

THE STATE OF NEW HAMPSHIRE

MERRIMACK COUNTY

SUPERIOR COURT

GONYA

V.

SEVIGNY

Docket No: 04-E-208

Before: Honorable Kathleen A. McGuire

Steno: Brenda Hancock

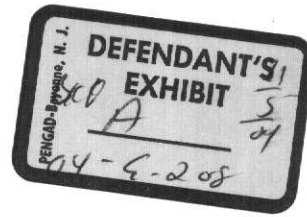
Date: NOVEMBER 5, 2004

Plaintiff's Exhibit List:

None

Defendant's Exhibit List:

- A NAIC Model Laws, Regulations and Guidelines
- B Laws and Legislation Committee report



Model Laws Regulations and Guidelines

NAIC

National Association of Insurance Commissioners

Volume III
(includes Update #68, July 2004)

Rehabilitation and Liquidation Model Act

Section 66. Separability

If any provision of this Act or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 67. Effective Date

This Act shall take effect immediately.

Legislative History (all references are to the Proceedings of the NAIC).

1936 Proc. I 29, 30-32, 33 (adopted first liquidation statute).
1969 Proc. I 168, 241, 271 (recommended the adoption of the Wisconsin Liquidation Act by states).
1978 Proc. I 13, 15, 211, 238-241, 242-275 (adopted new model).
1986 Proc. II 410-411 (amendments adopted later are printed here).
1987 Proc. I 11, 18, 161, 420-421, 423-424 (amended).
1989 Proc. II 13, 23, 227-228, 338, 379-381 (amended).
1990 Proc. I 6, 26, 172, 398, 407-410 (amended).
1990 Proc. II 7, 14-15, 202-204, 224-251, 529-531 (amended and reprinted).
1991 Proc. II 25, 56-57, 322, 560, 577, 604 (amended).
1992 Proc. I 77, 78-79, 769 (amended at special plenary session in September 1991).
1993 Proc. I 8, 136, 277, 741, 746-748 (amended).
1994 Proc. 4th Quarter 14, 20, 593-594, 596-634 (amended and reprinted).
1996 Proc. 1st Quarter 29-30, 123, 562, 565-566 (amended).
1996 Proc. 4th Quarter 9, 44, 938, 945, 953-955 (amended).
1997 Proc. 2nd Quarter 25-26, 539-546 (amended).
1997 Proc. 3rd Quarter 25, 26, 1076, 1124, 1124-1126 (amended).
1999 Proc. 4th Quarter (amended).

DEFENDANT'S
EXHIBIT
B
04
04-8-28

To Study Procedures of Reorganization, Receivership and Liquidation
(D4) Subcom. Report
(Mtg. 28)
(Formerly (D5) Subcom.)

The (D4) Subcommittee met at 2:30 P.M., Monday, December 2, 1968 in the Pacific Room of the Century Plaza Hotel. A quorum was present.

The following report to the parent committee was adopted: "Resolved that the Liquidation Act adopted by the State of Wisconsin be recommended as the basis for model legislation in the various states replacing the current uniform National Association of Insurance Commissioners resolution in this respect and further that this committee now be discharged."

Hon. John F. Bolton, Jr., Chm., Ill. by Donald Karnes; Hon. Allan W. Horne, Ark.; Hon. Benjamin C. Neff, Jr., Neb.; Hon. Louis T. Mastos, Nev.; Hon. Durwood Manford, Tex.; Hon. Robert D. Haase, Wis.

PRESIDENT HOWELL: The next item on our agenda is report of the Laws and Legislation (D) Committee meeting. Commissioner David M. Pack, Chairman of this Committee, will give the report.

LAWS AND LEGISLATION (D) COMMITTEE

AGENDA—MTG. #41

WEDNESDAY A.M.

