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Self-Insured Groups Transparency Bills Introduced

Will Scrutiny Screw SIGs?

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As workers' comp rates start to creep up, the debate over transparency of self-insured groups (SIGs) is beginning to heat up. Following up on last year's abortive effort, the Legislature ponders proposed legislation that would open SIG financials to greater scrutiny. SIGs control $5.2 billion of workers' comp payroll, yet unlike insurance companies, their financial information is not publicly available. And its results are not filed with the Workers' Compensation Insurance Rating Bureau (WCIRB).

Some in the insurance industry feel this lack of oversight is crucial to entities that control this much payroll, especially in this economy. If failing insurance companies and other publicly traded companies couldn't be saved by a regulator, why should SIGs be any different?

The issue is fraught with controversy as most SIGs continue to fight attempts by the insurance industry to open their books and place them on par with insurance companies. Even though not technically insurance companies, SIGs comprised a number of employers in the same industry that pay contributions in lieu of premium. This arrangement permits transfer of workers' comp risk among members just as insurance companies do. Joint and several liabilities make each employer susceptible to others' financials.

Financials of individual SIGs are provided to the regulator, the Office of Self-Insured Plans (OSIP), but not to the public or the California Self-Insurance Security Fund (CSISF), the backstop for self-insured employers.

SB 683, authored by Ron Calderon (D-Montebello), would require SIGs to file an audited actuarial statement with OSIP. It also states that individual member data would remain confidential. The sponsor is the Associated California Self-Insured Businesses (ACSIB), an association of SIGs representing growers, contractors and livestock producers.

ACSIB lobbyist Peter Kellison says that though the bill is short, it's more than a spot bill. "It's really a starting point for the issue. It's the breadth of disclosure. We're in favor of disclosure, but it's to whom that disclosure is given," he says, adding that his clients do not favor public disclosure because they're private entities.

Kellison says that, given the release of self-insured regulations and the work done by the Commission on Health and Safety and Workers' Compensation (CHSWC), legislation may not be needed.

Another bill, AB 879, authored by Ed Hernandez (D-West Covina), is going to be a gut-and-amend that would require SIG financials be made available to the public. CSISF will sponsor it.

The language for AB 879 is being worked on and vetted by lobbyists representing SIGs and the insurance industry It's unknown where all SIGs stand on public disclosure, and not all lobbyists are willing to go on record as to their clients' positions until there is final language.

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"We think this is good public policy," says Theo Pahos, lobbyist for the Association of California Insurance Companies (ACIC). CSISF is sponsoring the bill, but Pahos says that ACIC will play a part in this bill.

"The general goal is to have information about a group made public, so the public would have an opportunity to review the financials," says Sam Sorich, ACIC president. "We think it would be a healthy debate. We think the Legislature should at least review this."

SIGs do not oppose some additional scrutiny. Some SIGs are open to allowing CSISF to look at their financials. But SIG administrators think individual insurers are taking a sudden interest in their books because SIGs present serious competition in a workers' comp market that appears to be hardening.

Disclosure: Pros and Cons

Clay A. Jackson of Affinity Group Administrators, a SIG administrator, says that some SIGs turn over their financials to CSISF. CSISF would be in the best position to understand a financial statement, but Jackson says most SIGs do not support public access because they don't consider group self-insurance to be a marketable commodity.

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> *—Clay A. Jackson, Affinity Group Administrators*

"If a SIG failed, [CSISF] would ultimately be liable. It is the backstop for the SIGs," Jackson says. "We do not consider SIGs to be a market, but insurance companies market by nature. They want to have a greater market share," says Jackson, adding that OSIP has never expressed a concern that SIGs are not sufficiently transparent, yet insurance companies are expressing overwhelming concern.

"You have to wonder why do they care so much," Jackson says.

The industry asks the same question of Jackson: Why the big hide?

Some industry notables dismiss this notion that wanting public financials is in some way an attempt to gain a competitive edge. Mark Webb, vice president of governmental relations with Employers Direct Insurance Company, points out that a balance sheet cannot reveal how a SIG prices a risk. Insurance companies have other ways to market.

"We know what their pricing is. A number of these are broker based. SIGs accept broker submissions, which is fine," Webb says. "To somehow suggest that this is a state secret...is ludicrous."

Some industry experts question whether CSISF should even have access to the same financial information given t the regulator for liability reasons. In the case of insurance companies, the California Insurance Guarantee

Association (CIGA) pays the claims of an insolvent carrier, but carriers are not required to provide CIGA with financials, arguing that CIGA would be exposed to liability if it failed to take action against a sinking carrier.

“We’ve got all the transparency that’s needed right now…That’s the point of James Ware’s group,” says Phil Vermeulen, lobbyist for Acclamation Insurance Management Services. “Where’s the problem?” he says, adding that not all SIGs are fans of having CSISF look at financials for reasons not least of which is the liability factor.

But CIGA has access to carrier financials just like any member of the public. Neither CSISF nor CIGA are regulators, so they don’t have a duty to take action.

“Even if we did think a carrier is in bad shape, so what. What can we do about it? We have no power to stop a carrier from writing,” says Wayne Wilson, executive director of CIGA. “[The carrier’s] underlying data [are] public. The Department’s opinion is another thing.”

CSISF thinks that it’s not only good policy for its organization to see SIG financials but for the public’s benefit as well.

“The Fund has outsourced financial and credit analysts that are able to scrutinize 27 or so SIG financials as they are made available,” says Jeff Pettegrew, executive director of CSISF. “SISF is the legal financial backstop for SIGs now and we don’t have any financials. Clearly, the fund will be able to monitor each more closely. ‘Legal liability’ is an obvious scare tactic that is an inappropriate description pertaining to the Fund’s legal role.”

Pettegrew says he can’t attest to the financial situation of any of the SIGs right now and it’s his understanding that potential members don’t get to see them until they join. CSISF’s board supports total transparency.

“[SIGs] would post pertinent figures it has to do with performance to see they’re complying with various standards. If SIG managers say they’re sound, it sounds good, but unless we can prove it, we can’t [vouch] for it,” Pettegrew says.

Pettegrew says he’s suggested that a summary actuarial opinion be included in the financial information, so the opinion can be tied to a loss pick.

Webb says the arguments regarding liability and market share have no bearing on whether SIGs’ financials should be public. Many of the stand-alone self-insureds are publicly traded, so their financials are already public.

“Let’s take a public company. I don’t recall there being a duty to do something when [it] lost 30% of its book last year,” Webb says. “CRM’s financials are public, and I don’t recall the doors of the security fund being beaten down.”