



Ironworker-Management Progressive Action Cooperative Trust

## Talking Points – Collectively Bargained Workers Compensation

### 1. Primary Objectives:

- **Improve the delivery of medical benefits** to worker injured on the job through the cooperative efforts of labor, management, and insurance carriers.
- **Reduce loss-time injury days** and return workers back to work sooner.
- **Avoid unnecessary medical costs** by establishing better medical networks and selecting occupational specialist.
- **Reduce workers compensation costs** to employers by avoiding unnecessary frictional costs through cooperative efforts of all parties.

### 2. Important CBWC Program Clarifications to Remember:

- These programs are “voluntary” and no employer is required to participate.
- **These programs do not remove or diminish any benefits** to injured workers provided by state statutes.
- These programs are available to industries that are subject to **collective bargaining agreements**.

### 3. Mandate to Improve the Delivery of Medical Benefits to Injured Workers

- Labor and management representatives **designate specific medical networkers** to provide the best medical care.
- Labor and management representatives **designate a list of board certified occupational specialist** to treat special cases.
- Labor and management representatives **designate a list of qualified medical examiners** to review certain cases and render opinions.
- The use of an **independent case nurse manager provides medical assistance and assurance to injured workers** during the claim process.



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4. Dispute Resolution Process Aids Workers and Helps Prevent Unnecessary Friction Costs

- Labor and management representatives **designate an independent ombudsman (union program representative)** that is available to assist injured workers.
- **Injured workers can contact the union program representative** to help answer any questions.
- Resolution of claims disputes through a **special medication and arbitration process** that uses mediators and arbitrators selected by labor and management representatives.

5. CBWC Programs Are Supported by Major Insurance Carriers

- Zurich Insurance
- Chartis Insurance (formerly AIG)
- Old Republic Construction Program Group
- Ullico
- SeaBright Insurance Company
- Dallas National Insurance Company
- Zenith Insurance Company
- California State Compensation Insurance Fund

## COLLECTIVELY BARGAINED WORKERS' COMPENSATION LAWS

There are currently 10 states that have specific legislation permitting the use of collective bargaining agreements to establish a workers' compensation program. They are:

Maine  
Massachusetts  
New York  
Maryland  
Pennsylvania  
Minnesota  
Kentucky  
Florida  
California  
Hawaii

In addition, there are some states whose workers' compensation laws contain language that, although it was not enacted with the intent of permitting the use of collective bargaining agreements, almost certainly does support them. These include such states as Missouri, Connecticut, Rhode Island and Georgia.

## MODEL LEGISLATION

Since state laws differ with regard their structure and nomenclature, and each workers' compensation system is unique in the way that it is organized, the language will have to be customized for each state in which it will be used. Some of the variables that must be dealt with when drafting legislation for a specific state are the following:

1. The names of the WC agency and relevant courts.
2. Statutory references
3. The question of whether the provision will apply to all industries, or construction only.
4. The extent to which the traditional court system will be involved in the program. For example, in Florida the program's arbitration is virtually final with no opportunity to appeal. In California the arbitration decision is appealable in the same manner as the decision of a WC judge.
5. Nomenclature for the claims process and benefit structure.

The following language provides a starting point for drafting specific legislation that will fit within a state's statutory structure and follow the nomenclature utilized in that state. It represents the best of several existing statutes, in that it is relatively simple to understand and deals with the issues that have been raised concerning previously enacted legislation.

## Basic Legislative Language

(1) Subject to the limitation stated in subsection (2), a provision that is mutually agreed upon in any collective bargaining agreement filed with the department between an individually self-insured employer or an insured employer having the consent of its workers' compensation insurance carrier and a recognized or certified exclusive bargaining representative establishing any or all of the following shall be valid and binding:

- (a) An alternative dispute resolution system to supplement, modify, or replace the provisions of this chapter, which may include, but is not limited to, conciliation, mediation, and arbitration. The Agreement may provide that arbitration held pursuant to this section be binding on the parties, or may provide that it be subject to review in the same manner as a final order, decision, or award made and filed by a workers' compensation administrative law judge.
- (b) The use of an agreed-upon list of health care providers of medical treatment which may be the exclusive source of all medical treatment under this chapter.
- (c) The use of a limited list of physicians to conduct independent medical examinations, which the parties may agree, shall be the exclusive source of independent medical examiners pursuant to this chapter.
- (d) The use of a case manager, patient advocate, utilization review or similar program or combination of programs intended to improve the quality and control the cost of medical and related treatment and care.
- (e) A light-duty, modified-job, or return-to-work program.
- (f) A vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services under this chapter.

(2) Nothing in this section shall allow an agreement that diminishes the entitlement of an employee to compensation payments for total or partial disability, vocational rehabilitation, or medical treatment fully paid by the employer as otherwise provided in this division; nor shall any agreement authorized by this section deny to any employee the right to representation by counsel at all stages during the alternative dispute resolution process. The portion of any agreement that violates this paragraph shall be declared null and void.

