

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS
COMMITTEE HEARING

STATE CAPITOL
HARRISBURG, PA

RYAN OFFICE BUILDING
ROOM 205

WEDNESDAY, NOVEMBER 14, 2012
9:00 A.M.

PRESENTATION ON ACT 46 OF 2011
WORKERS' COMPENSATION - CANCER PRESUMPTION

BEFORE:

HONORABLE STEPHEN BARRAR, MAJORITY CHAIRMAN
HONORABLE KAREN BOBACK
HONORABLE MARTIN T. CAUSER
HONORABLE GARTH D. EVERETT
HONORABLE FRANK A. FARRY
HONORABLE MARK M. GILLEN
HONORABLE JOSEPH T. HACKETT
HONORABLE SCOTT E. HUTCHINSON
HONORABLE JIM MARSHALL
HONORABLE THOMAS P. MURT
HONORABLE KATHY L. RAPP
HONORABLE ROSEMARIE SWANGER
HONORABLE WILL TALLMAN
HONORABLE CHRIS SAINATO, DEMOCRATIC CHAIRMAN
HONORABLE BRYAN BARBIN
HONORABLE TINA M. DAVIS
HONORABLE MARIA P. DONATUCCI
HONORABLE WILLIAM C. KORTZ II
HONORABLE ED NEILSON
HONORABLE JAKE WHEATLEY

* * * * *

*Pennsylvania House of Representatives
Commonwealth of Pennsylvania*

ALSO IN ATTENDANCE:

HONORABLE GEORGE DUNBAR
HONORABLE TIMOTHY KRIEGER
HONORABLE MARK LONGIETTI

COMMITTEE STAFF PRESENT:

RICHARD T. O'LEARY
MAJORITY EXECUTIVE DIRECTOR
SEAN E. HARRIS
MAJORITY RESEARCH ANALYST

HARRY M. BUCHER II
DEMOCRATIC ACTING EXECUTIVE DIRECTOR

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1 P R O C E E D I N G S

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3 MAJORITY CHAIRMAN BARRAR: Good morning,
4 everyone. I would like to call the Veterans Affairs and
5 Emergency Preparedness Committee meeting to order.

6 I would ask that Senator-elect Scott Hutchinson
7 lead us in the Pledge of Allegiance.

8 REPRESENTATIVE HUTCHINSON: Thank you. It would
9 be my honor.

10

11 (The Pledge of Allegiance was recited.)

12

13 MAJORITY CHAIRMAN BARRAR: I would ask the
14 Members, first, if they would -- and everyone in the room
15 -- if they would mute their cell phones since we are being
16 live-streamed in the room today. Okay?

17 And I would start to my far right, if the
18 Representatives and staff would introduce themselves.

19 REPRESENTATIVE WHEATLEY: Thank you,
20 Mr. Chairman.

21 I'm State Representative Jake Wheatley
22 from Allegheny County, the city of Pittsburgh, the
23 19th Legislative District.

24 REPRESENTATIVE KORTZ: Good morning, everyone.

25 My name is Bill Kortz. I'm from Allegheny

1 County, the 38th District.

2 REPRESENTATIVE HACKETT: Good morning, everyone.

3 I'm Representative Joe Hackett from Delaware
4 County.

5 REPRESENTATIVE FARRY: Representative
6 Frank Farry, the 142nd District, Bucks County.

7 MR. HARRIS: Sean Harris, Research Analyst for
8 the committee.

9 MR. O'LEARY: Good morning.

10 Rick O'Leary, Executive Director for Chairman
11 Barrar.

12 MINORITY CHAIRMAN SAINATO: Representative
13 Chris Sainato. I'm the Democratic Chairman of the
14 committee.

15 MR. BUCHER: Harry Bucher, staff for Chris
16 Sainato.

17 REPRESENTATIVE DAVIS: Good morning.

18 Tina Davis, Bucks County, the 141st.

19 REPRESENTATIVE DONATUCCI: Good morning.

20 Maria Donatucci, the 185th District, Philadelphia
21 and Delaware Counties.

22 REPRESENTATIVE GILLEN: Mark Gillen, the
23 128th Legislative District, southern Berks County.

24 REPRESENTATIVE CAUSER: Good morning.

25 Marty Causer, the 67th District, McKean, Potter,

1 and Cameron Counties.

2 REPRESENTATIVE RAPP: Good morning.

3 Kathy Rapp, 65th District, Warren, Forest, and
4 part of McKean County.

5 REPRESENTATIVE HUTCHINSON: Good morning.

6 Representative Scott Hutchinson, the
7 64th Legislative District, Venango and a portion of Butler
8 County.

9 REPRESENTATIVE MURT: Tom Murt, the
10 152nd District, Philadelphia and Montgomery Counties.

11 REPRESENTATIVE TALLMAN: Will Tallman, the 193,
12 Adams and York, parts of.

13 REPRESENTATIVE LONGIETTI: Hello.

14 Mark Longietti, the 7th District, Mercer County.

15 MAJORITY CHAIRMAN BARRAR: Thank you, everyone.

16 Yesterday on the floor I had made a comment about
17 the Marine Corps birthday, it being the 237th birthday. A
18 year ago, Representative Wheatley had actually sung
19 a cappella the Marine Corps Hymn. I'm just wondering if
20 you want a chance to do that today? It was very
21 entertaining.

22 We're here today to examine the reported
23 cancellation of fire department workers' compensation
24 insurance plans in response to Act 46, which is known as
25 the Cancer Presumption Act.

1 This committee conducted a public hearing and
2 multiple meetings on this important subject matter last
3 year, and with the support of the League of Cities,
4 municipal trust organizations, local government
5 associations, firefighting organizations, and our Senate
6 counterparts, an agreed-to piece of legislation was passed
7 into law with several amendments offered by the municipal
8 trusts and the local government associations.

9 As we move forward today, over the past several
10 months we've received many reports from House Members who
11 have been contacted by their volunteer fire departments and
12 local governments and shown letters stating that their
13 municipal trust insurers are dropping their coverage at the
14 end of this year citing Act 46. Myself and many Members of
15 this committee and the General Assembly find this to be
16 shocking and very disturbing.

17 In view of the agreement we have all worked
18 together towards on this important legislation, today we're
19 here to examine this matter with some of the very same
20 stakeholders in the past negotiations, and it's my sincere
21 hope that we can find some resolution of the conflict here
22 and do what is right for our volunteer firefighters and the
23 communities which they serve and protect.

24 We have an excellent panel of testifiers this
25 morning, and I want to thank everyone here for their

1 attendance, especially Members. We have a great turnout
2 from the Members, and it shows you how important this issue
3 is to us.

4 So I would refer to Chairman Sainato, if he would
5 like to make some remarks.

6 MINORITY CHAIRMAN SAINATO: Thank you, Chairman
7 Barrar.

8 I, too, have a great concern about this issue.
9 This committee took a lot of time and effort into getting
10 this legislation passed with all stakeholders there. We
11 thought it was resolved, and this is very disturbing to me,
12 as well as I think most Members. To see how many people
13 have come to this meeting this morning I think tells you
14 how important this issue is. So we look forward to the
15 testifiers, and hopefully we can come up with a solution
16 that would be beneficial to all.

17 MAJORITY CHAIRMAN BARRAR: Thank you, Chairman.

18 Also, I would like to ask the prime sponsor of
19 the bill, Representative Frank Farry, to make some opening
20 remarks, please.

21 REPRESENTATIVE FARRY: Sure. Thank you,
22 Chairman.

23 Act 46 was actually based upon numerous meetings
24 that started in November of 2010 with all the various
25 stakeholders once HB 1231 was vetoed by then Governor

1 Rendell. All parties worked together to come to a
2 consensus on what was ultimately Act 46.

3 Obviously what's going on right now in the
4 Commonwealth has resulted in some unintended consequences.
5 I'd like to thank the Chairman for hosting this meeting so
6 we can get to the bottom of what has led us to the point
7 where we are right now. Thank you.

8 MAJORITY CHAIRMAN BARRAR: Thank you,
9 Representative.

10 Our first testifier today is Ms. Elizabeth Crum,
11 Deputy Secretary for the Department of Labor & Industry.

12 Ms. Crum, thank you for being here today, and you
13 can begin your testimony.

14 DEPUTY SECRETARY CRUM: Thank you.

15 Chairman Barrar, Chairman Sainato, and Members of
16 the Veterans Affairs and Emergency Preparedness Committee,
17 I'm Elizabeth Crum, Deputy Secretary for Compensation and
18 Insurance with the Department of Labor & Industry. On
19 behalf of Secretary of Labor & Industry Julia Hearthway, I
20 would like to thank you for the opportunity and invitation
21 to testify at the hearing this morning regarding Act 46 of
22 2011.

23 Because the Pennsylvania Insurance Department was
24 unable to be here this morning, I'll read the comments
25 prepared by that agency regarding their authority under the

1 act as well.

2 Act 46, as you know, establishes a rebuttable
3 presumption that any cancer suffered by a firefighter with
4 the requisite years of service and exposure is considered
5 to be work related. To rebut the presumption, an insurer
6 or self-insured employer must show by "substantial
7 competent evidence" that the firefighter's cancer was not
8 the result of their work as a firefighter. In other words,
9 the employer, the insurer, of an eligible firefighter has
10 the burden of proving that the cancer was caused by factors
11 other than their work as a firefighter. Among other
12 provisions, the act expands the time period for filing such
13 a claim from 300 weeks to 600 weeks.

14 The hearing this morning specifically focuses on
15 the announcement of municipal trusts that are authorized to
16 self-insure their workers' compensation liability to cancel
17 volunteer firefighter policies because of potentially large
18 claims under the act. As a result, volunteer fire
19 companies will need to obtain insurance from the State
20 Workers' Insurance Fund or a private insurer.

21 By way of background, with respect to volunteer
22 firefighters, there are actually two employers, the
23 volunteer fire company and the municipality. The
24 municipality bears the primary but not exclusive authority
25 and responsibility for insuring the workers' compensation

1 liability for volunteer fire companies and for paying the
2 premium.

3 Although volunteer fire companies are able to
4 obtain separate workers' compensation insurance, they are
5 not required to independently insure their workers'
6 compensation liability. If a volunteer fire company does
7 not obtain separate coverage, the municipality as the
8 "statutory employer" remains ultimately liable for payment
9 of workers' compensation benefits to any injured member.

10 For those municipalities where policies were
11 canceled, there are options available. They are able to
12 purchase workers' compensation insurance from SWIF, the
13 insurer of last resort in Pennsylvania, or another licensed
14 workers' compensation insurer in the Commonwealth. They
15 can purchase separate workers' comp coverage from SWIF or a
16 private insurer as a combined entity or as a single entity,
17 and when I say "combined entity," I mean as an entire
18 municipality. And then finally, they could be included in
19 a municipality's workers' compensation insurance policy.

20 The Department of Labor & Industry has also been
21 working in conjunction with the State Insurance Department
22 to evaluate and understand the potential impact Act 46 of
23 2011 has had on the availability of coverage options for
24 municipalities with volunteer fire companies. It should be
25 noted that the Pennsylvania Insurance Department has a very

1 limited but specific role in the regulatory scheme
2 pertaining to workers' compensation coverage in the
3 Commonwealth.

4 Most of the oversight responsibilities for Act 46
5 rest with the Department of Labor & Industry. The
6 Pennsylvania Insurance Department is responsible for
7 reviewing and approving loss cost factors that are used by
8 the State's two rating organizations for workers'
9 compensation -- the Pennsylvania Compensation Rating Bureau
10 and the Coal Mine Rating Bureau -- to develop
11 classifications and rules used in the development of
12 workers' compensation rates. The filings submitted by the
13 various rating organizations are open to public comment,
14 but historically the Insurance Department has received
15 little input on any modifications to the classifications or
16 rules that are proposed.

17 The Insurance Department has spoken with a
18 handful of insurance carriers throughout the Commonwealth
19 who are in the private market and who currently have
20 policies in force covering volunteer firefighters, and the
21 department has been informed that these insurers are
22 adopting a "wait and see" approach and have not made any
23 final decisions as to whether to nonrenew any of their
24 current policies.

25 Through our meetings with some of the

1 self-insured municipal trusts, which has been anecdotally
2 confirmed through conversations with insurers, the
3 Insurance Department believes that a majority of the
4 Commonwealth's volunteer fire departments currently secure
5 their coverage through a municipal trust or the State
6 Workers' Insurance Fund. Neither of these entities is
7 regulated by the Pennsylvania Insurance Department.

8 The Department of Labor & Industry understands
9 the concern expressed by lawmakers regarding the loss of
10 workers' compensation coverage for volunteer firefighters.
11 L&I continues to pursue all options available under the law
12 so that municipalities and volunteer firefighters are
13 covered under the act. Specifically, L&I's executive team
14 continues to meet to address outstanding issues and stay
15 apprised of latest developments. L&I has attended meetings
16 with the General Assembly and has met with two of the
17 Trusts in September.

