

**Industrial Commission's Advisory Committee  
On Workers' Compensation  
Minutes  
February 8, 2011**

**Members Present**

Mike Haxby	Glenna Christensen
Rian Van Leuven	Gardner Skinner
Roy Galbreath	James Alcorn
Linda J. Sams	John Greenfield
James Arnold	Steve Millard
Jasen Carrier	Clay Atwood
Dave Whaley	

**Members Absent**

Paul Collins, M.D.  
Senator Andreason

**Industrial Commission**

Chairman Thomas E. Limbaugh  
Commissioner Thomas P. Baskin  
Commissioner R. D. Maynard

**Minutes:**

The Minutes of November 8, 2010 were reviewed. Dave Whaley moved to approve the Minutes as written. Steve Millard seconded the motion, and the motion carried.

**Subcommittee Reports:**

Industrial Special Indemnity Fund – Jim Kile, Manager of the Industrial Special Indemnity Fund (ISIF) reported on the status of the proposed legislation to dissolve the ISIF. Mr. Kile stated that amended legislation was reintroduced to the 2011 legislature and after some debate, the bill was pulled and no further legislation will be introduced regarding the issue this year. Mr. Kile is waiting to hear from his superiors on what direction the ISIF is to pursue. If legislation is drafted in the future, Mr. Kile agreed to bring such legislation before the Advisory Committee for review.

Mr. Kile reported that the estimated assessment for FY2012, using projections from the first half of the year, could be approximately 5.3 million which is a 39.5% increase from 2009 (3.8 million for 2009). That number could go down if expenses stabilize through the end of this fiscal year.

PFFI Legislation- Idaho Code § 72-438 - (*Roy Galbreath, Chairman, Dave Whaley, Jasen Carrier, Paul Collins, Commissioner Baskin, Ex-officio: Rob Shoplock, Mike Walker, Michael Kane, Kent Day, Woody Richards*). The subcommittee Chairman noted that Alan Gardner, Dick Owens, and Paul Jackson have attended previous meetings and Dr. Reedy and Ron McGraw joined the last meeting by teleconference. Mr. Galbreath informed the members that the subcommittee met two times to discuss the proposed amendments by the Professional Firefighters of Idaho. Mr. Galbreath reported that the main changes to the legislation allow presumptions of compensability for cardiovascular and pulmonary injury occurring within 24 hours of an event, and also includes a number of specifically named cancers with a required timeline for years worked. If a presumption is claimed, Mr. Galbreath stated that the proposed legislation would require sureties to pay for the claimant's medical bills until the Commission

decides causation; volunteer firefighters are not included in the presumption; and changes will be made to include a sunset for access to the presumption by retirees. Mr. Galbreath reported that alternative funding was suggested, such as a medical insurance fund for long term disability or establishing some other type of dedicated fund for firefighters who contract these diseases rather than including them in the workers' compensation laws. Concern was also raised regarding the cost of ongoing medical evaluations for firefighters borne by each department. According to Mr. Galbreath, representatives from PFFI will be making some revisions to the proposed legislation and will present the changes to the subcommittee again in the spring for further discussion.

Occupational Disease Laws – (*John Greenfield, Chairman, James Arnold, Mike Haxby, ex-officio: Jack Barrett, Woody Richards, and Alan Gardner*) John Greenfield, subcommittee chairman, reported that he doesn't see any chance of consensus on any significant changes to the occupational disease laws, and believes that now is not the time to run proposed legislation on this subject. Therefore, Mr. Greenfield recommended dissolution of this subcommittee for now and the members concurred.

Attorney Fees – (*James Arnold, Chairman, Roy Galbreath, Mike Haxby, John Greenfield, Glenna Christensen, Gardner Skinner and ex-officio: Dan Bowen, Darin Monroe, Scott McDougall, Commissioner Baskin, and Woody Richards*) Subcommittee Chairman James Arnold informed the members that the subcommittee met and will continue discussions on how to provide for attorney fees when prospective medical care is in dispute. The amount of the attorney fees in most cases would be small, according to Mr. Arnold, but would give claimants better access to an attorney. Mr. Arnold suggested that the subcommittee may look at establishing procedures similar to a change of physician in order to obtain a quick decision rather than having to wait for a lengthy hearing. Mr. Arnold said the subcommittee will meet again.

Independent Contractor Laws – (*Chairwoman Christi Simon, Dave Whaley, Gardner Skinner, Linda Sams, Jim Alcorn, John Greenfield, and ex-officio members Blair Jaynes, Jack Barrett, and John Graham*) Christi Simon reported that this subcommittee is working on amending Idaho Code § 72-102, definition of an independent contractor under the workers' compensation law. The amended definition adds to the current "right to control" test, an "also engaged in an independent business" test. Ms. Simon stated that the addition of this second test will improve the ability of the Industrial Commission to ensure that Idaho workers who are truly not independent contractors are being protected under the Idaho Workers' Compensation Law. It also somewhat mirrors the definition of an independent contractor in the Idaho Employment Security Law.