## ENACTING ENABLING LEGISLATION

We have been extremely fortunate in having successfully enacted legislation each time that the effort has been made. The only exceptions have been a few instances when local employer organizations have attempted to pass legislation on their own, without understanding either the program or the process. The reason for success has been that supporters of collectively bargained workers' compensation have always pursued legislation as a joint labor/management goal, with support from both sides. As a result, the process has, for the most part been quite simple, following this model:

1. Identify a very small group of labor and management leaders who will support the proposal and conduct an educational session with them so that they will fully understand exactly what it is they are supporting. It is important that these individuals be those who are respected by the rest of the community, which makes it much easier for the rest to follow their lead.
2. Using this leadership, secure the formal backing of the appropriate labor and management organizations that will provide legislative support for the proposal.
3. Again utilizing this leadership, identify, meet with and educate the legislative representatives who will actually file and pursue the legislation. Consideration should also be given to bringing in representatives of the Governor's office as well, if the politics of the particular state support or require this.
4. In conjunction with the legislators and their staffs, develop the appropriate legislative language, and the appropriate legislative strategy.
5. File the legislation.

Once the legislation is filed, we are usually at the mercy of the legislative leadership. For this, we have to depend upon the skill of the lobbyists who work for our supporting groups. Our major role becomes that of providing testimony and expertise to overcome any opposition.



Ironworker-Management Progressive Action Cooperative Trust

## ***Nevada Legislature Passes Bill For Collectively Bargained Workers Compensation Programs***

***For Immediate Release  
Roseville, CA  
June 8, 2009***

***Contact Steve Rank  
IMPACT Director  
(916) 784-9144***

On May 31, 2009, the Commerce and Labor Committee in the Nevada Senate voted 21-3 to pass legislation to permit the use of "collectively bargained workers compensation programs (CBWC)" for Nevada employers subject to collective bargaining agreements. Despite Governor Gibbon's veto of the bill, labor and management representatives rallied to lobby a two-thirds vote to override the Governor's veto.

**IMPACT Initiative.** In 2008, *Joe Standley*, IMPACT Labor Co-Chair and *Dave McEuen*, Management Co-Chair for IMPACT Region IX commissioned the IMPACT Regional office to pursue enabling CBWC legislation in Nevada that would afford injured workers with enhanced benefits as injured workers currently receive under the "California Ironworkers Collectively Bargained Workers Compensation Program". IMPACT submitted to draft language to Assemblyman Jerry Claborn who sponsored the Nevada bill for CBWC programs. In addition to several published reports from insurance carriers and results from the California Program that was established in 2003, the "*IMPACT Lobbying Guide to Workers Compensation Reform*" provided important information to Nevada legislators on the key components of "collectively bargained workers compensation programs".

**Labor and Management Support.** *Danny Thompson*, Executive Secretary of the Nevada State AFL-CIO worked closely with Assemblyman Claborn and IMPACT to orchestrate a labor movement accompanied by representatives of Ironworkers local 118 Reno Nevada, Ironworkers local 416 Las Vegas, Nevada, and Ironworkers local 433, Las Vegas, Nevada. Representatives of these locals were instrumental in the passage of this legislation by providing testimony and lobbying the Nevada Legislature. IMPACT and Danny Costella, Business Agent for Ironworker Local 118, lobbied Assemblyman and Senators for several weeks to educate them on the merits of this legislation. *Michael Newington*, Executive Director of the Western Steel Council (WSC), spearheaded a letter writing campaign from employers throughout Nevada and California to Legislators urging their support for this bill. The WSC rallied support letters outlining the benefits of this legislation to both contractors and injured workers.

**Insurance Carrier Support.** IMPACT entered into an "*Alliance Agreement*" with several insurance carriers to explore new opportunities and address issues that affect our industry. Insurance carrier representatives accompanied IMPACT to provide supporting testimony before the Nevada Senate on Commerce and Labor. *Rae Farese* and *Anne Mino* with SeaBright Insurance Company, *Kevin Peters* with Old Republic Construction Program Group, and *Douglas Dvorak* with Ullico Casualty Company provided compelling statistics to members of the Senate Committee on Commerce and Labor on the benefits of "collectively bargained workers compensation programs".

### Highlights of Legislation

- Cannot diminish any benefits or reduce any entitlements to injured workers for compensation.
- Allows for voluntary use by industries or groups subject to collective bargaining agreements.
- Provides a process for alternative dispute resolution, including, without limitation, mediation and arbitration, which governs disputes between employees and employers or their insurers.
- Establish a specified list of providers of medical treatment who may be the exclusive source of all medical treatment provided.
- Use of a specified list of medical evaluators as the exclusive source of all medical evaluations.
- The establishment of a joint labor-management safety committee to improve safety performance.
- Establishment of light-duty programs and employment imposed by a physician or chiropractor.
- A program for vocational rehabilitation utilizing a specified list of providers of vocational rehabilitation services who may be the exclusive source of all vocational rehabilitation services.

