

**BRYON H. SHORT**  
STATE REPRESENTATIVE  
Seventh District



HOUSE OF REPRESENTATIVES  
STATE OF DELAWARE  
LEGISLATIVE HALL  
DOVER, DELAWARE 19901

COMMITTEES  
Economic Development, Banking,  
Insurance & Commerce, Chair  
Energy  
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Revenue & Finance  
Veterans Affairs

**Joint Insurance Committee**  
Meeting Minutes  
April 13, 2010

Chairman Short called the meeting to order at 1:13 p.m. Representatives present included Lavelle, Ramone, and Brady. Senators present included Blevins, McDowell, and Cloutier.

After calling the meeting to order, Chairman Short explained that Commissioner Karen Weldin Stewart, of the Delaware Department of Insurance, requested to speak with both the Senate and House about current events surrounding Delaware insurance. Chairman Short thanked Commissioner Stewart, her staff, the general public, and the Senate and House members for attending the meeting today. He explained that two issues would be discussed at today's meeting: the issue of an insurance denial for a diagnostic cardiac test and the Captive Insurance Bureau.

Chairwoman Blevins explained that the meeting would be a hearing for the Insurance Commissioner and her staff and that there would be no public comments. In addition, the purpose of the legislative bodies is not to oversee Commissioner Stewart's office because it is an elected position that has its own authority. Chairwoman Blevins asked that the members of both the Senate and House introduce themselves. Rep. Lavelle asked if the legislators could ask questions of Commissioner Stewart. Chairwoman Blevins stated that the legislators could ask questions but discussion would not be opened to the public.

Commissioner Stewart began by thanking the committee for holding this meeting. She introduced her staff, which included Linda Nemes, a Senior Research Analyst, Mitch Crane, Acting Director of Consumer Services, John Tinsley, Special Deputy for Examinations, Steve Kinion, Director of the Bureau of Captive & Financial Insurance Products, and Gene Reed, Acting Deputy Insurance Commissioner.

Commissioner Stewart explained that the Department of Insurance (DOI) manages 130 domestic companies with \$391 billion in assets in 2009, an economically bad year. She stated that although Delaware is a small state, it is highly recognized as a business state. The 2009 fiscal budget had a total revenue generation of \$126 million, in which \$109.9 million came from premium taxes and \$16.1 million from licensing fees. Of that revenue, \$84.5 million was allocated to the General Fund with the remainder going to the Fire/Ambulance/Police Pension fund. The department had an operating budget of \$24.9 million, where \$17 million is passed through the department for Triennial Financial

Examines of Domestic Insurance Companies and \$7.9 million is the department's operating budget.

After explaining the overall department's budget, Commissioner Stewart read the timeline of events that pertain to the situation where a patient was denied a cardiac test. For a detailed timeline, see the handout titled "Timeline of events related to the Department of Insurance's handling of a recent and high profile medical procedure pre-authorization case." In February 2010, a patient underwent surgery and no complaints were made. On March 10, DOI received a complaint letter from the doctor of the patient and on the same day, DOI sent confirmation of receipt of the letter. On March 19, a News Journal reporter called asking questions which results in an article being printed on March 21 in the publication. Chairman Short asked about a meeting with Blue Cross Blue Shield. Commissioner Stewart stated that on March 22, she attended a previously scheduled meeting with Blue Cross Blue Shield and also discussed, with the News Journal, denials moratorium on an "off the record" basis. On March 25, U.S. Senator Jay Rockefeller sent a letter to Blue Cross Blue Shield about the patient's case and called for an investigation into the situation. On March 26, the News Journal printed another article, announcing the investigation by Senator Rockefeller. The following day, Commissioner Stewart announced that a separate investigation will be run by DOI into the situation. On April 13, DOI holds a public hearing about this case, which Commissioner Stewart found to be very beneficial.

