



*The Governor's
Workers' Compensation
Labor Management Advisory Committee*

Co-Chairs:

Ross Dwinell
United Grocers,
Portland

Rep. Bob Shiprack
Oregon State
Building &
Construction
Trades Council,
Beavercreek

**Committee
Members:**

Mark Davison
Safeway Stores, Inc.,
Clackamas

Jon Egge
M.P. Plumbing,
Clackamas

Irv Fletcher
Oregon AFL-CIO,
Salem

J.D. Hutchison
Hoffman Construction
Company,
Portland

Tom Leedham
Teamsters Local 206,
Portland

Ed Redman
WTD Industries,
Portland

Jeanine Meyer Rodriguez
Oregon Public
Employees Union,
Salem

Chris Short
Int'l Woodworkers of
America Local 3-261,
Coos Bay

Dan Simmons
Dept. of General Services,
Salem

Steve Socotch
Oregon AFL-CIO,
Portland

Cecil Tibbetts
Am. Federation of State,
County and Municipal
Employees,
Sherwood

Dea M. Trussell
NORPAC Foods, Inc.,
Stayton

Report from
*The Governor's
Workers' Compensation Labor Management
Advisory Committee*

To
*President John Kitzhaber
Speaker Vera Katz
Senate Minority Leader John Brenneman
House Minority Leader Larry Campbell*

May 1, 1990

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Lisa M. Trussell
NORPAC Foods, Inc.,
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April 30, 1990

Governor Neil Goldschmidt
254 State Capitol
Salem, OR 97310

Dear Governor Goldschmidt:

On December 21, 1989, you wrote a letter to fourteen Oregon citizens requesting them to be part of an important effort for Oregon. You specifically asked that seven employee representatives and seven employer representatives join with you as a Workers' Compensation Labor and Management Committee to negotiate a strategy to control the costs of Oregon's workers' compensation program. You further asked that the committee complete its work by April 15, 1990.

The committee held its first meeting at your home on January 5, 1990. We met every Tuesday at your Executive residence from January 9, 1990, to April 10, 1990. The committee's preliminary report was completed on Wednesday April 11, 1990. At your request, the committee has continued to meet to review our report for technical changes and consider amendments proposed by members of the Oregon Legislature. The full committee or its working subcommittee has met with you, the Department of Insurance and Finance, and Legislative leadership six times since our preliminary report was submitted. The actions of your committee on the suggested amendments are reflected in our letter to President Kitzhaber, Speaker Katz, Senate Minority Leader Senator Brenneman and House Minority Leader Representative Campbell.

Our work is now complete. We commend this report to you as a working format to bring both short-term and long-term changes that will control costs in Oregon's workers' compensation system.

From a worker's perspective, benefits include the following:

- * Safety committees and increased emphasis on safety education and safety enforcement
- * Increasing by over 45 % the number of compliance officers in the OREGON-OSHA Division to conduct workplace inspections

- * Managed medical care system to deliver high quality and consistent standard of medical service to all workers
- * Disabilities rated by a worker's own attending physician, with a neutral, nonadversarial appeal process
- * Increasing to \$305/per degree of scheduled injuries such as carpal tunnel syndrome
- * Reinstatement right for up to three years
- * Workers may choose lump-sum settlement for vocational and indemnity issues while retaining protection for required medical treatment
- * Workers retain some penalty fees now paid to attorneys, with assurance that insurer decisions are reasonable
- * Enhanced preferred worker program encourages hiring previously injured workers
- * Workers have increased certainty and convenience:
 - claims can't be denied after two years for any reason
 - less litigation on extent of liability
 - fewer medical exams, less inconvenience
 - quicker determination of responsible insurer

From an employer's perspective, the report contains improvements in the following areas:

- * More precise definition of compensability removes injuries and occupational diseases not clearly work-related
- * Managed medical care system controls costs while delivering high quality and consistent standard of medical care, with unnecessary care eliminated
- * Small business ombudsman as advocate
- * Reduced litigation reduces cost:
 - DIF Director has jurisdiction for many penalty and fee disputes
 - reduced litigation for "responsibility" questions
 - reduced litigation for extent of disability issues
- * Opportunity to negotiate settlements increases early resolution of some claims, to provide certainty about extent of liability
- * Payment of benefits is limited pending appeal
- * No time-loss payments to incarcerated workers

Gov. Neil Goldschmidt

May 1, 1990

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We believe this proposal is consistent with your charge of creating a workers' compensation system that is fair and affordable: fair to the injured worker and affordable for Oregon employers.

We want to emphasize three issues that we consider critical to our proposal. The first issue is our proposal to increase the number of compliance officers in the OREGON-OSHA Division by over 45%. Every member of the committee is committed to a safer Oregon workplace. The basic truth is that fewer workplace accidents mean lower workers' compensation costs. You cannot be in favor of lowering the cost of workers' compensation if you are not in favor of greater workplace safety. This basic truth is the cornerstone of organized labor's agreement to our proposal. It is not in the drafted proposal because that part of the agreement will be an item at the next Emergency Board meeting on May 17 and 18, 1990. We cannot emphasize enough how important the OREGON-OSHA funding proposal is to the stability and credibility of our agreement.

The second issue is the need for greater representation by the small business community on boards and commissions working with issues that affect the small business community. Our committee requests that you name at least one, and preferably two small business representatives to the standing Workers' Compensation Management and Labor Committee, which will function as an oversight committee of our workers' compensation system.

