

**MINUTES OF THE MEETING  
OF THE  
LEGISLATIVE COMMITTEE ON WORKERS= COMPENSATION  
(Nevada Revised Statutes 218.5375)  
August 10, 1998  
Las Vegas, Nevada**

The seventh meeting of the Legislative Committee on Workers= Compensation (*Nevada Revised Statutes* [NRS] 218.5375) for the 1997-1998 interim was held on Monday, August 10, 1998, at 9:30 a.m., in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada, and video conferenced to the Legislative Building, Room 1214, 401 South Carson Street, Carson City, Nevada. Pages 2 through 4 contain the AMeeting Notice and Agenda.@

**COMMITTEE MEMBERS PRESENT IN LAS VEGAS:**

Senator Ann O=Connell, Chairwoman  
Assemblyman Lynn C. Hettrick, Vice Chairman  
Senator Kathy Augustine  
Senator Raymond C. Shaffer  
Senator Randolph J. Townsend  
Assemblyman David R. Parks  
Assemblywoman Sandra Krenzer  
Assemblyman Dennis Nolan

**LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:**

Vance A. Hughey, Senior Research Analyst  
Melissa Stafford Jones, Senior Research Analyst  
Kim Marsh Guinasso, Principal Deputy Legislative Counsel  
Sue Matuska, Deputy Legislative Counsel  
Susan Furlong Reil, Senior Research Secretary

**MEETING NOTICE AND AGENDA**

Name of Organization: Legislative Committee on Workers= Compensation  
(*Nevada Revised Statutes* 218.5375)

Date and Time of Meeting: Monday, August 10, 1998  
9:30 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 video conference conducted at the following location:

Legislative Building  
Room 1214  
401 South Carson Street  
Carson City, Nevada

**A G E N D A**

- I. Opening Remarks  
Senator Ann O'Connell, Chair, Legislative Committee on Workers' Compensation
- \*II. Approval of Minutes of the Meetings of February 20, 1998, and June 24, 1998
- \*III. Report on the Fifth Anniversary of the Workers' Compensation Fraud Unit  
Kevin Higgins, Chief Deputy Attorney General, Office of the Attorney General
- \*IV. Progress Report on the Implementation of Three-Way Insurance from the Commissioner of Insurance
  - A. Regulations Related to the Residual Market  
Alice A. Molasky-Arman, Commissioner of Insurance
  - B. Development of Program for the Training of Workers' Compensation Insurance Agents  
Alice A. Molasky-Arman, Commissioner of Insurance
- \*V. **Work Session** Discussion and Action Regarding Certain Remaining Recommendations from the Work Session Document (see attached list of recommendations)  
Senator Ann O'Connell, Chair, Legislative Committee on Workers' Compensation
  - A. Recommendation *i* Related to Information Collected by the Division of Industrial Relations (DIR)  
Robert Ostrovsky, Ostrovsky & Associates
  - B. Recommendations *ii* Related to the Information System Proposed by the DIR for Three-Way Insurance, *iii* and *iv* Related to the Qualifications for Associations of Self-Insured Employers, and *viii* Related to the Hearings and Appeals Process  
Sam McMullen, The McMullen Strategic Group
  - C. Recommendations *v* and *vi* Relating to the Regulation of Insurers Under Three-Way Insurance  
James Wadhams, Representing:  
American Insurance Association  
Nevada Independent Insurance Agents
  - D. Recommendation *vii* Relating to the Definition of AInsurer@ in the Nevada Insurance Code  
Gary Milliken, GEM Consulting
- \*VI. Report from the Voluntary Working Group Regarding Owner-Controlled Insurance Programs  
Jim Schober, Chief Operating Officer, Kaercher Insurance  
Sam McMullen, The McMullen Strategic Group
- \*VII. Presentation Regarding Subrogation (NRS 616C.215), Permanent Total Disability (NRS 616C.435), and Primary Cause (NRS 616C.175)  
Leslie Bell, CDS of Nevada  
Timothy E. Rowe, McDonald Carano Wilson McCune Bergin Frankovich & Hicks LLP
- VIII. Public Comment
- \*IX. Discussion of Next Meeting Date
- X. Adjournment

\*Denotes items on which the committee may take action.

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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 687-6825, as soon as possible.

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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; Carson City Courthouse, 198 North Carson Street; Legislative Building, Room 1214, 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; Grant Sawyer State Office Building, 555 East Washington Avenue.

## **OPENING REMARKS**

Chairwoman O=Connell called the meeting to order at 9:35 a.m. and noted that all Committee members were present.

## **APPROVAL OF MINUTES OF THE MEETINGS OF FEBRUARY 20, 1998, AND JUNE 24, 1998**

The Chairwoman asked for approval of the minutes of the Committee meetings held on February 20, 1998, and June 24, 1998.

**SENATOR TOWNSEND MOVED FOR APPROVAL OF THE MINUTES OF THE COMMITTEE=S MEETINGS HELD ON FEBRUARY 20, 1998, AND JUNE 24, 1998, IN LAS VEGAS, NEVADA. THE MOTION WAS SECONDED BY ASSEMBLYMAN HETTRICK AND PASSED UNANIMOUSLY.**

## **REPORT ON THE FIFTH ANNIVERSARY OF THE WORKERS= COMPENSATION FRAUD UNIT**

### ***Kevin Higgins***

Kevin Higgins, Chief Deputy Attorney General, Office of the Attorney General, mentioned that Thursday, August 13, 1998, is the fifth anniversary of the Workers= Compensation Fraud Unit, and press conferences will be held in Las Vegas and Reno, Nevada, on that day. The press conferences will accomplish several purposes consisting of:

- C Highlighting for members of the community the work of the fraud unit.
- C Announcing several planned anti-fraud initiatives.
- C Showing videotapes of several recent cases solved by the fraud unit.
- C Discussing the unit=s 1999 Legislative package.
- C Reviewing statistics and successes of the fraud unit over the last five years.

Accomplishments of the Workers= Compensation Fraud Unit include:

- C Investigation of over 4,500 cases;
- C Arrests exceeding 400;
- C Nearly 350 sustained convictions; and
- C Recognition in a national study of all fraud units in the country as number one in cases presented for prosecution and cases prosecuted.

Mr. Higgins presented AA Proclamation by the Governor,@ proclaiming the month of August as Workers=

**PROGRESS REPORT ON THE IMPLEMENTATION OF THREE-WAY  
INSURANCE FROM THE COMMISSIONER OF INSURANCE**

*Alice A. Molasky-Arman*

Alice A. Molasky-Arman, Commissioner of Insurance (Commissioner), Division of Insurance, Nevada=s Department of Business and Industry, testified that the residual market plan was adopted by an order of the Commissioner on December 31, 1997. The Commissioner has been working on a regulation that would implement the elements of that program. The regulation was heard on June 30, 1998, and it is still under consideration by the Commissioner and by the hearing officer. It is expected to be adopted within the next two to three weeks, and as soon as that is accomplished, Ms. Molasky-Arman will provide a copy to the Committee.

