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MEETING NOTICE AND AGENDA

Name of Organization: Legislative Committee on Workers' Compensation

*(Nevada Revised Statutes 218.5375)*

Date and Time of Meeting: Wednesday, October 28, 1998

9:30 a.m.

**Place of Meeting: Grant Sawyer State Office Building**

**Room 4412**

**555 East Washington Avenue**

**Las Vegas, Nevada**

**Note: Some members of the committee may be attending the meeting, and other persons may observe the meeting and provide testimony, through a simultaneous video conference conducted at the following location:**

**Legislative Building**

**Room 4100**

**401 South Carson Street**

**Carson City, Nevada**

**A G E N D A**

**I. Opening Remarks**

**Senator Ann O'Connell, Chair, Legislative Committee on Workers' Compensation**

**\*II. Approval of Minutes from the Meeting of May 28, 1998**

**\*III. Work Session I—Discussion and Action Regarding Recommendations on the Following Topics (Work Session Document with the specific recommendations is attached):**

**A. Proposals Recommended by the September 30, 1998, Subcommittee of the Legislative Committee on Workers' Compensation for Adoption:**

- 1. Permanent Total Disability**
- 2. Hearings and Appeals Process**
- 3. Qualifications of Associations of Self-Insured Employers**
- 4. Owner-Controlled Insurance Programs (OCIPs)**
- 5. Three-Way Insurance**

**B. Proposals Concerning Owner-Controlled Insurance Programs Recommended by the September 30, 1998, Subcommittee of the Legislative Committee on Workers' Compensation for No Action**

**\*IV. Report on Three-Way Insurance**

**James Jeppson, Chief Insurance Assistant, Division of Insurance, Department of Business and Industry**

**Tim Hughes, Appeals Manager, Western Region, National Council on Compensation Insurance (NCCI)**

**A. Proposed Plan by the NCCI for an Appeals Board Relating to Rates and Classifications of Employers**

**B. Report on the Opinion from the Attorney General Regarding the Definition of "Insurer"**

**\*V. Report on the Fiscal Year 1998 Financial Statements of the Employers Insurance Company of Nevada**

**Lenard Ormsby, General Counsel, Employers Insurance Company of Nevada**

**\*VI. Report and Recommendations Regarding the Coverage of Heart and Lung Disease for Retired Police Officers and Firefighters**

**Wayne Carlson, Public Compensation Agency Trust**

**Danny Thompson, AFL-CIO**

**\*VII. Report Regarding Physical Therapy Care for Injured Employees**

**Lynn Maguire, President-elect, Nevada Physical Therapy Association**

**VIII. Public Comment**

**\*IX. Work Session II—Discussion and Action Regarding Proposals Recommended by the September 30, 1998, Subcommittee of the Legislative Committee on Workers' Compensation for Further Discussion (Work Session Document with the specific recommendations is**

attached):

- A. Coverage of Heart and Lung Disease for Retired Police Officers and Firefighters
- B. Coverage for Correctional Officers Exposed to Contagious Diseases
- C. Subrogation of Insurer to Rights of Injured Employees
- D. Owner-Controlled Insurance Programs

**\*X. Discussion of Next Meeting Date**

**XI. Adjournment**

**\*Denotes items on which the committee may take action.**

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Research Division, Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call Terrie Williams at 702/684-6825, as soon as possible.

Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; Carson City Courthouse, 198 North Carson Street; Legislative Building, Room 1214, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was faxed for posting to the following Las Vegas, Nevada, locations: Clark County Office, 500 South Grand Central Parkway, and Grant Sawyer State Office Building, 555 East Washington Avenue.

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## WORK SESSION DOCUMENT

**Legislative Committee on Workers' Compensation**

*Nevada Revised Statutes (NRS) 218.5375*

**October 28, 1998**

The following "Work Session Document" has been prepared by the staff of the Legislative Committee on Workers' Compensation. The document is separated into two parts. The first part, Work Session I, contains proposals recommended by a subcommittee of the Legislative Committee on Workers' Compensation at the September 30, 1998, meeting for adoption by the Committee. In addition, it includes proposals recommended by the subcommittee for no action by the Committee. Proposals adopted by the Committee will be referred to LCB's Legal Division for preparation of bill draft requests. The second part, Work Session II, contains proposals that the subcommittee wanted to consider again before taking action.

