

WORKERS' COMPENSATION INDUSTRIAL COUNCIL

FEBRUARY 13, 2006

Minutes of the meeting of the Workers' Compensation Industrial Council held on Monday, February 13, 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
Walter Pellish (via telephone)
Rick Slater

1. Call to Order

Chairman Charles Bayless called the meeting to order at 3:06 p.m.

The first thing we do under our proposed rules, which we hope to adopt today, is to have the secretary call the roll and state the names for the record.

[The recording secretary called the roll.]

Chairman Bayless: I doubt if we will see our friends that are elected representatives today because they are busy at the Capitol.

Let me just mention one thing. I talked to Mary Jane about this. I know there is a lot in the newspapers about the widows and BrickStreet. I don't think we should get into the merits of that, but I would like to inquire if there is anything in our jurisdiction. . .let's do it later when we come to other business. I'll just give people a chance to think about it. I know that the Attorney General is working on it and the Legislature. My question has nothing to do with the merits of the case. I don't want to get into that. Is there anything that this body needs to do? The answer could be "yes" or "no," but I'd just like to ask that question later.

2. Approval of Minutes

Chairman Bayless: The first item on the agenda is the approval of the minutes from the January 12, 2006, meeting. Are there any comments, additions or corrections?

Bill Dean made the motion to approve the minutes from the January 12, 2006, meeting. The motion was seconded by Dan Marshall and passed unanimously.

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

Judge Leach: Good afternoon, Mr. Chairman, and members of the Council, Madam Commissioner. You should have received my lengthy monthly report. Before the meeting today I passed out two corrected pages. Mr. Pellish, I have to apologize. I will send you those corrections. It was a matter of incorrectly transposing a figure from the report and it related to the number of protests acknowledged in January. Where the original report says 932, the actual statistical data which is attached to the report showed 992. When I was looking at that small print I copied down the wrong number. As a consequence that changes our projection for the number of protests for the year. And it changed Table C in terms of our balance sheet for how we get cases in and how many we move out. It didn't change the number of cases pending at all. My math was a little bit off on that because of that error I made on the first page. I also handed out today a printout of what the web page looks like for the Office of Judges, and this is definitely a work in progress. This is the basic information you will find if you go to the web site through the Insurance Commissioner's web site.

The first item to note is the red caveat which indicates the disruption in our IT switchover from Workers' Compensation Commission in January. I'm a little uncomfortable with the total accuracy of any of these numbers. In addition to my mistake that I made of losing 60 protests, I think it will play out over the next two or three months – what type of numbers we are expecting. So it's difficult to draw any long-range planning conclusions from the numbers in January. You will see that the protest total is way down. We averaged over 1,500 protests a month for last year and we did not quite reach 1,000 for January. If you look at that chart on the first page, it shows a projected total of under 12,000 protests for the year which would be an all time low. But again until we have the first quarter under our belts we're not going to be able to draw any conclusions from the incoming number of cases.

On page four you will see the big yellow dot which is down around 10% in our protests acknowledged in more than 30 days. That's our unacceptable level. And all of the years have improved since the baseline of 2001 and 2002. The next three years showed an improvement. But the yellow dot representing January was at 9.68%. That's an unacceptable number for us. But we think it's caused in part by losing a whole week of work productivity the first week of January and then some episodic disruptions since then. I look for all of these performance numbers to turn around. The same goes for the decision timeliness. You see that that drops down to 91.4% in Chart F, and that's a very unpleasant number to report to you. You can see that it is a sharp decline from our performance over the previous five years.

Roman numeral II., Self-Insured Administration – For whatever reason their protests were down by 50% for January also. The protests that we acknowledge in one month generally

reflects an Order that was issued by the agency or by the self-insured employer the month before that because you have 30 days to protest. Often people will wait until close to the 30 days to file the protest. Then as you can see by our acknowledgement, it is 10 days or so on average to get it into the system. So, we're working from 10 to 40 days behind the agency's Order. So our number of protests received in January reflects to some degree the number of decisions that were protested or issued in December. I had some reason to speculate that perhaps with the transition coming in January that BrickStreet – or Workers' Compensation Commission at that time – because of the holidays and people have to use their leave or they lose it at the end of the year, December is traditionally for both my office and Workers' Compensation a slow month. So the numbers are always lower in January. Now I really can't explain why the self-insured protests are down, so perhaps my theory doesn't hold water. I'm just engaging in some speculation.

