISLATION IN RESPONSE TO THE AMERICAN LAW INSTITUTE'S RESTATEMENT OF THE LAW OF LIABILITY INSURANCE

Rep. Joseph Fischer (KY) stated that this Committee, and NCOIL in general, has been involved with the ALI's Liability Insurance Restatement (Restatement) since May of 2017. For those who may not know, the ALI is a group of distinguished professors, judges, and academics who issue "Restatements" of the law on certain subjects, which are essentially summaries. The Restatements are also reviewed from time to time after completion to determine if any changes should be made. NCOIL's main concern with

this particular Restatement is that in certain areas, it appears that the ALI is stating what they think the law should be rather than what the law is. Rep. Fischer stated that NCOIL certainly respects the ALI's opinion, but legislators have a right to determine what the law is, as do judges. Rep. Fischer stressed again that the ALI is a very respected and important organization and judges do give some deference to what the ALI says so that makes it even more important for legislators to weigh in when issues like this arise.

Rep. Fischer then referenced the two documents he has sponsored. The first document titled "Model Act Regarding Interpretation of an Insurance Policy" is based on Tennessee HB 1977 – enacted on March 22, 2018 – and is meant to set forth in statute the settled law regarding the "plain meaning rule" as applied to interpretation of insurance policies. The second document, titled "Guidance for States Responding to the American Law Institute's Restatement of the Law: Liability Insurance" is meant to serve as exactly what the title states – "guidance." The document recognizes the fact that is in fact difficult to develop corrective model legislation on every issue in the Restatement as each state's statute or common law on the issue may be different. That is why the drafting note indicates that "States should work with stakeholders and the insurance department to amend the appropriate portion of insurance code to reflect the settled law on the issues below in order to avoid the Restatement being construed as the state's settled law on those issues."

Erin Collins, Asst. VP of State Affairs at the National Association of Mutual Insurance Companies (NAMIC) reiterated Rep. Fischer's regarding the Restatement's aspirational nature. The Restatement is an issue that NAMIC has been fighting for years and now that the Restatement has been adopted the conversation has shifted to what to do about it in the states. NAMIC has joined forces with the American Property & Casualty Insurance Association (APCIA) to undertake a national project to address the Restatement and both organizations have approached it in such a way as to address it in three ways. First, it is important that whatever solution is arrived at appropriately fixes the problems with the Restatement in that state. Second, it is important to avoid a methodology or vehicle that would go through a legislative process that might alter the intent of the bill. That means it is important where the bill is assigned. This is an insurance issue and it should be assigned to insurance committees and not judiciary or courts committees in which sections of the code could be opened up and altered. Third, whatever vehicle is chosen should appropriately address separation of powers in a state and make sure that it's reflective of that state's constitutional requirements in terms of what a legislature can say to the courts.

Ms. Collins stated that multiple states have coalesced around language that is phrased as a broad disavowal of the Restatement. NAMIC and APCIA believe that approach addresses the three aforementioned points. Ms. Collins stated that multiple bills have been introduced with that approach and hopefully they pass expeditiously. Ms. Collins thanked NCOIL for being involved with this issue in order to ensure that insurance law is developed by legislators and not outside parties. Ms. Collins urged the committee to adopt the model language submitted to them beforehand in a letter submitted by NAMIC and APCIA if NCOIL determines a model law is necessary.

Frank O'Brien, VP of State Gov't Relations at APCIA, congratulated NCOIL for taking the lead on this issue. Mr. O'Brien stated that at the 2017 NCOIL Annual Meeting in Phoenix, AZ, a general session was held during which one of the Restatement's reporters participated and the session was both eye opening and shocking as the

reporter essentially admitted that it was not a Restatement and they had put several provisions in that were aspirational in nature. NCOIL has been very active with the Restatement and has shown its strength. The states that have taken action against the Restatement have been "NCOIL states" and they have shown leadership by broadly stating that the Restatement does not reflect the law of their particular state. OH, AR, ND, and TX have all either taken action or have contemplated action. Other states are also contemplating action. Mr. O'Brien urged NCOIL to continue its leadership role and to move forward with a broad repudiation of the Restatement.

Rep. Fischer stated that in light of the language proposed by NAMIC and APCIA, and the language that has been adopted and introduced in certain states, Rep. Fischer made a motion to table the two documents he has sponsored and stated that he will engage in discussions before the Summer Meeting in July to introduce new language. Rep. Keiser seconded the Motion. The motion carried on a voice vote without objection.

Rep. Matt Lehman (IN), NCOIL Vice President, asked NCOIL staff for a list of states that have passed or introduced the language mentioned by Ms. Collins and Mr. O'Brien.

