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September 24, 2020

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)

Dear Governor Hogan,

As required by Maryland law, Labor and Employment Article § 10-320(b), the Maryland Uninsured Employers' Fund (UEF/agency/fund) respectfully submits the following Annual Report to you, including details concerning the balances and expenses of the Fund during the relevant period of time.

The UEF is a statutory completely self-funded agency which was created to protect Maryland workers who are injured on the job from an accidental injury or an occupational disease during certain circumstances. The purpose of the agency is to provide workers' compensation benefits to injured workers and their families when an uninsured employer fails to have Workers' Compensation Insurance, an employee is injured, benefits are awarded by the Maryland Workers' Compensation Commission (WCC/Commission) and the uninsured employer fails to pay that award as ordered. The agency's obligation to provide benefits and/or compensation is triggered when an uninsured employer defaults on an award issued by the Commission. The agency also covers claims for compensation for insolvent self-insured employers as well.

The UEF is a special fund. It 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 but

because many uninsured employers fail to make those payments those funds are often a challenge to collect.

The UEF is entirely self-funded and receives approximately 80% of its funding from a 2% assessment on most WCC permanency awards and settlements (also seeking reimbursement from uninsured employers as previously described). This 2% is the statutory maximum and has been the statutory maximum for many years. As will be discussed more fully, the 2020 session of the legislature raised that assessment amount temporarily for a period of one year to 3% with that increase due to expire on June 30, 2021.

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 believed when the agency was established 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 prediction 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 2020 the result has been that the UEF has now grown to cover nearly 1,000 injured workers at any one time, with expenditures for both lost wages and medical bills totaling millions of dollars per year.

UEF coverage for a claim can last for any amount of time depending on the Order of the WCC: weeks, months, years, a lifetime. Workers sometimes come back to the WCC with a claim for worsening of their condition, requiring a new hearing, resulting in a new order, multiple times. 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. Over time, such cases can result in millions of dollars in medical and related expenses.

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 tens of millions of dollars in workers' compensation payments for these two corporations, a responsibility which continues to the present time and is ongoing.

In addition to providing benefits to injured workers, the UEF, as noted previously, receives funding by various mechanisms to provide the funds it requires to pay injured workers. It 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.

Under the leadership brought in by Governor Hogan's Administration the agency has, during the past several years, worked, effectively and successfully, to address the situation of dysfunction and failure that existed at the agency upon their arrival. The covid pandemic of 2020, although challenging, was also met successfully by the agency.

The COVID pandemic resulted in a number of disruptions, challenges and changes to the functioning of government in 2020 and the UEF was not spared from those events. The agency has, however, come through the worst of the situation. Thanks to quick responses, planning and implementation of emergency procedures, an excellent and resourceful staff, a competent and experienced TPA contractor, and the leadership and direct assistance of the Administration, the agency was able to quickly set up a successful remote teleworking program which enabled us to continue to function effectively remotely.

By way of background, in response to the developing situation and in response to notifications from the Administration, the Fund took immediate action in February, 2020 to prepare for various contingencies regarding the COVID-19 situation and the agency's functions. We reviewed the Office of Personnel Services and Benefits Policy regarding Pandemic Flu Attendance and Leave (Pandemic Flu Policy) and also reviewed the Fund's plan for dealing with any disruption in agency function. Our staff meet in order to discuss the details of the Pandemic Flu Policy and related issues regarding the situation and possible responses thereto. Meetings were also conducted with the agency's Principal Counsel who supervises our agency's five attorneys general as well as the supervisor of our contractual Third-Party Claims Administrator (TPA) to discuss the Pandemic Flu Policy and related issues, again in preparation for the agency continuing to function remotely. We also reached out to one of our TPA's Vice Presidents to discuss the company's possible responses to the situation and plans. All of this was done with a view of making all persons aware of the situation and the possibilities involved and to be prepared for various contingencies, including the closure by the State of the UEF office.

As a result of the Administration's pro-active offer of assistance, we worked with DoIT on the program to obtain laptop computers for key staff to use for remote work off site. Thanks to the work of the agency and DoIT, the agency was able to obtain five laptop computers for our staff to use. The agency was also able to procure other laptops itself for remote use so when the State Government was forced to close down State offices the agency was able to quickly convert to teleworking and remote functioning.

We have also engaged in weekly remote meetings as an agency since March of 2020 in order to discuss relevant matters with both staff and other interested parties on an ongoing basis. Our goal was, and remains, to function as a competent, ongoing agency no matter what situations present as well as to have staff cognizant of the health situation and vigilant as to their own health and safety.

