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SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE, AND GOVERNMENT SPONSORED ENTERPRISES

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Good afternoon Chairman Baker, Ranking Member Kanjorski, and Members of the Subcommittee. My name is Ronnie Tubertini, and I am pleased to have the opportunity to give you my views on the current state of insurance regulation and on the role Congress can play to reform and improve our regulatory system. I am President and CEO of SouthGroup Insurance and Financial Services, Mississippi's largest privately owned insurance agency. SouthGroup Insurance and Financial Services is a Jackson-based insurance agency employing 120 people in 17 locations across the state. Although based in Mississippi, SouthGroup writes business in over 20 states and provides foreign coverage for clients operating outside of the United States. My agency represents over 50 insurance companies.

I. Introduction

At the outset, Chairman Baker, I must applaud the Subcommittee and full Committee's continued interest in these important issues as we have many challenges facing the state-based system of insurance regulation. As you have heard in previous hearings, and as I will testify today, the need for meaningful reform has increased dramatically in recent years. The enactment of financial services modernization legislation, the convergence of the financial services marketplace, the global nature of the insurance industry, and the emergence of electronic commerce are among the catalysts that have led many observers to reconsider the manner in which states regulate the business of insurance. The desire for reform has become so pressing that some segments of the industry have actually expressed support for federal regulation of our business. Proponents of such proposals argue that federal insurance regulation will promote greater uniformity, reduce costs, and cause less frustration than the current multi-state system. Other segments of the industry, including the NAIC, continue to push for reforms of state regulation in state capitals across the country and make the case that federal regulation is both dangerous and unnecessary.

In my testimony today, I will outline some of the problems and challenges that my agency faces. I will also provide the Subcommittee with my thoughts concerning the NAIC's recently unveiled action plan and my personal observations regarding the concept of federal insurance regulation. Finally, I will close with an outline of what I believe is the most effective manner in which to obtain regulatory reform of our industry in a timely fashion.

II. Challenges Facing Insurance Agents and Brokers

Like the vast majority of insurance agents and brokers, I provide insurance services to consumers, households, and business in multiple states, and my personal experiences with the existing regulatory system lead me to believe that insurance regulation must be reformed and modernized. Let me focus on two issues in particular – agent/broker licensing and product regulation.

The most significant burden facing my agency and my employees is compliance with the licensing requirements of the 20 states in which we operate. Insurance producers of all kinds – whether operating in large commercial centers or small communities – face unnecessary bureaucratic hurdles that are imposed by distinct and often idiosyncratic licensing laws. Although most states have now enacted licensing reform statutes that provide reciprocity to licensed agents and brokers, various burdens and difficulties remain. Several of the larger states still have not enacted licensing reciprocity, and many of the states that did pass licensing reform deviated from the NAIC's model law. The resulting lack of uniformity and consistency among the states makes compliance a challenge, and states still differ dramatically in the manner in which they handle nonresident licensing and renewals.

My agency is also incorporated, and our corporate status creates special hurdles and delays for us when we seek licenses in other states. While some jurisdictions simply require us to (1) prove that we are licensed and in good standing in Mississippi, (2) complete the NAIC's uniform application, and (3) submit the appropriate fee, other states impose additional requirements. In some states, for example, we are also required to complete the lengthy and expensive process of registering our agency as a foreign corporation. While we have found that state insurance departments are increasingly responsive and timely in their processing of applications, state secretaries of state are often much slower to act.

An additional bureaucratic challenge is the requirement imposed by some states that requires my agency and our producers to obtain letters of certification from the Mississippi Department of Insurance in order to obtain a nonresident license. This requirement is especially peculiar to me in light of the development of the Producer Database (PDB), the nationwide repository of agent and broker licensing information that is maintained by the National Insurance Producer Registry (NIPR). Within seconds, the PDB can provide an insurance regulator with real-time information about a person's licensing status, yet many states require me to obtain a paper letter of certification to show that I am licensed and in good standing. In my view, many states and regulators are not taking full advantage of the PDB's ability to provide quick and up-to-the-minute information about a particular agent or agency, and it is my hope that states will eliminate the letter of certification requirement. Some states have already taken this step, which has made

the licensing process more efficient, but others have taken the unappealing step of requiring the agency to obtain a copy of the PDB printout and provide it to the department.

