

WORKERS' COMPENSATION INDUSTRIAL COUNCIL

NOVEMBER 6, 2014

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, November 6, 2014, at 1:00 p.m., Offices of the West Virginia Insurance Commissioner, 1124 Smith Street, Room 400, Charleston, West Virginia.

Industrial Council Members Present:

Bill Dean, Chairman
Kent Hartsog, Vice-Chairman
James Dissen
Dan Marshall

1. Call to Order

Chairman Bill Dean called the meeting to order at 1:00 p.m.

2. Approval of Minutes

Chairman Bill Dean: The minutes of the previous meeting were sent out. Did everybody have a chance to look them over? Is there a motion for approval?

Dan Marshall made the motion to approve the minutes from the September 4, 2014 meeting. The motion was seconded by James Dissen and passed unanimously.

3. Update on West Virginia Code of State Rule §85-1 Amendments

Andrew Pauley, General Counsel, OIC: Mr. Chairman, I want to briefly update you on Title 85, Series 1, amendments to the workers' compensation rules. As you know, we proposed amendments based on questions and concerns from various stakeholders concerning §85-1, and attorney fee representation acknowledgement and costs. We had an open comment period [30 days]. We had a Public Hearing, and there was a lot of concern voiced from both sides – most of the stakeholders. It appears that the gulf is so wide at this point there is no consensus on moving forward with the amendments at this time. I have already sent a letter to the Secretary of State's Office withdrawing the rule amendment proposals in their entirety, and as questions appeared there was no consensus within our office. The Secretary of Revenue and the Governor's Office are

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not moving forward on these, and we are unilaterally withdrawing without the need for a vote. Obviously, we cannot move forward with amendments without getting the Council's blessings. But we are unilaterally withdrawing those amendments in their entirety. If you have any questions I'll be happy to discuss them.

Chairman Dean: Mr. Dissen, questions?

James Dissen: The way I understand the procedure. . .once you unilaterally withdraw then the Council has no say in the matter. It becomes moot for us.

Mr. Pauley: That's correct. We were proponents of the rule, and our interpretation is that the Insurance Commissioner [under the statute] is the one that brings changes to the Industrial Council or rule amendments or new rules to have the blessing of the Council. We no longer are proponents of the rule. We would have to final file the rule before it would become effective, and we no longer have any authority to final file the rule itself. So, any vote on the matter would essentially be moot at this point. We would just not be moving forward on this matter. We will continue to look at this matter. We will continue to hear stakeholder comments. We will continue to monitor our complaints and see where the issues may continue for future development. But at this point we have no intent on moving forward with any additional rule changes at this point.

Chairman Dean: Mr. Hartsog, do you have any questions or comments?

Kent Hartsog: None.

Chairman Dean: Mr. Marshall?

Dan Marshall: Just for clarification, if you would. I understand what's happening with respect to this particular rule. Forward looking, can you clarify for me, is the Insurance Commission the only body or individual or organization that can bring a rule forward to this Council?

Mr. Pauley: That is our interpretation. When you look at the statute it says that you're basically under the umbrella as a Board – an advisory Board – for the Insurance Commissioner for rules that they propose and bring before this Board for its blessing. It does not keep anyone from making public comment. It does not keep anyone from coming to the Council and voicing concern. But we are the ones that have to kind of shepherd that rule through the various stages – through the Secretary of State, through the amendment stage, and then of course we will ultimately be implementing that rule. We have to be the ones that are bringing it forward. Again, as I stated, we report to the

Secretary of Revenue, and we report to the Governor's Office. So, those [rules] have to be approved through that chain of government as well.

Mr. Marshall: Thank you.

4. General Public Comments

Chairman Dean: We'll move onto general public comments. Bill, you signed up to speak today.

Bill Gerwig, Attorney: I don't think that I need to address the Council at this time.

Chairman Dean: Mr. Maroney, you signed up to speak.

Bill Maroney, Attorney: No, thank you.

Chairman Dean: Ms. Garrett, you signed up as a "maybe."

Linda Garrett, Attorney: Well, now it's a "no." Thank you.

Chairman Dean: I have one more "maybe," Mr. Atkins.

Garth Atkins, Attorney: No.

