

*Tennessee Advisory Council on Workers' Compensation*  
**MINUTES**  
*August 29, 2013, 9:30 a.m. CST*  
*Legislative Plaza, Room 30*  
*301 Sixth Avenue North*  
*Nashville, Tennessee*

**Members present:**

Voting Members

Chair David H. Lillard, Jr., State Treasurer

Kerry Dove

J. Anthony Farmer via telephone

Jack Gatlin via telephone

Bob Pitts

Gary Selvy

Nonvoting Members

Dr. Keith Graves

Gregg Ramos

Lynn Lawyer

Mike Shinnick

Paula Claytore via telephone

Sandy Fletchall via telephone

Bruce Fox via telephone

Lynn Ivanick, Administrator

Chairman Lillard called the first order of business, that being a presentation by Mike Shinnick, the Workers' Compensation Manager of the Tennessee Department of Commerce & Insurance to discuss the Workers' Compensation Market Conditions & Environment.

Mr. Shinnick began by advising that there will most likely be two filings from NCCI on or about September 6, 2013 for the Council's review and recommendation, the experience filing to be effective March 1, 2014 and a Law Only filing which represents the impact of the 2013 Workers' Compensation Reform Act to be effective July 1, 2014.

Mr. Shinnick then discussed premium segment changes, key national indicators, national and state price changes, the 2013 Voluntary Weighted Average Loss Cost Multiplier, assigned risk trends and cyclical implications. He provided a preview of the likely 2014 assigned risk loss cost multiplier recommendation and discussed insolvency changes including a couple of new, fairly sizeable insolvencies. He presented a new slide this year, the Tennessee A .M. Best ratings by premium concentration and the NCCI Annual Issues Symposium Summary. Medical severity and indemnity severity are very moderate, while frequency continues downward.

With respect to combined ratios, he did not have Tennessee data this year since the filing had not yet been made. Mr. Pitts requested an update for the State of Tennessee to be supplied to the Council after the Tennessee filing had been made and inquired about a 14% countrywide

investment gain. Mr. Shinnick explained that investment gains associated with workers' compensation transactions (premium transactions and loss reserves over time) remained relatively flat at 14% in 2012, comparing favorably to the 12% average since 2001.

Mr. Pitts expressed concern that the countrywide operating ratio on workers' compensation is still the highest of all the lines. Since it is a State mandated program, it is concerning that we still have a high combined ratio. We would like to see the industry become actuarially sound in writing based on an appropriate level of return that gets us closer to 100%. Mr. Shinnick indicated that the market is recognizing those facts and responding. We've been in a soft market for long time and now you see companies making adjustments to correct that situation.

Tennessee specific data indicates there hasn't been a lot of change in the loss costs and the loss cost multiplier has been fairly flat until this year. In 2013 the weighted average loss cost multiplier has gone from 1.35 to 1.40. Mr. Pitts inquired about whether the -19% figure at the top of the slide was the "net out" figure since the Reforms, which was accurate. Mr. Gregg Ramos inquired as to the significance of that figure. Mr. Shinnick explained that it represented a total 19 percent reduction in loss costs between 2004 and 2012.

Mr. Pitts summarized that from the data presented so far, it appeared that the voluntary market is writing a larger premium, pricing for policies has increased and there's been growth in the assigned risk pool, although there are signs that that may be moderating. He further indicated that this picture portrays only premium and inquired as to whether there is any way to ascertain the number of policies the voluntary market is carrying versus the number of policies carried by the assigned risk pool on various years to indicate whether there is a company shifting? Mike indicated that Mr. Tom Redel, whose presentation was to follow, may be able to share some data that will be of help in answering the question. The final subject was the two new insolvencies to report which are Lumbermens Mutual (which has been monitored and mentioned in these presentations previously) and Ullico.

In summary, Mr. Shinnick reported that the results are a mixed bag. The negatives are underwriting results, the potential expansion of alternative systems for workers' compensation in light of what has transpired in two other states (opt out). Interest rates are low, the impact of the healthcare reform act is uncertain and the pace of the economy is slow. The positives are that the premiums are increasing, frequency decline resumed to a five point reduction countrywide, severity growth numbers are manageable and close to the rate of payroll growth in the industry. Additionally, there is improved countryside accident year combine ratio, the industry's capital position is strong and the outlook has been described by NCCI's president Steve Klingel as "encouraging".