On the next three sections of my report are three new processes that were put in the legislation last year. Our expedited hearings are being utilized at a lower number than I would have anticipated. We've only had 28 requested since September 1 through January. That's five to six a month. I thought it would be a much higher number than that. There are four to five hundred potential cases a month that we receive that fall into those categories. The fact that only five or six are requesting the expedited process means that there is a public awareness issue or perhaps we set the process up to be too restrictive and folks are aware of it but just don't want to mess with it because it is too difficult to deal with. So I have to go back and review my rationale on how we set that process up.

The failure of the insurance carrier to timely act, we've had only seven requests. This week we issued our first three decisions on that process. So that's a slow process. I think that is an education process. I think the general workers in the State are not aware that this remedy is available. Again, this is the remedy where you cannot get BrickStreet or your self-insured employer to act in a timely fashion on your claim filing or your doctor's request for surgery or whatever else you've got. You can go to the Office of Judges with a petition – a formal process to invoke our jurisdiction to give you some relief in that process. I think that's an issue that probably is not high on the public awareness scope.

Finally, the award of attorney fees for unreasonable claim denials. We've had none of these yet. . .since September 1. This I do not think is a public education issue because we went to many seminars, we had four workshops and we educated the lawyers. It is going to be the lawyers that are invoking this remedy, and they're not doing it. So, I'm just taking it that they don't believe the cases are out there yet, that there is any kind of an issue that they need to be using this process.

The appeal process brochure is in the proofing stage. We haven't put the art work to it. We have the text. It's legal paper that folds four ways and printed front and back so it looks like a nice three by nine, full color, slick paper printing that we send out with every new claim we get in. That goes to the employer and to the injured worker. It explains in layman's terminology what you are about to enter into – the world you are entering into on your appeal. It explains

terminology; it explains deadlines; who you have to send copies to; what we are going to do with your case. We received a lot of favorable comments on that. It needed to be tweaked and updated after we changed to the Insurance Commission and with the privatization of Workers' Compensation Commission. The text is done. We are just putting some art work together. I'll give you a final copy so you can see that material once it's printed.

The OOJ web site, I've already mentioned. I gave you a copy of the printout of that. It's again undergoing some design changes to meet the look that the Insurance Commission and we want – a more professional look.

Legislative issues – I call to your attention to two bills that are pending that affect the Office of Judges and perhaps the Board of Review. As of today, I'm not aware of any movement on either of those bills in the House or the Senate. There was a subcommittee appointed in the House Judiciary. We attended the first session on that. Their idea was that they would talk privately among themselves and get some ideas on how fast and what vehicle they wanted to move that bill or if they wanted to move that bill or give it further study. I have nothing more to report to you on that bill. If it were to pass in the current form, we would be removed from your jurisdiction and be assigned to this central panel of all administrative hearing examiners along with the PSC Hearing Examiners, the Tax Hearing Examiners, the DMV Hearing Examiners, the Grievance Board Law Judges – all of those would be centralized and would be removed from the control of the agency to whom they report.

Finally, there was one matter I did not put in the written report because of the state of flux it was in and that is the status of my satellite office in Beckley. Due to some communication problems, two agencies are now trying to occupy the same office space in Beckley and the report is that I got bumped. I am looking for new office space. As of Friday afternoon we have made our decision on where we are going to move. We are supposed to be out by March 1. Getting a lease signed, approved, the equipment and the personnel moved by March 1 may be problematic. The current landlord has threatened to file, as of today, a suit to evict us. But if that happens, we'll get at least 30 days more to move. So, we're doing the best we can. We are trying to work with the current tenant to avoid any ugliness. He wants us out. We want to get out. We are just moving as fast as we can. That's all I have to report Mr. Chairman. I'll be happy to take any questions.

Chairman Bayless: Does any member of the Council have questions for Judge Leach?

Dan Marshall: Judge, those bills introduced into the Legislature – were they to your knowledge administration initiatives or just bills popped in by members of the Legislature?

