



Steve Bullock, Governor  
Pam Bucy, Commissioner

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## **November 18, 2015 – LMAC Meeting**

### **Governor Bullock requested LMAC identify alternatives to subrogation and address the underlying concerns in SB288**

#### **UNDERLYING CONCERNS PROVIDED BY STAKEHOLDERS**

##### **PUBLIC POLICY:**

Grand Bargain – Work Comp is a no fault system and an entitlement – exclusive remedy

MT Public Policy objective – work comp is not intended to make a worker whole intended to assist the worker at a reasonable cost to employer

Workers have the right to obtain full legal redress for 3<sup>rd</sup> party at fault injuries

##### **SCOPE OF PROBLEM:**

*What is the scope of the problem? Can the scope of the problem be measured system wide? Does the scope justify a change in public policy?*

The scope of the problem is significant and across industries

The scope of the problem cannot be determined by numbers of 3<sup>rd</sup> party incidents or costs

Insurers are unable to subrogate against 3<sup>rd</sup> party recoveries

Insurers are entitled to subrogate against recoveries in excess of worker damages

##### **FAIRNESS AND EQUITY:**

*Is subrogation an equity and fairness issue? If so, who comes first – the worker or the employer?*

Subrogation is an equity and fairness issue

Fairness to employers - the responsible party should bear the cost

Fairness to injured workers – workers should be compensated for all damages not covered by work comp

Individual Self-insurers bear the entire cost of 3<sup>rd</sup> party at fault injuries

Group Self-insurers, Plan 2 and Plan 3 employers spread some of the costs of 3<sup>rd</sup> party at fault injuries to all employers

Workers receive double recovery for medical benefits

Workers recover limited work comp wage loss and medical benefits

Low mandatory liability insurance laws leave workers undercompensated for 3<sup>rd</sup> party at fault injuries

**PREMIUM:**

**Does the manual premium include the risk of 3<sup>rd</sup> party at fault injuries?**

Employer pays premium to insurer to assume risk of all expected losses

Risk of 3<sup>rd</sup> party caused injuries are already factored into the premium

**EXPERIENCE RATINGS/MOD FACTORS:**

**How is an employer's experience rating impacted by 3<sup>rd</sup> party at fault injuries?**

3<sup>rd</sup> party at fault injuries result in increased experience ratings for employers

Not all employers qualify for experience ratings

Frequency of claims versus dollar size of claim is the driver of the experience mod

One 3<sup>rd</sup> party at fault injury causes an employer's experience rating to increase

Higher than average experience ratings adversely affect an employer's ability to be awarded contracts

NCCI advocates against using the mod factor in contract award decisions

Contracting agents disqualify employers based on higher than average mod factors

Higher than average experience ratings indicate an unsafe workplace

Mod factor is only one indicator of a safe or an unsafe workplace

Catastrophic injury costs and the experience mod will not be impacted by a \$25,000 liability payment

**OPTIONS FOR CONSIDERATION:**

Exclude 3<sup>rd</sup> party at fault costs from the calculation of experience ratings

Prohibit public employers from using mod factor in awarding contracts

Restrict the use of mod factors to one of several factors used in determining the safety of an employer in awarding contracts

Develop a "best practice" policy statement for contracting agents to use when requesting bids and measuring safety of bidders

Mike Marsh proposal

Others?