Volume XXVI, Number 1 | April 2020

nolhga journal

A Publication of the National Organization of Life and Health Insurance Guaranty Associations

Bigger & Better in Texas

Austin played the perfect host for NOLHGA's 2019 Annual Meeting

By Sean M. McKenna

There is no truth to the rumor that the slogan for NOLHGA's 36th Annual Meeting was "come for the barbeque, stay for the insurance!" But it's a good bet that the 170 or so people who ventured to Austin in October 2019 did just that. Over the course of two days, attendees were treated to great food and even better discussions of long-term care (LTC), insurance business transfer/corporate division legislation, the health market, regulatory issues, and more.

Based on meeting evaluation forms, just about everyone went home happy. Based on the number that appeared on the scale the morning after the meeting ended, your correspondent is not going back to Austin anytime soon.

Changing Markets

The meeting opened with an analysis of the LTC market by Aaron Ball (New York Life Insurance Company). Ball reviewed the history of LTC products from the 1970s onward. "What went wrong?", he asked rhetorically. "Virtually everything." Almost every assumption made about the products, from lapse rates to adverse morbidity to interest rates and beyond, turned out to be wrong. Even the benefit design, which treated the products like life insurance, was flawed. "It turns out these are more like health products," Ball said. "I don't think carriers appreciated the behavioral economics of that fact."

They do now, which may explain why there are only about 10 to 15 carriers still in the market. That could change, Ball said, because demand is still high. "This is a market consumers are still very interested in," he explained, noting that LTC and retirement savings are the top two financial priorities for consumers. However, the current market is largely tilted toward the affluent: "As an industry, we've left that middle market behind." He added that there's interest among middle- and lower-income groups if premium prices come down.

Ball noted that the LTC market is moving away from stand-alone policies to hybrid products such as linked-benefit policies (life or annuity policies with LTC components) or chronic care riders on life policies, which allow policyholders to accelerate death benefits to pay for LTC. Companies like the linked-benefit prod-

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Texas Insurance Commissioner Kent Sullivan welcome attendees to Austin and spoke about his department's focus on best practices, modernization, and the use of plain language. "Plain language is essential for consumer protection," he said, stressing that consumers need to understand the policies they buy and how those policies work. Turning to the long-term care issue, Commissioner Sullivan said that the states will need to work together to develop creative solutions. "We need to raise the bar. We need to expect more from each other."

> "What went wrong?", he asked rhetorically. "Virtually everything."

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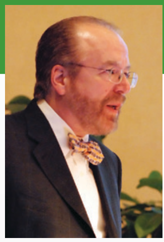

"World War C" and the Life & Health Insurance Sectors

I hadn't planned on writing this column from my home, and I suspect that you hadn't planned on reading it from yours. Until recently, much of the focus of the regulatory, receivership, and guaranty system community has been on long-term care insurance (LTCi), and I had been expecting that this column would also be about LTCi. You'll see that column in the next issue. Over the past two weeks, nearly everything has changed.

That change, of course, involves the recent and rapid spread of the coronavirus, and the rapidly growing number of cases of COVID-19, the viral illness that the coronavirus causes. As I write on March 19, the number of U.S. cases has reached 9,400, and COVID-19-related deaths to date have reached 150. Globally, cases now exceed 222,000, and deaths exceed 9,100. All of those numbers have grown sharply each day and likely will be significantly higher by the time you read this. (*Editor's Note: As of April 1, there are approximately 210,000 confirmed cases and 4,700 deaths in the United States and approximately 905,000 cases and more than 45,000 deaths worldwide.*)

Everyone's first thoughts at such a time are to grieve for those who have lost their lives and for their loved ones, and to commiserate with those suffering from the illness. Aside from the deaths and sickness, this pandemic has disrupted normal civic and business life in ways that haven't been seen since World War II. Indeed, the health and economic impacts of the pandemic are fairly comparable to a global war.

In the United States, as in other countries, social and economic disruptions have been massive. Normal business and commerce have ground nearly to a halt. Those who can continue to do their jobs by teleworking, but millions don't have that option. Many businesses have closed, and most others have cut back. Many government offices have also closed or cut back operations. As a consequence, business orders and personal incomes and expenditures have all slowed dramatically.

A recession probably has already commenced. GDP is projected to drop dramatically for at least the second quarter of 2020, and the only real questions are, how far and for how long will the human and economic damage extend? An important development for insurers (discussed below) is that interest rates (which were already near record lows) have dropped to near zero; how long that situation will prevail is both important and, again, impossible to predict.

Schools have closed, and virtually all cultural and sporting events have been cancelled or postponed. Stock market indices have dropped sharply to their lowest levels in several years. The President has declared a national emergency, and governments at all levels are exploring every option to respond to a crisis that has several different key aspects: the public's health, drastic effects on the economy, and troubling implications for the financial services marketplace (including insurance).

The COVID-19 crisis is fundamentally a public health crisis. Economic and financial marketplace dislocations are being driven by public health developments, and economic and financial marketplace recoveries will depend fundamentally on solving the public health crisis.

Because the coronavirus is quite contagious—with no current remedies or preventative vaccines—the public health responses have to date involved efforts to contain and mitigate the virus's spread, including testing and tracing sources (efforts that are just gearing up now in the United States); and, more significantly, "social distancing" to minimize, or at least slow, the transmission of the virus. In turn, slowing transmission of the virus is viewed as a critical measure to prevent swamping the capacity of the healthcare system—especially hospital ICUs—to respond to serious cases of COVID-19 requiring intensive care.

