

e REPORTER

Professional Insurance Agents of New Jersey Inc.

July 10, 2007

New Jersey legislative update for 2007

The New Jersey Legislature has recessed for the summer. Here's a look at some of the recent activity:

PIANJ-supported producer bill clears Assembly.

A bill (A-3863) that would delete the requirement for insurance agents to provide each automobile insurance applicant with premium quotations from every insurer represented was approved unanimously by the Assembly June 21, 2007. The bill now heads to the Senate Commerce Committee. PIANJ and the IIABNJ worked together to secure introduction of the bill, which is sponsored by Assemblymen Neil M. Cohen, John Wisniewski, Christopher Bateman and Assemblywoman Charlotte Vandervalk.

PIANJ told lawmakers the requirement for agents to quote every company places an unnecessary obligation on them and does not serve consumers because it fails to take into account all factors that agents consider when offering coverage options to consumers.

The bill also deletes the requirement for insurers to provide each applicant seeking automobile insurance, and each insured upon request, with three premium scenarios demonstrating the effect of different coverage choices.

PIANJ explained that this requirement offers little benefit to consumers, who disregard these hypothetical coverage scenarios that are often not based on the individual's circumstances. PIANJ will continue to lobby to ensure passage of this important piece of legislation.

PIANJ-backed bill prohibiting step-down clauses heads to the governor. A PIANJ-supported measure that would prohibit the use of step-down provisions in motor vehicle liability insurance policies issued to business entities has cleared both houses and now heads for the governor's signature. The legislation (S-1666) also reverses the effect of the Supreme Court's decision in *Pinto v. New Jersey Manufacturers Insurance Co.* 183 N.J. 205 (2005).

In *Pinto*, the Supreme Court held that step-down provisions in business auto policies are enforceable.

Step-down provisions allow insurance companies to reduce the coverage available to employees that are not individually named on their employer's business auto policy. Instead of receiving the uninsured and underinsured motorist limits stated on their employer's policy, an employee injured while occupying a business vehicle receives the lesser coverage limits of his own personal auto policy or that of a family member if he does not have his own policy. New Jersey is unique in being the only state that uses these types of provisions to limit coverage.

The *Pinto* decision was particularly troublesome for insurance producers because the court also imposed upon insurance agents and brokers in the state a new duty that is impossible to achieve. This impractical duty has increased the risk of litigation substantially against insurance producers and placed them in an untenable position with their customers.

The court held that insurance producers have a duty to inform employers that if they want to avoid imposition of a step-down provision, it is necessary to elevate the status of their employees to that of named insureds on the business auto policy. The court felt having these facts would enable an employer to make an informed decision about whether to include employees as named insureds on their business policy. In reality, employers have no choice in the matter because most insurance companies will not allow employees to be included as named insureds on a business auto policy. Therefore, producers are required to inform employers how to avoid application of a step-down provision, when there is no way to do this.

PIANJ lobbied tirelessly for passage of this legislation, testifying before both Senate and Assembly committees. The legislation is crucial because it will reverse the effects of the *Pinto* decision and the impractical duty it imposed on insurance producers. In doing so, it will avoid countless lawsuits against insurance producers that are based upon an insurance company's limitation of coverage, a limitation over which the producer has no control.

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Association

PIA BusinessLink™—your business connection

PIA's BusinessLink™ service provides two programs to help association members build lasting relationships with carriers, managing general agents and general agents. Under the Business Link™ umbrella there are two distinctive programs that help you promote your business:

- **Agency/Company Appointment Program** helps bring professional insurance agents together with companies looking for quality agents; and

- **PIA's Appointment Access Program** offers an opportunity for professional agents to be linked with managing general agents and general agents who are looking to appoint agents.

Company/MGA/GA alert—BusinessLink™ wants you. PIANJ is encouraged by the changing marketplace and carriers' increased appetites to do business within the Garden State. In light of these opportunities, PIANJ would like to initiate an aggressive outreach to carriers to participate in PIANJ's BusinessLink™ Agency/Company Appointment Program. This program has been bringing carriers together with quality agencies for more than a decade. Through the Agency/Company Appointment Program, carriers provide PIA with their appointment criteria, and their contact information is forwarded only to those association members who meet these

requirements. Then, the carriers and producers take it from there to work out any details for further consideration. MGA/GAs also are encouraged to participate in PIA's Appointment Access Program.

