



2020 Summer National Meeting

Workers' Compensation (C) Task Force

August 5, 2020

WebEx – 3:00-4:00 pm (Central)

Consider Adoption of its July 22 and June 2 Minutes

Draft: 7/22/20

Workers' Compensation (C) Task Force
E-Vote
July 22, 2020

The Workers' Compensation (C) Task Force of the Property and Casualty Insurance (C) Committee conducted an e-vote that concluded July 20, 2020. The following Working Group members participated: James J. Donelon, Chair (LA); Jim L. Ridling, Vice Chair, represented by Gina Hunt (AL); Lori K. Wing-Heier represented by Michael Ricker (AK); Christina Corieri represented by Tom Zuppan (AZ); Alan McClain (AR); Ricardo Lara represented by Mitra Sanandajifar (CA); Andrew N. Mais represented by George Bradner (CT); Trinidad Navarro represented by Frank Pyle (DE); Karima M. Woods represented by Angela King (DC); John F. King represented by Steve Manders (GA); Colin M. Hayashida (HI); Dean L. Cameron represented by Michele Mackenzie (ID); Vicki Schmidt represented by Heather Droge (KS); Sharon P. Clark (KY); Eric A. Cioppa (ME); Steve Kelley represented by Tammy Lohmann (MN); Chlora Lindley-Myers (MO); Barbara D. Richardson represented by Gennady Stolyarov (NV); XX represented by Carl Sornson (NJ); Russell Toal represented by Robert Doucette (NM); Mike Causey represented by Fred Fuller (NC); Jessica K. Altman represented by Michael McKenney (PA); Elizabeth Kelleher Dwyer represented by Beth Vollucci (RI); Raymond G. Farmer (SC); Larry Deiter (SD); Todd E. Kiser represented by Tracy Klausmeier (UT); Michael S. Pieciak represented by Kevin Gaffney (VT); and James A. Dodrill represented by Tanya Gillespie (WV).

1. Adopted its Interim Minutes

The Working Group conducted an e-vote to consider adoption of the *NAIC Workers' Compensation Policy and the Changing Workforce* paper, which concluded July. 22, 2020. The motion passed, with a majority of the Working Group members voting in favor of adopting the white paper. (Attachment **XX**).

Having no further business, the Workers Compensation (C) Task Force adjourned.

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Draft: 7/1/20

Workers' Compensation (C) Task Force
Conference Call
June 2, 2020

The Workers' Compensation (C) Task Force met via conference call June 2, 2020. The following Task Force members participated: James J. Donelon, Chair (LA); Jim L. Ridling, Vice Chair, represented by Gina Hunt (AL); Lori K. Wing-Heier represented by Michael Ricker (AK); Christina Corieri represented by Tom Zuppan (AZ); Alan McClain (AR); Ricardo Lara represented by Mitra Sanandajifar and Patricia Hein (CA); Andrew N. Mais represented by Qing He (CT); Trinidad Navarro represented by Frank Pyle (DE); Karima M. Woods represented by Angela King (DC); David Altmaier (FL); John F. King represented by Steve Manders (GA); Colin M. Hayashida (HI); Dean L. Cameron represented by Katie Deaver and Michele Mackenzie (ID); Robert H. Muriel represented by Reid McClintock and Erica Weyhenmeyer (IL); Vicki Schmidt represented by Heather Droge and Brenda Johnson (KS); Sharon P. Clark represented by Michael Staley (KY); Eric A. Cioppa (ME); Steve Kelley represented by Jonathan Kelly, Tammy Lohmann and Phil Vigliaturo (MN); Chlora Lindley-Myers (MO); Barbara D. Richardson represented by Gennady Stolyarov (NV); Russell Toal represented by Robert Doucette (NM); Mike Causey represented by Fred Fuller and Wilhelmina Muhaimin (NC); Glen Mulready represented by Landon Hubbard, Cuc Nguyen and Andrew Schallhorn (OK); Andrew R. Stolfi represented by Brian Fordham and TK Keen (OR); Jessica K. Altman represented by Michael McKenney (PA); Elizabeth Kelleher Dwyer represented by Beth Vollucci (RI); Raymond G. Farmer represented by Will Davis (SC); Larry Deiter (SD); Todd E. Kiser represented by Tracy Klausmeier (UT); Michael S. Pieciak represented by Kevin Gaffney (VT); and James A. Dodrill (WV). Also participating were: Robert Wake (ME); Bob Lutton (MI); Tom Green (NE); David Dahl (OR); Mike Shinnick (TN); Marianne Baker and Nicole Elliott (TX); and Millcent M. Landrum (VA).

