MINUTES OF THE MEETING

OF THE

LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION

(*Nevada Revised Statutes* 218.5375)

May 28, 1998

Las Vegas, Nevada

The fifth meeting of the Legislative Committee on Workers' Compensation (*Nevada Revised Statutes* [NRS] 218.5375) for the 1997-1998 interim was held on Thursday, May 28, 1998, at 8 a.m., in Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada, and video conferenced to the Legislative Building, Room 4100, 401 South Carson Street, Carson City, Nevada. Pages 3 and 4 contain the "Meeting Notice and Agenda."

COMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Senator Ann O'Connell, Chairwoman

Assemblyman Lynn C. Hettrick, Vice Chairman

Senator Raymond C. Shaffer

Assemblywoman Saundra Krenzer

Assemblyman Dennis Nolan

Assemblyman David R. Parks

COMMITTEE MEMBER PRESENT VIA TELECONFERENCE:

Senator Randolph J. Townsend

COMMITTEE MEMBER ABSENT:

Senator Kathy Augustine

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Scott Young, Principal Research Analyst

Vance A. Hughey, Senior Research Analyst

Melissa Stafford Jones, Senior Research Analyst

Kim Marsh Guinasso, Principal 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: Thursday, May 28, 1998

8 a.m.

Place of Meeting: Grant Sawyer State Office Building

Room 4412

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 4100

401 South Carson Street

Carson City, Nevada

A G E N D A

I. Opening Remarks and Introductions

Senator Ann O'Connell, Chair

*II. Approval of Minutes of the Meeting of April 7, 1998

*III. Report Regarding the Payment of Medical Claims for Workers' Compensation to Physicians by Managed Care Organizations

Janice Pine, Director of Government Relations

Saint Mary's CompFirst

*IV. Report by the National Council on Compensation Insurance (NCCI) Regarding the Residual Market Plan Under Three-Way Workers' Compensation Insurance

A. Alice A. Molasky-Arman, Commissioner of Insurance

B. Diane Vural, Vice President, Residual Market Pool Operations

Karen Rodriguez, Director of Plan Administration

National Council on Compensation Insurance

*V. Reports Regarding the Structure and Operations of State Funds in a Competitive Three-Way Insurance Environment

A. Report Regarding the Role and Regulation of the State Industrial Insurance System (SIIS) Under Three-Way Insurance

Lenard Ormsby, General Counsel

State Industrial Insurance System

B. Report on the Workers' Compensation Fund of Utah

Tom Callanan, Senior Vice President of Marketing

Workers' Compensation Fund of Utah

C. Report on the Colorado Compensation Insurance Authority

Gary Pon, President and General Manager

Colorado Compensation Insurance Authority

VI. Public Comment

*VII. Action Regarding the Recommendations in the Work Session Document (Attached) on the Following Topics:

A. Three-Way Insurance

B. Regulation of SIIS Under Three-Way Insurance

C. Wrap-Ups and Owner-Controlled Insurance Programs (OCIPs)

D. Benefits and Administration of the Workers' Compensation System

*VIII. Discussion of the Regulation of Self-Insured Employers and Associations of Self-Insured Employers Under Three-Way Insurance

Senator Ann O'Connell, Chair

Legislative Committee on Workers' Compensation

*IX. Directions to Staff

X. 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, Capitol Complex, Carson City, Nevada 89701-4747, or call Susan Furlong Reil, at 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; 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 AND INTRODUCTIONS

Chairwoman O'Connell called the meeting to order at 8:18 a.m. All members were present except Senators Augustine and Townsend.

APPROVAL OF MINUTES OF THE MEETING OF APRIL 7, 1998

Chairwoman O'Connell asked for approval of the minutes of the Committee meeting held on April 7, 1998.

SENATOR SHAFFER MOVED FOR APPROVAL OF THE MINUTES OF THE COMMITTEE'S MEETING HELD ON APRIL 7, 1998, IN LAS VEGAS, NEVADA. ASSEMBLYMAN HETTRICK SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.

REPORT BY THE NATIONAL COUNCIL ON COMPENSATION INSURANCE (NCCI) REGARDING THE RESIDUAL MARKET PLAN UNDER THREE-WAY WORKERS' COMPENSATION INSURANCE

Alice A. Molasky-Arman

Alice A. Molasky-Arman, Nevada's Commissioner of Insurance, Division of Insurance (DOI), Department of Business and Industry, Carson City, reported on the status of the residual market plan:

- On December 31, 1997, the residual market plan proposed by the National Council on Compensation Insurance (NCCI) was adopted by the Commissioner of Insurance.
- A work session was held on May 7, 1998, to discuss the regulations that must be adopted in order to establish the residual market plan. The NCCI presented its residual market plan at this meeting.
- During the work session, one of the participants, Jim Wadhams, a Nevada attorney, Las Vegas, pointed out that Nevada is vulnerable to unauthorized insurers and suggested that these carriers should be subject to the same assessments and costs as any other insurer under the residual market plan.
- Based on her experience, she shares Mr. Wadhams' concern that Nevada will face increased exposure to the activities of unauthorized insurers once three-way insurance is implemented.
- While she is authorized to impose penalties for unauthorized insurer activities pursuant to *Nevada Revised Statutes* (NRS) 685B.170, "Order after hearing; administrative fines; modification of order," she is of the opinion that her powers as to regulation are limited. Continuing, she recommended that NRS 685B.170 be amended to enable her to more effectively impose penalties on carriers that engage in unauthorized activities in Nevada.

Karen Rodriguez

Karen Rodriguez, Director of Plan Administration, NCCI, Boca Raton, Florida, announced that Ms. Vural was unable to attend the meeting. She provided the Committee with an overview of NCCI's Residual Market Plan (Exhibit A), and covered the following points:

- The residual market exists in order to ensure that employers have a means of complying with their statutory obligation to maintain workers' compensation insurance. The NCCI currently serves as plan administrator in 19 states and as the pool administrator in an additional 4 states.
- The NCCI responded to a Request for Proposal (RFP) issued by the State of Nevada on November 20, 1995. The regulation was adopted by the Commissioner of Insurance on January 3, 1996, and NCCI filed its Workers' Compensation Insurance Plan (WCIP) for the residual market on August 18, 1997, in response to that regulation. The WCIP was approved by the Commissioner of Insurance on December 31, 1997, and NCCI is now working through transitional issues.
- The NCCI's WCIP is also known as the assigned risk market, the market of last resort, the plan, the voluntary market, or the workers compensation safety net. It sets forth the rules which govern the administration of the residual market and ensures that employers can obtain workers' compensation coverage.
- The WCIP contains the state-approved rules which govern the equitable and random assignment of employers to assigned carriers, which is a specification in the regulation. It also governs administration, the duties and responsibilities of the plan administrator and assigned carriers, eligibility of employers, participation of carriers, and policy issuance requirements. Approval of the plan rests with the regulatory authority.

The WCIP requires that each insurer licensed to write insurance in the state participate in the plan.

- A workers' compensation pool is a voluntary contractual agreement among participating insurers to share in the operating results arising out of WCIP assignments.
- The largest reinsurance pooling arrangement is the National Workers' Compensation Reinsurance Pool, also known as the National Pool, and the NCCI serves as its administrator.
- Insurers who take part in the National Pool share in the operating results of the states in which they are participating in direct proportion to their total voluntary workers' compensation premium in those locations.
- In general, the reinsurance pools exist to share the results and reduce the expenses arising out of the residual market and to avoid catastrophic loss to any one insurer.
- The goal of the servicing carrier process is to provide consistently high-level service to the policyholders with an efficient delivery system.
- The National Pool provides administrative and operational convenience to insurers across state lines. Its financial structure is state-specific; thus, Nevada insurers will participate only in the Nevada results.
- The operation of the National Pool is governed by its 12-member Board of Governors. In its role as administrator to the Board, NCCI provides accounting, administrative, and financial services. The board meets quarterly.
- The WCIP encompasses the entire residual market, with the pool being a portion of that plan. Membership in the WCIP consists of pool participants and direct assignment carriers.
- Carrier participation is accomplished either through pool participation or direct assignment. The carriers who participate in the pool do not write the policies; however, they share in the operating results of the policies that are serviced by the servicing carriers.
- The servicing carriers are always pool participants. They issue and service the policies, and their losses are reimbursed by the pool. Servicing carriers are selected and evaluated by the plan administrator and the regulator, and they receive compensation for servicing the policies.
- The direct assignment carriers are non-pool participants in the WCIP. They issue policies; however, each of these carriers is fully responsible for the financial results of the business it writes.
- Applications for workers' compensation insurance are received by NCCI from employers via the Internet, by mail, or by phone. Deposit premium can be paid through electronic funds transfer, mailed check, or preauthorized check. Once the application is processed, a binder package is prepared and forwarded to one of the assigned carriers.
- In those states where NCCI is the plan administrator, the volume of new business applications has been declining steadily over the past few years.
- Considerable savings to workers' compensation insurance plans and pools have been achieved as a result of the competitive servicing carrier bid process which was implemented by NCCI approximately five years ago. Contract savings to date total $190 million.
- The three components of the servicing carrier oversight program — quarterly operations reporting, a self-audit program, and two-tiered remediation programs — work jointly to ensure that the servicing carriers are providing adequate service.
- The number of servicing carriers on remediation programs has consistently declined over the years as a result of enforcement of NCCI's performance standards.

Assemblyman Nolan commented that Nevada often compares its systems to those of other western states. Referencing page 18 of Exhibit A, he pointed out that the servicing carrier bid process achieved lower savings in the western states. Ms. Rodriguez explained that a number of factors are considered in calculating the savings achieved. Those states with the most carriers operating prior to the implementation of the bidding process also had higher expenses for financial reporting and oversight; thus, their potential savings were greater. Application volume also plays a role in determining savings. When these factors were averaged, the western states saw a lesser impact from the bidding process.

Ms. Rodriguez covered the following points in response to questions from Assemblyman Hettrick:

- The WCIP document which was approved by the Commissioner of Insurance requires participation by all insurers licensed to write and/or writing workers' compensation coverage in Nevada.
- The Commissioner of Insurance has postponed implementation of the direct assignment participation option for several years. Hence, all carriers licensed to write workers' compensation coverage in Nevada will initially be pool participants.
- Once the direct assignment option is available, each insurer will have the option of joining the pool or becoming a direct assignment carrier to fulfill its plan responsibility.
- Self-insured companies will not be required to become members of NCCI or participate in the WCIP.
- Several states have required participation in their residual plans by carriers that include disability and life insurance as a package with workers' compensation coverage.

REPORTS REGARDING THE STRUCTURE AND OPERATIONS OF

STATE FUNDS IN A COMPETITIVE THREE-WAY INSURANCE ENVIRONMENT

REPORT REGARDING THE ROLE AND REGULATION OF THE STATE INDUSTRIAL INSURANCE SYSTEM (SIIS) UNDER THREE-WAY INSURANCE

At the request of Chairwoman O'Connell, a verbatim transcript of the testimony of Douglas Dirks, Chief Executive Officer, State Industrial Insurance System (SIIS), Carson City, regarding his view of the structure and function of a state fund in a competitive marketplace is attached to these minutes as Exhibit B.

Douglas Dirks

Mr. Dirks prefaced his remarks by noting that Governor Robert J. Miller has directed SIIS to develop legislative proposals for the 1999 Legislative Session; however, the next Governor will determine whether or not to pursue those proposed plans.

Continuing, Mr. Dirks discussed his vision of the structure and function of the state fund in a competitive marketplace, covering the following topics:

- A state fund in a competitive marketplace should be nonprofit, quasi-governmental, self-supporting, and provide workers' compensation insurance to all businesses in the state wishing to obtain coverage.
- It is important that the state fund ensure that it maintains an adequate surplus to support contingencies and that it examine its surplus level each year. Once an appropriate surplus is achieved, a state fund should function solely on a nonprofit basis.
- The state fund should derive all of its revenue from its policyholder premiums and the return on its investments.
- He suggested that the Committee should carefully examine areas where the state fund has been used as a subsidy for General Fund accounts in the past and examine whether or not that practice is appropriate in a competitive environment.
- The state fund's function, operation, and performance must be reviewed similarly to that of the private carriers with which it will be competing in the marketplace.
- While the state fund will always be a state agency, it differs from other areas of government in that it functions as a proprietary fund. It has invested assets, produces its own financial statements, reports profits and losses, and tracks surplus. Its goal is to operate on a break-even basis.
- Workers' compensation impacts every major constituency in the state and as such is inherently a political issue. However, it is imperative that the business decisions of the fund not be influenced by politics.

Chairwoman O'Connell invited Mr. Dirks to share his views regarding a proposal that the state fund be governed by a board of directors upon implementation of three-way insurance. Mr. Dirks covered the following topics, emphasizing that he was not speaking for the current or the future Governor:

- While he does not support a return to SIIS's prior board system, he acknowledged that a board of directors that understands its fiduciary obligation to the policyholders of the state fund could be effective in directing the management of the company.

- The Legislature should mandate that board members possess: (1) expertise in managing large investments; (2) experience in hiring chief executive officers; (3) the knowledge and ability to establish internal control policies for the fund; and (4) a thorough understanding of the budgeting process.

- The budget of the state fund should be removed from the political process. Rather, the budget should be prepared by the fund's chief executive officer and staff and approved by its board of directors.

Continuing his remarks, Mr. Dirks strongly recommended that the state fund should serve as the market of last resort, at least during the transition period. In support of his recommendation, Mr. Dirks made the following points:

- It is in the best interests of all parties that the size of the residual market be kept at a minimum.

- In its consideration of any proposal regarding the residual market, it is important that the Committee determine if the plan minimizes or maximizes the size of that market.

- He is of the opinion that the state fund can function well as the residual market so long as the Commissioner of Insurance ensures that the residual market is actuarially priced and that the fund is guaranteed not to lose large sums of money.

- The SIIS has requested and received from the Commissioner of Insurance the right of refusal for a limited transition period. Arizona's state fund, which also has a right of refusal, voluntarily writes as much business as it can and has the smallest residual market in the nation.

Mr. Dirks concluded his presentation regarding the future structure and function of the state fund with the following remarks:

- The next Governor and 1999 Legislature must define the oversight role of the Executive and Legislative Branches over a competitive state fund. In his opinion, annual audited financial statements, as are currently performed, should provide adequate information to the Executive and Legislative Branches to provide oversight of the fund. Primary oversight should rest with the fund's board of directors.

- Referencing his earlier testimony concerning a board of directors for the state fund, Mr. Dirks recommended that the board be exempted from the Open Meeting Law. He pointed out that in a competitive environment, the board of directors will be required to discuss matters of a proprietary nature. Continuing, he suggested that the state fund be viewed in the same manner as a mutual insurance company owned by its policyholders and that it be required by law to hold an annual meeting that is open to all policyholders.