Chairman Lillard commented that Chairman Bernanke of the Federal Reserve Board is working on the interest rates being at historic lows which may help in the longer run, but the bond market in the meantime is not necessarily in a helpful position as a result. Mr. Shinnick's presentation may be viewed in its entirety at <http://treasury.tn.gov/claims/wc advisory.html>, under the Reports tab.

Upon the conclusion, Chairman Lillard thanked Mr. Shinnick for his presentation and called the next order of business, that being a presentation by Thomas Redel of AON Risk Services Central, Inc. on the Annual Assigned Risk Plan Data.

Mr. Redel gave background information regarding the general organizational structure and complex administration and management of the Assigned Risk Plan including AON's relation to and work relationships with other entities listed. He explained the difference in servicing versus direct assignment carriers. He explained the number of incoming calls and applications as well as a premium flow and trust accounts explanation. This data is not audited, but rather shows a snapshot on the first day of the policy. Premium and policy variances comparing 2011 to 2012 indicate that, overall, the policies went up by 4.5%. The growth in the assigned risk pool is starting to level off.

With the exception of the smallest policies, growth is significant in all categories of premium size with really high growth for policies over \$100,000 in premium. The average policy size for 2012 was roughly \$5,200.00 and this figure has grown slightly in 2013 and all have grown fairly significantly from what they were 2-3 years ago. The top 20 classes by policy count haven't changed significantly. The top 20 classes by premium have had a few changes, those being in the Mental Health Group Care Homes, Trucking: Local Hauling Only and Convalescent or Nursing Home – All Employees' classifications. The charts show where and what types of businesses are moving into the Assigned Risk Plan. Construction classes have their own separated charts in the presentation and have shown significant change in the Electric Light or Power line Construction as well as the Burglar Alarm Installation or Repair categories.

Observation from Mr. Pitts regarding the construction industry and its record, that many end up in the Assigned Risk Pool because the private sector doesn't want to insure them.

Overall, the Pool was small back in 1998, had some significant growth during 2001-2007, became small again and is now starting to grow somewhat again in the last year or two. Mr. Redel's presentation may be viewed in its entirety at <http://treasury.tn.gov/claims/wcadvisory.html>, under the Reports tab. Upon completion of question and answers, Chairman Lillard thanked Mr. Redel for his presentation and called the next order of business which was a presentation by David Wilstermann regarding the Statistical Analysis and Report Concerning Tennessee Workers' Compensation, Data for Calendar Year 2012.

Upon recognition from the Chair, Mr. Pitts wanted to get on the record that we have a need for continuing statistical information going forward on workers' compensation activity in the State. The reforms going into effect as of July 1, 2014 will affect the types of data that are collected and where they are collected. The Division of Workers' Compensation will be required to provide reports to the legislature. Both the Advisory Council and Division of Workers' Compensation need to meet their responsibilities with respect to the SD-1 to see what alterations need to be made to make sure all the State's needs are met as well as what kind of obligation we have with respect to some kind of close out with the courts.

Mr. Wilstermann began his presentation by informing the Council that he first began looking at workers' compensation data in Tennessee in a study of 1996 trials analyzing the implementation of the 1992 reforms, more specifically the 2.5 times multiplier cap on body as a whole return to work cases. This required driving around the state from courthouse to courthouse pulling files reading through and gathering information. After the department started collecting data we were able to review settlements as well as trials. This has been done through many reforms and

helps to provide insights as to their effects. So, since a major reform was just passed, the report before you lays the groundwork for future comparisons. Mr. Ramos inquired as to when the Department started collecting that data and if he had been doing the analysis since that time to which Mr. Wilstermann responded 2000 and in the affirmative. There were trial studies of 1996-1998. 1999 may have been skipped since the SD-1 was being implemented. My presentation will correlate with the report in front of you, but also accompanies a moving graph much the same as the one presented last year, which I will show you now.

Mr. Pitts reiterated that Mr. Wilstermann has been the person collecting data since the beginning and he probably has some relevant comments to share with the Council and Division with respect to what the need is and what may be attainable going forward.

To provide context for the rest of the data in his report, Mr. Wilstermann informed that from 2004-2012 there's been a drop in the number of cases from over 12,000 to 8,427. The percent of ways a case can be completed (which will no longer be required post 2013 reform) indicates that from 2011-2012, joint petition settlements increased from 30-42% of all conclusion types. From 2006-2011 it was fairly consistent that 60% of cases were approved by the department, this went down to 51% of the cases this past year. Half of those were in Davidson County, so this tells us that people were going to Davidson County to settle their cases rather than to the Tennessee Department of Labor and Workforce Development.

