



# OIEC Quarterly Review

Issue No: 3

Information Period: *July-September 2006*

## Letter From the Public Counsel



**“Oh voice of summer winds among the trees,  
What soft news art thou bringing us here?”**

The Victorian poet who wrote those lines obviously had little experience with the hot summer winds of Texas. However, it did seem to be an appropriate quotation with which to introduce our end of summer newsletter.

As a start-up agency that only became fully operational in March, each quarter represents a significant milestone in the growth of OIEC’s infrastructure. In the process of fully staffing our agency, we have hired some outstanding, talented people who came to us with a shared vision of building an agency that will have longevity. We are becoming a team.

As I have said many times, I came to lead this agency having had 40 years of experience as a trial lawyer and not one day of experience being the head of a governmental agency. As a result, I was painfully aware that I would not accomplish my mission in state government if I did not have a staff that knew the nuts and bolts of running an agency.

Our ombudsmen have been given a new “playbook” from which they will prepare for proceedings. My Executive Assistant, who has worked for me for 15 years, is working with each field office to instruct them, individually and in groups, in the techniques that we had



**OIEC’s Public Counsel, Norman Darwin,  
Provides an Update on 3<sup>rd</sup> Quarter  
Accomplishments for the New Agency**

developed to help injured employees effectively navigate the dispute resolution process. We have introduced new concepts to them and they have responded magnificently. It will remain a work in progress because you never accomplish perfection. The ombudsmen have made suggestions of ways that our techniques could be modified to fit their role and we have incorporated those changes into our training protocols. We are learning from each other. We are becoming a team.

## OIEC’s First Annual Conference

OIEC’s first conference with its theme of “Make a Difference Today” took place during the second week of July 2006 and provided a great deal of technical training for Ombudsmen and other OIEC staff.

Supervisory and managerial training was provided to OIEC's management team and leadership skills training was provided for all staff throughout the conference.



The conference was rated overall as "excellent" by 95% of attendees. Technical training was provided by internal and external speakers on a variety of topics including rules, building the perfect case, legal strategies, and preparing for Contested Case Hearings. Leadership skills training topics were covered by internal and external speakers and included character driven success, skills in listening, customer services, and understanding personality types to improve relationships in life and work.

A special thank you is extended to Insurance Commissioner, Mike Geeslin, Workers' Compensation Commissioner, Albert Betts, and Mike Morrisey and Kelly Sadler from the Governor's Office for welcoming our staff to our first conference.

Our conference closed at the end of the week with an awards ceremony for staff and a heightened sense of the importance of making a difference each day for the injured employees of Texas.

Our highest recognition awards were given for Technical Achievement, Excellence as an Ombudsman Assistant, and Outstanding Customer Service. Our recipients for these awards were:

- **Technical Achievement – Reba Hutson** (Lufkin) was awarded this recognition

based upon specific examples of her excellent case work.

- **Excellence as an Ombudsman Assistant – Yolanda Garcia** (Lubbock) was awarded this recognition based upon her dedication to servicing injured employees, outstanding assistance to Ombudsmen, teamwork, and her organizational and administrative skills and abilities.
- **Outstanding Customer Service Award** recipients were awarded this recognition based upon excellent customer service they provided. The recognized individuals in this category were:

*Team 1: Don Sharlow (Fort Worth)*

*Team 2: Janice Lawson (Wichita Falls)*

*Team 3: Sharon Perez (San Angelo)*

*Team 4: Sandra Frausto (Missouri City)*

*Team 5: Kathy Frymire (Abilene)*

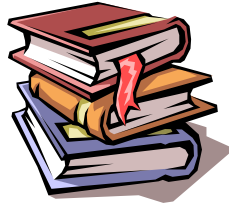
*Team 6: Inez Flores (Weslaco)*

*Team 7: Carol Martin (Lufkin)*



*(Pictured above left to right: Loretta Blount, Janice Lawson, Sabrina Schiro, Norman Darwin, and Sabrina Alfaro)*

## OIEC Files its First Amicus Curiae Brief in the Texas Supreme Court



OIEC filed its first amicus curiae (friend of the court) brief with the Texas Supreme Court on September 5, 2006. Labor Code § 404.104(3) provides that OIEC "may appear or intervene, as a party or otherwise, as a matter of right, on behalf of injured employees as a class in any proceeding in which the public counsel determines that the interests of injured employees as a class are in need of representation . . ."

