

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS COMMITTEE

STATE CAPITOL
ROOM 418, MAIN CAPITOL BUILDING

WEDNESDAY, MARCH 30, 2011
10:00 A.M.

HEARING ON
HOUSE BILL 797(FARRY)

BEFORE:

HONORABLE STEPHEN BARRAR, MAJORITY CHAIRMAN
HONORABLE CHRIS SAINATO, MINORITY CHAIRMAN
HONORABLE BRYAN BARBIN
HONORABLE KAREN BOBACK
HONORABLE MARTIN CAUSER
HONORABLE TINA DAVIS
HONORABLE H. WILLIAM DeWEESE
HONORABLE MARIA DONATUCCI
HONORABLE GARTH D. EVERETT
HONORABLE FRANK A. FARRY
HONORABLE JOHN T. GALLOWAY
HONORABLE MARK M. GILLEN
HONORABLE NEAL GOODMAN
HONORABLE JOSEPH T. HACKETT
HONORABLE JOHN HORNAMAN
HONORABLE SCOTT E. HUTCHINSON
HONORABLE BILL KORTZ
HONORABLE JIM MARSHALL
HONORABLE THOMAS P. MURT
HONORABLE SCOTT PERRY
HONORABLE KATHY L. RAPP
HONORABLE ROSEMARIE SWANGER
HONORABLE WILL TALLMAN
HONORABLE RANDY VULAKOVICH
HONORABLE JAKE WHEATLEY

INDEX

TESTIFIERS

WITNESSES	PAGE
HONORABLE STEVE BARRAR MAJORITY CHAIRMAN	4
HONORABLE CHRIS SAINATO MINORITY CHAIRMAN	5
HONORABLE FRANK FARRY PRIME SPONSOR OF HB 797	6
GEOFF BEAUCHAMP COUNSEL, DELAWARE VALLEY MUNICIPAL MANAGEMENT ASSOCIATION	8
PATRICK HARVEY COUNSEL, PENNPRIME	9
AMY STURGES DIRECTOR OF GOVERNMENTAL AFFAIRS, PA LEAGUE OF CITIES AND MUNICIPALITIES AND PA STATE ASSOCIATION OF TOWNSHIP COMMISSIONERS	11
ELAM M. HERR ASSISTANT EXECUTIVE DIRECTOR, PA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS	12
SAM MARSHALL PRESIDENT AND CEO, INSURANCE FEDERATION OF PENNSYLVANIA	23
JOHN STOUGH AGENT, KEYSTONE MUNICIPAL INSURANCE TRUST	36

INDEX CONTINUED

WITNESSES	PAGE
ART MARTYNUSKA PRESIDENT, PA PROFESSIONAL FIRE FIGHTERS ASSOCIATION	43
RICHARD DUFFY ASSISTANT TO THE GENERAL PRESIDENT, OCCUPATIONAL HEALTH, SAFETY AND MEDICINE, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS	45
DON KONKLE EXECUTIVE DIRECTOR, PA FIRE AND EMERGENCY SERVICES INSTITUTE	50
CERTIFICATE	58

WRITTEN TESTIMONY SUBMITTED:

ED MANN
STATE FIRE COMMISSIONER

CLARENCE D. ARMBRISTER
CITY OF PHILADELPHIA OFFICE OF THE MAYOR
CHIEF OF STAFF

CHAIRMAN BARRAR: Good morning everyone. Can we get everyone to take their seats, please. The Veteran Affairs and Emergency Preparedness Hearing will convene and I would ask the members to please turn their cell phones off or make sure the phone is on vibrate and I would ask Representative Farry to lead us in the Pledge of Allegiance.

(Pledge of Allegiance was recited.)

We're not going to take a roll call vote or roll call today, but I am going to ask the members to please stand and introduce themselves starting down on the end there.

REPRESENTATIVE GILLEN: Representative Mark Gillen from the 128th Legislative District of southern Berks County.

REPRESENTATIVE HACKETT: Good morning. Representative Joe Hackett from Delaware County, Pennsylvania.

REPRESENTATIVE FARRY: Good morning. Representative Frank Farry from Bucks County.

CHAIRMAN SAINATO: Representative Chris Sainato, Democratic Chair from Lawrence County.

REPRESENTATIVE DAVIS: Good morning. Tina Davis, lower Bucks County.

REPRESENTATIVE KORTZ: Good morning. I am Representative Bill Kortz, Allegheny County, 38th District.

REPRESENTATIVE KOTIK: Representative Nick Kotik, 45th District, Allegheny County.

CHAIRMAN BARRAR: Thank you. I want to thank the members for being here today. Today we are here to receive testimony on House Bill 797, which the prime sponsor is Frank Farry. This legislation amends the Commonwealths Workers Compensation Act by designating

certain cancers as an occupational disease for firefighters across Pennsylvania. Before us today are representatives from paid and volunteer fire services, representatives of the insurance industry, municipal trust industry as well as representatives of our local government groups here.

At this point I am just going to ask Representative Sainato for some of his comments, if he would like to make any.

CHAIRMAN SAINATO: Sure. Thank you Chairman Barrar. I too would like to thank everyone for coming today for this very important hearing. We appreciate those who are coming before the Committee from local government, from the fire community, and from the insurance committee.

This is a very important issue to firefighters and I know last year we had very extensive meetings and hearings in the House on this issue and it was passed and sent to the Governor. So, we are going to give this another shot and I think it is very important that we hear the testimony from all sides today, because this is an important issue. Thank you Chairman Barrar.

CHAIRMAN BARRAR: Thank you Chairman Sainato. I personally support this bill, I voted for it last session. I see a great need in the Commonwealth to get this legislation passed today. If you remember the history of this bill, it passed the House, Senate with overwhelming support and it was vetoed by the Governor because of some opposition from what he said was local government. I'd like to see this bill at least get through the Committee. We won't be voting on it today, this is just an informational hearing.

Fire Commissioner Ed Mann, was invited to the hearing. He could not make it today. He did send a letter of support that he does support the bill. He is doing a training exercise I understand in the Marcellus Shale area today.

I would also like to recognize at this time Representative Frank Farry who's the prime sponsor of the bill, and ask him for some comments.

REPRESENTATIVE FARRY: Thank you Chairman Barrar, Chairman Sainato, thank you members that are in attendance today, interested parties in the audience and other guests.

This bill is a little near and dear to my heart because I have over twenty years as volunteer firefighter in Bucks County and I am currently in my eleventh year of Chief of Langhorne – Middletown Fire Company. I know firsthand the dangers that our firefighters face in protecting the residence and property in the Commonwealth. The bill before us today actually tackles one of the unforeseen dangers that firemen suffer and that is the exposure of carcinogens. The impedes of this legislation is kicked around the legislature for over twenty years.

As reflected by Chairman Barrar's comments, House Bill 1231, which was Representative Murphy's bill in the previous session actually passed the House of Representatives this summer of 2009 by a vote of 186 to 3 with clearly strong bipartisan support. Based on some concerns raised by local governments, the bill was amended in the Senate and then passed the Senate in Fall of 2010 overwhelming by a vote of 45 to 4. The bill then passed unanimously on concurrence in the House. The bill was vetoed in fall in 2010 by Governor Rendell, based again on the concerns raised by the municipalities.

The amended version of House Bill 1231 is actually the starting point of the current bill where we sit today, House Bill 797 in the current session. Working with Representative Murphy I have assumed the lead on pushing this legislation. Starting in the fall of 2010 after the veto I began working with the various interest groups and stakeholders on the matter. There were

numerous meetings both with me and amongst the stakeholders themselves and the goal of those meetings was to address the concerns of the municipalities.

Prior to running for office I spent eight years working in municipal government and it was funny because it brought back the meetings of some old friends from my municipal days. House Bill 797 actually balanced the interest of the health of firefighters with the interest of the municipalities. In discussing the matter with both sides I found that there was a common thread that just needed to be brought together and that was the fire service community was interested in protecting the health of firefighters concerning job related illnesses, and likewise municipalities will willing to assume responsibilities for firefighters who contract job related illnesses. The key to the agreement that was reached amongst all the parties it was by changing the evidentiary standards from House Bill 1231 to the current standards in House Bill 797. House Bill 797 reflects that the efforts of many parties, most of which are here today, and I look forward to Pennsylvania joining the other 32 states in the nation that have some form of cancer protection.

Thank you, Mr. Chairman.

CHAIRMAN BARRAR: Thank you Representative, just real quick, are there any questions for Representative Farry from the members? No, okay.

I wanted to introduce our panel, we're going to give, we're going to try with several panels set up for today. We are going to try give you 30 minutes and then some questions for as long you know as you need to do your testimony.

With us today is Geoff Beauchamp, attorney for the Delaware Valley Municipal Management Association; Patrick Harvey, attorney with the Council to PennPrime; and Ms. Amy Sturges, Director of Government Affairs for the Pennsylvania League of Cities and

Municipalities and the Township Commissioners Association, right? Okay would you start your testimony please? And Elam Herr.

MR. BEAUCHAMP: Thank you Mr. Chairman and members of the committee. My name is Geoff Beauchamp; I'm general counsel for the Delaware Valley Municipal Management Association. That Association is comprised of three municipal insurance trusts including the Delaware Valley Workers' Compensation Trust. They insure approximately 60 or so municipalities in southeastern Pennsylvania and have done so since 1999, 1991 actually.

I think Representative Farry deserves our gratitude for meeting with us after the veto of the House Bill 1231 to hear our concerns. We were very much involved, along with our coalition partners, in lobbying against House Bill 1231 and asking Governor Rendell to veto it and we asked for that veto simply because the rebuttal standard, the standard in that bill which defines the evidence which a municipality may offer to rebut the presumption that the cancer is work related was too narrow. It prohibited municipalities from admitting or offering into evidence all competent evidence addressing causation.

In another words, the municipalities under HB 1231 were confined to proof that somehow the claimants conduct or activities increased their risk of getting the cancer they were claiming as an occupational disease. That was far too limiting, because as we all know many cancers are not conduct related. Consequently, the standard that is in House Bill 797 is in line with existing law as it applies to all other occupational diseases, which allows municipalities to rebut the presumption of work relatedness with any competent substantial evidence or substantial competent evidence as it is called, showing that the cancer was unrelated or not caused by firefighting. That gives the municipalities a fair and full opportunity to defend themselves against these claims, which could be quite costly. It is most definitely an unfunded mandate and the

language that we are endorsing in House Bill 797 as it is drafted is necessarily a compromise. Compromises are never ideal, but we believe that the legislation strikes the right balance between the interest of the municipalities and the rights of a firefighter or firefighters to be compensated for any cancer they contract in the line of duty.

