

The Inside Story: SCIF Bullied Broker

Brokerage Wins, Will Have Its Day in Court vs. State Fund

A California state appeals court has cleared for trial a case that will shine the spotlight on how State Fund in 2002 seemingly arbitrarily cut off one of its largest brokerages after it erroneously calculated that the loss ratio on the firm's book of business slipped past 80 percent. The future trial was made possible by the Fourth District Court of Appeal last week when it sided with Cumbre Insurance Services and reversed rulings on motions for summary judgment a lower court had made in favor of State Fund.

At stake is Cumbre's and parent Coachella Valley Insurance Services' right to recoup lost commissions from State Fund, which exceed \$1.4 million in the year prior to its broker access being revoked along with that of 140 other brokerages. Although the appellate court sided with Cumbre on its claim that State Fund had denied its access to fair procedure, the court reversed a previous ruling that State Fund had breached its contract and that in so doing had committed an uncon-

stitutional taking of Cumbre's property.

The case is a study in how the insurer of last resort, which underwrote all of the business it accepted, revoked "preferred broker" status from some 140 brokerages because it calculated their clients had aggregate loss ratios of more than 80 percent. The move forced Cumbre, which had placed \$16 million in business with State Fund the year prior to the edict, to either slough off clients to other brokers or ask other brokerages to front the business for them and split the commission in return. It went from receiving \$1.4 million in commission in 2002, to \$537,000 in 2003, and none in 2004, according to court documents. In a word, the ordeal was tantamount to bullying, according to the brokerage's account of the affair.

The case also illustrates the randomness of State Fund's treatment of Cumbre Insurance, which had been placing business with the insurer of last resort since 1995 and was one of SCIF's largest brokers. And after it was notified that it no longer would have access to State Fund, the

brokerage, desperate, was drawn into State Fund's internal appeals process, which had no written rules of engagement.

This arbitrary appeals process is at the heart of the case. It was a process that came with neither written rules of engagement nor a hearing giving the broker a chance to rebut the decision.

Michael Holzman, president of Cumbre Insurance, says he hopes that his brokerage will be made whole now that the appeals court has cleared the way for trial. The brokerage hopes to receive its lost commissions and to be given access to State Fund once again, which he says every broker in California needs.

There is an issue of fairness here, and perhaps even one of "does State Fund have the right to decline business from any licensee? Neither the California Fair Plan nor the Assigned Risk can deny access," says Dale Debber, publisher of *Workers' Comp Executive*.

One point that Holzman has argued throughout the case is that State Fund's termination program was irrational in that it did not have the desired effect of avoiding bad business and reducing the size of the insurer's bloated book. Regardless of who was doing the brokering, a bad account in a bad class would have had no choice but to go to State Fund anyway. Also, Holzman says, State Fund was well within its rights to

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Health Care and National Regulation to Terrorism

7,372 Bills in Congress Affect Workers' Comp

While state lawmakers across the country are wading through hundreds of workers' comp-related bills in their respective legislative sessions, more than 7,300 bills that would affect workers' comp in some way have been introduced in Congress this year. The number is staggering, experts say, especially considering that mouths dropped last year when a mere 4,500 such bills were penned.

Common topics on the hill this year include general health care, accounting for 124 bills; indemnity and medical

benefits (122 bills); first responders (102 bills); and independent contractors (89 bills), according to Helen Westervelt, president of regulatory services for the National Council on Compensation Insurance Holdings, Inc. (NCCI), who briefed attendees on legislative issues at the council's annual symposium.

"Much of this is influenced by the midterm elections," Westervelt said. "In D.C., the entire House was up for re-election and one-third of the Senate – the Democrats now control both chambers."

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2006 Underwriting Results

In this issue, *Workers' Comp Executive* features the 2006 California workers' comp underwriting results for all carriers writ-

ing business in the Golden State. Please find the complete listings on pages 4-8. ▲

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Reserves Decreasing

Insurers Likely to Follow Pure Premium Decrease

Although insurance companies are loath to divulge their plans for rate filings they're about to make for July 1, *Workers' Comp Executive* has learned that many carriers likely will take whatever the commissioner approves. But they are giving themselves plenty of leeway with scheduled credits and debits. Industry players are becoming wary of the rate free fall that seems to show no sign of letting up. And many are worried that, as the courts interpret reform statutes and the legislature further tinkers with the system, claims costs could turn at a moment's notice.

California Insurance Commissioner Steve Poizner has until the end of this month to approve or reject the recommendation by the Workers' Compensation Insurance Rating Bureau to reduce advisory pure premium rates on average by 11.3 percent effective July 1. It is expected that an approval will be forthcoming.

Despite industry players wondering when rates will stop falling, the flipside

is that predicting costs was made easier thanks to reforms cutting down litigation and weeding out frivolous claims from the system.

"(Senate Bill) 899 took the litigation out of claims, and it made all the difference in the pricing. It's more than 50 percent less than last year at this time," says Jerry Dunn, a partner of Owen-Dunn Insurance Services in Sacramento. "You're able to lower your rates because you have a better idea of what your expenses are going to be. When there was more litigation, you didn't know what they were going to be; they could be all over the place."

This predictability and stability has spurred both more interest and inserted more surplus into the marketplace, with new entrants and other carriers expanding their books of business in covered payroll.

"I'm seeing [carriers] discounting heavily – they're really driving the cost down," says John Wood, vice president of finance for McGee & Thielen Insurance Brokers in Sacramento. "Nothing will get a carrier to compete in California more than seeing another carrier making a profit. Everybody's said, 'Well, let's get back in.' I have to credit Schwarzenegger because [SB 899] really brought people back into town."

Larry Evans, a broker with John O. Bronson Co., says that despite many carriers toeing the line, he's heard of a few that will opt to supersize their reductions.

"There might be a couple [of carriers] looking to take 15 or 18 percent to be more competitive," he says. "But we're on a slide downhill at this point, and it's a matter of how far down the carriers want to go to be competitive."

"Claims are falling and rates are falling, and we get a rate decrease every six months. We're on a slippery slope," Evans says. "Until the premium fall and the loss fall balance out, companies are going to slide. They just have to decide where they're going to stop."

Rate cuts are resulting in the unusual phenomenon of carriers' premium writings falling but covered payroll increasing.

"Like everybody else in the comp business, we continue to see the top line writing drop, but unit counts are increasing," says Jim Little, president of Employers Direct Insurance Co. "We are actually selling more business, but another double-digit rate decrease will go to the top line."

Another factor that may be fuelling the soft market is redundant reserves and reserve releases. Many carriers have been letting out reserves. Zenith National Insurance Co., for example, released \$34.2 million in reserves in the first quarter alone due to favorable prior accident-year loss reserve development, thanks to reforms, according to its quarterly statement.

"That's further freeing up capital," says Mark Stokes, senior vice president at ABD Insurance Services. "Some carriers have this money to burn, giving them more money to write risks."

Despite heavy competition, there are only a few complaints about carriers being ultra-aggressive to the point of pricing dangerously.

Little says that, overall, companies are pricing fairly, "with a couple of exceptions. We haven't seen any irresponsible competition. The companies in the market now are what I would consider responsible." ▲

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CALENDAR OF EVENTS



June 12

Annual Workers' Compensation Legislative Education Day, California Coalition on Workers' Compensation, 1215 K Street, Sacramento, 916-441-4111.

June 18

2007 Workers' Compensation Information System (WCIS) advisory committee meeting, Division of Workers' Compensation, Elihu Harris State Building Auditorium, Oakland, 510-286-6763.

June 28-July 1

22nd Annual Mid-Summer Seminar, California Society of Industrial Medicine and Surgery, Hilton La Jolla Torrey Pines, La Jolla, 800-692-4199.

August 2

Workers' Compensation Carve-Out Conference, Commission on Health and Safety and Workers' Compensation, The Hilton Garden Inn, Emeryville, 510-622-3959.

State of the Line Is Strong but Shouldering a Heavy Load

Workers' comp underwriting results nationally are the best in decades, and the industry just saw its fourth straight year of underwriting profits, according to the National Council on Compensation Insurance. NCCI just released its annual "State of the Line" report. California's impact – both positive and negative – cannot be overlooked, and it greatly affected countrywide numbers. But all is not rosy, as highlighted by continually climbing medical claims costs, which could erode results in future years.

