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Workers’ Compensation (C) Task Force
New York, New York
August 5, 2019

The Workers’ Compensation (C) Task Force met in New York, NY, Aug. 5, 2019. The following Task Force members participated: John G. Franchini, Chair, represented by Robert Doucette (NM); Lori K. Wing-Heier, Vice Chair represented by Joanne Bennett (AK); Allen W. Kerr represented by William Lacy (AR); Keith Schraad represented by Erin Klug (AZ); Ricardo Lara represented by Ken Allen (CA); Andrew N. Mais represented by George Bradner (CT); Stephen C. Taylor represented by David Christhilf (DC); Trinidad Navarro represented by Fleur McKendell (DE); David Altmaier represented by Sandra Starnes (FL); John F. King represented by Steve Manders (GA); Colin M. Hayashida represented by Paul Yuen (HI); Doug Ommen represented by Travis Grassel (IA); Dean L. Cameron represented by Weston Trexler (ID); Robert H. Muriel represented by Judy Mottar (IL); Vicki Schmidt represented by Justin McFarland (KS); Nancy G. Atkins represented by Patrick O’Connor (KY); James J. Donelon represented by Warren Byrd and Rich Piazza (LA); Eric A. Cioppa represented by Sandra Darby (ME); Steve Kelley represented by Tammy Lohmann (MN); Chlora Lindley-Myers and Angela Nelson (MO); Mike Causey represented by Fred Fuller (NC); Marlene Caride represented by Mark McGill (NJ); Glen Mulready represented by Cuc Nguyen (OK); Andrew Stolfi represented by TK Keen (OR); Jessica Altman represented by Michael McKenney (PA); Elizabeth Kelleher Dwyer represented by Beth Vollucci (RI); Raymond G. Farmer represented by Joe Cregan (SC); Larry Deiter (SD); Carter Lawrence represented by Lorrie Brouse and Brian Hoffmeister (TN); Todd E. Kiser represented by Tracy Klausmeier (UT); Michael S. Pieciak represented by Rosemary Raszka (VT); and James A. Dodrill (WV). Also participating was: Peg Brown (CO).

1. Adopted its Spring National Meeting Minutes

Mr. Byrd made a motion, seconded by Mr. Trexler, to adopt the Task Force’s April 8 minutes (see NAIC Proceedings – Spring 2019, Workers’ Compensation (C) Task Force). The motion passed unanimously.

2. Adopted the NAIC/IAIABC Joint (C) Working Group Report

Jennifer Wolf (International Association of Industrial Accident Boards and Commissions—IAIABC) said she wants to stimulate discussion regarding an IAIABC white paper at the Task Force level, as she is seeking feedback from Task Force members. She said the goal of the white paper is to address how work is changing, especially with respect to how individuals are connecting to work. Ms. Wolf said the changing work environment is putting stress on the legal classification system when determining whether an individual worker is an employee or an independent contractor. This will raise questions regarding how the individual receives coverage for a work injury, illness or fatality.

Ms. Wolf said the white paper is broken down into three sections. The first section discusses changes in the labor force and changes with the ways in which individuals are connecting to work. She said this part of the paper provides a context for these contemporary policy discussions. Ms. Wolf said some comments were received regarding the reason for the changing demographics of the labor force and the changing types of work. She said it is important to include this information because it provides a context and demonstrates how the environment has changed over the last century. This is also important when evaluating policy changes or innovations in the future. Ms. Wolf said the discussion of wage replacement for second, or multiple, jobs is important. She said many people talk about platform work as being supplemental benefits, and many states require that if there is an injury at a primary workplace, it is required the supplemental benefits be paid. Ms. Wolf said this is not included in the current draft of the white paper. She asked the Task Force if this should be included and if so, where it should be included. Ms. Nelson said she is unsure where this should be added, but she believes it is a valuable topic to cover in this white paper. Ms. Wolf said she would include this in the white paper.

Ms. Wolf asked the Task Force if there are any other changes being seen in the workforce that the Task Force believes are important to note in the first part of the whitepaper. Mr. Byrd suggested adding more regarding employees who work from their home and discussing issues such as how workers’ compensation covers injuries at home. Mr. Bradner said another issue worth discussing is the age at which people are entering the workplace. Ms. Nelson said it would also be worthwhile to discuss how automation is changing the workforce. She agreed to review the first part of the paper and provide written feedback.

