MINUTES OF THE MEETING
OF THE
LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION
(*Nevada Revised Statutes* 218.5375)
September 15, 2000
Las Vegas, Nevada

The fifth meeting of the Legislative Committee on Workers' Compensation (*Nevada Revised Statutes* [NRS] 218.5375) for the 1999-2000 interim was held on Friday, September 15, 2000, at 8 a.m., in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada, and videoconferenced to the Legislative Building, Room 3138, 401 South Carson Street, Carson City, Nevada. Pages 3 through 6 contain the "Meeting Notice and Agenda."

COMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Assemblyman David R. Parks, Chairman
Senator Margaret A. Carlton, Vice Chairwoman
Senator Ann O'Connell
Senator Randolph J. Townsend
Assemblyman Lynn C. Hettrick
Assemblywoman Gene Wines Segerblom

COMMITTEE MEMBER PRESENT IN CARSON CITY:

Senator Dean A. Rhoads

COMMITTEE MEMBER ABSENT:

Assemblyman David E. Goldwater

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Vance A. Hughey, Principal Research Analyst
Crystal M. McGee, Senior Research Analyst
Sue S. Matuska, Senior Deputy Legislative Counsel
Susan Furlong Reil, Principal Research Secretary

MEETING NOTICE AND AGENDA

Name of Organization:	Legislative Committee on Workers' Compensation (*Nevada Revised Statutes* [NRS] 218.5375)
Date and Time of Meeting:	Friday, September 15, 2000 8 a.m.

Place of Meeting: Grant Sawyer State Office Building
Room 4401
555 East Washington Avenue
Las Vegas, Nevada

Note: Some members of the committee may be attending the meeting and other persons may observe the meeting and provide testimony through a simultaneous videoconference conducted at the following location:

Legislative Building
Room 3138
401 South Carson Street
Carson City, Nevada

If you cannot attend the meeting, you can listen to it live over the Internet. The address for the legislative Web site is http://www.leg.state.nv.us. For audio broadcasts, click on the link "Listen to Meetings Live on the Internet."

A G E N D A

I. Opening Remarks and Introductions
Assemblyman David R. Parks, Chairman

II. Report on the Use of Open Rating in the State of California to Determine Industrial Insurance Premiums
Crystal M. McGee, Senior Research Analyst, Legislative Counsel Bureau

III. Discussion on the Future Use of Subsequent Injury Funds in Nevada
Assemblyman David R. Parks, Chairman

IV. Report on Recommendation Concerning the Retaliatory Discharge of an Employee Who Files a Claim for Workers' Compensation and an Injured Employee's Right to Return to Work
Kathleen Stoneburner, Representing the Alliance for Workers' Rights
Carol Walton, Representing the Alliance for Workers' Rights

V. Report on Recommendations Concerning the Administration of Nevada's Workers' Compensation Program
Thomas E. Wilson

A. Recommendation Regarding Unpaid Penalties and Fines Levied for Failure of an Employer to Provide, Secure, and Maintain Workers' Compensation Insurance Coverage

B. Recommendation Regarding the Posting on the Internet of Certain Information Pertaining to Workers' Compensation Hearings and Appeals and the Collection of Fines Against Insurers and Employers

C. Recommendation Regarding Informational Brochures Concerning Nevada's Workers' Compensation Program

D. Recommendation Regarding Certain Training for Employees of the Nevada Attorney for Injured Workers and the Division of Industrial Relations (DIR)

VI. Report on Recommendation Concerning Annual Revisions to the Medical Fee Schedule for Industrial Insurance Accident Benefits

Robert A. Ostrovsky, President, Ostrovsky & Associates, Representing the Medical Fee Schedule Working Group

VII. Report on Proposals Concerning Industrial Insurance
Robert A. Ostrovsky, President, Ostrovsky & Associates, Representing the Working Group of Industrial Insurance Carriers

A. Proposal to Change the Requirement That the Administrator of DIR Audit All Insurers at Least Every Three Years to at Least Every Five Years and Allow the Division of Insurance to Perform Audits in Conjunction With DIR

B. Proposal to Provide That Certain Records of Private Carriers Are to Be Considered Confidential

C. Proposal to Eliminate the Requirement That an Insurer Provide an Employer With a Certificate of Insurance

D. Proposal to Allow for the Issuance of a Policy of Industrial Insurance That Does Not Cover All Employees of an Employer

E. Proposal to Eliminate the Requirement That an Employer Notify the Administrator of DIR of an Intent to Cancel a Policy of Industrial Insurance if the Insurer Has Provided Notice of the Actual Cancellation or Lapse in Coverage

F. Proposal to Eliminate the Provision of NRS That Allows an Employer to Appeal Certain Matters to the Administrator of DIR

G. Proposal to Eliminate the Requirement That Employers Submit to a Private Carrier Information Concerning Tips Received by Employees

H. Proposal to Eliminate the Provision of NRS That Provides for the Accrual of Interest on Unpaid Industrial Insurance Premiums

I. Proposal to Require That Associations of Self-Insured Public or Private Employers Meet the Same Qualifications Required of Self-Insured Employers Pursuant to NRS 616B.300

J. Proposal to Prohibit the Commissioner of Insurance From Backdating a Certificate of Qualification for an Association of Self-Insured Public or Private Employers

K. Proposal to Require That Associations of Self-Insured Public or Private Employers Meet Certain Requirements Concerning Loss Reserves for Industrial Insurance Claims

L. Proposal to Require Private Carriers and Associations of Self-Insured Public or Private Employers to Notify DIR of Certain Changes and to Correct or Substantiate Certain Information Related to Coverage and Membership

M. Proposal to Eliminate Provisions That Allow an Officer or Manager of a Company Who Does Not Receive Pay for Services to Elect to Reject Industrial Insurance Coverage and Rescind Rejection

N. Proposal to Eliminate the Provision Whereby Employers Can Elect Industrial Insurance Coverage for Employees for Whom Coverage Is Not Required by State Law

O. Proposal to Make a Physical Examination Optional When a Sole Proprietor Elects Industrial Insurance Coverage

VIII. Report on Recommendation Requiring Appeals Officers to Comply With the *Nevada Code of Judicial Conduct*
Donald E. Jayne, President, Jayne & Associates, Inc., Representing the Nevada Self-Insurers Association (NSIA)

IX. Report on Recommendation Concerning an Application to Reopen a Claim if an Injured Worker Was "Not Off Work" as a Result of the Injury
Donald E. Jayne, President, Jayne & Associates, Inc., Representing the NSIA

X. Report on Proposal to Prohibit Payment of Rehabilitation Benefits if an Injured Worker is Unable to Participate in a Program of Vocational Rehabilitation Due to Nonindustrial Causes
Donald E. Jayne, President, Jayne & Associates, Inc., Representing the NSIA

XI. Report Concerning the Rights of Certain Employees of Employers Insurance Company of Nevada to Receive Priority Placement on the Appropriate Reemployment List Maintained by Nevada's Department of Personnel
Senator Ann O'Connell

XII. Public Comment

XIII. Discussion of Next Meeting Date

XIV. Adjournment

*Denotes items on which the committee may take action.

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Research Division of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call Susan Furlong Reil at (775) 684-6825 as soon as possible.

Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was faxed for posting to the following Las Vegas, Nevada, locations: Clark County Office, 500 South Grand Central Parkway; and Grant Sawyer State Office Building, 555 East Washington Avenue.

OPENING REMARKS AND INTRODUCTIONS

Chairman Parks called the meeting to order at 8:17 a.m. and directed the Committee's secretary to call the roll. All members attended the meeting except Assemblyman Goldwater. Chairman Parks indicated that Legislative Counsel Bureau (LCB) staff assisting the Committee at the meeting were Crystal M. McGee, Senior Research Analyst, Research Division; and Sue S. Matuska, Senior Deputy Legislative Counsel, Legal Division. Vance A. Hughey, Principal Research Analyst, Research Division, LCB, was present in Carson City.

Because of the diversity of issues before the Committee, Chairman Parks requested that individuals interested in speaking on a particular topic do so at the time the item is opened to discussion.

REPORT ON THE USE OF OPEN RATING IN THE STATE OF CALIFORNIA TO DETERMINE INDUSTRIAL INSURANCE PREMIUMS

Crystal M. McGee

Crystal M. McGee, Senior Research Analyst, Research Division, LCB, Carson City, provided the Committee with a document titled "California Workers' Compensation Direct Premium and Loss Data for 1993 through 1999," prepared by the California Workers' Compensation Institute (CWCI). Please see Exhibit A. Ms. McGee noted that the analysis provided in this document is based on data compiled on the 30 largest writers of workers' compensation insurance in California, who service approximately 95 percent of the market in terms of direct written premium. The graphs contained in Exhibit A summarize changes in California's workers' compensation market from the time legislation was first enacted allowing opening rating in 1993, to its implementation in 1995, and continuing through 1999.

Ms. McGee also provided the Committee with an article from the April 14, 2000, issue of *BNA's Workers' Compensation Report* regarding California's workers' compensation market titled "Rates in First Quarter Are up 19 Percent From 1999 Average, Rating Bureau Reports" (Exhibit B). She discussed open rating and the current state of the workers' compensation market in California. In addition, she summarized the rate-setting process that will become effective as of July 1, 2001, in Nevada. Ms. McGee covered the following points:

- Under open rating, an insurer may select its own industrial insurance rates within certain parameters.
- In 1993, the California Legislature enacted legislation allowing open rating and set an implementation date of 1995. The two-year time period between enactment of the legislation and its effective date was intended to allow both carriers and regulators adequate time to prepare for the change to open rating.
- The Workers' Compensation Insurance Rating Bureau (WCIRB) serves as California's rating bureau and provides the same type of services with respect to ratings that the National Council on Compensation Insurance, Inc. (NCCI) performs for Nevada and many other states.
- Under the open rate-setting mechanism, the WCIRB must file advisory rates with California's Department of Insurance. These advisory rates are then used by private carriers as benchmarks for establishing their own individual rates for workers' compensation.
- California utilizes a "file and use" method of administering rates. At least 30 days before using a rate, a carrier participating in the California workers' compensation market must file all rates, rating plans, and supplementary rate information that it wishes to use in that state with California's Department of Insurance. Thereafter, California's Commissioner of Insurance has 30 days within which to either approve or reject the proposed rating plan. Any rating plan not rejected by California's Commissioner of Insurance within 30 days from the date of filing is deemed approved.
- A carrier may use the advisory rates filed by the WCIRB or it may file a multiplier that, when applied to the WCIRB's advisory rates, will result in final rates. These final rates may be higher or lower than the advisory rates.
- With the implementation of open rating in 1995, the number of licensed carriers servicing California's workers' compensation market has increased from 270 to more than 300 licensed carriers.
- While media attention has focused on carriers that have withdrawn from the workers' compensation market due to bankruptcy, California's Department of Insurance reports that many carriers also have entered California's industrial insurance market.
- Carriers that have become insolvent since the implementation of open rating include Golden Eagle, Reliance Insurance, and Superior National. However, it is the position of California's Department of Insurance that the

insolvency of these companies was not due to the price competition that followed open rating, but rather to poor business strategies followed by these carriers.

- Workers' compensation premium rates in Nevada are currently subject to administered pricing. The NCCI files workers' compensation rates with the Division of Insurance (DOI), Nevada's Department of Business and Industry, and these rates are deemed approved unless the Commissioner of Insurance disapproves them within 60 days after the date the rate filing is submitted for consideration. The rates offered by carriers participating in Nevada's workers' compensation market may deviate from those filed by the NCCI by no more than 15 percent. Further, any deviation from the current advisory rates must be filed with the DOI by the carrier at least 60 days prior to use and are subject to approval by the Commissioner of Insurance.

- Competitive pricing will determine workers' compensation rates in Nevada effective July 1, 2001. Nevada will utilize a "file and use" method of establishing rates similar to that employed by California. The NCCI, as Nevada's advisory organization, will file prospective loss costs, which will serve as benchmark rates for insurers. Carriers will be required to file their rates with the Commissioner of Insurance at least 60 days before they become effective. Thereafter, these proposed rates will be subject to approval or rejection by Nevada's Commissioner of Insurance within 60 days. Insurers may file their proposed "final rates" or they may file a multiplier that, when applied to the prospective loss costs filed by NCCI, will result in final rates.

- Earned premium for carriers participating in California's workers' compensation market declined considerably before open rating became effective. Please see Exhibit A, page 2. In 1993, California enacted various workers' compensation reforms designed to reduce costs. As a result of these reforms, state-mandated rates declined considerably between 1993 and 1995. California's Department of Insurance and the WCIRB attribute the deterioration in earned premium between 1993 and 1995 to this decline in state-mandated rates brought on by the 1993 reforms. Earned premium reached its lowest level in 1996. As more workers entered the California market and payroll rose, earned premium began to increase in 1997. By 1999, workers' compensation rates had begun to rise.

- Workers' compensation rates in California have continued to increase in 2000. During the first quarter of 2000, the average workers' compensation premium rates in California were 19 percent higher than the average rates charged in 1999. According to the WCIRB, the rise in rates is due to several factors, including a sharp increase in paid losses and an increase in the average cost of claims. Please see Exhibit B.

- At page 5 of Exhibit A, the graph demonstrates a steady increase in incurred losses as a percent of earned premium. The industry-wide incurred loss ratio rose steadily, from 54.7 percent in 1994 to 100 percent in 1999. A loss ratio of 100 percent indicates that for every dollar of premium collected, the insurer is paying out one dollar in losses, not including expenses. Loss ratios of less than 100 percent suggest favorable financial results for insurers. A loss ratio that is greater than 100 percent, however, is an indication of unfavorable financial results and that workers' compensation rates may be inadequate.

- The CWCI report (Exhibit A) discusses the deteriorating loss experience in California's workers' compensation market and concludes that substantial price increases will be necessary in order for carriers to achieve satisfactory financial results. This conclusion is supported by the *BNA Workers' Compensation Report* (Exhibit B).

- According to the August 14, 2000, issue of *BNA's Workers' Compensation Report* (Exhibit B), current projected losses for accident year 1999 are $7.7 billion, an increase of $800 million over 1998 levels and the highest amount ever recorded by the WCRIB.

- Staff at California's Department of Insurance and the WCRIB indicate that deteriorating loss experience and price competition under open rating have contributed to the decline in earned premium in that state's industrial insurance market.