#### DISCUSSION ON INSURANCE DEVELOPMENTS IN THE SHARING ECONOMY

Eric Goldberg of The Hartford introduced Iain Boyer, Chief Underwriting Officer at Y-Risk, and stated that Mr. Boyer is a national expert on the sharing economy, is a frequent speaker on the issue, and has 28 years of experience in the industry. Mr. Goldberg stated that there are aspects of state insurance laws that may need to be revisited in light of emerging types of insurance. NCOIL may be particularly helpful with that in terms of allowing companies to innovate and bring products to market.

Mr. Boyer stated that Y-Risk launched in 2016 as an underwriting management company with a focus on the sharing and on-demand economy. In December of last year, Y-Risk was acquired by The Hartford. In terms of the factors that have influenced the rise of the sharing economy, there have been a number of disruptive forces which singlehandedly could have caused a lot of changes but all three of them have occurred rapidly. Those forces include a change in demographics with the rise of millennials, the nature of the economy after the financial crisis, and the rise of technology. With regard to millennials, they have been shaped by technology and they also were brought up during the financial crisis which influenced their ideas of working for one company.

To define the sharing economy, there is an excess in capacity either in services or assets. Cars may sit idle for a period of time; homes may not be used 100% of the time; and depending on the nature of our work we may have free time. The sharing economy is essentially technology firms that enable that excess capacity to be matched; people will put their cars and homes on a platform for use, and people will do the same with their time. Transportation network companies do both since they will provide their time and share their vehicle. Growing up, we were taught to not talk to strangers, don't meet people on the internet, and never get in a stranger's car. Now we go on the internet to meet a stranger and get in their car. The reason we are able to do that is because technology allows us to track what's happening and people are more connected. Years ago, you may have asked your neighbor to drive your child to a soccer game, so the concept of sharing always existed but it existed in micro communities. Technology has enabled hyper connectivity and has caused those micro communities to become very big.

Mr. Boyer stated that access is now more important than ownership and flexibility has value. This is all difficult for the insurance industry because with the rise of collaborative consumption and sharing, there is not a lot of data. There is analogous data but that does not serve the same purpose. Mr. Boyer noted that all of this has occurred very quickly so even though the insurance industry has struggled to keep up, the industry does not have to lose its relevance because insurance is one of the ingredients to creating trust. Accordingly, in the sharing and on-demand economy, insurance can both protect against loss and bridge the trust-gap.

Mr. Boyer stated that the emerging platforms and technologies operate between pre-defined categories. Insurers have every intention to provide protection to either consumers or companies. Going forward, there needs to be an adjustment to the lines between: personal and commercial; small, medium, and large; and between businesses. There are now three parties involved: the platform, the provider, and the user. Who is ultimately responsible? Is it first party or third party property damage? Is it auto liability or general liability because of something the platform did to match the people together? Commercial entities are providing assets to individuals so is it a personal product or commercial product? Additionally, hypoconnectivity makes the lines around geography less clear because transactions are taking place across jurisdictions.

Mr. Boyer stated that this is not just about how individuals interact. Municipalities struggle to provide the transportation they need for their communities because it's expensive to insert rail lines or bus lines. Municipalities are therefore partnering with on demand and sharing economies to implement the equivalent of last-mile deliveries of goods, for people. As a result, there is a lot of opportunity for those firms but at the same time they need insurance protection that can be difficult to procure. That leads to opportunity because these issues are not going away. As insurance companies work to provide these products, it is important that the industry works collaboratively with legislators and regulators to think about how to properly accommodate the sharing economy.

There are examples of transportation network company legislation, and there has been recent peer to peer legislation introduced in several states. Those are examples of states working to develop a framework so that insurance companies can provide products. Some of the questions that raises are: admitted vs. non-admitted – what are the right ways to deliver those products? Also, how does one satisfy minimum financial responsibility is a question that needs to be thought about. Matching the platforms to the appropriate set of laws can also be difficult. For instance, deciding whether something is short term rental or the shortest possible long term rental has important ramifications.

Rep. Tom Oliverson, M.D. (TX) asked if there are a set of best practices that certain states are implementing that legislators can look to address the issues Mr. Boyer mentioned relating to the on-demand and sharing economy. Mr. Boyer stated that one of the most important things to do is to develop definitions that fit the platforms. For instance, ride sharing services do not meet certain definitions applicable to Hertz and Avis. Rep. Oliverson agreed and asked if there are specific states that are doing that. Mr. Boyer stated that TNC legislation passed across the country and the peer-to-peer car sharing legislation passed in Maryland are good examples of how to think about and approach these issues.

