

# Mapping The Maze Of SIIS

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prepared for  
**Nevada Policy Research Institute**  
by Lynn B. Grandlund

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# News

NEVADA POLICY RESEARCH INSTITUTE

P.O. BOX 20312  
RENO, NEVADA 89515-0312  
702-786-9600

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Contact: Judy Cresanta  
or Lynn Grandlund  
702/786/9600  
Fax/786/9604

## SIIS linked to Sensible Health Care Reform

A \$2.2 billion unfunded liability currently exists in the Nevada State Industrial Insurance System, according to the insurance commissioner's recent audit. Over the last five years, expenditures for physical therapy have increased by 300 percent; vocational rehabilitation expenditures by 400 percent, medical disbursements by 400 percent and lost time compensation by 450 percent. How did Nevada get into this "fix"?

Nevada Policy Research Institute has completed a study entitled "Mapping the Maze of SIIS." A companion study to "Nevada's Health: Options for Nevada's Working Uninsured," NPRI demonstrates the inextricable link between health care reform and SIIS reform. NPRI analyzes the seven government agencies which contribute to inefficient claims management and benefit delivery, diffuse and overlapping control, waste, and operational inefficiency.

Nevada Policy Research Institute recommends that Medical Savings Accounts be instituted to lower health care administrative costs, offer maximum choice to the health care consumer, emphasize individual responsibility for worker safety and life style choices, and move government out of the realm of insurance provider.

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# EXECUTIVE SUMMARY

## "Mapping the Maze of SIIS"

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- **A \$2.2 billion unfunded liability currently exists in the State Industrial Insurance System, according to the insurance commissioner's recent audit.**
  - **Over the last five years medical expenditures have risen an astounding 300-450 percent.**
  - **Since by statute, private insurance carriers are not allowed to write coverage in Nevada, SIIS can rightly be termed a government monopoly.**
  - **Reforms for SIIS must be linked to health care reform. Nevada Policy Research Institute recommends that Medical Savings Accounts be instituted to lower health care administrative costs, offer maximum choice to the health care consumer, emphasize individual responsibility for worker safety, and move government out of the realm of insurance provider.**
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- SIIS reforms to streamline the benefit delivery system should not be limited to SIIS alone. At least seven other agencies directly affect SIIS determinations, in addition to the medical and legal communities, employers and injured workers, and organized labor.
  - SIIS is structured to be "no-fault" to avoid blame and therefore the possibility of expensive litigation. In return for ignoring responsibility for accidents, workers are guaranteed immediate medical attention and wage benefits. Unfortunately, over time, litigation has invaded the workers' compensation program because the benefits have provided strong incentives.
  - The result of no-fault insurance has been a systematic redistribution of income. Income has been redistributed from responsible employer and employees to irresponsible ones, and less risky business firms to those which are more risky. This in turn, has reduced both profits and wages and increased unemployment.

- Problems identified aside from the multi-agency overlap:
  - Nevada's permanent partial disability payments are among the highest in the nation,
  - Increased costs make it more difficult for small businesses to survive,
  - Many entry points for fraud and abuse,
  - Statutes and administrative codes relating to the Workman's Compensation System are often liberally construed in favor of the injured worker,
  - Employers do not comply with safety standards.
  
- Recommendations have been offered in each of the above problematic areas.

**Nevada Policy Research Institute recommends that its study on "Nevada's Health: Options for Nevada's Working Uninsured" be used as a companion to "Mapping the Maze of SIIS".**

## INTRODUCTION

Recent reports in the media have alerted the public to explosive increases in the unfunded liability of the Workers' Compensation System (WCS) in the state of Nevada. This liability, in excess of \$2,000,000,000, is a direct result of runaway growth in medical expenses and disability payments disbursed in the past few years.<sup>1</sup>

All the agencies which administrate the WCS are funded by premiums paid by policy holders of the State Industrial Insurance System (SIIS), by assessments to all self-insured employers, and by premiums which impact the price of all goods and services sold in the state of Nevada.

The Workers' Compensation system is failing not only the employers and employees it was designed to serve, but it is failing the consumer as well.

## BACKGROUND

According to a recent article in *Nation's Business*, the first permanent Worker's compensation law was enacted in Wisconsin in 1911. By 1949, all fifty states, and the District of Columbia, had established similar systems. Today, the Worker's Compensation System as a whole continues to function as fifty separate state operations.<sup>2</sup>

The Nevada Industrial Insurance Act, referred to as NRS Chapter 616, was passed in 1913. The purpose of this act was threefold: first, to provide medical benefits to injured workers while they recovered from industrial injuries; second, to return them to work as soon as possible; and, third, to relieve employers of any legal liability relative to recovery of damages resulting from industrial injuries.

