

WORKERS' COMPENSATION ADVISORY COUNCIL

**MINUTES ~ AUGUST 22, 2002 [1:00 P.M.]
710 JAMES ROBERTSON PARKWAY
HEARING ROOM, FIRST FLOOR
ANDREW JOHNSON TOWER
NASHVILLE, TENNESSEE**

The meeting was called to order by Mr. Steve Adams, State Treasurer, Chair

Voting members in attendance:

Mr. Jack Gatlin
Mr. Dave Goetz
Mr. James G. Neeley
Mr. Bob Pitts
Mr. Steven Turner

Nonvoting members in attendance:

Ms. Kitty Boyte
Ms. Jacqueline Dixon
Mr. Tony Farmer [by conference call]
Mr. Abbie Hudgens
Mr. Jerry Mayo

Ex officio members in attendance:

Mr. Mark P. Reineke, Commissioner - Department of Labor and Workforce Development
Mr. Everett Sinor, Assistant Commissioner, Department of Commerce and Insurance
[designee for Commissioner Anne Pope]

Also present:

M. Linda Hughes, Executive Director
Mr. Dale Sims, Executive Assistant to the Treasurer
Mr. Dave Wilstermann, Research/Statistical Analyst

Mr. Adams called the meeting to order. The minutes from the December 13, 2001 and the February 15, 2002 meetings were unanimously approved.

A. INSURANCE MARKET UPDATE

The Advisory Council had requested the Department of Commerce and Insurance to provide an update of the insurance market and the assigned risk plan. Mr. Everett Sinor, Assistant Commissioner presented information concerning terrorism and Tennessee Insurance Guaranty Association [TIGA]. Mr. Benn Daley, actuary for the Department, presented information concerning the voluntary insurance market in Tennessee and the Tennessee Assigned Risk Plan.

1. TERRORISM

Mr. Sinor made the following points concerning Terrorism and the effects of the September 11th attacks on the insurance industry in general:

- Prior to September 11th, the insurance market had begun to harden due to the competitive insurance price wars of the mid to late 1990s, the economic downturn and the “Bear” stock market.
- The estimates of insured losses as a result of the terrorist attacks are \$40.2 billion. This entire insurance industry [all lines] collects \$1 trillion dollars in annual premiums; therefore, the losses due to 9/11 is 4% of the annual premiums. As of December 31, 2001, insurers had \$4.1 trillion in assets. [Source: Insurance Information Institute, July 2002]
- Property and Casualty insurers have \$1 trillion in assets and 2/3 of the assets are offset by liabilities/non-admitted. Total P&C surplus is \$298.2 billion as of June 30, 2001. Commercial (non-personal) surplus is \$150 billion. [Source: Insurance Information Institute, A.M.Best]
- The losses due to 9/11, per line of insurance are estimated to be:

Life	\$2.7 billion
Property	\$9.5 billion
Business Interruption	\$11.0 billion
Aviation	\$4.0 billion
Workers' Compensation	\$2.0 billion
Event Cancellation	\$1.0 billion
Other Liability	\$10.0 billion
- [Source: Insurance Information Institute, July 2002]
- 17 insurers have reported losses exceeding \$0.5 billion; Lloyd's had the largest loss at \$2,913,000 and five (5) insurers had losses exceeding one million dollars. [Source: Morgan Stanley, Benfield Research, Insurance Information Institute, July 19, 2002]
- Following 9/11 most commercial policy coverage exclude terrorism and these policies have also had significant rate increases. Only one carrier in the personal insurance line has excluded terrorism and rates in the personal lines have shown minor to moderate rate increases. Workers' Compensation coverage CANNOT exclude terrorism.

- Congress is still debating enacting a federal terrorism backstop. The House and Senate bills differ substantially, but workers' compensation is covered by each.
- The National Association of Insurance Commissioners formed a task force to address the NCCI's 4% "catastrophe" provision that was to have been effective on January 1, 2002. The position taken by the Task Force is that the catastrophe provision and related issues warrant further study. Concern has been expressed that all states do not have the same terrorism risk, the money from this "load" should be segregated into a separate fund for payment of terrorism losses and not placed into the carriers' income stream. The NAIC sent a letter to the Senate urging passage of legislation making terrorism coverage affordable and available and the letter mentioned workers' compensation as a "prime concern".

