CITY OF OAKLAND

AGENDA REPORT

TO: Office of the City Administrator
ATTN: Deanna J. Santana
FROM: Finance and Management Agency / Risk Management Division
DATE: January 24, 2012

RE: Informational Report Regarding Workers' Compensation Program Administration Strategies Update and Industry "Best Practices"

EXECUTIVE SUMMARY

This report responds to City Council's directive to provide regular updates of the City's Workers' Compensation Program as administered by the Risk Management Division (RMD).

During the November 29, 2011 committee meeting, the committee requested staff return with updated information in January and subsequent reports to be submitted on a quarterly basis after that. Due to the short timing of this report, after the issuance of the November 2011 report, much of the information is substantially similar to the data provided in the prior report. All data presented is current through the end of the first quarter of FY 2011-12 (September 30, 2011).

During the November 2011 committee meeting, staff was directed to (1) provide an update on the implementation of the recommendations made by Bickmore Risk Services (BRS), in their Workers' Compensation Program Review report dated October 12, 2011; (2) provide specific information regarding the City's utilization of Agreed Medical Examinations as a tool to resolve Workers' Compensation claims; (3) schedule an educational summit for departmental workers' compensation coordinators and Human Resource representatives; (4) provide information on methods used to monitor department disciplinary process when workers' compensation abuse is discovered; and (5) provide strategies used at the department level to curtail workers' compensation claim activity.

In addition to the information noted above, this report presents more detailed information in the following areas:

- Costs associated with each City Departments Workers' Compensation Expenditures;
- Significant components of Workers' Compensation costs such as Medical, Indemnity and Disability Leave supplemental payments;
- Claims for City Departments that have the highest number of claims;
- Performance measures of the Workers' Compensation Claims Administration program; and
- The City's effort to control costs and reduce claims.

FISCAL IMPACT

The overall cost of the Workers' Compensation Program in FY 2010-11 was $25,292,026. This represented an increase of $2,762,842 over the prior fiscal year. The largest increase was associated with Temporary Disability payments in the form of LC4850 Pay (+$2,384,101) paid to Oakland Police Department sworn employees, Temporary Disability Pay (+$378,986) and MOU Salary Supplement Pay (+$99,489), resulting in a 31.8 percent increase in Indemnity/Salary Supplement payments to injured employees over the prior fiscal year.

LC4850 pay refers to disability payments made to public safety mandated by Labor Code section 4850. LC4850 requires that sworn personnel who are injured on the job receive 100 percent of their salary for up to 12 months.

Of the Temporary Disability payments listed above, only one – Salary Supplement Pay – is not mandated by the State of California Labor Code. ***Salary Supplement Pay*** is a negotiated benefit where eligible employees receive a supplemental payment in addition to the mandated Temporary Disability payment. This supplemental payment, when combined with the Temporary Disability payment, results in the employee receiving 100 percent of their regular pay. Other than by Memorandum of Understanding (MOU), the City has no obligation to extend this benefit to City employees.

Attachment A – Workers' Compensation Expenditures Report provides a breakdown of tracked expenditures against the Workers' Compensation Program including the amount of Indemnity payments paid for FY 2008-09 and FY 2010-11 and projects year end expenditures for the current fiscal year (FY 2011-12). Actuarially projected expenditures over the next two years for the total WC program is $20,118,617 for FY 2011-12 and $19,816,328 for FY 2012-13, representing an increase of 1.4 percent and a decrease of 0.1 percent respectively compared to FY 2009-10 actuals. (Note: The actuarial projections do not include Administrative Expenditures in their projections.)

Beginning June 1, 2011, the City changed the method by which employees eligible for transitional duty assignments were funded. Previously, employees with work restrictions that were not returned to a modified assignment by their department were simply placed back on workers' compensation and funded through Fund 1150 – Workers Compensation Insurance Claims. Now, similarly situated employees are placed in a paid administrative leave status and funded by the department's payroll budget.

Since implementing changes to how employees eligible for transitional assignments are funded, the City has experienced a first quarter reduction in Indemnity/Salary Supplement costs of approximately $720,111 (-28.6 percent); however, it should be noted that this reduction is largely a transfer of funding sources and does not result in an overall savings to the City. The intent of this funding change is to allocate financial responsibility on the department of the injured employee to promote more proactive participation in injury prevention strategies and the return to work process. Staff will continue to track and report on projected/actual cost reductions in the up coming months.

BACKGROUND

This quarterly report on the Workers' Compensation program is presented to inform the Committee of Workers' Compensation costs and claims and to raise the visibility and accountability for controlling costs and claims at the department level. Overall, program related medical costs have remained virtually flat, as have allocated costs. However, the program experienced a significant upward trend of Indemnity/Salary Supplement payments to injured workers during FY 2010-11. This increase prompted a mid-year program administration change designed to place financial responsibility within departmental budgets, incentivizing departments to more proactively implement injury reduction strategies and participate more fully in the City's Transitional Duty Program.

It should be noted that the increase in Indemnity expenses is not related to an increase in Workers' Compensation claims filed by City employees. The number of Indemnity claims filed by employees remained flat, resulting in 403 Indemnity claims filed in FY 2008-09, 402 Indemnity claims filed in FY 2009-10 and 393 Indemnity claims filed in FY 2010-11. As of September 30, 2011, 99 Indemnity claims have been filed in FY 2011-12 (projecting a total of 396 Indemnity claims filed for the current fiscal year.)

For FY 2008-09 an average of 8.24 Indemnity claims were filed per 100 employees; in FY 2009-10 an average of 8.73 Indemnity claims were filed per 100 employees; and in FY 2010-11 an average of 8.34 Indemnity claims were filed per 100 employees. This represents 4.5 percent per employee Indemnity claims decrease.

KEY ISSUES AND IMPACTS

Council has asked that staff return on a regular basis to provide updated information on the Workers' Compensation Program. In addition to the updated statistical data, specific information was requested in this quarter's report:

- an update on the implementation of the recommendations made by Bickmore Risk Services (BRS), in their Workers' Compensation Program Review report dated October 12, 2011;
- the City's utilization of Agreed Medical Examinations as a tool to resolve Workers' Compensation claims;
- the scheduling of an educational summit for departmental workers' compensation coordinators and Human Resource representatives;
- methods used to monitor department disciplinary process when workers' compensation abuse is discovered; and
- strategies used at the department level to curtail workers' compensation claim activity.

