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In the Matter of  
Workers' Compensation Insurance Loss Cost  
Application of the New York  
Compensation Insurance Rating Board

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**OPINION AND DECISION**

On May 14, 2013, an application for an overall loss cost increase of 16.9% was submitted to the Department of Financial Services ("Department") by the New York Compensation Insurance Rating Board ("NYCIRB"). A public hearing concerning the loss cost filing was held on June 25, 2013. As discussed below, the Department disapproves the application as filed. But should NYCIRB refile its application in accordance with this Opinion and Decision, policyholders will experience an overall increase in workers' compensation costs of 2.8%.

NYCIRB'S FILING

NYCIRB, licensed pursuant to Insurance Law § 2313, serves as the private rate service organization for New York State workers' compensation insurers. Consequently, all workers' compensation insurers that write business in New York report statistical information to NYCIRB. NYCIRB compiles and evaluates the data and proposes loss cost changes, which require the Superintendent's prior approval before implementation.

In its May 14, 2013 filing, NYCIRB sought an overall loss cost increase of 16.9%. NYCIRB based its 16.9% request on: loss experience, as measured by two policy years of data, which contributed 16.1% to the proposed increase; an overall trend factor of 0.974; a change in the loss adjustment expense contributing -1.4% to the overall loss cost level; and legislative and regulatory changes, including a raise

in the maximum and minimum weekly benefit amounts and the closure of the Reopened Case Fund, which, in NYCIRB's estimation, increases the overall loss costs by 5.4%.

## PUBLIC HEARING

In accordance with the requirement under Insurance Law § 2305 that a hearing be held on any proposal for a loss cost increase greater than 7%, the Department held a public hearing concerning NYCIRB's loss cost filing on June 25, 2013, at its Beaver Street offices in New York City. At the hearing, the Department heard testimony from eight people: Ziv Kimmel of NYCIRB; Elizabeth Heck of Greater New York Mutual Insurance Company; Steve Bennett of the American Insurance Association; Laurie Barkhorn of The Hartford Insurance Company; Thomas Nowak of AIG Property and Casualty Group; Nancy Treitel-Moore of Liberty Mutual; Robert Grey of the New York Workers' Compensation Alliance; and Mark Humowiecki of the Workers' Compensation Board.

Mr. Kimmel testified about the actuarial analysis NYCIRB performed in support of the loss cost application. For example, he explained the use of a revised methodology in calculating carrier experience, which he estimated reduced the application by 2.7%; the decision to assume that two-thirds of losses are reserved at post-2007 reform levels to avoid a shock to the market;<sup>1</sup> the rationale for using a five-year period to calculate the trend factor; and the impact of benefit level changes and of the closing of the Reopened Case Fund.

The next five witnesses, representing private carriers that write workers' compensation business in New York and an insurance industry trade group, testified in support of NYCIRB's filing. Elizabeth

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<sup>1</sup> The 2007 workers' compensation reforms sought to reduce the costs of the system while increasing weekly benefits. Among a number of changes, the reforms imposed duration caps on non-scheduled permanent partial disability cases, required the implementation of medical treatment guidelines, and allowed employers and carriers to establish mandatory networks for pharmacy and diagnostic testing. In addition, the Workers' Compensation Board established fee schedules for pharmacy, diagnostic testing, and durable medical equipment.

Heck testified that rising claim and medical costs, combined with the extended period of low interest rates, require a loss cost increase. In particular, Ms. Heck identified the over-prescription of pain medication and increased delays in classifying permanent partial disability (“PPD”) claims as the drivers of higher workers’ compensation claim costs. Steve Bennett testified that the Department’s decision regarding the loss cost increase will inform how much capital private insurers commit to writing workers’ compensation insurance in New York. Laurie Barkhorn testified that approval of NYCIRB’s application is necessary to “address rising system costs in the state.” Thomas Nowak, who served as chair for NYCIRB’s Governing Committee this year, testified that NYCIRB’s filing is supported by standard actuarial analysis. Nancy Treitel-Moore testified that the requested increase in loss cost rates is necessary to address rising claim costs and maintain a competitive workers’ compensation marketplace. Moreover, Ms. Treitel-Moore testified that NYCIRB could have used less favorable assumptions and requested a more substantial loss cost rate increase.

