

WORKERS' COMPENSATION INDUSTRIAL COUNCIL

JUNE 3, 2010

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, June 3, 2010, 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, Vice-Chairman
Bill Chambers
James Dissen
Dan Marshall

1. Call to Order

Chairman Bill Dean called the meeting to order at 3:00 p.m.

2. Approval of Minutes

Chairman Bill Dean: The minutes were sent out. Did everybody have a chance to review the minutes? Is there a motion to approve?

Jim Dissen made the motion to approve the minutes from the April 29, 2010 meeting. The motion was seconded by Dan Marshall and passed unanimously.

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

Judge Rebecca Roush: Good afternoon. I've tendered to you the Office of Judges report with statistics for the month of May. I've also e-mailed a copy of this to you. My sincerest apologies for the delay in getting it to you, but the employee who prepares this report had a family emergency. We were a little behind. The statistical analysis essentially remains the same. The data is essentially unchanged. I really don't have anything to add today. If you have any questions, I would be happy to answer them.

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

Bill Chambers: I haven't seen this [report]. I want to make sure we have the right e-mail.

Judge Roush: You know I may not have your e-mail address. Maybe Margaret can give it to me after the meeting. I'm sorry. I should have thought of that.

Mr. Chambers: That would be great. Thank you.

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

James Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Kent Hartsog: No.

Chairman Dean: Mr. Marshall?

Dan Marshall: No, Mr. Chairman.

Chairman Dean: Thank you, Judge.

4. Request to File Initial Draft on Rule 32 – Ryan Sims

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"

Ryan Sims (Associate Counsel, OIC): Members of the Industrial Council, we are bringing before you today a new rule amendment, Title 85, Series 32. It is being done in conjunction with the Title 85, Series 8 amendment to get rid of the exemption process that we currently have in place where any employer, pursuant to a request by an agency or just on their own, can request a letter of exemption. That rule is still in the process of being approved for final approval. It came to our attention – when going through that process – that there was still a need or a concern among state agencies that there should be a process where they can specifically ask us if an applicant [for a different license or certification] is exempt from workers' compensation. Because normally some agencies have a process where they check for coverage and if there is

no coverage they want a confirmation that the person is actually exempt. So in this rule, which is the rule that deals with how other state agencies interact with us for workers' compensation enforcement purposes, we've added Section 7. It is on page four of the rule, and there are two sections. Essentially the first section permits an agency to request from us that any person – and normally that would be a person who is applying for another certification with that agency – fill out a request [an application] for an opinion as to whether that person is exempt from workers' compensation.

In creating this process we would essentially maintain the current process, but only for those persons where other agencies want them to get an express opinion because they have that as part of the other agency's process. We would still move forward with Rule 8, which hasn't been finalized yet, but eliminating the overall exemption process where any entity can ask for a letter of exemption. So essentially the effect of both Rule 8 and this rule would be that there would still be an ability for agencies to use this process and ask us to have a person go through the application process for us to issue an opinion as to whether that person is exempt, but only at the request of another agency because it is part of their process. Private parties would not be able to ask for exemptions anymore, which we had significant concerns that it was kind of muddy beneath the waters and that type of thing – concerns that we've been over before. With that we're asking you to approve this rule for initial filing with the Secretary of State's Office so that it can go into the public comment process.

Chairman Dean: Mr. Chambers, do you have any questions or comments for Ryan?

Mr. Chambers: Is there any reason to consider local governments or county governments? Would they ever need to request such information?

Mr. Sims: I think from time to time they do. Normally they just want to know if somebody has coverage or not. It's not certificates or anything. It's when they want to know if they can do business with. . .

Mr. Chambers: No need to cover that?

Mr. Sims: We don't think so.

Mary Jane Pickens (General Counsel, OIC): I think that is something we can always handle less formally. The whole rule itself focuses on state agencies, and we actually considered that but felt that it was beyond the scope of the existing rule. But there is no reason why we couldn't continue to try to assist.

Mr. Chambers: That's all I have.

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

Mr. Dissen: No. I think based on the prior discussion it seems you've addressed the concerns.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: As I understand it, the effect of Rule 8 that's still pending and this rule change here is basically a state government agency would need to request from you [OIC] this opinion letter [or this opinion] as to whether or not someone is in good standing with workers' compensation, if I'm understanding it correctly.

Mr. Sims: That's correct.

Mr. Hartsog: What were the instances that you feel individuals or individual companies were coming to you and asking you for this opinion letter about being in good standing or not being subject to having workers' comp coverage that you feel was being abused or should not be permitted going forward?

Mr. Sims: It wasn't necessarily just that we thought it was being abused, but we felt the effect of our exemption letters in those situations particularly had questionable legal meaning. We did feel there were some private entities that perhaps gave us mischaracterized information on the application to try to confirm that they didn't have to carry coverage when in fact if we had known the actual facts they would have to. We certainly don't have the resources to send an investigator out to their work site. In light of the fact that these letters had questionable legal meaning, and the fact that some entities were using them for nefarious purposes or to try to skirt the law, it was really more useful not to have the process for private companies than to have it.