DECEMBER 4, 1968

10:30-12:00

SANTA MONICA ROOM

Reference

1968 Proc. VOL. II pp. 497-567

1. To Draft Model Legislation Relating to Insurance Holding Companies (D1) Subcom. Report (Mtg. 15)
(Formerly (D2) Subcom.)
Hon. Benjamin C. Neff, Jr., Chm., Nebraska
Refs: 1966 Proc. VOL. II pp. 299; 308-310
1967 Proc. VOL. I p. 105
1967 Proc. VOL. II p. 365
1968 Proc. VOL. I p. 117
1968 Proc. VOL. II pp. 503-506
2. To Make Recommendations, Including Drafting of Model Legislation if Necessary, to Regulate Long Term Credit Insurance (D2) Subcom. Report (Mtg. #20)
(Formerly (D3) Subcom.)
Hon. William G. Walton, Chm., Wyom.
Refs: 1967 Proc. VOL. I pp. 105-108
1967 Proc. VOL. II p. 365
1968 Proc. VOL. I pp. 119-120
1968 Proc. VOL. II pp. 507-512
3. To Make Recommendations, Including Drafting of Model Legislation if Necessary, Dealing with Unauthorized Insurers (D3) Subcom. Report (Mtg. #24)
(Formerly (D4) Subcom.)
Hon. James R. Faulstich, Chm., Oregon
Refs: 1967 Proc. VOL. I pp. 216-217
1967 Proc. VOL. II pp. 365-366
1968 Proc. VOL. I p. 121
1968 Proc. VOL. II pp. 513-556
4. To Study Procedures of Reorganization, Receivership and Liquidation (D4) Subcom. Report (Mtg. #28)
(Formerly (D5) Subcom.)
Hon. John F. Bolton, Jr., Chm., Ill.
Refs: 1936 Proc. pp. 30-32 (Uniform Liquidation Act—14 States & Puerto Rico)
1967 Proc. VOL. I p. 388
1968 Proc. VOL. I p. 123
1968 Proc. VOL. II p. 557

5. To Study Administration Experience of Proxy Regulations and Insider Trading Regulations and Make Recommendations (D5) Subcom. Report (Mtg. #21)
(Formerly (D6) Subcom.)
Hon. David O. Maxwell, Chm., Pa.
Refs: 1965 Proc. VOL. I pp. 155-170 (Proxy Regulations)
1965 Proc. VOL. I pp. 175-178 (Stockholder Information Supplement)
1966 Proc. VOL. I pp. 111-120 (Insider Trading Regulations)
1966 Proc. VOL. II pp. 389-394 (Summary and Suggested Revisions)
1968 Proc. VOL. I p. 111
1968 Proc. VOL. II pp. 559-567
6. Future Studies:
A. Uniform Agents License.
B. Model Bill Covering Unsecured Notes.
7. Any other matter submitted for consideration.

LAWS AND LEGISLATION (D) COMMITTEE Report
(Mtg. 41)

The Standing (D) Committee on Laws and Legislation met at 10:30 A.M. in Los Angeles in the Santa Monica Room of the Century Plaza Hotel.

The reports of the following Subcommittees were presented.

It was moved that the report of the (D1) Subcommittee To Draft Model Legislation Relating to Insurance Holding Companies be received and adopted by the Committee with the additional recommendation that the Committee express itself as preferring the draft as prepared by the (D1) Subcommittee and the report with the additional recommendation was duly adopted by the Committee. It was then moved that the report be adopted by recommendation as the interim NAIC suggested bill. Motion was duly received and adopted.

The report of the (D2) Subcommittee To Make Recommendations, including drafting of Model Legislation, if necessary, to Regulate Long Term Credit Insurance was received and adopted by the Committee. The (D2) Subcommittee was discharged.

The report of the (D3) Subcommittee To Make Recommendations, including drafting of Model Legislation, if necessary, dealing with Unauthorized Insurers was received and adopted by the Committee.

The report of the (D4) Subcommittee To Study Procedures of Reorganization, Receivership and Liquidation was received and adopted by the Committee. The Subcommittee was discharged.

The report of the (D5) Subcommittee To Study Administration

PLENARY SESSION - 2

The Second Plenary session convened on the afternoon of December 5, 1968, Hon. Charles R. Howell, President, presiding.

PRESIDENT HOWELL: Gentlemen, we are a little bit late. In looking around the room, it appears to me that a quorum is present. I hope nobody wants to make a point of order on it. I do want to call this Plenary session to order and, as I say, I believe it is obvious that a quorum is present here.

Any Commissioners who have departed or are not going to be here and want to leave a letter of authorization for someone from their Department to act in their place in case any controversial vote comes up on anything, in the absence of such a letter supplied to me, they would not be permitted to vote. Joe Hunt of Oklahoma did file his letter of authorization for his young deputy to vote, and they will be recognized.

PRESIDENT HOWELL: The next item on our agenda is report of the Laws and Legislation (D) Committee meeting. Commissioner David M. Pack, Chairman of this Committee, will give the report.

