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Samuel R. Marshall
President & CEO

November 2, 2014

John F. Mizner, Chairman
Independent Regulatory Review Commission
14th Floor
333 Market Street
Harrisburg, PA 17101

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RECEIVED
IRRC

**Re: Department of Labor and Industry's final-form regulation amending
Chapters 111 and 131 – Agency No. 12-99; IRRC No. 3047**

Dear Chairman Mizner:

This is to support the Department's final-form regulation, with a request for clarification to one comment in the Department's explanations, for clarification as to how the Department construes another provision, and for ongoing monitoring of a third provision.

Section 111.11(a)(1) of Chapter 111

In response to questions from us and the IRRC, the Department states in its explanations that it "does not intend this change to disallow partial appeals."

We agree and ask for a further clarification – that the Department "does not intend this to change the current practice of partial appeals." The concern (or question) is that this could be construed to alter, while still allowing, the current practice of partial appeals. We don't believe that is the intent and recommend that clarification on the record.

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Section 131.53b of Chapter 131

We remain concerned with the third option provided to judges with these motions: This allows a judge to grant or deny a motion within 30 days, but also to “articulate in writing or on the record the reasons for not ruling on the motion” within that time frame.

Our main concern is that this third option – not ruling one way or the other, but explaining why – may become an open-ended means of never ruling, particularly if the reason for not ruling is waiting for information or a response from the party opposing the motion. We appreciate that is not the intent, but the Department should better explain how it intends to ensure timely responses in the event it takes this third approach, so there won’t be the problem of unresolved but pending motions.

We also recommend the Department clarify what it envisions the moving party doing when faced with a judge exercising this third option: Does it anticipate the moving party will file a new motion addressing its reasons, or does it anticipate the moving party will file a revision to the existing motion? If the latter, will the Department hold to the same 30 day time frame?

Section 131.91 of Chapter 131

We still question the need for a claimant’s signature on all such stipulations of fact, especially when represented by counsel. We recommend the Department monitor how this works in practicality, as it could be a needless delay and expense in the use of stipulations of fact.

We appreciate the effort in getting these regulations to this point and look forward to their approval. The above clarifications and recommendation are, we believe, consistent with the final-form regulations and can be addressed on the record and without change to those regulations.

Sincerely,

Samuel R. Marshall

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C: Honorable Julia K. Hearthway, Secretary
Department of Labor and Industry

Elizabeth Crum, Director, Office of Adjudication
Department of Labor and Industry

Alfonso Frioni, Commissioner
Workers' Compensation Appeal Board

Michelle L. Elliott
Fiona Wilmarth
Independent Regulatory Review Commission