

June 5, 2014 | Washington, DC

EXECUTIVE SUMMARY

In its second meeting of 2014, The Council's Legal Counsel Working Group was well attended by nearly 40 of the insurance brokerage industry's top legal counsels. The participants discussed federal legislative matters, including NARAB II, TRIA, FATCA, cyber security, and ongoing health care reform topics, as well as state issues, including Illinois market conduct examinations, anti-rebate reform efforts, broker duty of care issues, and NAIC activities. The meeting took place at The Council's headquarters in Washington, D.C., and was chaired by Bob Lloyd, Vice President & General Counsel, Brown & Brown Inc., and staffed by The Council's Joel Kopperud, Director of Government Affairs, and Jason Capeheart, Government Affairs Associate, as well as Scott Sinder and John Fielding of Steptoe & Johnson.

PARTICIPATING FIRMS

Thirty-six (36) participants from the following 28 member firms were in attendance:

AEGIS Insurance Services	Frenkel & Company	Payne Financial Group
AmWINS Group Inc.	Glatfelter Insurance Group	Ryan Specialty Group
Aon Insurance Corp.	The Graham Co.	Towers Watson
Arlington/Roe & Co.	Hays Companies of Minnesota	TrueNorth Companies
Arthur J. Gallagher & Co.	Hub International Ltd.	USI
Assured Partners Inc.	IMA Financial Group	Wells Fargo Insurance Services
BancorpSouth Ins. Svcs. Inc.	Keenan & Associates	William Gallagher Associates
BB&T Insurance Services	JLT Towers Re	Willis North America Inc.
Brown & Brown Inc.	Lockton Companies LLC	
Buck Consultants	Marsh & McLennan Companies Inc.	

MAIN TAKEAWAYS

NARAB II: Optimistic on passage later this year as a rider to the TRIA legislation.

TRIA: Senate Banking Committee passed TRIA legislation unanimously on June 3. Bill will be voted on the Senate Floor in July. The House Financial Services Committee will markup its bill which increases the trigger to \$500 million and bifurcates "conventional" terrorist attacks from NCBR attacks.

FATCA: The Council will launch the W8BENE Portal (www.w8bene.com) on July 1 to assist brokers and insurers with the newly implemented the Foreign Account Tax Compliance Act. The Council is working with the Department of the Treasury to ease compliance burden, but we will not see relief before July 1.

HEALTH CARE REFORM: The Council continues to focus on preserving the tax exclusion for employer benefits, as pressure mounts for Congress and the Administration to reform the tax code in the next congressional session. The Council is also working to preserve access to self-insured plans for small groups, monitoring activities in the states to regulate attachment points for stop-loss coverage and supporting legislation to keep the Administration from regulating stop-loss policies as health insurance.

CREATION OF LEGAL COUNSEL SUB-GROUPS: Groups will be headed by a sub-group committee chair and will lead discussion on the assigned issue at all future meetings.

MAIN TOPICS

NARAB II

Council staff is optimistic that NARAB II, which will establish a national insurance producer licensure system, will be attached to the Terrorism Risk Insurance Act (TRIA) reauthorization bill as TRIA moves through Congress this year, avoiding the procedural trap that doomed efforts to pass NARAB II as part of the flood insurance legislation earlier this year. There is broad support for NARAB II, which has passed the House three times and the Senate once.

TRIA

Extension of the Terrorism Risk Insurance Act remains one of The Council's highest priorities this year. Set to expire on December 31, TRIA, which was originally passed in 2002, creates a federal backstop for terrorism coverage.

- Sen. Charles Schumer (D-N.Y.) is lead sponsor of the Senate TRIA bill, S. 2244, which would reauthorize TRIA for seven years. On June 3, the Senate Banking Committee passed TRIA unanimously, adding pressure on the House to act.
- Rep. Randy Neugebauer, R-Texas, chairman of the Insurance and Housing Subcommittee, introduced House bill, H.R. 4871, which would extend TRIA for five years, increase the insurer co-pay to 20 percent, and phase out coverage for "conventional" attacks while preserving the program for nuclear, biological, chemical, or radiological (NBCR) type of attacks. The House legislation would also increase the program's trigger from \$100 million to \$500 million. House Financial Services Committee is scheduled to mark up the legislation on June 19.