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It was moved that the report of the (D1) Subcommittee To Draft Model Legislation Relating to Insurance Holding Companies be received and adopted by the Committee with the additional recommendation that the Committee express itself as preferring the draft as prepared by the (D1) Subcommittee and the report with the additional recommendation was duly adopted by the Committee. It was then moved that the report be adopted by recommendation as the interim NAIC suggested bill. Motion was duly received and adopted.

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The report of the (D3) Subcommittee To Make Recommendations, including drafting of Model Legislation, if necessary, dealing with Unauthorized Insurers was received and adopted by the Committee.

The report of the (D4) Subcommittee To Study Procedures of Reorganization, Receivership and Liquidation was received and adopted by the Committee. The Subcommittee was discharged.

The report of the (D5) Subcommittee To Study Administration

Item 5. Signature.

The statement shall be dated and signed in the following manner:

I certify that the statements made in this statement are true, complete, and correct, to the best of my knowledge and belief.

.....
 (Date) (Signature of participant or authorized representative)

COMMISSIONER PACK: Mr. Chairman, I move the adoption of this report.

PRESIDENT HOWELL: Thank you. You have heard the report given by the Chairman of the Laws and Legislation (D) Committee. Does someone care to second this motion?

COMMISSIONER WORTHINGTON: Second.

PRESIDENT HOWELL: It has been moved and seconded that the report be adopted. Is there anyone who would care to be heard on this report? Hearing or seeing no persons — Commissioner Neff would like to make a statement.

COMMISSIONER NEFF: In this particular area, the matter came up as to the new industry committee for the holding companies, the (D1) Committee, and, for purposes of making sure, Mr. O. L. Frost will be the chairman of the new committee, and it will consist of Mr. George H. Kline, Edmund J. O'Brien, Mr. Richard J. Baker, Mr. John H. Filer, Mr. Howard B. Woodside, Mr. Davidson Sommers, Mr. J. Harry Cross and Mr. R. P. J. Cooney, and they may consider themselves appointed.

In addition, I have asked — well, let me make one statement before that. I would like to ask this group or so move this group to permit the (D1) Subcommittee to request the office in Milwaukee to prepare a document showing the differences between the Industry Bill and the one which we have; and, if this is approved, then I will see it is personally circulated to all persons.

In addition, the industry group has prepared a document showing the differences and I will personally see that this is also circulated to every commissioner. However, I have asked Mr. O. L. Frost to read a statement and, if this is all right with everyone, I think they should be given an opportunity to state what they think the differences are, or what in their judgment the differences are between these two bills.

CHAIRMAN HOWELL: Thank you, Director Neff. Mr. O. L. Frost will be recognized at this time to make a statement.

MR. FROST: Thank you, Mr. Chairman. My name is O. L. Frost. I am Vice President of the Occidental Life Insurance Company, and have been given the duty of presenting a statement on behalf of the Industry Advisory Committee on holding company legislation.

Gentlemen, as you have just heard, the Laws and Legislation Committee, at its meeting yesterday, considered the subject of holding company legislation but many of the Commissioners and industry representatives have not yet had an opportunity to compare the Industry Advisory Committee suggested Bill and the Commissioners' (D1) Subcommittee Interim Draft. Therefore, we believe it necessary to delineate the major areas where the Commissioners' (D1) Subcommittee draft is materially different from the Advisory Committee Bill and also to briefly explain why the Advisory Committee cannot accept these differences. Only by delineating our differences in this way can an intelligent decision be made as to the course of action to be followed in the several states.

Many months of work went into the Advisory Committee Bill. The Commissioners' (D1) Subcommittee only had a few days here in Los Angeles to study that draft. The Laws and Legislation Committee received these drafts of legislation yesterday morning at the start of the Committee meeting. I recite these details only to point out the pressures of time under which we all operated. It is, therefore, with particular sincerity that I say that any comments made here should be taken in a constructive sense. This is a difficult problem which could have considerable effect on not only the insurance industry but substantial segments of the American economy.

Now, let me simply point out a few of the major differences . . . let me caution, the (D1) Subcommittee draft is based upon the Advisory Committee's Bill. Whenever a draftsman takes a long and complex bill and makes changes within the structure of that bill, results unexpected to the draftsman are likely to occur. We think that may have happened here.

