

WORKERS' COMPENSATION INDUSTRIAL COUNCIL
SEPTEMBER 11, 2008

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, September 11, 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:

Charles Bayless, Chairman
Bill Dean
Kent Hartsog
Dan Marshall
Walter Pellish (via telephone)

1. Call to Order

Chairman Charles Bayless called the meeting to order at 3:00 p.m.

2. Approval of Minutes

Chairman Charles Bayless: The first thing on the agenda is the approval of the minutes of the August 7th meeting. Do we have a motion?

Bill Dean made the motion to approve the minutes from the August 7, 2008, meeting. The motion was seconded by Dan Marshall 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. You should have a copy of my report for our August statistical summary and year-to-date. It reflects a general pattern of the decline in the number of our protests. If you look at the first graph on page two you will see it was projected at 8,120 protests for the year. But for August we only got 600, which is about 7,200 for the year. So it's below average for August. The trends also show the expected switch in the percentage between the Old Fund and the New Fund as the number of claims administrative decisions that are protested in the Old Fund cases continue to decline and the new cases start to come into our system. As a historical

Workers' Compensation Industrial Council
September 11, 2008
Page 2

side note, we did receive last week our first protest from a private carrier other than BrickStreet. So it was kind of a curiosity factor for us.

Our Pending Caseload – because we've continued to use our resources to push more products out the door than comes in the door it continues to decline and has reached a new all time low of 5,144 pending issues before us. And because of the declining numbers that we are facing, our performance measurements, both the 90-day rule compliance and also our overall time standard compliance, continue to be excellent or at least very good. That kind of stands to reason when you have fewer cases to work on that you should be able to manage the cases you have more efficiently.

In terms of other matters to report other than the statistical analysis, as of this morning we have 320 registrants for our Fall Workshops. The numbers continue to come in, in spite of a very loosely enforced deadline for registering. We had seven people register today and the deadline was technically last Friday, but that's been our past history with this workshop. More people will want to register on the day before the workshop, which we're glad to have. It's just a matter of being able to plan your resource needs. That's why we ask for an early registration.

Two new topics that I have not addressed before – well I have addressed one of them – the I-AIMS, which stands for Internet AIMS version. AIMS is our case tracking system and it tells us what evidence has been filed, what deadlines there are in a case. It's our adjudication management system. A lot of the questions we get from outside people are: "When does this deadline occur? Has the evidence been filed?" We have known since I took the job in 2001 that if we could make this available online to authorized personnel it would save a lot of calling in because people could just look up the information. At long last we have an Internet version of AIMS that is just about ready for some testing. That is going to be probably sometime at the end of this month or hopefully in October at the latest. We hope to have registration information available for our workshops and to have some samples to demonstrate the product.

Now I do want to alert the general public and members of the Council that because this is an adjudication management system we are going to limit the access to it – to attorneys. Not to TPA's, not to injured workers, not to employers, but to their representatives. The information that is contained in there will be more useful and beneficial and mean more to the attorneys than it would be to the laypersons who are calling to check. And we feel like that might cause some misunderstanding difficulties between the client and their attorney if we let everybody in. In addition to that, it's going to be a security nightmare to try to let everybody in, so we're going to have a limited audience to begin with.

The other thing I wish to call your attention to is with OIC and our IT people. We are working on developing a system which we will have a "unique case number" for every workers' compensation claim. Currently if you are in the appeal system, starting with my office, we have an OOJ "Case ID Number" we ask to be used. If you move beyond that and go to the Board of Review, they have a "Board of Review appeal number" they ask you to use. If you go to the Supreme Court, you end up with a "Supreme Court number" that they require you to use. With the transition of the system to the Insurance Commissioner's regulation, there was no longer one agency issuing a unique claim number for each case. Prior to that transfer, Workers' Compensation Commission issued a claim number and everyone used that in correspondence. So we're moving back towards using that kind of a number which we hope will cause less confusion because there are at least three numbers floating around now that people are using in my office: The Office of Judges' "case ID number;" a "jurisdictional claim number;" and another number which is the individual insurance carrier's or TPA's own self-assigned number. Unfortunately at least one outside party – more than that I'm sure – are using numbers that are formatted the same as the jurisdictional case number and the old claim numbers, and they are causing some confusion in our office about which cases we're talking about. We are working with our programmers to go to one number that you use for every claim. Mr. Chairman, that's all I have to report today.

