

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
PROPERTY & CASUALTY COMMITTEE  
LAS VEGAS, NEVADA  
NOVEMBER 17, 2016  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Property & Casualty Committee met at the Paris Las Vegas Hotel on Thursday, November 17, 2016 at 10:30 a.m.

Representative Matt Lehman of Indiana, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert, AR	Sen. David O'Connell, ND
Rep. Martin Carbaugh, IN	Rep. Don Flanders, NH
Rep. Peggy Mayfield, IN	Aswm. Maggie Carlton, NV
Rep. Joseph Fischer, KY	Asm. Will Barclay, NY
Rep. Steve Riggs, KY	Sen. Neil Breslin, NY
Rep. Bart Rowland, KY	Asm. Kevin Cahill, NY
Sen. Dan "Blade" Morrish, LA	Sen. Bob Hackett, OH
Rep. Michael Webber, MI	Rep. Michael Henne, OH
Rep. George Keiser, ND	Rep. Bill Botzow, VT
Sen. Jerry, Klein, ND	

Other legislators present were:

Sen. Joe Hune, MI

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO  
Paul Penna, Executive Director, NCOIL Support Services, LLC  
Will Melofchik, Legislative Director, NCOIL Support Services, LLC

## MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its July 16, 2016, meeting in Portland Oregon, and the minutes of its September 29, 2016, interim conference call meeting.

## DISCUSSION OF FLOOD INSURANCE MARKET WITH EMPHASIS ON PRIVATE MARKET'S INVOLVEMENT

John Huff, NAIC President and Missouri Insurance Director, began by stating that the private flood insurance market is a great opportunity for the insurance and reinsurance markets, but even more of an opportunity for consumers for the possibility of leveraging the private market to get better prices and potentially better service. Director Huff stated that flood is a very unique peril in the sense that it is a hazard that can hit all 50 States. There is a growing interest in the private flood market – the interest from the admitted market is somewhat limited but there is a great deal of interest from the surplus lines

market. There are some regulatory differences between the admitted and surplus lines markets and that is one thing to be cognizant of as we go down the path of private flood insurance.

The biggest opportunities for consumers in a private flood market are a better balance between coverage and price. NAIC supports the growth of the private flood market to provide consumers an alternative to the National Flood Insurance Program (NFIP). The NAIC is also very supportive of H.R. 2901 which passed unanimously in the House. Some of the language in that bill is important to clarify that state insurance regulators do have the same authority and discretion to regulate private flood insurance as they have to regulate other similar insurance products and markets. Director Huff stated that since H.R. 2901 passed the House, federal banking regulators have issued a notice of proposal for rulemaking to implement private flood provisions which would require federally regulated lenders to accept private flood insurance as an alternative to NFIP. The rules are now out for comments until January 6<sup>th</sup>, 2017 and Director Huff encouraged NCOIL to comment.

Director Huff then stated that another big issue is the upcoming re-authorization of the NFIP that has to be done by September 30, 2017. NAIC staff issued a handout to this committee that highlighted some things that NAIC thinks are important for the viability of the private flood insurance market and the re-authorization of the NFIP. Some highlights include: a long-term re-authorization of the NFIP – it's in the best interests of the long term stability of the marketplace for insurers to be able to plan on a long term basis; growth in the private flood insurance market to complement the NFIP to help consumers have more choices; FEMA should be required to share NFIP information including claims elevation and mapping data – such information should be shared with State insurance regulators and with the market to make sure the private market is able to accurately assess flood risk; encourage support for mitigation planning including mitigation discounts such as premium discounts and insurance rate deductions to people who build/re-build/retro-fit certain residential properties to better resist flood events.

Frank O'Brien from Property Casualty Insurers Association (PCI) stated that there is a lot going on in the flood insurance markets recently due to the recent events in Louisiana. PCI supports H.R. 2901 and agrees with the principles that Director Huff stated. The private flood insurance market continues to evolve and it is fair to say that there is a lot of momentum right now with trying to see the private flood insurance market work.

Eric Goldberg of the American Insurance Association (AIA) stated that AIA also supports H.R. 2901 and agrees with the principles that Director Huff noted. However, there are some hurdles when talking about the admitted market. One is an adverse selection problem and the other is a strong regulatory touch. AIA urges States, when looking at private market flood writers coming into their respective State, to exercise a light regulatory touch that will encourage the market to continue growing. Some States already have statutes that allow regulators to exempt certain specialty lines of coverage from prior approval of rates and form approval – AIA recommends that all States have those statutes.