I have also witnessed the inefficiencies and market problems that can arise because of the structural and procedural flaws associated with the regulation of insurance products. Many states regulate the development and introduction of new products into the marketplace in ways that cause significant and unnecessary delays, undermine the forces of competition, and create affordability and availability problems for consumers. This Subcommittee has previously held hearings about the problems associated with product regulation, and I thank you for spotlighting these issues. Based on my experiences, I can assure you that consumers are among those penalized because the system is not as competitive and responsive as it should be.

Some states have begun to make improvements. For example, Louisiana, Mississippi's neighbor to the west and south, recently enacted a flex-rating system that allows personal lines insurers to raise or decrease rates up to 10% per year without securing the prior approval of the state's rating commission. A similar law has had great success in South Carolina, and I am hopeful that other states will enact market-oriented statutes that revise the structural foundation of how products are regulated. States also need to make procedural reforms as well, yet some states still appear to be operating under unwritten rules and practices (e.g. rules that limit the number of filings that an insurer may submit or limit the amount of rate increase that a company may seek).

III. NAIC's Reform Efforts and the NAIC Action Plan

The NAIC has been the focal point of many of the reform efforts that have been undertaken in recent years, and I commend NAIC President Mike Pickens and Vice President Ernie Csiszar for their attention and focus on these important issues. The NAIC's reform initiatives were launched in the wake of the enactment of the Gramm-Leach-Bliley, and that organization's *Statement of Intent* provided a blueprint for their activities over the last 3½ years. In September of this year, the commissioners adopted a new outline for action, entitled *A Reinforced Commitment: Insurance Regulatory Modernization Action Plan.* I have been asked by the Subcommittee to provide my thoughts on this latest plan, and I have done so below.

My reaction to the updated action plan is mixed. On one hand, as a strong supporter of state insurance regulation, I am pleased that the NAIC is "renewing [its] commitment to modernizing the state-based system of insurance regulation" and outlining specific objectives for the coming months and years. Many of the NAIC's stated goals are critically important, and I welcome their inclusion in the document. On the other hand, I am somewhat disappointed that the action excludes other potential steps and establishes certain timeframes that are more than five years away. Earlier drafts of the action plan were more aggressive and called for greater reforms to occur in a quicker period, and I would have preferred to see the NAIC stick to some of the objectives considered in earlier versions.

The licensing section of the action plan is particularly modest and includes five initiatives: (1) development of a single uniform application; (2) implementation of a system whereby agents and brokers need only satisfy their home state pre-licensing and continuing education requirements; (3) consolidation of all limited lines into a core group of license types; (4) full implementation of

an electronic filing/appointment system; and (5) implementation of an electronic fingerprint system. Let me address each of these in order:

- *A single application* – Several years ago, the NAIC developed uniform applications for individual producers and business entities, and most states accept these applications today. The NAIC's Producer Licensing Model Act provided that these are the applications to be utilized for both resident and nonresident licensing purposes, and any state that enacted the model should not have a state-specific application today. In addition, according to NIPR's website, all but four states (Florida, Hawaii, New York, and South Carolina) accept one or both of the uniform applications. While the NAIC's stated goal of developing a single application is apparently satisfied already, I would urge the NAIC to promote its use among the states for both resident and nonresident licensing purposes.