To learn more about either of these programs, logon to www.pia.org and key **RC10000** in the Quick-Link box in the upper-right-hand corner, or fax PIA's Industry Resource Center at (888) 225-6935.—*Albright*

N.J. flood training: Mandatory flood courses are coming in the fall. Register today—PIANJ has scheduled programs in the fall to meet your training needs. If you do not see a course that fits your schedule, we can come to your office and train your entire staff via the **Custom Class** program. PIA suggests you take a course as soon as possible. For more details, logon to: <http://www.pia.org/EDU/estras/njfflood.shtml>.

Call PIA's **Education Department** for more information at (800) 424-4244.

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PIANJ Industry Resource Center

Agreements not to compete: Protection or illusion?

Producers understandably place great value on the preservation of their book of business, taking great care to protect this valuable asset. As part of their efforts to protect their expirations, many agents and brokers attempt to constrain business producers from absconding with valued customers and the attendant income flow by compelling such employees to sign so-called "noncompete" agreements.

These agreements, however, may not, in the end, supply the type or level of

protection intended by the producer.

Factors, such as variances in state law or weaknesses in the agreement itself, may fail to convince a court that protection is warranted.

For a discussion of some of the weaknesses found in these types of agreements and how to avoid them, logon to www.pia.org and key **QS90285** in the Quick-Link box, or fax

PIA's Industry Resource Center at (888) 225-6935.—*Albright*



State

New Jersey legislative update for 2007 *(Continued from page 1.)*

The legislation also is necessary to protect employees injured in work-related accidents. These employees are entitled to the full protection afforded under their employer's policy.

PIANJ commends the bills sponsors, Sens. Nicholas Scutari and Nia Gill; and Assemblyman Neil M. Cohen.

Other bills of interest to PIANJ members headed to the governor include:

Contractor insurance requirements. A-1016 establishes the State Board of Examiners of Heating, Ventilating, Air Conditioning and Refrigeration Contractors. It requires HVAC contractors to carry a policy of general liability insurance in a minimum amount of \$500,000. PIANJ recently testified before the Senate Labor Committee to suggest amendments to the bill to remedy a problem for insurance producers in the issuance of certificates of insurance required by the legislation.

The bill would have required that every certificate of insurance provide that cancellation not be effective until at least 10 days' notice of intention to cancel had been received in writing by the Board of Examiners. PIANJ explained that it would be impossible for insurance producers to provide such a certificate without unlawfully misrepresenting the terms of the policy. PIANJ suggested the bill be amended to replace the problematic wording with an alternative provision requiring that HVAC contractors whose general liability policy is cancelled or nonrenewed, submit to the board a copy of the certificate of general liability insurance for a new or replacement policy before the former policy is no longer effective. The Senate Labor Committee agreed to PIANJ's suggested amendments. However, in making revisions to the bill, the provision that was supposed to be deleted was erroneously kept in the bill. PIANJ is working to correct the legislative drafting mistake.

Worker misclassification. A-4009 would criminalize the misclassification of construction workers as independent contractors for purposes of the New Jersey Prevailing Wage Act; Unemployment Compensation Law; Temporary Disability Benefits Law; New Jersey Gross Income Tax Act; and New Jersey State Wage; and Hour Law. The penalties for misclassifying workers include: immediate suspension

of a contractor's registration; issuance of a stop-work order for second and subsequent violations; and debarment from contracting for public works. Unlike other states that recently have passed similar legislation, A-4009 does not apply to workers' compensation misclassifications. The original bill had included workers' compensation, but it was deleted from the bill when a workers' compensation judge noted that the employment test set forth in the bill differs from the test used to determine workers' compensation eligibility. Under the bill, a working relationship shall be deemed to be employment unless and until it is shown to the satisfaction of the Department of Labor and Workforce Development that: 1) the individual has been and will continue to be free from control or direction over the performance of that service, both under his contract of service and in fact; and 2) the service is either outside the usual course of the business for which the service is performed, or the service is performed outside of all the places of business of the employer for which the service is performed; and 3) the individual is customarily engaged in an independently established trade, occupation, profession or business.

