

**TESTIMONY  
OF THE  
NEW YORK WORKERS' COMPENSATION ALLIANCE  
TO THE  
NEW YORK STATE INSURANCE DEPARTMENT  
REGARDING  
THE 2011 WORKERS' COMPENSATION RATE FILING REQUEST  
OF THE  
COMPENSATION INSURANCE RATING BOARD**

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**I. INTRODUCTION.**

The Workers' Compensation Alliance ("WCA") is a political action committee that advocates for the interests of injured workers in New York's workers' compensation system. It submits this testimony in opposition to the rate filing request of the Compensation Insurance Rating Board ("CIRB").

The CIRB's data collection process lacks transparency, consisting of the un-audited self-report of information by private insurers to an entity controlled by those same insurers. The information used by the CIRB cannot be verified by comparison to other sources, does not correlate with actual workers' compensation benefit structure, and is not based on actual payments, but rather on carrier "projections" that are of dubious validity. As a result, the CIRB's submissions are wholly lacking in credibility.

The WCA submits that these factors, described in Section II below, should lead the Insurance Department to reject CIRB's application. The WCA also calls the Insurance Department's attention to the provisions of the 2007 Workers' Compensation Reform Act that were intended to remove the CIRB from data collection and rate-making functions. These provisions remain unfulfilled.

The WCA also disagrees that employer or carrier costs have increased at the rate suggested by the CIRB. Available information regarding the impact of the 2007 statutory reforms is discussed in Section III, below. This information does not support the CIRB's current application.

To the extent any increases have occurred, such would be due to the failure to fully implement the 2007 statutory reforms. The lack of implementation is, in turn, directly attributable to the obstruction of various reform Task Forces by The Business Council of New York State ("the Business Council") and the insurance industry – which collectively dominate the CIRB. These issues are discussed in Section IV, below.

For all of these reasons, the WCA submits that the CIRB's current rate application should be rejected.

## **II. LACK OF TRANSPARENCY, CREDIBILITY, AND CORROBORATION OF CIRB DATA.**

The structure, data sources, and inability to verify CIRB's data preclude it from functioning as a credible rate-filing entity. Prior to the 2007 statutory amendments, the CIRB was composed solely of representatives of the private insurance industry, and existed for the purpose of submitting proposals for increases in workers' compensation insurance rates.<sup>1</sup> The CIRB receives un-audited self-reports from private insurance carriers regarding their claim experience, and translates those reports into "data" in support of rate applications. Said rate applications, of course, benefit the very entities that compose the CIRB itself. There are a number of fundamental issues raised regarding the transparency, accuracy, and credibility of this process.

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<sup>1</sup> NY Ins. Law § 2313.

1. CIRB Data Cannot be Verified by or Compared to Data from Other Sources.

The CIRB receives data only from private insurers and the State Insurance Fund, which together amount to about two-thirds of the market in New York.<sup>2</sup> The self-insured sector of the market (the other one-third) does not report data to CIRB or to any other source. The lack of reporting by self-insurers represents a loss of invaluable data that could be used as to verify the accuracy and credibility of CIRB rate filings.

Similarly, the Insurance Department has previously found it to be difficult, if not impossible, to compare the CIRB's data to that collected by the Workers' Compensation Board ("the WCB") because the systems used by these entities are fundamentally incompatible.<sup>3</sup> As a result, the accuracy of the information collected and reported by one cannot be cross-checked by reference to that of the other.

For example, in its 2008 Report to the Governor, the Insurance Department found that CIRB had reported 154,598 claims for 2003. The Department therefore added one-third to that figure in order to account for the self-insured sector, arriving at the conclusion that there were 206,079 claims in 2003.<sup>4</sup> The WCB, however, had indexed only 149,808 claims in 2003.<sup>5</sup> In short, the CIRB (accounting for two-thirds of the market) had more claims reported to it than the WCB (covering the entire market) indexed.

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<sup>2</sup> Report to the Governor from the Superintendent of Insurance Summarizing Workers' Compensation Data and Recommending Improvements in Data Collection and Development of a Research Structure for Public Policy, NYS Insurance Department, at pp. 21-22, available at [http://www.ins.state.ny.us/wc/wc\\_index.htm](http://www.ins.state.ny.us/wc/wc_index.htm).

<sup>3</sup> Report to the Governor at pp. 21-23.

<sup>4</sup> *Id.* at p. 24.

