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Pepperdine University

Graduate School of Education and Psychology

A STUDY OF THE HISTORY AND TRANSFORMATION  
OF THE CALIFORNIA WORKERS' COMPENSATION SYSTEM  
AND THE IMPACT OF THE NEW REFORM LAW: SENATE BILL 899

A dissertation submitted in partial satisfaction  
of the requirements for the degree of  
Doctor of Education in Organizational Leadership

by

Elias Teferi

June, 2010

Michelle Rosensitto, Ed.D. - Dissertation Chairperson

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This dissertation, written by

Elias Teferi

under the guidance of a Faculty Committee and approved by its members, has been submitted to and accepted by the Graduate Faculty in partial fulfillment of the requirements for the degree of

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DEDICATION

To my parents

Mr. Teferi Gezaw Endalamaw

Mrs. Tekelework Getahun Gebre Selassie

For providing an excellent environment for spiritual enrichment, growth, good education,  
and instilling pride, compassion, kindness, and a strong belief in the word of God.

Special dedication to my wife; Elizabeth Hailu Teferi, to my son; Emanuel Abraham  
Teferi, and to my mother in-law; Mrs. Meaza Feleke for their encouragement and  
support.

## ACKNOWLEDGEMENTS

First and foremost, I would like to thank my academic advisor, Dr. Michelle Rosensitto, for her dedication, expertise, compassion, and encouragement throughout my dissertation journey. I am grateful for her willingness to make herself available at all times, and being an extraordinary coach, mentor, with a unique ability to provide guidance while focusing on the task to be accomplished.

I am also grateful to the Members of the Committee, Mr. Thomas Morrow (Attorney at Law) and Dr. Kathleen MacInness, for sacrificing their time, providing excellent feedback, support, flexibility, and guidance, thereby making my journey manageable. A special thanks to Dr. Tom Granoff, for his help with the statistical aspect of this study.

I would also like to thank Dr. Farzin Madjidi for his advice and guidance, so that I could enter the program and be a part of the Pepperdine community.

I would also like to express my deepest gratitude to Mrs. Christie Dailo, an extraordinary person that made my stay at Pepperdine enjoyable. Her ability to listen and take immediate action was superb.

To my professors, the staff at the Irvine and West Los Angeles campus, thank you for making my dissertation journey simpler, and for your assistance when it was needed.

I would also like to thank Mr. Jerald F. Burke, Attorney at Law, of Laughlin, Falbo, Levy and Moresi, for his understanding, compassion, courage, and support.

To my God fearing parents, thank you for instilling pride, self reliance, patriotism, work ethic, compassion, kindness, and a strong belief in God.

Special thanks to Jan Ellis and Ann Johannsen of Tustin Secretarial, for their dedication to the project up to and including its completion.

Most important, I would like to thank the following law firms and their dedicated defense attorneys for their participation and their support. This study could not have been completed without their assistance and due diligence.

Law Offices of:

- 1) Laughlin, Falbo, Levy, Moresi
- 2) Hallett, McCormick, Emrick, Barba and Wells
- 3) Morrow and Morrow
- 4) Pearson, Simon, Warshaw & Penny, LLP
- 5) McDermot and Clawson, LLP
- 6) Sacks and Zolonz
- 7) Wall, McCormick & Baroldi

Finally, I would like to thank our Dean of Students, Dr. Margaret J. Weber, and the President of our University, Dr. Andrew K. Benton, for constantly reminding us about the importance of purpose, service, and leadership.

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## ABSTRACT

The purpose of this study was to determine the perception among defense attorneys regarding the New Reform Law SB899. The study was also to further assess defense's satisfaction with regard to the leadership provided by Governor Schwarzenegger, Senator Poochigian and The Legislature as a whole. Furthermore the study was to assess defense attorneys' readiness to defend the gains afforded following the passage of the reform law.

The sampling procedure for this study is one of the three types of non-probability sampling called Purposeful Sampling. The population for this study includes all defense attorneys who are members of the California State Bar and are currently engaged in defending Workers' Compensation cases in the State of California.

The sample of this study was obtained from defense attorneys who practice in the Southern California Tri-County (Los Angeles, Orange, and San Diego) region. The survey instrument had 34 questions out of which 6 were demographic in nature. Surveys were administered to 110 Defense Attorneys. A total of 31 ( $N = 31$ ) respondents participated for a response rate of 31%.

According to the analysis done on the study the highest mean scores were obtained on questions relating to the concern defense attorneys have regarding the provisions of SB899 that are exposed to serious legal challenges up to and including reversals on appeal ( $M = 4.52$ ).

Concurrently defense attorneys have confirmed their readiness to defend the gains of SB899 and have given high marks ( $M = 4.23$ ) regarding the plan of action for the future that will be to litigate and argue for preservation of the law. Defense attorneys also

strongly agreed that SB899 enjoys broad support amongst California employers, insurance carriers and third party administrators ( $M = 4.06$ ). Their impression regarding the Governor's leadership including Senator Poochigian's was also positive and has drawn moderately high agreement ( $M = 3.58$ ). Participants also have validated the Governor's argument on the detrimental effect of high premiums ( $M = 3.68$ ).

This study provides solid evidence that defense attorneys are concerned about certain aspects of the New Reform Law being reversed on appeal while affirming their commitment to preserve the gains afforded by the same. Their success or failure for preservation of SB899 will without a doubt be closely monitored by all stakeholders.



## Chapter 1: The Problem

The history of California Workers' Compensation Insurance coincides with advanced industrialization in the 18<sup>th</sup>, 19<sup>th</sup>, and 20<sup>th</sup> centuries (UC Berkeley Governmental Studies, 2003a). Most states were not equipped with any organized remedy to compensate employees for their injuries and protect companies from lawsuits.

One of the first states to adopt a more coherent system by enacting laws to deal with workplace injuries was California (UC Berkeley Governmental Studies, 2003b). The compensation Act of 1911 was the beginning of such an effort but did not mandate employers to join. The act was deemed non-compulsory up until the enactment of the Workers' Compensation Insurance Safety Act of 1913, better known as the Boynton Act. The act mandated that employers carry insurance and keep policies in force to protect themselves and compensate injured workers. In exchange, employees would not file any lawsuit against the employer and have to forego pain and suffering and punitive damage claims.

Subsequent to the Boynton Act, the state of California's Constitutional Mandate of 1917 known as the Workers' Compensation Industrial Safety Act was signed into law (UC Berkeley Governmental Studies, 2003a). This particular act was more comprehensive in nature and contained more provisions than the previous act. The act precluded employees from filing civil suits and extends more benefit features to injured workers. The law also deemed an "exclusive remedy" for any work-related injuries and extended solid protection to employers by pre-empting unlimited liability for workplace injuries, including death.

Employers, on the other hand, had to enter into an agreement to cover employees on a no-fault basis and had to provide benefits that were due and owing at the time of injury. Furthermore, the act allowed limitations to compensation specifically for diminished ability to participate in the open market and not intended to make the injured worker whole. The most important provision, however, remains the subsequent economic assistance (i.e., temporary disability, payment, and medical treatment) afforded to employees who have suffered workplace injury or illness.

*Subsequent Significant Reforms Leading to Senate Bill 899*

Following California's constitutional mandate, many years have elapsed without any progressive reforms until the Margolin-Bill Act of 1989 (UC Berkeley Governmental Studies, 2003b). This act was aimed at doctors and medical providers who were identified as major cost drivers to the Workers' Compensation system. Under the reform, doctors faced restrictions in how much they could charge for services.

In 1993, the California legislature passed a compromise bill between employer and organized labor specifically to deal with "fraud" and "stress" claims that had grown exponentially. As a result, the penalties for fraud were raised, and restrictions on psychiatric cases were imposed. In addition, vocational rehabilitation was capped at \$16,000 per worker. Before this bill, vocational rehabilitation benefits had no cap, and injured workers had the right to participate in more than two distinct plans. Other reform bills include SB 30 (The Jonston, D-Stockton), which lifted the restriction on insurance companies governing how much premium they can charge for various risks. The term "open rating" was used to describe this particular phenomenon. As a result, some carriers

were able to charge between 10 to 15% less, which gave employers a huge relief. Employers were able to save billions of dollars in premium costs, which boosted their bottom line and indirectly helped to minimize the exodus to other business-friendly states. The down side, however, was that carriers that were unable to compete under “open rating” were forced to go out of business.

AB749 (Calderon, D. Norman) Bill, which was another compromise between California Federation of Labor and the states’ employers, was signed by then-governor Davis on February 15, 2002. The purpose of this bill was to increase the minimum and maximum weekly payments for temporary and permanent disability benefits for workers’ families. Severe penalties against employers who fail to carry Workers’ Compensation insurance were assessed, including for alleged fraudulent practices, by both employees and by employers. Even though the bill was regarded as less complex, it has failed to meet its target, which was to further reduce premiums (UC Berkeley Governmental Studies, 2003a).

Additional reforms were introduced in 2003. AB227 and SB228 were regarded as the most effective in standardizing rates for medical care and surgery centers and, above all, established fee schedules for prescription medications that were one of the major cost drivers of the Workers’ Compensation system.

The twin bills also capped the number of visits allowed for chiropractors and physical therapies. A subsystem was also established, better know in the insurance industry as “Utilization Reviews,” which in effect were used as a benchmark for standards of care for various injuries.

Even though these reforms were welcomed by the insurance industry, employers, and some labor groups, the system remained the most expensive in comparison to other states. Employers continued to complain about ever-increasing insurance premiums. Employees were also not content about benefit payments, which proved to be the third lowest in the nation.

*The Emergence of Senate Bill 899*

Following his October 2003 election, Governor Arnold Schwarzenegger vowed to fix the system. The State of the State Address, which he delivered on January 6, 2004, was a clear indication that the governor's concern was the effect worker's compensation had on the state's business climate:

We must fix the state's business climate. And we must start with workers' compensation reform. Our workers' comp costs are the highest in the nation—nearly twice the national average. California employers are bleeding red ink from the workers' comp system. Our high costs are driving away jobs and businesses. My proposal brings California's workers' comp standards and costs in line with the rest of the country. To heal injured workers, it emphasizes the importance of health care and doctors rather than lawyers and judges. It requires nationally recognized guidelines for permanent disability. And it provides for innovative approaches. I call on the legislators to deliver real workers' comp reform to my desk by March 1st. Modest reform is not enough. If modest reform is all that lands on my desk, I am prepared to take my workers' comp

solution directly to the people and I will put it on the ballot in November.

(¶107-116)

The threat to present the pending reform to the voters continued for the next several months. Governor Schwarzenegger and Senator Poochigian were not impressed with legislative efforts, and they proceeded to move the matter along to the signature-gathering phase, which made democrats nervous.

Subsequently, a reform package delivery was intensified, and a compromise bill emerged as a result. SB899 was approved by both parties on April 16, 2004, and was signed on April 19, 2004. The main highlights of the bill were:

1. De-regulation of insurance rates.
2. Medical Provider Network (MPN) Program: requiring employees to select from a pool of doctors approved by employers.
3. Temporary Disability limited to 104 weeks.
4. Permanent Disability tightened.
5. Allowed speedy treatment to injured workers, and employers can treat up to \$10,000 while their claim is delayed 8 to 90 days.
6. Revoked the \$16,000 cap previously allotted to pay for rehabilitation and reduced it to a maximum of \$10,000, depending on the actual percentage of Permanent Disability rating.

The immediate effect of the passage of SB899 was the decline in premiums paid by employers. Employers realized substantial savings of \$100 per payroll. Brokers were willing to extend these savings mainly because of medical control through the MPN

Program. The program's main purpose was to terminate "doctor shopping," which in turn levied a moratorium on sky-rocketing costs of medical care.

While the reform law passed on April 19, 2004, it produced unprecedented results. It was also a source of contention for attorneys who represent injured workers. Serious allegations continue to be raised by opposing attorneys, which include (a) the MPN Program and (b) the new rating schedule.

Attempts to reverse the gains that were realized continue. It is also prudent to mention that some defense attorneys and carriers share similar concerns, especially when it comes to (a) the new rating schedule and (b) the limitation of temporary disability benefits to a maximum of 104 weeks for all injuries. So far, applicants' attorneys were unable to reverse the gains using the court systems, but no one in the industry believes the fight is over.

#### *Statement of the Problem*

Senate Bill 899 has made reasonable progress in reducing the ever-escalating Workers' Compensation insurance premiums. Brokers and insurance agents were able to reduce their premiums, which are calculated on a percentage of \$100 per payroll in anticipation of a reduction in medical costs as a direct result of the MPN Program that will minimize "doctor shopping" and medical legal liens. This action has caused the majority of employers to reverse their decision to leave the state. Both Governor Schwarzenegger and Senator Poochigian were proud of such an achievement, which was hailed as a bipartisan compromise.

The question now becomes whether or not the other provisions of the new law, which include Apportionment, the new QME Process, and the New Disability Rating Schedule, will be equally exciting and comforting to attorneys who defend employers against lawsuits brought by injured workers. While injured workers and their attorneys continue to be outraged by the events following the passage of SB899, defense attorneys and employers were busy implementing the law and taking advantage of the gains that were afforded by the provisions of the law. The majority of defense attorneys and employers to date hold the same posture and continue to fight to preserve the literal language of the various rules, regulations, and statutes.

However, not all attorneys share the same philosophy regarding some distinct provisions within the new reform law. Some of the issues they raise, which they consider detrimental, include the apportionment, the new rating schedule, the new QME process and rules of the MPN Program, and the medical-legal liens generated by aggressive medical providers who will not hesitate to exploit a loophole. Some of the examples cited by defense attorneys regarding potential litigation and reversals are:

1. The Medical Provider Network Program (MPN)

Although it is hailed as an instrument that severely curtailed “doctor shopping” and gave initial medical control back to the employer, many of the doctors who were considered abusive or over-treaters prior to the reform law are now on the MPN panel. The statute is also inherently defective because its application is to the primary physician, not to the referral physicians who are not required to be on the MPN.

## 2. Apportionment

Mandatory subtractions that fail to evenly apply to settlements and leave the presumption if the settlement was via Stipulation and Award vs. Compromise and Release are defects. Furthermore, there is a dispute whether the subtraction should be percentages of past disability rating or monetary. What is holding and practiced to date has been the percentage method of apportionment.

### *Purpose of the Study*

The purpose of the study is to determine the perception among defense attorneys of the New Reform Law SB899. The study will also assess their satisfaction regarding the leadership provided by Governor Schwarzenegger, Senator Poochigian, and the legislature as a whole. Furthermore, the study will assess defense attorneys' readiness to defend the gains realized following the passage of the new reform law.

### *Research Questions*

The research questions for the study are as follows:

1. What is the current level of support by defense attorneys regarding SB899, the New Reform Law, and are these opinions related to demographic characteristics?
2. How do defense attorneys perceive SB899 and its current standing, and are these opinions related to demographic characteristics?
3. How satisfied are defense attorneys regarding the quality of leadership provided to make SB899 a reality, and are these opinions related to demographic characteristics?



4. Based on the current level of resistance by attorneys representing injured workers, are defense attorneys worried that the gains made by SB899 will expose decisions in their cases to reversals on appeal, and are these opinions related to demographic characteristics?
5. Do defense attorneys feel that they are sufficiently prepared to resist efforts to reverse some provisions of the law, and are these opinions related to demographic characteristics?
6. What do defense attorneys recommend as a future plan of action, and are these opinions related to demographic characteristics?

#### *Significance of the Study*

This study is designed to assess defense attorneys' perceptions regarding their need to preserve the achievements of Senate Bill 899. Furthermore, it will assess the quality of leadership provided by individuals and institutions that were instrumental by dedicating themselves to the passage of the act. The study will evaluate the interest of California employers, the governor, and Senator Poochigian who supported the bill in an effort to remedy the economic woes of the state's employers. This study will be relevant to the insurance industry, defense attorneys, brokers, claims managers, claims administrators, insurance carriers, self-insured administrators, insurance agents, account executives, federal government, state government, county governments, and higher education.

### *Limitations of the Study*

This study is limited to surveying defense attorneys in the tri-county area (Los Angeles, Orange, and San Diego, California) who are employed in law firms that employ between 50 and 250 attorneys and who are currently engaged in defending employers and their insurance carriers against lawsuits brought by injured workers. A major law firm is defined as a firm that employs between 250 and 500 attorneys. Furthermore, this study will only survey defense attorneys who have dedicated themselves solely to the practice of Workers' Compensation Law in the state of California.

### *Definition of Variables*

1. Senate Bill 899: The New California Workers' Compensation reform law authored by Senator Poochigian and passed into law on April 19, 2004.
2. Defense Attorneys: Attorneys who specialize in defending against lawsuits brought by individuals that allege workplace injuries.
3. Applicants Attorneys: Attorneys who specialize in bringing lawsuits against employers and their carriers on behalf of employees that allege/suffered workplace injuries.
4. Insurance Professionals: Individuals who have expertise and specialize in handling Workers' Compensation claims from inception to conclusion.
5. Injured Workers: Individuals who have suffered workplace injuries while performing their usual and customary occupation.

6. Third Party Claims Administrators: Entities that handle claims for major carriers who may or may not specialize in Workers' Compensation claims' handling.
7. American Medical Association (AMA): Nationally known physician group that has developed a "guide to the evaluation of permanent impairment." Permanent disability is currently rated under this schedule, and it requires the doctors to determine an injured worker's level of impairment using the AMA's guides.
8. American College of Occupational and Environmental Medicine (ACOEM): Composed of 31 societies in the United States and Canada, ACOEM has published "Occupational Medicine Practice Guidelines" to help determine medical treatment guidelines and protocols for injured workers.
9. Employer: The individual or entity that has control over your work activities.
10. Employee: The person whose work activity is controlled either by an individual (self-proprietor) or entity (corporation, government).
11. Workers' Compensation Appeals Board (WCAB): Adjudicates disagreements between injured workers and their employers. The board has 24 officers throughout the state of California.
12. WCAB Reconsideration Unit: A seven-member judicial body appointed by the governor and confirmed by the State Senate that has a duty to hear appeals on lower court (WCAB).
13. Workers' Compensation Insurance Rating Bureau (WCIRB): Employer-funded entity that compiles and provides statistical data and insurance rating/premium

information, Workers' Compensation insurance, and employers' liability insurance.

14. Medical Provider Network (MPN): A network of doctors that the injured worker is required to use after a workplace injury has occurred. This network of medical providers is established by the employer or a self-insured entity and has to be approved by the California Division of Workers' Compensation (DWC).
15. Division of Workers' Compensation: The division that has the extraordinary task of administering all aspects of Workers' Compensation law in the state of California.

## Chapter 2: Review of Literature

The purpose of this chapter is to examine existing literature to the topic of Workers' Compensation reform law and the leaders that made it possible. Additional literature related to resistance to the reform will also be included.

The California Workers' Compensation system has undergone various revisions ever since the Boynton Act of 1913 was established (UC Berkeley Governmental Studies, 2003a). This historical document required employers to provide benefits for all employees who suffered work-related injuries. In addition, employers were prohibited from suing their employee seeking damages for pain and suffering and punitive damages. The Boynton Act provided a more stable atmosphere for proper handling of workplace injuries. The act that preceded the Boynton Act, the Compensation Act of 1911, The Roseberry Act, failed to deliver the same since it was established as voluntary for employers. Employers that elected not to participate had no obligation to provide any benefits. Employees that suffered injuries while performing their occupation were left without any coverage.

Several years passed until the California legislature came around to discuss the ever-changing work force and the various injuries that employees were exposed to. Legislative initiatives gradually began to surface, and legislators in both houses and from both political persuasions (Democrats and Republicans) drafted bills salient to reforming the Workers' Compensation system of our state (UC Berkeley Governmental Studies, 2003b).

