

**WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full MLAC Meeting**

January 23, 2015
10:00 a.m. – Noon

Committee Members Present:

Aida Aranda, Oregon & Southern Idaho Laborers-Employers Training Trust, Corvallis
Guy Boileau, Louisiana-Pacific Corporation, Portland
James Denham, ATI, Albany
Paul Goldberg, Oregon Nurses Association, Tualatin
John Mohlis, Oregon Building Trades Council, Portland
Ben Stange, Polk County Fire District No.1, Independence
Theresa Van Winkle, MLAC Committee Administrator

Committee Members Absent:

Carol Duncan, General Sheet Metal, Clackamas

Agenda Item	Discussion
Opening (0:00:00)	John Mohlis opened the meeting at 10:03 a.m.
Review of December 11, 2014 MLAC Minutes (0:00:14)	Theresa Van Winkle noted the committee did not have quorum. December 11, 2014 minutes review will be held over until next meeting.
Department Updates (0:00:33)	<p>Jennifer Flood presented an introduction to the Ombudsman for Injured Workers office. The office was established by the legislature in 1987 as part of ORS 656.709. It is charged with advocating for injured workers, protecting workers benefits and rights, and ensuring workers understand their responsibilities. The office is part of the Department of Consumer and Business Services (DCBS) but is a separate entity from the Workers' Compensation Division (WCD). The office currently contains 5 assistant Ombudsman, 3 of whom are fluent in Spanish. It handles approximately 700 inquires a month from injured workers.75% can be handled via phone and 25% are advocacy calls. 88% of the inquiries are completed within 48 hours.</p> <p>The main issues the office deals with include:</p> <ul style="list-style-type: none"> • General process (workers do not understand the system) • Medical (finding a doctor, knowing what benefits they may be entitled to)

	<ul style="list-style-type: none"> • Accurate and timely benefits. However, the OIW can not give legal advice and it is not a regulatory authority. It does assist with unrepresented claims disposition agreement (CDA) without legal representation. The office will contact injured workers on CDA claims, but does not discuss dollar amounts. • Fatal claims – Helps identify the insurer and helps with all parties involved. • General workers’ comp 101 • Assistance to medical providers • Works closely with workers’ compensation organizations to help ensure the knowledge of the impact of decisions made. • Resource available to most everyone - legislature, public, Governors’ office, other agencies • Spends a lot of time listening, calls range from five minutes to two hours. Issues can be very time intensive. <p>Jim Denham asked if OIW keeps data on types of issues dealt with. Ms. Flood said yes, approximately 20 categories of issues are kept.</p> <p>Ben Stange asked if there is a process regarding policy changes on these issues. Ms. Flood answered yes, but that sometimes workers don’t want their identity known so the information used is mainly anecdotal.</p> <p>Paul Goldberg asked if the office is asked to testify. Ms. Flood said not so far. The private information is protected so workers feel safe.</p>
<p>Legislation Review Public Testimony (0:16:31)</p>	<p><u>SB 371</u></p> <p>Michael Orlando, Lake Oswego defense attorney, member of the Access to Justice Sub-Committee of the Oregon State Bar.</p> <p>Recommending a change to the reconsideration process following a Notice of Closure on workers’ compensation claims in cases where the beneficiary is unknown when the claim is closed. Mr. Orlando is proposing that the beneficiary has one year to address the Notice of Closure, if they were not sent a copy. It is currently 60 days. Mr. Orlando also requests that the insurer is required to pay for interpreter in an Arbiter Exam. It is not currently required. Mr. Orlando has currently proposed these changes to the Executive Committee of the Workers’ Compensation Bar as well as to the Bar’s Public Affairs Committee.</p> <p><u>LC 1578</u></p>

