NATIONAL COUNCIL OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
NCOIL SUMMER MEETING – SALT LAKE CITY, UT
FRIDAY, JULY 13, 2018
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Little America Hotel in Salt Lake City, UT on Friday, July 13, 2018.

Asw. Maggie Carlton (NV), Vice Chair of the Committee, presided

Other Members of the Committee present were:

Sen. Jason Rapert (AR)
Asm. Ken Cooley (CA)
Rep. Martin Carbaugh (IN)
Rep. Matt Lehman (IN)
Rep. Joseph Fischer (KY)
Rep. Steve Riggs (KY)
Rep. Bart Rowland (KY)
Rep. Edmond Jordan (LA)
Rep. Lois Delmore (ND)
Rep. George Keiser (ND)
Asw. Pamela Hunter (NY)
Rep. Tom Oliverson, M.D. (TX)

Other legislators present were:

Rep. Sam Kito (AK)
Rep. Deborah Ferguson (AR)
Rep. David Livingston (AZ)
Rep. Bryon Short (DE)
Sen. Travis Holdman (IN)
Sen. Brian Feldman (MD)
Rep. Michael Webber (MI)
Sen. Bob Hackett (OH)
Rep. Glen Mulready (OK)
Rep. Joe Schmick (WA)
Rep. Jim Dunnigan (UT)

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Paul Penna, Executive Director, NCOIL Support Services, LLC
Will Melofchik, Legislative Director, NCOIL Support Services, LLC

MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its March 2, 2018 meeting in Atlanta, GA.

DISCUSSION ON UTAH WORKERS' COMPENSATION INSURANCE MARKETPLACE

Dennis Lloyd, Senior Vice President and Chief Legal Counsel at WCF Mutual Insurance Company (WCF), stated that Utah has a healthy, low cost, and efficient workers' compensation marketplace. Utah has a healthy balance of business and labor interests that help Utah's public policymakers establish good public policy. Utah is a right-to-work state, has a healthy and diversified economy, and a low litigation rate in workers' compensation. Utah also has a low rate of fraud in workers' compensation claims. WCF has slightly over 50% of the insured market in Utah and there are just under 100 self-insured employers in Utah. Mr. Lloyd stated that WCF, as the dominant "player" in Utah, thinks that they are helpful in making the Utah workers' compensation insurance marketplace efficient.

Mr. Lloyd then provided a history of WCF, noting that on July 1, 2017, WCF celebrated its 100th birthday. To provide perspective, 1917 was the start of the women's suffrage movement, and the start of U.S. involvement in World War I. In 1917, the name of the company was "The State Insurance Fund" (SIF) and was created by the State of Utah to operate as a mutual benefit group and it was given a $40,000 start-up loan. It operated in state government as a division within a department. By 1920, operating on its premium income and the interest earned on the same income, it was able to gain a market share of 25%. In 1922, SIF paid off the $40,000 loan by transferring bonds back to the state, and by 1936, SIF had 72% of the insured market in Utah.

However, Mr. Lloyd stated that, over time, SIF has garnered a reputation of paying all the claims that came through the door using manual processes such as card files and ledger books, and playing cards in the back room. SIF was not viewed as being robust or progressive. Fast forwarding to 1986, there were certain events that caught the eye of public policymakers, one of which was the failed thrift crisis. There were certain thrift organizations that had a relationship to the state in terms of state oversight and the allegation was made that the state could be liable for the failure of those thrifts and loans. After litigation and settlements, people began to ask whether there are other entities that could involve an allegation of state liability for their operations. The focus came upon SIF. In 1986, Mr. Lloyd stated that SIF was, by statute, named as the insurer of last resort. Additionally, in 1987, because of the concern over thrifts, the Utah Governor engaged in a formal organizational study that studied SIF and asked where it should be placed. The recommendation was that there should be an autonomous relationship between SIF and the state. That recommendation took on a life of its own in the public policy process and ultimately lead to WCF today.

Mr. Lloyd stated that in 1988, legislation was proposed to transform WCF from an agency in a department to a non-profit, quasi-public corporation. Under Utah law, a non-profit, quasi-public corporation is a type of corporate entity that is privately owned but has a public purpose. Utah law defined the private owners to be the policyholders and the public purpose to be the carrier of last resort. Others argued that the public purpose was the WCF's historical purpose of creating competition in the Utah workers' compensation marketplace. Then, Utah Insurance Commissioner Robert Wilcox took note of the corporate structure and stated that if WCF was going to be an insurance corporation, it will be regulated by the Insurance Department and would have to comply with the necessary requirements.