1. Adopted its 2019 Fall National Meeting Minutes

Ms. Droge made a motion, seconded by Commissioner Dodrill, to adopt the Task Force's Dec. 9, 2019, minutes (*see NAIC Proceedings – Fall 2019, Workers' Compensation (C) Task Force*). The motion passed unanimously.

2. Considered Adoption of the *Workers' Compensation Policy and the Changing Workforce White Paper*

Commissioner Donelon said the NAIC/IAIABC Joint (C) Working Group produced a whitepaper, *Workers' Compensation Policy and the Changing Workforce*. This white paper addresses the changing relationships with work, a discussion regarding the determination of employee status, and alternative coverage models. The white paper was exposed for comments, and comments were received in January 2020 and incorporated into the white paper.

Commissioner Altmaier made a motion, seconded by Director Lindley-Myers, to adopt the white paper. Mr. Stolyarov asked that the adopted version of the white paper incorporate some changes. The first change is to correct the formatting in the chart in Appendix A, as the letter "e" in the word "state" and the letter "n" in the word "presumption" spill over into the second line. Mr. Stolyarov asked that the word "once" in the "NV" section, page 51, bullet 3 be changed to read "one." Finally, he said item 5 in the same section is missing punctuation at the end of the preface and the sub items. NAIC staff agreed to make these changes. Mr. Stolyarov made a motion, seconded by Mr. Kelly, to make these changes. The motion passed unanimously.

Ms. Sanandajifar said she had some formatting changes she would like to suggest making. The first change was under the "State Employment Tests" section, under the "Hybrid" subsection. The word "weights" should be changed to "weighs." The next change suggested was to change the word "cap" to "cab" in the last paragraph of the "State Employment Tests" section. NAIC staff agreed to make these changes.

Ms. Sanandajifar said the last bullet in the "Marketplace Contractors" section should not be a bullet point, but it should lie outside of the bulleted section. The bullet point will be removed from the sentence "Common exclusions include...organizations, and Indian tribes." NAIC staff agreed to make these changes.

Ms. Sanandajifar said there was a grammatical error in the "Black Car Fund" section. The sentence currently reads, "This is could be... 'employee status.'" This sentence should read, "This could be... 'employee status.'" The footnote in this same section should be changed to reflect the correct source, which is, "The current surcharge is 2.5%, <https://www.nybcf.org/faqs>." NAIC staff agreed to make these changes.

Ms. Sanandajifar said under the “Policy Questions and Considerations” section, in the “Exclusive remedy” subsection, the word “business,” should be replaced with the word “businesses.” NAIC staff agreed to make these changes. Ms. Sanandajifar said she was unable to check all of the links in the footnotes. NAIC staff will check the links in the footnotes ensure that they are all referencing the correct information.

Ms. Sanandajifar made a motion, seconded by Commissioner Altmaier, to amend the white paper with the changes she suggested. The motion passed unanimously.

Commissioner McClain made a motion, seconded by Commissioner Altmaier, to adopt the amended white paper. The motion passed unanimously.

Commissioner Donelon asked for a motion for the Task Force to consider adoption of the white paper by e-vote once the changes are made to the document. Mr. Doucette made a motion, seconded by Commissioner Dodrill, to reconsider adoption of the white paper by evote once changes were made. The motion passed.