Senator Shaffer requested that Mr. Dirks share his views regarding the selection of board members. Mr. Dirks stated he is of the opinion that for tax reasons, the majority of the board should be appointed by the Governor. He also suggested that if the fund is to be viewed as a mutual insurance company owned by its policyholders, some portion of the board should be elected by the policyholders. Senator Shaffer expressed concern that in the past, politics have played a role in board appointments made by the Governor. Mr. Dirks indicated that he shared those concerns. Continuing, he pointed out that if the Governor appoints the board members and the board mechanism is unsuccessful, the Governor must ultimately assume responsibility for that failure.

Chairwoman O'Connell asked Mr. Dirks if his statement that the state fund should be a provider of workers' compensation coverage to all businesses in the state is meant to include those businesses that are refused coverage by all other carriers. Mr. Dirks indicated that he is of the opinion that the state fund can function as the market of last resort provided, however, that the Commissioner of Insurance establishes an adequate residual market rate so that the voluntary portion of the state fund's business is not subsidizing the residual market. He observed that in the current monopolistic environment, SIIS services the entire residual market.

Referencing a proposal to eliminate the subsequent injury funds, Chairwoman O'Connell sought Mr. Dirks' recommendation on alternatives that would specifically address the needs of small employers. Mr. Dirks indicated that he has not yet formed an opinion as to whether the subsequent injury funds should be abolished but acknowledged that the proposal merits further study. Continuing, he recommended that if the Committee was to decide to take action on the proposal, it should at a minimum consolidate the four subsequent injury funds into one fund and require all insurers to adhere to the same policies and procedures.

Chairwoman O'Connell asked if any steps were being taken to cover the insolvency, commonly referred to as the "old account," while the SIIS looks toward open competition in the marketplace. Responding, Mr. Dirks explained all claims are handled consistently. Internally, a claims examiner does not know if an account being managed is old or new. When the old account was originally funded with $650 million, the SIIS created a share value similar to that of a mutual fund, and those values fluctuate with the market. The funds of the old account are accounted for separately; however, SIIS's investment managers do not manage that money independent of the new fund. Continuing, he informed the Committee that allocation of expenses is based on total expenditures. Overhead is apportioned based on the total claims expenditures of the old fund and the new fund, and costs are allocated according to actual expenditures. At

the beginning of every month, he reviews the fund's paid claims data to monitor the performance of the old fund against internal projections. The expenditures from the old fund for the current year were originally projected at $77 million, and a review of the old fund's performance demonstrates that actual expenditures will total approximately $78 million.

Mr. Dirks revealed that his greatest concern regarding the old fund is that it is vulnerable to medical inflation. If medical inflation were to accelerate and other areas of inflation did not, real rates of return may not rise, compromising the ability of the fund to earn higher investment return to fund claims expenditures.

Assemblyman Hettrick inquired if the allocation of expenses is absolute by percentage of claims paid with no discretionary input by SIIS management. Mr. Dirks stated that SIIS apportions expenses based on claims expenditures primarily but allocates when costs can clearly be traced to a specific claim.

Referencing Mr. Dirks' concerns regarding the impact of medical inflation to the old fund, Assemblyman Hettrick commented that medical expenses should decline. Mr. Dirks agreed that medical expenses in the old account decline while indemnity expenses remain fairly stable subject to some mortality. Further, as the life of the old account lengthens, the impact of medical inflation lessens. Assemblyman Hettrick observed that since indemnity expenses are generally fixed, long-term interest rates should overcome the fluctuation of long-term medical expense.

Mr. Dirks cautioned that the old account would be unable to fund an increase in the minimum pension by the Legislature.

Responding to questions from Chairwoman O'Connell regarding the payment of claims by SIIS and SIIS's new computer system, Mr. Dirks covered the following points:

- To his knowledge, 85 percent of the bills processed by SIIS are paid within 60 days.
- A regulatory decision was made requiring SIIS to return bills which contain errors to medical providers for correction.
- It is not the intent of SIIS nor has management ever instructed anyone to delay the payment of medical bills.
- The implementation of SIIS's new computer system is behind schedule, primarily due to a tight labor market. Six million papers must be converted to an electronic image, and SIIS has had difficulty finding people to work from 5 p.m. until midnight on the file conversions, despite the use of temporary employment agencies. It is investigating the possibility of outsourcing this task in order to get the new system online as quickly as possible.
- Five days were allotted for training a team; at the end of three and one-half days, the employees were ready to return to their duties, evidencing a comfort level with the new system sooner than originally expected.
- Because the new computer system represents a major change in the way SIIS does business, it is imperative that it not be fully implemented until SIIS was assured that it will work as anticipated.

Assemblyman Nolan expressed concern that an employer with one catastrophic incident could be declined coverage by its insurer. Mr. Dirks indicated he is of the opinion that if Nevada implements a pure NCCI residual market mechanism, such a situation could occur, and that employer would be placed in the residual market. He reported that some states have tried to define a residual market versus a voluntary market. Louisiana bases an employer's loss experience on a certain number of years, giving the state fund some discretion in placing the employer. Other states have provided that the insurer, through its underwriting guidelines, establish what constitutes a voluntary market risk versus a residual market risk. He emphasized that if the state fund serves as the residual market, it must have discretionary power.

REPORT ON THE WORKERS' COMPENSATION FUND OF UTAH

Chairwoman O'Connell introduced Gary Pon, President and General Manager, Colorado Compensation Insurance Authority, and Tom Callanan, Senior Vice President of Marketing, Workers' Compensation Fund of Utah, and announced that they would be discussing the experience of their respective state funds.

At the request of Chairwoman O'Connell, a verbatim transcript of the testimony of Mr. Callanan and Mr. Pon is attached as Exhibit C to these minutes.

Tom Callanan

Tom Callanan, Senior Vice President of Marketing, Workers' Compensation Fund of Utah, Salt Lake City, Utah, discussed the background, history, and experience of the Utah fund and detailed the challenges it faces. Please see Exhibit D. He covered the following topics:

- The Utah fund is a quasi-public, nonprofit mutual insurance corporation governed by a seven-member board of directors chosen by the Governor.
- By statute, the chief executive officer of the fund must have a background in finance and serve as a board member. Statute also requires that the board's membership include one state representative and three policyholders. While a number of the board members have financial backgrounds, such experience is not required by law.
- Names of potential board members are submitted to the Governor for his review and approval; however, they do not serve at the pleasure of the Governor. Board members may be removed for acts of malfeasance.
- Current membership of the board includes a financial institution chief executive officer; a retired "Big Six" accounting firm partner; a retired Mobile Oil Corporation executive; a senior executive of Zions Bank; an insurance entrepreneur; and the manager of Utah's Administrative Services Department, an ex officio member who serves in two capacities, as the state's board representative and as a policyholder representative since the Utah fund insures the State of Utah.
- Aside from discussion of political issues, the fund's board meetings do not differ from those of a private corporation. Topics typically discussed at the meetings include cost controls and marketing and strategic issues.
- The primary objectives of the board are to fulfill its fiduciary duties to the policyholders and, on the public side, to responsibly service the market of last resort.
- The Utah fund was originally created to provide a competitive source of workers' compensation insurance. In 1988, the fund became a quasi-public statutory corporation, no longer a state agency, and exempt from many of the requirements of a state agency.
- The Utah Insurance Commissioner has jurisdiction of the fund's activities. The fund complies with all provisions of the Utah Insurance Code and is a full participant in the Guarantee Association in Utah.
- The Utah Supreme Court has affirmed in four separate cases that the policyholders own the assets of the Utah fund.
- Utah is not an NCCI state, and the fund is the market of last resort.
- The State of Utah is required by statute to maintain its workers' compensation coverage with the Utah fund.
- Except for federal income taxes, the Utah fund pays the same taxes as do private insurers. The exemption for federal income taxes arises out of the fund's quasi-governmental status. However, federal legislation enacted in 1997 may impact the fund's ability to maintain its exemption. The fund's tax counsel is of the opinion that it is entitled to retain its tax exempt status and has applied for a revenue ruling from the United States Internal Revenue Service (IRS).
- On a premium basis, the Utah fund writes approximately 52 percent of the overall Utah market. It estimates that 90 percent of its business is voluntary or competitive business and the remainder the market of last resort.
- In his view, the residual market is a phenomenon that makes definition difficult. For example, five years ago, Utah trucking firms could not obtain coverage from a private insurer, a condition which no longer exists. It is generally agreed today that coal mining is the only high hazard industry in Utah, and the fund writes virtually all of that business.
- Generally speaking, businesses that pay minimum premiums such as a start-up operation or a one-person firm, are not a competitive business and do not have the option to have their coverage written by private carriers, regardless of the market.
- The Utah fund has 27,000 customers, of which 16,000 pay less than $1,000 in premium. These 16,000 businesses comprise a portion of the residual market. It is important that coverage be available to these businesses, and the Utah fund has systems to handle large volumes of small accounts.
- As a mutual insurance company, the fund pays dividends to its policyholders based on loss-sensitive formulas.
- The fund views its ability to offer competitive products in the future as an area of challenge. The Utah fund has entered into a number of business arrangements to meet that challenge:

    1. It has entered into a reinsurance arrangement with a company that is licensed to write coverage in other states. This has enabled the fund to retain some accounts in which the employer was domiciled in Utah and had multiple operations in other states.

2. Subsidiaries have been created such as Univantage, a shell disability company which was originally formed to enable the fund to underwrite health coverage. This action was taken by the fund in anticipation of a 24-hour coverage product being developed by private insurers. It was expected that this product would provide employers with coverage which blended different health benefits. The fund was subsequently constrained by the Utah Legislature from using this shell company. Generally, the 24-hour coverage product has not been as successful as anticipated.

3. It purchased a majority interest in a third-party administrative firm which handles claims for large self-insureds. The fund envisions using this firm as a platform to market some of its services (such as fraud technology and safety engineering) to the self-insured market.

4. Advantage Workers' Compensation Services was created by the fund to handle any services it may sell directly.

- Last year, the fund received a rating of A- from A.M. Best Company, a premier insurance rating firm.
- The fund manages its own investment portfolio through an investment committee of the board and money managers.
- Specific authority was not required to enable the fund to participate in OCIP projects, and it competes with private insurers for that business. It is the view of the fund that construction projects of $60 million or more will likely involve wrap-up programs. The advantages of wrap-up programs on large projects include consistent safety efforts, elimination of some cross-liability issues, and cost savings.

Concluding his presentation, Mr. Callanan reported that there is little litigation in Utah's workers' compensation system, and the state's employers enjoy the third or fourth lowest rates in the nation. Utah fund managers are interested in the laws governing workers' compensation and proposed reforms, and they are active in offering their expertise in legislative matters.

Assemblyman Hettrick raised a number of issues regarding deposit requirements for insurance companies in Utah, disclosure of information, the open meeting law, OCIP concerns, and residual market standards. Responding, Mr. Callanan offered the following remarks:

- The records of the Utah fund are confidential to the same extent as those of private carriers. The fund is not required to disclose proprietary information such as the names of its customers or its market plans. However, it does file with Utah's Insurance Department the same documents that a private insurer is required to submit, including its annual statement and reinsurance protocols.
- Inasmuch as the fund is not a state agency, it is not subject to the Open Meeting Law.
- The fund complies with Utah's deposit requirements for insurers. As a quasi-public entity, there is no commingling of funds between the State of Utah and the fund, and with the exception of premium taxes, no money is exchanged between the fund and state government. He is not aware of the mechanism used to fulfill this requirement but suggested it is likely that a trust or escrow fund is utilized.
- A review of the residual market in Utah demonstrates that the fund does not make money from an expense or a claims standpoint on those small employers that pay the minimum premium of $300 a year. In effect, other employers are subsidizing those policyholders.
- Two rating tiers have been established by the fund, and the principal basis of the differentiation in price between these two tiers is expected loss ratio and size.
- In Utah, if a worker on an OCIP project was sent off site to obtain materials, the specifications of the OCIP project agreement would determine whether that employee would be covered under the OCIP.

Assemblyman Hettrick complimented Mr. Callanan on the performance of Utah's workers' compensation system and noted that, had SIIS not had a deficit over the last few years, it too may have been able to pay dividends to its policyholders.

REPORT ON THE COLORADO COMPENSATION INSURANCE AUTHORITY

Gary Pon

Gary Pon, President and General Manager, Colorado Compensation Insurance Authority (Authority), Denver, Colorado, provided the Committee with a summary of the structure and operation of Colorado's workers' compensation fund (Exhibit E), covering the following topics:

- The mission of the Authority is to provide Colorado employers with an assured source of workers' compensation insurance at cost and to maintain a solvent fund.

- The Authority was created by statute and does not require a certificate of authority from Colorado's Insurance Department.

- In 1986, the Colorado Legislature made significant changes to the workers' compensation system. These changes included the repeal of a mandatory vocational rehabilitation law and the transformation of the Colorado fund to an authority.

- The Authority is quasi-public in nature, and its enabling act specifically states that it is not an agency of the State of Colorado. Its revenues are derived solely from premiums and investment income.

- The Colorado State Treasurer serves as custodian of the Authority's assets. The assets are directly managed by the State Treasurer with the assistance of an investment consulting firm hired by the Authority. Income on investments enables the Authority to write business at a higher loss ratio and a higher combined ratio.

- By statute, the Authority is prohibited from denying workers' compensation coverage to any Colorado employer, regardless of loss experience, unless that employer fails to pay its premium, in which event its coverage may be cancelled with notice.

- The Authority is governed by a seven-member board of directors appointed by the Governor and approved by the Colorado State Senate. The board is comprised of four representatives from the business sector that are also policyholders of the Authority, two employees of businesses that are policyholders of the Authority, and one representative with experience in the administration and operation of an insurance company without a conflict of interest.

- Current board membership includes the retired chief financial officer of a private insurance company, a large potato grower, a warehouseman who serves as the board's chairman, an assistant city manager who also serves as a risk manager for a Denver suburb, a risk manager of a large university, and an insurance agent who owns three insurance agencies in Colorado. The board elects its chair annually. The board meets monthly to review the Authority's financial and operating results and discuss strategic issues. All filings with the Insurance Commissioner are first approved by the board.

Senator Shaffer questioned whether the Authority's board members receive compensation. Mr. Pon reported that members receive $140 per day. The board meets monthly, and the law allows it to meet up to 30 days per year. Board members are also reimbursed for expenses incurred as a result of their duties.

Continuing, Mr. Pon offered the following remarks:

- He serves at the pleasure of the board.

- Colorado is an NCCI state; thus, the Authority uses rates filed by NCCI.

- With the assistance of his staff, he prepares the Authority's budget annually and submits it to the board of directors for review and approval.

- The Colorado State Auditor, which is an arm of the Colorado Legislature, selects a certified public accounting firm to conduct an annual financial and operational audit of the Authority. The audit report is submitted to the Legislative Audit Committee, and the Authority addresses that report before the Committee annually.

- Authority employees are not civil servants, however, they are covered by Colorado's Public Employees Retirement Association.

- A formula-based fee is paid to the State of Colorado in exchange for the Authority's participation in the state's risk management program. In addition, the Authority purchases directors' and officers' liability and errors and omissions liability coverages on the competitive market.

