

## **Breakout Sessions March 31, 2006**

### **Implementing More Effective Health Care and Workers' Compensation**

Learn about efforts to control health care costs through plan modifications including national prescription drug programs. Learn how labor-management workers' compensation programs have resulted in more efficient program management and premium savings for the industry.

**William Ecklund**, director and shareholder of the law firm of Felhaber, Larson, Fenlon & Vogt, P.A., specializes in the areas of employee benefits and risk management. The firm represents many multiemployer plans. Mr. Ecklund received his undergraduate degree from Carleton College and his juris doctorate from the University of Minnesota Law School. He has written articles and spoken before many groups on ERISA and employee benefit-related matters. He organized and represents the first collectively bargained workers compensation program in the State of Minnesota. That program has in excess of 10,000 participants and is jointly administered. Mr. Ecklund is a founder and first chairman of the Employee Benefits Section of the Minnesota State Bar Association, and a member of the Hennepin County, Minnesota and American Bar Associations. Mr. Ecklund is past chair of the International Foundation's Attorneys Committee and a fellow of the American College of Employee Benefits Counsel. Mr. Ecklund was a delegate to the 2002 National Summit on Retirement Savings. He is General Counsel to the Finishing Contractors Association and the Sheet Metal and Air Conditioning Contractors' National Association.

**Thomas J. Kelly** started his successful career in Philadelphia as an apprentice sheet metal worker in 1965. He became a Business Agent with Local 19 in 1973 and rose to the position of President and Business Manager in 1979. His members then reelected him for seven consecutive terms. His numerous leadership roles included service as a General Vice President on the SMWIA's General Executive Council, President of the Pennsylvania State Council of Sheet Metal Workers, President of the New Jersey State Council of Sheet Metal Workers, Vice President of the Philadelphia Building Trades Council, the Pennsylvania Building Trades Council, the Philadelphia AFL-CIO, Pennsylvania AFL-CIO and President of the Mechanical Trades District Council of the Delaware Valley.

He also served as Co-Chairman for Local 19's Pension, Health, Annuity, Underemployment and Training Funds for 23 years representing over 4000 members.

His governmental activities included serving as Chairman of the City of Philadelphia's Zoning Board from 1992 until 2002. He is a graduate of St. Joseph University's Institute of Industrial Relations and studied at the University of Pennsylvania's Wharton School

In his capacity as General Secretary-Treasurer, he directs the union's financial and administrative operations at their headquarters in Washington, DC, servicing 151,000 members in the United States and Canada. In addition to these duties, he is a member of the National Joint Adjustment Board (NJAB), a member of the SMWIA/SMACNA Executive Committee, a trustee of the International Training Institute (ITI) and the National Health Fund. He also is on the AFL-CIO's Union Label Service Trades Department's Executive Board and is on the Board of Directors of The American Community Partnerships, Inc. (ACP).

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**Roy Ringwood** began his forty-three year career in the sheet metal industry by graduating from the apprenticeship program in 1966. While working with the tools, he was an instructor for the JATC and served on the Local 108 Executive Board for six years. He was elected Business Representative in June 1987 and, Recording Secretary in June 1993. In June, 1996 Roy was elected to the position of Business Manager/Financial Secretary Treasurer. When Local 102 and Local 108 were merged in November 2001, Roy was appointed as Business Manager/President to the newly chartered Local Union 105. In June, 2004 he won the election to continue with Local Union 105 as the Business Manager/President.

Roy was appointed to the SMWIA General Executive Council in June 2005 and is currently the Ninth General Vice President of the SMWIA. He also serves on numerous committees and trust funds including the SMACNA/SMWIA Joint Executive Board, Western States Council, the LA/OC Building Trades Executive Board, and he is the Co-Chairman of the International Certification Board. Roy and his wife, Diane have been married forty-one years and they have 4 sons. Two of his sons are sheet metal workers.