<sup>5</sup> Summary Annual Report of the Workers' Compensation Board, 2003.

Clearly there is a significant variation between the data collection and reporting mechanisms of the CIRB and the WCB. This variation, like the absence of data from the self-insured sector of the market, deprives the Insurance Department of critical information that could be used to verify the CIRB's data.

## 2. CIRB Does Not Audit or Verify Insurer Self-Reports.

There is no evidence that the CIRB effectively audits or verifies the accuracy of the information it receives from insurers. As a result, the reliability of CIRB data has been subject to severe criticism. One such instance occurred in July, 2006, when the Insurance Department issued an Opinion and Decision ("the Opinion") disapproving the CIRB's filing for a significant rate increase.<sup>6</sup>

The Opinion observed that the CIRB is licensed under Insurance Law Section 2313 and that all workers' compensation insurers must report statistics to it. The CIRB then compiles and evaluates the data (from the insurers' self-report) and proposes rate changes for approval by the Department of Insurance. If the rate increase sought exceeds 2%, a public hearing is required.<sup>7</sup>

The Opinion reviewed the history of rate changes going back to 1995, observing that there has been "an overall average rate decrease of 30%" over that time span.<sup>8</sup> It also

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<sup>6</sup> In the Matter of Workers' Compensation Insurance Rate Application of the New York Compensation Insurance Rating Board, Opinion and Decision of New York State Insurance Department, 7/17/06, available at [http://www.ins.state.ny.us/wc/wc\\_index.htm](http://www.ins.state.ny.us/wc/wc_index.htm).

<sup>7</sup> Id.

<sup>8</sup> Id. According to the New York State Workers' Compensation Board's 2001 Summary Annual Report there was a 39.1% reduction in the manual rates for workers' compensation benefits from 1995 through 2001. Further, in a press release, the Superintendent of the Insurance Department stated that a "detailed analysis of the [CIRB] application demonstrated that an increase is not warranted. ... The statistical data that was submitted as part of the rating board's application, and the testimony received at the public hearing, indicate the workers' compensation insurance market in New York remains quite profitable."

observed that according to the insurer's own submission, loss experience for 2004 decreased 4% and for 2005 it decreased an additional 2.3%.<sup>9</sup>

The Opinion further observed that workers' compensation carriers are not intended to have "underwriting profit" in which premium collected exceeds claims paid. The target number in that regard is 0%, and insurers are expected to profit solely through "investment return." The Superintendent further stated that "this target provision appears to have worked well in enabling insurers to earn a reasonable return on capital."<sup>10</sup> This may be compared to the NCCI data, which demonstrated that workers' compensation insurers generally were earning not only an underwriting profit of about 10% in 2004 and 2005 but also an investment profit in excess of 12%.

The Insurance Department analyzed the profitability numbers of workers' compensation insurers (again, based on their self-report) over the ten years from 1994-2004, observing that "New York has been able to maintain a competitive and healthy market, with profitability in a reasonable range." Indeed, with the exception of 2001 (due to the September 11<sup>th</sup> attacks), from 1997 through 2004 the average return on net worth for New York workers' compensation insurers was 9.4%.<sup>11</sup>

The Insurance Department therefore rejected the CIRB application for a rate increase based on its skepticism about the accuracy and credibility of the CIRB's claims, which were inconsistent with other available data. In the absence of any evidence that the CIRB has modified its process, its current filing should be given no weight.

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<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

3. CIRB Data Does Not Correlate With the Nature of Workers' Compensation Benefits.

The manner in which CIRB collects data is not compatible with relevant workers' compensation practice. A prime example was the CIRB's claim about the cost of permanent partial disability claims, which was a fundamental basis of the 2007 legislation time-limiting permanent partial disability benefits. Prior to the enactment of the legislation, the method by which the CIRB calculated the cost of permanent partial disability awards was not generally available. The March, 2008 report of the Insurance Department revealed that the CIRB does not distinguish between schedule loss of use awards (which are finite awards for permanent injury to extremities) and permanent partial disability awards. "Instead, CIRB splits PPD into major and minor categories. Separating PPD data as scheduled and non-scheduled is critical information."<sup>12</sup> The Insurance Department further observed that the CIRB's determination of whether a "PPD" claim was "major" or "minor" depended on whether the carrier's reserves on the claim were more or less than \$22,000.<sup>13</sup> It must be noted that a worker earning \$600 per week would be entitled to an award of \$22,000 or more with schedule loss awards totaling 17.5% of an arm, 20% of a leg, 22.5% of a hand or 27.5% of a foot. It is therefore apparent that counting all "major PPD" claims as permanent partial disabilities in fact included a vast number of schedule loss awards, thus resulting in an incalculable overestimation of the cost of permanent partial disabilities. In its current filing, the CIRB continues the same inaccurate and inappropriate methodology of defining permanent partial disability claims as "major" and "minor," rather than scheduled and non-scheduled.