18 The good news is that these internal and external
19 meetings have proved to be very productive. We've been
20 advised that the insurance industry identified a rating
21 methodology that would minimize rate increases for
22 municipalities with multiple volunteer companies within
23 their borders. The Pennsylvania Compensation Rating Bureau
24 will allow volunteer fire companies within a municipality
25 to purchase a single policy if all the companies within the

1 municipality participate in the policy.

2 Additionally, L&I is working to ensure
3 continuation of coverage and a seamless transition for
4 those companies that apply for workers' compensation
5 coverage with the State Workers' Insurance Fund. As of
6 November 8, 2012, SWIF received a total of 131 applications
7 for coverage. Of those, 32 are for coverage beginning
8 January 1, 2013.

9 I am happy to report that of those applications,
10 SWIF has issued 107 policies, 8 of which have January
11 renewal dates. Fifteen applicants were provided with
12 quotes but have not followed up with SWIF in any manner;
13 9 remain pending for information that SWIF needs in order
14 to process applications regarding classification and
15 ownership issues. We'll continue to process the
16 applications as quickly as we can.

17 Regarding the act broadly, there have been
18 75 petitions filed with workers' compensation judges by
19 67 individuals who are seeking benefits under the act since
20 its passage in July 2011. Of those cases, three have
21 settled, six have been withdrawn. The remainder are in
22 various stages of litigation before workers' compensation
23 judges; however, no decisions on the merits of any of the
24 claims have been rendered.

25 Mr. Chairman, the Administration is working

1 within the scope of Act 46 to address the loss of coverage
2 as quickly as we can and in a manner that insures workers'
3 compensation coverage is available. The responsiveness of
4 our team in partnership with other agencies is an example
5 of how the functions of government can come together to
6 obtain solutions. If you or any of the Committee Members
7 have additional thoughts or ideas, Labor & Industry is
8 available as a resource. Do not hesitate to contact me or
9 our Office of Legislative Affairs.

10 Again, thank you for the opportunity to testify
11 here this morning, and I would be happy to answer any
12 questions that any of you may have.

13 MAJORITY CHAIRMAN BARRAR: Great, and thank you
14 for your testimony today.

15 Let me, real quick, a little housekeeping. We've
16 been joined by Representative Boback, Representative
17 Everett, Ed Neilson, Tim Krieger, and Representative Barbin
18 and Representative Swanger.

19 And Tallman? Oh, you have a question?

20 REPRESENTATIVE TALLMAN: I'm waiting for the
21 Chair.

22 MAJORITY CHAIRMAN BARRAR: Okay; okay. You can
23 ask the question. Start.

24 REPRESENTATIVE TALLMAN: Well, I don't want to
25 interrupt you guys.

1 MAJORITY CHAIRMAN BARRAR: No; go ahead. Please.

2 REPRESENTATIVE TALLMAN: Okay.

3 Thank you for being here this morning, and thank
4 you, Mr. Chairman.

5 You painted a much more glowing picture than what
6 is actually happening on the ground. I have United Hook &
7 Ladder in New Oxford, who has had their insurance going to
8 be dropped January 1. So -- and that covers multiple
9 municipalities. I'm trying to think, there are four or
10 five actual municipalities that United Hook & Ladder is
11 involved with. And I'm not sure, but then I have my
12 township supervisors from those areas telling me that the
13 cost has almost doubled. Is that what your experience is
14 with SWIF, because that's the last resort.

15 DEPUTY SECRETARY CRUM: Correct. And the cost is
16 more than it is currently with the Trust, as I understand
17 it, and that's primarily because of how SWIF rates and
18 classifies the companies, which is determined by the
19 Pennsylvania Compensation Rating Bureau.

20 And for the volunteer fire companies, the rates
21 are based in part on the population of the municipality,
22 and the rates increase based on the number of the
23 population that they cover.

24 REPRESENTATIVE TALLMAN: Well, I have fairly
25 rural, and United Hook & Ladder is rural. So is population

1 a lesser amount? Does population increase your rates? I
2 would think not, but---

3 DEPUTY SECRETARY CRUM: I'd have to get back to
4 you on that.

5 REPRESENTATIVE TALLMAN: Okay.

6 DEPUTY SECRETARY CRUM: But as the population
7 increases, actually it's better for the municipality. So
8 presumably they decrease as the population increases, up to
9 a certain level.

10 REPRESENTATIVE TALLMAN: Thank you, Mr. Chairman.

11 MAJORITY CHAIRMAN BARRAR: Thank you.

12 Other Representatives with questions?

13 Swanger; Representative Swanger.

14 REPRESENTATIVE SWANGER: Yes.

15 Does anybody know how many companies have refused
16 to write workers' comp policies that would include
17 firefighters? I've heard that some of them weren't even
18 writing them.

19 DEPUTY SECRETARY CRUM: I've heard the same
20 thing, but to my knowledge, nobody has an exact number. We
21 can check with the Insurance Department and see if they
22 have a better number. But their sense also was that there
23 are some who are not, but nobody is not renewing existing
24 policies at this point.

25 REPRESENTATIVE SWANGER: Thank you.

1 MAJORITY CHAIRMAN BARRAR: Representative Barbin
2 for a question.

3 REPRESENTATIVE BARBIN: Thank you, Mr. Chairman.

4 My question relates to your testimony this
5 morning. It says that SWIF has received a total of
6 131 applications; 25 were for coverage as of January 1,
7 2013. You've issued these 107 policies, and as
8 Representative Tallman pointed out, they're at some point
9 doubling the cost to the municipalities. But there's also,
10 and the next sentence is my question. It says that 8 of
11 the 107 have renewal dates of January; 15 were provided
12 with quotes. Do I understand your testimony correctly to
13 say that there are some of these applications that have
14 been denied? Some municipalities have been denied?

15 DEPUTY SECRETARY CRUM: No one has been denied.
16 SWIF is unable to deny coverage for any entity in
17 Pennsylvania except for nonpayment of premium.

18 What that is, the eight, the January renewal
19 dates are as the result of one of the municipal trusts that
20 is not going to renew coverage as of January 1, so eight of
21 those policies would come out of that Trust. With regard
22 to the 15, and I can get back to you on this, but what they
23 would do, the 15 presumably called SWIF or talked to
24 somebody at SWIF, asked for a quote as to how much the
25 insurance would be, and have not followed up with SWIF with

1 respect to a formal application.

2 REPRESENTATIVE BARBIN: Okay. And what I'm
3 worried about is that you say there are 25 that are coming
4 due on January 1, and 15 have been provided with quotes but
5 you haven't heard from them, possibly because of the price,
6 8 have renewal dates, but the 8 and 15 is 23. Twenty-five
7 are coming up. What's happening to the other two?

8 DEPUTY SECRETARY CRUM: I'll have to get back to
9 you with the status. They could be part of those that
10 remain pending for more information.

11 REPRESENTATIVE BARBIN: All right.

12 And then my only question would be, as a result
13 of this information, why isn't this just like Highmark
14 versus UPMC where until the Legislature took a step and
15 said we demand that you do something about the insurance
16 problem that we're having in the western part of the State,
17 why shouldn't the Pennsylvania Department of Insurance be
18 regulating this?

19 Because when we discussed these things in
20 Insurance on the insurance problem out in the western part
21 of the State, they came to an agreement, and the reason
22 they came to an agreement was we said if you don't come to
23 an agreement, we're going to provide the Insurance
24 Department with authority to resolve this question. So my
25 question for Labor & Industry is, since we don't have an

1 answer, since there are 15 volunteer fire companies that
2 haven't gotten back to you, don't really have a good way of
3 going forward as of January 1, why shouldn't we take
4 immediate action to demand the Department of Insurance to
5 step in and do something on an interim basis?

6 DEPUTY SECRETARY CRUM: I think that's really a
7 question for the Legislature and the Department of
8 Insurance. I can't speak on behalf of the Department of
9 Insurance.

10 REPRESENTATIVE BARBIN: But you're the only
11 person who is.

12 DEPUTY SECRETARY CRUM: Well, I---

13 REPRESENTATIVE BARBIN: You're giving the
14 comments of Insurance this morning.

15 DEPUTY SECRETARY CRUM: Correct.

16 REPRESENTATIVE BARBIN: So you have to give us
17 the answer of the Administration.

18 DEPUTY SECRETARY CRUM: I'll get back to you.
19 I'll have our legislative person get back to you.

20 REPRESENTATIVE BARBIN: Thank you.

21 MAJORITY CHAIRMAN BARRAR: Thank you,
22 Representative.

23 Representative Boback for a question.

24 REPRESENTATIVE BOBACK: Thank you, Mr. Chair.

25 Ms. Crum, I don't know if you can answer this,

1 but I'm curious, with the petitions that were filed by
2 67 individuals, since 2011, within 1 year, these people,
3 these individuals, came forward claiming their cancer was
4 as a result of their position as a firefighter. Were any
5 of them not covered by their municipality?

6 My concern is, it went into effect in 2011, and I
7 do understand there are some companies that did not follow
8 through with the insurance saying they could not afford it,
9 or did they have to purchase this? Because I'm concerned
10 about these individuals. Are they in fact covered?

11 DEPUTY SECRETARY CRUM: There is coverage or
12 self-insurance coverage in place for all of them, all the
13 claims that have been filed.

14 REPRESENTATIVE BOBACK: Self-insurance?

15 DEPUTY SECRETARY CRUM: It would be the Trust,
16 the municipal trust, and you'll be hearing from several of
17 them this morning. So they self-insure the liability for a
18 number of municipalities throughout the Commonwealth and,
19 up to this point, had included the volunteer fire companies
20 in their self-insurance programs.

21 REPRESENTATIVE BOBACK: Thank you.

22 And with the individuals then, they have to prove
23 beyond a shadow of a doubt that their cancer came from work
24 relation?

25 DEPUTY SECRETARY CRUM: No. Under Act 46,

1 there's a presumption that if they meet certain criteria in
2 terms of their employment as a firefighter and exposure to
3 certain carcinogens, there's a presumption that their
4 cancer is the result of firefighting and that they can file
5 a claim for up to 300 to 600 weeks. The presumption
6 doesn't exist between the 300 and 600 weeks, but they still
7 have that timeframe within which to file.

8 REPRESENTATIVE BOBACK: Thank you for your
9 clarification.

10 MAJORITY CHAIRMAN BARRAR: Representative. I'd
11 like to now go to Representative Farry for questions.

12 REPRESENTATIVE FARRY: Thank you, Chairman.

13 Ms. Crum, thank you for being here today.

14 A couple of quick questions. Some of this is
15 following up on some other questions that were asked. In
16 your testimony you said the Department of Insurance does
17 not have oversight of this self-funded trust. Who does
18 then?

19 DEPUTY SECRETARY CRUM: The Department of
20 Insurance does not, but the Department of Labor & Industry
21 through the Bureau of Workers' Compensation self-insurance
22 division has oversight responsibility for granting the
23 privilege of self-insurance in the Commonwealth.

24 REPRESENTATIVE FARRY: Okay.

25 In terms of the number of claims that have been

1 filed, you testified that 67 individuals have filed claims,
2 6 have been withdrawn, so that leaves roughly 61 out there,
3 and 3 were settled. My understanding is 38 of the claims
4 have been filed out of the city of Philadelphia, so simple
5 math gives me roughly 29 claims for the remainder of the
6 State. Do we know how many of those claims are look-back
7 claims? How many of them are actually -- you know, in the
8 roughly 18 months of this law being in effect, how many of
9 the claims are cancer claims that were diagnosed in the
10 last year and a half versus claims that were in the first
11 300 weeks or second 300 weeks?

12 DEPUTY SECRETARY CRUM: What I can tell you is
13 what they're alleging on their claims, not what may be
14 testified to or -- it may change eventually throughout the
15 litigation. But in any event, there are about seven that
16 have filed alleging injury dates after July 7 of 2011, the
17 remainder alleged injury dates prior to that time.

18 REPRESENTATIVE FARRY: Okay. So six of these
19 claims are actually that initial bump from the look-back
20 period?

21 DEPUTY SECRETARY CRUM: Correct.

22 REPRESENTATIVE FARRY: So we can extrapolate then
23 that there are seven firefighters in the Commonwealth of
24 Pennsylvania that have been diagnosed with cancer in the
25 last 1 ½ years that have actually now filed claims since

1 Act 46 became law.

2 DEPUTY SECRETARY CRUM: If they're using date of
3 injury as date of diagnosis, yes. We don't ask, on a claim
4 petition, we don't ask the question of diagnosis date.

5 REPRESENTATIVE FARRY: Okay. Do we know how many
6 of those claims were volunteers versus career firefighters?

7 DEPUTY SECRETARY CRUM: About 68 of the actual
8 petitions were career firefighters; 57 of the claimants are
9 career firefighters. So the vast majority are career
10 firefighters filed in the city of Philadelphia, the city of
11 Pittsburgh, and a few other municipalities. And as I was
12 looking at the claims, there were a few that I wasn't sure
13 whether they were career or volunteer.