- While California's workers' compensation rates are rising, it is the position of the WCRIB that these increases are necessary in order for insurers to achieve satisfactory financial results in view of deteriorating losses.

- As commercial property and casualty rates across the country are increasing, there is a "hardening" of the workers' compensation market nationally.

- Regulators will monitor the industrial insurance market as Nevada moves to a competitive rating structure to ensure that rates are not excessive, inadequate, or unfairly discriminatory and that the interaction among employers and insurers is competitive as required by state law.

Concluding her remarks, Ms. McGee provided the Committee with a copy of an article that appeared in the September 2000 edition of *Business and Health* which highlights some of the issues facing the workers' compensation market nationwide. Please see Exhibit C. She pointed out that the "hardening" of the industrial insurance market is not confined to California but rather is a phenomenon being experienced by other states as well.

Ms. McGee indicated that David Lester of Harris Insurance Services would be presenting additional information with regard to the California industrial insurance market. She explained that Mr. Lester worked in the California workers' compensation market for a number of years and suggested that he might be able to answer questions specific to that market. Ms. McGee also noted that Commissioner of Insurance Alice A. Molasky-Arman and her staff were available to answer questions.

Chairman Parks questioned the accuracy of the statement contained in the last paragraph of Exhibit B, which indicates that the median cost of an indemnity claim has grown at an average rate of 12 percent per year since 1994. Ms. McGee reported that based on her conversations with David Bellusci, the WCIRB's chief actuary, it is her understanding that the information is accurate.

David Lester

David Lester, Harris Insurance Services, Las Vegas, shared his views regarding the California industrial insurance market. He prefaced his remarks by stating that he has been a licensed California insurance agent for almost 13 years and is licensed to sell insurance in Nevada. Mr. Lester covered the following points:

- The year before the implementation of open rating was probably one of the most profitable for California workers' compensation insurers, with 1994 total premium volume for the state reaching $10 billion.

- Carriers began offering moderate rate reductions averaging 15 percent to 30 percent in 1995, depending on the account size.

- In 1996, rates continued to decrease, and underwriting standards were loosened. Carriers began applying large credits in order to secure business, regardless of the employer's loss history.

- While rates further deteriorated in 1997 and 1998, many new carriers continued to enter California's industrial insurance marketplace. By the end of 1997, the total premium volume for the state had declined to $4.6 billion, almost half that of 1994.

- One problem with the rate decreases is that they were not offered to all employers. Larger employers received much higher rate discounts than smaller companies. For example, one large financial institution that paid approximately $1 million in workers' compensation premiums in 1994 received a quote for $180,000 in 1997. One of his clients had 75 employees in 1994 and paid $143,000 annually in workers' compensation premiums; by 1999, this company had grown to a staff of 275, yet its annual premium had decreased to $65,000. Small employers with premium under $50,000 did not enjoy the same type of rate discounts.

- Mounting loss ratios began to impact carriers' financial results by the end of 1999. The combined loss and expense ratios—the dollars actually paid out for claims plus operating expenses—reached 142 percent in 1998 and in 1999 were 141 percent.

- His client whose rates had declined from $143,000 annually in 1994 to $65,000 in 1999 was given a renewal

quote of $240,000 for 2000. After contacting a number of carriers, the company was able to secure coverage for an annual premium of $150,000, a 130 percent increase over the prior year.

- California's Insurance Commissioner approved an advisory rate increase of 18.4 percent in January 2000. Despite the fact that a year has not yet passed, California's Insurance Commissioner is currently considering approval of an additional advisory rate increase of 10.4 percent.

- Conduct in California's workers' compensation market over the last several years has impaired the financial ability of many carriers to pay claims. The WCIRB estimates that California's industrial insurance market is under reserved by $4.3 billion.

- Since January 2000, A.M. Best Company, who rates the financial strength of insurance companies and the security of holding companies' debt and preferred stock, has downgraded the ratings of at least four workers' compensation insurance carriers doing business in California. Two of the four carriers whose ratings were downgraded are among the largest issuers of workers' compensation coverage in California. Further, one of these carriers, Superior National, was placed in conservatorship earlier this year, and its liquidation is scheduled for September 15, 2000. It is estimated that Superior National under reserved workers' compensation claims by $300 million, an amount that exceeds the entire California Insurance Guaranty Association's $289 million workers' compensation fund.

- Another major workers' compensation carrier in California, Fremont Compensation Insurance Group, has been downgraded by A.M. Best Company from A- to B and was forced to increase its reserves by $450 million in August 2000. Fremont announced an operating loss of $268 million for the second quarter of 2000 on $438 million in revenue.

Citing the current state of California's workers' compensation marketplace, Mr. Harris urged that the Committee embrace a moderate approach to pricing and avoid a strict open rating premium-pricing model. He suggested that establishing a mechanism that would enable employers to earn lower premiums based on performance would lead to more stable premium reductions over time. Mr. Harris noted that utilizing tools such as loss-sensitive rating and dividends could provide substantial savings to those employers whose safety records warrant them while minimizing instability in Nevada's marketplace. He pointed out that both large deductible plans and retrospective rating plans offer opportunities for significant premium reductions and can be structured in such a manner that the policyholder is exposed to little or no risk. In addition, dividend plans that are not guaranteed also provide a return of premium for those companies who have earned them.

Rodney Leavitt

Rodney Leavitt, Leavitt Insurance Agency, Las Vegas, stated that he has been a licensed insurance agent in Nevada for 23 years. Mr. Leavitt voiced concern regarding: (1) the use of open rating to set workers' compensation rates in Nevada; and (2) the ability of the DOI to effectively administer pricing and regulate the industry. Of particular concern to Mr. Leavitt is the DOI's ability to monitor the rates of individual carriers once open rating becomes effective.

Mr. Leavitt emphasized that the stability of Nevada's industrial insurance environment is contingent upon carriers maintaining adequate and proper rates. He reported that some carriers are currently engaging in irresponsible pricing practices—offering rates lower than those filed by NCCI and approved by the Commissioner of Insurance—yet these insurers are not being held accountable for their actions. In his view, workers' compensation coverage is of such social importance that it should be more closely regulated.

Concluding his remarks, Mr. Leavitt reemphasized the importance of establishing adequate rates and urged consistent and fair regulation of the industry to ensure compliance with state law.

DISCUSSION ON THE FUTURE USE OF SUBSEQUENT INJURY FUNDS IN NEVADA

Chairman Parks directed the Committee's attention to Background Paper 01-1 titled "A Study of Subsequent Injury Funds" (Exhibit D) prepared by Crystal M. McGee, Senior Research Analyst, Research Division, LCB, and invited the members and interested members of the audience to share their views on this topic. He noted that this item was placed on the agenda to provide an opportunity for members of the public to comment on subsequent injury funds (SIFs) in Nevada.

Mark A. Marsh

Mark A. Marsh, of Reno, Nevada, stated that he had over nine years of experience in the industrial insurance field and currently works with the Bison Group, of Reno, and Reiser and Associates, Inc., of Carson City. He noted that both of these companies represent Nevada employers, primarily with regard to workers' compensation. On behalf of the Bison Group and Reiser and Associates, Inc., Mr. Marsh expressed the following views regarding Nevada's SIFs:

- The Americans With Disabilities Act (ADA) applies only to companies that meet certain criteria and is perceived by many employers as a mandate to hire workers who have previously suffered an industrial injury. The ADA prohibits employers from asking prospective employees certain questions regarding prior injuries.

- In contrast, SIFs encourage the hiring of individuals who previously have been injured in the workplace and apply to all Nevada employers, regardless of whether the organization is experience rated or nonexperience rated. Many employers throughout the state—including those involved with retrospective rating group associations and companies represented by Bison Group and Reiser and Associates, Inc.—utilize post-hire questionnaires to determine whether an employee has previously suffered an industrial impairment or injury that may later entitle the company to relief under the appropriate SIF.

- Some people argue that SIFs primarily benefit the state's largest employers. However, in his experience, application for SIF relief has been sought on behalf of employers of all sizes.

- A number of organizations, including the University and Community College System of Nevada (UCCSN), support the retention of Nevada's SIFs.

- The analysis contained in Exhibit D does not adequately compare the impact of the ADA and SIFs on Nevada employers. For instance, the report discusses the impact of the ADA and SIFs on experience-rated employers but does not address the effect of these mechanisms on nonexperience-rated employers. While an experience-rated employer that accesses a SIF may benefit from a lowering of its experience modification factor, a small employer that pays a flat premium also may profit from a SIF in that its future premium will not be impacted by the cost of an employee's subsequent industrial injury.

- Further, Background Paper 01-1 (Exhibit D) does not discuss the "last injurious exposure rule" adopted by the Nevada Supreme Court in the case *Collett Electric v. Dubovik*, 112 Nev. 193 (1996) and reaffirmed in *Las Vegas Hous. Auth. v. Root*, 116 Nev. Adv. Op. No. 92 (August 30, 2000). As applied to workers' compensation, this rule requires that if a worker suffers an injury in the workplace that aggravates a prior industrial injury, the employer for whom the employee works at the time of the subsequent or second injury must bear full responsibility for the workers' compensation claim. The following example was offered: An individual was employed as a welder at a mine site for 13 years. When the welder's services were no longer needed at the mine site, he secured employment with another company. After working half of a shift on his first day of work for his new employer, the welder complained of back pain and was ultimately diagnosed as suffering from a degenerative condition of the spine. Despite the fact that a half a day of work did not cause the employee to suffer a degenerative spinal condition, the welder's new employer bore full responsibility for the industrial injury.

- Nevada is one of only a few states in the nation that applies the last injurious exposure rule in this manner. Most states modified their application of the last injurious exposure rule and now apportion subsequent injury claims between employers.

- One unique feature of SIFs is that a worker need not suffer a preexisting industrial injury in order to access

benefits but rather a condition of any cause or origin.

- The SIFs provide a financial incentive to hire previously injured and impaired workers.

- Workers who have suffered a work-related injury have a higher incidence of subsequent industrial injury than employees who have never been injured in the workplace.

- The Nevada Attorney for Injured Workers is the only state agency of its kind in the country.

- With the implementation of open competition in the workers' compensation marketplace and the change to open rating, employers have limited options to pursue their rights.

- Employers cannot always rely on insurers to properly administer claims. In addition, claims management has not improved with the privatization of industrial insurance in Nevada.

- There is a proposed 12 percent rate increase for workers' compensation in Nevada.

- The SIFs provide Nevada employers with an effective method of controlling industrial insurance claims costs.

Concluding his remarks, Mr. Marsh opined that the ADA and SIFs are not comparable mechanisms.

Referencing pages 105 through 111 of Exhibit D, Assemblyman Hettrick pointed out that a few companies derived considerable benefit from the subsequent injury funds, while the majority of employers paid their assessments and received nothing in return. During the period 1996 to 1998, contributions to the private carriers' SIF totaled $4,562,000; approximately 30 companies that paid SIF assessments of about $1,545,000 received benefits totaling $3,400,000. The difference between the SIF assessments collected and the total benefits paid—or approximately $2,000,000—was borne by small employers that were not able to access the fund. Mr. Hettrick opined that most employers do not have sufficient staff to justify the retention of a private management firm to administer their workers' compensation programs. Continuing, he noted that the issue is not whether the ADA negates the need for SIFs, but rather whether SIFs are fair to all employers.

Continuing, Assemblyman Hettrick pointed out that in light of the ADA rules which prohibit an employer from asking a prospective employee questions of a medical nature, it is often impossible for an employer to know in advance that an employee might later qualify for a reimbursable subsequent injury. Rather, this type of information is typically obtained through the completion of a post-hire questionnaire. Hence, SIFs do not incentivize employers to hire previously injured workers. Mr. Hettrick expressed concern that Nevada's SIFs have evolved into a mechanism that benefits larger and more sophisticated employers at the expense of small employers. In his view, a fair and equitable SIF should ensure that an employer's assessments are proportionate to its claims. For these reasons, Mr. Hettrick is of the opinion that Nevada's SIFs should be either eliminated or modified to ensure fairness to all employers.
Mr. Hettrick invited Mr. Marsh to respond to his comments.

Mr. Marsh prefaced his response by noting that his remarks pertain specifically to the private carriers' SIF. He pointed out that Nevada's workers' compensation laws clearly state that SIFs are available to all employers. The statute requires private carriers—not employers—to submit requests for SIF reimbursement to the administrator of the DIR. For example, once the Bison Group or Reiser and Associates, Inc. identify a claim as possibly qualifying for SIF reimbursement, a notification letter is sent to the appropriate carrier. The carrier is then required to submit the claim to the DIR. However, currently there is no penalty provision for an insurer's noncompliance with this provision of the law.

Continuing, Mr. Marsh offered the following suggestions to ensure fair access to the private carriers' SIF by all employers:

1. Educate employers regarding SIFs by providing them with an informational pamphlet at the time they submit an application for industrial insurance or otherwise secure workers' compensation coverage;

2. Require insurers to train their claims adjusters to identify possible SIF-reimbursable injuries and immediately notify employers of each such claim identified;

3. Request that the Legislature enact legislation requiring insurers to review each claim and providing a penalty such as an administrative fine for an insurer's failure to submit a claim that may qualify for reimbursement under a SIF; and

4. Ask the Legislature to add a provision to NRS Chapter 616D, "Industrial Insurance: Prohibited Acts; Penalties; Prosecution," providing for the imposition of a penalty such as an administrative fine for an insurer's failure to submit to the DIR a claim that may qualify for reimbursement under a SIF;

5. Request that the Legislature enact a statute requiring private carriers to review all claims files, identify possible SIF-reimbursable injuries, and submit these claims to the DIR for consideration.

Concluding his response, Mr. Marsh urged the Committee to retain Nevada's SIFs. He pointed out that SIFs are funded by employer assessments. Further, he asserted SIFs are a benefit to Nevada employers and that their elimination would result in rising experience modification factors and higher industrial insurance rates for Nevada's employers. In his view, the rights of employers in the workers' compensation area are eroding, and elimination of the SIFs would continue this trend. To illustrate his point, Mr. Marsh related an incident where an insurer accepted a claim—over the objection of the employer—that clearly was not work-related, requiring the employer to seek judicial relief through the courts. In his view, the key to resolving the challenges facing the SIFs lies in educating employers on how to access the SIFs.