The next era of reform, which is regarded as most significant, was from 1989-2003. The Margolin-Bill Greene Workers' Compensation Reform Act of 1989 recognized doctors and lawyers as cost drivers on the system. The bill created the Qualified Medical Evaluator (QME) as a medical dispute resolution mechanism. The statute limited each party defense and applicant to a single medical-legal report. The statute also made a profound change in the treatment of psychiatric injuries. The employee is now required to demonstrate industrial causation by a preponderance of the evidence. Prior to the Reform Act, the evidentiary standard was "substantial in the record as a whole." Furthermore, the employee is also required to prove that 10% of the causation of his or her psychiatric conditions was due and is attributable to actual employment factors, which clearly shows the legislative intent to hold employees to a higher threshold. The above statute has been reviewed, and, due to the passage of the new reform law, the burden of proof has been shifted to the employee more than the previous years. The percentage of causation has now been raised 35 to 40%. LC 3208.3 discusses the present criteria concerning compensable psychiatric disorders:

1. A psychiatric injury shall be compensable if it is a mental order which causes disability or need for medical treatment and it is diagnosed pursuant to procedures promulgated under paragraph (4) of subdivision (j) of section 139.2 or until these procedures promulgated; it is diagnosed using terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition – revised or The terminology and diagnostic criteria of other psychiatric and

diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.

2. (a) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.
  - (b) Notwithstanding paragraph (a), in the case of employees whose injuries resulted from being a victim of Violent Act or from direct exposure to a significant Violent Act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury.
  - (c) For the purpose of this section, “substantial cause” means at least 35 to 40 percent of the causation from all sources combined.
3. It is the intent of the legislature in enacting this section to establish a new and higher threshold of compensability for psychiatric injury under this division. (Parker, 2006, p. 261)

Other important reform laws continue to be enacted by the California Legislature, including Senate Bill 30, which successfully removed the floor on premiums. Effective January 1, 1995, insurance companies can sell Workers' Compensation insurance coverage at a rate that employers are able to afford. Due to this practice, known as open rating, employers were able to save 3.9 billion dollars in premiums.

Bills that would continue to be heard on the floor gained bipartisan support for passage in 2003 during the year of Governor Davis. The legislature passed AB227 and SB228. These bills established standardized rates for all medical providers, outpatient surgery centers, set fee schedules for pharmaceuticals, capped number of visits to chiropractors (24 visits) and physical therapists, and required “Utilization Reviews,” which would set care standards for injuries.

Even though with each legislative effort claims of savings were made, the system continued to prove the most expensive in the country, premiums charged to employers were astronomical, and benefits to injured workers remained the lowest. This cumulative phenomenon was one of the most compelling reasons to overhaul the entire system. The historical effort was led by Governor Arnold Schwarzenegger and State Senator Charles Poochigian, the architect of Senate Bill SB899.

### *Leading the Quest for Genuine Reform*

Leaders often find themselves called upon to face challenges they never planned for. Others have made up their mind prior to assuming leadership about the various actions they will take upon arrival. The important thing is how the leader goes about solving the very problem or issue that confronts him and his constituents.

The concept of leadership and its meaning and interpretation vary from one academician to another. Over the years, well over 300 definitions of leadership have been published (Daft, 1999).

Wren (1995) writes:



Leadership is one of the world's oldest preoccupations. The understanding of leadership has figured strongly in the quest of knowledge. Purposeful stories have been told through the generations about leaders' competencies, ambitions, shortcomings, leaders' rights and privileges and the leaders' duties and obligations. (p. 49)

Hess and Cameron (2006) explain their conclusion regarding the definition and their perspective on the subject of leadership as follows:

In their classic tome on leadership, Bass and Stodgill's handbook of leadership: Theory, Research, and Managerial applications (Bass & Stodgill, 1990 as cited in Hess and Cameron), the authors extensively reviewed existing definitions of leadership and concluded that the definition of leadership should be crafted to suit the purposes at hand. Echoing this pragmatism, (Useem 1998, p. 4 as cited in Hess and Cameron) cautions us: "A precise definition is not essential ... indeed it may be impossible to arrive at one." (p.15)

Hess and Cameron further stress their concept of the subject matter referring to their study on various scholars in the following manner:

Following these leadership scholars we take a broad perspective on leadership, conceptualizing it as "The Act of Making a Difference," which can occur in a variety of ways, including but not limited to: ... changing a failed strategy, or revamping a languishing organization... [leadership] requires us to make an active choice among plausible alternatives, and it depends on bringing others

along, on mobilizing them to get the job done. Leadership is at its best when the vision is strategic, the voice persuasive, and the results tangible. (p. 156)

Riggio and Conger (2007) describe the relationship between vision and social responsibility and the importance of communication:

What promotes perceptions of a visionary leader, especially one who is able to link social responsibility and vision? From research we know that leaders perceived to be visionary include references to a broad range of constituencies in their communication and as noted previously, social responsibility involves considering a wide range of constituencies and/or stakeholders. In addition they emphasize their own values and moral justifications pertaining to those constituencies in that communication. In doing so, they are challenging the status quo. (p. 232)

The essential components of leadership have been discussed by Northouse (2001), who described leadership as a process that involves influence occurs in a group context, and therefore is a process that has a lot to do with influence and using the same to achieve a common goal. The process, however, should not be confused with management, which has to do with planning/budgeting, organizing, staffing, controlling, and problem solving. Leadership has to do with vision building, strategizing, aligning people, communicating, motivating, and inspiring (Northouse, 2001).

Bennis (1999) identifies differences between managers and leaders. Managers focus on administration, while leaders focus on innovation. Leaders inspire trust, while managers rely on control. In *Managers Maintain While Leaders Develop*, Covey (1991a)

illustrates that, while managers are concerned mostly with maintenance, leaders focus on doing things right.

Wren (1995) divided leadership into two distinct forms. These concepts remain very important since individuals who have aspirations of engaging followers for fundamental change have to make a choice or use both forms, depending on their circumstance. The first form is transactional leadership. Wren (1995) writes:

Such leadership occurs when one person takes the initiative in making contact with others for the purpose of an exchange of valued things. The exchange can be economic, political or psychological in nature: a swap of goods or of one good for money, a trading of votes between candidate or citizen or between legislators, hospitality to another person in exchange for willingness to listen to one's troubles.

Contrast this with transforming leadership. Such leadership occurs when one or more persons engage with others in such a way that leaders and followers raise one another to a higher level of motivation and morality. (p. 101)

Burke and Cooper (2006) express the nature of transformational leaders as follows:

Transformational leaders promote higher-order changes in people, workgroups, organizations, and entire social and political systems. Burns highlighted the meaning and significance of the type of change transformational leaders initiate support.

But to transform something cuts much more profoundly. It is to cause a metamorphosis in form and structure, a change in the very condition and nature of a thing, a change into another substance a radical change on outward from the inner character, as when the frog is changed into a prince or a carriage maker into an auto factory. It is change in of this breadth and depth that is fostered by transforming leadership. (Burns, 2003, p. 24)

The authors also explain why transformational leaders are likely to develop emotional intelligence:

Transformational leaders excel because they develop clear and compelling visions, and they inspire their followers to work towards those visions through their use of language, storytelling, and other communication devices. The ability to communicate in ways that evoke the desired emotional response requires emotional intelligence. (Burke & Cooper, 2006, p. 136)

Storey (2004) stresses how transformational leaders are defined:

Transformational leaders are defined precisely in terms of their claimed ability to overcome or compensate (transform) organizational and individual limitations. Transformational leaders 'motivate others' to do more than they originally intended and indeed often more than they thought possible...team spirit is aroused. Enthusiasm and optimism are displayed. (p. 74)

Locke et al. (1991) describe what we ought to expect from true transactional leadership and its effect on the expectation of followers: "Transactional leadership has been defined as leadership that maintains the status quo. It has been defined as leadership

that involves an exchange process where by followers get immediate, tangible rewards for carrying out the leaders orders” (p. 5).

Bass (1998) further elaborates and makes a distinction between transactional and transformational leadership accomplishment as it relates to the structure of relationships:

Transactional leadership can service the structure of relationships and readiness that is already in place, and transformational leadership adds to the structure of readiness by helping followers to transcend their own immediate self-interest and by increasing their awareness of the larger issues. (p. 41)

What do people expect from their leaders, whether they are the governor of a state or a legislative leader? Kouzes and Posner (2002) have outlined four key characteristics. These characteristics were based on extensive research, which included 350,000 individuals worldwide. The four characteristics are honesty, forward thinking, competence, and inspiration. Bennis (1999) has also proclaimed the four things that people most want in their leaders as purpose/direction, trust, optimism, and results. Drawing upon key resources like social capital and human networks is also a viable tool when one is in a position of leadership (Kouzes & Posner, 2002).

Finally, Wren (1995) discusses a study regarding the desirable competencies that leaders ideally should possess. The study was conducted to identify clues about effective leadership, and 90 chief executive officers took part. He writes that his study provides “a basis for generalizing about those ‘Chiefs’ who successfully achieved mastery over noisy, incessant environments, rather than throwing up their hands and living in a perpetual state of ‘present shock.’”.

Wren (1995) found that the CEOs possessed the following competencies:

- Vision: The capacity to create and communicate a compelling vision of a desired state of affairs, a vision (or paradigm context, frame) that includes clarity to the vision;
- Communication and Alignment: The capacity to communicate a vision in order to gain the support of constituencies;
- Persistence, consistency, focus: The capacity to maintain the organization's direction, especially when the going gets rough;
- Empowerment: The capacity to create environments – the appropriate social architecture – that can tap and harness the energies and abilities necessary to bring about the desired results. (p. 378)

The aforementioned leadership concepts and philosophies best describe what leaders ought to do, laying out the expectations constituents expect from them. The governor of our state appears to have realized that from the onset. As Wren (1995) described, the phenomenon he faced was two distinct choices. One is to leave the broken Workers' Compensation system alone and live in a perpetual state of “present shock,” and the other is to make a concerted effort to transform the system. Studies that will be discussed show that his decision to choose to leave no stone unturned to transform the ailing system has paid healthy dividends for our state.

His main objective was to lead California into a perpetual motion of economic development and job creation and, above all, make the state “business friendly.” The first order of business was to clearly communicate his initiative following his October 2003

election. In his State of the State Address message on January 6, 2004, the Governor explained why the system is in dire need of reform. He stated that the system is facing imminent collapse unless an urgent remedial action occurs. What was the governor confronted with?

When the governor took office, the state of California was on the verge of bankruptcy, and businesses were cutting back operations. Large, midsize, and small organizations were closing their doors, and unemployment was growing at an alarming rate. Progressively, the governor mustered enough political strength and opened direct dialogues with what he considered the power structure in Sacramento. Seizing some control over what he termed anti-business legislature and special interests, which dominated California politics, was gradual.

Going forward, Governor Schwarzenegger took swift and decisive action to address the most urgent problems such as budget, overall fiscal crisis, Workers' Compensation, and the growing anti-business legislation that overwhelmed the legislature. He made excellent use of his veto power to quash various legislations as time progressed.

The governor had to use all the tools of the political trade to pressure the legislature very effectively – along with his supporters in both the Assembly and the Senate. He was able to contain the ever-hostile legislators to achieve a bipartisan-supported reform. Fiscal crisis was alleviated by a 15 billion dollar bond. Special interest groups that, for decades, had created a legislative barrier to reform the troubled Workers' Compensation system by burying it in committees were threatened with a sponsorship of

an initiative to put the matter on the November 2004 ballot. This was presented during a special session called by the governor, at which time he explained that he needed the reform bill on his table by March 1, 2004. Upon their refusal, he publicly expressed his support for what was called the Workers' Compensation Reform and Accountability Act. Under pressure from all corners, proponents of the reform bill had no choice except to compromise and pass the long-awaited legislation.

What other methods did the governor use to break the impasse? When he is faced with an impasse, he often bypassed legislative leaders and negotiates directly with stakeholders, sits down with politicians, demonstrates his willingness to listen to opponents, and negotiates face to face to effect a compromise.

Avolio (1999) explains how leaders are expected to articulate their message in a way they can identify with the business at hand: "Often a leader must become adept at articulating the message to people in ways they can identify with the message" (p. 150).

Kouzes and Posner (2002) discuss the ability of leaders to continue to work ahead and the ability to set and select a desired destination. They also show the importance of credibility in order to gain trust of their constituents: "credibility is mostly about consistency between words and deeds – people listen to words and look at the deeds and then they measure the congruence. A judgment of 'credible' handed down when the two are consonant" (p. 47).

The above reinforces how credibility appears to be a verifiable process. In dealing with the task at hand, the governor maintained his word and successfully translated it into deeds, which culminated in the passage of SB899.



*Leading Legislative Efforts*

Legislators in both the Assembly and the State Senate have played a pivotal role in helping pass a viable business-friendly legislation. Assembly and Senate Republicans and a few Democrats took the lead in recognizing imminent collapse of the troubled system.

Senator Charles Poochigian (R-Fresno) has played a pivotal role and is the author and architect of the famed Reform Law. The senator is no stranger to California politics and has successfully helped pass some of the most vital legislations to make the state business friendly. He is the author of several bills, which mainly have to do with rural crime. He has heard from his constituents on many occasions, especially regarding the ever-increasing Workers' Compensation premiums and the direct effect on the survival of businesses, big and small. Following is an excerpt of his statement on why he is committed to work with the legislature to push for reform. “We cannot continue to force our businesses, non-profits, and government agencies, to be pummeled by costs 2 ½ times the national average.... The legislation gives California businesses and their workers a fighting chance” (as cited in Heartland Institute, 2004, ¶ 4). In conjunction with the statement, the governor warned that if a modest reform was all that landed on his desk, he would direct the issue to California voters. This action undoubtedly played a role in convincing whoever happened to be opposing the bill to engage in critical thinking. The important thing to realize, however, is the fact that the opposition camp had also recognized the need for reform reluctantly. Pressures from their constituents were mounting, and there was no room for business as usual.

The senator continued his commitment and determination to lead, and he was confident that things would change and a new beginning was a possibility.

Bridges (2003) discusses the three important phases of the transition period:

Phase One – Ending, Losing, Letting Go – Every transition entails ending, which can be characterized as a loss. When change occurs, individuals have to let go of the old ways and identities. Leaders are responsible to help them leave the old.

Phase Two – The Neutral Zone – A confusing and difficult stage where a psychological realignment has to take place. The old ways and identities are gone, but the new is not completely operational.

Phase Three – The New Beginning – Successfully emerging from the transition and making a new beginning. Individuals will start a new chapter and are ready to embrace a new reality. For the transition process to be effective, we need all of the three phases. (p. 5)

Schuler (2003) has identified the top ten reasons people resist change. A psychologist by training, Schuler offers very elaborate reasons:

1. The risk of change is seen as greater than the risk of standing still.
2. People feel connected to other people identified with the old way.
3. People have role models for the new activity.
4. People lack competence to change.
5. People feel overloaded and overwhelmed.
6. People have a healthy skepticism and want to be sure new ideas are sound.
7. People fear hidden agendas among would-be reformers.

8. People feel the proposed change threatens their notions of themselves.
9. People anticipate loss of status or quality of life.
10. People genuinely believe that the proposed change is a bad idea. (p. 1)

As the effort to transform the system continued, so did the resistance to change. The opposing camp continued to dig its heels deeper, making the senator's job difficult. The shift in paradigm that could be reasonably expected from the legislators was not forthcoming. Legislators were reluctant to embrace the new beginning. They were stuck in the neutral zone and made excuses about why they would not move forward. By now, it was evident that both the governor and the senator were trying to pre-empt an economic (being pro-active) and fiscal disaster that could potentially drive the state into real bankruptcy. This action was probably frustrating for both leaders and reformers, especially Senator Poochigian, who, just as the governor, demonstrated that he was willing to work both sides of the aisle to create a win-win situation. Proactivity is more than being aggressive or assertive. It is taking both initiative and responding to stimuli, based on one's principles (Covey, 1991b).

Beginning a new chapter, accepting new realities, and taking the psychological lead presented a real challenge to legislators who had held any kind of reform at bay. Creating a bottleneck was the rule, not the exception. It was considered a miracle when Governor Davis was able to push two important reforms during his era. However, when the Reform Act was initiated, the opposition felt the cumulative effect of the reforms and decided to follow the path of resistance.

Kotter (1991) describes the emotional turmoil individuals experience and their reaction to change with keen interest by briefly discussing what could be expected:

Of course all people who are affected by change experience some emotional turmoil. Even changes that appear to be “positive” and “rational” involve loss and uncertainty. Nevertheless for a number of different reasons, individuals or groups can react very differently to change – from passively resisting it, to aggressively trying to undermine it, to sincerely embracing it. (p. 31)

Again, this was a source of frustration for Senator Poochigian, who continued to use his influence, credibility, and popularity to accelerate the effort. The dust did not settle for several months until the ballot initiative was seriously considered. That was the moment the legislature had a change of heart. No one wanted to take the responsibility of letting the most populous and the sixth largest economy down.

Following the passage of the reform law, rate reductions that were promised to employers took hold immediately. Senator Poochigian made a statement on June 9, 2006:

Recent recommendations of double digit Workers' Compensation rate reductions are the result of the reforms that passed last year are beginning to take hold. New guidelines have brought California Standards closer in with those used by the rest of the nation and are helping keep the cost down. The best way to restore competition, and provide much needed relief to businesses, is to see that last year's Workers' Compensation overhaul is implemented. (¶ 1)

On August 8, 2005, Senator Poochigian continued his effort to show that the reform enacted was beneficial to California employers. His intent was to depict the

continued rate decline and to encourage employers that further reductions are not probable but possible.

Today California's Insurance Commissioner announced an average of 14.6% decrease in Workers' Compensation rates for policies sold or renewed starting July 1<sup>st</sup>, which brings the cumulative rate reduction to nearly 27% since the reforms were enacted. While employers have yet to realize the full magnitude of the savings, recent Workers' Compensation rate reduction should drive costs down even further and continue to lower premiums as competition increases between sellers and employers should take advantage of a renewed Workers' Compensation market, resulting from reforms to compare rates in order to insure that they are receiving the best policy for their money. (¶ 2)

Employers throughout the state, through their respective chambers of commerce, continue to send their appreciation for Senator Poochigian and Governor Schwarzenegger. They are exuberant about the fundamental change made to the way the Workers' Compensation system determined the level of injury and the amount of disability assigned to an injury and, of course, the establishment of Medical Provider Networks, which shifts medical control to the employer.

Employers continue to vow to keep defending the gains and will do everything in their power to reject any legislative attempt to circumvent the gains. Employers also forecasted the consequences of undoing the reform. They cite that economic vitality will diminish, and businesses will be forced to reduce their workforce as a result of rising costs of doing business in the state. Other citations include reduced expansion, relocation

to a business-friendly state, or simply closing shop. Furthermore, employers are aware of the current effort to promote initiatives that are deemed job-killers.

A *Wall Street Journal* article titled “Businesses Leaving California” (Vames, 2003) lists businesses that have left the state due to the “oppressive” business environment. The list includes major business establishments such as Fidelity National Financial, Inc., the nation’s biggest title company formerly located in the city of Santa Barbara. CEO William Folley indicated that the move was spurred by California’s less-than-friendly business environment. The American Racing Unit of Noranda, Inc., also ended its 47-year stay in California and moved to Mexico, citing excessive cost of workers’ compensation. A survey conducted by the California Business Round Table, who sent questionnaires to 400 businesses, reported that 20% of the businesses surveyed have completed their plan to leave the state.

Other disturbing developments during that time included states like Nevada, Arizona, Wyoming, and North Dakota courting businesses to move. In an article titled “Firms Have a Long List of California Turnoffs,” (Lee, 2004) Victor Monia of Visa Technologies, an electronics manufacturer in San Jose, explains the impact of Workers’ Compensation insurance cost: “‘Workman’s Comp is a big issue, but it’s just one of the many items,’ Monia said, rattling off a list of California’s comparatively high operating costs: energy, rents, labor taxes. ‘Even the garbage costs are cheaper in Nevada’” (¶ 2). The article further states that, since July 2003, Nevada officials “have helped 18 California firms with an average of 52 workers relocate to the Las Vegas area – as many as they attracted during the previous 12 months. Recruiters from Phoenix, another

popular destination for California businesses, report much the same trend” (¶ 21). John Belzer, President of TCI Precision Metals in Gardena, explains the struggle that businesses have to contend with while weighing whether to move or stay put:

“It is nice having suppliers virtually next door.” But then there are the downsides. Although TCI Precision has seen its orders accelerate since last fall, it has not added a single new job. Doing so will only add to Workers’ Comp premiums, which Belzer expects to rise to \$355,000 this year from \$227,000 in 2002. (Lee, 2004, ¶ 17-18)

Finally, the article describes Los Angeles Consultant Larry Kosmont, who tracks California regional business costs and cautioned in 2003 that the governor and other leaders have to step up to turn around the business climate, and the state has to “resuscitate itself by being competitive” (Lee, 2004, ¶ 25).