IMPACT in conjunction with the Western Steel Council WSC will sponsor a series of labor-management meetings throughout Nevada provide information on this legislation and unveil our efforts to initiate a program for signatory employers.

To obtain a complete copy of this legislation, contact Steve Rank at the IMPACT Western Region office at (916) 784-9144.

**OFFICE MEMORANDUM**



**MINNESOTA DEPARTMENT OF  
LABOR & INDUSTRY**

*A trusted resource utilized by  
employees and employers ...*

**DATE:** 10/31/2007

**TO:** Patricia Todd, Shawn Peterson

**FROM:** Brian Zaidman

**PHONE:** 284-5568

**SUBJECT:** Construction Collective Bargaining Agreement Claims and Cost Comparison

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The workers' compensation collective bargaining agreement (CBA), also called the Union Construction Workers' Compensation Program, started handling workers' compensation claims in 1997. For contractors accepted into the program, the CBA provides:

- safety services to help prevent injuries;
- dispute resolution services involving facilitation, mediation and arbitration;
- medical care through an exclusive provider organization (starting in July 2004);
- a panel of neutral doctors for second opinions; and,
- vocational rehabilitation services through a panel of neutral rehabilitation counselors.

The effectiveness of the CBA program can be assessed by comparing various workers' compensation measures with available data about the construction industry. For this comparison, information from the CBA annual data reports for 2003 and 2004 was compared to information from the Minnesota Ratemaking Report and from the DLI workers' compensation claims database. (A blank CBA annual data report form is attached.)

Overall, construction employers in the CBA program, compared to all construction industry employers, have slightly fewer claims, pay significantly lower benefits per claim, have claims that require vocational rehabilitation less often, and have fewer claims disputes. These results are consistent with a shorter average duration of indemnity benefits, in which workers are more likely to return to work without requiring additional services. The comparisons, detailed in Tables 1-3, show that:

- The indemnity claims rate per \$1 million of payroll is about 18 percent lower among the CBA employers (Table 1, measure 2);
- The overall claims rate per \$1 million of payroll is 5 percent to 10 percent lower among CBA employers (Table 1, measure 3);
- Total incurred benefit costs per \$100 of payroll are about 40 percent lower among CBA employers (Table 1, measure 8);
- Average benefits paid per claim are about 32 percent to 36 percent lower among CBA employers (Table 1, measure 13);

- Vocational rehabilitation is required half as frequently among the CBA claims as among all construction-worker claims (Table 2, measure 1);
- Vocational rehabilitation plans for CBA claimants are about half the cost of plans among all construction claimants (Table 2, measure 2);
- The CBA vocational rehabilitation plans are much more likely to result in returning injured workers to the pre-injury employer than are all construction-industry plans (Table 2, measure 3); and,
- CBA claims are much less likely to require dispute resolution services (Table 3, measures 1-4).

#### Detailed results and technical notes

The DLI workers' compensation claims database does not include a flag to indicate whether a claim is or is not covered by the CBA program. Therefore, direct comparisons of claims-level statistics using the DLI claims database is not possible. All the comparisons involve comparing CBA program-level statistics reported on the CBA's annual data reports with all construction claims, which include the CBA claims.

Table 1 shows the comparison of claims incidence and cost. In order to create a comparison group to the CBA program, statistics for the ten largest insurance classifications represented in the CBA program (out of a total of 56 classifications present) were combined. The ten classifications account for over 70 percent of the CBA program's payroll (see Table 4). The MWCIA's Ratemaking Reports for 2006, 2007, and 2008 were used to collect the first report statistics for the policy years corresponding to the CBA program reports for these classifications. This also had the effect of more closely matching the groups by eliminating data from classifications with less union representation, such as construction of detached residential units.

Table 1 measures 1-3 show the rates of 2003 and 2004 claims reported per \$1 million of payroll. This is used to adjust for the difference in the size of the CBA program compared to all insured construction employers. For both claims years, the CBA claims incidence rates are lower than the construction industry rates. Measures 4-8 show the incurred benefit costs per \$100 of payroll. Incurred benefits include the benefits paid to date and the case-specific reserves. While the costs for medical-only claims are the same, indemnity claim costs are much lower for CBA employers. Measures 9-13 display the average incurred costs per claim. While the medical-only claim costs are slightly higher for CBA claims, the difference is very small. The average incurred total benefit cost for indemnity claims is approximately \$8,000 lower for the CBA claims.