1. Quarterly Workers' Compensation Statistical Information

A. Transitional Duty Program Participation

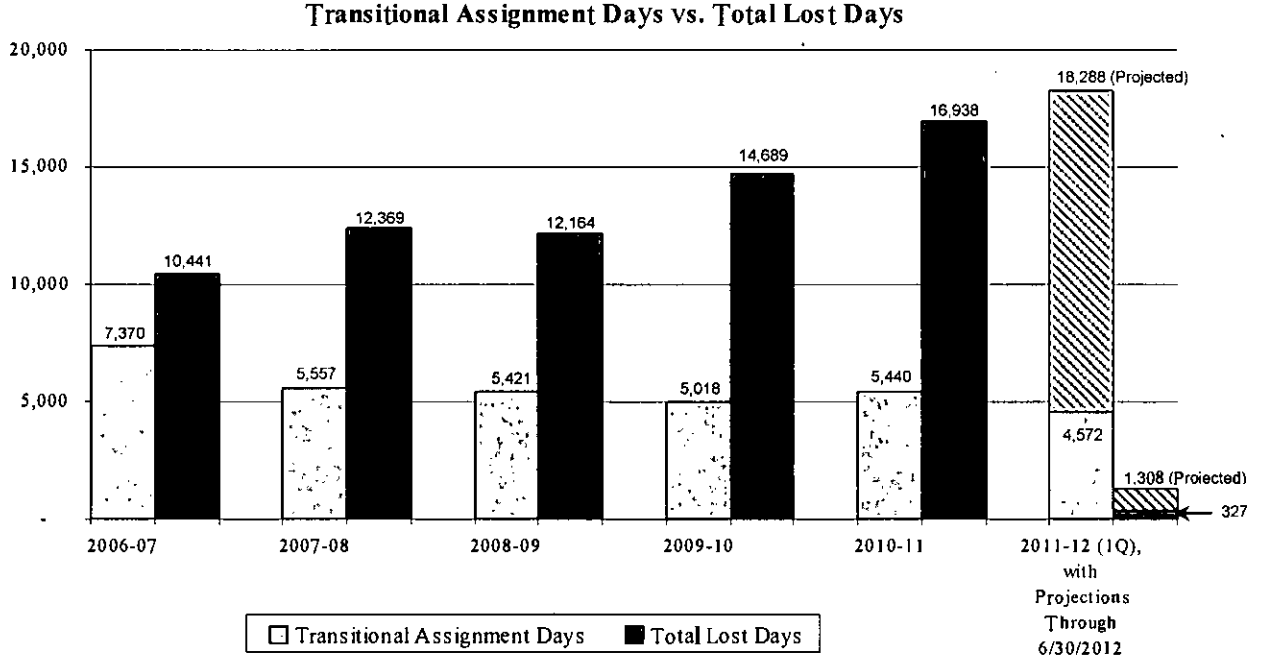
Historically, Departments have not been held financially responsible for the burden their injured employees place on the overall Workers' Compensation Program. All expenditures related to Workers' Compensation have been financed solely from Fund 1150 in a non-departmental account. This provides little to no incentive to department directors, managers or employees to make reasonable effort to reduce their department's cost burden on the $22 million program. With reduced budgets and work force, the little incentive they had dwindles as departments seek alternative sources of funding for their employee payroll and overhead.

The cost factor within the Workers' Compensation Program that is most directly impacted by the department's lack of incentive is the Indemnity expenditures. The increase in Indemnity/Salary Supplement payments was driven by a marked increase in temporary disability days related to a corresponding decrease in departmental participation in the City's Transitional Duty Program.

By making departments more accountable for the program expenditures they can directly influence, the City creates a larger incentive to departments to expend more effort in reducing their burden on the Workers' Compensation Program. Actions have been taken to influence the departmental incentive to reduce their burden on the Indemnity costs.

Post Work Restriction Funding: Effective June 2, 2011, the City changed how injured employees are funded after receiving work restrictions from their physician. Departments are now financially responsible to fund employees with work restrictions directly from their department payroll budget. This provides an incentive for departments to return employees to transitional duty more quickly since employees with restrictions are no longer paid through Fund 1150. Complementing this funding change are modifications made to the Transitional Duty Program and resources made available to departments to assist with the implementation of the program. The table below shows the dramatic change in participation rate after these program modifications were made near the end of last fiscal year. It is expected that the program will provide a needed stimulus to engage departments in more proactive workers' compensation control measures.

This reduced participation is reflected in the decline of transitional assignment (TA) days worked by injured employees shown below:



B. WCP Statistical Information

This section provides information specifically requested by Council as well as other information meant to provide additional insight into how the Workers' Compensation Program is funded and monies expended.

(1) Average time employees are out on workers' compensation

	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12 (Ending 9/20/2011)	FY 2011-12 (Projected Through 6/30/2012)
Open Indemnity Claims	926	866	944	991	--
Total TD Days	22,213	29,766	38,478	6,553	26,212
Average TD Days per Claim	23.99	34.37	40.76	6.62	26
Percent Change from Prior Year	--	34%	29%	--	--

The number of Temporary Assignment days has increased over the past three years, resulting in an increase of over 34 percent and 29 percent in FY 2009-10 and FY 2010-11 respectively. ***However, based on projections for FY 2011-12, if trending remains consistent through the remaining quarters, it appears there should be a significant decline in the average number of TD days per claim.***

(2) ***Percentage of employees out on Workers' Compensation for more than 12 months***

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In some cases, depending on the severity, Workers' Compensation strategies for long-term absence cases involve moving cases to closure and assisting employees with the job reassignment as required under the Califomia Fair Employment and Housing Act (FEHA) and/or the disability retirement process, as appropriate. This usually occurs once a case reaches the point where the employee has permanent medical restrictions and it has been determined that the employee can no longer perform the essential functions of his/her job classification, with or without accommodation. Depending on the severity of the injury, it takes more than 12 months for this determination to be made. Until this stage is reached, the City is obligated to continue working with the employee and his/her medical provider in returning them to full functionality in their designated job classification. As a result of RMD's collaboration with other City agencies that also have responsibilities in employee disability cases, a majority of the employees that are on the list of long-term leave cases have either returned to work, retired or otherwise separated from the City. The 46 percent reduction reflected in the previous table results in overall savings to the Workers' Compensation Program, as it fiirther limits the amount of Indemnity expenditures made on the individual cases.

