



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

on

House Bill No. 2522

**By the Delaware Valley Municipal Management
Association on behalf of the Delaware Valley
Workers' Compensation Trust**

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and

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HEALTH TRUST



WORKERS' COMPENSATION TRUST



PROPERTY & LIABILITY TRUST

Dear Chairman Barrar, Representative Farry and Committee Members:

My name is Robert G. Solarz, Executive Director for the Delaware Valley Municipal Management Association (“DVMMA”) and the Delaware Valley Workers’ Compensation Trust. The Trust is a public employer group fund that provides workers’ compensation coverage for 89 townships, boroughs and authorities in Southeastern and Central Pennsylvania. I will be joined today by General Counsel Geoffrey L. Beauchamp, Esq. and the Trust’s underwriter Fredric W. Schultz, CPCU, ARM, of Insurance Buyers’ Council.

We would like to provide you with our comments about House Bill No. 2522 fully recognizing that the Trust and other stakeholders are obliged to constructively engage the Committee in tackling a significant policy issue involving the critical role played by the Commonwealth’s volunteer fire companies. The Trust and its municipal members will work with you to provide sustainable workers’ compensation benefits for all of their volunteer firefighters. We welcome this opportunity to work with you in achieving the objectives of this legislation.

A realistic assessment of the feasibility of the proposed volunteer firefighter group funds will not be possible until the Pennsylvania Supreme Court decides *Sladek v. WCAB (Philadelphia Fire Department)*, a case that is expected to clarify the burden of proof imposed upon a claimant under Act 46 and the evidence which must be presented by an employer or its insurer to rebut any presumption of causation in a particular case. Equally important is a decision by the Pennsylvania Commonwealth Court in *Bristol Borough v. WCAB (Burnett)* in which the Court has been asked to uphold the validity of the PennFIRS requirement as a predicate for the recovery of Act 46 cancer compensation benefits by volunteer firefighters.

Quite apart from the potentially significant Act 46 cancer presumption liability exposures, a number of volunteer fire companies have high experience modifications (“MODs”) where claims costs consistently exceed paid premiums. It is therefore imperative that any group fund dedicated to volunteer fire companies be free to adopt underwriting criteria that will allow for some selectivity so that the minority of companies with consistently high MODs will be ineligible for group participation and as such would remain with SWIF. This will ensure that we have a sustainable benefit model.

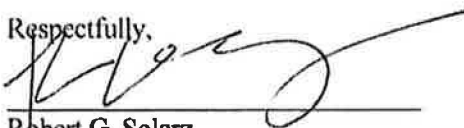
So that those new group funds can be responsibly underwritten and L & I approval obtained, SWIF must provide *all* the relevant claims data required by our underwriters. This information should also be subject to independent claims and actuarial audits, the cost of which should be borne by the state. *Only then will the Trust be able to determine the amount (if any) of the "excess reserves" associated with the volunteer fire companies.* A thorough underwriting analysis based on a *complete verifiable claims database* will also allow the Trust to determine the capital and reserve requirements that must be met so that any group fund will be sustainable at reasonable rate levels. This will require the full cooperation and collaboration of SWIF in this critically important process. To forestall insolvency and avoid ruinous assessments it will also be necessary for the state to provide a financial backstop for deficits in any volunteer fire group funds.

To better assure the success of the volunteer fire company group funds the Trust respectfully suggests that the following Act 46 related provisions should be considered for inclusion in any final legislation:

- Limit all volunteer firefighter cancer compensation claims to those based upon carcinogenic exposures which occurred on or after July 7, 2011 (the effective date of Act 46), thereby eliminating a substantial retroactive risk exposure;
- Limit the recoverable medical costs to those that are not covered and paid by the claimant's health insurer (including Medicare);
- Prohibit third-party subrogation claims against any municipality and its workers' compensation insurer group fund for the medical costs incurred in treating those cancers for which a volunteer firefighter obtains benefits under Act 46;
- Require the workers' compensation indemnity benefits under Act 46 be offset by pension or disability pension benefit payments; and
- Do not apply the presumption to any volunteer firefighter claimant who has used tobacco products at any time within ten (10) years before the date of his or her lung cancer diagnosis.

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

Respectfully,



Robert G. Solarz
Executive Director

and



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