

PRESIDENTS MESSAGE
MICHAEL K. GRUBER

The 4th of July is a uniquely American holiday. It is a time when we as a country celebrate freedom. We celebrate July 4 because that was the date the final wording of the Declaration of Independence was approved by the Second Continental Congress in 1776. In that Declaration, the Founding Fathers set forth the principle that while long established governments should not be lightly overthrown, when the people are subject to “a long train of abuses” it becomes their duty to overthrow the government and “provide new guards for their future security”. Oddly enough, this make me think of the state of workers compensation systems across the country. One of the key questions addressed extensively in the past months is whether the “Grand Bargain” which constitutes the foundation of workers compensation has been breached to the point where it is ultimately untenable. As a result of the “long train of abuses” heaped upon injured workers by state legislatures in the form of continuing and systematic roadblocks to benefits, is it time to overthrow the workers compensation system? Interestingly, some advocates for both injured workers and employer have proposed exactly such a remedy, by advocating either for a return to a tort based remedy for those injured on the job or by proposing “Opt-out” employee benefit plans designed to replace the traditional state workers compensation systems. WILG has extensively documented the evils of Opt-out, and the “remedy” of returning to a tort based was considered as far back as the 1972 Presidential Commission on Workers Compensation. At that time, the Commission found that the majority of injured workers would be ill-served by a return to a tort liability system, and I believe the same holds true today. We must continue to work within the existing framework to stop the “deform” efforts and attempt to restore reasonable and adequate benefits for those injured on the job. Many of WILG’s efforts have been directed towards the legislative arena, with the thought that if we properly educated our representatives they would recognize the propriety of a fair and just compensation system. The dramatic shift in the makeup of state legislative houses, with 68 of 99 houses being controlled by Republicans, has made our task exponentially more difficult. While we still must make every effort to continue to educate legislators, WILG members have made tremendous strides in the past months in effecting legislative change through the use of the judiciary. WILG members in several states have successfully challenged the constitutionality of provisions of their states’ workers compensation laws. The most recent victory has come in Pennsylvania where the state Supreme Court held that Pennsylvania’s statutory language requiring the use of the most recent edition of the AMA Guidelines to determine impairment constituted an impermissible delegation of legislative authority. Given the successes of our members in putting forth constitutional challenges, WILG is planning a conference focuses on both the theoretical and practical aspects of such challenges, a different type of “constitutional convention” as it were. We hope to release more details regarding this conference in the fall, but it promises to be an enlightening experience.

I hope everyone is having a safe and relaxing summer. I look forward to seeing everyone at our Annual Convention at the Breakers in October.