The second provision that we addressed with Representative Farry and with the firefighters representatives is a requirement that claims made by volunteer firefighters be based on carcinogenetic exposures or duly documented in the PennFIRS Reporting System. It's a very important risk management measure that we endorsed and support in the current bill because it will protect municipalities against claims that are based on undocumented carcinogenetic exposures that occurred years before, and frankly that would make these this liability exposures uninsurable, and I think having a compensation prevision in the Workers' Comp Act that is uninsurable does no one any good. So consequently, in our judgment this bill does strike the right balance. We are therefore endorsing it and we are here to do so consistent with our discussions with the Pennsylvania Fire Fighters, Professional Fire Fighters Association and Representative Farry and we thank you for your consideration.

I'll turn it over to Mr. Harvey, who has some comments as well.

MR. HARVEY: Mr. Chairman and members of the Committee, thank you for inviting us here today. I'm Pat Harvey; I am counsel to the Pennsylvania League of Cities, the PennPrime Workers' Compensation Trust, and the Pennsylvania Public Employer Labor Relations Advisory Service. And I am also, I am seconding this, I don't want to repeat Mr. Beauchamp's testimony, but I second his testimony as part of our coalition. In reaching this comprise we had a coalition of the League of Cities, PSATS, the township's association which you will hear from Mr. Herr about, the Borough's Association and the Delaware Valley Municipal Management Association.

And when you ask what is that coalition, we represent over 2500 municipalities in the Commonwealth.

I want to thank Representative Farry , I want to thank the Fire Fighters Association here today because we obviously had concerns with the original version of this bill and what we believed was a flawed rebuttal standard which prohibited us, it sort of set up an unfair, we believe an unlevel playing field where we couldn't rebut, present all relative evidence in rebut claims when we believed that there were outside causes of cancer that weren't occupationally related. But, the bill has been corrected and we endorsed the current, the rebuttal standard and I want to thank the Fire Fighters Association today for sitting down and working with us. Too often you hear about strife between the parties and because we had these differences we sat down and our concerns were addressed and we had a full and frank conversation where we sat down and we came up with a compromise. And I also want to applaud this Committee and the House and the Senate in listening to us because we came back and we said the municipal parties and the Fire Fighters Associations have corrected what we believe were some of our differences on the bill and because of those corrections you listened and I want to thank you here today for listening and now we have a version of the bill. I agree with Mr. Beauchamp nothing is perfect out there, it is not perfect, but it addresses our concerns and I think it is fair for both parties. And as you know, we fund firefighters services. We represent third class cities, we represent all classes of cities, we represent all municipalities throughout this Commonwealth; boroughs, towns, townships and we pay for the volunteer firefighters services and the paid volunteer services. Any bill that is passed here today we want to ensure not only that is fairly compensates, we're not are not against compensating firefighters when they contract an occupational disease or occupational cancer, but we also have to look at the cost and it being done in a full and fair way so we still can

pay and provide for the valuable services of firefighters that serve our communities. We think this bill strikes that correct balance and we also look forward to working with you, working with the Bureau and working with the Firefighters Association when this Bill passes in setting up reasonable risk management regulations or controls so that the goal, I believe the goal of everyone here today is not only to fully compensate firefighters when they do contract occupational diseases, but to prevent that from hopefully we can limit these claims hopeful with the breathing apparatus and the corrective controls and some of the risk management controls that we will be working with the associations in hopefully with this Committee in the future to implement, to try to cut down on these claims and try to prevent occupationally cause cancers so that our firefighters can do the good job they do and hopefully have a healthy and full career and a healthy and full retirement so they are not suffering from these diseases and make these claims as rare as possible.

So I thank you for your time here today and thank you for inviting us and we will be available at the conclusion of our testimony for any questions you may have. Thank you.

MS. STURGES: Good morning, thank you. I am Amy Sturges. I am the Director of Governmental Affairs for the League of Cities and Municipalities, and also the State of Association of Township Commissioners. And I just want to very briefly endorse the testimony that's been given thus far and let you know that both the League of Cities and Municipalities and the State Association of Township Commissioners do endorse House Bill 797.

As a coalition we worked very hard last session to make the language of the bill workable for local government, and unfortunately we weren't able to do that. So this session, early in the session when we were faced with the fact that we did have broad support from the General Assembly for the concept and that there was clear indication that the bill would be reintroduced,

we did have the opportunity to comprise and were able to strike a good balance and we were able to have in the language what we asked for last session. So with that, the two Associations were able to endorse the legislation and I want to thank Representative Farry for his work and the Committee and you Chairman Barrar. Thank you.

ASSISTANT EXECUTIVE DIRECTOR HERR: Mr. Chairman, ladies and gentlemen, my name is Elam Herr. I am the Assistant Executive Director for the State Association of Township Supervisors. First I want to apologize for the cold, but please bear with me. I will keep this relatively short for two reasons one the cold, and two, you have my written comments. Just to give you a little bit of perspective on this, our Association represents about 95 percent of the landmass and about 45 percent of the population. So we wanted to emphasize that we support our firefighters for the valuable service that they provide to our members and to the citizens of Pennsylvania.

But with that said, just a little history. First of all, I want to make it clear that we did oppose House Bill 1231 of last session. There were problems in that and the problems come down the unfunded mandates and the potential cost to our members and the citizens. We did get some agreement from the Senate to make some changes to the bill, but it did not go far enough and we did also ask the Governor to veto the bill and he did. With that, now I'm going to go 180 degrees.

Representative Farry approached us, as we approached him knowing that he was a former township official, assistant manager, and also a firefighter, and voiced our concerns that we had with the bill. Not that we don't think that firefighters should not be protected, but let's limit the cost so it isn't excessive. He worked with us; he worked with the other side of the issue and was able to form a compromise, which is what is before you today in House Bill 797.

So I want to take this time and thank Representative Farry. I want to thank the firefighters. I think they were in the driver's seat with this piece of legislation, but they were willing to listen to our concerns and understand that this is a two way street. If it gets to be such a cost an unfunded mandate that we can't afford the premiums they won't get the benefits. So the end result is I think with what the work that was done last year by the Senate, Representative Farry, what this Committee is doing and again, thanking the firefighters, I think we have a piece of legislation that will work. We will monitor. If there is a problem we will be back to discuss this with the Committee to help address it. Just so everybody knows – it is an unfunded mandate and a position that all of the local governments association have about unfunded mandates is that it's very tough for municipalities to comply with, but I think as the gentleman sitting to my left has stated, we've gotten this to be a reasonable comprise, one that we think that will work and the State Association of Township Supervisors at this point supports the bill that is presently written, we thank you and if we can be of any assistance today in answering questions or in the future I am available and I know the rest of the panel is. Again, chairmen, we appreciate the opportunity.

CHAIRMAN BARRAR: Thank you for your testimony, before we go out and ask questions of the members, I wanted to make a quick announcement. We are joined today by Representative Barbin, Representative Wheatley, Representative Swanger, Representative DeWeese and Representative Goodman. I want to thank the members, we had a great turnout for this meeting. Chairman Sainato would you want to start off the questioning?

CHAIRMAN SAINATO: Thank you Chairman Barrar. Gentlemen I appreciate you all coming here today and I think that it's shown, that you know, when working together and Representative Farry for his efforts on this piece of legislation. Because I think the ultimate goal

is to serve the firefighters and municipalities that you all represent and I think this is showing that when groups can get together and try to find the common ground I think that's very important. So we appreciate your efforts in this process and I am very pleased; like Chairman Barrar, I do support this legislation; because it's, I think it's critical. We all have fireman. I have a paid fire department in the city of New Castle and I have ten volunteer fire departments in my townships and boroughs that I represent so I have a very diverse district and they do such a fantastic job, without them I don't know what we would do and I, it is that way across the State. So I am very pleased to hear your testimony today and that there is common ground that we could all work together on.

CHAIRMAN BARRAR: Thank you Representative. Frank, Representative Farry, no? Representative Swanger.

REPRESENTATIVE SWANGER: Thank you Mr. Chairman. I realize and I understand that this bill is better than the former House Bill 1231, but I am still very concerned about the additional cost to municipalities and workers compensation insurance rates. Can anybody tell me how this would affect those rates?

MR. HARVEY: At this point, Representative, we did a underwriting analysis of the prior legislation which showed that frankly the way it was drafted with retroactive impact it would have been significantly more costly to, to our workers comp trust and our members. We can extrapolate from those studies; tell you that we don't believe this current legislation will have that degree of material negative impact on the municipalities. Quantifying it is somewhat difficult. We've not had a high incidents of cancer compensation claims by firefighters. As you may know, lung cancer is already an occupational disease under the act and I'm informed that we have not had a high incidence of cancer compensation claims for lung cancer over the last

several years. That's pretty much what we can say at this point. Obviously it's, there is a certain degree of uncertainty in calculating any kind of cost of a risk like this and that's why the bill also provides that every two years reports are submitted to the Department of Labor and Industry, by the Department of Labor and Industry to the Chairman of the House and the responsible House and Senate Committees to address the ongoing impact of these claims. So I think we must take a cautiously sort of optimistic attitude here, be smart in our risk management practices so as to minimize the incidence of these claims and manage them much better, manage the risk. I think that's what we need to do.

REPRESENTATIVE SWANGER: Thank you. I'd like to just throw out a hypothetical here and I think the world of firefighters, believe me I worked with them very closely when I was City Clerk for the City of Lebanon. But suppose a firefighter has been a smoker for virtually all his life, since age 14, comes down with lung cancer, files a claim and says that in his opinion it was related to the chemicals that he encountered on his job. What protection is now in this bill for the municipalities that they won't be stuck with a claim that could have been caused by some other exposure?

