



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

STEVE ARWOOD
DIRECTOR

June 4, 2014

Dear Michigan Senate RRR Committee Members:

The Senate RRR Committee is scheduled to take up HBs 5478-5490 at its June 4, 2014 meeting. These bills are collectively known as the "Delphi Package" and are the product of nearly three years of efforts by the Workers' Compensation Agency (WCA), industry, and labor representatives to resolve a difficult legacy issue.

As part of their bankruptcy, Delphi Automotive stopped paying workers' compensation benefits to its injured employees in October of 2009. In doing so, they left 352 workers without the benefits provided by Michigan's workers' compensation laws.

The bills before your committee provide authority for the WCA's Funds Administration to accept the Delphi claimants into our Self-Insurers Security Fund (SISF), process their claims, and get them the benefits they are entitled to under Michigan law. The bills also improve transparency in the operation of the SISF and provide a limited-term mechanism to fund the increased costs associated with the Delphi claimants.

I am providing some background information to assist with any questions you may have regarding the Delphi problem. The first document is a timeline of the key events surrounding the Delphi bankruptcy and the state's handling of it. The second is a set of Q&A's addressing some of the key questions we hear from legislators regarding the package.

I welcome any questions you may have as this package moves through the legislative system and I can be reached directly at (517) 335-3178. Thank you for your careful consideration of this important package of bills.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Kevin Elsenheimer".

Kevin Elsenheimer

Director, Michigan Workers' Compensation Agency (WCA)

Deputy Director, Michigan Department of Licensing and Regulatory Affairs (LARA)

Enclosures

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Timeline of Events – Delphi Corporation

- **1999:** The Michigan Workers' Compensation Agency (WCA) approves self-insurance status for Delphi Corporation (Delphi). The company is not required to post security.
 - Security: The Michigan Worker's Disability Compensation Act (Act) requires that all but very small employers have either an insurance policy providing workers compensation coverage, or be approved by the Director of the WCA (Director) as self-insurers.
 - The Director *may* require a self-insurer to post security in the form of a letter of credit, bond, or other means. MCL 418.611(1)(a).
 - Prior to 2011, over 60 private self-insurers posted no security to the WCA. Today, every private corporate self-insurer is required to post security satisfactory to the Director.
- **2005:** Delphi Corporation files to reorganize under Chapter 13 of the US bankruptcy code.
- **2005-2009:** Delphi continues to pursue reorganization, and pays its workers compensation claims in a timely way.
- **2006:** Neither the WCA nor the Funds Administration file a timely notice of claim in the Delphi bankruptcy case.
- **June, 2009:** Delphi announces it will terminate payment of its workers compensation obligations. Delphi stops making payments in October of that year.
 - As of today, there are 352 open workers compensation claims against Delphi. There have been no payments on approximately 300 of these claims since 2009. A recent distribution list of these claimants by house district is attached.
- **July, 2009:** The WCA discovers that in addition to being self-insured, Delphi has been purchasing workers compensation insurance policies from ACE Insurance. Ultimately, the WCA finds policies covering 8 of the prior 10 years. The WCA notifies ACE of its obligation to pick up Delphi's workers compensation obligations. A copy of the declarations page of one of the policies is attached. The Workers Compensation Funds Trustees accept the claims from the two years which were not covered by insurance (1999-2000, and 2002-03) into the Self Insurers Security Fund (SISF). No other claims have been accepted into the SISF.
 - The SISF (or Fund) is a statutory fund maintained by a board of trustees which steps into the shoes of bankrupt self-insurers when those insurers go bankrupt and continues to pay the company's workers' compensation expenses.
 - The SISF is funded through an assessment against private self-insurers.
 - The assessment is a maximum of 3% of the previous year's indemnities. Since inception of the SISF, the average assessment is approximately 1.3%.

- **October, 2009:** ACE Insurance files suit against the WCA, the Funds Administration, and Delphi asking for a declaration that it owes no duty of coverage for Delphi's workers compensation obligations. The suit is filed in the US Bankruptcy Court in New York.
 - Litigation against ACE continues to this day in both the US Court of Appeals and the Michigan Court of Appeals. The cases are being handled by the Michigan Office of the Attorney General. Thus far the courts have been unwilling to require ACE to provide coverage for the Delphi workers.
- **Feb., 2010:** Governor Granholm is formally advised of the Delphi problem through a detailed letter from the Funds Administration. A similar letter is sent to Governor Snyder in June of 2011.
- **Feb., 2011:** New leadership at WCA and LARA starts exploring options to resolve the Delphi matter, including bonding out the obligation along with the 2011 UI bonds, purchasing a debt/loss portfolio policy, and eventually, a legislative solution involving increasing the SISF assessment. The WCA conducts meetings with interest groups.
- **Summer, 2013:** Work begins on bill package.

