

WORKERS' COMPENSATION INDUSTRIAL COUNCIL

APRIL 26, 2007

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, April 26, 2007, at 3:00 p.m., Offices of the West Virginia Insurance Commissioner, 1124 Smith Street, Room 400, Charleston, West Virginia.

Industrial Council Members Present:

Bill Dean, Chairman
Dan Marshall
Walter Pellish
Delegate Kevin Craig
Senator Brooks McCabe
Commissioner Jane Cline

1. Call to Order

Chairman Bill Dean called the meeting to order at 3:00 p.m.

2. Approval of Minutes

Chairman Dean: Did everybody have a chance to look at last month's minutes?

Dan Marshall made the motion to approve the minutes from the March 22, 2007, meeting. The motion was seconded by Walter Pellish and passed unanimously.

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

Judge Leach: Mr. Chairman, members of the Council and members of the audience, there are copies of the report outside of the room if anybody wants to see the black and white version.

Our statistical analysis shows that we received 1,100 protests in March which is slightly above our average for the month. Looking at the two graphs that follow, you can see that we were climbing steadily until 2004 when we hit a peak and then there has been a precipitous plunge in the number of protests filed since then. But the chart on page two – at the top of the page – shows that after that steep plunge, which occurred in 2004, from that point there has been a decline, but not a steep decline. It leveled off there. We've been unsuccessful in making our predictions about our statistics that I hesitate. . .Chief Judge Drescher and I was talking on the way over here. It does appear that we plateaued on the drop-off.

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The number of pending cases is now at an all time low of 7,352 active cases pending in our system. Just from a historical basis, when the auditor started the analysis in July 2005 – not quite two years ago – we had over 18,000. And at one time there were estimates that the Office of Judges had as many as 35,000 pending cases before I got there. The decline in the incoming work and the continued high level of the outgoing work has resulted in a reduction of the pending caseload being 7,352. As a consequence, our other numbers look very good. We have less cases to work on so we're more efficient with the ones we are working on.

Our acknowledgement timeliness – the orange bar that starts out the first three months – as you can see is well ahead of the average for our good years in 2003, 2004, 2005 and 2006.

The final decision timeliness on page four, I highlighted some of that in yellow. Our timeliness is at 99.4%. That's the highest for the year-to-date. That's the highest of the six years that I've tracked. Our decisions – 64.5% – almost two out of every three are being done within 30 days with assignment to a Judge. Your predecessors, the Board of Managers, once asked me if we could emulate the Ohio system. The Ohio system requires a decision in five working days of the date of the Hearing. There is one Hearing in the case and then there is a decision in five days. With our system we can't do that, but we're getting it done within 30 days. So we're emulating without intending to the Ohio system to some degree. Our time standard compliance for the year-to-date is up to 93.4%. It was 93.8% for March. It is a product of having less work to do.

In terms of staffing issues – Mr. Pellish has asked me about this before. We gave up three more positions this week. We transferred them to the Insurance Commission on a permanent basis. That makes our working total 109 employees from an all time high of 146 shortly after I took the position. The 109 positions, I think ten of them are vacant. So we're actually working with 99 people now. I estimated for the Insurance Commissioner a few weeks ago that we were probably overstaffed by a number of about eight. But I do not want to give up all eight because that's cutting it too fine. You don't want to budget your personnel needs and your product needs that closely. If someone takes a month off for illness or something, you are just messed over if you're budgeted right to the line. I was comfortable with moving as many as five positions, and we've transferred three. So, we're in the ballpark. We've fine tuned it about as well as we can. And of course we don't fill the vacancies if we don't need to fill the vacancies. They are sitting there as sort of an emergency position. We are negotiating. . .well we're not negotiating. We are being told what to do with the Commissioner's staff about doing some scanning work for the Claims Administrator for the Commissioner and the Old Fund. We estimate from what we've been told about the number of documents involved that if we inherited all of that work it would be about five positions. Of my ten vacancies, I would have to reclassify five of them into those types of positions and hire people to do that work, if we get that job assignment. So rather than give up the vacancies we just kind of set on them until we see how those cards fall.