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<sup>12</sup> Report to the Governor at p. 22.

<sup>13</sup> Id. at p. 22, footnote 24.

#### 4. CIRB Data is Not Based on Actual Claim Costs.

None of the CIRB's "data" is based on actual claim costs. Instead, "the CIRB classifies the data as it is projected by the payor, i.e., when an insurer projects that a [temporary disability] case will become a PPD case, it reserves the case as a PPD and forwards the case data to CIRB as a PPD."<sup>14</sup> In other words, CIRB reports the number and type of PPD cases not based on the actual result of any particular claim, but rather based on the carrier's "projection" of the claim, which projection is directly tied to the carrier's need or desire to set reserves aside. The CIRB makes no effort to evaluate the extent to which these "projections" related to actual costs. The accuracy of carrier "projections" is affected by many factors, not least of which is the impact of Section 32 settlements. The Insurance Department found that 78% of the cases resolved by Section 32 settlement between 2000 and 2006 did not involve permanency.<sup>15</sup> It is highly likely that a large percentage of these 12,645 claims were matters in which the carrier "projected," but never actually paid, benefits for permanent partial disability. In the absence of any evidence that carrier projections are reliable – and they appear not to be – the CIRB's rate filing is lacking in credibility.

#### 5. Abolition of the CIRB.

The unreliability of the CIRB was considered so pervasive that the March, 2007 Workers' Compensation Reform Act included provisions intended to eliminate the CIRB by prohibiting it from functioning as a rate-making entity.<sup>16</sup> The Insurance Department

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<sup>14</sup> Id. at p. 29, emphasis added.

<sup>15</sup> Id. at p. 103.

<sup>16</sup> 2007 New York Workers' Compensation Reform Act Section 57, 3/13/07.

was instructed to offer a plan for the creation of a new rate-making agency.<sup>17</sup> As an interim step, legislation was passed requiring new governance of the CIRB as a transition measure to its elimination.<sup>18</sup> Unfortunately, the addition of new members to the CIRB has thus far failed to ameliorate any of the fundamental issues described above. The WCA submits that these issues will only be resolved through the abolition of the CIRB and the transfer of all of its data, operations, and function to the Insurance Department.

### **III. THE WORKERS' COMPENSATION REFORM ACT OF 2007.**

#### **1. The CIRB Estimate.**

On June 26, 2007, the CIRB published a document entitled “Workers’ Compensation New York: General Rate Revision Effective October 1, 2007; Summary: All Elements Including Effect of the 2007 Reforms.” The document identified each component of workers’ compensation premium rates to be effective October 1, 2007, and concluded that excluding the effect of medical treatment guidelines, fraud savings, and the ATF deposit requirement the Reform Act should reduce premiums by 13.5%. The CIRB also estimated that the Reform Act would reduce losses (the cost of workers’ compensation claims) by 17.1%.<sup>19</sup>

The CIRB specifically considered the impact of the ATF deposit requirement, and concluded that ATF deposits in permanent partial disability cases with dates of accident prior to March 13, 2007 “could result in an estimated increase of 7.8% in loss costs, or a + 6.1% effect on manual rates.” When viewed in the context of the overall impact of the

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<sup>17</sup> Insurance Law § 308.

<sup>18</sup> Report to the Governor at p. 18.

<sup>19</sup> We note that if losses were to decline by 17.1% while premiums declined 13.5%, then at least some of the difference would represent profits for insurers.

Reform Act, however, this would result in a conclusion that the Reform Act resulted in a premium reduction of 7.4% (13.5% premium reduction for reforms partially offset by 6.1% increase due to ATF deposit requirement = 7.4% premium reduction) and a reduction in losses of 9.3% (17.1% reduction in losses due to reforms partially offset by 7.8% increase due to ATF deposit requirement = 9.3% loss reduction).

The CIRB also considered the impact of medical treatment guidelines that were intended as part of overall system reforms, and concluded that imposition of such guidelines could further reduce premiums by 5.9%. Fraud savings were estimated to reduce premiums another 0.2%.

