

e REPORTER

Professional Insurance Agents of New York State Inc.

June 7, 2005

PIA National warns insurers against imposing their own disclosures

A number of carriers have begun to consider, and a few have implemented, company-specific requirements directing agents and brokers to disclose their compensation to customers. PIA National recently issued an open letter to companies. "Let it be clear that PIA adamantly opposes any such compensation disclosure requirements imposed by carriers," wrote PIA National's Executive Vice President and CEO Len Brevik.

PIA National also provided a detailed FAQ-format explanation of its stance on this issue. "It is PIA National's expectation that insurers recognize these facts and will refrain from imposing unnecessary, burdensome and ill-defined disclosure requirements upon their agency producers. This would avoid the inadvertent expansion of agency liability and/or the creation of a new and heightened customer expectation of the insurance producer—imposed upon the producer

by the insurer, and not by law. This is critical, given that such expectations often evolve into legal obligations, which easily could extend beyond the independent insurance agencies to the carriers, encompassing much more than what a carrier envisioned at the time."

The FAQ discusses existing state disclosure rules and the public policy discussions currently underway about potential additional requirements. "Given that these requirements will vary from state to state (and most certainly from the ... disclosure policy a carrier may be issuing, unless carefully crafted), PIA National firmly believes that any insurer-imposed obligations will, with respect to these compliance issues, create or contribute to increasing confusion and frustration," the FAQ says.

"Producers would not only have to comply with the various disclosure requirements of the states in which

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Legislative update: Loss run bill passes Assembly; time running out

On-time passage of the 2005 budget seemed to clear the way for orderly deliberation on other substantive issues. Nevertheless, time has passed quickly since April 1, with much left to be done if major insurance-related issues are to be addressed by the time the legislature leaves town, scheduled for June 23.

Loss run bill. One hurdle was crossed when the PIANY-backed loss run bill (A.1973-a) passed the Assembly on May 23. It would require carriers to provide loss runs along with adverse policyholder notices, so agents can begin seeking alternative coverage immediately.

This year's version has been amended to address concerns voiced by a few insurance companies about the bill in its original form. One change eliminates the requirement for nonpayment cancellation notices—which frequently result in payment before cancellation takes place. Another change eliminates the requirement for cancellations involving suspected fraud.

Attention now turns to the Senate, where the companion bill, S.4312, remains in committee at present.

PIANY also is working on other high-priority items, including:

NYPIUA. The 2005 sunset date for the authority of the New York Property Insurance Underwriting Association is fast approaching; NYPIUA already has notified producers to submit all applications in advance of the June 30 witching hour. PIANY is optimistic that this year will not see another shut-down. The question is whether the Senate will go along with the Assembly, which already has passed A.750 to make NYPIUA permanent. PIANY strongly supports permanency.

A temporary extender—even if longer than the annual extenders of the past few years—doesn't address the crippling effect of keeping NYPIUA on a short leash. With the hurricane season predicted to get nasty, NYPIUA could suddenly be thrust into the spotlight and asked to take on even more than it currently is doing. Permanent status would empower NYPIUA to meet such a challenge.

ELANY. Another entity needing periodic extension of its authority is the Excess Line Association of New

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Association

PIANY celebrates 65 years at annual conference

PIANY/PIANJ's Joint Annual Conference, June 5-7 at Bally's Atlantic City, was the largest gathering of insurance agents and brokers in the Northeast, breaking last year's attendance record of nearly 2,000 agents, company representatives, exhibitors and other insurance industry professionals. Both PIANY and PIANJ are celebrating their 65th anniversary this year and the milestone was recognized during the conference.

The conference offered individuals the opportunity to participate in educational seminars; attend social events including an opening reception and recognition banquet; and view the latest insurance products and services available during the trade show, which has sold out for the past five years.

"The thousands that come here each year already know this is the place to be for quality education sessions," said PIANY President N.

Read all about it, the "e" way

PIANY's popular monthly Reporter newsletter, offered electronically in PDF format, is the user-friendly way to get in-depth coverage on important industry issues. The e-version differs from traditional print in its attachment of Web links to feature stories, association events and more. Members are literally a click away from detailed data important

Stephen Ruchman. "It's also a chance to reconnect with past friends; establish new contacts and congratulate those who are being honored for their commitment to the independent insurance agency system and their communities."

