

Negligence Law Section

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Insurance Report

“NAIC AND DIFS BEGIN TACKLING RACISM IN INSURANCE PRACTICES”

Robert June, Law Offices of Robert June PC

In the summer of 2020, the National Association of Insurance Commissioners (NAIC) announced the formation of a Special Committee on Race & Insurance, aimed at addressing racism in insurance practices throughout the country. As explained by Special Committee co-chair and NAIC President Ray Farmer:

Within the NAIC, we’re seeing unprecedented discussions between our members and stakeholders on race and its role in the design and pricing of insurance products as well as our collective need to improve diversity in the insurance sector particularly in senior leadership roles. It is the duty of the insurance sector to address racial inequality while promoting diversity in the insurance sector. We welcome the public commitments of industry leaders to address these issues and I am excited by the strong and personal commitment of my fellow commissioners to take action on these important subjects. If not us, who? If not now, when?

NAIC CEO Mike Consedine echoed the need to focus on unconscious bias: “Our regulatory system and insurance in general is a reflection of the society it aims to protect, and while state insurance regulators have worked to eliminate overt discrimination and racism, we all have been increasingly aware that unconscious bias can be just as damaging to society.” The Special Committee was charged with:

- Conducting research and analyzing the level of diversity and inclusion within the insurance sector;
- Engaging with a broad group of stakeholders on issues related to race, diversity, and inclusion in the insurance sector;
- Determining whether current practices exist in the insurance sector that potentially disadvantage minorities; and

- Making recommendations regarding steps:
 - both insurance regulators and the insurance industry can take to increase diversity and inclusion;
 - that should be taken to address practices that potentially disadvantage minorities; and
 - to ensure ongoing engagement of the NAIC on these issues through charges to existing committees, task forces and working groups.

Over the past year, the Special Committee has created five “Workstreams” to address elements of its broad charge and develop action steps:

1. Workstream One: Research/analyze level of diversity and inclusion within the insurance industry.
2. Workstream Two: Research/analyze level of diversity and inclusion within the NAIC and state insurance regulator community.
3. Workstream Three: Examine and determine which practices or barriers exist in the insurance sector that potentially disadvantage people of color and/or historically underrepresented groups in the Property and Casualty line of business.
4. Workstream Four: Examine and determine which practices or barriers exist in the insurance sector that potentially disadvantage people of color and/or historically underrepresented groups in the Life Insurance and Annuities lines of business.
5. Workstream Five: Examine and determine which practices or barriers exist in the insurance sector that potentially disadvantage people of color and/or historically underrepresented groups in the Health Insurance line of business.

Michigan Department of Insurance and Financial Services (DIFS) Director Anita Fox is one of the state insurance commissioners named to the Special Committee, and she is specifically identified as a participant in Workstreams Three, Four, and Five. “Access to insurance is a key component of financial security and opportunity,” said Fox. “I am committed to joining the NAIC and my peers nationwide to critically examine and take meaningful steps to confront the issues of racial disparities and inequities in the insurance sector that have created barriers to equal access to insurance products for people of color and other underrepresented communities.” Director Fox emphasized that this is part of the core mission of DIFS:

Our mission drives us to ensure that all Michigan residents have access to insurance and financial services, which includes improving access in underserved communities and removing explicit or implicit racial and other biases to eliminate barriers to these essential services. DIFS is committed to working with national and state partners to address these serious issues.

The Special Committee is scheduled to meet again in mid-August 2021, and the difficulty of its work is just beginning to come into view. For example, the Workstream Five group has generated a *draft* “Principles for Data Collection” in order to “establish consistent

high-level guiding principles for the collection and treatment of data on race, ethnicity, and other demographic characteristics in the business of health insurance.” This will require a delicate balance of regulatory work within an already regulated data framework. Insurance departments will need to confirm that state and federal laws do not prohibit insurers from “collecting race, ethnicity, language, sex (including gender identity), sexual orientation, and disability information.” At the same time, state commissioners will have to “distinguish between the collection of demographic data and the prohibited use of demographic data in rating, underwriting practices, and benefit determinations.” Insurance companies must also comply with HIPAA, and privacy protections may impair their ability to report on disaggregated demographic data.

Determining acceptable uses of demographic data may require “evaluating algorithms for bias; analyzing claims, enrollment, and complaint data to better understand health care disparities or to evaluate the efficacy of programs intended to reduce health care disparities; provider network development and coordination of care; reporting requirements; quality improvement of services; assessing or planning to meet the need for health-related social services and supports, including trauma-informed care; and targeted outreach to underserved populations, among other uses.”

This is obviously a large and data-intensive project, and whether we consider creating regulatory algorithms in DIFS or regulating the algorithms used by insurance companies, the level of technological sophistication involved is clearly reaching new heights. More and more, insurance companies are using algorithms in the process of rating risks and in evaluating and settling claims. Those algorithms may have built-in implicit biases that should be weeded out, but regulating insurance company algorithms will certainly be difficult, and much of this effort may require insurance companies to analyze and improve their methods without regulation.

DIFS is aware that lawyers in the field may encounter insurance practices or barriers that potentially disadvantage people of color and/or historically underrepresented groups, and DIFS wants you to report any such practices to DIFSinfo@michigan.gov. DIFS has a number of staff members working on these issues and supporting NAIC committee work.

This will be a long process, and hopefully the creation of the NAIC Special Committee will prove to be a great first step in addressing racial bias in insurance practices.

Bob June is an Ann Arbor attorney representing people throughout Michigan regarding insurance coverage and ERISA benefit claims. Bob is a past chair of the Litigation Section of the State Bar of Michigan, and he presently serves on the council of the Insurance & Indemnity Law Section. His email address is bojune@junelaw.com.

Robert June
Law Offices of Robert June PC
734-481-1000
bojune@junelaw.com