

WORKERS' COMPENSATION INDUSTRIAL COUNCIL

JUNE 26, 2014

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, June 26, 2014, 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 1:00 p.m.

2. Approval of Minutes

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

Dan Marshall made the motion to approve the minutes from the May 22, 2014 meeting. The motion was seconded by James Dissen and passed unanimously.

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

Judge Alan Drescher: I'll be brief. Just a few things I want to point out from the Office of Judges' Report. We acknowledged 376 protests for the month of May, which brings our total so far for this calendar year to 1,766. We are continuing our trend of the number of protests going down. This is mainly led by the Old Fund diminishing the number of protests involving their orders. As you can see, protests to their orders only accounted for 7.45% of the total protests received at our office for the month of May.

I want to note that our pending caseload was 3,100 as of June 2, 2014. This has been consistent for the last year. It has been between 3,228 and 3,072. Our Time

Standard Compliance continues to be good. The resolution of our motions and our decisions, again, are in good shape in terms of timeliness. In terms of the Failure to Timely Act Process, we've had 53 petitions filed for this calendar year; and we had 69 requests for Expedited Hearing Protests for this calendar year. I would be happy to respond to any questions.

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

James Dissen: I do not, sir.

Chairman Dean: Mr. Hartsog?

Kent Hartsog: No.

Chairman Dean: Mr. Marshall?

Dan Marshall: No, Mr. Chairman.

Chairman Dean: Thank you.

4. General Public Comments

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

5. Old Business

Chairman Dean: Let's move onto old business – Safety Study Report, Mr. Pauley.

Safety Study Report – Andrew Pauley

Andrew Pauley, General Counsel, OIC: Thank you. Just briefly, as you know, we are required to file a report every two years with the Legislature concerning the Safety Survey. You have before you a binder which has the results. We employed West Virginia University Health and Safety Extension, and we have that gentleman here as well if you have any questions. You received drafts of this at the last meeting. There really has been no substantial changes to it other than there was one party that was saying they did not have a written safety report, and we discussed the situation with

them. They changed their answer because they do have a policy that is sufficient to keep them in self-insured status. Other than that change, there was some cleanup and some minor changes concerning just syntax of the reports; lining up the number of self-insured employers we have, which might have been different in each of the reports; those kind of things. The actual report has to be submitted by July 1, which will be next Tuesday. Whatever you would like to do. .if you would like to take time to look at it. WVU Extension is here. If you would like for him to summarize his findings, he would be happy to do that – whatever the Council wishes.

Chairman Dean: Mr. Dissen, do you have questions about the report?

Mr. Dissen: How long do you think it would take you to summarize it?

Mr. Pauley: I am sure he could be brief.

Mark Fullen, WV Health and Safety Extension: Five minutes. I appreciate everyone having us here. We did this report two years ago. Prior to that the report was done manually, and it was paper reports. These last two have been done through online surveys.

The conclusions from the insurance carriers were that the majority of the carriers – 91% that responded – reported that they offer safety and loss control services to the folks that they insure. A majority of the comp carriers have a unit solely dedicated to safety and loss control efforts; 73% of the carriers offer regular safety audits to the companies that they insure; 73% also rate West Virginia employers to be equal to employers in other states that they do business with in regards to effective use of safety and loss control programs and implementation. As far as the self-insureds – all that responded have a written safety and health program. There was one outlier we had communication with, and we cleared that up. The primary industries that were represented were manufacturing, retail, trade, mining, transportation services, and public administration.

The companies were asked what three elements of the safety program are most effective in reducing injuries and illnesses. Their responses were: (1) providing safety training; (2) promoting safety, which is a broad response, but we can dig into that a little deeper; and (3) emphasizing commitment and responsibilities. The vast majority does training. They conduct training internally to address the major hazards in their specific workplace. That was 94%. They make training mandatory – almost 90% of the folks responded. They develop specific training curriculum to address the hazards – 95% responded to that. Almost all are conducting their own safety training. Only 67%

conduct both initial and refresher training. If you have a new employee come on board, 67% of the companies are offering training before they go to work. It would be nice to see that number higher because there is that time lapse when you first start a job that you are more likely to be injured than not. Ninety-seven percent indicated that they undergo a regular external safety audit, so almost all of them do safety audits. Eighty-four percent have at least one full-time person that is dedicated to safety and health, and that is their responsibility. That has increased from 68% in 2012. That's a very good jump in having someone on site that is responsible for safety and health program implementation. The increase is significant and may be the impetus for the increase in the other areas of safety management found in the survey. Eighty-one percent of the self-insured employers responded that they have a written return-to-work program. Ninety-six percent have a written policy regarding drug and alcohol testing. There is evidence that shows there is a direct link to having that program and having a reduction in injuries on the work site. And that was an increase from 75% in the 2012 report. Other than that, that's the conclusions of this report. If anyone has any questions about this report or how to move forward thinking about the next two years, we can talk about that.