14 REPRESENTATIVE FARRY: I'm sorry; those numbers
15 again? Volunteer were how many and career were how many?

16 DEPUTY SECRETARY CRUM: Sixty-eight career
17 petitions. Out of the 75 petitions, 68 were career.

18 REPRESENTATIVE FARRY: Right.

19 DEPUTY SECRETARY CRUM: Fifty-seven actual
20 individuals are career firefighters.

21 REPRESENTATIVE FARRY: Okay. And the Trusts that
22 we're going to hear testimony from shortly generally are
23 insuring the volunteer departments?

24 DEPUTY SECRETARY CRUM: That's my understanding.

25 REPRESENTATIVE FARRY: Okay. So there have been

1 seven volunteer claims that have been filed that include
2 the look-back period as well as cancer diagnosed in the
3 past year and a half?

4 DEPUTY SECRETARY CRUM: Correct, but I'm not sure
5 that the seven are the same seven. I can find that out,
6 though.

7 REPRESENTATIVE FARRY: Okay. Very good. Thank
8 you.

9 MAJORITY CHAIRMAN BARRAR: A question: Of the
10 three claims that have been settled, were they volunteers
11 or were they all paid companies? Do you know?

12 DEPUTY SECRETARY CRUM: I do not know. I can get
13 back to you on that.

14 MAJORITY CHAIRMAN BARRAR: Okay. And have you
15 looked into what is happening around with other States that
16 have this? I understand there are 43 States that have
17 passed this type of legislation, and have you looked to see
18 what other States are doing with this?

19 DEPUTY SECRETARY CRUM: I have not personally. I
20 have spoken to people in other States anecdotally, but I
21 haven't looked specifically, no.

22 MAJORITY CHAIRMAN BARRAR: Okay. Great. Thank
23 you.

24 Are there any other questions from the Members?

25 Okay.

1 REPRESENTATIVE KORTZ: Thank you, Mr. Chairman,
2 and thank you, Ms. Crum, for being here today.

3 Do you have a breakdown of what types of cancers
4 the 75 cases have? For example, lung cancer, skin cancer,
5 bone cancer, prostate. Do you have a breakdown of that?

6 DEPUTY SECRETARY CRUM: I do. I don't have it
7 set out. I can get a complete breakdown to you.

8 REPRESENTATIVE KORTZ: If you could do that, I'd
9 appreciate it.

10 DEPUTY SECRETARY CRUM: And again, it's what
11 they're alleging on their claim petitions, presuming that's
12 what they take before the judge.

13 REPRESENTATIVE KORTZ: Thank you.

14 Thank you, Mr. Chairman.

15 MAJORITY CHAIRMAN BARRAR: Thank you,
16 Representative Kortz.

17 A follow-up from Frank Farry, Representative
18 Farry.

19 REPRESENTATIVE FARRY: Thank you, Chairman.

20 Two follow-up points.

21 In your conversations with other States, have you
22 found a similar type of insurance crisis where the
23 departments are being dropped from coverage?

24 DEPUTY SECRETARY CRUM: The indications from
25 people I've spoken with -- I had one person from Maine and

1 I can't remember the other State -- they indicated there
2 really was no issue as the result of the legislation that
3 they have in their various States. Again, that's
4 anecdotal.

5 REPRESENTATIVE FARRY: Understood.

6 And in terms of the claims that were filed,
7 obviously there are certain thresholds and criteria both
8 the career and volunteer firefighters need to reach to be
9 eligible for the presumption. Do we know if any of these
10 claims have actually -- I know you said there were some
11 that were withdrawn, but have they actually met the
12 threshold to even potentially have coverage based on years
13 of service, the physicals, the documentation?

14 DEPUTY SECRETARY CRUM: We don't know that at
15 this point.

16 REPRESENTATIVE FARRY: Okay. So some of these
17 claims may actually be thrown out based on not meeting the
18 criteria to even be covered under this law.

19 DEPUTY SECRETARY CRUM: Perhaps. A lot of things
20 happen once cases get into litigation.

21 REPRESENTATIVE FARRY: Okay. Thank you.

22 MAJORITY CHAIRMAN BARRAR: Are there any other
23 questions from the Members?

24 Secretary Crum, thank you for your testimony
25 today.

1 DEPUTY SECRETARY CRUM: Thank you.

2 MAJORITY CHAIRMAN BARRAR: Now I'd like to call
3 forward the next testifiers, who will be from the municipal
4 insurance trusts: Robert Anspach, Director of Insurance
5 Services with PennPRIME and the PA Municipal League;
6 Mr. Geoff Beauchamp, Esq., General Counsel for the Delaware
7 Valley Workers' Compensation Trust; Mr. Patrick Harvey,
8 Esq., Legal Counsel for PennPRIME; and R. Scott Agar,
9 Principal Consultant, Insurance Buyers' Council, Inc.

10 Thank you for being here. I guess we need a
11 bigger table for you. Sorry about that.

12 MR. BEAUCHAMP: Chairman Barrar, Chairman
13 Sainato, Members of the committee, my name is
14 Geoff Beauchamp. I'm General Counsel for the Delaware
15 Valley Municipal Management Association and the Delaware
16 Valley Workers' Compensation Trust.

17 I think I'd like to open by addressing a comment
18 made by Representative Farry, whom we worked very closely
19 with in reaching the compromise legislation that became
20 Act 46, and I think Representative Farry mentioned
21 "unintended consequences." One of the unintended
22 consequences of the law as we have seen in the last
23 14 months is a significant number from a statistical
24 standpoint in the filing of prostate cancer compensation
25 claims. That has caused us, caused our underwriters, to

1 revisit the viability of sustaining, on a self-insured
2 basis, the coverage for the Trust's volunteer fire
3 companies.

4 However, I want to make it perfectly clear that
5 we're not walking away from our obligation in that regard
6 in that the Trust is subsidizing our members' purchase of
7 the SWIF coverage such that the municipalities who are
8 members of the Delaware Valley Workers' Compensation Trust
9 will not bear the full impact of the SWIF premiums. That
10 will give us an opportunity to assess the development and
11 impact of the claims under this law. L&I, as you know, is
12 charged with the responsibility of updating the General
13 Assembly, this committee, and others as of July of next
14 year as to the impact of this law.

15 Now, why do we seize on prostate cancer claims
16 and why in fact did that cause or raise a red flag with our
17 underwriters? Keep in mind that underwriting is a
18 prospective exercise or analysis in that we don't wait for
19 claims to be filed before we assess the impact on our
20 reserves. We have to estimate, forecast, predict, if you
21 will, using certain defined methodologies and assess the
22 likely impact of these claims upon our reserves, and most
23 importantly, the likely impact of the claims under this law
24 on the Trust's ability to continue to adequately fund
25 workers' compensation benefits for all municipal employees.

1 I mean, we don't just cover volunteer firefighters.
2 Obviously the vast majority are not volunteer firefighters.
3 They are rank-and-file municipal workers in our
4 61 municipalities in southeastern Pennsylvania.

5 So the decision was made to assist our members in
6 transferring the volunteer firefighter workers'
7 compensation risk to SWIF as a matter of exercising the
8 Trust's fiduciary duty to preserve and protect the ability
9 of the Trust to sustain the payment of benefits in a
10 responsible way to all of the other claimants, all the
11 other employees of our municipal members, without, without
12 imposing an undue financial burden on volunteer fire
13 companies. Volunteer fire companies aren't going to pay a
14 nickel toward this coverage. Our Trust will subsidize the
15 payment of the SWIF premiums by our members. How the
16 mechanics of that will work is another story, but the net
17 impact of it is, it will not have a material adverse impact
18 on our municipal members.

19 As of this time and certainly going forward, it
20 will allow us to assess the impact of this law and perhaps
21 reaching later a point where the Trust can reconsider or
22 revisit the decision to transfer the risk to SWIF. That's
23 done on a year-to-year basis.

24 Let me turn, if I can, to the issue of the
25 prostate cancer. Prostate cancer is an extremely

1 age-related male illness that frankly is all too common and
2 all too inevitable. And we have seen in the case of the
3 city of Philadelphia, admittedly by paid firefighters, of
4 the 30-some-odd claims that have been filed against the
5 city of Philadelphia, some 20-some-odd have been for
6 prostate cancer.

7 We don't know how it breaks down as to whether or
8 not the claimants were diagnosed over the age of 50. If
9 that is indeed the case, that would only cause us even more
10 concern, because prostate cancer, as actuaries and
11 underwriters will tell you, the greater the age, the
12 greater the prospect or incidence of that cancer among
13 males. Over the age of 50, the risk increases
14 exponentially.

15 So consequently, for example, the State of
16 Washington limits prostate cancer claims, compensation
17 claims, to men who have been diagnosed when they were under
18 the age of 50, because that suggests some sort of unusual
19 environmental factor that may have played a role in
20 developing cancer. Frankly, the studies that we have
21 reviewed and our underwriters have reviewed do not
22 establish to any great degree of certainty or likelihood a
23 connection between prostate cancer and exposure to
24 carcinogens associated with firefighting.

25 So we saw this trend, this spike, if you will, of

1 prostate cancer claims that regrettably was the result of,
2 as we understand, a rather well-orchestrated campaign by
3 certain plaintiffs or claimants' firms in Philadelphia and
4 elsewhere to solicit, actively solicit, these claims for
5 the filing against municipalities. It's an alarming trend,
6 in our judgment. It's one we have to act on now. We can't
7 wait until we get a barrage of these claims to reassess the
8 situation, because it might be too late.

9 The other thing we have seen, even more
10 disturbing, are subrogation claims being filed by health
11 insurers against municipalities and their insurers.
12 There's one such claim in the city of Philadelphia for
13 \$1.5 million. Those claims, by way of explanation, arise
14 from the fact that a health insurer will treat a
15 firefighter for cancer and then a law firm, in this case we
16 understand, is soliciting subrogation claims from the
17 health insurers. They can actually recover from the
18 municipality that allegedly caused the illness the costs of
19 that medical treatment that may have occurred years before.
20 That is an unquantifiable and very disturbing risk that we
21 are now confronting. That, too, is part of the
22 underwriting determination.

23 The other point we want to make, very plainly, is
24 that transferring the risk, if you will, to SWIF does not
25 absolve the Trust or its municipal members of ultimate

1 responsibility for the liability, because under the
2 statute, our members are the statutory employers.
3 Nevertheless, we are deeply concerned that the ultimate
4 impact of these claims will jeopardize the Trust's
5 solvency.

6 Unless we can see some better trends in the
7 claims, they're very costly to defend. If you have to
8 defend a prostate cancer claim, admittedly with
9 epidemiologists, oncologists, and other medical experts --
10 usually they're MDs with PhDs, so they don't come
11 inexpensively -- that ratchets up the cost of defense
12 significantly for us. That, too, is a factor that we have
13 to take into account in the underwriting. These are going
14 to be very expensive claims, and we'll see if the trend
15 continues, and admittedly, it has just started, and to be
16 perfectly candid, the Trust has not yet received a cancer
17 compensation claim from a volunteer fireman. But again,
18 our fiduciary duty is such that we can't wait for these
19 claims to be filed before we then in effect assess their
20 impact and charge a retrospective premium.

21 We need to be responsible. We need to exercise
22 our fiduciary duty in a carefully considered way given all
23 the underwriting factors but without abandoning the
24 volunteer fire companies or the volunteer firefighters, and
25 we are not doing that.

1 As I have explained, the benefits, too, provided
2 by SWIF are in accord with the workers' compensation
3 statute. Consequently, there would be no reduction or
4 diminishment in the quality or the amount of the benefits
5 to which a claimant would be entitled. SWIF would defend
6 the claims. We would pay them a premium, and they would be
7 settled in accordance with the law. But we really need to
8 be very prudent in this respect.

9 We have suggested some legislative remedies in
10 the testimony that I have submitted, and then I can turn it
11 over to Mr. Anspach who will more particularly explain the
12 SWIF process and what PennPRIME has done and other
13 self-insured Trusts, and that's page 4 of my testimony.

14 One of the main problems of the law as it is now
15 materializing is the retroactive impact, and we had heard
16 of the date of injury. As we understand it, Occupational
17 Disease claims the date of injury is the date on which the
18 claimant is exposed to the occupational hazard. In this
19 case, it's not the date of diagnosis; it would be the date
20 that individual was exposed to the carcinogen while engaged
21 in firefighting.

22 Consequently, there is a very significant
23 retroactive exposure that frankly we are assuming and we
24 cannot transfer to SWIF. So we are not, quote, "getting
25 off the hook" here. We are going to be responsible and we

1 are retaining responsibility in full, because we must under
2 the law, for all of these exposures, all the claims that
3 have arisen from exposures to carcinogens that occurred
4 before the effective date of the transfer to SWIF, and that
5 is a significant, unquantifiable retroactive liability that
6 our underwriters have taken into account. We also are
7 retaining, as we must under the law, full responsibility
8 for the payment of claims by our paid firefighters.

