

Testimony House L & I Committee

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Good morning, my name is Dr. Duane Hagelgans and full-time I am a professor teaching at Millersville University in the Emergency Management Master's and undergraduate programs. I am also the Fire Commissioner for Blue Rock Regional Fire District in Millersville, Pennsylvania. In addition to spending almost 30 years as a career firefighter for the Lancaster City Bureau of Fire, retiring as a Battalion Chief, I am a Pennsylvania attorney who has practiced workers' compensation law.

In 2011, Manor Township and Millersville Borough in Lancaster County, in an effort to sustain our volunteer fire companies, consolidated four volunteer fire companies into one fire district, creating the Blue Rock Regional Fire District. With this consolidation of services, we contracted for workers compensation for our volunteers, as required by law, with the Susquehanna Mutual Trust (SMT). At the beginning of 2012, our premiums were twelve thousand dollars (\$12,000) a year. Imagine how surprised I was at the first SMT training meeting that I attended when the topic was the new Cancer Presumption legislation, and that all fire companies would no longer be insured through the trust.

Since the enactment of Act 46 in 2011, better known as Pennsylvania's Cancer Presumption Law for firefighters, workers' compensation costs have skyrocketed for all-volunteer fire departments. For our department, it has meant being dropped from our insurance provider of choice and moved to the insurer of last resort, The State Workers Insurance Fund (SWIF). In 2012 our department that covers an area of 55 square miles and approximately 29,000 citizens, experienced an increase of almost \$35,000 per year with no other available insurance options. Our department saw the costs rise each year even though we only had minor claims and zero cancer claims were filed. Each subsequent year since the law's passing we have investigated other insurance options and for five years in a row, have found no other options.

When we were placed on notice, we began searching high and low for another insurer, but to no avail, which is why we along with three thousand or so other volunteer fire companies in Pennsylvania we are now insured by the Commonwealth through the State Workers Insurance Fund. This is still yet another nail in the coffin of the volunteer fire service. Volunteers, who have given tirelessly of themselves to help their neighbors are being further punished for the good deeds they do through this system. For example, our organization now pays almost

seventy thousand dollars (\$70,000) a year for workers' compensation insurance, and worse yet, we get less protection.

With the tremendous increase in our premiums, it would be expected to see an increase in service. Filing a claim for an injured firefighter is not typically an issue. Claims are filed fairly simply with two exceptions. Claims cannot be filed during a weekend and it seems impossible to reach anyone to file a claim up to a half an hour before the published hours end. We have started to wonder if anyone is working in the SWIF offices. Our Administrator has spent up to 92 minutes stuck in phone trees and on hold never to reach anyone. In addition to the premium increase, we have also been burdened with an unfunded mandate in providing physicals for our firefighters. No provisions have been made to supplement these costs for volunteer departments, which are required for a firefighter who files a cancer claim.

Since being removed from our trust and basically forced into SWIF, we have been repeatedly reminded at how bad this system is for our volunteer firefighters. The first time we had to file a claim, the personnel at SWIF did not understand the Pennsylvania Workers' Compensation Act and that volunteers are treated by law as employees. Further, they did not understand that volunteer firefighters are entitled to the state-wide average wage as "their salary" as volunteer firefighters. Our member was repeatedly harassed and attempted to be removed from workers compensation even though he was not returned to work by the doctors.

Our volunteers are repeatedly harassed as the claims personnel continuously do their best to try to quickly get our volunteers off workers' compensation, which I certainly understand should always be the case, get workers healed and returned to work, however, returned to work in this case means return to full duty as a volunteer firefighter, which they do not understand. If a member can return to a sedentary job, but not to full duty as a firefighter, they are still entitled to workers compensation, just as an employee of any other company, a fact missing in these situations by SWIF. They seem to have a hard time differentiating that these are firefighters who are injured as "employees," they seem to get hung up on the "volunteer" title.

Then, to add insult to all the other injuries we are suffering at the hands of this system, we were then advised that even though the Pennsylvania Workers' Compensation Act clearly covers and "has always" covered "ALL" volunteers, including those who do the fundraising so that we may keep the doors open, that "only those actively engaged in firefighting are covered!" Just to be clear, in Pennsylvania where the volunteer fire service is dying, and where studies have shown that it would cost billions of dollars, that is billions with a "B", we are paying five times as much for workers compensation insurance and receiving less coverage. So in a state where we not only allow people to volunteer to give their lives to protect others, where in many cases we also require those same volunteers to sell chicken bar-b-que, have festivals and various other fundraisers so that they can buy the protective equipment they

