

**Workers' Compensation Advisory Council**  
Meeting Minutes  
October 29, 2015  
Kneip Conference Room #3  
700 Governors Drive, Pierre, SD

The meeting was called to order at 1:30 p.m. CT by Chairman Michels.

**Members Present:** Chairman Matt Michels, Marcia Hultman, Jeff Haase, Connie Halverson, Kory Rawstern, Guy Bender, Carol Hinderaker

**Members Absent:** Thomas Huegel, Randy Stainbrook

**Others Present:** Tom Hart, James Marsh, Larry Deiter, Brad Wilson, Carla Townsend, Carolyn Hofer, Daniel Maguire, Dick Tieszen, Lindsey Riter Rapp, Deb Mortenson, Mike Shaw, Doug Decker, Jill Kruger, David Owen, Shane Mattheis, Jason Simmons, Shawn Lyons, Scott Schuetzle, Dawn Dovre, Michele Brich, Lynn Job, Jerry Diamond, Sara Garbe, Jennifer Andrisen-Selzler, Sue Simons, Kathy Reimers, Jolene Nasser, Dean Nasser, Brett Wickersham, Rep. Dave Anderson, Larry Nelson, Laura Hensley, Chris Specht, Justin Smith, DJ Mittan, Larry Klaahsen, Fred Dieken, Elaine Odeen, Pat Tollefson, Dan Thielsen, Kelsey Baker, Julie McClelland

DDN sites were available at the following locations: Aberdeen, Rapid City and Sioux Falls.

Representatives from the National Council on Compensation Insurance (NCCI) were in attendance via teleconference: Susan Schulte, Robert Moss, Cynthia Wood.

Roll call was taken by Julie McClelland. A quorum was present.

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**Approval of the Minutes of July 28, 2015**

Motion: by Council member Bender. Seconded: by Council member Haase. Approved and Motion carried.

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**Agenda Changes**

Chairman Michels announced Agenda Item #5a would be presented first, then Item #4. Item #6 would be stricken as Terry LaFleur, was not in attendance due to a scheduling conflict.

The NCCI Medical Data Report was not presented.

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**SD Workers' Compensation Law and Principles Presentation**

Director Marsh explained workers' compensation history, laws, how compensation rates are figured, and forms of dispute resolution.

During his presentation, Director Marsh mentioned DLR took over Federal Beef and Pope & Talbot claims because those companies went into bankruptcy, and DLR has been handling these claims for 10-12 years.

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### **How the Wheeler Case Changes How We Look at Things, or "The Story of Bonnie's Benefits" Presentation**

Director Marsh gave an example relevant to the Wheeler decision, which calls for aggregation of concurrent wages for earnings calculations. In his example, "Bonnie" worked 40 hours as a custodian for the State, making \$9/hr. She also worked nights and weekends at a department store stocking shelves, making \$100/week. She got injured at her State job and a doctor took her off all work. Wages from both jobs (\$460 a week, rather than \$360 for the state job alone) would be used in calculating her benefits.

Council member Bender asked, "If she was working full-time at the department store rather than the State, would the State's income be included also?" Director Marsh confirmed, yes, those wages would be included.

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### **Analyzing the Wheeler decision's cost impact**

Chairman Michels indicated, due to the Wheeler case wages have been aggregated since May 6, 2015. Director Marsh went through handouts he asserted showed the cost impact of the decision would be small, as medical costs, rather than disability payments, drive South Dakota's costs, premium costs have decreased more than 18 percent in the last five years and South Dakota's indemnity costs per claim are significantly lower than other states in the region and nationally.

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### **Discussion on Draft Bill for Legislation**

Drafts were submitted by: Director James Marsh, Representative Dave Anderson and Doug Decker, Jolene Nasser and Dean Nasser, and Jerry Diamond.

There are four key points to consider: 1) retroactivity - injuries prior to May 6 2) effects on teachers, 3) obtaining information & records from other employer 4) what is the percentage increase in premiums.

Draft bills were discussed.

Director Marsh, Representative Dave Anderson, and Doug Decker gave testimony on their drafts. Mr. Decker had made edits to Director Marsh's draft for clarity; overall the two drafts were similar.

Jolene and Dean Nasser then gave testimony. Ms. Nasser stated they deleted "From and after May 6, 2015," from Section 1. Removed Section 3 entirely and inserted their own verbiage. Section 4 was totally removed. He indicated his proposal would involve only those claims that are active and ongoing; no issue of reopening cases.

Next, Jerry Diamond asked the NCCI representatives, "Would medical indemnity claims weigh differently on experience mods, or would they weigh the same?" Carla Townsend indicated there would be no difference. In regard to his draft, Mr. Diamond stated his was also an edited version of Mr. Marsh's.

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### **Public Testimony**

Chairman Michels opened up public discussion on the Wheeler case. Should the Supreme Court decision be null and void?

After their testimony, Chairman Michels wanted the record to reflect:

Sue Simons (legal counsel, Risk Administration Services) gave testimony to nullify Wheeler.

Dick Tieszen (representing Associated School Boards of South Dakota) gave testimony on the issues of similar/related employment and actively engaged employee.

Others who provided testimony on Wheeler were as follows: Justin Smith (Sioux Falls attorney), Mike Shaw (legal counsel, Property Casualty Insurers Association of America), Lindsey Riter (lobbyist for National Federation for Independent Business), David Owen (South Dakota Chamber of Commerce), Brad Wilson (Insurance Benefits, Incorporated), Shawn Lyons (South Dakota Retailers Association), Deb Mortenson (Associated General Contractors), and Michele Brich (South Dakota Hotel & Lodging Association).

During public testimony, Chairman Michels commented the proposed drafts do not have a provision prohibiting insurance underwriters from inquiring into an employee's earnings received from employers other than the insured. He recommended the council make its position on this clear.

The NCCI representatives on the telephone were released, and their data report will be introduced at next council meeting.

Additional testimony was provided by: Sue Simons, Jolene Nasser, Dean Nasser

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## Council Discussion

Chairman Michels opened up discussion for council members.

Council member Halverson wants clarification regarding similar/related employment. Director Marsh and Chairman Michels provided examples.

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## Closing Remarks

Council members were asked if they had any desire to make a plan to nullify Wheeler. After hearing no comments, Chairman Michels indicated this doesn't mean any legislator couldn't bring it up during session. He also spoke on retroactivity. Council members held a discussion on the May 6 date and whether it should be included. Also part of discussion was the issue of being actively engaged in employment.

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## Adjournment

Chairman Michels adjourned the Workers' Compensation Advisory Council meeting at 5:00 p.m. CT.

A full length audio recording of the meeting, as well as meeting handouts, is available on the Department's website.

  
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Matt Michels, Chairman

  
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Date

  
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Julie McClelland, DLR Program Assistant I

  
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Date