MR. HARVEY: Under the rebuttal standard in the current bill, the municipality will be allowed to introduce competent evidence establishing that indeed the firefighters smoking history was the approximate cause of his cancer. And that frankly, your hypothetical addresses the very point that of our concern with the prior version of this legislation, that municipalities have to be able to introduce competent medical testimony establishing – if creditable and competent – that the cancer complained of is not caused by the firefighting, but indeed in your hypothetical cause by smoking. Again, smoking of course is tied to lung cancer. Lung cancer has already be an occupational disease for a number of years under the Act and we have not seen a

significant number of cancer compensation claims for lung cancer over the last twenty years or so, but your point is well taken and I hope I answered your question.

REPRESENTATIVE SWANGER: I think so. Thank you very much.

CHAIRMAN BARRAR: Thank you; are there any other questions from the members?

Representative Barbin.

REPRESENTATIVE BARBIN: Thank you Mr. Chairman and thank you for your testimony today. I had one question about the length of time that is covered under this revised legislation, and I read some testimony in here that California has a ten year standard and other States have had longer standards. This standard, is it correct that the standard only applies 300 weeks from the last possible exposure by the firefighter, is that the standard?

MR. HARVEY: Actually it's the presumption would apply for cancers contracted within 300 weeks after the last date of employment and the last day in which the firefighter is actively engaged in fire fighting activities. Claims may be filed 600 weeks after the last date of employment, but not all those things would have the benefit of the presumption. The presumption would only apply to the 300 week period.

REPRESENTATIVE BARBIN: Alright, so that the way this amendment is written is that there's been a compromise to allow the presumption, which benefits the firefighter who contracts the cancer to file within 300 weeks. Can you tell me, are there any studies that justify the shorter standard, 300 hundred weeks is approximately six years versus the ten year standards that have been applied are applied in the other States? Because what I am worried about is, I am looking at this and you've already covered lung cancer, but one of the things that the fire creates a problem with is asbestos and we're all familiar with how long the asbestos claims have been continued in our court process. We still have asbestos claims going on in Cambria County that date that date

back to exposures that are in the forties and in the fifties. So, why is it that we picked this 300 week period, since the presumption is allowing benefits to both sides? Why are we using 300 weeks?

MR. HARVEY: Well the 300 weeks was in the original bill as passed by the General Assembly last year and I think , believe it was based largely on what other States have done. The ten year period is somewhat unusual. In fact, the California law was only recently amended to extend that period, prior to that it was five years.

REPRESENTATIVE BARBIN: But is there any documentation? You've been studying this for years. Is there any documentation that would show that a ten year standard as opposed to a 300 week standard would substantial increase the cost of this unfunded mandate that's led to the compromise?

MR. HARVEY: Based on our underwriting analysis of the prior bill we can, I think say that it would and frankly the 300 week period was factored into the analysis such that we can better address current claims where the cancer has only recently developed. Sure there is a latency period and that's why we have the 2-year reporting requirement to the Committees just to see how these claims are being handled.

REPRESENTATIVE BARBIN: Thank you for your—

MR. HARVEY: But again, most States have the 5 year period and that's what we, that's why it was included in this bill.

REPRESENTATIVE BARBIN: Alright, I appreciate your testimony and I'd ask Mr. Chairman if it was possible, if that information could be provided to the Committee so that we could review it before the bill was voted on the floor.

CHAIRMAN BARRAR: Thank you, we will try to get that for you, okay. Any other questions from the members?

I have a couple of questions. House Bill 1231 that was vetoed by the Governor and opposed by your organizations, my understanding is the difference between the bill we are supporting today and the bill that was vetoed by the Governor, the main difference is the collection of evidence and the burden of proof that is placed on the firefighter to make the claim. Is that the difference?

MR. HARVEY: No, it is not the burden on the firefighter. It's the ability of the municipalities to rebut the presumption created under the law for all occupational diseases that the occupational disease in this case cancer would be related or caused by firefighting. HB1231 as amended by the Senate limited the municipalities rebuttal evidence to prove that the firefighter engaged in conduct or activities that increased their risk of cancer. That standard would be totally inadequate in cases involving say prostate cancer, pancreatic cancer, liver cancer, and the like; many cancers are not tied to conduct or activities. So we argued to the Governor's Office and repeatedly stated our position before the Senate Committee staff that we needed, municipalities needed the ability to introduce evidence of a claimants medical history, predisposition toward cancer due to genetic factors totally unrelated to firefighting. Keep in mind that lung cancers are already an occupational disease for firefighters. So we are necessarily embarking on sort of uncharted territory here in terms of the types of cancers covered by this legislation. It does not limited to types of cancers; it simply ties the claim or the cancer to direct exposure to a classification of carcinogens which are group 1 carcinogens recognized by an international body. They are 80 in number, but they are they have been tied to a variety of cancers. Consequently, the medical testimony offered by municipalities has to be equally broad. They have to be allowed

to do that and HB1231 did not allow them to do that, this bill does. It just basically gives them a fair opportunity to defend against these claims, which by their nature may very well be fairly costly to defend.

CHAIRMAN BARRAR: In Delaware County we had a, I think it was 1978; there was a fire in Delaware County, the Wade Dump fire.

MR. HARVEY: Yes.

CHAIRMAN BARRAR: I don't know if you are familiar with that.

MR. HARVEY: Very.

CHAIRMAN BARRAR: The fact that the we lost 22 firefighters to cancer within ten, fifteen years after that fire, I personally lost a neighbor, one of my neighbors who was present at the fire. His father was present at the fire. They both died within two years of each other of the exact same stomach cancer. Would the burden of proof be enough that the fact that they were at that fire where we know there were known carcinogenics being you know spewed into the air that that their presence at that fire, would that have been enough for them to make a claim, a cancer presumption that their cancer was related to the dump the dump fire?

MR. HARVEY: Under the current bill, if they could prove direct exposure to one of those carcinogens, a group 1 carcinogen and they can track the cancer and the exposure occurred while they were firefighting, they would have the benefit of the presumption. And the Wade Dump site fire, obviously this law did not exist, and the Wade Dump site fire created, raised some very significant issues as to medical causation and the interaction of various substances, both carcinogenetic and not, so it is fairly complicated area. But to your point, this bill would have benefited some of the firefighters involved in that fire, depending on the facts, depending

on the nature of the cancer, when it was developed, the medical history of the individual firefighter and so forth. But yes this, this, this legislation would apply to that situation.

CHAIRMAN BARRAR: Thank you. Well one comment I wanted to make, I know everyone of you have referred to the, this is an unfunded mandate and, and it kind of bothers me a little bit because when you look at the cost to the taxpayer, the savings to the taxpayers that are volunteer firefighters give to the State of Pennsylvania. my understanding it's a \$2 billion a year benefit that we reap as, as local government officials. I was a Township Commissioner for six years, the amount of money my township saves in not having to pay a fire company is enormous compared, in my opinion, compared to the, to the cost this may present to most municipalities. I would think in some cases it may be a high cost, but this savings to Pennsylvania is just incredible that from our volunteer fire companies.

Okay, thank you. Oh, we have another question here, Representative Kortz, who just joined us has a question.

REPRESENTATIVE KORTZ: Thank you Mr. Chairman and thank you all for your testimony this morning. Does the League have an estimate of how many firefighters may come forward after House Bill 797 is signed into law by the Governor? How many firefighters may come forward claiming that I contracted cancer through this occupation? Is there any estimates?

ASSISTANT DIRECTOR HERR: We don't have that Representative. It's a hard thing to put a number on because it's going to be easier under the presumption standard than it is currently to file these claims. We believe there will be an increase in the claims, but our underwriters who did the analysis of the original bill, that's one of the sort of unknowns. So we think there is going to be uptake, we think it's going to be easier to file these claims, but over the years these claims have been minimal. We haven't seen, under the current law we have not seen

many occupational cancer claims. So trying my best to answer your question, we think there's going to be an uptake, but we have a hard time putting a hard number on that.

REPRESENTATIVE KORTZ: Okay, I, I just curious. Thank you, thank you Mr. Chairman.

CHAIRMAN BARRAR: Are there any other questions from the members?
Representative Gillen.

REPRESENTATIVE GILLEN: Very briefly I wanted to echo the comments of the chair as a former county official and also as a former borough official. The efficacy of our volunteer fire departments and the cost savings that result as a consequence of having volunteers. My questions is specific to cancer rates, as to how cancer rates of all types of cancer compare occupationally firefighters versus other occupations and then I have a follow up-question.

MR. HARVEY: If I may answer, we've reviewed studies in the course of our assessment of the prior bill last year and those studies were somewhat inconclusive as to across the board generalizations, about the incidents of cancer among firefighters versus the general population. Very much cancer specific, but I cannot give you the details of those studies at this point in time. I don't have them in front of me.

REPRESENTATIVE GILLEN: So with regard to other occupations or the general population we don't have any specific statistical information at least to offer in testimony at this point.

MR. HARVEY: Not that we can offer at this point, we would be happy to supplement the record with the studies that we've reviewed. The one that we did review, and I do recall it, it was somewhat inclusive as to the different types of cancer in firefighters versus the general population.

Our focus, Representative, you should know given our trust where we insure most of our municipalities have volunteer fire companies. When you're talking about volunteer fire companies, you're talking about an entirely different scenario as opposed to the full time paid fire departments because a volunteer fireman could work in a factory, where they're exposed to carcinogenetic solvents on a regular basis. Their outside employment could expose them to a number of carcinogens that might be higher than the average or the general population and may even be higher than the average firefighter. A lot of the studies that were done I think were focused on fire departments, full-time professional firefighters, where you can clearly, clearly carve them out of the general population. So our concern was mostly with the volunteer firefighters. So we didn't drill down as much perhaps as we otherwise would have had our members had mostly paid fire departments.

REPRESENTATIVE GILLEN: Well thank you very much for your comprehensive and discerning testimony. Thank you, Mr. Chairman.

CHAIRMAN BARRAR: Thank you. We're joined today also by Representative Donatucci, over at the table there. And she is new to our Committee; we want to welcome you to the Veterans Affairs Committee. Thanks for being here today.

Are there any other questions by the members? Sean Harris is one of our research analysts.

SEAN HARRIS: Thank you Mr. Chairman. I just wanted to make a clarification on a point brought up by Representative Barbin. A claim can be filed by a firefighter up to 600 weeks. The presumption is only applicable for the first 300 weeks, but the 600 week is still in current law and it's still applicable.