The social distancing strategy has led the CDC and various government authorities to call for closing of businesses, schools, and other gathering places. The indirect effects of social distancing have included drastic decreases in travel; cancellation of meetings and conferences; and the closing (we hope, temporarily) of restaurants, theaters, and other small and large businesses.

Necessary as those public health measures are, they have led directly to a broad-based decline in general economic activity (the so-called "real economy," as opposed to the financial markets). At the federal level, the Trump administration and Congress are working feverishly to implement unprecedented measures to respond to the slowdown in the real economy.

Economic stimulus measures often adopted to address more conventional recessions or problems originating within the financial markets (such as the 2008 financial crisis) are somewhat frustrated by the nature of the COVID-19 public health crisis and the necessary public health responses. The

traditional forms of economic stimulus, which aim at incenting a variety of consumer and business expenditures, don't work well in an environment where responding to the public health crisis requires a significant shutdown of the very markets where such expenditures would be made.

Because businesses and workers will lose substantial cash flow during the period when social distancing must be practiced, the appropriate economic relief measures require broad-based liquidity support for individuals and businesses. As I write, Congress and the White House are considering measures to provide just such support.

In the meantime, the equity markets and the rates paid on all kinds of debt have declined suddenly and deeply for a basic reason: uncertainty. While it's a cliché, it's also an indisputable fact that financial markets respond better even to bad news than they do to uncertainty, and nothing is more materially uncertain today than the eventual length and severity of the pandemic as a public health issue (and secondarily in its effects upon the real economy). A massive and well-designed stimulus program would go far to reduce the uncertainty in the financial markets.

Most experts agree (famous last words, I know) that U.S. economic fundamentals were relatively strong entering the pandemic crisis. If the liquidity pressures of business shutdowns and lost paychecks can be bridged over the period required to get past the worst stage of the pandemic, it is not unreasonable to expect a return to some degree of economic normalcy in the relatively near future.

As to the life and health insurance markets specifically, the pandemic is significant in several ways.

First, private health insurers (along with government programs like Medicare and Medicaid, which cover much larger shares of U.S. healthcare costs) will face claims for covered costs of treatment. Those costs doubtless will be significant, but at this point they are very difficult to quantify and will be highly dependent on the length and severity of the epidemic.

If nothing else, the pandemic is an excellent reminder of why insurers are required to maintain sizable reserve funding capacity.

This is a developing situation. If nothing else, the pandemic is an excellent reminder of why insurers are required to maintain sizable reserve funding capacity.

Life insurers will also be affected by the pandemic in several ways: First, deaths from the pandemic will require cash outflows for death benefit payments sooner than projected (though many annuity payments will cease upon death, somewhat buffering the death benefit payments for companies that write both life and annuity business). Second, the current near-zero-return capital markets environment, if sustained for a prolonged period, will place pressure on life insurers' reserves. (Fortunately, neither U.S. life insurers nor health insurers—unlike some foreign counterparts—have significant exposure to equity markets, so the recent wild gyrations—mostly downwards—in equity prices will have

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NOLHGA Conversations

Meeting Change Head On

Former NAIC Presidents Julie Mix McPeak & George Nichols discuss the challenges state insurance regulators have faced and what's on the horizon

Julie McPeak is a shareholder at the international law firm Greenberg Traurig LLP, and she recently opened their Nashville office. She's also a former NAIC President, Tennessee Insurance Commissioner, and Director of the Kentucky Office of Insurance.

George Nichols is the President and CEO of the American College of Financial Services. He too is a former NAIC President, and he also led Kentucky's Department of Insurance as Commissioner before embarking on a long and very successful career with New York Life. He is also a former Chair of the NOLHGA Board of Directors.

The following is an edited transcript of our conversation at NOLHGA's 2019 Annual Meeting on October 11.—Peter G. Gallanis

Gallanis: *Our discussion today has to do with how insurance regulation has evolved, and we'll spend most of our time on some critical developments in which the two of you played key roles. George, you were President of the NAIC when the organization developed a response strategy to the push for optional federal chartering that arose around the year 2000. Companies had a number of concerns about matters such as product approvals, rate and form filings, speed to market, and consistency of regulation from state to state. The ACLI conducted some regulatory efficiency studies that played a part in that conversation. How did you and your fellow regulators view those issues, and what did you do in response?*

Nichols: Most of us thought about getting out of the business of being regulators. That's probably the first thought. But it was really a matter of sitting down and trying to think about it not just from our own perspective of being regulators. What was the right thing for the marketplace, both for the industry itself and where we thought the marketplace was going?

Peter mentioned in his introduction the connection between Julie and me—both being Commissioner in Kentucky and both having the opportunity to serve as NAIC President. But what a lot of people don't know is that Julie and I met in 1995, and when I became the insurance commissioner, I asked her to come over with me from the previous roles both of us had played with the Health Policy Board in Kentucky.

Julie was in our legal office, and she was assigned to do one thing—help me in responding to these federal pressures. She was a driving force behind a lot of the things that I thought about when it came to financial services. And what we were trying to do is figure out where we thought the marketplace was going and then ask, "What is our role in that?" There is a responsibility as regulators to facilitate the marketplace. When we came up with the statement of intent, I think we were ahead of our time. There's a technology tie to this, which I think Julie will talk about when you get to the NAIC's State Ahead Strategic Plan.

Here's what we were trying to think of: With all these pressures, what do consumers want, what

does the industry want, what might the federal government expect of us, and how do we organize it in such a fashion that we can manage it all? I've always believed that if you want to defeat something, you make sure it all stays apart. That was how regulation was structured. We could deal with one issue. Companies would come after us or consumers would come after us, and they always kept us apart. So the objective was to pull it all in and say that every part fit into certain categories.

