

**Piping Industry Progress and
Education Trust Fund**

501 Shatto Place Suite #200
Los Angeles, CA 90020

**Alternative Workers Compensation
Agreement ("ADR")**

**P.I.P.E. California Worker's
Compensation Agreement
For**

**Contractors in the Construction
Industry**

Between

**Joint Labor Management Safety
Committee (J.L.M.S.C.)**

And

**Southern California Contractors and
Contractor Associations**

**Article I
Purpose**

It is the intent of this Agreement to provide employees who claim injuries arising out of and in the course of employment and for death of any employee if the injury proximately causes death occurring under the California Worker's Compensation Law (hereinafter referred to as "the Law") with improved access to high quality medical care, and to reduce the number and severity of disputes and provide an efficient and effective method of dealing with disputes resulting from such personal injuries and diseases by utilizing the provisions of Section 3201.5 of the California Labor Code to establish a system of medical and vocational care, delivery, dispute prevention and resolution which will be used by all eligible employees of employers signatory to the appropriate Southern

California Pipe Trades District Council
16 agreement.

Article II

Duration and Scope of Agreement

2.1 This agreement shall become effective on July 1, _____ or upon completion of vendor list regarding authorized treating physicians and facilities, independent medical examiners, ombudsman, arbitration panel, submission and review of this Agreement by the Administrative Director, Division of Workers' Compensation and with execution by the Joint Labor Management Safety Committee (JLMSC) and Contractors in the Construction Industry.

2.2 This agreement shall remain in effect for not less than one year from the date of its execution by the parties. It shall continue in effect from year to year thereafter or unless earlier terminated by either party of the bargaining parties by providing (30) days written notice of intent to terminate prior to the anniversary date. Upon termination, any case pending, whether active or inactive, shall remain subject to this agreement. Any claim remaining open more than five years after termination of this agreement shall no longer be subject to this agreement and the employee may proceed directly before the Workers' Compensation Appeals Board.

2.3 This Agreement represents the complete understanding of the parties about the subject matter dealt with herein.

2.4 In any instance of conflict the provisions of this Agreement shall take precedence over provisions of the Law, so far as

Exhibit 1

- permitted by the provisions of California Labor Code Section 3201.5
- 2.5 This Agreement shall not be construed to modify the provisions of the Law except as specifically set forth in this document or rules adopted by the JLMSC.
- 2.6 This Agreement shall apply only to those injuries arising out of and in the course of employment and for the death of any employee if the injury proximately causes death, as defined by the Law, sustained by employees covered by this Agreement, during their employment by a signatory contractor covered by this Agreement on or after the effective date of this agreement and during the term of this Agreement.
- 2.7 The parties to this Agreement agree that it is in their mutual best interest to establish a fee schedule limiting the fees which may be charged for arbitration, providing documents, narratives vocational rehabilitation, medical treatment, attorney fees and any other associated costs. The maximum fee schedule established by the Administrative Director of the Division of Workers' Compensation shall be in effect for this Agreement, unless superseded by fee schedules and provider agreements incorporated as part of this Agreement.

Article III

Authorized Medical Providers

- 3.1 All medical and hospital services required by employees subject to this agreement as the result of a compensable injury, shall be furnished by health care professionals and facilities

selected by the employee from a list of health care professionals and facilities. This list (hereinafter referred to as "authorized providers") shall include, but not be limited to, the list of providers contained in the Southern California Administrative Corporation Affiliated Health Funds and any other list of providers the JLMSC shall approve. The list of authorized providers shall also include the physician that the employee has designated in writing as his or her personal physician provided that the employee has notified the employer in writing prior to the date of the industrial injury of the name, address and telephone number of such designated physician. Any health care professionals not listed on the approved list of "Authorized Providers" may be submitted to the JLMSC for review and inclusion. All authorized providers shall be board certified in their respective specialties, assuming that such is available in the geographic area.

- 3.2 In case of emergency when no authorized provider is available, the employee may seek treatment from a health care professional or facility not otherwise authorized by this agreement, to provide treatment during the emergency. Responsibility for treatment shall be transferred by the employer or its insurance carrier to an authorized provider as soon as possible, consistent with sound medical practices.
- 3.3 After selecting an authorized provider to furnish treatment for a particular injury, an employee

