

**MINUTES OF THE MEETING
OF THE
LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION**

(Nevada Revised Statutes 218.5375)

February 20, 1998

Las Vegas, Nevada

The third meeting of the Legislative Committee on Workers' Compensation (*Nevada Revised Statutes* [NRS] 218.5375) for the 1997-1998 interim was held on Friday, February 20, 1998, at 9:30 a.m., in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada, and video conferenced to the Legislative Building, Room 1214, 401 South Carson Street, Carson City, Nevada. Pages 3, 4, and 5 contain the "Revised 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 IN CARSON CITY:

Senator Kathy Augustine

COMMITTEE MEMBER ABSENT:

Senator Randolph J. Townsend

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

Sue S. Matuska, Deputy Legislative Counsel

Susan Furlong Reil, Research Secretary

REVISED

MEETING NOTICE AND AGENDA

Name of Organization: Legislative Committee on Workers' Compensation

(Nevada Revised Statutes 218.5375)

Date and Time of Meeting: Friday, February 20, 1998

9:30 a.m.

Place of Meeting: Grant Sawyer State Office Building

Room 4401

555 East Washington Avenue

Las Vegas, Nevada

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

Legislative Building

Room 1214

401 South Carson Street

Carson City, Nevada

A G E N D A

I. Opening Remarks and Introductions

Senator Ann O'Connell, Chair

***II. Approval of Minutes from November 18, 1997, Meeting**

***III. Staff Presentation on Time Lines for the Legislative Committee Study and the Implementation**

of Three-Way Insurance

Melissa Stafford Jones, Senior Research Analyst

Research Division, Legislative Counsel Bureau

***IV. Progress Report from Three-Way Task Force Regarding Time Line and Potential Barriers to Implementation of Three-Way Insurance**

Ron Swirczek, Administrator

Division of Industrial Relations, Department of Business and Industry

***V. Presentations Regarding Time Line and Potential Barriers to the Implementation of Three-Way Insurance**

A. State Industrial Insurance System

Lenard Ormsby, General Counsel

State Industrial Insurance System

B. James Wadhams, Representative for:

American Insurance Association

Nevada Independent Insurance Agents

C. Representative

Reno-Sparks Chamber of Commerce

Kara Kelley, Senior Vice President

Las Vegas Chamber of Commerce

Robert A. Ostrovsky

Ostrovsky and Associates

Advisory Council to the Division of Industrial Relations

***VI. Report from Division of Insurance Regarding Time Line and Potential Barriers to the Implementation of Three-Way Insurance**

A. Implementation of Three-Way Insurance

Eloise Koenig, Coordinator

Self-Insured Workers' Compensation Section, Division of Insurance

James Jeppson, Chief Insurance Assistant

Division of Insurance

B. Presentation Regarding Certification Requirements of Insurers Under Three-Way Insurance

Eloise Koenig, Coordinator

Self-Insured Workers' Compensation Section, Division of Insurance

James Jeppson, Chief Insurance Assistant

Division of Insurance

C. Presentation Regarding the Statistical Plans, Classification Plan, Experience Rating Plan, and Assigned Risk Plan Under Three-Way Insurance

Maggie Karpuk, Director, Government Affairs

National Council on Compensation Insurance (the advisory organization to the Commissioner of Insurance)

VII. Staff Presentation Regarding History of Workers' Compensation Rates in Nevada

Melissa Stafford Jones, Senior Research Analyst

Research Division, Legislative Counsel Bureau

* VIII. Report Regarding Recent SIIS Rate Filing

A. Lenard Ormsby, General Counsel

State Industrial Insurance System

B. Eloise Koenig, Coordinator

Self-Insured Workers' Compensation Section, Division of Insurance

James Jeppson, Chief Insurance Assistant

Division of Insurance

*IX. Presentation Regarding Structure of Workers' Compensation Coverage for Construction Projects

Representative

Associated General Contractors of Southern Nevada

X. Public Comment

*XI. Directions to Staff

*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

Senator Ann O'Connell, Chairwoman, called the meeting to order at 9:47 a.m. All members were present except Senator Townsend.

The primary topics of the meeting were reviewed by Chairwoman O'Connell as follows: (1) a proposed time line for the Committee's study and for the implementation of three-way insurance; (2) the State Industrial Insurance System's (SIIS) deficit, loss ratios, and rate reduction; and (3) the structure of workers' compensation coverage for construction projects.

APPROVAL OF MINUTES FROM NOVEMBER 18, 1997, MEETING

Chairwoman O'Connell asked for approval of the minutes of the Committee meeting held on November 18, 1997.

SENATOR SHAFFER MOVED FOR APPROVAL OF THE MINUTES OF THE COMMITTEE'S MEETING HELD ON NOVEMBER 18, 1997, IN LAS VEGAS, NEVADA. ASSEMBLYMAN HETTRICK SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.

STAFF PRESENTATION ON TIME LINES **FOR THE LEGISLATIVE COMMITTEE STUDY AND** **THE IMPLEMENTATION OF THREE-WAY INSURANCE**

Melissa Stafford Jones

Melissa Stafford Jones, Senior Research Analyst, Legislative Counsel Bureau (LCB), Research Division, Carson City, reviewed a proposed interim meeting schedule for the Committee. The Committee's initial meetings will focus on the implementation of the three-way insurance program, including a meeting in April 1998 to take recommendations and a work session in May 1998. This schedule will enable the Committee to submit bill draft requests (BDRs) to the Legal Division of the LCB by June 1, 1998. The Committee will hold a second set of meetings in the fall of 1998, with a final work session in mid-November 1998.

Chairwoman O'Connell noted that the 1999 Legislature is facing the potential of a limited, 120-day session, a circumstance that will accelerate the entire legislative process. Legislation introduced through a committee rather than an individual legislator will more likely be heard and acted upon. The Committee's meeting schedule should provide sufficient time for interested parties to raise their concerns and present suggested legislative changes related to workers' compensation to the Committee.

Ms. Stafford Jones provided the Committee with a handout (Exhibit A) outlining critical time lines for the Commissioner of Insurance (Commissioner); the Division of Industrial Relations (DIR), Nevada's Department of Business and Industry; and the National Council on Compensation Insurance (NCCI) in the implementation of three-way insurance. She indicated that each agency would make a presentation as to why it chose a particular time line and its progress in meeting those deadlines.

PROGRESS REPORT FROM THREE-WAY TASK FORCE **REGARDING TIME LINE AND POTENTIAL BARRIERS** **TO IMPLEMENTATION OF THREE-WAY INSURANCE**

Ron Swirczek

Ron Swirczek, Administrator, DIR, Nevada's Department of Business and Industry, Carson City, provided the

Committee with the following documents:

1. "Proof of Coverage & Claims Information Flowchart, Current Information Flow" (Exhibit B);
2. "Proof of Coverage & Claims Information Flowchart, Proposed Information Flow, July 1, 1999" (Exhibit C);
3. "Workers' Compensation Three-Way Task Force Education Subcommittee Status Report," dated February 20, 1998, together with an attached brochure titled, "Employers, Frequently Asked Questions Regarding Nevada's Workers' Compensation Insurance," dated February 1998 (Exhibit D); and
4. "Workers' Compensation Three-Way Task Force Regulation Subcommittee Status Report," dated February 20, 1998 (Exhibit E).

Mr. Swirczek reviewed the time lines for DIR and for the Division of Insurance (DOI), Nevada's Department of Business and Industry. Please see page 5 of Exhibit A.

Referencing the "Proof of Coverage & Claims Information Flowchart, Current Information Flow" (Exhibit B), Mr. Swirczek summarized the information that is currently provided to DIR by all insurers: associations of self-insured employers, self-insured employers, and the SIIS, and covered the following points:

- On a monthly basis, SIIS provides DIR with a list of employers whose coverage has lapsed or been cancelled. Under Nevada law, an employer who fails to maintain workers' compensation insurance coverage is directly liable for medical bills incurred as a result of an on-the-job injury. Often, however, these uninsured employers leave the state, and SIIS is forced to administer a claim for which premiums were not received. Since 1983, SIIS has incurred approximately \$20 million in uninsured employers' claims, of which DIR has recovered only \$2.5 million. Under the new proposed information system, DIR would receive reports of lapsed or cancelled insurance coverage on a much more timely basis and be able to locate employers before they leave the state.
- Pursuant to statute, the Administrator of DIR also receives data pertaining to all industrial accidents, diseases, and injuries, including claims disposition, payment information, and reserves so that it may carry out its regulatory responsibility of ensuring proper claims procedures are followed.
- The DIR also collects information on work-related fatalities and multiple injuries.
- In addition, insurers provide DIR with claims expenditure data biennially so that DIR may determine appropriate assessments necessary to fund the regulatory function of all state agencies, including the Attorney General's Workers' Compensation Fraud Unit, DIR, and DOI.
- Self-insured employers and associations of self-insured employers provide DIR with benefit and claims information, enabling DIR to evaluate their claims management practices. This is a regulatory requirement.
- The DIR utilizes individual claims files to audit all insurers. Each insurer must be audited at least once every three years.
- Information provided by insurers is also used for DIR research and special requests, for example, to respond to legislative inquiries.
- One statutory requirement outside the scope of workers' compensation is that on a monthly basis, all industrial insurers provide DIR with specific injury data, such as cause, number, risk classification, severity, and type. The DIR uses this information to develop intervention and prevention programs.
- Permanent Partial Disability (PPD) settlements comprise a significant portion of workers' compensation expenditures, and the DIR is required by regulation to review information pertaining to this type of award.
- By statute, the DIR is required to assign a physician, on a rotating basis, to conduct an impartial evaluation of an injured employee, and a great deal of information flows from this process.

- The indexing system of DIR contains a record of all claims that have been filed. Its purpose is to ensure that an injured employee is not obtaining PPD awards from multiple employers for the same injury.
- Managed care organization (MCO) contracts are also reviewed by the DIR to confirm that they meet Nevada's standards of care.

Continuing, Mr. Swirczek reviewed additional statutory requirements that DIR must fulfill effective July 1, 1999, as follows:

- The DIR must evaluate the services provided to employers by both private insurers and SIIS in terms of loss control and prevention of accidents and diseases.
- All insurers will be monitored by DIR to ensure that payments and notification of denials are made in a timely manner. The DIR anticipates that the new information system will enable it to track insurer compliance.

Mr. Swirczek covered the following points in response to questions from the Committee:

- After being approached by the Three-Way Task Force (Task Force), NCCI organized a management development team to create a proposed plan whereby NCCI would collect the data from all insurers on DIR's behalf. The Task Force is of the opinion that this approach provides a number of advantages for Nevada:
 1. All data will share a common format, regardless of its source;
 2. A survey of all other states which collect data directly demonstrates that outsourcing this function is more cost-effective than hiring additional staff to process data; and
 3. The use of a single reporting agency would eliminate duplication of data input.
- The DIR is also exercising due caution to make sure that there is not another company other than NCCI which could provide the same type of service.
- The NCCI has indicated that the up-front development costs related to its proposal will be \$150,000. The DIR staff and representatives of the International Association of Industrial Accidents Boards and Commissions (IAIABC), a national insurance organization for formats and standards, will work with NCCI on the service proposal.
- In its initial proposal, the NCCI has indicated that the ongoing cost for providing this service is estimated to be \$2 per claim, an expense which would be borne by the insurer, and ultimately, the employer.

