

WORKERS' COMPENSATION INDUSTRIAL COUNCIL

JULY 21, 2016

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, July 21, 2016, at 1:00 p.m., Offices of the West Virginia Insurance Commissioner, 900 Pennsylvania Avenue, Room 912, Charleston, West Virginia.

Industrial Council Members Present:

Bill Dean, Chairman
Kent Hartsog, Vice-Chairman
James Dissen
Dan Marshall
Sydney Thornhill-Brown

1. **Call to Order**

Chairman Bill Dean called the meeting to order at 1:00 p.m.

2. **Approval of Minutes**

Chairman Bill Dean: The minutes of the previous meeting were sent out. Did everybody get them, and have a chance to look them over? Is there a motion for approval?

James Dissen: So moved.

Dan Marshall: Second.

Chairman Dean: A motion has been made and seconded to approve the June 23, 2016 minutes as stated. Question on the motion? All in favor, "aye." All opposed? The ayes have it.

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

Judge Rebecca Roush: Good to see you all. I tendered this report to you just before the meeting, so my apologies. You will have it in your email when you get back to the office.

There is really nothing new to report with regard to the statistics that are contained within the report.

I did want to note that our office was impacted by the flooding that occurred recently, which you are all aware of. On page five you will see a note that says all of our mail goes to a facility at the Big Chimney office, and that's where all of our scanning goes. As of June 24, that office was impacted by the flood, and there was about a two week period that we were unable to officially scan documents at that location. We did try to take some temporary measures. We got the documents and took them to our office and individually scanned them at our location. There was a little bit of a slowdown. I think, as of July 8, that office is now fully operational. The Commissioner can confirm that.

Commissioner Michael Riley, OIC: The Office of Judges' staff did a tremendous job of stepping up and filling in during the disruption.

Judge Roush: That actually could [later] impact some of these numbers that we'll see here in the future, particularly with regard to time standards and our compliance measures. For the time being, we just wanted you to know that we did have that problem. But other than that, things are going okay in our office. We did have a judge retire after 31 years of service. He had been there quite some time. We will be replacing him down the road. That is quite a lengthy process, as you know, in state government. I am happy to take any questions that you might have.

Chairman Dean: Ms. Brown, do you have any questions?

Sydney Thornhill-Brown: No, sir.

Chairman Dean: Mr. Dissen?

James Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Kent Hartsog: No.

Chairman Dean: Mr. Marshall?

Dan Marshall: No, sir.

4. General Public Comments

Chairman Dean: We'll move onto general public comments. Does anybody from the general public have a comment today? [No comments.]

5. Old Business

Chairman Dean: Does anybody from the Industrial Council have anything they would like to bring up under old business? Ms. Brown?

Ms. Brown: Did everything get pushed through with the Safety Study Report? I did not get to respond on that last email.

Andrew Pauley, General Counsel, OIC: It did get filed with the Legislature. It's on file, and it is public record.

Mr. Hartsog: Would you mind emailing us a copy, if you don't mind, the final report?

Mr. Pauley: Sure.

Mr. Hartsog: Thank you.

Chairman Dean: Ms. Brown, did you get all your information from the last meeting? I know you were on the phone, and we were going to send it to you.

Ms. Brown: Yes. For some reason when I pull up those emails it won't initially load them, and I have to find a program online. I've got it working now.

Chairman Dean: Okay, as long as you got them. Mr. Dissen, do you have anything that you would like to bring up under old business?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, sir.

Chairman Dean: Commissioner?

Commissioner Michael Riley, OIC: No, sir.

Chairman Dean: Mr. Pauley?

Mr. Pauley: Just as a brief introduction, the Industrial Council had asked to have some presentations about what the OIC does. We are going to start doing this so questions can be asked – for educational purposes, whatever is needed. Tina Clark is here today. Tina is Director of our Revenue Recovery, Legal Division. She is going to give a presentation about what she does. I think they do a real good job. They work hand in hand with our Employer Coverage Unit, which also works for Melinda [Kiss]. This is about making sure the market place has insurance coverage because it is mandatory, and making sure that people purchase a policy if they're not self-insured. We think it has been a successful program overall because we have an Uninsured Fund, and this is probably going to be a later presentation from someone so I don't want to steal anybody's air. But basically that's been a fairly low claim count, and that's for people. . .there should have been a policy purchased for them. They were injured. There wasn't a policy in place. So, there is a State back stop fund to pay claims to make sure a person gets taken care of. Then we go after the employer for compensation, reimbursement for those situations. Traditionally there has been a low claim count in that fund, in part of what Tina and her people do, and Melinda's people as well. I think employers understand that we take this seriously – that you've got to have this coverage in place. We have injunction authority, which as a last ditch. . .the last thing we want to do is shut anybody down, but if they will not get the coverage, we have that in our arsenal. Again, Tina will go into that. I just wanted to lay that ground work. Tina. . .