"California has a habit of reforming, and then the reforms are eroded through court decisions, until finally they have to re-reform. It's hard to say [if the benefits will last]."

—NCCI chief actuary
Dennis Mealy

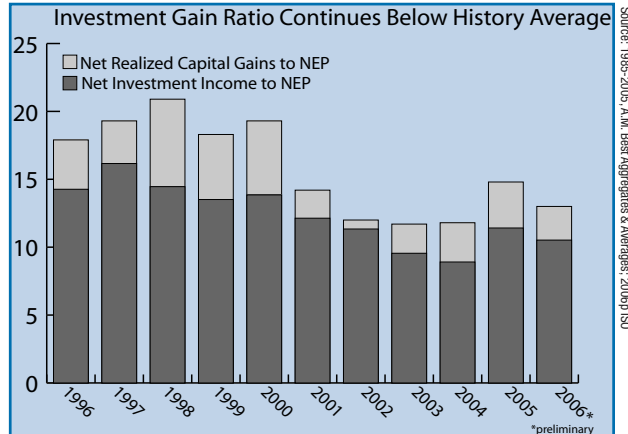
Nonetheless, California is the star performer today, but that could all change depending on how far the pendulum on its recent reforms swings.

"California has a habit of reforming, and then the reforms are eroded through court decisions, until finally they have to re-reform. It's hard to say [if the benefits will last]," said NCCI's chief actuary Dennis Mealy.

And besides that, he points out, the cyclical nature of insurance, especially workers' comp, will force a change in California's status. It wasn't too long ago that California's numbers were hurting national averages. But that was then.

The 2006 national workers' compensation calendar year ratio was 96.5 percent – a 6.5-point improvement over 2005. But excluding California's results alone would raise the calendar year net combined ratio about 10 points, to more than 105 percent.

"California is big. It has a big effect, and it's that simple," said Dr. Richard Victor, executive director of the Workers' Compensation Research Institute. "If the trends in California looked like the trends everywhere else, it wouldn't be



distorting the national [data]. But what's happened both pre- and post-reform has been different than in every other state."

According to NCCI's report, workers' compensation insurance rates also declined in 2006. This was no surprise to California, which experienced more than a 65 percent rate reduction and created a highly competitive market. NCCI reports to the nation that both California and Florida experienced significant rate declines as reforms in those states favorably affected costs and improved marketplace conditions.

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"Terrorism"

continued from page 3

The party also controls both houses in 23 states. Republicans have the upper hand in 15 states, and 11 others are split. Nebraska is unicameral. Furthermore, Westervelt said, gubernatorial elections were held in 36 states and the Dems picked up an additional six seats for a total of 28.

As part of the democratic process, party changes ebb and flow, so perhaps of particular interest is that 15 new insurance commissioners were either elected or appointed last year.

"Typically, [new commissioners are] not much of a problem if they have a mature staff, but so many baby boomers are retiring," said Mona Carter, National Policy Executive for NCCI. "The majority of commissioners who have come on have been very open and have been willing to work with the industry. It takes a little while to get their feet wet and they certainly haven't had time to look at the national picture."

Although Capitol Hill has seen an increase in the number of bills affecting

workers' comp bills, it's unlikely that a great number more will be enacted than in previous years, experts surmise.

Thousands of Bills: Few Topics

The 7,372 bills introduced in Washington that affect workers' comp cover a range of topics that include issues such as data quality, unintended consequences of coastal insurance in states such as Florida and Mississippi, and insurance profitability reports. But just three topics, experts said, will likely consume most of lawmakers' time: the Optional Federal Charter, McCarran-Ferguson and the Terrorism Risk Insurance Extension Act.

"[We] are seeing activity coming at a fast and furious pace," said Mary Jane Cleary, Washington affairs executive for NCCI. "The impact of [decisions in] Washington, D.C. and the debates that are the front-page discussions of the papers...will influence the regulatory climate for workers' comp in the next 12 months."

Optional Federal Charter

Introduced during the 109th Congress, and likely to be debated under this year's 110th, the National Insurance Act is stirring the pot.

Penned by Sens. John Sununu (R-N.H.) and Tim Johnson (D-S.D.) in 2006, the National Insurance Act, the authors have said, addresses an ineffective regulatory system spread over 56 jurisdictions. If signed into law, the act would allow an "optional federal charter" for life and property/casualty insurance carriers that prefer federal regulation over state regulation.

The option could benefit carriers that do business nationally, such as Liberty and Travelers, Cleary said, because those companies would need to meet only federal requirements, rather than individual states' requirements. Companies that do business outside the country also might benefit from a more concise

"Terrorism," continued on page 11

2006 Year-End California W/C Results for Leading Carriers/Groups

On pages 4-8 we list year-end 2006 California workers' comp results for major carriers writing in the state. The charts list all companies that write any significant amount of business in the Golden State. For companies that have data listed as "N/A" in some columns, our vendor was unable to get all of the information to us by press time.

Group	Carrier	Direct Premiums Written	Direct Dividends Paid	Direct Losses Paid	Direct Premiums Earned	Direct Losses Incurred	Current YTD Direct Loss Percentage
Ace Limited	Ace American Ins Co	124,083,343	0	7,182,574	135,625,432	30,911,716	22.79%
	Ace Fire Underwriters Ins Co	16,249,954	0	5,324,760	15,981,817	11,029,103	69.01%
	Ace Indemnity Ins Company	0	0	559,201	0	658,191	0.00%
	Ace Property and Casualty Ins. Co.	Not Available at Presstime					
	Bankers Standard Ins Co	521,110	0	(92,483)	520,953	(655,130)	-125.76%
	Indemnity Ins Co of North America	3,700,350	0	17,730,762	3,690,411	12,492,696	338.52%
	Insurance Co of North America	7,469	0	2,417,182	44,205	3,000,351	6787.36%
	Pacific Employers Ins. Co.	5,261,707	0	22,152,855	6,108,597	17,520,294	286.81%
Ace Limited	Group Total:	149,823,933	0	55,274,851	161,971,415	74,957,221	46.28%
Alaska National Ins Co		33,376,006	0	9,411,218	38,101,319	23,061,713	60.53%
Alea North America Ins Co		(743,365)	0	14,505,020	8,527,223	(853,634)	-10.01%
Allianz Insurance Group	American Automobile Ins. Co.	37,553,654	3,042,350	15,428,401	44,299,949	10,355,640	23.38%
	American Insurance Company	23,924,385	19,545	31,709,675	27,319,988	11,619,893	42.53%
	Associated Indemnity Corp	2,561,834	(199,116)	7,319,606	2,968,959	(908,653)	-30.61%
	Fireman's Fund Insurance Co	10,765,109	12,820	4,600,023	10,443,878	(1,726,163)	-16.53%
	National Surety Corp	5,612,677	1,352	3,670,471	7,112,588	(433,178)	-6.09%
	Group Total:	80,417,659	2,876,951	62,728,176	92,145,362	18,907,539	20.52%
American Financial Group	Great American Alliance Insurance Co	582,474	0	2,001,945	572,916	3,059,588	534.04%
	Great American Assurance Co	32,111	0	584,375	38,787	(50,339)	-129.78%
	Great American Insurance Co of NY	6,822,831	0	3,411,248	8,783,314	4,848,852	55.21%
	Great American Insurance Co	594,718	0	2,625,765	586,468	5,292,171	902.38%
	National Interstate Insurance Co	15,866,211	0	2,990,169	13,055,485	4,528,817	34.69%
	Republic Indemnity Co of CA	184,352,543	3,653,326	50,678,836	187,971,210	54,115,472	28.79%
	Republic Indemnity Co of America	68,357,123	969,458	27,001,856	71,086,951	14,265,928	20.07%
Group Total:	276,608,011	4,622,784	89,294,194	282,095,131	86,060,489	30.51%	
American Internat'l Group	AIG Casualty Company	(19,449)	0	39,294	(19,430)	34,300	-176.53%
	AIU Insurance Company	31,306	0	58,414	57,818	(316,509)	-547.42%
	American Home Assurance Co.	555,235,351	0	134,445,298	608,091,626	301,273,082	49.54%
	American Intl Ins Co of CA	2,080,296	0	0	1,885,017	28,356	1.50%
	Commerce & Industry Ins Co	132,000,792	0	55,920,140	162,836,069	48,654,835	29.88%
	Granite State Insurance Co						0.00%
	Ins. Co. of the State of Pennsylvania	59,564,693	0	21,007,456	64,606,845	24,909,138	38.55%
	Lexington Insurance Co	0	0	388,841	0	(437,154)	0.00%
	National Union Fire Ins Co of Pittsburgh PA	143,255,110	0	133,925,781	152,960,664	129,235,417	84.49%
	New Hampshire Insurance Co	3,032,041	0	1,244,014	3,647,818	1,288,707	35.33%
Group Total:	895,180,140	0	347,029,238	994,066,427	504,670,172	50.77%	
Arch Insurance Company		71,042,868	0	22,528,721	87,134,572	26,754,086	30.70%
Argonaut Group	Argonaut Insurance Company	(64,168)	13,116	15,195,560	6,787,825	(25,652,699)	-377.92%
	Argonaut Midwest Insurance Co	2,641	0	29,290	28,707	(443,812)	-1546.01%
	Argonaut Southwest Insurance Co	(816,709)	0	901,476	175,148	(767,406)	-438.15%
	Group Total:	(878,236)	13,116	16,126,326	6,991,680	(26,863,917)	-384.23%
Atlantic Companies	Atlantic Mutual Insurance Co	Not Available at Presstime					
	Centennial Insurance Co	(17,310)	0	2,002,383	(17,310)	3,578,389	-20672.38%
Group Total:	(17,310)	0	2,002,383	(17,310)	3,578,389	-20672.38%	
Bancinsure Inc		2,366,850	0	554,134	2,700,065	471,847	17.48%
Berkshire Hathaway	Cypress Insurance Co	76,943,407	0	12,998,547	73,256,970	28,797,550	39.31%
	National Liability & Fire Ins Co	339,782,207	0	27,751,613	402,916,988	196,458,334	48.76%
	Oak River Insurance Co	6,510,376	0	887,525	5,991,457	1,688,031	28.17%
	Redwood Fire Ins Co	394,170,380	0	38,143,505	392,193,291	187,253,249	47.75%
Group Total:	817,406,370	0	79,781,190	874,358,706	414,197,164	47.37%	
Berkley Regional Insurance Company		785,825	0	839,986	2,628,055	1,060,263	40.34%