- The Authority enjoys governmental immunity but can be sued for willful, wanton acts and for acting unreasonably in its official capacity. In his opinion, governmental immunity has served as an effective deterrent to frivolous lawsuits.

- The Authority is exempt from paying federal income taxes. However, as with Utah, federal legislation enacted in 1997 may impact the Authority's ability to maintain its exemption. The Authority has filed for a determination with the IRS to confirm its tax-exempt status.

- Another advantage resulting from the Authority's quasi-public nature is an exemption from the state sales tax on items necessary for its operation. This does not include payment of benefits and supplies that are provided to injured workers.

Assemblyman Nolan asked if it was necessary to change the status of the Authority's employees in order to accommodate a reduction in its workforce. Mr. Pon explained that the Authority's employees, prior to July 1, 1987, were given five years within which to make an election to either join the Authority and leave the state civil service system or to transfer to another state agency. The board of directors established an incentive for employees to transition to the Authority. In addition, a consulting firm was retained to assist in developing a salary and benefit package for the new system.

Responding to a question from Chairwoman O'Connell, Mr. Pon stated that by law, the Authority does not pay a state premium tax. However, the Authority does pay a premium surcharge of approximately 4.5 percent. This surcharge is used to fund the agency that oversees the administration and enforcement of the workers' compensation system in Colorado, including the cost of administrative law judges that preside at hearings on contested cases.

Mr. Pon continued his presentation, covering the following points:

- The subsequent injury fund was eliminated by the Colorado Legislature. However, because of the "long tail" in workers' compensation, assessments continue for the subsequent injury fund and a major medical expense fund which was available for accidents occurring prior to July 1, 1981.

- There are a number of disadvantages of the Authority's quasi-public status:

    1. The Authority does not choose its customers. Because Colorado had never had a residual market mechanism and a large number of private carriers are currently interested in writing workers' compensation coverage, it is difficult to define the residual market. He estimates that less than 10 percent of coverage written in Colorado is considered a residual market risk.

    2. There is a potential to politicize operations in a quasi-public operation.

    3. The Authority has less discretion regarding its investments. While it currently enjoys a good working relationship with the Colorado State Treasurer, that has not always been the case.

    4. There is a stigma associated with being a part of government. The public's expectations concerning the Authority's duty to accommodate them sometimes leads to an assumption by employers that the Authority, as a part of state government, must provide workers' compensation coverage irrespective of the fact that the employer may be delinquent in its premium payments.

    5. While acknowledging the importance and necessity of audits to ensure that adequate controls are in place to safeguard the financial and operational stability of the organization, he pointed out that such audits would provide added value if they enabled the Authority to learn from the best practices of other organizations.

    6. The inability to expand its services beyond workers' compensation is also viewed as a disadvantage. Like Utah, the Colorado Authority has contracted with a private insurer to enable it to offer coverage to businesses with operations in other states.

- The Authority is subject to the same degree of regulation as that of a private carrier.

- The rates of the Authority are subject to the same scrutiny as those of a private carrier. Three rate tiers were developed by the Authority, and the criteria for each tier has been approved by the Commissioner of Insurance.

- The Authority currently has an actuarial deficit. By statute, it is required to determine a reasonable surplus, and once achieved, maintain that surplus. In addition, the Authority must submit a plan on when it expects to achieve the surplus it sets. Once that plan is approved by the Insurance Commissioner, the Authority will become subject to the supervision rehabilitation provisions of Colorado law if it fails to maintain its surplus.

- The Senate Committee on Business Affairs and Labor is designated as the legislative oversight committee of the Authority. He meets with that committee at least once a year and more often if workers' compensation legislation is pending.

Responding to questions from Assemblywoman Krenzer, Mr. Pon offered the following information:

- The Authority's premium for the year ended December 31, 1997, was $238 million. It projects premium of $235 million for 1998.

- Ownership of subsidiaries by the Authority is not permitted. However, the Colorado Legislature has authorized it to enter into cooperative arrangements with other companies. For example, the Authority cannot underwrite the risk for health insurance or

nonoccupational disability insurance, but it may enter into an arrangement with a health maintenance organization or a disability carrier.

- It is exploring the possibility of leveraging its network of occupational medical providers in an alliance with a long-term disability company wherein the Authority would provide the workers' compensation coverage, the disability insurer would provide the disability coverage, both occupational and nonoccupational, and utilize the Authority network of medical providers.

Assemblyman Hettrick questioned Mr. Pon regarding the Authority's disclosure requirements, open meeting law, and OCIPs. Responding, Mr. Pon covered the following points:

- The Authority is subject to Colorado's open records law with some exceptions: it is not required to divulge market information or records pertaining to individual employers or employees.

- The board of directors is subject to the open meeting law. Under the exclusions to the open records law, the board may hold executive sessions to discuss strategic issues.

- The Authority does not currently participate in OCIP business.

Tom Callanan

Mr. Callanan, previously identified on page 13 of these minutes, offered clarification of his response to Assemblyman Hettrick's inquiry regarding OCIPs. He explained that an employer must maintain workers' compensation coverage for all of its operations, not just those covered under the OCIP, and if an employee were to leave the OCIP project site to perform work not related to the OCIP, then the employer's primary carrier would be responsible for the claim. Assemblyman Hettrick clarified that his question pertained to the reporting of wages, e.g., what would occur if an employer reported an employee's wages on an OCIP project but the employee was hurt en route to another job. Mr. Callanan suggested that premium auditors can be valuable in assisting with the development of protocols for payroll reporting.

Continuing, Mr. Callanan reported that Utah had abolished its subsequent injury fund several years ago. At the time, Utah's subsequent injury fund was in a deficit position, and insurers were given responsibility for the claims of the fund when it was eliminated.

PUBLIC COMMENT

Lynn Grandlund

Lynn Grandlund, Employers of Nevada, Las Vegas, spoke in favor of Recommendations 17, 18, and 19 of the Committee's "Work Session Document" regarding to the creation of a board of directors to govern SIIS. It is the position of Employers of Nevada that the policyholders who support the SIIS have had an inadequate voice in its operations. Referencing the earlier testimony of Mr. Callanan and Mr. Pon, Ms. Grandlund agreed that defining the qualifications of board members deserves further study. She also suggested that the Committee consider implementing a confirmation process similar to that of Colorado wherein the Governor's board appointments must be approved by the Senate. Ms. Grandlund further advocated strong policyholder involvement on the board. She pointed out that a number of SIIS policyholders have many years of business experience and could offer valuable contributions to the board.

Assemblyman Hettrick suggested that in order to depoliticize the board selection process and set a minimum qualification standard, the Committee consider amending Recommendation 17 to require that each of the appointing authorities, the Senate, the Assembly, and the Governor: (1) appoint members from at least two political parties; and (2) select at least one member with senior management experience.

Robert A. Ostrovsky

Robert A. Ostrovsky, Ostrovsky & Associates, Las Vegas, representing the Nevada Resort Association, commented on a number of the recommendations pending before the Committee:

- He agreed with Mr. Dirks that it is important SIIS maintain its tax-exempt status and suggested that the Committee determine what kinds of political subdivisions are needed for members of the board in order to retain that status.

- Utah law mandates that its board members possess certain qualifications, and the Committee may wish to consider establishing similar qualifications for the Nevada fund's board.

- He is of the opinion that the SIIS will function more efficiently under the leadership of a board of directors.

- Recommendation 12 regarding confidentiality of information may require additional review if the Committee favors the creation of a board for SIIS. In that event, it would be necessary for the Committee to maintain a balance between the board's need to protect the confidentiality of certain information (e.g., SIIS's marketing strategy), and the public's need to monitor the status of SIIS's public obligations.

- He has encountered difficulty drafting language for Recommendation 4 and suggested that the proposal be withdrawn at least temporarily.

- The Three-Way Task Force (Task Force) recently reviewed the provisions of Title 57, "Insurance," of NRS with a view towards its applicability to SIIS in a competitive environment and determined that there are valid reasons why some portions should not apply to the SIIS. Mr. Wadhams provided additional testimony on this topic later in the meeting.

- There is some concern about 24-hour coverage and the appropriateness of allowing any state fund to provide other lines of coverage. He favors Nevada handling this issue in a manner similar to that of Colorado by providing that SIIS may enter into agreements with other carriers on an affiliate basis but prohibiting it from offering other lines of insurance.

- The implementation of three-way insurance will inevitably result in a loss of market share by SIIS and hence, a reduction in its workforce. Two prior legislative sessions have discussed the State Personnel Act and the coverage of SIIS employees, but no actions were taken. He urged the Committee to address the applicability of the State Personnel Act to SIIS in a competitive environment.

Senator Shaffer invited Mr. Ostrovsky to share his views regarding the manner in which Colorado transitioned the Colorado Authority's employees from a state to a quasi-governmental agency. Mr. Ostrovsky explained that in order to ensure that no one was forced into one system or the other, Colorado gave employees of its fund a transition period within which to transfer to another state agency or stay with the new quasi-governmental agency under the new system. However, given the limited amount of time between the beginning of Nevada's 1999 Legislative Session and the implementation date for three-way insurance, the Committee may find it necessary to take an alternative approach.

Douglas Dirks

Chairwoman O'Connell requested that Mr. Dirks, previously identified on page 8 of these minutes, also comment on this issue. Mr. Dirks stated that:

- He anticipates that SIIS will lose at least 50 percent of its market to competitors when three-way insurance is implemented.

- In order to continue operating on a break-even basis, the fund will need to reduce its work force.

- The State Personnel Act determines which employees will be laid off based solely on seniority.

- The personnel rules are written in such a manner that employees are classified in very broad terms, and this will create problems when SIIS downsizes its work force. He cited the following hypothetical situation: Two Workers' Compensation Technician II's employed by SIIS, one in the Finance Department and the other in the Claims Department. There is a surplus of staff in the Claims Department. Instead of giving notice to the employee in the Claims Department, SIIS must release the employee in the Finance Department and move the Claims employee, who has no experience in finance, into the Finance Department. He emphasized that in a competitive environment, SIIS will not have the time to retrain personnel.

- The future success of SIIS is dependent upon its ability to be flexible in the marketplace.

Chairwoman O'Connell inquired if the Committee could be of assistance in addressing the challenges presented by the State Personnel Act. Responding, Mr. Dirks made the following remarks:

- Legislation introduced in 1995 proposing a transition rule was unsuccessful.

- At worst, he anticipates that the SIIS could lose two-thirds of its business in one year and be forced to release approximately 600 employees. This will create a long-term impact on all other state agencies in that no external hires will be permitted so long as former SIIS employees have priority on the hiring list.

- He expects staffing adjustments will begin on July 1, 1999.

- Given the limited amount of time before three-way insurance is implemented, any proposed transition plan must be short.

Chairwoman O'Connell questioned if SIIS had investigated the possibility of early retirement buyouts for those employees who are nearing retirement. Mr. Dirks stated that SIIS has never done that analysis. Further, he indicated that under the existing personnel rules, a layoff would have to occur before that type of offer could be made. He added that the employees who would be eligible for buyout — those with the most seniority — are those that will not be laid off. Chairwoman O'Connell requested that SIIS provide the Committee with an estimate of the cost of such a program.

Robert A. Ostrovsky

Mr. Ostrovsky observed that the Committee's decision regarding the residual market will also impact SIIS and suggested that the more business SIIS is able to retain, the less jobs it will need to eliminate. Assemblyman Hettrick acknowledged the merit of the suggestion; however, based on the percentage of employers in the residual markets of Colorado and Utah, he was of the opinion that retaining the residual market business would save only 30 to 60 jobs at SIIS. He anticipates that management will be able to assist in the transition of some of the displaced employees into the private sector. Mr. Ostrovsky added that since SIIS will be competing for employees against private carriers, its rates of pay and the qualifications for various jobs must be competitive in the marketplace.

Linda M. Collins

Linda M. Collins, President, Nevada Self-Insurers Association (NSIA), and Workers' Compensation Manager, Mirage Resorts, Las Vegas, summarized the position of the NSIA on the various proposals before the Committee:

- The NSIA supports the creation of a board of directors to govern SIIS.
- The NSIA has prevailed in a court case which dealt with providing permanent partial disability (PPD) ratings on subjective medical findings rather than objective medical evidence. She indicated that it is her understanding that the Division of Industrial Relations (DIR), Department of Business and Industry, plans to seek a stay and appeal the district court's decision to the Nevada Supreme Court. Therefore, she requested that Recommendation 25 of the "Work Session Document," which also deals with rating evaluations for PPDs, be considered by the Committee.
- There are currently four cases pending before Nevada's First Judicial District Court Judge Michael E. Fondi with regard to the subsequent injury fund, and the NSIA has filed an amicus brief in that action. She is unsure whether or not the self-insureds still support repeal of the subsequent injury fund.

In response to a question from Ms. Collins, Chairwoman O'Connell affirmed that the intent of Recommendation 23 is to require that insurers provide claimants with notice of the circumstances under which a claim may be closed automatically. Assemblywoman Krenzer suggested that the notification of rights be included on the Form C4, and Chairwoman O'Connell indicated that this was the intent of Recommendation 23.

Referring to Recommendation 24, Assemblywoman Krenzer commented that differences of opinion between physicians occur frequently and expressed concern about use of the term "misdiagnosis" in regulation. She added that the proposal could create situations where different opinions are repeatedly given from one doctor to another. Ms. Collins pointed out that the person who would ultimately make the decision as to whether or not the diagnosis was proper would not be a physician but an appeals officer. Chairwoman O'Connell invited comments from Committee members and the audience on suggested language. The following points were covered in the ensuing discussion:

- Assemblyman Hettrick agreed with Assemblywoman Krenzer's comments and suggested if the Committee were to adopt Recommendation 24, the language be changed to provide that the misdiagnosis must be confirmed by two doctors as being a misdiagnosis.
- Sam McMullen, The McMullen Strategic Group, Reno, Nevada, concurred with Assemblyman Hettrick's suggestion, pointing out that the Committee might find it easier to define a clear situation and then add the two-doctor rule to provide medical objectivity rather than trying to define a vague situation in statute.
- Assemblywoman Krenzer opined that the proposal would tremendously increase costs on $500 claims.
- Chairwoman O'Connell explained that her concern is for injured workers who "fall through the cracks" in the law. She added that since learning that the automatic closure period had been increased from six months to one year by the 1997 Legislature, she was more comfortable that such occurrences would be reduced.
- Lenard Ormsby, General Counsel, SIIS, reported that, other than the case recently brought to Senator O'Connell's attention, he was aware of four instances where injured workers had complained that they were unable to reopen their claims due to the six-month automatic window for closure.

- Mr. McMullen commented that if the managed medical care component of the system is working properly, disputes regarding diagnosis should be settled by peer review.

Referencing her testimony at a prior Committee meeting, Ms. Collins reviewed the NSIA's position regarding data that DIR proposes to collect as part of its new information system, data it anticipates DIR needs in order to carry out its responsibilities, and data currently being reported by insurers. Please see Exhibit F. The NSIA contends that compliance issues are adequately handled by statutes and that the new information system should not be used for compliance reporting purposes.

