

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

INDUSTRY, BUSINESS, AND LABOR COMMITTEE

Wednesday and Thursday, March 5-6, 2008
Multipurpose Room, Workforce Safety and Insurance Building
Bismarck, North Dakota

Representative Rick Berg, Chairman, called the meeting to order at 12:30 p.m.

Members present: Representatives Rick Berg, Bill Amerman, Tracy Boe, Donald L. Clark, Mark A. Dosch, Glen Froseth, Jim Kasper, Darrell D. Nottestad, Gary Sukut, Elwood Thorpe, Don Vigasaa, Steve Zaiser; Senators Robert M. Horne, Jerry Klein, Terry M. Wanzek

Members absent: Senators Arthur H. Behm, Nicholas P. Hacker

Others present: See [Appendix A](#)

Representative Bob Skarphol and Senators Dick Dever and David O'Connell, members of the Legislative Council, and Jim W. Smith, Director, Legislative Council, were also in attendance.

It was moved by Representative Nottestad, seconded by Representative Amerman, and carried on a voice vote that the minutes of the February 6-7, 2008, meeting be approved as distributed.

Chairman Berg said this meeting will be much like the previous meeting in that the committee will seek ways to improve the workers' compensation system. He said it is important to be openminded and to focus on developing solutions to problems that may be identified. He said two issues that were discussed at the first meeting include the use of independent medical examinations by Workforce Safety and Insurance (WSI) and the possibility of increasing the dependency allowance. Because the committee and the public have not had the opportunity to hear from WSI employees, he said, he would like to provide the opportunity for those who do the work to address the committee. He said any positive feedback that may be included in the consultant reviews that the committee will hear during this meeting will be a reflection on those employees. He said he has also sought comments from injured workers and has received a number of comments. He said he has advocated for the appointment of an interim chief executive officer at WSI to be brought in to head the agency, and the WSI Board of Directors will likely consider that proposal.

Chairman Berg said members of the committee may go to WSI employees to seek information regarding the operation of the agency and encouraged employees to contact members of the committee or other members of the Legislative Assembly if they have any comments they would like to share.

Chairman Berg opened the meeting for public comment.

Mr. Allen Gange said he was injured while at work and his employer was not very cooperative in assisting with his workers' compensation claim. He said his claim was denied, reopened, denied a second time, investigated further, and denied again. He said the scope of the investigation into a claim should be limited to whether the employee was injured at work. When his claim was reopened, he said, representatives of WSI lost a form and delayed consideration of his claim. He said the agency will do anything to get a claim dropped.

In response to a question from Representative Berg, Mr. Gange said representatives of WSI investigated his claim by talking to other employees at his place of work and used smear tactics against him.

In response to a question from Representative Kasper, Mr. Gange said after his doctor gave him the option to return to work, he called his place of work and did not receive a response regarding whether he should return to work. When he showed up at work, he said, he was not allowed to work and was fired. He said he received benefits during a portion of the time he was not allowed to work.

In response to a question from Representative Thorpe, Mr. Gange said he has applied for the WSI continuing jurisdiction review of his claim and has received help from Mr. Sebald Vetter, Concerned Advocates Rights for Employees, in working with WSI.

In response to a question from Representative Amerman, Mr. Gange said his appeal to an administrative hearing officer was unsuccessful, and he did not pursue the claim further because he did not want to spend more money on an attorney and assumed his claim would be denied again.

In response to a question from Representative Skarphol, Mr. Gange said he received workers' compensation benefits for two to three years but was not offered vocational rehabilitation.

Mr. Jim Long said he is the Chief of Support Services at WSI but has been placed on administrative leave. He said no employees of WSI are willing to testify before the committee because they are afraid of retaliation from WSI management. He said he has received a number of telephone calls from employees who are scared to talk because they know the meeting is recorded and the press is present, and they know what has happened to him. He said the committee should provide employees a

method through which they can communicate anonymously with the committee. He said a 2006 performance audit was conducted which protected employees while allowing them the opportunity for comment.

Mr. Long said the employees at WSI do an excellent job, but the existing situation has made them miserable. When he was hired at WSI, he said, he was asked by the executive officer what he would do if a question arose regarding ethical or unlawful actions. He said his answer was that he would fight for the truth. He said injured workers and employees at WSI are suffering. He said the workers' compensation process is so complicated that most WSI employees would not even know the entire claims procedure. He said a study reported by LexisNexis demonstrated that North Dakota has the lowest statutory workers' compensation benefits among the 51 jurisdictions examined. He said Mr. Dave Maclver of the North Dakota Chamber of Commerce and others often tout the benefits of the system but do not accurately reflect benefits. He said the dependency allowance of only \$10 a week is insufficient to support the dependents of injured workers. He said there is no reason the state should not strive to have the best benefit structure among the various states. Mr. Long said this committee can do much to improve the situation but must protect WSI employees so that they can be frank. He said the committee is not providing a safe atmosphere for discussion when the agenda includes time for Mr. Steve Cates. He said he is aware of a WSI employee who has had to call law enforcement due to actions by Mr. Cates.

Mr. Long said the reports the committee will hear from the consultants are not audits. He said Marsh U.S.A., Inc., which was awarded the contract to conduct the claims processing review of WSI, was fined \$850 million as a result of an investigation by Eliot Spitzer in New York. He said the other consultant, Mr. Henry Neal Conolly, was involved in an allegedly secret fund with Governor George Pataki in New York.

In response to a question from Representative Zaiser, Chairman Berg said if there are facts that would impact the validity of the reviews, he would like to see documentation of the concerns.

In response to a question from Representative Kasper, Mr. Long said he has received approximately 100 calls from employees of WSI regarding the working conditions at the agency. He said the calls came from approximately 40 employees. He said he was told directly by another employee that the employee had filed for a restraining order against Mr. Cates.

In response to a question from Representative Thorpe, Mr. Long said although claims are processed according to the law and WSI policies, the claims adjusters feel pressure from management and external sources which affects how they handle the claims. He said an April 11, 2007, memorandum detailed a philosophy at the agency to deny claims

that may be on the edge. He said there is a concern that the philosophy would cause the claims staff to deny certain claims and require a claimant to appeal the denial. When the workers' compensation fund reserve is \$174 million over the statutory limit, he said, it should be the policy of the agency to make determinations in favor of the injured employee.

In response to a question from Representative Skarphol, Mr. Long said claims handlers may feel pressure to make claims go away.

In response to a question from Representative Thorpe, Mr. Long said there is a significant difference between the management philosophy at WSI and the ideal of sure and certain relief for an injured worker.

In response to a question from Representative Clark, Mr. Long said North Dakota has the lowest statutory benefits of 51 jurisdictions.

In response to a question from Representative Kasper, Mr. Long said he brought his concerns to others in management at WSI management meetings, but those concerns fell on deaf ears. He said he also went to the WSI Board of Directors, which did not act on the concerns. He said many of the policies with which he had concerns were ideas that came from the Ohio employees at WSI. He said there was an attitude that Ohio knows best. He said there are no minutes of the meetings to which he was referring.

In response to a question from Senator O'Connell, Mr. Long said the claims process is very burdensome and tricky, and injured workers often believe they will lose their appeals. He said decisions of the Office of Administrative Hearings are not binding on the agency, and many workers are unable to afford an attorney.