It is true that the state’s corporate taxes and the general business climate were undesirable; the fact that Workers’ Compensation insurance was beyond the reach of most businesses did not help matters any. This particular cost could be construed as the straw that broke the camel’s back. Businesses had to weigh the cost of doing business on a daily basis to avoid the alternative, which will force many of them to file for bankruptcy or close shop altogether. For some, it was too late and they had no choice but to relocate.

Rate reductions and cumulative rate reductions continued, and both the insurance commissioner and Workers' Compensation Insurance Rating Bureau (WCIRB) reported a 33 to 36% decrease in premiums. Further, rate deductions were announced by the State

Compensation Insurance Fund (SCIF), which was encouraging to small business owners who suffered from skyrocketing premium increases that proved to be devastating. Since most small businesses lack vast resources at their disposal or a promising profit margin, the only option was to close their doors and get out of the business they were in altogether.

In an article titled “SB899, One Year Later” (Love, 2005), Nicole Mahart, Public Affairs Director of the prestigious *Insurance Journal*, stated:

It has taken sometime to get all of the pieces in place, but it is working.... It takes time to implement such major reform, but as it is being implemented properly, we’re really seeing positive results and that was what everyone was after. SB899 has been successful. We’re just now starting to see the real impacts of the bill. (¶ 4)

Mahart also commented on the cumulative effect of AB227, SB228, and SB899, and the willingness of insurers to enter the market and add capacity. This capacity will allow businesses to obtain competitive rates and choices to purchase coverage from a variety of brokers.

Despite the apparent success of SB899, opponents continue to impede progress. SB46, authored by Senator Alarcon (D-San Fernando Valley), suggests a formation of a commission to regulate rates. The probability of this bill passing and being law was suspect from its inception, and it later proved to have no support.

The two- and three-year report indicates that SB899 continues to be encouraging. An article in the *American Chronicle* is a clear indication of the phenomenon: “Insurers are reporting that costs have fallen to 4.42 per 100 of payroll, and pure premium rates are



down to pre-1996 levels, with a cumulative 55 percent rate reduction reflected in policies renewing this July” (Poochigian, 2006, ¶ 3). The article continues to emphasize the savings realized by employers, i.e., \$8.1 billion and the decline in the unemployment rate from 6.8 in 2003 to 5.1% 2 years later. Furthermore, state and local governments have also benefited from SB899. Los Angeles County reported a one-year savings of \$141 million.

The latest report on the progress of the third anniversary of SB899 came directly from the Workers' Compensation Insurance Rating Bureau (2007). In its announcement, the Bureau proposed an 11.3% decrease in pure premium rates and indicated that it had submitted a rate filing to the California Department of Insurance recommending an 11.3% decrease in advisory pure premium rate based on the analysis experience valued as of December 31, 2006. A public hearing was scheduled for May 3, 2007.

### *Conclusion*

Senator Poochigian, from all accounts, has worked hard to gather all available information necessary on how to best approach the opposing camp to convince them to help pass the act. However, he was also confident that the opposition had no option except to ratify the act and go forward. In other words, he was confident that, sooner or later, SB899 would pass both Houses. Confidence was also exhibited by the governor, who worked with due diligence to work with both sides of the aisle to help the act.

Several authors on the subject of leadership have made a distinct observation regarding the relationship between self confidence and the ability to command respect from others. Locke et al. (1991) describe this phenomenon as follows:

The essential nature of self-confidence, of having assurance in one's own ideas and abilities, has been recognized by many leadership researches (Bennis and Nanus, 1989; Burns, 1978 as cited in Locke, et al.). Self-confidence plays an important role in decision-making and in gaining others' trust. A leader who is not sure of what decision to make, or who expresses a high degree of self-doubt, cannot develop the confidence among followers that is necessary to commit them to the vision. (p. 26)

There should be no doubt that both leaders have exhibited the necessary self-confidence and have their made intentions evident regarding SB899 from the onset. Their actions and statements were clear and unambiguous. There was also no doubt, fiscally or otherwise, that passage of SB899 was critical. The fraud-riddled and abused system was on the verge of collapse. The state of California was in no budgetary shape to prevent it from total disintegration. Taxpayer bailout was unthinkable. The system had to stand by itself.

Opponents were also aware of the condition the system was in. Even though opponents were not prepared to go public regarding abuse and fraud, they remained cognizant. They were not ready to receive the backlash from their respective constituents. Organized labor was also on the same level, but it continued to show reluctance in openly supporting the bill. Everyone knew employer revolt was imminent, since there was no action taken to slow down the rise of premiums, abuse, or fraud. To soften the blow in the long run, medical control has to be shifted to the hands of California employers, which was eventually accomplished with the passage of SB899.

Sadler (2003) best explains the characteristics of the transformational leader, which, in my view, describes Senator Poochigian. These characteristics were developed based on the study conducted by Tichy and Devannaguho, who studied 14 business leaders. These common characteristics are that transformation “leaders clearly see themselves as change agents, are courageous, believe in people, driven by strong sets of values, are life long learners, can cope with complexity uncertainty and ambiguity and are visionaries” (p. 25).

Bass (1998) underlines the importance of articulating a vision or a mission. The governor has undoubtedly excelled in this area. Ever since he took the task of reforming the Workers' Compensation system, he has clarified goals and values and, without any fear of political reprisals, gone forward without hesitation. His deeds and actions spoke louder than his rhetoric. This result of course was supported by vital statistics gathered by the WCIRB, which indicates a decline in unemployment, an upsurge in economic development and new business startups, and a decline in the number of employers leaving our state.

#### *Major Achievements of SB899*

One of the most important gains afforded by SB899 is the establishment of the Medical Provider Network Program (MPN). The program is hailed as one of the most significant and an official and legal transfer of medical control to the employer and insurance carriers. With its profound effect on medical treatment and control on choices of physicians an injured worker is entitled to remains one of the most contentious issues in contemporary Workers' Compensation law. At the heart of the matter is the program's

ability to restrict injured workers to an employer-controlled pool of doctors known as MPN member doctors, who render first, second, and third opinions regarding any work-related injury. The Division of Workers' Compensation (2008), or DWC, which has authority over all work-related injuries and states its mission as “minimizing the adverse impact of work-related injuries on California employees and employers,” described the program as follows:

An MPN is an entity or group of health care providers set up by an insurer and self-insured employer and approved by DWC’s Administrative Director to treat workers injured on the job. Each MPN must include a mix of doctors specializing in work related injuries and doctors with expertise in general areas of medicine. MPN’s are required to meet access to care standards for common occupational injuries and work related illnesses. Further, the regulations require MPN’s to follow all medical treatment guidelines established by the DWC and must allow employees a choice of provider(s) in the network after their first visit. MPN’s also must offer an opportunity for second and third opinions if the injured worker disagrees with the diagnosis or treatment offered by the treating physician. If a disagreement still exists after the second and third opinion, a covered employee in the MPN may request an Independent Medical Review (IMR). MPN coverage can begin January 1, 2005 and once a plan has received approval by the Administrative Director. (§ 1)

The rush to establish an MPN was monumental. Almost all employers that have the resources to establish one filed the necessary papers with the administrative director

and successfully established an MPN. A package was subsequently distributed to all employers with a cover letter explaining the post-SB899 protocol regarding workplace injuries.

The MPN was widely revered by defense attorneys but was regarded as a devastating blow to attorneys who represent injured workers. Applicants' attorneys were not content with this sudden and abrupt halt to doctor shopping and unlimited referral and transfer of medical control to the employers and carriers. They vowed to do everything in their power to fight medical control and promised that they will appeal every decision handed down by the WCAB or appellate courts.

In order to understand their frustration, it will be prudent to discuss the pre-reform law that controlled medical treatment and the post-reform law that is a source of serious complaints. The old pre-reform law, LC4600, regarding medical and hospital treatment states:

Medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including orthotic and prosthetic devices and services, that is reasonably required to relieve from the effects of the injury shall be provided by the employer.

(Parker, 2003, p. 265)

It further states that, after 30 days from the date the injury is reported, the employee may be treated by a physician of his/her choice, including a facility of his/her choice in a geographical area that is reasonable. In the instance that the employee had

pre-designated his/her personal physician, the injured worker has a right to be treated by that particular physician starting with the date of injury or accident.

In contracts, the new post-reform law LC4600, under the heading of medical and hospital treatment, states:

§4600. Medical Treatment Provided by Employer; Liability for Reasonable Expense; Medical Provider Network; Predesignation of Personal Physician; Expenses Incurred in Submitting to Examination; Qualified Interpreter

(a) Medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of his or her injury shall be provided by the employer. In the case of his or her neglect or refusal reasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment.

(b) As used in this division and notwithstanding any other provision of law, medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury means treatment that is based upon the guidelines adopted by the administrative director pursuant to Section 5307.27 or, prior to the adoption of those guidelines, the updated American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines. (p. 335)

(c) Unless the employer or the employer's insurer has established a Medical Provider Network as provided for in Section 4616, after 30 days from the date the injury is reported, the employee may be treated by a physician of his or her own choice or at a facility of his or her own choice within a reasonable geographic area. (p. 335)

LC4600 also allows the employee to pre-designate his or her personal physician to be treated for an occupational injury, provided that the employer provides a non-occupational group health coverage in a health care service plan or group health insurance policy.

While there are some similarities, a fundamental difference exists that imposes restrictions and limitations. Injured workers and attorneys representing them have taken due notice.

They have to abide by the guidelines adopted by the administrative director pursuant to 5307.27 or prior to adaptation by the updated American College of Occupational Medicine Practice Guidelines, better known as evidence-based medicine or scientific medicine. In addition, injured workers are restricted to use the MPN panel of doctors unless the employer has not established one. Conditions have also changed at what point injured workers are allowed to use their personal physician. Specific provisions of non-occupational group health coverage in a health care service plan or group medical provided by the employer exist with policies in force.

Defense attorneys and carriers have lodged their own complaint. The complaint cannot be compared with the incessant outrage manifested by applicant attorneys in print

and at the courts. Even though defense is satisfied with the historic achievement of the shift in medical control through the MPN, they are not hiding the fact that there are perceived weaknesses in the MPN panel. They cite that doctors who were considered over-treaters and abusers are in the MPN. This makes their job to defend the gains and argue their cases while dealing with the same dreaded over-treaters and abusers. The other defect cited is that the MPN panel applies mostly to treating physicians, but referral physicians are not required to be on the MPN, which is a loophole the administrative director has to deal with.

*Conclusion.* The MPN program is now law of the state, and it will remain for years to come. It is further enforced by LC4616, which helps the employer to establish an MPN. LC Section 4616.3 establishes the dispute procedure, and 4616.4 (c) provides for Independent Medical Review (IMR). LC4616.4 (f) requires that the IMR issue a report in 30 days. In all, it appears that the new reform law is a well thought out plan that happens to be easy to follow for both employers and employees. It does not appear arbitrary and haphazard, as attorneys for injured workers claim.

#### *American College of Environmental Medicine (ACOEM)*

The American College of Environmental Medicine (ACOEM) guidelines are the highest standard and an exemplary treatment protocol for all work-related injuries. The central focus of the guidelines has been, and continues to be, to deliver quality care and scientifically based treatment to help the injured worker return to work in the shortest possible timeframe. ACOEM guidelines today have been adopted by most all agencies in the state of California, including DWC (Division of Workers' Compensation), SCIF



(State Compensation Insurance Fund), and CSHWC (Commission on Health and Safety and Workers' Compensation). The treatment protocol also includes comprehensive view, which encompasses the whole person. The concerns are not simply cure and relief, but functional impairment and outcomes and psychosocial well-being.

ACOEM's physicians are renowned, specialize in environmental and occupational medicine, and collectively have established a permanent published guideline. Their specialties in a variety of medical expertise allow them to participate in policy formation and discussions in occupational medicine.

The society's main function, however, is to provide physicians who are in the business of treating injured workers with a common knowledge base and recommendations regarding diagnosis and treatments that are most likely to return workers to their respective occupations as quickly as possible with three important components essential for positive outcome: health, function, and safety.

Cocchiarella and Anderson (2001) explain impairment evaluations, including the role of the physician, when the injured worker is considered stable, and the importance of consistency: "An impairment evaluation is a medical evaluation performed by a physician using a standard method outlined by the guides to determine permanent impairment associated with a medical condition" (p. 18). The role of the physician, according to the authors, is to perform an impairment evaluation, give unbiased assessments of medical conditions, and identify effects on function limitations in performing daily activities. A full documentation of medical findings, with fair and accurate assessments, is expected. These assessments will be used to determine the extent

of disability, which will lead to future impairment ratings provided the injured worker has reached Maximal Medical Improvement (MMI).

In order to assume consistency, the physician must have the “entire range of clinical skill and judgment when assessing whether or not the measurements or test results are plausible and consistent with the impairment being evaluated” (Cocchiarella & Anderson, 2001, p. 19). This quest for consistency is understandable. An inconsistent measurement or test while evaluating impairment provides an opportunity for groups that oppose the guidelines to poke holes and discredit the evaluation process. For this reason, physicians exercise proper care while performing evaluations and do their utmost to be consistent. One positive outcome of the implementation of the guidelines is the strong support it enjoys in many prestigious publications.

The Rand Corporation (Nuckols et al., 2005) has endorsed the guidelines and has deemed it an “innovative system that supports the delivery of evidence-based medical care” (p. 77). It further commented that its goal should not be denial of care, but to “support the delivery and management of appropriate evidence-based medical treatment aimed at restoring the injured worker to full function and returning him or her back to work in a timely manner” (p. 77).

The code section that governs the adaptation and practice of ACOEM is LC4604.5, which states as follows:

§ 4604.5. Medical treatment utilization schedule and recommended guidelines; Rebuttable presumption of correctness; Limit on chiropractic, occupational and physical therapy visits

(a) Upon adoption by the administrative director of a medical treatment utilization schedule pursuant to Section 5307.27, the recommended guidelines set forth in the schedule shall be presumptively correct on the issue of extent and scope of medical treatment. The presumption is rebuttable and may be controverted by a preponderance of the scientific medical evidence establishing that a variance from the guidelines is reasonably required to cure or relieve the injured worker from the effects of his or her injury. The presumption created is one affecting the burden of proof.

(b) The recommended guidelines set forth in the schedule adopted pursuant to subdivision (a) shall reflect practices that are evidence and scientifically based, nationally recognized, and peer-reviewed. The guidelines shall be designed to assist providers by offering an analytical framework for the evaluation and treatment of injured workers, and shall constitute care in accordance with Section 4600 for all injured workers diagnosed with industrial conditions.

(c) Three months after the publication date of the updated American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines and continuing until the effective date of a medical treatment utilization schedule, pursuant to Section 5307.27, the recommended guidelines set forth in the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines shall be presumptively correct on the issue of extent and scope of medical treatment, regardless of date of injury. (p. 36)

This presumption is rebuttable and could be overturned by a preponderance of evidence. The evidence that has to be established includes, and a deviation from the set guidelines is reasonably required to cure or relieve the effects of an injury as stated in LC4600. Furthermore, for any injury occurring on or after January 1, 2004, the injured worker will only be entitled to no more than 24 chiropractic, 24 occupational injury, and 24 physical therapy visits for each separate injury. The only exception is if the employer authorized, in writing, additional visits to a health care provider for physical therapy.

Nuckols et al. (2005) also describes the function of the ACOEM guidelines as it relates to the presumption of correctness:

The ACOEM Guidelines are presumptively correct regarding the extent and scope of medical treatment regardless of the date of injury. The presumption affects the burden of proof required in legal situations and is rebuttable by “a preponderance of evidence establishing that a variance from the guidelines is reasonably required.” (p. 7)

Nuckols et al. (2005) define and give meaning to what evidence-based medicine is all about:

Today, clinical research, meaning the study of medical tests of therapies in living humans, enables providers to generalize from the experience of numerous patients. Although basic science, experience and intuition still play important, even irreplaceable roles in medicine; physicians and health care professionals are relying more and more upon evidence from clinical research studies to support their diagnostic choices. Within health care, this represents “a significant cultural

shift, a move away from unexamined reliance on professional judgment toward more structured support and accountability for such judgment.” (p. 10)

They further stress the current trend and effort in expanding the use of evidence-based medicine in helping minimize the effects of bias:

Use of the best available evidence to support medical professionals’ decision-making is often referred to as evidence-based medicine (Sackett et al., 1996 as cited in Nuckols, et al.), the objective has been defined as to minimize the effects of bias in determining an optimal course of care (Cohen, Stauri, and Hersh 2004 as cited in Nuckols, et al.). Bias, meaning lack of objectivity and other factors that may distort conclusions, can exist at any stage in the medical decision-making process, from research through guidance come development and clinical care. (p. 10)

It should now be evident that the ACOEM guidelines are here to stay. The scientific literature that backs the guidelines is powerful and irrefutable. No amount of resistance could circumvent these impairment evaluation processes. It appears that applicants’ attorneys have come to grips with this particular reality. The endorsement by various state agencies makes it difficult to refute or continue to attempt to discredit the evaluation process.

However, one issue that is consistently raised in opposition to LC4604.5 is the limitation imposed by ACOEM to 24 chiropractic, occupational, and physical therapy visits per industrial injury. Applicants’ attorneys feel that numeration is arbitrary. Carriers and defense, however, are of the opinion that continuing the modalities will not

be of use, and the injured worker should be elevated to more aggressive treatment protocol to cure or relieve his/her injury. It is also common that this unrestricted method of treatment will lead to abuse and over treatment and be, without a doubt, very expensive. Prior to SB899, carriers were faced with billions of dollars worth of bills for various modalities that ultimately did not help cure or relieve the injury. In most cases, surgical intervention was the only remedy for the injured worker. This being the case, applicants' attorneys continue to question how the legislature arrived at the number in question and have clearly indicated that it will definitely become a matter of fact. Defense and carriers appear to be confident and are making the necessary preparation in case a suit is filed by opposing council. However, a small minority has expressed its doubt if the limitation could withstand judicial scrutiny. Regardless, it has now become a major component in the Utilization Review (UR) process. Providers are barred by law not to exceed 24 visits and are subject to bill review.

Nuckols et al. (2005) further describe the UR process as follows:

The UR process, a common element of Utilization Management (UM), involves a two-stage assessment of high cost procedures or services proposed by treating clinicians. The type of care most frequently subject to UR are hospital admissions, prolongation of hospital stay, costly out patient diagnostic tests and elective procedures (Wickizer and Lesser, 2002 as cited in Nuckols, et al.). (p. 16)

Penalties had a devastating effect on carriers and employers for decades. The struggle to keep a lid on unwarranted penalty assessment is well documented. Carriers were frustrated by the way the penalties were levied on them and the way the opposing

side was taking advantage of the situation. Claims for unreasonable delay of benefits and self-imposed penalties went unabated, and some firms had their practice dedicated to filing for penalties and found it more profitable. Carriers were afraid to appeal these penalties and preferred paying the assessment for fear that the amount demanded would be much higher.

Until it was rendered inoperative on June 1, 2004, LC5814 was continually cited to demand payment of penalties until it was replaced by a more conservative section, which capped penalties at 25% or \$10,000, whichever is less. The old LC Section 5814 regarding unreasonable delay reads as follows:

When payment of compensation has been unreasonably delayed or refused either prior to or subsequent to the issuance of an award, the full amount of the order, decision, or award shall be increased by 10 percent. Multiple increases shall not be awarded for repeated delays in making a series of payments due for the same type of specie of benefits unless a legally significant event between the delay and subsequent delay in payments of the same type of specie of benefits. (p. 358)

Even though the above citation happens to be true for the most part, requires carriers to show good cause why benefits were delayed, and attempts to make the issue a matter of fact, carriers were ordered to pay penalties with impunity for decades. Judges almost always found carriers and employers at fault and levied penalties, including on the same type and specie of benefits. Therefore, repealing the old and implementing the new was good news. The new LC 5814, in comparison, has been found reasonable and fair

and circumvents the desire to file for penalties on frivolous grounds and saves court time and expense. The new section states:

§ 5814. Unreasonable delay or refusal of payment of compensation;  
Increase; Self-imposed Penalty; Conclusive presumption on approval of  
Compromise and Release, etc.; Actions; Applicability

(a) When payment of compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the amount of the payment unreasonably delayed or refused shall be increased up to 25 percent or up to ten thousand dollars (\$10,000), whichever is less. In any proceeding under this section, the appeals board shall use its discretion to accomplish a fair balance and substantial justice between the parties.

