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### **David vs. Goliath: Yes, You Can Have a Positive Influence on Regulatory Developments**

**Track:** Smaller Insurance Company

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*Summary: Learn how individuals and companies have made an impact on regulatory activity. Panelists discuss opportunities to communicate issues and concerns to local legislatures and regulatory staff. In addition, see how small talk, the newsletter of the Smaller Insurance Company Section, supports the efforts of smaller companies to play a role in the development of model laws and regulations in the National Association of Insurance Commissioners.*

**Mr. James R. Thompson:** This is a session on how you can effectively lobby to affect the course of laws and, in particular, regulations. The three speakers are Julie Hunsinger, who is from Investors Heritage Life in Frankfort, Kentucky, which is the state capital. Dale Hall was recruited when he was originally with Westfield Life, which no longer exists. Now he is with Midland Life in Columbus, Ohio. I'm a consulting actuary with Central Actuarial Associates, and I also edit the newsletter *small talk*, the official newsletter of the Smaller Insurance Company Section of the Society of Actuaries, which is the sponsor of this session.

The larger companies have massive staffs. I used to work for a larger company in Chicago. We would sometimes have an actuary who was assigned to go to National Association of Insurance Commissioners (NAIC) meetings and go to all the smaller committee meetings. Somebody from the law office would go to the American Council of Life Insurance meetings. Big companies have large staffs and they develop committee strategies about what to do at meetings. They keep up on these things. So the posture of the smaller companies, when something is coming down the line, is to view it as the NAIC is delivering a monster upon the industry and it irritates them because they believe that they can't do anything about it.

How can we lobby effectively? In the course of the Smaller Insurance Company Section's evolution, we have been able to approach this process and learn some valuable insights by pooling our talents. We're going to have two presentations. First is Dale Hall, who will discuss the American Council of Life Insurance (ACLI). Then Julie Hunsinger will discuss some effective lobbying techniques on a state level. Before we do that I just want to give you a brief overview of the way the NAIC works.

Now as we know, within the NAIC, every state has a commissioner and every state gets a vote. These people have quarterly meetings and their votes count. All sorts of public lobbying groups attend. They have meetings in March, June, September, and December, that usually take place at the beginning of the month. The June and December ones are the ones where they usually vote on the big stuff. Even though we are life actuaries, many of the issues that the NAIC deals with are related to casualty insurance. There is a casualty committee and a life committee and the life committee is called the A committee. These are the master committees, but they have other little subgroups, one of which is called the Life and Health Actuarial Task Force (LHATF).

These are regulatory actuaries who devote their time to analyzing the actuarial aspects of some of these regulations. Because of the increasing pace of the regulations, the LHATF is very influential behind the scenes in affecting the opinions of the regulators. There are numerous special working groups that deal with various issues. These are being renamed and come and go with increasing frequency. The NAIC develops the model regulation, which has to be implemented in the state. If nobody implements it, it just sits there, although it might have some impact on tax methodology. It's not effective just because the NAIC developed it. We mainly will deal with the impact of the NAIC model regulations. Although there are other sources of legislation, much of what we are discussing will deal with that. The first speaker will be Dale Hall, whose company, Westfield Life, has extensive experience working with the ACLI, and he will discuss some of the valuable experience his company has gained over the years.

**Mr. R. Dale Hall:** I will give some insight into some of the different ways that really small insurance companies can get their voices heard and their opinions known on some of the issues that face the insurance industry, specifically the health insurance industry. When we talk about getting our voices heard, I sometimes subdivide that into two different categories. One would be, for sure, that we want to have our voices heard and our votes be counted along with large insurance companies when some proposals are made in our industry. These could be proposals such as the taxation of products that we end up selling or the markets that we're allowed to enter. In these cases I think we just want to make sure that small companies are

being counted along with big companies and we want to be heard in conjunction with them.

The second issue, of course, as Jim has alluded to, is that we want to make sure we're not drowned out by large companies in raising issues. We want to know that there are specific groups championing our cause and kind of realizing that small insurance companies do play a vital role to the life and health insurance industry in that they help meet client needs and agent needs in certain ways and help bring on a lot of value to the industry. I'll be talking about two different organizations, one that fits into each of the categories I've listed: one that is kind of an insurance-minded organization in the ACLI, and one that just particularly concentrates on small insurance companies.

The first group is the one that does take more of the global approach for insurance regulation and insurance questions that come up. The Insurance Industry Citizen Action Network (ICAN) is kind of a subdivision of the ACLI. This network was founded in 1988, so it's now about ten years old. It is a grass-roots education and activation network of insurance companies who are members of the ACLI or the Health Insurance Association of America (HIAA). The goal of the program is to pull together the resources of the industry into one format to form a core of volunteers in order to support important legislative issues, at both the federal and the state levels. Federal issues that are typically addressed include things such as financial services reform, retirement income security, Social Security type questions, and most importantly, the revision of the U.S. tax code. State issues include matters such as premium taxes, sales illustration laws, and things along those lines. The volunteers in ICAN are typically employees or agents or retirees from insurance companies. As of the end of 1997, there were about 350 companies who participated, and they've raised their count to well over 200,000 volunteers in the program.

One of the enticing aspects of ICAN, from a small insurance company standpoint, is that there's really no cost to be involved. The costs of the ICAN program are kind of covered by the dues you already pay to the ACLI or to the HIAA. Small-end companies are really looking at costs. This is one that doesn't come up because all the costs are covered by the dues you've already paid.

There are two real levels of participation in ICAN. One is that your company can be described as a recruiting company. Recruiting companies have volunteers from their company that actually receive information from the ICAN program about current legislation or proposals. This information is called Action Alert and the ICAN program sends it out. It is sent directly to the employees and the volunteers, if the company has sent approval from ICAN to do so. ICAN will send to your

company, and maybe a representative of your company, a proposed Action Alert. Then you have the choice of deciding whether you want to participate or not participate in this specific one.