In response to a question from Representative Sukut, Mr. Long said a process is in place through which an injured worker can discuss the disputed claim, but the process is dependent upon a culture under which the individual fears retaliation with respect to the claim.

In response to a question from Representative Froseth, Mr. Long said the governance of WSI must be changed. He said the agency is an unregulated monopoly that needs regulation through the Governor or the Insurance Commissioner. In addition, he said, there should be consideration given to allowing competition as well as a review of the benefit structure.

In response to a question from Representative Zaiser, Mr. Long said the internal auditor at WSI needs autonomy and probably should be an employee of the State Auditor.

In response to a question from Representative Dosch, Mr. Long said WSI employees are afraid of retaliation from management and being labeled as troublemakers. He said he had a friend call him with a concern with respect to a legislator asking questions provided by the employee.

Chairman Berg said he would like to hear from the 40 employees that Mr. Long says have contacted him. He said those employees would likely be in a better

position having their name on the record if they are afraid of retaliation. He said the Legislative Assembly sets the level of benefits, and WSI employees interpret the law as it applies to each case. He said legislators should receive comment from individuals if the agency is not providing benefits that the Legislative Assembly has directed.

At the request of Chairman Berg, committee counsel distributed correspondence ([Appendix B](#)) from the state procurement manager regarding the request for proposals for the WSI human resources and claims processing reviews.

Chairman Berg said the New York settlement mentioned by Mr. Long and the indictments of former employees of Marsh U.S.A., Inc., were limited to a division that no longer exists within the structure of the company.

Chairman Berg noted that employees of WSI are participating in this meeting through videoconference in Fargo, Jamestown, and Grand Forks, as well as another conference room within the building.

Ms. Sandra Bilstad said she has worked for WSI for approximately 1.75 years from the Fargo office. She said she is a nurse and acts as a medical case manager. She said she is not part of the management team and has a strong conviction and belief that employees may speak up in a constructive manner. Although the agency has some problems like all other agencies, she said, the employees at WSI are great people with whom to work. She said it is important to capture the positives with respect to the agency and fix the problems. If everyone would be less caught up in politics and focus on the business at hand, she said, action can be taken to move WSI in the right direction.

In response to a question from Representative Kasper, Ms. Bilstad said the one thing that could make the most positive impact would be to change the media focus to the positive things done by the employees of WSI. She said everyone is caught up in the news which is blown out of proportion because sensationalism sells.

In response to a question from Representative Zaiser, Ms. Bilstad said the employees of WSI are familiar with the rules and policies that apply to their jobs and work to follow those rules and policies. If something does not make sense to her, she said, she attempts to seek additional information from supervisors, who are always open and available to her. She said the policies that employees are required to follow seem fair, but, as with all rules and policies, constant review is needed to change with the times. She said implementing a different policy or rule may not always be as easy as it may seem from the outside.

In response to a question from Representative Amerman, Ms. Bilstad said her role is to serve as an advocate for the injured worker with employers and medical providers. She said she assists with the return-to-work program and works to enhance

communication between the employee and the medical provider.

In response to a question from Senator Wanzek, Ms. Bilstad said the claims that involve multiple medical providers are often the most difficult to manage.

In response to a question from Representative Nottestad, Ms. Bilstad said the claims adjuster involves the medical case manager when the adjuster determines it to be appropriate. She said the medical case manager occasionally may attend medical appointments with the claimant. Although the medical claims manager generally deals with accepted claims, she said, she occasionally may be involved with a claim before the claim is approved.

Chairman Berg said if employees of WSI see any barriers to doing their job that are the result of legislation, he would like to hear about those barriers.

Mr. Harvey Hanel said he is a pharmacist and an employee of WSI. He said he did not intend to speak to the committee today, but it was not out of fear or retaliation. He said he has never felt intimidated or fearful to voice his opinion. He said any intimidation likely comes from fear of being tried and convicted by the media and legislators. He said WSI employees have been compared to Nazis and have heard their work environment described as a "culture of corruption." He said the employees do not want to be in the paper or on the television news under the type of scrutiny that they have been subjected to by the media. Instead, he said, they only want to do their jobs well.

Representative Zaiser said there is a perception of a culture of corruption at the agency. He said he has heard many complaints of that nature and has never received a response from anyone regarding the names of injured employees that he submitted to have their cases reviewed by the Legislative Council's interim Workers' Compensation Review Committee. He said every attempt to advance benefits during the last legislative session was killed, and WSI upper management always opposed enhancing benefits. He said horrible mistakes have been made in opposing legislation that increases benefits.

Mr. Hanel said if someone has an issue with the law, do not blame WSI employees. He said the employees are doing what they are required to do and the comments made by individuals who refer to the employees as Nazis and the agency as having a "culture of corruption" affect the employees personally.

Chairman Berg said there is an application process that must be followed by individuals seeking to have their claims reviewed by the Workers' Compensation Review Committee. He said the chairman of that committee may consider submitting Representative Zaiser's list of names to a representative of WSI. He said he would like to have legislators stop taking shots at people without having the facts to back up their statements. He said the purpose of this committee is to gather facts and not make accusations.

Representative Kasper distributed copies of a memorandum entitled [2007 Legislation Relating to Workers' Compensation](#) summarizing 2007 legislation considered by the Legislative Assembly which relates to workers' compensation issues.

In response to a question from Representative Dosch, Mr. Hanel said legislators should attempt to get to know who the WSI employees are and understand what they do. Because of the complexity of their jobs, he said, it is difficult to get a good perspective on what they do.

Representative Froseth said the Legislative Assembly has been doing things to improve benefits during the last few legislative sessions after fixing the problems that the workers' compensation system was experiencing in the 1990s.

Senator Dever said much of the discussion revolving around WSI is about politics and the media, and not about policy. He said it is important to get beyond politics and address policy issues. He said comments such as the agency having a "culture of corruption" are inflammatory, fail to provide specifics, and stand in the way of solutions. He said the idea to put the agency under the control of the Governor is not a solution that will fix every problem. He said any individual can come to him to visit at any time with the assurance of confidentiality. He said he works with injured workers and WSI when problems are brought to him, and communication is often the biggest challenge. He said 11 cases were reviewed by the Workers' Compensation Review Committee last interim, and one of his constituents was given three hours of time to present his case. He said representatives of WSI have never lost any information he has brought forward and have always tried to work with him to address a claim.

Ms. Rebecca Nagel said she agrees completely with the statements made by Mr. Hanel. She said she has never felt afraid to discuss issues with a supervisor and has never heard of any such instance from any of her peers. She said she participated in the April 11, 2007, meeting that Mr. Long referenced. She said the portrayal of the agency having a dirty little secret and a philosophy to deny claims was incorrect. She said the statement upon which Mr. Long focused contained a few words within the minutes and did not reflect the entire discussion that occurred at that meeting or at meetings for approximately three months before and after that meeting. She said she was a part of a group that was involved at that meeting and the other meetings. She said the group developed a policy to address degenerative conditions, and a few words taken from those meeting minutes blew everything out of proportion.

In response to a question from Representative Berg, Ms. Nagel said a difficult case may involve a back injury resulting from picking up a light object and the diagnostic test indicates a degenerative disk disease. She said the claims adjuster will gather information regarding the medical history of the

claimant and consult with the medical and the legal teams at WSI as well as others who may be able to assist with the claim. She said determinations are made with respect to what treatment may be appropriate, whether the claim should be denied, or whether an independent medical examination is necessary.