Ms. Wolf said the second section of the white paper focuses on employment status. She said it looks at the legal landscape of how workers are classified under federal and state statutes—whether they are an employee or an independent contractor. The two parts to the second section include the federal landscape, as well as the state landscape. Ms. Wolf said one of the key takeaways is that the complexity in the legal classification system has created an uncertain business climate. She said there
have been a lot of new state legislative efforts to confirm independent contractor status for platform workers. In 2016-2017 and 2018, there was the development of marketplace contractor designations in eight states. Additionally, Arkansas adopted a new 20-point independent contractor test. Ms. Wolf said she believes there should be some highlights regarding some state case law in this section. Mr. Byrd volunteered his staff to review the second section.

Ms. Wolf said an issue raised in the comments received on the white paper was that when it comes to the funding of state agencies, many workers’ compensation administrative agencies are funded by premium payroll taxes. She said if there is a decrease in premium because fewer workers are covered by workers’ compensation, it will affect state agency budgets. Ms. Wolf asked the Task Force if they think this is a topic that is important to mention in the white paper. Ms. Nelson said this is something noted in Missouri when there are huge changes in terms of payroll bases and different legislative proposals. She said it is important to note this in the white paper. She said she does not know if there is a large impact currently but said it may be worth noting for further observation. Mr. Yuen said he also believes it is important.

Ms. Wolf said there have been suggestions from academics and think tanks regarding developing additional classifications for workers. There have been proposals to add a dependent contractor. Canada has this type of classification. She asked the Task Force if the white paper should offer these items as considerations or just discuss the current landscape as it is today. Ms. Klug said she believes it would be interesting to list these considerations as a reference. Ms. Wolf asked for volunteers to review this section of the white paper, as well as to discuss the current legal classification system and the subtilty nuance involved.

Mr. McKenney asked if it would be worthwhile to mention states where the independent contractors can opt in to the workers’ compensation system. Ms. Wolf said she believes this would be worthwhile to mention. She said she would conduct a survey and obtain that legal landscape.

Ms. Wolf said the third section of the whitepaper addresses alternative coverage models. This section discusses the alternative coverage solutions. These coverage solutions include occupational coverage benefits to those workers who might not be considered under a traditional workers’ compensation system. Ms. Wolf said the section outlines some models that have been reviewed across the country. She said the section also discusses some other considerations and policy questions that policymakers and regulators need to think about when examining these alternative coverage models.

Ms. Wolf said the third section describes some of the alternative models that are currently in place, allowing independent contractors to opt-in to workers’ compensation, such as the Black Car Fund based in New York, the extension of occupational accident insurance policies, disability insurance policies and portable benefits. She said these are the key models that are currentlybeing reviewed. She asked the Task Force if the descriptions of these models needed to be expanded. Ms. Klug said she believes the occupational hazard coverage information would be interesting to include in the white paper. She said she would reread this section and provide comments.

Ms. Wolf said the final part of the paper was included to stimulate thought and discussion regarding the questions that need to be answered when considering these new solutions. She said this is the most important section going forward, as the first two sections offer context and the current situation. The final section addresses what the future landscape will look like. She asked the Task Force to take some time to consider what additional information regarding these models would be helpful and what policy questions Task Force members would like to see raised. Ms. Nelson said Ms. Wolf might consider adding some information regarding how health care reform may affect workers’ compensation insurance. Mr. McKenney said the history of workers’ compensation insurance was to keep employees from being able to sue employers. He suggested adding something that speaks to the fact that in any independent contractor relationship, there is no one to sue for workplace injuries.

Ms. Wolf said the appendix included provides charts regarding employee/independent contractor definitions by state. She said this chart was compiled in the summer of 2017, so there may be updates for individual states. She asked Task Force members to review the information regarding their states and provide updates to NAIC staff.

Ms. Nelson made a motion, seconded by Mr. Byrd, to adopt the Working Group report. The motion passed unanimously.

