

**ELECTRONIC INSURANCE NOTICES AND DOCUMENTS WORKING GROUP
MINUTES OF NOVEMBER 4, 2013 MEETING
KING KALAKAUA BUILDING
QUEEN KAPIOLANI CONFERENCE ROOM**

Present: Peter Fritz, member of public; Martha Im, Insurance Division; Gordon Ito, Insurance Commissioner; Isaac Kosasa, Hawaii Insurers Council (HIC); Ann Le Lievre, Insurance Division; Lori Lum, Watanabe Ing LLP, representing Property Casualty Insurers Association of America (PCI); Alison Powers, Hawaii Insurers Council; Bob Toyofuku, Commission to Promote Uniform Legislation (Commission); Tiffany Yajima, Ashford & Wriston LLP.

Conference Call Participants: Alex Hageli, PCI; Robert Joslin, Hawaii Public Adjusters; Bob Nash, State Farm Insurance Companies (State Farm); David Leifer, American Council of Life Insurers (ACLI); Mark Sektnan, PCI; Joann Waiters, ACLI.

1. Call to order; public notice

Insurance Commissioner Gordon Ito called the meeting to order at 9:10 a.m. Public notice for this meeting was timely filed with the Lieutenant Governor's office on October 21, 2013.

Commissioner Ito opened the meeting by thanking members and participants for attending the meeting, and also reminded members that the Working Group is following the Sunshine Law. Discussion among members should occur in open hearing.

2. Approval of minutes of October 14, 2013 meeting

A draft of the minutes of the October 14, 2013 meeting was previously circulated to members for their review.

Bob Toyofuku moved, and Isaac Kosasa seconded, to approve the minutes of the October 14, 2013 meeting. The motion passed unanimously.

3. Testimony by Public

Taking agenda item number IV, testimony by members of the public, out of order, Commissioner Ito invited comments from the public. Peter Fritz, member of the public, who is also an attorney, an individual with a disability, member of the State Rehabilitation Advisory Council, and current chair and member of the Disability and Communications Access Board, presented oral

testimony in his capacity as a member of the public. In addition, Mr. Fritz provided written testimony, a copy of which is attached hereto as Exhibit A and made a part of the meeting minutes.

Mr. Fritz stated he was concerned that the Draft Report of this Working Group had failed to include legal considerations such as the Americans for Disabilities Act (“ADA”) or any Hawaii laws requiring access to documents by individuals with disabilities, such as those with sight or hearing impairments. Electronic documents must be accessible by all individuals. The PDF documents posted online for this Working Group were not accessible by the blind, but this problem was timely fixed by the Insurance Division. For electronic documents, § 508 of the Rehabilitation Act sets forth the standards that should be used.

Mr. Fritz shared that in his review of State Farm’s website, the overall accessibility for persons with disabilities was worse than average. Although he only reviewed between four (4) to ten (10) pages of State Farm’s website, he found problems.

He noted that a mandatory opt-in would likely not comply with the ADA. Many impaired individuals do not use computer or have access to computers. If a person with disabilities were charged any fees for paper documents, this would be a violation of the ADA. A 9th Circuit case held that charging individuals with disabilities fees for disabled parking permits was a violation of the ADA.

He asked that the Working Group consider that legislation in this area cannot be passed in a vacuum. Proposed legislation cannot be effective upon signing, but should be contingent upon rules being adopted first. He also noted that a study be considered regarding the impact this proposal would have on the digital divide. He cannot see accessing insurance documents on smart phones due to smart phones not being able to print documents. In addition, the Working Group should consider having broad band feedback on accessibility of the internet to access electronic insurance notices and documents.