Mr. Goldberg stated that a couple of western states passed legislation relating to peer-to-peer car sharing services several years ago but it is difficult to look to them as models because the industry changes very quickly. Last year, working with Turo, a good framework was developed in Maryland. Collaboration yields the best results and there is not one particular state that has done that more than others but that it was what led to the solid TNC legislation.

Rep. Oliverson stated that he would like to see this Committee, and NCOIL, take the lead on these issues through perhaps the development of a working group or task force. Mr. Goldberg stated that in his opinion these issues don't lend themselves to an NCOIL Model Law, but they could be an opportunity to work with interested parties and inventory laws that may need to be re-visited in order to accommodate insurance for the sharing economy and The Hartford would be happy to help in doing that.

Rep. Lehman stated that when discussing these issues, it is a good example of the grey colliding with the black and white. There may not be a standard that can be set that says "if you are in the sharing economy, this is what you must do" because each situation is different. In Indiana, there was an unwillingness to compromise on TNC legislation, but a willingness to do so with Airbnb legislation. Good public policy may require putting some parameters in place. With regard to autonomous vehicles, some platforms have said that they are not willing to take on any liability if the car drives off the road because it is only an electronics company – that needs to be figured out and that will depend on how we legislate who is responsible for what. Rep. Lehman agreed with Rep. Oliverson's statement that it is important for NCOIL to have its finger on the pulse of these issues.

Sen. Bob Hackett (OH) stated that TNC legislation is a great example of getting both sides of an issue to work together and develop a workable solution. In Ohio, legislation is being developed regarding peer-to-peer car sharing and everyone is hopeful that both sides will work together just as they did for TNC legislation.

Asm. Ken Cooley (CA), NCOIL Treasurer, stated that in California the ruling in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* was an example of how questions are arising with regard to how the gig economy ties into existing laws on wages and benefits. There is definitely a lot of crossover as you have innovators trying to figure out how to develop products but they are bumping up against insurance laws and other legal obligations. The *Dynamex* decision was very controversial in CA and Asm. Cooley stated that he has a bill pending on that issue with insurance implications. There are a lot of fights yet to come over how the sharing economy intertwines with existing statutes. Notably, the *Dynamex* decision was a unanimous decision from the CA Supreme Court.

Mr. Boyer agreed with Asm. Cooley and stated that it is important to first identify that these are issues public policymakers and interested parties need to be talking about. Next, conversations must be had that acknowledge how well the current insurance statutory and regulatory framework works, but at the same time acknowledging that certain definitions may need to be changed to accommodate the on-demand and sharing economy. Mr. Boyer then discussed the example of the difficulty of providing insurance to people who are renting homes or cars on a short-term basis and determining what is the best vehicle to deliver insurance to that person and at what specific moment in time.

One of the issues brought up was that if the requirement is to give any person insured a 30 day cancellation notice that is impossible in those short-term rental situations.

In response to Sen. Hackett's statement, Rep. Jordan stated that it has been very difficult in Louisiana to pass legislation involving taxis and limousines because they don't want to be labeled common carriers because with that designation there is certain liability attached to it. Sen. Hackett stated that issue was also prevalent in Ohio but they worked together to develop a solution. Rep. Jordan stated that he would speak to Sen. Hackett afterwards about that solution.

#### DISCUSSION ON EFFORTS TO MODERNIZE AND STREAMLINE DATA REPORTING

Robin Westcott, VP of Gov't Affairs & General Counsel at the American Association of Insurance Services (AAIS), stated that AAIS is a national advisory organization that creates forms, loss costs, manuals, and other types of things to assist companies about the centralization of policy language and rating information. AAIS is a non-profit organization and part of what it has done and part of its responsibilities centers around being a statistical agent and collecting data from its member companies to be able to report to insurance departments as well as assist AAIS in developing its products around loss costs.

Advisory organizations are licensed under the National Association of Insurance Commissioners' (NAIC) model rating law which all states have adopted some version of. Traditionally, AAIS has focused on the collection of data and it has some limited anti-trust exemptions for that. One of the things that is very hard in this industry is the collection of data and the ability to streamline or share it. When the data calls come out, many companies will have 16 different systems because they have acquired 15 companies in the past 10 years and the integration of that data is very difficult for them as well. The industry still struggles around centralization and the ability to share and collect data and integrate data. Over the years the advisory organizations have lost their way in the ability to assist and be that conduit and it is important to have the ability to judge and take data and understand what is occurring in a marketplace.

Ms. Westcott stated that she applauded and respected the Resolution Encouraging the Adoption of Voluntary Data Call Principles that was adopted by NCOIL in November 2017. Advisory organizations are the right place for the improvement of data calls to happen. As a result, AAIS has created a blockchain around data reporting and data calls for the industry called Open Insurance Data Link (Open IDL). Statistical reporting is something that companies must do and then there are increasing amounts of data calls that come from the regulatory environment to understand and judge what the marketplace, which is of course a fair thing to try and understand and judge.

