NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
PROPERTY-CASUALTY INSURANCE COMMITTEE
SEATTLE, WASHINGTON
JULY 20, 2007
MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee met at the Sheraton Seattle Hotel & Towers in Seattle, Washington, on Friday, July 20, 2007, at 9:00 a.m.

Sen. Ruth Teichman of Kansas, chair of the Committee, presided.

Other members of the Committee present were:

Rep. Kurt Olson, AK
Rep. Greg Wren, AL
Rep. Donald Brown, FL
Rep. Pat Patterson, FL
Sen. Ralph Hudgens, GA
Rep. Michael Ripley, IN
Rep. Ron Crimm, KY
Rep. Susan Westrom, KY
Rep. Barbara Farrah, MI
Rep. Edward Gaffney, MI
Sen. Alan Sanborn, MI
Sen. Dean Kirby, MS
Rep. George Keiser, ND
Rep. Frank Wald, ND
Rep. Donald Flanders, NH
Assem. Nancy Calhoun, NY
Sen. William J. Larkin, Jr., NY
Rep. Ronald Peterson, OK
Rep. Robert Godshall, PA
Sen. David Bates, RI
Rep. Brian Kennedy, RI
Sen. William Walaska, RI
Rep. Larry Taylor, TX
Rep. Virginia Milkey, VT

Other legislators present were:

Sen. Vi Simpson, IN
Sen. Chris Steineger, KS
Rep. Dennis Keene, KY
Rep. Tommy Thompson, KY
Sen. Delores Kelley, MD
Rep. David Law, MI
Rep. Joe Atkins, MN
Sen. David O'Connell, ND
Sen. Pete Pirsch, NE
Rep. William Batchelder, OH
Sen. Keith Faber, OH
Rep. Jim Raussen, OH
Rep. Charles Curtiss, TN
Rep. Craig Eiland, TX
Rep. Warren Kitzmiller, VT
Rep. Michele Kupersmith, VT

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Candace Thorson, NCOIL Deputy Executive Director
Mike Humphreys, NCOIL Director of Legislative Affairs & Education, Life, Health, and Workers' Compensation Insurance

MINUTES

The Committee voted unanimously to approve the minutes of its March 2, 2007, meeting in Savannah, Georgia.

SUBCOMMITTEE ON NATURAL DISASTER INSURANCE LEGISLATION

Sen. Kirby, chair of the Subcommittee, reported that the Subcommittee had heard a report regarding recent state and federal initiatives, as well as a report from Washington State Senator Craig Pridemore regarding a new climate change law that he had introduced.

Sen. Kirby said the Subcommittee had decided to postpone indefinitely its review of a draft National Association of Insurance Commissioners (NAIC) catastrophe plan, in favor of further developing an NCOIL mitigation package for use by the states. This package, he said, would build upon other NCOIL efforts to promote natural disaster preparedness.

Sen. Kirby said the Subcommittee had deferred until the November Annual Meeting a proposed *Resolution Regarding a New Approach to State Catastrophe Funds and Federal Mega-Disaster Assistance*, due to the absence of the resolution's sponsor. He said the proposed resolution would support a system in which optional state/regional catastrophe funds would serve as pass-through mechanisms for distribution of federal monies following qualified natural disasters.

Finally, Sen. Kirby said the Subcommittee had unanimously adopted a proposed *Resolution Regarding State Land-Use Policies* that, among other things, sets forth items that should be included in local land-use strategies. Upon a motion made and seconded, the Property-Casualty Insurance Committee unanimously adopted the draft land-use resolution and referred it to the Executive Committee.

STATE GUARANTY FUND REFORM

Ms. Thorson said the Committee had deferred from the 2007 Spring Meeting a proposed *Post-Assessment Property and Liability Insurance Guaranty Association Model Act* that, she said, would create a comprehensive, statutory remedy for paying the claims of certain insureds after their property-casualty insurers have been declared insolvent. She said the NAIC had adopted a guaranty fund model act, first passed in 1970, as well as proposed revisions to the model that were under consideration by an NAIC task force.

