WORKERS' COMPENSATION INDUSTRIAL COUNCIL

OCTOBER 15, 2009

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, October 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
James Dissen
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.

Chairman Dean: Before we get started today, I would like to welcome our new Council member. Mary Jane, would you like to introduce him?

Mary Jane Pickens (General Counsel, OIC): Yes, I would. We are fortunate to have present with us today, James H. Dissen, our newly appointed Industrial Council member. The Governor appointed Mr. Dissen within the last three weeks, if I recall correctly. I believe we shared that information with members of the Council.

Mr. Dissen is a Partner and Senior Vice President for Corporate Development at Triana Energy, LLC. He received his B.S. in Business Administration from Wheeling Jesuit University; his M.B.A. from Xavier University; and his law degree from Duquesne University School of Law. He has over 40 years of Human Resources and Labor Relations experience in natural gas distribution, transmission, exploration and production. He was the Chief Spokesman for the Columbia Gas System companies in its collective bargaining sessions with various unions.

The position that Mr. Dissen serves – the statutory position – is that of a person from the world of academia. He is an Adjunct Professor at the University of Charleston where he teaches graduate and under graduate level courses in "Human Resources Management," "Business Ethics," "Operation and Management of a Small Business," and "Collective Bargaining and Arbitration," and he is a part-time Officer of Instruction in the Masters of Science in Organizational Leadership Program for Wheeling Jesuit University. Mr. Dissen has participated in and headed up corporate re-engineering efforts and the integration of companies after successful merger and acquisition activity.

He serves as Director of the WV Chamber of Commerce (former Chairman of the State Chamber's Human Resources Committee); he Chairs the Board of Trustees for Highland Hospital; former Chairman of INROADS/WV; Chairman of Board of Directors of Star USA Federal Credit Union; and President of the Catholic Business Network.

He is an Army veteran having served as a Special Agent in Counter Intelligence during the "Cold War." He is licensed to practice law in Pennsylvania and West Virginia. Mr. Dissen is married to Shirley Stark Dissen and they have three children and two grandchildren.

So, that tells you quite a bit about Mr. Dissen – his background and his qualifications to serve on the Board. Is there anything you want to add?

James H. Dissen: No, I think we probably bored them enough.

Chairman Dean: Welcome. We certainly welcome you, and it's a pleasure to have you with us today.

2. Approval of Minutes

Chairman Bill Dean: We need approval of the previous meeting minutes.

Dan Marshall made the motion to approve the minutes from the September 24, 2009, meeting. The motion was seconded by Kent Hartsog and passed unanimously.

3. Presentation of NCCI Loss Cost Comparison – Dennis Kokulak

Dennis Kokulak (State Relations Executive, NCCI, Boca Raton, Florida): I am going to take you through the handout. First of all, does everybody understand what NCCI is and our role in this State? Perhaps I can take a minute to talk a little about that.

Chairman Dean: Yes. Go ahead, sir.

Mr. Kokulak: The National Council on Compensation Insurance, Inc., has been working in this State since October 2005. We were selected by the Offices of the Insurance Commissioner to assist in the transition and to provide basically the same services that we provide in about 36 to 37 other states. We are not an insurance company. We are not lobbyists. We are not agents or brokers of any kind. What we are is a "service organization." We are selected by the Insurance Commissioners in the states that we operate in to perform some distinct functions, and the primary one is to collect the data. If your insurance company is writing workers' compensation insurance in any of the states that we operate in, you must submit your data to us so we have all of the workers' comp data. That data puts us in kind of a unique position to provide the services that we provide. The primary service is to develop the annual rate filing change in the State, which we've done for about four years now. We've made four different filings. But we put the entire infrastructure in place in the State – the classification system. That is our role in the State.

One thing that we do every year in all of our states – we did it about a month ago in West Virginia. . .I want to apologize. I should have thought to invite this group, and I'll make sure we do that from here on out. But we have a meeting once a year in each of our states where we spend about two and a half to three hours [in the morning] – we get you out of there before lunch – and we share the information that we have as to what's happening, in this case in West Virginia, from a workers' comp perspective. It's kind of a State of the Union summary. The meeting this year went very well. What you are getting today is a much truncated version of that. I essentially went in and pulled some selected slides that I thought would be of interest to you. We did a couple of other things at this meeting in September. In addition to just sharing information based on the data that we collect, we shed some information with respect to issues like, "What's the impact of a recession on workers' comp?". . .in general. Then more specifically, "What's been the impact in West Virginia based on this recession from the standpoint of workers' comp?" We also did a report on the issue of people working past the age of 65. It's a little bit more of a trend these days, particularly with what's happened with the economy. We look at it from the standpoint of, "What does that portend for the workers' compensation system?" I think we do interesting things along those lines that we share with the audience too. We will make sure you get an invite to that next year.