The failure to withhold federal or state income taxes or to pay unemployment compensation contributions or workers' compensation premiums with respect to an individual's wages will not be considered in making an employment determination.

Towing companies. A-4053 known as The Predatory Prevention Act, regulates the removal of vehicles that are on private property without proper authorization. This bill is intended to stop the practice of predatory towing, where a vehicle is removed without the owner's notice or consent and the owner is charged an exorbitant fee for the vehicle's return. All tow-truck operators must be registered with the Division of Consumer Affairs in the Department of Law and Public Safety. The bill limits the towing fees that can be charged and the instances in which a vehicle may be towed. It also requires towing companies to maintain liability insurance. The insurance requirements are the same as provided for in current motor vehicle law. For light-medium duty tow trucks, personal injury and property damage liability insurance in the amount of \$750,000 combined single limit. For heavy-duty tow

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National

Reinsurance reform bill passes in House

The **House of Representatives** approved the **Nonadmitted and Reinsurance Reform Act of 2007** on a voice vote Monday, June 25.

The bill, co-sponsored by Reps. Dennis Moore, D-Kan., and Ginny Brown-Waite, R-Fla., would streamline the regulation of reinsurers and surplus lines insurers, and enjoys broad support among risk managers, underwriters and producers. Under the bill, the home state regulator also would be responsible for allocating any taxes collected on the coverage to the other involved states. The legislation makes it easier

for sophisticated purchasers to access the surplus lines market.

“With such broad, bipartisan support, I’m hopeful that this legislation, which is long overdue, will be approved by the Senate soon and signed into law,” said Rep. Moore in a statement released after the vote.

A similar measure was approved by the House last year on a 417-to-0 vote but failed to move in the Senate. The **Senate** has yet to act on companion legislation introduced earlier this year.—*Renzi*

Bush administration opposes terror backstop bill

A House bill that would extend the federal terrorism insurance backstop for 10 years “does not meet” the **Bush administration’s** objectives. The administration’s three objectives are: The program must be both temporary and short-term; private-sector retentions must be increased before coverage can be triggered; and the program should not be expanded, said David G. Nason, assistant treasury secretary for financial institutions.

Nason did not, however, call for the program to end Dec. 31, its scheduled expiration date.

He indicated that the administration might accept a two- or three-year extension under some circumstances.

The **Terrorism Risk Insurance Revision and Extension Act** would: extend the program for 10 years; allow the backstop to cover acts of domestic as well as foreign terrorism; and cover group life insurance as well as property/casualty lines. The measure also would require insurers to “make available” coverage for nuclear, biological, chemical and radiological risks, albeit at a relatively low level.—*Renzi*

Legal

Court backs insurers on credit-based, adverse-action notices

The **U.S. Supreme Court** recently decided a case in which it agreed that insurance companies do not have to issue adverse-action notices under the Fair Credit Reporting Act if an applicant is not given the best possible rate because of their credit score.

The consolidated case, *Safeco Insurance Co. of America, et al, v. Burr, et al*, involved the practices of GEICO and Safeco in sending adverse-action notices to applicants when a credit score was used in rating a policy. GEICO sent applicants an adverse-action notice only if using a neutral score (one calculated without reliance on the credit score) would have put the applicant in a more favorably priced tier or company. GEICO did not send a notice if the applicant could have received better terms with a better credit score. Safeco did not send adverse-actions to any first-time applicants because it did not believe the

FCRA applied to initial applications.

The Supreme Court reversed the lower court’s decision, and agreed with GEICO that it owed no adverse-action notice to a customer where the initial rate offered was the one he would have received if his credit score had not been taken into account.

The court stated that “Congress was ... more likely concerned with the practical question whether the consumer’s rate actually suffered when the company took his credit report into account than the theoretical question whether the consumer would have gotten a better rate with perfect credit.”