In terms of narrative reports, there were two matters that I first brought to your attention last month about the legislative changes from the 2007 Session. One was a change in the record considered by the Administrative Law Judge. That change has been implemented effective April 2, 2007. For a number of months we will have two different types of records. Those old cases that were in the system before April 2007 will be treated under the old procedural law. And the new cases that come into the system on and after April 2007 will be treated under a different procedural law. That's a process that is going to require us to change our procedural rule, but the statute has overturned a provision of our procedural rule and a statute takes precedence. So even though the rule still says we do it one way, we have to follow what the statute says. It's really a procedural matter. It doesn't really impact substantive benefits at all in my opinion. It actually makes, in my opinion also, a cleaner and neater litigation file. It's exactly what the parties give us. We don't put a burden on us or a Judge to go hunting for something that we don't have a copy of and decide to put that into the record by ourselves. So it gets us out of the "evidence hunting job" and puts us more into the "decision deciding job."

And the second thing, a bigger topic, is the stays for payment of the Administrative Law Judge awards. We met and talked with the Board of Review and the Insurance Commissioner's staff and came up with a temporary process that all three of us would agree to abide by for the State petitions because the State law is going to require an amendment to Rule 1 and maybe Rule 18. The earliest we could get a new Rule 1 in place would be . . .it is 30 days after you file the final version so it's probably going to be July or August at the most rapid pace before there is a Rule 1, and this law takes effect on March 10. We would be five to six months without any regulatory process, so we just reached an agreement between the three agencies involved and how we would do that. In my written report we received 13 petitions. As of yesterday, it's now up to 20. Two of those are still pending and 18 have been ruled on. We are given the task under the agreement of dealing with the vast bulk of the State petitions. Any old case that we had decided before February 1, 2007, is to be filed directly with the Board of Review. But all of them from February 1, 2007, into the foreseeable future will be filed with the law Judge who actually granted the award. That's all that I have to report to you this month, and I'll be happy to take any questions.

Chairman Dean: Does Council have any questions?

Walter Pellish: You've taken the right approach on the manpower issue.

Judge Leach: Thank you, Mr. Pellish.

4. Amendment on Title 85, Series 8 – Ryan Sims

Ryan Sims: Chairman and members of the Industrial Council, good afternoon. The next item on the agenda, as you can see, is the presentation of the initial draft of an amendment of Title 85, Series 8. The rule is currently titled "Workers' Compensation Policies, Coverage

Issues, Policy Defaults and Related Topics.” We are making obviously the standard stylistic and technical cleanup that we make in all of these rules to reflect the transition to a completely privatized system which we are undergoing right now. I did provide to you all, pursuant to your previous request, a bullet summary of the changes we are making in the rule and we can go through that.

We will begin with Section 3, Definitions. As we always do in all the rules we added and amended various definitions in this section to provide more clarity on certain topics addressed in the rule, and of course struck definitions which are now obsolete. Getting into the substantive changes, the first one would be in Section 4.3. This adds provisions which define and clarify the specific statutory exemptions in workers' compensation insurance for employers. Basically in the workers' compensation Code there are a number of specific statutory exemptions for employers in West Virginia and we thought it would be appropriate to outline them in this rule to provide more clarity and guidance on these exemptions for employers so that employers will know whether or not they are exempt from workers' compensation insurance. We thought that would be a good addition to this rule. That would begin at the bottom of page six and move on into page seven. They are listed in subdivisions (a) through (g) of subsection 4.3.

