

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

WORKERS' COMPENSATION REVIEW COMMITTEE

Wednesday, August 24, 2011

Workforce Safety and Insurance, 1600 East Century Avenue
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Gary R. Sukut, Chairman, called the meeting to order at 8:30 a.m.

Members present: Representatives Gary R. Sukut, Bill Amerman; Senators George L. Nodland, Mac Schneider, Rich Wardner

Member absent: Representative George J. Keiser

Others present: See [Appendix A](#)

TOUR

The committee toured the Workforce Safety and Insurance (WSI) office. The tour began at 8:30 a.m. and ended at approximately 9:15 a.m. The tour included a review of the activities of the customer service call center. Ms. Carla Usselman, Customer Service Unit, Workforce Safety and Insurance, said the calls the unit receives have been increasing due to oilfield development and flood-related issues. She said the unit resolves approximately 70 percent of the calls the unit receives and transfers the other 30 percent of the calls the unit receives.

The tour included a review of the Claims Department. Ms. Patsy Peyerl, Claims Department, Workforce Safety and Insurance, said a claims adjuster's average caseload is made up of 50 to 60 wage-loss claims and 280 to 340 medical-only claims. She said the caseloads are split by employer accounts, and the department has approximately 50 claims adjusters.

Mr. Tim Wahlin, Chief of Injury Services, Workforce Safety and Insurance, reviewed the activities of Injury Services. He said approximately 60 percent of all claims are filed online. Additionally, he said, the auto adjudication system allows some of those claims to be processed without a claims adjuster ever actually seeing the claim.

CLAIM REVIEW

Chairman Sukut resumed the meeting at 9:45 a.m. at the State Capitol in the Roughrider Room. He welcomed the committee members and called on committee counsel to review the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

Committee counsel stated the Workers' Compensation Review Committee is a statutory committee, created under North Dakota Century Code Section 54-35-22, and therefore differs slightly from

the typical Legislative Management interim committee. She said the statute provides the "committee shall operate according to the laws and procedures governing the operation of other Legislative Management interim committees."

At the request of Chairman Sukut, committee counsel reviewed the procedure and application forms used by the Workers' Compensation Review Committee during the 2009-10 interim. Committee counsel distributed a copy of the application packet ([Appendix B](#)) used during the 2009-10 interim and a copy of the letter ([Appendix C](#)) sent to members of the Legislative Assembly to notify them of the activities of the Workers' Compensation Review Committee.

Committee counsel said if the committee follows the pattern of the previous Workers' Compensation Review Committees, it is likely the committee will be scheduling meetings across the state to accommodate injured employees having their claims reviewed.

In reviewing the application procedure, committee counsel said the proposed application packet includes a cover letter explaining the application process and eligibility requirements, a copy of Section 54-35-22, a "Release of Information and Authorization" form, and a "Review Issue Summary" form.

Committee counsel reviewed Section 54-35-22, including the statutory requirement the committee meet once each calendar quarter or less often if the committee chairman determines that meeting is not necessary because there are no claims to review, the statutory eligibility requirements for claim review, the open meeting provisions, and the confidentiality provisions. She said traditionally the committee has considered how best to notify the public of the committee's activities in order to solicit injured employees to have their claims reviewed, and reviewed confidentiality issues and discussed how to protect the confidentiality of the WSI records of injured employees.

Committee counsel said in the past the committee has posted the application packet on the legislative branch website, informed the AFL-CIO, WSI, and the State Bar Association of North Dakota of the online application packet and has notified all legislators of the committee's charge. Additionally, she said, during previous interims the committee has made an affirmative decision to hold committee hearings near

the location of the injured employees having their claims reviewed by the committee. She said in considering whether steps could be taken to improve notification, the committee may wish to consider also notifying the North Dakota Chamber of Commerce.