(b) If a potential violation of this section is discovered by the employer prior to an employee claiming a penalty under this section, the employer, within 90 days of the date of the discovery, may pay a self-imposed penalty in the amount of 10 percent of the amount of the payment unreasonably delayed or refused, along with the amount of the payment delayed or refused. This self-imposed penalty shall be in lieu of the penalty in subdivision (a).

(c) Upon the approval of a Compromise and Release, findings and awards, or stipulations and orders by the appeals board, it shall be conclusively presumed that any accrued claims for penalty have been resolved, regardless of whether a petition for penalty has been filed, unless the claim for penalty is expressly excluded by the terms of the order or award. (p. 414)



LC5814 further allows any submission at a trial hearing, presumes that all accrued sums of penalty reserved, unless it is expressly excluded or submitted in the Statement of Issues.

LC5814 is followed by LC5814.6 and quotations, and spells out the consequences of knowingly violating Section 5814, and making it a general practice will expose carriers to administrative penalties not to exceed \$400,000. Carriers today operate under significant relief after the repeal of the old law but have always kept in mind that repeat offenses have serious consequences.

#### *Apportionment*

The issue of apportionment of permanent disability and the potential reduction that it causes has been, and will be, one of the most contentious subjects in the history of California Workers' Compensation. Carriers have given the matter serious consideration and will litigate the issue without hesitation. Going back to the status quo is not an option. At the heart of the matter of LC4663 is the fact that it compels the physician who prepares a report addressing the issue of permanent disability to comment on two distinct areas by (a) finding the approximate percentage of permanent disability caused by the injury, and (b) finding the approximate percentage of permanent disability caused by other factors, before and after the alleged industrial injury. It also forces that the injured worker disclose all previous permanent disabilities and physical impairments.

LC4663 states:

Apportionment of Permanent Disability; Causation as Basis; Physician's Report; Apportionment Determination; Disclosure by Employee; Applicability.

(a) Apportionment of permanent disability shall be based on causation.

(b) Any physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury shall in that report address the issue of causation of the permanent disability.

(c) In order for a physician's report to be considered complete on the issue of permanent disability, the report must include an apportionment determination. A physician shall make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries. If the physician is unable to include an apportionment determination in his or her report, the physician shall state the specific reasons why the physician could not make a determination of the effect of that prior condition on the permanent disability arising from the injury. The physician shall then consult with other physicians or refer the employee to another physician from whom the employee is authorized to seek treatment or evaluation in accordance with this division in order to make the final determination.

(d) An employee who claims an industrial injury shall, upon request, disclose all previous permanent disabilities or physical impairments. (p. 366)

While all other cases fall under LC4663 to determine apportionment, cases that involve the loss of both eyes, both hands, or render the injured worker paralyzed or

insane are presumed to be total under LC4662. Applicants' attorneys will not leave the issue of apportionment unchallenged, will file an appeal on every decision regarding the subject, and will attempt to reverse the section. Carriers and defense are equally vigilant to counter the motion, either through the courts or the legislator.

*Temporary and Permanent Disability*

SB899 has made very notable changes in the area of temporary and permanent disability. The newly enacted statutes have imposed restrictions on how long an injured worker will receive temporary disability benefits with some exceptions. While the statute allows 240 compensable weeks prior to January 1, 1979, within a period of 5 weeks, it limits any single injury after the aforementioned date to 104 compensable weeks.

LC4656 states as follows regarding the subject:

§ 4656. Aggregate Disability Payments for Single Injury Causing

Temporary Disability; Number of Compensable Weeks

(a) Aggregate disability payments for a single injury occurring prior to January 1, 1979, causing temporary disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury.

(b) Aggregate disability payments for a single injury occurring on or after January 1, 1979, and prior to the effective date of subdivision (c), causing temporary partial disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury.

(c) (1) Aggregate disability payments for a single injury occurring on or after the effective date of this subdivision, causing temporary disability shall not

extend for more than 104 compensable weeks within a period of two years from the date of commencement of temporary disability payment.

(2) Notwithstanding paragraph (1), for an employee who suffers from the following injuries or conditions, aggregate disability payments for a single injury occurring on or after the effective date of this subdivision, causing temporary disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury:

- (A) Acute and chronic Hepatitis B.
- (B) Acute and chronic Hepatitis C.
- (C) Amputations.
- (D) Severe burns.
- (E) Human Immunodeficiency Virus (HIV).
- (F) High-velocity eye injuries.
- (G) Chemical burns to the eyes.
- (H) Pulmonary Fibrosis.
- (I) Chronic Lung Disease.

Enacted 1937. Amended Stats 1947 ch 1033 § 4; Stats 1955 ch 956 § 5; Stats 1959 ch 1189 § 12; Stats 1978 ch 937 § 1. Amended Stats 2004 ch 34 § 29 (SB 899), effective April 19, 2004. (p. 362)

As indicated above, the exceptions to the 104-week limitation were injuries that are severe in nature (severe burns, amputations, Hepatitis B, etc.). However, the limitations to two-thirds of one's average weekly wage remain intact.

As far as permanent disability determination is concerned, SB899 has introduced a major shift in philosophy. To be considered legal and acceptable, the determination has to take into serious consideration the nature of physical injury or disfigurement, the injured worker's occupation, age, and, above all, the employee's diminished future earning capacity. The old language, "ability to compete in the open labor market," will no longer be considered.

Reville, Seabury, Neuhauser, Burton, Jr., and Greenberg (2005) describe the new California Rating System in the following manner:

As we have stated SB899 introduced sweeping reforms to the California system for compensating Permanent Partial Disabilities. The rating system, in particular, was the target of many changes, and these changes will have a direct effect on the many aspects of the system in this study. Perhaps most notably, the disability ratings in California are no longer to be based on the 1997 rating schedule; instead, the injury descriptions and standard ratings are to be based on the AMA Guides. However, these ratings are also to incorporate data of the sort used in this study and in Reville, Seabury, Neuhauser, Burton, Jr., and Greenburg. (p. 91)

LC4660 further mandates that the American Medical Association (AMA) guides to the evaluation of permanent impairment should be used to produce "a numeric data and findings that aggregate the average percentage of long term loss of income resulting from each type of injury for similarly situated employees" (p. 365). It further states that "the administrative director formulates the adjusted rating schedule based on empirical data and findings from the Evaluation of California's Permanent Disability Rating

Schedule, Interim Report (December 2003) prepared by Rand Institute for Civil Justice” (p. 365).

The schedule should apply to all compensable claims that arise after January 1, 2005 and is expected to be consistent, uniform, and objective. Again, applicants’ attorneys have expressed their dissatisfaction with both temporary and permanent disability enactments. The argument whether or not 104 weeks of temporary disability (TD) is sufficient addresses the various injuries injured workers are exposed to and whether or not the reports that mention any signal of the injured worker have been deemed permanent and stationary prior to the passage of SB899 remains and will be one of the hotly debated subjects. Later, we will examine the various suits and appeals that were before the courts and their outcomes. Overall, the current trend in case law has been to uphold the literal language of the various statutes in spite of the arguments that results are unfair and harsh treatment to injured workers occurs.

### *Rehabilitation*

For injuries occurring on or after January 1, 2004, a generous comprehensive benefit package, which allowed the employee to spend up to \$16,000, was hereby repealed. The passage of AB227, which triggered reform law and was considered a catalyst, culminating in SB899, introduced a fresh start in the history of the Rehabilitation Bureau. In effect, it allows the injured worker’s self-determination by providing a voucher for education and training of their choice. The only caveat is that continuing the amount of the voucher is dependant on the Permanent Partial Disability (PPD) Awards. LC Section 4658.5 states:

If the injury causes Permanent Partial Disability and the injured employee does not return to work for the employer within 60 days of the termination of Temporary Disability (TD), the injured employee shall be eligible for a supplemental job displacement benefit in the form of non-transferable voucher for education related re-training and skill enhancement, or both, at a state approved or accredited school, as follows:

1. Up to Four Thousand Dollars (\$4,000) for Permanent Partial Disability Awards less than 15 percent.
2. Up to Six Thousand Dollars (\$6,000) for Permanent Partial Disability Awards between 15 to 25 percent.
3. Up to Eight Thousand Dollars (\$8,000) for Permanent Partial Disability Awards between 26 to 49 percent.
4. Up to Ten Thousand Dollars (\$10,000) for Permanent Disability Awards between 50 and 99 percent. (p. 365)

For several years, administering vocational rehabilitation benefits has been difficult. The program was marked full of periodic interruptions and restarts by the injured worker, and the completion rate was dismal. Current law, to the relief of employers and carriers alike, has transferred the responsibility to the injured worker. Only individuals who have legitimately suffered Permanent Partial Disability and are serious in pursuing education-related programs and enhancement of their existing skills will participate. Employers will save the cost of administering the benefits, dealing with interruptions and staff time to file a flurry of forms upon commencement, interruption,

and completion. To the surprise of many, including defense, applicants' attorneys have not lodged any objection. They seem to be satisfied with the program since it does not appear to be a major source of revenue, especially after it was capped at \$16,000. It appears they have elected to focus on other issues they consider will render a potential positive outcome. To date, that has been quashed by the various courts that applied strict interpretation of the status on almost every issue.

*The Role of Defense Attorneys in Defending the Gains of SB899*

Defense attorneys and defense firms play a pivotal role in leading the fight to preserve the gains afforded by SB899. These individuals and firms are, without a doubt, considered highly capable and experienced to provide a front-line defense in the legal trench warfare against them. Defense firms, to their huge credit, have a heightened awareness with regards to the real and tangible changes that translated into reality because of the reform law. For example, they are fully aware that premiums have taken a free fall, severe restriction are imposed in choosing a physician, MPN and ACOEM are permanent fixtures, temporary disability has been capped at 104 weeks, and the AMA and its guides are a present reality.

One of the most interesting phenomena has been that defense firms have an in-depth understanding of the impact of skyrocketing premiums and the crippling effect on California businesses. In each instance, an applicant's attorney files a lawsuit in an attempt to reverse a known gain; defense has countered it with unprecedented vigor and has registered significant achievements. So far, they have managed to stop the tide of lawsuits that was brought before every courtroom in every jurisdiction, including the



Superior Court of the State of California. This by no means should be mistaken as the war against reversals being won; in fact, most in the insurance industry agree the initial action taken by applicants' attorney can be construed as the tip of the iceberg. Defense has no alternative but to anticipate and to be at least one step ahead of the reversal game. They also realize that they have no control over how each jurisdiction will rule on highly contested issues. Some courts have come very close to ruling in favor of reversal.

A unique development in interest groups that have a stake in keeping the gains afforded by SB899 surfaced a few months after its passage. Various companies are entering the California Workers' Compensation market offering insurance. Companies are encouraged by the new reform law and, as a result, they have developed an unexpected level of confidence that the market is definitely profitable.

New entrants to the Workers' Compensation market include Seabright, CompWest, Employers Direct, Everest National, Berkshire Hathaway, and a half dozen others who previously avoided the market at all costs. After 2004, however, a new trend has developed, creating a seller-friendly environment that alleviated the tremendous strain on the state-backed State Compensation Insurance Fund (SCIF), which had carried the burden for several years. Increased competition continues to cause rates to drop further than anticipated.

Nicole Mahrt (as cited in Beisiegel, 2005), Western Regional Director of the American Insurance Association, in a statement issued after the reform law stated, "We feel very optimistic that as long as the reforms can stay on track and are not undermined by some of the litigation that has been filed, the system will continue to improve" (§ 14).

She however, warned about the effort by applicants' attorneys to undermine the reforms and cited that the battle waged by applicants' attorneys has a single purpose, which is to maintain a system that continuously works in their favor.

She also stated, "If the reforms go away, nothing will have changed. If those are chipped away at, it can be like previous reform efforts in this State where the efforts became failed promises and cost savings never materialized" (Beisiegel, 2005, ¶ 13)

Undermining the system by filing lawsuits and relentlessly "chipping away" continue to be a thorn on the pro-reform side and a standing strategy used by attorneys. Suits are filed on a regular basis questioning the new rating formula, ACOEM, apportionment, bill review, AMA guides, and the like.

#### *Vital Statistics – The Role of WCIRB*

The Workers' Compensation Insurance Rating Bureau (WCIRB) was established as a private trade association of insurers to perform and serve as a statistical agent. The agency also serves as a right hand for the California Insurance commissioner and projects statewide claim costs and trends. As such, it has been used to evaluate and document the impact of SB899 from its inception and up to the present day and continuing.

The agency conducts studies requested by the insurance commissioner, state legislators, and members. The WCIRB is also entrusted to develop and manage rating plans and rules such as the California Statistical Rating Plan (USRP) and the California Experience Rating Plan (CERP). The agency calculates base rates and issues experience modifications, inspects policyholders' premises, and assigns classification codes for insurers.

The California Insurance Code 11750.3 states that a rating bureau may be established and outlines its purpose to include the following:

(a) To provide statistics and rating information with respect to Workers' Compensation Insurance and employers' liability insurance incidental thereto, and written in connection therewith.

(b) To collect and tabulate information and statistics for the purpose of developing pure premium rates to be submitted to the Commissioner for issuance or approval. (p. 57)

While the above description points to the function of the WCIRB, it is simply vast. For our purpose, however, mentioning how the agency had to adopt too rapidly, changing situations, and how it classifies California's businesses are of interest. The WCIRB has, as its primary purpose, a standard classification system to:

facilitate the accurate collection of data so that the cost of Workers' Compensation Insurance can be distributed as equitably as possible. To do that, the classification system is designed to divide payroll data into groups in order to match the premium that you pay to the average potential risk of injury. All California businesses are classified using The Standard Classification System found in part 3 of the Uniform Statistical Reporting Plan. The Uniform Statistical Reporting Plan is part of The California Code of Regulations and is approved by the Insurance Commissioner. The Standard Classification System, which contains approximately 500 industry classifications, describes groups of employers whose businesses are relatively similar. (WCIRB California, 2007, ¶ 1)

It further states how a pure premium rate, which is expressed as a rate per \$100 of payroll, is calculated. It is based on loss and payroll data submitted by all insurance companies.

Immediately following the passage of SB899, the agency reported a monumental decline in pure premium rates for almost all California businesses. Year after year, rates continued to decline, and this phenomenon received a warm reception by California businesses throughout the state. In its 2005 report, the WCIRB reported a significant drop in insurer rates per \$100 of payroll for policies written in the first half of 2005 as \$5.26, 19% below the average rate charges the last six months of 2003.

Rates continued to decline in 2007 as reported by the WCIRB. Citing the cumulative effect of SB228, AB227, and SB899, the average statewide insurer rate per \$100 of payroll for policies written in the last six months of 2006 was 3.25. This reflects a 29% decline on the average rate for the first six months of 2005 and almost a 50% decline below the average rates of the last six months of 2003.

One might question to what we can attribute the rate decline. According to UC Berkeley Survey Research Center (Department of Insurance, 2005), the provisions that were effective after the passage of SB899 caused the decline. The survey acknowledged that 55.2% of the medical portion of the pure premium as excess cost attributable to over utilization of medical services.

1. ACOEM guidelines had a vital role in eliminating 66% of the excess costs.

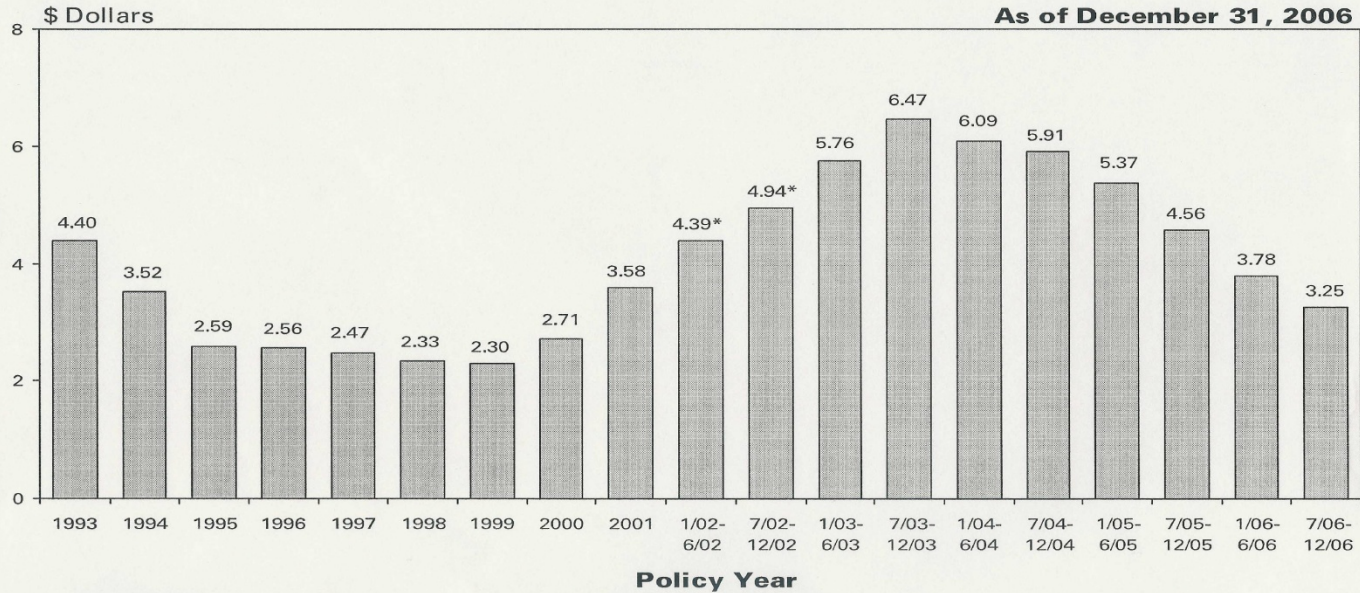
2. The establishment of insurer-controlled networks (MPN) coupled with dispute resolutions rendered a potential reduction of 80 to 90%, significantly impacting medical costs.
3. SB899 amendments of LC4060, 4061, 4062.1, and 4062.2, which limits workers and employers to a single medical-legal evaluation effective January 1, 2005, translated into a 14% savings and forever eliminated duplicative efforts while each party obtains its own medical-legal reports.
4. Utilization review – according to the Department of Insurance, which accepted the UC Berkeley Study, the combined impact of the MPN and ACOEM guidelines alone mass reduced pure premium rates by 6% after January 1, 2005. (p. 1)

Even though SB899 has exceeded expectations of rate reduction, backed by a mountain of empirical evidence, applicants' attorneys were not receptive and continued to reject and deny reality. Their complaints ranged anywhere from doctors leaving the state for lack of adequate payment to reduction of benefits to injured workers and the like. They refused to accept the fact that higher premiums will drive employers to leave the state, rendering Californians unemployed, increasing the insolvency rates, and preventing investors and businesses from coming into the state. Although their complaints lack merit and are not supported by hard evidence, they have managed to create an uproar with the state's labor unions and some non-profit organizations. Despite their complaints, rates continue to decline, and WCIRB's most recent report, as of March 31, 2007, says the average insurer rate per \$100 of payroll has dropped to \$2.93.

Figure 1 and Figure 2 depict a rate decline per \$100 of payroll, due to the passage of SB899. This indeed is a dramatic decline that was witnessed post the passage of the new reform law.

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## California Workers' Compensation Average Insurer Rate per \$100 of Payroll



\* Excludes the impact of the adopted changes to outstanding policy year 2002 pure premium rates effective January 1, 2003.

**WCIRB**California®

Exhibit 2

Figure 1. Rates per \$100 of payroll declined from 6.47 to 2.93 in 7/3/2003 to 3/7/2007. Soaring average insurer rate per \$100 of payroll until the passage of the new reform law. A dramatic decline was witnessed post SB899 era. Used with permission.

