NATIONAL COUNCIL OF INSURANCE LEGISLATORS
WORKERS' COMPENSATION INSURANCE COMMITTEE
JERSEY CITY, NEW JERSEY
JULY 15, 2022
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Workers' Compensation Insurance Committee met at the Hyatt Regency in Jersey City, New Jersey on Friday, July 15, 2022 at 9:00 a.m.

Senator Bob Hackett of Ohio, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert (AR)
Rep. Matt Lehman (IN)
Rep. Joe Fischer (KY)
Rep. Rachel Roberts (KY)
Rep. Bart Rowland (KY)
Rep. Edmond Jordan (LA)
Rep. Hank Zuber (MS)
Sen. Jerry Klein (ND)
Rep. Wendi Thomas (PA)
Rep. Lacey Hull (TX)
Rep. Tom Oliverson, M.D. (TX)
Del. Steve Westfall (WV)

Other legislators present were:

Asm. Mike Gipson (CA)
Asm. Tim Grayson (CA)
Rep. Stephen Meskers (CT)
Rep. Tammy Nuccio (CT)
Rep. Kerry Wood (CT)
Rep. Rod Furniss (ID)
Rep. Michael Sarge Pollack (KY)
Rep. Brenda Carter (MI)
Rep. Kevin Ford (MS)
Sen. Mike McLendon (MS)
Sen. Nellie Pou (NJ)
Rep. Brian Lampton (OH)
Rep. Forrest Bennett (OK)
Rep. Carl Anderson (SC)

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Will Melofchik, NCOIL General Counsel

QUORUM

Upon a Motion made by Rep. Hank Zuber (MS), Vice Chair of the Committee, and seconded by Rep. Wendi Thomas (PA) the Committee voted without objection by way of a voice vote to waive the quorum requirement.

MINUTES

Upon a Motion made by Rep. Bart Rowland (KY), and seconded by Sen. Jerry Klein (ND), the Committee voted without objection by way of a voice vote to adopt the minutes from the Committee's March 4, 2022 meeting in Las Vegas, NV.

"STATE OF THE LINE" PRESENTATION – AN UPDATE ON THE STATUS OF AND TRENDS IN THE WORKERS' COMPENSATION INSURANCE MARKETPLACE

Jeff Eddinger, Executive Director, Regualtory Business Management at the National Council on Compensation Insurance (NCCI) thanked the Committee for the opportunity to speak and stated that we're going to do a quick review of workers' compensation results and guess I want to leave it with one word, and that is the results of workers' compensation are strong. Another year of good results. So, we'll start out looking at the combined ratio which is just basically how much was paid out versus how much collected in premium and for two years in a row the combined ratio for calendar year has been 87%. It's a very good result and I just want to highlight that basically that's eight years in a row of underwriting gains in Workers' Compensation. Basically, when you look at the components, it's fairly stable over time. There is a slight uptick in the expense ratio but improvement in the loss ratio. So, now we're looking at loss ratios in Workers' Comp under 50% snd then the investment gains for the line, another strong year showing 12%. So, the long term average there is about 12% and when you combine the underwriting results, underwriting profit it's 13% and then investment gain of 12% we're looking at a very strong 25% pre-tax operating gain in the latest year.

So, there's a little bit of movement in Workers' Compensation premium basically caused indirectly by COVID and the impact to the economy and then some inflationary pressures as well on premium. So, we're looking at in the latest year payroll is up almost 11% and a lot of that is made up of wage increases of 7% and then employment is also up. But we're going to see how that translates to actual changes in the premium. So, the premium is up slightly for 2021. Again, $43 billion for private carriers and state funds. Just to get the full picture, look at the premium in the residual markets. So, this is the market of last resort for anybody that can't find coverage in the voluntary market. It continues to be a very manageable and stable market size. So, we're looking at about $700 million in premium in the residual market and that translates to about 6% of the market. So, as you can see, for the last almost ten years, it's been very small, very stable. So, the overall change in written premium is actually only a 2% increase. So, we'll get into the reasons why we're seeing 10% increases in payroll and 2% increases in premium. It does vary a little bit by state. You see there some negative changes in blue and some very large changes in orange.

So, one of the reasons for a smaller increase in premium is the changes in the bureau loss cost levels. So, this is a picture of what was filed in every NCCI state over the last 12 months and basically, anything in blue is a decrease and you see a lot of double digit decreases there for the states. So, that translates for 2022 about a 7% overall decrease in the loss cost. So, right away you're taking a big bite out of that 10% increase in payroll looking at 7% decrease in the actual loss costs. This is just showing the written premium for private carriers and state fund, how it's been relatively stable but I think you also see that what we saw happen to the premium during the great recession took many years for that premium to recover to its level prior to that. But when you see the drop in premium from 2019 to 2020, it pretty much is starting to bounce back already in 2021. So, this is just a breakdown by component. So, payroll for 2016 to 2021 you just see the movement there for those last six years. The payroll during that period of time increased by 28% but the loss costs and some mix changes actually put downward pressure of 33% on the premium. So, that's why even though you see growth in payroll growth and employment, overall premiums are staying relatively stable.

This is just showing the loss cost departures that we see by company pricing - fairly stable. Very small dividends. Schedule rating. And then just a slight uptick in the loss cost departures that will be filed by company. So, when we look at the loss drivers, we'll just briefly mention COVID.

