

WORKERS' COMPENSATION INDUSTRIAL COUNCIL

May 31, 2012

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, May 31, 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
Dan Marshall

Note: James Dissen was not in attendance. Mr. Dissen tried to call in [conference call] but was unable to get a connection.

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 May 31, 2012 meeting were sent out. Did everybody have a chance to look at them? Is there a motion to approve the minutes as stated?

Dan Marshall made the motion to approve the minutes of the April 26, 2012 meeting. The motion was seconded by Kent Hartsog and passed unanimously.

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

Judge Rebecca Roush: Good afternoon. I forwarded to you earlier by e-mail a copy of the Office of Judges report for this month, which is reporting on statistics in April. Not a lot of notable things in this report other than the fact that we acknowledged 401 protests in the month of April. I think one of the more interesting facts in this month's report is on the page identified as "Statistical Analysis." You will see that the Old Fund protests have declined drastically for the month of March. They only made up

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9.98% of all the protests we are seeing in our office, and likewise you will see that the private carrier protests increased to 71.07%.

Judge Drescher and I were just discussing the following page with regard to the graph. You'll see the Old Fund has been in decline for approximately six months, so I don't know if it is fair to report that as a trend or not, but it does appear that the Old Fund protests are on the decline. We are projecting to have about 100 less protests this year, and we believe we will have about 4,900.

We seem to be doing pretty well with our Final Decision Compliance. Almost 97.0% are done within 60 days, and that is on page six.

I'll answer any questions you may have about this report in general.

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

Kent Hartsog: On page six you are definitely showing improvement in getting more decisions within 30 days.

Judge Roush: Yes.

Mr. Hartsog: What do you think it will take to get that next step changed to. . .

Judge Roush: Beyond 60 days?

Mr. Hartsog: No. To get more moved from 60 to 30. . .

Judge Roush: I don't know if that is going to happen. It really was a huge accomplishment to get it down to 60 days, and I think. . .

Mr. Hartsog: And you're showing a great deal of improvement when you look at going into twelve from 2011.

Judge Roush: Right.

Mr. Hartsog: And that's definitely been an obvious step improvement.

Judge Roush: Great. I will pass your compliments along to our Judges. I will say that they did work very hard to get these done within 60 days. I know we talked about it quite a bit last year. We lost six Judges to retirement last year, and we did not replace

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all of them with regard to our hiring. This compliance number was actually done by even fewer Judges. And, of course, we feel that we've done a really good job of increasing our efficiency by changing the way the work processes in and out of our office. It really is a huge accomplishment and a testament to the loyalty of the Judges in making certain they can meet that deadline.

Mr. Hartsog: I agree with you. I guess my question is more. . .do you think you've wrung all you can or do you think there is still the ability to have another step improvement?

Judge Roush: Well I think one thing that you've got to remember with regard to rendering decisions is that the era in which we are currently in, the issues that we're seeing are growing increasingly complex. Even though we have a decline in litigation the issues that we see vary widely – we've got private carrier issues; self-insured issues; complex medical treatment. So it is not always easy to manage an inventory with quite a few decisions to get out when you have all of them being of a complex nature. I think that's one thing we have to always remember is that these cases are not as easy as what they used to be back in the day. And it does take a lot of time to reach an appropriate and reasonable conclusion. I think if you had the challenge of picking up a file and try to grasp all the information, review all the evidence, understand the law, and come up with a decision, it does take a significant amount of time. And I think 60 days is really appropriate.

Mr. Hartsog: Okay. So that was a long way of saying you think you're probably. . .

Judge Roush: Yes, we're here. If we can get everyone to 60 days I think we would be great – if we didn't have any errors.

Mr. Hartsog: Yes. I understand. Thank you.

Chairman Dean: Any more questions, Mr. Hartsog?

Mr. Hartsog: No.

Chairman Dean: Mr. Marshall?

Dan Marshall: Are you at your expected staffing level now [with Judges] or do you still have a position to fill?

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Judge Roush: Yes. That's my next update. We have hired another Judge, Gary Mazezka. I'm not certain if you are familiar with him, but he is a long-time workers' compensation practitioner. We recently hired him and he will be joining our office tomorrow. We have replaced two of the five regular ALJ positions within the office, and we think that that is appropriate staffing with regard to the regular ALJ's who write traditional decisions. We have recently interviewed for the Deputy Chief position that Judge Ann Rodak left due to her retirement last August. Those interviews have recently concluded, and I have made a selection although it has to go through the appropriate channels for approval before we can even announce to the candidate that we have made a selection. It should be done within a couple of months, I would hope.

Mr. Marshall: Are you complete with your system's integration in the changeover?