We concluded, at that time, that the platform we should build that would allow us to address all of this in a systematic and methodical way was the Interstate Compact. That was the platform. At the time the biggest pressure was speed to market, so that's what it started with—even though it's really not evolved into anything else.

But the objective was, if you build it correctly and you draft the document, you could put anything on it. You could put product approval on it. You could put all your financial issues in terms of how you looked at a company that operated nationwide. You could put consumer issues on it. You could put anything on it, because the platform itself was an agreement, beyond just membership within the NAIC, that everybody was going to work in a very, very consistent fashion. That is what we were trying to achieve.

We recognized that we needed to look more at group-wide risk and make sure that we had a significant number of discussions between regulators of affiliated entities.

Julie Mix McPeak

When I left, the work that Terri Vaughan and others did was, how do we get the Interstate Compact passed? And then how do we show that it works on the first pressure point, which was speed to market? If we can get that done, then we can convince regulators and the industry that this could be a national platform for national oversight of insurance regulation. That would've been great at the time, but I also know it would've been threatening. But that was our thought process back then.

Gallanis: *But the accomplishments that were achieved, even if not carried through to all the objectives you've described, were successful in addressing some of the drivers behind the push for the optional federal charter. In any case, the optional federal* *charter proposals didn't move anywhere in Congress. I think that, as the industry got to know some of the reforms that you put into place, there was a recognition that there was a lot of value there.*

Now we find ourselves in 2007 and 2008, and it began to look, for a while anyway, like the world was coming to an end. Julie, by then you were clearly moving into NAIC leadership circles. As Congress was setting up the Financial Stability Oversight Council (FSOC) and insurers were being designated as systemically important financial institutions (SIFIs), the NAIC was also dealing with systemic risk in the financial crisis, such as the Solvency Modernization Initiative and other steps. What was the NAIC trying to accomplish?

McPeak: Our goal was to build on the platform from the statement of intent and the Interstate Compact. I feel like, at that point, the NAIC had responded to some of the issues of market efficiency. We could get products uniformly approved, and we could get rates approved in a fairly consistent national strategy. We didn't have all the states onboard—we're still working on that today—but we could really address a lot of those issues. Then comes the solvency crisis, and our focus shifted to the strong and cohesive network of state insurance regulation on the financial solvency side.

George is right; I grew up as a baby attorney in the Kentucky department on the financial solvency side, which was a really nice place to be as Gramm-Leach-Bliley was being adopted. It also served me well in looking at how to describe our system of solvency regulation to others at the federal government and certainly internationally.

Our position at the NAIC at that time was to let everyone understand how we have this under control. There were improvements to be made, certainly, through the Solvency Modernization Initiative, and we recognized that we needed to look more at group-wide risk and make sure that we had a significant number of discussions between regulators of affiliated entities. That's where the ORSA (Own Risk and Solvency Assessment) project came into play; we wanted to really hear from the executive management team about what you think your risks are. We knew that would help the insurance department oversee the market from a financial solvency side.

Then we became very active in the International Association of Insurance Supervisors (IAIS). The NAIC was actually one of the founding members of that organization. That's where things became a little more difficult, because there wasn't a huge recognition globally of our state insurance regulatory system. There was a desire to deal with our central bank, the Federal Reserve Board, or the government as a one-stop-shop for other international regulators. We felt that we were constantly trying to prove that we have our eye on the ball. We feel very comfortable with our oversight financially of large groups in the United States. I think that argument is actually still ongoing; many of you in the audience know because you have been involved in those discussions as well.

I will tell you that I was shocked when I started appearing at IAIS meetings to learn that globally, the world sees AIG as an abject failure of the United States system. It's not because they don't see the value in the fact that no consumers ever lost their benefits. They consider it a failure because a federal government backstop was required. Forget the fact that it was paid back in full with interest and no consumers were ever harmed. The fact that the federal government had to step in—the international community is still very wary about that. There is still a great deal of discussion of, do you really have your eye on the total risk of some of these globally significant groups? Do the FSOC and the Treasury Department help in that regard? Can we really rely on your financial oversight? That discussion is continuing even today through the Insurance Capital Standard.

Nichols: Let me add something to what Julie said. When you think about the financial crisis, of all the financial regulators that had done a great job, it was the insurance commissioners. There was not a crisis in the insurance industry. There might have been a crisis in AIG in parts outside the insurance entity, but there was nothing at the insurance level. But internationally, I don't think regulators ever acknowledged to the NAIC or state regulators that, apparently, you were doing your job. You can argue with me over whether I had real control over the other components of this holding company structure. But that recognition never really came about, internationally or domestically.

I know that when regulators were saying that on Capitol Hill, the response was always, "Well, they should've had oversight of the whole AIG structure because it's an insurance company." Well, that's just not the way the laws were set up. There was always an effort to downplay the fact that the insurance commissioners had done an outstanding job, from a solvency perspective, of keeping the insurance industry protected. They weren't going to be protected from the environmental issues in the marketplace. But in terms of their regulatory oversight, reserving, and where they were financially, I think it was probably one of the more shining moments for the state regulatory body.

Gallanis: *The narrative was that because there was a problem with AIG, which people thought of as an insurance entity, therefore there was a problem with the insurance industry. My response to that has always been, "If there was a problem with the industry, show me the second AIG. What other company had problems like that?" I think anybody who really has dug into this, including a lot of people in the federal government who afterward gave it some thought, has come to the conclusion that AIG was a one-off.*

The technology, the ability to do the analytics, the data scientist who will come in and help departments analyze this—those will be the things that help the NAIC connect the dots to see things that may not be seen at a state level.

