MINUTES OF THE SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-fifth Session April 22, 2009

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 1:55 p.m. on Wednesday, April 22, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Maggie Carlton, Chair
Senator Michael A. Schneider, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Dean A. Rhoads
Senator Mark E. Amodei
Senator Warren B. Hardy II

GUEST LEGISLATORS PRESENT:

Assemblyman Jerry D. Claborn, Assembly District No. 19
Assemblyman Marcus Conklin, Assembly District No. 37
Assemblyman Tom Grady, Assembly District No. 38
Assemblyman Tick Segerblom, Assembly District No. 9

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Daniel Peinado, Committee Counsel
Vicki Folster, Committee Secretary

OTHERS PRESENT:

David Peri, President, Peri & Sons Farms
Scott J. Kipper, Commissioner of Insurance, Division of Insurance, Department of Business and Industry

George Ross, Snell and Wilmer; Hospital Corp. of America, Inc.; Sunrise Hospital and Medical Center; Nevada Self-Insurers Association; Las Vegas Chamber of Commerce
Ann Nelson, Executive Vice President, Employers Holdings Inc.
Rusty McAllister, Professional Firefighters of Nevada
Ryan Beaman, Clark County Fire Fighters Local 1908
Steve Driscoll, CGFM, Assistant City Manager, Administrative Services Department, City of Sparks
Victoria J. Robinson, MBA, SPHR, Manager, Insurance Services, Department of Human Services, City of Las Vegas
Danny Thompson, American Federation of Labor-Congress of Industrial Organizations
Steven Rank, Ironworker Management Progressive Action Cooperative Trust
Daniel J. Costella, Ironworkers Local 118; Member, District Council of Nevada Ironworkers
John O'Connor
J. Rae Farese, ARM, Sr. Vice President, CBWC Division, SeaBright Insurance Company
Ann Mino, Western Division Claim Officer, SeaBright Insurance Company
Doug Dvorak, Vice President of Claims, ULLICO Casualty Company
Kevin Peters, Vice President Underwriting, Old Republic Construction Program Group, Inc.
James (Jim) Wadhams, Jones Vargas; American Insurance Association
Don Jayne, Administrator, Division of Industrial Relations
Ray Badger, Nevada Justice Association
Dean Hardy, Law Offices of Hardy & Hardy
Barbara Gruenewald, Nevada Justice Association
John (Jack) E. Jeffrey, Las Vegas Laborers International Union of North America, Local 872
Nancyann Leeder, Nevada Attorney for Injured Workers, Office of the Nevada Attorney for Injured Workers, Department of Business and Industry
Randy Waterman, Public Agency Compensation Trust
Bryan Wachter, Retail Association of Nevada
Tray Abney, Reno/Sparks Chamber of Commerce
Robert (Bob) A. Ostrovsky, Nevada Resort Association
Christopher Reich, General Counsel, Washoe County School District
Ed Finger, Comptroller, Clark County
R. J. Lapuz, Coordinator, Claims Management Services, Clark County School District

CHAIR CARLTON:
We will open the meeting with Assembly Bill (A.B.) 124.

ASSEMBLY BILL 124 (1st Reprint): Revises provisions governing unemployment compensation. (BDR 53-667)

ASSEMBLYMAN TOM GRADY (Assembly District No. 38):
With me today is Dave Peri from Peri Farms in Yerington to present A.B. 124, and I have provided you with my written testimony (Exhibit C). We have left you with some information on the guest-worker program (Exhibit D).

DAVID PERI (President, Peri & Sons Farms):
The workers are here on a work visa. They have no social security number and are not eligible for any benefits whatsoever.

CHAIR CARLTON:
Is there anyone opposed to this bill? It seems very sensible.

ASSEMBLYMAN GRADY:
We have worked with the Department of Employment, Training and Rehabilitation and with Michael Tanchek, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry. We have one amendment in the Assembly at their request which we have included in the bill.

CHAIR CARLTON:
Are there any questions from the Committee? Out of curiosity, how many folks are we talking about?

MR. PERI:
At our peak, we have about 1,000 people. All the onions are harvested by hand. We grow baby spinach, spring mix, romaine hearts and it is very labor intensive. That is the reason we use the guest workers. The whole Country should use it. We just planted onions and we have about 20 extra guys who still have their visas. They go back to Mexico and the next job will start in about 30 days. That is when we do hand weeding and they will come back.

They cannot draw unemployment so they are not around being a burden on society. We think it has been a great program. The issue is that we are paying into unemployment and they cannot use it, nor can we.

CHAIR CARLTON:
There is no further testimony on this bill. What is the Committee's pleasure?

SENATOR HARDY:
There was no amendment, is that correct?

CHAIR CARLTON:
That is correct. There is no amendment.

SENATOR RHOADS MOVED TO DO PASS A.B. 124.

SENATOR AMODEI SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARLTON:
We will open the hearing on A.B. 248.

ASSEMBLY BILL 248: Revises provisions governing holding companies. (BDR 57-997)

ASSEMBLYMAN TICK SEGERBLOM (Assembly District No. 9)
Assembly Bill 248 was developed in response to issues that came up during United Health—Sierra Health Services merger two years ago. The presentation before you describes the additional authority of the insurance commissioner when reviewing insurance mergers (Exhibit E). The issue that the former Insurance Commissioner, Alice A. Molasky-Arman, faced in 2007 was her inability to evaluate the merger. She said she could not evaluate certain issues because she lacked the authority. You will recall that one of the issues was how United Health had managed their claims in other states. They had several complaints against them in other states and the Insurance Commissioner said she could not consider that when she was making her decision.

In A.B. 248, we tried to address the decision that Ms. Molasky-Arman wrote. We looked at the issues she raised and put those into the law, so if this ever happens again we will be able to make those evaluations. Since then, we have

added to the criteria allowing the insurance commissioner the ability to review claims management issues when approving mergers and acquisitions, Exhibit E.

We have also changed the burden of proof. In current law, the burden is on the insurance commissioner to prove the merger should not go forward. This change would put the burden on the party making the merger, and they will have to prove that the merger is legitimate. The new insurance commissioner supports the bill and I have asked him to testify to answer any questions you may have.

SCOTT J. KIPPER (Commissioner of Insurance, Division of Insurance, Department of Business and Industry):
We are here today to support A.B. 248. We believe this bill extends the ability for the insurance commissioner to review the issues as articulated by Assemblyman Segerblom. We feel this is good public policy and we stand before you to answer any question you may have on the bill.

CHAIR CARLTON:
Are there any questions from the Committee?

SENATOR COPENING:
Can you talk a little bit about the statement, "not in the public interest …"? I note it has been added throughout the bill. Perhaps you could give us some examples of situations you did not think were in the public interest. Why is this important to have in there?

COMMISSIONER KIPPER:
One thing that comes to mind is if there are issues surrounding a significant market share, potential or close to a monopoly. It may not be in the public's interest to approve that type of merger which would create that type of market. It gives us the ability to look even further at the effect of a total marketplace; not just on those particular lines or those particular companies.

GEORGE ROSS (Snell and Wilmer; Hospital Corp. of America, Inc.; Sunrise Hospital and Medical Center; Nevada Self-Insurers Association; Las Vegas Chamber of Commerce):
We are in favor of A.B. 248. Going forward is very important to allow the insurance commissioner the ability to look at the public interest, and in particular, to look at the competitiveness of the market. We believe that for both health-care consumers and health-care providers a comparative market

offers the most efficient effective situation. Its power apparently was not there in going forward. It would be very helpful to preserve the competitive market in Nevada.

ANN NELSON (Executive Vice President, Employers Holdings Inc.):
For the Committee's purpose, Employers Holdings, Inc. (Employers) is the largest domestic property and casualty insurance company in Nevada. We have a clear significant interest in A.B. 248. I have distributed a proposed amendment to all of you (Exhibit F). This is a bill that Employers could definitely support, so I want to walk through the bill and discuss why we oppose the bill as it is currently written and what we think the terms of the amendment do.

I have discussed this with Commissioner Kipper and he has indicated he has no objection with this amendment.

CHAIR CARLTON:
Has Assemblyman Segerblom seen this amendment? Was it presented to him before this hearing today?

ASSEMBLYMAN SEGERBLOM:
It was discussed, but I have not actually seen it.

MS. NELSON:
Briefly, Employers supports the notion that the insurance commissioner be able to look at the claims-management practices of insurance companies. It was one of the big concerns during the acquisition or merger that brought this issue to the forefront. We have proposed language in Exhibit F that substitutes for the language that is currently on page 2, lines 33 and 34. The concern we have with this language is that the applicant does not possess the ability … We do not believe it gets at the issue that you all were concerned about in the last acquisition. Clearly, a company can purchase the ability to manage claims appropriately. What the insurance commissioner, in our opinion, ought to be able to look at is the past practice of claims management, the pattern, the knowingly refusing to pay claims appropriately and those kinds of things. You will note that in the deletion of lines 33 and 34 in section 2 and inserting the new language in Exhibit F. That gives the insurance commissioner the ability to look at actual claims-management practices as opposed to the ability to manage claims which is on the "go-forward basis."

We have amended "public interest" to include the phrase, "insurance buying public interest." Both of these sections come straight out of the National Association of Insurance Commissioners' model law. We fully concur that the insurance-buying public ought to have an interest at the table and ought to be represented by the insurance commissioner. If two insurance companies are merging, that makes complete and total sense to us.