Rep. Lehman asked the panel if there is a long-term re-authorization of the NFIP, is there an incentive for the private market to continue to delve into the market. Frank O'Brien stated that he thinks there is a general consensus that there continues to be a need for the NFIP whether it functions as a market of first or last resort. The balance

that needs to be struck by policymakers, particularly at the federal level, is balancing the need to have some stability and predictability relative to the ongoing nature of the NFIP and its obligations while at the same time allowing the private flood insurance market to evolve. There needs to be encouragement to those that want to be in the market and those who are forced into it. Mr. O'Brien stated that PCI supports re-authorization of the NFIP for a reasonable amount of time because it provides for market stability. Mr. Goldberg stated that short-term re-authorization has not been good for anyone involved in the market. Director Huff stated that the transition of private market involvement will be difficult but there is no better time than now considering the record levels of capital particularly in the global reinsurance markets.

Rep. Keiser stated that he sees a dis-connect in the panel's thought process in that they want to continue the NFIP but also want expansion of the private market. The NFIP will continue to lose money if the private market's involvement grows because the private market will take all the "good" risk. Accordingly, Rep. Keiser stated that a single approach might be best going forward. Mr. Goldberg stated that the notion of requiring people to pay a premium that accurately reflects their risk is rational because people will act rationally if they have a better understanding of what they are facing. AIA is not sure what the flood insurance market will look like in the future but definitely believes that the NFIP needs to be there at the very least in the short-term.

Dennis Burke of the Reinsurance Association of American stated that the private market, particularly the reinsurance market, is interested in writing flood insurance. One way to operate going forward is by supporting the private insurance companies who want to write either on a surplus lines or an admitted basis, and reinsure the NFIP. Additionally, Mr. Burke believes that there is plenty of risk that could be written by private insurers but they don't know about it because they don't have the data from the NFIP.

In closing, Rep. Lehman stated that he has always wondered why we can't roll flood into a standardized policy when spreading the risk across a segment of society. Additionally, Rep. Lehman asked why NFIP isn't structured more like TRIA where it is the backstop to the heavily catastrophic claim.

## DISCUSSION OF ASBESTOS CLAIM TRANSPARENCY MODEL LAW

Barry Goldwater, Jr. from Goldwater-Taplin stated that asbestos litigation is the longest running litigation tort in the history of the country and encouraged NCOIL to adopt an asbestos claim transparency model law.

Mark Behrens, Esq. stated that asbestos today is characterized today by widespread and significant manipulation of exposure evidence by plaintiffs and their attorneys – those words are from a federal judge a few years ago involved in a bankruptcy proceeding. Asbestos litigation began in the 1970's – OSHA was formed in 1972 particularly because people found out that asbestos could cause cancer. For 20 years, lawsuits were brought against the companies that were the major asbestos producers. Those companies were culpable and did some very bad things and probably deserved to go bankrupt. However, those companies are not involved in the litigation today – virtually all of them were forced into bankruptcy.

Asbestos bankruptcies are different from any other type of bankruptcy because there is a provision in the bankruptcy code that says when you have an asbestos-related

bankruptcy, your liabilities will be channeled into a trust. The company will put up assets into that trust and then when re-emerged from bankruptcy, they are forever immune from ever being sued again in asbestos litigation. There are now over 60 of these trusts and as of 2011, they hold almost \$37 billion in trust assets, and that number is probably higher today. So all that money is available to pay claimants and its completely outside the tort system. Asbestos litigation has not dissipated - there are now over 10,000 companies that have been involved in litigation. What the plaintiff's bar did was cast their net wider by going after any company whatsoever that had any nexus, no matter how remote, to asbestos.

Today, a plaintiff has two different avenues towards recovery. You can bring a claim against the trust and bring a claim in the tort system. Because there is a disconnect between those systems, it has created an opportunity to game the system. When plaintiffs today are deposed, they routinely name all of the solvent defendants in the lawsuit when asked to name all defendants. So when the plaintiffs are asked of any other exposures they had, they say they do not recall. Defendants therefore today have a very difficult time defending themselves. And inevitably, after plaintiffs file one lawsuit, they file another against the trusts with information that contradicts their testimony saying they do not recall any other exposure. A sampling was taken among plaintiffs who filed lawsuits against companies and it was discovered that in every single case where plaintiffs said they do not recall, on average they filed subsequently 22 lawsuits with trusts and recovered an additional \$560,000.

Consequently, 8 (eight) States have enact legislation simply saying that plaintiffs have to file their trust claims before their tort lawsuit goes to trial. It's not about closing the courthouse doors to anyone or capping damages - this is all about changing the timing requirement. Instead of filing the tort suit first and preventing the defendant from having access to all exposures, it is required to file trust claims first so that the jury can hear evidence about all exposures and make an informed decision about who really is liable. In light of the fact that similar legislation has passed in 8 states, and the drain these duplicative recoveries place on insurance ratepayers, NCOIL should develop a Model based on this legislation.