3. **Heard a Presentation from Cake Insure on the Use of Digital Direct Distribution for Workers’ Compensation Insurance for Small Businesses**

Robert Norris (Cake Insure) gave an overview of Cake Insure. He said Cake Insure is a wholly owned subsidiary of Pinnacol Assurance, which is the workers’ compensation state fund in Colorado. He said Cake Insurance sells and services policies, but also provides software to other insurers. Cake was formed in early 2017 in response to observations that the workers’ compensation market was starting to move away from independent agents and toward direct distribution models.
Mr. Norris said it is Cake Insure’s belief that the commonality across all of the digital distributors is that they are responding to changing expectations of small business owners. They want the experience of buying an insurance policy to be the same as buying a roll of paper towels on Amazon. Small business owners want a fast, easy digital experience. It is not that small business owners do not want human client care or an agent; they just want the journey to start digitally, and then the small business owners will let the insurer know if they need help from a customer service person.

Mr. Norris said price is important, as small business owners want to know they are getting a low price and want to make sure there is some transparency in the process. Mr. Norris said there are more and more entrants into the digital distribution space on a monthly basis.

Mr. Norris said from an insurer perspective, Cake Insure believes it is important not to just provide a customer experience on par with the other digital insurance providers, but also to ensure that they did not get an advantage in terms of their ability to understand and price risk more precisely. Mr. Norris said there are a couple of ways that there is a potential for that to happen. If insurance is being distributed digitally, you may have access to different sources of data then you would typically see on an Accord form. If those data elements are predictive in terms of losses, that might allow one insurer to file rates that are inclusive of those insights.

Mr. Norris said the biggest challenge, especially for a small business, is classifying risk appropriately. Whoever can classify high risks more appropriately is going to have an advantage in ultimately pricing that risk. Combined with paperless efficiencies, you create a potential for insurers to have cost efficiency they can pass off to the consumer in the form of lower prices. From Pinnacol’s perspective, they want to be sure they are on par with every other insurer out there as they respond to the digital disruption of the insurance industry.

Mr. Norris said in 2017, Cake Insure confronted some specific questions. The first question is that in a digital world, how would they would remain a carrier of choice. Secondly, as the world is changing so rapidly, how can Cake Insure innovate rapidly to keep up. The insurance industry is not known for moving quickly. Mr. Norris said no industry is immune to digital disruption. Mr. Norris said small or mid-size insurers are limited by statutory constraints regarding where they operate and what lines of insurance they can provide. He said we need to be answering the questions regarding the implications of digital distribution on those constraints.

Mr. Norris said the first issue Cake Insure solved was the issue of speed. He said it is no surprise that bureaucracies move slowly, and corporate bureaucracy does not necessarily support innovation. Cake Insure decided that the best way to provide experience on par with what startups are providing was to create their own startup. Cake Insure used all of the things that work well with a startup.

Mr. Norris said Cake Insure calls itself a managing general agent (MGA) even though it does not meet the statutory definition of an MGA. Cake Insure’s key insight regarding innovating quickly was to take a holistic approach, realizing this was not just an information technology (IT) problem but a marketing program, a customer service problem, an agent problem and an operations problem. Cake Insure worked with all these areas together to work closely with a team of people who were schooled in human-centered design. Mr. Norris said the result has been successful.

Mr. Norris said through the process, Pinnacol was able to determine what needed to be done to be successful as an agent. Pinnacol is an agent-focused insurer, and the goal was not to compete with agents but rather to say there is a portion of the market where independent agents have told Pinnacol that they struggle to serve them cost-effectively.

Mr. Norris said a business can be quoted and priced a policy in three to five minutes. He said Cake Insure dramatically simplifies the application process and the way they ask questions. Cake Insure does not ask businesses to choose a classification code from a list. Instead, the Cake Insure platform asks the business to describe their business in plain English. Using machine learning, the platform chooses the correct classification code with a high degree of accuracy.

The Cake Insure platform is married with omni channel human client care. This simply means that while a business is trying to buy a policy, Cake Insure is able to get to a licensed property/casualty (P/C) producer who has been trained as an underwriter. These producers are available during the purchasing process if needed via chat, email, phone, etc.

Mr. Norris said the Cake Insure platform includes electronic signatures. The company has not eliminated all paper, as the law requires insurers to use paper for things such as cancellation notices. Cake Insure’s platform includes a chatbot, which is not used a great deal. A customer can also text the word “cert” to Cake Insure and obtain a certificate of insurance immediately.

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Mr. Norris said the next challenge Cake Insure is facing is that the shift from independent agent distribution to the direct distribution channel is not occurring as rapidly as many analysts have predicted. Insurers that focus on independent agents, as well as different types of independent agents, such as alternative channels, are now starting to provide a good digital experience to their customers. Cake Insure believes it is important from an insurer perspective to expand the Cake Insure platform to agents. Mr. Norris said Cake Insure is going to expand their platform to agents. This will provide a better experience for agents.