Tina Clark, Director, Revenue Recovery: Thank you for having me. I've been with OIC since 2007, same position. Our staff is a staff of analysts. We have six analysts – one being a supervisor, a secretary, and an office assistant, and me. We work with legal for investigative purposes, such as posting employers. We work with Melinda's group, Employer Coverage, to make sure that everybody is on the same page, and we know that coverage is being purchased, and educating employers as we go.

Our responsibility is mainly employer compliance. We educate the defaulted employer. We explain to them what could happen to their business if they are uninsured, and if a claim is filed by one of their employees due to an injury or worse occurring. We collect monies due to the State for fines, and for uninsured claim charges. If a claim is filed in the Uninsured

Employers' Fund, we will collect from the employer what the State has paid out. In fiscal year 2016, we collected nearly \$700,000.00, and that was on fines and claims charges. We also collect for the Old Fund. Those employers are out of business, but there are times when a collection opportunity will arise. In 2015-2016 we collected about \$45,000.00 in Old Fund.

The unit does send out correspondence of different nature from letters to invoices. The Rule 11 Letter, which we send out once an account is set up. It's an automatic notice that goes out to the employer telling them that their workers' compensation insurance has been cancelled, and we also advise them that they are being placed on the Default Database. That also allows them, if they want to protest, to actually call in and we will do a Rule 11 Hearing. I should have been more specific about this, but Rule 11 is something that the Industrial Council had approved previously, so that's why we call it that. By the way, those are system generated letters, and we did send out about 2,000 in fiscal year 2016. There were only six Rule 11 Hearings, and that goes to the Office of Judges. So, not many employers call in or send in any protests and ask for Rule 11 Hearings.

We also send out an EVS letter, which is the Employer Violator System. This goes out to the business and to the officers of the business. There were about 1,700 EVS letters mailed out in fiscal year 2016. These are system generated, but an analyst has to review the whole account before we can send these out because we have to actually go out, research, and find the officers or members that are attached to this company so they can be notified.

We also send out what we call an "Intent to Lien Letter." This is giving the employer an opportunity to cure any default with us before we would file the lien against them for fines owed if they haven't paid, and they have actually obtained their workers' compensation insurance. That's all manual. There were about 3,000 letters sent out in fiscal year 2016. Also, every month an invoice goes out of the Monthly Fine Assessment, and that is calculated by the system at 200% of premium divided by 12, and then it is accrued every month, and the premium we get from electronic sources from NCCI Proof of Coverage System.

We also have other collection activities. Of course, we are on the telephone constantly. I was really surprised this year. In going back and looking at numbers, we have 14,000 telephone calls in fiscal year 2016, and that's us making the calls, and also the employers calling in. We try to use that time to educate the employer; tell them exactly what they need to do; help them in any way, shape or form to get their workers' compensation.

We also do the investigative request that I talked about earlier. We do that through our Legal Unit, Regulatory Compliance. We hope that the investigators are our eyes and ears so we know what's going on with that employer – if they've closed down or they just let their

workers' comp lapse and they have employers. We had 168 requests in fiscal year 2016 to be posted; 120 were actually posted; the remaining 48 were resolved. Those are low figures compared to the number of accounts we have. But, again, we work with the employers and try to get them back into compliance before we do posting.

If we file liens, we will do that if an employer is not responding to us, and not keeping in touch with us. We do that after the fine accrues up to a \$500.00 mark. I don't want anything below that. It gets a little bit too punitive. That is all a manual process, and a lot of research goes into that before we actually file the liens, and then sent to the county courthouse. In fiscal year 2016, there were 900 liens filed, and 419 lien releases. So, if somebody comes in and actually makes good on their account or sends us money on their account, we'll release the liens accordingly.