Each part of this Work Session Document is organized by the recommendations of the subcommittee and is designed to assist the members of the Committee in making decisions during the work session. The source of each recommendation is noted at the end of the recommendation. You may wish to note that the numbers used to identify proposals in this Work Session Document are consistent with the numbers used in the Work Session Document of September 30, 1998. In addition, some of the recommendations have been modified to reflect testimony provided to the Committee at its September 30, 1998, meeting.

## WORK SESSION I

**PROPOSALS RECOMMENDED BY THE SUBCOMMITTEE FOR**

**ADOPTION BY THE COMMITTEE**

**Permanent Total Disability**

**1. Amend NRS 616C.435 to provide that wage replacement benefits will be provided only up to age 70 for employees who are determined to be permanently and totally disabled under the odd-lot doctrine.**

*Point of clarification: The insurer will determine whether an employee qualifies for permanent total disability (PTD) benefits under the odd-lot doctrine. This doctrine means that an employee may qualify for PTD benefits because the physical impairment and factors not related to the physical impairment, such as age, experience, training, and education, make the employee so handicapped that he will not be employable in a competitive labor market.*

**(Leslie Bell, CDS of Nevada; Timothy E. Rowe, McDonald Carano Wilson McCune Bergin Frankovich & Hicks LLP; 8/10/98)**

## Hearings and Appeals Process

**5. Amend NRS 616C.340(2) as follows to clarify that an appeals officer must have not only been licensed to practice in Nevada for two years, but must have experience in workers' compensation claims and proceedings:**

**2. Each appeals officer must be an attorney who has been licensed to practice law before all the courts of this state *and have actively practiced law in actions related to claims for compensation* for at least two years.**

**(Sam McMullen, McMullen Strategic Group, 4/7/98 and 8/10/98)**

**6. Amend NRS to require the chief of the hearings division to adopt regulations governing the conduct of Hearing Officers and Appeals Officers that will include the standards set forth in the Nevada Code of Judicial Conduct.**

**(Sam McMullen, McMullen Strategic Group, 4/7/98 and 8/10/98)**

## Qualifications of Associations of Self-Insured Employers

**12. Amend NRS 616B.386 to provide that an association of self-insured public or private employers that meets the criteria listed below may adopt internal policies that specify what type of documentation a proposed new member must submit to the association and the commissioner to demonstrate its financial solvency. Such an association must have:**

- a. Been certified by the Commissioner of Insurance for at least three consecutive years;**
- b. A combined tangible net worth of all the members of the association of at least \$5 million; and**
- c. At least 15 members.**

*Note: In previous work session documents, item 12 indicated that an amendment be made to NRS 616B.350. Upon further discussion between the parties proposing these items and legal counsel, it was determined that the amendment should be made in NRS 616B.386. Also, some changes to the proposed language have been made to reflect the intent of the parties proposing this item. Any other necessary changes to NRS will also be made accordingly if a bill draft request is made by the Committee.*

**13. Amend NRS 616B.386 to provide that an association of self-insured public or private employers that meets the criteria listed below may adopt internal policies setting the tangible net worth and manual premium for each proposed new member. Such an association must have:**

- a. Been certified by the Commissioner of Insurance for at least three consecutive years;**
- b. A combined tangible net worth of all the members of the association of at least \$5 million;**

c. At least 15 members; and

d. Not had an informal meeting arranged for it by the Commissioner of Insurance pursuant to subsection 1 of NRS 616B.431 due to an issue of the association's solvency or an alleged violation of law or, if such a meeting has been arranged by the Commissioner, there must have been a satisfactory resolution of the concerns which made the meeting necessary, as evidenced by a letter from the Commissioner.