In Tables 2 and 3, the CBA statistics are compared to the results for all construction indemnity claims in the DLI claims database. Table 2 compares the use and outcome of vocational rehabilitation benefits. Measure 1 constructs a vocational utilization rate by calculating the ratio of the number of vocational rehabilitation plans started during the year to the number of indemnity claims occurring during the year. While this is not a "perfect" utilization rate, the same calculations were performed for both the CBA and all construction statistics. The results show that injured workers in the CBA program are much less likely to require vocational rehabilitation services.

Table 2 measure 2 shows the average cost of vocational rehabilitation plans closed during each of the years. To make the closed plan comparisons more similar, the all construction plan closures were limited to injuries occurring during or after 1997. The table shows that the average cost per closed plan among the CBA claims is approximately half the cost of the plans among all construction claims. Measures 3-5 reinforce this finding, showing that the CBA plans are more likely to close when the injured worker returns to the pre-injury employer, which is the least expensive type of plan closure (see the Minnesota Workers' Compensation System Report, 2004). Additionally, the CBA plans are much less likely to close with the worker finding a job with a different employer and are somewhat less likely to result in closing without a return-to-work.

Table 3 shows measures of disputes and dispute resolution activity. The percentage of claims involved in dispute resolution activity is the ratio of the number of disputes filed to the number of indemnity claims filed during that year. In this measure, the CBA claims are counted if they use mediation, which is the dispute resolution service beyond facilitation. Facilitation compares to the phone intervention services provided by DLI, although it is possible to hold informal conferences as part of facilitation. The CBA claims involved in their dispute resolution services do not file dispute resolution forms with DLI, so they are not included in the construction industry claims statistics. The construction industry claims are counted as requiring dispute resolution if they have at least one of the following forms filed during the year: a certification request, a request for assistance, a claim petition, a request for discontinuance conference, an objection to discontinuance, or a petition to discontinue benefits. Claims with disputes in the previous year were not counted in the latter year. Claims with injuries in 1997 and later were included. Measure 1 shows that a much lower percentage of CBA indemnity claims are involved in disputes than are the construction claims as a whole.

It is possible that the construction industry dispute rates are higher because the claims are open longer, providing a greater opportunity for filing disputes. Therefore, measure 2 of dispute resolution activity was calculated by limiting the construction industry claims to those claims filed within two years of the dispute filing year. Thus, the dispute ratio for 2003 includes the disputes filed during 2003 for injuries occurring in 2001, 2002, and 2003, and the dispute ratio for 2004 includes the disputes filed during 2004 for injuries occurring in 2002, 2003, and 2004. While this reduces the construction industry dispute ratio, it remains much higher than the CBA claims' ratio.

Measures 3 and 4 are similar to the first two measures, respectively, but the construction industry disputes do not include claims with only certification requests filed. In both of these measures, the CBA claims had a lower dispute resolution activity ratio.

**Comparison of the Union Construction Workers' Compensation Program (CBA) and Construction Industry Workers' Compensation Claims, Costs, and Outcomes**

**Table 1 Claims and Benefits**

measure		2003 Claims		2004 Claims	
		CBA	Construction <sup>1</sup>	CBA	Construction
1	medical-only claims per million \$ payroll	1.78	1.95	1.78	1.80
2	indemnity claims per million \$ payroll	0.57	0.69	0.52	0.63
3	total claims per million \$ payroll	2.35	2.64	2.30	2.43
4	medical-only costs incurred per \$100 payroll	\$0.13	\$0.12	\$0.12	\$0.12
5	indemnity claim medical costs incurred per \$100 payroll	\$0.56	\$0.90	\$0.53	\$0.83
6	indemnity claim indemnity costs incurred per \$100 payroll	\$0.54	\$1.01	\$0.47	\$0.90
7	indemnity claim total benefit costs incurred per \$100 payroll	\$1.11	\$1.91	\$1.00	\$1.73
8	total benefit costs incurred per \$100 payroll	\$1.23	\$2.03	\$1.12	\$1.86
9	medical costs incurred per medical-only claim	\$ 710	\$ 632	\$ 700	\$ 684
10	medical costs incurred per indemnity claim	\$ 9,908	\$12,959	\$10,116	\$13,169
11	indemnity costs incurred per indemnity claim	\$ 9,562	\$14,617	\$ 9,003	\$14,238
12	total benefit costs incurred per indemnity claim	\$19,471	\$27,576	\$19,119	\$27,407
13	total benefit costs incurred per claim	\$ 5,243	\$ 7,695	\$ 4,874	\$ 7,631

<sup>1</sup> Construction values based on MWGIA Ratemaking Report data for ten large contractor classifications.