2. TENNESSEE INSURANCE GUARANTY ASSOCIATION [TIGA]

Mr. Sinor also discussed the Tennessee Guaranty Association and how workers' compensation is handled by TIGA.

- TIGA has two separate accounts - one for workers' compensation [which has no maximum payout limit] and another for all other insurance losses.
- Each insurance company is assessed up to 2% of written premium for TIGA and each company is allowed a credit against premium taxes [maximum of 25% of taxes due each year] until the aggregate has been paid.
- The Tennessee Attorney General has issued an opinion that TIGA does not cover excess insurance policies.
- From January 2000 through June 2002, the following workers' compensation insurance companies have entered bankruptcy or insolvency and TIGA has had to assume these losses:

Company	Incurred Losses
Commercial Compensation	\$ 5,085,486
Credit General	\$ 8,726,311
International Indemnity	\$ 1,070,383
Reliance	\$ 31,000,780
Phico	\$ 80,825
TOTAL:	\$ 45,963,785

- TIGA assessed a total of \$ 9,850,853 on December 28, 2000; \$10,815,508 on November 5, 2001 and it is estimated the 2002 assessment will be \$13,093,823.

Mr. Sinor pointed out this would leave a present balance of -\$12,203,601 when you subtract the assessments from the total incurred losses. In addition, Legion Insurance Company has been placed into rehabilitation by the State of Pennsylvania and it is expected to have an estimated \$48,000,000 in workers' compensation losses in Tennessee. Thus, Mr. Sinor reported this indicates a future balance of -\$60,203,601. Mr. Mayo, who serves on the TIGA Board, pointed out these are anticipated reserved losses and this amount will be paid out over an extended period of time, not immediately.

Members of the Advisory Council expressed concern as to whether anything could have been done by the Department to have been aware of these troubled insurance companies prior to their insolvency. Mr. Sinor told the members that these companies are not domiciled in Tennessee and the Department depends on the domiciliary state to regulate their companies and to keep other states informed concerning companies in trouble. Tennessee conducts audits and financial reviews of only Tennessee companies.

The Advisory Council also discussed the fact that these insolvencies and the guaranty fund assessments diminished the money collected by the State of Tennessee in workers' compensation premium taxes. Mr. Adams made the comment that the taxpayers of Tennessee have been effected more by these insolvencies than the Enron bankruptcy cost any taxpayers.

3. TENNESSEE VOLUNTARY INSURANCE MARKET and ASSIGNED RISK MARKET

Mr. Daley first reviewed the NCCI loss costs filings made since 1996 and the loss cost approved by the Commissioner of Commerce and Insurance. He then presented the following information concerning the voluntary workers' compensation insurance market in Tennessee:

- Tennessee workers' compensation premium written by coverage type from 1990 to 2001 broken into these categories: Large Deductibles; Self-insured Employers; Self-insured Groups; Assigned Risk Plan; Voluntary Market. The following for years 1999, 2000 and 2001 was presented [in millions of dollars]:

Type Coverage	1999	2000	2001
Large Deductible Policies	\$183	\$ 215	\$ 261
Self-Insured Employers	\$179	\$ 206	\$ 243
Self-Insured Groups	\$ 29	\$ 27	\$ 31
Assigned Risk	\$ 20	\$ 33	\$ 69
Voluntary	\$540	\$ 557	\$ 592

- Tennessee Workers' Compensation Premium Written by loss cost multiplier range from 1997 to 2001 was provided to the members. The information showed that the amount of premium written at loss cost multipliers above 1.1 has increased greatly from 2000 to 2001.
- The average filed loss cost multiplier for 2001 was 1.255; the average for 2002 was 1.347
- Other 2002 filed amounts [developed by using 2001 written premium "weights" included:

