



COVERAGE, CLAIMS & LITIGATION COMMITTEE
Meeting Minutes

Thursday, May 23, 2013
IRMA Office – 9:30 a.m.

PRESENT: Kathleen Gargano, Chair
Curt Barrett
Peter Scalera
Dennis Bubenik
Colleen Nigg
Keith Sbiral
Julia Cedillo
Blaine Wing

ALSO PRESENT: Larry Bush
Mary Henzler
Susan Garvey

ABSENT: Mike Braiman
Eric Ertmoed

I. CALL TO ORDER

Chair Gargano called the meeting to order. Roll was taken and a quorum declared.

II. APPROVAL OF MINUTES – February 12, 2013

A motion was made by Nigg and seconded by Sbiral to approve the minutes of the February 12, 2013 Coverage, Claims & Litigation Committee meeting. A voice vote was taken and the motion carried.

III. CLAIMS & LITIGATION REPORTS

- A. Claims Operational Report – 4/30/13
- B. Summary Loss Report as – 4/30/13
- C. Litigation Reports
 - 1. New Liability Claims Report
 - 2. Closed Liability Claims Report
 - 3. Litigation Management Report – 4/30/13

Bush noted that the reports are self-explanatory and commented that the increase in claims was due primarily to the recent flooding. Workers' compensation remains very favorable. Some of the reforms that took place in September of 2011 took effect, such as the medical fee schedule using the AMA guidelines have really had an impact on our workers' compensation costs. We will also be introducing a preferred provider network that will also have a very favorable impact long term.

Bush reported that there was legislation introduced that would have a very negative effect – rolling back some of the AMA guidelines; however, we don't think the legislation will be passed. We have registered our position with the Chamber of Commerce, who is taking the lead on this.

IV. CLAIMS AUDIT

Bush reported that he received the report yesterday and hasn't had much time for analysis. However, he did put together a summarization table that shows the results indicated excellent performance. Bush stated that staff will review the report and respond to the recommendations and bring this back to the September 12th committee meeting to discuss more thoroughly. Gargano asked Bush to put together a summary of any dialogue between the auditor and IRMA and bring that back to the next meeting.

V. GUIDELINES FOR USE OF MUNICIPAL COUNSEL

Garvey explained that this is something that we have been talking about and the RFQ process brought it to the forefront. Garvey explained that on rare occasions when it was beneficial to allow member's counsel to remain on the defense of the matter. Staff thought that it would be helpful to have something in writing to outline those circumstances,, as well as the procedures that will be followed once an agreement to retain member's counsel has been reached. Gargano thanked staff for doing the work on this.

VI. AMICUS BRIEF – MOTION TO RECONSIDER DIAZ V. VILLAGE OF MONTGOMERY

Garvey reviewed the facts of a involving a police officer shooting case that came out of Montgomery involving a police officer who filed a workers' compensation claim for a psychological disability in the absence of a physical injury. Garvey noted that the "mental-mental" theory of recovery requires that a claimant suffer a "sudden, severe emotional shock traceable to a definite time, place and cause, which causes psychological injury or harm, but doesn't require a physical injury."

Garvey noted that the police officer reported that he was having anxiety attacks, began treating and was diagnosed with posttraumatic stress disorder. He was given a fit for duty exam and was found to be fit for duty. However, he filed an application for adjustment of claim seeking workers' compensation benefits. The Arbitrator granted him benefits based on the "mental-mental" theory. The Commission reversed the Arbitrator's decision, based on the fact that a police officer with weapons training is trained to deal with these types of situations. The Circuit Court upheld the Commission's decision, but the Appellate Court reversed. The police officer claimed that he was improperly held to a higher standard of proof than workers in other occupations because of police officer training. The Appellate Court agreed with him and reversed the Commission's denial of his claim.

Garvey stated that this decision has a huge impact on workers' compensation costs for public safety employees and will likely result in an increase in these types of claims. Garvey noted that there is only one appellate court that hears these kinds of cases, so if it stays the way it is, this ruling will apply to all cases in Illinois. On top of that there has to be two dissenting votes in the appellate court to be able to take it up to the Supreme Court, and there was only one dissenting vote. The only option is to file a Petition for Rehearing and hope that another justice will dissent.

Garvey noted that staff was approached by our counsel who handles these types of cases and suggested that we file an amicus brief on this, although it is unusual to file amicus briefs in conjunction with Petitions for Rehearing. Our workers' compensation attorney did research and found that there was nothing wrong with filing an amicus brief, so we did make the decision to

move forward and have filed an amicus brief. There isn't a hearing date set on this, but our counsel reports it will be a written order.

VII. EXECUTIVE SESSION

A motion was made by Nigg and seconded by Scalera to move into Executive Session. A voice vote was called and the motion carried.

A motion was made and seconded to move out of Executive Session. A voice vote was called and the motion carried.

VIII. ADDITIONS TO AGENDA

There were no additions to the agenda.

IX. CONFIRMATION OF NEXT MEETING

Gargano reported that the next committee meeting was scheduled for Thursday, September 12, 2013 at 9:30 a.m. at the IRMA office.

X. ADJOURNMENT

A motion was made Spiral and seconded by Wing to adjourn the meeting. A voice vote was called and the motion carried.

Submitted by:

Susan Garvey
Director of Legal Services

Approved by:

Kathleen Gargano, Chair
Coverage, Claims & Litigation Committee