

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
CHICAGO, ILLINOIS
JULY 15, 2004
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Hotel Inter-Continental in Chicago, Illinois, on Thursday, July 15, 2004, at 8:45 a.m.

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

Other members of the Committee present were:

Sen. Steven Geller, FL
Rep. George Keiser, ND
Rep. Donald Flanders, NH
Rep. Larry Taylor, TX

Other legislators present were:

Rep. Greg Davids, MN
Sen. Neil Breslin, NY
Assem. Nancy Calhoun, NY
Sen. William Larkin, Jr., NY
Sen. James Seward, NY
Rep. Robert Godshall, PA
Rep. Brian Kennedy, RI
Rep. Dan Tripp, SC
Rep. Craig Eiland, TX
Del. Harvey Morgan, VA
Rep. Robert Dostis, VT
Rep. Kathleen Keenan, VT
Rep. Gini Milkey, VT

Also present were:

Candace Thorson, NCOIL Director of Legislative Affairs and Education,
Property-Casualty and Workers' Compensation Insurance
Franesa Liebich, NCOIL Director of Legislative Affairs and Education, Health
and Life Insurance

MINUTES

The Committee voted to approve, as submitted, the minutes of its February 26, 2004, meeting in San Antonio, Texas.

ILLINOIS WORKERS' COMPENSATION INSURANCE SYSTEM

Dennis Ruth of the Illinois Industrial Commission said the Illinois legislature made recent changes to the Commission that addressed, among other things, its funding mechanism and its policies. He said the new name for the organization was the Illinois Workers' Compensation Commission, which he said better reflected the Commission's purpose.

Mr. Ruth reported that the General Revenue Fund (GRF) no longer funded the Commission and that it now operates independently, as most other state commissions do. As a result, he said, the Commission was able to hire additional arbitrators that have helped to lower the average per-arbitrator caseload. Mr. Ruth noted that the Commission had reduced the length of time that workers' compensation trials are pending, and he said that some 400 carriers now write workers' compensation insurance in Illinois. He reported that business and labor interests had just reached agreement on workers' compensation reforms that included increased benefits and cost containment via a medical fee schedule. Mr. Ruth said that medical associations had aggressively fought against such a fee schedule, as they had during earlier reform efforts.

Mr. Ruth observed that Illinois has no state fund and that the market has been competitive enough to provide coverage for all workers' compensation risks.

SECOND INJURY TRUST FUNDS

Ray Farmer of the American Insurance Association (AIA) overviewed the history and purpose of second injury trust funds, also known as subsequent injury funds. He said that state legislatures originally created them after World War II to insure that soldiers returning from war could receive workers' compensation coverage regardless of whether they had suffered a war-related injury. He said that over the years states have begun the process of repealing these funds as lawmakers determine that they have outlived their usefulness, particularly following the enactment of the Americans with Disabilities Act (ADA). Mr. Farmer said that second injury funds are profitable for some insurers that can devote significant resources to aggressively pursuing claims and receiving monies from the fund. He continued that other insurers, which do not have such resources, effectively subsidize their competitors because they are less able to collect from the funds despite the fact that they, too, must pay annual fund assessments.

Mr. Farmer said that many state second injury funds now have large unfunded liabilities. He reported that Georgia was the most recent state to repeal its fund, and he cautioned that it may take many years to run off such funds.

OSHA ERGONOMICS GUIDELINES FOR NURSING HOMES

Dana Root of the United States Department of Labor overviewed the development and implementation of the Occupational Safety and Health Administration's (OSHA) ergonomics guidelines for nursing homes. She said that nursing homes were the subject of OSHA's first industry-specific guidelines because these facilities have among the largest number of ergonomics injuries, particularly as a result of lifting and repositioning residents. She said OSHA developed the guidelines using sources such as scientific data, state best practices for ergonomics safety, and discussions with trade associations and nursing home facilities. Ms. Root

noted that the guidelines are voluntary and rely on a facility to recognize its need for further safety and to adapt the OSHA recommendations to the facility's specific characteristics. She said the guidelines cannot be used for enforcement purposes. She then cited Illinois case studies in which adoption of the OSHA guidelines resulted in fewer workers' compensation claims and, subsequently, in lower premiums.

Paula Williamson of Heritage Enterprises, which operates nursing homes across Illinois, said their facilities implemented the OSHA guidelines several years ago and have since witnessed a decline in injuries and premiums. She reported that prior to that, Heritage's nursing homes faced mounting injuries and related costs. Ms. Williamson said that purchasing the requisite equipment, such as mechanical lifts, to comply with OSHA's guidelines had been a significant investment.

Joe Zaroni of the University of Chicago's School of Public Health said he previously had worked with the Service Employees' Union, which represents nursing home and other workers. He said that union members had participated in peer review activities regarding ergonomics safety and that employees currently are involved in ergonomics training programs in conjunction with OSHA. Mr. Zaroni remarked that though they are useful, voluntary programs have limited effectiveness, and he said that, even with the OSHA guidelines, legislators and others should recognize that the nursing home industry remains very injurious to workers. He said employee involvement was key to the guidelines' success.

Jeffrey Durango of Diamond Insurance Group said the insurance industry has observed significant injury reduction as a result of the OSHA ergonomics guidelines. He reported that Diamond Insurance encourages the nursing homes it covers to implement OSHA's recommendations and that slightly more than 50 percent of them have. Mr. Durango noted that high employee turnover is common in nursing homes, in part because the job duties required are physically taxing. He said Diamond Insurance operates in nine states, including Illinois.

Sen. Leavell said that the Committee would investigate the issue further during the NCOIL Annual Meeting in November and would consider taking a position on the issue at that time.

OTHER BUSINESS

FRAUD ISSUES

Howard Goldblatt of the Coalition Against Insurance Fraud reported that California had enacted stronger workers' compensation reforms that addressed medical costs and that ultimately would reduce the number of fraudulent providers. He said another California law would add city attorneys who prosecute cases to the list of agencies that could receive information regarding workers' compensation fraud investigations. Mr. Goldblatt said Louisiana failed to pass legislation that would have allowed insurers to consider employee or employer misrepresentation in workers' compensation fraud cases to be a relevant factor when denying a claim. He then reported that earlier in 2004 Vermont enacted a reform that increased the sentence for workers' compensation fraud to three years.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:50 a.m.

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