

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
SAN DIEGO, CALIFORNIA
NOVEMBER 17, 2005
DRAFT MINUTES

The Workers' Compensation Insurance Committee of the National Conference of Insurance Legislators (NCOIL) met at the Hilton San Diego Resort in San Diego, California, on November 17, 2005.

Sen. Carroll Leavell of New Mexico, chair of the Committee, presided.

Other members of the Committee present were:

Sen. Pam Redfield, NE
Rep. George Keiser, ND
Rep. Donald Flanders, NH
Sen. Ann Cummings, VT
Rep. Virginia Milkey, VT
Del. Lidella Wilson Hrutkay, WV
Del. L. Gil White, WV

Other legislators present were:

Rep. Pat Patterson, FL
Rep. Jo Oldson, IA
Rep. Terry Parke, IL
Rep. Michael Ripley, IN
Rep. Matthew Whetstone, IN
Rep. Ron Crimm, KY
Rep. Dennis Keene, KY
Rep. Glenn Anderson, MI
Rep. Morris Hood III, MI
Assem. William Barclay, NY
Assem. Nancy Calhoun, NY
Rep. Craig Eiland, TX
Rep. Robert Godshall, PA
Del. Harvey Morgan, VA
Del. J.D. Beane, WV
Del. Richard Browning, WV
Del. Robert Kiss, WV
Del. Dale Martin, WV

MINUTES

Upon a motion duly made and seconded, the Committee voted unanimously to approve the minutes of its July 7, 2005, meeting in Newport, Rhode Island.

HURRICANE KATRINA'S EFFECT ON WORKERS' COMPENSATION SYSTEMS

Stephen Cavanaugh of the Louisiana Workers' Compensation Corporation (LWCC) addressed the Committee. He suggested the real story behind Hurricane Katrina was not how many people stayed behind, but rather how many were successfully evacuated given that the enormity of the potential hurricane catastrophe was not adequately communicated to the citizenry in advance. He noted that, with respect to workers' compensation, there were relatively few claims resulting directly from the hurricane itself, but that many more were anticipated during the rebuilding process ahead.

Mr. Cavanaugh provided Committee members with some history about the creation and operating results of LWCC and then discussed the enormity of the challenge of reconstruction subsequent to Katrina, referencing the numbers of destroyed cars and homes plus job losses. He noted that for workers' compensation carriers, the largest outstanding question concerns how many people return to New Orleans and are involved in rebuilding efforts. Other issues that arose, according to Mr. Cavanaugh, included problems such as lack of mail service and the inability to locate claimants. He then discussed measures taken to address problems with dispute resolution systems and urged a requirement for states to create emergency dispute resolution plans prior to a catastrophe.

Mr. Cavanaugh informed Committee members about special, future workers' compensation problems anticipated, primarily asbestos and mold removal. He noted that calculating adequate rates going forward could be problematic since old losses would not necessarily be predictive and that reinsurance agreements are now excluding roofing. He said the reinsurance market is not working well adjusting to catastrophes and that perhaps a comprehensive national catastrophe system is needed for the future. He warned that major cities are not adequately prepared.

Rep. Keiser asked whether there were any problems with workers' compensation reciprocity agreements. Mr. Cavanaugh replied that the largest problem is with immigration of employers who do not honestly report payroll exposure.

ISSUES RELATED TO POTENTIAL REGULATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS (PEO'S)

Todd Cohn of the National Association of Professional Employer Organizations (NAPEO) addressed the Committee. He described the ways in which PEO's enhance the workers' compensation system, noting that PEO's as policyholders have an interest in managing risk, controlling premium leakage and improving workplace practices. He also suggested that PEO's invest more percentage of premium in managing risk than do insurers. He indicated that NAPEO supports the comprehensive PEO certification and financial assurance programs of the Employer Services Assurance Corporation (ESAC). Mr. Cohn concluded by noting that 26 states now recognize the industry for workers' compensation as policyholders and that five states have adopted workers' compensation rules that recognize the PEO industry as the policyholder for workers' compensation.

