



National Association  
of Attorneys General

**Adopted**

**Summer Meeting  
June 19-21, 2007  
Atlanta, Georgia**

**RESOLUTION  
OPPOSING PREEMPTION OF STATE INSURANCE REGULATION AND  
SUPPORTING REPEAL OF THE INSURANCE INDUSTRY'S  
EXEMPTION FROM FEDERAL ANTITRUST LAWS**

**WHEREAS**, the antitrust laws are intended to protect and promote a competitive marketplace, benefit all the citizens of the several states, and promote robust innovation; and

**WHEREAS**, state Attorneys General represent their states and the citizens of their states in federal antitrust litigation; and

**WHEREAS**, the insurance industry wrote a total of approximately \$1.1 trillion in premiums in 2003, or approximately 10 cents of every dollar of the \$11 trillion Gross Domestic Product<sup>1</sup>; and, is a significant part of the U.S. economy; and

**WHEREAS**, the McCarran-Ferguson Act, 15 U.S.C. §§1011-1015, enacted in 1945, affords the business of insurance a significant exemption from the federal antitrust laws and precludes enforcement of the prohibitions against anticompetitive practices, such as price-fixing, that are almost always unlawful outside the business of insurance; and

**WHEREAS**, the McCarran-Ferguson Act has hindered the ability of antitrust enforcers to detect, correct, deter and obtain compensation for abuses in the insurance sector; and

**WHEREAS**, even though state antitrust enforcers achieved significant reforms in the liability insurance industry in *Hartford Fire Insurance Co. v. California*<sup>2</sup>, the defendants in that

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<sup>1</sup>Insurance Information Institute, *citing* U.S. Department of Commerce, Bureau of Economic Analysis.

<sup>2</sup>509 U.S. 764 (1993)

case significantly delayed the reforms by raising non-meritorious claims of immunity under the McCarran-Ferguson Act, that ultimately the United States Supreme Court had to resolve against the defendants; and

**WHEREAS**, recently, a decade after the *Hartford* litigation, state Attorneys General discovered new instances of anticompetitive conduct in the insurance industry that they chose to address under state, rather than federal, law, in part to avoid the delay and uncertainty that might have resulted from the assertion of a McCarran-Ferguson Act defense to a federal antitrust claim; and

**WHEREAS**, a uniform federal antitrust standard would facilitate antitrust enforcement and benefit plaintiffs and defendants alike, by reducing disparate actions, under different laws, that may yield inconsistent results; and

**WHEREAS**, the exchange of information among market participants to achieve pro-competitive benefits is not unique to the insurance industry and generally is not prohibited by the antitrust laws; and

**WHEREAS**, like businesses in virtually all other market sectors, entities engaged in the business of insurance should not be permitted to enter into agreements that unreasonably restrain competition between them; and

**WHEREAS**, state regulation of the business of insurance covers far more than antitrust considerations, governing insurance operations, reserves, notices to policy holders, forms of policies, and other matters affecting the day-to-day business of insurance; and

**WHEREAS**, continuation of this state regulatory regime is consistent with application of the antitrust laws; and

**WHEREAS**, the National Association of Attorneys General consistently has opposed legislation that weakens antitrust standards for specific industries because there is no evidence that such exemptions promote competition or serve the public interest;

**NOW, THEREFORE, BE IT RESOLVED THAT THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL:**

- 1) Opposes preemption of state regulation of insurance; and
- 2) Supports repeal of the McCarran-Ferguson Act's exemption for the business of insurance from federal antitrust laws.