



Back to Workers' Comp

By Jacquelyn Horkan

The premiums Florida employers pay for workers' compensation are among the highest in the nation. The schedule of benefits paid to injured workers, on the other hand, is among the lowest. In other words, Florida employers pay more while Florida employees get less.

Some of the other problems in our state's workers' comp system were spotlighted last summer by the Workers' Compensation Research Institute of Cambridge, Massachusetts. The institute issued a report analyzing benefit delivery systems in the eight states, including Florida, that account for 40 percent of the nation's workers' compensation benefits. The following are some of the conclusions reached about Florida's benefit delivery system:

- medical cost containment services are used more frequently and their expenses are higher
- both litigiousness and defense attorney fees are higher
- paid benefits per claim are higher, particularly for medical care

That is why Associated Industries of Florida (AIF) is making workers' comp reform its top priority for the 2001 legislation session.

"Our key battle this year will be reducing the costs of workers' compensation," said Jon L. Shebel, AIF's president and CEO. "At the same time we want to increase benefits to truly injured workers and make the system easier to use."

AIF general counsel Mary Ann Stiles has developed AIF's "Workers' Compensation Reform Act of 2001" to help achieve those goals.

Shebel and Stiles are both experts in workers' compensation, having studied the system for more than 25 years. Stiles, a founding partner in the law firm of Stiles, Taylor & Grace, specializes in workers' comp defense, while Shebel is also the president and CEO of Associated Industries Insurance Company, Inc., a workers' compensation insurance carrier founded by AIF, which still owns the major share in the company. That experience informed the ideas embodied in the association's 2001 reform legislation.

The reform proposals are divided into four sections: litigation, benefits, medical, and administration. Each element attacks a warp in the system that drives up the premiums paid by employers while keeping the benefits paid to injured workers low. On its own each element will not achieve the goals set forth by Shebel, but woven together they will supply the much-needed correction to the system.

Shebel expects the efficiencies and cost-savings that derive from the litigation, medical, and administrative reforms will be sufficient to boost benefits to injured workers.

"Part of what's sending costs skyrocketing," he explained, "is the gaming of the system by claimant attorneys. It's not just their fees, it's the cumulative impact of each lawyer wanting to send his client to this doctor, then that doctor, then another doctor to build up his fees and the benefits due to his client."

(Continued on page 12)

2001 Legislative Preview

What's Inside

*Common Sense:
Fish in a Barrel*
by Jon L. Shebel

*A Solution to the
Nursing Home Crisis*
by Randy Miller

Issue Roundup
by Jacquelyn Horkan

*AIF's Team of
Lobbyists*

The Business at Hand



Fish in a Barrel

By Jon L. Shebel, *Publisher*

When Florida's workers' compensation law was first enacted in 1935, it was intended to replace the adversarial system of civil law — where dueling lawyers battle in a winner-take-all contest — with a self-executing system of statutory administration. Unlike long, drawn-out lawsuits, the workers' compensation system promised immediate relief to the injured worker. The employer bought an insurance policy and the carrier paid the benefits, specified in law, to the employee that were necessary to return him to health and gainful employment.

Over the years, this automatic system of delivering benefits has been twisted out of shape by claimant attorneys who only benefit (in the form of legal fees) when they turn workers' compensation back into an adversarial system. Attorneys for injured workers aren't the only reason for increased costs, but they are the driving force.

The same holds true for the nursing-home and assisted-living-facilities (ALF) industries. One defense attorney has compared the business of suing nursing homes to shooting fish in a barrel. Plaintiff lawyers can sue the nursing homes and ALFs for violations of a broad and loosely defined variety of so-called residents rights. They don't have to prove negligence on the part of the homes and facilities. And here's the kicker: the plaintiff lawyer is guaranteed payment of his fees and costs by the nursing home or ALF.

In other words, the law doesn't just provide an incentive to sue; it provides a reward

to a plaintiff lawyer for suing a nursing home or ALF over any slight or grievance, even those that never happened. There has been much blame put on large nursing-home chains for creating their own financial problems by spending lavishly when Medicare reimbursements were high. Perhaps they shouldn't have depended on continued government largesse, but the fact is, they were simply exhibiting a natural response to an incentive. And so are the plaintiff lawyers who amass wealth by suing nursing homes and ALF. But can we, honestly and intelligently, allow that incentive to continue when it's harming the patients that plaintiff lawyers purport to protect?

