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October 1, 2019

The Honorable Thomas V. "Mike" Miller
President
Senate of Maryland
State House, H-107
Annapolis, Maryland 21401

The Honorable Adrienne A. Jones
Speaker
Maryland House of Delegates
State House, H-101
Annapolis, Maryland 21401

Re: Report Required by Senate Bill 62/Ch. 269, 2019 (MSAR # 12317)

Dear President Miller and Speaker Jones:

Pursuant to Senate Bill 62, Ch. 269, 2019 the Maryland Uninsured Employers' Fund (UEF) respectfully submits the following report:

Senate Bill 62, 2019 Session, as enacted, states as follows:

- (a) On or before October 1, 2019, the Director, of the Uninsured Employers' Fund shall report to the Senate Finance Committee, the House Economic Matters Committee, and the Joint Committee on Workers' Compensation Benefit and Insurance Oversight, in accordance with § 2-1246¹ of the State Government Article, on:

¹ Section 12-1246 is, as of July 1, 2019, no longer the relevant section. As of that date the relevant section is now section 12-1257, Publications.

- (1) the solvency of the Uninsured Employers' Fund, including the Fund's solvency during the period from October 1, 2012, through August 31, 2019, both inclusive; and
 - (2) whether the General Assembly should adjust or provide authority to adjust the assessment required under § 9-1007 of the Labor and Employment Article.
- (b) The report required under subsection (a) of this section shall include:
- (1) a discussion of payments for compensation to claimants made from the Uninsured Employers' Fund, from September 1, 2017, through August 31, 2019, both inclusive; and
 - (2) a discussion of the Uninsured Employers' Fund's prospective liabilities; and
 - (3) a discussion of Bethlehem Steel Corporation hearing loss claims for compensation.

The response of the UEF is:

- (a)(1) "the solvency of the Uninsured Employers' Fund, including the Fund's solvency during the period from October 1, 2012, through August 31, 2019, both inclusive;"

The UEF was solvent for the period for the period Oct. 1, 2012 through Aug. 31, 2019. Appendix A reports in detail the expenditures and revenues for the 2012-2019 period.

As Appendix E indicates, 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. The balance on Aug. 31, 2019 was \$6,818,063.40.

- (a)(2) "whether the General Assembly should adjust or provide authority to adjust the assessment required under § 9-1007 of the Labor and Employment Article."

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 its unique nature, the UEF is quite literally at the mercy of future events and potential claims.

The UEF is entirely self-funded, and receives approximately 80% of its funding from a 2% assessment on most Workers' Compensation Commission (WCC) permanency awards and settlements (UEF also seeks reimbursement from uninsured employers). This 2% is the statutory maximum and has been the statutory maximum for 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 thought that there would only be a fairly small number of such cases because employers would maintain

workers compensation insurance to cover their employees because it was required by law. Over the years however this notion has proven to be erroneous. Some employers, especially those in the construction and landscaping industries, routinely fail to carry required insurance because it enables them to underbid their competitors. Add to this honest employers who simply fail to have coverage and then have a claim from an injured worker, as well as bankrupt self-insured employers, such as Bethlehem Steel and A&P Supermarkets, 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 a year.

There are a number of factors to consider in evaluating the agency's revenue requirements. Rising medical costs, hiring a competent TPA, and replacing and compensating long empty staff positions continues to require increased expenditures from the fund. In addition, the law requires the UEF to pay claims of self-insured employers who become insolvent. This statute places unlimited liability on the UEF to pay relevant claimants, but provides no funding mechanism to do so. In recent years both the A&P Supermarket and Bethlehem Steel, both self-insured, have become insolvent and UEF has become responsible for millions of dollars in workers' compensation payments for these two corporations.

An audit of the UEF several years ago predicted the agency's insolvency in the early 2020's. (The agency is working with DBM to obtain a new audit.) Increasing costs for long-neglected basic requirements such as adequate staffing and utilizing a competent third-party claim administrator (TPA) have added to the agency's expenditures without any increase in revenue. The decision to add potentially hundreds of new claims to the UEF caseload without any corresponding revenue to pay the claims is another point to be considered as well.

This report contains extensive documentation as to the history and current status of the UEF's revenue, expenditures, liabilities, and condition.

- (b)(1) "a discussion of payments for compensation to claimants made from the Uninsured Employers' Fund, from September 1, 2017, through August 31, 2019, both inclusive;"

Appendices C and D provide extensive detailed, monthly information as to the agency's performance, payments, and status. Numerous data points and areas 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. Performance data indicates the following information for the period of FY18 and FY19:

	FY18	FY19
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

(b)(2) “a discussion of the Uninsured Employers’ Fund’s prospective liabilities;”

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 WCC.