Thus, the CIRB's estimate of the impact of the Reform Act – which was essentially the insurance industry's estimate - was that it reduced workers' compensation insurance premiums 13.5% without considering the impact of the ATF deposit requirement, medical treatment guidelines or fraud savings, 7.4% considering the ATF deposit requirement but not the medical treatment guidelines, or fraud savings, and 13.5% considering all factors, while reducing costs more than 17%. The current CIRB filing offers no explanation as to why its current projections are or should be different from those it made previously.

## 2. The Insurance Department Decision.

Several weeks after the CIRB released its estimate of the impact of the Reform Act on workers' compensation costs and insurance premiums, the Insurance Department released its decision on the subject of premium reduction attributable to the Reform Act. Workers' Compensation Rates To Drop By Record 20.5%, NYS Ins. Dept. Release, July

11, 2007.<sup>20</sup> The Insurance Department reported that although the initial projection had been a reduction in workers' compensation insurance premium rates of 10% to 15% (consistent with the CIRB projection) the final figure was 20.5%. The Insurance Department stated that the premium reduction translated into a \$1 billion reduction in employer costs in the 2007-2008 fiscal year.

The Governor, Lieutenant Governor, Assembly Speaker, Senate Majority Leader, Senate Minority Leader, and Assembly Minority Speaker all released statements highlighting the involvement of the business community in crafting the Reform Act. In particular, the Assembly Speaker referred to the Reform Act as "certainly a win for our all-important business community," while the Senate Majority Leader stated that it "will strengthen New York's business climate." *Id.* The President and CEO of the Business Council stated that the Reform Act "is welcome news and the business community remains grateful" to the Governor and legislative leaders. *Id.*

The current CIRB rate filing would, of course, contradict these various statements made by elected officials regarding the impact of the 2007 statutory reform.

### 3. The Impact of the Current CIRB Rate Application.

The current CIRB rate application, if approved, would return workers' compensation insurance premiums to precisely the same level that existed prior to the 2007 statutory reforms. If the 2007 reforms achieved no savings whatsoever, then it would call into question the accuracy and veracity of the claims made by the CIRB a few short years ago, upon which the Insurance Department and elected officials relied. If, on the other hand, the 2007 projections of the CIRB and the Insurance Department were

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<sup>20</sup> <http://www.ins.state.ny.us/press/2007/p0707111.htm>

correct, then it would call into question the accuracy and veracity of the current rate application.

The WCA submits that the available data and information suggests that the latter is the true state of affairs.

#### 4. Available Corroborative Data.

The Workers' Compensation Division of the Law Department of the City of New York, as required by Section 12-127 of the Administrative Code of the City of New York, recently released its Annual Report of Workers' Compensation Claims of New York City Employees for Calendar Year 2010.<sup>21</sup> The report includes a summary of the City's workers' compensation costs annually, with a year-by-year comparison.<sup>22</sup> The City receives approximately 15,000 workers' compensation claims per year, arising out of a large workforce with diverse occupations and wages.<sup>23</sup> According to the report, the City's workers' compensation costs from 2008 through 2010 appeared as follows:

Year	Medical	Indemnity	Total
2008	\$6,563,208	\$5,663,721	\$12,226,929
2009	\$5,647,841	\$7,238,175	\$12,886,016
2010	\$5,711,198	\$6,825,625	\$12,536,823

It is readily apparent that the City's workers' compensation costs have remained stable for the past three years, and in fact declined slightly in 2010 as compared to 2009. To the extent that the City's workers' compensation experience is fairly representative, it is difficult to comprehend the CIRB request for a rate increase in excess of 10%.

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<sup>21</sup> The report is available at [http://home2.nyc.gov/html/records/pdf/govpub/5940city\\_counsel\\_report\\_2010.pdf](http://home2.nyc.gov/html/records/pdf/govpub/5940city_counsel_report_2010.pdf).

<sup>22</sup> Annual Report at p. 520.

<sup>23</sup> Id.

3. Transfer of Liability to the Special Disability Fund Under WCL Section 25-a.

The Workers' Compensation Law provides for two Special Disability Funds, one under WCL Section 15(8) (the "Second Injury Fund") and one under WCL Section 25-a (the "Stale Claims Fund"). As a means of reducing employer assessments and costs in the long term, the 2007 reform legislation closed the Second Injury Fund under WCL Section 15(8) to future claims. It also encouraged settlement of existing claims (reducing long-term costs) in which the Special Funds was liable under WCL Section 15(8) through the creation of a Waiver Management Office ("WAMO"). To date, WAMO has been virtually uninvolved in the resolution of Special Funds claims under WCL Section 15(8), and as a result the legislative intent to reduce these employer costs and assessments by this mechanism has been largely defeated.