- *Pre-licensing and continuing education* – The NAIC's Producer Licensing Model Act already provides that agents and brokers need only satisfy their resident pre-licensing education and continuing education requirement, and any state that has enacted the model or true licensing reciprocity should have satisfied this objective already. As noted earlier in my testimony, however, some states have deviated from the model and others have not enacted it at all. It would be helpful for the NAIC to identify which states have not enacted parts or the entirety of the model and to urge action on those elements.

- *Consolidation of limited lines licenses* – Although this is an important issue, it is not the most pressing issue for most insurance agents, and I also wonder what steps the NAIC intends to take to eliminate the proliferation of limited license types.

- *Implementation of an electronic filing and appointment system* – Earlier drafts of the NAIC's new action plan called for a fundamental reworking of the appointment process and the creation of a registration system whereby insurers would simply maintain a list of the producers with whom they have a contractual relationship. Insurers would have been required to file this list on a quarterly or other basis with the appropriate regulatory authority. Unfortunately, this stronger and more reform-oriented proposal was left out of the final plan, and it appears as though the NAIC's objective is to simply recreate the current appointment process in electronic form.

- *Implementation of an electronic fingerprint system* – The NAIC acknowledges that it will need assistance from state and federal legislatures to make this a reality, but certain concerns remain. Specifically, the stated goal of uniformity will be undermined if individual states begin to enact state-specific fingerprint or background check statutes without centralized access to criminal histories or common procedures. In my view, a prerequisite for this objective would be authorization from Congress for state regulators to have access to federal criminal databases, along with the requisite protections and safeguards, as proposed last Congress in H.R. 1408.

The action plan also includes three licensing objectives for NIPR: (1) The creation of use of National Producer Numbers; (2) acceptance of electronic appointments and terminations or

registrations; and (3) use of electronic funds transfers for payment of licensing fees. While the first and third objectives would be helpful reforms, the appointment process is in need of far greater scrutiny and fundamental change than is called for in the action plan.

From an agent's perspective, I would encourage the NAIC to also consider the following issues as the regulators continue to build upon the progress that has been made to date:

- *Enable agents and brokers to apply for and obtain nonresident licenses via an electronic, web-based, single-point-of-filing system.* Most states require potential licensees to submit paper forms, a practice which unnecessarily slows the licensing process. States should take advantage of the significant progress that NIPR has made in developing a technological infrastructure for electronic licensing, and this system should be expanded to incorporate nonresident renewals as well. If there are barriers to the implementation of the NIPR nonresident licensing process, these should be identified and eliminated. Today, about one-third of the states accept electronic nonresident license applications, and many of those only accept applications from individuals.

- *Eliminate letter of certification requirements and utilize the PDB to confirm whether an agent or broker is licensed and in good standing.* These requirements might have been the most effective way to verify licensure status in the past, but they unnecessarily slow the licensing process today and make it difficult for producers and insurers to serve clients in a timely manner. The same information provided by a letter of certification can be obtained instantaneously by a regulator on the PDB. The PDB is actually a more reliable source of this information, since it can be maintained and checked in real time and provides regulators with the most current licensing information available.

- *Eliminate all paperwork and administrative application requirements that are not part of the uniform applications.* Unfortunately, many states continue to impose additional paperwork requirements in connection with an application, which is inconsistent with the principles of both licensing reciprocity and uniformity and perhaps the laws of many states.

- *Establish uniformity in the license renewal process.* There is little uniformity in the license renewal process today, and states renew licenses at different times of the year and utilize different methodologies to determine when the license is set to expire. Greater standardization would ease the tremendous administrative burden that is imposed on multi-state agents and brokers. The NAIC has adopted a series of uniform standards, but little action has been taken on these standards at the state level.

I also wanted to take the opportunity to comment on the "speed-to-market" section of the NAIC's action plan. For the most part, the objectives outlined in this section of the action plan are procedural, rather than structural, and it was somewhat disappointing that the document did not consider additional market-oriented reforms that rely more heavily on the forces of competition. In addition, the objectives contained in the action plan include timeframes that are distant, with most calling for implementation or enactment by the end of 2008. In my view,

product regulation reform most be broader than what the NAIC has proposed, and it must come about quicker than December 2008.