Robert Grey and Mark Humowiecki testified in opposition to NYCIRB’s loss cost application. Mr. Grey questioned the validity of the data and assumptions underlying NYCIRB’s filing. Mr. Humowiecki testified that the 16.9% rate increase request is primarily attributable to a change in actuarial assumptions – relating to duration caps for permanent partial disability claims and the closure of both the Special Disability and Reopened Case Funds – rather than a change in financial data. Moreover, Mr. Humowiecki testified that recent reforms have significantly expedited the classification of PPD claims and will lower the assumed costs incorporated in NYCIRB’s requested loss cost increase.

## WRITTEN SUBMISSIONS

In addition to the public testimony presented at the hearing, the Department received three written submissions before and two submissions after the hearing.<sup>2</sup> Before the hearing, the Department received written submissions from Kristina Baldwin of the Property Casualty Insurers Association of America; Lev Ginsburg, Esq. of The Business Council of New York State; and David Dickson, public member of NYCIRB. All three submissions supported NYCIRB's request for a loss cost increase. Ms. Baldwin wrote that a loss cost increase is necessary to maintain a competitive market and avoid more business shifting to the State Insurance Fund. Mr. Ginsburg suggested that NYCIRB's requested increase is necessary to offset the increasing costs associated with increased benefit levels, higher medical and frictional costs. Mr. Dickson contended that New York workers' compensation rates are too high because insufficient action has been taken to improve workplace safety and to address workers' compensation insurance fraud.

Following the hearing, the Department received additional comments from Ziv Kimmel, in further support of his public testimony, and from Jeffrey Fenster of the Workers' Compensation Board. Mr. Kimmel responded directly to Mr. Humowiecki's criticism of the actuarial assumptions supporting NYCIRB's filing. In particular, Mr. Kimmel explained why NYCIRB concluded that its duration cap assumptions were reasonable. Mr. Fenster explained how changes in the assessment process are expected to reduce assessments and administrative expenses.

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<sup>2</sup> Robert Grey submitted written testimony that mirrored his hearing testimony and is not restated here.

## DISCUSSION

### A. Loss Experience by Policy Years

In this revision, NYCIRB has submitted case basis loss experience for Policy Years 2010 and 2011.<sup>3</sup> The submission shows a loss cost indication for Policy Year 2010 of +17.9% and a loss cost indication for Policy Year 2011 of +14.2%. Both indications rely on premium and loss development factors and on-level factors to project data to ultimate values and adjust data to the current loss cost level, respectively. Such factors must be evaluated each year to assure that they are reasonable projections of past development patterns, and appropriate to apply to the current data.

This task has been complicated by the gradual inclusion of reserves reflecting the 2007 workers' compensation reforms that were enacted to reduce the costs of the system while increasing weekly benefits. Among other changes, the reforms imposed duration caps on non-scheduled PPD cases, required the implementation of medical treatment guidelines, and allowed employers and carriers to establish mandatory networks for pharmacy and diagnostic testing. Moreover, the Workers' Compensation Board established fee schedules for pharmacy, diagnostic testing, and durable medical equipment. The January 2012 implementation of Loss-of-Earning-Capacity Guidelines and May 28, 2013 subject number announcing "Efforts to Promote Permanency Classifications" provided clarity and have helped carriers become more responsive to the post-reform environment.

The Department has reviewed and modified three of the assumptions underlying NYCIRB's policy year experience analysis to arrive at a reasonable calculation of loss experience for Policy Years 2010 and 2011. Specifically, the Department adjusted NYCIRB's assumptions relating to Special Disability Fund reserves, PPD loss reporting and the development rate for PPD losses. Each of those items is addressed in turn.

## 1. Special Disability Fund Reserves

The Special Disability Fund (“SDF”) reimburses insurers for all benefits paid to a claimant who is classified as having a PPD, and subsequently becomes permanently disabled as a result of a work-related injury or occupational disease.<sup>4</sup> As part of the 2007 workers’ compensation reforms, the SDF was closed to all claims arising from accidents occurring on or after July 1, 2007.

