eREPORTER

Professional Insurance Agents of New Jersey Inc. Nov. 1, 2005

PAIP approves increase in commission rate

The New Jersey Personal Auto Insurance Plan Governing Committee earlier this month unanimously approved an increase in the PAIP commission rate, in response to the urging of PIANJ. PIANJ first brought the issue to the fore when it asked the PAIP steering committee to approve the increase this summer. The PAIP Governing Committee gave the nod for an increase from 9 to 10 percent, subject to future approval by the Department of Banking and Insurance, which bears the authority to pass the measure. PIANJ hopes this will take place in 2006. PIANJ members with questions about the increase may contact PIANJ's Industry Resource Center at (800) 424-4244.

Commercial vehicle pedestrian PIP is back (and apparently never left)

Among many reforms, Chapter 89 of the Public Laws of 2003 changed the way personal injury protection benefits are paid for pedestrian injuries. In response, the Insurance Services Office Inc. revised its PIP endorsements for both personal and commercial policies. It appears, however, that the statutory changes apply only to "automobiles" and not to commercial vehicles that are not private passenger vehicles. Consequently, the ISO filed with the Department of Banking and Insurance to restore pedestrian PIP to commercial vehicle policies.

Pre-auto reform. In order to understand what happened, let's start with coverage as it existed prior to the 2003 Auto Reform Act. Pedestrians were covered for PIP benefits under the policy that insured the "automobile" that hit them according to Section 39:6A-4 of the Motor Vehicles and Traffic Law. An "automobile" means a private passenger vehicle or a pickup truck or cargo van not customarily used for business and owned by an individual or husband and wife. However, if the injured pedestrian was covered on a policy as the named insured or covered as a resident family member of a named insured, then primary coverage was provided by that policy in lieu of the policy insuring the vehicle that hit the pedestrian.

On the other hand, if the vehicle injuring the pedestrian did not meet the definition of an "automobile" (i.e., a motorcycle or a commercial vehicle that is not a private passenger vehicle), then Section 17:28-1.3 of the Insurance Law required the vehicle owner's policy to provide PIP benefits to the injured pedestrian.

Post-auto reform. The 2003 Auto Reform Act amended Section 39:6A-4 to remove coverage for pedestrians who are not the named insured or a resident family member of the named insured. Then, it introduced new Section 39:6-86.7, which places responsibility with the Unsatisfied Claim and Judgment Fund to provide PIP benefits to pedestrians who are not covered on their own policy or covered as a resident family member. These two statutes are applicable only to "automobiles," but Section 17:28-1.3, which is applicable to commercial vehicles that are not private passenger vehicles and motorcycles, was not amended or repealed. Consequently, the following is how coverage for pedestrians is to be provided after the 2003 Auto Reform Act:

1. A pedestrian is injured by an "automobile" and is a named insured on their own policy or is a resident family member of a named insured—PIP coverage is provided by the named insured's policy;

(Continued on page 6.)

Employers must provide earned income tax credit notice

A new law (P.L. 2005, c.210) requires public and private employers, as well as the Commissioners of Labor and Workforce Development, Human Services, and Community Affairs to notify certain individuals of the availability of the federal earned income tax credit and the New Jersey earned income tax credit. These credits are available to qualifying low-income workers to reduce their tax burden.

Employers must notify potentially eligible employees of the availability of these credits when giving the employee the statement of wages and tax withholding already required under current law. A determination of potential eligibility will be based on the wages for the

(Continued on page 5.)

Association

PIANJ supports proposed amendment to exportable list

PIANJ recently provided a comment in support of the New Jersey Department of Banking and Insurance's proposed amendments to the exportable list that would permit the export of physical damage coverage for private passenger and commercial vehicles with an original cost new of $60,000. This represents an increase from the current $40,000 amount.

"PIANJ agrees that a change to increase the vehicle cost value to $60,000 from $40,000 is warranted and will allow more vehicles to be written in the admitted market," said John A. Latimer, Esq., president of PIANJ. "This will benefit drivers directly since the admitted market offers more protections to consumers."