IV. Federal Chartering

There is widespread consensus among observers – including state and federal legislators, regulators, and the insurance industry – that insurance regulation needs to be updated and modernized. There is disagreement, however, about the most effective and appropriate way in which to obtain needed reforms. Some support pursuing reforms in the traditional manner, which is to seek legislative and regulatory improvements on an ad hoc basis in the various state capitals. A second approach, pursued by several international and large domestic companies, calls for the unprecedented establishment of full-blown federal regulation of the insurance industry. The call for federal regulation concerns me deeply.

Although the proposed optional federal regulation proposals might correct certain deficiencies, the cost is incredibly high. The new regulator would serve to add to the overall regulatory infrastructure – especially for agents and brokers selling on behalf of both state and federally regulated insurers – and undermine sound aspects of the current state regulatory regime. As an agent who is licensed in over 20 states, I can assure you that the last thing I want to do is get an additional license through a bureaucratic federal agency. As an independent insurance agent, I write for more then one company, and surely some companies would choose a federal option while others would continue to be regulated at the state level, which would force me to get dually licensed.

The best characteristics of the current state system from the consumer perspective would be lost if some insurers were able to escape state regulation completely in favor of wholesale federal regulation. As insurance agents and brokers, we serve on the front lines and deal with our customers on a face-to-face basis. Currently, when my customers are having difficulties with claims or policy, it very easy for me to contact my local company representative or a local official within the state insurance department to remedy any problems. If insurance regulation is shifted to the federal government, I would not be as effective in protecting my consumers, as I have serious reservations that some federal bureaucrat on a 1-800 number will be as responsive to a consumers needs as a local regulator. Federal models propose to charge a distant and likely highly politicized federal regulator with the implementation and enforcement of a single set of rules that would apply equally across all States and all insurance markets. Such a distant federal regulator may be completely unable to respond to insurance consumer claims concerns and its mere creation could spark fears that this will prove to be the case. As a consumer, specifically in terms of personal lines, there would be confusion as to who regulates their policy, the federal government or the state insurance commissioner. I could have a single client that has several policies with one company that is regulated at the federal level, while at the same time having several other policies which are regulated at the state level. Nor can a single regulatory system harmonize the diversity of underlying state reparations laws, varying consumer needs from one region to another, and differing public expectations about the proper role of insurance regulation. The potential responsiveness of a federal regulator to both industry and consumer needs in several critical areas could therefore jeopardize the fundamental purpose of insurance regulation and must be considered questionable at best.

One of the primary concerns I have with any federal regulation proposal is the political reality associated with legislation being considered by Congress, especially a proposal of this magnitude. The proponents of optional federal chartering equate federal regulation with deregulation, and their proposals call for an elimination of product regulation and an exemption from many of the requirements and consumer protections that states have in place today. Such a proposal would be impossible to pass through Congress in that form, and any bill adopted by Congress will undoubtedly include a host of other provisions. Any optional federal chartering legislation can be expected to include many onerous mandates and requirements, including anti-redlining provisions, unprecedented disclosure and Community Reinvestment Act-like requirements, oversight by the Federal Trade Commission and other federal agencies, expanded privacy provisions, credit scoring and claims history restrictions, strict rate and form filing and approval requirements, and other purported consumer protections.

During the last two sessions of Congress, two federal regulation proposals have been formally introduced, and, ironically, both were strongly opposed by all aspects of the insurance, including those insurers that support optional federal chartering. The most recent proposal is the Insurance Consumer Protection Act (S. 1373), which was introduced earlier this year by Senator Fritz Hollings (D-SC). S. 1373 would create the "Federal Insurance Commission," an independent panel to be housed within the Department of Commerce, and the commission would be the sole regulator of all interstate insurers offering property and casualty or life insurance. This legislation would also repeal the McCarran-Ferguson Act's antitrust exemption.

