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April 4, 2017

Senate Judiciary Committee

Senator. John. Coghill@akleg.gov
Senator. Mia. Costello@akleg.gov
Senator. Kevin. Meyer@akleg.gov
Senator. Pete. Kelly@akleg.gov
Senator. Bill. Wielechowski@akleg.gov

Re: Senate Bill 29 and House Bill 69

Dear Legislators,

While all who work in the field of Workers' Compensation have differing opinions of the Appeals Commission, one thing is certain: going back to the Superior Court and a system that was changed in 2005 because it did not work will not fix anything and will not cost less.

In 2005, the legislature actually codified its specific intent for the Workers' Compensation Act. "It is the intent of the legislature that this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter." AS 23.30.001(1).

Returning to the Superior Court will not make the process quick or efficient. Ms. Mede, on behalf of the court system, has testified before other committees that superior court judges are not familiar with this area of law, that workers' compensation appeals are very complex, and that workers' compensation cases are considered less urgent than criminal cases or CINA cases and consequently often go to the bottom of the stack. Before the Commission was created in 2005, appeals would be lengthy and waiting for a decision would take 12 to 18 months.

Senate Labor & Commerce Committee
House Judiciary Committee
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Returning to the Superior Court will make the system less predictable. But for the Supreme Court, decisions of the Appeals Commission, "have the force of legal precedent." AS 23.30.008(a). That makes the law predictable and results in less litigation, less cost, and less delay. Superior Court Judges issue a single decision applicable to a single case only. Many times attorneys practicing in this area do not know about a Superior Court decision or do not care because it has no impact on their specific case. The same legal argument can be made in a different case in hopes one can receive a different decision from a different Superior Court Judge.

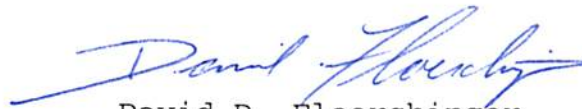
If the legislative intent remains the same and the legislature wants to reduce costs, they should consider setting up a designated administrative law judge in the Office of Administrative Hearings already established in the Department of Administration. This has the potential to provide a person trained in the law of workers' compensation whose decisions have the force of legal precedent and can do so quickly at less cost.

Finally, this law firm limits its practice almost exclusively to workers' compensation cases. Combined, we have over 130 years of experience practicing workers' compensation law. While it might be in our financial best interests to return to the lengthy, inefficient, less predictable and more costly system of appealing to the Superior Court, it certainly would not favor employers or injured workers.

Thank you for your consideration.

Very truly yours,

RUSSELL WAGG
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David D. Floerchinger
President