INSURANCE COMMITTEE

SUPPLEMENTAL REPORT

This report addresses the non-statutory questions and issues that were posed to the committee.

1. Whether there are problems with minimum premium policies (ghost policies).

To set the stage for our response to this question, we felt that it is important to explain how a minimum premium policy functions. When an entity, having no employees and the principles have obtained an exemption from the secretary of state's office, is required to furnish a certificate of insurance evidencing workers' compensation coverage (§50-6-916 doesn't prohibit contractors from requiring certificates in these circumstances), then a policy is requested which is often times referred to as a "minimum premium" policy. It is issued using the appropriate classifications for the operations of the business, with the payroll being shown as "nil" or "if any". Each classification has a minimum premium assigned to it corresponding to its rate level. No policy can be issued with premiums below this amount. If during the policy period there is no payroll generated, then there is a return premium at the time of the audit reflecting the minimum premium for the clerical office employees -- class 8810. However, if the employer adds staff during the period, then the premium auditor will pick up that payroll approximately 60 to 90 days following the expiration date of the policy and the policyholder will be billed the balance due. It's important to point out that the insurance carrier at any time can conduct an interim audit – that is an audit during the policy period – if it suspects that payroll is being generated during the policy term. If the insured declines to estimate his future annual payroll on the front end, but provides proper information on payrolls when the final audit is conducted, then no insurance fraud is perpetrated. In order for fraud to take place, the policyholder would need to conceal the proper assignment of payrolls to the carrier when the final audit is conducted. Thus, it's at audit when the "account" is squared away between the carrier and the policyholder.

Some folks refer to these policies as "ghost policies". This is a misnomer in that these are real policies covering the workers' compensation liabilities of the policyholder. Neither are they "get out of jail free" cards since whatever that actual exposure is for the policyholder, the carrier has the right and obligation to charge the appropriate amount of premium for the actual operations of the business when audited. These policies are a real safety net for policyholders who don't anticipate hiring employees but pick up laborers during the policy period.

Randy Thomas with the Travelers reports that 50% of their minimum premium policies are audited using a "physical audit" process. That is they are audited face to face with the policyholder as opposed to simply relying upon documentation being mailed to the carrier. Due to the size and nature of these policies, a physical audit is not practical for a majority of policyholders. They may take advantage of the carrier by having greater opportunity concealing payroll from the carriers on these minimum premium policies. It's up to the carriers, though, to identify red flags and to garner more resources to investigate situations that are suspect.

Overall, although not full proof, minimum premium policies serve their purpose in the marketplace. Many general contractors will require a certificate, which is permitted by law, from their subcontractors even though they don't have employees. They want to be protected from workers' compensation liability if their subs end up bringing uninsured laborers onto their jobsite. The insurance committee believes the "minimum premium" policy has its place in the market and that it should be allowed to continue function as a "safety net" for the construction industry.

2. Whether insurance companies should include more information on certificates of insurance (i.e. total estimated annual premium).

States of Florida and Georgia require the governing class and total payroll to be included on the certificates of insurance. By "governing classification", we mean the classification that produces the most payroll on the policy, with the exception of "standard exception" classes (clerical office employees, drivers, etc.). The committee discussed the merits of such a requirement. Ultimately we asked how this information is going to benefit the process of identifying employee misclassification. It's important to note that the payroll shown on the policy initially is subject to audit. Payrolls can and do change during the policy period so those numbers can be very fluid and thus often times misleading. Florida has a system that tracks these elements, along with policy inception and cancellation dates. This type of information is also available to the Tennessee Department of Labor and Workforce Development as well. Data is fed from NCCI and takes into account changes during the policy period. This information may be incorporated into another monitoring system that would be far superior to a paper certificate of insurance tool. A database of this nature deserves more thought as the taskforce seeks answers to the most effective method of employing resources to fight fraud. Certificates, on the other hand, can easily be "doctored" to misrepresent these exposures on the policy. For these reasons, the Insurance Committee felt that more information on the certificates would not be an effective means of fighting fraud, and thus the current certificate process should stay intact.

3. Whether there should be requirements for contractors to maintain workers' compensation certificates of insurance on project sites (whether not having workers compensation certificates on project sites will lead to injunctive or stop work order relief).

Similar to our position on certificates of insurance, the committee felt that a requirement for maintaining certificates on the jobsite would be of little or no value. Certificates provide annual payrolls, thus they are not site specific. Certificates can be manipulated on copy machines and therefore are not good tools for assisting investigators in identifying fraudulent activity on jobsites. Bob Pitts opined that at this stage in our efforts, the most effective way to enforce the laws is a complaint driven strategy. Having an ample number of properly trained investigators on the ground to investigate complaints is where we need to be moving towards at this point.

Insurance Committee Expenditures – No expenditures necessary.

Respectfully submitted on behalf of the Insurance Committee,

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Mike Shinnick, Chairman

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