The National Association of Insurance Commissioners (NAIC) held its 2018 Summer National Meeting from August 4 through 7 in Boston, Massachusetts. Baseball and weather were pervasive topics, with the Red Sox’ sweep of the Yankees and weather related travel delays and cancellations dominating hallway small talk.

The meeting built on many initiatives begun or already underway in Milwaukee during the Spring National Meeting, as regulators, members of industry, and consumer representatives work to complete tasks by the end of the year. Work continued on key initiatives including implementing changes related to the US-EU Covered Agreement, development of US group capital calculation tools, developing resources to assist states in reviewing complex predictive models, and modifying annuity suitability standards. A number of new initiatives have also begun, including an initiative to address issues related to legal cannabis businesses. Finally, several ongoing initiatives managed to near the finish line in Boston, with the finalization of a new Travel Insurance Model Law and Pre-Dispute Mandatory Arbitration Clauses Bulletin, to be presented for adoption by Executive and Plenary before year end.

The following are some highlights from the Summer National Meeting. We do not cover every meeting in this report; rather, we comment on select noteworthy developments and matters of interest to our clients.

A. Issues of General Interest
1. Work Related to the US-EU Covered Agreement Continues
2. IAIS Continues Work to Update ComFrame Materials
3. Development of US Group Capital Calculation Tool Continues
4. Risk-Based Capital C-1 Bond Factor
5. Work on the NAIC Macroprudential Initiative (MPI) Continues
6. Innovation and Technology

B. Issues of Particular Interest to Life Insurers
1. Work Proceeds on Annuity Suitability
2. Regulators Explore Multistate Review of Long Term Care Rate

C. Issues of Particular Interest to Property/Casualty Insurers
1. Travel Insurance Model Law Ready for Final Adoption
2. Pre-Dispute Mandatory Arbitration Clauses Bulletin Ready for Final Adoption
3. Regulators Consider New Customer Disclosures Regarding Premium Increases
5. Work Continues on the Mortgage Guaranty Insurance Model Act

D. Briefly Noted
1. Working Group Established to Address Issues Related to Legal Cannabis Businesses
2. NAIC Begins Development of Life Insurance Online Guide
3. NAIC Requests Comments on Federal Tax Law Impact on Adjusted Capital
4. Revised and Reorganize P&P Manual Exposed for Comment
5. Revisions to SSAP No. 61R and Appendix A–791 — Life and Health Reinsurance Agreements Exposed for Comment
A. Issues of General Interest

1. Work Related to the US-EU Covered Agreement Continues

The Reinsurance (E) Task Force received comments on the proposed revisions to the Credit for Reinsurance Model Law (#785) and Regulation (#786). The revisions make changes needed to conform the existing state framework for credit for reinsurance to the Bilateral Agreement between the United States and the European Union on Prudential Measures Regarding Insurance and Reinsurance (the so-called “Covered Agreement”). Absent conforming changes, inconsistent existing state law provisions that require certain EU reinsurers to provide reinsurance collateral would be preempted under Dodd-Frank. The revisions go beyond conforming changes so as to accommodate future covered agreements between the US and other foreign jurisdictions and to provide an equivalent elimination of reinsurance collateral for qualified reinsurers in other “qualified jurisdictions” (currently, Bermuda, Switzerland and Japan and, following Brexit, the UK). For a comprehensive description of the Covered Agreement and the proposed changes, see our alert.

Speakers were limited to two minutes each, so oral comments during the meeting simply highlighted key points that each commenting organization covered in its written comments on the proposed changes. Without exception, all were in support of the overall approach, and comments were focused on making specific, targeted improvements to the proposals. Common themes were:

- Put requirements in the model law, not model regulation. Many commenters wanted this change to limit the ability of individual state regulators to deviate from the models by adopting inconsistent regulations, taking the view that legislation is “cast in stone” and cannot be easily circumvented through administrative action.

- Eliminate disparate treatment between EU and non-EU reinsurers. Commenters objected to the different treatment of reinsurers in jurisdictions that are party to a covered agreement and those in jurisdictions that the states have accepted as “qualified jurisdictions.” In particular, they point to the ability of state regulators to consider factors or impose requirements not included in the Covered Agreement and note the disparity is inconsistent with the goal of establishing a level playing field.

