

WORKERS' COMPENSATION INDUSTRIAL COUNCIL

JANUARY 12, 2006

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, January 12, 2006, at 3:00 p.m., Charleston Civic Center, Rooms 207-209, 100 Civic Center Drive, Charleston, West Virginia.

Industrial Council Members Present:

Charles Bayless, Chairman
Bill Dean, Vice-Chairman
Jane L. Cline, Commissioner
Dan Marshall (via telephone)
Walter Pellish
Rick Slater

1. Call to Order

Chairman Charles Bayless called the meeting to order at 3:15 p.m.

2. Approval of Minutes

Chairman Bayless: The first item on the agenda is the approval of the minutes from the November 18, 2005, meeting.

Bill Dean made the motion to approve the minutes from the November 18, 2005, meeting. The motion was seconded by Rick Slater and passed unanimously.

Chairman Bayless: Mr. Marshall is on the phone, so there are four of us here.

3. Office of Judges Report – Timothy G. Leach, Chief Administrative Law Judge

Judge Leach: I do not have a lengthy report to submit to you other than the written report that I submitted about a week ago. I would like to update a couple of the conclusions. If any of you have any questions about the statistical part of the report – or as I've tried to indicate – if you wish for me to report periodically on a different type of statistic or try to do any kind of research for query of our statistics, please express that interest to me by e-mail, or more formally, and we will try to analyze our data to give you that information.

Starting with Roman numeral II. – I'll update those topics a little bit from when I prepared this report and sent it to you. Roman numeral II. reports the number of our protests which come

from the self-insured employer community. Your predecessors, Workers' Compensation Board of Managers, had an interest in knowing those numbers. It may or may not be of interest to the Industrial Council. I will probably continue to submit the numbers. I know that the Insurance Commission has interest in that number. They may use that number or a similar number to determine a prorated cost for the self-insured community for the adjudicatory process. Right now approximately 14.5% of all of our case work is from the self-insured community.

Roman numeral III. – The first paragraph refers to three new processes which were mandated upon us by the reform, the privatization act in January of 2005. It has taken us a while to get a rule in order and in place and to get the processes working. They are all three in place now. First was the Expedited Hearing Process. We tried to expedite all of our processes as much as we could. When the Legislature required us to expedite three particular issues, we took that to mean “go faster still.” So, we created a new process to offer to the protesting parties and it has not been very widely received yet as I reported at the time of this draft document – only 27 requests for expedited processes in approximately three months, about nine a month. When you consider that these three issues total about 500 to 600 a month, that's not a very high usage rate and it's a little bit surprising. As I tried to indicate in the text of the report, I think it's an education of the public issue. We will try to make it more widely known to the claimants' community. I've had some preliminary discussions with the Insurance Commission's staff about using their publicity department to get that information out and perhaps we will see more usage of this process in the future.

Roman numeral IV. – My report is the second of those three new processes. This is a process by which the Office of Judges intervenes to force an insurance carrier to rule upon a claims request that is sitting dormant and not acted upon. When all rulings were by the Workers' Compensation Commission, a government agency, parties had relief in Circuit Court and Supreme Court. They could seek an Order of Mandamus to compel some action. Once the system went privatized you cannot go to Circuit Court and compel or mandate a private company. So there had to be an alternative mechanism and this was the process created. Again, this is early in its start-up infancy. We've only had four requests for compelling. I think as the lawyers in particular get more used to this process we may see some more of that type of activity. Or the mere threat of it may keep the carriers timely and acting in prompt fashion and there will be no need to implement this process.

Roman numeral V. is the third of the three new processes. In this case we can award to the claimant an attorney fee paid by the carrier. Normally the claimant's attorney fee is paid by the claimant to his or her attorney. In this case, in special circumstances, where the initial denial of the claim or the medical treatment was determined by the Office of Judges to be unreasonable as defined in the statute, then we in effect penalize the carrier for their unreasonable decision by saying, “You will pay an attorney fee to the claimant for bringing this protest and action.” So this process is in its infancy also, and we have not so far received our first request.

Two other matters to report on under Roman numeral VI. – The transition to the Insurance Commission. I know that Commissioner Cline is going to address transition issues so I am going to skip most of that. I did want to point out that when I wrote this it was in the middle of the first week of January. Our computer issues remained with us throughout the first week of January, which was a four workday week because we had the New Year's holiday on Monday. We basically got no production done Tuesday, Wednesday, Thursday or Friday. Monday of this week we are back to work. There are still bugs. I don't want to gloss it over. However, I also don't want to cast a lot of stones. I want this Council to understand and the general public to understand that this technology is a massive "pick up sticks" type child's game. It was created by adding on and adding on and writing new programs, and so the technology guys don't know for sure if they move one stick what other sticks are going to fall over. The people that are trying to keep it up and running now are not necessarily the people that designed the system a number of years ago. We anticipated that there would be problems. We just could not anticipate what exactly the problems would be. The downtime that we suffered in my view – having gone through this same process a few years ago – was very acceptable and handled extremely well by the Insurance Commission's IT staff and by BrickStreet's IT staff who are providing us with service under a service level agreement. So I feel obligated to report that we lost about a quarter of a month's work production time. It may reflect in the statistics in February. I feel like it was an acceptable and understandable transition problem – a bug that we anticipated but couldn't prevent.

And finally on the deposition fees, I just included that in the written report. I think that's a closed issue. I think we've got the deposition fees worked out. That was mainly a concern for the practitioners who appear before the Office of Judges – who was going to pay their court reporter. That concludes, Mr. Chairman, my report.

Chairman Bayless: Are there any questions? Anybody in the audience have any questions of Judge Leach?

Walter Pellish: Judge, I read through your report a couple of times and it is extremely well done. Very good analysis. Could you just comment for me for a minute on why we see so many questions raised as we go through the process?

Judge Leach: Protests themselves?

Mr. Pellish: Yes.

Judge Leach: I tried to give you an answer to that. It's a lot of gut reaction as opposed to data analysis. My thoughts are every decision that is made by now, insurers and previously by Workers' Compensation Commission, every decision has someone who agrees with it and another party who disagrees. There is an appeal process. It's not an expensive process in terms of costs. There are no filing fees. If you disagree with the decision, your first reaction is

"let's protest." You only have 30 days to decide whether to protest or not. I think there is a lot of "protest first and figure out if it was right secondly."

Mr. Pellish: That's a good explanation. Thank you.

