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Professional Insurance Agents of New York State Inc.

April 2009



Special briefing for New York state legislators by the Professional Insurance Agents of New York State Inc.

Legislative positions for 2009

The Professional Insurance Agents of New York State Inc.—representing insurance agents throughout New York state. PIANY is a voluntary, membership-based trade association representing professional, independent property/casualty insurance agents. A statewide organization, PIANY serves member insurance agencies doing business in every New York community. In every city, every town and every village, we are your neighbors providing valuable p/c insurance coverage to the homes, businesses and automobiles of the citizens of New York state. PIANY members employ more than **20,000 insurance professionals**, providing insurance for more than **2,000,000 households** and **750,000 businesses, governmental units and other organizations.**

PIANY's issues protect insurance consumers. As in years past, PIANY's 2009 legislative issues serve to protect insurance consumers. Past legislative successes include:

- 1) giving property owners the security they need by **making NYPIUA permanent**;
- 2) closing technical loopholes that let insurance companies deny payment of claims by **restricting late notice-of-claim denials** for all claims except no-fault; and
- 3) working to secure **affordable, available and secure coastal property insurance** for all New Yorkers.

This session, **PIANY continues our tradition of placing the interests of our clients first.** PIANY will redouble our efforts to pursue important **consumer protection proposals** that aim to:

- correct an unintended result of the 2007 **Workers' Compensation Reform Law** that adds unnecessary costs and could discourage economic activity;
- repeal mandatory photo inspections;
- provide credit-scoring protections for commercial lines;
- reduce accident surcharges on policyholders who suffer minor automobile accidents; and

PIANY works with our federal association. PIANY works hand-in-hand with our national association, The National Association of Professional Insurance Agents, based in Washington, D.C., and represents independent professional insurance agents in all 50 states, Puerto Rico and the District of Columbia.

PIANY helps policymakers. For help on any insurance-related issue or **constituent problems**, PIANY offers legislators the resources of its professional staff—call any time for fast, accurate answers. Also, PIANY supplies legislative offices with the annual **New York State Legislative Reference Guide**—a handy guide to room numbers, district offices, committees and more.

Sincerely,

D. Scott Liebert, CIC
PIANY President

Compensation/disclosure

1. Oppose legislation or regulation to outlaw performance-based compensation for insurance agents and brokers or impose additional mandates.

• **Compensation.** Performance-based compensation earned by the state's thousands of insurance agents and brokers unjustly came under attack after wrong-doing took place at a handful of large insurance brokers. The state took appropriate action to halt these practices. Remember, these parties knowingly entered into certain highly unusual, leveraged compensation agreements rewarding illegal conduct as part of larger, anti-competitive business models. There is no basis to extend a ban on standard, performance-based compensation agreements throughout the industry. **PIANY opposes legislation or regulation that would outlaw the payment of performance-based compensation to insurance agents and brokers.**

• **Disclosure.** PIANY believes that, in New York state, existing state law, regulation and regulatory guidance already address disclosure. Charges against the mega-brokers showed violations of these existing rules, offenses that were detected and duly punished. Section 2119 of the Insurance Law and related regulations require written disclosure agreements whenever a customer pays a fee, including additional disclosure of commissions that may be earned in addition to consulting fees. Circular Letter 22 (1998) provides further regulatory guidance on disclosure and recordkeeping for broker compensation. **No additional mandates are warranted.**

Auto insurance

1. Decrease the number of premium surcharges.
2. Combat auto-insurance fraud.
3. Repeal photo inspection requirements.

• **Prohibit surcharges for minor vehicle damage.** Given today's repair costs, the most minor vehicle damage results in expensive insurance surcharges. Legislation supported by PIANY would prevent surcharges for these incidents.

New York state currently lets insurers surcharge drivers for three years, following accidents causing property damage of more than \$1,000. The current \$1,000 threshold has been in place since 1991. Since then, the cost of auto repairs has increased dramatically. Today, the slightest fender bender can exceed \$1,000. Total surcharges paid over the next three years can equal or exceed the insurance claim benefit. This is unfair to consumers. Moreover, it leads many to pay out-of-pocket, when they could legitimately collect from their insurer. It puts agents in an untenable position when clients ask what they should do. **PIANY believes accidents should not result in surcharges unless they cause at least \$2,000 in damage.** (A.1952/S.1700)

• **Combat auto insurance fraud.** PIANY proudly participates in a coalition dedicated to fighting fraud in our auto insurance system: NY FIRST. New York's competitive auto-insurance market already reflects the benefit of reforms the New York First Auto Fraud coalition has helped enact. But more can be accomplished. PIANY advocates:

1. **Extending time for fraud challenges.** Currently, insurers only get 30 days to spot a suspicious claim.
2. **Criminalizing "runners."** Fraud specialists called "runners" organize fake accidents and help run up huge medical bills.
3. **Set treatment standards.** Approved standards (like those used in New Jersey for auto-accident victims and recently enacted in New York state for workers' compensation) could reveal unnecessary or fictitious doctor visits, treatments, tests and procedures.
4. Mandate arbitration for provider disputes. Currently, arbitrated decisions on disputed medical payments aren't binding. This clogs both the arbitration and the court systems.

• **Repeal mandatory photo inspections.** PIANY considers this outdated requirement onerous and unnecessary. We support repeal of the underlying statute (Ins. Law Section 3411), which we believe has been rendered unnecessary by vastly improved ways of verifying and tracking the existence and physical condition of insured vehicles since its original enactment. (S.1039)

Consumer bills

1. Protect consumer credit data in commercial-policy transactions.
2. Stop late escrow account premium payments.
3. Restrict advertising in state agency mailings.

