



Faist Government Affairs Group, LLC

COUNCIL OF INSURANCE BROKERS OF GREATER NEW YORK (CIB)

2010 LEGISLATIVE/REGULATORY ISSUES

(1) Broker Compensation Disclosure

On February 10, 2010, after more than a two-year odyssey, the New York State Insurance Department (NYSID) promulgated Final Regulation No. 194 (11 NYCRR 30) entitled “Producer Compensation Transparency” to require mandatory disclosure of the role of brokers and agents in any insurance transactions, and upon request, full disclosure of any and all compensation arrangements, including fixed commissions and contingent or performance-based compensation, placement fees or profit sharing arrangements paid by insurance carriers, together with an estimate of any and all such compensation.

http://www.ins.state.ny.us/r_finala/2010/rf194txt.pdf

http://www.ins.state.ny.us/r_finala/2010/rf194ris.htm

Regulation 194 takes effect on January 1, 2011.

CIB filed numerous letters of concern with the Department over the past two years, outlining problems with the various iterations of Drafts of Reg. 194, and actively participated in Departmental work groups to discuss the same, raising valid arguments:

* That existing laws, regulations and Circular Letters already require disclosure of broker compensation agreements in certain enumerated circumstances and that written disclosures must be made whenever a client agrees to pay a consulting fee to a broker, including disclosing that commissions may be earned in addition to such fee (see NY Ins. Law §2119 and Circular Letter 22 (1998)).

* That it is the practice of insurance producers to seek the best coverage and most competitive offers for their clients. While being the ethical approach, it is necessary to remain professionally viable in the highly competitive insurance marketplace.

* That disclosure of commissions earned by a specific broker or agent would not provide an insurance consumer with any valuable information, since they are included in the filed premium rates quoted that do not change. Moreover, disclosure of actual compensation rates to consumers may invite negotiation of commissions between insurance producers and consumers in violation of the anti-rebating law (see NY Ins. Law §2324).

CIB also worked on a parallel course with a broad “all-industry” coalition of stakeholders across all major lines of insurance (e.g., property/casualty, life and accident & health) to express valid concerns therewith.

CIB has also held ongoing discussions with the Senate and Assembly Insurance Committees, to seek a legislative remedy that may supersede Reg. 194 by statute.

Throughout all these discussions, CIB has maintained and enunciated its strongly held belief that adequate statutory, regulatory and administrative safeguards already exist that require transparency and disclosure of compensation arrangements to insurance consumers, that additional mandates are unnecessary, and that there have been no consumer complaints regarding producer compensation.

After much external and internal discussions and debate, the CIB Board of Directors convened in emergency session to decide whether to bring a Special Proceeding under Article 78 of the NY Civil Practice Law and Rules to challenge the legality of Reg. 194. On April 8, 2010, the CIB Board voted unanimously to hire litigation counsel to commence an Article 78 Proceeding to overturn Reg. 194 to protect its members’ professionalism and livelihood.

(2) Coastal Insurance

CIB has actively engaged and supported past coastal insurance reforms, such as making the New York Property Insurance Underwriting Association (NYPIUA) permanent, codifying the Coastal Market Assistance Program (CMAP), promoting homeowners (HO) wrap-around policies, and making the advisory panel on HO insurance permanent.

However, additional measures are necessary to continue to make coverage in the coastal areas of the State more available and affordable on Long Island, New York City & Westchester County. Cancellations and non-renewals of policies on homes and businesses within a certain distance from the water continue to occur.

CIB believes that the Legislature or the New York State Insurance Department (NYSID) should take the following actions:

1. Create standardized, uniform windstorm triggers, rather than uniform percentage windstorm deductibles, within homeowners policy forms [see A.4847 (Weisenberg)];
2. Provide financial incentives to policyholders, such as premium discounts, to invest in loss mitigation techniques (e.g., installing hurricane shutters or otherwise retrofitting their properties against high wind damage) [see S.2376 (Padavan)];

3. Mandate better enforcement of state and local building codes in coastal zones to foster more storm-resistant structures [see A.6695 (Thiele) / S.3145 (LaValle); A.6344 (Gordon) / S.4838 (Aubertine)];

(3) Automobile Fraud

Auto fraud costs insurance consumers billions of dollars a year in higher premiums, even in the face of crackdowns on organized insurance fraud rings by the New York State Insurance Department (NYSID), the state Attorney General and local District Attorneys [see A.2964 (Barclay)]. Additional fraud-fighting legislation to aid law enforcement efforts is necessary, such as making it a felony to hire a “runner” [see S.1335 (Skelos)], to provide additional funds to law enforcement agencies and prosecutors for the investigation and pursuit of no-fault fraud, and to establish a task force on automobile insurance fraud [see S.7091 (Klein)].

