

# Exhibit A

## Workers' Compensation Section Executive Council Meeting Minutes

November 21, 2008

Taken by Jacqueline Blanton, Secretary

- I. Chair, Tuwana McMillan brought the meeting to order
- II. Introduction of Guests - Fausto Gomez and Judge Langham

The following members attended the meeting either in person or by telephone: Jacqueline Blanton, Dawn Traverso, Bill Berke, Mike Winer, Tom Conroy, Glen Wieland, Christopher Smith, Jeffrey Jacobs, Rick Thompson, Bill Roger, Richard Chait, Fausto Gomez, Tuwana McMillan, Nancy Cavey, Richard Sicking, Robert Strunin, Brian Carter, Tim Dunbrack, Tara Sa'id, Stewart Colling, Brian Sutter, Mark Zientz, Robert Donahue, Ric Morales, Paul Anderson, Chris Petruccelli, Alan Kalinoski, Tim Jesaitis, Judge Sculco, Judge Langham, Jake Schickel, and William Holley.

- III. Minutes from August 2008 meeting were approved.
- IV. Alan Kalinoski gave a treasurer's report on current statement of operations. Discussion was had at that time about our annual reception and associated cost issue because of such low attendance. Consideration was given to possibly moving meeting to Monday to get greater interest and attendance, but conflicts with other meetings and events resulted in a consensus that the general meeting and reception should remain on Tuesday with an eye toward reducing costs in the coming year.

Treasurer's report was moved/seconded and accepted.

- V. NEW BUSINESS LEGISLATIVE MATTERS:
  1. Determine Section's positions on the following:
    - A. Current legislative positions were renewed and remain the same. In addition, the Section's new position to support an increase in the salaries of the JCCs was approved by the Board of Governors.
    - B. Consolidation of all insurance regulatory functions - Reports were given by Fausto Gomez and Paul Anderson. It was reported as follows:

Rate making issues - Consumer Advocate and NCCI. Some options are

being considered - lost costs with NCCI involvement, competitive state fund or competitive rate making.

Over the last two years Consumer Advocate actuary has seen disparity between rate decreases recommended by NCCI (teens -14-16%), but believes they could have been in mid-30s. Consumer Advocate actuary has proposed lost costs as an alternative to full rates (currently used in Florida) or competitive rate filings on an individual basis as an option to the current system or, in the alternative, a competitive state fund.

In October, Office of Insurance Regulation - Kevin McCarty asked Consumer Advocate if they were intending to recommend legislative action on competitive rates. New Consumer Advocate had just taken over at that time. FWA is getting some advice on NCCI report. FWA will also be meeting with the Consumer Advocate regarding legislative action/intent going forward.

Concern was voiced that NCCI is “the only game in town” and a real need exists to push for diversification and another voice.

Claimant’s bar is concerned about NCCI having monopoly and the perception of crisis in the industry.

Discussion was also had regarding the 2008 Oregon Premium Rate Ranking Summary - Florida post 2003, per this report of Jan. 2008, Florida is 28<sup>th</sup> in the country in premiums (2006 market had not stabilized enough at that time and Florida was 6<sup>th</sup> most expensive two years post reform). Suggestion that Murray is causing a crisis is too premature. As a result, we need others involved in rate making process to get more information disseminated.

In October of 2003, Kevin MCCarty said that competitive rate making move would have been appropriate at that time once market stabilized in 18 months - not 60 months post - market is stable.

Discussion was then had as to whether we want a system that gets us away from crisis mentality. If 18% rate increase requested over next two years already - it could really be just the beginning unless competitive rate making is put into the mix.

Concern was voiced about the section taking a position in support of any one specific calculation method. It was agreed that if a consensus was reached regarding rate making that the section’s position should be to support fair calculations generally and not any one specific methodology.

It was noted that our current legislative position 7 would support this type

of methodology already - i.e. - support for independence and accuracy of information.

Comment was then made that NCCI is not currently required to disclose raw data upon which their findings are based, but rather only a summary. Raw rate making data has been requested by Consumer Advocate, but NCCI will not disclose same.

Glenn Wieland then inquired as to whether the section could support the CFO in investigating the best and most efficient way to come up with a system to gather data to determine a fair methodology for rate making.

A motion was then made that the section should support the CFO in determining the best way to assess premiums and gather data to assess premiums.

The Board of Governors is scheduled to meet on December 10-12, 2008 and at the end of January 2009. It was noted that if a new position was agreed upon and passed, it could be addressed at that time by the BOG and/or Jake Schickel noted he could take the position to committee or to Paul Hill.