need, pay for the utilities, and buy vehicles to protect the public, we are also drastically overcharging them for insurance while telling those who “DONATE” their time to do fundraising that if they get hurt, they are not covered! Seems reasonable to me, especially when SWIF testified before a Senate committee that they are taking in over twenty-one million (\$21,000,000) dollars a year in premiums and paying out less than three million (\$3,000,000) dollars in benefits. Doing my simple math, in the past five years, SWIF has accumulated about one hundred million (\$100,000,000) dollars in surplus funds, which according to the Pennsylvania Workers’ Compensation Act, must be returned to the insured. SWIF will argue, I am sure, that they need this money because of actuarial studies. However, I will tell you that this is nothing more than a hidden tax on any Pennsylvania taxpayer who relies on Volunteer Fire protection. Because, as we are all aware, the municipality is required to pay for the workers compensation insurance for their volunteer firefighters, therefore, every one of these municipalities is being unfairly burdened and excessively taxed due to this system.

SWIF will argue they need the money for the Cancer presumption, to which I say, if you look at the legislation, it is almost impossible for a volunteer to meet all the requirements to get this coverage through the presumption. While I am sure there are some out there who may meet this burden of proof, the reality is that most cancer claims are the career firefighters, who do not pay into SWIF. Another key point many are missing is that municipal firefighters did not get dropped into SWIF, since their municipalities can cover these career firefighters through their regular employee workers compensation insurance. We are ONLY penalizing the volunteers, who we rely upon so much as well as the taxpayers in these municipalities.

In reflecting in what has happened in the aftermath, by 2014 there were 123 claims with an average expense of about \$113,812 per claim. The majority of the claims, 80.5%, came from the career service departments and more specifically, the Philadelphia area. The most common cancer claim is prostate cancer which by CDC records, shows little to no evidence of environmental influence. Even if prostate cancer is influenced minimally by firefighting activities, 30% of the claims filed due to prostate cancer seems startlingly high. Like every other covered injury in the state of Pennsylvania, there needs to be clear evidence of casualty. The number one claim should be linked clearly by evidence. It should be noted that in Pennsylvania, there are far more volunteers in the fire service than career personnel.

I have testified many times about this issue, and other issues in the volunteer fire service. I have conducted a national study on the volunteer fire service. There are reasons that Pennsylvania used to have two hundred and fifty thousand (250,000) volunteer firefighters in the 1970s and today we have less than fifty thousand (50,000), please don’t add yet another reason to the list of reasons that the volunteer fire service is dying. At a minimum, if the state is going to continue to take such exorbitant hidden taxes from us, then use this money for good, if you won’t give it back. Set up online training for firefighters, use these excess funds to assist volunteer fire companies with cancer training, purchasing of equipment to wash gear,

and fund studies to battle cancer causing issues in the fire service. If it is cancer that is causing this issue, then let's use the funds to study how to prevent them.

All-volunteer departments experienced a huge increase in cost in insurance services after the enactment of the law. I would like to point out the insurance market prior to the law's passage was extremely weak at best but in actuality, non-existent. I believe that had due diligence been performed during the construction of the law, in regards to the state of the volunteer fire department insurance market, there would have been insight on how the changes would affect the non-existent market. Career and combination departments were not forced from their insurance in 2012 in the same manner that all-volunteer departments were and they did not experience the premium increased felt by the volunteers.

The singular reason that volunteer departments had workers' compensation coverage prior the law was that municipalities had no choice but to include them on their municipal policies. Act 46 has pulled the rug out from under the volunteer fire service and subsequently those costs are trickling down to the taxpayers. Even though the usage rates are below the original projections, our rates continue to rise and not fall. Unfortunately, the Act gave carriers a huge unknown for which the premium basis for volunteer fire departments could not cover. We are paying the price today and there appears to be no relief in sight.

In addition, I will briefly discuss this other issue of who is covered by our workers' compensation insurance. A year or so ago we were advised that some volunteers who were doing fundraising were being denied workers' compensation insurance as they "were not doing active firefighting activities." It has been a longstanding practice, and there is tons of case law that volunteers doing fundraising are covered as long as the activity has been approved by the municipality. This requirement is due to the fact the municipality is the insured. SWIF has taken the stance that these volunteers are not covered, since they are not engaged in firefighting activities, a complete reversal of decades of workers compensation practices and policies. This not only has a chilling effect on those volunteers being asked to donate their time in fundraising, but in all other non-firefighting activities. We have fire police who direct traffic at events and incidents. Are they covered? I don't know and because of this I am very cautious about what we will allow them to do, as I don't want to jeopardize any of our volunteers. We stopped doing all fundraising other than our festival because I am afraid to put my volunteers in a position in which they could possibly get injured and not be covered. Even having the festival is a nerve-racking event, because what if one of our volunteers gets injured, will they be covered? Will a dedicated member of our community lose his or her house because they were injured assisting our community? Who wants to be the leader taking that chance? Here is one of the arguments I have heard about why this is the system SWIF is creating, social members. There is a COMPLETE difference between members "working for the benefit of the community," and social members who do no fundraising or other community service activities. However, it is a great excuse for SWIF. And let me be clear, when I say SWIF, I mean the Commonwealth of Pennsylvania, as SWIF is a state agency!