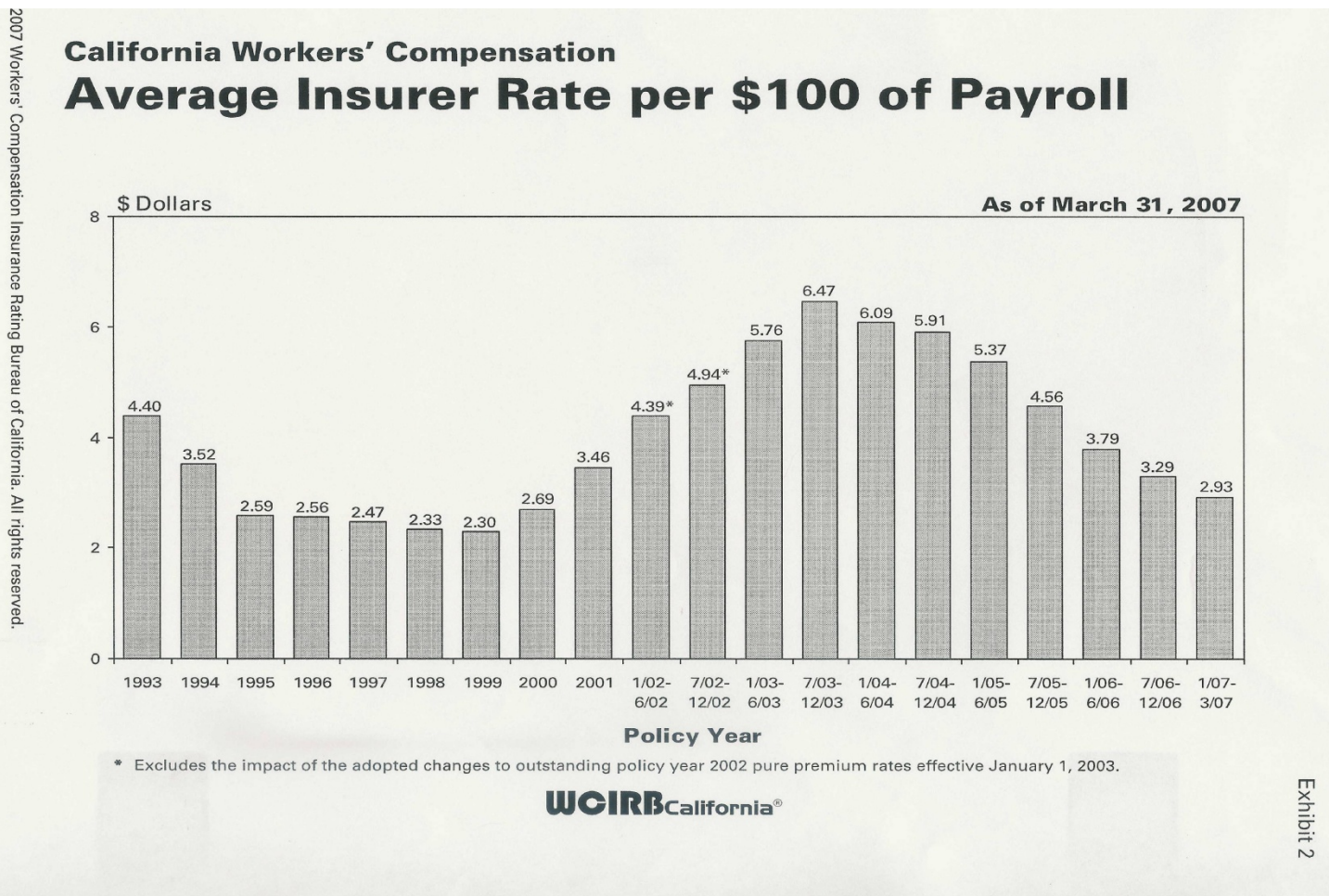


Figure 2. Rates per \$100 of payroll declined from 6.47 to 3.25 in 7/3/2003 to 2/1/2006. Soaring average insurer rate per \$100 of payroll up until the passage of the new reform law, and a dramatic decline post SB899 era. Used with permission.



Table 1 clearly shows the decline in rates charged per \$100 payroll for various employers after the passage of SB899. The table also shows the percentage of change, which depicts a downward trend.

Table 1

*Comparison of Workers' Compensation Pure Premium Rates*

Code	Class	Rate at 7/1/2006	Rate at 1/1/2007	Rate at 7/1/2007	Percent Change (1/1/07 to 7/1/07)
7332	Ambulance	4.46	4.01	3.44	-14.2%
7382	Bus Operators	9.35	7.82	6.71	-14.2%
7424	Aircraft Operation	2.13	2.21	1.90	-14.0%
7429	Airport Operator	5.4	5.16	4.43	-14.1%
7520	Waterworks	4.44	3.93	3.37	-14.2%
7580	Sanitation Employees	3.55	3.39	2.91	-14.2%
7706	Firefighters/Paramedics- Regular	5.11	4.67	4.01	-14.1%
*7707	Firefighters-Volunteer	295.77	317.77	272.65	-14.2%
7720	Police/Sheriff Officers	5.95	4.04	3.47	-14.1%
7721	Probation	4.35	4.32	3.71	-14.1%
*7722	Sheriff-Volunteer	227.80	201.38	172.78	-14.2%
8810	Clerical	0.6	0.49	1.42	-14.3%
8830	Institutional	2.32	2.03	1.74	-14.3%
8831	Animal Care	2.84	2.23	1.91	-14.3%
8838	Curators	1.58	1.3	1.12	-13.8%
8868	Schools-Professors, Teachers	1.48	1.06	0.91	-14.2%
8875	Public Colleges or Schools	1.63	1.61	1.38	-14.3%
9015	Building	5.44	4.56	3.91	-14.3%
9033	Housing Authorities	6.81	5.69	4.88	-14.2%
9043	Hospitals	2.32	2.03	1.74	-14.3%
9101	Schools-All other empl	4.05	3.68	3.16	-14.1%
9220	Cemetery Operation	6.74	5.87	5.04	-14.1%
9410	Municipal-Non-Manual Labor	2.71	1.82	1.56	-14.3%
9420	Municipal-All other	4.85	4.9	4.20	-14.3%
9422	Roads	5	4.52	3.88	-14.2%

\* Rate is Per Capita

\*\*Insurance Commissioner approved a 14.2% decrease in Pure Premium Rates

*Resistance to Change*

One group that has gained fame in resisting change while fully understanding the alternative has been and continues to be the applicants' attorneys association. In order to keep the status quo, applicants' attorneys have conducted a relentless campaign before and after the passage of SB899. While there appears to be no other reason to pursue resistance except fear of losing their livelihood and practice, they routinely use the plight of injured workers by publishing stories on how the law had a direct implication on their lives. The main website used is "Californians Injured at Work," [www.californiansinjuredatwork.com](http://www.californiansinjuredatwork.com), where they quote John Garamendi (2004), the former Insurance Commissioner, stating the following: "The insurance companies have control over the California Legislature; they dominate it. They get what they want. They kill what they don't like. That's got to stop."

Much has been written about resisting change; Maxwell (2006) articulated some main reasons:

1. People resist change because of personal loss (i.e., how change will affect them).
2. People resist change because of fear of the unknown.
3. People resist change because the timing could be wrong.
4. People resist change because it feels awkward.
5. People resist change because of tradition. (pp. 82-88)

Among the five main points Maxwell raises, items number one and five best describe applicants' attorneys. While no one doubts they might exhibit some feelings toward their

clients, the overwhelming reason appears to be on the effect of change and keeping the tradition (status quo) without any interruption or with total disregard for employers' and carriers' concerns. No one should expect a paradigm shift.

Quinn (1996) makes a distinction between deep change and incremental change. He indicates that deep change requires a paradigm shift with a larger scope, leads to an irreversible change, and involves taking risk. It might also mean surrendering control. He also discusses the effect of denying the need for change while efforts have been made to begin with incremental change finally leading to deep change with the passage of SB899. Applicants' attorneys continue to deny the need for change to date. Their inability to make a transition to a more transformational paradigm continues to perpetuate the adversarial relationship we have in existence. Their management style is no different, by and large, and it perpetuates a more transactional approach than a transformational, which tends to be more mature and appropriate for a system facing imminent collapse. A transformational paradigm neglects personal survival but instead focuses on vision realization (Quinn, 1996). A transactional approach in the end is an impediment to change, has a tendency to be resistant to change, and exacerbates denial.

In their quest to resist and impede change, applicants' attorneys have devised a plan of action that will render the provisions of the new law ineffective. The plan they followed is to litigate every conceivable provision in hope of reversing the general trend. As a result, the courts have been tied up listening to arguments and, for the most part, affirming the provisions. Some of the successfully argued cases include *Knight v. United Parcel Service* (2006) 71 CCC 1423, where the appeals board in an En Banc decision

agreed with the applicant that failure to provide the MPN list to the applicant will allow the same to designate a physician of choice, and defense was estopped to deny coverage of medical treatment self-procured by the applicant. *Gamble v. WCAB* (2006) 71 CCC 1015, Court of Appeal, Fourth Appellate District, Division Three, affirmed applicants' rights to continue to earn wages at a second job while collecting Vocational Rehabilitation Maintenance Allowance (VRMA) benefits and being rehabilitated with no credit for wages earned at the second job.

Even though applicants' attorneys were fortunate to garner limited success, defense continues to repulse some of the most calculated attacks. These proceedings include arguments on salient issues regarding the applicability of the new rating manual, commencement and ending of temporary disability (LC4061), definition of amputation, apportionment, ACOEM guidelines, and MPN, to name a few.

In *E.L. Yeager Construction v. WCAB* (Gatten, 2006) 71 CCC 1087, Court of Appeal, Fourth Appellate District, the court found that the board's rejection of the Independent Medical Examiner's (IME) apportionment analysis, which was based on an MRI taken on the claimant's back, which showed early degenerative changes, could not be disregarded as being speculative and is based on the IME's expertise in evaluating significance of the facts.

In *Pendergrass v. Dugan Plumbing* (2007) 72 CCC 95, Appeals Board, en banc decision, the applicant made the issue that the applicability of the new rating schedule was a trier of fact, alleging that LC4061 notice (ending TD beginning PD) was not sent timely, citing the need arose June 2004. WCJ decided in the applicant's favor in a 4-to-3

split decision. The defendant petitioned for reconsideration, and the board reversed its decision and issued a new en banc decision indicating that, in order for the old 1997 Permanent Disability Rating Schedule (PDRS) to apply, the defendant must have issued the last payment of temporary disability prior to January 1, 2005, since it is the last payment that triggers the obligation to serve the Labor Code Section 4061 notice.

In *Costa v. Hardy* (2006) 71CCC1797, Appeals Board, En Banc decision, the applicant questioned the Rand's study in developing the new PDRS, alleging that it was invalid and not based on empirical data and studies. The board found that the decision to comply with the January 1, 2005 deadline was not arbitrary or capricious.

The next case was intended to circumvent the 2-year temporary disability cap to 5 years by alleging that removal of a bone as part of a surgery constituted an "amputation" within the meaning of Labor Code Section 4656. In *Cruz v. Mercedes-Benz of San Francisco*, the WCAB unanimously rejected this analysis and sent a clear message (en banc opinion) that an amputation requires a removal or severance of a limb, part of a limb or other body appendage (including surgical removal). The amputation must be of an external projecting body part and cannot be an internal part, even a bone.

Other famous cases, in which applicants' attorneys made last ditch efforts to have the 1997 Permanent Schedule apply (which translates into more benefit payment allocations) are *Zenith Ins. Company v. WCAB* (Nader Aziz) A11167671, June 19, 2007, and *Costco Wholesale Corporation v. WCAB* (Chavez). In both cases, the court ruled that the new permanent disability rating schedule applies for a 2004 injury that was declared a permanent and stationary condition in 2005. Applicants in both cases failed to meet the

qualifications necessary for the 1997 schedule to apply. These qualifications include a qualifying medical report or notice under 4061 requiring a percentage of disability calculated using the earlier schedule. Simply arguing the defendant's duty to give notice under LC 4061 before 1/1/05 will not suffice, especially when the applicant (Aziz) received temporary disability benefits from October until August 2005.

### *Summary of Findings*

While reviewing literature, it was determined that defense attorneys were successful in winning most of the cases that appear to preserve SB899 provisions. Their style has been transformation rather than transactional; defense also enjoys the support of carriers, self-insured entities, employers, and brokers. Furthermore, the governor and his staff are committed to preserving the provisions of the new law. However, this does not mean that attorneys representing injured workers will not continue litigating every thing that could be remotely construed as a viable case to circumvent the trend. They want to preserve the status quo, have no regard for California employers and the economy, and seem only driven by pure self-interest.

Whether or not they will be successful and have in some way cast doubt on defense remains to be seen and is the crux of this dissertation. All indications show the integrity of SB899 along with the support it enjoys are still intact. Stakeholders do not appear to relent and continue to be vigilant; the opposing camp, though equally vigilant, lacks substance. Filing lawsuits for the sake of same or in pretence, simply tying up court time at taxpayers' expense, could be considered unethical, immoral, and a manifestation of poor judgment and practice.

*On Fraud*

Fraud and fraudulent practice have been and continue to be one of the menaces of the California Workers' Compensation System. The labor code section that governs the statute is LC1871.4, making false or fraudulent written or oral statements a felony. Furthermore, knowingly presenting fraudulent material statements, conspiring with others to commit an unlawful act, impeding reimbursements due to the employer, and causing the employer to incur medical-legal expenses due to such actions are incorporated into the statute. The punishment for such activity is described under Section(b) under general rules:

Every person who violates subdivision(a) shall be punished by imprisonment in county jail for one year, or in the State prison, for two, three, or five years, or by a fine not exceeding one hundred fifty thousand dollars [1] (\$150,000) or double the value of fraud, whichever is greater, or by both imprisonment and fine.

Restitution shall be ordered, including restitution for any medical evaluation or treatment services, obtained or provided. The court shall determine the amount of restitution and the person or persons to whom the restitution shall be paid. (p. 29)

The state agency in charge of controlling various types of fraud or suspected fraud is the California Department of Insurance, Fraud Division, which has special investigative units throughout the state. Steve Poizner, current Insurance Commissioner, was elected on November 7, 2006, and heads the department, which is considered the largest consumer protection agency in the state. According to the National Insurance Crime Bureau's (2000) estimate in the year 2000, Workers' Compensation fraud was the

“fastest-growing insurance scam in the nation, costing the insurance industry 5 billion per year” (p. 1).

California employers continue to be victimized by fraudulent activity along with taxpayers and the general public, which has to foot the bill for prosecution and court expenses. According to the Department of Insurance Fraud Division, in Fiscal Year 2005–2006, “the division received 572 new cases, made 299 arrests, submitted 319 cases to prosecuting authorities with potential loss amount up to \$240,670,133” (p. 1).

*Types of Fraud and Defenses’ Efforts to Stem the Tide*

Defense attorneys are also expected to work closely with the Department of Insurance and employers in reporting fraud and fraudulent activity, whether it is committed by applicants, medical providers, or even employers. They have a duty to forward their concerns from all sources including investigative reports, surveillance (video tapes), activity checks (applicants working while receiving benefits), and the like. The most common activity involves fraud committed by an applicant, better known as claimant fraud, which, according to California Commission on Health and Safety and Workers' Compensation Report on The Workers' Compensation Fraud Program (2001) comprised “three out of four of the people convicted of Workers' Compensation fraud” (p. 6). The activity includes faking injury at work, exaggerating the severity of a legitimate injury to extend time away from work, claiming an injury arose out of the employment and in the course of employment, and working while receiving temporary disability benefits, to name a few.



Medical provider fraud continues to cost California employers and insurance carriers. The Department of Industrial Relations (2006) encourages reporting of any suspected fraud, citing LC Section 3823. According to the department, LC 3823 “requires any insurer, self-insured employer, third-party administrator, Workers' Compensation Administrative Judge, audit unit, and the Department of Industrial Relations reporting suspected Medicare Provider Fraud, pursuant to Labor Code Section 3823” (§ 1).

An attorney or other person who believes a fraudulent claim has been made by any person or entity providing Workers' Compensation medical care should report the apparent fraud to the administrative director of the division of Workers' Compensation. Fraudulent activities by medical care providers include fraudulent billing for services not received, double billing insurance carriers and group health, performing unnecessary procedures, upcoding and miscoding, billing more than one time, billing for brand while dispensing generic, and other blatant fraud that includes billing for medical equipment that was never dispensed to the injured worker.

The third and less common practice is what is called employer fraud, where some employers are engaged in understating the actual amount of payroll, reducing premium payment liability. Employer fraud also includes claiming employees as independent contractors, classifying employees with improper job codes that carry lower premiums, and failing to carry Workers' Compensation insurance, which has a potential of exposing injured workers to unnecessary financial disaster.

The effects of SB899 on fraudulent activity from all sources are currently work in progress due to lack of sufficient data. However, current observations by the insurance

industry and employers indicate a decline. That phenomenon could be attributed to the changes that were introduced by SB899, which incorporates a new way of evaluating permanent disability, duration of temporary disability, actual rehabilitation benefits, and the absence of doctor shopping and uncontrolled referrals to specialists for every conceivable and unsubstantiated diagnosis.

*Examining Organized Opposition and Descent and Its Potential Ramifications in the Future*

The California Applicant's Attorneys Association (CAAA) is the only organized coherent organization that has stood up in opposition to the New Reform Law. Whether or not their opposition to specific provisions of the law is with or without merit appears to be an issue to some extent; however, some of the issues raised have made an impact on the defense camp and are worthy of a discussion and a closer look.

The organization's first attempt was manifested by filing a petition for Writ of Mandate and Memorandum of Points and Authorities to the Court of Appeals of the State of California by attaching a critical date of January 1, 2005, to stay the execution, specific provisions of the New Law Article 2.3 of the Labor Code and Section 9767.9, which is part of the regulation that authorizes employers to establish an MPN. The attorneys representing the injured workers, mentioned in the Writ of Mandate, present a constitutional argument that states as follows:

The California Constitution bestows upon California workers the right to "a complete system of Workers' Compensation" that includes among other things:

...adequate provisions for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent or relieving from consequences of any injury or death incurred or sustained by workers in the course of their employment [:]... full provisions for such medical, surgical, hospital and other remedial treatment as is a requisite to cure and relieve from effects of such injury... the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character....

(p. 5)

While applicants' attorneys agree that Article 2.3 authorizes employers to require newly injured workers to seek medical treatment exclusively from doctors in the MPN, they argue that it made no provision for the transfer of ongoing care of workers who were injured prior to the establishment of the MPN into the MPN. Their main objection, however, lies with regulation 9767.9, which they strongly feel overturns "California's long-standing policy against interrupting the established doctor-patient relationships in the absence of good cause" (p. 1). They further argue LC4603 prohibits an employer from terminating an existing doctor-patient relationship unless good cause is demonstrated by the employer. Further objection to the regulation cautions that arbitrary disruption of the doctor-patient relationship can be counterproductive and has a tendency to increase cost, since the new MPN doctor has to acquaint himself with the injured worker and massive medical records. In addition, 9767.9 to the CAAA constitutes a retroactive application of Article 2.3 in violation of the California Constitution,

applicable case law, and the legislature's intent with respect to SB899. Furthermore, the law's liberally constructed phrase "good cause" is ambiguous, and any ambiguity will have to be adjudicated in favor of the injured worker. This same argument has been presented in cases subsequent to this particular objection lodged by attorneys representing injured workers. Indeed, the definition of "good cause" has a potential to be construed as ambiguous, and the lack of meticulous delineation and boundaries adds to the existing controversy, has a potential for an amendment or total reversal, and appears to be a danger to subsequent future litigation.

Part of Regulation 9767.9 states as follows:

(b) The insurer of employer shall provide for the completion of treatment for injured employees who are being treated outside of the MPN for an occupational injury or illness that occurred prior to the coverage of the MPN... for the following conditions:

(1) An acute condition. An acute condition is a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical problem that requires prompt medical attention and that has a duration of not more than 30 days. Completion of treatment shall be provided for the duration of the acute condition.