Since 1913, there have been numerous changes to the Worker's Compensation System in the state of Nevada. Originally the WCS was established and called the Nevada Industrial Commission, overseen by three Commissioners: one representative from labor, one representative from management, and one who acted as chairman. The NIC commissioners acted as a hearing panel, as well as a policy making board for the day to day administration of the system. However, in 1981 the Legislature adopted the present State Industrial Insurance System (SIIS) in an effort to decentralize WCS, establishing other agencies within the state to oversee it.<sup>3</sup>

## HOW DID WE GET THERE FROM HERE?

According to the insurance Commissioner's audit, SIIS currently has a deficit of approximately \$2.2 billion dollars. The question which now must be addressed is, "How did

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<sup>1</sup> This figure comes from the Insurance Commissioner's audit which was based upon so-called statutory accounting principles (SAP). The SIIS figure of \$1.4 billion was obtained using generally accepted accounting principles (GAAP). The State Accounting Procedures Law states that government agencies should use the GAAP accounting principles. NRS 353.293, 353.3245. The data on SAP versus GAAP is provided for your information. Obviously, under either scenario the unfunded liability is extremely high.

<sup>2</sup> *Nation's Business*, U.S. Chamber of Commerce, Workers Compensation Out of Control, July 1992.

<sup>3</sup> DIR and some of the other agencies came into existence in 1982.

we get here?" This question can be answered in part by simply looking at expenditures paid out by SIIS in the last five years.

Figure 1 --  
Comparison of Medical Expenditures -- 1988 and 1990

<u>SERVICE</u>	<u>1988</u>	<u>1990</u>	<u>APPROX. % INCREASE</u>
Physical Therapy	\$5,000,799	\$18,467,000	300%
Voc. Rehabilitation	\$15,047,000	\$75,500,000	400%
Med. Disbursements	\$34,000,000	\$164,000,000	400%
Lost Time Comp.	\$51,000,000	\$274,000,000	450%

It is the premise of this paper that SIIS alone is not responsible for such hyperinflationary expenditures in the past few years. Rather SIIS, and a maze of other governmental and private agencies and groups are contributing to the demise of the Nevada Worker's Compensation System.

#### **SIIS: A GOVERNMENT MONOPOLY**

Because, by statute, private insurance carriers are not allowed to write coverage in Nevada, SIIS can rightly be called a government monopoly.

Although one solution would be to allow private insurance companies to come into the state, thus opening Workers' Compensation to competition, at this time many private carriers have either completely ceased to write Workers' Compensation policies, or are withdrawing from many of the states in which they have previously written these policies. This exodus from Workers' Compensation insurance is a result of the fact that Workers' Compensation is no longer a profitable endeavor for the insurance provider.

#### **MAPPING THE MAZE**

SIIS has proposed basic changes to deal with the current crisis. These include better claim management, consolidation of control, cost containment, improved benefit delivery, and enhanced operational efficiency. SIIS is attempting to revamp and to streamline the benefit delivery system. However, this is a situation that cannot be rectified by one entity. Too often SIIS makes determinations which are in accordance with the current Nevada Revised Statutes and Nevada Administrative Code, only to be overruled by other departments within the state government.

There are a number of other state agencies, including SIIS, that have a direct impact upon WCS. This is a systemwide problem. Blame for such massive cost increases, and for such a huge deficit, lies with all of the following groups:

1. The State Industrial Insurance System
2. The Department of Administration
3. The Department of Insurance
4. The Department of Industrial Relations

5. The Supreme Court of the state of Nevada
6. The Division of Industrial Insurance Regulation
7. The Nevada Attorneys for Injured Workers
8. The medical community
9. The legal community
10. The employers
11. Injured Workers

#### **THE STATE INDUSTRIAL INSURANCE SYSTEM (SIIS)**

SIIS is run by a Board of Directors made up of seven individuals appointed by the Governor of Nevada. Three of the directors represent management, two of which, according to statute, must represent major policyholders. Three of the directors represent organized labor. The one remaining director represents the public at large.

The Board of Directors is the policy setting body for SIIS. However, two other departments can also affect, and in some cases overrule, policies instituted by SIIS: The Department of Administration, and the Department of Insurance.