George Nichols

Nichols: Even on the point of other insurance companies that took TARP funds. There were a couple of them that said, "We want TARP funds." If you're running a business and someone says, "I'm going to give you some money cheap," would you take it? Sure, if I need to. I don't know that we want to say that they did a bad thing, but there were not a lot of insurance companies that took TARP funds. There were some.

When I was at New York Life, we were involved in some of the meetings with Treasury. I remember Ted Mathas, our CEO, telling me that he was in a meeting with a group of CEOs and Secretary Paulson. The Secretary said, "Everyone is going to have to take this money, but we have one problem. How do we make those mutuals take it?" The government's reaction was that everybody has to take the money so that it looks like everybody has a problem. Because otherwise, people are going to say, "Why didn't you save Lehman when you chose to save AIG, and then you chose to save this other company?"

You'll also remember that banks were angry because a lot of the banks said, "We don't want the money." But again, the government said, "All of you are sort of bad, and we're helping all of you." A lot of dynamics came into play.

Gallanis: *In the last few years, the federal government has backed away from the more intrusive regulatory role that it first played under Dodd-Frank. The three insurers designated as SIFIs ended up being de-designated, either through litigation or by the FSOC. As the federal government's interest in the supervision of systemic concerns that might arise within the insurance industry has receded, the states have been moving forward. Julie, if you could talk a bit about the NAIC's State Ahead Strategic Plan, what can you tell us about what it has achieved? And now, from something of a remove, what do you think still needs to be achieved?*

McPeak: The State Ahead Strategic Plan was an initiative that took about a year and a half to reach fruition, which was the actual State Ahead Report. We spent a great deal of time with a lot of our members doing the same strategic planning exercises I'm sure you all do in your firms—with Post-It notes about our threats and opportunities—in an effort to decide how to position the NAIC to support state insurance regulation and the state insurance departments as members in this evolving environment of financial oversight

NOLHGA Conversations

I don't think most regulators and industry people really pay attention to the business models that companies are evolving into today. —George Nichols

and consumer protection in the insurance industry. We were really trying to suss out from members, "What are your priorities? What are your issues in providing high-quality regulation with efficiency to the marketplace?" Several themes emerged from that. The report was issued, it was adopted, and we're in the implementation process even today.

What we heard was that state insurance departments vary in what kind of support they need from the NAIC. There are some very large departments, like Texas, that say, "We are very interested in what you're doing, but we have such a large market and such a well-funded department, we can kind of do our own thing." Tennessee was a little bit more in the middle and said, "We have a pretty significant market and some pretty significant resources, but if the NAIC can help us do some things, we are interested in doing that." And then we had some departments that said, "We would like to be on the PBR (principle-based reserving) train, but we don't have the actuaries that can help us reserve under PBR, and we need all the help that the NAIC can give."

So the NAIC really started to consider how to reposition itself to support state insurance regulation through the use of technology, refocusing on consumer education, really applying what George mentioned earlier about viewing the consumer as an entire person. Granted, we were given a little help with that from the Department of Labor and the SEC with their fiduciary standard and best interest rule.

But at the same time, we were envisioning how we as state regulators should be overseeing the market with the view toward a competitive marketplace, solvency regulation, and consumer oversight. There are a lot of projects still underway.

It may be scary to think about, but with the Artificial Intelligence Initiative, we're looking to see whether you can use some of these technologies and learning tools to do some of the form functions in state departments so you don't have to have the actual forms analyst checking the statutes against every form. You can do that with machine learning.

If that is possible, then you could see how it could go in many other directions. You could look at ORSAs in the same way. You could identify outliers on financial statements. That's what the NAIC is really trying to determine—how to use tools to benefit all state regulators across the states and really preserve the state of our regulatory system of insurance.

Nichols: I still keep up with this. I don't know why I still enjoy it, but you can't get away once it gets in your blood. I applaud the NAIC and the regulatory community for the State Ahead Initiative and what they're doing. I agree with Julie in terms of where I think it is and where it will bring value. When I look at it, I think about the future. This is something I deal with today at the American College of Financial Services, in that the faculty or even some companies we deal with have this perspective of, "Well, this is what we are. We really don't evolve much, and if we do it evolves slowly." But right now, it's not evolving slowly.

That's very concerning. And the way risk is done today, it actually is going to be the NAIC itself that will save state regulation, because of all of the things that it's putting in place. The technology, the ability to do the analytics, the data scientist who will come in and help departments analyze this—those will be the things that help the NAIC connect the dots to see things that may not be seen at a state level. Maybe the NAIC's not saying they're doing that and they really are, but I think they're going to have to do that. That's one piece of it.

You also have to factor in the disruption of InsureTech/FinTech. It's more than enterprise risk programs. This is a disruption from the outside that you have to react to. I think that's another piece that the NAIC should be thinking about. Are we keeping up? Not just with the innovation that's happening within our departments and the innovations that are happening in companies, but what's happening outside our industry, in companies that are actually coming in and trying to change the game itself.

It's those things that I hope the leadership is thinking about, "We've got this in place. It's going to help us. But what should we be thinking about future-wise?" Because it is not going to evolve slowly. When Google or Amazon decides, "I'm going to start selling insurance," the same way Facebook says, "I'm going to create an alternative currency," then you could say we fight all of that. But right now those are driven from the consumer side, not

from the company side. Those are things that become really important.

