

February 6 - 7 | Washington, DC

EXECUTIVE SUMMARY

The Council of Insurance Agents & Brokers' Legal Counsel Working Group met in Washington in conjunction with The Council's Legislative & Working Groups Summit. The broader conference enabled members to participate in the full slate of Summit activities, including a joint session with the other Council Working Groups, a Day on the Hill featuring briefings from several Members of Congress, as well as individual congressional meetings, and a congressional reception.

The Working Group is chaired by Pete Prinsen, vice president and general counsel of The Graham Co., and the meeting was attended by more than 50 of the insurance brokerage industry's top legal counsels. 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 Government Affairs Associate Julia Tishman.

PARTICIPATING FIRMS

More than 50 participants from the following member firms were in attendance:

ABD Insurance and Financial Services	JLT Re
AHT Insurance	Johnson Kendall & Johnson
Arthur J. Gallagher	Lockton Companies
Assurance Agency, Ltd.	Keenan
AssuredPartners, Inc.	M3 Insurance
BancorpSouth Insurance Services, Inc.	Marsh
BB&T Insurance Services	MHBT, a Marsh & McLennan Agency LLC
Brown & Brown, Inc.	Murray Securus
CBIZ Benefits & Insurance Services Division	NFP
Conner Strong & Buckelew	Odell Studner
Cottingham & Butler, Inc.	Oswald Companies
Crump Life Insurance Services	PayneWest Insurance, Inc.
Frenkel & Company	Risk Strategies
Fringe Benefit Group	RLA Insurance Intermediaries, LLC
Gehring Group	Ryan Specialty
The Graham Company	USI Insurance Services
The Hays Group, Inc.	Vita Benefits Group
HUB	Wells Fargo Insurance Services
Hylant	Willis Towers Watson
The IMA Financial Group, Inc.	Woodruff-Sawyer

MAIN TOPICS

Political Update

A major focus of the meeting was discussion of the to-do list for the new Administration and the Republican-controlled Congress, and the implications of the change in control in Washington for Council members.

The group heard from Senior Vice President of Government Affairs Joel Wood and Vice President of Government Affairs Joel Kopperud. Wood and Kopperud provided background on several issues of key importance to Council members on which Congress may act in the coming months, including the future of the Affordable Care Act (ACA), the Foreign Accounting Tax Compliance Act (FATCA), and reauthorization of the National Flood Insurance Program (NFIP). More than merely providing background, however, Wood and Kopperud forecast how these issues would play on Capitol Hill amid uncertainty concerning presidential confirmations, the future of health care and tax reform efforts, and internal party politics.

Health Care Reform

With the start of the 115th Congress, the Republican-controlled Congress and the Trump Administration have been considering plans to repeal, replace, or otherwise reform the ACA. Although it is not yet clear what form that plan might take—whether a regulatory fix led by the newly-confirmed Health and Human Services Secretary, Tom Price, or a legislative fix led by House Speaker Paul Ryan (R-Wisconsin)—the discussion focused on identifying the broker-specific policy priorities that need to be highlighted as Congress and the Administration begin to consider their options. The discussion resulted in a compilation of policy issues important to Council members, including clarifying employer reporting obligations, ensuring price transparency, repealing the medical loss ratio, preserving the tax treatment of employer-sponsored health insurance, and simplifying the treatment of FSAs and HSAs, among others. This list and the continuing discussion with Council members will assist Council staff as they navigate the evolving health care reform activity on Capitol Hill.

In the coming weeks, as efforts to repair or repeal the ACA become more concrete, please keep us informed of any policy changes that will benefit the broker community.

FATCA

Under FATCA, U.S. brokers remitting premium payments to non-U.S. carriers are required to prove that the carriers are in compliance with U.S. tax laws by either (1) collecting a W-8BEN-E form from each carrier holding a share of the policy or (2) withholding 30 percent of the premium payment. The Council has long argued that non-cash value property/casualty insurance premium payments made to overseas insurers cannot be used for the purposes of tax evasion (which is one of the stated purposes behind FATCA). Including P&C insurance under FATCA is a clear example of regulatory overreach and unnecessarily subjects certain insurance market participants to cumbersome and expensive certification and documentation requirements.

To remedy this problem, Representatives Jason Smith (R-Missouri), John Larson (D-Connecticut), and Ed Royce (R-California) introduced legislation (H.R. 871) on February 6, 2017, that would exempt non-financial insurance premiums from FATCA requirements. FATCA was one of the main issues discussed in the Hill visits during the Summit, and passage of H.R. 871 will be a priority for The Council this year.

Producer Licensing / NARAB

The NARAB Board remains unfilled after the Senate refused to approve nominee's put forward by then-President Obama last year. Given the many other appointments and nominations the new Administration must work through, there is concern that naming members to NARAB will be a low priority, particularly in the short-term. This will likely delay the creation of NARAB for a significant time.

