

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
PROPERTY-CASUALTY INSURANCE COMMITTEE
BOSTON, MASSACHUSETTS
JULY 21, 2006
MINUTES

The National Conference of Insurance Legislators (NCOIL) Property-Casualty Insurance Committee met at the Boston Park Plaza Hotel & Towers in Boston, Massachusetts, on Friday, July 21, 2006, at 3:15 p.m.

Sen. Pam Redfield of Nebraska, chair of the Committee, presided.

Other members of the Committee present were:

Sen. Joseph Crisco, CT	Sen. Dean Kirby, MS
Rep. Donald Brown, FL	Rep. George Keiser, ND
Sen. Steven Geller, FL	Sen. Harvey Tallackson, ND
Rep. Pat Patterson, FL	Rep. Donald Flanders, NH
Rep. Dennis Ross, FL	Sen. Carroll Leavell, NM
Sen. Bill Brady, IL	Sen. Neil Breslin, NY
Sen. William Haine, IL	Assem. Ivan Lafayette, NY
Rep. Terry Parke, IL	Sen. William J. Larkin, Jr., NY
Rep. Michael Ripley, IN	Sen. James Seward, NY
Sen. Ruth Teichman, KS	Sen. David Bates, RI
Rep. Ronald Crimm, KY	Rep. Brian Kennedy, RI
Rep. Dennis Horlander, KY	Sen. William Walaska, RI
Rep. Susan Westrom, KY	Rep. Larry Taylor, TX
Rep. Joe Hune, MI	Del. Harvey Morgan, VA
Sen. Alan Sanborn, MI	Rep. Virginia Milkey, VT

Other legislators present were:

Rep. Sandra Adams, FL	Rep. Dan Foley, NM
Rep. Franklin Sands, FL	Rep. Robert Godshall, PA
Rep. Priscilla Taylor, FL	Rep. John Morley III, VT
Sen. Ralph Hudgens, GA	Rep. Michael Reese, VT
Rep. Robert Damron, KY	Rep. Mark Young, 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 February 24, 2006, meeting in Weston, Florida.

SUBCOMMITTEE ON NATURAL DISASTER INSURANCE LEGISLATION

Sen. Geller reported that the Subcommittee had considered a draft mega-catastrophe proposal that was a joint effort between himself and Florida Insurance Commissioner Kevin McCarty, chair of the National Association of Insurance Commissioners (NAIC) Property-Casualty Insurance Committee. He said the plan would, in part, call for a newly created Federal Natural Disaster Catastrophe Commission to evaluate whether public-sector involvement in catastrophe management would be called for and, if so, what triggers might be appropriate. He said optional state or regional catastrophe funds and a federal reinsurance program would follow should the Commission see a need for public participation. He said the plan also would support mitigation and land-use measures and tax-deferred catastrophe reserves.

Sen. Geller said the Subcommittee had reported the proposal to the full Committee, but was not requesting action at that time. Rather, he said, NCOIL President Rep. Frank Wald (ND) was appointing a separate, smaller subcommittee that would negotiate with the NAIC and interested parties prior to the NCOIL Annual Meeting. Sen. Geller said that he was to be chair and Rep. Keiser vice chair.

Sen. Geller reported that the Subcommittee also had adopted a *Resolution in Support of the Adoption of Stronger Building Codes and Building Requirements*. He said the resolution, among other things, supports the adoption of statewide construction codes and related inspection and enforcement measures; codes that are flexible, affordable, and do not inhibit competition; and the incorporation by all levels of government of appropriate disaster mitigation and emergency preparedness. He said the resolution encourages local and state governments to use experts to help with public preparedness.

Upon a motion made and seconded, the Committee adopted the resolution via unanimous voice vote.