Other auto fraud issues of concern to CIB include:

1. Requiring mandatory arbitration as the initial remedy for dispute resolution for assignees [see A.8798 (Morelle)].
2. Permitting retroactive cancellation of auto policies procured for fraudulent purposes (e.g., adding no-fault benefits to motor vehicle accident indemnification coverage).
3. Denying coverage where an auto policy is procured with a bad check (but with an opportunity to cure).

CIB continues to strongly oppose any legislative attempts to roll back or weaken the current fraud-fighting provisions of no-fault insurance Regulation No. 68 (11 NYCRR 65).

(4) Regulation of SIF

CIB believes that certain practices of the State Insurance Fund (SIF) are anti-competitive and detrimental to consumers, such as the requirement of 30 days prior notice to cancel a policy. There is no such mandate in the private workers’ compensation insurance market.

SIF also requires that policies cancelled at the insured’s request or for nonpayment of premium, be cancelled on a short-rate basis, essentially assessing a penalty charge. Private carriers canceling for nonpayment of premium do so on a pro rata basis (charging only for the time the policy was in force).

Moreover, SIF charges a \$10 per installment payment fee. Such fees are excessive and harm small businesses with the least ability to pay for their workers’ comp coverage. In view of its huge market share, SIF should be fully regulated by the New York State Insurance Department (NYSID) [see S.1662 (LaValle); A.8399 (Morelle) / S.4463 (Breslin)].

(5) Scaffolding Law

Changes to New York Labor Law §240 & §241, the so-called “scaffolding law,” to substitute a negligence standard for the existing absolute liability standard, are long overdue. Strict liability damage awards against property owners and general contractors regardless of fault, without considering the negligent culpability of the injured worker, continue to plague the construction industry [see A.2855 (Schimminger) / S.4899 (Aubertine); A.3047 (Kolb)].

Such an absolute liability standard for on-site job injuries to workers is antiquated and obsolete and predates the workers’ compensation law, which was designed as the sole remedy for job-related injuries by virtue of guaranteed recoveries to injured workers in forbearance of tort litigation. Unfortunately, Section 240 & 241 litigation continues to expand, marking New York as a litigious, business-unfriendly state and resulting in unaffordable, unavailable or severely restricted liability coverage for property owners and general contractors [see A.1895 (Morelle)].

Without changes to the draconian scaffolding law contained in §240 & §241, true reform relating to worker injuries on construction sites will not be realized.

(6) Consumer Protections

Because CIB member brokers are independent businesses, they have no corporate-line conflicts to divert them from their #1 priority: consumer protection and satisfaction.

CIB supports the following consumer protection initiatives:

1. Raising the 3-year policy premium surcharge limit for minor property damage from \$1,000 to \$2,000 [see A.1952 (Morelle) / S.1700 (Breslin)], or to \$3,000 [see Part J, S.6609-A (Budget)]. On today’s high priced automobiles, even the most minor fender bender routinely exceeds the \$1,000 figure, particularly if the air bag deploys.
2. Preventing carriers from issuing arbitrary cancellation/non-renewals of workers’ compensation coverage, akin to the protections afforded to insureds for commercial lines coverage under NYIL §3426 [see A.4691 (Morelle)].

(7) Self-Storage Insurance

Last year, CIB successfully worked to obtain a Governor’s Veto of a bill to authorize of the issuance of limited licenses to employees of self-service storage facilities to sell personal effects content insurance. Governor Paterson cited parts of CIB’s filed Letter-in-Opposition in his Veto Message No. 27, disapproving the bill. Unfortunately, this bill has been reintroduced [see S.7118 (Breslin)].

(8) Excess Line Insurance

CIB supports legislation to eliminate the “diligent effort procedure” requiring excess line brokers to obtain three declinations of coverage from authorized insurers before obtaining coverage for certain hard-to-place commercial risks in the excess line market [see S.7219 (Breslin)].

Doc. CIB – 2010 Legislative Positions

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