A participating company is involved on a lower level and does not have any real volunteers in the ICAN database. These types of companies just choose not be recruiting companies simply because they either have their own grass-roots foundation in place or they just haven't wanted to jump up to the step of being a recruiting company yet. The participating companies have the choice of how to distribute information they receive from ICAN. They'll still get all the information, but they don't have their volunteers in the ICAN database. I think it's important to mention that the information that's sent from ICAN to the company has proven to be a good way to keep up on industry issues. It's much more detailed than what you would get through a magazine article or newspaper clipping. When I was at Westfield, we would have some knowledge that there was an issue brewing, but we would not have the time to sit down and figure out how this would affect what we're doing, the way we're selling business, or the way we're reserving products, and those type of things. When the information from ICAN came down, it laid out in front of you pretty clearly all the aspects, and kind of put all the pieces together. Then we could fully decide how this was going to affect our business.

The traditional Action Alert includes four different pieces. First, there is a memo sent out that outlines the issue at hand. It's simple and describes how it would affect the insurance industry. I have some examples that we can look at. The second piece is just a fact sheet that summarizes all the main points that the volunteers can use in their lobbying efforts. They can write letters or make phone calls to their legislators. The sheet usually contains information on why a proposal should be either supported, opposed, or amended.

The third piece is a communication guide. It helps the volunteer determine the appropriate ways of addressing an issue. Finally, there's kind of a feedback loop that the ICAN likes to have. If it ends up that the volunteers had actually sent or written a letter or made a phone call, they just want to know about that to track its effectiveness. There's an "I participated" card that they can send back to the ICAN at no cost.

I think it's important to know that Action Alerts are not sent out randomly or for any old issue. I'm kind of impressed by the steps that the ICAN has taken to sort through things and do it quickly. They really attempt to fully dissect all the issues involved, go through a number of steps to make sure that all sides are considered. In the initiation stage, ICAN considers whether the issue at hand is even appropriate for a grass-roots type system. There are some considerations that you might have as

to whether it's appropriate to go straight from the company to the legislators or to have volunteers participate in the process. The legal staff does a detailed review of anything they're going to mail out.

In addition, ICAN first sends the information to the company so they can look over it and decide if it's something they want to participate in. We had a 50% participation rate at Westfield, and it wasn't that we didn't agree with what ICAN was saying when they sent us an Action Alert they were proposing. It dealt with a product that we weren't selling. We didn't do any disability income or long-term care, and there has been a lot of stuff dealing with that lately. Since we didn't sell it, we didn't figure that our volunteers at Westfield should get involved in that type of issue. Or, on some state issues, we might not participate because we had little or no market presence in that state. We didn't have a very big, if any, market presence in Montana. We just decided not to participate on that basis.

One of the differences between ICAN and some of the other lobbying groups, not just those in the insurance industry, but lobbyists as a whole, is that ICAN definitely stresses the importance of personalized communication, communicating with written letters and personal phone calls. They think that it garners a lot more support by having volunteers do things personally.

Follow ups are also part of the process. Once there's an outcome to report, ICAN will send information back to the volunteers to show how it turned out.

Let's discuss a couple of quick case studies. One is a Federal Action Alert. Earlier in 1998, President Clinton, in his State of the Union address, gave his fiscal year 1999 budget proposal to Congress. In his address, he proposed to use budget revenues to shore up the Social Security system. Some of the products that life insurance companies sell were targeted as taxable entities to raise revenues. In response to this, ICAN sent an Action Alert out in order to help build up the case for opposing these new product taxes. Some of them had to do with a variable annuity tax. I don't know the specific mechanics of it, but transferring from one variable to another or from a variable to a fixed was considered a taxable event. I guess that wasn't the first time that has been considered. It has gone down to be defeated before.

There were some suggestions in the budget proposal that only certain people should be able to qualify for corporate-owned life insurance, and I think there was a proposal to remove Crummey trust provisions, which are ways to donate money to fund life insurance and the estate planning processes.

The actual Action Alert has two lines for your name, and the company you work with or are associated with. It also gives a spot to show what the issue is. There is a spot for a background statement to show where this is coming from. The second page is a little bit more detailed, showing you what the impact will be and which representatives you should contact to try to address this issue. There is the two-page Action Alert, the memo, and the information.

Finally, the last part of it would be this talking points page. In this talking points page, it just tries to help clarify, to some extent, what the actual proposals are. Some of these don't go into a whole lot of detail about the actual mechanics of how the proposed tax will work and where it is in the code, but it gives the volunteers a flavor for how the proposals are being made without bogging them down with all the regulation numbers. There's a reference in the first paragraph to the new tax on annuities. It also goes through the Crummy trust corporate-owned life insurance provisions.

ICAN can pat itself on the back because of the quick turnaround they had on this Action Alert. The State of the Union address was given during the last week of January 1998. This Action Alert actually went out on February 9 or February 10. After bringing in all this information, ICAN reviewed it, and decided what steps it was going to take. It let the volunteers in its system know what was going on and how they could help.

ICAN also pays close attention to a lot of state issues as well, and a recent one that I think deserves some attention was Hawaii House Bill 2399, which was introduced in early 1998 and was passed by the House of Representatives as a general excise tax bill that proposed imposing taxes on amounts received from life insurance and endowment contracts. It is big because it's unprecedented. Federal laws have exempted death benefits from taxes for a long time, and Hawaii had also exempted these benefits in their general tax bill over 60 years ago, which is well before it became a state in 1959. Hawaii was really bidding to become the first state to impose a tax on death benefits.

With that in mind, ICAN sent out another Action Alert. The bill was recently turned over to the Senate Ways and Means Committee. As I understand it, the committee essentially defeated it by deferring it and by pushing it off the table. So that part of the law has been kind of pushed aside for now and if they want to pass it as a law, they would have to address it in their next session, which starts in January 1999. I think this is a good example that ICAN is also paying close attention to what's happening on the state level. These issues could end up affecting all of us. If one state went to this, there could be a domino effect, so ICAN put out a local Action Alert to let people in Hawaii know what was going on.