The next substantive addition would be Section 6 on page eight of the rule. We added provisions and specifically five criteria to be used in determining whether an employer meets independent contractor status in the State of West Virginia. This is to some degree a hot button topic particularly in several industries in West Virginia. The issue is whether individuals working are independent contractors or are employees required to carry workers' compensation. There is some jurisprudence from our Supreme Court to the effect that generally you always construe in favor of employer status rather than independent contractor status. We thought it would be good to provide more specific guidance in this rule. There was some but we thought it would be good to set forth specifically five criteria, and they can be found on page nine in subdivision (a) of subsection 6.2. Subdivisions (a), (b), (c), (d) and (e) set forth those. We obtained these provisions by looking at other state's laws that have some type of provisions in their law. Again, we thought the best approach would be to provide employers or workers specific criteria in a rule to follow in order to determine whether they are independent contractors or not. Our Employer Coverage Unit that issues exemption letters will also be assisted by these provisions so they know when somebody applies for an exemption claiming to be an independent contractor whether or not they are in fact an independent contractor based on using these criteria.

The next substantive change would be Section 7. This is a section entitled “Extraterritorial Coverage and Related Issues.” In this section we provide guidance and clarification to employers on cross-border and extraterritorial issues. These issues are complex and unfortunately our statutory law we believe doesn't provide as much guidance as it could. It's somewhat ambiguous in certain areas. We thought these provisions in this new Section 7 provide more guidance to in-state and out of state employers when they come in the state; how long they can be here before they have to obtain West Virginia coverage; when they can enter into a new agreement to be bound either by West Virginia's laws or another state's laws. These

provisions will probably be the subject of substantial feedback by stakeholders, as they should be. We will continue to work on these provisions until we get them right.

The next change would be in Section 8, and specifically 8.3. Basically what this provision does is establish that dependent and death benefits in workers' compensation are considered derivative of the underlying occupational injury. Previously the Workers' Compensation Commission would consider the claim for treatment and administration purposes and reserving to be a brand new claim rather than derivative of the original occupational injury because of some issues that have come up from an administration perspective. It has become apparent to us that the way it's done in other states and the way it should be done in our privatized market is to treat dependent benefit claims as derivative of the original date of injury claim for purposes of administration and for purposes of reserving, and therefore we wanted to clarify that in this section.

Moving onto Section 9 on page 18, we added this section to provide guidance and clarification on notices of changing of coverage and cancellation for carriers of workers' compensation insurance. These provisions are consistent with West Virginia Code §23-2C-15, which provides the time limitations for canceling coverage for insurance carriers. We believe at this time that some added clarification in the rule would be beneficial. Again, we will certainly be willing to listen to any comments received on that provision.

The next relevant substantive additions would be Sections 10 and 11 of the amended rule which address rating organizations and ratemaking. In House Bill 595, which just passed, there were some substantial changes to the ratemaking provisions for workers' compensation that basically clarified that the Insurance Commissioner can appoint a designated rating organization, which as we all know is NCCI, and that carriers generally have to follow the form filings, manual rules, rating rules, loss cost, etc., as filed by the designated rating organization. The current provisions in Rule 8, which we struck in Section 11, were based on the way the former rating language read, and again in House Bill 595 that just passed was stricken. The changes in subsections 10 and 11 basically reflect the changes that were made in House Bill 595 for rating organizations and workers' compensation rates.

Those are the substantive changes. And again throughout the rule there is stylistic and technical cleanup. With that I would present to you this initial draft of Rule 8 and request that you provide us permission to file with the Secretary of State for public comment. Any questions?

Chairman Dean: Any questions?

Mr. Pellish: Ryan, I'm not a hundred percent clear that I understand the difference between a casual employer and an independent contractor, and also the extraterritorial thing. But my gut tells me that my good friend Mr. White is going to address these issues so I'll defer to him.

Steve White (Affiliated Construction Trades Foundation): I'm not an expert on casual. Could you help us define?

Mr. Sims: Casual employers can be found in West Virginia Code §23-2-1. It's one of the enumerated exemptions in that section, §23-2-1, subsection (b). As I told you we are trying to set forth all of those exemptions. I don't have the Code with me right now, but it's basically defined as somebody employing three or less employers for a period of ten calendar days.

