

Management Labor Advisory Committee  
February 7, 2003  
Room 260 Labor & Industries Building

Members Present:

Bob Shiprack, Oregon Building Trades Council, Tualatin, OR  
Brad Witt, Oregon AFL-CIO, Salem, OR  
Lisa Trussell, Associated Oregon Industries, Salem, OR  
Ken Hector, CNF Service Company, Portland, OR  
Sheri Sundstrom, Hoffman Construction Company, Portland, OR  
Mike O'Rourke, Plumbing & Steamfitters UA 290, Tualatin, OR  
Diane Janzen, NorPac Foods, Lake Oswego, OR

Members Absent:

John Kirkpatrick, IUPAT District Council #5, Portland, OR

Members of the Public and Special Guests present:

Todd Hennelly, OCWCT/OEEWCT/ONET, Lake Oswego, OR  
Rosie Neilz, Schnitzer Group, Portland, OR  
Linda B., Schnitzer Group, Portland, OR  
Shawn Miller, Liberty NW, Salem, OR  
Roger Pearson, Workers' Compensation Board, Salem, OR  
John McCullough, Workers' Compensation Board, Salem, OR  
Fred Van Natta, Liberty NW, Salem, OR  
Steve Cotton, OSB/Leg. Com., Salem, OR  
Mike Taylor, NCCI, Portland, OR  
Chris Moore, OSB, Leg. Com., Eugene, OR  
Teresa Miller, OWCA Policy Group, Salem, OR  
Ernest Delmazzo, Injured Workers' Alliance, West Linn, OR  
Scott Wroot, Injured Workers' Alliance, Lebanon, OR  
Brian Daniels, Injured Worker Support, Lebanon, OR  
Lana Butterfield, SAFECO, Wilsonville, OR  
Bonnie Jones, SEIU, Vancouver, WA  
Chris Davie, SAIF, Salem, OR  
15 additional members of the public who did not sign in

Mary Schwabe  
Cathy Ostrand  
Nancy Bieber  
John Shilts  
Mike Manley

JL Wilson brought the meeting to order

Committee Business

Adoption of Committee Minutes:

The minutes were adopted by the committee as submitted with no changes.

### **PPD Legislation**

Meg Reinhold: It is my understanding that we have a consensus on LC311 with an addition of a sunset date of December 31, 2007. Meg reviewed the content of LC311. It removes tiers, adds in state average weekly wage. There will be an additional phrase added so that it will sunset in 2007 so that the 2007 legislature will be able to review it at that time and decide if it is working well.

The committee was given a chart identifying issues relating to the implementation of LC311. The committee briefly discussed it and decided that the PPD subcommittee will get back together to discuss the issues.

Without objection the committee submitted LC311 to be drafted as a bill to be presented to the legislature.

Lisa Trussell: Informed the committee that she has received several communications on issues related to the concept. She will submit them to the subcommittee to be discussed at their meeting.

### **SB233**

Mary Schwabe, Workers' Compensation Division, Gave the committee an over view of SB233 the bill address the following issues:

1. Clarify proof of coverage language in the statutes to eliminate inconsistencies and help facilitate transition to electronic reporting;
2. Clarify the status of the Assigned Claims Agent for noncomplying employer claims as an independent contractor;
3. Add efficiency and fairness in the service of agency orders;
4. Allow the agency warrant authority in efforts to increase collections against noncomplying employers; and
5. Provide increased protections to reduce the financial exposure to public funds in the event of insolvency by self-insured employers.

K. Hector: On the securities issue will you address by rule the people that fall into the 18%?

M. Schwabe: A phrase will be added that says it is applied to those on or after a specific date.

Meg Reinhold: Introduced Cory Streisinger, new director of DCBS

Cory Streisinger: Expressed how much the department appreciated the efforts of the MLAC committee. Regarding the issue of committee approving legislation, the Governor Kulongoski has asked that the committee continue the same approach that was followed under Governor Kitzhaber.

The committee voted unanimously to pass on SB233 with the phrase added as an amendment with a do pass recommendation.

### **SB234**

Nancy Beiber, Workers' Compensation Division

SB 234 eliminates the requirement that this committee review the emergency temporary rules. N. Beiber gave a brief explanation of the bill.

There were No questions or comments from the committee.

The committee voted unanimously to pass on SB234 with a do pass recommendation.

### **SB63**

Overview of the bill given by Chris Moore, OSB Leg. Comm., Eugene, OR

Presented to the committee the same testimony that had been given at the Wednesday hearing with Senate Business. Under this bill the request for a hearing would be assigned to an administrative law judge immediately. It allows the administrative law judge to not set the hearing any sooner than necessary, allowing all parties time to prepare. There would be no multiple resets of the hearings. It would save money by not having to prepare multiple times with reset hearings that end up having to be postponed. The Legislative Committee of the OSB operates on consensus and we all agree that this is a reasonable solution. The bill does not affect the department's ability to designate a paying agent. It allows the claim to be processed with who ends up paying the bill to be sorted out at the end.

Ken Hector: Questions about the bill. Currently an attorney can collect a fee if they meaningful participate by joining all parties, filing a hearing request, and presenting evidence as to who is responsible to pay. Now we are going to shift one of the paths to an ALJ when it is currently the responsibility of the attorney to do it. If we are going to do that then the attorney should not get a fee solely on a responsibility issue. I could not support it the way it is crafted.

JL Wilson: Other comments?

Bob Shiprack: If this clarifies the responsibility issue, then I am all for it because often times an individual simply fails to list all of the employers they worked for in a timely manner and then it is thrown out. It may not be an issue of compensability but an issue of who pays. I would be interested in simplifying the responsibility issue.

