

WORKERS' COMPENSATION INDUSTRIAL COUNCIL

AUGUST 12, 2010

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, August 12, 2010, 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
Bill Chambers
James Dissen
Dan Marshall (via telephone)
Senator Brooks McCabe

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 July 12th minutes were sent out. Did everybody have a chance to look them over?

Kent Hartsog made the motion to approve the minutes from the July 12, 2010 meeting. The motion was seconded by James Dissen and passed unanimously.

4. Office of Judges Report – Rebecca Roush, Chief Administrative Law Judge

Judge Rebecca Roush: Good afternoon everyone. Yesterday evening I tendered to you a report which reflects the work performed by the hard working folks at the Office of Judges for the month of July as well as year-to-date statistics. The report really speaks for itself, but I'll just point out the highlights.

For the month of July we acknowledged 345 protests for a total of 2,892 protests for year-to-date. Again, we see the anticipated trends that you would expect to see as we move forward with this privatized market. The Old Fund litigation is starting to

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drastically decline and we're starting to see an increase in claims coming from private carriers.

Moving forward to the Pending Caseload – we have 3,693 protests pending in our office which is about 26 less than last month.

I wanted to point out a couple of issues on Final Decision Timeliness. We have 90 days to complete a decision once all the evidentiary submissions are sent to our office and the claim is submitted for a decision. That means it goes to a judge for the final disposition. We've been doing very well in that regard with only 1.7% being more than 90 days.

With regard to our Time Standard Compliance – that's the actual time it takes from the time we receive a protest to the final disposition of the case. That's set by rule 93CSR2. And with regard to that, for the month of July we've actually seen somewhat of a dip in our Time Standard Compliance at 84.6%. I wanted to point out the reason for that – we believe it's the issue that we made you aware of last month with regard to the transcription problems that we were experiencing with our new vendor. We believe that's the reason, combined with all the renovations in our office. The issue with the transcription – the problem with the vendor – we continue to make substantial progress. It's not quite resolved in its entirety, but we're moving that way rather quickly and making significant progress with regard to the problems that were raised there. And that's the report. I would gladly take any questions you might have on the statistics.

Chairman Dean: Senator McCabe, do you have any questions?

Senator Brooks McCabe: No.

Chairman Dean: Mr. Chambers?

Bill Chambers: Judge, I think Mr. Kenny mentioned this briefly last month. As we look at these statistics for the number of protests – and kind of set the Old Fund aside – private carriers relative to self-insurance, of those about 30% are self-insurance protests and about 70% are private carriers. Do you have a sense or can we get some measurement of how that compares to the universes those are drawn from? In other words, if self-insureds are 30% of the protests, but they're only 15% of the hours worked or dollars of premium, then it would suggest a relatively greater problem there than with private carriers. Is there some way to put the statistics into context relative to the size of the universe from which those protests come?

Judge Roush: I think that's an excellent question, but I don't think that it can be performed from our vantage point at the Office of Judges. Of course these are merely litigation statistics. I think that analysis is more appropriate for market conduct and the division here that performs the market conduct analysis. We could delve into that a little further and I could probably come up with some sort of number for you to compare it based on the total. A market conduct survey really is not appropriate from our perspective.

Mr. Chambers: Do you have a general sense or an educated guess as to how they compare?

Judge Roush: I do not – off the top of my head. I would gladly go back and research that for you and try to get that information to you.

Mr. Chambers: Thank you.

Chairman Dean: Mr. Dissen, do you have questions?

James Dissen: No questions.

Chairman Dean: Mr. Hartsog?

Kent Hartsog: Following up on what Mr. Chambers said, Ryan do you think you could get a breakdown of the number of people covered by private carriers versus the number of people covered by self-insured employers? And then you could use that. . . because it would be kind of a head count between the two groups and the relative numbers, and to give an indication of whether the percentage is higher among carriers or self-insureds, or if they're proportional, exactly what it is. Do you think you could do that and get that to Judge Roush so that she could add some information to this – both historically and present?