LONG TERM WORKERS' COMPENSATION LEAVE COSTS

The following table provides information about the financial impact of Workers' Compensation cases, where the employee has been absent from work for one year or more during FY 2010-11. Cases that resulted in an Industrial Disability Retirement (IDR) are indicated:

DOI	Claim No.	Department	Job Class	Totals PAID Through 6/30/11	Total INCURRED Expenses Through 6/30/11	Status Through 12/20/11
09/27/08	809002287	OFD	Captain	$179,383.09	$266,820.00	Retired IDR 11/11
03/30/10	1003000607	OFD	Captain	$156,267.79	$215,745.39	Retired IDR 10/11
07/12/10	1007001399	OFD	Captain	$108,285.91	$118,909.09	Retired IDR 8/11
03/19/10	1003000506	OFD	Engineer	$226,482.87	$434,532.00	Surgery 11/11
05/01/10	1005000837	OFD	Engineer	$129,103.77	$207,217.34	Retired IDR 6/11
07/21/10	1007001475	OFD	Engineer	$111,170.82	$150,237.00	RTW 11/5/11
07/02/10	1007001409	OFD	Fire Fighter	$112,521.52	$145,790.00	Off work; surgery 3/11, litigated
08/31/10	1008001950	OFD	Fire Fighter Paramedic	$103,841.45	$210,583.96	Off work
05/04/07	705001251	OFD	Lieutenant	$204,197.81	$122,269.44	RTW 8/2/11
03/24/10	1003000561	OFD	Lieutenant	$161,531.84	$208,102.00	RTW 6/30/11
08/11/11	808003192	OPD	Police Officer	$118,384.50	$204,303.00	Retired IDR 7/11
10/27/08	810002603	PWA	Sewer Maintenance Leader	$266,076.06	$399,794.82	Retired 11/11

(3) ***Workers' Compensation Program Utilization by Department*** -- The City will begin tracking the financial utilization of the Workers' Compensation Program by department. While Workers' Compensation continues to be financed through Fund 1150, RMD will begin tracking the usage of the fund by department. This will provide the Administration with a clearer picture of where the Workers' Compensation Funds are being expended and equip departments with information to assist in developing loss control strategies. This will also tie to the statistical information Council has requested.

According to the Budget Office, Workers' Compensation Funds have been allocated as shown below for the past three fiscal years. This represents the funds set aside for each department to fund the workers' compensation program monies:

WORKERS' COMPENSATION
SOURCE ALLOCATIONS TO FUND 1150

	FY 2009-10	FY 2010-11	FY 2011-12
01 -- Mayor	$ 60,705.96	$ 32,692.53	$ 30,128.28
02 -- City Council	$ 116,982.78	$ 63,904.30	$ 64,417.92
03 -- City Administrator	$ 259,279.37	$ 173,056.90	$ 167,741.27
04 -- City Attorney	$ 371,456.07	$ 226,428.71	$ 218,595.65
05 -- City Auditor	$ 35,977.69	$ 23,628.21	$ 26,809.48
06 -- City Clerk	$ 33,582.01	$ 25,174.80	$ 24,645.39
07 -- Human Resources	$ 156,659.95	$ 100,154.16	$ 94,899.87
09 -- Office of Communication and Information Services	$ 328,865.96	$ 191,075.63	$ 181,032.48
10 -- Finance and Management Agency	$ 574,565.50	$ 381,683.74	$ 433,250.26
11 -- Police Services Agency	$ 10,206,540.47	$ 8,647,464.16	$ 6,800,907.17
12 -- Fire Services Agency	$ 6,869,761.16	$ 6,897,298.35	$ 7,088,383.14
14 -- Library	$ 397,346.77	$ 272,367.02	$ 387,719.56
15 -- Office of Parks and Recreation	$ 249,494.29	$ 173,718.16	$ 297,372.04
16 -- Department of Human Services	$ 544,894.45	$ 395,453.11	$ 361,975.06
17 -- Public Works Agency	$ 1,435,392.65	$ 1,273,012.36	$ 1,491,320.93
18 -- Community and Economic Development Agency	$ 1,472,915.08	$ 641,176.68	$ 633,079.23
Total Accruals	$ 23,114,420.16	$ 19,518,288.82	$ 18,302,277.73

As of September 30, 2011, the City expended $5.4 million in Fund 1150 for Workers' Compensation costs compared to $5.6 million for the same period last year. The table below shows detailed costs, by department, including Medical, Legal, Temporary Disability and LC4850 pay.

Table 1: Costs by Department (Medical, Legal, Temporary Disability and LC4850 Pay)*

Department	Adopted W/C Budget (FY 2011-12)	Actual Expenditures 1Q (FY 2010-11)	Actual Expenditures 1Q (FY 2011-12)	Projected Expenditures (FY 2011-12)	Projected Year-End Balance (FY 2011-12)
Police	$6,800,907	$2,721,338	$3,092,646	$12,370,584	($5,569,677)
Fire	7,088,383	1,741,345	1,481,780	5,927,120	1,161,263
PWA	1,491,321	485,998	453,079	1,812,316	(320,995)
All Others	2,921,666	652,111	399,110	1,596,440	1,325,226
Subtotal	$ 18,302,277	$ 5,600,791	55,426,615	$ 21,706,460	($3,404,183)
Subrogation / Insurance Recoveries			(1,840,631)	(1,840,631)	1,840,631
General Fund (GF) Total	$18,302,277	$5,600,791	$3,585,984	$19,865,829	($1,563,552)

**The year-to-date expenditures shown above include final settlements related to the 2009 Police Officers Deaths claims in the amount of $1,840,631. The City was reimbursed for this same amount by our Insurance Pool, CSAC-EIA, since the City was covered by Excess Workers' Compensation when these claims were filed in 2009. The total of these expenditures minus this amount would adjust the year-to-date totals to $3.6 million, reflecting a reduction of 28 percent in program expenditures.*

(4) ***Indemnity (Mandated Temporary Disability Leave Benefits) Cost Analysis*** – Indemnity (Mandated LC4850 and Temporary Disability Leave Benefits) is one of the major Workers' Compensation costs. This cost is paid from Fund 1150 with no financial burden or responsibility placed on departments. As of September 30, 2011, the City expended $2.2 million in Indemnity costs as compared to $2.5 million during the same period last year, representing a 10.9 percentage year-to-date decrease.

Table 2: Disability Leave* Costs by Department: 4850, Temporary Disability, Civilian Salary Continuation (MOU "Free Period)

Department	FY 2010-11 (1Q Actual)	FY 2011-12 (1Q Actual)	Net Change	Percentage Change	Projected Year End
Police	$ 1,259,606	$ 1,452,737	$ 193,131	15.33%	$ 5,810,948
Fire	668,246	580,415	(87,831)	-13.14%	2,321,660
PWA	309,055	151,129	(157,926)	-51.10%	604,516
All Others	285,201	63,555	(221,646)	-77.72%	254,220
Total	$ 2,522,107	$ 2,247,836	$ (274,271)	-10.87%	$ 8,991,344

* Includes 4850, Temporary Disability, and Civilian Salary Continuation (MOU "Free Period"). It does not include Permanent Disability (Settlements), Death Benefits, Legal, or Medical Costs.

(5) ***Significant Components of Cost*** – Significant components of Workers' Compensation cost include medical, Indemnity, and other (legal fees and rehabilitation). All costs are currently paid from Fund 1150. The table below presents various cost components for the Workers' Compensation Fund by department.

