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October 1, 2019

The Honorable Larry Hogan
Governor
State of Maryland
State House
100 State Circle
Annapolis, Maryland 21401

Re: Report required by Labor and Employment Article §10-320 (b) (MSAR # 10394)

Dear Governor Hogan,

Pursuant to Labor and Employment Article § 10-320(b), the Maryland Uninsured Employers' Fund (UEF/agency/fund) respectfully submits this annual report including details concerning the balances and expenses of the Fund.

By way of background, the UEF is a statutory self-funded agency created to protect Maryland workers who are injured on the job from an accidental injury or an occupational disease. The purpose of the agency is to provide workers' compensation benefits where an uninsured employer fails to provide benefits awarded by the Maryland Workers' Compensation Commission (WCC/commission). The agency also covers claims for compensation for insolvent self-insured employers.

The UEF is a special fund, which is funded by fines levied by the WCC against uninsured employers, and assessments imposed on awards of indemnity benefits. The agency also is to receive reimbursement from uninsured employers for expenditures made to claimants. The agency's obligation to provide benefits and/or compensation is triggered when an uninsured employer defaults on an award issued by the commission.

UEF is entirely self-funded and receives approximately 80% of its funding from a 2% assessment on most WCC awards and settlements (UEF also seeks reimbursement from uninsured employers). This 2% is the statutory maximum and has been the statutory maximum for many years.

The UEF was originally designed to be a limited stop-gap fund for injured workers whose employers failed to maintain legally required workers' compensation insurance. It was apparently thought that there would only be a fairly small number of such cases because employers would maintain workers compensation insurance to cover their employees since that was required in most cases by law. Over the years this notion has proven to be erroneous. Some employers, especially in the dangerous construction and landscaping industries, routinely fail to carry required insurance because it enables them to underbid their competition and thus obtain work. Add to this honest employers who simply fail to have coverage for some reason and then have a claim from an injured worker, as well as bankrupt self-insured employers such as the Bethlehem Steel Corporation (BSC) and A&P Supermarkets (A & P), and by 2019 the result has been that the UEF has now grown to cover nearly 1,000 workers at any one time, with expenditures for both lost wages and medical bills totaling millions of dollars per year.

The UEF coverage in a claim can last for any amount of time depending on the order: weeks, months, years, a lifetime. Workers sometimes come back to the WCC for a claim for worsening of their condition, requiring a new hearing, and resulting in a new order. Even if a claimant does not claim a worsening of their condition the UEF is still responsible for casually-related medical treatment for the rest of the claimant’s life.

In addition, the law requires the UEF to pay workers compensation claims of self-insured employers who become insolvent. Both A&P and BSC, both self-insured, have become insolvent over the past years and the UEF has become responsible for millions of dollars in workers’ compensation payments for these two corporations.

In addition to providing benefits to injured workers, the UEF, as noted previously, collects fines and assessments, and seeks reimbursement of the benefits paid from the relevant liable uninsured employers. The agency also pursues revocation of business licenses, and seeks criminal penalties against employers who fail to secure insurance and/or fail to pay benefits awarded by the commission.

In late 2016 the leadership of the UEF changed. The new leadership quickly found a host of issues, problems and needs at the agency. The agency has, during the past three years, worked, effectively and successfully, to address the situation that existed at the agency upon their arrival.

Bringing the agency to professional competence and performance has been neither easy nor expense-free. In order to simply function adequately the agency has added four full-time staff persons since late 2016, including two new attorneys general, which is reflected in increased costs to agency management. The agency has a total of nine full-time State employees, five of whom are the attorneys general, as well as four non-State employees. As a result of an emergency, which was declared in March 2017, the agency located and hired the CorVel Corporation (CorVel) pursuant to an emergency procurement effective Sept. 1, 2017 to investigate and manage claims as the agency’s third-party claims administrator (TPA). CorVel’s task was daunting; it literally had to build the agency’s case management record from the ground up based on what data was available while also taking on investigating and managing new claims immediately upon their arrival at the agency. It took CorVel months to collect, organize and process data and files just to get to a point where the agency could even know, with confidence, how many open claims were in existence (the number is approximately 950 open claims per month). Additionally, CorVel's success at data management and investigations has taken the rate of cases where insurance coverage is found in new claims from a rate of approximately 9% per month to approximately 35-40% per month. CorVel's effective case investigation, management, and large network of providers has provided substantial savings to the agency. The cost of finally having a competent TPA with a written contract added to expenditures starting in 2017, however, causing an increase in costs but the resulting competence, accuracy and savings achieved have been outstanding and are long-overdue.

