

INTERIM JOINT COMMITTEE ON BANKING AND INSURANCE

Minutes of the 5th Meeting of the 2019 Interim

December 17, 2019

Call to Order and Roll Call

The 5th meeting of the Interim Joint Committee on Banking and Insurance was held on Tuesday, December 17, 2019, at 10:00 AM, in Room 154 of the Capitol Annex. Representative Bart Rowland, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Jared Carpenter, Co-Chair; Representative Bart Rowland, Co-Chair; Senators Tom Buford, Rick Girdler, Morgan McGarvey, Dennis Parrett, Albert Robinson, John Schickel, and Reginald Thomas; Representatives Terri Branham Clark, Deanna Frazier, Jim Gooch Jr., Kathy Hinkle, Derek Lewis, Michael Meredith, Wilson Stone, and Ken Upchurch.

Guests: Greg Mitchell, Insurance Industry Group Chair, Frost Brown Todd; Dan Tafel, Vice President of Business Development, Hornbeam Insurance Company; Chris Nolan, Assistant Director, MML&K Government Solutions; Dusty Brighton, Turo, Inc.; Lisa Pierce, Regional Counsel, Allstate Insurance Companies; and Luis Rizo, Group Controller, Enterprise Holding Bluegrass Group.

LRC Staff: Jessica Sharpe, Breanna Miller, and Dawn Johnson

Minutes

A motion by Representative Upchurch and second by Representative Gooch to approve the minutes of the November 20, 2019, meeting carried by voice vote.

Extended Warranty/Service Contracts

Referring to a recent article in *Warranty Week*, Greg Mitchell, Insurance Industry Group Chair, Frost Brown Todd said Louisville has become a major hub for the warranty industry. He discussed the difference between warranties and extended warranty or service contracts and explained that service contracts are treated by most state laws as a type of quasi-insurance. Historically, consumer service contracts include home and motor vehicle contracts. There is some uncertainty with the regulation of commercial service contracts.

Mr. Mitchell discussed parties involved in a service contract – service contract providers, sellers, and administrators. The provider, or obligor, issues the service contract,

is responsible for honoring the obligation in the event something happens to the product purchased, and may be required to register with a regulatory agency. The entity selling the product is the seller. The administrator is the entity responsible for administering claims. Most states impose financial security requirements for service contract providers. There are three financial security options — obtaining a contractual liability insurance policy (CLIP) from a regulated insurer, which is the safest option, maintaining a funded reserve account, or maintaining a high net worth, an option for larger companies.

Mr. Mitchell said Kentucky has not adopted the 1997 Service Contract Model Act. A number of states have adopted various provisions of the act. He said Kentucky has certain regulatory provisions in code, but not enough. Several states have improved upon the model act provisions to expand the scope of what a service contract can do. With Kentucky being a major hub in the service contract industry, it is well positioned to innovate service contract laws.

Dan Tafel, Vice President of Business Development, Hornbeam Insurance Company said the warranty industry has expanded and now covers a broad range of products. He explained how a small third-party administrator company based in Louisville was purchased by AIG in 2011. AIG now runs some of the world's largest warranty programs, including AppleCare. The warranty and service contract industry in Kentucky has grown significantly to include companies like AIG, Geek Squad City, GE, and approximately 15 other companies. Expertise exists in Kentucky to foster a strong warranty insurance business and that the legislature has an opportunity to partner with the industry to help create unique products. Kentucky's regulatory sandbox insurance law is an opportunity to create innovative new products, lead the industry, and grow its business. He discussed an example of how the industry's business is growing and stated that blurred lines between what would be covered by consumer warranty and what would be covered by insurance need to be addressed.

Responding to Chairman Rowland's questions about licensing and education requirements in Kentucky for these types of products, Mr. Mitchell said there are licensing requirements to sell some types of warranty products, but that some of the requirements could be improved upon. Kentucky did not adopt the model 1997 law, but rather has a simple provision that requires the company putting their name on the terms and conditions of the extended warranty to provide some form of financial responsibility. For example, in the home warranty space, the minimum amount is \$50,000. Chairman Rowland said the amount was low. Mr. Mitchell said the amount may be considered appropriate to ease the burden on entrants, but it is probably something that should be reviewed. Chairman Rowland asked if the committee could expect specific requests during the upcoming session. Mr. Mitchell said yes, the industry is putting together some ideas, including discussion about whole home coverage issues. The idea is to provide a framework of regulation, including for commercial areas, which allows companies to innovate, but with

the protections of financial responsibility and some consumer protection provisions, especially on service times.