Regarding the education of agents and brokers, Ms. Molasky-Arman advised that there is a subcommittee of the Commissioner=s Advisory Committee on Property and Casualty Insurance working with the division to establish this regulation. That regulation was also heard on June 30, 1998, and a copy of it was submitted to the Commissioner on Friday, August 7, 1998. The Commissioner signed an order, and it will be filed with the Legislative Counsel Bureau (LCB) on August 10, 1998. The regulation requires that every resident agent, broker, and solicitor take a course that has been approved by the Commissioner consisting of six credit hours. The course will apply to the continuing education requirements normally required of all agents and brokers. It will be the responsibility of each insurance company to ensure that its agents, brokers, or solicitors have completed the required course before marketing workers= compensation insurance.

Ms. Molasky-Arman explained that the commission is currently reviewing the types of curriculum that will be required and expects to make a decision in that regard shortly. A great deal of interest has already been expressed by various trade associations, particularly the independent insurance agents, the professional insurance agents, and individual companies. The courses should be available soon.

Chairwoman O=Connell recalled that Lenard Ormsby, General Counsel, State Industrial Insurance System (SIIS), made comments expressing concern about a federal tax and SIIS losing its tax exempt status. She advised that the LCB was preparing a legal opinion, but found that the information from the Federal Government was not clear. Therefore, it is still unknown whether the federal tax ruling would apply to SIIS.

**WORK SESSIONCDISCUSSION AND ACTION REGARDING CERTAIN  
REMAINING RECOMMENDATIONS FROM  
THE WORK SESSION DOCUMENT**

The remaining recommendations contained in the AWork Session Document@ appear below in italics and precede the actions of the Committee.

**WORK SESSION DOCUMENT**

*Legislative Committee on Workers= Compensation  
Nevada Revised Statutes 218.5375*

*August 10, 1998*

At its meeting on June 24, 1998, the Legislative Committee on Workers= Compensation held the following eight recommendations contained in the Committee=s Work Session Document for further discussion at the August 10, 1998, meeting of the Committee:

***Three-Way Insurance***

- i. *Repeal Nevada Revised Statutes (NRS) 616B.012(6) which requires the Administrator of the Division of Industrial Relations (DIR) to collect certain information from insurers.*

*Robert Ostrovsky; support expressed by James Wadhams; 4/7/98*

*(Formerly identified as Recommendation 3 in the June 1998 Work Session Document.)*

Robert A. Ostrovsky, Ostrovsky and Associates, representing the Nevada Resort Association, explained that the Committee asked him to work with Michael Pitlock, Executive Director, Department of Taxation, in writing his proposal to delete subsection 6 of NRS 616B.012 and replace it with language that would alleviate his concerns about the Department of Industrial Relations (DIR) collecting information about the number of employees at each employer and the wages paid them.

Mr. Ostrovsky referred to his handout titled AAmendment to NRS 616B.012 C Disclosure of Information C Draft 3@ (please see Exhibit B), and advised that the Department of Taxation is in agreement with that language. The revision removes from the statute the language Athe number of employees employed by each employer and the total wages paid by each employer,@ and replaces that language with Aor any other records he maintains.@ This would give the Department of Taxation access to information that was held at the DIR for the purposes of administration of the business tax without limiting it to the number of employees and wages paid.

In response to Chairwoman O=Connell=s previous question to Mr. Higgins regarding money that the Fraud Unit had collected from prior uninsured employers, Mr. Ostrovsky advised that NRS 232.600, which is the guidance to the advisory council for the DIR, provides language that allows the DIR to write off uncollectible debt that is older than three years. Mr. Ostrovsky, as a member of the advisory council, assured the Committee that the council looks at that debt on a regular basis and exhausts every effort before writing off debt that is owed for purposes of paying uninsured employers= claims.

- ii. *Enact legislation to allow the DIR to collect only basic claims information as described in materials provided by the Nevada Self-Insurers Association in Attachment I.*

*Linda Collins, Nevada Self-Insurers Association, 5/28/98*

*(Formerly identified as Recommendation 42 in the June 1998 Work Session Document.)*

Sam McMullen, representing the Nevada Self-Insurers Association (NSIA), introduced Linda Collins, President, NSIA. He indicated that copies of his handout titled AProposed Statutory Amendments Regarding Appeals Officers and Hearing Officers@ (Exhibit C) were available to the public.

Ms. Collins distributed a document titled AEstimates of Cost to Report Claims to DIR C Prepared by Nevada Self-Insurers Association@ (please see Exhibit D). She mentioned that a topic that has been discussed by the Committee for several months is the National Council on Compensation Insurance (NCCI) information system. She explained that NSIA compiled the cost of some of its clients to report claims to NCCI. Ms. Collins emphasized that claim information will have to be reported a minimum of four times for each claim: (1) when it is accepted; (2) when the status changes; (3) when there is a PPD rating; and (4) on claim closure. Not included is the cost of membership in NCCI, if that is a requirement, and the cost to access the information. In her opinion, NCCI requires too much information and the cost is excessive.

Responding to a question from Chairwoman O=Connell regarding the approximate current amount of uncollected debt from uninsured employers, Ron Swirczek, Administrator, DIR, Department of Business and Industry, remarked that for the period of 1993 through 1997, there was approximately \$20 million in uninsured employers= claims, which the division is working to recover. Per Chairwoman O=Connell=s request, Mr. Swirczek agreed to include in his data compilation of uncollected debt information, a relation to cases and the amount reserved for each case. Mr. Swirczek clarified that he was talking about actual claims and not premium dollars.

Mr. Swirczek made the following points regarding Ms. Collins' concerns:

- C There is no NCCI membership requirement.
- C The information from NCCI will go to DIR, and DIR will make the appropriate information available to all insurers.
- C NCCI was chosen because it is already under contract with the Division of Insurance for rating purposes and it has been in the workers' compensation business for 75 years.
- C NCCI is only a vendor to collect, validate, and transfer information to DIR; it is not in the business of making the information accessible to anyone else, such as other insurers or employers.
- C A confidentiality agreement is in place, and the only use and access of the information collected by NCCI will be by DIR.

Senator Townsend inquired why DIR is utilizing NCCI to collect data that it has no ability to use.

In response, Mr. Swirczek referenced a letter addressed to the Legislative Committee on Workers' Compensation, c/o Vance Hughey, Senior Research Analyst, Research Division, LCB, from Mr. Swirczek, dated June 23, 1998, in response to a letter from Linda Collins of the NSIA stating the DIR's objectives regarding the proposed information system (please see Exhibit E). Mr. Swirczek read the objectives listed in the letter.

Senator Townsend suggested that perhaps if DIR was given a better legislative mandate, it would not be necessary to employ NCCI to collect claims data. Further, he proposed utilizing graduate students from the University of Nevada to collect data since no analysis is required.

Responding to a question from Senator Townsend regarding the cost of employing NCCI, Mr. Swirczek called attention to Ms. Collins' handout listing the cost to some of its clients (Exhibit D). He added that DIR has reduced the employers' burden of providing information by allowing it to be submitted in one of several forms (for example, hard copy, electronically, or by means of the Internet). Continuing, Mr. Swirczek advised that using the figure of 500 private employer insurers as a basis for calculation, claims history data for 1997, and the volumes to submit and collect the data, it will cost the insurers approximately \$500,000 to utilize NCCI. If DIR collected the data in-house, the ongoing cost would be approximately \$750,000.

