

WORKERS' COMPENSATION INDUSTRIAL COUNCIL

JANUARY 15, 2009

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, January 15, 2009, 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
Charles Bayless (via telephone)
Kent Hartsog
Dan Marshall
Walter Pellish (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: Has everyone had a chance to review the November 20th minutes? Is there a motion to approve?

Dan Marshall made the motion to approve the minutes from the November 20, 2008, meeting. The motion was seconded by Kent Hartsog and passed unanimously.

Chairman Dean: Mr. Pellish, Mr. Bayless, we have a new Judge with us today, Judge Rebecca Roush.

Walter Pellish: Welcome.

Charles Bayless: Welcome.

3. Office of Judges Report – Rebecca Roush, Chief Administrative Law Judge

Judge Rebecca Roush: Thank you. Mr. Chairman, members of the Council, Deputy Commissioner and OIC staff, it is my pleasure to be here today to tender my

Workers' Compensation Industrial Council
January 15, 2009
Page 2

first report from the Office of Judges since being appointed Chief Administrative Law Judge, and to also give an update on the transition of the office since my appointment, which was effective December 15, 2008.

First, the Industrial Council report. I think you will find for the moment that it is very comparable to what Judge Leach put together. Before you is the statistical summary of the work being performed by the Office of Judges. We are still in an overall pattern of decline in the number of protests pending. For calendar year 2008, the Office of Judges acknowledged 7,567 protests, down from 11,794 in 2007. Most importantly, on page two, you will find that there are currently 4,388 protests pending review, which is an all-time low with regard to litigation. So, whether your glass is half full or half empty, that may be a positive thing.

With regard to timeliness, positive results have been reported. The vast majority of protests are acknowledged by our office within 30 days of receipt. Additionally there were positive numbers with regard to the timeliness on the entry of final decisions with 99.7% of all opinions being completed within 90 days of the protest being submitted for a decision. With regard to all Time Standard Compliance issues, the trend remained consistent with the previous year, and about the same.

Another issue to report on is the I-AIMS project. I am pleased to report that we currently have 71 confirmed administrators registered, and provide an access to our case management system. And that has been a positive tool for attorneys practicing before the Office of Judges to utilize to determine whether evidence has been submitted, or whether a timeframe is coming up. We are happy to announce that we've got some widespread participation with the use of I-AIMS.

Overall with regard to the transition – I have been there one month and I think the transition so far has been successful. I am happy to report that the Office of Judges is and remains an efficient operation. A priority during my first few days as Chief Administrative Law Judge has been to meet with all of the ALJ's currently working within every office. We have two branch offices – one in Beckley and one in Fairmont, as well as the one in Charleston. I have completed interviews with all of the Judges in Charleston, and Judge Drescher and I traveled to Fairmont yesterday to review the Fairmont operation and to meet with those Judges and the staff there. Judge Ann Rodak and I will be traveling to Beckley next week to complete the interview process with all the Judges. I am pleased to report that I have been quite impressed with the Judges and their professionalism. Overall we have 16 on our staff. Obviously there is a great wealth of experience and historical knowledge contained within the office. They

Workers' Compensation Industrial Council
January 15, 2009
Page 3

have been honest in their recommendations to me and I truly value their insight and their words of wisdom as we go forward.

Over the last month I have also taken the time to meet with supervisors and staff there within the office. We meet on a fairly regular basis to review the process in place and determine if there are any areas of improvement we can make, and we continue to look at that on an ongoing basis.

I will say that the current system in place is designed with a high volume of litigation in mind. It is somewhat of an assembly line process and really was designed to process a high volume of protests, which at its peak was about 30,000. We are now down to approximately 4,500 protests pending. So there has never been a greater time to take a step back, look at the process we have in place, determine if it really works for our current industry, and also to focus more on the quality of the decisions coming out of the Office of Judges. That's going to be my main goal in the coming weeks and months. Additionally, we are going to focus on uniformity and consistency in the opinions coming out of the office; and we will be doing some training and providing educational opportunities for the Judges in the coming weeks.

