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Minutes, Aug. 1, 1980

MEMORANDUM

TO: All Commission Members
Workers' Compensation Study Commission

I wish to extend my apologies for any errors or breakages in the continuity of the minutes. Because of poor quality tapes and equipment problems, this could not be helped. Therefore, I have tried to reconstruct the minutes in an appropriate fashion. If there are any corrections that you feel would be necessary, please contact me.


Licia Piceno
Administrative Assistant
Workers' Compensation Study Commission

Worker's Compensation Study Commission

Organizational Meeting

August 1, 1980

Co-Chairmen: Senator Terry Stimson

Representative Brian Rogers

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Stimson

For those who have never used this before, it will require that each time you want to speak, you want to press down on the button on the microphone in front of you. For the people who are listening in, I would like to say that all members are present and we're delighted to have you here. In addition, we have Tom Sofo who is with us and will be serving as the legal consultant for you. We put together a rough agenda for today and you have it in your packet there, it is our intent that we have an opportunity for everybody to identify their major concerns and hopefully, toward the later part of the day we will feel like we can identify some specific concerns that we need to focus in on as a task force.

All of you are familiar with the background and how we've arrived at the point we're at and probably we'll need to take some time for that. We have made this a teleconference so that if there were members of the general public that wanted to have an opportunity to speak to us that we could hear some of their concerns today. We'll probably limit those comments to 15 minutes, so that we can be sure to have time for everybody to speak. Do we have members of the audience who would like to have an opportunity to testify sometime today.

(acknowledgment by R. Block and R. MacArmour)

If anyone else is pressed for time and wants an opportunity to speak, you might want to let us know. I might suggest

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Stimson cont'd

that we plan on taking a lunch break from 11:45 to 1:15 so folks can just plan on that.

The first item we've put down on our agenda is the future meeting dates. Before we get into that I would like to give Representative Rogers an opportunity to make a few comments and share with you some of his perceptions with the task force.

Rogers

Thank you Senator Stimson, just for a little bit of background in 1979 during the interim the House Labor and Management Committee did some work on Worker's Compensation trying to figure out what some of the problems were, we did retain Richard Fineberg and he prepared a report on some of the Worker's Compensation problems during the 1980 session. We did take care of a couple of those problems. Probably the most distressing one was the Alaska hearing examiner and in the budget bill this year we did add hearing examiners for Anchorage and Fairbanks to try and speed up the process.

In addition, the Governor in his capitol budget did ask for an automated claims processing system, in hopes that would reduce the delay problem and bring the paperwork under control. In addition we felt that the issues surround Worker's compensation were going to take longer and what we really had time for in the 1980 session as a result created this study commission, to try and come up with legislation for 1981 session. One bill did pass providing Workers Compensation for work study students and part of the revisor statutes bill passed late in the session was the Workmens Compensation act now the Worker's Compensation Act and all future reference to it in the statutes and the legislature

TAPE 1, SIDE 1 cont'd

Rogers cont'd

will be Worker's Compensation. Which will conform with federal practices. There were a couple of bills introduced in the 1980 legislature, by the Governor and one by the House Labor and Management dealing with the Second Injury Fund, the bill passed for the Second Injury Fund is in difficulty. I expect that will be one of the areas we may want to look into during the work study commission. I think I will leave it at that and let Terry, go on with the overall plan of the study commission.

Stimson

Thank you Brian, it is our intent that we give some thought to forming sub-committees with the thought being we're probably going to have a tremendous amount of work, we're going to try to accomplish in a relatively short period of time and we've come up with some tentative dates that we would like to propose to you as possible future meeting dates and then as we progress through the day and begin to identify some of our sub-committees and establish times they would like to meet.

It is our suggestion that we have Saturday meetings and the proposed dates we have at this time are Saturday, September 20, 1980 and each meeting we'd like to hold as a teleconference but have one geographic area designated as a vocal point for the hearing, and the September meeting we're suggesting possibly it will be held up in Fairbanks. Then November 15, in Anchorage and our intent on the 3rd meeting is to try to uphill the meeting with an orientation for legislators in Juneau, we think that will be approximately the 2nd week in December, so we're suggesting December 13th in Juneau and you may have to view that as tentative since we don't know for sure of the date. Any discussion on those dates, Brian.

TAPE 1, SIDE 1 cont'd

Rogers

Just one additional comment, the final meeting of the study commission would be at the beginning of the legislative session in Juneau with wrap-up by the end of January and to present the report to the Labor and Commerce Committees and Legislature.

One comment, please identify yourself as this is a teleconference so that the people at the other end will know who you are.

Stimson

Do those dates appear to be satisfactory.

Debra in Juneau

Everything is satisfactory down here, we do not believe that we have any teleconferences scheduled on those days.

Stimson

Very good thank you.

Well lets go ahead then with giving each member of the commission an opportunity to express some of their concerns. We could go in any order you like, or just go round robin. Chancy, would you like to start off.

Croft

Thank you, the first thing I would like to say is, I would like to thank the legislature for having created this commission. I told somebody the other day that my experience in the legislature was that few legislative subjects provided are without any legislative history being available that was done mostly, and that was the end of the discussion. The theory is to provide quick compensation for workers. They give up substantial rights. I would say there are five concerns in my mind we need to address:

- 1) The board violates the Alaska Statutes
- 2) Rehab/re-employment (not amount but rehab)
- 3) P.P.D. 60,000, no relation to statute or anything else

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TAPE 1, SIDE 1 cont'd.

Croft cont'd.

- 4) Serious physical injury not addressed
- 5) The premium cost re-evaluation of cost, technical amount, long overlap for the cost of workers compensation in Alaska

I know there is little or no coordination between the Division of Insurance or Department of Commerce and the Worker's Compensation Board. Possibly the commission could look at the overlap, language and technical amount for the cost of workers compensation.

Stimson

Thank you Chancy I might mention that we do have a representative from the Division of Insurance in Juneau attending the teleconference Don Koch and John Geroge they're are listening in. Also representing the Worker's Compensation Division is Jan Hansen, as Jackie could not come.

Swalling

Without going into detail with the problems that Chancy has already addressed I think that every study that has been done by the legislature or privately has indicated that the Worker's Comp. Act has got some severe deficiencies in it. Amended over a period of time in a piece meal fashion and it has never been really studied thoroughly and objectively. Any fractions that have been made have been made from a shotgun approach and the task that's been outlined for the commission I think is pretty formidably. It is going to be difficult to come up with a completed study. I think that this preliminary commission will not be finished before this session. The problem with slow payments are cumbersome, administrative procedures relating to workers compensation are administrative in nature and high premium costs are of course something else. Benefits to injured workers, cost to the employers ultimately are passed on to the consumer, all of those problems have to be addressed.

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Maloney

I'm Dennis Maloney, I cannot add to much to what's been said by Chancy Croft and Mike Swalling other than the fact I have some additional concerns in the area of what can be drafted in the legislative fashion relating to the apparent misinterpretation of the law that has been made by our cohorts.

Opening and extending benefitis to workers. The prime example was a worker at a camp who riding a motorcycle into town to cash his check on Sunday, was considered to have been on the job. We might get into some debates amongst ourselves over whether or not that should or should not have been covered. Some other clearing examples that I think could be addressed by the commission in its study.

We also should look at the area of rehabilitation. In particular we should take a look at the interest of the party to actually be rehabilitated prior to an award being granted. I have had some personal contact with the matter that has come up, where it appears to me that the individual does not want to seek rehabilitation prior to award. Admiditly this is a conflict with the idea of giving the individual immediate payment.

There is also a problem with the amount of and method of studying reserves that I have had some concern with. In the past I think that the method used to set reserves is unrealistic in todays world, rather than having a total expected payment over a long period of time. I would think that looking at a persons value approach to the amount that may be due is more realistic.

We also have some concern with minimizing the millingering and volume of claims. The report that was issued last year in the case, that there's not really been any study of that, there may not be any way to look at it. I think all of us

TAPE 1, SIDE 1, cont'd.

Maloney cont'd.

have had occassion to look at cases where there has been millinging and where there is definitely fraud, which has been perpetrated. It is extremely difficult to figure out a way to handle this and I'd like the commission to at least take a look at some method to help us in that area.

Carlson

Senator and Representative Rogers, I want to commend the both of you and the Legislature for establishing this Commission as you know the State AFLCIO worked hard to get it established. I'd like to join with the remarks of Mr. Swalling, though my experience in Worker's Comp. has been about fourteen years and my feeling is that, if we're headed towards some goal by the end of four meeting we'll be very fortunate. I'm not very optimistic that we'll be able to recommend legislation by the end of that time, I am hopeful that we can show progress. We can come before the Legislature and ask for an extension.

One of the problems I think Senator Croft, just touched on was that in previous hearings and controversy over changes caused to Worker's Comp. have been almost a total lack of statistical data. When the legislators have had to make decisions based on information given at a time and given in good faith, unfortunately, that data hasn't proven to be factual, after the laws have been enacted in six months down the pike.

The cost factors come about, hopefully, this has been corrected with the money that you mentioned Brian, that will allow us to get computerized. I think the legislature though is going to have to watch closely, with all this data tied together not only from the Workers Compensation Division but the DOSH and the Divsion of Insurance all have input. I

TAPE 1, SIDE 1 cont'd.

Carlson cont'd.

understand that the chips are about to be processed. It was delivered I think to the office in Juneau, Wednesday. The information they are talking about for our perusal from the employers side and from our side to see about information. We need to find where these accidents happen, where there's a particular carpenter trade, construction industry or mechanics causing some of the problems in the air industry, so we can probably set up training programs to stop industrial accidents.

I've talked I think for four years, is trying to get funding for this. We didn't get into it to much last, but I think money is available. I would like to see the State bring in an outside actuarial that's, Johnson, Higgins or someone of this stature to completely go through the figures and data available. There will be more available once we get computerized, to set up the cost factor and I think the retention reserves mentioned is a legitimate complaint from employers. I don't know that retention is valid, I think there are other areas that would cut down the cost without reducing benefits to people.

It becomes a normal flow of things, there are arguments, you raise benefits and you raise the cost, so the employer side normally wants to lower the costs by reducing benefits. There has to be other approaches to this problem. I think Senator Croft touched on some of the problems in the benefit area. I think that all of the employers and all of us are concerned about the high cost so, hopefully, we can jointly come to some resolution of these problems.

O'Keefe

My background is about seventeen years, involved in Worker's Compensation. Primarily this exposure has been on the insurance part of it so, hopefully, this will add a balance

TAPE 1, SIDE 1 cont'd.

O'Keefe cont'd.

to the committee. Activity in terms of some of the difficulty that's seen by one of the delivery mechanism's and I think that being the insurer, to what problems we face in implementing the laws that's now instructed in Alaska. I hope to be able to be a coordinator between the National Council which does some of the statistical data gathering for Alaska. The Worker's Compensation Classification Rating Committee along with the wealth of information which should be available for this study from the insurers in this state, so that people making decisions here today and the Legislature in the future will know how, from a claims standpoint the mechanisms succeeded and failed.

I think it's important to point out in this state there has been two reports, one of them is the Fineberg report, there is another, Mr. Block has a report pointing out some concerns as well. There's nationwide and all fifty states commending many reports that are brought up concerning worker's compensation. Perhaps as many as 200 recommendations, these can all be boiled down.

TAPE BREAK

TAPE 2, SIDE 1

Rasley

I'm the operating engineers union business agent. I've been with them for about thirteen years in Fairbanks. I've seen quite a few of our members who have had worker's compensation claims in job connected injuries. In some cases the people where there claims were handled relatively soon and they were satisfied with the results, but they were also many cases where that was not the case and they were practically starved out and had lost a great deal of their family possessions and in cases even their family broke up, over the

TAPE 2, SIDE 1 cont'd.

Rasley cont'd.

loss of the earning power of the member. So I'm concerned with the cost of a good program through the employer. I think my first intent for being on this committee is that I hope that the intent of this study group will help the legitimately injured worker on a timely basis, at a reasonable cost to the employer.

I think that the system itself certainly needs over-hauling. The Fineberg report indicated that there are quite a few states in the lower forty-eight that have had a recent over-hauling of their worker's compensation system. I think that it's time that Alaska did the same thing. At the same time it might be beneficial to us to try to get some of the data collected by these other states. If that is possible, to see where they went with their system and what kind of results they have had with their programs they've instituted.

Probably, in the cost area; I think as far as the cost to the employer goes, I would think that one of the problems is with claims. Many times its cases that I have talked to our members about, they go into the hearing or either the attorney from one side or the other has filed a statement of readiness; then when they get to the hearing they are not ready. This wastes everybodys time, it runs up the attorneys fees. I believe on both sides and these are all calculated into the costs of the insurance through the carrier or through the employer. I think that's an area that needs looking at.

I think another area that needs to be looked at is possibly an independent state investigative unit, as was stated here earlier. I think that's an excellent idea. It would be an unbiased type of organization that would give a much better idea of what legitimate claimants are.

TAPE 2, SIDE 1 cont'd.

Rasley cont'd.

Theres many areas that I think that need to be looked at and when we get down into sub-committee meetings, I hope that we can get into these areas and come out with a really good study that will be beneficial to the workers who are injured on the job. I'm somewhat skeptical that we can do this in the short time that is allotted to us. It just may take more time then what has been allotted to us, to come up with something that will be comprehensive and in the best of all parties concerned. Thank you.

Chapados

I'm a small employer in the transportation industry and I should indicate that as an employer I am really interested in seeing good worker's compensation laws and good benefits.

I am also concerned about costs, but I think there has to be some position that we can all arrive at to provide a good program for Alaska workers, as well as to keep in mind the cost of a program. I think the studies that have been introduced, the Fineberg report and Dick Blocks really have established something from which we can work from. I think prior to the creation of these studies we have a situation where many people were not able to refer to any statements of information that would generally be acceptable.

I think we can go from there, using these studies to proceed with, perhaps, making alot better evaluation then we would otherwise.

I agree with Dwayne and Dave on the matter of timing and the time that we are going to be able to spend with it. It seems to me that a number of us, at least I know in my case are going to have to do a lot of studying to acquaint ourselves with these bills. Generally speaking, I know something

TAPE 2, SIDE 1 cont'd.

Chapados cont'd.

about the worker's compensation procedures and laws. In addition, I am also an employer and Chairman of the Alaska Trucking Association, Casualty Insurance Program and we provide worker's compensation coverage for our members and to those who participate in our programs.

We did participate in helping with the Block study. We do have some funds that we can use for this sort of activity and will probably in the future and hope that I can offer some help maybe, on those lines. I'd like to see the Block report made available to the committee members. I'm sure there is no objection to that. It was a good report, probably a few of our view points differ but you can balance them one against the other.

Our group of employers in the transportation industry for the most part, are in the regulated industry. For that reason we are more concerned about the cost then the average employer, because we cannot pass on our additional costs with justification and considerable amount of effort, clearer presentation to the AGC the RACC and the other agencies that regulate our rates. Usually, when our cost becomes effective, it takes about six months before we can get a change in our rates and it's very difficult to get this sort of change or get it amended right at the same time the rates are increased. This is an area that perhaps, we could give some thought too.

There may be other agencies or businesses that are regulated state-wide but I doubt it, within transportation and incidently we've considered this desirable, its part of the franchise that we have as an industry and when our rates are regulated the public interest is projected in that way.

There are some inequities that need to be considered that we

TAPE 2, SIDE 1 cont'd.

Chapados cont'd.

are well acquainted with. How they have been considered in the past. It's my understanding that within the labor organizations for example; you have a group of employees that are employed by contractors and so on, who belong to the agencies that have different types of contracts and our company for example has a year round type of contract with many benefits, vacations and sick leave. I think, the AGC has sick leave but I do not think they have the vacation. The sick leave is the one I wanted to comment on. I feel that there is an inequity there between these two groups and as far as an employer goes we find ourselves with an injured worker. We are not only paying him sick leave that he receives but on top of that he gets worker's compensation payments. I think, that could be considered excessive but I'm not sure that, that's fair to all employees within the state. I think that's something we ought to take a look at.

Stimson

Before we ask for public input, do the members have any further comments they would like to make.

Chapados

Like I say, I might not have all my facts correct but it does wind up where an employee gets the double dip and is a heck of a lot better not working.

Carlson

I don't think its timely now but it's a matter that the employers want to get into depth on and also we'll want to discuss negotiated agreements as opposed to benefits due under the law in exchange for not having the tort action.

I think, there are two separate distinct things and that's the employer prerogative at the bargaining table. The other

TAPE 2, SIDE 1 cont'd.

Carlson cont'd.

area of concern which was brought up; where the worker ends up with more take home pay while he is on temporary disability and that area is definitely an area to look at. It depends on the area where the employee has been working for the last twenty years and how much he is making. Often his experiences are a tramatic decrease in his take home pay.

Maloney

I would like to comment on some of the things that have been said. I think that almost all of us have commented on how we about the time that's been laid out for the meetings. I think one thing is we are willing to devote more of our time to this subject. Perhaps, we should discuss the schedule and maybe get a little open discussion in the direction that the study could take.

Esentially, what has been stated by Mr. Chapados and Mr. Rasley that there have been other states studying worker's compensation and there have been recommendations from all of those studies including; Mr. Blocks, Fineberg and the National Commission Study. It would seem to me that the starting point should be to: list all of the various recommendations (50 to 100) that have been made in the past addressing the specific area that we should be interested in, they should be broken down by those areas that affect the benefits, titlements, administration and rehabilitation. We should then have additional suggested recommendation which would come either from the public or from this group. Add those then methodically, go through all of them so that we in fact made a comprehensive study rather then something which does'nt address all of the problems. If we are going to take a complete look at this, we should take a complete look. Although this means more of my time, I'm certainly willing to devote that time. Another matter that some of us are concerned with are the Saturday meetings. If we

TAPE 2, SIDE 1 cont'd.

Maloney cont'd.

raise our hands and take a vote on that I think there might be a change of day.

Rogers

I would like to comment on that. It happens that the Chairman teaches school and he would be unable to attend meetings that would be scheduled during the week and the Chairman should be here for the meetings. This is why we have scheduled the meetings for Saturdays and also taking into consideration that many of you may not be able to attend meetings during the week also.

Maloney

I was under the impression, that they get ten days a year for personal leave.

Croft

I would like to comment on a couple of things. I am certainly willing to attend additional meetings but I personally prefer the Saturdays. I think its important that we have some mechanism for gathering up the accurate statistics. Dennis, mentioned that some injured workers are receiving more money on top of compensation. I don't think or find that, that is true but rather than us arguing back and forth, it is going to be hard for us to find any case showing that someone is getting more money than he/she should have.

Debra in Juneau

We are having a hard time hearing who ever is speaking at the moment.

Croft

One other thing I would like to see and I mentioned that to Licia for Senator Stimson, when she came by. I would like

TAPE 2, SIDE 1 cont'd.

Croft cont'd.

for maybe the year 79', be able to get statistics from the Worker's Compensation Board as to the total number of cases they handle, the number of cases that were solely medical benefits, the number of cases that involve just temporary benefits, the length of time, the average payment of compensation, the number of cases that were permanent disability, the average amount of compensation payments. Maybe, something that would indicate the extremes as well. The number of times that minimum benefits were payable at \$65.00 a week. I do think that we need alot of information in that regard. Otherwise, we are going to sit here and probably argue, about I remember a case such and such or somebody else remembers this example or we are going to have a real problem of getting an overall picture about that type of information.

Rogers

One comment I would like to make reference to, "the scheduling". In setting up that schedule we did intend that there would be a fair number of sub-committee meetings between now and the next meeting in September. This first period of time would be used to compile a list of recommendations in those areas we should look at. The second major area would be, to find out what portions of data and statistics that people are going to want. Either get that from the insurance industry, from state agencies or through the House Research Division which can help us in this area. In addition the committee does have money available to hire people to develop that data which we feel is necessary. My feeling is that by the next meeting we will have blocked out the major areas we may want to go into. Hopefully, we can put the sub-committees to work. It is a very tight time schedule.

Stimson

Any other comments from the members?

TAPE 2, SIDE 1 cont'd.

Rasley

One other comment concerning a specific area that I think needs work and probably one of the more important ones is the disagreement of the interpretation of the word "compensation" and what it means. In the Act itself, ten different people can read that Act and get ten different interpretations of what "compensation" means. It if it means medical compensation or disability compensation. We need to show exactly what we mean by "compensation" throughout the Act. It is not clear in the Act and many times you get into a case and the employer will be arguing that, that particular area is not covered or that the compensation does not apply to that area. Yet, there has been court decisions on it and the courts and supreme courts, have said, this particular area needs to be defined, so that they have a clearer understanding when a case appears before them. I think this is an area that really needs to be looked at and it would help clear up any disputes in the Act itself.

Thank you.

Stimson

Any other comments? I would like to now ask for public comment. Dick, you indicated that you wanted to talk, why don't you come up front.

Block

Senator Stimson and Representative Rogers, I'm Dick Block. I am with the firm of Ely, Guess and Rudd. Ely, Guess and Rudd is representing here today a group called the Worker's Compensation Committee of Alaska. Worker's Compensation Committee of Alaska was formed about two or three months ago. I would say, just prior to the end of the legislative session, out of a very real concern that the employers have had for the high cost of worker's compensation and for what they perceive to be a variety of inequities in the system. Worker's Compensation Committee of Alaska includes in its

TAPE 2, SIDE 1 cont'd.

Block cont'd.

support and representation, a broad spectrum of Alaska industries. It includes: support from AGC trucking industry, retailing and merchandising industry, from airline and air carriers and a wide degree of support representing a broad base of Alaskan employers.

Obviously, history of worker's compensation legislation has been the internal labor management struggle, trying to raise benefits up and lower benefits as the case may be. Perhaps, without a lot of regard for the impact it has on the other. I think that the Worker's Compensation Committee of Alaska, today takes in a realistic view. That is the worker's compensation is a system which has a proven history of success and benefits to maintain. A free stream of commerce without the barriers to commerce that a court system would present and provides or should provide a properly structured and fair compensation mechanism for those people who are injured, as a result of commercial activity in the state or in the area.

It is therefore, their objective not simply to recommend reduction in benefits for the purpose of reducing benefits but rather that the benefit structure along with all of the other components with the worker's compensation system. Many of which were with the insuring mechanism rating system, data system the reserving practices and the court. Determination of all of these be harmonized in order that we can maximize the efficiency of the system. It seems to me that worker's compensation pays a benefit to the injured worker that benefit

TAPE BREAK

Block cont'd.

The injured worker is receiving more from his injury than

TAPE 2, SIDE 1 cont'd.

Block cont'd.

than what he was receiving prior to his injury. I don't think it would be all that difficult but I would point out to this commission that not only are you to be concerned with the dollar to dollar relationship which is obviously important and deserves your concern; but I think you need to concentrate on particularly, if you're going to adopt Chancy Crofts five principles of concern, one of which is realization.

You need to concern yourselves with the impact, that the total benefits he's getting after the injury. What it has on his mental attitude as far as getting back into the work stream. If the amount he is paid or the total benefits are either from compensation plus an employer is providing for continued benefits puts him in a position where he is unconsciously receiving more benefits by not working then working. Then rehabilitation systems no matter how carefully you design it, may not be as effective as you want it to be.

I guess, what you need to concern yourselves with is looking at the benefit structure from this standpoint, reserving the incentive to do what I believe is an objective of worker's compensation, is to get the injured worker back into the work stream.

Now, I think if this task force has kind of a historic perspective of the worker's compensation law in this state. Many of you have been involved indirectly in this development of history and so what I give you is not new. Just for the record and for the benefit of those who are less involved in it over the last five or six years. Maybe, it will be relevant to see where we are today. The worker's compensation law, I think we would all agree, through about 1970 or 1971 nation-wide including Alaska was not living up to its intended purpose of worth for the benefit of the injured worker.

TAPE 2, SIDE 1 cont'd.

Block cont'd.

Inadequate benefits, it is true as everyone has said, Chancy and Dwayne that the trade off in court law for sick benefits. Once the system was put into place very little thought was given keeping the sick benefits in pace with the demands of the cost. That's what led to the creation of the National Commission of Worker's Compensation. This was a study group appointed at the federal level to include: representatives of labor, management, insurance industry and other related groups. It studied this system thoroughly. There were a lot of areas which at the conclusion of their report, that they didn't have time to look at or still unstudied areas. They looked at it very carefully and presented one of the most comprehensive analogies of the Worker's Compensation system.

From this study came eighty-four recommendations on how the system could improve. Those eighty-four recommendations included: a gamut of concerns, descriptions of who should be covered by compensation, entitled to benefits, changes in the administration and how the insurance mechanism could perform better. These eighty-four recommendations were presented with nineteen of them as being regarded as efficiently essential. That the federal government should become involved if they were not adopted at the state level.

As a result, the period from 1971 - 1975, I would say, all of the states considered and many of the states adopted, many if not all of the nineteen essential recommendations and that is essentially what took place in Alaska in 1975. The bill was adopted, which brought Alaska compensation benefits essentially up to speed. It also did some things which whether deliberately or whether it was inadvertantly without recognizing what was happening. It went a little beyond that, particularly from the perspective of death benefits, but in any event Alaska was brought up current.

TAPE 2, SIDE 1 cont'd.

Block cont'd.

There was at that time the not to well recognized phenomenon. I don't think the impact on compensation was recognized. We were in the middle of a 7.8 billion dollar construction work project. Employing at any one time fifteen thousand to twenty-seven thousand people who were working, driving up the cost of labor, driving up payroll rates and also driving up the injury frequency rate. This new impact was providing the rapid increase of our economy. These changes not only had a tremendous affect on worker's compensation for the pipeline but unfortunately, because of a rating system, insurance system and alot of other systems it affected all employees and affected them all disadvantageously.

Incidently, I will acknowledge up front what Chancy says, is true. That when the legislature deliberated on these things they use the best data available at the moment they have to make a decision. I am positive everybody operates in good faith but I'm also positive that the data at the time that a hearing is going on or a vote is being taken is grossly inadequate. You operate with the best that you have. Now, geting back to the subject at hand.

It is for that reason that I think the legislature would probably advise the cost impact. I don't recall now whether it was going to be around 25% to 30%. History has shown us that it has resulted in a cost impact and we're approximating an 80% increase as we measure it over time.

The response to that in 1976 and 1977 was to make the legislative changes which were regarded as having both a sufficient favorable cost impact on worker's compensation, with a minimum adverse impact of the legitimate rights of injured Alaskans. That was the provision dealing with reducing benefits.

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Block cont'd.

For those who leave the state a phase out of the death benefits putting the \$60,000 cap on permanent partial. I'm saying all of 76' and 77'. The only thing that was done in 76' was the exportation provision. 77' was the phase out of the death benefits, \$60,000 cap and social security offset. Now, accumulative impact on rates of 1976 and 1977 changes, was nominal rate reduction, when I say nominal the annual rates were actually reduced by accumulative of 28%. Ten percent in 1976 and about eighteen percent in 1977. I say nominal because, like anyone of these reate increases or decreases, they are a best guess as to what you think is going to happen.

The experience factors adjusted up and down go over five and as you get into your study of how the rates are made or how they are made; generally, you'll find that the law change factor is only one part of the rate, the experience adjusts it. You really, don't know how much experience change may be a miscalculation of that 28%. In any event, no matter how you view, we tend with a substantially increase net cost to worker's compensation from the period of 1975 to 1980.

Now the problem is not so much a dollar to dollar increase in cost. The problem particularly for the employer is that because compensation is a percentage of the payroll. If the payroll goes; the, you expect the absolute rate of compensation costs to go up. The percentage of payroll or percentage of cost dollars that the employers put out for compensation has been brought up considerably. Not only has it gone up but because of the rapid fluctuating impact on an employers cost, which makes it difficult to predict what his payroll burdens will be.

If you're in the general contracting business and your bidding on a job, which may go over the six months or one

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year period or longer and if you don't know what rate changes are going to take place during that interim, it's very difficult either to predict the cost or to hedge for an increase in cost. which may put you out of the bidding race. It's a very difficult thing to deal with and that makes it difficult to the Alaskan contractor.

The rapid increase cost has direct burden on some high risk industry and I'm sure Chancy will remember, fondly, the testimony of the Alaska Air Carrier Association. While their testimony may have been rather emotional, the problem was real and genuine. That was their most significant cost to worker's compensation insurance. Obviously the air carriers are an important part of our economy. Unfortunately, the worker's compensation benefits structure and the changes to it not only, have an adverse impact on employers but it has an adverse impact on the insurance industry.

Keep in mind something that I have said for a long time. If the benefits structure goes up, the cost and the frame costs go up, the insurance industry increases their premiums.

It flows through more cost so the insurance industry rides on a higher bank roll. That's kind of nice, up to a point. Where you have rapidly fluctuating rating changes in the benefit structure, like you have had over the last four years, by these people, where the cost cannot be accurately predicted. The cost rate mechanism lies behind the cost. Where you have such rapidly, what do I want to say, such indefinitely determinations of our law you can possibly predict the cost in claims, you have some serious adverse impact from the insurance companys.

It may very well be, that employers or even as representatives

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of labor, the response is that, so what after all they are big boys. They are big boys but their response could be we will make less market available. We will have to hedge it with higher premiums. You will have to do things that have an adverse impact on the whole system. These impacts that you have on the insurance industry by statute are an integral part of the worker's compensation system. This has to be considered by the staff.

It has had also defective claims that Dwayne has pointed out on the Division of Workers's Compensation. They have new laws. They have to cope with statistics. To garner that which is clearly not garnered is a burden on them and becomes increasingly a problem.

Now, I am somewhat concerned by listening to the comments around the table that this work may go on well past the legislative session. Let me tell you why, if newspaper accounts are correct, the impact of Alyeska from the period of 1973 to 1977 will be dwarfed by the impact of the gas pipeline, which should come on stream in another year. It is my understanding that, that project is in the 15 billion dollar bracket on the Alaska side. If all of the bonded projects and if all of the public works activities have been funded either directly by the state or by prior approved bonds or will be approved for another several million dollars of work coming on stream within the next 24 to 36 months, we should see another substantial economic boom in the state.

I think, this is healthy and I think we should anticipate it and desire it. I do think that if worker's comp has been adversely impacted on. Anybody because, of these substantial booms and lack of adequate considerations, perhaps this committee has the responsibility of anticipating that problem

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again and setting up the compensation law so that we don't have those kinds of problems during the next peak period. It would occur to me to connect legislative session at the proper time then introduce whatever legislation is necessary to implement it or put it in place and be ready for this activity when it gets underway.

Croft

Can I ask a question in that regard. I understood from a representative of the Division of Insurance that Alyeska had obtained special ratings with regard to the Trans-Alaska Pipeline that contractors were working for Alyeska, were granted an extension for their worker's compensation premiums.

Block

That is partially correct. Let me see if I can clarify that for you. The rating I think that you are saying is, does there activity impact on the rate by the other employers.

Croft

That's the second part of the question on the other hand I understood that our accident rate in the State of Alaska is confused with this compensation rate for all other employers, but what I'm leading to, I'm not trying to decide for you, was that Alyeska contractors never had the effect of their injury premium effecting their premiums; but every other employer in the State of Alaska pays for the injury rate. I'm not going to argue with you, if that's true I think your concerned about the effect of the gas pipeline, could very well be conditionally free to bribe contracts and the rates go up.

Block

I don't know. I'll make it the Chairmens progrative whether

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he would want an explanation in answer to Chancy's question. The second half of his conclusion was basically correct. The first half is correct but has no relevance. Perhaps, I need to explain that. Do you want me to do that now.

Stimson

Please do.

Block

Ok

Block

I guess, I have to go back and set the stage for how rates are made in the State of Alaska. The rates are determined by the insurance carrier and filed for approval by the Division of Insurance. The carriers utilize the National Council on Compensation Insurance, as there statistical agent for making that possible. Now, the National Council arrives at its statistical data from which there rates are determined from two principle sources. Two kinds of data go in the National Council. One of those is called the Unit Statistical Reporting Data. In effect each insurance company sends to the National Council a little card for everyone insured. That lists the premium, how there premium is calculated, also lists every claim and it shows the development of claims. They're timed and those cards go in six months and every year thereafter.

Anyway there are three or four reports that go in after the close of that follow cases showing the developments of those claims on that risk. Those unit statistical report cards are then used to determine a number of things. A computer can tell them when a loss development is growing, whether a loss occurred in 1970 or growing larger than what they thought they were going to be in 1970, shows the experience by risk,

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shows the experience by job classification, by identification, oil rigging losses by this and losses so much. This information goes in and now that information is used, I think two ways. One of them is to determine the relativity of cost among job classifications. For example: from the data they determine that oil rigging is two times more risky than trucking. So whatever rate is stuffed, this rate will be twice this one. The second way that the data is used, is to determine what is called the experience modification for the risk.

Under the rating structure are a number of things that impact on the annual rate. I don't think, anybody, in the state pays the annual rate. It is a starting point and one of the time experiences from the manual rate is the experience modification.

That is a look at the last. They look at the last 3 years of the last 4 years of the risk experience and determine that his risk losses are better or worse than the average level of losses for his classification. A trucker for example: they have zero accidents even though the industry of this kind have accident, so instead of his paying the manual premium he gets an experience modification rating which will be 85% or 15% off something like that.

Croft

For him too.

Block

That is exactly what it was designed for is an incentive for safety, he would get a regulatory provided credit or debit. It could work either way.

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O'Keefe

Wanted to elaborate a little on that. You are right on target but let me just add two more elements to it. In the rating mechanism itself, there are some limitations into the employer impact in terms of a specific loss. The system takes into consideration the frequency which is the more controllable element in severity in this regard. What I'm saying is when an employee has 22 eye injuries of a low magnitude the system says there are more preventive medicine available in this area than the one eye injury that one employee got, in which the severity is much more severe. Additionally the system takes into consideration from a small employers standpoint, the predictability on the credibility of the zone result from (3 of the last 4 years) is such, that a small employer with a premium development of \$1,000 hasn't got the accountability in terms of the statistical evidence. As a multimillion dollar employer and his mechanism.

Block

Let me go on Chancy and finish this structure and perhaps, you'll see where I'm going. One of the sources of data that the National Council uses is the Unit Stat Report that helps determine relativity among job classifications and helps you formulate the experience modification. The second major source of data which the National Council uses is what is called, the Call data, the National Council requires all insurance companies to submit aggregate loss premium data, by company for example. In this state, Industrial Indemnity, the Alaska Pacific, Providence Washington, quarterly send a large report, that says we have generated this much premium, we have incurred this much loss and made this much dollars and its stated in the aggregate. This information is accumulated or aggregated for the State and it is from this data which the National Council determines the note level which needs to go up or down. In other words the losses, the percentage. They also report the payroll. As a percent

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of the payroll is higher or lower than what is called the permissible level of losses per rate for losses. So that's the basic structure.

Now back to your question, what the impact at Alyeska. What we discovered was that the unit statistical reporting data were the contractors involved in the Alyeska project or I should say as a result of their Alyeska losses. There were contractors that were engaged in nonAlyeska projects and Alyeska projects, but the Alyeska portion of those unit statistical reports were not sent to the National Council. The aggregate loss data and premium data became part of the quarterly or semi-annual call, included the Alyeska losses and the Alyeska premiums. Now the impact of that is this. If both sets of data had gone in then what you would have had was a general indication that the losses were exceeding the permissible loss rate. You're driving the rates up but as a result of the unit statistical reporting system you would have learned that the substantial share of cost is distributed to the heavy contracting industry involved in the Alyeska project and driving the aggregate contractor rates up. If neither had gone in you have in affect totally eliminated the Alyeska experience and shopkeepers and everybody else would have had there own rates, generating their own experience. When you have the loss data going in an aggregate driving the aggregate cost up, the inner statistical parts do not go in until the costs don't get distributed more heavily towards those contractors classes, the natural impact, is impacted on everybody else.

What you say technically, it needs to be modified a bit. The impact of what you say is essentially correct. Now this was discovered, we knew something was wrong when I was with the Division. It was a little tough to pin it down but we

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kept probing and probing, finally along around the end of 1978 in a discussion with the Alaska Sea and Arctic we finally figured out what was going wrong because, these rate increases kept coming. The rate filings kept saying we need more money. We knew they didn't though we couldn't quite figure out why their statistics kept coming out this way. When we found this out we required the National Council to go back in and totally redo the data and I forgot how. They had to go back and totally reconstruct their data base excluding from the experience call. All of the Alyeska premiums and losses, in effect it went back and took the option of taking everything out and the result was just as we suspected. There was need for an additional increase of rating and this is the way it was done, I think towards the end of 1978.

So yes there was a problem, I think one of the things, that if you take a look at, in the Richard L. Block Report. One of the recommendations in that report is that if we have another one of these projects, if the project has a unitary policy as the Alyeska project did. That again at least up front not after the fact that should be totally excluded from the experience consolation but it does have an adverse impact on retailers.

Croft

Normally there's a control in any event. That is that the individual employer has the incentive to keep his rates down. I think to make more money and so there's an incentive on his part to run as safe a job as possible. With regard to Alyeska, those big contractors were all on top, plus totally reimbursed by Alyeska.

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Let the record show I'm shaking my head yes.

Chapados

Something we have to take into consideration is that fact that the employers that were contractors on that pipeline had to bid those contracts. Mostly in part, they were based on the percent of the involvement. They were reimbursed for the percent that their profits came from, a percentage on labor and that sort of thing. In order to bid, they had to take it into consideration the fact they were getting that compensation. The worker's compensation is not costing them any money so they reduced their bids accordingly. I think that actually, they didn't have an advantage over the employers outside of the Alyeska project.

One of the things perhaps, you may want to discuss is the impact of the average weekly wage. I believe it is a result of that construction project with the large wages and that sort of thing, that really did in fact raise the cost to all employers as well as to Alyeska.

Stimson

It's really important you identify yourself.

Block

There is no doubt that the driving up of the average weekly wage would be padding premiums in worker's compensation because of the of the changes made in the 1975 legislation, incidently, was taken right out of the National Commissions recommendations. The maximum benefits for workers were driven by the states average weekly wage. But not only that, the state adopted a recommendation which was one of the eighty-four, but not one of the nineteen, that the maximum benefits be a matchable of the average wage. That

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is to say, I forgot what the schedule was, but it went up from 80%, 101%, 132% to 200%, so that, right now, I think , we're at the level where the average weekly, in the state, is something like \$390.00 approximately. The highest average weekly wage for the total United States, our maximum benifits is \$650.00.

Carlson

I'd like to comment on the statements regarding the average weekly wage driving up the cost. I might add, if if hadn't been without that ceiling on it, that wasn't a plus that was a ceiling, the cost would have been considerably higher. The law reads you should get 66 2/3 of your earnings. Subject to the maximum. So, without this, the cost would have been considerably higher, rather than the other way around.

Maloney

I had a couple of question on the rate setting. My understanding is that London doesn't provide paperwork on their statistics.

Is that correct?

Block

Well, with one exception, London doesn't provide for the workers compensation in the state. The reason for that is the law in the State of Alaska is that worker's compensation insurance must be provided to do business here and London is not admitted. The one exception that has been allowed in the state is the worker's compensation on air carriers. The reason for that is that the admitted carrier in the state have totally refused to fight it; so, that really is not a significant factor in the overall.

However, it is true that the London statistics traditionally

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have not been submitted. An effort was made by the Division in 1976, at the time the rate law was being reviewed in a bulletin. The bulletin is on the books. I don't know to what extent it is still being followed. It required London to provide a required surplus of line brokers in the state, business to accumulate and provide some statistical data so we could evaluate the London rate.

Alyeska was not prevented from self-insuring from the best of my knowledge. The problem that you have with Alyeska is during construction, Alyeska didn't have the payroll. It was really the payroll of several hundred contractors. In affect, Alyeska purchased an insurance policy to cover the contractors working on the project. Self-insurance really wasn't particularly a relevant issue. In other words, you could not, Alyeska could not even in theory, self-insure other employers.

Debra in Juneau

Mr. Chairman, Don Koch in Juneau would like to make a comment if he may.

Stimson

Go ahead Don.

Koch

Thank you Mr. Chairman. In reference to Mr. Block's comment about the rate making in the two levels of statistics going in to develop the rates. I did want to make it clear that the problem with the Alyeska statistics was caught in the time before any rate filing actually went into force. The problem was discovered at the time of a rate filing. Later it was required to be changed. Previous rate filings had included that data. I just wanted to make sure that was clear. Thank you.

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Stimson

Thank you Don, I think may it's an appropriate time for me to see if the folks want to continue on at this point. I don't know what we've got in the way of people who want to speak. Also, I don't suppose its any surprise that you've gone over 15 minutes.

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TAPE 2, SIDE 2

Block

It was the questions that did it.

Stimson

Yes, let me just ask the audience here and the teleconference sites if they want to. It was not my intent to stop him altogether. There will be other opportunities to speak. Dick how much more time do you think you'll need?

Block

Mr. Chairman, what I originally wanted to do was to provide you with some suggestions on how you might proceed and give some ideas to where you might get some information for some kind of a procedural approach. This I haven't begun to discuss. I might go through that rather briefly and then be available for questions at your pleasure.

Stimson

Dwayne, you want to ask your questions first?

Block Mr. Chairman perhaps, I can skip a few of these notes and go on and make a recommendation to this commission as to what it ought to look at and how it should proceed. Frankly, this part of my comment can be very much abbreviated.

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I think each member of the commission have already discussed in part, alot of the things I was going to suggest you look at. Obviously, you need to take a look at a total spectrum of the system not just benefits, not just administration. I think those, plus, Rehab, plus the administration, plus insurance types of things. All deserves your review.

There are areas you have not mentioned. In the area of benefits such as, how do you calculate individual worker's wage for purposes in determining what is 66 2/3? I think you do need to look at such things as, the arbitrary dollar amount, scheduled and non- scheduled benefits in the area of administration. The whole area of claim adjustment practices, procedures used by the Division of Worker's Compensation, attending hearings, who should have hearings and whether or not there should be an interim appeal. All of these need your review; as well as, expediting settlement procedures.

I know Dwayne Carlson, has been arguing for as long as I've been in the state the need for statistics and a proper computer process facility in the Division. As long as he has been arguing, I've been agreeing, that it's vital. It needs to be done.

I was unaware of the funding before this morning. Whatever it is, that is a critical thing that needs to be done. There has not been mentioned today, in the area of insurance alternatives, things other than additional insurance would be valuable; such as, coordination of other benefit structures that are provided by the employer and already in place. These add up, validity of what a person should get in the event of his injury. The greater utilization of self-insurance and the utilization of alternatives for the insuring mechanism need to be reviewed. All of these things, I think, are there. How can you reduce the cost, still preserve

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an answer to these expenses and still be appropriate and legitimate of the rights of the Alaskan worker?

Now I would like to point out something that has been basically eluded. Much of your work has already been done. Every single thing has been discussed. Every single recommendation has been made and could possibly be made by you. I think you might be able to make them. It's already been reviewed, researched, studied and backed by evidence and data in the extent such is available.

Assembled by a document is the National Commission's report of 1971 which essentially, says there are eighty-four things you need to do to improve the system primarily from the stand-point of the injured worker. Subsequently, with the report and the research work that has been done by the interagency task force, which is a federal joint agency report, has a tremendous amount of research and study. It has a number of recommendations, paralleling and somewhat amplifying the National Commission report.

In more recent years, there have been a number of studies done in a number of states by commissions, study groups, with a balanced representation; such as, this group. In particular, was the State of Florida whose studies recommended and were implemented at the legislative level, a wage loss approach. This addresses the kinds of problems of permanent partial disability, unscheduled, scheduled problems that Chancy, was talking about. Whether or not wage loss is the answer for Alaska, I'm not prepared to recommend. I'm telling you that the study is done and there's legislation in place. You may look at that and the preliminary statistics on how it works.

In the State of Minnesota, a very comprehensive worker's

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compensation analysis was made. Minnesota is an interesting place to study, because it's one of the few states that has its own rating bureau. Possibly, reviewing and checking up on the National Council activities. They made some interesting recommendations in the area of rating. They also studied and reviewed certain things, that we don't ultimately recommend and object, which, very frankly, Richard L. Block does recommend. What you get then is two views of contrast.

In the State of Oregon they are currently concluding or have concluded a report in the last couple of weeks. This a very comprehensive study of one part of the compensation system, particularly in addressing permanent partial.

In the State of California, there is an organization called "California Worker's Compensation Institute", which is sort of a study group. They are funded and essentially guided by insurers and employers. They have done numerous studies with litigation analysis. Also they've done alot of things that go into the area of rehabilitation claim handling, hearing procedures. They sometimes concluded recommendations. In any event, a wealth of material has been done.

In the State of Alaska you have two reports, Fineberg report and my reprot. In addition to that, you should be aware of the fact that Legislative Affairs in 1976 or 1977, I've forgotten now, did a very comprehensive study on the State Fund. They also did a study of the National Council rating mechanism. I don't know where those reports are today but Legislative Affairs should have them. My recommendation, as a means to proceed is this: I believe, that if you can take these various reports and I will be happy to provide the committee at a later date with a bibliography. Take these reports and digest them, take all the recommendations categorize them by subject matter, in some logical fashion, you then have

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a basis to begin debate.

Let me point something out if I may. Essentially, you could assume there is need for alot of statistical data and evidentiary kind of support that's needed in order to decide what to do. Indeed, you should have background that helps you make logical and intelligent decisions, that will properly impact the state. Also, to a large degree, we are talking about fundamental public policy issues. It's either right or wrong to do this, or whatever you're going to do, and those boil down to public policy decisions. With the recommendations, you may have one degree or another, statistical or evidentiary reports from the reports, from which you get these recommendations.

I would suggest, that you have more committee meetings with a confirmed schedule. Especially, set one of your hearings to take up a block of these recommendations dealing with administration, for example.

Take these recommendations, accept testimony, or hearings from the board or opposition. Do that. I believe, from there, you will have much of your work done and much of the background needed to formulate what public policy you wish to recommend to the legislature.

I believe, that your work should start with a bill, a series of bills can be handed to the legislature which can adopt the public policy view point you've established here. Hopefully, they'll include the best that this committee can come up with.

I would like to offer a couple of suggestions if I can. I do believe, you do have a formidable responsibility in front of you. I think that it is a large task. Much of the paces

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underlined have already been clarified by a variety of organizations. Your job is to take that data and instill it. Perhaps, what you really need is to address the question of having additional staff available to help you go through this material, digest it and present it to you in some kind of useful fashion. Again, I would urge, that if perhaps you are going to take this approach, you need to have additional hearings and opportunities for your committee, as well as those affected by your work, to provide you with additional information about your work as it goes along.

I'm delighted to see that Tom is here because I was going to recommend that you were going to need legislative council staff here from the onset; so that, the guy isn't reinventing the wheel when he gets the bill which Stimson got. I'm delighted to see Tom.

I would make one final comment and that is a request for data. One thing that you can do, which would very effectively strap your ability to conclude anything is to continue to ask for a tremendous amount of data. One of the things that I have included in my report, which Fineberg has concluded in his report, and that all of us collectively feel as one of our problems is an inadequate data base. There is not alot of good data available. I think what you have to do is recognize that you're going to have to take what is available and do the best you can with it. I have been struggling now for a year to get the kind of data I need. The National Council may impact in a certain way. It is very difficult. Some of the reasons are very legitimate. Some of them may not be so legitimate. Its just tough to do and if you are going to wait to get a whole lot of data, the project won't be completed. I think you have to recognize the desirability of taking what you have with what you can get in a short term doing the best you can. Thank you very much Mr. Chairman.

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Stimson

Thank you, questions?

Carlson

Mr. Chairman, there is one particular statement. An employer now pays a dollar twenty-five or a dollar thirty. Is that an employer with an injury or is that an employer in total. Could you explain on that a little?

Block

I am really speaking in the aggregate. The employer community at large is paying. I suppose I can demonstrate it more with statistics. There's probably one hundred million dollars in this state that delivers about seventy to seventy-five million dollars in credit, probably. Unfortunately, I don't have the statistics in front of me. I'm guessing that it's about seventy-five.

Carlson

Maybe, Mr. Chairman, it is time we take a harder look at the State Fund. I just want to comment briefly Dick when I discuss this employer benefits should be in an amount to give an incentive to go back to work. The lesser the benefits the greater incentive to go to work is that correct?

Block

I think the answer to that is a little complex. I think the logical extension of your assumed conclusion is that if you pay them nothing it's really the best incentive. I don't think there's anyone at this table including myself who would recommend that. I think the person has to have an adequate continuation of his finances to meet his needs and everybody's needs to go up, as his basic salary levels go up. The approach that generally speaking, that's reasonable 66 2/3 of the guys wages is probably not an inappropriate arbitrary

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measure of what that is. On the other hand when you realize that the worker's compensation benefits is tax free, as opposed to the fact that his wages are taxable. When you compound that with the fact that in many cases, many workers are receiving sick leave benefits. Depending as you said, this morning, depending on the terms of the labor contract or maybe where they are receiving medical benefits from a medical policy or from the group medical provision of their employer. Where they're receiving some other kind in a volume which takes it beyond the 66 2/3, which in many cases you have created a situation where the person, so long as the compensation continues and so long as these other entitlements are received, his advantage is not working.

I would have to go one step further and that is I think you have to look at employees not by what they get but by what their attitudes are. Most people want to work simply because, that's how they were raised and trained and you could not pay them enough not to work. They are not abusing the system. I think what you have to do when you engage and it seems to have been evident over the last couple of years, is where you have a large group of workers who are really out maximizing. The return from their effort is, they really have no incentive to work. There's another alternative to work and that being has been demonstrated. Unfortunately, I'm not sure it can be demonstrated statistically. I'm not sure that looking at the benefits can make it conclusive, reducing the benefits five percent or ten percent isn't going to fix that. I have made in my report a recommendation that I think does not violate the benefit structure but it tries to address that problem.

Carlson

Mr. Chairman, I think that's a danger in making general statements. Mr. Croft pointed out, we need data we don't

TAPE 2, SIDE 2 cont'd.

Carlson cont'd.

need a statement, "that people are abusing the system". We need data and the law currently takes care of those who are doing it. I think there's a real danger in us just accepting statements, as they are brought back. One of them is the air carriers taxi, and I might ask is Mr. Koch still on the line.

Debra in Juneau

Yes he is.

Carlson

Thank you. Maybe Don you can follow along and correct me when I'm in error. One of the main items of controversies and the enactment of the changes in the law, was the air carriers. Later when it came about, their costs went up so substantially. They were the claim pushers and the reduction especially in death benefits.