Gallanis: *I know both of you really want to talk about some issues that have to do with changes in the technological environment that have an impact on how consumers make their decisions, how regulators do their job, and how companies are going to move into the future. Maybe I can try to pose this question by putting two things together and seeing whether you can define the connection between them. One is what you were just describing, George. We have this growth of big data and AI, and a concentration of a lot of power to do things with those tools in some very large and sophisticated technology companies that so far haven't been thought of as insurance market players.*

Second, you've got a shift in focus with the consumer population in terms of how they want to use their time and how they want to make their decisions. The cliché is that life insurance used to get sold over a kitchen table face-to-face, and now it seems to be the case that young people don't want to make purchases that they can't make on apps on their iPhones. Then you add to that one last thing—there is a retirement savings crisis that's particularly startling for people who are young.

Are insurance companies going to be able to sell to those young people who've got a retirement savings gap but who don't want to talk to their in-person agents? How do companies move forward given how we seem to be on the cusp of revolutionary change in so many different ways?

Nichols: First, let's take what we have today. I think there are a lot of companies doing great things in trying to give people options and help them with their retirement concerns and strategies. We're just going to have to get faster and better at that. I think there are companies that are already exploring how to sell term life insurance over the Internet and reduce the amount of time it takes. For a whole life policy, you might get it in three months. I hope you don't die between now and then. Companies are talking about how great our returns are and all of that other stuff, and customers are asking, "How quickly can you get me covered?"

I think we have to do a couple of things. First of all, I don't think most regulators and industry people really pay attention to the business models that companies are evolving into today. Talking about retirement—think about what we as the life insurance industry offer for retirement. Life and annuity. What else do we offer? We offer other people's products. That's our play in the retirement space.

Think about the growth within the life insurance industry. How many of you work at a company where your true policy count has increased over the last 10 years? Raise your hand. One, two, three. That's it. Most of it is premium. It's not policy count. As people are dying, we're not bringing as many new people on. We're actually selling products back to the people who we've already sold to. There's really not a lot of growth in the life insurance space. And then people are afraid of or confused by annuities.

The reason I'm raising this point is that most of the companies—and I think the life insurance industry is the right industry to take care of retirement—are actually moving to other things. We're getting creative about life insurance products. The fastest-growing part of most life insurance companies today is their asset management.

So I think we have to understand the business models. I know companies have pressures to drive profit and growth. But really, we're going to have to rethink and say, "What is our role in retirement, and how do we articulate that in a different message than what we used to do over the last 20 years?" Maybe it's in a tweet. I don't know.

But the reality is for young people to think about their retirement in the future, it actually comes down to getting them to understand. I just saw a statistic that people in the millennial group are actually better savers than Baby Boomers. You know why? They're afraid they will never be able to stop working because they're not ready for their retirement. Think about that. They're better savers, which means they're already ahead of the game. But they still don't feel like they are because they really don't understand what retirement means because their parents never got a chance to do it.

I think our industry should really be thinking about our value proposition and how we articulate it. Not the way we used to, but the way we have to in the future to get people to understand. Then think about how these other ancillary things that help companies be profitable—asset management and other spaces they get into—are helping them be stronger at delivering what clients are going to need. The biggest area of growth is retirement, and yet I don't know that we're still trying to be the retirement solution as opposed to some other solution that looks like the market.

McPeak: I completely agree with George's comments and I would add on top of that, how do we reach those millennials? They have money. They're saving it—they're just not buying our products. As a regulator, I was always very sensitive, along with my colleagues, about the sharing of consumer information. Do you know your information is being shared? When you do your cheek swab for 23andMe, do you understand there's a database somewhere with your DNA that's being shared wherever there's a commercial purpose for it?

The interesting fact is millennials are saying, "Yes, I don't care. My information is everywhere. I'm on Instagram. Get out of my way! If I can be at an open house and fill out a Rocket Mortgage app on my phone and get pre-qualified, why can't I do that with life insurance or retirement planning?"

How do we reach those millennials? They have money. They're saving it—they're just not buying our products.
Julie Mix McPeak

There really is a disconnect in how we reach millennials. They need to understand better how to plan for their retirement, but we have to be able to access them when they're ready. Maybe that is a pre-filled application on an app like some of the mortgage applications are right now, but the industry is not there quite yet.

Nichols: And the regulator has to get there too. Because the regulator has to be comfortable allowing companies to do that. But if you are a regulator today, you ought to be asking. "How do I create a pilot project with the industry to see how this works?" Because it has nothing to do with regulators releasing their authority. Actually, it is the demand of their customers, the real constituents—the taxpayers in their state.

There are a lot of things going on across the industry, and I really think the regulatory community, consumer groups, and those companies doing those really innovative things ought to get together and say, "Let's try a couple of things and see if this works." Because what's going to happen is that we'll keep along our traditional path and Google or Amazon or Apple will figure it out. Then we'll be trying to figure out how to stop them. Because they are thinking about this—how people buy—differently than regulators or the industry.

Audience Question: *I liked how you talked about the Interstate Compact as a platform, and I think it's been effective in the product approval space. Is there a discussion when the commissioners get together for their retreat about expanding that platform to include some of the things where the states are starting to diverge? I would put in that bucket solvency regulation, financial reporting, privacy, suitability, and a number of other things. But I think that it's starting to feel, from the industry's perspective, that we are seeing divergence now.*

McPeak: I think that's a very fair question, because I do think you see a wide variety of perspectives in state insurance departments today. Some of that is more from a political philosophy standpoint, and then others are really trying to deal with individual issues in their markets. There has been a great deal of discussion about expanding the Interstate Compact—would that be an efficient tool to add some uniformity to regulation on cybersecurity and some of the other issues you mentioned?