#### **DEPARTMENT OF ADMINISTRATION**

The Department of Administration falls under the direction of the state of Nevada Budget Director. This department consists of two levels: the Hearing Officer level, and the Appeals Officer level.

Contested SIIS rulings are passed on to the Department of Administration, Hearing Division for further appeals. The Hearing Officers and Appeals Officers both have the authority to overturn SIIS decisions related to compensation for the injured employee.

#### **HEARING OFFICER LEVEL**

The Hearing Officer Level consists of state classified personnel who may or may not be attorneys. The hearing officers have an in-depth knowledge of workers' compensation, with a background in either claims examination or vocational rehabilitation. They also have in-depth knowledge of Nevada statutes and administrative codes. This background enhances their knowledge of WCS in the state of Nevada.

At this level the hearing process is meant to be informal both for the employer and for the injured worker. However, the increased involvement of private claimant attorneys is now making this process more formal, and therefore more expensive.

#### **APPEALS OFFICER LEVEL**

The more formal and established record hearing is at the Appeals Officer Level. Appeals officers must be attorneys licensed in the state of Nevada, and, for the most part, have had experience in the workers' compensation area. Appeals officers are appointed by the Governor. Although there is a senior appeals officer, it appears that this senior officer has

little control over the decisions and actions of the appeals officers.<sup>4</sup>

The Supreme Court doctrine of "liberal construction" causes Appeals Officers to liberally interpret the law in favor of the injured worker. Because of this, employers have expressed the feeling that it is next to impossible for their position to prevail at this level.

## DEPARTMENT OF INSURANCE

The Department of Insurance is overseen by the Commissioner of Insurance. This department impacts SIIS in a number of ways. First, the Commissioner of Insurance has final authority as to what rates will be paid by policyholders. Where the General Manager of SIIS can make recommendations that premiums paid by policyholders are to be raised, the Commissioner of Insurance holds hearings on these rate changes, and can ultimately order that the rates be lowered.

The Department of Insurance also decides whether or not an employer can be classified as "self-insured." The 1974 ERISA<sup>5</sup> made self-insured plans exempt from all state laws pertaining to insurance, including premium tax laws. Therefore, self-insured employers avoid state mandates and premium taxes. Because most self-insured employers are large companies, the burden of higher premium taxes falls on small employers, who in turn are being forced out of business partly because of the costs of these SIIS premiums.<sup>6</sup>

## DEPARTMENT OF INDUSTRIAL RELATIONS

The Department of Industrial Relations consists of the following divisions that have a direct impact on WCS in Nevada:

1. Division of Industrial Insurance Regulation
2. Division of Preventative Safety
3. Division of Occupational Safety and Health

## DIVISION OF INDUSTRIAL INSURANCE REGULATION

The Division of Industrial Insurance Regulation is the regulatory arm of the WCS. This division regulates not only the self-insured employer, but also SIIS. The Division of Industrial Insurance Regulation is mandated to insure that all of the components of the WCS adhere to existing statutes and administrative codes. According to the AB1 Audit, these regulatory responsibilities were not being performed adequately. As a result, a new Administrator is in place who has begun to make significant changes in the auditing and fining practices.

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<sup>4</sup> In the 1991 Legislative Council Bureau audit the statistics showed that the insurer was upheld 72% of the time at the hearing officer level. While no doubt the percentage is somewhat smaller at the next level, on going review of all Appeals Officer decisions where the system is reversed indicates a higher number of cases won than lost.

<sup>5</sup> Newt Gingrich, "A Necessary Revolution in Health Care," Address given to the American Hospital Association, January 1992.

<sup>6</sup> Cresanta, Judy, Ludke, Jill B., "Nevada's Health-An Analysis of Health Care Options for Nevada's Working Uninsured," Nevada Policy Research Institute, 1993.



## **DIVISION OF PREVENTATIVE SAFETY**

The Division of Preventative Safety is a new division that was mandated at the 1991 Legislative Session in a bill known as SB7. This division was established for two reasons: first, to assist employers in providing a safe work environment for their employees, and second, to compile a list of the top twenty percent of employers who are driving up premium costs for the other eighty percent.

Although the Division of Preventative Safety has attempted to fulfill these mandates, it is still falling far short of these goals. Rather than reducing costs to policyholders, this division has actually increased those costs by contracting out many of the programs they were mandated to establish. Many of the programs which were contracted out could have been serviced by the Loss Control section within SIIS.