Mr. Norris said the distribution channels in the workers’ compensation arena are getting more complicated. Cake Insure believes in allowing agents for the smallest customers to be able to refer those customers to Cake Insure and still be compensated. Cake Insure believes it needs to create an agent service center, which involves a co-servicing relationship between the agent and the insurer on top of this digital platform. Cake Insure is looking for ways to interact with the new distribution channels that are emerging in the digital front.

Mr. Norris said companies with similar platforms exist across the U.S. He said although Pinnacol is focused on workers’ compensation insurance in Colorado, it has an obligation to keep its costs as low as possible. This type of innovation is expensive, and one-way Pinnacol can keep costs low for Colorado policyholders is to lower its net cost of innovation by licensing some of its innovations to other insurers.

Mr. Norris said there are two states in the country right now that have signed deals with Cake Insure that allows them to provide the same thing Cake Insure is providing in Colorado. These benefits naturally flow back to Colorado policyholders to help recover part of their investment in this innovation.

Mr. Byrd said most workers’ compensation policies have a provision for post-policy audit. He asked if Pinnacol provides this service and if it had revealed any misclassifications. Mr. Norris said Pinnacol has the same audit process for Cake Insure policies that it would for any other policies; however, it has developed a digital audit model that it refers to as a periodic check in process that is now making the audit process much easier for customers. He said regarding the specific classification and pricing, the accuracy rates have increased relative to the traditional model. The reason for this is that for very small customers, underwriters do not have enough time to spend on them to always do it right.

Ms. Klug said the most frequently appealed issue on workers’ compensation policies in Arizona is classification code. She said in their experience of going through the appeals, there are some classification codes that are rather general or vague, and there are others that are very nuanced. Ms. Klug asked about the artificial intelligence (AI) used on the applicant’s general description of his or her business. She asked if Mr. Norris is able to explain how the AI works and the testing that is used. Mr. Norris said even with a good AI algorithm, Cake Insure knows there needs to be follow-up questions. He said, for example, if someone says he or she is a landscaper, Cake Insure knows there is a good chance that in the winter, the landscaper is doing snow plowing, so Cake Insure has follow-up questions. Mr. Norris said Cake Insure additionally manually reviews every single policy it writes. He said the key point here is not to remove human judgment from that process. The key is to push it back, so the human is not causing a small business owner to have to wait for its policy.

Ms. Klug asked if the manual review is happening simultaneously to the AI review, or once the policy is issued, then a human is looking at the classification code assignments. Mr. Norris said this was the case. Ms. Klug asked if Cake Insure had to adjust the automated classification codes. Mr. Norris said adjustments were only made a small percentage of the time. Ms. Klug asked if Cake Insure was also at times in the audit process finding classification code errors. Mr. Norris said “yes” and they can be due to changes in business operations.

4. Discussed Other Matters

Mr. Doucette said there is a copy of the National Council of Insurance Legislators’ (NCOIL) draft Workers’ Compensation Drug Formulary Act as a reference, as well as comments from Arkansas. He said the Task Force will be discussing this draft model act during or prior to the Fall National Meeting. He asked members of the Task Force to review the model.

David Kodama (American Property Casualty Insurance Association—AIPCA) asked if the white paper regarding the changing workforce will be distributed for comment prior to publication. Mr. Doucette said interested parties would have time to comment.

Adam Orrs (Columbia Care) said his organization is a cannabis company that specializes in the production and distribution of pharmaceutical-quality cannabis products. He said Columbia Care uses delivery formats one would see at any single pharmacy. Mr. Orrs said New York is one of the 14 states where it operates. He said a licensed pharmacist greets the customer, and a pharmacy technologist fills the prescription with a pharmaceutical-quality product. Mr. Orrs acknowledged and thanked many of the state insurance regulators attending the meeting that have recognized that medical cannabis is a needed and fruitful
treatment option for those who have accidents in the workplace. He said Columbia Care would like to continue to engage with the Task Force following the meeting, or at the Fall National Meeting, to figure out how it can find some way to bring new states online and to help standardize the treatment options, formulary options, coding, etc. that is lacking even in some of the states that have taken this initial step.

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