Chairman Dean: Does anybody from the general public have anything that they would like to comment on today? [No comments.]

5. Old Business

Chairman Dean: Does anybody from the Industrial Council have anything they would like to bring up under old business? Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No, sir.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Commissioner?

Michael Riley, Commissioner, OIC: No, sir.

Chairman Dean: Mr. Pauley?

Mr. Pauley: No, sir.

6. New Business

Chairman Dean: Does anybody from the Industrial Council have anything they would like to bring up under new business? Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No, sir.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Commissioner?

Mr. Riley, Commissioner, OIC: No, sir.

Chairman Dean: Mr. Pauley?

Mr. Pauley: No, sir.

7. Next Meeting

Chairman Dean: The next meeting is Thursday, January 22, 2015, at 1:00 p.m. Does that meet everybody's schedule?

Mr. Hartsog: Have you given us the schedule for 2015?

Chairman Dean: It's on the second sheet.

Mr. Hartsog: Thanks.

Chairman Dean: Does that meet with everybody's schedule? If not, please let us know so we can rearrange.

9. Executive Session

Chairman Dean: The next order of business is Executive Session. The next item on the agenda is related to self-insured employers. These matters involve discussion as specific confidential information regarding a self-insured employer that would be exempted from disclosure under the West Virginia Freedom of Information Act pursuant to West Virginia Code §23-1-4(b). Therefore it is appropriate that the discussion take place in Executive Session under the provisions of West Virginia Code §6-9A-4. If there is any action taken regarding these specific matters for an employer this will be done upon reconvening of the public session. Is there a motion to go into Executive Session?

Mr. Dissen: So made.

Mr. Marshall: Second.

Chairman Dean: A motion has been made and seconded to go into Executive Session. Any question on the motion? All in favor, "aye." All opposed, "nay." The ayes have it. We will go into Executive Session.

[The Executive Session began at 1:12 p.m. and ended at 1:36 p.m.]

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Chairman Dean: We will now reconvene the regular session of the Industrial Council. We have before us two Resolutions. The first Resolution has 12 companies:

Asplundh Tree Expert Company
Delhaize America LLC
E. I. du Pont de Nemours and Company
Exxon Mobil Corporation
Lowe's Home Centers LLC
Pepsi-Cola Metropolitan Bottling Company, Inc.
Sentinel Transportation LLC
SWVA, Inc.
U. S. Silica Company
Union Carbide Corporation
Wendy's International LLC
Weyerhaeuser Company

Chairman Dean: The recommendation is for renewal of self-insured status. Is there a motion?

Mr. Marshall: So moved.

Mr. Dissen: Second.

Chairman Dean: A motion has been made and seconded for renewal status of the 12 self-insured companies. Question on the motion? All in favor, "aye." All opposed, "nay." The aye's have it. [Motion passed.]

The second Resolution is for four companies for renewal of self-insured status.

Appalachian Mine Services LLC
Eastern Associated Coal LLC
Pine Ridge Coal Company LLC
Rivers' Edge Mining LLC

Mr. Hartsog: Mr. Chairman, let the record indicate I am recusing myself from voting on this Resolution.

Chairman Dean: Is there a motion for recommendation of self-insured status for the four companies?

Mr. Marshall: So moved.

Mr. Dissen: Second.

[Mr. Hartsog recused himself from voting on these four companies.]

Chairman Dean: A motion has been made and seconded. Question on the motion? All in favor, "aye." All opposed, "nay." The aye's have it. [Motion passed.]

9. Adjourn

Is there anything else that needs to be brought up before the Industrial Council before adjournment?

Mr. Dissen: Since the next meeting is in January I would like to wish everybody a Happy Thanksgiving, a Merry Christmas, and a Happy New Year.

Chairman Dean: Mr. Hartsog, is there anything that you would like to bring up?

Mr. Hartsog: I'd like to ditto what my friend [Mr. Dissen] to my left just said.

Mr. Marshall: And the same.

Chairman Dean: Is there a motion for adjournment?

Mr. Dissen: So moved.

Mr. Hartsog: Second.

Chairman Dean: We are adjourned.

There being no further business the meeting adjourned at 1:40 p.m.