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Uninsured Employers' Fund
Testimony
Michael Burns, Director

SB0789/HB0915 – Workers' Compensation – Uninsured Employers' Fund – Timely Payment of Awards
Position - Unfavorable

Please accept the following as the written testimony of the Maryland Uninsured Employers' Fund (UEF/Fund/Agency) requesting an Unfavorable report on SB0789/HB0915 – Workers' Compensation – Uninsured Employers' Fund – Timely Payment of Awards:

The UEF is not an insurance company or an employer; it is a state agency which is a payer of last resort. <u>Employers and insurance companies are in a completely different legal posture from the State of Maryland Uninsured Employers' Fund – a payor of last resort - with different legal obligations, responsibilities, liabilities and duties.</u> This agency's obligation to pay is triggered by the default of an uninsured employer, unlike the obligations to pay of an insurer or an employer. The bill fails to recognize these basic legal and factual circumstances and differences.

The interested parties testifying in favor of this bill have indicated that this bill is necessary to enact because the UEF "refuses" to pay awards while appeals are pending as a matter of choice.

This is not true. The UEF's payment triggering statute, 9-1002 of the Labor and Employment article, does not currently ALLOW the UEF to pay awards while appeals on compensability are pending. That is the reason for this "refusal." (Note: The UEF does pay injured workers when appeals are pending on issues OTHER THAN Compensability.) This interpretation of 9-1002 has been supported by the Maryland Court of Appeals in <u>Uninsured Employers' Fund v. Danner</u>, 388 Md.649 (2005), a decision written nearly 20 years ago.

This bill, however, does NOTHING to change 9-1002 or remove the language that currently prevents the UEF from paying awards while certain appeals are pending.

Therefore, if this bill is passed, the UEF would STILL NOT be legally able to pay awards while appeals on compensability are pending.

So, it doesn't do what those in favor of it want it to do.

This bill also says that Awards must be paid within 15 days of "becoming due."

It is, however, 9-1002 - and only 9-1002 - that determines when awards become due for payment by the UEF.

The UEF already pays awards within 15 days of them becoming due under 9-1002. That is why the UEF stated in its House testimony that it would not expect to be fined for non-compliance under this bill.

The mechanism for triggering payment from the Uninsured Employers' Fund (UEF) is detailed in 9-1002. That statue lays out the process and the timeline of how the Fund is to pay benefits. This bill does not modify that statute, or potentially other relevant provisions of law, so it would not change the timelines by which the Fund pays benefits, despite its stated intention. Changing such timelines would require other substantial legislative changes to the entire payment process and timeline which would seriously disrupt how the UEF functions and operates.

These facts are important. As shown, the Fund has not refused, by choice, to not pay awards when certain types of appeals are pending. Additionally, changing timelines when payments are to be made by the Fund would require substantive changes to the current long-established procedure and process for payments made from the Fund by altering 9-1002.

Enacting this bill could, therefore, put the Fund in an impossible legal position regarding this issue of Appeal payments - between what this legislation would actually end up doing versus what the advocates that proposed it argued it would do.

We foresee that claimant attorneys will, under this legislation, seek large fines from the Fund for the sin of following the very statutory constraints put upon it by the General Assembly and subsequently affirmed by the Court of Appeals in 2005. This would cause the Fund to find itself in engaged in costly and burdensome litigation with ongoing large penalty payouts possible.

One of the main responsibilities this agency is to preserve the solvency of the agency's self-funded Fund so that it may continue to be available for future injured workers. An actuarial study has concluded that the UEF, absent an increase in its current funding structure, is presently on a track toward potential insolvency in the future. So, it is clear that this agency's concerns about the consequences of enacting SB0789 are legitimate concerns based on demonstrable fiscal analysis that should not be taken lightly and - in addition - reflect an ongoing commitment by the Fund to solvency and ensuring adequate resources are available to continue to protect uninsured injured workers and do not, as suggested in the House by the advocates, indicate a lack of concern for injured workers.

The Uninsured Employer's Fund exists to protect workers whose employers fail to obtain Worker's Compensation Insurance. We work to ensure that benefits and medical expenses are properly paid to injured workers, and that uninsured employers are held accountable with penalties and sanctions for their failure to comply with Maryland law to ensure and protect their employees. We protect the innocent employee and to ensure that noncompliant employers are held accountable for their actions as mandated by law.

In summary, we note that:

1) There is no indication that there is currently a problem of untimely payments from the Fund that would merit a punitive legislative change against this state agency;

2) The bill does not change the timeline for payments from the Fund, despite announcing its intention to do so, which will result in confusion and portends the prospect of future litigation, and potential further legislation, on the matter to resolve resulting conflicts;

3) The bill does not specify that the non-insured employer that is ordered to pay benefits be fined first - and that any fines paid by the Fund be recoverable from the non-insured employer, leaving the Fund without recourse in recouping penalties from any source. It also establishes a dangerous precedent with the Fund being subject to direct orders issued by the Workers' Compensation Commission involving payments without recourse;

4) The bill penalizes the Fund without any source of recovery for the substantial penalty payments made available to litigants, thus depleting the Fund, impacting its stability and long-term viability and thereby reducing the resources available to advance the Fund's purpose – to protect and compensate uninsured injured Maryland workers; and,

5) Although it is impossible to predict how many cases would be subject to this bill, it is clear that the bill, if enacted, will monetarily penalize the Fund, perhaps substantially, without any avenue for recoupment, and reduce the Fund's financial balance, stability and ability to protect and care for injured Maryland workers.

This agency requests an unfavorable report on this proposed legislation.

Thank you.

Sincerely,

Michael W. Burns

Michael W. Burns, Esquire

Director