

WORKERS' COMPENSATION INDUSTRIAL COUNCIL

MARCH 10, 2016

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, March 10, 2016, 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
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: Did Council members have the opportunity to review the minutes of the January 7, 2016 meeting? Is there approval?

Dan Marshall: I move for approval, Mr. Chairman.

James Dissen: Second.

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

3. Office of Judges' Report – Alan Drescher, Deputy Chief Administrative Law Judge

Judge Alan Drescher: Good afternoon. Unfortunately Judge Roush is ill today, which is why I'm filling in for her. The report for the Office of Judges is similar to what it has been in the past. I'll highlight a few things. The office acknowledged 301 protests for the month of February. It looks like we may continue our trend of going downward in terms of numbers. It's a little early in the year to know that.

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I did want to point out a slight acknowledgement issue we had on page seven of this report. On my copy that page is not numbered, but its right after page six. If you look at the time standard compliance chart at the bottom, you see that the percentage of timely issues is exactly the same as the percentage of late issues. I don't know what happened there, but the percentage of "timely" is correct, and the percentage of "late" is incorrect. We're going to check with IT and figure out what happened on our chart. Sometimes when they have to go in and make changes we have unintended consequences, and this is one of them. I don't know why that chart is not calculating correctly. As far as we could determine that was the only chart where that happened. I wanted to point that out.

Our time standard compliance continues to be good, up over 90%. The motion resolution compliance is also good. It's up over 98%. We resolved almost exactly the same number of issues as we received for the month of February. Our number of pending issues remains almost exactly the same. I'd be happy to address any questions you may have.

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

Sydney Thornhill-Brown: No, sir.

Chairman Dean: Mr. Dissen?

James Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Kent Hartsog: Just one. Claims that have been pushed back to the Guaranty Fund. . . I think there's one other fund that accepts claims from. . . where do those appear? I'm looking on page one at the stats there. You have the Old Fund, Private Carriers, Self-Insured Employers. Where would those kind of claims. . . ?

Judge Drescher: Well, for the purposes of this chart, I'm sure they would be under the Old Fund because they are still administered by the OIC in their capacity as the Claims Administrator. But you're right. Technically they are not the Old Fund. They would be part of the Guaranty Fund.

Mr. Hartsog: Okay.

Chairman Dean: Mr. Marshall, any questions?

Dan Marshall: No, sir.

Chairman Dean: Thank you, sir.

Judge Drescher: Thank you.

4. General Public Comments

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

5. Old Business

Chairman Dean: We'll move onto to Old Business – the Safety Study Report.

Commissioner Michael Riley, OIC: Mr. Pauley is not here. I'll give the Council an update. Please correct me if there is more updated information. We have been in contact with WVU. They've done the study in the past, and they have agreed to a price. We do not have a contract. And we also asked Marshall University if they would be interested. They have not returned our message. So, I believe we'll probably go with WVU, and we will get that ball rolling.

Just to update everybody. . .we survey self-insureds and those that write workers' comp in the commercial market regarding their safety practices and the things they are seeing in the market. We'll prepare a report and get that out to this Council, and then also share that with the Legislature. We need to have the report to the Legislature by July 1, and we'll make sure we meet that deadline, and share with the Council beforehand.

Chairman Dean: Very good. Does anybody have any questions for the Commissioner?

Mr. Hartsog: What's the timeline? This is March, and it has to be done by July 1.

Commissioner Riley: Yes. That is the date it is expected to be done.

Mr. Hartsog: So, basically you are going to have April and May to prepare it, and June to review it and get it done.

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Commissioner Riley: Yes. If we need to share the draft [by e-mail] with everybody here, we'll do that instead of having a formal meeting. But we'll make sure you all have a copy before we do meet.

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

Ms. Thornhill-Brown: Not today.

Chairman Dean: Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: I'd just like to ask the Commissioner if there is anything moving or going on with the Legislature with regard to workers' comp?