Mr. Hartsog: What were the private companies using these letters for? Why would they come to you directly and not need them for a government agency?

Mr. Sims: It might be when they want to do business with someone else and they say, "I won't give you a contract here unless you either show me workers' compensation coverage or show me something saying you're exempt." We're not saying that they can't go to an attorney or just write a letter themselves showing why they think they are

exempt. We are just saying that we are no longer going to make this process available to them.

Mr. Hartsog: Thank you.

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

Mr. Marshall: No, Mr. Chairman, I'm fine with the proposal.

Chairman Dean: Ryan, is there anything else you would like to add?

Mr. Sims: No. Just a motion in getting this filed.

Chairman Dean: Very good. Is there a motion to file?

Mr. Marshall: So moved, Mr. Chairman.

Mr. Chambers: Second.

Chairman Dean: A motion has been made and seconded to file the initial draft on Rule 32 with the Secretary of State. Are there any questions on the motion? All in favor signify by saying "aye." Opposed, nay? The aye's have it. Motion passed.

[Motion passed to file the initial draft of Title 85, Series 32, with the Secretary of State's Office for a 30-day public comment period.]

5. General Public Comments

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

[No comments from the public.]

6. Old Business

Chairman Dean: Does anybody from the Industrial Council have anything they would like to discuss under old business? Mr. Chambers?

Mr. Chambers: No.

Chairman Dean: Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: I don't know if this is new or old. I just wanted to ask if we could get an update at the next meeting with regard to the Old Fund – status and funding, the last actuarial statements and all that.

Ms. Pickens: We can do that. I think you asked that same question at the last meeting.

Mr. Hartsog: Oh, did I?

Ms. Pickens: I think you did, and I apologize if I overlooked it.

Bill Kenny (Deputy Commissioner, OIC): We can send him a copy of what we send to the Joint Committee every month. I cannot give you actuarial statements because they are only done once a year and it's as of June 30, so we're just now beginning that process and won't have it. It's same as last year. I would have to give you last year's.

Ms. Pickens: That is on our website.

Mr. Kenny: Last year's is but it's not going to be current. We give a report to the Joint Committee every month. In fact I have it electronically and when I go back to the office I'll send it out.

Mr. Hartsog: That would be fine.

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

Mr. Marshall: No, Mr. Chairman.

7. New Business

Does anybody from the Industrial Council have anything under new business? Mr. Chambers?

Mr. Chambers: No, sir.

Chairman Dean: Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No, sir.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Ryan, do you have anything you want to bring up?

Mr. Sims: No.

Chairman Dean: Mary Jane?

Ms. Pickens: Margaret went ahead and scheduled the meetings for the remainder of the year – July through December, and has printed out a calendar for everybody. I just wanted to mention that we have those dates available if you want to mark them on your calendars. Let us know if there's any that are a problem.

Mr. Marshall: Mr. Chairman, if I understand this schedule, the next meeting will actually be the special meeting on June 23 at 10:30 a.m.

Chairman Dean: Yes sir.

Mr. Marshall: And that will be here?

Ms. Pickens: Yes.

Mr. Dissen: There is no meeting in November.

Ms. Pickens: Probably not because we have to space them out a little more than 30 days to take care of our rulemaking process.

Mr. Hartsog: Will we receive something for the June 23 meeting in advance on the safety study that we could look at?

Ms. Pickens: Yes.

8. Next Meeting

Chairman Dean: The next meeting is Thursday, July 8, at 3:00 p.m. Does that meet everybody's schedule? And we'll also have the special meeting on June 23. Does that meet with everybody's schedule?

Mr. Chambers: It did not meet mine. I have an out-of-town conflict on June 23.

9. Executive Session

Chairman Dean: 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 made the motion to go into Executive Session. The motion was seconded by Mr. Dissen and passed unanimously.

[The Executive Session began at 3:18 p.m. and ended at 3:27 p.m.]

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Chairman Dean: We'll call the Industrial Council back to order. You have the Resolution in front of you. Is there a motion to approve the renewal of the self-insured status of the eight employers on Exhibit A?

Mr. Dissen: So moved.

Mr. Chambers: Second.

Chairman Dean: A motion has been made and seconded. Are there any questions on the motion? All in favor signify by saying "aye." All opposed? The aye's have it.

Motion passed on renewal of self-insured status for the following companies:

Alliant Techsystems, Inc.
City of Fairmont
Family Dollar Stores of West Virginia, Inc.
Federal Express Corporation
FedEx Freight, Inc.
FedEx Ground Package System, Inc.
FedEx Smartpost, Inc.
Kingsford Manufacturing Company

10. Adjourn

Chairman Dean: Is there a motion to adjourn?

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

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