The amendment also reflects changes in the current vehicle market, since the price of a new vehicle continues to increase every year.—*Czupryna*

PIA National debuts Spanish Web site

PIA National has unveiled a Spanish language section on its Web site to provide additional service to PIA members whose native tongue is Spanish, or who do business in Hispanic markets. The PIA Latino Agents Community Center (Centro de la Comunidad de Agentes Latinos) features key material in Spanish, including information on member benefits, products and services, as well as news updates and grassroots action alerts.

To view the site, logon to PIA National's Web site at www.pianet.com and click the link on the left-hand side. —*Aleksejczyk*

Keep your agency on your clients' minds throughout the year

Studies show that newsletters are an effective tool for cross selling and attracting new clients to your agency. PIA's newsletter service lets you send your clients a personalized newsletter with state-specific, client-orientated, insurance news, in multiple formats. Choose from personal lines with *Insights & Updates* or commercial lines with *Your Business*.

We offer traditional print newsletters, complete with stuff and seal options and self-mailer options, as well as PDF format (for e-mailing to clients or placing on your agency's Web site) and now, we offer you the opportunity to send the newsletter electronically to your clients in HTML format. For more information, logon to the PIA Web site, click on the Communication tab and scroll to the bottom, or call (800) 424-4244, ext. 282.—*Aleksejczyk*

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PIANJ Industry Resource Center

2005 homeowners premium comparison

The New Jersey Department of Banking and Insurance has recently released its annual Homeowners Premium Comparison Survey. Broken down by county and municipality, the 2005 edition outlines carrier premiums for three different types of policies (homeowners, renters and condominium owners) with the appropriate premium for each.

To receive a copy, logon to www.piaonline.org and use the QuickSource Quick-Link to request QS29106, or fax PIANJ's Industry Resource Center at (888) 225-6935.—*Albright*

National

Information for insurance agents on Medicare Part D

Insurance agents may be contacted by clients for help in understanding the new Medicare Part D prescription drug coverage. Also, agents who have sold Medicare Supplement (Medigap) policies or group health plans to employers covering Medicare-eligible individuals (whether retired or still employed) need to know how the program affects these policies and policyholders.

Producer certification required. Agents are being informed by carriers that, to sell Medicare products, insurance producers are required by the federal government to be certified annually. The insurer providing the plan normally also provides the required training and certification.

Enrollment starts Nov. 15. For existing Medicare recipients, the initial enrollment period for Part D coverage runs from Nov. 15, 2005 through May 15, 2006. Starting in October, Medicare is furnishing a comparison tool on its www.medicare.gov Web site to search for Medicare private drug plans in a given area and compare their costs, covered drugs and pharmacy networks.

Be careful of scams. Insurance licensees already are being contacted by parties wanting them to help enroll seniors in a particular plan. Producers are strongly cautioned to be alert for bogus plans. The current confusion about the new coverage makes the potential for fraud very real. Be sure a plan is Medicare-approved for your state and area before agreeing to help sell the coverage.

Enrollment in a Medicare prescription drug plan is entirely voluntary. Be wary of anyone who suggests a sales approach saying or implying that seniors must enroll in a plan.

The government posted information on approved plans at: www.cms.hhs.gov/map/map.asp.

Get an overview of the program. One site providing an overview of Medicare Part D is the Medicare Rights Center at www.medicarerights.org/newlawframeset.html. The official government site is www.medicare.gov/medicarereform/drugbenefit.asp. Information is also available at the Centers for Medicare & Medicaid Services at www.cms.hhs.gov/default.asp?.

Cost estimator. The government is furnishing an online "calculator" to figure current prescription costs vs. costs with the drug benefit at www.gop.gov/medicare/gopdrugcalc.htm.

The comparison does not factor in any premium penalty. Penalties will equal 1 percent for every month a person does not elect coverage after the initial enrollment period has concluded. Be aware that 1 percent a month quickly becomes a substantial penalty on top of the expected annual increase in the basic rate.

Medigap policyholders. Starting Jan. 1, 2006, new Medigap policies will not be permitted to contain drug coverage.

People whose existing Medigap policies have no drug coverage, or have coverage inferior to Medicare Part D, will pay a penalty if they opt to pick up Part D coverage after the initial enrollment period ends on May 15, 2006. The government says most Medigap drug coverage will NOT be considered at least equal to Part D.