Regarding reserving for SDF eligible claims, NYCIRB assumes that “all losses are at pre-reform level after application of ultimate development factors.”<sup>5</sup> In other words, all reserves valued as of December 31, 2012 do not reflect the elimination of the SDF. For post-reform reserves on SDF eligible claims to be comparable at early reports to reserves established when the SDF was accepting claims, carriers would have had to reserve for the full value of the claim and then reduced the reserves once they received relief from the SDF. This practice should be evident in the indemnity case basis loss development factors, where the link ratios would decrease markedly around the fifth report as the SDF began accepting a majority of its claims. While this pattern is borne out in the development data of the State Insurance Fund, the residual market carrier, it is not apparent in the historical private carrier data. This evidence suggests that NYCIRB’s reserving assumption with respect to the closure of the SDF, while valid for the State Insurance Fund, is not entirely appropriate for private carriers. The result is an apparent overestimation of the impact of the closure of the SDF on private carrier experience. To temper this result, the reserve assumption is hereby revised to 75% of the filed adjustment to private

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<sup>3</sup> Case basis losses consist of paid losses plus reserves on specific claims and do not include bulk or Incurred But Not Reported (“INBR”) loss reserves.

<sup>4</sup> To qualify for the SDF, the permanent disability must result from the combined effects of the initial and subsequent injury or occupational disease. All benefits paid to qualifying claimants after the first 260 weeks of disability (or 104 weeks for accidents or disablements before August 1, 1994) are reimbursed by the SDF. Workers’ Comp. Law § 15-8(d). Further, if a second injury results in the employee’s death and either the injury or death would not have occurred except for the pre-existing permanent condition, the employer or carrier shall be reimbursed from the SDF for all death benefits payable in excess of 260 weeks (or 104 weeks for accidents or disablements before August 1, 1994). Workers’ Comp. Law § 15(8)(e).

<sup>5</sup> New York Workers Compensation, October 1, 2013 Loss Cost Revision, Explanatory Memorandum, p. 4.

carrier indemnity losses to more accurately account for the closure of the SDF. This change decreases the Policy Year 2010 and 2011 indications to +15.8% and +12.2%, respectively.

## 2. PPD Duration Cap Loss Assumptions

The Workers' Compensation Reform Act of 2007 imposed duration caps on non-scheduled PPD claims, limiting what were previously considered "lifetime" benefits to a specified period of time. Thus, losses reserved at pre-reform levels would be reserving for lifetime benefits, while those reserved at post-reform levels would account for the cap. In calculating the loss cost adjustment, pre-reform losses are adjusted downward to reflect the full impact of anticipated savings from the duration caps, while post-reform losses do not need to be adjusted, as they already reflect the caps.

In the loss cost application, NYCIRB assumes that 66.7% of the private carrier PPD losses reflect the elimination of lifetime benefits and the application of duration caps.<sup>6</sup> This results in a substantial increase in NYCIRB's loss assumptions as compared to the assumptions made in prior filings. The 2011 loss cost filing, for example, assumed that 25% of PPD losses were reserved at post-reform levels while the comparable assumption in last year's loss cost filing was 27.5%. NYCIRB justified the current assumption on the grounds that the implementation of the Loss-of-Earning-Capacity Guidelines in January 2012 and the increased temporal distance from the effective date of the reforms indicate that carrier reserving practices now reflect the post-reform environment.<sup>7</sup>

While NYCIRB stated that its survey of private market carriers supports the view that practically all carriers now set claim reserves based on post-reform benefits, NYCIRB assumed that 66.7% of reserves are set at post-reform levels to maintain marketplace stability and limit any shock resulting from

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<sup>6</sup> New York Workers Compensation, October 1, 2013 Loss Cost Revision, Explanatory Memorandum, p. 4.

<sup>7</sup> Ziv Kimmel, Hearing Transcript, page 8-9

the changed assumption.<sup>8</sup> As modified, however, the PPD duration cap loss assumptions still result in a drastic change to the indication that will have a significant impact on the market. An assumption of 55% of PPD losses reflecting the application of duration caps for the calculation of indemnity on-level factor would be more reasonable. The increase would still be twice the assumption used in the 2012 loss cost filing, but would be less disruptive to the market. In combination with the revision to the SDF assumption, this adjustment further reduces the Policy Year 2010 indication to +12.1% and the Policy Year 2011 indication to +8.6%.