The situation in the workers' comp system is similar. Just like nursing homes, lawyers for injured workers often receive attorney fees far in excess of what they win for their clients. In the case of workers' comp, however, the damage done to claimants by their attorneys is more immediate. Workers' comp claimant attorneys thrive on delay. That's why claimant attorneys warn their clients not to talk to employers and insurance carriers. If disputes are resolved quickly and directly, the claimant attorney, at best, will get a smaller fee; at worst, he won't get anything. And while the claimant attorney is racking up billable hours, the injured worker is not getting the benefits he very well may deserve.

Trial lawyers are not the only problems in workers' compensation and long-term care. That's why Associated Industries of Florida supports comprehensive reform legislation for both. But all of the other reforms will come to naught unless steps are taken to thwart harmful and wasteful litigation.

There aren't many of us who would say no to easy money, but Florida's employers and injured workers, its frail elderly and taxpayers can't afford to let trial lawyers go on shooting fish in a barrel. ■

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A Solution to the Nursing Home Crisis

By Randy Miller

Editor's Note: *The following is the text of remarks presented at the October 30, 2000, meeting of the state's Task Force on the Availability and Affordability of Long-Term Care in Tallahassee, Florida.*

The speakers who preceded me spoke to the financial situation in the nursing home industry, and I defer to their greater expertise. I would like to address an aspect of the financial situation that has a direct impact on all employers.

In a tight-labor market, employers seek every advantage when it comes to attracting and retaining good employees. That's why so many are absorbing the rising costs of health insurance; it's the employee benefit that everyone wants.

There is another insurance product that more and more employers want to add their menu of employee benefits, and that is long-term-care insurance. This field of insurance is still in its infancy, but it is becoming more valuable as we Americans grow older. People covered by long-term-care insurance will be able to select the setting they prefer when they need help, be it home-based care, assisted-living facilities, or nursing homes. These policies also carry an advantage for governments because they help transfer the costs of providing long-term care from the state to private payers. The more people who are covered by these policies, the lower the burden on taxpayers.

One of the concerns we have with the future of long-term-care insurance parallels the cost-shifting that occurs in health insurance. We need to avoid a future of the kind of crises that regularly plague the health-insurance market, but that's the future we will face if steps aren't taken to reduce the financial stresses on the nursing-home industry. Those steps include increasing government reimburse-

ment rates and cutting wasteful litigation.

One of the quality-of-care issues facing nursing-home residents is a direct result of the financial problems, and that is inadequate levels of staffing and wages. In nursing homes, as in almost any other business, personnel costs represent the single biggest expense. When a budget crunch comes, personnel costs are often the first that a business person is forced to cut. About 80 percent of all nursing-home residents are covered by Medicaid or Medicare, so nursing homes cannot increase fees to cover budget shortfalls; they have no choice but to cut expenses.

As revenues drop and expenses related to litigation increase, nursing homes operators have to cut those costs even more, trapping residents and employees in a vicious circle. Staffing nursing homes with higher numbers of competent and experienced employees will help improve the standard of care residents receive, but the facilities can't do that unless they have the resources to pay wages that will attract those employees. And part of that solution is redirecting money and time away from litigation and back to caregiving. We must protect those who are harmed by nursing-home negligence, be it intentional or unintentional, while eliminating the burden of wasteful lawsuits.

Reducing wasteful litigation will improve the lives of residents by directing more money toward their care. It will reduce the burden taxpayers bear for this waste. And it will improve the prospects for long-term-care insurance, a product that will transfer to individuals more of the responsibility for the costs of their care. ■

Randy Miller is senior executive vice president & COO of Associated Industries of Florida (E-mail: rmiller@aif.com).

To find out more about the long-term-care industry and long-term-care insurance, visit AIF's Information Center on the Web (<http://aif.com>) and the "Caring for the Elderly" archive at *Florida Business Insight Online* (<http://flabusinessinsight.com>).



By Jacquelyn Horkan

Health Care

The HMO civil remedy bill would merely pad the award and the attorney fees by adding non-economic and punitive damages.