CHAIRMAN BARRAR: Any other questions? I want to thank you for your testimony today and thanks for being here.

Our next testifier is Sam Marshall with the Insurance Federation of Pennsylvania. Do you have testimony there Sam that you will present? We have it? Okay I saw those papers I thought he'd that's not your whole speech there is it, all that?

PRESIDENT MARSHALL: Thank you for having me here, Sam Marshall with the Insurance Federation. We are neutral on the bill, in light of the changes that have been made and I appreciate the efforts that were made to resolve some of the concerns that the Governor cited in last year's veto. We do offer a few suggestions and have a few questions about the bill, so that everybody has a better understanding of the impact.

First some suggestions, largely editorial, in section 301 (f) that refers to the physical examination prior to engaging in firefighting duties, I think it's a linguistic deal, but I think you want to say "whose most recent physical examination prior to engaging in firefighting duties failed to reveal any evidence of the condition of cancer." The way it is worded now is any physical examination suggests that there could be an intervening examination that revealed the cancer. I don't think that is anyone's intent, but you may want to clarify that. Also in that subsection in the third sentence, I think it is just a drafting matter. It talks about, "...provided that the members claim is based on direct exposure to a carcinogen referred to in section 108 are..." says it twice, I think you only need to say it once.

More important going to section 3 in terms of duties the Department of Labor and Industry in terms of gathering up information on successful claims, if you want to check with the Department of Labor and Industry as whether they have the capacity or capability of doing that, it's not easy, insurers don't necessarily segregate that out. We will have to revise through the

Pennsylvania Compensation Rating Bureau how claims are categorized. I'm not sure given that much of this business is done through the SWIF (State Workers' Insurance Fund) and through self-insured trust whether they will have that information readily available for the Department to gather up.

Second, I would recommend that you expand the data that you're looking for from the Department of Labor and Industry. The bill talks about successful claims filed. I think you want better claims processed. I think you want that to be "all claims filed" and with what the resolution is on that. I think you also ought to have that breakdown from the Department be by localities. You know, so that you and firefighters, municipalities, and insurers can identify if there's some unique regions or municipalities that might suggest some unique problems there whether it's in terms of risk management, prevention services, the quality of and the way in which they supervise firefighting, the safety concerns there.

We also recommend, you know why frankly you want the Department and I think everybody should want the Department, if it's going to be doing these biennial reviews, I think you ought to have the Department also submit any recommendations that might have on best practices and risk management from its ongoing monitoring. That's a good objective source they do a lot in the area of workplace safety already and I think that if you can have the Department submit anything on that, that would be a benefit for everybody concerned.

Next area just question and a concern, section 4 on the applicability, this applies right now to the change, being making this change for all claims filed on or after the effective date of the act. Generally in the world of insurance you apply these things and they apply to all policies issued on or after the date of the Act. The reason for that is that otherwise you are expanding

coverage in the middle of a policy so you don't have premium adequacy. You're asking for new coverage, but it's the old premium.

That said, that goes to a question that has been raised by a number of people here, how many claims does anybody foresee happening under this? Nobody, I think nobody is exactly sure but generally you do apply these to the policies. It's also a question, what happens with claims that were already filed under the current standard? Does it change on those, do they get withdrawn and refiled? That's questionnaire, strictly from an insurance perspective we will have a concern in terms of trying to adjust our premiums in the middle of a policy, you may get some concern about whether the insurance coverage is going to hold on that. Much of this business is done through either the SWIF, or the State Workers' Insurance Fund, or through self-insured trusts or through municipalities being self-insured on their own. It may raise some reserving questions there and I think you want to get into that.

Some general questions and maybe we'll hear more from the firefighters and close to what has been asked by a number of people, is there any data available on how many firefighter claims of work related cancer have been filed under current law? That would be, and what was the resolution of them? Our understanding, and really there one or two insurance companies write this business in Pennsylvania, the bulk of it again is done by the SWIF and the self-insured trust. What we hear from the, from the couple of companies that do this, they really aren't seeing any claims right now, so it's not as if the claims were being denied, it's just we're not seeing them, that's good news obviously to the extent that it reflects that you really don't have a cancer problem. What we don't know is whether the claims aren't being filed because of a concern that that they'd be denied and be unable to go forward. Could it be, you know, the firefighters, I would assume, would had that data as to how many claims they anticipate will be filed. They are

fortunately exceedingly rare. They will be, obviously, the nature of the cost of cancer, very expensive claims. That's why I think everybody should try to plumb down just how many claims we are talking about there.

The other question, and again, most of this business being done by the SWIF, and by self-insured trusts and self-insured municipalities, there are provisions in the self insurance laws that the Department Labor of Industry has that requires reinsurance agreements, require added reserves and all that. I think you want to make sure, particularly given the immediate effective date of this, that the Department is ready to implement whatever changes it envisions it's going to impose on localities. That's just an insurance guys concern, doesn't affect us directly. We may have to reestablish reserves, but our risk of business is spread, you know there's, you know we're not specialist in this., any companies that do it do a wide variety of areas so there would be a spread there, but for a, particularly a relatively small self insurance trust that's going to be a concern in giving some lead time on that is going to be important.

Hope that is somewhat edifying and happy to answer any questions.

CHAIRMAN BARRAR: Thank you Mr. Marshall. Can I, one question, trying to understand your testimony, is it that if we add this benefit that workers comp insurance will immediately have to be raised? That the premiums to cover this benefit even though there's no claims added to it?

PRESIDENT MARSHALL: That's one of the reasons, that's one of the things nobody is sure, right now are concern is that if you add the benefit to policies that are already in force and claims and premiums have already been charged, this potentially opens up new claims that weren't envisioned when the rates were set. Again, you know, as we, we don't see claims under the current standard for this, what we don't know and the firefighters with would be the ones

with that knowledge, what we don't know is how many claims are in the wings. Generally when you do something and you apply it immediate affect or claims as opposed to policies issued after the effective date of the act, that suggests that there are a bunch of claims in the wings. That's a problem for insurers, it's also going to be a problem for municipalities, particularly the self insured ones.

CHAIRMAN BARRAR: The claims are, are that the, that the premium is based on past experience for the most part, isn't it? Not future, not potential cost.

PRESIDENT MARSHALL: No, actually you base your premiums both on past experience and anticipated future experience.

CHAIRMAN BARRAR: Thank you. Are there any questions, by the members?
Representative Farry.

REPRESENTATIVE FARRY: Thank you for being here today Mr. Marshall. A question for you, right now under the current workers comp law I believe there is a catch all for occupational illnesses, so claims could be filed now, what we're doing here is rushing, changing the process in terms of creating the presumption and then setting forth the evidentiary standards for the employer. That is accurate, correct? Is that? Because they could file, if the fireman has cancer standing her today, they can file a claim for workers compensation under the catch all provision, I believe.

PRESIDENT MARSHALL: Correct but it, it wouldn't be the presumption.

REPRESENTATIVE FARRY: Correct.

PRESIDENT MARSHALL: That it will now get.

REPRESENTATIVE FARRY: Right.

PRESIDENT MARSHALL: And that's my point, we don't see those claims now. The questions is whether they simply aren't happening, that there isn't a high incidence of cancer, beyond the lung and the heart attacks—

REPRESENTATIVE FARRY: Sure.

PRESIDENT MARSHALL: —and lung cancer. The question is, is it because they're really not out there or because they are not being filed, that they exist but they're not being filed because of presumption doesn't exist. What you don't know, and the firefighters would be the ones with the data on this, what you don't know is whether you're going to see a sudden influx in claims that would then presumably smooth out after the Act takes effect. You might see an initial wave of claims that have been held back that would now be filed; but you haven't and then over time I would assume it smooth out. But it actually, we just don't see claims in this area and we don't know if the reason is because there isn't cancer caused by this or because the standard in the minds of those who would file the claims is right now too high.

REPRESENTATIVE FARRY: Right, very good, thank you.

CHAIRMAN BARRAR: Are there other questions, from the members? Representative Barbin, please.

REPRESENTATIVE BARBIN: Thank you Mr. Chairman, thank you Mr. Marshall for your testimony. You make a suggestion in the bill that the Section 4 of the bill should be changed from the language, which it is right now, it's that the Act shall apply to claims filed on or after the effective date of this section. You're suggesting that the that language really should be to the next policy year. My question would be this, if there was a person who was a firefighter and they were injured and that injury didn't become apparent for the 300 weeks that the presumption provides, the claim would be made under the next year's policy. So, I don't, what I

don't understand is how, whether the language is the claims filed on it or after the date of this Act. Let's say it's passed in 60 days, how would that be any different for a person who had an injury? Let's say 100 days from now or after the policy year started, you would still be covering the same thing. If a person, if we, if we make this Act effective today and it includes these policies that are already written or we make the Act effective for the next policy year, the people that file the claims under this presumption are going to file the claim probably because they have a personal injury in the next year anyway. So how would it, how would it provide a different cost to the insurance companies? I am in favor of the language as it is right now. It says if we pass this law it's effective on the date that we pass it.

PRESIDENT. MARSHALL: With respect to insurance policies, what you would then, what an insurance company would have is the ability to adjust its premium in anticipation of this; because it is now going to cover a new level of liability. If you pass it and, but you are right from a, assuming that the firefighter is has remained in employment, and remember it's 300, it's 300 weeks from his date of employment, from his date of last employment—

REPRESENTATIVE BARBIN: Last employment.

PRESIDENT MARSHALL: —not from date of injury. But you're right; I mean he will still file the claim. It's that the insurance company would have the chance to adjust its premium, to reflect its—

REPRESENTATIVE BARBIN: But why do we need to do that if the history up to this point is that we haven't seen many of these claims?

PRESIDENT MARSHALL: Well, that's, that goes to the questions you know, with Representative Farry that and Representative Barrar, that I was discussing. We don't know how many claims we're going to see under this. We haven't seen them now under the current

standard. Again, whether that's because there hasn't been cancers suffered by firefighters or because they haven't filed the claims and their waiting and once this bill is past we will see a sudden influx of claims, we don't know that. That's something that would be information, it would be uniquely held by the firefighters and I'm hoping to learn more about that.

REPRESENTATIVE BARBIN: So these are all balances, like the presumption, like you're saying since there are presumptions that benefit the township supervisors and there are presumptions that benefit the firefighters, all of these things need to be weighed together, you know, including cost, potential additional cost.