Ryan Sims (Associate Counsel, OIC): So that I understand the question, you want a breakdown of the overall percentage of employees in West Virginia who are entitled to workers' compensation that are employed by self-insured employers versus insured employers.

Mr. Hartsog: Not entitled to workers' compensation but covered by workers' compensation within those two buckets. Company "A" has 3,000 employees, okay. And so you'd have those 3,000 employees versus – within a self-insured bucket – and then you would have 2,000 over here that's within the insured kind of bucket. And you

compare those to the stats with regard to protest and litigation to kind of decide how that is.

Mr. Sims: Again, you are basically requesting what percent of the West Virginia's labor force works for self-insured employers versus what percent works for employers who are insured.

Mr. Hartsog: Yes.

Mr. Sims: Okay.

Judge Roush: I should point out also that we forward this data to a lot of different groups. This information is given to the Legislature, as well as to the Insurance Commissioner, as well as a number of units here within her office. I'm honestly not certain what is done with it. There could already be analyses being performed of this work that we send to them. So we probably should check into it to see perhaps if the Market Conduct Unit has already done some kind of analysis. I know that the gentleman who prepares the statistics for Commissioner Cline does regularly put different reports together for her. We probably should investigate that a littler further. I am happy to do that.

Mr. Hartsog: I don't think we're asking for anything to be duplicated if it already exists. If you just give us a copy that would be great.

Mr. Sims: The only other thing I want to say is we're going to need broad labor information on West Virginia, and we may have that available here or we may have to call the Department of Labor and get the labor pictures – the total number of employees in West Virginia. I'm not sure. Like Judge Roush pointed out, we actually have somebody that does research for the Commissioner. We'll run it through the proper departments and work on getting that information.

Mr. Chambers: And I suggest that if you're going to cast that net out – which I think is a really good idea – numbers of employees would be one factor. It would be even better to have hours worked or even dollars of premium. There could be more than one measure of the universe that might be helpful if we move forward.

Mr. Hartsog: The tricky part is on self-insureds. You wouldn't really have a premium dollar per se. You would have claims paid or something like that.

Mr. Chambers: Maybe you're referring to payroll.

Judge Roush: And just so I can clarify, the data that we collect – which is prominently used these days – is really just the collection of data we maintain on the litigation statistics. So we really have no way of knowing from our perspective the number of employees. But we are happy to reach out to other groups to share this information.

Mr. Hartsog: It would be good if it exists already. To have that if you need to get it from the OIC or somebody to incorporate it in your report so you could kind of see proportionally if there is a trend or something there that may be worth looking at.

Judge Roush: Absolutely. We are open to ideas of what information you need from our perspective to modify this report to make certain the Council has the information they need. This is actually a modification of Judge Leach's report. So we're always open to ideas of ways to make this report better, and I'll definitely research that further.

Mr. Hartsog: I do have one other question. I think you stated the statistics you gave here on timely decisions gave you 90 days from the time you had all the information to make a decision about a treatment or a protest or something like that. Is that statutory or is that in a rule?

Judge Roush: It is in a rule. And it's funny you should bring that up because I was just thinking I need to get those to you so that you can see what our actual rules are. They are found in 93CSR1 and 93CSR2, which are Office of Judges rules. And pursuant to statute those do not go through the regular rule making process. They are just rules that are assembled by our office, put out for public comment, and then filed accordingly. But they do not go through any – pursuant to statute – traditional rule making process.

Mr. Hartsog: What are the structural obstacles? And maybe you could talk about that. Give some thought to say cutting that to 60 days.

Judge Roush: I don't think there are, other than you would need to amend the rule. And I think we are at a point with the level of litigation. Our judges of course have been doing it this way for 19 years. The rules were created from a legislative mandate back during the time when litigation was overwhelming. There was a backlog of protests to review by the judicial wing of the Workers' Compensation Commission. So these rules were created from a legislative mandate at a time where there was substantial volume to the litigation. Now I definitely think we could get these done within

60 days. I don't think that is a problem. In fact I have asked many of our judges to try to do that already. Unfortunately old habits die hard and they are accustomed to the 90 days, but that's not something that we can't change.

