

TENNESSEE ADVISORY COUNCIL ON WORKERS' COMPENSATION MINUTES

Legislative Plaza, Room 29

Nashville, Tennessee

Tuesday, October 5, 2010

2:00 p.m.

Members Present:

David H. Lillard, Jr., State Treasurer, Chair

Voting Members:

Jack Gatlin

Jerry Lee

Bob Pitts

Anthony Farmer, by telephone

Non-Voting Members:

David Davenport

Keith Graves

Stephen Johnson

Sam Murrell

Dan Pohlgeers

Greg Ramos

Bruce Fox, by telephone

Jim Neely, Commissioner of Labor and Workforce Development

Also Present:

Mike Shinnick, Department of Commerce and Insurance

Greg Alff, Willis Casualty Actuarial Practice

Cathy Booth, National Council on Compensation and Insurance

Kirt Dooley, National Council on Compensation and Insurance

Laura T. Sprouse, Select Actuarial Services

David Wilstermann, by telephone

Janice Cunningham, Chief of Staff, Treasury Department

Steve Curry, Assistant Treasurer for Programs, Treasury Department

Gary Hotvedt, Assistant Treasurer, Legal, Audit and Compliance, Treasury

Department

Anne Adams, Director, Division of Claims Administration, Treasury Department

And other persons and interested parties

Chairman Lillard called the meeting to order at 2:00 P.M. in Room 29, Legislative Plaza; Nashville, Tennessee. Anne Adams completed the roll call, which resulted in three (3) voting members present, one (1) voting member participating by phone, and two (2) voting members absent. Chairman Lillard declared there was not a quorum of voting members present. He proposed a resolution that allows any member participating by

telephone to be deemed present for the purposes of the quorum requirement and voting. A copy of the resolution is attached and is incorporated as part of these minutes. Mr. Bob Pitts made a motion to adopt the resolution. Mr. Jack Gatlin seconded the motion. The motion was approved unanimously by a voice vote.

The first item of business was a review of the minutes for the Advisory Council's meeting of August 17, 2010. Mr. Jerry Lee made a motion to approve the minutes. Mr. Steven Johnson seconded the motion. The motion was adopted unanimously by a voice vote.

The next item of business was a presentation by Mr. David Wilstermann of the Tennessee workers' compensation data for calendar years 2000 through 2009. Mr. Wilstermann participated by telephone. He reported on the types of conclusions for workers' compensation appeals, the number of weeks from injury to maximum medical improvement, the number of weeks from maximum medical improvement to conclusion, average weekly compensation rates, temporary total disability amounts, average monetary amount of medical benefits, multipliers for permanent partial disability, permanent partial disability monetary benefits, and the number of cases appealed to the Supreme Court.

Mr. Wilstermann reported the following as a summary of his conclusion of the data:

- The utilization of the Tennessee Department of Labor and Workforce to conclude cases appears to be leveling off at 60% of cases as reflected in 2007, 2008, and 2009. 20% was concluded in 2000.
- Trials are occurring in 1% of workers' compensation cases.
- In 2009, it took an average of 32 weeks for a case to conclude once maximum medical improvement was reached, five weeks less than 2008.
- The level of education and the compensation rate of injured workers are increasing. The average age of injured workers was unchanged.
- Average medical costs for permanent disability cases appear to have leveled off.
- "Body as a whole" cases where the injured worker was returned to pre-injury employment continue to show decreases in permanent partial disability percentage amounts and permanent partial disability multipliers.
- After displaying initial post reform decreases, permanent partial disability percentage amounts and multipliers for arm and leg injury cases appear to be leveling off in cases where the injured worker was returned to pre-injury employment.
- The percentage of permanent total and death cases continues to be diminishing.

After discussion, Mr. Lee made a motion to accept the report. Mr. Pitts seconded the motion and it was accepted unanimously.

The next item of business was consideration of the National Council on Compensation and Insurance (NCCI) annual Advisory Prospective Loss Costs Filing. Prior to the meeting, the NCCI submitted to the Commissioner of Commerce and Insurance the

annual filing, with an effective date of March 1, 2011; following receipt of the filing, copies of the filing were distributed to members of the Advisory Council for review. Chairman Lillard stated the Advisory Council must consider the filing as required by *Tennessee Code Annotated* § 50-6-402(b). The NCCI proposed an overall change of negative 5.1% from the loss costs that became effective March 1, 2010. While the change in loss costs varies depending on the employer's classification, the average change in the five industry groups is: Manufacturing -2.5%; Contracting -8.3%; Office & Clerical -12.1%; Goods & Services -3.4%; and Miscellaneous -3.1%. Unlike NCCI's filing in 2009 where some industry groups increased and some decreased, this year each of the five industry groups will decrease if the filing is approved.