FATCA

The Foreign Account Tax Compliance Act (FACTA) goes into effect on July 1. The Council will launch its W8BENE Portal (www.w8bene.com) at that time to assist brokers and insurers with the FATCA reporting requirements. (The Council hosted a webinar to unveil the portal and how it works on June 26.)

- The www.w8bene.com portal provides a single place for carriers and insurers to obtain the W8 forms they need. The portal will be free (with a one-time, \$10 processing fee) until Jan. 1, 2015, at which time carriers and non-CIAB member brokers will be required to pay \$500. Partners of The Council will be required to pay \$400 per year to access the portal and Council members will be required to pay \$200 per year to access the portal. Carriers' forms will be uploaded to the website and will allow for each carrier to make rolling changes as needed.
- The Council will continue lobbying for the exclusion of non-cash value premium payments, and has on-going dialogue with the Treasury Department and IRS on the matter.

HEALTH CARE REFORM

The Council continues to champion legislation in the House and Senate that would forbid the Administration from regulating stop-loss policies as they do health policies. We expect regulators to increasingly look toward limiting access to stop-loss policies as the risk in the exchange pools trends above the age of 35. Officials need 40% of enrollees to be under the age of 35 to make them financially stable.

CYBER SECURITY

There is significant interest in cyber liability issues, as all eyes are on our industry to provide solutions for both property exposures and data breach threats. As cyber becomes a growing product line for a lot of our member firms and because this is a dialogue worth having, The Council is in the process of exploring an internal members-only group to lead discussions relating to the increased cyber threat. Members will receive more information when we have determined details.

SURPLUS LINES

John Fielding of Steptoe & Johnson updated the group on the surplus lines premium tax issues, noting that five states and Puerto Rico are participating in the NIMA tax allocation regime, and there's an effort by those states to increase NIMA membership. Tennessee and Wisconsin have signed on to NIMA as associate members to test out the program, and several other states appear to be considering their options. The group also discussed the broker fee being imposed by Minnesota – and potentially other states – and group members expressed concern at the lack of consistency in application of the tax by the state.

ADDITIONAL DISCLOSURES

FEE/COMMISSION DEBATE

The group discussed fee and commission issues, particularly the permissibility of “netting commissions” in certain states. This is becoming increasing of interest as more brokers look to fees as opposed to commissions for compensation. The Council's CYA has some information on this issue, and Steptoe is going to do some additional research and update the group as to state requirements.

ILLINOIS MARKET CONDUCT EXAMINATION

Group members discussed the Illinois market conduct examination, which is underway. A sub-group call was scheduled to discuss the issue and possible ways in which the group and/or The Council could obtain information from the Illinois Insurance Department regarding the reasons for the exam, budgets and other issues.

BROKER DUTY OF CARE:

The group discussed the issue of the “special relationship” between broker and client that has been found in recent law suits. A sub-group was created to research and discuss when these special relationships might apply.

CREATION OF SUB-GROUPS

During the June meeting, sub committees were created in order to foster more in depth discussion and information share between full committee members. A list of newly created sub committees and chairs are listed as follows:

- **FATCA:** Zac Skinner, MaryEllen Lenahan, Donna Hargrove
- **Illinois Market Conduct Exam:** Bob Sajdak, Dan Walseth, Bob Greco, Nancy McCabe
- **ACA:** Amy Donovan, Andy Impostato, Jeff Klein
- **Surplus Lines:** Nancy McCabe
- **Rebating:** Ivy Fischer, SueAnn Schultz, MaryEllen Lenahan, Jeff Klein
- **Cyber:** MaryEllen Lenahan, Terry Burston
- **Broker Duty of Care/Special Relationship:** Jim McNasby

SEE YOU IN THE FALL!

The next Legal Counsel Working Group will be held Thursday, Nov. 6, 2014. We know there are issues that are important to you. Feel free to send suggestions to Joel Kopperud at joel.kopperud@ciab.com or 202.662.4311 to discuss at our next meeting.

SHARE!

We encourage you to share this document with those in your firm who could benefit from this intel and information.

ABOUT OUR WORKING GROUPS

Part of The Council's membership offerings, the Legal Counsel Working Group is one of five working groups (CFO, CIO/Technology, HR in Insurance, International) open to employees of Council member firms. These working groups provide opportunities for peer-to-peer dialogue on relevant topics, and to connect with others who face similar issues and challenges. Participants will walk away with insights and ideas on best practices, as well as a fresh network of professionals. For more information, or to join, contact The Council's Julia Smith at julia.smith@ciab.com.