### 3. PPD Loss Adjustment

For the PPD losses estimated to reflect the duration caps, the indemnity loss development pattern was accelerated to reflect a lower anticipated development for these claims. The adjustment to the indemnity loss development embedded in the indemnity on-level factors are based on assumptions regarding: (i) the portion of PPD indemnity losses that arise from non-scheduled claims; (ii) the portion of indemnity losses that are from PPD claims; and (iii) the percentage of non-scheduled PPD (“NSPPD”) claims that are impacted by duration caps at each reporting age. In reviewing the assumed distribution of NSPPD claims for item (iii), the Department notes that, on average, NYCIRB assumes that it would take nine years before the duration caps would affect a NSPPD claim. However, according to the Workers’ Compensation Board’s Subject No. 046-058, issued on May 28, 2013, the average time from accident date to the classification of a NSPPD claim is 6.4 years. In addition, NYCIRB does not begin to adjust the indemnity development pattern until sixth report, where only 5% of the NSPPD claims are assumed to be affected by the duration caps. While this assumption may be reasonable for adjusting paid development factors, case reserves should be decreased sooner.

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<sup>8</sup> “The obvious question that needs to be asked is, therefore, why are we not reflecting the fact with respect to duration caps, 100% are at post-reform levels? The answer is that while a 100% would constitute a better reflection of the reserve levels and

Moreover, the Workers' Compensation Board's recently announced initiative to expedite the classification of NSPPD claims will likely result in a significant reduction of the delay underlying NYCIRB's loss cost application. While the full extent of the impact of this reform is yet to be determined, the Workers' Compensation Board indicated that initiative has resulted in a substantial increase in classifications in the first month of operation.<sup>9</sup> As a result, NYCIRB's NSPPD loss assumptions are overly pessimistic. It is therefore appropriate to take the assumed distribution of NSPPD claims impacted by duration caps and shift it forward by three years. This change decreases the loss development adjustment embedded in the indemnity on-level factor from 0.925 to 0.872. By making this change, the total Policy Year 2010 indication is changed to +9.5% and the total Policy Year 2011 indication is changed to +6.2%.

B. Loss and Wage Trend Factor

Apart from the analysis of loss experience by policy years discussed above, the Department also evaluated loss and wage trend factors in assessing NYCIRB's filing. The trend factor is based on an analysis of exponential regression lines of claim costs and frequencies. Wage data are analyzed separately, and severity trends are shown separately for indemnity and medical claims. The indemnity and medical claim frequencies are identical, as only lost time claims are considered in the claim frequency analysis. The indemnity and medical indications are combined using a weighted average based on Policy Year 2011 ultimate on-level losses valued as of December 31, 2012.

Loss trend data comes from policy year financial data submitted to NYCIRB and valued as of December 31, 2012. Workers' compensation insurance is a long-tailed line (i.e., it takes many years after the occurrence of a claim for the last dollar to be paid). Based on historical patterns, losses from

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would be more responsive to current market conditions, it was the Rating Board's decision to select two-thirds, in order to contribute to stability in the market." Ziv Kimmel, Hearing Transcript, p. 9, lines 9-16.

<sup>9</sup> Mark Humowiecki, Hearing Transcript, pp. 75-76.

more recent years (2004-2011) are adjusted (or developed) to ultimate value (the total cost of those claims when all dollars have been paid) through the use of loss development factors. This is done separately for the private carriers (excluding large deductible experience) and the State Insurance Fund. These losses are also brought to current levels. The adjusted data are then combined for the trend analysis. The eight years of trend data in the current filing are from 2004-2011. There is no available data for 2012.

Trend lines are calculated using exponential regression based on four, five and eight years of data. Historically, the trend indication has generally been based on five year exponential trend lines. The selected claim frequency, indemnity severity, and medical severity trend lines were based on the five year exponential trends.

The wage factor is designed to account for rising payrolls, which exceed the corresponding increase in exposure to loss. The wage factor is based on published annual Department of Labor statistics for the historical experience period, as well as projections made in the New York State Assembly's 2013 Economic Report to trend from the historical to the prospective experience periods.