PRESIDENT MARSHALL: And, and any company weighs those in when filing rates. The key is that when you determine your rate you know what the rules are at the time of determining the rate. The problem here from an insurance perspective is that the rules change in the middle of the policy. So you charged your rate under one set of rules, now the rules change and your rate remains the one that you calculated under the old set of rules. That's the challenge, now, again, if there aren't going to be a sudden wave of claims, not a problem. If there is going to be a sudden wave of claims, then that is a problem.

REPRESENTATIVE BARBIN: Well you've said before that there is a risk premium, which you're talking about, and there is also prior experience and prior experience says there aren't claims.

PRESIDENT MARSHALL: Except we don't have prior experience under this. That's—

REPRESENTATIVE BARBIN: Well you do because there is a catch-all phrase. There is the occupational disease catch-all phrase.

PRESIDENT MARSHALL: If there was, if there was a catch-all, if that was truly a catch-all frankly you then wouldn't need this bill. If that was catching everything, you wouldn't

need this. You know, what we don't know is how many claims is going to be filed under this. The firefighters, again, the firefighters would have that if it's going to be a dramatic influx of claims in the immediate sense, then you're going to have for existing policies rate inadequacy.

We may be able to absorb that, because the two carriers that do this is national carriers and they can spread it out over a pretty broad base; for the SWIF that is going to be a different problem; for a small self-insured trust, that's going to be a different problem. It won't have had the chance to get that rate adequacy on, but again, that goes to how many claims are going to be filed under this. So you know, on the one hand there is a great need, on the other hand everybody says gee, there aren't going to be any claims. It is one or the other.

REPRESENTATIVE BARBIN: Thank you.

CHAIRMAN BARRAR: Thank you, thank you, and other questions. Representative.

REPRESENTATIVE GOODMAN: Yeah, really quickly Mr. Chairman. I wanted to wait until you got here Sam, because I wanted to ask this to an insurance person. I am glad to see you're neutral on the bill. I think that will be very helpful. But some of the language in the very beginning under Section F, it states that a firefighter, "firefighters who have served 4 or more years in continuous firefighting duties..." the example that the Chairman gave, you had one specific fire that caused many people to be injured, and what if you are like a second year fireman and you end up at one of these really bad fires, chemical plant of some kind and you end up with stomach cancer a year or two down the road. In your opinion, is that a clause, is that an exemption clause? If I've been fight, I've been firefighter for 3 years, because it says right in the language there, it says "firefighters shall be those firefighters who have served 4 or more years in continuous fire fighting duties." My concern is I have a very young firefighter, they have the tendency to be the more aggressive ones, they're the ones that goes right in, and I have three

cogeneration plants in my Legislative District and there are a lot of chemicals involved there that do not respond well to fire. What if one of these young gentlemen goes in there and they find out that years down the road that it was that fire that caused it. Could this be looked at as, should we be looking for more clarity in the language to define the scenario that the Chairman pointed out where you have one horrendous fire.? No one is doubting the fact that this was directly related but to the exposure of carcinogen at that fire but, oh, you know, you're only an active firefighter for two years three months, you don't fit that , I mean should we have, in your opinion should that language be addressed?

PRESIDENT MARSHALL: Yeah, first of all, I mean if nobody is doubting then, then you wouldn't need this. If nobody was doubting then you don't need the presumption. The question comes in when there is doubt, when there is uncertainty this establishes a presumption in favor of the firefighter it can be rebutted, and so in the situation somebody wasn't a firefighter from continuously to 4 years, you can still file a claim if down the road he develops cancer and thinks it comes from that. He just doesn't get the presumption. He can file the claim under current law and when you pass this he will still be able to file under this. This extends the presumption to somebody who has been a firefighter for four continuous years. It doesn't mean that, and understand, you don't fight a fire one day and then develop cancer the next day. It comes over time. It would only be detectable over time.

REPRESENTATIVE GOODMAN: So am I reading the language of this legislation correctly then? The way I read it is, if you are a firefighter for less than 4 years you're not really even considered covered by this Act.

PRESIDENT MARSHALL: By this presumption.

REPRESENTATIVE GOODMAN: As we both know, the presumption is really the strength of any case when you go to—

PRESIDENT MARSHALL: Actually, with all due respect, our experience is claims get filed and they get granted right now. Not just with respect to cancer, but with respect to any type of an injury. Workers compensation judges, we certainly don't deny every claim and we don't win every claim in which we deny them. I think that would hold true for self-insured trusts as well. What this does is say that if you've been a firefighter for 4 continuous years at least, and if at any course in that you subsequently develop cancer, it will be a presumption. You could, if you want, you could broaden that presumption, but in the example that you gave, this isn't saying, you know what, it doesn't apply to any contact you may have had with a carcinogen in your first 4 years of firefighting, it's only after that that it applies. No, it's saying any contact that you've had during your tenure as a firefighter this will apply, but you have to have been a firefighter for 4 years.

REPRESENTATIVE GOODMAN: The only reason, because Representative Barbin asked some very good questions with regard to the 300 weeks and the 600, and I know those things were negotiated and I don't want to put you on the spot here, something I'd like you to think about and you can get back to me later. Where would you be if we struck that language out? I would feel more comfortable if that language was not in there because somebody could read it the way I am reading it. I don't really see how that strengthens the bill having that in there.

PRESIDENT MARSHALL: Again—

REPRESENTATIVE GOODMAN: To me a firefighter on his first day is a firefighter. I have more volunteer fire companies than any other Legislative District in this Commonwealth. I've got them. Thank gosh we do, because the Chairman pointed out, \$6 billion, it saves the

Commonwealth \$6 billion. What I am saying is, if I was a very young firefighter just joining a fire company, I would be wondered if I am covered just because of the way this language is written. What would your opinion be to simply striking this language out? I don't understand why it just doesn't say, "a firefighter." Why does it have to go on to say, "...who has served 4 or more years in continuous firefighting service..." You get a lot of these young people, they get in and then they get married and they leave the fire company and then they come back 2 years later, do you see where I'm coming from?

PRESIDENT MARSHALL: One of the difficulties we have in all of this is, generally the reason you do a presumption, and I don't know that the case has been met here, generally when you change from it's not a presumption to it is a presumption it's because you've seen a lot of claims that have been denied. I don't, I haven't heard that. I haven't heard that from our companies that do this and I haven't heard that from all of the different parties involved, that right now they are experiencing a problem with claims being denied. Frankly, that's a question for the firefighters. Our companies say, we just don't see claims being filed. That goes to the question, are we going to see a sudden wave. What you are doing here is saying, for the firefighter that you envision, somebody who doesn't do it for 4 years, he does it for a year or two and then a couple of years down the road he develops cancer, no, there the presumption doesn't apply. He can still file the claim, it's just that he doesn't have the presumption. He's got to make his case, the other side makes its case and that is what the judge does. This establishes a presumption, which is a favored status for whoever enjoys the presumption. This establishes the presumption for somebody who has been an ongoing firefighter. That is, again, that's a balance and I think it's a fair balance. If you want to say that the presumption applies to anybody who is a firefighter for a day, okay, that will then broaden the exposure. It becomes that much harder to

disprove, I think you should have to have some sort of ongoing commitment to the firefighting profession if you're going to get that presumption.

REPRESENTATIVE GOODMAN: And I understand where you're coming from on this, but I do have concerns with it, Mr. Chairman, and I'd be very willing to sit down with staff on both sides to see if there is some way we can clarify this language.

PRESIDENT MARSHALL: I think in doing it, we're happy to share any experiences we have, but again, it's very limited. I think you want to find out in addressing this just how many firefighters have cancer that they would be filing under this presumption. I think that may be very telling in terms of whether you want to expand it, how you want to, all of that.

REPRESENTATIVE GOODMAN: I think your second suggestion on the language, when you say successful claims processed, that's the fine clusters of that and I'm very supportive of that, I think it's a very good suggestion for this legislation, but I still have some questions with the language, Mr. Chairman, and I'd be willing to sit down and talk to somebody to make sure that my, the way that I read the language is not the way that it is going to be read, God forbid, if it ends up in a legal case.

Thank you, Mr. Chairman.

CHAIRMAN BARRAR: Thank you. Other questions?

Can I ask you a question, Sam? A volunteer firefighter, how would the claim be based on? Is it based on the salary that he is earning at his occupation or is there a set salary for a volunteer firefighter that workers comp would cover him for? I'm not really sure how that works.

PRESIDENT MARSHALL: I'll get back to you on that .In this case the real cost factor is on the medical side. Generally, you probably should have thought of that, because generally, and the municipalities will have a feel for that, generally with workers comp the waves, that side of

the equation is just as great or greater than the medical side. Obviously on the case with cancer the medical side is greatly worse for the compensation on salary, financial non-medical costs. In this instance, it's really all driven on the medical side.

CHAIRMAN BARRAR: Representative Farry.

REPRESENTATIVE FARRY: I think I know the answer to the question, I was just conferring with some of our comp people out here. I believe it's two-thirds of your weekly wage, your paid or the Statewide average.

CHAIRMAN BARRAR: So if I'm making, it's not regardless of what my income is as a volunteer firefighter, I would get two-thirds of my weekly wage is how it's covered.

REPRESENTATIVE FARRY: Correct. Or the Statewide average if you're unemployed, or a college student, for example.

CHAIRMAN BARRAR: Great. I just didn't know that answer. Thank you.

Thank you for your testimony, Mr. Marshall.

Our next testifier is John Stough with Keystone Municipal Insurance Trust. John, thanks for participating today.

MR. STOUGH: Thank you.

I'm going to first ask for any forgiveness with my inexperience in this capacity, but I was asked to speak on behalf of KMIT and our 64 members Statewide. I think coming around to you there is my testimony.

First, let me say I'm very grateful of this opportunity. I'm respectful of the entire process and I know you have deliberated on this for some time now. Having been a municipal manager for 15 years and now working for the Keystone Municipal Trust for 3 years, I've lived through

the workmans' comp claims and working hand-in-hand with our volunteer fire companies as well. I have a lengthy knowledge on what we are speaking of today.

