

Your Contact Information:

Donald Pachner
PO Box 926
Bedford, NY 10506-0926
Email: dpachner@pachner.info
Tel: 914-234-2228
Fax: 866-406-9548

If you have further testimony or comments, please send them to our email box at PublicHearingsComments@ins.state.ny.us. You may include any attachment of electronic documents in your email.

Your Testimony/Comment:

* * * * *
* * * * *

Thank you for giving the insurance community the opportunity to provide input on producer compensation in the insurance industry, a key issue that impacts not only the income of the large number of licensed resident and non-resident insurance producers in New York, but also the marketing practices and pricing structure of insurers and the integrity of the insurance industry.

I am President of Pachner & Associates, LLC, a tiny, growing, 5 year-old specialty broker that does business in more than 20 states around the U.S. I am a fourth generation insurance broker and previously worked for my father Charles W. Pachner and grandfather Leo S. Frenkel at Frenkel & Co., Inc., a respected, closely-held international insurance brokerage firm started by my grandfather's father Emil Frenkel in 1878.

As a small broker, compensation issues are extremely important. Direct appointments to insurance carriers are difficult to come by, and my commission from insurers is roughly half what brokers with direct appointments retain. This makes survival difficult at best due to the cost of labor and electronic insurance services (agency management systems, insurance information providers, IT infrastructure and document management systems.)

When I worked for a larger broker, contingent commissions were extremely important. However, they created a clear conflict of interest (an intuitive

conclusion that is justified, given the recent evidence of the resulting corruption at the largest brokers in New York) where the clients' interest is eclipsed by the need of the brokerage firm to increase profits by targeting insurance carrier goals.

Technically speaking, an insurance broker operates as a highly specialized contract attorney whom deals only in insurance contracts and issues surrounding them. We review the contracts for clients, bind the contract and represent the policy holders in their dealings with insurance carriers. Insurance carriers influence this client agency and trust by offering commissions.

I have spoken about this at insurance association meetings and know that the brightest and most involved insurance agents and brokers agree that we should be compensated by our clients rather than by the insurance carriers. As highly specialized contract attorneys, insurance brokers should be compensated on a fee basis (whether hourly, flat fee or contingent) for our work on behalf of clients.

Similar to arrangements entered into by attorneys, the more ambitious or talented brokers would command the highest compensation. The less talented or less ambitious brokers would receive the going hourly rate for their services, at least high enough to pay their overhead, personnel and a profit. The competition would define this.

Not only would this encourage attention to service by brokers and carriers, this would also encourage bright, young brokers to enter the industry, a problem in today's business climate where the brightest college graduates feel stifled by the agency system and see greater opportunity in other business segments.

The concept of agency should be just that. Insurers could continue to assign Managing General Agents, but most brokers would represent policyholders and the clear conflict of interest that inherently corrupts our industry would disappear.

To an insurance carrier, the most crucial part of the rate making process and marketing process is certainty. Two areas are crucial to carriers.

Retaining a loyal customer base through a cadre of loyal agents has been the method used for over 100 years.

Insurance carriers have to earn and hold the respect of brokers, hence a motivation to stand out and compete for business. They covet the agency association awards for best service by an insurer, which are handed out annually as association luncheons. This represents no change from the current state of the market.

Insurance carriers also rely on certainty in the rate making process and capitalization. A rate change may have to be phased in gradually, but obviously attainable over a period of a few years. This has been done when required by changes in policy forms, notably the current generation of Insurance Services Office commercial general liability forms.

In an industry that holds itself up as a socially-beneficial financial service and sells altruistic goals of trust, one serious flaw prevents the public from taking the industry seriously, the conflict of interest inherent in the agency system.

Yes, the regulatory process would have to change, the rates would have to be revamped to account for a new sales/marketing structure, and agents/brokers

would have to adapt to a new merit-based system of compensation by clients.

Around the end of the nineteenth century, many insurers gained the public's trust by being there for them when catastrophe struck. The insurance industry prospered. Prompt claim payments after a catastrophe is the insurance industry's best advertising and publicity.

I can see a similar surge of public confidence in the insurance industry when the agency system is replaced by a fee-for-service, merit-based system, and the insurance industry and public do not need to suffer a catastrophe to achieve this beneficial resurgence.

New York has historically led the way for the rest of the nation on insurance regulation. Let's show the rest of our great country how New York can reform the agency system to once again earn the public's trust and respect for the insurance industry, and lead the other 49 states toward an insurance compensation system with integrity. I urge you to examine a sweeping change to our current agency system and replace it with a client fee-based system.

Respectfully,

Donald C. Pachner
President
Pachner & Associates, LLC
Insurance Brokers & Consultants

* * * * *
* * * * *