

Approved: 2/15/93
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 9, 1993 in Room 123-S of the Capitol.

Members present: Senators Burke, Downey, Feleciano, Jr., Gooch, Harris, Hensley, Kerr, Petty, Ranson, Reynolds, Steffes and Vidricksen

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Ann Donaldson, Legislative Research Department
Jim Wilson, Revisor of Statutes
Bob Nugent, Revisor of Statutes
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee: Shelby Smith, Economic Lifeline II, Wichita
Hugh Vinson, Alexander and Alexander, Ft. Worth, Texas
Bart Griffin, Director of Records, Texas Workers Compensation Commission, Austin, Texas

Others attending: See attached list

Senator Salisbury announced Senator Petty will replace Senator Downey on the subcommittee on **SB 215**, and Senator Downey will be reassigned to the subcommittee on **SB 73**.

Hearing on SB 215--Workers Compensation reform

Shelby Smith, Economic Lifeline II, informed the Committee his organization supports a comprehensive program for reform of the workers compensation laws. He said the conferees are going to address dispute resolution, such as, mediation, ombudsman and a benefit review conference. He introduced Hugh Vinson, of Alexander and Alexander.

Mr. Vinson testified on behalf of Lifeline II. He stated several states, including Texas, Tennessee and Alabama have enacted legislation to provide for an Ombudsman Program and a Benefit Review Conference. Generally speaking, the Ombudsman is a source of information and assistance primarily to injured employees. The Benefit Review Conference is essentially a "mediation meeting" where information is shared and resolution of disputes is attempted in an informal atmosphere. Texas has a provision for Arbitration as a choice to a contested case hearing. Provision is also made for an Appeals Panel Review following an unresolved contested case hearing, prior to allowing a judicial review. The result has been a dramatic reduction in attorney involvement and litigation, see Attachment 1. He told the Committee the Ombudsman should not preside over the benefit review conference.

Bart Griffin, Director of Records, Texas Workers Compensation Commission, testified in regard to a dispute resolution system and the ombudsman program in Texas. He said the Texas Reform Act restructured the dispute resolution system to allow the agency to be involved in the decision making process throughout the dispute. On January 1, 1992, binding arbitration became effective. By mutual agreement of the parties, they may elect to go through binding arbitration as opposed to a contested case hearing. Texas has only had one request for binding arbitration since January 1, 1992. If issues are not resolved at the benefit review conference, and the parties did not elect binding arbitration, a benefit contested case hearing is held. This is a formal administrative hearing which is presided over by a hearing officer, who is a licensed attorney and is employed by the Texas Workers Compensation Commission. If the decision of the hearing officer is appealed, it goes to a three member appeals panel which reviews the decision of the hearing officer. Any party that continues to disagree with the agency decision can seek judicial review by filing suit in the appropriate court in the injured workers county of residency at the time of the injury or death.

Mr. Griffin informed the Committee the Ombudsman Program was statutorily established to assist

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on February 9, 1993.

unrepresented injured workers, employers and other parties to enable them to protect their rights in the workers compensation system. The ombudsman is directly involved in disputed cases and provides assistance to any participant once a case is scheduled for a benefit review conference or contested case hearing. The ombudsman continues to provide assistance in resolving disputes outside of these formal proceedings. They thoroughly explain the complex proceedings process and, if requested, assist them through the process, see Attachment 2.

In response to Committee questions, Mr. Griffin replied there are 23 field offices across the state. There are 31 ombudsman, 34 benefit review officers and 21 hearing officers. The cost of the administration is assessed against the carrier, and also against self-insurers. The Texas Workers Compensation agency has a \$32 million budget. He also stated that vocational rehabilitation is not mandatory.

The Committee meeting was adjourned at 9:00 a.m.

The next meeting is scheduled for February 10, 1993.

GUEST LIST

COMMITTEE: SENATE COMMERCE COMMITTEE

DATE: 2/9/93

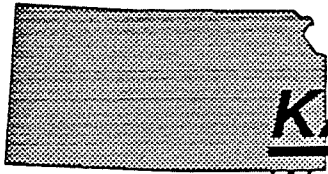
NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jim Allen	Topeka	PRM
Bill Curtis	Topeka	Ks Assoc of School Bds
Steve Smith	Wichita	EL-TL
Bart Griffin	Austin TX	TWCC
Geary Gromer	Topeka	Dept. Human Res.
Bill Morrissey	Topeka	DHR/Work Comp
Wayne Mauch	Top	75 AFL-CIO
Ray Ratzert	Topeka	Ks. Ins. Dept.
Bill Wempe	"	" " "
Nelsie Sweeney	Overland Park	OP Chamber
Laura Boggan	Topeka	Sen. Karis Intern
George Ruckett	Topeka/Wichita	KRHA
Bob Totten	Topeka	Ks Contractors Association
Larry Shaffer	Topeka	Kns. Hosp. Assoc.
ALAN COBB	Wichita	Ks Assoc. for Small Business
Joe Fuzanic	Topeka	KCA
GEORGE WELCH	"	DofA-Self Ins. Fund
LARRY MAGILL	"	PROF. INDEP. INS. AGENTS
Frances Kastner	"	Ks Food Dealers Assn
Whitney Dameron	Topeka	Pete McGill's Assoc.
Edna Ede	Dodge City	WKMA
Max E. Turkington	Topeka	Ks. Motor Carriers Assoc
Tony Shelton	Topeka	PRM
Richard Mason	"	KITA
MARK PARCELLANT	Topeka	KIDOCAT

GUEST LIST

COMMITTEE: SENATE COMMERCE COMMITTEE

DATE: 2/9/92

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KANSAS

Workers Compensation Reform

TESTIMONY

HUBERT (HUGH) L. VINSON

Alexander & Alexander of Texas, Inc.

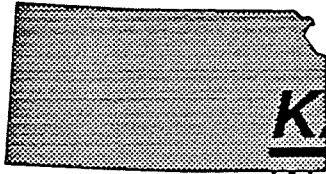
February 9, 1993

On behalf of Economic Lifeline II, I would like to offer some observations on the state of the Workers Compensation system and suggestions on how it can be improved for employers and employees alike, as has been accomplished in a few other states.

In 1961 the total cost of Workers Compensation was \$2 billion; in 1991 the cost was \$62 billion, and when the numbers are in for 1992, it will no doubt exceed \$70 billion. Costs are rising at well over 10% per year. This is no longer an expense business can absorb, or pass along, and expect to remain competitive in an increasingly competitive global environment.

