

## *Jim's Perspective...*

### Current Insurance Regulatory Issues

Recently, I attended a CPCU webinar that involved a discussion of important regulatory issues that the NAIC is now studying. Below is a summary of some of the current issues before various NAIC committees.

#### NAIC Insurance Data Security Model Law

It is estimated that by the end of the year, 23 states will have adopted the NAIC Insurance Data Security Model Act (Also referred to as the Cybersecurity Model Law). Development of this Act was a little different because it involved not only insurance professionals, but also cyber experts. There are three basic requirements in this model law:

1. Licensed insurance entities must develop a cybersecurity program.
2. Insurers, and all other regulated licensees, must notify the state insurance department if there is a cyber breach.
3. The licensed entity must designate a specific person to be in charge of the cybersecurity program.

Cybersecurity within an insurance company is routinely monitored or reviewed during the state regulatory financial exam of an insurer. Every five years the NAIC conducts a regulatory accreditation process of each state department of insurance. One objective of this accreditation process is to make sure each state insurance department has adopted or implemented all NAIC approved rules, regulations and procedures for regulation of insurance. It appears that this accreditation process may result in state insurance regulatory agencies adopting more cybersecurity regulations or laws. Chapter 77 of Nebraska's insurance regulations provides for the safeguarding of consumer information held by domestic insurance companies and in some limited cases, agents. Insurers must have a written information security program for the protection of customer information. It is not clear to me whether the NAIC Insurance Data Security Model Act might require an update of Chapter 77. I am sure the Nebraska Department of Insurance, has been, and is currently, still reviewing all of this. From the webinar discussion, it does seem that cybersecurity is a very hot topic amongst regulators today.

#### Big Data Working Group

The NAIC Big Data Working Group committee recently completed a survey of private passenger automobile insurance insurers. The main purpose of the confidential survey was to develop a better understanding of what information, or perhaps, types of big data, auto insurers are using to set rates for auto insurance. This committee will conduct another survey this summer related to homeowners insurance. Later, there will be a survey related to life insurance.

All of this activity is related to the use of artificial intelligence and machine learning in the process of underwriting and rating of risk exposures in insurance. With regard to auto insurance, once upon a time, all insurers used make, model and age of vehicle, age of driver, and the motor

vehicle record of the driver, to primarily set the cost of an auto policy. Today, there are all sorts of gadgets inserted into the operating system of an automobile that can be used to establish a rate and cost for an auto policy. Admittedly, I am the last one you want to consult about computers and technology, but I can at least appreciate to some extent how much things have changed in the process of underwriting and rating risk exposures.

The other very interesting issue this committee is considering, is to regulate insurer use of AI and ML based upon a set of “principles” rather than on specific rules or regulations. AI and ML can be developed every day by every insurer, and each insurer can use this in specific ways that another insurer may not. Because this technological frontier is so vast and unique within the insurance industry, it is kind of impossible to regulate all insurers with a set of specific rules or regulations that apply equally to all insurers. So a principals-based method of regulation can be better utilized to manage and monitor the use of AI and ML in the insurance marketplace. Regulation of insurance on a principals-based system rather than by specific rules and regulations has been a source of argument and heated debate around the world for many years. I remember that in the mid-1990’s the European Union adopted Solvency II which was essentially a principals-based method of regulating insurance in the EU. It made the EU insurance marketplace incredibly competitive because any insurer could sell insurance in the EU and not have to get licensed in each country. The United States was, and still is, extensively criticized around the world because for an insurer from another country to compete and sell its insurance products across the U.S., the insurer must get licensed in each state. It is argued that this is very anti-competitive. For many years, there has also been an international sentiment, that if the U.S. requires all this licensing to do business in America, then the EU and the rest of the world ought to set up a similar system for U.S. insurers to do business around the world. It will be very interesting to see how things develop on this issue.

#### Financial Standards Committee

This NAIC committee is working on a “commutation plan” related to how regulators manage the operations of an insurer that has become insolvent. There is discussion of adopting an insurer business transfer statute that creates a new entity to which the insolvent insurer’s business is transferred in order to complete liquidation of the company. This would also involve state insurance guarantee fund operation.

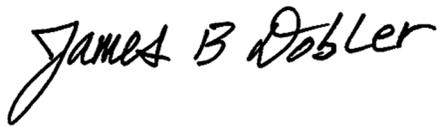
#### Climate Resiliency Committee

I am not surprised to see the NAIC study climate and weather-related issues. Historically, because of the hurricane risk exposure in Florida and other gulf-coast states it was certainly necessary to monitor climate and weather in this area, as it was also necessary to assess climate and weather related issues that escalated the wildfire risk exposure in California. But today, we see extensive wildfire destruction in New Mexico, Arizona and Nevada. I am concerned too about what is going on in Nebraska. This week, York County was slammed by another round of severe thunderstorms that included large hail and damaging wind. Last week, this county sustained a similar weather event. McCool Junction had many power polls knocked down. York had many homes with broken windows according to newspaper reports. I understand there is also extensive damage in Seward County. In addition, there have been other major storms in

southeast Nebraska. I am sure there will be a lot of roof hail claims as a result of the last two-weeks of storms. Nebraska has also suffered losses related to wildfires. The CPCU webinar participants agreed that the property and casualty insurance industry is ahead of most U.S. businesses in studying and dealing with this issue, but it is an ongoing concern for regulators.

One important aspect of climate or weather-related loss costs, is that loss costs can reach a point where the exposure is no longer insurable in the private marketplace. Then, states create a government-run insurance mechanism to cover the risk exposure. Florida and California already have state-operated insurance entities for some property and casualty risk exposures. One P&C insurer concern related to all of this, that has been discussed for many years, is that as the government enters and expands its involvement in the insurance marketplace, ultimately some will argue that insurance is a citizen benefit that should be completely provided to all people by the government, and it should no longer be something handled by private business or corporate America. This was all hotly debated at the time of the adoption of the federal Affordable Care Act. It will be interesting, to say the least, how this philosophical issue develops with the seemingly increased climate-related risk of loss.

As I recently mentioned, insurance affects peoples' lives every minute of every day. The insurance marketplace is in a constant state of data monitoring and data collection. Insurance is a financial services product always in an environment of change. It is obviously a never-ending challenge for state regulators to manage this product for the benefit of the insurance consumer and I can appreciate why the NAIC is studying the issues list above.

A handwritten signature in black ink that reads "James B. Dobler". The signature is written in a cursive style with a large, prominent "J" and "D".

Jim Dobler, CPCU

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Questions or Comments? Please email [jbdobler@outlook.com](mailto:jbdobler@outlook.com)