**From the Floor:** You mentioned companies and volunteers, but who actually does the work of publishing and printing and forming the consensus of opinion as to what the law and regulations might do?

**Mr. Hall:** That's all done through the ACLI and HIAA. They would lay it all out in front of them and have some committee structure at the ACLI or HIAA level that would investigate how this is going to affect the entire industry. That's the way I picture it happening, and I think it's important that as they come up with these news bulletins or newsletters, you always have the option of deciding not to participate in an Action Alert. If you disagree with what the ACLI is saying, then you can say, "We don't approve of that," or "We disagree with it." There is nothing that we've come across in the last five or six years that we vehemently disagreed with. I can see how there might be a case of that, but at least they give you the option of saying, we don't want to participate in that. We'll jump ahead to the second of the two groups that I want to talk about. John Mannion in his presentation to the ACLI Forum 500 Section in May 1998 said, "One of the immutable laws of the jungle is that elephants and tigers peacefully coexist. A cartoon reads, "There are numerable situations where sheer size is useless." Coming from a small insurance company background, I totally agree that small companies have the ability to react sometimes more quickly than big companies do. I've seen that happen a number of times.

In the past 10 years, the ACLI has become more aware that small companies have a role to play, not only in the insurance industry, but in any industry. You have Wal-Mart, Kmart, and your local hardware store. If you want the service, where do you go? You may end up paying a premium for buying a rake there, but if you want the attention, then you go to the small shop rather than the big shop.

About ten years ago, the ACLI began devoting more time and effort to small insurance companies by creating a section entitled Forum 500. They just had a committee on small company involvement, and they finally decided to raise it to full section status in the ACLI in 1988. Membership was at first limited to members of the ACLI who had assets of less than \$500 million. I think that's where the name Forum 500 comes from. They also set a rule up from the beginning that there is to be no fleet association, which means if you took a life insurance company and just chopped it into five or six small insurance companies, you couldn't qualify because all of them would have assets less than \$500 million. It's just got around that by having that rule. In the last couple of years, they raised the requirements to be less than \$750 million. You could also qualify by having capital and surplus less than \$100 million. They kept their no fleet association rule in tact.

Most recently, Forum 500 voted to raise those limits as companies decide to join together. Over time a small insurance company builds up assets. Their requirements are assets of less than \$1 billion or capital and surplus less than \$125 million. There is still no fleet association, and that qualifies about 200 of the 530 ACLI member companies for admittance into Forum 500.

There has been some discussion about changing the fleet association rule. They might say that that's okay if you can somehow prove to the Forum 500 that you do have a separate management team and distance. There should be physical and operating distance from your parent company. The example that Forum 500 likes to give is with Texas Life Insurance in Waco. They're a wholly-owned subsidiary of Metropolitan, but they operate autonomously from Metropolitan. I think they're battling around whether a company like that should be a part of us because they tend to operate more like a small company. Those are just some of the questions that come up along the way. The proposed new rules of asset size, surplus and fleet affiliation would take the membership up to about 280 companies, so you would get a marginal increase if the proposed fleet rule was changed. I think that gives you a good flavor of who's in the Forum 500 and whether they are companies like ourselves that have similar problems and issues to deal with.

The goals of Forum 500 are really to concentrate strictly on small insurance company issues. The ACLI recognized early on that legislation and standards have different effects on small and large companies and they know that certain industry proposals should have a chance to be addressed. We have leveled the playing field for small insurance companies. One of the most important committees in Forum 500 is the Issues Committee, which kind of scans the radar screen looking for issues that are particular to small insurance companies. Then it leads a charge to have them addressed among the members of the forum. For example, when the deferred acquisition tax proposal came out in the early 1990s, Forum 500 led the charge to have some relief clauses built in for small companies.

More recently, there has been the Actuarial Opinion and Memorandum regulations. They've done some work on that. They finally decided that they are in favor of a state of domicile approach where you can take a look at the state that you're domiciled in and follow those regulations. It's a big burden financially and in human resources, to have to do 50 separate valuations to meet the regulations of 50 different states. The state of domicile approach is what Forum 500 has taken up to be their largest issue in the Actuarial Opinion and Memorandum.

Forum 500 has a board of about 20 members who serve staggered three-year terms. After talking to the people at Forum 500 over the last couple of years, I think one of their big concerns is that they need more feedback, especially on actuarial technical



issues, from people who are in the trenches doing that type of work. The CEOs of companies are really the people who represent their company in the ACLI as well as Forum 500. If your CEO isn't an actuary, then he might not have the ammunition to speak on the topics that are coming up in Forum 500. So they're really encouraging actuaries in small companies to get involved in the process and to let their voices be heard and be known. As all the questions get discussed, there should be input from people who are going to end up dealing with those regulations in the end. Like I said, it's important to know the committees and working groups that they're putting together are not necessarily made up of CEOs. They look for people from different areas within small companies to work on and discuss the issues. They need not be from the upper echelons of senior management in order to do that.

I'd like to give you some contacts at the two organizations that I've talked about today. Chris Jacobs is the director of grass roots at ICAN at the ACLI. Frank Griscti has done a whirlwind tour lately of small insurance companies trying to build up Forum 500 and the voice that it has. He is the person from the ACLI who really is trying to structure a strong program for Forum 500. If you want to get in contact with these people, I'm sure they'd love to hear from anyone who has ideas, solutions or even new issues that need to be discussed for small insurance companies.

