

**SCHNEIDER, SCHNEIDER & SCHNEIDER***MARK G. SCHNEIDER PLLC*

FEB 28 2008

MARK G. SCHNEIDER\*  
 STEVEN C. SCHNEIDER\*  
 JASPER J. SCHNEIDER  
 Attorneys at Law

815 Third Avenue South  
 Fargo, North Dakota 58103

Telephone: (701) 235-4481  
 Fax: (701) 235-1107

mark@schneiderlawfirm.com

JOHN T. SCHNEIDER  
 (1945-2001)

Of Counsel  
 MARY DEUTSCH SCHNEIDER

Paralegal

Sarah A. Amundson

\*Licensed in North Dakota  
 and Minnesota

VIA FACSIMILE AND US MAIL

February 27, 2008

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

**Re: Invitation to Address Legislative Council's Interim Industry, Business, and Labor  
 Committee Regarding Workforce Safety & Insurance**

Dear Mr. Bjornson:

This letter is in response to your letter of February 21 and your subsequent telephone call to me yesterday regarding it.

First, your spouse is the chief in-house attorney for WSI. As I informed you over the telephone, this creates an overwhelming appearance - - at best - - of a conflict of interest. You should recuse yourself from any deliberations by the Legislative Council regarding WSI. Apparently, as you informed me, you take some comfort from the fact the Chairman Berg has apparently not seen "a problem" in this regard. Not only does he not have any standing to waive your conflict of interest, but relying upon his opinion simply underscores the necessity of you removing yourself from any consideration of this matter.

Secondly, Rick Berg has the dubious distinction of being the person most responsible for the train wreck that has become WSI. It was he who led the charge to remove political accountability from WSI by removing it from the control of the Governor and placing it into the hands of an employer-dominated board of "directors" who proved themselves to be

February 27, 2008

Page 2

nothing more than rubber stamps for the short and disastrous tenures of several executive directors, most recently, the disgraced and disgraceful Sandy Blunt.

It was under Berg's "leadership" of the super majority in the House that the concerted efforts to gut laws that were passed for the benefit of the injured worker (*Kahloff v. North Dakota Workers Compensation Bureau*, 484 NW 2<sup>nd</sup> 510, 513 (N.D. 1992)) occurred. The result is the bureaucratic monster that is "WSI." From taking political accountability of the agency from the governor, allowing WSI to use out state "doc-for-hire" anti-worker mills to write adverse medical reports against injured workers, to taking away the injured workers right to a treating doctor of his/her choosing, Berg has led the charge. In doing so, his duplicity has often been stupefying. Not the least example is in the last legislative session when, at first, under the hue and cry of a workers compensation fund he stated was in jeopardy, he led the charge in restricting total disability benefits to a maximum of two years for the vast majority of injured workers, whether they, in fact, could return to work or not. Having accomplished that draconian result, he then, at the end of the legislative session, in a back-door "delayed bill" maneuver, got a bill passed that gave 40 million dollars in "rebates" (not "dividends" as he calls them) to employers. This list is far from inclusive.

Of course, Chairman Berg knows that he was the chief architect of this unending nightmare for injured workers and their families. The question that begs answering, therefore, is why is he now pretending to give a damn? The answer is obvious to me - - he doesn't - - and the entire machinations regarding pretended interest in the welfare of injured workers is nothing more than a latter day charade to provide him and his ilk with political cover. In short, Mr. Berg knows exactly what needs to be done to restore any semblance of honesty and fairness to injured workers because he led the opposite charge. If he had any intention to help injured workers, he could simply hold another one of this many press conferences and announce his proposals. Of course, he won't. Because I will not be a party to this shameless shell game, I decline to attend.

However, in the hope that there may actually be someone on the Interim Committee that does "give a damn", please allow me to offer those elected officials some steps towards positive change.

First, required reading for every North Dakota politician should be the article, "Falling Down on the Job, Worker's Compensation Shifts From a No-Fault to a Worker-Fault Paradigm". This article was published by the University of North Dakota Law School and was authored by attorney Dean J. Haas. Mr. Haas worked for WSI as an assistant attorney general



February 27, 2008

Page 3

representing the agency for nearly eleven years. In private practice, he represented injured workers and, for some time now, has been an assistant attorney general in the Natural Resources Division in the Attorney General's Office. I represented literally scores, if not hundreds, of injured workers in cases where Attorney Haas was representing WSI. No single person in North Dakota has a better perspective on workers compensation law than Dean Haas. His law review article (79 N.D.L.Rev. 204 (2003)) offers a comprehensive and insightful history of workers compensation law in North Dakota and proposes exactly what needs to be done to make workers compensation, once again, an agency whose primary mission is to protect the interests of injured workers. *Kahloff, supra*. Mr. Haas should, if he has not been already, be invited by the Committee to provide the benefit of his expertise.

Also, I understand that attorney Steve Little will likely appear before the Committee. Attorney Little enjoys a well deserved reputation for being an excellent workers' compensation practitioner, who has labored for literally decades trying to breath life into valid claims of injured workers who claims have been unjustly denied by WSI bureaucrats who take their anti-worker directions from the top. I can state, without equivocation, that Attorney Little's recommendations to the Committee will be informed, honest, and are required in order to even begin to effectuate - - finally - - positive change in the way in which injured workers are so shamelessly treated.

I am hesitant to list even a few of the absolutely essential changes in the law at the risk of politicians, such as Mr. Berg, grasping on to a few to avoid the necessary changes in the many. Suffice it to say, I agree with all of the recommendations by Dean Haas in his law review article. Short term, the agency must be placed back under the control of the governor rather than a rogue board of "directors" whose interests lie solely in perpetuating the bloated fund at the expense of the injured worker (the last I heard, the WSI fund was at 1.7 billion dollars and growing, including approaching 200 million in excess funds over that approved by the legislature). It is essential that the legislature remove the irreconcilable conflict of interest that exists when WSI both adjudicates the claims of injured workers and also is responsible for the health of the workers compensation fund. Under the best of circumstances, this is too much to ask of one entity. And we are currently under the worst of circumstances. The solution is to have a separate state agency administer the fund and a separate agency adjudicate the claims. The heads of both agencies should be either directly elected by the people or appointed and directly responsible to the governor.

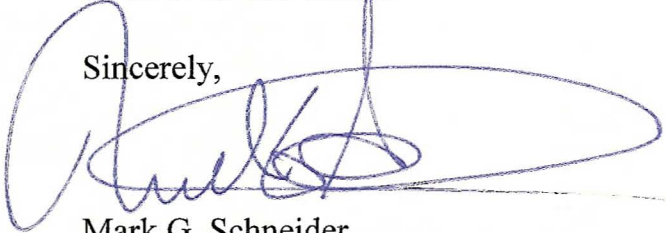
February 27, 2008

Page 4

The unrelenting attack on injured workers and their families has continued apace by Mr. Berg and his cronies for over a decade. The system is currently irretrievably broken and trust in it will never be restored until wholesale changes have been made to insure - - both in appearance and in fact - - that the workers compensation system functions in North Dakota for the benefit of the injured worker, recognizing that the "sure and certain relief" promised to the injured worker under the Act is in return for giving employers carte blanche against any lawsuits for workplace injuries.

Please ensure that this letter be included in the record to be compiled by the Legislative Council on this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark G. Schneider", with a large, sweeping loop at the end.

Mark G. Schneider  
Attorney at Law

MGS:cm

cc: Dean J. Haas  
Rick Berg  
The Forum (c/o Pat Springer)  
KVRR Fox (c/o Jim Shaw)  
Dale Wetzel, Associated Press