Chairman Bayless: If I might say also, having been through two bouts of electric utility deregulation, when England deregulated their electric utility system the first year there were over 14,000 appeals just to get the law settled down. The next year there were 1,000; then there were 200 and then it was down to 10 or 15 a year. So I think as we move to a new system you are probably going to see a lot of protests. The law is unsettled. Let's appeal and see what happens.

Judge Leach: I clearly saw that, Chairman Bayless. Right after the 2003 massive overhaul of Workers' Compensation, for the year after that we set a record for protests – almost 30,000 – because of the unsettled nature of the law. So I agree with your comment. Thank you, gentlemen.

Chairman Bayless: Let me back up. I knew that Mr. Pellish was coming in. Under our rules, which we haven't adopted yet but we can follow them anyway, we are supposed to have a roll call and I had been told that Mr. Pellish was on his way from the airport.

[The recording secretary called the roll.]

4. Public Hearing on the Procedural Rules for the Industrial Council, 85CSR13

Chairman Bayless: The next item on the agenda is a Public Hearing on the proposed rule (Title 85, Series 13). As you know, the rule that I just cited we have not adopted yet. At the last meeting we had the first reading of this rule and we had asked for comments. Ms. Pickens, have we had any public comments – written or oral or anything?

Mary Jane Pickens: No sir, we haven't. We received no written comments. I have spoken with you about a technical correction to clarify a phrase in the rule and I can take care of that. But we received no comments in response to the publication for comment.

Chairman Bayless: Could you describe for the public the next step in the procedures? If anybody does need to get anything in, they can.

Ms. Pickens: We have tried to mirror the procedures that the Board of Managers used when Workers' Compensation Commission was promulgating rules, which means that we come before this Council and present the rule initially. This Council will authorize us to publish it for public comment. And when we did that, we set a Public Hearing and we also set a 30 day written comment period because you are allowed to do both under the rules. Today is the day for the public comments. If anyone is here today and would like to step to the podium and share

thoughts about this procedural rule, we can do that. Then we will take all of that into consideration, and at the next meeting of this Council we will come back and present a rule to this Council to be voted on for final filing.

Chairman Bayless: Does anybody in the audience, any of the attorneys or anybody present have any comments on the proposed rules? Hearing none, we will move on. There will be a vote at the next meeting on the adoption of the final rules. If you are reading through them even now, give the comments to Mary Jane Pickens and everybody will be happy to consider them because we would rather get this right than to find out two months down the road that we made a mistake or left something out.

5. Update on Transition at Office of Insurance – Commissioner Jane L. Cline

Commissioner Cline: The Governor, I'm sure most of you are aware of, issued the proclamation on December 8, 2005. Along with the proclamation establishing the BrickStreet Mutual Insurance Company there was also a surplus note arrangement that was signed and agreed to between the State of West Virginia and BrickStreet Mutual. The surplus note agreement provides for BrickStreet – over a period of time – to pay \$200 million dollars of the initial capital back to the State of West Virginia which will go back to help retire the Old Fund. Surplus note arrangements are not uncommon in the insurance industry and generally there are a lot of qualifiers in a surplus note. It can only be paid back upon the approval of the Insurance Commissioner and that is to ensure that there is always enough capital and surplus available to make sure the policy holders are protected. We are working with PRAG, the consulting firm that the Governor had hired, and a number of actuaries involved in establishing all the initial capital, and so there is that provision. There is also a provision to settle up on the capital that was collected in the six month period from July 1 to December 31, 2005. That settling up provision will happen at a point in the future when we can really determine what the appropriate liabilities that BrickStreet actually took with them with respect to the claims for that six month period. We've worked through both of those issues and have both of those documents in place. Also on December 31, 2005, we signed the Third Party Administrator Agreement with BrickStreet to provide for them to handle the Old Fund claims and administer a number of the other funds that transferred to the Insurance Commission or had to be established by the Insurance Commission. Those would be the Uninsured Employees' Fund, Self-Insured Security Pool and the Self-Insured Guaranty Pool. We have been able to accomplish all of that.

As Judge Leach mentioned, we do have a service level agreement in place with BrickStreet to work through IT issues and if we get too technical on IT issues we do have John Beane with us today. He is our IT Director. One of the huge problems with this whole transition and split is the IT issues. We are going to have to rely on BrickStreet for some IT support as we work through and develop new systems and purchase new equipment. That was done. And actually that split on January 1, 2006, is really what caused both the Board of Review and the Office of Judges to be down for a period of time. John and his staff worked very hard with

BrickStreet. It was a change that BrickStreet made in the way we were accessing their system that I think caused the problem. He was able to finally work through that issue with them.

BrickStreet did file their rates with us. I don't remember the exact date in December, but our Rate Division and our actuary worked very closely with BrickStreet to work through the rate filing. As the Governor had committed last January when the Workers' Compensation Bill was passed to move to privatization, there was an overall rate decrease of 15% and that was in the aggregate. Some companies received more than that. No private business saw an increase. State government did see increases because it was felt that the private company should not be subsidizing the State's workers' compensation system in that fashion. Some State government entities did receive increases, but no actual employer out there saw a base rate increase. Now they could have seen a rate increase overall because their individual claims experience can be factored into that, but the overall base rates were decreased by an aggregate of 15%.

We have been in the transition of moving employees. Everyone, as we mentioned previously, will be located either at One Players Club Drive, Dee Drive or at Smith Street where the Insurance Commission is currently housed. We still have a few people that are physically located at BrickStreet. I think the move process is scheduled to be completed by the end of this month. We've had to do so much changing that we weren't able to physically move all the employees at that particular time. As far as their payroll, all of those issues have been taken care of and addressed. It's really been a challenging and busy time for us. That's kind of a brief update. I can answer questions if someone has questions with respect to the transition, the rate process or anything else we've been doing.

Chairman Bayless: I have one question. I was out of the country for a couple of weeks and came back. . .and Google is wonderful. . .I was looking and I saw that you had brought action to get injunctions against several businesses who were not paying premiums. Have they pretty much immediately paid or is that going to be a long process? I am just curious.

Commissioner Cline: I believe it is going to be a long and challenging process and I think Mary Jane can better answer that.

Mary Jane Pickens: Just a point of clarification. As you know we've been merging some people into our office. The legal staff, since December 16, has been physically present in our Legal Division offices on Smith Street. But the cases that were filed – I think there were 89 and it was kind of a heroic effort – it was done in a rather short period of time. But those were still Workers' Compensation Commission cases up through the end of the year. Just to make that clear it wasn't the Insurance Commissioner as the plaintiff. Now we've got the procedural matter of going back into those cases and filing motions to substitute parties or somehow correcting the fact that the plaintiff has changed. I've been speaking with some folks about how quickly we can identify the next group of employers to go through that process with.