House District # No. of Delphi Claims

95	60
94	42
48	39
34	37
57	28
49	27
96	20
50	17
84	16
85	9
51	8
98	7
82	5
97	5
103	4
75	3
105	3
106	3
24	1
29	1
52	1
54	1
59	1
60	1
63	1
65	1
68	1
81	1
86	1
88	1
92	1
107	1

Out-State (OS) 18



ISSUING COMPANY
ACE AMERICAN INSURANCE COMPANY
 NCCI CARRIER CODE
 12165

Workers' Compensation and Employers Liability Insurance Policy Information Page

POLICY NUMBER	
Symbol: WLR	Number: C4 39 88 94 3
PREVIOUS POLICY NO.	
Symbol: WLR	Number: C43535067

New Renewal Rewrite
 Individual Partnership
 Corporation

Item 1. **Named Insured**
 DELPHI CORPORATION
 5725 DELPHI DRIVE
 TROY MI 48098

Inter/Intrastate ID No.: 911161346
 Federal Employer ID No.: 480982815

Mailing Address

Employer's ID No.:

PIIC CODE: 37149

Other workplaces not shown above (See Extension of Named Insured WC999999C):

Item 2. **Policy period:** From 10-01-2004 To 10-01-2005 12:01 A.M., standard time at the named insured's mailing address.

Item 3A. **Workers' Compensation Insurance:** Part One of the policy applies to the Workers' Compensation Law of the states listed here: AL,AZ,CA,CT,DC,DE,FL,IL,KY,LA,MA,MI,MO,NC,NY,OK,PA,SC,TN,UT

Item 3B. **Employers Liability Insurance:** Part Two of the policy applies to work in each state listed in Item 3A.

The limits of our liability under Part Two are:

Bodily Injury by Accident	\$ 1,000,000	each accident
Bodily Injury by Disease	\$ 1,000,000	policy limit
Bodily Injury by Disease	\$ 1,000,000	each employee

Item 3C. **Other States Insurance:** Part Three of the policy applies to the states, if any, listed here:

ALL STATES EXCEPT
 MD,ND,OH,OR,TX,VA,WA,WV,WY,
 AND STATES DESIGNATED IN ITEM 3.A

Item 4. The premium for this policy will be determined by our Manual of Rules, Classifications, Rates and Rating Plans. All information required below is subject to verification and change by audit.
 SEE EXTENSION OF INFORMATION PAGE

If indicated here, interim adjustments of premium will be made:

Semi-Annually Quarterly Monthly

Minimum Premium collected in CA	\$ 1000.
Total Estimated Premium	\$ 108170.
Deposit Premium	\$

This policy includes these endorsements and schedules:
 SEE SCHEDULE OF FORMS AND ENDORSEMENTS WC999999D

PRODUCER NAME AND MAILING ADDRESS

AON RISK SERVICES INC
 OF MICHIGAN
 3000 TOWN CENTER
 SUITE 3000
 DETROIT MI 48242

PRODUCER CODE: 321139 38-0479530 CGU

MARKETING OFFICE: CHICAGO BRANCH
 ISSUE DATE: 10/07/2004

(Authorized Representative)

Q & A regarding Delphi Problem

Can you briefly summarize the issue?

Delphi Corporation terminated payment of workers' compensation benefits to its injured employees in Michigan in 2009 as part of its bankruptcy. Since Delphi was self-insured, the Self Insurers Security Fund (SISF) would normally step in to take over the payments. However, the fund is statutorily prohibited from taking over payments when there is some other entity that has payment responsibility, and in this case Delphi Corporation secured workers' compensation insurance policies from ACE insurance covering eight of the last ten years. Importantly, even if the SISF were to accept all of the Delphi claimants, there isn't enough money in the fund to pay the Delphi claims.

So ACE is paying on the policies, then?

No. ACE filed suit against the Workers' Compensation Agency (WCA) and others in 2009 saying their policy was intended to cover only a small part of Delphi Corporation in Michigan. Thus far, ACE has prevailed on this theory. The cases are now on appeal to the US Court of Appeals and the Michigan Court of Appeals.

