



**Property Casualty Insurers**  
Association of America  
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Kenton Brine  
Assistant Vice President, NW Region

July 30, 2015

Lieutenant Governor Matt Michels, Chairman  
South Dakota Workers' Compensation Advisory Council  
500 E. Capital Ave.  
Pierre, SD 57501

**RE: Wheeler v. Cinna Bakers**

Dear Chairman Michels and Members of the Council,

Thank you for the opportunity to provide written comment with respect to potential legislative and/or regulatory activity in response to the recent South Dakota State Supreme Court decision in Wheeler v. Cinna Bakers. I write on behalf of PCI, a national property & casualty insurance trade association whose members collectively write more than 44% of the workers' compensation policies in force in South Dakota today.

There are clear and obvious concerns raised by the Court's ruling in this matter, many of which you have likely heard from your constituents – our customers – in the South Dakota employer community. From insurers' perspective, I'm sure you can imagine that among the many unanswered questions raised by the ruling is how an insurer writing a policy for a single South Dakota employer can accurately rate the cost of a policy for an employee who may at some point in time over the course of his/her employment also accept (possibly unrelated, and more dangerous) work at another job site for another employer.

Research provided recently by the National Council on Compensation Insurance (NCCI) provides some sobering statistics – including the fact that no state has a higher percentage of workers holding multiple jobs than South Dakota. Of even greater concern is that the NCCI – an organization insurers routinely rely on to help establish rates (which is even more critical in less-populated, smaller-market states) – has stated they **cannot quantify** the impact that requiring the Average Weekly Wage to be based on all employment for an injured worker will have on the cost of providing coverage in this state. They can only assume based on extrapolated data that it will increase system costs (which suggests higher coverage costs and an associated impact on workers' compensation premiums). Even more disturbing is the retroactivity provisions associated with the Court's ruling.

At the same time, PCI is also concerned that an effort made in haste to overturn or otherwise respond to the Court's ruling could also lead to unintended consequences and/or market disruption.

PCI therefore urges the Workers' Compensation Advisory Council to move with deliberate caution, as our insurance company members and our industry colleagues work together with you, South Dakota's employers, labor organizations and policymakers to determine the most effective and non-disruptive response to the Wheeler v. Cinna Bakers decision.

PCI is reviewing the ruling and possible options, and would be pleased to have the ongoing opportunity to participate in the work of the Advisory Council. We appreciate the opportunity to be a part of this process. Please contact me or PCI's South Dakota Counsel, Mike Shaw, if we can provide additional information.

Respectfully,

A handwritten signature in black ink that reads "Kenton Brine". The signature is written in a cursive style and is contained within a rectangular box.

Kenton Brine  
PCI Assistant Vice President, NW Region