3. Discussed Possible Collection of Workers’ Compensation Data Related to COVID-19

Commissioner Donelon said the NAIC is currently collecting information from insurers regarding business interruption coverage due to the COVID-10 pandemic. The Property and Casualty Insurance (C) Committee formed a drafting group to draft the business interruption data call. The drafting group is currently discussing the need to consider collection of some type of workers’ compensation data. The financial regulators have raised the possibility of collecting information regarding exposures to address possible solvency needs for certain professions, such as health care workers and first responders like law enforcement.

Bruce Jenson (NAIC) said the drafting group held some discussion on its last call regarding the possible collection of workers’ compensation data. He said the drafting group identified the areas where some additional information might provide some valuable information. One of these areas includes exposure for workers that are classified as essential workers that may have COVID-19 claims. Mr. Jenson said focusing on essential workers, such as first responders and health care workers would be the most important, as this is where most of the activity is being seen regarding presumptions. The drafting group has suggested that getting information from insurers writing these “essential workers” might prove helpful to state insurance regulators. Mr. Jenson suggested finding out what percentage of business an insurer writes in these areas, as well as the percentage of employees the insurer provides workers’ compensation coverage to that fall into those categories. The idea would be to try to identify individual insurers that may have a concentration in that market. Mr. Jenson said in speaking to some of the state insurance regulators, it was indicated that some insurers focus on writing workers’ compensation for market segments such as health care workers and first responders to see how heavy that concentration is so that state insurance regulators can monitor those insurers more closely from a solvency perspective. The second item the drafting group discussed obtaining for the workers’ compensation line of business is claims data. State insurance regulators expressed the desire to know the number of COVID-19 claims being received, the dollar amounts of those claims, the number of claims being approved, and the number of claims being denied. State insurance regulators also expressed the desire to collect this information by “essential worker” status. Mr. Jenson said some of the state insurance regulators indicated that they have concerns with the possibility of premium declines due to payroll decreases across the country. Some of this information will come to light with the P/C Quarterly Statement filings; however, state insurance regulators are suggesting we may want to be more proactive in this regard.

Mr. McKenney said the COVID-19 pandemic is ongoing, and there is a possibility that there will be an increase in infection rates in the fall. He asked if the data collection drafting group was looking to conduct a data call in the immediate future and then do another data call at a later date. Mr. Jenson said the data call would include a one-time data call to identify the insurers that may have a concentration of exposure to “essential workers.” The claims portion of the data call would be an ongoing data call that would be refreshed on a monthly basis so the development of claims over time can be tracked.

In addition to collecting claims data on an ongoing basis, Mr. Stolyarov said the exposure data should also be tracked on an ongoing basis. He said this should be done as long as the pandemic exists, and there will likely be a socioeconomic impact. Even if a second wave of the pandemic arises, there could be different implications as to any payroll reduction. One reason might be a lack of mandatory lockdown during a subsequent wave of the pandemic, if for instance there are improved medical measures to keep the virus under control, or if it is recognized that lockdowns have largely failed as a strategy. In either of these situations, payroll reductions may be less pronounced than they were during the first wave of the pandemic. Mr. Stolyarov

said we do not know what prolonged economic impact would have arisen from the first wave of the pandemic, such as businesses being below capacity or some businesses never reopening. It is important to collect monthly data because the data has varied greatly by month up until this point.

Mr. Stolyarov said while working with the Governor's office to estimate premium tax reductions, using unemployment insurance claims data was the only data that was granular enough to use for his estimations. He said this data allowed him to create a rough proxy for an unemployment rate to be used on a weekly basis. Mr. Stolyarov said it would be ideal to have the data regarding payroll or other insured exposures directly from the insurer. Mr. McKenney asked Mr. Stolyarov if he was concerned that the decrease in payroll may not be known until after the policy expires and the audit is completed. Mr. Stolyarov said there could be preliminary estimates or adjustments. Nevada has encouraged self-audits or virtual audits and to make the adjustments sooner rather than later, with the understanding that there would be a final verification process at a later date. In the meantime, Mr. Stolyarov said he believes that a lot of insurers have adjusted their adjustments of payroll in recognition of the pandemic and its impact. He said there could be refinements to those figures in the course of subsequent audits, but if it is just random variation that is driving those refinements, they should roughly cancel one another. The only way this would not be the case would be if there was some systemic factor that almost everyone, including the insurers and the employers miss in providing and accepting estimates of payroll.