That is all I have to report. I've only been there a month, so not a lot to state. I'm learning the ropes. All in all it has been a smooth transition so far. Although I've personally thanked him, I would like to publicly acknowledge Judge Alan Drescher for the assistance he has given me over the last month. He's been most helpful in making this an easy endeavor, as well as Judge Ann Rodak, who is not here today. I would like to acknowledge her assistance as well. That is the report for the Office of Judges for this month, and I would be happy to take any questions you may have.

Chairman Dean: Any questions from the Council? Mr. Pellish, do you have any questions for Judge Roush?

Mr. Pellish: Yes. Judge, are you suggesting from your comments that there are some potential administrative cost savings out there?

Judge Roush: Absolutely. I think there are opportunities to definitely make some changes to improve the process, and what those are I don't think we have any idea at this time. . .something that I could report to you. But I do think that the opportunity is there.

Mr. Pellish: Well, good. I wish you luck in addressing them. Thank you.

Judge Roush: Thank you.

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

Mr. Bayless: No, I do not.

4. Final Presentation on Rule 1
Title 85, Series 1, "Claims Management and Administration"

Mary Jane Pickens (General Counsel OIC): Good afternoon. We are here for the final presentation of Rule 1. As everyone recalls, we had a limited amendment relating to Subsection 5.1 of the rule entitled "Special Rules for Temporary Total Disability Claims." This is a provision that we really felt needed to be changed because of difficulties with implementing the provisions as they exist today. We brought the rule here [before the Industrial Council]. The Industrial Council voted to publish it for public comment, which we did. We had a Public Hearing at the last meeting [November 20, 2008], and I think there were limited comments presented at the Public Hearing. No substantive comments were suggested. The language did not change as a result of any public comments. We received one written comment, but it was not on point. It related to matters outside of the provision that was opened for amendment. Obviously we always like to hear comments about the rules and we always retain anything we receive that comes in because it is likely that rules will be opened again in the future, and that reminds us of different things to keep in mind that we might want to address. But for purposes of this proposed amendment, it was really opened for the limited purpose of Subsection 5.1. We didn't receive any comments through the Public Hearing or the written comment period that in any way changed what we had proposed initially. So, we're here to request that the Industrial Council approve the Insurance Commissioner's final filing of the rule. We will give it an effective date, and in approximately one month this provision will come into effect. Are there any questions?

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

Mr. Bayless: No, I do not.

Chairman Dean: Mr. Pellish?

Mr. Pellish: I do not.

Chairman Dean: Mr. Hartsog? Mr. Marshall?

Mr. Hartsog: No.

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Is there a motion to approve Rule 1?

Mr. Hartsog: So moved.

Mr. Marshall: Second.

Chairman Dean: A motion has been made and seconded to approve Rule 1. Any questions on the motion? All in favor signify by saying "aye." Opposed? The aye's have it. Motion passes.

[Motion passed to final file Title 85, Series 1, "Claims Management and Administration" with the Secretary of State's Office.]

5. Update on Status of the Old Fund – Mary Jane Pickens

Ms. Pickens: I apologize. I did not have copies of the presentation made prior to the meeting so it's not in your packets. And I apologize for those on the phone. After the meeting I will send you what I just handed out. This is my oversight. The meeting caught up with me before I had the copies made.

What you have before you is the presentation that we gave to the Joint Committee on Government and Finance Tuesday afternoon of this week. We report to that Committee monthly during Legislative Interim Committee meetings. The report that we do routinely consists of information relating to the Old Fund and debt reduction. And then we share the Office of Judges' report and what the Board of Review sends us as well so that they can see what is happening with claims issues. I also update them on where we are on rules, any rule that is open, and what issues there are on that front.

In the packet that you have in front of you – on the Old Fund on page two – this is showing a comparison between fiscal year 2008 and so far in 2009. The third column over gives you a change between the years. What is positive here is that you're seeing revenues go up and you're seeing total expenditures going down a little bit. Those are all very positive. Right in the middle of the page you are seeing some investment

Workers' Compensation Industrial Council
January 15, 2009
Page 6

losses, which is not a surprise to anybody. But as far as the administration of the Fund, we think it is very positive as far as the monies coming in and monies going out.