Judge Leach: I don't believe that they were sponsored by the administration. They were sponsored by Chairman's of the Judiciary Committee of both bodies. But I don't know exactly who was behind the bill. This has been a historic issue that crops up ever so often. In fact the draft of the bill that was introduced is identical to a draft that was submitted in early 1990's, even

before we privatized Workers' Compensation Commission and everything else. So, it just kind of comes back up every now and then.

Mr. Marshall: Thank you.

Commissioner Jane Cline: I can add to that. . .

Walter Pellish: I have a question. What is the point of trying to remove the Office of Judges to a centralized location? I wasn't quite clear about that.

Judge Leach: Do you want that one Commissioner?

Commissioner Cline: You can take the first part and then I can supplement your answer.

Judge Leach: The general purpose of the bill. . .it doesn't address workers' comp specifically. It's just addressed to all State agencies who employ or use any type of Administrative Law Judges or Hearing Examiners in their appeal process. The general purpose for the bill is to accomplish two things: One is an economy of scale. Many agencies have so few appeals that they have no permanent process, and for each appeal they will go out and hire a lawyer to conduct a hearing and write a decision for them. Obviously if you have dozens of State agencies doing that it's a lot cheaper to have full time staff doing it than to have a "hired per case" type of situation. They are hopeful that they can save money for the State in general by consolidating the functions into one panel, and then there would be a Judge there who got assigned to do this DMV case or that PSC case. So, the first purpose is to save the State money. The second purpose is to create a more independent atmosphere on the appeal. Under the current system the State agency picks the Hearing Examiner. In other words, "picks the Court" – assigns the work to the Hearing Examiner. It is believed by some appellants in all of these different processes that they may not get a fair shake because they didn't get to pick the Judge. And a Judge, if he wants to do more work in the future, has some pressure to be favorable to the agency in order to keep getting referrals and continue that flow of income. It's thought that to give some judicial independence to the Judges it would take them out of this hiring and appointing process. And then on that same argument many statutes allow the agency to overrule their own Hearing Examiner. So, you get an independent decision of sorts and then you still lose. The idea is to create some independence in the appeal process and also for the economy. Frankly, neither one of those ideas works with workers' comp because we are independent to begin with. It's a separate agency reporting to the Industrial Council and to the Insurance Commission over decisions made by insurance companies, such as BrickStreet and self-insured employers. We are already independent of those agencies to begin with. And then secondly, we are full-time staffed, specially funded from insurance premiums previously by Workers' Comp premium dollars. We don't have the part-time process, and we don't issue recommended decisions that can be overturned by workers' comp for example. The bill is not addressed towards workers' comp. It just catches workers' comp in its broad net.

Commissioner Cline: Having said that, I've had conversations with the Governor's Director of Policy. I've also had some conversations with members of the Legislature. And our recommendation is there has been so much change going on with workers' comp that it would not be an appropriate time to try to take on that task as well. It would just further continue the disruption in the process. That has been our response when we are asked. Obviously, I checked with the Governor's office before I started voicing an opinion.

Mr. Pellish: Thank you very much. Excellent answers. It sounds to me like a disaster waiting to happen to go down that path.

Commissioner Cline: As the Judge mentioned, he has already had disruptions when people were directly focused on his needs and concerns with the Beckley office and some of the IT needs. I mean to do another round of that in such a short turnaround I think would further cause problems.

Mr. Pellish: I agree. Thank you.

Judge Leach: It would be remiss for me not to add to the Commissioner's comments. We feel like we were a hundred percent supported and backed on both the technological changes and the situation in Beckley. The Insurance Commissioner's people knew about it the same time I did, which was about two weeks before we were supposed to be out. Since then they have been on the mats with us fighting that one out, and I appreciate the support.

Chairman Bayless: Thank you. Any other comments? Does any member of the public have comments on any of the items that Judge Leach set forward?

4. Proposed Rule 13 – Procedural Rules for the Industrial Council – Mary Jane Pickens

Mary Jane Pickens, General Counsel: As you recall, a couple of months ago I originally presented this rule to the Council and asked for authority from the Council to publish it for public comment and to set a Public Hearing, and the Council voted to do that. We published it and received no written comments. At the last meeting of this Council we had the Public Hearing, and as I recall there were no public comments offered at the Public Hearing. The only change that I have made is one that I've discussed with Chairman Bayless. It was a technical change to clarify a provision in Section 4, and we have taken care of that since the Public Hearing. Other than that the rule looks just like you saw it the last time. If it is deemed appropriate by the Council at this time, now would be the time to make a motion to approve it for final filing at which point we will do that, and then it will be in effect. It will be a final filed rule in effect that would govern the activities of the Council.