Mr. Pellish: But I could imagine some people who operate as independent contractors are one in the same.

Mr. Sims: Actually independent contractor is a completely different situation. The Code doesn't actually provide a specific exemption for independent contractor. The Code basically says generally if you are an employer and you are employing employees you have to carry workers' compensation. Then there are the enumerated exemptions in §23-2-1(b). But then we also know from case law that if you are an independent contractor you are not an employee. You are an independent contractor and that really comes from common law rather than statutory law and it's a whole different ballgame. There is some Supreme Court case law on this – you have to use your own equipment; you have to make your own schedule; the person for whom you are working can't have direct control over your work; that type of thing. It's really a whole different situation. And of course if you are truly an independent contractor – and we know from case law and hopefully once we get these rule provisions to you – the standards are stringent. But if you do meet those standards, then you are an independent contractor and the person for whom you are working does not have to provide you workers' compensation regardless of how many hours you are working for them or regardless of how many independent contractors are working for the company, that type of thing. So it's really a totally different situation.

Mr. Pellish: Okay.

Chairman Dean: If this casual employee gets hurt on the job, who covers him? Let's say it's a three day job and the guy gets hurt on the first day, who would cover him for workers' comp?

Mr. Sims: Because an employer is exempt in a situation, such as a casual employment situation, does not mean they don't have the option of obtaining comp if they wish to do so. First the employer, if they wish to do so, can still provide comp. It just means they don't have to. They are not required to by law. However, if the employer decided not to in that situation, the casual employee would be left to the remedies of suing the employer in Circuit Court for negligence. Of course the employer would not have immunity if they did not provide workers' compensation for the worker, so they would have to find some type of action against the employer or health insurance for medical benefits.

Chairman Dean: They wouldn't be covered under anything. . .they would have to. . .

Mr. Sims: They would not be able to defer to the Uninsured Fund. They couldn't make a claim against the Uninsured Fund because their employer was not required to provide them coverage. It was an exempt situation so there wouldn't be a remedy in the Uninsured Fund. That's for employers that were supposed to have coverage but didn't.

Chairman Dean: I wasn't sure who that would fall back on. Any other questions? Mr. McCabe, Mr. Craig? I've got one other question for you. The 90 days – that concerns me. . . construction workers. . .the 90 days that they have to be here without West Virginia worker's comp. That concerns me.

Mr. Sims: That's basically a provision that's been in this rule. It was formerly in Section 6 and we've transplanted it to this new Section 7 we are working on. That's basically how the term "temporary" has been defined for years now. Certainly that amount of days could change. We find that there is a trend in a number of states that 90 days is the amount of time. Unfortunately the law really varies from state to state on these types of issues. For example, on our border states, we know in Kentucky they make you have coverage from day one. Even truck driving companies, if they're just driving through the state they have to have coverage. If they get in a wreck in Kentucky and don't have coverage, Kentucky's Uninsured Fund will sue them. We know that. That's happened in a couple of situations. The other extreme would be a state like Virginia that has a year. You can come in for up to a year with another state's coverage and they will let that state's coverage extend into their state. So those are the two extremes. I think Ohio has a similar 90 day provision to what we have in this rule, and there are other states. It's really all over the board, but I think one of the trends we've seen is the 90 days.

Chairman Dean: Are there any other questions?

Mr. Pellish: Are we comfortable in terms of the so-called "rogue employers" in attempts to get around this?

Mr. Sims: I'm having a little trouble understanding the question.

Mr. White: I don't know that this is meant to go after the "rogue employers." I share the same concern about the 30 day versus the 90 day – a shorter requirement versus the 90 day requirement. Ryan, this is not the method that we are going to go get the "rogue employers." That's under some other rule still to come. We've talked about Rule 32. I'm looking diligently for the loopholes here, but I'm not. . .

Mr. Pellish: But you've expressed concern in the past about people coming in and getting out just under the window.