Anyone switching plans needs to weigh the move carefully, making sure the new plan would meet their needs.

"Creditable coverage." People with existing drug coverage in a Medigap policy or other health insurance plan that is at least equal to the minimum Medicare prescription drug benefit have what is called "creditable coverage." People with creditable coverage could choose to continue their existing coverage and later switch to a Part D plan without penalty, so long as they are not without creditable coverage for more than 63 days.

Here is a link to CMS's information (note that there are different notifications for employers/unions and Medigap) on creditable coverage: www.cms.hhs.gov/medicarereform/CCguidances.asp.

Notice by employers and others who sponsor plans. Employers may have notification requirements. These requirements apply to all entities and/or programs that offer prescription drug coverage to active or retired Medicare eligible individuals. These entities are required to provide disclosure regarding the plan's "creditable coverage" status to such individuals. For more on entities that must disclose, see www.cms.hhs.gov/medicarereform/CCentities.asp.

Medicare prescription drug coverage. According to the Center, "The Medicare drug benefit will be available only through private drug plans. There are two types of Medicare private drug plans (Part D plans):

(Continued on page 4.)

National (Continued)

Information for insurance agents on Medicare Part D (Continued from page 4.)

"1. Stand-alone prescription drug plans. 'Stand-alone' plans only offer prescription drug coverage. You can continue to get all your other medical services (such as doctor visits, hospital stays) through Original Medicare (or through some Medicare cost plans and private fee-for-service plans if they do not offer drug coverage).

"2. A Medicare private health plan (like an HMO, PPO or PFFS). You can join or remain in a Medicare private health plan (Medicare Advantage) that provides all your Medicare-covered services, including prescription drug coverage.

"Note: If you are in a private fee-for-service plan or a Medicare cost plan that does not offer drug coverage, you can enroll in a stand-alone prescription drug plan. If you are in an HMO or PPO you must receive all of your medical and drug coverage through that plan."

The Center says everyone will have at least two Medicare private drug plans from which to choose in their area, at least one of which must be a stand-alone plan.

Private drug plans will not offer single, uniform Medicare drug coverage. The 2003 Medicare Law outlined a plan that serves as the minimum standard for the overall value a plan must offer in order to be approved as a Medicare private drug plan. However, "Plans can structure their benefit differently as long as the overall value is at least as good as the Medicare basic plan. They can also offer better coverage, for which they will likely charge a higher premium," the Center says.

Premiums. In addition to their existing Part B premium, recipients will have to pay a monthly premium for Medicare Part D, currently estimated at an average national premium of $32.20 a month ($386.40 a year) in 2006. This amount will vary by location and the actual benefits in the plan.

According to the Center, "Premiums will likely increase every year." People can choose to have the premium taken out of their monthly Social Security check (in addition to the Part B premium) or can pay it directly to the company.

How people sign up. According to the Center, there are three ways for an individual to apply for a Part D plan: 1. Contact the company offering the drug plan to ask for a paper application, complete it and mail or fax it back to the company; 2. Complete an online application on the plan's Web site (if it allows people to apply online); or 3. Complete an online application on the Medicare's www.medicare.gov Web site.

People who enroll in 2005 will start Part D drug coverage on Jan. 1, 2006. Thereafter, coverage will start the first day of the month after the month in which the person signs up.

The coverage. Each Medicare private drug plan will have its own formulary (list of covered drugs), which will include both brand-name and generic drugs. Plans will be allowed to change their formularies at any time as long as they give 60 days' notice. People with existing prescriptions need to check whether their medicines will be covered by a given plan.

According to an Oct. 3, 2005, *USA Today* article, "Plans vary. Monthly premiums range from $1.87 to nearly $100. Deductibles range from zero to $250. Co-payments differ from one plan to another, as do benefit packages.

"Under a typical plan, participants would have a $250 annual deductible and pay a monthly premium of $20 to $37. In most cases, Medicare will cover 75 percent of their drug costs to $2,250; nothing more until costs reach $5,100 [emphasis added], and 95 percent thereafter."

The interval for which the plan would pay nothing is called the "doughnut hole." This well-publicized feature of Part D plans is a deterrent to some.

