

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
FINANCIAL SERVICES SUBCOMMITTEE
DUCK KEY, FLORIDA
NOVEMBER 19, 2004
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Financial Services Subcommittee met at Hawk's Cay Resort in Duck Key, Florida, on Friday, November 19, 2004, at 10:30 a.m.

Rep. Robert Damron of Kentucky, Chair of the Subcommittee, presided.

Other members of the Subcommittee present were:

Sen. Steven Geller, FL
Rep. Don Pasley, KY
Rep. Joe Hune, MI
Rep. Fulton Sheen, MI
Rep. George Keiser, ND
Rep. Frank Wald, ND
Rep. Brian Kennedy, RI
Rep. Mark Young, VT
Del. Harvey Morgan, VA

Other legislators present were:

Sen. Joseph Crisco, CT
Rep. Terry Parke, IL
Rep. Mike Ripley, IN
Rep. Matthew Whetstone, IN
Rep. Susan Westrom, KY
Rep. Shirley Bowler, LA
Sen. Duane Mutch, ND
Rep. Craig Eiland, TX
Rep. Gene Seaman, TX
Rep. Gini Milkey, VT

Others present were:

Susan Nolan, NCOIL Deputy Executive Director

CORPORATE GOVERNANCE/ACCOUNTABILITY

Georgia Commissioner John Oxendine reported that the National Association of Insurance Commissioners (NAIC) was considering the application of Sarbanes/Oxley criteria to mutual companies.

Sen. Geller asked whether mutual insurers were the only insurers not covered by Sarbanes/Oxley. Commissioner Oxendine said he believed that only mutuals and certain closely-held, non-publicly traded companies were exempt from the law's provisions.

In response to a question from Rep. Bowler regarding the features of Sarbanes/Oxley under consideration for application to mutual companies, Commissioner Oxendine indicated that there were several corporate governance provisions such as certifications by boards of directors and senior officers, and due diligence matters. Rep. Bowler urged caution in applying these provisions to mutual companies in light of the small size of many of these entities.

Robert Zeman of Property Casualty Insurers Association of America (PCI) said the NAIC was looking to apply Sarbanes/Oxley provisions to mutual insurers via an amendment to the model audit rule, which was currently an accreditation standard. He indicated that these actions were raising several threshold questions, including the question of whether provisions intended to protect stockholders should be applied to non-stock companies. He elaborated on the key issues being debated by the NAIC regarding the application of Sarbanes/Oxley to mutual companies. Mr. Zeman urged a thorough analysis of what currently exists prior to the expansion of expensive Sarbanes/Oxley requirements.

Neil Alldredge of the National Association of Mutual Insurance Companies (NAMIC) addressed the Committee. He reminded Committee members that the vast majority of NAMIC membership was composed of mutual insurers, underscoring the importance of this issue to NAMIC. He relayed some highlights of NAMIC internal efforts to improve corporate governance but indicated that NAMIC felt that the NAIC approach contained both substantive and process errors, such as the failure to demonstrate the need for the types of changes being considered to be applied to mutual insurers. He noted that under the proposal being considered, the boards of mutual insurers would have to be separated from the policyholders, but that with mutual insurers in effect, the policyholders actually own the companies. Procedurally, he noted, by amending the model audit rule the changes sought by the NAIC would be incorporated by reference in the states, which he indicated should be of concern to NCOIL due to the sweeping policy implications of such changes.

Michigan Commissioner Linda Watters told the Committee that it was her belief that Michigan would not subject its mutual insurers to Sarbanes/Oxley requirements and that the current NAIC proposal was overreaching. She urged NCOIL to formally make its position known to the NAIC.

Sen. Geller asked whether the size of a mutual company should be a determining factor in deciding whether to apply Sarbanes/Oxley provisions. Mr. Zeman replied that the purpose of Sarbanes/Oxley was to address publicly held companies and, therefore, the size of the mutual should not be a factor.

Rep. Damron inquired of Mr. Zeman whether stock companies feel that mutual companies would have an unfair competitive advantage if not subjected to Sarbanes/Oxley provisions. Mr. Zeman replied that though the point is occasionally raised, there is recognition

by the stock companies that there are fundamental differences between the two types of corporate entities.

SUTA DUMPING

Rep. Keiser provided Committee members with an overview of the status of state unemployment insurance trust funds and methods by which some employers are attempting to mask the actual exposure of their employees to gain more preferable unemployment insurance tax rates, with the cost of these rate evasions being passed back to honest employers.