The issue is, there are still some members of the NAIC at the commissioner level who say, "I will never delegate the authority of my state for certain issues," or for all issues. I think that long-term care resolution will be a defining point in that debate, because there will be a need for everyone to come together to solve that, or some people will be split off. It could be very detrimental to their own markets and their own consumers if they don't get on board.

So, I think that the long-term care discussion will probably be very informative in terms of whether we can use the compact and come together on some more uniform standards that can be adopted nationwide.

Nichols: I would agree with Julie on every point. One additional thing that you as an industry should be thinking about—if you look at the amount of coverage in the long-term care space for consumers today versus the amount that's covered by the government, I think less than 10% is covered in the private market, if that. The rest of it falls under some level of state or federal government funding. The more challenging the long-term care issue becomes for the insurance industry and the regulatory community for such a small piece, the more likely it is that the government's going to come in. I don't know how they'll come in, but they have no choice because they're the dominant player. When that happens, the government's going to ask itself a question about reducing benefits, and then the industry and the regulatory community will have to respond to that.

There's no real answer, and I don't think any of us know how to do it, but I really think we should look at it. If the government says, "You can't take care of the 10%," or whatever percentage it is, then they are going to want to help you take care of that. Peter, in your speech you mentioned that, if an investor wants to come in, they have to get some return. Well, the government doesn't care about its return, and it doesn't really care about your return either. Maybe they'll want you to give a little bit more.

I really think that's another piece, and we're probably a few years down the road—except for the fact that more of the crisis raises its head within the private sector. It just exacerbates how much of a problem it is, and the industry and regulators are going to have to come up with an answer. I hope you know the answer of what you want to do before the government tells you what you should do.

Audience Question: *In health insurance, we have the Affordable Care Act (ACA), so we already have dual regulation. We know what's happened in the marketplace. What's the evolution of regulation in that space?*

McPeak: Well, the ACA has been extremely challenging to implement. I think it's also been really informative for those that were advocating an optional federal charter earlier in the 1990s. Because I think the adage of being careful what you wish for comes into play.

The evolution of the health insurance market is that pressure is building to require some amendments. Now, whether or not we can ever get the political will to reopen the ACA or maybe have some supplemental laws on top of it—I don't know how that will play out. But if you think about some of the surprise billing debates and the narrow network debates and the transparency debates, the pressure is building from consumer dissatisfaction with the implementation of the ACA. I think the ACA, in theory, was probably a much better idea than how it was actually rolled out in the states. There were a number of different decisions from 2014 on that made that the case today.

Markets are just starting to come back. I think experience is just getting to the place where it's somewhat reliable in terms of rate setting. But you still have that uncertain regulatory environment that is keeping a lot of folks from coming into the marketplace. I think Congress is going to have to look at how to at least supplement if not fix the ACA. Because right now, if you ask consumers, you're very likely going to hear some dissatisfaction on some aspect of their health insurance coverage. ✯

["Bigger & Better in Texas" continues from page 1]

ucts because they collect premium for multiple benefits and because expenses are reimbursed from the death benefit. "That drives different behaviors," Ball explained, as consumers have to decide whether to use the benefits at the expense of the payout to their beneficiaries. On the consumer side, "the policies eliminate the 'use it or lose it' design of stand-alone products."

The health insurance market has seen a fair bit of change in the last few years, and James Capretta of the American Enterprise Institute provided a fascinating look at where the market might be headed in the near and long-term future.

In the near term, "the big picture, obviously, is politics," he said. "Congress is not very productive at the moment." While partisan gridlock has ruled the day for years, there are two issues on which both parties could come together—surprise medical billing and prescription drug prices. This possibility is driven by voters, not the parties. "These are things where consumers on the ground are quite annoyed with the current status quo," Capretta said. "And that annoyance is translating into politicians saying, 'We've got to do something, even if it might be something we have to do in cooperation with the other side.'"

A few bills are moving in Congress to address surprise medical billing—where you have a procedure performed by an in-network physician, only to receive bills from one or more physicians who assisted but were not in your network—but the physician community is fighting the bills with a series of commercials, and "the ad campaign's having an effect; this thing is getting bogged down now in Congress." Capretta thinks a bill will pass, but it's not a sure thing. On drug prices, he predicted that political considerations would keep a bill from being passed (he was right), but he added that the Trump Administration would pursue regulatory methods to lower drug costs.

Healthcare will play a huge role in the next presidential election, but Capretta said that the "Medicare for All" plans introduced by several Democratic candidates won't be successful even if Democrats take the White House. "I think that's too big of a stretch," he said, adding that some sort of public option is more likely in this scenario.

Chairs Highlight Education & Member Support in Addresses

NOLHGA's Incoming and Outgoing Chairs cited the vital role the organization plays in educating stakeholders and supporting its member guaranty associations in their addresses at NOLHGA's 2019 Annual Meeting. After beginning her speech with a series of movie clips to "prove that insurance can be funny," Outgoing Chair Susan Voss said that NOLHGA "has been spending a fair amount of time educating regulators, consumers, carriers, and others about the importance of the sound financial solvency of a company, long-term care rate review, the need for updates to Model Laws and regulations, and the negative consequences of weak business division laws."

Voss also noted that when a company fails, "for some regulators, it may be their first rodeo. Our role is to be the steady hand that guides the process to its resolution." She urged members not to "let the perfect get in the way of the good" as they search for resolution plans for increasingly complicated insolvencies.

