

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full Committee Meeting

March 31, 2023
10:00am-12:00pm

Committee Members Present via Zoom:

Scott Strickland, Sheet Metal Workers Local #16
Patrick Priest, Citycounty Insurance Services
Sara Duckwall, Duckwall Fruit
Jill Fullerton, Clackamas County Fire Department
Lynn McNamara, Paladin Consulting
Margaret Weddell, Labor Representative
Marcy Grail, IBEW Local 125
Tammy Bowers, May Trucking
Matt Calzia, Oregon Nurses Association
John McKenzie, JE Dunn Construction

Excused:

Andrew Stolfi, DCBS Director, *ex officio*

Staff:

Cara Filsinger, MLAC Committee Administrator
Baaba Ampah, MLAC Assistant
Brittany Williams, MLAC Assistant

Agenda Item	Discussion
Opening (0:00:00)	Patrick Priest introduced himself and called the meeting to order.
(0:00:27)	Cara Filsinger called the roll of members. Patrick Priest shared a brief affirmation. He then announced that the minutes are not present due to the number of edits needed. Minutes will be edited, redistributed and presented at the next meeting.
	SB 418
(0:03:30)	Joe Baessler, AFSCME, shared that suggestions from last MLAC meeting were implemented into the bill. AGC provided the language that has been amended in the bill, and it passed by the Senate Committee on Labor and Business unanimously.
(0:04:11)	Patrick Priest thanked Joe Baessler for the update. He mentioned that he read through the bill , linked in the agenda, and confirmed that it was limited to

compensable treatments. However, what was unclear to him was whether an insurer may require a worker to confirm appointment and asked where in the bill does it explain such statement. Scott Strickland clarified that at bottom of page 3 in the [-4 amendments](#), linked on the MLAC webpage, mentions that “An insurer may require a worker to confirm the period during which the worker is absent from work to receive compensable medical...”. Joe Baessler confirmed that the -4 amendments includes the original amendment and other suggestions from stakeholders, which is what was adopted by the Senate Committee on Labor and Business. Patrick Priest thanked both of them for the clarification and for providing the link to the -4 amendments.

(00:06:38) Kirsten Adams, AGC, thanked Joe Baessler for his collaboration on SB 418. Patrick Priest joined in by thanking everyone for compromising and ensuring the bill passes.

HB 3412

(00:07:41) Patrick Priest mentioned that [HB 3412](#) is linked in the agenda and DCBS sent a [letter](#) drafted by SAIF. Kevin Barrett, SAIF, was unable to participate due to technical difficulties.

(0:08:31) Cara Filsinger reported that the bill passed the House Business and Labor committee a week ago with a -1 amendments, which had changes relating to lining up nurse practitioners and physician associate’s authority. Subsequently, SAIF identified some additional areas that might need some clarification. Cara Filsinger concluded that the memo from SAIF with these topics was sent to MLAC members and is also posted to MLAC website.

(0:09:22) David Barenberg, SAIF, summarized that due the complexity of drafting the bill, there were some minor issues identified. The changes will allow the bill to work properly. The issues primarily had to do with MCOs and wanting to ensure that the physician associates would have the same ability to continue treating if they were allowed to come into an MCO, which was an authority that they wouldn't have had without these technical changes. He concluded that he is available for any additional questions.

(0:10:47) Patrick Priest noted in the chat Kevin Barret mentioned that David Barenberg summarized his letter very well.

(0:11:16) Taylor Sarman, representing the Oregon Society of Physician Assistants, mentioned that he appreciates SAIF’s help in tracking down the statutes with the goal of aligning to nurse practitioner authority. He is supportive of the changes and what is outlined with SAIF’s letter. He concludes that he will share the final draft amendment with MLAC once it is completed.