Judge Roush: Yes.

Mr. Marshall: Very good.

Judge Roush: In January we implemented a new software program for Case Management that is comparable to the old system, but of course more current and more flexible use for us. We have finally settled down with regard to transitioning away from that old computer program and we are making improvements, although we occasionally still see errors that we have to go back and fix.

Mr. Marshall: Thank you.

Judge Roush: You're welcome. I have one more thing. I wanted to give you the presentation [handout] that I gave at the Third Annual Workers' Compensation Conference. The title of the presentation was "Playing by the Rules in West Virginia," and was geared to help carriers and third party administrators understand common mistakes that we're seeing trends in currently. I believe it was well received even though we were talking about carriers and third party administrators being compliant with our local laws, rules and regulations. We talked about Order Drafting. We talked about the Failure to Timely Act Process as well as the Unreasonable Denial Process. And there are some statistics on those particular issues contained within the materials. If you have any questions about that feel free to let me know. I would be happy to answer any questions that you might have. Thank you.

4. Safety Study Report – Ryan Sims

Ryan Sims, Associate Counsel, OIC: Chairman and members of the Industrial Council, good afternoon. I'm here today to initially present to you the first draft of the Safety Study that was presented to us in working with the West Virginia Safety and Health Extension. The draft has been sent to you so you've had a chance to review it. It was sent to you approximately two weeks ago. I am sure you have reviewed it and have some questions. The format is an introduction and an executive summary that had some general analysis of the data, and each question with a chart or graph showing how the responses came in. There is a separate report for the top ten carriers versus the self-insured employers. I am going to touch on some areas that we've identified and qualify as "data cleanup," particularly in regard to the self-insured employers, but also a little in regard to the carrier report.

Starting with the self-insured employers, the initial report indicated that there were 70 responses. If that were the case it would be a little bit troubling in light of the fact that we have 88 active self-insured employers currently in West Virginia, not counting the county risk pool – not exactly a self-insured entity so we didn't include them in this. If you look at the numbers. . .and I'm just going to try to briefly take you through this. Of those 70 responses seven were duplicate responses, and two were incomplete responses. Duplicate meaning some companies responded twice. So our guess as to what happened is the company had two different departments and both submitted a response. We are not exactly sure why, but that probably happens sometimes. In addition to those seven duplicates, among the 70 responses, there were two incomplete responses – essentially responses that were just begun and they didn't really put their name in and didn't complete them. Those nine, the seven duplicates, and the two incomplete responses will be backed out of the data. So that brings you down initially [of the 70] down to 61. Consol then will be added. Consol was inadvertently left out of the report so they will be entered back in. They have a number of subsidiaries, but they will be added as an entry.

Now on to the subsidiaries – That gets you to the 62 responses. And then among those 62 respondents there are 21 subsidiaries that are actually separate self-insured entities. So that would bring us up – once you count all of them as having responded – would bring us up to 83. There are 21 subsidiaries among those respondents. You have 62 responses when you back the ones I talked about out, and then you add the 21 subsidiaries which gets you to 83. So among 88 self-insured entities you are going to have 83 that have responded and five that have not responded, or have not responded by the deadline.

As far as the subsidiaries, what we propose doing in the report [in addition to the backing out that we discussed and adding Consol in] is the report currently does not reflect who the subsidiaries are of these companies. We are going to footnote who the subsidiaries are because if, for example, a coal company submits one safety program response for its five subsidiaries, that's just one program. So it doesn't need to be multiplied times five because it is a single program. What we think would be appropriate is to note that there are 88 self-insured employers in West Virginia, and if you count these footnoted subsidiaries, you've had 83 responses. It doesn't make it appear it was substantial compliance – 83 of 88.

On the carrier side ultimately you probably noticed the chart indicated that there were 13 responses, even though we were only soliciting responses from ten. We believe we are close to having identified the issues, specifically Liberty Mutual. They submitted two – under Liberty Mutual – and we believe those were on behalf of their two subsidiaries that are in the top ten. Sarah [Young] worked me through this, this morning. They have two subsidiaries that are in the top ten carriers in West Virginia by premium dollar. But then Liberty Mutual [apparently a duplicative response] also submitted a third response. We are going to take a look at it but we're assuming all the responses are basically the same because it's essentially one company, so we're going to back out two of them and just use the main Liberty Mutual response for their two subsidiaries, and then back out the extra one.