The court held that while Safeco was erroneous in concluding that it did not owe adverse-action notices to first-time applicants, it did not recklessly disregard the law because the company’s misreading of the statute was not unreasonable.—*Muratori*

State (Continued)

New Jersey legislative update for 2007 *(Continued from page 3.)*

trucks the limit is \$1 million combined single limit. State agencies or political subdivisions contracting with towing companies may require additional or higher limits. The bill also contains a problematic provision that requires that the Director of Consumer Affairs be named as an additional insured under each policy and that each policy provide for notice of cancellation to be given to the director. PIANJ is working to delete this requirement, as it would be impossible to fulfill.

Suspended license penalties. S-2330 provides that a person whose license has been suspended for failure to comply with a time payment order or for failure to respond to or pay a parking judgment is not subject to the same penalties as a person whose license has been suspended for a driving related offense. Under current law, failure to comply with a time payment order, and failure to respond to, or pay, a parking judgment are codified as serious driving-related offenses and offenders are subject to fines that are not commensurate with the offense. The bill provides for a maximum fine of \$100 for these less serious suspensions.

Registration for new state residents. S-2087 expressly would require new state residents to register their vehicles within 60 days of becoming a resident. Although the New Jersey Motor Vehicle Commission has interpreted the current law to require registration within 60 days of becoming a resident, the bill expressly provides for this. Violators would be punished with a fine up to \$250 for a first offense and up to \$500 for a second or subsequent offense. In addition, the vehicle would be impounded for a minimum of 96 hours for third or subsequent offenses.

Cell phones while driving. S-1099 makes it a primary motor-vehicle offense to use a hand-held wireless telephone or electronic communication device while driving, including using these devices to send a text message. Current law prohibits the use of a hand-

held wireless telephone while operating a motor vehicle, but this law may only be enforced as a secondary offense. Under this bill, motorists could be stopped and ticketed solely for illegally using a hand-held wireless telephone or electronic communication device.

Polluter liability. S-1712 would eliminate the statute of limitations for criminal offenses arising from violations of certain environmental criminal statutes and violations. It would apply to violations of the crime of causing or risking widespread injury or damage; the Solid Waste Management Act; the Comprehensive Regulated Medical Waste Management Act; the Air Pollution Control Act; the asbestos law; and the Water Pollution Control Act.

Assignment of benefits for ambulance services. A-439 requires that health insurance carriers or their agents honor an assignment of benefits made by covered persons to providers of emergency ambulance services, whether or not the provider is under contract with the carrier.

Handicapped parking violators. S-1810 clarifies that the penalties for unauthorized parking in a handicapped parking space are to be imposed even if the penalties are not posted or are posted improperly on the handicapped parking sign.

Recently signed into law a was **bill imposing personal liability on tax collectors.** A-5004 imposes personal liability on people who are required to collect certain state taxes, fees and assessments. Businesses, as well as individuals that act as the state's "fiduciary agents" may be held liable for the collection of: (1) the Cape May tourism assessment and the Cape May tax on predominantly tourism-related retail receipts; (2) the 911 emergency response fee; (3) the Atlantic City luxury tax; (4) the state hotel and motel occupancy fee; and (5) the cosmetic medical procedures gross receipts tax.—*Muratori*

The NJYIP raised \$136,572 for Special Olympics of New Jersey during the 23rd annual Fun Run (as part of the PIANJ/PIANY Joint Annual Conference at the Trump Taj Mahal, Atlantic City). NJYIP and PIANJ have raised more than \$2.2 million for SONJ. A record number of 152 runners took part in the 5-kilometer race. Chris Mignone, a member of the ARI Insurance Cos. team, finished first for the men

with a time of 17:11; and Tori Martin, of the Franklin Mutual Insurance Co. team finished first for the women with a time of 22:44. In terms of fundraising, FMI was the company that raised the most money, contributing \$55,923 to the Fun Run total. On the agency side, Jimcor Agencies raised \$12,365. The most funds raised by an individual was \$1,580 by Ed Francis of ARI.—*Czupryna*

Technical

New York WCB rejects Other States coverage

Effective Sept. 9, 2007, all out-of-state employers are required to cover employees working in New York state with a workers' compensation policy showing New York under item 3.A. of the Information Page. The New York Workers' Compensation Board is implementing Section 6 of the 2007 Reform Act (A.6163/S.3322), which reads:

"Subdivision 2 of Section 50 of the Workers' Compensation Law, as amended by chapter 605 of the laws of 1946, is amended to read as follows:

2. By insuring and keeping insured the payment of such compensation with any stock corporation, mutual corporation or reciprocal insurer authorized to transact the business of [workmen's] WORKERS' compensation insurance in this state THROUGH A POLICY ISSUED UNDER THE LAW OF THIS STATE.

