

WORKERS' COMPENSATION INDUSTRIAL COUNCIL

AUGUST 7, 2008

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, August 7, 2008, 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
Kent Hartsog
Dan Marshall (via telephone)
Walter Pellish (via telephone)
Delegate Carrie Webster (via telephone)

1. Call to Order

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

2. Approval of Minutes

Chairman Bill Dean: We need approval of the minutes of the July 3rd meeting.

Kent Hartsog made the motion to approve the minutes from the July 3, 2008, meeting. The motion was seconded by Walter Pellish and passed unanimously.

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

Judge Timothy Leach: Good afternoon Mr. Chairman, members of the Council and members of the public. I apologize for the lateness in mailing this report. It just happened that the weekend fell in between when we get our statistics in and that cost me a couple of days of time to prepare it. But I brought extra copies of the colored version if anybody needs that.

Also, before I came over here I just received a printing of our newly revised brochure, so I wanted to give you a copy. This is an explanation of rights, processes [before the Office of Judges]. We put one in place in 2001 but there have been several

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statutory amendments and administrative changes in the workers' compensation system since then. We revised this to include those changes and I wanted to say "thanks" to Jason Butcher and his folks for getting it published and designing it – the layout, the color schemes, the pictures. That's all their work. All we did was supply the text and then they made it look good for us. So we appreciate that. We mail this out with every new case we receive. A copy goes to the claimant and a copy goes to the employer. Our staff tries not to mail them to the attorneys involved because attorneys have hundreds of cases and they don't want to get hundreds of brochures. And once you've received one you've got the message. We try to avoid sending them to TPA's too. We think the same kind of thing for them, that if they've received one or two they don't need to receive two or three hundred.

On our report, the highlights are that the number of cases coming in and the number of cases pending before the Office of Judges continue to decline. I am in the midst of preparing a report that I have to present to the Governor, Speaker and President on September 1, so I'm starting to put those numbers together for the fiscal year of 2008. I was looking at the highlights of the cases pending before the Office of Judges – 17,000, 15,000, 11,000, 7,000, 5,000 – for the five years or so that I've been tracking. In a way that's a good thing because we can devote more attention and efficiency to the cases that are pending where we are not flooded. But those numbers are down. We did have one very slight slippage in our statistical reports. Our 90-day compliance had been running at or above last year's average. In July it dropped to 1.4% non-compliance. That's a very small amount. It might represent only five or six cases total where we missed the 90-day time limit. It's a little bit of a slippage in the year-to-date timeframe compliance. I attribute that to be – and these are July numbers – to a lot of vacations. You miss something by a day. . .if you miss it by 10 days it's the same as a day, and it all shows up the same on the statistics. So we tend to see a little bit of a slump in our performance measures during the summer months, and also at the end of the year [in December] when there are a lot of holidays and people are using up their vacation then. That's been a trend that I've noticed over my seven years up on the hill.

We wanted to alert you again to the Office of Judges' workshops. We have the dates set. Again, I owe kudos to the Commissioner's staff for assisting us. We did a mass mailing on Monday of 250 or so – mostly attorneys, some TPA's, some people that are on our mass mailing list. Through the aid of the Commissioner's staff we were able to bump that up by an extra 600 people. We e-mailed them yesterday, and we've already received [since yesterday] about 80 or 90 reservations. The workshops look like we are going to get a bigger audience than we normally do. Our hope was to bring

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in the new private carriers and their staffs to give them an overview of the appeal system in West Virginia.

I have spoken with Chairman Rita Helmick of the Board of Review. I've offered her some of the time for the conferences and she has accepted. So she will be making a brief presentation from the Board of Review's perspective during our workshops. I guess they can't justify it in their own workshop because of the limited contact that they have with cases, but we'll be glad to share some time and space with them.

We did have our in-house training. With the exception that I brought the wrong equipment for the audio/video presentation it went really well. We enjoyed 20 some judges getting together and discussing pending issues and alerting them to problems that we anticipate from the multiple carrier administration starting on July 1. Speaking of which, just out of curiosity, I asked my staff about the new protests received in July. So far, as of yesterday, we received no protests involving carriers other than self-insured employers or BrickStreet or the Old Fund. So we don't have any new carrier protests in the system yet. But thirty days out is probably too soon to see the impact of privatization on our part of the process.