This is a very truncated report. This West Virginia overview, which is slide number two. . .again, these are taken from the report at the September meeting. These are some of the key points – the overview – some of the key issues that we commented on at the September meeting. A significant thing is that after years of rates changing in this State every July, we are changing them every November. As a rating organization, we will now be filing for changes in loss costs and assigned risk rates. We will make that filing mid July with a proposed effective date of November 1. What will change every November 1 are the loss costs for all of the classifications in the State, as well as the assigned risk rates. November 1 is the new date going forward for West Virginia.

A couple of other observations, West Virginia's workers comp premium volume has declined. That's consistent with what we're seeing in the rest of the country. It is declining for basically two reasons. One, as you will see very shortly, we are filing many decreases in this line of insurance right now because of basically the results. The thing that is driving that for the most part is claim frequency is down in this line of insurance. So we're filing many decreases as we go through our 36, 37 states. And the other piece of this is the impact that the recession has had on workers' comp. Workers' comp is a payroll driven line of insurance to the extent that people are being laid off, businesses are shutting down, workers' comp premium declines.

Another theme which we are seeing in West Virginia – in fact it's a little bit pronounced in the last couple of years than what we're seeing in the rest of the country – and that is that claim frequency is down, as I mentioned. People are not being injured on the job in this country as much as they used to be, and that is certainly good news. We'll share some stats with you on that.

The two pieces of the workers' comp payout – the indemnity piece and the medical. We are seeing the cost rising. Obviously medical is going to rise. Indemnity should in this line of insurance. . .kind of run lock in lockstep with payroll, but we're seeing those costs on the increase.

The residual market is sparsely populated. That's a new concept in this State with an open market, as of last July. What happens with employers who can't get coverage? They end up in an assigned risk market. Usually as an employer you end in that market for a couple of reasons. Either you are too small from a premium standpoint to attract much in the way of a competitive bid from one or more carriers. It might be a line of business that is just not attractive to carriers in the voluntary market. The more hazardous the business you are in, the less likely perhaps that you'll get a voluntary offer of coverage. And the last piece is if you're just a poor performer. If you don't have a good record of loss control and safety, you are not going to be very attractive. So there has to be this mechanism for the residual market, and that was established as of January 1 this year. We will share some stats with you on how that is moving along.

We're going to talk a little about the average cost here versus the rest of the country. Someone requested that we go back in and put in the impact of surface and underground coal to see what it looks like. We will share that with you too. I'm going to move pretty quickly. Unless you raise your hand or stop me, I'm going to go through this and keep it short.

Slide 3 – The premium decline that we talked about in West Virginia, you will see in a couple of slides ahead the decreases that we have filed that have contributed to this – $497 million dollars. Of the 37 states that we operate in, if you are interested in ranking, West Virginia would rank somewhere around 21 or 22 from the standpoint of largest premium.

What I'm going to do this afternoon is not just talk about West Virginia but also give you a comparison as to what is happening in the region. If you look at slide four, you will see that we've had four straight years – this is a countrywide number, and this is in billions – four straight years of premium decline in workers' comp. It is basically for the reasons that I mentioned before. Most significantly are the rate decreases that have been filed and also the impact of what we have seen with the recession in the last year.

Slide 5 – Someone asked us about combined ratio. Let me explain what that is. Combined ratio is one of the measures that insurance companies use to determine how profitable things are. If you would take the comparison of what comes in the door to an insurance company in the way of premium, and then compare that to what goes out the door in the way of claims handling expense, dividends, anything that flows out the door; if you are in a business to make a profit, you would expect that what you take in exceeds what goes out the door. That generally does not happen in workers' comp. So a combined ratio of 1.00 would mean that for every dollar that comes in, a dollar goes out. What we have here in various states, you can see the range of combined ratios from Hawaii/Texas at .74 to South Dakota at 1.21. In South Dakota for every dollar that comes in, a $1.21 goes out the door. You can't stay in business too long doing that. West Virginia it's $1.03. For every dollar coming in a $1.03 goes out. What's not accounted for here is individual company performance – an overall number. What's not accounted for here are the results of investment income. Companies, insurance carriers years ago used to say, "Well, with a combined ratio of 1.05, 1.06 we can live because investment income will carry us through. Obviously, that's changed recently. Again, West Virginia's combined ratio of $1.03 puts you somewhere around the middle of the pack. That number is always changing.

