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BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON FINANCIAL SERVICES  
SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE  
AND GOVERNMENT SPONSORED ENTERPRISES

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Mr. Chairman, ranking member and members of the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, thank you for asking me to appear before you to discuss the issue of insurance regulatory modernization and to comment on the efforts behind the SMART insurance reform. My name is Gregory V. Serio, managing director of Park Strategies, LLC, a strategic planning and management consulting firm in New York City, and I served as superintendent of insurance for the State of New York from 2001 to 2005.

Modernizing insurance regulation is actually a multi-faceted undertaking, comprising the dual tasks of updating both insurance statutory standards and insurance regulatory standards, in addition to monitoring any case law development that also serves a role in the evolutionary process of the law. Insurance regulators and legislators both saw the need for modernization as a matter of culture rather than as a static event, and their representative groups, namely the National Association of Insurance Commissioners (NAIC), National Conference of State Legislatures (NCSL) and the National Conference of Insurance Legislators (NCOIL) undertook a series of initiatives over the past five years to help construct a coordinated approach to insurance reform.

Key to that effort was the creation of a productive dialogue with key members and committees in Congress—this Subcommittee and its members

chief among them—to forge consensus on the key areas needing reform and on the best way to achieve these mutually-desirable goals.

The underlying common thread among all players, federal and state, in the early stages of the insurance reform dialogue was to avoid replication of the awkward dynamics of the discussions leading up to the passage of the Gramm-Leach-Bliley (GLB) legislation, where it is universally agreed the state insurance legislative and regulatory community did not have an effective voice in that process. “Having a seat at the table” and, more importantly, a voice that would and could be heard, was a critical condition precedent to engaging in any discussions on insurance modernization; equally well understood, however, was that seats at the table had to be earned by a willingness to compromise for the larger good of meaningful insurance reform.

The quality of the insurance reform being considered in these early discussions was measured by the same standard that is still being applied to current deliberations: can adequate uniformity in laws and regulations be achieved so as to be able to justify the continued support of the state-based system of regulation. Uniformity was and continues to be the gold standard for measuring effective modernization of state insurance regulation, but it also is proving to be far more elusive a goal than many thought. Perhaps it is because some did not realize that the quest for uniformity within a state-based system would still require some states to shed some individual autonomy, perhaps it is because some erroneously thought that uniformity would mean deregulation when it clearly does not, or perhaps it is because at the end of the day there may not be the same level of commitment to modernization of insurance policy and practice as many had originally thought.

The ongoing dialogue between public policy makers and regulators must continue to focus on the issue of uniformity if we are to assure that laws keep pace with the rapidly changing dynamics of the domestic and international insurance markets. Uniformity is also a crucial element to the public’s better understanding of insurance, how it works and what they can and should expect from it. In the mobile society we live in today, the public should have reasonable expectations that the rules applied in one jurisdiction are reasonably similar to those in another jurisdiction, and that they are not forsaking adequate insurance regulatory protection simply because they have moved from point A to point B. Uniformity also allows regulators to more

smoothly and effectively join in joint regulatory actions, with less concern for nuances from one state to another that could undermine or complicate a multistate market conduct or financial examination. Indeed, uniformity would seemingly be the regulators' friend, allowing them to focus on examination, enforcement and consumer protection activities, and the enemy of the unscrupulous market player who arbitrages the vast variety in the bodies of law and regulatory environments by opportunizing the inconsistency in state laws for mischievous purposes.

It would be unfortunate if the efforts at regulatory modernization were hampered or stalled because of the inability to achieve consensus on uniformity of standards in certain critical areas. Inability to gain agreement on uniformity would also undermine all that which has occurred up to this point in the name of uniformity. The NAIC's accreditation program, the many model laws and regulations promulgated by the NAIC and NCOIL, the successful implementation of the GLB functional regulation of financial holding companies by state and federal authorities, and now the SMART legislative model put forward by the House Financial Services Committee are all examples of efforts taken individually and jointly by these entities to pursue greater uniformity in the statutory basis of state insurance regulation. Most notably, the insurance interstate compact, now passed by more than 15 states, a concept embraced by the NAIC, first championed by the NCOIL so many years ago and included within the SMART draft, provides the structural framework for assuring uniformity across the spectrum of issues over the long term.