The problem with just making a statement, that's their greatest cost of doing business while that may be factual. When Mr. Cook was Director and physically going over myself and going through the files, I went back I think it was ten years if I remember right. Out of the ten years seven years of that, they had contributed over fifty percent of the industrial accidents and accidental deaths in the State of Alaska. In some years and I think it was two, they were over sixty percent. Then in one year eighty percent. They contributed eighty percent of industrial deaths, however, they only employed less than one percent of the people. Now that meant the contractors in our construction industry were picking up some of the costs for those industrial deaths. That time they asked if they could form a pool. The law if you recall said, that they were allowed to do this, to form their own pool. They didn't choose to do that. I don't know what the answer is for the air carriers, it is a

TAPE 2, SIDE 2 cont'd.

Carlson cont'd.

real problem. It contributes substantially to the cost of living in the bush, the cost of transportation, bringing out their goods. Because, most of it has to be delivered, but maybe this is a place for a State agent to subsidize a pool or something but just to say that benefits might have been the cause of it, that isn't true, it's part of the fact. On the same token they contributed eighty percent. This portionment here of industrial accidents, which drove up the cost and it's hard to find those figures as you stated. They weren't available. We had to dig them out physically and present them. Don are those figures basically correct?

Koch

This is Don Koch in Juneau, you are pretty close to right on!

Carlson

Thank you. I think that's about all I have Mr. Chairman. Looking at the total picture here again, I think I would disagree, we can attack in that length of time the problems, with the pipeline coming up and a bill that would make it. I think that the Division of Insurance has a larger role to play in making recommendations in this committee and their expectations with the experience over the past pipeline.

I think there are some things, I hope, we can take a look at that need to be addressed this session. The Second Injury Fund particularly. Part of the problem is a lack of expertise by legislators and others in worker's compensation. They were afraid to properly address a bill for amendments being attached. So I think we need to take a look quickly at the Second Injury Fund. I think that's in serious jeopardy and I think it affects the injured worker in getting back to work and it's going to have an impact on the future rates of the employers. I think that needs to be one of the first

TAPE 2, SIDE 2 cont'd.

Carlson cont'd.

things we address. The other is a controverted plan. The number of controverted claims in the State is out of porportion and I think we need to take a look to see why this has happened. I hope that we hear from attorneys from both sides, both claimants and the insurance industry. Why they feel the large number of claims are controverted.

Rasley

I have a couple of questions for Mr. Block concerning the Florida experience and their new program. Do you recall when that was instituted? When their program went into effect?

Block

I don't recall the exact dated Mr. Rasley, its been in effect for about a year as I recall, it might be a little longer than that.

Rasley

Is there any statistical data available yet, that anyone could look at and say, yes that system is working. It seems to me, that would be a little early to tell whether their system they devised is beneficial.

Block

I'm sure there is some information that is coming out that would be useful but I would also agree with you, that you need to take a two year after the fact look to really know the impact

Rasley

One other question I have concerning the incentive to go back to work. One of the things that I see that seems to be a problem, is if an individual goes for rehabilitation training, my understanding at the present time is that,

TAPE 2, SIDE 2 cont'd.

Rasley

his benefits are cut just about in half. It would seem to me that would certainly take away the incentive for the individual to get training. It would seem to me that the amount of his benefits should be continued until such time he can go into some useful employment. Because, if he can draw \$600.00 and that amount is going to be cut in half, the training period would be for a period of six months. What incentive is there for the guy to be retrained. I don't understand the reasoning behind that.

Block

Well I'm not sure that, that's factually correct. My understanding is while a person is on an approved rehabilitation program they're receiving their temporary disability benefits. I would have to understand what facts you are relying upon to be able to comment more specifically. Obviously, if his wage continuation is cut in half, that would rather be a significant disincentive to rehabilitate. I don't think that's really the case.

I think another thing you need to consider on the rehabilitation program is perhaps, reorienting the objectives of a rehabilitation program. One of the things that I think is a disturbing factor is that the rehabilitation program seems in many cases to be utilized to recreate the individual in a new image. Taking someone who has certain skills in a particular job which he may not be able to continue because, of a disability, a permanent disability and substantially reorienting him, retraining him in an entirely new profession and maybe, a new academic or professional level. At some time in some extent without there being a real expectation that he can get a job in that field.

There have been cases unfortunately, I've got to say, I know

TAPE 2 SIDE 2 cont'd.

Block cont'd.

of a case, which Chancy doesn't want to do but sometimes it's useful. Where a person who is involved in a manual labor type of job, retrained as a computer programmer. When he returned to Alaska fully equipped, there were not computer programming jobs. There was nothing in terms of getting him back into the work stream. It seems to me that the rehabilitation process should not be, to go to the highest state of the art of rehabilitation to make people into something they weren't before. But to utilize the highest state of the art to get the individual back into a productive work stream in the shortest period of time. I think this is my concern about rehabilitation and where I think a lot of emphasis needs to play.

Stimson

Thank you Dick.

Carlson

You feel that can be addressed in legislation Dick and then have it left to the board and the counselors. I don't know how in the world you would address this in legislation.

Block

Let me point something out, at least my report which I prepared includes thirty-four recommendations, I don't think more than six or seven are legislative recommendations. In other words to answer more specifically Dwayne's questions, I think there is a lot of things that should be done and can be done which really legislation cannot address. Some of its going to require regulatory changes and some of its going to require a change in practices in accordance with existing laws. I guess what I'm saying Dwayne is nonetheless, those points need to be brought out. Attention drawn to them and then if there is legislative prohibitions for one reason or another or legislative incentives or counter

TAPE 2 SIDE 2 cont'd.

Block cont'd.

incentives that would prevent it from being done that should be addressed.

Stimson

Anything else for Dick? Thank you very much, you are going are going to be with us for the rest of the day, as we may have occasional questions.

Block

I have some meetings to attend but if the committee wants me to be present I will be able to attend for a portion of the afternoon.

Stimson

Thank you. We have other people in the room who would like to testify. I'd like to ask various teleconference sites if there is anyone else who wishes to testify at this time. Juneau, is there anyone there who would like to speak.

Debra in Juneau

No comments in Juneau at this time Mr. Chairman.

Stimson

Thank you Juneau, Fairbanks do you have anybody there. Apparently Fairbanks, has signed off. Dwayne.

Carlson

I'd like to ask another question of the Division of Insurance if they are still there? Did you people with the Division of Insurance have input on to what's going onto the computer as far as worker's compensation information?

Koch

Yes we did.

TAPE 2 SIDE 2 cont'd.

Carlson

I'm glad to hear that Don. As you know it has always been my feeling that there has never been proper coalition of the facts between OSHA, Division of Worker's Compensation and the Division of Insurance and one of the things we testified for. I've been working for six years to force that coalition of information. Do you feel that's being done with the computer as it is now being set up?

Koch

Yes I do. I will add that the communications and the activities between the two Divisions in the past six months have proved far beyond what has existed before.

Carlson

I won't comment on that.

Rogers

I would like to follow that up Dwayne. What changes do you feel should come out of it.

Koch

Unfortunately, I'm not the best one to respond to that. I've been in contact with the Division making sure that some of the things we wanted to have in the system were there but to tell you precisely what will come out of that, I think you really need to talk to somebody in the Division of Worker's Compensation.

Stimson

Thank you Don. We do have Jan Hansen with us and Jan, I don't want to put you on the spot but is that a question you could deal with for us. Why don't you join us up here.

Hansen

I'm Jan Hansen with the Worker's Compensation Division. The

TAPE 2, SIDE 2 cont'd.

Hansen cont'd.

computer program is very much in the early design stage. In June a committee including people from Research and Analysis Division of the Department of Labor and I traveled to three states to look at their computer systems. To try to learn what we thought were good features for a basis to start designing our program. My understanding, from Jackie McClintock a couple of weeks ago was that the request for proposals have just been submitted to the committee and have just gone out. So the status of the program, is a target date of January 1, 1982 for implementation of the program. I don't know whether that will be realized but that is the target date as far as I know at this time.

With regard as to what this system will do. I can tell you some of the things we want it to do and it will do. When new claims come into the Division they will be rapidly, hopefully, the same day or next day. They will be entered onto the computer. There will be terminals in the various field offices and the field officers will be able to pull up information on specific claims if questions come in about that particular claim. The data on each claim will be entered, as to the nature of the injury, amount paid, average weekly wage, permanent partial disability paid. Everything that is relevant to paying a worker's compensation claim.

Some things that DOSH wants to know about when the injury occurred, what kind of injury, the nature of employment, those things will be there. There will be reporting capabilities so that you will be able to pull out reports, about the number of accidents in particular industries, severities, amounts of money. Basically, most of the concerns I have heard expressed here today about the needs of data in various area, should be answered by the computer system.

TAPE 2, SIDE 2 cont'd.

Croft

What information is available now, though what you're talking about isn't going to be any help to us, not for the next year.

Hansen

There is some information available for example research and analysis. Those reports show basically how many injuries have occurred in certain areas for example; construction, forest projects. They have like a growth figure of how much has been paid, they count the number of deaths, they count the number of controverted claims and the number of claims. The problem with that is that the data which has been put in is somewhat unreliable. In other words its been spotty, so you might get some kind of figures but as to the reliability of those figures nobody knows.

Croft

Well there's got to be some figures available or there's got to be some method of coming up with them. Rather than argue the points that Dick Block mentioned, that fact, that somebody might get more in compensation so there wouldn't be a need to go back to work. I'm serious, what percentage of the compensation claims say the year 79' were paid the maximum compensation rate.

Hansen

I can't tell you for sure if they can pull that data out I don't think so, but I'm not certain on that. To be able to tell you for example; how many were overpaid, not overpaid but received more than they should have received, shall we say, let's put it that way, that would be impossible short of going file by file.

Croft

How can we find out the number of people that got the maximum

TAPE 2, SIDE 2 cont'd.

Croft cont'd.
of compensation.

Hansen

As I told you, I'm not sure if they can pull that out. If they did not and it's not on the report they've been doing already, they have to look at file by file by file.

Croft

How many open files say were there in 1979 approximately?

Hansen

I don't know.

Croft

Less than a thousand, less than ten thousand?

Hansen

It would be more than a thousand but I don't know what the relationship would be.

Croft

Instead of going through all of them. One of the things the committee could do is just take a sampling. If there is a thousand files you could go through every fiftieth file. It's better to do that than spend a day or two getting information that probably will misrepresent everything, at least it gives us some information. Then just say we can't do it all or were not going to have any information.

Hansen

Yes, that can be done the problem there, someone would have to physically go into the files and look at files and be aware that the files that the board has may not contain all of the relevant information anyway.

TAPE 2, SIDE 2 cont'd.

Croft

Sure, but anyway at least we could proceed from the final reports that are on the file by the carrier. We might take those with a certain reservation. But at least it gives us more information then what we would have if we didn't make the effort.

Hansen

Right, and those files are in Juneau in the Boards office.

O'Keefe

I would like to interject on behalf of the insurance industry. Our expertise as it might be in the use of computers, I believe there are no utopias. You have to realize that each company sets up there computers based on there particular needs, primarily dictated by government needs for statistics usually its federally oriented. These programs you can't just go into the wealth of information in the computer and bring out the kind of information you want unless it's programed in the system. Once you start with programing and changes you are into the soft word changes. The compatibility of the states computer all fifty states, two thousand insurance companys and I want to at this point, tell the committee many times when this type of an organization, the insurance company becomes the heavy in terms of why can't the industry provide us with this simple question, of how many maximum, minimum etc., the industry takes sometimes a bum rap. We would like the same information but we are limited by the same extremes with the system. I would like to make sure that you in your organization, Don Koch and his organization give as much lead time and cooperate as much as possible. Particularly, with the National Council and with the Alaska Insurers to make sure that the compatibility that you have available is utilized that you are not asking requests that would require complete system changes in these parts. They are not accomplished in a short bit of time.

TAPE 2, SIDE 2 cont'd.

Croft

Mr. Chairman, I would like to add just one thing. I appreciate the problems with regard to gathering the information but unless we set up some mechanism for providing some statistics of what we are doing, I don't think there is any chance at all of legislation being passed in the next session of the legislature. There well may be problems with getting the information but it seems to me without some statistical basis for our work we are going to get back to what has happened in the last twenty years in the legislature. That is when you've got eleven votes in the Senate and twenty-one votes in the House and they move and the other side has eleven and they move then it's a stale mate. I can appreciate there is some problems getting the information but I think we have come a long way. It's not going to be specific recommendations this committee comes up with but the information is going to be necessary for getting the information. From my point of view I would rather have a sample and that wasn't 100% accurate but at least gave us some ball park figures.

Carlson

I would first like to comment to the employers that are at the table. This just points out the problem. I've talked about this for fourteen years, I've been observing. The statistical data is just not available, other than the information I have personally gone down to the Division of Worker's Compensation as you say, dig it out physically. The Division has always been good about giving staff to help you do it. That a matter of going through every file down there and digging that out at this point, it is just not available. We could probably get a survey. Jackie McClintock the Director might have some of those that are updated now. I don't know how there're proposing to feed that into the computer but Mr. Koch, can correct me, the Division of

TAPE 2, SIDE 2 cont'd.

Carlson cont'd.

Insurance does not have the data, they have to go to the Division of Worker's Compensation. I don't think the Division of Insurance could give you statistical data that would help you.

Koch

We don't have the kinds of statistics you have been talking about except through what we are able to draw from the insurance carriers, there Mr. O'Keefe could probably give you a better insight, even I couldn't.

Chapados

I'm a little disappointed. I kind of expected, we would find the statistics we really needed and that sort of thing. Apparently they are not available to the extent we need them. I agree that the statistical information probably, is the basic information that we need to make the good hard decisions. I understand, that the committee does have some resources. I would suggest.

END OF TAPE 2, SIDE 2

TAPE 3, SIDE 1

Chapados

As I said, I think we certainly should consider engaging some firm or individual who is qualified to take a look at the statistics that are available now and based on such information that we follow up under and have questions on. Let's do a job with the available information that they provide us with that's available at this time. I think that if we leave it up to the governmental agencies, they have a lot of other things to do and I think we should get someone who really knows what they are doing to dig into this area. I would suggest that we consider this as one of the steps we

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TAPE 3, SIDE 1 cont'd.

Chapados cont'd.

take during the study.

Rogers

Are there any other questions for Ms. Hansen or the audience.

MacArmour

My name is Robert MacArmour. I represent Orientation for Victims of Industrial Accidents. Number one, I believe that Mr. Block and I read Mr. Block's report and he is very impressive in speech but I feel that two-thirds of what he has written is entirely against the working man. Mr. Chapados if your suggestion in the future will be to employ Mr. Block for a poor report like this, I suggest the committee disregard it. Concerning the question.

Rogers

Excuse me, is this prepared testimony? I thought we were receiving questions for Ms. Hansen. If you have a question for her, otherwise we would rather wait for her to finish.

MacArmour

Question, no I don't.

Rogers

Could we wait? Ms. Hansen could you give us a brief understanding of the Second Injury Fund?

Hansen

I'll admit right now that I'm not the expert in the Division about the Second Injury Fund but I will say simply that it's in critical condition. Jackie McClintock told me, that it will probably be bankrupt as of February, unless additional funding is brought into it. There have been some proposals that have been submitted this past legislative session by

TAPE 3, SIDE 1 cont'd.

Hansen cont'd.

Worker's Compensation Division that were drafted with input of the Division. I think they will give you what our point of view is on it and what the Division would like to have done.

I was going to ask if I could at least address a couple of important issues. The Second Injury Fund is primarily the problem right now. It will be bankrupt and there are a number of people who are technically, workers who receive benefits ultimately from the Second Injury Fund are paid directly by the insurance carriers. The insurance carriers are reimbursed by the Second Injury Fund. In most cases there are a few exceptions, but there are many, many workers who are receiving their benefits from the Second Injury Fund. Through the intermediary of the insurance carrier, so it will impact on a number of people, so that needs to be addressed if nothing else is done this next session, that must be addressed. If nothing else is done this next session that must be addressed.

Croft

The Second Injury Fund serves two purposes. One allocates the risk amount the insurance carriers as to somebody who has been injured that goes back to the job and may suffer a aggravation or a reinjury of that injury. Secondly, it does provide rehabilitation benefits as well. So it serves a dual purpose. Frankly, not only are the insurance carriers unfairly and adversely affected if the fund doesn't have any money, it offers injured workers themselves who do not get some assistance with regard to tuition and maintenance for their own rehabilitation. It really hurts everybody when that fund is not properly adequate.

Hansen

That's what I meant when I said, that some payments are direct

TAPE 3, SIDE 1 cont'd.

Hansen cont'd.

while they are not direct to the employee in the since, well that's not entirely true either. A small amount up to \$100.00 a month may be paid to an employee, may be retrained but also the Second Injury Fund pays up to \$5,000 per worker for tuition fees, books retraining etc. So the Second Injury Fund has a significant impact on rehabilitation and retraining as well as, as Chancy put it, look into the Second Injury Fund that's very critical. I might just mention a couple of other things.

Chapados

I'm just curious just what source of funds are directed toward the Second Injury Fund? Where do they come from? A direct corporation or are they investments and that sort of thing, that might be gathered and put into this fund.

Hansen

Ok, basically whenever an insurance carrier pays permanent partial disability to an injured worker it also pays eight percent of the amount of that permanent partial disability payment to the Second Injury Fund, also if a worker dies and has not dependants the carrier pays \$10,000 into the Second Injury Fund.

I would like to mention very briefly that there have been many administrative problems with the Division and I can give you one example, there are many but I will just take one. The Act provides for several penalties for late payments of compensation benefits for example, for failure of the carriers, self-insured to file notice of final payment. Basically the Board or the Division has done nothing about enforcing those penalties, although the authority is there in the law. It hasn't been done because, of lack of personnel that's one good example.

TAPE 3, SIDE 1 cont'd.

Hansen cont'd.

There are many other problems in the administration of the Act, that are being addressed now and will be addressed but it is going to take sometime. I just wanted you to be aware of that. The present Director is working very hard to solve some of these problems and we are interested in input and suggestions in helping us in way that might help us do that. There is progress in that regard it may not be apparent yet but things are improving.

Also the Act in several places gives the Board specific authority to make rules and in some places general authority to make rules that are necessary and the Board has made almost no rules. My impression is that the Board.

TAPE BREAK DID NOT USE SIDE 2 OF TAPE 3

TAPE 4, SIDE 1

Hansen

about is possibility of sort of a rush to judgment. We are the people who have to administer the things, and we've had some very hard times administering things in the past. When a certain section was changed without regard to how it would impact on the rest of the Act. I think there was a mention this morning that piece meal legislation has been a problem. Of course one of the things you want to address is comprehensive reform if that is necessary, or at least look at the Act in a comprehensive fashion. We would just like to encourage you to do that and if you intend to have legislation ready in the session in 1981 that you spend the time necessary to do it. That's all I have.

Stimson

Thank you, questions of Jan?

TAPE 4, SIDE 1 cont'd.

Rogers

Just a comment, it may be we end up doing a little bit of both. In January we should take care of the Second Injury Fund.

Hansen

That is one thing we need to have you fix.

Carlson

Mr. Chairman, in regards to that besides funding has there been corrective recommendations as to why the fund got in this position?

Rogers

The Division of Worker's Compensation did present a proposal to the legislature in this regard and they were funded in part.

Stimson

Ok, Robert you want to come up and make your presentation.

MacArmour

This is Robert MacArmour again, representing Orientation for Victims of Industrial Accidents. As I said, I have studied Mr. Blocks report entirely and I really gave it no validity however, since its the major issue here and Mr. Block is almost ordering the board to come within a decision in January, paying absolutely no attention to the work to the people it concerns rather its to figures. I suggest the board take time, whatever time and what ever information that needs to be gathered from whatever State for example Florida is unproven and it's being on Salt Water, on men that are crossing the ocean right now. Most of it is.

There are many states that are taking care of the worker's compensation law alot better than Alaska and since the

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TAPE 4, SIDE 1 cont'd.

MacArmour cont'd.

formation of worker's compensation sixty-seven years ago, there has never been a counter organization to be able to find out how much insurance companies make. Everything has been mentioned here except what are the profits of insurance companies. I think before any premiums can be established for the businessman I think, I honestly believe, we should know first what are the profits of the insurance companies. A monitoring system which will tell who are the lawyers, who represents the working man, who represents the doctors that are big guns for the insurance companies, doctors that are pro victim doctors that are riding the fence making it very difficult for the Board to make their decisions. Some doctors are truly objective.

A monitoring system that will give immediate information for John and Company paid the insurance company for example; \$20,000 in 1979, how much of the insurance that the carrier pays out 400, what was their profits? I think this will help the businessman as well as the working man. What I am strongly against is two-thirds, I can't believe that Mr Block wrote this report. I honestly cannot and I hope you take this into consideration. Many, many things I was about to bring out, but you will see this quite clear for yourselves after you study it in depth.

Thank you very much Mr. Chairman.

Rogers

I would like to ask you a couple of questions, first of all what on your perspective in working with victims of industrial accidents, is the biggest problem now in the system.

MacArmour

Pressure, alot of pressure. Detectives chasing men and women constantly, and depends upon what background we have, how much we can take. Now insurance companies have a Standard

TAPE 4, SIDE 1 cont'd.

MacArmour cont'd.

Operating Procedures. There is not an organization in the United States of America, anywhere else that knows how to counter this. They know the laws backwards and frontwards and anything you make, anything you write tomorrow they will be able to work around it. It's very, very simple but there is an organization that is strong enough to point out constantly how the insurance works both to the businessman as well as to the working man. I think we need a better system here in Alaska. Everywhere else in the United States insurance companies cut off victims of industrial accidents whenever they please frequently, putting pressure on their families as Mr. Rasley mentioned, many families are dissolved because of this.

I think a lot of men would be a lot better off if they were treated right from the beginning rather than the pressures. I am mentioning pressures because, I am speaking of personal history and of the men I've been contacting the last three years. Basically there has to be a revision of the system. Not by any particular order of anyone here especially, because you have paid over almost a \$100,000 dollars for this report that is totally bias.

Yes, almost a \$100,000 for this report which is totally bias. I still don't believe he could have possibly written this. It's just to bias. That's all I have. Thank you very much.

Chapados

Mr. MacArmour, would you care to mention, I mean to comment on your organization. The number of members? Are there particular classes of victims of industrial accidents statewide or national?

TAPE 4, SIDE 1 cont'd.

MacArmour

Two States. I organized in Los Angeles, California which I have the ex-president of the Lawyers Association of California and in San Francisco, who is the ex-president of the Trial Lawyers Association of the United States. I don't think we want to go into any history did we?

Chapados

How many people in industrial accidents do you represent and what are the classifications of their accidents?

MacArmour

There are almost eight hundred men and women that have been a part of this organization in Alaska.

Rasley

Mr. Chairman, Mr. MacArmour when you say there has been eight hundred people, does that mean eight hundred people whom your organization has helped through the process of worker's compensation claims? I think Mr. Chapados is left with the impression that these people are actually part of your organization or where they people whom your organization helped.

MacArmour

No. They are part of the organization, not the amount of people we have helped.

Rasley

Might I ask how many people you have helped through worker's compensation claims in Alaska?

MacArmour

Between Anchorage and Fairbanks, approximately 150 to 160 people, both men and women.

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TAPE 4, SIDE 1 cont'd.

Rasley

Ok, how is your organization funded?

MacArmour

We were funded by Ceta for a very short period of time; however, pressures were put on Ceta because of our organization and two girls decided to quit because of that pressure. They withdrew. Presently, for the last three years, I have put up most of the funding. I even sold most of my things to keep going; so, I have a very personal feeling towards insurance companies and have learned in three years the basic system of the carriers.

Rasley

Thank you.

MacArmour

Did I answer your question?

Rasley

Yes you did.

Stimson

Are there other questions for Mr. MacArmour? Thank you very much. Did we have any other members of the audience who wanted to speak or address Mr. MacArmour? How about in Juneau? Is there anybody there who would like to speak to the committee?

Debra in Juneau

No comments from Juneau at this time.

Stimson

Ok, thank you. I think we will break for lunch now. We will reconvene at 1:30.

TAPE 4, SIDE 1 cont'd.

Stimson

If I can have your attention, I think, we will start the meeting. I would like to emphasize that we are making transcripts of this meeting. They will be available to committee members. It is very important that we do identify ourselves. Could we have Gill Johnson join us?

Johnson

Mr. Chairman and members of the Commission. I didn't intend to testify but I feel that I should, at least, give you a little insight into the application of the worker's compensation law. From the view point of a practicing claimant worker's compensation attorney. So, I have no actual prepared text.

For a background, I have been in the worker's compensation business for the past twenty continuous years, with the Alaska Department of Labor and the last fourteen years in the general practice of law here in Anchorage, with a speciality in worker's compensation. I carry a caseload of about two hundred and twenty-five cases per year now.

I first, would like to give you some of the problems as I perceive them and then I do have some suggestions that may be of some help to you. I'm most disappointed in the overall approach to worker's compensation at a time, when a person, rather a man or woman needs help, when they are hurt and find they cannot get it. Most of the time, they are treated like they are a second class citizen. The reason they are in my opinion, is that we brand them as crooks immediately. Because we are going to pay them part of what they used to earn, if they have anything of a serious nature or injury of a serious nature, they lose all of their union benefits which is most unfortunate. I've asked the unions many, many times to freeze benefits. If the party can go back to work he doesn't lose; for example eight years of pension benefits.

TAPE 4, SIDE 1 cont'd.

Johnson cont'd.

I could never understand, frankly, why we talked about two-thirds pay and getting a fellow back to work. Apparently, that's supposed to be his incentive. However, I also noticed, we continually talk about a sixty-five percent or two-thirds pay and Dwayne Carlson earlier pointed out that, that's misleading. There is a limit on all of this. The average skilled workman today comes into my office, after he has been injured, has been making upwards of \$30,000 a year and in some cases of course, fifty and sixty and what he gets depends on how long he has worker, he will probably have an average of \$500.00 per week. All of a sudden, his income is cut in half or two-thirds more. The tax break you get is not enough to make up for the loss in wages. I don't think the reduction in benefits gives him that incentive to go back to work.

A fellow that comes into my office; for example, has fifteen or twenty years in his occupation, generally speaking, a skilled occupation that he wants to go back to. He has his lifestyle set at twenty, thirty, forty, fifty or whatever thousand a year he is making. That's where he wants to go. Now, here's where he gets into trouble. He gets awfully discouraged because of what he perceives as the insurance company not treating him fairly. I don't defend the insurance companies. I make a good living suing them. However, most of the insurance that I have dealt with, all of them do the very best job they can. I will not home rap them. They do the best they can. They've got the same problem the Department of Labor has. They'll do their work and they are faced with alot of problems.

Again, the average workman probably has had three or four injuries in the past, perhaps a lot of accidents by the time the medical results are into the insurance adjuster, and I put myself in the same place. When he comes into my

TAPE 4 SIDE 1 cont'd.

Johnson cont'd.

office, we've got three or four conflicting medical opinions. You would have to believe in the tooth fairy to think that the insurance company is just going to pass out money, which it feels could be a lot of money but not necessarily. Most of the time, the guy has an injury and thinks that he is giving him trouble but the fact is the problem is from another area.

I don't like to feel that we have, like a woman will point out, one of the problems that's unique. It happened yesterday. A skilled workman, twenty-one years with the same employers, a local employer, with a back injury. The employer will not have him back. The doctor suggested to him to return to work and try but they won't have him back. Now that's entirely up to the employer. They don't have to have them back. Part of the problem, I believe, is that most employers, don't know for example, that one of the functions subsequently of the Second Injury Fund, is that, that employer won't have to pay benefits. Assuming he pays them for three or four weeks, then the Second Injury Fund helps pay for the children. So, there is an incentive to rehire.

There are many types of injuries as we all know. I'm an employer, during the height of the pipeline, with sixty-four people. Now, we are ten. I'd like to have my rates reduced too.

I lend my support for whatever good it is to this gentleman that testified before lunch. I hope this is not a commission to reduce necessarily the pulse of compensation. Perhaps compensation should decrease it's discouraging always to feel that the way we are going to save a dollar is to take it away from the injured guy. I don't think that's the proper course to take. There are many areas that can be improved. The employer may not get a reduction but, at

TAPE 4, SIDE 1 cont'd.

Johnson cont'd.

least, it will be a little while before his rates go up again. I believe, Mr. Swalling indicated that we should take a look at reserving. I heartily second that. I may be wrong, but I think this is an area that lends itself to improper use. I suppose I should say very candidly, if you talk to a lot of defense council, they would scratch it off the record. True or not, I don't know.

The feeling is that that claims are paid from reserve interest. I have no notion if that is right or not. It certainly lends itself to certain amounts of loss ratio. I think that should be looked at. I'm speaking now as an employer, because I'd like to know that my case is properly handled.

Now the average compensation worker, gets the case a year after the accident has been established. We aren't. The individual comes in because he feels the adjustor is playing games with him or in most instances the insurance company has a controverted claim. Now, at that point, according to the Act, that's when we get paid by the insurance company. Up until that point the individual wants to hire us. He has got to pay us, as a matter of practice. I don't think any defense councilor takes that business and charges it. I think they mentioned that it's discouraging when an application for an industrial claim and the statement of readiness is filed and set for hearing and then we decide to take it off. I believe she feels this is encouragement. It does not, on behalf of the workmen.

We get our minimum fee. It doesn't matter if we work fifty hours or fifty days. I have no knowledge of what the insurance attorney gets, which is another area which troubles me.

I am one of those attorneys who is regulated by the worker's compensation board. The only fee that I am aware of that's

TAPE 4, SIDE 1 cont'd.

Johnson cont'd.

ever got to be approved in worker's compensation is the fee of the claimant's attorney. The defense council speaks only to his boss. We know, that the doctor charges whatever he charges. The physical therapist charges what he charges. Chiropractors charge what they charge. The pain clinics charge what they charge. The only people who have got to stand up and be counted is the claimants compensation attorneys. Let me assure you, we are paid what the minimum law allows, twenty-five percent of the first \$1,000, ten percent thereafter.

I feel there is a way to save money, help injured workers and be accomplished if you have a look at the following: Take for example, a case gives us a great deal of trouble. It's called a small case. The Supreme Court said, "that if I want to produce the medical report that we have for the client and the opposing objects, I have to make that doctor available" for cross examination. Now, when is that objection made? It's made at hearings. Here's a case when some of the board is ready to go and now the objection comes in. Then I have to produce this doctor. Do as I did. Go down to California, Redding, Oregon and for going to California except the pleasure of the trip. The doctor down there will get \$500.00 for his report. The court reporter gets \$180 or \$200.00. The defense attorney, I guess, is not going down for free. Again, everybody gets paid but the claimants attorney.

Now the difficulty here is getting an injured worker, who has been out of work for a year is broke, and has mentioned here losing his house and wife, lost many things because his cost of living and style of living is geared to \$60,000 or whatever and now he is getting less. I have to go to him to get the money; otherwise, I'm out. That's a terrible injustice. It's just unfair what's worse is the Supreme Court told the Department of Labor to withdraw regulations concerning this.

TAPE 4, SIDE 1 cont'd.

Johnson cont'd.

How many regulations have been drawn in the past four years concerning the small claimant? Not many, zero. The legislature has done a great deal of good this last time, by allowing, I believe three or four hearing officers. That sounds really great and the whole thing is improving.

As of last April, I was getting decisions and cases that I had tried in December. That doesn't sound too bad, not talking about December of 1979 but December of 1978. Thirteen and fourteen months it took to get those decisions down. In the meantime, my client expects getting nothing, can't get social security, which is another story.

I recommend that professional hearing officers be on the board, not Joe Blow and Sam Sneece, with all due respects to Jan Hansen. Jan is a trained professional. She has been in the business many, many years. I simply think we're wrong when we have different people on the board. Everytime I go to a hearing, not because they don't know what they are doing but because they do things differently. I have been told everytime I go to the board, the different applications this particular board is going to make up the rules. That is discouraging because you think you know what you are doing when you get down there and then within an hour or two you find out how well you knew what you were doing in front of another hearing officer. That is a real bad situation. I had hearing officers say they are not going to follow the Supreme Court and they will make their own rules. If I don't like it, I can appeal. Well, that's great if he doesn't like me but that's not so hot for the worker.

Another improvement. I think, we all know the rules and regulations, by the way they apply, not only to small workers but to alot of cases. We have just got to take the time to

TAPE 4, SIDE 1 cont'd.

Johnson cont'd.

utilize professional hearing officers.

Another area would be, and I think this will assist the guy or gal before they even see people like me. They have got to have some place to go at the Department of Labor, get an order from that department to go to the Department of Labor in any State around here and have them say, yes, well, it looks like you need help alright, that you should get a lawyer or you can set it for a hearing and how long does it take us to get a hearing - three to six months. The department now is improving. They are getting the decisions down and how long does that take? It averages sixty light days. We could easily sit from five months to a year before we could even get a decision, of any kind. It takes forever to get it.

The U.S. Department of Labor might be an area to look at. The U.S. Senate Commissioner may take a look at the medical report and he does this. I represent a workman in front of the U.S. Department of Labor who will then indicate to the insurance carrier that perhaps compensation should be started. Let me assure you that, that's precisely what will get done and quickly. There isn't an insurance company going, that is going to ignore, about ten times, an order for a compensation claim from the Director of Worker's Compensation when he's told to do something.

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Croft

Are you talking about the Longshoreman and Harbor Worker's Act?

Johnson

Yes, I am sir. The speed I think, is prompt and is the most important thing. It's a very ticklish problem we

TAPE 4, SIDE 1 cont'd.

Johnson cont'd.

have now. That's not the Department of Labors fault. They need help.

Vocational rehabilitation is a very important aspect of worker's compensation. We try and run everybody we can through the Department of Vocational Rehabilitation, at least to have a look and see whether or not they need to be retrained or should be slightly retrained for; such as a carpenter etc. The Department of Vocational Rehabilitation does an excellent job but the victims have three months before they even see them. They simply can't do it fast enough. Then when they decide if he is or is not eligible, it's been about three weeks of testing and its discouraging for him, for the employer, and for the insurance company. I don't know what the magic solution is there. There are two private rehabilitation groups operating in Alaska, the Rehabilitation Associates and the Collins.

I think from the notes that I took during the morning session here, I did want to comment on the fact that when people are being retrained, they sometimes, cut the money in half. Section 191 of the Act, which does allow for half benefits, while in training. When other grounds are not available, at least, part of the problem is that the individual worker should get full temporary total disability, while in retraining, and that has been our position.

I think the board is changing. One great help to compensation attorneys would be for the board to write it's own rules and regulations; so, at least, we know what they are going to do, and so does the insurance companies attorney. If we don't know what the board is going to do, all we can really do is go in and take our chances. We can settle many, many more cases if we got that somehow.

TAPE 4, SIDE 1 cont'd.

Johnson cont'd.

There is one thing that alarms me about this and of which you should be aware. I believe somebody mentioned, maybe Chancy, the 10,000 files. I think the last I heard we were having injuries, about 42,000 time-loss injuries, in this State. I think it's time we opened the files. I agree with what you are talking about and a sample of that.

I have nothing further and would be happy to answer any questions you may have.

Stimson

I would like to ask a question regarding section 191. Does the board have the latitude to interpret whether an individual receives half the benefits or could be receiving full benefits?

Johnson

The board has and does. The local board has consistently, or I'd say in the last year, said that full benefits are to be paid, full T.P.D. I don't know how they are doing it in Fairbanks. That's another reason I make a plea for the rules and regulations to be formulated; so that, if I go to Fairbanks, I know what that board is going to do.

Stimson

I was visiting with Jackie McClintock the other day and she explained that they were trying to get some common understanding for the board and officers.

Johnson

we have a lot of good worker's compensation board members, but you've got to remember, that all of these people that I know have jobs. I believe they are paid fifty dollars a day while they're working. That is amounting to now to almost half the total of time. Most of those people, it's

TAPE 4, SIDE 1 cont'd.

Johnson cont'd.

very difficult for them to spend that amount of time. Another reason we should at least, have hearing officers should be the same ones, time after time and they should be trained for professionally trained to handle claims.

Carlson

Mr. Chairman, I'd like to comment. We've heard this mentioned about three different times and I think the board should, I think later in our hearings you will hear testimony to this. I hate to see the claim labeled before we make any decisions. I think those recommendations should be submitted to the board for their approval or disapproval or adding to it. I think the initiative must come from the Department and the board should set up the adoption of regulations and procedures. I think it needs to be changed from a board being called to a department that is working with the board. I think also that you are going to have the Department of Law cross involved 1 cause, the Department of Labor thinks that we don't have any lawyers to help claimants with court proceedings probably, you will have to include both.

Croft

I'm sure that the average lay member of the board needs at least one full week every month and probably more to handle their caseload.

Swalling

Mr. Johnson do you have any idea of how many or what percentage of cases out of the 42,000 addressed that occur per year? How many go through the appeals or hearing procedure?

Johnson

I can give you I think a pretty good idea. I think you are looking at around 2,200 in total. Now remember this, if you say go through the appeals proceudre many, many of these cases

TAPE 4, SIDE 1 cont'd.

Johnson cont'd.

are set for hearing and as they say. are settled at the court house steps. I think Jan can probably tell you much more. I think in this area you are looking at 1,200 cases that have been actually tried per year.

Somebody is going to think that I'm the buddy of the insurance company, but I'm not. I think, it would be well for the board, maybe this would be an answer, half from anybody who wants to, but have a look at those cases and see what the people involved are facing. Start with the individual and his attorney, the defense attorney or the adjuster and, in turn, the worker's compensation.

For example, what good would it do to investigate a case, where you have six or seven conflicting medical opinions. It resolves nothing. That's my problem. If it would resolve something, I would be all for it. If anything could speed up the process, it's going to make it cheaper on Mr. Chapado's people and me.

I pay for the same compensation that you people do. So, as an investigative commission, I don't think it would do any good. What you might do is have an intermediate appellate sort of board or commission.

Now, for example, when we get a decision from the board and we don't like it, we can appeal it. About a year and a half later, we've got our decision. This could be speeded up. I haven't given this alot of thought. I believe they are doing this in the State of Washington. I'm not sure if there's some place we could go for the worker's compensation board and get, I guess you call it an appeal conference group or whatever investigative body, they're quick, that would do us alot of good. I think the insurance people will tell you sometimes, to their advantage but, generally speaking,

TAPE 4, SIDE 1 cont'd.

Johnson cont'd.

if a fellow isn't handled promptly, it's gonna cost the insurance company more. I think that's the case.

Carlson

If a claimant has his benefits in controversion, is that automatically granted him? Do the payments stop, or does the board hear them? Is it automatic in every case, that if a claim is controverted, the payments stop?

Croft

It's up to the carrier. They're so indecisoned, as to whether or not, to continue a claim.

Carlson

I would like to follow that Mr. Chairman. When you are talking about data. The claimant, at that point, has to prove his validity or whatever other reasons, to continue the claim I guess, that at no point does the carrier have to prove his reason for controverting. There must be some rational reason for doing this. It seems to be a problem. There is no advantage to the claimant to controvert a plan, if it's just monitoring the disadvantage or efforts to settle a claim.

Croft

A big point in the overall cost of the system is that, at least, in terms of the impact of the insurance, most doctors charge somewhere between \$100 and \$120 dollars an hour and I know of others that have driven the cost up to \$1,000.00 an hour and will be just to get interested, one doctor and maybe several doctors will raise the cost of the system \$1,500 to \$2,000.00.

TAPE 4, SIDE 2

Stimson

Dennis, you want to go ahead?

Maloney

I have a question for Mr. Johnson. Of the 800 cases you handle a year, how long did it take for payment, approximately?

Johnson

Ah, everyone of them?

Maloney

How many would that be, approximately?

Johnson

You mean total or just in my own practice?

Maloney

Your practice?

Johnson

Well, for example, presently, I have about 225 cases. Everyone of those have been controverted. I don't get a change, normally, unless it's controverted. Not controverted, the individual is either getting paid or has accepted whatever the adjuster has told them and is on his way. It's only the people that are disatisfied that have changes.

Maloney

How many of those 225 cases? Do you pay all of them?

Johnson

Basically speaking, that's correct.

Maloney

How many of those were you openly successful in getting paid?

TAPE 4, SIDE 2 cont'd.

Johnson

Probably, an average of 92 to 95%. The vast majority of cases, well, I don't like to say we win the vast majority of them. That isn't really what it is but, far and wide, most of the do get more money.

Maloney

Is that the higher controverted amount? or is it a portion of it?

Johnson

No, it's generally more. See, the controversion can come down as, I think, transive, for any reason, any reason whatsoever. I tell my clients. They can stop your payments because, they don't like the way it's put on there. That is really, literally true. No reason given and there is no penalty, basically speaking.

Maloney

No penalty, basically speaking, for any claim penalty at all?

Johnson

Yes, generally speaking, a penalty can be assessed if the carrier violates a board order.

Maloney

What about a pat-made solution to this?

Johnson

I doubt if in sixteen years, I've really seen a pat-made solution. I really don't think I have. There are many, many reasons, but pay for visible pay. I don't think that I have. Excuse me. It doesn't happen with me.

Maloney

I have one other question and comment. You indicated that

TAPE 4, SIDE 2 cont'd.

Maloney cont'd.

help in dealing with, you're not receiving sufficient compensation? Is that correct?

Johnson

That's correct. That's why there are only a handful of us in the business. The only way a lawyer can make any money at all having worker's compensation. That's why we're in business just like everyone else is to make a living. The only way you can do it is have a lot of cases. Individual cases simply can't do it.

Maloney

I have one other question. You also indicated that you wondered what the insurance council got compared to you. Isn't it true that the insurance companies controverted cases pays that fee to you?

Johnson

Absolutely. I didn't, at least I hope I didn't mean to say I wonder what the insurance council gets compared to me. I don't care what he gets. I don't care what the doctor gets. I don't care what the physical therapist gets. I just don't like to have to have my fee authorized when I'll bet a \$1,000 dollars I'm the lowest paid of the bunch.

Stimson

Any further questions? Frank?

Chapados

Johnson mentioned something that I was wondering if he could explain a little further about. I find him losing his union benefits and receiving compensation benefits. What triggers that?

TAPE 4, SIDE 2 cont'd.

Johnson

Lack of paying into the trust fund. I think Dave could probably explain it much better than I. For example: Before pension benefits are invested, you must have so many hours paid in on your behalf and you pay alot of them. A fellow gets injured and can't go to work and I believe this varies, union to union. An average guy has got to pay in 400 hours a year or he is just flat out. He has a bank of hours that is drawn. If he has a major injury, he loses all of it, until and unless he can get back in and can get those benefits paid in again. The problem's of course, when these fellows can't go back to that because the employer won't have them back.

Chapados

But, this leads into the next question about the employer required to take an injured employee back. I can see where it would be certainly a desirable thing to do but I know that if an employer is concerned about an aggravated injury, it would then make his situation even more infallible, as far as cost. A man comes back not completely healed. Then, he, as a result of that situation, becomes injured again. There is a nature hesitancy to take a man back. I think there could be another side to it. That's one of the reasons, I think, the employer is concerned about. On the other half, I agree that a man who has worked for you for twenty years and is a good employee and you want to help him but you have more concern then about the kind of liability you are protecting yourself with to do it? Maybe this is something we ought to look at.

Johnson

Frank, it's even worse than that, frnakly. In Alaska an aggravation of the pre-existing commission was the equivilent of the new injury. If I've got a bad back and I've been working for Dwayne Carlson (pretending). Then, after I recover,

TAPE 4, SIDE 1 cont'd.

Johnson cont'd.

I go to work for Frank Chapados and if, for whatever reason, that back goes out, (I'll call it that). There's no problem if I fall out of my truck, even though I've been hurt, but if it goes out again and then I have to go to Chancy Croft or someone to represent me, what they'll do is file an action against Dwayne Carlson, his carrier, and against Frank Chapados, with no compensation insurance. I've been aggravated by working for you. It's going to cost you money and I understand the employer's stand-point. It's a real tough thing to hire an injured workman. There's some protection built into the Act but perhaps there should be more built into it. I don't know. I know the second injured one is broke, no money really anyway.

Chapados

One last question. How do you qualify a special hearing officer?

Johnson

I don't know. I suspect, Frank, what you do is take a person like Jan Hanson, been in the business, I believe, ten years and who now, as a matter of fact is going to law school. You don't have to be a lawyer to be a professional hearing officer. I don't mean to imply that at all. It's got to be somebody that be somebody that's learned, at least, in worker's compensation. Worker's Compensation is a different world. For example: I'll go and mak a third party Act. It's about even. Fault is part of it, as a matter of fact. It's difficult, actually, for a lawyer to grasp and I don't blame them. Somebody trained like that. The adjustors, I think probably adjusting would be a good background. I wouldn't trust them.

Chapados

In other words, some background in worker's compensation,

TAPE 4, SIDE 2 cont'd.

Chapados cont'd.

perhaps, a legal background or an equivalent?

Johnson

I think background in Worker's Compensation is most important and legal background is second. There's nothing that's more disconcerting than going to a hearing and having (do I have to say, insurance is sitting over there) to give and bring in evidence and I object. The hearing officer says you're objection is noted, proceed. Everything I wanted to keep out comes flowing in. That is, not only disconcerting, it's an injustice to the client. If a fellow isn't trained in some of this stuff, it keeps coming in.

Maloney

Can I ask you one more question?

Stimson

Dennis, go ahead.

Maloney

The comment about the union and the possibility of losing the retirement fund, isn't it possible that the union trust fund, approximately paid in could have a provision for a disability? Continued payment or provide an instant investment for these cases of disability?

Johnson

I think probably Dave Rasley and Dwayne could answer you on that. It think it could.

Maloney

I think that the employer plan, it seems to me that first of all, men in the plan, it's been changed in the last few years, who paid in eight years, once his fee's working, would have an additional eight years to get back to work.

TAPE 4, SIDE 2 cont'd.

Maloney cont'd.

Technically, any plan can provide revesting benefits upon disability.

Carlson

Mr. Chairman. Dwayne Carlson. I can't give an exact figure. Some of the trust do provide for different periods of time at least on a pension plan. It's a different matter. That's part of the problem. I think, as Representative Rogers mentioned, we tried to get some protection for the worker who had unemployment disability. That's even more of a problem. Losing those benefits under the health plan, taken off worker's compensation, say in November and he's been working most of the fall on construction, and also lost his eligibility for unemployment benefits, so he can't go back to work.

Maloney

The point I was trying to make is that if unions wanted workers not to do the (interrupted)

Carlson

The joint trust

Maloney

It's the joint trust.

Carlson

I'm going to ask you, uh, that's come of the data I'd like to see in our facts rather than general statements, Mr. Chairman.

Stimson

I'm going to ask that you have your comments posted to the chair, please. It would be real interesting to know who made that statement down the road away. Are there any

TAPE 4, SIDE cont'd.

Stimson cont'd.

further questions for Gil? Ok.

Rasley

I don't have any further question at the moment but I'd like to elaborate on that statement just a little bit, for the benefit of the committee maybe. Dennis is absolutely right when he says that under the recent law, which is in effect now, that however many years you have in the pension plan, you have that many years to repay it. In other words, if the ten year investment period and you had eight years in, then you could be out of that for seven years and not work. Then, if you worked, for at least 250 hours in the eighth year, then you would repay what you had before.

Also, Dennis commented about some of these funds being flush. That's true in some crafts because of the fact that they have what they call a great deal of breakage. People come in and they work in these particular crafts for maybe four or five years. Then, they go on to do something else. Consequently there's a lot of breakage. In fact, here a few years ago, the Laborers Union - the retention rate in the Laborer's Union was only about 20%. Therefore, they had quite a surplus of funds and were able to increase their pension benefits but the Operating Engineers, with the Electrical Union and with the Plumbers Union, that's not true. Basically, our retention rate in the Operating Engineers is about 97%; so, consequently, we have very little breakage from that factor and people who tend to get into our union, stay there and work it straight. So, the fund isn't as flush as some people may think.

However, the other point that he raised there concerning the trust fund being able to waiver, if someone is on worker's compensation the trust fund being able to waiver, if someone is on worker's compensation. I have helped members petition

TAPE 4, SIDE 2 cont'd.

Rasley

our trust people who sit on our trust fund and asked them for a waiver in outlining the circumstances of the individual, particular petitions. In most cases, if it's a valid claim, the trust fund will waive that time period until the individual is ready to go back to work again. So, it can definitely be done but I know that all trust funds do not do that but I know that ours does.

Stimson

Dennis?

Maloney

My point primarily (interrupted)

Rasley

Mr. Chairman? May I respond to that?

Stimson

Ok. Let's let Dwayne go first.

Carlson

Mr. Chairman. I think we have to be very careful at this meeting. While there are those of us who represent organized labor, there is a great segment of the population that is not represented. I think any legislator that's been down there the thirty years I've been there, should try with all his might to protect the unorganized as well. While the unions can in their joint trusts, offer certain protections, we have others out there, probably a larger segment that doesn't have it. So, I think that any laws that are made on worker's compensation, we're talking about compensation for a worker that's been injured on the job, should include all. So I think we have to be very careful and possibly an exclusive way to vote that will represent it.

TAPE 4, SIDE 2 cont'd.

Rasley

This is Dave Rasley. That was the exact point that I wish to make. There are a great many people out there whom we, of this study commission, are representing and we're not just representing union members. I hope that I'm here to represent all the people of Alaska, all the working people of Alaska, not just my union members because this is something that effects every working person in this state.

Stimson

I'd like to move on unless you guys feel that this is really something that we need to continue discussion on.

Johnson

Mr. Chairman. I have two more comments to make. They both apply to this discussion. One is that it is customary in court to rend a judgment. For instance, an insurance company and worker's compensation controverts a claim. Whatever money it has in reserve most - interest is on that. When we're lucky enough to get a judgment and win the money for a client, no interest is paid. We would like to see that an injured workman gets interest on whatever one he has coming. I don't know if I wuld induce cost quarters or not. I'd like to see it done.

Then, earlier in the day somebody, I believe, Mr. Chapados, was curious about the definition of compensation. I would request that you tread cautiously there. Compensation now, matter of fact, Dwayne Carlson, this, put it in the definition as medical, for a very definite purpose. Many, many, many, times, an individual has his controverted. No lawyer, that I know of, will represent many of those in brief, no provision, other than calling that medical compensation. Then, we are allowed our usual permission, so to speak. That's another

TAPE 4, SIDE 2 cont'd.

Johnson cont'd.

area that should be looked into.

Stimson

Thank you. Dennis?

Maloney

I said, at one time, it is my understanding that a workman can represent himself.

Johnson

That's absolutely correct. However, on behalf of payments compensation attorneys, I think that anyone that represents himself is pretty foolish. You can bet your bottom dollar that the insurance company is going to have a high priority.

