

Testimony of Joe Damiata
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Testimony on S.73

**An act relating to expanding workers' compensation coverage
for firefighters with cancer**

Vermont Senate Committee on Economic Development, Housing and General Affairs
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- I. **Introduction.** Background on the organization and our cancer presumption claim experience:
- The Vermont League of Cities and Towns Property and Casualty Intermunicipal Fund (“VLCT PACIF” or “PACIF”) is a nonprofit, member owned, Intermunicipal Insurance Agreement (risk pool) regulated by the Department of Financial Regulation under Regulation I-90. We act like insurance, but we are not an insurance company.
 - We are owned by Vermont municipalities, governed by municipal officials, and are 100% funded by municipal budgets.
 - 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 353 Vermont municipal entities and provides that coverage to nearly 95% of the municipalities that are eligible for our program.
 - All PACIF claims are handled in-house by VLCT employees that are Vermont state licensed adjusters.
 - We put great emphasis on risk management, including many innovative programs (see Section II). We have six employees in our loss control department made up of a former Police Chief (Trevor Whipple), an HR Professional, three loss control consultants (one of whom is a volunteer firefighter), and an administrative assistant.
 - PACIF currently covers nine career fire departments and places 130 volunteer departments in the state workers’ compensation assigned risk program due to the high injury risk that is inherent in the profession and 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 \$1.95 million in workers' compensation contribution (premium) or about 14% 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 highest of all of our class codes. 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 fire fighters perform.
- We have received eight cancer presumption claims since 2016. Not all have been covered because they have not met the current presumption elements (type of cancer, smoking, age, length of service etc.). When cancer presumption claims meet the statutory requirements for compensability, they can cost municipalities a lot of money (see next bullet).
- Our 2nd largest claim on the books during this time frame is a pancreatic cancer claim with a total (incurred) value of just over \$1.7 million. The total incurred for the compensable cancer claims is \$2.1 million. Currently, we have another cancer claim in its infancy and it has the potential to grow substantially as time progresses. This is the nature of a cancer claim.

II. Programming. VLCT PACIF is very supportive of firefighters, as evidenced by the following risk management and loss control programs:

- VLCT PACIF provides free access to an Employee Assistance Program, called EAPFirst, which provides mental wellness and related services to all first responders and firefighters that PACIF covers for workers' compensation.
- 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 \$7,500 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 2019, PACIF has provided \$135,190 in grants to fire and rescue departments which helped purchase turnout gear and other PPE, SCBA's, traffic control equipment (lighting, sign packages, cones, etc.) 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 2022, PACIF provided

\$26,000 in scholarships that benefited firefighters. Some examples of the training include Aerial Apparatus training, 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.

III. Questions & Concerns. We have questions and concerns about expanding the current workers' compensation cancer presumption law. We are not opposed to the enhancements that this bill will provide in its current form, but there are some things we would like to comment on, that we hope would lead to further discussion and revisions to the bill. These include the following:

- We understand and agree with updating the language to make the presumption more gender equal. We have no issues with this language.
- We are okay with the study language that was added and think some kind of statewide group purchasing program would only benefit our members. We clearly 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. My understanding is that the cost to outfit a firefighter with turnout gear, helmet, gloves, boots, SCBA and mask can run upwards of \$9,000. That doesn't include all 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.
- We are okay with the new language that recommends a fire department offer or provide a screening. That said, we think "cancer screening" should be better defined. Right now, it's 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 slow the provision of benefits. It would be ideal if a specific type of screening is listed in statute that requires certain things to be captured as part of the screening (i.e. prior cancer diagnosis, family cancer history, etc.).

- If the cancer screening criteria is updated to consider a screening performed at any time (rather than 2007 as it is now), what about people who may be in remission from a prior cancer (before or during active service), or have significant family history/hereditary factors?
- Are employers going to be allowed to pre-screen prospective fire fighters as part of the hiring process or would this be against law/rules EEOC, ADA, GINA Etc.?
- If an employer hires a new firefighter who had a prior cancer that is in remission, would the new employer's workers' compensation automatically be responsible if that cancer returned?
- There has been some discussion about the 65-year-old age cap being removed. We are opposed to the cap being removed. I was not personally involved when the original legislation went through, but it's my understanding the age cap was included because it was shown through studies at the time that a cancer diagnosis is much more likely for everyone (not just fire fighters) over 65 years of age. That said, we do understand there are active volunteer firefighters over age 65 and perhaps a compromise would be to lift the age cap for active fire fighters over the age 65 only until they retire from the department. There would be a cost to lifting the cap although it is unknown at this time.
- Has a cost analysis been completed by NCCI to see how these new additions would impact Vermont workers compensation rates for the firefighter class codes, and specifically how this may impact Vermont municipal budgets?
- One issue we come across is when a firefighter 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 50%-50%? VLCT PACIF has had to deal with this issue and found it problematic because of the lack of clarity in statute.

We appreciate you giving us the opportunity to submit this written testimony. As VLCT employees (many of us serve in public roles), we understand firsthand the danger first responders are put in each day and we are all about supporting them. That said, we also see a need to be careful with respect to how wide open we make presumptions because not every claim that will be presented will be due to firefighting exposure. This bill with a few revisions/clarifications as mentioned in this testimony will give the firefighters what they deserve, while protecting taxpayers' funds.