Let us look at these major areas of difference. The Advisory Committee Bill is designed to provide you with a system for supervising insurance holding company activities. It does this through an interrelated system of registration, reporting and through control of acquisitions of insurers. It is contemplated that control will be exercised by the state of domicile unless that state fails to exercise effective supervision. If the state of domicile is ineffective, then the proposed legislation may be enforced by any state in which the insurer operates. The Commissioners' (D1) Subcommittee draft would impose control by each state of each insurance holding company. For example, this means that each company in your state would be subject to regulation by each state in which it does business. Let us recognize that an insurance holding company is any person owning 10% or more of an insurer; it is a non-insurance corporation owning 10% of an insurer; it is any kind of insurance company having the 10% ownership of another insurer; and it is also a mutual insurance company owning 10% of any other corporation.

This means, under the Commissioners' (D1) Subcommittee draft, you will receive a flood of registrations and continuing reports of transactions on all of these holding companies in America if the insurance company does business in your state. The effect of this provision is magnified by a further provision that requires any transaction, large or small, to be included in these continuing reports. This can very well result in your processing thousands of minor transactions. The (D1) Committee draft does empower the Commissioner to relieve an insurer of the burden of reporting a transaction, but apparently the Commissioner must first examine the transaction. Would it not be better to center these reports in the office of the domiciliary Commissioner and limit these reports to material transactions.

Another concern within the Advisory Committee is the desire of mutual companies to achieve fuller competitive equality, particularly with competition outside of the insurance industry. Let me simplify, obviously this desire to diversify produces an investment problem as the mutual company creates downstream subsidiaries. The Advisory Committee handled this investment problem by limiting the amount of money which would be invested in subsidiaries. Oversimplified, this limit was set at 5% of assets or 50% of surplus. The Advisory Committee recognized there was one very respectable school of thought which felt these downstream subsidiaries should be limited to businesses ancillary to the insurance business. This raises a difficult question of definition of ancillary. It may be defined in terms of the internal operational function of an insurance company, for example, a computer firm. Or, ancillary may be defined in terms of the ultimate business function of an insurance

company, such as providing family security. There are strong proponents for both approaches to the definition. The Advisory Committee felt, with the limits under its investment formula, insurance management should be given latitude in this area. We felt management investment judgment, with these restrictive limits, would result in the soundest investments with the best rate of return, flexibility and safety.

This is no time to go into a detailed discussion, but the Commissioners' (D1) Subcommittee draft greatly changes the test of how much money may be invested in subsidiaries. Under their draft, all investments in subsidiaries would be disallowed in calculating the amount available for additional investments in other subsidiaries. This is true even though existing subsidiary investments might be insurers or extremely liquid assets, such as stocks traded on a national securities exchange. This penalizes investment in successful subsidiaries.

The Advisory Committee further recognized a recurring problem involving purchases of insurers. Some corporate complexes are using tender offers, in some cases, to acquire control of insurance companies against the will of the companies' management and without any type of clearance with the Insurance Commissioner. We took a page from the most recent federal securities legislation and required acquisitions of insurers to be cleared with the insurance department to protect the interests of the policyholders and the public. The Commissioners' (D1) Subcommittee draft, however, extends these requirements to apply to any change in control in the parent company. Let us remember, control is defined as 10% ownership. We are deeply concerned with the possible impact of this provision on many large corporate institutions in America. Our quick examination indicates that it could apply to such well-known institutions as General Electric, Westinghouse, Ford Motor Company, J. C. Penney, General Motors, Greyhound, IT&T, Transamerica, plus changes in the trustees of pension and profit-sharing plans of many large institutions. Thus any change in control of these corporations would require prior clearance from each insurance department in which its insurance subsidiary does business. This requirement of approval by 50 states to transfers of stock in such corporations can adversely affect the marketability of their stock. Thus, market value will be adversely affected. The impact on the market values of stock owned by the citizens of your state can be tremendous, particularly where the 60 day prior notice of change in control can be extended indefinitely, as the Commissioners' (D1) Subcommittee draft provides.

This requirement also creates an overlapping jurisdictional problem at the state level with corporation commissioners and secretaries of state, plus an overlap at the federal level with the multitude of federal control agencies, such as the Securities & Exchange Commission, Federal Communications Commission and the Civil Aeronautics Board, etc.

There are many other problems involved with the changes made in the long, complex Advisory Committee Bill. Changes and deletions from the Advisory Committee Bill have produced a (D1) Subcommittee draft that has serious technical deficiencies. Deficiencies that, in one case, subjects certain persons to regulation that was never intended by anyone; that, in another instance, might well violate due process provisions of the Constitution; and, in yet another case adversely affects the ability of the regulator to achieve his desired objective. Let me simply give a few examples: through a change in the definition of control, many persons who occupy official positions in insurers who are not even in a holding company situation would be regarded as the holding company. For example, the secretary of a mutual insurer to whom proxies run by reason of his official position must register even though his company has no subsidiaries or any affiliation with any other corporation.