Slide 6 – This gives you a quick visual on how cyclical this is. What you're seeing is the amount of loss costs changes that as an industry we have filed for going back almost 20 years. If you look at 1990 through 1993, those four years we were filing a lot of increases because of what was going on in the system. Cumulatively workers' comp loss costs went up 36% during that period. We went into a period of six or seven years where systems changed in the states, laws changed, benefit provisions changed. Based on those results, we filed for changes of about 28% through that period. Again, it flipped around. The cycle changed. In 2000 to 2003, during those four years' rates of loss costs went up about 17%. We are in a cycle right now where the last six years loss costs have gone down about 25%. So this is very much a cyclical line of business, and that is all we are trying to show you here. This is a countrywide chart. West Virginia is really not represented in here because of the market just opening up last year.

Slide 7 shows you the results of the filings that we have made since our involvement in the State, and we have filed a decrease each time – the most recent one for 6%. We filed a slight increase for the residual market of 0.2%. One of the things you need to keep in mind about the residual market – as a separate market it needs to be self-funded. You do not want – at least we don't have any state that wants – voluntary market employers in subsidizing residual markets. So the residual market employers have to be self-funded, and that means generally their costs are going to be higher. It is a good example. We filed for 6% decrease for the voluntary market, and a very slight up-tick for the residual market. Good news in this state so far. Much to our surprise, and I think everybody's delight, the residual market is very small this first year.

Slide 8 – Where West Virginia sits in a grouping of states that are in the southeastern NAIC zone, you are in the middle of the pack. The most recent change was a 6.0% decrease. The top and bottom states are states where I work. In Virginia we just filed for a 3.0% increase. In fact Virginia has their rate hearing next week and I'll be in Richmond for that. Another state I work in, Louisiana, the most recent change there was 17.4% decrease, and some of that is post Katrina related with people not coming back to the workforce. So you can see the range of those changes in this region.

Claim frequency – This has been a good news story in this line of insurance. In fact, it's probably been the saving grace. With indemnity and medical costs on the increase, the saving grace – what's been allowing us to file for decreases despite that activity – is the fact that claim frequency is down quite substantially here and in the rest of the country.

Let's take a look at number 10. This is frequency of injury per 100,000 workers. These are lost-time claims. In West Virginia you have gone from 2,000 down to 1,500. You're down about 25% in three years. The countrywide number is down about 15%. Recent performance here is that things are a little bit better in West Virginia from a claim frequency standpoint. But you have a lot further to go than the rest of the states. The rest of the states have been doing this for a long time.

Slide 11 – Here you can see where there is an issue, if you want to call it that, with frequency per 100,000 workers in West Virginia at 1,548 cases, and you compare that to some of the other states in the region. This is after these states have gone through so much of a change in the last 15 to 20 years that you're at a point where it probably can't get too much better in some of these states. Hopefully, West Virginia is headed to the same results that we're seeing in some of the other states.

Slide 12 – This is a countrywide number. You see the cumulative change from 1991, minus 54.9%. That is so significant. Those results are terrific – claims frequency down 55%. People being injured on the job in this country are much less frequent than they ever have been before. You can see year after year – with the exception of two minor blips in 1994 and 1997 – it's down every year over and above the previous year.

We're going to take a look at indemnity severity and medical severity. First thing I'm going to do is show you the chart on slide 14. If you take a look at the indemnity and medical split countrywide, 58% of the dollar payout in workers' comp right now goes toward medical. Twenty years ago that was flip-flopped. It was mostly indemnity. Again, with the increase in medical costs, this is what's happened in this line of insurance. Most of the dollar payout is to medical costs rather than wage replacement costs, so nothing significant here. You are fairly close to that in West Virginia and to the regional average, about 53% of the dollar going towards medical costs.