Table 3: Cost Components (Year-To-Date FY 11-12, 1st Quarter): 4850, Temporary Disability, Death, Permanent Disability / Settlements

Department	Medical[1]	Indemnity[2]	Legal[3]	Total
Police	$ 609,005	$ 4,168,055	$ 79,269	$ 4,856,329
Fire	640,714	859,900	37,990	1,538,604
PWA	223,287	216,876	30,254	470,417
All Others	313,690	98,122	34,530	446,342
Total	$ 1,786,696	$ 5,342,953	$ 182,043	$ 7,311,692

[1] Medical Costs include treatment, diagnostic testing, physical therapy, hospitalizations and prescriptions.

[2] Indemnity includes Labor Code §4850 to sworn police and fire, temporary disability, death, permanent disability (claim settlements) and Civilian Salary Continuation (MOU "Free Period").

[3] Defense legal costs

Overall, medical costs account for 25 percent of the total cost and Indemnity and other costs account for the remaining 75 percent as show in the table below.

Table 4: Cost Components as a Percentage of Total Cost

Department	Medical as a % of Total	Indemnity as a % of Total	Other as a % of Total
Police	12.55%	85.81%	1.63%
Fire	43.78%	53.63%	2.60%
PWA	47.14%	40.48%	6.39%
All Others	66.23%	26.48%	7.29%
Total	24.70%	72.78%	2.52%

(6) ***Claims Analysis*** – The total number of new claims as of September 30, 2011 was 136, compared to 144 in the previous year. The following chart projects a total reduction of six percent of claims in FY 2011-12, compared to claims in FY 2010-11.

Table 5: Claims by Department

Department	FY 2010-11	FY 2011-12 YTD	FY 2011-12 Projected	Projected Net Change FY 2010-11 Actual - FY 2011-12 Projected	Projected % Change FY 2010-11 Actual - FY 2011-12 Projected
Police	214	61	244	30	14%
Fire	143	23	92	-51	-36%
PWA	115	33	132	17	15%
CEDA	27	4	16	-11	-41%
FMA	3	2	8	5	167%
All Others	74	13	52	-22	-30%
Total	576	136	544	-32	-6%

(7) ***Performance Measures for Workers' Compensation Administration*** – Four measures are used to monitor the performance of how claims are administered: closing ratio, timeliness of bill payments, medical utilization review (timeliness and approval rate) and customer's satisfaction with claim administration.

(a) ***Closing Ratio*** – This ratio measures how many claims are closed as compared to newly opened claims over a specific period of time. A closing ratio of greater than one is preferred and indicates that more claims are being closed than opened, thereby reducing the City's total body of open claims (and future liability). The chart below indicates continued positive progress in productivity for the three years reported.

Claims Productivity Ratio by Fiscal Year

FY Ending	# Claims Closed	# Claims Opened	Productivity Ratio
2009	829	650	128%
2010	812	592	137%
2011	701	568	123%
2012 (1st Qtr)	131	163	80%

(b) ***Timeliness of Bills Payment*** - This measure monitors the timeliness with which bills are being paid. In FY 2010-11 a total of 19,768 bills were received by the City of Oakland. They were paid according to the timeline below:

- 100 percent were paid within the statutory timeframe of 60 days
- 87.27 percent were paid within 30 days
- 71.85 percent were paid within 15 days

(c) ***Medical Utilization Review*** - This measures the approval rate of the requests for medical treatments under the State's Medical Utilization Review (UR) Program, and the timeliness with which requests are addressed and the UR outcomes. In FY 2010-11 there were 1004 UR referrals:

- 99 percent of UR referrals were reviewed with a decision rendered on a timely basis, as required by the State (within 5–14 days, depending on the need for additional information from the provider.)
- 51 percent of the UR referrals were initially approved
- 49 percent of the UR referrals were initially denied, modified, or withdrawn from the UR process (28 percent Denied/21 percent Modified)
- 6 percent of the UR referrals, that were initially denied, were appealed. Approximately 58 percent of those were upheld and 42 percent were reversed or modified.
- Ultimately, 82 percent of the UR referrals are approved or modified.

(d) ***Customer Satisfaction*** – Claimants with Indemnity claims have historically not been asked to assess their satisfaction with claim administration. In an effort to ensure quality service to both departments and injured employees, RMD will undertake regular customer service surveys of injured employees and departments to determine the level of customer satisfaction. The initial survey will be circulated prior to the upcoming Risk Management Disability Summit that will be held on March 28, 2012.

(e) ***Fraud Investigations***

The table below provides the information regarding investigation activity for FY 2010-11.

Total Claims Filed	Surveillance	Field Investigation	Fraud Referral (FD-1) Submission	Background Checks	Denied Claims
576	14 (2%)	44 (8%)	6 (1%)	6 (1%)	94 (16%)

PROGRAM DESCRIPTION

RMD was directed to return to the Committee and provide information on the following:

- an update on the implementation of the recommendations made by Bickmore Risk Services (BRS), in their Workers' Compensation Program Review report dated October 12, 2011;
- the City's utilization of Agreed Medical Examinations as a tool to resolve Workers' Compensation claims;
- the scheduling of an educational summit for departmental workers' compensation coordinators and Human Resource representatives;
- methods used to monitor department disciplinary process when workers' compensation abuse is discovered; and
- strategies used at the department level to curtail workers' compensation claim activity.

The remainder of this report will address the above requested elements.

A. ***Implementation Of Recommendations -Bickmore Risk Services (BRS) Workers' Compensation Program Review***: A number of recommendations were made by Bickmore Risk Services as a result of a review they performed on the City of Oakland's Workers' Compensation Program. A summary of these recommendations is contained in ***Attachment B*** with information regarding the implementation status of each recommendation. Staff has implemented most of the recommendations. In process of implementation are:

(1) ***Claims Intake: Development of an internet-based electronic injury report system.*** This item will require further research into the system capabilities of the current Claims Information System used by the City's Third Party Administrator, and the ability to interface with the City's Human Resource Information System (HRIS) currently based in Oracle. Staff will continue to work with the TPA, DIT and DHRM to explore the feasibility of creating the claims interface.

(2) ***Using Medical Experts: Negotiating a "Carve-Out" agreement with labor unions to enable the use of pre-approved AME physician list.*** This agreement would enable the participating labor groups to seek resolution of disputed claims more quickly through bypassing the State's overloaded Workers' Compensation Appeals Board (WCAB). Case outcomes would be more favorable for all parties involved as resolution would be obtained much quicker and more consistently as much of the potentially contentious legal positioning will not be necessary.

B. ***Utilization of Agreed Medical Examinations (AME) as a tool to resolve Workers' Compensation claims***: An Agreed Medical Examinations (AME) is a tool approved by the State of California as a method of seeking third opinion resolutions on disputed medical cases. It is used predominately in cases where the employee's treating physician and the employer's physician are not in agreement on the severity of injury and permanent disability caused by the injury. When such disagreement exists, either party (employee or employer) have the option to invoke an Agreed Medical Examination. However, the examination cannot go forward unless both parties agree to the need for the exam. Additionally, the State of California requires that the injured worker have legal representation to qualify for an AME. If the employee does not have legal counsel, the City cannot require the employee to participate in the AME process.