Chairman Bayless: Does anybody have any questions for Judge Leach? Thank you.

4. Public Hearing on Rules 11, 19 and 31

Title 85, Series 11, "Employer Default, Enforcement, Collections and Related Matters"

Title 85, Series 19, "Self Insurance Risk Pools"

Title 85, Series 31, "Professional Employer Organizations"

Chairman Bayless: The next three items on the agenda are rules that were brought before the Council last month. They were published for a 30-day comment period and that 30-day period is now up, so this is a second reading if you will. There have been comments received. We will give the staff a chance to say anything additional they want to say about the rules, then the Commissioner and then the public.

If you have comments or things that you have not submitted in writing in which to say, you are welcome to do that.

The first matter is Series 11. And as I read this about a month ago I thought you do not want to be an employer in default. I think you left out the part about the firstborn – taking the firstborn as collateral. But other than that the bases are pretty well covered. Mr. Sims or Ms. Pickens, do you have anything to say?

Mary Jane Pickens (General Counsel OIC): No.

Ryan Sims (Associate Counsel, OIC): Not at this time.

(Please refer to the Public Hearing transcripts.)

Chairman Bayless: Our next agenda item is an update on the Reviewing Body.

Bill Dean: I've got a couple of questions. It will take a little research. I would like to give them to Ryan or Ms. Pickens, either one to look over by the next meeting, or you could e-mail me. They are just simple questions. I don't think it would be fair to ask them without being researched a little bit.

Ms. Pickens: Okay. Thank you.

Chairman Bayless: Does anyone else have any questions?

5. Update on the Reviewing Body – Mary Jane Pickens and Rebecca Roush

Mary Jane Pickens (General Counsel OIC): The Reviewing Body – that term is relatively new. The law that is applicable to the Reviewing Body is found in Chapter 23, Article 4, Section 6. That Code section required the former Workers' Compensation Commission to establish what they called an "Interdisciplinary Examining Board," or the IEB. It was to be made up of three physicians with specialties and expertise that qualified them to evaluate medical impairment, as well as two vocational rehabilitation specialists to evaluate the ability of someone to perform gainful employment.

The IEB was an essential step in determining if an injured worker was entitled to a permanent total disability award, so they were an integral part of that process. In the

2005 amendments, the IEB actually terminated by statute upon the termination of the former Workers' Compensation Commission. All of the administrative and adjudicatory functions that have been performed by that IEB were required to be performed by reviewing bodies for those claims over which administrators had jurisdiction. Essentially the Reviewing Body could be the self-insured employer, the private carrier or the administrator of the Old Fund; again, for those claims over which they have jurisdiction.

The 2005 amendments did require that the reviewing bodies continue to have adequate resources, including medical professionals to carry out all of the functions of the former IEB. So I think it contemplated that whatever the IEB was doing before, these reviewing bodies would continue to do and they had to have adequate resources to carry out those functions.

When the Workers' Compensation Commission terminated, the IEB members were contracted by BrickStreet to continue to perform those functions essentially in the same manner as they had done at the former Workers' Compensation Commission. The IEB was made available for everybody else so the Old Fund could send PTD claims to BrickStreet's Reviewing Body, as could self-insured employers.

For the past several months Commissioner Cline, Deputy Commissioner Kenny, the legal staff and Dr. Becker have been talking about whether it makes sense in the open market to have a Reviewing Body available at the Insurance Commissioner's Office, and again to make it available for use by private carriers and self-insured employers. We've now taken some distinct steps in that direction and we wanted to discuss it briefly today to inform people where we are on it.