## DISCUSSION OF MODEL TOWING ACT

Rep. Lehman stated that the proposed Model issued to the Committee is not ready for action but it is a good starting point. – hopefully the Model will be ready for action at the Spring Meeting.

Joe Thesing of the National Association of Mutual Insurance Companies (NAMIC) stated that towing is an important issue to both consumers and insurers. When NAMIC first started working on a model, it received tremendous support. While there are many great towing companies, many are not conducting themselves in a proper manner and are creating unwarranted fees because the towing industry is largely unregulated.

The idea behind this model is to create a basic regulatory framework for towing companies. Some highlights include: allowing the Public Utilities Commission or similar division with rulemaking authority to implement and enforce the law; defining emergency and private property tows; requiring a written estimate to be provided; establishing invoice standards including itemization and costs for services provided; describing processes towing companies must follow for identifying the owner or lienholders;

outlining prohibited acts and defining penalties. NAMIC is looking forward to working with NCOIL on how to make the model better and to introduce it to States next year.

Tim Lynch of the National Insurance Crime Bureau stated that the timing of NCOIL involvement on this issue is good. Predatory towing has become a problem and several states have taken action. An example is charging consumers a “fuel fee” of \$225 when the towing yard was 4 miles away from the accident. California, Illinois and Missouri have passed legislation prohibiting towers from going to accident scenes unless authorized by law enforcement, with some exemptions. Also, some states have put together an approved towing list for law enforcement. Ohio and Pennsylvania are looking to pass similar legislation soon.

Rep. Riggs stated that in the model, the authority as to who might order a tow might need to be expanded past law enforcement to include fire departments, etc. Mr. Thesing agreed that such language should be included in the model.

#### CONSIDERATION OF PROPOSED AMENDMENTS TO LIMITED LINES TRAVEL INSURANCE MODEL

Rep. Lehman stated that no action will be taken on the proposed amendments today but this is an opportunity to understand what the amendments will do so that they can be properly considered at the Spring meeting.

John Fielding of the United States Travel Insurance Association stated that the reason for the Limited Lines Model in the first place was that things weren’t working well in the licensure front – it was sometimes impossible to be licensed in multiple states. 43 States have enacted the Model. The amendments to the model address a broader range of issues besides licensing and they aim to provide for a more clear and effective regulatory framework for the travel insurance industry because there have been some concerns recently in that area. The amendments are based on issues and concerns stated by regulators.

Among other things, the amendments: define what is and isn’t travel insurance; clearly identify who pays a premium tax and what its paid on; empower regulators to look at the market and to determine if there is a competitive market which is important to rates and forms; permits travel protection products in competitive markets; creates a new TPA license in states that do not have one; bolster enforcement rules. Going forward, it is important to get this right and the USTIA welcomes the opportunity to work with NCOIL. Mr. Fielding also encouraged NCOIL and NAIC to work together on this issue.

Greg Mitchell stated that the non-traditional distribution channel of travel insurance touches upon many other industries whose primary interest is not travel insurance such as adventure, cruise lines and tour companies. The amendments are a result of trying to update the laws that have existed for major lines of insurance and adapt them to be viable with travel insurance.

Rep. Riggs asked what kind of feedback they have had with State insurance commissioners with the Limited Lines Model. Mr. Mitchell stated that for the most part the 43 states adopted it uniformly. Mr. Fielding stated that hopefully in 2017 the remaining 7 States will adopt it. Mr. Fielding also stated that what helped passage of the

Model was that when they visited with State insurance commissioners, they were pleased to know that the model was a product of NCOIL and NAIC working together.

Wes Bissett of the Independent Insurance Agents and Brokers of America stated that IIABA looks forward to working with NCOIL on this issue and that while those who offer travel insurance shouldn't be subjected to the full level of regulatory oversight that of a traditional agent, we still need to make sure that consumers are protected. Mr. Bissett stated that there are ways to bolster the current Model to address consumer-protection issues.

#### CONTINUATION OF BIG DATA/TELEMATICS DISCUSSION

Eric Cioppa, NAIC Secretary-Treasurer and Superintendent of the Maine Bureau of insurance, stated that there are few things that can be as significant and transformative to society as data and insurance is no exception to that. NAIC is anxious to get ahead of the curve and protect consumers. Insurers are collecting more data than ever and the models they use to analyze that data are getting more complex. What's problematic is that most States' rating statutes simply state rates cannot be inadequate, excessive or unfairly discriminatory and it is difficult to merge the current technology with those laws. NAIC formed a big data working group and will be making a recommendation to the NAIC Executive Committee to form a big data task force. Some issues that the working group have been working on that the task force will continue to work on are: regulators need to review the current regulatory framework used to oversee insurers' use of data; regulators need to propose a mechanism to provide for sharing of resources to facilitate a States' review of complex models; and regulators need to assess their own data needs and tools to properly monitor the marketplace.