Many, if not most, states are "on their knees" to this economic threat - - a few, like Maine and Rhode Island - - are on their backs. Others, like Texas, Florida, and Louisiana have walked very, very close to the edge. It's not a pretty sight businesses closing their doors, some moving operations to a more friendly state or worse, to another country as prices escalate and insurers withdraw from the marketplace. Former Texas Insurance Commissioner Phil Barnes called it "the death spiral".

No fault Workers Compensation laws were originally crafted some 75 plus years ago to minimize, if not eliminate, litigation. And, for many years they worked very well. But for whatever reasons, and there are many, they have begun to breakdown in this important area in the last 10 to 20 years. In 1991, in California alone, litigation costs were \$1.5 billion. Texas was a large and growing number until our new Workers Compensation law, Senate Bill 1, took effect and began to stem the tide. Then Governor Bill Clements called it the most important piece of legislation passed in the last 20 years. Most other states, including Kansas, are facing a similar problem.



KANSAS

Workers Compensation Reform

There is no single, simple solution to any problematic Workers Compensation system. However, as indicated and almost without exception, every state is faced with growing conflicts and increased litigation costs. A positive approach to this area will go a long way toward righting the system.

What's missing in most states, including Kansas, is a dedicated information/communication process regarding benefits entitlement and an informal mediation arrangement where questions can be answered and disputes resolved without the need for litigation and attorney involvement.

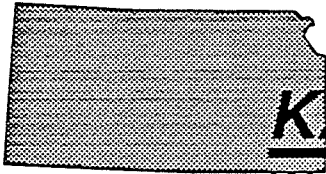
Several states, including Texas, Tennessee, and Alabama, have recently enacted legislation providing for an Ombudsman Program and a Benefit Review Conference. Generally speaking, the Ombudsman is a source of information and assistance primarily to injured employees. The Benefit Review Conference is essentially a "mediation meeting" where information is shared and disputes are attempted to be resolved in an informal atmosphere.

Alabama's program became effective January 1 of this year. Currently, they have eight Ombudsmen. Each was required to attend mediation training and to learn the Workers Compensation law. The manager of the program and senior Ombudsman has a general industry background, four are former insurance adjusters and three were previously state employees.

Employers are required to post notices in conspicuous places regarding the Ombudsman services and the mediation process. An 800 number is provided. Additionally, on receipt of the Employer's First Report of Injury, a postcard is sent to the injured employee outlining these services as well.

As expected and planned, most calls (56%) are from employees, (16%) from employers, with the balance from adjusters, attorneys and others.

Most questions (34%) deal with the law, (22%) concern disability, with the remainder having to do with medical, compliance, and other issues.



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Workers Compensation Reform

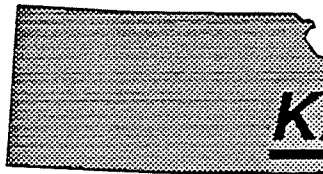
The most common problem is a breakdown in communication the parties haven't really talked and/or they haven't really listened. So far, the program is working extremely well with 95% of the issues being resolved at this first level.

As yet, Alabama has not had a Benefit Review Conference. It will be presided over by an Ombudsman in a very informal atmosphere with no official record or testimony being taken.

Likewise, Tennessee's program became effective January 1 of this year. They refer to it as the Workers Compensation Specialist Program as opposed to Ombudsman. There are currently a total of 11 Workers Compensation Specialists of which 6 are attorneys. The balance have various business backgrounds. They also require information posting regarding the services and provide an 800 number. Labor representatives are used for the first level of information requests and the Workers Compensation Specialist becomes involved only in the more complicated issues. Consideration is being given to advertising the services on selected TV spots. Preliminary results are encouraging and the system participants are enthusiastic about its future prospects.

So far, there has not been a Benefit Review Conference. However, unlike Texas, and Alabama, their mediation step is voluntary. It is possible some judges will require the Benefit Review Conference be held before proceeding with a trial. While the Benefit Review Conference will be presided over by a Workers Compensation Specialist, it will be a different person than the one who has been involved with the case. Again, this conference will be informal with no evidence or testimony as such.

In Texas, the new law not only makes provision for an Ombudsman program and Benefit Review Conference, but also provides for Arbitration as a choice to a Contested Case Hearing. Provision is also made for an Appeals Panel Review following an unresolved Contested Case Hearing, prior to allowing a Judicial Review. The result has been a dramatic reduction in attorney



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Workers Compensation Reform

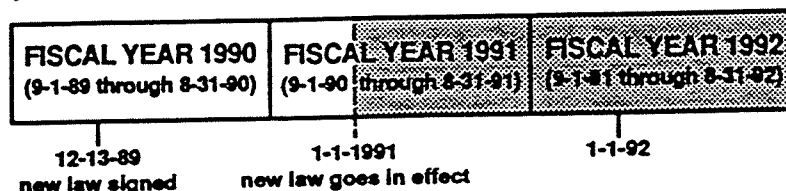
involvement and litigation.

One of your handouts, which is a copy of the Commission's quarterly newsletter, provides some statistics reflecting the improvements.

There is no question, however, that the Ombudsman Program and Benefit Review Conference have been the major keys to the system's current success. And we are fortunate to have with us Bart Griffin, Manager, Division of Records, who will discuss these programs and provide some insights into the reasons for their success.

TWCC Announces FY 92 Accomplishments

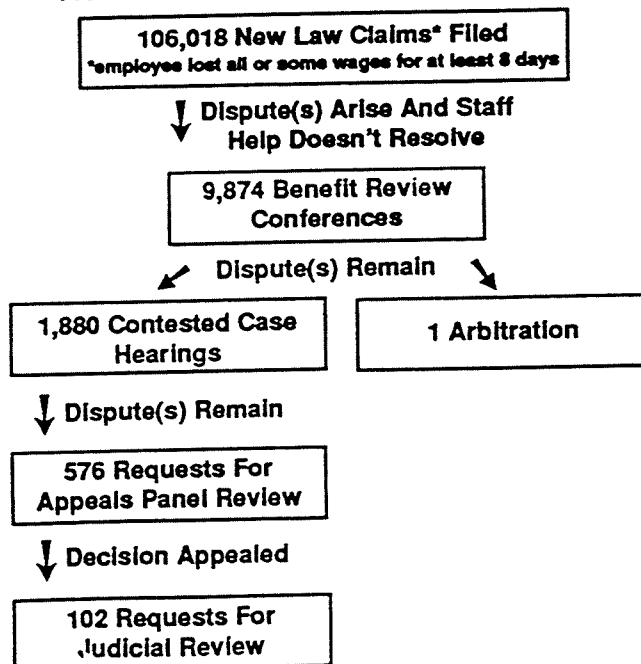
Fiscal Year 1992 was the first full fiscal year under the Texas Workers' Compensation Act or "new law." The Act went into effect January 1, 1991, part way through FY 91.