2006 Year-End California W/C Results for Leading Carriers/Groups

Group	Carrier	Direct Premiums Written	Direct Dividends Paid	Direct Losses Paid	Direct Premiums Earned	Direct Losses Incurred	Current YTD Direct Loss Percentage
California Insurance Company		145,393,714	0	17,324,627	145,393,714	53,171,538	36.57%
Carewest Insurance Company		28,062,109	0	4,236,087	24,886,901	7,282,077	29.26%
	Federal Insurance Company	139,341,234	0	41,267,414	166,645,990	44,263,958	26.56%
	Great Northern Insurance Co	3,204,213	286,417	1,158,675	2,619,857	654,006	24.96%
	Northwest Pacific Ind Co	Not Available at Presstime					0.00%
	Pacific Indemnity Company	14,352,300	690,743	5,490,858	14,152,238	16,228,916	114.67%
	Vigilant Insurance Company	12,055,363	1,192,605	2,236,929	12,377,930	5,915,646	47.79%
Chubb & Son Inc	Group Total:	168,953,110	2,169,765	50,153,876	195,796,015	67,062,526	34.25%
Church Mutual Insurance Company		14,508,696	2,425,488	3,404,402	15,197,942	4,713,697	31.02%
Cincinnati Insurance Company		725,495	8,837	373,569	800,722	655,999	81.93%
	American Casualty Co of Reading, PA	29,000,038	0	18,985,150	23,084,141	(865,439)	-3.75%
	Continental Casualty Co	17,785,661	0	34,790,728	16,025,329	18,935,655	118.16%
	Continental Insurance Co	1,659,297	0	8,821,308	1,861,125	1,197,045	64.32%
	Glens Falls Insurance Co	Not Available at Presstime					0.00%
	National Fire Ins Co of Hartford	10,169,289	0	4,766,280	10,340,349	4,533,650	43.84%
	Niagara Fire Insurance Co	Not Available at Presstime					0.00%
	Transcontinental Ins Co	(400,004)	(10,926)	7,899,073	(585,082)	(998,552)	170.67%
	Transportation Insurance Co	5,718,421	(1,726,507)	19,647,291	4,238,303	17,653,344	416.52%
	Valley Forge Insurance Co	8,788,321	51,102	5,643,934	7,068,242	4,893,225	69.23%
CNA Insurance Group	Group Total:	72,721,023	(1,686,331)	100,553,764	62,032,407	45,348,928	73.11%
CompWest Insurance Company		100,024,284	0	8,490,076	101,406,383	44,260,947	43.65%
	General Casualty Co of WI	1,165,937	0	156,685	954,596	256,292	26.85%
	Regent Insurance Co	637,094	27,167	247,260	656,258	37,160	5.66%
	Unigard Insurance Co	0	0	222,210	0	234,890	0.00%
Credit Suisse Group	Group Total:	1,803,031	27,167	626,155	1,610,854	528,342	32.80%
Electric Insurance Company		6,033,256	117,624	9,182,145	6,033,256	13,783,987	228.47%
Employers Compensation Insurance Co		288,528,564	0	38,951,410	292,789,693	41,133,253	14.05%
Everest National Insurance Co		169,966,027	0	116,074,909	197,925,471	47,183,049	23.84%
	North River Insurance Co	27,464,799	0	4,132,659	24,605,140	11,130,803	45.24%
	TIG Indemnity Co	0	0	0	0	(1,066)	0.00%
	TIG Insurance Co	8,695,237	0	35,999,754	15,781,836	33,598,170	212.89%
	United States Fire Ins. Co.	69,916,968	0	28,835,990	94,920,475	19,470,129	20.51%
Fairfax Financial	Group Total:	106,077,004	0	68,968,403	135,307,451	64,198,036	47.45%
Florists Mutual Insurance Company		836,005	0	2,135,589	1,161,537	(3,018,422)	-259.86%
	Coregis Insurance Co	(20,572)	0	7,447,591	(20,572)	(2,200,081)	10694.54%
	Westport Insurance Corp	(18,228)	0	2,463,570	(318)	(2,249,032)	707242.77%
GE Global Group	Group Total:	(38,800)	0	9,911,161	(20,890)	(4,449,113)	21297.81%
	Amguard Insurance Co	5,851,082	270	246,345	5,451,844	3,082,868	56.55%
	Eastguard Insurance Co	Not Available at Presstime					0.00%
	Norguard Insurance Co	Not Available at Presstime					0.00%
Guard Insurance Company	Group Total:	5,851,082	270	246,345	5,451,844	3,082,868	56.55%
Guideone Mutual Insurance Co		24,871,540	0	8,553,099	29,012,139	5,782,654	19.93%
	Clarendon National Ins Co	143,588,302	0	52,886,094	164,729,222	28,386,176	17.23%
	Harbor Specialty Ins Co	(108,989)	0	23,428,985	(108,989)	1,726,351	-1583.97%
	Redland Insurance Co	16,237,499	0	16,122,316	24,830,867	17,401,233	70.08%
Hannover Group	Group Total:	159,716,812	0	92,437,395	189,451,100	47,513,760	25.08%
Harco National Insurance Co		1,854,044	0	2,668,239	3,761,793	749,637	19.93%