Mr. Crane, who was hired to work on insurance regulatory policies, explains that Consumer Service is responsible for the inquiries received by DOI from Delaware residents and insurance companies. In 2009, Consumer Service had 6,000 complaints which included complaints concerning property, health, and workers compensation. Of those complaints, only 20 were related to denials of medical tests. Until the 2010 case, there were no complaints concerning stress tests. Mr. Crane explained that once the department receives a complaint letter, a letter is sent to the insurance agency. DOI received the complaint letter in this case on March 10 and immediately contacted the cardiologist for more information on the patient and procedure. The jurisdiction of DOI is limited to insurance companies licensed in Delaware and does not include self-insurance. With self-insurance, DOI can advocate for the patient and attempt to resolve the issue, but they have no real power in that arena. On March 29, DOI received a response from the cardiologist and made a formal complaint to Blue Cross Blue Shield. In some cases, when a test is an emergency and the patient can not wait a few weeks, DOI will call the doctor and insurance company directly. In almost all cases, denials are reversed because the insurance company will have the necessary information. In this case, there was no attempt by either the doctor or patient to call DOI. Since this case has been publicized, there have been six more cases of denials.

Chairman Short asked if decisions to reverse a denial are made rapidly. Mr. Crane responded that there are many steps in the appeal process but that it is possible for the reversal to happen in one day. Chairman Short questioned the DOI's authority to enforce this reversal and how many cases are typically reversed. Mr. Crane stated that there is no

true enforcement authority but a company will be marked with bad faith practice. Out of the 20 denials that DOI has received complaints on, 10 denials have been reversed.

Ms. Nemes explained that when DOI realized the seriousness of the situation, a decision was made to look into insurance carriers and investigate their practices and policies. Notification of this investigation was sent out to the companies that would be included. The examination will focus on March 2007 to April 2010 and will specifically look into the internal appeal process and third party vendors. DOI will use medical professionals, including nurses and cardiologists, to review the medical information. The approach will be to review the processes used by carriers to improve medical tests and any denials by insurance companies. The main focus will be on life-threatening conditions; however, the scope of the review can be expanded. In addition to these reviews, there will be random testing for timeliness.

Commissioner Stewart stated that at 9 a.m. this morning, she met with Senator Rockefeller's staff in order to work closely with the Senator's concerns. Chairman Short asked what had triggered the Senator's interest. Commissioner Stewart explained that he is the former governor of West Virginia, where the Insurance Commissioner is appointed, not elected. Being appointed changes the response an Insurance Commissioner has to the public. She also stated that Senator Rockefeller has had a life of caring for people and their medical needs. Chairman Short pointed to the fact that this is only one denial that is being discussed and questioned why Senator Rockefeller made his request. Commissioner Stewart attributed his interest to the media that surrounded the denial. Chairwoman Blevins asked if there were hundreds of these cases that the committee is unaware of or if it was a mistake by the media. Commissioner Stewart recognized that the media had reported high numbers but there was only this one complaint to DOI. She did state that there could be more complaints that have not been referred to DOI. However, since the media coverage, the office has received six more complaints.

Rep. Lavelle asked if DOI has medical professionals that they can talk to about denials. Mr. Crane said that DOI does not have in-house medical staff. If a complaint is made, DOI uses the patient's doctor as a medical reference. Rep. Lavelle asked how one denial could be termed "serious." Ms. Nemes explained that the media made allegations about the patient and the necessary test that resulted in a large amount of media coverage. Also, when a patient is dealing with a cardiac exam, they become more stressed than a less serious exam. Rep. Lavelle asked if the review will engage medical professionals. Mr. Tinsley explained that the goal of the examinations is to look at the medical protocol that is followed and specifically at the protocol that is followed with denials. DOI has a responsibility to approach the situation from all sides, the medical professionals, the patients, and the insurance companies. Rep. Lavelle asked if the medical professionals are contracted, to which Mr. Tinsley said yes. Rep. Lavelle also asked about what recourse or aid DOI could provide to state employees. Commissioner Stewart stated that DOI can make calls on the employees' behalf and that DOI has a law firm on retainer that could answer their questions. Rep. Lavelle asked what the law firm does. Mr. Crane explained that the law firm gives advice to self-insured persons as to their legal options. Currently, under U.S. law, an investigation will not take place unless there is a pattern of practice,

making the only alternative a civil suit. The law firm will assess whether or not the patient has an issue in which a civil suit would be cost effective. Rep. Lavelle asked what law firm DOI has on retainer and what they are paid. The law firm is Cross and Simon and they are paid \$3,000 per month. Rep. Lavelle stated that he is confused as to why Senator Rockefeller, who is a West Virginia senator, would take an interest in Delaware when there is no pattern of practice. Rep. Bennett asked the percentage of denials that are overturned. Mr. Crane stated that approximately half are overturned but that there are probably more that are not brought to DOI's attention.