Representative Stone asked if there was a way to prevent companies from overriding no-call lists. Mr. Tafel said regulation has weeded out some of the bad players. They are trying to keep the right regulations and provide the right framework for those who do bring value to the table. Representative Stone said it would be better if the governance came from within as opposed to being regulated.

Senator Buford said in previous years the legislature discussed regulating service contracts and insurance, but then a Kentucky appliance company dissolved and their insurance and service contracts became no good after dissolution. Sometimes consumers who purchase service contracts find out they have very limited coverage when they make a claim. He said the National Association of Insurance Commissioners' (NAIC's) Model has received mixed reviews, with several states making constant changes. Senator Buford asked if there is a way to protect the consumer in the event a company dissolves. Mr. Tafel said there is a low bar for home warranty companies to get into the business in Kentucky. He suggested that CLIPs could address the issue because they provide for a claim to the insurance company and the consumer could complain to the state insurance commission if the insurer is not making full on their obligation. Senator Buford asked if this meant we require anyone selling a service contract or a warranty to obtain that insurance. How would the consumer know? Mr. Tafel said there are regulations that allow a CLIP to be named in the terms and conditions of the service contract. Chairman Rowland said additional regulations, licensing requirements, and government oversight may be needed.

NCOIL Travel Insurance Model Act

Greg Mitchell said travel insurance is a specialty line insurance and that licensing in this area nationally leaves a lot to be desired for purposes of uniformity. Several years ago, the National Council of Insurance Legislators (NCOIL) created a regulatory framework that provided a better system of regulation for limited lines travel agents. He discussed the type of travel agents this framework applies to and stated that these agents did not need to get a full product license because it was impractical for what they do. The framework allows the agents to offer travel insurance for purchase, but not talk about the coverages and other things. Kentucky was the first state to adopt that model act, under the auspices of former Representative Damron being the president of NCOIL, and it has since been implemented and adopted in almost every state. Mr. Mitchell said the model act has been very successful in creating a definition of travel insurance and excluding certain international travel medical plans.

Mr. Mitchell stated that growth in the industry and a number of regulatory questions arising created a need for an update, which was adopted in 2018. He said we are looking to the Kentucky legislature to be one of the first to adopt the amended model act, which deals with the rules of the product. It treats travel insurance as it has typically been treated,

although not codified, as inland marine insurance. This is a catch all area in insurance that deals with things that move or are in transit. It is very difficult for insurance companies to know which state laws apply for travel insurance. This model act is attempting to provide clarity as to the form, filing, and rates for travel insurance. Mr. Mitchell said that travel insurance is also unique because it typically includes assistance services, which is not insurance. These services include location assistance if you get lost in another country and nurse hotlines that will direct you to facilities. The model act allows insurance and noninsurance products to be packaged into a bundle so you can buy it for one price. Some states will not let you do this. Mr. Mitchell discussed some of the model act's consumer protection components, including disclosing the price of assistance services and free look periods. Mr. Mitchell said that the NAIC formed a travel insurance working group that is looking at these issues as well. He said the model act also addresses certain areas, such as baggage, trip cancellation, and evacuation during a trip due to an accident or illness, including repatriation of remains. He said some states have already adopted the changes and some have pending legislation under consideration.

Senator Thomas discussed a recent issue he had dealing with a travel insurance claim. He said the flight insurance program is broken and needs to be fixed. Flight insurance should be no-fault. If for some reason plans change and a consumer has to rearrange his or her flight, why shouldn't that be sufficient to cover the ticket cost? Mr. Mitchell said there is "cancel for any reason" coverage and "cancel for a specified reason." Senator Thomas said this should be disclosed before purchasing coverage. Mr. Mitchell said the new model act addresses disclosure provisions.