Committee counsel said in the past the committee adopted the following procedure to determine eligibility for claim review and to prepare the injured employee for the committee meeting at which the claim was reviewed:

1. An injured employee would submit to the Legislative Council office a complete "Release of Information and Authorization" form. In addition, the applicant could submit a "Review Issue Summary" form on which the applicant could summarize the issues the applicant wanted the committee to review.
2. Upon receipt of a completed application, the Legislative Council staff forwarded a copy of the application information to an assigned ombudsman at WSI who reviewed the application to make a recommendation regarding whether:
 - a. The applicant was an injured employee or the survivor of an injured employee;
 - b. The workers' compensation claim was final; and
 - c. All of the administrative and judicial appeals were exhausted or the period for appeal had expired.
3. Following this review, the WSI ombudsman contacted committee counsel to provide a recommendation regarding eligibility for review. Upon receipt of this recommendation, committee counsel contacted the committee chairman to make a determination of eligibility.
4. Upon a determination of eligibility, the injured employee was contacted by committee counsel and the ombudsman to begin the case preparation.
 - a. Regardless of whether the injured employee accepted the assistance of the ombudsman, the ombudsman prepared a summary of the case to present at the committee meeting.
 - b. At the injured employee's discretion, the ombudsman assisted the applicant in organizing the issues for review.
 - c. The ombudsman prepared a case review packet and included this in a binder of information prepared for each committee member, committee counsel, and a WSI representative. Although these binders were distributed at each committee meeting, they remained the property of WSI and were returned to committee counsel at the completion of each committee meeting.
5. Before each committee meeting the ombudsman met with committee counsel to review the case summary and workers' compensation issues being raised.

6. Upon receipt of these workers' compensation issues, committee counsel notified the WSI representative of the identity of the injured employee who would be appearing before the committee for a case review, and, as appropriate, the statutory citations of the basic issues being raised by the injured employee.

Committee counsel reviewed the committee meeting procedure that has been followed during previous interims. She said for each claim reviewed by the committee:

1. Committee members had an opportunity before and during each committee meeting to review the binder of case review packets and to review each injured employee's WSI electronic records.
2. The ombudsman summarized the injured employee's case.
3. The committee received a list of the workers' compensation issues brought forward for review. At the discretion of the injured employee, these issues were presented by the ombudsman, the injured employee, a representative of the injured employee, or more than one of these individuals.
4. One or more representatives of WSI commented on the workers' compensation issues raised.
5. Interested persons were invited to comment on the workers' compensation issues raised as part of the claim review.
6. Committee members had an opportunity to discuss the issues raised.

Committee counsel said historically each of the claims reviewed is allocated a half day--either the morning, afternoon, or evening portion of the committee meeting--during which the initial review is conducted. Following the initial review, the committee retains the authority to continue to discuss the issues raised as part of the review. Periodically, the committee would request additional information on specific issues and review this information at one or more future meetings. During each committee meeting at which claims are reviewed, a WSI representative was available to access the injured employees' records electronically.

Committee counsel said traditionally the role of the WSI ombudsman has been filled by Mr. Chuck Kocher, the WSI representative role has been filled by Mr. Wahlin, and the role of providing WSI electronic records has been provided by Ms. Peyerl.

In response to a question from Senator Schneider, committee counsel said during the 2005-06 interim the committee reviewed 11 claims, during the 2007-08 interim the committee reviewed 15 claims, and during the 2009-10 interim the committee reviewed 4 claims.

RECEIPT OF REPORTS

Chairman Sukut called on committee counsel to review the committee's charge to receive reports. She

said the committee is charged with receiving the following reports:

1. Receive a report from the director of WSI, the chairman of the WSI Board of Directors, and the audit firm regarding the quadrennial performance evaluation of WSI and select no more than four elements for inclusion in the performance evaluation (Section 65-02-30);
2. Receive a biennial report from WSI regarding compiled data relating to safety grants issued under Chapter 65-03 (Section 65-03-05);
3. Receive an annual report from WSI which includes reports on pilot programs to assess alternative methods of providing rehabilitation services (Section 65-05.1-06.3); and
4. Receive a report from WSI on recommendations based on a biennial safety review of Roughrider Industries work programs and a biennial performance review of the program of modified workers' compensation coverage by WSI (Section 65-06.2-09).

Committee counsel said as a result of amendments made to Section 65-02-30, providing the WSI performance evaluation is performed quadrennially instead of biennially, this interim the committee will not be selecting elements to be included in the performance evaluation. She said next interim the committee will select elements. However, she said, the committee may wish to request a status report on the implementation on the most recent WSI performance evaluation.

