

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
TASK FORCE ON TERRORISM
WESTON, FLORIDA
FEBRUARY 23, 2006
MINUTES

The National Conference of Insurance Legislators (NCOIL) Task Force on Terrorism met at the Bonaventure Resort & Golden Door Spa in Weston, Florida, on Thursday, February 23, 2006, at 11:30 a.m.

Assem. Ivan Lafayette of New York, chair of the Committee, presided.

Other members of the Committee present were:

Sen. Joseph Crisco, CT
Sen. Neil Breslin, NY
Assem. Nancy Calhoun, NY
Sen. William J. Larkin, Jr., NY
Rep. George Keiser, ND

Other legislators present were:

Sen. Duane Mutch, ND
Rep. Anthony J. Melio, PA
Rep. Matthew Wright, PA
Rep. Gene Seaman, TX
Rep. Michael Reese, VT
Rep. Mark Young, VT

Also present were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Candace Thorson, NCOIL Deputy Executive Director
Paul Donohue, NCOIL Director of State-Federal Affairs
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 November 17, 2005, joint meeting with the Subcommittee on Natural Disaster Insurance Legislation in San Diego, California.

TERRORISM RISK INSURANCE ACT (TRIA) OF 2002 REAUTHORIZATION

Mr. Donohue reported that the *Terrorism Risk Insurance Extension Act of 2005* (TRIEA), S. 467, was signed into law by President Bush on December 22, 2005, approximately one week before TRIA was due to expire. He said that the House had pushed for an expanded TRIEA program that would cover group life while also establishing "silos" that would set different industry retention levels depending on the line of coverage. He said that the Senate, however, wanted to keep the current structure while raising the trigger

and retention levels and eliminating certain coverages from the program. He reported that the House bill, which passed overwhelmingly, was dead on arrival as far as the Senate was concerned. He said that no formal conference committee was convened, as is normally done to iron out differences between bills—one telling indication that the Senate was in no mood to compromise on its bare-bones extension approach. He said that House members were not pleased, but were realistic. He reported that Rep. Michael Oxley (R-OH), Chair of the U.S. House Financial Services Committee, was quoted as saying, “There is a time to fold your cards, and the time is now.”

Mr. Donohue said the White House and the Senate were pleased with the final bill, as was the Consumer Federation of America (CFA).

Mr. Donohue said that under the new TRIEA legislation, a President's Working Group on Financial Markets is required to consult with the NAIC, representatives of the insurance and securities industries, and representatives of policyholders to analyze the long-term availability and affordability of insurance for terrorism risk.

Mr. Donohue also reported on a meeting he had with Robert Gordon and Glenn Westrick, Senior Counsel and Counsel, respectively, for the Committee on Financial Services. He said they discussed the troubled passage of and long-term replacements for TRIEA. He said when he mentioned the fact that the Senate did not even convene a formal conference committee to work out differences between the two bills, Mr. Gordon responded that Senator Shelby, Chair of the Senate Banking Committee, was the main senatorial opponent of the bill.

Mr. Donohue reported that Mr. Gordon had encountered apathy from federal legislators and industry leaders concerning long-term solutions for TRIEA. Mr. Gordon said he heard from numerous parties that they were not worrying about long-term solutions because there are 22 months remaining before the program expires, Mr. Donohue reported. He said that Mr. Gordon did not expect the President's Working Group on Financial Markets to suggest a long-term program and that he doubted any long-term solution would be put in place prior to TRIEA's expiration. Mr. Gordon said that Representatives Oxley and Richard Baker (R-LA), chair of the House Financial Services Subcommittee on Capital Markets, Insurance, and Government-Sponsored Enterprises, were actively working towards a long-term solution, but that lately Rep. Baker has focused on Louisiana's Hurricane Katrina damage, Mr. Donohue reported. He said Mr. Gordon suggested that states may want to create their own programs to compensate for the inevitable loss of TRIEA.