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Group	Carrier	Direct Premiums Written	Direct Dividends Paid	Direct Losses Paid	Direct Premiums Earned	Direct Losses Incurred	Current YTD Direct Loss Percentage
Hartford Fire & Casualty Grp	Hartford Accident & Indemnity Co	1,365,047	(56,547)	3,392,696	1,912,895	3,037,980	158.82%
	Hartford Casualty Insurance Co	40,300,554	291,756	8,044,978	41,480,404	17,219,868	41.51%
	Hartford Fire Insurance Co	68,499,411	88,287	11,546,018	82,395,807	29,936,280	36.33%
	Hartford Insurance Co of the Midwest	80,727,011	126,889	15,691,548	88,767,480	106,722,421	120.23%
	Hartford Underwriters Insurance Co	38,809,183	(295,635)	20,526,749	38,541,781	27,896,796	72.38%
	Twin City Fire Insurance Co	67,987,709	387,602	11,615,460	59,246,183	18,445,712	31.13%
Hartford Fire & Casualty Grp Group Total:		297,688,915	542,352	70,817,449	312,344,550	203,259,057	65.08%
ICW Group	Explorer Insurance Co	27,748,377	0	9,624,396	28,042,175	12,110,696	43.19%
	Insurance Co of the West	68,521,615	0	8,971,637	67,624,101	25,636,194	37.91%
	Group Total:	96,269,992	0	18,596,033	95,666,276	37,746,890	39.46%
Liberty Mutual Group	Employers Insurance Co of Wausau	49,336,232	(35,364)	15,875,943	41,667,213	42,259,983	101.42%
	First Liberty Insurance Corp	6,053,051	0	962,239	4,983,097	1,212,214	24.33%
	Golden Eagle Insurance Corp	0	0	26,289,518	0	972,205	0.00%
	Liberty Insurance Corp	75,351,761	18,906	27,834,587	75,799,187	65,147,765	85.95%
	Liberty Mutual Fire Insurance Co	100,873,311	269,142	123,002,525	87,901,527	94,460,091	107.46%
	Liberty Mutual Insurance Co	9,355,109	(29)	18,445,322	34,528,942	55,742,471	161.44%
	Liberty Northwest Insurance Co	8,286,692	0	2,452,416	8,338,855	3,870,617	46.42%
	LM Insurance Corp	2,481,181	185	2,406,528	3,079,345	1,020,670	33.15%
	Peerless Insurance Co	27,937	0	0	24,741	(1,236)	-5.00%
	Wausau Business Insurance Co	51,514,994	(21,871)	8,080,668	51,057,953	24,696,374	48.37%
Wausau Underwriters Insurance Co	122,835,197	169,812	13,515,724	118,755,148	58,652,994	49.39%	
Liberty Mutual Group Group Total:	426,115,465	400,781	238,865,470	426,136,008	348,034,148	81.67%	
Lumbermens Mutual Casualty Group	American Mfrs Mutual Ins Co	(188,038)	(487,052)	14,921,652	(188,022)	65,326	-34.74%
	American Motorists Insurance Co	845,752	(612,829)	45,207,501	845,755	(20,929,701)	-2474.68%
	Lumbermens Mutual Casualty Co	1,095,195	(1,201,717)	28,997,082	1,095,195	1,091,717	99.68%
	Group Total:	1,752,909	(2,301,598)	89,126,235	1,752,928	(19,772,658)	-1127.98%
Lumbermens Underwriting Alliance- U.S. Epperson Underwriting Co	606,575	0	3,873,933	1,054,646	518,568	49.17%	
Majestic Insurance Co	61,269,275	0	29,184,545	65,175,131	36,660,558	56.25%	
Meadowbrook Insurance Group	Star Insurance Company	993,948	9,150	1,676,804	1,005,564	644,683	64.11%
	Williamsburg National Insurance Co	10,434,292	0	4,477,556	9,872,643	2,760,712	27.96%
	Group Total:	11,428,240	9,150	6,154,360	10,878,207	3,405,395	31.30%
Milea Holdings Inc	Tokio Marine & Fire Ins Co Ltd (Us Br)	18,929,889	228,226	12,735,824	24,105,347	(5,384,376)	-22.34%
	Trans Pacific Insurance Co	5,991,303	0	1,858,971	5,611,580	(2,721,015)	-48.49%
	Group Total:	24,921,192	228,226	14,594,795	29,716,927	(8,105,391)	-27.28%
Mitsui Sumitomo Ins Group	Mitsui Sumitomo Ins Co of America	15,934,276	0	4,910,614	16,222,219	8,005,895	49.35%
	Mitsui Sumitomo Ins USA Inc	7,813,334	0	1,209,628	9,293,086	2,412,175	25.96%
	Group Total:	23,747,610	0	6,120,242	25,515,305	10,418,070	40.83%
Nipponkoa Ins Co Ltd	5,281,576	0	2,167,233	5,695,565	3,364,947	59.08%	
Old Republic Group	Great West Casualty Co	431,284	0	280,246	487,778	(30,960)	-6.35%
	International Bus & Merc Reassur Co Not Available at Presstime						0.00%
	Old Republic General Insurance Corp	268,097	26,530	82,095	310,242	28,696	9.25%
	Old Republic Insurance Co	24,067,068	0	13,423,344	24,094,159	17,293,995	71.78%
	Group Total:	24,766,449	26,530	13,785,685	798,020	17,291,731	2166.83%
Penn Mfr Asn Ins	Manufacturers Alliance Ins Co	344,036	0	33,069	518,112	39,966	7.71%
	Pennsylvania Manufacturers Asn Ins Co	16,397,407	(29)	2,578,052	4,734,393	2,440,626	51.55%
	Pennsylvania Manufacturers Indemnity Co	1,283,020	0	92,662	1,216,773	508,074	41.76%
	Group Total:	18,024,463	(29)	2,703,783	6,469,278	2,988,666	46.20%
Royal & Sun Alliance USA	Royal Indemnity Co	421,280	0	27,904,004	421,298	9,511,975	2257.78%
	Security Insurance Co of Hartford	753,491	0	32,864,515	3,544,416	4,581,435	129.26%
	Group Total:	1,174,771	0	60,768,519	3,965,714	14,093,410	355.38%