9 Now, the date of injury is obviously going to
10 vary depending on the claim, but nevertheless, when we're
11 dealing with statistical analysis in the underwriting
12 context, we have to be prudent. And with that in mind, we
13 do suggest some legislative remedies, and again, we would
14 not be suggesting these but for what we consider to be a
15 very alarming and unexpected claims trend.

16 For example, we would prefer that the law be
17 amended such that the claims, the cancer compensation
18 claims under this law, be limited to claims based upon
19 carcinogenic exposures that occurred after July 7, 2011.
20 That way, we do not have the unfunded liability that we are
21 confronting, which is estimated to be approximately
22 \$3.2 million for the workers' comp Trusts alone.

23 Secondly, either limit by statute the types of
24 cancers covered that are compensable or make it clear that
25 the claimant must, at the very least, present competent

1 medical testimony establishing, in accordance with the
2 Pennsylvania Rules of Evidence, establishing a
3 well-founded, scientifically-based link between the
4 firefighter's cancer and the carcinogen to which they were
5 exposed while engaged in firefighting. That, at the very
6 least, should be required of the claimant.

7 Thirdly, exclude exposures, claims based on
8 carcinogenic exposures at the firehouse or while the
9 firefighter is not engaged in active firefighting
10 activities. When we consider volunteer firefighters in
11 particular, you have to recognize, as we mentioned
12 throughout the legislative process, that unlike paid
13 firefighters, their carcinogenic exposures could very well
14 have occurred outside, well outside the scope of their
15 firefighting activities -- through their daily employment,
16 for example. So the fact remains that the purpose of the
17 law is to reduce the cancer risk caused by active
18 firefighting, so the law should make that clear. It should
19 not be passive exposures while at the firehouse. That,
20 again, injects an element of uncertainty, and given the
21 prostate cancer claims we've seen, it raises a red flag.

22 Next, limit medical costs to those that are not
23 covered by health insurance. One of the main points we
24 made throughout the legislative process is that this law
25 should not be a substitute for health insurance. We did

1 not want State-mandated health insurance imposed on us. We
2 are a workers' compensation carrier. Consequently, our
3 liability should not be that of a health insurer, such that
4 if a firefighter has health insurance, medical costs are
5 covered, then they ought not be paid by the Trust under
6 this law. Admittedly, that's a different approach than
7 most workers' compensation claims, but then again, these
8 are not your common workers' compensation claims. Either
9 it is to frequency, severity, or cost of defense.

10 And lastly, we want to address squarely the
11 subrogation issue by amending the law to prohibit
12 subrogation claims by health insurers for the costs they
13 have incurred in treating a firefighter's cancer. These
14 subrogation claims do not in any way benefit firefighters.
15 They only serve to put recovery fees in the hands of
16 plaintiffs' lawyers, and also, quite frankly, impose a
17 considerably unquantifiable and potentially ruinous
18 liability upon municipalities and the self-insurance Trusts
19 that I represent.

20 And frankly, the subrogation issue never arose
21 during the legislative process, because we were, frankly,
22 completely blindsided by this one. But that, when you
23 think about it, a \$1.5 million claim, a single subrogation
24 claim brought based on a single firefighter against the
25 city of Philadelphia, does not bode well for the

1 sustainability of the claims under this new law.

2 And with that, I turn it over to Mr. Anspach for
3 his comments.

4 MR. ANSPACH: Thank you.

5 Chairman Barrar, Chairman Sainato, and
6 Representative Farry, thank you for holding this hearing
7 and giving us a chance to explain what has been happening
8 in this field over the past year and a half.

9 Let me preface my testimony by saying I look at
10 this issue from several directions, having been the Mayor
11 of the city of Lebanon in a past life and having been a
12 trustee of the PennPRIME Workers' Compensation Trust and
13 now as its Director of Insurance Services.

14 Just by way of a little history, the Trust was
15 founded in 1993 during a period when municipalities were
16 having trouble getting workers' compensation insurance
17 because they weren't considered a good risk. I should note
18 that a pooled-risk Trust such as ours or the Delaware
19 Valley Trust or any of the other Trusts looks like, in many
20 ways, an insurance company when it comes to how we set
21 rates, how we look at the risk. Our underwriting
22 methodology, the actuarial work, everything that we do
23 looks very much like an insurance company, until you get to
24 the end where an insurance company who is doing well has a
25 profit line at the bottom where they show a profit. For

1 us, it's called excess surplus, and rather than paying that
2 to the stockholders, we return that to our members as a
3 credit, which they can use towards their insurance payments
4 in the future. So that's where we differ significantly
5 from insurance companies.

6 The Trust provides workers' compensation coverage
7 to all classes of employees in a municipality, including
8 firefighters, and we will continue to provide coverage for
9 career firefighters, and we currently provide it for
10 volunteers, which we'll change on January 1. We have done
11 this and provided that coverage to the volunteer
12 firefighters even though it was a very costly coverage for
13 us. Their losses were greater, significantly greater, than
14 any premium that we could collect for them. And we
15 provided that coverage, even though expensive, until the
16 advent of Act 46 and our ability to analyze the potential
17 issues with that.

18 We have worked very hard at trying to determine
19 the impact of the law. We were informed soon after Act 46
20 was passed that the claims would be few and that the claims
21 would be cancer specifically linked to firefighters. This
22 has been disproven in an explosion of claims starting in
23 the city of Philadelphia, which went from zero cancer
24 claims prior to the enactment of Act 46 to 38 cancer claims
25 as of 2 days ago, 24 of which are prostate cancer claims.

1 Our Trust went from zero claims in our history to six
2 claims, and we also have received reports through
3 secondhand conversations with plaintiffs' attorneys that
4 they have more in the pipeline that are coming through.

5 The result of our costing study was disconcerting
6 for us -- for all insurance providers. The Pennsylvania
7 law is very broad and does not exclude any cancer from its
8 provisions. One of our first claims was for a retired
9 firefighter, career firefighter, I believe close to 70 and
10 well above 65, with prostate cancer. Unfortunately, as we
11 know, all males over 65 are probably, or many are going to
12 get prostate cancer. The numbers tell us that. And while
13 we recognize that these are issues, when we started looking
14 at what was happening after the law came into effect, and
15 it presumes that prostate cancer is covered under this, it
16 became especially concerning, because, you see, the
17 scientific community cannot tell us why prostate cancer
18 occurs. They can't do it. They cannot tell us
19 scientifically why it occurs, yet we're tying it into
20 firefighting.

21 We also witnessed this concerted effort by law
22 firms to recruit plaintiffs through active solicitation of
23 volunteer firefighters and cooperation through various
24 locals of the career firefighters' union, and we also were
25 concerned that the State Fire Commissioner's Website has a

1 joint initiative listed directing active or retiree career
2 and volunteer firefighters to call a plaintiffs' union
3 law firm for assistance in filing cancer claims in suing
4 municipalities.

5 While the cancer presumption issues were coming
6 to the forefront, we were already, as I mentioned, dealing
7 with significant losses in the volunteer fire classes. In
8 reality, when we looked at the numbers, we were paying in
9 excess of \$2 for every dollar in premium or contribution
10 that we collected to this class.

11 So when HB 797 was passed, for all of us, there
12 was no real understanding of the financial impact of the
13 act by either the insurance community or, dare I say, the
14 Legislature. The fiscal note for the bill stated, and I
15 quote, "This legislation would have a fiscal impact to
16 municipalities located in the Commonwealth. Municipalities
17 paying for workers' compensation coverage for professional
18 or volunteer firefighters would realize higher worker's
19 compensation payments or higher premiums as a result of the
20 legislation. Currently, there is no data available that
21 would allow for a reasonable projection of those costs."

22 It continues that "This legislation would have no
23 adverse impact on the General Fund" and "This legislation
24 would have no adverse impact on the Workmen's Compensation
25 Administration Fund," and I end the quote there.

1 There was a belief espoused within State
2 Government that the impact of this law would be minimal on
3 municipalities. We have found, again, the minimal-impact
4 theory to be greatly underestimated as PennPRIME Workers'
5 Compensation, as I mentioned, has already received six
6 claims, three of which are career firefighters and three of
7 which are volunteer firefighters. The Susquehanna Trust,
8 one of the other municipal trusts, has one claim, and the
9 MRM Trust out in western Pennsylvania has one career and
10 two volunteer claims at this point. As I mentioned, the
11 city of Philadelphia currently has 38 claims.

12 In determining PennPRIME's exposure, the
13 actuaries had to develop a model to provide estimates for
14 exposure so we could determine the risk and impact on the
15 Trust. While cancer incident rates are in fact available
16 very easily, there was and there is real concern about how
17 many firefighters are actually covered by the loss,
18 specifically volunteer firefighters. There is no database
19 in Pennsylvania that tracks the number of volunteer
20 firefighters and the demographics they represent. This
21 information is critical in determining potential costs.

22 Another issue of great concern was the 600 weeks
23 that a claimant has to make a claim. Now, while normally a
24 claimant has 300 weeks to make that claim, for this 300
25 weeks in our underwriting and actuarial processes, we

1 understand that there are going to be claims from an
2 incident that happened 2 years ago that wasn't reported,
3 and now it's reported, so we need to work that into our
4 rates. And we hold that money in reserve in order to pay
5 for those, and that's a study that we do every year, twice
6 a year sometimes, and report that to L&I, as what we're
7 doing and what we're looking at.

8 In this case, we now have 300 weeks, the
9 additional 300 weeks for which we have had no expectation
10 of claims, and we have had no potential to collect premiums
11 to cover those claims. So there is no million dollars,
12 \$2 million, \$3.5 million, as mentioned, for the Delaware
13 Valley Trust to cover those claims if they come in and when
14 we expect them to come in. That's of great concern to us.
15 So we are still responsible for those, yet we have to be
16 very concerned about the direction of those claims. The
17 modeling, after we saw everything that was happening, did
18 not bode well for keeping losses at a level that were
19 manageable.

20 In addition to projecting potential claims,
21 PennPRIME also evaluated the costs of refuting or defending
22 as well as paying for future claims. As I'm sure you know,
23 the medical costs can vary significantly. We looked at
24 from \$60,000 to many hundreds of thousands of dollars in
25 just medical claims. Added to the medical costs are the

1 costs to defend them, lost wages, and potentially death
2 benefits and survivor benefits, which can run a claim to in
3 excess of a million dollars.

4 The city of Philadelphia currently, as I
5 mentioned, has their prostate cancer claims. The average
6 cost of surgery for prostate cancer is about \$50,000 and
7 the cost of radiation about \$100,000. The city has one
8 death claim where, for a Blue Cross medical bill
9 subrogation claim, it's \$1.5 million. This one claim, when
10 you start adding in those other benefits -- the survivor
11 benefits, lost wages, a myriad of benefits -- it makes that
12 claim worth more than \$2 million. Again, the cost of this
13 one claim prior to the new law, it would not have been
14 filed, and we did not prepare for it. We could not prepare
15 for it.

16 The analysis of the number of claims, recruitment
17 of claimants by law firms, the potential cost of claims,
18 has resulted in a situation where PennPRIME literally could
19 not, could not risk the fiscal well-being of the Trust as
20 it is impacted by this law.

21 We recognize that the unfunded claims, the size
22 of the claims, the potential significant legal costs, the
23 subrogation of claims, we simply had to move away from the
24 volunteer fire coverage for the sake of the Trust. Our
25 municipal members and Pennsylvania taxpayers, who in

1 reality ultimately fund the Trust, had to be considered in
2 this move.

3 Another important consideration for us was the
4 impact of cancer claims on the municipality's premium as a
5 whole. There are numerous classes of employees in
6 municipal government, and each one of those has a separate
7 rate that is set for them to insure them in workers'
8 compensation. But when one class has a bad claim, the
9 insurance industry develops a multiplier which is applied
10 to their premium or their contribution, and if it's a bad
11 claim, their contribution goes up because of that, but it's
12 applied to the entire salary base of their municipality.
13 So if we kept the volunteer fire in there and saw the
14 significant claims coming in, it would in fact impact the
15 costs across the board for their workers' compensation, not
16 just one area. So by segregating them, we understood that
17 we could in fact protect the municipality's contribution
18 for those other classes and would not be impacted by the
19 Cancer Presumption Law.

20 I want to note that the reaction by PennPRIME was
21 not a knee-jerk reaction by any means. For the first year,
22 PennPRIME, its attorneys and consultants, looked at what
23 was developing as a result of the law. The number of
24 claims, the active recruitment of clients by plaintiffs'
25 attorneys and especially the plaintiffs' union firm and the

1 number displayed on the State Fire Commissioner's Website,
2 the potential subrogation of claims, and the unknown number
3 of individuals who would potentially be insured, it seemed
4 and it is an extremely expensive volunteer fire risk that
5 we had to segregate from the Trust.

6 An additional concern for PennPRIME was the
7 estimation that costs would be higher for our members,
8 because we recognize that the SWIF costs are a bit higher
9 or somewhat higher, and that was taken into consideration
10 in the decision process.

