<u>Maryland Uninsured Employers' Fund</u>

TESTIMONY BEFORE THE MARYLAND SENATE BUDGET AND TAXATION SUBCOMMITTEE ON PUBLIC SAFETY, TRANSPORTATION AND ENVIRONMENT

February 2, 2017

The Maryland Uninsured Employers' Fund (UEF) is the source of last resort to provide workers' compensation benefits to a claimant and to protect a claimant from an uninsured employer who has failed to obtain legally-mandated workers' compensation insurance and has failed to pay a workers' compensation award.

The purpose of the UEF, as explained by the Maryland Court of Appeals in *W.M. Schlosser Co. v. Uninsured Employers' Fund*, 414 Md. 195 (2010), is benevolent and remedial; to protect injured workers whose employers failed, either willfully or negligently, to obtain and carry workers' compensation insurance for those workers as well as seeking reimbursement from such employers for payments made from the Fund.

We at the UEF take that responsibility very seriously – our mission is to ensure that injured workers are compensated for their loses, including medical bills, and that employers who have failed in their legal obligation to protect those workers with worker's compensation insurance are held accountable.

The UEF receives most of its funding from assessments on insurers and employers and from interest and investment income which we derive therefrom. We also receive funding from fines levied upon uninsured employers.

When the UEF pays an award to a covered employee, it is subrogated to the employee's rights against the uninsured employer. The UEF has the authority to bring a civil action against the uninsured employer, initiate criminal action against that employer, and request revocation of relevant licenses issued to that employer's business.

The UEF has endured more than its fair share of challenges in recent years. The UEF's current Executive Director began at the UEF in late November of 2016 after the newly installed Board took office. His predecessor unfortunately died in 2015 and the prior Board did not name a replacement to serve as Executive Director to replace her. The UEF was, therefore, without an Executive Director for approximately 18 months prior to the recent appointment.

In addition to the obvious host of difficulties such events caused, the UEF has also been chronically understaffed for a number of years. As of December 31, 2016, the UEF had 6 vacant positions – 42.9% of authorized work force. That situation has resulted in an additional series of challenges and issues, which are being dealt with by the recently appointed Board and Executive Director.

Working with existing staff, including the outstanding staff of attorneys who represent the Fund from the Office of the Attorney General, the new Board and Executive Director have been working to identify what needs to be done to make the UEF a stable, well-organized and functioning agency and to make needed changes and improvements.

Such a task is a challenge to all involved, but the UEF's staff, the Board and the Executive Director are committing to meeting it.

Progress proceeds on a number of fronts as of today's date. We intend on succeeding.

The understanding and support of both the Legislature and the Administration is appreciated and will be put to good use.

To paraphrase Winston Churchill: "Give us the tools, and we will do the job."

Thank you for your time and your ongoing service and commitment to the people of Maryland.

Michael W. Burns, Esquire

Executive Director

Maryland Uninsured Employers' Fund

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Agency Reponses

1) ***New Cases Outstrip Resolved Cases, Resulting in Growing Backlog:*** In recent years, the number of new cases has been greater than the number of resolved cases, creating a backlog. From fiscal 2011 to 2016, UEF has received 3,114 new cases and resolved 2,581 cases, resulting in a carryover of 533 cases. UEF's vacancy rate has increased from 1.8 % in fiscal 2009 to 50.0% in fiscal 2016, corresponding to the buildup in case backlog. In prior years, the agency attributed drops in resolved cases to attorney vacancies. **UEF should comment on the decline in case closures in recent years and the cause of this trend, particularly addressing any impact vacancies may have had. The Department of Legislative Services recommends adopting committee narrative expressing intent that UEF be exempt from hiring freeze restrictions, given the agency is entirely funded through a dedicated special fund revenue source.**

   Response – Terms such as "resolved cases" and "case closures" are undefined. There is no record of any definition of either of these terms as relates to this agency's function in the records of the UEF. The Uninsured Employers' Fund (UEF) is the insurer of last resort for injured workers. Depending on the individual case facts, cases will be in a position that these terms ill-define. For example, the UEF continues to manage a number of claims resulting from the bankruptcy of Bethlehem Steel. The UEF continues to manage these claims as a result of the individual circumstances of each claim. They can be viewed as "resolved claims" but are not "closed cases."