- may change once to another authorized provider.
- 3.4 When referred by the authorized provider to another provider in a particular specialty, the employee may also change once to another authorized provider in such specialty. Additional changes will be made only with written agreement of the employer.
- 3.5 Neither the employers nor its insurance carrier shall be responsible for the cost of medical services furnished by a health care professional or facility not authorized pursuant to this agreement. Nothing in this article shall be construed to create a right for an employee to receive care at employer expense which is not reasonably required to cure or relieve a work related injury.
- 3.6 The list of authorized providers shall include but not be limited to, providers within the following specialties: Cardiology, Chiropractic, Dermatology, General Practice, Internal Medicine, Neurosurgery, Neurology, Occupational Medicine, Oncology, Ophthalmology, Orthopedics, Psychiatry, Pulmonary/Respiratory, Radiology.
- 3.7 The parties to this agreement may include providers from additional specialties or providers who are not specialists, on the list of authorized providers. In the event that an authorized provider furnishes treatment to an employee determines that consultation or treatment is necessary from a specialty for which no authorized provider has been selected through this agreement, or in the event that distance makes is impractical for treatment from the authorized provider, the authorized provider, and injured employee shall mutually select the additional specialist or the additional provider who offers treatment at a distance not greater than 40 miles in one direction for the employee.
- 3.8 All prescription medicines required by virtue of injury subject to this agreement shall be furnished by the employer through a prescription medicine provider or providers agreed to by the parties to this agreement, as listed. This list is attached hereto and marked attachment "C". The parties to this agreement may change the list any time by mutual agreement. Except in those instances in which an authorized medical provider determines that due to time constraints or other valid medical reasons, use of another prescription source is required.
- 3.9 Both the employer and the employee may request a second opinion from an authorized provider regarding diagnosis, treatment evaluation of related issue. Only one such second opinion shall be permitted by either party for any issue.
- 3.10 Both the employer and the employee shall be bound by the opinions and recommendations of the authorized provider selected in accordance with this agreement. In case of disagreement with an authorized providers findings or opinions, the sole recourse shall be to obtain a second opinion through dispute prevention and resolution procedures established in this agreement.

Article IV
Authorized Vocational Rehabilitation
Service Providers

- 4.1 All vocational rehabilitation services required by employees subject to this agreement as the result of injuries arising out of and occurring in the course of employment shall be furnished by a vocational rehabilitation service provider selected by the parties to this agreement, hereinafter referred to as the Authorized Rehabilitation Providers. A list of Authorized Rehabilitation Providers shall be made available to all employees subject to this agreement. The list can be changed at any time by the JLMSC or by mutual agreement of the parties to this agreement. This article shall not take effect until a list of authorized rehabilitation providers is incorporated as part of this agreement.

Article V
Dispute Prevention and Resolution

- 5.1 The dispute prevention and resolution program will consist of three components: Ombudsman, Mediation, and Arbitration
- 5.2 This program shall be used in place of the filing of an application with the WCAB. Any claim subject to this agreement filed with the WCAB for resolution will immediately be removed and placed within the program established by this Agreement. This is the sole means of dispute resolution and no dispute shall proceed to the California Workers' Compensation Appeals Board until it has completed the mediation and arbitration process defined by this agreement.

- 5.3 The Ombudsman will be a JLMSC employee selected and paid by the trust. The ombudsman shall receive complaints from employees who have filed claims for Workers' Compensation benefits subject to this Article and upon request of the employee shall assist the employee in attempting to resolve those disputes with the Workers' Compensation insurer of an employer subject to this article. The ombudsman shall, upon request of an employee, assist the employee in filing request for mediation and arbitration related to alleged work-related injuries subject to this Article.

- 5.4 An employee covered by this agreement, who believes that he/she is entitled, including medical and hospital services, shall notify the Ombudsman. If the issue cannot be resolved to the satisfaction of the employee within ten working days, the employee shall apply for mediation on the form attached hereto and marked Attachment "D". The Ombudsman shall assist the employee in filing with the mediator the application. The employee and employer may extend the ten working day period by mutual agreement. No issue will proceed to mediation without first being presented to the Ombudsman. The response of the Ombudsman to the employee shall be explained in terms which are readily understandable by the employee. The Ombudsman will maintain a log recording all Ombudsman activity, including the date of each notification and the date of each response. The employer shall also be allowed

