

TESTIMONY OF MIKE PICKENS BEFORE THE CAPITAL MARKETS
SUBCOMMITTEE OF THE HOUSE FINANCIAL SERVICES COMMITTEE

THURSDAY, JUNE 16, 2005

ROOM 2128 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC

Mr. Chairman, Ranking Member and Committee Members:

Thank you for this opportunity to once again testify on the important issue of insurance regulatory reform. I commend the Chairman and all the Committee members on your continued interest in, and enlightened, progressive work on, this issue -- one that is vital to all of us insurance consumers, the financial services marketplace and the United States economy.

During my years as an officer and 2003 president of the National Association of Insurance Commissioners ("NAIC"), my position on this issue has been, and remains, consistent: In order to better protect all us consumers and to survive, the state regulatory system must become more effective, more efficient, less costly and less burdensome. It is consumers, not the insurance industry, who bear the burdens and pay the costs when regulation is ineffective and inefficient. This issue of regulatory modernization is about consumer protection, competition, better products and better prices.

When I was NAIC president in 2003, our membership -- which included some twenty-two (22) brand new chief regulators -- made it clear they wanted the NAIC to have a strong, credible voice in Washington, DC. That is why we created a Governmental Affairs Committee, the state-based ASSURE initiative, and hired Washington insiders to help educate Congress about our issues.

At that time, as now, state regulators were faced with essentially three (3) options:

- (1) Develop our own modernization plan and get it passed in each state, one state at a time;
- (2) Engage the House Financial Services Committee and provide technical expertise and input on the "federal tools"/SMART approach, where the "threat" of preemption could be used as both a "carrot and a stick" to expedite necessary and appropriate state-based reforms; OR
- (3) Do nothing and confront the very real possibility of the creation a so-called optional federal charter ("OFC"), which would result in total preemption and the total loss of state authority.

Wisely, in 2003 our membership chose options one (1) and (2). We met in Austin, Texas and pounded-out our plan, “A REINFORCED COMMITMENT: INSURANCE REGULATORY MODERNIZATION ACTION PLAN,” and we began the hard work of implementing it in each state, one state at a time. (Please SEE my testimony of Wednesday, November 23, 2003, given before this Subcommittee.)

In addition, as early as the year 2000, we began working to develop a relationship based on credibility, trust and technical expertise with our Members of Congress.

It is in this spirit of consumer protection, reform, credibility and trust that I began working with this Committee when I became a NAIC officer. It is in this spirit that I and others were asked earlier this year to work with Committee staff in providing objective, expert input on the SMART initiative. As always, I appreciate the Committee giving me the opportunity to continue the good work my NAIC colleagues and I started some five (5) years ago.

Let’s give credit where credit is due: State insurance regulators, working through the NAIC, have made some impressive progress in implementing the 2003 ACTION PLAN. They have worked hard and made significant progress in bringing about uniformity of laws and administrative processes in the areas of producer and company licensing reform, making better products available to consumers as quickly as possible, and working to protect consumers from fraud in viatical sales and on military bases. Where appropriate, state regulators have provided their expertise to Congress on Sarbanes-Oxley, the Terrorism Risk Insurance Act (“TRIA”), the USA Patriot Act; asbestos, civil justice and medical malpractice reform and international insurance issues, among a host of others.

Still, as hard as they are working, state insurance regulators are limited in how much they themselves can do to pass needed laws and implement long-overdue reforms. State regulators must have the help and support of their governors and legislators to implement the reforms. I was fortunate: For my eight (8) years in office I had the support of my governor and a majority of Arkansas legislators.

However, in far too many states, when budgets get tight state regulators see their consumer protection trust funds raided, their programs frozen or cut, their legislation caught up in the politics of the moment, and some of their most experienced personnel leaving state government for the perceived “greener pastures” of the private sector. Reforms get stalled, languish, are eventually forgotten. This is not in the best interests of our consumers and markets.

Regardless of how hard they work, state regulators can not do the job alone. Even today, it is well documented that the state-based system continues to be burdened by a lack of uniformity in both regulatory philosophy and laws, and by ineffective and duplicative oversight, and insufficient coordination in some areas. There remain a handful of states where, for a variety of local political and other reasons, reforms may be difficult or even impossible to pass. State regulators, working through the NAIC, need a “big stick,” they

need your help and support if they are to be able to achieve the reform initiatives they already have unanimously agreed upon in their 2003 ACTION PLAN.

Even if state regulators can convince lawmakers to implement their promised reforms in a majority of the states, can they do so in the largest markets, where the greatest numbers of consumers stand to benefit from them? And how much longer will it take the states to implement the promised reforms? Five (5) years, ten (10) years, fifteen (15) years? This is a legitimate question: Can the states implement the promised reforms, and how long will it take?

I am a strong supporter of state insurance regulation. That is why I have been willing to engage and work with the Committee on the SMART approach. Is the SMART approach perfect? Of course, it is not. For one thing, I don't like the idea of creating a federal agency to oversee regulatory reforms and to act as a go-between for the federal government and state regulators. We have plenty of federal agencies already. This entity also could prove to be the precursor to a federal regulatory agency.

I also am opposed to federal preemption of state insurance laws. But significantly, preemption NEED NEVER OCCUR under the SMART proposal.

SMART does not use "preemption" -- but rather the "THREAT of preemption" -- to help state regulators overcome the political and other obstacles that exist in some states so that they can in fact implement, enforce and continue to regulate their promised reforms. Under the SMART, or "federal tools" approach, all the states need to do in order to avoid any preemption is to convince their state law and policymakers to implement the reforms they already have agreed upon and promised to deliver. Of course, this is easier said than done. And this just may be the reason something akin to the SMART idea may work to help my former regulatory colleagues keep their commitments sooner rather than later.

The Gramm-Leach-Bliley Act ("GLBA") required states to develop and implement producer licensing reforms within a specified time period or to lose their authority to a newly-created Orwellian-sounding federal agency, the National Association of Registered Agents and Brokers ("NARAB"). How did the states respond to this "threat" of preemption? They set a NAIC speed record in creating a model law and getting it passed and implemented in more than the required number of states, including some of the largest markets in the country.

Similarly, following a rash of high-profile insolvencies in the late 1980's and 1990's that seemed to take everyone by surprise and created both consumer angst and market instability, United States Representative Dingell of Michigan encouraged state regulators to reform or to be eaten alive by the federal government. State regulators responded affirmatively, as they always do to such encouragement, by creating the NAIC Financial Solvency Accreditation Program. Though not perfect, this program has proved to be a resounding success and has resulted in better financial solvency regulation and consumer protection.

It is said that the greatest champions respond to the greatest challenges; they rise to the occasion; they work best and deliver most when the stakes are the highest.

In my book, state insurance regulators are great champions who will, as they have always done, respond courageously and prove to be victorious when the chips are down.

But they need your support and your help. SMART just may be the tool state regulators need to help expedite the promised reforms in the states. I look forward to working with you and my friends and former colleagues at the NAIC, to make the SMART proposal the best, most effective, most user-friendly tool to meet our common objective of better consumer protection and more consumer choice through regulatory reform.

Will SMART work? I don't know, but for my money it beats the heck out of the so-called optional federal charter approach, and nobody has come forward with a better idea. Perhaps it is worth a try.

Thank you again for the opportunity to work with you on this initiative. I look forward to answering your questions.