For Travelers there was someone that responded with the name "D" in the survey, and we're assuming it was just an error when they responded to the online survey mechanism. We believe – and we are going to work with the WVUSHE to confirm this – but we believe that represented the Travelers companies, and they have two in the top ten as well – two subsidiaries. We are going to back one of the Travelers surveys out once we confirm its "D." We can probably do that by just seeing who. . .they're supposed to leave their contact information. We will confirm that they have an e-mail with Travelers or Charter Oak or something like that. Once we confirm that, we are going to use one Travelers response to represent the two in the top ten for the Travelers subsidiaries.

Then the other two issues – Southern Insurance was actually a subsidiary of FirstComp which is in the top ten. So apparently what happened is they directed FirstComp to do one and also Southern Insurance, and that's a subsidiary that doesn't really write comp in West Virginia. That will be backed out, the Southern Insurance response, and we'll just count FirstComp's response.

We believe Markel Insurance Company is a subsidiary of one of these top ten companies. We were not sure which one, but we haven't been able to identify it by researching it. So we are assuming it is a subsidiary of one of these companies that thought they had to respond [a duplicative response]. We are going to back that out.

Ultimately we're backing out five of the thirteen responses, and with the response for Liberty Mutual and Travelers counting as two – for their two in the top ten each. So we will have eight responses reflecting the top ten carriers. That's a little bit complicated, but you know when you have thirteen responses come in and you're supposed to get ten, it takes some working through.

Mr. Hartsog: How did we get down to eight again?

Mr. Sims: It is confusing. Travelers and Liberty Mutual – to cut to the chase – they have two subsidiaries that both rank in the top ten, as far as writing premium dollar. There are two Liberty Mutual affiliated companies ranked in the top ten and two Travelers companies that rank in the top ten.

Mr. Hartsog: And each one of those responded twice?

Mr. Sims: Well actually Liberty Mutual responded three times. Their two subsidiaries responded – the two correct ones – and then there was a third response that came in from Liberty Mutual, and we're not sure why.

Mr. Hartsog: I can understand why you would throw out the third response, but why wouldn't you include the responses from the two. . .

Mr. Sims: Our idea is similar to the self-insured realm where we are just going to count the parents' response as applying to both subsidiaries. Our idea was to do the same thing.

Mr. Hartsog: Will you collectively put those premium dollars together and **weight** them from both subsidiaries?

Mr. Sims: We would combine premium dollar. . .for example, I think Liberty Mutual, can't remember right off. . . they have two subsidiaries. We would take the premium dollar for both of them and combine them and then probably footnote that.

Mr. Hartsog: Okay. Does that mean we should send out questionnaires to two other carriers to get ten?

Mr. Sims: Well, after you get through the top ten the amount of premium dollars is so miniscule I'm not sure that it would be statistically beneficial to go beyond the top ten, and that's why we used two subsidiaries of the same company.

Mr. Hartsog: I understand how you got down to nine now. So how did you get down to eight? What was the other one?

Mr. Sims: Travelers has two – same situation. Are you saying start from the thirteen? We backed out Southern Insurance and we backed out Markel Insurance. Those were two duplicative responses, so that got us down to eleven. Liberty Mutual submitted three, and we only need one from them, so that gets you down to nine. And then Travelers submitted two, and we believe we only need one from them because they are representing two subsidiaries – so that gets you down to eight.

Mr. Hartsog: So for each one of those that's representing multiple subsidiaries you're going to combine the premium dollars, the number of participants, and all that stuff together for the whole entity and not just let it represent one subsidiary and not the other subsidiary. Correct?

Mr. Sims: I think that's what we're contemplating right now. If it is the Industrial Council's preference to list each entity separately we could also do that. And the thinking is they just run the same safety program.

Dan Marshall: Do we in fact know that they run the same programs with respect to two separate subsidiaries of a carrier or particularly separate subsidiaries of – let's say by way of example – a mining company? Are you going to look to see whether they are in fact the same, and if they are not the same then set them up separately? Because if you don't it seems like the data might be tainted somewhat.

Mr. Sims: What we presumed when we sent out the self-insured survey is when one large parent coal company, for example, responded, that they were responding on behalf of all their subsidiaries. When we sent the survey out I think we included information noting to them that they could either respond on behalf of all subsidiaries – just as a single response – or they could respond separately for each subsidiary; meaning if they had a separate program from each subsidiary. For example, if they have five subsidiaries they could submit five responses. Consol submits one response, but that's the response for their five self-insured subsidiaries, or however many they have.

Mr. Marshall: But if, in fact, a given company responds subsidiary by subsidiary, are you going to look for data to confirm that their programs are the same and not different through the various subsidiaries? Because in the real world that's certainly a possibility. A large company could acquire another company and they haven't yet integrated their systems in that regard. I think Kent could probably speak to that better, but it occurs to me that is a possibility.