Not a very big impact on overall loss experience for Workers' Compensation. However, in NCCI states there were about 60,000 claims paid accounting for a $500 million in losses. That's for both accident years 2020 and 2021. And as a result of the huge shake up in the labor markets we saw claim frequency there for 2021 up 7%. So, that's not a number we're used to seeing either positive or that large. However, there is some distortion there for just the changes in employment and the changes in premium that happened during that one year. So, really when you look at combined two years it's a 1% decrease which is really like the overall long term trend that we're used to seeing in claim frequency. And then we have indemnity claim severity. So, this is how much is paid for wage replacement. For the latest year it's flat and for the latest several years indemnity claim severity has been muted compared to changes in wage inflation. So, you see the gold line there is the changes in wage inflation. You would expect indemnity claim payments to move in line or pretty much in line with wage inflation which it did for a period there between 2016 and 2020 but it still is below that line and 2021 is well below that line.

It's a similar story for medical. Again, we're seeing flat and no change in the medical claims severity for the latest year and when you compare the medical claim severity to the healthcare index there in gold, there were times where the medical severity did move pretty much in line with that but now it's below that line. So, for both indemnity and medical payments we're seeing very small changes. We're not seeing the inflationary pressures that we're all experiencing in the general economy. We're not seeing it in the Workers' Compensation medical payments and there's a lot of reasons for that like medical fee schedules and things like that but I think it's just important to keep in mind that claim frequency does look to be continuing to be stable or even decreasing. And the average claim size is staying relatively controlled as well. So, the combined ratio was 87% The reported accident year combined ratio was a 102%. However, we expect that to develop downwards so I would expect even in an accident year basis to be below 100 and about $500 million in COVID losses since 2020 have been paid out.

Sen. Hackett stated that you don't talk too much about the drop in the market and the pressure on premiums. I totally agree with payroll and everything but those of us that are in the investment business, we know how bad the market's been so we're going to see really low returns and with low interest rates even our bond portfolios are not going to be really good. So, I'm surprised that the companies don't have the pressure on premium increases to offset market losses. Or is it always a delay? Mr. Eddinger stated that I would also say that I'm surprised in the sense that we all know what kind of returns we can get at the bank, or certificate of deposits (CD's), or whatever so it is difficult to know every company's portfolio and how they might have old things that they're cashing in now. But yes I would agree that I would think that, and I think we've been saying this for years that the low interest rate environment would put downward pressure on the returns that companies would get.

Sen. Hackett stated that in Ohio we're a state run system but we really worked hard to increase our portfolio return and they do a really good job under that scenario. So, we have professional money managers and they do an excellent job. So, there is still a decent amount in equites that are going to get slammed this year. And so, I agree with you on the bond portfolios and insurance companies pretty well hold them to maturity so that they don't have a lot of time and don't worry as much about the bond but equities are getting slammed.

EVALUATING THE EFFECTS OF COVID-19 PRESUMPTIONS ON THE WORKERS' COMPENSATION INSURANCE SYSTEM

Michael Dworsky, Ph.D., Senior Economist at Rand and Faculty at Pardee Rand Graduation School thanked the Committee for the opportunity to speak and stated that I've been at Rand almost 10 years and have done a lot of work for the State of California but we don't always get to share findings with folks from other states. This is an exciting opportunity. What I'd like to discuss today is just most of the work that we've done on COVID has focused on the impact of presumptions that were adopted in California. So, we did a state mandated study on Senate Bill 1159, which was California's presumption legislation and we're going to see what COVID claims have been like in California and what some of the findings were from the report that we published in May. And then I'd like to sort of tee up hopefully some discussion from this Committee about what we still don't know about COVID in Workers' Comp and whether any of the lessons we've learned from this pandemic should have bearing on how we respond either to the future of COVID or a future pandemic which seem likely at this point.

This is pleasure to speak to an audience that probably knows a lot more about Workers' Comp and about the status of current legislation than I do but in total, according to NCCI since the start of the pandemic 20 states at one point or another adopted either a COVID presumption or a more general infectious disease presumption. Many of those have expired. So, according to NCCI we're back down to about seven states that have presumptions currently in force. I just want to note to set the stage that presumption is not a new policy lever in Workers' Comp. It's been widely used for public safety workers in situations where similar to COVID you have an occupational disease where it's really difficult to evaluate causation on an individual basis. So, we've seen these extensively adopted for cancer, post traumatic stress disorder (PTSD), and other health conditions but primarily in firefighters, police, and the public safety workforce. COVID presumptions are different in a few key ways. First of all, COVID obviously is an infectious disease that has very high levels of community transmission. And second of all, compared to other presumptions, the COVID presumptions that were adopted in California and in a number of other states actually touch the private sector workforce in a way that we haven't seen with other public safety worker presumptions. We've been doing some work trying to understand the amount of liability associated with long COVID and how that might be spread across different parties. So, we've been coding up some of these presumptions. What we're finding is that every state for the most part really has taken a slightly different approach either in terms of who is covered by a presumption or by what conditions need to be met for the presumption to kick in. So, I think it is worth bearing that in mind that I'm going to be talking about California for the next ten minutes or so, and California probably took a slightly different approach from what happened in your state.

So, this figure is meant to illustrate that California adopted not just one but actually three presumptions over the course of the pandemic dealing with COVID. So, this is just sort of a timeline of when different presumptions were in effect. In the early days of the pandemic roughly March through June of 2020 there was a presumption that broadly covered workers who were outside the home that was adopted by executive order and then what we're going to focus on mostly are the two presumptions that were adopted legislatively under Senate Bill 1159. We call one of them the frontline worker presumption and this generally is a presumption that was rebuttable and it covered workers in public safety and in healthcare facilities as well as home health agencies and basically this presumption kicks in as long as you have a positive Polymerase chain reaction (PCR) test result and you have one of those jobs. However, California also adopted a broader presumption that covers the rest of the workforce under certain conditions. We call this the outbreak presumption because the requirements were for there to be a positive PCR test and what the statute called an outbreak period at your jobsite when your case is diagnosed. I'm not certain that other states adopted this kind of an outbreak requirement. And now the advantage of this from a broad coverage point of view is that it kept the state out of the business of picking which occupations and industries were high risk or would be eligible for that broad presumption. It may have created other challenges which is that the claims administrators now had to track whether there was an outbreak in effect basically in real time to decide if a claim would be eligible for the presumption or not. So those two presumptions covered all the workers in California potentially. They're scheduled to expire at the end of this calendar year. There is pending legislation I think in the Assembly that would extend that for two more years.