Rick Slater: May I ask what the technical change was that was made?

Ms. Pickens: Yes. It was in Section 4.9. The way it read before suggested that the same person could be chosen to be chair and vice-chair. And what Chairman Bayless suggested is that the language now reads, "The Members of the Council shall select a member to serve as chairperson and another member to serve as vice-chairperson."

Chairman Bayless: Previously it said, "The Members of the Council shall select a Member to serve as chairperson and vice-chairperson." It sort of sounded like it was the same person.

Ms. Pickens: Right. We corrected that.

Chairman Bayless: I think a motion would be in order.

Mr. Dean: Motion to approve.

Mr. Marshall: Second.

Chairman Bayless: It has been motioned and seconded. Is there any discussion among Members of the Council? Is there anything from the public? It has been moved and seconded that we approve as presented, and slightly amended, the Procedural Rules for the Industrial Council, which is Title 85, Series 13. All in favor, "aye." That was unanimous. [Rule 13 passed for final filing with the Secretary of State's Office.]

Ms. Pickens: Thank you.

5. Amended Rule 85CSR12 – Relating to Unconscionable Settlements – Ryan Sims

Ryan Sims: Chairman Bayless and Members of the Industrial Council, my name is Ryan Sims. I formally introduced myself to you at the last meeting. As Chairman Bayless said, this is the first of numerous substantive rule amendments or new rules that we will be presenting to you for initial filing, public comment and then final filing. This is Rule 12, "Compromise and Settlement of Workers' Compensation Issues." We are presenting it to you today for initial filing with the Secretary of State. That is to file it for a 30-day public comment period which will conclude with the opportunity for the public to come and give their comments to you, approximately one month from now. We discussed with Mr. Bayless that we are going to have to move the meeting ahead one month to fulfill the requirement of 30 days. A copy was sent out to you on Tuesday, and I have a copy here.

The first group of changes you will see are basically what I would describe as cleanup changes. Just to clean it up further to get it right for the transition which took place on January 1, 2006, to a privatized workers' compensation system from the State run monopolistic system. So, all of those changes are strikeouts, additions or changes which we thought would

essentially clean the rule up and make it more technically correct in light of the transition on January 1, 2006.

The primary addition we are making to the rule would be Section 14, which can be found in your copy on page three. It begins at the bottom of page three which is entitled, "Insurance Commissioner Review," pursuant to West Virginia Code §23-5-7, which was amended. It existed but it was amended in Senate Bill 1004 in the first extraordinary session of 2005. The Insurance Commissioner was given the ability to review workers' compensation settlements between the Workers' Compensation Commission once it terminated between private carriers, self-insured employers and claimants. Essentially what the Legislature did in §23-5-7 was previously the Office of Judges. . .in fact the Office of Judges reviewed every settlement between the claimant and Workers' Compensation. The Legislature changed that process and said that there does not have to be mandatory review of every settlement, but rather the Insurance Commission can review a settlement if there is a request by claimant to do so. If we make a rule and put some standards in, we can void the settlement if it is determined that the settlement terms were unconscionable. What we did, based on that mandate from the Legislature, we created Section 14. I, and some other attorneys in our Legal Division, went through some other states' law. We also looked at some law from our Supreme Court and other resources to try to come up with some criterion to define "unconscionable" and set forth some standards by which the settlements will be judged. What it basically comes down to in a nutshell is if the settlement creates a gross miscarriage of justice or is such that it is grossly unfair, then the Hearing Examiner that we appoint will be able to void the settlement essentially, and have it declared "void" from its beginning. Then the claimant will have the opportunity to litigate his or her workers' compensation claim.

Mr. Slater: The term "gross miscarriage of justice," is there some type of . . . is that just a legal term that can be subjectively applied to the process? How does that work?

Mr. Sims: I guess you are referring to Section 14.2.

Mr. Slater: Yes.