There are several key components to S. 1373 that I strongly object to. Under this legislation, the newly formed commission would have full authority over rates and policy substance, a step towards command-and-control regulation and away from a more appropriate reliance on competitive forces. The federal commission would be responsible for establishing licensing standards for the insurance industry; conducting annual examinations, solvency reviews, and market conduct examinations; and establishing accounting standards. The bill would also allow the commission to investigate the organization, business, conduct, practices and management of "any person, partnership or corporation in the insurance industry", and it would appear that insurance agents and brokers fall under this definition. I am specifically troubled that this legislation places the responsibility for regulating all multi-state agents with what will be a massive and untested Washington bureaucracy. While there are problems with the current licensing system, adding another layer of regulation on top of this would create significant problems.

Unfortunately, S.1373 takes the worst elements of the current state system and shifts them to the federal level, where there is even less accountability and potentially greater politicization. This legislation is a perfect example of what can happen when an industry goes to Congress asking for help. Very often, the final result winds up being far worse than the problems that were to be addressed and rectified. Plus, as we all know, once a new federal bureaucracy is established in Washington, it only grows larger and more powerful, so once we get federal regulation, there will be no hope of ever rolling it back if it fails.

V. A Middle Ground Solution

It is clear that there are deficiencies and inefficiencies that exist in state regulation today, and there is no doubt that the current state-based regulatory system should be reformed and modernized. At the same time, however, the current system is exceedingly proficient at ensuring that insurance consumers – both individuals and businesses – receive the insurance coverage they need and that any claims they may experience are paid. These aspects of the state system are working well, and I have little doubt that this Subcommittee will hear any testimony to the contrary. The optional federal regulation proposals, however, would displace these well-running components of state regulation as well and, in essence, thereby "throw the baby out with the bathwater."

What I believe is needed is a *third way* – a mechanism that builds on, rather than dismantles, the states' inherent strengths to meet the challenges of a rapidly changing insurance environment. Such a proposal must modernize areas in which existing requirements or procedures are outdated, while imposing effective regulatory oversight and necessary consumer protections. It must also include create more uniform and consistent requirements and regulatory procedures and ultimately lead to a more efficient, modernized, and workable system of insurance regulation.

In addition to serving as President and CEO of SouthGroup Insurance and Financial Services, I am also an active member of the Independent Insurance Agents and Brokers of America (IIABA). For the last year, IIABA has been spearheading a cooperative attempt to develop just such a proposal. They have been working with state policymakers, other trade associations, and an array of national and regional insurers in an effort to identify precisely what must be fixed and how that might be done without displacing the components of the current system that work well and without creating additional layers of governmental bureaucracy. Through this process, IIABA has been targeting those areas in the current regulatory system that need to be fixed, rather then scrapping the whole system all together.

Although the IIABA proposal is misinterpreted and mislabeled by some, the association is essentially calling on Congress to use the legislative tools at its disposal to overcome the structural impediments to reform and ultimately achieve a more efficient and effective regulatory framework. In other words, we advocate using federal legislative action to bring about greater consistency and other needed reforms across state lines. In this way, we can assure that insurance regulation will continue to be grounded on the proven skills and experience of state regulators.

The key to this approach is that it will lead to a more uniform and market-oriented system on a national basis while preserving and strengthening the regulatory infrastructure at the state level. It will also allow many overdue reforms, including much of the NAIC's regulatory reform agenda, to take effect countrywide following the adoption of a single legislative act. This pragmatic concept addresses many of the legitimate criticisms lodged against the current system and would improve and enhance state insurance regulation without replacing it altogether.