2006 Year-End California W/C Results for Leading Carriers/Groups

Group	Carrier	Direct Premiums Written	Direct Dividends Paid	Direct Losses Paid	Direct Premiums Earned	Direct Losses Incurred	Current YTD Direct Loss Percentage
Safeco Insurance	American Economy Insurance Co	3,841,928	0	685,692	4,193,095	167,505	3.99%
	American States Insurance Co	19,441,782	0	6,341,508	20,961,622	2,121,122	10.12%
	American States Insurance Co of TX	5,266,072	0	1,451,352	5,185,921	580,999	11.20%
	First National Insurance Co of America	12,147,672	0	2,621,157	12,418,668	1,491,958	12.01%
	General Insurance Co of America	(73,369)	0	4,417,784	(43,388)	7,480,582	-17241.13%
	Safeco Insurance Co of America	609,445	0	5,351,732	607,176	(2,888,123)	-475.66%
	Safeco Insurance Co of Illinois	406,824	0	5,304,248	378,414	(4,755,913)	-1256.80%
Safeco Insurance	Group Total:	41,640,354	0	26,173,473	43,701,508	4,198,130	9.61%
Safety National Casualty Corp		7,766,110	0	5,781,154	9,067,320	4,235,223	46.71%
Seabright Insurance Co		114,054,491	0	19,584,604	110,732,378	47,847,067	43.21%
Sentry Insurance Group	Sentry Insurance A Mutual Co	42,437,250	(15,923)	15,444,364	49,528,545	20,132,589	40.65%
	Sentry Select Insurance Co	7,882,573	7,975	6,932,797	11,266,230	2,016,779	17.90%
	Middlesex Insurance Co	9,395,990	(3,783)	2,306,517	10,307,691	2,946,754	28.59%
	Group Total:	59,715,813	(11,731)	24,683,678	71,102,466	25,096,122	35.30%
Sompo Japan Ins Co of America		8,558,152	0	2,927,890	9,319,909	13,800,497	148.08%
Springfield Insurance Co		13,592,148	0	7,948,825	15,560,624	1,958,448	12.59%
State Compensation Insurance Fund of CA		3,567,371,141	10,287	2,221,260,830	3,581,822,397	2,192,075,937	61.20%
State Farm Fire & Casualty Co		137,843,715	0	35,248,710	151,520,755	56,210,479	37.10%
St. Paul Travelers Group	Athena Assurance Co	769,546	0	2,807	531,537	133,570	25.13%
	Discover Property & Cas Insurance Co	3,480,608	0	1,690,129	3,123,246	290,354	9.30%
	Fidelity & Guaranty Insurance Co	12,083,802	0	14,910,082	14,541,302	11,311,369	77.79%
	Fidelity & Guaranty Ins Underwriters	0	0	1,039,846	1,035	169,619	16388.31%
	Gulf Insurance Company	Not Available at Presstime					0.00%
	Standard Fire Insurance Co	7,330,166	0	1,612,406	3,828,014	940,716	24.57%
	St. Paul Protective Insurance Co	13,179,684	0	3,282,263	18,322,713	8,005,706	43.69%
	St. Paul Fire & Marine Insurance Co	22,185,230	1,425,115	21,818,473	45,001,655	(4,065,452)	-9.03%
	St. Paul Guardian Insurance Co	1,638,473	52,567	3,144,253	10,052,988	2,126,184	21.15%
	St. Paul Mercury Insurance Co	6,835,342	214,539	3,484,458	10,547,605	1,639,861	15.55%
	Travelers Cas Co of Connecticut	13,303,901	0	477,186	6,357,642	7,088,937	111.50%
	Travelers Casualty & Surety Co	24,664,698	0	7,251,067	18,445,458	(475,162)	-2.58%
	Travelers Casualty Insur Co of Amer	8,675,694	0	859,734	5,677,379	(346,391)	-6.10%
	Travelers Casualty & Surety Co of America	(85,518)	0	132,912	(85,518)	(173,426)	202.79%
	Travelers Indemnity Co of Connecticut	93,268,513	4,282,986	15,112,045	78,527,175	34,238,802	43.60%
	Travelers Property Cas Co of Amer	122,704,005	797,388	54,559,355	140,271,597	97,666,326	69.63%
	Travelers Property Cas Ins Co	921,247	0	213,889	854,508	246,327	28.83%
US Fidelity & Guaranty Co	96,734,314	0	31,502,470	108,116,234	65,757,970	60.82%	
St. Paul Travelers Group	Group Total:	427,689,705	6,772,595	161,093,375	464,114,570	224,555,310	48.38%
Swiss Re Group	Employers Direct Ins Co	148,749,949	0	28,106,653	145,506,897	26,836,258	18.44%
	Employers Reinsurance Corp	280,130	0	4,906	341,117	111,566	32.71%
	North American Specialty Ins Co	210	0	2,182,363	210	1,901,058	905265.71%
	Group Total:	149,030,289	0	30,293,922	145,848,224	28,848,882	19.78%
Topa Insurance Company		3,714,340	0	2,235,422	3,714,727	3,361,204	90.48%
Transguard Insurance Co of America Inc		4,382,337	0	1,895,097	5,011,936	4,642,288	92.62%
Ulico Casualty Company		2,893,078	0	4,660,920	2,895,636	(5,223,029)	-180.38%
Vanliner Insurance Co		7,546,744	0	3,801,521	8,571,725	2,914,043	34.00%
Virginia Surety Co Inc		196,952,372	0	59,256,596	173,903,567	71,237,351	40.96%
White Mountains Group	Atlantic Specialty Ins Co	3,301,117	0	218,711	3,811,869	3,392,892	89.01%
	Commercial Cas Ins Co	(8,636)	0	29,677,926	(8,636)	17,125,747	-198306.47%
	Employers Fire Ins Co	6,680,684	0	198,578	6,478,540	2,210,358	34.12%
	National Farmers Union Prop & Cas	977,723	0	18,756	987,101	46,939	4.76%
	Northern Assur Co of America	0	0	102,004	0	(348,134)	0.00%
	OneBeacon America Ins Co	4,177,737	0	741,912	1,563,119	1,463,802	13371.53%
	OneBeacon Ins Co	20,172	0	7,326,516	22,458	3,002,979	93.65%
White Mountains Group	Group Total:	15,148,797	0	38,284,403	12,854,451	26,894,583	209.22%

2006 Year-End California W/C Results for Leading Carriers/Groups

Group	Carrier	Direct Premiums Written	Direct Dividends Paid	Direct Losses Paid	Direct Premiums Earned	Direct Losses Incurred	Current YTD Direct Loss Percentage
W.R. Berkley Corp	Midwest Employers Casualty Co	290,953	0	4,079	288,533	85,639	29.68%
	Preferred Employers Insurance Co	135,066,028	0	27,318,787	141,452,655	(3,792,359)	-2.68%
	Riverport Insurance Company	0	0	0	0	(37,257)	0.00%
	Group Total:	135,356,981	0	27,322,866	141,741,188	(3,743,977)	-2.64%
X L America	Greenwich Insurance Co	134,890	0	1,335,983	753,722	314,838	41.77%
	XL Specialty Insurance Co	30,062,482	0	8,365,862	32,805,057	10,872,737	33.14%
	Group Total:	30,197,372	0	9,701,845	33,558,779	11,187,575	33.34%
Zenith Nat'l Ins Co	Zenith Insurance Co	391,957,700	3,341,005	130,863,975	418,728,967	33,270,904	7.95%
	ZNAT Insurance Co	182,893,329	0	11,198,543	179,293,105	53,347,260	29.75%
	Group Total:	574,851,029	3,341,005	142,062,518	598,022,072	86,618,164	14.48%
Zurich Insurance Group	American Guarantee & Liability Ins Co	12,029,549	0	12,410,523	19,334,046	5,978,688	30.92%
	American Zurich Insurance Co	39,358,013	0	20,054,783	40,604,494	25,496,829	62.79%
	Assurance Co of America	3,307,824	0	212,718	2,504,412	1,413,531	56.44%
	Civic Property & Cas Co Inc	1,467,423	0	300,584	1,698,897	956,860	56.32%
	Exact Prop & Cas Company	1,047,631	0	203,991	1,060,651	455,239	42.92%
	Farmers Insurance Exchange	41,514,835	0	12,913,061	42,297,321	19,448,873	45.98%
	Fidelity & Deposit Co of MD	4,469,859	0	770,499	4,095,565	1,009,065	24.64%
	Maryland Casualty Co	2,390,655	0	574,760	1,933,717	1,634,316	84.52%
	Mid-Century Insurance Co	43,023,889	0	43,519,455	50,192,965	14,560,921	29.01%
	Neighborhood Spirit Prop & Cas Co	2,326,652	0	380,373	2,698,596	1,152,939	42.72%
	Northern Ins Co of NY	3,538,163	0	802,917	2,709,919	1,895,011	69.93%
	Truck Insurance Exchange	142,317,993	0	31,371,454	152,314,387	61,791,973	40.57%
	Universal Underwriters Insurance Co	1,074,262	0	3,081,622	1,224,074	1,639,848	133.97%
	Valiant Insurance Co	5,783	0	64,525	2,685	191,081	7116.61%
	Zurich American Insurance Co	308,965,337	0	75,740,165	329,171,155	117,527,051	35.70%
	Zurich American Insurance Co of IL	30,649,156	0	1,485,272	27,600,982	15,751,166	57.07%
		Group Total:	637,487,024	0	203,886,702	679,443,866	270,903,391
Totals		10,750,095,171	19,593,239	4,819,229,321	11,206,377,630	5,282,506,174	47.14%

"State Fund"

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reduce or eliminate commissions on accounts it deemed high risk.

Some Background

State Fund only started giving brokers the right in 1995 to represent clients that had no choice but to secure coverage with the insurer of last resort. That coincided with the onset of open rating, after the state's minimum rate law was repealed. Over the coming years, State Fund became friendlier and friendlier with brokers, increasing commissions. But State Fund continued increasing those commissions and offering increasingly competitive quotes even as the industry faltered, carriers were tanking and claims costs skyrocketing. State Fund continued with this strategy as the market hardened like a rock.

State Fund, under its former management, continued to grow, some say at the expense of private carriers. It was paying negotiated commissions in excess of 18 percent and in some cases bonuses, in

one documented case \$250,000, to brokers who brought in large accounts.

Regulators and the rest of the industry were mystified about why State Fund remained so aggressive and paid out such hefty commissions when business was going to flow its way no matter what.

The Department of Insurance and the legislature took note when State Fund's surplus failed to grow in conjunction with premiums. The Department in 2003 pressured State Fund to bolster its surplus and reduce its writings through a series of measures, including the misguided requirement that any new accounts coming to State Fund were supposed to have three declinations from other carriers in the market. It was about that time State Fund decided to jettison brokers that were funneling money-losing business its way.

According to court documents, Renee Koren, the recently fired vice president of State Fund, said in a deposition that SCIF instituted its broker termination program to avoid paying additional

commissions on unprofitable accounts.