Kent Hartsog: Mary Jane, could I ask you a question?

Ms. Pickens: Yes.

Mr. Hartsog: You are welcome to get back with me if you so choose. I was curious on the debt reduction surcharge. It's an \$11 million dollar increase. If you could get perhaps. . .add little color around that improvement. That's pretty big.

Ms. Pickens: You mean. . .

Mr. Hartsog: The \$11 million dollars. . .

Ms. Pickens: Are you wondering where it's coming. . .

Mr. Hartsog: No. What is driving that increase? That debt reduction surcharge is what. . .is that the ten and a half percent that's added onto people's policies that they pay?

Ms. Pickens: I believe it is. You may see an increase because it is calculated now differently than it was before the law was changed.

Melinda Kiss: You did have a law change. . .but you also had stable payroll that's actually increased some of that, and it's going to drive some of it too.

Mr. Hartsog: If you could just e-mail us an explanation on that with a little bit more detail. . .if that's okay.

Ms. Pickens: Sure. The Old Fund liability estimate is on page three, and you haven't seen this before. I'll run through it first and then see if there are any questions at the end. Page four is the Schedule of Net Assets showing cash, receivables, surplus note and liabilities resulting with the unfunded liability. On page five you have Old Fund Balances showing statutory transfers, what's been collected, investment income. And again you're seeing a change in that for calendar year 2008 from prior calendar years; at the bottom is the invested balance with the Investment Management Board at the year end.

On page six is an attempt to get a good look at the average monthly payments coming out of the Old Fund, comparing the current 12-month period to the previous 12-month period, just to get you a flavor of how that's trending.

We had not done this for the Joint Committee before, but pages seven, eight and nine is just a little bit of detail on the Coal Workers Pneumoconiosis Fund, the Uninsured Fund and what is titled the "Self-Insured Fund." This is the combined Security Risk Pool and Guaranty Pool. What you are seeing here at the top for employer contributions – that is the Guaranty Pool contributions based on the assessments that go out for the Self-Insured Guaranty Pool. So that is essentially what we presented to the Joint Committee. Again, they've seen it a lot. We've been doing this for a number of months now so they are used to the format. The information doesn't change dramatically from month to month. They did not have any particular questions or concerns when we did this on Tuesday.

Mr. Hartsog: On page six, second column, is that supposed to be 01/01/08 through 12/31/08?

Ms. Pickens: Yes.

Mr. Hartsog: And on page seven, first quarter and second quarter, is that calendar Q3 and calendar Q4 of 08 or first quarter. . . ?

Ms. Kiss: It's fiscal year.

Mr. Hartsog: So your fiscal year starts July 1, 2008. . .

Ms. Kiss: Yes it does.

Mr. Hartsog: So that would be July through September and October through December?

Ms. Kiss: That is correct.

Chairman Dean: Any other questions? Mr. Marshall, do you have any questions?

Mr. Marshall: No questions.

Ms. Pickens: I will follow-up with a little bit more information about the debt reduction number. And for the folks on the phone, Mr. Pellish and Mr. Bayless, I'll send

that as well as the information that was handed out today – the Committee Report that was presented on Tuesday.

Mr. Pellish: I would greatly appreciate that.

Chairman Dean: Very good. Thank you.

6. General Public Comments

Chairman Dean: Does the general public have a comment today?

[There were no public comments.]

7. Old Business

Chairman Dean: We'll move onto old business.

Ms. Pickens: I have some old business. Delegate Webster had some follow-up requests about some information that I've been coming back with for a couple months. This started out with a request from Mr. Dean about information on collections and different activities that our Revenue Recovery Unit engages in – and employer audits – which is something that the Employer Coverage Unit does. I had reported back about the number of audits and I think that Delegate Webster had followed up with a request for some information about what happened as a result of all of those audits.