As far as the injunction process, in 2016 we requested 57 injunctions; 25 of those injunctions were actually filed, and we went to court on. The remaining 32 were resolved before the filing was completed, and we had to go to Circuit Court for that.

To resolve accounts, we have a few methods where the employer can call in, walk in, they can do things on-line. We try to make it as easy as possible for them to repay the State for claims charges and also for fines. We do have walk-ins, and we actually have a credit card machine, and we can take the payment right then and there.

One of the big things I find that we do in our unit – and it takes a lot of time for our analysts – it's called "terminations." For example, if an employer would call an insurance company, or vice versa maybe not call an insurance company to tell them that they are going out of business, sometimes those policies actually ride out until they cancel. So they ride the full term of the policy. That makes a lot of work for us because we have to go back and figure out if they truly cancelled because they went out of business, or if they cancelled and just didn't renew and they have employees and they should still have insurance. So, we have to do some research on that. We work with Unemployment. We work with Department of Labor on contractors; several different agencies. We do our research to make sure that when we do terminate an account that they truly are out of business or they have no employees. We did process 1,320 of those termination forms [with all the research] in fiscal year 2016.

That about sums up our processes. It sounds short, but it's really not. And every day is different. We can run into one certain insurance carrier that we're finding an issue with, and fix that process, or help with that process, and then something else new comes up. I think that's about it for what we do.

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Chairman Dean: Very good. Ms. Brown, any questions on the report?

Ms. Brown: No, sir.

Chairman Dean: Mr. Dissen?

Mr. Dissen: It sounds like an interesting job.

Ms. Clark: It is.

Mr. Dissen: If it changes every day, I'd love a job like that.

Ms. Clark: It changes every day.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: It does sound like you have a lot of variety. The liens that you file, are those just general liens against the company or specific assets at the Secretary of State's Office?

Ms. Clark: It would be property that's owned by the company. In other words, it tends to be more small businesses, so it's the assets that are attached to the company that the liens are filed against. If it would be a business and they tried to sell a piece of equipment that could be caught in that lien process, we could get our money that way.

Mr. Hartsog: This is just more for my curiosity more than anything. Do you actually go and identify a particular piece of equipment or something and file a lien against that piece of equipment? Or do you just in general file against the company and whatever hard assets they might have?

Ms. Clark: It is just in general, and it is filed at the Courthouse. So, if any transaction would take place and somebody would do a "lien search," they would find us in line.

Mr. Hartsog: So, it's at the Courthouse and not the Secretary of State's Office?

Ms. Clark: It's at the Courthouse. It is always at the Kanawha County Courthouse, but it could also be at the county of which the company is. . .

Mr. Hartsog: Okay. Thank you.

Chairman Dean: Mr. Marshall, any questions?

Mr. Marshall: Do you have much of a collection rate on the monies that you expend for uninsured people, or are those companies that failed to have coverage in place. . .they pretty much go away don't they?

Ms. Clark: We're lucky that we've collected as much as we have, and I do not have that percentage. I should have brought that. I can get back with you on that. There are some companies that we have not been able to collect from, some employers.

Mr. Marshall: That would probably be most of them, would it not?

Ms. Clark: I would say it is most of them. Those claims get to be very. . .they're high. We will set them up on a payment plan, and we're lucky if they actually pay, and pay it off.

Mr. Marshall: They're mostly not. . .they don't have any assets.

Ms. Clark: Right. They're not the best employers.

Mr. Marshall: Thank you.

Chairman Dean: So, at what point do you write these people off as not collectable?

Ms. Clark: We really don't.

Melinda Kiss, Assistant Commissioner, Finance, OIC: As far as the records of the State, once you earn your reputation and you have that for your account, or as the owner/officer, it's pretty much on there forever. As far as what we actually reflect on the financial statements – because of the comment that you just made, Mr. Marshall, about the collection rate and about how poor performers are [some being insured employers] – our auditors have taken the stance “show me the money.” So, what we book into our financial statements is the net realizable value of the receivable, which is deemed to be what we actually collected in subsequent receipts. And that's all we book in as receivable – what was actually collected between June 30, and we run it 45 days to August 15. Whatever Tina brings in in that interim period, that's what the receivable was. If it was for a period prior to June 30, because their stance is very conservative, they want to see the actual cash before they are going to let us put it on the financial statements as an asset. As far as really writing it off, we really don't have to because of the method in which we book that asset.

Chairman Dean: Very good.

