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California Legislature

December 17, 2004

The Honorable Arnold Schwarzenegger
Governor, State of California
State Capitol – First Floor
Sacramento, CA 95814

Dear Governor Schwarzenegger:

The Legislature and your Administration shared many goals during the workers' compensation deliberations last year. We wanted to bring more predictability, efficiency, and consistency into the system; we wanted to make the cost of workers' compensation insurance cheaper for California employers and we wanted to guarantee that injured workers get the benefits they deserve.

A key component of Senate Bill 899, (Chapter 34, Statutes of 2004), the implementation of a new Permanent Disability (PD) Rating System, is scheduled to be adopted as an emergency regulation by the Office of Administrative Law by January 1, 2005.

To guarantee that injured worker benefits maintain their constitutionally required adequacy, SB 899 included language requiring consideration to be given to "an employee's diminished future earning capacity." SB 899 defined this as follows:

Labor Code 4660 (b)(2) For purposes of this section, an employee's diminished future earning capacity shall be a numeric formula based on empirical data and findings that aggregate the average percentage of long-term loss of income resulting from each type of injury for similarly situated employees. The administrative director shall formulate the adjusted rating schedule based on empirical data and findings from the Evaluation of California's Permanent Disability Rating Schedule, Interim Report (December 2003), prepared by the RAND Institute for Civil Justice, and upon data from additional empirical studies.

We have carefully reviewed the draft regulations developed by Andrea Hoch, Administrative Director of the Division of Workers' Compensation. We are concerned that her proposal violates both the spirit and letter of SB 899. In particular, it is our opinion that these regulations do not accurately reflect an employees "diminished future earning capacity" and will result in a drastic cut to PD benefits.



SB 899
December 17, 2004
Page Two

Specifically, we write to request that you delay implementation of these regulations for the following reasons:

- 1) By some estimates, the combined effect of the proposed regulations and other changes could result in a reduction of benefits of up to 2/3 of current levels. When negotiating, deliberating and ultimately voting for SB 899, it was never the Legislature's intent to have such dramatic cuts in PD. We acknowledged there would be cuts in PD, but the scope of the benefit cuts from the proposed regulations would be much deeper and much broader than we agreed to under SB 899.
- 2) During our negotiations and your public comments regarding workers' compensation reforms, you consistently expressed your commitment to not harm legitimately injured workers. We believe these regulations do harm legitimately injured workers.
- 3) SB 899 requires that when determining "future earning capacity" the administrative director shall base the PD schedule on the interim RAND study dated December 2003 *and* "upon data from additional empirical studies." It is our understanding that the RAND institute, despite the ability to complete their "crosswalk" study in the very near future, was requested to not proceed by the administrative director. Waiting two to three months in order to receive the RAND "crosswalk" study is not only more consistent with SB 899, it would result in a more empirical, rational, and fairer PD rating system.

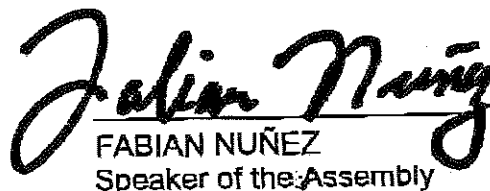
As you know, negotiations on SB 899 were sensitive, lengthy and at times very contentious. However, we believe there was always a shared goal of reforming a broken system without taking benefits away from those workers who are legitimately injured on the job. To allow these regulations to go forward by January 1, 2005 without the use of the "crosswalk" study would leave California's injured workers with inadequate benefits to survive. It is for that reason that we respectfully request you delay the implementation of the regulations.

We look forward to your response.

Sincerely,



DON PERATA
Senate President pro Tempore



FABIAN NUÑEZ
Speaker of the Assembly