

# Construction Industry Update

## Collectively Bargained Workers Compensation Lowering Your Cost of Risk

By Chris DeSales and James P. Schabarum II, CPCU, AFSB  
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Collectively Bargained Workers Compensation (CBWC) insurance programs can significantly reduce the Total Cost of Risk for union employers.

The statutory workers compensation system was once a model no-fault system. Despite recent reform efforts, the system continues to be plagued with litigation, restrictive processes, inadequate medical care, and inflated costs.

In 1993, California passed SB 983. Among other things, this legislation gave unionized construction-employers the ability to use the collective bargaining process to modify the conventional workers compensation system.

In 2003, the passage of SB 228 further expanded the use of CBWC to different types of unionized employers. This legislation amended California Labor Code §3201.5 and §3201.7 to include the specific requirements for the creation of CBWC

programs, also known as Alternative Dispute Resolution (ADR) or “carve-out” programs, used for the delivery of workers compensation benefits to union employees.

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# 2006 Seminars

## Cavnac & Associates' Training Room

Bank of America Plaza  
450 B Street, 18th Floor, San Diego, CA

- **Sexual Harassment Training**  
(AB 1825 Compliant)  
Thursday, May 25th, 2006 — 9:00—11:00 AM
- **Contractual Risk Transfer and Tracking Certificates of Insurance**  
Friday, June 9th, 2006 — 9:00 — 11:00 AM
- **How to Prepare for a Formal OSHA-Type Contractors Job Site Inspection**  
Thursday, June 15th, 2006 — 9:00 — 11:00AM
- **How to Conduct an OSHA-Approved Accident Investigation (for Automobile, Property and Workers Compensation Insurance)**  
Thursday, July 20th, 2006 — 9:00 — 11:00AM

**All training sessions available to our clients  
Reserve early / seating is limited!**

### For more information about upcoming seminars:

- Visit our Web site at [www.cavnac.com](http://www.cavnac.com)
- Contact **JASMIN ADRIANO** by e-mail [jadriano@cavnac.com](mailto:jadriano@cavnac.com) or by phone at **619-744-0596**

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CBWC programs commonly have three major components:

- Exclusive medical networks agreed upon by labor and management
- Alternative Dispute Resolution process
- Specific, agreed upon time frames for dispute resolution

Under a CBWC program, labor and management agree upon an exclusive medical network from which the injured worker receives medical care. If a dispute arises, the employer and injured employee must utilize an agreed upon Alternative Dispute Resolution process. Instead of utilizing the traditional Workers Compensation Appeals Board (WCAB) and applicant attorneys, disputes are initially routed to an ombudsman who works informally and proactively to address all questions and

concerns. The majority of claim issues are resolved at this level quickly and fairly.

Those disputes that cannot be resolved at the ombudsman's level escalate quickly to a mediator who presses for a satisfactory resolution within a specific time frame. If the dispute cannot be successfully mediated, it is then submitted to an arbitrator who has full authority to settle disputes in a judicious and expedient manner.

## Does ADR Work?

In practice, the ombudsman resolves most disputes with a small number of disputes going to mediation and fewer still going to arbitration. Since the law became effective in 1995, it is estimated that less than 2% of all claims have gone to arbitration. And while there have been several legal challenges to the validity of the law, to date none of the challenges have been sustained.

As an example, in early 2004 SeaBright Insurance Company performed an analysis of claim results for its CBWC policyholders. SeaBright compared those findings with a sampling of its own non-CBWC policyholders and those from a study conducted by the California Workers Compensation Institute. The SeaBright study showed overwhelmingly positive attributes of the CBWC system as compared to the statutory workers compensation system.

Under the statutory workers compensation system, over 30% of all settled indemnity (lost time) claims involved attorneys and associated legal expenses. In contrast, only 4% of SeaBright's study claims closed under CBWC programs had attorney involvement. Not only was there a significant reduction in the average legal cost of the SeaBright CBWC claims compared to the statutory system, but the average cost of a claim was approximately 35% less.

Participation in CBWC programs is open to employers who are signatory to collective bargaining agreements with labor unions. Each agreement is negotiated on an individual basis. The programs that are currently available are all in the building trades, but it is anticipated that new programs outside of the construction industry will be established in the next year due to the passage of SB 228.