**Judge Richard Robyn**, former Workers' Compensation Judge, has been involved in the creation, development, implementation and operation of workers' compensation alternative dispute resolution (ADR) programs (also known as "carve-out" programs). He assisted the National Electrical Contractors Association and the International Brotherhood of Electrical Workers (NECA/IBEW) with the establishment of California's statewide ADR model program, the largest operating ADR in the state and nation. He has also assisted in developing many other currently operating ADR Programs. Through American Ombudsman Enterprises (AOE) Ombudsman and Administrative services are provided for many Union ADR Programs, including the Southern California painters and painting & decorating contractors, the Sheet Metal Workers, the Plumbers and Pipefitters in Southern, Northern and Central California. Also, since July of 1997, AOE has provided and continues to provide, Ombudsman and Administrative services to the National Ignition Facilities Project at Livermore Labs, originally a four year \$1.2 Billion construction project vital to our nation's nuclear non-proliferation treaty. While serving as Judge, the administrative director of the Division of Workers' Compensation, Casey Young, assigned him to the Legislature to work as liaison between the Department of Industrial Relations and the Legislature during 1992-1994 for the purpose of developing a Legislative package of workers' compensation reform bills, which became law in 1993. In addition to these duties, he also served as counsel to the Governor's Task Force on Workers' Compensation Reform of 1993. Judge Robyn assisted in writing SB 983, Senator Leroy Greene's ADR bill, as well as other reform legislation.

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**Tom Soles** is the Executive Director of Market Sector Councils with SMACNA (Sheet Metal and Air Conditioning Contractors National Association). He has worked for SMACNA since 1987.

Mr. Soles is responsible for directing SMACNA's four market sector councils; HVAC, Industrial, Residential and Architectural and their related products and services. Additional responsibilities include business management programs and services, member education and training programs, construction contract services, SMACNA's High Performing Contractor Program, membership, safety and health services, and federal regulatory liaisons.

Mr. Soles graduated from The Catholic University of America in 1975.



## **COLLECTIVELY BARGAINED WORKERS' COMPENSATION**

There has been a renewed interest among the building trades in collectively bargained workers' compensation programs. Collectively Bargained Workers' Compensation Programs (CBWC) Programs have been around since 1992. Although it was felt at the time these programs were created that they would be both beneficial to employers and to employees, statistical information was not available until the last several years to confirm, in fact, that these programs are beneficial to both employees and employers. This memo is intended to address the basic outline of CBWC Programs in a question and answer format.

**Q: What is collectively bargained workers' compensation?**

A: CBWC Programs are established by Union and Management through a collective bargaining agreement. The CBWC program does not replace all of the existing state workers' compensation law. Instead, it provides a framework for improving the delivery of benefits, both indemnity (cash) and medical, preventing most disputes from arising, and speeding the resolution of those few disputes that do arise. This is accomplished by modifying only a few pieces of the state workers' compensation system. This may include a nurse who helps assure that the injured worker receives proper medical care, a facilitator who gets involved immediately when a question or possible dispute arises, and assists in resolving matters to the satisfaction of the injured worker, and a mediation and arbitration process to resolve those disputes not settled by the facilitator. Some CBWC programs also include high quality medical networks, return to work programs and rehabilitation services.

**Q: Does the CBWC Program change the benefits that the employee is entitled to?**

A: No. The statutory benefits remain the same.

**Q: Is CBWC a national program?**

A: No. Each state has its own workers' compensation laws and statutory procedures for resolving claims. Although similar, they will vary from state to state.

**Q: Are CBWC Programs available in every state?**

A: No. There must be enabling legislation in order for a CBWC Program to operate.

**Q: In which states are CBWC Programs available?**

A: CBWC programs are specifically authorized in California, Florida, Hawaii, Kentucky, Maine, Maryland, Massachusetts, Minnesota, New York, and Pennsylvania.

In addition to these states, the existing laws to of other states may allow a CBWC Program to be implemented with approval of the Insurance Commissioner of the state. These states include Connecticut, Delaware, Georgia, Indiana, Iowa, Missouri, Nebraska, Oklahoma, Rhode Island, South Dakota, Utah and West Virginia.

Also, existing laws may partially allow CBWC Programs in Colorado, Mississippi and Wisconsin.

**Q: Are there currently CBWC Programs in place that are considered successful?**

A: Yes. California and Minnesota are just two examples. In Minnesota, the Program is open statewide to all building trades employers. As of July1, 2005, a total of 112 employers were participating in the Minnesota Program. This Program currently covers over 10,900 employees. It should be noted that the Programs may vary significantly from state to state.

**Q: What is the typical procedure for handling a contested workers' compensation claim in a CBWC Program?**

A: The facilitator is immediately notified whenever an injury occurs. If questions or problems arise, the facilitator attempts to resolve the issue quickly, often within five days. Virtually all issues are resolved at this step of the process. However if facilitation does not resolve the problem, the next step is mediation and then finally binding arbitration. In some programs the worker or the employer can appeal the arbitrator's decision to the courts or the standard workers' compensation dispute resolution system.