Mr. Wilstermann reported averages for age, compensation wage, average temporary total disability amounts, total number of weeks from injury to maximum medical improvement, and from date of injury to conclusion. He indicated that when the mean and the median are right on top of each other, it signifies a normal shaped bell curve that statisticians like to see in data. Workers' compensation usually doesn't comply with that as the means and medians are usually far apart. For temporary total disability the mean was \$10,000 per case, the median, \$5,700. A couple of years ago, repetitive injuries were addressed in legislation, so looking at carpal tunnel from 2005 to the present, the numbers go down to only 3% of the cases. The body parts are coded and graphed separately in the data. Some standardization should be part of the discussion as a new system is developed. Upon inquiry from Mr. Pitts regarding the trend of carpal tunnel, Mr. Wilstermann indicated that it is declining. From 2005 to 2012, it was 7.5% and now it is 3% of all the cases. Impairment ratings are going down for arms, especially for return to work cases. It takes at least three years for a reform to be fully implemented, actually about 80% of the cases are concluded at three years.

The return to work multiplier is presently fully at 1.5xs. The non-return to work is at 3xs for legs, body as a whole is a little larger at 3.3xs. The average impairment rating is 6.7 to body as a whole. With the new legislation you should see about a \$5,000 decrease in the amount of benefits being paid for a return to work case. Mr. Ramos inquired as to Mr. Wilstermann's analysis that the \$5,000 reduction in benefits to the employee came from taking the average impairment rating plus the new numbers of weeks provided under the 2013 Reform, which Mr. Wilstermann confirmed was accurate. There are about 2000 cases of body as a whole, return to work a year, so that translates into \$5-13 Million in potential savings. Lastly, Mr. Wilstermann pointed out the percentage paid in dollars for all disability claims included the new right to close out future medicals.

Mr. Ramos was recognized and asked about data from 2011 in light of a recently circulated report by the National Academy of Social Insurance indicating that Tennessee was one of 22 states where workers' compensation payments and costs to employers actually decreased in 2011. He asked if this was consistent with Mr. Wilstermann's report from last year, to which Mr. Wilstermann replied that it was correct and that savings have been seen mostly in the permanent disability piece, although the impairment ratings had gone down and the other categories had remained flat. Mr. Ramos pointed out that this trend was before the Reform.

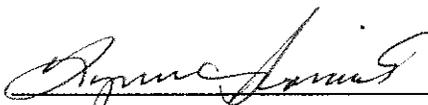
Mr. Dove commented on the valuable quality of the information presented and inquired on what data will be collected going forward, be it venue, litigated versus non-litigated cases or exactly what so that we can drill down to this data and actually manage and make decisions with respect to the future. It is important that we have data to report cause and effect for whatever had been changed over the years. Mr. Wilstermann indicated that much of the data has been absent since it comes into the Department from various sources. In the future, Mr. Pitts pointed out, that our data should be substantially improved since it will all be coming from one place. Mr. Ramos agreed that the SD-1 form had to be completed by lawyers before their cases could be finalized in the various courts.

Upon completion of question and answers, Chairman Lillard thanked Mr. Wilstermann for his presentation and asked him to provide the Council with a link to the moving graphs. Mr. Wilstermann's presentation may be viewed at <http://treasury.tn.gov/claims/wcadvisory.html>, under the Reports tab.

Chairman Lillard called the last order of business, that being a presentation by Josh Baker, attorney for the Workers' Compensation Division, on the proposed rules for Final Hearing Procedures set for Public hearing October 15, 2013, with 30 days following for public comment.

Mr. Baker briefly explained the rules that will govern the mediation proceeding and the hearings before the workers' compensation judges in the new Court of Workers' Compensation Claims. The rules apply only for dates of injury after July 1, 2014. The topics of scope, definitions, decisions on the record, dispute certification notice, expedited hearings, potential electronic filing and petitions for benefit determination were addressed. Further items addressed were the ombudsman program procedures, representation by counsel, fees due at end of claims, disclosure of records, requirements and procedures for alternative dispute resolution, and penalties for bad faith or failure to appear. Procedures regarding discovery, hearings and appeals were outlined as well. Council will determine at its next meeting the need for any recommendation regarding these rules.

A motion to adjourn was made by Mr. Pitts, **seconded** by the Chair, 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