Take a look at slide 15. Someone asked us about this so we put this in the State Advisory for a meeting last month. The thing you need to remember. . .these comparisons are constantly changing. But at least at this point, this was as of January 1, 2008, this has already changed. This is the latest point in time that we had all the states at a certain point where you could kind of stick a pin in it and take a look at it. West Virginia basically ranks twenty-first lowest out of the 50 states from an indemnity benefit standpoint, just slightly lower than the average. If someone says, "How do our benefits compare here to the average?" They are slightly lower considering what these folks did in making the average 1.0. You can see a state like Massachusetts – a very high benefit state.

Getting back to indemnity. Let's take a look at the costs here and how they compare on a cost per case basis to the rest of the country. West Virginia – 14,300. Excellent compared to the countrywide average of 20,200. Some good results there. They are on the incline and that's to be expected.

Take a look at slide 17 – indemnity average cost per case. We showed you the countrywide number in the prior slide, and what we're doing here is just giving you a quick look at what those results are in the other states that are in the region.

Slide 18 – A quick look at something a lot of people find interesting. As we said earlier, workers' comp is a payroll driven line of insurance. So you would think for the most part premium should run somewhat in lockstep with payroll. In the most recent years it's kind of close. If you look at indemnity costs per claim, [the light blue for 2007], indemnity costs went up 3.4%; wages went up 3.3%. So we're running in lockstep there. You can see that was not the case early on throughout the late nineties. What was happening in the late nineties, a number of states were changing their benefit provisions; labor got involved. They wanted to increase benefits. Those were passed, and you saw benefits go up; injured workers getting more; and it was out distancing the numbers with respect to how payroll was changing. If you track this and look for a little bit of time lag when indemnity benefits went up, you can see that that's at a point in time when the rates were going up if you look at those cyclical charts.

Let's look at medical severity. I share the same kind of number with you. The West Virginia average claim at $14,100 compared to the countrywide at $24,500. In both cases they are on the incline.

Take a look at slide 21 where your costs are very good compared to the other states in the region.

The same chart, slide 22, take a look at how much medical costs per claim is going up versus medical CPI – medical CPI meaning what's happening in general health. How are those costs going up compared to higher costs in the workers' comp system going up? This chart shows the last 14 to 15 years. In each year the costs for medical in the workers' comp system exceed the costs for medical overall for the general population. Basically it's a volume issue with carriers as far as services on the medical side not being able to match some of the larger health writers [negotiate as far as medical prices, etc.]. Again, medical costs on the increase in the workers' comp system, and they are on an increase higher than just general medical costs.

Slide 23 – Legislation that impacted us. I should mention another function with the data that we have in all of our states during the legislative sessions. There are general proposals related to the Workers' Comp Act that could impact the system from a pricing standpoint. We are asked to estimate or gauge or price the impact of those changes, whether they are increases to the system or decreases. Senate Bill 537 is something we looked at and we estimated an increase of just under 1%. That was factored into this most recent rate filing that we made with the Insurance Commissioner back in July.

The residual market in West Virginia – let's take a look at slide 25 and 26. We do this work in about 22 states and I wanted to give you a quick capsulation of the most recent changes that we've made in assigned risk residual market rates in various states. Again, no history here with West Virginia, but as you can see for all the states that we filed decreases in, in the residual market we file a lot more increases – South Carolina, Illinois and some of those states.

West Virginia's residual market – again this market just opened up as of January 1. This slide is a little bit dated. It shows 187 policies at about $2.6 million dollars. I think we're up to 209 policies at about $2.8 million dollars. This is far below any projection that we had when you think about 38,000 employers in the State. Even to the end of the year we'll get nowhere near 380 employers, but that would be 1% of the employers in residual market. That's very surprising. That's an excellent result. What it says is, for those employers that BrickStreet has opted not to renew, the carriers that have come into the market found a home with those carriers, except for these 209. That far exceeds any results in any other state that we work in.

This last slide is the one that we started to talk about during your last meeting. Someone had asked, "In factoring in the average costs in West Virginia, can you go ahead and put in the impact of surface and underground coal mines?" When we do obviously the rates are going to go up. The average rates will go up in all of these states. But West Virginia, in this case, went from the 13th lowest to the 14th lowest as a result of us including the impact of two highly rated class codes – surface and underground coal mining. Again, whoever was interested in this at the start, from a cost standpoint, is14th lowest.

Chairman Dean: I thought that would change more.

Mr. Kokulak: Well, we put it in for every state that had it. We thought it might go up to 15 – 16, but it came in at 14.