Barbara Gruenewald

Barbara Gruenewald, Nevada Trial Lawyers Association, Reno, spoke in favor of Recommendations 23 and 24 of the "Work Session Document." Ms. Gruenewald reported that many claimants have been impacted by the automatic closure of claims and that she personally has seen at least one claimant every three months regarding this issue.

Sam McMullen

Sam McMullen, previously identified on page 25 of these minutes, provided the Committee with an outline of NSIA's concerns with regard to appeals officers' responsibilities. Please see Exhibit G. He reported that after consulting with a number of people from various disciplines (excluding current appeals officers) regarding appeals procedures, he has concluded that the process which is currently in place, with some modification, is adequate. In his research of this issue, he found that participants in the appeals process voiced three areas of concern with the current system:

- Appeals officers should be required to adhere to the same statutes which govern the conduct of similarly-situated decision makers with regard to ex parte communications or relationships, including gifts and entertainment.

- The Committee needs to ensure the Senior Appeals Officer has the statutory authority to objectively measure and evaluate the performance of the appeals officers. Specific points made regarding performance measurements include the following:

    1. It is important that objective and measurable performance standards be developed.

    2. In terms of a measurement, the number of actual hours worked in hearings is a more accurate indication of work load and performance.

    3. Decisions should be reviewed for quality of the work, productivity, and reversal rates, not for purposes of overruling or adjusting them. In addition, decisions in new cases that set a precedent should be shared with all appeals officers.

    4. The Senior Appeals Officer should be accountable for the training needs of appeals officers.

- Appeals officers' qualifications should include knowledge of workers' compensation law.

- While appeals officers are allowed by regulation to direct an attorney of record to draft the opinion, it was the general consensus of the people he spoke with that they should be required to write their own opinions.

- It is the opinion of the NSIA that the Nevada Attorney for Injured Workers (NAIW) should be included at the hearing officer level. The NSIA has found that there is a role for claimants receiving some representation as early in the process as possible for purposes of resolving the issues as calmly and competently as possible. Chairwoman O'Connell noted that this issue had been removed from the agenda in order to allow Nancy Ann Leeder, Nevada Attorney for Injured Workers, Las Vegas, sufficient time to determine the additional cost to the NAIW.

- Mr. McMullen reported that it was the general consensus among the people he interviewed that there is a need for an alternative to judicial review after an appeals officer has ruled on a case. It was suggested that claimants be given the option of requesting that the appeals officer's decision be reviewed by a panel of three appeals officers. In support of this recommendation, Mr. McMullen pointed out that a panel of appeals officers would likely have more expertise in workers' compensation issues than a district court. In addition, such a panel would have the ability to operate and act more swiftly than a district court. This additional level of review would not eliminate a claimant's right to appeal to the district court.

In conclusion, Mr. McMullen opined that the recommendations he proposed would improve the hearings and appeals process while maintaining the dignity of claimants. He complimented the LCB staff for their assistance in answering questions and providing information to him and volunteered to work with anyone who has concerns about the proposals. Further, he offered to assist drafting the language for a bill draft request (BDR) should the Committee approve his recommendation.

Daryl Capurro

Daryl Capurro, Managing Director, Nevada Motor Transport Association, Sparks, Nevada, and Wayne Frediani, Nevada Franchise Auto Dealers Association, Reno, both also representing the Nevada Auto Network Self-Insured Group, Reno, appeared before the Committee in support of Recommendations 7 and 8 of the Work Session Document. Mr. Capurro addressed the regulation of self-insured employers, expressing the following views:

- He favors eliminating the prerequisite that individual new members joining a SIG provide the Commissioner of Insurance with a financial statement. In support of his position, he pointed out that the SIG itself would still be required to provide an audited financial statement.

- The Legislature's intent in requiring that an employer have a tangible net worth of at least $500,000 or reported payroll in workers' compensation premium of $15,000 in order to join a self-insured association was to provide a structure which would afford the SIGs the greatest opportunity to succeed and not become a burden on the SIIS. These restrictions should be eliminated for those self-insured groups who have proven their ability to operate responsibly and sustain growth.

- The performance of the SIGs managed by Pro-Group Management since October 1995 demonstrates that they are viable entities which successfully meet the needs of their members.

- The SIGs have become substantial competitors in the workers' compensation market. The approximate annualized assets of the group he represents are $8 million and those of the group represented by Mr. Frediani, $4 million.

- Before being allowed to join a SIG, an employer must also pass several levels of review, including: (1) actuaries; (2) the Commissioner of Insurance; (3) excess insurance market carriers; and (4) the self-insured association's board of trustees. This review process adequately ensures the safety of self-insured groups.

Mr. Capurro concluded his remarks by speaking as an employer and a licensed agent for whole lines of insurance. He is of the opinion that the workers' compensation residual market should operate in the same manner as other residual markets and that private insurers should be permitted an opportunity to participate in that market.

Jim Schober

Jim Schober, Chief Operating Officer, Kaercher Insurance Agency, Las Vegas, shared his views regarding Recommendations 7 and 8:

- He expressed concern about eliminating the requirement that a prospective new member of a SIG provide the Commissioner of Insurance with a reviewed financial statement prepared by an independent certified public accountant. He cited an instance where he worked with a company which had two entities and two sets of financial statements. In reviewing the notes to one of the financial statements, he discovered another entity which was in bankruptcy due to tax liens. He pointed out that financial strength is an essential component of a self-insured group and suggested that at a minimum, a compiled independent auditor's statement be furnished by each new employer seeking to join a SIG.

- Assuming a SIG is financially strong and has surplus to withstand adding small members, he would not oppose eliminating the requirement that an employer 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. He suggested that a SIG should be required to have a minimum of 100 to 125 members and tangible net worth of approximately $15 million or $25 million before it is exempted from this provision of the law.

- He reported that many insurers require financial statements on liability coverage because of concerns regarding a company's ability to pay its premium. Continuing, he pointed out that if one SIG does not succeed, the financial burden of that failure will need to be met by the remaining SIGs. He urged the Committee to ensure the SIGs are financially strong before changing the statutes which govern their operation.

Continuing, Mr. Schober discussed his views regarding other recommendations set forth in the "Work Session Document," making the following comments:

- With regard to Recommendation 1, he strongly supports alternative methods of pooling purchasing groups.

- He is of the opinion that private carriers should be allowed to write workers' compensation coverage on a wrap-up or an OCIP for both private and public projects effective July 1, 1999, and therefore opposes Recommendation 21.

- He apologized for any confusion regarding Recommendation 22 and invited construction companies, owners, risk managers, self-insured groups, and SIIS to participate in the working group to develop specific recommendations to the Committee regarding the regulation of OCIPs.

Joe Cain

Joe Cain, Assistant Director, Government and Community Relations Division, Las Vegas Chamber of Commerce (Chamber), Las Vegas, discussed the Chamber's position on several of the recommendations contained in the "Work Session Document," covering the following points:

- The Chamber represents over 5,300 businesses in the Las Vegas Valley, and its membership consists of self-insured companies, self-insured groups, and companies covered by SIIS.

- Referencing Recommendation 1, he stated that the Chamber supports legislation expanding the types of employer groups that can pool and allowing private carriers to offer fully-insured workers' compensation coverage to these groups, thereby providing small businesses access to private insurance.

- Further, the Chamber supports Recommendations 7 and 8, which would reduce the restrictions currently placed on employers seeking to join self-insured groups.

Senator O'Connell asked Mr. Cain to share his views regarding: (1) the proposed elimination of the subsequent injury funds; and (2) Mr. Schober's suggestion that a self-insured association be required to have a minimum of 100 to 125 members before it is exempted from the provisions of NRS 616B.386(3)(a) and 616B.386(3)(b), "Membership in association: Application; requirements; termination by member; cancellation by association; coverage after termination or cancellation required; liability of association for compensation owed by member. [Effective until July 1, 1999.]" Responding on behalf of the Chamber, Mr. McMullen, previously identified on page 25 of these minutes, commented that Recommendation 8 flows from the initial legislation which provided for the formation of self-insured associations and set forth guidelines for their operation. With the passage of time, the self-insured associations have demonstrated their ability to operate successfully. The Committee now has an opportunity to review their performance, determine whether or not they are ready to move outside the boundaries initially set by the Legislature, and if so, enable them to make business decisions regarding the financial capabilities of their members as proposed in Recommendation 7.

Continuing his remarks, Mr. Cain advised the Committee of other Chamber concerns:

- The Chamber supports the performance of an audit of SIIS by an external accounting firm. This would provide employers with an independent review of SIIS's financial condition.

- The SIIS needs to continue its efforts to manage the claims in the "old" fund.

- There is concern regarding SIIS's ability to address personnel issues in a competitive marketplace.

- The Chamber needs more information before forming an opinion with respect to the elimination of the subsequent injury funds. Referencing earlier testimony before the Committee that the Americans With Disabilities Act (ADA) eliminates the need for the subsequent injury funds, he pointed out that the Act does not apply to businesses with 15 employees or less and thus would not apply to the majority of the Chamber's members. Further, he stated it was his understanding that only those employers who are experience rated may apply for subsequent injury fund relief.

Chairwoman O'Connell asked Mr. Dirks, previously identified on page 8 of these minutes, if Mr. Cain's understanding of the subsequent injury fund was correct. Mr. Dirks explained that all of the approximately 46,000 employers covered by SIIS are qualified to participate in the subsequent injury program, regardless of their experience rating. There is no separate subsequent injury fund for SIIS or separate liability accrued on its financial statement; it is in essence a liability without support of a dedicated asset.

Mr. Ormsby, previously identified on page 26 of these minutes, confirmed that an employer need not be experience rated to apply for subsequent injury relief. He reported that the SIIS currently receives approximately 15 to 20 applications each month for subsequent injury fund relief, usually from larger employers who have a risk manager or a third-party administrator familiar with the fund. About 25 percent of these applications are approved, resulting in claims of $3 million to $4 million annually. The claim experience is applied against the employer's classification rather than the employer, whether experience rated or not.

Continuing, Mr. Ormsby stated that there is an effort underway to eliminate the requirement that self-insured groups participate in a subsequent injury fund. It is the position of SIIS that either all parties providing workers' compensation coverage should maintain subsequent injury funds or all such funds should be eliminated.

Assemblywoman Krenzer commented that one issue is whether employers with under 15 employees can support a subsequent injury fund without subsidy from the larger employers who are subject to the ADA. She questioned why the SIGs should be required to maintain a subsequent injury fund if they no longer find it useful. Mr. Ormsby indicated that from a policy standpoint, SIIS is seeking parity for all carriers so that one class of insurer does not hold a competitive advantage over other carriers.

Assemblyman Hettrick asked if Chamber members might be more comfortable with the possible elimination of the subsequent injury funds in view of Mr. Ormsby's testimony that the majority of claims are received from larger companies who employ risk managers. Mr. McMullen remarked that the workers' compensation field is entering a new era where functions will be guided by actuarial and economic factors rather than policies and regulations. He noted that in order for the SIGs to properly respond to the challenges that lie ahead, they must have a complete understanding of the issues.

Responding to a request from Chairwoman O'Connell, Scott Young, Principal Research Analyst, Research Division, LCB, reported that the Wyoming fund indicated to him that its employers were experience rated on the first $3,000 of each claim and thereafter the costs of any claim, whether it was a subsequent injury claim or not, were spread to the industry class. He indicated that Wyoming's formal subsequent injury fund was repealed a number of years ago, and it now utilizes this mechanism in place of the formal fund. Mr. Young commented that it was his impression that Wyoming fund's present rating system was not mandated by statute but implemented under its own authority as a business matter.

Mr. McMullen noted two concerns of the Chamber: (1) the modification factor; and (2) employer contributions. He argued that it is recognized that a subsequent injury fund is nothing more than an insurance or risk-sharing tool, and consequently, the function of such a fund may ultimately be included as a portion of the total insurance and risk sharing mechanism. He acknowledged that the Chamber does not yet have a full understanding of the issue and indicated that once it does, it will participate in the debate on this matter. Chairwoman O'Connell suggested that Mr. Wadhams might be able to assist in clarifying this issue.

Concluding his presentation, Mr. Cain reiterated that the Chamber needs to educate itself regarding subsequent injury funds and determine the impact on small employers if a change is implemented.

Assemblywoman Krenzer stated that a good working subsequent injury fund should benefit a small employer who wants to hire a person that has had a previous injury. She acknowledged that an employer's contribution, particularly if it is not utilizing the fund, is an issue and indicated that SIIS has been asked to distribute more information about the subsequent injury fund so that employers will seek relief.

Mr. Dirks offered the following clarification on subsequent injury funds:

- Approximately 32,000 of the smallest employers in the state are not experience rated and have a guaranteed premium.
- The smallest 32,000 employers receive little or no benefit from the subsequent injury fund unless all of the losses occur in one particular job class.
- The subsequent injury fund is of value to the 14,000 largest employer accounts at SIIS that are experience rated. By removing experience from their accounts, these employers will realize savings.

John Reiser

John Reiser, Reiser Consulting Group, Carson City, appeared on behalf of the Associated General Contractors (AGC), the Building Association of Northern Nevada, and approximately 500 other employers insured by SIIS. Mr. Reiser reviewed the position of his clients regarding subsequent injury funds, covering the following topics:

- Subsequent injury protection affords employment opportunities to disabled workers while protecting the employer from any expenses resulting from the employee's initial injuries.
- The subsequent injury fund mandated by the Legislature in the 1970s has successfully fulfilled its purpose for more than 20 years. It rewards those employers who modify jobs to keep impaired employees working.
- He urged the Committee to maintain the subsequent injury programs in statute and to address the concerns of the self-insured employers separately.
- Referring to the earlier testimony of Mr. Dirks, Mr. Reiser commented that the subsequent injury fund is not a fund but rather a mechanism which spreads liability among all employers in the state so as not to penalize those employers who retain impaired workers.

Pat Walquist

Pat Walquist, Chairwoman of the Board for Administration of the Subsequent Injury Fund for Self-Insured Employers, Las Vegas, advised the Committee that the board is divided four members to one member on the application of NRS 616B.578(4), "Payment of cost of additional compensation resulting from subsequent injury of employee of member of association of self-insured public or

private employers." Ms. Walquist favors a liberal interpretation of the statute while the remaining four members oppose that interpretation. There is currently a case pending before Nevada's First Judicial District Court regarding the Board's application of NRS 616B.578(4). She noted that previous judicial decisions have favored a liberal interpretation of the statute and urged the Committee to refrain from eliminating the subsequent injury funds until the Board is able to determine whether they are viable.

Meanwhile, the SIGs continue to pay subsequent injury fund assessments but are prevented from accessing the fund because of the dispute. In addition, some employers are concerned that the assessment will be greatly increased. Hence, it is the position of the SIGs that the fund should be eliminated.

Ms. Walquist expressed concern that elimination of the subsequent injury funds may lead to employment decisions regarding a worker that are based on that worker's impairment.