Agency functions during the remote period of activity have included:

- Implementation of Senate Bill 8 (Ch 0495, 2020), – The Agency worked with the WCC on changing the assessment amount in order to be prepared for the July 1, 2020 implementation date of legislation. The Agency sent letter to insurers to advise them of the change in assessment amount in June of 2020.
- Continuing Agency Function during site closure – The Agency has been functioning remotely since the mid-March office shut down. The Agency obtained and distributed 12 new laptop computers for staff. Agency staff meets by conference call weekly to discuss issues and concerns. Claims management, case preparation and investigation, legal preparation, and collections are all continuing without issues. All divisions of Agency

continue to operate smoothly in spite of shut down. Staff individually goes to office as needed to process mail, checks, and claims.

- Preparations for return to site – Since late February Agency staff has been discussing and planning on an ongoing basis for site reopening. The Agency is ready to resume operations as soon as State gives permission.
- Hearing resumption at WCC – Live Hearings began at the WCC in June. As a result of Staff organization and preparation UEF has been preparing cases for hearings throughout shut down and was ready to proceed as required when relevant cases were resumed.
- Collection of Funds Due – The UEF is 100% self-funded. When the Agency site prepared for closure the Agency developed plans for effective use of staff time, including collection activities. Collections staff have been continuing the Agency’s program of collecting and processing monies due as a result of WCC Orders effectively and has also been doing a review of past-due debt to prioritize collection.
- Staff – We were in the process of hiring two new contractual staff for collections. The agency funds these positions. The agency is planning on continuing the hiring process as events permit.

We are exceptionally pleased to report that the UEF has come through this crisis successfully and continues to function efficiently and effectively in spite of the many challenges faced over the past months.

In addition to the covid pandemic issues, the agency faced other challenges this year as well. This year represented the first year of the five-year contract of third-party claims services with the CorVel Corporation (CorVel), the agency’s third-party claims administrator (TPA). As was noted last year, this contract represents the first contract for TPA services with a vendor. The results have been spectacular, with administration, investigation, cost management and other benefits more than recouping the cost of CorVel’s services.

By way of background, CorVel first began work for the agency in September of 2017 under an emergency procurement contract for TPA services. 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 (that number would eventually be approximately 950 open claims per month, since reduced).

Additionally, CorVel’s success at data management and investigations took the rate of cases where insurance coverage is found in new claims from a rate of approximately 9% per month to approximately 35% per month. CorVel’s effective case investigation, management, and large network of providers 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 were outstanding, cost-effective and are long-overdue.

Thanks to finally having a record of information and data based from the professional TPA services received, and related valid data obtained, the UEF is finally able to report a host of information based on reliable data.

A five-month average of the expenses incurred (claim payments plus reserves) from February 2020 to June 2020 is approximately \$52,400,000.00 and as of September, 2020, the agency has 751 open claims. The “average” UEF claim has, therefore, an exposure of \$69,773.64.

It is important to emphasize that in fiscal 2020 CorVel found coverage on 153 of 423 new cases or 36.2%. This percentage should be contrasted to the 9% coverage found under the prior claims administration system at the agency. Finding coverage means that the agency is not responsible in that particular case. Additionally, this coverage number will almost certainly need to be revised upward as it includes cases from March through June of 2020 that are currently coded as no coverage that have not been litigated yet. The agency will certainly find coverage on many of those claims. As of now, the agency can report at least a 27.2% increase in real terms from 9% to 36.2% in claims in where coverage has been found.

From an agency savings standpoint this increase is remarkable: 27.2% of the 423 claims the agency received in fiscal 2020 equals 115 cases and multiplying that figure by the 27.2% average incurred equals \$8,023,968.60. The contract with CorVel has, therefore, resulted in approximately \$8 million in demonstrable savings to the agency during the past year in this area alone.

As noted, when CorVel was brought by way of an emergency procurement contract in September of 2017 the UEF did not have any idea how many claims it had open and/or had exposure for. When CorVel worked through the records and data it discovered roughly 1600 open claims. After review, investigation, management and handling of these claims the number was significantly lowered. Currently the UEF has reduced this number to approximately 751 open claims.

Further, when CorVel started to service the agency in 2017 the UEF had no information as to what the total exposure was for the agency TPA programs. Today the agency has reserves set for every claim and an overall figure of reserves as previously noted. The agency finally has an idea what its liabilities and exposure are going forward and can plan accordingly based on genuine data and realistic estimates based on facts and data.

In addition to uninsured employers, the UEF is also statutorily responsible for the claims of insolvent self-insured self-employers. One major responsibility is for the insolvent Great Atlantic and Pacific Supermarket Company (A & P). Prior to hiring CorVel the agency had no clear information as to the liabilities and status of A & P claims. Working with CorVel the UEF has now reviewed all open cases and has initiated complete claims management over them. In addition, working with CorVel the agency discovered that excess coverage with AIG Insurance existed for claims and as a result closed out three claims with an extremely high exposure and also has received funds in the amount of \$95,000 representing the funds the UEF paid over and above the excess threshold in these cases.

The UEF is also responsible for the claims of workers at the insolvent Bethlehem Steel Corporation (BSC). Last year’s report describes in detail the situation which the agency found

itself in with BSC and our ongoing efforts to resolve what has been a complicated and difficult process of dealing with a confused and tangled situation. This process continues and the agency has requested legislation for 2021 from the Administration to assist with resolving and clarifying the current situation.