I think Julie and Jim will also present other ways that small insurance companies can get involved, but when we combine all these ways together, we can draw an analogy. My daughter is about 15 months old and she likes to get into things. We had to quarantine off the bathroom because she likes to eat shampoo and soap and those types of things. My wife and I try to tell her, eating shampoo is bad. I think the more she hears that, the more it reinforces the rule that she can't eat shampoo. There is the ICAN, the ACLI, *small talk*, American Academy of Actuaries groups, and NAIC groups. The more that small companies keep on sending the same message to people, the more they reinforce how they want things to work. And that helps to level the playing field. When Congress or the NAIC comes looking for answers, we've got multiple groups set up to give them information. If we hit them from different sides, that's a good reinforcer.

**Mr. Thompson** This has given us valuable insight into the activity of the ACLI. Julie Hunsinger from Investors Heritage in Frankfort, Kentucky, will be discussing some insight she's gained from the implementation of NAIC model regulations in a particular state and how that can help you in dealing with the states you deal with.

**Ms. Julie A. Hunsinger:** I am the appointed actuary and the illustration actuary for Investors Heritage Life Insurance Company in Frankfort, Kentucky. I'm the only actuary there, which indicates our size. We are now the largest life insurance

company in the state of Kentucky, which is because Kentucky Central was taken over by the state regulators about five years ago. Recently Provident was purchased by Aegon, and it redomiciled to another state. We had always depended on these large companies to take care of us in the legislature and the general assembly. We would often make a comment and they would do all the dirty work. Now, we find ourselves in the position where we need to keep an eye on the general assembly ourselves.

As Governor Carroll Campbell said in the keynote address, the process of making laws is not pretty. It's a lot like making sausage—the whole process is just really ugly, but after it's done, the end product can be good (but it can be bad too). Fortunately for us, the Kentucky legislature meets for only three months every other year. The governor can call a special session at any time, but those special sessions deal with a specific topic. I think three special sessions were called last year. Two of them dealt with health insurance. I expect more to be called this year dealing with health insurance, which we're going to ignore.

I'll talk a little bit about the difference between a law and a regulation, and specifically how laws are passed in the state of Kentucky. I'll discuss how regulations are promulgated, and my specific role in the promulgation of Actuarial Opinion and Memorandum regulations in the state. I'll also discuss other legislative issues that we were forced to deal with, and I'll finish off with some helpful hints for successful lobbying. When you deal with these regulatory bodies, you are a lobbyist and it's important to conduct yourself as such.

A law is what has been enacted by the legislature through the regular legislative process. The senators all see it, they vote on it, and it continues through the regular legislative process. A regulation, however, is the legal equivalent of a law, but it's promulgated by cabinets in state government in response to laws enacted by the state legislature or federal mandates. In the case of the Actuarial Opinion and Memorandum regulation, in response to a NAIC's mandates.

I'm going to talk a little bit about the making of a law in Kentucky. The reason you need to know about the steps that go into making a law, and these are different in every state, is because you need to be involved at every step. You need to know if the bills are in committee, you need to know who has been handling the bill, who's responsible for it, who's trying to get it out of committee, who's trying to keep it in the committee, and so on. In the state of Kentucky, only members of the General Assembly can introduce legislation, although our legislature will introduce bills suggested by others. Now the bills are almost always written by attorneys or government staff. A bill can relate to only one subject and that subject has to be

stated in the title. Laws have been declared unconstitutional because the subject of the law was not stated in the title.

Amendments can be proposed by any committee that the bill goes through or by any legislator, but they can be amended only by a vote of the House or the Senate. A law can be, or a bill can be introduced in either the House or the Senate. Sometimes when they're trying to get something through, they'll introduce them concurrently, but that happens very rarely.

The bill is then assigned a number, it's read by title only and sponsor, and it's referred to a standing committee by the Committee on Committees. Then it goes on for committee consideration. And this is where you can get involved. Committee meetings in the state of Kentucky are open to the public. This is one place we've gotten involved, because if the committee does not recommend it out of the committee, the bill is virtually dead. The committee can also recommend amendments, or it can provide a committee substitute to the bill, which means they added so many amendments a new bill had to be written.

A committee can also recommend a bill without opinion, or say that it is unfavorable, which virtually kills the bill so it doesn't go any further. If the committee recommends the bill as favorable with amendment or favorable with a committee substitute, it then goes to its first reading on the floor. It's then placed on the calendar for the following day. It's read a second time, the next day, and then it goes to the Rules Committee. If the Rules Committee decides that the language doesn't follow that of the state constitution or the rules that the legislative research commission makes for how rules have to be written, then it can send it back to the committee. It's usually sent on to the orders of the day.

During a third reading, a motion is made by the majority floor leader and he or she says, "I move that House Bill 100 be taken from its place in the orders of the day, read for the third time by title only, and placed upon its passage." Now Kentucky introduces about 1,500 bills in any one session. I can't imagine them having to go through all this with everything, although they pass quite a few less because they meet only for three months every other year and they take every other Friday off, too.

Following debate and amendment, a final vote is taken on the bill. To pass, the bill had to be approved by at least two-fifths of the members of the chamber and a majority of the members present. Sometimes, even though it might be passed by two-fifths, you may not have a majority of the members present. It depends on who

shows up and who is playing those political games. If the member doesn't show up and vote, then it won't pass, even though it passed by two-fifths majority.

If the bill contains an emergency or appropriations clause, it has to be passed by a majority of the elected members. If the bill is defeated at this stage, it's virtually dead unless two members who voted against it request its reconsideration and a majority approves. Every now and then when the vote is close on a bill, two legislators will vote against it because they know it's going to close and they're going to lose, and that is the only way they can get it reconsidered. Then they'll be the ones to reintroduce the bill for reconsideration. It's really ugly. If the bill is passed by one house and hasn't gone to the other, it will go on to the other house and usually what comes out of the other house is a little bit different, or quite a bit different than what came out of the first house. Then a Conference Committee meets to resolve the differences. Sometimes they will resolve the differences and sometimes they won't.