11 The staff decision was to recommend that we did
12 segregate the volunteer fire risk and suggest it be moved
13 to SWIF. And after meetings and discussions with Labor &
14 Industry and SWIF, we determined that it was possible to do
15 that, and based on those discussions, we recommended to the
16 PennPRIME Workers' Comp Board of Trustees in June of 2012
17 that it be moved.

18 Now, the board, which is comprised of both
19 elected and appointed municipal officials, whose
20 municipalities are Trust members, decided -- I believe
21 reasonably, albeit reluctantly -- to authorize the process
22 of moving the volunteer fire risk to SWIF. I must note
23 that the board undertook this decision with much concern,
24 and while they certainly understood the financial
25 implications to the Trust, they charged the staff with

1 providing as much assistance as possible to the members in
2 this transition.

3 So we, in conjunction with our third-party
4 administrator for underwriting, the Insurance Buyers'
5 Council, worked with L&I, SWIF, and the Pennsylvania
6 Compensation Rating Bureau to clarify the process through
7 which insurance coverage for volunteer fire companies could
8 be obtained separately.

9 On August 6, 2012, we provided information to our
10 membership regarding that change, which was relayed via
11 e-mail to our members and their agents, and a copy of that
12 information is provided in my written testimony.

13 I have to note that during this time, we worked
14 with L&I, SWIF, PCRB, and the Governor's Policy Office
15 working through these issues, and those discussions and the
16 results of those discussions, I have to give positive
17 comments to those organizations because they did in fact
18 stand up and work with us and worked through that issue.

19 In addition to that initial information that we
20 provided to our members that I mentioned, we also provided
21 three webinars, two during the day and one in the evening.
22 We invited our insurance agents who write insurance
23 policies for municipalities, we invited the members
24 themselves, and through the members we invited any
25 volunteer fire company in their jurisdiction to attend

1 those webinars to explain what we saw the process would be
2 and how it would be unfolding.

3 We also, for those members who are direct with us
4 and don't have their own agent, we provided access to our
5 insurance broker, Porter & Curtis, who is then helping them
6 file those SWIF applications. Those who are represented
7 are working through their own agents.

8 Here again, our goal is to transfer this risk to
9 SWIF without ever having any lapse in coverage for any
10 volunteer firefighter. I have to note that we continue to
11 provide coverage to career firefighters, because they are
12 in fact an integral part of the city government, and L&I
13 and PCRB does not allow more than one policy for an entity,
14 so we will continue that.

15 I have to tell you that I believe across the
16 board, the cost of insurance in this particular category is
17 going to increase, and I believe it's going to increase
18 significantly simply because of the costs, the potential
19 costs, of these claims.

20 Interestingly enough, we learned through our
21 process that the other four insurance trusts had come to
22 the same decision that we had, but independently. We
23 elected then, after we started hearing through the
24 grapevine -- you have to understand that the five major
25 trusts in Pennsylvania, we are competitors, sometimes

1 friendly competitors and sometimes not so friendly. But we
2 felt that this was important enough that we needed to come
3 together to discuss it, and we did so at State College.
4 The result of that discussion was a list of
5 14 recommendations, which are attached to my written
6 testimony, which they came up with, and it was my promise
7 that I would present all 14.

8 Now, we have the note that PennPRIME is asking,
9 we looked at and are recommending steps be considered to
10 control the exploding costs of cancer presumption claims
11 and keep the costs sustainable for our valued paid and
12 volunteer firefighters.

13 Here again, number one, we'd like to reduce the
14 types of cancer claims to cancers that have been
15 scientifically linked to firefighting.

16 As I noted before, volunteer fire has
17 historically had the highest losses in workers'
18 compensation. They have not, in all cases, worked well
19 with municipalities to reduce losses. We would suggest
20 strengthening the municipal codes to give the
21 municipalities more control over the volunteer fire
22 companies in the area of safety and risk management.

23 We would limit the exposure by capping the
24 combined medical expenses and indemnity expenses on a
25 per-claim basis, and we would limit the exposure by either

1 barring subrogation when medical bills have already been
2 paid by insurers or by capping the medical expenses on a
3 per-claim basis as well as a separate indemnity expense cap
4 on a per diem basis.

5 I should note that that last one would have to be
6 supplemented by the Commonwealth, and we're using the model
7 that the Commonwealth used on the malpractice insurance in
8 the past.

9 The recommendations at Enclosure 2 either support
10 the return of the insurance trusts to the volunteer fire
11 market; suggest that the Commonwealth undertake a
12 reinsurance-like position, as it did when addressing the
13 medical malpractice crisis; or to permanently segregate the
14 fire classification from the insurance market while
15 providing financial relief to municipalities.

16 While a return to the volunteer fire market would
17 be preferable for PennPRIME, any decision to return to the
18 volunteer fire insurance market would require significant
19 analysis of the impact brought by the aforementioned
20 changes. And I must note that having had the opportunity
21 to review all of Mr. Beauchamp's testimony, I certainly
22 concur with all of his positions.

23 A letter sent to Representative Grell from
24 Hampden Township sums up the situation wherein it's stated,
25 and I quote, "Therefore, while the content of the law was

1 to provide a benefit for volunteer firefighters, the
2 unintended consequence of the law has been to eradicate
3 pricing competition in the insurance market....," end quote.

4 I want to emphasize that PennPRIME does not want
5 to see any reasonable benefit denied to firefighters,
6 career or volunteer, and I think I can make that statement
7 for the other Trusts also. We must, however, make business
8 decisions to ensure the continued viability of the Trusts.
9 And I want to emphasize that the decisions that we're
10 making are business decisions; they are not political
11 decisions.

12 That being said, we think the impact of the issue
13 can be resolved and we want to be part of that solution.
14 We stand ready to assist the Legislature, if requested.
15 Our overall goal is to provide coverage to the volunteer
16 and career firefighters while not creating an onerous
17 financial burden for the municipalities we insure.

18 I thank you for your time and for hearing us in
19 our position.

20 MAJORITY CHAIRMAN BARRAR: Great. Thank you.

21 I'm going to go to Representative Farry for
22 questions.

23 REPRESENTATIVE FARRY: Thank you, Chairman.

24 Gentlemen, thank you for being here.

25 With all due respect, I feel like I'm in a

1 perverse Groundhog Day, because, you know, roughly a year
2 and a half ago we sat here and heard testimony from your
3 organizations that is completely contrary to where we are
4 right now. Mr. Beauchamp and I have known each other for
5 years. I used to work for a municipality that insured both
6 liability-wise and workmen's comp-wise.

7 When I referred to "unintended consequences," the
8 unintended consequences are basically to ensure that our
9 firefighters have insurance, and that seems to have gone
10 out the window. Part of my concern is that you gentlemen
11 had a seat at the table. You gentlemen negotiated what the
12 language was that became Act 46. I can refer back to
13 letters that were written by your coalition in 2010, in the
14 previous legislative session, asking Governor Rendell to
15 veto the bill, asking the Senate to not pass Representative
16 Murphy's HB 1231. And immediately after elections in
17 November of 2010, all the stakeholders started meeting,
18 because I was the one that orchestrated those meetings.
19 Those meetings led to the language that was HB 797, which
20 ultimately became Act 46.

21 For the sake of time, I'm not going to read all
22 the quotes, this file full of letters from your coalition,
23 but in a nutshell, in 2010 when you were asking for the
24 veto, one of the things you requested was more time to
25 examine the fiscal impact of the law as proposed then. And

1 in Mr. Beauchamp's testimony, a lot of the things that he
2 is asking for in terms of recommendations were things that
3 were specifically agreed to. The look-back was agreed to.

4 And as a matter of fact, while we were working on
5 this legislation, California increased their look-back from
6 5 years to 10 years. The types of cancers were agreed to.
7 The thresholds that the firefighters have to meet to even
8 get the presumption was agreed to. The standard of
9 evidence and burden of proof and what you can bring in
10 terms of a rebuttal was agreed to. The types of exposures
11 were agreed to. I don't recall testimony regarding this
12 legislation being a replacement for health insurance, but I
13 think we're all on the same page with that. That I can
14 agree with, and certainly I don't think the legislation is
15 or the law is intended to replace health insurance.

16 I keep hearing "Philadelphia." Do either of your
17 entities insure Philadelphia?

18 MR. ANSPACH: No. Philadelphia is self-insured
19 completely.

20 REPRESENTATIVE FARRY: Okay. So we hear about
21 the volume of claims coming out of Philly, but neither of
22 your entities are going to have a fiscal impact because of
23 the claims coming out of Philadelphia.

24 In terms of the number of claims you've
25 experienced, we heard testimony from the Administration

1 that there are only seven claims statewide for volunteer
2 firefighters, and those claims, some of which very well may
3 be look-back claims, and I would expect an initial spike in
4 look-back claims, and then obviously since the law was not
5 available to those firefighters at that point in time, but
6 now I would expect a leveling out of those claims. But
7 you're talking about seven volunteer firefighters filing
8 claims, considering the roughly -- well, the total of
9 600 weeks of look-back plus the 16 months that this bill
10 has been law I don't think is a substantial amount of
11 claims.

12 I can tell you as a volunteer fire chief, if my
13 firefighter comes to me and has cancer, I'm telling him to
14 file a claim today. I'm not going to tell him "See how it
15 goes," because we want them to initiate the claim coming
16 out of the gate.

17 You guys have not suffered a significant fiscal
18 impact at this point in time. I can understand you being
19 cautious, but none of this was brought to light during the
20 hearings, during the negotiations on the legislation. If
21 you didn't have a seat at the table and the Legislature
22 dropped this in your lap and said, "Hey, gentlemen, you're
23 going to be responsible for this now," I could understand
24 where you're coming from, but that absolutely was not the
25 case.

1 Where were your fiscal studies in 2009-2010 when
2 this almost became law? A bill that you would consider
3 worse almost became law. Short of a pen stroke from the
4 Governor, it would have been law. Where was your modeling
5 then? Now we're hearing about all this modeling and what
6 you're facing, and you had the opportunity to have your
7 actuaries work on this.

8 And I'm not seeing a significant number of
9 claims, nor am I seeing claims that have been adjudicated
10 adversely to your Trust that are having this fiscal impact.
11 What I'm hearing from you is that the volunteer fire
12 service already was a loser for you. Your premiums you
13 were charging versus your payouts were already at a loss
14 for you, and now it's going to be potentially a greater
15 loss and you're basically turning around and dumping their
16 coverage. You didn't testify to or raise the issue when we
17 were negotiating this, both formally and informally, that,
18 hey, you know what? If this becomes law, we're probably
19 going to get out of the market.

20 I'm hearing about the prostate claims. And you
21 know what? They're going to be adjudicated, and I am sure
22 somewhere along the line either they are going to be
23 winners or losers.

24 We heard about the age of 65 years old. There
25 are not many 65-year-old firefighters out there. So if

1 you're 65 years old, you're diagnosed with prostate cancer,
2 you have your 300-week look-back, and that 300-week
3 look-back is correctly stated, it's to your last exposure.
4 So if that firefighter has not been exposed to carcinogens,
5 they may still have been an active firefighter but they
6 don't have a documented exposure to carcinogens, within
7 that 300 weeks, prior to their diagnosis or prior to filing
8 a claim, then they lose the presumption. And I certainly
9 don't think they're waiting 299 weeks to file their claim.
10 If it's within the second 300 weeks, there isn't the
11 presumption. The burden is solely on the firefighter, so
12 it's a job-related illness. You have the ability to bring
13 in your medical studies and say "X percentage of the male
14 population gets prostate cancer in this age," and it will
15 be battled out in the workmen's comp courts.

16 I'm just extremely disappointed where we are. I
17 think it is absolutely bad policy to allow insurers to pick
18 and choose who they're going to cover. If the public works
19 department goes on a bad string, if we find out road salt,
20 you know, is causing some sort of debilitating injury to
21 public works departments, are we going to hear all of a
22 sudden, well, we don't want to cover them; we'll throw them
23 in SWIF as well?

24 You know, you guys all had the chance to get on
25 the same page. The meeting that you had in State College

1 where you guys all agreed that this is a terrible situation
2 to be in, we didn't hear that when we had the hearings in
3 I believe it was March of 2011. It's just that I find it
4 extremely disappointing.

5 I'm curious, because we had a \$7 million
6 liability claim with Divot when I worked in municipal
7 government, a police-shooting case. Divot's insurance
8 coverage for our township at that point in time was
9 \$10 million. There was a million for Divot, there was a
10 million layer of reinsurance, and then there was an
11 additional \$8 million of a second layer of reinsurance.
12 Have you looked into reinsurance for cancer claims? Does
13 that market exist? Have you tried to get somebody in the
14 commercial market to provide you reinsurance?