Responding to questions from Chairwoman O'Connell regarding uninsured employer claims, Mr. Swirczek covered the following points:

- Many uninsured employers claims can no longer be pursued because the statutory time limits have expired. Investigators have sometimes been retained to locate uninsured employers. However, once an individual or company leaves Nevada, the cost of locating that employer oftentimes becomes prohibitive. If an uninsured employer is located, the DIR refers the case to the Attorney General's Workers' Compensation Fraud Unit, which begins the process of recovering funds that have been paid to injured workers.
- The Attorney General's Workers' Compensation Fraud Unit has been aggressive in its pursuit of uninsured employers, and the DIR works closely with the Unit.
- The \$2.5 million recovery from uninsured employers which was referred to in earlier testimony was effected by the DIR.
- As the advisory organization to the DOI, NCCI has a record of all insureds and employers. If NCCI is chosen by the Task Force to provide proof of coverage service to DIR, as is anticipated, it will participate in tracking the total number of insured and uninsured employers.

- Mr. Swirczek provided the Committee with a document titled, "Workers' Compensation Three-Way Task Force Information System Subcommittee, Status Report, February 20, 1998" (Exhibit F). He reported that the Information System Subcommittee members have raised a number of concerns over the last five months regarding the amount and type of information proposed to be provided by employers to DIR. Specific concerns include:
 1. The system as proposed is so complex and large that it may not be possible to complete it by the July 1, 1999, deadline;
 2. Some of the information being sought by the DIR is outside the scope of a regulatory agency;
 3. As initially proposed, the information was to be provided online, casting the DIR more in the role of a claims manager rather than that of a regulatory agency;
 4. If the information that DIR is now requesting is equivalent to a duplicate of the insurer file (which is not the DIR's intent), then employers will be required to do something different than they are doing now; and
 5. There is concern about the cost to be borne by employers in order to provide the information.

To address these concerns, a baseline claims data discussion document was developed. This document defines the purpose of claims information collection, delineates the specific information necessary to enable the DIR to carry out its responsibilities, and outlines reporting frequency. Responsibilities include measuring insurer performance (e.g., adherence to prescribed time lines for acceptance or denial of claims, the first payment, and PPD determination) and monitoring claims for occupational safety and health information so that preventative measures can be implemented.

Donald E. Jayne

Donald E. Jayne, President, Jayne & Associates, Inc., of Gardnerville, Nevada, a member of the Task Force, indicated that he was available to answer questions from the Committee.

James Wadhams

James Wadhams, Las Vegas, a Nevada attorney representing the American Insurance Association, and a member of the Task Force, complimented Mr. Swirczek and the Commissioner of Insurance for establishing the Task Force. Mr. Wadhams indicated that the Task Force is still reviewing a number of issues, and covered the following points:

- It is the goal of the Task Force to develop a system that is fair to the injured worker and at the same time allows the DIR to monitor the performance of all payers in the system without creating an unnecessary burden on the employers.
- The proposed system must enable the DIR to carry out its regulatory function without monitoring each individual claim.
- Development of information systems will require a careful review of individual and competitive privacy issues.
- He is of the opinion that it may not be economically efficient or necessary to take information that is normally available to the DIR upon request and put it into a common computer system. In support of his opinion, he described numerous safeguards put in place over the last 15 years which protect the integrity of the process. The DIR monitors the conduct of insurers in the marketplace, and the DOI ensures that carriers' premiums are fair and that they are able to pay claims. The office of the Nevada Attorney for Injured Workers (NAIW), Nevada's Department of Business and Industry, is available to assist individual claimants. The Attorney General's Workers' Compensation Fraud Unit and the Hearings Division, Nevada's Department of Administration, also provide balance to the process.
- It is important that the final list of information to be provided by insurers contain only those items that the DIR needs to carry out its functions. If the process is a burden for insurers, including SIIS, it will also be a burden for employers.

Ron Swirczek

Responding to questions from Chairwoman O'Connell, Mr. Swirczek indicated that the Three-Way Task Force expects it will reach a final decision as to what information the insurers will be required to provide by April 1, 1998. No one group within the Task Force has more influence than another, and the Task Force will be guided by statutory requirements.

Danny Thompson

Danny Thompson, COPE Director, Nevada State AFL-CIO, and a member of the Task Force, expressed concern about restricting the information that the DIR receives. He emphasized that without adequate information, the DIR will not be able to properly enforce regulations. Mr. Thompson is of the opinion that regulation is a very important component of three-way insurance, particularly in view of the number of new insurers who will be entering the market.

Ron Swirczek

Assemblywoman Krenzer requested that Mr. Swirczek provide a flow chart illustrating the step-by-step process that is being proposed by the DIR along with contrasting flow charts from the insurance industry. The flow chart should list the forms which will be used by the employer and show to whom these forms must be sent and the reporting time frames. Responding, Mr. Swirczek covered the following points:

- Ideally, reports will be filed electronically, but paper reports will still be accepted. Whether manual or electronic, the reports will include the same information that is currently contained in Forms C-3 and C-4.
- The DIR is requesting from insurers the same information that is currently provided on the Form C-4, commonly known as the first report of injury, and will track these. In addition, the DIR will monitor subsequent reports which include a lost time claim for purposes of its occupational safety and health programs and injured worker indexing.

Discussion ensued regarding the information needs of DIR. Mr. Wadhams noted that there is an important distinction between information being made available to regulators and maintaining information in a public data base. Senator Shaffer asked if DIR was of the opinion that certain forms should be automatically forwarded to it by insurers or if forms should be provided to DIR only upon request. Responding, Mr. Swirczek indicated that it was DIR's position that insurers should commit to providing a minimum amount of data to DIR. The performance audits that are completed once every three years are not timely enough and do not provide DIR with a sufficient volume of information to identify trends, e.g., if an insurer is not accepting claims within 30 days. Mr. Swirczek noted that in contacting private insurers, the DIR has learned that most insurers already supply information similar to that contained on Forms C-3 and C-4 to the regulatory agencies in most other states.

Mr. Wadhams pointed out that the State of Nevada needs to maintain the distinction between regulating a competitive marketplace and running those businesses. He noted that the State of Nevada has operated the workers' compensation insurance business for years, and it needs to shift its focus to monitoring and regulating activities.

Lynn Grandlund

Lynn Grandlund, Vice President, Account Services, W.R. Gibbens, a member of the Task Force, expressed support for the information needs of DIR. Ms. Grandlund stressed that, given the fact that Nevada allows lifetime reopening of workers' compensation claims, it is important that both private insurer and business records regarding injured workers be maintained within the State of Nevada.

Ron Swirczek

Responding to a question from Assemblyman Nolan, Mr. Swirczek assured the Committee that the Task Force is working to establish a system that is fair to private insurance carriers and SIIS and allows no advantage for one party over another. From a regulatory perspective, all participants — associations, private carriers, self-insureds, and SIIS — will be subject to the same rules.

Assemblyman Hettrick stated that the amount of information being requested will be an issue of concern if insurers find it necessary to add staff in order to input the data. Mr. Swirczek indicated that conversations with NCCI revealed that approximately 90 percent of all private insurance carriers utilize some type of electronic format. Hence, these insurers need only transfer the data electronically to NCCI, which in turn will be electronically sent to DIR. Referencing an attachment to Exhibit F titled, "Call for Detailed Claim Information," Assemblyman Hettrick questioned the ability of self-insured companies to provide DIR, on a daily basis, the amount of information proposed. Responding, Mr. Swirczek stated that the Task Force is still reviewing all information currently provided to DIR, and once this review has been completed, all data elements which are not pertinent to Nevada will be discarded.

Linda Collins

Linda Collins, President, Nevada Self-Insurers Association, and Workers' Compensation Manager, Mirage Resorts, Las Vegas, expressed concerns shared by self-insured companies, covering the following points:

- Self-insured companies do not categorize their employees by standard industry or risk classifications.
- DIR is proposing that the information be organized using risk classifications, enabling NCCI to obtain statistics to produce premium levels and loss ratios experience. Complying with DIR's proposal would require major expenditures for some self-insured companies.
- The proposed indexing system is supported by the self-insured companies.
- Self-insured companies question why NCCI needs their data if it cannot be used in NCCI's data base.

Referring to Exhibit B, Mr. Swirczek pointed out that self-insured companies are currently obligated to provide DIR with a variety of information, including the following:

- Self-insured companies are required to furnish claims, disposition, payment, and reserve information to DIR at least annually or at intervals determined by the Administrator of DIR pursuant to NRS 616B.009, "Reports required to be made by self-insured employers and associations of self-insured employers. [Effective until July 1, 1999.]" All insurers are currently reporting this information annually.
- A regulatory provision adopted in 1982 by DIR and DOI requires self-insured companies to provide claims information for the purpose of evaluating claims management. However, DIR has not been enforcing this requirement.
- In 1993, the Legislature amended NRS 618.378, "Employer required to report fatal accident or accident requiring hospitalization of employees; investigation of accident by division; insurer to report claimed or reported injuries and diseases; compliance with federal recordkeeping and reporting requirements; variances to those requirements," to require all industrial insurers to provide DIR with health and safety data. Instead of requiring self-insured companies to fully comply with this provision, DIR has focused on lost-time claims only.
- Workers' compensation insurers are also obligated to provide information regarding all claims for compensation pursuant to NRS 616B.018, "Index of claims: Establishment; use; fee; administrative fine for failure by insurer to provide information."

Chairwoman O'Connell noted that review of the statutes and regulations that are necessary for the efficient operation of workers' compensation does not occur regularly. Continuing, she requested that the Task Force review the laws and regulations governing workers' compensation and that it include in its BDRs to the Committee recommended statutory and regulatory changes. Chairwoman O'Connell requested that legislative staff review proposed BDRs to ensure that outdated laws and regulations are updated or repealed.

Assemblywoman Krenzer asked Mr. Swirczek to discuss the differences between self-insured companies that do not generate premiums and private insurance companies that write coverage for employers. Responding, Mr. Swirczek made the following points:

- The NCCI collects data from private insurers, and in Nevada's case, from SIIS, and uses that information for statistical purposes such as pricing.
- As self-insured companies do not set premiums, NCCI would not need data from them for the purpose of rate setting. However, in its proposed role as a vendor of the State of Nevada, NCCI would require claims data from self-insured companies in order to provide the statistical information DIR needs to properly track regulatory compliance (e.g., time lines) and safety and health issues. For this reason, DIR is proposing that self-insured companies be required to report claims data in the same manner as all other insurers, including SIIS.