(00:20:42)	<p>Bill Cross, representing the Oregon Self Insurers Association, indicated that LC 1578 is being introduced as a bill by Senator Beyer in early February.</p> <p>Jerry Keene, Oregon Workers' Compensation Institute, LLC, presented and identifying recommendations regarding the <i>Brown</i> and <i>Schleiss</i> court cases. Mr. Keene believes the current court decisions have undone 1990 Mahonia Hall agreements, disrupting the balance that they struck. The goal of the legislation he is proposing is to bring it back to the 1990 agreements.</p> <p>Mr. Keene states that currently if you have a compensable injury you receive benefits. There is a definition of what type and how much in the statute. Once you determine the event is work related, you decide what benefits, time loss and/or permanent disability result from that decision. Then you then decide what the medical consequences of that injury were, and focus on those conditions.</p> <p>The <i>Brown</i> case now states: Are we looking at the event or what conditions did the event cause and what is the treatment for those conditions? When you are looking at whether or not medical treatment is from the claim, no longer does the notice of acceptance define the medical conditions but also should consider any other conditions the worker believes are contributing to the need of the benefit. This can now be raised at a hearing. <i>Brown</i> states that a compensable injury no longer equals compensable conditions. It will change the way notices of acceptance are looked at and the way lawyers analyze cases. It makes it so notices of acceptance are not the exclusive place to review claim information anymore.</p> <p>Mr. Keene is proposing for the status quo to be brought back. The way the legislative concept addresses this is by changing the statute to say the compensable injury is signified by and reflected in exclusively the notice of acceptance.</p> <p>The <i>Schleiss</i> case is a slightly different issue. Currently, most states' laws say that once you have an accepted claim and paid for it, and there is some impairment left over, if medical evidence determines that the impairment is caused by any thing other than the injury, the award is discounted. Hence, most states only pay for the impairment that is due to the injury. The Oregon Supreme Court has decided that apportionment cannot be conducted. This allows people to argue for compensation for</p>
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Comment [TVW1]: Deleted as I don't recall if he specified what "that percentage" means.

(00:43.33)	<p>impairment based on conditions other than what was part of the notice of acceptance. This is the same fundamental issue the <i>Brown</i> case; of a notice of acceptance not being the exclusive place to look at claim information.</p> <p>In his opinion, these cases will cause everyone to need a lawyer for a claim, setting the clock back 30 years. These cases are re-writing history and undoing Mahonia Hall agreements.</p> <p>Jaye Fraser, speaking on behalf SAIF Corporation, states that SAIF is Oregon's state chartered workers' compensation carrier, a not-for-profit entity. SAIF believes they exist to protect the Oregon workforce by providing workers' compensation coverage to as many Oregon employers as possible as inexpensively as possible, while protecting the Industrial Accident Fund and providing sound principles of insurance. As a public entity, SAIF believes they exist to serve and protect the Oregon workforce and to meet the needs of both workers and employers to make Oregon's economy better.</p> <p>Julie Masters, appellate attorney with SAIF Corporation, gives an overview of LC 1578 and hopes to clarify and restore the law after the <i>Brown</i> case decisions. LC 1578 does the following:</p> <ul style="list-style-type: none">• Clarifies that a compensable injury consists of medical conditions shown to have resulted from an accident. It adds the word 'conditions' to compensable injury and clarifies that you don't treat the event, you treat the injury.• Clarifies that benefits are paid for conditions accepted after being claimed, with an exception for diagnostics and pre-decision time loss. It is not necessarily tied to just conditions being accepted.• Clarifies that pre-existing conditions include conditions that predispose a worker to injury or disease. The law was modified to remove the word 'predisposition.' This restores that if something is actually a condition that predisposes a person to something, it has to be proved the injury is the main cause for the treatment.• Clarifies and restores the longstanding interpretation of the medical services statute to address accepted conditions in the claim by indicating that diagnostic medical services may be compensable to determine scope of injury.• Clarifies and restores the requirement that the notice of injury must be made in writing and establishes a one year time period to
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	<p>file the claim.</p> <p>SAIF concludes that by clarifying these activities, these changes will reduce expense and delay in the system.</p>
<p>Next Steps (1:08:52)</p>	<p>Theresa Van Winkle, Committee Administrator, stated that City County Services submitted written testimony in support of LC 1578.</p> <p>The MLAC committee currently has open positions on the management (two openings) and labor side (one opening).</p> <p>Starting February 6th, every other week, there are tentative meetings scheduled, on an as needed basis. For now the current start time is 9:00 a.m. and will be adjusted as needed.</p> <p>The committee will be posting a spreadsheet with the legislative concepts they have heard thus far.</p>
<p>Meeting Adjourned (1:11:45)</p>	<p>John Mohlis adjourned the meeting.</p>

*These minutes include time stamps from the meeting audio found here:
<http://www.oregon.gov/DCBS/MLAC/audio.shtml> .

**Referenced documents can be found on the MLAC Supporting Documents page here:
<http://www.oregon.gov/DCBS/MLAC/pages/support.aspx>