

Council on Worker's Compensation
Meeting Minutes
GEF-1 Building
Madison, Wisconsin
September 11, 2012

Members present: Ms. Bloomingdale, Mr. Brand, Mr. Brandl, Mr. Buchen, Mr. Collingwood, Mr. Ginsburg, Mr. Kent, Mr. Metcalf, Ms. Pehler, Mr. Redman, and Mr. Schwanda

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

1. Call to Order/Introductions: Mr. Metcalf convened the Worker's Compensation Advisory Council (WCAC) meeting via teleconference at approximately 10:00 a.m. in accordance with Wisconsin's open meetings law. WCAC members, staff and members of the audience introduced themselves.

2. Approval of Minutes: Mr. Brand moved to approve the minutes of the June 26, 2012 meeting without correction; seconded by Mr. Kent. The minutes were unanimously approved.

3. Meeting Calendar: The members discussed the meeting calendar for 2013. The WCAC decided to meet monthly on the second Tuesday of the month, beginning January 8, 2013.

4. Public Hearing Date: The public hearing has been tentatively scheduled for Thursday, December 13, 2012 with both afternoon and evening sessions. The public hearing will be conducted via videoconference, originating at the UW Pyle Center in Madison with connections to remote locations throughout the state.

5. Database Audit Committee: Ms. Knutson reported that the request for bids for the database audit will be posted on September 14, 2012, with the bids due on October 5, 2012. It is anticipated that a contract will be awarded on October 8, 2012 with the commencement of the audit on October 29, 2012.

6. Permanent Total Disability Study Committee: Mr. Aiello reported the PTD Study Committee met on June 28, 2012. The committee members discussed increasing supplemental benefit rates to a 10-year versus a 6-year lag. The committee requested that the WCD gather information on a number of issues including how other jurisdictions fund permanent total disability benefits and whether other jurisdictions have a cost-of-living adjustment for PTD benefits. The next meeting is scheduled for September 18, 2012.

7. Work Injury Supplemental Benefit Fund: Mr. Krueger provided financial information on the WISBF. Supplemental benefit payment reimbursements to insurance carriers exceeded \$8.2 million in fiscal year 2012 and the WISBF balance dropped to a low of \$1.7 million. To date all claims for payments out of the WISBF have been paid. There is approximately \$330,000 in supplemental benefit reimbursement requests still in process. The WCD anticipates that with the continuous flow of revenue into the Fund, payments will continue out of the Fund. The main revenue sources for the Fund are assessments for dismemberments and death benefit payments in cases where the deceased had no dependents. Some adjustments will need to be made with respect to revenue and/or expenditures in the not too distant future in order to preserve the solvency of the Fund. The WCD is monitoring the balance of the WISBF daily. The Labor members of the WCAC proposed changes regarding the revenue and expenditures of the WISBF for consideration by Management. A statutory change would be required to implement those changes. Mr. Metcalf strongly encouraged the WCAC to arrive at an agreed bill fairly early in the next session. The WCAC could advance two agreed bills to the Legislature if necessary. It is projected that the WISBF will go into a deficit in 2013 if no adjustments are made to the WISBF's funding and expenditures. Mr. O'Malley explained that when the last supplemental benefit increase was approved in 2009 (effective May 2010), WISBF revenue was about \$5 million per year; however, now revenue is down due to fewer injuries as a result of the recession. In addition, payment of barred traumatic claims has significantly increased. The Dept. of Justice has reserved known barred traumatic claims at \$3.1 million. Mr. Krueger indicated that due to the statutory changes effective in April 2012, DWD has the authority to prioritize payments from the WISBF once the Fund reaches 85% encumbrance by known claims. By 2013, the WCD should have a better handle on the estimated exposure for known claims.

Mr. Kent inquired whether there needs to be a statutory change to calculation of permanent partial disability in response to the MG&E case, which involves stacking of permanent partial disability ratings in prosthetic replacement (i.e. hips and knees). Mr. Metcalf responded that if the WCAC intends to limit benefits available for these types of permanent disabilities, a statutory change is needed.

8. Self-Insured Rule Update: Mr. Krueger reported that the Self-Insurance Advisory Council (SIAC) will be recommending an amendment to Wisconsin Administrative Code s. DWD 80.60 regarding exemption from the duty to insure (self-insurance). The rule has not been reviewed in 15 years and includes procedures on the ability to self-insure and the responsibilities of employers who are self-insured. A work group with the SIAC will have a recommendation ready for amendments to the rule to be presented to the WCAC this agreed-bill cycle. The work group is particularly looking at identification of international corporation relationships to identify the most responsible and accessible entity in case the state needs to collect on liabilities.

9. Loss Reimbursement Insurance: Mr. Ginsburg indicated that insurance companies desire to write loss reimbursement policies in Wisconsin – particularly

insurers with multistate policy holders. Changes to Chapter 102, and statutes relating to insurance rating and Wisconsin Insurance Security Fund would be necessary. Insurers would like the changes to be included in this agreed-bill cycle. Mr. Ginsburg indicated there would be first dollar coverage by carriers with expected streams of payments by employers, including priority on proceeds of letters of credit. The carrier interacts with the WCD and claimants in the same way as with other policies. The insurer pursues repayment from the employer monthly. Mr. Krueger inquired whether the retention maximum is per claim or aggregate. Mr. Ginsburg indicated it could be both – for Liberty Mutual Insurance it would apply per accident. Mr. Krueger inquired whether there would be a cap on the maximum retention in the proposed law. Mr. Ginsburg replied that the minimum loss reimbursement amount is \$100,000 with a premium threshold of \$500,000 country-wide. There is no maximum indicated in the proposed law other than an aggregate, with no standard aggregate for insurers. Mr. Krueger indicated that policies of this type are currently written in Wisconsin even though they are not allowed by law.

10. Other Business: Mr. O'Malley reported the Health Care Provider Advisory Committee (HCPAC) met in July and discussed the issue of opioid overuse. The committee is concerned that tighter regulation is needed, particularly with regard to testing for drug compliance. The State Medical Society is working on opioid prescription treatment protocols to be presented to the HCPAC for review. The HCPAC will present any recommended changes to the WCAC for consideration.

Mr. O'Malley indicated the WCD is in the process of hiring the Madison Section Chief to replace Ms. Knutson. In addition, three to four new ALJs will be hired to fill vacancies.

11. Adjournment: Motion by Ms. Bloomingdale, second by Mr. Buchen to adjourn to closed caucus. The motion carried unanimously and the open meeting was adjourned at approximately 11:00 a.m.

Next meeting: January 8, 2013.