The Committee then discussed issues regarding the proposed mega-catastrophe system and other NAIC catastrophe efforts. Legislators addressed concerns that the Subcommittee had passed the Geller-McCarty draft up to the full Committee based on incorrect information regarding the status of the draft within the NAIC committee structure. Sen. Geller said he had learned that the information he had received and presented to the Subcommittee had been inaccurate and that the proposal remained at the NAIC working group level, rather than in its full P-C Committee. He said he regretted the inadvertent error, and he assured the Committee that any future changes to the proposal would ultimately come to the Committee for its approval.

Rep. Keiser said that the Subcommittee's action, and the formation of a separate subcommittee to consider the same issue, deviated from typical NCOIL procedure. He suggested that Rep. Wald had incomplete information when he formed the smaller subcommittee and expressed frustration that the standing Subcommittee would be unable to review the proposal. He moved that the Committee return the Geller-McCarty draft to the Subcommittee and that it ask staff to inform Rep. Wald of recent developments.

Sen. Geller said he was concerned that NCOIL might deliberate too long. In part, he said that he did not really oppose re-referring the proposal to the Subcommittee, as long as representatives of the Subcommittee would still meet with NAIC and interested parties and still discuss the draft at the November meeting. He said he hoped that Rep. Keiser would include those items in his motion.

Rep. Keiser reasserted that he had objected on a procedural basis and that the Subcommittee must be allowed to do its work.

Sen. Redfield reminded the Committee that the motion was to return the Geller-McCarty proposal to the Subcommittee. The motion passed via a unanimous show of hands.

NATIONAL FLOOD INSURANCE PROGRAM (NFIP)

Ed Pasterick of the Federal Emergency Management Agency (FEMA) updated the Committee on recent National Flood Insurance Program (NFIP) activity. Regarding Hurricane Katrina claims, he said that 98 percent of claims were closed and that, thus far, approximately \$13 billion had been paid in Louisiana, \$2.4 billion in Mississippi, \$275 million in Alabama, and \$129 million in Florida. He said compliance with mandatory flood insurance requirements was not really a problem in Louisiana.

Mr. Pasterick said that H.R. 4973 had passed several weeks before and would extensively amend the NFIP. He said the bill would institute a 15 percent annual premium increase on pre-Flood Insurance Rating Maps (FIRMs) properties that do not meet current building codes and receive large premium subsidies. He said the increase would continue until property owners were paying actuarial rates.

Mr. Pasterick said H.R. 4973 would increase penalties for lenders who do not enforce mandatory flood insurance requirements and would add additional living expense coverage, as well as optional basement, business interruption, and content replacement cost coverages.

Mr. Pasterick said the NAIC had proposed a provision regarding claims mediation. He said that though the NFIP had no objection to working with regulators, the NFIP was not in a legal position to mediate on claims, as federal law clearly establishes what the program can and cannot cover.

Finally, Mr. Pasterick said the NFIP was working closely with states to implement the agent training requirements mandated by the *Flood Insurance Reform Act of 2004*, which he said required the program to make public policy changes that the NFIP had no authority to do.

Sen. Kirby thanked other states for their support of Mississippi in the aftermath of Hurricane Katrina. Among other things, he said that the storm had destroyed whole communities, that it would be five years before all debris was removed, and that the insurance market was severely strained. The Committee applauded his efforts.

AUTO ANTI-FRAUD MODEL ACT

Howard Goldblatt of the Coalition Against Insurance Fraud overviewed a proposed *Auto Insurance Fraud Model Act*, which he said was based on Florida and New York initiatives.

Rep. Keiser said he had concerns with Title IV, Driver's License Suspension. He said the language would suspend the license of a driver who committed auto-associated fraud unrelated to actually driving a motor vehicle (for instance, driving a car to an insurance agent in order to fraudulently claim that skis were stolen from a residence). He said loss of the license could prevent a driver from traveling to a job, eventually leading to public assistance.