15 I know I've kind of rambled, but I guess that
16 would be my first question to you.

17 MR. BEAUCHAMP: Scott Agar, the underwriter with
18 Insurance Buyers' Council, may have some insight into that.

19 REPRESENTATIVE FARRY: Okay.

20 MR. AGAR: Yeah; we have explored a number of
21 different options---

22 MAJORITY CHAIRMAN BARRAR: Would you take the
23 microphone, because we are streaming live.

24 MR. AGAR: I'm sorry.

25 Hi. My name is Scott Agar. I'm the consulting

1 underwriter for the PennPRIME Trust.

2 We had charged our broker, who currently secures
3 our excess insurance, with identifying any and all
4 alternatives for trying to finance this separately. We do
5 have some regulatory constraints on what we can use.
6 Predominantly, reinsurance is not one of our options
7 per se. We are required to use license-specific excess
8 insurance.

9 We've even explored the idea of getting a
10 licensed insurer to front for a reinsurer or other
11 financing mechanism to attempt to finance this, and we
12 could not find any. There was some exploration into
13 various cancer coverages to see if that could supplement
14 it, and we really couldn't find a solution that was going
15 to be as cost effective as the one that we've chosen.

16 I mean, the issue here really is not and has not
17 and will not be about coverage for the firefighters. I
18 mean, the act holds the municipality as the statutory
19 employer. They're obligated to pay those benefits. What
20 we're doing is we're choosing a different risk-financing
21 mechanism. We're financing it differently. Instead of
22 financing it from internal sources, we are leveraging SWIF.

23 I don't know if there were any discussions about
24 how we were going to finance our claims. It's all about,
25 you know, coverage of claims and coverage of the

1 presumption.

2 The fact that there's an increase in costs, which
3 is really what this whole discussion is about -- I mean,
4 the uproar is not because of, should not be because of
5 coverage, because coverage is still there, will be there,
6 and will continue to be there. It's about costs. And even
7 in the fiscal note it was clear that the costs were going
8 to increase.

9 It was also clear that there was no data on which
10 to base some of this information or to base projections.
11 If you're an actuary, what you're looking for is precedent,
12 precedent that you can use to project into the future to
13 give reasonable estimates, confidence in what you're
14 financing. And if you don't have good data, if you don't
15 have the means in which to, you know, take a look at this
16 data and say "I think with confidence we can fund X amount
17 of dollars for this," then you don't have the ability to
18 manage the risk. It becomes unmanageable, difficult to
19 manage, or in some cases it may be, you know, a situation
20 where we could see our surplus or our means to continue
21 operations depleted.

22 I've heard some discussions about the commercial
23 insurance marketplace, and I think if you survey it -- and
24 I have to do it from anecdotal information. I look at new
25 business applications, and in those new applications, if

1 I've seen loss runs from five insurers, maybe six if you
2 include SWIF, that's a good chunk of the marketplace that's
3 willing to underwrite municipal business from the
4 commercial marketplace. It's not a fertile marketplace;
5 it's very restrictive.

6 And workers' compensation insurance as a whole is
7 under stress. Last year, the workers' compensation
8 insurance companies paid a dollar 17 for every dollar they
9 collected, and last year, 2011, was the first year that
10 they even got an increase, which was 10 percent. So just
11 as a marketplace as a whole, the prices are going to go up.
12 And SWIF raised its loss cost multipliers 10 percent. They
13 are recognizing this.

14 The only direction workers' compensation costs
15 are going is up, okay? And what this has really been, it
16 has been an accelerant, because it has introduced a
17 tremendous amount of uncertainty. We just don't know. But
18 we've been presented with cancer. It's the second leading
19 cause of death in men. Forty-four percent of the men in
20 this room are going to be diagnosed or perhaps have been
21 diagnosed with a form of invasive cancer. Fifteen percent
22 of us will die. My apologies to the ladies; I can't keep
23 all these numbers in my head.

24 Okay; so we've introduced cancer. We know that a
25 significant number of cancers will be diagnosed, but we

1 really don't know the exact number of people who are going
2 to be afflicted. How many are we covering? The rating
3 base is this population. The same population could be
4 served by 35 firefighters, it could be served by
5 135 firefighters. We don't know. We've done some
6 estimates, but again, this isn't certain, and this isn't
7 certain data.

8 And workers' compensation is what we consider to
9 be a long-tail line of business. Even after our fiscal
10 year has closed, we don't know what our ultimate costs are
11 going to be. That's where the actuaries come in. They
12 say, based on your history of loss development, we expect
13 so much more in losses to evolve over time. We may only
14 see a third of our claims, certainly of our claim dollars,
15 in the first year. And it grows over time, and that's just
16 a function of the system; that's how it works.

17 And now we've introduced something where we have
18 no basis to make the projection from, and that leaves us
19 with tremendous uncertainty. And we can't recommend to our
20 client that they bet the farm on low numbers. You know,
21 even average incident rates might be 500 per 100,000
22 people. It's going to happen. Out of 100,000 people,
23 500 are going to get cancer, okay? Most of those will be
24 older. The thing we have going for us is that, you know,
25 the cancer prevalence is much higher in older people, but

1 there are older volunteers still serving their communities.
2 My father is a volunteer fire policeman in Upstate
3 New York. He's 83. Do you know what the incident rate for
4 83-year-olds is?

5 So, I mean, this comes down to cost. The costs
6 are increasing, and this may be the tip of the iceberg
7 because you have a very limited marketplace that can even
8 entertain this stuff. And Bob sent me an e-mail from one
9 of the commercial insurers who already had discontinued
10 writing the volunteer firefighters. They had already
11 required that they be placed in SWIF 3 or 4 years ago, and
12 now they're dropping the pay. They are nonrenewing, and
13 that's one of the five or six insurance companies whose
14 loss runs I see the most of.

15 So you have a very restrictive marketplace to
16 begin with. That's why the group self-insurance trusts
17 were created, because the commercial marketplace
18 periodically abandons them. There are not a lot of
19 insurers that want to write municipal entities. It's
20 unfortunate, but that's the case, and there's no white
21 knight stepping up to solve this.

22 So we have to stay in business, and in order to
23 do that, we have to be fiscally responsible.

24 MAJORITY CHAIRMAN BARRAR: Thank you.

25 Representative Farry.

1 REPRESENTATIVE FARRY: I appreciate your candor.
2 I wish that somebody was expressing that candor 18 months
3 ago, because we could have perhaps taken a bit of a
4 different look at this.

5 I support the municipal insurance trusts' motto.
6 I have firsthand experience with Divot. I guess, I think
7 something that I would like you to take back and convey to
8 your board, because your board is made up, I guess, of
9 municipal managers and supervisors and council people and
10 all, I guess what I'd like you to convey to them is, from a
11 policy standpoint, we need to help keep the volunteer fire
12 service sector alive and well, because otherwise, if you
13 have to move to a career model, your property taxes are
14 going to be going up, your budgets are going to be going
15 up.

16 So one of the things I think you need to do is,
17 one, look at your risk-management models and try and
18 develop ways to work with your volunteer fire departments
19 to reduce their incidents of claims. Two, I believe their
20 rosters that are submitted to you in terms of number of
21 firefighters, ensure that the number is actually
22 representative of the number of firefighters, not social
23 members, not the 70-year-old gentleman that's not a fireman
24 anymore but he's the company treasurer. So ensure your
25 numbers are accurate in that way.

1 And I just think from a policy standpoint, this
2 is a bad thing, and if you're the volunteer fire chief or
3 the president of the department and you get a letter in the
4 mail that your insurance company is dropping you now, just
5 like if you got that letter in the mail as a private
6 individual, that's not the kind of letter you want to get
7 and that's the letter that these fire departments received.
8 I'm sure when Chief Konkle testifies, we'll talk a little
9 more about it.

10 But at this point in time, you guys have made a
11 business decision to drop the volunteer fire service, move
12 them to SWIF, and I appreciate whatever you're doing to
13 help with that transition, but none of this was brought to
14 light as this legislation was being drafted and vetted.

15 MR. ANSPACH: Geoff, do you want to address that?

16 MR. BEAUCHAMP: Sure.

17 Let me just say in response to that,
18 Representative Farry, that the one new information that we
19 have received since the enactment of the law is this what
20 we consider to be a very disturbing claims trend. Prostate
21 cancer, frankly, was not on the radar screen. There are
22 absolutely no studies done of the incidents of cancer for
23 volunteer firefighters. All of the studies that have been
24 published have been limited to paid or professional
25 firefighters.

1 Consequently, to do any kind of actuarial
2 analysis during the legislative process would have been
3 impossible. It was always, I wouldn't call it a shot in
4 the dark, but it was always a risk that the law would be
5 responsibly, responsibly used for those claims that are
6 legitimate on their face where the connection between the
7 carcinogen and the cancer is very clearly established, well
8 established in science as a matter of medical science.
9 What we have seen is quite the opposite. And admittedly,
10 it's the city of Philadelphia; it's the paid fire
11 department, I grant you that. It doesn't necessarily mean
12 that volunteers will follow that trend.

13 But as Mr. Agar has explained, the underwriting
14 process is, by its very nature, a conservative,
15 forward-looking, prospective analysis, and we cannot assume
16 that this trend -- in fact, we must assume the opposite,
17 that the incidents of these claims will spill over into the
18 volunteer fire community, keeping in mind that the transfer
19 to SWIF is a measure that is taken now. But in conjunction
20 with that, what we hope to do is, over time, implement
21 risk-management measures, working closely with our
22 municipalities and our volunteer firefighters, to minimize
23 the risk of cancer to the volunteer firefighters so they
24 don't have these claims. That's our common goal, and there
25 are many ways that we can accomplish that without

1 legislative relief.

2 There may also be a possibility that Labor &
3 Industry, through the Bureau of Workers' Compensation, can
4 adopt regulations within the context of this new law that
5 will limit the, shall we say the number and frequency of
6 what we would consider to be frivolous or abusive claims.

7 And the cost of defending a prostate cancer
8 claim, when no one really knows what causes the cancer to
9 begin with, given the presumption of the law, is
10 significant. It cannot be ignored from an underwriting
11 standpoint. And we frankly never anticipated during the
12 legislative process that we would see such a frequency of
13 prostate cancer claims. And they are used emblematically,
14 frankly, as illustrative of this sort of claim that is,
15 almost by its very nature, contrary to medical science.

16 It's an age-related cancer afflicting men, as we
17 all, unfortunately, are painfully aware, and has nothing
18 whatsoever to do with firefighting, much less the
19 carcinogens associated with firefighting. We don't want to
20 turn every workers' compensation case into a forum where
21 the science is debated before a workers' compensation
22 judge, and at great cost. We would just as soon have the
23 underwriting reflect the risk reasonably assumed and
24 foreseeable from this law, not the unforeseeable, perhaps
25 ruinous risks that are presented by the recent claims

1 trends that we've seen. That's what is different from what
2 we were dealing with in the legislative process.

3 MAJORITY CHAIRMAN BARRAR: Thank you.

4 Representative Farry, are you still a go?

5 REPRESENTATIVE FARRY: Yes. Just real quick. A
6 couple of follow-up questions.

7 MAJORITY CHAIRMAN BARRAR: Okay; we need to get
8 moving on this. Thanks.

9 REPRESENTATIVE FARRY: Understood.

10 It was defined, though, what cancers would be
11 covered. I mean, there is the International Agency for
12 Cancer Research. I mean, that is written into the law.

13 MR. BEAUCHAMP: That's only the group on
14 carcinogens. They don't limit the types of cancer. It
15 just lists carcinogens, and to that end, that is somewhat
16 consistent with other State laws.

17 So what you're trying to do is establish a
18 connection. What triggers these claims is the carcinogenic
19 exposure: A firefighter is exposed to carcinogen X while
20 engaged in firefighting activities. That exposure caused
21 that firefighter's cancer for which they must be
22 compensated. That's the chain of causation.

23 And the Group 1 carcinogens are not necessarily
24 -- they cover a wide variety of cancers, I assume. There
25 were no limits as far as the type of cancer under this law.

1 We knew that going in. Nevertheless, we understood, quite
2 reasonably, that the claims that would be made by the
3 firefighters would be those for which there was solid,
4 well-established medical evidence connecting that
5 firefighter's cancer to a particular carcinogen, and we
6 have not seen that in the prostate cancer claims, to say
7 the least, and don't expect to.

8 REPRESENTATIVE FARRY: Mr. Chairman, one final
9 point.

10 But none of these claims have been fully
11 adjudicated yet, so we don't know what the end result is
12 going to be.

13 MR. BEAUCHAMP: No, we don't. And frankly, the
14 costs of adjudicating them will be significant.

15 So again, underwriting is prospective. Whether
16 or not the transfer to SWIF is irrevocable is another
17 question. But we have to see how these claims do develop
18 and how they are adjudicated, and frankly, we're fortunate
19 that they're only going to be adjudicated, at least for
20 now, in the city of Philadelphia.

21 Although, the subrogation claims that we
22 mentioned present in themselves a significant financial
23 risk, one that, frankly, we hadn't anticipated before,
24 during, or after the legislative process. And that's
25 something the Legislature can and should deal with, because

1 that doesn't benefit firefighters at all if health insurers
2 are simply recovering the costs of medical costs after the
3 fact based on this law.