Although the 2007 legislation did not address the Stale Claims Fund under WCL Section 25-a, it has in fact been greatly impacted by the legislation, and we anticipate that this impact will continue to increase annually absent corrective measures.

Under WCL Section 25-a, if more than seven years have passed since the date of the accident and more than three years have passed since the last payment of compensation, liability passes from the carrier to the Special Fund. An increasing number of claims meet these requirements due to insurer actions and the effect of the 2007 legislation.

The 2007 legislation imposed time limitations, or "caps," on permanent partial disability benefits. One effect of the PPD caps is to create a new class of cases in which

indemnity payments will end, while medical liability continues. Under WCL Section 25-a, these claims will all ultimately become the liability of the Special Fund three years after the last indemnity payment is made. Accordingly, in setting reserves, insurers need only consider medical liability for the duration of indemnity payments, plus three years. The WCA believes that insurer projection of costs and the associated CIRB rate filing fail to take this situation into account.

Insurers have also been taking increasing advantage of the Stale Claim Fund through the vehicle of “indemnity only” settlements pursuant to WCL Section 32. By entering into such settlements, insurers effectuate the transfer of medical liability to the Special Fund at a definite point in time, again providing significant savings to insurers. The WCA believes that the CIRB’s current rate filing fails to take this factor into consideration.

For the reasons stated above, the WCA respectfully submits that the CIRB’s current rate filing fails to take into account the impact of the 2007 statutory amendments, and should be rejected by the Insurance Department.

**IV. ANY INCREASE IN INSURER COSTS IS DUE TO THE FAILURE TO COMPLETE TASK FORCE REFORMS.**

To the extent that insurer costs have increased, such increases are largely attributable to the failure to complete the reform process anticipated by the 2007 legislation. The Reform Act generated the creation of a group of Task Forces assigned to study aspects of the workers’ compensation system and to recommend additional statutory, regulatory, and systemic reforms designed to improve benefits for injured workers while reducing costs for employers. Regrettably, these Task Forces have

generally failed to achieve results due to obstruction by the Business Council – whose Task Force designees have consisted primarily of insurers and insurance defense lawyers. In effect, the insurers that make up the majority of the CIRB have stymied the process that was intended to reduce their costs, and now endeavor to use conditions they created to justify a rate increase, transmitted through the CIRB.

1. Loss of Wage Earning Capacity.

In connection with the implementation of caps on permanent partial disability awards, the 2007 legislation envisioned the reassessment of disability determinations by the Workers' Compensation Board. Consistent with the requirements of the statute, the Board was to re-focus on awarding benefits for loss of wage earning capacity, instead of medical impairment.

A trio of Task Forces was formed to carry out this process, divided into medical impairment, functional loss, and loss of wage earning capacity.<sup>24</sup> Although the first two tasks were completed, “a consensus could not be reached by the Advisory Committee about the approach for determining loss of wage earning capacity.”<sup>25</sup> As a result, the Insurance Department issued a report and explanatory letter outlining the extent to which the process had been completed, its inability to achieve a final product, and deferring resolution of the issue of wage earning capacity to the Board. The WCA and others submitted a 54-page commentary and suggestion in an effort to assist in the completion

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<sup>24</sup> Disability Duration Guidelines, Proposed by the State of New York Department of Insurance to the Workers' Compensation Board, September, 2010 at pp. 4-5, available at <http://www.ins.state.ny.us/wc/wc-guidelines.pdf>

<sup>25</sup> Id. at p. 5.

of this vital task.<sup>26</sup> The Business Council and the insurance industry submitted nothing. To date, the Board has issued no guidance on the subject, apparently due to a continued lack of cooperation from the Business Council with the process.