JL Wilson: We look for direction from the committee. My inclination is to take inventory of thoughts from the committee members in the next few days and then address it at the next meeting.

Chris Moore: My understanding of what this bill would do is not put the responsibility on the ALJ but the attorney would still have the responsibility. The judge would be there to set a timeline. And then the judge would set who has responsibility. It would still be up

to the attorney to join the parties, file the request and present evidence. It would also would cover multiple insurers where there is a compensability denial.

JL: I Would like the committee to review this and address it at the next meeting.

Meg Reinhold: Passed out a chart that gives an overview of the bills out there right now. The department will sent out a similar chart to the committee once a week so that the committee can decide which bills will be discussed at the meetings.

### **SB285**

Lisa Trussell: This bill addresses a situation that arose when the evaluation section of WCD was eliminated. There used to be two avenues to have a claim closed. The carrier could close themselves or the claim could be sent to the department to be closed. If the carrier closed the claim they send in a notice of closure. If WCE closed the claim it was called a determination order. On a determination order any of the parties could appeal it. In 1999 we eliminated the evaluation unit and with it the determination order. Under the notice of closure language that had existed historically the only one that could appeal the closure was the worker. This bill would allow the self-insured employer to appeal the closure just as they could the determination order.

Bob Shiprack: Asked for clarification on why a carrier would want to appeal its own closure.

Lisa Trussell: There is a requirement to use the attending physicians report to close. One of the reasons for eliminating evaluation was that it didn't matter who evaluated you would have the same report. There are times when the carrier or self-insured employer does not agree with the findings of the attending physician. It would be then that you might want to appeal the closure.

Ken Hector: Not only do you have to close, but there is a short time frame that doesn't allow time to disagree or seek an alternative opinion. That is the reason why you would want to request reconsideration of your own closure.

There was a brief discussion by committee members.;

Brad : I would appreciate hearing from others about it.

Linda, Oregon self-Insured Association: The ability to close the claim at the state gave ability to appeal. Sometimes there are questions about the medical opinion. There is currently no recourse to appeal. This gives an opportunity to question the medical report.

Lisa Trussell: Rather than having it not successful I would like to bring it back at the next meeting. What was happening was that when the claims closer had a question about the medical evaluation they sent it in to the department. We are just asking for the opportunity to appeal that closure by sending it to reconsideration process.

JL Wilson: Other questions or comments? The bill will be put on the agenda of the next meeting to allow time to review the bill before any action is taken.

**SB286**

Lisa Trussell: This bill puts into statute something that we thought was generally accepted. The WCB is made up of representatives that represent labor, 2 management and then a public member. In the past, panels review always had labor and management and the public member was the tie breaker. There was a point in time when both of the management positions happened to be vacant. At that time the board made the decision that a panel was any three members. You then could have 2 labor people and a public person deciding the case. A majority could then be two labor representatives even if the public person decided against. The bill will need some change. The issue was raised by the department that it is not clear that you have to have a majority for a decision.

JL Wilson: Questions or comments?

Brad Witt: I like the concept. The only question is there any question that the language does not allow for setting the case aside if there is not a third person?

Bob Shiprack: Is the board working on some technical or legal issues?

Lisa: WCD had some comments in the analysis that they did. We want to make sure that it is clear that you need at least two in a panel of three to agree. Also the point the Brad brought up.

Bob: We want to make sure that it works for the board.

JL Wilson: Are there any comments from members of the audience?

Earnest Delmazzo: As we are talking about different backgrounds of understandings. I don't think the phrase "different backgrounds" is specific enough. It is not anywhere in statute. Where did this phrase come from?

JL: Good issue to bring up. That could be addressed by Legislative Counsel

Earnest: I see the potential for a lot of litigation. Mr. Delmazzo also mentioned SB334. I see no way that these can co-exist. I believe that there is another bill that addresses the number of people on the board. The committee needs to listen to them together.

JL Wilson: I would like to hold this over to the next meeting.

Ken Hector: I can understand Earnie's concerns. Sometimes it is a context matter. I think the statute clarifies the phrase.

Earnest: I see the main issue as a potential conflict with 334.

### **Workers' Compensation related court cases**

Cathy Ostrand-Ponsioen, Workers' Compensation Division

Briefly reviewed recent and current court cases relating to workers' compensation.

Safe Corp v. Lewis

Issue is how to interpret objective findings. Worker had filed a claim for exposure but did not go to the doctor until he was 70% recovered. The court of appeals held that there was no medical evidence of objective findings because the worker did not go to a physician until after he was 70% recovered. The supreme court overturned saying that the statute requires verifiable, not verified indications of injury.

Ms. Ostrand-Ponsioen gave handouts to the committee giving an overview of Koskela Line of cases and briefly reviewed the cases.

JL Wilson Questions?

Cathy Ostrand-Ponsioen: Reviewed Davis v SAIF with the committee and distributed an overview of the case to the committee. The case deals with whether or not a new medical condition claim gives rise to new aggravation rights.

### **Public Comments:**

Earnest Delmazzo: Would SB285 have any adverse effect on Koskela.? Was this in response to that case?

Lisa Trussesll: No this was in response to the need for appeal.

Earnest: I hope that MLAC would stay with Koskela.

### **Next meeting**

Thursday, February 20<sup>th</sup> at 1:30 pm

### **Other Business:**

Bob Shiprack: Ken Allen's term has expired. I have spoken to Bob Livingston with International Association of Firefighters. I have submitted his name to be appointed to the committee and would like to request that Meg follow up.