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NAIC DECLINES TO ACT ON LIFE INSURER CAPITAL AND SURPLUS RELIEF PROPOSALS

Jeremiah P. Sheehan

The National Association of Insurance Commissioners (NAIC) has denied the request the American Council of Life Insurers (ACLI), a life insurer trade association, to adopt proposals intended to provide capital and surplus relief to life insurers on their December 31, 2008, financial statements. (This issue was previously discussed in the January 6, 2009, edition of InsuranceLaw@Manatt.)

The proposals had been referred for consideration to the NAIC Capital and Surplus Working Group, which held a public hearing on January 27, 2009. At that time, testimony was presented by the ACLI in support of the proposals, which were strongly opposed by consumer groups. The Working Group subsequently issued a report, indicating that six of the original nine requests could be addressed within the necessary time frame for reflection in December 31, 2008, statutory financial statements. Four of the six were recommended with conditions or modifications. This report was referred to the NAIC Executive Committee, which met via conference call on January 29.

Following discussion, the Committee voted not to adopt the recommendations of the Working Group Task Force. There was no vote on any individual recommendation. The discussion in connection with the vote focused on necessity of providing emergency relief on 2008 insurer financial statements in lieu of following the normal review process (which in the case of several of the items is likely to result in implementation on a prospective basis). Consumer representatives had strenuously objected to the fast-tracking of these items, as well as to what they perceived as a weakening of regulatory capital standards during the current financial crisis. Committee members indicated that the

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existence of industry wide emergency conditions justifying the proposed action had not been sufficiently demonstrated. It was emphasized that significant problems relating to individual insurers could be addressed on a case-by-case basis by the applicable state insurance departments.

The proposals will ultimately be referred to NAIC committees and working groups for review and analysis as regular agenda items. An interesting side issue is whether and to what extent the NAIC's action will impact upon proposals for federal regulation of insurance. During the Executive Committee's discussion of the proposed emergency relief, it was noted that the insurance industry was in better condition than other areas of the financial services sector due to strong regulation of insurer solvency at the state level. On the other hand, it could be argued that a single federal regulatory agency could deal directly with such issues without the need for committee deliberations. (Interestingly enough, the ACLI itself is a supporter of optional federal charter legislation.)

We will report on significant future developments on this issue.

FOR ADDITIONAL INFORMATION ON THIS ISSUE, CONTACT:



Jeremiah Sheehan Mr. Sheehan has had extensive experience in insurance and regulatory matters and has represented a broad range of clients in connection with the financing, acquisition and regulation of life, health and property-casualty insurers and related entities. He has represented clients on a wide range of matters before state insurance departments. He has also advised clients in connection with product development, financial and market conduct examinations, investment law issues, insurance holding company transactions, formation and licensing of insurers and related entities, reinsurance matters, insurer liquidation and rehabilitation proceedings and insurance agency and broker operations.