**Table 2 Vocational Rehabilitation<sup>1</sup>**

measure	2003		2004	
	CBA	Construction <sup>2</sup>	CBA	Construction
1 vocational rehabilitation utilization <sup>3</sup>	12%	23%	12%	26%
2 mean vocational rehabilitation costs per closed plan <sup>4</sup>	\$ 2,783	\$ 6,032	\$ 3,764	\$ 6,347
3 percentage returned to work with same employer	56%	40%	75%	41%
4 percentage returned to work with different employer	11%	26%	10%	26%
5 percentage closed without return to work	33%	34%	15%	34%

<sup>1</sup> Year refers to claim and form filing year (for utilization) and to year of plan closure for the other measures.

<sup>2</sup> Construction values use construction industry indemnity claims in the DLI claims database.

<sup>3</sup> The ratio of the number of vocational rehabilitation plans filed during the calendar year to the number of indemnity claims with injury dates in that calendar year.

<sup>4</sup> Mean vocational rehabilitation costs adjusted to 2005 wage levels.

**Table 3 Dispute resolution<sup>1</sup>**

measure <sup>2</sup>	2003		2004	
	CBA	Construction <sup>3</sup>	CBA	Construction
1 dispute resolution rate, all years	11.2%	23.2%	8.7%	24.3%
2 dispute resolution rate, recent years	11.2%	18.6%	8.7%	18.2%
3 dispute resolution rate, excluding cert. requests, all years	11.2%	22.5%	8.7%	23.7%
4 dispute resolution rate, excluding cert. requests, recent years	11.2%	18.1%	8.7%	17.9%

<sup>1</sup> Year refers to injury year for denials and to year of dispute document filing for dispute activity.

<sup>2</sup> The ratio of the number of unique indemnity claims with a dispute filed during the calendar year to the number of indemnity claims with injury dates in that calendar year. The percentage in parentheses is the dispute resolution activity limited to indemnity claims incurred up to two years prior to the dispute filing. The four measures reflect changes in counting construction industry disputes.

<sup>3</sup> Construction values use construction industry indemnity claims in the DLI claims database.

**Wilson McShane**

## Union Construction Workers Compensation Program

### Our mission:

- Eliminate the adversarial culture of workers' compensation claim administration;
- Improve the delivery of wage-replacement and medical benefits to injured union members; and
- Reduce the costs of insurance for union contractors, making them more competitive.

The structure of our dispute resolution process encourages a faster return to work, or a faster claim settlement, reducing the amount of time indemnity benefits are paid while waiting for a hearing in the statutory system. While the statutory system takes an average of 18 months to get to a hearing, our alternative system can get to arbitration within 180 days. Significantly, 98% of disputes are resolved without arbitration, with 85% being resolved at or before a Facilitation.

<b>Claims Experience:</b>	<u>Medical Only</u>	<u>Lost Time</u>	<u>Denied Liability</u>	<u>Total Claims</u>
7/1/97 to 12/31/06	6,039	2,115	338	8,492

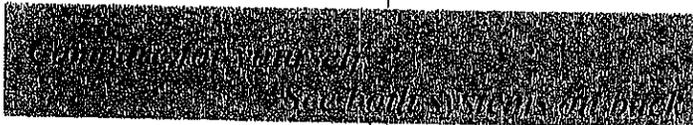
  

<b>Dispute Resolution Experience:</b>	<u>Facilitations</u>	<u>Mediations</u>	<u>Arbitrations</u>	<u>Neutral Exams</u>
7/1/97 to 12/31/06	726	110	14	165

From July 1, 1997, through December 31, 2006, 8,492 claims were filed with participating contractors, of which 2,115 were lost-time accidents. Of these, only 14 claim disputes went to Arbitration—less than 1%!

According to the Minnesota Department of Labor and Industry, approximately 3% of lost-time claims in the state system go to a formal hearing—a *more than three-fold increase in the litigation rate!*

We provide results through a clear system that settles claim disputes in a fair and timely manner. This is most obvious by comparing the UCWCP system to the State's statutory system.



STEVEN A. HORSFORD  
SENATOR  
Clark No. 4

MAJORITY FLOOR LEADER

COMMITTEES:

*Co-Chair*

Finance

*Member*

Government Affairs

Health and Education



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May 18, 2009

Steven L. Rank  
IMPACT Director of Western Region  
151 North Sunrise Avenue, #1002  
Roseville, California 95661-2930

Dear Mr. Rank:

Thank you for your letter stating your support of Assembly Bill 410 which proposes changes to workers' compensation directing the State of Nevada to recognize certain collective bargaining agreements between construction-related businesses and employee groups.

Provisions of the bill are similar to the points described in your letter. The Senate and Assembly passed the bill and it will be forwarded to the Governor for consideration. You may review the actions on the bill at the following Internet link:

<http://www.leg.state.nv.us/75th2009/Reports/history.cfm?DocumentType=1&BillNo=410>.

Thank you expressing your concerns to me.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Horsford", written over a horizontal line.

