

WORKERS' COMPENSATION INDUSTRIAL COUNCIL

JULY 5, 2012

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, July 5, 2012, at 1:00 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, Vice-Chairman
James Dissen
Dan Marshall

1. Call to Order

Chairman Bill Dean called the meeting to order at 1:06 p.m.

2. Approval of Minutes

Chairman Bill Dean: The minutes of the previous meetings were sent out for May 31, 2012, and the special meeting of June 21, 2012. Did everybody have a chance to look them over? Is there a motion to approve the minutes as stated?

Kent Hartsog made the motion to approve the minutes of the May 31, 2012 meeting and the June 21, 2012 Special Meeting. The motion was seconded by Dan Marshall and passed unanimously.

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

Judge Rebecca Roush: Good afternoon. I hope that everyone survived the storms this past week. We did experience a few issues at the Office of Judges this morning related to the weather. We had a few flickers of power outage, and this report was just completed this morning. So, my apologies for getting it to you right before the meeting.

The information in this report is similar to what we've seen over the last few months. We've acknowledged 408 protests in the month of June. Trending wise, the

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numbers remain substantially the same with the Old Fund, significantly on the decline with an increase in the number of private carrier protests being acknowledged. You will see for 2012 the Old Fund is making up 13% of all the protests within the Office of Judges.

One thing that the Council is usually interested in is our Final Decision Compliance. That's on page six. You can see for 2012 we are up to 99.7% within the rules' time limits, and making progress with regard to those claims being done within 60 days. So you can see only 1.6% for the month of June made outside of the 60 to 90 day timeframe. If the Council has any questions on the report, I would be glad to take them.

Chairman Dean: Mr. Dissen, do you have any questions on the report.

James Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Kent Hartsog: No.

Chairman Dean: Mr. Marshall?

Dan Marshall: No questions. I would like to say I am real pleased with the trend on the timeliness. I think you are doing a good job – especially a good job, having also just integrated your new system.

Judge Roush: Thank you. I'll pass that along. I will point out that we have hired a Deputy Chief Administrative Law Judge to replace Judge Ann Rodak. That individual is in the process of giving their final notice to their employer right now. So, they will be joining us sometime relatively soon. Hopefully next month I can disclose a little more information and make you aware of our selections. That's basically all that is going on in our office for this month.

Chairman Dean: Very good. Thank you.

Judge Roush: Thank you.

4. General Public Comments

Chairman Dean: We'll move onto the 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 under old business? Mr. Dissen?

Mr. Dissen: No.

Chairman Dean: Mr. Pauley?

Andrew Pauley, General Counsel, OIC: We wanted to update the Council, at Mr. Hartsog's request. First of all the Safety Report has been submitted to the Joint Committee. So that's been submitted in a timely manner at the first of the month. There was one question about one of the entities possibly not having a safety program, and there was a request to follow-up on that. They graciously gave us until August 1 or the August meeting, but we wanted to go ahead and get on top of that. We talked with the entity and they do in fact have a safety plan in place. It's a low risk modification type of business – clerical, banking. But we did check with them to ensure they did have a safety plan in place. So, that response in the report was an error. Therefore that would make it complete that they did in fact have a safety plan in place. That is all I have to update you on.

Chairman Dean: Question Mr. Hartsog?

Mr. Hartsog: Did the report get submitted with that exception in it. . .noting that?

Mr. Pauley: No.

Mr. Hartsog: So it got fixed before it was submitted?

Mr. Pauley: No. It went with that one in it.

Mr. Hartsog: It didn't get adjusted after it left here?

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Mr. Pauley: Right. That's correct.

Mr. Hartsog: Second question. Did their plan. . .do we think it met what's required by statute, I assume?

Mr. Pauley: Yes. As your suggestion, we had our safety guy here [OIC] to contact them, work with them, and discuss it with them, and he was confident that it was. . .

Mr. Hartsog: Thank you very much.

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

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Mr. Dissen, I know you weren't here, but. . .

Mr. Dissen: No questions.

Mr. Pauley: Thank you.

Chairman Dean: We're still under old business. Does anybody from the Industrial Council have anything else under old business they would like to bring up? Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: The Old Fund. . .are you going to give us an update on the Old Fund this year? We normally get an update on the financials at some point.

Michael Riley, Commissioner, OIC: We can do that. . .sure.

Mr. Pauley: Certainly.

Commissioner Riley: We will try to prepare something for next month.

Chairman Dean: Very good. Thank you.

6. New Business

Chairman Dean: We'll move onto new business. Does anybody from the Industrial Council have anything under new business? Mr. Hartsog?

Mr. Hartsog: The only question I have. . .is there anything else, rules or anything that the OIC is planning on bringing up here in the near term?

Mr. Pauley: We did receive a request to submit an informational letter in regards to prime/sub contractor liability. We have been looking at the rule itself. We are taking a look at that to determine whether we would go the rule amendment route or whether we would discuss the informational letter and go that route. But most likely we would run either one before the Council before we would do it and have discussion. We are trying to formulate and have discussion on where there is consensus on that, and then we'll bring it back before you and update you on that. That is probably the main one we're looking at. We will probably get a decision out this week on extra contractual liability. It's a small issue, but it can be somewhat larger. So, we may look at a rule amendment based on the decision of the Commissioner on that.

Mr. Hartsog: Which rule is that?

Mr. Pauley: Extra contractual liability.

Commissioner Riley: It's extraterritorial.

Mr. Pauley: Extraterritorial, I'm sorry. That's my fault. That's right – extraterritorial. It's really just issues that are coming up between us and Ohio. Most other states would have an all states endorsement or a policy that would cover. . .

Mr. Hartsog: Are those two separate and distinct issues between the prime sub issue and the extraterritorial issue?

Mr. Pauley: To some extent. But to some extent there are times where there could be a more similar issue if an extraterritorial agreement is determined to be invalid. Sometimes you may look to a prime on that particular instance. They could be a similar

issue, but they would be handled separately for amendment purposes. That's probably the two biggest ones. Can you guys think of anything you want to bring up other than those right now? Those are the ones we're going to be looking at in the short term.

Chairman Dean: Very good. Anything else Mr. Hartsog?

Mr. Hartsog: No.

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

Mr. Dissen: No, sir.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

7. Next Meeting

Chairman Dean: The next meeting will be Thursday, August 9, 2012 at 1:00 p.m. Does that meet everybody's schedule?

8. Executive Session

Chairman Dean: The next order of business is Executive Session. The next item on the agenda is related to self-insured employers. These matters involve discussion as specific confidential information regarding a self-insured employer that would be exempted from disclosure under the West Virginia Freedom of Information Act pursuant to West Virginia Code §23-1-4(b). Therefore it is appropriate that the discussion take place in Executive Session under the provisions of West Virginia Code §6-9A-4. If there is any action taken regarding these specific matters for an employer this will be done upon reconvening of the public session. Is there a motion to go into Executive Session?

Mr. Marshall: So moved.

Mr. Dissen: Second.

Chairman Dean: A motion has been made and seconded. Any question on the motion? All in favor "aye." All opposed? The ayes have it. [Motion passed.]

[The Executive Session began at 1:16 p.m. and ended at 1:24 p.m.]

9. Adjourn

Chairman Dean: We are back in regular session. Is there a motion for adjournment?

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

There being no further business the meeting adjourned at 1:25 p.m.