Chairman Bayless: How long do you think that process will take?

Ms. Pickens: You mean the individual cases?

Chairman Bayless: Yes.

Ms. Pickens: Well, we should get hearings. That depends on the Court's docket and I don't have enough experience with these particular injunctions to be able to say that normally it takes a month or two months or whatever. But I would think that within a month we'll start having hearings on those cases.

Chairman Bayless: I would think you could make a case of almost irreparable harm to the employees if they are injured while they don't have workers' compensation that it would be. . .

Ms. Pickens: Right. There is a lot of irreparable harm. I mean there is exposure to the Uninsured Employer Fund. There are a lot of reasons for the Court to act quickly. Of course any time you are asking for extraordinary relief like that you are looking for a quick hearing.

Chairman Bayless: I would think with the provisions that hold officers and owners and people liable that we wouldn't have many of those cases.

Commissioner Cline: There are approximately 1,400 employers in default right now. So what Melinda Kiss and her staff have been working on is identifying those by the amount of claims they have pending and what their cost impact is to try to go after those individuals first. Some of those are probably employers that have actually gone out of business but have failed to notice, and they are working very diligently on that. We don't want to get an Uninsured Fund that creates another huge unfunded liability out there. Obviously the first concern is to make sure employees are provided safe working environments, but if something does happen adverse to them, that they are taken care of. They are putting a lot of focus on that particular piece because that can have a huge negative impact as we move forward on industry, other companies being interested in coming in here – what that looks like. It can have an adverse impact on all of us. It is very critical that we do that.

Chairman Bayless: I think the best defense is a good offense theory too. Just to let people know that if they try that they are immediately going to be in court.

Commissioner Cline: I really didn't talk about the Fraud Unit because we have Gary and Denny here to talk with you about that.

Mr. Pellish: Do you have any feel for the size of these companies?

Commissioner Cline: We know what their default premium is and that would be dictated on what their payroll would be.

Mr. Pellish: I was just wondering if they were mostly small operations.

Commissioner Cline: It would appear. I mean there are a couple of municipalities on there that we obviously need to work with pretty quickly. Melinda, you might be able to answer that.

Melinda Kiss: There are several small. . .over the past few years Comp has been trying to get out some bigger premiums, get those corrected. But there are still some substantial premiums due out there. We're also looking at claims liabilities too because that is going to impact whether that actually. . .we can provide you with that information.

Commissioner Cline: We also want to be careful too and make sure the list is accurate before we get out there and publish. . .I mean. . .we have found some discrepancies. . .

Ms. Kiss: We are unable to post right now. That's another one of our IT issues. If anyone paid after the first of the year. . .we were unable to post that payment onto their account and get our systems updated. We're working through IT issues this month. We probably would not want to distribute that list right now.

Commissioner Cline: Obviously you want to be very careful and make sure it is correct. I know for a fact that the one that was published by BrickStreet – old Workers' Compensation – had some errors in it because I had people that personally called and they really weren't in default.

Mr. Pellish: One other comment. You people have taken an incredible task underway to make this transition and from what I see and read you are making great progress with it.

Commissioner Cline: We've had a lot of good staff working very hard. You are correct. There are a lot people out there who have really stepped up to the plate and done an incredible job.

Chairman Bayless: I think you've done a great job too.

Commissioner Cline: The Governor's office has been very involved and very helpful through this process as well.

Chairman Bayless: Does any member of the audience have any. . .you may have seen things in the transition that the Commission doesn't know about yet. Does anybody have any comments? It is entirely possible that you see problems that the Insurance Commission doesn't. You are on the receiving end of it.

Commissioner Cline: I will note that Randy Suter is here from BrickStreet. There has been a lot of hard work on the part of the members of BrickStreet.

Chairman Bayless: Thank you.

6. General Information on Claims Index – Ryan Sims

Ryan Sims: Chairman Bayless and members of the Industrial Council, my name is Ryan Sims. I don't believe I've spoken before you. But to give you a little background, I'm Associate Counsel at the Insurance Commission. I work under Mary Jane Pickens. I've been working on the workers' compensation transition since February, essentially right after the Bill came out, helping the Insurance Commissioner and our legal staff hash through various legal issues as they've come up and have been part of all the transition teams and that type of thing. As you'll find out in a later report on a going forward basis, I am going to be probably the primary attorney in our Legal Division working on workers' compensation rules. I just wanted to give you a little background about who I am.

The purpose of this report is to provide some follow-up information regarding the research we have been performing on the Claims Index in regard to how other states handle that issue. We've had paralegals and attorneys in our office working very hard to gather as much information as we can on how other states handle the issue of claims indexing. It is never a perfect process when you do a state-by-state research task. It's always difficult to get every single state to respond and you really never do get every state to respond. Again, we've worked very hard on it and made every attempt to get as much information as possible to give to you.

The front page of the report is basically a bullet summary of the information we have received. The subsequent pages are state-by-state results of the research we performed. But if you look at the front page which is entitled, "Summary of Research on Workers' Comp Claims Index," you first see a list of the states that do report having some type of Claims Index or database. We received sufficient data back from 31 states to make some kind of determination. There were 26 states that reported having some type of Claims Index. I am not going to go through all of them, but they are listed on the front page. That would include our border states – Pennsylvania, Virginia, as well as Kentucky. The second part you see the states which have no Claims Index and this is, again, of the 31 states we did receive sufficient data from. That would be Hawaii, Idaho, our border state of Maryland, South Dakota and South Carolina. Those states reported having no type of Claims Index whatsoever in regard to workers' compensation. Additional points below – sufficient data was received regarding 31 states. So that means we only received enough data from 31 states to even determine whether they have one or not. Many states reported to us that it was their Department of Labor rather than their Insurance Department that might keep a Claims Index, but they just didn't know and we were never able to receive feedback from the Department of Labor in time.

The second point there – 26 of the 31 states did report having some kind of Claims Index, including Kentucky, Pennsylvania, Virginia; five states reported having none, including our

border state of Maryland. I think the more specific information you all are looking for – I wasn't at the last meeting, but my understanding is you wanted to focus in on the scope of the information that is required of an Index – that would be detailed information that is initially filed with the Index as well as whether follow-up information is filed. It is my understanding from the last meeting that that is what you, the Industrial Council, wanted to focus on. I think these next three points address that to some degree. Of the 26 states that have a Claims Index, six of the states reported maintaining what I would describe as “limited” information in their Claims Index, and that is they only require basic information about the initial claim to be filed – meaning claim date, claimant identification, Social Security number, that type of thing. So I'd call that a “limited” Claims Index.

