



November 14-15

EXECUTIVE SUMMARY

The final 2016 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 Pete Prinsen, vice president and general counsel at The Graham Co. 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

Thirty-seven (37) participants from the following 28 member firms were in attendance:

AEGIS Insurance Services, Inc.	The IMA Financial Group, Inc.
AmWINS Group Inc.	JLT Re
Aon Service Corp.	Johnson Kendall & Johnson
Assurance Agency, Ltd.	Keenan
AssuredPartners, Inc.	Lockton companies
BancorpSouth Insurance Services, Inc.	Marsh & McLennan Agency
BB&T Insurance Services	NFP
Brown & Brown, Inc.	Risk Strategies
Conner Strong & Buckelew	Ryan Specialty
Frenkel & Company	TrueNorth Companies
The Graham Company	USI Insurance Services
Glatfelter Insurance Group	Wells Fargo Insurance Services
The Hays Group, Inc.	Willis Towers Watson
HUB International Ltd.	Woodruff-Sawyer

MAIN TOPICS

POLITICAL UPDATE

A major focus of the meeting was discussion of the result of the presidential and congressional elections, and the implications 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 gave an in-depth analysis of the election results, evaluating results state-by-state in Senate races, Congressional races and the Presidential race. More importantly, Wood and Kopperud shared insights on what these results could mean for the insurance industry, both for the property/casualty and benefits sides of the business.

HEALTH CARE REFORM

As a result of the 2016 election, the big question is: What will the GOP's ACA repeal and replace legislation look like? President-elect Donald Trump has repeatedly said that his top priority is a quick and full repeal of the Affordable Care Act. The replacement plan will likely reflect Speaker Paul Ryan's blueprint that House Republicans released earlier this year. This plan consists of a cap on the tax exemption for employer-based premiums, bolstering vehicles like HSAs and HRAs, and the sale of health insurance across state lines. Every lobbyist in town has some stake in the upcoming replacement bill—**we need your help identifying the broker-specific priorities as we gear up for this fight.**

LICENSING / NARAB

The NARAB Board remains unfilled. Currently, 10 Obama nominees to the Board remain languishing in the Senate. If they are not confirmed before recess (which is likely the outcome), we will have to start over with the new administration. The current nominees are likely being held because Senate Republicans view them as Obama nominees—and they are holding all nominees until the new administration takes over in January. A major concern for us is that the NARAB Board will likely not be a priority for the new administration, particularly in the short-term, when there are so many other appointments and nominations to work through. This could delay the creation of NARAB for a significant time.

On a substantive note, many of our members have expressed concern regarding producer appointments across the country, but especially noted difficulties in New York and Connecticut. 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.

INSURTECH UPDATE

During our lunch hour, The Council's Chief Information Officer, Chris Gagnon, spoke to the group about the rapid acceleration of InsurTech in the insurance industry. With the emergence of these investments, there is a shift from focusing simply on technology to behavioral changes. Using both Zenefits and Lemonade as examples of market disruption, these technological advances aim to get closer to the dollar using technology and increasing simplicity for the user.

FLOOD INSURANCE

The National Flood Insurance Program (NFIP) is set to expire on Sept. 30, 2017. The Council's three stated priorities for the upcoming reauthorization of the NFIP are preserving the WYOs, increasing the take-up rate in mandatory purchase zones and increasing private market involvement. The Flood Insurance Market Parity and Modernization Act, introduced by Congressman Dennis Ross (R-Fla.) and Congressman Patrick Murphy (D-Fla.), passed the House earlier this year 419-0, but is currently being held in the Senate. The bill aims to clarify that private insurance is to be treated the same as federal flood insurance in fulfilling the mandatory purchase requirement, allowing more private involvement in the market. Although this legislation has not progressed in the Senate, the bill will likely be the cornerstone of the broader reauthorization bill in 2017.

In addition, several agencies have released a joint proposed rule to implement the provisions in the Biggert-Waters Act of 2012 (BW'12) on the acceptance of private flood insurance under the NFIP. The proposal aims to implement certain provisions of BW'12, which amended the NFIP to require regulated lending institutions to accept private flood insurance as defined in the Act. The rule does three things:

1. Provides a definition of "private flood insurance" consistent with BW '12, but includes a clarification to the statutory definition;
2. Provides a compliance aid provision to help institutions comply with the laws' mandatory acceptance requirement; and
3. Provides permission for lending institutions to accept private flood insurance policies, at their discretion, that do not satisfy the BW '12 definition, but meet other criteria laid out in the proposed rule.

Please submit your comments on the proposed rule to The Council no later than December 14.

SURPLUS LINES

The surplus lines subgroup discussed a number of state-specific issues, and generally noted that many states are increasing their activity in surplus lines taxes. Specifically, discussion focused on state 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 tax issues were raised, as well, including issues in states such as Minnesota and Texas, where the Department of Revenue handles these taxes (not the DOI).

CYBER

Cybersecurity continues to dominate discussions about the future of insurance. Following high-profile data breaches, people are looking to the insurance industry to provide solutions for both property exposures and data breach threats. In addition to coverage issues, the threat of regulatory activity at the state level continues to grow. The NAIC is continuing its debate over a cyber security and data breach model act, and New York has issued a proposed rule on the same issue—thus threatening to break away from the other states and dashing hopes for any sort of uniform standard at the state level in the absence of federal action.

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

REBATING

The Council, in conjunction with our team at Steptoe & Johnson, is drafting a state-by-state list of rebating rules and regulations. **We ask that you forward along any bulletins that you see so we can update our list.** The group spent time reviewing a statute in Kentucky and discussing ongoing conversations with North Carolina on its stringent anti-rebating laws. Lastly, the rebating subgroup raised a question about the permissibility of offering services to a prospect under rebating laws, which differs state-by-state. In New York, for example, the same services offered to a client must be offered to a prospect as long as the services do not pose a non-discrimination issue.

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 because we are state regulated.

We won't know all the insurance commissioner changes until the new governors announce their cabinets, but **we have a working list available of states where changes have or are likely to take place.** If you are interested in this information, please contact Julia Tishman at julia.tishman@ciab.com.

SEE YOU IN 2017!

The next Legal Counsel Working Group will be held February 6-7, 2017, at our annual Legislative & Working Groups Summit in Washington, D.C. If you have any suggestions of future topics, please send them to Julia Tishman at julia.tishman@ciab.com or 202.662.4306.