Mr. Hartsog: Could you speak to that next time and what your thoughts are as far as changing your rule?

Judge Roush: Absolutely.

Mr. Hartsog: Because I think, especially from a claimant's perspective, anything we can do to speed that up and change the standard and we can measure it.

Judge Roush: I agree. And I will share that sentiment when we get back and emphasize to our judges that there is a desire to get them done more quickly. I don't think it will be a problem.

One more thing I wanted to add. We have set September 15 as the date that we will open our new hearing rooms for business, so to speak. And I wanted to talk to the Council – perhaps after the meeting – about inviting you up to take a tour of our operation. Of course we want to make it convenient for you, and the Senator as well, and any other members who would like to attend. Maybe we could do this prior to the next meeting and have lunch available and take a tour of our new hearing rooms. But we can talk about that and finalize that after the meeting.

Chairman Dean: Very good. Mr. Marshall, do you have any questions for Judge Roush?

Dan Marshall: No, Mr. Chairman.

4. Request to Withdraw Rules 8 and 32 – Ryan Sims

Title 85, Series 8, "Workers' Compensation Policies, Coverage Issues and Related Topics"

Title 85, Series 32, "State Agency Revocation Or Refusal To Grant, Issue Or Renew Contracts, Licenses, Permits, Certificates Or Other Authority to Conduct a Trade, Profession Or Business To Or With An Employing Unit In Default Of Its Workers' Compensation Obligations"

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Ryan Sims (Associate Counsel, OIC): Chairman Dean and members of the Industrial Council, over the past six months we have presented to you two [sort of] companion rules for amendment – Title 85, Series 8 and Title 85, Series 32. The desire by the Insurance Commissioner in both of these rules was to eliminate this exemption process that we currently have in place. We thought that it was causing more problems than it solved and created some legal questions, and potentially inviting issues with employers using the workers' compensation system.

After we initially proposed eliminating the process outright it became apparent that there were two issues that were concerning people, and rightfully so, with eliminating the process outright. And one was that many state agencies rely on this process, not that they necessarily have to, but they've grown accustomed to doing so. So often they will send a licensee or permittee applicant to get an exemption if they claim they do not need to have workers' compensation. A second issue that definitely did not involve as many applications, but was a concern, was how it might affect private, smaller, less sophisticated businesses that from time to time do business; for example, a sole proprietor who doesn't have any employees, and from time to time to do business with bigger companies. The bigger companies are only comfortable if they get an exemption from the Insurance Commissioner.

We felt we solved the first problem, which was the primary problem – the state agency issue – by doing a companion rule, Title 85, Series 32, which we would have eliminated the process in Series 8 but create a new process in Series 32. But after further consideration we are still concerned about the potential to affect small businesses, particularly in this atmosphere. It is our feeling, after looking over the exemption forms and the way we responded to the exemptions, that we could tweak the language in those internally, continue with the normal process, but put some qualified language in there that explains to the employers that this is just our opinion based on the picture you are giving us. We are not saying you are definitely exempt. We are saying – based on the information you give us you would be exempt under the law. Try to solve some of our concerns that way instead of doing something which could have unintended consequences of harming small businesses particularly in this atmosphere. The last thing we want to do is hinder small businesses that are already struggling. With that we are proposing to you that we currently withdraw Title 85, Series 8 and Title 85, Series 32, in lieu of changing the current internal forms we have and see how that goes for a while.

Chairman Dean: Questions for Ryan? Senator McCabe. . .

Senator McCabe: No.

Chairman Dean: Mr. Chambers?

Mr. Chambers: No.

Chairman Dean: Mr. Dissen?