Fiscal Year 1992 was a landmark year in many areas:

- **The number of injuries decreased.**
In 1990, reported injuries totalled 43,750 per month. In FY 92, reported injuries averaged 32,913 a month, a drop of nearly 25 percent.
- **Workers received benefits faster.**
In 1990, an injured worker had to wait an average of 30 days after beginning to lose time until receiving the first check. In the first quarter of Calendar Year 1992, an injured worker only had to wait 17 days.
- **Thousands of disputes were resolved with the help of the Commission.**
The chart shows dispute resolution figures for new law claims.

New Law Claims - Fiscal Year 1992



- **Attorney involvement decreased.**
In the first half of 1990, attorney representation was 95 percent at prehearing conferences. In FY 92, attorney representation for claimants was 43 percent at Benefit Review Conferences and 56 percent at Contested Case Hearings. Attorney representation for insurance carriers was 38 percent at Benefit Review Conferences and 90 percent at Contested Case Hearings.

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- **The Commission went to its customers for an evaluation of our customer service.**
FY 92 started with the inauguration of a Customer Service postcard program allowing our customers to tell us how we did at serving them. The Commission also began a survey of claimants to better determine their needs. Although the Commission placed a strong emphasis on customer service from the beginning, a number of injured workers still had complaints. Until we can reach the point that we're assured that every injured worker is getting the benefits that they are due under the law, we cannot claim total success in the implementation of the law.
- **The staffs of our Field Offices were reorganized to better serve our customers.**
To address concerns about customer service, the Commission began a pilot program which later developed into the Customer Service Enhancement Program. The Program reallocated staff resources to provide better customer service. By the end of FY 92, the Customer Service Enhancement Program had expanded to most Field Offices. A key element was the restructuring of the Ombudsman Program to give the Ombudsmen a proactive role in dispute resolution. The Ombudsmen explain the dispute resolution process to unrepresented participants and assist unrepresented participants in preparing for a dispute resolution proceeding.
- **Figures show that the system is achieving cost savings.**
Figures from Texas Department of Insurance show that in the first half of calendar year 1992, insurance companies reported they had paid about one third less in actual medical and income benefit than they paid in 1990, the last year the old workers' compensation law was in effect.
- **Preparations began for the Self-Insurance Program which goes into effect January 1, 1993.**
During FY 92, the Division of Self-Insurance was formed. By the end of FY 92, Commissioners had proposed the rules to implement the Program, and more than 400 businesses had requested application forms.
- **Fraud is being successfully prosecuted, and employers and insurance carriers improved their compliance with administrative requirements.**
In FY 92, the Commission conducted 3,131 criminal and administrative investigations. Twenty-four criminal charges were referred to prosecutors. One referral led to a felony fraud conviction, and 12 others led to grand jury indictments. The Commission issued 650 penalties against 108 employers and 23 insurance companies. The average recommended penalty during the first eight months of 1992 was \$1,643. In 1990, the average penalty amount was \$123. The Commission worked closely with employers and insurance carriers to develop compliance plans, mostly focusing on timely filing of paperwork and timely payment of benefits.
- **Two medical fee guidelines were adopted, and work began on treatment guidelines.**
Commissioners adopted a Medical Fee Guideline and a Hospital Fee Guideline. A Physical Medicine Treatment Guideline has been proposed and work began on other treatment guidelines.
- **Medical cost savings were achieved as a result of the guidelines and other provisions.**
In the first eight months of 1992, the amount of medical bills submitted by health care providers was \$911,581,112. The amount paid by insurance companies according to Commission guidelines was \$791,744,813, a net savings to the system of \$119,836,299. In the first eight months of 1992, the Commission received 6,119 requests for spinal surgery. Of these, 812 were deemed unnecessary by second or third opinion doctors, resulting in a net savings to the system of \$8,120,000.
- **The Commission did long-range planning to identify how to accomplish agency objectives.**
The Commission developed an Agency Strategic Plan, began work on an Agency Systems Plan and revised its Performance Measures. The Commission coordinated closely with the Texas Department of Information Resources in the development and approval of automation plans.

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- The Commission began assisting the Texas Workers' Compensation Insurance Facility with the new requirements of House Bill 62.
A new safety program for certain employers insured through the Facility was implemented in April 1992. Through the end of the Fiscal Year, 1,472 employers had been identified for the program, which requires them to have a hazard survey conducted and to develop and implement accident prevention plans. More than 530 plans had been submitted by the end of the Fiscal Year.
Preparations were made to begin another program in Fiscal Year 1993, that gives certain employers insured through the Facility an opportunity for a rate reduction if they have implemented safety programs.
- The Commission's free safety consultation program continued to grow.
The Commission provided 2,675 OSHCON or Occupational Safety and Health Consultation Program consultations to more than 1,900 Texas employers in FY 92. Before 1990, the program provided an average of approximately 1,200 consultations a year. A 1991 study showed a 21.5 percent reduction in reported injuries and illnesses associated with OSHCON consultations. The study also associated the safety consultations with a 15.6 percent reduction in those reported injuries and illnesses that resulted in more than one lost workday.
- The Commission maintained a toll-free safety hotline for workers.
In FY 92, the hotline received 2,620 calls, of which 811 were safety-related and 573 were complaints of unsafe working conditions, which were investigated by the Commission.
- The Commission reached thousands of employees with its mandatory and voluntary back injury prevention training program.
Back injury prevention training was offered through a mandatory pilot program in eight counties, reaching 525 workers. The Commission provided back injury prevention training through a voluntary program statewide, reaching 3,065 workers in FY 92. In addition, the Commission trained 143 employees from Texas businesses to be back injury prevention trainers. Through internal training programs in their businesses, each of these trainers can reach thousands more employees.
- The Commission established new safety programs and offered safety training statewide.
The Commission began a Safety Award Program and a Peer Review Safety Program. The Commission provides safety and risk management programs, free safety videos and publications to Texas employees and employers.
- The Commission further reduced the injury rate for Commission employees in FY 92.
In FY 92 the Commission reduced its injuries per 100 employee to 2.01, exceeding the FY 92 goal of 3.1 injuries per 100 employees. In FY 91, the Commission also met its goal, reducing injuries from 4.3 to 3.4 injuries per 100 employees. In 1992, the Commission emphasized training to prevent carpal tunnel syndrome and back injuries.
- The Commission evaluated state agency safety programs and provided Risk Management guideline manuals to every state agency.
The Commission began safety program evaluations for state agencies after that function was transferred from the Attorney General's Office. The Commission developed a risk management program review format and did a pilot implementation project. Risk management information software was installed and will be used to report exposure and loss data from state agencies to the Legislature.
- Public information and assistance was offered through conferences, seminars and speakers.
Approximately 450 people from 13 states attended the second Texas Workers' Compensation Educational Conference, co-sponsored with the International Workers' Compensation Foundation. The Speakers' Bureau provided 319 speakers statewide, reaching an audience of 23,193. Eleven Medical Review Educational Seminars were offered to health care providers statewide. The Commission participated in the TEC's Greater Texas Program and in other conferences and seminars across the state.

