

Tennessee Advisory Council on Workers' Compensation
MINUTES
March 7, 2013, 1:00 p.m. CST
Legislative Plaza, Room 30
301 Sixth Avenue North
Nashville, Tennessee

Members present:

Voting Members

Chair David Lillard, Jr., Treasurer
Kerry Dove
J. Anthony Farmer via telephone
Jack Gatlin via telephone
Jerry Lee
Bob Pitts
Gary Selvy

Nonvoting Members

Bruce Fox
Dr. Keith Graves
Abbie Hudgens
Gregg Ramos
Lynn Lawyer via telephone
Mike Shinnick

Lynn Ivanick, Administrator

Chairman David Lillard, Jr., State Treasurer, called the meeting to order, introduced himself, and asked for a roll call which resulted in a quorum physically present.

The Chair called for the approval of the minutes of the February 28, 2013 Council meeting. Mr. Bob Pitts made a **motion** to accept the minutes, which was **seconded** by Mr. Jerry Lee. The motion to approve the minutes was approved by a unanimous roll call vote and the minutes thereby **adopted**.

Chairman Lillard indicated that he had received a written call by four Council voting members, members Pitts, Selvy, Dove and Farmer, for reconsideration of the Council's previous recommendation of HB1149/SB0509 which occurred at the February 28, 2013 meeting. The parliamentary situation, as the Chair explained it, was that since the Council recommended HB1149/SB0509 by Representative Pody and Senator Hensley for adoption at the last meeting, it would now require a vote on a motion to reconsider.

Mr. Pitts moved to have a **motion** to reconsider which was **seconded** by Mr. Lee. The Chair called for further discussion, and seeing none, the roll was called and the motion was

unanimously supported and **adopted** placing HB1149/SB0509 back on the agenda for reconsideration.

Ms. Mandy Haynes Young, on behalf of the Property Casualty Insurance Association of America, spoke about the association's concerns. She stated that the bill deals with subrogation by employers and their insurance companies of any benefits they have paid. In so doing, the bill would insert fault and the apportionment of fault of the employer back into a "no fault" system which the association believes is dangerous. In addition, it allows the settlement of a matter without a carrier or employer's knowledge or even notice, and may apportion fault to them, thereby reducing their lien for benefits. It may encourage gaming of the system and doesn't benefit the worker in any way. Right now, the law only applies to trials and this bill would allow it to include settlements as well.

Council Member Gregory Ramos inquired of Ms. Young if she was suggesting this may create unforeseen problems down the road, especially since settlements would be included and would occur before employers had an opportunity to contest their fault. Ms. Young responded that Mr. Ramos' assessment of her comments was accurate and added that it wouldn't be required that employers be given any notice to contest their alleged fault, and then their lien could be reduced by virtue of their not being present.

Mr. David Broemel, with the American Insurance Association next addressed the Council, agreed with Ms. Young's assessment and indicated that this change could harm employers since over time this could increase the loss of an Employer, have a detrimental effect on the modification factor and adversely impact rates. He reiterated that all of this would occur without any opportunity for employers or insurers to be heard.

Council Member Tony Farmer commented that he agreed with Mr. Josh Baker's comments from the February 28, 2013 meeting regarding a Justice Holder comment in a recent Tennessee Supreme Court case. He indicated that the bill as written does not address the problem that Justice Holder felt needed to be addressed by the legislature and didn't believe it needed to be addressed under Title 50 of the Code. Mr. Farmer suggested that the bill as written creates more problems for both employers and employees than it creates solutions and recommended it be sent back to the sponsor to reconsider the language and withdraw it until such changes could be made.

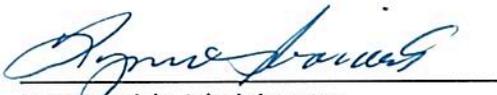
Chairman Lillard stated that he recognized that the Council has the power to comment on the bill which will be read by the sponsors and also to make a recommendation for passage or against passage or no recommendation.

Mr. Farmer made a **motion** that the Council recommend disapproval with the attachment to that recommendation consisting of the comments mentioned today. The motion was **seconded** by Mr. Gary Selvy.

Mr. Pitts indicated that he agreed with the previous comments made and further had been cautioned that for the employer/insurer to protect themselves, assuming that they know about the litigation in the first place, that there would have to be a second law suit in order to protect their rights. That's an additional burden which would result from the proposal as written.

The motion to recommend against passage of the bill with the comment that the bill should be rewritten as it does not address the matters Justice Holder addressed in her previous opinion received a unanimous vote and was **adopted**.

A **motion** to adjourn was made by Mr. Pitts, **seconded** by Mr. Selvy, and the Council was **adjourned**, subject to the call of the chair. The chair thanked everyone for their participation and attendance.



Lynn Ivanick, Administrator
Advisory Council on Workers'
Compensation



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