## **DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

The Division of Occupational Safety and Health's role is to provide support services and assistance to policy holders. However, they have also given policyholders the impression that their role goes beyond that of mere assistance. Because of this, many policyholders often turn their responsibilities and problems over to this division, making them liable for serious finable offenses.

## **THE SUPREME COURT OF THE STATE OF NEVADA**

The decisions rendered by the Nevada State Supreme Court in the last several years have contributed greatly to the demise of, and problems within, the Nevada WCS.

One of the most devastating decisions was that in which the Supreme Court stated that the workers' compensation statutes will be "liberally construed in favor of the injured worker," thereby allowing for great latitude in the interpretation of the law, rather than encouraging strict adherence to the letter of the law. This decision alone has had a tremendous impact on the existing SIIS crisis, causing the Hearing and Appeals Division officers to find generously for the employee and award higher benefits than may have been warranted if the case were interpreted with more strict adherence to the letter of the law.

## **NEVADA ATTORNEYS FOR INJURED WORKERS**

The Nevada Attorneys for Injured Workers used to be referred to as the State Industrial Claimants Attorneys. This agency is also funded by the policy holders, with assessments from self-insured employers as well. The Nevada Attorneys for Injured Workers offer services to the injured worker free of charge, and they do not take any portion of the claimants' benefits, regardless of the amount of litigation that is done.

In some systems, like that in the state of California, private attorneys who represent claimants are paid directly by the insurer if the attorney prevails in the case. As a result, even though the percent fee is relatively low, (9-12%), the aggregate amount of attorneys fees paid in a California-type system runs into the hundreds of millions of dollars. The existence of the NAIW office, on the other hand, helps control litigation costs because it is not profit driven. Within the existing system, the NAIW has no reason to pursue litigation or take cases, because there is no fee involved.

Although the NAIW office provides a valuable service in reducing the amount of

litigation, it should be noted that, because this office is paid for by the employers, this requires them to fund the legal services for their opponent, namely the injured worker. Further, since it doesn't cost the injured worker anything to litigate, there may be instances where marginal appeals are taken to hearing that might not otherwise get that far if the worker had to pay to hire an attorney.<sup>7</sup>

### THE MEDICAL COMMUNITY

Statistics given earlier in this paper (see Figure 1) illustrate the dramatic increases in costs of medical treatment, physical therapy and chiropractic care over the last few years. When a WCS treatment plan is compared to the treatment recommended by any other medical plan, the treatment, diagnostic testing, and manipulations for the WCS plan are significantly higher.<sup>8</sup> NOTE -- LAS VEGAS, NEVADA HAS BEEN TARGETED AS ONE OF ELEVEN CITIES IN THE NATION TO WHICH THE FBI HAS SENT TASK FORCES TO INVESTIGATE MEDICAL FRAUD.

### THE LEGAL COMMUNITY

The increased involvement in the WCS by the legal community in the last few years has added to the increase in costs to SIIS. Due to the complexity of many cases, it is sometimes necessary for injured workers to have legal counsel to assist them in receiving benefits due them. However, the amount of litigation has added to the cost of the overall program. Many times injured workers' claims are processed through SIIS with no problems. There is no litigation involved, and yet the attorneys sometimes take approximately one third of what the legitimately injured worker has been awarded.<sup>9</sup>

Some of the successful reforms implemented by other states have included the capping of attorneys' fees, thereby limiting the amount of money an attorney can receive from an injured worker's award. In the state of Nevada, due to the influence of the Nevada Trial Lawyers Association, and the money it contributes to political campaigns, it does not appear that the 1993 Legislative Session will address the issue of capping lawyers' fees.

### THE EMPLOYER

There are many employers in the state of Nevada who have initiated, and continue to, refine safety programs which provide many safety initiatives and strict safety training. There are also many employers that have not provided a safe work environment, have provided no safety initiatives to their workers, and have in fact increased the problems which exist in the Nevada WCS.

First, there are numerous employers throughout the state that are in violation of existing statutes by not having State Industrial Insurance policies. As a result, all employers

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<sup>7</sup> The 1993 legislature had proposed to abolish the NAIW. That proposal was recently withdrawn.

<sup>8</sup> A study done in Minnesota compared the cost of similar injuries that were treated under WCS and those treated under regular health care. Except for very straightforward injuries, such as broken bones, the cost of treating the same injury under a worker's compensation program was significantly higher than treatment for the same injury that happened at home.