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- The Commission improved its telephone and computer networks. To support the Customer Service Enhancement Program and other communication needs, the Commission acquired PBX systems for five Field Offices and the records facility, which added call routing support and significantly reduced the cost of the agency's telephone services. The agency expanded its wide area network at the beginning of FY 92.
- Three new Field Offices opened, and one Field Office was closed. Field Offices opened in Galveston, Victoria and San Angelo, and the Wharton Field Office closed. Two more Field Offices are scheduled to open in FY 93, bringing the total to 24 Field Offices.



* Lufkin and Del Rio Field Offices are scheduled to open in FY 93.

To request a subscription to the *TWCC Times*, send this form to: Texas Workers' Compensation Commission, MS 3B, 4000 South IH-35, Austin, Texas 78704-7491.

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Editor Anne Sigman
Editorial Advisor Linda McKee

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TEXAS WORKERS' COMPENSATION COMMISSION

Field Office Pilot Project *

Objectives:

Test in two field offices, Harlingen and Fort Worth, a new program design that emphasizes dispute resolution and Ombudsman services while maintaining necessary general public information services and official duties on claims (approving advances, medical exams, correspondence, etc.). The Pilot Program will use mostly existing resources but will redistribute staff to focus resources on key areas.

Key Elements:

- Increase available time and scope of Ombudsman duties to include assistance in dispute resolution proceedings. Time will be made available by removing current general information duties and moving Disability Determination Officer level staff, if required to increase Ombudsman coverage.
- Dedicate certain Disability Determination Officers to handle claim related dispute resolution, prior to the setting of a proceeding, as only responsibility: Time is provided by the elimination of current claim file reviewing tasks.
- Dedicate certain Disability Determination Officers to handle official activities on claims such as approving advances, medical exams, setting issues for conferences and settlements.
- Dedicate individuals previously involved in support roles and Assistant Disability Determination Officer positions to provide increased general information, brochure distribution, etc. Time is provided by eliminating the current hard copy file review in favor of a periodic sample audit of files with violations referred to Compliance & Practices.
- Structure project management and pilot program evaluation process to determine the relative effectiveness of current and pilot programs.

* As a result of the success of the Field Office Pilot Project, it has now been adopted as the standard operating procedure.

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Comparison of Current Process to Pilot Project;

Ombudsman

CURRENT

- Provide general information to injured workers, employers and general public
- Assist individuals in understanding worker's compensation benefits and procedures
- Receive and investigate reported complaints
- Make necessary referrals to other departments

PILOT

- General Information will be provided in the Customer Assistance Department
- "Assisting individuals in understanding Workers' Compensation benefits" is a Customer Service activity that is provided by all departments of the organization and is a primary responsibility
- Enter into and assist dispute resolution on all issues if requested
- Receive and investigate reported complaints
- Make necessary referrals to other departments, agencies and services
- Receive notices of all Benefit Review Conferences, Arbitrations and Contested Case Hearings
- Perform consultations on issues regarding procedures and preparation required for the hearing process
- Assist the injured worker and employers through the hearing process
- Assist participants in understanding their responsibilities through the hearing process
- Assist claims services person, Benefit Review Officers and Hearing Officers in communicating with employees, employers, medical providers and carriers
- Input information into the Compass claim records

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CURRENT

Customer Assistance

New functional department - the positions were primarily Assistant Disability Determination Officers which performed the following responsibilities:

- Review of hard copy claim files on a regular basis for documented filings
- Audit compensation rates on regular basis and identify non compliance issues
- Assist injured workers in absence of Disability Determination Officer
- Purge for hard copy file retention requirements
- Respond to specific detailed questions and overflow calls
- Review claim file data for correct employer name, carrier, addresses, etc.

PILOT

- Hard copy claim file review is done on an as needed basis to respond to specific correspondence
- Auditing done through a periodic random sampling of files until automation takes place with referral to Compliance and Practices on violations
- Assistance to injured workers in absence of Disability Determination Officer is done through teamwork as opposed to assignment
- Customer Assistance is notified of file and telephone contact is made with the injured worker within 3 working days
- Incoming requests for general information handled by this functional area while providing general information regarding rights/responsibilities/medical rights/file location, what to do if a dispute arises/carrier & employer information
- Messages are returned within two (2) business hours of receipt
- Preliminary dispute resolution will take place and proper notation made in COMPASS. If necessary, written agreements submitted to Claims Services department
- Record disputed issues and respective positions on COMPASS
- Insure data received is accurate and obtain all other required data necessary to support other functional areas
- Enter data into COMPASS

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Customer Assistance (continued)

PILOT

- Make necessary referrals to other field office staff members
- Make necessary referrals to other departments, agencies and services
- Identify and initiate activity with regards to violations

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RENT

Records Maintenance

- Provide basic clerical support to the field office
 - Assist in completion of purchase requisitions
 - Maintain statistical information and data
 - Distribution of files and mail
 - Provide word processing requirements
- Maintain processing of mail (open, date, sort, pull and file)
- Provide support to the BRC/PHC/Hearings sections