For those of you that don't know, KMIT is an intergovernmental organization owned by its 64 local government members that provides quality workers compensation coverage to its members at the lowest possible cost to the local taxpayer. KMIT is not an insurance company. Our question that we have posed to ourselves is, is there a problem? A lot of what I'm going to testify on today has already been spoken to, so please forgive the redundancy.

Considering a presumption to cancer bill the State legislature is assuming that there is a serious problem that is not being addressed. We in local government submit that this might be a false assumption. Most volunteer firefighters are covered by health insurances providing medical coverage for cancer. If they are not covered, the volunteer fire company has the option to purchase supplemental cancer policies using firemans relief funds if they choose to do so.

We believe that the current workmans' comp law does provide coverage for cancer if it's shown that the cancer is a result from fighting fires. Our experience has shown that workmans' compensation judges do have a tendency to support workmans' comp claims and provide every benefit of the doubt to the worker when linking an injury to the occupation.

Since our inception in 1997 KMIT has handled 2,463 claims without a claim for cancer. Our presumption is that cancer is being covered elsewhere and not thought to be related to fighting fires. We believe that costs shifting to a workmans' compensation system that is already overburdened may be a problem. The question is, why in this area of public budget shortfalls are we making this a priority?

I'm going to use an ugly word, the unfunded mandate, and I'll speak to the Chairman's comments earlier, because I do agree with some of the things you mentioned, sir. Municipalities

are very financially strapped since the 2008 period moving forward. If you believe those that say it is a significant problem, then all of those dollars that are currently being paid for claims by group health carriers or by Medicare or by some other health insurance mechanism will be shifted to the workman's comp program, which ultimately falls on the local government to pay.

Our experience shows that the rates are already inadequate to cover the existing losses. Rates are consistently being increased just like health insurance premiums, but in workman's compensation rates the local government agencies are required by law to fund 100 percent of the cost, whatever those costs may be.

Since 2003 KMIT has collected, and I won't go into the details, \$2.1 million in volunteer premiums and has incurred volunteer fire losses of over \$3.5 million, or 162 percent loss ratio, or 162 percent of the premium. For 2011 we took a 25 percent rate increase in the volunteer fire class, but as you can note, that will not make up for a loss ratio of 162 percent. Even one or two cancer claims will exasperate the situation, lead to a major rate increase to local governments and the taxpayers.

The intent will be greatly expanded. We don't see how legislation can be advanced that fairly and prudently addresses the situation. First, the science is not conclusive that cancer is caused by one or two brief or casual exposures to a carcinogen while fighting fires. There are so many other factors that contribute to causing cancer such as genetics, family history, personal habits like smoking, drinking, eating, or place or residence; and no matter how carefully legislation is written past history shows that legislation will be interpreted by workman's comp judges in favor of the claimant, thus expanding the intent of the legislation. A historical review of the types of claims covered by workmans' comp currently were never even considered when workmans' compensation was first implemented. The same will be true with this proposed

legislation. If the legislation is approved, the ultimate result will be a massive cost shifting from other health insurance mechanisms to the workman's comp system funded by local government. Many of these costs will end up in the State workman's compo insurance fund as standard insurance companies back away from these exposures.

We do have concerns about the legislation. Some say that there will be minimal cost. As an intergovernmental cooperation organization that provides workmans' compensation to our members and other member municipalities, we respectfully disagree. The costs will be real and they will escalate over time and will result in a higher cost to the taxpayer. If the General Assembly believes that the cost will be minimal, then we propose cancer coverage be provided through a State funded agency.

It's not a vote against our firefighters. Our communities value and rely on the many volunteers who give to themselves so generously. Our complaint is only about the unnecessary transfer of the cost of cancer treatment to the local taxpayers of Pennsylvania.

We respectfully ask that you support our position and keep workmans' comp for municipalities strong and solvent.

Thank you.

CHAIRMAN BARRAR: Thank you.

Questions from the members?

One question from me. I come from a family where very few males have lived past the age of 65, most of them have died of cancer. If I were a 30 year firefighter retired now and I come up with a certain type of cancer, this doesn't cover all cancers, it's limited to the number, first of all, this bill would limit the number of cancers covered, is that correct?

MR. STOUGH: It's limited to type 1 carcinogens from an exposure standpoint, but I don't believe the bill speaks to the limitation as to what type of cancer is covered. It could be any type of cancer that is covered.

CHAIRMAN BARRAR: So if I were to make a claim after fighting, being a firefighter for 30 years, paid or volunteer, doesn't matter, so with my genetic family history there, that would be a factor in fighting my claim, then?

MR. STOUGH: I think you have to look at the total, all the details that go into the claim. I think family history has to be an important part of it, because as you said, many of your family members who maybe didn't fight fires have also died of cancer as well. Our concern is with the presumption it puts the onus back to the insurance company, and in our case, actually our member municipalities to defend the claim. If there are known exposures and they are documents, our belief is that under the current Act as it is written, that that is a defensible position and the claim could be covered.

CHAIRMAN BARRAR: Thank you.

Questions? Gentleman, anyone? Frank? Representative Farry.

REPRESENTATIVE FARRY: Thank you, and thank you for being here today.

I just wanted to make sure it was clear, to kind of follow-up to where the Chairman was going, in your testimony you talked about genetics, family history, personal habits like smoking, et cetera, et cetera. That is part of the change that we made between 1231 from the previous session and now, it was to give the municipalities more of a fighting chance to have testimony and evidence that they could use to rebut the presumption.

I just wanted to make sure, if you could take that back to your members just to ensure that they are clear that in moderating the bill that we did tackle some of those components. The

presumption that volunteer firefighters have health insurance through other means is a presumption that is not completely on point, a lot of these guys are small independent contractors, college students, things of that nature, and even if they do have the health insurance there is still the wage component that they would be missing. Even if I did have health insurance from a private employer outside of my scope as a volunteer firefighter, I'd still be losing the wage component if I contracted cancer and it was deemed to be job related.

Part of the premise for this presumption is to ensure that firefighters that develop cancer and it is believed to be job related and they make that claim have the presumption on their sides to have coverage. In the case of, and it was something in our numerous discussions, I don't think the fire service was looking for somebody that was a volunteer firefighter for 5 years and then moved down to the Jersey Shore for 10 years and developed skin cancer on their big toe. The premise isn't to provide coverage for those folks. The premise is to provide coverage for people that either have one significant exposure, the Chairman mentioned the Wade Dump fire which took not just firefighters lives, but public works employees, police officers, numerous public servants that were exposed there, it took their lives with all types of crazy cancers. Not just those single exposure folks, but also long-term, because cancer could develop from those single exposures like the Wade Dump or you could have the 30 year firefighter who was in 200 burning buildings over the course of their career and it becomes which cigarette gave you the cancer, well, which fire gave you the cancer? Obviously they are long serving public servants.

I just want to make it clear some of the premises on where we are coming from and why there is the presumption. We have heard a lot of testimony today regarding that claims presently aren't being filed. I can tell you being a 20 year volunteer firefighter and being a nonsmoker and not having a history of cancer in my family, if I develop cancer, I'd be filing the claim. What

we're trying to enact within this law is ensuring that those firefighters are covered. That is kind of the background where we're coming from. Having worked with a sister organization to yours, and they were the insurance provider when I worked for Middletown Township in Bucks County, I understand the concerns from your end as well, but this is the point we are trying to get to.

MR. STOUGH: If I can respond, I appreciate it. The change that you did make from the original HB 1231 were appreciated, and I think do address a lot of the concerns from the insurance side. KMIT, from our perspective, is not wanting to decline claims. We just want, we feel that the Act does currently provide a broad sweeping coverage for employees, volunteers as well, if they do have an exposure. That was just our concern, that there is an Act in place that protects the employees, protects the volunteers, do we need the presumption of cancer. If there was an overwhelming number of declined cancer claims, then we could say okay, this Act needs to be amended or changed, but there hasn't been that scenario. I do appreciate your comments.

REPRESENTATIVE FARRY: Thank you, thank you very much.

CHAIRMAN BARRAR: Our next testifiers are representing professional firefighters and volunteers from around the State of Pennsylvania. Mr. Art Martynuska, who is the President of the Pennsylvania Professional Fire Fighters Association; Don Konkle, Executive Director of the Pennsylvania Fire and Emergency Services Institute; and Richard Duffy, Assistant to the President of the Occupational Health, Safety and Medicine in International Association of Fire Fighters. Thank you, gentlemen, for being here today.

You came here with quite a few members. I didn't know, would you want to introduce any of the other career firefighters that are with you?

(Firefighters were introduced.)

CHAIRMAN BARRAR: Thanks for being here today, and we do appreciate your service, and thank you for that from everyone in the Commonwealth of Pennsylvania.

You can begin your testimony, thank you.

PRESIDENT MARTYNUSKA: Thank you, thank you Mr. Chairman.

My name is Art Martynuska, I am the President of the Pennsylvania Professional Fire Fighters Association, which is a State affiliate of the International Association of Fire Fighters. Our organization represents a majority of the career firefighters and emergency responders in the State of Pennsylvania. I believe currently we have members in 32 counties representing 70 locals, protecting about 3.6 million Pennsylvanians, or roughly 30 percent of the population. We have members that either work for or protect every type of political subdivision and every type of demographic in the Commonwealth of Pennsylvania. Our folks have been on the streets for quite some time.

The Pennsylvania Professional Fire Fighters Association is here today with Rich Duffy from the International Association of Fire Fighters, Don Konkle from the Pennsylvania Fire and Emergency Services Institute, and another gentlemen who is not on your program, Rick Poulson who is special counsel to the Pennsylvania Professional Fire Fighters Association from the firm of Willig, Williams, and Davidson from Philadelphia.

What I am here to talk about today is not necessarily the mechanism of the bill, but how we got here and talk about that process. I also want to make sure I thank Representative Farry for helping us with this bill, I'm sure there were some points in his career in dealing with this that he thought he would rather be back fighting a structure fire in Bucks County than having us camped out in his office. But, the process worked. Ladies and gentlemen, the process worked and that is what we were attempting to do.

As most of you know, this bill was introduced last session under the form of HB 1231. I think it is important to note also that this is a compromise bill. As was heard in previous testimony, not every compromise is going to be perfect, there are things in this bill we are happy with, there are things in this bill that we would certainly like to see improve, but we have met with the groups who have had concerns that we knew about, we talked to them, we learned, and we think we came up with a good compromise on this bill.