- Limit discretion of regulators to establish rules other than those in the model law and rule. Similar to the above, commenters noted where the model law and regulation grant individual state insurance commissioners’ discretion to add requirements or consider unspecified factors as conditions for approving reinsurers not domiciled in jurisdictions covered by a covered agreement as “qualified reinsurers.”

- Receivership court, not the commissioner, to require collateral for insolvent cedents. The model law authorizes the insurance commissioner to require a qualified reinsurer to post 100% security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer. Commenters noted this is inconsistent with the wording of the Covered Agreement, which authorizes the commissioner to seek a court order from the receivership-court.

- Equal treatment for US reinsurers. The Reinsurance Association of America pressed for consideration regarding how the changes would impact the treatment of US reinsurers, noting that they should have the same access to US markets afforded to foreign reinsurers under the regulation.

Following the public comments, New York Department of Financial Services Superintendent Maria Vullo, Task Force Chair, indicated that the comments revealed the need to make some technical changes, but not a reworking of the overall conceptual approach, and the project can stay on schedule for adoption of the changes to the models by year end. She reported NAIC staff will work with the Task Force to incorporate comments they deem necessary, with a new draft in mid-September for another public comment period. She added she would not allow the need for speed to overcome accuracy and effectiveness, but she also did not see the two to be in conflict.

2. IAIS Continues Work to Update ComFrame Materials

The ComFrame Development and Analysis (G) Working Group received a presentation from staff of the International Association of Insurance Supervisors (IAIS) regarding the consultation documents for the revised version of the Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame) and the insurance capital standard (ICS) version 2.0, which were released by the IAIS on July 31, 2018, for a public comment period ending October 30, 2018. The Working Group, in conjunction with the International Insurance Relations (G) Committee, is working to develop NAIC comments to ComFrame and ICS version 2.0.

Romain Peserot, Deputy Secretary General of the IAIS, gave a presentation providing an overview of the public consultation documents highlighting changes from previous versions and the main issues on which the IAIS is seeking input from IAIS members and stakeholders. In response to a question about how many insurance groups could qualify as internationally active insurance groups (IAIGs) and fall under the IAIS criteria when ComFrame takes effect in 2020, Mr. Paserot responded that there is no published list. However, he said 50-55 insurance groups, including a dozen in North America, fifteen in Asia and twenty or more in Europe could qualify.
The ICS version 2.0 is an integral part of ComFrame. Enhancements developed for 2018 field testing are: Valuation (Market Adjusted Value (MAV) & GAAP Plus); MOCE; Capital Resources; Capital Requirements; and, Data Collection on Internal Models (as per the Kuala Lumpur Agreement) and dynamic hedging.

ICS version 2.0 was also highlighted during the Opening Session, where NAIC President Julie Mix McPeak (Tennessee), in her prepared remarks, noted that “[r]ecognizing the different needs of jurisdictions around the globe, our goal at the IAIS is to work constructively on an aggregation approach that is recognized as comparable to the baseline ICS method . . . [u]ltimately ensuring US companies are not put at a competitive disadvantage or subject to duplicative regulation.” Commissioner McPeak went on to emphasize that “while we may not go as far as dumping tea into Boston Harbor in protest against standards that won’t work for the US, we will hold our ground in negotiations around the globe. [and] if in the end a standard doesn’t fit our system, we will declare our independence from it.”

The Committee also heard a report regarding a number of other IAIS consultation documents that are out for public comment, including an application paper regarding supervision of insurer cybersecurity, an application paper regarding proactive supervision of governance and the composition and role of the board, and an issue paper on the increasing use of digital technology in insurance and its potential impact on consumer outcomes. The NAIC indicated it will submit comments on these documents.

3. Development of US Group Capital Calculation Tool Continues

The Group Capital Calculation (E) Working Group discussed comment letters on the June 26, 2018, staff memorandum on the Scope of the Group/Non-Insurance Testing. This updated staff memorandum was exposed after a June 20, 2018, interim Working Group meeting during which details about how a group capital calculation will consider specific items, such as the treatment of captives and non-insurance entities, were discussed.