Representative Skarphol said he would like to hear specific suggestions for improvements from the front-line employees of WSI.

In response to a question from Representative Berg, Ms. Nagel said she does not see how it would be possible for a claims adjuster to simply ignore the law with respect to the handling of a claim. She said the claims adjuster works with the medical director regarding medical issues and reviews the interpretation of laws with the attorneys. She said the claims review process is a collaborative process, and every notice of decision to deny benefits must be reviewed by a supervisor.

Representative Zaiser said he would like to see an explanation of the claims review process from each portion of the agency and see examples of checks and balances in the system.

Mr. Troy Beckler said he was injured at work and has had 11 surgeries on his hands and arms over the last 25 years. He said he receives Social Security disability and workers' compensation medical benefits, but no wage loss benefits from WSI. He said he has undisputed medical evidence demonstrating his disability, but WSI would not accept his claim and the district court will not allow the evidence of his disability because it would render WSI an unfavorable position in the denial process. Because he had a 55 percent impairment before the permanent partial impairment law was changed, he said, he should have been grandfathered in and received benefits. He said WSI retraining injured workers in fields in which they should not be working so that WSI can deny their benefits. He said people are hurting, and it is not necessary for WSI to continue to investigate their claims.

Committee counsel distributed copies of a [report](#) prepared by Marsh U.S.A., Inc., which reviewed WSI's claims processing procedures. A copy of the report is on file in the Legislative Council office.

The committee observed the presentation of the report via videoconference as the report was presented to the WSI Board of Directors. The report was presented by Mr. Anthony Walker, Ms. Kathleen Dopkeen, and Mr. John Krutzler.

In response to a question from Representative Berg, Mr. Walker said the report reviewed 475 claims using a statistical model that had a 95 percent confidence level. He said he is confident that 475 claims was an appropriate number of claims to review.

In response to a question from Representative Amerman, Ms. Dopkeen said the reviewers interviewed 19 individual staff members from WSI and conducted four group interviews of WSI staff.

In response to a question from Representative Kasper, Ms. Dopkeen said the individuals interviewing WSI employees saw a significant level of dedication and passion. She said it is a very difficult time for WSI staff, and some were more emotional than others because of how they have been portrayed in the media. She said the interviewers experienced no issues with openness by employees.

In response to a question from Representative Skarphol, Ms. Dopkeen said WSI performs better than average in many areas and has no glaring deficiencies. However, she said, there are important issues that must be addressed as soon as possible.

In response to a question from Representative Berg, Mr. Walker said if the subrogation scores were removed from the statistical summary, the overall score would likely increase. He said claims are not being denied inappropriately. He said a few claims that were reviewed lacked documentation, and others were denied on a narrow interpretation of the law. He said he expects that Marsh U.S.A., Inc., will work with WSI to develop an implementation plan and work toward improvement in the areas that have been identified.

Representative Skarphol said a review of the subrogation issue a few years ago indicated that seeking subrogation was taking more assets than it was recovering.

In response to a question from Representative Berg, Mr. Krutzler said the legal issues raised with respect to Marsh U.S.A., Inc., involved indictments against a small number of former employees in a division that was disbanded in 2005. He said the division is not related to the Marsh Consulting Division. Although it is convenient to use the actions of those few employees to attempt to discredit Marsh U.S.A., Inc., he said, those actions have no effect upon the review done in this instance.

In response to a question from Representative Skarphol, Ms. Dopkeen said the best result in workers' compensation is to get the worker back to work and as quickly as possible. She said the six major medical facilities in the state have case managers on staff to assist in that goal.

Senator O'Connell said the committee should take a closer look at the workers' compensation claim appeals process.

In response to a question from Representative Zaiser, Ms. Dopkeen said although there are advantages to assigning claims based on the employer, the report recommends assigning claims based on the experience of the adjuster. She said a process could likely be designed to get the advantages of both.

In response to a question from Representative Berg, Mr. Walker said the review did not specifically address whether injured workers are treated uniformly throughout the state. However, he said, the auditors conducting the review gave no indication of any lack of uniformity.

In response to a question from Representative Berg, Ms. Dopkeen said she would grade WSI at a B+ in the areas that she reviewed.

In response to a question from Representative Berg, Mr. Walker said he would grade the claims area at a C because the agency could improve in certain critical areas. He said action plans are vital to bring files to an appropriate resolution with specific target dates. He said more consistent supervision of claims handlers could be implemented. Overall, he said, the operations of the agency could be graded as a B.

In response to a question from Representative Skarphol, Mr. Walker said the handling of claims comes down to execution and, perhaps, the weight of the caseloads of the claims adjusters.

In response to a question from Representative Skarphol, Mr. Krutzler said the 15 people involved in the review process have an average experience of 16 years. He said approximately 750 to 800 hours were invested in the project.

In response to a question from Representative Berg, Mr. Walker said in states with workers' compensation insurance provided through the private sector, appeals usually go through an arbitration process. He said the arbitration process commonly allows a decision to be appealed to a three-person board.

Chairman Berg called on Mr. Steve Cates for comments regarding the committee's review of WSI. Mr. Cates distributed and reviewed written documents ([Appendix C](#)). He said he became interested in the issues relating to WSI when he saw the criminal prosecution of Mr. Sandy Blunt. He said he requested documents from several sources and spent a great deal of time studying those documents to determine if the prosecution was improper. He said it was frustrating to see numerous accusations thrown out while WSI has not been able to address the accusations because waivers have not been granted by claimants. He said people get the perception of wrongdoing at the agency because representatives of WSI are not able to address the facts publicly.

Mr. Cates said the results of the Marsh review indicate that WSI is doing well and improving. Nonetheless, he said, a good man has had his career, family, and reputation destroyed by accusations. He said the Marsh report demonstrates that the accusations of Ms. Kay Grinsteiner are not true, and the accusations of the individuals seeking whistleblower protection also will be disputed when the facts come out. He said the facts will present a much different view than the public perception.

In response to a question from Representative Kasper, Mr. Cates said he is not surprised by the fact that Mr. Long presented hearsay regarding the allegation of a restraining order. He said the allegation made by Mr. Long is false.

In response to a question from Representative Clark, Mr. Cates said Mr. Blunt is likely the most scrutinized individual in the history of the state. He said several audits, studies, and reviews have been

conducted during his time at WSI, and auditors have looked closely at his activities, including reviewing his e-mails. He said he believed an injustice has been directed at Mr. Blunt and WSI, and Mr. Blunt has never been proven to have done anything illegal, lied, or provided factually incorrect information.

In response to a question from Senator Wanzek, Mr. Cates said the facts indicate that the State Auditor's office initiated an audit against WSI without authority and with the intent to achieve a particular result. He said it would be a good idea to find all the people involved on both sides of the audit and get the information directly from them.

In response to a question from Representative Kasper, Mr. Cates said he is frustrated with the mainstream media not presenting information accurately. He said there has been no attempt to dig into statements to find the truth. He said a FOX TV news report from Fargo portrayed a woman allegedly injured at work who was shown crawling into her house while holding her crutches. He said he recently stopped in the woman's hometown of Oriska to seek further information, and none of the woman's neighbors would talk about whether they have ever seen that happen. He said the attorney interviewed in that news report, Mr. Mark Schneider, never has been identified in the news reports as the law partner and uncle of Representative Jasper Schneider. He said Mr. Schneider knows that WSI is unable to respond to the story because of confidentiality laws.

