

MAR 4 - 2008

APPENDIX I

**SCHNEIDER, SCHNEIDER & SCHNEIDER**

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March 3, 2008

John Bjornson, Counsel  
North Dakota Legislative Council  
600 East Blvd. Avenue  
Bismarck, ND 58505-0360

**RE: Upcoming Legislative Council's Interim Industry, Business and Labor  
Committee Meeting Scheduled for March 5-6, 2008 at WSI**

Dear Mr. Bjornson:

On February 25, 2008, I received your invitation for me to attend the Legislative Council's Interim Industry, Business and Labor Committee Meeting scheduled for March 5<sup>th</sup> and 6<sup>th</sup>. You and I also briefly discussed this matter on the phone on Thursday, February 28, 2008. As we discussed, I will be unable to attend the meeting. Although I am unable to attend, I would appreciate it if you would include the following comments and concerns I have.

One cannot pick up a paper today without some sort of criticism of the workers compensation system we have in North Dakota and, particularly, WSI management. Only now, after more than a year of unending negative news about this agency and its disgruntled employees including literally dozens of editorials demanding change at WSI, has Representative Rick Berg, Chairman of the above Committee, found it "time" to address the countless concerns pertaining to WSI's management, North Dakota workers compensation laws and the abysmal treatment of the injured worker.

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As you are aware, the invitation I received was also received by Attorney Mark Schneider. I have had an opportunity to review the correspondence he has sent in response to the invitation. First of all, I completely concur with his concerns of your involvement in this Committee meeting. Certainly, as husband to WSI's chief-in house attorney, not only would it be impossible for you to be "objective", clearly you have a conflict. Regardless of what your intentions may be, it would be best for you and the Committee that you not participate in this meeting(s).

Regarding Chairman Berg, I have been around long enough to know that since the late 1980's Representative Berg has been one of the main facilitators of the so-called "reformers" of workers compensation in North Dakota. The wholesale changes that he was the architect of in 1995 are the main reasons the injured workers have suffered so terribly at the hand of WSI this past 13 years. Representative Berg is also largely responsible for the removal of the Governor as an overseer of WSI and essentially leaving WSI's actions to no one other than the WSI Board, which is only concerned with making sure that the employer's premiums in North Dakota remain the lowest in the country.

Apparently, Representative Berg has recently called for a new director at WSI. I could not concur more with that conclusion of Representative Berg, regardless of his motives. The interim director is too closely tied in with the previous director who has left the agency in shame (including an obscene buy out by the Board). Appointment of a new director who has no ties with the current agency appears essential. A recent Bismarck Tribune editorial, which was reprinted just this past Saturday in The Forum (March 1, 2008), echoed this move as a first needed step for the "...healing process [to] begin."

Time does not permit me to list all the numerous changes that are necessary to even the playing field for the injured worker with WSI. I concur with Mark Schneider's suggestion that the Committee should review and consider implementing the numerous changes recommended in the excellent Law Review article prepared by Attorney Dean J. Haas entitled *Falling Down on the Job, Worker's Compensation Shifts from a No-Fault to a Worker-Fault Paradigm*, 79 N.D.L.Rev. 204 (2003). Dean Haas, currently an Assistant Attorney General with the Attorney General's Office, has invaluable experience on both sides of the fence. I believe he was in-house counsel and a Special Assistant Attorney General for WSI (formerly North Dakota Workers Compensation Bureau) for more than 10 years. He then spent several years representing injured claimants. During his tenure with the Workers Compensation Agency, he undoubtedly appeared in front of the North Dakota Supreme Court more than any other attorney during that decade. Certainly, Mr. Haas is no "bleeding heart."

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However, Mr. Haas does understand the balancing that is supposed to occur with the Workers Compensation Act, and that of course is that an injured worker is given a no-fault system for benefits in return for not being able to sue his employer. As Mr. Haas correctly points out in his article, the bargain has been broken.

I have spoken with Mr. Haas as it pertains to this meeting, and he informed me that if he were invited by the Committee he would seriously consider attending. I hope such an invitation has been forwarded to Mr. Haas. I also spoke to Attorney Steve Little who has stated that he would appear in front of the Committee. Mr. Little has been a tireless warrior for injured workers for nearly 25 years. As is the case with Mark and me, Mr. Little has seen the derailment of this agency over the years and, more particularly, over the last decade. I am therefore pleased that Mr. Little has agreed to attend and to offer his invaluable insight to the Committee so that the healing process for what has occurred to injured workers can hopefully begin. I remain skeptical that this meeting is anything more than a "feel good" response to what is occurring, and that when the next legislative session begins in January 2009 the present day cries for change will be shoved aside and truly needed reform will be forgotten.

I am proud to state that I have probably represented over 1500 injured workers in the past 26 years. However, the numbers I am presently representing that are active cases have dwindled to just a few because of the legislative changes that have occurred which make it virtually impossible to assist those injured workers who are in more need of representation today than they were 15-20 years ago. If Representative Berg is sincere in looking into what best can be done to accomplish positive change for the injured worker, he can start out by committing his unequivocal support of the petition that will likely be on the next ballot placing the control of the agency once again under the leadership of the Governor. I truly believe that if Representative Berg were to announce his support for this first step in reforming this agency that it would go a long ways in insuring that the petition would pass and become law so that the Governor can start making positive changes even before the next legislative session.

I am anticipating that Mr. Haas will appear at this Committee meeting, and I am hopeful the Committee will listen to his concerns and what he has recommended in his Law Review article for positive changes. Additionally, Steve Little has my support in the changes that he will be requesting or addressing that are necessary at WSI. I have essentially told Steve Little that I would be grateful if he would be my "proxy."

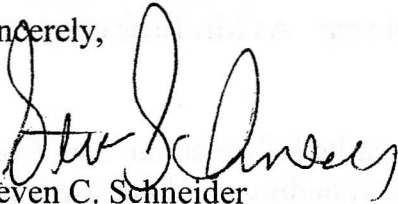


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Please attach this letter to the minutes of the meeting.

Sincerely,



Steven C. Schneider

Attorney at Law

jmd

cc: Steve Little, Esq.  
Dean Haas, Esq.  
The Forum, Attn: Pat Springer