(Mary Lau, Retail Association of Nevada, 4/7/98; Sam McMullen, McMullen Strategic Group, 8/10/98)

#### Owner-Controlled Insurance Programs (OCIPs)

**NOTE:** On June 24, 1998, the Legislative Committee on Workers' Compensation approved a proposal to form a voluntary working group to make recommendations regarding the regulation of owner-controlled insurance programs (OCIPs). On September 30, 1998, the OCIP working group submitted recommendations for consideration by the Committee and the subcommittee recommended the following items for adoption.

*Point of clarification: For the purposes of items 15, 17, 19, 20, 23, 26, and 29, the terms "wrap-up," "OCIP" and "CCIP" refer to an arrangement where an owner of a construction project (if "owner-controlled") or a principal contractor of a construction project (if "contractor-controlled") has provided for industrial insurance and other types of insurance related to a construction project for all the subcontractors, independent contractors and employees working on the construction project. When an owner makes such an arrangement the exclusive remedy provisions of NRS 616A.020 apply to that owner.*

**15. Enact a provision in NRS to require that a contract for a wrap-up, OCIP, or CCIP include the following specific requirements:**

a. The project site must include all operations in the course or scope of the OCIP project, including all related off site operations;

b. The owner, general contractor, or insurer must develop and implement a safety program that includes: minimum safety standards; safety meetings; safety training; site inspections; advising subcontractors on special hazards; and investigation of serious injuries;

c. The owner, construction manager, general contractor, and all subcontractors working on the project must be listed as named insureds (NOTE: A named insured is specified as the insured in an insurance policy. A business added to a policy, other than the named insured, is considered an additional insured.);

d. The owner or general contractor must be designated as responsible for loss control and claims handling programs, including that the owner, general contractor, or their representatives must sign the C-3 form;

e. Penalties for failing to comply with the safety plan and claims procedures;

f. Terms and conditions of coverage; and

g. Insurance for completed operations and project coverages for a minimum of three years, except for residential projects which would be required to have five years of completed operations and project coverages.

**17. Prohibit the withholding of periodic payments to subcontractors or members enrolled in a wrap-up, OCIP, or CCIP by the owner or general contractor if the subcontractor does not sign the C-3 form.**

**19. Enact a "file and approve" provision in NRS that would require a contract for a wrap-up, OCIP, or CCIP to be filed with the Division of Insurance 60 days prior to the start of the project. The Commissioner of Insurance would have 60 days after submission of the materials to review and approve or disapprove the contract. If no action is taken by the Commissioner within 60 days, the contract would be considered approved.**

20. Amend NRS to specifically allow the following entities to participate in or sponsor wrap-up, OCIP, or CCIP agreements: private companies, including firms undertaking to construct a project(s) in Nevada; public bodies; and utilities.

23. Do not set a minimum project size in statute. Allow market forces to determine the minimum size of projects for which a wrap-up, OCIP, or CCIP may be used.

26. Clarify in NRS that the insurer for the wrap-up, OCIP, or CCIP is liable for all workers' compensation claims related to injuries that arise in the course of employment on the project which are covered by the wrap-up, OCIP, or CCIP contract, including future claims filed after the completion of the project. Provide in NRS that a subcontractor or enrolled member of the wrap-up, OCIP, or CCIP may not be made liable for payment of claims, including claims filed after the completion of the project, related to the OCIP. An enrolled member is a company that is covered under the wrap-up, OCIP, or CCIP agreement under the definition of enrolled member. This provision would apply for the time period of the wrap-up, OCIP, or CCIP agreement and after the completion of the project, including in situations in which the insurer and/or owner of the project are no longer present or in business in the State of Nevada.

29. Require in NRS the following education and notification related to a wrap-up, OCIP, or CCIP:

a. The owner or general contractor must clearly notify subcontractors if a project is a proposed wrap-up, OCIP, or CCIP. This notification must be made in the document that requests bids in advance of the bid. The purpose of this notification is to allow subcontractors to bid the project with and without insurance costs, as well as with bid fees relating to the costs of loss control and claims administration.

b. The pre-bid conference must at a minimum include the following information: the general concept of a wrap-up, OCIP, or CCIP; the requirement for contractors to carry separate workers' compensation coverage for work not performed on the "project site"; the basic safety plan; and claims administration procedures.