"Koren also explained that State Fund did not implement its termination program arbitrarily, but applied its criteria uniformly and treated all brokers considered for termination in the same manner," the appellate court writes.

But that's one side of the story. According to the lawsuit, Cumbre was one of about 140 brokerages that received letters saying that their preferred-broker status would be revoked because their books of business had aggregate average loss ratios of more than 80 percent over an average of three years: 1999, 2000 and 2001.

The 2003 broker agreement required that either State Fund or a broker could terminate the agreement with at least 60 days' prior written notice. Cumbre received a notice on April 2, 2003 that State Fund would terminate its broker agreement effective Aug. 1, 2003 because the brokerage's business with SCIF had an average loss ratio exceeding 80 percent.

"State Fund," continued on page 9

The termination of the contract precluded Cumbre from placing more new business with State Fund after Aug. 1, 2003, although it was allowed to maintain its existing policies for the

"We wanted to know how they would handle broker-of-record agreements and many other factors. The answer we got was 'We don't want you to limit what you say to us.' "

— Michael Holzman

remainder of the agreement period. And at that time in the marketplace, so few private carriers were willing to write business that all brokerages had clients forced to go with SCIF. The decision bled Cumbre's client base, many of them leaving to other brokerages that still had access to State Fund. It also was forced to arrange broker-of-record arrangements with other brokerages, which split the commissions with Cumbre. Eventually, Cumbre says, it lost those clients, too.

Cumbre was given the option to appeal the termination decision with State Fund. But the insurer handled the appeal internally after Cumbre submitted documentation refuting the decision. There was no administrative hearing, just an internal process through which a decision was rendered behind closed doors. In this case, the decision was that State Fund's decision to terminate the contract was legitimate.

Cumbre soon filed a complaint against State Fund that included causes of action for breach of contract, negligence, breach of the implied duty of good faith and fair dealing, unfair business practices and declaratory relief. State Fund successfully attacked the complaint and, after losing three procedural battles, Cumbre hired new attorneys who amended the complaint to include a cause of action under the common law doctrine of fair procedure. Both parties then sought summary judgment and the trial court granted judgment in favor of State Fund, concluding that the doctrine of fair procedure did not preclude State Fund from terminating the broker agreement.

The trial court also threw out Cumbre's accusation that State Fund had encumbered its right to the courts when the

insurer invited all of the dismissed brokers back into the fold if they dropped any legal actions they had taken as result of having their preferred-broker status revoked.

Appeals Process

Holzman argues that State Fund's internal appeals process was a shady affair based on internal politics.

He says the appeals process should have included a "hearing and an opportunity to confront and cross-examine its accusers and examine and refute the evidence." Instead it got a vaguely defined process that seemed like State Fund was shooting from the hip.

Holzman says that his brokerage was given no written guidelines for how to submit the appeal. "We wanted to know how they would handle broker-of-record agreements and many other factors. The answer we got was 'We don't want you to limit what you say to us,' " he says.

This in effect hamstrung the broker from properly preparing for the appeal. At one point, Ingo Coolins, State Fund marketing manager, said that even if Cumbre's overall loss ratio had been less than 80 percent, it still would have been terminated based on its "loss ratios in specific areas," according to court documents. And apparently it was lower than 80 percent if broker-of-record arrangements would have been removed from the calculation, says Holzman.

Holzman says he was told after his appeal was rejected that despite being below 80 percent, the brokerage would still lose its access because more than 40 percent of its accounts had had some adverse loss development (which was the norm at that time throughout the industry). He asked for a copy of this rule in writing, but none was produced.

With all this in mind, the appellate court ruled that State Fund's internal appeals process was not fair.

Writes the court: "In evaluating these claims, we note that the doctrine of fair procedure protects against arbitrary decisions and unfair procedures. It is not designed to impose impractical and unworkable standards on private entities."

It went on to say that "the doctrine of fair procedure imposes certain minimum requirements, including adequate notice of charges and a reasonable opportunity to respond. The individual has a right to a tribunal which meets the prevailing

standards of impartiality and biased decision-makers are impermissible and the probability of unfairness is to be avoided."

The appeals court said factual questions remain as to whether State Fund's appeals process comported with these minimum requirements and it is unclear whether State Fund's failure to inform Cumbre of additional criteria beyond the 80 percent loss ratio rule deprived the brokerage of having a reasonable opportunity to present a defense. These issues, the appellate court says, must be worked out at the trial-court level.

"State Fund's quasi-public nature, dominant market share, and important public function justify the application of the requirement of fair procedure," the court writes. "Even if some [of its broker] relationships did not prove to be economically advantageous, State Fund initially made use of them to fulfill its statutory mandate and, presumably, to expand its reach beyond its own capacity.

This opinion, in essence, gives the trial court something to work with.

"This case will go back to the trial court and we will have a road map for the case," says James Powers, partner with Nossaman, Guthner, Knox & Elliott, which represents the insurance brokerage.▲

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Labor Seeks to Soften Physical Medicine Caps

California lawmakers once again are eyeing the 24-visit cap placed on chiropractic, occupational therapy, and physical therapy treatments instituted by SB 228, which was signed into law in 2003. Labor representatives have rallied for alternatives to the bill since its inception, claiming that the cap is too restrictive and in some cases does much more harm to injured workers than good. With just a week remaining for policy committees to meet, legislators now are hearing more of the same.

Assemblyman Pedro Nava (D-Santa Barbara) is looking to add some exceptions to the 24-visit rule through AB 1073, which passed out of the lower house on a 43-27 vote and is now before the Senate Rules Committee for committee assignment. But insurance company representatives are shaking their heads and asking why on earth they would support a measure that doesn't include any visit limitations at all for injured workers who undergo surgery, potentially leading to yet another downward spiral of use and abuse.

Under the new legislation, injured workers would be able to seek more than 24 physical medicine service visits if surgery is needed.

Nava is urging that the preferred approach to treating an injured worker be nonsurgical. But the dilemma, the author said, is when the worker attempts recovery with 24 physical therapy visits but still ends up requiring surgery and has no workers' comp coverage left for postsurgical recovery physical medicine.

"So what you are really doing is creating an incentive to cut first," Nava

said. "If I were an advisor to an injured worker, and there was either physical therapy or surgery, and you're limited to 24 visits, I'm sending you to surgery because I know I can get you 24 therapy visits after."

Rights to Waive

Opponents weren't stridently opposed to that rationale, but they did seem pretty puzzled by the absence of the postsurgical visit cap in the bill's language, and that the bill seems a bit redundant – existing law already allows an employer or insurer to waive the visit cap if they see fit.

Nava said he doesn't think that employers and insurers are exercising this right nearly enough.

"Although employers may authorize additional physical medicine services, many [utilization reviewers] will not approve the additional visits," Nava said. "The result is that surgeons are unable to get approval for injured workers who have had surgery and need postsurgical rehabilitation to restore motion and to eliminate pain. These workers are not receiving the standard of care required to complete full rehabilitation."

A case in point was an injured worker from the Silicon Valley named Polly Larson, who testified at the committee hearing. Larson shattered her elbow at work in 2004 and underwent three surgeries to repair the damage. The 24 therapy visits weren't enough, she said, and because no further coverage was available, her elbow failed to completely heal. She says she cannot straighten her arm and can barely lift a gallon of milk.

"These individual cases are tragic, and we think the denial was wrong," said Theo Pahos, outside lobbyist for Association of California Insurance Companies (ACIC). "But we're not sure that this is as big a problem as it has been presented."

During his argument, Pahos cited a study currently under way by the California Workers' Compensation Institute that suggests the use of postsurgical physical medical service has fallen 1 percent.

The association also opposes AB 807, a nearly identical bill penned by Democratic Assemblywoman Loni

Hancock (D-Berkeley) that should have been heard at a May 9 meeting of the Assembly Insurance Committee but was pulled from the agenda just

"Although employers may authorize additional physical medicine services, many [utilization reviewers] will not approve the additional visits."

*– Assemblyman
Pedro Nava*

prior to game time.

Last year, the insurance industry lobbied against AB 1209 (Leland Yee, D-San Francisco), a bill sponsored by the California Chiropractic Association that was the first to target the visit cap.