In considering adequacy of surplus for investment in subsidiaries, the Industry requirement of adequacy of reserves was dropped. A portion of the "findings" was also deleted, making them technically deficient because they only refer to half of the bill: one should use all or nothing. A word about penalty provisions would seem in order. The Advisory Committee Bill did not include penalty provisions because we contemplated fitting our recommended bill into the existing insurance codes of the various states and using the existing penalty provisions in those various statutes. We have offered to go forward and develop specific penalty provisions, if desired by the Commissioners. The penalty provisions contained in the Commissioners' (D1) Subcommittee draft are comprehensive but are technically quite deficient in failing to provide federal constitutional due process guarantees. For example, there is no provision for notice or hearing prior to imposing a monetary fine or even imprisonment. We are sure the Subcommittee had no intentions whatever to violate these basic guarantees. There were many other technical changes which may or may not have been intended.

Let me refer to some other deletions. For some reason, the Commissioners' (D1)

Subcommittee draft omits the recommended provisions for preferred stock or debt obligations of a subsidiary. We believe such investment is sound and, in some cases, necessary. For example, the subsidiary's preferred stock or bonds might be convertible and its ownership, in some degree, could be necessary to maintain control. In addition, a provision allowing stock and mutual companies to use surplus notes was deleted. This was intended to give parity to stock and mutual insurers. A provision for "all-lines" charters was deleted. The Advisory Committee included this item since it would simplify diversification within our industry.

The Industry Advisory Committee has worked diligently to produce a model bill that confers upon state regulatory authority appropriate power to effectively control abuses that may develop, thereby adequately protecting public and policyholder interests, without artificially or unreasonably burdening insurers in their ability to respond to demands of the market place. We believe our recommended legislation achieves this objective. The Industry, of course, stands ready to continue its efforts to be of assistance to the Commissioners in this area.

Mr. President, we thank you for this opportunity to present our comments. May we respectfully request that this statement be received and included in the official proceedings of the NAIC.

Perhaps I should take 15 seconds and make a suggestion. When we started out on this exercise, it was my personal viewpoint, not the viewpoint of the Committee but my personal viewpoint, that we really didn't need any legislation. After talking to the various Commissioners, and particularly the Chairman of the (D1) Subcommittee, Director Neff, I must confess that I changed my mind and I think it is obvious that the entire Advisory Committee changed its mind. They do feel that good, sound legislation is necessary and we will certainly do everything we can to work towards it. Thank you.

PRESIDENT HOWELL: Thank you very much, Mr. Frost, for your well considered statement.

Is there anyone else who would like to be heard on this item at the present time?

T. C. V. SEDGWICK: The only comment I would have to make, I am not really an official part here, is in connection with that 10% control. You can't control very much with 10%. Now, perhaps other considerations come in and there is some reason for it but to me, working with companies and their finances and their controls, 10% doesn't control very much. That seems a very, very low figure to put on that piece of paper.

PRESIDENT HOWELL: Thank you, Mr. Sedgwick.

Would anyone else like to be heard on this committee report? Ben Neff, do you have any motions to make at this point?

DIRECTOR NEFF: I think there is a motion on the floor.

PRESIDENT HOWELL: The motion on the floor is for the adoption of the report. There were two requests that I believe I heard, one that the report of the Industry Advisory Committee as given by Mr. Frost be attached to the report. If there is no objection, I believe that could be done. And there was a request, I believe, from Director Neff.

DIRECTOR NEFF: We can't make it a part of it, Charlie.

PRESIDENT HOWELL: No, but we can attach it. And there was a request by Director Neff that certain assistance of the Central Office be afforded and I see no reason why there should be any objections to that request being carried out. Therefore, we are now at the position of taking a vote on the adoption of the report. It has been moved and seconded that the report of the Laws and Legislation Committee be adopted. All those in favor, say "Aye." Opposed, "No." It is so ordered.

I have one more authorization for voting submitted by Commissioner Short of Delaware, designating Mr. Frank J. De Geeter, Jr., Deputy Commissioner, to represent him in any official capacity in voting at this session. This is the most fancy authorization I have received. It is subscribed and sworn to, with a gold seal and everything, and sworn to before a notary public, and we'll receive that.