

**Industrial Commission's Advisory Committee  
On Workers' Compensation  
Minutes  
February 10, 2016**

**Members Present**

Dr. Paul Collins, Chair  
James Arnold  
Connie Barnett  
Mike Batten  
Roy Galbreath  
Dane Higdem  
Larry Kenck  
Craig Mello  
Gardner Skinner  
John Greenfield  
Susan Veltman  
Aaron White

Ex-Officio: Senator Jim Patrick

**Members Absent**

Mike Haxby  
Brian Whitlock

Ex-Officio: Representative Greg Chaney

**Industrial Commission**

R. D. Maynard, Chairman  
Thomas P. Baskin, Commissioner  
Thomas E. Limbaugh, Commissioner  
Mindy Montgomery, Director

**Opening Remarks and Introductions:**

Chairman Paul Collins opened the meeting with introductions of new Special Member Senator Jim Patrick of District 25 and new member Dane Higdem of Glanbia, Inc., who represents employers.

Senator Patrick provided a brief summary of his professional and personal background.

Mr. Higdem thanked the Committee for the opportunity to serve on behalf of employers.

Committee Members and public attendees were next introduced. The Commission's new Fiscal Officer Nick Landry provided a summary of his professional experience and personal background.

**Minutes:**

The Minutes of November 10, 2015 were presented for review and approval. Mr. Galbreath moved to approve the minutes of November 10, 2015 as written, seconded by Ms. Veltman. The minutes were approved as written.

**Industrial Commission Report:**

Commissioner Limbaugh had the following report:

➤ **Status of 2016 Rules and Legislation.**

- **IDAPA Rules Status for Implementing EDI Release 3.0 and Med Fee Rules.**

The Commission's Benefits Administration Manager Scott McDougall presented the rules dealing with EDI 3.0 – IDAPAs 17.0206.1501, 17.0207.1501, 17.0208.1501, 17.0210.1501, and 17.0211.1501 to both the House and Senate Commerce & Human Resources Committees. The rules comprise employer reports, procedures to obtain compensation, and miscellaneous provisions for both sureties and self-insured employers. These rules passed both bodies unanimously.

The Medical Fee Rules – IDAPAs 17.0209.1502 and 17.0209.1503 - were presented by the Commission's Med Fee Analyst Patti Vaughn to both the House and Senate Commerce & Human Resources Committees. The rules were approved in both Committees.

Commissioner Limbaugh commended Ms. Vaughn and Mr. McDougall for a job well done on their rules presentations to both Committees.

- **Review of Market Valuation of Securities Held on Deposit on Behalf of Sureties.**

Representative Anderson (Acting Chair for the House Commerce & Human Resources Committee) requested this Committee to work with him in reviewing market values of securities held on deposit through the State Treasurer's Office ("the STO") on behalf of sureties. The Commission has undertaken preliminary steps to address Representative Anderson's concerns. The Commission reviewed the IDAPAs for self-insured employers to identify who monitors the security deposits for market value. The Commission's Fiscal Officer Nick Landry summarized his meeting with the Treasurer's office and the Department of Insurance ("DOI") on the monitoring process of security deposits for market value. STO reconciles the par value of securities on a bi-annually basis with the banks; the security deposits of the DOI are held by banks under a custodial agreement between DOI, the banks and the sureties, for which DOI receives quarterly statements reflecting the market values of those deposits. STO has the ability to do evaluations through their investment team utilizing a service to track market values.

Through an agreement with the Treasurer's Office to track market values, the Commission would need to pick up the cost for the service. The Commission is considering contracting a vendor to evaluate market valuations.

**ISSUE:** *In times when the market value is higher, do sureties receive a return on deposits?*

Senator Patrick would be opposed to treating security deposits like long-term investments.

After further discussion, the Committee reached consensus to form a **Subcommittee for Securities Valuation** to vet the issue, with an invitation to the Treasurer's Office to participate in the meeting discussions. **Subcommittee members include:** *Chairman Nick Landry, Roy*

*Galbreath, Woody Richards, Larry Kenck, Dane Higdem, Gardner Skinner, Commissioner Limbaugh; Ex-officio members include: Representative Anderson and Senator Patrick.*

Commission Secretary Beth Kilian will distribute the first meeting invitation to the Subcommittee members and coordinate an invitation to the Treasurer's office.

➤ **Legislation the Commission is Following:** The Industrial Commission had no legislation this year, but have been following a few bills in this session:

**HB435.** The House Commerce & Human Resource Committee yesterday held a hearing and unanimously voted to hold HB435 in committee. The Commission opined the bill had 'merit' on both sides of the issue.

Mr. Greenfield attended the hearing on the bill and expressed his concerns regarding HB435. The House Commerce Committee took issue that the proposed legislation had not been vetted through the Commission's Advisory Committee. He opined the end result would be a *Neel* fee issue. Mr. Greenfield requested the Idaho Trial Lawyers Association (Executive Director Barbara Jorden) meet to vet the issue and present recommendations to this Advisory Committee at a future meeting.