Ms. Collins observed that state employees who will be laid off when three-way insurance is implemented could be transferred to DIR to meet the additional staffing needs of performing data collection in-house. That would provide jobs for those displaced by three-way insurance and keep wages within the state of Nevada.

Mr. McMullen addressed methods of data collection and noted that currently information is being collected by reports and functional responsibilities, and that data can be computerized. He mentioned two levels of debate regarding information to be collected: (1) how much information is necessary; and (2) how it is necessary and in what form. Mr. McMullen advised that this issue was studied both for all insurers and for self-insurers as a sector in and of itself, for which data collection expense is an added cost of providing workers' compensation.

Assemblywoman Krenzer asked Ms. Collins if there are no additional costs for utilizing NCCI, and no additional reporting, did she have additional reasons for not wishing to employ NCCI.

Ms. Collins replied that one reason is a competitive issue, that NCCI is requesting competitive type information that in her opinion is not necessary for DIR to accomplish its goals.

Assemblyman Nolan pointed out that the collection of information regarding workplace injuries and safety that Mr. Swirczek has determined is necessary, already is reported to the Occupational Safety and Health Administration (OSHA). He inquired whether NSIA would be willing to expand on the information reported to OSHA to perhaps satisfy the requirement of DIR for that type of information.

Responding, Ms. Collins stated that in her opinion, that would not be a problem. However, in order to add any additional data fields, she would need to obtain permission from NSIA=s membership.

Linda Rogers, Vice Chairman, DIR Advisory Council, expressed her view of why the DIR is in favor of employing NCCI. Referring to the \$20 million that was lost from 1993 to 1997, she asserted much of that loss was due to inefficient reporting systems. She advised that NCCI is better equipped to handle the overwhelming amount of information that will be coming in once three-way insurance is implemented on July 1, 1999.

Raymond O=Donnell, Associated General Contractors (AGC), testified that AGC represents 475 contractors, subcontractors, and other members throughout Nevada. He stated that AGC supports the testimony of Ms. Collins and the NSIA in their position that NCCI is too costly and requires an excessive amount of information. He asserted that this issue is between NCCI, insurance companies, and SIIS, and has little to do with self-insurers. Annually, self-insurers in Nevada are required to prepare a detailed package of statistical information that is sent to DIR, and that information is sufficient for statistical analysis to meet DIR=s requirements.

Another concern of Mr. O=Donnell is the confidentiality issue. He pointed out that contractors make their livings based on competitive bids. Mr. O=Donnell mentioned a one-half page, full color glossy advertisement taken out by NCCI in the April issue of *Business Insurance* magazine offering to package underwriting and risk information for a particular company for anyone who calls their 800 telephone number to request such information and pays a NCCI subscriber fee. Mr. O=Donnell is also concerned about the lack of security when transmitting data on the Internet.

A final point made by Mr. O=Donnell is that his company has been providing DIR with loss information for ten years, and the DIR staff has been processing that information. He asked why the DIR would have to increase its staff to process the information it has been processing for ten years.

Ms. Rogers concurred with Mr. O=Donnell=s remarks that DIR has been doing a good job of managing the data reported by insurers. However, she maintained the problem is controlling the 46,000 other employers who will be implementing three-way insurance. She asserted that the DIR is staffed to process the current volume of data.

Mr. O=Donnell responded that if the problem is 46,000 employees who are currently covered by SIIS and will not be covered later, SIIS and the private insurers should meet with NCCI and determine how to pay for the desired services and let the self-insurers proceed accordingly.

James Wadhams, representing NCCI, made the following distinctions:

- C The Commissioner has appointed NCCI to be the statistical agent to collect data for rate making. This function is discrete and separate from the vendor function which Mr. Swirczek has identified.
- C Claims reporting information is what has been discussed at this meeting. A policy decision has been presented as to whether the state should collect the data C irrespective of contracting it out. Does the Committee want that data collected?

### ***Hearings and Appeals Process***

viii. *Amend NRS to establish the following standards for Appeals Officers:*

- a. *Tighten standards against ex parte communications or relationships (including entertainment, gifts, et cetera, comparable to other similarly-situated decision makers) with attorneys or other representatives who appear in front of Appeals Officers; and*
- b. *Require that Appeals Officers must have experience in workers= compensation law.*

*Sam McMullen, 5/28/98*

*(Formerly identified as Recommendation 39 in the June 1998 Work Session Document.)*

Mr. McMullen referred to his handout (Exhibit C), and pointed out that it provides specific language to amend Chapter 616C of NRS regarding appeals officers for workers= compensation. He mentioned a typographical error in the unbolded paragraph 2 in the second to the last line of his handout; the letter Af@ should read Afor.@ Mr. McMullen remarked that these amendments address two areas.

1. The first amendment adds to an appeal officer=s credential of being a licensed attorney in the state for a period of two years the requirement of having some experience and knowledge of claims for compensation.
2. Amendment 2 lists ethical guidelines in two ways: (a) functionally, the relationship between appeals officers and the people that appear before them and in all facets with respect to gifts; and (b) the ongoing relationships that develop with respect to appeals officers and the people that appear before them.

Mr. McMullen concluded by stating that this is draft language that LCB will review and change as necessary.

Assemblyman Nolan expressed his concern that as a representative of employers and employees, he has formed relationships with appeals officers, and he does not wish to preclude, through these amendments, qualified appeals officers from presiding over hearings. He mentioned that the disclosure process will be important in these proceedings.

Responding, Mr. McMullen concurred and added that the amendments may have a limiting effect on the pool of available appeals officers. He suggested that perhaps language could be added to the effect Aor other qualifying experience@ to prevent limiting the pool to such an extent that they are unable to find people who can serve. He emphasized, however, that there is a need for the appeals officers to at least have some qualifying experience, and that is what the first amendment addresses.

Senator Augustine suggested that appeals officers be required to file financial disclosures with the Ethics Commission rather than putting Amendment 2 into statute. She reasoned that all of the information called for in Amendment 2 is included on the financial disclosure form. Senator Augustine also mentioned that the requirements in (b) of Amendment 2 is not even in statute with regard to judges; it is assumed to be part of the job.

Chairwoman O=Connell requested that Sue Matuska, Deputy Legislative Counsel, Legal Division, LCB, work with Mr. McMullen to develop appropriate language for Amendment 2, including financial disclosure, to be presented at the Committee=s next meeting in September 1998.

A final comment by Mr. McMullen was regarding appeals officers writing their own decisions. He suggested that the Committee adopt that standard for appeals officers= performance.

Lynn Grandlund, Employers of Nevada, agreed with Mr. McMullen=s comments regarding the appeals process. She testified that Employers of Nevada have had many discussions regarding the problems they have had when appearing at the Department of Administration. Ms. Grandlund urged the Committee to take a strong stand with strict requirements, and asserted it would benefit employers as well as insured workers who have been aggrieved by decisions.

Chairwoman O=Connell addressed the next item on the Work Session Document and requested Mr. Wadhams= testimony.

