



FOR FEBRUARY 13, 2002

WORKERS' COMPENSATION REFORM: "ALL THE KINGS HORSES AND ALL THE KING'S MEN..."

The House Insurance Committee met today to take up PCB 02-02a, relating to workers compensation. While PCB 02-02a did not have all of the components of the Business Coalition bill (the Coalition comprised of business and insurance carrier representatives), drawing upon components from last year's bill, it would have reduced costs and at the same time increased benefits to injured workers.

The proposed draft bill:

- eliminated the exemptions in the construction industry, except for up to 3 corporate officers owning at least 10% of a corporation, such exemptions to be effective January 1, 2004;
- created a study commission that would review the market place and report back to the Legislature whether or not adequate coverage existed;
- insured prompt medical treatment to injured workers by clarifying that managed care is no longer required;
- guaranteed injured workers would be able to completely resolve each petition within 6 months from the filing of the petition rather than the 12 to 24 months minimum today;
- created enforcement powers to insure employers not misrepresent payroll or classification;
- required reporting to DBPR of any employer certified under chapter 489 who fails to secure coverage;
- increased the fees paid for IMEs to reverse a recent First District decision to insure injured employees can get an IME;
- simplified the calculation of the average weekly wage so that injured workers benefits are calculated by the employer correctly from the start;
- defined permanent total disability to stop the abuses but at the same time give the Judge of Compensation Claims the discretion to determine permanent total disability rather than the arcane social security standards that have nothing to do with work place injuries;
- made the Office of Employees' Assistance voluntary rather than mandatory to eliminate the delay of having to file a request for assistance and wait for a bureaucratic agency to make a decision that is not binding anyway;
- eliminated the Request for Assistance and allows the Petition to be filed immediately;
- allowed public and private mediators so that all mediations are handled within 90 days and stop the long delay today;
- sanctioned attorneys who fail to complete the pretrial stipulation at the mediation to avoid delay in setting the final hearing;
- eliminated the incentive to litigate every case rather than resolves issues timely by both the claimants' and defense bar by eliminating hourly rates but rather pay fees by the employer/carrier based on a 20/15/10/5 formula with 15% paid for settlement of cases;
- allowed a one time only medical fee up to \$1,500 if fee schedule is not sufficient and the same for denying of compensability both paid by the employer/carrier;
- reversed *Turner, U. S. Sugar vs. Henson; Burger King and Wilkins* and other cases that negatively impact the system.

But a funny thing happened on the way to committee. Representatives Dennis Ross (R-Lakeland), David Simmons (R-Altamonte Springs) and Joe Negron (R-Stuart) drafted an amendment that would have paid attorneys fees of 20% on the first \$5,000 and 15% on all benefits thereafter; and guaranteed a \$2,500 fee for every medical petition for benefits. In “compensability” cases, the judge would be allowed to approve an attorneys’ fee of 15%, plus an additional fee based on a **reasonable hourly rate.** (Attorneys don’t have it that good under current law!).

Together with their amendment, they joined Representative Kim Berfield (R-Cleawater) in support of her amendment to keep the exemptions in the construction industry. Her amendment would allow exempt sole proprietors, partners and corporate officers to work on prime contracts for commercial buildings less than \$250,000 and all residential buildings. While they would characterize this as an effort to compromise, this amendment would do virtually nothing to stem the fraud and abuse that drains the system and leaves injured workers without adequate care.

The Coalition was advised that if it agreed to these two amendments then Representatives Dennis Ross, David Simmons, Joe Negron and Kim Berfield would support what was left of the bill. The Coalition said thanks, but no thanks. The problem with the system today is that it is always fixed with band-aides by legislators who are afraid to stand up for what is right and stop the fraud in the construction industry and reduce attorney involvement. The National Council on Workers Compensation found attorney involvement is a tremendous cost-driver, spiking Florida’s costs 40% higher than any other state to which Florida was compared. The system was originally designed to be self-executing with only the rarest of attorney involvement. Members of the Committee will have to actually make decisions and dismiss the seduction of half-measures that seek to smooth over very real policy questions and only do more harm than good.

House Insurance Committee Chairman, Representative Leslie Waters (R-Largo) was not afraid to stand up and be counted. She had the bill temporary passed, meaning any detailed consideration or vote on the bill was delayed until the next meeting. (The amendments by Representatives Dennis Ross, David Simmons and Joe Negron showed up at 8:45 a.m. one and one-half hours before the committee would meet.)