The Working Group agreed to expose a joint P&C trades proposal submitted by AIA, NAMIC, PCI and the RAA for 45 days.

The joint trades proposal represents a reworked version of the NAIC June 26 staff memorandum. It recommends a more principle-based process and a focus on the aspects that impact policyholders. It differentiates between all entities in the “Broader Group” and those entities that should be within the “Scope of Application” of the group capital calculation. The Scope of Application would be determined by the group in a series of steps, although the ultimate determination of which entities would meet the criteria to be included in the Scope of Application would remain with the lead state regulator.

Florida Commissioner Altmaier, Working Group Chair, noted that the next step is field testing. He encouraged interested parties looking at the exposure draft to consider field testing elements and weigh in on things such as the inclusion or exclusion of a materiality threshold, a possible exemption for mutual companies and Federal Reserve filers, expanded Schedule Y inventory approaches, and whether scalars should be included in the field testing process. Before exposing the joint trades proposal on August 7, NAIC staff added eight questions related to such elements and decisions to be made prior to field-testing. The Working Group has scheduled a call for October 1, 2018, to discuss comment letters received on Scope of the Group/Non-Insurance Testing.

4. Risk-Based Capital C-1 Bond Factor

The Investment Risk-Based Capital (E) Working Group received an update from the American Academy of Actuaries on analysis, in its July 17, 2018 letter, of the statutory reserve offset included in the C-1 bond factors. The letter was prepared in response to the Working Group’s request that the Academy reconsider whether the level of reserve offset, reflected in their October 10, 2017 set of bond factors, was too conservative. The Academy explained that after reviewing the risk premium assumption used in the development of the C-1 bond factors, they continue to recommend a risk premium set at the mean to be consistent with the existing solvency framework.

The ACLI responded that it could not support the Academy’s proposed C-1 risk bond factors and updated portfolio adjustment factors because they will materially increase C-1 bond capital charges, especially for smaller life insurers, as well as change the slope of the capital charge. ACLI commented that a risk premium set at the mean is too low and recommended an adjustment that incorporates a small amount of additional risk premium. The Academy responded that if the risk premium changed, all the other elements of the solvency framework would have to be changed as they are all tied together. Consequently, the Academy concluded that the recommendations in its October 10, 2018 letter regarding C-1 bond factors and the portfolio adjustment factors should not be adjusted.

After listening to the debate between the Academy and the ACLI, Kevin Fry (Illinois), Working Group Chair, announced his intended course of action to conclude this work. The Academy’s July 17, 2018 letter related to the statutory reserve offset included in the bond factors report was exposed for a 60-day public comment period ending October 4, 2018. Chairman Fry plans to schedule an interim call to discuss any comments received on the exposure and adopt something at the Fall National Meeting in San Francisco.
The Working Group also received and exposed the July report from the Academy’s Joint P&I/Health Bond Factors Analysis Work Group for a 60-day public comment period ending October 4, 2018. The report provides an analysis and recommendation related to bond factors and increased granularity in the property & casualty (P&C) and health RBC formulas. The recommendations related to bond factors in the P&C and health RBC formulas won’t have nearly as much of an impact on P&C insurers as on life insurers.

5. Work on the NAIC Macroprudential Initiative (MPI) Continues

The Financial Stability (EX) Task Force received an update on IAIS activities, including the focus on identifying and minimizing systemic risk through an Activities Based Approach (ABA). It was noted that an IAIS Task Force on Banking and Insurance plans to address cross sectional aspects of systemic risk. The IAIS is continuing to make progress on issues associated with recovery and resolution and the Resolution Working Group released ICP 12 (Exit from the Market and Resolution).

The Task Force received a report on liquidity stress testing from Justin Schrader (Nebraska), Chair of the Liquidity Assessment (EX) Subgroup. Mr. Schrader reported that the Subgroup had agreed on stress testing using a cash-flow approach applied to large life insurers. He said that the primary objective of the Liquidity Stress Testing Framework is to provide insights for macroprudential surveillance and useful insights regarding vulnerability of insurers to various economic factors.