- to file disputes with the Ombudsman.
- 5.5 Application for mediation shall be made not more than 60 days after the Ombudsman has responded to the employee's or employer's notification. Failure to mediate will bar any further right to adjudicate the issue. Any application for mediation shall be assigned to a mediator selected under this agreement within three (3) working days of a receipt of a request. The mediator will contact the parties to the dispute, including the insurance carrier and take whatever steps the mediator deems reasonable to bring the dispute to an agreed conclusion.
- 5.6 The mediator subject to this agreement shall be from the list mutually agreed to by the parties to this agreement and who has experience and is knowledgeable in the workers' compensation industry. This list is attached hereto and marked attachment "E". As needed, this list may be modified by the JLMSC.
- 5.7 Mediation shall be completed in not more than 10 working days from the date of referral, except that in no event shall an issue be permitted to proceed beyond mediation until and unless the moving party cooperates with the mediator and the mediation process, or if both the employee and the employer mutually agree to an extension.
- 5.8 Neither party will be permitted to be represented by legal counsel at mediation. The fact that an employee or employer representative or its workers compensation carrier's representatives has had legal training or is a licensed attorney shall not bar such person from participating in mediation unless he or she seeks to participate on the basis of a lawyer-client relationship. All communications between the mediator and the parties shall be directly with the parties, and not through legal counsel.
- 5.9 Within 30 calendar days after the completion of the mediation process, any party not satisfied with the outcome shall file with the mediation board a request that the matter be referred for arbitration. Upon receipt of such a request, the board shall immediately refer the matter to the arbitrator agreed to by the parties to this agreement for arbitration. The arbitration date will be set with sufficient advance notice to permit the parties to retain and/or consult with legal counsel.
- 5.10 The arbitrator shall have experience and be knowledgeable in the workers compensation dispute process and shall have been at one time a California Workers Compensation Judge. The arbitrator shall be selected by the administrator from the list negotiated by the parties to this agreement attached hereto and marked Attachment "F". As needed, this list may be modified by the JLMSC.
- 6.1 The Arbitration will be conducted pursuant to the rules of the JLMSC using the arbitrator agreed to by the parties to this Agreement. Unless the parties to the matter otherwise agree, arbitration proceeding shall be completed within 30 days after referral, and an arbitration decision rendered within 10 working days of the completion of the proceedings. The arbitrators' decision shall be

- written in form consistent with the WCAB practices.
- 6.2 No written or oral offer, finding, or recommendation made during the mediation process by any party or mediator shall be admissible in the arbitration proceedings except by mutual agreement of the parties.
- 6.3 Whenever the employee prevails at arbitration, either through the entry of a favorable arbitration decision or by agreement with the employer at any time subsequent to mediation, the employer shall pay a fee to the employee's attorney in an amount equal to the prevailing wage of attorneys practicing in workers' compensation for the geographical area in which the dispute has arisen. The arbitrator may increase or decrease such fee based on the complexity of the dispute or the effort expended by the attorney. The amount shall not exceed 12% of the P.D. award.
- 6.4 The mediator or arbitrator may in his sole discretion appoint an authorized health care professional to assist in the resolution of any medical issue, the cost to be paid by the insurance carrier, unless voluntarily paid by the employer.
- 6.5 Arbitration shall be subject to the provisions of Labor Code Section 3201.5. The decision of the arbitrator shall be subject to review by the State of California Workers' Compensation Appeals Board in accordance with the provisions of Labor Code Section 3201.5.
- 6.6 It is agreed that the JLMSC may assign Ombudsmen, Mediators and Arbitrators to geographical areas in order to better serve injured workers.

Article VI
General Provisions

- 7.1 All payments required to be made by employers pursuant to this agreement including payment of 1-1/2% of covered premium funding the JLMSC shall be in accordance with California law, be made by their workers compensation insurance carrier. Similarly, all actions required by law to be undertaken by the insurance carrier rather than the employer shall be performed by their workers compensation insurance carrier. Self-insured employers shall calculate approximate amounts equal to the above stated assessment. Inclusive of both insurance carriers and self insured employer, if such fees for administering and facilitating dispute resolution exceed the above stated funds, self-insured employer's or the insurance carrier (whichever applicable) are required to provide further contributions for such exceeding costs.
- 7.2 In the event the employer/carrier denies a claim on grounds that the injury or disease sustained is not compensable under the Law the issue of compensability and all other issues which may arise shall be determined pursuant to the provisions of Article V (Dispute Prevention and Resolution), but the employees shall not be bound by the provisions of Article III (Authorized Medical Providers), and Article IV (Authorized Vocational Rehabilitation Service Providers), except that all authorized medical evaluators shall come from the approved list of authorized medical providers.
- 7.3 If any provision of this agreement or its application to

held invalid, the invalidity shall not affect other provisions or applications of this agreement that can be given effect without the invalid provision or applications, and to this end the provisions of this agreement are declared to be severable.

7.4 In the event of legal action contesting the legality of this agreement, or any portion of it, the JLMSC shall pay for the cost of defending the agreement, and shall actively assist in such defense, and shall solicit the participation of financial assistance of other interested parties in such defense.


7.5 On construction projects where the owner, developer or general contractor supplies a project wrap around insurance that includes workers compensation insurance, the employer at the employer's option, may suspend this agreement for that specific project.

7.6 Any cost savings that are realized by the parties in this agreement from this agreement are to be shared equally in benefits and reduction in insurance cost.

7.7 This agreement shall be deemed to be executed when the parties signing shall have affixed their signatures hereto.

In Witness Whereof, the parties hereunto set their hands and seals this day of:

JULY 24, 1998


Chairman, Joint Labor/Management Safety Committee (JLMSC)

Contractor:

California Plumbing & Mechanical Contractors Association