



From January 28, 2005

### **FULL REPORT ON WORKERS' COMPENSATION**

For purposes of background information, the WCJUA, Florida's insurer of last resort, was established in 1992, at a time when almost 50,000 businesses in this state could not find workers' compensation coverage in the traditional market. Today, the WCJUA has approximately 5,400 policies and is considered a model of success for residual workers' compensation markets across the country. Last year, however, the WCJUA estimated it would have a significant deficit in one of its subplans. As a measure of prevention, the Legislature passed HB 1251 in 2004 to revise the WCJUA structure and provide a supplemental funding mechanism to assist with the deficits.

Currently, the WCJUA offers policies in one of three tiers. Premiums in Tiers One and Two are statutorily set at 25% and 50%, respectively, above the voluntary market rate. The premiums in Tier Three are set on an actuarially sound basis. The WCJUA this week recommended that the rates in Tiers 1 and 2 now be increased to comply with actuarial soundness sooner than the 2007 deadline that is now provided in statute.

Representative Kim Berfield (R-Clearwater) asked the WCJUA representatives why the established rates in Tiers One and Two were not placed at a higher level in the law in 2004. Mr. Neff responded that the current rates were too low and that it had been suggested that rates in the range of 60% and 70% above the voluntary market rate would be actuarially sound. However, most who were involved in this issue during the 2004 session realized that legislators would not pass on such a large rate increase to small employers, especially since it was an election year. Representative Berfield was the House sponsor of the 2004 legislation.

The law passed in 2004 also gave the WCJUA the option to present financial evidence to the Joint Legislative Budget Commission on a quarterly basis to obtain additional funding when cash deficits exist. The WCJUA has utilized this funding mechanism on three occasions so far, and expect to ask for additional funding in the coming quarters, unless their rates are increased.

The 2004 law also required the Auditor General to complete an actuarial and operational audit of the WCJUA. Mr. Ted Sauerbeck with the Office of the Auditor General presented those findings to the committee. His recommendations and findings were broken into the following 8 categories:

1. Rates and Reserves
2. Contingency Reserve of \$15 Million
3. Outsourcing
4. Executive Compensation

5. Contractual Services
6. Monitoring
7. Producer Commissions
8. Payroll Audits of Insureds

AIF provided a detailed report of these findings and recommendations in a report issued last week. However, the WCJUA did not provide any significant testimony in response until this meeting of the House Insurance Committee.

The WCJUA responded by stating that it will be preparing bid requests for its policy administration services and for its legal services as a step to address some of the concerns raised in the audit.

Representative Dick Kravitz (R-Jacksonville) asked the Auditor General if this was an acceptable report or if it was completely unacceptable. Mr. Sauerebck responded that it was a moderately acceptable report. He stated that the WCJUA's premium rates were definitely too low and recommended the same rate increases that Mr. Neff suggested, and recommended those be implemented before 2007. He noted that one concern was the percentage of premium that went uncollected due to the WCJUA not monitoring the service administrator more closely. He stated that they had done an excellent job of depopulation but needed to develop better ways to measure and monitor their effectiveness. While they are implementing many cost cutting measures they require a lot of improvement on policy administration.

Representative Franklin Sands (D-Weston) also questioned the wisdom of allowing Travelers, the WCJUA policy administrator, to receive approximately \$14 million per year for claims and policy administration services, without letting that function out to bid. Ms. Torrance responded that over the course of several years there were only 3 administrators in Florida that typically handled residual market claims and the WCJUA's low volume had prohibited them from being able to obtain service in the past from some of those administrators. They anticipate the bid for these services will be available by March 31, 2005.

Chairman Dennis Ross (R-Lakeland) also clarified that the Auditor General's report did not encompass any of the changes to the law that were applied by the passage of HB 1251 from the 2004 session.

Representative Ed Jennings (D-Ocala) also inquired why the WCJUA could not consider handling all of its claims and policy administration services in house since their volume was so low. They did not have an available number of open claims to respond to Representative Jennings questions but did promise to provide that information to the committee in the future.

In response to another questions by Representative Berfield, the WCJUA also stated that they are currently in the process of revising their policies and procedures regarding broker and producer commissions and payroll audits of employers.

In addition to the WCJUA issue, the House Insurance Committee also received testimony from Mr. Brett Stiegel who had worked significantly on the Workers' Compensation Task Force on

Fraud. The task force was primarily concerned with professional employment organizations and the ability of businesses to avoid providing adequate workers' compensation coverage for their workers by using an employee leasing company or other employment agency. Their primary findings were as follows:

- Many employers are able to avoid receiving a fair experience rating by using a PEO.
- Many employers and PEOs disagree over which entity has the obligation to report an employee on its policy
- Delivery of workers' compensation coverage to an employer happens in a PEO arrangement without a licensed insurance agent
- Audit provisions are avoided at the client-employer level when PEOs are involved, making it difficult to find non-covered employees or independent subcontractors
- PEOs only provide coverage to those employees they are leasing, thereby allowing an employer to lease some but not all of its employees, leaving the remainder of the workforce to go bare

Representative Dean Cannon (R-Winter Park) asked if the PEOs should be required to report the experience rating of each employer and report that to its workers' compensation carrier to resolve a significant part of this issue before creating an entirely new system for PEO fraud detection. Mr. Stiegel responded that if carriers only provided coverage directly to employers – and not through the PEO – then NCCI (National Compensation Carriers Institute) would have adequate data to prepare the experience rating information.

Mr. Ron Vilella also testified on behalf of the PEO Association of Florida and reported that 1 in every 7 employees in the state of Florida are employed under some sort of PEO. He said that these are particularly used in the construction industry. The Association earlier discussed with the Division of Workers' Compensation how they can assist in cutting down on the level of fraud that could be occurring in this area. He also stated, in response to a question from Representative Sands, that the PEOs complete due diligence in when entering into a relationship with their employers because they do not want the bad, fraudulent activity on their accounts either because they ultimately lose money in those situations. Mr. Vilella stated that the PEOs would not likely object to the requirement of additional audit standards for the employers and they are interested in collecting the premium due in all cases. Dan Sumner with the Division of Workers' Compensation was present and informed the committee that an exact figure of the lost premium on the workers' compensation system was unknown but it was estimated by most to be in the billions.

AIF will continue to monitor these issues and provide additional reports on future legislation filed, if any, to address these concerns.