Consequently, a policy's Other States (item 3.C.) coverage will no longer be accepted for temporary or incidental employment in New York state.

Previously, Other States coverage was permissible as long as the employment did not involve any of the following criteria:

1. A physical location within New York state;
2. \$50,000 in payroll during a calendar year in New York state;
3. One or more employees with a primary work location or hired within New York state; or

4. Employees working in New York state for more than 90 days during a calendar year."

Technically, an out-of-state employer that sends an employee to attend a seminar or conference in New York state will be required to maintain a New York policy. While the New York WCB is unlikely to track such incidental employment for enforcement purposes, an employer will nevertheless be subject to uninsured penalties should a compensable injury occur.

The primary focus of enforcement by the WCB is to track employers who are working under the authority of a government entity; for example, when a contractor obtains a building permit. Presently, an employer would have to complete the Affidavit That An Out-Of-State Or Foreign Employer Working In New York State Does Not Require Specific New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage (WC/DB-101) form to comply with the requirements of the government entity. Since, effective Sept. 9, 2007, there no longer is a basis to show a government entity that New York state-specific workers' compensation and/or disability benefits insurance is not required, this form will be obsolete.

Details of this change may be obtained from the New York WCB Web site at: http://www.wcb.state.ny.us/contentmainSmall_BusinessoutOfStateEmp_compLaw.jsp.

If you would like to notify your clients in advance of this change, PIANJ has created a sample letter for this purpose; request QuickSource document No. QS29216 at www.pia.org.—Corbin

National (Continued)

Allstate settles hurricane claims

Allstate Corp. reached a settlement with Mississippi customers whose homes and property were damaged by 2005's Hurricane Katrina, resolving one of the largest groups of outstanding claims in the two-year-old wrangle.

The Scruggs Katrina Group of lawyers and the carrier said terms are confidential and are subject to individual client consent and could not be disclosed. The settlement agreements will be presented shortly to each Scruggs Katrina Group client, the announcement said.

An Associated Press report said that one of the Scruggs Group attorneys had said last month that

they represented about 280 policyholders.

Allstate spokesman Michael Siemienas said 99 percent of all of the insurer's claims from the hurricane in Mississippi now are resolved.

Private insurers pay claims for wind damage, while water damage generally is covered by federal flood insurance. But U.S. and state authorities have been pressuring insurers to settle with the flooded-out homeowners.

Katrina, the mostly costly storm in U.S. history, caused \$40 billion in insured losses, including \$3.6 billion to Allstate, the nation's largest publicly traded home insurer.—Renzi

State (Continued)

PIANJ members rate their carriers

More than 250 New Jersey members performed a valuable service for their fellow agents and for companies that want to sell more insurance here, by rating the performance of the insurers they work with. The 2007 **PIANJ Company Performance Survey** included 45 individual companies or company business units—up from 42 last year. Each one was rated by an average of 29 people, who scored companies on a total of 16 different performance items.

Top overall performers. Taking top honors (with overall scores) were The Hartford (68.4), Selective (67), Travelers' commercial lines unit (66), Travelers New Jersey personal lines (65.9) and Progressive/Drive (65.7). A "perfect" score would be 80.

Rounding out the survey's top 10 were:

Foremost, Penn National, Palisades, Andover Cos. and Philadelphia Insurance Co.

As usual, the top scorers generally offer agents a combination of personal attention and serviceable technology. "Very responsive and very cooperative," says a Hartford agent; "underwriter is great to work with," says another. Regarding Selective: "Their AMS [Agency Management Specialists] are always available and very helpful," an agent writes. Travelers (commercial)? "Their underwriters and company reps are always available and very helpful," echoes a Travelers agent.