The Advisory Council members received comments from its consulting actuary, Mr. Greg Alff, Senior Vice President with Willis Casualty Actuarial Practice; Mr. Kirt Dooley, actuary with NCCI; and the consulting actuary to the Department of Commerce and Insurance, Ms. Laura T. Sprouse, with Select Actuarial Services.

Mr. Dooley noted that the proposed overall aggregate change of negative 5.1% in the proposed advisory prospective loss costs is comprised of a reduction due to experience (-3.4%), development (-0.8%), trend (-1.2%) and benefits (-0.1%) and an increase in the loss adjustment expense (0.3%). Mr. Dooley described to the Council the methodology that was utilized by NCCI. The experience period (latest two years), loss methodology (paid plus case reserves) and loss development (five year average) were the same as the prior filing. The tail factor for indemnity changed from 1.008 to 1.007 and the tail factor for medical changed from 1.046 to 1.042. The indemnity trend did not change but the medical trend changed from 1.010 to 1.005. The loss adjustment expense (comprised of DCCE – Defense and Cost Containment Expense and AOE – Adjusting and Other Expense) increased from the current level of 19.9% of losses to 20.3%.

Mr. Greg Alff, the actuary under contract to the Advisory Council to review the NCCI loss costs filings, stated the NCCI proposed decrease of 5.1% for the Tennessee voluntary workers' compensation market is in a narrow range of -5.3% to -4.5% depending on which indemnity loss development factors are chosen and which specific adjustment to the load for loss based expenses is utilized. The -5.1% is reasonably calculated based on the 2007 and 2008 policy year data underlying the filing. Mr. Alff noted concerns regarding the NCCI filing in two areas. First, Mr. Alff sees indemnity loss development as clearly higher in the most recent three periods and recommends selecting higher indemnity loss development factors. This adjustment would result in an indicated loss cost change of -4.5% instead of the -5.1% proposed by NCCI. Second, the Council might consider a revision of the factor to load for loss based expense. Using a lesser factor of 20.0% instead of the proposed NCCI factor of 20.3% would result in an indicated loss cost change of -5.3% instead of -5.1%. Adopting both recommendations by Mr. Alff would give a change of -4.7% instead of -5.1%.

Ms. Laura Sprouse spoke to the Advisory Council concerning her review of the filing and explained that she agreed with the proposed decrease of 5.1% that the NCCI had

submitted as being within the reasonable range from about -5.5% to about -4.9% thereby putting the filed indication of -5.1% toward the upper end of that reasonable range. Ms. Sprouse noted that NCCI's 0.5% medical loss ratio trend is not unreasonable but it is more likely to be on the high side than not. Conversely, the NCCI's 20.3% provision for loss adjustment expense is more than likely toward the low end.

Mr. Pitts expressed concerns relative to the loss adjustment expenses. He indicated that he understands it to be reflective of various companies' thoughts as opposed to hard data. He also advised concern that the estimates have come in high the past two years. He stated he was not being critical of the NCCI's and believes all the reports to be actuarially sound.

After consideration of the presentations by the three actuaries and the comments and discussion among the members, the voting members of the Workers' Compensation Advisory Council unanimously recommended adoption of a -5.3% change in loss costs to become effective on March 1, 2011 for the voluntary market. This recommendation is based on the Council keeping NCCI's filing intact with the exception of using Mr. Alff's recommendations regarding the loss adjustment factor. Using a 1.200 factor to load for loss based expense instead of NCCI's proposed factor of 1.203 produces the -5.3% result.

Next, Chairman Lillard recognized Mr. Jim Neely, Commissioner of the Department of Labor and Workforce Development. Chairman Lillard then advised the members that there were three (3) finalist candidates for the position of Administrator to the Council and introduced Ms. Lynn Ivanick, Mr. Mark Travis and Mr. Scott Yarbrough. He recommended that the members take a moment to talk with each candidate and asked members to call him the following day with any comments.

There being no further business, Chairman Lillard adjourned the meeting at 3:40 P.M.

Anne Adams, Director, Division of Claims

David H. Lillard, Jr, State Treasurer
Chairman
Advisory Council on Workers'
Compensation