Mr. Schrader further advised that the Subgroup had conducted regulator-only sessions and identified the following products and/or activities as having the potential to pose liquidity risk: (a) Fixed and Indexed Annuities; (b) Derivatives; (c) Funding Agreements (deposit type contracts relating to insurers’ borrowings from an FHLB) and GICs; (d) Securities Lending; (e) Repurchase Agreements; and, (f) Borrowed Money (includes Commercial Paper). Based on the criteria the Subgroup proposed in its July 31 exposure memo for each of the six activities, 21 insurance groups were anonymously identified as falling under the Scope of the Liquidity Stress Testing Framework.

Mr. Schrader said that the Subgroup will continue to refine the Scope and dig deeper into the Design Elements of the Framework and then they will create a template for field-testing which will take place in 2019. The target date for completion of the Subgroup’s deliverables is no later than the end of 2018.

The Financial Stability (EX) Task Force also received an update from Kristine Maurer (New Jersey), Chair of the Receivership and Insolvency (E) Task Force regarding the referral from the Task Force to re-examine resolution planning materials. Ms. Maurer reported that the Task Force had created three drafting groups focused on three different work streams. They are reviewing source materials such as ICP 12, ICP 16, ComFrame, an EIOPA opinion paper on recovery and resolution, etc., to determine Best Practices and misalignment between federal and state laws.

Finally, Todd Sells, NAIC staff, thanked the ACLI for the comments they submitted on the NAIC Staff Analysis for Counterparty Exposure Concentrations. The Task Force will discuss whether gaps exist with respect to existing reporting requirements. Mr. Sells noted that the focus has been on the asset side, but the Task Force will also look at liability and product reporting.

6. Innovation and Technology

The NAIC continued its focus on insurtech and innovation, hosting presentations and discussions on a range of technology-related topics. These included presentations on blockchain-based products by The Institutes RiskBlock Alliance to the Innovation and Technology (EX) Task Force and by the American Association of Insurance Services (AAIS) to the Property and Casualty Insurance (C) Committee. The NAIC’s Center for Insurance Policy and Research also hosted a well-attended panel discussion titled “Can Regulation Keep Up with Innovation?” The two-hour discussion was hosted by NAIC CEO Michael Consedine, and featured input from Commissioners Doug Ommen (Iowa) and Michael Pieciak (Vermont) as well as members of industry and academia. The NAIC’s main focus, however, remains on the use of big data and predictive models.

Regulators Move Forward with Efforts to Facilitate Review of Predictive Models

The NAIC continued to move forward with its efforts to aid state reviews of complex predictive models for personal auto and homeowners insurance rate filings on a number of fronts. While activities related to this issue are primarily driven by the Big Data (EX) Working Group, charges related to these issues have now been adopted by the Executive (EX) Committee and the Casualty Actuarial and Statistical (C) Task Force as well.

The charges taken up by the Executive (EX) Committee and the Casualty Actuarial and Statistical (C) Task Force were previously referred to those groups by the Big Data (EX) Working Group during the NAIC’s Spring National Meeting.

The Casualty Actuarial and Statistical (C) Task Force was asked by the Big Data (EX) Working Group to:
- Draft and propose changes to the Product Filing Review Handbook to include best practices for review of predictive models and analytics filed by insurers to justify rates.
- Draft and propose state guidance (e.g., information, data) for rate filings that are based on complex predictive models.
- Facilitate training and the sharing of expertise through predictive analytics webinars.
The Task Force reported that it is actively pushing forward on these requests and has formed an ad hoc group of actuaries that is working to develop a white paper addressing issues and considerations around sources of data, how companies use selected data, the nature of predictive models being used, and how companies prepare rate filings in connection with these products. The Task Force is working to have a draft of the paper ready for review and comment by the Fall 2018 meeting. The Task Force also noted that it has already been working to develop and share expertise on these issues through its existing initiatives.