So, I want to just highlight a few high-level findings about the claim volumes and some of the other policies that impacted COVID in Workers' Comp. So, I think looking at the total claim volumes this may be similar to what you've seen in your states but really it's the dynamics of the virus that have been driving the volume of claims that come into the Workers' Comp system. So, this chart is showing the number of COVID cases in the state and then the number of COVID claims filed and pretty much when there's a case surge in the state, we also see a surge of Workers' Comp cases. So, in the period that we studied which ends in mid-2021, COVID was about 15% of the Workers' Comp cases over the preceding year and a half but that kind of understates the impact on the administration of the Workers' Comp system because you look at this surge in the Winter of 2020 when there were about 45,000 Workers' Comp COVID claims in a month. That was actually a majority of claims in the system and that was, as far as we know, the all-time record for the number of Workers' Comp claims that were filed at one time. We did hear that this placed some burden on claims administrators trying to process all of that at once and after our study period ended we had the Omicron surge which led to an even higher claim volume. So, it's not just an average volume of COVID claims that impacted the system but really the volatility month to month.

Looking at which workers filed Workers' Comp claims, we did something that sometimes was difficult with Workers' Comp data, which is that we used an algorithm that the National Institute for Occupational Safety & Health (NIOSH) developed to impute an occupation code so that we could sort of break out the claims into frontline workers. So, the firefighters, police officers, and healthcare workers covered by this frontline presumption, and then what we called the outbreak workers which is the other 95% of the workforce. So again, these frontline workers are approximately 5% maybe a little bit more of the California State workforce. The outbreak workers about the other 95% and in terms of who is filing claims, we found that 42% of the COVID claims came from those frontline presumptions even though they're only about 5% of the workforce. Now, typically these are high risk jobs for Workers' Comp apart from COVID so they would typically account for about 15% of the Workers' Comp claims but looking at COVID it was more like 40%.

Looking at which industries were driving COVID claims not surprisingly it's the industries that contain those frontline workers, the state and local government and healthcare social assistance had claims rates over a one year period per 10,000 workers that were about four times, or about double the statewide average of 70 claims per 10,000 workers. I would note however that transportation and warehousing and retail trade also had above average claim rates. Manufacturing as a whole was a little bit below the average although some manufacturing industries had high claim rates. Looking at which occupations within these presumptions had a lot of claims, I think it's interesting for a few reasons. One, it sort of tells us about where the liability might be in the longer term as long COVID emerges and second of all, it also may speak to some of the social equity concerns you would have. We know the impact of the pandemic was disproportionately born by some disadvantaged groups so it's worth understanding whether those groups actually had access to the Workers' Comp system. What we found is among the frontline workers the public safety occupations, the firefighters and police officers, had substantially higher claim rates than most of the healthcare workers although the healthcare workers, of course, also had elevated claim rates. Something that we thought was interesting is within industries in healthcare, it was really the healthcare support occupations rather than sort of the more credentialed practitioner and technical occupations that tended to have high claim rates. We saw that across these industries.

That's consistent with speculation there may have been differences in the availability of personal protective equipment (PPE) but we certainly couldn't investigate that within the scope of our study. What I thought was really striking that we didn't expect to find is that within healthcare it wasn't the providers but actually the maids and the housekeeping cleaners who had by far the highest claim rate out of anybody that we looked at and they were covered under the frontline presumption because the way it was written in California but I know that looks different in some other states. In terms of other industries covered by this outbreak presumption, there were some very high claims rates in some of these industries as well. I mentioned transportation and warehousing. A lot of that was driven by couriers and messengers which is sort of industry coding jargon for shipping and local delivery companies. What I thought was interesting is the truck drivers had high claim rates, but actually the laborers, the material moving occupations really had I think the highest claim rate that we saw among the large occupational groups under this outbreak presumption. We also saw some high rates in some of these retail industries so essentially hardware stores, auto dealerships were multiple times higher than the statewide average. Assisted living facilities weren't covered by the frontline presumption but obviously they had a lot of outbreaks. They had actually very high rates, a little bit lower than the skilled nursing but comparable to hospitals.

Then finally, I mentioned that manufacturing had a below average rate as a whole but slaughterhouses and animal processing had very high rates particularly among machine operators. So, in some ways this corresponds to some of the people who we knew were working a lot and had high COVID exposures outside the home. What I think is worth noting in contrast to some of the stats that Mr. Eddinger just mentioned, these stats reflect claims filed without sub setting the claims that were accepted or paid. In many of these groups especially the couriers and messengers and the slaughterhouse operators had very high denial rates generally in the range of close to 90% of the COVID claims being denied. For the frontline workers that was more like 20% and I'm happy to say more about denial rates in the Q&A if that's of interest. So, I want to say a little bit about other policies, some of which as state policymakers you should be thinking about as we continue the COVID pandemic or gear up for the next pandemic and our study had a large qualitative component. My co-project lead did a ton of interviews really fast in the summer of 2021 and what we were trying to understand is thinking about the objectives of Workers' Comp which include providing paid leave to workers, reducing contagion by allowing workers to stay out while they're still contagious, and providing access to medical care. There were a lot of other state and federal policies that also served these functions that may have taken some spending and some claims pressure out of the Workers' Comp system.