Mr. Sims: Is the question that if we received. . .for example, one company has three subsidiaries and decides to submit three separate responses. Are we going to check to make sure that they are in fact all different safety programs?

Mr. Marshall: Correct. Yes.

Mr. Sims: I don't think we intended to do that. We assumed that they would be different safety programs because we explained to them in the e-mail, "If you have the same program for your subsidiaries you can submit one response." We assumed the company wouldn't. . .

Mr. Marshall: If they did in fact submit multiple responses that would give rise to an inference that the programs among these subsidiaries might be different. I think it ought to be looked at, at least to validate one way or another.

Mr. Sims: To confirm that they are different.

Mr. Marshall: Correct.

Mr. Sims: Okay.

Mr. Marshall: Or confirm they are the same.

Mr. Sims: It is certainly something we can instruct the Safety and Health Extension to do.

Mr. Hartsog: In my opinion he is right. When you're just automatically combining things or taking one response at face value – and especially if it's a significant response that swayed all the stats that are in these reports – it would be good to confirm that they're in fact the same and if the programs cover all of these employees or not. You know I know our most recent acquisition it took us a couple of years to kind of get the programs combined, and then some companies have different safety programs with subsidiaries for a lot of reasons. It could be a different industry; they could be different

geography; could be completely separately managed autonomously. I mean there are a lot of reasons they could be, and I think it would be worthwhile to be in touch with them and make sure that what we're thinking and not assuming is correct.

Mr. Sims: So the request is that we contact every company that submitted separate subsidiary reports [rather than a single report] to confirm that those companies all do in fact have different safety programs; and then also to contact the large parent company and confirm that they did intend to reflect that they had a single safety program for all five of their self-insured subsidiaries [or however many].

Mr. Hartsog: That's my interpretation for what we are requesting. Dan, does that sound right?

Mr. Marshall: Yes. I think so. You can probably get some pretty good understanding of that by laying them down side-by-side and doing a side-by-side comparison. Is the data the same or is it different? If the data is different one subsidiary to another, you can be pretty certain that there's some variance in their programs.

Mr. Sims: Right. Just for clarity sake. . .what we did in the actual survey, the first question was [other than stating the name of your company], "Are you reflecting that this safety program in your answer is for all of your subsidiaries?" We actually had that question. But unfortunately a fair number of the respondents did not respond to that particular question. Some of them did answer that, and for the parent they said, "Yes, we are responding that this program is used for these subsidiaries." But some of them did not. It sounds like what you're saying for those – for the ones that did not respond to that question and we know to have subsidiaries [self-insureds] – you want us to check with them and say, "Is this the safety program you are using for all of your subsidiaries [on that side]?"

Mr. Hartsog: At a minimum, unless what Dan just mentioned – when you do some comparing or looking there's reason to think that there might be some inconsistencies that you need to ask about.

Mr. Sims: On the parent side comparing. . .

Mr. Marshall: The parent to the subsidiaries or the subsidiaries one to another.

Mr. Sims: Okay. The only thing is with the parents they've only submitted one response.

Mr. Marshall: I'm not suggesting that you go back. If a company responded for itself and its subsidiaries, I think that's sufficient because the way you phrased your questionnaire, "Is it consistent over all of your operating entities?" But where you got multiple responses and where your original intention was to just combine them wholesale, I think you need to go back and approach them individually, verify whether or not the programs are different subsidiary by subsidiary. I mean that could very well be the case with your carriers as well. As Kent said, these businesses whether they are carriers or coal companies or whatever, a lot of times they operate with autonomous management and different policies. They are not necessarily consistent because they're combined at the top in a corporate pyramid.

Mr. Sims: For clarity sake. . .the ones, for example, a company has three subsidiaries and they've submitted three separate responses. You want us to confirm that each one of those responses is in fact different and isn't the same program.

Mr. Marshall: Yes.

Mr. Sims: Okay. But on the parent side is it also your request that – and I just want clarification so we can go back and do this work – on the parent side if one parent coal company submits one response and they have five self-insured entities. . .

Mr. Marshall: You only got one response. We'll assume they combined the data, one way or another.

Mr. Sims: It was for all. . .

Mr. Hartsog: I agree as long as they responded to your question that they are responding for all of them. If they skip that question and didn't answer it, even though it's probably reasonable to assume, I wouldn't make that assumption.

Mr. Marshall: No. You need to go back and confirm it.

Mr. Hartsog: Because you could have a person that was responding that's employed by one subsidiary. He's just responding for him and skipped the question. Unless you're sure that the person has broad responsibilities for all five subsidiaries. You kind of see what I'm driving at.