Referencing the summary of assessments and expenses at page 108 of Exhibit D, Assemblyman Hettrick pointed out that the assessments collected from employers are approximately the same as total benefits paid from the fund. Hence, if more employers begin accessing the fund, assessments will need to be increased accordingly. He opined that even if employers were provided with informational materials on the SIFs, some of them still would not understand the system or access the fund but would be required to pay assessments.

Concluding his remarks, Assemblyman Hettrick opined that mandating the use of SIFs would result in increased reimbursements from the funds and higher assessments. He further asserted that the SIFs provide a form of workers' compensation insurance coverage that can be paid through the employer's primary coverage or a SIF. In his view, the SIFs should be eliminated and each employer held responsible for its own losses and premiums.

Crystal M. McGee

Chairman Parks asked Ms. McGee, previously identified on page 7 of these minutes, to clarify Mr. Marsh's statement regarding a proposed 12 percent increase in Nevada's workers' compensation premium rates. Responding, Ms. McGee reported that on May 11, 2000, the Commissioner of Insurance approved an overall workers' compensation premium increase of 6.3 percent that became effective July 1, 2000. The overall increase of 6.3 percent was a combination of a manual rate decrease of 1.9 percent and a standard premium increase of 8.3 percent for experience-rated risks.

Danny L. Thompson

Danny L. Thompson, Nevada AFL-CIO, Las Vegas, spoke in support of retaining Nevada's SIFs. He opined that SIFs incentivize employers to hire or retain employees who have suffered a previous work-related injury. Mr. Thomspon pointed out that the ADA does not provide employers with any financial incentive to hire workers who previously have suffered a work-related impairment or injury. He acknowledged that there are problems with the administration of the SIFs and urged the Committee to work toward resolving these issues rather than eliminating the funds.

Cliff King

Cliff King, Chief Insurance Examiner, DOI, Carson City, clarified previous testimony regarding a pending rate change. He noted that Ms. McGee was correct in her statement that a rate change was implemented effective July 1,

2000. There are no individual rate filings from private carriers currently pending for workers' compensation coverage.

Tom Stoneburner

Tom Stoneburner, Director, Alliance for Workers' Rights (Alliance), Northern Nevada Chapter, Reno, also expressed support for retaining the SIFs. The Alliance views the SIFs as a benefit to employees as they provide an incentive for employers to retain workers who have been injured on the job and to hire those who have previously suffered a work-related injury. He urged the Committee to work toward resolving the problems with the SIF mechanism.

REPORT ON RECOMMENDATION CONCERNING THE RETALIATORY DISCHARGE OF AN EMPLOYEE WHO FILES A CLAIM FOR WORKERS' COMPENSATION AND AN INJURED EMPLOYEE'S RIGHT TO RETURN TO WORK

Michael A. Foley

Chairman Parks noted that the Committee received written comments regarding the retaliatory discharge of an employee who files a claim for workers' compensation and an injured employee's right to return to work from Michael A. Foley of Henderson, Nevada. Please see Exhibit E.

Kathleen Stoneburner

Kathleen Stoneburner, Research Secretary, Alliance for Workers' Rights, Northern Nevada Chapter, Reno, provided the Committee with the following documents:

1. A copy of her August 31, 2000, letter to Assemblyman David R. Parks, regarding the retaliatory discharge of an employee who files a claim for workers' compensation and an injured employee's right to return to work (Exhibit F);

2. A document titled "Protection Against Discrimination Because of a Workers' Compensation Claim," which contains recommendations concerning the retaliatory discharge of an employee who files a claim for workers' compensation and an injured employee's right to return to work (Exhibit G); and

3. A copy of an Equal Employment Opportunity Commission (EEOC) guide titled "EEOC Enforcement Guidance: Workers' Compensation and the ADA" (Exhibit H).

Mrs. Stoneburner highlighted the recommendations of the Northern Nevada Chapter of the Alliance for Workers' Rights, making the following remarks:

- In proposing the recommendations contained in Exhibit G, it is the goal of the Alliance to protect injured workers from retaliatory acts of employers and to provide them with a remedy that does not require the retention of legal counsel.

- Nevada's at-will employment doctrine enables both employers and employees to terminate the employment relationship without cause at any time. This doctrine, however, is subject to certain exceptions. In the case *Hansen v. Harrah's*, 100 Nev. 60, 675 P.2d 394 (1984), the Nevada Supreme Court ruled that Nevada's industrial insurance laws reflect a clear public policy exception to the at-will employment doctrine, making the retaliatory discharge of an injured worker for filing a workers' compensation claim an actionable tort.

- While the *Hansen* decision established the right of an injured worker to file an action against an employer who engages in retaliatory conduct, many injured workers are financially unable to pursue this remedy.

- *Nevada Revised Statutes* 616C.530, "Priorities for returning injured employee to work," does not protect those

injured workers who have been placed on temporary total disability (TTD) from termination. Adoption of the Alliance's recommendations would ensure that: (1) an injured worker's employment could not be terminated while on TTD; and (2) an injured employee would be entitled to reinstatement, and if necessary, reasonable accommodation for his or her impairments or injuries upon return to work.

- Currently, if an employer is unable to reasonably accommodate an injured employee's impairments or injuries upon his or her return to the workplace, the worker is terminated. This act of "termination" impedes the injured worker's attempts to gain employment. The Alliance proposes that rather than terminating the employment of injured workers whose impairments or injuries cannot be reasonably accommodated, the employer instead be required to lay off the employee for lack of suitable work.

- Another recommendation proposed by the Alliance seeks to establish an employee's right to have his or her employment records sealed, allowing only a neutral reference to be made to prospective employers. Adoption of this recommendation would enhance an injured worker's ability to gain future employment.

Mrs. Stoneburner opined that the Committee's adoption of the recommendations contained in Exhibit G would preserve the intent and spirit of Nevada's workers' compensation laws.

Carol M. Walton

Carol M. Walton, Sparks, Nevada, stated that she is both a charter member and a board member of the Alliance for Workers' Rights and also serves as president of the American Federation of Government Employees, Local 2152, Reno. Ms. Walton provided the Committee with a copy of an article titled "Return to Work Under Workers' Compensation," that appeared in the Legislative Counsel Bureau newsletter *Workers' Compensation*, Volume 8, Number 1, dated August 2000. Please see Exhibit I. She urged the Committee to adopt the proposed recommendations of the Alliance for Workers' Rights and offered the following supporting testimony:

- Discrimination in the form of retaliatory conduct directed toward injured workers affects all citizens. Any circumstance that hinders an injured worker's ability to return to the workplace increases the likelihood that the employee will become dependent upon government entitlement programs.

- In her experience, she has observed that the inability of an injured worker to reenter the workplace leads to a gradual erosion within the worker's family. For example, limited financial resources result in the basic needs of the injured worker's children not being met.

- The injured workers most likely to be the subject of discriminatory tactics are often those least able to afford adequate legal representation. While the provisions of the proposed recommendations, if enacted into law, would not hinder the ability of injured workers to exercise their rights to pursue relief through the courts, they would serve as a deterrent to discriminatory conduct by employers.

Kathleen Stoneburner

Kathleen Stoneburner, previously identified on page 18 of these minutes, advised the Committee that the Alliance for Workers' Rights intentionally omitted the following provisions from its proposed recommendations:

1. The name of the state agency that would be responsible for filing injured workers' complaints of retaliatory discrimination; and

2. A specific fine or penalty to be assessed against an employer who engages in retaliatory discrimination.

It is the Alliance's view that if the Committee chooses to adopt the proposed recommendations, it should add provisions to address these two issues.

Robert A. Ostrovsky

Robert A. Ostrovsky, President, Ostrovsky & Associates, Reno, appeared on behalf of the Nevada Resort Association

with regard to the proposed recommendations of the Alliance for Injured Workers. Mr. Ostrovsky prefaced his remarks by noting that the Nevada Resort Association's board of directors has not yet had an opportunity to review the recommendations offered by the Alliance and hence does not have a position on the issues addressed in the proposal at this time.

Mr. Ostrovsky expressed the following concerns and views regarding the proposed recommendations of the Alliance for Workers' Rights:

- His interpretation of the testimony offered in support of the recommendations is that the Alliance for Workers' Rights' seeks to provide injured employees claiming retaliatory discharge with more than one avenue of relief.

- The issue before the Committee is whether an injured employee's rights are best protected through statute or in tort. If the Committee chose to recommend that this protection be provided through statute, an injured worker could have a number of avenues available within which to seek relief, including: (1) the filing of a lawsuit in tort; (2) statutory remedies; (3) a union grievance procedure, if the employee is a party to a collective bargaining agreement; and (4) an ADA complaint. Offering this number of potential avenues of relief to injured workers would be burdensome to Nevada's employers.

- In the case of *Hansen v. Harrah's* cited by Mrs. Stoneburner, the Nevada Supreme Court ruled that an employer is prohibited from terminating an injured employee while he or she is on workers' compensation leave. The Court also found that because the injured worker's employment had been terminated while he was on workers' compensation, the employer was subject to punitive damages. However, the Court further decided that because the employer in the instant case was not aware that it had violated the law, no punitive damages would be allowed. The case was remanded to district court, and it was subsequently settled. (Mr. Ostrovsky disclosed that he was employed by one of the defendants to the *Hansen v. Harrah's* lawsuit.)

- Terminating an employee for filing a workers' compensation claim is not appropriate. However, there are many problems with the language of the recommendations. For instance, as written, the recommendation requiring the closing of an employee's personnel file would apply to all individuals who filed a workers' compensation claim, regardless of whether the injured worker actually had been terminated after filing such a claim. Further, a hearing would be required in order to determine whether the employer had a substantial motivating factor in terminating the employment of an injured worker.

- If the Committee determines that changes are needed to better protect the rights of injured workers, the language recommendations proposed would require significant modification.

Mr. Ostrovsky reiterated that he intends to discuss his views and concerns with the Nevada Resort Association's board.

Mary Cunningham

Mary Cunningham, a resident of Las Vegas, expressed support for the recommendations of the Alliance for Workers' Rights. Ms. Cunningham indicated that she has been employed in the gaming industry for the past 22 years. She has worked to address discriminatory practices in the workplace, particularly with regard to the requirement of some casinos that cocktail waitresses wear high heel shoes. Ms. Cunningham pointed out that litigating such issues in court is cost-prohibitive to the average gaming employee. Further, she noted that injured employees often fear loss of employment if they are unable to return to work within a specified period of time after suffering an industrial injury, and she urged the Committee to adopt legislation to protect their rights.

REPORT ON RECOMMENDATION CONCERNING THE ADMINISTRATION OF NEVADA'S WORKERS' COMPENSATION PROGRAM

Thomas E. Wilson

Thomas E. Wilson, a resident of Carson City and a volunteer with the Alliance for Workers' Rights, provided the

Committee with the following documents:

- His letter to Crystal M. McGee, Senior Research Analyst, Research Division, LCB, dated September 1, 2000;
- A document dated June 23, 2000, prepared by the State Controller's Office titled "AB 638 Summary by Agency, (as of March 31, 2000)";
- "An Employee's Guide to Nevada Workers' Compensation Insurance," a brochure that is published by the DIR; and
- A brochure prepared by the Nevada Attorney for Injured Workers (NAIW) titled "Injured Workers, Important Points About Your Hearing Before the Hearing Officer."

Please see Exhibit J. Mr. Wilson prefaced his remarks by noting that the Alliance was unsuccessful in its attempts to obtain the views and comments of the Division of Industrial Relations (DIR), Nevada's Department of Business and Industry, and the NAIW before drafting its proposed recommendations. Mr. Wilson shared his views with the Committee regarding needed changes to workers' compensation laws, covering the following points:

- Over $13 million in debt owed to Nevada has been deemed uncollectable by the DIR. The majority of this debt was incurred through the payment of benefits to injured workers whose employers failed to secure industrial insurance coverage as required by state law. The Committee should determine whether the DIR has made a good faith effort to collect these funds.
- Debt determined to be uncollectable by the DIR should be referred to the State Board of Examiners for appropriate action.
- Certain information pertaining to workers' compensation should be made available to the public via the Internet, including: (1) the final disposition of workers' compensation proceedings; (2) a list of carriers fined by hearing officers and the collection status of such fines; (3) notices of workers' compensation hearings; and (4) the names of employers who have failed to secure workers' compensation coverage together with the amount of any fines assessed for such violation of the industrial insurance statutes, the amount owed by each firm to reimburse the state for benefits paid to care for uninsured injured workers, and the status of efforts to collect these debts.
- Further, the names of employers against whom the DIR has levied fines for violation of state workplace safety regulations should be posted on the Internet.
- Six separate state agencies currently are involved in the workers' compensation arena, requiring injured workers to navigate through a number of agencies.
- The workers' compensation brochures currently in use are incomplete and unprofessional. For example, deadlines for filing a workers' compensation claim are not addressed in the brochure. Please see Exhibit J. The DIR, the DOI, and the NAIW should collaborate to produce a workers' compensation brochure that is readily available to all Nevada employees. The pamphlet currently published by the Employment Security Division, Nevada's Department of Employment, Training and Rehabilitation, could be used as a model for the new workers' compensation brochure.
- Nevada should follow California's example and hold hearings to determine what information should be provided to employees regarding their workers' compensation rights and at what point this material should be made available.
- In some instances, injured workers have not received fair treatment from employees of the DIR and the NAIW. Staff who routinely have contact with injured workers should be provided with training on how to properly communicate with distressed persons.

Responding to a question from Senator O'Connell regarding the debts deemed uncollectable by the DIR, Ms. McGee, previously identified on page 7 of these minutes, explained that the spreadsheet prepared by the Office of the State Controller was required pursuant to a bill passed during the 1999 Session which requires that the overdue balances for certain accounts receivable be documented. She noted that in her discussions with Cindy Jones, DIR, the uncollectable amount shown represents bankruptcies, settlements for less than the full amount owed, uncollectables, and write offs associated with the Uninsured Employers' Claim Fund and is cumulative for the period 1982 to 1994. In accordance with the provisions of NRS 232.600(3), such items may not be deemed uncollectable for a period of three years, at which time the write off of these debts must be approved by the Advisory Council to the DIR.