On a substantive note, many of our members have expressed concern regarding state producer appointment requirements, and would like to explore options for improving or doing away with the requirements. The appointment process is costly and burdensome, but states have become very protective of them because appointment fees bring in a great deal of revenue. Other issues raised during the meeting include the potential liability concerns surrounding firm-only licensure (in the absence of individual licenses), and the variety of disclosure requirements imposed on producers.

Flood Insurance

The NFIP is set to expire on September 30, 2017. The Council's three stated priorities for the upcoming

reauthorization of the NFIP are that the overhaul (1) increases private market involvement, (2) increases flood insurance take-up rates in the mandatory purchase zones, and (3) preserves the Write-Your-Own Program. In addition, Council members expressed the critical importance of timely reauthorization of the program without any lapses.

The Flood Insurance Market Parity and Modernization Act, which received bipartisan support in both chambers last Congress, passed the House unanimously by a vote of 419-0, but failed to move forward in the Senate. The bill, which facilitated more private involvement in the market and clarified that surplus lines insurers are eligible to offer private market solutions, has not yet been reintroduced this Congress, though many expect it to serve as the cornerstone of the broader reauthorization bill, which is must-pass legislation because of the impending expiration of the program.

Border Adjustment Tax

As Congress begins to consider a comprehensive tax reform package, among the “pay-fors” being considered is a border adjustment tax, which would effectively tax imports to the United States but would not tax exports from the United States. Speaking to the LCWG members were Patricia Henry, Executive Vice President, Global Government & Industry Affairs, Chubb Group; Mike Regan, Global Tax Director, Vice President, RenRe North America; and David Pearce, Vice President, Director of Tax Policy, American Insurance Association.

These three experts in the field described:

- The path forward for comprehensive tax reform in the House and Senate (two distinctly different paths with Speaker Paul Ryan relying on his Better Way for Tax Reform Blueprint and Finance Committee Chairman Orrin Hatch (R-Utah) aiming to produce legislation that has a chance of passing the full Senate);
- The operation of the border adjustment tax in practice;
- The application of such a tax to the reinsurance market; and
- How key players in the insurance industry should approach the issue.

Although this is not an immediate issue for Council members, and it is not clear the issue will be included in tax reform legislation that is likely to be considered (in some form) on Capitol Hill this year, because of the potential impact on Council members and the insurance industry as a whole, it raises important concerns and is something Council staff will be watching closely.

Surplus Lines

The surplus lines subgroup discussed a number of state-specific issues. Specifically, discussion focused on concerns surrounding group insurance issues. The core problem is determining which state has oversight over an RPG and, therefore, where the taxes need to be paid. Unaffiliated groups are based where the group is domiciled, but affiliated groups pick a state. Other issues were raised as well, including premium tax issues in Minnesota and Massachusetts; and the due diligence issues in Florida.

Cyber

Cybersecurity issues continue to be at the forefront of discussions about insurance regulation. The Working Group focused on New York’s recently proposed cybersecurity rule governing financial services and insurance entities, as well as the NAIC’s proposed model act. At the time of the meeting, The Council was awaiting issuance of the final New York rule (which has since been released—please click **here** for the Final Rule as well as a Steptoe & Johnson memo regarding the new rule). Additionally, the NAIC is continuing its discussion and drafting of a cybersecurity and data breach notification model act, which, if adopted, could provide a path toward uniform cybersecurity standards in the insurance sector. Skepticism is high, however, given the regulators’ past attempts at reaching uniformity. The expectation is that the NAIC will aim to finalize the model act in time for the state insurance departments to include it in their legislative packages for the 2018 legislative session.

For more information on what The Council is doing in the cybersecurity space, please contact Robert Boyce at robert.boyce@ciab.com.

Rebating

The Council, in conjunction with our team at Steptoe & Johnson, has completed a draft of a 50-state survey of rebating rules and regulations. We ask that you review the document for any statutes, regulations, bulletins, or other guidance documents that would be useful in updating the survey. Once comments are received and incorporated, the survey will be posted on The Council's website.

The Working Group also spent time reviewing a statute in Kentucky and discussing the ongoing Zenefits litigation.

NAIC

In addition to election year changes at the federal level, there were a number of changes at the state level—in governors and state insurance commissioners—that will affect Council members. For a complete list of NAIC members and Committees for 2017, please click [here](#).

SEE YOU IN JUNE!

The next Legal Counsel Working Group will be held June 12-13 at The Council's headquarters in Washington. If you have any questions or suggestions for future discussion topics, please contact The Council's John Fielding at john.fielding@ciab.com or 202.350.5864.