So, in particular, there were federal sick leave mandates. California also had its own sick leave mandates that kind of wrapped around and filled some of the holes in the federal mandate. We heard from public health officials that they think that was much more important for reducing contagion than Workers' Comp was simply because there's a lot less hassle for the worker to use sick leave than there is to file a claim and potentially worry about whether it's going to be accepted or not. The other thing we heard is that expanded payment for hospital care for COVID by private health insurers as well as some federal programs that target the uninsured really contributed substantially to the low proportion of COVID claims that had paid medical bills. So, I'm sure you've all heard that COVID claims were very unusual and that many of them had no paid medical or no medical bills submitted to Workers' Comp. We heard qualitatively that a lot of that is because it was basically easier for people and potentially easier for providers to send those bills to health insurers and get them paid out. What I think is worth bearing in mind is that a lot of these programs have either expired or only existed in California so if you look at our study, we're going to say that Workers' Comp was less valuable than anticipated to a lot of workers or less important for accessing medical care but that may not be the case moving forward.

So, why don't I just wrap up by highlighting a few questions that I think we weren't able to address in the context of California and then also raise some discussion questions that I think you folks should all be thinking about both in the context of COVID and future pandemics. One is that we didn't really have data available given the timeframe of the study on settlements or permanent disability. We would expect to see more settlements given the high level of uncertainty on the costs associated with COVID but those simply weren't happening when we looked at the data and I think permanent disability rating is going to be interesting and potentially contentious and we also pulled the data too soon to look at that. We also can't really say whether disputes or frictional costs would have been higher in the absence of the presumption. There's reasons to think they might have been but we didn't study a world without the presumption in California. Also, this outbreak provision that, as far as I know, was unique to California, probably limited costs and may have led to greater accuracy in terms of the application of the presumption but it was a real headache for the claims administrators. It's worth thinking about whether there could be better information sharing with public health departments to track outbreaks.

I think some other big questions of course include what role experience rating's going to have. The rating bureau in California recommended that COVID claims be included in experience rating but the last I heard the insurance commissioner had disagreed with that. I think it's worth thinking about the equity aspects especially given those high denial rates in the private sector that we saw and we heard anecdotally about retaliation, other barriers to claim filing from some of those vulnerable populations. I think it's worth thinking more holistically, if you're going to adopt a presumption for Workers' Comp or other pandemics, know whether sick leave will do the job better for some of your policy objectives. There's a lot of unknown questions about long COVID given that long COVID wasn't priced into 2020 premiums, so where are folks going to come up with that money and how are those costs allocated between governments, employers, insurers, and reinsurers? And also whether having Workers' Comp involved in the long COVID care is going to lead to issues with healthcare fragmentation that might affect quality adversely. And the last thing I'd like to add is there's a lot of potential reasons why you might think about a Workers' Comp presumption. Workers' Comp serves a lot of functions for different stakeholders. I think having clarity on which of these you're pursuing can help you think about whether Workers' Comp presumptions are actually the best policy instrument because what we heard is that for some of these, it was actually questionable whether Workers' Comp was optimal compared to sick leave or other types of healthcare payment.

Rep. Stephen Meskers (CT) stated that when I look at Workers' Comp and I look at the issue of COVID, it takes me back to the initial Severe acute respiratory syndrome (SARS) issue in terms of viruses and the pandemics and the exception on a lot of general insurance policies. If you're talking about future pandemics and we're talking about Workers' Comp, what's a tipping point in general ratios where you begin to look at a pandemic and it's an impact on long term and short term worker impact and on claims on the system? How does a system sustain itself? Where's the break point on a pandemic in terms of the ratio? It would be good financially if in the future we saw some data on what the survivability of the payout ratios and the sustainability of Workers' Comp is on the basis of a modeling of a pandemic because at some point it becomes a federal issue bailout versus a question of can we self-finance the Workers' Comp, right? Dr. Dworsky stated that's a great question and probably the actuaries are in a better position to answer some of that about at what point it becomes financially unsustainable and burns through reserves. I think the one thing I would note is that probably the status quo in Workers' Comp is for pandemic related diseases not to be covered due to ordinary disease of life exclusions and so on. So, certainly one policy option is to leave that in place and not adopt presumptions but of course that raises sorts of fairness and contagion issues which motivate a lot of states to adopt presumptions. I think what we saw with COVID is the claim volume overall in the Workers' Comp is, at least through the end of our study period, was still lower than what it was before the pandemic just because the drop in non-COVID claims more than offset the volume of COVID claims so generally we're about 6% lower at least through mid-2021 in terms of the monthly claim volume when you include the non-COVID claims.

Rep. Meskers stated that that's my only question is really basically when we move forward on coverage on different issues of policy basis, I want to know what the breakpoint is for the fundability of our claims system. I'm not against the policy issues, I just worry about the funding. Mr. Eddinger stated that early on NCCI developed a tool which produced a wide range of scenarios based on different assumptions. So, before anybody really knew what the impact on Workers' Comp was going to be and looking at some of these presumption laws that were happening at the time, there were some scenarios based on well, it's presumed that if you caught COVID it was at work or we probably had some assumptions about more higher medical. It turned out to be an indemnity only of pay the wages while the person is out sick but there were scenarios where the annual payout was three times what it is for the entire Workers' Comp market. So, there is a possible I guess you would say tipping point but luckily we did not see that but I guess there's always the potential for something catastrophic like that.

