

State of Connecticut



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To My Fellow Commissioners, Directors and Superintendents:

“We have met the enemy and he is us!” This famous line from the comic strip Pogo aptly describes the current state of governance at the National Association of Insurance Commissioners. And it comes at a time when our national state-based system of regulation is under perhaps its most critical set of threats and challenges at home (with the ascent of the Federal Insurance Office and the growing regulatory authority of the Federal Reserve) and abroad (at the International Association of Insurance Supervisors and the Financial Stability Board). The recent decision by some of our leadership to decline an invitation to meet with the President of the United States on critical insurance matters was bad enough. But to immediately provide a copy to the national press of a misguided and irresponsible letter criticizing the decision to accept President Obama’s invitation makes clear that, in spite of these external threats, the biggest challenge we face is the dysfunction in our own organization. To quote Commissioner Chaney: *“I am shocked and appalled to put it mildly at the reaction”* and Commissioner Kreidler: *“I am appalled and embarrassed for the NAIC. This could be so bad that it might be the pivotal point we later recognize that doomed state based regulation. Talk about a self inflicted wound!”* If we cannot fix these governance issues, then others, including industry and the Federal Government, would be right to question whether we are up to the task of regulating the largest insurance market in the world.

If the companies we regulate had the same governance issues we have here at the NAIC, we would be outraged and “heads would roll.” Let me cite some examples:

1) The cult of the Imperial Presidency: Everyone seems to accept the unwritten rule that most decisions are at the discretion of one person. Not only is this an abysmal governance practice, but since every year brings a new president, the organization predictably lurches from one administration to another.

2) The myth of the “officers’ leadership” role: The officers have conference calls every Monday and discuss, debate and decide issues. Only occasionally are other commissioners brought in to the discussion, and issues are brought to the Executive Committee only when the “leadership” deems it appropriate. This is bad enough, but consider this: There is nothing in the NAIC bylaws that provides any responsibility or authority to the “officers” to take such action or invoke such authority. Yet they do so on a constant basis.

3) Elections: They most closely resemble those we experienced in junior high school. This is compounded by the fact that some who are elected forget that the election is often by default (none of the elections for our current officers over the past two years have been contested). Yet somehow some seem to believe that once elected, they become more experienced, articulate and wiser than they were the day before the election. And many Commissioners who choose not to run for office are nonetheless viewed by staff, industry and consumer advocates as being among the most knowledgeable, articulate and respected of our membership.

4) Leadership: We should resolve whether the role of the NAIC President and other officers is to advance the work of the Executive Committee and broader body, or to dictate and steer it. Consolidating too much control in just a few of our members, particularly given a membership comprised of sovereign entities nevertheless working to maintain some semblance of consistency, leads to a lack of diversity in thought and insular decision making. Using President Obama's invitation as an example, some of our leadership clearly felt that our current NAIC President was not inclusive enough in his decision making when he agreed to accept the meeting, which would seem to prove my point that they too should support broader buy in. However, in this instance the only right answer was to accept such an invitation, and any concerns about internal communication or decision making should have been dealt with separately without the embarrassment to our organization. If you happen to believe that President Donelon made a mistake – and I and many other commissioners disagree with those who do – the public rebuke by our other officers compounded that mistake and met a minor issue with a colossal blunder. Regardless of your feelings, this example proves why better governance is essential. It would avoid the impression of unilateral action by one member, even if he made the right decision, and would have prevented the misguided response from our other leadership.

5) Ultra Vires Actions: Perhaps the most egregious example of all however, was the unilateral decision by last year's NAIC President to give the Federal Insurance Office one of the NAIC's three seats on the IAIS Executive Committee. This is not only a vivid illustration of the Imperial Presidency referred to above, but even more troubling, it illustrates how one person's personal wishes were allowed to trump fiduciary duty to the organization (in this case, to catastrophic proportions). Informal discussions made clear that not a single commissioner (other than the president at the time) and not one staff member agreed with giving FIO an Exco seat. Yet the president unilaterally gave the seat to FIO anyway. No vote. No NAIC Exco debate. Unilateral. Only after the seat had been given up and the FIO director had the audacity to demand that he take the seat held by our NAIC CEO, did the issue go to the NAIC Exco. But the fateful decision to give up the seat had already been made unilaterally and no Exco vote was ever taken on that decision. Nor was the issue ever even debated by our Government Relations Leadership Council or our International Insurance Relations Leadership Group, let alone the NAIC Executive Committee on this, one of the most strategically important decisions/mistakes in the organization's 130 year history.

6) Cronyism: The undue influence of two former Commissioners continues to undermine the independence of this organization to its detriment. Our previous CEO was a victim of this cabal. We went out and hired a world class ceo in Senator Ben Nelson, yet the cabal is now attempting to undermine him with the tacit approval of "leadership" as well. My efforts as the Chair of the NAIC's International Committee (and as someone widely recognized as a credible and able

defender of and spokesman for our national state-based system of insurance regulation) have also been undermined by this so called leadership.

7) Lack of understanding of the role and responsibilities of a fiduciary: The culture of leadership in this organization is to first ask: “Do I have the votes”, not: “what is the right decision, and how do I get the votes to support that decision?”

The overwhelming majority of commissioners are dedicated professionals who, working with an extraordinary staff at the NAIC and their departments at home, strive to do the right thing at all times. But many of these same people are often too busy tending to their constituents at home, or regulating large industries, large markets, (or in some cases, both) that they understandably have little time or energy left over to engage in petty NAIC politics. But now is the time to pay attention. The future of state based regulation is on the line and the stakes have never been higher. We cannot afford to continue along this path. Everyone needs to be engaged and aware of what is happening in this organization. We cannot choose our fellow commissioners or always compensate for each other’s weaknesses, but we can make sure that our organization is structured and governed in a way to minimize the negative consequences of those realities.

I am recommending that we hire outside consultants (similar to the process we recently employed effectively at NIPR) to conduct a thorough evaluation of our governance structure, and to pursue the following initiatives, among others:

- Clarify the role and specific authorities of the President, the officers, the Executive Committee, and the broader membership in key decision making that impacts state regulation. Particular attention should be given to the manner in which we appoint representatives of the state system and NAIC to external bodies or forums that could directly impact state regulation, such as IAIS, Joint Forum, or others.
- Review the election process to determine whether it follows best practices for organizations of government officials and make changes as necessary.
- Review/clarify the role and authority of the NAIC CEO to determine whether we are following best practices. The NAIC board should establish and adopt a strategic plan at the beginning of each year and task the management and staff of the organization with the execution of that strategy, utilizing the vast talents, resources and relationships of the various members and their state staffs. This will more closely conform to best practices consistent with other \$100 million non-profit organizations and will greatly improve the stability and continuity of the organization from year to year.

Thank you for your consideration for these thoughts and recommendations.

Sincerely,

Thomas B. Leonardi