BrickStreet's Reviewing Body conducted – and we've talked to BrickStreet about this as well – their Reviewing Body conducted its last meeting in August and the Insurance Commissioner has signed contracts with five Reviewing Body members, the same people that were contracted to BrickStreet. We wanted to announce this development today so that the self-insured community and the carrier community would know to stay tuned for further information because we don't have it all entirely set in stone right now. But we just wanted to make sure that everybody knows about the development and that everyone is paying attention and looks for further information because it should be coming shortly.

BrickStreet is part of this transition and has agreed to finish out any activities that are still needed for any PTD applications that were before its Reviewing Body, and for which it has already received payment. Their staff that was working with those claims

will continue to work with the Reviewing Body at the Insurance Commissioner's Office to finish out those that are still sort of in the pipeline so to speak.

Again, soon we are going to have some written instructions for the self-insured community and for the rest of the world to know how the process is going to work at the Insurance Commissioner's Office. I think it's going to be a lot like the process before BrickStreet's Reviewing Body. It seemed to work, and there is no reason to change something that works. We will have specific instructions – like the cost of the review, who to send your packets to. And we hope to have some forms developed to make it easy to know that the packet is in really good shape when you send it to the Reviewing Body here. So that should be coming shortly. Becky Roush has been very involved with the establishment of the Reviewing Body here at the OIC and I think she has more information on where we go from here.

Rebecca Roush (Associate Attorney, OIC): Thank you. I do have some more details to share with you. Again, we are pleased to announce the creation of the Reviewing Body and also review PTD applications in our new open market. I think it's important to note that all private carriers and self-insured employers at this time still retain their right to assemble their own Reviewing Body. So just to reiterate, this service it is voluntary.

For those of you unfamiliar or new to West Virginia, let me just tell you briefly about our panel members. We have three physicians with longstanding histories here in the state: Dr. Dominic Gaziano with specialties in pulmonary and internal medicine; Dr. Luis Lomail who is an orthopedic surgeon; Dr. Robert Walker who has specialties in family practice and occupational medicine; as well as two vocational experts, Deborah Frost and Gina Baldwin.

We are endeavoring to make improvements to the PTD evaluation process as we transition this Board to the OIC. And as part of that process, we are working regularly with the physician community to improve the quality of the IME's performed as part of the PTD application process. To that end we are considering rotating the Reviewing Body members on and off the "body" in a staggered manner, but this concept is still in development at our office. The current Reviewing Body members, all five of them, agree that this a way to improve the overall quality of the process.

Now for some details – our first meeting is scheduled for October 23, 2008. On a going forward basis we believe the meetings will be held once a month. Initially our docket will contain about ten claims in order to allow the OIC staff to transition into this new process. And in the future we anticipate that we can have approximately 20 claims

per docket. There will be a fee, of course, and the fee will be comparable to the price currently established by BrickStreet. The fee must be paid at the outset by the carrier or the self-insured employer or their TPA, along with a request for review of the claim file and of course all the appropriate claims information that needs to be sent along.

For our own internal purposes, we have had to assemble some support resources. We have assembled a team to work with the Reviewing Body. Dan Murdock is an attorney in OIC legal and he will be assisting the Board with legal related matters. Joan Abbott has a longstanding history with the Worker's Compensation Commission and also here with the OIC. She worked with the initial IEB when it was first developed, and we are pleased that she has agreed to assist us in transitioning the Reviewing Body. She will be the Assistant to the Board. Judy Fling has a history of working in medical records and in medical offices. So she will be assisting us in collection of data and records. Stephanie Shahbandy is a nurse on-site here. She will be a consultant to the Board if necessary. And of course our very own Margaret Rice will be the recording secretary for the Board.

Just a follow-up on some of the issues with BrickStreet. It is my understanding from talking with some of the employees at BrickStreet – the management there, the legal department – BrickStreet will no longer be accepting PTD claims for review. Their last meeting was held on August 18, 2008. It is our understanding that they will be contacting those self-insured employers and TPA's who had claims pending and will be discussing with you what you would like to do with those claims on a going forward basis. As of the final meeting, only six claims remain pending for review with the Board and all of those were Old Fund claims. To the best of my knowledge all self-insured claims and all BrickStreet claims were reviewed by the Board in a various stage of the process. They could still be pending some sort of determination by the Board. BrickStreet will follow through on all claims handled by them to their conclusion and will also assist us in getting their claims scheduled on our docket for review.