AAIS has approached this issue differently than the Risk Block Alliance (Alliance) who have about 40 different use cases around how data will go back and forth and exchanged. AAIS has created one use case centered around data calls and data reporting. AAIS has a private permissioned blockchain network where AAIS has worked with IBM on the hyper-ledger platform over the past year to develop an environment where a company can stand up with the nodes inside of the blockchain. The network has a multi-tenant because there are many smaller and mid-size companies that won't be able to stand up their own nodes inside of a blockchain network.

AAIS has worked with taking a thin-stream of statistical data that must be given and working to ensure that companies can do that much more efficiently so that every new data call or every time they have to produce the statistical data the wheel is not being reinvented. Accordingly, the blockchain is three releases in and it was designed by asking companies and regulators to come to AAIS' design-thinking sessions to help AAIS understand what its needs were and what they are using the data for and how it can be delivered back to them so its very efficient. Some very large companies have participated in those sessions in addition to 8 different regulatory regimes participate, including the NAIC.

From AAIS' perspective, it thinks that there will be many blockchains and AAIS' job will be to get the insurance industry to a place where data can be exchanged and integrated in a more efficient way. Ultimately, that will enable insurtechs to develop products that are much more responsive to the customer's experience and needs. Insurtechs and new products will be able to come into a private-permissioned blockchain environment where the regulator has their node and the ability to interact with data in a secure way. Instead of simply taking large blocks of data and giving it to a regulator, an environment now exists to ask questions about the data. For example, when someone gets "carded" at a bar, the bartender does not need to know anything about that person besides the person's age. Similarly, a credit lender does not need to know your entire credit history which is what they get when they get a credit report – they just need to know that you are a 720 or better. Therefore, imagine an environment where we can ask questions about the data and the data never leaves the privacy of the company's firewall. Insights can be obtained with some transparency but without risk. Another key element of Open IDL is that for the companies that participate, they will get some benchmarking tools back. Currently, when companies submit statistical data and other data they get nothing back and do not know where they stand in relation to the other companies that are writing that business.

Ms. Westcott stated that she has a demo available for anyone that is interested. It looks like a website and information can be plugged in to create a request. The company can then go in and look at it and like it or work collaboratively to perhaps modify the request. Everyone can find value and the data in and of itself can be used and leveraged inside a company in a much greater way to integrate data and streamline the efficiency of sharing data.

Paul Martin, Regional VP – Southwestern Region at NAMIC, stated that there is a balance between the insurer's ability and willingness and need to use data versus the regulatory need for data to ensure that the industry remains between the guardrails. NAMIC has estimated that at any given time in the U.S. there are between 250 and 300 data calls ongoing. Some of those are ongoing while some are quarterly or monthly or annually. Some stem from catastrophe operations. NAMIC believes that there is a place for NCOIL to have some participation in trying to figure out what data calls need to look like moving forward. Some thing that NAMIC would like to see addressed are: a.) ensure that data calls are relevant and that the information being sought by the data calls is actually probative to the issue at hand; b.) ensure that the data call is not overly burdensome. Oftentimes, NAMIC member companies complain about voluminous points of data that are not relevant and they are also costly to comply with; and c.) a need for a sunset provision, particularly since technology is rising at a rapid pace, so that every so often the data calls can be looked to make sure that the things are being asked for.

Ms. Westcott noted that one of the features of Open IDL is an expiration. So as you create data calls you also create time periods within which there will be a response required. Ms. Westcott agreed with Mr. Martin's statements regarding data calls being burdensome and at times overbroad in asking for information that is not relevant. Blockchain enables data standards to be developed around how we are actually storing data to provide uniformity. One of the greatest outcomes from a blockchain technology is the ability of a company to leverage that as much as the ability of a regulator to simply ask a question and not have voluminous amounts of data in response to that question.

The Honorable Tom Considine, NCOIL CEO, stated that it is not necessarily important for public policymakers to actually understand the nuances of how blockchain functions, as it is very complicated, but it is important to know that it facilitates the exchange of data in a secure way.

#### RE-ADOPTION OF STATE FLOOD DISASTER AND MITIGATION RELIEF MODEL ACT

Upon a Motion made by Asm. Cooley and seconded by Sen. Jason Rapert (AR), NCOIL Immediate Past President, the Committee voted to re-adopt the NCOIL State Flood Disaster and Mitigation Relief Model Act until the NCOIL Summer Meeting in July while amendments to the Model continue to be developed and considered. The Motion carried without objection by way of a voice vote.

#### ADJOURNMENT

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