PILOT

- Provide general support to the field office
 - Processing routine correspondence
- Provide support to the Proceedings Section
 - Schedule/provide notice of claim files for Benefit Review/Prehearing Conferences
 - Maintain docket calendar for all proceedings
 - Prepare Benefit Review Officer reports for submission to participants and Hearings Division
 - Perform complex word processing and/or transcription of dictation
 - Prepare Hearing Officer decisions for submission
- Maintain statistical information for the field office
- Maintain processing of mail to include opening, dating, sorting, filing and pulling to responsible party
- Responsible for completing purchase requisitions for supplies and maintaining inventory
- Purge active files to determine if may be retired and sent to General Files
- Maintain general field office calendar (staffing calendar)
- Perform random sampling for claim file monitoring
- Responsible for distribution of field office information (rules, policies, procedures)

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RENT

Claims Services

- Provide general information to injured workers on their claim file
- Perform official activities required in a claim file
- Perform routine file review
- Perform routine audit of claim information
- Perform purging of hard copy claim files
- Supervise Review Team staff

PILOT

- "Providing General Information" will be given primary attention at the Customer Assistance level
- Perform the official activities required in a claim file
 - Request for Medical Examination Orders
 - Required Medical Exams
 - Advancement/Acceleration
 - Designated Doctor Referral
 - Identifying Violations
 - Handle Fatal/Statutory Total and Permanent Claims
 - Official Correspondence
 - Requests for:
 - Benefit Review/ Prehearing Conferences
 - Arbitration
 - Contested Case Hearing
 - Lump Sum - Impairment
 - Third Doctor Requests
 - Supplemental Income
- Perform Dispute Resolution
 - Specific claims identified by Information Assistance
 - Agreements
 - Request For Forms
 - Certify parties unable to resolve prior to referral to proceedings
- Make necessary referrals to other departments, agencies and services
- Assist in gathering necessary data and information
- Make necessary entries into COMPASS

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RENT

Proceedings

- Conduct and oversee Benefit Review Conferences, Prehearing Conferences and Contested Case Hearings

PILOT

- Conduct and oversee Benefit Review Conferences, Prehearing Conferences and Contested Case Hearings
- Assist in gathering necessary data and information
- Serve as resource to dispute resolution activity in field office
- Assist field office in staff education

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CURRENT

Health & Safety

- Provide health and safety consultations and assistance to employers and general public
- Complete necessary documentation or correspondence

PILOT

- Provide health and safety consultations and assistance to employers and general public
- Complete necessary documentation or correspondence
- Gather data and information as needed

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TEXAS WORKERS' COMPENSATION COMMISSION

COMMENTS BY
BART L. GRIFFIN
DIRECTOR OF RECORDS

INTRODUCTION

I WOULD LIKE TO THANK YOU FOR INVITING ME TODAY AND ALLOWING ME TO TAKE PART IN YOUR DISCUSSION OF YOUR WORKERS' COMPENSATION SYSTEM. I THINK THERE ARE MANY SUCCESS STORIES COMING OUT OF TEXAS, THAT ANYBODY, LOOKING AT CHANGING THEIR SYSTEM SHOULD AT LEAST THINK ABOUT. I AM HERE TODAY TO TALK TO YOU SPECIFICALLY ABOUT A COUPLE OF THE SUCCESS STORIES IN TEXAS. THE STATUTORILY ESTABLISHED:

- 1) DISPUTE RESOLUTION SYSTEM; and,
- 2) THE OMBUDSMAN PROGRAM

OLD LAW DISPUTE RESOLUTION

TEXAS HAS HAD A SUCCESSFUL DISPUTE RESOLUTION SYSTEM WITHIN THE AGENCY FOR MANY YEARS. PRIOR TO THE REFORM OF OUR WORKERS' COMPENSATION ACT BECOMING EFFECTIVE, DISPUTE RESOLUTION WAS KNOWN AS A PRE-HEARING CONFERENCE. THIS WAS AN INFORMAL MEETING BETWEEN THE PARTICIPANTS DIRECTLY INVOLVED IN THE CASE. IT ALLOWED THEM THE OPPORTUNITY, TO SIT AT THE SAME TABLE, AND DISCUSS THE DISPUTES IN A CASE AND ATTEMPT TO GET IT RESOLVED WITHOUT COSTLY LITIGATION. THE PROBLEM WITH THE OLD SYSTEM WAS, IF THE CASE COULD NOT BE AMICABLY RESOLVED OR SETTLED, IT LEFT THE AGENCY'S JURISDICTION AND

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WENT IN TO THE DISTRICT COURTS--TRIAL DE NOVO.

NEW LAW DISPUTE RESOLUTION

THE TEXAS REFORM ACT RESTRUCTURED THE DISPUTE RESOLUTION SYSTEM TO ALLOW THE AGENCY TO BE INVOLVED IN THE DECISION MAKING PROCESS THROUGHOUT THE DISPUTE. WE NOW HAVE A THREE-TIER SYSTEM WITHIN THE AGENCY. IT IS AN ISSUE DRIVEN SYSTEM AS OPPOSED TO A TOTAL CASE RESOLUTION SYSTEM. IT BEGINS WITH THE BENEFIT REVIEW CONFERENCE.

THIS IS VERY SIMILAR TO OUR OLD LAW PRE-HEARING CONFERENCE. THE BENEFIT REVIEW CONFERENCE IS AN INFORMAL PROCESS, MEANING, THE CONFERENCE IS NOT RECORDED AND THERE IS NO SWORN TESTIMONY TAKEN. A BENEFIT REVIEW OFFICER, WHO IS REQUIRED BY THE STATUTE TO BE FORMALLY TRAINED IN MEDIATION, PRESIDES OVER THE CONFERENCE TO MEDIATE THE DISPUTES AND, HOPEFULLY, RESOLVE THEM. THIS NEW PROCESS, AS IN THE OLD, CONTINUES TO BE SUCCESSFUL. APPROXIMATELY 70% OF ALL CASES SCHEDULED FOR BENEFIT REVIEW CONFERENCE ARE SUCCESSFULLY RESOLVED AT OR BEFORE THAT CONFERENCE.

ARBITRATION

ON JANUARY 1, 1992, BINDING ARBITRATION BECAME EFFECTIVE. BY MUTUAL AGREEMENT OF THE PARTIES, THEY MAY ELECT TO GO THROUGH BINDING ARBITRATION AS OPPOSED TO A CONTESTED CASE HEARING. TEXAS HAS ONLY HAD ONE REQUEST FOR BINDING ARBITRATION SINCE JANUARY 1, 1992.