Rep. Ramone recognized that Commissioner Stewart had requested this meeting and that she has reached out to the community and professionals to learn about the environment. He is satisfied that Delaware does a good job with the issue discussed today. He referred to Commissioner Stewart's earlier comments about Senator Rockefeller because she mentioned that she had been to the Senator's home. Rep. Ramone also wondered why a member of the Senator's staff did not discuss their concerns with a representative of Delaware. He asked if there was any attempt by Senator Rockefeller to discuss the issue with Commissioner Stewart and asked what happened at the meeting with his staff at 9 a.m. on April 13. Commissioner Stewart stated that her staff met with the Senator's staff and discussed the information that would be gathered in the investigation. Rep. Ramone asked if the Senator's staff had attempted to reach out for information and clarity on this issue before the meeting and again expressed his confusion at the Senator's involvement. Chairman Short agreed but stated that no one seems to know the answer to this question. Senator McDowell stated that with the new federal health care legislation, more attention is being paid to individual states and how issues concerning health insurance are dealt with. The Senator's staff could have just been completing a "Google fishing expedition." Rep. Ramone stated that it is hard to believe that this amount of communication and interest would be derived from a "Google fishing expedition." Chairman Short stated that he will make a call to Senator Rockefeller. Senator Blevins said that Senator Rockefeller's investigation concerns Blue Cross Blue Shield, not Delaware insurance.

Rep. Brady asked if the meeting at 10 a.m. earlier today had been open to the public, to which Commissioner Stewart stated that it was. Rep. Brady complimented DOI for its prompt response to the situation and its willingness to meet and explain the issue to the members of the legislature. He asked if there had only been this one complaint from a medical professional. Mr. Crane said yes, it was just the one complaint from the medical professional and patient. Rep. Brady stated that the issue was not overwhelming. Chairman Short thanked the committee for answering the questions and stated that the action by DOI within 17 days was very responsive. He reiterated that he will make inquiries into Senator Rockefeller's interest with this situation.

Senator McDowell stated that in addition to this one complaint, there has been a series of meetings with medical professionals, including the one held this morning, that allow for open communication. Commissioner Stewart stated that the patient comes first and that consumers become stressed when dealing with health insurance issues. DOI tries to keep the patient from becoming too involved with the process in order to spare them the worry and hassle. In discussing these issues with medical professionals, DOI needs to

investigate the American Medical Association's Common Procedural Terminology (CPT) codes.

Chairman Short stated that the committee will discuss the second topic on the agenda: the Delaware Captive Insurance Bureau. He explained that this coincides with the professional perception of Delaware and allows Delaware to work within a niche market. Chairman Stewart explained that the Captive's Bureau does not focus on brick and mortar business initially, but it does bring in revenue. With the increase in Captive's Insurance, brick and mortar business will develop and grow. This growth is aided by past and current legislation.

Mr. Kinion discussed the Captive Insurance Bureau, explaining that it builds an economic base within Delaware. Throughout his explanation, he referenced a presentation titled, "Overview: Bureau of Captive and Financial Insurance Products" (attached). Mr. Kinion cited Vermont as an example of a state that has used Captive Insurance to create jobs and grow revenue for the state. Vermont and Delaware have similar populations; but Vermont is 20 years ahead of Delaware in Captive Insurance. Delaware needs to actively pursue this insurance, with a focus on domiciles because many states that have Captive Insurance do not have domiciles.