Representative Berg said there is a perception of hundreds of workers who have been denied benefits. He said the Marsh report appears to indicate that perception is incorrect. He said the public perception is due in part to the fact that WSI is unable to respond and show the other half of the story.

In response to a question from Senator Dever, Mr. Cates said it appears the state is about to make significant policy changes when the public perception does not match reality. He said it would be important to establish the facts fairly and honestly before making significant changes.

Mr. Gordy Smith, State Auditor's office, said the information presented by Mr. Cates is not factual. He said the presentation by Mr. Cates is an example of the worst "attack the messenger" campaign sponsored by the WSI Board of Directors, WSI management, and employers. He said Mr. Cates has acted irresponsibly, has no training in the area of audits, and misunderstands auditing standards. Despite Mr. Cates' assertions, he said, the State Auditor's office has done other audits without legislative direction. He said the conflict of interest claims by Mr. Cates are false. He said he is the chair of the Professional Ethics Committee of the North Dakota Society of CPAs and is well aware of ethical requirements. He said WSI officials tried to claim conflicts of interest within the State Auditor's office earlier in the process, and he challenged them to file a complaint with the ethics committee. He said the

professional impairments mentioned in Mr. Cates' documents do not apply.

Mr. G. Smith said Mr. Ed Nagel of the State Auditor's office had no influence over the audit of WSI, and the audit did not include an examination of the Information Services Division of WSI, the area in which Mr. Nagel's sister once worked. He said Mr. Cates is mistaken and uninformed with respect to his assertion that Mr. Kevin Scherbenske of the State Auditor's office had a conflict of interest because his spouse was the procurement officer at WSI before quitting in October 2005. He said Ms. Angie Scherbenske was hired by the State Procurement Office and was doing her job when she provided information requested by the State Auditor. He said there is no conspiracy as Mr. Cates seems to be alleging. He said Ms. Tammy Dolan quit working for the State Auditor's office in 1992, and her distant connection to that office posed no independence impairment. He said the office could not function if a connection as distant as that were considered to be an impairment. He said Mr. Cates' assertions of conflict of interest are ridiculous and unsubstantiated accusations based on little or no evidence. He said the accusations carry the risk of damage to reputations and careers.

Mr. G. Smith said the contention that Mr. Cates made with respect to the performance audit disclosing no wrongdoing was incorrect. He said the report specifically cited several illegal activities of noncompliance with state law. However, he said, the auditors do not get into the determination of criminality or charging of crimes.

Mr. G. Smith said Mr. Jason Wahl of the State Auditor's office was subpoenaed to appear by the Burleigh County state's attorney. He said Mr. Cates' assertions are the paranoid ramblings of a man who neither has the relevant information nor the desire to request it. He said in every instance in which the State Auditor's office requested the opinion of the Attorney General with respect to the audit of WSI, the Attorney General sided with the opinions of the State Auditor's office and not with the legal analysis of the attorneys at WSI. He said consultation with the Attorney General's office is necessary because the State Auditor's office does not have attorneys on staff.

Mr. G. Smith said the auditors never determine the time period of an audit based upon an individual's tenure in a particular office. He said the audits generally are based on fiscal or calendar years, and 24 of the 33 months reviewed in the WSI audit covered the tenure of Mr. Blunt. He said the State Auditor's office attempts to significantly improve the performance of state agencies, and 90 percent of the recommendations of the State Auditor's office are implemented.

Mr. G. Smith said if WSI officials and Mr. Cates would stop worrying about who authorized the audit and work to implement the audit's recommendations, they would be in a much better position. He said Mr. Cates made outlandish assertions regarding

Ms. Grinsteinner, who followed proper protocol and approached the internal audit chairman of WSI before bringing her concerns to the State Auditor's office. He said Mr. Cates' paranoid assertion of a secret audit by Ms. Grinsteinner is hilarious. He said the e-mail discussion referenced by Mr. Cates with respect to Mr. Ron Tolstad referred to a financial audit, and the findings support a violation of law of \$174 million. He said Mr. Cates has no facts to support his assertions and tries to protect himself from lawsuits through the use of language that suggests facts. He said the conclusions of Mr. Cates are flawed, inaccurate, and erroneous. He said Mr. Cates did not address his conflict of interest with Mr. Mark Armstrong of WSI and the fact that Mr. Armstrong's wife is a member of Mr. Cates' board. He said the findings of the State Auditor's office cannot be questioned, so Mr. Cates attacks the process. He said the State Auditor's office will be conducting a followup audit of WSI in late April or early May and will survey employees of WSI in a confidential manner. He said Mr. Cates' actions are irresponsible in questioning the ethics and personal professional reputations of those involved in the audit process.

In response to a question from Representative Kasper, Mr. G. Smith said he was responsible for the performance evaluation of WSI. He said the process started by e-mailing WSI for suggestions. After no suggestions were received for more than five weeks, he said, the State Auditor's office added items addressing concerns heard at meetings regarding WSI. He said a copy of the proposal was sent to WSI for comments. Although Mr. Blunt asked for the removal of three items, he said, his rationale was not persuasive and those items were not removed from the review. He said he met with Mr. Blunt and the WSI Audit Committee chairman, and those individuals expressed concern with the cost of the audit and that the State Auditor's office would not have sufficient expertise to look at the information technology and human resource functions of WSI. However, he said, a bidder for the evaluation had hired a subcontractor for issues such as that in the past. He said the State Auditor's office has experts in procurement and human resources as well as internal audit management. He said the representatives of the State Auditor's office were treated unprofessionally by WSI officials. He said he questions the integrity of the management of WSI because they have not done what has been recommended by the State Auditor's office in the past. Because there was an increased risk of concern for problems, he said, increased scrutiny and followup were necessary to confirm findings. He said the State Auditor's office does not keep minutes of its internal meetings.

Mr. Cates said it is curious that the State Auditor's office does not have any documents leading up to the audit. He said Mr. G. Smith's contention that Mr. Armstrong's spouse is a member of some board of his is erroneous. He requested members of the committee to talk with the individuals involved in the

audit process to determine who is correct and to see if he is a paranoid, wacko liar who is uninformed as Mr. G. Smith suggested.

Chairman Berg recessed the meeting at 6:20 p.m. and reconvened the meeting at 9:00 a.m. on Thursday, March 6, 2008.

The committee viewed via videoconference the presentation of a [report](#) presented to the WSI Board of Directors by Mr. Conolly. A copy of the report of the WSI management and human resource practices is on file in the Legislative Council office.

Representative Berg said he was stunned by the contents of the Marsh and Conolly reports. He said the reports show an entirely different picture than that which has been portrayed with respect to WSI.

