

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
INTERNATIONAL INSURANCE ISSUES COMMITTEE  
SANTA FE, NEW MEXICO  
NOVEMBER 18, 2011  
MINUTES

The National Conference of Insurance Legislators (NCOIL) International Insurance Issues Committee met at the Eldorado Hotel & Spa in Santa Fe, New Mexico, on Friday, November 18, 2011, at 11:10 a.m.

Sen. Travis Holdman of Indiana, chair of the Committee, presided.

Other members of the Committee present were:

Rep. Greg Wren, AL	Rep. George Keiser, ND
Rep. Jason Rapert, AR	Sen. Carroll Leavell, NM
Rep. Rich Golick, GA	Sen. Dave Thomas, SC
Sen. Vi Simpson, IN	Rep. Charles Curtiss, TN
Rep. Robert Damron, KY	Rep. William Botzow, VT
Rep. Susan Westrom, KY	Sen. Ann Cummings, VT

Other legislators present were:

Rep. Barry Hyde, AR	Sen. David O'Connell, ND
Rep. Nancy Barto, AZ	Rep. Don Flanders, NH
Rep. Nancy McLain, AZ	Rep. Mike Stinziano, OH
Rep. Ken Ito, HI	Sen. Gerald Malloy, SC
Sen. John Goedde, ID	Sen. Jean Hunhoff, SD
Sen. Ruth Teichman, KS	Sen. Maralyn Chase, WA
Rep. Sharon Treat, ME	Rep. Herb Russell, VT
Rep. Joe Hoppe, MN	Rep. Warren Kitzmiller, VT

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director  
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director  
Mike Humphreys, Nolan Associates, NCOIL Director of State-Federal Relations  
Jordan Estey, Nolan Associates, NCOIL Director of Legislative Affairs & Education

## MINUTES

After a motion made and seconded, the Committee voted unanimously to approve the minutes of its July 14, 2011, meeting in Newport, Rhode Island.

## U.S. TRADE AGREEMENT POLICY

Sen. Holdman reported that numerous amendments to a draft *Resolution Opposing Commitments on Pharmaceutical Reimbursement and Insurance Regulation in Free Trade Agreements* had been submitted after the Annual Meeting 30-day deadline and that the Committee would need to waive the deadline rule in order to discuss them. He said, however, that given the complexity of trade issues and the number of revisions, it was his request that the Committee refrain from waiving the 30-day rule or considering the underlying resolution in order to consider a new proposal at the Spring Meeting. He suggested holding an extended discussion of trade concerns at that time.

Rep. Wren supported Sen. Holdman's approach and underscored the importance of U.S. trade activity nationwide and in his Alabama district. Rep. Keiser also agreed that further discussion would be important and, after commenting that trade activity was a "moving target," said that NCOIL might take a general position related to state rights prior to weighing in more specifically.

Sen. Chase stressed that insurance-related trade issues were becoming increasingly relevant to state laws and regulations and said it was imperative that legislators, via forums such as NCOIL, appreciate trade complexities. Rep. Treat also encouraged more in-depth NCOIL discussion, and she noted that her state was among a handful with a committee focused on understanding trade policy pros and cons. She commented that an emerging Trans-Pacific Partnership Agreement (TPPA) was worrisome because it was wide-ranging and would impact financial services and insurance activities, among others. She said the Obama Administration had just announced an aggressive timeline for TPPA completion.

Legislators then discussed, via phone, U.S. trade efforts with the following speakers from the Office of the U.S. Trade Representative (USTR):

- Stanford McCoy, Assistant Representative for Intellectual Property & Innovation
- Probir Mehta, Deputy Assistant Representative for Intellectual Property & Innovation
- Carlos Romero, Assistant Representative for Intergovernmental Affairs & Public Engagement
- Kimberly Claman, Director in the Department of Services & Investment
- Jared Ragland, Director in the Department of Intellectual Property & Innovation

Sen. Chase asked for clarification regarding a reported TPPA confidentiality requirement, in which text of the TPPA could not be released until four years after TPPA approval by all participating countries. Mr. McCoy, after noting that U.S. trade with TPPA nations represented \$144 billion annually, said among other things that the four-year rule only related to interim proposals exchanged between negotiators. Mr. Romero, after noting that the timeframe previously had been ten years, said that such confidentiality standards were common both in government and in private industry and that "cleared advisors" to the USTR TPPA negotiations did have access to the proposals during the negotiation process. He said, in part, that "cleared advisors" included state/local officials and labor union and business representatives, among others.