Mr. Richards concurred with Mr. Greenfield's assessment that the issue merits further discussion. Mr. Greenfield will coordinate with the Idaho Trial Lawyers Association for a meeting on the issue.

**HB434.** The legislation affects the Crime Victims Compensation program. The Courts are reorganizing their schedule on collections of fees, which will move Crime Victims from a secondary position on the schedule to a fifth position. This change may affect collections, which in turn may reduce the percentage of payments to providers and hospitals. The Commission suggested medical providers follow this legislation.

Commissioner Limbaugh had no further report.

Commissioner Baskin next reported as follows:

➤ **Firefighters' Legislation.** The Commission recently was made aware of two new versions of legislation amending IC §72-438 that would create a presumption favoring the compensability of certain cancers contracted by firefighters. Representative Anderson has taken an interest in the Firefighters legislation and has been working on a couple of bills to address this issue. The Legislative Services Office is in the drafting process.

One version would benefit the Firefighters by obviating the need to demonstrate risk exposure characteristic of and peculiar to the employment of being a firefighter. It would not create a presumption but instead add another enumerated occupational disease in the list of occupational diseases in IC §72-438.

The second version would change the way in which the presumption could be overcome and would require demonstration of “substantial” evidence to the contrary. Substantial is a term-of-art constructed by the Court in the case of *Evans v. Harris* that dealt with another presumption created by statute, *see* IC § 72-228. “Substantial” means more than a scintilla, but less than a preponderance of the evidence.

**(Public Comment)**

Mr. Richards concurred with Commissioner Baskin’s summary of the proposed Firefighters’ legislation.

Commissioner Baskin further reported:

➤ Prompt Claims Handling – Timely Benefits Payments. The Commission held a meeting in September 2015 with a number of members from the adjusting community to address their concerns of auditing practices of the Commission’s Benefits department and some disagreements in the interpretation of certain requirements of the Worker’s Compensation law, including Benefits’ practice that prompt claims handling means something in addition to paying weekly benefits in a timely fashion.

Idaho Code § 72-304 vests the Commission with the authority “to make and change, from time to time such rules and regulations as it shall deem necessary to secure the prompt payment of compensation.”

IDAPAs 17.02.10.051.09 and 17.02.11.051.09 define prompt claims servicing and include, but are not limited to, the payment of medicals bills in accordance with the Med Fee schedule and payments of benefits on a weekly basis unless otherwise approved by the Commission.

The Commission understands the industry practice is not to pay on a weekly basis. PPI is paid on monthly basis. TPD is paid twice monthly.

Idaho Code § 72-317 reads, “the Commission, upon application of either party, may in its discretion having regard to the welfare of employee and the convenience of employer authorize income benefits be paid bi-weekly and bi-monthly, instead of weekly.” The default position is for benefits to be paid weekly; however, the Commission’s position is that, if either party makes an application to the Commission to receive some relief for the default position, the Commission can take up the issue on a case-by-case basis. The Commission recognized the industry practice is not in conformance with statute.

The Commission’s Benefits Department assures compliance with the adjusting requirements of Idaho law and the implementing regulations thereof through the audit process.

The Commission proposed statutory and rules amendments allowing a surety to make a blanket application on the relief from the default position; and to proceed as we have historically. (*See* handouts of Draft 5 Feb 2016 Amendments of IC § 72-317 and IDAPAs 17.02.10 and

17.02.11.) The proposed language would allow implementation of regulations to specify that the authority to do this could be withdrawn where it appears benefits are not being paid promptly, similar to the Commission's current practice for the in-state check writing waiver.

The surety groups at the September meeting also expressed concern. It means that the decision to accept or deny a claim needs to be done within 28 days after the case lands on your desk to assure the prompt payment of compensation to which an injured worker would be entitled, *see* the provisions of IC § 72-402. The practice has evolved over time and has met with a great deal of resistance due to the complexity of claims, the impact of the *Neel* case in making adjusting decisions, and the difficulty in obtaining medical releases for medical records. The Commission recognized it can be particularly difficult in an occupational disease claim.

Idaho Code § 72-304 allows the Commission the authority to adopt any kind of time frame. The Commission has used 28 days, but is not wedded to that timeframe. The Commission is interested in a timeframe that is fair to claimants' bar, the injured worker who has a right to receive a prompt handling of the claim, and to adjusters burdened in this day and age with tougher cases.

Commissioners Baskin, Maynard, and Limbaugh concurred a subcommittee should be organized that would include members from the adjusting community, the claimants and defense bar, and a few sureties to vet this issue of prompt payments of benefits; and address other issues of the surety group.