Of those 26 states, six of the states required a more “detailed” Claims Index and that would be described as requiring detailed initial information as well as follow-up information to be filed in the database regarding all of the claims. That would require updating the claim as it follows through – whether it's litigated. It could include what kind of medical treatment has been given to the claimant; a much more detailed type of database.

Five of the states, based on the information we received, require a “somewhat detailed” Claims Index. I would describe that as somewhere between the “detailed” and the “limited” Claims Index. They require some information to be initially filed and some information to be filed subsequently. Nine of the 26 states we did not obtain sufficient information to determine whether they have a “limited” or a “detailed” Claims Index.

In summary, I would say the research reflects that the trend based on the 31 states appears to be that most states do maintain some type of Claims Index for workers' compensation. However, it tends to be varied as you can see from the results of the research from state to state and the decision of whether to have “limited” or more “detailed” information. Again, that varies from state to state based on I would guess those states' needs and the decision that the individual agency makes. It's pretty varied and the only thing that is for sure is that most states do maintain some type of Claims Index. I would be glad to take any questions and I'll do my best to answer them.

Mr. Pellish: Were you able to ascertain any kind of relationship between the effectiveness of the programs in some states as it relates to the Index?

Mr. Sims: I guess you are asking how helpful the Index was to the overall workers' compensation program.

Mr. Pellish: Yes.

Mr. Sims: That wasn't really within the scope of our research. We were just trying to mainly focus in on what degree of information is required.

Mr. Pellish: So you really didn't get a feel for any effectiveness?

Mr. Sims: No. We really didn't look into that in our research. Generally the Claims Index serves multiple purposes. They serve the purpose of just general data collection for the agency. They can see what the trends are in workers' compensation, but they also serve purposes for parties involved in workers' compensation claims, particularly carriers to look up information in regard to a particular claim or claimant. I think if you read our statute, in my opinion, it is clear that the Legislature's intent was mainly to provide private carriers an initial source of information about a certain claim to get history on a certain claimant and see whether he has filed claims in the past, that type of thing. That is my opinion based on reading the statute. Again, we didn't do that within the scope of this research.

Mr. Pellish: I'm just wondering how we could get a feel for whether anybody is doing something significantly different. I hate to use the term "cutting edge" in this context. Are there new and different things being done to help administer programs more effectively? I don't know how we get at that.

Mr. Sims: Well, I think that would really be somewhat of a different type of research project and that might even be the type of research project. . .it might not really be a legal research project. It might be more of a policy research project. I believe the Commissioner has other staff members that might be able to perform that type of research, but you would really have to ask her about that.

Commissioner Cline: It would seem to me that what you are looking for is a "best practice." Is there a best practice model out there? And I think certainly we can go other avenues to do additional research on that and I'm not sure. . .Tammy. . .

Tammy Hypes: We'll work on it.

Commissioner Cline: I didn't know if they had started down that path yet or not. She has been trying to get people moved.

Mr. Pellish: We don't want to reinvent the wheel obviously.

Commissioner Cline: Tammy and John are back there. We do have a Claims Index started, so we're meeting the statutory requirement. I think what comes next is what is the best practice analysis: What type of data really is valuable that we should be collecting and how should that be put together? I think we have found that there are some people that actually contract this out. There are different methodologies. There has been additional work on it. We just don't have that recommendation ready today. I know Bill Kenny and Tammy and several people have been looking at different alternatives to present to you and we will continue to do that.

Mr. Sims: Again, this was kind of designed to create a summary of the research. There is more detail if you look through state-by-state. I was trying to focus on what I thought the crux of the information you were trying to find out to make a determination overall what the scope should be. If you look through the state-by-state research you will find – like the Commissioner said – that states do it differently. Some states require carriers to file information with a certain statistical bureau. We're not even sure what the scope of the information is. That would be in the category of "we're not sure" what the detail is or lack thereof. Again, I would encourage you to look through the state-by-state research provided in this and you might get some additional ideas and be able to see how some other states are doing things.

Mr. Pellish: Thank you.

Mr. Sims: Any other questions?

Commissioner Cline: We will work on flushing out in trying to see if we can find a best practice model for you.

Chairman Bayless: We had quite a bit of discussion about this the last time about what should be in the Index. I mean clearly there is a spectrum that you can go from just "name" and "Charlie got hurt" over to huge amounts of information which can be very burdensome and raise privacy issues. Does any member of the audience have any thoughts that weren't expressed last time on what should or should not be in there? The Commission can continue to work and come back with what they think the best practice and what best suits West Virginia. Thank you.

Mr. Sims: Thank you.

7. Workers' Compensation Self-Insurance Unit – Angie Shepherd

Angie Shepherd: I am Angie Shepherd, Director of Self-Insurance. I've been at Workers' Compensation Commission for almost 12 years. I've got a little bit of knowledge about lots of different pieces. So if you ever think of anything that you want to know about workers' comp, you have my phone number. It's on the back page of that spreadsheet. Give me a call and we'll talk workers' comp.

I don't have any type of statistical report for you all. I thought what I would do today is just tell you what we do in self-insurance, what makes up our self-insured community. And then as you decide how involved you want to be in the self-insured process, then we could get into a lot more detail. If at any time you have questions, just stop me and ask away.

The self-insurance program is governed by §23-2-9 of the Code and Legislative Rules 18 and 19. If you'd like copies of any of that information, I would be glad to provide it, but I didn't want to overload you with paper today. I've given you a list of our active self-insured community.

We have 114 active employers right now with two pending applications. We've sent out 20 additional packets for people who are interested in self-insurance. It seems like this is one of the most popular options right now. I don't know of any other time when so many people were interested in the self-insurance program. The list is sorted by risk classification and you see that runs from coal mining to retail stores to fast food restaurants.