Finally, we have deleted the word "may" and reinserted the language "shall" in our amendment, Exhibit F. The reason is the State, through you and through the remainder of the Legislature, has enacted public-policy parameters around any merger or acquisition. Those public-policy parameters are included in *Nevada Revised Statutes* (NRS) 692C.210, subsection 1, paragraphs (a) through (h); the new (h) deals with the claims-management practices. If there are other areas the insurance commissioner should be looking at, if there are other items of concern he should be considering, that ought to be spelled out here so that all parties, the insurance-buying public, the acquirer and the company being acquired, know what is happening as they go into or contemplate a deal. We do not want to end up with one party making the other party mad and, therefore, deny the acquisition just because he is angry with the other party.

We are looking for certainty in the marketplace. You may know that when writing insurance or conducting any other kind of business, certainty in the marketplace is crucial to attracting businesses to a state or jurisdiction. This certainty, the enumeration of the public-policy considerations that this Committee and the Legislature thinks are important for the insurance commissioner to look at and to evaluate, makes total sense. Unfettered or unbridled discretion to consider anything, you may as well not list section 1, subsection 1, paragraphs (a) through (h) of the bill. You do not need it. You could simply say the insurance commissioner may agree or may not agree. Those are our concerns with the adoption of this proposed amendment. Employers fully supports this legislation.

Finally, if you look on page 2, lines 11 through 13 of A.B. 248, "The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this State or would tend to create a monopoly." That is the specific jurisdiction that we have given the insurance commissioner to look at monopolistic behavior, to look at the results of a merger or acquisition to see if it would lessen competition. I want you to be aware that A.B. 95 is coming over to this House; it passed out of the Assembly on Monday.

Assembly Bill 95 also gives jurisdiction over the same subject matter to the Attorney General. Our company is concerned about concurrent jurisdiction with two potential different standards of review on the same subject matter.

ASSEMBLY BILL 95 (1st Reprint): Revises certain provisions concerning the investigation and prosecution of unfair trade practices. (BDR 52-268)

CHAIR CARLTON:
We will make sure Assemblyman Segerblom gets a copy of the amendment you submitted.

COMMISSIONER KIPPER:
We had an opportunity to review the proposed amendment before you; we do not, at the Division of Insurance, have significant opposition to this amendment. There is a concern that the burden of proof on the claims practice issue changed over to the insurance commissioner's office. The language I refer to in Exhibit F says: "(h) The applicant's claims management practices have evidenced a pattern of the applicant having knowingly committed or performing with such frequency as to indicate a general business practice of…"

That puts the burden on the insurance commissioner's office to prove the applicant is knowingly committed to a significant claims-management problem.

The second part of this clause, "… performing with such frequency as to indicate a general business practice …," does allow the insurance commissioner's office to look at the claims practices and if we do find a pattern or frequency of practices, we would have enough ammunition to question whether or not the acquisition or merger is in the best interest of the State.

MS. NELSON:
If I may, I would like to clarify. This language does give the insurance commissioner the ability to utilize claims practices in other states as evidence of whether or not a merger should go through in this State. It is not just claims-management practices or a pattern of claims-management practices in the State; it is the pattern of claims-management practices of the applicant or of the acquiree in any state.

CHAIR CARLTON:
Are there any questions from the Committee? Commissioner Kipper, could you elaborate on the difference of public interest and interest of the insurance buying public? It appears that has been narrowed a bit. Is that a significant change?

COMMISSIONER KIPPER:
I do not think that is a significant change. If you look at the general population, almost everyone in the State, or for that matter the Country, is touched by insurance issues. That would be a very fine line to define the difference between the public interest and the interest of the insurance buying public.

CHAIR CARLTON:
Is there anyone else wishing to speak on this bill? We will close the hearing on A.B. 248 and allow Assemblyman Segerblom time to review and decide what we would like to do and post it again at a work session in the near future.

We will open the hearing on A.B. 173.

ASSEMBLY BILL 173: Makes various changes relating to occupational diseases. (BDR 53-898)

RUSTY MCALLISTER (Professional Firefighters of Nevada):
With your indulgence, Madam Chair, there are actually two bill draft requests that were combined into one bill. I will speak to the first part of the bill which is our desire to include fire arson investigators into the provisions of the heart and lung benefits. Currently, the benefits are provided to firefighters and law enforcement officers. We found over the course of time that in some entities fire arson investigators are covered. They are covered under the provision because they were promoted from within and they had already been firefighters for five years prior to the promotion; they already had the coverage. There are other entities that do not necessarily use firefighters; they may use fire-prevention people to cover the scenario of the fire arson investigator, filling that roll as an additional duty and assignment without having to cover them for heart and lung benefits. These individuals fall into a unique category. By filling two provisions they are going into the buildings, the same buildings that we come out of that are still smoldering, and they do the investigation part of the duty. They have the fire investigation part in the same environment. Not only that, but they have the law enforcement responsibilities to do investigations into

arson and they attempt to prosecute criminals. Both of these duties fall into law enforcement and firefighters, yet they are in a position where they do not have coverage. Heart and lung benefits are not available to arson investigators because they are not specifically mentioned under the provisions for law enforcement. Unless they were a firefighter previously, they are not mentioned in the provisions of a firefighter. They simply fall into a sort of hole. This bill is our attempt to try to resolve this issue by their inclusion.

The concerns of the City of Sparks are with regard to prescreening provisions. Indicating that these individuals would have benefits without the provisions of prescreening is not in line with what is currently in place. There are provisions for prescreening. We discussed this years ago. We talked about whether or not they could be given physicals prior to being employed. Senator Amodei asked me in 1999 whether that could be done, and I provided him with documentation that showed there are prescreening physicals or pre-hire physicals to help identify people who may have problems prior to being employed. Since then, there was a national standard published, "National Fire Protection Association 1582." The standard for prescreening or pre-hire physicals basically states if you have these problems you cannot be hired as a firefighter.

Another concern they discussed was someone who smoked being eligible for the benefit. That is a predisposing condition that is correctable. They can deny that claim, because the claim has already been fought on our part up to the Nevada Supreme Court and we lost. Those individuals with predisposing conditions, who were within their ability to correct and chose not to, had their benefit denied and it has been upheld. They are not eligible for the benefit, and if denied, it will be upheld.

Also, looking at the testimony from the City of Las Vegas regarding the expansion of the heart and lung benefits to another group, the City already covers all of their fire arson investigators. Everyone is covered because they have already been a firefighter. I find it ironic that they would want to deny the benefit to other entities or other people who do the same job. It is currently in contract that way and the only way the contract can change is if both parties agree to negotiate that. At this point in time, we have no intention of doing that.

The other entity with arson investigators coming from within is the Clark County Fire Department which provides coverage to all their arson investigators.

CHAIR CARLTON:
Are there any questions from the Committee?

SENATOR COPENING:
Mr. McAllister, can you speak a bit to the safeguards that are in place for these arson investigators when they go into a smoldering building? What kind of protections do they have? What types of apparatus?

MR. MCALLISTER:
The apparatus they have are carbon paper masks. They have filtering masks. They do not have breathing apparatus. We try to ventilate the building and check for carbon monoxide within the structure using a meter. Not all entities have a meter, and not all entities with fire investigators have the provisions or have the ability to use breathing apparatus. They do not wear turnouts; they usually wear a pair of coveralls and a paper mask to protect against particulates that may be in the air.

SENATOR COPENING:
Have you found that those masks provide enough protection for these people to go into this type of situation?

MR. MCALLISTER:
They block out particulates. If there is soot, charcoal or dust in the air, it will block those out. We typically have fittings each year to ensure proper sized paper masks. Do they protect against invisible gasses? No, they do not.

SENATOR CARLTON:
Is there a piece of equipment available that would protect them better?

MR. MCALLISTER:
Self-contained breathing apparatus, if it was deemed necessary. A mask with a tank of air could be worn to help keep from breathing those gases if they were still in the air.

RYAN BEAMAN (Clark County Fire Fighters Local 1908):
Assembly Bill 173 is about the fundamental rights given to certain employees in Nevada. Police officers and firefighters, through legislative action, have the ability to have certain injuries and occupational disease to be deemed as occupationally related. In NRS 617.453, 617.455, 617.457 and 617.485 are provisions for the presumption that the illness/injury is exclusively presumed to have risen out of and in the course of duty as a firefighter or a police officer. In NRS 617, there are certain guidelines to be followed when denying a claim; most notably, notwithstanding any other provision of the language in NRS 617.453, 617.455, 617.457 and 617.485. This partial phase is noted in the presumptive statutes and is clearly understood to mean that no other sections within NRS 617 are to be used to determine the status of a claim filed under those presumptive statutes.

Unfortunately, we find that prior to the 74th Legislative Session, Clark County, through their third-party administrator (TPA), Sierra Nevada Administrators, did routinely deny claims filed under NRS 617 presumptive status utilizing other sections of NRS 617 to base their denial. During the 74th Legislative Session, a bill was filed and legislation was passed to address this situation. During the last two years, notwithstanding the legislative change, Clark County, through Sierra Nevada Administrators has continually denied presumptive claims in violation of this statute (Exhibit G, original is on file in the Research Library). As a practice, the Department of Administration's Hearings Division officers have also disagreed with the legislative intent of the presumptive statutes.

The first chance for the affected employee to have a review of their case is generally at the district court level and at a great cost to the employee where the legislative intent is observed and the provisions of administrative decisions are overturned. As president of Clark County Firefighters Local 1908, I have tried to address the issue of claims denial for these cases dealing with presumptive injuries by meeting with staff from Clark County, specifically the county lobbyist who facilitated a meeting with Ed Finger, Clark County Comptroller, who also oversees the Risk Management Division of Clark County. The meeting was held to identify the reasons of the denial of these presumptive claims. Mr. Finger informed me that Vice President Bret Fields, Clark County Firefighters Local 1908, and Commissioner Chris Giunchigliani, Clark County Board of Commissioners, would accept those claims dealing with heart/lung injuries as intended by the Nevada Legislature.