Expenses (of standard premium)	+21.1%
Schedule Rating	-6.7%
Experience Mod (0.952)	-4.8%
Small Deductible	-0.2%
Premium Discount	-8.0%
Expense Constant	+1.7%

- Total Market Premium Projection:
 - >Total market in Tennessee (voluntary and assigned risk) premium growth in 2001 was 12%, the greatest in 11 years
 - >Filed loss cost multiplier increase was 7.3%
 - >Loss cost increase was 1.4%
 - >Insurance increases accompanied/followed by “migration” to alternative markets (Example: 2002, two new self-insured groups at \$8 million)
 - >If you assume a 10% total market increase in 2002, the total market for workers’ compensation in Tennessee will be \$725 million.
- The Assigned Risk written premium has continued to grow steadily from July 1999 to the present.
- 2002 Assigned Risk Plan Projection
 - >2001 Assigned Risk Premium was 10.5% of the “total” market
 - >the 2002 assigned risk written premium will be approximately \$108 million
 - >Assuming a total market of \$725 million and an assumed assigned risk market of \$108 million, then the percentage of the assigned risk plan will be approximately 14.9%, very near the 15% statutory trigger.
- The assigned risk plan policies written in the various ranges of premium has continued to show a growth in the larger premiums from January 2001 through June 2002. A comparison of assigned risk policy size for policies written from January through June, 2001 to those written from January through June, 2002 shows the number of policies has increased by 20.4% and the total premiums have increased by 51.7%.
- The residual market load for 1998 was .98%; for 1999 it was .2% and for 2000 it is 2.74%; this load is minimal compared to the early 1990's.

Mr. Daley also presented information concerning the top 20 class codes that have increased in percentage of applications and premium in the first half of 2002 compared to the same period in 2001. Mr. Pitts requested the Advisory Council be presented with information concerning the top 20 class codes in the assigned risk plan. The Department also provided a listing of the loss cost multipliers filed by the insurance companies doing business in Tennessee for 2001 and 2002.

B. LOSS COST FILING - NATIONAL COUNCIL ON COMPENSATION INSURANCE

Ms. Cathy Booth, State Relations Executive, Regulatory Services Division, was recognized to discuss the current loss cost filing and other information relative to Tennessee workers’ compensation. Ms. Booth explained the NCCI had filed for a -3.1 % reduction in the loss costs which was included a 0.7% increase due to the automatic weekly benefit increase and a +0.6% increase due to the costs of Public Chapter 833 that allows some injuries [currently scheduled injuries] to be eligible for permanent total disability. She stated for the filing this year, the filing is based on two years of development which indicated the -3.1% decrease; had NCCI used three years

of development, the indicated filing would have been -5.7%. Ms. Booth also presented information that the NCCI plans to present at its Tennessee Forum on September 10th in Nashville. The information included the following points:

- For 2002, the loss cost approved by the Department of Commerce and Insurance was +1.4%; the assigned risk multiplier resulted in an increase of +15.2.
- After adjusting to Tennessee's payroll distribution, Tennessee's average loss costs [1.85] is higher than the regional average [1.57] and about the same as the countrywide average [1.87].
- NCCI states countrywide show a deviation of -15.3% from the approved loss cost as a result of discounting on premium [rate/loss cost departure, schedule rating and dividends]. This deviation does not include deductible policies, retrospective ratings or premium discounts. In Tennessee the impact of discounting on premium is -26.6% - in other words for a dollar of premium the carriers are charging only 73 cents.
- Accident year combined ratios vary from state to state. The lowest is Arkansas at 101, the highest is Oregon at 176. Tennessee's combined loss ratio for 2000 was 127.
- Tennessee's indemnity and medical loss ratios have declined from policy year 1993 to policy year 2000. The loss ratio for indemnity in 2000 was .44 and the medical was .47.
- Declines in claim frequency have contributed to Tennessee's favorable results in the 1990s. There was a slight increase from 22.2 [frequency per million of on-leveled premium] in policy year 1999 to 24 in policy year 2000.
- Tennessee's average claim frequency is comparable to other states in the region.
- Tennessee's average medical severity [medical cost per case] has increased from \$17.1 thousand for policy year 2000 to \$18.1 thousand for accident year 2001. This amount is higher than policy year 1993, but lower than the highest year, 1997 [approximately \$20.0 thousand].
- Of 8 states in the region, the medical average claim severity ranges from \$13 thousand to \$19 thousand; Tennessee's average is \$17,000.
- Tennessee's average indemnity severity [indemnity cost per year] was \$15.6 thousand for policy year 2000 and for accident year 2001 it is \$16.7 thousand. Compared to neighboring states, Arkansas is the lowest at \$8 thousand; North Carolina is the highest at \$20 thousand.
- Tennessee's mix of claims is similar to the region:

