LEGAL COUNSEL
Working Group

RECAP

MONDAY, February 3

SUMMARY. The Legal Counsel Working Group met on Feb. 3, 2014, during The Council's Legislative Leadership Summit in Washington, D.C. The meeting was chaired by Jeff Klein, SVP & Associate General Counsel, BB&T Insurance Services and staffed by The Council's Joel Wood, SVP, Government Affairs, and Joel Kopperud, Director of Government Affairs, as well as John Fielding and Scott Sinder, general counsel at Steptoe & Johnson.

MAIN TOPICS

- **NARAB:** Passed out of U.S. Senate Jan. 30 as part of the flood bill.
- **TRIA:** A final bill reauthorizing the program is expected to pass this year, but Chairman Jeb Hensarling wants a scaled-back version, and it remains unclear how that would look.
- **Health Care Reform:** Many issues associated with health care reform – both ACA-related and not.
- **FATCA:** Council leads efforts to exclude non-cash value insurance from the looming FATCA regime.

MAIN TAKEAWAYS

- **NARAB:** We had a major breakthrough on January 30 when the Senate voted 75-24 to beat back an effort by Sens. Tom Coburn and John McCain to weaken the legislation, which is attached to the national flood insurance legislation. There's still a lot of work to do on NARAB, as the House is expected to pass its own version of the flood bill which we anticipate to be more conservative than the Senate's four-year delay of reforms. If the two sides do not agree on a flood measure, we will have to consider other avenues in which we can attach NARAB.

NEXT STEPS ▶ At this point, we're busy thanking the 75 senators who voted against the Coburn amendment and we're preparing to ask our numerous House champions to again attach NARAB to their flood measure IF something moves in that chamber.

- **TRIA:** Extension of the Terrorism Risk Insurance Act (TRIA) is among The Council's highest priorities this year. Set to expire on December 31, TRIA which was originally passed in 2002, created a federal backstop for terrorism coverage that was critical to development in major cities nationwide. Neither chamber has yet acted on legislation to reauthorize it, but both bodies are expected to move the legislation at some point in some form.

NEXT STEPS ▶ House Financial Services Chairman Jeb Hensarling, R-Texas, would like to see an entirely private marketplace for terrorism coverage, and plans to move a bill that scales back the program by the end of the first quarter. Congressman Michael Grimm, R-N.Y., the principle author of the bill that would extend TRIA and a respected member of the House Financial Services Committee, ensured Council members during his remarks at the legislative program on Tuesday that he has industry interests in mind, understands our challenges and objectives, and is working closely with Hensarling to move a favorable bill in the coming months. Hensarling is considering making the "make available" requirement optional, and continuing the backstop solely for NCBR coverage. The working group thought these options were feasible.
Some insurers reportedly would prefer TRIA to go away (with its mandatory make-available provision) if they are required to assume considerably higher risk under a new program. And with the Senate likely to embrace legislation that mirrors the current law, how and when TRIA will finally play out remains unclear.

- **FATCA:** The new Foreign Accounts Tax Compliance Act is scheduled to go into effect on July 1. Efforts to exclude property/casualty premium payments to foreign insurers from the scope of the regulatory regime have been rejected by the Treasury Department. It's IRS regulatory overreach at its best. Nonetheless, the clock is ticking and The Council is working on a last-ditch effort to exclude p/c from the FACTA regime in Congress.

NEXT STEPS ▶ With supplemental regulations expected in the coming weeks, we are awaiting the IRS' response to our efforts to exclude non-cash value insurance. Separately, The Reinsurance Association of America has asked for a six-month delay of implementation; a request that The Council and the American Insurance Association have also signed onto. It is a long shot that another delay would be granted.

Should our efforts fail, we will be working closely with member firms on how to assist with their compliance efforts.

- **SURPLUS LINES:** John Fielding updated the group on the surplus lines premium tax issues, noting that five states and Puerto Rico are participating in the NIMA allocation share regime, and there's an effort at the NAIC to increase NIMA membership. Several states are considering their options, but several seeing through NIMA as a big expense.

The Council is working with Brady Kelley at NAPSLO to get intelligence on NIMA state efforts, and to combat any additional membership efforts.

NEXT STEPS ▶ We are currently working to make sure NIMA does not stand and to make sure SLIMPACT does not become operational. But it's still out there and it's still a threat.

- **FIO Report and FIO/NAIC Debate:** The FIO report was critical of the NAIC, making for what could be a very different federal optional charter debate going forward. The report states that while there are many worthwhile components in the state system, there's also a lot of obstructionist issues. This is creating anxiety for some, as to what it all means for their bottom lines.

- **Tax Reform:** The groundwork is being laid for comprehensive tax reform next year and The Council is working hard to protect the tax exclusion for employer benefits. It is by far the largest revenue raiser on the books, and it's difficult to imagine a rework of the tax code without raising revenue while combating a $17 trillion deficit. This has our guard up to protect the tax incentive that we consider to be the Holy Grail of the benefits market. The tax reform effort will be led by new Senate Finance Committee Chairman Ron Wyden, who historically champions scaling back or eliminating the tax incentive.

- **Health Care Reform Update:** A bill in House Ways and Means would increase employee hours from 30 hours to 40 hours for a full work week. The legislation is largely intended for messaging purposes to showcase the impact the ACA is having on the jobs market, and is considered dead on arrival in the Senate. It is, however, an indication of the Republican caucus looking at more targeted ways to scale back key ACA components, having abandoned outright repeal attempts.

We're championing 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 towards 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.