Responding to Senator Girdler's question as to whether the travel agent is responsible for this disclosure, Mr. Mitchell said the insurer is responsible for all disclosures. Senator Girdler asked if the travel agent was responsible for selling the product. Mr. Mitchell said, in Kentucky, an individual travel agent that sells the product would need to be licensed in some form. He explained two different ways to be licensed. Senator Girdler said, in this situation, you have no way of knowing whether the agent disclosed the type of insurance they are selling. Mr. Mitchell said the insurer is responsible for the distribution channel. If there was a misrepresentation, obviously, in both licensing systems, the agent would be responsible for being able to make sure they know what they are disclosing, how they are communicating, and what coverages are there or not there.

Representative Gooch said that there have been problems in the past with policies, like credit life and credit health, being sold without any underwriting until you actually have a claim, which results in the company doing rear end underwriting to find reasons not to pay the claim. He said that legislators have to make sure that the insurer is accountable for making sure that whoever is involved in that transaction understands the product and is meeting the needs of the consumer. Mr. Mitchell said there are very low consumer complaint rates in travel insurance and that he has personally witnessed travel insurance helping people who have had major catastrophes overseas. He said that the subject area

should be made as consumer friendly as possible, but in this licensing system, there are specialists in place to deal with international and domestic travel situations. In this space, there is an unusual distribution channel, with travel agents, cruise lines, and airlines. These are the very situations where you want to allow consumers to have the ability to buy travel insurance. He thinks and hopes the amended model act has a better regulatory landscape in order to be able to address things that have, possibly, been confusing. Mr. Mitchell reiterated that the complaint ratio is exceedingly very low. He said if he has the opportunity to bring the model back for consideration during session, he will present some statistics and other information to go into this a little deeper.

Peer-to-Peer Car Sharing

Chris Nolan, Assistant Director, MML&K Government Solutions, representing Allstate's Avail Program and Turo, Inc. said peer-to-peer car sharing, which deals in the sharing economy, has been an innovation that requires some regulatory oversight. As the sharing economy grows around the country, this is another industry that requires attention from state regulators nationally to ensure there is proper insurance and consumer protections.

Dusty Brighton, Government Affairs Representative, Turo Inc. said Turo is a California-based company that serves as a platform to connect hosts and guests who desire to share a car for a price. Mr. Brighton explained how the platform works. He said that Turo's presence in Kentucky is growing. There are over 850 hosts along with 34,000 registered users. Turo is not a rental car company. They partner with Liberty Mutual Insurance to ensure that both hosts and guests have insurance coverage and that state insurance laws requiring minimum insurance coverage are met.

Lisa Pierce, Regional Counsel, Allstate Insurance Companies stated that the Avail Company, owned by Allstate and formerly known as Drift, is a slightly different business model than Turo. Avail is community focused. They are opening in airports and urban areas where there is a high concentration of people, but maybe not many people that own cars. Like Turo, Avail connects car owners with people who want to share a car for a few hours to a few days. They do provide insurance through Allstate. Avail plans to expand in the future, but always with a community base in mind.

Mr. Nolan said the sharing economy has been growing. It first started with Transportation Network Companies (TNC), like Uber and Lyft. These models set the stage for needing to have insurance coverage in the sharing economy. The peer-to-peer car sharing industry took a huge step in the process last week, when, at Chairman Rowland's direction, NCOIL passed, and made available to all 50 states, the Peer-to-Peer Car Sharing Model Act. Mr. Nolan discussed state laws in Maryland, Colorado, and Indiana that were the basis for the model act, which is the product of nearly two years of work. It brought all the stakeholders to the table to negotiate on the front end what would be needed in a regulatory framework. It represents the vast majority of interests of the insurance industry,

the car sharing industry, and the automobile manufacturers that see themselves in this space in the future, with partners like GM, Toyota, Ford, and others.