Self-insurance is a privilege in West Virginia and the application process is rather complex. We check very carefully the financial condition of the applicant to ensure that they are capable of paying their workers' compensation claims. Once the self-insurance status is granted, we maintain continual review of the financial condition of our self-insureds. We check several on-line services on a daily basis to make sure that no one's financial condition is slipping. We also have an annual review process where their self-insured status will be renewed if their financial condition continues to allow them to pay their claims, and that they remain in compliance with the various rules – the self-administration of their claims and the payment of the various assessments that we do charge. In addition to their claims benefits that they pay, each self-insured employer is also responsible for the payment of various assessments to the Insurance Commission. The self-insured community contributes \$9 million dollars annually to help retire the Workers' Compensation debt through a monthly debt reduction assessment, and they also pay the State for the administration of the Self-Insurance Program through a monthly administration surcharge.

Two risk pools were established in Rule 19 to guarantee that the payment of the claims from default and bankrupt employers continued. The Security Pool covers claims incurred prior to July 1, 2004, and the Guaranty Pool covers claims incurred after that date. The pools are funded by the self-insured employers through the posting of security and periodic assessment. We currently maintain approximately \$600 million dollars in security from our active and inactive self-insured employers. We are also responsible for ensuring that the self-insured employers are in compliance with their claim, self-administration, policies and procedures. We have claims monitors that travel throughout the country to do claims audits to make sure of timely filing where the information is sent to us on the claims, and also that the injured workers are receiving correct benefits. It seems that the calculation of temporary total benefits is a big issue and employers have a great deal of trouble getting that calculation right. But they are doing better now that we are monitoring them carefully. They've only been self-administering their claims since July 1, 2004. So, we are still working with them to bring everybody up to speed on the way that we would like them to run their programs. We've seen a lot of improvement over the last year, so we're not concerned about that.

Chairman Bayless: Let me ask you a question. I'll express my ignorance, but I'll go to a subject I do know something about. In energy trading we have a concept called "value at risk." Every day you look at your book and you say with 95% probability, "I'm not going to lose more than this much money." You look at all the volatility and everything. . .About every two or three years you'll totally blow through your. . .and you'll lose \$50 million dollars. Some big event like nine eleven happens. My question is, given the mining disaster, I look at the companies – I won't say them because I don't know if this is public or not – but there are companies on here

that I think. . .fine. . .I don't care what happens, they can pay. Are these companies bonded enough in an absolute disaster? It doesn't have to be coal mining. It could be a factory where the roof caves in or something and kills 80% of their people. Are they covered even in a case like that? Is there enough of a bond? Is there enough of a surety there to cover that?

Ms. Shepherd: A big accident like that should be covered by an access liability policy. Whether they are fully insured, I can't tell you that. I can tell you with regard to the surety that they are required to have with us – all of the active self-insured employers are required to be fully bonded for claims incurred prior to July 1, 2004, by the end of this fiscal year. We actually only have a handful that are not fully secured. Now after July 1, 2004, they don't have to have actual security like a letter of credit or bond on hand with us. That is all to be taken care of through the funding of the Guaranty Pool. But truly we hope that our financial analysis is good enough that we don't have any employers that go bankrupt and are unable to pay those claims.

Chairman Bayless: Sometimes though you could just have unexpected voluminous claims that nobody would have thought possible.

Ms. Shepherd: Oh, absolutely. And the pools are not fully funded because they are so new. It's just a gradual process. We couldn't expect the self-insureds to come up with \$30 million dollars to fund the Guaranty Pool. We are just very diligent with our financial reviews, and I have a great staff. We are hoping that won't happen.

Chairman Bayless: Anything from a member of the audience on self-insurance? Any questions or comments?

8. Office of Inspector General Report – Gary Griffith

Gary Griffith: My name is Gary Griffith. I am Director of the Insurance Commission Fraud Division, and this is Denny Rinehart who is the Director of the Insurance Commission Fraud Unit, which is basically the investigative arm of the Fraud Division.

I presented to you four sheets with some statistics. I tried to make it fairly simple. The first two sheets are indications of referrals and investigations that came to the Division during the calendar year of 2005. The second two sheets reflect activity for fiscal year 2006 into the same point in the fiscal year of 2005. On the first two sheets you will notice that it is broken down into five categories – claimant, employer, individual, industry and vendor. The claimant, employer and vendor categories are investigations that pertain to workers' compensation complaints. The individual and industry categories are conventional insurance fraud. That has to do with how they were referred to us. They are fairly simple and self-explanatory and I would be happy if you have any questions about the individual statistics to try to answer those for you. Otherwise my intent was to just to try to explain to you what state the Fraud Division is in at this point. As you may know we were the first part of Workers' Compensation and the Insurance Commission to affect the consolidation. We actually started July 1, 2005. Since that time the

Inspector General himself, the two prosecutors within that Workers' Compensation Division, the top two managers, their main secretary, and five senior investigators have departed from the unit either to private jobs or BrickStreet. I came from the Insurance Commission side. Denny was hired afterwards. So a great deal of our time has been spent trying to replace personnel, retrain personnel. The investigators we have are Workers' Compensation investigators and now they also have the responsibility of investigating conventional fraud which is actually a quite different process. We've been going through that training and replacing the prosecutors that departed, all the time trying to obtain the equipment that was needed. A lot of the surveillance equipment and electronic evidence gathering equipment was also taken with those investigators to BrickStreet because it was assigned to them. So we've been spending a lot of time trying to upgrade the training – the expertise level, trying to learn the ins and outs of the workers' compensation investigations. That is basically where we are at, at this point.

Chairman Bayless: Can you explain to me, with BrickStreet now being the insurer, most of the fraud would be against BrickStreet. What is the breakdown between you and. . . ?

Mr. Griffith: BrickStreet becomes like a State Farm or Nationwide as far as we deal with it. Complaints would come in either to us or to them. If it appears that what we are dealing with is abuse that becomes a situation that their Special Investigative Unit would handle. If it is an outright fraud, either we discover it or they discover it, then that's what we do. We'll pursue that to prosecution stage. The minute that they discover that it is actually fraud instead of abuse then they refer it to us. We have a real good working relationship. We've worked with their personnel in the past.

Mr. Pellish: What typically would cause a referral or complaint to come to you? What are the sources?

Mr. Griffith: Well, you could do it from matching statistical reports. You may run a report from Social Security that says somebody is deceased but yet from workers' compensation they are still receiving some kind of disability benefits. You get it from the general public. People perceive that somebody has a workers' compensation claim and are receiving compensation from Workers' Compensation. They perceive that this person is conducting activities that are not consistent with that disability or whatever, so they will report that. Their observations may or may not be accurate, but you have to look at it. You can get it from any kind of internal sources within BrickStreet now, Workers' Compensation Commission in the past. Their auditor's units or whatever. . .when they see situations that they perceive to be fraud, then they would refer that to us. It's from any number of sources. And then with conventional insurance fraud, we'll get it from the general public. We get it from police agencies. We get it from the industry itself from their special investigative units. One of the most consistent and useful sources of information like that is really from "significant others" that have had a problem with their significant other.