   As to vacancies, the UEF has been understaffed for a number of years. The recently appointed Executive Director is, and has been, working since commencing his service in late November of 2016, to deal with the chronic understaffing, failure to address same, and host of negative consequences which have resulted from this ongoing situation. In addition to the extremely valuable position transferred from DHR to the Fund prior to the new Executive Director's assignment to the UEF, the UEF in in the process of hiring new staff for a number of positions – which includes reclassifying positions, describing positions, advertising positions, working on hiring freeze waivers and otherwise taking the steps needed to get this agency's staff where it needs to be.

2) ***Fund Could Face Insolvency within Five Years:*** UEF is entirely special funded through a 2% assessment on awards against and settlements with employers or insurers for permanent disability or death. Though the assessment has been at its maximum rate, increasing benefit payments have pushed the fund toward insolvency faster than expected. **UEF should comment on the viability of the fund and discuss if legislation is needed during the 2017 session to raise the assessment rate. UEF should update the budget committees on any actions that have been taken to address the issues identified and any recommendations made by the 2014 actuarial study.**

Response – The two percent assessment rate, as well as the five-million-dollar Fund cap, appear to date from at least the 1990's. The UEF intends on reviewing the entire relevant portion of the statute in order to consider possible suggestions for future legislation to deal with the Fund's current role in the 21st century.

As pointed out in caselaw, the legislature has carefully considered the Worker's Compensation law in a comprehensive manner. Any substantive revisions to the relevant portions of statute should be the result of careful review by the UEF along with relevant parties, including the WCC itself and the Legislature. The UEF made a conscious decision not to rush piecemeal suggestions to the Legislature in 2017 – any changes should be the result of a carefully considered and holistic approach to the UEF's structure and function as established in statute. Any piecemeal changes at this time are unnecessary and would be extremely ill-advised.

3) UEF should comment on the decline in case closures in recent years and the cause of this trend, particularly addressing any impact vacancies may have had. The Department of Legislative Services (DLS) recommends adopting committee narrative expressing intent that UEF be exempt from hiring freeze restrictions, given the agency is entirely funded through a dedicated special fund revenue source.

Response – See answer to Number 2.

The UEF would support, and be grateful to the Legislature for, an exemption from the restrictions of the current hiring freeze. It would enable the agency to move forward more efficiently with the requirements of hiring for a number of positions which are currently unfilled or will be reclassified and then filled.

4) In fiscal 2017, UEF abolished a vacant claims investigator position with a salary of approximately $34,000 and gained a position from the Department of Human Resources (DHR) with a salary of approximately $83,000; UEF has recently hired 1 contractual full-time equivalent claims adjuster to replace the loss of the regular position. The recently acquired higher salaried position is the reason for the increase in regular earnings and retirement costs in fiscal 2018 when compared to fiscal 2017; there are no increment or cost-of-living adjustments in the fiscal 2018 allowance. It is unclear the role the position transferred from DHR will play in assisting the fund. **DLS recommends abolishing the position transferred from DHR.**

Response – The claims investigator position referenced has nothing to do with either the transfer of, or the job duties involved in, the position transferred from DHR to the UEF in late 2016.

The position at issue is, pursuant to the Position Description, an "Administrative Manager, Sr. It is not a "claims investigator." As a result of a new program, designed with the participation of the person in this position, the UEF has an up-and-running collections program involving uninsured employers that was non-existent several months ago. Amongst her duties, the Administrative Manager is currently leading a working group that, quite simply, runs this new collection procedure. So far it is working smoothly and effectively – it is a model upon which

the new Executive Director believes can be replicated in various ways throughout the agency as personnel are hired and become available to expand this clearly successful program. In addition, the Executive Director has, in the past week, expanded the program to include the establishment of a Confessed Judgement aspect to make collections easier. This would not have been possible without the participation of the Administrative Manager.

This position plays an already vital role in this new program. Eliminating this position would result in chaos and disruption of the program. Based on the staffing facts as described herein there is simply no one available to replace her.

Considering the understaffed nature of the agency and the recognized need to give the UEF more freedom to continue to hire new persons, it makes no sense to terminate a position which is functioning so effectively at this time. Doing so will severely hamper this agency's mission and does nothing to assist in the resolution of the numerous issues noted herein.