To promote the concept of uniformity as the keystone to insurance regulatory modernization, the NAIC issued last year a "roadmap" (Modernizing the Insurance Regulatory Structure: The NAIC Framework for a National System of State-based Regulation) for regulatory improvement to serve as complementary document to Chairman Oxley's vision for improvement of the state-based system of insurance regulation, as he presented it to the NAIC at the Spring 2004 national meeting. Identifying points of consensus and earmarking points of disagreement allowed us all participating in the working dialogue to find areas of agreement quickly on the so-called "low-hanging fruit" and to concentrate our efforts on the more significant questions before us. Indeed, the NAIC, in its vision statement, expanded the perspective of the Chairman's view—at his invitation--by including provisions for greater financial surveillance and holding company

oversight, two issues that have taken on even greater importance given the events of the past several months.

The two roadmaps were and are not competing documents; they were and are the basis upon which consensus on national standards can be built. The SMART bill as currently drafted is a worthy progeny of the original roadmap initiatives. It contains many provisions that were originally in the NAIC vision statement. The SMART dialogue does not presume the SMART draft to be the final word on any issue, as serious discussion needs to be had on bellwether issues like rate regulation, the national partnership and the preemption powers. And state insurance regulators need to know that they are gaining the tools they need to effectively regulate the business of insurance in a new world order.

From the mutually constructive beginnings of these discussions and the valuable work products that have come from the open dialogue that has been the hallmark of this policy-making undertaking, though, there has been some erosion in the trust and confidence of all players with respect to the joint commitment to see this process through to what was once the articulated goal of all involved: “to modernize state insurance regulation in a manner that benefits both insurance consumers and industry participants” (from the NAIC roadmap document). Consequently, those who would prefer a more radical reform of insurance regulation (or those who envision a weakening of insurance regulation in the name of reform) now see new life being breathed into their efforts, largely on the strength of the notion that those who prefer to improve state-based regulation are a camp divided.

Uniformity of laws and regulation will allow the state-based system of regulation to become more effective and efficient in its enforcement of the law, as noted above. It will also allow the industry’s own efforts to improve regulatory compliance, internal controls and corporate governance to be more effective. The self-regulatory mechanism model now in place in the securities market and embodied effectively in the National Association of Securities Dealers, Inc. (NASD) can be greatly replicated and enhanced in the insurance sector through greater uniformity of laws and transparency in regulatory processes. Organizations like the Insurance Marketplace Standards Association (IMSA)—once challenged by regulators to provide greater disclosure of information and transparency of process--has shown that self-regulatory bodies can thrive in insurance, and even achieve regulatory efficiencies for its companies, as seen in recent regulatory

announcements in New York, Texas and Massachusetts and by the NAIC in an amendment to its market examiner's handbook accepting IMSA work products and analyses in the planning and execution of market conduct examinations. Greater uniformity in laws and regulations can make self-regulatory and best practices organizations like IMSA even more effective at promoting good market conduct by insurers and better at integrating their activities into the standard regulatory process.

Uniformity, where applied, has paid dividends. In producer licensing, the flow of information between states has given the United States, for the first time, a real national system of agent licensing regulation. At the same time, it has also made it infinitely easier for agents to expand beyond the borders of their own states, creating a far more dynamic insurance marketplace. The leveraging of technology by state insurance departments in this new regulatory paradigm has made life for agents and regulators even better still. In product development, as seen in the concentration of effort on life products in the interstate compact initiative and in the speed to market advancements made in New York, Ohio and elsewhere, real benefits from uniformity of process, if not policy, are being realized.

Uniformity of laws, regulation and process has been the stated goal of the NAIC since its origin over 130 years ago. It has been true to the quest, and has made particularly impressive strides over the past five years, from the Statement of Intent to the Reinforced Commitment to Modernization to the roadmap to the passage of the interstate compact legislation, producer licensing initiative and other uniform standards. Its members also know that modernization of regulation and the uniformity upon which it is based is very much a process and not an event. Changes will be necessary from time to time, and the ebb and flow of negotiation and compromise will always benefit all parties in the long run even if it seems that one side is giving more than the other at any given moment. Maintaining the long-term perspective of preserving the state-based system of insurance regulation—not simply because it has been the historical method of regulation but because it is the system best-suited to meet the demands of a changing world—will be all the motivation that regulators need to understand and embrace the give-and-take of the SMART deliberative process. The Congress will also understand that it stands in the best position when it works with the states in a cooperative venture to improve the state-based system of regulation rather than substituting a new federal government

regulatory body for a regulatory system that already works quite well and is poised to be even better with greater uniformity of policy and process.

Thank you for the opportunity to appear before you today, and I look forward to answering any questions.