You may hear from those who oppose A.B. 173 that they accept claims under NRS 617.453, 617.455, 617.457 and 617.485, which is true some of the time. The ones we always see them accept with no questions asked are the line-of-duty, desk and retiree claims due to a Nevada Supreme Court decision. You may also hear from those in opposition that they are winning these claims under the provisions of NRS 617.358 and 617.440, which is correct. The hearings officer and appeals officers are cutting and pasting the same decision as the TPA, Exhibit G. At the time the decision is received, the union employee must make the decision to pay the outstanding medical bills or have an attorney represent the member in district court.

Clark County seems to have no problem denying these claims, as they do not use in-house counsel for representation. Instead, they have entered into a contract with outside counsel to defend the decision being made by their TPA. Last year alone, from January 2008 to December 2008, the County spent more than $48,000 to fight these claims. Needless to say, I appear before you to inform you that Clark County and Sierra Nevada Administrators still fail to follow the direction of this Legislature. During the 74th Legislative Session, Clark County was reminded again of the legislative intent regarding this issue. The Assembly Committee on Commerce and Labor Chair, Marcus Conklin, stated after hearing testimony, the Legislature has tried to make it clear that in denying claims that should be undeniable is not an acceptable practice. Those claims are to be conclusively presumed per the NRS. Assembly Bill 173 is a small step to try again to address the issues of claim denial, and passage of this bill will further that mission.

CHAIR CARLTON:
Could you repeat the cost Clark County spent on these claims? Was it $48,000?

MR. BEAMAN:
That is correct. Last year, from January 2008 to December 2008, Clark County spent about $48,000 to fight these claims. They paid outside counsel.

CHAIR CARLTON:
Were those the legal fees?

MR. BEAMAN:
Correct.

CHAIR CARLTON:
We will now hear opposition to A.B. 173.

MR. ROSS:
With regard to A.B. 173, I want to remind you all that as a State we are currently in an extraordinary time of financial stress. I would ask that as you consider whether or not this benefit should be expanded everywhere, to arson investigators, and consider whether or not this is a priority compared to every other priority you are reviewing in consideration of public monies. This is not a few years ago when we were "fat and happy." We would suggest that you weigh the decision of the additional burden on the State and whether this is a use of money that compares to other potential uses of money. I feel if we expand those benefits in this particular year, this particular Session, we need to be mindful of expenditure importance.

CHAIR CARLTON:
Was that basically referencing just the arson investigator portion or was that for the denial portion also?

MR. ROSS:
I was just addressing the arson investigator. There is another bill coming over from the Assembly, A.B. 281, which helps some of that, but not all of it. My understanding is that there will be another bill coming over sooner or later that will address the additional aspects.

ASSEMBLY BILL 281: Makes various changes concerning workers' compensation. (BDR 53-57)

STEVE DRISCOLL, CGFM (Assistant City Manager, Administrative Services Department, City of Sparks):
Our issue with A.B. 173 is somewhat different than what has been talked about. Having arson investigators be involved in the benefit is probably long overdue. They are probably more exposed to some of the things than other people on the scene. From that standpoint, we do not disagree with what is being proposed to add arson investigator to the list.

As stated in my written testimony, our opposition continues to be, and we have testified in previous meetings as well, with the heart and lung benefit and that of personal responsibility by the employee both during and after employment

(Exhibit H). This has not been addressed and continues not to be addressed as we add and make changes. While there has been some discussion on the expense part of it from an actuarial base, each heart and lung case estimates out to about $1 million per case. Right now, the City of Sparks has more than $50 million of unfunded liability based on who we have on force today.

We agree that arson investigators out in the field are put in danger by the very nature of their job. They have been excluded for the reasons Mr. McAllister stated. If we are going to make changes to heart and lung, we would like to see the personal responsibility language be brought in.

CHAIR CARLTON:
Are you comfortable with the arson investigator portion? Your opposition is more about the overarching general public policy on heart and lung that we have disagreed with for a long time.

MR. DRISCOLL:
Yes, we continue to not address the personal responsibility on what is a very generous benefit intended to keep these people safe if they contract disease.

SENATOR COPENING:
Could you expand more on that? What do you see as some of those personal responsibilities that are not being addressed? How would you like to see it addressed?

MR. DRISCOLL:
The primary thing we would like to see, postretirement, is the continued medical follow-up while they are employed. While employed, all the folks under heart and lung are required to have an annual physical, and based on that physical, they are expected to follow through with the doctor's orders. There are some glitches in that, as I noted in my written testimony, Exhibit H. Glitches notwithstanding, they were to have annual physicals, medical follow-ups and were meant to follow those orders, so that they do not start drinking, they do not start using drugs inappropriately, they do not allow themselves to become obese, things that on their own cause heart or lung issues that would not be part of the job. Looking for some personal responsibility, this is a tremendous benefit, one that we bear and bear for a good reason; we would just like to see some personal responsibility both during and after their retirement.

CHAIR CARLTON:
For the record, I would like to disclose that my husband is a beneficiary of the heart and lung benefits in this State.

The follow-up you are speaking about, postretirement, would that be on the employee's dime or would that be on the entity's dime?

MR. DRISCOLL:
Based on this being something that could be handled through collective bargaining, we could work it out to be cost shared in a proper way. For some entities, it may be on the local government entirely. In other entities and other pay scales, it may be that the employee shares in that cost. In my opinion, the entity should always have at least some portion of it paid for.

CHAIR CARLTON:
We have to remember there are a significant number of peace officers and firefighters in this State who are employed by the State and do not have collective bargaining, therefore, they do not have the same voice at the table for some of the decisions that affect them. I would interpret that to be on the State's dime. The cost associated with the exams as well; they are not inexpensive.

MR. DRISCOLL:
Madam Chair, the wisdom of the Legislature would be to take a look at that, but this does become something that by spending a little bit now you offset large expense later. It does become like an insurance policy that if the State or local government employers were to put that in now and at least pay some, if not all, at the end of the day, you are going to save large dollar amount cases.

VICTORIA J. ROBINSON, MBA, SPHR (Manager, Insurance Services, Department of Human Services, City of Las Vegas):
As communicated by Mr. McAllister, we would like to go on record in opposition to A.B. 173. I have provided written testimony to the Committee on behalf of the City of Las Vegas (Exhibit I). We believe the expansion of the classification of employees covered under the presumptive benefits would be expensive and not based on scientific evidence; therefore, we are opposed to A.B. 173.

SENATOR COPENING:
Ms. Robinson, you had just mentioned that arson investigators did not have a higher incidence of certain diseases such as heart disease. Did you also mention lung in that description? Is there a certain group within this area that has a higher incidence of disease?

MS. ROBINSON:
I cannot say specifically about lung disease. I can say that the National League of Cities just released a study that indicates firefighters and those other types of public-safety employees do not have any higher incidence of cancer than the general public. If this bill covers presumptive benefits, which includes cancer, and we provided those individuals with benefits that other employees who work for us who have as high an incidence of cancer as firefighters do, they just have a better benefit.

CHAIR CARLTON:
You said the study was done by the Nevada Association of Counties (NACO) or commissioned by NACO?

MS. ROBINSON:
It was commissioned by the National League of Cities. It was just released this month.

CHAIR CARLTON:
For the record, written testimony neutral to the bill has been submitted to the Committee by Wayne Carlson, Executive Director, Public Agency Compensation Trust (PACT) (Exhibit J).

There being no further questions from the Committee, we will close the hearing on A.B. 173.

We will now move to A.B. 410 presented by Assemblyman Jerry Claborn.

ASSEMBLY BILL 410: Makes various changes concerning workers' compensation. (BDR 53-90

ASSEMBLYMAN JERRY D. CLABORN (Assembly District No. 19):
This is an act relating to industrial insurance allowing the provision of certain collective bargaining agreements to supersede various statutory provisions

related to industrial insurance. With me today is Danny Thompson of the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO); Steven Rank from Ironworker Management Progressive Action Cooperative Trust (IMPACT); and Danny Costella from Local 118. I understand that time is limited so I will turn it over to Danny Thompson.

DANNY THOMPSON (American Federation of Labor-Congress of Industrial Organizations):
We have reviewed a bill similar to this in the past and we never quite introduced it. Based on what is happening in California, specifically the provision that ironworkers enacted where they collectively bargained their workers' compensation, we have watched this program over the years and their successes. Ironworkers have the highest rates of any industry. In Minnesota it is as high as $68 per $100 of payroll. It is a very steep hill to climb because it is very dangerous work. They did it pretty much out of necessity.

I know when self-insurance came along and we opened up group, self and all the other ways of insuring workers' compensation, a lot of ironworker companies were the first to go to self-insurance because of the high cost to them. We would like to introduce Steve Rank of IMPACT, who has brought a number of providers and a number of people involved, who will testify. In the Assembly, we had testimony from contractors in Reno who said that because of the program in California, if one of those contractors come to Reno, it is difficult for Reno contractors to compete against them because their costs are so much lower, making it more difficult for them to bid work.

We are 100 percent in favor of A.B. 410 after we have reviewed those successes mentioned.

STEVEN RANK (Ironworker Management Progressive Action Cooperative Trust):
I am an ironworker representing IMPACT. I have worked with workers who have been severely hurt and have seen firsthand what happens when my friends have been hurt on the job site. Listening to their stories, I have learned that it takes them a long time to get treatment. The same 10 and 20 problems of getting checks on time, workers having good communication with the carrier claims adjuster and wanting a second opinion have always occurred with workers' compensation claims.

