



Conference Highlights

NATIONAL ALLIANCE OF LIFE COMPANIES *An Association of Life and Health Insurance Companies*

NALC 2006 Spring Conference Highlights

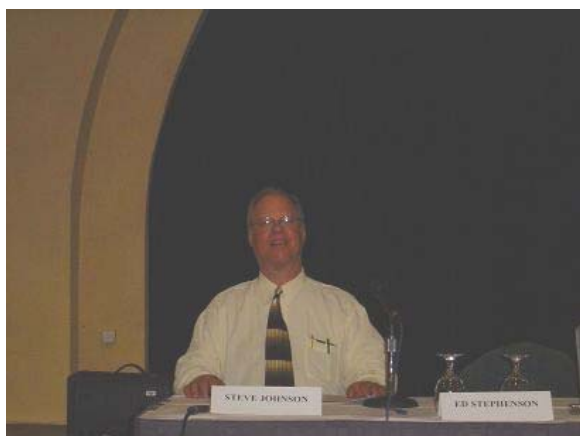


*El San Juan Hotel & Casino
San Juan, Puerto Rico
May 17-20, 2006*



The NALC held its 2006 Spring Conference May 17-20, 2006, at the El San Juan Hotel & Casino, San Juan, Puerto Rico. Following are summaries of presentations by participating speakers.

Commissioners Panel



Deputy Commissioner Steve Johnson

Deputy Commissioner Steve Johnson: Steve Johnson is Deputy Commissioner of Pennsylvania. He is a leader in the effort to extend Sarbanes Oxley provisions to non-public companies. After nearly two years of discussion, a proposal will be presented to the plenary meeting of the commissioners at the NAIC meeting in June. The primary focus is to require positive assurances from management regarding internal financial controls at the company. Additionally, the proposal requires independent directors on the audit committees of the companies. In summary, the Title 4 requirements (internal controls) will not apply to companies with direct and assumed premiums of \$500 million or less. If premiums are over \$500 million, new

management attestation requirements regarding internal financial controls will be in place. With regard to Title 3 (audit committee), companies with direct and assumed premiums of less than \$300 million will be exempt. For companies in the range of greater than \$300 million and less than \$500 million, a majority of audit committee members must satisfy the independence test. For companies at \$500 million or more, the percentage of independent audit committee members increases to 75%.

Commissioner Linda Watters: Commissioner Watters reported on activities in Michigan. She described efforts to ban credit scoring, which are currently under appeal. She endorsed principles based reserving and indicated an effort



Commissioner Linda Watters & Craig Eiland

was underway in Michigan to get the interstate compact passed. The Commissioner is opposed to the optional federal charter, and expressed concern about the impact of Sarbanes Oxley on small companies.

Superintendent Howard Mills: Superintendent Mills of New York noted that his tenure had coincided with the investigations of finite reinsurance and contingent commissions by Attorney General Spitzer. He has been very involved in the debate over these issues. He expressed opposition to the optional federal charter and spoke in favor of principles based reserving. The Superintendent also mentioned his role in examining investor owned life insurance. A meeting was held in New York City in early May to discuss abuses in this area.



Superintendent Iuppa, Commissioner Poolman & Superintendent Mills

Superintendent Al Iuppa: Superintendent Iuppa of Maine is the current NAIC President. He expressed opposition to the optional federal charter bill, and also emphasized the passage of the interstate compact by the 26th state, which activates the compact. This should address legitimate concerns about speed to market which are the premise of federal regulation; however, Superintendent Iuppa believes that Congress will still look at the proposals. He expects a busy year.



Derek Wooley & Commissioner Oxendine

Commissioner Jim Poolman: Commissioner Poolman of North Dakota chairs the Life A Committee. He thanked the NALC members for support of the initiative to resolve small face life insurance. He believes the issue is now put to rest. Additionally, the Commissioner discussed his priorities at Life A. They include principles based reserving and examination of abuses in investor owned life insurance. He also noted that the Producer Licensing Working Group is looking at licensing requirements that are burdensome, such as requiring that an agent get both a life and health license. In many cases, the agent is only selling life products.

Commissioner John Oxendine: Commissioner John Oxendine of Georgia is the third longest serving insurance regulator in the country. The Commissioner emphasized that life insurance is a “family values” product. He expressed concern that Sarbanes Oxley regulations of non-public companies is overreaching. He also reinforced his strong support for state regulation. In the Commissioner’s view, the optional federal charter is a race to the bottom.