USA Today cites a poll of people 65 and over: 37 percent say they understand the program at least somewhat well, but 61 percent don't. About one in four seniors, 24 percent, say they plan to join the program, compared with 54 percent who say they won't.

For more information on Medicare Part D drug coverage, contact the PIANJ Industry Resource Center by e-mail at resourcecenter@piaonline.org to request a copy of QuickSource document No. 90460.—*Kiehl*

For up to date industry news and association information, logon to the PIA Web site at www.piaonline.org.

Trends

Survey finds Americans lack faith in insurance industry after Katrina

In the aftermath of Hurricane Katrina, an online study of approximately 1,000 U.S. adults conducted by Ipsos, an international market research company, shows that while nearly all respondents approve of the job being done by charities and non-profits, only 18 percent approve of the job being done by the insurance industry. Forty-three percent of Americans disapprove of the job being done by insurance companies and 39 percent are unable to take sides at this time.

"The hurricanes that hit the Gulf Coast have had a devastating effect on people's lives and livelihoods," said a company spokesman, "and could soon be having a devastating effect on the insurance industry. The tremendous damage wreaked by Hurricane Katrina will take unprecedented amounts of money and effort to fix. Tensions among the key players—the federal, state and local governments, their disaster and relief agencies, the insurance industry and hundreds of thousands of policyholders—seem unavoidable."

This study also found that while almost 87 percent of Americans have auto insurance, only 67 percent have homeowners or renters insurance and only 8 percent have flood insurance. Further, less than half (47 percent) of Americans with a household income of less than $25,000 have their home insured, compared with 80 percent of Americans with a household income of $50,000 or more.—*Aleksejczyk*

State

Contractors begin registering with the Division of Consumer Affairs

More than 17,000 home improvement contractors have filed applications to register with the Division of Consumer Affairs, well in advance of the Dec. 31, 2005, deadline required by the Contractors' Registration Act. Contractors who fail to register by this deadline will be prohibited from making or selling home improvements in New Jersey and barred from obtaining local construction permits until they become registered. Contractors are also required to file proof that they have secured commercial general liability insurance in a minimum of $500,000 per occurrence.

The Contractor's Registration Act originally was to be effective on Nov. 9, 2004. However, the law was delayed and amended after PIANJ spotted a problem in the original act that would have caused problems for insurance producers. The original act would have required insurance producers to provide certificates of insurance for contractors that stated no cancellation or nonrenewal of the CGL policy would be effective until the Director of Consumer Affairs received 10 days notice of the insurer's intent to cancel or nonrenew the policy.

The amendments that PIANJ secured to fix the problem instead require that contractors whose CGL policy is canceled or nonrenewed submit to Consumer Affairs a certificate for the new or replacement CGL policy before the former policy is no longer effective.
—*Aleksejczyk, Muratori*

New Jersey joins Mid-Atlantic hazard consortium

A number of Mid-Atlantic states, including New Jersey, are forming a consortium to increase preparedness by enabling emergency management participants to share strategies and integrate planning. Delaware, the District of Columbia, Maryland, North Carolina, Pennsylvania, Virginia and West Virginia are also taking part in the All Hazards Consortium, a not-for-profit organization that emerged from last year's All Hazards Forum, a regional conference bringing together industry, universities, the state homeland security and emergency management and citizen leadership from the region.—*Aleksejczyk*

Employers must provide earned income tax credit notice *(Continued from page 1.)*

prior year reported in the statement. The law directs the state treasurer to develop a form of the notice that will be distributed and which must be used by employers and public officers. The notification is to be distributed between Jan. 1 and Feb. 15 of each year to coincide with the employer's distribution of the wage and tax withholding statement. To see the text of the new law visit: www.njleg.state.nj.us/2004/Bills/PL05/210_.PDF.
—*Muratori*

Legal

Court upholds step-down clause, imposes duty on producers

The New Jersey Supreme Court recently handed down a decision in an interesting case that involves step-down clauses and a producer's obligations to inform their clients about them.