The selected trends in claim costs for both medical and indemnity losses are lower than those submitted in last year's filing: +2.0% annually for Indemnity Claim Cost trend (vs. +4.7% in the 2012 filing), and +4.9% for Medical Claim Cost trend (as opposed to +5.2% in last year's filing). The trends reflect improving conditions that may be attributable to the 2007 reforms.

While the Department prefers that private carrier and State Insurance Fund trends be computed separately, and then weighted by the most recent projected claim counts available (for severity), or the most recent on-level premium (for frequency), determining the trend factor in this manner would not change the overall loss trend/wage factor. Therefore, the Department accepts the frequency and severity

trends as filed by NYCIRB. However, because the changes to the experience indication also affected the split of ultimate indemnity/medical losses, the approvable trend factor changes from 0.984 to 0.987.

C. Loss Adjustment Expense

The Department also analyzed the loss adjustment expense information, which relates to costs associated with resolving claims. The loss adjustment expense (“LAE”) provision was based on developing an ultimate ratio of paid LAE to paid losses for Defense and Cost Containment Expense (“DCCE”), and a review of historical calendar year ratios of paid LAE to paid losses for Adjusting and Other Expense (“AOE”). Private carrier financial data, excluding large deductible experience on both policy year and accident year bases, were used to determine the DCCE provision, while the AOE provision was based on a review of Insurance Expense Exhibit data. The selected DCCE factor of 0.090, based on an average of the latest three years of policy year and accident year ratios of ultimate DCCE to ultimate paid losses, increases to 0.095 as a result of the decrease in projected on-level ultimate paid losses resulting from the reduction of the on-level factors described above in section A. An average of the latest five ratios of calendar year incurred AOE to losses produces the selected AOE provision of 0.073.

The change in the LAE factor from 1.180 to 1.168 results in a decrease of 1.0% to the loss cost level. The original filed decrease in the LAE factor was 1.4% of loss costs.

D. Legislative and Regulatory Changes

Recent legislative and regulatory changes, too, affect the analysis of NYCIRB’s submission. The 2013-2014 Business Relief Act<sup>10</sup> closes the Reopened Case Fund (“RCF”) as of January 1, 2014 to all new claims.<sup>11</sup> Claims formerly eligible to be assumed by the RCF will now be paid fully by the insurer.

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<sup>10</sup> Part GG of Chapter 57 of the Laws of 2013.

<sup>11</sup> The RCF was established in 1933 and provides payments directly to claimants and health providers when the claimant’s case is reopened when: (i) the case was previously disallowed or closed without compensation and is reopened after a lapse of

While this action will result in an increase in loss costs, the Workers' Compensation Board testified that employers will realize an annual assessment savings of \$300 million.<sup>12</sup> In estimating the impact of the closure of the RCF on loss costs, NYCIRB took an average of the latest ten years of RCF assessments excluding self-insurers. "Defense of Fund" payments and payments to volunteer firefighters and ambulance workers were also removed. NYCIRB estimated the loss cost impact at +4.5% by taking a ratio of this adjusted assessment average to five years of historical ultimate losses. Since a claim must be at least seven years old before becoming eligible to be taken over by the RCF, the cost of any claim from an in-force policy cannot be shifted to the Fund. Therefore, NYCIRB has proposed to apply this +4.5% loss cost change to both new and renewal policies and to outstanding policies.

Also as a result of the 2013 Business Relief Act, the minimum weekly benefits for injured workers increased from \$100 per week to \$150 per week effective May 1, 2013. NYCIRB estimates that this increase will result in a 0.4% increase in total workers' compensation loss costs. In accordance with the 2007 reforms, the maximum weekly benefits for injured workers increased from \$600 per week to two-thirds of the statewide average weekly wage on July 1, 2010, with additional annual increases effective July 1 of each subsequent year. As a result, the maximum weekly benefit increased from \$772.96 to \$792.07 effective July 1, 2012, and to \$803.21 effective July 1, 2013. NYCIRB estimates the loss cost impact of these actual and anticipated indemnity benefit changes from October 1, 2012 to average +0.5% over the prospective experience period. However, NYCIRB inadvertently used the prior \$100 minimum weekly benefit in its calculation of the impact of these maximum benefit changes,