Mr. Sims: Just to take you through the process of how we did this, we first tried to define "unconscionable." We basically did that by looking in a legal dictionary and other similar resources to try to see how "unconscionable" was defined. Unconscionable is a legal term that has contractual legal ramifications. It just means the settlement which was entered into was so unfair, so grossly improper. It went against what any reasonable person would do that it should be void for public policy. That is essentially what it means. So, based on that, we found this definition by searching through several legal dictionaries – the definition at the beginning of 14.2. We then set forth in 14.2, (a) through (g), seven criteria which the Hearing Examiner can consider when reviewing the settlement as a whole. We tried to set forth an overall definition and then seven criteria that can be reviewed when the Hearing Examiner is determining whether the settlement is unconscionable or not. We got many of those from a Supreme Court case. The name slips my mind right now, but I can get you that case site. It was

a case where the Supreme Court set forth standards from conscionability where our Supreme Court set forth standards for determining if a contract is unconscionable. We also added a couple of them just through discussion and what we thought would be proper. If you move on, 14.2 sets forth the standards which the Hearing Examiner will use when making his analysis as to whether it's unconscionable. Really 14.5 sets forth the procedural aspect of this. It sets forth the procedure where the claimant can file the request to review the settlement and the Insurance Commissioner can designate a Hearing Examiner to review the settlement. The claimant, the carrier or the self-insured employer who entered into the settlement will have an opportunity to present additional evidence to the Hearing Examiner. There will also be an opportunity for a hearing if they want one. Both sides are involved when there is one of these settlements in dispute. We'll have a full opportunity for due process to present evidence and to have a hearing before the Hearing Examiner, and then ultimately the Hearing Examiner will make a final decision – either voiding the settlement or upholding it. That decision will be appealable, but it will be appealable to the Circuit Court. This is a slightly different process than normal workers' comp litigation because it's the Hearing Examiner process, and then it goes up to the Circuit Court. It's not a normal claims dispute that would go through the Office of Judges and then to the Board of Review.

Mr. Marshall: Mr. Chairman, just a couple of questions. The first is out of, I'm sure, sheer ignorance on my part with respect to Section 14.1. "In accordance with provisions of the W. Va. Code §23-5-7, the Insurance Commissioner may review any workers' compensation settlement entered into between an unrepresented claimant and the Insurance Commissioner. . ." That indicates to me that there are instances where the Insurance Commissioner would be reviewing its own decisions. Could you explain what sort of case would result in those circumstances?

Mr. Sims: Sure, I'd be happy to. I think you brought up a very good point, Mr. Marshall. Essentially the kind of claims where that would occur would be the various funds. When there is a claim in one of these various funds that the Insurance Commissioner has control over, such as the Old Fund, the Uninsured Fund, the Guaranty Fund for self-insured employers, any time a claim hits one of those funds the Insurance Commissioner has somewhat of a supervisory duty over those funds. The claims actually go to our TPA, and the TPA would have the opportunity on our behalf to enter into a settlement with the claimant. I think you just hit something on the head. That's why we had to go to a Hearing Examiner instead of someone in our Legal Division to review it – to try to avert that conflict. But, yes, there could be situations under the Old Fund or the Uninsured Fund where our TPA enters into a settlement with the claimant. Obviously if our TPA is entering into a settlement, the TPA is someone we entrust to be fair, but also enter into a settlement which benefits the fund. Yes, it could be reviewed by the Hearing Examiner that is appointed by the Insurance Commissioner. I think this is a situation where the Legislature created sort of an inherent conflict and that's why it says the "Insurance Commissioner." Any time it says the "Insurance Commissioner" and then after that it says "or other private insurance carriers or self-insured employer," the reason we said the "Insurance Commissioner" is because in situations where it involves these funds there could be a situation where there is a settlement and that ultimately has to be reviewed. It's an awkward situation that was created by the Legislature. Again, the Insurance Commissioner would pass that on to

the Hearing Examiner. I would think even though she could overturn the Hearing Examiner's decision, she would not in that particular situation because of that inherent conflict. I would think she would defer to the decision of the Hearing Examiner, particularly in the situation where it's a fund that the Insurance Commissioner. . .her TPA made the settlement. If the Hearing Examiner overturned it, I would think that she would just let it go on to the Circuit Court if we decide to appeal it.

Mr. Marshall: Thank you. With respect to your unconscionability standards and the Supreme Court case that you used and took some of those from, could you tell us what the context of that particular case was – what sort of dispute was involved where the Court set forth its criteria for these unconscionability standards so that we could see how that relates to workers' compensation types of cases?