The contract with CorVel has resulted in other benefits and savings as well. By working closely with CorVel staff the agency has been successful in defending several claims cases in which the amount of liability potential reached over \$1 million dollars. The professional investigations and active collaboration of CorVel with our attorneys general played a critical role in the agency's success in prevailing in these cases.

Our collections efforts have also been augmented by our contract with the TPA. CorVel works with agency collections staff constantly, providing important information which allows the agency to locate and contact relevant parties in both the assessment and the uninsured employer recovery areas. The UEF has received numerous corrected addresses and contacts from CorVel which enabled collection of assessments, repayments and fines due and owing to the agency.

The CorVel staff is extremely competent and experienced. Three of its adjusters on the UEF account have an average of 25 years of experience. That level of experience is extremely rare. CorVel's staff consists of five investigators, the three highly experienced adjusters noted previously, a claim assistant, a manager/supervisor and an Account Manager. That is 11 staff members that the State is not responsible for paying salary, health insurance, retirement/pension, taxes, workers compensation, E & O exposure, and other expenses which is in itself an enormous short and long-term benefit to the State.

We are pleased to present this information to the Administration and to thank the Administration for providing the UEF with the support and backing to engage in the RFP process and the support to hire a competent, professional TPA. That process of selection and hiring has paid enormous dividends to the agency which have been truly a great success story for this Administration.

The agency also continues to refine and expand its revenue collection program. The agency has taken a number of actions since late 2016 to collect revenue, which was basically non-existent before the current administration. The agency continued to follow-up and expand its program of collection of assessments during the past year. Additionally, with the support of the Administration the agency worked with the legislature to pass Senate Bill 8 during the 2020 session. This legislation gave the UEF a one-year increase in the Assessment from 2% to 3%. Unfortunately, the covid crisis has resulted in a serious disruption in the normal number of WCC Orders subject to the 3% Assessment and there has been a clear reduction in assessment revenue during 2020. The agency continues to monitor this situation. Additionally, the agency is preparing for the contingency of dealing with this issue during the upcoming legislative session as well.

The UEF has been and remains solvent as of this report. Appendix A details expenditures and revenues for the 2011-2020 period for review and comparison. Appendix F indicates the various Fiscal Year-End Fund balances from 2012-2020. As Appendix F shows, the fund balance has gone from approximately \$10,733,750.83 on June 30, 2012 to approximately \$6,327,160.83

on June 30, 2020, which reflects increased expenses for both administration and claimant payments over time. The Fund balance on Aug. 31, 2020 was \$6,587,595.42.

Appendices C, D and E 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 June 2020. In particular, detailed monthly amounts are presented for compensation payments, medical payments, and operating expenses.

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 L and E section 10-320(b) as regards information which may be due for previous annual reports regarding balances and expenses of the fund

Detailed performance data indicates the following information for the period of FY 2019 and 2020 including balances and expenses:

	FY 2019	FY 2020
Number of claims filed	483	423
Number of investigations conducted	483	423
Number of claims where coverage found	168	153
Percentage claims where coverage found	34.8%	36.2%
Number of claims where agency responsible	53	280
Average number of open claims (per month)	919	835
Number of cases resolved	556	616
Number of benefit payments made	2,425	2139
Compensation and medical payments made (in dollars)	8,772,756	8,784,084
Agency operating expenditures (in dollars)	2,009,819	2,013,893
Total expenditures (in dollars)	10,782,575	10,797,977
Amount of assessments collected (in dollars)	8,501,406	9,927,746
Interest on Fund balance (in dollars)	122,793	96,035
Amount of benefit payments owed by uninsured Employers recovered (in dollars)	918,229	1,319,496

Total revenue (in dollars)	9,542,428	11,343,277
Ration of Total expenditures to Total revenue (year)	1.12:1	.95:1

Appendix B indicates the history of reserves for the agency. It shows that as of June, 2020 the agency has liability reserves currently set at \$54,825,539. 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. Additionally, the impact of the covid experience can only be estimated at this point in time.

As to administrative costs the TPA contract is estimated to cost \$2.3 million per year (such costs are included in the “compensation and medical payments made” entries of Appendix A for the years 2011 through 2020). 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. And, of course, the covid pandemic adds yet another layer of uncertainty going forward to all aspects of our work as well.

Although the agency faces challenges it does so from a position vastly improved in recent years. The improvements in the UEF between over the past few years are documented and substantial. The agency’s response to the covid pandemic, from planning to implementation to the successful functioning of remote work has been striking.

There is still work to be done, staff to be hired, improvements and refinements to be made, an ongoing pandemic to deal with. But there is no question that 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, particularly in the past year. Our ongoing success would not have been possible without their support and involvement.

Respectfully submitted,

Michael W. Burns, Esq.
 Director

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Encls.

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