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Mr. Sims: On the parent side you want us to . . .if they didn't answer that question and they didn't state the subsidiaries or responded, you want us to contact their contact person and say, "Was this intended to be the response for all of your subsidiaries?"

Mr. Hartsog: For clarity.

Mr. Sims: For clarity purposes. Okay. That works.

Mr. Hartsog: One other quick question. Are the respondents in this, based on putting this together and doing this is included in the statute, is this voluntary to respond to these questionnaires?

Mr. Sims: No it is not. According to the Code under §23-2C-5 it is a mandatory duty for them to respond under the law.

Mr. Hartsog: Thank you.

Mr. Sims: With that I'm going to present Mr. Mark Fullen who heads the West Virginia Safety and Health Extension. To give you a brief background on him – Mr. Fullen is the Program Leader for the Safety and Health Extension as well as an Associate Professor at West Virginia University. He brings 18 years of occupational, safety and health experience to his position. Most recently he has conducted Intervention Research in the areas of dramatic injury reduction in construction and utilizing new media to deliver training to hard to reach workers. He has worked as a Safety Professional for construction companies in the Petrochemical Industrial and Bridge Construction Industries. Mark has a B.S. in Safety Engineering, an M.S. in Occupational Safety and a Doctorate in Technology Education. Again, he heads this Department. He, along with some of his colleagues, has been very helpful with us in this joint venture, and I will now turn the floor over to Mr. Fullen.

Mark Fullen, WV Safety and Health Extension: I'll take any questions related to the data. If you have any, I guess. If you want a little bit of a background about how the relationship was started. We got a call from the Medical Director, Dr. Becker, about working with this group to do this survey. It was done internally, I guess two years ago. So we basically just – due to time constraints and when we started the process – we just agreed, and also for consistency of data, to use for the most part the same survey that was conducted two years prior so that we could over time start to look for trends across the surveys from one survey to the next. To just somewhat respond to the conversation that just occurred, I think we can do what the request was related to kind of sub analysis of, if we know that one company submitted separately for their

subsidiaries, we can pull those subs out and kind of compare them side by side. There is not really a question in the survey that lets us know if a company, as you had suggested, if they leave that blank. Then the question is really about just who your subsidiaries are. It wasn't really about consistency across programs. There will have to be some real communication with them to make that determination versus just reanalyzing the data. It's going to have to be some call backs.

I hope you guys have had time to look over the survey and if you have any questions on any of the data. . .there are some anomalies and outliers in here that we are working on as we go from draft to final. If you have any suggestions for us we will take those back and roll in the changes that Ryan has already discussed, as far as backing out some of the respondents. Do you have any questions? I'd be glad to take them?

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

Mr. Hartsog: Yeah, a couple comments on the report. But are you suggesting that you will not be able to gain the clarity on the responses as Ryan here was suggesting?

Mr. Fullen: No, I think what I was suggesting was we can't gain all the clarity with just the data set. We are going to have to go back and make calls because the survey as approved doesn't get to the questions that you guys proposed. So it will be an additional data point that we are going to have to identify.

Mr. Hartsog: Okay. I just wanted to make sure that that was going to get incorporated. Were there any plans to provide any conclusions or suggestions with regard to the data and responses in the draft? Are we doing really great or are we doing really bad or can you provide any kind of conclusions or other information?

Mr. Fullen: I was talking to Ryan about that and for the most part the agreement, the contract that we agreed to with this department, was to really just analyze the data. We can make some conclusions and compare across industry standards related to the occupational safety and health side of things. That's really where our expertise lies. When it moves over to the insurance side that is something that we are not really prepared to have a conclusion on.

Mr. Hartsog: Well I understand that. Any kind of help with regard to where we are at regarding safety programs, and I feel probably pretty strong on the self-insured side that there are larger companies that probably have good programs, established

programs in that regard; but potentially programs not that strong with the smaller companies. If there is any indication of how the carriers interact with the companies that they represent and any ability there to make suggested improvements or anything that we should be looking at as an Industrial Council would be helpful.

Mr. Fullen: Okay. Yes. We can definitely add some detail there.

Mr. Hartsog: I have a number of suggestions. Do you want me to just go down through line by line? Is that how we want to do it?

Chairman Dean: Yes, go right ahead.

Mr. Hartsog: Okay. In the executive summary there was a pound sign after West Virginia. I wasn't sure what that was, if that was just an extraneous mark that was going to be taken out on the front. I'm looking at the carrier safety report.

Mr.: Right, right.

Mr. Hartsog: Besides West Virginia, is that just an extraneous mark or does that mean something?