Emerging Life Insurance Financing Techniques for Estate Planning

Bob Thompson, Partner InsCap Management LLC

InsCap Management LLC Partner Bob Thompson spoke at the recent NALC spring meeting in Puerto Rico on the emerging life insurance financing techniques for estate planning.



Matt & Sharon Reed; Vicki & Bill Gibson

Mr. Thompson discussed that the premium financing of life insurance is not only a valuable and necessary option for the insurance consumer, but a valuable and marketable asset for the insurance companies themselves. He explained the historical lack of financial options available to consumers looking to acquire insurance as an asset had the effect of suppressing premium growth.

The development and evolution of legitimate institutional premium finance will have the dual effect of providing commercial choice and value to the consumer and eliminating the historical suppressive effect on carrier's premium growth.

Anti-Money Laundering

Mark Willoughby, Consultant

On May 2, 2006, every life insurance company was required to have developed and implemented a written Anti-Money Laundering program that was (1) approved by senior management; and (2) met the minimum requirements of the AML program rule.



Mark Willoughby



Friday Night Fun

A risk assessment is an important part of establishing a policy, and consideration of a company's customers, beneficiaries, products, and business locations are factors that should be considered. The process will also require an assessment of the company's infrastructure. The rules pre-suppose that the company policies and procedures will be tailored and "reasonably designed to prevent the insurance company from being used to facilitate money laundering or the financing of terrorist activities".

The procedures should include the collection of relevant customer information, confirmation that the customer identification has been verified, notes on suspicious behavior at the point of sale, and a means to discover potentially suspicious activities such as early cancellation or taking out the maximum loan soon after purchasing the product.

Each company must appoint a compliance officer who is responsible for implementing and monitoring compliance by agents and brokers. The compliance officer is also responsible for establishing and maintaining program that trains and tests appropriate persons within the company. The company is also required to submit Suspicious Activity Reports (SAR-IC) to the Financial Crimes Enforcement Network (FinCEN) regarding suspicious transactions that involve at least \$5000 in funds and the company "knows, suspects or has reason to suspect" that the transaction involves funds derived from illegal activity; is designed to evade the requirements of the Bank Secrecy Act; has no business or apparent lawful purpose; or involves use of the insurance company to facilitate criminal activity.

More detailed information concerning the rules and Frequently Asked Questions concerning compliance is available at www.fincen.gov.

Class Action Fairness Act

David Yohai, Attorney, Weil, Gotshal & Manges LLP

David L. Yohai, a litigation partner at Weil, Gotshal and Manges who is experienced in insurance class action matters,



Welcome Reception



Ted Hoxmeier & Bob Hagmeier

gave a presentation on the Class Action Fairness Act ("CAFA"), the cases litigated under CAFA during the last year, and how they effect the insurance industry. CAFA was enacted on February 18, 2005 to address issues including: (1) due process concerns over state courts resolving nationwide class actions, particularly in a few "drive -by class action" state courts, (2) unfair settlements that provided no real benefit to class members; (3) applying the laws of a single state to a nationwide class; and (4) ensuring that multiple and "copy cat" class actions filed in several jurisdictions can be heard by a single federal judge to promote efficiency. CAFA made several critical changes in the rules governing federal diversity jurisdiction to give Defendants better access to federal court.

These changes include permitting federal jurisdiction in class actions where there is only minimal diversity among the parties and permitting aggregation of the claims of putative class members to allow for federal jurisdiction where the claims of class members in the aggregate exceed \$5 million.

On balance, CAFA and the cases litigated under CAFA help level the playing field and should permit insurance company defendants a better opportunity to avoid certain "plaintiff friendly" state courts. This may result in certain additional related benefits such as a greater likelihood of defeating class certification, a greater ability to consolidate related litigation in multiple jurisdictions, and a better opportunity to defeat claims of questionable merit on summary judgment. On the other hand, however, CAFA does change the dynamics of potential class action settlements in several different ways. First, there are more stringent notice provisions requiring notification of appropriate state and federal officials of potential class action settlements. Second, there is increased scrutiny on coupon settlements and plaintiffs' attorneys fees as they relate to such settlements. In particular, in cases involving coupon settlements, plaintiffs' attorneys fees can only be based on the amount of coupons redeemed, as opposed to issued, or the amount of time class counsel expended working on the case. This may make settlement of such actions more difficult in federal court.



