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## Workers' Compensation in Los Angeles and the L.A. Basin

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### California Links

**State Senate**

**State Assembly**

On Wednesday the Senate Labor and Industrial Relations Committee held a hearing regarding workers' compensation in the Los Angeles area. This hearing was held because of the great disparity between workers' compensation rates, injury records, and high litigation rates in the area compared to the rest of California. The hearing was at the Downey City Council, part of the committee chair, Senator Tony Mendoza's District.

The Los Angeles region is distinctive with regards to workers' compensation in at least two respects according to the Senate Labor and Industrial Relations Committee: indemnity claims and IMR requests. Los Angeles has shown disproportionately high indemnity rates for many years as shown by the Workers' Compensation Insurance Rating Bureau (WCIRB) study, which reported that the Los Angeles/Long Beach region has 36.5% more indemnity claims than would be expected. Similarly, the California Workers' Compensation Institute (CWCI) conducted a study, which found that there are 50% more IMR decisions originating from the Los Angeles Region than would be expected. The study by CWCI also showed that about 1,200 medical providers were responsible for 83% of the IMR decisions.

As the committee's analysis states, there is little agreement by stakeholders regarding what causes the Los Angeles workers' compensation climate. A few of the basic arguments include Los Angeles being a dangerous region for workers, inhabited by employers and insurers that are driven to deny care for California's most seriously injured workers, or that Los Angeles has a significantly larger amount of fraud driven by unscrupulous attorneys and medical providers. The committee was charged with the agenda to move beyond these basic arguments and to move towards a data-driven and comprehensive picture of why Los Angeles is different from the rest of California.

Destie Overpeck, Administrative Director of the Division of Workers' Compensation, noted that SB 863 has resolved a few of the regional variances in the workers' compensation system including delivery of medical treatment, delays in dispute resolution, and increasing permanent disability ratings. Overpeck's information also confirmed Los Angeles' high numbers of claims, hearings, and lien conferences in comparison with the other regions. Overpeck noted that regarding IMR, the highest number of disputes involves pharmaceuticals, but she is hopeful that with AB 1124 being enacted this year, which requires a pharmaceutical formulary for the workers' compensation system, that number may be reduced.

**Department of  
Insurance**

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Data Analytics and Specialty Actuarial testified that the Los Angeles area began to see a difference in the frequency of claims in 2007 compared to the other regions. The report found that loss rates (loss per \$100 of payroll, claim frequency, and average claim size are all higher in Los Angeles compared to the rest of California.

CWCI also reported statistics regarding Los Angeles as compared to the rest of California. A few statistics included: (1) Closure of claims percentages is 5% lower than the rest of California, showing that claims stay open longer in the Los Angeles area; (2) Attorney involvement in Los Angeles is 17% more than the rest of California

One interesting study discussed by CWCI was regarding the cost drivers for indemnity claims. Some of the highest cost drivers included attorney involvement, comorbidity: mental health, and permanent disability rates. The study actually found that opioid use is less than the rest of the state.

CWCI also just released a study that was shared at the hearing regarding IMR. Overall in California, the top 1% of providers named on IMR determinations drive 40% of the IMR decisions and the top 10% drive 81% of the decisions. Los Angeles does follow the state-wide pattern, but the top 10 Los Angeles Basin individual physicians drive 18% of the decisions in Los Angeles. At this statistic, Senator Mendoza requested the presenter and subsequently the Department to identify these 10 doctors who cause 18% of the IMR decisions at a later date.

Steve Robles, Assistant Chief Executive Officer and Alex Rossi, Chief of Risk Management, represented Los Angeles County during the hearing. According to their numbers there are approximately 27,500 open workers' compensation claims with approximately 10,500 new claims reported annually. In the last fiscal year the County of Los Angeles workers' compensation costs were approximately \$427.7 million.

California Applicant Attorneys Association argued that the IMR statistics are actually distorted because they include claims that are not just permanent disability claims. Bernardo de la Torre, who presented on behalf of CAAA, stated that Latinos are the most seriously injured subgroup of employees. De la Torre also stated that the increase of attorneys on cost drivers is actually a good thing because the representation is needed in the Los Angeles area based on the high Latino immigrant population who are the highest population of injured workers. He also stated that profits of the insurance companies were not discussed in the hearing. Senator Mendoza stated that profits of private and self-funded insurance companies could be a different topic for another hearing.

California Labor Federation (CLF) stated that although the Los Angeles area is more expensive, that does not mean that other areas of California should be emulated. CLF noted that industrial mix could be a bigger factor than reported in the studies and that this could be a point of further study. Another issue to gather more data on is temporary workers because there is very little information on these types of workers.

California Medical Association (CMA) noted that better education on the SB 863 for the medical community especially regarding the IMR process. CMA also noted that they believe that the independent medical reviewer should be required to write a discussion on why the

medical treatment was accepted or denied. CMA also stressed the need for education of the injured worker regarding the process.

California Professional Association of Specialty Contractors presented four factors to consider from the employer side with regards to the Los Angeles workers' compensation problems. First, the underground economy is a big problem with regard to workers' compensation because they either do not buy workers' compensation insurance or under report their payroll to receive a lower rate. The other problems noted were provider fraud, overuse of applicant attorneys and under education of the employer committee and employee communities regarding workers' compensation regulations and rights.

Senator Mendoza noted at the end that this will be the first of a number of hearings on the general topic of workers' compensation and that the conversation will continue through next year.