The physician selection process is managed by the State of California. When a request for an AME has been received, the State will provide a "panel list" of physicians for the two parties to select from for the examination. The State of California establishes the panel and frequently there is a waiting list of several months for an examination appointment to be obtained due to the number of backlogged disputed workers' compensation cases within the State. ***Attachment*** C provides more detailed information regarding the AME process and effective utilization of the option in Workers' Compensation claim resolution.

The City of Oakland relies heavily on AMEs to bring resolution to a number of our workers' compensation cases. The table below provides information on the number of AME and QME (Qualified Medical Examination) processes that have been utilized over the past three fiscal years. In addition, the table reflects the number of cases settled on the basis of the opinion of the employee's Primary Treating Physician (PTP):

City of Oakland Medical - Legal Statistics
(3 Years and 1st Qtr 11-12)

	7/1/08 - 6/30/09	7/1/09 - 6/30/10	7/1/10 - 6/30/11	11-12 1st Qtr
Number of Claims Settled	207	276	157	91
AME (Agreed to Medical Examination)	118	161	106	77
PTP (Primary Treating Physician)	35	50	24	8
Panel QME (Employee Unrepresented by Attorney)	25	38	14	3
QME (Employee Represented by Attorney)	19	13	7	2

C. ***Risk Management Disability Summit – Spring 2012***: On an annual basis, RMD hosts a Workers' Compensation/Disability Summit which targets department workers' compensation representatives, human resource representatives, upper management and directors. The summit provides current information and education on workers' compensation issues that impact departments. It provides an opportunity for department representatives to discuss recent changes to their department case trends and seek clarification on disability related issues from the technical and legal experts in attendance. The next Risk Management Disability Summit will be held on **March 28, 2012**. The agenda is currently being developed in collaboration with other City departments with responsibilities that involve employee medical and disability issues.

Other methods of outreach used to bring information to departments include:

- ***Monthly Workers' Compensation Meetings*** to discuss specific workers' compensation cases. Three of the four meetings are dedicated to the high volume departments (OPD, OFD and PWA) with the fourth meeting open for all other departments that have lower case volume. In attendance are representatives from each department who were appointed by the director, RMD Workers' Compensation and Employee Safety staff as well as representatives from the TPA.

  The intent of these meetings is to ensure departments remain informed to the current activity on their department's Workers' Compensation cases. Information is provided that would enable the department representatives to return to their respective departments and inform their directors and managers of the status of the various cases discussed. The Workers' Compensation meetings serve as an opportunity for departments to provide "real time" information about the injured employees to ensure benefits are being properly and promptly administered. Participants in these meetings include Risk Management's Workers' Comp and employee safety coordinators, and representatives from the Third Party Administrator. Every third meeting (once a quarter), the agenda is modified to address the more severe, difficult or long term cases, to discuss more technical aspects of case management and employment matters.

- ***Monthly Safety Meetings*** where designated safety representatives from each department discuss common safety and loss prevention issues and new regulatory requirements. Through this forum, RMD promotes the use of Safety and Loss Prevention programs and training to assist departments in reducing the frequency of their employee injuries.

- ***Employee Health and Wellness Fair*** hosted annually by Risk Management Division. Through the health fair, employees can receive health screenings, flu shots, obtain wellness information and attend a variety of wellness related short classes that are meant to encourage them to stay fit and well. Participation in the health fairs have increased over the years and we currently anticipate at least 15 – 20 percent of the employee population to partake in some portion of the event.

D. ***Workers' Compensation Abuse/Employee Discipline***: During the investigation process, instances of employee workers' compensation abuse and fraud may be uncovered. When such instances are discovered, immediate steps are taken to limit the employees benefit entitlements to ensure they receive only the amounts they are legally entitled to under the State Labor Code.

The source of information may come from departments providing anecdotal information which can be used by the investigator to verify. Upon verification, if it is determined that the employee also violated City policy, the employee's department is contacted by Risk Management to refer the employee for discipline. Working with employee relations and the involved department, RMD assists in developing evidence to document the policy violation. Monitoring of employee discipline is largely in the jurisdiction of DHRM - Employee Relations. RMD works with DHRM-ER on a case-by-case basis to monitor case resolution.

E. ***Departmental Workers' Compensation Strategies***: The Committee requested that department representatives be present at the current Committee meeting to discuss current strategies on containing the cost of Workers' Compensation within the individual departments. RMD met with representatives of OPD, OFD and PWA in preparation of this report and to brief them on the Committee's request.

RMD continues to work with the individual departments to develop loss prevention and injury reduction strategies specific to the departments. For instance, OFD and RMD are working together to bring injury prevention training to the Fire Department. This training will focus on proper fitness training, utilization of fitness equipment and work strengthening strategies. This particular training was requested by OFD due to the frequency of injuries incurred during physical fitness activities in the fire stations.

Similarly, RMD is collaborating with OPD to certify driving instructors in the department for Emergency Vehicle Operations training. By establishing core driver

trainers and evaluators, OPD will be better equipped to evaluate employee driving skills and habits, enabling them to work with individual employees on correcting negative driving practices, thereby reducing vehicle accidents and injuries associated with these accidents.

It is imperative that departments participate in the "strategy development" process to instill a sense of ownership of the process. Without full and demonstrable support for such efforts, Risk Management cannot effectively promote injury reduction efforts or cost containment efforts beyond areas it is directly in control of

F. ***Critical Case Review Team***

Many of the issues related to long-term workers' compensation cases cross over into other jurisdictional areas that are monitored and managed by departments/divisions outside of Risk Management. The Administration is re-instituting a Critical Case Review Team (CCRT) with the objective of joining staff from different departments under a common cause of resolving long-term and problematic employee cases. The CCRT will be made up of members from the City Administrator's Office, DHRM, RMD, and City Attomey's Office. Jointly, this team will work together to strategically plan and resolve cases as well as to discuss updating or creating policy centered on case resolution. RMD anticipates the first quarterly meeting will be held in February 2012.

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities associated with this report.

Environmental: There are no environmental opportunities associated with this report.

Social Equity: There are no social equity opportunities associated with this report.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that Council accept this informational report.