Mr. Dissen: We did agree on making the change. Are you saying all of that would be voided and go right back to where it was before?

Mr. Sims: Right. The rules are still in the "draft" process. So at this point if you withdrew them we would just continue the process. We haven't made any changes yet, and we wouldn't have until the rules went through. So nothing would really change other than we would amend the forms we use to try to make some legal clarifications.

Mr. Dissen: Thank you.

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

Mr. Hartsog: Do you plan to come back with another rule at some point, or are you just going to go ahead with the process as it is? Because I thought eliminating that headache was a good idea, as long as we did it in such a way that. . .as we discussed it in several Industrial Council meetings.

Mr. Sims: Well, I think our approach is going to be twofold. We think a lot of agencies are requiring all applicants to come to us and get an exemption when they don't have to. The current law only requires them to check our default list. We have been and will continue to work with agencies on doing our best to explain to them, "You do not need to use this process. It is not required." But our concern is that, again, some small businesses, for example, like I said, a sole proprietorship. Maybe he has himself and a partner in the business and no employees. The bigger businesses are not comfortable doing business with them unless they get something from the Insurance Commissioner saying, "Yes, if these are your circumstances you would be exempt from the law."

I guess the plan would be to, number one, make adjustments to our forms to address some of the concerns we have about these exemption letters. . .maybe had unintended consequences; people are relying on them that shouldn't be. Explain to them that basically we are not doing a full investigation. You are giving us information.

We are saying, "If this is accurate, then you are exempt." And that would address the same concerns that originally led us to want to get rid of this process, but also certainly to continue working with agencies. We don't want agencies to require permittees, people applying for licenses, to have to get these exemptions when all the agency has to do under the law is check our default list. It is definitely intended that the Commissioner will continue to work and outreach to other agencies saying, "You do not have to do this process." And continue through that method to try to start tampering down the desire of agencies to use that process.

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

Mr. Marshall: No questions. I think this, as proposed by Ryan, is a workable solution. In the short run I just suggest that in about six months the Commissioner revisit the issues involved here to see if the system that you intend to put in place is functioning effectively.

Chairman Dean: Ryan is agreeing with you. Any other questions? Is there a motion with withdraw Rule 8?

Mr. Hartsog: I move to withdraw Rules 8 and 32 at the Insurance Commissioner's recommendation.

Chairman Dean: Is there a second to the motion.

Mr. Chambers: Second.

Chairman Dean: A motion has been made and seconded to withdraw Rule 8 and Rule 32. Any questions on the motion? All in favor signify by saying "aye." Opposed, "nay." The aye's have it. [Motion passed.]

5. General Public Comments

Chairman Dean: We'll move onto general public comments. Does anybody from the general public have a comment today?

Henry Bowen (West Virginia Self-Insurers Association): Mr. Chairman and members of the Industrial Council, it is contemporaneous and therefore it's guaranteed not to be as long as would have been if it had been planned. I did want to make one comment to you while this otherwise slow meeting was meandering to an end. I've

been in workers' compensation defense in West Virginia of employers since 1986, on a full-time basis, and worked in the early 80's and late 70's under a variety of context around workers' compensation, federal black lung. I've been representing the Self-Insured Association since 1988 continuously. I understand very much and appreciate the seriousness with which this Council is undertaking its position. I say that sincerely. I know it sounds gratuitous, almost puffery, but it is seriously intended as a compliment to all of you. I take also seriously our responsibility in disseminating information to you.

During the course of the summer there has been a great deal of discussion while certain rules were pending. There has been a great deal of discussion about the Office of Judges' report and data contained therein. I made my historical reference only because I remember full well being at the Legislature when the Office of Judges was created, and that office started with a transfer of 25,000 claims that were pending in litigation. If you want a quick snapshot of West Virginia today versus the old monopoly system and how it was dysfunctional, recall that even ten years after the Office of Judges was created they were still struggling with the management of thousands of claims in litigation. So these timeframe decisions that were imposed on them by pressure put on the Legislature by the Legislators' constituents to kind of make sure that workers' compensation things got done more timely, more accurately, historically provided the basis for discussion about why things took so long and so forth.

