

Testimony Regarding Workers' Compensation Cancer Presumption for Firefighters

April 12, 2024



Testimony of Joe Damiata, Director, Risk Management Services
Vermont League of Cities and Towns

Testimony on H.55 An act relating to miscellaneous unemployment insurance.
Vermont Senate Committee on Economic Development, Housing & General Affairs
April 12, 2024

Our testimony is only focused on the sections of the bill related to the “Survey of Firefighters; Report” and “Firefighters Workers Compensation Claims for Cancer; Annual Report”

Good morning and thank you for having me in to testify today. For the record, my name is Joe Damiata and I’m the Director of Risk Management Services at VLCT. In my role, I oversee VLCT’s two insurance pools. Our Executive Director, Ted Brady, is also joining me today. We

are here to provide some thoughts on the sections of H.55 related to reports on workers' compensation cancer presumption for firefighters. Let me first start by providing you with a background of VLCT's Property and Casualty Intermunicipal Fund or "PACIF".

- VLCT PACIF is a nonprofit, member owned, Intermunicipal Insurance Agreement (risk pool) regulated by the Department of Financial Regulation under Regulation I-90. We function similar to insurance, but we are not an insurance company.
- We are wholly owned by Vermont municipalities, governed by municipal officials, and are 100% funded by municipal budgets. There are no profit motives and any money that is not needed to responsibly operate the Fund is returned to members.
- We were formed by the VLCT membership in 1986 when municipalities faced an insurance crisis due to commercial insurers pulling out of the public entity insurance market. PACIF has offered workers' compensation coverage since 1990.
- VLCT PACIF provides property, liability, and workers' compensation coverage to 354 Vermont municipal entities which equates to nearly 95% of the municipal entities that are eligible for our program. We do not currently cover the Cities of Burlington and South Burlington.
- All PACIF claims are handled in-house by VLCT employees that are Vermont state licensed adjusters.
- A member of this Committee asked if VLCT provides any proactive risk mitigation programs and services in a meeting last week. We put great emphasis on risk management, including many innovative programs that I will get to shortly. We have six employees in our Risk Management department that work with fire departments throughout the year - a former Police Chief (Trevor Whipple), an HR Professional, an employment law attorney, and three loss control consultants (one of whom is a volunteer firefighter).
- PACIF currently covers nine career fire departments with approximately \$14.2 million in payroll. We also place 130 volunteer departments with \$7.8 million of fire related payroll in the state's workers' compensation assigned risk program due to the high injury risk that is inherent in the profession compared to the relatively low amount of contribution that would be collected from volunteers with low or no payroll.
- The nine career departments that PACIF provides coverage for generate \$1.44 million in workers' compensation contribution (premium) or about 11.5% of the total annual workers' compensation contribution collected by PACIF, while only comprising about 5%

of the payroll. This is because the rate per \$100 of payroll for the firefighter class is high – in fact it is the second highest of all of our class codes, only eclipsed by the rate for EMS personnel. The high rate and cost of coverage is driven by PACIF's claim experience in the firefighter class. The high cost of firefighter injuries is probably not a surprise to anyone, considering the wide range of duties that firefighters perform. The 130 volunteer departments that are placed in the assigned risk program generate a little more than \$609,000 in premium for Technology Insurance, the single assigned risk carrier for the program.

- We have received eleven cancer presumption claims since 2008. Not all have been covered because they have not met the presumption elements (type of cancer, smoking, age, length of service etc.). Ten of the eleven claims we have received were reported from 2016 on. When cancer presumption claims meet the statutory requirements for compensability, they can cost municipalities a lot of money.
- Two of the three largest workers' compensation claims we have on the books during this time frame are a pancreatic cancer claim and a Multiple Myeloma claim with a combined total (incurred) value of just over \$4.6 million. The total amount incurred for the compensable cancer claims is currently over \$5.2 million with the potential for a third large claim to emerge and increase that amount. The total incurred for the multiple myeloma claim is about six times higher than it was at this time last year when we testified on this issue. This is the nature of how a cancer claim evolves.