Rasley

This is Dave Rasley again. I was the one who made that comment and that was my point this morning, of defining compensation. I think it covers the area that it should cover as written in the statute and it would cover the think that you're talking about, Gil. It would definitely cover a controverted medical claim to where the attorney would be paid according to the statute; so that, I think, is one of the problems now. In some cases, the carriers and the employers are arguing if that is not covered by the statute. That's one of the problems. It needs to be covered and my point was, broadening the scope of compensation; so that, it does cover the areas of these things to where it would not be open to controversy.

Stimson

Thank you very much. Gil I appreciate your testifying. We have Richard Fineberg in Fairbanks and I'd like to hear from him now unless there's something else. Ok, Brian?

TAPE 4, SIDE cont'd.

Brian Rogers

This is Brian Rogers. Just a word of explanation. Mr. Fineberg did have a contract with the House Labor and Finance Committee during the 1979 interim. The cost was over \$2,000 dollars for the report to the committee. It reported that everyone filed a rather quick report. I asked him to come today to go over the recommendations of the report and to point out, in particular, the recommendations which have not seen any action in the 1980 legislature. Richard?

Fineberg

Thank you very much. Do you read me on volume? You do? I shall proceed then. I will take off the button one more. I'm not sure I hear you there. Do you read me on the volume?

Rogers

Yes, we do read you very well. Thank you.

Fineberg

Ok. Thank you would like to hit some of the points that I raised in my project for the House Labor and Management Committee, which I was required to complete in January and which Representative Rogers mentioned. I should say that since I did the report and testified, I have not tracked worker's compensation in the same detail. T'PE BREAK the individuals are safely in the way of problems. I think that ought to be a primary requirement of the task force. You ought to begin there and that ought to be a starting point simply because there have been a large number and nobody is quite sure as to that number of long-term disability OFF TAPE task force of the pipeline feel a need of help that they are not receiving from the system at this point. It is my belief that, that number may be sizeable, 5,100 or more. I don't know. We don't have the data. I think we ought to know how the system is treating the individuals in it at

TAPE 4, SIDE 2 cont'd.

Fineberg cont'd.

this point, rather than saying, well, you win some, you lose some. We'll take it from here and do the best we can.

While I'm not on that one, I should mention that Mr. Johnson made that recommendation in the process of trying to figure out whether or not a state investigating arm of the board would be of service. He said he couldn't figure out how it would help. Since you're going to get six or seven conflicting medical opinion, how would your investigating arm help? I would like to point out that the nature of alot of the compensation problems in conflicting medical opinions. The board is compelled to play Solomon and make a decision, in some cases. That's the one thing I think you ought to look into procedurally. That is one of the recommendations I suggested looking into in the report.

Very quickly, I'll name some of the problems in the report and for which I suggest a need of attention. One thing you might look into, the legislature has not covered them at all to this point. One is AS 23.32.250 in the worker's compensation statute has a provision that makes it a misdemeanor for a claimant to commit a fraud. In view of the wide-spread assertion that there are claimants who are fraudulent, I suggest, that the task force might want to look into the non-enforcement of this provision. I submit that, at times, the claim of compensation fraud is a valid one. Very often it is generalized and aggregated. The complaint comes up all the time as a source of high compensation costs and problems or they're faking it, always with no substance data except for particular individual cases. How wide-spread is it? The law that would penalize it has not, to my knowledge, been enforced at all.

The next recommendation refers to AS 23.30.155 (c). You'll find it on page 50. It is a violation of the compensation

TAPE 4, SIDE 2 cont'd.

Fineberg cont'd.

practices if I tell you not to notify the board when the carrier stops the payment. The carrier does notify the board, as far as I can tell, when the case is actually controverted but I understand that something, like twice the number of controversion are OFF TAPE not controverted. The payment is stopped. The board is not formally notified. I think, it's a provision that ought to be enforced if nonenforcement is a situation to which I would direct your attention.

On page 51, I referred to the applicability of AS 23.30.030 (7) which indicates that the Division of Insurance shall take action if the carrier fails to meet its requirements. At the present the Division of Insurance does not do so. The Insurance Statute 21.36, also has fair trades practices that might be applicable in this regard. The Division has not, to date, enforced that statute with regard to worker's compensation. There's a need for, as you're quite well OFF TAPE can find a clue that is not structured to operate efficiently to accomplish the ends set forth in worker's compensation. Specifically, the interface between the Division of Insurance and the Worker's Compensation Division is very sadly lacking. It's much better than it was eighteen months ago but it's still sadly behind what it ought to be to provide efficient delivery of the services that the compensation law sets out to provide; for example, I'd like to give you one specific one from my research.

The Division of Worker's Compensation found that for 1978, of 3,889 cases surveyed, for which first payment was required by statute, fourteen days of notification to the carrier, only 1,093, something like 26 or 27% were actually paid within the fourteen days. This fact was retrieved by the Division in an in-house report in September of 1979. When I asked the Division of Insurance if this, was a violation

TAPE 4, SIDE 2 cont'd.

Fineberg cont'd.

of the law, was not the Division of Insurance's responsibility with regard to AS 23.30.030 (7) and possibly the fair trade practices under 21.36, the response from the Division (point man) the Division of Insurance, was one of surprise. This was in December of 1979. The first question was whether or not it was a fact. I said it was. It came from a Division of Worker's Compensation Report. He was completely unaware of it and it just caught him completely by surprise. I believe all of you, especially Chancy Croft and Dwayne Carlson, are quite well aware and not at all surprised that only 26 to 27% of the payments were (of the first payment) made within the required fourteen days. I am surprised that the Division of Insurance's (man) responsible for worker's compensation did not know this was the case. That's one of the examples of the lack of interface. Again, there's some progress here, I sense but there's a need for attention and improvement. I think, you're the logical group to look into this. I'd like to suggest with regard to three sets of institutions.

I would like to conclude with a general observation of three of the parties to worker's compensation. First of all, to the lawyers, with respect to my friend, Chancy and Gil Johnson and other fine attorneys within worker's compensation. I would have to caution the task force against making the mistake that because the lawyers speak for the claimant, the claimant is all right. I would like to point out that the claimant has the injury and the lawyer has his job. The more litigation, the more money the lawyer is going to make. I do not mean to impute bad faith to any lawyer, certainly not to Gil or Chancy, but there is an institutional framework there that indicates that you, as a task force, should not conclude that the lawyer's interests are identical to the claimant's.

TAPE 4, SIDE 2 cont'd.

Fineberg cont'd.

The research I have done indicates that the claimants often have a terrible time with the lawyer and they just don't know what to do because the lawyer's the only person who can cut through the law for them. With regard to Dwayne Carlson and the union, I should say that Dwayne was the first person, I'm aware of, to call for computerization of the compensation system. He was way ahead of the State and ahead of the industry in recommending it. I think that the claimants are quite lucky to have Dwayne Carlson as a union representative in Juneau. Again, however, I have to indicate the same caution with regard to presuming that because the unions are there the claimant will be well represented.

It is a fact, I believe, and you may correct me if I am wrong on this, that the Laborers International has one safety person. He is a part-time person nationally. It is hard to look at that fact and presume that the unions definitely cover the problem of worker safety. With regard to the Insurance Industry, I have been told again and again by compensation adjustors, by carriers, that they genuinely represent the worker's interest. I believe, the workers sincerely believe that to be the case. I think, very often they do not. I will not take you through the case studies, which I reported, both in the report for the legislature and in articles I've done to document the case. Again, nobody seems to speak well for the claimant and I think, that's a serious problem because very often the claimant can't speak well for himself or herself. Very often the pain, the drugs, the bureaucratic hassling leads the claimant to overstate the case; so that, no one can tell what the validity is of the claimant's plan. You've got an institutional problem there.

I will conclude my remarks with those observations. If anyone has any questions, from the report or from the comment

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TAPE 4, SIDE 2 cont'd.

Fineberg cont'd.

I've made, I'd be delighted to answer, inso far as I am able. Thank you.

Stimson

Thank you, Richard. We do have some questions. Dave Rasley.

Rasley

Mr. Fineberg, I would like to ask you, if the statute is written for the claimant's attorney at 25 and 10, how prolonging the case could make more money for him?

END TAPE 4, SIDE 2

TAPE 5, SIDE 1

Fineberg

How prolong the case could make OFF TAPE system, that's a nationwide over-view. At this point in time, if you could get the lawyers out, the lawyers would not make any money. I do not assert that, that ought to be done. I am not saying that lawyers are bad for the claimants. Good Lord, I sent some claimants to Chancy and I've just been grateful that he is there, that he's the kind of lawyer he is and that he has the concerns he has. The claimants are quite lucky he is there. However, the claimant would be far better off, if he or she didn't need a lawyer. Chancy wouldn't be. That was my point.

Rasley

Thank you.

Stimson

Yes, Thank you, Richard. Other questions?

TAPE 5, SIDE 1 cont'd.

Stimson

Richard, there's been a question raised about what your background is. Could you share that with us?

Fineberg

Ok. I am a newspaper reporter. I free-lance. At the present, I edit my own monthly newsletter in Fairbanks. I came into workers' compensation as an investigative reporter in late 1978. I was aware of compensation of the increase in the compensation workload through the pipeline. I did alot of reporting free-lance for the Fairbanks Daily News Miner, the All-Alaska Weekly and the Daily News, in Anchorage during the oil pipeline.

In the post-pipeline period, I became aware of several comp. cases. My approach, as a reporter, is to do in-depth investigative research. I spent, oh, many months, I can't recall exactly the time-lack between the time I began on compensation intensively and the time I did my first articles, but I did a set of articles for the Alaskan Advocate in January of 1979.

Then, with some assistance from the Fund for Investigative Journalism, I went to Juneau and did further research for a series for the Anchorage Daily News in April and May of 1979. I also went to California and picked up some legal and court records that were pertinent to the series. I think for much of the period between October of 1978 and February of 1980, I spent, somewhere between a third and half-time on worker's compensation. I believe that would be the background you seek.

Rogers

Are there any other questions from the members of the committee? Thank you Mr. Fineberg. Is there anyone else, either in Juneau or in Fairbanks, wishing to testify at the time?

TAPE 5, SIDE 1 cont'd.

Koch

This is Don Koch in Juneau. No comments at this time.

Rogers

Mr. Carlson?

Carlson

I think in about February or whatever it was, you testified before a subcommittee chaired by Representative Rogers. You testified, at that time, that the Division of Insurance was not fleecing those carriers who just stopped payment. That's what Richard mentioned, I think?

Koch

This is Don Koch. No, there hasn't. We haven't lost sight of it completely. It's just a matter of getting some other systems on line before we'll have a means to check that. But to answer your question, no we haven't.

Carlson

Well, I'm curious. If it is as large a problem as it appears to be? Pardon me, excuse me, gladly ignore that section of the law. OFF TAPE an important feature but currently we should just open the mechanisms to enforce it. I guess it's a matter of their or somebody brush fires it, we're stamping out. We just haven't gotten to that particular one suggesting is if you ran a man down, there has to be a way to get the law enforced.

Koch

If I may add one point. This is Don Koch again. The enforcement of that type of feature does involve OFF TAPE the field and actually do the investigative work necessary. We've just not had the manpower or the funds to do that. Hopefully, that will improve. We've been trying to do a lot of things with what staff we have but that's certainly a piece of it.

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TAPE 5, SIDE 1 cont'd.

Carlson

I have no further comments but I'd like to point out again OFF TAPE these problems. There's a multitude of problems and that's only part of the problem. The burden on the injured will prove, with a big cost to the employer that these OFF TAPE.

Stimson

Mr. Fineberg, are you there?

Fineberg

Yes, I am here.

Stimson

I'm reminded in reviewing your study of OFF TAPE comments that you made OFF TAPE from the legislature and I can't OFF TAPE comment on that?

Fineberg

In Juneau, he can correct me if I am wrong, I OFF TAPE insurance has made request for OFF TAPE to try to bring the legislature around to give it insight with regard to worker's compensation. I may have misinterpreted there and I may be several months out of date but I am not aware of the Division of Insurance making the kind of request for manpower to solve the problem that Don Koch just identified.

Stimson

Thank you. Don, would you respond to the same question?

Koch

Yes sir. This Don Koch. I'm the person incidentally, that Mr. Fineberg was referring to when he indicated that a problem existed. I was very much surprised. I found out this in December; in fact, after Christmas, December 1979. At that point, of course, it was late to change budgets. In

TAPE 5, SIDE / cont'd.

Koch cont'd.

the meantime, we have talked in the Division and we are looking to the possibility, hopeful, impossibility of getting some additional staff. Frankly, we are trying to get a shared attorney for our division, and the Division of Occupational Licensing. If we are to proceed on any of these things, particularly under the Unfair Trade Practices Act, we're going to need a bit more expertise than we presently have in prosecution and in holding effective hearings. We are looking to that and a shared attorney is a beginning. That person would be expected to perform hearing, officer type duties and other sorts of things along that line.

Rogers

Have you requested from the Department of Law that they give you some assistance in that area, in the meantime, while you are waiting for your next budget request?

Koch

No sir, we have not. Let me add one thing further to that, if I may. We have not requested that kind of direct assistance. However, where we have had problems come up, involving a hearing that we are involved indirectly, we have then gone to the Attorney General's Office and asked for assistance on those particular cases. Generally, we've had advice and what-have-you. However, we just feel it would be much better to have somebody there full time, for the two divisions anyway.

Maloney

I know that under AS 23.31.45 (b) that if took fifteen days, and the claimant hires an attorney, the attorney fees will then be paid. It seems to me that the claimant knew that the amount had to be paid OFF TAPE standard fee was for OFF TAPE would be processing a claim OFF TAPE If the insurance company knew OFF TAPE the employer knew that somehow the check OFF TAPE

TAPE 5, SIDE 1 cont'd.

Rasley

Mr. Chairman. Unless you have some type of penalty or unless the department is going to enforce the law, it's going to happen with what's happening right now. They're going to cut those payments off and they're not going to notify anybody. As long as nobody is monitoring the thing, or whatever you know you can notify from now on, they're not going to change their method of operation.

Maloney

My point made was that, I'm sure that most of them, claims are eventually OFF TAPE

Rogers

We're going to take a five minute break for equipment problems?

Stimson

If I could have your attention. I'm not sure if we have our problem corrected but we will proceed. Don go ahead.

Koch

Thank you, sir. This is Don Koch in Juneau. I just got a copy of the worker's compensation law. I didn't bring my copy with me. Back in December, as I indicated earlier, when Mr. Fineberg mentioned the degree of the problem with non-payment or late payment of claims, he told me that only 24% of the claims were paid in a timely fashion. He also pointed out that the enforcement device that was left to us was to be found in AS 23.30.030 Sub. 7 and that, that particular provision calls for the Insurance Commissioner Director to revoke the approval of policy form utilized by the company and to not accept further proofs of insurance from it until it had paid, or had complied with the violated provision of the chapter. That presents a couple of functional problems.

TAPE 5, SIDE 1 cont'd.

Koch cont'd.

It certainly should be looked at. One is, that the filings of policy forms are not made directly by the company but rather by the National Council on Compensation Insurance for a number of companies. Also, that could present some problems. In effect, what it amounts to is the revocation of that particular company's certificate of authority. Perhaps, there ought to be some re-work, in some clearer form of penalty stated, for the insurer, that has made a violation. That would certainly make enforcement a bit more simple. I am not excusing the fact that we have not enforced it, but merely that the device that is there, comes close to being unworkable.

Further, it also refers to not accepting further proofs of insurance. Well, the Division of Insurance doesn't have a role that is anything like that and so there appears that there maybe some old language in there that is just not up to snuff with the apparent law, especially the Compensation Law and the Insurance Law. That's all I had to add to it. Thank you.

O'Keefe

Mr. Chairman

Stimson

Yes, Mr. O'Keefe? Go ahead.

O'Keefe

My name is Tom O'Keefe. I would like to comment just briefly on the issue of on-time payments, in particular first-time payments. The law, in terms of the State of Alaska, is quite similar to some other states regarding the timeliness of the first payment for injured party and regarding termination of payment and the notification justifiably given to the claimant. However, like any

TAPE 5, SIDE 1 cont'd.

O'Keefe cont'd.

other law that is presented, it does have its difficulty. We as individual insurance companies, speaking only for ourselves, are concerned about this..

Being a service oriented organization, and being dependent on our ability to meet the needs of the worker's compensation community, we are obviously concerned about on-time payments. We do some record keeping in this area but admittedly, it is not what this committee is looking for. We do it simply because it's an insurance company and for the interest we have. We know that any delay that we make on a first-time payment, any any annoyance we cause through a claimant, only hurts us because they have no recourse but getting an attorney and this can be more expensive.

So, it is to our best interest and not only to pay on time, it is not to say statistically, because of the inability of the company to get the employer's report from a far off location in Alaska, through a secretary who perhaps just quit, etc. If an insurance company can match up the doctor's first report of injury and the employer's report in such a fashion that we can meet the ten day notice, the issue of notice to the employer, notice to the insurance company and how does the insurance company find out from the employer in a location, Alaska, which perhaps doesn't have a ratio. This can be difficult. I think it's much more. It's a much easier task for this committee to address the issue of stopping payments arbitrarily. This is an issue where, in all due conscience with any insurance company, we should look at that. But before we chastise the industry on statistical basis, let's take into consideration that the insurance company has no vested interest in alienating claimants.

Stimson

Ok, thank you, Tom. We're going to take some time now

TAPE 5, SIDE 1 cont'd.

Stimson cont'd.

for Brian to go over a few items with you.

Rogers

There was a question earlier about the resources of the committee. We do have, through the Legislative Affairs Agency, an attorney available to the committee, Tom Sofo, who will be handling any drafting and legal research for the committee to the extent of time we have available and will be attending all the committee meetings to make sure that we do have a continuity in getting a bill drafted.

In addition, we do have the availability of a House Research Aid for all research requests. Anything of a major size will have to be approved by the Oversight Committee on the House Research Aid. They don't allow it to be three people applying for six months without some kind of a major policy position. After covering the cost of an aide to the committee, secretarial costs and travel, it's time for the committee to come up with something quickly. We have roughly \$35,000 dollars available at the present time for contractual work; that would be, printing statistical work we wanted to have done, any rate making, designating people to do the work, etc. We have those available through the legislature.

In addition, I would expect, from Mr. Block's comments earlier that industry will make the information available we will need. I expect a fair amount of data may be obtained without spending a lot of money, by requesting of the parties.

One of the things that Terry and I did talk over earlier is that we have five members from Anchorage, three from Fairbanks and one from Juneau. In trying to cut travel costs, we did look at the idea of breaking down into sub-committees for some of this work, some of the people in these committee meetings doing background work, and so on. What I think we

TAPE 5, SIDE 1 cont'd.

Rogers cont'd.

should probably do is break into three sub-committees, one composed of three members from Fairbanks; one of three from Anchorage; and one of one person from Juneau and two from Anchorage, in order to minimize the travel costs for any sub-committee work. That would be background work in preparation for both committee meetings. We don't think we really want any decisions made by three people but rather by the committee as a whole. When we do get into recommendations we'll have to spend some time on them.

I think based on what we heard earlier, there were four things that we need to develop prior to the next meeting. One will be a list of all the recommendations you people think ought to be considered by this commission over the course of the quarter. We had a number of recommendations here today. There have been a number of recommendations of the National Commission on Worker's Compensation Laws and recommendations by the Fineberg report, the Block report and I think we want to basically list or group those recommendations, list them out and then decide which ones are worth time and sub-committee time.

The second major thing would be in terms of what data, what statistical information we think we need to ask the Chairman, the people we can get for free and hire someone to develop the rest of the data.

Third, would be the bibliography, Mr. Block gave us a good beginning. I think perhaps the rest will want to look over what else might be available to make sure we all are working on the same amount of statistical information.

The fourth theory would be to try to get from each member of the committee a list of four people who might be available

TAPE 5, SIDE 1 cont'd.

Rogers cont'd.

for developing information for the committee on any issues that might come up in the future. My suggestion would be that we spend at least an hour going over, firstly, what statistical information the members of the commission think is most important to develop and if anyone knows where that information is readily available we'll send for that. If it is not readily available, whoever the Chairman hires to develop that information prior to the next meeting. That secondly we go over the bibliography and it's potential development. Finally, I think we do have time before 4:40 to start going through the major recommendations that we know and between now and the next meeting, the staff will get the information out to the people.

The members of the commission can send their many additional recommendations, requesting for data or suggestions for developing the bibliography and try to, basically, build our information base between now and the next meeting. If you have any comments on that procedure for the rest of the afternoon we can go over any problems with that.

Carlson

I would like to hear from the board themselves, the members from board as to the problems as they foresee them before we go too much further into developing any resource data, we'll probably have to have quite an input to develop the resources information. I don't know how you propose to do this. I really don't know if you have a board in Anchorage and in Fairbanks OFF TAPE

Rogers

Yes, there is

Carlson

I don't know if it would be necessary OFF TAPE Their input

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TAPE 5, SIDE 1 cont'd.

Carlson cont'd.

is the problem OFF TAPE

Rogers

I'm told that the boards are meeting August 18th through the 22nd. Is that still on?

Maloney

I concur with Brian Rogers. I concur with that suggestion let's get the board members OFF TAPE That might be something to lay out for the morning of the next meeting.

Carlson

Well, I wonder if their meeting Representative Rogers, if the sub-committee OFF TAPE What I was going to suggest was that the subcommittee meet down there in September OFF TAPE

Rogers

There is a possibility that there may be some new legislative members OFF TAPE Nex, why don't we start with going over what specific data areas people think we should try to develop as necessary information.

Croft

I would suggest that you try something like this, have someone with legislative research go through the 200 cases all with the 78' number on them; so that, we'll now they were filed a couple of years ago. They could go through and just at random pull out the final report from the carrier end and then have a check list. The person would collect the following information maybe alot more but I was just curious about: how many cases was the only issue payment of medical benefits? How many cases only involved temporary total disability? How many cases involved permanent partial disability. How many cases involved, of this permanent ottal, are dead? How many cases are still open? How many cases have been closed? The date of the increase and the

TAPE 5, SIDE 1 cont'd.

Croft cont'd.

and the date of the first payment and date of last payment. First if a hearing had been requested and secondly if there had actually been a hearing in the case? I think that if we had compensation statistics like that, we would then have some idea of what we're talking about. If we find that only five percent say of the cases ever go to a hearing, I think OFF TAPE 95% of the cases were involved in a hearing, we would have a pretty good system. If most of the cases are medical expenses, and we find that, that what we consider additional portions, maybe the problem is medical. I'd be curious to find out how quickly compensation is paid. If we find that 60% of the people are getting their compensation OFF TAPE are injured, that's actually pretty good statistics. If it's two month, OFF TAPE but I think, we can get the statistics rather quickly, that would be my suggestion.

Rogers

I think that's a good idea. Are there other members of the commission who have other questions they'd like to have on this random sample of the 200 cases?

O'Keefe

Yes. I just want to verify something in my own mind. Clarify a point. Are all cases, whether medical only, reported to the commission? In other words, do they have everything or do they just have thos that did involve some complaints?

Croft

There should be a report on the file.

O'Keefe

They get copies of all medical only?

Croft

There would be a final report indicating they only OFF TAPE

TAPE 5, SIDE 1 cont'd.

Hansen

If there is a first report of injury filed, they've got it down there somewhere, there is no final report filed unless there is complications.

Rogers

One suggestion for the attorney is to note how many cases there appears to be on worker's compensation.

O'Keefe

We'll just kind of clarify that again. So, that if we look at this random sample, the only meaningful statistics we could get would be those that had complications. It would not involve the medical because you have not followed up. Is that right?

Hansen

No, I said that any reports of medical reports, or if the medical has been filed, it'll be there. That is OFF TAPE but all of the time loss complaints, complete file of medical reports, reports filed by the insurance carrier, first injury reports, final injury reports but the majority of the cases that were controverted. I can't tell you what the percentage is. I don't know what the majority is that's been controverted. We'll find all those documents in the time loss cases there. First reports and final reports.

O'Keefe

Thank you.

Carlson

Can I ask you a question? OFF TAPE

Hansen

No, the majority of the claims OFF TAPE

TAPE 5, SIDE 1 cont'd.

Carlson

I was just wondering OFF TAPE It really isn't necessary for the data either OFF TAPE.

Croft

It could. I would like to see it because I think it would be interesting to see out of 200 cases the total amount of expenditures by the OFF TAPE then find out what percentage of that is medical OFF TAPE.

O'Keefe

Mr. Chairman. This information in its aggregate is available through the National Council of Worker's Compensation in the rate making formula in terms of allocations and expenses. Statistically, they can determine how much of this would be, ah, how much loss is attributable to medical, temporary disability, permanent, etc. The formula does calculate this. So, that this information should be available. I would believe that the information that Mr. Koch has in Juneau may already have that in his file from the last filing.

Croft

I've been waiting sixteen years for it if it is. That's fine but I have a suspicion that we're going to get more information out of the random sample than OFF TAPE.

Hansen

I would just like to add that the filing in Juneau is such that the time loss claims are filed in one area and medical only in controverted claims is in another area.

Rogers

Are there any other items of information you people would want from the random sample?

TAPE 5, SIDE 1 cont'd.

Rasley

Yes. Mr. Chairman. Dave Rasley. I would like to know the percentage of cases that come from uninsured employers. I think that, that particular area is an area where it's difficult for the claimant to collect any compensation. This is where, I don't mean self-insured, I mean where the guy is flat out there violating the law and doesn't have any compensation coverage at all.

Rogers

From uninsured employers. Any other items?

Rasley

I have one of them. I would like to mention that Sec. 125 of the Act, sec. C had to do with Rule 45. "If not in accordance with the law, a compensation order maybe suspended or set aside in full or in part through injunction being in the Superior Court brought by a party and interest insubordinate in all other parties as seen before the board". I would like to know how many of those cases, Rule 45 was involved with, you know in relation to how many cases go before the board.

Rogers

Any other suggestions from this?

Chapados

I'm concerned about, who is going to OFF TAPE

Rogers

That would be staff from the direction of the Chairmen, setting the guidelines and working with either House Research Commission or if House Research can't do it, the staff will find out who can.

TAPE 5, SIDE 1 cont'd.

Chapados

OFF TAPE

Rogers

I would agree with that. One thing I'd like to add is that we make the request of the Insurance Carriers, that they provide us with any data they have which answers any of the questions and also of the Division of Worker's Compensation and the Division of Insurance depending on which one would be the one likely to have the information. If we get entirely different answers from asking the same question from three, there's probably something wrong but I think by doing the random sample and asking both the industry and OFF TAPE to answer the question, we'll probably get a pretty good handle. If all three agree, we'll probably get good data. Statistically, then, we can look and find the corrections.

Croft

It would be my idea to take both and if there was any problem with making sure it was a random statistical sampling, I would take the number of cases which involve compensation. We could count those. That would be pretty easy, take 78' or whatever the last number is, then you'll know the number of medical payments, make a portion of the medical only, the total number cases.

Rogers

Thank you. I'd like to hear from Mr. Koch for just a second. Go ahead.

Koch

Ah, yes, this Don Koch in Juneau. We made some studies a little bit ago. In fact in the past year, through the firm of Milliman and Robertson because we were concerned with the data base that goes into the rate-making process. It dealt

TAPE 5, SIDE 1 cont'd.

Koch cont'd.

with the area that Mr. Block referred to this morning, as the cause. We have that and can make that available to your committee, along with a wealth of other data that somebody on the task force may wish to review before we start in discriminately we can pull this information up.

Maloney

Maybe someone could go down there, take a look at that information, see what they have, take a look at what's developed in the cases prior to getting back together again, add something that one or two of us requested. I would also urge that the raw data be brought back to the committee so that, that information OFF TAPE

Rogers

Ok. That takes care of the first group of data from the cases. Are there other areas that the members of the commission feel we should have information? There was a question earlier about rate-making data, premiums. Is there anything else anyone else wants to ask for? Mr. Maloney?

Maloney

I don't know if we want to punch into the probabilities or not. I don't care OFF TAPE supposed to be regulated OFF TAPE should have some idea of what the problems are. Get that information. Also, what the reserves are. How long is this held? If you can't find out what the profit is, find out what the reserves are and how long it's held? I think that the investment income question. I think that might be an area to start developing data.

Rasley

Mr. Chairman. Dave Rasley. I thought that in the area that Dick Fineberg mentioned in his report. (I think it was on

TAPE 5, SIDE 1 cont'd.

Rasley

page 53 or 54), where he lays out the area that might be looked into. The worker's compensation premiums. That's really one of the only places I've ever seen that the contractor really doesn't know where his money is going. Usually, your contractor knows where every penny is going what he's spending it for and why he's spending it but in worker's compensation it doesn't seem like he knows that. He has to pay he goes ahead and pays it but he doesn't really know what he's buying.

END SIDE 1, TAPE 5

TAPE 5, SIDE 2

Fineberg

This is Richard Fineberg from Fairbanks.

Rogers

Go ahead.

Fineberg

I refer to the question of investment income and the overview pages 42 to 48. The reference to the Millman and Robertson Report, that Mr. Koch referred to, is on page 46. I think, before you send someone to Juneau, you should take a look at the bottom paragraph on page 46, at the scope of that report. That was a rather narrow focused report. It doesn't deal with investment income at all. I think, before you send someone to Juneau, at the tax payer's buck, you ought to find out from Mr. Koch if you can guess clear answers to the categories I outlined on page 42 of my report.

Rogers

Thank you. Two of the members of the commission will be in

TAPE 5, SIDE 2 cont'd.

Rogers cont'd.

Juneau and can check on that without any additional expenses. That will be Senator Stimson and Dwayne Carlson. Is there any other data that we want to develop, that you can think of right now, before the next meeting?

Carlson

This is Dwayne Carlson. I didn't necessarily have other data but I'm concerned OFF TAPE committee and subcommittee gathering the data that's been mentioned the profitability and the reserves. I don't feel that the expertise OFF TAPE If that helps add ratio to ratio, where benefits are concerned, the premium dollar OFF TAPE profitability of the insurance industry OFF TAPE benefit the premium dollar. All our other insurance program OFF TAPE I don't know if they have the expertise to handle it OFF TAPE.

Maloney

What I would suggest we do on that is that the committee try to find out what data is available on profitabilities and then by our next meeting, where we know we don't have the expertise or any data, at that point, we'll be contracting out to develop the data. I would ask Mr. O'Keefe to come up with whatever he might want to offer with regards prior to the next meeting. Then after the next meeting, we should decide how far we want to go into the profitability question, to what extend we want resources. In that regard, it may be helpful to talk to the other States and their commissions, to see if they looked at that. In my own opinion, probably it will be very difficult to figure out the profitability figures because, as we all know, the insurance companies help write the tax laws. OFF TAPE as an accramation, in approximate terms, most of us have looked at profit, whether the reserve is current and productive. OFF TAPE very difficult to accurately figure out what the profit is and

TAPE 5, SIDE 2 cont'd.

Maloney cont'd.

and you're probably going to have to OFF TAPE how you want to do it. It would take a very bright person OFF TAPE.

Rogers

Ok. In the question of data needed, what I would request is that by next Friday, a committee member define areas on which he feels data should be developed, prior to the next meeting. Have the members send a letter to the committee staff letting us know. From that, we'll ask the staff and the House Research Division to develop much of that data, if they can. If it becomes necessary we'll hire outside to pick-up what data we can, prior to the next meeting. I'll be seeing alot of that as they come in.

The more we can get before the next meeting, the better off we are. We'll ask the staff that any real concrete results they get between now and the next meeting that a synopsis of it be sent to the committee members to try to keep everybody up to date on exactly what data we haven't been able to obtain.

The second thing I'd like to go into is the bibliography. What resource material do we feel that all committee members should read priot to the next meeting. I'll start building that list with the following: One is the 1971 National Committee Report which all of you were given during the lunch break. Second is the Interagency Task Force Report. I'll ask that a copy of that be made available to the members of the Committee. The third is the four studies of Florida, Minnesota, Oregon and California OFF TAPE the essential items from those reports we'll try to get copies to the members. Everyone has the Fineberg report and the Block report. We need to make these reports available to everyone. Are there other suggestions and background information that would be valuable for all of the committee members prior to

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TAPE 5, SIDE 2 cont'd.

Rogers cont'd.
the next meeting?

O'Keefe

Yes. I have a few copies of the Reinstatement of Worker's Compensation Expense Program. Again, this would address the issue of rate make-up and the expense stand point. There is some explanation there. We will endeavour to get additional copies, so everybody can read this. OFF TAPE.

Rogers

Are there any other questions at this time or items which should be made available?

Hanson

I wish to mention, that it is my understanding that in the State of Delaware they're been some comprehensive changes in their law and OFF TAPE.

Rogers

OFF TAPE

Hanson

They may have done some studies though.

Rogers

In addition, at the law library OFF TAPE seven or eight volumes OFF TAPE

Stimson

Do you have a copy of that? I would suggest that we send a letter down there and try to make that available to Brian.

Maloney

I would also suggest OFF TAPE report be made available.

TAPE 5, SIDE 2 cont'd.

Stimson

Any other suggestions?

Rogers

OFF TAPE area of worker's compensation. I think on that, rather than getting OFF TAPE try to compile a list of what the committee does need in a specific area and try to get it quickly OFF TAPE and have them shop around. The more we end up with OFF TAPE all reports will be coordinated into one recommendations and we won't have to really read the reports to get OFF TAPE and be reading the same thing. It'll be consolidated down into one set of recommendations OFF TAPE

Stimson

If there is no other business, I would like to thank everyone for coming and suggest that we adjourn.

**PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.**

Alaska State Legislature

CO-CHAIRMEN
SENATOR
TERRY STIMSON
REPRESENTATIVE
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Worker's Compensation Study Commission

TO ALL MEMBERS

At the request of Senator Terry Stimson, attached is a verbatim transcript of the presentation given by Mr. Jack Thompson.

This particular presentation was recorded by staff that was in attendance at the October 13, 1980 meeting of the Chamber of Commerce in Anchorage.

CHAMBER OF COMMERCE MEETING

October 13, 1980

INTRODUCTION:

Jack Thompson, Vice President and General Manager of Air Van Lines and member of the Board of Directors of the Worker's Compensation Committee.

He is going to discuss the problems in regards to Worker's Compensation and to put forth a few recommendations in hopes of bringing about solutions.

Jack, first came to Alaska in 1951, resided in Fairbanks and worked for Nerland's until 1954. He entered the household moving business in 1956 and began a career that took him to Japan, Germany, California and then back to Germany.

In 1977, he returned to Alaska. At this time Anchorage is his home. His position in life is Vice President and General Manager of Air Van Lines.

JACK THOMPSON:

I am glad to be here today. I find it kind of timely, in regards to last year, the speaker, Dr. Lesher, the President of the National Chamber, in his comments he mentioned, that one of the big pushes that the Chamber is making, is to get the business community involved in setting up political action committees around the United States, to accomplish things that will help the employer community. That's what we are-a political action committee; so, that's a step up on Lesher's plans.

I'd like to take a couple of minutes to give a little biographical data in how we came into existence. Some two years ago, a group of concerned employers, concerned with the escalating costs of Worker's Compensation joined together and formed a group called the "Alaska Compensation Employer", called "ACE". The reason they were formed was

page 2

Thompson continued

to research the Worker's Comp. problems, to identify them and propose solutions.

From this end, they hired a consultant, a former Director of Insurance for the State of Alaska, Richard Block. Dick went to work and after a sundry of time came out with the Block Report. It's a report like this and it's called "The Application and Elimination of the Causes of the High Cost of Worker's Compensation Insurance to Alaskan Employers".

The report listed 34 recommendations. It's fairly hard reading. He had the report finished and what we were going to do at that time. The next step, we formed a political action committee, "The Worker's Compensation Committee of Alaska" and we were formed.

At the same time our group was formed, there was a House Concurrent Resolution passed in the Legislature, HCR 59, which was to set up a Study Commission, to study the Worker's Compensation problems in the State. We monitored the progress of the Joint Resolution and were able to have some input to the number of members that were finally appointed to this State Commission.

The State Commission is Co-Chaired by Senator Terry Stimson and Representative Brian Rogers from Fairbanks. On the Labor side of the Commission was Dwayne Carlson of the AFLCIO; Chancy Croft, the Labor attorney; Dave Rasley, a business agent with Operating Engineers 302 in Fairbanks. On the management side, Frank Chapados who has business warehouses up in Fairbanks was appointed along with Dennis Maloney, Chief Council for Wien Air Alaska and Mike Swalling of Swalling Construction Company. We were able to get representation in the Resolution appointing a voting member of the Insurance Industry on it and that was Dennis O'Keefe of Industrial Indemnity Insurance Company.

Thompson continued

This Commission was charged by the Legislature to study and report to the Legislature some preliminary findings and recommendations relative to changing the current Workmen's Compensation laws. They were specifically charged to eliminate antiquated and inadequate provisions. They were to provide for legitimate rights of the injured Alaskan workers. They will bring the Worker's Compensation law into harmony with current needs and conditions and number four they were to minimize the cost of Worker's Compensation to the Alaskan employers.

We took that charge as, basically, our charge to accomplish the same. Along with this, we took as our responsibility, to get the business community and the employers involved in a compilation of data to be presented at these hearings, which are held around the State, and solicit a broad based input from the business community.

To date, there has been two hearings, one in Anchorage and there was one in Fairbanks. The hearings have been interesting, to say the least. They have been full of horror stories from both sides of the coin. There has been some interesting ones. One that comes to mind was a story that was actually a part of a report that was commissioned by the Legislature, which was called the "Fineberg Report".

This is supposed to be an unbiased report. This was put on the tables at the hearings and one of the interesting stories in there is about this man that (I don't know if he is still there or not) but he was arrested in California, charged, convicted of rustling. It appears that he had to kill a cow to feed his family, because Worker's Compensation in Alaska didn't treat him right.

During a meeting up in Fairbanks, I had an occasion to meet the hearing officer that heard that case and the hearing

Thompson continued

officer told me, "Tere was no way that there was any legitimacy to that particular claimant and that's why it was turned down". That's the more exaggerated end of what happened.

The bad part of all this is the cost, of course. We feel one of the main problems is the excessive level of benefits paid in the State of Alaska. For instance, taking a salary comparison into account, the level of benefits paid here is 2.7 times that paid in Washington and 4.3 times that paid in California.

We feel that one of the solutions to this high level of excessive benefits is to tie the Alaska benefits to the benefit levels of Washington, Oregon and California, by taking into consideration the proportion difference in the wage levels.

Back in 1975, the so called Croft Bill was passed and I think, when it was passed, there were things put into that statute that nobody really knew what the end result would be cost wise.

One of the worst features of it was that the benefits were based upon average wages in the past 3 years. In other words, in Worker's Compensation, you arrived at his weekly wage. You took the best years salary for the prior 3 years.

With the Pipeline Syndrome, that recreated a real obvious problem as the pipeline wound down and workers went on Worker's Compensation. They were paid based on those higher income earnings on the pipeline and of course the last employer they were working for was the one that got stuck with the bill.

We feel that there should be a change to reflect earnings

page 5

Thompson continued

held at the time of injury, and where appropriate, it should be stretch and reflect to seasonality of the job. As it currently is, a man can make, and in many cases does make, more money tax free than what he makes in his normal job.

Testimony at these hearings, shows that the existing system give little incentive to return to work. If you're making more money not working, what's the real incentive to come back to work?

We feel that the law should be changed; so that, there is an incentive to work and rehabilitation should be more heavily stressed.

This is a very controversial point in the hearings it is a great emotional point. One of the things brought up is what is known as the Alaska Layoff Syndrome. I came up here a long time ago and was a little bit aware, that when you are in a seasonal job and things get slow and it's November and that's a heck of a time to have a bad back, because you can go on Worker's Compensation; so, we feel, that is one of the most important things that has to be corrected.

We also feel there are no incentives for workers' physicians to contain costs. An injured worker can solicit a physician or member of the medical profession in one spectrum or another and get a diagnosis which is beneficial to him. We have no question with the legitimate injuries but the so called doctor shopping leaves this open and it's difficult to find out what is a legitimate injury, especially in the so called soft tissue injury which are related to back problems.

We feel the schedule of usual or customary fees should be established by the State. If the employer or carrier is not satisfied then he has the option to draw a physician or

physicians. END SIDE I, TAPE I

TAPE I, SIDE II

The Worker's Compensation Division and just about every employer I've talked to and the insurance companies, feel is one of the big problems and that is the condition of the Worker's Compensation Division in Juneau.

There seems to be no question that it is under staffed and is under funded to meet its statutory obligations. That's where a lot of problems start-right down there.

We feel that a complete reorganization should be done to streamline that division, to provide a prompt document flow and provide timely professional services to the workers. We also feel it should include some full time professional hearing officers. Some of these cases drag out for months and years, because of the backlog.

The testimony in Fairbanks a couple of weeks ago, I believe, that Mrs. McClintock stated it would be 1982 before the State's system are geared to handle this problem. That means, we are going to have that problem for another year. We feel its absolutely necessary to correct it.

Parallel to these hearings, we have been giving talks to various groups around the State, soliciting them to come to these hearings because the business community, they are aware of their problems. They've got to tell their horror stories, as it is, and give their recommendations and do all we can to get the input before the Legislature. If all the input is from one side, the story is not going to be weighed as heavily if we don't show up.

I'm sure that the Legislature has the best intentions to

page 7

Thompson continued

correct this problem; however, we know what the problems are collectively. We have the solutions. I'd rather bet on us going to those hearings and giving this input, than relying on what happens down in Juneau.

We are in the process of revising, amending and making a more readable Block Report. It is very large and difficult to read. We are trying to prioritize some of the 34 recommendations that are in this report. Some of them are politically not acceptable at this time. We are trying to edit the ones out that have an impact on the career loss and get it down so everybody can read and understand it.

When we finish this report we are going to give it as an informational tool to the Legislators and also to business people that become supporters to our group. Then they'll know what we're doing and what we're pushing for and that they can have the proper input with their Legislators.

I can't stress too heavily how important it is for those of you that have problems and have had problems and have got stories, to come to these hearings. There are two more hearings scheduled, one in Juneau and one for Anchorage. I believe, they are having a hearing on the 16th of October. It's not a full hearing. It has to do with the ways that statistics are prepared for the rating bureaus; but there are some more hearings and there is one here. We would sure like to get people out to it.

People are sitting here wondering, well, what's Worker's Compensation got to do with me? I don't have many employees right now. It's not a problem with me. The Worker's Compensation Bill in this State is at 100 million dollars and that has an impact on everybody. Take the logging industry; for instance, 35% of their labor costs are directly

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Thompson continued

attributed to the Worker's Comp. problem. Build a house, buy lumber, anything to do that comes from a tree, you're paying for that bill. In the trucking industry, our percentage is 10 to 15% of our total labor costs are involved in Worker's Comp. premiums. Even that lunch included that 10%; so it is a problem that everybody has.

Further, we will talk to any group of business people, trade groups or anybody that's interested in hearing what we are proposing. Because, we want to get down to the broad grass roots group of people, to get them interested in this on a statewide basis. It's something that is very emotional. It's got to have some participation, more than just our group. It's got to have everybody in it..

We intend to monitor the State Commission to insure that they follow the charge that they were given and especially where it talks about minimizing the cost to employers. We don't want to have everything solved, except to have the cost keep going out of sight.

Towards the end of this, we also intend to draft a bill, if required, to be able to have entered by the Legislature. We don't always agree on the ways we put things together but we feel, when we get this bill put together, we'll have a broad base in it.

I was reminded by one of the Legislators, who happens to be an attorney, about the proper kind of offership. He said, "Don't come up with something that you're so proud of you don't want to change it. He says, sometimes, we in the Legislature have that problem. I mentioned to him that I thought, that generally, attorneys had that problem because their first year in college they take on dividends and 101.

Thompson continued

He kind of laughed and said, "Well, that's true and he said, but you know who our teachers are". I said, "No" and he said, "Well, they are the doctors".

In conclusion, I would once again strongly urge you to get involved in this. There's a list on the tables of those of us who are on the committee. You can call us at our business place. We'll get together with you and get you involved in this.

We've got plenty of space available left on our committee. There's just the seven of us. We're looking for people who will sit on our board, representing certain parts of the industry; so, please give us a call and let's get together on these problems. Thank you.

QUESTIONS FROM THE AUDIENCE AND ANSWERED BY MR. THOMPSON:

Question: Do you have any dollar value as to what this is costing the Alaskan employers?

Answer: The premium is 200 million dollars. Does that answer your question?

Question: Given that, I'll assume you'll believe there should be some law. How much should the cost be in the state's law and how much of that is unfair?

Answer: I really don't know. That's a very good question for those on our committee, if somebody will look into it. I may not have some answers to a lot of questions. We do have a lot of time to gather it. I'm sorry, I don't have the answers for you.

Questions and answers continued

Question: Can some of these procedures be changed administratively and some of them changed legislatively? If so, which ones can be administratively handled and which ones legislatively?

Answer: The administrative changes, some are in the mill right now. Ms. McClintock did testify that it's gonna take a year to get a grip on it. We have an understanding that the rest of it has to be done legislatively. I understand they may approach that in two methods: one, to accomplish some part of it in one bill and some parts of it in another bill to get the more controversial stuff in one bill and the non- controversial in another bill and get some of the easier things solved right away.

Question: Is there an alternative to Workers' Comp.?

Answer: There are certain perimeters where one can be self-insured. I don't know where all those perimeters are. I'm not in the insurance business but there are a lot of people who are self-insured who are not large employers and I guess there are benefits in terms of loss factor, because the law indicates certain things.

Question: I understand there's a movement in Washington D.C. to federalize Workers' Comp. Is there any momentum in that?

Answer: Oh God! I hadn't heard that but maybe our State's Commission is gonna take a look at where our relationship is with the federal government and put that into their offer too.

I really think the Workers' Comp. in every state is federally locked in; of course, not in all the states but in terms of an overall end. I sure hope it doesn't happen.

Chaired by:
Senator Stimson

October 27, 1980
Insurance Sub-Committee Meeting
with Anchorage/Fairbanks/Juneau

TAPE 1, SIDE 1

STIMSON

Bob, I'd like to ask what topics you would like to address in this sub-committee meeting.

WILLIAMS

Senator, most of this week, I spent working on the Second Injury Fund and I don't know if this falls directly in the line of insurance but I would like to take a couple of minutes on the Second Injury Fund.

As far as the insurance, I'd like to go over briefly the areas. I talked to the Director of Insurance. (He is not here.) I'd like to give, at least, my perspective of what he is waiting for on the issues that we've raised. That's about it.

STIMSON

Thank you, Bob. Brian, does Joan want to entertain any questions or does she just want to listen in?

JOAN GOMIER (BLUE CROSS)

Good afternoon, Terry. No, I came in to try to get some idea as to what was going on this afternoon with no intention of participating. All of my homework on this is still in Seattle. I'm not that far along on it.

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STIMSON

Thank you, Joan. For the people on the line, we have the Administrative Assistant in Anchorage, Licia Piceno, who has been working on Controversions and I'm going to turn this portion of the meeting over to her.

PICENO

Mr. O'Keefe was very kind in letting me come over and talk to some of his claims adjustors, as well as taking a look at some of the controverted claims that he had on his files.

The claims that I did look at were just pulled, at random. The claims that were done by Diane Simonson, down in Juneau, I was unable to use, as some of the information was not sent here to Anchorage, due to Diane being out of State at the present time.

Some of the things that I found out from the claims adjustors that the reasons for controverting a claim would be from lack of medical reports. One of the big problems that they did have was that out in the bush areas, as far as having information released to the insurance companies for a particular claim. There is a policy of the hospitals for the native people, that they have to have a release form signed prior to any information being released. This is, apparently, causing some problems for the insurance companies and it might be an area that you might want to take a look at.

Some of the things that I did find out is that, the information that is needed by the insurance companies would be reports filed by the employers on a timely basis. What has happened is that some of the reports are not being submitted to the insurance companies, by the employers, in what I would say, a

page 3

PICENO continued

proper amount of time. Therefore, it would slow down the process for the employee, as well as, the insurance company, in going through all of the paperwork.

Some of the reasons a case would be controverted, would again, be due to lack of medical reports, lack of the employer filing his notice to the insurance company.

One of the big factors is employer lack of incentive. In other words, if an employee has particular forms to fill out, appointments to keep with his doctors, etc., they're not doing their part. I feel that, if employees want a much faster process, they have to do a little bit of work, with their employer, as well as, the insurance company, to expedite things for them.

Some of the cases I looked at today were very minimal. I found, in one of them, lack of employer information. The employer had no knowledge of a particular injury. There were many questions relating to it. The other would be, again, no medical information. Those were just a few of the cases I had an opportunity to look at.

If you wish to go into a more detailed study, it takes approximately 6 to 10 minutes for a single file that's not into great detail. If it was a controverted case, that had quite a few reports to look at, you could figure on a maximum of 15 minutes per file. That, so far, is about all I've found out.

STIMSON

questions for Licia?

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O'KEEFE

Licia came into the office and, basically, our objective was to see if we could put a guage on a timetable on how we could go back and look at the 250 that we had previously looked at through the Commission, if we could identify exactly which ones they were. Then, go to the carriers and complete our studies and how long that would take. So, using Industrial Indemnity, as an example, she first made an effort to try the 12 that we had but was unable to give us a name of the claimant. Rather than just drop it there, then, we decided we'd, at least, let her, on a random basis, pick some out and see how long it would take to identify the problem area. While she was there, she also talked to claims adjustors to get their input, as to, what generally is the reason that a claim is controverted.

So, with information in mind, if the Commission feels that we want to identify the specific cases looked at before the 250, we'd, at least, have a timetable that we could use to see how long it would take to go back and finish that study.

STIMSON

Tom, we don't know how many of those cases are with Industrial Indemnity do we?

O'KEEFE

twelve

STIMSON

a total of 12, OK. Do we have any indication who the other carriers are?

O'KEEFE

They're identified on the report and my understanding in looking through that, your major carriers would have most of them, like Alpac, Providence Washington and some self-insured. I would think that it would all be something we could accomplish right here in Anchorage. If we could get the names or some identification numbers, we could complete that in a relatively short period of time.

STIMSON

It's our intent then, to explore right now the feasibility of going ahead with the study of the controverted claims. Bob, maybe, you and Brian could share your observations on whether you think that would be a worthwhile endeavor for us to get into. The purpose, of course, being, to see if we can identify patterns in controversions we might be able to address.

WILLIAMS

I think, that's probably a good idea. I think, when Diane started on the claims study, one of the recommendations there was that (These claims aren't really what this Commission or Legislature would like to deal with.) perhaps, a better idea is to start with the problem area. I think, the area of controverted claims is, probably, where most people's interest lie and I think, if we did a claims study that, that would be the logical area to begin.