So who is paying the benefits?

There are approximately 352 Delphi claimants; 305 have not received any workers' compensation benefits since 2009. The SISF has accepted liability on the remaining cases.

Are all of those claimants entitled to benefits?

We will not know that until we actually go through the files. Filing a claim does not mean that you are necessarily entitled to benefits – the claims will need to be evaluated like any other workers' compensation case. We do know that at the time Delphi stopped paying benefits, there were over 100 claimants who were receiving some kind of payment from Delphi. If the Delphi cases are accepted into the funds system, those people may be entitled to some accrued benefits.

So how much are we talking about here?

We have placed a reserve – or estimate – of the total cost of the Delphi problem at \$46.5 million. The actual cost could be higher or lower, but based on the information that we have today, and our experience in dealing with claims from other bankruptcies, we feel this amount will resolve the claims. If you talk to advocates for the injured employees (their lawyers) they will tell you the number should be at least \$60 million. Industry representatives have estimated in the \$20-30 million range. We have confidence in our number.

Isn't Delphi still around? Why aren't they paying for this?

The new Delphi, LLC, is an entirely separate company from Delphi Corporation. They have no legal obligation to make these payments.

What about General Motors? Wasn't Delphi part of GM?

Delphi Corporation legally split off from GM in 1999. GM has no legal obligation to make payments on the Delphi claims. However, to their credit, GM has been actively involved in cases from particular plants and where the injury occurred prior to 1999.

Self-insurers are supposed to provide security – why didn't Delphi have security that could be called when they went bankrupt?

As a condition of approving self-insurance, the WCA Director may require security from the company. Prior to 2011, there were over 60 private companies that were allowed to self-insure without security. This policy goes back to the early 1900s, and involved many companies that were perceived as being "too big to fail." **Today, every private company that is allowed to self-insure provides security to the WCA.**

Wasn't there some money left over in the Delphi bankruptcy? Why don't we use that money to pay these claims?

The state did not file a timely claim in the bankruptcy proceedings in 2006. The state did recover over \$4 million for Delphi claims arising *after* the bankruptcy date, but recovered nothing for the claims which were in place prior to the bankruptcy.

Why didn't the state file a claim?

It's not entirely clear. The people that were involved in making that decision from the administration's perspective are no longer with the state. As Director, I have investigated this carefully, and there is nobody in my chain of command that I can take action against regarding the decision not to file the claim. Based on our review of the Delphi bankruptcy, we believe that the state would have recovered in the area of \$15 million had it filed a timely claim.

You said the SISF doesn't have the funding to cover the Delphi claims?

Correct. The SISF fund currently has approximately \$16 million that it could use to pay Delphi claims. Adding the \$4.15 million from the Delphi post-bankruptcy claims, and some administrative maneuvering, the fund believes that it can currently contribute \$21.35 million to solve the Delphi problem.

But you said the cost was over \$46 million - where does the additional money come from?

The bills being discussed would allow the assessment made against all self-insurers to increase from 3% to 4% for a period of no more than 4 years. We believe this would generate \$8.6 million. The appropriations committees are investigating a general fund contribution of \$15 million. Any remaining costs would be paid through the normal assessment process used by the funds.

Should the business community even be concerned about this issue?

Yes. The integrity of the self-insurance program and the workers' compensation system is at stake. There are over 430 individual self-insurance programs encompassing nearly 1,200 employers, and 31 Group SI Funds with nearly 7,800 employer members with over 1.1 million Michigan workers covered by both self-insurance programs. The system was designed to make sure that the SISF acted as a safety net, but the net hasn't caught all of the Delphi claimants. If the system as it's currently designed doesn't catch all claimants of self-insurers that go bankrupt, then additional safeguards have to be considered. Those safeguards might include, for example, increasing the security requirements on self-insurers, which would make workers' compensation more expensive.

Why do we have to deal with this now?

Remember those 100+ claimants that were receiving benefits from Delphi from above? Their claims continue to accrue and are increasing at the rate of approximately \$3.2 million per year. The longer we wait, the more expensive the solution will be. The solution that has been proposed is the product of years of negotiation with the affected parties.

Can't we just wait for the lawsuit against ACE to resolve?

The Attorney General believes that the cases being heard in the US and State Court of Appeals are important enough that regardless of how they are decided, further appeal is likely. The matter might not be resolved for several years. In the meantime, over 300 claimants will not have had their day in court, and in some cases will not have had benefits since 2009.