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CONTESTED CASE HEARING

IF ISSUES ARE NOT RESOLVED AT THE BENEFIT REVIEW CONFERENCE, AND THE PARTIES DID NOT ELECT BINDING ARBITRATION, A BENEFIT CONTESTED CASE HEARING IS HELD. THIS IS A FORMAL ADMINISTRATIVE HEARING WHICH IS PRESIDED OVER BY A HEARING OFFICER, WHO IS A LICENSED ATTORNEY AND IS EMPLOYED BY THE TEXAS WORKERS' COMPENSATION COMMISSION. THE HEARING OFFICER IS THE SOLE JUDGE OF THE RELEVANCY AND MATERIALITY OF THE EVIDENCE PRESENTED AT THE HEARING. ONLY THE UNRESOLVED ISSUES FROM THE BENEFIT REVIEW CONFERENCE ARE DISCUSSED UNLESS THE HEARING OFFICER ALLOWS ADDITIONAL ISSUES TO BE RAISED. THIS WHOLE DISPUTE RESOLUTION PROCESS IS MEANT TO BE WIDE OPEN. EVERYTHING PRESENTED AT THE CONTESTED CASE HEARING MUST BE EXCHANGED PRIOR TO THE HEARING OR IT MAY NOT BE ALLOWED TO ENTERED INTO EVIDENCE.

APPEALS PANEL

IF THE DECISION OF THE HEARING OFFICER IS APPEALED, IT GOES TO THE THIRD TIER WITHIN OUR SYSTEM, A THREE MEMBER APPEALS PANEL WHO REVIEW THE DECISION OF THE HEARING OFFICER. THE PANEL WILL REVIEW THE PETITION REQUESTING THE APPEAL, THE RESPONDENTS BRIEF AND THE RECORDING OF THE HEARING, IF NECESSARY. THE PANEL WILL AFFIRM THE HEARING OFFICERS DECISION, REVERSE THE DECISION AND RENDER A NEW DECISION OR REVERSE THE DECISION AND REMAND THE CASE BACK TO THE HEARING OFFICER FOR FURTHER DEVELOPMENT AND CONSIDERATION.

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JUDICIAL REVIEW

ANY PARTY THAT CONTINUES TO DISAGREE WITH THE AGENCY DECISION, CAN SEEK JUDICIAL REVIEW BY FILING SUIT IN THE APPROPRIATE COURT IN THE INJURED WORKERS' COUNTY OF RESIDENCY AT THE TIME OF THE INJURY OR DEATH. DURING ANY JUDICIAL REVIEW OF AN APPEALS PANEL DECISION, OUR AGENCY RETAINS JURISDICTION OF ALL OTHER ISSUES RELATED TO THE CLAIM.

ADDITIONALLY, THE JUDGE MUST GIVE THE DECISION OF OUR AGENCY THE APPROPRIATE WEIGHT. SINCE JANUARY 1991, ONLY 162 CASES HAVE BEEN FILED FOR JUDICIAL REVIEW OUT OF THE 800 DECISIONS OF OUR APPEALS PANEL.

OMBUDSMAN PROGRAM (OLD CONCEPT)

THE SECOND AREA OF DISCUSSION TODAY IS OUR OMBUDSMAN PROGRAM. THE OMBUDSMAN PROGRAM WAS STATUTORILY ESTABLISHED TO ASSIST UNREPRESENTED INJURED WORKERS, EMPLOYERS AND OTHER PARTIES TO ENABLE THEM TO PROTECT THEIR RIGHTS IN THE WORKERS COMPENSATION SYSTEM. I BELIEVE THE TEXAS LEGISLATURE'S INTENT, WAS FOR THE OMBUDSMAN TO BE ACTIVE AND AGGRESSIVE PROBLEM-SOLVERS, WHO, DETECT AND HELP RESOLVE DISPUTED ISSUES OR MISUNDERSTANDINGS BEFORE THEY ADVANCE TO THE COSTLY/COMPLEX DISPUTE RESOLUTION SYSTEM.

INITIALLY, OUR OMBUDSMAN WERE TASKED WITH MERELY RESPONDING TO GENERAL INFORMATION QUESTIONS. THEY WERE PROCEDURALLY NOT ALLOWED TO ATTEND A DISPUTE RESOLUTION PROCEEDING. WE DID NOT LIKE THE WAY THE OMBUDSMAN PROGRAM WAS SHAPING-UP. WE DID NOT FEEL WE WERE

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GETTING ENOUGH "BANG FOR OUR BUCK". WE FELT IT SHOULD DO MORE. HOWEVER; ANY CHANGE WE NEEDED TO MAKE TO OUR OMBUDSMAN PROGRAM WOULD AFFECT THE RESPONSIBILITIES OF EVERYONE IN OUR FIELD OFFICES; SPECIFICALLY, THIS WOULD EFFECT HOW WE WERE ORGANIZATIONALLY STRUCTURED AND THE ASSIGNED RESPONSIBILITIES OF EACH PERSON IN THE FIELD OFFICE.

FIELD OFFICE

THE PROBLEM WAS, WHEN THE ORIGINAL OMBUDSMAN PROGRAM WAS ON THE DRAWING TABLE, WE DID NOT ASK OURSELVES THE CRITICAL QUESTION: "DOES OUR ORGANIZATIONAL STRUCTURE REFLECT WHAT IS IMPORTANT TO OUR BUSINESS?" WE LEARNED, THAT WHAT WAS IMPORTANT TO OUR BUSINESS WAS A MORE AGGRESSIVE PROGRAM. THE NEW LAW IS AN ISSUE-DRIVEN SYSTEM AND NOT A TOTAL CASE RESOLUTION SYSTEM. WE HAD TO HAVE STRUCTURE THAT WAS RESPONSIVE TO OUR CUSTOMERS. THE ORIGINAL ORGANIZATIONAL STRUCTURE WAS NOT PROVIDING THE LEVEL OF RESPONSIVENESS WE NEEDED.