ROGERS

I, generally, agree with Bob. I do think it might be worthwhile to look a little further into controversion.

STIMSON

I have a question on the release form, Licia, that you made

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STIMSON continued

reference to as being a problem in the rural areas. I just wondered if you could explain that (I know you've just had a very brief look at it.) Tom. Maybe, you even have a better idea of what the problem is?

O'KEEFE

When Licia was over at the office, she was discussing the issue of controverted claims and we were discussing, at that point, the problem, in terms of, the medical information to verify the loss. The claims adjustors indicated that they, particularly, have a problem when they're dealing with communities that use the (I don't know the exact term.) I believe, it's the administrative arm of the government for medical in the bush.

They do not accept a Workers' Compensation claim and send the report into the insurance companies. The insurance company has to turn around and probe and find some way to get the information. So, what happens is the employer turns in a report saying an individual was injured and has time off. The company, then, has to verify that this is an accident or injury that a doctor said, indeed, would have disability. At that point, we don't have a medical release from the injured claimant and time lapses before we can get that approval and, then, turn around and get that information from the hospital. When you're not dealing with that type of environment, generally, all the hospital or doctor would need is an indication that it's a compensation claim. Then, they release the information.

STIMSON

I assume, then, what we are talking about is the Public

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STIMSON continued

Health Service. That's interesting. That's a problem I hadn't even considered. So, then, what do you ultimately do? Do you oftentimes go without ever receiving anything from them?

O'KEEFE

No. Generally, we have to go through the extra steps of getting an injured party release which we then present to the hospital and they, in turn, release the medical information. Then, we can pay it. When you're doing this by mail, we have to get hold of the injured party in the bush. Then, they send the information to us. We, in turn, send it to the hospital and they send it back. A time passes and they're payments just can't be on time.

I'm, also, of the opinion that this has been discussed with the Workers' Compensation Board and I believe, they have made some efforts. The problem is they just released it on the one and there's no uniform policy for releasing this information. Maybe, that's what we should look at.

STIMSON

Any other questions or comments?

WILLIAMS

I have a question. Licia looked into the claimants at Industrial Indemnity. Is it my understanding, for my own benefit, that the information she was looking for was not on record at the Division of Workers' Compensation?

PICENO

Bob, there were a couple of them already, where paperwork had been turn back in from the Division of Workers' Compensation.

page 8

PICENO continued

Compensation in Juneau. What I was looking at was not what Diane had done. I just went in and requested to pull a few of the controverted cases that they had. It was just a random pulling.

WILLIAMS

OK. I guess, what I'm asking for is that the information that's in the Insurance Company's file would not be in the files at the Division of Workers' Compensation?

MALONEY

Bob, this is Dennis. I think, that what Licia was looking for and the reason they were going to go into this is because after Diane did her work, there were some questions we had about the date that the claim was filed, versus when the first payment was made. I don't believe that was documented in the State files and which would be in the Insurance Company files. I think that, that's what they were looking for. The reason she wasn't able to get it is the study that we had, that Diane did, didn't identify the cases in significant detail to allow her to do that. I think, one of the questions we had was the timeliness of the payments. That was one of the things, I think, she was going to address.

WILLIAMS

Thank you, Mr. Maloney.

STIMSON

It's my understanding that we need to get the list of claims or cases from her that she worked with, in order for Licia to go ahead with her controversion study. Is that correct? Maybe, Bob, you could try to track her down and try to find out where that list is so Licia could get started on that.

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WILLIAMS

OK.

PICENO

Bob, this is Licia. The list that I'm looking for is the alphabetical listing. It is not the one listing the case numbers.

WILLIAMS

Is this her own list or is this the list that the Division of Workers' Compensation has?

PICENO

This would be her own list.

WILLIAMS

OK. I'll get hold of her and try to find it.

PICENO

Thank you.

STIMSON

OK. Anything else for Licia on controversions at this time? If not, Bob, we'll go ahead and turn this portion of the meeting over to you.

WILLIAMS

Thank you, Mr. Chairman. I don't have a whole lot to say but I would like to go over with this sub-committee the problem with the Second Injury Fund. I'm not sure that it's really the sub-committee to handle it but I don't think it'll hurt. I, also think, that, at least, the insurance companies seriously are concerned about it.

WILLIAMS continued

It's my understanding that the Second Injury Fund right now is on the verge of being bankrupt. The Fund serves two purposes. The first purpose is to provide funds to the Department of Education through the Vocational Retraining Program. The second purpose is to pay insurance carriers for an excess of their liability under Sec. 205 of the Comp Act, which, basically states, that if they hire someone with pre-existing impairment that they only have to pay 104 weeks compensation.

I talked with Jackie McClintock about that and they're very concerned that they will not have the money, come January, to pay any fee out of the Fund. As I understand it, (I don't have any writing on this.) the outstanding amount owed is almost a million dollars. They, right now, and this is in lump sum payments; this is in back payments; along with, what they're going to accrue in just through the normal operation of that Division. What they're doing is they're trying to take in receipts and pay them out and do so in monthly installments. The Division thought they may not even be able to continue that.

What I've done, is I've called the Department of Revenue and I've asked them if it would be possible to arrange a loan. It seems to me that, and we're not sure about this, the Department of Labor might be subject to some liability if they can't make these payments. So, I talked to the people at the Department of Revenue. Unfortunately, the Department of Revenue can't make loans to other departments, unless, it is explicitly provided for in that Act and it's not explicitly provided for in the Second Injury Fund Act.

So, where we are is, I think, the Commission may wish to deal

WILLIAMS continued

with the Bill that the Division of Workers' Compensation has submitted. It's very similar to HB 1011 and, perhaps, make an action on it. We, also, may wish to see if we can figure out some method of protecting the solvency of the Fund, at least, until January. Are there any questions?

STIMSON

Yes, Bob. You referred to an outstanding debt of about a million dollars. Is that what the Division of Workers' Compensation owes the insurance carriers?

WILLIAMS

Yes. That's what I understand. They don't have any problem with sending the money for retraining over to the Department of Education. (That's another point that we may want to talk about.) As I understand in talking to Michael Morgan, who's the Director over there, they send over 90,000 dollars for vocational retraining to the Department of Education. The way I understand it, they use that 90,000 to leverage federal funds. As it turns out, that's not the case because they've already reached the limit allowed under federal matching funds and 90,000 dollars is a recap of the problem. They aren't having problems sending over the 90,000 dollars on the Second Injury Fund. Where the problem comes in, is the repayment to the carriers and to the employers who are under Sec. 2 of Comp Liability.

O'KEEFE

I can add to that. In many cases, when our company's waiting for the Second Injury Fund reimbursement, it either is slow or they only make a partial payment. Once again, they don't have the money.

STIMSON

Bob, have you had a chance to get a copy of the Bill that the Workers' Compensation Division has put together?

WILLIAMS

Yes. Mr. Chairman. I sent a copy of that--telex to Licia. I think it was on Friday or Thursday. I was under the impression that you would all have a copy of that.

STIMSON

I understand that we do and we're getting it right now. I wonder if you've had a chance to review it and what you think about the provisions in it, dealing with the Second Injury Fund?

WILLIAMS

I can go over it real briefly. First of all, under the current system, the funds for the Fund are collected by an assessment and that assessment is 8% of the maximum paid to permanent partial disability. What this new Bill does is it lowers the assessment to 6% but it's 6% for temporary total, temporary partial, permanent partial, permanent total and, I believe, the amount paid for rehabilitation.

Now, there are a couple questions that I have and that the Commission may want to consider. The old Bill had a limit on that fund. The receipts from that fund couldn't exceed 400,000 dollars. Now, this new draft doesn't have that limit. The only question that pops into my mind is I'm not sure what the estimates are on 6% of all compensation but I suspect that we wouldn't want a big fund going over there. I mean, if we find, in a year or so, they can pay off the million dollars and they can pay their liabilities that incurred, it maybe wise to put in some flexibility, with a provision on there

WILLIAMS continued

own motion, to lower the assessment or eliminate the assessment.

There's other provisions in this Bill that I'm sure the Commission would want to be aware of before they consider taking any action on it. At least, the portion on the Second Injury Fund. Under Section E, this places a limit on the amount that can be paid to one person for retraining rehabilitation and necessary transportation. Under current law, those are 5,000 dollars per person. This piece of legislation raises that maximum to 10,000 dollars.

There is also a provision in Subsection E of AS 23.30.040, where the major benefits are raised from 100 dollars to 200 dollars. These, certainly, aren't just technical changes and the Commission should be aware, that, at least, they're in this piece of legislation before they make an action on it.

That's pretty much all I have to say, at least, on the Second Injury Fund. There are some other provisions in this draft and probably, the Division of Workers' Compensation, at some point, will want to testify. Well, what I want to say is (This is off the subject.) that, I think, that softens the Second Injury Fund.

We listened to the Department of Revenue not having the abilities to make a loan and, again, I'm not sure, they probably, can skate by until January but they're not sure they can. We may want to take a look and see if the Council or Legislative Budget and Audit can make a loan or somebody like that. We talked to Billy Berrier about it and I'm not sure if it's that much of an emergency.

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ROGERS

This is Brian in Fairbanks. I'd like to ask, Bob, what the differences are. I've got a copy of HB 1011 in front of me, the version that was passed out at Labor and Management. I'd like to ask what the differences are between that and the Division's proposal that they made? As I recall, it's almost exactly the same, except, we added authority for the Commissioner of Revenue to loan surplus money to the Second Injury Fund. That is appropriated by the Legislature. Are there any other differences between the Labor and Management version and the Division's version?

WILLIAMS

No. I believe, they're pretty much the same.

ROGERS

The main difference between that and current law are, the addition of what 6% applies to, the doubling of rehab expenses and the ability to loan. Were those the only changes that were made in the overall expenses?

WILLIAMS

Yes. That's, basically, it.

ROGERS

Thank you.

STIMSON

Did you have a question, Dennis?

MALONEY

There was, also, in addition to the amount expended, an increase in the benefit paid during the rehab time period?

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WILLIAMS

Yes, Mr. Maloney. That's when we referred to the total of 10,000 dollars per person for retraining rehabilitation. That's the current draft that I have from the Division. It's 10,000 dollars per loss, 5,000 dollars in the maintenance benefits and a draft for 200 dollars. The current law is 100 dollars.

ROGERS

Going back to Subsection E, of the proposal, which benefits now are subject to 6% fee?

WILLIAMS

The current assessment is 8% of just that amount for permanent partial disability.

WILLIAMS

Thank you.

STIMSON

anything else on that particular issue? Dennis?

MALONEY

I think, Brian, wants to say something.

STIMSON

Brian, you want to go ahead?

ROGERS

No, Mr. Chairman. Go ahead, Dennis.

MALONEY

I would hope that while we were addressing the question of

MALONEY continued

the solvency of the Fund that we also get into the deeper questions. I think, that if we do address the bigger questions, like: Is there a better way to do it or are we doing it the right way? Does the individual have an incentive to return to work? I think, that if we can address those things, before we start beefing up the funds and the problem goes away, it's going to be some kind of a motivating factor for us to address the real problems that underlie the rehabilitation question.

I, for one, would like to see us address the whole area as comprehensively as possible, rather than, slipping in a supplemental appropriation or putting some additional funds in to make the Fund healthy and not addressing the more basic questions. I would not be opposed to some limited period of time, which would have a definite duration. That, either the State could loan money to the Fund, or some special assessment could be made to make the Fund healthy again. I think, there should be a time limit, beyond which, if we don't address the whole area, we have to come back and attack this problem again.

WILLIAMS

Dennis, this is Brian in Fairbanks. I'm not sure I understand that. It seems to me that the Second Injury Fund is an incentive to employers to hire someone who's had a second injury.

TAPE 1, SIDE 2

MALONEY

Well, Brian, in one sense you're correct. In terms of the

MALONEY continued

individual employee standing before you, you're going to be more likely to hire him or her; however, if it's merely another 2% added on to your insurance bill, you're paying that cost, anyway. I think, there are some basic questions that I'd like to see addressed. I'd like to take a look at the length of time that it's paid.

I for one, as an employer, although my liability is limited, looking at someone who's just suffered a back injury or who's just had a laminectomy and who has come to work for us in the cargo department, the Human Rights Commission has said, if you don't hire this person, you're going to discriminate against him. Even though the penalty is limited to 104 weeks, that's a substantial amount of money.

I think that there's some other related areas that we should take a look at, including the overall question of rehabilitation. I'd like to see us address the whole problem and get it all resolved into one piece of legislation, hopefully.

WILLIAMS

Mr. Chairman. This is Bob Williams in Juneau.

STIMSON

Go ahead, Bob.

WILLIAMS

First of all, the Department of Labor presented a version of this Second Injury Fund Bill. It was first introduced as HB 705. Then, in the session, the Division decided to take it out of HB 705 and introduced it separately as HB 1011 because it was important in getting it passed. I'd like to read a

WILLIAMS continued

quote from the Postion Paper that stayed attached to this Bill. That paper is dated April 24, 1980--"that the actuaries of the National Council on Compensation Insurance have indicated to the Alaska Division of Insurance that this legislation would cause impact on Workers' Compensation insurance premium rates". I think that, that may help the deliberation along, at least, in determining how we want to consider it.

Second of all, I'd just like to briefly say that my work with the Second Injury Fund hasn't just been concentrated on its solvency. I have looked into a couple of things. Maybe, this is as good a time as any to talk about them.

First, I was looking into transferring that vocational retraining section over to the Division of Workers' Compensation. Second, I think, and this was brought out in the September meeting in Fairbanks, I believe, by Virginia Collins and that is on shortening the liability of 104 weeks in Sec. 205. Maybe, if we look at the Second Injury Fund, along with, the transfer of it over to the Division of Workers' Compensation, and perhaps, some of the other divisions, that we're getting to where, what Mr. Maloney means, by taking a more comprehensive look.

MALONEY

Yes, Bob. I think, those are the kinds of things I was talking about, in terms of, addressing them--the whole problem.

STIMSON

Bob, if your discussions with the Division of Vocational Rehabilitation, what did you find out about that 90,000 dollars,

STIMSON continued

in regards to, how it was used for receiving federal funds? According to your statement earlier, they do not use it for the receipt of federal funds and, as I recall, that's contrary to what we've heard in our meeting in Fairbanks.

WILLIAMS

Mr. Chairman. I talked to Michael Morgan, Director of the Division of Vocational Rehabilitation. Now, the way I understand it, the permanent funding for this retraining program, the 90,000 dollars shows up as an interagency receipt collected pursuant to the Second Injury Fund. The Division of Workers' Compensation then transfers it over to the Division of Vocational Rehabilitation in its interagency transfer. Then, it's just thrown in with the rest of the general fund money that the Division of Vocational Rehabilitation uses.

Now, they take their general fund money and they leverage federal funds, in terms of, a match but what I understand from Mr. Morgan is that the cap, and this is contrary to what I previously thought, I thought that we'd be losing some federal funds but the federal funds for that Division is three million dollars. Evidently, the state matching funds are now, at least, 90,000 dollars above where we need to leverage that maximum.

According to Mr. Morgan, in fact, this sort of surprised me at first and it surprised Jackie. They have not used that 90,000 dollars to leverage any federal monies for the last seven years. So, what I have in mind here is that, at least in terms of funding, that question could be put aside in determining whether to transfer that over to the Division of Workers' Compensation. We can examine that issue more on

policy

WILLIAMS continued

policy and whether we can, indeed, create a better retraining program over that division that currently exists in the Division of Vocational Rehabilitation.

O'KEEFE

My recollection was that when Mr. Young spoke in Fairbanks, he was talking about how what a good deal we were getting, in as much as, we were putting 90,000 dollars in and then, on leverage basis, we were getting 172,000 dollars back. It appears that, because of the maximum on federal funding that, that would be irrelevant. This gives more credence to the idea of Jackie's concerns about a separate department being more interested in rehabilitation, from a compensation standpoint, then, the goals and objectives that might be set with the present rehabilitation program in the state.

WILLIAMS

Mr. Chairman. This is Bob Williams again. I'm not an expert in this. I can't just say that. In reading the recommendations of the National Commission, that is one of the recommendations that they do make. They say the retraining program is a problem and it should be included in the Division of Workers' Compensation because of special types of clients and oftentimes the other vocational retraining programs aren't designed that way. Just for your information, that is a recommendation included in the National Commission's 1972 study.

STIMSON

Bob, this is Terry. I think, at least, if I'm able to sense what the committee is interested in, most committee members are very interested in pursuing the feasibility of separating the Division, or the portion of it that deals with Workers' Compensation and put that back into the Division of Workers'

STIMSON continued

Compensation. I assume, if the money is not a major factor, as we previously thought, then what kind of reaction did you get from Mike Morgan, in terms of, just the whole concept of removing vocational rehabilitation from having any responsibility to Workers' Compensation injured employees?

WILLIAMS

Well, his reaction was sort of vague. On the one hand he said that the comp claims that his division handles are sometimes the most difficult and cause some trouble. On that respect, I suppose, he wouldn't violently object. He did say, however, that the division that we mentioned in relation to the Second Injury Fund, currently, under current law, limits the amount that can be paid for vocational retraining.

The 5,000 dollars we just discussed raises that to 10,000 dollars. The current practice right now with the Division of Vocational Retraining is, that if the amount exceeds 5,000 dollars, they kick in, either their general or federal fund money, for that particular claimant. But, again, I think, that if we take the issue, maybe, that would be to the core of the issue of vocational rehabilitation. Certainly, we would look at the Second Injury Fund and consider that.

MALONEY

Bob, one of the things I'd like to see us look at and, again, I'm not an expert in this area, but if we do make the transfer, it might be appropriate to take a look at the feasibility of using private rehabilitators; such as, Virginia Collins. I'm not saying, Virginia Collins, but that there could be, perhaps, some state people doing that at an allowance of a fee per case or percentage of some amount received that could be paid to a private rehabilitator. We could have the private sector

MALONEY continued

participating and competing. That way, we can keep the system as effective as possible.

I'd, also, like to see, might like to see, either the employee or the employer have some input, as to whether, you know, which group they go with. They can either go to the state rehabilitation person, or maybe, there's an x amount of dollars that you figure is spent in that effort, or the same, or an equivalent amount of money, go to a private person engaged in that business.

STIMSON

For the Committee's verification, I might explain that what I've asked, Bob, to do is to explore the ways in which we could remove the Workers' Compensation responsibility from the Division of Vocational Rehabilitation and put it back into the Division of Workers' Compensation. Then, I've asked, Licia, to pursue a proposal regarding the Vocational Rehabilitation Program, as it might be restructured in Workers' Compensation. So, that's essentially, the lines of responsibility, as I understand them at this point. Bob, do you have something else that you want to raise that we haven't discussed so far?

WILLIAMS

Not really. I kept notes last week on this Second Injury Fund and vocational retraining. I haven't got a whole lot that's new to say on insurance, except perhaps, to questions.

We tackled that insurance quite a bit. I guess, I'm really not sure which way we're going to go here. We've got a way to go yet in just establishing a State Fund. We've got deregulation

WILLIAMS continued

and, at least, a thought in deregulation and opening it up to competition. On the other hand, we've got regulating for investment income. I guess, what I'm asking is, I'd like the Commission or this sub-committee to give an idea of which of those three major areas they're leaning toward; so, I can just concentrate my effort in that particular area.

MALONEY

The problem I'm concerned about, in terms of the economics, after listening to the National Council people and listening to the presentation made by the Commissioner from Oregon, I would, for my own personal preference, head in the direction of allowing some competition, perhaps, using the Oregon model as a guideline, in terms of, not being able to go below the absolute level but some competition as to the expense provisions. I think that's logical.

One other thing has to go hand in hand with that and I've said it before. I hope I'm not meeting a dead horse but, I think, that the payments for a defaulted company, or by a defaulted company, should not lie in the back so the people who are running their business, especially, if you get into more of a competitive model. In other words, company x fails. Company Y shouldn't be forced to pick up the pieces. The State should have to pick up the pieces. It has authorized company x to do business and has allowed it to charge rates which are below the standards set by the National Council, including its estimates for overhead.

STIMSON

anyone else?

WILLIAMS

I guess the reason that I'm saying this is because we've been asked to look into it and this is briefly. As far as the State Fund and a lot of these decisions, they can be made, I think, without a big study. People know what a State Fund is. The Legislative Affairs Agency did a study on the State Fund in 1977. They do operate some. They say they can operate with less than the expense costs us. On the other hand, I agree that they're less sufficient and that kind of wipes out that advantage.

On the second area, we had a lot of discussion on deregulation, or at least, regulating the pure premium and requiring the companies to compete on that expense portion of their premium.

The last area, which I think, perhaps, the Legislature hasn't really quite dealt with and that we haven't dealt with, is the regulation of Investment Income. Again, this is a fairly radical departure from the way that we regulate rates now. The only State, that I know of, that does this is Massachusetts and, I think, we had testimony from our own Director of Insurance that Massachusetts is having some problems--something like, 50% of the insurance is in the assigned risk pool. I think, it is indicative that the companies just won't write us a set that regulate a different rate.

I can say, I guess, I talked to, Ken Moore, this afternoon and, while the Division of Insurance is not going to come out front on any of this stuff, if there is a recommendation in one of these three major areas, that's got to come from this Commission. Of the three approaches, let me go over these again--the State Fund, open competitive income, the most repaire from the Divison of Insurance will come from the

WILLIAMS continued
question of deregulation.

As far as the other areas, we have self-insurance, use of deductibles, pooling without safety services and I might throw out one more idea at this point. This was brought to my attention by Ken Moore. That is, there's an 8% surcharge in the assigned risk pool. It's an automatic surcharge and Ken thinks that, that ought to be negotiated. It doesn't, necessarily, have to be 8% and he leans towards deregulation--to compete from their 68% permissible loss ratio all the way up to 108% of the assigned risk pool.

Anyway, I guess, while I'm on the line here, the four latter subjects--self-insurance, deductibles, pooling without safety services, well, at least, those three, I don't see a reason why we couldn't draft a bill that included all of those. That way, we get into the three above, which is the State Fund, deregulation and regulation of Investment Income. I think, those are three totally separate approaches to a problem and, I think, it would be obviously impossible to draft a bill that deregulates on the one hand and regulates Investment Income on the other. If you're talking about actually setting up a program by a draft bill, which, I think, ought to be the next step, then, someone's got to make a decision.

ROGERS

I've got a couple of questions. Firstly, Bob, is there any State where the State Fund is working and solvent?

WILLIAMS

I don't know for sure. I'm sure there are. I understand that there are a number of them that are working fairly well. I

WILLIAMS continued

believe, there's a couple of them; such as, Pennsylvania, that aren't working very well. I guess, I'll have to say that I don't know.

ROGERS

I'd like to request that you do go ahead and get that, the open competitive rating law so we can take a look at just what would be in that. Then, I have a couple of questions on the assigned risk pool.

As I understand it, the way that works, now, is if someone can't get into a regular carrier, they go into the assigned risk pool-----that goes out to anyone of us and the carrier charges an 8% surcharge. The loss ratio doesn't seem to justify that 8% surcharge. Can you or can, Tom, answer that for me?

O'KEEFE

Yes, you are correct, in terms of, the 8%. I just gave, Senator Stimson, a copy of the surcharge plan that is in effect in other states. Essentially, it appears to me that, other than those who are involved in the underground mining--coal exposure, the surcharge doesn't seem to be prevalent. I would think the only concern I'd have in Alaska is the aircraft situation, which is quite hazardous and, perhaps, a surcharge might be appropriate there. In terms of, putting a surcharge on an account simply because it's a small account, that obviously, ought to be addressed regarding its equity.

In answering your question on loss ratio, the National Council did supply information which would indicate that on a three year basis, the loss ration was, I believe, 74%. There was one good year and two poor. Again, that does include, with the surcharge, if you dropped the surcharges off, the loss

ratio

O'KEEFE continued

ratio, obviously, would go up.

ROGERS

OK. I wonder if there are other ways the states handle an assigned risk. For example, could the State put it out to bid? Which company will handle all the risks that all the other companies refuse to, and whichever company did below surcharge or are there other ways of handling assigned risk situations?

MALONEY

The study that, Tom, has doesn't show that. It does indicate there are thirteen states, which charge about 8% surcharge. It seems to have been a uniformly developed percentage. I would just point out, for whatever reason, an insurance broker or company is not willing to take a risk on, it, maybe, because it's uneconomical. Certainly, if it was economical, you would think that they would go after the buck, particularly, in light of the, what did we figure, 6 million dollars in premiums or 7 million a year that is what is currently being collected. It seems like a substantial amount of business that's out there.

Perhaps, Terry, someone would like to bid on it. Brian, I think, your suggestion might be a good one. There might be someone who could start a company this way.

WILLIAMS

I'd like to make a comment. I don't know. It doesn't sound like a bad idea. They just might draw a parallel between what you're talking about and the issue that we've been talking about for the last month, and that's deregulation. You allow your autolines. You get subservice companies and while they don't go out and, necessarily, bid, what they do is file an

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WILLIAMS continued

upper deviation and that prices them out of the normal insurance bracket. I mean that's their hook of business, these high risks.

I don't know whether or not that really gets to it. I think, and Tom O'Keefe can, probably, straighten this out. The Workers' Compensation plan in Alaska, I believe, (Isn't this right, Tom?) it's negotiated. Don't all carriers participate but don't they just sit down or didn't they three or four years ago, sit down and negotiate a surcharge?

O'KEEFE

I don't have, firsthand, the information as to how it was formed. I do believe, at that time, Director Block called the carriers together and did formulate a plan.

I would like, on my own, perhaps, to do some polling of the insurance industry and see if they would like to come up with some better, alternative recommendations on that pool business. In other words----- (interrupted)

ROGERS

Tom, I can't hear you.

O'KEEFE

Can you hear me?

ROGERS

Yes, I can.

O'KEEFE

This is Tom O'Keefe, again. What I was going to suggest is that, perhaps, as step one, and, obviously, the Commission

O'KEEFE continued

could do what they wanted, in terms of, the overall plan. As step one, perhaps, I should get back to the carriers in the State--come up with some consensus of opinion as to readdressing the current plan regarding the 8% surcharge, as it applies to the small account and second, in terms of, which follows closely, would be the area of how much income the carriers would get for servicing the accounts that they presently have in the pool. I would be willing to get some opinions from the carriers in that area, if that would be of any significance.

ROGERS

I think, that's a great idea.

O'KEEFE

In other words, what I'm thinking of is seeing if they can solve the problem before this Commission solves it for them.

I might also add one more thing that, Dennis, brought to my attention. In looking at these things, we were talking about a State Fund deregulation, including Investment Income in calculations of rates. There's, also, one more that, Mr. Williams, forgot and that is no change.

I will go ahead and see what I can do about this because I have to add some concerns on that, in terms of, some of these other pools that I have here. There seems to be a question as to whether we ought to readdress that. It's been a while now and, perhaps, it just needs some readdressing, at this time, in many areas. I'll go ahead and do that, report back as soon as I get the information.

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STIMSON

OK. Bob, you were asking for direction. Do you feel like you've got it now?

WILLIAMS

Yes, Mr. Chairman.

STIMSON

OK. Are there any other areas we want to cover at this subcommittee meeting?

ROGERS

This is, Brian. I would like to see what the three other issues that, Bob, mentioned--pooling without safety services, self-insurance and deductibles--I'd like to see that on paper and how it might look in a draft bill. I wonder if he could look at that, draft that up or something and give a little explanation of the issues.

MALONEY

I'd like to make sure we even know what the issues are, especially, as a self-insurer, I'm, particularly, interested in the self-insurance area. I do believe there are some holes in the law. Once you have qualified, you appear to have qualified forever and there doesn't appear to be any review mechanism, other than, filing an annual update--saying we wish to continue and here's what our losses were.

With respect to maintaining, as in our case, we maintain a very large deductible policy, which is on an annual aggregate basis. I think, there needs to be some guidelines in that area. I'd like to talk to, Bob, or see what he's drafting before we put something in, which may affect those people whom I represent.

WILLIAMS

Mr. Chairman, on the self-insurance thing, the only thing that I have in mind was it's my understanding that, right now, the Division of Workers' Compensation certifies health insurers and it's, fairly, an informal process. They just, basically, send them a notice.

I think, what we were discussing, with turning that portion over to the insurance, because they're more along the lines with what they would seemingly do, which is, regulating the solvency of the carriers versus the Division of Workers' Compensation, which is really handling claims procedures. I guess, more specifically, what I would envision is seeing a function that exclusively requires a division to certify self-insurers' rate of insurance.

MALONEY

I have some questions about that, Bob. If it's left open-ended, I assume that they would draft regulations dealing with that question but I had a very difficult time, for instance, self-insuring in the State of California. There arguments had meant to me that you're too small an account in California. I argued and pointed out to them that I'm already self-insured in Washington and in Alaska and already have the excess insurance policy. They had some very stiff guidelines. I'm just concerned that, that could happen in Alaska.

TAPE 2, SIDE 1

MALONEY continued

If you look at your reserves, merely, because our current ratios weren't high enough, which is, as you know, the current

MALONEY continued

debt to current asset level.

The California people, also, pointed out, when I mentioned we were a subsidiary of Household Finance Corporation, which is a multibillion dollar corporation, that Household Finance wouldn't qualify under California rules either. I'm sure that Household Finance is double A bond rating in New York, which was adversely affected by this ruling. However, I would hate to see the Alaska Workers' Compensation Self-Insurance Program end up following the guidelines that were used in California. That's all I've got to say.

WILLIAMS

I think, I'm sure, Ken Moore, has a few things to say on it and I talked to him, briefly. Basically, he doesn't want the responsibility but I don't personally have a good feeling for what the criteria for self-insurance would be if I requested those legislative legal council people to draft a bill. I would leave it pretty much open to the Division to establish those criteria by regulations. Then, I think, what would happen would be a notification of the people who were interested. They'd have to come in and testify on it.

MALONEY

I'd like to see some of their criteria laid out just in a general philosophical point of view--that we point out that the self-insurer in Alaska would not have to have the same qualifications that an insurance company does. Obviously, very few of your employers in Alaska can meet those stringent guidelines. Perhaps, just a few of the criteria could be laid out in the legislation. You could talk to the insurance people to see what they might line out; so that, I know what

MALONEY continued

I'm buying when it's transferred.

WILLIAMS

Mr. Chairman. Why don't I sit down with the Director and see what we can come up with? Then, we'll talk about it when we get a draft?

STIMSON

OK. I think that sounds real find, Bob. What about the other two areas, now?

WILLIAMS

Well, the deductibles is one that we discussed and since we discussed it at the sub-committee meeting, with----, he was asked if we met with the people from the Insurance Trade Association. I believe, we talked about deductibles with the National Council and we were kind of confused, actually.

The National Council didn't seem to think, one way or the other, about--Ken Moore, gave me some idea, at least, mechanically, how they would work. I suppose, as far as this Commission, you could mandate that the companies offer deductibles or you could just allow them to offer deductibles. Maybe, the best way would be that they would have to file, basically, made to file, the percentage premium reduction for whatever amount that the employer was going to be willing to take on himself.

Finally, that deductible would have to be, whether the deductible would be offered, it would have to be decided between the employer and the carrier. The carrier would be the one on the hook. It would have to be drafted in such a way that the carrier would have a lot of subrogation against the employer

WILLIAMS continued

should he not be able to make those payments.

I guess, if we were to go ahead and draft a piece of legislation, what I would do, I'd make an option, allow the carriers the option and then require them to make a filing with the Division of Insurance and then leave the first burden of payment on the carrier. Include in there, a provision of subrogation.

MALONEY

Again, I'm somewhat concerned with that approach from just a business standpoint. Depending on how high the deductibles get, especially, since we're talking about a situation where we've got an assigned risk pool, where people are forced to take certain risks. Say, for example, we had Mr. Fly-By-Night Trucking Company that starts out and because of the reduction in his rates, he chooses the highest deductible possible--comes in for a season and either goes bankrupt or disappears with the funds, leaving the company, which has been forced to take his business with this worthless right of subrogation against the Fly-By-Night Company.

I would think that in your competitive model, you seem to be pushing and which I would support, at least, in part, you would have that as part of your competitive skeem.

WILLIAMS

Mr. Chairman. This is Bob Williams, again. Maybe, I didn't make myself clear. I think, the problem that Mr. Maloney points out is a valid one. I don't think that we should force the insurance companies to offer deductibles to companies that they don't feel can financially carry that risk. Somewhere

WILLIAMS continued

in there there's got to be the choice. I can't see how we can work it, other than, the choice of whom the company offers the deductible to. It would have to be left up to that company, particularly, if they have the notice of first payment.

STIMSON

Bob, at this point, it strikes me that what we need is for you to put together some concepts that we could take a look at on paper and explore, in both these areas we've talked about so far--also, that pooling. Why don't you discuss that pooling a little bit?

WILLIAMS

Yes, Mr. Chairman. I think, you're right. We've talked about these a number of times and what I'd recommend is my going ahead and requesting that some legislation be drafted so we can look at it and examine, specifically, how they work. We've dealt with all of this and, I think, we all are at the point where we need something in writing. I think a bill, with a section by section analysis would be the right step.

On the pooling, from what we have, there was, in relationship to the fictitious group law--right now, it's against the law for groups of insurance to go in and, just form, what the law calls, a fictitious group, just for the advantage of obtaining group policy. The recommendation there was along the lines of--as long as an employer falls within the same rating classification as other employers, that those employers get together, band together, and go in and get a group policy. The immediate advantage there is that if you get the policy

WILLIAMS continued

amount high enough, one, you don't get placed into the assigned risk pool and, two, you're eligible for some premium discounts.

STIMSON

OK. Bob, why don't you go ahead with something like that. You can bring it back to the Insurance Sub-Committee and we can review those ideas when we can take a look at something.

WILLIAMS

OK. Then, I'll go ahead. Tom Sofo, is still on vacation. I suppose when the legislative drafting is requested that it doesn't have to be, Tom Sofo.

STIMSON

Jack Chenowith is available.

WILLIAMS

OK, fine. Then, we'll go ahead and draft up a bill along the lines of Oregon, where the insurance companies are still required to file information with the National Council. The National Council comes up with a premium ratio and then the companies are required to file expense premiums above that. We will, also, start drafting up some legislation on self-insurance, deductibles and pooling relationship to the fictitious group law.

STIMSON

OK. any questions for, Bob?

MALONEY

I would, again, just as long as we're drafting things and

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MALONEY continued

these, supposedly, are going to be options, hope that we would, either vote on it or address it. Ask that when the deregulation bill is drafted--that an additional paragraph be included that we can look at, which would require the State to pick up the tab, if a certified state licensed company fails, rather than, requiring these companies which are competing to pick up the tab. I think that, that's equitable.

WILLIAMS

OK. I'll include that language in the draft then.

MALONEY

It can be deleted if the Committee feels it should be deleted.

STIMSON

Yes. I think, that's fine. It will give us something to look at and a basis for some discussion. Anything else we need to address at this time? Brian, anything else you want us to take a look at?

ROGERS

Nothing, right now. I'll hold Fairbanks clear.

STIMSON

Dennis has a couple of questions before we sign off here, if you want to hold on.

MALONEY

Brian, I just would like to know. You're the Chairman of the Benefits Sub-Committee. I'm wondering when we're going to have some meetings relating to the benefits?

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ROGERS

I decided to hold off until after the election on sub-committee meetings.

MALONEY

I can understand that position.

ROGERS

The difficulty would be, you'd, probably, have to carry on the meeting without the Chairman.

STIMSON

Bob, anything else you want to say before we sign off?

WILLIAMS

No. Thank you, Mr. Chairman.

STIMSON

OK. Thank you and thank you, Brian and Joan, if she's still sitting in. We'll sign off, then.

WILLIAMS

Terry?

STIMSON

Yes. Go ahead.

WILLIAMS

I did have one last thing. Joan's been sitting there and I'd just like to tell the Commissioner, with the sub-committee present, that I did send Blue Cross a letter, with the suggestion, that we're considering the feasibility of Blue Cross writing that Workers' Compensation package. I mailed, with the

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WILLIAMS continued

with the letter, a copy of the law. I don't know if Joan's still there but, I guess, that's in the works.

STIMSON

Yes. Joan, said you were keeping her busy.

WILLIAMS

OK. That's all I have.

STIMSON

OK. Thank you. We'll sign off, then.

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Chaired by:
Senator Stimson

November 15, 1980
Workers' Compensation Study
Commission Teleconference
Anchorage/Fairbanks/Juneau

Members Present:

Anchorage: Chairman, Senator Stimson

Committee Members: Dennis Maloney
Michael Swalling
Thomas O'Keefe
Chancy Croft

TAPE 1, SIDE 1

STIMSON

Good morning. Welcome to our meeting. We know who we have in Juneau. Do we have anybody on line in Fairbanks? No one in Fairbanks. For the information of those folks that are in attendance, we are without our Co-chairman, Brian Rogers. He's in Sitka working on another committee and I do believe that---(interrupted)

DEBRA

This is Debra in Juneau. If you're speaking, we're not hearing you down here.

STIMSON

This is Terry Stimson. Are you reading me now?

DEBRA

Yes, Senator Stimson, we hear you fine.

STIMSON

OK. Thank you. If, Bob Williams, is there and ready, we would like to have him present the draft legislation. Bob?

WILLIAMS

I'm here. Thank you, Mr. Chairman. With distribution, you have six bills, their amendments and you should also have two reports that I sent to Licia.

STIMSON

I believe we have it, Bob. Go ahead.

WILLIAMS

OK. With this report and the progress report, they outline where the Committee is and they outline in a narrative form how we got there. I went through each of the meetings, highlighted them, the pertinent points, to further lead into why we're addressing these particular amendments. The second memorandum is a more technical memorandum with a section by section analysis of each of the pieces of legislation.

Very briefly, the legislation covers four general areas. The first amendment deals with the licensing of the self-insurers. The second amendment deals with eliminating restriction on employers who wish to obtain group insurance policies. The third amendment allows deductible policies for Workers' Comp and the fourth establishes a limited form of open competitive rating. This is more on the insurance proposal which Commissioner Fritz testified on before the Commission in Anchorage. I don't know if the Commission wants to recap where we are, or whether or not we should just go into the legislation.

CROFT

Mr. Williams, I'd like to ask a question in regards to the first proposed piece of legislation, the licensing of self-insurers, whether the sub-committee considered removing that provision altogether, in other words, prohibiting self-insurers and requiring everybody to have an insurance policy?

WILLIAMS

Mr. Croft, the answer is no. What the proposal does is, basically, transfer the function of licensing self-insurers from the Division of Workers' Comp to the Division of Insurance. The rationale being there is that the Division of Insurance has the type of financial expertise that would allow them to be able to review the records of a firm applying for self-insurance and being able to make the judgment as to whether they can carry that risk. As far as eliminating the opportunity for self-insurance, we have not done that. In fact, I think, we've gone a little bit the other way by providing policies that would encourage self-insurance; again, if it can be determined by the Division of Insurance that they're able to carry that type of risk.

STIMSON

OK, Bob. Why don't you just go ahead.

WILLIAMS

OK. What we did was on the self-insurance and Tom Sofo, who drafted the bill is here, the provisions in the Workers' Comp Code for self-insurance we just listed those right out and wherever that needy reference was made to the board, we replaced that with the words "Insurance Commissioner", which, I think, is a slight technical drafting mistake and it should be the "Director or self---(Tom is shaking his head.) In Title 21, which is the Insurance Code, the Insurance Department is a Division and not a department; so, we have the Director as head and not the Commissioner. He's shaking his head that it is not a technical mistake but, I think, that it should be "Insurance Director". Basically, what we did is we took just a lead-in reference to the board and replaced it with the Insurance Commissioner.

Maybe, I can go over exactly what specific provisions they are.

WILLIAMS continued

I think, that at the sub-committee meeting, we had talked about what criteria we should use and as I found out, those criteria are already contained in the Law. We did add one change, based on the Minnesota Statutes that, Licia, sent me and I'll be going over that as I go through this Bill.

I refer you, at this point, to Amendment 1, which is three pages long and if you'd like to follow along, I also have the memorandum, entitled, "Review of Draft Legislation", from which the first section will deal. The sections on the Draft Bill aren't numbered and I took the liberty of just numbering them in the memorandum.

The first section repeals AS 23.30.005 (f), which is a requirement that the Board notify any contracting agency of the state, if it revokes a self-insurance certificate. We repealed that and later on it's added back in but it's added in as a requirement for the Division of Insurance.

The second provision, again, is in Law in the Workers' Comp Statute. It, basically, disallows the awarding of any state contract to any person or corporation who can't show proof of self-insurance. The only change we made here is changed the reference to the Board, the Workers' Comp Board, to the Insurance Commissioner.

The third section (We're now on page 2, about the middle of page 2) grants the authority to any state agency to terminate a contract with any person if they receive notice that the person's Workers' Comp Policy has been cancelled, and grants the agency the right to terminate the policy if the Insurance Commissioner revokes a certificate of self-insurance. However, as I'm reading, 075, I think that, that's the section it's based on. OK. I see the problem. Section 3 is actually on

WILLIAMS continued

the bottom of page 1 and that is, the agency may either terminate the contract if they receive from the Insurance Commissioner notice that the self-insurance policy has been revoked.

Section 4 is the general section in the Workers' Comp Statute that requires an employer to maintain insurance. In that section, they include insurance, self-insurance, as covering that liability as long as that self-insurance is authorized by the Insurance Commissioner. This section states that he has to show the Insurance Commissioner proof of financial responsibility or the ability to pay any direct losses. It also, at the discretion of the Insurance Commissioner, allows him to require the deposit of what they call acceptable security or bond to secure the insurance payment. Again, this is taken right out of the existing Law.

Section 5 (and here we're on the bottom of page 2, the last section) AS 23.30.085 (a)) exempts showing certificate of compliance with the Board as long as he has certification from the Insurance Commissioner.

Section 6, is at the top of page 3, AS 23.30.087. Here, we took a section from the Minnesota Law that authorizes group self-insurance, again, as long as it's approved and under regulations adopted by the Insurance Commissioner.

Section 7, deals with the actual issuance of self-insurance certificates by the Insurance Commissioner. It adds in a provision, that was deleted in Section 1, making it a requirement that the Insurance Director has to notify any contracting agency of the state if and when they revoke a certificate of self-insurance.

That's, basically, kind of a brief and rough outline.

STIMSON

Bob, what changes does this proposed legislation make in the respective roles of the Board versus the Insurance Commissioner? Are there any changes or is it all just transferred over to the Insurance Commissioner?

WILLIAMS

No. Every requirement that the Board has now has been transferred directly over to the Insurance Director. The only change is at the top of page 3, where we added in a provision to allow group self-insurance. That's the only substantive change in this whole piece of legislation. What that section says is that two or more employers with the same rating classification can group together and apply for a certificate of self-insurance with the Insurance Director and pursuant to regulations adopted by him, he can either decide to issue it or to not issue it.

STIMSON

OK. Questions? Dennis?

MALONEY

This is Dennis Maloney.

WILLIAMS

Reference to this is on top of page 3, AS 23.30.087.

MALONEY

Bob, this is Dennis Maloney. Your group self-insurance program, is there a requirement? I don't see a requirement that members of the group agree to indemnify each other. How are you proposing that this work?

SOFO

Dennis, this is Tom Sofo. We looked at the Minnesota Statutes and the Statutes didn't give us any of the mechanics as to exactly how these directors would get

SOFO continued

and the Statutes didn't give us any of the mechanics as to exactly how these insurers would agree--if they'll agree among themselves or under regulation by the state. So, the only reason for the insertion of 087 is to raise the issue. We may or may not be able to draft the exact line which would clarify the relationship between each of the insurers but, at this point, from the drafting standpoint, I've given no thoughts to it at all. I would assume that some of the mechanics are for them to sign their own private agreements. There's nothing in the legislation in front of you today that indicates whether they have to do that at all and, if so, with what incentive?

MALONEY

Well, I think, it would be helpful if we inquired of Minnesota, precisely, how that is accomplished. Without something like that, a proposal for group self-insurance, such as this, is meaningless.

WILLIAMS

I think, it's a little vague but I believe, at least the way I understood it, would be that the actual provision and the mechanics of it would be handled by the regulations adopted by the Insurance Commissioner and that's the way it reads. Don Koch, may have a comment on that.

DON KOCH

This is Don Koch in Juneau.

STIMSON

Don, we need to have you speak up.

DON KOCH

I'll move the mike a little closer. Maybe, that will help.

KOCH continued

I think, that Mr. Maloney has hit the nail right on the head. There has to be some kind of, I don't know what you'd call it, an agreement or what, but, I believe that, that should be in statute rather than in regulation.

Unfortunately, none of what we have here gives us any guidelines, any statutory guidelines for saying who can do this and who can't do this. So, we're going to end up with some contested things. We're not all that happy about the idea of transferring the function to the Division of Insurance but, if that is the policy decision that you make, we'd certainly be encouraged a bit more in the way of specific language as to a guideline. I can go on about this but I'll finish for now.

STIMSON

Tom?

O'KEEFE

This is Tom O'Keefe. I'd like to pursue that last comment, Don. You say you're not all that happy with this possible transfer. Could you elaborate on the reasons for that?

KOCH

One of the arguments for placing the self-insurer function with the Division of Insurance is that we have the, quote, "expertise" to do these kinds of examinations and draft regulation, etc. I would point out that we do this kind of function for insurance companies but if you were to take a look at Title 1, the Insurance Statute, you'll find that there is a very elaborate and structured set of statutes that, basically, outline everything you want to look at. It includes: capital, insurance function requirements, investments--what they can do and what they can't do, reporting requirements, drafting subsidies. It deals with

KOCH continued

a whole string of subjects, holding company action, etc. All the guidelines are well defined and there's stability; for instance, to examine; so that, we can determine the reason they're there.

Another book that we did would exist for a self-insurer because the statutes in Title 21 deals, specifically, with insurers. This particular amendment has nothing in it, that I can see, that, specifically, places any statutory language in Title 21. I think that will be needed.

O'KEEFE

Don, this is Tom O'Keefe, again. From what you're saying, you don't feel that there would be anything particularly accomplished by moving it from one government agency to another, unless something's done, in terms of, the guidelines for establishing self-insurance. Is that right?

KOCH

That's right. I guess, in defense, we haven't. It can be argued that we have a bit more expertise than they have because we've been dealing with our own insurers and if we had to deal with them, on this basis, we'd probably try to copy as much as we could out of the Insurance Statutes. I think, it would be much clearer to make specific references to the sections of the Insurance Statutes as to which ones should apply to self-insurers. It would give us a guideline.

O'KEEFE

Don, this is Tom O'Keefe, again. In the event that a self-insurer is unable financially to meet its obligations, are there any provisions right now as to how the employee is protected?

KOCH

Of course, as you know, Chapter 80 of the Insurance Statutes, the Alaska Insurance Guarantee Plan is a program that deals with insurers. Again, that fits into that structure, to the policy structure, that we have for insurers. There would be no protection for the employees of a self-insurer. I, frankly, don't see how you could amend Chapter 80 to include self-insurers. I think that, that would foul-up the whole works.

O'KEEFE

I agree with that statement, Don.

CROFT

If the Division of Insurance took over the existing authority of the Workers' Comp Commission and the Division of Insurance does have the ability to look at insurance companies to determine their solvency but can't, under the authority that would be transferred, determine whether a self-insurer was solvent or not and granted that the Workers' Comp Division has absolutely no ability to determine insolvency, it seems to me that we've got a situation now, in which, basically, a lot of people are unprotected. That's why I brought up, at the beginning of this, the question of whether or not we should just simply remove the self-insurance provision altogether. The thing that worries me about it, as well, is I think that it's a great opportunity for a lot of large businesses to take off a lot of the low risk insurance business and leave the higher risk to people who have to buy insurance policies.

MALONEY

I couldn't disagree more about what, Mr. Croft, has stated. The ability to self-insure is something that the company I'm working for has taken advantage of to its great benefit. It's

MALONEY continued

my experience that there aren't that many corporations or organizations which are self-insured, currently. I'm unaware of any failure to pay any claims and prior to going on a witch hunt, I'd like to see some statistics regarding failure to pay, by self-insurers, in states that have allowed self-insurance for an extensive period of time. The State of Washington, I think, has upwards of half the insurers in the State which are self-insured. I think the program is very successful. At least, it's been my experience, that most corporations or organizations, which self-insure, do have a very large deductible blanket policy covering the shop loss that one would, ordinarily, be concerned with.

In terms of the overall operating costs of the company, I think that you'll see this self-insured retention is, probably, a very small percentage of the operating costs of the companies which are self-insured. Now, I have no objection to drafting regulations covering that. I would object where we try to wholesale import the financial requirements, which are put on insurance companies, to a company, which is to self-insure. There are all kinds of financial rules of thumb--current ratios, the amount of reserves which are retained, all kinds of questions, which really don't apply to the self-insurer, who, ordinarily, pays his ongoing costs of Workers' Comp out of his operating money.

CROFT

I'd like to ask, Dennis, do you agree that it should be transferred out of the Workers' Comp Division?

MALONEY

It seems to me that it would be no problem in moving. I have no problem with it. In terms of performing some kind of

MALONEY continued

an analysis, it seems to me that, presumably, the Insurance Commissioner is better suited to make that kind of analysis. I don't think, by any stretch of the imagination, that you should try to say in order to self-insure, Wien Air Alaska, or any corporation like it, would have to have the same kind of financial wherewithal that the insurance companies do. We're not out selling insurance. Our Workers' Comp costs, although they are running, maybe, one percent of our operating costs, are not that significant, in terms of, our ability to pay. As I said, we also have a large excess policy should we suffer a big shop loss. I think, most self-insurers have those kinds of excess policies.

O'KEEFE

Don, this is Tom O'Keefe. I'd like to ask you two questions. One of them is concerning the philosophical use of offshore reinsurance. How attainable is the reinsurance on that to some of the self-insurers? Is the market such that at the prices you could get to these? Do you have any feelings on that?

KOCH

Are you talking as to our ability to regulate them?

O'KEEFE

I'm talking, in terms of, the large deductible that an employer might have for self-insurance and then have a reinsurance or an excess policy to cover. I assume you do the monitoring of the licensing of the company but are there any statistics to find out how many, what you might call, foreign companies versus alien companies?

KOCH

I have further insurance programs for those but not really. -- I

KOCH continued

suspect we have the ability to look at it but we wouldn't have the ability to say to an insurer you can't use that one.

