

**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: December 18, 2013**

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 60 townships, boroughs and authorities in Southeastern Pennsylvania. Mr. Richard J. Lee, CPCU, ARM, is the Trust Administrator and he will also be testifying today.

We would like to update the Committee on the cancer compensation claims filed to date and some of the decisions rendered under Act 46 since last November's hearing. We 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.

On July 7 of this year, the Pa. Department of Labor and Industry reported to the appropriate House and Senate Committees that in the two years after the passage of Act 46, 102 claims petitions were filed, 88 from paid fire companies, 7 from volunteer fire companies, and 7 from mixed paid/volunteer fire companies. As reported by Labor and Industry, the claimants prevailed in all of the three Act 46 cases decided as of that date. As of this date, the total number of Act 46 claims has increased to 110, of which 31 involve prostate cancer.

We have received and reviewed five Act 46 decisions by workers' compensation judges - in three of which the City of Philadelphia was the employer, and the other two involved the cities of Erie and Williamsport. The claimants prevailed in the cases against Williamsport and Erie and in one of the cases against Philadelphia. All of these cases involved career firefighters.

As this Committee may recall, last year we expressed our concern that Act 46 would be exploited by what we perceived to be a well-orchestrated campaign by the plaintiffs' bar to convert Act 46 into a new entitlement by pressing claims for prostate cancer, among others, based largely upon what is commonly called "junk science". Our concerns have only been heightened by some of these recent decisions.

Three of the five decisions we have reviewed thus far involved prostate cancer, all of which appear to have been the result of such a campaign. In one of the two prostate cancer claims filed against the City of Philadelphia, the claimant was diagnosed and successfully treated for that cancer in early 2002, but first learned of a possible connection between his illness and his job as a firefighter ten (10) years later when he received a report in April 2012 from Dr. Barry Singer, a medical "expert" retained by a prominent labor firm in Philadelphia. Dr. Singer - who never met, much less examined, the claimant - nevertheless opined that the claimant's prostate cancer was caused by firefighting. Although Philadelphia prevailed in that particular case, we understand that the city incurred significant defense costs.

A prostate cancer case against the City of Erie in which the claimant won serves as an example of how Act 46 can be misconstrued by workers' compensation judges who are understandably sympathetic to a claimant stricken by cancer. In that case, the judge found for the claimant simply because he had been exposed to smoke and soot at various fire scenes and, when not fighting fires, was exposed to diesel exhaust at the firehouse. The judge accepted the opinion of the claimant's medical expert, Dr. Barry Singer, despite the fact that diesel exhaust was not even added to the list of IARC Group 1 carcinogens until June 2012 (one year after Act 46 became effective) and then only because of its association with lung cancer. If, as this decision suggested, a claimant need only establish exposure to fire smoke and diesel exhaust to prevail on a presumptive claim for compensation under Act 46, then it will be impossible to underwrite this liability exposure at reasonable premium levels. The upward pressure on premiums is further exacerbated by the filing of follow-on subrogation claims by health insurers, as happened in at least several of the Act 46 cases decided to date.

We understand that several Act 46 claims have been filed by volunteer firefighters. These cases, like those involving career firefighters, present complex questions of medical causation that are all too easily answered by the "junk science" espoused in the Erie prostate cancer case. 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:

- Prohibit 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.
- 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;
- Limit the recoverable medical costs to those that are not covered and paid by the claimant's health insurer (including Medicare);
- Do not apply the presumption to any firefighter who has used tobacco products at any time within ten (10) years of the date of his or her cancer diagnosis; and
- Require that workers' compensation indemnity benefits under Act 46 be offset by pension or disability pension benefit payments.

Thank you for your consideration, and we welcome your questions.

Respectfully,

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