During the 1996 legislative session, the Academy of Florida Trial Lawyers convinced lawmakers to enact a new cause of action against health maintenance organizations that would allow HMO subscribers to sue their health plans for compensatory and punitive damages, as well as attorney fees, whenever a medical treatment or service was denied. This HMO civil remedy legislation was vetoed by Gov. Lawton Chiles, but it has become a perennial favorite among plaintiff lawyers and their ilk.

Rep. Nancy Argenziano (R-Crystal River) filed the 2001 version of the HMO civil remedy bill in January. AIF opposes this bill because it will increase health care premiums without improving the quality of care received by HMO patients, who already have the right to file a lawsuit to compel their health plans to either provide a requested treatment or reimburse the patient for the out-of-pocket fees he incurred in obtaining the treatment. If the patient prevails he can also recover attorney fees from the HMO. The HMO civil remedy bill would merely pad the award and the attorney fees by adding non-economic and punitive damages.

The state of Florida has spent years building a system to address grievances by subscribers against their HMOs. The resolution process settles disputes quickly and efficiently. HMO civil remedy legislation would replace that process with the lengthy and expensive mechanism of courtroom trials.

The resolution process helps HMO patients get the treatment they need without delay. It helps keep health insurance affordable and available. An HMO civil remedy would do neither, and would eventually precipitate an insurance crisis, robbing hundreds of thousands of Floridians of their access to health care. ■

Health-Insurance Mandates

Every year, Florida lawmakers introduce bills that would force health-insurance providers to cover certain conditions and services, whether their policyholders wanted to pay for them or not. AIF opposes the passage of most coverage mandates because they force people to pay for coverage they wouldn't otherwise choose. Buyers should be able to negotiate freely for the services they want and can afford.

Of all insured Floridians, about 40 percent are covered by policies that carry mandated benefits. There has never been a study on the cumulative cost of mandated benefits in Florida, but if we compare ourselves to other states that do keep this information we can get some idea of the burden. Only Maryland has more mandates than Florida — 47 according to a Blue Cross/Blue Shield report; in that state they add \$604, or 15.4 percent, to the average monthly premium for a group policy. In Maine, 19 of its 31 mandates were found to increase premium costs on groups of 21 or more by just over seven percent.

The 2000 legislature enacted a bill that provides for an assessment of the impact of current mandated benefits and requires an estimate of their aggregate costs. AIF also supports the creation of a commission that would review all existing mandates, with the intent of eliminating the more costly among them. The commission should also analyze all proposed mandates before they are enacted as a means of determining both their cost and their necessity. ■

Premises Liability

Under the theory of premises liability business owners can be held responsible for damages arising out of crimes committed on their property. If a criminal robs a customer outside of a convenience store, for example, and the customer is hurt in the process, the customer can sue the owner of the store, who must pay any damages awarded, while the criminal pays nothing.

This injustice exists because business owners are held jointly and severally liable for any crimes committed on their property whether the owner is at fault or not. AIF supports the institution of comparative fault for damages arising under a premises-liability lawsuit. That means that the business owner would pay damages for any injury he caused, while the criminal would be responsible for paying for the damages he caused. ■



Tax & Budget

Last year the legislature completed the three-year phase-out of the intangibles tax on accounts receivable, an idea that originated with AIF. In his 2001-02 fiscal year budget proposal, Gov. Bush has proposed further reductions in this tax, a relic of soak-the-rich politics of the Great Depression. AIF supports these efforts because the intangibles tax is one of the greatest deterrents to attracting new business to the state.

AIF will also promote final repeal of the per-drink surcharge on alcoholic beverages that are purchased and consumed on-premises. This tax was enacted by a revenue-hungry legislature in 1990, without much forethought or discussion. It is cumbersome to calculate and generates undue controversy during audit assessments. ■

Education Governance

Last year, Florida lawmakers enacted the Florida Education Governance Reorganization Act of 2000, which provided for a consistent education policy and a seamless education system from kindergarten through post-secondary studies.

The principles guiding the reorganization effort are greater local control, financial and academic accountability, coordination among all education providers, and a statewide strategy for providing a first-class education to all Florida students.

AIF supports this effort as part of the state's ongoing commitment to improving education, a commitment that will ensure Florida's economic competitiveness and promote prosperity for all citizens. ■

Civil Service Reform

Florida's civil service system, created in 1955, is required by Florida's constitution. In 1967 Florida lawmakers, however, instituted protected-status employment for government workers through Florida Career Service. This employment policy makes the dismissal of unsatisfactory state workers virtually impossible while it fails to reward and encourage high levels of efficiency and performance among government employees.