That's the best we can do. All I can tell you is show up next year at our meeting. I don't know where we'll have it. We had it at the Clay Center this year. We spring for a free breakfast, so it's the best deal in town. I think this one went about two and a half hours. I hope to see you there. I'll answer any questions that you might have.

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

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: I am assuming page 28 includes only actual pure premium.

Mr. Kokulak: Yes. It is the loss costs.

Mr. Hartsog: Comparatively to other states, is there a way to look at it that includes tax and other add-ons that employers have to pay as part of their insurance premium. . .compare it that way? There is a 10.50% premium charge that goes to the Old Fund and some other things like that. . .

Mr. Kokulak: The loss costs that get developed include the various fund taxes. They do not include this "set aside" separate. . .is it still two – the two taxes that the employers pay? They pay that as a separate line item, right?

Mr. Hartsog: Yes.

Mr. Kokulak: So those are not in here. But what is in here. . .if there is a Guaranty Fund, a Second Injury Fund. All of those funds that have to be funded by these loss costs are in here. So West Virginia is unique with those two assessments that are being paid off by the employers to pay down the debt. That is unique. That's not in here.

Mr. Hartsog: That's not in there. Do you have any sense how that would move the needle if they were included?

Mr. Kokulak: I'm not accurate. What is the total of that, about 10%?

Mr. Hartsog: Well, it's 10.50% for one of them.

Mr. Kokulak: It's about 15%. I could ask. . .we could do some quick math. It might move up to 15% or 16%. It wouldn't move it much.

Mr. Hartsog: You don't think it would move it much?

Mr. Kokulak: No. It wouldn't move it much at all because you only moved up one notch including surface and underground coal. You move away then. . .keep in mind from an apples to apples comparison because no other state has that. We could have them do it from a math standpoint to let you know.

Mr. Hartsog: I appreciate that.

Chairman Dean: Any other questions, Mr. Hartsog?

Mr. Hartsog: No.

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

Mr. Dissen: No questions, sir.

Chairman Dean: Mr. Pellish, any questions for Mr. Kokulak?

Mr. Pellish: No questions.

Chairman Dean: Mary Jane, do you or Ryan have any questions?

Ms. Pickens: No.

Chairman Dean: Thank you.

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

Judge Rebecca Roush: Good afternoon. My report today will be very brief. First of all I would like to congratulate Mr. Dissen on his appointment to the Council. Welcome to our meeting.

Mr. Dissen: Thank you.

Judge Roush: I've tendered to you today the statistical summary of the work that is being performed at the Office of Judges. For your information, Mr. Dissen, the number of protests being acknowledged by the Office of Judges, which is the first level of workers' compensation appeals here in West Virginia, we review initial claim management decisions from private carriers, self-insured employers, as well as third party administrators, including those who are responsible for administering the legacy claims of the old Workers' Compensation Commission. We review those, and over the last four years we've seen a drastic decline in the number of protests that we've received. There have been a number of changes in the law. The amount of litigation continues to decline, and we are currently at an all time low. For the month of September, we acknowledged 458 protests for a total of 4,886 for 2009. We are on target to meet our projected goal which is a little more than 5,500 protests for 2009. And of course this report, I should clarify, is for a calendar year, not necessarily a fiscal year, which has brought some confusion to us lately. We've been tendering a lot of reports to the Governor as well as to you. Are there any questions about the report? The trends essentially remain the same.

If you don't have any questions, what I'd really like to do today is advertise our workshop, which is scheduled for Tuesday, November 3, in Morgantown at the Ramada Inn and Conference Center; as well as Thursday, November 5, here in Charleston at the Charleston Town Center Marriott. This workshop is free to the public and is designed to help people understand issues related to areas of concern in our office. We've identified a few topics that we think are really important – the disputes between the process for carriers which is outlined in §23-5-1. We're seeing that carriers are not utilizing that process appropriately, and in fact have not used it at all whatsoever, even though there are plenty of circumstances that we can identify where they should be using it.

We also see some issues with the managed health care plans in the grievance process. A claimant many times, if it's a medical treatment issue, must first exhaust all their internal remedies with the carrier before they protest to our office. And we're finding that there is some confusion out there in the claimant community as to whether they have to go through the grievance process or whether they can protest to our office. What we want to do is just basically clarify those issues, and Judge Alan Drescher will be giving that presentation. We also are going to have an update on the legislative amendments and the rule amendments. Mary Jane Pickens is going to be our guest of honor at our workshop and give us a presentation on those updates.