**(No Public Comment.)**

After discussion, the Committee consensus was to form the **Subcommittee for Prompt Claims Payments Regs & Statutes** to convene the early part of March. Commission Secretary Beth Kilian will distribute the first meeting invitation to the Subcommittee.

The **Subcommittee Members include:** *Chairman Mike Haxby, Jamie Arnold, Brad Eidam, John Greenfield, Paulette Boyle, Aaron White, Holly Alderman, Jeanne James, Woody Richards, Gardner Skinner, Mike McPeek, and Teresa Cirelli.*

Commissioner Baskin had no further report.

Commission Benefits Administration Manager Scott McDougall presented a status update for the implementation of EDI Release 3.0 as follows:

➤ Update: EDI Release 3.0 Implementation. The IDAPA Rules passed in both the House and Senate Commerce & Human Resources Committees to enable and mandate EDI Release 3.0, the paperless submission and acknowledgment of claims documents. There are several individuals involved in the quality control process, which is the more difficult part for the Commission. The IDAPA Rules specify that the Commission will provide a web-based data entry portal for any surety or claims administrator not able or unwilling to develop their individual internal EDI system.

Mr. McDougall recognized the following individuals who were vital on the Subcommittees for putting together the rules package: Brad Eidam, Gardner Skinner, Mike McPeck and Mike Haxby.

Mr. McDougall confirmed the mandate date for implementation of EDI Release 3.0 is July 1, 2017. Also, the Subcommittee's work was completed last May; it was determined that no further meetings would be needed.

There was no further report of the Commission.

**(No Public Comment.)**

*(Break.)*

**Updates:**

➤ **Industrial Special Indemnity Fund – Annual Report CY15 and FY17 Assessments.**

James Kile, Manager of the Industrial Special Indemnity Fund, provided a handout of the ISIF Annual Report Calendar Year 2015 and FY17 Assessments and presented a brief summary of the report as follows:

He summarized the purpose of the Second Injury Fund is to pay benefits to workers, who become totally and permanently disabled due to a permanent work injury; while still preserving the assets of the Second Injury Fund so money is readily available.

- Page 3, Notices of Intent. Notices have decreased about 30% from 46 to 32 as compared to the last calendar year. Several factors contributed to the decrease; in particular, using an aggressive strategy to manage the claims.
- Page 4, Complaints. Complaints have decreased almost 26%, from 39 to 29. 18 complaints were filed during same year as notices of intent.
- Page 5, Cases Closed by Stipulated Agreement. The report reflects just 17 cases closed by agreement, which is misleading since that number also includes the lump sums the ISIF agreed to pay for total and permanent benefits either statutorily or modified statutory or in some cases both.
- Page 6, Lump Sum Settlements. The aggregate figure for lump sums is down \$200,000. The Average Weekly Wage is a big factor in the benefits structure; and is a sizeable increase for all beneficiaries.
- Page 7, Monthly Payouts. There is a steady increase in monthly payouts. Paying approximately \$300,000 a month for all beneficiaries, due to added individuals to the rolls.
- Page 8, Attorney Expenses. ISIF is represented by eight well-experienced attorneys throughout the State. One attorney in North Idaho; three attorneys in the Treasure Valley; two attorneys in the Twin Falls area; and two attorneys in Eastern Idaho. The cases have become more complex. ISIF precludes inclusion of defense costs, see case of *Werneke*.

- Page 10, Assessments. Although numbers of notices of intent and complaints have decreased, ISIF has projected an increase of assessments next year. Historically, there are more cases settled and fewer cases dismissed during the first six months of the fiscal year. Cases are tougher to settle in the last six months, from now to June. If the trend continues as projected, ISIF predicts a sizeable bump in the assessments.

Mr. Kile anticipates no changes to the ISIF's current document filing processes. He conceded that electronic submissions are the future. He would be opposed to electronic filing of documents with the ISIF, due to his experience at ISIF of a contaminated disk that corrupted the computer system. His preference is documents be filed in paper form.

Mr. Mello inquired, at page 4 of the report, if it is by coincidence that complaints increase every even year.

Mr. Kile had no conclusion for the rollercoaster effect; and had no further report.

**Other Issues/Announcements:**

The Commission announced it will begin the process for requests for proposals ("RFP") for contracting a consultant who would provide commercial pay data on medicals specific to Idaho. The RFP process could take a full year to complete. If you recall, the Commission has been researching, for some time, ways to obtain commercial data for assessing the medical fee schedule. Commissioner Baskin and Med Fee Analyst Patti Vaughn had met with representatives of commercial carriers; unfortunately, those meetings did not have the expected result.

**Preparation for Future Meetings:**

Next Meeting Dates:

May 11, 2016;  
August 10, 2016; and  
November 9, 2016

Mr. Galbreath moved to adjourn, seconded by Ms. Veltman.

There being no further business, the meeting adjourned at 11:07 am.