



Mary Jane Cleary
Washington Affairs Executive and
Counsel

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Ms. Deborah A. Garza
Chairperson
Antitrust Modernization Commission
1120 G St., NW, Suite 810
Washington, DC 20005

Re: Follow-up Comments regarding the McCarran-Ferguson Act testimony

Dear Chairperson Garza,

Given that much of the questioning of the witnesses at the October 18 hearing dealt with data collection, "trending", and, implicitly, collective ratemaking activities, we at the National Council on Compensation Insurance (NCCI) thought it would be helpful to supplement the information provided by those witnesses.

Terrence Delehanty, NCCI's General Counsel and Chief Legal Officer, submitted a comment letter to the Commission on July 15, 2005, part of which explained the purpose and activities of NCCI. While I would commend that earlier letter to you for further information, the activities of NCCI that are most relevant here are our data collection process and ratemaking activities. It should be noted that we deal only with workers compensation insurance.

NCCI is regulated by the state insurance departments in the 34 states in which we do business. In all of those states but five, the state law requires that NCCI make annual proposed changes to the current average employer occupation costs, which are called "loss costs". State law in some states defines "loss costs" in one of two manners. In some states "loss costs" means historical loss data combined with loss development and trend to project the likely "losses"/payouts to employees during the coming fiscal year. In other states, "loss costs" means historical loss data combined with loss adjustment expenses and loss development and trend to project the likely "losses"/payouts for the coming fiscal year. Four of the five "exception" states are: Florida, Arizona, Iowa, and Idaho. (The remaining state, Illinois, is addressed below.)

In these states, once the state insurance regulator approves the “loss costs”, NCCI notifies the companies which sell workers compensation insurance in those states. Thereafter, the insurance companies that want to sell such insurance are required by state law to file a “multiplier” for approval by the state insurance regulator. The “multiplier” reflects, among other things, an insurance company’s expenses and business considerations. The use of the approved “loss costs” and an insurance company’s own multiplier facilitates greater pricing freedom than in the past when states used “final rates” that included both “loss costs” and average industry expenses.

In 19 of the 34 NCCI states, the states require NCCI to administer the “residual” or “alternative” or “involuntary” market in those states on behalf of all of the insurance companies selling workers compensation insurance in those states. (Since workers compensation insurance is mandatory for most employers in all jurisdictions except Texas, the “residual” market provides a mechanism for employers who cannot find an insurance company to sell them coverage for their employees.) In those 19 states NCCI is required to file proposed “final rates” for the coming fiscal year. “Final rates” include historic data, loss development and trend, an expense component, premium and other state taxes, and a small “profit factor”. (The primary reason for states generally requiring NCCI to file “final rates” for the residual markets is to have them operate them on a break-even basis.)

In the 20th state, Tennessee, the state insurance regulator requires NCCI to file a “multiplier” for the residual market, though the market is run by another entity. Once the regulator has approved that “multiplier”, NCCI converts those numbers to “final rates” for each occupational classification in the residual market.

In the state of Illinois, the state insurance regulator requires NCCI to make three filings: one each for “final rates” and “loss costs” for the voluntary market and “final rates” for the residual market. The purpose of the “final rates” voluntary market filing is to help those companies which otherwise would not be able to do business in the state because they could not meet the “loss costs” and “multiplier” filing requirements. Illinois has insurance companies of every size, from the very largest to the very smallest. (Those falling into the latter category are generally called “farm mutuals” or “county mutuals”, which developed on a historical basis.)

The use of “loss development” and “trending” in workers compensation insurance filings is important for several reasons, the most important of which is to make certain that premiums are adequate to cover anticipated losses during the year or more in which those filings are effective. Quite often NCCI’s “loss costs” and “final rate” filings are the subject of public comment periods and public hearings. This typically results in delay of the approval of these filings and their implementation. “Loss development” and “trending” are important tools to guard against the possibility of “rates” and “loss costs” becoming inadequate during their effective period. They are also a means of making

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certain that premiums are sufficient to cover claims that develop and require payments over a number of years, some of which could cover decades. (After the state insurance regulator approves the filing, neither NCCI nor any company can return to the regulator for approval of higher "loss costs" or "final rates" if they are determined to be insufficient during that time period.)

We reiterate our earlier reasons for leaving the McCarran-Ferguson Act intact. The Act has provided a solid legal foundation for NCCI and other rating organizations to be involved with loss development and trending. If the Act were to be modified it would create substantial uncertainty as to whether or not rating organizations could perform these critical steps in the ratemaking process. Additionally, the McCarran Act has added greater stability to what can be at times a very volatile workers compensation insurance market.

If you have any questions about the contents of this letter, please feel free to contact me. Thank you for your consideration of these comments and those that we filed earlier.

Mary Jane Cleary

c: Terrence Delehanty, NCCI General Counsel and Chief Legal Officer