Steven A. Horsford  
Senate Majority Leader

SAH/sg: CW94290

## STATE NEWS

(Vol. 55, No. 2731) 765

Nevada**Workers Compensation Law Survives  
Veto Against Collectively Bargained Programs**

**P**HOENIX—Nevada's success at enacting legislation establishing collectively bargained workers compensation (CBWC) programs is drawing attention from other states that wish to replicate the effort, a labor-management official involved in the campaign told DNA on July 31.

The victory of the legislation (Assembly Bill 410) came despite a veto from Gov. Jim Gibbons (R), and is attracting interest from as far away as Alaska, the official, Steve Rank, said.

Rank, the Western region director for IMPACT, the Iron Worker Management Progressive Action Cooperative Trust, told BNA the program is patterned after California's. He hailed the override as a combined effort of organized labor, business and insurance interests who lobbied heavily on the bill's behalf.

The new law took effect July 1. The Democratic-controlled Nevada Legislature overrode the governor's veto on May 31 by a two-thirds majority in the Assembly, and by an overwhelming 18-3 vote in the state Senate. Six GOP senators crossed the aisle and voted against their governor in overriding the veto.

The measure initially passed the Nevada Legislature on votes of 30-11 in the Assembly on April 14, and by 21-0 on May 12, before being sent to the governor's desk.

**CBWC Defined.** Collectively bargained workers' compensation allows union contractors and building trade unions to bargain with one another to design and implement their own workers' compensation system which is customized to meet their needs.

California is one of about a dozen states that allow unions and employers in construction to negotiate alternatives, known as "carve outs," to traditional state-supervised workers' compensation insurance.

The program allows parties to achieve reduced workers' compensation insurance costs by using alternative-dispute resolution procedures to speed treatment of injured workers, resolve claims more quickly, and minimize litigation.

According to a digest provided by the Nevada Legislative Counsel staff, such collective bargaining agreements may include provisions which establish processes for alternative dispute resolution, lists of medical evaluators and providers of medical treatment, joint safety committees, programs for light-duty or modified job responsibilities and programs for vocational rehabilitation.

IMPACT is the joint labor-management, nonprofit trust formed under Section 302(c)(9) of Labor-Management Relations (Taft-Hartley) Act. It has served a key role in carrying out CBWCs.

In a telephone interview with BNA, Rank singled out his organization's efforts, as well as those of the AFL-CIO, signatory contractors, and insurance carriers for their lobbying on the bill's behalf.

Rank told BNA that the governor viewed the measure as a collective-bargaining issue when, in fact, it was an injured-worker's issue. The measure is designed to help

speed up the process for injured workers to receive the care and treatment they need, he said.

**Governor's Veto, Law Provisions Detailed.** The governor's spokesman was unavailable. But according to a legislature journal of proceedings the day of the override vote, Gibbons was said to veto the measure because it was giving collective agreements the power to supersede industrial insurance law, a position that supporters disputed.

According to a statement from IMPACT, the new legislation:

- cannot diminish benefits or reduce entitlements to injured workers for compensation,
- allows for voluntary use by industries or groups subject to collective bargaining agreements,
- provides a process for alternative dispute resolution between employees and employers or their insurers,
- establishes an exclusive list of medical treatment providers,
- uses a specified list of medical evaluators as the exclusive source of all medical evaluations,
- establishes of a joint labor-management safety committee to improve safety performance,
- establishes light-duty programs and employment imposed by a physician or chiropractor, and
- establishes a program for vocational rehabilitation utilizing an exclusive list of providers.

**Legislation Dates Back to 2008.** Rank told BNA that the effort began in 2008, when Joe Standley, IMPACT labor co-chair, and Dave McEuen, management co-chair, for IMPACT Region IX commissioned him to pursue CBWC legislation in Nevada.

In California, an existing CBWC program provides injured workers enhanced benefits. IMPACT submitted draft language for the Nevada bill based upon the California model, Rank told BNA.

Danny Thompson, executive secretary of the Nevada State AFL-CIO, worked closely with IMPACT, according to Rank.

In addition, Bridge, Structural Ornamental and Reinforcing Iron Workers locals were involved in the campaign. They were identified as: Iron Workers Local Union 118 in Reno, and Iron Workers Local Unions 416 and 433 in Las Vegas.

By WILLIAM H. CARLILE

Additional details on the bill can be viewed at <http://www.leg.state.nv.us/75th2009/Reports/history.cfm?ID=798>

Florida**Roofing Contractor Sentenced to Probation,  
Restitution in \$400,000 Workers' Comp Case**

**T**AMPA, Fla.—The owner of a South Florida roofing company was sentenced to five years probation for using shell companies and check cashing services to underpay workers' compensation premiums by more than \$400,000, state officials announced July 29 (Florida v. McDonald, Fla. Cir. Ct., No. 302008CF016641AXXXMB, sentencing 7/24/09).