SO, IN MARCH OF 1992, WITH A FOCUS TOWARD PURE AND SIMPLE CUSTOMER SERVICE, WE LAUNCHED A PILOT PROJECT IN TWO OF OUR 23 FIELD OFFICES TO STUDY A NEWLY DEvised CONCEPT OF HOW WE COULD BETTER MEET THE NEEDS OF OUR CUSTOMERS, AND, AT THE SAME TIME, REFOCUS THE DIRECTION OF HOW WE NEEDED TO HANDLE OUR DAILY CLAIM HANDLING BUSINESS. WE NEEDED TO TAKE A REAL LOOK TO THE FUTURE TO SEE WHERE WE TRULY WANTED TO BE AS AN AGENCY.

CUSTOMER SERVICE HAS BECOME THE MOST IMPORTANT AREA IN ALL TYPES OF BUSINESSES. THIS IS CERTAINLY TRUE FOR STATE GOVERNMENT AS WELL. THE PHILOSOPHY, AS SET OUT BY TEXAS GOVERNOR ANN RICHARDS

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FOR TEXAS STATE GOVERNMENT, IS, THAT WE WILL BE OPEN, ETHICAL, RESPONSIVE, ACCOUNTABLE AND DEDICATED TO THE PUBLIC WE SERVE. WE TOOK THIS DIRECTION VERY SERIOUSLY.

PILOT PROJECT

WITH THE ENTHUSIASTIC SUPPORT OF OUR COMMISSIONERS AND OUR EXECUTIVE DIRECTOR, AND, FOLLOWING THE LEAD OF GOVERNOR RICHARDS, AND, IN AN EFFORT NOT TO CONFORM TO NORMAL STATE GOVERNMENT, WE REVIEWED HOW WE DID BUSINESS AT OUR SERVICE DELIVERY POINTS. WE PUT OURSELVES IN THE POSITION OF THE INJURED WORKER OR EMPLOYER. WE KNEW DEFINITE CHANGES WERE NECESSARY. WE WANTED TO MAKE THE PROCESS MORE EFFICIENT AND, AT THE SAME TIME MORE EFFECTIVE. EFFICIENCY WAS SIMPLY NOT ENOUGH. ADDITIONALLY, WE CONSIDERED THAT A NECESSARY PART OF OUR CUSTOMER SERVICE PROGRAM IS "CUSTOMER CONTACT" AND "CONTINUAL COMMUNICATION" WITH OUR CUSTOMERS.

FIRST, WE NEEDED TO LOOK AT THE MAJOR FUNCTIONAL GROUP ACTIVITIES IN THE FIELD OFFICE TO DETERMINE WHERE CHANGES WERE NEEDED. AS WITH ANY WORKERS' COMPENSATION SYSTEM, WE RECOGNIZED THAT THERE ARE CERTAIN ROUTINE REQUIRED WORK ACTIVITIES OF THE AGENCY, AND THOSE THAT OCCUR AND ARE UNIQUE TO EACH AND EVERY CLAIM.

WE HAD THREE OBJECTIVES WHEN CREATING THE IDEAL FIELD OFFICE OR SERVICE DELIVERY POINT:

- 1) WE WANTED TO FOCUS ON A HIGHER LEVEL OF CUSTOMER SERVICE
AND SATISFACTION
- 2) WE WANTED TO REFOCUS OUR OMBUDSMAN PROGRAM TO PROVIDE

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TRUE ASSISTANCE TO PARTICIPANTS IN THE WORKERS' COMPENSATION SYSTEM; AND,

- 3) WE WANTED TO ACHIEVE A HIGHER LEVEL OF DISPUTE RESOLUTION AT THE EARLIEST POSSIBLE LEVEL.

LOOKING AT THESE OBJECTIVES, AND, PUTTING OURSELVES IN THE POSITION OF THE WORKER AND THE EMPLOYER, WE THOUGHT IT EXTREMELY IMPORTANT TO INITIATE IMMEDIATE CONTACT WITH AN INJURED WORKER ONCE WE ESTABLISH A FILE OR HAVE KNOWLEDGE OF AN INJURY. CONTACT WITH THE INJURED WORKER BEFORE THEY EVER RECEIVE A PIECE OF CORRESPONDENCE FROM OUR AGENCY WAS A FOCUS OF THIS EFFORT.

DURING THIS INITIAL CONTACT:

- 1) WE WILL PROVIDE GENERAL INFORMATION AND ADDRESS IMMEDIATE CONCERNS
- 2) WE WILL BRIEFLY DESCRIBE THEIR RIGHTS AND RESPONSIBILITIES
- 3) WE WILL NAME THE RESPONSIBLE FIELD OFFICE AND PROVIDE THE TOLL-FREE INJURED WORKER HOTLINE NUMBER.

WITH THIS PROACTIVE APPROACH, WE ARE NOW ABLE TO RECOGNIZE AND RESOLVE PROBLEMS OR POTENTIAL PROBLEMS MUCH EARLIER; WE ARE NOW ABLE TO ANSWER QUESTIONS OR CONCERNS MUCH EARLIER; AND, WE ARE NOW ABLE TO GET UNRESOLVED ISSUES INTO THE DISPUTE RESOLUTION PROCESS MUCH QUICKER.

THE CONCEPTUAL IDEA OF THE PILOT PROJECT MADE THE ENTIRE FIELD OFFICE FUNCTION AS A TEAM IN HANDLING WORKERS COMPENSATION CASES. BASICALLY, ANY EMPLOYEE MAY GET INVOLVED IN MAKING THE INITIAL CONTACTS OR HANDLING GENERAL INFORMATION CALLS. WE ALSO HAVE AN AUTOMATION SYSTEM THAT ALLOWS US TO LOG EVENTS INTO THE SYSTEM

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DURING THE LIFE OF A FILE AND IT REMAINS AVAILABLE FOR REFERENCE TO THOSE ACROSS THE STATE HAVING ACCESS TO OUR AUTOMATION SYSTEM. BASICALLY, ANY AGENCY EMPLOYEE, ACROSS THE STATE, CAN ASSIST ANY PARTICIPANT OF A CASE BY REVIEWING THE DATA FILE AND ITS CONTACT LOG ON THE SYSTEM.

PRIOR TO THIS PILOT PROJECT, WE ALWAYS CONCENTRATED ON MANUALLY REVIEWING FILES, AUDITING DOCUMENTS, AND REVIEWING MOST OF THE CORRESPONDENCE IN A FILE. YOU MUST KEEP IN MIND, THE CARRIERS AND EMPLOYERS ARE REQUIRED TO DO CERTAIN THINGS HANDLING A FILE AND THEY ARE DOING THEM WITHOUT OUR INTERVENTION ON THE GREAT MAJORITY OF THE CASES. AS I AM SURE YOU REALIZE, THIS IS A LABOR INTENSIVE PROCESS WITH VERY LITTLE RESULT.