### ***Regulation of Workers= Compensation Insurers***

- v. *Specifically exempt all insurers who provide workers= compensation, including SIIS, from the following provisions of NRS, as they relate to workers= compensation and not other lines of insurance:*
  - a. *NRS 679B.430(2) and 679B.450 relating to the fund for the stabilization of insurance costs;*



- b. *NRS 680A.140 which requires an insurer to deposit cash or securities; and*
- c. *NRS 679B.310 through 679B.370 which relate to the Commissioner holding hearings to determine whether an insurer or an employee of an insurer has engaged in unsuitable conduct.*

*James Wadhams, 4/7/98*

*(Formerly identified as Recommendation 15 in the June 1998 Work Session Document.)*

Mr. Wadhams stated he was testifying on this issue on behalf of the Nevada Independent Insurance Agents and the American Insurance Association. He said that his group was withdrawing Recommendation v. a. because the Commissioner indicated that the cost of workers= compensation will be included in the continued application and assessment for the insurance cost stabilization fund in the future. Mr. Wadhams expressed his desire that the Committee, along with the budget committees, look at the cost of insurance regulation in Nevada. The licensing fees paid by companies and agents generate over \$6 million, and the General Fund appropriation for the regulation of insurance is approximately \$2.5 million. Therefore, there is a disparity of licensing fees collected to pay for the cost of regulation.

Regarding Recommendation v. b. on cash and securities, Mr. Wadhams advised that he has met with the Commissioner, and they are in agreement to recommend that whatever was required of SIIS also be required of commercial insurers.

Mr. Wadhams requested Recommendation v. c. be withdrawn.

- vi. *Specify that NRS Chapter 686A is the exclusive jurisdiction of the Commissioner of Insurance, except to the extent that workers= compensation benefits to claimants are administered by DIR. Clarify that the authority of DIR in the area of claims practices specifically relates to the responsibility of insurers to pay benefits to injured workers.*

*James Wadhams, 4/7/98*

*(Formerly identified as Recommendation 13 in the June 1998 Work Session Document.)*

Regarding Recommendation vi., Mr. Wadhams noted that SIIS is preparing to become a competitive insurer, and in that regard, the application of the general rules of insurance company conduct should apply to all entities engaging in the commercial insurance of risk, whether it is done on a for profit basis or not. His recommendation is that NRS 686A should apply under the egis of the Commissioner with the specific activity dealing with monitoring the payment of benefits.

Chairwoman O=Connell clarified that Mr. Wadhams was proposing changing the first word in the third line of Recommendation vi. from Aadministered@ to Aregulated@ or Amonitored.@ Mr. Wadhams concurred, stating it was a more distant function than actually administering the claims.

Assemblyman Hettrick referred to Recommendation v. b. and inquired whether its intention is that private insurers would not be required to provide a deposit or security if they are going to offer insurance in Nevada.

Mr. Wadhams replied that was correct and explained that the concept of depositing insurers money in the state of Nevada is not as precise as it once was. Most insurers hold the vast majority of their funds in U.S. Treasury Bills that are not invested in the state of Nevada. He emphasized that it is the evidence of ownership that must be controlled within the state of Nevada.

- vii. *Amend NRS 686B.1759 to read as follows to specifically exempt associations of self-insured employers from the definition of insurer:*

*AInsurer@ means the state industrial insurance system and all private carriers authorized*

*to provide industrial insurance in this state. The term does not include:*

1. An association of self-insured private employers, as defined in NRS 616A.050; or
2. An association of self-insured public employers, as defined in NRS 616A.055.

*Tom Wheeler, Nevada Contractors Network*

*(Formerly identified as Recommendation 41 in the June 1998 Work Session Document.)*

Gary Milliken, Gem Consulting, Las Vegas, and a member of the Task Force's Information and Education Subcommittee, representing Nevada Contractors Network (NCN), advised that Mr. McMullen and he had met with the Division of Insurance, who referred them to the Attorney General for a ruling on the status of becoming an insurer. He requested the Committee defer action on this item until the Attorney General's office makes its decision.

Chairwoman O'Connell inquired whether Ainsurer@ means an entity that simply buys the insurance policy with all obligation from that point forward belonging to the subcontractors. She also asked, that being the case, if that was part of the concern as to what the liability is once NCN becomes involved with an owner-controlled insurance program (OCIP).

Mr. Milliken replied negatively, stating this was more from the self-insured workers' compensation side. He remarked that NCN would like clarification in writing as to whether it falls under the Ainsurer@ category. He stated the OCIP situation is a different situation that should be discussed when the Committee addresses that topic.

#### **REPORT FROM THE VOLUNTARY WORKING GROUP REGARDING OWNER-CONTROLLED INSURANCE PROGRAMS**

Chairwoman O'Connell requested Mr. Schober address the question she asked Mr. Milliken regarding whether responsibility for administering the insurance belongs to the owner with an OCIP.

***Jim Schober***

Jim Schober, Chief Operating Officer, Kaercher Insurance, and Co-Chair, Committee on OCIPs, thanked the members of the Committee on OCIPs and the LCB for its work on that committee. He referred to two handouts; one which lists the continuing events within the Committee on OCIPs, and the other information regarding OCIPs, wrap-up insurance programs, and consolidated insurance programs (CIPs) in the United States (please see Exhibit F). Mr. Schober advised that the committee invited various members representing different segments of the community, such as insurance, contractors, and so forth, to discuss their concerns and questions to gain feedback from them. The information was gathered via the Internet and facsimile transmissions. He mentioned that an item was added regarding the fact that 40 states allow OCIPs, 4 states prohibit them, and asks why Nevada is trying to reinvent them when there is such a long OCIP history.

The Committee on OCIPs met, reviewed the information received, and defined its position as a result of its meeting. At this point, Mr. Schober stated the committee would like to condense the information into a recommendation to the Legislative Committee on Workers' Compensation by its next meeting in the latter part of September 1998.

***Sam McMullen***

Mr. McMullen remarked that there are three probable recommendations that the Committee on OCIPs will make on any one of these subjects: (1) there is disagreement, and it needs to be decided as a policy issue; (2) the insurance contract will govern, and it should be a matter of contract; and (3) the Committee may want to, as a matter of public policy, ensure by statute that certain issues are dealt with by contracts.

***Tom Czehowski***

Tom Czehowski, representing Associated General Contractors, testified that the Committee on OCIPs was a good working group, and the positions of the various contributors are within the positions statement. He pointed out that the contractors must work with the OCIPs, but the subcontractors are not yet at the stage where they are negotiated between the insurer and the owner.

Mr. Schober announced the next meeting of the Committee on OCIPs will be within the next ten days to two weeks based on the recommendations the committee will formulate this week. He agreed to inform the Committee members of the time and date of the meeting.