Separately, the Executive (EX) Committee was asked by the Big Data (EX) Working Group to:
- Direct NAIC management to research the appropriate skills and potential resources required for the organization to support NAIC members in reviewing predictive models and making appropriate recommendations to the Executive (EX) Committee and the Internal Administration (EX1) Subcommittee.
- Direct the NAIC Legal Division to prepare a memorandum analyzing methods and procedures to be followed in sharing predictive modeling information while maintaining confidentiality protections.

The Executive (EX) Committee reported that it has adopted these charges and has directed NAIC staff members to begin work. To this end, NAIC staff members have begun researching what resources would be needed to support states in reviewing complex predictive models. Staff indicated that a majority of states have expressed interest in receiving such support. The NAIC Legal Division has also begun work to identify mechanisms in state law that could be used to maintain the confidentiality of information shared as part of the NAIC’s support activities, with early research focusing on state rating laws and trade secret laws.

**LIMRA Presents on Use of Automated Underwriting in Life Insurance**

LIMRA presented to the Big Data (EX) Working Group on the use of data to enable accelerated and automated underwriting in the life insurance industry. The presentation provided a window into how the life insurers are embracing and working towards greater use of automation and alternative sources of data in place of manual review and the collection of bodily fluids. The presentation noted that the life insurance industry has accelerated its pace in working to adopt automated underwriting, with the majority of companies at least in the planning stages of building out this new technology. LIMRA highlighted some of the most common new data sources being used as part of this effort, including data from the Medical Information Bureau, motor vehicle records and credit records. LIMRA in particular noted the interest of the industry in using electronic health records as a basis for automated underwriting, but also noted that it remains a challenge to gain access to those records for the time being. LIMRA also identified the industry’s top challenges in developing automated underwriting, with the greatest challenges being allocating sufficient human resources to develop new approaches and having to accommodate legacy IT systems.

Members of the Working Group responded to the presentation with familiar questions related to consumer protection concerns that have been a focus of Working Group meetings in the past. This included questions on whether appropriate disclosures are being made around the use of new data sources and how predictive models are being tested and validated. The Working Group noted that it plans to continue discussing these issues in the future.

**B. Issues of Particular Interest to Life Insurers**

1. **Work Proceeds on Annuity Suitability**

On July 24, 2018, the NAIC Annuity Suitability (A) Working Group circulated an informal draft of proposed revisions to the Suitability in Annuity Transactions Model Regulation which reflects the Working Group’s discussion of comments received on Section 6 (Duties of Insurers and Producers) of the Model Regulation during its interim meeting on May 31–June 1, 2018 in Kansas City. The Working Draft also included suggested additional definitions of terms used in the proposed revisions to Section 6.

During the Summer National Meeting, the Working Group used the Working Draft as the basis for continued dialogue on proposed revisions to the Model Regulation. The discussion focused on defined terms that commenters had suggested be added to Section 5 (Definitions) because of their use in Section 6 revisions. Idaho Director Dean Cameron, Chair of the Working Group, took tentative straw poll votes on suggestions for the definition of the following terms: “cash compensation,” “consumer,” “intermediary,” and “material conflict of interest.” The Working Group was comfortable with the addition of Iowa Commissioner Ommen’s definitions of “cash compensation” and “intermediary.” However, there was greater discussion on the definition of “consumer” which generated a debate about whether the proposed revisions to the Model Reg should apply to current (in-force) annuity owners, and under what circumstances it should apply (e.g., to a replacement, or a recommendation made by the producer that generates compensation for the producer). Discussion of the four suggested definitions of “material conflict of interest” resulted in a lack of unanimity about what constitutes a conflict of interest, how to measure its materiality and whether it could be interpreted to include compensation.

