

Industry balks at expanding N.Y. FAIR Plan to commercial liability

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ALBANY — The New York State Insurance Department has held three of its four public hearings to determine whether the Fair Plan, which is also known as the New York Property Insurance Underwriting Association (NYPIUA), will be required to provide commercial liability coverage for high-risk businesses.

If the industry's own views carry any weight, the proposal will die.

Maura Clancy, chair of the Independent Insurance Agents and Brokers of New York (IABNY), expressed the opinion of almost everybody who testified when she said that although there is a crisis at hand, this proposal is "not the correct approach to solve current market problems."

"In fact, we believe that expanding NYPIUA's authority to write general liability will actually create additional market problems," she said.

James Fenniman, executive vice chair of government affairs for Insurance Brokers Association of the State of New York (IBANY), weighed in that availability may improve with the NYSID's proposal, but warned that the financial burden on the industry to subsidize NYPIUA to underwrite this coverage, along with the fact that many contractors cannot afford it, makes the exercise precarious.

Instead, he recommended the NYSID re-establish a Market Assistance Program for commercial liability coverage.

Fenniman was one of many who emphasized the need to change sections 240 and 241 of New York State's Labor Law. He said the limitation of commercial liability coverage is directly linked with the Labor Law, which established strict liability standards for contractors.

"The strict liability standards places an unmanageable burden on insurance providers as they factor in such pervasive risk when attempting to calculate rates," he said.

Pamela Young, an assistant general counsel for the American Insurance Association, agreed. "The concerns call for the end of absolute liability," she said. "They do not merit the placement of considerable pressure on the NYPIUA."

Bernard Bourdeau, president of the New York Insurance Association, also testified against the FAIR Plan expansion.

"The insurable commercial liability risks that may not be placed in an admitted market can always find coverage in the non-admitted market," he said. "We all know that the current crisis of affordability (not availability) in the contractors' market is a product of New York's Section 240 and 241 Labor Law."

He also said requiring NYPIUA to write the cover will not change public policy, but will "masquerade as a solution and guarantee that public policy will not change."

Richard Savino, a director of Professional Insurance Agents of New York, asserted that the "Labor Law is definitely the problem."

Pointing to a PIANY-conducted survey of 196 members, Savino said the most common view expressed in survey comment fields was that the Labor Law should be fixed instead of creating a residual market. Sixty-two percent of those surveyed said they believed if this were done, voluntary markets would withdraw from the state. Only eight percent believed that a residual market would provide a permanent solution to the problem.

Savino agreed with many of the members.

"We believe this residual market would become a band aid that would

mask the underlying problem without providing a lasting solution," said Savino. "By the nature of such coverage, it would take a long time for the 'tail' to catch up with the pool, but when it did the results would quickly prove disastrous."

Jeffrey J. Zogg, executive director of General Building Contractors of New York State, said the heart of the problem is that there is not enough information available to the Department.

"In our efforts to study this problem and offer solid evidence of the impact of the Labor Law on our insurance markets, we found few if any carriers that had any data on the impact of the Labor Law claims they have paid," he said.

Savino noted that there would be difficulties separating out only Labor Law related coverage from the rest of liability coverage for a residual market, saying that the difficulty of handling claims and coordinating coverage would be "insurmountable."

Without a better collection of data on the cause and effect of the current availability and premium swings in construction liability insurance, Zogg said, making changes doesn't seem to make much sense.

"Good public policy can be developed in the future only if we can quantify current problems and fashion reasonable solutions to legitimate issues," he said. □