Mr. White: Right. The number one issue is the 30 day. . .90 day. . .zero day issue that we'll probably be commenting on and encouraging you to shorten that period up. And I'm going to try to understand further the "casual employer." You know, who the demolition contractor is hiring for a five day job. I want to make sure that is not considered a casual employer. Their business is ongoing and not just deciding to do demolition for a day or so, if I can understand that correctly. Other than that time period, that's the only thing I've seen here that I would be urging you to address. And in terms of the processes – gets filed with the Secretary of State – we do our comments and there will be a lot of back and forth on it.

Chairman Dean: Are there any other questions? Would any member of the general public like to speak on that? Is there a motion?

Mr. Pellish: I so move.

Mr. Marshall: Second.

Chairman Dean: Motion made and seconded to approve it [Rule 8] to go to the Secretary of State. Any questions on the motion? All in favor say "aye." All opposed, "nay." The ayes have it.

[Title 85, Series 8, "Workers' Compensation Policies, Coverage Issues, Policy Defaults and Related Topics," passed unanimously to initial file with the Secretary of State's Office for public comment.]

5. Amendment on Title 85, Series 11 – Ryan Sims

Ryan Sims: We are also bringing before you today for permission to initially file an amendment of Title 85, Series 11. The current version is entitled "Enforcement of Reporting and Payment Requirements." As you can see, one thing we are doing is changing that antiquated title because we don't have a monopolistic system now. Other than Old Fund provisions there is no reporting of payment requirements anymore so we entitled it "Employer Default, Enforcement, Collections and Related Matters."

Most of the cleanup was technical or stylistic. There was a significant amount of antiquated language. Section 3, beginning at the bottom of page five, that whole section dealt with the former Workers' Compensation fund and the reporting and payment requirements under the Workers' Compensation fund, which would now be the Old Fund, which is now under the authority of the Insurance Commissioner. There are still employers that have default liabilities to the Old Fund and these rules would still apply in those situations that occurred prior to 2005. But we are striking them from the rule now since they no longer apply in our new

privatized system. So that's why there is a lot of antiquated obsolete language that has been stricken in there.

First I want to point out in the bullet summary I provided to you with the agenda, there was a typo because of some sequence numbering changes. The third bullet is where I'm going to start as far as substantive changes. And that should read "Sections 18-19" instead of "Sections 19-20." The next bullet after that should read "Section 20" instead of "Section 21." I wanted to make those typographical corrections on that bullet list. I apologize for that.

The main substantive changes are in Sections 18 and 19. Essentially there are about four sections under the previous version of the rule which addressed all kinds of various scenarios. We've consolidated those under one section addressing situations when an employer should now be placed on the default list, and that includes any employer that defaults – any employer that was in default with the comp fund and still is in default with the Old Fund; any employer that defaults because they are not carrying insurance. That would include the "rogue employers" you referred to, Mr. Pellish, who never had comp. When we discover them we are going to put them on the default list. Any time you go on the default list that's going to subject you to severe remedies by the Insurance Commissioner, including being shut down, being posted on your site that you are not carrying insurance. If you owe money to the Old Fund, we can go after you for collection efforts and all of those provisions are still in this rule. We've done stylistic cleanup, but in the heart of this rule – the middle sections – addresses all the different remedies we have such as lawsuits, injunctions and all those various things. They are still in here, and that would apply to any employer that's on the default list. But basically we attempted in 18 to create a single section addressing employers being placed on default and in what situation they should be placed on default. We also struck in these sections because of what recently passed – Senate Bill 595. The Legislature amended that to no longer require carriers to have any part in the enforcement process. Basically a carrier does not have to do a check on the employer to make sure they are not in default before writing them, and that was passed in Senate Bill 595. So we also amended this section to take out any duty on the part of carriers to have a hand in employer enforcement. They can write them based on their underwriting standards but they don't have to do a check to see if they're in default or not.