Ms. Thorson stated that the draft NCOIL model act reflected language common among state guaranty fund laws. She said items for the Committee to consider included 11 key differences between the NCOIL draft and either one or both of the NAIC documents. Ms. Thorson said those differences were whether:

- there should be a section in the model law that would explain the purpose of the model
- a guaranty fund should cover business that an insolvent insurer had purchased (or "assumed") before it became insolvent
- it was appropriate to set financial limits on the worth of people who would receive money from a guaranty fund
- members of the public should sit on a guaranty fund's Board of Directors
- a state should set a date beyond which claims against a guaranty fund could no longer be filed
- there should be a cap on the amount of money that a guaranty fund would pay on any one claim
- a receiver of an insolvent estate should be allowed to manage how a guaranty fund pays its claims
- a guaranty fund should have the right to be involved in related court proceedings that take place in other states
- a guaranty fund should be able to get claims information from third-party administrators
- the liquidator of an insolvent insurer must accept the decisions of a guaranty fund

- a state should uphold certain immunities that are afforded to a guaranty fund and its members

Roger Schmelzer of the National Conference of Insurance Guaranty Funds (NCIGF) discussed why guaranty funds are important to consumers and states. He overviewed the history of the guaranty fund system and said that although guaranty funds have been successful, the emergence of complex insurance products, such as large-deductible policies, now require that states revisit their laws. Mr. Schmelzer said the proposed NCOIL model would give states the language they need.

Barbara Cox, also of NCIGF, spoke to some of the items before the Committee. Regarding whether there should be a purpose section in the model, she commented that these sections often stretch state law, in a negative way, beyond what legislators intend. She said these purpose sections were "disappearing" in many states.

Regarding whether it was appropriate to set limits on the financial worth of people who might get money from a guaranty fund, Ms. Cox commented that net-worth limitations would help guaranty funds do what they are supposed to—help people who are in most financial need receive their money first. She explained, in some detail, how states might structure net-worth provisions.

Regarding whether a state should cap the amount of money that a guaranty fund would pay on any one claim, Ms. Cox said that guaranty funds are "limited safety nets." She said they do not fully replace the amount of money that a person would have received from the insolvent insurer. She noted that although the proposed NCOIL model act would set a $300,000 cap on any one claims payment, it may be appropriate to set a higher threshold based on cost-of-living differences among the states.

Ms. Cox stressed the importance of making sure that a guaranty fund's claims determinations are final. She commented that allowing a liquidator to reevaluate what a guaranty fund had decided is an unnecessary and duplicative exercise that ultimately delays payments to people in need. She said a guaranty fund and a liquidator have already—prior to decisions by the fund—worked together closely.

Ms. Cox then discussed what is known as "assumed business." She said that sometimes an insolvent insurer had purchased (or "assumed") the business of another primary insurer—for reasons, she said, that may include solvency troubles at the other primary insurer or simply a desire by the other insurer to exit a particular line of business. She said that, under the draft NCOIL model law, a guaranty fund would *not* cover assumed business when the other insurer had operated outside of the admitted market. Ms. Cox commented that a non-admitted insurer sacrifices the protections of state regulation—including guaranty fund coverage—in order to have price flexibility and other freedoms.

In response to a question from Rep. Wald, Ms. Cox said that she was unaware of any state that assigned liability on an agent or broker for placing an insured with a company that ultimately becomes insolvent.

Insurance department representatives and other interested parties addressed the committee. Debra Korta of the Connecticut Insurance Department noted that the Connecticut state legislature had recently increased the state's claims cap from $300,000 to $400,000 to reflect higher property values in the state. Bob Wake of the Maine Bureau of Insurance, representing the NAIC, addressed issues regarding NAIC guaranty fund activity and various technical matters.

Following Committee discussion, legislators 1) supported a limit on the amount of money that could go to any one claimant but chose to wait until the 2007 Annual Meeting to vote on the issue, so that the Committee could also consider a drafting note acknowledging cost-of-living differences between the states and 2) indicated support for limiting payments to claimants whose net worth is below a certain threshold. In addition, legislators—concerned that states might interpret the model law too broadly—unanimously voted against including a purpose clause in the beginning of the act.

STATE LIQUIDATION LAWS AND LARGE-DEDUCTIBLE POLICIES

Ms. Cox overviewed the mechanics of large-deductible insurance policies, which she said relate to workers' compensation. In large-deductible plans, she explained, a company chooses a large deductible amount (for instance, $100,000) in exchange for receiving a significant premium discount. However, Ms. Cox said, in order to ensure that an injured worker receives the money he or she needs as quickly as possible, the insurer agrees to pay out the full amount of the claim (for instance, $200,000) and have the company later reimburse the insurer for the deductible amount. She noted that there are many ways in which a company may structure its reimbursement (for instance, via collateral), and she commented that these arrangements are quite complicated.