PIANY also honored industry superstars during award ceremonies at the conference. The association named Robert Franzese, CEO, Capital Bauer Insurance Agency Inc., Albany, N.Y. its Professional Agent of the Year. He was honored for his contributions and commitment to the insurance industry, including his fellow agents, PIANY and his community.

Additionally, Frank Reis, who was president of Frank H. Reis Inc., Kingston, N.Y., until his retirement, received PIANY's Distinguished Insurance Service award. The award recognizes an individual who has established a history or service, dedicated leadership and attention to the concerns of independent agents and their clients.

For a full wrap-up of this event, look for the July/August issue of *PIA magazine*.—*Czupryna*

to their business. Also, the eReporter saves the hassle of routing the newsletter throughout your office—go paperless and let PIA e-mail the eReporter to as many recipients in your office as you like! Best of all, this member benefit is free. To receive the eReporter, logon to the PIANY Web site and click the **eReporter link**.—*Aleksejczyk*

Address comments to:
PIANY Reporter
Phone:
(800)424-4244
Fax: (888) 225-6935
Web site:
www.piany.org
Editorial staff:
Stacey Aleksejczyk,
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PIANY Industry Resource Center

New York state referral fees

New York Insurance Law allows licensed insurance agents and brokers to pay for receiving referrals, provided certain guidelines are followed. A licensed agent or broker is not permitted to compensate a nonlicensee for referrals contingent upon the placement of insurance. However, the nonlicensee may be compensated for the referral if the compensation is not based upon the placement of insurance and the individual who makes the referral does not discuss specific insurance policy terms and conditions with the prospective insured.



These rules have prompted a number of specific questions and potential scenarios to which the New York Insurance Department's Office of General Counsel has responded in recent years. To review these materials, logon to the PIA Web site at

www.piaonline.org and key **QS31361** in the Quick-Link box, or fax PIANY's Industry Resource Center at (888) 225-6935.—*Albright*

State

Budget increases DMV fees, uninsured penalties effective Oct. 1, 2005

Changes made by New York's budget legislation to various **Department of Motor Vehicles** fees, fines and the important grace period for insurance lapses all will take effect Oct. 1, 2005—not Jan. 1, 2006, as PIANY originally reported. The effective date of these changes was moved up three months in a separate chapter amendment (S.4271/A.7298) made to the original budget bill (S.3671/A.6845). PIANY regrets the error. Both bills were signed into law April 12, 2005.

The original budget bill summary estimated the revenue from these (plus a few other DMV fee changes) at \$42.8 million in state fiscal year 2005-2006 and \$165.8 million when fully implemented. Presumably, the Oct. 1, 2005, effective date will boost revenue projections.

DMV MVR fees. The charge for accessing a driver's motor vehicle records will go from \$6 to \$10 for manual searches conducted by DMV staff, and from \$5 to \$7 dollars for searches done electronically.

The increases take effect Oct. 1, 2005. Members have told PIANY that some MVR vendors already have announced their impending fee increases, corresponding to the higher DMV prices.

Uninsured operation; grace period. Also effective on Oct. 1, 2005, penalties for uninsured vehicles will be calculated on a graduated basis depending on the length of the lapse.

Another noteworthy change will trigger these penalties if a motor vehicle remains registered and uninsured more than seven days. Currently, the figure is 15 days. Both the current and new periods are on a calendar-day basis. (The original budget bill would have reduced this period to five 'business' days, but the final figure is seven days thanks to the S.4271/A.7298 chapter amendment.)

Under this grace period in Section 318 of the Vehicle and Traffic Law, a registrant is not penalized if there is only one insurance lapse of 15 days or less in any three-year period (unless the vehicle is being operated while uninsured). Starting Oct. 1, 2005, the grace period becomes seven days. Any subsequent or longer period without insurance is a "chargeable lapse," which initiates a DMV suspension letter.