During the past year the agency, for the first time in its 35-year history, worked with the Department of Management and Budget (DBM) Procurement Staff to prepare, issue and award a Request for Proposals (RFP) for TPA services. After a complete and thorough RFP bidding and evaluation process, the agency awarded the TPA contract to CorVel. This five-year contract insures not only that the agency will receive the best possible TPA services for the next five years, but that the agency will have a defined and developed RFP to work from going forward. The impact, both short and long term, of this successful RFP process is impossible to overestimate. Finally, for the first time in recent history, this agency should - from this point forward - be in a position to have competent, professional TPA services without interruption. The yearly cost of this contract will depend in part on the number and type of claims filed and found to be the responsibility of the UEF, but an estimate of $3.1 million is reasonable.

Improving collection of revenue also has taken time to plan, implement and provide results. The agency has taken a number of actions since late 2016 to collect revenue, which was non-existent before the current administration. New programs include the activation of a program of criminal enforcement as well as a reactivation of, and emphasis on, a program of suspending business licenses of uninsured employers who have not paid for their injured workers.

The UEF has been and remains solvent as of this report. Appendix A details expenditures and revenues for the 2012-2019 period for review and comparison. Appendix E indicates the various Fiscal Year-End Fund balances from 2012-2019. As Appendix E shows, the fund balance has gone from approximately $10,733,750.83 on June 30, 2012 to approximately $5,781,953.68 on June 30, 2019, which reflects increased expenses for both administration and claimant payments over time. The fund balance on Aug. 31, 2019 was $6,818,063.40.

These detailed statements of the balances and expenses of the Fund are included for purposes of providing data for this report and to comply with the requirements of 10-320(b) as regards information which may be due for previous annual reports regarding balances and expenses of the fund.

Appendices C and D provide extensive detailed information – including monthly balance, payment and expense information - as to the agency's performance, claims, payments, and status. Numerous data points are recorded and presented therein for the period of August 2017 through August 2019. In particular, detailed monthly amounts are presented for compensation payments, medical payments, and operating expenses.

Detailed performance data indicates the following information for the period of FY 2018 and 2019 including balances and expenses:

	FY 2018	FY2019
Number of claims filed	479	483
Number of investigations conducted	479	483
Number of claims where coverage found	98	168
Number of claims where agency responsible	1,172	53
Average number of open claims (per month)	1,270	919
Number of cases resolved	992	556
Number of benefit payments made	2,250	2,425
Compensation and medical payments made (in dollars)	9,449,100	8,772,756
Agency operating expenditures (in dollars)	1,787,862	2,009,819
Total expenditures (in dollars)	11,236,962	10,782,575
Amount of assessments collected (in dollars)	9,586,116	8,501,406
Interest on Fund balance (in dollars)	121,238	122,793
Amount of benefit payments owed by uninsured		
Employers recovered (in dollars)	1,492,355	918,229
Total revenue (in dollars)	11,199,709	9,542,428
Ration of Total expenditures to Total revenue (year)	1.00:1	1.12:1

Appendix B indicates the history of reserves for the agency. It shows that as of August 2019 the agency has liability reserves set at $24,714,514. These reserves are estimates of the agency's liability for the claims currently being paid by the agency for any particular month as well as anticipated claim obligations. Those reserves do not, and cannot, completely predict future increases, including yearly rising medical costs, new claims and claimant worsening changes, which will increase the agency's liability substantially in the years ahead.

As to administrative costs the TPA contract is estimated to cost $3.1 million per year (such costs are included in the "compensation and medical payments made" entries of Appendix A for the years 2012 through 2019). Agency operating expenses are currently at approximately $2 million without the costs associated with the three open staff positions, which the agency continues to develop for recruitment and hiring.

The agency emphasizes that it is not an insurance company. Whatever cases are found to be the responsibility of the agency are the cases it will cover; it is therefore difficult to predict what the UEF's true future liabilities are for medical and compensation payments with any rational degree of certainty. Due to the unique nature of our mission, the UEF is quite literally at the mercy of events as to future costs and expenditures.

An example is the ongoing coverage and cost issues involving the bankruptcy of BSC which continues to materially affect the agency even after 16 years.

By way of background, prior to its insolvency in 2003, BSC was self-insured for insurance purposes, including workers' compensation insurance. It was also one of the largest, if not the largest, private employer in Maryland. For employees with hearing loss cases BSC apparently agreed to provide causally related medical treatment, including, but not limited to, hearing aids, batteries, follow-up audio testing, etc. (it also appears that the treatment was paid through BSC's health insurance, also was self-insured) before its insolvency in 2003. These payments were made by BSC outside of Maryland Workers' Compensation law. Most BSC employees did not file formal claims involving hearing loss with WCC. For most of the few employees who actually had claims on file with the WCC, those claims were not pursued. Only a few early claims were ever dealt with by the WCC. For the vast majority of these cases there was no WCC claim or involvement of any kind.

It is important to emphasize that the payments BSC made with its employees only involved medical treatment for hearing loss (*i.e*, there were no indemnity payments for temporary or permanent disability that injured workers' might normally be entitled to in a claim filed with the WCC for workers compensation benefits). Whatever these payments by BSC were they were not statutory workers' compensation claim payments made pursuant to claims filed with WCC and made pursuant to orders of WCC or settlements approved by the WCC.