Chairwoman O'Connell questioned the time frame for a decision to be entered on that case. John Wiles, Division Counsel, DIR, Las Vegas, and attorney for the Board for the Administration of the Subsequent Injury Fund for Self-Insured Employers, reported that he anticipates the issues will be briefed before the district court in Carson City within approximately 30 days, with oral argument following 30 days later. A decision should be rendered within 90 days after oral argument. Mr. Wiles pointed out that even after the district court enters its findings and order regarding the Board's application of the law, that decision may well be appealed to the Nevada Supreme Court either by the plaintiff or the majority of the Board.

Assemblyman Nolan noted that in order for a person to come under the purview of the ADA, he or she must experience impairment of an essential life function. He pointed out that most people who are eligible for the subsequent injury fund would also qualify for ADA. However, an individual could have a preexisting condition but not experience impairment of essential life functions and thus be eligible for the subsequent injury fund but not meet ADA standards. He suggested that as the Committee deliberates on the pending recommendations regarding the subsequent injury fund, it not overlook a group of workers who may need subsequent injury fund relief.

Mr. Wiles commented that differing views of the purpose underlying the statute divide the Board. One field of thought is that the statute was designed not merely to spread risk of loss but to encourage the retention and the hiring of people with known disabilities. Ms. Walquist is of the opinion that a majority of self-insured employers favor liberal interpretation of the statute and urged the Committee to withhold action on the recommendations dealing with subsequent injury funds until such time as a decision is rendered by the court.

J. Michael Nave

J. Michael Nave, Alliance of American Insurers, Las Vegas, reviewed his professional background, indicating that he formerly managed the NAIW's Las Vegas office and later served as an appeals officer. Referencing Recommendations 27 and 28, he discussed his views regarding the appeals and hearings process:

- He expressed doubt that utilizing the criteria of timeliness and consistency would result in an accurate measurement of an appeals officer's performance. In support of his position, he made the following points:

  1. Statistical measurements such as the number of hearings conducted per week or the number of hours spent each week in hearings can be controlled by appeals officers and as such will not provide a fair and accurate measurement of their performance. For example, if an appeals officer knows that the evaluation of his or her performance will be based on the number of hours spent in hearings each week, he or she can manipulate the length of the hearings in order to achieve a good evaluation.

  2. Because the length of proceedings varies from case to case, timeliness cannot be measured by the number of hearings conducted by an appeals officer each week.

  3. Utilizing the number of decisions that are successfully appealed as a measurement tool would not provide an accurate reflection of an appeals officer's performance because: (a) district court judges are not as knowledgeable as appeals officers in the area of workers' compensation law; and (b) most decisions are not written by appeals officers.

- He stated that the effectiveness of the appeals process would be improved if appeals officers were required to write their own decisions and urged the Committee to consider such action. He pointed out that under the current system, the prevailing party is often directed to write the decision. As a result, an appeals officer may not read the file or reconcile the legal and factual issues of a case before making a decision.

Chairwoman O'Connell asked Mr. Nave to share his views regarding Mr. McMullen's proposal that the parties to a case be given the option of requesting that an appeals officer's decision be reviewed by a panel of three appeals officers. Mr. Nave agreed that this

additional level of review could improve the appeals process. He noted such a panel would provide the added benefit of affording appeals officers an opportunity to review alternate resolutions to similar issues, which in turn could lead to greater consistency in decisions issued. Further, if an appeals officer is making decisions not in line with those of his or her peers,the panel review process may cause that officer to render future decisions that are more consistent with those of the majority.

Mr. Nave concluded his comments by requesting that the Committee withhold action on Recommendation 5, which he initiated. He is of the opinion that the language contained in the statute is conflicting and may cause problems beginning in the year 2003, and he plans to work with the NCCI to develop more precise rating language. At the present time, however, he is not prepared to propose language which would resolve his concerns.

Wayne Carlson

Wayne Carlson, Executive Director, Nevada Public Agency Insurance Pool & Public Agency Compensation Trust (PACT), Carson City, a self-insured group for counties, cities, municipalities, hospitals, and schools, provided the Committee with a memorandum regarding the subsequent injury fund (Exhibit H) and reviewed the position of his organization on several proposed recommendations, covering the following topics:

- He favors providing self-insured associations more flexibility in making business decisions, particularly with regard to new membership.

- He spoke in opposition to Mr. Schober's suggestion that a self-insured association be required to have a minimum of 100 to 125 members and tangible net worth of approximately $15 million or $25 million before it is exempted from the provisions of NRS 616B.386(3)(a) and 616B.386(3)(b), pointing out that Nevada's size limits the pool of potential members.

- The subsequent injury fund of the SIGs is a zero-balance fund. If there are no expenditures in a given year, collected assessments are returned to the employer groups. However, if expenditures are incurred in a particular year, member assessments can be unlimited. He expressed concern regarding this volatility and suggested that if the funds are maintained, self-insured associations be given the option of purchasing coverage in order to cap the amount of risk and assessments and stabilize their fund.

- There may be merit to maintaining some type of subsequent injury fund to provide coverage on those claims that are not eligibile under the Americans With Disabilities Act.

Karen Rodriguez

Karen Rodriguez, previously identified on page 6 of these minutes, reported that the residual market plan filed by NCCI and approved by the Commissioner of Insurance provides for a minimum of two declinations from a voluntary carrier before becoming eligible for residual market coverage, and one of those declinations must be from SIIS. This temporary procedure was put in place at the request of the National Pool in order to foster a competitive environment. Since SIIS will continue writing the policies currently in effect when the market changes on July 1, 1999, it is possible that only the new employers entering the state or risks that SIIS cancels will apply to the residual market. The NCCI does not anticipate a large residual market in Nevada.

Douglas Dirks

Douglas Dirks, previously identified on page 8 of these minutes, clarified the following residual market issues:

- It is his understanding that the residual market plan provides that SIIS be required to maintain all accounts during the transition to three-way insurance. If SIIS determines that the residual market or transitional rate is inadequate, it could potentially place 26,000 employers into the residual market at the same time.

- The Commissioner of Insurance has directed that during the transition period to three-way insurance, SIIS shall have the right to one of the two declinations that are necessary before an employer can be placed in the residual market. The Commissioner's action was taken at the request of the NCCI National Pool, who is of the opinion that allowing the SIIS to have the right of last refusal to the residual market would be anticompetitive. He expressed concern that the National Pool had instructed the Commissioner of Insurance how to rule on this issue.

- He urged the Committee to designate SIIS as the residual market or, in the alternative, to maintain SIIS's right of last refusal thus ensuring that the state fund is always the guarantor and that an employer is only placed in the residual market if the state fund is unable to write coverage due to risk factors.

Responding to the comments of Mr. Dirks, Karen Rodriguez, previously identified on page 6 of these minutes, noted that the National Pool's Board of Directors is a voluntary group of insurers, and it does have the right to provide underwriting guidelines to the

Commissioner of Insurance. Continuing, she pointed out that if the Commissioner of Insurance does not wish to proceed with the National Pool, she has the option of forming a state-specific Nevada pool and designating SIIS as the carrier of last resort on a permanent basis. Mr. Dirks acknowledged Ms. Rodriguez' comments and indicated that his understanding the National Pool Board's position is that NCCI's National Pool will terminate its involvement in Nevada's residual market mechanism if the Commissioner of Insurance does not adopt the National Pool's underwriting guidelines. Chairwoman O'Connell pointed out that the Committee's primary concern is the insolvency of the SIIS and suggested that all interested parties remain mindful of the importance of SIIS's viability until that issue has been resolved.

Daryl Capurro

Mr. Capurro, previously identified on page 27 of these minutes, addressed Mr. Schober's suggestion that a SIG be required to have a minimum of 100 to 125 members and tangible net worth of approximately $15 million or $25 million before it is exempted from the provisions of NRS 616B.386(3)(a) and 616B.386(3)(b). In his view, the combined net worth of a SIG is not an issue; however, requiring that SIGs have a minimum of 100 to 125 members as a prerequisite to exemption from the current statutory restrictions imposed on SIGs would in effect eliminate a large number of employers from taking advantage of such legislation. In support of his position, he pointed out that the group he represents has approximately 47 members with a combined net worth of $200 million. Similarly, the group represented by Mr. Frediani, previously identified on page 27 of these minutes, has a combined net worth in excess of $150 million and approximately 52 members. Under the guidelines proposed by Mr. Schober, neither of these groups would benefit from the proposals contained in Recommendations 7 and 8.

Mr. Capurro also agreed with Mr. Carlson's statement that Nevada's size limits the pool of potential members. For example, Nevada has less than 120 franchised auto dealers; thus, the Nevada Franchise Auto Dealers Association has less than 120 employers who could potentially join that association.

Concluding his comments, Mr. Capurro spoke in favor of Recommendation 31, noting that elimination of the subsequent injury funds would not harm employees.

Charles L. Halsey

Charles L. Halsey, Senior Vice President, J&H Marsh & McLennan, Las Vegas, directed the Committee's attention to Recommendation 21 and expanded on comments he made at the Committee's April 7, 1998, meeting regarding wrap-up programs for public projects:

- It is not his intent to specifically prohibit open competition on public wrap-ups or OCIPs but rather to save taxpayer money. The SIIS is currently the only carrier capable of providing such coverage.
- Government-controlled projects are frequently written on a continuous basis. State agencies often work with and support the efforts of other governmental agencies, and this cooperation results in savings to the taxpayer.
- The SIIS has demonstrated its ability to successfully perform on private wrap-up projects. However, if it at any time fails to carry out its obligations, it should then be subject to open competition with other carriers.

Kevin Higgins

Kevin Higgins, Chief Deputy Attorney General and Director, Workers' Compensation Fraud Unit, Reno, spoke in favor of enacting legislation requiring that warning language appear above the endorsement line on benefit or payment checks as proposed by Recommendation 29. He opined that for such an endorsement to be truly effective in the prevention and prosecution of fraud, it must also contain language stating that the claimant, by signing the check, certifies that he or she has been continuously disabled and unable to work for the previous two weeks. Further, he suggested the statute be amended to provide that the endorsement of a benefit check creates a rebuttable presumption that the claimant signed the check. In support of his recommendation, he cited instances where claimants have argued that they did not certify their disability because a spouse or supervisor endorsed the benefit checks, leaving the state with the burden of proving that the claimants had signed the checks.

Referencing Recommendation 30, Mr. Higgins offered to discuss with the Commissioner of Insurance the potential of combining the various fraud units and report back to the Committee by November 1, 1998. He pointed out that because the mission and funding of each fraud unit is different, budgetary and operational issues would need to be addressed. For instance, federal regulation requires that funding of the Medicaid Fraud Unit must be directed solely toward Medicaid fraud. Similarly, Nevada employers who fund the Workers' Compensation Fraud Unit would likely oppose the use of those funds to investigate other types of fraud. In addition, investigators are currently trained in one area of fraud, and consolidation of the units could present training challenges. Mr. Higgins concluded his remarks by assuring the Committee that the fraud units share information and resources whenever possible.

Chairwoman O'Connell asked Mr. Higgins to present to the Committee a draft of Recommendation 29 with the changes he proposed. Mr. Higgins indicated that he would work with Janice K. Rhodes, Senior Vice President and Division Manager, Liberty Mutual Group, Phoenix, Arizona, to develop language that would aid in the prevention and prosecution of fraud.

Jim Wadhams

Jim Wadhams, an attorney who represents a variety of interests, Las Vegas, discussed numerous recommendations pending before the Committee, covering the following topics:

- As workplace injuries seldom occur at small businesses, the cost benefit of the subsequent injury fund to those small employers is unreasonable. He agreed with Mr. Ormsby's assessment that sophisticated employers derive the greatest benefit from the subsequent injury fund.

- Referring to Assemblywoman Krenzer's previous remarks, he indicated that he, too, shares her concerns regarding discriminatory employment practices aimed at impaired workers. He is of the opinion, however, that Nevada has in place other statutory provisions which would prohibit such forms of discrimination.

- He is of the opinion that the opposition of SIIS management in the early 1980s to serving as the market of last resort resulted in a legislative mind set to avoid requiring that SIIS fulfill that function, and this philosophy has carried on through the intervening years. Current SIIS management is interested in servicing the last resort business because: (1) they expect they can provide service at a profit; and (2) amendments to the Taxpayer Relief Act of 1997 (HR 2014) may impose an income tax on SIIS if it is not the market of last resort. He suggested that the Committee may wish to reconsider its position regarding the market of last resort in order to avoid the possible application of a federal income tax to SIIS.

Referring to the earlier testimony of Mr. Pon and Mr. Callanan, Chairwoman O'Connell asked if the Colorado and Utah funds had made application to the IRS for a determination of their exempt status due to the amendments to the federal Taxpayer Relief Act of 1997. Mr. Wadhams indicated that it was clear to him that Colorado and Utah wish to avoid a sudden finding that their funds are taxable.

Mr. Wadhams continued his remarks:

- He reminded the Committee that under NRS 680B.060, "General tax on premiums: Collection; credit; payment under protest; deposit of taxes collected which are attributable to industrial insurance," premium tax revenue that is derived from the transaction of workers' compensation coverage will benefit the "old" SIIS account which is dedicated for the payment of pre-1995 claims. That additional income will continue until such time as the entirety of SIIS is declared actuarially sound.

Acting in his capacity as a member of the Workers' Compensation Three-Way Task Force (Task Force), Mr. Wadhams discussed the findings of the Task Force, offering the following additional testimony:

- In a competitive environment, SIIS should be subject to most of the same regulatory parameters as other carriers.

- It was unanimously agreed that SIIS should not be required to purchase a certificate of authority and that exempting SIIS from this requirement will not result is a competitive disadvantage to other carriers of such a magnitude that it would require legislative adjustment.

- The SIIS should comply with those portions of Chapter 686A of NRS, "Trade Practices and Frauds; Financing of Premiums," commonly referred to as the Unfair Trade Practices Act, that pertain to all other providers of workers' compensation coverage in Nevada.

- Pursuant to NRS 686A.310, "Unfair practices in settling claims; liability of insurer for damages," the DIR should monitor the payment of claims for the benefit of injured workers.

- Referencing Recommendation 11(c), he indicated that there is a strong consensus that all persons who market or sell workers' compensation insurance should be licensed.

- There was also general agreement among the members that SIIS should be required to furnish the Commissioner of Insurance with the same amount and type of information as private carriers.

- The Commissioner of Insurance should have clear authority to examine SIIS's "new" and "old" funds and to monitor the processing of claims through DIR.

- Regardless of how SIIS may be characterized, it is still a state agency with its funds on deposit in Nevada. The Task Force is of

the opinion that requiring the SIIS to deposit additional securities in Nevada is unnecessary.

- There was some debate among members regarding the authority of the Commissioner of Insurance to suspend operations. The group was of the opinion that the Commissioner of Insurance should have the authority to suspend SIIS's marketing operations for noncompliance utilizing the same notice and hearing that a private carrier would receive.

- However, SIIS operates by virtue of a certificate of authority granted by the Legislature, and the Commissioner should not have the power to revoke its ability to remain active in the marketplace. The termination of SIIS's operations would require a legislative determination.