At the Life Insurance and Annuities (A) Committee meeting the following day, Director Cameron reported that the Working Group was moving diligently and making progress. He said that another meeting or two, perhaps one in-person, would be necessary so that the Working Group could get something to the Life Insurance and Annuities (A) Committee by the Fall National Meeting in San Francisco, scheduled for November 15–18, 2018.
New York Superintendent Maria Vullo took the opportunity to tell the Committee that the New York Department of Financial Services had finalized its *Suitability in Life Insurance and Annuity Transactions Regulation* (#187) and that in the opinion of the DFS, life insurance should be included in the revisions to the NAIC Model Regulation. She said she understood, however, that the Working Group had interpreted its existing charge as pertaining only to annuities. Consequently, she was not seeking any immediate action, but, when the Working Group concludes its work and makes a recommendation to the Committee, she would like to reopen the discussion about the inclusion of life insurance. The California and D.C. Insurance Commissioners supported Superintendent Vullo and Chairman Ommen gave her his commitment that a discussion of life insurance suitability would be taken up at that time.

There appears to be a growing desire by the Working Group to conduct a regulator only in-person meeting to develop a revised working draft among themselves, after which they would expose the revised draft for comment before the Fall National Meeting.

### 2. Regulators Explore Multistate Review of Long Term Care Rate Increase Applications

The *Long Term Care Insurance (B/E) Task Force* received a proposal by actuaries Rhonda Ahrens (Nebraska), Tomasz Serbinowski (Utah) and Wes Trexlor (Idaho) for coordinated multistate review of long term care rate increase applications. The proposal involves the formation of a new NAIC subgroup to be charged with developing a process for the coordinated reviews and thereafter coordinating future multistate review examinations.

The process would borrow elements from coordinated multistate market conduct examinations and risk focused financial examinations, as well as the *Interstate Insurance Product Review Commission (IIPRC)*. In broad terms: the subgroup would make calls for an examination; states could elect to participate on a voluntary basis; a lead state would be selected based on available resources and expertise; an oversight group would be established; the lead state would engage actuarial review resources, either from participating state resources or a consultant; the oversight group would produce advisory findings reports; and insurers would file individually with participating states. Expected benefits from the proposal are a single review for the insurer, leveraging of state resources and expertise, assuring uniformity in review and the results, including more equitable treatment of policyholders nationwide, while preserving state implementation or legal considerations.

Some commissioners on the Task Force expressed skepticism about the need for another working group, asking why coordinated review could not be done through the existing *LTC Pricing (B) Subgroup*. California Insurance Commissioner Dave Jones weighed in that LTC insurers should not “get an out” for their own prior pricing mistakes, and wasn’t agreeing that there should be common shared pricing assumptions used in all states. The proposal’s proponent responded that under the proposal states were not compelled to participate and could rely on their own resources for individual state review. A consumer representative expressed concern that use of examination procedures would result in an assertion of confidentiality over rate filings, which he maintained would be public if done by individual states, and that there would be a perceived NAIC endorsement of a rate increase.

No action was taken on the proposal. Instead, it will be taken up in a separate conference call, and the pricing subgroup will be asked for its views.

### C. Issues of Particular Interest to Property/Casualty Insurers

#### 1. Travel Insurance Model Law Ready for Final Adoption

After more than a year of work, the *Travel Insurance (C) Working Group* has completed work on the development of a new *Travel Insurance Model Act*. The goal of the *Model Act* is to create a comprehensive legal framework for the sale of travel insurance. The Act was based on the *Travel Insurance Model Act* developed by the *National Conference of Insurance Legislators (NCOIL)*, with changes reflecting comments received by the Working Group during a section-by-section review earlier drafts. The final version of the *Model Act* addresses producer licensing requirements, disclosure requirements, premium taxes and sales practices in connection with the sale of travel insurance.

The Working Group provided a final report on its activities to the *Property and Casualty Insurance (C) Committee*, and asked that it adopt the *Model Act*. The Working Group reported that the final *Model Act* was adopted during the Working Group’s June 13th conference call by unanimous vote. It noted that several comments had been received regarding the adopted final act, including comments noting that the regulation of travel insurance as inland marine insurance might cause other products to be categorized as inland marine products unintentionally. The Working Group noted that the final *Model Act* included language to help clarify this issue and allow states to address state specific issues in this area. The Working Group also noted that it had included language to help differentiate between non-insurance and insurance services, addressing another issue that had been raised in the comments.

