

**Village of Skokie, Illinois**

**Written Testimony Re: Workers' Compensation Reform**

**December 8, 2010**

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**Introduction**

Skokie is a municipality of 66,000 residents located in Cook County and shares a border with Chicago. Skokie employs approximately 500 employees with an annual operating budget of \$48 million. The Village averages approximately 50 workers compensation claims a year, including medical-only and lost-time injuries. The Village is self-insured and therefore, there are no workers' compensation insurance premiums paid. All costs are first dollar expenses associated with Skokie's workers' compensation program.

The Village of Skokie was the first municipality in the country to have a professionally accredited Police Department, Public Works Department and a professionally accredited, ISO-Class One-rated Fire Department. This achievement is mentioned as evidence that discipline experts regularly review the Village's procedures and operations including safety and risk management practices. Further evidence supporting sound operational practices is the fact that the Village of Skokie has the AAA bond rating, the highest achievable for a municipality.

The Village employs a full-time risk manager and is committed to preventing employee injuries, providing timely and quality medical care in the event of an employee injury, and timely return to work if possible.

**Skokie's Workers' Compensation Experience**

The Village of Skokie is pleased that there is interest in Workers' Compensation reform. It is our belief that workers' compensation reform is intended to fairly compensate injured workers while managing business expenses at appropriate levels. Municipalities in Illinois, including the Village of Skokie, have been negatively impacted by increasing workers' compensation costs. The financial impact of the Illinois workers' compensation program to Illinois businesses and governmental units is unsustainable.

Looking at Skokie's workers' compensation from a historical perspective, a 5-year cost average between fiscal years 2000 and 2005 resulted in an annual cost-average of \$703,718; a 5-year average between fiscal 2006 and 2010 however, resulted in an annual cost-average of \$1,044,913. This is a 48 percent increase in total workers' compensation costs, while incurring 42 percent less injuries over the same five-year periods.

From Skokie's perspective, several factors within the Illinois Workers' Compensation program are contributing to these escalating costs. These are:

## Cost Drivers of Workers' Compensation

### 1. Disability Settlements Not Based on Objective Medical Guidelines

The Illinois Workers' Compensation Act provides for permanent partial disability benefits for the permanent, total loss or for a percent loss of various specific part of the body. Currently however, a treating physician at the point of maximum medical improvement is not allowed to assess the level of impairment, if any, of injured body part. The injury is not evaluated based on objective medical criteria when determining impairment or disability, and yet, the employee claims – even litigates for - a monetary settlement from the employer. The practice in Illinois is to base permanent partial disability (PPD) awards on past settlements amounts for similar cases rather than base awards on objective medical findings to determine the specific impairment of the injured individual. This practice contradicts logic when significant permanent impairments of 25 or 30 percent loss of an arm or leg are awarded, yet the injured employee has suffered little or no residual functional impairment such that they are able to return to work full-duty in a high-demand physical job such as a firefighter or police officer.

For example, a Skokie firefighter undergoes shoulder surgery for a rotator cuff tear. Undisputed, all medical expenses and lost wages of \$40,761 are paid by the Village. The firefighter successfully returns to work, full-duty without any physical impairment or restriction. However, the Village through the Illinois Workers' Compensation Commission, is ordered to pay PPD settlement of 35 percent loss of use of an arm or \$52,401. The cost of the PPD settlement exceeded the cost of medical care and lost wages by 28 percent; yet, the employee had no physical impairment that prohibited him from returning to full-duty work as a firefighter.

The American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment are tools to help doctors accurately rate impairment cases, leading to fair compensation for injured patients. The AMA Guideline is an accepted standard for impairment and disability assessment in a majority of the United States. This objective and widely used medically founded resource and will be helpful for employers who are attempting to treat their employee fairly and still manage their business expense. For a doctor to estimate the functional loss of an injured body part where the employee is requesting a permanent partial disability seems only logical. The local government public safety disability pension process requires three medical examinations with written opinion of disability in order to be eligible for a disability pension. If objective medical opinions regarding impairment are needed for disability pension findings, it seems reasonable to conclude that similar objective medical findings are appropriate when determining and awarding Permanent Partial Disability settlements under workers' compensation.

*To control escalating workers' compensation costs in Illinois, disability settlements must be based on objective medical guidelines.*

### 2. Workplace as the Primary Cause of an Injury

Illinois provides workers' compensation benefits to an employee if their pre-existing injury or medical condition is aggravated in any way by their employment. No consideration is granted relative to the employee's pre-existing or underlying health condition.

For example, a morbidly obese Skokie firefighter with significant underlying health conditions twisted his knee walking during a training exercise. Three orthopedic physicians opined that the work incident aggravated his severe degenerative arthritis. The case was litigated and Skokie was ordered to pay the firefighter 50% loss of a man or \$137,617 since the injury was career ending.

Another firefighter bumped his shoulder walking into a doorframe at a fire scene. Minimum medical care was sought for 14-months post-incident when surgical intervention for a rotator tendinopathy was requested. Although an avid golfer during his free time and although the employee underwent similar surgery for the opposite shoulder, the Village was ordered to pay 35% loss of use of an arm or \$52,401 in a permanent partial disability benefit based on the treating physician opinion that the underlying osteoarthritis was aggravated by the work incident.