Mr. Conolly said no one refused to speak with him or the other individuals involved in preparing the report. He said he looked for facts to substantiate the claim that WSI had a management philosophy to deny claims but found no such directive. He said the review included visits with Mr. Vetter and representatives of organized labor as well as Senators O'Connell and Joel C. Heitkamp and Representatives Berg and Merle Boucher. He said the review was directed at investigating the management structure but also reached out to stakeholders to determine if individuals are unhappy with outcomes. He said there are cases in which claims adjusters follow the law, but the outcome is difficult for the claimants. However, he said, a release of information would likely show that WSI does not cut off medical benefits if the claimant's physician requires treatment. He said the unhappy results are often related to vocational rehabilitation cases. Under state law, he said, benefits are cut if training is completed and the individual is unable to do the job for which the individual was trained. He said the report recommends that WSI respond to the public perception and create a method to examine those cases more carefully and create a hardship review process under the responsibility of the chief executive officer. He said that process will not solve all problems but could help address the public perception of being too hard-nosed.

In response to a question from Representative Berg, Mr. Conolly said because WSI is unable to discuss cases without a release, the agency usually is not able to respond to news stories regarding the denial of claims and present the other side of the story. He said a reporter who does an exposé story and makes statements without first trying to get a release is acting outrageously and has no credibility. He said that type of behavior does nothing to give the public the facts. He said a denial of benefits generally results in a case where the individual is hurt and suffering financially, but it is important to have all the facts known.

In response to a question from Representative Nottestad, Mr. Conolly said regulation of WSI similar to an insurance company is important. He said WSI could be served well to have the Insurance Commissioner regulate the agency in the same

manner as an insurance company and have a certified examiner review the agency.

In response to a question from Representative Berg, Mr. Conolly said the involvement of Mr. Kevin Ryan in the review process was disclosed and was consistent with the request for proposals, which specifically stated that no one could be involved with the project if they had worked on any contract with WSI within the last five years. He said Mr. Ryan had done some review work of an actuary related to WSI eight or nine years ago. With respect to this project, he said, Mr. Ryan interviewed WSI employees related to the financial aspect of the review and addressed issues related to the Office of Independent Review and the Office of Administrative Hearings. He said Mr. Ryan is one of the preeminent workers' compensation actuaries in the country, and the idea that he would be biased toward WSI is beneath comment.

In response to a question from Representative Zaiser, Mr. Conolly said the review could have been done without the involvement of Mr. Ryan, but it is not easy to find an outside actuary in a short period of time at this time of the year. He said he asked Mr. Ryan to participate as a favor to him, and he agreed to do it. He said Mr. Ryan's prior activities related to WSI occurred far beyond the five-year restriction in the request for proposals, and Mr. Ryan's prior service was voluntarily disclosed.

In response to a question from Representative Amerman, Mr. Conolly said the interviews of WSI employees were conducted in a variety of manners. He said some interviews were conducted only with the employee, while some employees were interviewed in a group setting. He said the employees did not hold back information and appeared very willing to finally have an opportunity to speak. Although many of the employees indicated that they feel better about the agency than they did six to nine months ago, he said, there still needs to be a process to build trust, and a third-party interim chief executive officer is necessary to open lines of communication. He said the employees of WSI do not want to interject themselves into a highly controversial and public debate.

In response to a question from Representative Froseth, Mr. Conolly said during the review process he was told that some physicians will not accept workers' compensation claimants. However, he said, all injured workers receive treatment even if it is not the physician of the claimant's choice.

In response to a question from Representative Amerman, Mr. Conolly said there is an issue as to whether specialists have the time and willingness to engage in occupational medicine. He said most physicians do not want to deal with cases that will waste time and be controversial. He said WSI contracted for about 110 independent medical examinations last year. He said the use of the independent examinations is lower than in most other jurisdictions. Because of the size and nature of the medical community in this state, he said, it may be

necessary at times to seek physicians from out of the geographical area to get an objective opinion. He said the review demonstrated that WSI does not act arbitrarily as a practice. However, he said, WSI should continue to be vigilant to try to improve its rapport with the medical community. He said adding three additional nurses to the WSI staff would help provide additional medical expertise.

In response to a question from Representative Skarphol, Mr. Conolly said vocational rehabilitation programs are done differently in each state. He said most states emphasize and focus on return-to-work programs. He said some states may allow the continuing of benefits subject to a continuing review after the vocational rehabilitation program.

In response to a question from Representative Amerman, Mr. Conolly said the report recommends WSI take another look at some of the hardship cases that may have led to a reduction in public confidence.

In response to a question from Representative Berg, Mr. Conolly said during the review process he met with Mr. Long for approximately 2.5 hours. He said he informed Mr. Long the study indicating that North Dakota was 51st in statutory benefits was not based on actual benefit payments and did not reflect medical benefits. He said the study was not based on facts but was based on subjective interpretation of state statutes. He said he informed Mr. Long that just because he reads something that was printed, that does not make it true. He said it is difficult to compare benefits because of different laws and policies in the various states. He said the United States Department of Labor funded a measurement that ranked North Dakota as 33rd in benefits, which was one spot below Minnesota and about seven places better than South Dakota. He said the study Mr. Long referenced contained conclusions but no statistics.

Representative Berg said Mr. Long led the committee to believe that the study he referenced was accurate.

In response to a question from Representative Berg, Mr. Conolly said the reserves in the workers' compensation fund have grown for a number of reasons. Although the assets continue to grow, he said, it is not related to the assertion that WSI is taking money from the pockets of injured workers. He said the Marsh report indicated that benefits are being paid according to the law, and his review found no directive, strategy, or policy to not pay benefits as provided by the law. He said WSI has done a good job of being efficient, and a tremendous job has been done with respect to the investment of the money in the workers' compensation fund. He said WSI underwrites at a loss because of the efficiencies and the investment decisions, including the decision to invest in reinsurance.

In response to a question from Representative Thorpe, Mr. Conolly said WSI will pay a claim when it is found to be work-related. However, he said, cases such as ongoing back injuries pose difficult decisions for the claims adjusters. He said physicians can differ

on whether an injury has gotten worse over time. He said it is very difficult to deal with degenerative injuries aggravated at work, and it is important to keep up with medical science as well as be sensitive to the public perception. He said difficult decisions to deny benefits may have been made that could have been made in favor of the claimant, but he found no practice or policy to avoid paying for back injuries.

In response to a question from Representative Skarphol, Mr. Conolly said the workers' compensation fund is far better off than most state funds. He said private carriers likely have larger reserves.

In response to a question from Representative Dosch, Mr. Conolly said employees at the Office of Independent Review are supposed to aggressively review a file and see if all relevant facts are examined. He said moving the office outside the WSI structure may reduce communication and make litigation more likely. He said the report suggests that the chief executive officer have more authority in making the final decision in certain claims. He said the costs of litigation are low in this state while being completely out of control in some other states.

In response to a question from Representative Skarphol, Mr. Conolly said the WSI Board of Directors should meet more frequently and for longer periods of time. He said better communication is needed between the board and the chief executive officer. He said it is important that the Carver principles under which the board operates are not violated and that the board not allow a shadow management to be created.

In response to a question from Representative Zaiser, Mr. Conolly said Workforce Safety and Insurance has been subjected to several audits, reviews, and evaluations. He said WSI has an active office devoted to keeping track of implementation of audit recommendations.

In response to a question from Representative Skarphol, Mr. Conolly said the guidelines governing the internal auditor at WSI direct that the internal auditor take issues to the Audit Committee chairman and to the board. Even if the internal auditor did not believe she was getting an appropriate response, he said, it is improper for the auditor to take the issues to an outside party. He said by going through an employee's desk after work hours, the internal auditor lost the trust of nearly everyone within the agency. He said the issues addressed in the internal auditor's letter were not based on an analysis of facts but were innuendo. He said those actions were outrageous and not analytical or auditing work.