4 REPRESENTATIVE FARRY: Thank you.

5 MAJORITY CHAIRMAN BARRAR: Representative
6 Tallman.

7 REPRESENTATIVE TALLMAN: Thank you,
8 Mr. Chairman.

9 I'm just going to correct Representative Farry.
10 I'm a 65-year-old volunteer firefighter, and I'll pack up
11 if it's an afternoon fire and nobody else is around. But
12 anyway, that's an aside.

13 REPRESENTATIVE FARRY: I said very few.

14 MAJORITY CHAIRMAN BARRAR: I thought you were a
15 kid.

16 REPRESENTATIVE TALLMAN: Sometimes I act like --
17 well, never mind.

18 Serious; I'm disappointed in what you're telling
19 us today versus what you told us on March 30. And
20 Mr. Agar, you know, talked about confidence. Well, we had
21 confidence in you folks testifying that it was not going to
22 have a negative impact on our municipalities and fire
23 departments, and in fact it has. I worked 30 years in
24 manufacturing, and if I had said, well, I need to put a new
25 boiler in and it's going to cost a million and it cost

1 \$2 million, I would have been looking for a job, and that's
2 kind of the information we were seeking.

3 As a matter of fact, you were asked a direct
4 question -- Mr. Harvey; I don't know if he's here -- on
5 costs by Representative Swanger, and the testimony was,
6 "...we don't believe this current legislation will have
7 that degree of...negative impact on the municipalities,"
8 and yet in fact it has. As a matter of fact, we're
9 dropping, as PennPRIME has said, we're dropping from
10 PennPRIME our volunteer fire companies, which is what I'm
11 experiencing in my legislative district. And I guess
12 that's somewhat contradictory to what the Secretary has
13 testified, because I asked that question referring
14 specifically to United Hook & Ladder in New Oxford who was
15 dropped, and she said, well, we haven't had a whole bunch
16 of drops but yet you're telling me we're dropping all the
17 volunteer fire companies.

18 So I guess my question is, we had you, our
19 experts, on costs and whatever impact on the municipalities
20 saying it's going to have minimal impact, and now we're
21 finding out, starting in August, that it's going to have a
22 significant impact, specifically on our volunteers. I
23 wonder what -- we were depending on you to be our experts.
24 We had confidence in you testifying to those costs, and it
25 seemed to me that either, A, you were saying the minimal

1 impact was a guess at best, or you had some other kind of
2 data that indicated otherwise. But it just doesn't seem
3 comprehensible to me that you would say one thing on
4 March 30 of 2011 and now in August of this year we're doing
5 completely opposite.

6 MR. ANSPACH: I think the bottom line between
7 then and today is -- and here again, I wasn't involved
8 then, so I'm looking at this from afar, if you will, in
9 reading things -- is that there was a belief that once this
10 law was in effect, that the exposure that we were going to
11 experience was really based on the scientific evidence and
12 scientifically tying these things to firefighting duties,
13 tying the cancer to firefighting duties, that there was
14 going to be a limited number of claims coming through this
15 and it was really going to be very specific in folks where
16 we can tie it into firefighting duties, and that has not
17 been the case once the law was in effect and we saw the
18 claims coming in, we saw what it was, and we saw the
19 direction it was going.

20 And I think as much as the number of claims is
21 the proactivity of law firms to recruit plaintiffs to go
22 through this, it just was very, very disconcerting for
23 underwriters and for anyone involved in the insurance
24 business. Had it been the de minimis activity that was
25 originally thought was going to happen, we wouldn't be here

1 today, sir.

2 MR. BEAUCHAMP: We had based our assumption,
3 frankly, on the fact that we had not had any cancer
4 compensation claims before the law, even though lung cancer
5 is already an occupational disease for many firefighters.
6 So consequently, with the scant data that we had available
7 to us at the time, we made an assumption, albeit a
8 good-faith assumption, that the incidents of claims, cancer
9 claims under this law, would not be materially increased.

10 We have never had a prostate cancer claim, and
11 you can always, by the way, file occupational disease
12 claims or file a claim for an injury under the Workers'
13 Comp Act if you contract a disease while in the course of
14 working in your employment, but you don't get the
15 presumption. We have never seen any of those claims
16 either. And then all of a sudden we see a marked spike --
17 from an underwriting standpoint, not in terms of absolute
18 numbers -- high incidents of these prostate cancer claims,
19 suggesting, to our surprise, that this law would be seen as
20 a health insurance entitlement program, and that's just not
21 what we underwrote it for and not what we assumed it would
22 become when we supported the law as a compromise.

23 That's the long and the short of it. That's what
24 has changed, and that's what's causing us deep concern.

25 MAJORITY CHAIRMAN BARRAR: Thank you.

1 Representative Barbin.

2 REPRESENTATIVE BARBIN: Thank you, Mr. Chairman.

3 I'm going to keep this short, because, you know,
4 there are two fact issues that need to be developed, and I
5 would hope we would have another hearing on this once the
6 year starts.

7 MR. ANSPACH: Absolutely.

8 REPRESENTATIVE BARBIN: But the two facts that
9 are out there that make a difference are, how many of these
10 States are in a similar position to ours, and wasn't that
11 known when we did this? And how many of those States, the
12 43, have written out of their law "subrogation," because
13 that seems to be a reasonable point of lowering the cost of
14 insurance that has to be spread everywhere.

15 The rest of this stuff, with all due respect, is
16 insulting, because you put on testimony -- and I was here
17 -- you put on testimony that said the standard that we are
18 agreeing to will not increase costs, and now today you're
19 switching it. It's a bait and switch. You're basically
20 saying, before we said this is the standard we want, we
21 didn't like the standard you originally proposed; now
22 you've got a new standard, we agree to it, but now we're
23 not going to write it. And the only evidence that you're
24 suggesting should change our minds that somehow this was
25 all unforeseen is the fact that seven volunteer firemen

1 have filed claims because a look-back period of 300 weeks
2 to 600 weeks exists. That's ridiculous. Every State that
3 has passed a law like this has had to have at least seven
4 claims filed in the look-back period because there was
5 never a law before that.

6 Now, with all due respect to Mr. Agar, the idea
7 that you can project volunteer claims on the basis of
8 prostate claims in Philadelphia is really -- it's
9 offensive, because prostate claims are obviously being
10 filed in all of the 43 other States that have this law.

11 Now, I don't know if our law is worse than the
12 other 43 States that have this law, and maybe we have to
13 change something with subrogation, but it's unconscionable
14 for you to say, we think we could have a problem with
15 volunteer firefighters in the future so we're going to
16 double your rates; and by the way, we're sticking it in the
17 State Workmen's Insurance Fund and let them deal with it.
18 That's just wrong. And if that was the position that you
19 were going to take, you needed to tell us that and we would
20 have said, you know, maybe we've got to work a little
21 harder on the compromise because that's not an acceptable
22 position to have to come back a year from now and explain
23 to the volunteer firefighters why they don't have coverage,
24 or the municipalities, why they can't pay for coverage.

25 We need another hearing on this, and I think you

1 guys have a duty to explain why you're out of the market,
2 even though there hasn't been a single claim of subrogation
3 against you. There has been one in Philadelphia, and there
4 have been only seven volunteer claims filed statewide.

5 MAJORITY CHAIRMAN BARRAR: Thank you,
6 Representative.

7 I want to thank you for your testimony. And what
8 we may do is -- I agree with the Representative -- we do
9 need to do a follow-up. Maybe in 5 or 6 months we will
10 hold another hearing on this, if I am fortunate enough to
11 be appointed as the Chairman of this committee again. And
12 most likely I think you'll see some of the suggestions,
13 even if they're just introduced as legislation, just to
14 bring this point up for discussion so we can continue to do
15 these hearings. And I hope you'll take us up on our
16 invitation to come back here again and testify before us.
17 Thank you.

18 MR. ANSPACH: We would most certainly be willing,
19 sir, to work with Mr. O'Leary in the meantime to work
20 through any issues, because we would like to be helpful.

21 MAJORITY CHAIRMAN BARRAR: We would like to be
22 kept informed of every step of this process that will take
23 place over the next couple of months of what you're doing.
24 Thank you very much.

25 MR. ANSPACH: Sure.

1 MR. BEAUCHAMP: Thank you.

2 MAJORITY CHAIRMAN BARRAR: We only have a couple
3 more minutes left, and I'm going to call up our next
4 testifiers, Elam Herr and Ed Troxell.

5 Elam Herr is the Executive Director for the
6 Pennsylvania State Association of Township Supervisors, and
7 Mr. Troxell is the Government Affairs for the Pennsylvania
8 State Association of Boroughs.

9 Thank you, gentlemen, and you can begin your
10 testimony.

11 MR. HERR: Thank you, Mr. Chairman.

12 I will try to keep this relatively short. The
13 testimony you just heard from the Trusts, a lot of what
14 they said I can just stand behind it and verify it.

15 But what I would like to start out in saying,
16 first of all, is that my name is Elam Herr. I am the
17 Assistant Executive Director for the association. And we
18 did appear before you in March of 2011, and during that
19 testimony I made the statement that we did support the bill
20 at the time because we felt that it was compromise
21 legislation. And then it was enacted as 46, and we still
22 stand behind that. We felt it was a balance of rights
23 between the firemen who contracted cancer while in the line
24 of duty and with the local government's fiscal
25 responsibility.

1 We also made it clear at that time that this
2 legislation would constitute an unfunded mandate because
3 there would be some cost that was there, and that is
4 spelled out in the testimony. But again, as we said at
5 that time, and I'll reinforce it now, we believed that 46
6 as written would limit the liability and the costs for
7 providing this benefit, and the proposal was a substantial
8 improvement from the former piece of legislation known as
9 HB 1231, which at the time Governor Rendell vetoed.

10 Since 46 was passed in 2011, we had little
11 feedback on this legislation until this past summer when we
12 first learned that the municipal trusts were considering
13 dropping workers' compensation coverage for firefighters
14 due to the cost in liability that was projected under this
15 act. Please note that we still see this as a developing
16 situation. We're trying to get more information on it.
17 But it is a situation out there that does need to be
18 addressed and does need to be looked at, because, one,
19 again, the law is in effect and we have to provide this
20 coverage to the firefighters, but on the other hand, we
21 have to look at the potential ramifications of the cost
22 that may be out there for purchasing or paying the premiums
23 of the workers' compensation coverage. And a bigger
24 problem than that is to make sure that there is coverage
25 available. If not, then SWIF is going to be overrun with

1 potential applications.

2 For your information also, there was an
3 electronic survey done by the Department of Community and
4 Economic Development. That survey showed that 21 percent
5 of those responding reported that their workers' comp
6 insurance had been canceled, and as such, they were going
7 to apply to SWIF or they were also potentially looking into
8 other avenues.

9 One other thing is that 43 percent reported that
10 there was an increase in workers' compensation costs. Now,
11 what we didn't know at that particular time was whether
12 that was, of the 43 percent who responded, if workers'
13 compensation insurance was going up just for firefighters
14 or whether it was their workers' comp costs across the
15 board.

16 With that, we are now in the process of
17 conducting our own survey of our own members, and hopefully
18 within the next few weeks we will have that information
19 back and the data compiled, and we will get that to you,
20 the Chairman, and he can make it available to the
21 committee.

22 One of the things that we have seen from some of
23 the information that has already been supplied to us is the
24 majority have been going to SWIF, and I think what the
25 Deputy Secretary said earlier is probably fairly true as

1 far as the applications. SWIF is the insurance carrier of
2 last resort, so I don't think you'll see any being actually
3 turned down. You may see that the premiums have gone up
4 substantially, and that can be a cost.

5 One other thing, just a sidelight with the
6 information, and again, this isn't scientific, but we are
7 having at the present time our annual committee meetings
8 and the quarterly board meeting, which is taking place
9 today. This issue was brought up in some of the committee
10 meetings. Surprisingly, we're getting different responses.
11 There are those who are saying it is a problem; they've
12 already lost their insurance for workers' compensation, and
13 then there were those municipal officials at the meeting
14 saying they didn't even know there was a problem.

15 So it is widespread across the State if you go
16 and look at, you know, the different municipalities who are
17 responding. But there are those areas where workers' comp
18 coverage is still being provided by some type of carrier.
19 Whether it's a Trust or whether it's an individual
20 insurance carrier, it is there.

21 The other thing that we have received so far and
22 we've seen is that where workers' comp, another carrier
23 possibly will pick it up, if the municipality is looking
24 for just workers' comp for volunteer firemen, those agents
25 are saying, we will take volunteer firemen, but we want the

1 rest of the package with it also. It's not just take the
2 one and leave the rest. So when that is compiled,
3 Mr. Chairman, I will make that available to you.