The "federal tools" or "uniform treatment" approach can be applied to nearly every important area of insurance regulation, including those issues most in need of reform. For example, such a

bill could address product regulation, agent and company licensing, market conduct exams, auditing procedures, corporate governance, and a variety of other areas. At the same time, Congress has a wide variety of legislative tools at its disposal, including the implementation of national reciprocity or uniformity and the preemption of state law. Accordingly, one of the benefits of IIABA's approach is that it allows different legislative tools to be utilized in a tailored fashion on an issue-by-issue basis.

Working in conjunction with other groups interested in this approach, IIABA continues to consider the potential applications of this concept. Although this development process is still underway, there are some areas where our work is more evolved and refined. In order to give you some perspective concerning the possible applications, I have highlighted some of the ways in which this approach could perhaps be implemented, focusing below only on producer licensing and speed-to-market issues.

- *National Licensing Reciprocity* – In the licensing arena, we propose implementing reciprocity on a 51-jurisdiction basis and preempting all non-resident licensing laws that are inconsistent with the GLBA/NARAB standards. By using Congress's preemptive authority, we could provide that a producer licensed in his/her home state may obtain a non-resident license by simply completing the NAIC's uniform application and paying the requisite fee. Similarly, such a federal law could preempt non-resident continuing education requirements and other requirements that have the effect of limiting or conditioning a non-resident's activities solely because of that person's residence or place of operation.

- *National Uniformity* – Additional uniformity is necessary in producer licensing, and federal legislation could be used to establish greater multi-state consistency. One way in which to obtain uniformity through such a vehicle would be to prohibit a state from licensing non-residents unless the state agrees to abide by certain uniformity standards. Such uniformity standards could address a broad array of issues, including, but not limited to, resident licensing requirements, the licensing cycle and renewal process, entity licensing, the use of the Producer Database, etc.

- *Appointment Requirements* – Through the use of preemption, a proposal of this kind could help revolutionize the appointment process or lead to the elimination of appointment filings altogether. Appointment requirements could be preempted outright, perhaps with a limited savings clause for certain narrower requirements.

- *Countersignature Laws and Other Restrictive Barriers* – This type of proposal could also provide for the outright preemption of countersignature laws and similar barriers to effective multi-state commerce.

- *Prior Approval Requirements* – In the area of product regulation, most or all prior approval requirements could be preempted by Congressional action.

- *Parameters for Rate and Form Review* – Through the use of preemption, a federal proposal could establish parameters for the purpose of standardizing and streamlining the

review and approval of insurance products. This could be done on the form side, for example, by making a traditional file-and-use system (with a strict deemer provision, limited to 30 days, and other mandates) the most stringent form of review available to state regulators. Rate regulation could be addressed in similar ways, and IIABA supports using preemption to move to a competitive rating system that would eliminate the traditional review and approval of rates and only require rates to be filed electronically at the time they are introduced in the marketplace.

If the IIABA proposal were to become law, I believe it would remedy 95 percent of the problems with the current regulatory structure. From an agent and broker's perspective, I can assure you that licensing burdens facing my agency and employees would be reduced dramatically with such a proposal. Just as important to agents and companies is our desire to get products out to our customers as quickly as possible, and we are confident that we can realize such reforms by utilizing this philosophical approach to reform. As you can see, a proposal like IIABA's would alleviate most, if not all, agent and company concerns while still leaving the day-to-day regulation at the state level and without transferring power to a new federal bureaucracy in Washington.

VI. Conclusion

Although I continue to support the preservation of state regulation of the business of insurance and applaud the efforts that the NAIC and state legislators are making, I believe that additional reforms to the current system are necessary and essential. Specifically, I believe the best alternative for addressing the current deficiencies in the state-based regulatory system is a pragmatic, middle-ground approach that utilizes federal legislative tools to establish a more uniform system and to streamline the regulatory oversight process at the state level. By using federal legislative action to overcome the collective action hurdles and structural impediments to reform at the state level, we can improve rather than replace the current state-based system and in the process create a more efficient and effective regulatory framework.