<u>Type of Claim</u>	<u>Tennessee</u>	<u>Region</u>
Medical Only	80.9%	81.0%
PTD/Fatal	.1%	.1%
PPD	6.5%	4.9%
TTD	12.5%	14.0%

Members of the Advisory Council then discussed the differences in the loss cost for each classification and noted the variations in each. Mr. Mayo noted not all insurance companies agree with the NCCI as to the amount of loss costs needed. Mr. Neeley questioned why the State pays NCCI to interpret these facts if the insurance carriers do not agree with them. Mr. Turner pointed out the insurance industry's 26% average discount on premiums was very high. Members were reminded the actuaries would further discuss the filing at the next meeting of the Advisory Council.

C. STATISTICAL REPORT & APPROVAL OF ANNUAL REPORT

Linda Hughes, Executive Director, explained that the Annual Report for 2001 includes, for the first time, statistical data from 2000 and 2001 statistical data forms filed with the Department of Labor and Workforce Development. She thanked the Department of Labor and Workforce Development for providing staff of the Advisory Council with access to the Workers' Compensation Integrated Data System and she thanked the Administrative Office of the Courts [AOC] for providing information on a calendar year basis [claims reported as closed by the clerks and the number of appeals filed] so they could be included in the Annual Report. Members of the Advisory Council were provided with copies of the Annual Report. Mr. David Wilstermann, statistical/research analyst for the Advisory Council then presented a summary of portions of the statistical report.

Mr. Wilstermann explained the Department's workers' compensation system database was queried on February 19, 2002 to allow time for the statistical data form [SD-1 Form] for cases closed in 2001 to be received and entered by the Department. The report is based on cases closed in calendar years 2000 and 2001; it included 11,425 cases from calendar year 2000 and 10,605 cases from calendar year 2001. This is the first time Tennessee specific data has been available on this scale and will provide a benchmark for future year to year comparisons.

Mr. Wilstermann pointed out the following information from the Annual Report:

- Number of completed and submitted SD-1 forms as a percentage of AOC designated number of cases. Fifteen percent (15%) of the SD-1 forms received in 2000 and seventeen percent (17%) received in 2001 did not include the county - making it impossible to determine the judicial district for those cases.
- Case length for all claims: In calendar year 2000, the average from date of injury to date of maximum medical improvement [MMI] was 41.6 weeks, and the average from date of MMI to date of conclusion was 38.6 weeks. For 2001, the average from date of injury to MMI was 42.5 weeks; the average from MMI to conclusion was 38.9 weeks.
- Case length for trials: CY 2000 - 49.3 weeks from date of injury to MMI and 63.0 weeks from MMI to date of trial. CY 2001 - 54.5 weeks from date of injury to MMI and 71.7 weeks from date of MMI to date of trial.