**PRESENTATION REGARDING SUBROGATION (NRS 616C.215),  
PERMANENT TOTAL DISABILITY (NRS 616C.435), AND  
PRIMARY CAUSE (NRS 616C.175)**

***Leslie Bell***

Leslie Bell, Director of Compensation, CDS of Nevada and Saint Mary=s Health Plans, advised that she would be testifying about three items that have created significant litigation in Nevada and are subject to multiple interpretations. She introduced Timothy E. Rowe from the law firm of McDonald Carand Wilson McCune Bergin Frankovich & Hicks who was present to offer details of the legalities of the issues and suggestions for gaining clarity. Ms. Bell distributed documents that supplied background information (please see Exhibit G).

***Timothy E. Rowe***

Mr. Rowe first addressed subrogation and the Nevada Supreme Court case of *Breen v. Caesar=s Palace*, 102 Nev. 79, 715 P.2d 1070 (1986). The issue arose from a situation involving a worker injured in an industrial accident caused by a negligent third party other than the employer. Under Nevada=s statutes, the insurer on this type of case is given a lien to recover whatever is paid out on the claim from any recovery the injured worker might get from the negligent third party. The issue raised by the *Breen* case is how to allocate the cost of obtaining the third-party recovery among the parties involved, i.e., the insurer, the injured worker, and so forth. The theory behind the *Breen* case is that when a workers= compensation claimant recovers money from the third party, he should participate to some degree with the cost of obtaining that recovery, generally consisting of the attorneys= fees and costs incurred in the third-party action.

Mr. Rowe referred to a memorandum (the second page of Exhibit G) from Scott Young, Senior Research Analyst, Research Division, LCB, in which Mr. Young discusses the *Breen* decision. Mr. Rowe explained the chart titled ASubrogation Formula Comparisons,@ which is the last page attached to Mr. Young=s memorandum. He pointed out that the recoveries using the *Breen* formula are relatively minimal in terms of what the insurer recovers. For example in number 5, there was a lien of \$103,704, and a zero recovery on the part of SIIS. Mr. Rowe maintained that the *Breen* formula works to the disadvantage of claimants as well. As examples, he pointed out that in numbers 7 and 8, the *Breen* formula resulted in the claimants receiving nothing.

In researching the problems caused by the *Breen* formula, Mr. Rowe told of being unable to locate another case or jurisdiction that uses this particular formula. In his opinion, an error was made when the case was written. He asserted there are other formulas available that provide a more equitable allocation of the attorneys= fees and costs in these types of cases. Mr. Rowe mentioned another case that came after *Breen*, the case of *Nevada Bell v. Hurn*, 105 Nev. 211, 744 P.2d 1002. He pointed out the two alternative *Hurn* formulas listed on the chart in Exhibit G, which in his opinion provide a more equitable allocation of these costs. However, the Supreme Court rejected both *Hurn* formulas and elected to stay with the *Breen* formula when the *Hurn* case was presented.

The last column on the chart is a formula that has been historically used by SIIS to deal with the lien issue and allocation of costs and fees and is the most fair in Mr. Rowe=s opinion. He urged the Committee to bring about legislation that would alter the formula being used to obtain a fairer allocation of attorneys= fees and costs. He concluded by reiterating that injured workers are in favor of an alternate formula as well.

Lenard Ormsby (previously identified on page 6 of these minutes) testified that during the last three and one-half years Employers Insurance Company of Nevada (formerly SIIS) has aggressively pursued subrogation recovery due to its obligation to policyholders. Mr. Ormsby is familiar with the *Breen* formula and in such cases generally proposes one-third for the plaintiff, one-third for the attorney, and one-third for the insurer, up to the extent of its lien. He advised that this arrangement has been very successful. He agreed with Mr. Rowe that the *Breen* formula was a mistake and needs to be addressed.

The second issue addressed by Mr. Rowe is commonly referred to as the APrimary Cause Statute,@ NRS 616C.175. Primary cause deals with the situation where there is a preexisting disability that is aggravated or accelerated as a result of an industrial injury. This is the most frequently litigated issue in the workers= compensation setting. In many cases there is a substantial disagreement between attorneys as well as physicians as to what primary cause is. This statute is applied inconsistently to various cases. As an example, Mr. Rowe described a case in which this statute came into effect and that, in his opinion, caused an inequitable result. An individual with severe diabetes stubbed his toe during his employment. His injury resulted in a serious medical condition in which he ultimately lost his leg at just below the knee. There was disagreement as to the primary cause of the injury. The wording of the statute provided that the industrial injury has to aggravate, accelerate, or precipitate the preexisting condition. In this case the argument was that the diabetes made the injury worse; the injury did not make the diabetes worse. Therefore, the statute did not apply.

A more equitable approach in Mr. Rowe=s opinion is a statute in which the most important cause of the condition is identified, whether it is the preexisting condition or the industrial injury. If it is the preexisting injury, there would not be responsibility on the part of the employer for the resulting condition. Mr. Rowe referred to page 1 of Exhibit G which highlights the altered language of NRS 616C.175. His proposal includes deleting the highlighted words under section 1. b), and replacing the word Aprimary@ with the word Apreponderant@ to describe the cause.

In response to a question from Chairwoman O=Connell, Mr. Rowe stated there is a definition for Apreponderant@ in the law and in the dictionary. Generally, it means Awhat is the more important or predominant reason@ for the resulting condition. Continuing, Mr. Rowe remarked the word embodies the idea that whatever is the most important cause is the one that his firm will attribute the resulting condition to, and if it is not the industrial injury, then there would be no coverage.

Mr. Ormsby remarked that more than one-third of the issues SIIS has on appeal deal with primary cause; it is an issue that is litigated at length by all three parties C the insurer, the employer, or the injured worker. Historically, his stance is on different sides; sometimes on the side of the injured worker, at times on the side of the employer, as to the primary cause and whether coverage should be provided for the injury. He concurred that it is an important issue for the Committee to study, because litigation costs are expensive for everybody.

The final item discussed by Mr. Rowe is related to primary cause; it deals with the APermanent Total@ statute (NRS 616C.435), particularly, the Aodd lot doctrine,@ (subsection 2). The odd lot doctrine arises from an older workers= compensation case before the Nevada Supreme Court, *Nevada Industrial Commission v. Hildebrand*, 100 Nev. 47 6.75 P.2d 401 (1984). In that case, the Supreme Court decided that a person can be determined to be permanently and totally disabled as the result of an industrial injury in combination with other factors that makes the employee permanently disabled. The example given by Mr. Rowe was a 55-year-old worker employed in heavy construction who sustained a moderate back injury. If the individual had a relatively low level of education, other medical problems, and so forth, it would be difficult to re-employ that person as the result of the combination of factors. In this situation, the court follows the odd lot doctrine, making the injured worker a permanent and total disabled individual, and the employer would bear the cost of that condition.

Mr. Rowe advised that the number of this type of case is rising. He asked the philosophical question, AIn a situation where you have an injured worker who is declared to be permanently and totally disabled for a combination of reasons, only one of which, and maybe a minor portion, may be the industrial injury, is that a situation where the employer should bear the full cost of the permanent and total disability?@ In Mr. Rowe=s opinion, in those situations where the employer has minor involvement through the industrial injury, perhaps a way to deal with it is something similar to the primary cause statute or the preponderant standard previously proposed, where unless the

preponderant cause of the permanent and total disability is the accident, the employer should not have to bear the full cost of the disability. Currently, the odd lot doctrine creates inequitable results in certain situations, and it should be dealt with legislatively.