Nancy Ann Leeder

Nancy Ann Leeder, NAIW, Carson City, made the following remarks in response to Mr. Wilson's comments:

- While the caseload of the NAIW has remained relatively flat, the agency's workload has steadily increased. Responding to the telephone calls of injured workers seeking assistance requires a significant amount of staff time. To address this issue, she has requested and received authorization from the Nevada Legislature's Interim Finance Committee (IFC) to retain two additional staff members in the Las Vegas office. She anticipates this staff increase will enable her office to better meet the needs of injured workers who telephone the agency for assistance.

- As a member of the Workers' Compensation Education Committee, Industrial Insurance Regulation Section (IIRS), DIR, she was the primary author of the DIR pamphlet and received input from representatives of all interested parties. The key purpose of the brochure published by DIR was to provide employees with information regarding the transition of workers' compensation to the competitive market.

- Further, she wrote the workers' compensation pamphlet distributed by the NAIW and updates this material as changes occur in the law. Resources for production of informational materials are limited.

- The pamphlets published by the DIR and the NAIW have different focuses.

- She is unaware of a brochure distributed by the DOI.

Ms. Leeder offered to meet with Mr. Wilson and discuss the issues raised in his testimony following the Committee's meeting.

Roger Bremner

Roger Bremner, Administrator, DIR, Carson City, indicated he had three telephone conversations with Thomas Wilson, previously identified on page 22 of these minutes, with respect to scheduling a meeting between DIR staff and members of the Alliance for Workers' Rights. He noted that Mr. Wilson had expressed a desire to hold the meeting either in the evening or on a weekend day. A convenient time has not been established when it would be possible to have the Administrator of the IIRS travel from Las Vegas to Carson City for such a meeting.

Mr. Bremer made the following comments regarding Mr. Wilson's recommendations:

- Rather than create a single workers' compensation informational brochure, the DIR has chosen to produce several pamphlets, each containing information of importance to a particular group, e.g., employees, employers, health care providers, insurers, and third-party administrators. The brochure referenced by Ms. Leeder, "An Employee's Guide to Nevada Workers' Compensation Insurance," is available in both English and Spanish.

- The DIR also maintains a Web page (http://dirweb.state.nv.us/) that includes the information above, copies of worker compensation forms, and answers to frequently asked questions.

- The DIR does not object to publishing the names of employers that do not have worker's compensation coverage but indicated there might be legal or ethical issues to be addressed when dealing with exclusive remedies.

In conclusion, Mr. Bremner explained that through cooperative efforts with the Office of the Attorney General, DIR has been working to alleviate the uninsured situation by identifying employers without proper coverage.

REPORT ON RECOMMENDATION CONCERNING ANNUAL REVISIONS TO THE MEDICAL FEE SCHEDULE FOR INDUSTRIAL INSURANCE ACCIDENT BENEFITS

Robert A. Ostrovsky

Robert A. Ostrovsky, previously identified on page 20 of these minutes, appeared on behalf a medical fee working group that was formed to explore the possibility of modifying the current methodology used to review and update the medical fee schedule relative to workers' compensation. The group's membership included a number of insurance companies, including the carrier he represents, the Employers Insurance Company of Nevada (EICON); self-insured employers; representatives from the medical community; and certain third-party administrators. Mr. Ostrovsky provided the Committee with a copy of his August 31, 2000, letter to Chairman Parks together with suggested changes to Chapter 616C.260 of NRS, "Schedule of fees and charges; submission of information to administrator; penalty for refusal to provide information; regulations." Please see Exhibit K.

Mr. Ostrovsky provided the Committee with a historical perspective of NRS 616C.260 and summarized the proposed amendments to that statute, covering the following points:

- The DIR is required to conduct an annual study of the medical fees charged in Nevada. After the study is complete, a hearing is held to establish new fees for the upcoming year. Because information about medical fees and charges being paid in Nevada is not readily available, the DIR must contract with a consultant to conduct this study at an annual cost of $25,000.

- Currently, the medical fee schedule is too low in some areas and too high in others. Because Nevada law does not allow payment of fees over that allowed under the medical fee schedule for workers' compensation claims, certain medical facilities and providers will not contract with insurers or self-insured employers for industrial insurance medical benefits. As a result, access to certain medical facilities and providers has been lost.

- Modifying the statute to allow the DIR to utilize national medical fee data such as the information collected by the federal government for the Medicare program would provide increased accuracy and stability to Nevada's medical fee schedule.

- Further, the DIR would realize savings if it were allowed to utilize a national medical fee data warehouse to obtain information and adjust its schedule.

- During the last fee-setting cycle, the NCCI established rates and the DIR then made changes in the fee schedule. These two actions were not coordinated, and as a result, the rates established by NCCI were inadequate to cover the fee schedule increases set by the DIR. To avoid a recurrence of this situation, the working group recommends that the Administrator of DIR be required to coordinate any change in the fee schedule with the DOI to ensure appropriate rate setting. Adopting such a change would require the DIR to alter the timing of its study for at least one cycle.

Greg Gilbert

Greg Gilbert, Vice President of Reimbursement/Government Relations, Concentra Health Services, Addison, Texas, explained that Concentra is a national occupational health care provider group that owns and operates 215 occupational health centers in 32 states, including Nevada. Mr. Gilbert advocated modification of Nevada statute as set forth in Exhibit K. Further, he reported that the medical fee working group recommends an additional change to Section 2 to require that the Administrator of DIR consider the amounts being "charged and paid" in the state for accident benefits when revising its medical fee schedule.

Mr. Gilbert pointed out that the proposed recommendation would allow the DIR to adopt a much broader, cost-

efficient, and flexible approach to fee schedule review. He asserted that modifying NRS 616C.260 as recommended by the working group would provide the DIR with the ability to: (1) use a larger and independent data set of Nevada-specific medical charges and payments that are statistically defendable; and (2) benchmark data one time only and then implement a low-cost methodology to review and update the fee schedule using the Consumer Price Index (CPI), Medical Care Component. Further, he commented that other states utilize a similar approach to the review and update of their medical fee schedules.

Concluding his remarks, Mr. Gilbert noted that the proposed changes would assist the DIR in creating a fair and equitable fee schedule that can be updated each year. At the same time, the proposed changes would also provide significant administrative cost savings relative to the annual fee study performed by the DIR.

Chairman Parks asked whether the approach advocated by the medical fee working group is reflective of the practice utilized by other states. Responding, Mr. Gilbert explained that of the 41 states that establish fee schedules, approximately 17 utilize some form of resource-based relative value scale and a CPI cost index to increase that fee schedule. Approximately nine states currently base fees on usual, customary, and reasonable charges (UC&R). This methodology essentially allows the market to determine rates and is the easiest and most cost-efficient means available to states. Mr. Gilbert emphasized the importance of establishing a benchmark to ensure the rate-setting system begins with an appropriate fee schedule.

Responding to a question from Senator O'Connell, Mr. Ostrovsky explained that the DIR currently utilizes only data on paid medical claims, and such information is often distorted. For this reason, the recommendation proposes that the DIR review charged and paid fees. Mr. Gilbert observed that wide fluctuations in fees frustrate interested parties, and for this reason, the medical fee working group seeks to ensure consistent methodology.

Senator O'Connell commented that physicians are allowed to charge an additional fee to cover the cost of carrying an account that is not paid in a timely manner. In such an event, a doctor might be paid many times above the established fee. Senator O'Connell questioned whether the DIR would be able to determine what the actual charge should be as opposed to what the physician is paid if the words "being paid" are omitted from Section 2 of NRS 616C.260.

Mr. Ostrovsky acknowledged that Nevada law provides for payment of medical claims within 30 days. Senator O'Connell asserted that the law has not been implemented or enforced and suggested that the statute should include penalty provisions for noncompliance. Mr. Ostrovsky acknowledged that the medical fee working group could discuss the issue. Further, he reported that the IIRS audits workers' compensation claim files, and one of the areas examined is timely payment of medical billings. He pointed out that because of the statute's flexibility, examination of this area can be complex. For instance, an insurer is not required to make payment to the medical provider within 30 days if it requests additional information from the physician.

Senator Townsend noted that payments to medical providers are delayed on a routine basis and expressed concern physicians may be reluctant to treat injured workers if they are not paid on time. He suggested that statistics could be obtained from industrial groups to determine which insurers pay providers in a timely manner and the effect of the law requiring payment of claims within 30 days. Senator Townsend sought Mr. Ostrovsky's insight into the issue and requested that he provide the Committee with statistics to match those of the IIRS. In addition, he suggested Committee staff obtain an analysis from the IIRS as to the providers being paid and the timeframe within which those payments are being made.

Chairman Parks directed Committee staff to explore this issue and report her findings to the members before the Committee's work session meeting.

Senator Rhoads questioned how the fee schedule is adjusted for technology improvements. Mr. Gilbert explained that the resource-based relative value scale is updated each year and includes consideration for such improvements.

Ron Hubel

Ron Hubel, Industrial Medical Group, Las Vegas, reported that the Industrial Medical Group has three workers' compensation clinics in southern Nevada and treats approximately 1,500 new patients per month. Mr. Hubel covered the following additional points:

- He initiated the medical fee working group over a year ago because DIR had proposed only one increase to health providers in eight years, which was offset by a reduction the same year in the relative value studies.

- In establishing a medical fee schedule, the study vendor surveys large insurers to determine the amount it is paying its contracted providers. Based on the results of the survey, the DIR sets the medical fee schedule.

- However, the insurers surveyed are not asked to provide data regarding the amount a physician under contract receives for his or her services. For instance, an insurer may pay a physician $50 for an office visit, but he or she also receives a copayment of $10 from the patient. This copayment is immediate and represents a 20 percent higher payment to the physician than that reported on the survey.

- When Nevada's system for reviewing and updating the medical fee schedule was established, health maintenance organizations did not require copayments from their insureds. Nevada law was never changed to reflect the advent of copayments.

- After correctly completing the study, the DIR determined that the rate was not defensible and decided to make no changes.

- Contrary to Mr. Gilbert's testimony, rates have not been rising and falling for the past eight years. Rather, recommendations to either decrease or maintain fees have been made but not adopted.

- The Industrial Medical Group has not experienced problems with insurers failing to make timely payment for services provided to injured workers.

Maggie Karpuk

Referencing Mr. Ostrovsky's comments regarding rates, Maggie Karpuk, State Relations Executive, NCCI, Agoura Hills, California, explained that any medical fee schedules should be evaluated by the rating organization to determine the impact on premium. She reported that NCCI reviewed all assessment and fee schedules and determined that the rates under discussion were adequate.

REPORT ON PROPOSALS CONCERNING INDUSTRIAL INSURANCE

Robert A. Ostrovsky

Robert A. Ostrovsky, previously identified on page 20 of these minutes, appeared on behalf of his client, EICON, and a working group of industrial insurance carriers formed to address certain workers' compensation issues. He explained that he and EICON had identified certain areas of statute that in their view should be modified to meet more properly the needs of a competitive marketplace. At their request, the Commissioner of Insurance provided them with a list of carriers that write insurance in Nevada. With the exception of very small companies, he invited the insurers on the list to participate in the working group. The group's membership includes representatives from the Alliance of American Insurers, AIG Liberty Insurance, EICON, Farmers Insurance Group, and Sierra Insurance Group. Mr. Ostrovsky provided the Committee with a copy of the working group's proposed recommendations (Exhibit L).

1. PROPOSAL TO CHANGE THE REQUIREMENT THAT THE ADMINISTRATOR OF DIR AUDIT ALL INSURERS AT LEAST EVERY THREE YEARS TO AT LEAST EVERY FIVE YEARS AND ALLOW THE DIVISION OF INSURANCE TO PERFORM AUDITS IN CONJUNCTION WITH DIR

Robert A. Ostrovsky

Robert A. Ostrovsky, previously identified on page 20 of these minutes, explained that current law requires the DIR to audit all insurers at least every three years. The working group recommended that changes be made to NRS

616B.003 of NRS, "Periodic audit of insurers; required standard auditing procedures; information to be shared by division of insurance; report to legislature," that would allow DIR to: (1) conduct periodic audits of insurers every five years; and (2) Perform an abbreviated audit for insurers with no history of prior violations.

The goal of this recommendation is to enable the DIR to focus its efforts on auditing those carriers suspected of performing below standard or against whom complaints have been filed. Mr. Ostrovsky pointed out that the language of the proposed recommendation is permissive rather than mandatory in nature. The recommendation would further permit the DIR and the DOI to collaborate on audits of insurers to avoid duplication of effort.

Scott M. Craigie

Scott M. Craigie, President, Alrus Consulting, Reno, representing Liberty Mutual Insurance Group, commented that an agency's regular schedule of required tasks sometimes makes it difficult for state government to respond to individual complaints regarding insurers. He pointed out that when state government sets aside its required work to investigate such complaints, it risks not completing its regular tasks. He asserted that given the limited resources available to both the DIR and DOI, the recommended change to the audit requirements would provide them the flexibility to draw on each other's expertise.

Jack H. Kim

Jack H. Kim, Sierra Health Services, Inc., Las Vegas, clarified that the proposed recommendation would not limit the DIR's ability to audit an insurer every year or more often, if deemed necessary.

Senator O'Connell asked Mr. Ostrovsky to review the follow-up procedure to an unsatisfactory audit. Responding, Mr. Ostrovsky recollected that if the DIR identifies certain areas of concern in an audit, it could conduct a follow-up audit without providing notice. In addition, the DIR could fine the carrier or a self-insured employer or recommend to the Commissioner of Insurance withdrawal of the carrier's or the self-insured employer's certificate to insure. In his experience, unless there is a pattern of unsatisfactory performance, the DIR will meet with the carrier and attempt to resolve the issue.

Chuck Verre

Chuck Verre, IIRS, DIR, explained that after an audit is completed, the IIRS typically issues findings and notices of correction. Depending on the response received from the audited company, the IIRS may review the file to determine if in fact compliance has taken place. In the event compliance does not occur, the IIRS will utilize other procedures, e.g., a fine or a benefit penalty depending on the severity or type of infraction. Continuing, Mr. Verre explained that if in conducting the audit a pattern of violation were identified or there existed an apparent lack of understanding with regard to application of the statute, the IIRS would review additional files in an attempt to assist the insurer in correcting those infractions.

Senator O'Connell questioned whether the audit procedure includes time stipulations to ensure closure. Mr. Verre indicated that companies are given specific time limits within which to respond to identified deficiencies, comply with recommended actions, and provide benefits. If these time limits were violated, administrative fines would be imposed.