David West of the California State Workers' Compensation Insurance Fund (CSWCIF) next addressed the Committee. He told Committee members that with respect to the longstanding role of PEO's there was one primary problem: non-rated employers were able to gain the experience rating of the PEO, resulting in the separation of actual experience, which he noted is the essence of experience modification. He further noted that this practice led to experience modification avoidance schemes.

Mr. West then summarized the new California rating rule (created, he noted, with the assistance of NAPEO) which required the writing of a rate to a specific client, rather than the PEO, with some room for segmentation, thereby tying the carrier's experience to the actual workplace experience. He discussed the benefits to carriers of writing policies pursuant to this rule and the added benefit to honest PEO's of gaining a level playing field because of the inability of others to unfairly hide risk. He urged legislators to make sure experience is tied to the workplace, rather than to the "paper employer" and to make sure carriers have underwriting flexibility.

RECIPROCITY AGREEMENTS FOR WORKERS' COMPENSATION PROGRAMS

Mona Carter of the National Council on Compensation Insurance (NCCI) addressed the Committee. Ms. Carter began by noting her agreement with the concept put forth by Mr. West that uniformity in PEO regulation is needed. With respect to reciprocity agreements she displayed to Committee members a model agreement that, she suggested, could help alleviate adjudication issues arising from multi-state workers' compensation matters.

CALIFORNIA WORKERS' COMPENSATION REFORMS

California Insurance Commissioner John Garamendi addressed the Committee. He began by noting that the California workers' compensation reforms have taken place over the last three years, beginning with legislative enactment of about one-half of his "roadmap," primarily dealing with medical issue concerns and using evidence-based, clinically proven medical standards for the provision of appropriate medical care. The second half of his reform package, enacted more recently, involved the use of American Medical Association (AMA) disability guidelines. Commissioner Garamendi said that the effect of these reforms, from 2003 through the present, resulted in an almost 47 percent reduction in total claims costs. He further noted that the industry had not lowered its prices by a similar amount.

Commissioner Garamendi then described his recent efforts, in conjunction with New York Insurance Superintendent Howard Mills, to develop a catastrophe insurance program for homeowners, many of whom are inadequately insured for catastrophes ranging from hurricanes to earthquakes to tsunamis.

Superintendent Mills then described the catastrophe construct discussed by himself, Commissioner Garamendi and other commissioners at a recent meeting. He outlined an all-peril program focusing on habitats (houses, condominiums, rental units, cooperatives)

that involves three layers. The primary layer would involve maximum insurance industry involvement; the secondary layer would be a state catastrophe fund system; and the third layer, for the truly catastrophic events, would be federal. Reinsurance would be involved in each layer. Superintendent Mills urged Congress to create incentives for the creation of catastrophe reserves to avoid what he termed the “Air Force One policy,” whereby monies are allocated by the federal government only in response to a catastrophe, rather than set aside in advance. He also cited the value of using insurance industry infrastructure to pay claims. He advocated risk-based pricing in the creation of this program.

Assem. Calhoun inquired as to whether there were areas that are so vulnerable to catastrophe that they should not be rebuilt. Commissioner Garamendi responded that the issue was best addressed through adequate pricing and risk mitigation programs.

COMMITTEE CHARGES FOR 2006

Sen. Leavell requested that, in addition to the 2006 Committee charges already proposed, the Committee add a charge to examine ways to control hospital, medical, and pharmaceutical costs in workers’ compensation insurance. Upon a motion made and seconded, the Committee unanimously adopted the charges, as amended. Sen. Leavell said they were as follows:

- Identify and report on state workers’ compensation insurance systems, focusing particularly on reform efforts, cost containment, and best practices
- Research and report on regulation of Professional Employer Organizations (PEOs) and establish a position, if appropriate
- Investigate and report on reciprocity agreements between states for workers’ compensation programs
- Study and consider ways to control hospital, pharmacy, and medical costs related to workers’ compensation insurance

ADJOURNMENT

There being no further business, the meeting adjourned at 10 a.m.

© National Conference of Insurance Legislators (NCOIL)

K:NCOIL/2005 documents/2004952a.doc