

**Maryland Insurance
Administration's
2004
Report on
Workers' Compensation**



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Preface

The Maryland General Assembly created the Maryland Insurance Administration (“MIA”) as an independent state agency in 1993. Among other things, the MIA is charged with:

- **Ensuring the solvency of every Maryland entity that engages in the business of insurance;**
- **Encouraging competition in the industry;**
- **Protecting customers from fraud, misrepresentation, and unfair trade practices;**
- **Ensuring that the customer is treated fairly and with respect; and**
- **Combating insurance fraud.**

Pursuant to Chapter 590, Act 1987; Chapter 119, Acts 1993 and Chapter 352, Acts 1995 the Insurance Commissioner is called upon to make an annual report to the Joint Workers’ Compensation Oversight Committee. The following report provides an overview of the condition of the workers’ compensation insurance market in Maryland.

Overview

Workers' compensation insurance differs from most other lines of insurance because the law sets the benefits and most employers are required to have this type of coverage. This type of insurance is based upon a no-fault system which compensates eligible workers by funding replacement wages, providing unlimited medical and rehabilitation costs (in accordance with an approved Medical Fee Guide) and compensates the injured workers for any permanent partial or permanent total disability, if applicable. In addition, it includes provisions for funeral expenses and death benefits for survivors.

Costs are more difficult to project in workers' compensation insurance as opposed to other lines of insurance as there is a "long tail" exposure and because benefits may be awarded in various combinations of disability determinations – temporary or permanent and partial or total. In addition, cases may be reopened and medical and indemnity benefits may be increased.

With the establishment of competitive rating laws for the workers' compensation products offered by private insurance companies, premiums have been driven in large part by competitive market forces. Under this system, the National Council on Compensation Insurance ("NCCI"), a licensed rating and advisory organization, files "pure premium loss cost" rates on behalf of its members (private insurance companies) with the MIA.

A “pure premium loss cost” rate reflects actual loss costs and related loss adjustment expenses. The pure premium considers the cost of medical care, the frequency and severity of injuries, indemnity benefits (which are tied to wages and litigation as it affects claims resolution) and economic cycles.

NCCI applies a rating methodology to the data supplied by its member insurance companies to calculate the proposed loss costs. The NCCI filing is subject to prior approval which means the submission and all other supporting data to determine if the filing complies with relevant statutes. If, after a thorough review, the MIA determines that the NCCI filing complies with Maryland laws, the filing will be approved for use in Maryland.

Thereafter, insurers submit independent rate filings to the MIA using NCCI’s pure premium, including loss costs, as a basis for their individual company rates. These filings include the insurer’s individual loss cost multipliers that are applied to the NCCI’s pure premium. Loss cost multipliers include provisions for an insurer’s profit and administration expense. An insurer’s actual rate can be calculated by multiplying the NCCI’s loss cost times the insurer’s loss cost multiplier. Loss cost multipliers are filed with the MIA and, unlike the NCCI filing, are not subject to prior approval, but are reviewed under Maryland’s competitive rating laws.

Exhibit 1 displays the major insurance groups by market share for 1998, 1999, 2000, 2001, 2002 and the latest data available, which is for 2003.

Market Concentration

If one insurer possesses an inordinately large market share, it may possess the power to charge a price higher than might otherwise exist in a competitive market. In Maryland, the Injured Workers' Insurance Fund ("IWIF") is the major insurer with approximately thirty three percent (33%) of the market share. IWIF is not a member of NCCI. Consequently, their written premiums and claims experience is not reflected in NCCI's loss cost filings. The largest market share for any other single group of insurers is eight percent (8%) (See Exhibit 1). The market share of companies is continually being monitored. Currently there are forty-four (44) insurance groups¹ with direct written premiums in excess of \$1,000,000 and an additional sixty-three(63) with direct written premiums of less than \$1,000,000 for workers' compensation insurance in the State of Maryland (See Exhibit 2).

NCCI Rate Filings

Between January 1989 and September 2003, NCCI has submitted fourteen (14) pure premium filings to the MIA for review and approval.

Exhibit 3 displays a comparison of changes in NCCI's pure premium filings with the MIA for years 1996 through 2005.

¹ An insurance group is comprised of several subsidiary insurance companies

The NCCI's most recent loss cost filing submitted August 3, 2004, was approved in October and will become effective January 1, 2005. The overall average change for this filing was an increase of +3.4%. This figure reflects an increase in experience of +1.6% and is due to an increase in benefits paid under the new Fee Schedules; benefits to injured worker (.5%), hospital fees (.7%) and medical fees (.5%). However, as is the case with most averages, some classifications will receive a greater percentage increase, some classifications receive a smaller percentage and some may even receive a percentage decrease (*See Exhibit 4*). Additionally, it is unknown whether individual insurers will modify the loss cost multipliers that are currently being used. This year's loss cost filing included a revision to NCCI's Excess Loss Factors (ELF's). NCCI files ELF's annually as part of each state's experience filing. For the most part, the update is based on adjusting the loss distributions for overall state severity trends. The new Excess Loss Factors are being filed as part of the 2004/2005 loss cost/rate filing.