### Three-Way Insurance

30. Amend Recommendation 25 (from the Summary of Recommendations) approved by the Committee at its meeting on August 10, 1998, to clarify that the information DIR may collect for the information system for three-way insurance is limited to the basic claims information identified in Attachment I. The amended recommendation would read as follows:

25. *For the information system being developed for three-way insurance, enact legislation to allow the Division of Industrial Relations (DIR) to collect only basic claims information from associations of self-insured employers, the Employers Insurance Company of Nevada (EICON), private carriers, and self-insured employers as described in the materials provided in Attachment I. Specify that in carrying out its general responsibilities and regulatory activities, DIR may at a maximum collect only that information which is currently collected by DIR or the EICON. The frequency of the requirement to report [this] information must be the same for associations of self-insured employers, EICON, private carriers, and self-insured employers.*

## PROPOSALS RECOMMENDED BY THE SUBCOMMITTEE

### FOR NO ACTION BY THE COMMITTEE

#### Owner-Controlled Insurance Programs

NOTE: On June 24, 1998, the Legislative Committee on Workers' Compensation approved a proposal to form a voluntary working group to make recommendations regarding the regulation of owner-controlled insurance programs (OCIPs). On September 30, 1998, the OCIP working group submitted

recommendations for consideration by the Committee and the subcommittee recommended that no action be taken on the following items.

*Point of clarification: For the purposes of items 14, 18, 21, 22, 24, and 25, the terms "wrap-up," "OCIP" and "CCIP" refer to an arrangement where an owner of a construction project (if "owner-controlled") or a principal contractor of a construction project (if "contractor-controlled") has provided for industrial insurance and other types of insurance related to a construction project for all the subcontractors, independent contractors and employees working on the construction project. When an owner makes such an arrangement the exclusive remedy provisions of NRS 616A.020 apply to that owner.*

**14. Enact a provision in NRS to require that a contract for a wrap-up, OCIP, or CCIP minimally address the following general items:**

**a. The definition of the project site covered by the contract;**

**b. The safety program;**

**c. The insured status of the owner, construction manager, general contractor, and subcontractors as additional insureds or named insureds. (Note: A named insured is specified as the insured in an insurance policy. A business added to a policy, other than the named insured, is considered an additional insured);**

**d. Claims administration;**

**e. (no equivalent provision to 15e.);**

**f. Terms and conditions of coverage; and**

**g. Insurance for completed operations and project coverages for a minimum of three years, except for residential projects which would be required to have five years of completed operations and project coverages.**

**18. Enact a provision in NRS requiring prior filing and approval of all contracts for wrap-ups, OCIPs, and CCIPs with the Division of Insurance before commencement of the wrap-up, OCIP, or CCIP. Require the Commissioner of Insurance to review and approve all contracts for wrap-up, OCIP, and CCIP agreements. The review and approval of the Commissioner would relate specifically to the insurer, policies, forms, rates, rating plans, funding plans (such as a deductible or deferred loss plan), coverages, site specific wording, and other insurance product matters. The Commissioner would have 20 days from receipt of the contract material to review and approve or disapprove the contract.**

**21. Amend NRS to specifically prohibit the use of wrap-up, OCIP, or CCIP agreements for public projects.**

**22. Enact a provision in NRS to allow self-insured employers, associations of self-insured employers, and captive insurance companies to provide workers' compensation and other insurance coverages for a wrap-up, OCIP, or CCIP. For the purposes of this provision, a captive insurance company would mean an insurance company set up by the owner of the project for purposes of writing a wrap-up, OCIP, or CCIP agreement.**

**24. For the period of July 1, 1999, to June 30, 2000, allow the use of wrap-up, OCIP, or CCIP agreements only for projects greater than \$200 million in project cost. The minimum project size would then be reduced to \$100 million effective July 1, 2000. This provision would only apply to site-specific wrap-ups, OCIPs, or CCIPs.**

**25. Amend NRS to specifically allow the use of rolling wrap-ups, OCIPs, or CCIPs. A rolling wrap-up is an agreement used for ongoing or continuous construction projects that are typically not site-specific or time limited.**