The next step is enrollment. When the bill has been agreed on and voted on by both houses and is the same, it is signed by the presiding member of each house and sent to the governor. Now the governor can sign the bill, permit it to law without signing it, or veto it. I think that's similar to what the president of the United States can do. It becomes law 90 days after the general assembly adjourns, unless it contains an effective date stated in the law. The fastest a bill can go through this process is five days.

Next, we'll move on to the making of a regulation. A regulation is the legislative fine print. The process is a little more formal and a little more scary. And I'll tell you about that when I talk about the Actuarial Opinion and Memorandum regulation in particular. I was surprised how loose the process was, and how many places someone could just railroad a bill through without anybody really understanding what is going on. The state of Kentucky adopts 1,000 new regulations each year, and these can be adopted at any time during the year. I'm not sure how many proposed regulations there are. Monitoring the proposed regulations can be overwhelming, due to their volume and lack of media attention.

We have a paper called the *Kentucky Gazette* which keeps an eye on our legislature. This paper also gives you an indication of what bills are coming up, what issues are going to be hot, and which issues are not. I think a lot of states might have a paper similar to this one. Government publications give volumes and volumes of information. This paper really helps to give us an idea of what they're doing and what they're up to.

A regulation is always drafted by a cabinet in state government, as I said before, in response to a federal mandate or another law that has been passed. The Actuarial Opinion and Memorandum regulation is in response to the NAIC's mandate. A notice of intent to promulgate is given, which is really an early warning sign, and it sets the first public hearing. About 45 days later, the regulation is listed in the administrative registry. The completed language is printed here and the second public hearing is scheduled. Next it goes to a legislative subcommittee for review. This subcommittee is a seven-panel member of senators and representatives. I attended the subcommittee review after the session was open, and only four out of the seven senators turned out, but it was enough to do what they had to do. The committee can make amendments if it wants to and the agency agrees.

Three actions can be taken by this committee. It can pass the regulation as it's written, it can defer the regulation, or it can find it deficient. Now if they find the regulation deficient, it goes to the governor. If it is not found deficient, it does not go to the governor. The governor has a chance to kill it, order it, promulgate it as is, or let it go into effect temporarily until it can be pushed through the legislature. The final legislative review happens if the regulation is not deficient. It goes to an Interim Joint Committee that oversees the issues that the regulation deals with. The Interim Committee has 30 days to act on this regulation, which is really pretty fast for state government. This committee may find it deficient and send it on to the full legislature. If this committee finds it deficient, it goes to the legislature rather than the governor, where they have a chance to act on it. Now the legislature may keep the deficient regulation alive by declaring that it does comply, so then it just automatically becomes a law and it's not even a regulation anymore. I don't quite get that part.

My specific involvement was with the Actuarial Opinion and Memorandum regulation. This one sort of blind-sided us. It was promulgated first as an emergency regulation, and it was in effect until late May 1998. This emergency regulation was an effective regulation, but it had to be replaced by an ordinary regulation within six months. When I first read this regulation, I called up our corporate attorney, who is also the only attorney at the company, and I asked him if he could believe this stuff. I called all around and nobody really seemed to care. I got some help from the National Association of Life Companies, but basically I found that I was pretty much on my own when I had to do this. I didn't get a lot of help.

There was wording in this regulation such as, "The actuarial opinion shall be the statement of an appointed actuary setting forth an opinion relating to a reserve and a related actuarial item held in support of a policy." A commission was formed about

40 years ago to help the legislator write more effective bills and write bills that complied with the Constitution of the state of Kentucky. Now, it's almost in charge of determining the substance of the bill. There are some rules from which you are not supposed to deviate. For instance, you're not supposed to use plurals. Some of the rules are really silly. One of the ironic things about this legislative Research Commission is that the founder of our company, when he was lieutenant governor of the state of Kentucky, helped to found the Legislative Research Commission group to help the General Assembly do a better job.

This was actually in effect for six months in the state of Kentucky. The actuary was supposed to list each item and the amount with respect to the appointed actuary's expression of opinion including the aggregate reserve and deposit fund for each policy and contract and for each of the following statement items, and it went on to list eight, nine, ten. We only have about 250,000 policies, so I figured that's another 4,200 pages to the opinion. The regulation took all the recommended language out, because the Legislative Research Commission said you can't have any recommended language. It incorporated it through Form 1000, which you had to get from the insurance department every year. I didn't think it was a good idea that we should have to write the insurance department every year to get something that may change and make Kentucky rules different than other states' rules. This regulation expanded the opinion beyond those related to actuarial items in that the actuary was now supposed to opine on all items on the balance sheet, not just the actuarial items. Some of it made no sense at all. The actuary was supposed to state that the amounts carried in the balance sheets are based on an assumption which produces a reserve, like we've ever used one assumption.

Section Seven, which is the part of the opinion I usually do, asks for an expression of opinion of the appointed actuary with respect to the adequacy of each supporting asset to mature each liability. I've had a run in with our state actuary before on some fine print. I thought we were going to have to put up face amounts for the reserve.

So those are just some examples of what was contained in this regulation and it scared me because they are going to promulgate the real administrative regulation like that. We had to become involved. On the same day the emergency was promulgated, the notice of intent to promulgate the ordinary was also filed and the first public hearing was scheduled.

On December 22, we attended the first public hearing. We decided that if we went in as a friend of the insurance department instead of an adversary, that we would get a lot more done, and we really did. As a result of all these hearings we have

become the source that the insurance department calls before they try to do something silly like this again.

The first public hearing was held. The attorney for the commonwealth, our corporate counsel, the attorney that wrote the regulation, and I were the only people at the hearing. As a result of that hearing, we put together a document that was 15 pages long of what we thought was wrong with the regulation. On January 8, a statement of consideration was published regarding the first public hearing. A statement of consideration is a public document that says, okay this is what they disagreed to, and this is what we agree should happen. They conceded on a lot of things, but they still weren't understanding a lot of the actuarial issues. So I guess you could say that this is where we started to pull out our contacts. Rob, our corporate attorney, called all the people he knew. Remember that we're only three blocks from the state legislature, and we all live in Frankfort. It's a very small town. We do find that we have made a lot of contacts over the years.