The Committee discussed issues regarding Title IV. Assem. Lafayette said that it was common for drivers with suspended licenses to receive certain allowances for traveling to work or school. Sen. Geller said that perhaps clarification was needed in Section 1 to ensure that only true auto insurance fraud was relevant. Sen. Sanborn suggested changing the section's "shall" to "may" in order to allow for greater state discretion. Rep. Foley noted that Section 2 would allow a state to suspend either a registration or a license.

The Committee voted to amend Title IV, Section 1 in order to 1) clarify the provision's intent, 2) allow for greater state discretion, and 3) provide that, consistent with Section 2, either a license or a registration could be suspended.

Sen. Redfield said the model act as amended would 1) make it a felony to procure or attempt to procure a person in order to commit insurance fraud; 2) make it a second-degree felony, punishable by a minimum two-year jail term, to stage auto accidents, whether in person or on paper; 3) restrict access to accident reports for 60 days, with certain exceptions; and 4) allow for a one-year suspension of the license or registration of anyone convicted of insurance fraud while using a motor vehicle, with his or her license/registration reinstatement fees double the normal charges.

The Committee adopted the amended model act via unanimous voice vote.

RESOLUTION REGARDING IRMA AND NAIC ACCREDITATION ACTIVITY

Neil Alldredge of the National Association of Mutual Insurance Companies (NAMIC) addressed a proposed *Resolution Regarding Efforts to Make the Insurance Receivership Model Act (IRMA) Part of NAIC Accreditation Standards*. He said, in part, that the accreditation system was meant to establish uniform solvency standards and that IRMA spoke to post-solvency issues.

Deb Wozniak of State Farm Insurance Companies overviewed IRMA, which she said the NAIC had adopted in December 2005 in order to replace an earlier, unsuccessful NAIC model law. She reported that insurers had many concerns with IRMA, including that it would raise costs related to guaranty fund assessments. She said these added costs would be on top of the already extra costs born by State Farm policyholders, for instance, as a result of the company's recent, substantial guaranty fund assessments. Ms. Wozniak said IRMA also was problematic because it did not address large-deductible insurance policies.

Regarding accreditation, Ms. Wozniak said that some regulators were pushing for IRMA's inclusion in the NAIC system because that would force states to adopt uniform receivership language, which they currently have not.

Lawmakers and others discussed issues regarding separate NAIC proposals that would, in part, truncate the process by which new accreditation standards were exposed and adopted, and eliminate a requirement for a cost-benefit analysis of any proposed new standard.

Rep. Keiser, co-sponsor of the resolution with NCOIL President Rep. Wald, emphasized the resolution's reaffirmation of legislative authority to set insurance public policy. He also cited language regarding concerns with IRMA and its ultimate impact on consumers.

Chey Calvo of the NAIC said, in part, that proposed changes to the accreditation system were in the early stages of consideration and that the NAIC would welcome NCOIL input. He acknowledged that the accreditation procedure required the NAIC to notify NCOIL and other organizations of proposed changes once the Financial Regulation Standards and Accreditation Committee voted to expose them for comment. Mr. Calvo encouraged the Committee to delay taking a position on NAIC activity until regulators worked further.

Sen. Redfield responded that the appropriate time for legislators to weigh in was early on, before it was too late to effect change.

The Committee adopted the resolution via unanimous voice vote.

GUARANTY FUNDS

Kevin Harris of the National Conference of Insurance Guaranty Funds (NCIGF) said NCIGF had model legislation that reflects “lessons learned” from current state systems. He said he hoped the Committee would consider the issue in further depth at the Annual Meeting.

The Committee determined to address guaranty funds at that time.

SURPLUS LINES COMPACT PROPOSAL

Dan Maher of the Excess Lines Association of New York (ELANY) overviewed problems with the current surplus lines system and advocated for an interstate compact. He described the nature of the surplus/excess lines (E&S) industry and said it was approximately a \$36 billion business in the United States.