Mr. Nolan stated that this model only deals with the insurance and consumer protection angles. He said that there are taxation questions as well as airport licensing questions that will be dealt with later. As in ride sharing, he stated that the model act determines start/stop times, delivery times, outlines the processes and responsibilities of insurance coverage during the sharing transaction, and assures there are no gaps in coverage. The model determines insurance coverage for the platform, car owners, and drivers and how all of these coverages work together throughout the process. Much like ride sharing, once the car is out for sharing, it is considered by most insurance as a commercial transaction. This legislation walks through all the scenarios, ensures there is liability coverage for the car owner for bodily injury, property damage to third parties, underinsured/uninsured motorist coverage, and personal injury protection (PIP) coverage. It addresses disputes, lapses in coverage, state minimum insurance coverage, and consumer protection issues, like safety recalls. Since peer-to-peer car sharing has reached Kentucky, they will be looking to move some legislation this session.

Luis Rizo, Group Controller, Enterprise Holdings Bluegrass Group, the parent company for Enterprise Rent-A-Car in Kentucky discussed Enterprise's businesses, its operations in Kentucky, and the company's investment of over \$3 billion in technology over the last several years to better serve their customers. He said Enterprise was involved in the NCOIL meetings with Chairman Rowland to develop an insurance framework for this business model. In that scope, Mr. Rizo said that the NCOIL model recognizes that it is just one part of a comprehensive bill and that states may address other areas, like tax issues and airports. Mr. Rizo discussed what makes peer-to-peer companies different from what Enterprise does. He said the NCOIL framework, including the definitions, were for insurance purposes only and that other areas of the law, including taxation, airport, consumer protection, and other things, may be addressed without being bound by the definitions in the model act. Mr. Rizo discussed similarities between peer-to-peer car sharing companies and rental car companies. He said the peer-to-peer car sharing industry is essentially what Airbnb was to the hotel industry. Unlike Airbnb, which collects and remits sales and room taxes, peer-to-peer car sharing companies are not currently collecting or remitting any taxes or paying any fees to the airports. When an individual purchases a vehicle, they pay a six percent motor vehicle usage tax up front in the state of Kentucky, with the intent being that that purchase is largely for the personal use of the vehicle, not for a revenue-generating purpose. Peer-to-peer car rentals can increase the number of, and time that, vehicles are on the road. The renters of these private vehicles, therefore, should also contribute to the road fund the same as if they were renting a vehicle from a rental car company. Additionally, peer-to-peer car sharing companies, which gain access to the vehicles from the owners that put their cars on the platform, have paid no tax, yet they are profiting from that transaction. Rental car companies operate under the U-Drive-It Tax, which is the same six percent usage fee for personal vehicles, but rental car companies

collect the tax as the transactions occur. That money goes directly to the road fund. Kentucky should apply this fee to peer-to-peer car sharing transactions because a vehicle purchased for private use is now being used for a completely different purpose—a revenue-generating use. The fee would be applied to the transaction and ultimately paid by the renter. There would be no additional responsibility placed on the vehicle owner who already paid six percent usage tax upfront when they purchased the vehicle. Other states have passed laws regarding this. Enterprise is very supportive of the NCOIL model insurance language, but wants to make clear that the tax portion is important and they want to make sure that if a renter has two options to rent a vehicle, one company is not able to provide a price that does not include taxes.

In response to Senator McGarvey's question about the exclusions in a personal insurance policy for coverage, Mr. Nolan said that personal insurance policies may exclude coverage for peer-to-peer car sharing, which is why the NCOIL model act provides a platform for insurance coverage. Senator McGarvey asked what happens if you have rented your vehicle to someone, they are intoxicated and they wreck the car, would that be excluded under an insurance policy? Representative Rowland said if you are renting your car to me on the platform, it allows my insurance policy with any exclusions that might be in it to extend to your vehicle just like I was renting an Enterprise policy. We are not creating any new exclusions outside the personal auto policy, it just allows my coverage to transfer to the vehicle I am renting.