As promised, I will now share what VLCT PACIF provides for risk management programming, all of which are provided at no cost to the members:

- VLCT PACIF provides access to an Employee Assistance Program through InvestEAP.
- In support of career firefighters and other first responders, PACIF provides separate funding for EAPFirst (a mental wellness program) and works closely with InvestEAP who has leveraged additional funding from the Department of Justice to implement a regional mental health peer support network that serves ALL first responders. This program continues to gain traction.
- PACIF has a grant program that provides member municipalities with up to \$5,000 to purchase risk management related equipment. Numerous municipal fire departments have taken advantage of this funding to obtain safety related equipment for their firefighters. Since 2010, PACIF has provided \$600,000 in grants to fire and rescue

departments which helped purchase turnout gear and other PPE, SCBA's, traffic control equipment and other important safety equipment.

- PACIF also offers a scholarship program that provides free funding to municipalities for risk management and safety training. From 2019 until the end of 2023, PACIF provided \$30,000 in scholarships that benefited firefighters. Some examples of the training include Aerial Apparatus training, Mental Wellness training, medical certification training (for a department that added internal EMS services), Respect in Workplace, and Game of Logging (chainsaw and storm cleanup safety). PACIF has also provided financial support to the Vermont Fire Academy to help with the cost of bringing in highly regarded speakers from out of state, in support of mental wellness and other safety curriculum.
- PACIF loss control consultants regularly provide safety support, consultation, and training to municipal fire departments on a range of matters including, but not limited to respiratory protection, medical evaluations, breathing air safety, driver qualifications, hiring and personnel issues, Jr. firefighter programs, traffic control at incident management areas, and safe emergency vehicle operations.

The last part of my testimony will focus on our comments on the sections within H.55 related to firefighter cancer presumption and some other questions and concerns in response to what has already been discussed by this Committee.

- We are okay with the study language that has been added to H.55 and should be able to provide most of the information required for the fire departments we cover. We appreciate this Committee taking a thoughtful approach and trying to figure out what the issue is before coming up with a solution.
- We have listened to your discussions about cancer screenings for firefighters and we wanted to provide our thoughts. We obviously support better screenings as they may save lives and keep the cost of treatment down. If screenings are added to the bill, we think "cancer screening" should be defined. Right now, the term is ambiguous, and we are finding that our claims adjusters are not receiving complete records from certain medical providers and claimants to allow the adjudication process to go smoothly. This requires our adjusters to do much more investigation which leads to delays in determining compensability, which could in some cases delay the provision of benefits. It would be ideal if specific screening protocols were listed in statute that requires certain things to be captured as part of the screening (i.e. prior cancer diagnosis, family cancer

history, etc.). With cancer presumptions having been in place in many states for several years, there has to be a comprehensive screening method and data developed by a reputable medical organization that can be used in Vermont. NFPA 1582 has some well-developed cancer screening and examination details – so perhaps that could serve as the basis for determining “appropriate screening”?

- Now let’s talk about funding the screenings. I understand the Department of Public Safety has estimated that it would cost approximately \$4.5 million to screen every firefighter in Vermont. It has also been suggested that workers compensation carriers’ foot the bill for the screenings, with the legislature appropriating a portion of the expense to start a fund that could potentially be administered by VLCT. We do not think this is the right approach for the following reasons:
 - Our member fire departments (not including Burlington and South Burlington) currently pay around \$2.05M annually for workers’ compensation coverage. This includes members for which PACIF provides workers’ compensation policies, as well as those that we place into assigned risk. The total cost of screenings is more than two times what all of our members pay for workers’ compensation coverage for their firefighters. If carriers were required to pay for screenings, this cost would be passed on through the rates. Obviously, this would have a huge adverse impact on municipal budgets.
 - VLCT PACIF only covers nine career departments directly and places the rest (around 130) in the state assigned risk program. The State Assigned Risk Program would be responsible to foot the screening bill for the fire departments they cover.
 - A decision to require carriers to pay for screenings could result in PACIF re-evaluating the feasibility and desirability of providing workers’ compensation coverage for fire departments – with the alternative being that we consider moving the fire department exposures we currently retain, to assigned risk.
 - Keep in mind VLCT PACIF is member owned and all of our assets belong to our members. We don’t testify on these issues because it impacts our profits. We are here to provide perspective for our members. Any amount we are required to pay for screenings will just be collected back from our members to offset the expense. VLCT does not have the bandwidth to administer a fund and keep track of screenings. Perhaps that is better suited for the Division of Fire Safety or the Academy if this bill were to move forward.