AIF supports the governor's effort to reform Florida Career Service by replacing state employees' "property right" to their jobs with the employment-at-will status found in the private sector. Employee-protection laws enacted since 1967 are sufficient to protect employees against the abuse that critics claim will occur if the governor's recommendations are enacted. This will improve the work of government by instituting a system that rewards initiative and productivity. ■

Select
"Issue Pages"
in AIF's
Information
Center (on the
Web at
<http://aif.com>)
for a complete
review of
AIF's position
on these and
other issues.



Growth Management

Last year the governor created a commission to study the state's growth management system and make recommendations for changes. As of this writing, the commission has not completed its final report. Gov. Bush and most of the committee, however, appear to back decentralization of planning decisions by returning more authority to local governments.

AIF will monitor any proposals while supporting comprehensive changes that eliminate unnecessary, duplicative, and time-consuming reviews and processes that currently exist.

The most important component of improving the growth-management system, however, is the revising of priorities. This system is guided by the State Comprehensive Plan, a catalog of 26 guiding principles for state planners, the 22nd of which is the economy. As a result, growth-management decisions are made with a minimal degree concern over their economic impact.

AIF's goal in this area is to make the economy primary in these decisions. Without a thriving and healthy economy, pursuit of environmental and social progress is a futile endeavor. ■

Electricity Deregulation

As rolling blackouts darken northern California, the Energy 2020 Commission, created by Gov. Jeb Bush, has been investigating methods for opening Florida's \$13-billion electricity market to competition.

AIF will closely monitor developments in this area to prevent Florida from making the same mistakes California did. ■

High-Speed Rail

In the 2000 elections, Florida voters approved a constitutional amendment that mandated creation of a high-speed rail system to connect the state's five largest population areas. Construction of the rail network, which is estimated to cost anywhere from \$6 billion to more than \$20 billion, must begin in 2003.

Unless this rail system can be built with substantial, if not exclusive, private investment, it could divert billions of dollars from existing education, social service, and infrastructure programs. Already, lawmakers are talking about putting a constitutional amendment before voters in 2002 that would repeal the high-speed rail initiative.

AIF supports the creation of a bullet-train network, but only when its prospects are lucrative enough to attract private investors on their own. Forcing the state to embark on such a venture, through a constitutional amendment, when the market is not demanding the service, is an unwise fiscal and public policy decision. ■



Cabinet Reorganization

After the 2002 elections, the Florida Cabinet will consist of an attorney general, an agriculture commissioner, and a chief financial officer, which is a new position created by merging the offices of comptroller and treasurer. The now-elected secretary of state and commissioner of education will be eliminated from the Cabinet, becoming appointed posts.

Under the Cabinet reorganization the chief financial officer will handle the receipt and investment of approximately \$12 billion in state funds, a duty now carried out by the treasurer. He will also assume the comptroller's duties of accounting for and auditing of all state expenditures.

The 2001-02 legislature must decide how to assign the statutorily assigned duties of the treasurer (who is also the insurance commissioner and state fire marshal) and the comptroller (who regulates state-chartered financial institutions, securities dealers, investment advisers, and cemeteries). Putting these functions under one department would create an enormous burden for one individual while consolidating too much power in the hands of one government official. Separating them into two new agencies (one responsible for the oversight of the state's finances and the other with three commissioners appointed by the governor and Cabinet to regulate private financial and insurance entities) would also help ensure an equitable, and competitive environment for consumers.

AIF supports the segregation of these regulatory responsibilities into three newly created offices run by appointed commissioners of banking, securities, and insurance. ■

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WHAT DO YOU NEED TO KNOW?

On AIF's Web sites you'll find the information you need — when you need it — on the political, legislative, and regulatory efforts that are shaping your company's future.

Associated Industries of Florida Online

- Links to all of AIF's web sites, both public and members only
- Access to AIF research and issue pages
- Ability to print mailing labels for Florida lawmakers

<http://aif.com>

Florida Business Insight – The Magazine of Free Enterprise and Public Policy

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<http://flabusinessinsight.com>

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- Resources for employers to help them control their workers' compensation costs
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<http://aiic-insurance.com>

The Elections are Over — Let the Elections Begin



Six years of preparation went into AIF's 2000-election effort, and it paid off. Of all the candidates supported by AIF in the general election, 94 percent will take their seats on opening day. The next round of elections, however, is coming sooner than you might expect.