## WORK SESSION II

**PROPOSALS RECOMMENDED BY THE SUBCOMMITTEE FOR  
FURTHER DISCUSSION BY THE COMMITTEE**

**Coverage of Heart Disease for Retired Firefighters and Police Officers**

**2. Clarify NRS to limit the compensation for heart and lung disease of firefighters and police officers that occurs after the employees have retired or are no longer working as firefighters or police officers:**

**a. Repeal NRS 617.455(7) and 617.457(7) which provide that a firefighter or police officer who is partially disabled as a result of heart or lung disease may elect to receive permanent total disability benefits if the person is incapable of performing as a firefighter or police officer.**

**b. Amend NRS 617.455 and 617.457 to provide that the presumption in subsection 1 applies to disabling heart or lung disease diagnosed after the termination of the person's employment if the diagnosis occurs within a period which begins with the last date the employee actually worked in the qualifying capacity and extends for a period calculated by multiplying three months by the number of full years of his employment. For example, an employee with 30 years of service would have continued eligibility for compensation of heart and lung disease for 90 months (7.5 years) after the employee retires. Nevada law currently provides that diseases of the heart and lung of certain persons who have been employed as firefighters or police officers are presumed to arise out of and in the course of employment.**

**c. Amend NRS 617.455(6) and 617.457(6) to add the following provision. These subsections currently state that failure to correct predisposing conditions which lead to heart or lung disease as ordered by a physician in the annual examination excludes the employee from benefits if the correction is within the ability of the employee.**

*Such annual physical examinations shall be required during the periods of extended eligibility provided in section 1. Failure to comply with the requirements for physical examinations shall result in the suspension of eligibility for the benefits provided by this section.*

**d. Amend NRS 617.455 and 617.457 to provide that if a person is entitled to benefits under subsection 1 or 2, the firefighter or police officer shall not be entitled to temporary total disability benefits pursuant to NRS 616C.475. This provision would only apply to cases in which the person is retired or otherwise separated, voluntarily or otherwise, from employment or volunteer status as a police officer or firefighter before the claim is opened.**

**e. Amend NRS 617.455 and 617.457 to provide that the last injurious exposure rule may be used to determine the insurer responsible for payment of benefits to the police officer or fireman who has retired or otherwise separated from employment as a police officer or fireman. The last injurious exposure rule imposes liability on the insurer of the employer that last exposed a person to conditions that could have caused the occupational disease.**

**f. Amend NRS 617.455 and 617.457 to provide that any benefits payable pursuant to these sections shall be based upon the average monthly wage as of the date of disablement.**

**i. Average monthly wage for retirees could be based on the amount of the retirement benefits received by the retired firefighter or police officer.**

**OR**

**ii. Average monthly wage could be deemed to be zero for retired firefighters or police officers if "wage" is defined to not include retirement benefits.**

**(Wayne Carlson, Public Agency Compensation Trust, 9/23/98; Vicki Robinson, City of Las Vegas, 8/10/98)**



**Coverage for Correctional Officers who are Exposed to Contagious Diseases**

**3. Amend subsection 2 of NRS 616A.035, which defines the term "accident benefits," to read as follows:**

**2. The term includes [medical] :**

***(a) Medical benefits as defined by NRS 617.130 [and any preventive] ;***

***(b) Preventive treatment administered as a precaution to an employee who is exposed to a contagious disease while providing medical services, including emergency medical care, in the course and scope of his employment [.] ; and***

***(c) Preventive treatment administered as a precaution to an employee of the department of prisons who:***

***(1) Qualifies as a police officer pursuant to subsection 7 of NRS 617.135; and***

***(2) Was exposed to a contagious disease when battered by an offender or when responding to a physical altercation between offenders at an institution or facility of the department of prisons in the course and scope of his employment,***

***if the battery or employee's response to the altercation is documented by the creation and maintenance of a report concerning the battery or altercation by the department of prisons.***

**AND**

**Add a new subsection 4 to NRS 616A.035 to specify that "preventive treatment" includes tests to determine if an employee has contracted the disease to which he was exposed.**