Before the BSC insolvency the situation continued as outlined above. BSC's insolvency, however, has unfortunately proven how dysfunctional and impractical this arrangement actually was.

BSC became insolvent in 2003. Due to the large number of BSC claims to be transferred to the States a result of the insolvency, the UEF was unable to handle the processing and adjusting of the BSC claims in 2003. As a result, the Injured Workers' Insurance Fund (IWIF), which has since become Chesapeake Insurance (Chesapeake), was hired to administer the BSC claims pursuant to Memoranda of Understanding (MOUs) made between the UEF, IWIF, the WCC, and the State dated May 28, 2003 and Jan. 11, 2016. Neither MOU addressed the BSC hearing loss cases. In fact, both MOUs limit payments to "claims," which, as explained, the hearing loss cases paid under BSC's medical insurance – and not filed with the WCC - clearly were not.

Title 9 of the Labor and Employment Article (LE) authorizes the UEF only to make payments on claims filed with WCC against uninsured employers after an order triggering Fund liability and after an uninsured employer default. In fact, the State normally does not allow this agency to make a payment without a WCC claim number. Pursuant to LE § 9-405, the UEF shall also pay the outstanding claims for "compensation" of a self-insured employer upon insolvency. "Compensation" is defined by law as money payable under the Workers' Compensation statute.

IWIF/Chesapeake issued payments on hearing loss cases on an ongoing basis from 2003 until 2015 based on information provided by BSC to the State. In 2015, the cases were transferred to the UEF for processing and payments continued to be paid by the UEF's claims administration. In 2018, as part of the investigation and organization of claims undertaken by the agency, the current UEF administration discovered the facts, circumstances, and events outlined above. Because the Fund cannot legally pay benefits for non-WCC claims such as these, the payments had to be, and were, stopped.

A number of former BSC employees have, as a result, filed new formal claims with the WCC with the assistance of counsel involving hearing loss issues. Additionally, many of these claimants are now asking for new benefits in addition to, and beyond the scope of, the medical-treatment-only arrangements made with BSC before its insolvency. The UEF has asserted defenses to these claims, including that they are barred by the Final Bankruptcy Decree and by limitations. The number of claims now numbers approximately 73, and it is anticipated that the number of claims filed will increase substantially in the months to come.

The UEF wanted to assist these BSC employees and worked to find a solution to the situation beneficial to all parties involved. As a result, the agency developed and presented a plan in 2018/2019 to resolve this matter and requested funding to do so. In order to pay and resolve the hearing loss cases of these Marylanders in a reasonable, fair and compassionate manner a plan was developed and approved by the administration to request an appropriation of dedicated general funds, administered by UEF as part of our claims administration, to treat BSC employees with the goal of assisting these individuals and also resolving the State's involvement in this matter over a projected three-year period. The administration, therefore, placed a request for $2 million in the FY19 budget agency's request in order to begin this process, with the intention that any unspent funds would revert back to that State at the end of the relevant fiscal year.

During the 2019 session of the Maryland General Assembly, the legislature struck this funding from the budget. Instead, the legislature amended the Code (Labor and Employment section 10-314 (b)) to authorize the agency director to pay for "hearing loss claims for retirees of the Bethlehem Steel Corporation" (Labor and Employment section 10-314(b)(5) ("10-314(b)(5)) by way of the Budget Reconciliation and Financing Act of 2019 ("BRFA"/HB 1407).

The legislature did not, however, provide any source of funding for these payments, for which the agency has established a reserve in the amount of $6 million based on review of the information available.

The agency now faces the task of paying millions of additional dollars for potentially hundreds of new BSC claims with no revenue to offset those payments 16 years after Bethlehem Steel went bankrupt.

Although the agency faces challenges such as the BSC issue, it does so from a position vastly improved in recent years. The differences in the UEF between 2016 and today are clear, substantial and long-overdue. For the first time in many years, probably decades, possibly ever, the UEF handles claims and cases professionally, efficiently, economically, and correctly, and actually has an established and effective program to collect debt owed to the agency.

After almost three years of effort, the agency now is finally at a point where it can have confidence that it is functioning reasonably well. That expenditures are accurate and current. That revenue is being collected efficiently.

There is still work to be done, staff to be hired, improvements and refinements to be made. But on the whole, and it is upon the whole that it should be judged, the administration's progress at the UEF is impressive and undeniable.

The agency thanks the Governor, his staff, the Legislature and all of the other many State employees and agencies who have supported and assisted the UEF in its work and its success over the past few years. Our improvements would not have been possible without their support and involvement.

Respectfully submitted.

Michael W. Burns, Esq.

Director

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Cc: Sarah Albert, Department of Legislative Services (5 copies)