

June 17–18 | Washington, DC

## EXECUTIVE SUMMARY

The June meeting of the Council of Insurance Agents & Brokers' Legal Counsel Working Group was attended by nearly 40 of the insurance brokerage industry's top legal counsels. The meeting was held at The Council's headquarters in Washington, D.C., and was chaired by Working Group Chair Heather Steinmiller, Managing Director, Claims and General Counsel of Conner Strong & Buckelew. The working group was staffed by The Council's General Counsel John Fielding, Chief Legal Officer Scott Sinder, Senior Vice President of Government Affairs Joel Wood, Vice President of Government Affairs Joel Kopperud, and Director of Government Affairs Blaire Bartlett.

## PARTICIPATING FIRMS

Nearly 40 participants from the following member firms were in attendance:

AEGIS Insurance Services, Inc.  
All Risks, Ltd.  
AmWINS Group, Inc.  
BB&T Insurance Holdings  
Borislow Insurance  
Brown & Brown  
Brown & Riding Insurance Services, Inc.  
BXS Insurance  
Clements Worldwide

Conner Strong & Buckelew  
Corporate Synergies Group, LLC  
Frenkel  
Gallagher  
Gehring Group, Inc.  
The Graham Company  
HUB International Ltd.  
Hylant  
IMA Financial Group  
JLT Re Inc.

Lockton Companies, LLC  
M3 Insurance Solutions, Inc.  
Marsh & McLennan Companies, Inc.  
Moreton & Company  
PayneWest Insurance, Inc.  
Ryan Specialty Group  
USI Insurance Services  
Willis Towers Watson  
Woodruff-Sawyer & Co.

## MAIN TOPICS

### Political Update

The Working Group heard from The Council's federal lobbyists, Joel Wood, Joel Kopperud, and Blaire Bartlett, on an array of political issues, noting that little has gotten done due to political partisanship and less and less will get done in Washington as we get closer to the 2020 election.

The trio also provided insight on several issues of key importance to Council members. At the forefront of these discussions were prognostications about the future of universal health care proposals and ongoing efforts to reform the Affordable Care Act (ACA); the potential for bipartisan support on legislation to combat rising drug prices; and the reauthorization of the Terrorism Risk Insurance Act (TRIA) and the National Flood Insurance Program (NFIP) before their approaching deadlines, among others. Congress will be addressing these issues while it tries to tackle other major legislative efforts, including the debt ceiling and funding the government for the 2020 fiscal year.

Gracie Gerlach, the Council's PAC Manager, provided Working Group members with a CouncilPAC update, noting that our goal is to raise \$2 million this election cycle. The PAC is well on its way to

meeting that goal and maintaining its role as the leading insurance industry PAC. We are grateful to all members who contribute.

Vlad Gololobov, the Council's Director of International, provided the Working Group with an update on the most pressing international issues from the Council's perspective. The most pressing issue is the adoption of the US-Mexico-Canada trade agreement (the USMCA). The agreement has been finalized but has not yet been approved by Congress. Unfortunately, from our perspective, the agreement does not satisfactorily address the issue of provincial taxes on certain non-admitted lines of coverage. We are continuing to work on that. On a related issue, free trade agreements with the United Kingdom and the European Union continue are still a possibility, but remain on hold due to uncertainty surrounding Brexit. Finally, GDPR, the EU data privacy regime, has been in place for a year now. A number of significant fines have been imposed on large companies, and the approach of the regulators thus far has indicated that they intend to impose real punishments whether or not the violation was a mistake, inadvertent, or intentional.

The Council's International Working Group will meet on October 4-5, 2019, in conjunction with the Insurance Leadership Forum (ILF) meeting this fall at the Broadmoor.

### **Health Care Reform**

The Working Group discussed health care and health insurance issues at length, during both the **Employee Benefits Compliance Subgroup** meeting on Day One of the sessions and during the full Working Group meeting on Day Two.

Just prior to the meeting, on June 13, the Departments of Treasury, Labor, and Health and Human Services released a final rule to expand the use of, and access to, Health Reimbursement Arrangements and "other account-based group health plans" (HRAs). This is the long-awaited third prong of the President's directive to the Departments to increase flexibility and affordability in the healthcare market (coming on the heels of rules to expand association health plans and short-term limited duration ("STLDI") plans). The Working Group discussed the implications of the rule for brokers and employers.