<sup>9</sup> Some legal fees go as high as 50% in civil cases which are appealed beyond the third level. A normal fee schedule in a civil suit is one-third if settled before trial, 40% after trial and 50% after appeal.

in the state who are within the SIIS are assessed a fee to provide for the uninsured employers' relief fund. These employers are paying for the medical treatment of injured workers whose employers are uninsured.

Second, to further compound the problem, out-of-state contractors are allowed to work in the state and bring in out-of-state workers. These employers are required to either qualify as self-insured or to pay SIIS premiums. However, those who choose not to comply with the law are often not detected, so the premiums go unpaid. This has created a burden for Nevada contractors who have to place higher bids to comply with the costs of Nevada SIIS premiums.<sup>10</sup>

### **ORGANIZED LABOR**

Some argue that organized labor has played too viable a role in determining increased benefits. Their visibility as members of the Board of Directors cannot be denied.

While organized labor has certainly played a role over the years in increasing benefits, there have not been any significant new benefits or increases in existing benefits in the last five years. The only exception has been some limited increases in payments to permanently and totally disabled people. Under NRS 616.027, the average monthly wage which is used as the basis for calculating workers' comp benefits automatically increases each year. Over the last decade the average increase has been about four to five percent a year. Additionally, the medical fee schedule which sets the reimbursement to medical providers for services to injured workers has been increased annually at a rate somewhere in the neighborhood of six to seven percent under NRS 616.412. Labor has had no direct role in these increases. Rather, they were built into the statues a number of years ago and their impact has been automatic ever since then.

### **INJURED WORKERS**

Employees are also responsible for spiralling costs to the SIIS. Employers who contribute premiums to pay for WCS expect, and receive, first class medical treatment for their injured employees. Often, injured workers contribute to the abuse of SIIS when they do not comply with their medical treatment, and do not make every effort at rehabilitation in order to return to the work force as soon as possible.

Employees have a responsibility to point out unsafe equipment and unsafe working conditions to the employer. They also have a responsibility to step forward and bring any fraudulent claims to the attention of employers.

The attitude that "it is not costing anyone anything" reflects the lack of understanding of a system where even those who are drawing workers' compensation are helping to finance the cost of SIIS with every purchase of goods and services within the state of Nevada.

### **MISCELLANEOUS CONSIDERATIONS**

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<sup>10</sup> NRS 616.260 was amended in 1989 to require all out-of-state contractors to either qualify as a self-insured or purchase SIIS coverage on any project that exceeded \$250,000. AB 205 was recently introduced which would remove even the limited \$250,000 exception. Testimony on that bill, indicated that the problem is not so much that out-of-state contractors can purchase cheaper insurance in their home states and have it recognized in Nevada. But, there seems to be a lack of detection and enforcement when those out-of-state contractors are working on projects in Nevada without obtaining Nevada coverage.

## FRAUD

Fraud is defined in Webster's dictionary as "intentional misrepresentation of the truth in order to induce another to part with something of value or to surrender a legal right."<sup>11</sup> Employers defraud the state in two ways: first, by not having a State Industrial Insurance System policy in accordance with the Nevada Revised Statute. In this way, they make use of WCS funds and services at the expense of other employers who are policy holders. Second, they defraud the system by paying cash under the table to their employees in order to reduce their reportable payroll, thereby reducing the amount of their premiums.

Again, every policy holder, and every consumer in the state of Nevada has to pay for this activity.

## THE PROBLEM WITH NO-FAULT

SIIS is a no-fault insurance system. The basic purpose of no-fault insurance is to reduce litigation costs. In a no-fault scenario, if two individuals are involved in an accident, neither party will be assigned blame for the accident, with the expectation that there will be no dispute to be resolved in court. Under "No Fault" we are again looking at a philosophical issue.

Although this type of arrangement is attractive, it is not without cost. An individual who knows that he or she will not be held responsible for his or her actions, will have less incentive to act in a responsible manner. The implications for the work environment are obvious. The employer who is not penalized for negligence has less incentive to provide a safe work environment for his workers. The employee who is not held accountable for compliance with existing standards and procedures will have less incentive to comply with those standards and procedures.

To address these issues, the 1991 Legislature passed Bill SB7 which established very strict guidelines for all employers to provide a safe work environment. Built into the Bill were incentives for compliance. However, lacking in the bill were any provisions which required the *employee* to act in a responsible manner. This placed all the burden on the employer, without providing them any way in which to enforce restrictions on employees who chose not to follow safety policies and procedures. For this reason NRS 616.655 was established.

