

## **WORKERS' COMPENSATION INDUSTRIAL COUNCIL**

**APRIL 25, 2013**

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, April 25, 2013, 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 receive them and have a chance to look them over? Is there a motion for approval?

Kent Hartsog made the motion to approve the minutes from the March 21, 2013 meeting. The motion was seconded by Dan Marshall and passed unanimously.

### **3. Office of Judges Report – Rebecca Roush, Chief Administrative Law Judge**

Judge Rebecca Roush: Good afternoon everyone. I tendered to you this morning the Office of Judges report for the month of March. This will be very brief. For the month of March we acknowledged 335 protests for a total of 1,141. It does look as if we are on target to actually reduce the number of protests we acknowledged for calendar year 2013. We currently have a record low with regard to pending protests. If you compare this data to that of last year the trend is definitely downward. Do you have any questions specifically about the contents of the report?

Chairman Dean: Mr. Dissen?

James Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Kent Hartsog: No, I don't.

Chairman Dean: Mr. Marshall?

Dan Marshall: No, Mr. Chairman.

Judge Roush: Thank you.

#### **4. General Public Comments**

Chairman Dean: Does anybody from the general public have a comment today?  
[No comments.]

#### **5. Old Business**

Chairman Dean: We'll move onto old business. 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, sir.

Chairman Dean: Commissioner?

Michael Riley, Commissioner, OIC: No, sir.

Chairman Dean: Mr. Pauley?

Andrew Pauley, General Counsel, OIC: No, sir.

## **6. New Business**

Chairman Dean: We'll move onto new business. 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, sir.

Chairman Dean: Commissioner?

Commissioner Riley: No, sir.

Chairman Dean: Mr. Pauley:

Andrew Pauley, General Counsel, OIC: I actually do. I wanted to briefly update the Council on the recent legislative session and one Bill that affects workers' compensation [that just passed] which flowed out of Access to Justice, which is Justice Benjamin's committee that he put together concerning the ability to have representation and other issues concerning workers' compensation. From that Access to Justice Committee a Bill was submitted to the Legislature, which did in fact make it through. The Governor has not signed it yet. But House Bill 3069 basically allows attorney fees and costs to be awarded in "medical only" cases where there is a simple reversal standard. We have an unreasonable denial standard already in the statute. If a claim is denied and there is no basis in fact or law that can be found to be an unreasonable denial on attorney fees, it can be awarded for that. This standard is basically just a successful prevail standard; so therefore if a person is reversed from a decision, regardless of the facts of the case, they can be ordered to pay \$500.00 attorney fees per issue up to \$2,500.00 per claim plus costs. The private carriers can pay that or the

self-insured employers can pay that. That appears to be on its way for the Governor's signature. Of course, like I said, he hasn't signed it yet, but that is one of the issues.

What may be brought before this Council [flowing from that committee] are additional concerns about acknowledgement of attorney representation in cases, access to claims files, and repository information of actual claims. Those have not been formally submitted to us at this point. Obviously we are still continuing to review that, and we'll make you all aware of that; if in fact that's submitted or if someone comes before the Council and submits it, we'll be ready for that.

Chairman Dean: Questions, Mr. Dissen?

Mr. Dissen: None, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: Is there any other workers' comp type of legislation that went through this time?

Mr. Pauley: I want to say "not really." There were some. . .volunteer fire departments, but that's just more budgetary issues. There is going to be a study for that, which was passed in the first special session. The Fire Marshall, the Insurance Commissioner, the Secretary of Revenue, and so forth. . .to try to come up with a long-term solution. There is a short-term funding solution for this Bill. I think that report is due sometime at the end of 2015, so they will continue to look at it. Other than that, there were some carryover Bills that basically didn't really move or go any further.

Mr. Hartsog: So you would look for a couple of rule modifications potentially to spring out of the Bill that you spoke about?

Mr. Pauley: Yes. That is being discussed, and the thrust of the committee wanted to get this Bill out obviously for this Session, and then the other issues are still continuing to be discussed. There are transition issues with opening the market, and when it was the Workers' Compensation Commission and they were kind of the central document repository; that's one thing. Now you have private entities that have this information, and what extent does that have to be disclosed on a continuing basis, and those kind of issues. You have to look at all of that. The acknowledgement of attorney representation – there is obviously a Bar rule that attorneys have to acknowledge. . .not necessarily carries over to self-insured employers or private carriers. One of the concerns is you want to make sure there is a timely payment of benefits to a claimant.

You want to make sure there are no issues there. It's continued to be looked at. It's anticipated those will be coming our way at some point, but we don't have a specific date or timeframe.

Mr. Hartsog: Timeliness of payment as well as timeliness of communication with the claimant.

Mr. Pauley: Correct.

Mr. Hartsog: Would you report back at the May 30 meeting and kind of update us on where you're at in looking at that?

Mr. Pauley: Certainly.

Mr. Hartsog: Thank you.

Chairman Dean: Mr. Marshall, do you have any questions?

Mr. Marshall: None, sir.

Chairman Dean: Very good. Thank you, sir. Ryan, do you have anything under new business?

Ryan Sims, Associate Counsel, OIC: No, sir.

## **7. Next Meeting**

Chairman Dean: The next meeting is Thursday, May 30, 2013 at 1:00 p.m. Does that meet everybody's schedule?

## **8. Executive Session**

Chairman Dean: 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

**Workers' Compensation Industrial Council**  
**April 25, 2013**  
**Page 6**

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 moved.

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 aye's have it. Motion passed.

[The Executive Session began at 1:12 p.m. and ended at 1:25 p.m.]

Chairman Dean: We are back in regular session. Commissioner, do you have anything you would like to bring up under regular session?

Commissioner Riley: I do not, sir. Thank you.

Chairman Dean: Mr. Pauley?

Mr. Pauley: No, sir.

Chairman Dean: Ryan?

Mr. Simms: No, sir.

Chairman Dean: Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No, sir.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, sir.

**9. Adjourn**

Chairman Dean: Is there a motion for adjournment?

Mr. Marshall made the motion to adjourn. The motion was seconded by Mr. Hartsog and passed unanimously.

There being no further business the meeting adjourned at 1:25 p.m.