Committee counsel said the biennial report on safety grants, the biennial safety review of Roughrider Industries work programs, and the biennial performance review of the program of modified workers' compensation coverage are typically received by the committee near the end of the interim.

Committee counsel said the committee is charged with receiving annual reports on rehabilitation services pilot programs which should be received once in 2011 and then again towards the end of the interim.

Chairman Sukut called on Mr. Bryan Klipfel, Executive Director and CEO, Workforce Safety and Insurance, for comments regarding the committee's report charges and related issues. Mr. Klipfel distributed a handout of the WSI strategic plan ([Appendix D](#)).

Mr. Klipfel said the committee discussions during the 2009-10 interim resulted in WSI making enhancements to its communications with injured employees, including:

1. The readability and ease of understanding of forms. Before forms are finalized, the text is copied and pasted into an online product that tests the readability. The program scores the document based on the number of characters, words, sentences, syllables per word, and words per sentence.
2. Personal telephone contacts are made for various denials of benefits. This is intended to

help individuals better understand the basis for decisions.

Mr. Klipfel said the 2010 WSI performance evaluation was conducted by Sedgwick Claims Management Services, Inc., and was presented to the Workers' Compensation Review Committee on August 13, 2010. He said under the performance evaluation there were eight elements reviewed--claims, contracts, internal audit, postretirement, benefits, a comparison of other states' workers' compensation laws regarding prior injuries, narcotics utilization, impact of moving to the sixth edition of American Medical Association's *Guides to the Evaluation of Permanent Impairment*, and a review of implementation of recommendations from the 2008 performance evaluation.

Mr. Klipfel said the 2010 WSI performance evaluation contained 50 recommendations, and as of July 31, 2011, WSI has closed out 28 recommendations and 22 recommendations remain open. Additionally, he said, many of the recommendations relate to legislative and policy issues, and these items were considered by the 2009-10 interim committee and some were ultimately recommended as bill drafts.

In response to a question from Senator Wardner, Mr. Klipfel said the change from a biennial to quadrennial performance evaluation has been very helpful to WSI. He said it is valuable for WSI to have this additional time to concentrate on implementing the previous evaluation's recommendations. He reminded the committee that WSI does have an audit that continues to occur annually.

Chairman Sukut requested WSI provide a more detailed report on the status of the 2010 performance evaluation at a future meeting.

Mr. Klipfel provided a brief overview of North Dakota's workers' compensation system. He informed the committee that effective July 1, 2011, the WSI vocational rehabilitation program was brought in-house, and 11 vocational consultants have been hired by WSI and are located regionally throughout the state. Additionally, he said, traditionally WSI has underwritten approximately 2,000 policies annually; however, starting in 2009 WSI has experienced a significant increase in the number of applications for insurance being received--2,463 in 2010 and 1,763 for the first six months of 2011. He said a great percentage of these applications are directly related to the petroleum industry. To address the increase, he said, WSI has taken the following actions:

1. Underwriter position - To address the influx of applications for insurance, the majority of which are associated with the petroleum industry, an additional underwriter will be added to the policyholder services staff.
2. Interagency contractor compliance checks - Members of the policyholder services premium audit team participated in the recent task force addressing contractor compliance issues in western North Dakota. The task force identified

several employers who had failed to secure the proper licenses and insurance.

3. Premium audit plan - A new premium audit plan was introduced July 1, 2011, whereby an audit risk score is assigned to each active policy. The plan prioritizes which policies should be audited based on 15 different criteria, each weighted to address its relative importance or risk. Significant weights have been assigned to the petroleum and pipeline construction activities resulting in a greater allocation of audit resources toward these industries.

In response to a question from Senator Nodland, Mr. Klipfel said with the increased oil development, the premium dollars collected has increased, and the number of workplace injuries also has increased. He said WSI is monitoring this development. Additionally, he said, since the last oil boom in the 1980s, safety at the worksite has made great strides, with many employers having their own safety officers.

Mr. Klipfel said flooding in Bismarck and Minot has also had an impact on WSI. He said not only has the flooding impacted the business of WSI, but several of the WSI staff members have been impacted personally.