- He provided the Committee with a position paper on subsequent injury funds. Please see Exhibit I.

In response to a question from Assemblyman Hettrick, Mr. Wadhams explained that the intent of Recommendation 14(e) is to subject foreign insurers to the jurisdiction of Nevada by requiring that each such insurer appoint a state official as its agent for service of process in exchange for a license. Since SIIS is already located in Nevada and subject to the jurisdiction of Nevada's courts, this provision need not apply to it.

Robert A. Ostrovsky

Mr. Ostrovsky, previously identified on page 22 of these minutes, advised the Committee that he has proposed that all information provided to the Commissioner of Insurance be handled in the same manner. He reported that while SIIS does not oppose providing information on both the "old" and "new" funds to the Commissioner of Insurance, it is concerned about the manner in which that information would be reported. Mr. Ostrovsky has worked with Mr. Dirks to draft language which provides for the disclosure of all information to the Commissioner of Insurance in two separate reports.

Douglas Dirks

Mr. Dirks, previously identified on page 8 of these minutes, explained that the "old fund" and the "new fund" on a combined basis report to Nevada's Controller on a fiscal year basis. The cutoff date for the books for both accounts is June 30. An audit will be performed in August or September of 1998, and an audit report will be issued in October 1998. A copy of that report will be provided to the Commissioner of Insurance.

Continuing, Mr. Dirks indicated that the account for current claims is administered under insurance accounting rules and is done on a calendar year basis consistent with every other insurer in Nevada. The statute currently provides that the financial statement must be provided to the Commissioner of Insurance by March 1 of each year, and an audited financial statement on a statutory basis must be provided to the Commissioner of Insurance by June 1 of each year. The language drafted by Mr. Dirks and Mr. Ostrovsky specifically states that SIIS must provide a copy of the audit as well as the actuarial certification for the old and new funds annually to the Commissioner of Insurance.

Sam McMullen

Sam McMullen, previously identified on page 25 of these minutes, offered additional testimony regarding the recommendations pending before the Committee:

- Although the Retail Association of Nevada offered no testimony regarding Recommendations 7 and 8, it supports the position of Mr. Capurro and Mr. Frediani.

- Referencing Recommendation 21, he questioned why public projects should be handled differently than private projects and opposed prohibiting private carriers from participating in wrap-up programs on public projects.

- He argued that Recommendation 20 affords all carriers an opportunity to participate in wrap-up or OCIP programs, thus ensuring that no one carrier has a competitive advantage over the other carriers. However, even if the Committee adopts Recommendation 20, a number of issues must still be addressed. Mr. McMullen suggested that the voluntary working group proposed under Recommendation 22 could define those issues and report its findings to the Committee in late August or early September 1998.

Assemblyman Hettrick questioned whether a simple bill draft could be developed based on Recommendation 20 which also provides that any contract for an OCIP or wrap-up program must address the issues delineated in Recommendation 22. He pointed out that such a bill draft would enable the parties to negotiate those items rather than having the terms of the OCIP or wrap-up program dictated by law. Mr. McMullen agreed that some of the issues should be a addressed by contract. However, he is of the opinion that other items such as jurisdiction (e.g., who is responsible for coverage if a worker is injured while fabricating materials for the job at an off site location) may require a legislative policy statement.

Mr. Ormsby, previously identified on page 26 of these minutes, commented that in his experience negotiating a number of OCIP contracts, the items listed in Recommendation 22 are of a contractual nature. He pointed out that an insurer needs to know exactly what it is insuring. Further, from a business standpoint, an insurer wants to minimize disagreements with the contractor and the subcontractor. He noted that even if those items were not covered by contract, Chapter 616, "Industrial Insurance," of NRS contains a provision which states that a contract that alters, amends, or destroys the obligation of the employer to provide workers' compensation is void on its face.

Continuing, Mr. Ormsby advised the Committee that the SIIS would like to participate in any working group formed in conjunction with Recommendation 20. He commented that one concern that has not been addressed is a general wrap-up program outside the State of Nevada which includes all insurance coverages, not just workers' compensation. He pointed out that if the Committee chooses to consider proposed legislation regarding wrap-up programs, it must also review all types of coverage at the construction site, not just workers' compensation coverage. Mr. McMullen indicated that the working group will identify and settle as many issues as possible, and will submit those issues that remain unresolved to the Committee for decision.

Mr. McMullen concluded his remarks, urging the Committee not to adopt Recommendation 34. He stated that there are still unresolved issues with respect to NRS 616D.120, "Administrative fines and benefit penalties for certain violations; powers of administrator; revocation or withdrawal of certificate of self-insurance or registration as third-party administrator," and suggested that if the Committee wishes to consider increasing the maximum benefit penalty for certain violations by employers, health care providers, insurers, organizations for managed care, or third-party administrators, that it review the statute in its entirety.

Assemblyman Hettrick referenced the earlier testimony of Mr. Callanan and Mr. Pon regarding the ability of their systems to enter into arrangements with other companies in order to write 24-hour liability coverage, and questioned if the Committee needs to authorize the SIIS in statute to enter into similar instruments. Mr. Ormsby stated that he is of the opinion that SIIS currently has the ability to enter these types of arrangements.

Responding to a question from Assemblyman Hettrick, Mr. Ormsby offered to research whether the lack of a certificate of authority could prevent SIIS from writing a policy which would cover all the employees of a Nevada employer with workers in Nevada and Utah.

Alice A. Molasky-Arman

Alice A. Molasky-Arman, previously identified on page 5 of these minutes, commented on previous testimony and summarized the position of the Division of Insurance (DOI) on the recommendations contained in the Work Session Document. Ms. Molasky-Arman discussed the following topics:

- She assured the Committee and Mr. Dirks that the regulations currently being developed by the DOI concerning the residual market will reflect her independent judgment of what she deems to be fair or unfair competition.

- The 24-hour insurance product is not allowed in Nevada, and this type of coverage would require special statutory authority in Nevada.

- A uniform law applicable to all states prohibits a foreign insurer who is owned or controlled directly or indirectly by a government entity from being licensed as an insurer in that state. She is of the opinion that Utah's applications to offer coverage in other states may have been declined based on this law.

- Referencing Recommendation 1, she expressed concern about expanding the types of employer groups who can pool. She stated that in most purchasing groups, one of the requirements for stability is commonality of trade or business practices, and for this reason, that same criterion was imposed on the associations of self-insured employers in Nevada. Thus far, associations of self-insured employers have performed well, and she is of the opinion that the commonality of its members is a primary reason for their success.

  In addition, pursuant to Nevada's Risk Retention Act, which follows the Federal Risk Retention Act, purchasing groups must have commonality of trade or business practices and are generally prohibited from forming for the purpose of obtaining insurance, with certain exceptions. Within those exceptions there are "fictitious groups" with certain other requirements such as guaranteed issue of policy (e.g., NRS 686B.240, "Nevada Essential Insurance Association: Powers of commissioner and association," which allows fictitious groups to be formed). However, those plans must be submitted by the carrier to the Commissioner of Insurance for approval, and all members of the group must be accepted for coverage.

- She requested clarification from the Alliance of American Insurers regarding Recommendation 5 to amend the provisions regarding scheduled rating and competitive rating issues to contain the same rating definitions.

Eloise Koenig

Eloise Koenig, Self-Insurance Coordinator, Division of Insurance, discussed the DOI's position regarding Recommendation 8. In order to keep the associations from becoming vulnerable to insolvency, she is of the opinion that minimum size thresholds should be established for these entities such as approved surplus, combined tangible net worth, or number of members.

Alice A. Molasky-Arman

Ms. Molasky-Arman, previously identified on page 5 of these minutes, continued her remarks regarding the recommendations pending before the Committee, covering the following topics:

- With regard to Recommendation 11, the DOI is currently developing regulations that will designate those provisions of NRS Chapter 686A and NRS Chapter 683A, "Administrators, Agents, Brokers and Solicitors," with which SIIS must comply.

- Currently the DIR is responsible for claims by employees related to delivery of benefits; however, she is of the opinion that NRS 616A.465, "Responsibilities of division, commissioner of insurance, department of administration and Nevada attorney for injured workers. [Effective July , 1999.]," should be amended to clarify that the Commissioner of Insurance has authority over court claims by workers' compensation policyholders (e.g., complaints and claims by employers such as a claim for returned premiums).

- Recommendation 15(a) proposes to exempt workers' compensation carriers from paying assessments for the cross-stabilization fund under NRS 679B.430, "Commissioner may issue orders for compliance with provisions; regulation of recording and reporting of information by insurers; insurer to report information and pay fee," and 679B.450, "Fee for administration and enforcement; cost of report; schedule of fees." She pointed out that many of the insurers interested in providing workers' compensation coverage in Nevada currently sell automobile insurance, and the cross-stabilization fund supports the DOI's automobile insurance guide and its report to the Legislature on casualty insurance. Hence, she opposes Recommendation 15(a).

- She expressed uncertainty regarding the application of Recommendation 15(c) which provides that workers' compensation carriers be exempt from the hearing processes conducted by the Commissioner of Insurance pursuant to 679B.310, "Administrative procedures; hearings in general," through 679B.370, "Appeal from commissioner." She noted that these are due process standards which the DOI is required to provide to insurers in disciplinary actions.

- A number of states have legislatively authorized wrap-ups or OCIPs, but every state has set minimum standards and oversight requirements by the Commissioner of Insurance. Likewise, Ms. Molasky-Arman recommended that Recommendation 20, which would allow private carriers to write wrap-up, OCIP, and contractor-controlled insurance program coverage, provide minimum standards and oversight requirements to address the areas of concern set forth in Recommendation 22.

- The DOI also supports Recommendation 29 which would require that warning language appear above the endorsement line on benefit or payment checks as a deterrent to fraud.

- She reported that the assessment referred to in Recommendation 11(d) consists of fees of no more than $500 that are imposed on each insurer. It was determined during a fraud meeting two years ago that the flat fee was the most appropriate method of assessment. Continuing, she advised the Committee that the fund serves two purposes: (1) to finance the activities of the Attorney General's Office in investigating fraudulent claims and benefits under an insurance contract; and (2) to support the Commissioner's program to ensure compliance with Chapter 686A and to support the DOI's staff who investigate fraud by insurers, agents, and unauthorized insurers as well as violations of the unfair trade practices act.

Chairwoman O'Connell requested that Ms. Molasky-Arman provide Committee members with a written summary of her concerns.

WORK SESSION

Chairwoman O'Connell advised the Committee members that Senator Townsend would be joining the meeting via teleconference for a portion of the work session. She pointed out that five members are needed to take action on the recommendations; however, Assemblywoman Krenzer left the meeting earlier and Assemblyman Nolan had a prior commitment that would necessitate his early departure. Continuing, Senator O'Connell suggested that the Committee members present work as a subcommittee and report back to the full Committee its findings as to the proposed action for each recommendation. The full Committee could then review and vote on the actions proposed by the subcommittee. Assemblyman Hettrick agreed with Senator O'Connell's approach and proposed that the subcommittee take action on those recommendations on which the subcommittee members agree. Further, he suggested that the recommendations on which Committee members have differing views could be held until the Committee's next meeting so that the full Committee could hear testimony on those proposals and take final action.

The recommendations contained in the "Work Session Document" appear below in italics and precede the actions of the subcommittee.

WORK SESSION DOCUMENT

Legislative Committee on Workers' Compensation

Nevada Revised Statutes (NRS) 218.5375

May 28, 1998

The following "Work Session Document" has been prepared by the staff of the Legislative Committee on Workers' Compensation. Organized by topic, it is designed as a working document to assist the members of the Committee in making decisions during the work session.

The "Work Session Document" contains a summary of major recommendations which have been presented to the Committee in public hearings and correspondence through this date. A citation concerning the source of each recommendation is noted at the end of the recommendation.

It may be noted that the Legislative Committee on Workers' Compensation is required to meet quarterly in accordance with NRS 218.5375. Therefore, the chair of the Committee plans to have a second series of meetings in the fall of 1998, culminating in a second work session.

THREE-WAY WORKERS' COMPENSATION INSURANCE

1. Enact legislation to expand the types of employer groups who can pool and allow private carriers to offer fully insured workers' compensation coverage to employer pools or groups.

(Jan Rhodes, Liberty Mutual Group and Alliance of American Insurers; Scott Craigie, R&R Advertising; 4/7/98)

(A pool is a purchasing group that obtains economies of scale not otherwise available to individual members. Group and association programs that pool to purchase workers' compensation insurance provide a means for small businesses to access comprehensive safety and loss control programs. A number of states allow insurers to write workers' compensation insurance for groups and associations of employers.)

There was no subcommittee discussion of Recommendation 1.

2. Amend NRS 616A.485 to provide that the books, records, and payrolls of an employer insured by a private carrier must be open to inspection by the private carrier providing workers' compensation insurance to that employer.

(Jan Rhodes, Liberty Mutual Group and Alliance of American Insurers; Scott Craigie, R&R Advertising; support expressed by James Wadhams; 4/7/98)

(The State Industrial Insurance System [SIIS] has access to the books, records, and payroll of the employers it insures pursuant to NRS 616A.485. Also, the Division of Industrial Relations [DIR] has access to the books, records, and payrolls: for employers insured by SIIS and private carriers; for self-insured employers; and for associations of self-insured employers. Pursuant to NRS 616A.485, access to these records may be used to determine the accuracy of payroll, the number of persons employed, and any other information necessary for the administration of Chapters 616A through 617 of NRS.)

There was no subcommittee discussion of Recommendation 2.

3. Repeal NRS 616B.012(6) which requires the Administrator of the DIR to collect certain information from insurers.

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

(The information is used by the Department of Taxation to verify returns for the business tax.)

Assemblyman Hettrick noted that it is the position of the NSIA that sufficient information is currently being reported to the DIR. Please see Exhibit F. He invited Ron Swirczek, Administrator, DIR, to comment on Recommendation 3.

Mr. Swirczek indicated the DIR has not yet had an opportunity to review the NSIA's position statement (Exhibit F) as he did not receive a copy prior to the meeting. He requested that the Committee withhold action on Recommendation 3 until its next meeting, at which time the DIR will respond appropriately.

4. Clarify in NRS that a managed care organization that is owned by or affiliated with a licensed workers' compensation insurer is required to be separately licensed by the Commissioner of Insurance to provide managed care services in the state.

(Robert Ostrovsky, 4/7/98)

(The intent of this recommendation is to ensure an appropriate separation between health care providers who treat injured workers and insurers who pay the claims.)

There was no subcommittee discussion of Recommendation 4.

Competitive Rating Schedule

5. Amend provisions regarding scheduled rating and competitive rating issues to contain the same rating definitions. NRS 686B.1774, 686B.1779, 686B.176, and 686B.1769.

(Jan Rhodes, Liberty Mutual Group and Alliance of American Insurers; Scott Craigie, R&R Advertising; 4/7/98)

There was no subcommittee discussion of Recommendation 5.