Ms. Collins inquired if it was possible for self-insured companies to report the information necessary for DIR to carry out its regulatory duties directly to DIR. Responding, Mr. Swirczek noted that the Task Force has discussed two options: (1) collection of data by DIR; and (2) outsourcing that function to a vendor such as NCCI that already has in place the mechanisms to collect and validate data. If the Task Force were to determine that DIR is the most logical choice to carry out this function, additional staffing would be required. The Task Force's primary goal in this regard is to implement a program that streamlines the reporting process for all interested parties and is cost-effective for businesses and the State of Nevada.

Assemblyman Hettrick directed two questions to Mr. Swirczek, as follows:

1. Will insurance providers that report information to NCCI, including self-insured companies, be required to first become members of NCCI, and if so, what is the associated cost?
2. Will NCCI be able to accept information from a self-insured company that does not utilize standard industrial classification (SIC) codes and still create data that is meaningful to the State of Nevada?

Responding to Assemblyman Hettrick's inquiries, Mr. Swirczek covered the following points:

- In any proposed contract negotiations with NCCI for the collection and validation of data, the cost of providing such services both to the State and to all insurers would be defined. If it is determined that the cost of outsourcing that function is not cost-effective, the Task Force would review alternative solutions.
- Industry classification codes for the type of employer, cause of injury, and nature of the injury are standard. For instance, the DIR could contact private insurance carriers who currently provide workers' compensation coverage for gaming properties in other states to ascertain the carriers' SIC codes. The DIR could then utilize that information to assign SIC codes to self-insured gaming establishments in Nevada.

Committee discussion ensued regarding the treatment of self-insured companies under three-way insurance. Assemblyman Hettrick urged caution against requiring businesses to conform to rules and regulations that match DIR's information requirements rather than their own business needs. Continuing, Assemblyman Hettrick remarked that the final process will need flexibility in order to fairly regulate self-insured companies that do not utilize or set premiums based on risk or SIC codes. In addition, Assemblyman Hettrick stated that he was of the opinion that if those statutes which were enacted in 1982 and 1993 have not been implemented, they are most likely unnecessary and should be repealed.

Senator Shaffer encouraged the Task Force to maintain a strong focus on its ultimate purpose: to provide safe working environments and protect injured workers. He also stated that he was of the opinion that all insurance providers should be treated equally.

PRESENTATIONS REGARDING TIME LINE

AND POTENTIAL BARRIERS TO THE IMPLEMENTATION

OF THREE-WAY INSURANCE

Kara Kelley

Kara Kelley, Senior Vice President, Las Vegas Chamber of Commerce (Chamber), Las Vegas, expressed concern

regarding the information system being considered by the Task Force and what the Chamber views as additional burdens on employers. Ms. Kelley expressed the following concerns:

- There is still a great deal of work to be done at the regulatory level in order to start competition in July of 1999. The Chamber fears that regulatory authorities such as DIR will become so overwhelmed with the task of implementing the information system and additional regulations, that they will be forced to request the postponement of the implementation date for three-way insurance.
- The information system as proposed by the Task Force would contain a large amount of data — information that employers will need to provide directly to the system in an electronic format.
- Businesses that do not have the capability to transmit data electronically will need to provide claims information on paper. In turn, DIR staff will have to input that data. This situation could potentially create a substantial backlog.
- It is the opinion of the Chamber that DIR does not have the manpower to maintain such a system and have it operational by July of 1999.
- The Chamber requested that the Committee recommend that the regulatory bodies develop only a proof of coverage service and later work to build a larger claims system if it is deemed necessary.

Responding to the issues raised by Ms. Kelley, Mr. Swirczek made the following points:

- An information system similar to the one proposed for three-way insurance in Nevada was installed in just three months. A delay to the implementation of Nevada's system will not occur.
- Pursuant to Assembly Bill 609 (Chapter 410, *Statutes of Nevada 1997*), which "Makes various changes to provisions governing industrial insurance," employers have the option of electronically transmitting the information that is currently contained on Form C-3 to insurers. The burden for reporting data to the DIR (or its chosen vendor) rests with the insurer.
- In creating an information system, the Task Force's goal is to utilize technology in such a way that the reporting process is streamlined but still enables the DIR to identify problem areas.

Robert A. Ostrovsky

Robert Ostrovsky, President, Ostrovsky & Associates, Las Vegas, a member of DIR's Advisory Board and a member of the Task Force, summarized his concerns regarding the ability of the DIR to meet the July 1, 1999, implementation date for three-way insurance and the conduct of the State of Nevada as a regulator. Mr. Ostrovsky covered the following points:

- The Task Force members continue to debate the amount of information that DIR proposes insurers report, and there is concern about the number of decisions that remain unresolved.
- The State of Nevada has historically had a difficult time meeting information system implementation deadlines. Specific examples cited were the GENESIS system at Nevada's Department of Motor Vehicles and Public Safety, the NOMAD system at Nevada's Department of Human Resources, and SIIS's prior system.
- Less information is currently collected from insurers in Nevada than in most states. However, if the information system as proposed is approved and implemented, Nevada would collect more data than most states.
- The Task Force is requesting that NCCI develop a system that has not been tested in any other state and to collect information it has never before collected.
- In addition to charging the State of Nevada a fee of approximately \$150,000 to cover system development costs, NCCI will charge insurers a fee to set up each claim file and additional fees to access the data base and update files. Those fees have not yet been determined.

- He is of the opinion that the DIR should determine the minimum amount of data required to meet the July 1, 1999, implementation date for three-way insurance.
- An indexing function to assist in claims identification is an important component of the proposed information system.
- A primary issue to be determined by the Legislative Committee on Workers' Compensation is the manner in which the State should regulate market conduct.
- Current regulations and statutes empower DIR with authority to request whatever information it deems necessary to carry out its regulatory responsibilities.
- He is of the opinion that the list of data that DIR is proposing be reported is akin to the State "attaching a computer to an individual's car speedometer." He stated that (1) regular audits; (2) reporting of claims information (e.g., the name of the injured worker and the name of the insurer on a particular date); (3) reports of data on an annual or semiannual basis; and (4) utilization of an indexing system, are appropriate tools to assist the DIR in tracking market conduct and compliance.

He is also of the opinion that requiring insurers to report the following information constitutes excessive reporting:

1. The date a PPD check was issued;
2. The date a request for a rating physician was made;
3. The date of a letter scheduling the PPD evaluation;
4. The date the rating evaluation was made; and
5. The date the PPD evaluation report was received.

- While there are broad statutes in Chapter 618, "Occupational Safety and Health," of *Nevada Revised Statutes* which empower DIR to collect as much data as it desires, it has never required that level of reporting in the past.
- The Task Force's Regulations Committee is compiling a list of those laws with which insurers are currently unable to comply and will submit its recommendations to the Committee.
- Mr. Ostrovsky stressed the need to quickly resolve information systems issues if the July 1, 1999, implementation date for three-way insurance is to be met.

Mr. Swirczek responded to the issues raised by Mr. Ostrovsky, covering the following points:

- The DIR's purpose is to impartially serve the interests of employers and employees and to ensure timely and accurate delivery of benefits.
- A good information system is essential to the successful implementation of three-way insurance.
- Data element issues will be resolved by April 1, 1998.

Chairwoman O'Connell thanked Mr. Swirczek for his efforts and requested that he update the chart provided to the Committee (Exhibit B) to reflect which statutes are currently being enforced and which statutes have never been used.

Lenard Ormsby

Lenard Ormsby, General Counsel, SIIS, informed the Committee that Douglas Dirks, Chief Executive Officer, SIIS, was unable to attend the meeting due to the birth of a daughter earlier in the week.

Mr. Ormsby reported that SIIS has no specific deadlines that must be established or monitored or laws which must be changed in order to prepare for the implementation of three-way insurance on July 1, 1999. Mr. Ormsby also covered the following points:

- The SIIS is an insurer, and as such, any legislation relating to workers' compensation should be referred to as "workers' compensation legislation," not "SIIS legislation."
- In its capacity as an insurer, SIIS is a member of the Task Force.

Responding to questions from Chairwoman O'Connell, Mr. Ormsby stated that SIIS may have input regarding BDRs that arise out of the Task Force. However, any specific BDRs from SIIS for legislative changes will be submitted through the Governor's Office, not through the Legislative Committee on Workers' Compensation. Continuing, Mr. Ormsby stated that he is unaware of any BDRs to be submitted by SIIS to the Governor's Office or the Committee.

James Wadhams

James Wadhams, previously identified on page 11 of these minutes, stated that as long as the Task Force continues to meet, he is optimistic there is opportunity to address more issues and report back to the Committee later.

REPORT FROM DIVISION OF INSURANCE

REGARDING TIME LINE AND POTENTIAL BARRIERS

TO THE IMPLEMENTATION OF THREE-WAY INSURANCE

IMPLEMENTATION OF THREE-WAY INSURANCE

James Jeppson

James Jeppson, Chief Insurance Assistant, DOI, updated the Committee on the time lines the Division must meet in order to implement three-way insurance on July 1, 1999. Mr. Jeppson covered the following points:

- The DOI created a time line in 1995 to establish dates for the various components it needed to implement three-way insurance on July 1, 1999. To date, all time lines have been met. There are three items remaining on the time line.
- The Commissioner of Insurance issued an order approving the NCCI filing on December 31, 1997. On July 1, 1998, the DOI will formalize the NCCI filing by regulation so that it can add language concerning any endorsements or other forms that insurers may wish to file.
- Continuing education programs for agents and brokers to be offered by insurance companies and education vendors are well underway and will be in place well before the October 31, 1998, deadline.
- Because statute requires that rates must be filed 60 days before they become effective, private insurance carriers and SIIS must submit their rate filings to the DOI by April 30, 1999, in order for those rates to go into effect on July 1, 1999. It was noted, however, that for the first four or five years under three-way insurance, all insurers must base their rates on those established by NCCI, the Commissioner of Insurance's designated advisory organization on workers' compensation.

Responding to a question from Chairwoman O'Connell, Mr. Jeppson reported that DOI has received 47 applications from private insurance companies to write workers' compensation insurance in Nevada. Fourteen of those applications were received from companies that are not currently authorized in the State of Nevada, and the remainder of the applications are from currently authorized insurers that have asked that workers' compensation be included as an approved line of insurance. Seven of the applications are from insurers that are among the 40 largest providers of workers' compensation insurance in the United States.

Eloise Koenig, Coordinator, Self-Insured Workers' Compensation Section, DOI, stated that when an insurer requests an application from DOI or when a company requests an application to provide self-insurance, that information is open to the public.