Michael Riley, Commissioner, OIC: I was just going to assume it was the number of respondents.

Mr. Fullen: Yeah I think we were just kind of trying to wait until we kind of cleared up those final numbers. So as this was the draft we were working toward that.

Mr. Hartsog: So it is just a placeholder?

Mr. Fullen: Yes, exactly.

Mr. Sims: That's correct.

Mr. Hartsog: The other thing, and this is a personal preference. I know you have got it parenthetically indicated that WC means workers' compensation carriers. If you could just spell that out and make it clear so that that it reads, "the majority of West Virginia Workers' Compensation Carriers have a unit solely" instead of "WC." And going down to question one, and you talked about you have thirteen responses here, but everywhere else I think the other questions generally refers to that there are only twelve responses.

Mr. Fullen: Which page are you on there?

Mr. Hartsog: I am on page one, question one, "name of carrier" at the bottom. The pages aren't numbered.

Mr. Fullen: They are not numbered?

Mr. Hartsog: No, not what I have.

Mr. Fullen: Oh, okay. The one we have is.

Mr. Hartsog: On the summary of the workers' compensation carrier survey responses question one.

Mark Fullen: Okay.

Mr. Hartsog: I think this is what Ryan was referring to earlier, that there were thirteen responses.

Mr. Fullen: Okay. Yes.

Mr. Hartsog: And there the next pages all indicate twelve responses, and I'm not sure where that went.

Mr. Fullen: Typically what would happen is, of the thirteen if they left that blank, which they could just leave that cell empty, then we only have twelve of the thirteen responses. So they could give us their name on the first question and on the second question, name and address. They didn't provide it, so then there were only twelve of thirteen. Well for this survey it pretty much stays consistent at twelve. But if you look at the self-insured it varies a lot depending on the question we asked.

Mr. Hartsog: Well if I go to question three, as an example, there are twelve responses but you have a spot down at the bottom that says "no answer provided" as 0.

Mr. Fullen: That would be the thirteenth.

Mr. Hartsog: So you should have a "one" there.

Mr. Fullen: Yeah, I guess so. And again I'd have to look at the actual raw data to give you the right answer there, but that is a good point.

Mr. Hartsog: There are a number of points like that through here. If you go down to number four, you have the same thing. You have twelve responses. Then when you go down under "raw responses" and it gives you brackets of premium dollars, you have three or four of these responses with premium dollars less than half a million dollars. And if you are surveying the top ten. . .intuitively it seems how can you have that many of your top ten with premium dollars less than \$500,000.00?

Mr. Fullen: Right. I agree. This is one where someone responded with \$1.00 and someone responded with \$50.00. So we have some outliers there that we don't really have the answers to yet.

Mr. Hartsog: Are these things you are planning to correct?

Mr. Fullen: Yes. We are working along with the folks here to try to figure out the best way to. . .I mean this report was really the initial analysis of the data as a draft and we are trying to work through all of those other little details. And again, we don't know what the person meant by that, so we've got to go back and figure that out.

Mr. Hartsog: Well it would seem that getting those clarified are pretty important. Or getting this report correct is very important.

Mr. Fullen: Oh, absolutely, right.

Mr. Hartsog: Okay, we are on the same page. If you look at question five, six and seven, no answer provided. It would appear throughout that there are a number of people that didn't respond to certain questions when you look at it in total. Is that something we are going back to try to get answers? Or are we just going to just not? I mean if they should be answering and we are relying on this information, and we are trying to use it, and I'm sure the Commissioner is going to be presenting this to the Legislature. I'm sure they are going to be looking at it with regard to what do we need to do collectively to try to keep improving the programs in West Virginia. It's kind of hard if you don't get the data, and if they are compelled to give the data.

Mr. Fullen: Right. I mean I don't know the best way to answer that. Just that typically with survey data you are going to have some disparities on all the questions answered or not. That is something we can talk with these folks here about (OIC).

From our perspective it was made clear to them that they needed to answer all the questions. Some didn't and some did.

Mr. Hartsog: I understand having a few outliers occasionally. But it seems like there are quite a few people that didn't respond, and when you have ten or twelve people that you are asking, that's a concern. So if you guys would could talk about that.

Mr. Fullen: Yes.

Mr. Hartsog: If you look at question eight. . .if I look at the response, General Consulting has three under frequency and Risk Services have two. You have five that answered, which the number there is seven.

Mr. Fullen: Yes. There are probably two that didn't fall into one of those two categories by answer. So we will just have to figure out what that is. And maybe it would just be "other" by category. We will have to figure that out.

Mr. Hartsog: Okay. There may be a couple other categories that may need to be added?