In lieu of serving a registration suspension, in certain cases an uninsured registrant can pay a daily fine. The current figure is \$8 a day, up to 90 days. (For a lapse of more than 90 days or any subsequent lapse within a three-year period, there is no option to pay a fine, and suspension becomes mandatory.)

The 2005 budget changes this formula. The figure stays at \$8 a day for each uninsured day up to 30 days. From the 31st through the 60th days, the daily fine goes to \$10, and for each day from the 61st to the 90th, the fine goes to \$12.

Auto insurance cancellations. Under law, insurance companies must reference these penalties when an insurance policy providing required financial responsibility for a vehicle registrant is terminated. The DMV is reviewing its regulation implementing this requirement as well as the language of its suspension notices and other documents it supplies to motorists. The DMV will be working with the **NYSID** to make the necessary changes and inform insurance carriers in time for the Oct. 1, 2005, implementation.

Watch the **PIANY Web site** and publications for additional information.—*Kiehl*

Have you sent us your written consent yet?

As a member of PIANY, if your agency has not yet provided written consent to receive faxes from us, take the time now to complete a consent form that will allow PIA to continue to send you vital information. Be sure to register with us before July 1, so you continue to receive important association updates. You can obtain the consent form by logging onto www.piaonline.org/faxform.pdf, or by contacting the Resource Center at resourcecenter@piaonline.org.—*Aleksejczyk*

State

Legislative update: Loss run bill passes Assembly; time running out

York. **ELANY's** authority would be extended through July 1, 2009, by S.3819-a, which passed both houses and awaits the governor's action.

No-fault fraud. Assembly Insurance Committee Chairman Alexander "Pete" Grannis again has introduced an omnibus bill (A.8357) to address many issues related to auto insurance fraud, particularly in no-fault claims. This year's bill contains several changes responsive to comments on the Assembly's omnibus legislation of last session. However, there is scant hope that major legislation would occur this year.

PIANY participates in the New York First coalition effort to move forward on this issue, in part by crafting more focused legislative proposals and securing sponsorship. Specific bills introduced so far this year would address the glut of frivolous lawsuits in certain courts; provide more time for insurers to challenge suspected fraud; and prevent crooked health care providers from collecting no-fault payments.

Security breach. One issue that is likely to see action this year is notification to consumers if there has been a breach of security affecting their personal information. Numerous bills have been introduced, but the final product is likely to resemble S.3000-a/A.5487-b. It would require businesses that hold personal information about consumers to safeguard their information, and to notify them if there has been a breach of the security leading to unauthorized persons obtaining their personal information.

SMART Act. Legislators active in the **National Conference of Insurance Legislators** are asking state legislatures to endorse resolutions supporting state-based insurance regulation and opposing federal legislation like the State Modernization and Regulatory Transparency Act. In New York, the resolution cleared the Senate on May 10 and is pending in the Assembly. It proclaims that state legislatures are the appropriate bodies to determine public policy on insurance issues

because they are more responsive to constituents and better-informed about local market conditions.

The resolution also quantifies a possible loss of revenues in New York, including \$762 million in premium taxes and \$162 million in Insurance Department assessments. Pressure from SMART Act author Rep. Michael Oxley, R-Ohio, recently killed a similar resolution in the Buckeye State. The stakes are high, and this battle for jurisdiction will continue, with its outcome shaping the future of PIANY members' business.

Workers' compensation. As this year's session nears its end, observers wonder whether we will see any legislation addressing New York's status as a high-cost, low-benefit state for workers' compensation. Many opportunities exist to speed benefits to injured workers while actually lowering costs, according to those who have studied the system and its problems.

Labor Law reforms. Advocates for change have been encouraged this year at the high degree of overall awareness and the activity shown by some key lawmakers who want to address New York's unique Labor Law and its effect on insurance costs and availability. Yet, the issue proves resistant to solutions—perhaps in part due to the success of insurers in extricating themselves from the scene through targeted exclusions and market withdrawals. Discussions at PIANY's legislative programs suggest more leaders in the business community are making the connection between this issue and economic activity in specific areas of the state. Some creative bills have emerged, but no consensus.