At the request of Chairwoman O'Connell, Mr. Jeppson covered the following topics:

- The DOI has established office procedures that follow the statutory requirements related to rate filings. An insurer seeking a rate change must provide the Commissioner of Insurance with a 60-day notice which establishes an overall change. This notice must be accompanied by a specific rate filing that contains actuarial justification for the rates.
- The SIIS submitted a rate filing to the Commissioner of Insurance several months ago. The filing was reviewed extensively by the DOI's property casualty actuary, Chuck Knaus, and his staff. The DOI's consulting actuary, Glen Taylor, of Taylor, Walker & Associates, was also provided with a copy of the filing. Mr. Knaus and Mr. Taylor participated in discussions with SIIS and its actuary, and they recommended that the Commissioner of Insurance approve the rate filing. The Commission did approve the rate filing to become effective on April 1, 1998.

Chairwoman O'Connell questioned how SIIS could request a rate filing while it still has a deficit of approximately \$850 million. Responding, Mr. Jeppson covered the following points:

- In fairness to Nevada employers insured by SIIS, the premium rates should reflect SIIS's anticipated losses and expenses for the coming year or other period of time the rates are intended to cover.
- The rate filing as approved by the Commissioner of Insurance was not designed to fund any part of the deficit.
- Investment income generated from premiums contributed during the coming year (or other time period the rates are intended to cover) should also be used to offset the expenses and losses experienced by SIIS during that same time period.
- In addition, investment income continues to be generated from SIIS's assets. The investment income earned on those assets will be used to offset part of the accumulated deficit.

Mr. Jeppson cautioned that he was speaking outside his area of expertise, and urged the Committee to direct its questions regarding the SIIS rate filing to the System.

PRESENTATION REGARDING THE STATISTICAL PLANS, CLASSIFICATION PLAN, EXPERIENCE RATING PLAN, AND ASSIGNED RISK PLAN UNDER THREE-WAY INSURANCE

Magda (Maggie) Karpuk

Magda (Maggie) Karpuk, Director, Government, Consumer & Industry Affairs, Western Region, NCCI, Agoura Hills, California, presented background information on NCCI and reported on its activities in Nevada. Ms. Karpuk provided the Committee with a summary of NCCI's presentation (please see Exhibit G) and covered the following points:

- The NCCI is a nonprofit, statistical research and rate making organization. It collects data on the cost of workplace injuries and illnesses from its members. After these costs are adjusted for inflation, recent legislative and regulatory changes, and other factors, NCCI prepares a schedule of rates and rating values to be filed with the appropriate regulatory authorities.
- In addition, NCCI actuaries evaluate the potential cost of legislation to assist state legislators and regulatory agencies considering changes to their workers' compensation mechanism.
- The NCCI is in the process of finalizing a time line plan detailing past and future transition issues. The major components of the time line are the classification system; customer education; data reporting; experience rating production; experience and retrospective rating plan; regulatory schedules; and training.

- The mapping of SIIS class codes to corresponding NCCI class codes has been completed. In some instances, the mapping was not a one-to-one match, so it was necessary to map businesses to the class description which best matched their business.
- The NCCI collects four primary types of data: (1) aggregate financial data; (2) detailed claims data; (3) policy data; and (4) unit statistical data. These data serve as the foundation for NCCI's rating bureau services.
 1. Policy data consists of information from the policy page and associate endorsements representing the contract between the employer and the insurance carrier. The NCCI uses this type of data for controlling the receipt of unit reports, producing and distributing experience ratings, providing proof of coverage information to state industrial accident boards, reporting individual risk inspections and test audits, and for other analysis of reports.
 2. Unit statistical data is comprised of audited payroll and loss data information that is reported to NCCI 18 months after the policy inception date. This information is used to produce rating bureau products and services including classification rate making and experience rating.
 3. Specific information about workers' compensation claims is collected on a random sampling basis and provides the detailed claims data which serves as the basis for research initiatives and assists the NCCI in determining the underlying causes of the trends of those claims. For instance, if state legislators are considering a benefit change or an adjustment to the weekly average wage, they could contact NCCI and request an estimate of the cost of that change to the state's workers' compensation system.

Detailed claims data is collected on a random sampling basis. If a carrier serves one tenth of 1 percent of a marketplace, it is required to report detailed claims data to NCCI.

 4. The financial call information is an aggregate summary of premium and loss data transactions for a given accident year, calendar year, or policy year. The NCCI utilizes this data to determine required overall rate changes and insurance market share.
- The SIIS and NCCI have successfully completed the transfer of all Nevada employers' historical data.
- In September of 1997, NCCI filed its basic manual, experience rating plan, policy forms and endorsements, residual market plan, retrospective rating plan, and workers' compensation statistical plan for the Commissioner's review. The NCCI presented summaries of each of these filings at an informational public hearing held by DOI in October 1997, and the Commissioner of Insurance approved the entire filing with certain amendments in December of 1997.
- The NCCI's initial rate filing for three-way insurance must be submitted to the Commissioner of Insurance no later than July 1, 1998.

Gerald Yeung

Gerald Yeung, Actuary, NCCI, Agoura Hills, reviewed the information that NCCI will consider in determining Nevada's initial rate for three-way insurance and summarized the key components of the rate filing which is due July 1, 1998, to be effective July 1, 1999. Please see Exhibit G. Mr. Yeung covered the following points:

- The factors considered by NCCI in its rate filing will be financial data from SIIS (e.g., historical premium and loss information), loss trends, experience rating offset, expense provisions, and national class relativities.
- Key components of the rate filing include:
 1. The classification plan of NCCI encompasses over 600 separate classifications, each with its own rate. These classifications have been split into five major industry groups: (a) contracting; (b) goods and services; (c) manufacturing; (d) miscellaneous; and (e) office and clerical.
 2. Deemed wage rate multipliers are being developed by NCCI. These multipliers will be used to adjust a given class rate for those policyholders who select one of the statutory deemed wage benefit levels. In

general, if the deemed wage level is less than the average wage for a given industry group, employers will be charged the higher rate because the payroll base will be reduced yet the medical benefits will remain unlimited. This procedure would be consistent with the current SIIS rate plan.

3. Because a certain portion of a carrier's expense is considered fixed, as a policy grows in size, the carrier is able to take advantage of economies of scale. The NCCI is developing a premium discount table which will provide for incremental premium discounts to be given to employers as their premium size reaches certain levels. This discount program is not included in SIIS's current rating plan.

4. The NCCI will set an expense constant to reflect the minimum fixed expense required to write a policy for each classification. It will also set the minimum premium to provide coverage for one worker who is making the average wage in the state.

5. In order to enable carriers to implement NCCI's experience rating plan and retrospective rating plan, NCCI will also set experience rating values and retrospective rating values. Examples of experience rating values include expected loss rates and various weighting values. Retrospective rating values would include excess loss factors and references to tables of insurance charges.

6. All private carriers and SIIS will be required to charge employers those rates which will be filed by NCCI with the Commissioner of Insurance and become effective July 1, 1999.

Chairwoman O'Connell asked if the NCCI's rate filing will impact the special retrospective plans to which SIIS is currently a party. Responding, Mr. Yeung indicated that each individual carrier will be able to design its own plan. However, NCCI will file values that will be useful to carriers in determining their final retrospective premium. Ms. Karpuk pointed out that carriers will also be able to choose the rate level for retrospective rating plans.

In response to a question from Chairwoman O'Connell, Mr. Yeung indicated that NCCI is not involved in the setting of reserves for retrospective rating plans.

Assemblyman Nolan questioned whether SIIS currently uses a discount premium table. Mr. Yeung stated that it was his understanding that SIIS does not have a premium discount program comparable to the one being proposed by NCCI.

Mr. Nolan also asked Mr. Yeung if he was familiar with the criteria used by SIIS in establishing claims reserves. Responding, Mr. Yeung indicated that it was his understanding that SIIS utilizes an automated reserve-setting system called "MIRA" (Micro Insurance Reserve Analysis). Mr. Yeung noted that several other state funds also use the MIRA system.

Continuing his discussion of NCCI's rate transition program, Mr. Yeung made the following points:

- In the first year of three-way insurance (commencing July 1, 1999), carriers will not be allowed to deviate from the full rates filed by NCCI. In each of the next three years, NCCI will file full rates with the Commissioner of Insurance. Insurance carriers will be allowed to deviate downward from NCCI's rates up to a maximum of 5 percent beginning July 1, 2000; up to a maximum of 10 percent beginning July 1, 2001; and up to a maximum of 15 percent beginning July 1, 2002. During the fifth year of three-way insurance, NCCI will not file full rates but rather advisory loss costs that provide only for the loss portion of the costs. Effective July 1, 2003, carriers will be responsible for adding their own loadings and providing their own expenses and profits.
- The transition to three-way insurance, and particularly the conversion of SIIS's classification plan to NCCI's classification plan, may lead to large rate changes for some employers. To address this problem, NCCI has developed a program to transition rates over a five-year period. Mr. Yeung directed the Committee's attention to examples contained on pages 14 and 15 of Exhibit G which demonstrate the rate transition of two hypothetical employers.

Ms. Karpuk noted that NCCI has not yet started its calculations for the rate filing which is due July 1, 1998.

Chairwoman O'Connell requested Ms. Karpuk's opinion as to whether additional large carriers will show an interest in the Nevada market once NCCI's rate filing is completed. Responding, Ms. Karpuk stated that she was of the

opinion that interested carriers are currently reviewing their business plans and are not waiting for the rate filing to be completed.

Senator O'Connell questioned whether NCCI would seek to remove Nevada's deemed wage cap. Mr. Yeung indicated that the deemed wage cap is a statutory requirement in Nevada and that it was not within NCCI's authority to remove that. Further, NCCI will address the deemed wage cap issue through its rating plan.

Responding to a question posed by Chairwoman O'Connell, Mr. Yeung reported that the NCCI policy is not an open-ended certificate similar to that issued by SIIS but rather a year-by-year policy. While there may be various payment options for employers, the premium is most often paid up front.

Magda (Maggie) Karpuk

Ms. Karpuk, previously identified on page 21 of these minutes, provided the Committee with a newsletter regarding NCCI's proof of coverage service. Please see Exhibit H. The NCCI presently renders proof of coverage service to 18 states, enabling those states to gain online access to current employers' coverage information including carrier name and location; employer's federal identification number, name, and address; governing class code; and policy information (e.g., cancellation, effective date, expiration date, endorsements, history, and policy number, reinstatements, states covered under the policy).

Ms. Karpuk covered the following points with regard to its proposal to provide Nevada with first and subsequent reports of injury service:

- The NCCI does not presently provide first and subsequent report of injury information to any of its subscribers. This type of information has historically been reported to a state agency.
- Following the initial report of an occupational injury, subsequent forms are gathered for the purposes of determining benefit payments and following the injured worker's progress going forward.
- A proposal to provide Nevada with first and subsequent reports of injury service has been submitted by NCCI.
- Nevada's business requirements, regulations, and statutes determine the amount and type of information which must be reported for first and subsequent injuries. It is critical that NCCI receive guidelines from the State as to its information needs so that it has adequate time to build and test a first and subsequent reporting system. If Nevada is able to provide guidelines to NCCI quickly, NCCI could begin testing as early as August 1998.