Bob Toyofuku asked for clarification of the term “digital divide”. Mr. Fritz stated this term meant the discrepancy between the wealthy or affluent having material things, versus others in a different economic strata. Mr. Fritz stated the term “program modification” is the equivalent of “reasonable accommodation.” An insurer will likely not be expected to undergo program modification regarding documents and be forced to translate every document into braille for the blind. Having to provide a blind person with a document in paper format would be reasonable. However, there are certain standards that must be complied with when providing a PDF or other electronic document to a person with a disability. He noted that the Notice for this meeting was not ADA-compliant in that Adobe Acrobat 9 was used to PDF the Notice that was posted on the state’s website. Creating a PDF of the Notice in this manner would not allow someone who was

blind to use software to “read” the Notice. The State of Hawaii needs a uniform policy on accessibility of documents by persons with disabilities.

Alison Powers asked for clarification regarding Mr. Fritz’s broad band comment. Mr. Fritz stated that he was looking at the availability of broad band in remote locations in Hawaii. In rural areas, lack of sufficient broad band may be adequate to read emails, but to download a 2 MG document may take up to two (2) hours. One could go to the library to access a computer and the internet, however, this goes to the issue of accessibility for the disabled individual.

Commissioner Ito shared that the Department of Commerce and Consumer Affairs IT Division is tasked with posting documents on the Department’s website in an ADA-compliant format. Upon our being alerted to the problems with this working group’s posted Notice, the Department’s IT Division initiated work on ADA-compliance for all documents posted on the Department’s website.

4. Report to the Legislature

The Working Group went over the comments and recommendations to the draft report received from HIC, PCI, State Farm, and the Commission, circulated in advance of today’s meeting.

Page 2, lines 9 through 16, of the Draft Report elicited comments from HIC and PCI. HIC’s comments were to clarify what the industry wanted going forward, not to state what the industry is already allowed to do. Currently, the insurance industry can provide electronic copies of certain documents to consumers who opt-in to receive electronic documents. However, the insured cannot get the following documents in electronic format: cancellations, terminations, lapses, or material alterations.

Bob Toyofuku stated that if the Model Law is passed and governs e-delivery of insurance documents and notices, then the Hawaii Commission would have concerns whether the Model Law would trump UETA regarding cancellations, terminations, lapses, or material alterations as stated in Hawaii’s UETA, Hawaii Revised Statutes (HRS) § 489E-3(b)(3)(C). Earlier Working Group discussions made clear that Hawaii’s UETA law specifically prohibits electronic transmission of insurance cancellations, terminations, lapses, or material alterations of contracts of insurance, insurance benefits, life settlement or viatical settlement agreements, or service contracts.

Alex Hageli stated that Tennessee and Arkansas have issued bulletins that clarify electronic insurance cancellation notices are allowed as long as consumers consent, but he also acknowledged that Hawaii’s UETA had specific prohibitions regarding certain electronic insurance notices. The specific prohibitions in Hawaii’s UETA are not in the Model UETA.

Bob Toyofuku shared that the Report to the Legislature be as factually accurate as possible, without fluff or opining. Commissioner Ito stated that if a bill is introduced on this subject, industry and other groups will have ample opportunity to provide testimony advocating a particular position.

Page 3, lines 1 through 7, HIC, PCI, and State Farm submitted comments. Alex Hageli stated PCI's suggested language addresses that there are two (2) ways to deliver electronic documents: by email or to have documents on a secure encrypted password protected site. The second method of delivery would entail putting a link on the insurer's website and consumers would click on the link and enter a password to access their documents. HIC and State Farm agreed with PCI's proposed amendments.

Page 4, line 18, HIC submitted comments. With minor clarification, HIC's proposed edits were incorporated into the Draft Report.

Page 5, line 11, HIC's proposed edits were incorporated into the Draft Report.

Page 5, lines 15 through 18, PCI submitted comments questioning the accuracy of the language in the Draft Report regarding E-SIGN. Joann Waiters will consult with Dave Leifer as to the E-SIGN law and provide appropriate language if needed.