Mr. Kinion explained that Captive Insurance is a global industry that allows business entities to form their own insurance entity; it is a type of self-insurance. The state is able to tax the invested income that companies receive. During the first six months of 2009, Delaware had one captive; however, the last six months of 2009 saw an increase to eight captives in Delaware. The bureau is also using series entity LLC captives to growth the business, which is garnering a lot of attention. So far, Delaware has licensed two of these series entity LLC captives. Mr. Kinion is promoting Delaware Captive Insurance on the basis that many companies are already incorporated in Delaware and practicing Delaware corporate law; therefore, it is easy for companies to use Delaware Captive Insurance as well. The state of Delaware will receive revenue from premium taxes, which Mr. Kinion estimates will be around \$800,000 by year end. These premium taxes are like an annuity, and Delaware will continue to see revenue from them. Delaware's premium taxes are lower than other states in order to attract companies to use Delaware Captive's Insurance.

Mr. Kinion referred to the pie chart on page 3 of his presentation to explain how Captive Insurance will help build the economy of Delaware. In 2009, 85% of the newly contracted captives used Delaware service providers, including accounting services, legal services, and management services. Vermont has seen growth in their professional services as a result in their Captive's Insurance and Delaware hopes to use niche markets to do the same.

On page 4, there is a map of the U.S. which shows the home states of Delaware's licensed captives. Mr. Kinion explained that the bureau has three captive initiatives. The first initiative is employee benefits in which costs to employees can be mitigated by captives. Delaware is the only state that is researching this niche market and looking at the health insurance language. The second initiative is the Federal Home Loan Bank,

which is an FDR era program. This system offers low-cost capital for developer projects. The federal government loans money at a low interest rate. The third initiative is Terrorism Risk, in which companies are looking to cover the terrorism exposure of a company. This is an area in which Delaware could take a lead position in Captive Insurance. Mr. Kinion stated that Delaware is committing to Captive Insurance and that he is excited for the growth potential.

Chairman Short thanked Mr. Kinion for his presentation and asked for a real count of Captive Insurance companies over the years. Mr. Kinion said that there are 53 captives today; in 2009, there were 40 captives and in 2008, there were 22 captives. Chairman Short asked Mr. Kinion to describe the make-up of his office. Mr. Kinion described the physical office of the bureau, explaining that there were many boxes amid the desks; however, the bureau has very little consumer traffic. The office space is shared with the liquidation bureau, with the Bureau of Captive Insurance paying 40% of the rent. There are four individuals in the office: the director, the director of business development, the director of strategic development, and the office manager. Mary Jo Lopez, the director of business development, has experience with the insurance industry, and she is the “frontline” for the bureau in attracting business. Chairman Short asked if she was on the road the majority of the month, to which Mr. Kinion explained that Ms. Lopez and himself were both on the road marketing Delaware. Ed Ianni, the director of strategic development, is a Delaware attorney that has LLC experience as well as wealth transfer experience. Jamie Bafundo, the office manager, plays an integral part by organizing the office.

Senator Cloutier asked if any Delaware resident is qualified to fill these positions. Commissioner Stewart responded that she had a short period of time to fill the positions and that she wanted to have personnel experienced with insurance. Specifically, Commissioner Stewart stated that Mr. Kinion had 10 years experience in insurance regulation and “fit the bill.” Mr. Kinion stated that although there has been much written about him, he is experienced in Captive Insurance and does not believe there is anyone in Delaware who has the same level of credentials. Mr. Kinion believes that he can serve as an advisor to the Delaware legislature when issues surrounding the recently passed federal healthcare legislation begin to take affect. Senator Cloutier thanked Mr. Kinion for explaining the public misconception about his employment with the bureau.

Rep. Bennett asked the total cost to run the bureau. Mr. Kinion stated that it is \$750,000 including overhead and the bureau brought in \$600,000 in revenue for 2009. Rep. Bennett that the current year’s revenue is expected to be \$700,000 and next year’s revenue is expected to be \$800,000. Mr. Kinion predicted that the bureau would be “out of the hole” by 2010/2011.