The most compelling of data is on page one of this report. It shows there are 3,451 claims – not 25,000, not 10,000, not the 8,000 there were just a few short years ago when the 2003 reforms were adopted. And if this report stands for anything, it's a testament to how well the Legislature did in changing the law in 2003, two years before the 2005 decision to move toward privatization. We're talking about Senate Bill 2013 and the work that Senator McCabe and others did to re-craft the benefit structure. It impacted dramatically in a way that the cost of the workers' compensation system has been totally redefined.

Part of your challenge going forward is to measure data and to make conclusions about – are things being handled accurately, and are things going the way they are intended to go? And I would say – just one public statement of concern. Several references have now been alluded, one by the Deputy Commissioner at last month's meeting and perhaps by Council member, Mr. Chambers, today – the concern about the number of self-insurers, the number of employees self-insurers represents. The Deputy Commissioner in fact made a reference and expressed concern about the proportion of claims in litigation since self-insurers only represent a small number of the West Virginia total policies. That's true. And Angie [Shepherd] is here and she can give us the updated data. But they reflect no more than about 100 employers, including seven

West Virginia cities that have chosen to self-insure their risk for workers' compensation. But if you look at the *State Journal* and their periodic quarterly report of West Virginia's top 100 employers, you will see in the top 25 the majority of those employers, including the top ten employers in West Virginia, the majority is self-insured. So when you're talking about self-insurers, you're not just talking about coal companies. Those are indispensably important to West Virginia's economy. But many people just associate self-insurance with coal. And that's just as important, but a small part of the picture. Our largest retailers are self-insured. Three of our state's largest hospitals are self-insured. We have a variety of public utilities and chemical manufacturers and others that comprise the self-insured community.

It always disturbs us from time to time when we represent self-insurers to hear those who are trying to understand why things are the way they are. It is easy to say, "Well, maybe self-insurers are disproportionate in denying treatment." The only way that's measured is through the market conduct. I don't have any belief that data that the Office of Judges can create will allow for any realistic conclusion that somebody is doing something correctly and somebody is doing something incorrectly. I would strongly urge that we not get too swallowed up in why 350 medical treatment decisions were reversed. Why did 25% of those represent self-insurers when self-insurers only represent 12% of the policy owners? I think you have to look at the total number of claims filed – the universe of employers represented by those claims. Understand we have some businesses in West Virginia that never have workers' compensation injuries, thank goodness. And we have some injuries, of course, that are reflective of those very dangerous kinds of labor that men and women in West Virginia have to do on a daily basis.

I would urge that we not get too swept up in trying to use some of this data to draw policy determinations. I've said this to Judge Roush and her Deputy several times. The disturbing thing about last month's argument about treatment denials, that treatment affirmations don't reflect that the decision was necessarily correct. Treatment affirmations can occur because nothing was done to support the protest. Remember, the dramatic difference between the current system and the old system is that the old system anybody could protest that was a party to a claim. So we're only talking about a new system, a new claim that is driven. . . except for three statutory exceptions, and treatment is not one of them. All of the protests are driven off of claimants' perceptions that the decision was wrong, and claimants may or may not have been able to support their protests. Many times referrals – and I've seen this in my own experience as a practitioner – many times decisions are reversed because the necessary information to support the treatment decision is presented after the protest is made. We are all in support of looking for alternative dispute resolution – any time that can be realistically

an option outside of litigation. But please remember when we look at these policy decisions, this is a legal system that took the place of common law right of an employee to bring a lawsuit against an employer for a work related injury or a work related disease because the social determination made in the early part of the 20th century was employers were not adequately protected and served by that common law. And so the workers' compensation law evolved nationally [in 1913 in our state] as an alternative legal system to protect and to provide a no fault compensation system for injured employees, so long as that injury occurred or that disease occurred in the course of employment.