My husband owns a coffee house, and this may sound funny, but a lot of the people that work in state government work up there. One man is a regular and his sister is the Secretary of State who has some connections to this. We used these connections to get to the insurance department and into the commissioners office. We expressed our opinion that if they pass this regulation, it will be an embarrassment to the state. You want to look good.

So everything was really starting to fall in place. On February 17, 1998 the regulation was filed with the Legislative Research Commission, and it was published in the administrative registry. This publication in the administrative registry was very close to the NAIC model. I had to keep going through everything, paragraph by paragraph, to make sure everything was in there. A second public hearing was scheduled. The second public hearing went really well even though it was actually held two days after it was scheduled because of conflict of schedules. Rob, our attorney, Sharon Yeager, from the department, and I pounded out the final changes to this regulation. Nobody else was involved. This was the part of the legislative process.

There are three steps yet to be taken. The legislative subcommittee review was last week. Everything went through as planned or very well.

The legislative subcommittee was a different animal. There are supposed to be seven members on this panel, and four actually showed up. It started at 10:00 in the morning and they had 100 regulations to review that morning. Forty of them were deferred so that worked out. We didn't know where in the order we were

going to be. These regulations had everything to do from child care to coal mining to water rights in eastern Kentucky to boating on western Kentucky. It was all over the place. One of the reasons I took you through the steps of making a law and a regulation is because time and time again, the legislatures would berate the agencies, and their adversaries or their lobbyists, on not following the proper procedures, getting involved too late in the procedure, and so forth. So it's very important that you know where everything happens for every step of the way.

They went through these things so fast that we were the next to the last one to be reviewed and we were done at 11:30. The insurance department had asked us to be there as support, and they had brought the insurance commissioner and several of their attorneys and their actuary and all sorts of people. And we all went up front to sit to wait to get grilled like everybody else did, and one really old man from eastern Kentucky looked at it and said, "Actuarial Opinion and Memorandum Regulation." He sort of looked around the room and said, "Let's pass it." It passed without even a question. So we don't have to worry about going to the governor, which would be the second step. The third step is the final legislative review. It's just going to sail through it, and it's basically in effect now.

There are some other issues we worked on during the legislative session that came up. There was a genetic testing bill that would have very broadly involved insurance companies. It involved a lot of things, but it would have sort of included insurance companies in that we wouldn't be allowed to use the results of genetic testing, even if the client knew about those results. There were some premium tax issues that we were involved with, which mostly involved companies that are domiciled in the state of Kentucky. We had a big thing on the continuing education for agents. One of the men that stops at my husband's coffee shop all the time is the head of agent licensing for the state of Kentucky. We had some rather lively debates about how much education an agent should have. My company has a lot of limited licensing agents that are writing very specific markets. We didn't think they needed as much education as the state thought they did. We lost part of that and won part of that. And then there was the telemarketing bill that was so broad it would have also applied to insurance companies.

I'm going to finish with some helpful hints for successful lobbying. When you start to deal with these people, you become a lobbyist. Even though you don't take them out to dinner and buy them things, you still are a lobbyist. To be a good lobbyist, you need to be careful about what you do. You need to watch for emerging issues. You need to talk to people before these issues come up. Sometimes you can stave off a lot of headaches just by talking to the right people before things happen. You need to be a credible source of information and you need to be accessible. That was one of the tactics we took with the insurance department. We're just here to



help. We don't want them to embarrass themselves. I rewrote most of the language for the Actuarial Opinion and Memorandum regulation that was passed.

You need to know your bill or regulation and be ready to defend it at any time. You need to learn the process and use it. That's one of the most important things because people that have been in the system for so long will really cut you down for not taking the proper steps or skipping steps. You should never be critical of personalities; you need to criticize the issues and the philosophies, but never the performer. You may have an adversarial relationship with someone, but you don't want them to be defensive. You never want to lie or tell half truths, or conceal or distort important facts. You need to give them the good and the bad side of it and then talk them into your side of it.

You never want to make public assumptions about another person's motives. In a town the size of Frankfort, it will get back to them. Of course, you never want to threaten. This goes back to you not wanting to make your adversary defensive. You want them to think that you really are working for them. Because this is a small group of people that you will see again and again, you never want to make your enemies mad enough to work against you..

**Mr. Thompson:** As you can see, just having the NAIC pass a regulation doesn't mean anything unless it gets into an actual state, and that's a process in itself. I think that all of us have key states or states where our home office is or states of domicile where this information can be highly useful.

I'm going to deal with the role of *small talk*, the official newsletter of the Smaller Insurance Company Section. It helped to focus some of the members on regulatory problems. This involved coordinating with some of these other groups.

One point I noticed is there are certain generic objections that occur. One is that smaller companies say a regulation is going to be onerous in and of itself; in other words, it's going to consume a lot of resources that they would rather spend elsewhere. Obviously, cash-flow testing is something that was perceived that way, even though some people gained insights. Another generic objection is that it may involve some significant purchase, such as purchasing a new valuation or illustration system. A third generic objection is that it might upset the relative small company, large company balance of power or competitiveness. I think many of the objections we deal with to regulations are in those three areas.

Now I want to deal with the role of the *small talk* newsletter. One point is, we never know in advance who would be willing to work on an issue. We generally

deal with companies where you have one actuary or several actuaries or no actuary and they use a consulting actuary. The actuary has to maintain the marketing illustration system, be responsible for liaison with the software developer from the mainframe, be the product actuary, and the cash-flow tester, and take on whatever else comes along. These actuaries don't have the time or the staff. But sometimes within the Smaller Insurance Company Section, there are people who have the time or the motivation, because of some particular company perception. We have to locate who those people are. We also wanted to provide information to people in advance of the issue, not just educate people on the issue. We wanted to show them when and how to act. We also were aware of the fact that other groups were doing this, and we wanted to coordinate with these other groups, including the ACLI and the ICAN program.