How about technology? The Hartford: "Their ICON 2.0 [small business quoting and submission] system is fantastic," raves a Hartford agent. Selective: "company training and support is excellent." Travelers (commercial): "online quoting, real-time access for billing, quotes, etc."

More winners. In individual performance categories, other companies stand out. Here are the top scorers, by category:

Pricing is competitive. Travelers New Jersey (personal), Philadelphia Insurance Co., CNA/Continental Casualty, New Jersey Skylands and a tie between Peerless and The Hartford.

Coverage compares favorably. Fireman's Fund, AIG (private client), CNA/Continental Casualty, Chubb (personal) and The Hartford.

Dedicated to independent agency system. FMI Group, Harleysville and a tie among Andover Cos., ARI, Cumberland Group and IFA.

Attractive agency compensation. Andover Cos., FMI Group, ARI, Peerless and a tie between Selective and Travelers (commercial).

Communicates effectively. Andover Cos., Penn National, Selective, The Hanover Insurance Group and a tie among AIG (private client), FMI Group, Palisades, The Hartford and Travelers New Jersey.

Advertises, is recognizable brand. Progressive/Drive, The Hartford, Travelers (commercial), Chubb (personal) and Travelers New Jersey.

Supports agency marketing. Selective, The Hartford, Travelers New Jersey, Progressive/Drive and Travelers (commercial).

Good technology overall. Progressive/Drive, The Hartford, Travelers (commercial), and a tie among CNA/Continental Casualty, Selective and Travelers New Jersey.

Good technology support, training. Travelers (commercial), The Hartford, IFA, Progressive/Drive and Travelers New Jersey.

Enables real-time transactions. Progressive/Drive, The Hartford, Travelers (commercial) and a tie among CNA/Continental Casualty, Selective and Travelers New Jersey.

Pays claims promptly. Palisades, Penn National, Chubb (personal), Foremost and Mercer Group.

Adjusts claims fairly. Chubb (personal), Penn National, Andover Cos., Palisades and a tie among FMI Group, Foremost and Philadelphia Insurance Co.

Good overall service. Andover Cos., Palisades, Penn National, Progressive/Drive and a tie among FMI Group, Foremost, Philadelphia Insurance Co., The Hartford and Travelers New Jersey.

Speedy and responsive. Andover Cos., Philadelphia Insurance Co., and a tie among Chubb (personal), Foremost, Palisades, Penn National and Progressive/Drive.

Stable market. Andover Cos., FMI Group, Penn National, Selective and a tie between Foremost and The Hartford.

Underwriting flexibility. Andover Cos., ARI, Harleysville, Philadelphia Insurance Co. and The Hartford.

To view the complete survey results of the survey logon to PIANJ's Web site <http://www.pia.org/GIA/survey/2007/results/reults-pianj-2007.pdf>.—Kiehl

PIANJ Calendar of Events

September

- Sept. 6—Monroe

Women's Business Forum: Learn. Inspire. Value. Evolve.

- Sept. 11—Edison

NJ PAIP/CAIP Producer Procedures Course

NJCE: 4

- Sept. 17—Your office

Lunch 'n' Learn Teleconference: Contractor's Equipment

- Sept. 18—Somerset

CISR IC: Insuring Commercial Casualty Exposures

NJCE: 8/12 with designation

- Sept. 18—Edison

CPIA 2: Implement for Success

NJCE: 7

- Sept. 19—Mt. Laurel

CISR IC: Insuring Commercial Casualty Exposures

NJCE: 8/12 with designation

- Sept. 25—Branchville

CISR PR: Insuring Personal Residential Property

NJCE: 8/12 with designation

PIA also offers myriad self-study online courses that provide up to 15 NJCE credits per course—earn the CE you need without ever leaving your office. See www.pia.org for details. If you have a certain topic in mind for your staff, create your own seminar via **PIA's Custom Class Education Services**. Custom Class brings tailored, CE-approved education programs into your office at a time that's convenient for you. Call (800) 424-4244 for a free quote.

To register for an education event, call the Education Department, (800) 424-4244. Or, logon to the PIA Web site, click "New Jersey," "Education," and then "**Schedule.**"

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