4 The last thing that I'll quick bring up is what
5 Mr. Beauchamp had brought up and Mr. Anspach, the potential
6 suggestions that were made. A number of the suggestions
7 that the two gentlemen made in their presentations we
8 happen to agree with, and that is being done without
9 consultation with those two gentlemen, one being and that
10 we have seen in the past and would consider not only for
11 this aspect but for other aspects is to be strengthening
12 the municipal codes to allow minimum criteria for workers'
13 comp. Again, we realize that in most cases with
14 volunteers, the volunteer organization is separate from the
15 municipality, yet the municipality has certain obligations;
16 i.e., workers' comp. We have very little control over
17 them. It would be probably beneficial to us if there were
18 more authority given in the municipal codes to make sure
19 that certain procedures are followed.

20 I'll just jump around real quick. The "Clarify
21 'substantial competent evidence,'" again, that was
22 mentioned earlier. I think that would help in clarifying
23 what is there as far as when claims are filed.

24 "Shorten the 'look back' period." Again, this is
25 one issue that I have to admit none of us thought about

1 when the act took effect, that it would go back to
2 600 days. We were thinking about going forward. That's
3 not a fault of the law; that's a fault of us for not
4 thinking that way. But possibly what the end result is,
5 none of the Trusts or none of the insurance carriers had
6 any reserves built up for that type of payback. Something
7 may have to be done about that.

8 And that gets to the last one: to make the
9 Commonwealth partially responsible for some of the
10 obligation that is here with this mandate in that possibly
11 there is some type of a fund set up. There have been funds
12 in the past. One has nothing to do with insurance but our
13 workers' comp, the Tank Indemnification Fund. It was a
14 procedure where the Commonwealth and municipalities and
15 other entities that had underground tanks were in a program
16 where both had some obligations and liabilities, and
17 actually it had worked out very well. This may be a model
18 that should be looked at for this particular type of
19 situation so we can get over this hump.

20 The last thing finally, and then I will close,
21 there are other States out in the country that have some
22 similar to this program and some from what I would say are
23 actually more liberal means. Yes, in doing a little bit of
24 the research, we did see that there was a spike in the
25 beginning and then it sort of leveled out. But the problem

1 that we have right now is that initial spike can be a
2 financial burden on municipalities, and we have to do
3 something.

4 The second part of it is, we have to make sure
5 that there is some type of insurance out there. SWIF is
6 the insurance of last resort, but if they are hit too hard,
7 the premiums are going to go up and it will be a
8 substantial problem to our municipalities. We need to just
9 address that problem so that the end result is what 46
10 meant to do as far as the firemen and the volunteers that,
11 you know, represent my members are covered.

12 With that, Mr. Chairman, I'll turn it over to
13 Mr. Troxell.

14 MR. TROXELL: Thank you.

15 Good morning, Mr. Chairman and Members of the
16 committee. I'm Ed Troxell. I'm the Director of Government
17 Affairs for the Boroughs Association.

18 Our community is roughly 960 of them throughout
19 the Commonwealth, actually serve as home to a lot of the
20 volunteer fire forces, and we depend on them a lot.

21 I've prepared for you a brief statement, but in
22 light of time, session coming and whatnot, I'm just going
23 to glaze over that a little bit.

24 What I want to do is really just provide you a
25 little observation on maybe some of the law changes that

1 are there, but we've discussed a lot of that, how PSAB was
2 involved with that, with the law change, Act 46 -- and
3 Representative Farry, I know you'll be interested in that
4 as well -- and some of the things we're learning from our
5 members at this point.

6 To lead off, basically the law changed and made
7 cancer now an occupational disease, so it's going to fall
8 under our workers' comp coverage that we have to provide
9 for our communities. That's a given.

10 The two areas that probably are most impacting
11 our folks as well are, you know, the "substantial competent
12 evidence" and that aspect of the law and the liability --
13 the presumption, basically. That's hitting our folks. And
14 secondly, which is something that we might want to discuss
15 at a later time, is the Penn FIRS system itself.

16 I had some discussions the other day with
17 Representative Farry, and within Penn FIRS, I think there
18 is some cleaning up that could occur there where this
19 reporting could become a little more substantial to --
20 well, pardon the term -- substantiate those actual Class 1
21 carcinogen presences in the ambient atmosphere when these
22 claims, you know, when these reports are made. So that's
23 something we'd like to see in any type of change that is
24 put in there. Those are the two big ones.

25 The third one, one of the things that is ironic,

1 but there is to be a review every 2 years by the Labor and
2 Industry Committees. I guess you guys are going to jump on
3 that train, too, or else we're going to have combined
4 committees or whatnot, because we did negotiate a lot of
5 this stuff with L&I folks, you know, and a lot of it
6 happened on the other side of the building, too. So, you
7 know, that's why there may be different things floating
8 around here and there, lastly.

9 To consider our roles in the association
10 basically, we did join in coalition with the League of
11 Cities, now the Municipal League, with Elam's group, PSATS,
12 et cetera, and we worked our tails off at trying to get
13 something that would work for our folks. We support
14 firefighters, okay? We also support taxpayers and where
15 their dollars go and the amount of dollars that they do pay
16 in.

17 Basically, we worked very hard when it came to
18 1231 over in the other Chamber, and seeing what that was
19 going to be, we just could not live with that. So
20 basically we were able to obtain a veto at that point. The
21 Governor understood at that time.

22 Following that, we saw a change in the
23 Administration. Governor Corbett came out, and this thing
24 was right back out there with the changes that, you know,
25 we thought would solve the problem. But, you know, yeah,

1 looking at things with some hindsight, whenever you
2 introduce that word "cancer," it's really hard to predict
3 anything, you know? So while you think the law may have
4 worked or addressed it, it's just a variable on there that
5 just made it very difficult for us. But the language we
6 did come up with and we still, you know, agree with is
7 basically something that is going to need to be massaged
8 and looked at again, because it's having an impact on our
9 folks.

10 Basically, Representative Farry, you did
11 introduce your bill, and then by July 7, it became law in
12 2011. It was Act 46. But basically what I want to get to
13 today, though, is how some of our communities are learning
14 about this law change.

15 While we did do an educational effort -- we
16 offered training; we did webinars, et cetera; we do our
17 annual conference and our leadership conferences -- we
18 educated folks on this. They're also hearing a lot,
19 though, from the regional dailies, you know? I mean,
20 you're reading this stuff in the newspaper now -- okay? --
21 and it's getting out there and folks have a lot of
22 questions and quandaries, not just in the southeast but
23 also out in the northwest, the western part of the State,
24 and central PA. So I think a lot of the folks here today
25 might be really focused southeast-wise or whatnot, but

1 there's a whole other part of this Commonwealth that's
2 going to have to really address this basically.

3 We've observed alone, in a period of time, that
4 three municipal insurance providers have indicated that
5 they struggle to provide and, worse, they plan to cancel
6 the provision of this. Now, these are separate insurance
7 companies. And we've learned that to date, while it was
8 updated, they have 70 claims that are sitting out there
9 with the SWIF Fund folks.

10 On our end, we have an endorsed provider that we
11 use. We don't participate in a Trust. The association has
12 an endorsed insurance provider, and at this point, they are
13 still carrying it. I believe there are still two firms
14 that are covering it. I think EMC and Selective might be
15 the two that are still writing this insurance.

16 Our EMC folks, they related to us that there were
17 10 folks that came and asked them, 10 municipalities came
18 and asked them about acquiring this type of insurance.
19 They have not yet gotten back to them. They did learn,
20 though, that there are four claims that have been reported
21 -- this is all a provider telling us -- and I have it
22 delineated there what those claims were for and whatnot.

23 Also, our insurance provider who is doing this,
24 he is making sure that they're following Penn FIRS, okay?
25 That's a big check, because that's one of the things we

1 inserted in here. Penn FIRS, you know, if I leave here
2 today, we've got to look at Penn FIRS, you know? It's just
3 something that needs to be clarified for folks to get a
4 better handle on what's going on there.

5 Lastly, I just want to thank the community for
6 the time to explain, you know, express a lot of this and
7 our intentions and whatnot. You know, our boroughs support
8 the fire service, okay? We actually provide facilities,
9 annual contributions, appropriations, and we even have
10 dedicated fire taxes, you know? Our citizens support the
11 fire service. They're the volunteers that support the fire
12 service.

13 And this runs into an area, and this may be a
14 little bit touchy here at this point, but it's a great
15 benefit to offer if you can afford it, but I'm not really
16 sure how much it's going to benefit me. Let's say my
17 19-year-old son returning home doesn't want to join the
18 fire service but he sees this one option, "Well, if I get
19 cancer, they'll cover it," I'm not sure that's a real
20 attractive pull for me to become a volunteer and to
21 participate. I think what we need to look to is not maybe
22 doing something here, but let's look at those fire
23 companies that have the best success at getting volunteers
24 and let's look at some of their practices, some of the
25 things that they do in order to gather more members, more

1 volunteers, et cetera.

2 I think sometimes, I know we've had a task force
3 that went to settle on this concept, you know? And that's
4 great from up here, but, you know, it's really done down
5 here. So if we can help these folks down here and learn
6 from them their best practices to build the volunteer fire
7 force, I think that would be most helpful. I know that's
8 not in my script, but I just wanted to share that with the
9 committee today.

10 So with all that, I just want to thank you for
11 the time. I look forward to working on the legislation
12 with the coalition that we have here. It's a dynamic
13 issue, but I'm sure there's something that we can come to
14 where everyone can agree upon something and find some
15 predictability on that.

16 MAJORITY CHAIRMAN BARRAR: Thank you.

17 If any of the Members have questions, I would ask
18 them to get them to Rick or Sean, who will then forward the
19 questions to you, and we will send the answers out to our
20 Members, if you're okay with that. I think we're about
21 3 minutes away from session starting, if you're okay with
22 that.

23 Our next testifier is Don Konkle.

24 MR. KONKLE: Thank you.

25 I'm Don Konkle. I'm the Executive Director of

1 the Pennsylvania Fire & Services Institute, and I'll try to
2 do this in 3 minutes.

3 First of all, the fact that firefighting has been
4 among the 10 most dangerous occupations in the country for
5 as long as I can remember shouldn't be discounted, and the
6 fact that workmen's compensation for firefighters is
7 expensive should be anticipated.

8 But perhaps more importantly, anytime you analyze
9 costs, it's important to look at value, and I think we need
10 to understand that this benefit being provided for our
11 volunteer firefighters is an important benefit. It's
12 another incentive for them to continue to volunteer,
13 knowing that their families won't be bankrupted if they
14 contract an occupational disease in the performance of
15 their duties, and I think that removing this would
16 obviously be a disincentive and would already just
17 exacerbate the number of volunteers that we're losing for
18 many other reasons. And the cost of losing volunteers, as
19 everyone knows, is huge. The volunteer fire service
20 provides about \$6 billion in avoided costs to the
21 Commonwealth, and we can't afford to really risk that going
22 forward.

23 And as Chief in the Harrisburg Bureau of Fire, we
24 are probably the largest combination department in the
25 Commonwealth, and I can tell you that the risk to career

1 people and volunteers is the same. There is no way to
2 differentiate between the two.

3 And if I could, given the amount of time I have,
4 just a couple of points in reaction to what I heard. And
5 it is true that the Institute was involved in finding an
6 attorney that we could recommend to defend volunteer
7 firefighters. When we looked at the law and we understood
8 what municipalities have done in most workmen's comp
9 claims, we thought they would, particularly in the
10 beginning, be defended vigorously. We wanted to make sure
11 that a volunteer firefighter wasn't brushed aside because
12 he didn't have an effective advocate. So we looked and we
13 think we found someone, and there's no requirement that
14 they use them, but we think that the level of defense
15 provided or the level of offense, however you want to look
16 at that, is important to see that these guys get a good,
17 honest representation as they're going up against an
18 insurance company attorney so they simply don't get
19 out-lawyered, and that was the sole motivation in
20 recommending an attorney. There's nothing nefarious about
21 it as we look at that.

22 And just to quickly address the prostate cancer
23 issue. Those claims have yet to be adjudicated. There's a
24 process that we'll follow. But the standard of proof was
25 recommended by the municipalities and the insurance

1 companies in order to do that. So I think until they shake
2 themselves out, it's a little hard to say this is a
3 terrible problem, because they haven't been adjudicated
4 yet. Until they are, I think if, you know, people begin to
5 lose prostate claims, you'll see people quit filing them.
6 If they get upheld due to the scientific evidence presented
7 at a hearing, then they'll probably continue.

8 Thank you.

9 MAJORITY CHAIRMAN BARRAR: Again, if any of the
10 Members have questions for Don, then get them to Rick and
11 Sean and we will forward them to you and then get the
12 answers out to their questions.

13 I want to thank everybody for their participation
14 today, and it was really, truly a great hearing.

15 Thank you. Meeting adjourned.

16

17 (The hearing concluded at 11:00 a.m.)

1 I hereby certify that the foregoing proceedings
2 are a true and accurate transcription produced from audio
3 on the said proceedings and that this is a correct
4 transcript of the same.

5
6
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9 Legislative Reporter

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