Beau Pankiw

Beau Pankiw, Information Systems Specialist, Nevada's Department of Information Technology (DOIT), directed the Committee's attention to the last section of Exhibit F (beginning at page 8 of Exhibit F) and summarized the proposed data flows, system configuration of DIR, system storage requirements, and preliminary system costing estimates. Mr. Pankiw covered the following points:

- The DOIT's objectives in designing DIR's system were to create a repository of information for workers' compensation insurance that allows enhancements to be made by DIR and its associates (e.g., any state agency that needs to make inquiries or enhancements to the data); with proper security, to make a portion of the information available to the public; and to provide scheduled and ad hoc reporting on that information.
- The information system recently installed at the office of the Nevada Secretary of State is very similar to that being considered by DIR. The Secretary of State's system was completed within three months.
- The insurance carriers will provide the information to a repository or to a consolidation vendor, who will then make a copy available to DIR's system. The DIR's system will be divided into several areas: internal enhancement modification, public inquiry, and state entity inquiry.
- The design components of the system are contingent upon numerous factors, including volume. Using the Secretary of State's system as a baseline model, the DOIT has allotted two gigabyte for mass storage of workers' compensation data.

- The preliminary costing estimates provided are based upon information received as of February 19, 1998.
 1. The data base system and tools estimate is likely a volatile figure which could be impacted by a number of factors, including the number of required concurrent user sessions. Based on the Secretary of State's system, the DOIT has allowed for 25 concurrent users for the DIR system.
 2. The preliminary estimate for the web server system and tools is stable and should not change significantly.
 3. The server hardware and operating system costs could be affected by the system's volume and security. The system can grow approximately 400 percent before reaching capacity.
 4. Three levels of security are planned to protect the system: (a) at the firewall; (b) within the data base system; and (c) the State's intranet system. Additional security can be added provided the funds are available to support such an effort.
 5. The cost of hiring an outside contractor to develop the data base, security tools, and web pages is based upon an estimate of six months of work.
- He is of the opinion that the time line for the development, installation, and testing of the DIR's information is reasonable and achievable.
- The time allotted for alpha testing has been increased from the standard two weeks to one month. Likewise, beta testing has been allotted two months rather than the traditional one month.

Responding to a question from Assemblyman Hettrick, Mr. Pankiw indicated that for planning purposes, he allowed for about 300 fields of information. Actual storage for the data is approximately 14 gigabyte.

Assemblywoman Krenzer questioned what time frames need to be met by the State in order for NCCI to fulfill its proposal. Ms. Karpuk indicated that if NCCI received approval to proceed with the project and if the guidelines which will serve as the rules that will govern the system are provided to it by the end of February 1998, it can meet the August 1, 1998, deadline for testing operation of the information system and the July 1, 1999, implementation date. Mr. Swirczek indicated that DIR is responsible for providing the guidelines to NCCI. The DIR has also made inquiries to other states to ensure that the NCCI would be an appropriate candidate for entering into a sole-source contract.

Jim Schober, Chief Operating Officer, Kaercher Insurance Agency, Las Vegas, requested clarification on retrospective rating plans. Responding, Mr. Yeung covered the following points:

- The NCCI will file advisory rating values to be used in helping insurers to craft their own retrospective ratings. The advisory rating values will be submitted with the rate filing itself.
- The retrospective rating plans will be tailored by the individual carriers.
- Effective July 1, 1999, carriers will have the option of offering retrospectively rated policies.
- The retrospective rating plan is optional; the experience rating plan is mandatory and will be applied uniformly for all employers.

Ms. Karpuk concluded NCCI's remarks by emphasizing that it does not set policy but follows the state mandate.

PRESENTATION REGARDING CERTIFICATION REQUIREMENTS OF INSURERS UNDER THREE-WAY INSURANCE

James Jeppson

Mr. Jeppson, previously identified on page 19 of these minutes, discussed the certification requirements of insurers

under three-way insurance, covering the following points:

- In January 1997, the DOI established certification requirements for private insurers who wished to offer workers' compensation insurance in the State of Nevada.
- The DOI has received a total of 47 applications from private insurance companies to write workers' compensation insurance in Nevada. Fourteen of those applications were received from carriers not authorized to sell insurance in the State of Nevada. The remaining applications were submitted by carriers currently authorized to sell other types of coverage in Nevada and who are now seeking authority to offer workers' compensation as an approved line of insurance.
- Twenty-six of the applications received from carriers who currently offer other types of coverage in Nevada have only one step left in the approval process, to submit an outline detailing their plans to ensure that their agents and brokers are trained to sell workers' compensation insurance.
- The Commissioner of Insurance's Advisory Committee on property and casualty issues has established a group to explore the education and training requirements for new workers' compensation insurance providers. The goals of the group are to:
 1. Establish guidelines for insurers to provide adequate training for their brokers and agents; and
 2. Develop regulations to implement those guidelines.

Draft regulations should be finalized within two weeks, at which time they will be presented at a public workshop.

- The agent/broker education requirements will be adopted well before the October 31, 1998, deadline.

Responding to a question from Chairwoman O'Connell, Mr. Jeppson noted that SIIS does not possess a certificate of authority from the Commissioner of Insurance; rather SIIS is authorized by statute to write workers' compensation coverage. Therefore, the DOI has limited authority over SIIS's ability to do business, and SIIS will not be required to go through the same process as private insurers.

Chairwoman O'Connell suggested that since SIIS will be operating as a private insurance company, it should be treated as a private insurance company. She pointed out that SIIS is protected under A.B. 609 insofar as proprietary information, and requested that the Committee review the relevant statutes. Ms. Koenig indicated that the statute provides that the Commissioner certify private carriers to sell workers' compensation products in Nevada and differentiates between SIIS and private carriers.

REPORT REGARDING RECENT

STATE INDUSTRIAL INSURANCE SYSTEM RATE FILING

Danny Thompson

Mr. Thompson, previously identified on page 12 of these minutes, reminded the Committee of the sweeping reforms made to the workers' compensation system in 1993. These changes included dramatic increases in premiums and deductibles, a reduction in benefits paid to injured workers of over 20 percent, a reduction of 15 percent in the PPD multiplying factor, and the implementation of managed health care. Continuing, Mr. Thompson stated that at the time these reforms were being negotiated in the Legislature, several legislators assured him that the lost benefits would be restored to workers once the financial condition of the SIIS improved and it was no longer operating at a deficit. He advised the Committee that the AFL-CIO plans to request that the 1999 Legislature restore some of the benefits that were taken away from workers in 1993.

Chairwoman O'Connell requested Mr. Jeppson to recap his earlier testimony regarding how SIIS's assets can cover the remaining \$856 million deficit.

James Jeppson

Mr. Jeppson, previously identified on page 19 of these minutes, noted that he would limit his comments on SIIS's deficit because it is a complex issue and not his area of expertise. He covered the following points:

- Chapter 686B of NRS, "Rates and Essential Insurance," requires rates to be neither excessive, inadequate, nor unfairly discriminatory, and that they be established on anticipated losses and expenses.
- Insurance companies establish rates and project future losses and expenses based on past experience.
- The rates approved by the Commissioner last month are designed to secure the losses and expenses of the SIIS for the next coverage period. The rates as approved do not contribute any money toward the accumulated deficit.
- The losses and expenses of the SIIS for the next rating period should be funded by the premiums collected together with the investment income on those premiums.
- The SIIS does have an investment account of its current assets, and the income earned on those assets will be applied to the accumulated deficit.
- In conclusion, Mr. Jeppson explained that the premium collected during the next rating period together with the investment income from those premiums will fund future expenses and losses. At the same time, the accumulated assets of the SIIS will continue to generate investment income that can be utilized to reduce the deficit.

Assemblywoman Krenzer noted that because rates are predicated on anticipated losses, and those estimated losses are based on past experience and benefit levels, then the most recent rate adjustment approved by the DOI is based on a benefit level which was reduced in 1993 and in 1995. She pointed out that while employers will benefit from the reduction in rates, none of the benefits to workers have been restored.

Mr. Ormsby, previously identified on page 18 of these minutes, acknowledged that the current benefit level, historical losses, and historical premium data were used in determining future rates. Referring to the earlier testimony of Ms. Karpuck of NCCI, he explained that if the 1999 Legislature determines that a benefit increase is appropriate, NCCI would provide it with an estimate of the required increase or decrease in premium to effect such a change. He pointed out that in the future, NCCI will establish rates for private carriers and for SIIS.

Assemblywoman Krenzer emphasized that the reduced benefit level was a factor considered when the new rate was established. She was of the opinion that it would be unfair to allow SIIS to justify a rate reduction based on the bifurcation of the System and current losses and then later seek an increase in benefits and premium from the 1999 Legislature while it still has a deficit.

Assemblyman Hettrick pointed out that while charging a rate that offsets past losses is not permitted by statute, Nevada has allowed this practice to occur for the last several years. He emphasized that SIIS's losses are being paid solely by its policyholders. He was of the opinion that: (1) adjusting the rates to comply with the law is appropriate at this time; and (2) if there is a need to adjust benefits, the Committee should make those adjustments apply to all insurers, not just SIIS.

It was Assemblywoman Krenzer's position that the Committee should determine if a benefit increase is appropriate at this time, and if so, develop a proposal for consideration by the 1999 Legislature. Chairwoman O'Connell reiterated that any proposed legislation must be submitted to the Committee no later than April 1998 in order to allow the Committee sufficient time for consideration of the issues.

Assemblyman Nolan indicated that it is his understanding that the SIIS is involved in an aggressive marketing campaign for its private system. He has been informed that SIIS may be negotiating different types of policies, including innovative retrospective rating plans, and that it may be considering a change to its reserve-setting policies. Assemblyman Nolan pointed out that the effects of raising or lowering reserves include reduced losses and a change to an employer's modification factor and requested clarification of SIIS's reserve-setting activities. He also inquired

about SIIS's current customer retention efforts.

Responding, Mr. Ormsby covered the following points:

- The SIIS has utilized the MIRA system since 1993 or 1994 to establish reserves, and he is unaware of any move to change or modify that system.
- He has no knowledge of any marketing proposal which would change the reserve activities of SIIS.
- The SIIS's efforts to attract new policyholders and maintain its customer base commenced with the passage of Assembly Bill 552 (Chapter 580, *Statutes of Nevada 1995*), which "makes various changes to provisions governing industrial insurance," when it learned that it would be entering a competitive marketplace effective July 1, 1999. As the implementation date approaches, SIIS is refining its ongoing efforts to protect its customer base.