Sen. Chase and Rep. Wren expressed concern that state legislators were not included in negotiating efforts, and Rep. Wren inquired about opportunities for state lawmakers to work more closely with the USTR to ensure that state legislators' roles were not diminished as a result of international insurance negotiations. Ms. Claman responded by offering an overview of U.S. financial services-related efforts, saying that USTR:

- negotiates only "non-discriminatory obligations" that compel states to treat U.S. and non-U.S. insurers similarly
- does not discuss specific elements of state-level prudential regulation
- does not engage in discussions over potential state regulations that could conflict with a "non-discriminatory obligation"
- defends the U.S. state-based system, despite interest among some trading partners in a federal U.S. regulator

Rep. Wren commended the USTR for its interest in protecting state insurance authority. He urged federal officials to remember the role that state legislators, not just regulators, play in U.S. insurance oversight.

Upon a motion made by Rep. Keiser and seconded by Rep. Wren, the Committee voted unanimously to defer indefinitely the proposed *Resolution Opposing Commitments on Pharmaceutical Reimbursement and Insurance Regulation in Free Trade Agreements* and to request that its original proponents offer a new resolution for Spring Meeting consideration.

#### OVERARCHING GLOBAL REGULATORY FRAMEWORK/STATE IMPACTS

Ms. Thorson overviewed the interplay between U.S. and international insurance regulatory bodies and initiatives. Using an NCOIL diagram as illustration, she reported that a proposed Common Framework (ComFrame) was being developed by the International Association of Insurance Supervisors (IAIS) as a global, group-wide system for holistically supervising internationally active insurance groups (IAIGs). She said that certain industry and regulator observers had expressed concern that ComFrame, which she described as extremely complex, could work to supplant U.S. state-based regulation.

Ms. Thorson noted that the IAIS was a voluntary organization of insurance regulators representing more than 140 nations. She said that the group was founded by the National Association of Insurance Commissioners (NAIC), which had 15 seats on the IAIS, including three votes on its Executive Committee. She said that other members included the European Union (EU) and the new Federal Insurance Office (FIO). The IAIS, she added, developed insurance core principles that were globally accepted criteria for judging insurance regulatory systems.

Ms. Thorson explained that the NAIC Solvency Modernization Initiative (SMI) was an effort to evaluate U.S. regulation in light of global initiatives, such as Solvency II and ComFrame, and that SMI could lead to changes in state law that may or may not require legislative approval. She said that SMI focused on five areas: capital requirements, governance and risk management, group supervision, reinsurance, and statutory accounting and financial reporting. Ms. Nolan highlighted an area of the diagram that showed state legislators' connection to insurance regulation, noting that there was no legislative input into regulatory activity. She cautioned that legislators, although they had not weighed in, would still be impacted by regulator decisions.

Ms. Thorson said that the EU Parliament and the EU Council had each passed Solvency II and that the Commission was currently evaluating other regulatory systems to determine whether they were equivalent. She said that insurers from jurisdictions deemed non-equivalent could face higher regulatory hurdles when doing business in the EU. Thus far, she reported, Bermuda, Japan, and Switzerland had all been deemed equivalent with caveats. She said recent reports had predicted that U.S. regulation would be deemed equivalent.

David Snyder of the American Insurance Association (AIA) said that it was critical for European officials to take an outcomes-based approach when evaluating U.S. regulation in light of Solvency II. Regarding other activity, Mr. Snyder said that the G-20, responding to the financial crisis, had charged a Financial Stability Board (FSB) with reviewing regulatory systems and developing certain standards. He said that the FSB, in turn, had charged IAIS with looking at global insurance oversight and considering how insurers might pose systemic risk. Mr. Snyder said there was a parallel effort in the U.S., in the form of the Dodd-Frank Act, that responded to what happened when a large insurer engaged in non-traditional, non-transparent risk behavior.

Mr. Snyder then said that it was vital for officials to realize that U.S. insurance regulation performed extremely well throughout the financial crisis and that it would be inappropriate to impose bank-centric regulations on insurers.

Amanda Weaver of the NAIC reported that six U.S. states are within the top 20 insurance markets in the world. She also said that the U.S. market is larger than the top two through six insurance markets combined.

Regarding ComFrame, Ms. Weaver said that the NAIC views the proposal as a platform for supervisory cooperation, among other things. She said that U.S. regulators stress the importance of an outcomes-based approach to insurance oversight, as well as of multi-country coordination to prevent regulatory arbitrage and black holes.

#### PROPOSED 2012 COMMITTEE CHARGES

Ms. Thorson said the proposed Committee charges for 2012 were as follows:

- explore concerns with group supervision in light of emerging international framework for insurance regulation
- engage in discussions of NAIC Solvency Modernization Initiative/EU Solvency II reforms
- explore U.S. impacts of emerging international accounting standards
- continue review of U.S. trade agreement insurance impacts

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

#### ADJOURNMENT

There being no further business, the meeting adjourned at 12:05 p.m.