In response to a question from Senator Wanzek, Mr. Conolly said the negative public perception problems can be addressed by being persistent in asking for facts when broad generalizations are made. He said good employees at the agency need someone to speak up for them. He said if the board of directors is going to be more professional, the board will need to work more, which is asking a lot of the members. He said the additional workload of the board may reduce the pool of potential applicants.

Representative Thorpe submitted a written statement ([Appendix D](#)).

Representative Berg said it is time to determine facts and not make accusations. He requested Representative Thorpe to provide information regarding specific bills or a copy of statements from the Industry, Business, and Labor Committee meeting that he referenced.

In response to a question from Representative Berg, Representative Thorpe said it is not unethical to meet with individuals before a hearing, but when certain legislators and agency officials call a meeting involving handpicked individuals, the meeting is one-sided. He said the meeting that was called by representatives of WSI or Mr. MacIver during the last legislative session was a strategy meeting that did not include members of the Democratic-NPL party.

Representative Berg questioned whether Representative Thorpe has met with representatives of organized labor before any legislative meetings. He said there is no difference between those types of meetings and the meeting that Representative Thorpe questioned.

Chairman Berg called on Dr. Troy Pierce, Bone and Joint Center, who participated in the meeting by telephone conference call. Dr. Pierce said he is representing Bone and Joint Center physicians regarding some concerns they have with taking care of workers' compensation patients. He said the Bone and Joint Center has a mutually beneficial relationship with WSI to provide quality orthopedic care to help injured patients back into the workforce as soon and as safely as possible. He said physicians experience issues and frustrations from both the WSI side of matters and the patient's side. He said problems in dealing with WSI patients have come to the point where many of his partners have quit accepting WSI patients. He said nonphysicians are making medical decisions, such as denials for tests, and nonorthopedic physicians are denying treatment recommended by orthopedic physicians. He said it is important to trust the clinical judgment of the physicians and not constantly question treatment decisions. Another concern, he said, is the extra paperwork and time required with respect to handling WSI patients, which delays treatment and makes it more difficult to care for the patients. He said WSI should provide physicians adequate compensation to cover costs. Although the recent fee schedule increase was welcome, he said, it does not cover the actual cost to treat the patients. He said the medical directors at WSI are not orthopedic surgeons and often are making decisions outside their area of specialty. In addition, he said, non-health care workers making medical decisions create more work for the physicians. He said he does not experience these types of hassles in dealing with Medicare or Blue Cross Blue Shield. He said he will have to consider limiting his schedule because his partners are not seeing WSI patients. He expressed concern that the problems experienced by physicians treating

WSI patients may lead to a critical access to care problem.

In response to a question from Representative Berg, Dr. Pierce said establishing a preferred provider system may be a possible solution to the problems he has addressed.

In response to a question from Representative Skarphol, Dr. Pierce said there are no physicians in the state with an occupational medicine specialty. However, he said, there are therapists who specialize in occupational medicine.

In response to a question from Representative Berg, Dr. Pierce said it is the responsibility of WSI and the employer to find the patient a job subject to the medical restrictions placed upon the patient. He said the physician does not want to be negotiating with a patient about what the patient is able to do at work.

In response to a question from Representative Skarphol, Mr. Conolly said two dozen state workers' compensation funds generally fall under four separate types. He said there are exclusive funds, such as the fund in North Dakota; exclusive programs that allow employer self-insurance; state agencies that provide coverage, but allow competition; and mutual funds that are generally nonprofit. He said the governance of the mutual funds consist of a governing board appointed 50 percent by the Governor or a legislative body. Under a mutual concept, he said, the policyholders are the owners of the entity, claims handling is highly regulated by the states, and insurance regulations apply. He said there are four tests that must be met to qualify as being tax-exempt. He said Rhode Island has a mutual fund that is similar in size to North Dakota's fund and has been very successful. However, he said, severe problems developed in that state when the chief executive officer and top financial officer were forced to resign due to criminal actions. He said California and Ohio have also experienced governance or management problems.

In response to a question from Representative Berg, Mr. Conolly said the review of WSI showed no indication of fraud or illegal activities on the part of management.

In response to a question from Representative Amerman, Mr. Conolly said just because someone has the right to sue, it does not mean they will prevail. He said a social compromise was reached to assure recovery by an injured worker regardless of fault. He said he is not aware of any study that has attempted to quantify the value of giving up the right to sue.

In response to a question from Representative Berg, Mr. Conolly said under a comparative negligence system, a determination is made regarding whether the employer was at fault.

In response to a question from Representative Zaiser, Mr. Conolly said the employee turnover rate of 10 percent at WSI is comparable to the rate over the last seven years, but is slightly higher than the two previous years.

In response to a question from Representative Berg, Mr. Conolly said there is less of a conflict of interest with the WSI Board of Directors being responsible for the reserve balance and WSI making claims decisions as there is in other states where the business of the company providing workers' compensation coverage is underwriting. Under the type of system in this state, he said, there is no added cost for brokers and competition.

In response to a question from Representative Zaiser, Mr. Conolly said the monopolistic workers' compensation system under a board is similar to the system used in Canadian provinces. He said the current situation at WSI can be put in the past with a good management change. He said there are many well-meaning and committed individuals who work at the agency and who understand their responsibilities. He said the structure is viable, and it is not subject to the delays attributable to bureaucracy in other states. He said a claimant must go through three different layers of judges before getting to court when trying to litigate a case in New York. He said one factor that may contribute to the low litigation rate in this state is the inability of claimants to afford an attorney.

In response to a question from Senator Klein, Mr. Conolly said he was not hired to address whether WSI should be under the responsibility of the Governor. He said the big problem at WSI has been that people do not stay within their lines of authority.

In response to a question by Representative Zaiser, Mr. Conolly said increasing WSI benefits will result eventually in increased premiums. He said the state has had a strong economy, and low workers' compensation costs are a factor that a business will examine when determining whether to move to the state, stay within the state, or relocate. He said it is a question for the Legislative Assembly to determine whether benefits should be increased as a result of the successful and efficient operation of the agency.

In response to a question from Representative Berg, Mr. Conolly said one problem with having an elected official determining premiums is that rates are sometimes suppressed for political reasons.

In response to a question from Representative Skarphol, Mr. Conolly said it would help to build a consensus on professionalization of the board. He said if the board had more information and time to devote to board business, some of the problems that have been experienced could have been avoided. He said board members are reluctant to vote themselves a raise. He said the membership of the board likely should include individuals who are professionals in the basic functions of the business, such as law, information technology, investments, insurance, and medical services. He said the representation of labor interests on the board could be increased while still providing representation in those specific areas. He said he prefers smaller boards over larger boards. He said a four-year term of office is likely sufficient to provide a core group of knowledge and institutional memory.

In response to a question from Representative Berg, Mr. Conolly said much of the current level of distrust and lack of unity at WSI stems from the reorganization that was implemented under Mr. Blunt. He said the performance of the human resources department of WSI should be graded at a D or F.