Incoming Chair Tom English began his speech by reading NOLHGA's mission statement and noting that "support" is the first verb used in the statement. "You—the member state life and health insurance guaranty associations—are the ones who protect consumers," he said, "and NOLHGA is here to assist you." He added that "I'm committed to ensuring that

the Board is aligned with the interests of our members" and announced he would attend every MPC meeting in 2020 to give members more opportunities to bring issues to the attention of the Board.

English praised the role of the guaranty associations in keeping the promises of the insurance industry, saying that "I hope all of us share a sense of pride in the role we play." Looking to the future, he echoed Voss's comments on the continuing challenges presented by the long-term care market and corporate division/insurance business transfer legislation, but he also pointed to other potential challenges, such as the low-interest rate environment, private equity investors entering the insurance market, product complexity, and new guaranty association member companies.

"We're seeing more private equity investors in the insurance space," English said, "who could have a short-term orientation that needs to be considered in light of an insurer's long-term obligations." For HMOs becoming guaranty association members, the question is simple: "How can we best explain the guaranty system and their new role in it?" NOLHGA's Legal Committee has a number of subgroups working on this question, he added, "and I'm very much looking forward to seeing the results of their work in the coming year."

Likely, but not a slam dunk. The public option only works, Capretta explained, if there's a provision to force hospitals and physicians to participate, and that provision would be highly controversial. "That's where the power struggle and a lot of the politics will be," he said. "If I were betting at the moment, I don't think they have the ability to do it."

In response to a question about the Supreme Court possibly ruling that the Affordable Care Act (ACA) is unconstitutional because the individual mandate tax has been repealed, Capretta said that "I find it almost unfathomable that the Supreme Court would go along with that argument." If they did, he said, millions of people would lose their insurance, and "the first thing that would happen is that Republicans and President Trump would have to sign a bill into law that reinstated much of what was just repealed, because they'd have no choice."

Luncheon speaker Jake Sullivan (former Deputy Assistant to President Obama and National Security Adviser to Vice President Biden) told attendees that while foreign policy doesn't often play a large role in presidential elections, "there are reasons to believe it will loom larger this time around." He predicted that President Trump will look abroad for accomplishments, since "foreign policy is something that a president uniquely owns." He also predicted that Iran, China, and North Korea would continue to dominate the foreign policy landscape in 2020 and beyond.

Priorities in Order

A large part of the Annual Meeting program focused on the legislative and regulatory priorities of the guaranty system and the insurance industry. A panel moderated by NOLHGA's William O'Sullivan and featuring Richard Bowman (New York Life Insurance Company) and Michael Gugig (Transamerica) looked at corporate division/insurance business transfer (IBT) legislation, highlighting the arguments for and against this type of legislation and the concerns it can raise for guaranty associations.

Gugig pointed out that these laws allow insurance companies to align their historical business with the companies' current business strategies and to shift obligations to qualified, well-capitalized insurers and so end their liability. Consumers can benefit, he added, when companies are able to acquire and divest blocks of business. Bowman, however, cautioned that "policyholders expect to continue to do business with the insurer they originally chose." If they can no longer expect the company that sells them insurance to stand behind it, he added, the industry as a whole could suffer.

The ACLI recently released a set of guiding principles for these transactions, including policyholder/stakeholder access to the process (current IBT and corporate division laws do not require policyholder approval), a robust regulatory review component, the use of independent experts, court approval, and maintaining guaranty association coverage for the policies in the new company. Gugig noted that these transactions do require regulator and/or court approval, adding that companies want "robust guardrails to ensure consumer protection," including built-in licensing requirements to maintain guaranty association coverage.

A number of audience questions centered on whether there should be exclusions or heightened requirements if LTC policies were involved in an IBT or corporate division transaction. Gugig expressed

If the Supreme Court sustained the invalidation of the ACA, "Republicans and President Trump would have to sign a bill into law that reinstated much of what was just repealed, because they'd have no choice."

doubt, saying that the laws already require approval from a regulator, independent expert, and—in the case of corporate divisions—the court, and that no regulator would ever approve a transaction that would result in a monoline LTC carrier. Bowman said that if no regulator would ever approve such a transaction, why not incorporate those restrictions into the law itself?

Another panel—moderated by NOLHGA President Peter Gallanis and featuring Mark Backe (Northwestern Mutual) and Bob Ridgeway (America's Health Insurance Plans, or AHIP)—took a look at some of the issues that could radically change, or disrupt, the insurance industry. Backe pointed to what he called "regulatory fracture," as insurance companies face regulation not only from the states, but also from a host of federal agencies as well as some international bodies. "Not just formulating, but actually articulating and then advocating for policy in this environment is incredibly challenging," he said.

Ridgeway said "I'll see you and I'll raise you" (not literally) by bringing up the possible disruptions that would occur if the ACA was thrown out or if the Democrats followed through on their calls for Medicare for All. He agreed with Capretta that neither was likely, though he wasn't quite as certain about the ACA's chances at the Supreme Court. His members, he said, believe there's a better way to fix the ACA—by actually fixing it and going after the real problem. "Let's not throw the system out," he said, "Let's see what we can do to fix it. But the most important thing is to get a grip on healthcare costs. Until we get a grip on healthcare costs, we're doing little more than rearranging deck chairs on the Titanic."

Aaron Ball (New York Life Insurance Company)

The panel on regulatory and legislative priorities featured Bob Ridgeway (AHIP), Mark Backe (Northwestern Mutual Life Insurance Company), and NOLHGA President Peter Gallanis (not pictured).