I am pleased to report to you the successes we have had in California, and ten other states that have this enabling legislation for collectively bargained workers' compensation (CBWC) programs. This program allows the contractors, the workers and the insurance carriers to work together, to parallel the existing workers' compensation system to make it better and improve the delivery of medical benefits to injured workers. We do nothing to diminish or remove any benefits to any injured under this current system. We watch the "bouncing ball" to ensure these guys are not left alone waiting for a phone call. We do not want any litigation or unnecessary medical costs. Your employers working on the Strip in Las Vegas who have had these accidents in the past few years need some relief. We need the cooperation in Nevada to do the same thing we are doing in neighboring states to allow industry to work together to improve the delivery of medical benefits to injured workers.

There is a mechanism involved in this process. You have heard the term alternative-dispute resolution (ADR). Through ADR, injured workers have a voice to go to. If they are not happy with their doctor or if they want a second opinion, they have someone they can call that labor-management and the insurance industry have all appointed as the right person; the focal point. If there is a medical question, we have an independent nurse case manager that will talk to that injured worker. It will make it very clear to the injured worker what is going on in the system so they do not get nervous and can avoid unnecessary medical costs or litigation. Those costs reflect in the employers Experience Modification Rate rating. If you have 20 to 30 claims with unnecessary medical costs or litigation, their overhead will put them into a position where they will be unable to bid work or get work.

I am pleased to have insurance carriers from all around the United States here today to testify of the great relationship that we have working together in a high-hazard industry to help push injured workers to get them back to work on time and at reduced costs for our employers.

I would like to share one statistic we have. Unfortunately, Michael Newington, with the Western Steel Council who works with contractors in Nevada and California, was not able to be here today. He asked me to share these results. In 6 years, our program has been operating in California and we have incurred 2,000 claims. Our ombudsman has been able to resolve all these disputes with only 55 moving to the next level of mediation. We have only had three cases that have gone to arbitration. There has been only one claim that went to full

litigation when they elected to go out of the system to the statutory route. This has been a proven effective method for us.

CHAIR CARLTON:
Are there any questions from the Committee?

SENATOR HARDY:
I did not read anything about assurances should the program go bankrupt or have other issues or assurances that the injured worker would be taken care of in those circumstances. Could you address that?

MR. RANK:
If the program is bound by the insurance coverage and not by our efforts on the side to help the worker, nothing is going to change. If the program dissolved, the insurance carrier still has the claim on file and will take care of that worker. We have never had a program stop because of the successes of these programs; they continue to grow.

SENATOR HARDY:
On page 2 of A.B. 410, starting with line 35, "Nothing in this section: (a) Authorizes any provision of a collective bargaining agreement to reduce the entitlement of an employee to compensation for temporary total disability, …" Why is it necessary to put that in statute instead of leaving it as a subject of the bargaining agreement?

MR. RANK:
We want to make real clear there is nothing in this program, or in these types of programs, that will take away any benefits from workers who are under the current workers' compensation statute. They put that in there to give everyone …

SENATOR HARDY:
That is speaking to the current …

MR. RANK:
Yes. We want to make sure that everyone understands that we are doing nothing to diminish anything under the current workers' compensation statutes.

SENATOR HARDY:
So as you negotiate this going forward, this is just to ensure that you do not do anything to undo something that somebody has currently got.

MR. RANK:
Yes. We are all bound by that: the carriers, the workers and the contractors. Everyone is in step and is trying to pull in the same direction.

DANIEL J. COSTELLA (Ironworkers Local 118; Member, District Council of Nevada Ironworkers):
To be brief, as ironworkers, we want to work. When we are hurt we want to get back to work as quickly as possible. This will ensure that our guys get back to work and, in turn, lower the costs to our employer.

JOHN O'CONNOR:
I was injured years ago and it took four and a half years to get my first surgery. If this law had been in place at that time, it would not have happened. Now I have a disability, it is sad, forever. Hopefully you will pass this bill.

J. RAE FARESE, ARM (Sr. Vice President, CBWC Division, SeaBright Insurance Company):
I have prepared a written statement that I will abbreviate in the interest of time (Exhibit K). We are here today to discuss what we believe to be very strong benefits brought about through the collectively bargained process by which unionized employers can file an addendum to the collectively bargained agreement. This allows for a much more efficient workers' compensation claims process.

Many states' existing workers' compensation systems may not be functioning as they were originally intended. While this may not be true of the Nevada system, an alternative such as the one proposed by A.B. 410 can supplement the existing system, and it may entice more employers to do business in the Nevada.

Over the years, employers in most states have struggled with rapidly increasing workers' compensation costs, while benefits to injured workers have been diluted by what we refer to as "frictional costs" involved in resolving disputed claims. Increased costs of medical care and pharmacy costs have added to the overall burden of employers throughout the United States. Gradually, benefit

deliveries to injured employees have become slower, more cumbersome and certainly more confusing to even the most knowledgeable employees in the system. In the long run, neither of the original parties to workers' compensation laws has truly benefited.

While the employers in Nevada may not currently be suffering from the pains that employers in other states' systems are, we feel that the alternative approach to benefits delivery and dispute resolution offered by A.B. 410 is an amiable companion to the existing system and may hedge against rapidly changing workers' compensation issues in the future for participating employers.

Our observation has been that a three-step alternative-dispute resolution process substantially reduces the unnecessary frictional costs of a typical adversarial workers' compensation claim. To validate that observation, we commissioned an independent study of SeaBright's book of business, which covered almost 2,000 lost-time claims over a five-year period. The results of that study, which compared SeaBright's statutory claims against SeaBright claims handled under alternative systems, have shown us on average claims costs managed under the alternative system of CBWC were 26-percent lower than those managed under the statutory system. This study also showed for claims managed under the alternative systems that the average litigation rate was 46-percent lower, and the average claim life was 60-percent lower. We recognized that results like these can vary significantly between carriers and trades.

Finally, in 2007, the Minnesota Department of Labor conducted a study for accident years 2002, 2003 and 2004. The outcome of that study indicated that twice as many injured workers returned to their pre-injury trade and employer. Vocational rehabilitation services were required half as much and at half the cost. The disputed claim rate was 60-percent lower under the ADR process. The indemnity claims rate was 18-percent lower. The medical costs were cut by 30 percent and the total benefit costs were 43-percent lower.

We believe the voluntary alternative proposed under A.B. 410 provides a good business model for the employers who participate, for injured workers and for insurance carriers.

Our current recessionary cycle provides a strong opportunity to enact a workers' compensation system that does not reduce benefits for injured

workers, yet does reduce the cost of workers' compensation insurance for contractors and other union employers.

ANN MINO (Western Division Claim Officer, SeaBright Insurance Company):
Discussing the claim process, I know that people are concerned that benefits may be different under collectively bargained and under the state act. The goal of the ADR program is simple. We are trying to provide injured workers access to high-quality medical treatment, to promptly deliver wage replacement and medical benefits once an injury has occurred, to facilitate a prompt healthy return to work and to provide a more effective means of problem resolution should questions or problems arise.

The key differences between a regular state act claim and a CBWC claim are that we have added the ombudsman who is an intermediary to help out with the claim, a nurse case manager, the medical-treatment provision and the ADR process. I have provided a written description of the process we have developed to mirror the NRS (Exhibit L). Any benefit delivery we have would be the same in terms of providing the same type of disability rate, same permanent disability rate, same two-week payments and everything would stay the same. Form letters would remain the same and the only difference would be if there were a question, instead of going to the Division of Industrial Relations (DIR), they would go to the ombudsman.

The ombudsman-program representative is available to help the injured worker navigate through the system providing guidance for any issue that may arise. If the injured worker is unhappy with their temporary disability rate, the ombudsman could explain how that is acquired and, if there was a mistake made, could approach the examiner on behalf of the injured worker. The job of the ombudsman is to try to help resolve the confusion and issues before it develops into a bigger problem.

Under the ironworkers program, they also have a nurse case manager who is independent and who contacts the injured worker to provide an extra tool in explaining medical benefits, diagnosis, prescriptions, tries to help them through the system and helps direct them to proper medical specialists if needed.

The next phase is the medical treatment. When an injured worker needs medical treatment for a work-related injury, they would select a medical provider from the exclusive list of medical providers that was negotiated between a union and

management. The claims-examiner ombudsman would answer any question they might have, but they do not have any input in selecting the doctor. The injured worker looks at the list and chooses a doctor. That doctor panel would be selected from the same panel that the Division of Insurance has put into place. Emergency treatment can be obtained by anyone treating, so if there was a problem where they needed immediate assistance, they could still go to anyone. They would then need to roll into the program.

We have tried to speed up the process and time frame for handling disputes and resolving any conflict in the dispute resolution process. The ombudsman provides the initial direction and tries to intervene and resolve the issue before it becomes a problem. If they cannot resolve the issue, and the injured worker wants to request mediation, the ombudsman would help them fill out the forms so it would be set for mediation as soon as possible. The majority of claims and issues are resolved at the ombudsman level of the process.

Mediation is a process where the parties meet informally with the assistance of a mediator to try to resolve the conflicts. The benefit of the mediation process is that it can be set up quickly. There are no rules of evidence the injured worker needs to worry about. If at that point there was no resolution, it would then be set for arbitration. Arbitration is a formal hearing with testimony, and rules apply. The injured worker would be able to rely on an attorney or the Nevada Attorney for Injured Workers which is part of NRS. Arbitrations can be set as soon as 30 to 60 days out. The arbitration is binding, but if the injured worker is unhappy, they could go outside the system and back into the State's appeal process.

In summary, the injured worker benefits because they can choose their own doctor, they get treatment agreed to by both management and labor, not the insurance company and there is a faster resolution of cases because the case gets on calendar quicker. The employer benefits because it is a voluntary program resource of the labor-management safety committee, and they get injured workers back to work sooner.

DOUG DVORAK (Vice President of Claims, ULLICO Casualty Company):
For those of you who are not familiar with ULLICO Casualty Company, we are a labor-zoned insurance company and consider ourselves the risk-solution provider for organized labor. In early 1990, we were in the forefront in one of the

carriers that first created CBWC. Since that time, we have had great success with various programs throughout the Country.