The Working Group also received an update on other health regulatory activity, including Association Health Plans (AHPs) and the implications of the on-going legal activity surrounding the rule. In addition, the group discussed a number of specific compliance-related issues including wellness programs, diagnostic coding, individual mandate demand letters from the IRS and enforcement issues.

The bulk of the health care discussion was devoted to congressional activity on lowering healthcare costs. Prescription drug prices are the principal target. The Administration has floated several ideas designed to lower prescription drug prices, addressing rebating, reimportation and other potential remedies. Several Working Group members noted that a small number of states have been looking into reimportation, with Florida recently enacting a reimportation law. Congress has started to focus on the issue, as well. There are three bills pending in Congress that are intended to reduce health care costs. The Working Group focused its discussion on legislation sponsored by Chairman Alexander and Ranking Member Murray of the Senate Health, Education, Labor, and Pensions (HELP) Committee. That bill addresses prescription drug prices and surprise billing issues, among others. Importantly for brokers, it also includes a provision that would require brokers to disclose compensation. Working Group members were briefed as to the CEBE Board's discussion of the issue, and the Board's ultimate decision to support the legislation's disclosure language. The Working Group discussed the specific legislative language, and had some suggested tweaks for Council staff to suggest to the Senators. After the Working Group meeting, the Council's support was **articulated in a letter** submitted to the HELP Committee.

The Council is actively tracking developments in these areas via its ACA reform legislation tracker, federal single payer tracker, and federal drug pricing transparency tracker. We are also tracking the developments of these issues at the state level. For more information on the Council's health care activities, as well as the legislative trackers, please click here <https://www.ciab.com/market-intel/healthcare/>.

## **Flood Insurance**

The National Flood Insurance Program (NFIP) expired on September 30, 2017. It has been extended several times since then (with at least one lapse). The current short-term extension lapses on September 30 of this year. The Council and other interested groups are hoping – but not confident – that members of Congress will come to agreement on a long-term reauthorization before that date. There is some reason for hope. House Financial Services Committee Chair Maxine Waters has been supportive of the program, as has the Ranking Minority Member of the Committee, Pat McHenry. This is in contrast to the previous leadership of the Committee. The Council's priorities remain: (1) a long-term extension; (2) expansion of the private market and clarity around surplus lines access; (3) preservation of write-your-owns; and (4) increased take up and renewal rates.

Meantime, while Congress has been slow to act on reforming the NFIP, regulators continue to be active in this space in the areas of (1) facilitation of private-sector involvement; and (2) reforms of NFIP at FEMA, including:

- Re-rating the entire country (i.e., "Risk Rating 2.0"), beginning with single-family homes and then moving on to other structures;
- Transforming the forms for the NFIP;
- Changing the way the agency communicates about the NFIP, consumers' risks, and consumers' perceptions of such risks;
- Updating how the agency processes claims; and
- Looking at mapping and risk hazards differently.

Council staff is drafting a short description of FEMA's reforms for members to share with their clients.

## **Cyber**

The Working Group continued its ongoing conversation regarding the ever-growing patchwork of state laws imposing cybersecurity obligations on agents, brokers, and others in the insurance community. In the absence of federal action, there is growing concern that the states will continue to act in this area and that we could end up with increasingly challenging differences state-to-state from a compliance perspective.

The Working Group's cyber subgroup held a special session on Day One of the meeting to discuss the New York Department of Financial Services' (DFS) cybersecurity standard, specifically focusing on the rule's third party service provider requirements. There is a great deal of uncertainty regarding the requirements, ranging from lack of clarity as to what entities are covered, to what sort of certification is acceptable, to whether this is even a big problem (some members had not heard from carrier partners). Specifically, the group discussed these concerns:

- What entities qualify as third-party service providers;
- The potential duplicative and onerous requirements imposed on entities that qualify as both covered entities and third-party service providers; and

- Audit obligations and the potential for development of an industry best practice related to the influx of questionnaires on access to information systems and non-public information (e.g., an annual audit, a certification that procedures have not changed, sample questionnaires, etc.).

The Working Group asked Council staff to continue to pursue a dialogue with the carrier trade association (APCIA) to see if the brokers and carriers can establish some common ground.

## **Privacy**

Working Group members discussed the increasing focus on personal privacy protections at the state level and internationally. Led by GDPR and the California privacy law, there is concern that a patchwork of privacy rules will be enacted across the states and internationally. New York considered legislation this year, and China and Brazil have enacted privacy laws recently. Although the California law, for example, exempts the insurance industry, there is concern that some states may not provide such an exemption, and new privacy obligations would be added to the current HIPAA and GLBA requirements that already govern the industry. The Working Group asked Council staff to schedule an interim conference call to discuss privacy issues and how best to focus the Working Group's attention on the issue going forward.