Dave Snyder of PCI stated that insurers' use of big data has had beneficial results. It has improved the overall customer experience; improved the claims settlement process; its socially beneficial because usage based insurance data provides feedback to drivers as to how to drive more safely; improves risk assessment and pricing and makes the whole process less subject to judgment and more subject to data for regulators. Mr. Snyder also stated that this issue is so broad, however, that it might lead to disruption of the framework that has created the most competitive and consumer friendly insurance market in the world. PCI looks forward to working with NCOIL on these issues going forward.

Eric Goldberg stated that collecting data and discriminating based on risk is the nature of the insurance business. Mr. Goldberg agreed with Mr. Snyder's remarks in that we need to be careful of upsetting the current regulatory framework when considering this issue.

#### CONSIDERATION OF RESOLUTION SPONSORED BY REP. KEISER

Rep. Keiser stated that we know that autonomous vehicles are now reality and that we need to be careful that we don't play catchup on this issue the way we did with Uber and Lyft. This Resolution is an effort to get NCOIL involved in this issue and to see if legislation is required and if so, what form should it take. After reading the Resolution, Rep. Keiser stated that this Resolution should not be delayed because all the Resolution does is say that NCOIL should begin to get involved with legislation on this issue and oppose federal intervention.

Wayne Weikel from the Alliance of Automobile Manufacturers stated that when reading the Resolution AAM struggled with what it is that insurers will need and what it is that they feel they won't have access to in the future. If it's data from a vehicle to ascertain whether the vehicles are as safe as they predict they will be, that will be borne out by real-world claims data. If it's to get data off a vehicle for safe-driving discounts that's now done by a dongle, that plugs into a port that is required by law in California and the EPA – that's not going away. If it's to ascertain whether the human or the computer is driving in the case of an accident, automakers have a vested interest in that because it's more likely that a human will say it wasn't me, the car was driving itself. The legislation in States now typically revolves around allowing auto manufacturers to test vehicles in that State. AAM looks forward to working with NCOIL on these issues.

Jeffrey Stephen of General Motors stated that GM has privacy concerns with the Resolution and requested that it be tabled. Currently there is a privacy regime that governs access to insurance data via event data recorder laws both at the federal and state level. Those laws have defined data elements that insurers or any 3<sup>rd</sup> party can have access to with respect to vehicle crashes and they also protect consumers in that access to that data cannot be obtained without consumer consent or a court order. The Resolution disrupts that framework. Another concern is that automakers have significant intellectual property and proprietary data that's contained within vehicles and the access talked about in the Resolution raises competitive concerns for GM. Cybersecurity is also a concern for GM because autonomous vehicles are not designed to have such widespread access. Additionally, while the technology is moving rapidly, there is much learning that needs to take place and GM welcomes the opportunity to work with NCOIL.

John Ashenfelter of State Farm stated that State Farm acknowledges and agrees with GM's and AAM's concerns but noted that State Farm wants to ensure that with respect to rating, underwriting and claim handling, the ability to access and exchange information about the autonomous vehicle and what it has operated is important. State Farm supports the Resolution.

Sen. Hackett stated that in Ohio, there was legislation introduced to require insurance companies to give up data to an outside independent 3<sup>rd</sup> party. The legislation was defeated because they don't want data being issued to people they can't trust. Sen. Rapert stated that he supports the Resolution and asked the industry representatives to specify what exactly in the Resolution they have problems with. Sen. Rapert also asked Rep. Keiser if the industry representatives specified their concerns to him. Rep. Keiser stressed that this Resolution is simply an effort to state that NCOIL will get involved in these issues. Rep. Fischer echoed Sen. Rapert's question as to what specifically industry representatives have a problem with in the Resolution. Asm. Barclay stated that he doesn't see how this Resolution moves NCOIL forward on these issues – if NCOIL wants to be involved, it should pass a Model Law, not a Resolution. Sen. Hune and Sen. Breslin agreed with Asm. Barclay. Asw. Carlton stated that no matter what the committee decides on, nothing in the Resolution addresses software issues. Rep. Lehman stated that he is torn on this – if the Resolution brings the insurance and the auto manufacture industries together, then it's a good idea; but if the Resolution is simply stating that NCOIL will get involved, then it's meaningless although it won't hurt anyone. Sen. Rapert again stated that industry representatives need to specifically state what is wrong with the Resolution.

After Rep. Keiser's motion to adopt the Resolution was seconded, the Resolution was defeated by a vote of 11-10. Rep. Lehman stated that he hopes this discussion was the start of NCOIL efforts to draft and adopt a model on this issue.

#### ADJOURNMENT

There being no further business, the Committee adjourned at 12:30 p.m.