



**Testimony of Eugene Connell
Deputy Secretary for Compensation and Insurance**

**before the joint House Veterans Affairs & Emergency Preparedness Committee and
House Labor & Industry Committee**

regarding the implementation of Act 46 of 2011 (Cancer Presumption)

**Harrisburg, Pennsylvania
December 18, 2013**

Chairman Barrar, Chairman Sainato, Chairman Scavello, Chairman Keller, and members of the Veterans Affairs & Emergency Preparedness and Labor & Industry and Committees.

My name is Gene Connell. I am the Deputy Secretary for Compensation and Insurance with the Department of Labor & Industry (L&I). On behalf of Secretary Hearshway, thank you for the invitation to testify at this hearing regarding the implementation of Act 46 of 2011.

Act 46 was effective on July 7, 2011. It establishes a rebuttable presumption that recognized¹ cancers suffered by a firefighter with the requisite years of service and exposure are considered to be work-related. To rebut this presumption, an insurer or self-insured employer must show by “substantial competent evidence” that the firefighter’s cancer was not caused in the line of duty. In other words, the employer or insurance carrier has the burden of proving the cancer was caused by factors outside the firefighter’s occupation, if granted the presumption.

One consequence of Act 46 was a decrease in “appetite” among private insurance carriers for the writing of workers’ compensation coverage for fire departments. One year after the law’s passage, in August 2012, one of the larger municipal trusts authorized for workers’ compensation announced that it would be dropping volunteer fire department exposures starting January 1, 2013. Other municipal trusts and private insurers followed suit. By early 2013, only one private insurer was known to be writing workers’ compensation for fire departments.

Prior to Act 46, most volunteer fire departments were covered for workers’ compensation under the policies of the municipalities they serve. When the trusts or private insurers notified the municipalities that firefighter coverage would no longer be provided, the municipalities had the fire departments seek their own coverage. However, if a volunteer fire department does not secure coverage, the municipality, as the statutory employer, remains legally responsible for ensuring volunteer firefighters are covered.

¹ Act 46 includes cancer which is caused by exposure to a known carcinogen which is recognized as a Group 1 carcinogen by the International Agency for Research on Cancer.

Insurers avoid markets where there is an unusual amount of uncertainty. The State Workers Insurance Fund (SWIF) acts as a safety net in these situations, providing coverage when the private market is wary. Prior to August 2012, SWIF covered the workers' compensation needs of about 5 percent of the state's fire departments. Today, SWIF writes 808 fire departments, about 40 percent of the total market.² A large percentage of fire departments remain privately or self-insured.

As regards the claims filed under Act 46, on July 7, 2013, the department provided a report to the four chairs of the House and Senate Labor & Industry Committees on the number of successful claims filed by firefighters. At that time, there had been three successful claims decided by the Workers' Compensation Office of Adjudication. Since Act 46 does not define "successful claims" for purposes of the report, the department provided data on the number of claims that had received a plaintiff-favorable decision from a workers' compensation judge.

As of December 10, 2013, there are eight claim petitions that have had a plaintiff-favorable decision rendered by a WC judge. Five petitions have been dismissed by a judge and 13 have been withdrawn by the plaintiff. For 15 petitions, the employer and firefighter negotiated a settlement and a judge has approved the compromise and release.

As of December 10, 2013, 96 firefighters have filed 110 petitions seeking benefits. Of those 110 petitions, 96 are from paid fire departments, eight are from volunteer fire departments, and six are from mixed paid/volunteer departments. Of the 110 petitions, 98 are for exposure prior to Act 46 enactment. Act 46 provided a 600 weeks "look back" for submission of claims. Only 12 petitions have been filed with injury dates after the effective date of the law.

Philadelphia and Pittsburgh Fire Departments account for 80 of the 110 petitions. Philadelphia firefighters have filed 64 claims. Warren County has seen five claims, Lehigh County has four and Delaware County has three. The remaining 18 claims have been filed across the state, one or two in each of 13 counties.

The most common cancer cited in the petitions is prostate cancer (35 petitions). Lung cancer is claimed in nine petitions. In eight petitions, multiple cancers are claimed. Many other cancers are claimed in the remaining petitions.

L&I is working to ensure continuation of coverage and a seamless transition for those volunteer fire companies that apply for workers' compensation insurance through SWIF. L&I is also working with the Pennsylvania Insurance Department to evaluate and understand the potential impact Act 46 has had on the availability of coverage for volunteer fire departments.

Thank you for the opportunity to testify. I would be happy to answer any questions you may have.

² According to the Department of Community and Economic Development (DCED), there are 2,562 municipalities and 1,878 fire departments in Pennsylvania. Of those fire departments, 26 are paid, 1,744 are volunteer, and 180 are mixed paid/volunteer. Most paid fire departments are located in larger cities and are self-insured. They are not affected by the trust/insurer decisions.