HB 3541

- (0:12:38) Greg Peden, lobbyist for Avis, reminded MLAC that the bill comes from a lawsuit that Avis was involved in Multnomah County, which involved an injured employee of a subsidiary company. The court ruled that workers' compensation was not the exclusive remedy and the employee could bring a separate lawsuit. He continued that Avis feels that the bill will remedy that. Avis provides coverage to all employees in the cooperate structure. He noted that the employee is represented the Teamsters Union and feels that they are in support of the bill. The bill is in the House Committee on Business and Labor Committee and will be voted on this Monday; however, MLAC's opinion is wanted. Greg Peden continued that the courts filings for [*Fuhrer v Avis*](#) documents were sent out to the committee. He concluded that he is present to answer any question.
- (0:15:21) Robert Muhs, Avis, noted that it has always been Avis's intention to cover all of their employees through every one of their entities for workers' compensation. However, in this case the injured worker was assigned to one corporate structure since he was a union employee. The managers of the location were assigned to a different corporate structure and this resulted in lawsuit against the other corporate entity. He concluded that that workers' compensation should be the exclusive remedy for the injured employee.
- (0:16:34) Tammy Bowers asked Robert Muhs to elaborate how the two corporations are related to each other, and why both of them should be protected under exclusive remedy. Robert Muhs answered that they are all subsidiaries of a parent company. He continued that Avis has a number of entities that deal with different services. He indicated that car services, which was the employer of injured worker, ensured that all unionized shuttle drivers are under one place. The management of location resides in another place; however, they are all interconnected. He concluded that because they are all interconnected through the parent company, they should therefore receive the same benefit under workers' compensation.
- (0:18:30) Tammy Bowers followed up that she is in support of exclusive remedies and feels that it should be clarified and expounded upon. She then asks if the there is a claim subrogation issue? Robert Muhs explained that in the accident, there were several employees in the van being transported to pick up cars and the van was in an accident caused by a third party. While the employees gathered claims against the other party, they were also allowed to file claim against their employer, AB Car Rental Services, and the parent company, Avis. Tammy Bowers clarified that there was a workers' compensation claim, a subrogation claims against the third party, and a liability claim against the parent company. Robert Muhs confirmed the statement.
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- (0:20:16) Scott Strickland asked if the accident happened in 2019 and that the case was settled in 2022. Robert Muhs confirmed that statement. Scott Strickland asked if there is a reason why the case is now in MLAC's discussion given the sudden urgency. Robert Muhs responded that the case settled last year, and Avis wanted to seek a legislative change in 2023. He continues Avis settled the court case and in Avis's seventy plus years of operation, this is the first instance that such a case has come up. Scott Strickland asked how long Avis has had the entity structure that led to such development. Robert Muhs answered that Avis has had multiple entities for as long as he has been with the company, which is 29 years.
- (0:22:25) Marcy Grail shared that she feels that the case is a complicated issue, and in her workplace, they find opportunities for parent companies to create additional businesses. She noted that she has concerns about finding a rabbit hole on behalf of the workers. Marcy Grail explained that she needs more information, specifically more about the endorsement from Teamsters Union. She sees more barriers to get more remedies and expressed that she might be misunderstanding, but she ultimately has more questions.
- (0:24:01) Sara Duckwall asked for more clarification on the Teamsters Union endorsement. Robert Muhs answered that Avis has reached out to the Teamsters Union and has not heard any objection, so they believe that they would be supportive. Patrick Priest commented that was a little different from what he had heard the first time around.
- (0:25:32) Tammy Bowers commented that if the parent company is paying for the workers' compensation claim and a separate liability claim, it does not seem fair. This is one of the reasons why exclusive remedy exists. Tammy Bowers continued that pushing the bill through now is not appropriate because there is a lot to understand. However, this bill shows that there is an issue, and the company should not be paying multiple times for the same claim. She concludes that it breaks the principle of indemnity.
- (0:26:50) Lynn McNamara noted that she agrees that it is a complicated issue and it is worth discussing over the interim. However, pushing it is not reasonable since MLAC only learned about the issue last meeting.
- (0:27:25) Patrick Priest called on DCBS to inform everyone on the normal process and time frame on bringing a bill to MLAC.
- (0:28:24) Cara Filsinger explained there is no such schedule, but each year during a legislative session, bills are drafted. If the bill pertains to chapter 656 issues, they are brought to MLAC's attention. This is an unusual year, due to change in administration and new members, making the process slower. Greg Peden commented that the bill was introduced during the beginning of the legislative session and six weeks ago, Legislative Counsel produced the language. He
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continued that there is a process that goes through the legislator, and once the language was approved, Representative Shelly Boshart Davis asking for MLAC's opinion. He continued that he respects MLAC's members' statements that it is a complicated issue that needs more time to be understood. He shared that he is bounded by the legislative process, and there is a deadline to make the decision and the question is if this issue should be under exclusive remedy, as it seems as the court ruling goes against workers' compensation law. He concludes that he is here to answer any questions.