Mr. Kelly said he understands the desire to find the concentration of "essential workers" and the claims data. He asked if there would be anything in future data calls that would look at health care workers' compensation data. Mr. Kelly said one of the major issues being faced in Minnesota is that health care workers are self-insured employers and a presumption for these workers and first responders was put into legislation in Minnesota.

Mr. Jenson said the drafting group did not focus on this issue; however, he does believe it was brought up in conversation. He said the challenge is that the data call has to be limited to entities that file data with the NAIC. It would be difficult for the NAIC to collect data from entities that do not file financial statements with the NAIC.

Mr. Doucette said he agreed that it would be difficult to collect data from self-insureds. He said New Mexico's workers' compensation office could obtain data from self-insureds. He said he did not know if this was the case for other states. Mr. Wake said Maine would be able to collect this information, and most health care workers in Maine are self-insured. Mr. McKenney agreed and said police, fireman and municipalities are largely self-insured in Pennsylvania as well. Mr. Kelly said Minnesota has a workers' compensation reinsurance pool that is a quasi-private/public entity with a board that is overseen by the Minnesota Labor and Industry Commissioner. He said the Department of Commerce provides actuarial assistance. Minnesota has a self-insured security fund that only steps in to pay claims in the event of a bankruptcy. Mr. Kelly said they are finding that the U.S. Department of the Treasury (Treasury Department) guidance allows for the CARES) Act dollars to pay for government frontline workers, but they are still looking for backstops for the private self-insureds.

Mr. McKenney said he could see where a solvency group would not be as concerned with the self-insured companies, but he believes this is where the various state special funds would come into play if a self-insured was not able to cover its exposure. He said there is a desire to capture data for self-insureds' exposures. Mr. Kelly said they have entities that are health insurers, health care workers, and hospitals, so they are both a regulated entity and an insurance company, but they also have the health care system where they employ lots of frontline health care workers. He said that while they have a program, the retention limit varies from \$500,000 to \$5,000,000 and a lot of these costs cover COVID-19. This leaves only two weeks across the entire frontline workforce, and they are never going to hit that limit to trigger that program. This is front and center for Minnesota right now.

Mr. Dahl said it was his understanding that many self-insureds a lot of times set their contributions based on a reserve review, and they are not actually priced based on exposure. In Pennsylvania, Mr. McKenney said they have large group municipalities and self-insured trusts that largely deal with first responders, and they are not insurance companies; however, they get an exemption in Pennsylvania law. He said there might be some state-by-state differences in the way this is handled.

4. Discussed Key Topics and Future Work Product Regarding Workers' Compensation Issues Related to COVID-19

Commissioner Donelon said COVID-19 has raised several issues regarding workers' compensation. Some of the issues include presumptions for certain workers, possible premium increases due to presumptions, possible solvency issues for insurers that

write niche businesses, and possible economic effects due to the effects of COVID-19. Commissioner Donelon asked the Task Force members if they had any input regarding initiatives or future work products they might want to consider.

No Task Force members had topics they want to discuss at this time. Commissioner Donelon asked for a motion to invoke the help of the NAIC/IAIABC Joint (C) Working Group to help with possible work products concerning COVID-19 in the future. Mr. Doucette made a motion, seconded by Ms. Lohman. The motion passed.

Having no further business, the Workers' Compensation (C) Task Force adjourned.

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Hear a Presentation Regarding Workers' Compensation Treatment Guidelines and Formularies

**Hear a Presentation Regarding the
Handling of Issues Related to COVID-19
& NCCIs Atlas Initiative**

Any Other Matters