I second everything my friends at SeaBright, AFL-CIO and IMPACT have stated so far today. The ULLICO is a huge supporter of this program and we are hopeful that Nevada will adopt a similar program. Because we write insurance in several states, we have several insureds who work in multiple states. For example, we have insureds in California who come to Nevada to do jobs. The insureds in California are seeing the benefits of the CBWC, which Nevada does not have right now. They are telling ULLICO that they want it here in Nevada.

We have been doing these types of programs since early 1990; we have a lot of data that will back up the facts that this program really makes a difference. Since 1992, we have had over 20,000 claims we have adjusted in workers' compensation. One-third of those claims are CBWC claims and we have studied this data and compared it to the non-CBWC, and the differences are remarkable across the board. As Ms. Mino and Mr. Farese stated earlier, the duration of the claims are much less. The amount of money paid on the claims is significantly lower than on the non-CBWC, averaging less than $10,000 compared to $16,000. We have had more than a 30-percent savings by using the collectively bargained programs. Our data models a 2001 Cornell Study, where they reviewed and compared the New York claims and the New York CBWC pilot-program claims which showed a 35-percent reduction in claims costs and 25-percent decrease in the duration of the claims. Our data is more significant than the Cornell Study because our findings were significantly lower than theirs.

The effect of this program is that it is a win for all parties. When claims cost less, there is a lower cost for employers, contractors and better loss ratios for the casualty company. This is why we are so supportive of these types of programs. Looking at our 14,000 claims that are not CBWC, the litigation costs are immense. Compared with the costs on CBWC, there are almost none. We are able to move the claims much faster on the CBWC side because there is no litigation. Generally, most are completed at the mediation stage or earlier. It is rare that these claims get to the arbitration stage and most of them go away without the involvement of lawyers, making cost savings significant.

In conclusion, as a carrier on the forefront of utilizing CBWC programs, we are excited that Nevada is taking a look at this and hopeful that you will become the 11th state to adopt these types of programs.

CHAIR CARLTON:
This bill addresses one particular class of employees. Do you find that to be the pattern in other states, or is it a more open process where all CBWC employees can benefit from this?

MR. DVORAK:
My understanding is that this is consistent with the other states.

CHAIR CARLTON:
Do they choose one group and go with that?

MR. DVORAK:
Yes.

KEVIN PETERS (Vice President Underwriting, Old Republic Construction Program Group, Inc.):
We are an underwriter of casualty-coverage companies that are exclusively for the construction industry.

Our industry colleague's comments are very consistent with our results. I would like to discuss the practicality of this system and how it works. We strive to make immediate contact within 24 hours. We call it the "three-point contact" in the industry where we contact the employee, the employer and the provider. In this case, we enhance that by bringing a case manager into the process from the beginning, which would not be typical in every single injury case, but used most often in the more serious injury cases. Right from the beginning we have an enhanced process for workers' compensation claims in the delivery of those benefits. This process provides for a softer entry for the injured worker into the workers' compensation system; it is gentler and not adversarial. The case manager understands his job and can communicate with both the adjuster and the injured worker as an intermediary to expedite this process. The process promotes a cooperative proactive exchange between parties.

The benefits include reduced lost time, improved productivity for the employer and reduced medical costs, which ultimately reduces the employer's overall insurance costs. We found most injured workers want to return to work as soon as possible. By utilizing the ADR process we promote and assist in that process.

The reason our company supports this process is the safety component. IMPACT and other ADR programs for other unions promote safety extensively. Loss prevention for situations where the accident does not take place or is minimized is a direct reflection of the protective techniques that go into a job. We evaluate a company's safety and best practices when underwriting a program and price a risk. This makes it more cost-effective for the Nevada employer.

JAMES (JIM) WADHAMS (Jones Vargas; American Insurance Association):
The American Insurance Association is a trade association of property and casualty companies that write a substantial amount of workers' compensation in Nevada. You have had excellent testimony today. I have had the pleasure of watching the evolution of our workers' compensation system, and quite frankly, I think A.B. 410 represents a very positive move and the American Insurance Association supports the bill.

CHAIR CARLTON:
We have, for the record, written testimony from Seth Hausman, Senior Vice President of Zurich North America Construction, in support of A.B. 410 (Exhibit M).

DON JAYNE (Administrator, Division of Industrial Relations):
I signed in neutral today to take the occasion to acknowledge that, with conflicting schedules, we did not have an opportunity in the Assembly to work with the proponents of this bill. I was able to meet with them today to ask questions from the standpoint of how the regulator would interact with this type of program. We had a healthy discussion before this meeting and have made an agreement to spend a couple of days with my operational staff to speak with several of the folks who gave testimony today. We want to look for any concerns we might find to ensure that the simple things we have come to understand, such as board certified doctors being part of the process, interact properly. Within a couple of day's discussion, we should be able to report back to the Committee with any concerns or need for amendment. We want to be sure those things work properly in Nevada.

CHAIR CARLTON:
Is there anyone else who is neutral or in opposition to the bill who wants to testify today? Mr. Thompson, were there any proposed amendments to this bill?

MR. THOMPSON:
Yes, Madam Chair. We discussed a proposed amendment that Assemblyman Claborn has agreed to. It is specific as to who could collectively bargain for those types of agreement. We would propose removing that and allow anyone who wants to benefit from this be allowed to collectively bargain their workers' compensation.

CHAIR CARLTON:
That is a wise move. Is the sponsor of the bill fine with that?

ASSEMBLYMAN CLABORN:
We are.

CHAIR CARLTON:
There is one other public-policy issue I wanted to address. The discussion was about the way we view workers' compensation and how we try to treat all workers equally. This bill seems to afford extra care to those who can collectively bargain. Is there something on that line you would like to put on the record?

MR. THOMPSON:
This does not take anyone's rights. This bill keeps the statutory provisions intact. If someone feels they have been wronged, they continue to have the right to go through the appeals process. If you speak to the good workers' compensation attorneys, you will find that most individuals do not need an attorney at the hearings level. If you end up in a place where you are appealing something at the appeals level, you need an attorney. This bill does not remove anyone's statutory rights. It enforces all the existing statutory benefits.

CHAIR CARLTON:
The Legal Division had concerns on some language, but we can discuss that in our work session. At this time we will close the hearing on A.B. 410 and open the hearing on A.B. 511.

ASSEMBLY BILL 511: Revises industrial insurance provisions relating to insurers and third-party administrators. (BDR 53-115)

ASSEMBLYMAN MARCUS CONKLIN (Assembly District No. 37):
Madam Chair, you have before you today A.B. 511. Several weeks ago, Senator Schneider had a friend in Las Vegas testify in support of a bill who also happens to be a very good friend of mine. The circumstances surrounding his claim and events provide an impetus for A.B. 511. I told his story on the Assembly Floor and sometimes the system fails. In Nevada law when the system fails, there is no place left for an individual to turn; they have no recourse. To deny a person access to justice when they relied upon us to fairly and diligently help them through the process is indeed a real denial of their constitutional rights. This bill takes us back to pre-1995 and allows people who have been denied justice through the current system access to the courts. I cannot tell you how important this is to many people who in most cases have catastrophic claims and are not being helped by our current system.

Our committee heard testimony, as I am sure you will today, about the state of industrial insurance causes of action prior to 1995 when this was in existence. In fact, there were little to no actual lawsuits under this provision, but it did provide an impetus for insurance companies to fairly and diligently process claims that under the law should be processed and to not play games with those claims.

Madam Chair, I would urge your fair and impartial hearing of all this particular issue.

RAY BADGER (Nevada Justice Association):
The primary focus in my practice is representing injured workers. This bill provides an injured worker the opportunity to make a claim against their insurer for bad-faith claims practices. I want to read the definition that was in case law until 1995 because it is a very strenuous burden for anybody to meet. The person making such a claim would have to convince a court there were no reasonable bases for their benefits being denied and that their insurer knew there was no reasonable basis to make that decision. It is more than a negligence standard. These claims are not an erosion of exclusive remedy. You will hear from someone, I am willing to wager, that this bill interrupts exclusive remedy. The exclusive remedy is: an employer buys workers' compensation insurance and in return for that purchase they cannot be sued for negligence if their negligence may have caused the injury. This is about a claim against the insurer; not an employer.

Since 1995, we have had a provision of benefit penalties and it is complex. I will try to make a three-minute summary, but if I make an error it is not intentional; NRS 616D.120 is a very difficult statute to read,. There are fines that can be leveled by the DIR and that money goes to the DIR. Then the Legislature enacted something called benefit penalties. These benefit penalties go to injured workers who initiate a complaint stating their insurer made a decision without a reasonable basis and denied those benefits. The range under present law is between $5,000 and $37,500. You have to be a habitual criminal for the DIR to say you owe someone $37,500.

The only other remedy for our worst insurers in the State is for the Commissioner of Insurance to pull the insurance company's power to write business if they see enough claim-practice violations. That has never happened in Nevada. The problem with the benefit-penalty law is presently the DIR can only assess any monetary fine if that worker was denied a benefit, went through the hearing process, won the hearing process and then was untimely paid. That does not work. If you are trying to get the benefits to someone quickly, that process is not quick. I have a case today of a gentleman who is a maintenance worker and had a bad back injury. His doctor in Reno was on the insured's panel and said he needed back surgery. It took four months to get a second opinion. The second doctor is not allowed to tell the injured worker his opinion. That doctor sent a letter to the insurance company stating the injured worker needs surgery, but the insurance company did nothing with that information. Meanwhile, this injured worker sits at home gaining permanent nerve problems that sometimes happens when surgery is not performed.