Things to watch for in the future: We anticipate that we will have another Webinar Training on how to schedule a PTD application for review. It sounds like it should be a relatively simple process. But as you all know, as practitioners and people in the industry, PTD applications can involve multiple claims so it could get complicated with regard to record requests and compiling claim data. So we will offer some sort of training to the industry on how to get the appropriate information to us for review.

Additionally, we will also have a television program – our "Inside Insurance Program" that is on occasionally. We will have a feature on the Reviewing Body and that will be taped sometime toward the end of September, so you can watch for that.

That is all I currently have for the Reviewing Body. We've been working very hard on trying to get this up and running to coincide with the opening of the new market. We are pleased we could do it as early as October. If you have any questions, I would be happy to take them.

Chairman Bayless: Will this require a rule? Are we going to have a rule making? Can you set this up without a rule?

Ms. Pickens: Yes, I think we can.

Chairman Bayless: I would urge any member of the public, the practitioners, to talk to the staff, and if you see any pitfalls – how this could go bump in the dark or something. Let them know. One thing caught my . . . I don't even know these people. But you said we've hired the BrickStreet. . . is somebody likely to say, "Oh, come on, you've hired the . . . you have let the fox in the henhouse. We need an independent panel. We need Mr. Bowen to appoint one. We need a more balanced panel."

Ms. Pickens: I don't think so. Actually the people that went to BrickStreet were the people that were at the State under the Workers' Compensation Commission.

Chairman Bayless: Right. Okay. This is not quite as bad because these people were State people before they were BrickStreet people. Does any member of the public at this time have any comment? You are welcome to make them. But I would urge you to work with the staff and get this thing off to a good start so we will know what's going to be coming down the pike, rather than have it blow up. Thank you, Becky and Mary Jane.

6. General Public Comments

Chairman Bayless: Does any member of the public have any comments?

7. New Business

Chairman Bayless: Is there any new business?

8. Next Meeting

Chairman Bayless: The next meeting is Thursday, October 16, 2008, at 3:00 p.m.

9. Executive Session

Chairman Bayless: We are now going into Executive Session. Pursuant to West Virginia Code Section 6-9A-4, we will now entertain a motion to go into Executive Session to discuss matters that are designated as exceptions to the Open Governmental Meetings Act. What this is, its self-insurance review for a company so it is confidential. Do we have a motion?

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

Chairman Bayless: We will now move into Executive Session.

[The Executive Session began at 3:55 p.m. and ended at 4:40 p.m. There was no formal action taken in the Executive Session, and it was for informational purposes only.]

Chairman Bayless left the meeting for his flight to Tucson, Arizona. Bill Dean will Chair the remainder of the meeting.

Chairman Bill Dean: We are now back into regular session. We have two resolutions before us today. The first one we will start with is Family Dollar: "Whereas, Family Dollar Stores of West Virginia, Inc., has applied for workers' compensation self-insurance status." Is there a motion?

Mr. Hartsog: So moved.

Chairman Dean: A motion has been made. Is there a second?

Mr. Pellish: Second.

Mr. Marshall: Mr. Chairman, before you take the vote here I would like on the record that I am going to recuse myself and abstain from voting because I have a business relationship with Family Dollar as a landlord and a developer.

Chairman Dean: Let the record reflect that. Are there any other questions on the motion? All in favor of the motion, "aye." All opposed? The aye's have it. [Motion passed.]

The next resolution is to grant self-insurance status for the employers set forth on Exhibit A. There are quite a few of them. Is there a motion on the floor?

Mr. Hartsog: So moved.

Chairman Dean: Is there a second?

Mr. Marshall: Second.

Chairman Dean: Any questions on the motion? Hearing none, all in favor signify by saying "aye." All opposed? The aye's have it. [Motion passed.]

10. Adjourn

Chairman Dean: Is there a motion for adjournment?

A motion was made by Mr. Hartsog to adjourn. The motion was seconded by Mr. Marshall and passed unanimously.

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