The Public Counsel determined that the interests of injured employees as a class would potentially be adversely affected if the Supreme Court granted a petition for review filed by an insurance carrier and reversed the Court of Appeal's decision. The case concerns the interpretation of Labor Code § 409.021(c), the provision that establishes that an insurance carrier waives its right to contest compensability if it fails to do so within 60 days of the date it receives written notice of the claimed injury. OIEC determined that if the Supreme Court were to grant the petition and reverse the Court of Appeals decision, the effectiveness of the waiver provision, which encourages prompt investigation and decision-making by the insurance carrier to either pay benefits or contest compensability, would be significantly undermined. Anyone interested in reading the brief can access it on the Supreme Court web site:

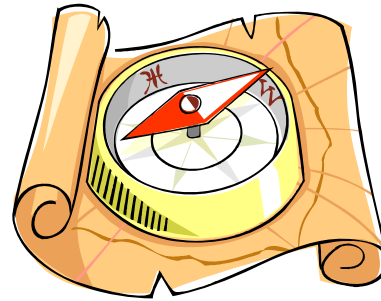
<http://www.supreme.courts.state.tx.us/ebriefs/files/20060299.htm>

## OIEC Submits its First Strategic Plan and Legislative Appropriations Request

In July 2006, OIEC submitted its first Agency Strategic Plan which outlined its goals for 2007-2011 and defined its performance measures.

As a new agency, many of the measures are difficult to baseline since much of the necessary data has not been previously collected. Projects and reports have been put into place that will assist the agency in establishing the correct targets for its critical measures as the agency moves forward. The Agency Strategic Plan can be accessed from its website:

<http://www.oiec.state.tx.us/resources/publications.html>



In August 2006, OIEC submitted its first Legislative Appropriations Request (LAR) for its budgetary needs for the 2008-2009 biennium. The agency's baseline budget was reduced by 10% as required of all state agencies as well as a loss of additional funds in its baseline due to the manner in which the baseline was calculated. Since the agency did not exist in FY06 until March, it could not spend all of its allocated FY06 dollars and therefore, lost what it had not spent. OIEC has requested restoration in its LAR of the 10% required reduction and the reduction taken due to lapsed funds. Budget hearings for the LAR process began at the end of September 2006, but OIEC will not know its FY08-09 funding level until the end of the 80<sup>th</sup> Legislative Session in May 2007.

In addition to seeking restoration of these reductions, the agency also requested a few funding enhancements. The agency's LAR can be accessed from OIEC's website:

<http://www.oiec.state.tx.us/resources/publications.html>

## Rule Comments & Rule Development Updates

OIEC continues to actively participate in the Texas Department of Insurance, Division of Workers' Compensation (DWC) rulemaking

initiatives as an advocate for injured employees in the workers' compensation system. OIEC participates in DWC's various informal work groups and stakeholder meetings to stay informed of the latest issues in the system and to offer the injured employees' viewpoint. As a result of work group discussions and information received from ombudsmen, OIEC is concerned about injured employees' access to health care in the workers' compensation system. Recently, OIEC had the opportunity to take a tour through an orthopedic, sports, and rehabilitation center to examine the differences of processing for a workers' compensation patient compared to processing a group health patient. This experience brought to life the overwhelming amount of additional paperwork, time, and staff needed to process a workers' compensation patient compared to processing a group health patient. Administrative support spent an extensive amount of time determining coverage issues and the network status of the patient, coordinating physician schedules for preauthorization consultation between the peer review doctor and treating doctor, and making telephone calls due to the limited ability to view workers' compensation information online. This experience proves to be most helpful in providing public comment to DWC's pending inpatient and outpatient hospital fee guideline and upcoming medical fee guideline rules.

In addition to the Inpatient and Outpatient Hospital Fee Guideline rules, OIEC has provided public comment as the voice of injured employees on the following DWC rules and forms during the last quarter:

- Distribution of OIEC's Injured Employee's Rights and Responsibilities in the Texas Workers' Compensation System;
- Electronic Claims Request pursuant House Bill 251;
- Disability Management Rules, which includes both the Treatment Guideline and Return to Work Guideline Rules;
- Medical Dispute Resolution Rules; and
- The new Interlocutory Order Form.



In regard to OIEC's rulemaking efforts, OIEC is proud to announce its first rule adoption regarding the Ombudsmen Education and Training Program and Private Meetings with Unrepresented Injured Employees. These rules were adopted on August 3, 2006 for an effective date of August 23, 2006. Director of Injured Employee Services Luz Loza states, "We are excited about the adoption of these new rules, which enhance training for ombudsmen and provide necessary legal support from OIEC's regional attorneys."

Adopted §276.10 extends the current training and education program given to ombudsmen. This rule provides for the assignment of staff attorneys to each ombudsman to offer legal research and counsel on providing assistance to injured employees in administrative proceedings. Adopted §276.12 establishes requirements for ombudsmen to meet privately with unrepresented injured employees prior to a proceeding.

OIEC's second rulemaking initiative regarding the notification requirement for employers to inform their employees of the Ombudsman Program is underway. An informal draft rule has been placed on the agency's website at <http://www.oiec.state.tx.us/resources/rulespage.html>. OIEC is requesting informal comment from all stakeholders until October 6, 2006 and plans to formally propose the rule by the end of October.

### [Contact OIEC](#)

We encourage you to provide feedback, ask questions, or send a request to be added to our Quarterly Review distribution list using this address: [OIECinbox@oiec.state.tx.us](mailto:OIECinbox@oiec.state.tx.us).