- Adding medical screening costs to municipalities' financial burden would more than double municipalities' already high workers' compensations costs and could lead to tough decisions including having to cut fire department budgets. Let's use the Pawlet Fire Department as an example. Their annual fire department workers compensation bill is \$1,218 and they have roughly 20 rostered volunteers. The Department of Public Safety's report to the legislature states that cancer screenings cost about \$1,000. If we multiply \$1,000 by 20, Pawlet is now looking at an insurance bill of \$21,218 if the screenings need to be completed annually. For Shelburne's Fire Department, their invoice would go from \$5,982 annually to \$45,982. I just wanted to provide a couple of examples of the cost impact.
- VLCT encourages the Legislature to recognize that asking municipalities to pay for more and more services calls for giving municipalities the authority diversify and increase revenues. Municipalities largely have to fund their entire operation on one tax – the property tax. No one here needs to be reminded of the pitfalls of doing so. As such, VLCT encourages the Legislature to consider joining every bordering state surrounding us in creating some sort of municipal revenue sharing program, expanding the authority to implement a local option tax to all Vermont municipalities, and consolidating and allocating state grant programs through non-competitive, equitable, needs-based grant programs. This would help enable cities and towns to take on responsibilities, including cancer screenings. But we also think a statewide approach to keeping our first responders healthy should not be carried solely by municipalities. The state should dedicate revenue to any screening program – and enable municipalities a new funding source to do the same.
- We did want to make note that on February 5, 2024, Federal OSHA published a notice of proposed rulemaking for 1910.156, Fire Brigades. Among other requirements, this proposed regulation would require employers to provide medical examinations that comply with NFPA 1582 for certain personnel who have 15 or more exposures to "combustion products". This would most certainly include firefighters. While this is a federal proposed regulation, if it was adopted at the Federal level, Vermont would likely need to follow suit and as such, the regulation would apply to both public and private sector employers. With this looming as a potential regulation, perhaps it would be useful to obtain input and testimony from VDOL personnel involved in the VOSHA program, such as Dan Whipple, Program Manager. We bring this to your attention because it may

make sense to wait until the VOSHA standard goes into effect.

- Another real issue our members are facing is the cost of providing proper safety equipment. Clearly proper safety gear will also protect firefighters and lower the chance they are exposed to the chemicals that are leading to cancer incidents. We obviously do not want to see any first responders using expired or damaged safety equipment. That said, the equipment is very expensive and small departments struggle to keep up with replacement schedules, with some using gear that is beyond its life expectancy. Our understanding is that the cost to outfit a firefighter with turnout gear, helmet, gloves, boots, SCBA and mask can run upwards of \$9,000 or more. That doesn't include all the other firefighting equipment that is far more expensive. That cost to protect firefighters clearly adds up when departments have 20-30 volunteers and need to replace such protective equipment on 10-year cycles. I'm not sure what the solution is here, but I wanted to bring this issue to your attention.
- Lastly, although not related to this bill, we wanted to bring another issue to your attention that we shared last session. We have run into problems when a firefighter has a claim and works or volunteers with multiple departments. This is not uncommon. If a specific exposure is not known or identified, how should it be determined which department is responsible for the cancer that has developed? Should it be split between the multiple statutory employers? Is it based on number of hours or shifts worked to splice out the percentage? Is it based on the last injurious exposure (i.e. last call that the firefighter went out on prior to the diagnosis)? Is it split 50%-50%? VLCT PACIF has had to deal with this issue and found it problematic because of the lack of clarity in the statute. The 'cleanest' (and easiest) method would be equal apportionment. The 'fairest' method would be apportioning claims based on the hours or shifts, which can be gleaned by comparing the average weekly wages. Either method has the potential to include different carriers - and there needs to be a way for carriers to be on the same page to work together for expedited compensability determination/informal hearing.

Thank you for allowing us to testify on this important issue. Can I answer any questions you may have?

Attachments

[Testimony to Senate Economic Development 2024.04.12](#)