6. Amend NRS 686B.1779 to clarify that the effective date of the competitive rating schedule is July 1, 2003, and ***not*** *July 1, 1999.*

(Jan Rhodes, Liberty Mutual Group and Alliance of American Insurers; Scott Craigie, R&R Advertising; 4/7/98)

(Section 686B.1779 identifies the basis on which the Commissioner of Insurance may disapprove the rates filed by an insurer. Effective July 1, 1999 until July 1, 2003, the rates filed by an insurer must comply with the administrative rating schedule provided in NRS 686B.177.)

There was no subcommittee discussion of Recommendation 6.

ASSEMBLYMAN HETTRICK MOVED THAT THE SUBCOMMITTEE APPROVE RECOMMENDATIONS 1, 2, AND 6, AND THAT IT HOLD ACTION ON RECOMMENDATIONS 3, 4, AND 5. MOTION SECONDED BY SENATOR SHAFFER AND PASSED UNANIMOUSLY.

Qualifications for Associations of Self-Insured Employers

7. Amend NRS 616B.350(4)(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)

(Current requirements for a new member to join an association would be maintained for associations with fewer than 20 members or a combined net worth of less than $5 million.)

There was no subcommittee discussion of Recommendation 7.

8. 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)

There was no subcommittee discussion of Recommendation 8.

Chairwoman O'Connell announced that Recommendations 7 and 8 would be held over to the Committee's next meeting in order to afford all Committee members an opportunity to hear testimony from interested parties on both sides of the issue.

Licensing of Claims Adjusters

9. Amend NRS to require claims adjusters who adjust workers' compensation claims to be licensed for that specific purpose by the Division of Insurance.

(William Matlack, 2/20/98)

ASSEMBLYMAN HETTRICK MOVED THAT THE SUBCOMMITTEE NOT APPROVE RECOMMENDATION 9. MOTION SECONDED BY SENATOR SHAFFER AND PASSED UNANIMOUSLY.

Chairwoman O'Connell indicated that Kim Marsh Guinasso, Principal Deputy Legislative Counsel, Legal Division, LCB, had advised her that all recommendations on which the subcommittee votes not to approve must be put to vote before the full Committee.

REGULATION OF THE STATE INDUSTRIAL INSURANCE SYSTEM

UNDER THREE-WAY INSURANCE

Application of Certain Provisions of the Insurance Code to SIIS

NOTE: Recommendations 10 and 11 both address the application of the Insurance Code to SIIS. Recommendation 10 involves a blanket application of the Insurance Code to SIIS. In contrast, Recommendation 11 would apply only specific provisions of the Insurance Code to SIIS.

10. Apply Title 57 of NRS generally to SIIS by amending NRS 679A.100 which defines the term "insurer" to include SIIS, unless a provision explicitly exempts SIIS.

(Robert Ostrovsky, 4/7/98)

There was no subcommittee discussion of Recommendation 10.

11. Make the following provisions of NRS specifically applicable to SIIS:

1. NRS Chapter 686A of the Insurance Code regarding fair trade practices;

   (Assemblyman Lynn C. Hettrick; James Wadhams; 4/7/98)

2. NRS 616B.472 which provides that the Commissioner may suspend the authority of an insurer to provide industrial insurance;

   (James Wadhams, 4/7/98)

   c. Provisions of Chapter 683A of NRS which require the use of licensed insurance agents to market and sell workers' compensation insurance; and

   (Jan Rhodes, Liberty Mutual Group and Alliance of American Insurers; Scott Craigie, R&R Advertising; support expressed by James Wadhams; 4/7/98)

   d. NRS 679B.158 for the portion of the assessment which supports investigations and examinations to investigate fraud and ensure compliance with the fair trade practices act.

   (Jan Rhodes, Liberty Mutual Group and Alliance of American Insurers; Scott Craigie, R&R Advertising; 4/7/98)

   (The assessment paid by an insurer, including SIIS, would be based on the lines of insurance written by the insurer. The assessment is currently used to fund (1) the fraud unit in the office of the Commissioner of Insurance; and (2) investigations and examinations.)

There was no subcommittee discussion of Recommendation 11.

ASSEMBLYMAN HETTRICK MOVED THAT THE SUBCOMMITTEE APPROVE RECOMMENDATIONS 10 AND 11 AS PROVIDED BY MR. WADHAMS. MOTION SECONDED BY SENATOR SHAFFER AND PASSED UNANIMOUSLY.

Confidentiality of Information

12. Amend NRS regarding the confidentiality of information of SIIS:

1. Make applicable to SIIS the portions of Title 57 of NRS (the Insurance Code) relating to the confidentiality of information so that SIIS and private carriers would have the same standards of confidentiality under three-way insurance;

   (Senator Randolph J. Townsend, 5/20/98; James Wadhams, 4/7/98)

   (For private carriers, pursuant to NRS 679B.190 of the Insurance Code, all documents in the possession of the Division of Insurance are considered public information unless deemed confidential by another code provision or they fall under one of the exceptions in NRS 679B.190. The exceptions include records relating to investigations or examinations that are ongoing or have not been finalized, other documents the Commissioner classifies as confidential because they were obtained from another governmental agency or from sources upon the express condition that they remain confidential, and medical records. Section 616B.014 of NRS currently governs the types of information of SIIS which are considered proprietary and confidential.)

   b. Repeal NRS 616B.014(1)(c), (3)(b), and (4) which provide that proprietary information of SIIS is confidential;

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

   c. Enact legislation to require that the official correspondence and records, including financial records, other than the files of individual claimants and policyholders, and the minutes and books of SIIS are public records and must be available for public inspection.

   (Robert Ostrovsky, 4/7/98)

   Chairwoman O'Connell announced that Recommendation 12 would be held over to the Committee's next meeting.

   Additional Recommendation Regarding Fair Trade Practices

   13. 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)

   Chairwoman O'Connell announced that Recommendation 13 would be held over to the Committee's next meeting.

   Exemption from Certain Provisions of the Insurance Code

   14. Specifically exempt SIIS from the following provisions of NRS:

2. NRS 680A.140 requiring an insurer to deposit cash or securities in order to be authorized to transact insurance in Nevada;

   (Assemblyman Lynn C. Hettrick, 4/7/98)

   (A deposit for a new certificate of authority is on average $200,000, according to the Commissioner of Insurance. A formula to determine the deposit for insurers providing workers' compensation coverage has not yet been established. It is expected that an insurer that already has a certificate of authority would be required to have an additional $100,000 deposit in order to provide workers' compensation insurance.)

3. NRS 680A.060 stating that an insurer must have a certificate of authority to transact insurance in Nevada;

   (Senator Randolph J. Townsend; Assemblyman Lynn C. Hettrick; James Wadhams; 4/7/98)

   (Pursuant to NRS 680B.010, insurers must pay the following fees for a certificate of authority to the Commissioner of Insurance: a fee of $2,450 for filing the initial application for a certificate of authority; a fee of $283 for issuance of a certificate for one kind of insurance; and a fee of $578 for issuance of a certificate for two or more kinds of insurance.)

4. NRS 680A.180(1)(a) and NRS 680B.010(1)(c) requiring an insurer to pay an annual continuation fee;

   (Senator Kathy Augustine; Senator Randolph J. Townsend; James Wadhams; 4/7/98)

   (Pursuant to NRS 680B.010 related to fees, insurers must pay to the Commissioner of Insurance a fee of $2,450 for each annual

continuation of a certificate of authority.)

5. NRS 680A.250(1) stating that an insurer must appoint the Commissioner as its attorney to receive service of legal process before the Commissioner may authorize that insurer to transact insurance in Nevada; and

   (James Wadhams, 4/7/98)

   (This provision ensures that the residents of Nevada can serve legal papers within Nevada to an insurer.)

6. NRS 692C.260 and 692C.270 requiring each insurer which is a member of an insurance holding company system to register with the Commissioner.

   (Assemblyman Lynn C. Hettrick, 4/7/98)

   Assemblyman Hettrick indicated that the issues raised in Recommendation 14 were covered by Mr. Wadhams during his earlier discussion of Recommendations 10 and 11.

15. Specifically exempt all workers' compensation insurers, including SIIS, from the following provisions of NRS:

1. NRS 679B.430(2) and 679B.450 relating to the fund for the stabilization of insurance costs;

   (James Wadhams, 4/7/98)

2. NRS 680A.140 which requires an insurer to deposit cash or securities; and

   (James Wadhams, 4/7/98)

3. NRS 679B.310 through 679B.370 which states that the Commissioner may hold a hearing to determine whether an insurer or an employee of an insurer has engaged in unsuitable conduct.

   (James Wadhams, 4/7/98)

   Chairwoman O'Connell commented that Ms. Molasky-Arman expressed reservations regarding Recommendation 15 earlier in the meeting and would be providing the Committee with a written statement outlining her concerns within the next week. She indicated that Recommendation 15 would be held over to the Committee's next meeting.

Review of SIIS Claims by the Commissioner of Insurance

16. Amend subsection 2(a) of NRS 616B.083 requiring SIIS to report to the Commissioner of Insurance regarding its current claims to read as follows:

Report to the commissioner [only] its financial statement and results of operations for [the account for current claims] <u>all accounts</u> in accordance with those accounting principles that are prescribed by the commissioner and applied to other insurers providing coverage for workers' compensation.

(Robert Ostrovsky, 4/7/98)

Senator O'Connell reported that the Mr. Dirks and Mr. Ostrovsky plan to work on the language contained in Recommendation 16 and noted that conceptually, the subcommittee supports this proposal.

SENATOR SHAFFER MOVED THAT THE SUBCOMMITTEE APPROVE RECOMMENDATION 16 CONCEPTUALLY, WITH NEW LANGUAGE TO BE PROVIDED BY MR. OSTROVSKY AND MR. DIRKS. MOTION SECONDED BY ASSEMBLYMAN HETTRICK AND PASSED UNANIMOUSLY.

Board of Directors

17. Enact legislation to create a board of directors for SIIS, structured as follows:

(Robert Ostrovsky, 4/7/98, written correspondence, 5/11/98; support expressed by Lynn Grandlund, 4/7/98)

1. The SIIS shall be under the direct supervision of a board of directors composed of nine members, each of which shall be a policyholder or an employee of a policyholder of SIIS (the members of the board may not hold legislative or judicial positions in government). The board of directors shall consist of: three members appointed by the Majority Leader of the Senate in

consultation with the Minority Leader of the Senate; three members appointed by the Speaker of the Assembly in consultation with the Minority Leader of the Assembly; and three members appointed by the Governor.

a. Board members shall serve for a term of four years and shall not be permitted to serve for more than two successive terms of appointment, except in the first year of the enactment of this law in which case one member from each class of appointments shall serve for two years and one member shall serve for six years.

2. The term of each regular appointment shall commence on July 1 of the appointment year and expire on June 30 following four years of service.

3. Vacancies on the board amongst members appointed by the Legislature shall be filled by the Legislative Commission. Such appointments shall expire at the conclusion of the next legislative session.

4. Service as a member of the board appointed by the Legislative Commission shall not be considered a term of appointment for the purposes of the limitation of two terms.

5. The board shall meet at least quarterly.

6. The duties of the board shall be those prescribed in NRS 616 and 617. The board may adopt rules and regulations, not inconsistent with the law, as required for the conduct of its business.

7. Board members shall be compensated by SIIS for meetings at a rate of $80 per meeting day plus travel and per diem expenses.

i. The board shall elect a chairman from amongst its members. The chairman shall serve for a term of one year and shall not be permitted to serve more than two successive one-year terms. The chairman shall be responsible for the conducting and scheduling of all meetings.

Assemblyman Hettrick indicated that his understanding of Mr. Dirks' testimony was that SIIS board appointments must be made by the Governor in order for it to retain its tax-exempt status. He commented that additional testimony on this topic was also given by Mr. Callanan and Mr. Pon and suggested that this issue be addressed by the Committee. Chairwoman O'Connell stated that she understood Mr. Dirks' testimony to reflect that the majority of board appointments must be made by the Governor.

ASSEMBLYMAN HETTRICK MOVED THE SUBCOMMITTEE APPROVE THE CONCEPT OF RECOMMENDATION 17 WITH THE UNDERSTANDING THAT SOME QUALIFICATIONS MAY BE MADE, INCLUDING A PROVISION THAT THE GOVERNOR BE REQUIRED TO APPOINT THE MAJORITY OF THE BOARD. MOTION SECONDED BY SENATOR SHAFFER AND PASSED UNANIMOUSLY.

18. If a board is established, amend NRS 616B.062 regarding the appointment and function of the manager of SIIS to read as follows:

1. The [governor] board shall appoint a manager to be in charge of the operation of the system;

2. The manager is the chief executive officer of the system and is responsible in consultation with the board for all duties of the system; and

3. The manager shall serve at the pleasure of the [governor] board.

(Robert Ostrovsky, 4/7/98)

There was no subcommittee discussion of Recommendation 18.

19. If a board is established, amend NRS 616B.065 regarding the selection and classification of assistant managers of SIIS to read as follows:

1. The manager shall select assistant managers whose appointments are effective upon the confirmation by the board of directors. [who] Assistant managers are in the unclassified service of the state and are entitled to receive annual salaries fixed by the [manager] board.

2. The assistant managers shall serve at the pleasure of the manager, subject to the review of the board.

(Robert Ostrovsky, 4/7/98)

There was no subcommittee discussion of Recommendation 19.

ASSEMBLYMAN HETTRICK MOVED THE COMMITTEE APPROVE RECOMMENDATIONS 18 AND 19. MOTION SECONDED BY SENATOR SHAFFER AND PASSED UNANIMOUSLY.

WRAP-UPS AND OWNER-CONTROLLED INSURANCE PROGRAMS (OCIPs)

20. Amend NRS 686A.200 and 686A. 220 to allow private carriers to write wrap-up, OCIP, and contractor-controlled insurance program (CCIP) coverage.

(Jan Rhodes, Liberty Mutual Group and Alliance of American Insurers; Scott Craigie, R&R Advertising; support expressed by James Wadhams; 4/7/98)

ASSEMBLYMAN HETTRICK MOVED THAT THE SUBCOMMITTEE APPROVE RECOMMENDATION 20 PROVIDED THAT A VOLUNTLARY WORKING GROUP IS FORMED AS SET FORTH IN RECOMMENDATION 22 TO DELINEATE THOSE ISSUES THAT MUST BE ADDRESSED BY STATUTE AND THOSE THAT MAY BE COVERED BY CONTRACT. MOTION SECONDED BY SENATOR SHAFFER AND PASSED UNANIMOUSLY.

21. Clarify NRS to allow SIIS exclusively to write wrap-up or OCIP coverage for workers' compensation for public projects. Private carriers would be prohibited from writing wrap-up or OCIP coverage for public projects.

(Charles L. Halsey, J & H Marsh & McLennan, 4/7/98)

ASSEMBLYMAN HETTRICK MOVED THAT THE SUBCOMMITTEE NOT APPROVE RECOMMENDATION 21. MOTION SECONDED BY SENATOR SHAFFER AND PASSED UNANIMOUSLY.