Discussion was then had amongst members with opinions being voiced that the section had no business poking in its opinion on state rate making. Other comments included opinions that the section should work to avoid this constant perception that workers' compensation is always in crisis which would be avoided with fair rate making practices. Section should advocate that the Consumer Advocate gets the same raw data as NCCI at the very least. The raw data requested is for non-confidential information. It was noted that whenever one side is not pleased, there is a perception of crisis. It was also commented that the Florida Bar had no business in the middle of rate making, but again comment was made as to why raw data had to be kept secret.

At this time, it was noted that the section's existing legislative position 2 - already covered this type of issue without adding to the legislative positions which should be avoided.

It was agreed that the legislative positions would remain the same and the prior motion was withdrawn. It was further agreed that the section's current positions would encompass the activities about rate making, but anything more specific should be addressed as it arises with the council. Discussion was had that while transparency was good, the section's goal should be to get a clear picture of what is going on.

At that time, a new motion was proposed as follows: "The section will

support any effort of the office of CFO to investigate and determine the best method to assess and set workers' compensation insurance premiums to provide for a stable workers' compensation system." - After further discussion, this motion was also withdrawn with a consensus to leave legislative positions as they exist.

Currently, it was noted that the CFO has a role in the workers' compensation system pending the May 2009 decision to relocate.

A question was asked about our current legislative position 8 and whether it would prevent a middle of the road or compromise issue with the consensus being that it would not do so.

Consolidation Issues - Report was given that the Senate Banking and Ins. Commission is preparing two interim reports to consolidate workers' compensation functions under one office whereas now it is under two offices: The Office of Insurance Regulation and CFO.

Question - Should workers' compensation administration be left under two offices or consolidated under just the Office of Insurance Regulation or CFO? Should section adopt a position? It was decided that the Section would not take a position on this issue.

C. Application of Antitrust Laws to Insurance Industry - Fausto Gomez and Paul Anderson - It was reported that it would likely be best to address issues of this nature in other organizations that are not bi-partisan in nature.

D. Proposed Legislation regarding JNC Compilation - Paul Anderson

Paul reported that it was anticipated that the trial bar would file a bill this session as the defense bar with business and insurance. Trial bar bill will likely include procedural and composition issues. In terms of the JNC, currently workers' compensation practitioners are barred from sitting on the JNC. The thought was discussed that it would allow for a better process for determining qualified candidates if people in the trenches of workers' compensation practice were on JNC.

A proposal is pending for 5 positions (2 defense bar seats, 2 claimant bar seats and 1 sitting chair to rotate between defense and claimant) come directly from the workers' compensation section executive council.

Richard Chait commented that the Executive Council would need to evaluate the bill more specifically once it is actually written and proposed because it is not yet in written form at present.

Paul noted that the report was for information purposes only and the

section took no position nor were they being asked to do so.

Paul also reported on possible procedural change issues. He noted that there had been complaints from the defense bar about preferring private mediation and not being permitted to utilize private mediation in lieu of state mediation in some venues. At times, when continuances cannot be obtained, the Judge will not agree as well.

It was noted that the legislative committee would discuss issues of this nature as they develop in session and if immediate action needed to be taken, a telephonic meeting of the council would be held.

Paul Anderson noted that he was currently the legislative chair on the FJA and FWA boards. He indicated that his intent with the section would be to defer to Tuwana McMillan and Richard Chait as well as Fausto Gomez because of his lobbying which is partisan on behalf of FJA and FWA. He indicated that he felt this to be important in order to avoid confusion regarding the section's lobbying activities. Paul was then asked if he felt comfortable remaining the chair of the section's legislative committee. Paul again indicated that he was fine, but concerned about how he would be perceived and on whose behalf he was lobbying. Tuwana McMillan indicated that she would be in Tallahassee for a significant amount of time during the session so the section's interests would be well represented with her, Fausto Gomez and Richard Chait and that Paul's guidance was valuable and he should remain in the chair position on the section committee.

Paul noted that CFO Alex Sink is prepared to meet with a section delegation with the Consumer Advocate to discuss positions of section post Murray and what the section wants her office to advance in the legislative agenda.

Meeting date has not been set yet, but it was noted that Fausto had the section positioned as advocates of the system and not particularly one side or the other in light of the bipartisan make-up of the section. Tuwana noted that the members of the section's legislative committee could attend as well as others, but to let either her or Fausto know of your interest in attending as a head count would be needed. Stewart Colling was placed on the legislative committee for the section in place of Christopher Smith as Chris voiced a need to step down since he is currently serving as president of FWA.

The Legislative Committee currently consists of the following council members: Nancy Cavey, Martin Leibowitz, Steve Kronenberg, Jacquie Blanton Jeff Jacobs Richard Chait, Paul Anderson and Stewart Colling. The council moved, seconded and approved the appointment of this

committee.