Pinto vs. New Jersey Manufacturers Insurance Co. involved the application of an underinsured motorist step-down clause in an employer's business automobile policy to an employee injured in a covered vehicle in a work-related accident. The issue in the case was whether the denomination of the corporate entity as the "named insured" in the employer's policy was so ambiguous as to allow any employee to be considered as a "named insured" and thus avoid the step-down provision.

Raymond Pinto sustained injuries when the truck he was driving was struck from behind by another vehicle. Pinto was employed by R.W. Vogel Inc., a company owned by Roger and Anita Vogel. The truck he was driving was owned by Holgate Property Associates, another company owned by the Vogels. The truck was insured by Vogels through a business insurance automobile policy issued by New Jersey Manufacturers Insurance Co.

The policy named only the two corporate entities, Vogel and Holgate, as the "named insureds." The policy included an endorsement providing UM/UIM coverage with a limit of $1 million per accident. It covered any employee "occupying" a covered vehicle and set a $1 million limit to such an employee as long as he was neither a "named insured" nor insured as a "family member" on another policy. If that were the case, coverage was stepped down to the limit in the relevant policies.

Pinto was a named insured under a personal automobile policy issued by Liberty Mutual that included UM/UIM coverage of up to $100,000 per person for bodily injuries. Pinto received $30,000 of the available $300,000 from the other driver's liability insurance coverage. Pinto's damages exceeded that amount so he submitted a claim for the $1 million maximum of UIM coverage under the NJM policy. NJM denied the claim based on operation of the step-down provision. Pinto then brought an action to compel NJM to provide the $1 million limit of coverage.

The Supreme Court held that the step-down provision was enforceable, and Pinto was not entitled to the $1 million limit. In reaching this conclusion, the court found the NJM policy language was not ambiguous. It did not designate Pinto by name, or by implication, as a "named insured." The court reasoned that an employer can cover employees as "named insureds" provided appropriate language is added stating such an intention.

The court then imposed a duty upon insurers, their agents and brokers: "To avoid having an employer misapprehend whether there is a need to include specific language incorporating employees as 'named insureds' on business automobile policies, we impose on insurers, their agents, and brokers, a duty to inform employers about the necessity for such language so that employers may make informed decisions about whether their employees will have the status of 'named insureds' under the employers' business automobile insurance policies."

Watch for more on this case in an upcoming *PIA Magazine.—Muratori*

Technical

Commercial vehicle pedestrian PIP is back *(Continued from page 1.)*

2. a pedestrian is injured by an "automobile" and is not a named insured on their own policy or is not a resident family member of a named insured—PIP coverage is provided by the Unsatisfied Claim and Judgment Fund; and

3. a pedestrian is not injured by an "automobile," but injured by a motorcycle or a commercial vehicle that is not a private passenger vehicle—PIP coverage is provided by the commercial vehicle policy or the motorcycle policy.

The confusion. The ISO, and apparently the DOBI (who did not disapprove the ISO commercial vehicle filings removing pedestrian PIP effective Nov. 1, 2004), seemed to be under the impression that Section 17:28-1.3 had been repealed under the 2003 Auto Reform Act, or that it was amended to place responsibility with the Unsatisfied Claim and Judgment Fund for payment of these PIP benefits. Since the statute has not been repealed or amended, commercial vehicle policies continue to be obligated to provide pedestrian PIP coverage. Therefore, the ISO is restoring this coverage in its current filing with the DOBI.—*Corbin*

Company

Peerless goes live with SETWrite, Penn wins A.M. Best award

• **AMS Rackley's** SETWrite Comparative Rating Software this week went live with its first fully integrated XML carrier partner in New Jersey, **Peerless Insurance.** SETWrite enables independent insurance agents to enter information once into a single Web interface and receive real-time rates and related information from participating carriers. A demonstration of the program, is available at www.rackley.com/amsrackley/includes/demos/setwrite/setwrite_demo.htm.

• **Penn National Insurance** won **A.M. Best's** E-Fusion technology award in the category of Productivity Management. According to the judges: "Mobile computing is offering Penn National Insurance dynamic loss control services that help with its strategy to grow its small-business and middle-market business portfolio. The project provides technology to liberate staff from administrative burdens and frees them to fulfill their consulting mission. The project uses tablet PCs, store-and-forward technology, wireless connectivity, handwriting conversion recognition, digital-optics capture and free-form sketches. The system completely automates a totally manual process, allowing for improved work flow efficiencies in the field, which will increase productivity and allow field representatives to stay in the field longer."