I do have some numbers there which I'm not going to go over with you. You have it in a written report about our special functions that we are doing and the number of cases we've had since implementing those in September of 2005. With those numbers that's how I concluded my report.

I also wanted to mention that we are moving along on our project to put our case tracking system on the Internet. We've actually seen some demo screens. This is very exciting to us because I've been chief administrative law judge for over seven years now and for seven years I've been promising that it's right around the corner. Now for the first time I am actually seeing some progress. IT has a special team for Internet projects and we're at the top of the list right now, so we are very excited about that. We hope to have this up and running at least for tests by outside users within the next couple of months or so.

Also, I brought last month's report when we didn't have a meeting [in June], if you have questions about either the August report or the July report. That's all I have to report, Mr. Chairman.

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

Mr. Hartsog: No, sir.

Chairman Dean: Delegate Webster, do you have any questions for the judge?

Delegate Carrier Webster: No.

Chairman Dean: Mr. Pellish?

Mr. Pellish: I have none.

Chairman Dean: Thank you, judge.

4. Request to File Initial Drafts on Rule 11, Rule 19 and Rule 31 – Ryan Sims

Ryan Sims (Associate Counsel, OIC): Good afternoon Chairman Dean and members of the Industrial Council. We are presenting three draft rules under Title 85 today for permission to file with the Secretary of State's Office for 30 days of public comment.

The first one is Title 85, Series 11, "Employer Default, Enforcement, Collections and Related Matters." This is a rule which deals with employer default and related issues.

The second one is Title 85, Series 19, "Self Insurance Risk Pools." This is a rule that deals with the self insured risk pools.

The third one is Title 85, Series 31, "Professional Employer Organizations." This is a regulation dealing with professional employer organizations or PO's, as they are known.

Again, these are just initial drafts which we are requesting permission to file with the Secretary of State for public comment, which would conclude with a Public Hearing at your September 11th meeting. With that, I'll entertain a motion.

Chairman Dean: Any questions Mr. Hartsog?

Mr. Hartsog: No.

Chairman Dean: Delegate Webster, do you have any questions for Ryan?

Delegate Webster: No.

Chairman Dean: Mr. Pellish?

Mr. Pellish: No questions.

[Dan Marshall has joined the meeting by telephone.]

Dan Marshall: I am now present.

Chairman Dean: Very good. Do you have any questions for Mr. Sims?

Mr. Marshall: No.

Chairman Dean: Is there a motion to approve for filing the initial drafts?

Mr. Hartsog: So moved.

Chairman Dean: There is a motion on the floor. Is there a second?

Mr. Pellish: Second.

Chairman Dean: A motion has been made and seconded. Are there any questions on the motion? All those in favor signify by saying "aye." All opposed, "nay." The aye's have it. Thank you, sir.

(Motion passes to File Rules 11, 19 and 31 with the Secretary of State's Office for a 30-day public comment period.)

5. General Public Comments

Chairman Dean: Does the public have any comments today?

6. New Business

Chairman Dean: Does any member of the Industrial Council have anything under new business that they would like to discuss?

7. Next Meeting

Chairman Dean: The next meeting is Thursday, September 11, 2008, at 3:00 p.m. at this location. Mr. Marshall, is that date okay with you?

Mr. Marshall: Yes.

Chairman Dean: Delegate Webster?

Delegate Webster: Yes.

Chairman Dean: Mr. Pellish, is that date good for you?

Mr. Pellish: What was the date again?

Chairman Dean: The date is September 11.

Mr. Pellish: That's fine.

Chairman Dean: Mr. Hartsog, are you good with that date?

Mr. Hartsog: Yes. That's fine.

Chairman Dean: Very good.

8. Adjourn

Chairman Dean: If there is no other business, I ask for a motion to adjourn.

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

There being no further business the meeting adjourned at 3:17 p.m.