**AND**

**Amend subsection 2 of NRS 616A.265, which provides what does and does not constitute an "injury by accident arising out of and in the course of employment," to add a new paragraph to read as follows:**

***(c) The exposure to a contagious disease of an employee of the department of prisons who:***

***(1) Qualifies as a police officer pursuant to subsection 7 of NRS 617.135; and***

***(2) Was exposed to the contagious disease when battered by an offender or when responding to a physical altercation between offenders at an institution or facility of the department of prisons in the course and scope of his employment,***

***shall be deemed to be an injury by accident sustained by the employee arising out of and in the course of his employment if the battery or employee's response to the altercation is documented by the creation and maintenance of a report concerning the battery or altercation by the department of prisons.***

**AND**

**Create a new section in Chapter 616C specifying that if an employee of the Department of Prisons who qualifies as a police officer pursuant to subsection 7 of NRS 617.135 is exposed to a contagious disease when battered by an offender or when responding to a physical altercation between offenders at an institution or facility of the Department of Prisons in the course and scope of his employment and the battery or employee's response to the altercation is documented by the creation and maintenance of a report concerning the battery or altercation by the Department of Prisons, and after retiring the employee develops a contagious disease, the employee's entitlement to workers' compensation would be limited to a certain period of time determined by the same formula as the**

**Committee on Workers' Compensation adopts for determining retired firemen and police officer's entitlement to workers' compensation.**

**(Ed Flagg, Nevada Corrections Association (NCA), Walter Tarrantino, Attorney for NCA, 8/10/98)**

### **Subrogation of Insurer to Rights of Injured Employees**

**4. Amend NRS 616C.215 to designate a formula for the distribution of a recovery obtained by an injured employee from a third party or a formula for the division of attorneys' fees and costs incurred by an injured employee to obtain a recovery from a third party when an insurer is subrogated to the rights of an injured employee against a third party.**

**(Leslie Bell, CDS of Nevada; Timothy E. Rowe, McDonald Carano Wilson McCune Bergin Frankovich & Hicks LLP; 8/10/98)**

### **Owner-Controlled Insurance Programs (OCIPs)**

**NOTE: On June 24, 1998, the Legislative Committee on Workers' Compensation approved a proposal to form a voluntary working group to make recommendations regarding the regulation of owner-controlled insurance programs (OCIPs). On September 30, 1998, the OCIP working group submitted recommendations for consideration by the Committee and the subcommittee recommended that the following items be further discussed.**

*Point of clarification: For the purposes of items 16, 27, and 28, the terms "wrap-up," "OCIP" and "CCIP" refer to an arrangement where an owner of a construction project (if "owner-controlled") or a principal contractor of a construction project (if "contractor-controlled") has provided for industrial insurance and other types of insurance related to a construction project for all the subcontractors, independent contractors and employees working on the construction project. When an owner makes such an arrangement the exclusive remedy provisions of NRS 616A.020 apply to that owner.*

**16. Clarify in NRS that contractors must have separate workers' compensation coverage for work not on the project site, as defined in the contract.**

**27. Require in NRS that contractors and enrolled members retain and carry forward their own workers' compensation experience from wrap-up, OCIP, and CCIP projects. This provision would apply if the owner provides workers' compensation coverage for the project or if the contractor is issued a separate workers' compensation policy for the wrap-up, OCIP, or CCIP.**

**27. OR 28.**

**28. Require in NRS that if the owner of a project provides workers' compensation coverage for contractors and names the enrolled members of the wrap-up, OCIP, or CCIP as additional insureds, the owner retains the experience of the contractors on the project. The experience of a contractor and enrolled members on the wrap-up, OCIP, or CCIP would not carry forward to that contractor's individual experience or loss history. In the case of self-insured employers or associations of self-insured employers participating in a wrap-up, OCIP, or CCIP, the experience of a contractor and enrolled members on the wrap-up, OCIP, or CCIP would not carry forward to affect any assessments or fines by DIR or the Division of Insurance that are based on the claims experience of the self-insured employers and associations of self-insured employers.**