- Case length for settlements: CY 2000 - 41.4 weeks from date of injury to MMI and 37.8 weeks from date of MMI to date of settlement approval. CY 2001 - 42.1 weeks from date of injury to MMI and 37.9 weeks from date of MMI to settlement approval.
- Temporary Total Disability Benefits: For both CY 2000 and 2001, the median was approximately \$3,750 and the mean was \$6,250.
- Medical Benefits/Expenses: the median was approximately \$12,500 and the mean was approximately \$17,500.
- Number of permanent partial impairment [PPI] ratings reported for settlements and trials: Calendar Year 2001: 74% of cases settled had only 1 PPI; 19% had 2; 3% had 3 and 2% had 4+ . For trials, 38% had 1; 39% had 2; 9% had 3 and 12% had 4+.
- Information concerning average permanent impairment ratings, median multipliers and median permanent partial disability percentages for each calendar year for body as a whole cases, arm cases and leg cases were also reported for both those who returned to the pre-injury employer and those who did not.
- The data indicated for 2000, 2.4% of the cases reported a claimed psychological injury; for 2001, the percentage was 2.5%. Of these claimed injuries, 0.6% for each year reported the injury was solely psychological.
- For permanent total disability cases, in 2000, 1.50% were settled and 0.12% were tried. In 2001, 1.10% were settled and 0.13% were tried by the court.
- The SD-1 forms indicated in 2000 approximately 0.66% of cases included payment of death benefits and in 2001, 0.48% reported those payments.
- When the number of appeals reported by the AOC are compared to the number of trials reported in the SD-1 forms, the data indicate 60.1% of the 2000 trials were appealed and in 2001 72.1% were appealed. [Ms. Hughes explained staff had concern about the accuracy of this percentage as anecdotal evidence indicates many attorneys are not filing a SD-1 form for cases that are tried and an appeal is anticipated due to confusion about the case not being "final".]

Mr. Wilstermann explained the SD-1 data in the Department's database does not tell us the actual body part injured or the type of injury. Also, the form does not request information concerning the type of physician that gives an impairment rating. In addition, the data does not indicate the impact of psychological injuries. Because the Department has not entered the type of injury into the database similar injury comparisons by judicial district cannot be made.

Mr. Wilstermann told the members that as more data is entered, in the future year to year comparisons can be made and trends identified. In depth analysis of specific variables can also be made. In addition, staff can query the data to analyze for relationships between variables and multi-variate analysis (using certain variables as filters for others) can be performed.

Ms. Hughes pointed out concerns about incomplete SD-1 forms being filed by the attorneys, especially since the judicial districts could not be identified in over 15% of the filed forms. She also expressed concerns that the attorneys are not filing statistical data forms for all cases that are closed.

In addition, she noted concern with the length of time for a workers' compensation claim to be concluded (by trial or settlement) after the employee has reached maximum medical improvement.

Following the presentation by Advisory Council staff, the Advisory Council unanimously approved the Annual Report for Calendar Year 2001 be published and unanimously approved the Trials Study completed by the staff in 2000 be published.

D. DISCUSSION OF ADVISORY COUNCIL RESPONSIBILITIES AND STUDY ISSUES

Ms. Hughes reminded the members that the Advisory Council is required to report its findings and recommendations, if any, on methods available to control the growth of medical costs within the workers' compensation system to the Joint Committee by December 15, 2001. Ms. Hughes then reported that the Workers' Compensation Research Institute has published studies related to these issues. The Advisory Council voted unanimously to request WCRI to make a presentation to the Advisory Council and to reimburse WCRI for its expenses in making the presentation.

Ms. Hughes then discussed the report concerning the impact of TCA 50-5-110(c) on the payment of emergency and stabilization medical services provided to an employee who tests positive for drugs or alcohol post-accident. This report is due on or before January 15, 2003. She also discussed the responsibility of the Advisory Council to include workers' compensation fraud in its annual report beginning for calendar year 2002. The final report discussed was the report concerning the effect of the "chiropractor panel choice" statute on the workers' compensation system. The report is due December 15, 2002. The members were informed the subcommittee on this issue had met prior to the general meeting and progress on the report was being made.

The members were then reminded by Ms. Hughes that remaining issues for discussion this year include: review and recommendation of the NCCI loss cost filing [which had been received on August 16]; report from the Assigned Risk Plan administrator, AON on the status of the Plan; a report from the Department of Labor and Workforce Development on the activities of the benefit review section. Members were invited to advise the Executive Director of any other issues that needed to be added to the agendas prior to the end of the year. The next scheduled meeting - September 19 - is dedicated to a discussion of the loss cost filing and the assigned risk plan.

No other business coming before the Advisory Council, the meeting was adjourned at 3:35p.m.