Mr. Hartsog: Who are your auditors now?

Ms. Kiss: We have new auditors on board for this year. We'll have Suttle & Stalnaker, who were previous auditors. For the past four years we had Dixon & Hughes. We didn't have any problems with them. They did a great job. They actually improved our game in our financial statements because they were very demanding. But their contract expired. No more possible renewals. We did a competitive bid, and Suttle & Stalnaker was the low bidder.

Chairman Dean: Mr. Marshall, do you have a comment?

Mr. Marshall: Just one other question, and perhaps I should know the answer to this. Does the statute allow you to go after officers? And that being the case, do you pursue those officers occasionally, always, or sometimes?

Ms. Clark: Well, the officers are actually placed on the Employer Violator System. Until they have cured that debt, they're still responsible for it.

Mr. Marshall: Do you ever file collection actions against them as individuals?

Ms. Clark: The liens are filed against the officers too.

Mr. Marshall: I understand that. But do you ever institute. . .assuming your investigators find that this person may have some assets, do you then proceed. . .do you just let the lien sit there, or do you actually file suit? I'm thinking of a case where the business has no assets, but perhaps some coal operator. . .this company goes broke, but he has this other company over here, and he has a nice house maybe free and clear. Do you ever pursue them?

Ms. Clark: We have. I don't think that is as prevalent as it used to be. With the Old Fund I know they have done that often, I've been told, before I came. But we do collect from the officers. If an officer is. . .for example, we had this a couple of weeks ago. Somebody was trying to get a license to open a new business here in the State, and they had a default with us. It was on a company where he was the treasurer, and he had to clear that default with us before he could get the permit that was needed from the State for his new company.

Mr. Marshall: Good. Thank you.

Chairman Dean: Any other comments or questions?

Mr. Dissen: What about directors? If you have organizations that have Boards of Directors.

Ms. Clark: The Boards of Directors are held responsible because they hold. . .they are responsible for the financial or the physical portion of the business. So, yes, they have liens filed against them too if you're on the Board of Directors' side. I know we've done that with some non-profits before.

Mr. Hartsog: That' true. My dad was on a board for a non-profit and got a lien filed on my parent's house. They had to go through some court proceedings, but got it cleared up.

Mr. Dissen: There are companies that do not have Officer and Director Liability Insurance. One of the problems is some of them just run a lot of different boards, and it is extremely difficult to get people to serve on boards anymore, especially if you have some that may be retired and have the experience, and aren't building their résumé, and actually can help the organization. They'll come back and ask, "What's our coverage?" And if you're not up there to \$2 or \$3 million dollars. . .

Ms. Clark: We find also that the Board of Directors that we work with, especially volunteers, they really don't really know what's going on with the company, and it's a big surprise to them.

Mr. Dissen: They not only have trouble with you, but they may be sued personally, which is a major issue finding persons to serve.

Chairman Dean: Any other comments?

6. **New Business**

Chairman Dean: We'll move onto new business. Does anybody from the Industrial Council have anything they would like to bring up under new business? Ms. Brown?

Ms. Brown: No, sir.

Chairman Dean: Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: One thing real quick. There is a Security Pool and a Guaranty Pool that have contributions going into them on the self-insured side I believe. Could you just put that on your list at some point to have a tutorial over the status of those two pools, and where they stand, and contributions going in, and what's getting paid out in the companies, etc.?

Commissioner Riley: Sure. We will put that on the agenda. It would probably be best to post audit, so maybe in October if that's okay.

Mr. Hartsog: There is no hurry. I just thought about that while she was talking that that might be a good topic. A relevant number of people would want to hear where that's at.

Commissioner Riley: Right. I hope everybody is aware there are no assessments out there for either one of those pools. We do believe that they are solvent at this period.

Mr. Hartsog: Good. Okay.

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

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Commissioner?

Commissioner Riley: No, sir.

Chairman Dean: Mr. Pauley?

Mr. Pauley: No, sir.

7. Next Meeting

Chairman Dean: The next meeting will be Thursday, September 8, 2016, at 1:00 p.m. Does that meet everybody's schedule?

8. Adjourn

Chairman Dean: There is no Executive Session, so I'll entertain a motion for adjournment.

Dan Marshall made the motion to adjourn the meeting. The motion was seconded by James Dissen and passed unanimously.

There being no further business the meeting adjourned at 1:30 p.m.