Senator Girdler discussed several insurance coverage scenarios with Ms. Pierce, Mr. Brighton, and Mr. Nolan. The participants discussed insurance coverage for rental activity when renting from a rental car company and using a peer-to-peer car sharing platform. Ms. Pierce and Mr. Brighton stated that the model law sets the floor for coverage at the state's financial responsibility minimum limits, but that Avail and Turo offer more coverage. They also discussed that people renting a vehicle may choose to use personal insurance, if the activity is not excluded under the policy, and that there are several levels of coverage that can be purchased by both hosts and owners to make sure they are covered. Mr. Nolan said that addressing all the scenarios discussed is why they have the model act. Under the model act, if there is a lapse in coverage or someone did not have coverage that was supposed to, the platform is the entity that provides the insurance in case of a wreck or claim.

Senator Thomas asked Representative Rowland to give him the names of some car sharing platforms for research purposes. Representative Rowland said Turo, Avail, and GetAround. Senator Thomas asked if this is offered in Tennessee and Indiana now. Mr. Nolan said car sharing platforms are operating in all states except New York. Representative Rowland said only a handful of states have passed legislation to license, regulate, and eliminate insurance coverage gaps. Senator Thomas asked are there requirements as to the functionality of the car, its maintenance, tires, engine operation. Mr. Brighton said yes, there is a 12-point inspection process. Representative Rowland noted that Section 5 of the NCOIL model bill is consumer protections and disclosures. These

were some concerns Enterprise wanted in the bill because they are required to do them as well.

In response to Senator Buford's question about how a host owner gets insurance for the car sharing transaction, Mr. Brighton stated that hosts can elect for a certain amount of insurance coverage, which with Turo, is a \$1 million basic insurance policy, just as you do with a rental car. Senator Buford asked what happens if the host doesn't notify the platform before sharing out the car. Mr. Nolan stated that you have to enter into a contract through the platform's app and that an owner's personal insurance policy is not the policy that will cover the car sharing. Representative Rowland said we are only talking about transactions that are taking place through the app, if you go out on your own and just start renting your car to your neighbor you had better call your insurance agent. Senator Buford asked how insurance companies would know that guests had a driver's license or a DUI in order to rate the policy and how instantaneous the car transfer was. Mr. Nolan said when he used the service, he was required to upload his driver's license to the platform before proceeding with the rental. Senator Buford asked if an insurance company would have to accept drivers regardless of the condition of their driving record. Mr. Nolan said the same issues are present when you rent from a rental car company.

In response to Representative Meredith's question about who is responsible for damages that exceed insurance coverage on the car sharing vehicle, Ms. Pierce said that it would be the platform, the owner, and the driver. You would go through the platform first, and then there may be additional insurance available from the driver on top of that. Representative Meredith, Representative Rowland, Mr. Nolan, and Ms. Pierce discussed additional insurance liability scenarios. Mr. Nolan said that liability will always start and stop with the person who is at fault. Ms. Pierce said while there has been a standard exclusion for "rides for hire" coverage, Allstate and other companies are going to quickly come on board and create endorsements for that usage. Owners would have insurance through the platform and could also add a rider or an endorsement to their personal policy to get that insurance to stack for additional coverage. Representative Meredith said he was concerned about protecting owners on these platforms and disclosing to owners their potential liability, stating that \$1 million is not that much in a death or dismemberment claim.

In response to Representative Branham Clark's question about what would happen when a guest driver opts to use their own insurance policy with a deductible, but doesn't pay the deductible, so that the host owner can't get their car fixed, Mr. Nolan said, since the guest driver's policy is primary, the car owner's deductible never comes to play and that the platform may be required to pay. Representative Rowland said the safeguard would be the host owner's option to buy and choose differing levels of coverage on the platform. Representative Branham Clark said the host owner may need to have overlapping coverage in this situation. Mr. Nolan said the enhanced options on car sharing platforms he has used provided coverage for car rental and out-of-pocket expenses.

In response to Representative Hinkle's question about the affect car sharing has on participants who have personal insurance with another company, Mr. Nolan said it would affect the premiums on a participant's personal insurance, but with car rental companies, you can choose to buy insurance from the company so that if you have a wreck, it does not reflect on the person's personal insurance. In response to Representative Hinkle's question about the affect for host owners, Mr. Nolan said that it would not affect the owner's personal insurance because it is the platform's insurance that covers an owner while the owner's car is being shared on the platform.

There being no further business, the meeting adjourned at 11:40 AM.