Existing programs for the building trades include:

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- NECA/IBEW Workers Compensation Trust (Electrical Contractors)
- Operating Engineers Workers Compensation Trust (Heavy Equipment)
- SMACNA (Sheet Metal and Air Conditioning Contractors)
- Masonry and Cement Workers Trust
- Carpenters and Contractors Workers Compensation Trust
- Laborers Workers Compensation Trust
- Plumbers and Pipefitters Trust
- Bridge, Structural, Ornamental and Reinforcing Ironworkers
- Painting and Decorating Contractors Association

If you would like more information about Collectively Bargained Workers Compensation, please contact Cavnac & Associates.

*Chris DeSales is the National Director of Product Development for SeaBright Insurance Company. Jim Schabarum, Executive Vice President and Principal of Cavnac & Associates, heads the Agency's Construction and Surety Department. ❀*

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# Generic Medications Keep You and Your Wallet Healthy

*Article courtesy of  
Cavnac & Associates Employee Benefits Department*

The majority of generics are typically sold at 15% to 50% less than brand-name drugs.

A generic drug is identical to a brand name drug in dosage form, safety, strength, route of administration, quality, performance characteristics, and intended use.

You can be assured that FDA approved generic drugs have met the same rigid standards as the innovator drug. To gain FDA approval, a generic drug must:

- Contain the same active ingredients as the innovator drug.
- Be identical in strength, dosage form, and route of administration.
- Have the same use indications.
- Be bioequivalent.
- Meet the same batch requirements of identity, strength, purity, and quality.
- Be manufactured under the same strict standards of the FDA's good manufacturer practice regulations required for innovator products.

Contact your physician or pharmacist for information on generic drugs. ❀



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# Risk Control Corner













By Stuart Nakutin, CSM, AIC, PHR, WCCP, CPDM  
Director of Safety, Claims, and Loss Control

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## 12 Step Program to Safety

### 12 Keys to Creating a Safety Culture



-  **1. Set a Good Example** – This means observing all safety rules, wearing personal protection when required, discussing safety with employees every day in an enthusiastic way and making sure safety has a priority standing among other problems.
-  **2. Know the Operation** – This means understanding the entire process or operation and knowing how safety rules apply to the work. Processing data to find and track trends is also important.
-  **3. Anticipate Risks** – Safety conscious supervisors think ahead, ask experts for help and are proactive in identifying potential risks.
-  **4. Discuss Hazards** – Supervisors are important in maintaining an open discussion of hazards. They should encourage employees to discuss work hazards, be receptive to ideas and make sure questions of safety are answered before jobs proceed.
-  **5. Be Alert for Unsafe Conditions** – Every plant walkthrough should be an impromptu inspection tour with hazards being correcting on the spot.
-  **6. Follow Up** – Good supervisors encourage safety by consistent follow up and establishing accountability and a timeline.
-  **7. Audit Often; Inspect Intelligently** – Auditing is vital to reducing safety incidents. Audits should be used to reinforce safe acts, detect unsafe acts and eliminate unsafe practices. Auditing often and involving the entire organization helps observe people and inspect conditions in a systematic way to track performance.
-  **8. Take Effective Corrective Actions** – Supervisors need to reinforce safe behavior and communicate positive aspects with leadership. This involves promptly correcting deficiencies and poor practices and addressing unsafe actions immediately.
-  **9. Investigate Incidents (Accidents)** – Investigate all injuries and incidents and identify key factors with line management being held accountable. It is important that investigation findings be seen as learning opportunities in order to encourage employees to report all events.
-  **10. Maintain Discipline** – Discipline may be necessary, and it should be applied consistently and equitably. The main objective of discipline is to improve performance.
-  **11. Know Your Employees** – Effective supervisors mentor employees and understand that their ability depends upon their education, training and experience. This means they should take employee capabilities into account when planning a job to prevent accidents. Auditing and teaming will help with communication and involvement.
-  **12. Make Safety Part of Your Business** – Supervisors demonstrate through “felt leadership” by clearly showing that accident prevention leads to better business, and incorporating safety into business activities. ✨