Lynn Grandlund

Ms. Grandlund, previously identified on page 13 of these minutes, expressed concern about the accuracy of the MIRA system, covering the following points:

- Each June, reserves are set for the next coverage period. In addition, the reserve is used to calculate an employer's experience modification factor.
- In checking the active claims inventory of its clients which was prepared by SIIS, W.R. Gibbens learned that many reserves were excessive. For example, MIRA had reserved \$148,000 for medical costs on a claim with no loss time and medical expenses under \$5,000.
- W.R. Gibbens contacted SIIS and requested that the error be corrected. One week later, MIRA re-reserved the same amount. W.R. Gibbens was unaware that the error had not been corrected until it began receiving client complaints regarding excessive increases in their modification factors.
- If an employer is of the opinion that its modification factor is incorrect, it must file an appeal within 30 days.
- A letter was sent to the General Manager of SIIS requesting that he advise W.R. Gibbens of its proposed solution to the problem; no response was received.
- Prior to the installation of the MIRA system, trained professionals set reserves. Claims adjusters not trained in reserving practices have become involved in the process, creating additional problems. She cited the case of a 36-year-old claimant who will require periodic medical treatment for an eye injury for the remainder of his life at a minimal cost. In this instance, a claims adjuster reserved \$5,000 for every year of the claimant's life (to age 70 years). Fortunately, this error was noticed and corrected.
- She expressed concern that the MIRA system commonly overstates modification factors, and as a result, many employers may be paying excessive premiums.

Assemblyman Nolan indicated that his understanding of Mr. Ormsby's testimony regarding SIIS's reserve-setting procedures conflicted with Ms. Grandlund's testimony that claims adjusters are now involved in the process. Responding, Ms. Grandlund explained that the involvement of claims adjusters in the reserving process is not a recent change but rather a practice which began when MIRA was installed. She pointed out that unless someone reviews the claims files and corrects the information that has changed, MIRA will continue to calculate reserves based on invalid data.

Jim Schober

Jim Schober, previously identified on page 27 of these minutes, reported that in the past 90 days, he has observed a change in the manner in which SIIS is approaching customer retention. Analyzing loss history is one of the services that Kaercher Insurance performs for potential customers that are interested in becoming self-insured. Before performing this service, Kaercher typically requests that the employer request from SIIS a loss run report in order to

ensure it has the most current information available to conduct that analysis. He cited five instances in which SIIS lowered an employer's reserves after loss runs were requested and inquires made, and he questioned how SIIS could have improperly set reserves for all five employers. He stated that in one instance, reserves set at \$502,000 were reduced to \$53,000, and in another reserves of \$326,000 were lowered to \$26,000. Mr. Schober also recounted an instance in which an employer told him that a SIIS employee had asked what it would take to keep that employer's business.

Mr. Schober is of the opinion that the Committee needs to consider the possibility that SIIS may be reducing reserves not just to lower the experience modification factor and increase the retrospective return but also to retain market share. He cautioned that sound judgment must be used in reaching any decision to reduce reserves.

According to Mr. Schober, the setting of reserves at SIIS is an issue which has not been studied. He acknowledged that it is possible that the reserves being decreased are those that have been raised by MIRA over the last several years. He is of the opinion that SIIS should be required to provide training for all employees who have direct responsibility for setting reserves.

Chairwoman O'Connell requested that Mr. Ormsby investigate the issues raised by Ms. Grandlund and Mr. Schober and report back to the Committee. In addition, she asked that he share with SIIS management the concerns raised.

Responding, Mr. Ormsby indicated that he would investigate the issues raised. He pointed out that the problems cited by Ms. Grandlund and Mr. Schober represented only seven exceptions to thousands of claims. He also observed that the information produced by MIRA is only as accurate as the data it receives. Hence, if information on a claim changes but the MIRA system is not updated, then MIRA will produce inaccurate data. Continuing, Mr. Ormsby reported that the MIRA computer program was recently updated by MIRA and reiterated that he is unaware of any change in the reserving process as a result of three-way insurance.

Assemblyman Nolan observed that the Hartford Insurance Company, a large private insurer, uses trained professionals to set reserves, and requested that staff research reserve-setting procedures utilized by other state funds. He suggested that the MIRA system may not be working properly for SIIS, and if so, small business owners unfamiliar with the reserve-setting process may be paying excessive premiums because their modification factors have been improperly set. Continuing, he suggested that if a more efficient system is available, SIIS may need to investigate the possibility of replacing the MIRA system.

Chairwoman O'Connell requested that each organization and business represented at the meeting review other reserve systems and report their findings at the Committee's next meeting.

PRESENTATION REGARDING STRUCTURE OF WORKERS' COMPENSATION COVERAGE FOR CONSTRUCTION PROJECTS

At the request of Chairwoman O'Connell, a verbatim transcript of the testimony given on the topic of owner-controlled insurance programs is attached hereto as Exhibit I. A summary of that testimony is set forth below.

J. Michael McGroarty

J. Michael McGroarty, of Las Vegas, testified in his capacity as General Counsel, Construction Industry Workers' Compensation Group (CIWCG), a self-insured group (SIG) composed of members of the Associated General Contractors (AGC), and on behalf of the AGC, regarding owner-controlled insurance programs (OCIPs). Mr. McGroarty covered the following topics:

- An OCIP is an insurance product sold to an owner of a large project which is discounted from general rates. During the construction bidding process, the owner requires bidders to list their insurance costs as a separate line item. The owner then accepts the bids minus the insurance costs.
- If a subcontractor working on an OCIP project is not already insured by SIIS, it must execute an application and rejoin SIIS in order to participate, even if it is a self-insured company or insured by a SIG.

- When the project begins, the SIIS assigns an account number to the owner and subaccount numbers for each subcontractor.
- Injuries that occur on the OCIP project site or areas immediately adjacent to the project will be covered by the owner. However, work performed outside the project site must be covered by the subcontractor unless it is being done exclusively for the owner of the OCIP project.
- Contractors insured by SIGs will not pay contributions to the SIG for work performed on the OCIP project, and the stability of the SIGs during their critical formation period is being undermined by the loss of contributions.
- Because OCIPs are operating without statutory or regulatory oversight or control, there are issues that have not yet been addressed.
- The SIIS requires that subcontractors on an OCIP project file a Form C-3 when an injury occurs on the job. There is a statute which states that the first employer with whom an injured worker files a claim is liable to pay all costs in that claim until the question of responsibility for coverage is resolved by an appeals officer. In the event of a dispute as to which employer — the subcontractor or the owner — is responsible for a claim, the subcontractor becomes the first in time and is liable for all litigation costs.
- An owner could conceivably deny a valid claim from an employee of a subcontractor, and absent specific legislation regulating OCIPs, nothing could be done to enforce coverage of that claim. In this instance, upon appeal by the injured worker, an appeals officer would need to determine the statutory employer. The subcontractor would be found to be the statutory employer and forced to provide coverage.

Responding to a question from Chairwoman O'Connell, Mr. McGroarty stated that it is possible that in this hypothetical situation, the owner could be liable for negligence torts if it is determined that the statutory employer is the subcontractor. Continuing, Mr. McGroarty stated that there are other theories in law that could allow a claimant to reach the owner, and a proper explanation of this issue is not being provided by SIIS to owners of OCIP projects. Mr. McGroarty indicated that it was his understanding that when an owner raises this issue with SIIS, he or she is sent copies of a case which does not apply to the owner's question.

Mr. Ormsby responded to the issues raised by Mr. McGroarty, covering the following points:

- When SIIS was initially approached to participate in an OCIP, he researched the issue and determined that there was no legal prohibition to entering into this type of contract in the State of Nevada.
- Responsibility for payment of claims is clearly set forth in the contract.
- Mr. Ormsby is aware of one instance in which a subcontractor has complained about the requirement of filing a Form C-3, and SIIS has proposed several alternatives.
- Case law regarding exclusive remedy is open, and it is the position of SIIS that exclusive remedy will apply.
- He is unaware of any problems with any injured worker under an OCIP in the State of Nevada.

Chairwoman O'Connell inquired if the OCIP contracts being entered into by SIIS are different than those in other states in that they deal strictly with workers' compensation insurance. Mr. Ormsby explained that SIIS's contracts with the owner pertain exclusively to the owner's workers' compensation liability. Continuing, he stated that OCIPs are provided for in the NCCI filing which was adopted by the Commissioner of Insurance. While those rules do not go into effect until July 1, 1999, it is the position of SIIS that the acceptance of the NCCI filing is an indication that any insurer can enter into an OCIP as of July 1, 1999.

Mr. Ormsby stated that the "tail" refers to a situation which occurs when the appropriate premium is not charged and an employer leaves the System to become self-insured, leaving the claims behind with the carrier.

Concern was expressed by Chairwoman O'Connell that SIIS is setting aside adequate reserves for claims arising from OCIP projects, particularly given the fact that OCIPs are in force only for the term of the contract or project. Mr. Ormsby indicated that the SIIS is confident that it is pricing the OCIP project appropriately to cover the expenses

associated with any work-related injuries or illnesses arising during the policy period.

Referring to earlier Committee discussion, Mr. Ormsby stated that the responsibility for rate setting rests with SIIS's General Manager. The recent application of SIIS to lower rates was approved by the Commissioner of Insurance. Factors that assisted in SIIS's recovery over the past five years were employers staying with SIIS, increased safety consciousness, improved claims management, reduction in claims costs, and reduction in the number of claims, much of which is directly attributable to the efforts of employees and employers.

Committee discussion ensued regarding a statute which prohibits an employer that has left SIIS from becoming reinsured by the System until after July 1, 1998. Mr. McGroarty alleged that employers who are insured by SIGs are being required to leave the SIGs and rejoin SIIS in order to participate on OCIP projects. Sue S. Matuska, Deputy Legislative Counsel, Legal Division, LCB, confirmed that there is a provision of law which provides that if a member of an association or a self-insured employer was a member of SIIS and terminated its membership, it is not to be reinsured by SIIS until after July 1, 1998. She pointed out, however, that in the instant case, it is not clear if the employer is actually terminating its coverage. Mr. McGroarty remarked that he was unaware of any authority which would allow an employer to be insured by both SIIS and a SIG.

Mr. Ormsby agreed that a subcontractor working for an owner under an OCIP has a contractual obligation to open a policy with the SIIS if it is a member of a SIG. Referencing Ms. Matuska's testimony, he also acknowledged that there is a statute which provides that if a SIG member voluntarily terminates its membership in the group, it cannot return to the SIIS for two years. He pointed out, however, that statute does not prohibit an employer from being a member of a SIG while having a policy with the SIIS, and opined that the statute referenced by Ms. Matuska would not pertain to a SIG member who chooses to bid on a project. Continuing, he observed that the issues raised by Mr. McGroarty are competitive and financial in nature. If SIIS provides coverage under an OCIP and the contractor chooses not to pay the SIG for coverage that it will not exercise, the SIG will lose money.

Raymond O'Donnell

Raymond O'Donnell, CIWCG, and the Las Vegas Chapter, AGC, Las Vegas, shared his views regarding OCIPs, covering the following points:

- Owner-controlled insurance programs are not available in all jurisdictions. In those states that do permit OCIPs, the legislatures have set the parameters which a project must meet (e.g., the term of the project and minimum construction value) in order to be eligible for that type of program.
- He suggested that the Committee may find it helpful to consider how other states deal with OCIPs.
- Referring to Mr. Ormsby's statement that Nevada law does not prohibit OCIPs, he pointed out that there is also no enabling legislation permitting such programs.
- Nevada contractors are being forced to compete in a business environment which allows OCIP projects to operate without regulation.
- He urged open hearings on OCIP issues during the 1999 Legislative Session. In the meantime, contractors will seek clarification of these issues through the courts.

