

**Public Testimony Prepared For
The House Veterans Affairs and Emergency
Preparedness Committee
On**

Act 46 of 2011

**By the Delaware Valley Municipal Management
Association**

Date: November 14, 2012

Dear Chairman Barrar, Representative Farry and Committee Members:

My name is Geoffrey L. Beauchamp, Esq., General Counsel for the Delaware Valley Municipal Management Association (“DVMMA”) and the Delaware Valley Workers’ Compensation Trust. The Trust is a public entity risk pool or group fund which provides workers’ compensation coverage for 61 townships, boroughs and authorities in Southeastern Pennsylvania.

I would like to address our concerns about Act 46 of 2011 and explain why the Delaware Valley Workers’ Compensation Trust, a DVMMA member, has decided to assist its member municipalities in obtaining coverage for their volunteer firefighters from the State Workers’ Insurance Fund (“SWIF”). I also would like to present for the Committee’s consideration certain remedial amendments to Act 46 and recommend the establishment of a state-funded excess insurance/reinsurance facility for firefighter cancer compensation claims.

As you know, DVMMA and other members of a coalition of municipal associations supported passage of the cancer presumption legislation (House Bill 797) which became effective on July 7, 2011 as Act 46 of 2011. Our support for this compromise legislation was based upon two considerations:

- The very real prospect that the deeply flawed cancer presumption legislation vetoed by Governor Rendell (HB 1231) would be re-introduced and ultimately enacted; and
- Our expectation that claimants would not abuse the new benefit provided by Act 46, a belief repeatedly reinforced by the firefighters representatives and legislative sponsors, who assured us that there would be a small number of legitimate claims for which the causal connection between the claimants’ cancers and their firefighting activities was well-established.

In the fourteen (14) months since Act 46 became effective the plaintiffs’ bar has mounted a well-orchestrated campaign throughout the state which has thus far resulted in the filing of over twenty-five (25) claims seeking compensation for prostate cancer, a very common age-related illness afflicting men for which there is no well-established and generally accepted causal link to any specific “Group 1” carcinogens associated with firefighting. To make matters worse,

plaintiffs' attorneys are actively soliciting health insurers to file substantial subrogation claims against municipal employers and their insurers for healthcare costs previously incurred by them for the treatment of the claimants' cancers. To date, one such claim for about \$1.5 million has been filed against the City of Philadelphia.

Upon taking into account all of the expected defense, medical and indemnity costs, the Trust's underwriters confirmed that Act 46 cancer compensation claims for volunteer firefighters will be of such severity and frequency that they could jeopardize the Trust's ability to fund the payment of workers' compensation benefits for all of the other employees of the Trust's municipal members. Based upon that underwriting analysis – and in fulfillment of its fiduciary duty to all of its municipal members – the Trust is assisting those members in obtaining coverage from SWIF, which will assume responsibility for the payment of workers' compensation benefits to their volunteer firefighters. Despite suggestions to the contrary, the Trust has not abandoned its members' volunteer fire companies because the Trust and its municipal members, not the fire companies, will be responsible for the payment of the annual premiums charged by SWIF. The Trust will also provide administrative support for volunteer firefighter claimants to assure that their claims are appropriately addressed by SWIF.

The transfer of volunteer firefighters' workers' compensation coverage to SWIF will not totally relieve the Trust or its municipal members of their responsibility for the payment of all firefighter cancer compensation claims under Act 46. The Trust and its members will still retain responsibility for the payment of all cancer compensation claims filed by their full-time paid professional firefighters and, even more importantly, will retain the risk of paying those claims for volunteer firefighters based upon carcinogenic exposures occurring through the effective date of the SWIF coverage transfers. This represents a substantial and largely unquantifiable retroactive risk exposure for which the Trust and its municipal members will retain full responsibility. Mindful of the need to reduce the cancer risk facing all municipal firefighters – both paid and volunteer – the Trust has also promoted, and will continue to promote, risk management measures to its municipal members that better protect the health and safety of those firefighters.

If the current claims trend continues, volunteer fire companies will ultimately be deprived of meaningful workers' compensation insurance coverage unless, at a minimum, the following amendments are made to Act 46:

- Limit all cancer compensation claims to those based upon carcinogenic exposures which occurred on or after July 7, 2011 (the effective date of the Act), thereby eliminating a substantial unwarranted retroactive risk exposure;
- Expressly limit the specific types of compensable cancers to only those for which there is a well-established causal link with those carcinogens associated with firefighting, or alternatively, include an express requirement that claimants be required to present substantial competent evidence (the Frye test) of the causal connection between their cancer and the carcinogen(s) to which they were allegedly exposed;
- Expressly exclude claims based upon claimants' exposure to carcinogens while they are not actively engaged in firefighting activities;
- Limit the recoverable medical costs to those that are not covered and paid by the claimant's health insurer (including Medicare); and
- Prohibit any third-party subrogation claims against any municipality or its workers' compensation insurer for the medical costs incurred in treating those cancers for which a firefighter obtains compensation under Act 46.

We also recommend that a state-funded excess insurance/reinsurance facility be created to provide additional financial support for Act 46 cancer compensation claims which facility could be administered by the Pa. Department of Insurance or the Bureau of Workers' Compensation.

Thank you for your consideration.

Respectfully,

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