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7 years from date of accident; or (ii) the case is reopened 7 years after the date of accident and at least 3 years after the last compensation payment; or (iii) death occurs after 7 years from the accident in non-compensated cases or after 7 years from the date of the accident and at least 3 years after the last compensation payment. Supplemental benefits are also paid out of the RCF to reimburse for payments to totally disabled individuals or the spouses of deceased individuals where the date of accident or death occurred on or before December 31, 1978; the RCF reimburses the supplemental portion of the payment. Finally, the RCF also reimburses payments to totally disabled volunteer firefighters and ambulance workers where the date of accident occurred on or before December 31, 1998.

<sup>12</sup> Mark Humowiecki, Hearing Transcript, p. 80.

instead of the recently enacted \$150 minimum weekly benefit. Making this correction reduces the loss cost impact of the contemplated indemnity benefit changes to +0.4%.

The approvable combined effect of these legislative changes is a loss cost increase of 5.3% on new and renewal policies. NYCIRB also proposed a pro-rated +4.5% loss cost increase to outstanding policies effective October 1, 2012 to September 30, 2013 due to the elimination of the RCF. However, those policyholders who have a renewal date earlier in the period would see the 4.5% increase pro-rated over a fewer number of days than those policyholders who have a renewal date later in the filing period. As the Workers' Compensation Board noted, "those policies that renew in October or shortly thereafter will have avoided the additional increase and will pay a much smaller assessment on the 2013 to 2014 policy."<sup>13</sup> This would have differing impacts on policyholders with in-force policies in the current period. Moreover, it is not practical or feasible to quantify the effect the fund closure will have, if any, on the experience of policies that are currently in effect. To the extent that such experience is adversely affected by the RCF closure, the adverse experience will be reviewed as part of future rate filings. Accordingly, this aspect of the request is disapproved at this time.

#### E. Catastrophes

Costs related to catastrophic risk also factor into NYCIRB's submission. In December 2007, the Terrorism Risk Insurance Program Reauthorization Act extended the federal backstop for terrorism exposure through December 31, 2014. In response to the increased carrier retentions required by the Act (20% of earned premium compared to 15% of earned premium through December 31, 2005), the loss cost provision for terrorism was increased to \$0.038 per \$100 of payroll as part of the October 1, 2008 loss cost filing. The current loss cost provision for natural disasters and catastrophic industrial accidents is \$0.008 per \$100 of payroll. For these hazards, payroll is a better reflection of risk than

premium, as the exposure to these hazards appears to be independent of the inherent risk of a given employment.

The NYCIRB did not file for any changes in these factors in the 2013 filing, and, the Department finds that no adjustments are warranted.

F. Comparative Analysis

The following table (“Summary Table”) compares the NYCIRB’s filed request with the Department’s findings:

	NYCIRB	DEPARTMENT
1. Change from present loss costs indicated by experience of Policy Year 2011	1.142	1.062
2. Change indicated by Policy Year 2010	1.179	1.095
2a. Average of (1) and (2)	1.161	1.079
3. New York Trend/Wage Factor	0.974	0.977
4. Change in Loss Adjustment Expense	0.986	0.990
5. Change Due To Legislation and Regulation	1.054	1.053
6. Manual Loss Cost Level Change $\{(2a)*(3)*(4)*(5)\}$	1.175	1.099
7. Change in Catastrophe Provision	1.000	1.000
8. Catastrophe Loss Cost as Percent of Total Loss Costs	0.036	0.036
9. Total Loss Cost Level Change $\{(6)*[(1.0-(8))+ (7)*(8)]\}$	1.169	1.095

In sum, the Department’s analysis of 2010 and 2011 Policy Year experience reduces the indicated loss cost increase from 16.1% to 7.9%<sup>14</sup>. Together with the adjustments for trend and wage

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<sup>13</sup> Mark Humowiecki, Hearing Transcript, p. 81.