Mr. Sims: It was another attorney in our office, Robert Nunley, who actually looked that case up. He was helping me and I just reviewed. . .

Mr. Marshall: Would you be kind enough to give us through e-mail the citations. . .where we could look at it?

Mr. Sims: I can certainly do that. That would absolutely be no problem.

Mr. Marshall: I'd appreciate that. You referred to an appeal to the Circuit Court. Would that be the Circuit Court of the claimant or would that be the Kanawha County Circuit Court?

Mr. Sims: That is actually addressed in Section 14.6. It refers to §29A-5-4, which is the section that addresses administrative hearing appeals. I'm not sure on this. I would have to review the Code section. But I believe it could be either the county. . .actually I might defer to Mary Jane on this. I think, Mr. Marshall – and again I would really have to take a look at that Code section – but I think it will allow you to take the appeal to the county where the settlement occurred. In most places that would probably be Kanawha County. I think it alternatively says you can always bring it in Kanawha County if you like, but I can double-check on that Code section if you like.

Mr. Marshall: Thank you.

Mr. Sims: Again, we're just bringing this rule to you for initial filing. We've already received four or five comments from stakeholders. We sent it out to the stakeholders at the same time we sent it out to you. We expect to receive numerous comments on this rule. This is the beginning stage on this. We will take every comment we receive and do our best to incorporate into the rule as appropriate.

Mr. Marshall: Will the members of the Industrial Council receive copies of those written comments prior to the meeting of which we consider final adoption of this rule?

Mr. Sims: I see no reason why that couldn't be arranged.

Mr. Slater: I would like to request that we do get those.

Mr. Sims: Sure. Also the comments received will be filed with the final version of the rule as well. We can forward those comments to you.

Mr. Marshall: Thank you.

Chairman Bayless: We need a motion.

Mr. Dean: So moved.

Mr. Marshall: Second.

Chairman Bayless: It has been moved and seconded that we file these rules for public comment. Any further discussion?

Mr. Pellish: I've got a couple of comments and a question. Perhaps I should have made them before the motion, but I couldn't quite hear. When I looked at this proposed rule I had difficulty reading it on the computer and unfortunately I couldn't print it out. When I went through it a couple of times the word "unconscionable" kept jumping out at me and it caused me concern. From the standpoint that we are dealing with a subject matter that is fraught with the vulnerability of judgment and interpretation, we've got a word here but it's so wide open to that, i.e., "unconscionable." It appears that the people who were putting this together were struggling with what it meant and attempted to define it further. What's going to go through a claimant's mind when the claimant looks at a word like that? My question is, is there not a better word that we could find somewhere in the English language to substitute "unconscionable" that would be more clear by its own definition? If there is any way of exploring that as we go through further rewrite on this rule, it would be appreciated.

Commissioner Cline: I believe Chapter 23 provides that word. It is already in the statute which is why we have to do the rule around that word.

Mr. Pellish: It prohibits us from trying to get it changed?

Commissioner Cline: I would think that would be difficult.

Mr. Pellish: Okay.

Mr. Marshall: Jane, do I understand you that the word "unconscionable" or "unconscionability" is imbedded in the statute?

Workers' Compensation Industrial Council
February 13, 2006
Page 12

Commissioner Cline: Yes. That is the term that is used in Chapter 23 that sets forward our responsibility to do this.

Mr. Marshall: It does occur to me, in conjunction with what Walt says, that that's a word just to me will give rise to a lot of litigation down the road because it is such a subjective term, but we're stuck with it.

Commissioner Cline: We have egregious in third party bad faith.

Mr. Sims: I might also mention that this is something in our general common law applying to all contracts that there is the ability to take any contract to court and get it deemed unconscionable after the fact and get it voided. So this isn't really something that is drastically different from our other venues of civil justice.

Chairman Bayless: Walt, do you have another question?

Mr. Pellish: No, I don't have any other questions. But it sounds to me like the attorneys way back when assured themselves of full employment.

Chairman Bayless: It has been moved and seconded. All in favor, "aye." [Motion passed on Rule 85CSR12.]