Mr. Fullen: Well it could have been so minimal. I will have to look at the data. Might have been not worth reporting if they just said "other" or something that we didn't have enough detail to know what that meant.

Mr. Hartsog: So somehow we should probably have another caption that captures those two. Sundry, other, *de minimis*, whatever is appropriate.

Mr. Fullen: Okay.

Mr. Hartsog: Question nine on the next page. There is a note down there kind of at the bottom before the box that says, "It is assumed that those who did not respond to this question do not use NCCI's scheduled rating plan." This may not be a question for this time but maybe for the future since we've already sent this out. Why wouldn't we just ask that question, "yes or no," and say, "Do you use NCCI's scheduled rating plan?"

Mr. Fullen: Yes, we could do that for the next one.

Mr. Hartsog: Instead of making an assumption.

Mr. Fullen: Yes, that could be the lead in questions, "yes or no" and if "yes" then answer the next question.

Mr. Hartsog: And flipping on over to question twelve. That is another one where the math didn't work when you take the six and three and the eight.

Mr. Fullen: Yes, you are right.

Mr. Hartsog: And then on thirteen, when I look at. . .well first off you have question thirteen and question three.

Mark Fullen: Oh, okay, yeah. This one. . .

Mr. Hartsog: I wasn't sure what those in that box. . .I wasn't sure what those columns meant or what they were. And I thought maybe some headings there would be appropriate.

Mr. Fullen: Yes, that's a good point. This one you basically have to use the number provided to us in question three as an average to come up with the percentage. I have to go back and look at this again. I reviewed that yesterday because it was confusing. We will add some language to clarify that.

Mr. Hartsog: Please. I still don't know what that box is intended to represent to draw any conclusions from it.

Mr. Fullen: Basically it means that 14% of the insured employers regularly utilize the safety and loss programs. That's the resulting data there.

Mr. Hartsog: Part of question fourteen at the top of the next page, you have three people who basically said they don't have any premium. That they had zero premium dollars?

Mr. Fullen: Yes. Well. . .

Mr. Hartsog: Then another one at \$64,560.00 and one at \$117,000.00. I mean for your top ten guys I'm not sure that's logical.

Mr. Fullen: If they answered in the previous question that none of their insureds used that then that could represent zero dollars to them.

Mr. Hartsog: Say that one more time

Mr. Fullen: Question fourteen is referring back to question thirteen. What amount of premium dollars does this represent? The West Virginia insured employers regularly utilize the safety and loss programs. So if a respondent from question thirteen would say that zero percent of their insureds utilize the safety and loss programs then zero premium dollars went toward it.

Mr. Hartsog: To me that would draw a significant conclusion that you have a top ten insurance carrier then that none of their companies that they represent has a safety and loss program, which would be a pretty significant finding to me.

Mr. Fullen: Yes. Well they are not saying they don't have a safety and loss program. They are saying that the employers that they ensure haven't utilized it. But yeah, definitely.

Mr. Hartsog: So those numbers, even having one at \$64,560.00, maybe they didn't. . .I don't know. The responses just don't seem to intuitively make sense. And maybe they are absolutely right. They just don't appear to. . .Question seventeen, that's kind of the same thing. You've got nine respondents. You've got three that didn't respond and again you have three that had no premium dollars. So, it would be easy for someone, if they wanted to, to read this and jump to the wrong conclusion potentially, and that's also what we are worried about. In question eighteen, the frequency you have three and two and then you have answered nine.

Mr. Fullen: Say that again, I'm sorry.

Mr. Hartsog: If you're on page eighteen and you look in the box it has frequency of three and same or greater than other states "two," then you have totaled that answer as nine.

Mr. Fullen: Right.

Mr. Hartsog: The nine and three make twelve. You see what I'm saying.

Mr. Fullen: Yes. And again I'll have to go back and look at that. It doesn't necessarily mean that. You know, it's just that error in survey reporting. It could be answers that we couldn't necessarily count, so we will just have to go back and clarify that.

Mr. Hartsog: Okay.

Mr. Fullen: We can just do that across all the questions – clarify if there are differences and what they were.

Mr. Hartsog: Ready to move on the self-insured report.

Mr. Fullen: Yes. The longer one.

Mr. Hartsog: I don't have as much blue ink on this one as the other one.

Mr. Fullen: Good. It's a longer report.

Mr. Hartsog: Although my friends over here may have more blue ink. In the executive summary, it says the survey results indicate that 96% of West Virginia self-insured employers have a written safety and loss program. Self-insured employers, I think, are statutorily required to have a safety and loss program. So, if we say 96% of them have it, then either we have some that don't that need to be followed up with and have someone talk with them or there is some reason that they didn't respond to a question or some reason that 96% is there instead of all of them.