Next, Rep. Ramone asked a series of questions to which Mr. Kinion responded with the following answers. Mr. Kinion is a contract employee as of January 2009 who makes \$192,000 per year. Ms. Bafundo is a state employee; Mr. Ianni is a contract employee at \$196,000; and Ms. Lopez is a contract employee at \$168,000. These salaries include all expenses associated with the employees, including travel. Rep. Ramone stated that the

three individuals make over \$500,000 per year thereby making the contribution of the Captive Insurance Bureau to the general fund only \$135,000. Mr. Kinion explained that 2009 was a difficult year economically because there was a lack of available credit. This led to the exploration of niche markets. Rep. Ramone asked Mr. Kinion to explain why he used the term “annuity due” to describe Captive Insurance. Mr. Kinion stated that captives will continue to pay long after they are created in the form of a tax. Mr. Ramone acknowledged that he understood the concept of annuity, but he pointed out that if the bureau was dissolved immediately, it would take the state four years to recoup the money it has paid out; he is trying to justify the investment of the state into the Captives Bureau. Mr. Kinion stated that each acquisition will grow the bureau and that new clients bring in additional revenue.

Rep. Ramone asked why the employees of the bureau had not moved into Delaware after being offered a job, which is a long-term goal when hiring an employee for the state. Mr. Kinion explained that Mr. Ianni was a Delaware resident and Ms. Lopez lived in New Jersey. Rep. Ramone asked how the three contracts for employees could have been decided without a bid or a request for proposal (RFP). Mr. Kinion stated that in certain instances, employees can be hired without a contract. Rep. Ramone asked if the cost of the bureau and the current employees are a start-up cost or if it will continue into the future. Mr. Kinion explained that the employees are on-going because the bureau is seeking out sophisticated transactions. Finally, Rep. Ramone asked how the bureau is marketing the tax advantages to Delaware corporations. Mr. Kinion stated that the corporation pays fees to Delaware and if they have a captive in Delaware, they will pay additional fees, for that captive, in Delaware. The captive is a separate legal entity.

Senator McDowell acknowledged the good questions asked by Rep. Ramone. He asked the salary of the director before Mr. Kinion and the cost of operating the budget before Mr. Kinion. Mr. Kinion stated that the previous director, who lived in New Jersey, was paid \$180,000 per year plus additional money for expenses. Rep. Ramone pointed out that the News Journal was inaccurate in reporting that the current employees’ salaries do not include expenses.

Chairman Short stated that there are two economic aspects to Captive Insurance: the premium tax received by the state and the creation of work for highly paid people in Delaware. Chairman Short asked the composition of the Vermont office that handles the Captive Insurance. Mr. Kinion stated that Vermont has approximately 800 captives that are monitored by a bureau of around 28 people. Rep. Lavelle asked if Captive Insurance is always an individual, to which Mr. Kinion responded that it can be a group as well but it is not a consumer oriented industry. Rep. Lavelle referenced the Wall Street issues when asking if the cost of captives will be forced on the tax payer. Mr. Kinion stated that derivatives are used in the investment world and that it is an option that is being researched for captives.

Rep. Lavelle asked Mr. Kinion if he personally has any conflict of interests due to his own law practice. Mr. Kinion stated that he has no conflicts because he gave up representing Captive Insurance companies. Rep. Lavelle asked Commissioner Stewart if

she believed that DOI did not need to use the RFP process when hiring contracted employees. Commissioner Stewart stated that she has the authority to hire the employees and is not restricted by the RFP process during hiring. Mr. Tinsley stated that there are many contractual employees within DOI that are experts within their field. Rep. Lavelle asked why the employees are contracted instead of becoming staff of the state. Mr. Tinsley stated that most exams are outside of the state so it is easier to have medical staff who are in the state of interest. Rep. Lavelle asked if the contracts are reviewed. Mr. Tinsley stated that the contracts are reviewed by the Commissioner, which is how the previous Commissioner handled the contracts. Commissioner Stewart stated that since she is an elected position, she does not need to go through the RFP process to hire employees. Rep. Lavelle stated that he does not understand that she does not need to use the RFP process and remarked that some type of oversight might be needed. Commissioner Stewart stated that two of the Captive Insurance positions were posted but received no responses.

Chairman Short thanked the members of the committee and the Commissioner's office for attending the meeting. He stated that Delaware is hoping to enjoy economic expansion from Captive Insurance in the future.

Chairman Short adjourned the meeting at 3:20 p.m.

Respectfully submitted by,

Jordan L. Fischer