Moving onto Section 20 in the amended rule, this is a provision which provides some clarification as to uninsured fines in particular. And that's when we discover an employer that's either defaulted to a private carrier or a rogue employer that never had insurance in the first place. It kind of sets forth the formula we use for fining them with statutory authority. It gives us the ability to fine them up to \$10,000.00. We established this process as set forth in Rule 20. Basically, to summarize it: If you are in default to your insurance carrier we would be notified and we would fine you two times the premium you owed up to that point in time when you defaulted, and it would be increased the longer you went without getting back in good standing. If you are a rogue employer we would estimate the premium you would have owed based on audit if you would have been paying premium and again assess that type of fine, and that formula is set forth in there. So that was the other substantive addition to this rule. I would be

glad to take any questions, and I would like to present the rule to you for permission to initially file with the Secretary of State.

Mr. Marshall: Ryan, in Section 20.1 it reads, "Any employer who is in policy default West Virginia workers' compensation insurance shall be fined. . ." Is there a word missing somewhere?

Mr. Sims: Probably. It appears to be a typographical error. It probably should say. . .

Mr. Marshall: You certainly need to correct that in the next draft.

Mr. Sims: It probably should say, ". . .with regard to. . ." We'll fix that.

Chairman Dean: Senator McCabe, Delegate Craig, do you have any questions? Does the public have any questions on this? Do I have a motion?

Mr. Pellish: So moved.

Mr. Marshall: Second.

Chairman Dean: It has been moved and seconded to file with the Secretary of State's Office. Any question on the motion? All in favor signify by saying "aye." All opposed, "nay." The ayes have it. [Motion passed.]

[Title 85, Series 11, "Enforcement of Reporting and Payment Requirements," passed unanimously to initial file with the Secretary of State's Office for public comment.]

Chairman Dean: Thank you.

6. General Public Comment

Chairman Dean: To the general public, do you have any comments today that you would like to make?

7. New Business

Chairman Dean: Does anybody have anything under new business? I've got a question and I'm not sure who I want to ask. I was asked what happens. . .we have a contractor that comes in here and goes to work and isn't covered, doesn't have workers' comp and gets somebody hurt. Then it goes to BrickStreet and BrickStreet says, "You have no coverage." Then it goes to the Insurance Commission and then it goes onto Cambridge. Basically what the guy is telling me. . .he's gone three and a half to four weeks with not knowing who is going to

pay or if he is going to get paid. I mean is that basically what the timeframe is? Three and a half to four weeks before he knows who is going to pay for his doctor's care and if he is going to get paid workers' comp or anything?

Mary Jane Pickens: Do you know if it was denied by BrickStreet because of no coverage if there just was not a policy in place. . .?

Chairman Dean: The employer didn't have coverage I'm pretty sure.

Ms. Pickens: Well, we try to handle claims that come into the Uninsured Fund as quickly as possible and you all have addressed that through a rule that has been final filed that requires us to make the call on accepting a claim into the Fund within five days. Now sometimes that's really hard to do and the rule actually gives us some leeway up to 30 days because it's just hard to get enough information to make that decision about whether or not the employer was insured and whether or not they were supposed to be insured. But we try to get through those really quickly because we understand you've got a human being out there that perhaps needs treatment. But once it is accepted into the Fund and assigned to the TPA to handle, as they would any claim, then it should be moving. And someone correct me if I'm wrong, but it should be moving the way any claim would. So certainly if somebody is in that situation they can feel free to call our Consumer Services Division to follow up on it or call us.

Chairman Dean: But if everything works smoothly, how long should that take going through all the agencies? I know it takes time for paperwork. Is three and a half weeks about right? That's what I'm asking.

Melinda Kiss: I think some of it is going to depend on how quickly the claim gets rejected by the carrier. And then hopefully the easy ones where it's clearly determined there was no coverage, we are well under the five day mark, we can turn them around the same day they come in or the following business day. There are only an isolated few where we really have to investigate and try to determine the facts of the circumstance.

Chairman Dean: Okay. Sure.