We have spoken numerous times to our local house members and senators about this problem, and yet here we are once again, telling our story again. We have been told everything from “we will fix it,” to “maybe you should buy an additional policy to cover these members.” This is ludicrous and ridiculous, they are here serving our communities as volunteers, raising thousands of dollars to buy their own gear and pay the electric bill and we are going to further penalize them by making them buy “ANOTHER” policy. We are already paying five times what we should be paying. Look at the law, look at case history, and require SWIF to abide by the law as it is written.

After we testified before the Senate committee last year and SWIF was called to task, SWIF took quick action. No, they did not fix the problem, they retaliated by sending all fire company claims to the Johnstown Office, where the phone is rarely answered, and when you do speak with a person in the office they ask all kinds of ridiculous questions. In addition, after this switch the claim form was changed and we now get asked all kinds of irrelevant and illegal questions. Maybe I am the only one that gets this, but workers’ compensation is “supposed to be” no fault. Why would SWIF, or any state agency, ask things like “what is the ethnicity of the injured member?” Does ethnicity play a part in being injured volunteering for your community?

Moving to Johnstown was starting over for us, we had all new people to deal with, and they certainly did their part to make it harder. We have an administrative officer, who we pay, and this makes us very fortunate. However, I can tell you that she spends hours on the phone and trying to get through on the phone. And, don’t have a claim late in the day because no one answers the phone within a half hour of the end of the day. If we were a typical Pennsylvania volunteer fire company with no paid employee, I can only imagine how challenging this would be to spend many hours on the phone and battling for the rights of their volunteers. We are not asking for anything other than what is defined and required by law!

Most recently we have had to deal with the issue that SWIF sends our paperwork to the township. Why is this a problem? This confidential information is being sent to the township and the township is NOT the policy holder, we are a fire district, legally set up by Pennsylvania law, we are the insurer. Of interest is the fact that at no time and no where do we ever reference the township as our policy holder. Yet, for some strange reason, SWIF continues to send our documentation to the wrong location.

As mentioned, I did a study for Millersville University on the volunteer fire service, and it is dying, AND these administrative issues are helping to dig that grave. Are you trying to kill the volunteer fire service? These are not challenging fixes. We keep hearing that we are going to fix the legislation, but I will tell you as one who has practiced workers’ compensation law, assisted many firefighters and studied the volunteer fire service, all you really need to do is to follow the legislation and case law that already exist, and if not, then you need to implement

some changes as I have outlined, which include using the excessive funds for the benefit of the volunteer fire service and all Pennsylvanians, rather than secretly taxing us while not protecting those who are volunteering to protect you!

I want to make it exceedingly clear that we all want to see our volunteers taken care of well. They are the lifeblood of the fire service in the state of Pennsylvania. We have more volunteer fire departments than any other state.

Below are a few examples I received from volunteer fire chiefs in my county:

Scenario #1: One of our members was operating on a working house fire in late October last year. Upon return to the station, within approx. 2-3 hours, he experienced a myocardial infarction leading to a cardiac arrest, while still operating in a capacity related to the incident. It is only by the skill, knowledge, and training of or membership that he is, today, operating in a capacity at all, let alone so close to what he was prior to the medical emergency. However, he has had multiple issues with insurance coverage, and is now being personally billed for hospitalization costs. He has another upcoming medical procedure, which is necessary and directly related to the previous medical emergency; however, with the stress of medical bills from the previous incident, he is contemplating not following through with the procedure. While I am not advocating continual payment of medical issues; I am advocating payment of the ongoing medical issue; it is in my opinion, completely unacceptable that any of our members are forced to pay anything out of pocket when injured on a documented emergency incident. I understand the Heart & Lung Bill is related to only career firefighters; but, what recourse do volunteer firefighters have in these matters? He is currently following up with an attorney; however, for him, and all of our volunteers, I'm not sure how the state will refuse to cover the costs of the number one killer of firefighters, volunteer or career.

Scenario #2: One of our members is a medical doctor, and surgeon. Last December, he fell on an icy foreground, and broke his wrist. He was forced to cancel numerous surgeries, and lost thousands, possibly tens of thousands of dollars, or perhaps even more. He was denied any type of workers compensation because he, "Makes too much money." Regardless of how much he makes, his principle form of income was gone; no different than a roofer, a carpenter, or a plumber. How is he supposed to provide for his family of 3 kids when he is denied compensation. Again, the fact that he is willing to bring his decades of knowledge and experience, some as a previous career firefighter, to us as a surgeon is remarkable to me. Now, our insurance is denying him his livelihood for volunteering?