Danny L. Thompson

Danny L. Thompson, previously identified on page 17 of these minutes, commented that he had no objection to the DIR and the DOI collaborating on an audit. However, he questioned the need to lengthen the time between required audits. Mr. Thompson pointed out that the purpose of conducting audits is to ensure compliance with the law. Further, he reported that during his eight years of service on the DIR Advisory Board, uncollectable employer debt totaling millions of dollars has been written off. He observed that all Nevada employers absorb such costs and expressed concern that if the timeframes for completing audits is extended, uncollectable debts may rise.

Senator O'Connell asked Mr. Thompson to elaborate on his comment regarding uncollectable debts that have been written off. Mr. Thompson indicated that he did not have the specific figures with him and suggested that research would be required to provide detailed information on write-offs. At the request of Senator O'Connell, Chairman

Parks requested that a five-year update on uncollectable debts be provided to the Committee.

Mr. Ostrovsky acknowledged Mr. Thompson's concern and observed that most write-offs are the result of an employer's failure to secure industrial insurance coverage. He pointed out that funds have been created on behalf of both self-insured employers and others that provide industrial insurance benefits for injured workers employed by uninsured employers.

2. PROPOSAL TO PROVIDE THAT CERTAIN RECORDS OF PRIVATE CARRIERS ARE TO BE CONSIDERED CONFIDENTIAL

Robert A. Ostrovsky

Robert A. Ostrovsky, previously identified on page 20 of these minutes, stated that the law currently requires the DIR to maintain as confidential certain records regarding self-insured employers and associations of self-insured employers. He noted that by statute, such information may only be revealed in whole or part in the course of administering the provisions of Chapters 616A through 616D and 617 of NRS. In addition, certain financial information on the part of these companies is provided to the DOI.

Mr. Ostrovsky proposed that statute be amended to extend the same confidentiality protections to all industrial insurers. He indicated that the industrial insurance working group was not attempting to prevent the public access to information that is available to the DOI. In addition, Mr. Ostrovsky stated that the DOI has confidentiality restrictions but is able to provide the public with certain information regarding the finances and resources of insurers.

Alice A. Molasky-Arman

Alice Molasky-Arman, Commissioner of Insurance, DOI, Carson City, reminded the Committee that insurance is national and international in scope. Currently, 287 insurers are authorized to sell worker's compensation coverage in the State of Nevada, and only 2 of those companies are domestic carriers. The remaining 285 insurers are subject to the laws of various states.

Commissioner Molasky-Arman explained that there has been established throughout the United States uniformity in reporting and the public status of information on insurers. She argued that if this recommendation were adopted, Nevada would be set apart from the other states. Further, she asserted that the 285 nondomestic insurers would be unable to do business in Nevada because of conflicts with the laws of the other states in which they do business.

Continuing, Commissioner Molasky-Arman reported that all insurers must report not only to DOI, but also to the National Association of Insurance Commissioners (NAIC). The NAIC provides a national data bank of information such as the net worth of insurers. Commissioner Molasky-Arman also argued that if adopted, the recommendation would prevent domestic insurers from conducting business on a multistate scale because other states would be unwilling to accept Nevada's confidentiality standard for information that has historically been public.

Scott M. Craigie

Scott M. Craigie, previously identified on page 29 of these minutes, offered to meet with Commissioner Molasky-Arman to address her concerns. He clarified that the recommendation pertains only to the treatment of proprietary or otherwise confidential information held by DIR. Mr. Craigie acknowledged that any conflict with NAIC that results from the proposed change to statute should be addressed.

Crystal McGee, previously identified on page 7 of these minutes, confirmed with Mr. Ostrovsky that the recommendation under discussion pertains to records held by DIR only and not the DOI. Continuing, she pointed out that the statute referenced in Exhibit L pertains to records held by the DOI.

Mr. Ostrovsky indicated that while the title of the section in question refers to the DOI, it is his understanding that the body of the section addresses records maintained by the DIR. Continuing, he indicated that the industrial insurance working group did not intend to separate Nevada from insurance practices in the rest of the country.

Sue S. Matuska, Senior Deputy Legislative Counsel, Legal Division, LCB, pointed out that subsection 3 of the

section under discussion defines "division" as the DOI. She suggested that the group's proposal might be intended to address another area of statute.

Wayne Carlson

Wayne Carlson, Executive Director, Public Agency Compensation Trust, Carson City, suggested that it might be appropriate to research the legislative history of the statute under discussion. He recollected that when the enabling statute for individual self-insurance associations was being considered, there was concern that employers would be required to provide confidential information to a public agency that was obligated to produce such data as public record. There was also concern that an employer might be required to divulge confidential information to an association of self-insured companies whose membership included its competitors.

Continuing, Mr. Carlson indicated it was his understanding that the statutory language ultimately passed by the Legislature was intended to provide the DOI with needed information regarding the financial status of self-insured employers and associations of self-insured employers while ensuring the confidentiality of information with regard to an individual employer. Mr. Carlson suggested it would be inappropriate to extend this same limited protection to all insurers.

3. PROPOSAL TO ELIMINATE THE REQUIREMENT THAT AN INSURER PROVIDE AN EMPLOYER WITH A CERTIFICATE OF INSURANCE

Robert A. Ostrovsky

Robert A. Ostrovsky, previously identified on page 20 of these minutes, stated that Proposal 3 of Exhibit L pertains to the documents an insurer is required to provide to an employer. He explained that an employer must post a document commonly known as a "D1 form," which contains all information that an injured worker would need to file an industrial insurance claim, e.g., the name of the insurer, where to seek medical treatment, and a contact telephone number. Nevada statute also requires that a provider of workers' compensation coverage must issue to each insured an insurance policy together with a separate certificate of industrial insurance stating that the employer has purchased industrial insurance coverage. Mr. Ostrovsky indicated that one of the purposes of the certificate of insurance is to provide the Fraud Control Unit for Industrial Insurance, Office of the Attorney General, with the identity of the insurer and a telephone contact number. Mr. Ostrovsky pointed out that this same information is contained on the D1 form. Continuing, he pointed out that the certificate and the policy of insurance are issued simultaneously, and if the employer later fails to pay its premium or changes insurers, the information contained in the certificate is no longer valid. Mr. Ostrovsky advocated elimination of the requirement that insurers provide certificates of insurance to employers, arguing that the D1 form provides adequate notice to injured workers. He further suggested that the Office of the Attorney General could access the DIR's Proof of Coverage (POC) system to determine whether an employer had obtained industrial insurance coverage, and if so, the carrier's name.

Jack H. Kim

Jack H. Kim, previously identified on page 30 of these minutes, commented that the POC system was developed to allow agencies to identify an employer's insurer. This information is downloaded from NCCI to the DIR, possibly as often as daily. It is his understanding that Nevada is the only state that requires Sierra Health Services, Inc. to provide a certificate of insurance, and this procedure is unnecessary and burdensome to insurers.

Chuck Verre

Chuck Verre, previously identified on page 30 of these minutes, indicated it was his understanding there is a lag of approximately 15 days between the time an insurer reports information to NCCI and the data is transferred to the DIR. If a company is suspected of failing to secure industrial insurance coverage, a compliance officer will visit the business and ask the employer to produce a certificate of insurance or the policy declaration page. Mr. Verre asserted that having this information on the employer's premises is important because it resolves the issue of coverage immediately.

In response to a question by Assemblyman Hettrick, Mr. Verre acknowledged that if a company failed to pay its premium, it would be possible for the employer to possess a certificate of insurance and not have coverage in force.

He reiterated that in his view, it is important that employers have documentation on the premises to resolve issues as they arise.

Mr. Ostrovsky suggested changing the name of the D1 form to "certificate." Mr. Verre commented that a compromise might be reached. He agreed to work with Mr. Ostrovsky to resolve the issue while protecting the interests of the Division.

4. PROPOSAL TO ALLOW FOR THE ISSUANCE OF A POLICY OF INDUSTRIAL INSURANCE THAT DOES NOT COVER ALL EMPLOYEES OF AN EMPLOYER

Scott M. Craigie

Scott M. Craigie, previously identified on page 29 of these minutes, stated that Senate Bill 133 (Chapter 582, *Statutes of Nevada 1999*), which "establishes provisions governing consolidated insurance programs," authorized certain providers of industrial insurance to provide workers' compensation coverage for consolidated insurance programs (CIP). He explained that CIPs provide a bundle or group of insurance coverages—such as builder's and general liability, workers' compensation, and others—and spread the risk, creating a significant savings to the premium payer. Senate Bill 133 also requires a CIP to provide a comprehensive safety program for project employees. The provisions of S.B. 133 apply only to construction projects whose estimated total cost is equal to or greater than $150 million.

Continuing, Mr. Craigie pointed out that current law continues to require an employer that has employees working on a CIP to maintain its own industrial insurance coverage for these workers, and he proposed amending the statute to relieve an employer of this requirement.

Darryl Capurro

Darryl Capurro, Nevada Motor Transport Association and Nevada Transportation Network Self-Insured Group, Sparks, pointed out that an employee may work at both a CIP project site and another location on the same day and questioned whether the proposed recommendation would create ambiguity.

Responding, Mr. Craigie explained that CIP contracts define the work site so that responsibility for a worker's industrial insurance coverage is clear. If a worker were injured outside the specified CIP work site, then responsibility for industrial insurance coverage would rest with the employee's individual employer.

Responding to a question from Assemblywoman Segerblom, Mr. Craigie indicated that day laborers on a CIP project would be covered by workers' compensation insurance.

5. PROPOSAL TO ELIMINATE THE REQUIREMENT THAT AN EMPLOYER NOTIFY THE ADMINISTRATOR OF DIR OF AN INTENT TO CANCEL A POLICY OF INDUSTRIAL INSURANCE IF THE INSURER HAS PROVIDED NOTICE OF THE ACTUAL CANCELLATION OR LAPSE IN COVERAGE

Jack H. Kim

Jack H. Kim, previously identified on page 30 of these minutes, reported that both employers and insurers are currently required to report any change in insurance status to the DIR. He proposed that if the insurer is providing the report to DIR, there is no need for the employer to duplicate that effort. Mr. Kim acknowledged that the draft language contained in Proposal 5 would require modification to accurately reflect the intent of the recommendation.

Chuck Verre

Chuck Verre, previously identified on page 30 of these minutes, observed that with the POC system in place, opportunities might exist to eliminate some of the notices currently required. He offered to work with Mr. Kim.

6. PROPOSAL TO ELIMINATE THE PROVISION OF NRS THAT ALLOWS AN EMPLOYER TO APPEAL CERTAIN MATTERS TO THE ADMINISTRATOR OF DIR

Robert A. Ostrovsky

Robert A. Ostrovsky, previously identified on page 20 of these minutes, reported that years ago, employers raised concern regarding certain charges that the former State Industrial Insurance Fund was applying to their accounts. A vocational rehabilitation program had permitted the purchase of certain expensive items, e.g., motor vehicles, and the employers' accounts were being charged for the cost of these devices. To address this issue, statute was amended to provide employers with the right to appeal such determinations to the Administrator of DIR.

Continuing, Mr. Ostrovsky proposed that an employer's right to appeal such decisions to the Administrator of DIR be abolished. He asserted that such a mechanism is no longer necessary in a competitive marketplace, and it is inappropriate for the DIR to make determinations regarding charges to an employer's account. In support of his position, Mr. Ostrovsky argued that employers now have choices, and if a company is dissatisfied with the services of its insurer, it can move its account to another carrier. He stated that the purpose of the recommendation is to indicate in law that the only place that such appeals were ever appropriate was to hearings and appeals officers.

Jack H. Kim

Jack H. Kim, previously identified on page 30 of these minutes, echoed Mr. Ostrovsky's comments. He argued that in the new competitive environment, the most successful insurers would be those that provide the best service to their clients.

Robert A. Ostrovsky

Robert A. Ostrovsky, previously identified on page 20 of these minutes, added that the purchase of automobiles and other rehabilitative devices is now limited by statute.

Mark A. Marsh

Mark A. Marsh, previously identified on page 13 of these minutes, expressed concern regarding the appeal of employer claims to hearings and appeals officers as recommended in Proposal 6. Mr. Marsh shared his views and concerns regarding this recommendation, covering the following points:

- Hearings and appeals officers are laypersons without legal training.
- If an employer is dissatisfied with its insurer's decision, it may change carriers. However, the employer's loss history will follow it.
- Negotiating with a carrier is difficult.
- Nevada's Industrial Insurance Act is both an administrative and a statutory act, meaning that all remedies provided within the act fall within the purview of the Nevada Administrative Procedures Act. The purpose of such a statutory scheme is to provide appeal rights to the agency with the greatest expertise in a particular area.
- Competency issues have been raised with respect to the administrative appeals process. The DIR is an agency that has had to address issues dealing with employer accounts.

Robert A. Ostrovsky

Robert A. Ostrovsky, previously identified on page 20 of these minutes, commented that there might be misunderstanding regarding the issues being heard by the appeals and hearings officers. He asserted that an employer should raise issues regarding charges to its account before hearings and appeals officers.

7. PROPOSAL TO ELIMINATE THE REQUIREMENT THAT EMPLOYERS SUBMIT TO A PRIVATE CARRIER INFORMATION CONCERNING TIPS RECEIVED BY EMPLOYEES

Robert A. Ostrovsky

Robert A. Ostrovsky, previously identified on page 20 of these minutes, prefaced his remarks by noting that he was not attempting to prevent employees from using tip income in calculating wages for their injuries. Continuing, he noted that NRS 616A.065, "Average monthly wage defined," provides that a wage "is increased by the amount of tips reported by an employee to his employer pursuant to 26 U.S.C. § 6053(a)" except for tips in cash which total less than $20 per month or those in a form other than cash.

Mr. Ostrovsky recommended elimination of the requirement that employers send a copy of their employees' tip forms to their workers' compensation insurance carriers. He questioned the value of such forms to insurers, noting that NCCI sets rates based on loss costs. These rates are then applied to employer classifications.