To make matters worse, Representative Joe Negron and Representative Eleanor Sobel (D-Hollywood), who seem to fail to understand the concept of “first party insured” drafted an amendment that would allow carriers to be sued under a civil remedy statute and under workers’ compensation. The amendment would allow a river of litigation that would so abuse and burden the process that an adjuster would not have the necessary time in the office to adjust claims. The adjuster would be so busy running to mediations on several petitions in one case; having depositions taken over and over; not to mention the other papers the adjuster has to respond to just to keep up with the litigation claims adjustments would be missed. There is no doubt that claimants’ attorneys knowingly overburden adjusters to insure that the adjuster misses a payment. And some times they do, but the Workers Compensation Research Institute found that the Florida Carriers pay benefits faster than other states to which it was compared. But when the adjuster misses that payment, the adjuster must incur penalties and interest.

Representative Eleanor Sobel did not stop there. She wanted to insure that if medical benefits are not given within 7 days of request, the employer/carrier shall “bear the costs”.

And it gets better. Medical costs make up 60% of the benefit dollar. Representatives Kim Berfield and Eleanor Sobel wanted to guarantee physicians a 150% Medicare fee schedule for surgical procedures and 125% of non-surgical fee schedule. It has already been estimated that this would increase premiums by as much as 8.8%.

She did not stop there. With a system that is in a crisis, Representative Eleanor Sobel introduced an amendment that would increase the length of time for both “temporary total” and “temporary partial” disability from 104 weeks to 260 weeks.

Then Representative Joe Negron and Representative Eleanor Sobel filed an amendment to take out the punitive decision of the *Turner* court decision. That case seriously takes away the immunity of workers compensation and allows double dipping for the same injury.

It was very clear to the business community these amendments were punitive and designed to derail real reform. It remains that the business community has not had a full opportunity to testify before the committee to counter many of the misleading statements that committee has heard. One wonders if some of the members would even listen.

The good news is that Representatives. Don Brown (R-DeFuniak Springs), Donna Clarke (R-Sarasota), Terry Fields (D-Jacksonville), Perry McGriff (D-Gainesville), Jerry Melvin (R-Ft. Walton Beach), Doug Wiles (D-St. Augustine) and Waters listened and stood ready to vote in favor of real reform.

The bad news is that with the construction industry elimination of exemptions, Representatives Carey Baker (R-Eustis) and Jim Kallinger (R-Winter Park) could not support the bill.

The Coalition has already decided that if there is no meaningful reform - if legislators do not get passed the rhetoric and listen to the facts - it will not support reform just for reform's sake. Some members of the committee could take a lesson from their Chairman who has crafted a bill that will reduce rates. It will not reduce rates as much as the Coalition bill, which produces 2% to 8% savings, but it is a good start. In addition, Senator Jack Latvala (R-Palm Harbor) has taken the time to listen to all sides and make up his own mind. He has filed a bill, SB 2304, which promises to address almost all the ills of the current system and reduce costs.

AIF supports PCB 02 -02a by Chairman Waters. Florida's Workers' Compensation system is slowly unwinding into a completely unworkable process that neither serves the employer or the employee. The bill represents real, substantive reform – the only reform that will repair the system and insure adequate care and benefits for injured workers. Half-measures and inside games to protect the financial interests of attorneys and doctors only make matters worse. Now is the time to enact reforms before the system is in complete collapse. The system was designed to be self-executing. The system was designed to make sure an injured employee received the speedy and necessary care in order to return to their rightful place in the workplace. It was not designed to provide a career path for bureaucrats and attorneys.

BUSINESS OPPORTUNITIES IN BROWNFIELDS

The House Natural Resources and Environmental Protection Committee passed HB 1281 by Representative Bob Allen (R-Merritt Island) today. The bill eliminates a local participation requirement for qualified, targeted business participation in “brownfields redevelopment bonus refunds.” The bill also reduces from 80 percent to 60 percent the required threshold average annual payment for participation in brownfields redevelopment bonus refunds.

Passage of HB 1281 would create more opportunities for businesses to redevelop brownfields areas and would allow a broader range of businesses to qualify for brownfields redevelopment, job credit incentives.

AIF supports the clean up and return to economic viability of these abandoned and often contaminated areas. This legislation will make the difference between property sites remaining abandoned and blighted.

Stay tuned to our daily brief and to our web site at www.fbnnet.com as the legislature makes some very important decisions on the state’s economy. These decisions will have a major impact on the business community and AIF will be reporting to you everything that happens.

This report was prepared by Curt Leonard, Manager – Governmental Affairs at Associated Industries of Florida (AIF). Please send your comments or suggestions to us at aif@aif.com or call the Governmental Affairs department at (850)224-7173.

- For more information on all of the important legislative information concerning the business community, go to our “members only” Florida Business Network web site at <http://fbnnet.com>
- Send us your E-mail address and we will begin to send this report to you automatically via E-mail.