We found out five months after this second opinion that the second doctor agreed with the first doctor that the man needed surgery. What is the remedy? When we finally found that out, we demanded in writing from the insurance company to approve the surgery. This insurance company did not respond. Under our law, we have to wait 30 days to ask for a hearing, because if they do not answer within 30 days, it is presumed to be a "no." I have a hearing next week and this man has now waited nine months. The two doctors have determined he needs surgery, and he has never received an answer from the insurance company.

My point is that is the type of conduct these insurance companies engage in because they do not see a major threat to them. The bad ones of the world do

what they well please. This proposal would be one step towards causing the worst actors to take a second thought before they do nothing.

CHAIR CARLTON:
To clarify, if an insurance company is doing the right thing and playing by the rules, they do not really have to worry about this bill, is that correct?

MR. BADGER:
Unless they are denying claims with no reasonable basis, knowing they have no reasonable basis, it would not affect them.

CHAIR CARLTON:
A perfect example that we do not make legislation for the good guys, we make legislation for the bad guys.

DEAN HARDY (Law Offices of Hardy & Hardy):
I practice workers' compensation law in Las Vegas. It is important for this Committee to understand this statute that we are trying repeal. It is at the back of the bill on page 9, "616D.030," it is actually astounding when I show this to my clients. If you read, "No cause of action may be brought or maintained against an insurer or third-party administrator who violates any provision of this chapter or chapter 616A, 616B, 616C or 617 of NRS." It is important to read that. You cannot sue an insurer or a TPA for violating the law. There is nowhere in American jurisprudence where insurers or TPAs have that immunity. It does not exist except in Nevada's workers' compensation law. As Mr. Badger said, this is not an erosion of the exclusive remedy. We are not asking for an opportunity to sue an employer for the underlying cause of action, for the underlying injury. We are asking to pursue an independent cause of action for the inappropriate administration of a client. When doctors agree an individual needs surgery and that individual has to wait nine months to have that surgery, it becomes inappropriate administration of a client.

The example we used several sessions ago when we were trying to change this law describes this inappropriate administration. An individual claimant was declared permanently and totally disabled by the Nevada Supreme Court. You all know how long it takes to get to the Nevada Supreme Court. In this case, it took almost five years to get a declaration that the individual was permanently and totally disabled. She worked for a major property in Las Vegas and she was in a wheelchair. In the State under current law, the insurers have the right to

revisit total disability once per year. After the Nevada Supreme Court decision came out, after a five-year struggle, they sent her to a "so-called" independent doctor, who was not more independent than if her uncle were to provide the consultation. That doctor said she was not permanently and totally disabled, so the insurer, in that instance, sent her a letter one month after the Nevada Supreme Court declaration that she was not now permanently and totally disabled pursuant to the doctor's report. The letter stated that her benefits are now terminated, and by the way, send us back the wheelchair. Then she killed herself.

That is a true story. Her adult son came to my office to ask me what we could do to the insurer and the administrator of the claim. I then pulled out the statute and said, "No cause of action may be found or maintained against an insurer or TPA that violates the law." We had him testify at that Senate hearing and there was not a dry eye in Committee or in the audience. We lost. It was difficult to convey to him. There is no State fund we are trying to protect; it is private insurers that insure in Nevada. There is no need to protect private insurers from an independent cause of action any longer. They violate the law; there should be a penalty for that. That is all we are asking. If you do not violate the law, there will be no penalty. All an insurer or TPA needs to do is to simply do the right thing. You have heard the testimony again and again from individuals, some of whom are your constituents, who tell you about the horrors of going through workers' compensation claims. It is sad, but true. It is real. If we had the opportunity to pursue the independent cause of action, those stories would be eliminated. The administrators and insurers of workers' compensation claims would not engage in bad-faith conduct. They did not engage in bad-faith conduct prior to 1995.

I have been practicing since 1981 in an office doing workers' compensation claims from 1985 to 1995, when I could sue insurers and administrators for bad-faith administration of a claim, and I filed exactly zero lawsuits. The reason for this was because I could file them. After 1995, I now can file dozens per year because of NRS 616D.030 that gives absolute blanket immunity for an insurer to violate the law. If that is the public policy that the State wants, then do not pass A.B. 511.

I would submit that is not the policy this Committee wants and it is certainly not the policy the Assembly Committee on Commerce and Labor passed. It is

time to change this and go back to an opportunity to pursue this cause of action because it is important public policy for Nevada.

BARBARA GRUENEWALD (Nevada Justice Association):
I also practice in workers' compensation law. I would like to present one example of why we need this bill; why we need this bad-faith cause of action. Many times insurers do not provide workers' compensation benefits that they are supposed to under the law. Ray Badger described earlier the procedure that if you do not provide the benefit, then you can demand, in writing to the insurance company, for the insurer to provide that benefit. This file box is full of demand letters that I sent in 2007 and 2008. Every time an insurance company did not provide my client the benefit, I sent them a demand letter. If they still did not provide the benefit after 30 days, then I can file an appeal. If I win at the hearing, they appeal it at the appeals office. That is a 90-day period that my client does not get these benefits.

If this legislation passes, then the insurance companies will provide the benefits in a timely manner, for the same reasons that Mr. Hardy has described to you. Thus, a claimant would not have to go to so many hearings, we would not have to write so many letters and we would not have to do all the work they have to do just to get a benefit like physical therapy, medication, surgery, etc.

CHAIR CARLTON:
Do you have a number associated with your visual display?

MS. GRUENEWALD:
Madam Chair, I do not.

CHAIR CARLTON:
Your display definitely makes an impression.

MR. THOMPSON:
I started here in 1981 and the third way to be insured would have been private carriers. All the machinations that we went through in that day to fight private carriers were not the problems everyone thought they were. However, in 1995, and after the 1993 Legislative Session when workers' compensation was decimated in this State, a bill was introduced. This bill included NRS 616D.030 that basically says an insurer or a TPA can violate any of those statutes and there is nothing that can be done about it. The remedy for the

injured person with a claim against the insurance company is a benefit penalty. Over the years we have worked to increase those benefit penalties to a level that would discourage purposely violating those laws, even though the statute provides that they can.

A couple of sessions ago, we had one particular TPA who would go to employers and tell them that he could save them 75 percent on their workers' compensation and proceed to tell them how he would do it. He said he would take every claim, regardless of the validity of the claim, and challenge every one of them by denying them. Of that amount, 50 percent of the individuals will just walk away. Of the remaining 50 percent, individuals will win half those claims on appeal; therefore, you will only pay 25 percent of the costs. This had nothing to do with the validity of the claims, but because of that statute it was more cost-effective for some employers to agree that this was a way to save on their workers' compensation costs. Because that statute is law, these people are getting away with it.

In the case that Mr. Hardy spoke of, where the woman killed herself, she called her senator and asked for help because the insurer took her wheelchair, which she could have probably lived without, but they took her off her pain medication. The senator she called had given the case to one of her staff people and the staff person was on vacation for two weeks. When the woman did not hear back from her senator, her pain increased and she killed herself. The direct cause was this statute. There has never been a successful bad-faith lawsuit in Nevada. There was no reason to pass that law. I will submit to you that if your constituents understood the way this is written, they would be outraged. People do not know about this and do not find out about it until they are caught up in the system. I believe you had a hearing on one of Senator Schneider's constituents. When Assemblyman Conklin contacted me a year ago about that particular individual, we tried to help him. He was helped, put back on for some 30 days and there was another reason to deny that particular person. You know and have seen the results. I have seen his injuries and they were grotesque then and they are now a year later from not being treated. This is the only way that it is ever going to be fixed.

If you pass this bill, you will stop a lot of unnecessary litigation and unnecessary pain and suffering for your constituents. We are 100 percent in favor of this bill.

JOHN (JACK) E. JEFFREY (Las Vegas Laborers International Union of North America, Local 872):
I have been fighting workers' compensation for 40 years. From 1967 there has not been a session that workers' compensation has not been an issue. In 1993, the system was pretty well decimated and in 1995 it was finished off. It is interesting today because of two different philosophies at work here. One is A.B. 410, a collectively bargained piece of legislation that works because it gets the injured worker back to work. Medical treatment is obtained in a timely manner and the individual is rehabilitated and put back to work. The other philosophy is the mindset that wants to put off and deny the claim. When the claim is denied the individual will walk away, but untreated injuries cause major problems for injured workers. I do not know of a single person in the construction trade who does not want to get back to work. The difference between what they earn on the job and the compensation rate is a lot of money, and they cannot afford to be on workers' compensation.

When individuals like these, who have great work ethics, are put off again and again, requiring appeal after appeal, spend years in the system, you are lucky if you ever get them back to work. I am wholly in support of this bill.

NANCYANN LEEDER (Nevada Attorney for Injured Workers, Office of the Nevada Attorney for Injured Workers, Department of Business and Industry):
At the hearing at the Assembly, one of my former construction clients was there to testify and his case was pretty egregious.. Many of our clients have become homeless and have had far-worsened conditions occur during the time they are waiting for treatment. This past year we have had three suicides occur amongst our clients.

This particular construction worker client who appeared at the Assembly was injured on January 31, 2002. His claim was denied and the employer said he was not working at the time, so he could not have had an injury on the job. It went to hearing, his time card showed he was working, a witness testified he was working and he was paid for the day; clearly he was working. Therefore, his case was accepted. It was accepted for an ulna nerve injury. About five months later he got to a doctor who said he had a median nerve injury and was approved for median nerve surgery. The median nerve surgery took place. A month later he still had symptoms and told his doctor. His doctor advised and recommended an electromyogram (EMG). The EMG was not approved and he had to go to hearing. The EMG was approved at the hearing. He got the EMG

but it did not show a substantial problem, so the doctor referred him to another doctor for further testing and physical therapy, all of which was denied. He went to hearing again and eventually got testing. This went on for seven years. We ultimately settled the case.

