

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

House Bill 122

(Chairman, Judiciary Committee)

(By Request - Maryland Judicial Conference)

Judiciary

Judicial Proceedings

**Courts - Subsequent Injury Fund - Effect of Impleading in Workers'
Compensation Appeal**

This bill requires that if the Subsequent Injury Fund (SIF) is impleaded in a Workers' Compensation Commission (WCC) claim on appeal before a circuit court or the Court of Special Appeals, as to an impleader filed at least 60 days before the scheduled trial in the circuit court or hearing in the Court of Special Appeals, the court must suspend further proceedings and remand the case to WCC for further proceedings to give SIF an opportunity to defend against the claim. As to an impleader filed less than 60 days before the trial in the circuit court or hearing in the Court of Special Appeals, the court may for good cause shown suspend further proceedings and remand the case to WCC for further proceedings.

The bill only applies to appeals filed on or after the bill's October 1, 2003 effective date.

Fiscal Summary

State Effect: To the extent that the bill results in fewer impleaders of SIF and/or remands to WCC in workers' compensation appeals, WCC and SIF will experience efficiency savings.

Injured Workers' Insurance Fund (IWIF): It is expected that any additional efforts expended by IWIF to show good cause in appeals could be handled with existing resources.

Local Effect: Efficiency savings for circuit courts due to improved scheduling and utilization of facilities.

Small Business Effect: Potential minimal impact on small law firms representing workers' compensation claimants due to requirement to show good cause when impleading SIF within 60 days.

Analysis

Current Law: If SIF is impleaded in a WCC claim on appeal before a circuit court or the Court of Special Appeals, the court must suspend further proceedings and remand the case to WCC for further proceedings to give SIF an opportunity to defend against the claim.

Background: SIF exists to encourage the hiring of workers with pre-existing disabilities by assuming financial responsibility for the combined effects of a pre-existing disability and an accidental workplace injury. SIF reviews and investigates workers' compensation claims that involve pre-existing health conditions that substantially increase the disability of injured workers. The liability of employers' insurers is limited to compensation for the damages caused by the current injury, and SIF incurs all additional liability from the combined effects of all injuries and/or conditions.

IWIF operates as a nonprofit insurer providing workers' compensation insurance to Maryland businesses. IWIF offers a fully integrated safety and benefits delivery system that provides safety information and medical care with an early return-to-work objective. IWIF is a State-created, fully self-supporting insurance company that operates solely from premium and investment income. A nine-member, Governor-appointed board of directors oversees the general operations of IWIF.

This bill is in response to the appeals process for WCC claims created by a Court of Appeals case (*Carey v. Chessie Computer Services Inc.*, 369 Md. 741 (2001)). In that decision, the court found that circuit court judges must, without any delay or further hearings on the matter, return WCC appeals to WCC as soon as SIF is impleaded.

At issue is the scheduling of the courts and the use of the SIF impleader to continue cases when there is no merit to the impleading of SIF. There are three basic events in appeals of WCC claims: (1) a scheduling order; (2) a pretrial form/order; and (3) a trial. A scheduling order sets the date for the pretrial hearing. At the pretrial hearing, the parties agree to a hearing date and indicate that all parties to the appeal have been included.

If a party to an appeal in a WCC claim impleads SIF more than 60 days before the agreed upon trial date, the court can remand the appeal and schedule another trial or hearing for that time. If SIF is impleaded within 60 days of the trial date, the courts cannot readily schedule another trial to fill that slot, costing the courts valuable hearing times.

This bill would provide circuit courts with the ability to determine whether a bona fide reason exists for returning an appeal to WCC or whether the impleading is clearly being used for a delay of the case without merit, if the impleading occurred within 60 days of the agreed upon trial date.

Additional Information

Prior Introductions: None.

Cross File: SB 140 (Chairman, Judicial Proceedings Committee) – Judicial Proceedings.

Information Source(s): Uninsured Employers' Fund, Judiciary (Administrative Office of the Courts), Prince George's County Circuit Court, Workers' Compensation Commission, Injured Workers' Insurance Fund, Subsequent Injury Fund, Department of Legislative Services

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