We started with a newsletter that was published twice annually, and one big decision we finally made, which I'll go into later, was we'd publish in advance of the June and December meetings of the NAIC, because they tend to pass legislation there and they tend to debate it in March and September. We finally discovered this.

The small insurance section was formed essentially in late 1992 and early 1993. We got a newsletter out, so we had to learn, as a section, how to coordinate effectively. Many of the companies in the ACLI are larger companies. They might be smaller relative to the other ACLI companies, but we were dealing with some truly small issues.

Issue number one was published in June of that year, and we got the idea of David versus Goliath, which was the banner for the first issue. It was the first editorial. We got it because we were aware of the fact that small companies had to be aware of their own strengths and weaknesses. Goliath had all the hardware and he had the size, but David had strengths. He could run or dodge spears, and he also had a potentially lethal weapon, if used properly. He had help upstairs too. In any case, a small company had to be aware of that.

We were faced with a fast-changing world. We were faced with changes in technology, including the evolution of personal computers, software design, the Internet, and so forth. People had to be aware of these, whether they were relevant, whether they could be used as strengths or whether they were things that would make us weaker. We also again had to network with each other and with other groups. In that issue, we said one problem was keeping up with information. Since then we've changed that to say we have to be aware of regulation.

Now, in the early issues of 1993 and 1994, we also became aware of other groups. There was a group called the National Alliance of Life Companies (NALC) headquartered in Rosemont, Illinois. We wanted to have someone from this organization on our panel to complement Dale Hall's presentation on the ACLI and Julie's on the state. Nobody who did extensive work with that group could come to the meeting. The NALC publishes its own newsletter monthly and it relies on Jim Van Elsen, who's a consultant. He publishes a newsletter that tells about what happened at the last NAIC meeting. We use quotes from those two newsletters in *small talk*.

In any case, in 1993 and 1994, we were trying to keep up with other people and we found that we were essentially just barely keeping people informed, and we were developing the network. In 1995, we published an editorial on focus groups, and we were trying to get small groups of people within the section to focus on issues between meetings. This is not that easy because you had to get the volunteers. We were aware of the fact that the committees that were pushing various issues were all dominated by big consulting firms and really large companies. We also saw that we had to get some spontaneity, so there was a certain strategic focus on this. We wanted to get people who are enthusiastic about something to write articles for *small talk*. Other people who wanted to lobby on these issues could then read the article and write a letter to the NAIC or their state legislature. They could photocopy it and that saves every individual company from having to do their own research the way the big companies were doing. So this would be some advantage.

I want to draw a little analogy about putting the troops in the trenches. In the battle of Bull Run during the Civil War, after the Confederates won, there were two Generals, Beauregard and Johnston, who were debating who was going to be credited with being number one. It was actually a team effort, which was one of the keys to *small talk*. They finally gave it to Johnston and he was one who sat back at the railroad terminal and was directing the regiments into the front lines. The other one was the front-line leader. They realized that you had to focus and direct people to be where they could do their job. Our newsletter, *small talk* sort of functions like that. In other words, we try to get attention for enthusiastic people, and then other people can peg off their articles and interact with them. Whoever is enthusiastic about things gets to write the articles.

We had to have a concept and an issue. In 1995, there was an issue coming down the pike towards the illustration actuary. We were discussing more of the methodology of lobbying rather than the issues, so I just want to briefly remind those who may not know that it essentially involves nonguaranteed elements. So if

you have products with nonguaranteed elements, life products only of certain types, premiums, nonguaranteed premiums, cost of Insurance, and interest rates, the illustration actuary has to sign off and say whether the scale is supportable. One thing we learned in following this issue is that this issue was not written in granite. Another perception many really small companies have was that this thing was coming down the pike, like that rock that rolled toward Indiana Jones. It's not that way at all. These regulations change a lot and that's one of the things Julie pointed out. Even when it gets to a state, it changes. We saw how the NAIC Illustration Actuary Model Regulation changed. In a short time I received five drafts of it. So we began to realize that you could have input into this process, and we looked into it.

One of the points about Dale is that he comes from Westfield Life. Westfield Life was a company that was very proactive. It was very useful to the Smaller Insurance Company Section and one of the people who was his colleague there was Kevin Marty, and he really spoke on the dangers of this. He was sort of a star on this. We focused on his articles, so people could read them and then start referring to them in lobbying with legislatures. Essentially, in the early drafts, the Generally Recognized Expense Table (GRET), which was the default scale, was not present. So if you were a small company and you were a start-up company out there and you had ten policies issued, you had to take your current experience, your expenses, subtract your acquisition cost, divide by ten, and that was your maintenance cost. That's the way the bill was designed, which was crazy. That's what I'm saying, this type of crazy thing comes in, the small companies always felt helpless, like the rock rolling on them. So, we finally got in there and we lobbied on this. Now, we got a good issue out in December, and December 4th, 1995, the bill was passed. There was a reference to a GRET in there, and this table means if you have too high expenses, you can always use this industry norm as a default for testing your products. In any case, there was no GRET design even though it says there's a GRET. The bill said, if there's no GRET when the illustration actuary bill comes into effect, then you have to use your own expenses. This was total suicide. The industry was hoping that some subcommittee would come up with a GRET in time. We then focused our attention on getting people to really lean on people to come up with that in time. All the organizations did come up with it in 1996, and we counted that as one of our first substantive victories of the focusing process.

We also published an article on lobbying itself, and we relied on a person named Bob Barney. He was someone who has been officially attributed with almost single-handedly stopping another NAIC model regulation, called XXX. It essentially deals with term insurance and certain types of universal life. And as it was conceived, people perceived this as having a monstrous increase on the premiums of products due to a certain reserving process.