We've come so far. These reforms in 2003 have worked so dramatically well that there is great frustration on the part of those who have been around a long time like me who have represented people on the other side – because you can't get treatment endlessly, and you can't get benefits indeterminately as easy as you once could. It was not hard to do in the old system, but the 2003 reforms stopped the ability of people to go off work and stay off work for four years, like they used to be able to, and then they could file for total disability with very little medical impairment. All of that is a part of our past. It is no longer the current landscape in West Virginia workers' compensation.

Treatment issues are probably the most sensitive issues because there is nothing that any of us wants to do but see that injured workers get appropriate treatment. And we are concerned as an employer community that claimants may not be getting what they deserve to be getting in terms of timely treatment decisions. We've discussed in these public meetings that treatment is so important that it almost polarizes the community.

In the advocacy of last month's rule that failed, there was an allegation that led to a clear suggestion . . . if not directly, . . . that people are deliberately making wrong decisions. I don't believe that the self-insured community is doing anything deliberately to deny treatment. I do believe the self-insured community has grasped Rule 20 and its administrators are applying Rule 20, and this agency has spent a considerable amount of its effort educationally since May talking about the proper application of Rule 20. And rule 20 is unique. There are not many states that have a Rule 20. There are lots of states that might have treatment review decisions and so forth.

As we kind of work through the postscript of what's happened this summer, and where do we go next, and how do we deal so that Senator McCabe and his colleagues can address pressures put on them by constituents who say, "Hey, I can't get treatment that's needed." There has to be an objective way for data to be presented that allows conclusions that make sense. And I'm a little nervous now that we're going down this

pathway of getting data that's not going to allow you to have facts that will allow you to make the right policy decisions.

I've probably exceeded my five minutes. I wanted to share that information now because it's timely now, and because of my concern. Not all self-insurers authorized are members of our Association. The majority of self-insured employees are represented through our Association. The majority of those employees are administered through large TPA's that are approved by this agency and regulated by this agency. And those self-administrators talk with confidence to us that they believe they are doing the job correctly. And I don't have any information to dispute that. I am proud to say, as a self-insured representative, that we hope that we're best in claims administration and that we are as good as any insurer anywhere. But we've got some serious issues to address, and one of them – if we've got people out there not applying treatment decisions correctly, then we can't ignore it. And we don't want you all to ignore that either. We don't want the agency to ignore it. But I'm concerned that we are looking for fixes that might be. . . arguments that can be crafted through data review and data extrapolation that may not be accurately reflecting the true story. I thank you for your time and I would be happy to address anything.

Chairman Dean: Senator McCabe, do you have a question for Mr. Bowen:

Senator Brooks McCabe: No.

Chairman Dean: Mr. Chambers?

Mr. Chambers: Yes. Mr. Bowen, it seems to me, as one Council member, that when we're asked to consider a rule to correct a problem in the system – and that rule will be applied throughout the system – that one of the things we need to do is try to figure out whether the problem itself is throughout the system or whether the problem is representative of a relatively few number of providers. And statistics seems to be to me, and I acknowledge I am an accountant, let me put the bad side out right there – I am an accountant – that statistics may be one place to start, but certainly it's only a place to start and would have to be subject to discussion, scrutiny and analysis. Do you have any suggestions of how else we might go about figuring out when a problem is representative of just a relatively small number of providers as opposed to across the system?