Defensive driver courses. Despite repeated vetoes by the governor, supporters again are trying to let people take the DMV-approved accident prevention courses online. PIANY opposes this move, believing the system would be less effective as an instruction vehicle and could be open to fraud.—*Kiehl*

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

National

Do-not-fax rules to begin July 1, 2005

Beginning July 1, 2005, new Federal Communications Commission rules will take effect making it unlawful for anyone to send an unsolicited advertisement to a commercial or residential facsimile machine without the prior written permission of the recipient. The FCC originally revised its rules on faxing in July 2003, but had postponed the effective date twice. Under the new rules, businesses sending fax advertisements must obtain the prior written consent of all recipients even those with whom they have an “established business relationship.”

Prior to this change, thousands of businesses and associations, including PIA, had been permitted to fax information to their customers and members because the FCC had viewed the existence of an EBR as constituting the required permission to send faxes. Under the FCC’s revised rules, the EBR will no longer constitute permission and businesses wishing to send fax advertisements to customers, or anyone else, must obtain the recipient’s signed, written consent that includes the fax number to which advertisements may be sent. An “unsolicited advertisement” is defined as “any material advertising the commercial availability or quality of any property, goods or services which is transmitted to any person without that person’s prior express invitation or permission.”

Under the revised rule, insurance producers will be prohibited from faxing unsolicited advertisements, (i.e., renewal reminders, information on new products, quotes) to anyone, including those who have verbally asked for such information, without that person’s prior written permission.

There currently is federal legislation that would restore the EBR rule. The Junk Fax Protection Act, S.

NCCI releases “State of the Line” report; WC experience improving

NCCI Holdings Inc. recently released its annual “State of the Line” preliminary workers’ compensation market analysis. This year’s report indicates that the workers’ compensation calendar-year combined ratio dropped four points to 105 percent—the best performance for the line since 1997.

The accident-year combined ratio continued the downward progression that began in 2000 and stands at 94 percent—the best performance in more than a decade. This reflects a 45-point improvement in just five years.

714, sponsored by Sen. Gordon Smith (R-Ore.), is similar to legislation that failed to pass last year. Cosponsors include Sens. Conrad Burns (R-Mont.), Byron Dorgan (D-N.D.), Frank Lautenberg (D-N.J.), Olympia Snowe (R-Maine) and John Sununu (R-N.H.). The legislation, which has strong bipartisan support in the Senate, was approved by the Senate Committee on Commerce, Science and Transportation on April 14. However, the bill has yet to be debated by the full Senate.

Since passage of this legislation is not guaranteed, producers should attempt to obtain the written consent to fax from their customers and others to whom they may fax advertisements. This consent can be obtained in a number of ways, including by direct mail, through Web sites, via e-mail or during interaction with customers at your place of business. Until July 1, 2005, you may also fax the consent forms to customers. To assist members in complying with the law, PIA has prepared a sample consent form producers can use. If desired, the form can be expanded to obtain permission to send e-mails in addition to faxes. To obtain the document, simply contact the resourcecenter@piaonline.org and ask for QuickSource document QS90440.

Once consent has been provided, it remains in effect until it is revoked. Producers should retain all consent forms they receive in the event they need to establish proper faxing.

Additionally, as a member of PIA, if your agency has not yet provided written consent to receive faxes from PIA, take the time now to complete a consent form which will allow PIA to continue to send you vital information. You can obtain the consent form by logging onto www.piaonline.org/faxform.pdf.—Muratori

NCCI’s estimate of the private carrier loss reserve deficiency declined by more than \$3 billion to about \$12 billion. After allowing for the permissible discounting of lifetime pension cases, the deficiency is \$7 billion. The estimated deficiency has been more than halved since year-end 2001, when NCCI estimates peaked. Claim frequency also continued in the current cycle of decline that began in the early 1990s.

Many troubling issues that the market has been facing over the last several years remain, which led NCCI to propose an outlook of cautious optimism for the line.

National (Continued)

PIA National warns insurers against imposing their own disclosures

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they operate, they also would have to compare these requirements with those of each insurer; and, absent specific instructions from the insurer, divine what the insurer intends for the policyholder experience on this issue to be. This could require the producer to implement dramatically different business practices and procedures for one carrier, while maintaining its current procedures for the rest of its carriers.