Respectfully submitted,

Joseph T. Yew, Jr.
Finance Director / City Treasurer

Prepared by:
Deborah Grant, Risk Manager
Risk Management Division

APPROVED AND FORWARDED TO THE
FINANCE COMMITTEE:

Office of the City Administrator

Attachment A: Workers' Compensation Expenditures Report
Attachment B: Bickmore Risk Services (BRS) Program Review and Staff Response / Actions
Attachment C: Med-Legal Process in California Workers' Comp (AME Overview)

Workers' Compensation Expenditures Report
FY 2008-09 through FY 2011-12

	2008-09	2009-10	2010-11	2011-12 (Period Ending 09/30/2011)	2011-12[1] (Projected)
OPERATIONS EXPENDITURES					
INDEMNITY / SETTLEMENT					
Permanent Disability	$ 4,567,441	$ 5,036,106	$ 4,939,738	$ 3,463,035	$ 8,330,247 [2]
INDEMNITY / SALARY					
Non-4850[3]					
Temporary Disability	$ 1,045,350	$ 1,371,942	$ 1,750,928	$ 356,250	$ 1,425,000
Civilian - Salary Supplement	$ 428,485	$ 526,605	$ 626,094	$ 64,431	$ 257,724
Total Non-4850 Pay	$ 1,473,835	$ 1,898,547	$ 2,377,022	$ 420,681	$ 1,682,724
4850[4]					
Sworn - OPD - 4850 Pay	$ 1,726,011	$ 2,654,322	$ 5,038,423	$ 797,116	$ 3,188,464
Sworn - OFD - 4850 Pay	$ 2,677,212	$ 3,104,530	$ 2,672,983	$ 584,199	$ 2,336,796
Total 4850 Pay	$ 4,403,223	$ 5,758,852	$ 7,711,406	$ 1,381,315	$ 5,525,260
Subtotal -- Indemnity / Salary	$ 5,877,038	$ 7,657,399	$ 10,088,428	$ 1,801,996	$ 7,207,984
MEDICAL					
City Physician (Concentra)	$ 403,931	$ 187,662	$ 234,939	$ 65,258	$ 261,032
All Others	$ 5,906,908	$ 6,158,683	$ 6,158,929	$ 1,897,870	$ 7,591,480
Subtotal -- Medical	$ 6310,839	$ 6,346,345	$ 6,393,868	$ 1,963,128	$ 7,852,512
ALLOCATED					
Rehabilitation	$ 88,391	$ 23,955	$ 34,391	$ (858)	$ (3,432)
Investigative Claims Expense	$ 443,300	$ 403,961	$ 468,595	$ 86,676	$ 346,704
Legal	$ 1,023,725	$ 1,180,255	$ 953,583	$ 184,012	$ 736,048
10% Penalties	$ 18,587	$ 7,864	$ 8,568	$ 1,971	$ 7,884
Subtotal -- Allocated	$ 1,574,003	$ 1,616,035	$ 1,465,137	$ 271,801	$ 1,087,204
SUB-TOTAL OPERATIONS EXPENDITURES	$ 18,329,341	$ 20,655,885	$ 22,887,171	$ 7,499,960	$ 24,477,947
THIRD PARTY RECOVERY - REFUNDED TO CITY	$ (329,531)	$ (821,953)	$ (340,184)	$ (2,014,012) [5]	$ (2,534,155) [6]
TOTAL OPERATIONS EXPENDITURES	$ 17,999,810	$ 19,833,932	$ 22,546,987	$ 5,485,948	$ 21,943,792
ADMINISTRATIVE EXPENDITURES					
Claims Administrator Contract	$ 2,082,888	$ 2,112,868	$ 2,162,655	$ 528,217	$ 2,162,655
Bill Review Expense	$ 582,384	$ 582,384	$ 582,384	$ 145,596	$ 582,384
SUBTOTAL -- ADMINISTRATIVE EXPENDITURES	$ 2,665,272	$ 2,695,252	$ 2,745,039	$ 673,813	$ 2,695,252
TOTAL WORKERS' COMPENSATION EXPENSE	$ 20,665,082	$ 22,529,184	$ 25,292,026	$ 6,159,761	$ 24,639,044

(1) Projections based on 1st Quarter Actual data carried forward to projected totals.

(2) Projection adjusted to discount one-time large settlement related to 2009 Officer Shooting Death Claims.

(3) Non-4850 pay is the amount paid to Civilian employees required by the State of California labor code for workers' compensation benefits plus the negotiated salary supplement contained in the City of Oakland memorandum of Understanding for each labor unit.

(4) 4850 pay is the total amount paid to Sworn employees (Police and Fire) required by the State of California Labor Code § 4850.

(5) Third Party Recovery reflects excess insurance recoveries of $1,840,631 in IQ 2011-12 and other subrogation recoveries.

(6) Projected recoveries adjusted to factor one-time large recovery received from excess insurance in the amount of $1,840,631 for 2009 Officer Shooting Death Claims.

Attachment A

Attachment B
Bickmore Risk Services (BRS)
Workers' Compensation Program Review
Recommendations with Cost Estimate and Staff Response/Actions

Specific Issue	Estimated Cost	Parties to Take Action	Recommendations	Staff Response/Actions
Claims In-Take	Increased usage of Nurse Triage Service is likely to cost $94,200. Developing the Intranet-based electronic first report of injury is likely to cost between $144,000 and $216,000.	RMD and JT2	Use the JT2 claims information system (CIS) to track lag time between knowledge of injury and receipt of injury report by JT2 to keep the Department Workers' Compensation Coordinators informed of reporting timeliness.	Beginning in January 2012, JT2 will provide monthly CIS reports ("lag reports") to departments which detail the lag time between knowledge of injury and receipt of the report by JT2.
			Set the performance objective for the City to submit claims to JT2 at a maximum of five (5) calendar days from the department's knowledge date.	Beginning in January 2012, the JT2 CIS reports ("lag reports") will provide departments a comprehensive listing of late reported claims. The "lag" report will detail claims reported beyond the legally mandated five (5) day period.
			Stimulate city-wide use of a nurse triage service to include use of JT2secure.com to ensure immediate receipt of new claims by JT2.	RMD has implemented the nurse triage program citywide. Cost of this program should be less than estimated as the current provider has a lower case fee than the provider that was used in the pilot last fiscal year. RMD will monitor the program as it continues to be assimilated into departmental reporting process.
			Consider developing an Intranet-based electronic first report of injury with a secure link to the Human Resources database to use in populating employee information and department information fields. Links to feed information for upload to the JT2 CIS may also be considered. As an alternative	