Mr. Bowen: I do. I wear multiple hats. One of my hats is I Chair the Workers' & Unemployment Compensation Committee, West Virginia Chamber of Commerce. I have worked with members of that committee. What we're trying to do is develop some

suggested information that you can drill down in getting your data so that the data would be tied to more meaningful information. And I don't ever mean to make any smart remarks about accountants and their need for data because I'm a historian, and I love history and I love workers' compensation history. I could write a book on West Virginia's, but nobody would buy it. And certainly I know as we get further and further away from it, it's old news and nobody wants to hear it. One of our big drivers, of course, is cost. And costs are so much better controlled today than they were under the old system. But that's one of the reasons self-insurers always immediately wave the flag at, "Oh, my gosh. What are they going to do now? And what's this going to cost us in terms of unanticipated unbudgeted claims costs that might be there now?" We've got to do a better job of getting you facts that allow you to assess this. We have an obligation to Senator McCabe and his colleagues as well. He gave great trust to many people who advocated reform at a time when people were saying, "Ah, the financial crisis is being exaggerated. It's not as bad, and you don't need to do these draconian things." I think a fair way of saying it is those of us in this field honestly couldn't say that the pendulum hasn't swung to the right or conservatively in terms of cost management. You can't make decisions just on what things cost. And we realize we've got a duty not to advocate to you all if you take action or not take action just because there is a cost to it.

The treatment issue is the most serious of that because it goes to the very heart of what a workers' compensation claim is all about. If you're not giving prompt medical treatment and correct treatment, then we are not doing the right thing. The problem is the old system had such excessive treatment in certain areas of medical discipline that that's been ended. Many people who didn't want to see that end still complain. So even we who live in the field of workers' comp get confronted with the same kind of anecdotal evidence that you all get confronted with. We have a responsibility to drill down to the next level and give you better data.

I wanted to mention what I did because I've already told Chief Judge Roush how I was afraid she was about to get lassoed into a mine field that she may never get out of if we keep using that report as the basis of policy decisions or policy arguments. Because to me that report reflects the best of what's happened in the new system, not the worst in terms of. . .I mean we have a fraction of people filing claims and I think loss prevention is a part of that piece, but I think it's only small part. I think a lot of the abuse of the old system has been eliminated by the new system. And that's why I think it is so important that all of us work together for solutions to make sure people are getting the benefits that they deserve. I realize that, again, it sounds puffery and subject to Sinicism. But I believe it and I believe all of my members believe it. I don't know anybody that I represent who doesn't want their injured employees to be protected. And

most of the self-insureds, by the way, have a universe of benefits that they wrap their employees around. They are never left alone to depend on Chapter 23 as the provision of workers' comp benefits to them. Other small businesses don't have those luxuries and therefore that's another reason the self-insured community is a little bit, I guess, defensive of implications it may be doing something wrong just because we are large employers – quite the contrary. I just don't believe that people are intentionally trying to do it. But I do think there is a lot of misinformation and we have an opportunity that we need to seize to make sure that you all get the information you need. I hope that was helpful.

Mr. Dissen: The only comment I have is two of the Council members today had made some recommendations. You indicated that the committee you Chair may have other factors. My only suggestion is get it into us as soon as you can so we can factor it in.

Mr. Bowen: I will. I work very closely with the incoming chairman of that organization and I know how serious he is about wanting to make sure that we get the information that would help you all [Industrial Council] address some of the issues.

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

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Thank you, Henry. Does anybody else from the general public have a comment today?

6. Old Business

Chairman Dean: We'll move onto to old business. Does anybody from the Industrial Council have anything to bring up under old business? Senator McCabe?

Senator McCabe: No, sir.

Chairman Dean: Mr. Dissen, Mr. Hartsog?

Mr. Dissen: No.

Mr. Hartsog: I see we got a very high level breakdown of administrative expenses with the Old Fund that I asked for at the last meeting. It is very high level. Not much

detail at all. I would ask that at the next meeting we could put this on the agenda and provide someone to discuss what it is, what's going through it. We're spending a million a month to TPA's, and \$250,000.00 a month on legal fees. We would just like to know some measure of claims and how that relates to perhaps other comparisons, best practices, maybe that's not a good word. How do we know we're paying the right amount? As a taxpayer or as a company that contributes a lot of money to the Old Fund know that we are getting a good deal on these payments. So that's what I would like to have kind of wrapped around a discussion

Mr. Sims: Sure.

