



**IRTBA Written Testimony
Senate Worker's Compensation Hearing
Wednesday, December 8, 2010 at 10:00AM
16-503 James R. Thompson Center, Chicago, IL**

John Sliwicki

Risk Manager, Aldridge Electric, Inc

(c)847-276-7093; jsliwicki@aldridge-electric.com

With nearly \$300M in annual revenues, Aldridge Electric is ranked as one of the nation's leading electrical contractors. Incorporated in 1952, we have more than 57 years of expertise completing complex transportation, drilling, mass transit, renewable energy and utility projects. A family-owned company headquartered in the Chicago-land area, Aldridge employs 600 employees nationally and has been involved in projects from coast to coast. *Mr. Slowicki will give specific examples related to doctor shopping, fraud and drug and alcohol issues.*

Bob Schutz Sr.

President, DS&P Insurance Services

847-934-6100; bschutz@dspins.com

Founded in 1981, DS&P has become one of Chicago's premier independent insurance firms specializing in all aspects of risk management. Our areas of expertise include: commercial insurance, employee benefits, surety bonds, safety consulting, personal insurance and more. *Mr. Schutz will talk about workers comp insurance claims and trends in construction.*

**Testimony of John Sliwicki
Illinois Senate Special Committee
On Worker's Compensation Reform**

December 8, 2010

My name is John Sliwicki. I am the Risk Manager for Aldridge Electric, a member of the Illinois Road & Transportation Builders Association for more than 30 years. Aldridge does business in almost every continental state. This gives us a unique perspective of the shortcomings of the Illinois Worker's Compensation Laws. I would like to share just two of the hundreds of stories that illustrate not only the need for reform of the statutes, but reform to the Commission and interpretations that have laid the ground work for an exodus of construction companies and competent insurers in the Illinois market place.

Drug and Alcohol use while on duty:

Several years ago Aldridge was brought in on a third party over action claim resulting from the injury of a Subcontractor's employee. The subcontractor did not have a safety program meeting Aldridge's standards. We assumed oversight, supervision and training of 2 employees and provided all necessary Personal Protective Equipment. While loading material onto a low-boy one of the employees slipped and fell sustaining permanent injuries. The employee received his Workers Comp benefits and subsequently sued Aldridge for not supplying the proper safety measures to protect him from injury...even lying under oath that we refused to give him a ladder! One problem...the employee tested positive for methamphetamines, marijuana AND opiates! Despite this finding the employee was still awarded a seven figure settlement!

Under the current system we implement drug testing programs that punish employees for drug use that MAY NOT even effect their performance (i.e. – pre-employment and random), but when the evidence clearly suggests it DID impact their injury (i.e. – post accident levels indicative of impairment at the time of injury) we award them with large settlements and the prospect of never having to work again. Reform that refuses to award settlements, greatly reduces the amount of the settlement or requires entry into a substances abuse program and clean testing for the duration of benefits are just a few modifications that are clearly more balanced than the current structure.

Not only does this clearly illustrate the need for reform with regard to Drug and Alcohol programs, testing and the lack of an effect it has on settlements, but also the need for Third Party Over-action reform. Illinois should grant third-party immunity to General Contractor's and Owner's in Workers Comp claims not involving willful negligence. The WC Laws were implemented to provide FAIR and BALANCED recourse for injured employees, lower costs of litigation and protect employers from frivolous lawsuits. Left as is without reform, it simply makes a mockery of the system and weakens our economy...when is enough, enough?

Fraud:

We were handling a worker's compensation claim involving a shoulder several years ago that seemed 'suspect'. The insurance company refused to provide surveillance per our request on the basis that courts often ignore surveillance conducted by the employer or carrier. In response, we employed the services of an independent investigator (who I use regularly now) at our own expense. The surveillance showed the employee doing yard work, moving wheel barrels and tossing 40-50lb bags of dirt onto his injured shoulder. The claim was settled for less than the reserve, but only because the insurance company was hesitant to let it go in front of the commission...even with this overwhelming evidence.

As a risk manager I have a duty to my employer, but as a citizen I have a responsibility to the well being of everyone. It is apparent that the Aldridge family spends a great deal of time and resources on training and safety because we care about our employees. In addition, we offer those resources to our peers and competitors to ensure a safe work environment for everyone. All of this effort is pointless if one claim hands down an unjust penalty due to antiquated statutes, runs another business out of Illinois, or worse yet shuts their doors.

When a system creates an atmosphere of enablement and blatantly disregards the impact to the group for the perceived wellbeing of the individual then we have failed.