“It also potentially would open independent agencies to legal and compliance confusion and exposure, because they would not be able to develop and execute a single, equal practice across all of their insurance customers. ... Carriers and their counsel should also remember that current agency agreement provisions already obligate agencies to comply with all applicable laws, regulations and rules that govern agency operations and business practices,” PIA points out.

For companies concerned about the disclosure issue,

PIA offers alternative suggestions. For example, a company could “include as part of the policy issuance or renewal process language that clearly states the fact that compensation arrangements 1. are varied among a carrier’s producers; 2. are created by the carrier; and 3. include an expected level of performance that is directly linked to the carrier’s internal performance requirements. This statement also should clearly state that any and all compensation paid to producers is included in the price of insurance and disclosed in the insurer’s various filings.” Also, the company could provide general disclosure language on how its compensation systems work, either on its Web site or in written form.

“In the absence of specific law, these suggestions would avoid creating and imposing a prescribed customer expectation upon a carrier’s producers extralegally, which easily could turn into an implied legal obligation,” PIA cautions.—*Kiehl*

Company

The latest at AIG

- **American International Group** released its postponed 2004 annual report on May 31. An internal audit of the company cut the company’s value by 2.7 percent, or approximately \$2.26 billion. The company reported net income for 2004 of \$9.73 billion, reduced by \$1.32 billion (11.9 percent) from the original \$11.05 billion it had announced in February.

- The New York State Insurance Department Superintendent, Howard Mills, and New York State Attorney General Eliot Spitzer filed a lawsuit May 26 against AIG. The suit alleges the company manipulated its books to deceive regulators and the investing public. It also suggests that AIG’s former top management, including former Chair Maurice R. Greenberg and former CFO Howard I. Smith, engaged in numerous fraudulent business transactions that exaggerated the strength of the company’s underwriting to prop up its stock price.

- Participants in AIG’s employee savings plan filed a prospective class action against the insurer, alleging that illegal acts by management hurt their investment. The lawsuit alleges AIG’s financial officers breached their

fiduciary responsibilities by leading participants to invest in AIG stock between Nov. 1, 1998, and the present, while failing to disclose improper business practices. The suit also charges that AIG officers disseminated false and misleading financial statements to investors.

- Jim Petro, Ohio’s Attorney General, filed a lawsuit against Maurice Greenberg and his wife, Corinne P. Greenberg, in an attempt to put a hold on the transfer of the more than 41 million shares of AIG common stock Greenberg “gifted” his wife two days before he stepped down as CEO.

- AIG revealed it plans to pay in advance legal fees and other related costs its directors may incur for pending lawsuits. In a SEC filing, AIG said it agreed to “advancement of expenses,” which could include “attorneys’ fees, actually and reasonably incurred by the director in the event that at any time he is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.” The filing listed 13 directors who entered into the agreement.—*Aleksejczyk*

Company

Insurers sue Port Authority

• Several insurers recently sued the Port Authority of New York and New Jersey over the agency's claim that it is owed \$2.1 billion to help rebuild part of New York's World Trade Center. The insurers include 10 **Lloyd's** syndicates, **Axa Global Risks Ltd.**, **Copenhagen Reinsurance Co.**, **Great Lakes Reinsurance Ltd.**, **Houston Casualty Co.**, **QBE International Insurance**, **Sirius International Insurance Corp.**, **Wurttembergische Versicherung AG** and **Zurich Specialties London Ltd.** The lawsuit is in response to the Port Authority's claim for the \$2.1 billion "shortfall," originally made in a written request in March, to help rebuild 10 million square feet of commercial space at the site, which the transportation agency owns. The companies say the Port Authority is looking to claim monies covered under a different policy.

• **Marsh & McLennan Cos.** completed the sale of its private equity business, **MMC Capital** to the unit's management. The firm, run by MMC Capital CEO Charles Davis, will now be called Stone Point Capital. Marsh had disclosed plans to divest itself of the unit in March.

• Robert B. Lockhart, president and CEO of **Hilb, Rogal & Hobbs Co.**, resigned after it was discovered that one of the company's employees arranged for improper payments in exchange for insurance placements. In addition to Lockhart's resignation, a second employee was terminated and a third suspended pending the outcome of the company's investigation. **Standard & Poor's Ratings Services** announced it currently is not taking any rating action on the insurance broker as a result of the company's announcement.