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

James Dissen: Commissioner, you are satisfied with this scope of the report?

Michael Riley, Commissioner, OIC: I am, sir.

Chairman Dean: Mr. Hartsog?

Kent Hartsog: Do we know if the Legislature uses this for anything or what they do with this after they get it? Let me ask Mr. Pauley. . .did the couple of comments that I made get incorporated in?

Mr. Pauley: They did.

Mr. Hartsog: Okay.

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

Dan Marshall: No, Mr. Chairman.

Chairman Dean: Very good, sir.

Mr. Fullen: Thank you very much. I appreciate it.

Chairman Dean: Title 85, Series 1 Amendments. . .Mr. Pauley.

Title 85, Series 1 Amendments – Andrew Pauley

Andrew Pauley, General Counsel, OIC: Thank you, Mr. Chairman. Just a brief update. . .There has been some discussion about what's going on with the rules. As you remember, at the last meeting this Council approved of moving forward with Amendments to Rule 85, Series 1, concerning Access to Justice issues of attorney acknowledgement and claim file copies. We will be required to have a Public Hearing in regards to that matter, and there was not appropriate timing to get that done by this meeting today. We were previously scheduled not to meet in July and August. We still need the Revenue Secretary's approval and the Governor's approval, and we have not received that at this point. I don't think you should read anything into that. It just has not been done. Mainly because there is an approval period right now for Legislative Rules, and the Governor is kind of swamped getting the approval for Legislative Rules for 2015 approved and moved forward. Our intention right now is to file these with the Secretary of State for comment, assuming approval from Revenue and the Governor's Office. Around the first of August there will be a 30-day comment period from August to September 4, which would be the next meeting of the Industrial Council. At that meeting on September 4, we would hold a Public Hearing on any further comments or discussion concerning the rules. Unless there is an objection to that, that's our intention on moving forward on the rules, and to get notice to interested parties that may look at the minutes or have additional information.

Chairman Dean: Very good. Any questions, 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: Thank you.

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Mr. Hartsog: Mr. Chairman, do we need a motion for the Safety Report to get filed with the Legislature, or was it okay with what we did?

Mr. Pauley: It wouldn't hurt.

Mr. Hartsog: So moved.

Mr. Dissen: Second.

Chairman Dean: A motion made and seconded to approve the Safety Study as presented. Question on the motion? All in favor, "aye." All opposed, "nay." The aye's have it. [Motion passed.]

We are still under old business. Does anybody from the Industrial Council have anything they want to bring up under old business?

Chairman Dean: Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No, sir.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No.

Chairman Dean: Commissioner?

Commissioner Riley: No, sir.

Chairman Dean: Mr. Pauley?

Mr. Pauley: No, sir.

6. New Business

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

Mr. Dissen: It came to my attention, prior to the meeting, that Judge Drescher's wife had passed away in May. On behalf of the Council, I would like to offer our sympathy and condolences.

Chairman Dean: Very good. Mr. Hartsog, do you have anything?

Mr. Hartsog: No, sir.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Commissioner, do you have anything under new business?

Commissioner Riley: No, sir.

Chairman Dean: Mr. Pauley?

Mr. Pauley: No, sir.

7. Next Meeting

Chairman Dean: We'll move onto next meeting. The next meeting will be Thursday, September 4, 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

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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. Dissen: So moved.

Mr. Marshall: Second.

Chairman Dean: A motion has been made and seconded to go into Executive Session. Any question on the motion? All in favor, "aye." All opposed, "nay." The aye's have it. Motion passed. We will now go into Executive Session.

[The Executive Session began at 1:16 p.m. and ended at 1:35 p.m. The regular meeting of the Industrial Council resumed at 1:36 p.m.]

Chairman Dean: The first Resolution is for Murray American Energy, Inc., to be approved for self-insured status. Is there a motion to approve?

Mr. Dissen: So moved.

Mr. Marshall: Second.

Chairman Dean: A motion has been made and seconded. Is there a question on the motion? All in favor, "aye." All opposed, "nay." The aye's have it. [Motion passed.]

The second Resolution is for the renewal of self-insured status for the thirteen companies on page three. Is there a motion for approval?

Mr. Dissen: So moved.

Mr. Hartsog: Second.

Chairman Dean: Questions on the motion? All in favor, "aye." All opposed, "nay." The aye's have it. [Motion passed.]

9. Adjourn

Chairman Dean: Is there anything else that needs to be brought up before adjournment under the regular session? Is there a motion for adjournment?

Mr. Dissen: So moved.

Mr. Marshall: Second.

Chairman Dean: A motion has been made and seconded to adjourn. Is there a question on the motion? All in favor, "aye." All opposed, "nay." The aye's have it.

There being no further business the meeting adjourned at 1:37 p.m.