The Terrorism Risk Insurance Act of 2002

In December 2002, NCCI submitted a filing that would have imposed a three percent "terrorism load" on all workers' compensation premiums in Maryland and countrywide. This filing covered the international terrorism risk and was approved.

In September, 2004 NCCI submitted ItemB-1393-Miscellaneous Values to cover an additional factor for Domestic Terrorism, Earthquakes and Catastrophic Industrial Accidents with loss cost of .001 for Maryland. This domestic factor terrorism factor remains under review by MIA.

The Harris Case – 2004 Update

As many of you are aware, on June 6, 2003, the Court of Appeals of Maryland, Maryland's highest Court issued its Opinion in the case of Vernell Harris v Board of Education of Howard County. This case is significant as it changed the definition of "accidental injury" under the Workers Compensation Act, which is §9-101 et seq. of the Labor and Employment Article.

I. Before the Harris decision: In order for an injured worker to have sustained a compensable "accidental injury", the accident had to be the result of some "unusual activity" – a slip, twist or fall – and not as a result of the workers' performance of his/her usual duty.

EXAMPLE: If the injured worker's job required him/her to stock shelves and while stocking shelves one day, the worker herniated a disc in his/her back, that would not have been a compensable claim because the injury did not arise out of some "unusual activity." In other words, sustaining an injury while performing duties as charged did not constitute a compensable claim.

II. After Harris: In the Harris case, the Court of Appeals noted that the definition of "accidental injury" as contained within the Statute, Labor & Employment Article, §9-101, defined "accidental injury" as "an accidental injury that arises out of an in the course of the employment." Thus, the Court held that what had to be "*accidental*" was the injury and not the activity or event that caused the injury.

EXAMPLE: Using the same scenario as previously given, if a worker, whose job it is to stock shelves, is stocking shelves one day and herniates a disc, this is now

a compensable accidental injury as the herniated disc was accidental; that is it was neither expected nor intended.

This change in the definition of what constitutes a compensable “accidental injury” while a significant change from the past case law in Maryland, serves to bring Maryland in line with the vast majority of other states as to what constitutes a compensable accidental injury.

However, this appellate decision resulted in an uproar in the workers’ compensation community concerning this case and the impact it would have on the Workers’ Compensation arena in Maryland.

- First and foremost, many parties argued that because this is a dramatic change in the definition/interpretation of “accidental injury”, a number of those claims which were previously non-compensable, would now be compensable; thereby increasing the numbers of risk for the Employers and their Insurers. As such, premiums for Workers’ Compensation insurance would increase.**
- There are parties who have argued that this new definition of “accidental injury” does nothing more than recognize what juries do when claims are appealed from the Workers’ Compensation Commission to the Circuit Court. Yet other parties have argued that the Harris case would actually result in a decrease in the cost of claims. Still other parties have argued that because more injuries would now be compensable, more attorneys would become involved in claims they would have not otherwise taken.**

- What the actual long-term impact of the Harris decision will be still remains to be seen; however, it does appear that it will have some impact on the insurance industry.
- NCCI's most recent filing, that being 2004, included a +1.6% based on experience, but this not being driven by Harris as it is too soon to include the post-Harris experience in the data. Previously, NCCI had suggested the impact of Harris could be as great as 20%. However, as the Harris case is relatively new, there is little experience to document the impact at this point in time.

Injured Workers Insurance Fund

The largest provider of workers' compensation insurance in the State of Maryland is the Injured Workers Insurance Fund ("IWIF"). With approximately thirty three percent (33%) of the market, IWIF writes more than the next twenty private insurers combined. Their closest insurance group competitor is the Hartford Group of Insurance Companies that writes eight percent (8%) of the market. Their closest individual insurance company competitor is the Twin City Insurance Company with four percent (4%) of the market. (See Exhibit 2 for a listing of individual insurer groups and their respective market shares.)

IWIF does not submit their premium and loss experience data to NCCI. In addition, IWIF is not required to file their rates with the Maryland Insurance Administration. Therefore, the loss cost filings submitted by NCCI on behalf of the

private insurance industry do not reflect IWIF's experience and the MIA has no authority to review the rates charged to Maryland consumers by IWIF.

Summary

In 2003, there were one hundred seven (107) insurance groups which represent the 261 insurance companies that reported they are actively writing workers' compensation premium in Maryland. This is a slight increase in the number of companies (up from 250) that reported to be actively writing in 2002. Although certain types of businesses may periodically experience difficulty in purchasing workers' compensation insurance, overall, Maryland's workers' compensation market is currently healthy and competitive enough to fill an employer's statutory requirement to carry workers' compensation insurance. The Maryland Insurance Administration will continue to monitor this market in order to identify future issues and trend.