




**C3 - Alternative Dispute
Resolution for Worker's Comp-
How to design the Labor-
Management Agreement**



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Introduction of Speakers

John A. Ferrone Esq.

Adams, Ferrone & Ferrone

jferrone@adamsferrone.com

David Ungar Esq.

Deputy County Counsel Kern County

Dungar@co.kern.ca.us

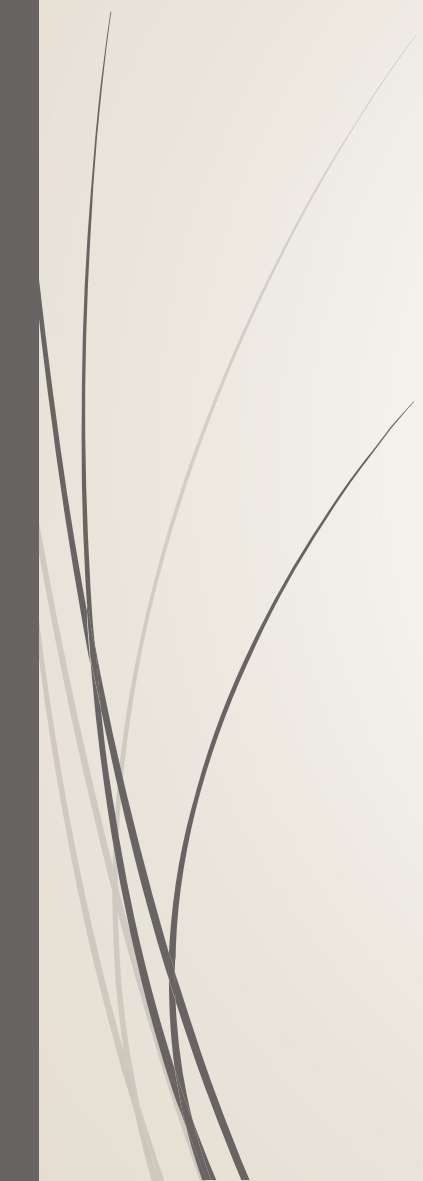
Lynn Cavalcanti

Sr. VP Operations AIMS

Lcavalcanti@aims4claims.com



Session Topics

- History of Alternative Dispute Resolution (ADR) Programs (Carve-Out Legislation)
 - Purpose of Creating an ADR Program
 - Initiating the Discussion
 - Program Design
 - Measurements of Success
 - Taking the Next Step
- 



History of ADR (Carve-Out) Programs

The California workers' compensation system has become increasingly complicated. Delays, disputes, and costs in the system have been excessive. Legislation enacted in recent years allows labor unions and employers to "carve out" alternative ways to deliver benefits and resolve disputes, rather than utilizing the state system. Carve-outs present an opportunity for unions and employers to alter the adversarial culture of the workers' compensation claims process. This can ultimately speed the process, reduce costs, and improve the experience of Injured workers.



History of ADR (Carve-Out) Statute

- **1993 – Labor Code Section 3201.5**
 - Permits Construction Industry to formulate alternative system
- **2002 – Labor Code Section 3201.7**
 - Adds aerospace & timber industries
- **2003 – Labor Code Section 3201.7 amended**
 - Permits any unionized industry to enter into a carve-out (public & private)
- **2012 – Labor Code Section 3201.7 amended**
 - Permits State of California to enter into a carve-out



What is an ADR(Carve-Out) Program

- ▶ Statutorily authorized process where unions & employers create a system to address their workers' compensation needs/issues.
 - ▶ ADR Program Benefits can not be less than the statutory benefits of Temporary Disability, Permanent Disability & Medical Treatment
- ▶ **Creates procedures established by employer & union**
 - ▶ There is no limit in the design and/or structure (can be complicated to simplistic in design)



Union Eligibility Requirements

▶ Eligibility

- ▶ Bona fide labor organization that represents the employees in CA as to wages, hours & working conditions; and
- ▶ Certified as the exclusive bargaining representative of the employees; and
- ▶ Officers who have been elected by secret ballot or otherwise in a manner consistent with federal law; and
- ▶ Be free of domination or interference by any employer and receive no improper assistance or support from any employer




Employer Eligibility Requirements

➤ Construction Employer Eligibility

- Annual workers' compensation premium of at least \$250,000 or the self-insured equivalent; or
- Be part of a "safety group" of employers that has annual workers' compensation premiums of at least \$2,000,000 or the self-insured equivalent.