Maggie Karpuk

Maggie Karpuk, previously identified on page 28 of these minutes, directed the Committee's attention to Proposal 7 of Exhibit L, which states in part that "tip income is not considered by the NCCI in establishing rates." She reported that according to the NCCI's *Basic Manual*, tips are not calculated as part of the premium at a national level. However, the *Basic Manual* reflects an exception for Nevada, where tips and other gratuities are reported as part of payroll. Continuing, she explained that insurers report such income as part of payroll. Ms. Karpuk clarified that if tips are reported as part of payroll, they are included in classification rating making on an aggregate basis.

Mr. Ostrovsky pointed out that tips are not reported separately; rather, insurers consider total wages paid. Further, wages reported in Nevada include tips. Ms. Karpuk acknowledged that tips in Nevada are part of the payroll.

Senator Carlton pointed out that tips are not always included in the payroll. For example, she pays an allocated tip for each hour she works, which is considered part of the payroll. However, some employers do not utilize an allocated tip mechanism, and the employee is responsible for paying taxes on gratuities and submitting the appropriate forms. Senator Carlton questioned whether insurers would consider such tip income in determining an employee's earnings for purposes of workers' compensation.

Jack H. Kim

Jack H. Kim, previously identified on page 30 of these minutes, stated that Proposal 7 addresses premiums that the employer would be required to pay in calculating payroll. He observed that Senator Carlton might be addressing the determined average monthly wage for benefits. When speaking of average monthly wage for benefits, all relevant available information is gathered for verification purposes.

Robert A. Ostrovsky

Robert A. Ostrovsky, previously identified on page 20 of these minutes, explained that an employee may make a declaration of income: (1) through an allocation pursuant to an agreement with the IRS, which is automatically performed on behalf of the employee; (2) on a monthly basis; or (3) annually. He pointed out tip income reported to the employer will appear on the DIR's reporting form.

Mr. Ostrovsky reiterated that the industrial insurance working group recommends elimination of the requirement that employers send a copy of employee tip reporting forms to their workers' compensation carriers.

Maggie Karpuk

Maggie Karpuk, previously identified on page 28 of these minutes, observed that there appeared to be some confusion relative to reporting of tip income. She clarified there are two separate levels of reporting: (1) an employee-by-employee reporting of tip income to the DIR; and (2) reporting from carriers to the NCCI on an aggregate classification basis. She explained that carriers provide aggregate payroll data by employer to the NCCI for rate-making purposes.

Continuing, Ms. Karpuk indicated it was her understanding that the industrial insurance working group's recommendation pertained to the reporting of tip income on an employee-by-employee basis. She explained that if Nevada employers were no longer required to report tip income, then the NCCI's *Basic Manual* would reflect this change so that Nevada data would be treated in the same manner as the rest of the country. Further, if this change

was adopted and a carrier consulted the *Basic Manual* for guidance on reporting, it would find that tip income should not be included in an employer's aggregate payroll data.

Concluding his remarks, Mr. Ostrovsky reiterated that the purpose of the recommendation is to eliminate unnecessary paperwork.

Mr. Ostrovsky requested the Committee consider Proposal 13 out of order to accommodate Ms. Karpuk's travel arrangements.

13. PROPOSAL TO ELIMINATE PROVISIONS THAT ALLOW AN OFFICER OR MANAGER OF A COMPANY WHO DOES NOT RECEIVE PAY FOR SERVICES TO ELECT TO REJECT INDUSTRIAL INSURANCE COVERAGE AND RESCIND REJECTION

Robert A. Ostrovsky

Robert A. Ostrovsky, previously identified on page 20 of these minutes, reported that Proposal 13 initially recommended changing the definition of a period of coverage to "during the year in which the policy is effective" for purposes of the pay cap. The NCCI subsequently suggested using the term "policy year." He noted that the term "policy year" has a specific definition used by the DOI and NCCI, and if that language were adopted, the statute would be consistent with the manner in which data is collected and rates are set.

Maggie Karpuk

Maggie Karpuk, previously identified on page 28 of these minutes, pointed out that since continuous policies or certificates of policy no longer exist in Nevada, using the phrase "policy year" would clarify the period of term, especially with respect to distribution of the $36,000 payroll cap if an employer terminated a policy and wished to obtain coverage with another carrier.

Robert A. Ostrovsky

Robert A. Ostrovsky, previously identified on page 20 of these minutes, indicated that Proposal 13 also recommended eliminating the right of an officer or manager to elect or reject workers' compensation coverage. He suggested that the current language was adopted at a time when Nevada had a state fund and certain employees were allowed to accept or reject coverage. Mr. Ostrovsky asserted that in a competitive environment, an employer's policy of insurance should clearly define covered employees. Further, it would be improper to allow employees to opt into or out of the policy at will.

8. PROPOSAL TO ELIMINATE THE PROVISION OF NRS THAT PROVIDES FOR THE ACCRUAL OF INTEREST ON UNPAID INDUSTRIAL INSURANCE PREMIUMS

Robert A. Ostrovsky

Robert A. Ostrovsky, previously identified on page 20 of these minutes, reported that NRS 616B.236, "Accrual of interest on unpaid premiums," allowed the former state fund to charge interest on unpaid premiums, and the industrial insurance working group recommended that this section be eliminated. In the past, once an employer was issued a policy of insurance by the state fund, it was difficult to lose coverage. He pointed out that in a competitive market, if an employer failed to pay its premium, it would receive a cancellation notice.

Chairman Parks questioned whether interest arrangements currently exist with regard to insurance carriers.

Scott M. Craigie

Scott M. Craigie, previously identified on page 29 of these minutes, shared his experience in dealing with monopoly utilities when he served as chairman of the Public Utilities Commission of Nevada. He explained that when regulating utilities as a monopoly, it was necessary to clearly establish the rights and responsibilities of both those that were collecting funds and those who were paying for services, particularly in view of the costs associated with

carrying an account. Mr. Craigie asserted that because monopoly providers have an obligation to serve, a system must be established to address nonpayment and delayed payment of fees. He pointed out that those who delay payment create a cost that is spread to all payers. In a competitive marketplace, however, such a system is unnecessary because each provider will establish an effective procedure to address such situations.

9. PROPOSALS TO REQUIRE THAT ASSOCIATIONS OF SELF-INSURED PUBLIC OR PRIVATE EMPLOYERS MEET THE SAME QUALIFICATIONS REQUIRED OF SELF-INSURED EMPLOYERS PURSUANT TO NRS 616B.300

Robert A. Ostrovsky

Robert A. Ostrovsky, previously identified on page 20 of these minutes, announced that Proposals 9 and 11 address the responsibilities of associations of self-insured public or private employers (SIGs). Proposal 9 recommends that SIGs be required to meet the same financial responsibilities as self-insured employers. He argued that this change is necessary to protect injured workers and parallels the requirement that insurance companies carry reserves and demonstrate the financial ability to meet their responsibilities. While SIGs currently adhere to certain requirements, it is the view of the industrial insurance working group that all providers of workers' compensation coverage should meet the same standards to assure fairness in the marketplace.

Continuing, Mr. Ostrovsky explained that Proposal 11 recommends that SIGs be required to maintain loss reserves. He also suggested that SIGs be required to increase or decrease their bonds at the discretion of the Commissioner of Insurance, a practice that currently applies to self-insured employers. Mr. Ostrovsky asserted that adoption of these recommendations would create a fairer competitive environment.

Scott M. Craigie

Scott M. Craigie, previously identified on page 29 of these minutes, emphasized that in terms of public policy, the primary goal of Proposals 9 and 11 is to ensure that entities operating as SIGs maintain adequate reserves and have the same security as individual self-insured employers. He pointed out that if a SIG were to experience financial difficulties, employers, injured workers, and the entire workers' compensation system would suffer.

Doug Ellington

Doug Ellington, CHSI of Nevada, Las Vegas, stated that CHSI is a program administrator for four SIGs in the state: (1) the Nevada Restaurant Self-Insured Group; (2) the Nevada Casino Network Self-Insured Group; (3) the Preferred Builders Self-Insured Group; and (4) the Preferred Transportation Self-Insured Group. Mr. Ellington offered the following remarks in opposition to Proposals 9 and 11:

- The SIGs are not insurance companies but rather Nevada employers who have joined to form not-for-profit organizations to meet their statutory obligations at the lowest possible cost. Many of the recommended changes contained in Proposals 9 and 11 would cause SIGs to be treated as insurance companies.

- Supervision of SIGs is performed by DOI. In addition, SIGs must comply with applicable regulations and reporting requirements and review their reserves monthly.

- Some of the more successful self-insured groups have been able to eliminate 52 cents on the dollar in administrative overhead costs. Further, the amount that SIGs can expend on administrative expenses is limited by statute to 25 percent.

- Nevada employers who belong to SIGs utilize cost savings to fund their obligations as identified by actuarial studies that are submitted to the DOI. In addition, the SIGs post bonds on a group basis.

- Nonprofit SIGs offer Nevada employers an alternative mechanism for securing workers' compensation coverage.

- Complete parity among private insurers, self-insured employers, and SIGs is not feasible in that they are each unique mechanisms that enable Nevada employers to maintain workers' compensation coverage. For example, SIGs are required to post a $100,000 bond for each individual member, but it would not be appropriate to force this same requirement on private insurers.

- Some national carriers doing business in Nevada pay insurance brokers a commission of 15 percent for the first year, a 6 percent bonus, and an additional 2 percent to 3 percent for profit sharing, for a total of up to 23 points.

Jim Jeppson

Jim Jeppson, Chief Insurance Assistant, DOI, Carson City, observed that one of the issues raised is the manner in which the statutes are constructed in Chapter 616B of NRS, "Industrial Insurance: Insurers; Liability for Provision of Coverage." He pointed out that a section of statute beginning with NRS 616B.300 through NRS 616B.336 is specific to self-insured employers. The statutes regulating SIGs are found later in that chapter, from NRS 616B.350 through NRS 616B.446.

Continuing, Mr. Jeppson noted that the section of statute addressed by Proposal 9 contains six paragraphs. He explained that the provisions in each one of those paragraphs, which are applicable to self-insured employers, are also either duplicated identically or substantially similar to provisions contained in the statutes pertaining to SIGs. Mr. Jeppson offered the following examples:

- With respect to paragraph 1 regarding net worth, a provision under SIG statutes requires a net worth of $2.5MM for associations. That limit is not established in the statute for self-insured employers. Instead, the Commissioner of Insurance sets a similar limit for self-insured employers in regulation.

- Paragraphs 2, 3, and 4 pertain to surety bonds for self-insured employers. Similar language in contained in NRS 616B.353 that requires a surety bond for SIGs. However, there is a difference in the requirements for individual self-insured employers. Individual self-insured employers are required to post a bond equal to 105 percent of their expected annual incurred claims costs or a minimum of $100,000. In contrast, the SIGs are required by regulation to post 50 percent of their expected annual incurred cost of claims. Because SIGs are required to assess their members and collect a substantial part of that assessment in advance, the association's liabilities are in essence prefunded. This requirement is not applicable to self-insured employers. For this reason, the bond amount for SIGs is less than that of self-insured employers.

- It is his understanding that in many cases, individual self-insured employers pay claims costs out of their net worth, possibly through a reserve.

- Paragraph 4 authorizes the Commissioner of Insurance to increase or decrease the deposit bond of self-insured employers. The same provision is located in a different subparagraph of NRS 616B.353 pertaining to SIGs.

- The statutes pertaining to both self-insured employers and SIGs contain specific requirements for both specific and aggregate excess insurance.

- With regard to paragraph 6, an account for bonds is also created under NRS 616B.353(7) for SIGs.

Concluding his remarks, Mr. Jeppson acknowledged the intent of Proposals 9 and 11 but suggested that each change proposed is already addressed in statute.

Robert A. Ostrovsky

Robert A. Ostrovsky, previously identified on page 20 of these minutes, indicated that the industrial insurance working group would review the citations offered by Mr. Jeppson and determine whether the statutes as currently written accomplish its goals.

Darryl Capurro

Darryl Capurro, previously identified on page 34 of these minutes, reported that the Nevada Transportation Network Self-Insured Group is the oldest and one of the largest SIGs certified by the Commissioner of Insurance in Nevada. The Nevada Transportation Network SIG has operated under the stringent statutory provisions that were implemented in 1993 to ensure that employers, potential employees, injured workers, and other interested parties were properly protected. Further, the Nevada Transportation Network SIG has been in existence for five years. Mr. Capurro noted that all of the provisions set forth in Proposals 9 and 11 are currently addressed in statute.

Robert Vogel

Robert Vogel, Vice President of Operations, Pro/Group Management, Carson City, stated that Pro/Group is a plan administrator that manages four SIGs: (1) the Nevada Transportation Network SIG; (2) Nevada Auto Dealers' Network SIG; (3) the Nevada Retail Network SIG; and (4) the Builders' Association of Western Nevada. Mr. Vogel echoed Mr. Ellington's comments and further indicated that each SIG is required to submit certified actuarial reports annually. It is his understanding that the SIGs also conduct a monthly and quarterly review of reserves.

Wayne Carlson

Wayne Carlson, previously identified on page 32 of these minutes, stated that Public Agency Compensation Trust is an association of governmental employers. He concurred with Mr. Jeppson's comments regarding Proposal 9. With respect to Proposal 11, Mr. Carlson reported that the requirement of Section 4 is addressed in NRS 616B.353, and those of Section 2 are dealt with in NRS 616B.419 regarding required reserves. He asserted that the provisions set forth in Proposals 9 and 11 are currently addressed in statute.

10. PROPOSAL TO PROHIBIT THE COMMISSIONER OF INSURANCE FROM BACKDATING A CERTIFICATE OF QUALIFICATION FOR AN ASSOCIATION OF SELF-INSURED PUBLIC OR PRIVATE EMPLOYERS

Robert A. Ostrovsky

Robert A. Ostrovsky, previously identified on page 20 of these minutes, stated that the purpose of Proposal 10 is to clarify the date on which an employer's coverage ends with a private insurer and begins with a SIG. He explained that conflicts have arisen as to claims responsibility when an employer has been in the midst of transferring coverage from a private carrier to a SIG. To address this issue, the working group recommended that the statute be amended to clarify that the effective date of coverage with a SIG is the date on which the certificate of qualification is issued by the Commissioner of Insurance. Further, the proposal seeks to prohibit the Commissioner of Insurance from backdating a certificate of qualification. Finally, the recommendation provides that if the Commissioner of Insurance dates a certificate in such a manner as to cause a period of double coverage, and an industrial accident occurs during this timeframe, then the private insurer and SIG shall resolve any ensuing dispute as to claim responsibility.

