

Good afternoon, and thank you, Representative Brooks for creating this opportunity to testify on the Cost of Doing Business in Pennsylvania. My name is LaVonne Pelisari and I have been employed as a Human Resource professional for over 30 years – most of that time in the Commonwealth of Pennsylvania. For the past eight years, I’ve worked as Corporate Director of Human Resources for Ellwood Group, Inc., a fully-integrated mid-sized manufacturer of steel and steel products.

The challenge for me today was *which choice to make among a plethora of critical issues that mid- and small-sized employers currently face*. For instance, there is always the need for a more favorable corporate tax climate that invites investment by entrepreneurs and job creation. There is also a strong need to halt the growth of new legislation that further burdens businesses within our state. And, as my colleague, Amy Weller, pointed out, we need to reform the funding mechanism to better support our Technical and Vocational education in an effort to provide the skilled workforce that is so desperately needed by Pennsylvania manufacturers. However, there is one topic that faces ALL business entities in Pennsylvania – large and small – manufacturing, retail, or service, and that is *the need for Workers Compensation reform*. It is that subject that I would like to discuss here.

Why we believe Workers Comp reform is necessary:

1. The last major workers’ compensation reform was Act 57 in 1996 under Governor Ridge; business is dynamic and our global market moves at an incredibly fast pace;
2. The current system needs updated to improve complicated medical fee schedules, improve medical evidence standards and prevent abuse;

3. Pennsylvania needs to develop a more favorable business climate to encourage investment. Workers’ compensation reform is an important step in aiding business *because it affects every business and can promote business growth, expansion, and job creation.*

Suggested Areas of Workers Compensation Reform

1. There is currently pending in the Pennsylvania House of Representatives House Bill 808 to increase from 90 days to 180 days the requirement for the injured worker to treat with a company-selected panel physician or healthcare provider. This will help assure continuity of treatment, avoid “doctor shopping” for the purposes of prolonging a return to work, and, we believe, will help discourage and reduce abuse by trial lawyers seeking litigation or settlements. We support House Bill 808 but believe that more needs to be done to improve the Commonwealth’s Workers Compensation law.
2. We advocate simplifying the medical fee schedules.
 - a. We believe a new base for establishing medical fees needs to be established. Currently, physician/provider payments are based on 1994 Medicare base rates times 113% and THEN multiplied by each year’s percent change in the average weekly wage (a cumulative number from 1995 through 2011). On average, the current fee schedule is estimated at ~139% of Medicare rates.
 - b. But any revision of the medical fee schedule must also include an update of the Medicare coding system. Medicare Chargemaster has 900+ DC-9 medical codes

(DRG’s). The Commonwealth’s workers’ compensation uses only 450 codes from 1994 “Grouper 12.” This results in a great deal of “down-coding” to convert a current code to one payable under Pennsylvania’s old system and often results in a way to obtain higher payments by the physician/provider.

3. Improve medical evidence standards. Currently, Judges make decisions based on their perceived “credibility” of witnesses, including whether or not they perceive a medical professional as “credible.” Perhaps a quick review of a relatively recent case in which I was personally involved will better illustrate this for you.

a. A young machine operator reported off work due to illness. The individual never reported a workplace injury. As he approached the end of a 26-week period of company-provided short-term disability, the company received a “Report of Workplace Injury” from an attorney representing the Claimant. ***This report was filed six months after the alleged occupational back injury.*** The employee also applied for (and received) the company provided long-term disability benefit through our insurance carrier. In the meantime, the employee and his attorney proceeded with a workers’ compensation claim during which the Claimant testified that he had injured his back in the workplace. A settlement demand of \$265,000 was made.

b. Two Independent Medical Examinations (IMEs) provided no pathology or evidence of any structural injury to the lumbar sacral spine. Claimant’s own

doctor's medical notes stated: "I'm somewhat concerned about his lack of motivation and that makes me somewhat guarded about his prognosis."

