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WORKERS' COMPENSATION

While they have yet to be heard in committee, employers should be aware of SB 1946 and HB 1655. These identical bills seek to create a state-run Florida Employers Mutual Insurance Company for the purpose of writing competitive workers' compensation insurance. The bills also establish a new residual market with forced apportionment of risks among carriers.

The Florida Employers Mutual Insurance Company would operate as a not-for-profit domestic carrier, not a state agency, with startup capital to come via a \$5-million loan from the Division of Workers' Compensation, most probably from the administrative trust fund. Preference is given to employers with premium of less than \$10,000. The governor would appoint the inaugural board of directors; thereafter policyholders would select board members who could not have any interest as a "stockholder, employee, attorney, agent, broker, or contractor" for a workers' compensation carrier.

The anti-insurance bias in this bill is both obvious and muted. The bill does beg a number of questions: How could this new insurance company escape the market conditions that are forcing other carriers to operate at a loss? What happens when the new company's premiums don't cover losses? Will it pay the same assessments that other carriers do?

Right now the insurance market is so unfavorable that companies are leaving the state. Forcing companies to finance a competitor through assessments will raise costs even more and make the Florida market even less attractive.

The bills are sponsored by two influential Republicans: Representative Kim Berfield (R-Clearwater), chair of the House Insurance Committee, and Senator Charlie Clary (R-Ft. Walton Beach), chair of the Senate Appropriations Subcommittee on General Government.

Defeating these two bills will be a top priority for Associated Industries of Florida (AIF). They rely on anti-insurance sentiment to advance the agenda of claimant lawyers and certain construction interests while ignoring the true flaws that are destroying the workers' compensation system from within.

The other workers' compensation news from the Capitol was less dramatic. The House Insurance Subcommittee on Health Access and Financing devoted most of its meeting today to workers' compensation.

Two particularly illuminating moments came during the meeting, the first involving a question from Representative Dick Kravitz (R-Orange Park) over the oft-cited statistic that Florida has the highest rates and lowest benefits in the nation. A representative of the Division of Workers' Compensation explained that the "lowest benefits" tag applies only to the statutory benefits and not to actual dollars paid as benefits. Actual benefits paid are much higher and Florida makes a better showing in that category.

The second interesting observation was made by Richard Gentry of the Florida Home Builders Association. He described his organization's members who do not have workers compensation coverage as, typically a subcontractor — such as a painter or trim carpenter — who is working on a project "with a helper." Gentry quickly corrected himself by referring to the helper "with a co-owner or partner."

It was a slip of the tongue that lies behind the position taken by the Coalition of Business and Insurance Industry, of which AIF is a part, that the exemptions from workers' compensation coverage for contractors must be eliminated. Too many contractors simply call a "helper" or employee a "co-owner or partner," which allows them to avoid paying workers' compensation premiums when they rightly should.

Mr. Gentry did inform the subcommittee members that his association now supports the coalition's position on eliminating all exemptions in the construction industry, with an exception for up to three corporate officers, each of which must own a 10-percent interest in the company. According to Mr. Gentry, the Associated General Contractors is the sole remaining bastion of opposition.

Representative Kravitz asked about responsibility for payment of medical expenses for a worker who is injured but works for an employer that should have purchased coverage but didn't. Mr. Gentry responded that the individual would have to pay for care out of his own pocket or would most likely seek indigent care. Later in the meeting, however, Thom Stahl of FUBA rebutted Mr. Gentry's statement by explaining that, in fact, those people file claims against general contractors or homeowners who end up being responsible for those medical bills. Most judges of compensation claims are sympathetic to the injured worker and award benefits from any deep pocket they can find.

On Tuesday night, the House Select Committee on Workers' Compensation devoted its meeting to fraud and market availability.

According to testimony from a representative of the Division of Insurance Fraud, his agency investigates fraud in all lines of insurance with workers' compensation representing 30 percent of its cases, for a total of 173 arrests last year with 117 convictions. Workers' compensation fraud is a felony offense, the degree of which is determined by the amount of money involved. Approximately eight percent of the cases involve fraud by employees seeking benefits to which they are not entitled. Over half of their referrals come from insurance carriers' internal investigations.

The select committee then shifted its focus to the availability and affordability of coverage for employers. The following key points were revealed:

- Only one carrier has returned to the Florida market following the recently announced rate increase. It must be noted, however, that the increase has yet to take effect and therefore is not a reliable indicator of the impact it will have on the market.
- Small businesses have a difficult time locating carriers who will cover their businesses due to the low rates of return such business provides carriers; many of these difficulties are due to reinsurance concerns.
- Current rates in the Joint Underwriting Association (JUA), which is the insurer of last resort for employers who can't find coverage elsewhere, are 199 percent higher than the voluntary market in Florida; in most other states JUA rates are between 35 to 45 percent higher.