I'd like to throw in one other thought. We've had some discussion with the Division of Workers' Comp, with the idea in mind, that, perhaps, this function of determining whether or not a self-insurer should receive his certificate should be a dual role function. I think the Board has a strong interest in monitoring just what's going on with that. Perhaps, by leaving that function with the Board, but by requiring any panel that is making that determination be members of the Division of Insurance might be helpful a little bit if you're throwing in the so-called, "expertise", that we have.

O'KEEFE

Would anybody here want to comment on that? That sounds feasible to me. In other words, share the talent, is that what you're saying there, the talent that's available between the two departments?

KOCH

Yes, sir. That's right.

CROFT

I don't think the Board has any interest at all in self-insurance and has refused, as a matter of fact, to even get into the question of whether somebody is complying with the self-insurance law. Secondly, I don't know of any expertise that they're going to have that's going to help to make the determination of, whether or not, somebody is a solvent self-insurer.

STIMSON

That's been my impression too, Chancy. I'd be interested in hearing Jackie McClintock's reaction.

MCCLINTOCK

Yes, this is Jackie McClintock. Actually, this had been suggested for a period of five years by, John Cook, the previous Director for Workers' Compensation. In last year's Bill, there had been drafted that provision to switch that responsibility over to the Division of Insurance. We have no objection to that switch at all. I would say that Workers' Compensation would have a vested interest to make sure that, that employer, to look at prior claims of that employer, and I can see that's how we would come into the picture, as far as, advising the Division of Insurance.

I think, the feeling has always been that the self-insurers, for all purposes, act as insurance companies when they self-insure. It is our feeling, again, that the same criteria, same guidelines that are with the Division of Insurance right now, in policing insurance carriers, would apply and really belongs in that Division.

O'KEEFE

I'd like to direct another question to, Don. Could you highlight, for the Committee here, a little bit of what goes on, at least a starting point, for the monitoring of insurance companies and their financial ability to pay and some of the difficulties that you, as a department, may have in trying to implement the same thing for self-insurers? You gave the example of the differences in the criteria of the Law but how about, in terms of, location? What about the self-insured who is out of state and who does not have local records? Would this, in fact, involve sending your staff to New York or California or to some other state to do this?

O'KEEFE

Second, does a self-insurer pay for these audits like the insurance company does?

KOCH

Well, to answer your last question, first, there's nothing in the current structure that would have a self-insurer pay for it that I'm aware of. The insurance companies do pay for their own examinations. To a degree, if you have an out of state employer, who's a self-insurer, that's not going to pose a problem because they're going to have to have funding in advance. That's going to remove the element of surprise, if you will.

The Division has a financial examination section that participates with other states, in the examination of other insurance companies. As to the examination of a self-insurer, that burden would be on us alone. We are able to keep a rather small financial examination staff because of this sharing of the load, as to insurance companies, with the other states. As a matter of fact, we have, currently, one examiner who's qualified in the State to do these types of examinations. We do rely on some contract work as well.

As to insurance companies, generally, when they are examined financially, you'll see a number of states in there at the same time and they're all working together for the same purpose. I can't speak for what goes on in one of those because I've not participated in a financial examination. My role with the Division was to do market conduct examinations, which are different in substance. Tom, I don't know if I'm answering your question or if you need a further answer on that.

O'KEEFE

Yes, I think, you have. You've hit a couple of points--first,

O'KEEFE continued

The financial expense to the State--of going, particularly, out of the state to make these audits, at the expense of the State, and second, the fact that for the more complicated self-insurance programs, you are sharing this responsibility, from an insurance standpoint, with other states and on a self-insurers basis, you would be stuck with the bill yourself. That's, basically, the point I wanted to make to this Commission.

MALONEY

I have a few comments based on what I just heard. First of all, our company is self-insured in the States of Washington and Oregon, as well as, in Alaska. We have gone through the process of, currently, becoming self-insured in the State of California. This discussion of putting forward the financial requirements and the audit requirements, that are present for insurance companies, on a company where, again, I say the Workers' Comp costs are a small part of the overall operating costs of the company, doesn't make a lot of sense.

In some states, for instance, in Washington, a bond requirement is set. The bond is, relatively, inexpensive. The bond is set at a level required by the Insurance Commissioner. That protects the people, who would, ordinarily, sustain a loss that an employer couldn't cover if he became insolvent. It seems to me that, that would do away with all requirements that these companies be audited because of the fact that the self-insured person has a bond backing him up, saying that he is capable of paying all claims. So, there's no need to go out of state.

Audit a self-insurer or not even audit him at all, other than an annual or semiannual, quarterly, or whatever, review of his financial statements just to make sure that he's paying his

MALONEY continued

current liability. I wouldn't think that we'd need to require a person, who is self-insured, to have the kind of financial wherewithal that we're demanding of an insurance company.

We're not asking for self-insurers to go out and insure other risks--just themselves and, presumably, prior to issuing a self-insurance certificate, the Insurance Commissioner, the Board, or whomever has that obligation, is going to take a look at the financial wherewithal of the company and make a determination that they have paid their bill overtime, that the Workers' Comp loss isn't insured below the excess policy that they might purchase, is not going to drive them into bankruptcy.

That's the kind of examination that the Insurance Commissioner should make. This wholesale importing of the financial requirements that's been suggested would make it impossible for most companies, including my company, to self-insure. I think that, before we draft some legislation, we ought to know what we're talking about.

I think we ought to look at some of the other states on self-insurance requirements; such as, Washington. They have a very difficult self-insurance in Washington. Only half of the people who apply receive the certificates. It's an involved process and the process that they have there is much less complicated than has been suggested today.

CROFT

Did I hear you say that they require the posting of a bond?

MALONEY

In Washington, there's a minimal bond requirement. I think

MALONEY continued

the minimum is a hundred thousand dollar bond and the Insurance Commissioner sets the bond level. If the company is very solvent, if Workers' Comp, making an objective analysis of the company, is a very small part of the operating cost, the Commissioner in Washington will, ordinarily, set the bond at the minimum hundred thousand dollar level. If the company is one that some losses, which are retained, could cause substantial financial problems, it's my understanding they're set at a higher bond level.

CROFT

But, for many of them, the minimum bond in Washington is a hundred thousand dollars?

MALONEY

As I recall, I think it's a hundred thousand.

KOCH

I might point out that when a Workers' Comp loss occurs, there can be a long-term liability. This is the type of thing that the insurance company has to respond to with a structure that appears in Title 21. Certainly, a concern with any self-insurer is their ability to pay this overtime. We can look at their financial statements, perhaps, and say that, sure, they have the ability to pay it on the short-term basis but we'd have to have some ability to be able to take a look at the long-term.

Another point on this is that in Washington the benefit levels don't resemble the benefit levels in Alaska. So, while a hundred thousand bond might be adequate in that State, I think we'd have to, certainly, look at whether it's going to be adequate here.

MALONEY

I don't know how the hundred thousand dollar level was set, in Washington. As a practical matter, for some self-insureds, there's no need for a bond at all. It seems to me that the bond will protect the employee. If we haven't seen any cases of insolvency among self-insureds, I think, if you examine the facts in the State of Washington and I would hope that we would examine the facts before we runoff some draft legislation, you'll find that there had not been failures among self-insureds and you don't have workers going without receiving the benefits that they're entitled to.

If you want to create a bureaucracy and have auditors in the field going over the financial statements of every self-insured and looking at the reserves that are established, I think you can do that but the bond protects the individuals without the necessity for the bureaucracy.

WILLIAMS

I'd like to direct the Commission's attention to page 2. The middle of that section is AS 23.30.075 (a). This section is in the Workers' Comp Law that requires that an employer maintain insurance, basically. The last sentence of that section reads, if an employer elects to pay directly, the Insurance Commissioner may, in his discretion, require the deposit of an acceptable security, indemnity or bond to secure the payment of compensation liabilities. My point here is that the Insurance Commissioner, under direct status, had the authority to require a bond.

MALONEY

I think that's a good point. I think that this language protects the worker. Apparently, this is the current language, except for the reference to the Commissioner. Is that right?

WILLIAMS

Correct.

O'KEEFE

Bob, first of all, have you, in your research, looked at a few states in regard to their handling of self-insurance requirements; such as, Washington? Do you have any copies of their information?

WILLIAMS

We haven't looked at Washington. What we did look at was Minnesota and we, basically, went through the Minnesota Law and we went through this Law. Minnesota just recently enacted on that Law, related to Workers' Comp. I think, the session date was 1979.

What we did was try to match our requirements in the Workers' Comp Statutes with the new requirements that they have in Minnesota. As I mentioned, the only thing that we added was the provision on group insurance because we found that the Statute in Workers' Comp was almost identical to the provisions in the Minnesota Statutes. In fact, I would say that they're, probably, a little more strict because the Minnesota Law didn't have provisions allowing the Insurance Commissioner or the Board, or whomever has the responsibility of notifying any contracting agencies in the State, that certificates have been revoked; thereby, that contract should be annulled.

In the Minnesota Law that we looked at, the most stringent requirement was, that at the discretion of the Insurance Commissioner in that State, the requirement of security or a bond. We found that requirement in the existing Law and felt that it was a strong enough requirement and didn't look any further.

O'KEEFE

Perhaps, I'd suggest to the Committee that we consider getting for the members a copy of the Washington Law, like Dennis mentioned, and, perhaps, the one that you're looking at, the Minnesota Law, so that we can get some ideas here.

CROFT

I understand that what you're saying is the Alaska Statute is, currently, almost identical to the new Statutes that were passed in Minnesota?

WILLIAMS

That's right, except, in the Minnesota Law, after just a brief review, this Statute is a bit more strict. In that Law, it did not list out any criteria for self-insurance, which is passed out, as it is in this draft, to the discretion of the Insurance Director. This Law, as I stated earlier, has provisions relating to the issue of state contracts and the ability for the Insurance Director to notify any contracting agency that, that contract be annulled if they don't have the insurance.

Those two provisions, the provision of the State to not issue contracts or terminate contracts with an employer and combined with this provision in AS 23.30.075, that allows the Insurance Commissioner to require the deposit of a bond, I don't know how strict you want to get but, those do seem to, at least, provide some means of control.

STIMSON

Bob, does the Board, currently, require bonding very often?

WILLIAMS

I think, Jackie, can answer that better than I can.

MCCLINTOCK

I believe they have, at times, in the past. However, we don't have a good set of guidelines to do that and we have not followed it, as of yet.

MALONEY

The point is that the current legislation and this proposed change is putting the burden on the Insurance Commissioner or the Board to make a determination, whether or not, the person is going to be able to pay his Workers' Comp claims and, presumably, at that determination, that he isn't, they do not have to authorize self-insurance. I think, the provision for the bond puts the monkey on the Insurance Commissioner's back to make a determination, whether or not, the person is going to be solvent. If he isn't; then, I don't see what the concern is.

CROFT

I don't know how much longer you want to go on this but I'd say you ought to introduce that one piece of legislation of transferring it from Workers' Comp to Insurance. How much further you want to go with regards to bonds and the like, or whether you want to eliminate it altogether, is another thing. If there's going to be any apportionment at all of this, it seems to me, it properly belongs in insurance and not in Workers' Comp.

KOCH

Given that, we would encourage some reference in Title 21 to the fact that we're doing that. Find some of these pretty clear references in Title 23. We'd, also, have something in Title 21; so that, the regulatory making authority of the Director, which is in 21, can be used, rather than having to go to the Labor Code and using that regulatory base for authority.

STIMSON

Bob, with that in mind, could we have you work together with the Division to include their concerns in those specific titles that, Don, made reference to? Go ahead with the concept that is embodied in this piece of legislation and present it to us again at the December meeting?

WILLIAMS

Yes, Mr. Chairman. We can do that. I think, maybe, we should add to that. We'll look at some other law besides, Minnesota. The only one we did look at was Minnesota. The reason we looked at that was because it was a brand new Law and it seemed like a fairly good piece of legislation. I think, we ought to go beyond that and look at Washington and Oregon. Excuse me. Oh, Jackie McClintock says she has a lot of material on self-insurance.

When you look at this piece of legislation and compare it to those other states that (I'll just reiterate this.) in this piece of legislation, the Insurance Commissioner has the authority to require bonds. He, also, is required to notify any state contracting agency and any local political subdivision of their contracting agency if he revokes a certificate of self-insurance. These do seem to me to be fairly strong provisions. I think that, maybe, we ought to look at some other states.

STIMSON

The other area, of course, Bob, that you want to address a bit more would be the group self-insurance.

WILLIAMS

Yes, Mr. Chairman. Again, we tried to mesh the Minnesota concept with what we have under the Workers' Comp Law and the

WILLIAMS continued

only provision that we found there, in addition to what we already have. I would say that this Law is more stringent than Minnesota because of the provisions relating to contracting. The only provision that we didn't have was the one relating to group self-insurance. I would make the suggestion of pursuing the idea of allowing small employers in the same rating classifications to go ahead and group for self-insurance. We'll try to expand on this particular provision. What I'm asking is, is the Commission interested in allowing the idea of group self-insurance?

MALONEY

Personally, I wouldn't object to it. However, I would object if each member of the group didn't agree to be responsible for any claims made against a member of the group who wasn't able to pay. In other words, have language in the statutes stating that any group, which is formed, agrees to and any member of such group, agrees to pay losses of another member of the group in the event that they are unable to pay. Then, we don't have this group only newly formed and then have some people maybe drop out overtime and disappear.

CROFT

Dennis, wouldn't that be more of a question of what the insurance companies themselves would want rather than what we should put in the statutes?

MALONEY

No. I think, we're just addressing the self-insurance group.

CROFT

Oh, just the self-insurance, OK.

WILLIAMS

I think it's a good idea. The way these items would have

WILLIAMS continued

handled under this provision is that the Insurance Director would be required to make regulations but as far as expanding on this and clarifying it and requiring cross-exemplification, I don't think it is any problem in redrafting this particular section.

STIMSON

OK, Bob. Do you want to go ahead and take us onto the next piece of legislation?

WILLIAMS

OK. The next piece of legislation is Amendment II. I'd like to give some background information as to why we suggested this change. I think, we heard testimony that the small employer is discriminately placed in the assigned risk pool. When the small employer is placed in the assigned risk pool, it isn't related, necessarily, to his loss experience or to his safety program or to the fact that he is apparently a bad risk, it is more related to the fact that he is a small employer. He doesn't generate the premium volume that makes him an interesting insured, from the standpoint of a large insurance company.

The second disadvantage that a small employer has and, these can be clearly shown, is that if his premium is below a thousand dollars, he is not eligible for any of the premium discounts that are built into the rate schedule promulgated by the National Council Rating Bureau.

So, what we have here is a situation where, if an insured policy is less than a thousand dollars, first of all, he is likely, or we heard testimony, that he is assigned to the risk pool and that's an 8% surcharge on his premium, plus, the fact that he's not eligible for the first level of premium

WILLIAMS continued

discount which is 9.4% for any policies between a thousand and four thousand dollars.

What we have done to address this problem is, first of all, to get the small employer out of the assigned risk pool and, second of all, to, hopefully, get up to the level where he would enjoy a premium discount, gone to AS 21.36.190 (d), which is part of the Statute called the Fictitious Group Law. What this section does is it's a section in the Law which prohibits people from forming groups solely for the purpose of obtaining a group policy at a preferred rate. There's an exception in Subsection D that relates to Workers' Comp. It was amended in 1977. It was amended to the effect that the Workers' Comp Associations of Employers could, in fact, go and get these group policies, if they met the criteria that are laid out in Subsection D.

Those criteria are, first, the group has to be formed for a purpose other than the purpose of insurance. They have to have a constitution and by-laws. They have to have a safety program and, as a group, they have to have preferred characteristics over similar risks written on an individual basis.

What we have done is eliminated these conditions and to effectuate the provisions of groups of employers, specifically, to obtain a preferred rate. So, the Amendment, as you can see, deletes a large part of the language in Subsection D. It eliminates all the conditions except two. In fact, we added one condition in there. First of all, the Association of Employers has to be in the same rating classification. In other words, the same employer classifications, as set out by the rules of the National Council and second, the group has to file and receive approval from the Director of Insurance. The purpose here is to allow the policy to get up to a large enough

WILLIAMS continued

level so the small employers, in this group, can collect some of the benefits that are provided in the Council's rate structure.

MALONEY

Bob, what is the underlying reason for the Fictitious Group prohibition in the Statutes?

WILLIAMS

I think there are various opinions on that. Maybe, Mr. Koch, can answer that. I'll offer you and, it's certainly my opinion, that, I guess, you could in some casualty lines. You can, probably, see where it would cause problems; for example, if entire blocks of communities decided to form groups to insure their homes. What they would do is form an association of home owners and then insure, cross-exemplify, insure themselves together and go in for a rather high group policy.

MALONEY

What's the problem with that, now? I'm not sure I understand.

WILLIAMS

I think it's a great idea. That's why I recommended this change. I don't really know if I should inject that much opinion but I think it's a fairly self-serving piece of the Law, as far as, the insurance certificates go.

KOCH

To some degree, Bob is correct. There are, also, other elements. One is to avoid a high concentration of risk within a given location. Of course, that's more of a property or casualty concern as opposed to a Workers' Compensation concern. One of the arguments that's been presented in the past is what happens to the guy who can't get into one of

KOCH continued

these groups? If everybody is in a group, then there's not going to be anyplace for him to go. While that may not be a strong argument, it is one that is reflected in these Fictitious Group Statutes, where they exist. Other than that, I guess, maybe, Tom O'Keefe might have some thought to this, as well but I don't have anything else to add to that.

O'KEEFE

Let's use the example of the homeowners which somebody brought up earlier. Let's take the example of the neighborhood where it's, what's considered as, an upper class neighborhood with a very desirable low crime rate, etc. A large group of people get together and form a fictitious group for the purpose of cutting the premium. It sounds good. Down the street, you have a neighborhood that is less desirable. Insurance companies want to spread risks, in other words, a little bit of this and a little bit of that. If you, in effect, cream all the business into some selective groups that are, perhaps, more profitable, it leaves the residue or a group of accounts that are not so desirable. Then, you have the public concerned about those that don't fit. That's when statutes come and say, well, we'll have an assigned risk program to take care of that and things of this nature.

So, at first, I'd say it sounds great but in, practicality, what you're doing is you're restricting the market to some extent, in as much as the insurance industry. They come into a community and they find that, perhaps, the better segments are taken and they may just decide not to be a player because what's left isn't desirable. Then, you have a problem for the public to face.

Let me use one more example. Let's talk about the air line business, since one of my colleagues is more familiar with

O'KEEFE continued

that. Just before one of his airplanes was to take off, all the customers came up and said, if you don't give us a group discount, we won't get on your plane. It would, probably, if done enough, cause some havoc with their rating position. I'm not sure, if ten people go up to the window at one time and want to pay their fare versus one at a time, that it changes the cost of doing business or flying that airplane. So, perhaps, some of these analogies will broaden the scope and make it more meaningful.

MALONEY

I'm afraid the people wouldn't get on the airplane in that type of a situation.

O'KEEFE

That's exactly what I'm saying about the insurance.

MALONEY

The reason I asked is because we're changing this section, presumably, other than just a suggested change. I'm not convinced that there's any reason there should be any prohibition against fictitious grouping for insurance. I think, the insurance companies did that sort of thing with redlining and the mortgage companies did the same kind of thing. For years, they have charged higher rates in riskier neighborhoods. If we're going to change it for Workers' Comp, I wanted to know is there any reason why this prohibition should exist at all or for any other kind of insurance? If there is; then, presumably, the same logic applies to the small Workers' Comp Group. You're going to have everybody grouping together, except, that one poor employer who can't get into the group. That's the argument we just used for the homeowners. I'm not convinced but, maybe, somebody else has some thoughts on it.

KOCH

While I don't have any strong objections to Amendment II as it relates to the Division of Workers' Comp., I guess, I would have more of a problem if you were to expand the scope of this review to all lines of insurance in the Fictitious Group Statute. It, certainly, has a place in the property line, particularly, in the property line.

MALONEY

Why is that? I hate to get off the subject. You know we're not supposed to be looking at property insurance but if you license the insurance companies to have the financial wherewithal to write the kind of risks that they're going to take, what difference does it make if one insurance company insures a whole block?

KOCH

The difference it makes is that you, then, are exposed to a complication hazard that you would not ordinarily have if you've got to spread the risk. In other words, if you're writing it in town and you're spread all over town or all over the State, as opposed to writing it in town and having your business all concentrated in a one, two, three, four, block area, you stand a greater chance of losing all, if that set of blocks goes up, than you would, if you had a set of blocks go up and you had to spread the risk throughout the town. It becomes the solvency question.

In addition, I'd like to offer one more thought. If the concern is for business involved being, particularly, placed into the Workers' Compensation because of the premium size, there is another alternative that you might want to consider. That is to eliminate the surcharge that applies to that business that goes into the pool below a certain premium size. That can be done and I don't know if the carriers would have

KOCH continued

a strong objection to it. They might not be happy with it but it certainly can be done.

O'KEEFE

Don, I have written to gather the Alaska C & R Committee together, hopefully, within the next month, to address that very issue. I've written to New York and I've asked them to give me the updating on the assigned risk pools nationwide, the surcharges that may or may not apply. In all honesty, I must say, the trend has been to drop that surcharge in most cases. That information should be with me shortly and I, obviously, will share that with the Commission. We will call together the carriers to see what we should be doing, in terms of, the assigned risk pool.

MALONEY

It seems to me that, with the changes that have been proposed, in terms of, competition and variance from the Rating Bureau's current method of determining what rates are, this whole question may become aloof as there is no standard premium in the future. There won't be, it is my understanding. You won't be able to determine whether or not there's an 8% surcharge and it'll just be competition for whatever the going rate is.

WILLIAMS

I think that's right, as far as, the 8% surcharge on the assigned risk pool that Mr. Maloney just mentioned. However, the other thing is here. There's two intents to this thing. The second is to allow them the economy scale's preferential treatment incorporated directly into the filing by the Council. I'm not sure that going into some kind of competitive rating is going into that premium discount program.

KOCH

If, indeed, you do go to a procedure where the Council can no longer file expenses, you will, probably, see a variety of premium discount programs filed because premium discount really addresses the expense portion of the premium rather than the loss portion. So, that also, may become aloof but his arguments are still, to some degree, valid.

MALONEY

My basic point is we're going to competition. There's not going to be any premium discounts anymore. That's going to disappear, entirely. In terms of a standard premium, to which you could add an 8% charge, there won't be a standard premium anymore. All there will be is the pure premium and, presumably, everyone will have to bid on whatever risk they take.

KOCH

I guess I missed that. I think you're still going to have to have an administered rate for the assigned risk plan. In other words, that is going to have to be something that will have to be the same for everybody that goes to it and not depend merely on where the insured is assigned. Otherwise, what you would have is insurers not, particularly, liking the assigned risk plan.

MALONEY

My point is, Don, I think that what's been proposed does away with the ability of the Commission to set a rate which includes expenses. So, there won't be that guideline published.

WILLIAMS

It won't be published but it, maybe, a matter of insurance company policy that the larger the premium the less expense provision they're going to tack onto it. I fail to see why this provision is not compatible with that because if the group went

WILLIAMS continued

into the insurance company and had a big policy based on whatever their company policy is. I'm for a premium discount and I'm not sure that just going to a different system of rate regulation is going to end the company's desire to offer these kind of attractive policies to large risks.

KOCH

I concur.

MALONEY

I don't see any problem with what you're saying. I think the terminology is wrong. It's not going to be a premium discount anymore because that's not going to be the way they're going to write the insurance. It's going to be pure premium as X and then there's administrative costs tacked onto that. That's what, presumably, various companies and organizations will be charged for Workers' Compensation.

I'm not arguing with Amendment II or attempting to say that, that Amendment isn't appropriate. My point is that there is a problem I think we've overlooked with the legislation that's been proposed. That is how you set the rates for the assigned risk pool. There will no longer be a standard premium published, which will include the expense allowance that, currently, is published. So, there won't be anything you can add 8% to and the whole question of how the assigned risk pool rate will be developed has been overlooked.

KOCH

I don't think that's true because what you're going to have is a filing for an assigned risk, which will include the expense. The assigned risk is not an individual insurer and the expenses that you have there will have to be filed. The

KOCH continued

companies, in effect, are acting conscious for the assigned risks and if you bar that, I don't see how you're going to have an assigned risk.

There's one other problem with what you say and that is that the entire amount that is charged to an individual employer for his Workers' Compensation is called premium. What you're not going to have is identification to the employer that says this much is your loss premium and this much is your expenses. What you're going to have is your employer approaching one company and they'll say this is the rate for your business. He'll approach another company and they'll say this is the rate and the two will be different. However, I don't think you're going to have that identification, except, if the information goes on file and it may in Juneau.

MALONEY

I may have misunderstood you, Don, but I still don't see without the Council publishing the administrative cost estimates, how you're going to come up with the base for the assigned risk pool, how you're going to determine what the rates of the assigned risk pool will be.

KOCH

OK. The assigned risk pool is not anyone insured. It is all insurers doing business in the state. Basically, what this means is that when an insurer writes a policy that is a policy of all of the companies. Therefore, the expenses for that policy, the assigned risk policy, has to be the expenses or a composite of all of the companies. When the Council makes a filing for the assigned risk plan, they're, in effect, making it on behalf of all of the companies because, in that case, that's exactly what it is.

MALONEY

Somebody correct me if I'm wrong but I thought we were going to prohibit the Council from publishing the expense figures, the administrative costs and that was one of these other pieces of legislation that we were looking at, in terms of, having competition.

KOCH

For your general rate filing, that is absolutely true.

MALONEY

Well, then, if there's no general rate filing or no base line because we're going to allow competition expense above the pure premium rate, how is the expense portion determined? Who is going to determine it? Is that expense portion going to be determined based on the new competitive administrative rates or is it going to be some other fictitious number that is generated?

WILLIAMS

Actually, this is a very pertinent discussion, as it relates to open competitive rating. One of the arguments for open competitive rating is that you're going to loosen up the market. First of all, I think, we're going to see the population of the assigned risk pools decline as the risks are now going to have the opportunity to shop around. Hopefully, at some point, some insurer is going to write it. Particularly, combined with the fact that they would now have the opportunity to form a group and generate a larger premium. One of the ideas of going to competitive rating laws is to loosen up that market and I think, you'll see that the residual market plans, like the assigned risk pool, the population will decline.

I think that, Mr. Koch, is right. Even though we've got a market that's a little bit more flexible and you may, over a period of time, see the development of substandard companies

WILLIAMS continued

that, actually, market insurance to attract these substandard or poor risks because of the fact that they can charge a surcharge and even with a loosened up market, you're going to, still, have some people who are not going to be able to obtain insurance.

That raises a difficult question and one I hadn't thought of is how we'll handle the assigned risk pool. I suspect that, in fact, we may have to have a filing dealing with the assigned risk pool. That's a very good point and it deserves more research.

KOCH

What I would suggest, as to rates that are going to be used by various numbers of subscribers of the Council, is that the pure premium is all that the Council can file, on their behalf. As to a filing made by the Council for, mainly, the assigned risk plan, they can make a whole filing. You may have to change the wording there but I think, it's still appropriate.

Further, that may provide a protection for the small employer, in that, by the use of the average data, the small employer is going to have, what it amounts to, a ceiling on the rate that he's going to have to face. Now, if indeed, the carriers developed are writing for the small employer a surcharge rate, it's like a higher expense, the assigned risk pool will likely devise some kind of a ceiling on that.

MALONEY

I think that what you're saying is, totally, illogical. The question of what the expense rates will be in the assigned risk pool can't be determined by looking at what the expenses are, now that we've got competition. Presumably, the bigger

MALONEY continued

accounts will have lower expense ratios and to say, well, we are going to allow competition and discounts given to the good accounts, which is what we're talking about when you're allowing free competition and groups to be formed. Then, we're going to say that the average ratio expense dollar to pure premium dollar will be applied to the small accounts. I think, it's, totally, illogical.

If they're going to have competition, they're going to have competition. It seems to me that, if you're going to have an assigned risk pool, with this kind of program you suggested --open competition above the pure premium rate--your're going to have to have some filings relating to the administrative costs associated with the assigned risk pool, alone. In other words, that the insurance companies would write the assigned risk pool at no profit level or some marginal profit level that is determined to be appropriate. There's going to have to be some changes to do that, that I don't think we've looked at.

KOCH

I don't know if it's, generally, understood what the assigned risk pool is or how it functions in this State. Maybe, it might be helpful to say that, currently, the assigned risk pool is serviced by five carriers. Those five carriers, physically, write the policies after the risk is assigned to them and on a rotating basis. The insured has no control over which of the serving carriers it gets.

In order to provide the same rates for everybody going into the assigned risk pool and I think, that's important, you're going to have to have a common expense level. I have no problem with saying that, that expense level should be the expense level that is developed by the assigned risk pool.

KOCH continued

That means that you're going to have to composite the five servicing carriers.

WILLIAMS

I think, Mr. Maloney's, right. What we really need to do is find out how open competitive rating works in relationship to the assigned risk pool. It occurs to me that if you go to open competitive rating and you're looking at the competitive market, really, the assigned risk pool should disappear, I mean, in the world of perfect competition. I'm not sure that, that's going to happen. Frankly, I don't know offhand how to handle it.

O'KEEFE

I'm having some real trouble keeping my mouth shut lately. Don, if in today's market, the insured is in the assigned risk pool, paying an 8% surcharge for whatever reason he's in the pool--the type of risk, the smallness of it, etc., and the competition today, then, would be the alternative, which would be the standard market without the 8%. I can't see how you're going to draw anything out of the assigned risk pool by saying that, now, that the standard market is going to deviate their prices, the spread between the two is so good that, now, all of a sudden, the standard carrier wants to go take this out of the pool. It seems to me that you'd make the problem worse, not better.

Generally, the point I want to get across is that the assumption all along, for the last twenty to twenty-five minutes, has been the desire to write all this profitable business in Alaska; therefore, there's people waiting at the starting gates to write this business. If you all refer to some of the notes that I passed out this morning, let's look at the information out of the best report for Workers'

O'KEEFE continued

Compensation premium discounts and leading carriers by State. I thought, maybe, we could start with an overview. I see most of you have those notes out now.

This lists all the States in the United States. In terms of Workers' Compensation premium, it lists loss ratio by State and, of course, the aggregate on the average. I think, there's some things we ought to be concerned about, when we talk about changing the system in Alaska. (1) Alaska represents one half of one percent of the premium in Workers' Compensation in the United States. I think, that's important when you're talking about nationwide companies and where they're going to spend their time in the years to come. (2) We ought to look at loss ratios for 1979 as compared to the nationwide average. You can see that there's only seven States that's had worse results than Alaska. Again, you're talking one half of one percent of the nationwide premium. You're talking of the loss ratios that are higher than all the seven States in the Nation. You're talking about a spread of business that, as you can see on the charts, is, primarily, nationwide companies with a small amount of regional companies and twenty-two percent direct writers. Again, direct writers are nationwide companies. You see the spread of risk for the three carriers.

I'm not going to belabor this but I want to make the point that Commissioner Fritz made. He said in his last testimony to us when he came up from Oregon, that if you want to make the State competitive and open, you have a profit opportunity. I suggest that, at least, for 1979. I don't see it and I don't see where carriers, who are doing it under the existing system, which is getting lots of criticism, in terms of their expense rates, are going to cut their rates and jump in for more of, what I would consider, a blood bath in the loss area of Alaska. Now, you can disagree with what I say. You can say my statistics

O'KEEFE continued

are biased but, I think, in the realistic approach, you have to say where are they going to spend their time and effort in the future and how difficult are you going to make it for them to participate in the market in Alaska?

Moving onto my other chart, Don Koch, I'd like you to pay particular attention to this. I did this in the last week and, if I've made some mistakes, in terms of filing, let's talk our way through it so that there's some accuracy here.

When we talked about deregulation, in the past, we talked about expense provisions and we talked about the possibility that carriers were getting more expense side than they needed for Alaska because we were using nationwide averages. It's hard to say, one way or another, as to whether that's true or isn't true. What I did on this chart is I went back for eight years through our actuarial department and used the filings that were presented to the Department of Insurance on a year by year basis. I had our actuaries make an estimate and, I agree right away, that it is an estimate. It's subject to some variance that actuaries allow for, in terms of discounts, so I could come up with, what you might consider, the paid premium or the net premium to employers. That would be line 2 of the chart.

Then, I went through and had my actuaries take the provisions and the rates for losses, loss expense, loss adjustment, general expenses, profit and contingency. In other words, that's what would have happened if everything was perfect in a utopia. Line 7 would, then, indicate the expected results combining everything to get to the hundred percent or the total premium involved year after year after year. Line 8 is the actual incurred losses. That is, the losses that were paid and again, for those skeptics among us, it does include reserves. However, as you look back in the past, the reserves become less

O'KEEFE continued

significant because most of them become paid. If you look through there, you will see that, for the last eight years, the total losses are almost forty million dollars or 12.8% of the premium.

We talked about investment income. Obviously, investment income is not in these figures and, obviously, that offsets the losses of the forty million. We talked about questions as to whether the loading for expenses is appropriate. I would hope that they were a little high because, again, I would say that they'd have to cover the forty million dollars of losses.

I'm not suggesting in any way that this is a perfect answer. I would think that we should back up a little and take a step at a time, in terms of just how much deregulation and how much adjustment we want to make, with the marketplace that is dominated by national companies that are looking at less than one half of one percent of their writings. Alaska, and I think, Don, you can address this, I think, that the Department of Insurance has been, for years, trying to improve the market situation in Alaska, in terms of getting more competition in terms of more carriers. I would suggest that, as Commissioner Fritz said, in the free enterprise system, the profit motive is important. I'm very concerned that, with the track record Alaska has developed here, to tamper with the system to a great extent, is going to develop uncertainty and uncertainty means risk. When there's risk, I'm afraid a lot of carriers might be considering the other forty-nine States.

WILLIAMS

I'm not sure where that leaves us. We were talking about Amendment II and I think, we jumped to Amendment IV. I don't think that we're arguing here that the insurance industry has

WILLIAMS continued

made money but what we're arguing is about a system of rate regulation that's very rigid. We're arguing about a system of rate regulation that lumps all companies' experiences together. We're talking about a situation that doesn't allow the consumer to go shopping around and get a preferred price. We're arguing about a system that, even though you have three companies with high losses and two companies that are making a considerable amount of money, when you lump them altogether, they all, under this system of rate making, might be entitled to rate increases.

We are, basically, talking about providing the consumer the opportunity to shop around and doing that by going to a system of more competitive pricing. I think, the term "deregulation" is probably misappropriate. They are not deregulation under the proposal that we're going to get to when we talk about Amendment IV. They're reregulated and in a way that the company, with the lowest loss ratio, which really needs a rate increase, may get one, under the current system; thereby, providing the insurance at a lower rate. This would provide the employers in the State the cheaper rate for insurance.

O'KEEFE

Let's get back to the issue of the assigned risk pool. Don, did you make note, if the pool doesn't contain its losses, where the losses are paid?

KOCH

No, I didn't, Tom. Those losses are considered-----
--(inaudible)-----There have been a couple of years where the losses from the pool can go to the other carriers to acquire the money to pay for those losses.

O'KEEFE

So, in other words, under the present system that any defaults

O'KEEFE continued

in the assigned risk pool are borne strictly by the carrier on a prorata basis that are last year's writings. So, if the premium decreases in the pool and the losses stay constant, the more losses go back on the carrier. Is that correct?

KOCH

That's what happens.

WILLIAMS

I'd, also, like to point to Mr. O'Keefe's chart. The total for percentage loss figure in the column, labeled "Total", is 79.6% over a period of--going back to 1973. I assume that, that's been adjusted for the net earned premium--(interrupted)

O'KEEFE

That's correct.

WILLIAMS

---divided by the current losses. I think, we heard testimony from the National Council; maybe, you can correct me here, that after the expected loss ratio in calculating rates is based on standard premium and it's around 69% but after you adjust for a net earned premium, what you get is a loss ratio up around 80%. That's done by averaging the expense provisions over all of the different policies. It appears to me that the overall actual incurred loss ratio that you have on this chart--79.6% is exactly in line with the Council's filings for the expense loading after deductions for the premium discount that they can still use in rate making. My point is that I'm not sure that this figure indicates that they will really be losing a lot of money.

O'KEEFE

I'm sorry. I thought forty million was a lot of money.

WILLIAMS

Excuse me. I was referring to the loss ratio of 1979 which is only 6%.

MALONEY

I don't want to comment on that but I think that, Mr. O'Keefe, brought up a salient point again, with respect to the losses of the assigned risk pool. It seems somewhat illogical, again, as we talked about it when the sub-committee met, to lay off the losses from writing those policies to insurance companies that aren't participating in the pool. I'm not sure. Were you talking about only in a default situation, Tom? I think, that's what he meant. Had there been any defaults, Mr. Koch?

O'KEEFE

I'm sorry. I correct that. No, as an industry, we pick up all of the losses of the pool. Again, it's not a matter of insolvency. In other words, there's a sharing of premium, a sharing of losses and it's the losses we share. The default only comes in when a carrier is insolvent and we pick up the pieces on that too.

MALONEY

OK. So, in other words, the pool doesn't pay for itself. That's what you're saying?

O'KEEFE

Dennis, none of the pools pay for themselves. If they were profitable, they wouldn't be in the pool.

CROFT

I'm curious about the figures you were mentioning. On the first set of figures for 1979, it shows a total direct premium of seventy-seven million, two hundred and sixty-five thousand and on the other figures, it shows standard earning premium

CROFT continued

totals of seventy-four million, thirty-nine thousand or net earned premiums of sixty-three million, which really gives us three different figures for, supposedly, the same item.

O'KEEFE

The best report, to my best understanding, includes the Alyeska. As we talked about in the last filings, my records, except for the year 1973 which I couldn't pullout, doesn't include that. So, that's----- (interrupted)

CROFT

So, the first figures you provided did not include Alyeska?

O'KEEFE

The nationwide figures from the best report, which is the one on your right. That's the long sheet of paper that-----
---- (interrupted)

CROFT

It lists all of the States?

O'KEEFE

That's all of the States. That's the total and that should, to my understanding, include that.

CROFT

Well, that should include Alyeska?

O'KEEFE

Yes. I have some hesitancy on that. I realize there's a difference on that one column. I could look to the Department of Insurance in this area. They could check their filings and see if they could come up with a reason as to whether that was Alyeska or not. I don't know the size of Alyeska; so, whether

O'KEEFE

that represents a difference or not, I don't know. That's what I was told by my actuaries who figured it up. If there's more than that, let's look at it. The point is that this kind of a chart, when it's done correctly and if it isn't done correctly, I want it redone so it is correct, is something we should start with, in terms of, where we go from here.

CROFT

I understand that but if that's correct, that the figures include all of the States, includes Alyeska and the 1979 figures, with regard to Alaska alone but does not include Alyeska, that explains the difference between the profit ratio. On the one set of figures, the loss ratio is 87.4% and on the other, which apparently, excludes Alyeska, the loss ratio is 82.2%.

O'KEEFE

That's right. It does make a difference when you change the base.

MALONEY

Bob, what do you intend to do with the assigned risk pool? I think, we brought up a number of questions today that haven't been resolved.

WILLIAMS

You're right. There are a number of things that I hadn't, actually--It did not occur to me how the assigned risk pool was going to work with each amendment. Frankly, this discussion hasn't been resolved in my mind and we're going to have to look at, exactly, what's going to happen when we find legitimate law in the language that we're looking at on insurance. I don't really know. I feel we'll just have to tell the Commission that. I think, it's going to take some

WILLIAMS continued

work. I, frankly, am not sure how you're going to file the provisions for the assigned risk pool, given the amendments that we're going to talk about later on. I really think it needs some work.

MALONEY

Is there some reason why the assigned risk pool couldn't simply be pooled together and then bid on, as long as we're going to a competitive structure?

WILLIAMS

I don't see why anybody would want it.

O'KEEFE

I think what, Dennis, meant was in terms of servicing, not in terms of paying the losses. Is that right, Dennis? Is servicing what you're talking about?

MALONEY

Yes, servicing. It seems to me that you're heading for a state fund for assigned risk pools the way you have this structured. I'm somewhat opposed to that. We've seen that the Oregon experience didn't work nor does Washington State work. We have to take a look, in an innovative way, at that. If we're going to open up the cream to competition, we're going to have the buttermilk left. We have to figure out how to have people handle those risks. If you don't pool them altogether and have one bid, including the risks; perhaps, you should have some retrospective method of rating the assigned risk pool. In other words, if you have bidding by the various companies for the claims handling and make the assigned risk pool self-sustaining overtime, this may require a loan from the State, if you will, in order to make it. If the assigned risk pool losses exceed the premiums paid; then, overtime

MALONEY continued

adjustments are made to increase the premiums so that it does become self-sustaining.

I don't think if you're going to go into competition that it makes a lot of sense to throw the excess losses back onto the other insurers in the State. Presumably, they're out there competing to get the rates down as low as they can. If you have this contingency hanging over their heads, they're going to have to throw a five or ten percent factor into that.

O'KEEFE

Dennis, addressing your first question of concern and, it was brought up by you before, and that is, perhaps, having one company bid on the servicing of the assigned risk pool. There's two points I want to make. First of all, the losses in the pool are paid by the carrier and not redistributed back directly to the employer. Secondly, the carriers that are, ultimately, going to pay the losses that come out of the administration's signed risk pool are going to be quite concerned about the carriers that do the servicing of the risks. Anytime a carrier does a poor job, bids on that business, in terms of low expenses, and does a processing rather than a claims adjusting approach; then, the losses fall back on the other carriers. In that case, the State would be very reluctant to just take any carrier in that pool, I'm sure.

MALONEY

Well, that was one reason why I was suggesting that the losses not be thrown back onto the other carriers. I have some other mechanism of making the assigned risk pool self-sustaining; so that, the pure risk, the pure loss ratio overtime, plus the fee for servicing equals the premiums paid.

O'KEEFE

Dennis, as I indicated earlier, we are trying to gather together the Alaska C & R Committee to address issues on the assigned risk pool and, if it's all right with this Committee, I would like to be able to come back with that, as a separate issue, after the carriers get together.

WILLIAMS

One thing that has occurred to me is that we're going to have difficulty with those questions because the packaged legislation is unique, as far as regulating and giving the rate making for Workers' Comp. We might be able to look at some of the other States. I would suggest that, as a start, we look at, at least administratively, how California handles the automobile insurance assigned risk pool because they do have competitive rating and Illinois, as well. Maybe, what we should do is go to a State that has other casualty lines that are competitively related and see how they handle their assigned risk pool. It's just not clear to me that it would be significantly different under the proposal that we have here for Workers' Comp. I just would like to throw that out for suggestion.

O'KEEFE

I can answer that question. You don't have to go to California. I'm sure, Don Koch, could fill you in on that. Essentially, the assigned risk pool for automobile here in Alaska files its own rates. I'm talking about the commercial pool, Don.

KOCH

I don't know if you want a response on that or not. It's my understanding that in places where there is Workers' Comp type rating in line, generally, there is an assigned risk pool with, usually, a fixed rate structure on how high this goes

KOCH

with the Workers' Comp rating. Whether that, also, extends to Workers' Comp, I don't know. I think, that Workers' Comp is, generally, excluded from this competition. To get more information on that, I'd suggest that you look to more of the assigned risk plans and see how they operate.

(Don Koch's answer was almost inaudible.)

STIMSON

Well, if the Committee agrees, maybe, we've spent enough time discussing the assigned risk pool. It seems like we have provided, Bob, with some direction. Tom, you're going to come back with some ideas too. What I'd like to suggest is that we take about a ten minute break right now. Then, Bob, will continue on with the draft legislation.

WILLIAMS

-----his position is. The first one we have deals with the deductible, when, Don, says that insurance departments figured out a way of getting around the National Council's rating files and, possibly, can approve deductibles without a statutory change; such as, Amendment III. Amendment IV deals with the Oregon Competitive Rating Law. Amendment V has enough provisions in there dealing with the reporting of investment income. Amendment VI is Mr. Maloney's amendment, at his request, that if we go to competitive rating, the insurance association not be liable for payments of insolvency. What I'd like to do is let, Don, make his comments to the Commission because he has to leave.

STIMSON

That's find. Don, I'd like you to ask you to speak close to that mike, please. We've had quite a bit of trouble hearing you.

KOCH

Thank you. As to Amendment III dealing with deductibles, this might be a boot. We've had some discussion with an insurer recently, who was interested in filing a deductible plan and we encouraged him to go ahead and do so. We now have the filing and we've had an opportunity to review it and we are going to approve it.

Basically, what the filing does is it keeps the insurance company on for first dollar. In other words, they have, as far as the payment is concerned and as far as the Workers' Compensation Act is concerned, full responsibility for all dollars to be paid in compensation and medical under the Comp Act. So, that complies with the requirements of Title 23. In addition, they will have in their policy an agreement between the employer and the insurer for reimbursement of those dollars paid up to a given deductible limit. There are a number of features in there, including some of the things that we were concerned with; such as, protection of the statistical base. The carrier, in all senses, will be complying with what the National Council requires and the things that we require, as far as, statistical reporting and just how they operate.

The scenario that we see going with this particular filing is that, after our approval, we will anticipate that the National Council will object, saying that this is an illegal deviation. We will, more than likely, take the position that it is an independent filing since there is no Council rule, rating rule this is, that addresses this particular issue. Further, it isn't equipped with any existing rating rule. Then, I guess, we'll see where it goes from there. It is likely they will ask for a hearing. Whether we'll grant the hearing or whether we'll sustain the action, remains to be seen. That's what we intend to do. If we're successful, this Amendment III won't

KOCH continued

be needed. Further, I guess, we have a little bit of a problem with putting all of it into Title 23. I think, that if anything was needed, it would be a very short addition to AS 21.39.070 for making deductible plans for Comp. I don't think we need to go through all of those deductions. We'd still want to keep the Workers' Compensation insurer responsible for the first dollar.

MALONEY

I have a question. Amendment III seems to me, as written, would cover the excess policies that a self-insured might purchase. I don't think that's what's intended. If Amendment III is adopted or anything resembling it, either in statute or in regulation, it seems the exclusion of an excess policy of a self-insured should be made because you're not going to find an excess carrier that's going to want to come forward and be responsible for the first dollar coverage.

KOCH

I agree. If you have a qualified self-insurer, we have not treated any excess policy that they purchased as Workers' Compensation coverage. We treat that as, either excess insurance or as reinsurance. So, once there is that certificate of self-insurance, the self-insurer has removed himself from that arena. The thing that worries us is the person, who is not qualified as a self-insurer but who still wants the advantages of some form of deductible. I think, there's a way to do it under the current law. If there is a question and the question, I think, we want to address is AS 21.20.070, which I've reported. As it happens, administratively, you're going to achieve this and I think, you'll be successful.

MALONEY

My point is that I just want to make sure that somewhere in the

MALONEY continued

legislative history of the regulations in the statutes, that are assuming exemption for the excess carrier of a self-insured, it should be spelled out, specifically, to avoid litigation, which, undoubtedly, will occur if we don't make some mention of that.

KOCH

Very good. I think, we can take care of that without any problem.

O'KEEFE

Don, I have a suggestion, as we review the issue of deductibles, that you might consider. I believe, Illinois has a plan that sounds like it's, probably, along the same line that you're thinking. A plan with a slight variation, I believe, is present in Florida. The Florida plan is one in which the employer pays the first dollar and then has a reporting responsibility, which I understand is rather cumbersome. The Illinois plan sounds similar to what you're talking about and that is the employer, the company pays and gets reimbursed and there are some provisions for lien rights. If you're investigating this, I would suggest that you might look at those two Laws to get some idea on the wording.

KOCH

We have the one from Florida and, frankly, it doesn't come anywhere close to doing what this proposal will do. There are really too many limitations on it and it just doesn't quite work. I haven't seen the Illinois provision but I will, certainly, take a look at it.

O'KEEFE

Don, I think, the Illinois one sounds pretty close to what you're talking about. I haven't seen it either but I've heard that that's the one operating now.

O'KEEFE

that, that's the one operating now.

KOCH

OK. I'll just go on to Amendment IV, the competitive rating approach. We have, in the Division, developed a position or adopted a position that we are in favor of the competitive rating approach. In the last part of September, I attended a meeting in San Diego, where a sub-committee, which is the only one dealing with competitive rating in the United States, met. The atmosphere there was very much in favor of some form of competitive rating for Workers' Comp. Commissioner Fritz was there and we had some discussions with him.

Although, I have not read the Oregon approach, what he described sounded pretty good. With the NAIC proposals, I think, when they come out, we'll, probably, go a bit further and you may wish to reserve a final opinion on just what kind of a competitive rating approach to take until you see that. That is due out, in final form, at the December meeting of the NAIC, which should occur about the first week of December. There has been, since the September meeting, three more meetings. One was in Hartford, Connecticut. One was in Springfield, Illinois and the final one was on November 7th in Chicago. The purpose being to finalize the form of the NAIC proposal. I have not seen that. I have some idea as to where it's going and, frankly, it sounds good.

The primary concern was for the preservation of the statistical data going tense; so that, we could get valid, comparable statistics for particular classes. What this does mean is that you would have to preserve a fairly rigid classification system. The Division takes the position that we have no problem with competitive rating as to the rates for a class. We would want to see preservation of a very strict classification system. So,

KOCH continued

we, basically, are in favor of Amendment IV. If there are no questions on that, I'll go on to Amendment V.

As to Amendment V, I understood that's part of number four. We have no difficulty with the concept, except to say that our insurers are not presently subject to AS 10.05.699. As a matter of fact, they are exempted from AS 10.05 in AS 21.03.010 (b). We would further suggest that AS 21.21 is not the appropriate place for this type of provision. That section deals, generally, with the general investments of an insurer. AS 21.09.200 deals with the requirement that an insurer provide an annual statement. We think that a minor amendment could be made to that statute, to AS 21.09.200. That would accomplish this but the reference to AS 10.05 should be removed.

O'KEEFE

Concerning Amendment V, is there any other State doing this now?

KOCH

Tom, I have not researched that. I really couldn't tell you. I know that there are States that are using investment income in their rate making requirements. As to a specific requirement, that's been reported in the annual statements, I'm not aware of it. AS 21.09.200 does allow for the Director to make additional requirements as he sees fit. I think that this particular part of it, even in spite of that language, ought to be specified in the statutes. It is my understanding, that it will run counter to what it, generally, does in the way of additional statements back to the annual statements.

Incidentally, that annual statement is pretty highly stylized, also. It is developed by the National Council, excuse me, the

KOCH continued

National Association of Insurance Commissioners. They have a committee that deals with it. It's called the Blanks Committee. There are States that have made additional requirements which are added in, in addition to what is developed by NAIC.

