

LYN D. ELLIOTT
ASSISTANT VICE PRESIDENT,
STATE GOVERNMENT RELATIONS

March 15, 2023

The Honorable Jesse Bjorkman and Members of the
Alaska Senate Labor & Commerce Committee, and
The Honorable Jesse Sumner and Members of the
Alaska House Labor & Commerce Committee
Alaska State Capitol
120 4th Street
Juneau, Alaska 99801

RE: Senate Bill 60/House Bill 63, Repeal Workers' Compensation Appeals Commission

Dear Chairs Bjorkman, Sumner, and Members of the Committees:

The American Property Casualty Insurance Association (APCIA), representing 82 percent of Alaska's workers' compensation insurance market, promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in Alaska, throughout the U.S., and across the globe.

APCIA opposes SB 60/HB 63, which would repeal the Workers' Compensation Appeals Commission. We believe this is unnecessary and it would be short-sighted to return workers' compensation appeals to the Superior Court. There has been legislation introduced in previous years to abolish the Commission and the reasons to keep it are even more important than they were over the last several years for the following reasons: workers' compensation is an extraordinarily complex subject matter and members of the Commission are subject matter experts, the judicial system suffers from an ongoing lack of resources which would likely and unnecessarily delay injured workers receiving timely relief, and a repeal does not support the intent of the Alaska Worker's Compensation Act to provide a quick, efficient, fair and predictable delivery of benefits at a reasonable cost.

Workers' Compensation is Complex and Commission Members are Subject Matter Experts

There are few areas of the law that are more complex than workers' compensation. Alaska has a significant amount of case law that has extensively modified the state's statutes that govern workers' compensation. Members of the Commission are knowledgeable of both Alaska statutes and case law and are subject matter experts. This familiarity allows cases to be adjudicated more easily and ultimately reduces the likelihood of a Supreme Court appeal.

Superior court judges and clerks are generalists and not workers' compensation specialists, thus there is the potential for an increase in appeals to and workload of the Supreme Court.

There also is precedential value the Commission offers in that its rulings are as binding as law. Commission decisions provide expert guidance both to the workers compensation bar and for reference and reliance in future board and Commission decisions. This promotes a fair, efficient, and predictable claims process.

Exclusive remedy is at the heart of a stable workers' compensation system. APCIA believes that issues related to the scope of the exclusive remedy protections of the Workers' Compensation Act, subrogation against third party claim awards, and complex compensability matters are best left to subject matter experts at the Commission rather than to the generalists of superior court.

We are concerned that by repealing the Commission, the state workers' compensation system would lose the efficiency and predictability that subject matter expertise brings to expeditious resolution of appeals for both workers and insurers.

The Judicial System's Lack of Resources Would Delay Resolution of Appeals

When this issue was first explored by the legislature in 2017 and again in 2020 the legislature heard testimony about the increasing lack of resources and resulting backlog of court cases. Additional 2020 testimony was presented that criminal and CINA (Child in Need of Aid) cases have constitutional timeliness issues and take precedence over civil litigation.

Since 2020, the world has been through a pandemic resulting in the closure of courts. At the Alaska State of the Judiciary delivered February 1, 2023, Chief Justice Daniel E. Winfree reported "The **number of pending criminal cases** remains higher than normal as a result of pandemic disruptions and subsequent unexpected events." Justice Winfree continued as to why there is a "backlog" of open criminal cases. "... cases that should have been resolved without trial did not get resolved during the pandemic... Last year, after authorizing all criminal jury trials to resume, I expressed confidence (to) whittle away the backlog. That whittling has been much slower than we would like."

Not only do superior courts have a backlog where civil litigation including workers' compensation appeals take a back seat, but superior court judges have six months from hearing or trial to issue a decision. The Commission has thirty days.

The courts provided testimony at a recent February House committee hearing and offered some information on how the judicial system would absorb the work if the bill was to pass. During their testimony they explained that workers' compensation cases are among the most difficult that a superior court judge would have to handle. Workers' compensation appeals are highly technical and time consuming which was the reasoning for the creation of the Commission. So even though the court does not believe that there would be additional costs, there would be a trade-off regarding time because a superior court judge would spend time on a workers' compensation appeal instead of working on another case.

APCIA believes the Commission has had a positive impact on the overall claims process. Perhaps as the bills' proponents state, moving workers' compensation appeals to superior court would not require any additional resources, but it is hard to imagine there would not be significant delays in resolving appeals in court as opposed to by the Commission. Repealing the Commission may result in a monetary cost savings, but at what cost if timely resolution of appeals is delayed by weeks or even months?

The proponents of SB 60/HB 63 have indicated there are not enough cases to justify the need for the Commission. Testimony delivered to the legislature in 2020 on the matter indicated that the Commission provides "an expert venue to clarify the governing rules and resolve disagreements on the rules where needed." The Commission's role in this manner may be a contributor to reducing the number of disputes and improving resolution time. In our opinion the Commission has had a positive impact on the overall claims process.

Repeal Does Not Support the Intent of the Alaska Workers' Compensation Act

The Alaska Workers' Compensation Act states the intent of the legislature in AK Stat § 23.30.001 is "to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers." It is hard to make a case that repealing the Commission would be consistent with this legislative intent.

APCIA respectfully urges rejection of SB 60 and HB 63. We are happy to respond to any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Lyn D. Elliott". The signature is fluid and cursive, with the first name "Lyn" and last name "Elliott" clearly distinguishable.

Lyn D. Elliott
Assistant Vice President, State Government Relations
720-610-9473
Lyn.elliott@apci.org