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Bobby Jindal, Governor
Curt Eysink, Executive Director

Office of Workers' Compensation Administration

WORKERS' COMPENSATION ADVISORY COUNCIL

Meeting Minutes
March 25, 2010
LABI Conference Center
9:30a.m. – 12:00p.m.

Members attending:

Chris Broadwater, Chair
Troy Prevot
Cherie Pinac
Dickie Patterson
Eddie Crawford
Chuck Davoli
Ken Hawkins
Denis Juge
Dr. Dan Gallagher
Jim Patterson
Greg Hubachek

Via conference phone

Dr. Mark Kruse
Michael Morris

Members absent:

Clark Cosse
Julie Cherry
Dr. Joe Laughlin
Dr. Jim Quillin

Professional Athletes:

SB 17 – Sen. Murray
SB 496 – Martiny, HB 1076 - Henry
SB 352 – Martiny
SB 459 – Martiny, HB 1098
HB 1097 – Henry

SB 17, SB 496, and HB 1076 - AWW calculation

Chris Kane, attorney from Adams Reese represents New Orleans Saints, relative to their workers compensation claims. Under the current jurisprudence, it has been determined that the statutes do not provide a definition on how to define annual wages for professional athletes. SB 17 elects to throw out the timing of when the wage happened, to throw out the actual wages being earned by the professional athlete at the time of the injury and to throw out the consideration of whether or not the player will ever even talent wise be put onto the active roster. The critical issue is when the players who get injured in the off season or pre-season periods. Under the CBA, they are required to get paid a certain pre-season salary amount. If someone signs, and is given the opportunity to be on the team, but in essence is there to try out, SB 17 is saying, if they are permitted to try out and they are injured, then you are running the risk of max benefits for his extended period. Annual wages need to be calculated based on the actual amount earned prior to the injury and not the contract amount. By defining this, we are not taking away what is already provided by workers' compensation law to professional athletes, instead we are codifying it.

Gary Delahoussaye, handles insurance for the Saints – From 2000 to 2009 the Saints worker' compensation premiums increased 387%. At the same time, the comp marketplace nationally, was experiencing very significant reductions in premiums. Quote from LWCC website “LWCC reduced overall rates in 2009 by 12.9% achieving an overall reduction of 53% since the company was founded in 1992 .” The Saints basically have a 400% increase in premium and the industry has a 50% reduction in premium. Impact: For one year's premium or set of losses, (Saints are basically self-insured). If SB 17 goes through, and we were to receive potentially 10-20 claims per year, here is the math: \$ 577.00 per week, the max benefit is 10 years. 521 weeks X \$577.00, each claim is worth \$300,040. If we get 10 claims, it's a \$3 million unanticipated expense. If we get 20 claims, it's a \$6 million unanticipated expense. This has an unbelievable economic impact on the bottom line, dollar for dollar for the Saints organization, as far as their workers compensation expenses are concerned.

Chuck Davoli – Asks if the contract requires the players participation in the pre-season workouts?

Chris Kane – When the player signs they have to participate in the pre-season in order to make the team. The contract covers x number of football seasons. The players pay in salary under the contract on weekly or bi-weekly basis over the course of the applicable regular season period commencing with the first regular season game played by the club.

Chuck Davoli – Has a comparison been done for classification of players and the rates charged for those classifications in Louisiana compared to other states.

Gary Delahoussaye – It's an NFL issue that is way high on the agenda because it is a complication for every team. Some states have excluded themselves.

HB 1097 and SB 352- Reciprocity issue

Chris Kane - Currently under Louisiana law, Louisiana does not apply the law from another state when adjudicating workers compensation claims. The bill proposes that an employer domiciled outside the state will be exempt from Louisiana workers compensation law, if the professional athlete is hired outside the state and sustains an injury while working in the state, only if Louisiana law would likewise be applied, if that employee is injured in that state on a temporary basis.

SB 459 and HB 1098 – Credit for compensation

Chris Kane – This bill proposes to add an offset or credit to the employer when a player receives any type of benefits when he is injured. When a player is hurt during the season, under the CBA he would be required to be

paid his full contract. There are other benefits that he is also eligible to receive. This bill tries to make it fair to Saints so there is no double or triple dipping potential.

Public Comment –

Frank Bruno – They are employees who are hired annually. What they are paid off season is in addition to what they get in annual salary. If players are hurt off season, their pay is based on that money that they earn, not the contract. Everybody should be treated the same, no matter what job you hold. No one else in the system is subject to a dollar to dollar credit. Why are football players being treated differently from everybody else? The problem seems to be with California law, not Louisiana law.

Jan Barber – Suggests that most of the issues with these bills can be addressed in the in-house contract for the Saints, we should not be changing Louisiana law to fit just a certain group of people.