The process has taken some time, as you are probably aware. With HB 1231 which enjoyed overwhelming bipartisan support last session, I believe in the total time that bill was introduced until the unfortunate veto with not enough time for an override last session, there were only eight negative votes. I think the membership of this Committee is a testament to that. I think when the bill first came through, the first version of 1231 which was less stringent that came back from the Senate, I believe there were 20 members of this Committee who voted in favor of it. When it came back on concurrence, which was a more conservative version of that bill, I think there were 21 members if memory serves me right. I believe that is also reflected in the testimony.

This bill started out as a bill that was good for a lifetime of presumptiveness for firefighters. It started out covering a wide range of cancers. Through our negotiations in the House and the Senate, we took that from a lifetime presumptive benefit of 30 years and then we dropped it to 15 years, and we finally came up with the current version of the 300, 600 week with different presumptive levels.

We seem to have reached a compromise on this. I think some of the testimony that you are going to hear from some of the folks who are sitting on the panel with me today will elay some of the fears that maybe mentioned in testimony earlier. It will also maybe answer some

questions a little more succinctly on the cost in what we have seen experience wise across the country with different States, some of which do have a lifetime presumptive benefit in this bill, we heard of course about the State of California which had a 5 year presumptive mechanism, in October of last year that was increased to 10 years.

I am here to talk about the process, and I think the cooperative nature of this has gotten us to where we are today. That, to me, has been personally enlightening that we can achieve anything as long as we sit at the table together. We are, of course, respectfully asking the Committees support on this bill for our folks who are out there in the field, for the future generations of firefighters. Pennsylvania has a long tradition of firefighting going back to the days of Benjamin Franklin and we are the heart of it. What we are looking for is something that is going to protect the protectors.

I'll turn it over to Mr. Duffy and we will go from there.

MR. DUFFY: Thank you Mr. Chairman and thank you for having me up here today. Let me just begin by some quick background. Again, my name is Rich Duffy, I'm the Assistant to the General President in charge of the Division of Occupational Health, Safety, and Medicine at the IAFF which is the International Association of Fire Fighters. We are a labor union that represents the men and women firefighters in the United States and Canada and we are 298,000 members strong.

I've been with the IAFF now for over 33 years, I am a health professional, I have graduate degrees in industrial hygiene and occupational health. I have a staff of a dozen members that include physiologists, a physician, and other health and safety professionals. Our only job is to, at least in my division, is to look after the health, safety, and diseases of firefighters. Our unit has been behind every single initiative in the past 4 years that have looked at making the

firefighting occupation better and we will continue to do so. Our job is not to get benefits for firefighters, our job is to save their lives, and I think we've been doing a pretty good job of that over the past 40, 50 years and will continue to do so.

I have also been at every major fire in this country over the past 30 years and every single multiple line of duty death, including those in Pittsburgh and Philadelphia over the past 30 years, I've been at the big hotel fires including the MGM Grand fire, the Hilton fire, the casino fire in Puerto Rico, I've been to Ground Zero, I spent the first 15 hours at the Pentagon on 9/11, I spent five months over a 14 month period in New York City, most of it on Ground Zero, and I've spent a lot of time at dump fires, including the Elizabeth, New Jersey chemical control fire of 1980 and with our members in Chester, at the Wade Dump fire with you. IAFF was the union that initiated the study by the federal government under NIOSH (National Institute for Occupational Safety and Health) to look at the plight of the firefighters there, I worked very closer with the reporters and the Inquirer that did probably one of the best stories about firefighters that was every published, and God bless them and the awards that they won, they truly deserved it and did a lot of research for it. So, we have a lot of background in the issues of firefighting.

I'm not going to spend any time here to go over the studies, you have gone over those over the last session and I'm sure in this session, I've summarized them in my testimony. I do want to let you know that it is conclusive that firefighting and cancer are directly related. Almost 40 epidemiological studies that have been done so far show that there is a direct relationship to firefighting and cancer. You have to be careful how you look at epidemiological studies, again, what we find, even if the cancer rate for whatever the cancer is was identical to the general public when you compare it to, that means it still high because firefighting in general is a healthy occupation, there are stringent physical and medical requirements to get on the job, and it's those

individuals who we don't expect to have occupational diseases. When they're having diseases including cancer equal to the general public, that demonstrates there is a problem. The studies are there, there are over 300 of them that have been developed over the last 30, 40 years on firefighting, 50 of which are directly epidemiological and the other 250 or so look at specific chemicals or exposures of firefighters. The record is clear, and again, as I have said, I have summarized that.

The reason we are here is the issue of workers' compensation and presumption. Let me first say, there is no presumptive laws in this country. There is no automatic presumption if a firefighter gets sick. Basically and in general it is a piece of legislation that allows a firefighter to get to first base in any claim that he or she may have because they, in this case, have cancer. Typically across the country workers' compensation claims, regardless if it comes out of the pension system, the insurance system, or self-insured, are categorically denied. Whether it be here in the Commonwealth or the other 49 States, it happens and it is very clear. It puts the burden on the firefighter or the firefighters family if that individual has then passed. Again, it is an unlevel playing field and the unlevel playing field is for the firefighter.

The rhetorical information that has come out, not just here in Pennsylvania but across the country that this is going to be an unfunded mandate, it's going to be a financial burden, it's going to put the cities out of business, is not true. I actually have the data for it which I provide in my testimony. Let me just summarize it here today. As I said, I have been involved in every single presumptive law in the United States and Canada, 37 of them so far, either directly testifying as I am doing here today or providing it and helping them get that done. We went back to the actuarial people, the insurance people, and the pension people in a number of them and actually asked what their experience was in so many years after the passage of their law. I

summarize it here in the testimony, but let me briefly go over it. In California, and California has the biggest public employee pension system in the world, again, as you know, California is the fourth largest country in the world, after the first 3 years of their program there is no significant impact whatsoever on that system. There were 45 annuitants claims that were brought forward in California, and again, as I showed you here, it was about seven hundredths of a percent on the cost for that program.

In Illinois, which was the second State to have a cancer presumptive law, and again, it was divided in half, it was the upstate law, Illinois, as you may know, is very similar to New York. They pass a law for Chicago and then they pass it for the rest of the State, New York passes it for New York city and then they pass it for the rest of the State. Again, that was an upstate law in Illinois. For the first 6 years of that program the actual cost numbers actuarially went down. The experience there did not cost the State of Illinois any more than they were paying there before after the first 6 years of the enactment.

In Oklahoma we found similar results, they had a very low claim here. Again, they were averaging four claims a year in the State of Oklahoma, it certainly wasn't a burden or an unfunded mandate for their particular system. Nevada was again very similar, the claims there were two hundredths of a percent. Rhode Island was almost identical to Nevada with two hundredths of a percent, six claims paid in the first 8 years of their legislation. In Massachusetts, a larger State, with a larger number of firefighters, there were 34 cancer claims paid over the first 4 years, less than 9 cases per year, and again, that was three hundredths of a percent of their active firefighting force.

Again, we estimated here if you took all those numbers and those similar very conservative assumptions in those other States and put them forth here in Pennsylvania, we

would estimate that it would be three hundredths of a percent in addition in claim costs and probably about three or four firefighters per year. Again, those are conservative numbers, but that is how actuarial individuals do it, and I just wanted to show you that there are no real big burdens on any individual people.

The issue here you addressed earlier was about the time period again. The time period is a time period based on the exposure. As the gentlemen said earlier with asbestos, the latency period after an exposure – and the latency period is a time from the time from the exposure to a substance to the onset of disease – in the case of asbestos, whether it's asbestos lung disease or the cancer associated with asbestos which is mesothelioma, it can take 30 to 40 years. That is why claims don't show up. Very similar to cancers that firefighters are exposed to. Again, the burden would not now be on the employer with the whole suit that firefighters may be exposed to. As you are well aware, at the Wade Dump fire there was idea what was there that day.

Whatever was in that dump fire firefighters were exposed to that. When you go home tonight, I'd ask you to go under your kitchen sink and look at what is under there. Or, go down to your work bench and look at what is there. The same chemicals that were in the Wade Dump fire are in our houses. They are in our buildings, they are in our hotel rooms, they are in our places of employment. Unfortunately, when those places catch on fire and there is a fire emergency there firefighters are exposed. Albeit, we are doing a much better job with protecting them with their protective gear, there still are exposures.

There is not a big burden for this bill. Then the question is, why do we need it? This is why we need it: Firefighters every day, and there are firefighters doing it right now as we sit here, climb down burning buildings, they rescue families, they put fires out, they save property, and the one thing, they may be heroes, they may be classified as heroes, but the real reason they

do their job that way is because they know someone has their back. They know if something happens to them or something happens to their family they will be covered. They go into those buildings, and yes, some of them do die and some of them are exposed and die a terrible death of cancer. That is what we ask this legislation to do. We will do everything in our power to protect firefighters. This has a real face on it.

As you continue with deliberations, let me just end up and then I'll certainly answer any questions you have, but let me just end on a personal note, if I may. A good friend of mine and a good friend of everybody here in the room today died on Monday. He was a New York City firefighter for 30 years. He was my friend. He was the Secretary Treasurer of the International Association of Fire Fighters for 21 years, and he fought in the two busiest fire houses in New York City for 30 years, and he fought breast cancer and won, he won heart disease and he won, and he lived his last couple of years with Parkinson's Disease. His cancer came back 3 months ago, and I was with him this weekend and I was with him Monday when he took his last breaths and he died because he was a firefighter. He died with only 1 year of retirement because he was a firefighter. I just want you to know, there are faces out there. There are faces of Pennsylvania firefighters who do their job every day, and again, we are asking you to cover our back. I do appreciate the time that you allowed me here today, so thank you very much.

EXECUTIVE DIRECTOR KONKLE: Just briefly, I don't want to be redundant, but a couple of people have asked, perhaps we are looking for a solution to something that isn't a problem. The Institute is very clearly to support the volunteer fire service. I don't think it comes as news to anybody that there is a great deal of pressure on the volunteer fire service in maintaining it. One of the things that I heard last year, after the veto particularly, is why do we do this if nobody appreciates us? The volunteer community asks pretty rapidly once this issue

has risen to an area of visibility, why should I go out and take the risk, in addition to the risk of my personal safety, the risks of bankrupting my family paying for cancer coverage that I contracted while volunteer in a municipality? Where is the payback? Where is the return for the service that we provide?

