



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

Wisconsin.gov

125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 266-3585 • Fax: (608) 266-9935
E-Mail: ociinformation@wisconsin.gov
Web Address: oci.wi.gov

Office of the Commissioner of Insurance Life Advisory Council

Minutes

Tuesday August 5, 2008

10:00 a.m. – 12:30 p.m.

125 South Webster Street

Room 227

Madison, WI 53703

Committee Members Present: Steve Stribling, Northwestern Mutual Life; Sarah Orr, University of Wisconsin Law School; Sharon Brosnan, Thrivent Financial for Lutherans; Dave Larson, American Family Insurance; Martin O'Brien, Principal Financial Group; Barbara Becker, Becker & Hickey; Jill Shilbauer, WEA Trust

OCI Representatives Present: Commissioner Sean Dilweg, Deputy Commissioner Kim Shaul, Eileen Mallow, Jennifer Stegall, Michael Honeck, Kelli Banks

Others Present: Jason Johns, Coventry; Nat Shapo, Coventry; Jim Poolman, Poolman Consulting; Fred McGary, Prudential; Kelly Johnson Becker, State Senator Jon Erpenbach's Office; Jordan Lamb, Dewitt Ross; Matt Moroney, Dewitt Ross; Connie O'Connell, WCLI; Bill Toman, Quarles & Brady; Susan Callanan, Northwestern Mutual Life

I. Approval of May 6, 2008, minutes.

Steve Stribling, Chair

Minutes were approved.

II. Coventry Presentation: "Insurable interest, stranger originated life insurance, and property rights in life insurance policies."

Nat Shapo, Katten Muchin Rosenman, LLP.

Jason Johns, Tenuta & Johns

Nat Shapo provided a presentation on Coventry's view point on how to find a balance between protecting insurable interest while fostering and maintaining property rights. Coventry is a privately owned company and the largest life insurance settlement provider. He explained there are two fundamental rules. The first is that insurable interest is required in the beginning. The second is

the policy owner's ability to alienate their contract on the free market. STOLI is drawing the line between a violation of insurable interest and the exercise of a property right. Modern courts recognize that STOLI requires an agreement at policy inception to sell to a particular assignee. Mr. Shapo stated he believes that life settlements and non recourse premium financing are not STOLI. This has created a secondary market for life insurance. Coventry's position is that the NAIC model attacks property rights. They believe the five year ban on exercising property rights of assignment is hostile to property rights. They believe the two year ban included in the NCOIL model is sufficient. Coventry believes STOLI occurs at the front end of a life insurance sale and, while suggesting a few revisions to the NCOIL model, believes it is a better starting point. Mr. Shapo provided a hand out of slides detailing his presentation.

III. NAIC Viatical Settlement Model: Adoption in other states.

Jim Poolman, Poolman Consulting, Inc.

Jim Poolman was previously a North Dakota State Representative and Insurance Commissioner. Mr. Poolman was directly involved with the NAIC when they were drafting the NAIC Viatical Settlement Model. Many states have adopted this model or have made slight changes in adopting their own version. Mr. Poolman provided background on how the issue evolved and stressed that the NAIC looked at which transactions were most pervasive in the market. He also noted that companies are sending questionnaires to seniors asking them medical questions. Once these seniors sign the survey, they sign away confidentiality rights to the medical information on the survey.

Issues raised in lawsuits and other incidents occurring during the NAIC discussion on viatical settlements were addressed in the model, such as full broker disclosure and rescission periods. Buyers believe in the secondary market for life insurance policies but regulation is needed to prevent abuse or fraud. The 5 year waiting period included in the NAIC model was set up to protect the consumers. Mr. Poolman acknowledged that the NCOIL model addresses some issues, such as trust issues, that the NAIC model does not. The main goal, from Mr. Poolman's perspective, should be to legitimize the secondary market for life insurance by adding regulation. Mr. Poolman added that Legislative sessions are difficult on this issue.

IV. Discussion on Next Steps relating to Viatical Settlements

Steve Stribling, NML

Commissioner Dilweg explained that he has been having discussions with Senator Kohl's office regarding this issue. This is something we want to spend some time on and take a good look at. Commissioner Dilweg asked everyone to come back to the next meeting with thoughts and ideas on how we should look at these models and develop our own. Deputy Commissioner Shaul

added we wanted everyone to have time to review before we start moving forward.

V. OCI Annuities Sales Supervision Advisory Committee Update

Kim Shaul, OCI

Kim reported that the last meeting of the Annuities Sales Supervision Advisory Committee was July 22 where members looked at initial concepts. The next meeting is August 25 where additional concepts will be discussed. Commissioner Dilweg explained that the Annuity Committee will report their recommendations to the Life Council.

VI. SEC Proposed Rule on Indexed Annuities and Certain Other Insurance Contracts

Kim Shaul, OCI

A proposed set of rules was issued by SEC June 25, 2008 which eliminates the exemption under the securities act for certain types of annuities. SEC is focused on indexed annuities and would like to regulate these as securities. Commissioner Dilweg has been working with the NAIC and we will be doing some outreach with SEC. Dual regulation causes more confusion. The current comment period on the SEC draft runs through September, however, it may be extended.

VII. Model Audit Rule Update

Kim Shaul, OCI

The Model Audit Rule workgroup developed a rule draft and a hearing was held on July 8th. Exemption language was inadvertently omitted from the first draft. This has been corrected. The modified rule will be sent to the legislature soon. The corrected draft rule was sent to the working group and any additional comments from the group are due by COB today.

VIII. Senior Designations

Kim Shaul, OCI

The "A" committee of the NAIC adopted a model regulation on the Use of Senior-Specific Certifications and Professional Designations on July 15th. The NASA model was used as a guideline. The rule addresses that it is an unfair sales practice for an agent to label themselves as a senior specialist when selling products. The model will be voted on by the full NAIC membership in late August. OCI will then pursue implementing the model through rule-making.

IX. Long Term Care Partnership Program Administrative Rule

Jennifer Stegall, OCI

Jennifer reminded everyone that the Long Term Care Partnership Program allows individuals with qualified long term care insurance policies to retain a portion of their assets for the purposes of MA eligibility and protect those assets from estate recovery. A rule was drafted and an emergency rule has been in place which addresses training requirements, inflation protection and policy exchanges. The permanent rule was sent to the legislature on July 14 and we expect a 30 day review period. Two germane amendments were sent to the Legislature, which will not affect the review period.

X. Other Business

Steve Stribling, Chair

No other business.

XI. Next Meeting

Wednesday November 5, 2008, at 10:00 a.m.