Ms. Cox said that when an insurer becomes insolvent, a state guaranty fund must pay out the full amount of a large-deductible claim—as the insolvent insurer would have—and so, by rights, should receive the full reimbursement amount when the insured company pays it. She opined that, in some states, the reimbursement goes instead to the estate of the insolvent insurer and that only a fraction of the reimbursement trickles down to the guaranty fund. Ms. Cox said consumers ultimately pay as a result of this practice.

Sen. Teichman said the Committee had before it a proposed *Resolution Concerning Amendments to the State Liquidation Laws Addressing Large Deductibles*. She said the resolution affirmed that guaranty funds should pay out no more than an insolvent insurer would have and—consistent with that notion—that states should require large-deductible reimbursements to go to guaranty funds, rather than to the general assets of insolvent insurers.

Mr. Wake said regulators had engaged in significant debate regarding how to treat large-deductible plans and ultimately determined that large-deductible reimbursements should go to guaranty funds. The exception, he explained, would be when an insured company had not paid back its reimbursement and the estate of the insolvent insurer was therefore forced to go after the insured company to get the reimbursement.

Rep. Brown expressed support for returning reimbursement amounts to a guaranty fund. Following a motion made and seconded, the Committee unanimously adopted the resolution via voice vote and referred it to the Executive Committee.

RENTAL VEHICLE DAMAGE WAIVERS

Sen. Sanborn expressed concern regarding damage waivers that rental companies offer to consumers who are renting motor vehicles. He said consumers often already have the coverage under their auto insurance and/or credit card agreements and that rental companies frequently use "scare tactics" to pressure consumers into paying for waivers they do not need.

Sen. Sanborn discussed a proposed *Model Act Regarding Rental Vehicle Damage Waivers*, which he was sponsoring, and said it would address the issue via disclosure. He noted that an earlier model act, which he had sponsored for discussion at the 2007 Spring Meeting, was based on New York statute and would focus on auto liability coverage as a means to consumer protection.

Harry MacAvoy, director of research and program development with the New York State Assembly, offered background regarding rental vehicle damage efforts in New York and spoke to options for future Committee action. He said New York began examining the issue 19 years ago and that the state now required that rental vehicle damage coverage be included in the property damage liability section of a private passenger auto insurance policy.

Mr. MacAvoy said that key insurance items for the Committee to consider included:

- where to insert coverage for rental vehicle damage (e.g., as part of collision or of property damage liability language)
- if included in property damage liability, whether the minimum level of liability coverage required by a state would be sufficient to cover the value of most rental vehicles—or whether the minimum level should be raised specifically for rental damage
- whether rental damage coverage should apply to rentals of no more than 30 or 60 days
- which entity should pay first—an auto insurer or a credit card company
- how to provide for proper notification to consumers
- whether a consumer should be able to opt-out of rental damage coverage if his/her insurer charges an additional fee for that protection

Mr. MacAvoy said there are also fair-trade issues to consider, which he said included:

- whether rental companies should be allowed to offer damage waivers at all
- if waivers are allowed, whether an amount offered should be tied to the value of a rental vehicle
- how to draft appropriate consumer disclaimers
- how to address miscellaneous issues, such as evaluation of damage

Mr. MacAvoy noted that an NAIC model law, adopted in 1988, approached damage waivers from a fair-trade perspective, rather than from an insurance angle, and would essentially prohibit waivers altogether. He commented that when waivers are disallowed, rental companies fold the cost of potential damage into the rates they charge for renting vehicles. He said no states have laws similar to the NAIC model act.

Committee members spoke to approaches in their states, including Rhode Island and North Dakota. Following further discussion, the Committee voted to establish a 30-day comment period following the Summer Meeting during which interested parties could submit proposed language for inclusion in a draft NCOIL model law. Sen. Sanborn said he would bring this draft model before the Committee at the 2007 Annual Meeting and that the new proposal would replace the two model acts already before the legislators.