The third issue concerns the standing Management and Labor Committee. We know that most citizens will judge our work product by the substance of the individual proposals that have been made. In our opinion, the greatest benefit for the citizens of Oregon was the process by which we achieved our agreement. Our proposal was achieved by the two parties most directly affected by our workers' compensation system: workers and employers. Due to the concerns that influenced your decision to form the committee, it is our strongest recommendation that you institutionalize the committee to strengthen the role of labor and management as the future of workers' compensation in our state is formed. It is our hope to work with the Department of Insurance and Finance to evaluate their present workload and to work with them as they implement the various programs needed to carry out the intent of our proposal.

A final comment about attempting to judge the impact of our proposal by how much money is saved by a particular proposal: The cost impact of workers' compensation legislation cannot be estimated with precision for two primary reasons. First, the past may not represent the future. Workers' compensation costs are determined by many legal, regulatory, economic, and human behavioral factors. Intervening changes in all these conditions cannot be simultaneously assessed.

Second, we have difficulty accurately knowing costs for the recent past. Most claims are reported within a few weeks of injury, but many claims take years to reach final disability determination. Three or four years is normal for permanent total and many serious permanent partial disability cases. The remarriage and mortality uncertainties remain for decades in estimated costs of pension benefit cases.

Cost impact is estimated using claim cost averages and claim percentages by injury type, the number of degrees of partial disability awarded each year, temporary disability duration patterns, dependency characteristics, medical cost proportions by injury type, and several such statistics descriptive of claim costs. These values change over time and can be known only as preliminary estimates for recent years. Furthermore, we cannot fully anticipate how changes we model in these factors will interact with all the other factors as well as with the economic, social, and human behavioral changes occurring between the recent past and the years ahead.

Some system changes have cost impact in different stages. The impact in the first year of a change may differ from the impact in later years after employers, insurers, workers, and other system participants adapt to changes. Changes in the appeals processes, disability standards, evidence rules, vocational rehabilitation opportunities, or funded assistance programs are examples where results may differ as participants learn how new rules apply to each new case. The total impact of any system change may never be final and can be difficult to assess even in retrospect.

Finally, many people in Oregon watched our progress with a degree of skepticism about our ability to reach agreement on this issue. Your belief in our ability to compromise and do what is in the best interest of all Oregonians gave us the confidence to succeed. Again, on behalf of all of us, thank you again for your faith in our ability to undertake this task and prove one more time that the impossible is only a little difficult.

Respectfully submitted,

Ross Dwinell
Co-Chairman

Bob Shiprack
Co-Chairman

SECTION 5:

If a non-complying employer is a corporation, other than a non-profit corporation, the corporation and the officers and directors thereof shall be jointly and severally liable for court costs and attorney fees.

SECTION 6:

The average weekly wage will now be computed by the Employment Division as of May 15th of each year.

SECTION 7:

Increases scheduled disability from \$145 per degree to \$305 per degree.

SECTION 8:

Minor change.

SECTION 9:

LUMP SUM SETTLEMENT:

Allows for compromise and release, except for medical benefits, of an accepted claim. Requires that the Workers' Compensation Board approves the release. Allows for 30 day cooling off period.

SECTION 10:

MANAGED CARE ORGANIZATION (MCO):

This section makes substantial changes in the way medical care will be delivered.

Requires a pharmacist or dispensing physician to dispense generic drugs to a worker.

Excludes palliative care. However if the attending physician believes palliative care is appropriate, an appeal may be made to the medical director and the findings of the director is binding.

REP. KATZ: I just said twenty-three million, I think. If that's wrong, somebody flag it.

UNIDENTIFIED: Is that annual cost?

MR. REDMAN: That's correct. That's the numbers that I received.

SEN. KITZHABER: Senator Grensky.

SEN. GRENSKY: Is that computed on existing workers' compensation law? Because you can't predict the number of scheduled disabilities under this bill.

MR. REDMAN: That was predicted on the past scheduled disabilities.

SEN. GRENSKY: All of the things being equal then, increase to \$305 per degree is going to result in \$23 million extra costs, right?

MR. REDMAN: That's correct.

MR. DWINELL: The latter part of section 7, there's some language that was deleted. Our intent was to make sure that the only reference to standards is what you see on line 13 on page 14.

Section 9, on page 14, is the next major change.

MR. REDMAN: Yes, this is the section that will allow workers to obtain a lump sum settlement on a claim. However, it does not allow for any settlement on the medical. All the other issues in the claim can be settled between the insurance carrier and the worker other than the medical area. It does provide for protections of the worker so that no one will be taking unreasonable advantage, by stating that the Board will have to review this disposition and approve.

UNIDENTIFIED: In one of the drafts of this document, correct me if I'm wrong, I thought it said that if the worker was not represented by an attorney, the worker shall appear before the Board. And that's the changes to May. And could you just tell me the discussion.

MR. REDMAN: Yes we did. We initially had in the draft that depending on what level that the claimant proceeded to, hearing officer, Board, Court of Appeals and so forth, that they would have to appeal personally. In later discussions after talking to the legislative groups, it was recommended that we'd made a real complicated issue and determined that it would be better that we had the Board alone be the deciding body rather than trying to divide it up among a number of deciding bodies. In doing that we felt that it would be a hindrance on a worker perhaps from LaGrande or Baker City having to travel to Salem to