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

In performing its purpose, the agency must initially determine: (1) if an employee making a claim against the fund (the “claimant”) is a covered employee entitled to receive benefits under the Maryland Workers’ Compensation Act; (2) if the claimant was injured on the job; (3) if the alleged employer is the proper employer; (4) if the alleged employer is uninsured; (5) if there is a co-employer/statutory employer who has insurance; and (6) if the benefits sought are causally related to the claim and are appropriate.

It is critical to emphasize that the UEF is not an insurance company. The differences are substantial and impact how the agency functions in numerous ways. For example, in the normal compensation claim scenario: a worker gets injured; he/she lets their employer know; employer then lets their compensation insurer know; the injured worker and employer work with the insurer on the case; if there is a dispute a claim gets filed with WCC; a hearing is held; an order is issued; and payments are made per the order by the insurer.

The UEF scenario is vastly different: a worker gets injured; sometimes they let their employer know and sometimes they do not. An employer who does not have legally required workers' compensation insurance responds in any number of ways, including participating in the claim, ignoring the claim, or even closing down business and starting up another similar business to dodge responsibility. Claims get filed whenever they get filed; it is common for claims to be filed months - or in the cases of the Bethlehem Steel hearing loss cases - years after the actual injury occurred. Injured workers and/or uninsured employers may or may not cooperate with the UEF or even contact the UEF. The UEF often must conduct its investigation with little or no

cooperation from the claimant or employer. A hearing gets conducted at which time the uninsured employer may actually appear and participate for the first time; a result which often requires a continuance for the parties to deal with the now-involved uninsured employer. Another hearing gets conducted at which the commission will make various determinations, including if the claimant is a covered employee with a compensable claim, identifying the proper employer, determining if the employer is insured, and award benefits. If the employer is uninsured and defaults on payment of the benefits ordered by WCC, the claimant may petition the UEF for “payment” of the award. It is the default of the employer and the petition of the claimant that triggers the liability of the UEF in a case. The UEF pays the claimant and seeks to obtain reimbursement from the uninsured employer for the costs of the benefits paid, which is often difficult.

The UEF coverage depends on the order: weeks, months, years, even lifetimes. 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 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 has statutory authority to pursue revocation of business licenses, and to seek criminal penalties against employers who fail to secure insurance and/or fail to pay benefits awarded by the commission.

The agency notes that the nature of the agency, including claims management and collections before 2016, has resulted in prior numbers that reflect the actual amounts of dollars spent and collected, but do not reflect numbers that are indicative of an agency that was functioning in a competent manner. For example, before the arrival of the agency’s TPA (CorVel) on Sept. 1, 2017, claims were managed first in-house by the agency and then starting in 2014 a new TPA transitioned to claims administration. Neither method proved effective or economical.

Also, various improvements to the agency have taken time to plan and implement. It took CorVel months to clean up files and to get to a point where the agency could know, with confidence, how many open claims were in existence (the number is approximately 950 open claims per month). Additionally, CorVel has taken the rate of cases where insurance coverage is found from a rate of approximately 9% per month to approximately 35-40% per month currently. CorVel’s effective case investigation, management, and large network of providers has provided substantial savings to the agency that may not be quantifiable in dollar, but clearly benefit the agency’s decision claimants.

Improving collection of revenue also has taken time to implement and provide results. The agency has taken a number of actions since late 2016 to collect revenue, which was sporadic before the arrival of 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.

Bringing the agency to professional competence and performance has proven to be 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. As a result of an emergency, which was declared in March 2017, the agency located and hired CorVel on Sept. 1, 2017 to investigate and manage claims as the agency's TPA. CorVel's task was Herculean in nature; it literally had to build the agency's case management record from the ground up based on what data was available while taking on investigating and managing new claims as they arrived. The cost of finally having a competent TPA with a written contract also added to operating costs starting in 2017 causing an increase in expenditures. The competence and savings achieved, however, have been outstanding.

For the first time the agency, working with the Department of Management and Budget (DBM) prepared a Request for Proposals (RFP) for TPA services in 2018. 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. 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.

Appendix B indicates the history of reserves for the agency. It shows that as of August 2019 the agency has liabilities in reserves of \$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. Those reserves do not, and cannot, 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 without any additional revenue.