Before the first workers' compensation programs originated in Europe in the 1880's, workers had to sue their employers at law in order to get any reimbursement. This was a long process and frequently the worker economically was not in a position to institute a lawsuit or be able to support himself until the successful conclusion of court action. If, however, the injured worker could successfully bring a lawsuit, they were entitled to much higher damages than they are now entitled to under workers' compensation programs. This is due to wage benefits capped under workers' compensation systems and no awards for pain and suffering. These are the two elements that usually result in the very high verdicts in personal injury cases. Workers' compensation was designed to be a compromise. In return for ignoring who was responsible for the accident, the worker would get immediate medical care and wage benefits and the employer would get protection from excessively large

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<sup>11</sup> Webster, Daniel. Webster's Seventh New Collegiate Dictionary. Springfield, Massachusetts, 1961.

judgments when the employer was at fault. By removing fault from consideration, there would not need to be litigation to determine whether someone should receive benefits. Unfortunately, over time, litigation has invaded the workers' compensation program because the benefits have provided incentive for litigation.

NRS 616.665 subparagraph 3 states:

"If the safeguard or protection is removed from the workman himself, or with his consent is removed by any of his fellow workmen, unless done by order or direction of the employer or superintendent or foreman of the employer, the compensation of the injured worker. . . must be reduced 25%."

Oddly, there has been great reluctance on the part of the WCS administration to enforce this particular statute and, further, when the SIIS has enforced this statute, The Department of Administration has overruled their determination.

The result of no-fault insurance has been a systematic redistribution of income. Income has been redistributed from responsible employers and employees to irresponsible ones, and from less risky business firms to those which are more risky. This, in turn, has reduced both profits and wages and increased unemployment.

#### **AMERICANS WITH DISABILITIES ACT (ADA)**

ADA prohibits employers from discriminating against disabled employees, even if the job in question could jeopardize the disabled person's health or safety, or could exacerbate an earlier Workers' Compensation injury. The ADA also bars an employer from asking about a job applicant's Worker's Compensation claims history before making a conditional offer of employment. The law does, however, allow employers to make post-offer inquiries about a person's Workers Compensation history as part of a medical examination or as part of an inquiry administered to all applicants in the same job category.

This act alone is expected to have major repercussions on employers' Worker's Compensation programs.<sup>12</sup> Among other things, the ADA effects how employers screen job applicants, return injured employees to the job, and settle some Workers' Compensation claims.

The Equal Employment Opportunities Commission acknowledges that the ADA has the potential to create legal problems for employers because it supersedes any state Workers' Compensation laws which conflict with it.<sup>13</sup>

#### **RECOMMENDATIONS**

Speaking at the tort and insurance practice section during the American Bar Association meeting in San Francisco, Mr. Roger S. Lawson, President of the Alliance of American Insurers stated the following,

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<sup>12</sup> "Americans With Disabilities Act of 1990," PL 101-336, 26 July 1990), *United States Statutes at Large* vol. 104, pp. 327-378.

<sup>13</sup> *Ibid.*

"This is definitely not the best of times for the worker's compensation insurance industry. . . . Perhaps at no other time since its creation has the future of the private industry been marked by such uncertainty. . . . Not only is the private markets franchise in jeopardy, but real questions are being asked by insurers about whether this franchise has any ongoing value."

Mr. Lawson went on to state that the business community is faced with skyrocketing costs of insurance protection, demonstrated by a 57.5 percent increase in premiums from 1985 to 1990, and an increase of over 400 percent from 1975 to 1990.

Six fundamental challenges that must be addressed if health and vitality are to be restored to the Worker's Compensation System nationwide are:

1. medical care cost containment
2. reduction of claimant fraud
3. reduced litigation and lawyer involvement in the claim process
4. improved administration of the system
5. indemnity benefits in scope of compensability control
6. de-politicization of the rate making process<sup>14</sup>

The following is a summary of problems with the SIIS and WCS in the state of Nevada, and recommendations as to how these problems might be addressed:

#### **Problems and Recommendations**

1. **Problem --** Spiraling health care expenses.  
**Recommendation --** MEDICAL SAVINGS ACCOUNTS

It is not within the scope of this paper to propose solutions for all the problems in government and in the private sector which have contributed to the demise of the Nevada Worker's Compensation System as it exists today. However, one innovative approach goes far to reducing costs both for government and private citizens, while greatly simplifying a completely unwieldy system. This plan, the Health and Wellness Savings Plan (also known as the Medical Savings Account) is the creation of Patrick Rooney, Chairman of the Board of Golden Rule Insurance Company. The MSA plan is currently being examined by the Health Care Finance Administration for national application. Its state level applications are obvious.