## **Producer Licensing / NARAB**

Although Treasury appeared enthusiastic about getting the NARAB board up and running last year, NARAB continues to take a backseat to other issues facing the Administration. Despite the Treasury soliciting nominees from both the public and private sectors over the past several months, nomination and approval of the NARAB Board continues to remain stalled. Council staff continues to raise the issue at every possible opportunity with the Federal Insurance Office (FIO) and other influential players.

The Working Group also discussed other producer licensing-related issues including affiliations and appointments, and the possibility of working through the NAIC to try to get some reforms started. To that end, the Working Group decided to task Licensing Subgroup with meeting with regulators at the upcoming NAIC meeting, and asked Diana Ivey to take the lead on the issue.

## **Surplus Lines**

The Working Group discussed a number of state-specific issues, including taxation of international risks and the states in which that issue has arisen, as well as a number of issues discussed at the recent Surplus Lines Law Group meeting. On the tax issue, The focus of the Working Group's discussion revolved around risk purchasing groups, including the issues of state of regulation, declinations (how often?), and an ELANY bulletin asserting that unaffiliated groups are prohibited in New York.

The Working Group also discussed the premium tax allocation legislation that was considered in four states this year. Legislation was successfully adopted in Hawaii, New Hampshire, and Vermont, leaving Florida as the only state that continues to require calculation of surplus lines premium tax according to the location of the risk. The Council will continue to work with WSIA to reform the Florida law.

## **Rebating**

Both the National Association of Insurance Commissioners (NAIC) and the National Conference of Insurance Legislators (NCOIL) (which represents the state legislators who work on insurance issues in their states) have taken up the issue of rebating this year. In both cases, the policymakers appear to be opening the door to some reform of the archaic rebating prohibitions that have been on state statute books since the late 1800s. The Council has testified before both organizations and submitted written letters advocating for our position that rebating prohibitions should be repealed in the commercial insurance space. It is a long-standing policy of the Council Board that rebating prohibitions in the commercial space do nothing to protect sophisticated commercial consumers, and violate producers' and consumers' right to freedom of contract. It is unclear at this point where NAIC and NCOIL will end up in their reform efforts, but the Council will continue to press for real action on the issue.

The Council's 50-state survey of rebating rules and regulations is available on the Council's website [here](#). Please let us know as you see laws enacted, regulations finalized, bulletins issued, or enforcement actions undertaken to help us keep the survey as up-to-date as possible.

### **Member Information Exchange**

At the close of the meeting, members were provided with an opportunity to address any specific issues that they thought warranted further discussion. Members of the Working Group raised:

- Data feeds from carriers: There is concern among members about the state of the data technology that carriers are using (in general). The Working Group discussed the possibility of approaching the carriers as a group to discuss improvements.
- Appointment / fee issue in California: The Working Group discussed the question of when an appointment is necessary in California and the impact of an appointment on the ability of a producer to charge a fee.

### **SUBGROUP SIGN-UP**

Our Subgroups – Employee Benefits, E&O, Licensing, and Small Legal Division Operations – are getting increasingly active. All interested Working Group members are encouraged to participate in any / all of these groups. Please contact John Fielding ([john.fielding@ciab.com](mailto:john.fielding@ciab.com)) or Tish Carden ([tish.carden@ciab.com](mailto:tish.carden@ciab.com)) if you're interested in participating.

### **BASECAMP COMMUNICATION PORTAL**

We have created a Working Group communications portal through Basecamp, which enables Working Group members to communicate directly with the group (or indirectly through Council staff) to raise issues, ask questions, and share information. It also allows us to more easily keep you informed about legislative, regulatory, and legal issues that may be of interest. All Working Group members are eligible to sign up – and we encourage you to do so. It's simple and unobtrusive. Basecamp emails participants to let you know when a communication has been posted, and the user can engage with Basecamp either through email or directly on the site. Please email Tish Carden ([tish.carden@ciab.com](mailto:tish.carden@ciab.com)) to receive your registration email.

### **SEE YOU IN NOVEMBER!**

The next Legal Counsel Working Group will be held November 6-7, 2019, at The Council's headquarters in Washington, D.C. If you have any questions or suggestions for future discussion topics, please contact The Council's John Fielding at [john.fielding@ciab.com](mailto:john.fielding@ciab.com) or **202.350.5864**.