In response to a question from Representative Skarphol, Mr. Conolly said 400 claims of the 20,000 claims processed during a year are brought to the Office of Independent Review. Of those cases, he said, 20 percent are not satisfied and the claimants ask for further review. He said 40 percent of the claims are settled at the Office of Independent Review, and some cases are reversed at hearing. He said he has heard concerns expressed regarding the lack of opportunity for legal representation. He said he does not see anything unusual about the number of claims reviewed by the Office of Independent Review and the number of claims litigated. He said part of workers' compensation reform in all states that have experienced workers' compensation crises is removing the lawyers from the process.

At the request of Chairman Berg, committee counsel distributed written testimony ([Appendix E](#)) submitted by Mr. Arnold R. Thomas, North Dakota Healthcare Association.

Mr. Dick Nelson, Bone and Joint Center, said as the chief executive officer of the Bone and Joint Center, he has seen how the low reimbursement rates from WSI have contributed to the number of physicians who are willing to accept patients who have suffered work injuries. He said he moved to North Dakota from Nebraska and has seen a significantly lower level in the reimbursement rate in this state. He said the managed care system of WSI jeopardizes the standard of care of patients and ties the hands of physicians. In addition, he said, there is a significant amount of additional paperwork required for workers' compensation claims.

In response to a question from Representative Berg, Mr. Nelson said the establishment of a preferred provider system could be a good solution to some of the problems he has experienced in working with workers' compensation claims.

Mr. LeRoy Volk introduced Mariann who, he said, was an injured worker and who is afraid to provide her last name because she works at a medical clinic and fears for job retaliation as a result of her testimony. Mariann said she works at a clinic and observes that WSI routinely denies diagnostic tests. She said the process in handling injured workers' claims takes forever, and providers are unable to treat injured workers without approval from WSI. She said WSI will not approve the prescribing of certain medications and will only approve the dispensing of a certain amount of the approved medications. She said she was injured in September 1990 and received treatment at the Bone and Joint Center. As a result of her claim, she said, she was referred to the psychiatric ward for treatment and ultimately required spinal surgery. She said she saw a surgeon in Minneapolis in May 1991

and was diagnosed with having a bone cutting through her spinal cord. She said she did not receive approval for her surgery until August of that year and was unable to have the surgery until January 1992. She said she went through a vocational rehabilitation program for retraining, but still experiences pain, and WSI will not allow her to quit working.

Representative Berg said although the workers' compensation program was not working well prior to 1995, the state has attempted to improve the system.

Mr. Bruce Levi, North Dakota Medical Association, submitted written testimony ([Appendix F](#)).

In response to a question from Representative Berg, Mr. Levi said the WSI physician fee schedule is a work in progress, and he hopes that WSI will increase rates to a more equitable level. He said a preferred provider system may be a part of the answer to some of the problems he has seen with respect to the relationship between WSI, physicians, and patients. He said he is willing to work with WSI to examine the implementation of such a system.

In response to a question from Representative Skarphol, Mr. Levi said if a physician experiences a problem with a patient not assuming the responsibility of the physician's treatment orders, the physician will attempt to make clear the patient's responsibility. If the patient will not adhere to the treatment program, he said, the physician may attempt to transfer the patient to another physician.

At the request of Chairman Berg, committee counsel distributed a summary ([Appendix G](#)) of an independent medical examination audit report conducted following the Workers' Compensation Review Committee meetings in 2006.

Mr. Darren Knutsvig said he was an electrician who had three back surgeries as a result of work injuries. He said WSI cut his benefits a couple years ago. He said he requires another surgery but is not able to find a doctor willing to perform the surgery. He said three physicians in Grand Forks have stated that he should work no more than two hours per day. He said WSI scheduled an independent medical examination for him in Minneapolis, at which he was told he may work 40 hours per week as a security guard. He questioned why it is necessary to see a physician in Minneapolis and whether those physicians are really independent from WSI. He said WSI is unwilling to accept the reports of his physician, and WSI pushed him to try to get Social Security disability. If he is eligible for Social Security disability, he said, why is he not eligible for workers' compensation benefits. He said after he had written a letter to WSI complimenting his case manager for being very helpful, WSI changed his case manager within a week.

Mr. Doug Riley said he was injured at work in 2003. He said the WSI case managers have been very rude to him and show no compassion. He said it appears their job is to deter the injured workers rather than help. He said he receives Social Security disability, but WSI dropped his benefits two or three

years ago. He said WSI told him he could work as a telemarketer. He said independent medical examinations should not be used to reverse the treating physician's opinions.

Mr. Ed Christensen said many of the independent medical examinations are conducted by chiropractors. He said the examinations should be conducted by a specialist appropriate to treat the type of injury.

Chairman Berg said he had invited attorneys that handle workers' compensation cases to this meeting. He said two of the attorneys contacted were unable to attend the meeting and submitted written comments. The comments of Mr. Mark Schneider are attached as [Appendix H](#), and the comments of Mr. Steven Schneider are attached as [Appendix I](#). Chairman Berg said because the meeting fell behind schedule, two of the attorneys who had agreed to testify had to leave due to other engagements. The statement of Mr. Dean J. Haas is attached as [Appendix J](#), and the statement of Mr. Stephen D. Little is attached as [Appendix K](#).

Representative Berg said Mr. Mark Schneider's letter refers to 1997 House Bill No. 1440 and blames Representative Berg for "being the person most responsible for the train wreck that has become WSI." Representative Berg distributed copies of two memorandums entitled [Legislation Relating to Workers' Compensation - 1995](#) and [Legislation Relating to Workers' Compensation - 1995 Through 2007](#). He said House Bill No. 1440, which established the board of directors to oversee the Workers Compensation Bureau, was introduced by Representatives Boucher, Dalrymple, and Skarphol and Senators Grindberg, Lips, and Robinson. He said the legislation had sponsors from both parties, including one of the current Democratic Party candidates for Governor. He said if the committee is going to move forward, the members must work toward bipartisanship. He said a review of the vote totals from the 1995 legislation relating to workers' compensation indicates that most of the legislation adopted was done on a bipartisan basis. If partisan issues cannot be set aside, he said, the injured workers and the citizens of the state will suffer due to the partisanship. He encouraged members of the committee to focus on the facts and look forward. He said most employees are part of a small business and their employers want to take care of them.

Mr. Christensen said representatives of injured workers introduced 40 bills during the last legislative session, all of which were killed. He said the majority party is not out to help injured workers.

Mr. Vetter said the independent medical examinations are in need of being addressed because they are not good examinations. He said many physicians do not want to deal with work injuries, and WSI should take the opinion of the treating physician rather than a physician in Minneapolis. He said if an employer wants to get rid of an injured employee, the employer will do it and WSI will cut the injured worker's benefits. He said it is the duty of WSI to find

a new job for such an individual. He said he had referred to the people at WSI as Nazis because they had called him and others in his organization disgruntled workers.

In response to a question from Representative Berg, Mr. Vetter said although some of the people at WSI are corrupt, not all the employees are.

Representative Berg said the employees are affected by the name calling and that type of behavior is not appropriate.

Mr. Vetter said the independent medical examination issues need to be addressed. He said injured workers do not receive large payouts like Mr. Blunt received.

In response to a question from Representative Berg, Mr. Vetter said he would try to get injured workers to attend the next meeting to provide specific information regarding their concerns and suggest solutions. However, he said, injured workers whose cases are closed believe there is no point in coming to a meeting when they are unable to get help.