During discussion of the report, Louisiana offered an amendment to the *Model Act* to address issues raised by health insurers and to clarify that insurance that provides coverage for a range of health related losses could be filed with the states as either an inland marine product or a health product.
Following discussion, the final Model Act was adopted by the Committee, as amended by Louisiana. The Model Act will now need to be adopted by the Executive (EX) Committee and Plenary before becoming fully effective, likely during the 2018 Fall National Meeting.

2. Pre-Dispute Mandatory Arbitration Clauses Bulletin Ready for Final Adoption

Both the Pre-Dispute Mandatory Arbitration Clauses (D) Working Group and the Market Regulation and Consumer Affairs (D) Committee adopted the final version of the Pre-Dispute Mandatory Arbitration Clauses Bulletin developed by the Working Group. The Bulletin prohibits the use of pre-dispute mandatory arbitration, choice of law, and choice of venue clauses in personal line contracts. The bulletin does, however, include several exemptions for uninsured or underinsured auto. The Bulletin will next need to be adopted by the Executive (EX) Committee and Plenary, likely during the 2018 Fall National Meeting.

3. Regulators Consider New Customer Disclosures Regarding Premium Increases

The Transparency and Readability of Consumer Information (C) Working Group has received permission from the Property and Casualty Insurance (C) Committee to discuss and gather information regarding how property and casualty insurers might improve communication and disclosure with customers in connection with significant rate increases, policy changes, and policy non-renewal. Accordingly, the Working Group began discussing the possibility of developing new consumer disclosures that would assist customers that have been subject to significant premium increases or coverage changes (including non-renewal) in understanding the underlying factors leading to those changes. The Working Group discussed the need for consumers to be able to understand the key risk variables that are driving these changes, and enable consumers to correct any inaccurate or incomplete data utilized by an insurer in making premium or coverage changes.

Regulators, consumer advocates, and industry commenters all expressed agreement that this is an important idea, but debated the best way to address this issue. While consumer advocates pressed for increased clarity and transparency, industry commenters, including PCI, expressed concern that trying to communicate all the factors contributing to pricing and coverage decisions in complex products could actually cause more confusion in the market rather than help consumers. Based on this discussion, the Working Group acknowledged that the challenge would be to find the right approach to increasing consumer understanding about why changes have been made to their premium or coverage, without creating additional confusion.

The Working Group noted it will continue to take comments on this issue and plans to continue the discussion on the next conference call.


The Auto Insurance (C/D) Working Group received a report from the Missouri Department of Insurance regarding two recent studies on pricing for private passenger auto. The first study involved a general overview of the Missouri market, and focused on spatial patterns of pricing and risk factors that account for spatial differences. It found rating territories were a primary source for large pricing disparities between urban areas with large concentrations of minorities and other areas, but that the differences were risk based, so that per unit of risk, no pricing disparities were noted. The second study rebuts a joint study published in 2017 by ProPublica and Consumer Reports that concluded minority neighborhoods pay higher premiums for private passenger auto insurance than white areas with the same risk. The ProPublica study examined the handful of states that make relevant loss data available, including Missouri.

In the cover memo for the report of the Missouri study, the author noted that the ProPublica analysis, if taken at face value, “would indicate a profound regulatory failure across all of the states that were subject to the study... if left unchallenged, the ProPublica piece of necessity suggests that state regulators are either complicit or incompetent.” The Missouri report then concluded the ProPublica study was deficient in two respects. First, it confounds risk associated with individuals that reside in an area and risks associated with the physical characteristics of the area itself and made no attempt to assess the effects of the former, which, according to the Missouri study, are very significant. Second, the Missouri study concluded the ProPublica analysis’s selection of zip codes introduced a very strong statistical bias into the analysis that skewed the results.

5. Work Continues on the Mortgage Guaranty Insurance Model Act

The Mortgage Guaranty Insurance (E) Working Group met very briefly to receive a progress report from Steve Junior (Wisconsin) on the development of the mortgage guaranty insurance capital model. The capital model is a cornerstone of a newly revamped Mortgage Guaranty Insurance Model Act (#630) that has been under development for several years. The revamped model act would subject monoline mortgage insurers to risk based capital (RBC) and loan-level capital standards. The calibration of the “RBC grids” and loan level capital standards turn on the capital model.

