

**DRAFT**  
Council on Worker's Compensation  
Meeting Minutes  
GEF-1 Building  
Madison, Wisconsin  
March 29, 2012

Members present: Mr. Beiriger, Ms. Bloomingdale, Mr. Brand, Mr. Buchen, Mr. Collingwood, Ms. Connor, Mr. Kent, Mr. Metcalf, Ms. Nugent, Mr. Olson, Mr. Redman, and Mr. Schwanda

Staff present: Mr. O'Malley, Ms. Knutson, Mr. Aiello and Mr. Krueger  
Excused: Ms. Pehler and Ms. Thomas

**1. Call to Order/Introductions:** Mr. Metcalf convened the Worker's Compensation Advisory Council (WCAC) meeting via teleconference at approximately 10:15 a.m. in accordance with Wisconsin's open meetings law. WCAC members, staff and members of the audience introduced themselves. Mr. Metcalf introduced Janet Jamieson, Ph.D., who was available as a resource for the WCAC members on the database audit.

Dr. Janet Jamieson provided her background in medical research and working with the California legislature, worker's compensation in California and the International Association of Industrial Accident Boards and Commissions (IAIABC).

**2. Approval of Minutes:** Mr. Brand moved to approve the minutes of the January 18, 2012 without correction; seconded by Mr. Kent. The minutes were unanimously approved.

**3. Database Audit Committee:** Mr. Metcalf indicated that Ms. Knutson will chair the audit committee. Management appointed Jeff Brand as their representative and Labor appointed Stephanie Bloomingdale as their representative with Mr. Schwanda as an alternate.

**4. Permanent Total Disability Study Committee:** Mr. Metcalf indicated that Mr. Aiello will chair the permanent total disability study committee. Management appointed Mr. Beiriger as their representative and Labor appointed Mr. Kent as their representative with Mr. Redman as an alternate.

**5. Work Injury Supplemental Benefit Fund:** Mr. Krueger presented a PowerPoint presentation explaining the revenue sources and various expenditures out of the Work Injury Supplemental Benefit Fund (WISBF), and trends regarding revenue, expenditures and the cash balance of the WISBF. The largest revenue source (number one on the PowerPoint) is payment of death benefits when the injured worker had no dependents. Dependency is determined at the time of death. If the deceased worker does not leave a surviving spouse or minor children, the entire death benefit (calculated as four times the worker's average annual earnings up to the maximum benefit) is paid to the WISBF.

Revenue Source Six refers to double and treble penalties for illegal employment of minors.

The largest expenditure (Expenditure One) is reimbursements to insurance carriers and self-insured employers for payment of supplemental benefits. Expenditure Two refers to barred occupational disease claims including occupational hearing loss. In order for benefits to be paid for compensation for barred occupational hearing loss, under Wis. Stat. §102.555 the loss of hearing must exceed 20% binaural hearing loss. Further, medical expenses are no longer payable for occupational hearing loss unless compensation is also payable.

There was an in-depth discussion regarding Expenditure Three – Second Injury Fund benefits. Mr. O'Malley explained that the Second Injury Fund has been in effect since 1919 – right after WWI. A footnote to the Act indicated that it was intended to pay compensation and act as an incentive for employers to hire employees with disabilities. If the employee was later injured, the employer would not be responsible for the resulting permanent total disability. Second Injury Fund benefits compensate for the cumulative effect of a work injury on a pre-existing disability (whether or not work-related). The Department of Justice is responsible for defending the WISBF, and they either agree to voluntary payments or benefits are awarded following a hearing. In 2011, \$647,581 was paid out in Second Injury fund benefits. Mr. Beiriger commented that the Americans with Disabilities Act (ADA) mitigates the need for this benefit. Mr. O'Malley further explained that the Court of Appeals in the *Green Bay Soap* case held that if someone has a pre-existing disability, and later suffers a work injury with the employee becoming permanently and totally disabled as a result of the work injury, the employee is not entitled to Second Injury Fund benefits.

Expenditure Four is benefits from the Children's Fund. Mr. O'Malley explained that the Children's Fund was enacted in 1923. In a number of states, the surviving spouse is paid for benefits as long as she/he lives. In Wisconsin, death benefits are paid out in 6 years, and there may still possibly be minor children in the household. Mr. Buchen questioned why the benefits to children are paid out of the WISBF, rather than being part of the underlying worker's compensation claim paid by the insurer or self-insured employer.