Significant problems with the E&S market, Mr. Maher said, include agent/broker confusion regarding which state to comply with on multi-state risks. He commented that producers want to do the right thing but that the post-Gramm Leach Bliley (GLB) system is “terribly inefficient” and designed to fail.

Mr. Maher said ELANY was attempting to commission a study on states’ under-collection of E&S tax revenue as a result of the current regulatory environment. He said Texas had estimated that it collects only ten (10) percent of the monies it is due.

Mr. Maher said that ELANY, the National Association of Professional Surplus Lines Offices (NAPLSO), and other organizations support formation of an interstate compact to facilitate tax payments. Among other things, he said, the compact could rely on a Web-based system into which brokers would file data regarding the state-by-state risk of a multi-state insured. He said this information would be aggregated periodically and reported to both the broker and the states. Mr. Maher said this “billing sheet” would tell a broker how much money to send each jurisdiction and would notify those states of the taxes they were entitled to collect.

Mr. Maher commented that an E&S compact would be feasible because, in part, only four (4) states—California, Florida, New York, and Texas—represent 50 percent of the market. He said that the next largest—Illinois, Louisiana, New Jersey, and Pennsylvania—represent an additional 20 percent. He predicted that other states would join the compact once the larger ones signed on. He said the compact would be a state solution to a state-regulated industry and that he hoped to have a model act ready for Committee consideration at the Annual Meeting.

Mr. Maher said ELANY would prefer a state solution but admitted that recently introduced legislation in the House Financial Services Committee would address market concerns while keeping coverage under state oversight. He said the E&S industry had not pushed for the bill.

OTHER BUSINESS

NCOIL PROPERTY-CASUALTY INSURANCE MODERNIZATION ACT

Sen. Redfield said that, as per NCOIL bylaws, the Committee would review the NCOIL *Property-Casualty Insurance Modernization Model Act*. Among other things, she said, the model would

establish a use-and-file rate regulatory system for personal lines of insurance; a no-file system for commercial lines; and an exemption from rate and regulatory requirements for sophisticated commercial insurance buyers.

Sen. Geller said he opposed the model law because it would allow insurers too much freedom regarding rate, and to some degree form, filings. He said it was not best for consumers.

The Committee overwhelmingly readopted the model law.

ILF STUDY REGARDING MOTOR VEHICLE SAFETY INITIATIVES

Ms. Thorson said the Insurance Legislators Foundation (ILF) had voted to pursue a study into motor vehicle safety initiatives, such as red-light cameras and other automated enforcement measures; staggered licenses for young drivers; distracted driving initiatives; roundabouts and other roadway techniques; and ignition interlock systems and other DUI/DWI efforts.

Ms. Thorson said the Advocates for Auto and Highway Safety had agreed to work with the ILF and that the two groups would discuss funding and other details in the near future. She said that Advocates was comprised of insurers and agents, consumer advocates, medical and police organizations, and Mothers Against Drunk Driving (MADD), among others.

ACTIVITY REGARDING FORD AUTO PATENT INITIATIVE

Eileen Sottile of Keystone Automotive reported that Ford Motor Company had filed a complaint against Keystone for violating several patents on Ford F150 crash parts. She said that Ford had patented many of the truck's parts and that the effort had set a disturbing precedent.

Ms. Sottile reported that a hearing on the violations would take place in August and that the determination of the presiding International Trade Commission (ITC) administrative judge would be released by December. Should the Commission agree with the determination, she said, Keystone could no longer manufacture the parts in question. She predicted that other car companies would follow suit should Ford's effort succeed.

Ms. Sottile commented that consumers would be adversely affected by a market without generic competition. She said the Ford patents were on design of the crash parts, rather than their function; that they were "pushed through" the U.S. Patent Office very quickly; that several of Keystone's arguments in the case, including those alleging patent abuse, had been dismissed during proceedings in the spring; and that there was no opportunity for Keystone to know what patents were being pursued so as to challenge those requests.

ADJOURNMENT

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