By 1993, WCF had adopted a business structure of wanting to operate more like an insurance business – card playing in the backroom had ended. WCF had engaged in new business practices such as fraud detection, utilization review, bill review, negotiating hospital contracts, and engaging in vocational rehabilitation to help injured workers. By 1998, WCF obtained tax-exempt status under section 501(c)27(b) of the Internal Revenue Code. The legislature took note of that and wanted to further distance itself from WCF. Accordingly, "of Utah" was struck from WCF's name so that it was named as it is today – WCF (Workers' Compensation Fund). There were refinements in the enabling legislation that occurred. WCF's success was reflected in its balance sheet and at one point in time, in 2003, a member of the AG's staff wrote a white paper that took the position that the surplus of the company belonged to Utah and argued that the legislature should have access to those funds. Gov. Leavitt at that time also ordered studies to be conducted of WCF, looking at its value as a state-asset. Those actions caught the attention of WCF's board of directors, and one board member recommended that WCF file a declaratory action, asking the court to rule on ownership of WCF's assets. In 2004, WCF offered to settle the case with Utah for $50 million but no deal was reached. The very next day, the District Court issued a ruling in WCF's favor. The case, "WCF v. State," ended up being appealed to the Utah Supreme Court which ruled in WCF's favor. Many questioned the wisdom of the state in turning down WCF's $50 million settlement offer.

In 2016, Utah SB 63 was passed which allowed WCF policyholders to elect WCF board members, which meant that WCF no longer qualified for a federal income tax exemption. WCF later earned an "A" rating from A.M. Best and then in 2017, Utah SB 92 was passed which repealed WCF's enabling legislation and converted it into a mutual insurance corporation. Notably, throughout the entire legislative process of that bill, there was not a single opposition vote casted. Before the conversion process was finalized, the State auditor had to conduct an audit to ensure that no state assets were being taken by WCF.

Rep. Matt Lehman (IN), NCOIL Treasurer, asked if after WCF's conversion from a "pool" to a mutual insurance company, Utah has a pool/insurer of last resort. Mr. Lloyd stated that WCF has agreed to continue to serve as the insurer of last resort, and has notified Utah Insurance Commissioner Todd Kiser that if he ends up bidding out that role, WCF will competitively bid for it. Rep. Lehman asked a follow-up question of whether WCF is the sole carrier of last resort. Mr. Lloyd stated yes. Rep. Lehman then asked how that has impacted WCF's loss-ratio. Mr. Lloyd stated that it has been WCF's policy to charge all employers, whether they are in the residual or voluntary market, a premium that is appropriate to their loss history. WCF works with NCCI and the Utah Insurance Department to file appropriate and adequate rates. Rep. Lehman stated it is an important issue because in Indiana, the residual market can charge a certain percentage above the voluntary market rate since those carriers are taking on more risk. Mr. Lloyd stated that WCF's approach to rating has been a tiered-rating system but none of the tiers are specifically designated as the residual market tier. Rates are set at what the underwriters and actuaries believe are appropriate. Rep. Lehman stated that he is interested in what NCCI has to say on Utah's approach because it sounds unique.

Rep. George Keiser (ND) asked if the reinsurance rate is different for the residual and voluntary markets. Mr. Lloyd stated that his understanding of WCF's reinsurance program is that WCF buys reinsurance for the entire company at rates that are in tiers, and there is a percentage of the loss that is self-insured before the reinsurance kicks in. None of the reinsurance purchase is specifically designated to go to the residual market. The reinsurance purchase is designated to go to WCF's loss-history as it proceeds through its tiers.

STATE OF THE LINE – AN UPDATE ON THE STATUS OF AND TRENDS IN THE WORKERS' COMPENSATION MARKETPLACE

Jeff Eddinger, FCAS, MAAA, Senior Division Executive – Regulatory Business Management of the National Council on Compensation Insurance (NCCI), began by stating that for the 2017 workers' compensation (WC) rate-filing cycle, 38 filings were made and there was only one rate-increase which was slight (LA). Seventeen states saw double-digit decreases, and 2016 data was extremely similar to 2017. Additionally, for the third year in a row, an underwriting profit was achieved. Mr. Eddinger stated that the underwriting profit is being driven by a low loss-ratio, and also noted that the loss-adjustment-expense (LAE) to loss ratio has slowly increased the last two years because of California's extremely high ratio. Mr. Eddinger stated that the investment gain on WC insurance transactions was reported as 12%, up from 10.8%, but below the long-term average of about 13%.