(2) A serious chronic condition. A serious chronic condition is a medical condition due to a disease, illness, catastrophic injury, or other medical problem or medical disorder that is serious in nature and that persists without full cure or worsens over an extended period of time or requires

ongoing treatment to maintain remission or prevent deterioration.

Completion of treatment shall be provided for a period of time necessary to complete a course of treatment approved by the employer or insurer and to arrange for transfer to another provider within the MPN, as determined by the insurer or employer. (p. 259)

The regulation also defines terminal illness as an incurable or irreversible condition with a certain probability of death in about a year. Treatment will be extended for the length of time the terminal condition exists. Any surgical procedure has to be authorized by the insurer or employer, and documented by the provider to occur within 180 days prior to the termination of the contract. Furthermore, as stated in LC Section 3202, liberal construction will apply for injuries that occur in the course and scope of one's employment.

While regulation 9767.9 appears to be clear when discussing acute conditions, the limitation to only 30 days has been and will continue to be a source of contention. The likelihood of potential litigation and a more serious source starts with Paragraph (2), which has the potential to disrupt the doctor-patient relationship on what constitutes "completion of treatment in serious and chronic conditions." The "time necessary to complete a course of treatment to arrange a transfer to another provider within an MPN" can be construed with liberal construction of law as ambiguous. Obviously, the questions become, when is treatment deemed complete in serious conditions, when is the right time to arrange a transfer, and what are the ramifications to the injured worker when he/she is transferred to a doctor he/she has no prolonged relationship with?

The issue of liberal construction and ambiguity came up in an opinion and decision in *Cruz v. Mercedes Benz of San Francisco*, where the applicant was seeking an extension of the cap on Temporary Disability (TD) as defined by LC 4656(C)(7)C. The applicant alleged that the removal of a portion of his spine and bone from the hip comes within the general definition of amputation. The WCJ agreed, and the defendant petitioned for reconsideration. Arguments raised by the defendants include that the definition of amputation is overly broad, and the interpretation is contrary to the intent of the legislature, which could have included spinal surgery in the exceptions; therefore, liberal construction of the statute is moot.

The panel agreed with the defendants and amended the April 4, 2007, decision that spinal surgeries do not constitute an amputation and no additional Temporary Disability benefits were extended to the applicant. Commissioner Caplane wrote separately regarding the 104-week cap on TD. Again in this case, the commissioner had serious doubts about how the 104-week cap was decided upon. There is no question that he agreed with the court's definition of amputation and the court's responsibility to interpret the law. He was equally disturbed by how "Injured Workers are sorted, based on the random nature of their injuries and without regard to relative need; and on that basis, are either entitled or denied extended Temporary Disability benefits during their ongoing recovery".

Commissioner Caplane further stressed the purpose of TD indemnity (*Gamble v. Workers' Compensation Appeals Board Bd* (2006) 143 Cal.App.4<sup>th</sup> 71, 79 [71 CCC's 1015, 1017]) and underlines that, in this particular case, the applicant had not healed but

was ineligible to receive indemnity payments. According to the commissioner, the carving out of exceptions specifying injuries and conditions “leaving equally devastating conditions such as traumatic brain injuries, failed back syndrome” has no rational basis. For this reason, he called the cap unreasonable and unjust to other salient arguments presented, including:

1. The issue will not go away.
2. Causes workers to return to work prematurely.
3. Shifts the burden of financial support from the employer to taxpayers.
4. Induces a rush for surgeries instead of less risky conservative treatment.

The argument raised by the commissioner should be given serious consideration. Again, the lack of clarity with regard to how the 104-week cap has been arrived at, and why the injuries and conditions listed did not take into consideration serious brain injuries, chronic back injuries, failed back syndrome, and other equally devastating injuries will undoubtedly have future litigation potential. The dissention of a commissioner in opposition to the aforementioned matters should not be taken lightly. This, in turn, will give rise to a complete reversal or, at a minimum, will force the legislature to expand the list of exceptions and examine the true essence of the cap. At this point, it might be prudent to weigh the consequences and effect change on every provision that appears too meritorious. Simply ignoring these issues and succumbing to the “enough is enough” mentality will not contribute to holding on to the gains realized by the New Reform Law.

*Recent Significant Decisions*

The impact of previous objection to varied provisions has given rise to additional cases before the board and the Supreme Court. The most interesting, however, is *Sandhagen v. WCAB/SCIF*, which rose all the way to the state's Supreme Court. The case stems from the refusal and failure to authorize a Magnetic Resonance Imaging (MRI) test of the applicant's spine after a legitimate injury to his neck, back, left elbow, and left wrist as a foreman in road construction. A request was made to SCIF on May 24, 2004, to authorize the MRI, which referred the matter to Dr. Krohn for "Utilization Review." On June 11, 2004, when SCIF failed to communicate its decision within 14 days as stated in LC4610 sub c1.(g)(1), the applicant filed for an expedited hearing. The hearing was held on July 15, 2004. The WCJ ordered State Fund to authorize the MRI. Instead of authorizing the MRI, State Fund chose to seek reconsideration, exposing itself to unnecessary litigation and expense. It also contributed to a legal precedence, since the case continued all the way to the State Supreme Court. The WCAB granted reconsideration and, on November 16, 2004, issue its decision holding that the LC4610 deadlines are mandatory, and failure to meet the deadline precludes it from using the utilization review process.

A Writ of Review was filed exacerbating the matter. The appeals board affirmed both WCAB holdings but concluded that State Fund could object to the medical treatment request as set forth in the LC4062 dispute resolution mechanism. The State Supreme Court issued a judgment reversing the Court of Appeal's decision in its entirety and remanded the matter to the Court for further proceedings consistent with their



opinion. Ramifications of this decision are numerous. We have now established a legal precedence with regard to UR. Secondly, since the applicant was legitimately injured while performing his usual and customary occupation, State Fund's action was ill advised and can be construed as arrogant. At a minimum, the attorneys representing the injured worker were correct and diligent in the course of the litigation process and met the preponderance of the evidence threshold. State Fund also failed to pick its battles and, by not allowing a simple MRI to be performed, created a legal precedence. Furthermore, the more employers and insurers engage in such behavior, the harder it will be to defend any and all provisions of SB899.

The next decision for discussion is *Benson v. The Permanente Medical Group*. This case is significant not because it was decided in favor of the defendant, but because of the dissenting opinion of Commissioner Caplane. Even though the applicant's specific and cumulative trauma claim and the rating thereof were later reversed and a separate award was issued, the lack of a unanimous decision is worth noting. The commissioner's main disagreement is with Dr. Izzo's description of apportionment. The entire discussion offered in his opinion with regard to both injuries was brief and does not identify factors of disability caused by the cumulative trauma injury. The fact that no explanation was given on how it translated to a three-level anterior-posterior fusion did not help matters any. The how and why of factors of disability caused by the CT, which Dr. Izzo concluded as 50%, did not satisfy the commissioner. For these other reasons, he did not agree with the panel decision and sided with the original WCJ decision. Liberal construction was also an issue. Since he felt that the defense failed to sustain its burden of

proving apportionment and the fact that the applicant's PD was caused by a specific injury, the benefit should have been favorably construed to the applicant.

*Conclusion.* The above recent decisions and dissensions should serve as notice to all employers and insurers. The more employers choose to litigate cases that are not worth fighting, the more they create unnecessary precedence. *Sandhagen v. WCAB/SCIF* should serve as an important example. The increase in the number of dissensions is not a good indication of support for the New Reform Law. The law should also not be used as payback for years of abuse and fraud. Employers and insurers should take action when it is appropriate and refrain from litigating each and every issue. By now, everyone should realize things could be subject to change.

As we are all aware, the governor's term in office is coming to conclusion. Even if it could be pure speculation at this point, there is no guarantee that he will be replaced with a governor who is from the same party or philosophy and leadership style. Some or all of the provisions of the New Reform Law might be subject to amendment, revision, or outright repeal. Recent developments indicate that an increase in the Permanent Disability benefit rate has been proposed. There should be no doubt that this is the beginning, not the end.

#### *On Job Displacement Benefit*

LC Section 4658.1 defines the meaning of "regular work," "modified work," "alternative work," equivalent wages, and compensation location. LC Section 4658.5 further specifies the conditions of eligibility for supplemental job displacement, which bases the amount of funds available to the percentage rating of the applicant's disability.

Moreover, it specifies the use of the voucher, when the benefit should be available, and the notice of rights sent. The employer's liability for supplemental job benefits is described as follows:

LC4658.6 Employer Liability for Supplemental Job Displacement Benefit.

The employer shall not be liable for the Supplemental Job Displacement Benefit if the employer meets either of the following conditions:

- (a) Within 30 days of the termination of Temporary Disability Indemnity Payments, the employer offers, and the employee rejects, or fails to accept, in the form and manner described by the Administrative Director, modified work, accommodating the employees work restrictions, lasting at least 12 months.
- (b) Within 30 days of the termination of Temporary Disability Indemnity Payments, the employer offers and the employee rejects or fails to accept, in the form and manner prescribed by the Administrative Director, alternative work meeting all the following conditions:
  - (1) The employee has the ability to perform the essential functions of the job provided.
  - (2) The job provided is in a regular position lasting at least 12 months.
  - (3) The job provided offers the same wages and compensation that are within 15 percent of those paid to the employee at the time of injury.
  - (4) The job is located within reasonable commuting distance of the employee's residence at the time of injury. (p. 365)

There might be several issues that can be raised concerning this package. First and foremost is the willingness that the employer has to follow the prescription and administer the benefit due to the employee. The second concern is that there are too many conditions on the employee regarding the acceptance and rejection of the offer. The most concerning is the amount allotted to workers who have suffered serious injuries. The provision does not allow special accommodation, and the restrictions and conditions are the same for all injuries, regardless of severity. This and other provisions will continue to be a source of contention and fertile ground for litigation, since the question of adequate compensation and care will undoubtedly come to the front burner.

Carriers and employers have to show reasonable care in accommodating legitimately injured workers and avoid lumping all together irrespective of their injuries. If done correctly, their prudent action will contribute to reduced litigation and cost effectiveness and will lift undue burden from the defense bar, which continues to appear on behalf of carriers and employers. Creating precedence and not accommodating legitimately injured workers will lead to more scrutiny of existing laws and will contribute to reversals/repeal of provisions under the law.

### Chapter 3: Methodology and Procedures

This study is intended to assess the perception of defense attorneys in the Southern California region of the California New Reform Workers' Compensation Law: Senate Bill 899. The intent is further justified by the increasing number of California defense attorneys who have doubts regarding SB899, especially in light of legal challenges presented by attorneys representing injured workers, employees, and other entities and defenses' ability to preserve significant gains realized by the passage of SB899. The study will further explore defense attorneys' readiness to prevent potential reversals on appeal. Additionally, the study will explore the quality of leadership provided to make SB899 a reality and defenses' perception of the same.

#### *Objectives/Restatement of the Purposes of the Study*

The objective of this study is to determine the answer to the following questions:

1. What is the current level of support by defense attorneys regarding SB899, the New Reform Law, and are these opinions related to demographic characteristics?
2. How do defense attorneys perceive SB899 and its current standing, and are these opinions related to demographic characteristics?
3. How satisfied are defense attorneys regarding the quality of leadership provided to make SB899 a reality, and are these opinions related to demographic characteristics?
4. Based on the current level of resistance by attorneys representing injured workers, are defense attorneys worried that the gains made by SB899 will

expose decisions in their cases to reversals on appeal, and are these opinions related to demographic characteristics?

5. Do defense attorneys feel that they are sufficiently prepared to resist efforts to reverse some provisions of the law, and are these opinions related to demographic characteristics?
6. What do defense attorneys recommend as a future plan of action, and are these opinions related to demographic characteristics?

Included in this chapter is a description of the methodology of the study, which includes (a) research design, (b) hypotheses, (c) data gathering instruments, (d) reliability and validity, (e) population and sample, (f) survey procedures, (g) data processing and recording, and (h) institutional review board requirements.

### *Research Design*

McMillan and Schumacher (2001) provide a definition of scientific inquiry as “The search for knowledge by using recognized methods in data collection, analysis, and interpretation” (p. 9). They further describe the scientific method as a sequential research process and indicate the steps that are essential in the completion of the process: “(1) Definition of the problem, (2) Stating the hypothesis to be tested, (3) Collect and analyze data, and (4) Interpret the results and draw conclusions about the problem” (p. 9).

According to the authors, methodology or research methods “are the ways one collects and analyzes data. These methods have been developed for acquiring knowledge by reliable and valid procedures” (p. 9).

In general, “methodology refers to a design whereby the researcher selects data collection and analysis procedures to investigate a specific research problem” (McMillan & Schumacher, 2001, p. 10). This study uses a non-experimental research design that involves survey research. According to McMillan and Schumacher (2001), survey research is described as research in which the investigator

selects a sample of respondents and administers a questionnaire and conducts interviews to collect data on variables of interest. The data gathered are used to describe characteristics of a certain population. Surveys are used to learn about people’s attitudes, beliefs, values, demographics, behavior, opinions, habits, desires, ideas, and other types of information. They are used frequently in business, politics, government, sociology, public health, psychology, and education because accurate information can be obtained for large numbers of people with a small sample. (p. 304)

The sampling procedure for this study is a non-probability sampling known as Purposeful or Purposive Sampling. The researcher in this case selects particular elements of the population that will be representative and informative about the topic of interest.

The two characteristics to be studied in this study are the differing perceptions among defense attorneys and their readiness to keep the gains realized by the passage of SB899. These two characteristics are defined as (a) pre-disposition to believe a certain way based on prior experience, and (b) sufficient collective motivation to embrace change respectively.

*Validity and Reliability*

McMillan and Schumacher (2001) define validity as “a judgment of appropriateness of a measure for specific inferences or decisions that result from scores generated” (p. 239). The authors further offer the concept of test validity and its implications: “conceptualization of test validity implies much more than simply determining whether a test measures what it is supposed to measure” (p. 239). The authors have also offered more up-to-date definitions to clarify that test validity is an inference, use, or consequence that is valid or invalid, but it is not a test. The authors cite various examples to reinforce their thought on the subject. A sample of the examples defines validity as an “integrated evaluative judgment of the degree to which empirical evidence and theoretical rationales support the adequacy and appropriateness of inferences and actions based on test scores or other modes of assessment” (Messick, 1989, as cited in McMillan & Schumacher, p. 240).

Face and content validity will be determined by having at least two worker’s compensation defense attorneys review survey items 7 to 33. Their examination will include recommending any changes that would improve the readability and understandability of the questions as well as ensuring that the opinion questions asked for each research question are relevant and provide a comprehensive picture of the scope of the topic being addressed in each research question.

Reliability “refers to the consistency of measurement – the extents to which the results are similar over different forms of the same instrument or occasions of data collection” (McMillan & Schumacher, 2001, p. 244). The authors further describe what



makes the instrument reliable: “If an instrument has little error it is reliable and if it has great amount of error it is unreliable” (p. 244). One can conclude that the less the error, the more reliable the instrument.

The internal reliability of the opinion items in each section of the survey will be determined using Cronbach alpha reliability coefficients. Should the aggregation of the items be deemed worthy of a scale ( $r > .70$ ), this new scale will also be compared against the demographic factors.

#### *Survey Procedures*

Each participant in the sample will receive a cover letter describing the study and the subject matter researched and the survey questions. The survey can be described as paper and pencil as opposed to online. Participation will be voluntary, and subjects will not be asked for any identifying information. The timeframe to respond will be 3 weeks initially, and a follow-up letter will be forwarded in 1 week to help increase the response rate.

In preparation for sending out the survey for this study, the researcher will establish contact with various law firms to facilitate the process. This will be accomplished by contacting managing attorneys, office managers, and individual attorneys the researcher has established a business relationship with for several years. Each participant in the sample will receive a cover letter describing the study and the subject matter researched and the survey questions. The survey can be described as paper and pencil as opposed to online. Participation will be voluntary, and subjects will not be

asked for any identifying information. The researcher will adhere to the following timeline while conducting this study:

July 18, 2008: Preliminary Oral Defense Exam.

August 5, 2008: Establish contact with various law firms.

August 5–30, 2008: Complete any modifications following the Preliminary Oral Exam. Conduct instrument validity and reliability tests and modify the survey accordingly, with approval of the Dissertation Chair.

June 7, 2009: Mail the survey along with cover letter and waiver to defense attorneys.

June 21, 2009: Deadline for first responses to the survey.

June 21, 2009: Mail follow-up letter to defense attorneys.

July 7, 2009: Deadline for all responses.

July 14, 2009: Enter data and analyze results.

July 21, 2009: Begin working on the results chapter.

July 30, 2009: Begin working on Chapter 5 conclusion.

September 21, 2009: Prepare to complete Final Defense.

November 1, 2009: Complete Final Oral Defense.

#### *Data Processing and Analysis*

Each of the completed surveys will be examined and will be deemed incomplete if the respondent has marked less than 90% of the responses to the questions. Therefore, an incomplete data was defined as one that is less than 90% complete. Data will be processed using the Statistical Package for the Social Sciences (SPSS, 2008).

Table 2

*Mapping of Survey Items*

Research Questions	Survey Questions	Descriptive Analysis
1. What is the current level of support by defense attorneys regarding SB899, the New Reform Law, and are these opinions related to demographic characteristics?	#7, #8, #9, #10	Descriptive statistics plus Pearson product-moment correlations.
2. How do defense attorneys perceive SB899 and its current standing, and are these opinions related to demographic characteristics?	#11, #12, #13	Same as above.
3. How satisfied are defense attorneys regarding the quality of leadership provided to make SB899 a reality, and are these opinions related to demographic characteristics?	#14, #15, #16, #17, #18, #19	Same as above.
4. Based on the current level of resistance by attorneys representing injured workers, are defense attorneys worried that the gains made by SB899 will expose decisions in their cases to reversals on appeal, and are these opinions related to demographic characteristics?	#20, #21, #22, #23, #24, #25	Same as above.
5. Do defense attorneys feel that they are sufficiently prepared to resist efforts to reverse some provisions of the law, and are these opinions related to demographic characteristics?	#26, #27, #28	Same as above.
6. What do defense attorneys recommend as a future plan of action, and are these opinions related to demographic characteristics?	#29, #30, #31, #32, #33, #34	Same as above.

Initially, descriptive statistics will be calculated for all variables (means, standard deviations, frequencies, and percentages). The demographic data gathered (i.e., Questions 1 through 6) in the survey will be correlated against the opinion questions (items 7 to 34) using Spearman's Rank-order correlations.

Table 2 displays a mapping of survey items to their respective research questions.

*Population/Sample/Analysis Unit*

The sampling procedure for this study is one of the three types of non-probability sampling called Purposeful Sampling; it has been described by McMillan and Schumacher (2001) as follows:

In Purposeful Sampling (sometimes called Purposive, Judgment, or Judgmental Sampling) the researcher selects particular elements from the population that will be representative or informative about the topic of interest. On the basis of the researcher's knowledge of the population, a judgment is made the best information to address the purpose of the research.

(p. 175)

The population for this study includes all defense attorneys who are members of the California State Bar and are currently engaged in defending Workers' Compensation cases in the state of California actively. The current membership of defense attorneys who are active is 3800. The sample will be drawn from defense attorneys who practice in the Southern California tri-county (Los Angeles, Orange, and San Diego) region, who number approximately 1800.

The participants in the study will be a representative sample of 100 attorneys. The analysis unit is one defense attorney belonging to the California State Bar and actively engaged in defending Workers' Compensation cases. The study is limited to surveying defense attorneys in the Southern California tri-county (Los Angeles, Orange, San Diego) region. The study is further limited as the researcher will only survey

attorneys who have dedicated themselves solely to the practice of Workers' Compensation Law in the state of California.

*Human Research Considerations*

Protecting the participants of any study is highly important, and the researcher is obligated to address this issue. This is accomplished by following the prescribed procedure as defined by the Institution Review Board (IRB) process and reviewed by HSRC. Key areas of the process include Study Design, Investigator Qualifications, Selection of Subjects, Risks and Benefits, Informed Consent Process, and Confidentiality and Privacy.