Dr. Dworsky stated that I'd actually like to amplify that. There was similar modeling done by the rating bureau in California that predicted a conclusive presumption that couldn't be rebutted that basically showed 100% of COVID cases from working people go into the Comp system would have more than doubled the paid benefits and the losses. That could have been really destabilizing but we were nowhere near that as it turned out. It is hard to say how much of that is because hospitals found it easier, or potentially in California more remunerative to bill health insurance payers rather than Workers' Comp. California has a fee schedule that pays statewide maybe half of what the average commercial insurer pays so it's a 120% of Medicare versus around 260% statewide in California. I'll jump to this slide which we cut out in the interest of time that kind of compared the number of COVID fatalities from working age people by occupation that were estimated by the State Department of Public Health. So, the blue bars here show the number of COVID claims filed in the following year that actually have the death of the worker reported and I don't think the benchmark should be that every working age person who died of COVID necessarily would determine it to be work related and file a comp claim but if you're worried about this kind of financial Armageddon scenario where every COVID cost goes into the system, we're nowhere near that in California, even with fairly expansive presumption laws. But what does that look like in the next pandemic I have no idea.

Rep. Wendi Thomas (PA) asked if you are continuing to study the long term COVID? And are the presumption laws permanent in California? So, in three years if we have another outbreak of COVID are they going to still exist or do they sunset? Dr. Dworsky stated that to the second question the presumptions that we studied under current law are going to expire at the end of this calendar year. There is pending legislation that would extend them basically unchanged for two years and we're getting close to the end of the session so they're still alive but there's two more months and anything goes. I think in terms of what we're doing at Rand, this was a state mandated study that was bid competitively that we did as a contractor. We're not currently analyzing on the long COVID or really anything about COVID from the California system. Rand also has other funding streams and we're doing a small sort of preliminary study with some basically donor based funding about long COVID liability. That's why I mentioned we're looking beyond California to kind of code up some of the other presumption laws and trying to get again back of the envelope calculations that I think would complement what NCCI and other folks are doing by looking at the liability for governments and self-insured and people who aren't in the insured system. But no, we're not currently studying long COVID quantitatively beyond that.

Rep. Forrest Bennett (OK) stated that we discussed earlier the kind of intersection of paid family medical and Workers' Comp and we're having these conversations back in our states especially when it comes to pandemic response. Do you have data on, especially for the employer side, the overhead and cost benefit analysis of stronger Workers' Comp versus paid family medical? And which tool is a better one for responding to that? And also if you think that the solution is some combination of both or a paid family medical that conditionally allows an employee to sort of proactively take themself out of the workplace if they're afraid of being infectious?

Dr. Dworsky stated that's a great question and that's I think one of the takeaways from our study. I should be clear, California had some unusual provisions that were part of the presumption legislation in that California required workers to exhaust any COVID specific sick leave before temporary disability benefits would start. So, that probably limited some of the indemnity payouts that you would have seen if it hadn't had that provision to coordinate those two types of benefits. But what we heard, and I've kind of been harping on sick leave here even though this a Workers' Comp Committee, is that the public health officials we spoke with felt very strongly that Workers' Comp was not really a good mechanism for reducing contagion. It's probably better than having no paid leave or having no Workers' Comp access but basically their sense was that by the time you're diagnosed and you think about filing a Workers' Comp claim and you're worried about the uncertainty of whether you'll actually receive indemnity benefits or not the cat's kind of out of the bag. I think we heard from a lot of the stakeholders we spoke with that the after the fact aspect of Workers' Comp limits its value as a preventive or a public health measure in terms of reducing workplace transmission. Now, Workers' Comp could work through other mechanisms. I wrote something on the Rand blog in 2020 about how in an ideal world Workers' Comp would create incentives for the insurers to get engaged with loss prevention. Similar to what the Bureau of Workers' Comp in Ohio does, I know for a while it was preemptively mailing masks out to people and they have a safety grant program for other industrial hazards. You could have imagined something like that happening for COVID once you moved those liabilities into the Workers' Comp system but it's not clear to us that that's actually happened on the large scale through other Workers' Comp payers. I think in terms of sick leave, we haven't analyzed from the employer's point of view whether sick leave is more or less cost effective but I think that's a super important question to examine moving forward if you wanted to set the policy for the next pandemic.

PRESENTATION ON OHIO WORKERS' COMPENSATION SYSTEM

Sen. Hackett stated that Rep. Brian Lampton (OH) and I are from Ohio and Ohio has a state run work comp system. John Logue, Chief of Strategic Direction at the Ohio Bureau of Workers' Compensation, who will speak in a second will tell you when I first ran over ten years ago our system was really struggling and I think most people that ran, ran on the principle to privatize the system but our Workers' Comp system has had a tremendous turn around and a lot of dividends have gone back to the employer.

Mr. Logue thanked the Committee for the opportunity to speak and stated that I'm going to talk a little bit about the Ohio Bureau of Workers' Compensation (Bureau). Sen. Hackett's correct - when I began my career in the Ohio system about almost 30 years ago, the famous line in Ohio from then Governor Boynavich was that the Bureau was the silent killer of jobs in the State of Ohio and I would say he was very justified in that comment, certainly at the time. As we heard earlier, we are one of four exclusive compulsory state run systems in addition to Washington, Wyoming, and North Dakota. We currently have about 1,600 employees across the State of Ohio. Again, when I began my career that number was over 4,000 so we have come down quite a bit over the last couple of decades and we are funded entirely by premiums and assessments paid by Ohio private and public employers. So, a little bit about Ohio and our workforce. We are number ten on the competitive labor market, third manufacturing workforce in the United States, first in plastics and rubber manufacturing, and we are number four in the number of active apprenticeships in the United States. Our injury rate is 2.4 injuries per 100 workers in calendar 2020, which does put us below the national average of 2.9 injuries per per 100. We currently cover approximately 250,000 private and public employer policies. That represents about 55% of Ohio's workforce. The remaining 45% of the workforce is employed by about 1,200 employers who are self-insured for their Workers' Compensation coverage. Currently, we have just over 200,000 claims that we are managing. We have claims that go back to the late 1940's that are still open, active ongoing claims up until likely a claim that happened at some point this morning. That number is down from well over 600,000 probably ten years ago.