Wayne Fontana – From a public policy standpoint, from economic impact on the State, some consideration and examination should occur, if we are talking about the tangible and intangible economic engine that the Saints have been able to bring to this State particularly over the last year. To the extent that the Saints are adversely impacted competitively disadvantaged from other teams – that is an appropriate consideration for this Council to consider. Moving from historical earnings to future earning potential is a serious policy change and is not a positive policy change and something we should consider opposing.

Dickie Patterson – Motions to defer all the professional athlete bills to the next meeting.

Troy Prevot – Seconds motion.

Second Injury Fund

HB 1223 – Edwards, SB 639 – Murray

HB 1197 - Ponti

SB 424 – Donahue

Director Broadwater - motions to defer HB 1223 and SB 639 to the next meeting.

Eddie Crawford - seconds motion.

HB 1197 – Brought up by AIA and is dealing with how the 2nd Injury Funds assessments are collected. AIA, Rep. Ponti, and the Director have a standing agreement, that unless they work out some significant concerns with how that bill is drafted, they are not going to move the bill in anyway.

Denis Juge motions to oppose the bill in current format.

Chuck Davoli seconds motion.

Motion passes unanimously to oppose bill in current format.

SB 424 – Streamlining recommendation of eliminating the 2nd Injury Fund.

Jim Patterson – Motions to defer to next meeting.

Eddie Crawford - seconds motion.

Motion passed unanimously.

Confidentiality

HB 1129 – Talbot

Director Broadwater - motions to defer to next meeting.

Jim Patterson - seconds motion.

Motion passes.

Compliance/Fraud Penalty

HB 873 – P.Smith

Director Broadwater - motions to defer to next meeting.

Jim Patterson - seconds motion.

Motion passes.

Undocumented Workers

SB 372 - Amedee

Greg Hubachek -motions to oppose bill in current format.

Jim Patterson -seconds motion.

Motion carries unanimously.

Public Comment:

Wayne Fontana – The end point is give at least a minimum wage presumption, but, you also allow the proving of wage earning capacity but for the illegal status of the individual.

Dale Cronin – Agrees in theory that there has to be some type of breakwater in place because of the nature and circumstances. But it goes beyond that. W. C. system is not just indemnity, it is medical, long term disability. Your talking about someone who is here illegally and shouldn't be working. Employers have an interest, as they do not want to be fostering that kind of behavior. Labor should have an interest because illegal undocumented workers are competing with them in some of these trades. In terms of the system and the costs, if an illegal alien is working and injured on the job, where are you going to send that check? How will you compel that worker to an IME? This is a problem that needs to be addressed by both the employer and the Labor side.

Mediation

HB 1088 – Ponti

Chuck Davoli - motions to defer to next meeting.

Jim Patterson - seconds motion.

Motion unanimously passes.

Reserve Police Officers
HB 1034 - Richmond

Dickie Patterson – motions to suggest amendment.

Chuck Davoli - seconds motion.

Director Broadwater – substitute motion to move to defer, to get with Rep. Richmond, then back to Council.

Ken Hawkins – seconds motion.

Dickie Patterson – No objection.

W. C. Preamble
HB 899 – Ponti

Jim Patterson - motions to defer to next meeting.

Chuck Davoli - seconds motion.

No opposition.

Voc-Rehab / Rehab. Conference
HB 669 – Dixon

Director Broadwater - motions to defer to next meeting.

Eddie Crawford – seconds motion.

No opposition.

Electronic Medical Billing/Payment
SB 255 – Chaisson

Public Comment –

Cindy Bishop – The doctors are fully engaged in the guidelines development and if they see a bill going through that will address their concerns and issues, that would certainly help.

LeAnn Alexander - They are in the process of going mandatory and it is an absolute nightmare. The problem is the medical records. They have to have medical records to determine sedimentary and all the other things that are unique to workers' compensation and aren't present in this proposal.

Director Broadwater – motions to defer to next meeting, will alert Sen. Chaisson to issues/concerns.

Jim Patterson – seconds motion.

Self Insurance Funds

SB 607 – Long

SB 510 – Long

Denis Juge- motions to take no position

Troy Prevot -seconds motion

State Safety Consultant

SB 551 – Donahue

Dickie Patterson - motions to support

Dr. Dan Gallagher - seconds motion

Independent Truckers

SB 314 – Walsworth

Jim Patterson – motions to defer to next meeting.

Eddie Crawford - seconds motion

W. C. Appellate Decisions

SB 42 – Murray

Denis Juge – motions to support

Chuck Davoli – seconds motion

Vote: 5 in support, 6 opposed

Motion does not carry

Chuck Davoli- motions to take no position.

Ken Hawkins -seconds motion

Vote: 7 in favor, 4 opposed

No position taken

Public Comment –

Dale Cronin –

Director Broadwater -motions to adjourn

Dickie Patterson – seconds motion

Meeting adjourned

Adjourn