Expenditure Five is benefits for barred traumatic claims under Wis. Stat. §102.17(4), and includes payment for prosthetic devices, knee replacements and hip replacements.

Traditionally, there has been a lag in supplemental benefit reimbursement requests from carriers and self-insured employers. For payments made in 2012, the carrier/self-insured employer must request reimbursement by December 31, 2013. For payments made prior to 2012, all requests for reimbursement must be made by December 31, 2012.

Revenue Source Three involves the \$20,000 payment into the WISBF for dismemberments and fatalities. Since 2005, there has been an average of 13 dismemberments per year and 47 fatalities per year.

Court decisions also have an effect on the WISBF. The *Society Insurance* case involving the payment of barred traumatic claims will cost the WISBF an estimated \$3.1 million in benefit payments. While the Supreme Court decision did not state that the WISBF had liability for payments, just that the carrier was not liable for benefit payments for barred traumatic claims where the statute of limitations expired before April 1, 2006, the agreed bill provides that the WISBF will pay those benefits. In addition, the *MG&E* case, which involves stacking of permanent partial disability ratings in prosthetic replacement (i.e. hips and knees) cases, will result in additional benefit payments out of the WISBF.

Additional future financial stressors on the WISBF include payment of medical expenses in barred claims and possible reimbursement to the Center for Medicare and Medicaid Services for payments made by Medicare. The federal law provides that CMS is a secondary payer, while Wis. Stat. §102.66(1) provides that WISBF is supplemental to other payers, including federal programs.

The agreed bill provides that if the WISBF meets the encumbrance threshold, the Department has options for prioritizing or suspending benefit payments. The Department could promulgate an emergency rule if needed.

**6. Agreed Bill Update:** Mr. Metcalf reported Governor Walker is scheduled to sign the WC agreed bill on April 2, 2012.

The Labor and Management members of the WCAC went in to closed caucus session from approximately 11:30 a.m. to 1:30 p.m.

**7. Attendance Parameters:** Secretary Newson asked that the WCAC discuss in caucus attendance parameters for the WCAC. Ms. Nugent commented on the value of having the input of all WCAC members. Mr. Beiriger commented that continuity of attendance is critical and it affects the quality of decisions of the WCAC. Ms. Bloomingdale responded that it was a lively legislative year and both sides worked well together to finalize an agreed upon bill that was unanimously approved by the WCAC, which improved the worker's compensation system for both employees and employers. Mr. Metcalf commented that in talking with legislators, the WCAC is still held in very high regard; the WCAC has much to be proud of for their work this legislative session.

**8. Other Business:** On the issue of the financial state of the WISBF, Labor presented a preliminary set of proposals. Ms. Bloomingdale explained that Labor's proposals were meant to have an immediate as well as have a long term effect on the WISBF. Labor's proposals are as follows:

1. Reimbursements to insurers and self-insured employers for supplemental benefit payments should be discontinued (resulting in estimated savings of \$2 million);
2. Provide for assessments against carriers/self-insured employers for permanent total disability claims of \$20,000 per claim (generating approximately \$700,000 per year in revenue for the WISBF);
3. Provide that Children's Fund payments are to be paid as part of the primary worker's compensation claim by the insurer/self-insured employer, and no longer paid out of the WISBF;
4. Provide for assessments against carriers/self-insured employers for any part of a lesser dismemberment, i.e., part of a finger or toe;
5. Modify eligibility for Second Injury Fund benefits. Currently, in determining the minimum 200 weeks of pre-existing disability, employees may stack multiple pre-existing disabilities. Labor's proposal would provide that the minimum 200 weeks of pre-existing disability must be the result of one disability;
6. Modify the Social Security offset under Wis. Stat. §102.44(5) to provide that the benefit offset amount is paid to the WISBF.

Mr. Kent indicated that efforts should be made to reach out to the Legislature. Labor is ready to meet with the new legislators. With the assistance of the Wisconsin Insurance Alliance, Labor would like to produce a new DVD that would provide an overview of the WCAC process. A packet including the DVD and printed information will be provided to the legislators. The legislators will be requested to not introduce bills that are detrimental to the advisory council process.

The next meeting will be scheduled June 26<sup>th</sup> starting at 10:00 a.m. at the GEF-1 Building in Madison.

**9. Adjournment:** Motion by Ms. Nugent, second by Mr. Redman to adjourn. The motion carried unanimously and the meeting was adjourned at approximately 2:00 p.m.

*Next meeting: June 26, 2012.*