Tim Tucker of the National Association of Professional Employer Organizations (NAPEO) noted that the issue arose due to concerns of the business community and that the SUTA dumping activity was engaged in by businesses of all kinds. He discussed the anti-SUTA Dumping Act enacted by Congress and noted that, pursuant to the Act's provisions, states would need to adopt conforming language to close the loophole. He further noted that the Act will require states to enact meaningful penalties for entities that engage in SUTA dumping. He then presented a videotape that addressed the topic as it relates to particular states in more depth. Finally, he urged NCOIL members to pursue legislation that tracks suggested U.S. Department of Labor language on the issue.

PROPOSED NCOIL RESOLUTION OPPOSING OFFICE OF THE COMPTROLLER OF THE CURRENCY (OCC) REGULATIONS PREEMPTING STATE LAWS

Rep. Kennedy provided Committee members with background information on the development of OCC regulations that would preempt state laws. He related state concerns regarding the impact of these proposed regulations on states' ability to enact legislation pertaining to national banks and their operating subsidiaries, including those holding a state charter, unless specifically permitted by Congress or under circumstances where the proposed enactment has only an incidental effect on the operation of the national bank. He noted that as a consequence of the OCC plans to adopt the regulations, all consumer complaints nationwide would be routed to one customer assistance center to be handled by a staff of 40. On behalf of Rep. Keenan, he presented the proposed resolution to the Committee and suggested to members that it be considered favorably.

J. Kevin McKechnie of the American Bankers Insurance Association (ABIA) and Matthew Street of the American Bankers Association (ABA) addressed the Committee. Mr. Street suggested that the proposed resolution was a broad brush commentary on the OCC regulation. He noted that the language of the resolution did not contain the word "insurance" and that the resolution would be more focused if it concentrated more on insurance matters.

Rep. Kennedy clarified for Mr. Street that the creation of the Financial Services Subcommittee was done with the recognition that NCOIL should be broadening its area of concern given the nationwide integration of financial services.

Mr. Street elaborated on the resources available to the OCC and state regulators with respect to consumer protection. He said the OCC has more resources available for the

examination efforts of national banks than do all other bank/financial service regulatory bodies. He urged NCOIL to improve the resolution by focusing on the resource issue and looking at it more deeply.

Sen. Geller inquired whether several of the “whereas” clauses in the resolution were correct, especially in light of the consumer protection provisions. Mr. Street indicated that, given prior litigation, the OCC regulations do not actually broaden the OCC authority but simply codified prior court decisions and did not actually break new ground.

Sen. Geller inquired further about paragraphs seven, eight and nine of the resolution, dealing with precluding states from enforcing consumer protection laws for national bank customers. He said he had received information that indicated that the OCC was planning one nationwide call center in Houston to serve as an outlet for consumer complaints. Mr. Street suggested that the consumer call center matter could be a rumor, that he was unsure whether it was true. He suggested that most state consumer enactments passed subsequent to the adoption of the regulation would likely be found invalid, but not all such initiatives.

Rep. Kennedy asked rhetorically how he might respond to a constituent who calls seeking assistance and is told he/she must call Houston to resolve the complaint. Mr. Street offered to convene a forum with all interested parties to address any issues that might arise along this line. He suggested an adversarial resolution advanced by NCOIL would not help these efforts.

Rep. Young suggested that Mr. Street’s offer to bring the parties together was a valuable contribution to the process and that opening a dialogue with the new Comptroller of the Currency would be beneficial to all parties.

Rep. Milkey suggested that NCOIL pass the resolution and also convene the dialogue.

Rep. Keiser suggested that the situation could be viewed as similar to that of the SMART Act, that NCOIL would not in reality be a part of the actual negotiation of the regulation, therefore the resolution should be passed now.

Del. Morgan said that passing the resolution could only help NCOIL to be part of the negotiating process. He said he supported the resolution.

Rep. Kennedy clarified that the statements in the resolution were in fact correct.

Upon a motion by Rep. Keiser, which was duly seconded, the resolution was adopted unanimously with one abstention, that of Rep. Mark Young. The resolution was referred to the State-Federal Relations Committee for further consideration.

ADJOURNMENT

There being no further business, the meeting was adjourned at 12:00 noon.