In the absence of guidelines concerning loss of wage earning capacity, the Board has been unable to meaningfully adjudicate cases of permanent partial disability. As a result, such classifications have dropped sharply compared to pre-reform rates. Because the PPD caps imposed by the 2007 legislation do not apply until classification, the point at which insurers might have begun to achieve the savings anticipated from the PPD caps has been delayed.<sup>27</sup>

## 2. Return to Work.

It is axiomatic that an expeditious return to work following injury benefits the injured worker, the employer, and the insurer. As a result, the 2007 reform legislation designated the Commissioner of the Department of Labor to study and report on the issue of return to work by injured workers who would be permanently partially disabled and subject to the PPD caps. In March, 2008, the Department issued its report, which was prepared with the assistance of an Advisory Council.<sup>28</sup>

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<sup>26</sup> Comments on the Disability Duration Guidelines and Issues Concerning Loss of Wage Earning Capacity, Grey, 10/27/10.

<sup>27</sup> The caps included in the 2007 reform legislation apply only to weeks of “permanent” disability, as distinct from awards for temporary disability. Under existing practice, it would take an average of two years for a claim to arrive at classification, and the shortest cap period is approximately four years. As a result, the earliest year in which savings could realistically begin to result from PPD caps applicable to accidents after 3/13/07 would be 2013. However, the anticipation the application of caps to a given case would adjust the settlement value of that case, resulting in savings at an earlier date. Where, however, the application of caps cannot be anticipated due to the lack of classification, which is in turn due to the absence of guidance regarding determination of loss of wage earning capacity, such savings are not achieved.

<sup>28</sup> Report of the Commissioner on Return to Work, In Consultation with the Return to Work Advisory Council, March, 2008, available at [http://www.labor.ny.gov/agencyinfo/PDFs/ReturtoWorkReport\\_March\\_08.pdf](http://www.labor.ny.gov/agencyinfo/PDFs/ReturtoWorkReport_March_08.pdf)

The Return to Work Task Force produced a number of recommendations, involving return to work education, return to work communication, improvement in the physician's role, vocational rehabilitation evaluations, services, and incentive programs, data collection, and provision for representation in "medical only" cases. Like the Earning Capacity Task Force, however, the Return to Work Task Force also "could not reach consensus" on a variety of key initiatives due to lack of good faith cooperation from the Business Council and the insurance industry. As a result, to date few elements of the Return to Work Task Force report have been implemented, squandering savings that might have been achieved.

### 3. Medical Treatment Guidelines.

The creation of Medical Treatment Guidelines to reduce medical costs was a key component of the 2007 reform legislation. On December 1, 2010, the Workers' Compensation Board implemented such guidelines for treatment of the neck, back, knee, and shoulder, which were identified as the four sites of injury that generate the highest system-wide medical costs.<sup>29</sup>

Although the substance and implementation of the Guidelines have been problematic, the bulk of the complaints have been from injured workers, their representatives, and health care providers, who contend that the Guidelines excessively restrict access to treatment.<sup>30</sup> Restriction of access to treatment would, of course, be consistent with a reduction in costs for insurers. As the Medical Treatment Guidelines

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<sup>29</sup> The Medical Treatment Guidelines are available at <http://www.wcb.state.ny.us/content/main/hcpp/MedicalTreatmentGuidelines/2010TreatGuide.jsp>.

<sup>30</sup> See, e.g., WCA letter dated April 14, 2011, available at <http://www.nyworkerscompensationalliance.org/uploads/file/MTGLetter2finaledit.pdf>

have only been in effect for six months, the CIRB's rate application could not take adequate account of the impact of these guidelines on insurance costs.

The WCA therefore submits that to the extent insurer costs may have increased, such increases are attributable to those same insurers, through the Business Council and through their direct participation in the various Task Forces, delaying and obstructing the implementation of reforms envisioned by the 2007 legislation. Under these circumstances, Insurance Department approval of the CIRB's application for a rate increase would simply reward those same insurers for their obstructionist conduct and provide a disincentive for their productive participation in the future.

## **V. CONCLUSION.**

The WCA respectfully submits that the CIRB rate filing application is lacking in credibility due to the nature of the CIRB, the lack of transparency in its data collection, the inability to verify its claims by comparison to other data sources, and the Insurance Department's prior opinions regarding CIRB applications.

The WCA further submits that the 2007 legislation and related mechanisms have in fact produced cost savings for insurers that belie the CIRB's application for a rate increase.

Finally, the WCA submits that to the extent any cost increases have occurred, they are attributable to insurer and Business Council obstruction of the various Task Forces that were intended to fully implement the 2007 reforms, benefiting injured workers and reducing costs for employers and carriers.

The WCA respectfully requests that the Insurance Department deny the CIRB's

application for a rate increase.

Dated: June 12, 2011  
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Respectfully submitted,

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