## Farewell to Assembly Member Perea

Democratic Assembly Member Henry T. Perea (D—Fresno) announced on Tuesday that he will resign from the Legislature effective December 31<sup>st</sup>, 2015, rather than waiting to fulfill the remainder of his term which would have concluded next November.

“This is a bittersweet moment for me as I announce my departure from the state Legislature to pursue other career opportunities. I am currently exploring these options and I expect to make a decision soon. In the meantime, my district and capitol staff will remain in place to address the needs of the 31<sup>st</sup> Assembly District. I would like to thank my staff for their commitment and hard work in serving the people in Fresno County and the State of California. I'm grateful for the opportunity to serve and look forward to continuing my advocacy for our community.”

Perea was elected to the Assembly in 2010 and chaired a variety of committees, most notably the Assembly Insurance Committee. Among his peers he was known for being a well-spoken moderate Democrat who often voted against controversial bill proposals, including the provision in SB 350 earlier this year which would have provided regulatory authority to the Air Resources Board to enact regulations and standards that result in a 50 percent reduction in oil used in motor vehicles by 2030.

Perea indicated that he is considering two different government relations positions and will announce his decision by the end of next week.

## Candidate Field Narrows in SD 25

In what was anticipated to be one of the most closely watched Democrat vs. Democrat battles in the upcoming 2016 primary election, current Assembly Member Mike Gatto (D—Los Angeles) withdrew his contention for Senate District 25 on Wednesday. Citing the need to spend more time with his growing family and the recent unsolved murder of his father, Gatto indicated, “At this moment, my family needs me, and they must be my first priority.” He also suggested that the voters of the district deserve a non-divisive election, linking some of the political spats that had already occurred among the candidates.

Senator Carol Liu (D—La Canada Flintridge) will vacate the seat in 2016 due to term limits. Former Democratic Assembly Member and speaker-contender Anthony Portantino is

now the clear front runner in the race. He will face off against Democrat Phlunte' Riddle, who although has received some notable law enforcement endorsements, trails Portantino in local endorsements. Also contending for the seat is Republican Los Angeles County Supervisor Mike Antonovich, but SD 25 is a safe Democrat seat. Since the change in primary election rules that mandate the top two candidates move to the general election, there is always the possibility that two Democrats could standoff in the general, but given the district demographics it seems likely it will boil down to only one Democrat surviving the primary.

## MCO Tax Discussions Return

This week the Healthcare Special Session Conference Committee held a hearing on the extension of the MCO tax that funds healthcare for low-income Californians, marking the first time members of the Legislature met to discuss the issue since adjourning back in September despite a special session called by Governor Brown that unsuccessfully found no solution to extend the expiring tax.

The Health and Human Services Secretary indicated in September that the agency did everything in its power to help facilitate discussions and demonstrate the urgency for an extension before the July 1<sup>st</sup> expiration date, but pointed to Republicans refusing to pass any taxes. There have been suggestions that Governor Brown, who has made significant reductions in spending to tame California's debt and build a rainy day fund, may look to counterbalance the reduction in revenue if the tax expires by slashing other current spending.

Democratic members commented on the expiring tax during the hearing, including Senator Holly Mitchell (D—Los Angeles), saying that “the lack of alarm is troubling.” But the Legislative Analyst Office indicated in their tax revenue projections that the state could have more than \$4 billion in unrestricted revenue by mid-2017. This would appear to weaken the case for expanding the tax extension as there would be available money to cover the missing revenue. However, Assembly Member Rob Bonta (D—Oakland) questioned, “Is that wise and prudent? What about tomorrow?” If there is an economic recession in the meantime or in the future, those revenue numbers will plummet. It would appear that the MCO tax will expire in 2016 unless some Republicans come together to support the increase.

## State by State Insurance Regulatory Report Card

This week the R Street Institute released their annual [Insurance Regulation Report Card](#), ranking each state's rating in a variety of issues within the insurance regulatory process, including solvency monitoring, anti-fraud efforts, rating and underwriting freedom, minimizing politicization of regulation, consumer protection and fostering competitive markets.

The report gave a failing grade to 11 states, including California, New York, Texas, Florida, Hawaii, and Montana. Meanwhile, the 5 states receiving a solid “A” rating include Vermont, Utah, Iowa, Virginia, and Kentucky; Nebraska, Tennessee, and South Carolina received an “A-”.

“Reviewing the data on insurance in 2015, we see mostly stable trends in consumer and business freedom in state insurance markets,” indicated R Street Editor-In-Chief and Senior Fellow R.J. Lehmann, who authored the study. “In some states – notably Florida – real efforts were made to scale back, or otherwise place on more sound financial footing, residual

insurance markets and state-run insurance entities. Other states, notably North Carolina, appear to be moving in the wrong direction.”

Some of the biggest legal developments in California’s insurance regulatory market include Insurance Commissioner Dave Jones mandating to 750 insurance groups to end the practice of price optimization in rate-making, allowing 6 months to submit revised rates that eliminate the practice. Earlier this year, a Sacramento Superior Court rejected a lawsuit brought forth by Mercury Casualty Co. and insurance trade associations that sought to challenge rules established in Proposition 103 that cap the amount of marketing costs that may be passed along to consumers. More notably, the California Supreme Court unanimously struck down an existing statute in liability insurance policies that require insurer consent before benefits may be assigned to third parties. The insurance industry did, however, win in a state Court of Appeal’s Second Appellate District decision that found the Insurance Commissioner did not have statutory authority to promulgate rules in 2011 that explicitly prescribed insurers’ methods to calculate replacement costs in homeowners insurance policies. The Insurance Commissioner has appealed the case to the Supreme Court, pending approval.