Commissioner Riley: As far as the administration of workers' comp and those kind of laws, I can't recall anything. Obviously, there was significant legislation regarding the Old Fund and the dedicated revenues that go there. I'll give you an update just off the top of my head. Senate Bill 419 was passed. Essentially what it does – it stopped all the dedicated revenues that are currently going to fund the Old Fund as of March 1, 2016. So, the Old Fund is no longer getting revenue. It's just living off investment. All the severance taxes will remain, and it will go to General Revenue through July 1, 2016, and it is my understanding those go away. Lottery funds – about \$11 million dollars go to General Revenue March through July. Also, the surcharges – the self-insured and the private carrier, March through July, go to General Revenue. I believe those come back as of July 1, and will continue to be dedicated to the Old Fund; maybe a percentage, maybe we get half, maybe we get 100%. I'm not exactly sure about the future of those. But those monies will return until the Old Fund defeases or its assets equals its liabilities.

Personal income tax – we get about \$95 million every year. That's all General Revenue, so that's gone. The future of the Old Fund – post July 1 – will be investments, obviously. And then the revenue sources will be the private carrier surcharge, self-insured surcharge, and lottery funds, which are about \$11 million

dollars. So, we're getting close to paying this thing off. We'll have new numbers in November to see exactly where we are. Obviously, when you remove significant revenues upfront here, you don't have compounding. So that may result in it being extended for a year or two more, but you never know. You also have a liability piece of it, and how that develops, and any law changes that may impact those. I can tell you that investment income is terrible, but you guys are probably experiencing that in your own businesses. In the long run I think we can make some money. We got about \$1.2 million in monies there. I'd be happy to answer questions.

Mr. Hartsog: Is there any other legislation that you're aware of?

Commissioner Riley: Nothing I'm aware of. It's been really quiet on the workers' comp end. Like I said, as far as the administration of claims or the benefits that are paid out, some things got introduced, but nothing has made it through committee.

Mr. Hartsog: That's actually really good news. I guess that means things are working okay.

Commissioner Riley: I agree. I think from the Judge's report and the updates that we try to give here, things do seem to be performing well. I think stability helps everybody understand what the rules and the laws are, and make sure that folks are taken care of.

Ms. Thornhill-Brown: What was the Bill number on that?

Commissioner Riley: It's Bill 419. It is in effect. It has been signed by the Governor, and all of the dedicated revenues have ceased.

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

Mr. Marshall: No, sir.

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. Thornhill-Brown: No, sir.

Chairman Dean: Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, sir.

Chairman Dean: Commissioner?

Commissioner Riley: No, sir.

7. Next Meeting

Our next meeting is scheduled for Thursday, May 5, 2016, at 1:00 p.m. Does that meet everybody's schedule?

8. Executive Session

Chairman Dean: The next order of business is the 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 made the motion to go into Executive Session. The motion was seconded by Mr. Hartsog and passed unanimously.

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[The Executive Session began at 1:14 p.m. and ended at 1:43 p.m.]

Chairman Dean: We'll call the regular session of the Industrial Council back to order. We have two Resolutions. We'll go over the Resolution for Patriot Coal first. Mr. Hartsog, would you like to recuse yourself from this?

Mr. Hartsog: Yes.

[Kent Hartsog recused himself from voting on the Patriot Coal Resolution.]

Chairman Dean: The Resolution is to revoke the self-insured status of Patriot Coal Corp., Et. Al. Is there a motion to approve the Resolution?

Mr. Dissen: So moved.

Mr. Marshall: Second.

Chairman Dean: Any question on the motion? All in favor, "aye." All opposed, "nay." The ayes have it. Motion passed.

The second Resolution is for the approval of the self-insured status for seven companies. Is there a motion to approve?

Alliance Coal LLC
Dominion Transmission, Inc.
Hope Gas, Inc.
Macy's Retail Holdings, Inc.
Toyota Motor Manufacturing of West Virginia, Inc.
Union Carbide Corporation
Virginia Electric & Power Company

Mr. Dissen: So moved.

Ms. Thornhill-Brown: Second.

Chairman Dean: A motion has been made and seconded to approve the self-insured status for the seven companies. Any question on the motion? All in favor, "aye." All opposed, "nay." The ayes have it. Motion passed.

9. Adjourn

Chairman Dean: Is there anything else that needs to be brought up before the Industrial Council before we adjourn today? Seeing none, is there a motion for adjournment?

Dan Marshall made the motion to adjourn. The motion was seconded by Sydney Thornhill-Brown and passed unanimously.

There being no further business the meeting adjourned at 1:45 p.m.