WE DID NOT HAVE A VALID REASON FOR CONTINUING BUSINESS THIS WAY. THE BOTTOM LINE IS, WE HAD TO LOOK TO THE FUTURE AND DEVELOP A MEANINGFUL CLAIMS-HANDLING PROCESS THAT TOOK CARE OF THE EXCEPTIONS IN THE LIFE OF A CLAIM FILE. THE PILOT PROJECT ESTABLISHED AN EXPERT GROUP TO HANDLE THE OFFICIAL ACTIVITIES, WHICH, ARE STATUTORILY REQUIRED TO BE REVIEWED AND, APPROVED OR DENIED.

ADDITIONALLY, IT CREATED A DISPUTE RESOLUTION ACTIVITY EVEN PRIOR TO A BENEFIT REVIEW CONFERENCE. TRAINED STAFF WILL GET INVOLVED IN A DISPUTE, THE MINUTE WE BECOME AWARE OF IT, AND GET THE PARTICIPANTS TALKING. WE DETERMINED MOST DISPUTES COULD BE EASILY RESOLVED IF THE PARTICIPANTS SIMPLY COMMUNICATED THEIR RESPECTIVE POSITIONS. TOO OFTEN IN THIS BUSINESS, WE FIND ADJUSTERS FOR INSURANCE COMPANIES WITH CASELOADS THAT WERE FAR TOO LARGE, AND IT PREVENTED TIMELY CONTACT WITH THE INVOLVED PARTICIPANTS ON DISPUTED CLAIMS. WE COULD NOT WAIT FOR INSURANCE

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COMPANIES TO RESPOND TO THIS PROBLEM. WE HAD TO BECOME PROACTIVE. THIS PROACTIVE APPROACH, ALLOWED US TO BETTER UTILIZE THE CROWDED DOCKET SPACE BECAUSE FEWER AND FEWER CASES ACTUALLY NEEDED A BENEFIT REVIEW CONFERENCE.

OMBUDSMAN PROGRAM (NEW CONCEPT)

AND FINALLY, A VERY EXCITING PORTION OF THE PROJECT, WHICH IS WHAT GOT US LOOKING AT OUR ENTIRE PROCESS TO BEGIN WITH, WAS TO REFOCUS THE DIRECTION OF THE OMBUDSMAN PROGRAM. UNDER THE PROJECT, OMBUDSMAN ARE GETTING DIRECTLY INVOLVED IN DISPUTED CASES AND WILL PROVIDE ASSISTANCE TO ANY PARTICIPANT ONCE A CASE IS SCHEDULED FOR A BENEFIT REVIEW CONFERENCE OR CONTESTED CASE HEARING. THE OMBUDSMAN WILL CONTINUE TO PROVIDE ASSISTANCE IN RESOLVING DISPUTES OUTSIDE OF THESE FORMAL PROCEEDINGS. THEY WILL THOROUGHLY EXPLAIN THE COMPLEX PROCEEDINGS PROCESS AND, IF REQUESTED, ASSIST THEM THROUGH THE PROCESS. WE HAVE DEFINED "ASSIST" AS BEING ANYTHING FROM THE CRITICAL PREPATORY WORK, TO ACTUALLY COMMUNICATING FOR THE PARTICIPANT WHO REQUESTED ASSISTANCE. HOWEVER, WE ARE VERY CAUTIOUS OF NOT CROSSING THE LINE FROM ASSISTING TO REPRESENTING. THE OMBUDSMAN ARE NOT LAWYERS, AND, WE FEEL STRONGLY THAT THEY DO NOT NEED TO BE LAWYERS.

WE ARE WORKING WITH A VERY COMPLEX LAW THAT HAS BEEN DIFFICULT FOR MANY PEOPLE TO FULLY UNDERSTAND. WE MUST GIVE OUR CUSTOMERS AN OPPORTUNITY TO RECEIVE THE ASSISTANCE THEY NEED AND DESERVE FROM THE INCEPTION OF THEIR CLAIM THROUGH THE END OF THE PROCESS. WE FELT VERY STRONGLY, THAT IT SHOULD NOT BE NECESSARY FOR AN INJURED

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WORKER TO HIRE A LAWYER TO GET THE BENEFITS THAT THEY ARE ENTITLED TO RECEIVE. OUR AGENCY IS CHARGED WITH THAT RESPONSIBILITY, AND THIS PROJECT HAS ASSISTED US IN MEETING THIS IMPORTANT OBJECTIVE.

CLOSING REMARKS

AND, TO BRING YOU UP TO DATE, THE RESULTS OF THIS PILOT PROJECT USING THIS PROACTIVE CONCEPT, WAS RECEIVED MOST FAVORABLY BY THE COMMISSIONERS AND EXECUTIVE DIRECTOR. THIS CONCEPT HAS NOW BEEN IMPLEMENTED IN ALL OF OUR 23 FIELD OFFICES ACROSS OUR STATE AND HAS BEEN NAMED THE CUSTOMER SERVICE ENHANCEMENT PROGRAM. IT HAS BEEN A NEW AND SUCCESSFUL APPROACH FOR EXCELLENCE AND IS TAKING OUR AGENCY TO A HIGHER LEVEL OF CUSTOMER SERVICE WHERE WE ARE ACTUALLY REALIZING CUSTOMER SATISFACTION.

ADDITIONALLY, WE ARE COMMITTED TO WORKING WITH PARTICIPANT GROUPS. WE WANT CLEAR AND OPEN COMMUNICATION WITH THEM. IF WE HEAR THEIR SUGGESTIONS AND COMMENTS, OUR JOB AS ADMINISTRATORS IS MUCH EASIER IN THE LONG RUN.

AND IN CLOSING, I WOULD LIKE TO SAY WE GLADLY REALIZE AND ACCEPT THE CHALLENGE THAT THE EYES OF THE WORKERS COMPENSATION WORLD ARE ON TEXAS. WITH THE REFORM AND THIS NEW WAY OF DOING BUSINESS, THE FUTURE TRULY LOOKS GOOD FOR WORKERS' COMPENSATION IN TEXAS.

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