➤ All Other Employers Eligibility

- Have an annual workers' compensation premium of at least \$50,000 or the self-insured equivalent; or
- Be part of a "safety group: of employers that has annual workers' compensation premiums of at least \$500,000 or the self-insured equivalent.



Purpose of Creating and ADR (Carve-Out) Program

- ▶ **Identify most serious problems faced by your organization**
 - ▶ Survey and/or discuss issues created by the current system and experienced by participants (consider employer, claims administrator & union difficulties)
- ▶ **Analyze whether problems can be addressed by improving and/or changing a practice or procedure**
 - ▶ There are no boundaries in creating a solution (consider ease of use & time to monitor/administer program)



Initiating the Discussion

- ▶ **Introduce topic of ADR (Carve-Out) Program to unions by providing them the following information**
 - ▶ How to Create a Workers' Compensation Carve-Out in California (CCHSWC 2006)
 - ▶ Peace Officers Research Association of California (PORAC) August 31, 2015 Article
 - ▶ City of Long Beach 2008 Year-End Results (Deloitte Consulting LLP June 3, 2009)
 - ▶ Petition for Permission to Negotiate a Section 3207.1 Labor Management Agreement (DWC Form RGS-1)
- ▶ **Presentation & Open Discussion**
 - ▶ Send invitation letter to unions to question/answer session on creating a ADR (Carve-Out) Program
 - ▶ Discuss objectives of Program & determine union interest
 - ▶ Set time for follow up meeting once Petition to Negotiate are approved



Program Design

- ▶ Ombudsmen – 3rd party to assist in informally resolving disputes
- ▶ Mediators – provides help in resolving disputes when Ombudsmen can not
- ▶ Arbitrators – authority of Workers' Compensation Judge
- ▶ Treating Physicians – select group of doctors to treat
- ▶ Specialty Physicians – select group of doctors for surgery/complex medical issues
- ▶ Medical Evaluators – doctors who resolve disputes
- ▶ Rehabilitation Services – create exclusive list of counselors, programs and providers of services
- ▶ Joint Safety/Labor Committee – address program issues
- ▶ Nurse Case Management – create exclusive list of nurses to assist injured employees though medical components

The City of Long Beach

- In 2008 the City of Long Beach entered into an ADR program with their police & fire unions.
- Issue identified was the protracted length of time it took to resolve medically-related disputes.
 - Return to Modified Duty
 - Release to Full Duty
 - Retirement Issues
 - MMI/P&S Status
 - Permanent Work Restrictions
 - Utilization Review Disputes (following IMR enactment)
- **Solution was to create a Independent Medical Evaluation Panel to address all medically related disputes.**
 - Applied to litigated & non-litigated files
 - Assignment of IME based on rotation

Workers' Compensation Dynamics

- Two Tracks

- Denied cases - 14 days to notify claim is on delay & then 90 days to render decision on compensability.

After 90 days, parties need to obtain a medical legal evaluation

- PQME- Panel Qualified Medical Examiner
 - State DIR Medical Unit issues the panel of 3 QMEs after filing request forms
- AME- Agreed Medical Examiner
 - Parties agree on the specific medical evaluator

- Time Lines - exam schedule is 2 - 4 months out & 2 - 4 months for report receipt (up to 8 months).

- Depositions can take several more months to set
- Denied cases take up to 9-12 months to resolve before triggering benefits.