Commissioner Cline: Any person that is in the insurance business, the insurance industry, if they suspect fraud, it is a mandatory reporting requirement to us. Also I would like to point out, with respect to the Insurance Commission, the legislation to establish a Fraud Unit – we

were one of about ten states that didn't have a fraud investigative unit within the Insurance Commission – that legislation was passed in 2004. Gary came on board to actually begin that implementation process. Then the Governor, during this transition, I guess knew what he was planning to do because he said, "Whoa up just a little bit." We have the ability to hire five individuals in that unit. We have over 50 people in that unit now. They have been working very hard on training programs, getting the investigators the resources that they need, and Mary Jane has been working on getting the prosecution piece up to speed as well. I think from time to time you are starting to see press releases that will. . .

Mr. Griffith: What is not on those statistics that we gave you. . .since the first of the year we've actually had two criminal indictments returned – one in Harrison County and one in Upshur County. One is a conventional insurance fraud and one is a workers' compensation fraud. We are trying to work more hand in hand with the individual prosecutors in the counties as we go. That is working out well.

Rick Slater: Gary, what is the differentiation between fraud and abuse?

Mr. Griffith: That is hard for me to define. It's in the statute and it's really not something I have dealt with. In other words, I think abuse is like I've got a legitimate claim but maybe me or the doctor one is running the treatments a little bit longer than normal or trying to extend it more than necessary. Out and out fraud is just. . .I'm submitting claims for travel to a doctor's office when I really don't have an appointment. Or in the insurance industry, I'm going out here and stage a wreck and I'm filing a lot of insurance claims for property damage and medical injuries that didn't occur. It's really got to do with the difference between a warning ticket for speeding and a citation for speeding, if you know what I mean.

Commissioner Cline: Randy may be able to correct me if I say something wrong. But it was my understanding that in Senate Bill 2013 they know of abuse and they can get providers off of their network easier. They could shut them down from processing workers' compensation claims under an abuse definition which helped them be able to start cleaning up the system a little quicker. That's my understanding. . .just to be able to get something through the process sooner and quicker to get them off the rolls. There is provider fraud out there too.

Randall Suter: That is correct.

Commissioner Cline: Workers' Compensation Commission was beginning to take the steps to gather that data and actually had begun to suspend doctors that were abusing the system.

Chairman Bayless: Any questions from the public? Hearing none, we'll proceed. I just want to thank you very much. I wanted to get one thing in the record. You will notice our legislative colleagues are not here. I think they have something else going on.

Commissioner Cline: I know Senate Finance is meeting today at 3:00 p.m. Senator Minear and Senate McCabe are both on Senate Finance.

Chairman Bayless: This is the second day or so of the Session so I assume that none of them will be here and I think they have a perfectly good excuse, but I just wanted to get it on the record why they are not here today.

9. Report on Title 85 Rules – Ryan Sims

Ryan Sims: Again, Chairman Bayless and members of the Industrial Council, I am here to talk a little bit about the Workers' Compensation rules which transferred to the Insurance Commission on January 1, 2006. Just to give you a little background. All the rules pertaining to workers' compensation, and that would be the rules promulgated under Chapter 23 which were previously promulgated by the Workers' Compensation Commission and their predecessor agencies, are found in Title 85. They are exempt rules. Prior to January 1, 2006, all new rules or amendments to the rules were made through the Workers' Compensation Board of Managers. The Workers' Compensation Commission and the Board of Managers worked together much in the similar fashion that the Insurance Commission and the Industrial Council work together to make changes or new rules under Title 85. There are currently 26 active rules or 26 series, so to speak. Each rule – they call it a rule but it's actually a series – they are all under Title 85 and there are 26 active rules. That does not include Rule 13 which Mary Jane recently brought before you, and you will be voting at the next meeting on final filing with the Secretary of State. As you probably know, pursuant to Senate Bill 1004, when the Workers' Compensation Commission terminated all the rules transferred in their form as they were at the end of December 2005 to the Insurance Commission. They are now part of our rules. So now the Insurance Commission has two titles of rules so to speak under its regulatory purview and that would be the Title 114 rules, which are general insurance rules. They are legislatively passed rules that go to the Legislature while the Title 85 rules will be exempt rules and will go through the public comment process with cooperation between the Insurance Commission and the Industrial Council. As far as what Senate Bill 1004 specifically does, under the Code section it is the Industrial Council's job to approve, reject or modify rules. You specifically have the job, once we propose an amendment or a new rule, of reviewing the rule and approving, rejecting or modifying it. Again, this is essentially the same process that was used between the Board of Managers and Workers' Compensation Commission. I don't think anybody anticipates that process changing substantially. But I do believe that it is one of the most important and significant roles that the Industrial Council has is overseeing these rules. When we come up with a change or an amendment to review, approve, reject or modify it, you [Industrial Council] work with us in making sure the rules stay up to date. And when it is necessary to make changes or when there is a policy issue that comes up, that we work together in getting the rule changed to appropriately reflect what needs to be done.

As far as the rule making process, I was going to go through that but I think Mary Jane pretty much went through that. There are three steps. In the first meeting we ask you to initially file it for public comment. Then in the subsequent meeting there would be an opportunity for the public to actually come up to speak to you about the proposed amendment or new rule. And the third meeting, so to speak, we would ask for your permission to final file it with the Secretary of State's office. Once we do that, then the Secretary of State kind of takes the ball from there and will send us a notice that the rule is final and it will become part of the registry of Title 85.

As far as looking at the rules right now, at the Insurance Commission we have a full registry of the rules and they are also available on-line on the Secretary of State's site. We are working on getting all the rules put up on the Insurance Commissioner's site and it just ties into one of the many IT issues we have right now. As soon as possible we are going to get those put up and anyone from the public can view our current rules. But right now you can go to the Secretary of State's site and they have a place where you can search rules. If you put in "Title 85," and then you put in whatever series you want to look at or you can just put in "Title 85," it will list all of them and you can usually view them in either Word format or Adobe Acrobat. If you want to get a head start and start looking at some of the rules, they are available right now on the Secretary of State's site and hopefully in the near future they will be available on our Insurance Commission website.