Chairman Dean: Mr. Marshall, do you have anything you would like to bring up under old business?

Mr. Marshall: No, Mr. Chairman.

7. New Business

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

Senator McCabe: No, sir.

Chairman Dean: Mr. Chambers, Mr. Dissen?

Mr. Chambers: No.

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No.

Chairman Dean: Mr. Marshall, do you have anything?

Mr. Marshall: No, Mr. Chairman.

8. Next Meeting

We'll move onto the next meeting. It's scheduled for September 16 at 1:00 p.m. I have a conflict there. I'm going to be out of town that day. Is there a chance we could move that to Tuesday, September 14?

Mr. Hartsog: It's fine with me.

Mr. Marshall: It works for me.

Chairman Dean: Mr. Chambers, check your schedule if you would, sir. Ryan, is there anything conflicting with you on the 14th?

Mr. Sims: Not to my knowledge. I can't speak on behalf of Mary Jane and Bill and everybody. But it's fine with me.

Chairman Dean: Okay. So everybody is in agreement to the meeting on the 14th will be appropriate. The next meeting will be Tuesday, September 14, at 1:00 p.m. Does 1:00 p.m. work for everybody? Okay.

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. Marshall: So moved, Mr. Chairman.

Mr. Dissen: Second.

Chairman Dean: A motion has been made and seconded to go into Executive Session. Any questions on the motion? All in favor signify by saying "aye." Opposed, "nay." The aye's have it. We will now go into Executive Session.

[The Executive Session began at 1:50 p.m. and ended at 2:04 p.m.]

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Chairman Dean: We will call the Industrial Council meeting to order. There are two Resolutions here to vote on. The first one we will vote on will be the 23 companies that have been recommended for renewal of self-insurance status. The 23 companies are:

Century Aluminum of West Virginia, Inc.
Chesapeake Appalachia, LLC
Columbia West Virginia Corporation
CONSOL Energy, Inc.
CONSOL of Kentucky, Inc.
Consolidation Coal Company – Eastern Region
Consolidation Coal Company – Morgantown
Exxon Mobil Corporation
Fola Coal Company
HealthSouth Corporation
Huntington Bancshares, Inc.
Kroger Limited Partnership I
Macy's Retail Holdings, Inc.
Marriott International, Inc.
McElroy Coal Company
PPG Industries, Inc.
Residence Inn by Marriott, LLC
TA Operating, LLC
Toyota Motor Manufacturing of WV, Inc.
Union Carbide Corporation
United Parcel Service
UPS Ground Freight, Inc.
Weyerhaeuser Company

Chairman Dean: Is there a motion for renewal for self-insurance status?

Mr. Chambers: So moved.

Mr. Marshall: Second.

Chairman Dean: There is a motion and a second to renew these 23 companies. Any question on the motion? All in favor signify by saying "aye." All opposed, "nay." The aye's have it. [Motion passed.]

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The next Resolution is for four companies that are recommended for renewal of self-insurance status:

Appalachia Mine Services, LLC.
Eastern Associated Coal, LLC
Pine Ridge Coal Company, LLC
Rivers Edge Mining, Inc.

Chairman Dean: Is there a motion for renewal on these companies?

Mr. Chambers: So moved.

Mr. Marshall: Second.

Chairman Dean: A motion has been made and seconded for renewal of these four companies for self-insurance status. All in favor signify by saying "aye." All opposed, "nay." The aye's have it. [Motion passed.]

[Kent Hartsog recused himself from voting on Appalachia Mine Services, LLC; Eastern Associated Coal, LLC; Pine Ridge Coal Company, LLC; and Rivers Edge Mining, Inc., because of his affiliation with these four companies.]

Chairman Dean: Is there any other business that needs to be discussed by the Industrial Council? Seeing none, I'll accept a motion for adjournment.

Mr. Chambers made the motion to adjourn. The motion was seconded by Mr. Dissen and passed unanimously.

There being no further business the meeting adjourned at 2:09 p.m.