Workers' Compensation Dynamics

Two Tracks:

Admitted cases

- ▶ Injured officer is being paid IDL/TTD/4850 pay and seeking medical treatment.
- ▶ Medical treatment subject to UR (Utilization Review).
 - ▶ 3rd party vendor that reviews-not examiners- the primary treating physician's (PTP) treatment recommendations-
 - ▶ UR process can take between 5-14 days. If UR denies or modifies the treatment, PTP may engage in peer-to peer to overturn denial. If UR decision remains denied, only remedy is IMR

IMR- Independent Medical Review

- ▶ All treatment disputes must go through IMR. The parties cannot use a QME or AME.
 - ▶ WCAB review limited only if the UR decision/review was untimely. It does not matter that the IMR is untimely.
 - ▶ Trends showing 3 out of 4 treatment requests were denied by IMR.
 - ▶ Once IMR has issued a final decision on the medical treatment the injured officer has no remedy to overturn the decision.
 - ▶ The injured officer would be faced with no medical treatment while receiving benefits until the 104 week cap and retirement.

The Current Statutory System – What is at Risk?

Currently, the workers' compensation system is averaging almost one year from the time a claim is filed before the claim is resolved. Medical treatment disputes are no longer easily resolved and employers are faced with continued disability payments.

Employer

- ▶ Overtime pay
- ▶ Backfill with other employees
- ▶ Cost of work comp claims
- ▶ Training of replacement employees
- ▶ Litigation expenses-
- ▶ Depleted workforce

Employee

- ▶ Sick time used
- ▶ Vacation time used
- ▶ IDL/TTD Pay/4850
- ▶ Delays in medical treatment
- ▶ Decreased employee morale
- ▶ Not getting the medical attention needed



Measurements of Success

- ▶ **City of Long Beach**

- ▶ The City retained Deloitte Consulting to study the previous five years of claims to determine an average time length of the claims. Deloitte found the average claim took nearly 230 days. The City agreed to negotiate an ADR system where the goal was to reduce the time to resolve the disputes.
- ▶ 2008 report found the average lag time from delay date to binding medical report date = 59 days for police & 63 days for fire.



Measurements of Success

- ▶ **Alternative Dispute Resolution Carve-Out Program Report (2004 – 2011)**
 - ▶ 89% of claims were resolved in under 1 year
 - ▶ 94% of claims were resolved without the use of mediation or arbitration (litigation)
 - ▶ 0.6% of claims were litigated
 - ▶ 4 claims out of 3,100 proceeded to the WCAB for resolution

Measurements of Success

- ▶ **County of Kern (2012 Memo to Board of Supervisors)**
 - ▶ Estimates introduction of program to save at a minimum of \$580,000 for the Sheriffs Department
 - ▶ Estimates a savings of a minimum of \$666,000 for the Fire Department
- ▶ **Orange County Fire Authority (August 2015 HR Committee Meeting)**
 - ▶ Reported savings in overtime/backfill costs of \$592,000
- ▶ **City of Huntington Beach (2015 Program Summary)**
 - ▶ Experienced 30% reduction in newly reported claims
 - ▶ Claim compensability decisions made within 100 days
 - ▶ Claim settlement lag time reduced by 50%



Measurements of Success

- ▶ Know what you want to measure before implementation
 - ▶ What will program impact?
 - ▶ Cost \$\$\$\$
 - ▶ Time
 - ▶ Attitudes/Culture
 - ▶ How are you going to measure it?
 - ▶ What outside (TPA or Payroll) assistance will you need to collect data?
 - ▶ What intervals will you measure at?

What an ADR System Can Do - Recap

- Provides employees with a fast track system to resolve workers' compensation disputes.
- Reduces overtime wages.
- Reduces sick leave for an injured worker.
- Reduces litigation expenses.
- Improves employee morale.
- Resolves claims in under 90 days vs. 180 days to over a year
- Efficiently gets the injured worker the help they need.

Next Steps

- ▶ Union will need to file the Petition for Permission to Negotiate a Labor-Management Agreement for Workers' Compensation.
- ▶ DIR will grant permission for one-year then can extend.
- ▶ Set meetings with management and labor unions
 - ▶ Interest letter
 - ▶ Who to include-scope of invitation
- ▶ Discuss the scope of the ADR program.
 - ▶ IME list
 - ▶ Nurse case managers
 - ▶ Mediation



Contact Information

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