Alice A. Molasky-Arman

Alice Molasky-Arman, previously identified on page 31 of these minutes, made the following remarks regarding Proposal 11:

- The proposal summary refers to dates of: (1) issue; (2) signature; and (3) effectiveness. In practice, however, all certificates of authority for insurers or certifications for self-insured employers or SIGs have only one date, namely, an issue date. The date of issue is the same as the date of signature.

- It is the practice of the DOI not to backdate any certificates of authority or certifications. Following a hearing several months ago on an applicant's proposal that its certificate of authority be dated retroactively, she issued an order in which she clearly stated that backdating of certificates of authority or certifications was not permitted under existing laws.

- The Committee might wish to explore whether Proposal 11 would impede the ability of the SIGs to commence business.

- Once a SIG's initial proposed membership is reviewed by DOI and it receives certification, it may add members as insureds under its plan. A SIG must give notice to the DOI of the addition of members. An original certification or certificate of authority is not affected by the addition of members to a plan.

Senator Townsend suggested that the Committee's staff research whether this issue has been addressed in other states and report their findings to the Committee.

Darryl Capurro

Darryl Capurro, previously identified on page 34 of these minutes, stated that he was confused as to the reason for the proposal. He noted that this section of statute deals with the original certification of the group itself. Mr. Capurro cautioned the Committee not to confuse the addition of members with the original issuance of the certificate for the group to operate. In his view, the proposed language would prevent the Insurance Commissioner from being able to certify a SIG.

Mr. Ostrovsky indicated that it is not the working group's intent to prevent the Commissioner of Insurance from certifying a SIG.

Wayne Carlson

Wayne Carlson, previously identified on page 32 of these minutes, concurred with Mr. Capurro that Proposal 11 confuses a certificate of authority with the issuance of a certificate of insurance, which are not the same. Further, he asserted that inasmuch as Proposal 11 addresses certificates of insurance, it does not pertain to NRS 616B.359, "Certificate of qualification as an association of self-insured employers: Time for consideration of application; issuance by commissioner; contents; effective date; period certificate is in effect; cancellation by association." Mr. Capurro argued that the proposed language in Section 4 would prohibit any group from having members, making it impossible to create a SIG.

Scott M. Craigie

Scott M. Craigie, previously identified on page 29 of these minutes, acknowledged the concerns expressed. He agreed that Proposal 11 was placed in the wrong section of NRS and would not achieve the objective of EICON's claims representatives, who initiated the recommendation. Mr. Craigie indicated that the working group would review the issue.

11. PROPOSAL TO REQUIRE THAT ASSOCIATIONS OF SELF-INSURED PUBLIC OR PRIVATE EMPLOYERS MEET CERTAIN REQUIREMENTS CONCERNING LOSS RESERVES FOR INDUSTRIAL INSURANCE CLAIMS

There was no independent discussion of Proposal 11. Please see comments under Proposal 9 above.

12. PROPOSAL TO REQUIRE PRIVATE CARRIERS AND ASSOCIATIONS OF SELF-INSURED PUBLIC OR PRIVATE EMPLOYERS TO NOTIFY DIR OF CERTAIN CHANGES AND TO CORRECT OR SUBSTANTIATE CERTAIN INFORMATION RELATED TO COVERAGE AND MEMBERSHIP

Jack H. Kim

Jack H. Kim, previously identified on page 30 of these minutes, stated that the intent of Proposal 12 is to clarify for private insurers and SIGs what reports must be filed with the DIR and when they are due.

Continuing, Mr. Kim explained that private carriers and SIGs currently submit proof of coverage reports through the

POC system. If the NCCI returns a notice indicating that the information was submitted incorrectly, then the insurer or SIG is subject to a mandatory fine and must resubmit the data. Proposal 12 would provide insurers and SIGs an opportunity to recheck the information sent to NCCI, and if it were determined that the data was transmitted correctly, to avoid being fined. The party responsible for the incorrect submission would be required to resubmit the data.

Wayne Capurro

Wayne Capurro, previously identified on page 34 of these minutes, requested an opportunity to review Proposal 12 more closely.

14. PROPOSAL TO ELIMINATE THE PROVISION WHEREBY EMPLOYERS CAN ELECT INDUSTRIAL INSURANCE COVERAGE FOR EMPLOYEES FOR WHOM COVERAGE IS NOT REQUIRED BY STATE LAW

Robert A. Ostrovsky

Robert A. Ostrovsky, previously identified on page 20 of these minutes, recommended that statute be changed to require an employer to designate the employees to be covered at the time it purchases a policy of workers' compensation insurance. He explained that in the past, employers with employees who were excluded from industrial insurance requirements were allowed to elect coverage for these workers.

15. PROPOSAL TO MAKE A PHYSICAL EXAMINATION OPTIONAL WHEN A SOLE PROPRIETOR ELECTS INDUSTRIAL INSURANCE COVERAGE

Robert A. Ostrovsky

Robert A. Ostrovsky, previously identified on page 20 of these minutes, explained that statute currently requires sole proprietors who elect to accept the terms and conditions of the Nevada Industrial Insurance Act to submit to a physical examination by a physician selected by a private carrier. Proposal 15 recommends that the statute be amended to make a physical examination of a sole proprietor permissive rather than mandatory at the discretion of the insurer.

REPORT ON RECOMMENDATION REQUIRING APPEALS OFFICERS TO COMPLY WITH THE *NEVADA CODE OF JUDICIAL CONDUCT*

Donald E. Jayne

Donald E. Jayne, President, Jayne & Associates, Inc., representing the Nevada Self-Insurers Association (NSIA), Gardnerville, provided the Committee with copies of the following documents:

1. His September 5, 2000, letter to the Committee outlining the NSIA's recommendations for Committee action; and

2. The *Nevada Code of Judicial Conduct*.

Please see Exhibit M. Mr. Jayne recommended that appeals officers, who operate in a capacity similar to that of judges, be required to comply with the *Nevada Code of Judicial Conduct*. In support of his position, he pointed out that the legal record of a case is established at the appeals officer level, and new evidence may not be introduced once a proceeding is appealed to the district court.

Sandra Simon

Sandra Simon, President, NSIA, Las Vegas, stressed the importance of appeals officers maintaining a high standard of conduct and advocated requiring such officers to comply with the *Nevada Code of Judicial Conduct*. She expressed concern regarding associations between judges and interested parties.

Sue S. Matuska

Sue S. Matuska, Senior Deputy Legislative Counsel, Legal Division, LCB, Carson City, shared concerns previously expressed relative to requiring appeals and hearings officers to comply with the *Nevada Code of Judicial Conduct*. These concerns include potential problems with the Legislature directing certain persons to comply with a different body of law. She explained that in taking such action, the Legislature in essence would be delegating its authority to legislate. Another potential issue would be enforcement of such a requirement. Ms. Matuska pointed out that the Nevada Supreme Court may not be prepared to add appeals and hearings officers to the persons under its jurisdiction. She noted that another approach suggested in the past would be to adopt regulations that incorporate similar standards that are no less stringer than those contained in the *Nevada Code of Judicial Conduct*.

Mr. Jayne stated that he and Ms. Matuska had discussed potential problems with the NSIA recommendation. He indicated that additional language was available that attempts to clarify the recommendation and provide flexibility for the chief of the Hearings Division to promulgate regulations to address this issue. Continuing, Mr. Jayne acknowledged that the NSIA's recommendation references a section from the *Nevada Code of Judicial Conduct*. He recognized that in doing so, the NSIA sought to incorporate a mechanism that was developed by another branch of the government. Continuing, he suggested that it might be possible to find a way to incorporate the NSIA's recommendation into law and to allow each session of the Legislature to revisit any changes that may have been developed and determine whether they are appropriate.

In response to a question by Chairman Parks, Ms. Matuska reported that standards of practice are not contained within the *Nevada Administrative Code* (NAC); however, certain provisions of NAC address selection and other issues pertaining to appeals and hearings officers.

Bryan A. Nix

Bryan A. Nix, Senior Appeals Officer, Hearings Division, Nevada's Department of Administration, Carson City, reported that the Hearings Division is currently drafting regulations that will establish standards for: (1) performance; (2) evaluation of performance; and (3) qualifications for consideration by the Governor during the appointment process. Further, the Division is drafting regulations that would incorporate many of the standards of judicial conduct that are referenced in the *Nevada Code of Judicial Conduct*. Mr. Nix noted that there would be an opportunity for public comment on the proposed regulations. Further, he anticipated that these regulations would be completed by the end of the year.

Continuing, Mr. Nix explained that there is a standard of conduct for administrative law judges, which is similar to the *Nevada Code of Judicial Conduct*; however, it does not provide for review by a separate entity.

Sheri Newberry

Sheri Newberry, a former employee with Nevada's Department of Employment, Training and Rehabilitation, Las Vegas, provided the Committee with copies of the following documents:

- A document dated May 4, 2000, titled "Decision and Order" concerning the contested industrial insurance claim of Ms. Newberry;
- A letter dated May 8, 2000, from Peter L. Busher, Deputy, NAIW, to Ms. Newberry;
- A letter dated May 16, 2000, from John P. Comeaux, Director, Nevada's Department of Administration, to Ms. Newberry regarding a decision concerning her workers' compensation claim; and
- An e-mail from Assemblyman Joseph E. Dini, Jr. dated June 19, 2000.

Please see Exhibit N.

Ms. Newberry related her personal experience with the Hearings Division and expressed concern regarding appeals

officers conducting hearings for state employees, particularly in those instances where potential conflicts of interest exist.

Chairman Parks invited Ms. Newberry to remain and provide additional comment during the public comment portion of the meeting.

Lynn Grandlund

Lynn Grandlund, Employers of Nevada, Las Vegas, spoke in support of requiring appeals and hearings officers to adhere to *Nevada's Code of Judicial Conduct*. She was encouraged that the issue might be addressed with regulation.

Sandra Simon

Sandra Simon, previously identified on page 47 of these minutes, commented on the proposed regulations of Nevada's Department of Administration to address the conduct the appeals and hearings officers. She pointed out that the Department of Administration writes its own regulations. Further, although the public will have an opportunity to comment on the proposed regulations, the Department will make the final decision as to adoption. The NSIA would prefer that the Legislature require Nevada's Department of Administration to adopt a code of conduct.

REPORT ON RECOMMENDATION CONCERNING AN APPLICATION TO REOPEN A CLAIM IF AN INJURED WORKER WAS "NOT OFF WORK" AS A RESULT OF THE INJURY

Donald E. Jayne

Donald E. Jayne, previously identified on page 37 of these minutes, requested that the Legislature review the language contained in NRS 616C.390, "Reopening claim: Procedure;

limitations; applicability," noting that the intent of the language is vague. Specifically, Section 5(a) of NRS 316C.390 provides that:

> 5. An application to reopen a claim must be made in writing within 1 year after the date on which the claim was closed if:
> (a) The claimant was **not off work** as a result of the injury; . . . (Emphasis added.)

At issue are the definition and intent and the phrase "not off work." Mr. Jayne explained that this language has been found to be vague at the administrative appeals level and by the district courts and the Nevada Supreme Court. The NSIA contends that the term "not off work" means that the employee suffered from a disability or injury that caused him to be incapacitated as defined in NRS 616C.400, "Minimum duration of incapacity," which states in part:

> 1. Temporary compensation benefits must not be paid under chapters 616A to 616D, inclusive, of NRS for an injury which does not incapacitate the employee for at least 5 consecutive days, or 5 cumulative days within a 20-day period, from earning full wages, but if the incapacity extends for 5 or more consecutive days, or 5 cumulative days within a 20-day period, compensation must then be computed from the date of the injury.

The NSIA recommends that the term "off work" be clarified by referencing NRS 616C.400. Mr. Jayne reported that after the NSIA submitted its proposed recommendations to Committee staff, further discussion took place regarding this proposal. The NSIA has concluded that its initial recommendation may not result in the clearest language. In the alternative, it suggested that the term "off work" be deleted and the phrase "eligible for temporary compensation benefits" be inserted in its place. He noted that this phrase more closely reflects the language of NRS 616C.400. His recollection of discussions that took place at the time the law was originally considered is that a person "off work" was not eligible for temporary disability benefits.

Jack Jeffrey

Jack Jeffrey, Southern Nevada Central Labor Counsel (SNCLC), Las Vegas, spoke in opposition to Mr. Jayne's recommendation. He expressed concern that the definition proposed by Mr. Jayne could cause problems for persons employed in the construction industry. Mr. Jeffrey stated that construction workers often do not admit to being injured and work through their injuries. This mind set can cause problems if the injury later worsens. He pointed out that NRS 616C.390 requires an injured worker to demonstrate a change in circumstances to reopen a claim that has been closed for more than one year. In his view, the NSIA's recommendation, if adopted, would impede a construction worker's ability to reopen a claim. Mr. Jeffrey asserted that the proposed change would erode and reduce benefits.

Donald E. Jayne

Donald E. Jayne, previously identified on page 37 of these minutes, observed that it is not the intent of the NSIA to impede the ability of injured workers to reopen a workers' compensation claim. Rather, it seeks to clarify the meaning of the term "off work." It is his recollection that the term "off work" should be definable. He stated that it is the position of the NSIA that the Legislature did not intend "off work" to include an employee's absence from work due to an office visit with his physician.

Jack Jeffrey

Jack Jeffrey, previously identified on page 50 of these minutes, explained that the construction industry considers any absence from work due to a work-related injury, including physician office visits, to be a lost time accident. In his view, the key issue is not how long an employee is absent from the job site but whether the worker was legitimately injured while working.

Mark A. Marsh

Mark A. Marsh, previously identified on page 13 of these minutes, voiced support for Mr. Jayne's recommendation. He related details of a court case involving this issue.