One of the primary reasons for ACIC's opposition to both of this year's bills, according to association president Sam Sorich, is the absence of a written requirement to keep postsurgical treatments consistent with guidelines from the American College of Occupational and Environmental Medicine (ACOEM).

"Without additional language, there is a possibility that a workers' comp judge could say that by removing the cap, the legislature has taken that action without specifying that visits beyond the cap should be consistent with the [guidelines]," Sorich said. "Let's just be clear about what we're doing here."

There appears to be room for a deal that retains the existing cap as presurgical and allows for a postsurgical cap consistent with ACOEM.

Labor reps are adamant that this bill is narrowly tailored and was not written to create loopholes for injured workers to bilk the system.

"Hard caps in chiropractic and physical therapy visits were adopted...because there was overuse and abuse that didn't create good medical outcomes for injured workers," said labor representative Angie Wei. "But we have addressed unfettered use in different ways. There is already employer control over medical treatment. The real issue here is who gets to make the final decisions." ▲

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“Terrorism”

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process, Cleary said.

The Optional Federal Charter, the authors say, would allow for greater choice for insurers, greater stability within the system, including making fraud a federal crime, and greater consumer protection.

A national insurance act would create a federal regulator: the Office of National Insurance that would be housed in the Department of the Treasury and would be headed by a national insurance commissioner appointed by the president and subject to confirmation by the U.S. Senate.

Former California Insurance Commissioner and current Lt. Gov. John Garamendi has been mentioned for and would be in contention for this position under a Democratic president.

“It’s been a hot topic for years – life insurance has been pressing it for more than a decade,” Cleary said. “Oftentimes, when you get an esoteric topic that takes a lot of discussion at the congressional level, people will put in a bill to simply start a discussion. I think this will be a several-year project.”

Both Sununu and Johnson are members of the Senate committee on Banking, Housing and Urban Affairs.

TRIA and TRIEA

High on everyone’s list this year – again – is TRIA, the Terrorism Risk Insurance Act. It’s been the topic of conversation on Capitol Hill since its inception in 2002. The act sunsets at the end of this year. A new bill (the Terrorism Risk Insurance Extension Act, TRIEA) is now in play. The bill is especially vital for workers’ comp carriers, which are mandated to cover all workplace accidents, including those caused by terrorism. The industry has made much ado about the need to extend TRIA to TRIEA because the reinsurance industry has failed to respond with adequate terrorism coverage backstops.

“Congress said it was a temporary solution. They thought the capital markets would respond and that there would be money out there to invest, and that the reinsurance market would assume the risk,” said Carter. “That has not happened yet. The reinsurance market is basically nonexistent to the extent that the groups would need.”

Most experts agree that terrorism falls under a category that is unpredictable –

the law of large numbers does not apply – and for which in case of a large loss such as nuclear or biological attack there is not enough capacity.

“There are discussions going on, and at first [Congress] said there would be something [new] by April, but there has been a lot of disagreement between the House and the Senate and the different committees,” Carter said. “The big question that many of the representatives have is how [long-lasting] the act should be.”

Congress also needs to decide whether the act will cover both domestic and foreign attacks on American soil, and how terrorist acts using radiological, chemical, nuclear or biological tactics would be covered.

Along with the workers’ comp industry, group life insurers also are lobbying hard to extend the act and gain inclusion in its coverage. Like workers’ comp, group life is likely to see greater losses than other lines of business.

Industry experts who spoke at NCCI’s annual issues symposium seemed confident that Congress would work something out by the sunset. But the smart thinking is that because Democrats have taken power, TRIEA will be handled much differently than it would have been if Republicans were running the show.

“It appears that the Democrats want some type of mechanism. They always seem to want mechanisms – like FEMA,” Carter said. “But it wasn’t created as a mechanism; it was just created as rules. They want something more concrete, but I don’t think that’s going to happen.”

McCarran-Ferguson Act

The McCarran-Ferguson Act provides a limited exemption to the insurance industry from federal antitrust laws. Passed in 1945, the act allowed for insurance to be regulated by the federal government and that insurance was a form of interstate commerce subject to regulation and taxation by the states. After passage of the act, all states enacted some form of local rate regulation to qualify for exemption from the act.

Proposals to repeal McCarran-Ferguson have been a familiar feature in Washington for many years. But the most recent cry for repeal comes from companies that want to participate in the Optional Federal Charter for the federal

regulation of insurance. A number of such companies, Cleary said, have agreed that if they get federal regulation, they will give up the protections that McCarran-Ferguson provides.

Other carriers have a different position: that such a deal would be a Faustian bargain.

McCarran-Ferguson supporters such as NCCI say the act promotes healthy insurance markets by permitting insurers of all sizes to participate in, and avail themselves of, products and services from organizations such as NCCI, the California Workers’ Compensation Institute and California’s Workers’ Compensation Insurance Rating Bureau.

Such groups provide data collection and analysis, determination of loss development factors for use in ratemaking, and the development of standard insurance policy forms that many smaller carriers do not have the resources to create for themselves, according to NCCI. The exemption allows pooling of such interests.

Modification or repeal of the act could create uncertainty about the legality of joint activities undertaken by the insurance industry. The question therein is whether collective activities are anti-competitive or pro-competitive.

It is likely, according to NCCI, that repealing McCarran-Ferguson would actually reduce competition, increase the cost of insurance, and reduce the availability for some high-risk coverage, because the threat of antitrust litigation would make insurers unwilling to engage in efficiency-enhancing cooperative activities.

This is where size matters. Some of the large, national insurance companies that desire the Optional Federal Charter tend to be able to provide data collection, analysis and other such resources for themselves. By throwing their weight behind a repeal of McCarran-Ferguson and offering to “trade” one act for another, they will essentially kill two birds with one stone: gain the option of federal regulation while stripping smaller competitors of a much-needed, collaborative information asset, essentially putting many of them out of business.

Though nothing in Washington is for sure, the continued existence of the idea of a federal charter is one that Congress is getting used to. As that familiarity builds, so does the likelihood of such a charter. ▲

“Results”

continued from page 3

In addition, national claims frequency trends continue to be favorable and, along with wage increases, are offsetting medical and indemnity cost increases—allowing for a generally stable loss cost environment.

“I’ve seen a lot of interest from other states in what’s going on in California, but I’m not seeing a lot of other states wanting to enact what California has done,” Dr. Victor said. “There are some things that Texas has enacted that have resemblance, but it’s partial. New York passed some

Last Year’s AIS Survey Results What will the workers’ compensation combined ratio be in 2006?

- A. 95%-100% (24%)
- B. 101%-105% (57%)
- C. 106%-110% (18%)
- D. Over 110% (1%)

major reforms, but I don’t see much of what they did to be similar to California.”

In the private-carrier workers’ comp reserve position, 2006 marked another year of improvement. NCCI’s estimate of the national reserve position as of December 2006 shows a \$4 billion deficiency – a \$5 billion improvement from year-end 2005. After allowing for discounting of indemnity reserves for lifetime pension cases, the report deems the reserve position as slightly more than adequate. NCCI’s analysis indicates the industry has made significant progress on its reserve deficiency over the past five years, and the current cycle of strengthening reserve on older accident years is nearing an end for this cycle.

“We are pleased to report that all of the major financial performance measures for the line experienced significant improvement during 2006,” said Mealy. “However, despite excellent underwrit-

Net Combined Ratio – Private Carriers			
Line of Business (LOB)	2004	2005	2006*
Personal Auto	91%	95%	93%
Homeowners	94%	100%	90%
Other Liability (Incl Prod Liab)	117%	113%	109%
Workers Compensation	107%	103%	96.5%
Commercial Multiple Peril	101%	97%	87%
Commercial Auto	93%	92%	91%
Fire & Allied Lines (Incl EQ)	87%	104%	92%
All Other Lines	99%	112%	94%
Total P/C Industry	98%	101%	92%

*preliminary

Source: Workers Compensation; NCCI;
All Other Lines, Best’s Review Preview & ISO

ing results, it is important to note that the record low interest rates of recent years—as well as the industry’s need to strengthen its reserve position—made these types of results a necessity.”

NCCI’s short-term view of the line is optimistic, said NCCI President and CEO Stephen Klingel, but the long-term view remains cautious due to a series of critical issues that include soaring medical

costs, low investment returns, a changing political landscape and a projection that the current underwriting cycle is likely at its peak.