After the 2001 legislative session ends, Gov. Jeb Bush will appoint a permanent agriculture commissioner, probably from among the ranks of the Florida Senate. That will precipitate a special election to fill the vacated seat. Expect some House members to run for the open Senate seat, which will lead to special elections to fill those seats. And don't forget the likelihood of some Florida politicians being chosen by President George W. Bush to fill the several hundred positions left uninhabited by the exodus of the Clinton Administration.

For now though, political observers will be watching the more than 60 new lawmakers for their reactions to the pressures of office. How will they stand up to demands to break campaign promises from advocacy groups,

senior lawmakers, and party officials? Adding spice to the mix are the special challenges of redistricting. Final population numbers from the census are due in March. The action won't really heat up until 2002, but it will start to simmer this year.

Last time legislative districts were redrawn, in 1992, black and Republican lawmakers banded together to break the Democratic party's stranglehold on state politics. That year's election produced a tie in the Senate; by 1995 the upper chamber was controlled by Republicans. The GOP ascended to the majority in the House in 1997. The 1992 redistricting also brought a record number of minority lawmakers into office.

Before the results could be tallied, however, the state's citizens had to endure a flurry of rancor, special sessions, and lawsuits to bring finality to reapportionment. As it was, the job of redrawing Congressional districts had to be left to a federal court.

Whether reapportionment will roil the 2001-02 legislature to the same degree remains to be seen, but interparty squabbles are bound to occur as some members lobby for preferential treatment when it comes to drawing the lines. ■

Membership Profile

By now, all AIF members should have received either a membership profile or a subscriber profile. Returning your profile means that you'll have access to the following up-to-the minute reports:

- **Daily Brief**, a short wrap-up of each day's happenings at the Capitol during the session
- **Weekly Legislative Update**, an analysis of the week's key debates and votes on important business bills
- **Action Reports**, to help you keep track of important public policy decisions; available in 14 different issue areas, from civil justice to education to workers' compensation

All three contain the kind of information business people need but can't find on the news or in the papers.

If you have any questions about either profile, or if you need another copy, please call Cindy Bramblett, executive manager of the membership department, at (850) 224-7173. And don't forget: you can also complete the profile online at <http://aif.com>. ■

What are You Missing?

Are you a regular visitor to *Florida Business Insight* Online (<http://flabusinessinsight.com>)? If not, here are some of stories you might have missed.

- Long before the networks did, *Florida Business Insight* Online reported on problems with the forecasting models used by the major media outlets on election night.
- *Florida Business Insight* Online put you in the know about a new ruling that lets any employee, union or non-union, have a representative present during an investigatory interview that could lead to disciplinary action.
- "Dateline: Florida Business," one of the online magazine's weekly columns is consistently among the first to report breaking news about Florida's economy. ■

AIF's Members Only Governmental Information System

Did you make a New Year's Resolution? If you didn't — or if you've already broken the one you made — here's an idea: Why not become an active participant in our state's democracy?

If you're a member of Associated Industries of Florida, we can make your newfound enthusiasm easier — with Florida Business Network (FBN). Here's how.

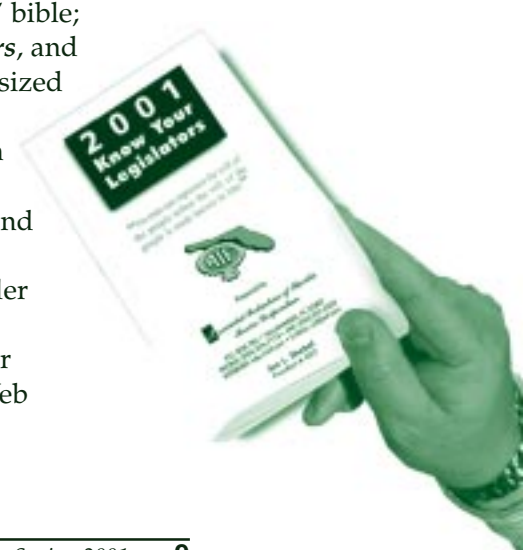
Decide what issues grab your interest. Workers' compensation got you worried? Log onto FBN and you can tag all of the key workers' compensation bills that have been filed, which will let you keep track of the bills' progress. If there's an important vote coming up on one, we'll let you know ahead of time. On FBN, you'll find phone and fax numbers, as well as e-mail and mailing addresses, for your senator and representative. You send them a letter or give them a call. In a couple of minutes you've taken part in the process, made an impact, and you can get back to business.