Fausto Gomez also reported that the Governor and House did not want special session and Senate does for budget only. As of now, any special session would not include workers' compensation issues so regular session will be the time that the Murray decision is addressed.

Fausto also reported that as of this week, legislative staff has not been given any direction on workers' compensation issues in either the house or senate aside from Department of Education issue on rehabilitation advisor in 2003 law which is currently undefined. House and Senate want to strike the term rehabilitation advisor. Dept of Ed has no enforcement powers for using qualified vs unqualified vocational individuals (rehabilitation providers). Per Claude Revels - Fair Care has gone to House and Senate Insurance Committees with a proposal advocating for that - but not much support at this time.

FWA and FJA will be filing some comprehensive legislation and it was reported that AIF tried a pre-emptive fix striking the word reasonable and it went no where. Fausto noted that this upcoming regular session was expected to be an extremely active session in the workers' compensation arena.

## VI. OTHER NEW BUSINESS

- A. Council At Large Member Vacancy - A defense seat vacancy has been created by Attorney Brian Carter's change to representation of claimants. Richard Chait - nominated Leo Garcia out of Miami with Angones law firm. Further nominations will be taken with letters being requested prior to January meeting with vote being taken at that time. E-mail will be sent to all section members announcing vacancy.
- B. Revisit Fee Waiver for Mediators - Dawn Traverso - Dawn discussed the ramifications of this waiver issue and felt that they were not specifically addressed to her knowledge so she wanted to make certain that the section understands that a waiver for this large number of people will impact successful budgeting of future programs. Judge Hawkes had asked for a waiver for the 1<sup>st</sup> DCA law clerks which the council agreed to provide at a discounted rate and not a complete fee waiver because of expense and section's inability to afford the costs.

CLE rules for the Florida Bar do not provide for a complete fee waiver as even Judges have to pay for incidentals and our prior motion gave complete fee waivers. What about CDs and luncheons? Dawn voiced concern that our language provided for a complete free pass which meant a mediator could go free completely and a Judge would have to pay for incidentals. There are costs associated with everything even with the

telephonic sessions.

It was noted that Judge Langham may have communicated our prior agreement to the fee waiver to mediators as Tuwanna received thanks from him, but our prior motion was to adopt CLE rules of the Florida Bar for the fee waiver. It was agreed that this clarification was appropriate as incidentals would not be waived. Dawn asked about tabling further discussion of whether we continue the waiver for her to meet with treasurer and Arlee to address costs and present at January meeting. Suggesting a nominal fee was noted to be an appropriate alternative.

Arlee reported that only one state mediator had taken advantage of the waiver thus far and she thought that the waiver was only for a telephonic seminar. Judge Langham indicated that he thought the waiver was for telephonic seminars only. In addition, the waiver was only for state mediators who were also members of the section.

Further discussion was tabled until January to get specific budget information for telephonic seminars.

Dawn also reported that she had received a letter from Ray Malca about the trial advocacy program and whether it would be offered again next year. The program was noted to have been very well attended last year. It was agreed that we would have it again in 2009 especially due to law change with Murray.

- C. Judge Langham reported that he was available and would like to know about issues and questions regarding any way that he can help the section. The JCCS are scheduled to meet on Jan. 7<sup>th</sup> or 8<sup>th</sup>. He asked for the section to let him know about anything that needed to be addressed.
- D. Richard Chait reported that on the Wednesday and Thursday before our next council meeting of January 16, 2009, the 1<sup>st</sup> DCA would be holding oral arguments in Miami. Oral arguments would be on January 14<sup>th</sup> at 2:00 p.m. at the Hyatt Regency Downtown Miami and on the 15<sup>th</sup> at the historic courtroom of Dade County Circuit Courthouse. He noted that Judge Hawkes, Browning and Kahn would be hearing the arguments and attending our meeting on the 16<sup>th</sup>.

It was also noted that a dinner may possibly be planned with the judges.

It was agreed that the law clerks and staff of 1<sup>st</sup> DCA who are in town for the oral arguments would also be invited to dinner. Richard asked that anyone who is interested in attending the dinner email him for specifics.

- E. Mike Winer - News and 440 Report - Mike asked for newsletter support for articles and indicated that he needed quality information to put together for

newsletter and encouraged submissions.

- VII. Future Meetings - Dates were confirmed as noted in agenda of January 16, 2009 for Midyear Meeting, February 22-27, 2009 for the Winter Retreat in Silver King Park City, Utah as well as our Executive Council Meeting/Retreat in Las Vegas, Nevada on May 14-17, 2009.

There being no further business, the meeting was adjourned.