

WORKERS' COMPENSATION INDUSTRIAL COUNCIL

JULY 30, 2009

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, July 30, 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
Kent Hartsog
Dan Marshall
Walter Pellish (via telephone)

1. Call to Order

Chairman Bill Dean called the meeting to order at 3:04 p.m.

2. Approval of Minutes

Chairman Bill Dean: The minutes of the previous meeting were sent out. Has everyone had a chance to review them? Is there a motion to approve?

Dan Marshall made the motion to approve the minutes from the June 25, 2009, meeting. The motion was seconded by Walter Pellish and passed unanimously.

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

Judge Rebecca Roush: Good afternoon. I am here today to tender our customary report from the Office of Judges. As we've discussed previously, we are seeing significantly less litigation than we have in prior years. I wanted to talk to you briefly about the statistics for the month of June. In June we acknowledged 600 protests for a total [for the year] of 2,912. That's a very small increase of about 40 protests between last month and this month – quite a small number compared to years past. Trending wise, with regard to the percentage of protests, you can see that the trend remains the same as it was in 2008 – 47.28% from the private market; 27.19% from the Old Fund; and 25.53% from self-insured employers.

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We still remain on the downward trend with regard to the total amount of protests compared to one year ago. In June of 2005, we acknowledged 5,301 protests. This year we've only acknowledged 4,173. I think the chart on the second page is the most telling. Every year we dramatically decline the number of protests. And this year we anticipate we'll have around 13,000 less than four years ago. There is a dramatic change.

Quality assurance continues to be our primary goal. If you'll turn to "Final Decision Timeliness," as well as the "Time Standard Compliance," I want to talk about that. All decisions must be rendered within 90 days of a submit order. We are 98.6% compliant with regard to that rule.

With regard to Time Standard Compliance, there are varying time standards for processing a protest, depending on the type of protest in litigation. For this year we are still on our target goal of 80%. We anticipate we will make that for all of 2009.

So far we have resolved 283 protests for the month of June, and for the entire year we have resolved 2,098.

When we last spoke, I talked to you briefly about the work we were doing with regard to substantive evaluation of our ALJ decisions. Judge Rodak, Judge Drescher and I have completed a preliminary review of a batch of ALJ decisions, and we were able to provide our judges with some critical feedback on the decision writing process. And in the next go around of evaluations we will look to see if modifications have been made consistent with our recommendations.

Also, I want to talk to you briefly about our mediation program that we are trying to upstart. We did have the opportunity to meet with the Kanawha County Circuit Court and talk to them about their program, as well as the success of their program. They were able to provide us with some valuable tips on how to implement our program as well as some tips on how to keep track of statistical information, etc. I did attend the basic mediation training offered by the State Bar in July, and I will also attend the Advanced Mediation Training in August. We're hopeful that we will start to schedule some cases for mediation.

Our annual judges' retreat is scheduled for September 18, and that will be an opportunity to get all of our judges together to sit down with them collectively and discuss substantive legal issues, as well as other important issues; such as ethics and the code of conduct.

Also, I want to point out that we are in the process of working with our building manager, as well as the OIC, on revising our office space – making some modifications to make better use of our space. Currently we are in a 20,000 plus square foot space, as well as having square footage in the basement where we conduct hearings. That space really was designed for more than 150 employees, and we are down to 65 at this point. We are looking to make better use of our space, and perhaps bring our hearing rooms up to the second floor where we are located. That is, of course, preliminary and we are going to have to do a lot of work before we get to that point, but we are making some progress in that regard.

Finally, we have a 14-year old software program called AIMS that we used for our data management, and we are in the process of upgrading that to install newer computer language, so to speak. We have been meeting with our IT Department regularly to discuss improvements that need to be made so they can make some initial drafting changes to the program. That is all I have today. I'll take any questions you may have.

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

Mr. Marshall: No, Mr. Chairman.

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

Mr. Pellish: No questions.

[Mr. Kent Hartsog joined the meeting.]

4. Public Hearings on Rules 1, 9 and 32

Title 85, Series 1, Claims Management and Administration

Chairman Dean: We will now move to the Public Hearings on Rules 1, 9 and 32. We will start off with Title 85, Series 1, Claims Management and Administration. Ryan, do you have anything you want to say about that before we get started.

Ryan Sims (Associate Counsel, OIC): No. We did not receive any written comments on that rule, or any of these three rules.

Chairman Dean: Does anybody from the general public have anything they would like to comment on regarding Title 85, Series 1?

Title 85, Series 9, Workers' Compensation Uninsured Employers' Fund

Chairman Dean: We'll move onto Title 85, Series 9. Ryan, do you have anything you would like to comment on?

Mr. Sims: No.

Chairman Dean: Does the general public have anything they would like to comment on regarding Title 85, Series 9?

Title 85, Series 32, State Agency Revocation or Refusal to Grant, Issue or Renew Contracts, Licenses, Permits, Certificates or Other Authority to Conduct a Trade, Profession or Business to or with an Employing Unit in Default of its Workers' Compensation Obligations

Chairman Dean: Ryan, do you have any comments?

Mr. Sims: No, sir.

Chairman Dean: Does the general public have any comments today on Title 85, Series 32? We will close the public hearing on Rules 1, 9 and 32.

5. General Public Comments

Chairman Dean: Does the general public have any comments today that they would like to make?

6. Old Business

Chairman Dean: Does anyone on the Council have anything under old business that they would like to bring up today? Mr. Pellish?

Mr. Pellish: No.

Chairman Dean: Mr. Hartsog, do you have anything under old business?

Mr. Hartsog: No, sir.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No.

7. New Business

Chairman Dean: Mr. Pellish, do have anything that you would like to bring up under new business? Mr. Hartsog? Mr. Marshall?

Mr. Pellish: No, sir.

Mr. Hartsog: No, sir.

Mr. Marshall: No.

8. Next Meeting

Chairman Dean: Our next meeting is Thursday, September 10, at 3:00 p.m. I think everybody agreed upon that date.

9. Adjourn

Chairman Dean: Is there a motion for adjournment? Mr. Pellish, do you have a comment?

Mr. Pellish: Before we adjourn, I would like to request that the attorneys come up with some commentary on these rules before we go into the next session. It would be appreciated if we could get them in our hands prior to the meeting and have the opportunity to read them.

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Mr. Hartsog: Mr. Pellish, are you referring to any comments that might be received through the general public?

Mr. Pellish: Or the staff. . .before we go to a final vote.

Mary Jane Pickens (General Counsel, OIC): Yes. At the next meeting we will present that. I guess we could still receive some written comments before the end of today.

Chairman Dean: We will see that it's done, Mr. Pellish.

Mr. Pellish: Thank you.

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

There being no further business the meeting adjourned at 3:13 p.m.