Mr. Fullen: I mean, in looking at this from survey analysis and reporting standpoint, that's what the number said. I don't know if it's our role to do follow up questions to adjust for those 4%. That's the data that we got. That's a pretty high percentage, I know you are saying it should be 100%, but in reality we know that there are companies that don't have them.

Mr. Hartsog: No, what I think I'm pointing out is that if there is truly a company that responded that they didn't have one, then I think that's probably a follow-up point. On page four, at the bottom of all the boxes it has ABA and XXX.

Mr. Fullen: Right. Those were two that we are going to back out. They were survey respondents and that is what they listed as their company name.

Mr. Hartsog: Those are the couple that you talked about before, that you're going to change that and fix that.

Mr. Fullen: Those are the two that Ryan had said that we are going to back out. Yes.

Mr. Sims: Right. I referenced those. Those are the two that we called "incomplete" because they apparently started the survey and didn't complete it.

Mr. Hartsog: Okay, got it. On page twelve under question thirty-two. I'm sure you've heard this before having proofread a lot of documents over the years. The lines are just off. The lines and the numbers need to be lined up.

Mr. Fullen: Oh, okay. I see what you are saying.

Mr. Hartsog: That was just a nip.

Mr. Sims: Which question was that on?

Mr. Hartsog: Thirty-two. The eighty-five just needs to move. . .

Mr. Sims: Okay, yeah, I see.

Mr. Fullen: That's an easy one.

Mr. Hartsog: And again, and I'm not sure, and OIC can I guess provide some too. Because I guess you will end up presenting this down at the Legislature too with regard to what you want to do with regarding compelling and getting some better or perhaps clearer responses and devoting some resources to do that. I would hate to put out something that we end up getting some misleading information.

Commissioner Riley: I agree 100% and we certainly won't do that. There will be a review by our people also to make sure the data we see there makes sense. And that the report itself is clear and that people aren't drawing the wrong conclusions from it.

Mr. Hartsog: Thank you, Sir.

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

Mr. Marshall: I agree with everything that Kent said. It seems to me we have a necessarily small group of people that we have surveyed here and I think that makes it especially important that when we see these anomalies that we go back and get the necessary confirmations and clarifications and so forth. I think that is well within the purview of the contractual agreement with your agency. So I would urge you to do that because what we all want to have at the end of the day is a useful product.

Chairman Dean: I have no questions.

Mr. Hartsog: I would ask, Mr. Chairman, that an updated draft, whenever it's ready, get returned to us before the meeting so we will have the ability to review another draft before we go final.

Chairman Dean: Ryan, can you get it cleaned up and back to us?

Mr. Fullen: Yes, sir. Absolutely.

Chairman Dean: Very good. Appreciate it.

5. General Public Comments

Chairman Dean: Does anybody from the general public have a comment today?
[No comments.]

6. Old Business

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

Mr. Hartsog: No, sir.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Commissioner Riley, do you have anything?

Commissioner Michael Riley: No, sir.

7. New Business

Chairman Dean: Seeing none, we'll move onto new business. Does anybody from the Industrial Council have anything they would like to bring up under new business? Mr. Hartsog?

Mr. Hartsog: No, sir.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Commissioner Riley, do you have anything?

Commissioner Michael Riley: No, sir.

8. Next Meeting

Chairman Dean: The next meeting will be a special meeting on Safety Study on Thursday, June 21, 2012, at 11:00 a.m. Is that doable for everybody? The only one I know that may not be here is Mr. Dissen. So, that will be our next meeting.

Our next regular meeting will be Thursday, July 5, 2012 at 1:00 p.m. Is that doable for everybody? Okay.

9. 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. Hartsog: Second.

Chairman Dean: A motion has been made and seconded to go into Executive Session. Any question on the motion? All in favor signify by saying "aye." All opposed? The aye's have it. [Motion passed.] We are in Executive Session.

[The Executive Session began at 2:02 p.m. and ended at 2:26 p.m.]

Chairman Dean: We will reconvene the regular session. We have a Resolution before us to improve the self-insured status of Atlantic Development and Capital, LLC. Is there a motion to approve?

Mr. Marshall: So moved, Mr. Chairman.

Mr. Hartsog: Second.

Chairman Dean: A motion has been made and seconded to approve the self-insured status of Atlantic Development and Capital, LLC. Any questions on the motion? All in favor signify by saying "aye." All opposed? The aye's have it. [Motion passed.]

10. Adjourn

Chairman Dean: 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 2:28 p.m.