

MINUTES

COMMONWEALTH OF PENNSYLVANIA COAL AND CLAY MINE SUBSIDENCE INSURANCE BOARD SPECIAL MEETING

May 13, 2003

A special meeting of the Mine Subsidence Insurance (MSI) Board (Board) was called to order at 10:00 a.m. on May 13, 2003 in the Department of Environmental Protection's Conference Room located on the 5th Floor of the Rachel Carson State Office Building, Harrisburg, Pennsylvania. Board members present at the meeting were: Joseph G. Pizarchik, Esq., Director, Bureau of Mining and Reclamation, Designated Chairman for Kathleen McGinty, Acting Secretary of the Department of Environmental Protection (DEP); Michael Burkett, Actuary, Designated Representative for Board Member M. Diane Koken, Commissioner of Insurance; and Kathleen M. Peterson, Assistant General Counsel, Representative for Board Member Barbara Hafer, State Treasurer. Also attending were the following DEP employees: Marc Roda, Assistant Counsel; Robert W. Agnew, Chief, Division of Environmental Analysis and Support; Joseph Seiber, Environmental Policy Specialist, and Lawrence Ruane, MSI Program Administrator.

The following is a summary of the issues discussed and actions taken at the meeting:

I. Approval of the Minutes of Previous Meeting

The Board reviewed and made editorial changes to the minutes of the November 18, 2002 regular Board meeting. A motion was made by Ms. Peterson to approve the minutes of the November 18, 2002, as amended. Mr. Burkett seconded the motion, and it passed unanimously.

II. Review of Commission Rate Information

BACKGROUND: Act 155 of 2002 amended the Coal and Clay Mine Subsidence Act, the Act of August 23, 1961 (P.L. 1068 No. 484), as amended, (52 P.S. §§ 3201-3225) (Act), the act that governs the administration of the MSI Fund (Fund), to allow Pennsylvania licensed insurance producers (formerly known as insurance agents and brokers) to submit MSI applications and receive a one-time commission for applications that become policies. Act 155 of 2002 also amended the Act to require the Board to annually establish a commission rate for a one-time commission payment.

To assist the Board in its selection of a commission rate, DEP staff provided the Board with the results of a survey of insurance producers. The consensus of the insurance producers was that a one-time commission rate should be 50% of the first year's premium. The insurance producers noted that commissions for most property or homeowner insurance policies are paid annually and not as a one-time payment. One-time commissions are more typical of commissions paid for life insurance policies and a 50% commission is typical. A typical annual commission rate is 15%.

The Board also reviewed a study of commissions paid by other states offering MSI coverage. It demonstrated that other states pay annual commissions of between 20% and 30% and not a one-time commission. However, in the other states, insurance producers process annual MSI policy renewals, collect and submit the annual premium to their respective MSI Funds, and process and pay claims. In Pennsylvania, all MSI renewal and claim processing is done by the Fund through its agent, DEP. All the efforts and costs associated with those activities are born by the Fund and not the insurance producers. The only obligation of the insurance producer in Pennsylvania is to submit a completed application.

Finally, the Board reviewed analyses demonstrating the impact that various commission rates could have on the first year's premium income as well as the premium income that is generated over the life of a policy, which is currently about five years. Given the five-year average life of a MSI policy, 20% of the commission costs can be apportioned to each year a policy is in force. As a result, a one-time commission of 25% would yield an annual commission of 5%, 50% would yield 10%, and 75% would yield 15%. Adjusting these yearly rates to account for the value of money over time could yield slightly higher annual rates, say, 12% to 19% depending on market conditions.

A general discussion among the Board and DEP staff ensued that focused on the need to establish commissions at rates high enough to attract the participation of the insurance producers. Commissions need to be high enough to encourage the insurance producers to actively promote MSI. The need to pay attractive commissions must also be balanced against the need to keep premium costs low, the need to safeguard the solvency of the Fund, and the need to maintain the confidence of the policyholders and potential policyholders. Mr. Burkett noted that under the rules that govern insurance producers, only insurance producers with property authority could be paid commissions and that the Insurance Department's licensing records should be used to verify licensure. DEP staff noted that electronic systems were under development that will provide online application forms and information regarding underground mine areas. These systems would also be used to register the insurance producers and will use the Insurance Department's data to verify that the insurance producers are licensed with property authority. The electronic systems will eventually provide for the submission of electronic premium payments. DEP will also establish safeguards in the electronic systems to insure that commission payments are made only after the applications are accepted, the premium is received, the information in the application has been reviewed, and the need for coverage has been evaluated by DEP. Provisions will also be made to allow for premium and commission refunds when required. The address of the web site containing the electronic systems will be provided to the Board.

III. Establish Commission Rate for State Fiscal Year 2003-2004

Upon the conclusion of the discussions, Mr. Pizarchik called for a motion to establish a rate for a one-time commission to be paid to insurance producers with property authority who submit MSI applications that become MSI policies. Ms. Peterson introduced a motion to

establish the commission at 50% of the first year's premium. Mr. Burkett seconded the motion, and it passed unanimously.

IV. Other Business

The Board discussed the need to revise 25 Pa. Code Chapter 401, regulations that govern the administration of the Fund. The Board then directed DEP to develop a proposed rulemaking that brings the provisions of Chapter 401 into conformance with the provisions of the Insuring Agreement, the contract between a policyholder and the Fund. Additional changes, as may be warranted by Act 155, should also be incorporated into the proposed rulemaking.

The Board also directed DEP to begin development of the annual report of MSI program activities that Act 155 requires be provided annually to the Environmental Resources and Energy Committees of the Senate and House. A draft of the report is to be provided to the Board at the next regular Board meeting.

V. Adjournment

With no further business before the Board, Mr. Pizarchik called for a motion to adjourn. Mr. Burkett made a motion to adjourn, which was seconded by Ms. Peterson and passed unanimously.

SUMMARY OF ACTIONS TAKEN BY THE BOARD

1. The Board approved the minutes of the November 18, 2002 Board meeting.
2. The Board approved a rate of 50% of the first year's premium as a one-time commission to be paid to insurance producers with property authority who submit MSI applications that become MSI policies.

KEY OBLIGATIONS:

1. DEP will develop electronic systems to support the submission of MSI applications that are submitted by insurance producers and to support the payment of commissions.
2. DEP will prepare a rulemaking for the Board's review.
3. DEP will draft an annual report of MSI program activities that Act 155 requires be provided annually to the Environmental Resources and Energy Committees of the Senate and House for the review of the Board.