22. Appoint a voluntary working group to develop specific recommendations to the Committee regarding the regulation of OCIPs. The working group would consider topics including, but not limited to: the extent of coverage under an OCIP, including the "gray" areas of coverage; specific requirements of OCIPs, such as the size of the project that would qualify for an OCIP, safety plans, training, and the length of completed operation coverage (relates to general liability coverage); rating plans and rates for projects; claims handling; on-site health care; use of incentives to promote a safe workplace; reporting relationships of subcontractors and owners related to claims; and whether insurers should be required to offer a subcontractor continuing workers' compensation coverage for a limited period of time (similar to Consolidated Omnibus Budget Reconciliation Act of 1985 [COBRA] requirements for health insurance) if all the employees of the subcontractor worked exclusively on the project covered by the OCIP. The working group would report back to the Committee by September 30, 1998, and would include at a minimum representatives of the Associated General Contractors, the insurance industry, insurance agents, labor, and the Commissioner of Insurance.

(Jim Schober, Kaercher Insurance, 4/7/98)

NOTE: Recommendation 22 is not intended to be included in a bill draft request.

Chairwoman O'Connell emphasized that Recommendation 22 is not a bill draft request. Rather, it provides that a working group be formed to discuss issues relative to the regulation of OCIPs and that it report its findings to the Committee. Continuing, she indicated that the Committee endorses the efforts of the working group, which will be organized by Mr. Schober.

BENEFITS AND ADMINISTRATION

OF THE WORKERS' COMPENSATION SYSTEM

Automatic Closure of Claims

23. Amend NRS 616C.235 to require insurers to notify certain claimants of the circumstances under which a claim may be closed automatically. This provision would apply for claimants who have received less than $500 in medical benefits six months after an injury.

(Senator Ann O'Connell, 5/4/98)

Chairwoman O'Connell referenced the earlier suggestion of Assemblywoman Krenzer that notification of a claimant's rights and the conditions under which a claim may be closed automatically be included on the Form C4.

ASSEMBLYMAN HETTRICK MOVED THE SUBCOMMITTEE AMEND RECOMMENDATION 23 TO PROVIDE THAT NOTICE OF THE CONDITIONS UNDER WHICH A CLAIM MAY BE CLOSED AUTOMATICALLY BE INCLUDED ON THE FORM C4 AND THAT IT APPROVE RECOMMENDATION 23, AS AMENDED. MOTION SECONDED BY SENATOR SHAFFER AND UNANIMOUSLY PASSED.

24. Amend NRS to provide that a claim which is closed automatically pursuant to NRS 616C.235(2) may be reopened if medical benefits of less than $500 were received by the injured worker as the result of a misdiagnosis.

(Senator Ann O'Connell, 5/14/98)

Chairwoman O'Connell announced that the Committee would hold action on Recommendation 24.

ASSEMBLYMAN HETTRICK MOVED THE SUBCOMMITTEE HOLD ACTION ON RECOMMENDATION 24. MOTION SECONDED BY SENATOR SHAFFER AND UNANIMOUSLY PASSED.

PPD Rating Evaluations

25. Amend NRS 616C.490(4) regarding rating evaluations for permanent partial disability (PPD) to clarify that PPD ratings must be done using objective medical findings only. Specify that impairments cannot be rated based solely on subjective pain.

(Linda Collins, Nevada Self-Insurers Association; Sam McMullen, McMullen Strategic Group; 4/7/98)

Chairwoman O'Connell stated that a court decision was recently rendered which addresses this issue; however, that decision is being appealed.

ASSEMBLYMAN HETTRICK MOVED THE SUBCOMMITTEE APPROVE RECOMMENDATION 25 TO BE HEARD BY THE FULL COMMITTEE. MOTION SECONDED BY SENATOR SHAFFER AND UNANIMOUSLY PASSED.

Benefits

26. Amend NRS 616C.505 to remove the provision which limits payment for the transport of the body of a deceased employee beyond the continental limits of the United States.

(Danny Thompson, AFL-CIO, 2/20/98)

ASSEMBLYMAN HETTRICK MOVED THE SUBCOMMITTEE APPROVE RECOMMENDATION 26. MOTION SECONDED BY SENATOR SHAFFER AND UNANIMOUSLY PASSED.

Hearing and Appeals Process

27. Amend NRS to require that the performance of Appeals Officers (AO) be evaluated based on the criteria of timeliness and consistency. Timeliness would be measured at a minimum by determining the number of hearings per week held by the AO. Consistency would be measured by the number of decisions of the AO which are appealed and the number of appeals which are upheld by the district court.

(Senator Ann O'Connell, 5/7/98)

(This recommendation would provide information regarding the work load of the AOs and the correctness of decisions made at the AO level of appeal.)

Chairwoman O'Connell asked Mr. McMullen, previously identified on page 25 of these minutes, to share his views regarding the comments of Mr. Nave with respect to the hearings and appeals process. Mr. McMullen indicated that he was of the opinion that Mr. Nave's suggestions were "excellent," and further proposed that hearings officers also be required to author their own decisions.

Nancy Ann Leeder, Nevada Attorney for Injured Workers, Las Vegas, spoke in opposition to Mr. Nave's suggestions. She indicated that appeals officers currently prepare decision letters wherein they explain their decisions and the rationale for the decisions and direct one of the attorneys of record to draft the formal findings of fact, conclusions of law, and order. She is of the opinion that the attorneys of record are most familiar with the case and hence write firm decisions that are less likely to be appealed.

Responding to a question from Ms. Leeder, Chairwoman O'Connell indicated that the panel review proposed by Mr. Nave would provide an additional, optional level of review before a case is appealed to the district court level.

Mr. McMullen, previously identified on page 25 of these minutes, stated that requiring appeals and hearings officers to author their own decisions will ensure that they are thoroughly familiar with each case. In addition, the quality of the opinions written by appeals and hearings officers would provide an additional objective standard by which their performance could be measured. Continuing, he indicated that statistical performance measurements should not be abandoned altogether.

Ms. Grandlund, previously identified on page 21 of these minutes, stated that she supported Mr. Nave's suggestion that appeals and hearings officers be required to write their own decisions.

> ASSEMBLYMAN HETTRICK MOVED THAT THE SUBCOMMITTEE APPROVE RECOMMENDATION 27 AND FURTHER, THAT IT: (1) CLARIFY THE RESPONSIBILITY OF THE SENIOR APPEALS OFFICER OVER APPEALS OFFICERS TO MEASURE PERFORMANCE; (2) REQUIRE APPEALS AND HEARINGS OFFICERS TO WRITE THEIR OWN DECISIONS; AND (3) CREATE A PANEL OF THREE APPEALS OFFICERS TO ACT AS AN ADDITIONAL, OPTIONAL LEVEL OF REVIEW. MOTION SECONDED BY SENATOR O'CONNELL AND PASSED, WITH SENATOR SHAFFER ABSTAINING FROM THE VOTE.

28. Request that the Department of Administration study options to improve the effectiveness and accountability of the hearings and appeals process and report its findings to the Committee by September 30, 1998.

(Senator Ann O'Connell, 5/14/98)

There was no separate subcommittee discussion of Recommendation 28.

Workers' Compensation Fraud

29. Enact legislation to require the following warning language to appear above the endorsement line on benefit or payment checks as a deterrent to fraud: "For your protection, Nevada law requires the following statement to appear on this form: 'Any person who knowingly presents a false or fraudulent claim for payment of a loss is subject to criminal or civil penalties.'" The cost of this requirement would be shared by all insurers who write workers' compensation insurance in Nevada.

(Jan Rhodes, Liberty Mutual Group and Alliance of American Insurers; Scott Craigie, R&R Advertising; 4/7/98)

> ASSEMBLYMAN HETTRICK MOVED THAT THE SUBCOMMITTEE AMEND RECOMMENDATION 28 TO PROVIDE ADDITIONAL LANGUAGE PROPOSED BY KEVIN HIGGINS THAT THE CLAIMANT, BY SIGNING THE CHECK, CERTIFIES THAT HE OR SHE HAS BEEN CONTINUOUSLY DISABLED AND UNABLE TO WORK FOR THE PREVIOUS TWO WEEKS, AND THAT THE SUBCOMMITTEE APPROVE RECOMMENDATION 28, AS AMENDED. MOTION SECONDED BY SENATOR SHAFFER AND PASSED UNANIMOUSLY.

30. Request that the Commissioner of Insurance and the Office of the Attorney General study and report back to this Committee by November 1, 1998, whether the various fraud units in their offices should be consolidated.

(James Wadhams, 4/7/98)

Chairwoman O'Connell asked if Mr. Wadhams agreed with the concerns raised by Mr. Higgins regarding consolidation of fraud units. Mr. Wadhams, previously identified on page 38 of these minutes, acknowledged those concerns and clarified that it was his original intent that the Committee ensure the various fraud units coordinate wherever possible. He agreed that it would be impossible to mix budgets with specific sources and requirements. Mr. Wadhams stated that Mr. Higgins' testimony that the fraud units share information and resources whenever possible satisfied the intent of his proposal, and he withdrew Recommendation 30.

Subsequent Injury Funds

NOTE: If the recommendations to repeal all or certain of the subsequent injury funds are adopted, a mechanism to disburse any money in the funds would also need to be identified in order for a bill to be drafted.

31. Repeal the provisions of NRS related to all subsequent injury funds.

(James Wadhams, 4/7/98)

(Subsequent injury funds are established in statute for SIIS, self-insured employers, associations of self-insured employers, and private carriers. Subsequent injury funds were established to enhance employment opportunities for disabled workers and to protect employers from expensive claims resulting from additional injuries to workers with disabilities.)

There was no independent subcommittee discussion of Recommendation 31. Please see comments under Recommendation 33 below.

32. Repeal NRS 616B.545 through 616B.560 to dissolve the subsequent injury fund for self-insured employers.

(Linda Collins, Nevada Self-Insurers Association; Sam McMullen, McMullen Strategic Group; 4/7/98)

There was no separate subcommittee discussion of Recommendation 32. Please see comments under Recommendation 33 below.

33. Repeal NRS 616B.575 which establishes the subsequent injury fund for associations of self-insured employers.

(Jack McClaherty, 2/20/98)

Chairwoman O'Connell stated that in her opinion, there is no need for the self-insured employers to maintain a subsequent injury fund. However, she still questions the need for such a fund for the smaller employer. Assemblyman Hettrick indicated that one of the benefits of the subsequent injury funds is that they allow any employer the opportunity to hire someone who has been injured without risk. He suggested that if that risk can be insured in some way, perhaps through the purchase of reinsurance, it may be possible to eliminate the subsequent injury funds and proposed that the Committee explore the issue further.

ASSEMBLYMAN HETTRICK MOVED THAT RECOMMENDATIONS 31, 32, AND 33 BE BROUGHT BEFORE THE FULL COMMITTEE, AND FURTHER THAT THE COMMITTEE CONSIDER ALLOWING THE PURCHASE OF EXCESS INSURANCE OR REINSURANCE OF THE SUBSEQUENT INJURY FUND RISKS. MOTION SECONDED BY SENATOR SHAFFER AND UNANIMOUSLY PASSED.

Benefit Penalty

34. Amend NRS 616D.120 to increase the maximum benefit penalty for certain violations by insurers, organizations for managed care, health care providers, third-party administrators, or employers to $200,000. The DIR would have discretion to apply a benefit penalty up to $200,000 to account for the seriousness of the violation and the size of the employer.

(William Matlack, 2/20/98)

ASSEMBLYMAN HETTRICK MOVED THAT THE SUBCOMMITTEE NOT APPROVE RECOMMENDATION 34. MOTION SECONDED BY SENATOR SHAFFER AND UNANIMOUSLY PASSED.

ADDITIONAL RECOMMENDATIONS BASED ON

TESTIMONY TO THE COMMITTEE ON MAY 28, 1998

The Committee may also discuss and take action on items presented in testimony at the May 28, 1998, meeting regarding the residual market plan, the regulation of SIIS under three-way insurance, the payment of physician claims for workers' compensation, and the regulation of self-insured employers and associations of self-insured employers under three-way insurance.

There was no subcommittee discussion of additional recommendations.

DIRECTIONS TO STAFF

The Committee discussed possible future meeting dates, and Chairwoman O'Connell directed that the secretary contact the members and set the Committee's next meeting.

ADJOURNMENT

There being no further business to come before the Committee, Chairwoman O'Connell adjourned the meeting at 2:13 p.m.

Respectfully submitted,

Susan Furlong Reil

Research Secretary

APPROVED BY:

_____

Senator Ann O'Connell, Chairwoman

Date:

LIST OF EXHIBITS

Exhibit A is a document titled "NCCI's Residual Market Administration," dated May 28, 1998, provided by Karen Rodriguez, Director of Plan Administration, National Council on Compensation Insurance (NCCI), Boca Raton, Florida.

Exhibit B is a verbatim transcript of the testimony of Douglas Dirks, Chief Executive Officer, State Industrial Insurance System (SIIS), Carson City, Nevada, before the Legislative Committee on Workers' Compensation on May 28, 1998, regarding his view of the structure and function of a state fund in a competitive environment.

Exhibit C is a verbatim transcript of the testimony of Tom Callanan, Senior Vice President of Marketing, Workers' Compensation Fund of Utah, and Gary Pon, President and General Manager, Colorado Workers' Compensation Insurance Authority, before the Legislative Committee on Workers' Compensation on May 28, 1998, regarding the background, experience, history, operation, and structure of their respective state funds.

Exhibit D is a document titled "WCF History and Status," provided by Tom Callanan, Senior Vice President of Marketing, Workers' Compensation Fund of Utah, Salt Lake City, Utah.

Exhibit E is a document titled "Presentation to Nevada Legislative Committee on Workers' Compensation Regarding Colorado Compensation Insurance Authority (CCIA)," dated May 28, 1998, provided by Gary Pon, President and General Manager, Colorado Workers' Compensation Insurance Authority, Denver, Colorado.

Exhibit F is a letter to the Legislative Committee on Workers' Compensation from Linda M. Collins, President, Nevada Self-Insurers Association, and Workers' Compensation Manager, Mirage Resorts, Inc., Las Vegas, Nevada, dated May 28, 1998, together with an attached document titled "Indexing of Claims Data Proposed by The Nevada Self-Insurers Association," also dated May 28, 1998.

Exhibit G is a document titled "Clarifications of Appeals Officer Responsibilities Proposed by the Nevada Self-Insurers Association," provided by Sam McMullen, The McMullen Strategic Group, Reno, Nevada.

Exhibit H is a memorandum dated May 14, 1998, to the Legislative Committee on Workers' Compensation from Wayne Carlson, Executive Director, Nevada Public Agency Insurance Pool and Public Agency Compensation Trust, Carson City, Nevada, regarding the subsequent injury fund.

Exhibit I is an document on American Insurance Association letterhead titled "Second Injury Funds Should be Abolished" provided by Jim Wadhams, attorney, Las Vegas.

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) 684-6827.