Mr. Klipfel said as it relates to the WSI computer system implementation project (AIM), WSI is implementing Mitchell Bill Review. He said all medical bills except pharmacy are currently being processed through SmartAdvisor and future phases will include processing pharmacy bills from US Script and processing nonmedical bills, including personal reimbursements through SmartAdvisor. He said the implementation has been challenging, but they continue to find solutions to issues that arise. Although there have been some delays in getting payments to medical providers and other recipients, he said, communications were sent to payees advising them there may be delays and inconveniences.

Mr. Klipfel said the other computer activity that has taken a back seat to the Mitchell implementation is the continuing testing and receipt of iVOS features. He said as Mitchell implementation activity subsides, activity on iVOS will pick up. He said on August 5, 2011, the provider delivered a release of iVOS that included a large number of items for WSI. He said WSI staff is just beginning to install, review, and test this release. The next release--a combination of claims and policy functionality--will be provided late in November 2011.

Chairman Sukut called on Mr. David Kemnitz, President, AFL-CIO, for comments regarding the committee's charges. He said he appreciates the opportunity to address the committee and recognizes the expertise and experience represented on the committee. He said as the committee moves forward, he requests that it consider the issue of attorney's fees as it relates to the ability of the injured employee to attain effective relief. He said legislative changes made in the 1990s need to be reevaluated.

Additionally, he said, he would assist the committee by attempting to bring injured employees before the committee for claim review.

2011 LEGISLATION

Chairman Sukut called on Ms. Jodi Bjornson, General Counsel, Workforce Safety and Insurance, to provide a review of the 2011 workers' compensation-related legislation. Ms. Bjornson provided written material ([Appendix E](#)).

In response to a question from Representative Amerman, Ms. Bjornson said the provision of Senate Bill No. 2114 which expanded eligibility for the educational revolving loan fund is applicable for those injured employees who received a designation as catastrophically injured after December 31, 2005, who apply for the program after July 31, 2011.

In response to a question from Senator Schneider regarding House Bill No. 1037, Ms. Bjornson said no claims have been generated from Roughrider Industries.

In response to a question from Senator Wardner regarding House Bill No. 1050, Ms. Bjornson said the primary intent is that grant money will go to existing adult learning centers, but the language is broad enough to allow funding to other facilities as may be appropriate.

In response to a question from Senator Schneider regarding House Bill No. 1055, Mr. Wahlin said due to limited resources there are no plans to collect data on how claimants would be rated under both the new and the old permanent partial impairment formulas.

In response to a question from Senator Schneider regarding Senate Bill No. 2118, which would have provided workers' compensation coverage for civilian volunteers, Ms. Bjornson said the failure of that bill may have been a result of its late introduction and the perceived need for additional review. She said WSI did not oppose the bill, and it may make sense to revisit the issue during the interim.

APPEAL PROCESS AND SPECIAL INVESTIGATION UNIT

Chairman Sukut called on Ms. Bjornson to review the WSI appeal process and called on Mr. Rob Forward, Director, Special Investigations Unit, Workforce Safety and Insurance, to review the Special Investigations Unit. Ms. Bjornson distributed written material ([Appendix F](#)), and Mr. Forward distributed written material ([Appendix G](#)).

In response to a question from Senator Nodland, Mr. Wahlin said the North Dakota Century Code is clear in limiting the appeal period to 30 days and in requiring a written request.

In response to a question from Senator Nodland regarding whether there are any workers' compensation issues that are specifically related to the growth in the oilfield, Ms. Bjornson said often with injuries to employees in the oilfield, the injured

employee chooses to return home to a different state to seek medical treatment.

In response to a question from Senator Nodland, Mr. Forward reviewed failed House Bill No. 1054 which would have regulated pain management in WSI claims. He said the issues still remain, and he would support the committee reviewing this issue during the interim.

In response to a question from Representative Amerman, Mr. Forward said the Special Investigations Unit recently issued its second request for proposal for private investigators. He said of the 12 investigators with whom the Special Investigations Unit has contracted, eight or nine of these individuals have a long-term relationship with WSI. He said once WSI contracts with a private investigator, if WSI is not happy with the quality of the work, WSI can stop sending work to that investigator. He said investigators receive \$60 per hour under the WSI contract.