FBN also gives you all the information you need to read up on the issues so that you'll know when — and when not — to believe what you hear.

Keeping in Touch

It's been called the lobbyists' bible; we call it *Know Your Legislators*, and it's available now! This pocket-sized guide, published by AIF, is the original directory of the Florida legislature. Every AIF member gets one complimentary copy and additional copies are available, starting at \$5 each. Place an order by calling AIF's publications department at (850) 224-7173, or make an online order on our Web site (<http://aif.com>). ■

If you're an AIF member and haven't already gotten your FBN login ID and a password, call the Florida business Network at (850) 224-7173.



Associated Industries of Florida

OFFICERS & LOBBYISTS

Jon L. Shebel – President & CEO of Associated Industries of Florida and affiliated corporations ... more than 32 years as a lobbyist for AIF ... directs AIF's legislative efforts based on AIF Board of Directors' positions ... graduated from The Citadel and attended Stetson University College of Law.



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Jodi L. Chase, Esq. – Of Jodi Chase, P.A. ... former executive vice president & general counsel of AIF ... areas of specialization include health care, legal and judicial issues, and business issues ... undergraduate and law degrees from Florida State University, both with honors.



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Lance Ringhaver – PRESIDENT, RINGHAVER EQUIPMENT COMPANY

2001 LOBBYING TEAM

Ralph Haben Jr., Esq. – Partner in the law firm of Haben & Richmond, P.A. ... former speaker of the Florida House of Representatives (1981-1982) ... as a member of the House from 1972 to 1982, served on every major committee and received numerous awards in recognition of legislative accomplishments ... B.A. from the University of Florida and J.D. from Cumberland College of Law.



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John Thrasher – Partner in the lobbying firm Southern Strategy Group ... former speaker of the Florida House of Representatives (1999-2000) ... as a member of the House from 1992 to 2000, was instrumental in protecting Floridians' access to health insurance, shepherding tort reform legislation, and promoting pro-free-market policies ... recognized frequently for legislative accomplishments ... B.S. and J.D. with honors from Florida State University.



Ken Plante – President of Plante & Adams, Inc. ... more than 34 years of governmental experience ... former director of legislative affairs, Office of the Governor (1999) ... former Florida senator (1967-1978) and Republican leader (1976-1978) ... member of the Florida Constitutional Revision Commission (1977-78) and chairman of the Commission's Finance and Taxation Committee ... a founder and first president of Florida Tax Watch.



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Gerald Wester – Governmental consultant with the law firm of Katz, Kutter and Haigler, P.A. ... former chief deputy over Florida Department of Insurance's regulatory staff ... more than 25 years of lobbying experience ... expertise in insurance, banking, and health care issues ... Bachelor's and master's degrees from Florida State University.



Workers' Comp

To view a copy of the executive summary of AIF's "Workers' Compensation Reform Act of 2001," and to receive a complete briefing on this issue, visit the Workers' Compensation Information Center at <http://aif.com>



(continued from on page 1)

Stiles also believes that increasing benefits will help reduce litigation. "Take the case of a 55-year old worker with little education who suddenly suffers an injury that makes it impossible to continue in the profession he's practiced for his entire working life. The way the system works right now, the benefits he receives don't give him enough time to recover and learn another occupation so that he can return to gainful employment. So what does he do? He hires a lawyer."


Reform of workers' comp is a difficult and ongoing process because there are so many lawyers — and some medical providers — who have so much to lose. AIF's attempts over the last five years to bring reform have been thwarted by a lack of political will,

particularly in the Florida Senate. The leadership of 2001 legislature, however, appears ready to address this issue of importance to Florida employers and employees.

"I think our bill will have bipartisan support," predicted Shebel, "but there are no guarantees. I urge all business people to educate themselves on this issue and to let their lawmakers know, now and during the session, that workers' comp reform is must-pass legislation." ■

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