Because of the way our system works, each denial can be appealed. After six years he did have surgery and the insurer said they would approve a redo surgery on the median nerve. The doctor opened up his wrist and determined he needed ulna nerve surgery and the doctor ended up doing median nerve surgery and ulna nerve surgery and also fixed another problem he found. That took care of the man's problems. But it took six years to get the surgery with multiple cases because everything got denied; we just settled the case.

This bill would stop that type of action. It would definitely help our clients. Workers' compensation is the only insurance where a failure of proper administration can take place, but there is not a bad-faith action to correct that.

CHAIR CARLTON:
Are there any questions from the Committee? We will now go to those who are in opposition to the bill.

RANDY WATERMAN (Public Agency Compensation Trust):
The PACT is a group of 130 mostly small, rural public employers. It is an association formed to self-fund their workers' compensation exposures. The PACT is opposed to the passage of A.B. 511. Allowing employee lawsuits in a workers' compensation arena will significantly increase costs to PACT employers. Even cases that are won will create a significant financial burden in the defense of those cases. Because of that, cases of questionable merit are sometimes settled based on the cost to defend versus the cost of winning a case. These increased costs are not something that public or private employers should be burdened with during these already challenging economic times.

If A.B. 511 passes, there are questions we have. "Who will be laid off? What additional basic services will be cut to pay for them?" Most employers and TPAs already act in good-faith fashion, doing all they can within the workers' compensation system to get injured workers healthy and back to work following an industrial injury or illness. For those few bad actors, by all means punish them with the fines and penalties that are already in the law and regulations. Hit

them hard, but do not expose all employers to unnecessary additional costs when the intent is just to get at those bad actors.

BRYAN WACHTER (Retail Association of Nevada):
This kind of business is in rapid decline with the costs of the new minimum wage, the rise of cost in health care, a decrease in consumer spending and the potential increase of workers' compensation benefits which are leading to a perfect storm that will create a climate where more businesses are forced to close. The Retail Association of Nevada believes that the current workers' compensation program works in general, but acknowledges there are bad actors that do exist. However, the extent that we feel A.B. 511 takes the current system is too far. Assembly Bill 511 allows for employers to be sued because of the way I read NRS 616D.030 which includes employers; it allows them to be sued beyond fines and penalties that are already in place. The bill does not create the ability for the worker to receive an extra fine or an extra penalty because that is currently there.

We feel a better remedy for employers and employees because of the effect the new system will have on insurance premiums would be to strengthen the ability of the DIR, or what NRS 228 created, which was the Fraud Control Unit for Industrial Insurance in the Office of the Attorney General, to go after those bad actors. If the current system of oversight from DIR was as strong as it could be, the Retail Association feels that many of the injustices caused by the bad actors could be alleviated.

CHAIR CARLTON:
If I may cite NRS 616D.030, "No cause of action may be brought or maintained against any insurer or third-party administrator … ." I do not see employer in there, but I do understand your concerns. For the record, are you testifying that you want to protect the "bad guys?"

MR. WACHTER:
Absolutely not. Our alternative solution would be to increase the ability of the Fraud Control Unit, for the investigators and DIR to go after those bad actors and maybe increase the penalties. We do not want to create a haven for the bad actors, because they increase the cost of health care for all the good actors as well. This opens it up to anybody and everybody, and that may be detrimental to the system as a whole.

CHAIR CARLTON:
But as we stated earlier, we do not make this legislation for the "good guy." If you are doing it the right way, you do not have much to worry about.

MR. WACHTER:
If I may respond, Madam Chair, the threat or the potential, even if the actual cause of this kind of legislation would increase the cost of premiums on health care, whether it does or not, employers might consider twice before hiring new employees or the associated costs of having a new employee. It may not be a direct benefit, but we could contemplate an indirect consequence of something like this.

MR. ROSS:

> The Nevada Self-Insurers Association consists of large employers who are self-insured and consists of a number of public-sector entities, cities, counties and large school districts. I face the unenviable task of trying to refute or counter what are very compelling personal tragic stories with statistics. It is almost impossible to do, but there are statistics that are also relevant. What we have is, I think the Chairwoman has implied and many of the testifiers have already implied, a situation where you have some cases which are improperly, and poorly, and tragically handled and many, many other cases that are handled very, very well. For example, the DIR's own statistics show that over the last 10 years, the number of accepted claims has gone from 84 percent to 92 percent. Pro Group Management which has a big operation here in town runs 5 very large self-insured groups, including over 2,300 employers and showing 60,000 employees. They regularly, out of 222,969 cases in the last 9 years, they accepted 91 percent. The City of Las Vegas annually accepts between 93-95 percent of its claims.
>
> First of all, a vast, vast, vast majority of workers' compensation claims are accepted and dealt with. In addition to trying to, a situation where we have some truly, … And I understand this. I have heard, … I know Senator Schneider, I know Assemblyman Conklin, I have heard, I understand that story, and there is no way in the world a person can defend that. You can't defend many of the other cases. But we do have to look at the

bigger picture. Sitting behind me are three, probably according to my client, over and over, the three best, fairest and most reasonable and effective workers' compensation attorneys in the State. Unfortunately, they aren't the only workers' compensation attorneys in this State. Even though they may say they would deal with something in a particular way, the practice of trial attorneys nationwide and in our State as well, suggests that other attorneys will do things quite differently. That is a major fear and underlies some of what I am going to say next.

What's going to happen is, in our minds, is a significant increase in the number of lawsuits, because the concept of what a plaintiff's attorney or a trial attorney does in life has spread from getting accountability and getting restitution to somebody who is harmed in a tort situation, has now spread to essentially assuming the regulatory burden for the State. Bob Reich, who used to be Secretary of Labor, wrote a very eloquent essay in the *Los Angeles Times* a few years ago explaining that very, that whole approach.

Consequently what we, we do not believe that just because that there were virtually no lawsuits before 1995 that the same thing will occur today, because there is a whole different approach to how they treat the situation. We believe, therefore, because you can sue the insurer, you can sue the third-party [TPA], and there is nobody … in the business community who has, who certainly who has worked in other states or has operations in others states who hasn't seen situations over and over and over, where lawsuits are brought despite the fact that on its face you would think that somebody was exempt from being sued. That's my preface to saying that we have every confidence that the self-insured employer and the employers who have bought the insurance will also be sued, because they are the "deep pockets" in many cases, and lawsuits go to deep pockets, always.

Insurance costs will rise because of these suits. Even if you aren't being sued yourself, even if you're the perfect actor, your rates will go up because you are working in an environment which is much more litigious. Your legal expenses will go up as you defend yourself. Imagine in our State, the worst thing you could be is a

large out-of-state employer. You are the grand target of everybody in this State. You can imagine when one perfect, one out-of-state employer is sued in a jury trial, many of whose jurors have grown up reading John Grisham books, and one poor individual … It really doesn't matter what the facts of the case are in that situation. So, that is the big fear from a business point of view.

Secondly, this is sounding like a broken record and I apologize, but it's—unfortunately we are in a situation where the broken record has … to be tried and be played again, and that is that we know that we are going to be paying significantly more taxes in the business community as a result of the situation we are in. You all have been spending a tremendous amount of time doing the best you possibly can by trying to figure out what is the priorities for, what other priorities you want to state, how can we, what do we have to spend and then we know we are going to be facing taxes and my clients have made that clear that we understand that. Having said that, the collectivity of workers' compensation legislation that has been brought in this year, essentially amounts to a significant increase in taxes. So … and; i.e., expenses on the business community. So when you are taking and looking at this, aside from the compelling stories of the personal tragedies, taking into account the businesses who are going to be having to pay a lot more expenses anyway, just for our State to provide its essential services, and again remember that you are adding on to them when you sit there and add up the seven different taxes and collectively they are going to be this many hundreds of millions of dollars. You need to add on a line for what you pass for some of the workers' compensation legislation.

In the public sector, these and the local entities again, facing the same pressures for money, they are cutting back. The schools, I mean, how many hearings have occurred in Education [Senate Committee on Health and Education] and Finance [Senate Committee on Finance] and Ways And Means [Assembly Committee on Ways and Means], and how are we going to fund our universities? How are we going to fund our educational systems? If this bill were to pass, the additional costs of defending themselves would be significant for the school districts. Essentially,

you are saying, setting up a choice here. Does a school district spend this money on teachers? Does it spend this money on books? Does it spend this money on buying lawyers and legal—and fighting legal cases? That is not a false choice. There will be higher expenses and they will not be going to education that you think of as education. They will be going to legal expenses.

Now, is there a solution? Yes, there is. Bryan [Wachter] suggested a few minutes ago, but we strongly believe that DIR should be given significantly greater power. In many respects it probably needs significantly more resources, which are paid for by fees from the regulated community. It should be having, it should be able to find more, it should be able to investigate more, it should be able to audit more, it should be able to be much stronger with regard to TPAs. We have absolutely no problem with that, because we, like everybody else up here, you know, the good actors would be very hurt by curtailing to not be able to go after the bad actors. We are very much in favor of strengthening those areas, without any question … You will probably see some legislation coming over that does some of these things. I can't get too far over my skies yet. But I suspect there will be some things coming.

There is an alternative approach which if done correctly can make a major difference. So, my final plea is, please consider the whole picture, the big picture and it's a system which for an awful lot of cases, for the vast, vast majority of cases, has worked. The system which can be fixed, we believe, through help to try to eliminate the tragedies and the stupid behavior. My final plea then would be to please don't throw the baby out with the bathwater.

CHAIR CARLTON:
Are there any questions from the Committee?