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 UEF handles claims and cases professionally, efficiently, economically, and correctly, and actually has an established program to collect debt owed to the agency and state. Such improvement only comes with a price. Claims management was done on the cheap for many years. Collections were inefficient or non-existent. Staff was not replaced; eventually only six people were left on the agency's payroll as of late 2016. There was no plan or vision for the agency to succeed or to even minimally function. There was not even knowledge of how many claims the agency was handling (as previously noted the number averages around 950 claims per month). By any measure, nothing at the agency functioned at an acceptable level when the new administration took charge in late 2016.

The agency is at a point where it can have confidence that it is functioning well. Expenditures are accurate and current. Revenue is being collected efficiently. The agency has a basis for calculating the genuine costs of administration.

The agency has submitted the following relevant estimates for FY20 and FY21 based on the current information available as to the future:

	FY20	FY21
Number of claims filed	570	495
Number of investigations conducted	570	570
Number of claims where coverage found	170	172
Number of claims where agency responsible	136	59
Average number of open claims (per month)	1,022	1025
Number of cases resolved	425	550
Number of benefit payments made	2,600	2,650
Compensation and medical payments made (in dollars)	11,200,756	11,300,000
Agency operating expenditures (in dollars)	2,020,000	2,200,000
Total expenditures (in dollars)	13,220,756	13,500,000
Amount of assessments collected (in dollars)	8,800,000	12,800,000
Interest on Fund balance (in dollars)	110,000	110,000
Amount of benefit payments owed by uninsured Employers recovered (in dollars)	940,000	950,000
Total revenue (in dollars)	9,850,000	13,860,000

(b)(3) “a discussion of Bethlehem Steel Corporation hearing loss claims for compensation.”

By statute (L and E section 9-405 (9-405)) the UEF pays claims of self-insured employers who become insolvent. This statute places unlimited liability on the UEF to pay relevant claimants, but provides no funding mechanism. In 2003 the Bethlehem Steel Corporation (BSC), which was self-insured, became insolvent and the UEF became responsible for millions of dollars in workers’ compensation payments.

The insolvency of BSC has materially affected the agency during the past 16 years. No single occurrence in this century has had the same effect.

According to the agency’s investigation, the following are the facts and history of the BSC bankruptcy as regards to the UEF.

Prior to its insolvency in 2003, BSC was self-insured for insurance purposes, including workers’ compensation insurance. It was also one of the largest private employers in Maryland. For employees with hearing loss claims 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 self-insured before insolvency in 2003.

Very few of the payments for hearing loss before 2003 by BSC were made pursuant to workers' compensation claims filed with the WCC. 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 those few who did, those claims were not pursued. Only a few early claims were ever dealt with by the WCC.

It is critical to note that the vast majority of relevant payments BSC made to its employees only involved medical treatment for hearing loss related to employment at BSC (*i.e.*, there were no indemnity payments for temporary or permanent disability). Whatever the vast majority of these payments were, they were not statutory claims for compensation made by BSC pursuant to claims filed with WCC and made by BSC pursuant to orders of WCC or WCC-approved settlements. As such, they were not subject to UEF coverage under 9-405 in the event of BSC becoming insolvent.

As long as BSC was solvent, everyone seemed satisfied with the situation as outlined above. BSC's insolvency, however, has proven how dysfunctional and impractical this arrangement actually was.

Due to the large number of BSC claims to be transferred to the State as 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 limited 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 UEF 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 as money payable under the Workers' Compensation statute. In spite of that, 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. In 2018, as part of the organization of claims undertaken by the agency, the current UEF administration discovered the facts and events outlined above. Since the UEF cannot legally pay benefits for non-WCC claims such as these, the payments were suspended.

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 arrangement made previously with BSC. The UEF has asserted defenses to these claims, including that they are barred by the Final Bankruptcy Decree, and by limitations. The

number of BSC claims now numbers approximately 73, and it is anticipated that the number of claims filed will increase substantially in the months and years to come.

The UEF did not, however, simply abandon these injured Maryland workers. The agency developed and presented a plan in 2018/2019 to resolve the situation 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, 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 placed a request for \$2 million in the FY19 budget 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 (L and E section 10-314 (b)) to authorize the agency director to pay for "hearing loss claims for retirees of the Bethlehem Steel Corporation" (L and E section 10-314(b)(5) ("10-314(b)(5)) by way of the Budget Reconciliation and Financing Act of 2019 ("BRFA"/HB 1407).

The agency now is legally responsible for potentially hundreds of additional claims amounting to millions of additional dollars for new BSC claims with no revenue source to offset those payments. The agency has established a reserve in the amount of \$6 million based on review of the information available to pay for these new claims.

That concludes the report.

Thank you.

Respectfully submitted,

Michael W. Burns
Director

MB/

Encls.

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