I want to go into the methodology of lobbying. Tom Foley mentioned Bob Barney and said that he was somebody who essentially stopped this regulation or significantly impeded it. He wrote an article on lobbying. He said lobbying is more a process of educating; it's not this back-room corrupt thing with booze and money flowing. When done properly, lobbying is a process of getting educated about issues of concern to you. As Julie has pointed out, these people have an enormous agenda with all kinds of bills facing them. They have a time crunch. They don't only have insurance bills. And even the insurance bills are mainly casualty bills and health bills. So if a life bill comes down, they don't know the facts.

You should lobby with them on the facts. One point is, in dealing with 50 states, he found out he had to do it in writing. He didn't have the long-term relationships with them on the issues. When dealing with 50 states, there are staff changes. People leave their jobs, or someone new comes in, or they reassign certain people so you always try to get a written response instead of a verbal one. So he wrote letters and tried to get a written one back, because it's hard to change that once they say something. He also found out you had to use simple language, and it couldn't be technical. Actuaries tend to be technical, but they don't realize how clueless the regular world is. So you have to be mindful of this. Then he said, if you get no response, there is a chance to go higher up the tree. There's usually a hierarchy and you can keep a record of this. So these were some of the tips he came up with. Now his tips are useful, as I said, for lobbying of larger situations. I think if you have one legislature and you have personal or long-term relationships with them, you have a better, more stable situation.

There are a couple of other approaches we've taken. Remember, that we had a problem with networking. You have to develop relationships with other people, and you can't just get into one issue. When it comes to getting representation on committees, the smaller insurance company section has a problem. So we wanted to get smaller companies representation.

We ran an article by Arnold Dicke in which he invited members of smaller companies to participate in various Academy and life practice committees. They weren't doing that. We finally got some representatives on it. To give you an example, Norm Hill of Kanawha Life is on the Unified Valuation System (UVS) Committee of the Academy. This has also been referred to as the Wilcox Committee or the committee to redo the standard valuation law. They came up with a report. You may have heard about this. In the old days, the last place you would ever find a small company actuary, would be on a long-standing theoretical committee that works for years and revises things. They might deal with something

that's about to come down the pike real quick. Jim Van Elsen and a few others are on the mailing list and go to a few meetings as nonvoting members. So people are following this. They've come out with their report for a long-standing theoretical committee. I think they came out with a report that was discussed at another session at this meeting, so this is something that should be followed.

Now another issue I wanted to bring up is XXX. This is the issue that Bob Barney was known for. To make a long story short, current term insurance valuation methodology has a kind of theoretic loophole that allowed people to take a level term product and put a term-to-100 tail on it, which produces terminal reserves that are zero. This is used by companies to develop 10, 15, 20, and 30-year level term products with low premiums, which the consumers like.

Some people believed that there are some theoretical problems with the reserving, so they put forth Guideline XXX as an alternative. Because of the way it was designed with mortality tables and deficiency reserves, it monstrously raised the premiums, thus affecting the consumers. In any case, there's a compromise going on that began with an industry group I'm involved with, along with several other small company people. Jim Van Elsen and Steve Smith are the official contact people from the National Association of Life Companies and the larger term writers. They're coming up with what we call XXX Lite. In other words, the mortality is significantly improved and there is more flexibility on the deficiency reserves so that the reserves will be lower if it's passed. But the key is that smaller companies have a hand in something that is in process. If you are affected by this, get in touch with any of the above named people or me because it's not set in granite and there are a lot of odd nuances to it dealing with the deficiency reserves. Essentially, if you're totally allowed to set up your own deficiency reserves using actuarial judgement, you can set up none, and larger companies can use their credible experience to gain a leg up on smaller companies that don't have credible experience. In any case, these nuances are too difficult to go into here because we're discussing the methodology of lobbying. What I'm trying to point out is that over five years, the Smaller Insurance Company Section has evolved from essentially having no influence or being a passive follower, to having helped produce the GRET. We're now on significant committees and we're helping to inform people in the shaping of regulations. They're no longer the inevitable rock coming down on us. The *small talk* issues come out in May and November, and we rely on input from the March and September NAIC meetings so we can publish what has happened and what is likely to come down at the next meeting. So you should get that three weeks in advance and then be able to read it and know what to lobby for, either by attending the meeting or endorsing some article from *small talk*. You might see some of the similar patterns between this and how the Industry Citizen Action Network program tells you how and with whom to communicate.

We need to go back to the Civil War analogy about more regiments in the front line. We have the process of focusing the troops, and we need your participation.

**Mr. Hall:** I would second your comment that small insurance companies should try to keep up as much as possible with XXX and the unified valuation system. Sometimes it's hard because of limited resources, but now with the Internet and e-mail and phone calls and having a network, it is a little bit easier. It's an important process to build up.

**Mr. Thompson:** I like the way the Industry Citizen Action Network program uses the postcard. It's two pages or a short brief, and then you can learn whom to contact. You don't have to agree with their suggested position. Guideline XXX is a very controversial issue and the ACLI sometimes disagrees with the NAIC. So you have to read these things and then evaluate them. At least you get summaries of what's important.

**Mr. Franklin C. Clapper, Jr.:** I was interested in how you can get involved professionally, not just to promote the interests of your company, but also your professional interests to see that things are done correctly. In terms of the NAIC meeting, one thing I noticed is that the commissioners tend not to show up and they always have delegates going to these things. So the process is very unpredictable, even at the NAIC. All the work is done in the working groups. I was on an advisory committee for reinsurance where we did a lot of good, professional work in our committee. That paper went to the Life and Health Actuarial Task Force, which, as you pointed out at the beginning, was very influential. It went from there to the NAIC, so that's the way the process worked. They try to solicit professional involvement that they consider to be responsible, and then they accept it from there. So it's not really political; it's more professional as long as you get the right people on the working group and on the committees.