REPORT ON PROPOSAL TO PROHIBIT PAYMENT OF REHABILITATION BENEFITS IF AN INJURED WORKER IS UNABLE TO PARTICIPATE IN A PROGRAM OF VOCATIONAL REHABILITATION DUE TO NONINDUSTRIAL CAUSES

Donald E. Jayne

Donald E. Jayne, previously identified on page 37 of these minutes, stated it is the position of the NSIA that an injured worker should not receive benefits during any period in which he or she is unable to participate in a rehabilitation program due to a nonindustrial cause. He provided the Committee with a copy of the Nevada Supreme Court's decision in the case of *State Industrial Insurance System v. Engel*, 114 Nev. Adv. Op. No. 145 (Exhibit O). Continuing, Mr. Jayne explained that the *SIIS v. Engel* case arose out of the SIIS's decision to deny vocational rehabilitation maintenance benefits to an injured worker who had contracted tuberculosis, was ordered quarantined, and therefore could not participate in his rehabilitation program. While the Court found SIIS's denial of benefits improper, it also indicated that the statutory language at issue was unclear.

To address the Court's concerns, the NSIA recommended that the Committee consider adding clarifying language to Section 6 of NRS 616C.590, "Eligibility for services; effect of incarceration; effect of refusing services offered by insurer; effect of inability of insurer to locate injured employee" as set forth in Exhibit M.

Danny L. Thompson

Danny L. Thompson, previously identified on page 17 of these minutes, spoke in opposition to the NSIA's recommendation that clarifying language be added top NRS 616C.590. He stated that injured workers surrendered their right to sue in exchange for exclusive remedy. Mr. Thompson questioned who would decide whether an injured worker was able to participate in a vocational rehabilitation program.

Jack Jeffrey

Jack Jeffrey, previously identified on page 50 of these minutes, expressed opposition to the NSIA recommendation. He reminded the Committee that workers' compensation benefits were appreciably reduced in 1993 and 1995. Continuing, he pointed out that injured workers participating in rehabilitation programs typically have been off work for a considerable period and would be significantly affected by a loss of income. In his view, suspending benefits to an injured worker who is unable to participate in a vocational rehabilitation program for reasons beyond his control would be inappropriate.

Linda Rogers

Linda Rogers, Vice Chairman, Advisory Committee to the DIR, Las Vegas, agreed with Mr. Thompson and Mr. Jeffrey that it would be inappropriate to suspend benefits to an injured worker who is unable to participate in a vocational rehabilitation program for reasons beyond his control.

Lynn Grandlund

Lynn Grandlund, previously identified on page 38 of these minutes, spoke in support of the NSIA's recommendation to add clarifying language to NRS 616C.590 as set forth in Exhibit M. She reported that in the 15 years she has been involved in workers' compensation claims management for employers, the situation under discussion has rarely occurred. In her view, an injured worker should not receive benefits during any period in which he or she is unable to participate in a rehabilitation program due to a nonindustrial cause. Further, Ms. Grandlund questioned why an employer should be expected to pay benefits for a condition unrelated to the worker's employment.

Nancy Ann Leeder

Nancy Ann Leeder, previously identified on page 23 of these minutes, indicated that in her experience, an injured worker is rarely unable to participate in a rehabilitation program due to nonindustrial reasons. From a policy standpoint, she questioned the value of adopting the NSIA's recommendation if it would result in increased appeals and litigation.

Donald E. Jayne

Donald E. Jayne, previously identified on page 37 of these minutes, pointed out the Nevada Supreme Court's reference in *SIIS v. Engel* that the Legislature did not distinguish between excusable and inexcusable nonparticipation in a vocational rehabilitation program. He asserted the proposed changes to statute are intended to clarify whether an insurer has an obligation to continue paying benefits to an injured worker during the period in which he is unable to participate in a rehabilitation program due to a nonindustrial cause.

Sandra Simon

Sandra Simon, previously identified on page 47 of these minutes, noted that the proposed changes would not halt the vocational rehabilitation program. She pointed out that benefits would recommence once an injured worker was able to participate in the program.

Senator Townsend pointed out that it would be difficult to reach a consensus among all interested parties as to the definition of "inexcusable nonparticipation." Referencing page 4 of Exhibit N, Mr. Jayne noted that the Nevada Supreme Court indicates that under current law, a worker's nonparticipation must be willful to justify suspension of benefits. The Supreme Court also recognizes the lack of clarity with respect to involuntary nonparticipation. Mr. Jayne urged the Committee to research the issue to determine whether it is appropriate to require workers' compensation carriers to continue paying benefits during a period in which an injured worker is unable to participate in a vocational rehabilitation program.

REPORT CONCERNING THE RIGHTS OF CERTAIN EMPLOYEES OF EMPLOYERS INSURANCE COMPANY OF NEVADA TO RECEIVE PRIORITY PLACEMENT ON THE APPROPRIATE

REEMPLOYMENT LIST MAINTAINED BY NEVADA'S DEPARTMENT OF PERSONNEL

Senator O'Connell related a problem encountered by a constituent regarding the interpretation of Section 132 of Senate Bill 37 (Chapter 388, *Statutes of Nevada 1999*). The constituent, an unclassified employee of EICON, is of the opinion that he should be allowed to receive priority placement on the reemployment list, and conflicting interpretations of Section 132 have been reached by the Legislative Counsel and the Office of the Attorney General. It is the opinion of the Office of the Attorney General that Section 132 was not intended to address the classified service. Senator O'Connell suggested that the Committee discuss the Legislature's intent with respect to the application of Section 132.

Senator Townsend questioned the procedure for placing classified and unclassified employees on reemployment lists, e.g., whether classified and unclassified employees would be placed on separate lists. Ms. Matuska indicated it is her understanding that Nevada's Department of Personnel does not maintain reemployment lists for unclassified employees and has never done so. The fact that a reemployment list for unclassified employees had never been maintained was part of the rationale cited by the Department in support of its position that Section 132 was not intended to apply to unclassified employees. Ms. Matuska reported that the LCB's Legal Division did render an opinion on whether Section 132 of S.B. 377 applied to this particular unclassified employee. In researching the issue, the Legal Division reviewed other provisions of the bill that dealt with reemployment rights. It was clear from the language of these other provisions that they applied to classified employees. Continuing, Ms. Matuska pointed out that Section 132 was located directly below these sections and said, "A person employed on January 1, 2002 . . ." After considering the distinction in the language of the bill, the fact that the Section 132 referred to "a person," and the absence of strongly countervailing intent, the Legal Division chose a plain interpretation of the law, that is, that the legislative intent was to include both classified and unclassified employees.

Following Committee discussion, Chairman Parks directed that the issue be included in the upcoming work session.

PUBLIC COMMENT

Sheri Newberry

Sheri Newberry, previously identified on page 38 of these minutes, shared her views regarding Nevada's stance on stress-related workers' compensation claims and the administrative hearings process. Ms. Newberry suggested the Committee:

1. Explore establishing an alternative mechanism to the administrative hearings process to address issues involving state employees, e.g., mediation; and

2. Review Nevada's stress laws.

Assemblyman Hettrick commented that he served on the committees that changed Nevada's laws relative to stress-related workers' compensation claims in 1993. He pointed out that at the time, the state fund was both collecting and losing $400 million a year and was $2 billion in debt. The Legislature was required to take decisive action to reverse this trend. Continuing, Assemblyman Hettrick reported that 29 states have passed similar stress laws. He cautioned that any effort to change these statutes would be difficult.

Lynn Grandlund

Lynn Grandlund, previously identified on page 38 of these minutes, spoke in support of the state's position on the stress-related workers' compensation claims. Continuing, she reminded the Committee that there are a number of resources available to protect workers' rights, including the ADA and the EEOC.

Janice L. Schrader

Chairman Parks introduced into the record a document titled "Injured Worker Flees State Seeking Medical Attention," (Exhibit P) authored by Janice L. Schrader of Sacramento, California.

Barbara Honey

Barbara Honey, a classified state employee, Carson City, reported that after 21 years of state service, she was laid off on October 2, 1999, when her position was transferred to Las Vegas. She indicated she was not formerly employed by EICON, but she is on the reemployment list. Ms. Honey explained that she is currently working at a position that is a lower class than the one from which she was laid off.

Ms. Honey reported that her lay-off status would end on October 2, 2000. Because of the protections afforded to EICON employees, the agencies at which she has sought positions were unable to interview her until after they had first considered all former EICON employees who had submitted applications. Ms. Honey indicated that over the past year, she had only been interviewed four times, and none of these positions was acceptable. Ms Honey shared her views and concerns, offering the following remarks:

- Former EICON employees are allowed two years reemployment rights while she was allowed only one year.
- Despite her years of service and satisfactory performance record, an EICON employee who has successfully completed a six-month probationary period has priority over her.
- Former EICON employees who secure a new position with the State of Nevada are afforded permanent status immediately while she must complete a probationary period.
- Due to the ranking system, former EICON employees who have secured positions at a grade lower than that at which they were laid off can continue to compete for positions at a higher grade for a period of two years from their lay-off dates.
- Further, approximately $2 million was allocated to train former EICON employees during the period when plans for privatization were being developed and two years thereafter. She was not offered any training.

ADJOURNMENT

The Committee scheduled a work session meeting for Friday, October 20, 2000, at 8 a.m.

There being no further business, Chairman Parks adjourned the meeting at 3:03 p.m.

Exhibit Q is the “Attendance Record” for this meeting.

Respectfully submitted,

Susan Furlong Reil
Principal Research Secretary

Crystal M. McGee
Senior Research Analyst

APPROVED BY:

_____
David R. Parks, Chairman

Date: _____

LIST OF EXHIBITS

Exhibit A is a document titled "California Workers' Compensation Direct Premium and Loss Data for 1993 through 1999" prepared by the California Workers' Compensation Institute, provided by Crystal M. McGee, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit B is an article regarding California's workers' compensation insurance marketplace from the August 14, 2000, edition of *BNA's Workers' Compensation Report* titled "Rates in First Quarter Are up 19 Percent From 1999 Average, Rating Bureau Reports," provided by Crystal M. McGee, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit C is an untitled article regarding California's workers' compensation insurance marketplace that appeared in the September 2000 edition of *Business & Health*, provided by Crystal M. McGee, Senior Research Analyst, Research Division, Legislative Counsel Bureau, Carson City, Nevada.

Exhibit D is a copy of Background Paper 01-1 titled "A Study of Subsequent Injury Funds," prepared by Crystal M. McGee, Senior Research Analyst, Research Division, Legislative Counsel Bureau, provided by Ms. McGee.

Exhibit E is a copy of a letter dated September 15, 2000, from Michael A. Foley, of Henderson, Nevada, to the Legislative Committee on Workers' Compensation regarding the retaliatory discharge of an employee who files a claim for workers' compensation and an injured employee's right to return to work, provided by Mr. Foley.

Exhibit F is a copy of a letter dated August 31, 2000, from Kathleen Stoneburner, Research Secretary, Alliance for Workers' Rights, Northern Nevada Chapter, to Assemblyman David R. Parks, Chairman, Legislative Committee on Workers' Compensation, which sets forth a number of recommendations concerning the retaliatory discharge of an employee who files a claim for workers' compensation and an injured employee's right to return to work, provided by Ms. Stoneburner.

Exhibit G is an undated document titled "Protection Against Discrimination Because of a Workers' Compensation Claim, Alliance for Workers Rights," provided by Kathleen Stoneburner, Research Secretary, and Carol M. Walton, Board Member, Alliance for Workers' Rights, Northern Nevada Chapter, Reno, Nevada.

Exhibit H is a copy of an Equal Employment Opportunity Commission enforcement guidance dated September 1996, Number 915.002, titled "EEOC Enforcement Guidance: Workers' Compensation and the ADA," provided by Kathleen Stoneburner, Research Secretary, Alliance for Workers' Rights, Northern Nevada Chapter, Reno, Nevada.

Exhibit I is a copy of an article titled "Return to Work Under Workers' Compensation," that appeared in the Legislative Counsel Bureau newsletter *Workers' Compensation*, Volume 8, Number 1, dated August 2000, provided by Carol M. Walton, Board Member, Alliance for Workers' Rights, Northern Nevada Chapter, Reno, Nevada.

Exhibit J is a letter from Thomas A. Wilson, a resident of Carson City, Nevada, and a volunteer with the Alliance for Workers' Rights, to Crystal M. McGee, Senior Research Analyst, Research Division, LCB, dated September 1, 2000, together with the following attachments:

1. A document dated June 23, 2000, prepared by the State Controller's Office titled "AB 638 Summary by Agency, (as of March 31, 2000)";

2. "An Employee's Guide to Nevada Workers' Compensation Insurance," a brochure that is published by the DIR;

3. A brochure prepared by the NAIW titled "Injured Workers, Important Points About Your Hearing Before the Hearing Officer."

Exhibit K is a letter from Bob Ostrovsky, President of Ostrovsky & Associates, dated August 1, 2000, representing the Employers Insurance Company of Nevada, indicating his desire to present the matter of changes to the medical

fee schedule for consideration.

Exhibit L is a packet submitted by Bob Ostrovsky, President of Ostrovsky & Associates, dated August 31, 2000, outlining proposals numbered 1 through 15 in proposed statutory changes concerning Industrial Insurance.

Exhibit M consists of copies of the following documents provided by Donald E. Jayne, President, Jayne & Associates, Inc., representing the Nevada Self-Insurers Association:

1. His September 5, 2000, letter to the Legislative Committee on Workers' Compensation outlining the Nevada Self-Insured Associations recommendations for Committee action; and

2. The *Nevada Code of Judicial Conduct*.

Exhibit N is a packet of material consisting of copies of the following documents:

1. A document dated May 4, 2000, titled "Decision and Order" concerning the contested industrial insurance claim of Ms. Newberry;

2. A letter dated May 8, 2000, from Peter L. Busher, Deputy, Nevada Attorney for Injured Workers, to Ms. Newberry;

3. A letter dated May 16, 2000, from John P. Comeaux, Director, Nevada's Department of Administration, to Ms. Newberry regarding a decision concerning her workers' compensation claim; and

4. An e-mail from Assemblyman Joseph E. Dini, Jr. dated June 19, 2000.

These documents were provided by Sheri Newberry, Las Vegas, Nevada.

Exhibit O is a copy of the Nevada Supreme Court's decision in the case of *State Industrial Insurance System v. Engel*, 114 Nev. Adv. Op. No. 145, provided by Donald E. Jayne, President, Jayne & Associates, Inc., representing the Nevada Self-Insurers Association:
.
Exhibit P is a document titled "Injured Worker Flees State Seeking Medical Attention, provided by Janice L. Schrader.

Exhibit Q is the "Attendance Record" for this meeting.

Copies of the materials distributed in the meeting are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the Library at (702) 684-6827.