The same holds true for Medicare for All. While his members have a number of problems with the various proposals, from lack of detail to fuzzy (at best) math, "the cost of healthcare is the problem with our system," Ridgeway said. "It's not the cost of insurance. The cost of insurance is just a reflection of the cost of healthcare." Unfortunately, he didn't hold out much hope for Congress doing much on this front, though he did say that efforts to improve transparency in healthcare prices were a better idea than outright price controls.

Talk then turned to some of the high-tech challenges facing the industry, such as privacy considerations surrounding genetic testing and whether insurance companies should be able to use genetic information. "There are absolutely proper uses for genetic information," Backe said. "The problem that I have with the current debate about genetic information is that so many participants want to separate genetic data from all other health data, when I think in reality, it's just another subset of health data."

Backe added that the furor surrounding genetic testing also touches on issues the insurance industry has dealt with for decades. "In an age where you can go to

“HMOs think a lot about the social good of what they’re doing,” Passwater added, “so the philosophy of the guaranty system will make sense to HMO leadership.”

23andMe or Ancestry.com or a growing number of firms and get genetic tests run, the risk of creating adverse selection is huge,” he said. “But behind that is a much simpler and much older issue—underwriting.” Underwriting isn’t allowed in health insurance anymore, he added, and many feel it shouldn’t be allowed in the life industry as well, even though “probably more than 90% of the population get a better rate on their life insurance than they would get if we had no underwriting.”

Adding HMOs as guaranty association member insurers doesn’t qualify as a disruption, but it’s certainly something the associations have to prepare for as more of them adopt the 2017 amendments to the NAIC’s GA Model Act. The first step in this preparation is gaining a better understanding of HMOs and how they operate, and that was the goal of a panel moderated by Caryn Glawe (Faegre Drinker) that featured Lee Douglass (Arkansas Life & Health Insurance Guaranty Association), Keith Passwater (KTPassCo), and Michael Polakowski (BlueCross BlueShield of South Carolina).

HMOs are structured differently than traditional health insurers—they arrange for the provision of healthcare services under a prepaid health plan, whereas insurers traditionally reimburse or indemnify policyholders for the cost of their care. HMOs are often affiliated with service providers such as TPAs or pharmacy benefit managers, and they often exist in a holding company structure with health insurers. Polakowski pointed out that HMOs do not pay premium taxes—they pay income taxes, which means that assessment tax credits could operate differently as HMOs become member insurers.

James Capretta (American Enterprise Institute)

The differences go beyond structure, however. “There’s a philosophical difference between how an HMO operates and how a traditional health insurer operates,” Passwater said. “There’s an inclination to approve more care.”

What do the guaranty associations need to learn as HMOs become member insurers? “The first step is to understand the market they’re in,” Douglass said, especially the close arrangements they have with providers and hospitals. “All these contractual relationships are immediately relevant” in an insolvency, Passwater added. Associations will also need to “set a level playing field for assessments,” Polakowski said.

Passwater pointed out, with a bit of understatement, that “HMOs are really not excited about being assessed.” However, the philosophical underpinnings of HMOs could make them a good fit for guaranty associations. “HMOs think a lot about the social good of what they’re doing,” he added, “so the philosophy of the guaranty system will make sense to HMO leadership.” ✯

Sean M. McKenna is NOLHGA’s Director of Communications.

["President's Column" continues from page 3]

little direct effect on them.) Finally, for some insurance entities that concentrate on wealth management, various fee income sources are likely to be depressed.

As of now, the immediate impacts on the U.S. life and health insurer sectors would appear to involve decreased earnings prospects in the near future, and depressed stock prices for companies that are organized as stock insurers. A very severe, very prolonged epidemic might have more serious consequences not only for the insurance sector, but for the U.S. economy as a whole.

For the guaranty system, the most significant concerns to date have been operational. How can those who work in the system best continue to get their daily work done without compromising the expectations of the stakeholders who depend upon them?

Fortunately, both NOLHGA and its member guaranty associations have long had in place business continuity plans providing for contingencies like this, and all of our offices are set up to provide full and uninterrupted service on a teleworking basis. In addition, a number of the most experienced guaranty association administrators, led by Margaret Sperry, the Rhode Island association's Executive Director, are now conducting a study to be reported soon to NOLHGA's membership on how to optimize guaranty association performance during this pandemic.

During my time with NOLHGA, our members have performed their missions at a very high level through some extremely difficult challenges, including (for example) the September 11, 2001, terrorist attacks and the resulting uncertainties, and the 2008 financial crisis and its aftereffects.

Today we join with all of you in hoping that the measures now being developed and implemented will effectively mitigate both the length and severity of this pandemic and its effects on the economy, and that life will return to normal soon.

Stay safe and well; we need all of you. ✭

Peter G. Gallanis is President of NOLHGA.

NOLHGA Calendar of Events

2020

July 29	**MPC Meeting** **Washington, D.C.**
July 30–31	**NOLHGA's 28th Legal Seminar** **Washington, D.C.**
August 8–11	NAIC Summer National Meeting Minneapolis, Minnesota
October 26	**MPC Meeting** **Nashville, Tennessee**
October 27–28	**NOLHGA's 37th Annual Meeting** **Nashville, Tennessee**
November 14–17	NAIC Fall National Meeting Indianapolis, Indiana

NOLHGA Journal
Vol. XXVI, No. 1 | April 2020

The *NOLHGA Journal* is a publication of the National Organization of Life and Health Insurance Guaranty Associations dedicated to examining issues affecting the life and health insurance guaranty system.

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