Ms. Kiss: After it hits our TPA then the provisions of I guess Rule 1, the claims handling rule, those types of things should take over and it should be ruled upon within I think the 15 day timeframe.

Chairman Dean: Very good. I didn't have an answer and I couldn't give an answer so I wanted to ask today. Mr. White, do you have a question?

Mr. White: Is there any method to track those instances to see whether that's the anomaly? Or do we have any statistical report that will ever be produced that will look at that phenomenon that he was describing?

Commissioner Jane Cline: We have the information internally. . .

Ms. Kiss: We could check it. . .

Commissioner Cline: And see what the feasibility is. Clearly, again, we recognize the sooner the individual has a decision and knows what direction they need to go in, the better for everybody. If you get those kind of questions I would encourage you to call us immediately or have them call us immediately.

Chairman Dean: Sure. Mr. Marshall. . .

Mr. Marshall: In those circumstances you mentioned your Consumer Affairs. Who particularly should we – if we have such an inquiry – direct them to? Not necessarily an individual but an office within the Commission who can be responsive to check into the status of that particular situation.

Ms. Pickens: Our Consumer Services Division has a staff of people dedicated to workers' comp issues and they handle questions all day long, and that's a good first place to start.

Commissioner Cline: The phone number is 1-888-TRY-WVIC.

Mr. Marshall: I hate those letters. I'd rather have a number.

Commissioner Cline: It was on my card. I tell you what, I'll get that for you before you leave.

Mr. Marshall: It's good information for us to have.

Commissioner Cline: Yes.

Chairman Dean: Any other questions, Mr. Marshall, Mr. Pellish, Delegate Craig, Senator McCabe? Is there anything else under new business that anybody would like to bring up?

8. Next Meeting

Chairman Dean: The next meeting will be Thursday, May 31, 2007, at 3:00 p.m. The location to be decided. We're doing fine here aren't we?

Ms. Pickens: Is parking okay?

Chairman Dean: Yes.

Ms. Pickens: That's been our biggest concern in having the meetings here is the parking.

Commissioner Cline: I also thought if you were going to continue to meet here we would purchase some more chairs in the advent that you would have more people.

Chairman Dean: I think this place is fine.

Mr. Marshall: It's comfortable.

Chairman Dean: The location will be here [Offices of the Insurance Commissioner].

9. Executive Session

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

Chairman Dean: Is there a motion to go into Executive Session?

Mr. Pellish made the motion to go into Executive Session. The motion was seconded by Mr. Marshall and passed unanimously.

[The Executive Session began at 3:40 p.m. and ended at 3:55 p.m.]

Chairman Dean: We are now back into regular session. There was no action taken during the Executive Session and we will take action now on the Resolutions. Resolution one is for Cracker Barrel Old Country Store, Inc., which has applied for self-insured status. Is there a motion on the Resolution?

Mr. Marshall: Moved to approve.

Mr. Pellish: Second.

Chairman Dean: Motion made and seconded to approve the Cracker Barrel Old Country Store, Inc. Are there any questions on the Resolution? All in favor signify by saying "aye." All opposed, "nay." The "ayes" have it. [Motion passed unanimously.]

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Resolution two is the Pepsi Bottling Group, Inc. They would like to have compensation of self-insurance status. Is there a motion?

Mr. Marshall: So moved.

Mr. Pellish: Second.

Chairman Dean: Motion made and seconded to approve Pepsi Bottling Group, Inc. Any questions on the motion? All in favor signify by saying "aye." All opposed, "nay." The "ayes" have it. [Motion passed unanimously.]

Resolution number three is to approve the annual renewal of groups one through five for self-insurance. Is there a motion?

Mr. Pellish: So moved.

Mr. Marshall: Second.

Chairman Dean: Motion made and seconded to approve Resolution three for groups one through five. Any questions on the motion? All in favor signify by saying "aye." All opposed, "nay." The "ayes" have it. [Motion passed unanimously.]

Is there anything else to be discussed in regular session? Motion for adjournment.

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

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