

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
PROPERTY & CASUALTY INSURANCE COMMITTEE  
INTERIM COMMITTEE CALL  
JUNE 5, 2017  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Property & Casualty Insurance Committee held an interim meeting via conference call on Monday, June 5 2017, at 12:15 P.M. (EDT).

Assemblyman Ken Cooley, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Peggy Mayfield, IN	Asm. Will Barclay, NY
Rep. Joseph Fischer, KY	Sen. Bob Hackett, OH
Sen. Dorsey Ridley, KY	Rep. Matt Lehman, OH
Rep. Steve Riggs, KY	Rep. Marguerite Quinn, PA
Rep. Bart Rowland, KY	Rep. Bill Botzow, VT
Rep. Greg Cromer, LA	Del. Steve Westfall, WV
Sen. Jerry Klein, ND	

Other legislators present were:

Rep. Sam Kito, AK  
Rep. Richard Smith, GA

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

DISCUSSION AND CONSIDERATION OF NCOIL ASBESTOS BANKRUPTCY TRUST  
CLAIMS TRANSPARENCY MODEL LAW

Asm. Cooley (CA) provided the Committee with some brief background on the issues surrounding asbestos litigation and stated that when considering Model legislation on such an issue, it is important to strive to ensure that everyone effected by it is treated fairly.

Sen. Klein (ND) stated that he has spent a lot of time on this issue in North Dakota and legislation similar to the proposed NCOIL Model was passed earlier this year.

Sen. Hackett (OH) stated that he sponsored similar legislation in Ohio which passed in 2013, and despite initial fear that the law would delay resolution of asbestos cases, the transparency requirements contained within the law, and the NCOIL Model, have resulted in quicker, more efficient litigation.

Former U.S. Congressman Barry Goldwater, Jr. stated that the proposed NCOIL Model strikes a fair balance between plaintiff and defendant interests in asbestos litigation. Congressman Goldwater stated that this issue is a perfect example of how it is sometimes necessary to take a step back, analyze a situation, and adjust in order to make sure there is a level playing field for everyone involved.

Mark Behrens, Esq., Shook, Hardy & Bacon, LLP, provided some background on asbestos litigation in an effort to illustrate the problems surrounding it. Asbestos litigation is nearly 40 years old, and the culpable asbestos companies that were major asbestos producers have gone bankrupt. As a result of those bankruptcies, privately managed trusts were created which today collectively hold approximately \$37 billion dollars available to those exposed and harmed from asbestos.

What has transpired over the years is that plaintiffs have been suing companies that are extremely remote in terms of asbestos exposure such as small hardware and plumbing stores. Therefore, plaintiffs today have two different sources of recovery: the trust system, and the tort system. However, by delaying the filing of trust claims until after a personal injury case is resolved, the jury in the personal injury case is misinformed about all of the plaintiff's exposures. This enables plaintiffs to "double dip", i.e. receive a settlement or judgment in an asbestos-related personal injury lawsuit and then receive additional payments from multiple trusts for the same injury.

Mr. Behrens stated that the bankruptcy case *In re Garlock Sealing Technologies, LLC*, 504 B.R. 71 (W.D.N.C. Bankr. 2014), perfectly illustrates these problems. In that case, the Federal bankruptcy judge found that Garlock Sealing Technologies, LLC was a very remote company in terms of asbestos exposure, but they became a target defendant after the major asbestos companies went bankrupt. The judge in *Garlock* conducted a study of asbestos cases, the findings of which showed that every single plaintiff that had certified during the tort case that they could not recall/had never been exposed to any other asbestos besides the company they were suing, then proceeded to file multiple trust claims against other companies, thereby resulting in "double dipping."

Mr. Behrens stated that, to help solve this problem, 12 States have passed legislation simply stating that in asbestos litigation, trust claims must be filed concurrently with personal injury lawsuits. Such legislation in no way presents a roadblock to plaintiff recovery – it simply ensures that the juries in the tort cases have all the information they need to make a proper determination as to who is at fault. Wrongdoers will continue to be held accountable under such legislation. Mr. Behrens further stated that the proposed NCOIL Model is very similar to the legislation passed in West Virginia last year, which is important because that legislation represents a product of significant negotiations involving one of the largest plaintiff law firms in the country. The West Virginia legislation passed nearly unanimously, with bi-partisan support.

Rep. Riggs (KY) asked whether the proposed NCOIL Model restricts or delays plaintiff access to court in any way. Mr. Behrens replied no – the Model just says that 120 days prior to trial in the tort case, the plaintiff must provide all parties with a sworn statement identifying all asbestos trust claims that have been filed by the plaintiff or by anyone on the plaintiff's behalf. Mr. Behrens further stated that in Ohio, similar legislation was adopted in 2013, and it is therefore a good place to look as a predictor of future behavior. The results in Ohio show that the legislation has helped asbestos victims because it has enabled them to acquire money from the trusts more quickly.

Additionally, the legislation has resulted in less discovery disputes between attorneys in tort litigation, leading to more efficient litigation.

Asm. Cooley then opened up the discussion to interested parties. Hearing no comments, a Motion was then made and seconded to waive the quorum requirement.

Upon a Motion made and seconded, the Committee then voted to adopt the NCOIL Asbestos Bankruptcy Trust Claims Transparency Model Law without dissent.

ADJOURNMENT

There being no further business, the Committee adjourned at 12:45 P.M.