As far as what's next, we are in the process now of reviewing the rules. During the last year I worked closely with people at Workers' Compensation Commission in the transition process to try to get everything we needed in the rules as far as the transition goes to reflect the transition in the rules. I am sure we did not sufficiently transition every single rule, but we did our best to do so and I think they are in pretty good shape right now. But there is going to be changes we need to make. And then on a going forward basis, just generally we're going to have to make changes to the rules. That could be because of a legislative change or it could be just because we are hearing something from the public – that they don't like this rule; there is a problem. That's just going to be ongoing where our Legal Department will make changes to the rules as we deem necessary. Like I said, we are currently reviewing the rules and we have a few things in mind to bring before you next month. I think a high priority right now, pursuant to Senate Bill 1004, the Office of Judges no longer reviews workers' compensation settlements; rather the Insurance Commission is charged with doing that. We need to create some standards to review settlements. If they are found to be unconscionable we can actually overturn the settlement. We need to create some standards for what constitutes unconscionability and place those in what is actually Rule 12, which is the Rule on Compromise and Settlements. I can certainly tell you that is one rule we will be bringing before you next month. If there are any questions, I would be glad to answer them.

Chairman Bayless: What is the procedure for a member of the public who would like to suggest a rule change?

Mr. Sims: Well, there are really two processes. When we initially send the change or the new rule out, we have a very large stakeholder list that includes employers, third party administrators and claimant attorneys. We will send that out and say, "We are going to be presenting this to the Industrial Council." The community in general will become aware of the proposed rule change that way. They can contact us and tell us they don't like this or send us e-mail comments or comments by letter; however they want to do it. The second one would be the official meeting before you all, which is that second step where anyone can come and comment to you [Industrial Council] and us [Insurance Commission] at that meeting in front of the microphone. So those are really the two processes. The way it works is you are going to do the initial filing, and during that process we will be receiving comments at the Insurance Commission and we are going to take those into account and try to make any changes during that time. But the version of the rule that they [public] will comment on will be the initially filed version. We will take any public comments at the second step process. We will take those and try to incorporate them as we deem it appropriate. Between the second meeting and the third meeting where we ask you to final file it, that's where we will bring you the final version of the rule so to speak. We will e-mail that out to you ahead of time so you can review it and see if it meets your satisfaction. At the final meeting I'll come up and review the final changes that were made and then you will vote.

Chairman Bayless: What if a member of the public, one of the lawyers, calls up and says, "This is really a bad rule. I think the rule should read this way." And you haven't suggested anything. Do they just call somebody at the Commission and suggest it?

Mr. Sims: Are you saying if it's before we even have started a change or anything?

Chairman Bayless: You have adopted all the Title 85 rules and somebody says, "This really ought to be changed. I don't like this." You haven't suggested anything yet.

Mr. Sims: I would suggest that they can contact our Legal Department or they can contact one of you all. They would have a number of options. Our Legal Department is going to be handling the actual drafting of proposed changes. If we hear complaints on a certain rule, we will certainly take those under advisement and discuss it within our Legal Department – what an appropriate remedy for it would be.

Mr. Pellish: How are you going to prioritize what existing rules should be looked at first? Secondly, can we get a rough feel for how many proposed new rules are kind of floating out there? I sat in on the November Board of Managers' meeting and I just got a feeling that there may be some new stuff that was out there just kind of floating in limbo because of the transition that was going to take place.

Mr. Sims: Well, like I said, we tried our best to get the rules transitioned properly, but there is certainly going to be some transition issues that need to be addressed in the rules. And then there is probably going to be some new rules that need to be made. What we are doing,

as a Legal Department right now, is looking at all that. One amendment we are certainly making is the unconscionability standards for review of settlements. But we are reviewing all the rules right now and intend to bring several before you next month. Our Legal Department will decide what amendments or changes need to be made and then bring them before you for initial filing, and then that begins your opportunity and the public's opportunity to start reviewing and say, "Is this a good change?" Now if you would like a heads up on what we're thinking about changing, I'd say communicate that to us and we'll try to get that together as we're going through this process of reviewing the rules.

Mr. Pellish: I'd just kind of like to get a feel of where your priorities are for the existing stuff and also how much new stuff is out there.

Mr. Sims: I think our initial priority is to make sure that the rules are in compliance with Senate Bill 1004, and the example would be those standards for review of settlement. That is something we need to get in the rules as soon as possible, and reviewing the other rules and making sure that the proper transition language is in them, and that they correctly reflect our new workers' compensation system. So I would say that would be our first priority. I think subsequent to that then we can look at different policy issues, different general issues. There are going to be other things that come up once we are into the privatized system that we didn't even think that might not be part of the statutory issue. But like Chairman Bayless was saying where somebody calls us and says, "There is a problem with this rule. We need to look at it."

Commissioner Cline: Oftentimes things get prioritized by the complaints that get generated. That's how we find a problem that something is not working. I mean clearly we can work on getting you a prioritized list. Unfortunately Ryan also has to draft legislation because the Legislature is in town. We have that going on too. He really has already begun to work on some issues and identified some things I think we need to bring before you.

Mr. Sims: I would like to say that I do believe right now the rules for the most part are in a functional manner. We tried to make sure before the end of the year that we took care of everything that was absolute necessary and that's how we proceeded when we were doing it with the Board of Managers. There was a great working relationship between BrickStreet, the Board of Managers and the Insurance Commission in getting the rules transitioned. And like I said they are not perfect, but there are no major issues out there. I think we did a pretty good job of transitioning and hopefully there will be no major issues that come up. Of course we are going to continue to work until we get them perfect.

Mr. Pellish: Well, that gives me the feel I was looking for.

Commissioner Cline: Randy Suter and T. J. Obrokta [BrickStreet] worked very closely with Ryan on most of them. We have found some things that I think we probably need to go back and revisit.

Chairman Bayless: Thank you very much.

Mr. Sims: Thank you.

Commissioner Cline: The primary focus now is just to make sure we meet our statutory obligations and we believe we're there.

Chairman Bayless: I have one question for Mary Jane. You sent out an e-mail a couple of weeks ago that talked about the Board members and there was a ruling that they were public employees under some statute. As President of West Virginia Technology, I am already a public employee. Does that subject them [non West Virginia employees] to any rules or regulations on reporting or anything that they should be aware of? I'm just questioning for the people that are not already public employees. Does that subject them to anything they ought to be aware of?