The following is a brief description of the Medical Savings Account (MSA) plan. Currently, many employers in the United States pay about \$4500 for an insurance policy that covers a worker and his or her family. The deductible for these policies is usually somewhere between \$100 and \$200. With an MSA the employer would provide catastrophic insurance coverage for each employer. Further, in January of each year the employer would deposit \$2000-\$3000 into an MSA for each employee. This would mean an immediate

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<sup>14</sup> Lawson, Roger S., "Nations Worker's Compensation Woes Creating Chaos for Business," *National Underwriters Property and Casualty/Risk and Benefits*, Management's Edition, September 28, 1992, pp. 80.

savings to the employer of \$1500 to \$2000. The savings account would belong to the individual employee who would draw from it to cover medical expenses. In the event that MSA money were depleted, the catastrophic insurance policy would take over coverage. Any money remaining in the account at the end of the year could be withdrawn by the employee from the account as a year end bonus, or rolled over to a savings account or IRA and accumulated over several years. From an insurance standpoint, it is estimated that administrative savings alone would pay for the program.

The advantages are obvious --

-- *The MSA will not cost the government anything.*

In fact, as is evident with the SIIS debacle, it would lead to substantial savings to the state to have medical coverage handled strictly between the employer and employee.

-- *The MSA will reduce employers' expenses.*

With MSAs, escalating increases in insurance premiums would stop.

-- *The MSA will not cost the employee anything.*

Deductibles and co-payments would no longer exist since the MSA would cover them.

-- *The MSA provides incentives to prevent disease and injury.*

Since money not spent stays with the employee, family and individual health can be translated over time in tangible ways. Over 20-25 years a sizable nest-egg could be accumulated to be used at the employee's discretion.

--*The MSA would greatly reduce paperwork for both insurance companies and doctors.*

Currently, 70% of health care spending occurs in the first \$3000. All medical procedures that cost less would become over-the-counter transactions paid for by the employee out of his or her own Medical Savings Account.

Critics of this plan say that it is too dependent on the federal government to change current tax law so that people can deduct their health care expenses from their taxes, a privilege which currently exists only for business. However, several bills now before Congress incorporate this concept into law, and are sponsored by a bipartisan group of legislators.

The following is a comparison of the major health care reform proposals currently being

considered by the Senate:

Figure 2 --  
Comparison of Major Health Care Reform Proposals

	PRIVATE		MANDATED EMPLOYER	NATIONAL HEALTH INS.
	MSA	Senator John Chaffey	Senator George Mitchell	Senator Bob Kerrey
NEW TAXES:	<i>none</i>	<i>\$150 billion over 5 years</i>	<i>\$6 billion first year</i>	<i>\$246 billion first year</i>
MAJOR SOURCE:	<i>current health insurance premiums</i>	<i>not specified</i>	<i>payroll tax</i>	<i>5% payroll tax; excise taxes; increased taxes on personal, corporate, Soc. Security income</i>
DEDUCTIBLES:	<i>none</i>	<i>not specified</i>	<i>individual \$250 family \$500</i>	<i>Individual \$100 family over 2 \$300</i>
CO-PAYMENT:	<i>none</i>	<i>not specified</i>	<i>Acute 20%</i>	<i>Acute 20% Physician visit, \$5 illness LTC 80% of Soc. Sec. benefits</i>
CAP ON PERSONAL OUT-OF-POCKET EXPENSES:	<i>\$3000 (Paid for out of MSA)</i>	<i>not specified</i>	<i>\$3000</i>	<i>Individual \$1000 Family/2 \$1500 Family/3 or more \$2000</i>
OUTPATIENT:	<i>yes</i>	<i>no</i>	<i>no</i>	<i>yes</i>

2.

Problem --

Spiralling costs in the workers' compensation area.

Recommendation --

Several states, among them Connecticut, Michigan, Oregon and Massachusetts have



succeeded in keeping down workers' compensation costs. They have instituted the following measures:

- a. medical savings accounts
- b. preferred provider networks
- c. case management
- d. utilization review
- e. bill audits

3.       **Problem --**           Spiralling costs of permanent partial disability payments (PPD)
- Recommendation --** Soft tissue injuries -- no PPD award, since soft tissue injuries result in no permanent damage. Serious injuries - Adjust current PPD award formulae to be more in line with towards in the rest of the country.

