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A Limited Liability Partnership

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RE: IIC Docket No. 17-0204-1802

To Whom It May Concern:

My name is Michael Kessinger, and I represent injured workers in Idaho. I oppose IIC Docket No. 17-0204-1802 because it is one-sided and is bad for Idaho's injured workers.

IDAPA 17.02.04.281 currently requires insurance companies to average impairment ratings when different doctors rate an injury. By using an average, the current rule mitigates the harsh results of extreme ratings. The proposed change to 17.02.04.281 will effectively eliminate the current practice of averaging impairment ratings.

The insurance company chooses a rating under the proposed rule. Reported I.C. cases reveal that insurance medical examiners usually assign lower ratings than other doctors. Those cases also establish that given a choice, insurance companies choose the lowest rating nearly 100% of the time. The proposed rule change is one-sided: it benefits the insurance industry to the detriment of the injured worker.

With the proposed rule, paying disability in excess of the lowest rating would violate an insurance company's duty to its insureds and investors. Idaho's injured workers would be forced to litigate cases to have higher ratings considered.



Idaho's workers' compensation system was designed to provide "sure and certain relief to injured workmen and their families." I.C. § 72-201. The proposed rule would eliminate sure and certain relief that is currently available to injured workers. The proposed rule runs counter to the Workers' Compensation Act's purpose of relieving injured workers from adverse economic effects caused by disabling work-related injuries.

On August 24, 2017, the Commission decided the case of Mead v. Swift Transportation. The case illustrates the vast difference in ratings and the negative impact on an injured worker. In Mead the insurance company argued for a 6% rating assigned by its hired doctor. The doctor retained by the injured worker assigned a 19% rating. The results with the proposed rule and the current rule are vastly different:

	<u>Weeks of Payments</u>	<u>Total Benefit Amount</u>
Proposed Rule	30	\$10,197.00
Current Rule	62.5	\$21,243.75

Under the current rule, Mead receives over twice as much compensation as he would under the proposed rule. Ultimately, the Commission awarded Mead 95 weeks, the highest rating, worth \$32,290.50.

The purpose of Idaho's workers' compensation law is to provide sure and certain relief to injured workers. The proposed rule is inconsistent with the purpose of the law and should not be adopted.

Sincerely,

A handwritten signature in black ink, appearing to read "M K".

Michael Kessinger
Attorney at Law