In response to a question from Senator Wardner, questioning whether pain management is a provider issue due to overprescribing or whether it is a patient issue due to misrepresenting, Mr. Forward said WSI views the situation as the injured employee being prescribed too many pain medications. For instance, he said, a problem arises when a physician does not take the time to check the patient's prescription medication use. He said in some instances of long-term use of pain medication, it becomes an issue of quality of care and sometimes WSI will challenge the physician. He said when WSI challenges a physician's quality of care, WSI does not receive a very warm reception.

In response to a question from Representative Sukut, Mr. Forward said the level of fraud by an employer or by an employee seems to be pretty static.

Mr. Klipfel said House Bill No. 1054 was opposed by the North Dakota Medical Association. He said the bill came about as a result of the 2010 WSI performance evaluation, and it is a national issue, not unique to WSI. He said he will continue to work with the North Dakota Medical Association and the State Board of Medical Examiners on the issue of pain management. He said he will continue to keep the committee informed.

CLAIM TRENDS

Chairman Sukut called on Mr. Wahlin to provide information regarding WSI claim trends. Mr. Wahlin provided written material ([Appendix H](#)). He said although much about WSI is static, such as the number of employers and the number of workplace deaths, the oilfield development is a new trend.

In response to a question from Senator Nodland regarding independent truckers in the oilfield, Mr. Wahlin said although independent trucking is a riskier class, there are high numbers of sole proprietors who are not required to have workers' compensation coverage unless they have employees. He said there is a specific legal analysis undertaken to

determine whether a trucker is an employee or an independent contractor. Additionally, he said, it is interesting that a recent review recommended decreasing the rates for the upcoming year for the class that covers oilfield trucking.

Mr. Wahlin said special issues specific to the oil industry include the transient nature of the employees. He said this transient nature makes the job of claims analysts more challenging.

In response to a question from Representative Sukut, Mr. Wahlin said WSI does not collect customer satisfaction data that distinguishes between transient and nontransient employees; however, anecdotally the oilfield's employer response has been positive.

COMMITTEE DISCUSSION AND DIRECTIVES

Representative Sukut said at a future meeting, he would like to receive a more detailed report from WSI regarding the WSI rehabilitation services pilot program and regarding the Roughrider Industries biennial safety review.

Representative Sukut requested that WSI consider how WSI may assist in informing employers and employees of the claim review process available through application to the Workers' Compensation Review Committee.

Mr. Wahlin said it should not be a problem for WSI to assist in informing injured employees about the claim review process offered through the Workers' Compensation Review Committee; however, it does require some thought about how to do this most effectively. He said perhaps it would make sense to have the WSI Decision Review Office do some outreach, and WSI could include fliers in some of WSI's mailings. Additionally, he said, the WSI website can include a link to the committee's online application packet.

It was moved by Senator Wardner, seconded by Senator Schneider, and carried on a voice vote that the committee adopt the application packet and claim review procedure used during the 2009-10 interim.

It was moved by Senator Nodland, seconded by Representative Amerman, and carried on a voice vote that the committee establish an application deadline of June 30, 2012, for committee claim reviews performed during the 2011-12 interim.

The committee requested the Legislative Council staff publish the application packet on the legislative branch website and notify legislators and the following organizations of the online applications--State Bar Association of North Dakota, North Dakota Chamber of Commerce, North Dakota Medical Association, AFL-CIO, and Mr. Sylvan Loegering at the North Dakota Injured Workers' Support Group.

Representative Sukut said it may make sense to have the Decision Review Office provide some outreach to inform injured employees of the committee's claim review process. Representative

Amerman said if the Decision Review Office does provide this outreach, it needs to be made clear that the committee's claim review process is not an appeal. Senator Nodland suggested the Decision Review Office prepare a suggested method to provide this outreach to injured employees.

No further business appearing, Chairman Sukut adjourned the meeting at 2:20 p.m.

Jennifer S. N. Clark
Committee Counsel

ATTACH:8