FEDERAL INSURANCE SCORING ACTIVITY

FEDERAL TRADE COMMISSION REPORT

Julie Gackenbach of Confrere Strategies reported that the FTC had, that day, released an almost 18-month-overdue report regarding whether insurance (credit) scoring in auto insurance has a discriminatory impact on consumers. She said that when Congress reauthorized the Fair Credit Reporting Act (FCRA) in 2003, lawmakers directed the FTC to prepare such a study.

Ms. Gackenbach said the FTC concluded that:

- credit-based insurance scores are very predictive of risk, regarding both frequency and severity
- insurance scores often result in a disparate impact among some ethnic groups, but the scores are very predictive of risk within those racial categories
- insurance scoring is not a proxy for racial classification
- the FTC was unable to devise another underwriting tool that would be as effective as credit-based scoring

Ms. Gackenbach said the House Financial Services Committee had scheduled a July 27 hearing on the FTC report and that some Committee members were interested in banning the practice nationally. Regarding the NCOIL insurance scoring model act, Ms. Gackenbach reported that insurance industry representatives had "discussed extensively" the model and its state successes with both FTC commissioners and congressional staff. She said congressional staff were committed to ensuring that the NCOIL model receive its due attention during congressional deliberations and believed that, should Congress feel the need to pursue legislation, the NCOIL model should be the basis of any federal bill.

Ms. Gackenbach said that an FTC report regarding use of insurance scoring in homeowners' insurance was scheduled for release in early 2008.

U.S. SUPREME COURT CASE

James Tuite of State Farm Insurance Companies reported that the U.S. Supreme Court had recently decided in favor of GEICO and Safeco regarding Fair Credit Reporting Act (FCRA) adverse action requirements. He said that, under the decision, insurance companies must only send adverse action notices to policyholders and potential policyholders when a price quoted for insurance is higher due to a consumer's credit history.

Mr. Tuite said the ruling, which overturned a 9^{th} Circuit Court of Appeals decision, rejected the idea that an insurer must send adverse action disclosure when the company does not place a person in the absolute highest tier at the absolute lowest price.

Mr. Tuite said that if GEICO and Safeco had been found in "willful disregard" of FCRA, as alleged, the financial implications could have amounted to billions of dollars. Under FCRA, he explained, willful violations can lead to penalties of up to $1,000 per incident.

ACCIDENT RESPONSE FEES

Rep. Keiser overviewed issues regarding the collection of accident response fees, in which a third party approaches a municipality and offers to collect fees from accident victims for the financial benefit of the municipality.

Rep. Keiser stressed that cities do need the authority to help pay for their emergency services, and he noted that in many cases communities already charge fees for responding to an incident, but he expressed concern that third parties allegedly pursue the collection of accident fees from people who have insurance, and not from the uninsured, on the belief that an insurer will automatically pay the accident charge.

Rep. Keiser said this practice was inequitable and rewarded people who fail to purchase required auto coverage. He added that the response fee practice "disrupted" insurance underwriting because carriers could not, in a big-picture way, estimate the risk of paying accident fees.

Rep. Keiser said a proposed *Model Act Prohibiting Accident Response Fees*, which he offered for initial Committee consideration, would prohibit levying fees unless it was done equitably and the money received went only to local emergency services—and in no way to third-party collectors.

Sen. Hudgens identified a similar concern in Georgia and said he had proposed legislation to ban accident response fees altogether. He said municipalities in Georgia already receive 2.5 percent of the premium taxes that Georgia levies on insurers in the state.

In response to a question from Rep. Milkey, John Lobert of the Property Casualty Insurance Association of America (PCI) said most auto insurers do not cover accident fees and so consumers pay them on their own. He suggested that the draft model act attempted to protect policyholders who, in effect, were being penalized for having insurance.

Joe Thesing of the National Association of Mutual Insurance Companies (NAMIC) said municipalities were pursuing response fees in 18 states. He emphasized that the real problem lay with the third-party collectors, rather than with the municipalities.

Rep. Kennedy addressed issues regarding reimbursement for volunteer fire and similar emergency personnel and urged against taking action that would impede the ability of these entities to recover their costs.

Following further Committee discussion, Sen. Teichman acknowledged legislators' interest in the issue and noted that the matter would be addressed in greater detail at the Annual Meeting.

ADJOURNMENT
There being no further business, the meeting adjourned at 10:30 a.m.