Ms. Pickens: Not that I am aware of. The problem that we ran into was the reimbursement issue and we were simply told by the auditor's office, "This is what the IRS has told us and this is the way you've got to do it." Beyond that I haven't looked at it anymore, but I would be happy to.

Chairman Bayless: Just for the record. My check. . .since I'm already a public employee, whenever I get it. . .I was not going to get it and then I figured Tech needs the money more than the Insurance Commission does, so I will just sign it over to Tech whenever I get it. We need the money a lot worse.

10. General Public Comment

Chairman Bayless: Let me first to call on the Commissioner. Do you have anything to say?

Commissioner Cline: We look forward to working with you and I think we are embarking on a positive path. It's challenging, but it's exciting. I keep telling our staff that we are also getting a lot of opportunities – there is career opportunity, but there is a lot of opportunity to make positive changes for the State.

Chairman Bayless: Does any member of the Council have anything before we turn to the public in general that hasn't been brought up?

Mr. Pellish: I've got a general question. Again, my compliments for what you are addressing and what you're doing. I couldn't help but think as I was looking through the Judge's report, the thought crossed my mind – are we comfortable with the amount of education that we are giving the public and to employers in terms of workers' compensation, what the procedures are, how to file a claim?

Commissioner Cline: I think from the employers' perspective and some of the employees' perspective some of that really should not change all that much because they will still file the claim with BrickStreet. It is the same place they filed it with Workers' Compensation Commission. BrickStreet has been doing a lot of public education. They've been sending out a lot of mailers and pieces of information. Now we also recognize that that does not always get read and I know from discussions with BrickStreet Mutual's President, Greg Burton, we are seeing some of the same kind of inquiries. We are getting inquiries at the Insurance Commission like, "Who is BrickStreet? What is this? Why has my premium changed?" And I know that they really did try to educate them on that. We have a Consumer Services Division that will be handling those inquiries and complaints as they come in. They will be working with BrickStreet's customer representatives to address those issues as well. As we move forward and we move to the NCCI classification system, we've committed to BrickStreet to work with them on an educational program and make employees available to go out and work with employers and answer those questions as well. There is still continual need for education process and we know from the Insurance Commission there is often need for general education because we find that people don't know we exist sometimes. We are there as resource on all insurance matters. We already have in place a Consumer Services Division. A number of workers' compensation employees transferred to us and fortunately we have people that have workers' compensation expertise that are in that area that has worked with our other consumer representatives. I know BrickStreet is continuing to try to get its message out.

Mr. Pellish: They put a forum on in the eastern panhandle. I know they came out and did that. I was kind of thinking of the small "Mom and Pop" operations where Suzy goes out and falls down and they might not even know that they need to file a claim – the real basic stuff.

Commissioner Cline: But I can't see that that really would have changed from what was happening before. I understand what your point is. We always need to be working on public information. The fortunate thing with the transition is our Public Information Division and Training Division went from one to five. We have much better resources now than we did.

Mr. Slater: The NCCI. . .what's the target date for that?

Commissioner Cline: We are targeting to have the classes mapped by July 1, 2006, so that we can work on a smoothing of the base rates that may have wide variances in them, which would not be uncommon. If a company comes in today in a homeowner's line and they want to restructure their product that might cause a huge fluctuation in one particular class of people's rates, we would cap that rate allowance and not allow them to take it all at once because it's just too much shock for the individual. That's why we want to be able to work with BrickStreet – in the advent that we have some classes that might have a huge dispersion of what the rate really should be.

Mr. Slater: The 1,400 companies that are currently in default, whose back is that on? Is that part of the Old Fund?

Commissioner Cline: That goes into an Uninsured Fund, and the Uninsured Fund was initially capitalized with \$5 million dollars. There is also a provision for us to assess. . . I believe it's industry, which obviously would get passed back to the employers that are not in default, which is why it is really critical and significant that we do everything we can to get people into compliance. Again, we don't want the other unfunded liability. But we also do have some significant powers in going after employers who are in default. There are fines, injunctions; they are personally liable. There are a number of avenues that we can use to go after employers. We can actually take some of their assets.

Mr. Slater: Thank you.

Chairman Bayless: Does any member of the public have anything that needs to be brought up.

Steve White (Director of the Affiliated Construction Trades Foundation): Just a quick question. Chairman, you had mentioned the legislative session and Commissioner Cline mentioned drafting bills. Do you anticipate any bills being put forth by the Insurance Commission having to do with workers' compensation this Session? Part one of the question, and part two – is this Board to play a role do you see in looking at suggested legislative agenda items?

Commissioner Cline: Short answer. We are in discussions with the Governor's office on what our final legislative package is going to be. We have a follow-up meeting scheduled next week and I would be better prepared to answer after that.

Mr. White: In the second part then, will you be bringing any of those suggestions to this Council for review/input in terms of the workers' compensation legislative initiatives?

Commissioner Cline: I would think it would depend on what the initiative is. There are some things that are general insurance regulation scope and then there are other things that tie into the workers' compensation statutes because of the changes. But then there are some things that would clearly be of interest to the Council.

Mr. White: Thank you.

Chairman Bayless: Any other comments?

11. Determination of Next Meeting and Regular Meeting Dates

Workers' Compensation Industrial Council
January 12, 2006
Page 24

Chairman Bayless: We need to look at meeting dates and we thought if we set a regular meeting date for the year, probably on a date that's during the Interims if anybody knows when that is.

Commissioner Cline: The problem is, generally speaking, the Interim schedule will not be out until after the regular Session.

Chairman Bayless: Should we just set it for the next couple of months or do we want to try to set it for the year?

Commissioner Cline: The Interim schedule is not necessarily the same weekend every month, so that varies. It is a good thought on part of the members, particularly Senator Minear. Delegate Craig lives in Cabell County so that's not as difficult. The Speaker's residence is in Beckley. He has a law office here. Of course Senator McCabe is here.

(There is discussion among the Board members regarding meeting dates.)

Chairman Bayless: Ryan, you were talking about proposed rule changes. Do you need us to meet February 1 or February 15? Do you have a feeling when these may be ready for first reading?

Mr. Sims: I would say about a month from now we could get the first couple of rules before you, realistically speaking. We've got a lot of things going on in our Legal Department right now.

(There is further discussion about the meeting dates/times through 2006.)

Chairman Bayless: Until further notice we will meet the second Monday of each month at 3:00 p.m.

Mr. Dean made a motion to adjourn the meeting. The motion was seconded by Mr. Slater and passed unanimously.

There being no further business, the meeting adjourned at 4:45 p.m.