So I'll hit a couple points on the actions we took during COVID. The agency issued three dividends to Ohio's employers totaling nearly $8 billion. All three of those were done in calendar 2020 with the last one that we paid in December of 2020 of $5 billion. At Gov. Mike Dewine's request since 2019 our Board of Directors has authorized over $9 billion in dividends to Ohio employers. Regarding COVID claims, we did not have a presumption law in Ohio. I know there were a few introduced but we did not actually have one. We handled them through our occupational disease guidelines and put together a team that has remained through today so we had a consistent internal team made up from our medical, legal, policy and claims divisions looking at every single one of those claims so that we were handling them in a consistent matter across the State of Ohio. To date we have allowed as just under 1,400 claims, which seems low compared to the 3,600 filings. What we saw during the first few months of the pandemic as businesses were closing, we had probably 1,500 claims that were filed with us under Workers' Comp that were actually individuals intending to file under our employment system. So, we had a large number of claims that were then subsequently dismissed by the employee because they weren't actually alleging a workplace injury. Of those 1,400 claims on the state fund side we have paid out just under $9 million in medical and indemnity benefits. The self-insured employers that we regulate have had just over 1,100 claims since the onset of the pandemic that they have accepted. During the state of emergency in Ohio which Gov. Dewine lifted in June of 2021, any COVID claims that were allowed we did not charge to the employers experience. Since the end of the state of emergency the frequency has declined significantly. However, anything since that time are being charged to the employer's experience. We also during the pandemic expanded availability of telemedicine to injured workers and we extended and forgave many of our deadlines and penalties for late payment, lapses in coverage, etc.

So, a few comments from some of our customers and interest groups during the pandemic. First one is from Roger Geiger, the Executive Director of the Ohio Chapter of the National Federation of Independent Business. I won't read it for you word for word but basically, this is thanks on behalf of his members to the administration for everything we were able to do to help employers keep afloat." And again, from Jack Tran at Jergens Inc., the pandemic placed enormous pressure on businesses and individuals across Ohio and across the Country. The dividends we were able to provide and support during that period we did receive a lot of feedback from employers across the state that it was able to help them get through and maintain their employees and their payroll and fortunately the agency was in a position to do so. You heard a little bit from the prior presenter here talk a little bit about some of the programs we have. So, I'm glad those have gotten notice outside of our state lines. The Bureau does have a division of safety and hygiene roughly a 150 individuals that are paid through employer premiums that we support those businesses with loss preventions, consultative services, training. We'll do a walk through, air sampling, anything we can to help them reduce the risk of injury and illness and keep their workforce safe and healthy.

We annually offer $35 million in a variety of grant programs to help employers invest in equipment to reduce the risk of injury and illness. We have specific programs targeted for firefighters for equipment to reduce some of the environmental exposures they have. Police body armor, organizations that work with adults with developmental disabilities and then as well as just broad based grants that employers can apply for, we will review them as there's some filing that they have to make with us and we'll offer up to $40,000 per employer during their eligibility cycle. A new initiative we just launched in our recent bi-annual budget, we were granted the authority for $15 million each year. During the pandemic there was certainly a focus on PPE within Ohio and across the country and what we wanted to do was take a shot at providing research funding. This is funding that goes to Ohio's University or not-for-profit research organizations of what else can we do out there to help keep Ohio's workforce safe? What we made clear testifying before the legislature is we weren't interested in a paper research study, we wanted to see things get into the workforce to be tested, to be tried out. Gov. Dewine has repeatedly encouraged us to, in his words, throw some long passes knowing that not every single one of them might be caught but we need to take some shots and see what we can do.

So, we've recently just issued our first three awards under this program. They are just off the ground but one is looking at, and it's outside my realm of expertise, but nanotube technology to assist firefighters with their turnout gear to make that better fitting and more comfortable for them. Others have a sensor type of technology that will be worn with individuals in metal grinding and stone grinding that will actually measure the particulates in the air with the respirator they're wearing and alert them and the management if we're at a dangerous level. So, we're going to see where this goes. Again, we just issued our first round of funding on July 1st. As far as Ohio and our Workers' Comp system, our aim is to increase our capabilities of our agency to provide the best service for our customers that are in Ohio and those that may choose to come to Ohio. I wanted to leave some time in here for questions. There was a discussion earlier about investments and I believe roughly our portfolio has dropped the value of about $3 billion since the beginning of the year. We currently are running our total assets which you might imagine will vary by the day, and are somewhere in the $20 billion to $22 billion range. Our long-term liabilities are currently about $15 billion.

Rep. Matt Lehman (IN), NCOIL Immediate Past President, stated that he has a quick question as a border state to Ohio. It can be problematic at times with a monopolistic state of Ohio and Indiana's not but one question I have is there's the issue my employers in my state can work in Ohio not more than so many days etc., but if they have to buy an Ohio policy one question I'm asked a lot of times is how much more will that cost me? Where do Ohio's rates fall in that scale of the high states, low states? Mr. Logue stated that the best measure we have on that is the Oregon study of Workers' Compensation that is done every two years. Obviously, it varies and we use the NCCI's system for our class codes. The Oregon study currently has us as 13th highest, or actually lowest rates in the country. At one time we were the 47th lowest, meaning we were the 3rd highest. On the most recent version of the Oregon study the way that's calculated our index, at the way they calculate it, we were lower than all of our border states. Now, I would tell you with a business coming into Ohio, if they're not coming in for an extended period of time, and they have coverage in your example in Indiana we will honor that coverage. We will not require them to take out a policy for Ohio. I think sometimes what we'll find is perhaps a general contractor or someone may require them to have an Ohio policy but for the most part, if they're hiring workers in Ohio strictly to work in Ohio, yes we would like them to have an Ohio policy or require them to have an Ohio policy. I'd be happy to follow up with you afterwards, but generally if they have coverage, we're usually pretty good with it.