• **Protect the use of an individual’s credit data in commercial-lines rating.** New York state protects individual consumers when their credit data is pulled to underwrite and rate personal-insurance products. However, these same individuals lack protection if their credit is used regarding a commercial policy, as frequently happens to owners of small businesses. **PIANY believes commercial policyholders should be notified if their credit information will be accessed.** (A.5181)

• **Stop late escrow account premium payments.** Lenders often require mortgage borrowers to let the bank handle homeowners insurance payments. Unfortunately, common banking practices can delay these payments. Late payment starts a costly cascade of costly events, including cancellation notices, frantic communications, duplicate payments and even a lapse in coverage. Current law requires “timely” payment, but this requirement is unenforceable because it is not defined specifically. **PIANY supports defining “timely payment” in order to bring greater certainty to this process.** This bill has passed the Assembly. (A.167/S.3491)

• **Restrict advertising in official state mailings.** PIANY believes state agencies should not send commercial ads in official state mailings, when the advertised product or service is related closely to the agency’s regulatory authority. We believe this practice implies that the state’s official endorsement is for sale and could mislead the public. Moreover, it puts New York state small businesses that cannot afford to pay for this expensive advertising at a competitive disadvantage to large national corporations. (A.1100)

Workers’ compensation

1. Repeal onerous insurance requirements that will hurt New York state’s economy.
2. Provide compensation to brokers who serve State Insurance Fund clients.
3. Enhance policyholder protections.

• **Out-of-state insurance requirements.** New York state’s historic workers’ compensation reforms made many highly beneficial changes to the workers’ compensation system—changes that will benefit New York workers and employers for decades to come. As with any major undertaking, a few results were unforeseen. In the effort to crack down on non-New York employers operating within the state without New York coverage, the reform inadvertently swept in everyone who may visit New York in an employment-related role—people attending professional conventions, business flyers changing planes at the state’s airports, long-haul truckers traversing the Thruway or others who have no New York operations or job sites. Potential enforcement of these requirements threatens such severe consequences, that people may well avoid coming to New York state. Change is needed so these incidental contacts within the state can remain covered under their home states’ insurance policies for New York claims. **PIANY supports language permitting a return to the pre-reform rules for incidental or transient contact within the state.** This change would not affect the requirement that these employees must be covered if they make New York claims for any injury occurring in the state.

• **Compensation for brokers’ services from the State Insurance Fund.** Currently, insurance brokers whose business clients obtain workers’ compensation coverage from the New York State Insurance Fund get no compensation for their services on these clients’ behalf. This practice contrasts with the state’s other residual markets for automobile and property insurance, which do pay brokers’ commissions. **PIANY believes the time has come to change the State Insurance Fund practice of denying compensation to the insurance professionals that serve its policyholders.**

- **Enhance policyholder protections.** Currently, other types of business insurance coverage are governed by provisions of Insurance Law that confer far greater protections than apply to workers' compensation. Better protection against cancellation and nonrenewal and longer notice prior to coverage termination all would be conferred if workers' compensation were added to the type of insurance protected under Section 3426 of the Insurance Law. **Workers' Compensation should be afforded the protections offered under Section 3426 of the Insurance Law.**

Property insurance

1. Couple state-level catastrophe funding with a federal fund and tax changes.

- **Catastrophe funds.** Hurricane Katrina and the events of Sept. 11 have underscored how quickly enormous amounts of property can be destroyed. Each caused insured losses of around \$40 billion. As a result, insurance companies were forced to reassess their exposure to catastrophic loss. Losses as high as \$100 billion have been projected if a major storm hits Long Island. PIANY urges caution as New York lawmakers consider a strictly state-based catastrophe fund. Previous insurance-related funds (originally created by the Legislature in good faith) have been raided when the state budget fell short. A stand-alone New York fund, even if maintained intact, would require significant financial contributions by the state, yet could fail to provide adequate protection when put to the test. The danger to the national economy from major catastrophes requires participation by

the federal government. Congress needs to create an ultimate financial backstop with a framework for state-level participation and change federal tax policy. Only Congress can enact tax changes allowing insurers to reserve a part of their premiums for future catastrophes. **New York should consider a state-level catastrophe funding mechanism only in partnership with a pre-existing federal plan including tax changes.** (S.1017, et.al)

Labor Law reform

1. Reform Sections 240 and 241 of the New York Labor Law

- **Change Labor Law “absolute liability” to a negligence standard.** Sections 240, 241 and 241-a of the New York Labor Law impose an absolute liability standard on general contractors and property owners when workers are injured at their job sites. Absolute liability removes access to the customary legal defenses when a suit is brought. Because of this law, insurers cut back general liability coverage for the state's contractors. Most can get coverage only with exclusions precluding payments for Labor Law cases, so contractors risk bankruptcy from uninsured claims. Many contractors cannot get insurance that satisfies the terms of their construction contracts; or cannot stay in business due to high insurance costs. Increasingly, these claims also affect owners of properties where contractors are working. The state faces a loss of jobs and economic activity as the costs are factored into bids and new construction becomes uneconomical. **PIANY supports a change to substitute a negligence standard for the absolute liability imposed by current law.** (A.1895/S.4037)

For more information on any of these issues, or help in researching any insurance-related topic, just give us a call, here in Albany, at (518) 434-3111, toll-free statewide at (800) 424-4244, or e-mail govaffairs@pia.org.



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