At the Spring National Meeting, Mr. Junior reported the results of Milliman’s assessment of the model, which had been developed by Oliver Wyman. He reported that while the theory and approach of the model and the data supplied by participating MI insurers were reasonable and appropriate, there were inconsistencies and errors in data preparation and certain steps taken used to forecast future loan performance. The inconsistencies and errors were material and had to be corrected before the model could be used.
At the Summer National Meeting, Mr. Junior reported on the progress on finalizing a new contract with Milliman to work on correcting the deficiencies he reported in the Spring, and noted there is “light at the end of the tunnel.” He indicated he expects to have a workable model by year end, so the Working Group can finalize the text of the model law during the September to November timeframe, with the goal of exposing the draft for comment after discussion of it during the Fall meeting.

D. Briefly Noted

1. Working Group Established to Address Issues Related to Legal Cannabis Businesses

The Executive (EX) Committee approved the creation of the new Cannabis (C) Working Group in order to develop a whitepaper on insurance issues related to legal cannabis businesses. The Working Group’s charge is to “consider the insurance regulatory issues surrounding the legalized cannabis business, including the availability and scope of coverage, Workers’ Compensation issues, and consumer information and protection. The Working Group will develop a white paper outlining the issues and containing recommendations for the development of regulatory guidance as appropriate.” California Commissioner David Jones will chair the Working Group, with Illinois Director Jennifer Hammer serving as Vice Chair. The Working Group has been directed to complete its work by the first quarter of 2020.

2. NAIC Begins Development of Life Insurance Online Guide

The Life Insurance and Annuities (A) Committee adopted a charge to “develop an online resource on life insurance, including the evaluation of existing content on the NAIC website, to be published digitally for the benefit of the public.” The Committee delegated the new charge to the Life Insurance Buyer’s Guide (A) Working Group, which was renamed the Life Insurance Online Guide (A) Working Group.

3. NAIC Requests Comments on Federal Tax Law Impact on Adjusted Capital

The Property and Casualty Risk-Based Capital (E) Working Group is requesting comments on how the new federal tax law may impact the total adjusted capital of companies in advance of its next meeting, where it plans to discuss the issue.

4. Revised and Reorganize P&P Manual Exposed for Comment

The Valuation of Securities (E) Task Force received a report from the Securities Valuation Office and the North American Securities Valuation Association regarding a series of proposed changes to the Purposes and Procedures Manual of the NAIC Investment Analysis Office. The proposed changes are part of an ongoing project to reorganize and simplify the manual for clarity and ease of use. The revised and reorganized manual was exposed for a 75-day comment period, with comments due by October 20, 2018.

5. Revisions to SSAP No. 61R and Appendix A-791 — Life and Health Reinsurance Agreements Exposed for Comment

The Statutory Accounting Principles (E) Working Group exposed revisions to SSAP No. 61R and Appendix A-791 — Life and Health Reinsurance Agreements (Ref. # 2017-28). The revisions propose new disclosures as well as update the question-and-answer guidance to clarify the applicability of A-791. The Working Group has specifically requested comments regarding whether the proposed disclosures adequately address the referral received from the Financial Analysis (E) Working Group.
Contacts

If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed or the Eversheds Sutherland attorney with whom you regularly work.

John S. Pruitt  
*Partner*  
**T:** +1 212 389 5053  
johnpruitt@eversheds-sutherland.com

Cynthia R. Shoss  
*Partner*  
**T:** +1 212 389 5012  
cynthiashoss@eversheds-sutherland.com

Daren L. Moreira  
*Partner*  
**T:** +1 212 389 5039  
darenmoreira@eversheds-sutherland.com

Maureen Emmert Adolf  
*Senior Policy Adviser/Insurance*  
**T:** +1 212 389 5028  
maureenadolf@eversheds-sutherland.com

Kevin Finnegan  
*Associate*  
**T:** +1 212 389 5069  
kevinfinnegan@eversheds-sutherland.com

Alexander F. L. Sand  
*Associate*  
**T:** +1 212 287 7019  
alexandersand@eversheds-sutherland.com