MALONEY

Don, how would you propose that the insurance company break out the specific investments relating to the premiums paid for Workers' Compensation?

KOCH

You have hit a flaw in the pudding and I, honestly, don't know. Obviously, if they do this, there are going to have to be certain assumptions made. The insurance statutes require that all investments be--I guess, the most comparable things would be like the general fund. You can't have separate accounts for certain types of investments, mainly those, that are there for insurance reserve purposes. So, it would present some problems. You'd have to have allocations. Those allocations would have to--you'd have to make certain assumptions. Those would be subject, I guess, to what the Division would accept or wouldn't accept. There's going to be a lot of discussion on that, on which Division it's going to go into.

MALONEY

I have a lot of questions, in that regard. What type of income method are you talking about? Taxable income? My company would keep three or four separate sets of books, one for the income tax people; one for the CAB because they have different rules; one for our shareholders and we'd have a cash flow analysis. I think, what you're saying on reported income isn't clear. I don't really understand the need for this filing, if we're going to the competitive approach but I'm willing to

MALONEY continued

listen to the arguments as to why it's necessary.

KOCH

I guess, our position is that we don't, necessarily, object to it. We haven't done any indepth analysis as to how you would go about it or on what basis it should be made. I guess, if anybody is going to object to it, it would be the insurers. I think, that if they have any problems with the approach, they should, probably, be the ones to identify those problems and come up front with them; so that, we can analyze whether or not they're valid objections.

O'KEEFE

This issue was brought up at one of our sub-committee meetings and, I believe, the Alliance talked about it as well as the American Insurance Association. I'm sure there's been plenty of papers written. I'm surprised we don't have a stack of them already with the rest of them. I can check it out if there is any interest but I'm sure there are already papers done if the staff wants to pick them up. What I'm saying is I really doubt if it's a new issue.

MALONEY

I just fail to see the necessity for it. I don't think that we should just ask the insurance companies to come forward. I am opposed to any unnecessary regulation, if anybody. Unless somebody can give me some intelligent reason as to why we should propose this kind of an amendment, which will require more work, more paperwork and, presumably, more State employees to review the work and unless it's going to benefit someone in some meaningful way, I don't see why we should adopt it.

KOCH

One of the reasons for a provision of this kind or, at least, one the the generators for it is the fact that investment

KOCH continued

income is not directly addressed in the rate making process for Workers' Comp, currently. By directly, I mean that they don't analyze just what the investment income is. The National Council has done some work on investment income. They've got some statements out. If you don't have those available, I believe, we have them in the office and we can make them available to you.

They argue that the profit in the contingency portion of their rate making or the rate filing is deliberately set at a low figure, mainly, at 2½% to reflect the fact that they have not included investment income. There are pros and cons on that argument and I just haven't gone any further into it.

MALONEY

My point is if we're going to have competitive rates, that the profitability or lack, thereof, is irrelevant. They're not going to be filing the rates as they have previously. It seems to me, if you're talking about competition, in terms of the expenses, one of the elements of that competition, presumably, is the amount of profit that the insurance company is able to make. If it has good investments and makes more money, a more return on its dollar, it can, presumably, offer a lower rate. That will be reflected in the competitive rates that the other legislation we proposed puts forth. I just don't see a need for this.

KOCH

I think, you've been reading the work by the National Association of Insurance Commissioners. They issued a publication called, "Monitoring Competition". One of the arguments that's presented in there for open competition rating is just what you said. To the degree that competition exists in an area; then, many of the alternates that you presently consider in rate making are

KOCH continued

really not necessary because, to the degree that competition exists, you are going to have reflections of a different kind of thing. So, that's an element, certainly. If there are no further questions, I'll go on to Amendment VI.

This one, I don't know what generates it but we have a problem with it. I believe that this exception in the Guarantee Act will create a class of employers who are, excuse me, employees who are not entitled to recovery based on an a presumption that may or may not be true but which, in any case, is beyond the ability of the employee to control or, for that matter, for the employer to foresee. The assumption is that the insurance company has cut its rates below the pure premium point to the point that has affected its solvency.

The problem with it is that you have to assume that the insurance company has done that in all classifications in order to buy business. The provisions, as we read them, would require that an insurer, if it is going to use the rates below the pure premium level, would have to file those for approval with the Division. Frankly, that's going to be a concern of ours because, if their capital, their surplus and their surplus to policyholders is as insufficient as it seems in that kind of rating, we're, certainly, not going to permit it to go on. There are, at least, two areas in the Division that would be concerned with that kind of action. I don't think that this is going to be necessary and further, it's really not protecting the insurance company. Rather, it will end up penalizing the employers and employees who have the misfortune to be insured with an insolvent insurer.

I have one other final comment. That is one for which you don't, currently, have a bill but which is mentioned in the memorandum, concerning Blue Cross writing Workers' Compensation. I guess, I have some problems with that. One of the problems is that

KOCH continued

Blue Cross is, certainly, expert in its field, which is medical and hospital expenses. You pay into those. They're well under costly payments in all of these issues but Workers' Compensation Insurance, the Workers' Compensation, generally, is not all medical. As a matter of fact, the medical portion represents something on the order of 28 to 30% of the losses paid, which leaves you with another approximate 70%, which is compensation and an analysis of that on what you should do in that general area. Frankly, Blue Cross, doesn't have the expertise to deal with that end of it. Certainly, they have the expertise to deal with the medical but not with the compensation. Also, their financial structure is not geared to long-term liabilities of the kind that you would have with compensation. So, I believe, that would have to be changed if you were to seriously pursue this. With that, I guess, I'd better turn it back to you. Thank you.

STIMSON

Go ahead, Dennis.

MALONEY

I have a comment relating to your comments on Amendment VI. The proposed change in the Law coincides with the competitive approach. It was suggested by me and the reason it was suggested is because there appears to be no logical reason why the solvent companies, that are being competed against by a cost cutting or low cost jippo insurance company that goes belly up, should have to pay its claims. It seems to me that, if anybody should pay those claims, it should be you. That is the person who licensed that insolvent company to stay in business. If you license a company that shouldn't be in business in this State, I'd like to see you come before an appropriation committee in January of the following year and say, Mr. Chairman, I'd like to have a million and a half dollars

MALONEY continued

and the chairman will say, why? You'll say, because we licensed this insolvent company and we didn't do our job. That's why that amendment is there.

KOCH

I apologize to you, Mr. Maloney, but I had to say what I felt was right. Aside from that, the rules under which we determine whether an insurer is to be admitted or not are pretty well structured in the Statute. We can determine, over a period of time that those rules or those amounts; for instance, for capitol surplus, are not sufficient but as long as an insurer meets those criteria, we would have to issue them a certificate of authority. We could limit some of the things they can do and we, certainly, would not be approving rates for an insurer that, we felt, was borderline as to whether it was solvent or not. As a matter of fact, we want them to be very conservative. Generally, our whole approach to the regulation of insurers, primarily, from a solvency standpoint, is fairly conservative.

Insurance regulation has conflicts within it. In other words, on one hand you have to take a very conservative position from the solvency approach and on the other hand, the public expects us to take a fairly liberal view of rate making. The two conflict and we have to walk a tightrope, admittedly. You can rest assured that, if the carrier is insufficient to support this kind of rate cutting, if indeed it is rate cutting, I think, we'd be looking to more support for a rate level below the pure premium thing than, just the fact, that they want to compete. We'd look for some sound and logical reason as to why they would expect to have a deal to use the rate that is, actually, below the pure premium level. I'm rambling, at this point; so, I'd better shut up.

MALONEY

I would think that, in light of what you said, the burden should fall back on the State. You're talking about a social policy to make sure that a worker isn't left without insurance, after a company has been licensed by the State. Since the State is adopting that social policy, we won't let a worker have a claim that is not covered. The State should recognize that, that's, merely, a social policy and it should come out of the social funds of the State--not the other insurers that are not operating, in less than, a businesslike manner. Shifting it to the competitors that are efficient is an inefficiency in the system.

KOCH

The argument that you presented is one that has, also, been made in opposition to the general legislation, by some insurers, when it was being presented in this State and in other States. As a matter of fact, the same argument could be made for an insurer who is writing at, what you could call, the standard rate. There's nothing to assure that the standard rate is going to be sufficient, for a particular insurer, because their claims settlement practices could cause them an insolvency. So, it need not be, in other words, the argument is equally valid for the whole scheme of Chapter 80 as it is to this one area of Chapter 80.

I guess, my primary concern is that, given the fact that Chapter 80 exists, I would have some problem with creating a particular class within that Chapter. The people who would be the ones hurt are those who have the least control over it, namely, the employees. They rarely, if ever, have any say as to who is going to provide a Workers' Compensation Insurance that protects them.

MALONEY

What I'm suggesting is that, in that case, the poor uninsured

MALONEY continued

employee or employer, who comes to the State, there should be a common amendment which would allow the State to fund those failures.

KOCH

I guess, I really can't respond to putting the State into the position of, basically, reinsuring those insurers who do go belly up. I guess, I just can't add anything to that.

STIMSON

anything else for, Don?

CROFT

I have one question with regard to Amendment V. I was looking back through some information we have and there's a statement that says, "We have, also, included a requirement that they report investment income." This, too, was taken from the Oregon proposal on competitive rating. I just ask that, Bob, or somebody check with Oregon and see what their experience has been with it. Otherwise, it seems to me that, if we are going to a competitive system, we, probably, don't need it.

KOCH

Mr. Croft, the provision is in the Oregon code or in the Oregon proposal. Of course, they are pretty much pioneering in their area. I don't know what their reason is for including it. I don't recall seeing a similar provision in the NAIC proposal. The NAIC's competitive approach, I believe, goes a bit further than the Oregon approach. Again, I would urge that as soon as that proposal is out, which should be early December, that you consider it for Workers' Comp. I will make sure that you get a copy of it as soon as I can get it.

STIMSON

Thank you, Don. I appreciate your being with us this morning.

STIMSON continued

Bob, you want to go ahead?

WILLIAMS

After listening to this discussion, I'm not sure that I have a whole lot to add. If you want me to go back to starting with number three, I'll, at least, give you the rationale as to why Tom and I, basically, worked it into our drafting.

On number three, I didn't talk to, Don Koch, until yesterday. It was then that he told me that the Division of Insurance is trying to work out some arrangement where the carriers can allow deductible policies. Of course, the philosophy behind it is to allow a limit on self-insurance to small employers who couldn't bear the whole risk. I think, there's an additional benefit here, in that, the small employer who has to have two to three thousand dollars a payment is going to be more likely to implement some safety program or loss control program. For those two reasons, I think, it's a good idea.

I don't think you have the actual bill request. In that bill request, I did make the point that it seems funny to enact a provision in the Law, like this, to allow carriers to write deductibles. The only reason I went ahead with the request was because of the system of the National Council. I had assumed that this would be a deviation from that filing. It's, certainly, not a uniform percentage deviation. I'm sure that they would, in fact, claim that it's illegal and not permitted under the Alaska Insurance Code. For that reason, we drafted the amendment and now, Don, is telling me that the Division of Insurance has figured out a way to, well, he hopes, go go ahead and allow it without a statutory change.

Briefly, as I listened to this discussion, the deductible provision, as allowed in Amendment III, is more like the Illinois plan that was discussed. The carrier is liable for payment.

WILLIAMS continued

He has the right to go against the employer for any amount that he's paid, in the deductible amount. The deductible plan has to be approved by the Division of Insurance and, finally, to use the carriers' expression, as to which insurer the insurer wants to issue this policy for. Obviously, he's got to make a determination in his own mind or the insurance company has to make a determination that the company, who has been offered the deductible policy, has the financial wherewithal to be able to pay it back. That's how it's structured and, Don Koch, tells me that's how his program is structured.

I really don't know where to go. I think, we can go ahead and make a one line or an authorization allowing carriers to do that, if it helps the Division of Insurance. It may or may not be necessary. It, certainly, would be a statement by the Commission that they approved the policy of allowing this kind of limited self-insurance. That's pretty much all I had to say on Amendment III.

MALONEY

Maybe, Mr. Koch, can tell us whether or not he anticipates any litigation over the position he's taking. If it does, maybe, we should just go ahead with something along the lines of what you proposed.

KOCH

We don't anticipate litigation. We do anticipate objection and request for hearing. We haven't decided, in the Division, whether we will grant that hearing or deny the hearing and state a reason for the denial. That's kind of where we're at right now. We finished analyzing the program. In fact, I finished it up this morning. I've had it on my desk for the last two or three days. I just finished going through the last of it this morning. It's a good program. We want to see it implemented.

WILLIAMS

Well, if there's no more discussion on Amendment III, we can move to Amendment IV. The is the Oregon insurance proposal. We followed the Oregon insurance proposal because it already relates to the prior approval statutes, which we already have.

Basically, the important section here is AS 21.39.045 and that limits the filings made by any rating organization to pure premium. What would result is that the companies wouldn't tack on expense provisions. I'd, also, like to make a point here that, in looking at the draft, I'm going to have to talk over some technical things with the legislative draftsman. I don't know if we need to talk about them here. Under most competitive rating laws, there is a provision allowed the Insurance Director to reinstate prior approval. I notice that, that wasn't contained in the Oregon insurance proposal. He can reinstate prior approval if some conditions are met and most of those conditions are that he makes a determination, in fact, that there is no competition. Tom, says that he believes that, that authority is in the existing Law and I think, that we're going to have to check it out to make sure it is.

I'm, also, not sure from the staff that it's clear that, if the company files a deviation below the pure premium level, it's subject to prior approval. That's the way the Oregon Law is. Maybe, it is in Section 1. I'm going to have to read that. Basically, this Amendment IV is what we've determined we need to put in statute to implement the proposal that was discussed by Commissioner Fritz at the last full meeting of the Commission.

STIMSON

any questions for, Bob? OK, Bob.

WILLIAMS

Amendment V is, again, I can't really speak to rationale. The reason it's in there is that it was part of the Oregon Open

WILLIAMS continued

Competitive Rating Law and their amendments dealing with investment income. I included it because, from previous discussion, I know that one of the major areas that the Insurance Sub-Committee mentioned is the question of investment income. It is not figured in the rates. I think, we've discussed how it could be figured in the rates by going to regulation of the insurance industry, like a public facility. I'm sure that the Division of Insurance is totally opposed to that type of concept. This provision, I thought, was in the Oregon Insurance Booklet. It would require the companies to tell the State how much they make in investment income. Maybe, this is Commissioner Fritz's rationale that it may assist the Insurance Director in determining the solvency under this new type of competitive rating law.

STIMSON

Bob, before you leave that, I might suggest that you get back to, Mr. Fritz, and find out what the rationale is for the Oregon Law, in that regard. Then, give us a little more background on how that would relate to the open competition legislation that we're looking at.

WILLIAMS

Yes, I think, that's a good idea. I'll do that.

Amendment VI is Mr. Maloney's request. Basically, this section exempts the Alaska Guarantee Association from covering the policyholders due to any insolvency, if the Legislature did, in fact, pass Amendment IV. We've heard it discussed with, Don, and I don't have anymore to say about it.

STIMSON

any other comments, here?

WILLIAMS

That, I think, covers all of the Insurance Sub-Committee's preliminary recommendations. I would like to conclude, by saying to the Commission, that these sub-committee recommendations are rough and nobody's claiming they're not going to need a lot of work. I'd, also, like to say to the Commission, that it's not been the sub-committee's position to pass these bills out, as they haven't, actually, approved them.

We have been discussing a number of things, sectionally, which are the issues that you see. We've just begun to rough out the draft legislation. The reason we're doing this is because, I think, we've talked to the point where we, now, need to examine the mechanics of how these are going to work. That's what we are trying to do this morning. Obviously, there's a lot of problems. Some of this is a fairly, complicated insurance law legislation. I think, it, certainly, needs a lot of refinement. The comments made by the Commissioner will help, Tom and I, to improve on this.

STIMSON

OK. Thank you, Bob. We're going to go on to our next item on our agenda, which is the sub-committee reports. We can go through those very briefly.

I think, we've pretty well covered the Insurance Sub-Committee's Report. The Insurance Sub-Committee met several times, on October 7th and 8th and again, on October 27th. We wanted an opportunity to present this draft legislation to the Commission before the Insurance Sub-Committee worked with it any further. So, we'll be having some follow up meetings now.

The Procedures Sub-Committee has not met. That was, primarily, because, Tom Sofo, has been on vacation. Tom is back now and it is our intent to have a meeting in the near future.

STIMSON continued

Vocational Rehabilitation Sub-Committee has a meeting scheduled for November 20th. They'll meet from 7 to 10 in the evening and it is a teleconference.

The Benefits Sub-Committee will meet on November 21st, starting at 9 in the morning and running until noon. That is, also, a teleconference.

Any questions or comments about sub-committees, at this point? All right. What I'd like to do now is go on to a review of the proposed legislation that the Workers' Compensation has put together. I think, we all have copies of that. Bob, I guess, you're going to lead us through that.

WILLIAMS

Actually, no. I think, the person to talk about this is Jackie McClintock. It's her division who drafted it and it relates to her division. She's here. I talked to her last week and she's ready to discuss this legislation with the Commission.

STIMSON

Well, we'd be delighted to hear from her.

MCCLINTOCK

Thank you. As you may recall, when I testified in Fairbanks, I indicated some emergency problems. Two of those would be the additional board members. Under Section 1, the provision has enclosed an additional state-wide panel to the Alaska Workers' Compensation Board, as each panel member would serve only when the regular regional members were not available.

The Section II portion deals with the funding of the Second Injury Fund. There were some changes to that by the direction of, Licia, on Thursday. It will be on Section 1 and it will be the same as the last sentence in 040 (b) that you, currently,

MCCLINTOCK continued

have. That states, "the provision of this subsection will be raised in and during any calendar year when the unincumbered balance on January 1st, in the Second Injury Fund, is equal to or exceeds the sum of four hundred thousand dollars". We did not have that cap on in our initial proposal and that is on, as of yesterday.

The last one, Section III, we discussed in Fairbanks and that allows for the liability of any kind of Workers' Compensation coverage for a person that is in retraining with an employer, to be covered by the State, with or without wages. I think, we find that a justification and the draft is what we discussed in Fairbanks. If you have any questions, I'll stand by.

STIMSON

This is the first time we've had a chance to look at this legislation. So, it's taking us a little while to look through it. Jackie, we'd be happy to have you draw our attention to any other portions of it that you think we should be made aware of.

MCCLINTOCK

Basically, it's the same thing we discussed in Fairbanks. As far as the funding of the Second Injury Fund and the provisions under 045 (b), it's the same that was contained in 705 and in HB 1011 that we entered last year.

CROFT

What's the purpose of Section IV? Exactly, what does it do?

MCCLINTOCK

As stated in 040 (b), the portion of Section II, the Act does not apply for an employer or an insurance carrier required to make payments to the Second Injury Fund for injuries to an employee which occurs before July 1, 1981. We, basically, are

MCCLINTOCK continued

saying, as far as the 6% on all disability types, that would not be effective for any injury prior to July 1981. As of July 1, 1981, the 6% assessment will be paid.

CROFT

I assume that the reason for increasing the money in the Second Injury Fund was because there isn't enough, now, in there. The effective date of the increase from the 6% isn't going to be until July 1, 1981. How is the Second Injury Fund going to get by until then?

MCCLINTOCK

I just happen to have, Paul House, here. He is going to explain what we've done.

HOUSE

On October 1st, the Director of our Division of Administration Services submitted a memo from, Mike Miles, to, Ron Lear, outlining our problems for the remainder of fiscal year 1981. We anticipate revenues of, no more than, eight hundred thousand dollars for FY81. Our budget, however, has been authorized, in the amount of, one million, two hundred and eight thousand dollars. We have asked the Governor's Office to mention to you people to give us permission to request, between four and six hundred thousand dollars of the general funds. This will provide us with adequate funding to meet our essential obligations through the remainder of FY81.

CROFT

One other question is, is that why the reinsertion of the four hundred thousand dollar limit? Is it, presently, a two hundred thousand dollar limit? Do you think four hundred thousand dollars is adequate?

HOUSE

The four hundred thousand dollars became effective in 1977. The amendment was made in 1977, Mr. Croft. When the original draft was made, HB 1011, they neglected, for some reason, to put in the four hundred thousand dollars. We have discussed this since and we feel it should be put back in, at this point.

CROFT

Granted, there should be a cutoff. Is four hundred thousand dollars an adequate figure or should it be raised again, just as the two hundred thousand dollar figure was raised several years ago?

HOUSE

Mr. Croft, this is the proposal that we're putting in. I just hope that we will be given ample time to determine if the 6% will be adequate to meet our statutory obligations and, also, during this time, if four hundred thousand dollars is a level that's appropriate to stop that. It has been up to this point. It depends entirely on the revenues taken in, in general.

O'KEEFE

Has any estimates been made, as to how much additional revenue will be raised by changing the system to the 6%?

HOUSE

Based on figures that have been submitted to the Division of Insurance, (They have our own figures kept within the Department.) we anticipate, at this point, that the revenues will be in the vicinity of one million, eight hundred thousand dollars for the year 1982, when this Bill would become effective, if approved by the Legislature. Our budget for FY82 is one million, seven hundred thousand dollars.

O'KEEFE

If no change took place in the Law, what would your revenue

O'KEEFE continued

anticipations be for the next year? In other words, what is the net cost difference between the two approaches, the present system and the proposed system?

HOUSE

We have protected it, at this point, based on last year's revenues, including pipeline, when we had an excessive amount being contributed to the Fund. We anticipate no more than eight hundred thousand dollars over the next, I would say, three years of the present revenue system.

MALONEY

What is not covered under the 6%, other than, the medical payments?

HOUSE

Contributions will be made on all disabilities and on Section 191, which is retraining benefits that the carriers are required to take. At this point, we receive contributions only on permanent partial disability. However, we have to reimburse the carrier or the employer on all disabilities, plus death, and the retraining benefits they carry under Section 191.

MALONEY

Well, what I'm saying is you're saying that 6%, essentially then, of all payments to the individual for rehabilitation, you're not collecting it on medical? Now, it's my understanding that about half the losses are related to wage payments. If that's true, when you look at the loss rates for 1979, you had losses of forty-four million dollars. You have about twenty-two million dollars covered and then, you end up with, you said, about 1.4 million in income. Is that what you estimated?

HOUSE

about 1.8

MALONEY

OK. That's in the ballpark.

STIMSON

Are there any other questions on this proposed legislation?

OK. Thank you, Jackie and Paul. What's the Commission's pleasure, at this point? We have set aside some time to hear from some folks about problems with Asbestosis and, I think, we told them after lunch. What do we have, in the way of, people testifying here or who would like an opportunity to speak? OK. It will be my suggestion then, that we recess for lunch and reconvene at 1:30 p.m. Thank you.

TAPE 2, SIDE 1

STIMSON

This is Terry Stimson. Is Jackie McClintock there?

MCCLINTOCK

Yes, Mr. Chairman, I'm here.

STIMSON

My intent, at this point, is to go into a discussion of Asbestosis. I had hoped to be able to have you available to answer some questions as they arise.

MCCLINTOCK

I'll sure try.

STIMSON

Folks, could I have your attention? We're going to go ahead and get started here. Last Monday evening, I met with the local Union of Asbestos Workers and I was quite concerned at the kind of response that I received at that meeting. I wasn't aware that Asbestosis was of any particular concern up here. What I ran into was a group of people who were very concerned

STIMSON continued

about being treated, in their opinion, in a very inequitable manner regarding Workers' Comp and Asbestosis. I had no knowledge on the subject, whatsoever. So, I suggested that they come to our meeting today and make a presentation. Unfortunately, we don't have any of those members present with us now. We do have a lady with us who has been doing some research on the subject. Your name is, Sue? Sue Johnson? Sue has no background in Workers' Comp but has agreed to answer some questions, of a general nature, that we might have about Asbestosis. Sue, maybe, you could just come up at the table here, if you would.

I ended up with a variety of concerns as a result of my meeting with these men the other evening. First of all, I suppose, the most dramatic aspect of what I found out was the tremendous fatality rate that this local has. Sue, can share that with us as we progress. We started talking about a variety of problems related to the chemicals they work with. They seemed to suspect that, not only was asbestos causing problems, but that there were other chemicals, (I don't happen to have those names in front of me, right now.) also, of some serious concern. In addition, there was some real suspicion about fiberglass.

I don't know what all that amounts to. In the course of their discussion with me, they went on to point out that, without even being aware of it, a lot of us, maybe, are dealing with Asbestosis just in the various buildings we work in; in that, many of the vents have a lot of asbestos on the inside lining. This creates problems. Their position was that many of the schools, probably, have a lot of asbestos floating in the air without people even being aware of it. Anyway, they raised a number of general concerns like that. I thought it would be good for us to be aware of them. Then, we'll try to address, rather specifically, their concerns about the way in which they've been dealt in regards to Workers' Comp on occupational diseases, typically, the

STIMSON continued

Asbestosis.

What I'd like to do is stop here and, Sue, if you feel comfortable in sharing some general information with us about problems that you're familiar with, regarding Asbestosis; then, maybe, we could ask questions and just have a general discussion.

SUE JOHNSON

I want to tell you that our Business Agent did, very much, want to come to this meeting. He was unable to come and I am here, not to participate, but just to observe, take notes and see whether we're covered, in relation to, Asbestosis.

This Local 97 is the sister of the International Union of Heat, Insulators and Asbestos Workers. They have had, as their sister Locals, a very high mortality rate. This has been caused, not only by Asbestosis, but also, by Mesophelioma and other forms of cancer. This has been, directly, the results of over and prolonged exposure to asbestos. The Local up here doesn't use asbestos to do insulation as much as they have in previous years. They can get their exposure from doing removal, maintenance and things like that. The mortality rate and the reasons for the deaths have been extremely well documented. We have that documentation from Dr. Irving Selikof, who is based in New York City at the Mt. Sinai School of Medicine. He was the first to take the position to link asbestos and cancer.

As far as Workers' Compensation, all I can say about that, as far as Local 97 is concerned, is that in a series of letters that, Dr. Selikof, and I have been sending back and forth, I mentioned to him and so did, Jack Endsley, of Local 97, that there was a problem up here with Workers' Compensation. Basically, Jack Endsley's analysis was too little too late, which Dr. Selikof thoroughly agrees with.

SUE JOHNSON continued

I suppose an example of that, and which is public information, is a case of a member of Local 97, who is now deceased. He had gone before the Workers' Compensation Board to try to be compensated for his occupational exposure to asbestos and the disease. He was turned down. He died. Other evidence was introduced and it was appealed. The Board, then decided, that he should have been compensated. However, it was to nobody's benefit because he had no family. The Business Agent had put out fourteen thousand dollars of his own money to try to pay for his medical expenses, or assist paying for them. Of course, he doesn't get compensated later on because he's not a blood relative.

I can answer any general questions that you have. I don't feel at liberty to give out too much.

STIMSON

Jackie, a question that I would like to address to you and it came up in this meeting that I had the other evening with the union members is their interpretation of Asbestosis, that it is not compensable under Workers' Comp. I haven't spent any time researching that and I just thought that we could spend some time in discussing it.

MCCLINTOCK

No. That's not correct. Any kind of occupational disease that arises out of the scope of employment and has a causal relationship to that employment is, certainly, covered under the Act--an occupational disease, or injury, or anything else. I'm not aware of the case that she's talking about. I did take time to go through some of the occupational diseases that we've had in recent times and couldn't find one on Asbestosis, that may have caused the problem. Now, maybe, it's an older case. It appears to be.

MCCLINTOCK continued

We went through our records for '78 and '79 where we found four cases filed under Pneumoconiosis, which includes both, Silicosis and Asbestosis. Again, I'm not too sure what the problem is that she's addressing for the State of Alaska; other than, perhaps, that one case but I would repeat that any occupational disease is covered as long as there's a causal relationship to the employment.

SUE JOHNSON

The case is the case of, Bill Anderson. It's in the Workers' Comp files. I don't think it's too hard to get. Like I said, I'm not here to discuss Workers' Compensation. I am not familiar with the laws but they don't feel that they are being given a fair deal. I really don't feel comfortable discussing Workers' Compensation. I was asked, generally, to address Local 97.

MCCLINTOCK

I don't want to put you on the spot on this. I would like to know the full case, or, maybe, you can get it for me if you don't have it. I would assume that it's, William Anderson. I need to know the employer and, if you can, the date of the accident; so that, I can review that case. Also, I'd be interested in knowing of any other cases that they feel haven't been given a fair shake; so that, we can review them.

STIMSON

Are you able to provide that, Sue?

SUE JOHNSON

Yes.

STIMSON

OK, Jackie. Sue said she can provide those names for you, for those various cases. Maybe, since we are at a standstill here,

STIMSON continued

in terms of information, and we don't have the people in attendance that we expected to have, the best that we could do is get that information to you and ask that you take a look at it.

I was, particularly, concerned because these folks, that I met with, seemed knowledgeable. They seemed to feel as if they just hadn't been able to be heard; that their concerns were of such a nature that we could deal with it with some legislative corrections. I'm disappointed that we're without the representatives. I understand there's been a problem and, Jack Endsley, can't be here. I do appreciate, Sue, being here. I did ask her to step-in and share with us in a general way.

As I said, I wasn't aware that there was a problem with asbestos workers up here. It's, probably, one of the more dramatic experiences I have had, sitting in on that meeting and listening to them talk about some of the problems that they've had. This, Bill Anderson's, name came up quite often in the course of the evening, as an example, of how unjust the system is.

MCCLINTOCK

Yes, I would like to pull that case and I'm kind of at a loss here if they've not been able to give it to him or if the Board has denied him. Again, we don't have a track record showing that there's been that many cases filed on Asbestosis.

STIMSON

Well, the word that I got that evening, as I recall and I'm not looking at my notes from that meeting at this time, was that they had brought three different cases before the Workers' Comp Board and lost all of them. The basis for their cases was that these individuals suffered from an occupational disease, Asbestosis. They made reference to some kind of limitation, like Statute of Limitation. I don't know what the

STIMSON continued

limitation was. They could only go back so many years for an employer to be responsible for this Asbestosis, or something like that. I wasn't knowledgeable enough to understand what they were referring to.

MCCLINTOCK

Under Section 105, this will be particularly true in occupational disease cases. The claim would be barred, unless, the claim for it had been filed within two years after the employee has knowledge of the nature of the disability and how it related to his employment. Again, Asbestosis, and there's a lot of that type of disease, takes quite a long time to manifest. Still, that time doesn't start clicking away until two years after the person does have knowledge of the disease and how it relates to employment.

SWALLING

There are two attorneys, I believe, here in the audience in Anchorage who might be able to shed some knowledge on the application of the Statute of Limitations in occupational diseases of this sort that do have a long development time. I wonder if one of them could comment?

PAT JAMES

Jackie's correct in 105 and it's like a latent defect. Until the individual has knowledge, the Statute doesn't begin to run. What it precludes is the person who has knowledge of an injury or industrial accident or disease and doesn't do anything about it and two years elapse; then, that person is precluded. Where the person does not have any knowledge or the correlation between, in this case, Asbestosis, and his work, he can be expected to react to it. Consequently, the Statute does embark.

I have two cases currently going, involving COPD, which is Chronic Obstruction Pulmonary Disease. That is a general

JAMES continued

classification Asbestosis is involved with. What I have found and, I think, it has to be addressed in, probably, a factual basis, most people that have COPD, also smoked. He either still continues to smoke or he has smoked in the past a great deal and COPD, one of the known causes of it is smoking, because you get your tars, what have you, inside the lungs. The real dilemma is where you've got both factors working.

There's a case out of Fairbanks that came down, where an individual worked for the school district. I'm just going to rough over that. He claims there was a lot of dust in the air and that's what caused his problem. The Board found no evidence that his problem wasn't in the smoke. So, they put it on his smoking. I don't know which way the Board's going to go there because we haven't brought the cases before them. I am concerned that they may very well connect it to smoking, even though there's been an aggravation in the situation due to the industrial employment.

STIMSON

Dennis?

MALONEY

I would just remind the Chairman----(interrupted)

MCCLINTOCK

The case you're talking about in Fairbanks, as I recall, the Board did find there was some temporary total disability due to that aggravation. However, they felt that the permanent or any kind of permanent total disability would be because of the smoking. I agree. That is a problem with a lot of these cases and, of course, trying to track down the causal relationship, particularly, if that person smokes.

MALONEY

Mr. Chairman, I just want to remind us that we've previously taken a position that we wouldn't discuss pending cases. Anyway, I appreciate, Mr. James's, remark. Again, I think, that the problem he's talking about, the one that we're thinking of, is the establishment of the causal relationship, which is a factual determination, that only the Board can make. We can't offer them any guidelines in that regard.

STIMSON

No, I think, that does give us some indication of the degree of the problem we're dealing with though. I appreciate you folks sharing that with us. I think, the best we can do, at this point, is to suggest that, Jackie, take a look at those cases and share with us at the next meeting what has taken place. Oh, pardon me----(interrupted)

MCCLINTOCK

Let me interrupt you. If I could have a list of those cases they are talking about up there; then, I would know what to look for.

STIMSON

Yes, we'll get those to you, Jackie. I've just gotten a message from, Dan Middaugh, who was one of the individuals who was going to be here to speak to us about Asbestosis. He, apparently, is just a few minutes away. He'll be here shortly and then, we can continue this discussion. Is there anything of a general nature that the Committee would like to deal with right now?

One of the things I might suggest is that we take a look at our next meeting date. We had, originally, talked about having a meeting in Juneau in December. We have, since, talked about having a meeting in Juneau in January. My suggestion to the Committee would be that we consider having our December meeting here in Anchorage and then, decide on what date that would be.

STIMSON continued

We hadn't firmed up that date yet. We'd left that tentative.

CROFT

Are you going to try to meet in January prior to the session?

STIMSON

I think, our thought was to meet right after the session has begun. December 13 was what we had, tentatively, set for Juneau. Is there any problem with the Committee if we switch that to Anchorage?

CROFT

What date?

STIMSON

That's Saturday, December 13th. Great. Do you want to determine the January meeting date, now, or do you want to wait until the December meeting to do that?

CROFT

You're talking, roughly, the middle of January though?

STIMSON

Yes. The session begins the 12th and so, as I recall from our discussions, we were talking about, maybe, the next week after that. Then, the Legislature will have already convened. Ok. So, we'll meet December 13th here in Anchorage and we'll determine our January meeting date at that time.

MALONEY

Mr. Chairman, in terms of a general nature, at one point, we were going to get copies, or at least look at, recent supreme court decisions relating to interpretation of the Workers' Comp Statute. I have some concerns in the benefit areas - to examine some of those decisions. I think, some of them are illogical.

MALONEY continued

I know there can be some debate about them.

We've had a recent case where the Supreme Court found that an individual, irrationally and unreasonably, refused to have an operation which would have corrected part of his problem. They found that even though this was wholly irrational fear of having an operation, he was entitled to be compensated.

Those are some of the things I'd like to take a look at, to see whether it's really what the Legislature intends, in terms of the whole scope of things. Some of the others, the cashing of the checks on the week-ends and being covered, I think, there's some areas we can look at. Maybe, the Supreme Court has gone a little far afield on some of these points.

CROFT

I'd like to discuss them too. The check cashing is one case but the other case didn't hold that, so---(interrupted)

MALONEY

What did it hold?

CROFT

It held that--in the first place, there was an indication that the operation would have been successful. At best, there was mixed medical testimony on the desirability of it and secondly, they concluded it was not any irrational reaction on the part of the injured worker.

MALONEY

Excuse me but I thought that the Board withheld that it would have been medically--had made a factual determination that it would have assisted in overcoming the problem. Then, the Supreme Court reversed the factual findings?

CROFT

That's correct.

MALONEY

At any rate, I'd like to take, if we could, copies of the more recent ones that are distributed or are available to us, and examine some of the findings. I think, some of them don't appear to be logical.

CROFT

I think it's a good point. I think, there is a substantial difference in quite a few recent cases between what the Board has done and what the Court has finally done. It, maybe, a philosophical question of who's right and who's wrong but I do think there is a philosophical difference in the approach that is taken between the Board and the Court. I'd, certainly, like to see that discussed.

MCCLINTOCK

I think on that one case, if I'm thinking of the right one-- that you're talking about the operation, you'll find that the Supreme Court case, actually, upheld what the Board determined.

MALONEY

I was looking for the case, today. We can't seem to find it. We don't have it here. I would like to, at least, look at some of those cases.

MCCLINTOCK

We'd be glad to go back through our files and pull out the recent ones. It was my understanding though that the Commission was going to go to the Library to get them. I do know the case that you're talking about and some of the other recent ones I'd be glad to send to the Commission.

STIMSON

Dennis, Licia, says she has some on file here. We might just have you get together with her and we can identify some of those that we could share with the other Committee members. Thank you. Is that it, Dennis? Was there something else?

MALONEY

No.

STIMSON

We have, Dan Middaugh, with us. We were attempting to have a discussion on Asbestosis, Dan, but we weren't having much luck without your input. So, I'm glad you're here. We did have, Sue, share some comments with us but we had, essentially, decided to get the cases that have been brought before the Board to, Jackie McClintock, and have her take a look at those-- to brief us at our next meeting. I'd be real interested in having you share with the Committee some of the concerns that were expressed at the union meeting the other evening.

DAN MIDDAUGH

I'm not prepared with facts and figures. I expected, Mr. Endsley, to be here to make a total presentation on the asbestos situation. We've done quite a bit of research. We have Dr. Silikof. I'm not sure it's come up before but he is, basically, tied in with the research for the Asbestos Workers Union, an international organization, and he's been doing quite a bit of research. I'm not totally prepared; so, it's going to be a little sketchy.

I'm not totally prepared so it's going to be a little sketchy. When I started this trade, it was 1968. At that point, asbestos and the hazards around it, were sometimes joked about by the older members. I think they were trying to phase over it because they knew that the danger was imminent. I wasn't totally aware until after I had worked in the field five or six years. It

MIDDAUGH continued

really came down to me that I had a real strong chance of getting Asbestosis. That was pretty close to the time that they started outlawing all asbestos in the products and that type of thing.

I have seen a few presentations on television, and what not, showing the guy carefully scraping the asbestos filled fibers out of the school houses. That's a pretty major concern for us because we all have an overall view and understanding of the danger involved. I've got two little children. I don't care to see them come down with Asbestosis because they are going to school in a school house that has insulation in the mechanical room, which goes into the air handling units and blows directly into the classrooms. Compounded with that are the fiberglass fibers, as we brought out at the meeting the other night.

Fiberglass, according to some recent Japanese studies, is as bad or worse than the asbestos fibers, anyway. In this building right here, and I'm sure you can hear the air handling units running, I can open up the ceiling for you, right now, and show you fiberglass particles being blown into this room. It's a normal situation in all of the buildings in town. It's something that our Locals have been working at--trying to stop it.

We would rather see the air handling units and systems in the buildings being put in with metal and, then, insulated on the outside. That takes the fiberglass fibers out of the air that's being blown into the rooms. Also, if you take the asbestos fibers out of the mechanical areas, they're not picked up by the air handling units and blown into the rooms. So, it's simple enough to see, rather than exposing a couple to three hundred Pipecoverers that go out there and do this work and

MIDDAUGH continued

rather than exposing the total population that works inside any buildings in which those products are used.

One that I mentioned at the meeting the other night is the Native Hospital. I was working for Owens-Corning Fiberglas at the time and we started an insulation project on a new boiler system that they put in. The building is set up; so that, it exhausts more than it takes in, which makes it, basically, a negative building. When you open the door, the wind hits you in the back of the face rather than pressurizing the building with a minor amount of outside air intake; so that, when you open the door, warm air hits you in the face.

Well, as we were working in that building, they shut down our production because the dust from the new products that we were using, which are supposedly "non-hazardous", were blowing clear to the upper floors of the hospital and we were working in the basement level. The old part of that mechanical area is all old asbestos fiber material. It's ragged. It's been torn apart for repairs. When they tear apart a valve or whatever, you have a ragged end with the air blowing around and the fibers are being sucked right through the hallways in that hospital.

We have made efforts. My Business Agent, Jack Endsley, has made efforts to make complaints. We were told that we can't make the complaint because it's a work issue to us. It will create more work for the asbestos worker to put the insulation on the outside of the duct, rather than have the sheet metal worker put the duct in as a solid fiberglass duct, as all the work in the new airport building. It's all solid fiberglass ducting, rather than metal ducts. It's a work issue, yes. It's, also, a health and safety issue to everybody in the whole State. We can't make the complaint because of the fact that it's a work issue. We have to wait. We were told by "someone" that we

MIDDAUGH continued

would have to wait until someone, who didn't have any idea of what the heck he was living with, made the complaint. This sounds like a pretty backward operation to me.

I'm glad to see this Committee getting together and starting to put some study into these things. To blow fiberglass fibers throughout a building, in conjunction with whatever asbestos fibers are there, is ridiculous. I know that it has been outlawed in the State of California. They can no longer line the intake duct. Fresh air intake goes directly into a mixing plenum. That mixing plenum, nine out of ten times, is fiberglass lined. It's a joke to call it a fresh air intake. Do you guys have any questions? I know I'm not totally prepared here.

STIMSON

Dan, can you share with us more specifically the kinds of work related diseases that have developed, references made to several cases that have been brought before the Workers' Comp Board and how they were handled? That was the kind of thing I wanted to focus on today.

MIDDAUGH

OK. One that was mentioned the other evening, I believe, was Bill Anderson, the late Bill Anderson. It took until well after he was dead before they would admit to the fact that he had Asbestosis or that he died of Asbestosis. The thing that we were kind of pushing for, trying to push for, and nothing against lawyers but there's no reason we can see why a man should have to pay a lawyer an exorbitant fee to get something that he should get in the first place from a Workers' Comp situation. They were getting nothing.

We're fighting a case right now. Mike Steffen has a case that he's attempting to make. To the best of my knowledge, he has Asbestosis, which is, basically, a cancerous situation from

MIDDAUGH continued

the asbestos contamination of the lungs. To date he's getting little or no response from the Workers' Comp people, none that I know of anyway. Like I say, I'm not as closely related to that as, Mr. Endsley, would have been.

We've had several other----(interrupted)

STIMSON

Let me interrupt you there, Dan. Without talking so much about that specific case but rather the nature of it, I get the impression that there's a common concern asbestos workers have about the way that they're treated by the Workers' Comp Division or the problems that develop when they attempt to go before the Workers' Comp Board. What I want to do is try to isolate what you folks think those problems are; so that, we can take a look at them.

See, my understanding at that meeting the other evening was some of the people there, in fact a great majority, thought that Asbestosis wasn't even covered by Workers' Comp. Is that your impression?

MIDDAUGH

I'm not that closely related to the cases themselves. As far as Asbestosis being recognized---Is that what you're saying, being recognized? I hurt my back. That's a work related injury and right now I'm on Workers' Comp for that situation, which is, actually, what I came down here to talk about today. As far as, Mike Steffen, being able to draw Workers' Comp because of the fact that he has Asbestosis, the story is no. He is not drawing any Workers' Comp. He's still attempting to work in the field to earn a living and, at the same time, slowly dying. It seems like kind of a ridiculous situation.

CROFT

I wasn't here when, Pat James, talked about it but I think it's clear that Asbestosis is covered under the Alaska Act. All diseases that are caused by employment are, basically, covered by the Act. The problem with Asbestosis is that it doesn't often show up for twenty or twenty-five years after the initial contact with it. So, there is a real causation problem and a problem determining which employer has the responsibility. I don't know whether, Pat, covered that.

The second point is whether the exact condition was caused by exposure to asbestos, or whether it was from smoking or other factors--isolating it; so, it can be determined if it was caused by employment, with regard to, the permanent effects and exposure to asbestos. I think there, probably, isn't much of a problem with the temporary effects. If you're overly exposed or exposed to a large amount, not in this room, but if you're cutting asbestos or something like that and you develop an immediate cough, whatever, there should be coverage there. I think that, Jackie McClintock, mentioned in the one case, where there has been a high level of exposure for a period of time, the Board did award temporary benefits. There was no permanent benefits because, again, there was no medical testimony establishing causation.

I don't mean to put you on the spot but we're concerned about it. Are you familiar with any case where the Board has said that it wasn't covered, as a legal interpretation?

MIDDAUGH

No. I'm not directly aware of that. There were a couple of things you said there. Yes. It does take, approximately, twenty years to develop the disease, Asbestosis. To get a cough, you can get a cough grinding concrete for a short period of time. That doesn't mean that you're going to die. I have,

MIDDAUGH continued

personally, worked with asbestos filled products for a five or six year period. It only takes one particle of that asbestos stuck in your lungs, after a period of time, to give you a possible case of Asbestosis. You can get the disease from that point. That, in itself, is kind of tough to understand.

What we're trying to say is because it's so flimsy, we're not really getting anything out of it. We have guys that have Asbestosis, whether they smoked or not. If they hadn't been exposed to asbestos particles, they couldn't possibly get Asbestosis from smoking. So, that particular point is kind of off the wall as far as I'm concerned.

CROFT

Were they denied compensation?

MIDDAUGH

To the best of my knowledge, I don't know of any man that was getting compensation for an Asbestosis case.

CROFT

I'd like to know. Maybe, we can have somebody take a look at the cases that have been presented to the Board. Without looking at any particular case, at least, look and see if there is any particular pattern by the Board of excluding coverage.

MIDDAUGH

The other point that we were trying to really push and make everyone here aware of, with the possibility of getting some legislation started, is the fact that the fiberglass particles that are now being put in all these buildings are just as bad, if not worse, than the asbestos, to start. That disease is called, Silicosis. It's named after, Dr. Silikof. I guess

MIDDAUGH continued

you have to be famous before you can get a disease named after you. It's something, at this point, that we're aware of and we're trying to push it. It's kind of hard for us to push something, if we can't make the complaint and if we have to wait for someone, who has no knowledge of the facts, to make a complaint. That sounds like a pretty silly operation and I'd like to see some more research put into that situation because we're exposing all of your children and mine to the same things.

As a matter of fact, I helped line that five story, pretty large, return air plenum over here at the new court house building a few years back. We put all the lining in there. At that point, we weren't totally aware of how bad the fiberglass particles were actually affecting each member. In the beginning, there was one of the major companies, who owns Corning Fiberglas, that put out pamphlets--stating facts; such as, "Fiberglass injected into the lungs of rats acted as an interforeign substance". So does sand but if you fill your lungs up with it and if you can't breathe anymore, you're going to die.

When the fiberglass particles get into your lungs, they do not come back out. They're little tiny slivers of glass. Your body, in a natural reaction, builds a small cyst around that glass. Pretty soon you don't have any lungs left. (We now utilize a lot better respiratory devices and whatnot when you get into buildings) If you breathe this, from the time you're in Kindergarten to the time you graduate from college, you've breathed a lot of fiberglass in your lifetime. Then, you continue to breathe when you walk into a building just like the one we're sitting in right now. It's not a situation where a person should panic and go crazy but, I think, something should be done about it.

STIMSON

Well, thank you, Dan. We can begin to address that in a little

STIMSON continued

bit different way. This particular Commission is not charged for those kinds of responsibilities. We can get into that area. My office will be in touch with your union and representatives and so forth. Sue, is this what you've been working on, too?

JOHNSON

I've been working on overexposure to fiberglass, etc.

STIMSON

Well, before we get out of here, maybe, we can get your phone number, too. We can be in touch with you regarding this. Jackie, if you're still with us, if I understand, with the conclusion that we've reached at this point, you're to take a look at the cases that have come before the Board, relating to Asbestosis, and get some idea what the decisions have been and what kind of patterns might exist there. See how legitimate the concerns are of the asbestos workers. Are we on the same wave length?

MCCLINTOCK

Yes. I would be very much in favor of that and, particularly, to review some of the medicals that are concerned with those cases. I can go through and, on the cases that are reported, go back and pull those. I'd, also, appreciate a listing that the union there could provide.

STIMSON

OK. Dan, could you get a list like that to us or have, Jack, do it?

MIDDAUGH

Definitely. Like I say, I apologize for not being prepared for that point but I came down to ask you if you were doing anything in the area of Vocational Rehabilitation as far as the Compensation people are concerned.

STIMSON

OK. We're going to go ahead and go into that in just a moment. If there's nothing else on Asbestosis, what I'd like to do is bring this portion to a close. Then, go ahead and let, Dan, address his other concerns with Vocational Rehabilitation. Any other questions before we do that? OK, Dan, go ahead.

MIDDAUGH

I injured myself a year and a half ago. I hurt my back. I made an attempt to go back to work. It was unsuccessful. It's kind of hard to carry things around when you have a herniated disk, which was the final conclusion. I'm reasonably mobile. Sometimes I limp a little because my leg hurts from the pain in my back. It was, finally, put back into this Workers' Compensation situation. I'm now receiving Comp again. I had a hard time reproving my case because I made an attempt to go back to work and backache is pretty easy to fake, I guess. There was no problem with it. It's noted by my Compensation carrier, my doctor and their doctors that I do have a bad back.

My problem is I started a year ago, let me make it nine months ago, under Vocational Rehabilitation people here in town. I asked them what I could do. I needed to train myself in something else because I'm incapable of working on a construction project. I, finally, got a counselor. I went in and I made out the paperwork and that sort of thing. I waited for an answer. I waited for six months, longer than those two periods of time. I, finally, got pretty shook up and angry. I went back to them. They said they were waiting on confirmation from their office in Juneau. I had already missed a full semester at ACC or at the University. At that point, they said they'd go ahead and start some of the other procedures. Some of them were things that I could have had taken care of nine months ago, like making applications for loans. They know I'm going to be denied because I have no other income but Workers' Comp. I need their aid in

MIDDAUGH continued

setting up schooling. The whole situation seems a little bit out of line to me.

It seems like it could be stepped up or speeded up in some manner. I realize that you can't go around giving college educations to every "Joe Blow" on the street but when a man has certification, or whatever else is necessary, that I need the schooling and that I am deserving of the training, why does it take nine or ten months before we can even get an answer? If you don't go sweep your own wheel, you get no answers at all. That's my major complaint. I'm not sure if I'm going to be able to get through all the paperwork in time now to be able to make the spring semester.

STIMSON

What is your status now? Have they authorized you to go to school this next semester?

MIDDAUGH

I think so. My problem is I'm, also, getting evasive answers from a lot of people. What is my status? What can I do? What am I supposed to do to find out? They say, well, you could do this or you could do that or I get no answer at all.

CROFT

Is the problem that you haven't heard from the Workers' Comp Division on whether or not it's been approved by the Second Injury or whether or not the Division of Vocational Rehabilitation and the Department of Education has not even come up with a plan yet?