Mr. Eddinger then discussed WC premium drivers and noted Rep. Lehman's earlier question to Mr. Lloyd. Mr. Eddinger stated that while each state, Utah being one, is somewhat unique in how it handles a residual market, Utah's approach is somewhat similar in other states, and it is sometimes difficult to determine if there really is a residual market because some of the carriers write other business and write in other states. Mr. Eddinger noted that the data shows that combining state funds and private carriers, WC net written premium reached a high of $47.8 billion in 2005, and clearly took a hit during the 2008 recession, but since then it was grown back to $45 billion in 2017. Mr. Eddinger noted that there are some offsetting factors that are keeping the percentage of change in direct WC written premium flat right now. Employment and wages are up but the loss costs themselves are down by almost the same amount.

Mr. Eddinger then discussed WC loss drivers and stated that what's driving the rate decreases is a long-term, downward trend in claim frequency. Mr. Eddinger noted that some may question NCCI's data of the lowered claim frequency, but the Bureau of Labor Statistics' (BLS) data is extremely similar. Mr. Eddinger stated that there has been a decline in the amount of prescribed opioids in the WC system. In 2012, approximately 55% of WC claimants with a prescription were prescribed an opioid. By 2016, that figure decreased to about 45%.

Mr. Eddinger then discussed the residual market. The premium volume has remained relatively stable over the past 5 years, and the residual market share as a percentage of total premium has also remained stable for the past 5 years. Mr. Eddinger noted that, on average, when there is a residual market, the premium is about 40% higher than the voluntary market, which is necessary to account for the higher risk.

Mr. Eddinger then provided a summary of NCCI's 2017 data. On one hand: investment income remained below the long-term average; loss costs continued to decrease; lost-time claim frequency fell again; and net written premium for private carriers declined slightly. On the other hand: combined ratio improved to the lowest level in over half a century; payroll continued to increase; severity increases remained moderate; and residual Market remained stable and manageable.

Rep. Lehman stated that there has been a huge increase in loss-control for carriers, but they refuse to give any discounts because the rates are too low. Rep. Lehman asked Mr. Eddinger where he sees rates trending in the future given that dynamic. Mr. Eddinger stated that NCCI thinks the rates are where they need to be given the data available and cannot speak for the carriers. Mr. Eddinger also noted that insurance carriers, like other companies, are looking to make a profit, and they have also realized that the least expensive claim is the one that doesn't happen, and employers are increasing workplace safety.

Rep. Lehman then asked if monopolistic states such as Ohio and North Dakota are seeing rate decreases. Mr. Eddinger stated that there is very little data available from monopolistic states. Rep. Keiser stated that there has been an emphasis on workplace safety and therefore a decrease in workplace accidents. Rep. Keiser asked how much in the recent data can be attributed to the legislation that many states have passed relative to cost-drivers. Mr. Eddinger stated that overall, the impact of state reforms is a very small piece of the data, and that he is confident that monopolistic states have similar data.

Asw. Maggie Carlton (NV), Vice Chair of the Committee, stated that in Nevada, construction used to be a large part of the economy but that has changed. Construction WC claims are expensive, so she asked if a decrease in construction jobs factored into the lower overall claims frequency. Mr. Eddinger stated that those types of shifts do have impacts, however, only huge events like the great recession tend to show up in the data.

RE-ADOPTION OF MODEL LAWS

Upon a Motion made by Rep. Keiser and seconded by Rep. Lehman, the Committee voted without objection by way of a voice vote to re-adopt for five (5) years, per NCOIL bylaws: the Model Act on Workers' Compensation Coverage for Volunteer Firefighters; the Construction Industry Workers' Compensation Coverage Act; and the Model Act Regarding Workers' Compensation Insurance Coverage in Professional Employer Organization (PEO) Relationships.

Upon a Motion made by Asm. Ken Cooley (CA), NCOIL Secretary, and seconded by Rep. Keiser, the Committee voted without objection by way of a voice voce to re-adopt the Model Act on Workers' Compensation Repackaged Pharmaceutical Reimbursement Rates until the NCOIL 2018 Annual Meeting in December since proposed amendments to the Model are in the process of being developed and considered.

ADJOURNMENT

There being no further business, the Committee adjourned at 3:45 p.m.