Assemblyman Hettrick referred to Mr. Rowe's reference to apportionment of cost in the last situation he mentioned and asked, apportionment to whom?

In response, Mr. Rowe stated most often there is another source to cover the cost of what would be the disability benefits. Some employers carry disability insurance, either short or long term, but in most cases, that is not the situation. If based on the worker's benefits of, for example, \$2,500 a month, those would be reduced by the apportionment. Mr. Rowe repeated that an easier solution would be something similar to the primary cause statute on a preponderance standard.

Mr. Hettrick inquired whether they were talking about cases where the experience modification (mod) factor ratings would be affected, which does not occur for a large percentage of the companies covered in Nevada, or the actual reduction in dollars paid, and 100 percent of whatever dollars paid would still go back to experience rating or mod factors. He agreed with Mr. Rowe's statement that this will be a very difficult subject to resolve.

Ms. Bell mentioned a 74-year-old man who admittedly intended to work until he was 75-years of age. He hurt his back halfway into his last year of employment and was declared permanently and totally disabled. He receives Social Security benefits, a military pension, and full workers' compensation benefits. Ms. Bell pointed out that it is inequitable for a person who would not have worked into retirement anyway to receive 100 percent of workers' compensation benefits along with Social Security and his military pension.

Mr. Hettrick called attention to the fact that other states limit the number of years that it will pay workers' compensation benefits, but Nevada does not. He suggested that perhaps a limit related to age would be appropriate, in light of Social Security and other retirement benefits, to offset workers' compensation benefits without materially damaging the person who was injured.

Concurring that the situation Mr. Rowe addressed is a problem he sees quite often, Mr. Ormsby told of a 64-year-old woman with a work-related back sprain whose doctor advised her to stop working due to cancer. The SIIS denied her permanent total disability application, and was ordered to declare her permanently and totally disabled because of the aggregation of situations despite the fact that the work-related injury was very small. Mr. Ormsby agreed this is a situation the Committee needs to address going into the 1999 Legislature.

Mr. Hettrick suggested that workers' compensation benefits be based on the number of years remaining in a person's working life after incurring a disability. He requested staff to research whether there are formulas in disability insurance policies that have a change in benefits based on age.

Responding, Mr. Ormsby stated he was not aware of a policy that changes benefits based on age; however, the policy may exclude or deduct from a standard disability policy dollar amounts received from Social Security or retirement pensions once the insured reaches the age of 65 years.

Lynn Grandlund (previously identified on page 12 of these minutes) advised that Employers of Nevada brought the *Breen* issue of subrogation to the Legislature in 1993; however, at that time, her organization did not have sufficient numbers to effect changes in the law. Ms. Grandlund stated that Employers of Nevada supports the Committee's effort to bring about a change in the *Breen* formula. She also offered support for a change in the odd lot doctrine. A suggestion of Ms. Grandlund is to calculate the percentage of the actual industrial injury versus the percentage of all of the other health conditions of the injured person and pay benefits on that basis.

Vicki Robinson, Manager, Insurance Services for the City of Las Vegas, addressed the recent Nevada Supreme Court decision resulting in NRS 617.457, which provides fire fighters and police officers with additional protection over that provided the average Nevada State employee. (Please see Exhibit H for details of her testimony.) That statute stipulates that heart disease is presumed to have arisen out of the course and scope of employment. Additionally, if it

is determined that fire fighters and police officers are unable to continue in their respective lines of work due to their health condition, regardless of their ability to do any other type of work, they may elect to retire. Ms. Robinson maintained that policy results in, for example, a City of Las Vegas fire fighter receiving 75 percent of his salary in retirement benefits, \$27,000 a year in workers= compensation benefits, and income from another job if he chooses to assume one.

Recently, the Nevada Supreme Court expanded the above coverage to every person employed a minimum of five years as a fire fighter, police officer, or corrections officer (the City of Las Vegas has corrections officers rather than police officers) in the state of Nevada. Ms. Robinson received a claim during the week of August 3, 1998, from an employee who retired in 1978 and developed heart disease in year 1994. According to the provisions of NRS 617.457, the former employee is entitled to payment of his medical bills as well as permanent total disability benefits. The City of Las Vegas currently has 27 permanent total disability recipients at a cost of \$51,000 per month in indemnity payments. With the expansion of this coverage, Ms. Robinson anticipates a doubling of that figure in the next five years. The City of Las Vegas is a relatively small employer with less than 2,500 employees, and she fears the burden of such costs will be overwhelming to the City.

Mr. Ormsby clarified that Ms. Robinson=s testimony was correct, but he was not certain whether the same provisions would apply to voluntary fire fighting employees.

Responding to a question by Senator Augustine, Ms. Robinson stated that approximately 10 percent of the City=s employees are fire fighters, and approximately 10 percent are police officers, for a total of around 500 employees.

Mr. Ormsby directed the Committee=s attention to NRS 617.457, and read paragraph 1:

Notwithstanding any other provision of this chapter, diseases of the heart of a person who, for 5 years or more, has been employed in a full-time continuous, uninterrupted and salaried occupation as a fireman or police officer in this state before the date of disablement are conclusively presumed to have arisen out of and in the course of the employment.

He continued reading paragraph 2:

Notwithstanding any other provision of this chapter, diseases of the heart, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by extreme overexertion in times of stress or danger and a causal relationship can be shown by competent evidence that the disability or death arose out of and was caused by the performance of duties as a volunteer fireman by a person entitled to the benefits of chapters 616A to 616D, . . . and who, for 5 years or more, has served continuously as a volunteer fireman in this and who has not reached the age of 55 years before the onset of the disease.

Mr. Ormsby concluded that there is possible coverage for a volunteer fireman; the criteria is different, and is actually higher for the volunteers.

Elizabeth Ayers, Clark County Risk Management Division, Department of Administration, announced that she was appearing at the meeting at the request of the Director of Risk Management who was unable to attend due to other commitments. Ms. Ayers testified that since the Supreme Court=s ruling, she has received three new claims from retirees who have been retired from between seven to ten years, and her division is concerned about the financial impact of that ruling on the county and on the taxpayers.

Assemblyman Hettrick requested that Ms. Robinson share the proposals drafted at the meeting of the various municipalities of southern Nevada.

Ms. Robinson replied that each of the public entities has different concerns; however, they are all concerned about the cost of providing benefits to fire fighters and police officers who have worked for the State for five years. She said they also wanted to make sure that anything proposed would be acceptable to all groups concerned. So far, the groups have not reached 100 percent consensus on the proposals.

Chairwoman O=Connell informed Ms. Robinson that the Committee was planning to meet in late September 1998, and requested Ms. Robinson to inform staff if they had reached consensus on a proposal before that time.