J. Michael McGroarty

Addressing Mr. Ormsby's earlier statement that there will be no "tail" if the project is properly priced, Mr. McGroarty made the following points:

- It is his understanding that SIIS is offering owners more favorable rates than a new owner could obtain from SIIS on the open market under a guaranteed rate.
- Because the common incentives that keep workers' compensation costs low (such as drug testing and safety programs) are absent on OCIP projects, subcontractor claims are more expensive to administer.
- Inasmuch as the OCIP terminates upon completion of the project, there is no incentive for the subcontractor to

assign an employee to light duty. He is of the opinion that this will result in an increased need for rehabilitation programs for OCIP projects.

- He is also of the opinion that OCIPs are more expensive to administer than ordinary workers' compensation programs and charged that SIIS is utilizing predatory pricing tactics.
- It is his position that OCIPs should be regulated by the State of Nevada.

Continuing, Mr. McGroarty alleged that he had been threatened with a lawsuit if he testified before the Committee. Mr. McGroarty detailed the incident as follows:

- Shortly before the Committee's meeting commenced, a representative of a multistate broker that has interests in current OCIPs to which SIIS is a party and in future OCIPs, approached him and asked if he planned to testify before the Committee. When he responded affirmatively, the broker threatened to file a lawsuit against him for conflict of interest and to hurt his business.
- While talking to the multistate broker's representative, a local broker joined him. The local broker outlined some of the difficulties he had encountered working on an OCIP and indicated that he would be testifying before the Committee that afternoon.
- Thereafter, the multistate broker's representative threatened the local broker with loss of business and other unfair trade practices if he gave testimony to the Committee.

Mr. McGroarty acknowledged that the threat by the multistate broker's representative may have been an isolated incident, but cautioned that it could also be a preview of the type of business tactics that will be used once multistate individuals are working full time in the State of Nevada in 1999. He urged the Committee to carefully analyze the provisions of NRS Chapter 686A, "Trade Practices and Frauds; Financing of Premiums," governing unfair trade practices to ensure that the Commissioner of Insurance has the authority to take the necessary steps to control businesses that engage in these activities. He also suggested that the Committee put this issue on the agenda for its next meeting.

Chairwoman O'Connell stated that the Committee would not tolerate the type of behavior described by Mr. McGroarty and encouraged the local broker who was allegedly threatened, if still in the room, to contact either a committee member or his legislator so that the Committee could consider his concerns. She also requested that the Committee's secretary prepare a verbatim transcript of the testimony regarding OCIPs.

Mr. Ormsby was of the opinion that Mr. McGroarty's statement was "outrageous" and indicated that he had no knowledge of the identities of the persons to whom Mr. McGroarty referred. He also requested a copy of the verbatim transcript regarding OCIPs.

Gary D. Goerz

Gary D. Goerz, Sedgwick, Incorporated and Sedgwick of Nevada, Las Vegas, spoke in favor of maintaining the status quo with respect to wrap-ups until July of 1999. He provided the Committee with a summary of his testimony (Exhibit J) and covered the following points:

- Sedgwick is the third largest insurance broker in the world and maintains offices in Las Vegas and Reno, Nevada.
- A wrap-up, also known as an OCIP, is an insurance program that reverses the traditional method of providing insurance for a construction project where each contractor provides its own insurance, and replaces that with one program provided by the owner of the project.
- Wrap-ups have been in existence for approximately 30 years. The first major wrap-up was the Bay Area Rapid Transit Project (BART) in the San Francisco, California, Bay Area, for which Sedgwick was the broker/administrator.
- It is the position of Sedgwick that wrap-ups provide a number of benefits. These benefits include the following:

1. A substantial reduction in the cost of a risk transfer to the owner;
2. Reduced taxpayer expense for public projects such as airports, roads, schools, sewer systems, and stadiums as a result of decreased construction costs;
3. Reduced costs to private owners for construction projects such as factories, hotels, and shopping centers as a result of decreased construction costs;
4. Increased opportunity for small and minority contractors to compete for projects on which they would otherwise be unable to meet the minimum insurance requirements;
5. A safer construction project with fewer injured workers;
6. Safer construction projects for the public in construction areas, such as sidewalks;
7. Reduced litigation costs and fewer cross-complaints leading to a higher probability that claims will be settled amicably, thus reducing the burden on the judicial system; and
8. Reduced burden on public and private agencies for employees and members of the public injured by uninsured contractors.

Charles L. Halsey

Charles L. Halsey, Senior Vice President, J&H Marsh & McLennan, Las Vegas, also spoke in favor of allowing OCIPs in Nevada. He stated that the most valuable benefit of OCIPS is that they reduce taxpayer spending on public projects. As an example, he cited a public entity in Arizona which saved in excess of \$20 million through reduced workers' compensation premiums. Continuing, he stated that SIIS has not pursued J&H Marsh & McLennan for wrap-up business; rather, his clients have requested that he approach SIIS to participate in OCIPs. Mr. Halsey concluded his remarks, indicating that as a Nevada resident, he does not want SIIS to fail.

Kenneth S. Caldwell

Kenneth S. Caldwell, Senior Vice President, Aon Risk Services, Construction Services Division, Los Angeles, California, also spoke in favor of OCIPs, covering the following points:

- Aon Risk Services is the largest broker of construction risk globally and represents over 3,000 contractors nationally. It is currently involved in 105 OCIPs, 20 of which are in the Western United States.
- He manages Aon Risk Services' OCIPs for the Western United States. In coordination with the AGC, the public entity risk managers of California, and labor, he helped orchestrate the California legislation which repealed the prohibition against public entities participating in wrap-ups.
- He approached the SIIS on behalf of the Venetian hotel/casino project in Las Vegas.
- He concurred with Mr. Ormsby's assessment that the SIGs' opposition to OCIPs is a financial issue in that the SIGs are losing premium on OCIPs. He is of the opinion that the impending competition from private carriers presents an even greater threat to the future of SIGs.
- He opined that Mr. McGroarty's testimony describing wrap-ups was fairly inaccurate. Simply put, on an OCIP project, the owner of the project pays for the insurance policy in lieu of the contractor. In other states, it is not uncommon to have one carrier provide the owner with general liability coverage and another provide the workers' compensation coverage, or to have one carrier provide multiple lines of coverage on an OCIP project.

Chairwoman O'Connell inquired if OCIPs are regulated in other states. Mr. Caldwell indicated that he is of the opinion that OCIPs are regulated in approximately half of the states which allow them, and offered to provide the Committee with the national statistics at a later time. Mr. Goerz pointed out that a few states prohibit wrap-ups for public entities. He also observed that regulation of OCIPs most often is through the state insurance commissioners,

and that they must meet the same requirements as any other type of construction project.

Mr. Caldwell continued his presentation, discussing the following topics:

- Workers' compensation in Nevada is statutory, and employers are responsible for the health and safety of their employees. These responsibilities include completing workers' compensation claim forms and providing safety programs for their employees.
- On a typical wrap-up project, the owner develops a list of project safety standards which each contractor must meet. In addition, each employee who works at the site is put through a safety orientation.
- In the case of the Venetian, there are six extra safety resources provided on site to monitor the contractor's and the subcontractors' compliance with the safety standards. A first aid clinic is located on the site, and SIIS has employed a full-time construction safety officer to work on the project.
- He read into the record an article which appeared in the February 16, 1998, issue of *Business Insurance* titled, "Savings may pay for schools, Owner-controlled insurance also helps small contractors." Please see Exhibit K.

Senator Shaffer asked Mr. Caldwell if he had heard any threats made prior to the Committee's meeting. Chairwoman O'Connell announced that interfering with the legislative process is a criminal offense and expressed her intent to further pursue this issue. Mr. Caldwell made the following comments:

- Mr. McGroarty was retained to represent the Kaercher-Aon joint venture in developing the Venetian wrap-up project to prove to the State of Nevada, the DOI, and the SIIS that wrap-ups are legal.
- Prior to the Committee meeting, he had a conversation with Mr. McGroarty in which he indicated that because Mr. McGroarty is now representing opposing interests, he is of the opinion that Mr. McGroarty had conflicting interests.
- He is also of the opinion that he has the right to contact the ethics board which oversees the conduct of attorneys in Nevada to inquire whether or not Mr. McGroarty's conduct is proper.

G. Wayne Harris

G. Wayne Harris, Administrator, Nevada Contractors Network (NCN), Las Vegas, and Chairman, USA Risk Services, Inc., Sarasota, Florida, shared his views regarding OCIPs, covering the following topics:

- The NCN is a SIG composed of approximately 350 Nevada contractors that employ approximately 18,000 workers.
- In addition to serving as Administrator of the NCN, he also manages SIGs in other states and serves as a managed care operator, managing general agent, and third-party administrator for several national insurance companies.
- Wrap-ups are a good product for private carriers but inappropriate for a state agency such as the SIIS. He pointed out that if reserves are inadequate or if a claim is reopened after the project is completed, the loss must be covered by the insurance company. In the event either of these circumstances was to occur on a project on which SIIS is the carrier, SIIS could face significant future expense, and its policyholders would bear the weight of those costs.
- Likewise, retrospective plans are a good product for private carriers but not a state agency. He questioned the fairness of placing 20 large employers with \$2 million in premium in a segregated plan with a potential refund of 60 percent but not offering the same type of product to 200 smaller employers with \$2 million in premium. This is particularly germane in Nevada where, if there is a reserve change, SIIS does not obtain funding from the members of the retrospective plan but rather from all of its policyholders.
- The NCN is in its third year of operation and has a very extensive safety program. No fatalities have been suffered.

Senator Shaffer asked what would occur to an injured worker whose condition changed after completion of a project. Mr. Harris explained that a typical wrap-up contract has a closure date, and after that closure date, the carrier can no longer obtain additional funds from the contractor.

Assemblyman Hettrick questioned whether any members of the NCN had participated in wrap-up projects, and if so, if the NCN rebated a portion of the premium to those members while they were working under the wrap-up policy. Responding, Mr. Harris covered the following points:

- NCN members who have worked on wrap-up projects have maintained their membership in the SIG.
- It is the position of the NCN that it was created to aid its members. As such, if a member certifies its payroll to the NCN and identifies those employees who are working on a wrap-up project, the NCN does not require the contractor to pay premium on that payroll. Thus, the contractor could have coverage with two entities, the NCN and the SIIS.
- This dual coverage does create some issues. For example, if an employee works half a day on a wrap-up project and half a day on another project, the SIG could end up covering the claim without the benefit of receiving premium on that employee's payroll.
- A contractor must also be careful to provide prompt notification of any changes in employee job assignments. Confusion and disagreement could arise if a contractor failed to notify the SIG that an employee finished working on a wrap-up project one day and was assigned to another job site the following day.