Specific Issue	Estimated Cost	Parties to Take Action	Recommendations	Staff Response/Actions
			to uploading information to the JT2 CIS, information may be transferred to JT2 and RMD in PDF format by automated E-mail attachment. This approach would require continuation of the manual claim set up into the CIS currently used by JT2.	
Keeping City Departments Involved	Cost is estimated at $250 to $1,500 annually	RMD, Department WC Coordinators, and JT2	Update procedures to guide adjusters to provide Department WC Coordinators with E-mail transmission of Department of Workers' Compensation (DWC) benefit notices rather than service by US Postal Service.	In November 2011, RMD updated and implemented procedures for adjusters to provide Department WC Coordinators with email transmission of DWC benefit notices, rather than by US Postal Service.
			Schedule a city-wide Department WC Coordinator retreat annually to allow departments to receive training, share problems, and develop solutions.	RMD will sponsor a City-wide Risk Management Disability Summit for department personnel in March 2012.
Using Medical Experts	Cost for the first recommendation is expected to be offset by current expenses. Negotiating the pre-approved AME "Carve-Out" list is expected to cost less than litigating one case, or $5,000 to $30,000.	RMD, FD, JT2, City Attorney	Use of nurse triage in conjunction with physician peer review. We estimate costs to be flat, with current Utilization Review and nurse triage services to be replaced rather than duplicated. The advantage is the use of established relationships to influence outlier Pre-Designated Physicians to conform to the American College of Occupational and Environmental Medicine guides for treatment plans and disability evaluation.	RMD has implemented the nurse triage program citywide. Cost of this program should be less than estimated as the current provider has a lower case fee than the provided that was used in the pilot last fiscal year. RMD will monitor program as it continues to be assimilated into departmental reporting process.

Specific Issue	Estimated Cost	Parties to Take Action	Recommendations	Staff Response/Actions
			Explore whether the unions are interested in negotiating a "Carve Out" to include, at a minimum, a pre-approved AME list to use in medical dispute resolutions. The California Commission of Health and Safety and Workers' Compensation has published "Practical Advice for Unions and Employers" on its website. Starting with the Fire Department is recommended as dissatisfaction with the current Panel Qualified Medical Examiner / Agreed Medical Examiner process is voiced. The dissatisfaction stems from the fire fighters" desire to obtain dispute resolution quickly and obtain adequate guidance from providers for work capacity and treatment planning. Where a successful "Carve Out" is agreed upon with one union and implemented successfully, other unions tend to become interested.	
RTW Coordination	Continuing the NPA Bridge program is expected to cost $320,000 annually.	RMD, JT2, NPA, Department WC Coordinators	Continue: • Providing the Ergonomic services to assist departments and employees in preventing injuries, minimizing injury severity, and promoting a "stay at work" message. Have Risk Management's Safety Coordinator review implementation by departmental personnel.	RMD continues to administer the City's Ergonomic and Work Station Design program per Administrative Instruction 130. RMD staff works closely with department safety and workers' compensation coordinators to ensure ergonomic services are extended promptly and cost-effectively throughout the City.
			• Providing the NPA Bridge program to assist departments to coordinate early return to work. Enhance the effectiveness of this program by: o Having JT2 personnel work with NPA personnel and the Department WC Coordinators to streamline workflow by:	▪ In October 2011, JT2/NPA and the City of Oakland have changed the workflow by eliminating duplication of communication with doctors, departments and claimants, as

Specific Issue	Estimated Cost	Parties to Take Action	Recommendations	Staff Response/Actions
			▪ Getting the communicating parties to pay attention to the source of E-mails received to avoid returning the documentation to the initiating party unnecessarily. ▪ Having the JT2 CIS business rules updated to allow NPA to review claim notes and have limited claim note entry for specific claim note categories. The new business rules are planned to allow NPA to attach a medical report obtained to the JT2 CIS. NPA will also be able to view the check register, new claims and closings by examiner. These CIS usage allowances will eliminate the need to make numerous follow-up phone calls and e-mails. Information developed will be entered to the CIS where the Examiner is able to review it during scheduled follow up. ▪ Requesting NPA to provide targets for obtaining work capacity as soon as information on the target is available rather than simply delivering the work capacity notice. It is realized advance targets availability may be limited.	well as between NPA and JT2 personnel. With the streamlining of communication the parties are able to avoid unnecessarily returning documentation to the initiating party. ▪ As of November 2011, NPA has the ability to view claim notes, payment history, closings, and each night, receives a listing of all new claims. NPA's online access eliminates the need for numerous follow-up phone calls and emails. ▪ By March 2012, JT2 anticipates an upgrade to the claims data system enabling NPA to have limited access to enter notes and attach medical reports to the electronic claim file. ▪ Since July 2011, NPA/JT2 has provided departments with advance notice of "targeted" return to work dates. Departments receive notice of the targeted work capacity date three (3) days in advance of the employee's return to work.
Annual Report to the Office of Self-Insurance Plans	No additional cost.	RMD, JT2	Request JT2 to clarify the instructions for submitting the Annual Report to the Office of Self-Insurance Plans to include or exclude Labor Code (LC) 4850 benefits and update the information technology (IT) program used to extract claim information from the CIS for	The State Department of Insurance has been contacted. Inquiries have been made to verify the requirement to include Labor Code 4850 benefits in the City's Self-Insured Annual Report to the State of California. The State anticipates being able to provide

Specific Issue	Estimated Cost	Parties to Take Action	Recommendations	Staff Response/Actions
			reporting purposes accordingly. If exclusion is allowed, amend prior Annual Reports and request reimbursement of overpaid indemnity assessments.	guidance on their requirements in January 2012.
Annual Comparison of Expenditures	No additional cost	RMD, JT2	Improve the comparison of expenditures by updating the report to include: • Recoveries received from subrogation and excess insurance carriers. • Premiums paid for excess insurance (noting the self-insurance retention). • Calculation of expense ratio (allocated and unallocated expenses divided by expenditures for benefits and supplemental payments by departments). • Number of open claims in litigation. • Identification of the number of injured employees displaced from City employment including early retirement.	
Total:	$661,700			

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The Med-Legal Process in California Workers' Comp: Some Background and Comments

In the majority of cases, we can't escape the need to get an independent medical evaluation of the injured worker's condition if we want to get WCAB approval of a settlement which in turn allows us to finalize a case.

There are two ways to get these independent medical evaluations. The first is to use what the compensation system calls a qualified medical evaluator (QME). These are physicians in a broad range of specialties who pass a test administered by the Division of Workers' Compensation Medical Unit to indicate that the doctor has an understanding of workers' compensation concepts, can rate an applicant competently using the proper permanent disability rating schedule and can write a competent report with all the necessary elements (for example, taking an adequate history, reporting on relevant medical records and giving sound opinions on causation of an injury, permanent disability and need for future medical care, among other things)

When it comes to unrepresented workers, the QME process is required. That is not true for represented cases. Once a request is made for a QME panel in a particular specialty, the Medical Unit sends out a randomly selected panel of 3 possible QME doctors in that specialty in the general geographic area were applicant lives. The injured worker chooses one of those 3 physicians to act as the QME in his or her case, if he notifies the defendant in a timely fashion.