**AIG CONSTRUCTION RISK MANAGEMENT, AIG SURETY**

A DIVISION OF AMERICAN INTERNATIONAL COMPANIES®

175 WATER STREET  
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DANIEL F. CONWAY  
PRESIDENT

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February 3, 2009

Mr. Joseph J. Hunt  
General President  
Ironworkers International  
1750 New York Avenue, NW  
Washington, D.C. 20006

Dear Mr. Hunt:

The concept of voluntary Alternative Dispute Resolution (ADR) is not new to the workers compensation system in the United States. There have been various portions of its individual component parts successfully implemented in many jurisdictions for the last ten plus years by insurance carriers, employers and states themselves.

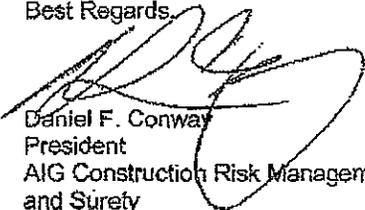
Return to work programs, light duty, medical bill management, medical networks and agreed upon file handling procedures are just a few of the cost saving measures incorporated into any ADR program.

Within ADR, these practices are used collectively to improve the timing of indemnity payments to injured workers while assuring quality, consistent health care through a mutually agreed medical network. Concurrently, the employer has the opportunity to benefit by curtailing costs and reducing experience modification factors.

These programs are often associated with collectively bargained Workers Compensation programs that establish specific requirements through the cooperative efforts of labor, management, and participating insurance carriers. I am not aware of any state regulations that prohibit non union employers from instituting an alternative dispute program for their employees and themselves.

I would support the use of any vehicle that reduces the ultimate cost of Workers Compensation Insurance to employers as long as it does not adversely affect the ultimate and primary goal of taking care of the injured worker. From the vantage point of an underwriter, voluntary alternative dispute resolution does exactly that.

Best Regards,

  
Daniel F. Conway  
President  
AIG Construction Risk Management  
and Surety

cc: S. Rank ✓  
D. Masucci  
J. Lamberson

DFC/lf



April 20, 2009

Senator Maggie Carlton, Chair  
Nevada Senate Committee on Commerce and Labor  
401 S. Carson Street  
Carson City, NV 89701-4747

RE: A.B. 410; Collectively Bargained Workers Compensation Programs

Dear Senator Carlton and Committee Members:

Thank you for the opportunity to share our perspective on collectively bargained workers compensation programs and to voice our support for passage of AB 410.

Zurich's U.S. insurance group is the fourth largest commercial property and casualty insurer in the United States by gross written premium and protects hundreds of thousands of U.S. employees and their employers as the nation's third largest workers compensation insurer. Zurich American Insurance Company employs more than 10,000 people in offices throughout the U.S. and over 50,000 worldwide. We distribute a wide array of insurance products to small and mid-sized businesses, farm businesses, local governments and Fortune 500 companies. Zurich is a large insurer of contractors throughout the world. In the U.S., we have been actively insuring contractors since 1995 and involved in collectively bargained programs since approximately 2002.

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As an insurer, one of our primary goals is to help return injured workers back to work safely and efficiently while at the same time trying to reduce unnecessary costs for the employer. We have found that the collective bargained programs established in other jurisdictions have been a good vehicle to achieve these goals. These programs improve the delivery of medical benefits and at the same time, reduce unnecessary litigation. While the medical benefits remain the same as under a more traditional program, they are closely managed to be delivered more efficiently and effectively, allowing the injured worker to return to work more quickly.

We have also found that the CBWC programs have increased overall safety performance by adding additional focus around safety programs by all parties. If managed properly and effectively, these efforts can reduce claim frequency, thus further reducing overall cost.

As these programs are also voluntary to the employer, they merely provide an additional tool for the employer to promote safety and maintain sound risk management.

We urge your support of AB 410 and appreciate your consideration. If you have any specific questions regarding our experience in other jurisdictions, please feel free to contact me.

Sincerely,

Seth Hausman  
Senior Vice President



January 19, 2009

To Whom It May Concern:

By way of introduction, SeaBright Insurance Company is a specialty workers' compensation insurer that has a significant focus on collectively bargained workers' compensation (CBWC) as a particular niche. We currently write CBWC programs in five states: California, Florida, Hawaii, Maryland and Minnesota. As of Decemeber 31, 2008, CBWC represented 18% of our in-force premium writings.

In August 2004, the California Workers' Compensation Institute published a report entitled California Workers Compensation Alternative Dispute System: Attorney Involvement Rates and Claim Costs, by Alex Swedlow, MHSA, and Dr. Laura B. Gardner, MD, Ph.D., M.P.H. That report was based upon almost 12,000 claims, 2,200 of which were handled under the "ADR" process and 9,500 of them under the conventional statutory process. These claims had dates of injury between January 1, 1995 and December, 2000, valued as of June 30, 2001.