Page 6, line 7, HIC's proposed language, first paragraph, was not incorporated into the Draft Report as it was deemed more commentary than factual. A comment was made that the second proposed paragraph may not be accurate in light of Peter Fritz's testimony and access to electronic documents by individuals with disabilities, and was not incorporated into the Draft Report. If a bill is introduced during the upcoming legislative session, the industry can provide the same comments in any testimony submitted.

Page 6, lines 20 and 22, minor addition and corrections made to Draft Report.

Page 6, lines 9 through 16, Commissioner Ito voiced the same concerns as the previous recommended additional language on page 6, line 7. The proposed language seemed more commentary and editorializing than factual, and the second proposed sentence was problematic.

Bob Toyofuku was to submit substitute language to accurately characterize the Working Group composition and positions shared regarding consumer concerns. He will try to submit substitute language in the next few days regarding language in section V of the Draft Report. Action on the

proposed language is deferred until Bob Toyofuku submits substitute language for consideration.

Page 7, line 5, HIC's additional proposed language incorporated into the Draft Report.

a. Draft Report Recommendations

Page 10, both HIC and State Farm submitted proposed Draft Report recommendations for consideration.

Bob Nash stated the proposed State Farm recommendations stem from the insurer seeing increasing numbers of consumers wanted to communicate electronically with insurers. Based on this feedback from consumers, State Farm wants to remain competitive in this industry and provide documents in electronic format.

Alex Hageli and Robert Joslin both agreed that a growing number of consumers favor electronic communications with insurers.

Bob Toyofuku stated he could not agree to a statement or recommendation that the Model Law be adopted, as the Model Law allows for electronic notices of cancellations, terminations, lapses, or material alterations of contacts of insurance, insurance benefits, life settlement or viatical settlement agreements, or service contracts. He reiterated that the Hawaii Commission was very specific in not allowing any electronic insurance notices of cancellations, terminations, lapses, or material alterations. Bob Toyofuku also stated that only 5 (five) current commissioners voted regarding the Commission's position on electronic insurance notices and documents; both Hiroshi Sakai and Bob Toyofuku, lifetime members of the Hawaii Commission, did not vote.

Alex Hageli summarized the Model Law as follows: Part 1 of the Model Law allows insurers to provide any and all documents to policyholders in electronic format. Policy holders must affirmatively opt-in to receive documents electronically. Part 2 of the Model Law allows insurers to post standard language policies that contain no personally identifiable information on the web and send a link to the policy holder to access the document, without the policy holder's consent. If a policy holder wants the document in paper format, the policy holder must specifically request this, whereby the policy holder would then opt-out to receiving an electronic version and obtain a paper copy instead.

All Working Group representatives, except for the Commission representative, were in agreement that Part 1 of the Model Law should be adopted. Bob Toyofuku stated that the Commission wanted everything to be on an opt-in basis.

The representatives could not come to a consensus on recommendation language. The Insurance Division will propose revised recommendations based on State Farm's proposed language, taking into consideration the comments shared by the participants.

b. Commission to Promote Uniform Legislation

Bob Toyofuku provided a report on the Hawaii Commission meeting of October 7, 2013. He was unsure if the Commission meeting report should be included in the body of the Draft Report, or reserved for the recommendation section. Bob Toyofuku stated that the Hawaii Commissioners were clear that they were not in agreement with any proposed legislation allowing for electronic insurance cancellations, and that the specific insurance prohibitions enumerated in Hawaii's UETA, HRS §489E-3(b)(3)(C) remain intact.

5. Submission of testimony by interested parties and members of the public

Interested parties and members of the public may submit testimony to the Working Group by: mail (335 Merchant St. #213, Honolulu, HI 96813), fax (808-586-2806), or email (ins@dcca.hawaii.gov).

6. Next meeting

The next meeting is scheduled for Wednesday, November 13, 2013 at 8 a.m. Hawaii time.

7. Adjournment

The meeting was adjourned at 11:24 a.m.