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May 4, 2018

***VIA U.S. Mail and Facsimile***  
(907) 465-3532

Governor Bill Walker  
Office of Governor  
3<sup>rd</sup> Floor, State Capitol  
PO Box 110001  
Juneau, AK 99811

***RE: Workers' Compensation Legislation***

Dear Governor Walker:

I am writing to provide some additional perspective regarding workers' compensation legislation pending in the Senate Finance Committee. Many of my clients are workers' compensation claimants, and therefore I have direct knowledge of how the workers' compensation system works and does not work. In addition, for in excess of ten (10) years I did insurance defense work, including some defense of workers' compensation cases. Over the last 41 years I have represented a large variety of clients, including large corporations as well as injured individuals. Therefore, I believe my background provides me with greater perspective on the workers' compensation system than some of my colleagues, in both the claimant and defense bar.

By statute, the workers' compensation system is intended to "ensure the quick, efficient, fair and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employer's. . . ." AS 23.30.001. An underlying principle behind workers' compensation law is that injured workers are entitled to receive medical treatment for on-the-job injuries so they can quickly reenter the workforce and continue being productive members of society. Too frequently the system fails to satisfy these goals, because injured workers have their claims wrongfully denied by the workers' compensation insurers/employers. Unfortunately, the legislation which is currently pending in the State Senate Finance Committee does little or nothing to achieve those goals. Passage of legislation which fails to support the underlying

principles behind workers' compensation law, harms injured workers, the most vulnerable people in this process, and burdens the public.

The proposed legislation does nothing to curb abusive strategies by insurers and employers in the litigation process. These strategies are seen over and over and over again by myself and other attorneys representing injured claimants. And, these abuses are a very significant reason litigation costs, on both sides, are higher than they should be and conclusions of claims are delayed.

Abuse Number One: Use of "employer medical evaluators" (EME). The insurance industry has a stable of well-paid physicians who examine injured workers and render opinions, which if believed by the Workers' Compensation Board, result in no medical treatment or indemnity benefits for on-the-job injuries. Many of the EME physicians are repeated offenders of truth and fairness; they ignore obvious facts within the record and express opinions not supported by medical science. They are advocates for the insurer, not true scientists expressing objective fact-based scientific opinions. What I am telling you is found in multiple decisions issued by the Workers' Compensation Board.

Too frequently EME evaluations are the "final word" in workers' compensation cases and the injured workers simply give up. And, too frequently many of those injured people have no option but to resort to Medicaid and public assistance in order to survive. Thus, benefits owed by insurers which received premiums to provide the benefits are instead paid from the meager funds in the public coffers.

Abuse Number Two: It is a standard "defense attorney" tactic to delay getting cases to hearing before the Board. There are multiple excuses for "delaying" the litigation process and certainly there are times when delay is appropriate. However, an injured worker whose claim has been controverted suffers the brunt of the delay. Prompt medical treatment allows prompt recovery and reentry into the workforce. Conversely, delayed medical treatment extends the misery of being injured and delays the injured person's reentry into the workforce. There are times that the delay in receiving medical treatment results in an injured person never reentering the workforce. Frequently an injured person will settle fast to recover something, so they can survive. In essence, they are "starved out" by the tactic employed by the insurer.

Abuse Number Three: It is a standard tactic for some defense attorneys to file a petition to continue a hearing, after it has been set, so a second independent medical evaluation (SIME) can be performed. If an SIME petition is granted, it takes the better part of a year for that process to be completed. This delay harms injured workers and too frequently leads them to "give up".

There are multiple other "abuses" which I could list, but I think you get the idea. The proposed legislation does "nothing" to fix these abuses. Instead, the proposals will only compound some of the existing problems, because claimant attorneys will "give up" and stop representing injured workers.

Any legislation which changes the current attorney fees structure will result in even fewer workers' compensation attorneys being available to represent injured workers. Obviously, I will not represent injured workers unless I can make a reasonable living at it. Legislation restricting claimant attorney fees to a percentage of the claimant's award unfairly burdens the injured workers attorney. If defense attorneys are not restrained by the amount of time they expand and the litigation tactics they engage in, claimant attorneys will simply be buried. To adequately represent his/her client a claimant's attorney needs to be able to go toe to toe with the defense attorney. If claimant attorneys will not be reasonably compensated for the time spent battling aggressive defense tactics, they will stop handling these cases. And, many claimants will simply end up on Medicaid and public assistance. That is not right.

I strongly suggest the legislation currently pending not be enacted, until it is overhauled to provide for fair treatment of injured workers. I urge that a commission be established which thoroughly analyzes the problem so changes can be made which make the Alaska Workers' Compensation system more fair and more cost-effective. The commission should takes influence from all stakeholders, not just the Chamber of Commerce, industry or insurers, but also labor unions, workers' compensation claimants and attorneys and any other group knowledgeable about the system. Enacting legislation which actually reduces the costs of providing benefits to injured workers, as opposed to reducing benefits injured workers receive, should be the intended goal. The pending legislation will not satisfy that goal. More input from all the stakeholders is necessary.

Respectfully submitted,

LAW OFFICES OF ELLIOTT T. DENNIS, LLC.



Elliott T. Dennis

cc: Senator Lyman Hoffman  
Senator Anna MacKinnon  
Senator Click Bishop  
Senator Peter Micciche  
Senator Natasha VonImhof  
Senator Donald Olson  
Senator Gary Stevens