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April 5, 1999

INDEPENDENT REGULATORY
REVIEW COMMISSION

Richard A. Himler, Director
Bureau of Worker's Compensation
Department of Labor and Industry
1171 South Cameron Street
Harrisburg, PA 17104

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**Re: Final-Form Rulemaking - Workers' Compensation
Special Fund Assessments**

Dear Mr. Himler:

This is to support the final-form regulation submitted by the Department of Labor and Industry implementing Act 57 of 1997, whereby the assessments for the three special workers compensation funds were changed from being on insurers, to being collected through insurers on behalf of employers.

Our support is made on behalf of not only the Insurance Federation, but also our national counterparts, the American Insurance Association, the Alliance of American Insurers and the National Association of Independent Insurers.

We support the regulation as being the most efficient and practical means of implementing Act 57. The Department has addressed the concerns raised with respect to its original proposal by the rating bureaus and the trade associations; the resulting changes will enable these assessments to be collected with minimal administrative cost and in amounts that best reflect the true cost to employers.

We understand that several insurers have belatedly filed objections to the final-form regulation. They contend that the Department has gone beyond its statutory authority by basing assessments on an earned premium rather than a compensation-paid system.

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I am not sure why these objections were not raised earlier in the IRRC's review. Notably, the insurers complaining of the regulation and the change in the assessment formula knew of all this when the regulation was proposed (or at least knew of it when they filed their administrative actions complaining about the change), so they cannot claim surprise.

In any event, the objections to the change in the assessment formula obscure several points.

First, these should be objections of employers, not insurers. As the complaining insurers note, these assessments will be paid by employers, not insurers - regardless of the formula. While these insurers have noted that it is employers who will pay these assessments, however, they have never contended that they are raising these objections on behalf of any employer-policyholder - either here or in their administrative challenges.

Second, the complaining insurers argue that the Department has no authority to make any change in the formula used to collect these assessments. They suggest that these assessments were always imposed on employers, with Act 57 being only a change of semantics to avoid retaliatory taxes from other states on insurers domiciled in Pennsylvania. Granted, any cost on an insurer is ultimately borne by its policyholders. But Act 57 was more than a semantic change: It switched the assessments from being on insurers to being on employers through insurers.

As such, the Department has not only the authority, but the responsibility, to develop a formula to best reflect this switch. The earned premium formula does this. It is more timely for employers than the compensation-paid method: It reflects employers' costs from the previous year, whereas the compensation-paid formula goes back several years.

The complaining insurers suggest that other formulas could better reflect the switch (although they contend the Department could not implement those formulas, either). Perhaps - although probably not with the same efficiency as the formula proposed by the Department in this regulation.

The complaining insurers also argue that the regulation should not be given retroactive effect. Act 57, however, took effect on July 1, 1998, and all other insurers have been paying the assessments for the special funds consistent with the formula in this regulation. The retroactivity in this regulation simply matches what has already happened; without it, the special funds might not get any assessments - hardly the General Assembly's purpose in enacting Act 57.

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Thank you for the opportunity to comment on this regulation.
We hope the IRRC approves it on April 8.

Sincerely,



Samuel R. Marshall

c: Robert E. Nyce, Executive Director
Fiona E. Wilmarth, Regulatory Analyst
Independent Regulatory Review Commission

FAX

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Number of pages including cover sheet _____

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Sen Marshall

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REMARKS:

- Urgent For your review Reply ASAP Please comment

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