NOTE -- NEVADA'S PPD AWARDS ARE CURRENTLY AMONG THE HIGHEST IN THE NATION.

4.       **Problem --**           Businesses are no longer able to operate because of the skyrocketing costs of the WCS in the state of Nevada.
- Recommendation --** a. restructure the WCS to reduce the amount of litigation in the claims settlement process
- b. create and maintain strongly administered, professionally staffed administrative agencies with funding commensurate with their scope of responsibilities.
- c. revisit judgements concerning benefits levels to assess whether they have pushed the envelope of affordability beyond acceptable levels.
5.       **Problem --**           The WCS in the state of Nevada has become nothing more than a political arena.
- Recommendations --** Remove politics from the WCS arena, and make the principal parties involved, employers and injured workers, the only concern of the political community.
6.       **Problem --**           The existence of fraud within the WCS system.
- Recommendation --** Pursue and aggressively prosecute perpetrators of fraud, whether they be employers, injured workers, the medical or the legal communities.
7.       **Problem --**           The statutes and administrative codes relating to the WCS are often liberally construed in favor of the injured worker.

**Recommendation --** The Supreme Court decision that the law be "liberally construed in favor of the employee" must be reevaluated to allow attorneys to provide more equal protection both for employers and injured employees.

8. **Problem --** Employees often do not comply with safety standards and procedures put in place by employers.

**Recommendation --** Hold employee accountable and finable for injuries sustained as a result of ignoring existing safety standards and procedures.

Enforce NRS 616.655.

### IN CONCLUSION

As the 1993, 67th Legislative Session gets underway in the state of Nevada, lawmakers are faced with the daunting task of once again addressing the beleaguered Worker's Compensation System. The essential characteristics of a Worker's Compensation System have been summarized in Nation's Business:

"When most states adopted Worker's Compensation some 75 years ago, it was designed to be simple: through no-fault insurance, an employer covers medical expenses and lost wages for employees who are injured on the job, until they can get back to work. If the employee is permanently disabled, the benefits continue tax free. Should a worker die in a job related accident, injury or disease, the survivor's receive benefits."

The current Nevada Worker's Compensation System is anything but simple. Because of abuses and mismanagement outlined in this paper, the System is not benefitting the people it was designed to serve, namely the employers and injured employees. Instead, because of rising costs of litigation and of rehabilitative care, premium costs have skyrocketed, placing a burden not only on the employers, but on every consumer in the state of Nevada who subsidizes premiums with every purchase of Nevada goods and services.

In order to save the WCS in the state of Nevada, and to reduce the massive liability SIIS has incurred, the primary areas that must be addressed as follows:

1. Managed care, or medical savings accounts
2. Accountability by all of the agencies previously mentioned
3. Reduction of litigation
4. De-politicization of the entire WCS

Because the state of Nevada is a relatively young state, and small in comparison to the larger industrial states, we have an opportunity to make the Nevada Worker's

Compensation System an example for the entire nation. By reducing premiums assessed to employers and added on to goods and services in the State of Nevada, we also have an opportunity to make Nevada a more attractive place to which businesses and private individuals will want to relocate. NOTE -- SEE APPENDIX A (below) -- SUMMARY OF A TYPICAL COMPENSATION ACT

#### APPENDIX A -- SUMMARY OF A WCS ACT

In the Law of Worker's Compensation, considered the "Bible" of Worker's Compensation, Dr. Arthur Larson provides a summary of a typical compensation act. The typical Workmen's Compensation Act includes the following features:

1. The basic operation principle is that an employee is automatically entitled to certain benefits whenever he suffers a "personal injury by accident arising out of, and in the course of, employment."
2. Negligence and fault are largely immaterial, both in the sense that the employee's contributory negligence does not lessen his rights and in the sense that the employer's complete freedom from fault does not lessen his liability.
3. Coverage is limited to persons having the status of employee, as distinguished from independent contractors.
4. Benefits to the employee include cash wage benefits, usually around one-half to two-thirds of his average weekly wage, and hospital and medical expenses; in death cases, benefits for dependents are provided; arbitrary maximum and minimum limits are ordinarily imposed.
5. The employee and his dependents, in exchange for these modest but assured benefits, give up their common law right to sue the employer for damages for any injury covered by the act.
6. The right remains to sue third persons whose negligence caused the injury.