There were some refunds – 2,076 audits resulted in refunds with about \$2.6 million dollars being owed back to employers, and that has been repaid. There were 789 audits that showed that neither the State was owed money nor did the State owe anyone else money. There were 513 which resulted in a liability due the State which equaled about \$3.7 million dollars. And billing letters for all of those balances were sent at the time to the employer by our Employer Coverage Unit. All of these employers were also placed on the Insurance Commissioner's Default List. Liens were filed on all of those employers whose account reconciliations indicated that they owed the State money. Those accounts were also sent to a collection agent that we use for some of this Old Fund collection activity. These accounts have been pulled back from that collection agent because the State – is my understanding – changed collection agents and they are about to be sent back out to the new collection agent because this is really old debt. And for the people in our Revenue Recovery Unit we have wanted their focus

to be on newer more collectible debt, in particular uninsured fines and monies due to the Uninsured Fund. This completes my follow-up that was due on information about the collection activity on audits.

Chairman Dean: Do you have any questions, Mr. Bayless?

Mr. Bayless: No, I do not.

Chairman Dean: Mr. Pellish, do you have any questions on that?

Mr. Pellish: Not on that particular report. I think during the last session I had asked if we were going to see a schedule of the priorities on rules that are going to be addressed, and I'm wondering where that stands.

Ms. Pickens: Well, I don't have that and I apologize if I didn't get that written down. Are you talking about the rules. . .if we just have an outline of what we consider to be the next most important rules to bring before the Industrial Council and that type of thing?

Mr. Pellish: Exactly. Yes.

Ms. Pickens: I know that right now – and Ryan can maybe address this – we are looking at “Return to Work” and “Utilization Review” types of issues. Is there anything else, Ryan?

Ryan Sims (Associate Counsel, OIC): I think the other one we would be discussing on the near horizon is a rule on workers' compensation TPA's – governing them because the legislation in 2008 requires a rule on workers' comp TPA's and they have to file to be licensed with us.

Bill Kenny (Deputy Commissioner, OIC): It's a brand new rule?

Mr. Sims: Yes. In fact all of the ones Mary Jane discussed will be new rules.

Ms. Pickens: And that's an informal response to your question, but that's pretty much it right now.

Mr. Pellish: That's fine. I just wanted to know where we are headed.

Mr. Sims: More than likely after this next legislative session if there's a comp clean-up Bill, there will probably be several rules that need updated following that.

Ms. Pickens: There will be.

Mr. Bayless: Do we have any knowledge of any major amendments or changes that we've made in the Legislature, or that anybody is going to try to make?

Ms. Pickens: As Ryan said, we do have a Bill that is being drafted and just in the last week or so we've been out in the community talking about it. It wasn't on the agenda this time, but it would be appropriate I think at February's meeting for me do a presentation on that. It wouldn't be introduced until then. I would be happy to come back and talk to you about that. We've met with some folks from the labor community. We've met with some business people a couple different times last week to talk about the provisions. So, we're starting to get some feedback.

Mr. Pellish: Did I miss the subject matter?

Ms. Pickens: No. I didn't go into the subject matter. It would take a while. I'm happy to do it, but my suggestion was that I come back with a little bit more of a formal presentation in February.

Mr. Pellish: Well, I'll yield to your insight on that, Mary Jane.

Chairman Dean: Mr. Marshall, do you have something?

Mr. Marshall: Well, that was my question. I'll likewise defer to the next meeting.

Chairman Dean: Is there anything else under old business?

8. New Business

Chairman Dean: Does any Council member have anything under new business?
Mr. Bayless, do you have anything under new business?

Mr. Bayless: It's not really business. I stopped in and picked up the schedule of meetings for the year and misplaced it. Does anybody have the dates? I can call later. I want to get them on the calendar.

Ms. Pickens: We can send it to you again right after this meeting.

Mr. Bayless: Okay. If you could just e-mail it, Mary Jane, that would be fine.

Chairman Dean: Mr. Pellish, do you have anything under new business?

Mr. Pellish: I do not.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No, sir.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No.

9. Next Meeting

Chairman Dean: We'll go onto the next meeting date – February 19, 2009, at 3:00 p.m. Is everybody okay with that?

10. Adjourn

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

There being no further business the meeting adjourned at 3:30 p.m.