Chairman Dennis Ross (R-Lakeland) relayed instructions from House Speaker Johnnie Byrd (R-Plant City) that the select committee is to have legislation prepared by week four of the session.

The next meeting, to be held on March 13, 2003, will feature presentations about medical providers and construction-industry exemptions. Chairman Ross also anticipates dedicating a meeting to presentations from attorneys.

AIF supports legislation that will bring more employers into compliance with the workers' compensation law, while reducing the amount of litigation over claims. Promoting greater fairness and efficiency in the system is necessary to curtail escalating costs for the business community, which can only come with a healthy insurance market.

MEDICAL MALPRACTICE

On a near party-line vote, the House Health Care Committee passed a bill to address the state's medical-liability crisis after adopting a series of amendments, including one that strengthens the \$250,000 cap on non-economic damages by making it an aggregate cap. The original version of the bill applied the \$250,000 cap to each defendant.

The bad-faith insurance reforms were removed by an amendment sponsored by Representative Joe Negron (R-Stuart). Joint and several liability was deleted and replaced with comparative fault, but collateral source setoffs were also deleted by amendment. The bill does not contain a provision for periodic payments.

In addition to tort reform, the bill would strengthen the Board of Medicine's ability to enforce physician discipline and would create an entity to provide liability insurance to physicians. The committee members rejected amendments to initiate a rollback in premiums immediately and if the law is held constitutional, at which a time a mandatory 25-percent rollback would go into effect.

The bill will next go to the floor for full House consideration.

AIF supports a \$250,000 cap on non-economic damages. Vulnerability to large jury awards is why insurers have not returned to the Florida market.

PERSONAL INJURY PROTECTION (PIP)

The House Insurance Subcommittee on Insurance Regulation met to hear PCB IN 03-01 relating to Automobile PIP Reform. The bill was passed with several amendments and will be heard in the full House Insurance Committee next week. Many of the amendments addressed fraud, however, a provider fee schedule as well as a mediation amendment aimed at reducing litigation was voted down. An amendment limiting the use of contingency fee risk multipliers was approved, which will limit attorney's fees in some cases.

AIF supports reform to restore and set clear the laws pertaining to Florida's automobile no-fault insurance.

SMOKE-FREE WORKPLACE

After yesterday's meeting of the House Business Regulation Subcommittee on Trades, Professions & Regulated Business (see last night's report), today's meeting of the Senate Regulated Industries Committee was met with some relief.

The committee passed SB 742 that implements the Amendment 6 ban on smoking in the workplace. Rather than taking the draconian approach of the House subcommittee, SB 742 would allow smoking in free-standing bars that receive no more than 30 percent of their business from the sale of food. Smoking would be banned in all restaurants, lobbies of hotels, and in airports. The bill will now go to the Senate floor.

AIF will continue to monitor the implementation of Amendment 6 to ensure that it does not place undue burdens on employers and their ability to conduct business.

GROWTH MANAGEMENT

SB 1044 by Senator Nancy Argenziano (R-Crystal River) was considered by the Senate Committee on Comprehensive Planning. This bill provides that a water management district may not issue a consumptive use permit unless the affected local government has been timely notified of the proposed permit and given an opportunity to file an objection with the district's governing board. The bill was amended to require the water management district to review certain portions of the regional plans every five years. This amendment helped ease some of the concerns of the business community with the bill. The original version of the bill required an applicant to obtain all necessary land-use and zoning permits before receiving a consumptive use permit, which would have caused unreasonable and unnecessary delays in community and business developments.

Most of the meeting, however, was devoted to the Smart Growth program, which encompasses different strategies in promoting urban growth. It provides options for a municipality with an urban-growth boundary by concentrating growth in one area and eliminating urban sprawl. This program has been described as anti-suburb but its promoters insist that it helps create new and functional communities by encouraging economic development while preserving rural areas. AIF will be watching progress on this issue to ensure that it does not become fancy wrapping for another regulatory program to hamper necessary commercial and residential development.

AIF supports growth that is based on the market principles of supply and demand and opposes any legislation that would make the permitting process more cumbersome by erecting barriers that strangle economic development in this state.

Please send your comments or suggestions to us at aif@aif.com or call the Governmental Affairs department at (850)224-7173.

- For more information on all of the important legislative information concerning the business community, go to our “members only” Florida Business Network web site at <http://fbnnet.com>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.