We are also going to discuss the expedited hearings and some issues we're seeing in the failure to timely act. Most importantly the one area that our judges are mostly interested in is giving the practitioners some practice pointers – things that they think could help improve the litigation process altogether.

We currently have 81 registered in Charleston, and our space is limited to about 250. I don't think we're going to have a problem, but please sign up if you are interested in attending. We have 34 registered currently in Morgantown, and have space for about 75. I hope that you will be able to attend. That is really all I have for today, and I would be happy to take any questions.

Chairman Dean: On your workshop, how long does that last?

Judge Roush: I'm sorry. This is actually an earlier version. We are going to have refreshments starting at 8:30 a.m., but the seminar begins at 9:00 a.m. and it will last until noon. This is presumptively approved for CLE's as well for lawyers.

Mr. Hartsog: If I could take you back to the report on page 10, the chart at the bottom of the page that talks about expedited hearings scheduled. It looks like you are having a fairly significant up-tick in 2009. Could you give us an explanation as to why you think we're seeing that?

Judge Roush: I am not prepared to answer that right now. I personally do not conduct the expedited hearings, but I can definitely survey our judges and see what kind of issues that they are seeing out there. Judge Drescher, do you have any comments upon why we might be seeing an increase?

Judge Alan Dresher: I really don't know why we're having an increase. But I would point out that that is optional on behalf of the claimant. It is their option whether or not they choose to follow that expedited process. Other than that, I don't really know why. You can see the first year we had 159. It doesn't appear to be a significant number in terms of our overall hearings scheduled.

Judge Roush: I would like to add just from some observations that I know about this process. The Legislature, when they created this process, short tracked the timeframes. They have to be done quickly if it is a certain type of issue. If I were a claimant's counsel I would think that it would be to their favor to get this resolution done as quickly as possible. We all know the longer you have to develop a claim the more likely you are to develop evidence opposed to it. I do think that there are some benefits to that. I think the reason for the process really was to get the benefits to them quickly if they were deserving. We are finding that this procedure or process is becoming more and more complicated, and there really is nothing expedited about it. The parties are actually in fact submitting loads and loads of evidence at these hearings to the point where the hearings are becoming overwhelming, even though the time to conduct them is limited. It's not unusual to have 50 exhibits per party at one of these hearings. Its high stakes, I think, and claimants may find it beneficial to them. I am just being honest in my observation.

Mr. Hartsog: Perhaps at the next meeting you could give us a better understanding as to why it's becoming more complicated and what is happening there. To see an increase like that could infer that someone is denying claims. . .then they're requesting an expedited hearing because they need medical attention. And if there's another issue or a common kind of thread going on. . .

Judge Roush: I would be happy to go back and give you a complete analysis of the types of issues.

Mr. Hartsog: Thank you.

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

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Mr. Dissen?

Mr. Dissen: No, sir.

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

Mr. Pellish: No questions, sir.

Chairman Dean: Thank you.

Judge Roush: Thank you.

5. Discussion on Safety Study – Ryan Sims

Ryan Sims (Associate Counsel, OIC): Good afternoon, members of the Industrial Council. At the last meeting there was a request that the OIC put together some information together about the safety initiatives that are currently available in our Workers' Compensation Insurance market.

I'll discuss the enabling statutory authority for the Industrial Council. It does charge that every two years the Industrial Council conduct an overview of the safety initiatives currently being utilized or which could be utilized in the workers' compensation insurance market and report said findings to the Joint Committee on Government and Finance. Our interpretation is that the report needs to be submitted to the Joint

Committee on July 1, 2010, because that would be two years after our competitive market began. At this point we believe our report needs to be submitted to the Joint Committee no later than July 1, 2010.

It should also be noted that the same Code section provides the Industrial Council the ability to collect information to be part of the study on safety from private carriers and self-insured employers. Even though the actual statutory language I have in there just references the insurance market, when you read it together I think it also includes the option of potentially collecting information on safety from self-insured employers to be part of the study.

As far as how we can proceed, the Industrial Council and the Insurance Commissioner can coordinate the preparation of the report by issuing surveys for the collection of data to private carriers, or if you wanted you could actually form a subcommittee and discuss what you want us to collect. That is an option for you to think about. In other words, you can have us go forward and decide what data would be relevant to collect and then present it you.