## **PUBLIC TESTIMONY**

### ***Ed Flagg***

Ed Flagg, President, Nevada Corrections Association, proposed amending NRS 616A.035 and NRS 616A.265 (please see Exhibit I). Mr. Flagg noted that correctional officers who respond to fights between inmates and altercations between inmates and staff and file workers= compensation claims involving the possible contraction of communicable diseases are having such claims rejected by SIIS because the officers are not Aproviders of medical services.@ Mr. Flagg pointed out that even though correctional officers do not possess a level of medical training of a nurse or forensic employee, they are first responders for critical incidences occurring in a custodial environment. Mr. Flagg referenced a recent televised broadcast of the major network program A20/20,@ in which it was estimated that approximately 40 percent of all incarcerated inmates are infected with positive HIV and hepatitis C antibodies. Additionally, it was recently confirmed by the Nevada Department of Prisons that there are currently 58 inmates in the general population that have tested positive for dangerously high levels of hepatitis C based upon their liver enzymes. Added to the number of inmates who have tested positive for hepatitis A, B, and tuberculous, the daily threat to the correctional staff is significant.

Mr. Flagg noted that the proposed draft revisions to NRS 616A.035 and NRS 616A.265 will recognize that correctional officers who are mandated to respond to emergency situations and at times administer first aid are statutorily protected and will have their workers= compensation claims accepted in the event they are exposed to a contagious disease in the line of duty.

Senator Augustine suggested that booster immunizations for hepatitis would be helpful in alleviating the risk of contracting that disease. Mr. Flagg agreed and remarked that he was not aware of the department offering such protection.

Chairwoman O=Connell closed the public testimony portion of the meeting and announced that the Committee would vote on the Work Session Document issues, most of which were discussed earlier in the meeting.

Mr. McMullen referenced Recommendations iii. and iv., previously identified as Recommendations 7 and 8 in the June 1998 Work Session Document, as follows:

### ***Qualifications for Associations of Self-Insured Employers***

- iii. *Amend NRS 616B.350(5)(h) regarding the qualifications of a self-insured association to allow a new member to join an association without providing to the Commissioner of Insurance a reviewed financial statement prepared by an independent certified public accountant. The amended provision would apply to self-insured associations that have at least 20 members or a combined net worth of \$5 million, and have an audited financial statement.*

*Mary Lau, Executive Director, Retail Association of Nevada, 4/7/98*

*(Formerly identified as Recommendation 7 in the June 1998 Work Session Document.)*

- iv. *Repeal NRS 616B.386(3)(a) and 616B.386(3)(b) which require an employer to have a tangible net worth of at least \$500,000 or a reported payroll resulting in workers= compensation premiums of \$15,000 in order to join a self-insured association.*

*Mary Lau, Executive Director, Retail Association of Nevada, 4/7/98*

*(Formerly identified as Recommendation 8 in the June 1998 Work Session Document.)*

An explanation offered by Mr. McMullen for these two recommendations is based on the fact that there is now a reliable track record for self-insurance groups in the State and evidence of working, competent business decisions which have kept these groups viable and solvent. With the advent of three-way, there is a need to allow for additional flexibility in the groups that have:

- C      Been certified for at least three years by the Commissioner of Insurance;
- C      Doubled their net worth from the statutory minimum for being instituted; and
- C      At least 15 members.

Mr. McMullen clarified that if the groups maintain these conditions, they may use their own business underwriting and financial practices to validate their new members. This does not change the requirements for a new group, a new member of a new group, or a member of a group that has less than three years experience. Mr. McMullen requested the Committee to review these two recommendations and bring suggestions for revision to the next Committee meeting.

Chairwoman O=Connell directed the Committee=s attention to Recommendation i. on the Work Session Document with consideration of the amended language presented by Mr. Ostrovsky.

Assemblyman Hettrick referred to Mr. Ostrovsky=s proposed language (Exhibit B) and questioned whether in the sentence Aor any other records he maintains,@ the word Ahe@ should be replaced with Athe DIR.@"

Mr. Ostrovsky affirmed that would be fine.

Ms. Matuska suggested Ahe@ could be replaced by either ADIR@ or Aadministrator,@ but stated that she would need to review the document to be certain.

**ASSEMBLYMAN HETTRICK MOVED TO AMEND RECOMMENDATION i. BY REMOVING THE LANGUAGE ATHE NUMBER OF EMPLOYEES EMPLOYED BY EACH EMPLOYER AND THE TOTAL WAGES PAID BY EACH EMPLOYER,@ AND REPLACING THAT LANGUAGE WITH AOR ANY OTHER RECORDS HE MAINTAINS,@ AND ADOPT RECOMMENDATION i. WITH THE UNDERSTANDING THAT THE WORD AHE@ MAY BE CHANGED DEPENDING UPON A DETERMINATION BY LCB. THE MOTION WAS SECONDED BY SENATOR TOWNSEND AND PASSED UNANIMOUSLY.**

Chairwoman O=Connell called for a motion on Recommendation ii.

**SENATOR TOWNSEND MOVED TO ADOPT RECOMMENDATION ii. WITH THE STIPULATION THAT THE THREE-WAY TASK FORCE RETURN TO THE NEXT MEETING WITH A CONSENSUS OF MOVING EMPLOYEES FROM SIIS TO DIR TO COLLECT CLAIMS INFORMATION INTERNALLY AND NOT EMPLOY NCCI TO COLLECT CLAIMS INFORMATION. THE MOTION WAS SECONDED BY SENATOR SHAFFER.**

Mr. Hettrick mentioned that after a discussion with Mr. Ormsby, they agreed that whatever is decided in terms of collection of materials should be the same for all entities required to report, using the same time frames so that trends may be determined.

Chairwoman O=Connell asked Ms. Collins if her concern was that there might be a regulation adopted if the Committee did not address specifically in the NRS what information DIR may collect?



Ms. Collins answered that she had not considered that aspect, but that she could review it and get back to the Committee. She added that in her opinion the information currently being collected is adequate.

**THE MOTION PASSED UNANIMOUSLY.**

Chairwoman O=Connell stated that Recommendations iii. and iv. were on hold while Mr. McMullen amends them. Recommendation v. a. and c. have been withdrawn. She requested a motion on Recommendation v. b.

**ASSEMBLYMAN HETTRICK MOVED TO AMEND RECOMMENDATION v. b. AND ADOPT IT WORDED AS FOLLOWS: AEXEMPT ALL INSURANCE CARRIERS WHO PROPERLY QUALIFY TO DO BUSINESS IN THE STATE OF NEVADA FROM THE DEPOSIT OF CASH OR SECURITIES.@**

Chairwoman O=Connell inquired whether Mr. Hettrick wanted to limit the exemption to workers= compensation or apply it across the board.

In response, Mr. Hettrick stated he wanted to limit it to workers= compensation insurance.

**THE MOTION WAS SECONDED BY SENATOR TOWNSEND AND PASSED UNANIMOUSLY.**

The Chairwoman noted that in line three of Recommendation vi., the word Aadministered@ has been changed to Aregulated,@ and called for a motion.

**SENATOR TOWNSEND MOVED TO AMEND RECOMMENDATION vi BY DELETING THE WORD AADMINISTERED,@ AND REPLACING IT WITH AREGULATED,@ AND ADOPT THE RECOMMENDATION AS AMENDED. THE MOTION WAS SECONDED BY ASSEMBLYMAN HETTRICK AND PASSED UNANIMOUSLY.**

Chairwoman O=Connell advised that Recommendation vii. has been withdrawn for the present time, and Recommendation viii. is on hold.