5) UEF should comment on the viability of the fund and discuss if legislation is needed during the 2017 session to raise the assessment rate.

Response – See Answer to Number Two. In addition, it is the Fund's current assessment that the Fund is viable. As the new Executive Director continues to evaluate and correct a host of issues any revision to this assessment will be made and communicated to the Legislature.

6) The study conducted by Pinnacle expressed concerns with UEF's recordkeeping. For instance, the study noted that claims information for the two most recent fiscal years appeared to be incomplete, that there were discrepancies in the data files, and that groups of significant data were indistinguishable. Pinnacle made the following recommendations:

- ☐ actuarially evaluate the unfunded loss liability and cash flow at least every two to three years to monitor their size and the possible need to revise the assessment rate;
- ☐ maintain historic archives of claims files and summarize those files on an annual basis in order to track the annual rates of change in these key statistics;
- ☐ attribute payments to the proper award type instead of defaulting to the "miscellaneous payments" category;
- ☐ review reserve coding for consistency; and
- ☐ create new, more specific data fields.

UEF should update the budget committees on any actions that have been taken to address the issues identified and any recommendations made by the 2014 actuarial study.

Response – This three-year-old study raised various issues.

- ☐ actuarially evaluate the unfunded loss liability and cash flow at least every two to three years to monitor their size and the possible need to revise the assessment rate;

This is not an insurance agency – we do not write policies. We take our claimants as they apply for benefits and are found compensable. Terms such as "unfunded loss liability" and "cash flow" depend on literally who claims what as time progresses since both our cases and payouts are a direct function of the circumstances of each claimant's case.

This agency also serves a relatively small population. The death of even one person can have a significant impact on the Fund's finances.

One example is the recent unfortunate death of a claimant receiving benefits, including medical and related 24/7 home nursing care services, totaling over $1 million per year. A study concluded the day before he died would result in a figure which, because of his death the next day, would be considerably inaccurate.

That is the environment the Fund operates in.

☐maintain historic archives of claims files and summarize those files on an annual basis in order to track the annual rates of change in these key statistics;

Claims are maintained and achieved. There has not been the manpower to summarize those files in the past – based on the current assessment of the UEF's staffing requirements, any such summarization and tracking would require two to three additional positions in addition to the positions currently allocated to this agency.

☐attribute payments to the proper award type instead of defaulting to the "miscellaneous payments" category;

These undefined terms are, according to our accounts staff, meaningless as applies to the UEF. For example, it fails to differentiate between compensation payments and medical payments, both of which the Fund makes to claimants as required by law.

☐review reserve coding for consistency; and

The concept of "reserves" for the UEF is not applicable. This is not an insurance agency that writes policies, knows it's potential liability, and sets reserve limits. It is not a concept that can be applied rationally to the agency as it functions.

☐create new, more specific data fields.

Again, the term "data fields" is not defined. The UEF utilizes the Maryland State Government R*STARS accounting system. Neither the UEF, nor apparently, any other state agency, has the physical ability to go into that system and arbitrarily change codes or coding.

Recommended Actions

1. Add the following language to the special fund appropriation:

, provided that PIN 092697 Administrative Manager Senior I position transferred from the Department of Human Resources shall be abolished and this appropriation reduced by $105,900 to eliminate associated salary and fringe benefits of this position.

Explanation: This language abolishes PIN 092697 Administrative Manager Senior I position transferred from the Department of Human Resources and reduces the special fund appropriation by $105,900 to eliminate associated salary and fringe benefits of this position. The role of this position at the Uninsured Employers' Fund is not justified.

UEF RESPONSE – THE UEF <u>OPPOSES</u> THIS RECOMMENDED ACTION FOR THE REASONS CITED.

2. Adopt the following narrative:

Hiring Freeze Exemption: It is the intent of the budget committees that the Uninsured Employers' Fund be exempt for hiring freeze restrictions, given that the agency is entirely funded through a dedicated special fund source.

UEF RESPONSE – THE UEF <u>SUPPORTS</u> THIS RECOMMENDED ACTION FOR THE REASONS CITED.