• **White Mountains Insurance Group Ltd.** in Bermuda announced that Steven E. Fass was elected president and CEO, effective immediately. He replaces Ray Barrette, who has decided to retire. Fass served White Mountains as a senior partner and head of reinsurance operations. He led the company's acquisition of **Sirius International** and oversaw the development of **Esurance** the past five years.

• **Chubb** announced claims from Hurricane Katrina will cost the company more than $500 million. The company reported third-quarter reported profit of $246 million, or $1.20 a share, down 32 percent from $364 million, or $1.88 per share a year ago.

• **A.M. Best Co.** recently released the third and final edition of its 2005 Best's Loss Control Manual. Included in this release are several new and extensively revised classifications, including the latest risk information on public bus companies, music stores and more. The publication serves as an industry standard training reference for new risk managers and underwriters and contains concise descriptions of more than 500 risk classifications. The manual is updated and released three times a year on CD-ROM and online. For more information, logon to www.ambest.com/sales/lcmcdrom.

• **Risk Management Solutions, AIR Worldwide Corp.** and **Eqecat Inc.** issued their preliminary estimates for insured property losses resulting from Hurricane Wilma. The total insured property loss estimates range between $4 billion and $10 billion. In addition, Eqecat also estimates insured property losses for Mexico's Yucatan peninsula of $1 billion to $3 billion.

• **Allstate** said its third-quarter loss was $1.55 billion, or $2.36 a share, compared with net income of $56 million, or 9 cents a share, a year ago.

• **Starr International Co.,** a former affiliate of **American International Group Inc.,** recently countersued AIG, denying any obligation to surrender control over more than $19 billion worth of AIG stock. *The Wall Street Journal* reported last month that AIG had filed suit against Starr claiming breach of contract and violation of fiducary duty and demanded that Starr forfeit control of its AIG holdings. Starr is led by Maurice "Hank" Greenberg, AIG's former chairman and CEO.—*Aleksejczyk*

Palisades cleared to acquire part of Parkway auto book

Palisades Safety and Insurance Association and Palisades Insurance Co. have entered into an agreement with Fireman's Fund Insurance Co. concerning the business of Fireman's Fund's New Jersey automobile insurance subsidiary company, Parkway Insurance Co. The carriers received approval from the Department of Banking and Insurance Oct. 3 for a "consolidation transaction," which will result in Fireman's Fund retaining a portion of Parkway's business with the remaining business to be transferred to Palisades upon renewal, beginning with those polices renewing Dec. 1, 2005, and after. Palisades informed Parkway agents via letter that their overall commission rate and ownership of expirations will remain the same. In 2003, PIANJ secured a change in the law protecting agents' commission and ownership rights during company book transfers.

PIANJ Calendar of Events

December

Dec. 6—Your office
• **PIANJ's Lunch 'n' Learn: The Business Auto Policy and Autos Not Owned**
NJCE: N/A

January 2006

Jan. 26-28—Edison
• **CIC Life and Health Institute**
NJCE: 20 NJCE /12 with designation update

March 2006

March 1-3—Atlantic City
• **CIC Update: James K. Ruble Graduate Seminar—"Mega Rubles, A & B"**
NJCE: TBA

March 7—Toms River/Lakewood
• **CISR IP: Insuring Commercial Property Exposures**
NJCE: 8/12 with designation

March 22-24—Branchville
• **CIC Commercial Property Institute**
NJCE: 20 NJCE/12 with designation update

April 2006

Apr. 27-29—Edison
• **CIC Agency Management Institute**
^FF, ^UM
NJCE: 20 NJCE/12 with yearly designation update

May 2006

May 2—Edison
• **CISR PA: Insuring Personal Auto Exposures**
NJCE: 8/12 with designation

May 3—South Jersey
• **CISR PA: Insuring Personal Auto Exposures**
NJCE: 8/12 with designation

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."
^FF ^UM—Contact the PIA E&O Department for details.

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