Positive Developments Lift the Line

A half-dozen exceptional market trends have proven beneficial to the comp industry’s bottom line, Mealy said, including accident-year combined ratios that have improved by more than 50 points since 1999.

These shifts are being attributed to carrier price increases and so-far successful reforms in such states as California and Florida, experts said.

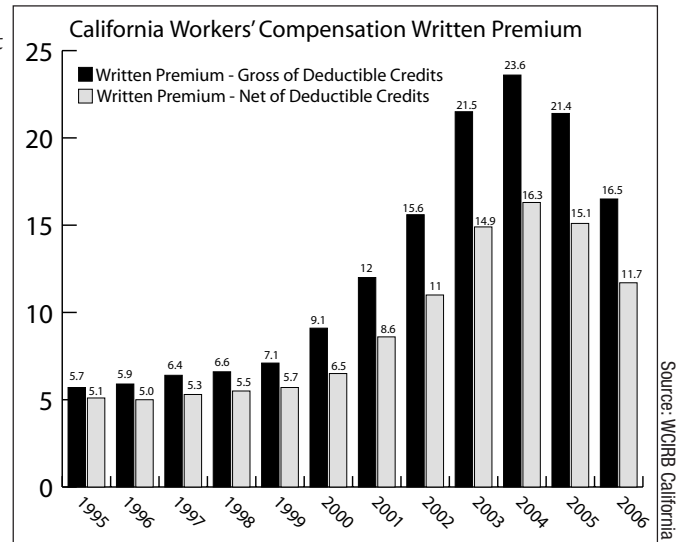
“Back in 1999 the combined ratio on an accident-year basis was about 140 percent. [Carriers] were not happy,” Mealy said. “They’re happy now, but...five years ago they weren’t.”

This year’s calendar combined ratio, for example, marked a 25.5-point improvement from the current cyclical peak of 122 percent in 2001. But can the seasons of prosperity last for the California market? Even considering the reforms, the pros said likely not.

And besides that, Klingel said, insurance, especially workers’ comp, is a cyclical business; California and the rest of the nation can’t stay on top forever.

But it can’t be all fire and brimstone when the reserve position of private carriers is continuing to improve. The deficiency, which peaked at \$21 billion at year-end 2001, declined to \$4 billion at year-end 2006, NCCI reported.

Depopulation of residual markets also continued at an increased pace in 2006 and into 2007. Overall, residual



Source: WCRB California

market premium dropped to \$1.2 billion in policy year 2006, down from \$1.5 billion in 2004. The combined ratio for residual market pools continues to remain in the 110 percent to 113 percent range where it has been for the past several years. But just a few states contribute a major part of the underwriting loss and many jurisdictions are at or close to being self-funded.

“As the insurance market becomes more competitive, the carriers start taking business out of the residual market, and that’s what we’re seeing now,” Mealy said. “Residual markets grew after 2001 – some people attributed it to terrorism – now the market is returning to normal.”

Positive news on the claims frequency front remains, with lost-time claims frequency continuing its decade-long decline in 2006. On the severity side, NCCI is reporting that indemnity costs crept up a bit in 2006 after moderating for several years.

Areas of Market Concern Weigh Heavily

That’s the good news; now the bad. Medical costs continue to increase at or near double-digit rates, according to Barry Lipton, senior actuary in NCCI’s Actuarial and Economic Services Division. Such increases have pushed medical costs to nearly 60 percent of the total losses for NCCI states in 2006 (this does not include California). Many states continue to search for ways to control medical costs in their workers’ comp systems.

Medical costs account for roughly the same amount in California, according to

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“Results”

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the Workers' Compensation Insurance Rating Bureau. The Bureau has estimated that for 2008 policies, medical will account for about 62 percent of losses and indemnity will account for about 37 percent.

Investment gains are down dramatically from the late 1990s and 2000, when interest rates were higher and the stock market produced large gains. Today, NCCI's modeling indicates the industry earned little more than its cost of capital for the first time since 1998. But if California results are excluded, the industry may in fact *not* be earning its cost of capital in the remainder of the country.

Meanwhile, a modern-day issue with no apparent right answer—the Terrorism Risk Insurance Act (TRIA)—continues to be debated. The act expires at the end of 2007, but policies already in force have exposure that extends

beyond the expiration date of the current federal backstop law. NCCI's modeling shows that, for 99 of 100 modeled scenarios, the federal government would pay virtually nothing under the current law. Even if the federal government does pay, the insurance industry incurs a significant portion of the losses.

“Because the deductible for an insurer to hit the federal backstop is so huge, we would pretty much have to be wiped off the face of the earth, and at that point, we wouldn't be worried by debt,” joked Mona Carter, national policy executive for NCCI. “In most scenarios, including 9/11, the threshold wouldn't be met. It's never been meant as bailout. If the federal government declares we've been attacked, the insurance carriers have said they are willing to pay their part. If it gets to be multiples, then the government is behind them.”

In the numbers game, net written

premiums for workers' compensation, including state funds, halted a six-year rise and posted a 2.5 percent decline in 2006. NCCI's preliminary estimate stands at \$46 billion for 2006. This makes the workers' compensation line the largest commercial line of insurance and the third-largest overall after personal auto and homeowners.

All things considered, the workers' comp insurance industry still looked better in 2006 than it has for many years. Both the calendar-year and accident-year underwriting results are at levels that have not been experienced in decades, according to Mealy. Reserves appear to be nearly adequate overall, and frequency continues to decline.

“Although the underwriting cycle is turning, stable overall loss costs and stable interest rates offer hope that this cycle will be less severe than the last one,” Klingel said. ▲



POINT OF ORDER

by Publius

LVII. To PD or Not to PD

That is the question in 2007. Or is it? Interest shown by employers and labor in this issue just a few months ago seems to have waned considerably, at least from the employers' side of the workers' comp bargaining table. But at whose expense?

Cautious statements about the need to look at both permanent and temporary disability benefit levels and duration early in the California legislative session have given way to a full-blown “over my dead body” grassroots launch by the Chamber of Commerce and other employer organizations decrying how bills by Senate President Pro Tem Don Perata, Speaker Fabian Nuñez, and Assembly Insurance Committee Chair Joe Coto will eviscerate SB 899 and return us to the dark days of the dreaded “job killers.”

Though a careful examination of SB 899, and Gov. Schwarzenegger's comments when it was signed into law, might lead one to a different conclusion, the popular mantra in the business world is that benefits are adequate and that any adjustments should happen only after empirical data are analyzed and the now-ubiquitous

“future earning capacity” (FEC) rating modifier is appropriately adjusted. This, of course, will not happen until 2008 at the earliest.

This is certainly a convenient conclusion in 2007, but regardless of when this happens it also ignores a very fundamental point—FEC, as it is now known, is a measurement of benefit equity, not benefit adequacy. In upholding the permanent disability rating schedule adopted by then-Administrative Director Andrea Hoch, the Appeals Board unanimously held that the rating schedule was valid and that FEC is to adjust ratings equitably based on loss of future income.

It did not hold, RAND has not claimed, and the Division of Workers' Compensation has never stated, that FEC was an instrument of making sure benefits are adequate.

That little nuance seems to have escaped the grassroots alarms that the business community is sounding for fear that injured workers will get more benefits. They very well may be successful in 2007 in keeping a benefit increase bill of any kind from being signed.

Such “gotcha” politics may play well

in Sacramento, but they don't play well with the legitimately injured worker whose life has been turned upside down because of bureaucratic delays and inability to get back to work with the employer at the time of injury.

“Bargain” usually means that both sides to a negotiation have gained something and lost something. In the workers' compensation “bargain,” the deal now more frequently becomes taking something back that the other side won when it could. And that doesn't lead to a very stable system, does it?

Regardless of the dollars involved, workers' compensation is a signature issue for the business community. Keeping its costs under control is a goal any governor seeks, because it gives him or her flexibility to address far more controversial and expensive issues. This is something Gray Davis learned in the first three years of his first term in office. It appears to those of us seasoned in the ways of Sacramento that this governor is taking a page from the same playbook, and the business community will say “thank you” by the end of the session.

Now that's what you call ironic. ▲

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