Attachment C

In a represented case, we get a similar panel but each side strikes one of the physicians listed and the remaining doctor is the chosen QME.
When a worker is represented, we have a 2nd pathway to get that independent medical evaluation. This would be through an agreed medical examiner (AME) chosen by the parties to resolve various disputed issues in the case. In these represented cases, if the parties cannot agree on an AME, then they are required to use a QME, chosen as we have described above.

There are significant debates about when it is better to use an AME versus a QME in a represented case. Suffice it to say that any strict, black-and-white rule is suspect. There are times when an AME would be appropriate and times when one would not be appropriate.

First, please briefly understand the less-than-ideal realities of how QMEs obtain that label and the shortcomings of that process. We mentioned earlier that there is a written test that needs to be passed. Over the last 5+ years since the reform legislation of SB 899 came into effect, the number of California doctors certified as QMEs has fallen a great deal. That means the pool of remaining doctors is smaller and if the doctor is poor at the task, we still see him more frequently on panels for various cases.

The list of QME doctors and the three doctor panels we get include great many doctors who we don't know and who may do a small amount of workers' comp treatment and certainly don't do a large amount of workers' compensation evaluations. The fewer cases they evaluate, the greater the chances that they are not going to provide a less than competent report. It is the rare case where a panel QME writes a report which is complete, which shows understanding of the law, for example, particularly on subjects like apportionment of disability between injuries and nonindustrial causes in which accurately describes an applicant's disability.

These QME shortcomings cut both ways. A QME may be very liberal and come up with a rating which is off the charts and not in accord with the rating schedule. By the same token, a QME may be very conservative and come up with a tiny rating which is not going in accord with the schedule either. Better QME reports come in from the doctors who are experienced in compensation evaluation, but that is not the majority of doctors on the QME lists. When you

get an inadequate report from a QME, this frequently leads to further litigation, with the employer/third-party administrator/defense attorney wanting to challenge the over-the-top rating or the applicant appearing before a judge, if unrepresented, with the judge seriously questioning the very conservative, stingy report and advising these workers to see a Board information and assistance officer to protect their rights and, even more so, urging them to obtain an attorney to challenge a tiny rating and the poor, conservative report.

What about agreed medical examiners?

This is not an easy question to answer. There are times when AMEs make a great deal of sense and times when they don't. There is no set rule of when it's worthwhile to use an AME and when it's terrible to do so. Every experienced attorney in comp has a list of doctors to use as AMEs and also has a separate list of favorite evaluators who are either substantially more liberal or substantially more conservative they like to use, depending on their tendencies. This is an important point when an applicant's attorney is dealing with a claims adjuster for a carrier or TPA after an application has been filed, but while the case is being handled in-house, ostensibly to save money. This is a serious danger point because applicant's attorneys will seemingly innocently throw out the names of one or two of their personal favorites i their list of AMEs and the claims examiner may unfortunately choose one of these physicians, to the complete detriment of the case. Once you have that AME in the case, by and large, you are stuck, though, once a defense attorney gets the case, he or she can certainly set depositions and request supplemental reports to clear up what the AME has already done to you. I have more than my share of these cases where claims people were preyed on by applicants' attorney and made bad AME choices.

Once that happens, that claims examiner is likely to get gun-shy and so develops absolute rules that they will never used an AME. They do that because they don't want to be held responsible for choosing a bad AME. However, going to a bad QME panel can lead an equally repugnant or worse result. The only advantage the claims person has in taking this absolute position is that they had no choice over the randomly-produced panel and was left to select the best of three potentially bad or unknown choices and they

therefore can wash their hands of the negative results. This passive resistance is not a good answer either.

Getting back to experienced attorneys, we all develop relationships with experienced evaluating doctors, many of them performing as AMEs. That largely happens because we depose the doctors and also occasionally meet them at professional conferences. Everybody's list of AMEs is different. There are doctors I may use because I think he or she is going to pay a bit more attention to what I'm asking for than someone I don't know. Another attorney in our office may have a significantly different list of doctors, who they have made personal contact with and feel they can depend on as being closer to fair. These lists of doctors are not particularly long and they don't work in every case for every attorney. They may work in specific cases for specific attorneys. That's the most realistic statement we can make.

What I am urging is that the use of AMEs should be left to attorneys. That means, when a case gets to a point where it needs a med-legal evaluator, a defense attorney should be on the case and not later after the proverbial horse has escaped the barn. For example, attorneys know which AMEs may be partial to which attorneys or offices on the other side. With that knowledge, we won't agree to that doctor as an AME with that particular attorney or his office.

Strategy issues aside, an AME frequently takes the place of a judge in the case. That is not all bad, given the fact that judges tend to follow a liberal bent as they are trained to be per the liberal construction statute, Labor Code section 3202.Thus, an AME may be preferable to such a judge.

There may be instances where we want an AME to make a judgment about whether an injury occurred. For example, if we have a psychiatric case where there is strong factual evidence that the applicant was not unreasonably stressed-out by his supervisors but was disciplined for poor performance or bad behavior, we might well be willing to use a particular AME who pays attention to the facts in a case (many do not). Or if we have an accepted back injury with a strong history of pre-existing injuries and symptoms, we might prefer an AME who has a tendency to be unafraid to make apportionment determinations to make the necessary apportionment, which a QME might miss or botch up the issue. As a last more concrete example, if an applicant's

attorney requests a panel of pain management physicians on the case, the results are almost uniformly going to be bad. In our view, those physicians are not even-handed and are very pro-applicant and pro- drug use. If that is so, then trying to go to an AME in an allied field like orthopedics or neurology may be a preferable course of action.

We state all of the above with some significant warnings. We have an imperfect evaluation system, an imperfect, ambiguous rating schedule which has had holes shot through it by cases over the last several years and a set of judges who tend toward a generous, liberal approach to their cases and to injured workers.

Right now, the unfortunate reality is that it is the exceptional case that should be tried. Sometimes we are forced to try cases we would prefer not to. We certainly are not going to shy away from that simply because applicant's attorneys can attempt to manipulate the system just so far. If we don't get what is appropriate at the trial level, we at least have a fighting chance of getting it at the Board on appeal or perhaps at the Court of Appeal.

Apart from there being a delicate balancing in the possible use of an effective AME, we have the absurd spectacle of QME physicians who are not adept at preparing fair and reasonable reports supported by evidence, whichever way that evidence points. The reports are just bad and that poor quality leads to more litigation.

Hopefully the above has not been overly-confusing. The question is a complex one and the process of defending employers and carriers is fraught with pitfalls that we do our best to avoid. At the very least, understand that there are pitfalls both in using qualified medical evaluators and agreed medical evaluators.

Lastly, this is a fairly truncated discussion about the medical-legal evaluation process in California. If you want more detail, we can provide it in person at your convenience.

Thank you.
--Barry Lesch, Laughlin, Falbo, Levy & Moresi, Oakland

Attachment C

--Barry M. Lesch

Attachment C