I think regardless of what the numbers are, that perception is real. This bill, when it is passed, will help address that. Volunteers will understand their hard work and dedicated hours are recognized and appreciated by the Commonwealth and by the municipalities.

We appreciate Rich's technical expertise, and he certainly is more informed than I. I think that is a very real perception. We work hard to provide incentives and remove disincentives. The lack of this bill being signed into law last year, we think provided a disincentive. We have an opportunity to move that.

Finally, I thank Representative Farry for his hard work on the issue and for Representative Barrar for holding a hearing. We think it is important, we certainly are supportive. As many people have said, I don't think the bill is perfect from anybody's perspective, but it is a reasonable compromise and one that we fully support. Thanks.

CHAIRMAN BARRAR: We are glad to hear that.

Did you have comments?

MR. POULSON: Good morning, sir. Rick Poulson on behalf of the Pennsylvania Professional Fire Fighters. I thank you, Mr. Chairman.

I just want to address two points that were raised earlier that might be helpful to the Committee. I'd also like to acknowledge Representative Farry and thank him very much for his hard work on this important issue.

There were two concerns that were raised earlier, one by Representative Goodman, I'd still like to address it given it was raised, even though he is not present right now. That was the concern about what about the second year firefighter who is exposed. Rest assured that that second year firefighter who is exposed will be covered, will be protected under this bill. There will be the ability for that firefighter to file a claim, that is why, quite frankly, the limitations period for filing a claim isn't tied to the exposure itself but to the employment. So while I very much appreciate the concern expressed for that firefighter, on behalf of the Fire Fighters, we are very comfortable with the 4 years of continuous employment standard and we would urge that language remain as it is currently stated in the bill.

The second point is to address a concern raised by the Insurance Federation and that was a request for information from firefighters about how many new claims we're going to see. Well, we don't have a list. We don't know how many new claims will be filed as a result of this bill, but it is important to stress that we're not creating a new claim. This is just, there is a process that exists, firefighters can file cancer claims. What we are doing, hopefully, is changing the process. It's a change in the process that essentially gives the firefighter the benefit of the doubt given all that we know about the relationship between that work and the particular diseases covered by this bill.

I would reiterate the comments by our partners on the employers side that given that there is a change in the process and there is a change in the limitations period, an adjustment in the limitations period, there might be an uptick. That would not be unreasonable to expect that there might be, but the fact is we don't know what is going to happen. We certainly don't expect the flood gates to open.

With respect to the ability to change rates midyear, I'm a lay person, I know very little about insurance, but I do know that adjustments are made annually with respect to insurance, they usually go in one direction and insurance companies seem to be able to take experience into account while rerating entities from year to year.

Thank you very much.

CHAIRMAN BARRAR: Great, thank you.

Do we have questions? Representative Davis.

REPRESENTATIVE DAVIS: Good morning. Thank you. You mentioned in the beginning of your presentation that most claims are denied for workmans' comp. How long does a claim take, normally? I'm just concerned about if I do have cancer today and I have a family and its going to exasperate all of our income, how long would a claim take, approximately?

PRESIDENT MARTYNUSKA: You know, I have no idea. First of all, if you break your arm, if you break your leg, if you cut yourself, it's very easy to get compensation for it from a judge. It's not that easy for any occupational disease. I'm not sure, I'm not even going to guess, but I know there are a number of claims paid after the person dies. You can add years to it, you know how the system works. The process, the appellate, the appeal, you have to go through the administrative relief from it to the various levels of appeal, so yea, it would take years. But, I would be wrong if I even attempted a guess here.

REPRESENTATIVE DAVIS: I just find that to be a concern. That is really not the problem of workmans' comp with insurance companies is this. If they have wellness programs, I was a commissioner for five years locally and I always fought with the insurance companies that they should provide wellness programs and then the workmans' comp claims would be a lot lower.

We just had an Iraqi war veteran die this past month, the funeral was last week, and he and 15 other gentlemen from his group have cancer from an explosion in Afghanistan. It was acknowledged, but they aren't paying the claim. How long will his family have to wait now? That is my only, it's a comment. I think it should be addressed here somehow. I don't know how, but somehow.

CHAIRMAN BARRAR: Thank you. Other questions, please? Representative Farry.

REPRESENTATIVE FARRY: A couple of points and one question.

Representative Davis, just to kind of follow-up some of your points. In working with both the municipalities and the insurance providers as well as the fire service, I think what we're going to try to do once this legislation is hopefully successful is develop some best practices and risk management standards so that we have the information, there is a common balance, firefighters are properly documenting their exposures and a firefighter of 20 years, whether it's' career or volunteer walks in with a stack of exposures documents through the PennFIRS system hopefully the insurance providers will be reasonable in recognizing that hey, chances are likely that this person contracted cancer through their job performance and they will have that coverage. That is something beyond the scope of legislating here that we are going to work on as part of policy in Pennsylvania. I just want you to know that.

Secondly, just to, I just want to make a point clear as well, the concept behind this presumption is simply not that a firefighter develops cancer and turns around and says, hey, this is the responsibility of my municipality. In the volunteer sector, they are going to be required to provide the documentation through the State reporting system so for anybody that has concerns about the mandate component of it, there are steps that the fire person are going to have to take to document their exposures and present that as a first step to get the presumption.

Finally, my question of Mr. Duffy, where you have done studies in other States, obviously there is a roughly 10 to 1 ratio in Pennsylvania between career firefighters and volunteer firefighters, a significant number in the State of volunteer firefighters as documented in your testimony. Have you found in other States that there is a higher incidence of cancer among the career firefighters as opposed to the volunteer firefighters? If you haven't looked at that, I don't know if you'll have an opportunity to look into that for us. I just know with a lot of our rural companies, they may be running 50 calls a year and have very, very limited exposure to carcinogens whereas a more active volunteer company or a career department where they are pulling not just 50 calls, they are running to 50 working fires a year, the exposure levels would be higher. I don't know if you have any correlation between the two.

MR. DUFFY: There has been very few studies, first of all, done with volunteers. First of all, any epidemiological, any study of disease causation is very difficult and very difficult to do. For a career fire department it is easier to do because the records are there. There is a lot of high turnover in the volunteer sector, people move, people stop doing it, it's intermittent. No disrespect for them, they are some good firefighters, they are benevolent neighbors, but it is very, very difficult to long term track volunteer firefighters. Albeit, there is efforts right now under funding, in fact, from the Department of Homeland Security to actually begin looking and trying to track that. There is a study being done in Kansas right now and a couple others that are trying to do a better job tracking the health consequences of exposures of volunteer firefighters. Most of the studies done right now clearly address career firefighters.

REPRESENTATIVE FARRY: So, the various States you cited in there with the number of claims they have had annually, most of those claims are career?

MR. DUFFY: Career.

REPRESENTATIVE FARRY: Thank you.

MR. DUFFY: I don't know how to add that. If I may, not to belabor this, but I want to have just a word of caution about exposure forms. I just don't want exposure forms to be used against firefighters because you don't know. You don't know you are exposed, and you don't want to burden your own employer by every run you go on and filling an exposure form out. I mentioned earlier at the MGM Grand fire. I saw everybody that died at that fire. I was there right away, I was flying back that morning from the west coast and just diverted to Vegas. The instant commander was the secretary treasurer of our local out there so I was with him for the first week. All the doors were tagged where the bodies were left except for five or six that were actually on the casino floor that had died, the other 80 people that died were in their rooms. Those rooms you could have made the bed and sold the room that night. There was no smoke on the wall, there was no fire damage, there was no smoke on the wall, you may have smelled it, but we had been in the building so far we had lost our smell anyway, but really, clearly. You walked up and down the hallways of that building and it was eerie. You literally could make the beds and rent the beds that night. There were no gasses, no burnt out smoke areas, so you don't see what you are exposed to. The deadly, the exposures to firefighters that happen don't happen right at once when you see the flames and the big black smoke, but they continue during the whole event that the firefighter is on the scene of the fire. I caution, I think it's a good idea to put exposure forms in and I think it makes firefighters comfortable that they know there is a record of an exposure, but you know what, there is an exposure at every fire. Thank you.

CHAIRMAN BARRAR: Other questions?

We want to thank you for your testimony today.

If the members could wait for just one second. I just want to thank the members for being here, great turnout today. I think the hearing today reinforced my support for the bill, I'm hoping that we can run the bill sometime before the summer recess takes place.

Tomorrow we will be back in this room again at 10 o'clock, we have the Director of PEMA will be here with us tomorrow. We'd like to get the same type of attendance. Representative Farry.

REPRESENTATIVE FARRY: Sorry, Mr. Chairman.

Could we just make sure it is in the record the letter from the City of Philadelphia, that they were, it is from Clarence Armbrister, Chief of Staff to the Mayor, just denoting that they were not part of the negotiations between the municipalities and the firefighters, but they do not oppose this legislation in the spirit of the compromise.

REPRESENTATIVE KORTZ: Mr. Chairman, the meeting tomorrow, is it at 10 o'clock or 1 o'clock?

CHAIRMAN BARRAR: One o'clock in 50 Irvis. Sorry about that, I made a mistake here. I just want to let you know we do have a meeting tomorrow, hopefully we'll get a good turnout, here.

Chairman Sainato, do you want to have any ending remarks?

CHAIRMAN SAINATO: I just want to emphasize what you said, Chairman Barrar. I think this was a very informative meeting. I do want to commend our firemen, the last group, for the fine job that they do, both paid and volunteer. Like I said, I have both in my Legislative District and without them where would we be? I think this was a very good, positive meeting as we move forward to get this legislation moving and I will do all I can from my end to make sure this gets resolved.

CHAIRMAN BARRAR: I'd like to thank Representative Farry and all the stakeholders for coming together and working out this compromise so that we can move this bill, hopefully very shortly from now.

Thank you everyone, meeting adjourned.

(Whereupon, the meeting adjourned at 11:50 AM)

The above is a full and accurate transcript of proceedings produced by the Chief Clerk's Office of the Pennsylvania House of Representatives.

Cathy Cyrus, Chief Clerk's Office