



April 21, 2009

To: All Clients of Bridge Consultants

From: Joe Stevens, President

Confidential and Privileged

Executive Summary: Current and future status of Workers' Comp Costs in California

As our valued client, I want to update you on the current state of workers' comp in California, with particular attention paid to changes that you should anticipate in the near future.

When reform legislation was first being discussed in early 2004, I was appointed to Governor Schwarzenegger's Task Force for Workers' Comp Reform, and I also served on a similar task force established by then-Insurance Commissioner Garamendi. I have maintained many of the contacts that I made then, so that Bridge Consultants can serve the purpose of informing you on changes in this difficult area, in addition to providing you with our unique injury reduction program.

On Tuesday, April 14th, I spent the day in Sacramento, participating in what was euphemistically called a Workers' Compensation Legislative Education Day. I doubt that education is what most legislators are looking for, but I thought it was a great opportunity to take the pulse, see what the mood is, and try to figure out what the future holds for workers' comp costs in California.

The group was brought together by the CA Coalition on Workers' Comp, and the CA Manufacturers & Technology Association. About 50 of us attended, so we broke into groups of 5 and met with 9 different Senators, Assemblymen, and too often, just their Chiefs of Staff.

The Goal

My goals were to see if the dyke is going to break as soon as Governor Schwarzenegger leaves office in 2010, determine what areas are the most vulnerable, and see if I could identify someone who we could count on to lead the fight in the Legislature, the way Sen. Poochigian did in 2004 in order to get SB899 passed. We should all be forever grateful to Senator Poochigian and his very capable chief of Staff, Deborah Gonzalez for that victory. It's getting more difficult to hold together.



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The Threats

There are several legal cases that we discussed on each visit. I have attached a description of each of them. To recap briefly:

1. AB 664 Workers' Comp treats government employees in sectors like police and fire differently from employees in the private sector. They have "Presumptive Status", which means that any injury they have is automatically considered to be the result of their work, and eligible for workers' comp benefits. This would extend that presumption to all hospital employees-not just nurses. AB664 would be very expensive in areas within and outside workers' comp.
2. AB933 wants all utilization review to be done only by physicians licensed in California. This bill tries to protect CA physicians when it should only be concerned with which provider does the best job at the best price. California costs are higher, so this bill would have a negative impact.
3. SB 145 The importance of DeSaulnier's bill is that it goes after *Apportionment*, one of the key tenets to SB899. Apportionment took away a serious tool of those who would commit fraud. Apportionment stopped the serially wounded workers who could pile up huge disability payments by reinjuring the same body part for different employers. This bill seeks to weaken it by adding some loopholes.
4. SB186 The second DeSaulnier bill goes after another of the key components of SB899: *Pre-Designation of Physician*. In the bad old days of pre-SB899, employees had the right to designate their own physician-or chiropractor, as the physician of record on any injury. SB 899 tightened that up, and then created a sunset for pre-designation altogether. This bill would wipe out the sunset and continue employees right to pre-designate, but potentially more serious, would grant the outside-the-MPN physician the ability to refer the injured worker for specialized treatment, also outside the MPN. If successful, the thing we all fought so hard for in SB899, medical control, would be circumvented.

In addition, we discussed the case that has the insurance industry most worried; *Almaraz-Guzman*. One of the reasons that costs have gone down since the reform acts of 2004 is the dramatic change in the Permanent Disability Rating Schedule. Finally objective standards were required in measuring impairment, based on AMA guidelines. Cases now go faster because everyone knows what the standards are. This recent decision allowed the award to be based on medical opinions that were *outside* the AMA Guides. That provides a wide open door to increased litigation and higher awards. So much so that the WCIRB has implied that a full 5% of its proposed 24.4% increase is based on this decision alone. The decision is being appealed.



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Costs and Rate Increases

24.4% Citing rising medical costs and recent court cases, the Workers' Compensation Insurance Rating Bureau (WCIRB) has recommended a rate hike of 24.4% on policies that renew beginning July 1st. Insurance Commissioner Steve Poizner has the final say, and there is a big question on what he will do. Knowing that he intends to run as a Republican for Governor, it's highly unlikely that he would accept that number. The guess here is that he will call for a rate increase somewhere in the 8 – 12% range. Insurance companies are not bound by this, but they do tend to stay in the recommended area.

While any rate hike at all is harmful in this economy, the bigger problem lies down the road, I'm afraid. Here are the reasons I believe that we are in for a series of increases.

1. The medical costs associated with treating injuries, including surgery and rehabilitation, have risen every year, while rates have been dropping. Now that injuries and claims have bottomed, the impact of cost increases will be felt. In 2007, an indemnity (lost time) claim was ascertained to cost about \$47,000. In one year, that cost has risen to an estimated \$56,000, a staggering 19% increase.
2. Slowly, applicant attorneys have risen from the near-dead. If upheld, *Alvaraz-Guzman* gives them lots of latitude. Weakening apportionment would hurt, and creating a path outside the employer's MPN for a disgruntled worker would have very negative effects, including on morale in the company.
3. The pressure is on legislators from their largest donors: Unions, Attorneys, and labor organizations, who all feel like they have lost the fight in workers' comp over the past 5 years. More than one legislator was candid enough to acknowledge the pressure, and the expectation that SB899 needed to be rolled back, at least in part. Schwarzenegger has been steadfast in vetoing legislation that would undo what is clearly his crowning achievement: the reform of the entire WC system with SB899. A Democratic Governor would almost certainly sign bills into legislation that would increase costs on employers.

I'm generally an optimist, but reality intrudes. I don't see any scenario where rates do not increase. No matter what Commissioner Poizner comes up with, there is still the reality of what is going on in the market, and in this case we are strictly playing defense.



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Summary

So what can you do? To say “Reduce Injuries and Claims” sounds self-serving, but the reason we provide our injury prevention program is because reducing injuries is the single most effective thing an employer can do to reduce costs associated with workers’ comp. You can’t control what they do to your rates, so you must control safety. Think about this: Based on current rates, the average injury in rate classes we deal with adds almost \$10,000 to an annual premium. That is *before* any rate increases.

If you feel like the time is right to re-energize your program, please let us know. Over the next few weeks I will be contacting everyone to review the results of the past year, and make sure that we are helping you in every way possible. If you have any questions about this report, or anything else in our field, please contact me.

Thanks for being our partner.

Best regards,

Joe Stevens