Consideration must be granted to the employer relative to an aging, often out-of-condition workforce. The Public Sector is not like repetitive, manufacturing-type jobs that often may lead to accumulative stress disorders or repetitive type injuries. Skokie does take our 'employees as we find them', but in addition, we encourage wellness, fitness and preventative health through various structured Village programs. However, the workers' compensation act must recognize that the resulting disorder is not always the sole and proximate cause of the workplace and often, there are underlying conditions that contribute to the injury.

*To control escalating workers' compensation costs in Illinois, reform language that requires the workplace to be the primary cause of an injury or illness is necessary.*

### **3. Wage Differential Claims**

Wage differential claims also are significant cost drivers within the Illinois workers' compensation system. Illinois needs to alter wage differential claims to respond to changes in the employee's economic circumstances, must provide credit for previous wage differential claims and must cap benefits to retirement age instead of providing awards for life.

If an employee's economic conditions change years after a claim is settled, the wage differential remains the same based on a life calculation rather than projected working years. In addition, Illinois does not provide a credit for previous wage differential claims. While Skokie has not experienced any direct wage differential claims, petitioners' attorneys routinely use the above wage differential provision to drive up settlement negotiations.

*To control escalating workers' compensation costs in Illinois, reform language that addresses abuses in wage differential cases is necessary.*

### **4. Alcohol and Drug Free**

Employees have a responsibility to be alcohol and drug-free in the workplace, and Illinois workers' compensation law should acknowledge this. Impaired municipal workers are not only a danger to themselves and property, but may also pose a risk to their fellow workers and the community they serve.

*To control escalating workers' compensation costs in Illinois, reform language is necessary that eliminates or dramatically reduces workers' compensation benefits when injuries are caused by intoxication or drug impairment.*

5. **Public Act 94-0277 (Act)** increased and changed workers' compensation scheduled benefits. The various provisions of the Act including the fraud unit, medical fee schedule, etc. have been ineffective from the employer's perspective. The Act has, however, made significant differences in increasing benefit and compensation levels, specifically minimum compensation rates – Section 8(b) of the Act, and scheduled body parts – Section 8(e) of the Act. The net result of these benefit changes has been to increase petitioner Permanent Partial Disability (PPD) awards and an increased workers' compensation burden on Illinois businesses and governmental units.

The Village of Skokie experienced an increase of over 400 percent in overall workers' compensation costs when comparing pre-Act to post-Act expenditures. Costs for fiscal year 2006 were \$332,554, while workers' compensation costs for fiscal year 2007 were \$1,542,164. This increase occurred despite the Village incurring 15 percent less injuries in fiscal 2007 than in fiscal year 2006.

Comparing 5-year averages pre-Act to post-Act expenditures, the increase is still significant. Five-year cost average between fiscal years 2001 and 2005 for total workers' compensation costs was \$703,718 per year, while the five-year cost average between fiscal years 2006 and 2010 was \$1,044,913. This result is a 48 percent increase post-Act compared to pre-Act. Interestingly enough, the percent attributable to medical costs remained approximately the same pre-Act to post-Act, while the increase in expenditures is directly attributable to increases in lost wages and permanent partial disability settlements.

Looking at PPD settlements specifically, the Village of Skokie has experienced increases of 25 to 30 percent. For example, before the Act, an arthroscopic shoulder surgery with full recovery and full return-to-work resulted in a PPD settlement of 30 percent loss of an arm at an average of \$30,000. Subsequent to the Act, the same 30 percent loss of an arm PPD settlement averages \$47,000, representing a 56 percent increase in the PPD settlements for shoulder injuries.

Skokie recognizes the need to fairly compensate injured workers for permanent impairments and permanent disabilities; we are not suggesting otherwise. However, from our experience and perspective, the Illinois Permanent Partial Disability component of the Act has become such a rich benefit, that PPD compensation is sought, even litigated, even when there are no other areas of dispute.

*To control escalating workers' compensation costs in Illinois, Sections 8(b) and 8(e) of Public Act 94-0277 that increased benefit and compensation levels must be re-evaluated. Illinois businesses and governmental units will be positively impacted by returning to pre-Act benefit levels.*

#### **In Summary**

Reform issues to control escalating workers' compensation costs in Illinois:

- *Disability settlements must be based on objective medical guidelines.*

- *Reform language that requires the workplace to be the primary cause of an injury or illness is necessary.*
- *Reform language that addresses abuses in wage differential cases is necessary.*
- *Injuries caused by alcohol or drug impairment have workers' compensation benefits eliminated or dramatically reduced.*
- *Public Act 94-0277, Section 8(b) and 8(e) that increased benefit and compensation levels must be re-evaluated to pre-Act benefit levels.*

In addition to the concerns expressed by business, public sector entities in Illinois, including the Village of Skokie, have been negatively impacted by increasing workers' compensation costs. The financial impact of the Illinois workers' compensation program to Illinois business and governmental units is unsustainable and is further exacerbated by the down economy.

Illinois citizens will be positively impacted by workers' compensation reform as businesses remain competitive and maintain operations in the State while governmental units reallocate scarce resources to provide continued community services without an additional tax burden. Reform efforts to rebalance the Act, as recommended above, are intended to fairly compensate injured workers while managing business expenses at appropriate levels.

Thank you for the opportunity to provide testimony regarding the need to reform workers' compensation in Illinois.

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