SENATOR COPENING:
Mr. Ross, are your clients required to keep records of the percentage of full denials or partial denials of their clients?

MR. ROSS:
I do not know if they are required to, but I believe that they do, because a number of them, when I have asked them for statistics, do have them.

SENATOR COPENING:
Are they records that they would make public?

MR. ROSS:
I would have to ask them. I am sure they would share them with you if you needed to see them. I would have to ask them before I could answer that question.

SENATOR COPENING:
Because we hear about good actors versus bad actors, I question how you find the bad actors if there is not good record keeping of the percentage of denials that are out there. I think that is one of the best ways to identify it. Yes, I would like to see if they would be willing to make anything public.

MR. ROSS:
Mr. Ostrovsky just sent notice to me that the DIR actually gets a copy of every denial. So that for every insurer there is, there is the ability to give the same statistics I previously gave. I would point out that I used the acceptance versus the denial as a sense of people who are not automatically denied, most are accepted. Even then, getting claim-denial facts does not really get directly at the issue of some of these situations you have heard today. Our objective, as much as anybody else, is as much as theirs to make sure those kinds of situations can be eliminated. They do not do anybody any good and do a lot harm to a lot of people.

TRAY ABNEY (Reno/Sparks Chamber of Commerce):
Mr. Ross and Mr. Wachter made most of my points. Briefly, the Reno/Sparks Chamber of Commerce is always concerned about any bill that has the potential to increase the costs of doing business and increase the chances of litigation. Mr. Ross mentioned other workers' compensation bills; we have other health insurance mandate bills and he mentioned the tax issue as well. All of these things have my members very concerned. The increased costs that could be incurred by this bill are going to have to come from somewhere. Does that mean fewer people are employed? Does it mean that fewer people can get health insurance coverage? Like Mr. Ross, I urge this Committee to consider the entire

comprehensive picture of what else is going on in this building when considering bills such as this.

VICE CHAIR SCHNEIDER:
Are there any questions for Mr. Abney?

ROBERT (BOB) A. OSTROVSKY (Nevada Resort Association):
I view you, this Committee, having to make what I consider to be major policy decision in terms of a fork in the road about how you want to be able to handle and review the workers' compensation system in the State. It is a significant decision you are being asked to make. You ought to weigh all of the positives and negatives involved in changing the direction we are in. Do we continue to go down the same road we have been with the administrative process of resolution of disputes and the administrative process for regulating market conduct of insurers? Since 1995 that is what the Legislature has decided is in the best interest of the system. They found it is in the best interest to use regulators, the DIR or the Division of Insurance (DOI), to determine a bad actor, to determine what the penalty should be within the provisions of the law.

If you look at NRS 616D.120, you will find there are lots of reasons for an insurer to be penalized and that is to provide a benefit penalty that goes directly to the injured worker who may have been wronged by the decision or the inaction of an insurer. What we are really saying in this fork in the road is that we are going to go after bad actors on behalf of an employee who is injured for almost any kind of violation that you can imagine from the statute. An attorney or an employee can write a letter to the DIR and say, "I was wronged. Would you investigate this matter?" The DIR would make that determination of what a penalty should be, and there are some built-in due-process pieces in there about hearings and appeals. In the end, certain fines and penalties are assessed against insurers. Those statistics have been provided to the Legislature by the DIR. Now if the statistics are correct in terms of the testimony you heard, the State has not gone to the death penalty, which is to withdraw someone's ability to provide TPA services or to provide insurance in the State. It has that "hammer" that has not been used. Maybe it needs to be strengthened or looked at, or maybe that is not the hammer you want. The hammer you want is a jury, which is what you are asking for in issues of bad faith. Essentially, lots of injured workers get an opportunity to look at and draw upon the penalty provisions of the law. To create a bad-faith case you have to climb a big hill. Therefore, there will be a few employees who may be able to get in front of a

jury and may hit a substantial jury award in one of these cases. On the other hand, there may be hundreds or perhaps thousands of other employees who might have had their case adjudicated through the benefit process. That is the fork in the road. The decision I think you will have to make.

I agree with Mr. Ross's testimony. You heard testimony about there being no cases prior to 1995; remember, before 1981, it was only a state system. The system did not blossom out into three-way until later, nor did it blossom out in the growth of self-insureds until later. This brought in the growth of the TPA industry, which has brought on some of these problems. The industry, in a sense, has brought some of these problems upon itself. You will see some proposals in other legislation.

I know that you will not vote on this today. But when it comes to work session, if you look at some of the other proposed ways to manage the TPA problem, weigh that against what benefit penalties provide employees now to what a jury system might and then make that fundamental decision about how you want this system to operate.

SENATOR SCHNEIDER:
It seems like the fines they give the TPAs takes a long time to get to the point. Then you find that it is a couple of thousand dollars after there are three violations, a two- or three-thousand dollar fine. This sounds substantial, but when you are dealing with somebody's health, that is just like an office visit. Why bother? The fine is pretty easy to pay if you just saved hundreds and thousands of dollars perhaps. It seems that fining is not any good. I have always been opposed to lawsuits. I do not see people ever winning on lawsuits. It seems to be like the death penalty that you brought up, pulling somebody's tag; they would just be out of business. That is like a big hammer. You toe the line or you are gone.

MR. OSTROVSKY:
I am not sure I am the right person to address those issues. If you have time, it seems to me that you should ask the regulators to come in and talk about the process and how they are viewing it. We currently have two new regulators, one from the DOI and one at the DIR. Ask them what hammer you need that you do not have. Ask them why we have not done these things in the past. If you are a bad actor and pay a $200 fine, I agree with you, that is just like getting a parking ticket and you are in a hurry to go to the movies and say I will

pay the $10 parking, what do I care? We cannot have that attitude. Then you ought to take the fork in the road that says you need to go after the bad actors in front of a jury. The regulators would be able to answer those questions.

SENATOR SCHNEIDER:
Perhaps we need to license the people that work for the companies. If they are licensed, then they can lose their tag and the company is out of business too. People do not work anymore. That is a pretty heavy hammer. That is a heavier hammer than going to court and paying some sort of little judgment. It is not going to help at the end of the day. If you have to be in court on every case, it would seem that it would not be very efficient.

MR. OSTROVSKY:
In response, clearly the State in many areas looks at administrative law as a quick way to handle disputes in all kinds of situations, knowing that the court system itself has its own slow process. It is probably an appropriate due process to get to the end result. If you are going to have an administrative process, it ought to be fair, swift and transparent.

CHRISTOPHER REICH (General Counsel, Washoe County School District):
Today I would like to share the Washoe County School District's (WCSD) concerns regarding A.B. 511 and have provided you with my written testimony (Exhibit N). If A.B. 511 passes, it will negatively impact the WCSD with increased litigation defense costs, taking monies away from students.

MS. ROBINSON:
The individuals who preceded me were very eloquent. Mr. Ross and Mr. Ostrovsky stated our position. I have provided the Committee with written testimony of our opposition to the bill (Exhibit O). We at the City of Las Vegas are those good guys that we have been talking about. We routinely accept between 92-95 percent of all of our claims. We have about a 5-percent turnover rate in our employee benefits. These are long-term employees we want to take care of. The idea is to get them fixed and to get them back to work. We treat our employees with dignity and respect. We have been self-insured, self-administered for the last 23 years. We do not have a TPA and have handled our claims with our employees.

That being said, we have never been assessed a benefit penalty either. That is because we pay our claims timely, and once again, we take care of our

employees. We do not anticipate ever doing anything that would result in being sued. That does not mean that we do not anticipate being sued if this legislation passes. We believe that we will be sued, simply because it is available. Defense costs, all taxpayer monies, will increase. That money will not improve the injured worker any, but will simply cost the system more.

As Mr. Ross and Mr. Ostrovsky both indicated, there are mechanisms in place for benefit penalties and fines. Perhaps, they have not been utilized as much as they should have been in the past. Perhaps, there are not enough "teeth" in them. If that is the case, we strongly support whatever it takes to get the bad actors punished and out so that the people for whom the vast majority of employers that we are aware of who follow the rules and take care of their employees do not get painted with the same brush that those bad actors do.

ED FINGER (Comptroller, Clark County):
I am in opposition to A.B. 511. I support the testimony of Mr. Ross and others. I will tell you that Clark County is an employer and an insurer to over 12,000 employees in the State's largest population area, providing key municipal and countywide services, social services, welfare services and public safety. Clark County takes exception to a concept that the bill will only harm the bad players. I can guarantee you that if Clark County can be sued, it will be sued. Clark County is often the least sympathetic party in a courtroom.

R. J. LAPUZ (Coordinator, Claims Management Services, Clark County School District):
The Clark County School District employs approximately 38,000 employees and is an insurer by virtue of our self-insurance certificate issued by the DOI. The school district has submitted written testimony to the Committee in opposition of A.B. 511 (Exhibit P).

We would like to state that we are one of those good guys. Our acceptance rate is between 92-95 percent. We believe if A.B. 511 is enacted, it will result in additional administrative expenses to the school district by virtue of defending a case. Like my colleague Ms. Robinson stated, if the district can be sued, the district will be sued.

VICE CHAIR SCHNEIDER:
For the record, written testimony in opposition to A.B. 511 was submitted to the Committee from Samuel Sorich, Vice President, Property Casualty Insurers

Association of America (Exhibit Q) and Wayne Carlson, Executive Director, Public Agency Compensation Trust (Exhibit R).

If there are no further questions, we will close the hearing on A.B. 511.

There being no further business, the meeting of the Senate Committee on Commerce and Labor is adjourned at 4:32 p.m.

RESPECTFULLY SUBMITTED:

____
Vicki Folster,
Committee Secretary

APPROVED BY:

____
Senator Maggie Carlton, Chair

DATE:_______________________________________