CONSIDERATION OF PROPOSED AMENDMENTS TO NCOIL MODEL STATE STRUCTURED SETTLEMENT PROTECTION ACT

Rep. Bart Rowland (KY) stated that the prime sponsor of these amendments to the NCOIL Model State Structured Settlement Protection Act (Model), Sen. Paul Utke (MN), unfortunately couldn't be here with us today but as co-sponsor of these proposed amendments I'm happy to offer them for the Committee's consideration today. I know that there's been some communications to Sen. Utke and the members of this Committee requesting that further amendments be made to the Model but Sen. Utke has made his intentions clear to us that he would like to move forward with what has originally been presented and is in your binders on page 119. I'll leave it to the speakers we have here today to make any specific comments on the amendments, but I'll just reiterate Sen. Utke's request that we move the amendments as they have been presented to the Committee. I support that request and look forward to the Committee considering the amendments.

Jack Kelly, on behalf of the National Association of Settlement Purchasers (NASP), thanked the Committee for the opportunity to speak and stated that we've been before this Committee since a year ago this month on this issue. In the meetings in 7/21, 11/21 and 3/22 this issue was deferred over by Sen. Utke who had announced a year ago in July that he had amendments he was working on for the Model that had been adopted from Louisiana, Nevada, and Georgia. Then in October of 2021 news articles appeared in Minnesota concerning some untoward behavior by non-members of our association and Sen. Utke announced at that time that he would like to defer the amendments until he could deal with the legislation in Minnesota. NASP worked nationally since the enactment of the Model. I personally have been involved in this since the creation of structured settlements when I was a member of the Ways and Means staff of the House of Representatives in Congress when we created structured settlements so I'm intimately familiar with this. NASP has worked nationally throughout all the years and today after our work and effort, all 50 states and the District of Columbia today now has a structured settlement protection Act. We have appeared in every one of those states and worked vigilantly on it. In 2019 then Sen. Dan "Blade" Morrish, former NCOIL President, identified a concern in Louisiana where structured settlements when they were entered into, nobody knew who was doing business in their states. The companies weren't registered and you didn't have to report who was doing business there. It was strictly a civil procedure hearing to the federal statute to get a court order and the only way you could find out who was doing business in those states was literally go through court records and search it out. So, Sen. Morrish and Louisiana adopted a registration or licensure procedure and a bond that had be proposed and in following that, Georgia adopted it and then following that last year, Nevada adopted it. It's kind of interesting about that as that's a mix of the variety of legislatures of Republicans and Democrats and it shows the uniformity and these laws develop as a uniformity occurs.

Then Sen. Utke intended to do that and he began the negotiations in Minnesota which we actively participated in. I made six trips to Minnesota and Sen. Utke personally spent ten hours negotiating with the interested parties in this legislation. This is very important to know - the Minnesota structured settlement protection Act that they operated on was before NCOIL or the federal law existed. They were the first state to have a structured settlement protection Act so it wasn't even the NCOIL model and Sen. Utke said we're going to do the NCOIL model and I'm going to work to address some concerns that are identified here and then if there are local issues we need to identify my intent is to take these changes that I'm updating here to bring them back and pass them at NCOIL. That's where we are today. There were two issues identified in Minnesota that were unique to Minnesota. There were local rule issues. Minnesota does not provide for the appointment of a guardian ad litem in these types of cases. A guardian ad litem is appointed by a Judge traditionally in a court to protect somebody who she thinks interests need protected.

In Minnesota they only appoint them in juvenile cases and in family law cases. Judges felt they didn't have the authority to do that. So, they created a provision for Minnesota unique to that state to address that issue of creating an attorney advisor to address that but that was unique to Minnesota. And Sen. Utke said at that time that he would do that there, but that was not his intention nationally - he would stick to the Model. And the one other provision that they put in was that Minnesota had a Court of Appeals decision that set four criteria that they wanted judges to look at in these cases and rather than have a conflict of law where the statute would say one thing and you'd have an Appellate decision that says another, they incorporated those four provisions into the law in Minnesota, unique to Minnesota. They're Minnesota decisions and not in any other states. So, we worked vigilantly with him and I commend Sen. Utke as he spent several hours negotiating with all of the interested parties. We've got a good bill. We need to move this now, and we urge that you do it today.

Frank O'Brien, VP of State Gov't Relations at the American Property Casualty Insurance Association (APCIA) stated that it's my pleasure this morning to introduce Ingrid Hopkinson of the National Structured Settlement Trade Association (NSSTA) who worked extensively on the structured settlement issue in Minnesota and has some comments to share with the Committee regarding some specific issues emanating from Minnesota and some of the Minnesota language which is not currently in your model bill.

Ms. Hopkinson thanked the Committee for the opportunity to speak and stated that I'm here on behalf of NSSTA which is an organization of skilled professionals that deal with providing a funding solution for personal injury matters. The members of the organization include consultants who are highly specialized in the field, life insurance producers, and companies that issue the annuities that fund these settlements, as well as property casualty insurers who are settling these personal injury cases. It takes a lot of time to settle a case. It takes a lot of energy. And they're put together to provide these individuals with a long-term financial security. Structured settlements have over time provided that and keep people from being on the social safety net. It's our position that structured settlement protection Acts are primarily a consumer protection statute. They are to protect the individuals who have been injured as a result of an accident. They also do protect the insurers who provide these products for the injured as well as the public policy of keeping individuals off the social system.