The conclusions of this study indicate that overall, ADR had failed (at that time) to confirm that carve-out programs, with their alternative dispute resolution process, provided a cost effective solution to the expensive, highly litigious workers' compensation system. It is of importance, however, to note that the dominant majority of claims in this study were with one carrier, the State Compensation Insurance Fund, a California non-profit, public enterprise fund that operates as a market of last resort and a competitive insurer.

The study did show that ADR programs are associated with significantly lower attorney involvement and litigation rates, and that aggregate benefit payments for indemnity claims in ADR programs were virtually identical to similar claims from the statutory system.

The study went on, however, to show that results indicated highly variable outcomes across classes of business within the construction industry, and that, to quote from the study, "modest levels of program participation and insufficient data collection have limited research into ADR outcomes", and that "a more complete analysis comparing ADR claim outcomes to traditional statutory claim outcomes is merited".

Our view of the study was that the findings represented more or less the experience of one insurance carrier, that of the California State Compensation Insurance Fund and that the results were not representative of the insurance industry as a whole. Secondly, results were not uniform across the data analyzed and thus further supported the notion that savings may in fact be produced with effective execution on the part of a specialty insurance carrier. Our experience since the year 2000 just did not match the overall conclusion of the CWCI study, but was consistent with the variability comments found in the report.

In light of the results of the 2004 study by the CWCI, SeaBright Insurance Company independently engaged the services of Axiomedics Research, Inc., and Dr. Laura B. Gardner, MD, Ph.D., M.P.H. (who did the original CWCI study) and asked that a study be done comparing SeaBright claims handled under "carve-outs" and SeaBright claims handled under the conventional statutory system. The first study done by Axiomedics Research, Inc. was done for SeaBright in 2004 and showed very promising results.

Early in 2006 and then again in late 2007, SeaBright Insurance Company engaged in more independent studies by Axiomedics Research, Inc., to conduct a study of the impact of the Collectively Bargained Workers' Compensation/ADR (CBWC) claim model on loss costs. It is important to note that these studies compared workers' compensation claims handled under the conventional statutory system by SeaBright against claims handled under collectively bargained workers' compensation (CBWC) agreements by SeaBright. (In other words, the study compares SeaBright claims handling under the conventional WC system with SeaBright claims handled under CBWC agreements). These studies showed considerable variances in loss costs. The most recent study included over 2,400 closed SeaBright claims for a seven-year period, valued as of July, 2007. Again, the comparisons shown in this study do not compare SeaBright CBWC against industry data – the comparisons are between SeaBright conventional claim data vs. SeaBright CBWC claim data. SeaBright is currently exploring the possibility of embarking on a new study contrasting industry-wide claims data in California (Non-ADR) to SeaBright's ADR outcomes.

The most recent SeaBright study confirmed that the average litigation rate among the CBWC Indeminty claims were more than 45% lower than claims handled under the claims handled under the conventional statutory workers' compensation system. The key factor in arriving at this result is the independent "third party" ombudsperson who represents the interests of all parties involved. Of almost 2,400 "disputed" claims handled under CBWC agreements by SeaBright over the last five years, 95% of them were resolved at the informal "ombudsperson" level with no legal intervention. Less attorney involvement translates into more of the benefits getting into the hands of the injured worker, and into lower loss costs for union employers.

The study also revealed that the CBWC claims can close faster than claims handled under the conventional statutory system. In many cases, claim duration on lost time claims were 10-20% shorter than in the statutory system.

It is our experience that injured workers get their benefits on a much timelier basis under CBWC. As stated earlier, the key reason for this is the presence of the third party "ombudsperson" and the time frames for problem resolution as outlined in the CBWC agreement. The result is that injured workers have a much less stressful experience after a work-related injury and that injured workers receive the benefits due them on a timelier basis under a CBWC program due to the absence of litigation.

This study showed that Average Claim Costs for claims processed by SeaBright under the conventional statutory workers' compensation system were 14% to 26% lower than claims costs for non-CBWC claims handled by SeaBright. (This excludes "first aid" or "medical only" cases.)

SeaBright Insurance Company supports labor and management in efforts to find cooperative means of resolving conflict and improving benefit benefit delivery for employees who are injured on-the-job. We believe that CBWC can provide a valuable option to workers' compensation claims handling for participating employers that delivers benefits, resolves disputes on a timelier basis, and provides employers and employees alike a forum to resolve issues without contentious litigation. It is our belief that with proper execution:

- Claim disputes are resolved in a non-contentious fashion causing less stress on injured workers;
- Litigation is reduced significantly offering more timely resolution of disputes;
- Claim costs are reduced for claims handled under CBWC agreements;
- Employees return to work on a more timely basis;
- The Collectively Bargained Workers' Compensation solution is a win-win proposition for both employers and labor alike.

Sincerely



J. Rae Farese

Senior Vice President – Collectively Bargained Workers' Compensation  
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