**Q: Are there any statistics regarding claim resolution in a CBWC Program?**

A: Yes. In Minnesota for the period July 1, 1997 to December 31, 2004, a total of 5,446 claims were filed in the Program. Most of these were not contested. 569 did go to facilitation. Of those, 74 went through mediation and 11 of those ended up in arbitration. Similar results have been reported for other programs. For example, the Northern California Ironworkers program has yet to need a single arbitration after three years of operation.

**Q: Why is this Program beneficial to employees?**

A: The use of the nurse results in prompt delivery of high quality medical care without the need for litigation and/or extended delays. The facilitator can usually keep appropriate benefits flowing in a timely manner without the delays and expense of litigation. Furthermore, the full dispute settlement resolution process operates much more quickly than the standard state system. In fact it is routinely possible to complete the process all the way through arbitration in less than three months, as compared to the 12-18 months or more that is routine in most state systems.

One study performed for them by Cornell University indicated that in New York, that there was an approximate 26% reduction in the average length of a claim using the CBWC program as opposed to the statutory mechanism. This means less lost income and a greater possibility of returning to normal employment.

**Q: Why is this Program beneficial to employers?**

A: Since the CBWC Program reduces the amount of time that the injured employee is off work, the overall claim costs are lower, and therefore, the employer's experience modification and premium are lower. Some insurance carriers will automatically offer a 3% to 5% discount on the insurance premium if the employer is enrolled in a CBWC Program.

**Q: Are there other elements to a CBWC Program?**

A: Oftentimes the Programs will incorporate the use of exclusive provider organizations to provide occupational medical doctors and specialists. The goal of these providers is to rehabilitate and get the injured workers back to work as soon as possible.

**Q: In a CBWC Program, is the employee allowed to hire an attorney?**

A: Yes. These Programs do not prevent an employee from hiring an attorney; however, experience has shown that employees are much less likely to hire an attorney if they participate in a CBWC Program.

**Q: Can a self-insured employer utilize this Program?**

A: Yes. The Program works whether the employer is fully insured, self-insured, part of a self-insured group, part of a group buying program, or has a retro policy.

**Q: Can an employer participating in such a program continue to use the same insurance broker?**

A: Yes.

**Q: How is a CBWC Program formed and under what structure does it operate?**

A: There are many different ways to form and operate a CBWC Program. In the Minnesota Program, a jointly administered Taft Hartley Trust Fund was created between employers and unions in the building trades. The Program is funded through an assessment on participating employers based upon the size of the payroll. A charge of .0015% of payroll is assessed. The maximum amount of payroll that can be assessed is \$5 million dollars. Other programs are funded through a cents per hour contribution in the collective bargaining agreement or through assessments on participating insurance carriers and employers.

## IMPLEMENTING MORE EFFECTIVE HEALTH CARE AND WORKERS COMPENSATION

Presenter: Roy A. Ringwood

### Retiree Health Care Cost Containment

The Health Plan of Southern California, Arizona and Nevada has developed a variable self pay rate for retirees based on age, years of service and years of retirement. Example charts will be provided with discussion on past failures to contain and stabilize escalating retiree health care costs and benefits of variable self pay rates for retirees.

### Collective Bargained Workers Compensation Alternative Dispute Resolution

Workers compensation systems in most states are so complicated and hostile that it requires the employee and the employer's insurance carrier to retain legal counsel. Each side disputes the other sides claims. Each side sends the injured worker to their medical evaluator to counter any evidence from the other side. The injured worker is caught in a system that is expensive, is not designed for a quick solution, rehabilitation or return to work. While the injured worker is drained of dignity and financial well being, the union employer's ability to remain competitive in the market is compromised.

The alternative dispute resolution (ADR) is intended to be a friendlier and non-adversarial system when compared to most state administered workers compensation plans. For the most part, that has been achieved. The ADR system presents the opportunity to develop a workers compensation process that will benefit the real parties of interest, the injured worker and the employer.

This presentation includes a brief discussion about the workers compensation system in California, which gave way to the "green" light to unions and employers to create their own workers compensation system via the collective bargaining process. Provisions of the California Labor Code pertaining to ADR, the negotiating process, essential parts to a successful ADR, and the importance of communication to employees will be discussed.

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