I would like to thank all parties for the opportunity to share this information on this crucially important matter.

Testimony of Bob Schutz
on
Workers' Compensation Reform

December 8, 2010

My name is Bob Schutz. I am a member of the Illinois Road & Transportation Builders Association. I am also the president of DS&P Insurance Services located in Palatine, Illinois. DS&P is an independent insurance agency. We have several thousand business clients located primarily in northern Illinois although we also have clients in Wisconsin, Indiana and other states. We represent approximately 25 insurance companies. Therefore, I am involved with our Workers' Compensation system on a daily basis and I regularly see the negative impact it has on our clients. I would like to address what I consider to be very onerous provisions in the current Workers' Compensation law as well as the liberal interpretation of the law by the Workers' Compensation Commission both of which in my opinion provide fertile ground for abuse and fraud.

The maximum Temporary Total Disability (TTD) benefit in Illinois is currently \$1,243 per week. This benefit is tax free. The maximum payment for this benefit is \$815 per week in Wisconsin and \$650 per week in Indiana. This extraordinarily high amount results in several negative impacts on Illinois employers. Workers Compensation premiums for all employers are much higher in Illinois than in Wisconsin and Indiana. Employees collecting this benefit have little or no incentive to return to work which results in higher claim payments which then results again in even higher insurance premiums for the employers of these employees. Illinois employers are put in a competitive disadvantage when competing against businesses in Wisconsin and/or Indiana. In fact, Illinois employers are put in a competitive disadvantage when competing against businesses in virtually every other state because I believe Illinois has the third highest Workers' Compensation insurance rates in the country.

Illinois added a new provision to the Workers' Compensation laws as part of the 2005 reform. It is titled Temporary Partial Disability (TPD). It applies to injured employees who return to work with duties that have been modified (lessened or changed) from those prior to the injury. Typically these employees are paid less by their employers because their duties have been lessened. As a result they are now entitled to receive Temporary Partial Disability benefits. Employees that receive this new benefit (TPD) typically earn a higher net income than they were earning prior to their injury. The impact to Illinois employers is the same as previously stated.

Another change made as part of the 2005 reform was the lengthening of benefits paid under the Wage Differential provision. Prior to the 2005 reform benefits were paid up to the average age of retirement. The 2005 reform changed this to now have benefits paid for life. Settlements made under the Wage Differential provision are now significantly higher. The impact to Illinois employers is the same as previously stated.

Permanent Partial Disability (PPD) benefits are awarded on the basis of "man as a whole" for certain types of injuries. Typically these injuries are related to an employee's back. All Permanent Partial Disability settlements are based on a percentage of the involved body part. All Permanent Partial Disability settlements for any body part other than "man as a whole" are discounted or credited for previous settlements involving the same body part. There is no discount or credit for settlements based on "man as a whole". Therefore, an employee with multiple injuries over a period of time that have been settled on the basis of "man as whole" will likely have been paid cumulatively in excess of 100% of a "man as a whole". The impact to Illinois employers is as previously stated.

A ruling by the Commission of compensability for repetitive trauma issues is now widely considered to be absolute. In my opinion no consideration is given for whether or not the employee's duties involve repetitive tasks, what type of duties the employee had with previous employers or the employee's non-work activities. I have seen many instances where an employee that has worked for one of my clients for a month or less has made a claim for a repetitive trauma issue and has received a compensability ruling. The impact to Illinois employers is as previously stated.

It is my understanding that if not every then the vast majority of the appointed arbitrators of the Commission were petitioner attorneys prior to being appointed as an arbitrator. It is widely viewed that the result is we have a commission that is pro employee to a degree that gives little or no regard to employers. It is widely viewed that all an employee has to do to receive benefits is to allege that something happened at work even in instances where it is proven there was a pre-existing condition.

The cost of Workers' Compensation insurance is very volatile for all employers in Illinois and especially for those in the construction industry. A construction company's premium can literally double or more within a 12 to 24 month period. A contractor cannot recoup this additional cost in existing projects. Bids for future projects have to include this cost which most likely will put the contractor at a severe disadvantage. The profit margin in the construction industry has been dwindling for the last three years to the point of being almost non-existent. The cost of Workers' Compensation insurance can literally make the difference between a contractor being profitable or not.

Insurance companies are starting to look unfavorably at Workers' Compensation insurance in Illinois. Several are raising rates and restricting their underwriting standards. If this momentum spreads premiums for most employers in Illinois will increase and perhaps dramatically. Something has to be done with the law and the administration of it.

Thank you for the opportunity to address this very dire situation with you.