- c. Claimant changed doctors three times during the 4-year period this case was being processed.
- d. Claimant's ex-girlfriend (and mother of their dependent child), current girlfriend, mother, and brother all testified that the Claimant did not have back problems until he began working at the Company.
- e. Claimant testified that he had not received medical treatment, therapy, or had any medical prescriptions for over a year AND that he only took an occasional Tylenol.
- f. Video surveillance revealed Claimant was active, including walking, bending, stooping, lifting his three-year old child, operating a snow plow, driving his car and four-wheel ATV.
- g. The Workers Compensation judge ruled in favor of the Claimant, rejecting all medical records and expert medical testimony, as well as the testimony provided by company professionals. ***The judge stated that he found all the Claimant's relatives to be more credible than the medical experts and Company professionals. The Judge ruled that the Claimant had met his burden of proving an injury in the course of his employment.***

- h. Shortly thereafter, Claimant's third personal doctor released him as fully recovered and able to return to full duty.
 - i. This case was finally settled by payment of \$50,000 to the Claimant, 20% of which went to his attorney.
 - j. Total company costs for this one workers compensation claim were in excess of \$150,000 including the indemnity payment of ~\$400/week that was paid to the Claimant for 4 years.
4. As part of our urgent plea for improving medical evidence standards, we also urge the legislature to consider improving the effectiveness of the Utilization Review process currently available under the Commonwealth's Workers' Compensation law.
- a. Briefly, a Utilization Review is requested by an employer to seek an independent determination of the efficacy of a specific medical treatment in a workers compensation case.
 - b. Utilization Reviews cost an employer at least \$1,000 and, once again, the outcome is dependent upon the Utilization reviewer's perception of provider credibility. In other words, the outcome is frequently based on how credible one or another medical expert's testimony is perceived by the Utilization Review Organization.
5. Tighten the law so as to prevent claimant abuse.

- a. Prescription drug abuse and escalating prescription drug costs are an area of grave concern to employers. Some claimants over dose or become addicted on prescribed drugs through no fault of their own to the point of causing organ damage or other serious health issues. Others refuse to take prescribed drugs or accurately follow dosage instructions that can help them recover. We believe that requiring drug testing of workers compensation individuals to confirm appropriate use of prescribed drugs would be a deterrent in such situations and should be considered. This, along with suspension of benefits when the claimant is uncooperative with prescribed medical treatment, would go far in helping to prevent claimant abuse.
 - b. We also suggest that there are opportunities to prevent abuse by improving the statute of limitations. This would prevent old claims from be re-opened after a defined period of inactivity.
6. And while all the above suggestions would represent significant improvements in helping to reduce the cost and abuse of workers compensation, they do not address the need to better fund the Uninsured Workers Compensation Fund. This Fund now stands at approximately \$30,000,000, a woefully low level and will have to be increased in the near future. How will that be done?

Who is Working on These Issues?

There are many Pennsylvania employers and organizations who are working on these important issues. Many experts are dedicated such as the Pennsylvania Chamber of Commerce and

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Industry who are diligently pursuing ideas, suggestions, and strategies for better workers compensation legislature that will continue to provide excellent medical treatment and care for employees who suffer occupational injuries. While we are grateful and hopeful that House Bill 808 will pass and increase the panel requirement from 90 to 180 days, we recognize that it does not do enough to help control the workers compensation cost of doing business in Pennsylvania.

Equally important, YOU are working on better understanding some of the issues that discourage entrepreneurs and private investors from doing business in our Commonwealth. We salute you for your leadership and courage in creating these opportunities to share our thoughts, concerns, ideas, and suggestions with you.

Ellwood Group, Inc. has seven individual and independent businesses in Pennsylvania. We're proud to operate as a steel manufacturer in this state and in this great country. We believe that by working together on improving the business environment here that these challenges can be met and that we all will benefit. Let's make the Commonwealth of Pennsylvania one of the best States in which to own and operate a business.

Thank you sincerely for your focus on these important opportunities and your commitment to meeting these challenges.