Ms. Simon reported that the subcommittee is also working on amendments to Idaho Code § 72-318, which deletes the misdemeanor criminal penalty and adds a civil penalty of up to \$10,000 per employee for those employers who violate the existing prohibition against requiring employees to pay for or obtain their own workers' compensation insurance coverage. Ms. Simon stated that these changes will not only act as a meaningful disincentive for employers to engage in these practices, but will give the Industrial Commission a more useful tool in their efforts to protect employees.

Subcommittee amendments to Idaho Code § 72- 319(7), according to Ms. Simon, include the ability to assess a penalty of up to \$10,000 in addition to the daily penalty under I.C. § 72-319(4), when an employer does not secure payment of workers' compensation benefits for employees. Ms. Simon stated that this additional penalty may be imposed when that violation is based on the misclassification of an employee as an independent contractor, after the employer had previously been notified in writing by the Commission that the worker was not an independent contractor. Ms. Simon noted it was suggested there was a possibility that if these legislative changes are enacted, the civil penalties received could at least partially be used for an uninsured employers' fund. Ms. Simon noted that if these legislative changes are enacted, it was suggested that the civil penalties received may, at least partially, be used to establish an uninsured employers' fund.

Chairwoman Simon reported that the last proposed legislative change affects Idaho Code § 72-801, which increases the criminal penalty for making false statements or misrepresentations in order to obtain workers' compensation benefits from a misdemeanor to a felony. Ms. Simon reported that this change coincides with the Idaho Arson and Fraud Reporting Immunity Act (Idaho Code §§ 41-290 through 41-298) that makes such fraudulent statements a felony. These changes will not be submitted to the legislature until the 2012 session, and if passed, the Commission is aware that due to the severity of the penalties involved, there would need to be an education process. Mr. Van Leuven suggested that it may be appropriate to put a "felony warning" on the first report of injury forms indicating that any false statements to obtain compensation is a felony.

Concerns and questions were addressed and a discussion regarding the changes was held.

### **Industrial Commission Report:**

Commission Chairman Thomas Limbaugh reported on the status of the Commission's rules and proposed legislation. He stated that there is a heightened interest in the public entity self-insurance requirements by some legislators, and it's possible that a legislator could propose changes affecting self-insurance requirements. Chairman Limbaugh noted that all of the Commission's proposed rules have been approved by the legislature and will become effective upon sine die with the exception of a portion of IDAPA 17.02.09 containing hospital and ambulatory surgery center (ASC) reimbursements that become effective January 1, 2012. Commissioner Limbaugh commented on the NCCI analysis just released that has determined the Commission's hospital outpatient and ASC reimbursements contained in the new medical fee rules have a plus or minus 1% effect from the current reimbursements.

James Arnold would like to look into the possibility of including deposition and testimony fee guidelines into the Commission's medical fee schedule to help curb exorbitant fees being charged by some providers. Mr. Arnold noted that education of providers has been positive, but it won't reign in the outliers. Mr. Arnold will look into the feasibility of proposing these changes in rule.

Commissioner Limbaugh stated that House Bill 76 (I.C. §72-205, Public Employment) is on the agenda of the House Commerce and Human Resources committee at 1:30 today, which is just a

housekeeping bill. House bill 77 (I.C. §72-523, Source of Fund-Premium Tax) which is the Commission's temporary reduction of premium tax bill will be proposed this year and has the Governor's full support.

Chairman Limbaugh discussed the budget restrictions that may be placed on the Commission and what the Commission has done to reduce our budget to date. Another reduction in funding may occur again this year, according to Chairman Limbaugh, but the Commission doesn't know what that may be yet.

Proposed Legislation – Security for Payment of Compensation – Jane McClaran, Financial Officer for the Commission reviewed the changes proposed by the Commission to lay the ground work for adequacy of security deposits and reporting from sureties and self-insurers with amendments to Idaho Code § 72-301. Woody reported that he and Jane will be meeting with insurance carriers to discuss concerns regarding deletion of the term awards in the proposed RS. Some members expressed apprehension about what rules might be established once the term award is deleted from the statute. Chairman Limbaugh suggested that the proposed legislation could be proposed next year in conjunction with a temporary rule to go into effect upon approval of the legislation.

Questions and concerns were discussed by the members. A meeting with some of the interested parties was scheduled for Friday, February 11<sup>th</sup> at 9:00 a.m. and invitations will be sent out to the subcommittee members.

Topics for discussion at the next Advisory Committee meeting:

- 1) Proposed release to work form for providers - Linda J. Sams
- 2) Improving independent medical exams: reduce multiple exams – possible Commission appointed IME panels or providers – other ideas to improve the IME – feasible to form a subcommittee – Commissioner Baskin
- 3) If , how, and who should notify employees of their five year statute of limitations - since it is a change in claimant's benefits, is it appropriate for the IIC or the surety to send out this notification with the final notice of claim status – Jasen Carrier
- 4) Report on subcommittee meeting on PFFI legislation – Roy Galbreath
- 5) Report on subcommittee meeting on Security for Payment of Compensation – Rian Van Leuven
- 6) Deposition and Testimony Fee Guidelines in Rule – James Arnold
- 7) Report on subcommittee meeting on Attorney Fees – James Arnold
- 8) Independent Contractor Laws – Christi Simon