MIDDAUGH

There's no plan yet. As soon as I get this straight--I asked my adjustor, the person I'm working with there, what I can do now.

MIDDAUGH continued

I'm ready to go to school now. I was ready to go to school last semester. Let's get something going. Well, the adjustor says we can do nothing until Vocational Rehabilitation comes across with a verified plan of attack and all that type of thing. In the meantime, it's been six months or more that I've been signed up with Vocational Rehabilitation. I would not say it's the counselor's fault, in particular, because the counselor is waiting on some guy in Juneau, who possibly, is waiting on some guy in California, for all I know, to come up with an answer as to, yes, go ahead with his case or, no, don't do this case. What I'm saying is, if we have such a rich State, why can't we put people in these offices taking care of things that are of need to people? If my Compensation runs out before I become educated in another craft, I have no way to feed my family. That's what I'm saying. I think that is pretty important to a lot of people.

MALONEY

You couldn't go to school on your own? You don't have the funds or you're afraid your Comp will be discontinued if you started and it wasn't an accepted program?

MIDDAUGH

All these are major considerations. I told the counselor that I was getting Compensation payments again. In the meantime, I've lost my home. I'm living in an apartment. I had a pretty nice home. I had to sell it so I could pay off the bills. I was behind in them for five or six months from being off work trying to re-up with Workers' Comp because I was incapable of working.

I understand their position on that point because I realize there's a lot of skullduggery involved in the backache. I guess you can't prove or disprove it one way or the other. I understand that they were checking it out, making sure that I wasn't filing dual claims because I had made an attempt to go back to work. I

MIDDAUGH continued

I worked for a different company. I understand their position there but after I once got back into the operation, I still heard nothing for that period of time from the other people. I didn't get any answers. I didn't know what I was supposed to do. I told them now I'm getting Comp and I can go to school. They said, well, we're sorry. We can't pay you back if you start. I said why not?---(interrupted)

MALONEY

You mean all they couldn't pay you back was the tuition?

MIDDAUGH

Yes, even if that's all it was, was the tuition, at this point. They told me if I go ahead and start school; then, they couldn't pay me back. If they can't pay me back, does that mean the following year I get nothing? I don't know. Those are my questions.

O'KEEFE

What type of prequalifications was given it, then? In other words, you, apparently, made the decision that you wanted to go back to school. At that point, when there was some agreement with both players involved, did this Department of Rehabilitation do any testing or did they match your skills with the job related possibility end or did they just say file all this paperwork and sit around and wait? Was there any personal testing?

MIDDAUGH

That's exactly what they did. As yet, I've taken absolutely no testing through the Vocational Rehabilitation people. My case file's over there. The dates are on it. I could be off by a few days but not very far.

O'KEEFE

So, what you're saying is---(interrupted)

MIDDAUGH

I went and took testing at the college myself because I just got tired of waiting around. So, I went over and took the testing.

O'KEEFE

I don't have any questions. I guess you've answered that pretty clear.

STIMSON

Jackie, I'm curious. When an injured worker goes to the Division of Vocational Rehabilitation for assistance like this, is there some point at which the Division of Workers' Comp makes a determination as to whether they are funded for their schooling?

MCCLINTOCK

Mr. Chairman, what happens is when they go to Vocational Rehabilitation, a form is sent to the Administrator of the Second Injury Fund, who is Paul House. Mr. House reviews it and the following determinations are made. There must be a disability that's permanent in nature. The person must be precluded from his returning back to his regular type of work and the third portion is that there's no other employable skills. The medical file is reviewed and then, Mr. House, makes up a recommendation to the Board. The Board reviews it and it is either approved or denied. Of course, any party has the right to have a hearing before the full Board.

O'KEEFE

Jackie, how do they determine whether a person has other employable skills? It sounds, in this case, that there wasn't even any testing.

MCCLINTOCK

Also, this is one of the things we talked about in Fairbanks. We feel more should be done in that area. If the person does have

MCCLINTOCK continued

other employable skills and can be insured to a modified type of work, more canvassing of employers is needed to try to get that person back into a work study program or in an on the job training situation.

MIDDAUGH

That sounds good. I talked to my counselor, initially, for approximately forty-five minutes to an hour. We talked about what I had done in the past, my past work record and that type of thing--a rough idea of what I would like to do. Basically, I think, that's all we discussed; other than, what doctors I was going to, who my counselors were and whether I was released medical information or not. That was done in the initial time that I went to see my counselor. I got no further notification, of any sort, from my counselor until I called back. That was a long time. It had to be four to six months. It had to be before I, finally, said something is going wrong here. So, I called back. My biggest question is, if this paperwork went to the person you mentioned, does it take him six months to say, no, if it's a no?

MCCLINTOCK

That's exactly what I just said. It would appear that there were other things that have not been done. I know that Vocational Rehabilitation usually will send you to an independent medical evaluator and will, also, put you through some tests. I have no idea if Vocational Rehabilitation has sent any kind of form to, Mr. House, or even if he's had an opportunity to see the file at all. Quite a bit of that stuff has come in a package from Vocational Rehabilitation to Workers' Compensation. If I can get your last name, I would, certainly, look through the file and see what the status of it is. I think, there are some things, apparently, you have not done with the counselor that would be done prior to any kind of decision by the Workers' Comp Board.

MIDDAUGH

My last name is MIDDAUGH. I've been kind of relying on the counselor. So, I really don't know what has or hasn't been done and what was supposed to be done. If I were a counselor, I would have taken care of it.

MCCLINTOCK

To answer your question, no, certainly not. It has not been six months for our Second Injury Fund Administrator to review and pass on to the Board. If the Administrator needs more information, either in medical or from Vocational Rehabilitation, he would ask for that, of course, but it does not take six months for our review.

CROFT

Did you have any kind of medical exam after you went to the Division of Vocational Rehabilitation?

MIDDAUGH

Yes. I went to Vocational Rehabilitation's doctor and he twisted my leg and looked at my wrists to see if they worked. It was a very basic physical.

CROFT

How long ago was that?

MIDDAUGH

within a week of my first visit.

CROFT

six months ago?

MIDDAUGH

Yes.

CROFT

Something's wrong someplace. You're getting full Compensation now?

MIDDAUGH

Yes. At this time, I am.

CROFT

Is there a program out at the college that you want to get into?

MIDDAUGH

Yes, there are two or three possibilities. I was told by my counselor that I had further testing to take. I would like to take that testing to find out exactly where I sit. My initial testing I took on my own. On the overall, I came out with a fairly high score. The answer that was given to me, at that point, by the man that I was working with at the college was that I could do anything I wanted. I told him, thanks, but that really doesn't help me in what I would choose. I, also, asked for information through my counselor. I'd like to look at labor statistics of what we need here in Alaska in the next couple of years. I don't want to go to school for six years and become an attorney if there are ten thousand attorneys and two cases. That's what I'm saying. I definitely don't want to be an attorney.

CROFT

Well, at this point, you're waiting for further testing but the first testing you did was six months ago? You can't get a decision as to who's waiting on what? It's just that everybody is waiting on somebody else? Is that, basically, it?

MIDDAUGH

That's exactly it, yes.

CROFT

I take it that, Jackie, is going to check on that and get back to you. Jackie, do you have his phone number?

MCCLINTOCK

No. I'd appreciate it, in the event it's not listed in his file.

MIDDAUGH

349-3434

MCCLINTOCK

OK. What is your counselor's name with the Vocational Rehabilitation Office?

MIDDAUGH

Sandy Hobbs

MCCLINTOCK

OK. Thank you.

MIDDAUGH

She told me not to be a teacher because that's what she is.

STIMSON

Thank you, Dan. We'll see if we can't find something out on this for you right away. Do we have anybody else that would like to take this opportunity to testify before the Committee on any particular problem? OK. Pat James, is it?

PAT JAMES (Anchorage)

Yes. One problem that I think needs to be addressed, and rather strongly, is the uninsured employer. Now, in one of your proposed recommendations of the insolvent insurance company, you have where the other insurance company could have

PAT JAMES continued

a fund or something that would take care of that company's liabilities. What I think we are finding more and more, as the Workers' Comp rates go up, is the small employer does not have Compensation.

The case that's in mind is over a situation involving Circle Construction Company and Circle Construction is well known in this State right now. Their job is out in the Aleutians where my client was injured. We've got a judgment. How do we collect on the judgment? We go after Circle Construction Company, along with everybody else. Also, a part of that is the ongoing medical. How is the person, who is not receiving Comp because there is no insurance company back there to make the payments, has a disability and needs some medical, going to pay for it? The doctors aren't working for free. So, consequently, I feel that there should be a provision in the Law, maybe, as a part of the Second Injury Fund concept; wherein, there is a source of money for that employee to draw off of for, at least, the medical aspect. The reason I say that is the employee, when he goes to work, has no idea whether or not the employer does, in fact, have Compensation in effect. That's just not something you look for, to see if any signs are posted. So, it's always after the fact.

Now, another alternative is to coordinate it with the Department of Revenue, which issues business licenses, general contracting licenses with the Department of Commerce and cross-pollinate. They must have a computer down in Juneau somewhere to do this without putting ten million new State employees on. Say an employer has Workers' Comp through an insurance company and it lapses. We need to insure that, in fact, the insurance company would somehow notify the Department of Labor, the Department of Commerce, what have you; so that, there's a triggering mechanism taken into effect in case someone contacts that employer, like Circle Construction Company, and says, "Hey! You don't have

PAT JAMES continued

Comp. What's going on?"

SWALLING

I'm aware of some of the problems with Circle Construction. As a general contractor, it's normally required, prior to doing any physical work on the site, to provide the contracting agency with evidence of insurability, liability, Workers' Comp, etc. I, also, believe that, and you can correct me on this if I'm wrong, the employer is required to post evidence of Workers' Comp coverage in the principal place of employment.

Now, I grant it, on a construction site, it's almost impossible sometimes. Certain other agencies have site requirements for posting of those requirements. I am surprised that the contracting agency, and I don't know if it was the State or ATW. (ATW? OK,) out on the Pribilofs, was not aware that they did not have coverage on it. I believe there's, also, a cancellation clause in there requiring the insurance company to notify the contracting agency ten days or thirty days prior to expiration of that policy. Now, whether it was complied with or not, I don't know. If ATW did anything or not, again, is a question.

PAT JAMES

Well, to answer your question, Mike, I think that the problem is it dropped through the cracks. The end result was the person, who was supposed to be protected, ended up being unprotected and everybody said he should have done it but it wasn't done. That's the real dilemma and it's after the fact that it happens. The person doesn't come to the attorney beforehand and say he thinks he's going to get injured on the job. We would hope not. It's after that, that this problem exists. Then, we start to enter the picture. Then, there's the medical aspects of it too, you know. You don't prepay your doctor.

MALONEY

What's the penalty for not having Workers' Compensation coverage?

PAT JAMES

Criminal penalty is one year or one thousand dollars, I think. Then, you can, also, have your twenty percent penalty provision. You know, the judgment is just a piece of paper.

MALONEY

Does it survive bankruptcy?

PAT JAMES

I don't know.

SWALLING

As I recall, on that job, where you say there was no Workers' Comp, I believe there was, also, no bond. It was done with either a letter of credit or with personal insururity. I'm not sure how far the liability of this carries. That's more in your line of work but I know it's an extremely messy situation. I don't know if there's any solution in this case. It may be possible in the future to, either change the penalties or look into this evidency of insurabilities, prior to employment.

PAT JAMES

Well, I referenced Circle Construction Company because, I assume, most people would be familiar with it. It still doesn't change the fact that there has to be something cranked into the Law somewhere to protect the employee from the uninsured employer or the employer who is not self-insured. You can say that the AG's going to prosecute. Big deal! I was a DA for four years and they are not the highest priority clients. We have referred it over to the AG, on that particular case, but nothing's happened on it. We're trying to collect on it, our judgment. We're going to have a letter of credit, naturally, on that case. There has to be some teeth in the Law. If there aren't any teeth in the Law, why spend money for Comp? Run the risk.

STIMSON

Jackie, is this a question that the Workers' Comp Division has addressed before?

MCCLINTOCK

Yes, Mr. Chairman. That's one thing, I think, we brought up briefly in Fairbanks and which we were going to look at, I thought, in smaller Committee meetings. It was our desire that more teeth be put into the Law for the uninsured; that more investigative work be done to insure that people are carrying Workers' Comp liability insurance. It's, also, our feeling that we should have some type of agent assistant authority. Some of the divisions in the department do. I feel that, that is one thing that could be very beneficial in Workers' Comp, to make sure that they aren't carrying on with the job and not giving their employees Workers' Comp.

There's another thing I'd like to address to Pat James. There are other States that carry, what they call, kind of an emergency fund. What happens is, if a person does get injured, the State pays those benefits and for medical care. Then, the State goes after that uninsured employer. I think that's something we may want to look at, too. If an employer is not insured, it should not be the worker that suffers for it.

MALONEY

I guess I'm having a philosophical problem again. If the responsible person doesn't pay for the medical or for the wage claims, if we're going to adopt a social policy, saying, that the State is going to fund those sorts of things, for the insurance companies or for the employers, I fail to see the real significant difference between that and saying, we will insure everybody for everything because of the fact that one person happened to fall down the ladder and break his leg while uninsured on a job someplace. There is very little difference in the person who just happens to fall down the stairs at home, breaks a leg and doesn't

MALONEY continued

have medical insurance to cover that.

I don't think, from a philosophical point of view, you make much sense by saying, we're going to take care of the Workers' Comp person and we're not going to take care of the other person. Neither of them have insurance. Both of them have the same problems. Both of them contributed to their own problem, presumably, through contributory negligence and both of them have the same need. Why should the person, who was injured on the job, be singled out as a favorite?

MCCLINTOCK

I guess I have a little problem with your "contributory negligence" statement. In the State, any employer who hires employees is to carry Workers' Compensation liability. What I'm saying of the emergency fund is, at least, it would help the worker, so he's not suffering from this, until such time as the State can go after the uninsured employer. This isn't fair to the employers of this State, that carry Workers' Comp, who pay the premium for it and who aren't able to bid as low prices as those employers who do not carry Workers' Comp. It's agreed that it's only those employers that are trying to follow the Law. As far as a person paying his injury on his own, that's rather a social welfare system. I'm not addressing that. I'm just addressing those injuries that's caused by other employment.

O'KEEFE

Perhaps, I can suggest a couple of things that we could do as a Study Commission. This issue has been addressed in other States and there are some variable solutions to it. I suggest that we do check with Idaho and, perhaps, Oregon. Maybe, the staff has some other ideas to see how this is addressed in some other States. I know, Oregon, has a Compliance Division and there's some certificates sent to the State, if a policy is cancelled or there's a notice sent. That's, Oregon, I'm talking

O'KEEFE continued

about. If the policy is not renewed, there's a notice sent. There's a Compliance Officer, from the State, that goes out to the job site and determines if, in fact, there still is exposure to Workers' Comp. If there isn't, they shut the job down until they get the coverage. So, there are some solutions already thought of. Maybe, before we try and create a wheel here, we glean some of the experiences from the other States and pick the solution that is best for Alaska.

STIMSON

Bob Williams, are you there in Juneau?

MCCLINTOCK

No, Mr. Chairman. I had to leave.

STIMSON

Thank you. We'll assign that responsibility to Bob, Tom, and get the word to him to do some work in that area.

MALONEY

One of the things that you can do, legislatively, is impress upon the AG's office the desire that they prioritize these types of cases. I mean, I would be in favor of, very strongly, making it a felony not to have the insurance. At least, have the Legislature mandate that this is an area that they want prosecuted.

JAMES

I have another comment. It's something that, I think, should be considered in the Statute or proposals that may come about. If an individual is on Workers' Comp, and the carrier, as most of Comp carriers, is self-insured, he is assigned to an adjustor. At some point in time, if the adjustor decides that things are not the way he or she feels they should be, (Of course, I represent the claimant; so, I'm a little biased in what I'm going to say here.) she'll file a notice of controversion and cut the payments

JAMES continued

off. I think, that before they're allowed to cut off payments, a notice of controversion should be reviewed by someone in the Workers' Comp Division. I'm not saying that they should have a Board hearing, but somebody like, Becky Branchflower, Jackie in Juneau, Paul Troeh, what have you, to ascertain the fact it is a legitimate controversion, at least, on its face.

What happens is the case is controverted. Then, the individual finds out he is not receiving his ttd. He, then, goes and contacts a lawyer who files an application to get on the docket. Two or three months passes until you have your hearing. Then, there's a written decision, depending upon the backlog. I have decisions that have taken a year to come out. There's no Comp payment.

Now, we had an individual testify earlier today, Dan, that he lost his house. These things happen. When there's no money coming in and the person can't work, you put him in a terrible, terrible financial position. There's no way to recoup what's gone. So, I think, that's something which should be considered. It should be a part of the Statute that there has to be some type of review. At least, it can be a summary ex-parte situation that happened.

O'KEEFE

I think, maybe, we can get a little more insight on this when we finish our research on those 250 random claims. Maybe, that will tie into this recommendation.

STIMSON

Pat, we are doing some work on controversions. That is an area that has been of great concern to us. We have found that the whole area is a bit more complex than we realized. We do appreciate your bringing that to our attention. Again, though, we are focusing some concern on that controversion area. Thank

STIMSON continued

you, Pat. Yes sir? Yes, come on up.

GIL JOHNSON

I, as usual, am totally unprepared. My Statute is home, Title 23. However, I believe, there's an oversight in the Act. That is the payment of Compensation when due, the timeliness, and all this. What I've been running into lately and, in particular, with Alpac who's checks now are coming out of some place like, Dallas, Texas. They're payable on a bank in Los Angeles, California. My clients take the check to their bank. I believe the sight draft is illegal. However, they're treated just like sight drafts. They're put in the bank and somebody is having an advantage of up to twenty-one days loan and my client is backing it. The self-insured employers of the State, I believe the Act says, have to be staffed with people in the State who have the authority to write the draft for checks. It's not so with insurance carriers. I feel that should be corrected. I have objected and complained to the Insurance Commissioner and I've been advised that, that's what the Law is.

O'KEEFE

Clarification. Are you saying that when they present this to the bank, they have to wait twenty-one days to get their money? Where's the delay? Is that where it is?

JOHNSON

That's precisely what I'm saying. They'll put the money in the bank here. The bank will accept it for collection and forward it to (I think, it's the Bank of America, but I'm not sure.) Los Angeles and they'll put what, I think, is called a "stop order" of seventeen to nineteen days on it. At the end of that time, if it is not dishonored, the bank here will pay the check.

O'KEEFE

In other words, the person just can't go in and cash the check

O'KEEFE continued

and take the money, leave and spend it on his needs. Is that correct?

JOHNSON

That's exactly correct, unless he happens to be friends with the banker and, perhaps, has a bank account there.

MALONEY

I believe that the ten days is the maximum to hold a check, isn't it?

SWALLING

It's up to seventeen to nineteen now. I've come into that before on private checks from private companies back east, for instance.

MALONEY

seventeen to nineteen now?

SWALLING

It's a long time. At one point, it was ten days maximum.

MALONEY

Perhaps, the way to do it is to require a check drawn on a bank, locally, something like that. There could be problems with demanding a local check because, obviously, you've got some large company someplace that's going to have a computer spitting out the claims checks. It seems to me that it would be reasonable to have some guaranteed method of collecting on the check. You could have an arrangement with the bank, where Alpac or whoever, would say the checks are good.

SWALLING

payable at a certain bank. There's an overnight clearing house here in town now. So, it would solve a lot of that, of course.

JOHNSON

That's the way it should be, but it's not the way it is.

MALONEY

What you're saying is that it should have a correspondent bank. We could require all insurance companies, using out of State checks, to have a local correspondent bank that would honor the check.

STIMSON

Thank you very much, Gil. That's sure a problem and it hasn't come to my attention before. I'm glad to be aware of it. Are there any other members of the public who would like to testify at this point? Dan?

MIDDAUGH

This is dropping back to the asbestos problem and the Compensation problem there. There's a point that was brought out at the meeting and I had forgotten it until this time. They have a two year period in which you can apply if you are not working at the craft. After that two year period, if it's two years and one month, you go to a doctor and get a physical and he says you have Asbestosis, you have no way to claim against any company.

The other point was that one of the big problems with the claim that they're talking about is the last company you worked for, rather than trying to split it up between all the companies that you've worked for over, say, a twenty year period. In the construction industry, depending on the year, good work or bad work, you may work for one company for three years and all of a sudden the next year, you'll work for four companies in one year.

So, those two points, I just wanted to make sure that they were brought out. It's a pretty major objection on our part and this takes in myself, personally. It just dawned on me. If I go to

MIDDAUGH continued

school and start doing something else and three years from now I come down with Asbestosis, because of my prior involvement with the material, I have absolutely no one to claim to, according to the present ruling. They're putting me out to lunch. That's a pretty sad situation. Something should be done about that.

STIMSON

OK. Thank you, Dan. He's talking about Section 105. It's from the time of knowledge.

O'KEEFE

It's two years from when the doctor tells you you've got it.

MIDDAUGH

If the doctor tells me I have it and I'm working somewhere else, I still have to claim from the last company I worked for? It was a misinterpretation.

STIMSON

That is the general accepted interpretation of that section.

MIDDAUGH

So, on that same point, my brother member, the one who made the point, I realize now why he made it. He's still trying to recover from a back operation and he had to go back to work. I don't know how he's going to handle it but he had to go back to work for a period of time to maintain his coverage, because he's off on Compensation. That was my interpretation, if that's the correct interpretation.

STIMSON

Is, Tom Sofo, there in Juneau?

SOFO

Yes, Mr. Chairman, I'm here.

STIMSON

Tom, would you take a look at that Section 105 and just give us an analysis, at the next meeting, that confirms the definition that, Jackie's, given us--the description there. We seem to have a little bit of confusion here about whether or not that's correct. Jack, why don't you come on up?

JACK THOMPSON

In just talking with some of the people here, it sounds like part of the problem, Dan's, talking about is a possibility of losing parts of the investment of the particular retention reinvention programs they are under. We haven't gotten that impression from what you said because of the two year thing. We've heard this before in testimony that there seems to be some conflict from time to time along that line.

STIMSON

OK. Is there anything further in the way of public testimony? Is there anybody in Juneau that wants to testify? No one? OK. Is there anything else the Committee would like to address at this time? OK, apparently not.

We'll bring this meeting to a close then and plan on doing some work with the Sub-Committees. Our next meeting will be December 13, here in Anchorage, and it will be teleconferenced. Thank you to all the participants and for you folks who have been in attendance.

**PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.**

WORKERS' COMPENSATION STUDY COMMISSION

December 13, 1980

Excerpts from Minutes

Rogers

Amendment #1: Let's go through this by section, the first one 23.30.005 (k) is repealed. What does this mean?

Stimson

Are you with us Bob?

Williams

I am going to have a little problem here, I may have to run and get the Workers' Comp. Statutes. It's repealed, but I believe, Oh, it's re-enacted in the final section of that bill. It was a requirement that the board notify the contracting agency of the State or any political subdivision of the State when it revoked a self-insurance certificate of an employer. It was repealed and replaced in the final section of the bill and it simply puts that responsibility with the Director of Insurance.

Rogers

Is there an objection to this Amendment? Hearing none, this first section of Amendment #1 will be incorporated in the master piece of legislation. Section 2: Is changed to Insurance Commissioner. What I understand, is that we want to change that Director of Insurance where ever it says Insurance Commissioner and I understand Mr. Maloney has an objection to this section.

Maloney

I don't think it's in this section.

O'Keefe

Number six.

Maloney

Just in terms of, once we see those regulations or whatever direction they are heading in with respect to the regulations.

Rogers

I'll take then that a conceptual revision that acceptance of this block of Amendments is subject to later determination by the Commission, that either the regulations are not excessive or that we have language drafted which will say, what can be required of self-insurances.

Croft

How can we determine whether we are going to support the bill, if it's conditioned on the regulations that would be developed once the bill's implemented?

Maloney

They were going to give us some guidelines and perhaps, we can incorporate that in the legislative history in terms of the guidelines and regulations.

Carlson

Isn't it just a matter of philosophy whether they want it under the Division of Insurance because we are not changing any of the language.

Williams

This is Bob Williams in Juneau, I might point out that this block of amendments entitled Amendment #1, if you turn to page 3 at the top of that page we took a provision out of the Minnesota Statute on group self-insurance. I think that, the Commission should be reminded that this is a significant policy change. It goes far beyond simply transferring the current statutory requirements for self-insurance to the Division of Insurance.

There was discussion last time on group self-insurance and I have had a number of people talk to me including the Director of Insurance, Jackie McClintock and members of the Commission that have some reservations and I would like to point out that before we take any action that I remind, that this provision is there.

It's my understanding that there is model legislation and drafts and regulations dealing with self-insurance and they apply to group insurance as well. The Director of Insurance pointed out to me the way it was written. Again, we would have left promulgation of those rules up to the Insurance Director. His response and unfortunately, nobody else is here, I talked with him at length and he feels that group self-insurance can properly be handled under the existing law by creating a reciprocal insurance company and this is what the loggers have done in Southeast. I think there's, other ways.

In terms of group self-insurance I think it's very clearly some criteria should be laid out. The main reason is this kind of policy has to have a cross indemnification clause

Williams continued.

which leaves each member of the group jointly and severely liable for any claim for any one of the company's that goes under. It's also tied into, in my mind, I suspect that you want to form a group like this unless they could purchase reinsurance both on a per claim then aggregate basis.

The final thing that I think that probably, ought to be added, if the Commission decides to go ahead with it, is a provision for audit. I am briefly reminding you before we move on that, this is in there and I would suggest that, well, group insurance if it's structured right can certainly provide the benefits to small employers, it's got to be done so it's with care.

Rogers

I was just about to get to that, that was the next substantive change in Amendment #1. I'd like to ask, if there are objections to including this Section 23.30.087 on Group Self-Insurance?

Carlson

The Department has some serious reservations about it. Jackie McClintock I feel should have some input, although she could testify later. My concern and Bob, I would like to ask a question. In skimming these as quickly as I could today, I just assumed that any new language is underlined?

Rogers

It's adding a new section to read:

Carlson

I understand that but in skimming this I was under the impression that all we were doing was just changing this over to Commissioner. My point is, is there any other sections in here that wouldn't be underlined or bracketed that you're either deleting or anything?

Rogers

There are going to be some others where, we'll just have to look for amending by new section to read and any that are just pure amendments would be underlined and bracketed.

Carlson

We wouldn't recognize that as language though!

Rogers

It would have to say it as it says here. The top line which

Rogers continued.

says AS 23.30 is amended by adding a new section to read:

Stimson

Bob, repeat what you just said, would you please.

Williams

The provision in Amendment #1 on Group Self-Insurance is the only new provision to be added.

Rogers

I'm going to take it as a sense of the Committee that this Section .087 be held from this new bill we are building. It is to be held for discussion for the January meeting of the Committee. Is there objection to that?

O'Keefe

No objection.

Rogers

Section .090 Self-Insurance Certificates: This is where we've added the subsection (k) that was repealed earlier. Are there any objections to .090?

Note: No one objected!

Rogers

Section .265 (19) Self-Insurer's: That's again, the same change.

Williams

Don Koch's memorandum on insurance legislation did have one technical change. I don't know if you have this memorandum with you?

Rogers

Yes, we do.

Williams

Essentially, he wanted to add the language to this definition has been issued a self-insurance certificate. I believe if you have this memorandum it's on the bottom of page two.

Rogers

Is there objection to adding the language that Mr. Koch has suggested into this .265 (19)? Hearing no objection, we'll ask that the new master bill will include Mr. Koch's suggestion for .265 (19) with a change of the word, Insurance Commissioner

Rogers continued

to Director of the Division of Insurance.

We are now on Amendment #2. Bob you had some comments on Amendment Two?

Williams

Yes, Mr. Chairman. The idea of Amendment #2 deals with Group Insurance. I think it's considerably difficult to do self-insurance. This is a provision that allows employers in the same rating classification to form associations, purchase group policies, hoping to take derived benefits, from kind of economy as a scale provision built into an insurance rate making. In otherwords, the larger your policy is the lower the expense provision a company charges and the lower your premium. What we originally did was delete all of the requirements except the requirement to file and receive approval from the Director of Insurance. I would suggest that we probably, back track a little bit here and add back in sub-paragraph 2 which incorporates the safety program.

Croft

Why shouldn't we leave it all in? Why shouldn't we simply eliminate from the existing statute, "formed for the purposes other than the purchase of insurance" and add Number 4 to the existing statute?

Williams

That's probably a good suggestion. The idea in doing this was to make it easy to purchase group insurance, but I think, the requirements for constitution by-laws safety program may have some benefit because it at least provides some cohesiveness to that group.

Rogers

Do we need Number 3?

Williams

That's one I think perhaps, we probably, could delete that one.

Rogers

That leaves the motion, is that we take the old subsection (d), add underlined words: "in the same rating classification". Delete "formed for purposes other than the purchase of insurance". Add the words: "as a group". Keep in subsection 1 and subsection 2. Delete subsection 3 and make subsection

Rogers continued.

4 a new subsection 3 and keep that. Is there objection to that amendment? Hearing none that Amendment is adopted and incorporated in the master bill.

Amendment #3, first section .025 (b), Bob?

Williams

Mr. Chairman, this Amendment is an amendment that deals with allowing insurers to offer deductible policies. Since we drafted this amendment, it's my understanding that now some insurance companies are coming in and filing deductible plans with the Division of Insurance. Deductibles and comp. are kind of a new feature because of the fact that you are having to buy insurance for your employees and you are not buying it for yourself; so, they have to be structured in a way that protects the employee.

What we've done in these Amendments is laid out exactly what has to be included and most of that is in Section 2. Section 1 of this is basically technical. The comment from the Division of Insurance was, that they have already promulgated considering deductible policies as we have outlined in Section 2 of Amendment #3. What they have is requested that we just provide a technical amendment to the law which says that, filing by a company for a deductible plan is not considered a deviation and therefore, not subject to a uniform percentage deviation.

It's the same problem that we have with deviations with the Council. Anyway, what they recommended is that we just make this technical amendment clarifying that deductible plans are not deviations and therefore, do not have to be on the uniform percentage basis.

Rogers

Any comment? I understand it, rather than detail everything that has to be in a deductible policy or in a deductible section of a policy, that all we need to say is that, a deductible policy is not a deviation and that would be a technical amendment. Is there anything wrong with this?

Maloney

The language that is there prevents any kind of self-insurance or excess policy. For instance, when I buy an excess policy that covers me over \$500,000 that would presumably include

Maloney continued.

this and it would destroy the market for excess policies.
It's not what we are talking about.

Croft

How would it do that?

Maloney

Then they would have to be liable for the first \$500,000 under this thing.

Croft

That's one of the protections I want to see in there.

Maloney

If you're self-insured there is a difference. There is a different standard that they are adopting for self-insured and for standard insurance. What the Director of Insurance has said, is that he can adopt regulations that takes care of a deductible policy which is not the same standard requirement of a self-insurer. If you put this language in you are going to gum up the works.

Croft

What I want to do is make sure that as far as a deductible policy is concerned that the insurance company is responsible for payment to the injured worker and I like the provision that they then get it back from the insured. I don't want the Departments absent regulations to do that, where the only responsibility or the only opportunity that the injured employee had is to get it from some employer.

Rogers

I would agree with Chancy and I think that we could just put in, I understand Mr. Maloney's suggestion, I think if this just does not apply to self-insurers we are ok, aren't we?

Maloney

It would apply to excess policies for self-insureds.

Williams

I am having a little problem with this microphone. Can you hear me?

Rogers

Yes we can!

Williams

I'm not sure where we are. I understand the Division wants a technical amendment to clarify it's not a deviation and Commission members would like some protection on how that deductible policy has to be implemented, is that where I understand we are?

Rogers

Yes, that's correct. The Commission wants for example: The requirement that the employee can collect from the insurance company regardless of whether the insurance company collects from the employer.

Williams

I have a suggestion that we can probably keep the amendments that are in tact. Although in Section 2, we may want to put in Title 21 and what we could do is add a provision that this is not considered a deviation.

Maloney

The other thing Bob, is we want it to have something that indicates that this section does not apply to excess policies which may be held by self-insureds.

Williams

Ok, we'll put that in as well.

Rogers

Without objection from the Commission this Amendment #3 is adopted as written conditioned on the exclusion of the self-insurance, excess insurance for self-insurers and subject to perhaps, technical revision to get it in the right Title.

Amendment #4?

Williams

Amendment #4: Is the provision dealing with limiting the filing by the National Council.

Rogers

Ok, this is the open rating amendment.

Williams

Basically, what this is we've already discussed. It needs a whole new subsection (c) under Section 2 of that. Basically, there is going to have to be a provision in there allowing the Director to reinstate prior approval. If he makes a

Williams continued.

determination that any rating plan or class rate filed by insurers is excessive, inadequate or unfairly discriminatory. I feel it will be a fairly controversial amendment and it does make significant changes to the way we regulate insurance premium. What I would like to do is re-draft this one making the technical changes, then circulate it around to get comments from people knowledgeable in the industry and I would suggest to provide us a little clearer, what we've done and if the language is ambiguous and if we've really affectuated what we discussed conceptionally.

I have a number of people that I have contacted across the country and I would like to get some of their comments on this before we take any action. It's the kind of amendment that certainly is gonna have to bear close scrutiny.

Maloney

How are we going to take care of the pool if we don't have the filing, including expenses and so forth under paragraph 21.39 (a). We were going to look at that the last time we talked Bob.

Williams

We hadn't really decided, we've talked about it. Oregon of course, doesn't have that big of a problem because in essence their State Fund acts as the pool. I think we may have to make an exception on the expense filing for the Assigned Risk Pool or we're going to have to set up some mechanism that establishes a pool rate whether it's an organization, such as, Alaska C & R Committee or whether it's the Division of Insurance or how, frankly, I'm not entirely clear what we are going to do with the Assigned Risk Poo'. I suspect that the easiest way to do this is go ahead and make an exception on the expense filing by the Council for the Assigned Risk Pool.

Rogers

What I'm going to ask is, that we hold this Amendment for the January meeting. I would like to pool the Commission on whether or not the Commission wants to proceed to consider open rating and I guess we can take in essence a test vote on open rating, to give us an idea of whether or not we want to hold it until January or hold it until the Year 2000. Are there objections?

Maloney

My objection is as I say, there is nothing that outlines how you are going to determine the rates for the Assigned Risk Pool. I think that's a problem and I think, Bob's going to find some difficulty in drafting something to take care of that. If they are not filing expenses they are not going to be able to compute them. If the rating bureau doesn't give them to you then you are not going to know what they should be. I think that's a problem.

Again, I have this problem with Amendment #6. That if you are going to go to the competitive system, I think you ought to be wholly competitive rather than forcing Tom's company to pay the additional 1% depending on a failer of some other company that's competed in. I think that lies with the Division and I don't think that's an unreasonable burden if they have to be conservative. I'm not sure that Mr. Koch said, he would toss anybody out of the State that is currently in it.

Tom, is there any problem with the liquidity with any of the companies that are currently writing in the State?

O'Keefe

I have no knowledge of any problems with any of the major writers.

I would like to see this thing in its final form for the meeting in January; so, I can have time to study it and get some input from the industry rather than to show up and make a decision yes or no. If you can get your input and write it up and give me a copy, I can get some input on what concerns the industry might have. I would appreciate it.

Rogers

Bob, if you would do that, I would appreciate it. Moving on to Amendment #5, Workers' Comp. Insurers: This requires a report on investment income. Is there objection to inclusion of this Amendment in the master bill?

O'Keefe

Yes. My concern here is the previous testimony, in terms of how this can be accomplished and again, I'd like to be able to take this particular recommendation and get some feed back in terms of how it could be done. I suspect from the amount of testimony we heard from the National Council and some of the other people that its been a very difficult

O'Keefe continued.

task to figure this particular area out. Although, it's only a few sentences here, it could be a nightmare and I would like the input from the industry.

Rogers

Bob, did you have a comment on this section?

Williams

I will note for the Commission's information that the Division of Insurance has objected to it as well.

Maloney

I further object. If we go to an open rating system, I think that, that's the general direction we're taking. There is no need for this at all, if you've got competition. I don't see the need for the reporting.

Croft

I would agree that if we go to open rating, but if we don't go to open rating, then I'd like to have the information; so, to the extent that we are deciding open rating now. I'd like to continue this, but I do agree if we do go to open rating, it can be dropped.

Rogers

I'll take that Amendment #5, will be held until January and if we do not adopt Amendments #4 and #6, we will consider Amendment #5. If I'm not mistaken Amendment #6 is tied to the open rating issue and it has to do with the guarantee of funds.

Maloney

You may all not agree with me on that or even the concept of that. I may not be here January; so, I would like to hear your comments.

O'Keefe

I like the idea, Dennis. I'd like to see it go to all forms of insurance.

Williams

If the Commission decides, there was a section that was left out of this and I apologize. It was probably, the communication between myself and Tom Sofo and there was no intent. There should have been a provision that, if the the guarantee

Williams continued

association is not liable for continuing payment of claims for companies who go insolvent that the general fund has to be.

Rogers

I'm going to assume that Amendment #6, is going to be re-drafted and held for January and will be drafted. I would like to see it drafted in two separate manners, one: That the guarantee association picks up the cost. Two: That the State picks it up and then I think that's going to be the essential debate if we go to open rating. I think it's going to be a close vote and I think we had better have both of them there.

Croft

Third: I would like to have a fiscal note, on the impact of the state of this.

Maloney

You know if we are moving towards this open competition thing, I think the State ought to recognize and the Insurance Commissioner recognize that licensing people who ought not be in business. He is not doing his job and somebody should pick up the tab other than the good insurance company across the street.

Rogers

Wait a minute, we are asking for the return of the free enterprise system and you're saying that the State should pick up the cost of returning to the free enterprise system?

Maloney

A true return to the free enterprise system would say, that if an insurance company writes it and they can't pay it, poor Joe Blow has lost his insurance. It is a social policy that the State adopt. If the insurance goes bankrupt, somebody still has to pay the poor guy. That's the State's social policy and the question of where that revenue is going to come from to pay that. Whether it's going to come from the general fund or whether the insurance companies that are not insolvent are going to have to pay it, is a physiological question.

Rogers

I would like to ask that a third one be drafted: Where 50% of the money would come from the general fund and 50% would come from the guarantee fund. That's the standard legislative

Rogers continued

compromise and I think, that one might be a legitimate compromise in this particular issue.

O'Keefe

The question was, how does Oregon handle it? First of all, they have a lot more expertise and number of people that handle the filings themselves. Second, they have a Compliance Division that does that for example: In the case of uninsured people because they keep records and they will close them down if they don't have insurance. That's something we don't have. In terms of the second injury fund, (In terms of the insolvency situation) the State Fund would pick it up or write a lien.

Rogers

It seems to me that there might be some benefits to the 50 - 50 approach which is that; if the Director of Insurance is going to want to be on his toes in that, he doesn't want to come in and ask for the State appropriation and the industry will tend to self-police more if the State's picking up the whole cost.

O'Keefe

I'm backing up on my statement. Oregon has a guarantee fund, the same as we have in Alaska.

Rogers

Moving on to Amendment #7. It looks to me this is just a technical amendment. Is there anything non-technical about that?

Williams

Amendment #7 is getting into the Procedures Sub-Committee Amendments and none of these have been actually discussed or brought before this Commission. Really, if you are going to talk about Amendments beyond #6, I think Jackie McClintock and Tom Sofo should be present. Unfortunately, they are gone.

Rogers

That would go for Amendments #7 through #13?

Williams

Right. It is our understanding that, there was a Procedures Sub-Committee meeting scheduled and both Tom and Jackie are

Williams continued.

planning to discuss those Amendments with the Procedures Sub-Committee.

Rogers

I would still like to try going through these, we may be able to save the Procedures Sub-Committee some work. If there is any questions on any of them, then we will just refer it to the Procedures Sub-Committee. Any of these the full Commission agrees to, I see no reason to load down the Procedures Sub-Committee with work and the more we can get done in full committee now the less work we have later.

So, Amendment #7, is a technical amendment. Is there any objection to it in the inclusion of Amendment #7 in the full Commission's bill?

Stimson

Brian, I might just explain. I haven't gone through these myself but the explanation that Tom Sofo gave me was that, there is more to some of these than really meets the eye and it was very important to him that Jackie be available to explain some of the background.

Rogers

Ok, in that case we will hold Amendment #7 for the Procedures Sub-Committee.

Croft

Were these all requested by the Division?

Rogers

Some of them by the sub-committees. Number 8, we will hold for the Procedures Sub-Committee. Number 9 for the Procedures Sub-Committee. Number 10 for the Procedures Sub-Committee. Number 11 for the Procedures Sub-Committee. Number 12, that is before us, was approved by the Benefits Sub-Committee which is the increase of furnel expenses from \$1,000 to \$2,000. Is there objection to increasing the furnel expense?

Croft

Yes. I move that we delete: "\$2,000 and Add: \$3,000.

Rogers

Mr. Croft, has moved to delete: \$2,000 and to Insert: \$3,000 under furnel expenses.

Maloney

What's the basis to that, Mr. Croft?

Croft

\$1,000 has been there forever and I don't think \$2,000 is adequate in most cases.

Swalling

Alice Ebenal, testified, she did it for \$1,700 but she had to really work to get it!

Carlson

There is no more hassel to put in \$3,000 then \$2,000 at this point.

Rogers

The motion is to increase it to \$3,000. Is there any objection?

Maloney

I think, \$2,500 would be sufficient with Social Security paying \$500. The undertakers in the State will produce a wonderful casket up to whatever we allow here.

Rogers

I would like to propose \$2,500 but add a new section to read: "the Director made by regulation adjust this figure to account for inflation".

Maloney

Are we saying walnut caskets or what? What are we talking about?

Rogers

Necessary and reasonable furnel expenses not exceeding \$2,500 and then we want to allow the Director to increase to the Workers' Comp. Board by regulation which requires a public hearing, may increase this to account for inflation. Is there objection to that?

Maloney

As needed is that right?

O'Keefe

Yes!

Swalling

As long as it goes to the Board and there is a public hearing!

Rogers

Amendment #13 is the Procedural Sub-Committee, we'll postpone consideration of that.

Swalling

What happened to Amendment #13?

Rogers

That has been postponed till Tuesdays Procedures Committee. Amendment #14, is a penalty for misrepresentation. This is an Amendment by the Benefits Sub-Committee, I believe. It says, "that a person who willfully makes a false and misleading statement is guilty of theft and is punishable as provided in the law for theft". That would mean, depending on the severity of the amount of money that the person receives, that would set the severity of the misdemeanor. Is there objection of adoption of this Amendment? (Note: No objection was voiced) Ok, Amendment #14 will be included in the master bill.

Amendment #15. Bob, can you explain this Amendment?

Williams

No. I think, Jackie or Paul Troeh or Tom is going to talk to this.

Piceno

Gill Johnson, brought it to our attention here at the office and one of the Unions down in Juneau was going to be presenting something similiar in Juneau at the January meeting. At the request of Senator Stimson, I sent it down to Juneau for Sofo to check it out, to see if it was in relation to Workers' Comp.. He drafted it up and sent it back at the request of Senator Stimson.

Croft

This is under the Human Rights Commission and it simply says, "that you can't discriminate against somebody because they filed a work comp. claim". It basically, just tracks with an amendment that was recently made to the Longshoreman and Harbor Workers Act.

Maloney

Chancy, I have a problem with that and as long as we are drafting something on that, I'd like it to be made clear in the legislation that you need not hire somebody that is not qualified to do the job! I have had problems with the Human

Maloney continued.

Rights Commission on that three times, where the guys got a bad back, the doctor says, "he's got a bad back", the guy comes in and he says, "I still want the job". It's a good paying job and he goes and finds another doctor who says, "his back isn't that bad". I guess if I don't hire him I get a discrimination claim. That's a problem we need to address.

Stimson

Aren't we dealing with retribution here?

Maloney

As long as we are into this discrimination thing, I think, we should take care of this problem. The Human Rights Commission has come at me three times on this thing. Because you have back pain liability, they force you to hire these people whether you feel justified or not and they find some doctor that says, "he isn't" and you know when in doubt. I've had two guys injured after they come to work and sure enough bingo there backs go out.

Croft

Why don't you have some legislation drafted to that affect and in the meantime, I don't see any problem with this because that says, "for somebody that's filed a claim" and you can't in effect, as Terry says, do anything against them for filing a claim. Yours would cover a situation where they have some physical defect and the question is whether you have to hire them or not. I think, you have a legitimate point but it seems to me that it is somewhat different from this.

Rogers

Is there objection to inclusion to Amendment #15 in the overall bill? Hearing none, Amendment #15 is included.

Now we will go to the draft bill that is in the front of your packet enacting the Workers' Compensation Board, Second Injury, establishing a Workers' Compensation Act and providing for an effective date. Section 1: Adds another panel to the Workers' Comp. Board. Is there an objection to Section 1? Hearing none, Section 1 will be included in the master bill. Section 2: Is the Second Injury Fund.

Carlson

Brian, I don't want to delabor anything but when it says,

Carlson

(the interpretation of) "one panel of three members sitting for all judicial districts", does that need any clarification? Is that going to create a problem?

Swalling

Is that a roving panel?

Rogers

It's a roving panel?

Carlson

I understand that but I'm not sure that language says it that clearly.

Rogers

One panel of three members which may sit in any judicial district.

Carlson

Wasn't the original intent on this, is that any any of those panel members could sit in on any of the other panels? If you call it a roving panel, does it mean that the entire panel has to go or a member can fill in at any of the other panels?

Croft

You can't do that if you have a labor member substituting in for an employer member. You would have to substitute in for the same category.

Carlson

That's why I think, this needs clarification before we just say we are going to adopt it. I think, we all agree we want more members to be able to move in and out, around and fill in; so, some of the people aren't serving almost full time on the board. Frankly, we need to spell out the roving part, it's to sit in as a substitute or alternate member or a member to replace the same if it's from labor or management.

Swalling

You want three members, any member of which may sit for his counterpart on any other State panel in the State.

Rogers

Section 2: This is repealed and re-enacted, so; you won't see underlined language. Section 2 runs for 2½ pages and

Rogers continued.

it has to do with the Second Injury Fund. Is there objection to the changes in the Second Injury Fund?

O'Keefe

Is this essentially, the same thing as the Board tried to put in this last legislative session? Isn't that what we're saying 6% funding? Isn't that the same thing?

Rogers

That's correct.

O'Keefe

So, we're recommending something that was either not acted upon or was not passed last time.

Rogers

The reason it was not acted upon was that, it was referred to this Commission. I have a change that I would like to suggest and this would be on the second page of this draft, subsection (b). We are now saying, that we are going to pay 6% but (b) does not say when. It says, "you pay 6% on for the employee". Well, on a permanent total disability or a permanent partial disability you are making weekly payments to the person, you don't want them to have to make out weekly payments of 6% of his weekly check to the fund.

Swalling

Why not?

Rogers

Because of the cost of writing checks. There is a cost to writing a check and Barbara Grissom, who is not here now pointed that out. They figure their average cost of writing a check is \$15.00. If on \$600 of permanent total their paying \$36.00 plus \$15.00 to make out the check. What I would like to suggest is that the insurance carriers pay quarterly 6% of the benefits paid; so, they just pay quarterly or monthly. I'll leave it up to the Commission as to whether to pay quarterly or monthly. Tom, maybe, you could tell me better.

O'Keefe

Quarterly is a typical way to have reports in. I guess, I have to back up, I wonder how the 8% is paid now? Is that a lump sum?

Croft

It's on permanent partial disability so you don't have the question.

Rogers

On some of these, they could pay the 6% when they setup the reserve but on others you don't know how long it's going to go. I'd like the staff to get this re-drafted to say that "the carrier will pay quarterly a sum equal to 6% of the total compensation to all employees" or whatever it would take to make that correction. Bob, did you get that?

Williams

Yes, Mr. Chairman.

Rogers

Are there any other suggestions for changes in the Second Injury Fund?

Williams

I have something I would like to bring to the Commissions attention. The current law in the Second Injury Fund places a limit on the maximum amount of funds and maximum receipts that can actually be in the fund at one time. In looking through this draft, I don't see that limit.

Rogers

\$400,000, sub-paragraph (i).

Williams

Ok, I got it.

Croft

I move we change \$400,000 to \$600,000.

Rogers

Motion to change \$400,000 to \$600,000. Is there objection?

Maloney

That doesn't make sense. That shouldn't be on a annual basis, it should be on a quarterly basis or something like that. If you are going to say, you're spending 1.2 million a year that's \$300,000 a quarter and presemably at the end of any quarter year you're going to have that quarter money. It seems to me that's logical.

Carlson

I just wonder, we have the wild fluctuations and I assume we

Carlson continued.

are going to have that in Alaska. What would be wrong with that fund building up when you have high employment and etc., then you are not having the shortage and have to go to the legislature to refund that thing. I don't see anything wrong with any surplus money being in there.

Maloney

It limits surplus funds against expense spending and unless there's a need for the money, they can always come in and ask for more.

Rogers

What I would like to suggest is that provisions (b) and (c) of this section shall be waived during any calendar quarter when the unencumbered balance on the first day of that quarter is equal to or exceeds the sum of \$600,000. Which would say, that if you have enough at the current time to operate for two quarters, we'll suspend it but as soon as you get below a six month cushion you start building again. Bob, could you draft that?

Williams

Could you repeat that? I'm working off an old draft, that is my problem.

Rogers

It would read: that the provisions of (b) and (c)"shall be waived in and during any calendar quarter when the unencumbered balance on the first day of that quarter in the Second Injury Fund is equal to or exceeds the sum of \$600,000".

Williams

Ok, I've got it.

Rogers

Is there objection to the remainder of the changes in the Second Injury Fund? Hearing none, Section 2 will be adopted and placed in the composite bill. Section 3: Anybody understand Section 3 of this?

Croft

That means that with regard to rehabilitation that you can receive a small amount of payment. The provision now says, that you couldn't get paid at all and this allows you to go into some type of job where you get some remuneration but still be eligible for rehabilitation. In other words, if

Croft continued.

an employer were to pay \$100.00 a week or so, you could get some subsistence out of vocational rehabilitation. An employer might not be willing to pay you the full amount.

Swalling

I believe also, they are referring to the liability of getting re-injured. It says, "the liability set out in any of this section applies to the State", rather than to the employer. I believe, that's what it refers to.