I would urge the members of the public bar that are here today to weigh in on the comments. Today there is no need to comment. You are welcome to if you want to, but we're going to be living with this thing for years and there will be a lot of settlements. So I would urge people to go back and look at former settlements that you thought should not have happened, or should have happened, or may have been unconscionable and do they fit within this. It is much better to find this out before we have it appealed to any Court. So, get the comments in, in the next month.

Now we do have a scheduling problem. We had agreed on the second Monday of each month. For March that would be the thirteenth. I have been informed that that does not give us sufficient time because February only has 28 days.

[There was discussion among the Council Members regarding a date/time for the March Industrial Council meeting to allow enough time for the 30-day public comment period on Rule 12.]

Mr. Marshall: Mary Jane, is it essential that we take the final action on this at our next meeting or is this something that we can defer to the April meeting and go ahead and have the March meeting as scheduled?

Workers' Compensation Industrial Council
February 13, 2006
Page 13

Ms. Pickens: With the notification of the Public Hearing, it can't be less than 30 days nor more than 60 days out. So you just need to keep it within that second 30-day time period.

Chairman Bayless: Is there one more reading on this or are there two more meetings? Can we approve it the next time?

Ms. Pickens: Well, the next time it would be an opportunity for the public to come forward and voice any concerns.

Chairman Bayless: We don't really approve it until the following. . .

Ms. Pickens: It's a three-meeting process to get all the way through it.

Mr. Marshall: But the hearing has to be – in receipt of public comments – within 60 days. Is that correct?

Ms. Pickens: Correct.

[There was more discussion about the date/time of next meeting.]

Chairman Bayless: Is there an urgency to get this done?

Commissioner Cline: The concern would be if we had a situation that arose where we would need to have the process in place for which to proceed under. It would delay it probably another 30 days from an effective date.

Mr. Marshall: If you were to hear one of these appeals, if one was filed as early as tomorrow, would it not be probably 60 days or so before. . . would that be an untimely response on your part?

Ms. Pickens: One thing Ryan commented on that you may want to make sure you know. In the rule, it does allow us to look at them after they have already been entered into. I mean, yes we would like to have the process because we are anxious to get some of these rules amended and get them the way we want them. It's not like we have to look at them before or simultaneously with the entry of the settlement.

Mr. Marshall: Where does that put us in your view?

Ms. Pickens: I think we were hopeful that we could have the Public Hearing roughly in a month. I don't think it is absolutely critical.

Chairman Bayless: I think we should have it in a month. I don't see any need to postpone it. Even if we pick a day that I'm not here, there are other Members and we have a Vice-

Chairman and we can go ahead. The next meeting will be March 24, 2006, at 3:00 p.m., in this room.

Mr. Sims: I can't remember if you voted yet or not. I just wanted to let you know that we made a few technical changes to this rule. It's just number changes where we didn't number things right or grammatical changes. Nothing substantive at all, but I just wanted to let you know before you voted that there were some technical changes made and that will be the version that will be initially filed with the Secretary of State's office today.

Chairman Bayless: Does any member of the public have anything to say? You don't need to get comments in right now.

Mr. Marshall: Do we need any resolution about the Public Hearing? When are we going to have the Public Hearing? Does that need to be resolved?

Ms. Pickens: It will be on March 24, 2006.

Commissioner Cline: That is why. . .if you were going to do it at the next meeting we needed to extend the next meeting because of the two-day time period.

Chairman Bayless: Mary Jane, I had asked the question earlier and I don't have a preconceived notion. But with all of the things that have been in the newspaper about widows' benefits, is there anything that we should be doing or is that entirely in the bailiwick of the Legislature? I mean, I noticed in this proposed rule there are things about widows, dependents and everything. Is there anything that we need to do?

Ms. Pickens: I don't think so. And the Commissioner can chime in certainly if she would like to. It is not a brand new issue. It has been around for a couple of years and the issue is framed in cases in litigation that is pending now before the Board of Review. We think it is working its way through that appellant process, which is really what it needs to be doing right now. I don't think there is anything directly that this Council needs to get involved in on that issue.

6. Public Comments

Chairman Bayless: Does any member of the public have any comments they would like to make?

7. New Business

Chairman Bayless: Is there any new business that anybody would like to bring before the Council?

8. Adjourn

Chairman Bayless: We need a motion to adjourn.

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

There being no further business the meeting adjourned at 4:00 p.m.