As far as self-insured employers, you're already familiar with this from the approval process. But under §23-2-9 all self-insured employers are required to have a written formal safety and health program for their employment operations prior to being approved for self-insurance. It's safe to say that before a self-insured employer is approved they have to have an established written safety program.

As far as the private market. . .July 1, 2006, was when the private market began. It was just BrickStreet, but on July 1, 2008, the complete private market began. Prior to the privatization of the market, the Workers' Compensation Fund didn't have any specific debits or credits just for safety initiatives. There were no employers subscribing to the Fund. They couldn't get a specific debit if they were unsafe, or credit if they were safe. That just didn't exist.

Currently under our private market all of the top ten insurers by market share have adopted NCCI's scheduled rating filing, which includes a premium credit or debit for the following factors:

- It should be noted that the maximum debit that you can get under the plan is 25%. All of these factors when taken into consideration – debit or credit – result in a net, and the net can't be more than a 25% credit or a 25% debit.

- The factors are safe premises. You can get up to 10% credit or debit.
- Employee selection, training and supervision – 10% credit or debit
- Safety devices – 5%
- Management, cooperation with carrier – 5%
- Management, safety organization – 5%
- Medical facilities – 5%

Finally, it should be noted that all the top ten insurers by market share in West Virginia offer specific safety services to their insured employers. We actually researched the websites of the top ten insurers and found information that they have on their websites about what services they offer to insured employers who want to take advantage of those. And those services generally are offered as part of the premium you pay. They are not extra. If you want to take advantage of those services, you have to establish contact with the carrier and they will offer them to you. That concludes my presentation, unless there are any questions.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No questions.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: Ryan, what do you see as the role of the OIC in promoting and pushing carriers and companies to enhance and take advantage of safety programs that carriers may offer to improve those programs?

Mr. Sims: I'm not really sure under the private market setting that there is a specific role as the insurance regulator to force employers to adopt safety programs. I think in the private market setting the financial incentive is there. As I noted, all the top carriers already offer debits and credits for safety. So assuming that employers like saving money – which I think is a pretty safe assumption – then those opportunities are out there for them to save money. Or if they don't want to be safe they are going to pay more in their premiums. Since we're just regulating the carrier it is really up to the carrier to offer those abilities to save money or to pay more money, depending on what type of safety programs you have. Carriers also offer safety services included in their premiums. I guess from our point of view it's primarily up to the employer, and we assume that employers like having a financial incentive to be safe. In addition to these debits and credits, your e-mod is going to implicitly include safety measures because if you're safer you are going to have less claim frequency. We think the financial incentives are already there for employers, and it's a matter of employers taking advantage of them. There is no statutory authority for the Insurance Commissioner to force employers to implement safety mechanisms.

Mr. Hartsog: What do you see as your framework for your report that you are going to need to make by the middle of next year with regard to the committee? Is that more just, "here's what's out there, and here's what insurance companies are doing, and what they are offering?"

Mr. Sims: This obviously sets forth what's out there. I think what we could do is survey carriers and ask them what percentage of your employers that you insure actually are taking advantage of these safety services. What percentage of employers are getting debits for safety measures, and what percentage of employers are getting credits for certain safety measures based on this scheduled rating plan? Then the Legislature could take a look at that and see how many employers are actually taking advantage of these incentives.

Mr. Hartsog: Is there any source or avenue to get information since this is basically the first time that this group [the OIC] is going to prepare such a report, and make sure they are getting the right kind of information? Are there other states that you could get surveys from, what they're doing, or ask those kind of questions so that we could hit the ground running and make sure we're asking what we need?

Mr. Sims: If we want to know what type of surveys have been done in other states, there are groups such as the IAIABC that I feel certain has collected that type of data before in other states, and we could also contact other insurance regulators. Normally in most states the employer side is regulated by the Department of Labor rather than the Insurance Commission. We are rather unique in the fact that we regulate both the employer and the insurance side. Certainly there would be a way to reach out to other regulators, and also the IAIABC which is sort of a trade group of all comp regulators, and I think we could find out what kind of information has been gathered in other states.

Mr. Hartsog: Could I please ask that at the next meeting, or the one following that, if you or someone could report back with regard to some of those avenues and data sources that we could pull from in doing this, and pull that in so we can get the information we need to do a good report, and see what people are taking advantage of? Obviously safety is very important to workers' comp and very important to everyone that's working.