Allen Kaercher

Allen Kaercher, President, Kaercher Insurance, Las Vegas, noted that a primary benefit of wrap-ups is a decrease in construction expense averaging 1 percent to 3.5 percent. In addition, wrap-ups provide an opportunity for smaller contractors to bid on large projects. He suggested that the Committee consider establishing a minimum project size for future projects.

Jim Schober

Jim Schober, Chief Operating Officer, Kaercher Insurance, Las Vegas, discussed wrap-up projects, covering the following topics:

- He has 28 years of experience in the workers' compensation area and provided assistance to the AGC in setting up its SIG.
- Historically there has been a conflict between contractors and owners. On a typical project, a contractor has the potential of receiving a refund in premium if it completes the job with a good safety record. This benefit is not available to a contractor on a wrap-up project.
- He recommended that the Committee establish some guidelines to govern the operation of wrap-up projects.
- Wrap-ups bring the private sector and public entities together, providing jobs for private contractors and cost savings to the taxpayers.

PUBLIC COMMENT

Danny Thompson

Mr. Thompson, previously identified on page 12 of these minutes, referenced the recent explosion at the Sierra Chemical Company which killed four employees. Two of the four bodies were returned to Mexico, the employees' country of origin. The families of the two men whose remains were returned to Mexico were informed that NRS Chapter 616C.505, "Amount and duration of compensation," prohibited the transportation of those men's remains

outside the border of the United States and were advised that they would need to make arrangements to have the remains collected at the border. Mr. Thompson observed that this incident damaged relations with the Hispanic community, and he urged the Committee to propose legislation removing the transportation restriction.

Lenard Ormsby

Mr. Ormsby requested the testimony regarding OCIPs be transcribed verbatim in its entirety.

William Matlock

William Matlock, an injured worker, of Reno, related his view of his recent experience with a self-insured employer, covering the following points:

- He provided background information on his workers' compensation claim as follows:
 1. He was employed from April 1988 until May 12, 1997, by the Santa Fe Pacific Gold Corporation (Santa Fe), a self-insured company. During the last week of his employment, Santa Fe merged with Newmont Gold Company.
 2. He suffered a work-related back injury in August 1995 and filed a workers' compensation claim. The claim was accepted by Santa Fe and its plan administrator, CDS of Nevada. However, Santa Fe took the position that the injury was a recurrence of a prior work-related back injury which occurred in May 1991 (when Santa Fe was insured with SIIS) and instructed him to reopen his old claim with SIIS.
 3. The reopening his SIIS claim involved a lengthy administrative process, during which time Santa Fe refused to provide a diagnosis of his injury or treatment while he continued to work.
 4. Although Santa Fe had knowledge of his back injury, it continued to require that he perform heavy lifting. His condition worsened in January 1996 while performing such duties.
 5. Thereafter, Santa Fe continued to deny him treatment. He secured the services of a doctor recommended by Santa Fe and made arrangements for payment outside of workers' compensation. A week after seeking treatment, CDS of Nevada initiated an action to close his claim. It based its action on two facts: (a) six months had passed without any medical care under workers' compensation; and (b) it had paid less than \$500 in claims. He noted that at that time, CDS was aware that he had incurred medical expenses of approximately \$1,500 for diagnostic tests, which it had refused to pay. The action of CDS took place two weeks before a state hearing to determine claim liability.
 6. On March 7, 1996, he learned that he had suffered a disk rupture, disk tear, and compressed nerve, and injections and intense physical therapy were prescribed. When questioned by his doctor, he indicated that he wished to continue working within the limitations of his treatment program. Work restrictions were prescribed, and the doctor advised him that if his condition did not improve, he would require back surgery.
 7. On March 11, 1996, Hearing Officer Elaine A. Cunningham, Hearings Division, Nevada's Department of Administration, found that Santa Fe had violated Nevada statute by refusing him diagnosis and treatment of the injury and ordered Santa Fe to provide him with those services immediately.
 8. In its reply, CDS admitted to him that it was cognizant of the law and offered rationalizations regarding its action.
 9. Shortly thereafter, management of Santa Fe became hostile towards him, and his employment was terminated on April 24, 1996. He was presented a settlement and release document which he did not sign. Thereafter, on April 25, 1996, he was informed that he was terminated due to a reduction in force, not his back injury. No reduction in force ever occurred, and about ten days

later he was reinstated at work.

10. In January of 1997, a manager at Santa Fe informed him that Santa Fe should not be liable for his workers' compensation claim as too much time had elapsed since his original injury. In addition, he was advised that Santa Fe did not anticipate that he would survive a merger with another company.

11. On May 6, 1997, his employment with Newmont Gold Company was terminated, ostensibly due to a reduction in force.

12. Since that time, he has been given a 10 percent permanent partial disability and released from medical care by his treating physician.

13. Through determination letters, Newmont has denied continued medical benefits that are necessary to maintain his stable condition and rehabilitation benefits. Newmont lost both of these determinations before the Hearing Officer and has appealed those decisions. However, Newmont has requested two continuances and has failed to respond to his discovery motion and provide evidence that it did in fact have a reduction in force. He has evidence to support his position that Newmont was expanding at the time of the merger.

- He has learned that injured workers, particularly those employed by self-insured employers, are encountering widespread difficulties with their workers' compensation claims. He praised the efforts of the NAIW in representing him, but noted that it is short of money and personnel.
- Staff of the NAIW and the DIR have informed him that the difficulties he has experienced with his workers' compensation claim are commonplace.
- The Attorney General Office's Workers' Compensation Fraud Division has indicated to him that it primarily investigates employees who attempt to defraud the system, not employers. He thanked Ms. Stafford Jones for her assistance in providing him with copies of the statutes pertaining to employer fraud and indicated that he had delivered that information, along with supporting documentation, to the Workers' Compensation Fraud Unit for investigation.
- Self-insured employers have successfully protected themselves from liability for civil actions arising from violations of workers' compensation laws.
- He offered the following suggestions for improving the workers' compensation system:
 1. Expand the resources of the NAIW so that it may provide injured employees with advice earlier in the claims process, for instance when a claimant has a question about a determination letter;
 2. Require that third-party administrator representatives be licensed;
 3. Require that persons who supervise adjusters be licensed so that if an adjuster engages in improper conduct and the supervisor fails to take appropriate action, remedial action can be taken;
 4. Earmark the fees obtained from licensing third-party administrator representatives and persons who supervise adjusters to help fund the expanded service of the NAIW;
 5. Increase penalties to deter employers from violating the law;
 6. Explore additional protections for Nevada injured workers in statute; and
 7. Explore whether or not criminal charges may be brought against employers who commit workers' compensation fraud.

Jack McClary

Jack McClary, Chairman, Board for the Administration of the Subsequent Injury Fund for Associations of Self-Insured Public or Private Employers, DIR, Nevada's Department of Business and Industry, Las Vegas, expressed outrage that someone would threaten a citizen who wished to testify before the Committee and strongly urged the committee members to remain mindful of the unconscionable behavior of that person when considering the testimony.

Speaking in his individual capacity and not on behalf of the Board he chairs, Mr. McClary suggested that legislation be introduced to eliminate the subsequent injury fund. He is of the opinion that the Americans With Disabilities Act provides adequate protection to workers and that NRS 616B.575, "Subsequent injury fund for associations of self-insured public or private employers established; purpose, disbursements; investments; assessment rates, payments and penalties," should be repealed.

Mary Jane Wirges

Mary Jane Wirges, Vice President, Horizon Comp Care, Las Vegas, reported that her organization is operating the first aid station at the Venetian project, and she is proud of the results. Many minor injuries are taken care of at the first aid station. In addition, the medical director visits the station once a week to follow up with any workers who have been injured so that they do not have to leave the job site to visit the doctor's office.

There being no further business to come before the Committee, Chairwoman O'Connell adjourned the meeting at 5:30 p.m.

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Respectfully submitted,

Susan Furlong Reil

Research Secretary

APPROVED BY:

Senator Ann O'Connell, Chairwoman

Date:

LIST OF EXHIBITS

Exhibit A is a document titled "Presentation to the Legislative Committee on Workers' Compensation, February 20, 1998, Time Line for Implementation of Three-Way Insurance," provided by Melissa Stafford Jones, Senior Research Analyst, Research Division, Legislative Counsel Bureau.

Exhibit B is a document titled "State of Nevada, Department of Business and Industry, Division of Industrial Relations, Proof of Coverage & Claims Information Flowchart, Current Information Flow," provided by Ron Swirczek, Administrator, Division of Insurance, Nevada's Department of Business and Industry.

Exhibit C is a document titled "State of Nevada, Department of Business and Industry, Division of Industrial Relations, Proof of Coverage & Claims Information Flowchart, Proposed Information Flow, July 1, 1999," provided by Ron Swirczek, Administrator, Division of Insurance, Nevada's Department of Business and Industry.

Exhibit D is a document titled "Workers' Compensation Three-Way Task Force Education Subcommittee Status Report," dated February 20, 1998, together with an attached brochure titled, "Employers, Frequently Asked Questions Regarding Nevada's Workers' Compensation Insurance," dated February 1998, provided by Ron Swirczek, Administrator, Division of Insurance, Nevada's Department of Business and Industry.

Exhibit E is a document titled "Workers' Compensation Three-Way Task Force Regulation Subcommittee Status Report," dated February 20, 1998;

Exhibit F is a document titled "Workers' Compensation Three-Way Task Force Information System Subcommittee Status Report," dated February 20, 1998, provided by Ron Swirczek, Administrator, Division of Insurance, Nevada's Department of Business and Industry.

Exhibit G is a document titled, "National Council on Compensation Insurance, Inc., NCCI, Presentation to Nevada Senate Workers Compensation Committee," dated February 20, 1998, provided by Maggie Karpuk, Director, Government Affairs, NCCI, Agoura Hills, California.

Exhibit H is a newsletter titled "POC talk," dated 4th quarter 1997, provided by Magda (Maggie) Karpuk, Director, Government, Consumer & Industry Affairs, Western Region, NCCI, Agoura Hills, California.

Exhibit I is a verbatim transcript of the testimony given on the topic of owner-controlled insurance programs at February 20, 1998, meeting of the Legislative Committee on Workers' Compensation.

Exhibit J is an undated letter to the Legislative Committee on Workers' Compensation from Sedgwick, Inc. regarding wrap-ups, provided by Gary D. Goerz, Sedwick of Nevada, Inc.

Exhibit K is a copy of an article which appeared in the February 16, 1998, issue of *Business Insurance* titled, "Savings may pay for schools, Owner-controlled insurance also helps small contractors," provided by Kenneth S. Caldwell, Senior Vice President, Aon Risk Services, Construction Services Division, Los Angeles, California.

Exhibit L 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.