

**To:** Workers' Compensation Advisory Council

**From:** James E. Marsh, Labor and Management Division Director  
South Dakota Department of Labor and Regulation

**Date:** June 25, 2012

**Subject:** 2012 Division Report on the State Workers' Compensation System

This report is prepared for submission at the June 26, 2012, meeting of the Workers' Compensation Advisory Council.

The 2012 Legislature did not pass any legislation affecting workers' compensation. Two pieces of legislation which were reviewed by the Council, 1) changing the employee's notice period from three to seven days and 2) allowing other insurance to cover claims when workers' compensation coverage is denied for any reason, were introduced in HB1054. It was defeated in the House Judiciary Committee 8-5.

The Division of Labor and Management (DLM) amended its rules relative to physician fee schedules, application processes, and medical treatment standards as planned. A rule amendment updating the physician fee schedule should be introduced before the end of Summer 2012, depending on receipt of cost data on South Dakota dental charges.

The Division of Insurance (DOI) announced average base rates for the voluntary insurance market will decrease by 0.3 percent for the period from July 1, 2012, to June 30, 2013, and assigned-risk rates will increase by 1.8 percent. This reflects the continued stability of the South Dakota workers' compensation system. The trend toward rapidly increasing medical claims costs has slowed over the last year, and disability costs have not increased significantly.

DLM will be watching the impact of two federal court cases: In re Prime Tanning-Hartland and Brown v Cassens Transport Company.

In re Prime Tanning-Hartland is a Chapter 11 bankruptcy (10-11757LHK, US Bankruptcy Court, District of Maine), in which an employer, self-insured in at least two states, is attempting to use the bankruptcy process in unprecedented ways to substantially rewrite its obligations under those states' workers' compensation laws. The Bankruptcy Court of Bangor, Maine is due to pass on the legality of the Prime Tanning's plan in the near future. The case is being monitored by the International Association of Accident Boards and Commissions (IAIABC), of which DLM is a member.

Brown v Cassens Transport Company (10-2334, US 6<sup>th</sup> Cir., April 6, 2012) was a federal civil lawsuit involving multiple plaintiffs who claimed Cassens colluded with a Michigan doctor and a third-party administrator to commit mail and wire fraud and

deprive the plaintiffs of workers' compensation benefits. The lawsuit proceeded under the US Racketeer-Influenced and Corrupt Organizations laws (RICO). For the first time, the US Sixth Circuit Court of Appeals concluded RICO applies when parties act jointly to deprive workers' compensation claimants of benefits to which they are entitled, even if the claims were settled. The ruling may have an impact on the process and terms of settlements, as well as the complexity of discovery processes in litigated workers' compensation cases.

Respectfully submitted,

James E. Marsh