Mr. Sims: I'll point out that I think the best source we're going to have for gathering data is focusing on West Virginia's carriers and what they are seeing from their employers – the West Virginia employers – and how they're utilizing the services. Because I'm not sure if it would be that helpful to find out what employers in other states are doing. Now we could find out what other state regulators are asking their employers, if that's what you're asking about.

Mr. Hartsog: No. What I was asking. . .you are basically starting with a blank piece of paper. And to glean ideas from what other states are doing to accumulate and report that kind of information, I agree with you. It doesn't make any sense to survey an employer in Ohio – what he's doing when he's not in West Virginia. But you might get some ideas from someone in Ohio when making sure we're asking the right questions and getting complete information.

Mr. Sims: Sure.

Chairman Dean: Is 30 days enough time to do that, Ryan, or do you want to wait until the January meeting?

Mr. Kokulac: I don't know if this is really what you're looking for. Would you be interested in knowing of all the policy holders in the State which ones have scheduled credit or debit being applied to the policy?

Mr. Sims: Credit or debit? That would be one of the number of areas of information we would like.

Mr. Kokulac: We could get you something like that, but that's really not what you're asking.

Mr. Hartsog: We're going to be building basically a questionnaire to send out to West Virginia insurers, self-insurers from scratch. What I think would be valuable would be to get what other states are doing when asking those questions, help from organizations such as yours and others to make sure that we get a questionnaire structured appropriately to get out early next year, and get the results back so you have time to get the report together.

Ms. Pickens: I think by the January meeting we could come with a proposed survey. When you read the Code section it talks about an overview basically – what's out there. "It requires carriers and self-insured employers to cooperate with the Council in the performance of its duties to evaluate and ensure services provided to employers in controlling losses. . ." It would be nice if there's a little bit of substance to it where you could try to determine what is more effective – what programs are more effective than others. I assume that's what you would like to find out, if we could try to analyze that, right?

Mr. Hartsog: Yes. You are taking it a little bit quicker than I was. I was just hoping we could get an outline as to who can help us and get some sources for the next meeting or two. Then maybe come back with a questionnaire a month later, something like that, and have the ability to review it, talk about it versus just starting from scratch with a blank piece of paper.

Ms. Pickens: I think by the next meeting we could come back with some sources. I would like to shoot for a proposed survey by January because that's a very busy time of year once that starts. I think focusing on it in January might be easier than trying to focus on it in February.

Mr. Hartsog: Does OIC have any safety professionals on the staff that does a lot in that area?

Ms. Pickens: We have some folks that are knowledgeable that we will certainly look to for assistance as well.

Mr. Hartsog: That sounds good to me. How about with you gentlemen?

Chairman Dean: It's good with me, as long as they have the time to prepare it.

Mr. Hartsog: That's always a concern. July is going to be here before we know it.

Chairman Dean: Any other questions, Mr. Hartsog?

Mr. Hartsog: No, sir.

Chairman Dean: Mr. Dissen, do you have a question?

Mr. Dissen: Let me follow-up. When you're doing that survey there are some organizations, and I think OSHA has something. . .some international standards. Although it's not actually on safety where companies have put in monitoring and measuring and had management systems on health and safety issues where you can certify. That certainly shows a standard out there that you're meeting, and not just from some internal insurance carrier but to outside standards that I think have gone a long way. I know in the environmental area they have those. I think OSHA, so they may want to see if any companies here that are part of the survey use the health administrations.

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

Mr. Pellish: No questions. My thoughts basically are along the lines of Kent. I support the comments that he raised.

Chairman Dean: Thank you.

6. General Public Comments

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

(No public comments.)

7. Old Business

Chairman Dean: Does anybody from the Industrial Council have anything under old business? Mr. Pellish, do you have anything under old business?

Mr. Pellish: No, sir.

8. New Business

Chairman Dean: Does anybody from the Industrial Council have anything under new business they would like to bring up? Mr. Pellish?

Mr. Pellish: No, sir.

Chairman Dean: Very good.

9. Next Meeting

Chairman Dean: The next meeting will be Thursday November 19, 2009, at 3:00 p.m. here. Does that meet everybody's schedule?

10. Adjourn

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

There being no further business the meeting adjourned at 4:05 p.m.