Regarding the presentation by Ms. Bell and Mr. Rowe, Chairwoman O=Connell asked what the Committee wished to do regarding the subrogation statute.

Senator Townsend mentioned that the Employers Insurance Company of Nevada has testified that they use the formula of one-third of the award to the plaintiff, one-third to the attorney, and one-third to the insurer. Other companies have used this formula as well, and this seems to be the most equitable method of determining the award division.

**SENATOR TOWNSEND MOVED THAT THE LEGAL DIVISION DRAFT A NEW APPLICATION OF SUBROGATION TO ONE-THIRD, ONE-THIRD, ONE-THIRD. THE MOTION WAS SECONDED BY SENATOR SHAFFER AND PASSED UNANIMOUSLY.**

The Chairwoman addressed the next item of that presentation, primary cause and how it is to be applied.

**ASSEMBLYMAN HETTRICK MOVED TO ADOPT THE LANGUAGE AS PROPOSED IN EXHIBIT G. THE MOTION WAS SECONDED BY SENATOR SHAFFER AND PASSED UNANIMOUSLY.**

The third item presented by Ms. Collins and Mr. Rowe, the odd lot doctrine, was mentioned by Chairwoman O=Connell. She asked the Committee=s opinion on that item.

**ASSEMBLYMAN HETTRICK MOVED THAT THE COMMITTEE SUBMIT TO THE 1999 LEGISLATURE A PROPOSAL TO STUDY THE ODD LOT DOCTRINE SYSTEM THAT IS**

**CURRENTLY IN USE. THE MOTION WAS SECONDED BY SENATOR SHAFFER AND PASSED UNANIMOUSLY.**

Chairwoman O=Connell next addressed the supreme court case presented by Ms. Robinson.

**ASSEMBLYMAN HETTRICK MOVED TO REVISE NRS 617.457. THE MOTION WAS SECONDED BY SENATOR TOWNSEND.**

Ms. Matuska pointed out that this item had not be agendized for this meeting, so if the Committee would like to vote on requesting a bill draft request (BDR) at its next meeting, that would be more appropriate.

**ASSEMBLYMAN HETTRICK REVISED HIS MOTION TO CONTINUE THIS ITEM TO THE NEXT MEETING OF THE LEGISLATIVE COMMITTEE ON WORKERS= COMPENSATION. THE AMENDED MOTION WAS SECONDED BY SENATOR TOWNSEND AND PASSED UNANIMOUSLY.**

The final item to be considered was the proposal presented by Mr. Flagg regarding including correctional officers, forensics personnel and nurses in NRS 616A.035 and NRS 616A.265.

**SENATOR TOWNSEND MOVED TO ADD THIS ITEM TO THE AGENDA OF THE NEXT MEETING OF THE LEGISLATIVE COMMITTEE ON WORKERS= COMPENSATION. THE MOTION WAS SECONDED BY ASSEMBLYMAN HETTRICK AND PASSED UNANIMOUSLY.**

#### **DISCUSSION OF NEXT MEETING DATE**

After discussion among the Committee members, Chairwoman O=Connell announced that the next meeting of the Committee would be held on September 30, 1998.

#### **ADJOURNMENT**

There being no further business to come before the Committee, Chairwoman O=Connell adjourned the meeting at 1:05 p.m.

Exhibit J is the AAttendance Record@ for this meeting.

Respectfully submitted,

Jo Greenslate  
Research Secretary

APPROVED BY:

\_\_\_\_\_  
Chairman

Date: \_\_\_\_\_

#### **LIST OF EXHIBITS**

Exhibit A is AA Proclamation by the Governor@ dated July 17, 1998, and presented by Kevin Higgins, Chief

Deputy Attorney General, Director, Workers Compensation Fraud Unit, Office of the Attorney General.

Exhibit B is an undated document titled AAmendment to NRS 616B.012 C Disclosure of Information C Draft 3,@ submitted by Robert A. Ostrovsky, Ostrovsky & Associates, representing Nevada Resort Association.

Exhibit C is an undated document titled AProposed Statutory Amendments Regarding Appeals Officers and Hearing Officers (Proposed by the Nevada Self-Insurers Association),@ submitted by Sam McMullen, The McMullen Strategic Group, representing the Nevada Self-Insurers Association (NSIA).

Exhibit D is an undated table titled AEstimates of Cost to Report Claims to DIR Prepared by Nevada Self Insurers Association,@ submitted by Linda Collins, President, NSIA.

Exhibit E is a letter dated June 23, 1998, addressed to the Legislative Committee on Workers= Compensation, c/o Vance Hughey, Senior Research Analyst, Research Division, Legislative Counsel Bureau (LCB), from Ron Swirczek, Administrator, Division of Industrial Relations, Department of Business and Industry.

Exhibit F is a packet of information submitted by Jim Schober, Chief Operating Officer, Kaercher Insurance, consisting of the following items:

1. A list of continuing events of the Committee on Owner-Controlled Insurance Programs (OCIPs).
2. A facsimile copy of a search document dated January 13, 1997, titled ABusiness Insurance C Copyright (C) 1997 Crain Communications, Inc. All rights reserved C San Diego Wrap-Up Honored in Contest C Joanne Wojcik.@
3. A chart titled AFigure 7-1 C Minimum Size Requirement of Wrap-Ups by State.@
4. A letter dated September 8, 1997, ARE: Michigan Wrap-Up Insurance Programs,@ from Bruno R. Czyrka, Deputy Director, State of Michigan, Bureau of Workers= Disability Compensation.
5. A letter dated August 3, 1998, addressed to Mr. Jim Schober from Melissa Stafford Jones, Senior Research Analyst, Research Division, LCB.
6. A copy of several chapters from *Oregon Laws 1995*.
7. A facsimile copy of a search document dated January 4, 1993, titled ABusiness Insurance C Copyright (C) 1997 Crain Communications, Inc. C Wrap-up plans - unveiled One-Stop coverage offers big savings in building projects C Delmer Ison.@
8. An article transmitted via facsimile on April 2, 1998, titled Appendix E C State CIP Regulation.@

Exhibit G is a packet of information submitted by Leslie Bell, CDS of Nevada, consisting of the following items:

1. A draft document titled ANRS 616C.175 - Employment-related aggravation of pre-existing condition which is not employment related; aggravation of employment-related injury by incident which is not employment related.@
2. A memorandum dated March 29, 1995, to Chairman and Members, Senate Committee on Commerce and Labor from Scott Young, Senior Research Analyst, Subject: ASubrogation Cases and the *Breen* Formula.@

Exhibit H is a letter dated August 10, 1998, to Legislative Committee on Workers= Compensation, from Victoria J. Robinson, Manager, MBA, SPHR, Manager, Insurance Services, City of Las Vegas Department of Human Resources Workers= Compensation.

Exhibit I is a copy of NRS 617.135, a document titled AProposed Revision to NRS 616A.035,@ and a document titled AProposed Revision to NRS 616A.265,@ submitted by Ed Flagg, President, Nevada Corrections Association.

Exhibit J 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) 687-6827.