*Study design.* This particular study's research methodology has been reviewed by experts and has been found to be sound. Dr. Thomas Granoff, who is an authority in educational research design, was hired to review the methodology for this study. His review includes the problem, purpose, research questions, survey instrument appropriate to analyze the population, and statistical analyses. Furthermore, at least two Workers' Compensation defense attorneys will review survey items 7-34 to determine face and content validity.

Participants will not be put in unethical and inappropriate conditions in the process of participating in this study. The experts have found the methodology to be appropriate and in compliance with IRB guidelines. Members of the committee and Dr. Thomas Granoff are serving as experts in upholding ethical standards and methodology.

*Investigator qualifications.* The researcher has been involved professionally with the subject matter for several years and has the ability to offer a substantial contribution

to the study. The researcher has managed complex litigated Workers' Compensation claims since 1990 and has developed a solid working relationship with defense attorneys in several firms.

The researcher is a doctoral student in Pepperdine University's Doctor of Education in Organizational Leadership Program. The researcher has completed all required course work and has passed the comprehensive examination (both written and oral). The researcher's professional experience and educational background provide appropriate qualifications to be involved in the research study.

Finally, the researcher has completed a literature review in the areas of (a) The History of the California Workers' Compensation System, (b) The Past Legislative Effort to Gradually Transform the System, (c) The Leadership Provided to Advance Full Transformation, (d) Resistance to Change, (e) Pertinent Case Law, and (f) Future Plan of Action to Preserve the Gains Afforded by the New Reform Law: SB899.

*Selection of subjects.* The selection process in this particular research study is free of any coercion or pressure on the subjects to participate. All subjects are members of the California State Bar, are over the age of 21, and are engaged in defending Workers' Compensation cases. The subjects' management and the researcher have no knowledge whether specific subjects participated in the study. Again, no coercion or pressure will be placed on the subjects. The researcher has established contact and has made arrangements in various law firms in the tri-county area to conduct the paper and pencil survey.

*Risks and benefits.* The risk to the human subjects in this study will be extremely low, because participation in the study will be voluntary, anonymous, and confidential.

Because of the above protocol, researcher results cannot be attributed to any single participant. The data-gathering process that will be utilized will not reveal individual participant identities in any shape or form keeping the process free from any intrusion.

*Informed consent process.* A waiver to the Informed Consent Process will be requested by the researcher upon distribution of the survey questions. The waiver will clearly indicate that the researcher communicated to each participant that participation is strictly voluntary and that all responses are anonymous and confidential. Furthermore, participants will be informed that they can contact the researcher to obtain additional information regarding the study, and every effort will be made to comply with their requests.

*Confidentiality and privacy.* Confidentiality and subject anonymity are crucial in any research study. The researcher will be able to conform with the above by securing a waiver to the Informed Consent Process that will allow the participants to avoid signing informed consent documents, affording the subjects anonymous and confidential participation. In addition, only summarized data, excluding individual responses, will maintain the security of the research data. The data collection process will be accomplished via paper and pencil survey, which will not provide individual subjects' information, further maintaining confidentiality of all responses.

*Summary*

In conclusion, and as stated in the aforementioned captions, every effort was made to protect the rights of the research participants. The foundation of the methodology used for this study will be to serve the same purpose. Strict adherence to the protocols of the Institutional Review Board in protecting the rights of human subjects will be followed, and the integrity of the study will be maintained. Participants will take on minimal risk in participating in the study.



## Chapter 4: Results

The purpose of the study was to determine the perception among defense attorneys regarding the New Reform Law SB899. The study also assessed their satisfaction regarding the leadership provided by the Governor Schwarzenegger, Senator Poochigian and the Legislature as a whole. Furthermore, the study assessed defense attorneys' readiness to defend the gains realized following the passage of the new reform law. Thirty-one defense attorneys completed surveys for this study.

### *Return Rate*

On June 7, 2009, the survey was mailed to 11 law firms in the Los Angeles, Orange, and San Diego Tri-County area. The total amount of surveys delivered to participants was 115, as indicated in Chapter Three, a non-probability sampling known as purposeful or purposive sampling. In this procedure, the researcher selects particular elements of the population that are representative and informative about the topic of interest. The response period was closed July 7, 2009, 4 weeks after the initial mailing and receipt. A total of 31 ( $N = 31$ ) respondents participated in the study, for a response rate of 27%.

### *Results of the Survey*

Table 3 displays the frequency counts for selected variables. Somewhat more men (58.1%) than women (41.9%) participated in the study. Most (83.9%) were Caucasian (Table 3).

Table 3

*Frequency Counts for Selected Variables*

Variable	Category	<i>n</i>	%
Gender	Male	18	58.1
	Female	13	41.9
Race/Ethnicity	Caucasian	26	83.9
	African-American	1	3.2
	Hispanic	3	9.7
	Other	1	3.2

(*N* = 31)

Table 4 displays the descriptive statistics for selected variables. These included the number of years in the California Bar Association ( $M = 17.75$ ), the number of years of experience of worker's compensation claims ( $M = 12.81$ ), the number of worker's compensation cases ( $M = 92.61$ ) and the respondent's age ( $M = 47.65$ ; Table 4).

Table 4

*Descriptive Statistics for Selected Variables*

Variable	<i>M</i>	<i>SD</i>	Low	High
Years in California Bar Association	17.75	10.74	1	46
Years of experience of worker's compensation claims	12.81	9.62	0	36
Number of worker's compensation cases	92.61	146.35	0	600
Age	47.65	10.45	26	73

(*N* = 31)

The attorneys in this sample were asked their opinions for 28 items pertaining to SB899. These opinions were given using a five-point rating scale: 1 = Strongly Disagree to 5 = Strongly Agree. The highest rating items were Item 21, “Defense perceives that the MPN Program (i.e. Employers Medical Control Provision) apportionment and the New Rating Manual will continue to be legally challenged by opposing council (*M* = 4.52),” and Item 20, “Defense Attorneys currently realize that some of the provisions of SB899 are exposed to a potential reversal on appeal (*M* = 4.39).” Least agreement was found for Item 10, “Overall, after a closer investigation of the key provisions of SB899, the support that the New Reform Law enjoys from all angles will remain unchanged (*M* = 2.35),” and Item 15, “It is Defense’s opinion that their relentless effort for change has prevented the Workers’ Compensation system from imminent collapse (*M* = 2.58)” (Table 5).

Table 5

*Descriptive Statistics for All Opinion Items Sorted by Highest Mean Rating*

Item	<i>M</i>	<i>SD</i>
21. Defense perceives that the MPN Program (i.e. Employers Medical Control Provision) apportionment and the New Rating Manual will continue to be legally challenged by opposing council.	4.52	0.57
20. Defense Attorneys currently realize that some of the provisions of SB899 are exposed to a potential reversal on appeal.	4.39	0.67
28. The future plan of action has been set. Defense will continue to litigate and argue cases to preserve the gains afforded under SB899.	4.23	0.56
29. Defense recommends that the cooperation with stakeholders should be continued and strengthened.	4.13	0.67
22. Among the provisions of the New Reform Law, the New Rating Manual tops the list of highly contested issues.	4.06	1.15
12. Currently, the Reform Law SB899 enjoys broad support from California Employers, Insurance Carriers, and Third Party Administrators.	4.06	0.73

*Note.* Ratings based on five-point scale: 1 = *Strongly Disagree* to 5 = *Strongly Agree*.

(*N* = 31)

(*table continues*)

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Item	<i>M</i>	<i>SD</i>
32. Returning to the Status Quo, pre SB899, is not an option and is not part of the future plan.	3.97	0.80
30. Defense warns that stakeholders should realize anything less than aggressive posture will be costly.	3.90	0.75
33. Overall, Defense recommends building on the united front against all challenges and fight for the preservation of the New Reform Law SB899.	3.84	0.93
16. Defense Attorneys are also of the opinion that the arguments presented by the Governor regarding the dangers of high premiums and the impact on employers are valid.	3.68	1.01
13. Stakeholders continue to benefit from key provisions of SB899, such as the MPN Program, which strengthens the current status of the Reform Law.	3.65	0.91
31. So far, Defense is of the opinion that they have earned adequate cooperation from stakeholders and plan to continue the same.	3.58	0.62

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*Note.* Ratings based on five-point scale: 1 = *Strongly Disagree* to 5 = *Strongly Agree*.

*(table continues)*

Item	<i>M</i>	<i>SD</i>
17. Working both sides of the isle is an example of good leadership by the Governor to obtain positive results.	3.58	1.06
26. Defense Attorneys are of the opinion that they are sufficiently prepared to litigate and attempt to win every suit filed.	3.45	1.18
18. The legislature finally realized that the Governor was committed to leading change and moved swiftly before the Governor put the matter on the November Ballot.	3.42	0.96
24. Defense is well aware that applicants' attorneys will aggressively litigate in hopes of reversing the gains but are not worried per se.	3.35	1.08
11. Defense perceives that the current standing of SB899 is overall impressive	3.29	0.94
7. Defense Attorneys are satisfied with almost all provisions of the Reform Law and genuinely support SB899	3.23	0.99
27. Overall, Defense anticipates a bright future in light of continuous successes in Appellate and State Courts.	3.19	0.79

*Note.* Ratings based on five-point scale: 1 = *Strongly Disagree* to 5 = *Strongly Agree*.

*(table continues)*

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Item	<i>M</i>	<i>SD</i>
23. Defense Attorneys are not worried about the rehabilitation provision being reversed on appeal.	3.16	1.16
34. Do you feel that legitimately injured workers are adequately compensated under the current law?	2.84	1.10
25. Defense is reasonably confident that most of the lawsuits that are filed lack merit and will be defeated even if cases are appealed.	2.81	1.01
14. Defense Attorneys are satisfied with the leadership provided by the Governor and Senator Poochigian and his team.	2.74	1.06
19. Overall, both the Governor and Senator Poochigian have exhibited exemplary leadership and have contributed to a more workable system.	2.71	0.94
9. Defense Attorneys perceive that when considering the status quo, SB899 should be supported at any cost	2.68	1.08
8. Currently California Defense Attorneys have high confidence that the support to uphold SB899 will remain intact	2.61	0.92

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*Note.* Ratings based on five-point scale: 1 = *Strongly Disagree* to 5 = *Strongly Agree*.

*(table continues)*

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Item	<i>M</i>	<i>SD</i>
15. It is Defense’s opinion that their relentless effort for change has prevented the Workers’ Compensation system from imminent collapse.	2.58	1.06
10. Overall, after a closer investigation of the key provisions of SB899, the support that the New Reform Law enjoys from all angles will remain unchanged	2.35	0.95

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*Note.* Ratings based on five-point scale: 1 = *Strongly Disagree* to 5 = *Strongly Agree*.

*Research question one.* Research Question One asked, “What is the current level of support by defense attorneys regarding SB899, the New Reform Law, and are these opinions related to demographic characteristics?” Table 6 displays the descriptive statistics for the related opinion items. The most agreement was for Item 7, “Defense Attorneys are satisfied with almost all provisions of the Reform Law and genuinely support SB899 ( $M = 3.23$ )” (Table 6).

Spearman rank-ordered correlations were utilized to compare the four opinion items with five demographic variables (gender, years in the California Bar Association, years of worker’s compensation claims experience, number of claims and age). None of the resulting 20 correlations were significant at the  $p < .05$  level.



Table 6

*Descriptive Statistics for the Current Level of Support for SB899 Sorted by Highest Mean Rating)*

Item	<i>M</i>	<i>SD</i>
7. Defense Attorneys are satisfied with almost all provisions of the Reform Law and genuinely support SB899	3.23	0.99
9. Defense Attorneys perceive that when considering the status quo, SB899 should be supported at any cost	2.68	1.08
8. Currently California Defense Attorneys have high confidence that the support to uphold SB899 will remain intact	2.61	0.92
10. Overall, after a closer investigation of the key provisions of SB899, the support that the New Reform Law enjoys from all angles will remain unchanged	2.35	0.95

*Note.* Ratings based on five-point scale: 1 = *Strongly Disagree* to 5 = *Strongly Agree*. ( $N = 31$ )

*Research question two.* Research Question Two asked, “How do defense attorneys perceive SB899 and its current standing, and are these opinions related to demographic characteristics?” Table 7 displays the descriptive statistics for the related opinion items. The most agreement was for Item 12, “Currently, the Reform Law SB899 enjoys broad support from California Employers, Insurance Carriers, and Third Party Administrators ( $M = 4.06$ )” (Table 7).

Table 7

*Descriptive Statistics for the Perceptions of the Current Standing of SB899 Sorted by Highest Mean Rating*

Item	<i>M</i>	<i>SD</i>
12. Currently, the Reform Law SB899 enjoys broad support from California Employers, Insurance Carriers, and Third Party Administrators.	4.06	0.73
13. Stakeholders continue to benefit from key provisions of SB899, such as the MPN Program, which strengthens the current status of the Reform Law.	3.65	0.91
11. Defense perceives that the current standing of SB899 is overall impressive	3.29	0.94

*Note.* Ratings based on five-point scale: 1 = *Strongly Disagree* to 5 = *Strongly Agree*. ( $N = 31$ )

Spearman rank-ordered correlations were utilized to compare the three opinion items with five demographic variables. Three of the resulting 15 correlations were significant at the  $p < .05$  level. Specifically, Item 13, “Stakeholders continue to benefit from key provisions of SB899, such as the MPN Program, which strengthens the current status of the Reform Law” had significant positive correlations with the respondent’s years in the California Bar Association ( $r_s = .40, p = .02$ ), their years of experience with worker’s compensation claims ( $r_s = .36, p = .04$ ), and their age ( $r_s = .48, p = .007$ ).

*Research question three.* Research Question Three asked, “How satisfied are defense attorneys regarding the quality of leadership provided to make SB899 a reality, and are these opinions related to demographic characteristics?” Table 8 displays the descriptive statistics for the related opinion items. The most agreement was for Item 16, “Defense Attorneys are also of the opinion that the arguments presented by the Governor regarding the dangers of high premiums and the impact on employers are valid ( $M = 3.68$ )” (Table 8).

Table 8

*Descriptive Statistics for the Satisfaction with the Leadership Quality Sorted by Highest Mean Rating*

Item	<i>M</i>	<i>SD</i>
16. Defense Attorneys are also of the opinion that the arguments presented by the Governor regarding the dangers of high premiums and the impact on employers are valid.	3.68	1.01
17. Working both sides of the isle is an example of good leadership by the Governor to obtain positive results.	3.58	1.06
18. The legislature finally realized that the Governor was committed to leading change and moved swiftly before the Governor put the matter on the November Ballot.	3.42	0.96

( $N = 31$ )

(table continues)

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Item	<i>M</i>	<i>SD</i>
14. Defense Attorneys are satisfied with the leadership provided by the Governor and Senator Poochigian and his team.	2.74	1.06
19. Overall, both the Governor and Senator Poochigian have exhibited exemplary leadership and have contributed to a more workable system.	2.71	0.94
15. It is Defense's opinion that their relentless effort for change has prevented the Workers' Compensation system from imminent collapse.	2.58	1.06

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*Note.* Ratings based on five-point scale: 1 = *Strongly Disagree* to 5 = *Strongly Agree*.

Spearman rank-ordered correlations were utilized to compare the six opinion items with five demographic variables. Two of the resulting 30 correlations were significant at the  $p < .05$  level. Specifically, Item 18, "The legislature finally realized that the Governor was committed to leading change and moved swiftly before the Governor put the matter on the November Ballot" had significant positive correlations with the respondent's years in the California Bar Association ( $r_s = .47, p = .008$ ), and their age ( $r_s = .41, p = .02$ ).

*Research question four.* Research Question Four asked, "Based on the current level of resistance by attorneys representing injured workers, are defense attorneys worried that the gains made by SB899 will expose decisions in their cases to reversals on

appeal, and are these opinions related to demographic characteristics?" Table 9 displays the descriptive statistics for the related opinion items. The most agreement was for Item 21, "Defense perceives that the MPN Program (i.e. Employers Medical Control Provision) apportionment and the New Rating Manual will continue to be legally challenged by opposing council ( $M = 4.52$ )" (Table 9).

Table 9

*Descriptive Statistics for the Level of Worry about Reversals on Appeal Sorted by Highest Mean Rating*

Item	<i>M</i>	<i>SD</i>
21. Defense perceives that the MPN Program (i.e. Employers Medical Control Provision) apportionment and the New Rating Manual will continue to be legally challenged by opposing council.	4.52	0.57
20. Defense Attorneys currently realize that some of the provisions of SB899 are exposed to a potential reversal on appeal.	4.39	0.67
22. Among the provisions of the New Reform Law, the New Rating Manual tops the list of highly contested issues.	4.06	1.15
24. Defense is well aware that applicants' attorneys will aggressively litigate in hopes of reversing the gains but are not worried per se.	3.35	1.08

( $N = 31$ )

(table continues)

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Item	<i>M</i>	<i>SD</i>
23. Defense Attorneys are not worried about the rehabilitation provision being reversed on appeal.	3.16	1.16
25. Defense is reasonably confident that most of the lawsuits that are filed lack merit and will be defeated even if cases are appealed.	2.81	1.01

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*Note.* Ratings based on five-point scale: 1 = *Strongly Disagree* to 5 = *Strongly Agree*.

Spearman rank-ordered correlations were utilized to compare the six opinion items with five demographic variables. One of the resulting 30 correlations was significant at the  $p < .05$  level. Specifically, Item 25, “Defense is reasonably confident that most of the lawsuits that are filed lack merit and will be defeated even if cases are appealed” had significantly higher levels of agreement from male attorneys than their female counterparts ( $r_s = -.45, p = .01$ ).

*Research question five.* Research Question Five asked, “Do defense attorneys feel that they are sufficiently prepared to resist efforts to reverse some provisions of the law, and are these opinions related to demographic characteristics?” Table 10 displays the descriptive statistics for the related opinion items. The most agreement was for Item 28, “The future plan of action has been set. Defense will continue to litigate and argue cases to preserve the gains afforded under SB899 ( $M = 4.23$ )” (Table 10).

Table 10

*Descriptive Statistics for the Level of Preparation to Resist Reversal Efforts Sorted by Highest Mean Rating*

Item	<i>M</i>	<i>SD</i>
28. The future plan of action has been set. Defense will continue to litigate and argue cases to preserve the gains afforded under SB899.	4.23	0.56
26. Defense Attorneys are of the opinion that they are sufficiently prepared to litigate and attempt to win every suit filed.	3.45	1.18
27. Overall, Defense anticipates a bright future in light of continuous successes in Appellate and State Courts.	3.19	0.79

*Note.* Ratings based on five-point scale: 1 = *Strongly Disagree* to 5 = *Strongly Agree*. ( $N = 31$ )

Spearman rank-ordered correlations were utilized to compare the three opinion items with five demographic variables. None of the resulting 15 correlations were significant at the  $p < .05$  level.

*Research question six.* Research Question Six asked, “What do defense attorneys recommend as a future plan of action, and are these opinions related to demographic characteristics?” Table 11 displays the descriptive statistics for the related opinion items. The most agreement was for Item 29, “Defense recommends that the cooperation with stakeholders should be continued and strengthened ( $M = 4.13$ )” (Table 11).

Table 11

*Descriptive Statistics for Recommendations for the Future Sorted by Highest Mean**Rating*

Item	<i>M</i>	<i>SD</i>
29. Defense recommends that the cooperation with stakeholders should be continued and strengthened.	4.13	0.67
32. Returning to the Status Quo, pre SB899, is not an option and is not part of the future plan.	3.97	0.80
30. Defense warns that stakeholders should realize anything less than aggressive posture will be costly.	3.90	0.75
33. Overall, Defense recommends building on the united front against all challenges and fight for the preservation of the New Reform Law SB899.	3.84	0.93
31. So far, Defense is of the opinion that they have earned adequate cooperation from stakeholders and plan to continue the same.	3.58	0.62
34. Do you feel that legitimately injured workers are adequately compensated under the current law?	2.84	1.10

*Note.* Ratings based on five-point scale: 1 = *Strongly Disagree* to 5 = *Strongly Agree*.  
(*N* = 31)



Spearman rank-ordered correlations were utilized to compare the six opinion items with five demographic variables. Two of the resulting 30 correlations were significant at the  $p < .05$  level. Specifically, Item 30, “Defense warns that stakeholders should realize anything less than aggressive posture will be costly” had significant positive correlations with the respondent’s years in the California Bar Association ( $r_s = .40, p = .03$ ), and their age ( $r_s = .35, p = .05$ ).