Rogers

Right. So, if the person is picked up on that \$100.00 a week the State still retains liability; so, there is an incentive for the employer to pick him up. Is there an objection? Hearing none, Section 3 will be adopted into the composite bill. Section 4: doesn't have a statute cite on it which would make it a session law only. I don't understand this one, does anyone else?

I think I do now, what it says, is that the new Second Injury Fund payment law doesn't apply to people who were injured prior to the date the law goes into effect. If there is no objection Section 4 will be adopted. Section 5: changes the panel immediately. Hearing no objection. Section 6: changes the Second Injury Fund law effective July 1, 1981. I don't see why we don't want to change that sooner.

Croft

In order to implement the reporting provisions, I think.

Maloney

Yes, you're going to have to change the forms etc.,.

O'Keefe

I don't think we can do it any faster.

Rogers

Section 6 will be adopted with the "July 1, 1981 effective date" on that. We have now made it through all of the amendments which have been proposed by the sub-committees. We have a meeting of the Procedures Sub-Committee scheduled for Tuesday afternoon and we do not have any meetings scheduled for the Rehabilitation, Benefits or Insurance Sub-Committees as I understand.

Rogers continued.

As Chair of benefits and rehab. I am not going to be able to call a meeting of those sub-committees. I would intend during our two day meeting in Juneau to try to hold a meeting of those sub-committees and to look at the more technical changes in rehabilitation. I would like to propose another piece of legislation to be drafted, a Resolution be drafted which continues this Commission for a period of another year, to get more deeply into the area of rehabilitation and benefits. I think, with both of those sub-committees we realize we just don't have enough information to proceed with major changes in rehab. this year. Would there be objection in drafting of a Resolution in continuing the Commission?

Stimson

What were the areas you said, you wanted to focus on?

Rogers

Changing the rehabilitation and benefits systems to provide incentives for employers to put people back to work and incentives for employees to go back to work.

A Resolution be drafted which would continue this Commission for a period of another year with specific areas to be worked on during the next year of improving the rehabilitation and benefits structure; so, as to provide incentives for carriers and employers to assist people in becoming rehabilitated and re-employed and incentives for the employees to become rehabilitated and re-employed. Is there objection? I think, it has been the sense all along. Hearing no objection.

At this time I would like to adjourn the meeting and thank all of you for attending.

Alaska State Legislature

CO-CHAIRMEN
SENATOR
TERRY STIMSON
REPRESENTATIVE
BRIAN ROGERS



MAILING ADDRESS
1024 WEST 6TH AVENUE
ANCHORAGE, ALASKA 99501

Worker's Compensation Study Commission

AGENDA January 29, 1981

- A. Presentation by Jackie McClintock - Workers' Compensation Division
- B. Presentation by Don Koch - Division of Insurance
- C. Review of Draft Resolution to continue the Workers Compensation Study Commission

D. Legislation

E.

→ Bunkhouse

→ WCCA

→ Funding

→ Intro of legislation

~~SA~~

**PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT**

Fairbanks, Alaska
December 18, 1980

Representative Brian Rogers
Senator Terry Stimson
Co-Chairmen
Alaska Workers' Compensation Study Commission
1024 Sixth Avenue
Anchorage, Alaska 99501

Dear Brian and Terry:

As a follow-up to my presentation to the Study Commission Dec. 13
I am enclosing the following materials:

- == Analysis of some of the assumptions behind pure premium rate-filing and some of the scenarios liable to occur, in my estimation, should we adopt such a system on the basis of our present understanding. Scenario #4 points out that if workers' comp is in fact a money-loser for carriers, that the downward pressure on premiums could force major carriers to pull out. Scenario #3 suggests that if invaders prevail, cut-rate pricing coupled with rapidly expanding business could lead to a repeat of Alaska's unfortunate experience in the '70's, when widespread claims-handling problems were associated with the rapid growth of one carrier. Scenarios #1 and #2 assume competition -- and point to some potentially undesirable consequences.
- == Also included with this scenario is a worksheet I drew up using data from the Minnesota Insurance Division's required annual report on in-state workers' compensation business. In Minnesota I discovered that outstanding losses -- a major source of investment income -- increased twenty-fold in dollar-value between 1969 and 1978. Adjusted to assume constant premium and loss rates (my figures are on the worksheet), the actual increase in outstanding losses as percent of premium was 285% (from 13.2% to 37.7%, adjusted). This analysis shows the way in which slight shifts in numbers can result in tremendous accretions of dollars to the carriers.
- == Finally, I drafted a memorandum covering (1) the adequacy of the New York State Fund's reserves, (2) a conversation with Albert Millus and (3) my concern that the Study Commission has failed in its responsibilities to claimant problems by failing to address this area in a systematic manner.

With regard to the New York State Fund, you may recall that I brought those numbers to the Study Commission because that fund, for several years running, wrote at a loss as bad as the worst year in the recent Alaska experience -- and had a net surplus of \$380 million at the end of the decade. I looked briefly into the suggestion the New York Fund might not be properly reserved. As the memorandum states, I find no indication the New York Fund is inadequately reserved.

Deann Ter

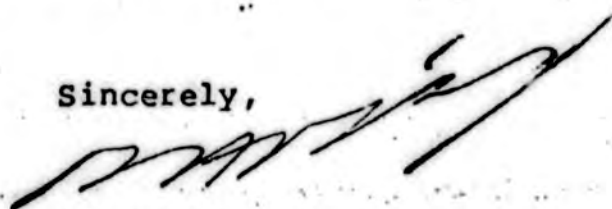
Fineberg / Stimson-Rogers
Dec. 18, 1980 (letter)
Page Two

Donald Kramer of Kramer Capital Consultants (from whose testimony to the Minnesota Workers' Comp Study Commission I borrowed the numbers) says he did not bring the liability numbers to the Minnesota hearing because he had not heard anyone question the New York fund's reserving practices. To his knowledge the New York State Fund is flat, sassy -- and properly reserved. Kramer, who has been a consultant to that Fund, suggests that anyone who wants to confirm the Fund's reserving practices might look at the conventional forms, such as Schedule P (loss development) which the Fund, like any other insurance carrier, files annually. Since I brought up these numbers to make a simple point -- that you can underwrite at a paper loss and still come out ahead -- I do not believe it is worth either the Commission's time or my own to pursue this matter further.

But I think the numbers from Minnesota and New York do make clear the point that small percentage changes in discrete elements of the comp-pricing system may yield tremendous sums of cash for the carriers -- and that we are still pretty much in the dark as to what the numbers mean for comp carriers in Alaska. It is my belief that we should be going over past rate filings and examinations with a fine-tooth comb to learn which of our assumptions reflect experience before we make major changes in the rate-making procedure.

With best regards, I am

Sincerely,



Richard A. Fineberg
Box 81835 - College Sta.
Fairbanks, Alaska 99708
tel 907/479-5363

(enc.)

I. General Assumptions Underlying Open-Rating Proposal

A. In the absence of meaningful numbers from the Alaska experience -- figures that might clarify our understanding of the way in which the workers' compensation pricing mechanism works in the Alaska market -- we must make some assumptions to proceed with consideration of rate-filing on pure premium.

Assumption 1. The existing rate system keeps prices somewhat higher than they would be in a truly competitive market. (1)

Assumption 2. The proposed rate-filing on pure premium would not destroy or detract from the integrity of the data-base and would induce competition. (2)

II. General Assumptions about Workers' Comp

A. It is also necessary to consider at all times the nature of workers' compensation. Three key factors will be identified here:

Assumption 1. Workers' comp exists to provide necessary services for injured workers. Delivery of insurance services may be adversely affected by sudden market changes. (3)

Assumption 2. Workers' comp is a long-tail line in which small incremental changes in base numbers may have significant effects in long-term calculations. (4)

Assumption 3. Alaska's comp market is unique in that this line is dominated to a great extent by a small number of carriers. (5)

III. Some Possible Scenarios

A. Again in the absence of meaningful numbers, let's consider the possible effects of rate-filing on pure premium in terms of abstract scenarios:

III. Some Possible Scenarios (cont'd)

Scenario #1: TRADITIONAL PRICE WAR

Some new carriers will spot the possibility of gaining investment income and will enter writing at reduced rates. The dominant carriers will come down to meet the invaders. The dominant carriers, already established, have a major advantage: they already have shops set up and know what their costs are. They can also under-reserve in Alaska for a few years, adjusting comp reserves in other markets upwards slightly to compensate. (Since Alaska does not keep close, systematic tabs on reserving practices in workers' comp, this practice would be difficult to detect.) In short, the carriers may do precisely what other marketers do when faced with competition in a market they wish to preserve: drop prices under the competition to drive out the invader. Once the invader is gone, the carriers who had previously carved out this market can once again kick premium prices up.

Scenario #2: MICRO-APPROACH TO TRADITIONAL PRICE WAR

Same scenario, but let's focus on how the major carriers might cut overhead. It was asserted during the Dec. 13 Study Commission meeting that some carriers might write comp as a no-profit "add-on" to package insurance already being written for an employer. If this were the case, the same employer would still be paying the same price for insurance and would be no better off; the workers' comp costs he/she perceives to be breaking the business would merely be described on the insurance bill as all lines of insurance together instead of workers' comp.

III. Scenarios (cont'd)

Alternatively, if the packaging plan actually succeeded in shifting costs out of workers' comp and into other lines, the premium costs on those lines would be artificially inflated to cover part of workers' comp. Is it rational to expect purchasers of (say) commercial liability insurance -- or homeowners insurance or some other line, for that matter -- to subsidize workers' comp? If workers' comp is to be subsidized from another sector of the economy, should that sector be the purchasers of other lines of insurance, or should that sector be society as a whole? I don't know the answer to this question. But I believe the implications of pure premium rate-filing need to be considered carefully in terms of effects that flow from the operative assumptions.

Scenario #3: CUT-RATE INVADERS PREVAIL

Invaders compete successfully, offering cheaper comp policies with reduced services, poor claims practices. The Division of Insurance has demonstrated its inability and/or unwillingness to monitor comp trade practices in the past.⁽⁶⁾ And it is not clear that the Division of Workers' Compensation has yet mastered the administrative problems that kept that division from preventing workers' compensation service problems that plagued Alaska during the '70's. The costs of poor claims service to society as a whole has been covered elsewhere; likewise the effects on the individual claimants. If delivery of services is the basic purpose of workers' comp, then policies that adversely affect delivery should be judged accordingly. Before advocating pure premium rate-filing I would want to make sure claims-handling practices were under control AND well-monitored by state officials to insure that services would not suffer as a result of a destabilized market.

III. Some Possible Scenarios (cont'd)

Scenario #4: DOWNWARD PRESSURE ON RATES FORCES MAJOR CARRIERS OUT

If I understand the argument put to the Study Commission for pure premium rate-filing, it is that the existing system is keeping the price of workers' comp up by inhibiting deviations, and that workers' comp in Alaska is a loser.⁽⁷⁾ If carriers cannot make money on workers' comp in Alaska, why do they write it at all? Answer: They want investment income. In this situation, anything that pressures carriers to reduce comp prices carries the risk that with the downward pressure on prices other insurance markets in other areas would become more desirable to the major carriers.

I do not believe workers' comp in Alaska is a loser. However, the data on which a firm conclusion can be based is simply not available at this time; that is one reason I advocate a statute or regulation requiring carriers to file an annual statement on their comp experience in Alaska that would include premiums, expenses, paid and unpaid losses, investment income and experience. Minnesota has such a law, and it yields data on which modification of the rate-filing system might be intelligently predicated.⁽⁸⁾ It is my premise -- which I presume the Study Commission shares -- that workers' comp exists to delivery a necessary service. If pure premium rate-filing might force carriers out of the market, in view of the extreme importance of the top three carriers (70.4% of the market) that provide this necessary service the numbers should be examined carefully before such a policy change is made.

IV. RECOMMENDATIONS

1. Adopt a comp-specific reporting system for Alaska similar to Minnesota's Form I-57.
2. Increase budget/personnel provisions for Division of Insurance to make sure the I-57 reports are drafted to glean significant information, then tabulated and analyzed.
3. Examine the Milliman and Robertson Oct. 1, 1979 report to the Division of Insurance to determine whether its conclusions are (a) valid and (b) applicable to the general reserving practices for Alaska workers' comp claims for the 1976-80 period.
4. Analyze previous rate filings with emphasis on outstanding losses and investment income.
5. Assess similarities and differences in the comp markets of Alaska and other states.
6. After completion of a thorough examination of workers' comp profitability in Alaska and the unique characteristics of the Alaska workers' comp market, make recommendations concerning ways to improve the pricing mechanism for workers' comp in Alaska.

MEMORANDUM

TO: WORKERS' COMPENSATION STUDY COMMISSION

FROM: RICHARD A. FINEBERG

DATE: DEC. 18, 1980

RE: NEW YORK STATE FUND / MILLUS / CLAIMANTS

In presenting information on the profitability of workers' comp to the Study Commission Dec. 13, I cited numbers from the New York State Workers' Compensation Fund. One commission member noted the absence of liability data and asked whether the New York State Fund--having written at a large paper loss for much of the 1970's while showing a tremendous net surplus accumulation -- was able to meet its future commitments.

With limited personal time available to pursue this question, I contacted Donald Kramer, Kramer Capital Consultants, from whose testimony to the Minnesota Workers' Compensation Study Commission I took the New York figures.

Kramer's response: He did not go through the liability data in his oral testimony in Minnesota because the New York State Fund's ability to meet its commitments is not, to Kramer's knowledge, in question. For those who wish to raise the question, Kramer noted that the Fund files conventional insurance forms required of any carrier, including Schedule P (loss development) and that any glaring defects or shortfalls in projected claims payments should show up there. He added that he has served as a consultant to the New York State Fund and that he is not aware of concern about solvency. To the contrary, he says, after two good years at the end of the decade the Fund is blessed with what he terms "an embarrassment of riches."

Additionally, I note that Albert Millus, whose article on competitive rating in workers' comp appeared in Best's in November, directed the New York State Fund from 1972-78, the years the Fund was underwriting at a paper loss. If Millus had led the Fund to insolvency, I doubt that we would find him consulting on workers' comp at \$100/hour and writing cover articles for Best's (he has a follow-up scheduled for January).

Since I brought up the New York Fund numbers simply to point out a tremendous change in net surplus in the face of years of underwriting loss and I know of no challenge from anybody who has examined the New York numbers, I do not feel it necessary to pursue this matter further.

V. FOOTNOTES

- (1) See articles by Fairley and Hill in the Bell Journal of Economics, 10(1): 1979 (cited in author's 12/13/80 presentations to the Study Commission.)
- (2) I am not persuaded that either assumption is valid. (See arguments presented Dec. 13.) For the purpose of analyzing the proposal, however, let's grant this assumption and proceed.
- (3) The Alaska comp experience during the '70's may be an example of the premise that sudden market changes result in deteriorated service delivery. (A former ALPAC official tells me that when the company shipped several Alaskans to San Francisco for evaluation by a psychiatrist whose firm consistently reports _____ to carriers that claimants are frauds, ALPAC sincerely believed that psychiatrist to be "the best medical opinion money can buy." This kind of honest mistake is precisely the kind of problem that occurs when a carrier is expanding rapidly. It is the claimant who pays the highest price for such honest mistakes.)
- (4) Indications from other states where data is available are that the size of the tail -- the amount of money in outstanding losses -- is increasing. (For Minnesota's experience see accompanying worksheet.)
- (5) According to Best's 1979 compilation, Alaska is the only state in the nation in which three private carriers write more than 2/3 of the comp premiums. The only other state that comes anywhere close is Oregon -- a three-way state -- in which three carriers write 54% of the comp. (Commissioner W.W. Fritz of Oregon therefore has the distinction of having served as Commissioner in the two states with this unusual market characteristic.)
- (6) See author's report to House Labor & Management Committee, Jan. 21, 1980 (on file with Study Commission).
- (7) Data from NAIC reports presented to this Study Commission Dec. 13 indicate Alaska workers' comp profits in four of the seven years for which data is available (1973-79) exceeded the national average for workers' comp -- and outweighed the loss in the worst year (1978) in three of those four profitable years.
- (8) Minnesota form I-57 filed with Study Commission Dec. 13, 1980. Figures on the amount of money in outstanding losses derived from that form are presented in the worksheet on the following page.

OUTSTANDING LOSS DATA: MINNESOTA WORKERS' COMPENSATION EXPERIENCE, 1969-1978

	(1) Total Net Earned Prem. (\$ 000,000)	(2) Factor to make (1) = 100	(3) Loss Ratio (Net) (%)	(4) Factor to make (3) = 70%	(5) Total Paid Loss (\$ 000,000)	(6) Adj. Paid Loss (5)x(2)x(4)	(7) Total Loss Outstanding (\$ 000,000)	(8) Adj. Outstndg. Loss (7)x(2)x(4)
9	\$69.7	1.43	61.2%	1.14	\$34.5	56.2	\$8.1	13.2
0	77.1	1.29	62.0	1.13	39.1	57.0	8.7	12.7
1	83.8	1.19	65.3	1.07	41.9	53.4	12.8	16.2
2	99.7	1.00	68.1	1.03	48.1	49.5	19.7	20.3
3	110.9	0.90	65.6	1.06	52.2	49.8	20.6	20.0
4	138.1	0.72	60.1	1.16	63.3	52.9	20.8	17.3
5	162.6	0.62	61.5	1.14	72.4	51.2	27.6	19.5
6	204.0	0.49	74.9	0.93	90.8	41.4	61.8	28.2
7	254.3	0.39	84.8	0.82	113.9	36.4	101.8	32.6
8	351.5	0.28	91.4	0.77	146.3	31.5	175.0	37.7

Source: Columns (1), (3), (5) and (7) taken from "Minnesota W.C. Experience -- Insurance Division Form I-57," provided by Minnesota Insurance Division from tabulation of Form I-57 ("Workers' Compensation Experience Exhibit -- Report to the Insurance Commissioner").

Columns (6) and (8) represent paid losses and losses outstanding, adjusted to assume premium for workers' comp at 100 (000,000 \$) per year and loss ratio at 70% of premium. Cols. (6) & (8) expressed in % or \$ (000,00

The factoring of the Minnesota numbers was done by the author to demonstrate the marked increase in the outstanding loss reserves for workers' compensation claims in Minnesota during this ten-year period. Similar data for Alaska is not readily available.

Prepared by Richard A. Fineberg
Alaska Workers' Compensation Study
Commission
Dec. 18, 1980

RE: ALBERT MILLUS

I spoke briefly with Millus about the New York State Fund and pure premium rate-filing.

Millus did not wish to comment informally by telephone. He expressed interest in consulting for Alaska as an expert in the field. To offer an opinion on the merits of any proposal he said he would have to see:

1. Details of the last three years' experience;
2. The last three rate filings -- applications and opinions; and
3. a copy of the current law

After looking at those materials, he would be able to tell us how much time he would need to evaluate the information. (He said his basic fee is \$100/hr., but the fee is adjustable.)

Millus did wish to make sure that an error in the Best's version of the manuscript filed with the Study Commission Dec. 13 did not result in confusion. According to Millus, Best's inadvertently dropped the capitalized words from the following passage, reversing his meaning:

....Without the volume of quality statistical detail now required by rating bureaus and obtained from all insurers, sound actuarial analysis of benefit changes and the determination of creditable rate levels would not be POSSIBLE. WITHOUT UNIFORM INPUT OF STATISTICAL DATA TO THE BUREAUS, THE DATA BASE WOULD BE diluted and eroded. . . .

Millus says a correction will appear in January, along with a companion article. He said the manuscript we have is correct.

Millus also suggested caution in using New York State Fund data, indicating that he could interpret it for us -- at \$100/hour, presumably.

For the record, Millus' address is 120 Broadway, Suite 1744, New York, NY 10271 (tel 212/964-1133).

RE: CLAIMANTS

Finally, I wish to express my disappointment that this Study Commission has failed to cover claimants' problems in an effective and systematic manner.

As I have indicated in presentations to the Study Commission (and in an Oct. 6 memorandum to Rep. Rogers and informal discussions with Sen. Stimson and Member Croft), I believe that the Study Commission should be conducting systematic interviews with claimants. Although the Study Commission has provided numerous opportunities for individuals to express their viewpoints (and certain problems have been identified as a result of this process), this unstructured approach begs a central question the Study Commission ought to be trying to answer: Are the individual claimant complaints the inevitable few failures of an otherwise competent system, or is there a pattern to problems associated with comp claims (or certain kinds of claims, such as long-term disabling injuries, applicants for permanent partial disability benefits)?

It is my belief -- backed up by numerous interviews and file examinations but unsupported by statistical analysis because I have not had the means at my disposal to attempt such an analysis -- that one aspect of the workers' comp crisis in Alaska in the '70's is that long-term disability cases were handled unevenly, and that some individuals suffered dearly and unfairly as the overloaded comp system failed to function properly. The only way to determine whether there is a carrier tendency to oppose long-term disability applications, regardless of merit, is to sample and examine files in a systematic manner, interviewing the claimants as a part of that examination since the records are known to be inadequate.

Despite its potential and its intentions, the Study Commission has failed in this regard. Despite the numerous indications of this disturbing pattern already on the record, the Study Commission has not taken the necessary steps to document the pattern, to assess and seek remedies to such a pattern. In view of the widely held notion that government should do for the people only what they cannot do for themselves, the Study Commission's failure is particularly lamentable: Insurance companies and employers can bring their grievances to the Study Commission quantified and analyzed in cogent arguing form: both have institutions and an economic base from which to make their presentations. On the other hand, the claimant has nothing but his/her own resources, inadequate understanding(s) of a complicated system and (possibly) distorted perceptions. Since my numerous recommendations in this regard are already recorded, I'll not repeat them here.

**PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.**

SECTION ANALYSIS - AS23.30.155(n)

This proposed amendment would authorize the Board to award a lump sum for all types of compensation whenever it determines that it is in the best interest of the employee and does not cause substantial hardship to the employer.

Currently, the Board may only award lump sums for unscheduled permanent partial disability under AS23.30.190(20). There is no authority to award lump sums on the other disability types or death benefits, except through a compromise and release agreement. This places the employee or beneficiary at a particular disadvantage in that under the terms of an agreement all future compensation for temporary total, temporary partial, permanent partial or permanent total disabilities are waived, and, in many instances, the lump sum is reduced to present value. This severely restricts the options of the employee or beneficiary who may feel it is in the best interests to settle the claim in a lump sum, but may only do so through a compromise and release.

The Board also questions the appropriateness of having the authority to approve lump sum settlements through an agreement process, while unable to do so through the hearing process.

SECOND INJURY FUND
Budget Request FY 82

Administrative Costs:

Personnel, Travel, Supplies & Contractural	182.4
A.G.'s Office	26.7

Grants & Claims:

Benefits to individuals (Voc Rehab)	589.5
Claims (Reimbursement)	765.4

TOTAL	1,564.0
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M E M O R A N D U M

TO: SENATOR TERRY STIMSON

FROM: DIANE SIMONSON

DATE: SEPTEMBER 16, 1980

RE: THE FOLLOWING IS A SYNOPSIS OF THE ATTACHED REPORT ON
CLAIMS STATISTICS AND PROCEDURES.

A request for a claims study was made by the commission at the August 1, 1980 meeting. A worksheet to be used in the data collection was prepared with the assistance of Commission member Chancey Croft. At Mr. Croft's request, a random sample of 250 claims filed in 1978 was selected. The worksheet and raw data are available.

The scope of the study was modified to a degree to reflect the information available in the Division of Worker's Compensation files and to outline the various forms and procedures used by the Division. The sample was taken from claims involving wage loss, as no final report is filed with the division on medical only claims. Information on total medical payments can only be obtained from the carriers. Data on dates of injury, first and last payments is not included in the report as additional information must be considered before analysing the dates for timeliness of payments.

Following is a brief rundown of the statistics which were obtained. They include both data from the division and statistics derived from the sample.

<u>TOTAL CLAIMS IN 1978</u>	21,575
MEDICAL ONLY	60%
WAGE LOSS	40%

TYPE OF DISABILITY	# of cases	%
TEMPORARY TOTAL ONLY	207	82%
PERMANENT PARTIAL	40	16%
TEMPORARY PARTIAL	4	2%

no death

usually combined with TT or PP

INSURANCE

INSURED BY CARRIER	224	90%
SELF-INSURED	21	8%
UNINSURED	5	2%

*? self insurance
Local gov't*

WEEKLY COMPENSATION RATES

\$65 (based on earnings)	9	3% ←
\$65 to \$607	158	63%
\$607 (maximum in 78)	11	4%
(undeterminable)	72	29%

Average \$303.51 *not incl undeterminable*

*start @ 6500
final report didn't show
when comp rate increased*

HEARINGS

Requested	24	10%
Held	12	5%
Pending	3	1%

In addition, the sampling showed 20 claims, or 8%, were settled by Compromise and Release, and the services of attorneys were utilized for 12% of the claimants, in 29/250 cases.

Introduction

A request for a claims study was made by the Commission at the August 1, 1980 meeting. After conferring with Commission member Chancey Croft and reviewing the minutes of the meeting, a worksheet was prepared for use in the data collection. Mr. Croft's recommendation was to select a random sample of 200 to 300 claims for 1978, with a proportionate number of medical only and wage loss compensation claims. The final report from the carrier was to be pulled to obtain the information requested. (The worksheet used for the collection of data is attached).

The scope of this survey was modified to a degree to reflect the information which is available in the Division of Worker's Compensation files, and to reflect the different statutory requirements for different types of claims.

First, the sample was taken only from claims involving wage loss. No final report is filed with the Division on medical only claims, so total medical payments cannot be determined from the Division's files. This information can only be obtained from the carriers. Second, many of the claims filed in 1978 are still open claims, which are either being disputed or where compensation is still being paid.

It is my intent to present statistics on the information that was readily available and to clearly define to the

Commission the reporting requirements and data included on three different types of claims: medical only, claims settled between the claimant and the employer/carrier, and those claims which were disputed. Recommendations for focusing in on particular areas on further claims studies will be provided.

The Division of Worker's Compensation is currently planning an Information Handling System to be implemented in 1982. The need for immediate retrieval of information on claims is crucial in overcoming the problem of timely issuance of Decisions and Orders by the Board. The Commission may want to look at the report filing requirements in relation to the retrieval of data for that system. Generally, carriers file only those reports required by statute, which may not be comprehensive reports on medical costs and reduction of compensation payments. Recommendations for the inclusion of comprehensive and complete information on all claims within the Information Handling system will follow.

Statistical Information

- A total of 21,575 claims were filed for the calendar year 1978
- 60% of the total were claims for medical only (no wage loss compensation).
- 40% were claims involving time loss
- Of the total claims filed each year, 10% to 20% are disputed, some by controversion, and others resisted by the carrier.

Statistics from the sample

A random sample of 250 1978 claims was selected from Time Loss claims only, from which the following statistics were obtained.

Type of disability

Temporary Total Only	206	82%
Permanent Partial	40	16%
Temporary Partial	2	1%
Temporary Partial		
Temporary Total		
Permanent Partial	2	1%
	250 cases	100%

Insurance

Insured by Carrier	224	90%
Self-Insured	21	8%
Uninsured *	5	2%
	250	100%

*On some claims it was difficult to determine if the employer was actually self-insured, as they sometimes use major carriers for adjustment. The Division provided a list of those employers who are self-insured, however it was not possible to ascertain if they were self-insured in 1978.

Average Weekly Compensation Rate

\$65 (wage statement not submitted)*	51	21%
\$65 (based on earnings)	9	4%
between base of \$65 and maximum of \$607.85 in '78	158	63%
Maximum of \$607.85	11	4%
(No figure available)	21	8%

*This figure includes those claimants who either never submitted their wage statements, or they submitted them after the final report was filed and their compen-

sation was adjusted. The carrier may not report the adjustment, or the amended figure was not included in the file.

Compromise and Release

Total number of cases settled by compromise and release (with Board approval)	20	8 %
---	----	-----

Hearing Requested/Hearing Held/Attorneys

Hearing requested	24	10%
Hearing held	12	5%
Hearing set for 1980	3	1%
Settled prior to hearing	9	4%

Hearing Requested	Hearing Held	D&O Issued	Attorney
2-28-80 28	3-24-80	5-9-80	yes
2-21-79 69	4-30-79	4-30-79	yes
2-19-80 36	3-25-80	6-9-80	yes
4-11-79 43	5-24-79 54	7-18-79	no
7-23-79 58	9-21-79 38	10-29-79	yes
3-03-79 69	5-14-79	3-10-79 <i>my</i>	yes
12-13-78 55	2-05-79	4-26-79	yes
10-25-78 47	12-11-78 5-01-79	2-16-79 6-08-79	yes
3-24-78 25	4-19-78	6-1-78	no
12-08-78 31	1-09-79	7-30-79	yes
8-23-79 66	11-29-79	12-13-79	yes
4-9-79 104	7-23-79	11-07-79	yes

As shown in the above table, it appears the Board is in violation of AS 23.30.110(c) which requires that a Decision and Order be issued within 20 days. However the 20-day period begins after the date the hearing record is closed, and NOT after the date of the hearing. Additional research into claims which resulted in hearing to determine what date the record actually closed is necessary to calculate the exact time period.

Pending Hearings

On three of the claims, hearings have been scheduled for the fall of 1980, and these should be considered in viewing the total number which result in hearings.

Attorneys

Attorney services utilized 29 12%

(the above data on hearings shows attorneys were brought in on 10 of the 12 cases. Attorneys were also brought in on claims settled by Compromise and Release, and some claims were settled informally.)

Dates of First and Last Payments

for notice

In regard to timely payments of compensation, there are several factors that should be considered. In addition to the date of injury, the date the employer had knowledge, the date the employer filed notification of injury, the date the employee's disability began, and the reporting by the physician treating the claimant must all be considered before analyzing the dates of first and last payment. In many claims, there were circumstances involved which legitimately prohibited payment within 14 days of notification by the employer. To acquire a true and accurate picture of the timeliness of payments those extraneous circumstances need to be considered. Raw data on dates of first and last payment is available, but will not be included in this report.

Second Injury Fund and Vocational Rehabilitation

For each and every claim resulting in a permanent partial disability, the employer/carrier is required to pay into the second injury fund 8% of the total amount reimbursed for that PPD injury. However, expenditures from the second injury fund for reimbursement to the carrier for a preexisting disability would not be compensable until 104 weeks after the disability. Because of that two-year time period, accurate up-to-date information on second injury

fund reimbursements are not available in the files scanned for this report. For a complete and accurate sample of vocational rehabilitation cases, the same holds true. Recommendations on addressing these two areas will follow.

Compensation Procedures on Claims

I Medical Only

Figures provided by the Division of Worker's Compensation show that in FY78, 60% of the claims filed were for injuries resulting in medical costs only, with no compensation for time loss from work. The table below gives an overall picture of the proportion of medical only and time loss compensation claims for fiscal years 1975 through 1980.

<u>Year</u>	<u>% of total medical only</u>	<u>% of total resulting in time loss</u>
FY 75	64%	46%
FY 76	62%	48%
FY 77	58%	42%
FY 78	60%	40%
FY 79	62%	38%
FY 80	67%	33%

In accordance with AS 23.30.150, no compensation is due for the first three days of disability, unless the injury results in disability of more than 28 days, in which case compensation shall be allowed from the date of disability. As the figures above show, well over one-half of the total claims filed represent claims for medical compensation only,

or no time loss. The Division has a totally separate filing system for the medical only claims, and the information available on this group is limited. Mandatory reports (see appendix) for claims involving medical only compensation are:

NOTICE OF INJURY TO EMPLOYER
NOTICE OF INJURY TO BOARD
PHYSICIAN'S INITIAL REPORT OF INJURY

Pursuant to AS 23.30.155(g), a final report is required within 16 days of the final compensation payment. Because no compensation payment is made for medical only claims, no final report is filed and therefore there is no record on file at the Division which shows the total amount of medical expenses paid for this group of claims. A scan through the medical only claims shows they include only the reports outlined above. If a claim is initially a medical only and the claimant later loses additional time from employment due to that injury, the claim is then counted as and included in the claims for compensation involving time loss.

II Claims settled between claimant and the employer/ carrier without dispute

Of the total claims for injuries filed each year, the Division estimates that 80% to 90% are settled without a dispute or investigation by the Division. Information available (forms attached) on those claims which are undisputed and promptly paid include:

NOTICE OF INJURY BY EMPLOYEE, AS 23.30.100(a) within 30 days of the injury

NOTICE OF INJURY BY THE EMPLOYER, AS 23.30.070(a) within 10 days from the date the employer has knowledge of an injury or death

PHYSICIANS INITIAL REPORT OF INJURY, AS 23.30.095(c) within 20 days following the first treatment.

NOTICE OF FIRST PAYMENT, AS 23.30.155(c), the employer/ carrier shall immediately notify the Board upon making the first payment, and upon suspension of payment.

NOTICE OF FINAL PAYMENT, AS 23.30.155(g), due within 16 days following the final compensation payment. This report also serves as the report of suspension of payment referred to in AS 23.30.155(c).

On many claims, the first and final report will actually appear as one report, particularly if the claimant was compensated for only a short period of time loss. The final report will provide the total amount paid in wage loss compensation. However there is no statutory requirement that the total amount of medical expenses be reported. Usually a figure for medical expenses will appear on the final report, but there is no means of ascertaining if this is in fact the total amount. AS 23.30.095(g) states that the employer is responsible for all medical costs relating to the injury for two years from and after the date of injury unless the injury is a latent one, in which case the two years runs from the time the employer has knowledge of the injury. In other words, the employer/ carrier may still be paying medical costs on 1978 injuries with no record whatsoever of the costs at the Division.

III Disputed Claims

The Division estimates 10% to 20% of all claims result in a dispute. The formal method of disputing a claim is the filing of a notice of controversion by the employer/carrier. However, the Division estimates that as many cases are informally disputed, or resisted, as are controverted.

Ideally the disputed case includes the following reports in the order listed:

EMPLOYERS NOTICE OF INJURY or
EMPLOYEES CLAIM FOR COMPENSATION (filed by the employee if the employer does not report the injury within 30 days)

NOTICE TO THE BOARD THAT CLAIM WILL BE CONTROVERTED, AS 23.30.155(d) must be completed and filed with the Board on or before the 14th day after the employer has knowledge of the injury

LETTER TO APPLICANT EXPLAINING NOTICE OF CONTROVERSION

APPLICATION FOR ADJUSTMENT OF CLAIM filed by the claimant if he disagrees with the controversion or if he desires investigation of his claim. The Division serves the application for adjustment on the carrier under AS 23.30.110(b)

LETTER TO CLAIMANT after receiving the Application for Adjustment and enclosing the Readiness to Proceed statement

STATEMENT OF READINESS TO PROCEED filed by the claimant--the actual document that triggers the hearing process. After receiving the Readiness to Proceed statement, the Division notifies the employer/carrier and the claim is docketed for hearing.

NOTICE OF HEARING sent to applicant and employer/carrier after a hearing date has been scheduled.

After a claim has been scheduled for hearing, one of the following results:

1. The two parties come to an informal agreement before a hearing takes place, or

2. The two parties sign a compromise and release statement, or
3. A hearing will be held and a Decision and Order issued by the Board.
4. In some instances a hearing is set and the claimant does not show up, which may result in the case being dismissed.

The order of the action in disputed claims can and does vary. It appears that at times the carrier quits paying, in which case the applicant files an adjustment for claim whereby the employer/carrier may either resume payments or file a controversion. As the Division points out, it is those resisted cases where no controversion is filed that present a substantial review and investment of time for preparation for a Board hearing.

Recommendations

I Information Handling System

The Division of Worker's Compensation handles an immense volume of paper work each year. The implementation of an information handling system, which is currently in the planning stage, should greatly enhance the efficiency of the Division by: 1) providing easy tracking of promptness in payments, 2) timely report filing by carriers and assessment of penalties for late payment, 3) providing summary files of each claim, 4) following the status of contested claims, and 5) increasing the quality and consistency of Board decisions while reducing the time required for research by documenting past Board decisions and court decisions into a legal digest. The difficulty in deriving the statistics for this report should be eliminated upon the installation of the information handling system. The Commission may want to review the information outlined in this report which was not available and consider reporting requirements and inclusion of that data in the information system for future reference.

II Medical Costs

As outlined, comprehensive medical benefits are not available at the Division of Worker's Compensation. If the Commission wishes to obtain these figures, I recommend contacting the carriers to get a sample of the total medical costs paid out on closed cases, both medical only and those

claims which include time loss compensation. If the Commission believes that information should be available in the claims files at the Division, I would suggest drafting legislation to revise AS.23.30.155(g), to include requiring a final report of comprehensive medical costs on each claim.

III Disputed Claims

In order to obtain a valid and accurate sampling of claims resulting in a hearing by the Board or a Compromise and Release, I recommend a year prior to 1978 be selected. The Division has listings by year of all claims which are scheduled for hearing. That listing includes case numbers that reflect the year of injury. If the Commission chooses to go forward with additional claims study, I recommend selecting a random sample of claims from the listings of at least three years and collecting data which would include in-depth information on: date record closed decision of the Board in favor of which party, issue of dispute, and an overall summary of the claim. The sample used for this report shows 5% of the 1978 injury claims resulted in a hearing, or only 12 cases. This is simply too small a number from which to draw conclusions on Decisions and Orders. An overall picture could also be obtained as to the number of those claims which are settled informally.

IV Second Injury Fund-Vocational Rehabilitation

Data obtained on the SIF should be obtained by choosing a

year prior to 1978, and by selecting a sample from claims which resulted in reimbursement to the employer/carrier for compensation for an injury resulting from a pre-existing disability. The primary focus should be on determination of eligibility for SIF reimbursement, or in the case of second injury fund, for means of retraining and vocational rehabilitation, payment data and inflated cost of retraining should be considered.

V Research and Analysis Conducted in the Department of Labor

The Division of Research and Analysis within the Department of Labor provides statistics on a yearly basis under the Federal Bureau of Labor Statistics Supplemental Data System (SDS). A copy of the most recent published report is available for the Commission to determine if this information can be useful in reviewing the nature of injury or illness, monthly occurrence of injury, type of accident and industry, and the worker's occupation and sex.

WORKERS
WORKMEN'S COMPENSATION COMMISSION DATA

CASE #	NAME:	EMPLOYER:	DATE OF ACCIDENT:
1. DATE: Case Opened _____ Case Closed _____ Case Pending _____		2. DATE OF: Injury _____ Notice of injury filed _____ First Payment _____ Last Payment _____	
3. TYPE OF CLAIM Medical Only _____ Temporary Disability _____ Total _____ Partial _____ Permanent Disability _____ Total _____ Partial _____		4. INSURANCE Uninsured _____ Employer Insured _____ Carrier _____ Other _____	
5. Type of Employer _____		6. Age of claimant _____ Location claim filed _____	
WAS A HEARING REQUESTED _____, DATE OF REQUEST _____			
WAS AN ATTORNEY BROUGHT IN _____, ACTUAL DATE HEARING HELD _____			
DATE WORKMEN'S COMPENSATION BOARD DECISION ISSUED _____			
WAS AN APPEAL FILED BY EITHER SIDE REGARDING THE DECISION _____ DATE _____			
WAS RULE 45 USED (suspension of order pending appeal) _____			
(Not NO)			
DID CLAIMANT UNDERGO VOC/REHAB TRAINING _____, DATE _____			
.040 First Payment _____ Last Payment _____ TOTAL _____			
2ND INJURY FUND (reimbursement to carrier) .205 First Payment _____ Last Payment _____ TOTAL _____			
TOTAL COMP PAID TO CLAIMANT _____ TIME LOSS			
AWW _____		WCR _____	

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International association of industrial accident boards and commissions



PRESIDENT
Robert C. Landess
Iowa Industrial Commissioner
507 10th Street
Des Moines, Iowa 50319
(515) 281-8335

MARCH, 1981

W Comp
**NEWS
LETTER**

EXECUTIVE DIRECTOR
Phillip T. Bork
P.O. Box 2917
Olympia, Washington 98507
(206) 754-3793

IAIABC 67th Annual Convention-Oct. 11-15, 1981-Des Moines

LEGISLATION COMMITTEE TO CONSIDER MODIFICATION OF IAIABC STANDARDS

The 1980 Convention in Detroit saw the adoption of revised IAIABC Standards for workers' compensation for the first time in nearly two decades. These were passed after considerable debate and response by the Legislation Committee. After adoption, a further motion was made that the 1981 Committee be charged with further review of the Standards to consider and possibly propose further changes and additions responsive to suggestions made from the floor in debate. The Committee members themselves supported that proposal and it passed unanimously.

The Legislation Committee will meet in Des Moines on April 30, 1981, as part of IAIABC's first All-Committee Conference. This is an invitation to all active, associate, and honorary life members to make suggestions for amendment or modification to the present IAIABC Standards. Prior to the 1980 convention a similar invitation was issued and dozens of suggestions were made by administrators, industry leaders, insurance association members, and others from both Canadian and United States jurisdictions--many of which were incorporated into the final product.

Again this year, we want your input and suggestions. The Association adopted what it believed to be improved Standards in 1980, but should not be content to wait another generation to consider further changes or additions.

If you have proposals for amendment, identify the number of the Standard(s) you suggest be amended, and provide the Committee with ten copies prior to its meeting. All proposed changes or additions should be sent to Committee Chairman Michael J. Gillman, Michigan Workers' Compensation Appeal Board, 309 North Washington Square, Lansing, Michigan 48909. They should be received no later than April 22, 1981.

(The Standards as adopted on September 10, 1980, are set forth on the page accompanying this newsletter.)

ALL-COMMITTEE CONFERENCE SET FOR APRIL 29 - MAY 1, 1981

Early in 1980 the idea of an IAIABC "All-Committee Conference" emerged. That idea will become a reality April 29 through May 1, when all standing committees of the association will meet in Des Moines, Iowa.

The idea makes sense. First, each committee will be able to do its own work more effectively if members meet face-to-face rather than merely by phone or mail. Second, by having all committees gather at the same place and time, any member of one committee can serve as an instant resource to all other committees.

The IAIABC Officers and Executive Committee are looking forward to this new experience in association activity. They hope the All-Committee Conference idea will enhance the productivity and importance of the committees' projects and reports. This, in turn, will improve the workers' compensation programs in our respective jurisdictions. Future newsletters will report on the

success of this conference. Watch for news on the work of the Legislation Committee as well as projects and studies undertaken by the other standing committees.

REHABILITATION UPDATE QUESTIONNAIRES DUE IN EARLY APRIL

In April, 1976, the Rehabilitation Committee of IAIABC conducted a study of the workers' compensation rehabilitation programs in the United States, Canada, Guam, New South Wales, New Zealand, Rhodesia, and South Africa. Response to the study was excellent, with 96 percent of the jurisdictions responding. The results were published by the association in a book entitled, Workers' Compensation Rehabilitation: A Study of the Rehabilitation of Injured Workers in the United States and Member Jurisdictions of the International Association of Industrial Accident Boards and Commissions.

Because a number of significant changes have occurred in workers' compensation rehabilitation in recent years, the members of the Executive Committee of the association asked that this year the Rehabilitation Committee update the 1976 survey. This new study will illuminate specific changes in general trends that have occurred since 1976. The information gathered will be analyzed and compared with the previous study. The results will be published by the association, with a copy of the final report to be mailed to each member jurisdiction.

Each jurisdiction has already received a copy of the update questionnaire. These should be returned to Eleanor M. Ross, Vice Chairman of the Rehabilitation Committee, in early April, 1981. Her address: U.S. Department of Labor, ESA/OWCP, Division of State Workers' Compensation, 1371 Peachtree Street, N.E., Suite 105, Atlanta, Georgia 30367.

If you have questions concerning the questionnaire, you may call Eleanor Ross at (404) 881-7560.

MEETING REMINDERS

- Western Region IAIABC--May 24-26, 1981. Sheraton-Waikiki Hotel, Honolulu, Hawaii. Contact: Orlando Watanabe, Administrator, Disability Compensation Division, Dept. of Labor and Industrial Relations, 825 Mililani Street, Honolulu, Hawaii 96813.
- Central Association IAIABC--June 17-19, 1981. Bismarck Hotel, Chicago, Illinois. Contact: Calvin Tansor, Commissioner, Illinois Industrial Commission, 160 North LaSalle Street, Chicago, Illinois 60601.
- Southern Association of Workers' Compensation Administrators--July 5-9, 1981. Grove Park Inn, Asheville, North Carolina. Contact: William H. Stephenson, SAWCA President, Industrial Commission, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina 27611.
- Association of Workers' Compensation Boards of Canada--May 24-27, 1981. Whitehorse, Yukon. Contact: H. J. Taylor, Chairman, Yukon Workers' Compensation Board, Suite 300, 4110 Fourth Avenue, Whitehorse, Yukon Y1A 4N7.
- IAIABC 67th International Convention--October 11-15, 1981. Des Moines-Marriott Hotel, Des Moines, Iowa. Complete details will be printed in the May IAIABC Journal.
- Course on Occupational Safety and Health Law--June 22-26, 1981. University of Utah, Salt Lake City, Utah 84112. Contact: Ms. K. Blosch, University of Utah, Building 112, Salt Lake City, Utah 84112. (801) 581-5710.
- Conference on Research in Workers' Compensation--July 19-21, 1981. University of Connecticut, Storrs, Connecticut. In 1979 the University of Connecticut and the U.S. Labor Department's Employment Standards Administration began a grant program for academic research into workers' compensation. Peter S. Barth, Project Director, says this conference has three emphases: (1) grant recipients will describe their ongoing research efforts, (2) major sponsors will outline their research plans, and (3) potential users of research will tell what new knowledge would benefit them most. Contact: Ms. Danitza Fernandez, Conferences and Institutes, U-56E, the University of Connecticut, Storrs, Connecticut 06268. (203) 486-3231.

IAIABC STANDARDS — 1980

1. **UNIVERSAL COVERAGE.** Neither an employer nor an employee should have the right to reject coverage; there should be no numerical exemptions nor exemptions for any types of regular employment.
2. **COVERAGE OF OCCUPATIONAL INJURIES AND DISEASES.** Coverage of all work-related injuries and diseases should be full and complete, without any legal requirement of an accidental occurrence.
3. **MEDICAL CARE FOR OCCUPATIONAL INJURIES AND DISEASES.** Medical care should be full for all work-related injuries and diseases without limitation as to cost or time and should include physical rehabilitation.
4. **CHOICE OF PHYSICIAN.** The employer should have responsibility to provide immediate treatment for injury or disease. Thereafter the injured worker should have free choice of a treating physician.
5. **COMPENSATION RATES.** Substantial protection against loss of earnings should be provided. This may be achieved by compensation payable at either 66-2/3 percent of the employee's gross wages, or 80 percent of an employee's spendable earnings, with a maximum rate of no less than 100 percent of the average weekly wage for the jurisdiction.
6. **WAITING PERIOD.** The waiting period should not be more than three calendar days; and if disability continues at least 14 calendar days, compensation should be paid from date of disability.
7. **BENEFIT DURATION.** In case of total disability, benefits should be paid for the entire duration of disability.
8. **PARTIAL DISABILITY BENEFITS.** Benefits should be provided for temporary partial disability and for decreased earning ability of the worker after maximum medical recovery and rehabilitation is completed.
9. **SURVIVOR BENEFITS.** In case of death, benefits should be paid to a dependent spouse until death or remarriage; to a child until age 18, and thereafter to age 23 if a full-time student in an accredited educational institution; or to a mentally or physically disabled child during the period of incapacity for self-support; and to other dependents during their period of incapacity for self-support.
10. **BENEFIT ADJUSTMENTS.** Compensation payable for total disability or survivor benefits should be adjusted annually to reflect percentage changes in the average weekly wage of the jurisdiction.
11. **COORDINATION OF BENEFITS.** Compensation payable for total disability or survivor benefits should be coordinated under the jurisdiction's law with Social Security and other employer-funded disability programs so as to best effectuate the objectives of wage replacement and rehabilitation.
12. **PROMPT DELIVERY OF BENEFITS.** Employers should be encouraged to carry out the obligation for prompt payments of benefits; and jurisdictions should not make admissions of liability a condition precedent to such prompt payments.
- ⑩ 13. **COMPENSATION ASSURANCE.** A special fund should exist, supported by assessment or from the jurisdiction's general fund, to assure the obligations of uninsured employers, insolvent employers, or insolvent insurers to pay all benefits required by law.
14. **SUBSEQUENT INJURY PROTECTION.** Employment of physically handicapped workers should be encouraged by limiting employer liability for subsequent injuries or diseases which, combining with prior injuries or diseases or infirmities, result in further disability or death. A special fund should be created for the purpose of paying benefits beyond the employer's limited liability.
15. **VOCATIONAL AND MEDICAL REHABILITATION.** When a worker cannot be restored to prior employment by ordinary medical treatment, it should be the employer's obligation to provide and pay the cost of rehabilitation; the obligation of the employee to cooperate with such rehabilitation; and the obligation of the workers' compensation agency to monitor the worker's rehabilitation and medical management, minimizing the adversary environment and creating an atmosphere conducive to successful reemployment.
16. **LIMITATION FOR FILING CLAIMS.** There should be adequate time limits for filing occupational injury or disease claims. The employee's obligation to give notice or to file claim for an occupational disease should not commence until the employee knows or has reason to believe a relationship exists between employment and the condition giving rise to the claim.
17. **CHOICE OF JURISDICTION.** An employee or survivor should be given the choice of filing a workers' compensation claim in the jurisdiction where injury or injury resulting in death occurred; or where the employee's employment was principally localized; or where the employee was hired.
18. **EXCLUSIVE REMEDY.** Workers' compensation should be the employee's exclusive remedy against his employer, its carrier, his co-employees and his union.
19. **ADMINISTRATION.** The administration of workers' compensation statutes should be vested in an agency created by and in each jurisdiction. The agency should be empowered to administer impartially the statutes enacted by its legislative body to meet the varying and unique needs of its jurisdiction.
20. **AGENCY ROLE IN DELIVERY SYSTEM.** The workers' compensation agency should take an active role in auditing all payments made under the compensation statutes including voluntary payments and those made after dispute resolution. The agency should provide mechanisms for informal resolution and prompt adjudication of disputes.
21. **INFORMATION SYSTEM.** The International Association of Industrial Accident Boards and Commissions' Basic Administrative Information System (BAIS) or its equivalent should be an integral part of each jurisdiction's workers' compensation program and used for internal management and for displaying performance and case load inventory and activity.
22. **JUDICIAL REVIEW.** Judicial review of final administrative determinations should be directed to the jurisdiction's appellate court and limited to consideration of the record only on questions of law without a trial de novo.

* we suggested this at one of the commission meetings, however
thought few may be interested to know it is now recommended
by IAIABC for all workers' comp. jurisdictions.