OneBeacon Professional Partners has purchased the renewal rights to the hospital professional liability and managed care E&O books of business from **Chubb Specialty Insurance**. OneBeacon will renew business that fits its underwriting guidelines starting with July 1, 2005, effective dates.

• **Best's Review** magazine recently introduced "The Best's Review Insurance Technology Guide," an online guide to insurance technology and online service providers. The new guide, available at www.bestreviewtechguide.com, lists technology providers, carriers and service companies in more than 40 categories of insurance specialties.

• **Genworth Financial Inc.** said it received a

subpoena from the Securities and Exchange Commission requesting documents in the ongoing investigation of finite reinsurance products. The company said it received the subpoena seeking documents "related to 'certain loss mitigation insurance products.'"

Since announcing the subpoena, Milan Vukelic, chief executive of **General Re** subsidiary **Faraday Group**, and an unnamed employee have been placed on paid leave as federal officials conduct probes into insurance practices. **Berkshire Hathaway Inc.** announced the actions in a filing with the Securities and Exchange Commission.

• **Arthur J. Gallagher & Co.** recently settled allegations by Illinois regulators that it accepted kickbacks from insurers by agreeing to pay \$27 million into a fund for its clients. The insurance broker admitted no wrongdoing and said the payment doesn't represent a fine or a penalty, in a press release issued yesterday. Gallagher also said it agreed to eliminate contingent commissions for retail clients as a part of the settlement.

• The **Chubb Corp.** announced it received a subpoena from the Manhattan U.S. attorney's office, part of the broad industry investigation into the use of finite risk insurance and related products. The company said it believes the probe involves a number of companies in the insurance industry and that it intends to cooperate fully with investigators.

• **Fortune Brands Inc.** is suing **Marsh & McLennan Cos. Inc.** over allegations that Marsh rigged bids and collected undisclosed contingent commissions on the company's insurance placements. In a suit filed in U.S. District Court in Chicago, Fortune Brands seeks the return of \$4 million in fees it paid Marsh between 1999 and 2004. It also seeks to recover \$800,000 in contingent commissions Marsh collected on the company's business over that period, along with damages reflecting higher premiums Fortune allegedly paid as a result of Marsh's conduct, a Fortune Brands spokesman said.

Stay up-to-date on the latest industry-investigation related news by logging onto PIA's Agent & Broker Compensation & Disclosure Update Web site. Logon to the PIA Web site, www.piaonline.org, and click the **ABCD** icon to enter this members-only site. Be sure to check the site regularly for all the current issues and important PIA information.—*Aleksejczyk*

PIANY Calendar of Events

June

June 15—Your office

PIANY Lunch ‘n’ Learn: Policy-holder Protections

June 16—New York City

AIP Producer Certification Course
NYCE: 5 PC BR C3 PA

June 16—Poughkeepsie

CISR IP: Insuring Commercial Property Exposures
NYCE: 7 (or 8 with passing exam)
PC BR C3 PA

June 16—Glenmont

CISR PA: Insuring Personal Auto Exposures
NYCE: 7 (or 8 with passing exam)
PC BR C3 PA

June 21—Jericho

Additional Insureds
NYCE: 4 PC BR C3 PA

June 21—Jericho

D&O Liability
NYCE: 4 PC BR C3 PA

June 22—Albany

CIC Commercial Casualty Institute
NYCE: 15 PC BR C3 PA

July

July 12—Jericho

Commercial Property Coverages
NYCE: TBA

July 12—Jericho

Business Interruption
NYCE: TBA

September

Sept. 13—Buffalo

CISR IC: Insuring Commercial Casualty Exposures
NYCE: 7 (or 8 with passing exam) PC
BR C3 PA

To register for a PIANY Education event (NYPO-100002), logon to the PIANY Web site and key **EC10028** into the Quick-Link box. Or, call the Education Department at (800) 424-4244. *^FF, ^UM—Call the PIA E&O Department for more information, (800) 424-4244.*

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