### *Summary*

Chapter 4 provided a complete statistical analysis of the data collected from participants. The chapter also provided narratives along with identifying what drew most and least agreement for each research question relative to survey questions that pertain to the particular research question. Spearman rank-ordered correlations were utilized to compare opinion items vs. demographic variables to identify significance at  $p < .05$  level. A detailed analysis of results and recommendations for future research will be provided in Chapter 5.

## Chapter 5: Discussion

This study was designed to assess defense attorneys' perceptions regarding the new reform law SB899. Furthermore, it was designed to assess the quality of leadership provided by the governor, Senator Poochigian, the legislators and both Houses. This study is relevant to the insurance industry, California employers, self-insured administrators, who exhibited a relentless effort for the passage of the new reform law. California employers have led the effort, more than other entities, due to suffering from one of the highest premiums in the State's history. Their effort has paid an enormous dividend, by drastically reducing the financial burden that was imposed on them by skyrocketing workers' compensation premiums.

This chapter will report on major findings, summarize the study design, and draw conclusions. It will also report on limitations and recommendations for further research, including final summary and conclusion.

### *Design Summary*

Participants in this study were defense attorneys that have solely dedicated their practice to handling workers' compensation claims. They are all members of the California State Bar, with significant legislation experience ( $N = 31$ ).

Participants were asked on 28 items pertaining to the new reform law. The first 6 questions were strictly demographic and asked about how long a participant has been a member of the California Bar, how many years of experience they had defending California workers' compensation claims, how many cases they took to trial, and their ages.

Male respondents comprise 58.1%, female; 41.9%, 9.7% were Hispanic 3.2% were African American, and 3.2% being other. The average year of the participants as a member of the California Bar was 17.75 years, years of experience 12.81, number of claims tried 92.61, and the average year of the participants was 47.65.

Survey instrument was sent to 11 law firms. Distribution of the instrument was handled by office managers and managing attorneys. Of the 115 attorneys in the Tri-County area, 31 responded, which comes out to be 27% response rate.

### *Summary of Findings*

*Research question one.* “What is the current level of support by defense attorneys regarding SB899, the New Reform Law, and are these opinions related to demographic characteristics?” Table 6 displays the descriptive statistics for all related opinions with regard to the above research question. It has ranked the findings from the most agreement to the least agreement. The most agreement amongst participants was survey question 7; “Defense attorneys are satisfied with almost all provisions of the reform law and support SB899 ( $M = 3.23$ ).”

Inquiries were also made regarding defenses’ perception on whether or not the new law should be supported at any cost, and defense maintains high confidence that the support for SB899 will remain intact. Less than moderate agreements were obtained on both inquiries. The least agreement was obtained on Item 10 ( $M = 2.35$ ); “Overall, after closer investigation of the key provisions of SB899, the support that the new reform law enjoys from all angles will remain unchanged.” It appears defense has concurred that

while the law has garnered acceptance on some circles, it is by no means popular and will be contested by those who oppose its very existence.

Spearman rank-order correlations were utilized to compare the four opinion items with the five demographic variables (gender, years in the California Bar Association, years of workers' compensation claims experience, number of litigated claims, and age). None of the resulting 20 correlations were significant at the  $P < .05$  level. It appears that there was no positive correlation between support for the new reform law and the demographic variables. Participants' gender, years in the California Bar, etc. did not influence any outcome.

*Research question two.* "How do defense attorneys perceive SB899 and its current standing, and are these opinions related to demographic characteristics." Table 7 displays the descriptive statistics for the related opinion items. As indicated on the Table, the most agreement was for Item 12, "Currently, the reform law SB899 enjoys broad support from California employers, insurance carriers, and third party administrators ( $M = 4.06$ )." It is also interesting to note the item with the least agreement, "Defense perceives that the current standing of SB899 is overall impressive," also carries a mean score of 3.29, which can be considered moderately high in comparison.

Furthermore, it is worth noting that Item 13 "Stakeholders continue to benefit from key provisions of SB899, such as the MPN Program which strengthens the current status of the New Reform Law," ( $M = 3.65$ ) also drew more than moderate support by participants in the survey. Defense has recognized that stakeholders cherish the benefits they received from key provisions of the law and will continue to fight and avoid going

back to the status quo. One of these key provisions is the MPN Program which transferred medical control to the state's employers.

Spearman rank-ordered correlations were used to compare the three opinion items with five demographic variables. In this case, out of the resulting 15 correlations, three were significant at the  $P < .05$  level. Item 13, "Stakeholders continue to benefit from key provisions of SB899, such as the MPN program, which strengthens the current status of the new reform law," had significant, positive correlations with the respondent's years in California Bar Association ( $r = .40, p = .02$ ), their years of experience with workers' compensation claims ( $r = .36, p = .04$ ), and their age ( $r = .48, p = .007$ ).

In this instance, participant demographics have clearly shown a positive relationship that is significant. Their years handling workers' compensation claims and years of membership in the bar and their age, has made a difference in their respective responses. The reason being that the more experience individual participants have in litigating worker's compensation claims the more they are inclined to have a more realistic evaluation of which key provisions are important to stakeholders. This has produced a positive correlation regarding the MPN program. Participants that are younger, with fewer numbers of years experience and bar membership, failed to produce positive correlations.

*Research question three.* "How satisfied are defense attorneys regarding the quality of leadership provided to make SB899 a reality and are these opinions related to demographic characteristics?" According to Table 8, which displays the descriptive statistics for the related six opinion items, the most agreement was for Item 16, "Defense

attorneys are also of the opinion that the arguments presented by the Governor, regarding the dangers of high premiums and the impact on employers are valid ( $M = 3.68$ ).

The least agreement obtained was Item 15 ( $M = 2.58$ ) “It is defenses opinion that the relentless effort (by senator Poochigian and the Governor) for change had prevented the Workers’ Compensation system from imminent collapse.” It appears that even though defense was convinced the system had serious problems and was marred with fraud and abuse, the danger it was facing was not critical enough for the entire system to collapse.

Spearman rank-ordered correlations were used to compare the six opinion items with five demographic variables. Two of the resulting 30 correlations were significant at the  $P < .05$  level. Specifically, Item 18, “The legislature finally realized that the Governor was committed to leading change and moved swiftly before the Governor put the matter on the November ballot,” had significant positive correlations with the respondent’s years on the California Bar Association ( $r = .47, p = .008$ ), and their age ( $r = -.41, p = .02$ ). In other words, attorneys that are younger, and have been members of the bar for a few years, did not produce positive correlations. However, it is interesting to note that participants’ awareness regarding the dangers of uncontrolled premiums and the impact on California employers is high. The study also found that participants affirmed the Governor’s argument as valid. More experienced and older attorneys, according to the study, affirmed the Governor’s desire to lead change, and his commitment to put the matter on the ballot was evidenced by significant positive correlation.

It is also worth noting that the second highest opinion item, with the most agreement by participants, has to do with the Governor’s leadership, with regard to

working both sides of the isle. This produced ( $M = 3.58$ ), which is considered moderately high in comparison to the highest score of ( $M = 3.68$ ) which validated the Governor's argument regarding the consequences of high premiums of California employers.

*Research question four.* "Based on the current level of resistance by attorneys, representing injured workers, are defense attorneys worried that the gains made by SB899 will expose decisions in their cases to reversals on appeal, and are these opinions related to demographic characteristics?" Table 9 displays the descriptive statistics for related opinion items. The most agreement was for Item 21, "Defense perceives that the MPN Program apportionment, and the new rating manual will be legally challenged by opposing council ( $M = 4.52$ )."

Equally important are Item 20 ( $M = 4.39$ ) and Item 22 ( $M = 4.06$ ) where participants opined their grave concern regarding contentious issues. Defense without any reservation has clearly indicated that some key provisions of the New Reform Law will be exposed to potential reversals on appeal. Furthermore, the third highest item that drew most agreement of highly contested issues where participants perceive ripe for serious litigation is the new rating schedule. Research Question 4 has drawn the most agreement than any other in this study. Participants were more than candid in expressing their opinion with regard to issues that they are seriously concerned about. This phenomenon adds strength to the study's objectives and purpose.

Spearman rank-ordered correlations were used to compare the six opinion items with five demographic variables. One of the resulting correlations was significant at the  $P < .05$  level. Specifically, Item 25, "Defense is reasonably confident that most of the

lawsuits that are filed, lack merit and will be defeated, even if cases are appealed,” had significantly higher levels of agreement from male attorneys than their female counterparts ( $r = -.45, p = .01$ ). Female attorneys, in this case, did not demonstrate the same level of agreement. This might be due to several reasons, possibly they did not feel that the suits that are filed have merit, and were reluctant to declare victory prior to evaluating the merits closely. Another reason might be that they did not choose to provide false hopes to stakeholders that every issue that ends up being litigated will end up being defeated. It appears that they do not want to underestimate the power of the merits of cases that are brought by opposing council.

*Research question five.* “Do defense attorneys feel that they are sufficiently prepared to resist efforts to reverse some provisions of the law and are these opinions related to demographic characteristics?” Table 10 displays the descriptive statistics for the related opinion items. The most significant agreement was for Item 28, “The future plan of action has been set. Defense will continue to litigate and argue cases to preserve the gains afforded under SB899 ( $M = 4.23$ ).”

Spearman ran-ordered correlations were used to compare three opinion items with five demographic variables. None of the resulting 15 correlations were significant at the  $P < .05$  level. Gender, age, years of experience, number of years as member of the bar, number of cases litigated did not produce a positive relationship and statistical significance. Table 10 also displays opinion items with moderately high ratings ( $M = 3.45$ ) and ( $M = 3.19$ ), indicating defense attorneys belief that they are sufficiently



prepared to litigate and anticipate a bright future, in light of previous successes in upholding the law and preventing reversals. It is worth noting that when it comes to future plans of action, participants responded with one voice and provided a strong confirmation, irrespective of demographics. Gender, age, years of experience, etc., did not influence or affect any outcome.

*Research question six.* “What do defense attorneys recommend as a future plan of action, and are these opinions related to demographic characteristics?” Table 11 displays descriptive statistics for the related opinion items. The most agreement by participants was Item 29, “Defense recommends that the cooperation with stakeholders should be continued and strengthened ( $M = 4.13$ ). The Table also displays several agreements amongst participants worth noting. Defense attorneys have rendered their opinion regarding returning to the status quo, not being an option ( $M = 3.84$ ), and the consequences of less than an aggressive defense ( $M = 3.90$ ). Furthermore, high ratings were obtained about forming a united front with all stakeholders against all challenges ( $M = 3.84$ ), to preserve SB899.

Spearman rank-ordered correlations were used to compare the six opinion items with five demographic variables. Two of the resulting 30 correlations were significant at the  $P < .05$  level. Specifically, Item 30, “Defense warns that stakeholders should realize anything less than aggressive posture will be costly,” had significant positive correlations with respondents’ years in the California Bar Association ( $r = .40, p = .03$ ) and their age ( $r = .35, p = .05$ ). Participants that are older, and that have been members of the bar, have exhibited positive correlations. The reason being that experienced litigators that have

tried a variety of issues before the Board, have developed a keen awareness about the dangers of passive defense. They know that it can lead to reversals, retroactive payments and penalties, and could create a legal precedence. It is in the best interest of the stakeholders to allow the defense to litigate aggressively, and completely avoid the above.

### *Recommendations for Future Research*

As far as the researcher is concerned, this study is the only inquiry exploring the impact of the new reform law, which directly solicited the opinion of defense attorneys regarding the same. Further research could explore the following, which might contribute to the expansion of knowledge.

1. A study could investigate and explore the impact of the new reform law on California employers.
2. A post SB899 study could be conducted on its effectiveness and to investigate the problems associated with implementation and satisfaction.
3. This study could be replicated, to explore the impact of the new reform law on legitimately injured workers, by soliciting the opinion of attorneys that represent them.
4. A similar study could investigate the impact of SB899 on brokers and insurance agents, regarding their satisfaction and attitude with the new reform law.
5. Further study could investigate the perception, satisfaction, attitude of insurance carriers, administrators, and claims staff with SB899.

*Conclusion*

Senate Bill 899 was designed to revamp the workers' compensation system of the State of California was signed into law on 4/19/2004. Even though the law has enjoyed broader support by employers, brokers, agents, carriers, and other entities, it has not escaped criticism from opposing quarters and sympathizers. No one doubts the determination of opposing council to file as many suits as they possibly can in an effort to reverse some key provisions of the law. However, this study also clearly indicates defense attorneys are equally determined to keep the gains afforded by the same.

Participants were also asked regarding the quality of leadership exhibited by both the Governor and Senator Poochigian. Agreement has been reached with regard to the governor's argument about the dangers of high premiums and his ability to work both sides of the isle to obtain positive results. Defense attorneys have also acknowledged and extended moderate agreement regarding the quality of leadership by both individuals.

The most interesting response ever obtained from participants which strengthens the overall integrity of this study has to do with the direct inquiry with regard to their main concern on SB899. As displayed on Table 9 defense without any reservation expressed their opinion, which provisions of the law will be contentious and some are exposed to reversals on appeal. Furthermore defense also provided a ranking as which provision tops the list of highly contested issues. They have concurred that the new rating manual ranks as number one. Attorneys representing injured workers will continue to challenge the legality the fairness of the rating system for years to come.

As far as recommendation for future plan of action is concerned participants in the survey have reached a strong agreement (Table 11) that cooperation with stakeholders should be continued and strengthened and return to the status quo could not be an option and not part of the future plan of action. Furthermore, defense has also strongly agreed to aggressively defend the gains and that a coordinated effort should be mounted against all challenges to preserve all of the provisions contained in SB899.

The challenge for all defense attorneys and stakeholders will be the ability to keep the gains afforded by the new reform law. Their action, strength and perseverance will determine if the aforementioned can be accomplished in the future.

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APPENDIX A: Letter to Defense Attorneys

Dear Defense Attorney,

Please allow this letter to be an introduction and an invitation to participate in one of the most important surveys in the history of the California Workers' Compensation Reform Law.

As attorneys who are engaged in defending Workers' Compensation cases representing a variety of stakeholders (Carriers, Employers, TPAs, Municipalities), you have one of the most serious responsibilities that affect the state and the nation in general. Your concerted efforts in vigorously defending the gains afforded by the New California Reform Law SB899 have garnered great respect and admiration from your stakeholders, including claims managers, supervisors, and claim representatives.

I am currently engaged in a Doctoral Study at Pepperdine University that is primarily concerned with SB899. As defense attorneys, you have played and continue to play a very active role in defending the gains realized by the New Reform Law, and as such, you are of a particular interest in the study. We share a common interest and concern in the study under investigation, since we both realize the damage to the state's economy if things happen to go back to the status quo.

I am respectfully requesting that you participate in a survey that is primarily concerned with your perception of SB899. The first six (6) questions will be biographical, and the last 28 questions will be concerned with your perception and readiness to defend the gains made by SB899.

Your responses will remain confidential, and your participation is strictly voluntary.

Please answer all the questions and return the completed survey in the enclosed envelope as soon as possible.

Thank you for your cooperation.

Yours truly,

Elias Teferi  
Doctoral Student  
Pepperdine University  
Graduate School of Education and Psychology

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APPENDIX B: Research Questions

1.    MALE                       FEMALE
  
2.    WHITE                       AFRICAN AMERICAN                       HISPANIC  
           NATIVE AMERICAN                       OTHER
  
3.   How long have you been a member of the California Bar Association?  
          \_\_\_\_\_ Years
  
4.   How many years of experience do you have in solely defending California workers' compensation claims?  
          \_\_\_\_\_ Years
  
5.   Approximately how many cases have you tried over the years that directly pertain to worker's compensation issues?  
          \_\_\_\_\_ Years
  
6.   How old are you?  
          \_\_\_\_\_ Years old

The following survey questions concern the new California Workers' Compensation Reform Law: SB899, which was signed into law by Governor Arnold Schwarzenegger on April 19, 2004. Questions numbered from 7 through 34 are designed to solicit your perception and readiness in defending the gains afforded by SB899. Your cooperation in completing these questions will be truly appreciated.

*INSTRUCTIONS*

*Please circle the response that most corresponds to your level of agreement or disagreement with the opinion statements below.*

7. Defense attorneys are satisfied with almost all provisions of the Reform Law and genuinely support SB899.

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree

8. Currently, California defense attorneys have high confidence that the support to uphold SB899 will remain intact.

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree

9. Defense attorneys perceive that, when considering the status quo, SB899 should be supported at any cost.

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree

10. Overall, after a closer investigation of the key provisions of SB899, the support that the New Reform Law enjoys from all angles will remain unchanged.

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree

11. Defense perceives that the current standing of SB899 is overall impressive.

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree

12. Currently, the Reform Law SB899 enjoys broad support from California employers, insurance carriers, and third party administrators.

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree

13. Stakeholders continue to benefit from key provisions of SB899, such as the MPN Program, which strengthens the current status of the Reform Law.

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree

14. Defense attorneys are satisfied with the leadership provided by the governor and Senator Poochigian and his team.

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree

15. It is defense's opinion that their relentless effort for change has prevented the Workers' Compensation system from imminent collapse.

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree

16. Defense attorneys are also of the opinion that the arguments presented by the governor regarding the dangers of high premiums and the impact on employers are valid.

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree

17. Working both sides of the aisle is an example of good leadership by the governor to obtain positive results.

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree

18. The legislature finally realized that the governor was committed to leading change and moved swiftly before the governor put the matter on the November ballot.

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree

19. Overall, both the governor and Senator Poochigian have exhibited exemplary leadership and have contributed to a more workable system.

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree

20. Defense attorneys currently realize that some of the provisions of SB899 are exposed to a potential reversal on appeal.

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree

21. Defense perceives that the MPN Program (i.e., Employers Medical Control Provision) apportionment and the New Rating Manual will continue to be legally challenged by opposing council.

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree



22. Among the provisions of the New Reform Law, the New Rating Manual tops the list of highly contested issues.

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree

23. Defense attorneys are not worried about the rehabilitation provision being reversed on appeal.

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree

24. Defense is well aware that applicants' attorneys will aggressively litigate in hopes of reversing the gains but are not worried per se.

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree

25. Defense is reasonably confident that most of the lawsuits that are filed lack merit and will be defeated even if cases are appealed.

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree

26. Defense attorneys are of the opinion that they are sufficiently prepared to litigate and attempt to win every suit filed.

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree

27. Overall, defense anticipates a bright future in light of continuous successes in appellate and state courts.

Strongly Agree   Agree   Unsure   Disagree   Strongly Disagree

28. The future plan of action has been set. Defense will continue to litigate and argue cases to preserve the gains afforded under SB899.

Strongly Agree   Agree   Unsure   Disagree   Strongly Disagree

29. Defense recommends that the cooperation with stakeholders should be continued and strengthened.

Strongly Agree   Agree   Unsure   Disagree   Strongly Disagree

30. Defense warns that stakeholders should realize anything less than aggressive posture will be costly.

Strongly Agree   Agree   Unsure   Disagree   Strongly Disagree

31. So far, defense is of the opinion that they have earned adequate cooperation from stakeholders and plan to continue the same.

Strongly Agree   Agree   Unsure   Disagree   Strongly Disagree

32. Returning to the status quo, pre SB899, is not an option and is not part of the future plan.

Strongly Agree   Agree   Unsure   Disagree   Strongly Disagree

33. Overall, defense recommends building a united front against all challenges and fight for the preservation of the New Reform Law SB899.

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree

34. Do you feel that legitimately injured workers are adequately compensated under the current law?

Strongly Agree    Agree    Unsure    Disagree    Strongly Disagree

APPENDIX C: Follow-up Letter to Defense Attorneys

Dear Defense Attorney,

Please allow this letter to serve as a reminder regarding your response to the Survey on SB899.

Please complete the survey as soon as possible. Your responses to the questions are extremely important because you play a major role in defending the gains realized by the passage of the New Reform Law SB899.

I sincerely appreciate every effort made in this regard.

Yours truly,

Elias Teferi  
Doctoral Student  
Pepperdine University  
Graduate School of Education and Psychology

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