<sup>14</sup> See line 2a, Summary Table.

factor, loss adjustment expenses, and legislative and regulatory changes, this produces a manual loss cost level change of 9.9%<sup>15</sup> The catastrophe provision remains the same and represents an estimated 3.6% of total loss costs.<sup>16</sup> Thus the total loss costs increase indicated by the Department's analysis is +9.5%.<sup>17</sup>

## ASSESSMENT DISCUSSION

A policyholder pays not only the premium on a workers compensation policy, of which the loss cost is an integral part, but also pays a separate New York Assessment charge with the premium. The New York State Assessment is levied by the Workers' Compensation Board. It is the mechanism that funds the costs of the Workers' Compensation Board, the Reopened Case Fund, the Special Disability Fund, the Special Funds Conservation Committee and interdepartmental expenses.

The 2013 Business Relief Act simplified the billing and collection of assessments. By November 1, 2013 and every year thereafter, the Workers' Compensation Board will publish an assessment rate as a percentage of premium to be used by all payers beginning January 1 of the upcoming calendar year. All statutory assessments will be combined into this single assessment except for the so-called self-insurers' assessment.

In addition, effective January 1, the assessment will no longer be subject to premium tax or include a paid premium tax loading. The current assessment percentage charge is 18.8% of standard premium and includes a 0.4% premium tax loading that will no longer be necessary. Removing the premium tax load would produce an estimated 0.3% reduction in policyholder costs.<sup>18</sup>

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<sup>15</sup> See line 6, Summary Table.

<sup>16</sup> See lines 7 and 8, Summary Table.

<sup>17</sup> See line 9, Summary Table.

<sup>18</sup> The adjusted assessment charge over the current assessment charge of 18.8%, which is calculated as  $[1.184/1.188] - 1.0 = -0.3\%$

Increases in the overall statewide premium base resulting from a loss cost increase could reduce the assessment rate further, equating to an approximate 1% assessment reduction for every 5% increase in loss costs.<sup>19</sup> Based upon a 9.5% loss cost increase, the reduction in the New York State Assessment charge is estimated to be 1.9%, which would result in an estimated net impact of 1.6% reduction in policyholder costs.<sup>20</sup>

Finally, the closure of the Reopened Case Fund would result in a reduction in the overall assessments for 2014 of roughly \$300 million, or approximately 5% of what the assessment would have been had it not been for the legislative action to close the Fund.<sup>21</sup> This would result in an estimated net impact of 4.2% decrease in policyholder costs.<sup>22</sup> The combined effect of these changes would decrease policyholder costs, as applied to the current premium base, by approximately 6.1%<sup>23</sup>. However, when this decrease is applied to the 9.5% loss cost increase indicated by the Department's analysis, the effect of these changes would decrease policyholder costs by an estimated 6.7%.<sup>24</sup>

## CONCLUSION

Based on the review of the filing, the related written submissions and the testimony provided at the public hearing held on June 25, 2013, the Superintendent disapproves NYCIRB's request for an increase of 16.9%. The Department's analysis indicates that an increase of no more than 9.5% would be reasonable. A 9.5% increase would alleviate the impact of the cost increases identified in NYCIRB's filing, and the supporting submissions and testimony, while, when combined with the anticipated 2014

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<sup>19</sup> Letter to Superintendent Lawsky from Executive Director Jeffrey Fenster, dated July 1, 2013.

<sup>20</sup> The adjusted assessment charge over the current assessment charge, which is calculated as  $[1.169/1.188] - 1.0 = -1.6\%$

<sup>21</sup> Letter to Superintendent Lawsky from Executive Director Jeffrey Fenster, dated July 1, 2013.

<sup>22</sup> The adjusted assessment charge over the current assessment charge, which is calculated as  $[1.138/1.188] - 1.0 = -4.2\%$

<sup>23</sup>  $-0.3\% - 1.6\% - 4.2\% = -6.1\%$

<sup>24</sup> The  $-6.1\%$  is applied to the adjusted premium base, which is calculated as  $1.095 * -6.1\% = -6.7\%$ .

New York State assessment reductions (resulting in a further 6.7% decrease in policyholder costs), limit the overall projected cost increase passed on to policyholders to approximately 2.8%.



DATED: July 11, 2013  
New York, New York

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Benjamin M. Lawskey  
Superintendent of Financial Services