Friday Night Fun



Ron & Linda Watters

During the first year, several matters have been litigated under CAFA including the extent to which adding a new party or claim to an existing case will result in the matter being considered a "new" action for purposes of removal to federal court. In particular, where the amendments were substantive and did not "relate back" to the original complaint, courts have held that a new action has been commenced for purposes of CAFA and that removal was proper even if the case was not originally removable. Creative plaintiffs' counsel, however, have already begun to find ways to plead around CAFA in an attempt to remain in state court. One such technique, utilized in *Hangarter v. The Paul Revere Life Insurance Co.*, 2006 U.S.

Dist. Lexis 5295 (N. D. Cal. Jan. 26, 2006), is to name the state DOI on a reformation claim. The Court in *Hangarter* found that, as pled, the state DOI was a "primary" defendant and therefore that the matter had to

remanded back to state court under CAFA's state action exception. An article regarding this decision was distributed at the conference.

In sum, CAFA and the decisions under it during the first year after its enactment have greatly reshaped the landscape for where class actions, and in particular insurance class actions, will be litigated. Use of this powerful weapon will benefit insurance company defendants. However, settlements that have been approved in the past may not pass muster. Accordingly, insurance companies must be strategic in their approach to such matters and decisions as to what forum is best for them.

Email & Document Management Issues

John Neiditz, Attorney, Lord Bissell & Brook, LLP

Jon Neiditz of Lord Bissell & Brook addressed the topic of the major information-related risks now faced by insurers. He explained his clients' needs to address: eDiscovery costs and risks, the volume of electronic messages overwhelming records management programs, and significant new legal and business risks associated with breaches of personal information.

Jon went on to describe an integrated policy and technology approach to enable insurers to reduce risks and costs in all three of these areas.

Federal Income Tax Update - Eliminate Your Policy-Holders Surplus Account and Pay No Taxes

Greg Stephenson, Partner, Smart LLP

Phase III tax relief, in the form of 0% tax rate on Policyholders Surplus Account distributions, applies only to tax years 2005 and 2006. Do not miss this opportunity. In addition to taking appropriate steps to "distribute" any PSA balance, it is recommended that all taxpayers with PSA balances make the election to transfer "any" remaining balance on a "protective basis".

The latest FASB change relative to uncertain tax positions includes a positive change that allows recognition of a tax benefit in the maximum amount that is "more likely than not" to be realized. The standard had previously been "should." Examination risk cannot be considered, and the tax benefit must be de-recognized when it is no longer "more likely than not" that the benefit will be sustained. The not so good news is that FASB will require detailed disclosure of tax positions that are not recognized for book purposes.

For the 2005 tax year, large corporations are being hit with additional Federal income tax return filing requirements. For certain large corporate Form 1120 filers, a full blown Schedule M-3 as well as electronic filing (e-file) of their return is required. For certain large corporate Form 1120-L/1120-PC filers, the Schedule M-3 can be abbreviated and the e-file requirement may not apply until tax year 2006.

Elections 2006

Jim Hodges, NALC Executive Director

Matt Salmon, President, Upstream Consulting -- Former Arizona U.S. Representative

Jim Hodges and Matt Salmon, former Republican congressman from Arizona, presented a program on the 2006 elections. Mr. Salmon was a member of the class of 94 in Congress, and expressed concern that the Republicans were



Jim Hodges & Matt Salmon

struggling on issues such as ethics and immigration. He feels they must address those issues in a way that energizes and reassures core Republican voters. He expressed optimism that John McCain would be a strong presidential candidate in '08.

Mr. Hodges believes that redistricting changes make it difficult for Democrats to take back the House of Representatives. He does believe Democrats will win enough seats in both chambers to pull virtually even with Republicans. Rising energy prices and the Iraq war will fuel the Democratic gains. Mr. Hodges believes that Hillary Clinton is the odds on favorite to win the Democratic presidential nomination in 08. He did caution that it was too early to make firm predictions.

The Gavel Award

Fred Meese was presented with the Gavel Award by past President Rob Hardy for his service as president during the last year. Fred presided during a year in which the NALC resolved the small policy debate at the NAIC.

He was a key player in this resolution, and also guided the organization through two successful conferences. We thank Fred for his great leadership.



Jim Hodges, Fred Meese & Rob Hardy

Save the Date

NALC 2006 Fall Conference

Wild Dunes

Charleston, South Carolina

September 27-30, 2006



The NALC will hold its 2006 Fall Conference September 27-30, 2006, at the Wild Dunes, Charleston, South Carolina. The conference registration form, sponsorship list, golf registration form and tentative agenda will be available soon on the NALC website at www.nalc.net. Hotel reservation instructions are also available. Please contact Dawn Bergsma to become a conference sponsor.

We hope to see you there!