- (0:31:27) Patrick Priest noted a comment in the chat from John McKenzie stating that he agrees with comments made by Tammy Bowers and Lynn McNamara.
- (0:31:49) Scott Strickland mentioned that he is in support of exclusive remedy; however, it seems to him like the subject is a consequence of gamesmanship with entity formation that to achieve certain goals. Exclusive remedy is to protect employers, not investors. Scott Strickland continued that there are multiple ways a parent company could avoid paying twice, such as if the employee of the other company was also a Teamster-represented member of the same company, or if there was a company policy that did not allow transportation of the other company's employees. However, in construction sites where there are multiple different employers, such as general contractors, project owners, other subcontractors and others, it is allowed for the injured worker to sue those parties involved because exclusive remedy is limited to only the employer. Scott Strickland reiterates that exclusive remedy is limited to the employers, and not investors or other corporate entity structures. He added that the bill does not relate employers to the other entities. The bill is missing the point that exclusive remedy is against an injured worker's employer. He concluded by asking for an elaboration.
- (0:35:00) Robert Muhs answered that in the context of the examples given, these are employees of the company and it is not about protecting shareholders. He continued that under Avis, they are not independent contractors, but employees of the entity structure for a specific operation, it is all a chain and the workers' compensation cover all employees of Avis. If they used outside contractor services, then such company would have their own workers' compensation. Scott Strickland asked who is paying the workers' compensation premium of those employers. Robert Muhs answered that the parent company pays the premium to cover every entity's employees.
- (0:36:42) Sara Duckwall noted that timing is not ideal and she is encouraged that everyone agrees with the exclusive remedy concept. She hopes MLAC could come up with a set of questions as a starting point for a concept or a bill that comes to MLAC for discussion.
- (0:37:58) Kirsten Adams, AGC, referenced Scott Strickland's statement, stating that the construction industry is a great case study where issues pertaining to this case
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occurs. Some construction companies have subcontractors and general contractor relationships, while others have a subsidiary tied to the main company. She concluded that the we need to make sure that exclusive remedy is working the way it is supposed to.

A brief break was taken so that MLAC members could meet in caucus rooms.

- (0:40:00) Scott Strickland summarized that during the discussion in the labor caucus, there were a lot of concerns about the how late the bill was brought to MLAC and also the systemic change that it would bring. The labor caucus agrees with exclusive remedy and linking it to only employers. He continued that there were also concerns about the lack of stakeholder's involvement during the discussion, specifically the lack of opinion from the Teamsters Union. Scott Strickland noted that in the [legislative analysis](#), it mentions the ambiguous definition of a parent company and related entity to the employer. He concluded that the bill might change the scope of how Oregon workers' compensation is done.
- (0:41:58) Patrick Priest summarized that during the discussion in the management caucus, they agreed that the bill was presented late for such a complicated issue. He confirms that the management caucus is in support of exclusive remedy, since it is the core principle of workers' compensation. He continued that the management caucus felt that more stakeholders needed to be involved in order to ensure that there is a broad application of the bill. The management caucus needed more engagement with the bill and concerns regarding the [bill analysis](#) were not addressed by Avis. He concluded that none of the members in the caucus groups felt comfortable to vote on anything or provide a recommendation. However, they wanted to provide feedback in support of the concept and encourage Avis to bring a bill in the future with more stakeholders and research.
- (0:44:15) Tammy Bowers requested a better definition of a parent company and related entities in the bill before it is brought back.
- (0:45:00) Marcy Grail asked if anyone knows how the injured worker in the court case, Henry, is doing. Greg Peden commented that he does not know the answer, but is happy to find out.
- (0:46:18) Greg Peden commented that he appreciates the input and will implement the advice to bring the bill again next legislative session.
- (0:46:47) Patrick Priest asked for a motion to adjourn, Sara Duckwall moved to adjourn the meeting, Lynn McNamara seconded the motion. The motion passed.

Meeting Patrick Priest adjourned the meeting at 11:12 a.m.
Adjourned

*These minutes include time stamps from the meeting audio found here:
<https://www.oregon.gov/dcbs/mlac/Pages/2023.aspx>

**Referenced documents can be found on the MLAC Meeting Information page here:
<https://www.oregon.gov/dcbs/mlac/Pages/2023.aspx>