The current proposal focuses on providing a registration provision that will register the companies that buy from these individuals the product. The registrations will not serve ultimately the payee who may enter into a transaction with a third party. The provisions as well, while helpful, don't address some of the major issues that were brought out in the various articles in Minnesota but have also been brought out in articles in the Washington Post before Maryland changed its structured settlement protection Act. And Maryland has a very rigorous registration process very unlike the registration process that's been adopted in the various states that Mr. Kelly mentioned. We seek to provide additional protections for the payees that these structured settlement protection Acts are intended to provide. What we have proposed and what has been adopted in Minnesota is not unique to Minnesota as many states have some of these provisions. The ad litem issue is in several states. The factors that we seek to have added in are also included in numerous structured settlement protection Acts. They're not controversial provisions. There are provisions that will provide the necessary protections for the payees for which these products were written.

Rep. Meskers stated that structured settlements sounds like a very complicated process but it's not. You're buying a cash flow basically. It's like a discount and it's for the general audience. It's the equivalent of taking your lottery payment up front, discounted and the only question is that you're changing the obligor so if you have a settlement from an insurance company, you're selling it to a third party. The third party is giving you a discounted cash flow. So, there's a bunch of words floating around that leave me more confused than I've been when I sold products like this on Wall Street. So, what I want to understand is what's the dispute in terms of either the transfer of the title or the obligation of the payee and I don't understand what the dispute is that I'm hearing here and it confuses me as to where the differences or discrepancies are in the legislation we want to look at.

Mr. Kelly stated that the original issue when this was created and it's interesting as we're here in the shadows of the World Trade Center and 9/11 - the actual law that allows for the transfer of these was in the 9/11 victims law. And what that said was that Congress said when structured settlements were created back in the 70s in Ways and Means we said, you cannot accelerate them, you're not going to decrease them. You can't accelerate the payments, the person had to receive it in a stream of payments for their tax structure. The carriers when this business emerged as a startup business of buying these structures were genuinely and rightfully concerned that the tax free treatment of the inside buildup of the money in the annuity could be subject to federal tax. There was a right point to make. And Ways & Means and the Senate Finance Committee addressed that and they said what we'll allow for is these to be transferred but a court of general jurisdiction is going to determine, and Congress specifically picked it, and a judge must determine if it's in the best interest of the person and that's where we are today and the structured settlement protection Model is what does that and allows for that civil procedure.

And what is at issue here today is a distinction between what Minnesota did in their uniqueness because of certain decisions and what's been adopted nationally by most states. While some might say that they were involved in Minnesota, we were physically there every day negotiating this with everybody and it worked out. It's a good bill in Minnesota and the provisions that people talk about here that were adopted in Minnesota, if a state finds something unique in their state in their civil procedure and they need to address it, they can. I came out of the Family Court in New York where guardians ad litem were thrown around regularly. Everybody had a guardian ad litem and it was a righteous system to protect people in the interest of juveniles and the interest of people like that. Minnesota didn't allow for that, and I was flabbergasted that they just didn't in Minnesota and they said we need this in statute. I worked in Maryland on the bill there and I worked hand and hand with NSSTA and Maryland adopted a registration system which then portions of it or the types of it were migrated to Louisiana, Georgia, and Nevada. Three states adopted those. Three different states. So, I think where we are today is if as time goes on, and that's why NCOIL revisits these every five years, and we see states start to emerge in multiplicity of wanting these amendments that were talked about today, then that's a right move to make to bring them into a model act. But models are just that, a frame.

Sen. Hackett stated that one thing that I've said consistently is that at NCOIL we really create the framework with our model laws. Ohio and California are different and Indiana and Ohio are very different from California and so each state can come in and take the Model and make it work to a way that fits their state under a situation like that so that's why I think these are good amendments and it creates a framework. If all the states eventually agree and we can get a standard Model act, we can do that but that's more the exception than the norm. We really try to create a framework and then let the policy come in as the states come in and decide what they need.

Rep. Thomas stated that as someone who's a co-sponsor on the NCOIL sandbox model legislation and seen Models come before NCOIL meeting after meeting after meeting, I just want to support what Sen. Hackett said. I think we have a member here who spent a lot of time and effort on this message and it's hard frankly at this point for me to know whether Pennsylvania will want those additional things or not. But I think passing the base legislation and then taking it back to our states and seeing how we have to tweak it is a good move for us. We meet three or four times a year as opposed to when we're in our general assembly and we're fighting it out every day at midnight. I think it's a good idea to pass the Model as it is presented and then take a look back in our own states as to how we have to modify it. As you said, it's just model legislation and if we keep pushing it down the road then we're behind the curve instead of leading the curve as an organization. NCOIL leads. Here's the Model and then each state modifies it as it needs.

Rep. Rowland stated that I appreciate the discussion and questions and stated that if there are no more questions from the Committee, I move that we pass the amendments as presented this morning. Rep. Lehman seconded the Motion. Hearing no questions or comments, the Committee voted without objection by way of a voice vote to adopt the amendments. Then, upon a Motion made by Rep. Rowland and seconded by Rep. Hank Zuber (MS), Vice Chair of the Committee, the Committee voted without objection by way of a voice vote to re-adopt the Model as amended.

ADJOURNMENT

Hearing no further business, upon a motion made by Sen. Jason Rapert (AR), NCOIL Immediate Past President, and seconded by Rep. Tom Oliverson, M.D. (TX), NCOIL Treasurer, the Committee adjourned at 10:15 a.m.