Mr. Volk said he was injured in the 1980s and injured on the job again in 2000. He said WSI would not approve surgery right away, and he was laid up for six months and suffered nerve damage. He said a physician in Rochester, Minnesota, said he is unable to work. However, he said, WSI said he must go to school for retraining. He said he was sent to a dentist in Minot for an independent medical examination. He said one of his biggest concerns was that WSI should be required to approve a physician's treatment order immediately.

Mr. David Kemnitz, North Dakota AFL-CIO, submitted written materials ([Appendix L](#)). He said it was not necessary to make such drastic benefit reductions in the 1990s. However, he said, there was a push to address the workers' compensation fund reserve quickly when it could have been done over a number of years. He said permanent partial impairment awards were cut, and legislators promised that the benefits would be increased after the fund reserve recovered. He said during the last legislative session, House Bill No. 1283, which would have helped injured workers, had bipartisan sponsors and was still defeated.

Representative Berg said bills were passed during the 2007 legislative session which benefited injured workers. He said 1995 House Bill No. 1228, which Mr. Kemnitz's written materials referred to as an example of cutting benefits, was proposed to be changed by an initiative measure that the people of the state defeated. He said the voters of the state demonstrated through that vote their support for the action of the Legislative Assembly.

In response to a question from Representative Berg, Mr. Kemnitz said it is difficult to identify the top three priority issues relating to workers' compensation from the point of view of workers. He said all of the issues identified in his summary are important.

Representative Berg said two of the three issues that Mr. Kemnitz mentioned were addressed through

legislation during the last session. He requested Mr. Kemnitz to identify specific issues and present solutions that the committee can consider at the next meeting.

Mr. Kemnitz said the committee should revisit the issue of denial of claims. He said denials have increased by 3 percent. He said the Marsh report indicated that there was not proper documentation with respect to the denial of certain claims reviewed. He said the report also indicated that the use of independent medical examinations should be addressed as well as the return-to-work program. He said more communication is needed between WSI and injured workers. In addition, he said, the Marsh report indicated that WSI should focus more on employer and medical provider fraud. He said the employees at WSI are excellent, but there are certain issues at the management level that must be addressed. He said the vocational rehabilitation program needs more tools and must be addressed to help claimants. He said there are also issues that should be addressed with respect to the Office of Independent Review.

In response to a question from Representative Zaiser, Mr. Kemnitz said most of the changes proposed during the last legislative session which would have aided injured workers would not have created a large fiscal impact considering the amount of the surplus in the workers' compensation fund.

Representative Zaiser said the proposals to increase benefits will not break the bank and will make the system more fair.

In response to a question from Representative Zaiser, Mr. Kemnitz said the image of WSI can improve with increased benefits.

Representative Berg said the committee heard a number of good things about WSI and was informed of areas that can benefit from improvement. He said the committee cannot waste time with accusations and innuendo but must hear specific solutions. He said that the committee should consider taking a closer look at the dispute and appeal process; the Office of Independent Review; the need to increase transparency and address the perception of a broken system; the use of independent medical examinations; the reduction in temporary benefits; the impact of a changing workforce; the vocational rehabilitation program; and other concepts of providing workers' compensation coverage, such as mutualization or allowing competition.

In response to a question from Representative Thorpe, Representative Berg said if additional WSI employees want to provide comments to the committee, they can contact committee members or e-mail information to them. He said it is difficult to govern properly if individuals are unwilling to go on the record with solutions.

Mr. Vetter said an injured worker in attendance at the meeting but who was unable to speak to the committee at this time, Mr. Doug Capon, has been directed by WSI to have five different functional

capacity tests and now is being directed to go to Minneapolis for an independent medical examination. He said the agency has been giving him the runaround, and it is difficult for him to get to Minneapolis for the examination.

Representative Skarphol requested the Legislative Council staff to contact the Insurance Commissioner to determine if the commissioner is able to evaluate whether WSI would be properly reserved if the agency were a private insurance carrier.

Representative Froseth requested the Legislative Council staff to review the Marsh and Conolly reports to determine which recommendations may require legislation.

Tammy, a claims adjuster at WSI, said she has worked at WSI for about 15 years. She said she has seen huge improvements in the tools available to do her job over that time. She said she works with employers that have employees in other states as well and has been told by many employers that they prefer dealing with WSI. She said a denial of benefits is difficult for everybody involved. She said she tries to put herself in the injured individual's place when making those difficult decisions. A concern that will need to be addressed, she said, is related to the aging workforce in the state and how to deal with aging-related claims. When looking at statistics relating to the denial of claims, she said, a number of factors may be involved. She said some claims that are filed were never intended to be claims and count in the statistics as a denied claim.

In response to a question from Representative Zaiser, Tammy said she has heard concerns from injured workers regarding the reimbursement structure for mileage when traveling to medical appointments. She said she believes WSI should pay mileage for injured workers in more instances.

In response to a question from Representative Skarphol, Tammy said medical case management has been a great tool to assist the injured worker. She said WSI could use three more nurses that were recommended. She said procedures have been built into the system to make it quicker to handle claims, such as implementation of an imaging system. She said it is difficult to be efficient and do a good job with all the distractions revolving around the agency.

In response to a question from Representative Froseth, Tammy said the WSI legal department requests suggestions from claims adjusters for areas of improvement. She said the employees work to come up with new ideas to improve the process.

In response to a question from Representative Thorpe, Tammy said employees at WSI are not afraid of retaliation at work. She said there is more fear of the media.

Representative Berg said people need to think about the damage caused as a result of making unfounded statements about employees.

Ms. Marsha Buchwitz said she is a WSI employee responsible for providing education and training to the medical community. She said the work done by the

claims adjusters is very complex, and she invited legislators to consider spending a day in training with the claims adjusters. She said independent medical examinations are always done by a specialist. She said medical providers, such as Dr. Pierce, who set restrictions for the injured worker are great. However, she said, many physicians simply tell an injured worker that they are off work. She said more information is needed, and WSI is working to educate the medical community to set appropriate restrictions so that WSI and the employer can make appropriate employment decisions. She said WSI is exploring the potential for establishing a preferred provider system.

In response to a question from Representative Berg, Ms. Buchwitz said there are no board-certified occupational medicine physicians in the state. Although there are occupational medicine clinics in the state which are staffed by family practitioners, she said, those practitioners may not fully understand the process when dealing with injured workers.

Ms. Michele Blumhagen said she has been a WSI employee since 1991 and has seen significant changes over the years. She said the lack of more WSI employees coming forward to provide the committee information is not out of fear of retaliation but is out of fear of the press. She said WSI employees have seen the agency smeared in the press for over a year, yet remain dedicated employees, wanting to do their jobs and move

forward. Although the agency handles 20,000 claims per year, she said, only a small handful of claims become contentious. She said the public is not hearing from all of the satisfied people who have had their claims handled well. She said the issues related to management at the agency need to be addressed. She said the employees are following the laws adopted by the Legislative Assembly in handling claims.

At the request of Chairman Berg, committee counsel distributed a document ([Appendix M](#)) prepared by representatives of WSI which provides statistical information relating to the fund balance, premiums earned, and benefits paid.

Representative Berg said the document indicates that premiums have remained stable since the mid-1990s. He said because of the efficiencies in operation and investments, the amount paid out in claims is greater than the amount collected in premiums.

There being no further business, Chairman Berg adjourned the meeting at 5:00 p.m.

John Bjornson
Counsel

ATTACH:13