Assem. Lafayette commented that while he initially expected there would be little problem extending TRIA, he did not expect the lack of congressional knowledge on the subject. He said that this, more than anything, contributed to the difficulty in getting the extension passed. He said the world was increasingly dangerous and that future acts of terrorism have become much more likely. He said that while the next act might not be as spectacular as the World Trade Center tragedy, it would undoubtedly cause great human suffering. Assem. Lafayette said the President should put a plan in place now. He

commented that some catastrophes are just too big for any company or industry to handle and that, in those situations, only the government could provide the necessary financial assistance.

LONG-TERM SOLUTIONS FOR TRIA

Michael G. McCarter, Chair of the American Academy of Actuaries (AAA) TRIA Subgroup, explained the specifics of TRIEA, saying that it extends the federal terrorism backstop for two years until December 31, 2007. He said that like TRIA, TRIEA only covers acts by foreign terrorists. He explained that under TRIEA, nuclear, biological, chemical, and radiological (NBCR) events are only covered if the underlying insurance policy independently provides such coverage. He said that the event trigger, the amount of damage that must occur before TRIEA is activated, is \$50 million in 2006 and \$100 million in 2007. Mr. McCarter said that the total cap on government and insurance industry liability is \$100 billion annually. He said the amount of federal payments subject to mandatory recoupment is set at \$25 billion in 2006 and will rise to \$27.5 billion in 2007.

Mr. McCarter said that TRIEA requires the President's Working Group on Financial Markets to report to Congress by September 30, 2006, on the long-term availability and affordability of terrorism insurance coverage, including group life and NBCR. He said that Treasury Secretary John Snow is Chair of the Working Group and that other members include Securities and Exchange Commission Chair Christopher Cox, Federal Reserve Chair Ben Bernanke, and Commodity Futures Trading Commission Chair Reuben Jeffery III.

Mr. McCarter said that the AAA TRIA Subgroup was working to provide input to the President's Working Group by June 1, 2006. He said that the AAA was conducting a two-part study. He said the first part comprised an assessment of the private market for terrorism insurance in the absence of a national framework, such as TRIEA. He said the issues to be studied included the rationale for private terrorism insurance, insurers' costs regarding terrorism coverage, the impact of a terrorist event on insurers, who would bear the costs of a terrorist event, and the likely stability of the private terrorism insurance market.

Mr. Carter said the second part of the AAA study would consider designs for a national framework that would encourage development of a private market for terrorism insurance. He said of particular interest would be how private reinsurance, income taxation, and state insurance regulation would fit into the overall framework.

Assem. Calhoun said she understood how big companies would have the wherewithal to plan and insure themselves against a terrorist event, but she queried whether TRIEA had any provisions for protecting individual citizens who might not know they are at risk for death or injury by terrorist attack. Mr. Carter responded that TRIEA did not address homeowners or auto insurance. Assem. Lafayette said that individuals would have a better chance of being covered during a terrorist event if they were at work at the time of the attack.

Eric Nordman, Director of Research for the National Association of Insurance Commissioners (NAIC), said that the latest example of terrorism was in South Carolina, where an unknown group of people was burning churches. Mr. Nordman said that there would not be coverage, under TRIEA, for those acts of terrorism because the perpetrators were not foreigners. He said that during the next six months, it would be important for interested parties to discuss situations, like those in South Carolina, in planning for post-TRIEA terrorism insurance programs. He said that state lawmakers should consider requiring insurers in their states to offer some sort of terrorism insurance coverage post-TRIEA. He said that most state laws do not address the subject because historically it has not been an issue.

Sen. Larkin asked Mr. Nordman if he thought the NAIC would be interested in collaborating with NCOIL to address development of long-term solutions. Mr. Nordman replied that the NAIC would not be opposed to, and in fact would welcome, joint participation with NCOIL. He said that, in essence, the challenge is one of public policy development.

ADJOURNMENT

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